

CALIFORNIA COASTAL COMMISSION

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Staff: Karl Schwing, LB
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Hearing Date: March 9-11, 2011
Commission Action:



STAFF REPORT:
RECOMMENDATION ON APPEAL FINDING SUBSTANTIAL ISSUE

APPEAL NUMBER: A-5-LGB-11-031

LOCAL GOVERNMENT: City of Laguna Beach

DECISION: Approval with Conditions

APPLICANTS: Laguna Terrace Park LLC & Ohana Laguna Reef LLC

PROJECT LOCATION: 30802 & 30806 South Coast Highway
Laguna Beach (Orange County)

PROJECT DESCRIPTION: Lot Line Adjustment 10-08 to transfer an existing 17-space parking lot area from a larger lot located at 30802 Coast Highway to approximately 0.828 acre property located at 30806 Coast Highway, which also effectively divides approximately 45.65 acre area from an adjacent undeveloped area of land.

APPELLANTS: Penny Elia, Sierra Club Save Hobo Aliso Task Force; Paul R. Esslinger; and Commissioners Esther Sanchez & Mark Stone

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after a public hearing, determine that **A SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which Appeal No. A-5-LGB-11-031 has been filed because the locally approved development raises issues of consistency with the Laguna Beach certified Local Coastal Program (LCP) related to public access and recreation, environmentally sensitive areas, water quality, and hazards (see Motion, page 3).

The development authorized by the City has the effect of separating an existing developed area from an adjacent undeveloped area that contains significant areas of sensitive habitat. This division creates parcels that are likely not developable without also impacting the sensitive habitat areas. Thus, such land division would be inconsistent with policies of the certified LCP that protect environmentally sensitive areas (ESAs). The certified local coastal program also contains policies that address the protection of existing public access and recreation opportunities that would apply to this type of land division that the City did not apply. Therefore, staff recommends that the Commission find that the appeals raise a substantial issue and cause this matter to be brought to the Commission on de novo review at a later date.

NOTE: THE COMMISSION WILL NOT TAKE PUBLIC TESTIMONY DURING THIS PHASE OF THE APPEAL HEARING UNLESS AT LEAST THREE COMMISSIONERS REQUEST IT. IF THE COMMISSION FINDS THAT THE APPEAL RAISES A SUBSTANTIAL ISSUE, IT WILL SCHEDULE THE DE NOVO PHASE OF THE HEARING FOR A FUTURE MEETING, DURING WHICH IT WILL TAKE PUBLIC TESTIMONY. WRITTEN COMMENTS MAY BE SUBMITTED TO THE COMMISSION DURING EITHER PHASE OF THE HEARING.

SUBSTANTIVE FILE DOCUMENTS:

Laguna Beach Local Coastal Program (LCP); findings and file materials in support of dispute resolution number 5-10-014-EDD; Vesting Tentative Tract Map No. 17301; Findings and file materials in support of dispute resolution number 5-10-117-EDD; Findings and file materials in support of appeal number A-5-LGB-10-039; Findings and file materials in support of appeal number A-5-LGB-10-174; Findings and file materials in support of dispute resolution number 5-11-012-EDD; California Coastal Commission Notice of Violation of the Coastal Act dated 5/4/2007 sent to The Athens Group and Laguna Terrace Park LLC; Letter dated October 27, 2009, from the California Coastal Commission to the Laguna Beach Planning Commission Regarding CDP No. 09-36; City of Laguna Beach Lot Line Adjustment No.s LL 95-01 and LL 95-04; Letter dated July 19, 2010 from staff of the California Coastal Commission to the City Council regarding CDP10-26; findings and approved plans for Coastal Development Permit No.s 5-95-286, 5-95-286-A1, G5-95-286, and 5-96-048; U.S. Geological Survey 7.5" Quadrangle Maps for Laguna Beach and San Juan Capistrano; Map titled *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach* Map ("post-cert map") adopted by the Commission on September 16, 1993; Letter dated July 7, 2010, prepared by LSA Associates to Mr. James Lawson titled Technical Evaluation of CCR Title 14, Section 13577(a) Stream Issue, Laguna Terrace Park, Tentative Tract No. 17301, Laguna Beach, California; Letter prepared by Mr. Steven Kaufman to Mr. Ken Frank dated July 19, 2010; City of Laguna Beach Agenda Bills dated 11/16/2010 and 1/18/2011; Letter dated November 4, 2010 from staff of the California Coastal Commission to Scott Drapkin, City of Laguna Beach.

LIST OF EXHIBITS:

1. Vicinity Map
2. Notice of Final Action & City of Laguna Beach Resolution No. 11.008 of the City Council adopted 1/18/2011
3. Appeal by Sierra Club Save Hobo Aliso Task Force
4. Appeal by Mr. Paul R. Esslinger
5. Appeal by Commissioners Esther Sanchez & Mark Stone
6. Lot Line Adjustment No. 10-08
7. Staff Report/Findings in Support of the Commission's February 2011 Action on Dispute Resolution No. 5-11-012-EDD, without attached exhibits
8. A portion of U.S. Geological Survey 7.5 Minute Quadrangle for Laguna Beach Depicting Blue Line Streams
9. A portion of map titled *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach* Map ("post-cert map") adopted by the Commission on September 16, 1993, with annotations
10. a. & b. Detail of portion of lot line adjustment occurring between hotel site and mobilehome park site.
11. Graphic Depicting Location of Streams, Parcel Areas, Mobilehome Park & Hotel Parcel

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE WITH REGARD TO APPEAL NO. A-5-LGB-11-031

MOTION: I move that the Commission determine that Appeal No. A-5-LGB-11-031 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings that a Substantial Issue Exists. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-5-LGB-11-031 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.

II. APPEAL PROCEDURES

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. Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located within 100 feet of a wetland or stream, between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, mean high tide line, or the top of the seaward face of a coastal bluff. Furthermore, developments approved by local County governments may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the four areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modifications had been properly accepted, and the City assumed permit issuing authority at that time. Section 30603(a)(2) of the Coastal Act identifies the proposed project site as being in an appealable area based on its location within 100 feet of a stream (see further discussion regarding this determination below).

Section 30603 of the Coastal Act states:

(a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*

- (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
- (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Section 30603(a)(2) of the Coastal Act establishes the proposed development approved by the local government as being appealable by its location within 100 feet of a stream (see Exhibits 7-9 & 11).

Laguna Beach Coastal Development Permit No. 10-57 is a lot line adjustment between the mobile home park and the hotel, which as explained more fully below, results in the creation of several parcels (see Exhibit 6 & 10). On January 4, 2011, the City Council of the City of Laguna Beach held a hearing on CDP 10-57, at which the City staff recommended the City find that its action would be appealable to the Commission. City Council members questioned this determination, and continued the matter for City staff to work on that question, and proposed condition language. On or about January 13, 2011, City staff published a staff report on the City's web site, revising their appeals determination and stating that the City's action would not be appealable to the Commission. On January 14, 2011, a member of the public, Ms. Penny Elia, sent an email to City staff and City Council members, with a copy to Commission staff, stating her objection to the City's determination that the currently pending proposal would not be appealable. Ms. Elia requested that the City contact the Executive Director of the Commission for a determination on appealability. Following that email, also on January 14, 2011, the Executive Director sent a letter to the City with his determination that the City's action would be appealable to the Commission because there are streams in the vicinity of the proposed development (in effect, a subdivision) which establish the appeals area; and the appeals area extends into parcel(s) that would be reconfigured as a result of the proposed subdivision. On January 18, 2011, the City Council took action to approve Coastal Development Permit No. 10-57, and adopted a resolution of approval stating its action is not appealable to the Commission. On January 25, 2011, the Commission received a Notice of Final Action from the City (Exhibit 2). Since the Executive Director found the City action to be appealable, on January 26, 2011, the Executive Director opened an appeal period that concluded on February 8, 2011. During this appeal period, three appeals were filed, one submitted by Ms. Penny Elia on behalf of the Sierra Club Save Hobo Aliso Task Force (filed as of February 3, 2011) (Exhibit 3), one by Mr. Paul R. Esslinger (Exhibit 4) submitted on February 7, 2011, and an appeal was filed on behalf of the Commission by Commissioners Esther Sanchez and Mark Stone on February 8, 2011 (Exhibit 5).

The Notice of Final Action submitted by the City contained the following statement: "...The City considers the project as not appealable to the California Coastal Commission; however, on January 14, 2011, the Executive Director of the California Coastal Commission has made a determination that the project is appealable pursuant to Coastal Act Section 30603. Based on the Coastal Commission's Executive Director's determination, an aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice...". Since this language was inconsistent with a statement in the attached resolution from the City Council, Commission staff contacted the City on January 26, 2011, to find out whether they believed a dispute existed. At that time, City staff advised Commission staff of their opinion that there was no ongoing dispute. The following day, January 27, 2011, Commission staff received a call from City staff advising that they had changed their opinion, stating that a dispute exists and they requested that a dispute resolution hearing on appealability be scheduled. Thus, on February 9, 2011, the Commission held a dispute resolution hearing on whether the City's action would be appealable to the Commission (see 5-11-012-EDD, Exhibit 7). The Commission

concurred with the Executive Director's determination, upholding the finding that the City's action would be appealable.

This action follows several prior actions by the City and the Commission relating to land divisions and appealability involving the subject parcels. To summarize, in 2009 the City approved a CDP for a land division (i.e. City CDP 09-36). The appealability of the City's action was determined in Commission dispute resolution 5-10-014-EDD, and that action was appealed under A-5-LGB-10-039. In March 2010, Laguna Terrace Park LLC submitted another application to the City of Laguna Beach to subdivide the Laguna Terrace Mobilehome park for residential purposes (i.e. City CDP application number 10-26). The Commission found that the City's action on that application would be appealable (see 5-10-117-EDD) on June 9, 2010. On July 20, 2010, the Laguna Beach City Council held a public hearing at which they approved CDP number 10-26. Appeals were subsequently filed, and the Commission found those appeals raised a substantial issue on September 15, 2010 (see A-5-LGB-10-174). The Commission hasn't taken action on the de novo component of that matter.

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states:

(b)(1) 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.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the appeal will be presumed to raise a substantial issue, and the Commission will proceed to the de novo phase of the public hearing on the merits of the project. The de novo phase of the hearing will be scheduled at the same meeting or a subsequent Commission meeting. De novo review on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding public access and recreation, environmentally sensitive areas, water quality, and hazards.

Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have time as established by the Commission chair to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, 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.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

The de novo phase of the hearing will be scheduled at a later date.

Factors to be Considered in Substantial Issue Analysis

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. Section 13115(b) of the Commission's regulations provides that the Commission will hear an appeal unless it finds that the appeal raises no significant question as to conformity with the certified LCP or there is no significant question with regard to the public access policies of Chapter 3 of the Coastal Act. 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 Local Coastal Program and the public access policies of the Coastal Act;
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 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 Code of Civil Procedure, Section 1094.5. Staff is recommending that the Commission find that **a substantial issue** exists for the reasons set forth below.

III. APPELLANTS' CONTENTIONS

The City of Laguna Beach approval of the proposed development was appealed on February 2, 2011, by one appellant, on February 7, 2011 by another appellant, and on February 8, 2011 by a third set of appellants. The project was appealed by California Coastal Commissioners Esther Sanchez and Mark Stone; by Ms. Penny Elia on behalf of the Sierra Club Save Hobo Aliso Task Force; and by Mr. Paul R. Esslinger. The appellants contend that the proposed development does not conform to the requirements of the Local Coastal Program.

The appeal by Commissioners Sanchez and Stone contend that the proposed project is inconsistent with the Laguna Beach LCP, as follows:

- The City has failed to address whether the proposed land division is consistent with LCP policies regarding protection and enhancement of public access and biological resources. Except for making generalized findings about the project being consistent with the public access or recreation policies of Chapter 3 of the Coastal Act and consistent with criteria

contained in the Certified Local Coastal Program, the City did not analyze the consistency of the proposed development with all applicable LCP policies.

- The City has failed to apply the requirements of Open Space Conservation Element Policies 8-J, 8-G, and 8-H which require the preparation of biological assessments when there is a subdivision within sensitive habitat (Environmentally Sensitive Areas/ESAs) and protection of identified habitat from impacts associated with new development and fuel modification.
- The City's action results in the creation of new parcels which are entirely within a Coastal ESA or which don't contain a site where development can occur consistent with the ESA policies of the LCP, contrary to OSCE Policy 8J.
- The City's action fails to take into account existing access trails and the requirements of Open Space Conservation Element Policy 6D and 6F, which require the protection of such trails and assurance that future provision of access will not be precluded.

The appeal by Ms. Penny Elia identifies the following reasons for appeal:

- The City has failed to address whether the proposed land division is consistent with LCP policies.
- The City has not addressed unpermitted development at the site including grading, bluff stabilization, installation of a light and an irrigation system.
- The proposed lot reconfiguration involves development on "Blueline Stream" identified by the U.S. Department of Water Resources [sic]¹. The presence of this segment of stream is sufficient to render the development appealable to the Commission.
- The City finds the project does not include any lots or parcels that were created illegally yet the City did not address unresolved/unpermitted lot line adjustments dating back to 1995
- The City has no coastal development permit jurisdiction over the subject development because the entire development is located in an area of deferred certification where the Coastal Commission retains jurisdiction over coastal development

The appeal by Mr. Paul R. Esslinger, identifies the following reasons for appeal:

- The City failed to comply with LCP Policy 3A, which requires the City to consider environmental hazards in the development review process, in that the City did not consider that the site is subject to seismically induced landslides, liquefaction and fire hazards. Nor did it address Policy 10C regarding geological hazards.
- The City failed to comply with the requirements of the City's LCP, particularly with regard to water quality (Policies 4a-4f).

¹ This appears to be a reference to so-called "blue line" streams that are depicted on U.S. Geological Survey 7.5 minute quadrangle maps of Laguna Beach (Exhibit 8) that the City's certified Local Coastal Program identifies as 'streams' (see Open Space Conservation Element Policy 9-C, which reads in part "...a) Streams on the Major Watershed and Drainage Courses Map which are also "blue-line" streams as identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments...).

- The City's action does not comply with LCP Policies 8G and 8K relative to requirements for biological resource assessments and impacts in conjunction with subdivisions.
- The property is subject to ongoing Coastal Act violations. For instance, the applicant developed two spaces with mobile home uses in the year 2000 without obtaining a CDP. The appellant believes this ongoing violation needs to be addressed prior to any further land division involving the subject site

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Location

The subject site is an approximately 1 acre site developed with a hotel at 30806 Coast Highway and a 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 hotel site is adjacent to Coast Highway. The developed part of the mobile home park occupies about 14 acres adjacent to Coast Highway within and at the mouth of a steeply sided canyon (Hobo Canyon). According to the City, the hotel site is designated Commercial Neighborhood, and the area of land occupied by the mobile home park is designated for recreation and 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 mobile home 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, near Coast Highway, where the hotel, 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).

Laguna Beach Coastal Development Permit No. 10-57 is a lot line adjustment between the mobile home park and the hotel, which as explained more fully below, results in the creation of several parcels (Exhibits 6, 10 & 11). In Lot Line Adjustment (LLA) No. 10/08 approved by City CDP No. 10-57, the LLA refers to the mobile home park parcel as being "parcel 1 in the City of Laguna Beach...of Lot Line Adjustment LL 95-01 recorded November 22, 1995 as instrument no. 95-520276...". There was a related LLA, 95-04, that is also involved. Thus, the City's approval relies on two lot line adjustments the City processed in 1995 (Lot Line Adjustment No.s LL 95-01 and LL 95-04). However, those lot line adjustments, which are development under the Coastal Act, were not authorized under any coastal development permit and are unpermitted. For additional analysis of this issue, see the Commission's findings regarding 5-10-117-EDD and 5-11-012-EDD, which are incorporated by reference (see substantive file documents). Thus, for purposes of the Coastal Act the property being subdivided is the approximately 270 acre property that existed prior to the lot line adjustments. No physical changes to the site are proposed.

B. Description of Local Approval

On January 18, 2011, the City of Laguna Beach City Council approved Coastal Development Permit 10-57 for the project without conditions. The City made various findings, as follows:

1. The project site consists of legal building sites as defined in Title 25 of the Municipal Code
2. The proposal does not create additional lots or building sites.
3. The land distribution is consistent with the minimum lot requirements of the Municipal Code

4. The lot line adjustment is exempt from the requirements of the California Environmental Quality Act for the sole and limited purpose of the lot line adjustment application (State CEQA Guidelines section 15305)
5. The lot line adjustment will not result in the need for additional improvements and/or facilities.
6. The lot line adjustment does not include any lots or parcels created illegally.
7. The lot line adjustment does not impair any existing access or create a need for new access.
8. The project is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.
9. The lot line adjustment and coastal development permit will not result in a change in the density or intensity of the use of the land.
10. The lot line adjustment will facilitate adequate parking for a lower cost visitor-serving facility, pursuant to Public Resources Code section 30213, which deals with the protection and encouragement of lower cost visitor-serving facilities.
11. One of the parcels of the lot line adjustment is located within both the California Coastal Commission's and the City of Laguna Beach's coastal development permitting jurisdictions.
12. The lot line adjustment and coastal development permit will not create any lots or parcels which "require any new lot lines or portions of new lot lines within the area subject to the [California Coastal] Commission's retained jurisdiction."
13. It generally is required to obtain the approval and issuance by the California Coastal Commission of a Coastal Development Permit for deferred areas, which are located outside of the City's Coastal Development Permitting jurisdictional boundaries. The portion of the property for which the lot lines are proposed to be adjusted lies within the City's Coastal Development Permitting jurisdictional boundaries, although other portions of the property lie within a Coastal Commission deferred area. In the event it is determined that the lot line adjustment's proposed "new lot lines or portions of new lot lines" are within the Coastal Commission's retained jurisdiction, then it shall be the responsibility of the applicants to comply with applicable requirements.
14. In accordance with Chapter 25.07 of the Laguna beach Municipal Code, it is determined that the Lot Line Adjustment is not an appealable development.

C. Substantial Issue Analysis

As previously stated, the local CDP may be appealed to the Commission on the grounds that it does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. The Commission must assess whether the appeal raises a substantial issue as to the project's consistency with the certified LCP or the access policies of the Coastal Act.

In making that assessment, the Commission considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP raise significant issues in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has regional or statewide significance.

In the current appeals of the project approved by the City of Laguna Beach City Council, the appellants contend that the City's approval of the project does not conform to various provisions of the certified LCP and requirements set forth in the Coastal Act. Not all of the contentions raised can be considered valid appeal arguments, as the grounds for an appeal are limited to an allegation that the development does not conform to the certified LCP or the public access policies of the Coastal Act.

For clarification, the appellants' contentions have been grouped into the following categories: Valid and Invalid. Within the Valid Contentions Section, the appeals are determined to either raise "Substantial Issue" or "No Substantial Issue." Of the valid appeal contentions raised, Commission staff has recommended that the Commission find that a substantial issue exists with respect to the grounds on which the appeals have been filed. Invalid contentions are addressed on page 14.

1. Valid Contentions

Those contentions determined to have valid grounds for appeal are included in the subsequent section. Section (a) describes those contentions that are found to raise a substantial issue and Section (b) addresses those which are not found to raise substantial issue with the City's certified LCP and public access provisions of the Coastal Act.

a. Substantial Issue

The following contentions made by the appellants raise a substantial issue of consistency with the regulations and standards set forth in the certified LCP:

Applicable policies of the LCP that are identified by the appellants, are as follows:

3A Ensure adequate consideration of environmental hazards in the development review process.

4A Development Planning and Design Best Management Practices (BMPs) Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs), where feasible, to reduce to the maximum extent practicable, pollutants and runoff from the proposed development. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.

*4B Minimize Impervious Surfaces
Ensure that development minimizes the creation of impervious surfaces, especially contiguously connected impervious areas, or minimizes the area of existing impervious surfaces where feasible.*

*4C Minimize Volume and Velocity of Runoff
Ensure that development is designed and managed to minimize the volume and velocity of runoff (including both stormwater and dry weather runoff) to the maximum extent practicable, to avoid excessive erosion and sedimentation.*

*4D Minimize Introduction of Pollutants
Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable.*

*4E Preserve Functions of Natural Drainage Systems
Ensure that development is sited and designed to limit disturbances and to preserve the infiltration, purification, retention and conveyance functions of natural drainage systems that exist on the site to the maximum extent practicable.*

4F Water Conservation and Native Plants

Ensure that development encourage[sic] water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides, herbicides and excessive irrigation. Prohibit the use of invasive plants, and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs).

6D Require as a condition of development approval, the dedication and improvement of public trail easements.

6F Ensure that new development does not encroach on access to trails nor preclude future provision of access.

8G When subdivision or fuel modification proposals are situated in areas designated as "High Value" habitats on the Biological Values Maps and where these are confirmed by subsequent on-site assessment, require that these habitats be preserved to the greatest extent possible.

8H When subdivision or fuel modification proposals are situated in areas designated as "Very High Value" habitats on the Biological Values Maps and where these are confirmed by subsequent on-site assessment, require that these habitats be preserved and, when appropriate, that mitigation measures be enacted for immediately adjacent areas.

8I Environmentally Sensitive Areas (ESA's) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as Environmentally Sensitive Areas: those areas shown on the Biological Resource Values Maps in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Maps and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.

8J Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:

1. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.

2. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.

3. Where development is proposed on an existing subdivided lot which is otherwise developable (i.e., able to be served by utilities and access, and on slopes able to accommodate development consistent with City provisions on slope/density, grading, hazards, subdivisions and road access), and is consistent with all other policies of this Land

Use Plan except for its location entirely within an identified ESA as confirmed by a site-specific assessment, the following shall apply:

a) Resource Management uses including estuaries, nature centers and other similar scientific or recreational uses are permitted subject to a Conditional Use Permit to assure that uses are sited and designed to prevent degradation of the resource value; or alternatively;

b) Transfer of a density bonus to another property in the vicinity able to accommodate increased density consistent with the policies of the Land Use Plan concurrent with the recordation of an open space easement or other similar instrument over the habitat area of the parcel;

c) Existing dwellings shall be designated as nonconforming uses but shall be allowed to be rebuilt or repaired if damaged or destroyed by natural disaster provided however, that the floor area, height and bulk of the structure not exceed that of the destroyed structure by more than 10 percent; and

d) No new parcels shall be created which are entirely within a Coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan.

