

## CALIFORNIA COASTAL COMMISSION

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SAN FRANCISCO, CA 94105-2219  
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Th-5a



September 26, 2002

## RECORD PACKET COPY

**To:** Coastal Commissioners and Interested Parties

**From:** Peter Douglas, Executive Director  
Steven F. Scholl, Deputy Director  
Chris Kern, North Central Supervisor

**Subject:** Public hearing and Commission determination of appealability for purposes of applicable hearing and notice procedures, pursuant to California Code of Regulations, Title 14, Section 13569, for exemption from coastal development permit requirements granted to Dianne Burr by San Mateo County for a lot line adjustment at 801 June Hollow Road, APNs 037-044-020, 40, and 50 in San Mateo County.

**Summary of Staff Recommendation**

In January of 2002, staff received a Notice of Final Local Decision from San Mateo County indicating that the County had granted a coastal development permit (CDP) exemption to Dianne Burr for a lot line adjustment between two purportedly separate lots located at 801 June Road (APNs 037-044-020 and 037-044-040). Staff informed County Planning staff both by telephone and in writing that the notice was erroneous because the purported lot line adjustment is not exempt from CDP requirements and that County approval of the purported lot line adjustment would be appealable to the Commission. Staff also informed the County of the administrative procedures provided by the Commission's regulations for resolution of questions or disagreements concerning whether a development is categorically excluded, non-appealable, or appealable for purposes of notice, hearing and appeals procedures (14 CCR §13569).

In February of 2002, staff received an appeal from Earnest Thompson of the County's CDP exemption for the purported lot line adjustment contending that: (1) a CDP is required for the purported lot line adjustment, (2) APNs 037-044-020, 40, and 50 comprise only one legal lot and that the purported lot line adjustment would therefore constitute a subdivision of the property, and (3) any coastal development permit approved by the County for either a lot line adjustment or a subdivision would be appealable to the Coastal Commission. Mr. Thompson requested that the County seek the Executive Director's opinion concerning the coastal development permitting requirements and appealability of the purported lot line adjustment in accordance with the provisions of 14 CCR §13569.

Between February 2002 and September 2002, staff received correspondence concerning this matter from San Mateo County Counsel (letters dated June 12, 2002, July 10, 2002, and September 11, 2002), legal counsel for the property owner Dianne Burr (letters dated May 10, 2002, July 12, 2002, and September 9, 2002), and legal counsel for the appellant Ernest

determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:

- (a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.
- (b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;
- (c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:
- (d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request. [Emphasis added.]

After the certification of a LCP, the Commission is authorized to resolve disputes regarding the appropriate status of a development proposal (i.e., categorically excluded, non-appealable, or appealable). The purpose of the dispute resolution regulation is to provide for an administrative process for the resolution of disputes over the status of a particular project. Such a process is important when two agencies, here San Mateo County and the Coastal Commission each have either original or appellate jurisdiction over a given project. The Coastal Act was set up to give certified local governments the primary permitting authority over projects proposed in the Coastal Zone but to allow the Commission oversight authority over specified projects through the appeal process. Thus, the regulations anticipated that, from time to time, there may be disagreements regarding the status of a particular project and an administrative dispute resolution process would be preferable (and quicker) than the immediate alternative of litigation. The local government may initiate the request or forward a request made by an applicant or other interested party to the Commission's Executive Director. In some cases, as here, an interested person may forward a request to the county as well as directly to the Executive Director. If the Executive Director and the local government are in disagreement over the appropriate processing status, as is the situation here, the Commission is charged with making the final determination.

In this case, the County received a request for an Executive Director's determination on whether the purported lot line adjustment is exempt from the coastal development permit requirements or non-exempt development appealable to the Commission, but the County chose not to ask for such a determination. The applicable regulations do not offer the County this option but rather state "the local government *shall* notify the Commission by telephone of the dispute/question and *shall* request an Executive Director's opinion." (14 CCR §13569(b)). Likewise, the

requested that the County refer this question to the Executive Director pursuant to 14 CCR §13569 (Exhibit 8).