9-C, reads in part "...a) Streams on the Major Watershed and Drainage Courses Map which are also "blue-line" streams as identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments...

10C Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.

The appellants contend that the City was responsible for considering all coastal resource issues addressed in the City's certified LCP that would apply to a land division including but not limited to protection and enhancement of public access, biological resources, water quality, scenic resources, and minimization and avoidance of hazards (geologic, fire, flood, etc.), but failed to do so. Except for making generalized findings about the project being consistent with the public access or recreation policies of Chapter 3 of the Coastal Act and consistent with criteria contained in the Certified Local Coastal Program, there is no evidence yet provided to the Commission that the City analyzed the consistency of the proposed development with all applicable LCP policies. The absence of such analysis is a substantial issue as there may be elements of the proposed development that do not comply with the certified LCP and the project must be modified and/or conditioned to address such issues, or denied if the issues cannot be addressed through modification or conditions.

The appellants contend that the proposed subdivision includes land that is identified on the City's biological resource values maps as high value and very high value habitat and that these areas, and perhaps others, are likely also Environmentally Sensitive Areas (ESAs). Such areas are subject to special treatment and protection under the policies of the certified LCP. LCP policies, such as Open Space Conservation Element Policy 8-J, require that detailed biological assessments be prepared for all development within and adjacent to ESAs and that identified ESAs be protected. The City's staff report and resolution of approval of the permit

makes no mention of any biological assessment or any measures to protect ESAs that are incorporated into the proposed development or imposed through special conditions on the coastal development permit. The absence of biological information and measures imposed to protect sensitive resources raises a substantial issue as to the conformity of the City's action with the requirements of the LCP

The appellants contend that policies, such as Open Space Conservation Element Policies 8-G and 8-H, that pertain to fuel modification, new subdivisions and requirements to protect sensitive habitat areas, were not addressed by the City. Fuel modification can have significant adverse impacts on sensitive habitat. Any new land division must consider siting development such that fuel modification within sensitive habitat is avoided and that adequate setbacks are incorporated into the developed area to provide all required defensible space. There is no evidence the City considered fuel modification and the impacts it would have on sensitive habitat in this action. This raises a substantial issue as to the conformity of the development with the requirements of the LCP.

Furthermore, the appellants contend that the City's action has the effect of separating the developed part of the subject site from the remaining undeveloped portions of the site, which is largely covered in sensitive habitat. The appellants contend that those remaining undeveloped portions of the site may not be able to be developed without impacting ESAs. The appellants contend that the creation of such lots would be inconsistent with several policies of the certified Land Use Plan, including Conservation Open Space Element Policy 8J, which states that "[n]o new parcels shall be created which are entirely within a Coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan." Policy 8J also prohibits new development that would impact an ESA, unless the development is resource dependent. Therefore, the City's failure to address these issues raises a substantial issue as to the conformity of the development with the certified LCP.

The appellants contend that the City did not address the water quality protection requirements of the LCP, particularly as they apply to new subdivisions. Topic 4 of the Open Space Conservation Element of the City's General Plan/LCP includes numerous policies calling for the implementation of water quality best management practices in order to protect and restore water quality in the City's streams and oceans. Title 16 (Water Quality) of the City's municipal code, which is a component of the City's LCP/Implementation Plan, contains many provisions relating to water quality and subdivisions. Nevertheless, no evidence has been provided to the Commission that the City considered the requirements of the LCP and Title 16. This raises a substantial issue as to the conformity of the proposed development with the certified LCP.

The appellants contend that the site is subject to seismically induced landslides and liquefaction and that the City did not consider these hazards in their analysis of the land division, including siting development in a manner that avoids hazards. Policy 3-A of the City's Land Use Plan states that the City must "ensure adequate consideration of environmental hazards in the development review process". Conservation Open Space Element Policy 10C states the City must "[r]equire projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space." This is in addition to the fire hazards mentioned above. The city's findings did not include any analysis of these hazard policies as they relate to the subject property. Thus, again, a substantial issue exists as to the conformity of the development approved by the City with the certified LCP.

The appellants contend that even though there are known trails on the subject site, the City did not address the requirements of policies 6D and 6F which pertain to the preservation of public access to trails. The City's resolution of approval states that the lot line adjustment does not impair any existing access or create a need for new access. The LCP, however, is clear that the protection of inland trails must be addressed (see Topic 6, Master Plan of Trails, Open Space Conservation Element, City of Laguna Beach Local Coastal Program). But, the City did not address these issues. Adverse impacts to public access and recreation could occur as a result. Thus, this raises issues as to the conformity of the proposed development with the certified LCP and the public access and recreation policies of the Chapter 3 of the Coastal Act.

Two appellants point out the specific creation of two mobile home spaces in the year 2000 without obtaining a CDP and that the City has never addressed these illegally created mobile home sites. This raises a substantial issue because the creation of the mobile home sites may have had adverse impacts on coastal resources, such as sensitive vegetation and water quality.

Therefore, the Commission finds that a substantial issue exists with regard to the grounds on which the appeals were filed. With regard to the factors that the Commission typically considers in a substantial issue analysis: 1. This is a case where there the City hasn't shown the factual and legal support for its decision that the development is consistent with the Local Coastal Program and the public access policies of the Coastal Act; 2. This is a case where the extent and scope of the development approved by the local government is significant as the area being divided is several hundred acres in size; 3. The resources that could be impacted in this case are very significant in that there are extensive sensitive habitat areas that could be impacted by the proposed development; 4. This is a case where there would be a significant adverse precedent made in that the local government didn't apply all of the requirements of the LCP, as noted above; and, 5. This appeal raises issues of regional and statewide significance given the scope of the development involved and the resources at stake. Each of the issues identified above, where the Commission expressly has found there is a substantial issue, are individually sufficient to warrant a finding that the appeals raise a substantial issue.

b. No Substantial Issue

The following contentions are valid, but raise no substantial issue of consistency with the policies and standards set forth in the certified LCP.

None.

2. Invalid Contentions

Not all of the contentions raised by the appellants can be considered valid appeal grounds, as the grounds for an appeal are limited to an allegation that the development does not conform to the certified LCP or the public access policies of the Coastal Act. Although these issues may not be grounds for appeal, they do include concerns that should be addressed at the de novo stage of the application.

An appellant contends that the City failed to address illegal grading in the subject area and that their failure to do so raises issues as to the conformity of the City's approval with the certified LCP. The factual accuracy of this claim is currently under investigation by the Commission's enforcement unit. If grading occurred at any time that the Coastal Act was effective, such grading would require a coastal development permit. However, the City's action did not authorize any grading. Thus, this contention isn't one that could be used as a basis for substantial issue. However, it is an issue that will need to be looked at during de novo review to determine whether

existing developed areas are permitted and should be established as building sites over the long term.

D. OTHER ISSUES

1. Addressing Unpermitted Development

The appellants have raised concerns about unpermitted development including lot line adjustments and grading with impacts to sensitive vegetation and watercourses. In conjunction with its de novo review of the development authorized by the City, the Commission will need to consider the extent to which any unpermitted development has a bearing on its ability to move forward on review of the land division the City authorized. For instance, as the Commission has previously notified the City and the landowners, the unpermitted lot line adjustments will need to be addressed prior to or concurrent with the land division the landowner now wishes to have endorsed. Commission staff does not presently believe these matters are separable from the overall request for subdivision.

2. Appealability of the City's Action

As described in the findings for Coastal Commission Dispute Resolution No. 5-11-012-EDD, the City's action is appealable to the Commission. As described in those findings, which are incorporated here by reference, the proposed lot line adjustment would reconfigure a lot onto which a blue-line stream extends and therefore qualifies as appealable development.

3. City's Approval Involves More Development Than Is Described in Their Action

As described in the findings for Coastal Commission Dispute Resolution No. 5-11-012-EDD, which are incorporated here by reference, the City's approval involves more development than is described in their action. Since the current lot line adjustment request makes reference to and utilizes unpermitted 1995 lot line adjustments previously described, and adjusts the boundaries of that lot, the current lot line adjustment request is, in effect, also a request to legalize the unpermitted 1995 lot line adjustment. It could have the effect of legalizing a slightly modified version of Parcel 1, and have the effect of carving out Parcel 2 along Coast Highway, and the balance of the undeveloped land, called Parcel 3 in LLA 95-01, that was part of the 270 acre subject area. Therefore, all the issues related to the 1995 lot line adjustment are also raised by the current proposal, and the 'development' involves not just the adjustment of the lot line in the parking area, but also the re-division of land that is described in the 1995 lot line adjustments.

4. Area of Deferred Certification

In reviewing its files for the Commission's dispute resolution hearing on the appealability of this matter (see 5-10-014-EDD & 5-10-117-ED), Commission staff discovered that the Laguna Beach post-cert map may inaccurately depict the area of deferred certification in the vicinity of the mobile home park. When the Commission certified the Land Use Plan (LUP) for southern Laguna Beach in 1992, the Commission identified Hobo Canyon (a.k.a. Mayer Group/Mahboudi-Fardi and Esslinger Property) as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an area of deferred certification to which the LUP did not apply. The following are examples from the findings which make clear that the entire Hobo Canyon site was to be deferred:

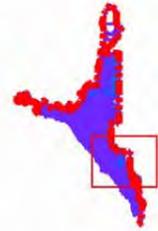
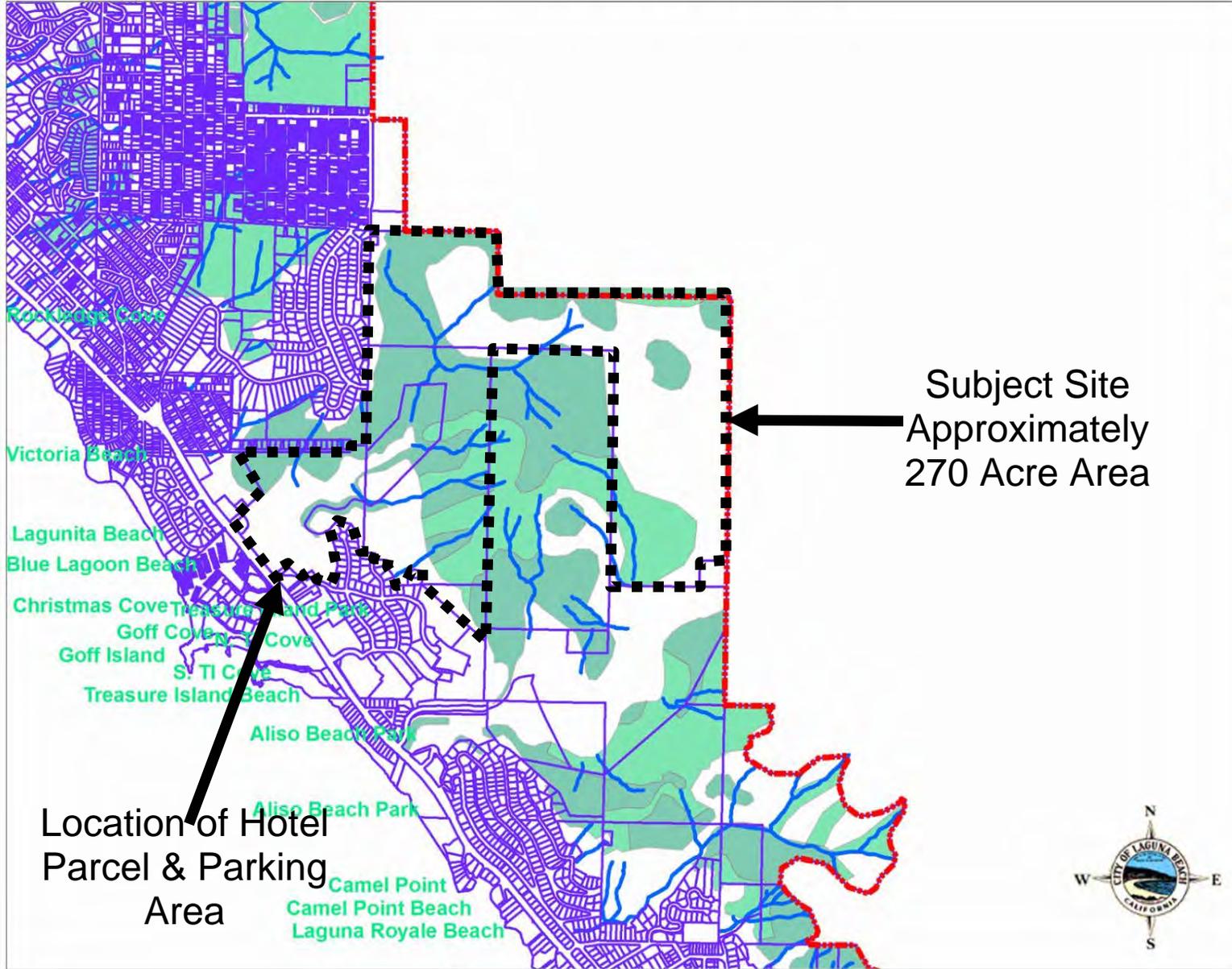
On page 16 of the Revised Findings adopted November 17, 1992 for Laguna Beach Land Use Plan Amendment 1-92, the findings state:

“At the Hobo Canyon area (also known as the Mayer/Mahboudi-Fardi parcel or the Esslinger Family Parcel), the issue at the time of the County’s LCP certification was vehicular access to the property, arising from intensity and location of development. The issue at the Hobo Canyon site remains the same and so certification for this area will also be deferred.”

Similar statements are made elsewhere in the report, and in the accompanying findings for the Implementation Plan amendment (1-92). There is also an exhibit, Exhibit H, attached to the findings that lists the areas of deferred certification and shows on a map the boundaries of the Hobo Canyon/ Mayer Group/Mahboudi-Fardi area, which includes the entire mobile home park.

The LUP expressly referred to the mobile home park as being within the Hobo Canyon area of deferred certification. The City has not subsequently submitted an LCP amendment to apply the LCP to Hobo Canyon. The post-cert map for the City of Laguna Beach that the Commission approved in 1993, however, depicts significant portions of the mobile home park as being within the City’s coastal development permit jurisdiction. Commission staff is still investigating this matter, but, in finding that the City’s action to approve a coastal development permit for the project raises a substantial issue as to the conformity of the development with the certified LCP, the Commission does not waive any arguments that the project is located within the Hobo Canyon area of deferred certification and that the Commission therefore has permit jurisdiction over the entire project for that reason.

City of Laguna Beach



Legend

- City Limits
- Parcels
- Significant Drainage Course
- Very High Value Habitat
- High Value Habitat

Subject Site
Approximately
270 Acre Area

Location of Hotel
Parcel & Parking
Area



1:19,634

0.6 0 0.31 0.6 Miles

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

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South Coast Region

JAN 25 2011



CALIFORNIA
COASTAL COMMISSION

**NOTICE OF FINAL LOCAL ACTION
FOR COASTAL DEVELOPMENT PERMITS**

Date: January 19, 2011

The following project is located within the City of Laguna Beach Coastal Zone:

Location: 30802 and 30806 Coast Highway

Coastal Development Project No: CDP 10-57

Project Description: Lot Line Adjustment 10-08 to reallocate an existing parking lot from 30802 Coast Highway to the property at 30806 Coast Highway. The parking lot area consists of 17 parking spaces. There are two parcels involved in the proposed Lot Line Adjustment – a larger parcel consisting of 45.65 acres and a smaller one consisting of 0.828 acres. After the lot adjustment, the parcels would be 45.44 and 1.04 acres, respectively. The adjustment area is 70 feet in depth, 132 feet in width and is approximately 10,000 square feet in area. The adjustment area is generally located along Coast Highway.

Applicant: Laguna Terrace Park, c/o James Lawson

Mailing Address: 30802 Coast Highway, Laguna Beach, CA 92651

On January 18, 2011 a Coastal Development Permit application for the project was

- approved
- approved with conditions
- denied

This action was taken by: City Council
 Design Review Board
 Planning Commission

Findings supporting the local government action and any conditions imposed are found in the attached resolution.

The City considers the project as not appealable to the California Coastal Commission; however, on January 14, 2011, the Executive Director of the California Coastal Commission has made a determination that the project is appealable pursuant to Coastal Act Section 30603. Based on the Coastal Commission's Executive Director's determination, an aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission if a valid appeal is filed. Appeals must be in writing to the appropriate Coastal Commission district office and in accordance with the California Code of Regulation Section 13111.

The Coastal Commission may be reached by phone at (562) 590-5071 or by writing to 200 Occangate, 10th Floor, Long Beach, CA 90802-4416.

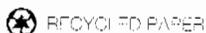
Attach: CDP Resolution No. 11.008

505 FORFS1 AVL

LAGUNA BEACH, CA 92651

TEL (949) 497-3311

FAX (949) 497-0771



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RESOLUTION NO. 11.008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, APPROVING LOT LINE ADJUSTMENT 10-08 AND COASTAL DEVELOPMENT PERMIT 10-57 AT 30802 AND 30806 COAST HIGHWAY.

WHEREAS, an application has been filed by the property owners of 30802 and 30806 Coast Highway requesting approval of Lot Line Adjustment 10-08 and Coastal Development Permit 10-57 to modify a common property line in accordance with the provisions of the California Subdivision Map Act and the Laguna Beach Municipal Code; and

WHEREAS, on November 16, 2010, January 4, 2011 and January 18, 2011, the City Council conducted legally noticed public meetings and, after reviewing all documents and testimony, desires to approve the Lot Line Adjustment 10-08 and Coastal Development Permit 10-57;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH finds and determines as follows:

1. The project site consists of legal building sites as defined in Title 25 of the Municipal Code.
2. The proposal does not create additional lots or building sites.
3. The land distribution is consistent with the minimum lot requirements of the Municipal Code.
4. The lot line adjustment is exempt from the requirements of the California Environmental Quality Act for the sole and limited purpose of the lot line adjustment application. (State CEQA Guidelines section 15305)

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5. The lot line adjustment will not result in the need for additional improvements and/or facilities.

6. The lot line adjustment does not include any lots or parcels created illegally.

7. The lot line adjustment does not impair any existing access or create a need for new access.

8. The project is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

9. The lot line adjustment and coastal development permit will not result in a change in the density or intensity of the use of the land.

10. The lot line adjustment will facilitate adequate parking for a lower cost visitor-serving facility, pursuant to Public Resources Code section 30213, which deals with the protection and encouragement of lower cost visitor-serving facilities.

11. One of the parcels of the lot line adjustment is located within both the California Coastal Commission's and the City of Laguna Beach's coastal development permitting jurisdictions.

12. The lot line adjustment and coastal development permit will not create any lots or parcels which "require any new lot lines or portions of new lot lines within the area subject to the [California Coastal] Commission's retained jurisdiction."

13. It generally is required to obtain the approval and issuance by the California Coastal Commission of a Coastal Development Permit for deferred areas, which are located outside of the City's Coastal Development Permitting jurisdictional boundaries. The portion of the property for which the lot lines are proposed to be adjusted lies within the City's Coastal

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Development Permitting jurisdictional boundaries, although other portions of the property lie within a Coastal Commission deferred area. In the event it is determined that the lot line adjustment's proposed "new lot lines or portions of new lot lines" are within the Coastal Commission's retained jurisdiction, then it shall be the responsibility of the applicants to comply with applicable requirements.

14. In accordance with Chapter 25.07 of the Laguna Beach Municipal Code, it is determined that the Lot Line Adjustment is not an appealable development.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH does further RESOLVE and ORDER that Lot Line Adjustment 10-08 and Coastal Development Permit 10-57 are hereby approved.

ADOPTED this 18th day of January, 2011.

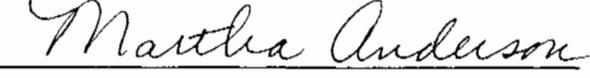

Toni Iseman, Mayor

ATTEST:

City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 11.008 was duly adopted at a Regular Meeting of the City Council of said City held on January 18, 2011, by the following vote:

- AYES: COUNCILMEMBER(S): Boyd, Egly, Pearson, Iseman
- NOES: COUNCILMEMBER(S): Rollinger
- ABSENT: COUNCILMEMBER(S): None


City Clerk of the City of Laguna Beach, CA

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
 200 OCEANGATE, 10TH FLOOR
 LONG BEACH, CA 90802-4416
 VOICE (562) 590-5071 FAX (562) 590-5084

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name: Penny Elia - Sierra Club Save Hobo Aliso Task Force

Mailing Address: 30632 Marilyn Drive

City: Laguna Beach

Zip Code: 92651

Phone: 949-499-4499

SECTION II. Decision Being Appealed

1. Name of local/port government:

Laguna Beach

2. Brief description of development being appealed:

Taken from January 18, 2011 Laguna Beach City Council Recap online:
 LOT LINE ADJUSTMENT 10-08 AND COASTAL DEVELOPMENT PERMIT 10-57 (30802 AND 30806
 COAST HIGHWAY) Request by the property owners of 30802 and 30806 Coast Highway for approval to
 reconfigure a common lot line between the two respective parcels.

Egley-Boyd-4-1 to approve Lot Line Adjustment 10-08 and Coastal Development Permit 10-57 for the property
 located at 30802 and 30806 Coast Highway. (No: Rollinger)

3. Development's location (street address, assessor's parcel no., cross street, etc.):

30802 and 30806 Coast Highway
 Laguna Beach, CA 92651

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 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-5-LGB-11-031

DATE FILED: 2/3/11

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COASTAL COMMISSION

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

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

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

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CALIFORNIA
COASTAL COMMISSION

6. Date of local government's decision: January 18, 2011

7. Local government's file number (if any): LLA 10-08 and CDP 10-57

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:

Laguna Terrace Park LLC
30802 South Coast Highway
Laguna Beach, CA 92651
James Lawson - Manager
Stephen Esslinger - Owner

Ohana Laguna Reef LLC
30806 Coast Hwy.
Laguna Beach, CA 92651
Iqbal Bashir

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) Penny Elia - Sierra Club
30632 Marilyn Drive
Laguna Beach, CA 92651

(2)

(3)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE 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.
- 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.)
- This 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.

This appeal stems from a January 18, 2011 action by the City of Laguna Beach approving a lot line adjustment that is currently associated with an unpermitted lot line adjustment and an unresolved CCC enforcement action. The Commission has previously addressed appealability in this area during two other dispute resolution hearings and two appeal hearings where substantial issue was found. The de novo hearing on the most recent finding of substantial issue (September 2010) has been delayed while awaiting receipt of the record from the City of Laguna Beach. This timely appeal is brought pursuant to Public Resources Code §30603 of the Coastal Act and the City of Laguna Beach certified Local Coastal Program "LCP" (certified January 13, 1993 and amended July 20, 2004).