### 2.3 Executive Director's Determination

On February 4, 2002, Commission staff informed the County Planning Department in a telephone conversation that the Notice of Final Local Decision described above was erroneous because:

- A coastal development permit is required for the purported lot line adjustment and
- County approval of a lot line adjustment would be appealable to the Coastal Commission pursuant to Coastal Act Section 30603(a)(4) because lot line adjustments are not designated as the principal permitted use under the zoning ordinance or zoning district map.

Section 6328.3(r) of the County's certified LCP states that a project appealable to the Commission includes any approval required before a development may proceed. Section 6328.16 of the County's certified LCP specifies that actions by the County "may be appealed to the Coastal Commission in accordance with Coastal Commission regulations." The January 23, 2002 County Notice of Final Local Decision did not meet the requirements for such notice specified by Section 13571 of the Commission's regulations.

In accordance with Section 13572 of the Commission's regulations:

A local government's final decision on an application for an appealable development shall become effective after the ten (10) working day appeal period to the Commission has expired unless either of the following occur:

...

(b) the notice of final local government action does not meet the requirements of Section 13571. [Emphasis added.]

Section 13571 of the Commission's regulations requires that a Notice of Final Local Action provide the procedures for appeal of the local decision to the Commission. The County's Notice of Final Local Action did not contain these required procedures. Consequently, the County's final action on CDX PLN2000-00734 remains ineffective.

On February 5, 2002, County Planning staff transmitted a memorandum via facsimile to Commission staff stating that:

*As discussed on the telephone, a Certificate of Exemption for Coastal Development Permit was issued for this project at the time of submission in November 2000 as the County's certified LCP clearly exempts lot line adjustments from the requirement of a CDP. The County reached an understanding with the Coastal Commission in 2001, however, that they viewed such an exemption as invalid and the County agreed to implement an administrative policy requiring CDPs for all lot line adjustments. The memo dated March 29, 2001 was issued to that effect [Exhibit 12]. The memo does state that the new requirement would relate to all unrecorded lot line adjustments. However, the Burr lot line adjustment had been approved by the Planning Commission several weeks earlier. In settling such an issue in a specific case as this, advice from County Counsel was to look at the purpose, stated in the policy, which is concern over lot line adjustments which could*

2002, April 12, 2002, June 12, 2002, June 27, 2002, July 5, 2002, and July 23, 2002), Norman Book, legal counsel for Dianne Burr (letters dated May 10, 2002, July 12, 2002, and September 9, 2002), and San Mateo County Counsel (letters dated June 12, 2002, July 10, 2002, and September 11, 2002).

This correspondence focuses primarily on the issue of whether APNs 037-044-20, 40, and 50 are legally subdivided, or whether they comprise only one legal lot, and, subsequently, whether the purported lot line adjustment would result in the reconfiguration of an existing property boundary or a subdivision. It is the Executive Director's opinion that whether the development approved by the County is a lot line adjustment or a subdivision, a CDP is required for such development and that any CDP approved by the County for either a lot line adjustment or a subdivision is appealable to the Commission. It is the Executive Director's further opinion that questions as to the legal status of the subject lot or lots should be addressed through the County's review of a CDP application for the purported lot line adjustment. As such, the Executive Director has not provided an opinion concerning the legal status of APNs 037-044-20, 40, and 50.

## **2.4 Commission Determination**

As stated above, the staff recommends that the Commission defer resolution of the issues regarding the legal status of the subject lot or lots until after the County has processed a CDP application for the purported lot line adjustment, which would be appealable to the Commission. Accordingly, the issues before the Commission at this time are:

- Is a CDP required for the purported lot line adjustment; and
- Is approval by the County of the purported lot line adjustment appealable to the Coastal Commission?

### **2.4.1 Coastal Development Permit Requirement**

Coastal Act Section 30600 states in relevant part:

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit. [Emphasis added.]

### ***Lot Line Adjustments are "Development" under the Coastal Act***

Coastal Act Section 30106 defines "development" as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of 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; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal

the extent that the County may have relied on the position that lot line adjustments are not development as defined under the Coastal Act in determining the purported lot line adjustment to be exempt from coastal development permit requirements, such determination is contrary to the prior published decision of the California Court of Appeal in *La Fe*.