The City Council decision under appeal brings several areas of concern to the Commission:

1) inconsistencies with the Coastal Act and the City's Local Coastal Program (LCP) 2) current application for lot line adjustment is based on an illegal lot line adjustment from 1995 and is in effect a request to legalize the previous unpermitted lot line adjustment (see attached) 3) unresolved Notice of Violation from the Coastal Commission's Enforcement Division (V-5-07-006) 4) proposed lot line adjustment would reconfigure a lot onto which a U.S. Department of Water Resources-designated "Blueline Stream" exists 5) request by Commission at previous appeal hearing for staff to conduct a thorough investigation of all previously approved Coastal Development Permits issued to this landowner 6) City of Laguna Beach's ongoing denial that project is located in an area of deferred certification and is under the jurisdiction of the Coastal Commission, including their most recent reversal on this application (see attached) 7) lot line adjustment raises significant coastal resource issues.

Inconsistencies with Coastal Act and City's LCP

The proposed division of land is development subject to regulation under the Coastal Act and certified LCP. The division of land can result in the establishment of additional development potential and certain expectations and rights on the part of the land owner(s) for certain levels of development. The effects of such development while processing the land division that would make such development possible must be considered.

Current Application for Lot Line Adjustment is Based on Illegal Lot Line Adjustment

See attached City Council resolution, finding #6 stating that:
The lot line adjustment does not include any lots or parcels created illegally.

This finding cannot be supported based on the unresolved Notice of Violation (V-5-07-006) addressed in this appeal.

Unresolved Notice of Violation

On May 4, 2007, Laguna Terrace Park LLC, Stephen Esslinger, owner, was sent a Notice of Violation, V-5-07-006. Property location: APNs 056-240-64, 056-240-65, 656-191-38, 656-191-39, 656-191-40. Unpermitted development: Lot lines adjusted (via LLA 95-01 and 95-04) without benefit of required coastal development permits. This violation has not been resolved in almost four years yet the same landowner is proceeding with a subdivision application and now requesting yet another lot line adjustment based on a previous unpermitted lot line adjustment.

Also in question is the sale by Laguna Terrace Park LLC of a related parcel to The Athens Group for the development of an off-site parking lot at 30782 Coast Hwy (APN 656-191-38). This parcel was formerly a gas station and never had any remediation action taken following the removal of the gas tanks and the development of a parking lot for off-site Montage Resort employee parking. Adjacent to this parcel is unpermitted development that occurred on a large lot associated with the mobile home park that runs parallel to Coast Hwy. Unpermitted development includes grading, bluff stabilization, light installation and an irrigation system. Currently there is additional unpermitted development occurring on this parcel which is adjacent to the area under application.

Proposed Lot Line Adjustment would reconfigure a lot onto which a U.S. Department of Water Resources-designated "Blueline Stream" extends

Referencing previous Coastal Commission substantial issue findings and documentation as well as the City's own agenda bills (January 4 and 18, 2011 - attached), there is no question as to the existence of this mapped blueline stream nor its proximity to the property and lot line in review.

Request by Commission at previous appeal hearing for staff to conduct a thorough investigation of all previously approved Coastal Development Permits issued to this landowner

It is assumed that this request by the Commission would be conducted in conjunction with the de novo hearing following the last findings of substantial issue. Due to the fact that Commission staff just recently received the file from the City of Laguna Beach and that the de novo hearing has not moved forward, this investigation has not been able to commence, but is intrinsically linked to this current request for a lot line adjustment. The permits in question include, but are not necessarily limited to:

- 5-95-286 (Esslinger Family Trust-LTP)
- 5-95-286-A1 (Esslinger Family Trust)
- 5-95-286-G (D and S Esslinger)
- 5-96-048 (Esslinger Family Trust-LTP)

Subject Site is located in an area of deferred certification under the jurisdiction of the Coastal Commission

The City of Laguna Beach has repeatedly rejected the fact that this requested lot line adjustment and previous project applications are located in an area of deferred certification under the jurisdiction of the Coastal Commission after being provided with the specific language from their own LCP on numerous occasions.

Page 16 of the Revised Findings adopted November 17, 1992 for Laguna Beach Land Use Plan Amendment 1-92 states:

"At the Hobo Canyon area (also known as Mayer/Mahboudi-Fardi parcel or the Esslinger Family Parcel), the issue at the time of the County's LCP certification was vehicular access to the property, arising from intensity and location of development. The issue at the Hobo Canyon site remains the same and so certification for this area will also be deferred."

In addition to overlooking their LCP, the City also does not recognize the fact that the project is within 100' of a mapped U.S. Blueline Stream as well as several other streams and watercourses on the property.

Please also find attached the cover pages from the City's agenda bills dated January 4, 2011 and January 18, 2011. The City originally states on January 4th that the lot line adjustment is considered appealable and then reverses itself on January 18th stating that the lot line adjustment is not appealable.

Lot Line Adjustment Raises Significant Coastal Resources Issues

Based on testimony by Ohana Laguna Reef LLC (partners of The Athens Group, developers of the Montage Resort & Spa located immediately across Coast Hwy. from this lot line adjustment) they asked the Laguna Beach City Council for assurances on parking given their desire to "upgrade" the current facility (Travelodge motel). It is unknown what the applicant's definition of "upgrade" could mean, thus the impacts and possibilities for intensification of use are unknown. Impacts and intensification of use ultimately result in significant coastal resource issues that need to be addressed up front and not after-the-fact.

This concludes our timely submission which constitutes the third appeal related to the same parcels, same landowner and same existing unpermitted lot line adjustment that continues as an unresolved enforcement issue.

Thank you for considering this information.

Enclosures: January 4, 2011 - City of Laguna Beach Agenda Bill cover memo
January 18, 2011 - City of Laguna Beach Agenda Bill cover memo
Page excerpt from City of Laguna Beach Resolution for approval of LLA 10-08 and CDP 10-57

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: February 2, 2011

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

_____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, APPROVING LOT LINE ADJUSTMENT 10-08 AND COASTAL DEVELOPMENT PERMIT 10-57 AT 30802 AND 30806 COAST HIGHWAY.

WHEREAS, an application has been filed by the property owners of 30802 and 30806 Coast Highway requesting approval of Lot Line Adjustment 10-08 and Coastal Development Permit 10-57 to modify a common property line in accordance with the provisions of the California Subdivision Map Act and the Laguna Beach Municipal Code; and

WHEREAS, on November 16, 2010 and January 4, 2011, the City Council conducted legally noticed public hearings and, after reviewing all documents and testimony, desires to approve the Lot Line Adjustment 10-08 and Coastal Development Permit 10-57;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH FINDS as follows:

1. The project site consists of legal building sites as defined in Title 25 of the Municipal Code.
2. The proposal does not create additional lots or building sites.
3. The land distribution is consistent with the minimum lot requirements of the Municipal Code.
4. The lot line adjustment is exempt from the requirements of the California Environmental Quality Act for the sole and limited purpose of the lot line adjustment application. (State CEQA Guidelines section 15305)
5. The lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities.
6. The lot line adjustment does not include any lots or parcels created illegally.

City of Laguna Beach
AGENDA BILL

No. 13
Meeting Date: 1/4/11
CONSENT

**SUBJECT: LOT LINE ADJUSTMENT 10-08 AND COASTAL DEVELOPMENT PERMIT
10-57 (30802 AND 30806 COAST HIGHWAY)**

SUMMARY OF THE MATTER: The property owners of 30802 Coast Highway and 30806 Coast Highway are requesting approval to reconfigure a common lot line between their two respective parcels. The adjustment would reallocate an existing parking lot from 30802 Coast Highway to the property at 30806 Coast Highway. The parking lot area consists of 17 parking spaces.

BACKGROUND: On July 20, 2010, the City Council conditionally approved Vesting Tentative Tract Map 10-02 and Coastal Development Permit 10-26 for the approval to convert an existing 157 rental space mobile home park to a resident owned mobile home park. The reconfiguration proposed by the approved Vesting Tentative Map has not been finalized (Final Map approval) and therefore the proposed Lot Line Adjustment is requesting to reconfigure the property lines of the current, pre-Vesting Tentative Tract Map approval configuration. Pursuant to the California Subdivision Map Act, final approval of a vesting tentative tract map is essentially a ministerial decision provided that the map is found to be in substantial conformance with the approved vesting tentative tract map. The proposed Lot Line Adjustment would not result in significant modification to the previously approved Vesting Tentative Tract Map boundary and therefore would be in substantial conformance with the approved subdivision.

STAFF ANALYSIS: The property at 30802 Coast Highway (Parcel 1) is developed with a 157 unit mobile home park and the property at 30806 Coast Highway (Parcel 2) is improved with an existing hotel. The parking lot area is currently under agreement for use by the hotel from the Mobile Home Park ownership. The subject property area to be adjusted (from parcel 1) is zoned Recreation and the hotel property (Parcel 2) is zoned Commercial Neighborhood. The proposed Lot Line Adjustment would create a split zoned parcel for the Parcel 2 property. The adjustment area is 70 feet in depth, 132 feet in width and is approximately 10,000 square feet in area. The adjustment area is generally located along Coast Highway.

(continued)

RECOMMENDATION: It is recommended that the City Council:

Approve Lot Line Adjustment 10-08 and Coastal Development Permit 10-57 for the property located at 30802 and 30806 Coast Highway.

Appropriations Requested: \$ _____

Submitted by: John Gustafson FOR JOHN MONTGOMERY

Fund: _____

Coordinated with: _____

Attachments: Application Forms; Aerial Photograph
and CDP Resolution.

Approved: John Puleo
City Manager

Lot Line Adjustment 10-08 and CDP 10-57
January 4, 2011
Page 2

In summary, the proposed request is consistent with the provisions of Municipal Code Section 21.08.030 (Lot Line Adjustments Exempted) and the California Subdivision Map Act. The proposal is consistent with the Coastal Development Permit (CDP) required findings; however, is considered “appealable development” to the Coastal Commission as a result of a blueline stream that bisects the upper portion of the mobile home park. The proposed adjustment would not result in an impact to the blueline stream. Staff has no objections to this request and recommends approval of the application.

City of Laguna Beach
AGENDA BILL

No. 8
Meeting Date: 1/18/2011
CONSENT

**SUBJECT: LOT LINE ADJUSTMENT 10-08 AND COASTAL DEVELOPMENT PERMIT
10-57 (30802 AND 30806 COAST HIGHWAY)**

SUMMARY OF THE MATTER: The property owners of 30802 Coast Highway and 30806 Coast Highway are requesting approval to reconfigure a common lot line between their two respective parcels. The adjustment would reallocate an existing parking lot from 30802 Coast Highway to the property at 30806 Coast Highway. The parking lot area consists of 17 parking spaces. There are two parcels involved in the proposed Lot Line Adjustment – a larger parcel consisting of 45.65 acres and a smaller one consisting of 0.828 acres. After the lot adjustment, the parcels would be 45.44 and 1.04 acres, respectively. The adjustment area is 70 feet in depth, 132 feet in width and is approximately 10,000 square feet in area. The adjustment area is generally located along Coast Highway.

BACKGROUND: On January 4, 2011, the City Council continued this matter to see if it was possible to reconcile differences between the applicant and staff regarding appealability and Coastal Commission original permitting jurisdiction.

STAFF ANALYSIS: The property at 30802 Coast Highway (Parcel 1) is developed with a 157-unit mobile home park and the property at 30806 Coast Highway (Parcel 2) is improved with an existing hotel. The parking lot area is currently under agreement for use by the hotel from the Mobile Home Park ownership. The subject property area to be adjusted (from parcel 1) is zoned Recreation and the hotel property (Parcel 2) is zoned Commercial Neighborhood. The proposed Lot Line Adjustment would create a split zoned parcel for the Parcel 2 property.

In summary, the proposed request is consistent with the provisions of Municipal Code Section 21.08.030 (Lot Line Adjustments Exempted) and the California Subdivision Map Act. The proposal is consistent with the Coastal Development Permit (CDP) required findings. After consideration of prior Coastal Commission actions regarding appealability, the Lot Line Adjustment and related Coastal Development Permit is not considered by staff to be “appealable development” because the proposed adjustment would not result in an impact to the blueline stream. The permitting jurisdiction is not a City issue. Staff has no objections to this request and recommends approval of the application.

RECOMMENDATION: It is recommended that the City Council:

Approve Lot Line Adjustment 10-08 and Coastal Development Permit 10-57 for the property located at 30802 and 30806 Coast Highway.

Appropriations Requested: \$ _____

Submitted by: 

Fund: _____

Coordinated with: _____

Attachments: Application Forms; Aerial Photograph

and CDP Resolution.

Approved: 

City Manager

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 590-5084



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

RECEIVED
FEB - 7 2011

SECTION I. Appellant(s)

Name: Paul R. Esslinger

Mailing Address: 2425 Windward Lane

City: Newport Beach

Zip Code: 92660

Phone: 949-548-8851

CALIFORNIA
COASTAL COMMISSION

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Laguna Beach

2. Brief description of development being appealed:

Approval of Coastal Development Permit 10-57 for the property located at 30802 and 30806 Coast Highway. The adjustment would reallocate an existing parking lot from 30802 Coast Highway to the property at 30806 Coast Highway. The parking lot area consists of 17 parking spaces.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

30802 Coast Highway and 30806 Coast Highway, Laguna Beach

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- 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.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	<u>1-5-LGB-11-031</u>
DATE FILED:	<u>2/7/11</u>
DISTRICT:	<u>Long Beach / South Coast</u>

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

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

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: January 18, 2011

7. Local government's file number (if any): CDP 10-57

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:

Laguna Terrace Park LLC
30802 South Coast Highway
Laguna Beach, CA 92651

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) Penny Elia
30632 Marilyn Drive
Laguna Beach CA 92651

(2)

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE 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.
- 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.)
- This 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.

The application for Coastal Development Permit 10-57 (the "Project"), as approved by the City of Laguna Beach on January 18, 2011, assumes the validity of lot line adjustments that occurred in 1995. The Project would transfer approximately 10,000 square feet of land from Parcel 1 to Parcel 2. Parcel 1 is shown on the application as a 48.84 acre area, the boundaries of which were formed by the 1995 lot line adjustments and are roughly consistent with the boundaries of the existing Laguna Terrace Park mobilehome community. The Coastal Commission has commented extensively on the validity of the 1995 lot line adjustments in past staff reports and Executive Director Determinations, and believes that the 48.84 acre Parcel 1 does not exist. Rather, since the 1995 lot line adjustments were never subject to a Coastal Development Permit, the Coastal Commission takes the position that they are invalid and that the 48.84 acre area is really a single 270 acre area. For purposes of this appeal, the appellant, Paul Esslinger, takes no position on the validity or invalidity of the disputed 1995 lot line adjustments. However, even assuming that those 1995 lot line adjustments are valid, this appeal will demonstrate that the City's approval of the Project still violates the City's certified Local Coastal Program ("LCP").

(1) BASIS FOR APPEAL JURISDICTION: PROJECT LOCATED WITHIN 100 FEET OF A STREAM

Public Resources Code Section 30603 establishes those instances when a certified local government's approval of a Coastal Development Permit may be appealed to the Coastal Commission. In the case of the Project, the Coastal Commission possesses appellate jurisdiction because the Project includes development within 100 feet of a stream. (See Pub. Res. Code § 30603(a)(2)). Specifically, there is a blue line stream (Stream Segment B discussed in Executive Director Dispute Resolution 5-11-012-EDD, which is hereby incorporated by reference), that is within Lot 1. Because the appeals area extends into a parcel (Parcel 1) that would be reconfigured as a result of the Project, the City's action on the Project is appealable to the Commission.

(2) BASIS FOR APPEAL JURISDICTION: ALL OF LAGUNA TERRACE PARK IS LOCATED IN AN AREA OF DEFERRED CERTIFICATION

The size and configuration of the Area of Deferred Certification ("ADC") in the vicinity of the Project as depicted on the Coastal Commission's Post LCP Certification Permit and Appeal Jurisdiction map ("Post-Cert Map") may be incorrect. Today, the Post-Cert Map shows that the 20-acre Laguna Terrace Park mobile home site contained within Parcel 1 is within the LCP, and that the land surrounding the park is within the ADC. However, the following evidence indicates that the entirety of Parcel 1—including the Laguna Terrace Park mobile home site—may in fact be within the ADC, and not the LCP. If true, then the Project is unquestionably within the Coastal Commission's appeal jurisdiction.

(a) When the Coastal Commission certified the Land Use Plan ("LUP") for southern Laguna Beach in 1992, the Commission identified Hobo Canyon as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an ADC to which the LUP did not apply. The LUP expressly referred to the mobile home park as being within the Hobo Canyon ADC. The City has not subsequently submitted an LCP amendment to apply the LCP to Hobo Canyon. (Id.) Therefore, we believe that Hobo Canyon, including the Project site, remains within the ADC.

(b) In the LUP Amendment findings, Coastal Commission staff wrote that "[a]t the Hobo Canyon area (also known as the Mayer/Mahboudi-Fardi parcel or the Esslinger Family Parcel), the issue at the time of the County's LCP certification was vehicular access to the property, arising from intensity and location of development. The issue at the Hobo Canyon site remains the same, and so certification for this area will also be deferred." (Page 16, Revised Findings: Laguna Beach Land Use Plan Amendment 1-92, attached as Exhibit B, Emphasis added).

(c) The Coastal Commission's June 30, 2010 status survey of LCPs in all 75 coastal jurisdictions clearly states that the 361-acre Hobo Canyon area--including "the 261-acre Esslinger property"--is located in an ADC. (Part 5, Page 32, Local Coastal Program: Detailed LCP Status and History as of June 30, 2010). The survey contains no indication that the Laguna Terracc Park mobile home site was to be excluded from that 261-acres. The Esslinger property is approximately 270 acres in size according to the Coastal Commission, and the Laguna Terracc Park mobile home site is approximately 20 acres in size. The City believes that all of the approximately 270-acre Esslinger property is located within the ADC except the approximately 20-acre mobile home site. This does not add up. If the approximately 20-acre mobile home site is omitted from the approximately 270-acre Esslinger property, the resulting size of the Esslinger property is approximately 250 acres in size, not 261 acres. The only reasonable explanation for the fact that "the 261-acre Esslinger property" was recently identified as being an ADC is that the Coastal Commission assumes that all of Parcel 1, including the mobile home park, is included within the ADC.

(3) EXHAUSTION OF LOCAL APPEALS

In order to appeal a local government's decision on a coastal development permit application, an aggrieved appellant must have exhausted local appeals. (14 CCR § 13111). An appellant is deemed to have exhausted local appeals and will be qualified as an aggrieved person if they have pursued their appeal to the local appellate body/bodies, as required by the local government appeal procedures. (14 CCR § 13573). Here, the City Council of the City of Laguna Beach has original permitting jurisdiction over both Lot Line Adjustment 10-08 and Coastal Development Permit 10-57 (See Laguna Beach Municipal Code §§ 21.08.030 and 25.07.012.D, respectively). There was no lower body decision (e.g., Planning Commission) to appeal, therefore the appellant (Paul Esslinger) is deemed to have satisfied his exhaustion requirement. However, note that Mr. Esslinger did submit a letter to the City Council, dated January 14, 2011, commenting on the Project and the Commission's appellate jurisdiction.

(4) THE PROJECT FAILS TO COMPLY WITH THE CITY'S LCP

The City of Laguna Beach's certified Local Coastal Program ("LCP") was adopted as City Council Resolution 92.014 on February 18, 1992 by the City Council and was certified by the California Coastal Commission on January 13, 1993. The LCP includes, among other documents, the General Plan's Land Use and Open Space/Conservation Elements and Municipal Code Title 25 (Zoning Code).

Under Public Resources Code Section 30603, a local government's approval of a Coastal Development Permit may be appealed upon an allegation that said Permit failed to conform to the standards set forth in the certified LCP. Here, the City's approval of the Project and Applicant's ongoing and activities on Parcel 1 are in violation of and inconsistent with the City's LCP, including the following policies from the General Plan's Land Use and Open Space and Conservation Elements:

Policy 3A: "Ensure adequate consideration of environmental hazards in the development review process." Parcel 1 is subject to seismically induced landslides and liquefaction that the City did not consider in connection with the Project. Parcel 1 is also subject to fire hazards that were not addressed as a part of the City's approval of the Project.

Policy 4A: "Development Planning and Design Best Management Practices (BMPs) Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs), where feasible, to reduce to the maximum extent practicable, pollutants and runoff from the proposed development. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality." The City's approval of the Project did not address this policy, specifically, or water quality, generally.

Policy 4B: Minimize Impervious Surfaces - "Ensure that development minimizes the creation of impervious surfaces, especially contiguously connected impervious areas, or minimizes the area of existing impervious surfaces where feasible." This City's approval of the Project did not address this policy, specifically, or the contribution of the Project's impervious surfaces to water quality, generally.

Policy 4C: Minimize Volume and Velocity of Runoff - "Ensure that development is designed and managed to minimize the volume and velocity of runoff (including both stormwater and dry weather runoff) to the maximum extent practicable, to avoid excessive erosion and sedimentation." The City's approval of the Project did not address this policy, specifically, or the Project's potential to create runoff and cause erosion/sedimentation, generally.

Policy 4D: Minimize Introduction of Pollutants - "Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable." The City's approval of the Project did not address this policy, specifically, or water quality, generally.

Policy 4E: Preserve Functions of Natural Drainage Systems - "Ensure that development is sited and designed to limit disturbances and to preserve the infiltration, purification, retention and conveyance functions of natural drainage systems that exist on the site to the maximum extent practicable." The City's approval of the Project did not address this policy, specifically, or water quality, generally.

Policy 4D: Minimize Introduction of Pollutants - "Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable." The City's approval of the Project did not address this policy, specifically, or water quality, generally.

Policy 4E: Preserve Functions of Natural Drainage Systems - "Ensure that development is sited and designed to limit disturbances and to preserve the infiltration, purification, retention and conveyance functions of natural drainage systems that exist on the site to the maximum extent practicable." The

City's approval of the Project did not address this policy, specifically, or water quality, generally.

Policy 4F: Water Conservation and Native Plants – “Ensure that development encourage[sic] water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides, herbicides and excessive irrigation. Prohibit the use of invasive plants, and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs).” The City's approval of the Project did not address this policy, specifically, or water conservation/native plants, generally, notwithstanding the fact that the undeveloped land surrounding Parcel 1 contains 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.