***LCP Permit Exemption for Lot Line Adjustments is Invalid***

San Mateo County Counsel states that the County issued CDX PLN2000-00734 pursuant to County Zoning Code Section 6328.5, which provides in relevant part:

**SECTION 6328.5. EXEMPTIONS.** The projects listed below shall be exempt from the requirement for a Coastal Development Permit. Requirements for any other permit are unaffected by this section.

...

(i) Lot line adjustments not resulting in an increase in the number of lots.

The County contends that because Zoning Code Section 6328.5(i) is contained in the certified LCP, lot line adjustments are exempt from coastal development permit requirements.

The Commission does not dispute that San Mateo County Zoning Code Section 6328.5(i) states that lot line adjustments not resulting in an increase in the number of lots are exempt from coastal development permit requirements, nor that Section 6328.5(i) is contained in the County's certified LCP. However, the LCP must be interpreted in light of and consistent with the Coastal Act, its implementing regulations and any judicial rulings affecting the implementation of those provisions. Examples of such judicial rulings include *La Fe* as well as *Nollan v CCC* (1987) 483 US 825, *Dolan v. City of Tigard* (1994) 512 U.S. 374, *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, *Sierra Club v. CCC* (1993) 15 Cal Rptr2d 779, and *Bolsa Chica Land Trust v. Superior Court* (1999) 83 Cal. Rptr. 850. The Commission therefore finds that lot line adjustments are not exempt from coastal development permit requirements because Zoning Code Section 6328.5(i) is in conflict with state law. As stated by the Court of Appeal in *La Fe*, the requirement that persons who undertake development must obtain a coastal development permit or waiver is one imposed by laws, not by the Commission:

*The requirement that plaintiffs obtain a coastal development permit or waiver [for a lot line adjustment] was one imposed by law, not by the county.*

As also stated by the Court of Appeal in *La Fe*, "development" as defined in section 30106 includes lot line adjustments because section 30106 explicitly applies to any change in the density or intensity of use of land, including a subdivision and any other division of land including lot splits and a lot line adjustment is a division of land.

Accordingly, after certification of an LCP, certain development review authority is delegated to the local government, but the permit requirement remains one of state law. Certification of a local government's LCP does not empower the local government to circumvent the permit requirement of the Coastal Act. Neither the County through the adoption of a zoning ordinance nor the Commission through the certification of an LCP can exceed the authority granted to it under the Coastal Act either to regulate or to exempt from regulation development in the Coastal Zone. In fact, in accordance with Coastal Act Sections 30512 through 30513, the Commission's review of a LCP is limited to a determination that the coastal development permit review standards submitted by the local government do or do not conform with the requirements of

A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances. [Emphasis added.]

The Commission understands the term “any applicable coastal plan” as used in Government Code Section 66412(d) to refer to the San Mateo County certified LUP. The legislature authorizes local governments to require the County to review lot line adjustments for conformity with the LUP as provided above in recognition of the fact that lot line adjustments are not exempt from regulation under the Coastal Act. The Commission therefore finds that the recently enacted amendment to Government Code Section 66412(d) further supports the Executive Director’s determination that lot line adjustments are not exempted from the coastal development permit requirements of the Coastal Act by Zoning Code Section 6328.5(i).

### ***Permit Requirement for Lot Line Adjustment is not Retroactive***

Dianne Burr’s legal counsel, Norman Book, contends that if the Commission determines that coastal development permits are required for lot line adjustments, this requirement should not apply retroactively to the subject lot line adjustment. The Commission finds it inaccurate to characterize the imposition of coastal development permitting requirements to the purported lot line adjustment as “retroactive” because: (1) the *La Fe* decision was published on June 30, 1999, more than a year prior to the Planning Director’s locally appealable decision on the exemption on October 17, 2000, (2) the County’s action exempting the lot line adjustment has been administratively challenged and final action on this matter is still pending Commission review and, (3) as discussed above, the County’s action on the purported lot line adjustment is not yet effective. Mr. Thompson has diligently pursued his appeals of the County’s action at the local level since the County first issued the certificate of exemption and has challenged the validity of the County’s action to the Commission consistent with the provisions of 14 CCR §13569. The Commission finds that Mr. Book’s position that the purported lot line adjustment should be excused from the coastal development permit requirement would be inconsistent with a published appellate court decision and would deny the appellant his right to challenge the County’s action in accordance with the provisions of 14 CCR §13569 and the County’s own appeal procedures. Furthermore, as discussed above, once the Commission staff received the County’s Notice of Final Local Decision, Commission staff informed the County of the Executive Director’s opinion concerning this matter.

### **2.4.2 Appealability**

Coastal Act Section 30603(a) states in relevant part:

(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:

...

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500). [Emphasis added.]

As with other divisions of land, lot line adjustments are not designated as the principal permitted use under the San Mateo County Resource Management (RM) Zoning District or the applicable

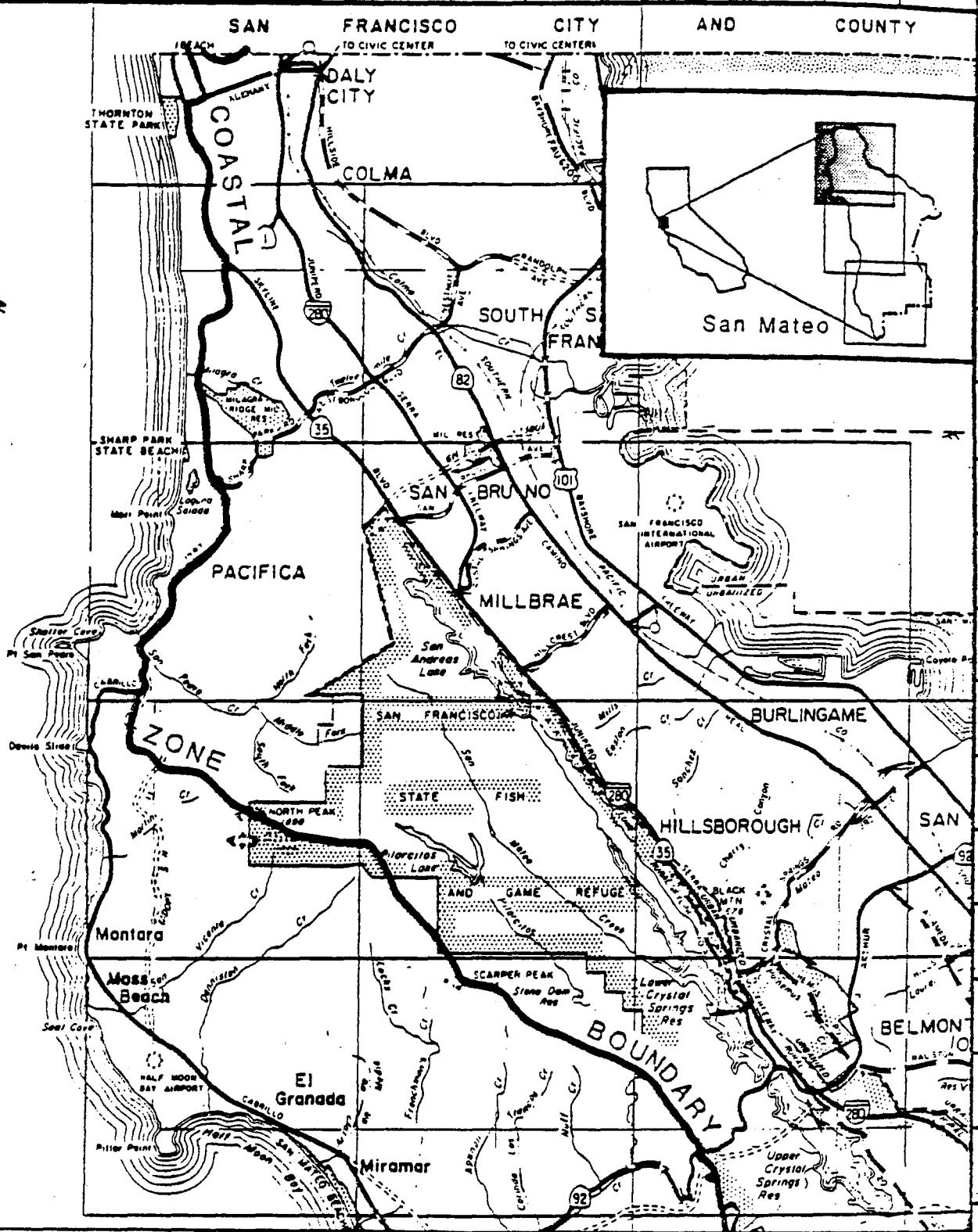
parcel entirely covered by wetlands or environmentally sensitive habitat such that the resulting parcel could not be developed consistent with the wetland or ESHA protection policies of the Coastal Act or a certified LCP. Without authority to review lot line adjustments under the coastal development permit requirements of the Coastal Act, the Commission or a local government would be unable to prevent such a result and could be forced to approve development in a wetland or ESHA to avoid a regulatory taking of private property. This exact issue is in fact raised by CDP Application 2-02-10 (Whitt) for a lot line adjustment in Marin County that is scheduled for Commission action as Item 8d on the October 10, 2002 agenda.