Policy 8G: “Detailed biological assessments shall be required for all new development proposals, including all subdivisions and fuel modification proposals, located within or adjacent to areas designated high or very high value on the Biological Values Map. Such biological assessments shall utilize the biological value criteria specified in the Biological Resources Inventories (1983, 1992 and 1993).” The undeveloped land surrounding Parcel 1 contains 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. Nevertheless, the City's staff report and resolution of approval of the permit makes no mention of any biological assessment or any measures to protect ESAs that are incorporated into the proposed development or imposed through special conditions on the coastal development permit.

Policy 8K: “When subdivision proposals are situated in areas designated as high or very high value on the Biological Values map and where these are confirmed by subsequent onsite assessment: a) Require maximum preservation possible of the high value habitats and when appropriate, require that mitigation measures be enacted for immediately adjacent areas. b) Require preservation of the very high value habitats and, when appropriate, require that mitigation measures be enacted for immediately adjacent areas. c) Create no new building sites which are entirely within a coastal ESA or which do not contain an area where development can occur consistent with the ESA policies of this Plan.” The undeveloped land surrounding Parcel 1 contains 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. Nevertheless, the City's staff report and resolution of approval of the permit makes no mention of any biological assessment or any measures to protect ESAs that are incorporated into the proposed development or imposed through special conditions on the coastal development permit.

Policy 10C: “Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.” The City's approval of the Project did not address this policy, specifically, or hazards, generally, despite the fact that the site is subject to seismically induced landslides and liquefaction.

(5) THE PROPERTY IS SUBJECT TO AN ONGOING COASTAL ACT VIOLATION (CUP 00-33)

Conditional Use Permit 00-33, as approved by the City in September of 2000, allowed for the addition of two mobile home spaces within Parcel 1, bringing the total number of mobile home spaces from 156 to 158. According to a July 20, 2000 letter from the City's Community Development Assistant Director, the site of these mobile home spaces "...is designated as containing Very High Habitat Value on the South Laguna Biological Resources Map." The Applicant subsequently developed those two spaces with mobile home uses, and the Project therefore includes these two spaces in the proposed 158-lot subdivision.

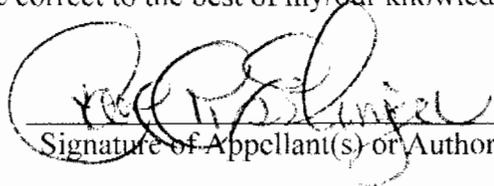
To the best of Appellant's knowledge, no Coastal Development Permit was issued in connection with this Conditional Use Permit by either the City or the Coastal Commission. Such a failure to obtain a Coastal Development Permit violated the Coastal Act, which requires such Permits for "development." The Coastal Act's definition of "development" includes the "...change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with § 66410 of the Government Code), and any other division of land." (Coastal Act §31016.) Clearly, the addition of two residential lots where fenced storage previously existed constitutes a "change in the density or intensity of use of land", notwithstanding the fact that such change was approved through a Conditional Use Permit instead of a subdivision action. Therefore, approval of a Coastal Development Permit by either the City or the Coastal Commission was required in connection with Conditional Use Permit 00-33.

If the appeal were accepted - which we urge the Commission to do - and the Applicant's Project considered by the Coastal Commission on appeal without addressing this ongoing violation of the Coastal Act, the Coastal Commission would be officially recognizing and validating the existence of these illegal home sites. We urge the Commission to enforce the provisions of the Coastal Act, to refuse to recognize these home sites until compliance with the Coastal Act and the LCP is achieved, and issue a Notice of Violation and Cease and Desist Order to restore the site to its original conditions and impose appropriate penalties. The legality of these two lots under the Coastal Act and LCP must be resolved. As the Commission itself stated in its October 27, 2009 letter regarding the Project, "...there are issues related to ongoing violations involving the subject property that have yet to be resolved, and should be resolved prior to any further division of the subject property." The Appellant strongly concurs.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 2-7-11

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

Mark Johnson and Sean Matsler of Manatt, Phelps & Phillips,

to act as my/our representative and to bind me/us in all matters concerning this appeal.



Signature of Appellant(s)

Date: February 7, 2011

CALIFORNIA COASTAL COMMISSION

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



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South Coast Region

FEB 8 2011

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

**CALIFORNIA
COASTAL COMMISSION**

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Coastal Commissioners: Esther Sanchez & Mark Stone
200 Oceangate, Suite 1000
Long Beach, CA 90802 (562) 590-5071

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Laguna Beach
2. Brief description of development being appealed: land division involving creation of lots and adjustment of lot lines, at 30802 & 30806 South Coast Highway
3. Development's location (street address, assessor's parcel no., cross street, etc.): 30802 & 30806 South Coast Highway, Laguna Beach, Orange County.
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: XX
 - 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-5-LGB-11- 051

DATE FILED: 2/8/2011

DISTRICT: South Coast

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: _____
 - b. City Council/Board of Supervisors: X
 - c. Planning Commission: _____
 - d. Other: _____
6. Date of local government's decision: 1/18/2011
7. Local government's file number: CDP 10-57

SECTION III. Identification of Other Interested Persons

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

1. Name and mailing address of permit applicant:
- Laguna Terrace Park, LLC; Attn: Jim Lawson
 30802 South Coast Highway
 Laguna Beach, CA 92651
- Ohana Laguna Reef, LLC
 720 University Avenue, Suite 200
 Los Gatos, CA 95032
2. 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.
- a. Sean Matsler
 Manatt | phelps | phillips
 695 Town Center Drive, 14th Floor
 Costa Mesa, California 92626
 - b. Penny Elia
 30632 Marilyn Drive
 Laguna Beach, CA 92651

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. Please 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.)

The subject site is an approximately 1 acre site developed with a hotel at 30806 Coast Highway and a 270 acre area partly developed with a mobile home park located at 30802 (South) Coast Highway, in the City of Laguna Beach, Orange County. The hotel site is adjacent to Coast Highway. The developed part of the mobile home park occupies about 14 acres adjacent to Coast Highway within and at the mouth of a steeply sided canyon (Hobo Canyon). According to the City, the hotel site is designated Commercial Neighborhood, and the area of land occupied by the mobile home park is designated for recreation and 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 mobile home 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, near Coast Highway, where the hotel, 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 19, 2011, the City Council of the City of Laguna Beach approved coastal development permit 10-57 that had the effect of separating the area of land developed with a mobilehome park from the undeveloped remainder of an approximately 270 acre area, and further adjusting the location of the lot line between the mobilehome park site and an adjacent hotel site. According to the City, the purpose of this action was to transfer a parking area located on the mobile home park site, but which was used by the hotel, to the hotel site. The City's approval relies on two lot line adjustments the City processed in 1995 (Lot Line Adjustment No.s LL 95-01 and LL 95-04). However, those lot line adjustments, which are development under the Coastal Act, were not authorized under any coastal development permit and are unpermitted. Thus, for purposes of the Coastal Act the property being subdivided is the approximately 270 acre property that existed prior to the lot line adjustments. No physical changes to the site are proposed.

The division of land is development subject to regulation under the Coastal Act and the certified LCP. The division of land can result in the establishment of additional development potential and intensity of development. Thus, even though there is no physical development currently contemplated, it is important to consider the effects of such development while processing the land division that would make such

development possible. Therefore, the whole range of coastal resource issues addressed in the City's certified LCP must be considered in this request for land division, including but not limited to protection and enhancement of public access, biological resources, water quality, scenic resources, and minimization and avoidance of hazards (geologic, fire, flood, etc.). Except for making generalized findings about the project being consistent with the public access or recreation policies of Chapter 3 of the Coastal Act and consistent with criteria contained in the Certified Local Coastal Program, the City did not analyze the consistency of the proposed development with all applicable LCP policies. The City may not approve a coastal development permit for the project pursuant to the Coastal Act without ensuring the project's consistency with the certified LCP.

For example, the proposed subdivision includes land that is identified on the City's biological resource values maps as high value and very high value habitat. These areas, and perhaps others, are likely also Environmentally Sensitive Areas (ESAs) that are subject to special treatment and protection under the policies of the certified LCP. LCP policies, such as Open Space Conservation Element Policy 8-J, require that detailed biological assessments be prepared for all development within and adjacent to ESAs and that identified ESAs be protected. The City's staff report and resolution of approval of the permit makes no mention of any biological assessment nor any measures to protect ESAs that are incorporated into the proposed development or imposed through special conditions on the coastal development permit. In addition, there are policies such as Open Space Conservation Element Policies 8-G and 8-H that pertain to fuel modification related to new subdivisions and requirements to protect sensitive habitat areas. These requirements have not been analyzed, or a determination made, as to whether or not the proposed land division is consistent with the certified LCP or the Coastal Act.

Furthermore, the City's action has the effect of separating the developed part of the subject site from the remaining undeveloped portions of the site, which is largely covered in sensitive habitat. Those remaining undeveloped portions of the site may not be able to be developed without impacting ESAs. The creation of such lots would be inconsistent with several policies of the certified Land Use Plan, include Conservation Open Space Element Policy 8J which states that "[n]o new parcels shall be created which are entirely within a Coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan." Policy 8J also prohibits new development that would impact an ESA, unless the development is resource dependent.

The City's maps of the site also show there are trails located on the approximately 270 acre site. Open Space Conservation Element Policy 6D states that the City must "[r]equire as a condition of development approval, the dedication and improvement of public trail easements" and Policy 6F says the City must "[e]nsure that new development does not encroach on access to trails nor preclude future provision of access." The proposed development must be reviewed for impacts upon access to existing trails. The City clearly did not conduct such an analysis given that its resolution of approval states that no impacts to public access and recreation are possible because

the site isn't seaward of the first public road. Clearly, such impacts could occur and need to be considered.

Since the City has authorized a land division that is inconsistent with the policies of the certified LCP, the development must be appealed.

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.)

RECEIVED
South Coast Region
FEB 8 2011
CALIFORNIA
COASTAL COMMISSION

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/our knowledge.

Signed: *Gate P. Sanchez*
Appellant or Agent

Date: FEB - 8 2011

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

Signed: _____

Date: _____

(Document2)

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.)

RECEIVED
South Coast Region
FEB 8 2011
CALIFORNIA
COASTAL COMMISSION

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/our knowledge.

Signed: 
Appellant or Agent

Date: FEB - 8 2011

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

Signed: _____

Date: _____

WHEN RECORDED MAIL TO:

City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92651

COPY

**APPLICATION FOR
LOT LINE ADJUSTMENT - LLA 10 - 08**

Recorded Owners:

PARCEL 1

PARCEL 2

Name: Laguna Terrace Park LLC
Address: 3 20802 Coast Highway
Laguna Beach, CA 92651
Daytime Phone No: (949) 290-6708

Ohana Laguna Reef LLC
30806 Coast Highway
Laguna Beach, CA 92651
(951) 715-5022

SITE ADDRESS: 30802 Coast Highway

30806 Coast Highway

PARCEL 3

PARCEL 4

Name: _____
Address: _____
Daytime Phone No: _____
SITE ADDRESS: _____

(I/we) hereby certify that: 1) (I am/we are) the record owner(s) of all parcels proposed for adjustment by this application, 2) (I/we) have knowledge of and consent to the filing of this application, and 3) the information submitted in connection with this application is true and correct.

Laguna Terrace Park, LLC, a California limited liability company

Ohana Laguna Reef LLC, a Delaware limited liability company

[Signature]
Signature(s) of Owner(s) of Parcel 1

[Signature]
Signature(s) of Owner(s) of Parcel 2

Signature(s) of Owner(s) of Parcel 3

Signature(s) of Owner(s) of Parcel 4

Contact Person: Burt Mazelow
Address: 1907 Border Avenue

Daytime Phone # (310) 320-4125
City: Torrance, CA 90501



This document consisting of 19 pages was prepared by me or under my direction.

R. T. Quinn [Signature] R.C.E. 24988

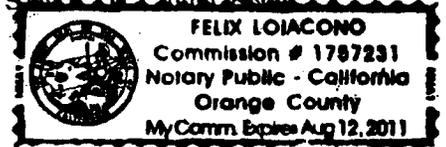
My Registration /License expires: 12/31/11

NOTARY ACKNOWLEDGMENTS

STATE OF CALIFORNIA)SS
COUNTY OF Orange

ON THIS 8 DAY OF Sept 2010 BEFORE ME,
Felix Loiacono A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY
APPEARED IBRAL Bashir WHO PROVED TO ME ON THE BASIS OF SATISFACTORY
EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN
INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON
THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S)
ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA
THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.



WITNESS MY HAND AND OFFICIAL SIGNATURES:

SIGNATURE: Felix Loiacono

PRINT NAME OF NOTARY: Felix Loiacono

MY PRINCIPAL PLACE OF BUSINESS: Orange COUNTY.

MY COMMISSION EXPIRES: 8/12/11

COMMISSION NUMBER: 1757231

STATE OF CALIFORNIA)SS
COUNTY OF _____

ON THIS _____ DAY OF _____ 20__ BEFORE ME,
_____ A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY
APPEARED _____ WHO PROVED TO ME ON THE BASIS OF SATISFACTORY
EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN
INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON
THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S)
ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA
THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SIGNATURES:

SIGNATURE: _____

PRINT NAME OF NOTARY: _____

MY PRINCIPAL PLACE OF BUSINESS: _____ COUNTY.

MY COMMISSION EXPIRES: ___/___/___

COMMISSION NUMBER: _____

EXHIBIT A
LOT LINE ADJUSTMENT - LLA 10 - 08
(Legal Description)

LEGAL DESCRIPTIONS FOR PROPOSED PARCELS

PARCEL 1 (30802 COAST HIGHWAY)

PARCEL 1 IN THE CITY OF LAGUNA BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA OF LOT LINE ADJUSTMENT LL 95-01 RECORDED NOVEMBER 22, 1995 AS INSTRUMENT NO. 95-520276 OF OFFICIAL RECORDS OF SAID COUNTY

EXCEPT THEREFROM THE PORTION THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT AN ANGLE POINT IN THE BOUNDARY OF SAID PARCEL 1 AT THE MOST SOUTHEASTERLY END OF THAT COURSE IN SAID BOUNDARY DESCRIBED AS BEING ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF PACIFIC COAST HIGHWAY 80 FEET WIDE AND HAVING A BEARING OF NORTH 40°18'00" WEST AND A LENGTH OF 610.81 FEET; THENCE ALONG THE BOUNDARY OF SAID PARCEL 1 NORTH 49°42'00" EAST 70.00 FEET TO AN ANGLE POINT IN SAID BOUNDARY; THENCE ALONG SAID BOUNDARY AND THE NORTHWESTERLY PROLONGATION THEREOF NORTH 40°18'00" WEST 132.00 FEET; THENCE SOUTH 49°42'00" WEST 70.00 FEET TO THE SOUTHWESTERLY BOUNDARY OF SAID PARCEL 1; THENCE ALONG SAID SOUTHWESTERLY BOUNDARY SOUTH 40°18'00" EAST 132.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 45.44 ACRES, MORE OR LESS

PARCEL 2 (30806 COAST HIGHWAY)

THAT PORTION OF SECTION 31, TOWNSHIP 7 SOUTH, RANGE 8 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LAGUNA BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA ACCORDING TO THE OFFICIAL PLAT FILED IN THE DISTRICT LAND OFFICE MARCH 29, 1879, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF THE CALIFORNIA STATE HIGHWAY, AS SHOWN ON A MAP OF TRACT NO. 1017 RECORDED IN BOOK 33, PAGES 26 TO 28, INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DISTANT THEREON SOUTH 40°18'00" EAST, 983.32 FEET FROM THE INTERSECTION OF SAID CENTERLINE WITH THE NORTHEASTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF LOT 64 OF SAID TRACT NO. 1017, SAID POINT OF BEGINNING BEING NORTH 40°18'00" WEST 10.83 FEET FROM THE SOUTHEASTERLY END OF A TANGENT OF THE CALIFORNIA STATE HIGHWAY, 1771.43 FEET IN LENGTH, AS DESCRIBED IN A DEED RECORDED OCTOBER 23, 1926, IN BOOK 683, PAGE 215 OF DEEDS OF SAID ORANGE COUNTY; THENCE NORTH 49°42'00" EAST ALONG A LINE MEASURED AT RIGHT ANGLES TO SAID HIGHWAY TANGENT 50.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 49°42'00" EAST 93.24 FEET TO POINT "A"; THENCE CONTINUING NORTH 49°42'00" EAST 110.00 FEET; THENCE NORTH 45°19'05" WEST 185.71 FEET; THENCE SOUTH 49°42'00" WEST 110.00 FEET TO POINT "B"; THENCE CONTINUING SOUTH 49°42'00" WEST 77.00 FEET TO A POINT NORTH 49°42'00" EAST 50.00 FEET FROM THE CENTERLINE OF SAID HIGHWAY TANGENT; THENCE SOUTH 40°18'00" EAST 185.00 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH THE PORTION OF PARCEL 1 IN THE CITY OF LAGUNA BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA OF LOT LINE ADJUSTMENT LL 95-01 RECORDED NOVEMBER 22, 1995 AS INSTRUMENT NO. 95-520276 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS: BEGINNING AT AN ANGLE POINT IN THE BOUNDARY OF SAID PARCEL 1 AT THE MOST SOUTHEASTERLY END OF THAT COURSE IN SAID BOUNDARY DESCRIBED AS BEING ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF PACIFIC COAST HIGHWAY 80 FEET WIDE AND HAVING A BEARING OF NORTH 40°18'00" WEST AND A LENGTH OF 610.81 FEET; THENCE ALONG THE BOUNDARY OF SAID PARCEL 1 NORTH 49°42'00" EAST 70.00 FEET TO AN ANGLE POINT IN SAID BOUNDARY; THENCE ALONG SAID BOUNDARY AND THE NORTHWESTERLY PROLONGATION THEREOF NORTH 40°18'00" WEST 132.00 FEET; THENCE SOUTH 49°42'00" WEST 70.00 FEET TO THE SOUTHWESTERLY BOUNDARY OF SAID PARCEL 1; THENCE ALONG SAID SOUTHWESTERLY BOUNDARY SOUTH 40°18'00" EAST 132.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1.04 ACRES, MORE OR LESS

EXHIBIT B
LOT LINE ADJUSTMENT - LLA 10 - 08
 (Map)

Owners	Existing Parcels AP Number	Proposed Parcels Reference Number
LAUGUNA TERRACE PARK, LLC	656-191-28 & 38 / 056-240-64	1
OHANA LAGUNA REEF, LLC	656-191-11 & 12	2