For these reasons, the Commission finds that the review for conformity with policies of the County's LCP and the Coastal Act afforded by the coastal development permit process is a matter of statewide significance.

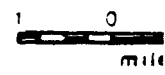
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# LOCATION MAP



California Coastal Commission

County of San Mateo

EXHIBIT NO. 1
APPLICATION NO.
2-02-1-EDD (BURR)
PAGE 1 OF 1





The County's coastal development permit regulations are contained at section 6328 et seq. of the County's Zoning Regulations. These regulations were originally approved and certified by the California Coastal Commission as part of the County's Local Coastal Program in the early 1980s. Section 6328.5 provides for exemptions from the requirement of a coastal development permit. Among those exemptions are "[l]ot line adjustments not resulting in the increase in the number of lots." (Zoning Regulations section 6328.5, subdivision (i).)

We acknowledge that one California court has held that lot line adjustments fall within the definition of "development" for purposes of the California Coastal Act. (La Fe, Inc. v. County of Los Angeles (1999) 73 Cal.App.4th 231.) It is not the definition of "development" that forms the basis for the exemption in the case of the County's Local Coastal Program, however, but a specific provision of the certified Local Coastal Program.

Prior correspondence with regard to this matter has also noted a memorandum dated March 29, 2001, from Terry Burnes, Planning Administrator, to Planning staff, stating that "[e]ffective immediately, all ongoing (and not yet recorded) and all future Lot Line Adjustment (LLA) applications [in the coastal zone] will require a Coastal Development Permit (CDP)." This policy directive has not been acted on by the Board of Supervisors, nor has a Local Coastal Program amendment been processed to eliminate the explicit exemption now contained in the County's certified Local Coastal Program. Until such time as that is done, the question of whether a coastal development permit is required is controlled by the provisions of section 6328.5, subdivision (i).

In short, the County's position is that no coastal development permit was required for the lot line adjustment because of an explicit exemption in the County's Local Coastal Program.

2. Appealability.

The Coastal Act, at Public Resources Code section 30603, provides that, after certification of a local coastal program, "an action on a coastal development permit application may be appealed to the commission" for certain specified types of developments. Since, in our view, lot line adjustments are not subject to the requirement that a coastal development permit be obtained under the provisions of section 6328.5, subdivision (i), any approval of a lot line adjustment is not "an action on a coastal development permit application" for purposes of appeal jurisdiction under the Coastal Act.

CARR, MCCLELLAN, INGERSOLL, THOMPSON & HORN  
PROFESSIONAL CORPORATION

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September 9, 2002

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CALIFORNIA  
COASTAL COMMISSION

VIA TELECOPY

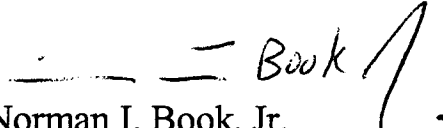
Chris Kern  
California Coastal Commission  
North Central District  
45 Fremont Street, Ste. 2000  
San Francisco, CA 94105-2219

Re: Coastal Permit Requirement for Lot Line Adjustment - 801 June  
Hollow Road (Burr)

Dear Mr. Kern:

Please agendaize the above referenced matter for the October meeting of the Commission. We do not plan to make a personal appearance and understand this is not required. However, we will be filing a brief in support of our client's position.