LEGEND OF SYMBOLS

- EXISTING PROPERTY LINE TO REMAIN
- REVISED PROPERTY LINE PER THIS MAP
- - - - PROPERTY LINE TO BE ADJUSTED

NOTE:
 SEE PAGE 8 FOR TABLE OF COURSES

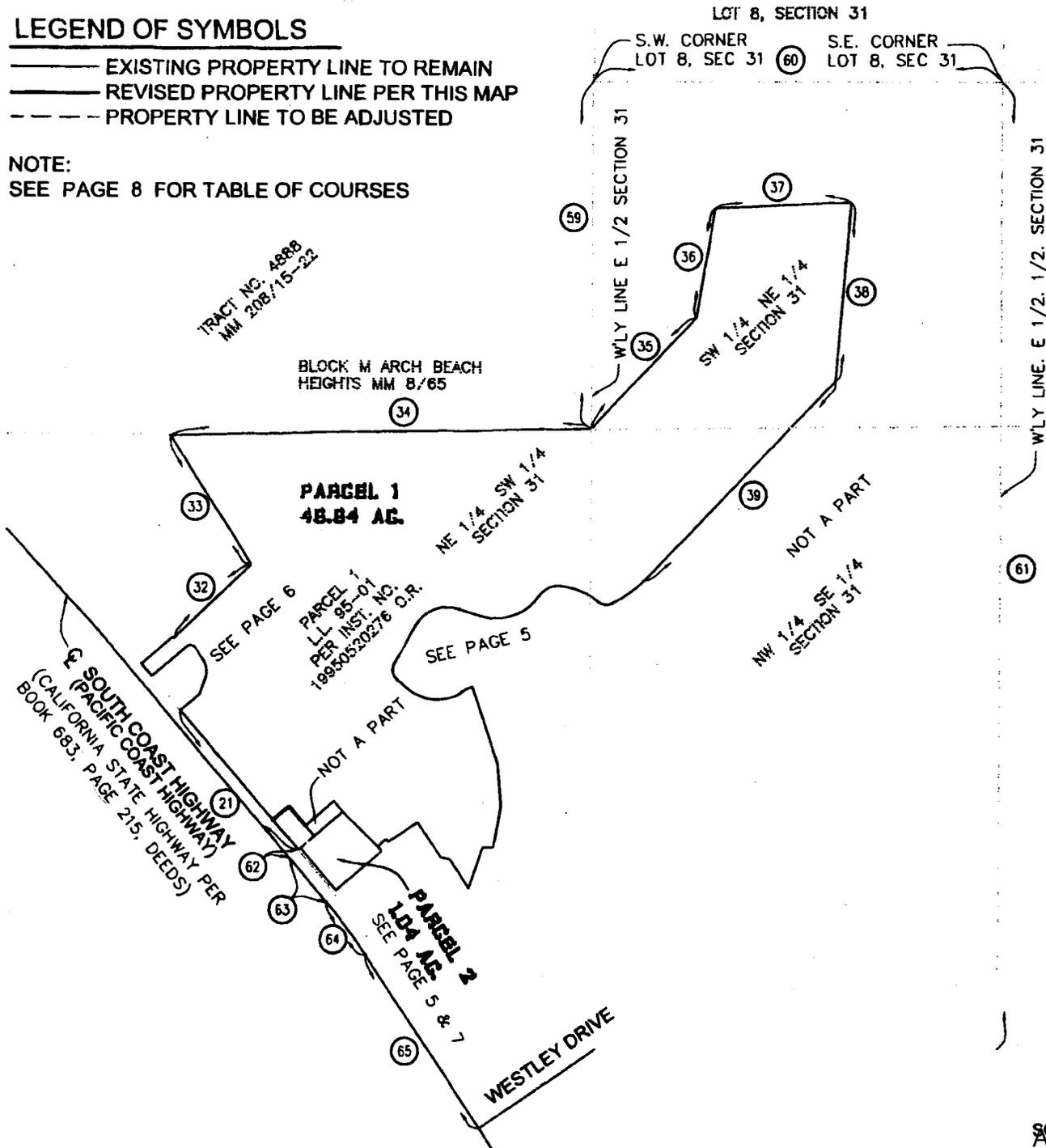
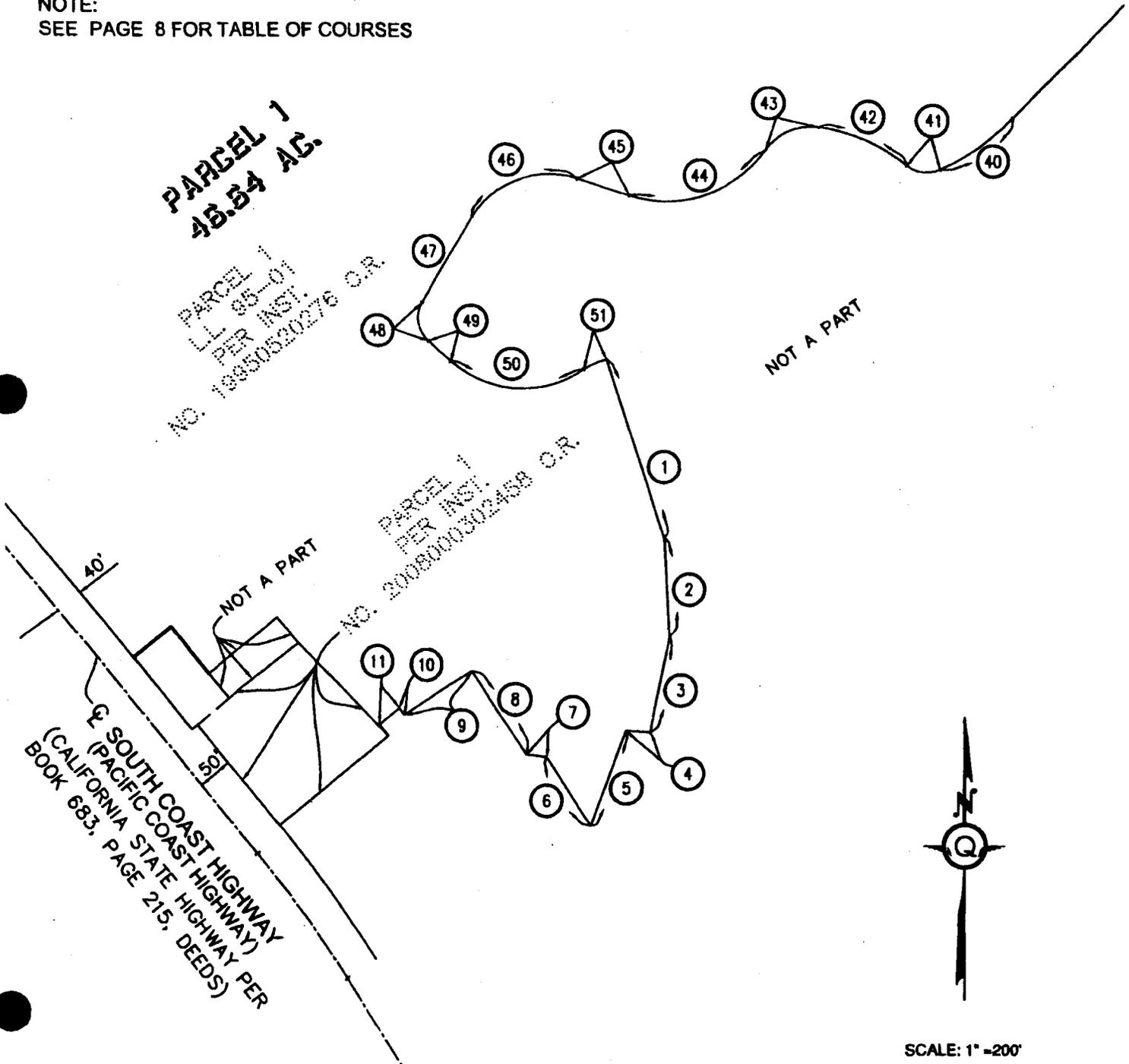


EXHIBIT B
LOT LINE ADJUSTMENT - LLA 10 - 08
 (Map)

LEGEND OF SYMBOLS

- EXISTING PROPERTY LINE TO REMAIN
- REVISED PROPERTY LINE PER THIS MAP
- - - - PROPERTY LINE TO BE ADJUSTED

NOTE:
 SEE PAGE 8 FOR TABLE OF COURSES



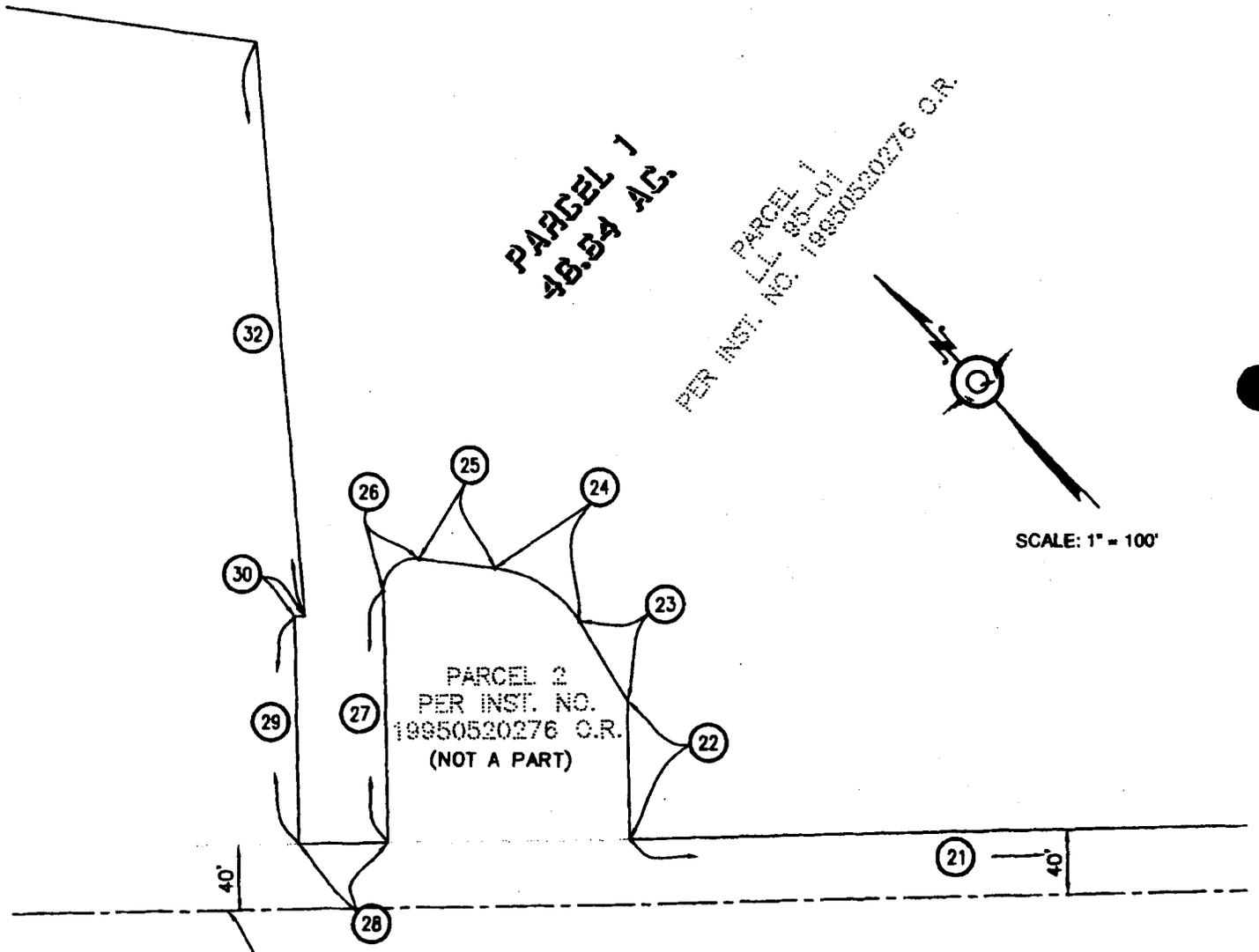
SCALE: 1" = 200'

EXHIBIT B
LOT LINE ADJUSTMENT - LLA 10 - 08
 (Map)

LEGEND OF SYMBOLS

- EXISTING PROPERTY LINE TO REMAIN
- REVISED PROPERTY LINE PER THIS MAP
- - - - - PROPERTY LINE TO BE ADJUSTED

NOTE:
 SEE PAGE 8 FOR TABLE OF COURSES



☪ SOUTH COAST HIGHWAY
 (PACIFIC COAST HIGHWAY)
 (CALIFORNIA STATE HIGHWAY PER
 BOOK 683, PAGE 215, DEEDS)

EXHIBIT B
LOT LINE ADJUSTMENT - LLA 10 - 08
 (Map)

LEGEND OF SYMBOLS

- EXISTING PROPERTY LINE TO REMAIN
- REVISED PROPERTY LINE PER THIS MAP
- PROPERTY LINE TO BE ADJUSTED

NOTE:
 SEE PAGE 8 FOR TABLE OF COURSES

PARCEL 1
48.64 AC.

PARCEL 1
 LL 85-01
 PER INST. NO. 18850520276 C.R.

SCALE: 1" = 50'

MH
 ZONING

NOT A PART

PARCEL 2, 1.04 AC.
 CN ZONING

NE'LY R/W LINE OF
 SOUTH COAST HIGHWAY

☉ SOUTH COAST HIGHWAY
 (PACIFIC COAST HIGHWAY)
 (CALIFORNIA STATE HIGHWAY PER
 BOOK 683, PAGE 215, DEEDS)

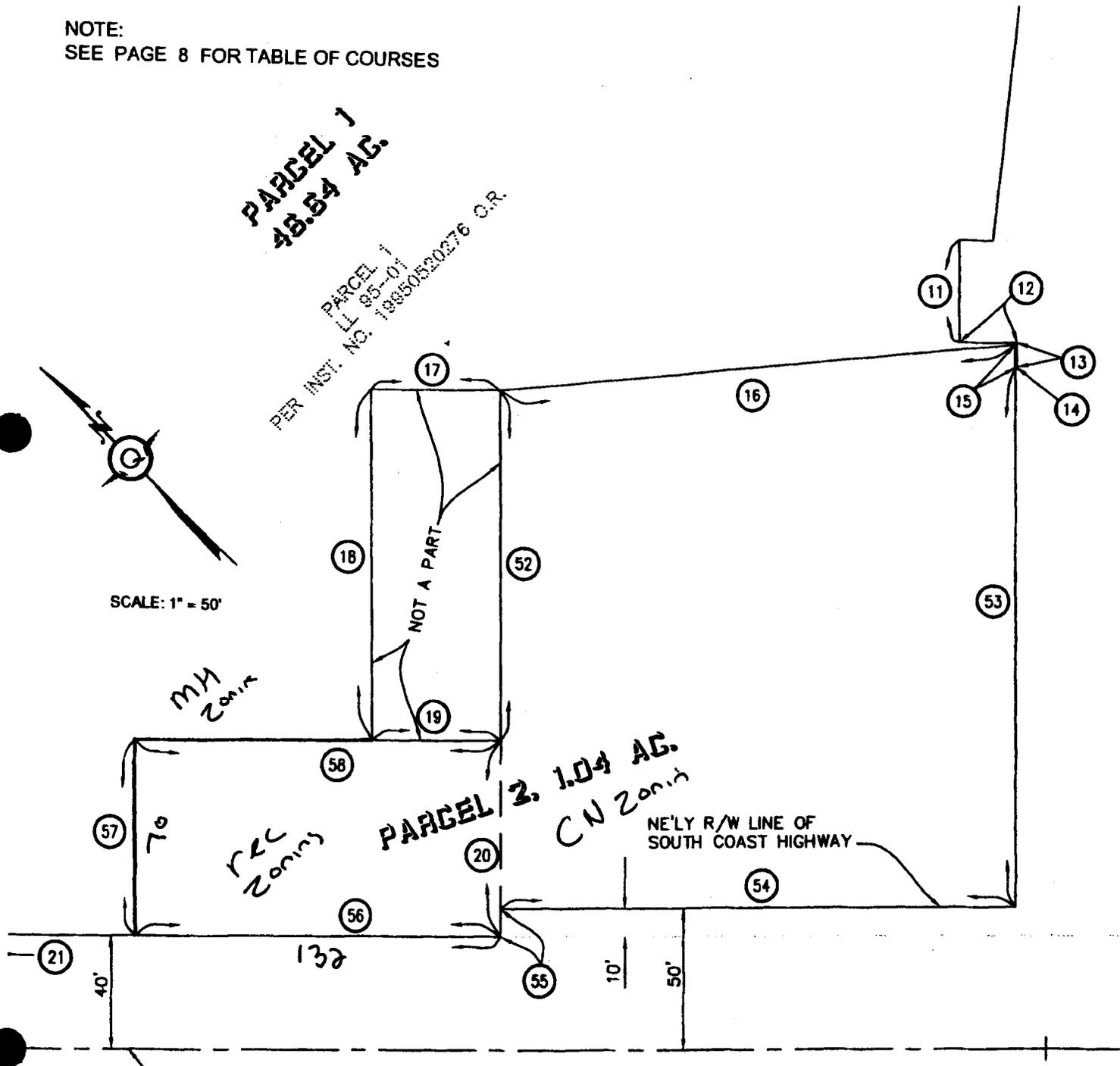


EXHIBIT B
LOT LINE ADJUSTMENT - LLA 10 - 08
 (Map)

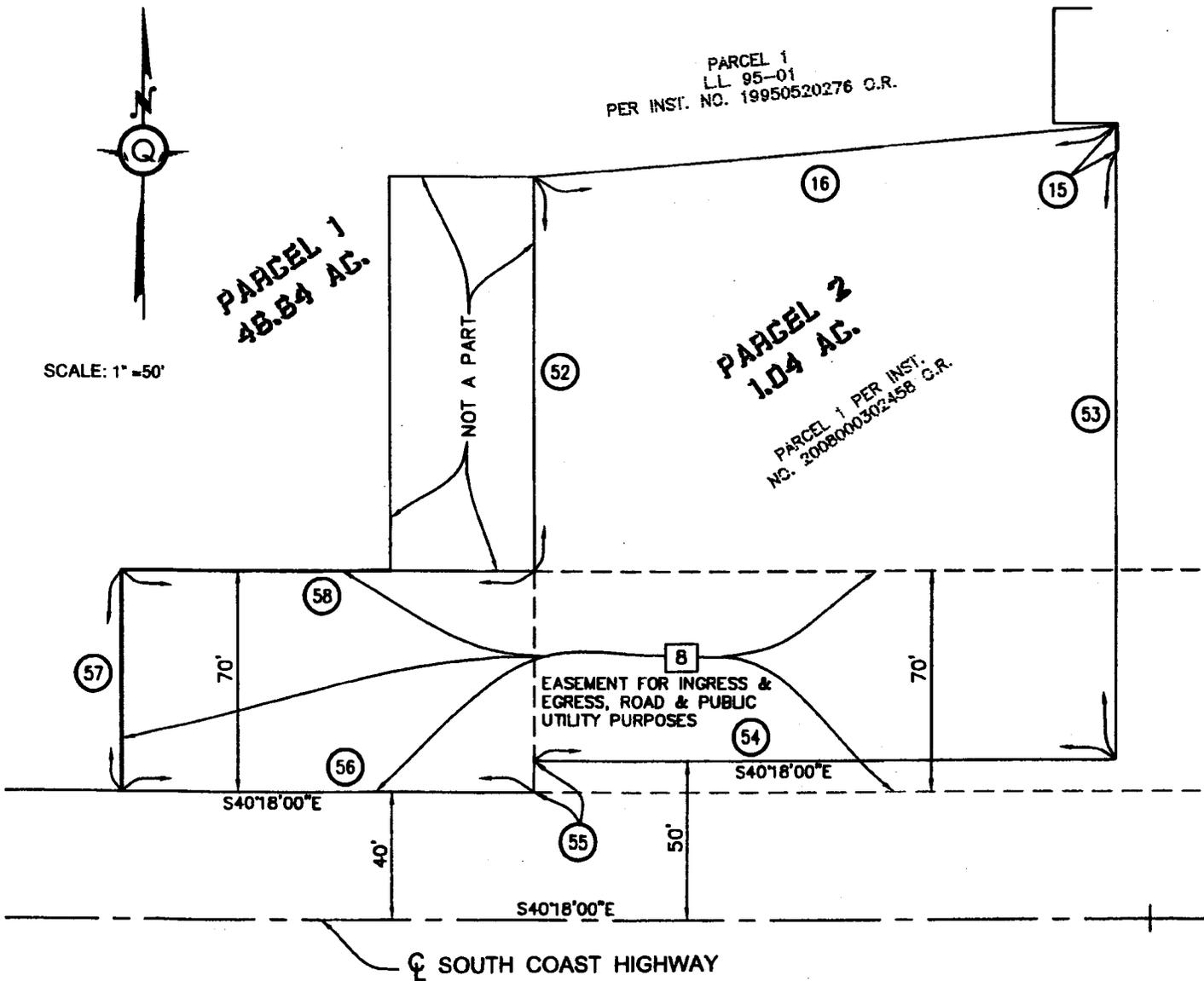
LINE TABLE		
LINE	BEARING	LENGTH
1	S18°23'56"E	271.88'
2	S04°16'07"E	141.78'
3	S10°17'43"W	140.80'
4	N87°05'00"W	35.12'
5	S19°30'00"W	145.02'
6	N34°03'30"W	116.96'
8	N34°03'30"W	141.30'
9	S55°56'30"W	116.61'
10	N40°18'00"W	12.00'
11	S49°42'00"W	37.00'
12	S40°18'00"E	20.00'
13	S49°42'00"W	8.91'
14	N40°18'00"W	0.20'
15	N49°42'00"E	8.17'
16	N45°19'05"W	185.71'
17	N40°18'00"W	46.17'
18	S49°42'00"W	127.00'
19	S40°18'00"E	46.17'
20	S49°42'00"W	70.00'
21	N40°18'00"W	610.81'
22	N49°42'00"E	85.00'
23	N19°24'00"E	57.42'
25	N32°40'00"W	47.66'
27	S49°42'00"W	155.14'
28	N40°18'00"W	54.97'
29	N49°42'00"E	140.00'
30	S40°18'00"E	6.36'
32	N46°10'00"E	360.28'
33	N31°26'20"W	515.42'
34	N89°00'40"E	1413.55'
35	N43°05'00"E	515.25'
36	N09°45'00"E	377.51'
37	N87°45'00"E	458.00'
38	S05°15'00"W	612.00'
39	S43°35'00"W	930.00'
45	N72°30'00"W	78.00'
47	S29°10'00"W	144.00'
49	S48°54'00"E	44.00'
52	S49°42'00"W	127.00'
53	N49°42'00"E	195.03'
54	N40°18'00"W	185.00'
55	S49°42'00"W	10.00'
56	S40°18'00"E	132.00'
57	N49°42'00"E	70.00'
58	S40°18'00"E	132.00'
59	N00°16'58"E	1178.05'
60	S89°37'53"E	1370.88'
61	S00°27'51"W	3254.75'
62	S49°42'00"W	40.00'
63	S40°18'00"E	195.83'
65	S34°03'30"E	689.41'
66	N49°40'19"E	11.00'
67	S40°18'00"E	103.36'
68	S55°55'21"W	32.20'
69	S40°18'00"E	79.67'
70	N49°40'19"E	17.00'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
7	9°13'33"	180.00'	28.98'
24	52°04'00"	70.00'	63.61'
26	97°38'00"	20.00'	34.08'
40	21°15'27"	350.00'	129.85'
41	63°51'00"	45.00'	50.15'
42	32°03'39"	250.00'	139.89'
43	62°46'00"	80.00'	87.64'
44	73°38'12"	170.00'	218.48'
46	78°20'00"	125.00'	170.90'
48	78°04'00"	45.00'	61.31'
50	77°38'15"	150.00'	203.25'
51	22°47'41"	90.00'	35.81'
64	06°14'30"	2000.00'	217.88'
71	89°59'49"	27.00'	42.41'
72	23°09'06"	27.00'	10.91'
73	113°08'24"	60.00'	118.48'

SITE PLAN

LOT LINE ADJUSTMENT - LLA 10 - 08

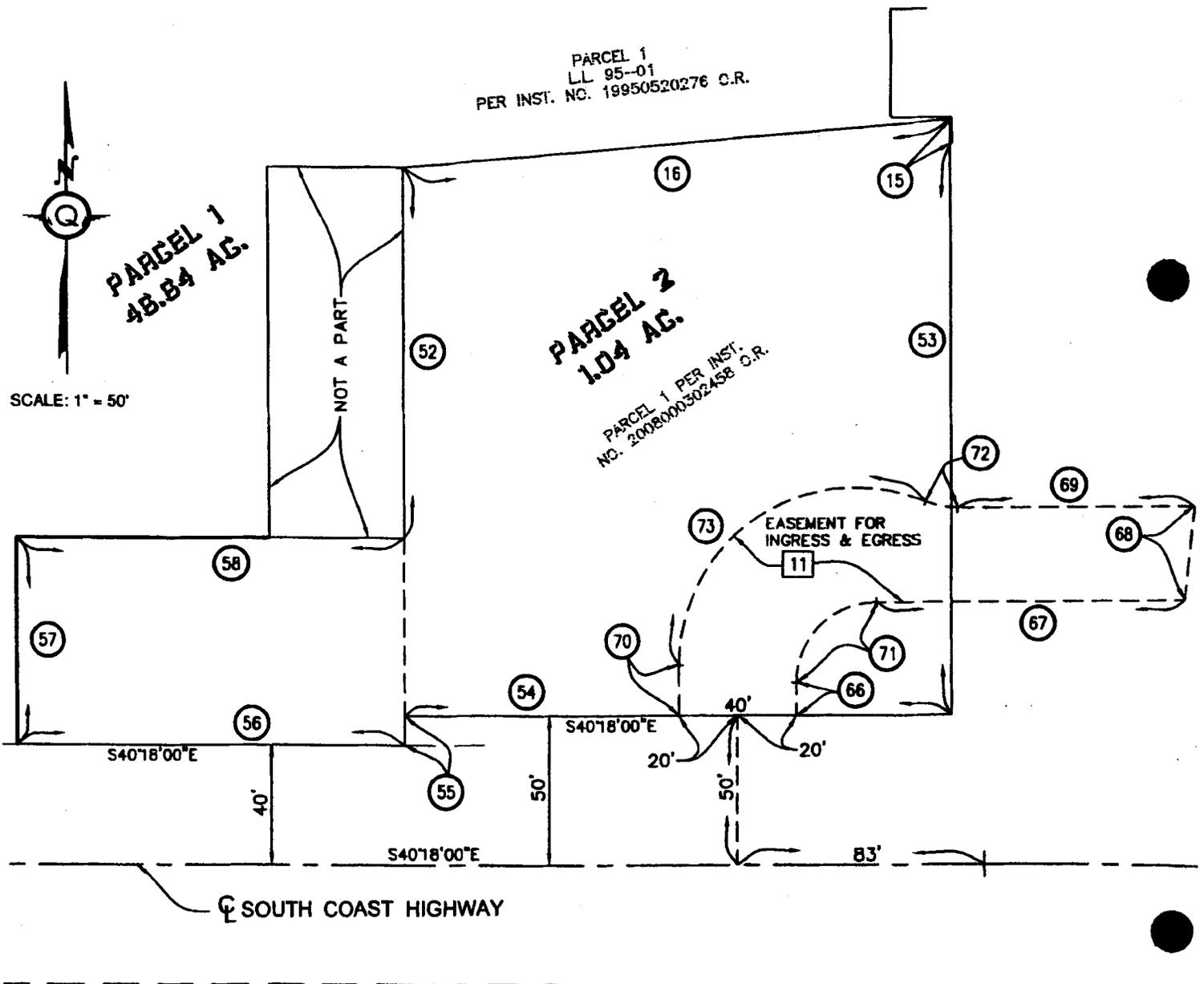
ITEM **8** PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. NCS-450835-SA1 DATED 7-27-10
 AN EASEMENT FOR INGRESS & EGRESS, ROAD & PUBLIC UTILITY PURPOSES RECORDED
 1-25-61, IN BOOK 5605, PAGE 113 O.R.



SITE PLAN

LOT LINE ADJUSTMENT - LLA 10 - 08

ITEM **11** PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. NCS-450835-SA1 DATED 7-27-10
 AN EASEMENT FOR INGRESS & EGRESS PURPOSES RECORDED 6-1-81 IN BOOK 14081, PAGE
 1895 O.R.



PARCEL 1
 LL 95-01
 PER INST. NO. 19950520276 C.R.

PARCEL 1
48.84 AC.

PARCEL 2
1.04 AC.

PARCEL 1 PER INST.
 NO. 2002000302458 C.R.

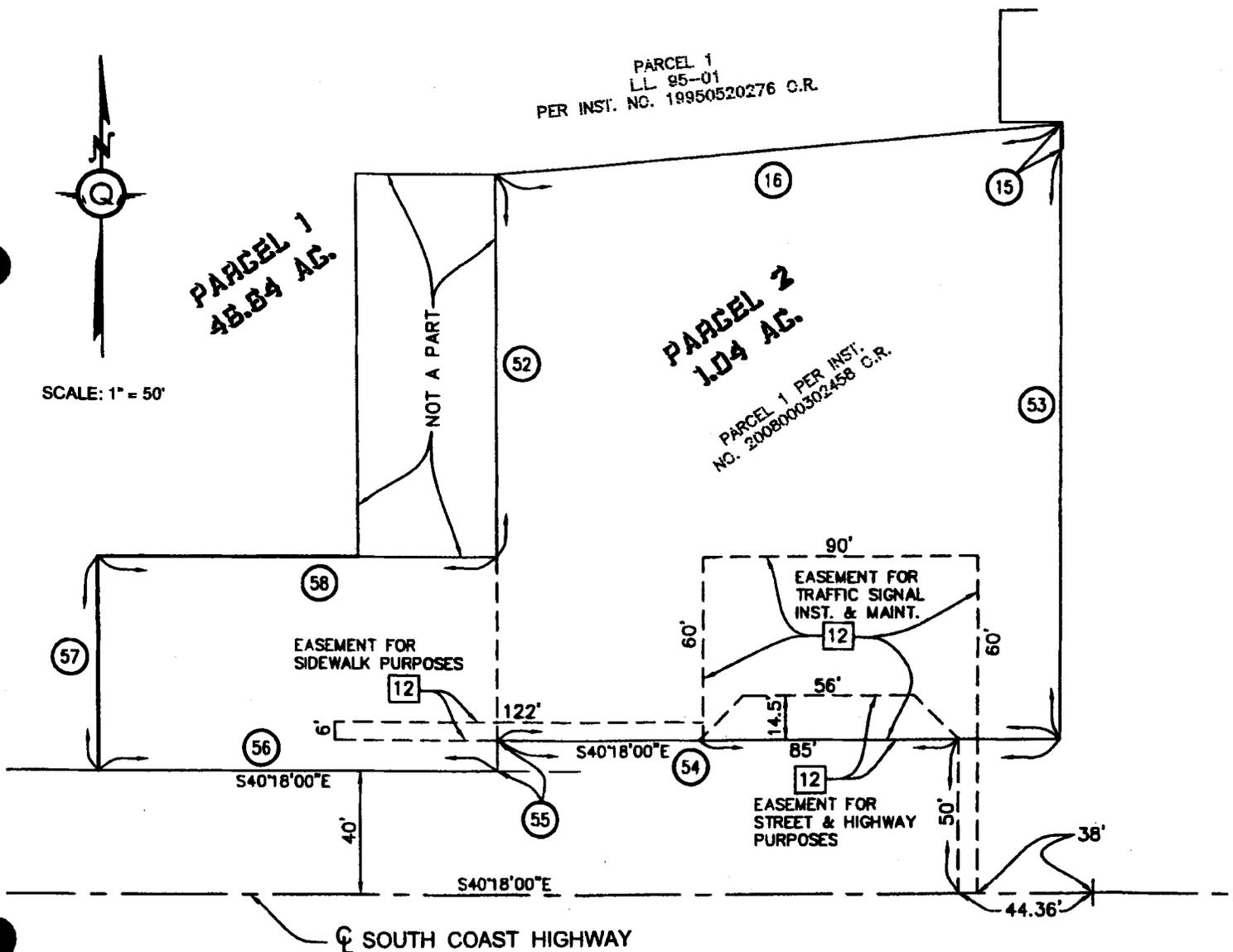
EASEMENT FOR
 INGRESS & EGRESS

☐ SOUTH COAST HIGHWAY

SITE PLAN

LOT LINE ADJUSTMENT - LLA 10 - 08

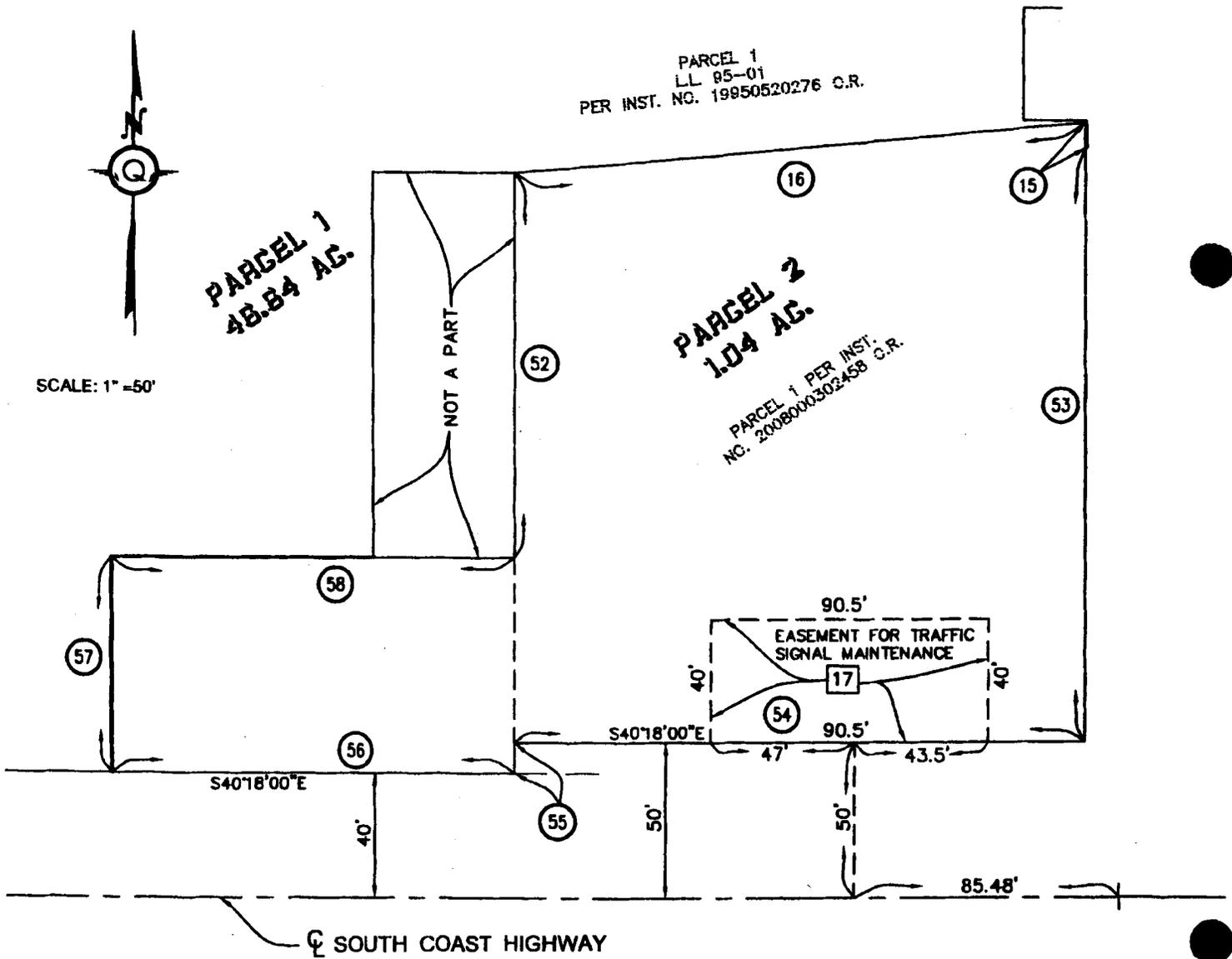
ITEM 12 PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. NCS-450835-SA1 DATED 7-27-10 AN EASEMENT STREET & HIGHWAY PURPOSES, SIDEWALK AND TRAFFIC SIGNAL INSTALLATION PURPOSES RECORDED 6-1-81 IN BOOK 10481, PAGE 1903 O.R.



SITE PLAN

LOT LINE ADJUSTMENT - LLA 10 - 08

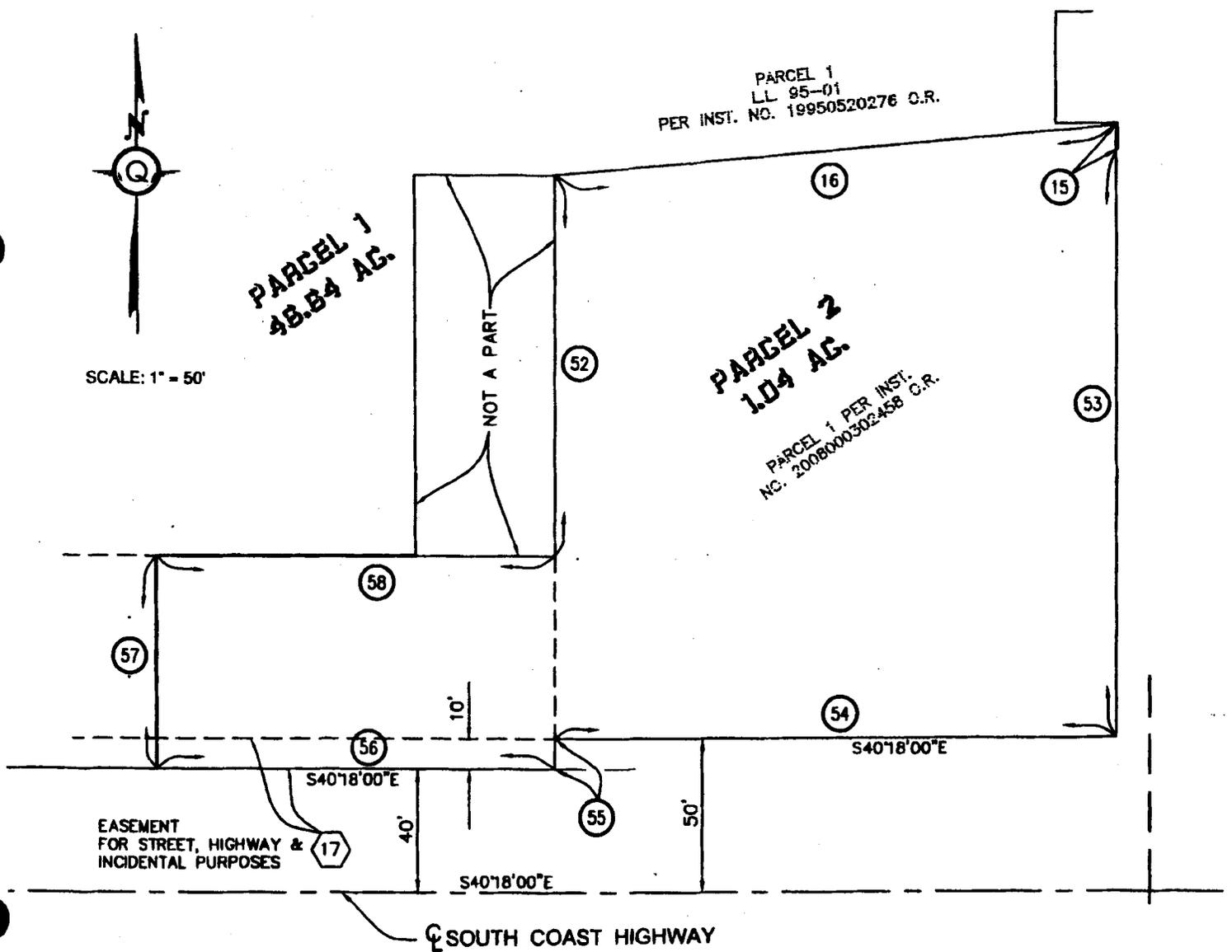
ITEM 17 PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. NCS-450835-SA1 DATED 7-27-10 AN EASEMENT FOR TRAFFIC SIGNAL MAINTENANCE PURPOSES RECORDED 5-20-03 AS INSTRUMENT 2003000581890 O.R.



SITE PLAN

LOT LINE ADJUSTMENT - LLA 10 - 08

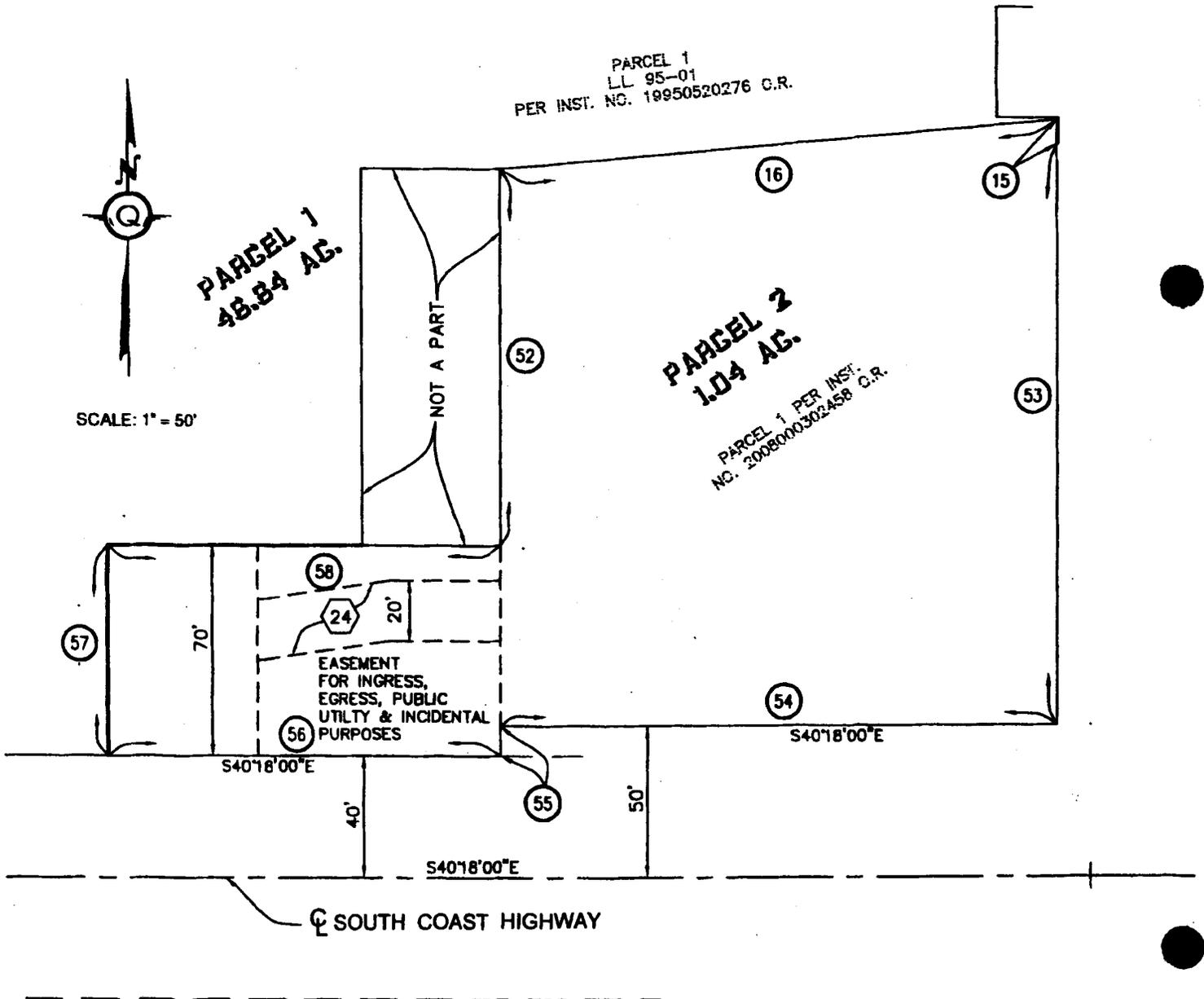
ITEM 17 PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. NCS-439501-SA1 DATED 4-28-10 AN EASEMENT IN FAVOR OF COUNTY OF ORANGE FOR STREET, HIGHWAY & INCIDENTAL PURPOSES RECORDED 4-7-61 IN BOOK 5682, PAGE 637 O.R.



SITE PLAN

LOT LINE ADJUSTMENT - LLA 10 - 08

ITEM 24 PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. NCS-439501-SA1 DATED 4-28-10 AN EASEMENT IN FAVOR OF MARIE M. ESSLINGER FOR INGRESS, EGRESS, PUBLIC UTILITY & INCIDENTAL PURPOSES RECORDED 4-26-84 AS INSTRUMENT NO. 84-172916 O.R.



PARCEL 1
LL 95-01
PER INST. NO. 19950520276 C.R.

PARCEL 1
48.84 AC.

PARCEL 2
1.04 AC.

PARCEL 1 PER INST.
NO. 2008000302458 C.R.

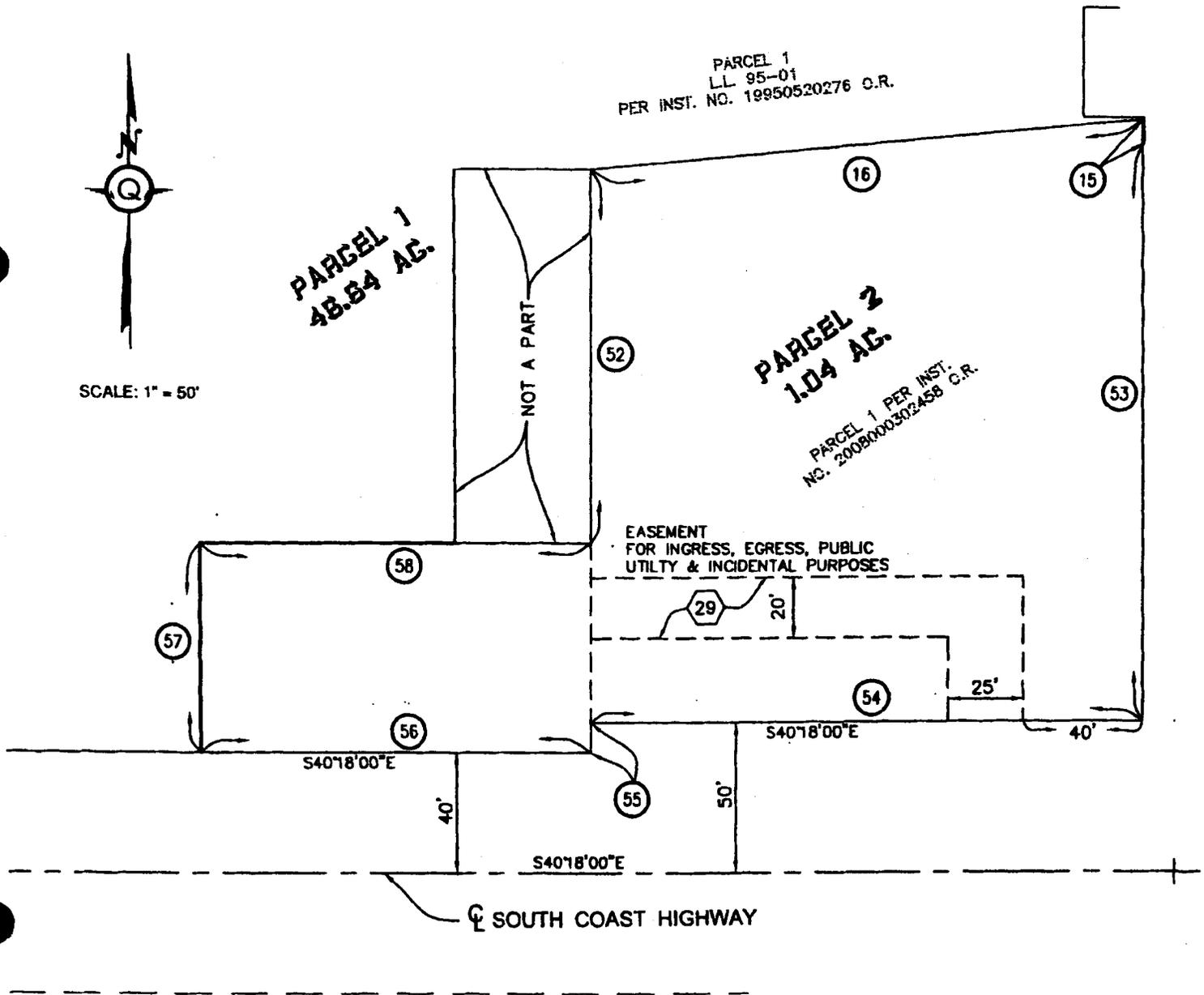
SCALE: 1" = 50'

☐ SOUTH COAST HIGHWAY

SITE PLAN

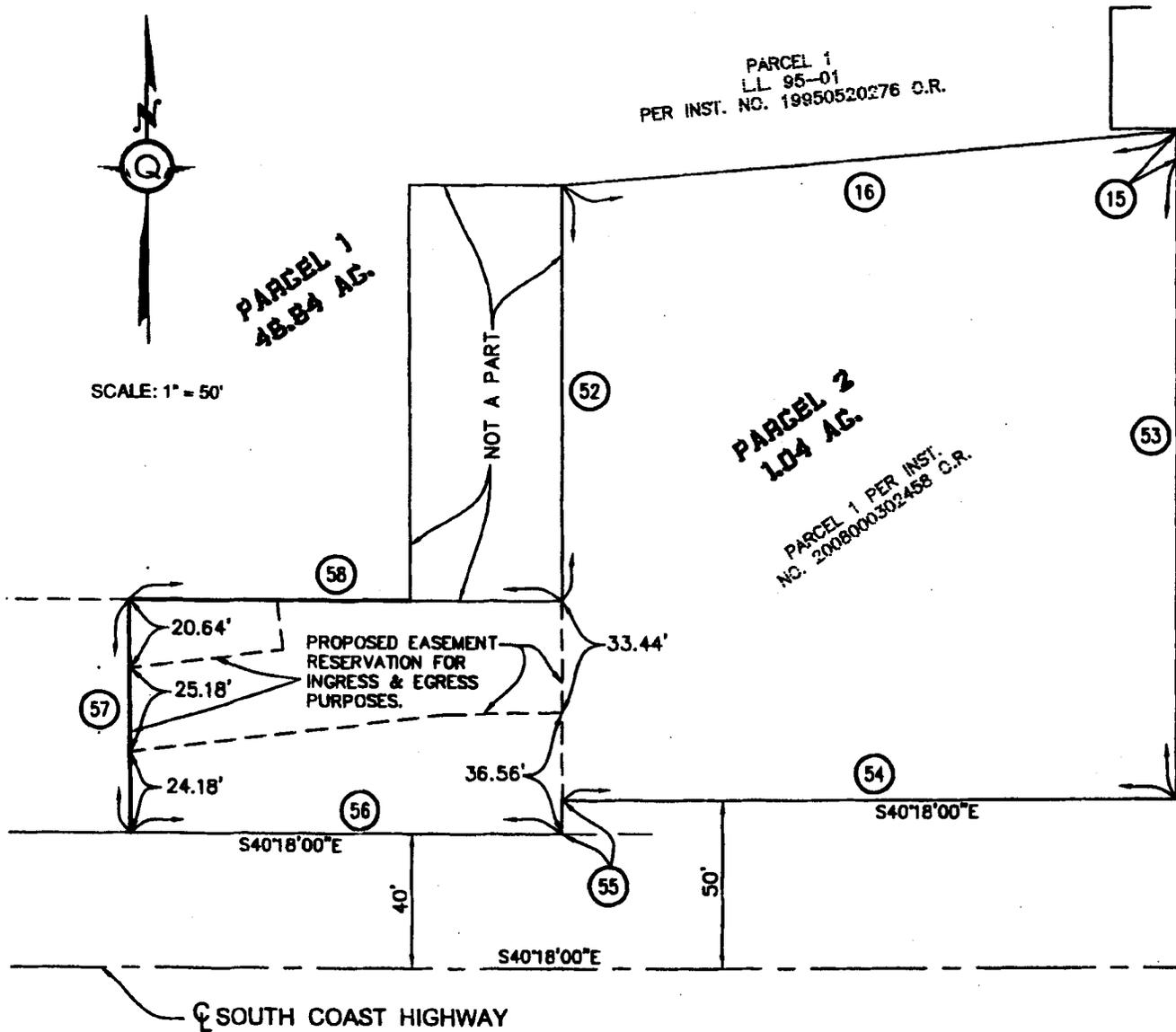
LOT LINE ADJUSTMENT - LLA 10 - 08

ITEM 29 PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. NCS-439501-SA1 DATED 4-28-10 AN EASEMENT IN FAVOR OF MARIE M. ESSLINGER FOR INGRESS, EGRESS, PUBLIC UTILITY & INCIDENTAL PURPOSES RECORDED 4-26-84 AS INSTRUMENT NO. 84-172918 O.R.



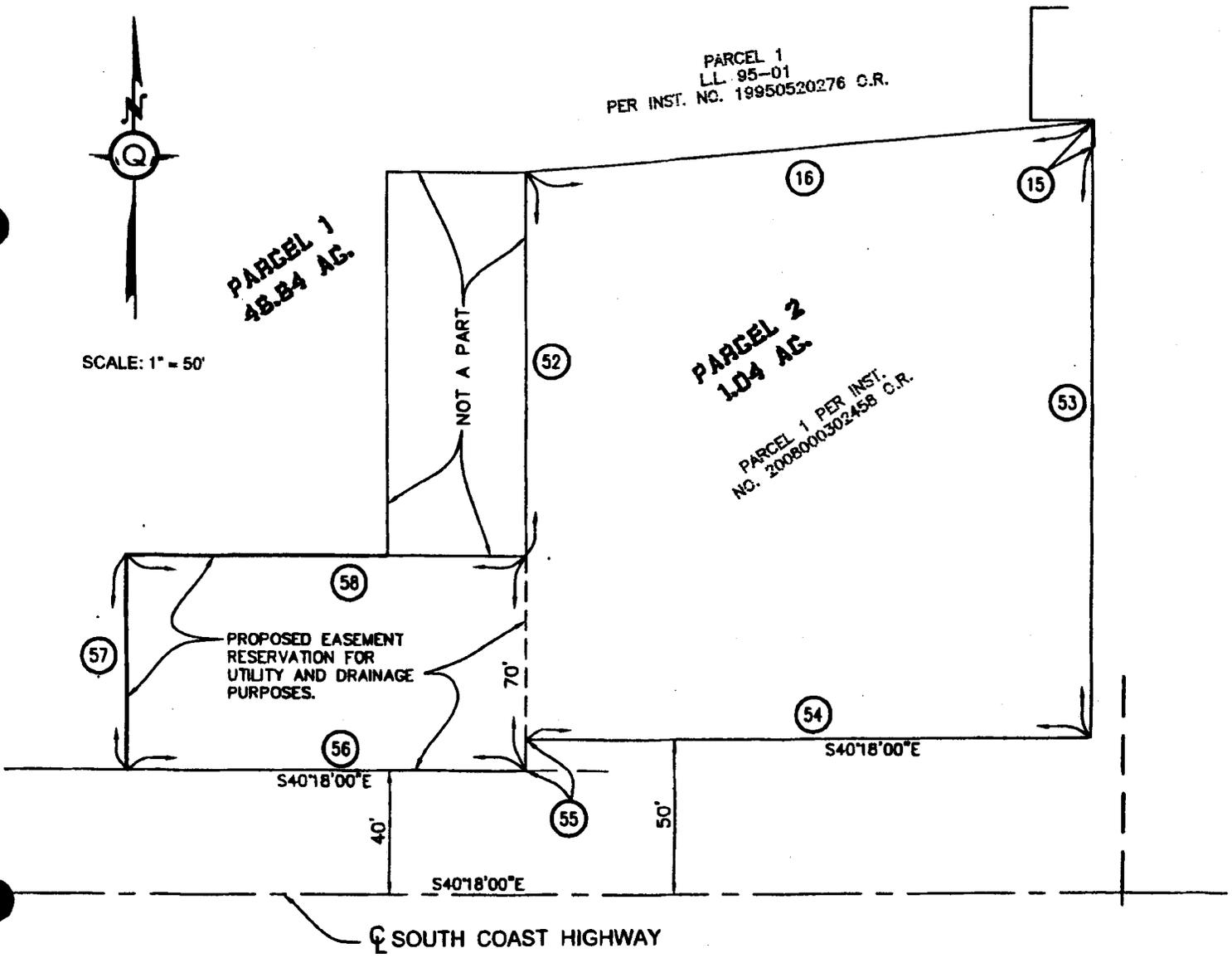
SITE PLAN LOT LINE ADJUSTMENT - LLA 10 - 08

PROPOSED EASEMENT FOR INGRESS & EGRESS PURPOSES



SITE PLAN LOT LINE ADJUSTMENT - LLA 10 - 08

PROPOSED EASEMENT FOR UTILITY & DRAINAGE PURPOSES



CALIFORNIA COASTAL COMMISSION

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Staff: Karl Schwing
Staff Report: January 27, 2011
Hearing Date: February 9, 2011
Commission Action:

**STAFF REPORT: APPEALABILITY****DISPUTE RESOLUTION****NUMBER:** 5-11-012-EDD**LOCAL CDP APPLICATION NO.:** 10-57**LOCAL JURISDICTION:** City of Laguna Beach**APPLICANTS FOR LOCAL PERMIT:** Laguna Terrace Park LLC & Ohana Laguna Reef LLC**PROJECT LOCATION:** 30802 & 30806 Coast Highway
City of Laguna Beach, Orange County**DESCRIPTION:** Public hearing and Commission determination of appealability of City of Laguna Beach action on coastal development permit No. 10-57 to adjust lot lines, at 30802 & 30806 South Coast Highway, Laguna Beach, Orange County.**SUMMARY OF STAFF RECOMMENDATION:**

The development plan considered by the City is to adjust a lot line between a parcel of land that contains a mobile home park and an adjacent parcel occupied by a hotel. A small portion of the mobile home park parcel contains a paved area, near Coast Highway, used for parking. According to the applicants, that parking area has been leased for use by patrons of the hotel for many years. Now, the hotel wishes to formally add that parking area to their parcel of land by adjusting the lot lines so that the parking area is transferred from the mobile home park parcel, to the hotel parcel. However, similar to the recent action to subdivide the mobile home park into small lots that is currently on appeal (see A-5-LGB-10-174), the request assumes the validity of lot line adjustments that occurred in 1995, which have never been permitted, and which raise significant coastal resource issues. The current lot line adjustment request is, in effect, also a request to legalize the unpermitted 1995 lot line adjustment. Therefore, all the issues related to that lot line adjustment are also raised by the current proposal, and the 'development' involve not just the adjustment of the lot line in the parking area, but also the redivision of land that is described in the 1995 lot line adjustments.

The City's decision that its action is not appealable to the Commission is based on its determination that there is no development occurring within 100 feet of any stream. The City's resolution of approval states "...the lot line adjustment and coastal development permit will not create any lots or parcels which 'require any new lot lines or portions of new lines within the area subject to the [California Coastal] Commission's retained jurisdiction.'" This is the incorrect standard. The proposed lot line adjustment would reconfigure a lot onto which a blue-line stream extends and therefore qualifies as appealable development.

Furthermore, the proposed lot line adjustment is reconfiguring a parcel that the mobile home park occupies that was the result of two lot line adjustments the City approved in 1995. Those lot line adjustments were never authorized through any coastal development permit even though such



authorization is required¹. The proposed action could have the effect of legalizing a slightly modified version of the boundary of Parcel 1 of Lot Line Adjustment 95-01. Thus, the entire configuration of this modified parcel, and the resultant remainder parcels that would be created, are also part of the 'development' the City approved. There are streams within those reconfigured parcels, which render the City's action to be appealable.

The Commission has previously addressed the appealability of a subdivision at this site in February 2010 (5-10-014-EDD), and in June 2010 (5-10-117-EDD), finding the subdivision to be appealable, and found substantial issue on appeals that were filed at hearings in March 2010 (A-5-LGB-10-039) and September 2010 (A-5-LGB-10-174). Laguna Terrace Park LLC has also pursued litigation with the Commission over its decisions.

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 pending local Coastal Development Permit application No. 10-57 is an action on a coastal development permit application that would be appealable to the Commission. 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 pending Coastal Development Permit Application No. 10-57 would be appealable to the Coastal Commission pursuant to Public Resources Code Section 30603.*

Staff Recommendation that City of Laguna Beach Coastal Development Permit No. 10-57 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 10-57 would be an action on a coastal development permit application that is appealable to the Commission and that (b) City notices must reflect that the local action to approve the development is appealable to the Commission, 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 10-57 is an action on a coastal development permit application that would be appealable to the Commission and that (b) City notices must reflect that the local action to approve the development is appealable to the Commission and (2) adopts the findings to support its jurisdiction that are set forth in the staff report.

¹ These unpermitted lot line adjustments are the subject of an ongoing enforcement investigation (Exhibit #9) Findings for Dispute Resolution No. 5-11-012-EDD

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Exhibits

1. Vicinity Map
- 2a. Map showing approximate parcel boundaries pre-1995 lot line adjustment & location of appeals area
- 2b. Map showing detail of the area of the parcel boundary adjustment between the 270-acre area and the hotel parcel, before the LLA
- 2c. Map showing detail of the area of the parcel boundary adjustment between the 270-acre area and the hotel parcel, after the LLA
3. E-mail from Ms. Penny Elia to City re appealability dated 1/14/2011
4. Executive Director's Appealability Determination dated 1/14/2011
5. Lot Line Adjustment Approved By City
6. City Notice of Final Action and Resolution Received 1/25/2011
7. 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, 1993

Substantive file documents: Lot Line Adjustment 95-04, Lot Line Adjustment 95-01, findings and file materials for Dispute Resolution No.s 5-10-014-EDD and 5-10-117-EDD, findings and file materials for determinations of substantial issue on appeals A-5-LGB-10-039 and A-5-LGB-10-174, Notice of Violation Letter dated May 4, 2007; City of Laguna Beach Agenda Bills dated 11/16/2010 and 1/18/2011

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. COASTAL COMMISSION AND CITY ACTIONS

The subject site is an approximately 1 acre site developed with a hotel at 30806 Coast Highway and a 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 hotel site is adjacent to Coast Highway. The developed part of the mobile home park occupies about 14 acres adjacent to Coast Highway within and at the mouth of a steeply sided canyon (Hobo Canyon). According to the City, the hotel site is designated Commercial Neighborhood, and the area of land occupied by the mobile home park is designated for recreation and 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 mobile home 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, near Coast Highway, where the hotel, 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).

Laguna Beach Coastal Development Permit No. 10-57 is a lot line adjustment between the mobile home park and the hotel, which as explained more fully below, results in the creation of several parcels. On January 4, 2011, the City Council of the City of Laguna Beach held a hearing on CDP 10-57, at which the City staff recommended the City find that its action would be appealable to the Commission. City Council members questioned this determination, and continued the matter for City staff to work on that question, and proposed condition language. On or about January 13, 2011, City staff published a staff report on the City's web site, revising their appeals determination and stating that the City's action would not be appealable to the Commission. On January 14, 2011, a member of the public, Ms. Penny Elia, sent an email to City staff and City Council members, with a copy to Commission staff, stating her objection to the City's determination that the currently pending proposal would not be appealable. Ms. Elia requested that the City contact the

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Executive Director of the Commission for a determination on appealability (Exhibit 3). Following that email, also on January 14, 2011, the Executive Director sent a letter to the City with his determination that the City's action would be appealable to the Commission because there are streams in the vicinity of the proposed development (in effect, a subdivision) which establish the appeals area; and the appeals area extends into parcel(s) that would be reconfigured as a result of the proposed subdivision (Exhibit 4). On January 18, 2011, the City Council took action to approve Coastal Development Permit No. 10-57, and adopted a resolution of approval stating its action is not appealable to the Commission. On January 25, 2011, the Commission received a Notice of Final Action from the City (Exhibit 6). The Notice of Final Action contained the following statement: "...The City considers the project as not appealable to the California Coastal Commission; however, on January 14, 2011, the Executive Director of the California Coastal Commission has made a determination that the project is appealable pursuant to Coastal Act Section 30603. Based on the Coastal Commission's Executive Director's determination, an aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice...". Since this language was inconsistent with a statement in the attached resolution from the City Council, Commission staff contacted the City on January 26, 2011, to find out whether they believed a dispute existed. At that time, City staff advised Commission staff of their opinion that there was no ongoing dispute. The following day, January 27, 2011, Commission staff received a call from City staff advising that they had changed their opinion, stating that a dispute exists and they requested that a dispute resolution hearing on appealability be scheduled. Thus, a dispute exists between the City and the Executive Director. 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).

1. The City's Approval Involves More Development Than Is Described in Their Action.

The development plan considered by the City is to adjust a lot line between a parcel of land that contains a mobile home park and an adjacent parcel occupied by a hotel. A small portion of the mobile home park parcel contains a paved area, near Coast Highway, used for parking. According to the applicants, that parking area has been leased for use by patrons of the hotel for many years. Now, the hotel wishes to formally add that parking area to their parcel of land by adjusting the lot lines so that the parking area is transferred from the mobile home park parcel, to the hotel parcel.

However, similar to the recent City action to subdivide the mobile home park into small lots that is currently on appeal (see A-5-LGB-10-174), the current lot line adjustment request relies on lot line adjustments that occurred in 1995, which have never been permitted by a coastal development permit, and which raise significant coastal resource issues. An unpermitted 1995 lot line adjustment, 95-01, purported to create at least three parcels out of the subject 270 acre area – Parcel 1, a 45.44 acre parcel which is occupied by the mobile home park and includes some vacant land around it, Parcel 2, a 0.53 acre parcel next to Coast Highway that contained a gas station, and Parcel 3, which contains undeveloped land and was said to be 74.81 acres (but would have been larger as it would have contained the balance of the 270 acres land). The current lot line adjustment refers to Parcel 1 of LLA 95-01, and purports to adjust the line between that parcel and the adjacent 1 acre hotel parcel. Since the current lot line adjustment request makes reference to and utilizes the unpermitted 1995 lot line adjustment, and adjusts the boundaries of that lot, the current lot line adjustment request is, in effect, also a request to legalize the unpermitted 1995 lot line adjustment. It could have the effect of legalizing a slightly modified version of Parcel 1, and have the effect of carving out Parcel 2 along Coast Highway, and the balance of the undeveloped land, called Parcel 3 in LLA 95-01, that was part of the 270 acre subject area. Therefore, all the issues related to the 1995 lot line adjustment are also raised by the current proposal, and the 'development' involves not just the adjustment of the lot line in the parking area, but also the re-division of land that is described in the 1995 lot line adjustments.

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2. There Are Streams Within 100 Feet of the Proposed Development

The *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993, depicts an appeals area within the subject 270 acre area. This appeals area is within parcel(s) that are being reconfigured in conjunction with the subject lot line adjustment.

Furthermore, the U.S. Geological Survey 7.5 minute quadrangle map for Laguna Beach depicts an approximately 1,300 foot long segment of blue-line stream closer to Coast Highway (herein 'Stream Segment B') than the stream that is depicted on the post-cert map (herein 'Stream Segment A')². The most southerly/downstream portion of Stream Segment B exists in the vicinity of the northerly terminus of "K" Street and of mobile home unit space number K52 and an existing storage yard for the mobile home park. Stream Segment B continues inland until it intersects Stream Segment A and is essentially a downstream continuation of that stream. Both stream segments (i.e. Stream Segments A and B) are within the parcel(s) of land that are involved in the lot line adjustment that is the subject of Laguna Beach's action on January 18, 2011 involving CDP 10-57. According to Section 13577 of the Commission's regulations, blue-line streams are to be used to determine appeals areas³. Thus, Stream Segment B forms the basis for a larger appeals area than is depicted on the post-cert map.

Stream Segment A is located inside of Parcel 3 of the unpermitted Lot Line Adjustment No. 95-01, and may touch Parcel 1 of unpermitted Lot Line Adjustment LL 95-01. Stream Segment B extends onto Parcel 1 of LL 95-01. Since Parcels 1, 2 and 3 of Lot Line Adjustment LL 95-01 aren't legally separated, both Stream Segments A and B form the basis for appealability. Thus, the subject land division is clearly appealable to the Commission and satisfies section 30603(a)(2) because the stream is on the parcels that are the subject of the land division—the development.

In sum, the Commission has appellate jurisdiction regardless of the legal status of the 1995 lot line adjustments. If, as the Commission has found, the 1995 lot lines should be disregarded for the purposes of Coastal Act review, both Stream Segment A and Stream Segment B are located on a parcel that is being reconfigured as part of the proposed subdivision. If the 1995 lot lines are assumed to be effective for purposes of Coastal Act review, then Stream Segment B extends onto Parcel 1, a parcel that is being reconfigured as part of the proposed subdivision.

3. The City's Rationale for Non-Appealability is Erroneous

The City of Laguna Beach contends that their action on a coastal development permit for the subject lot line adjustment, which also has the effect of a land division, in the Coastal Zone, is not appealable to the Coastal Commission. This determination appears to be based on an erroneous interpretation of the location of the proposed development with respect to the location of a stream-based appeals area. Their erroneous appealability determination also reflects a misunderstanding 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 Stream A

² Stream Segment A appears on both the Commission's Post-certification map for the City of Laguna Beach, and as a blue-line stream on USGS maps. Stream Segment B is not depicted on the Commission's map titled *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993, but is depicted on the USGS map. Pursuant to Section 13576 of the Commission's regulations, the post-cert map includes a statement that the map "may not include all lands where permit and appeal jurisdiction is retained by the Commission."

³ California Code of Regulations Title 14 § 13577 states in part, "For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1972, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria: (a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program..."

depicted on the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993, and based on the presence of a blue-line stream within a parcel being reconfigured, Stream B, the proposed development involves a division of land and the reconfiguration of a parcel 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's decision that its action is not appealable to the Commission is based on their determination that there is no development occurring within 100 feet of any stream. The City's resolution of approval states "...the lot line adjustment and coastal development permit will not create any lots or parcels which 'require any new lot lines or portions of new lines within the area subject to the [California Coastal] Commission's retained jurisdiction.'" The City argues that the area where the lot lines are being adjusted, down near Coast Highway, is more than 100 feet from any stream, and thus no new lines or portions of new lines are within areas subject to the Commission's jurisdiction. This determination and rationale by the City is erroneous for the following several reasons, which are discussed more fully below: 1) a lot line adjustment (or other division of land) is appealable if any portion of the parcel(s) being reconfigured are located in the appeals area – the actual portion of the lot line that is being adjusted/moved need not be in the appeals area in order for the action to be appealable (the City is erroneously applying Commission guidance related to permit jurisdiction, to a determination on appeals jurisdiction, which are distinctly different topics in the Commission's published guidance); and 2) the 'development' involved includes not only the adjustment of the lot line in the area of the parking lot, but also the redivision of land that occurred in conjunction with an unpermitted 1995 lot line adjustment.

The City makes reference to the following statement in their resolution of approval: that the lot line adjustment and coastal development permit will not create any lots or parcels which 'require any new lot lines or portions of new lines within the area subject to the [California Coastal] Commission's retained jurisdiction.' Although the City does not identify the source from which they are quoting, it appears that the City is quoting from the Commission's *Local Coastal Program, Post-Certification Guide for Coastal Cities and Counties*, Revised May 6, 2002 (herein 'post cert guide'). The post cert guide contains guidance to cities on various topics related to LCP implementation. It is solely guidance and does not have the legal standing of a statute or regulations. Among the topics is a discussion of handling projects that straddle various types of jurisdictional boundaries, including appeal jurisdiction boundaries, permit jurisdictional boundaries, and projects bisected by different local government jurisdictions. Each is covered under separate headings in the post cert guide, and there is a specific topic that discusses projects that are bisected by an appeals jurisdiction. However, the quotation the City cites is not from that topic. The quotation, which reads in full as follows, is from the discussion on projects that bisect, or occur, in both the Commission's permitting jurisdiction, and in the City's jurisdiction: "*Projects bisected by Commission and local government jurisdiction. The circumstance may arise wherein proposed development is located within both the Coastal Commission's and local government's coastal development permit jurisdictions. In such cases, coastal permits are required by both the Commission and the local government. In the case of any division of land, the permit is issued by the Commission only for lots or parcels created which require any new lot lines or portions of new lot lines within the area subject to the Commission's retained jurisdiction. In such an instance the Commission's review is confined to those lots or portions of lots within its jurisdiction. In the case of any development involving a structure or similar integrated physical construction, the Commission issues a permit for any structure partially in the retained jurisdiction area. For example, a permit for a shoreline protective device (e.g. a seawall) that is located partially within the Commission's retained jurisdiction would be reviewed by the Commission.*"[emphasis added] This guidance does not relate to appeals jurisdiction, it relates to permitting jurisdiction, which are distinctly different topics. The City did not consider that distinction, and erroneously applied the guidance related to permit jurisdiction, to their decision regarding appealability of the development.

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4. The Legal Status of 1995 Lot Line Adjustments

The legal status of division of the 270 acre area into various parcels is intertwined with the debate about the appealability of the City's action. As discussed partly above, 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 unauthorized creation of new parcels of land having a greater potential for development than previously existed (see substantive file documents). Pursuant to Section 30600(a) of the Coastal Act⁴, 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 (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 and, thus, constitute development under the Coastal Act. La Fe, Inc. v. Los Angeles County (1999) 73 Cal. App. 4th 231, 240. 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 1995 lot line adjustments, which required a coastal development permit, were all done without the benefit of any coastal development permit. Thus, any separation of the lots resulting from those 1995 lot line adjustments must be disregarded for the purposes of Coastal Act review, and the configuration of the lots preceding those lot line adjustments, and the effect of the proposed lot line adjustment on that pre-1995 lot line adjustment lot configuration, must be considered. 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 (see substantive file documents), was recorded that purported to make a relatively small adjustment to the boundary of the subject 270 acre property at its northwesterly corner near Barracuda Way, wherein about ¼ acre of the 270 acre property was taken out of the 270 acre property 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 (see substantive file documents). Subsequently, in November 1995, a second lot line adjustment was recorded, LL 95-01⁵ (see substantive file documents), 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

⁴ The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code ("PRC"), and thus, to the Coastal Act, unless otherwise indicated.

⁵ This lot line adjustment makes reference to and perpetuates the existence of the lot line 'created' by lot line adjustment LL 95-04.

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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*, supra, 73 Cal.App.4th at p. 240. 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 action⁶. 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.

If the lot configuration contained in the unpermitted lot line adjustments had been permitted, the appealability of the City's action would not be different. As noted above, there is a blue line stream, Stream Segment B discussed above, that is within Lot 1 of LLA 95-01 that is being reconfigured as a result of the proposed lot line adjustment. However, without those prior lot line adjustments being recognized, and based on information available to Commission staff at this time, the area occupied by the mobile home park occupies part of two larger parcels of land (an approximately 35 acre parcel and an approximately 235 acre parcel) that combined are hundreds of acres in size (i.e. about 270 acres)(Exhibits 2a-2c). The appeals area as depicted on the post-cert map on the basis of Stream Segment A extends into the pre-lot line adjustment 235 acre parcel (Exhibit 2a-2c and 7).

In effect, the land division that is the subject of the latest lot line adjustment would separate the land occupied by the mobilehome park from the larger parcels leaving multiple remainder parcels (Exhibit 2a). Because the appeals area extends into a parcel that would be reconfigured as a result of the proposed lot line adjustment, the City's action on the coastal permit authorizing the transfer of the parking area from Parcel 1 of LLA 95-01 to the adjacent hotel parcel, and the division of the mobilehome park area from the 270 acre area and its resultant creation of remainder parcels, is an action that is appealable to the Commission.

The Commission has had an extensive history of contact with the City and property owner(s) with regard to the appealability of a property division, as well as contact about concerns with the land division. This contact includes emails, letters, phone calls, and public hearings, all of which are documented in the findings and record for the prior dispute resolution hearings held in February 2010 (5-10-014-EDD) and in June 2010 (5-10-117-EDD), and in the findings and record for the appeals that were heard in March 2010 (A-5-LGB-10-039) and September 2010 (A-5-LGB-10-174), the records of which are incorporated here by reference.

3. The Development is Partly within the Commission's Area of Retained Jurisdiction

Aside from the appealability issue, the Commission asserts that the proposed development is partly located in the Commission's area of retained jurisdiction and that a coastal development permit is required from the Commission to authorize the development. Using the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993, the subject 270 acre area is depicted as being 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 (i.e. the area the City called "the Coastal Commission Post Certification Development Permit Jurisdiction Area") (Exhibit 7)⁷. The area of land where the applicants are proposing to adjust the lot line, between the

⁶ Those lot line adjustments are the subject of an ongoing enforcement investigation by the Commission (see substantive file documents).

⁷ In reviewing its files for the Commission's dispute resolution hearing on the appealability of local coastal development permit 09-36 (see 5-10-014-EDD), Commission staff discovered that the Laguna Beach post-cert map may inaccurately depict the area of deferred certification in the vicinity of the mobile home park.

hotel and the mobile home park, would be within the area the post-cert map says is City jurisdiction. However, significant portions of the remainder of that lot area (i.e. remainder lot) would be in the ADC. Commission staff maintains that the creation of the remainder lot would still require a coastal development permit directly from the Commission. 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.

B. COMMISSION DETERMINATION OF APPEALABILITY AND THE FILING OF APPEALS

The Commission finds that City approval of CDP Application No. 10-57 is an action on a coastal development permit application that is 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 the mobilehome park area from the subject 270 acre property. The *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach* Map ("post-cert map") adopted by the Commission on September 16, 1993 identifies a stream and an appeals area within the approximately 270 acre property that is involved in the land division that is the subject of the pending coastal development permit application before the City. Furthermore, there is a blue line stream within a parcel that is being reconfigured. Therefore, the City's approval of the coastal development permit is appealable to the Commission.

When the Commission certified the Land Use Plan (LUP) for southern Laguna Beach in 1992, the Commission identified Hobo Canyon (a.k.a. Mayer Group/Mahboudi-Fardi and Esslinger Property) as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an area of deferred certification to which the LUP did not apply. The following are examples from the findings which make clear that the entire Hobo Canyon site was to be deferred:

On page 16 of the Revised Findings adopted November 17, 1992 for Laguna Beach Land Use Plan Amendment 1-92, the findings state:

"At the Hobo Canyon area (also known as the Mayer/Mahboudi-Fardi parcel or the Esslinger Family Parcel), the issue at the time of the County's LCP certification was vehicular access to the property, arising from intensity and location of development. The issue at the Hobo Canyon site remains the same and so certification for this area will also be deferred."

Similar statements are made elsewhere in the report, and in the accompanying findings for the Implementation Plan amendment (1-92). There is also an exhibit, Exhibit H, attached to the findings that lists the areas of deferred certification and shows on a map the boundaries of the Hobo Canyon/ Mayer Group/Mahboudi-Fardi area, which includes the entire mobile home park.

The LUP expressly referred to the mobile home park as being within the Hobo Canyon area of deferred certification. The City has not subsequently submitted an LCP amendment to apply the LCP to Hobo Canyon. The post-cert map for the City of Laguna Beach that the Commission approved in 1993 depicts significant portions of the mobile home park as being within the City's coastal development permit jurisdiction. Commission staff is still investigating this matter, but, in finding that the City's action on a coastal development permit for the project would be appealable, the Commission does not waive any arguments that the project is located within the Hobo Canyon area of deferred certification and that the Commission therefore has permit jurisdiction over the entire project for that reason.

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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 10-57 seeks authorization for development within 100 feet of a stream identified on the City's post-cert map, and within 100 feet of a blue line stream identified on USGS topographic quadrangle maps for the area, approval of that application is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.





Stream Segment A - "Blue Line" stream segment on Post Cert Map

Stream Segment B - "Blue Line" stream on USGS Map, but not on Post Cert Map

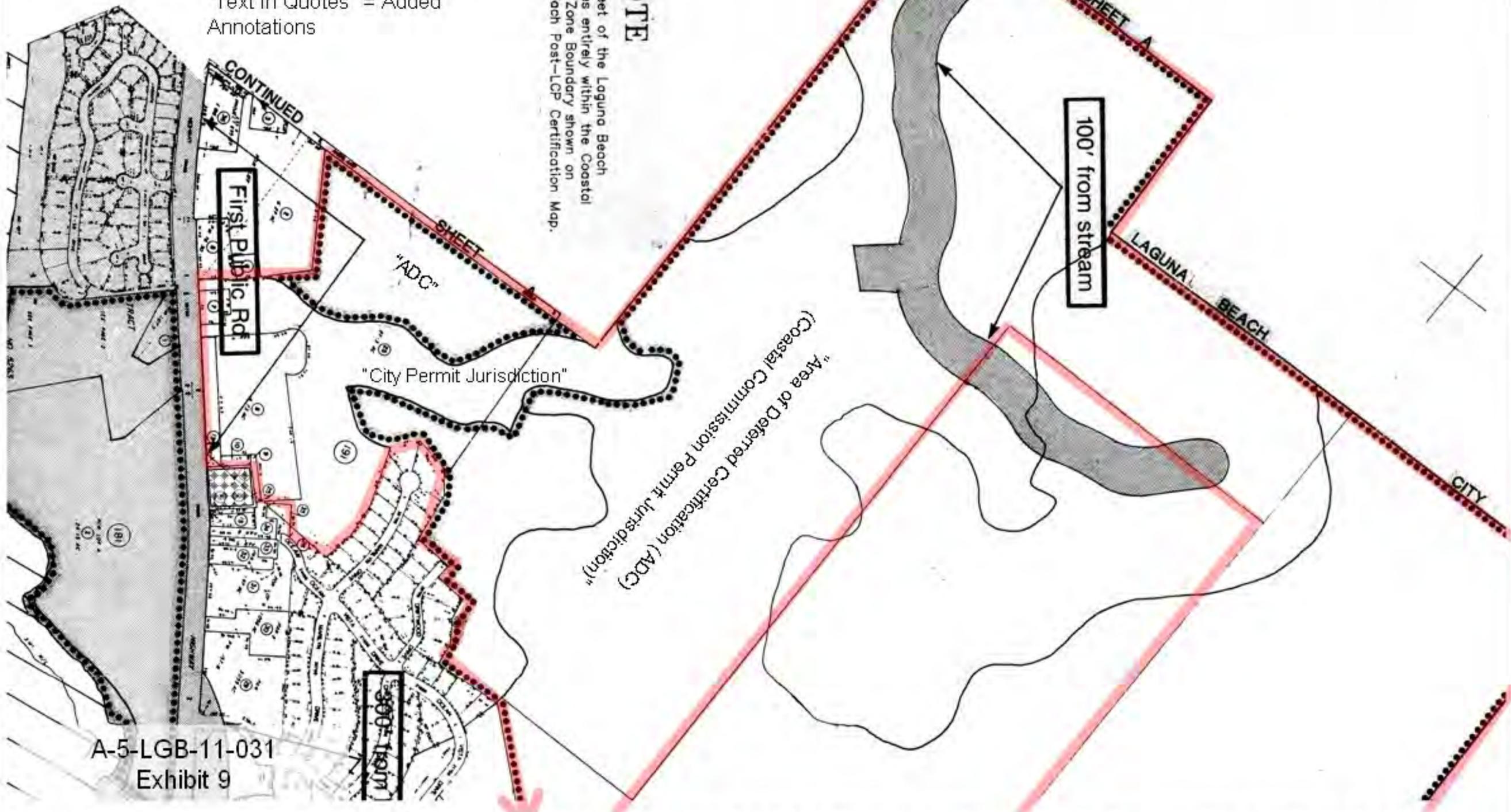
A portion of the U.S. Geological Survey (USGS) 7.5 Minute Quadrangle Map for Laguna Beach Showing Blue Line Stream in Vicinity of Laguna Terrace Mobilehome Park

EXHIBIT#8
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 California Coastal Commission

-  Faint Red Line = Subject Area Including Area Owned by Laguna Terrace Park LLC
-  Dotted Line = Boundary between Area of Deferred Certification and City Jurisdiction
-  Hotel Parcel

"Text in Quotes" = Added Annotations

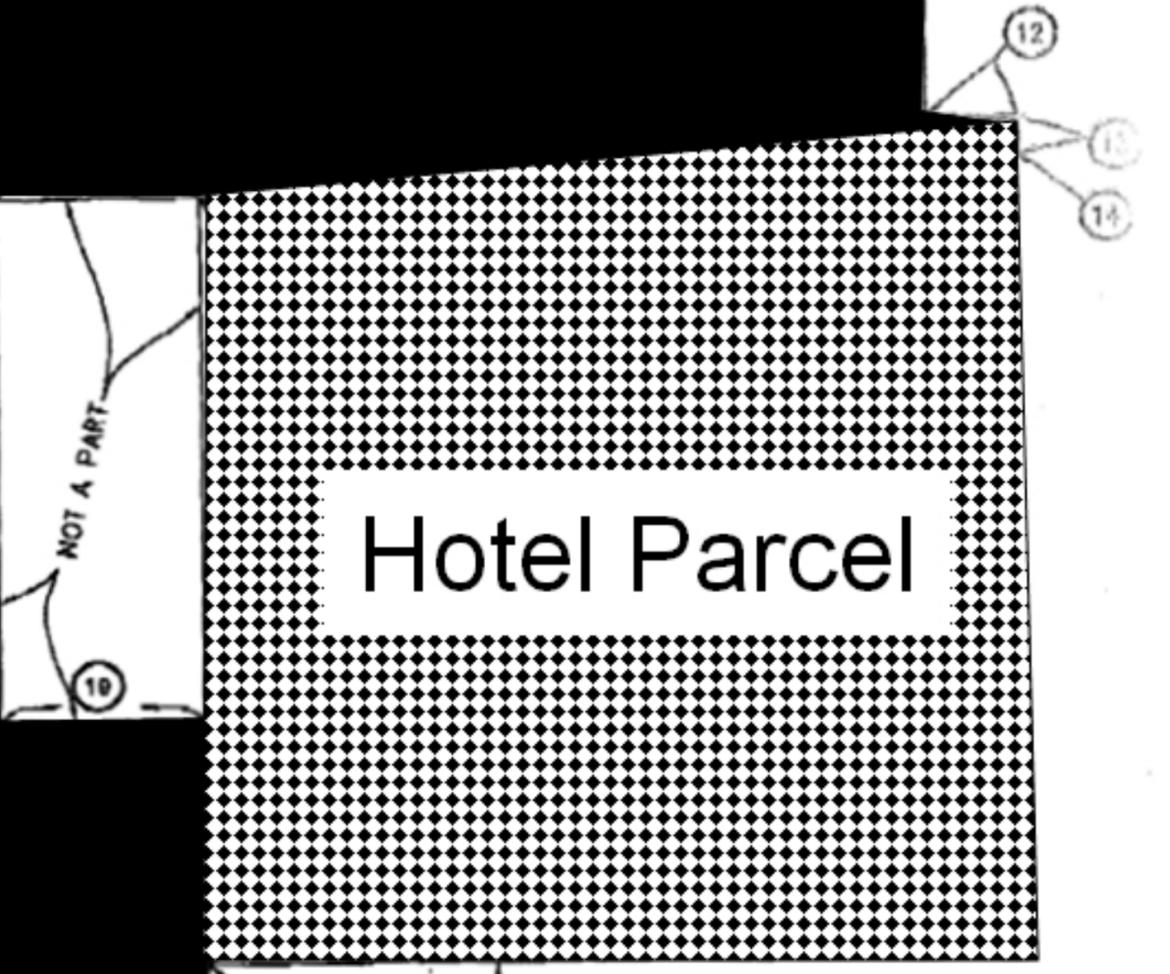
NOTE
 The area depicted on this sheet of the Laguna Beach Post-LCP Certification Map lies entirely within the Coastal As such, there is no Coastal Zone Boundary shown on this portion of the Laguna Beach Post-LCP Certification Map.



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 Exhibit 9

Before LLA

Mobile Home
Park Area



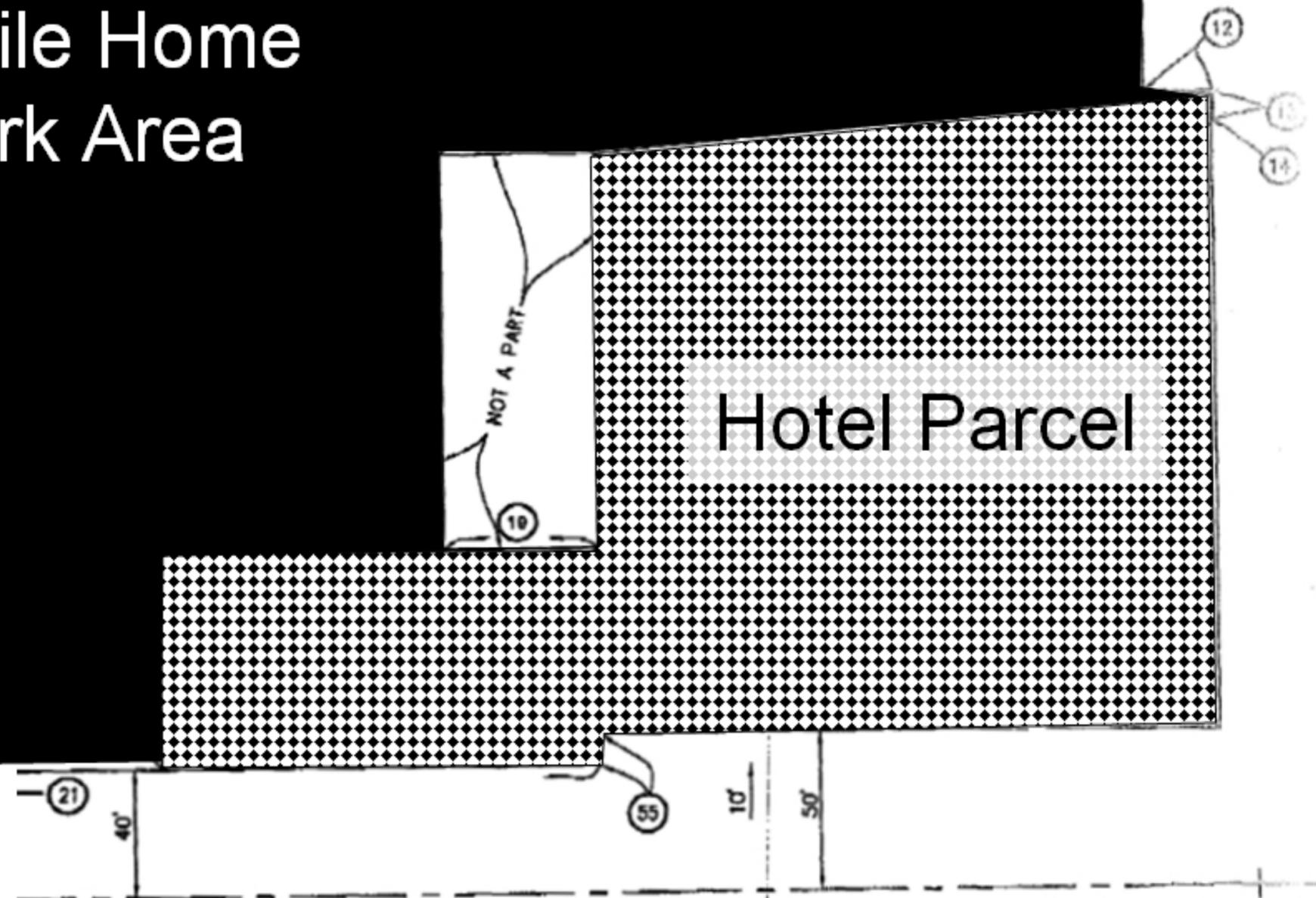
A-5-LGB-11-031
Exhibit 10a

SOUTH COAST HIGHWAY
(PACIFIC COAST HIGHWAY)
(CALIFORNIA STATE HIGHWAY PER
BOOK 683, PAGE 215, DEEDS)



After LLA

Mobile Home
Park Area



A-5-LGB-11-031
Exhibit 10b

☪ SOUTH COAST HIGHWAY
(PACIFIC COAST HIGHWAY)
(CALIFORNIA STATE HIGHWAY PER
BOOK 683, PAGE 215, DEEDS)