Very truly yours,

  
Norman I. Book, Jr.

NIB:om

cc: Michael Murphy (Via Telecopy)  
Dianne Burr (Via Telecopy)

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EXHIBIT NO. 5

APPLICATION NO.

2-02-1-EDD (BURR)

PAGE 1 OF 1

# Staff Use Only

## 4. Basis of Exemption or Exclusion

- Use attached review sheet to determine basis of exemption and whether project qualifies. Review basis of exemption with applicant/owner and initial appropriate category below:

### Initial

- |  |   |
|--|---|
| <input type="checkbox"/> A. Improvements to Existing Single Family Residence.<br>[PRC 30610(a), CCAG 13250, ZR 6328.5(a)]  | <input type="checkbox"/> F. Agriculturally-Related Development Categorical<br>Exclusion Area. [PRC 30610(e), CCAG 13240, ORDERS<br>E-79-7 and E-81-1, ZR 6328.5(e)] |
| <input type="checkbox"/> B. Improvements to Existing Structure Other Than<br>Single Family Residence or Public Works Facility. [PRC<br>30610(b), CCAG 13253, ZR 6328.5(b)] | <input type="checkbox"/> G. Utility Connections. [PRC 30610(f), ZR 6328.5(f)]   |
| <input type="checkbox"/> C. Existing Navigation Channel. [PRC 30610(c),<br>ZR 6328.5(c)]   | <input type="checkbox"/> H. Replacement of Structures Following Disasters.<br>[PRC 30610(g), ZR 6328.5(g)]  |
| <input type="checkbox"/> D. Repair or Maintenance Activity.<br>[PRC 30610(d), CCAG 13252, ZR 6328.5(d)]  | <input type="checkbox"/> I. Emergency Activities. [PRC 30611, ZR 6328.5(h)]   |
| <input type="checkbox"/> E. Single Family Residence Categorical Exclusion Area.<br>[PRC 30610(e), CCAG 13240, AB 643, ZR 6328.5(e)]  | <input checked="" type="checkbox"/> J. Lot Line Adjustment. [ZR 6328.5(i)]  |
|  | <input type="checkbox"/> K. Land Division for Public Recreation Purposes.<br>[ZR 6328.5(l)]   |

## 5. Approval

I have reviewed the above-described project and have determined that it meets all criteria for the exemption/exclusion checked above.

Exemption/Exclusion is approved.

Stephanie Wilby  
Planning Division

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OCT 20 2000

CALIFORNIA  
COASTAL COMMISSION

Date 10/17/2000

## 6. Processing

- ☒ Fee collected
- ☒ Original Certificate of Exemption to Building Inspection file.
- ☐ Copies of Certificate of Exemption to:
  - Applicant/Owner.
  - Planning Division Exemption Binder.
  - Any relevant Planning or Building Inspection files.
  - Central Regional Coastal Commission, 640 Capitola Road, Santa Cruz, California, 95062.
- ☒ Update Permit\*Plan Case Screen and Actions.
- ☒ Make appropriate entries in Coastside Building Permit Monitoring Log.

Ernest B. Thompson, CPA  
One Nizhoni Road  
Moss Beach, California 94038

RECEIVED  
JAN 28 2002  
CALIFORNIA  
COASTAL COMMISSION

Jan. 25, 2002

Mr. Michael Murphy, Deputy County Counsel  
400 County Center  
Redwood City, CA 94063

Re: Appealability of PLN 2000-00734 (Burr)

Dear Mr. Murphy,

I was the Appellant of the above-referenced project to the Board of Supervisors. On January 15, the Board of Supervisors denied my appeal.

Since the hearing on Jan. 15 we have been able to obtain documents which we previously unsuccessfully attempted to obtain to support our appeals. Among these is the 1985 Certificate of Compliance for the building of the original house on the property in question by Mr. Pelligrini. This certificate defines and legalizes the entire set of lots, (A,B,C and D) as a single parcel as a basis for the construction of Mr. Pelligrini's home. Other documents which we have just obtained from the county files are specific in that the County combined lots A,B,C and D into one single legal parcel. See letter from Mr. George Miller of planning and CDP 8540. (Attachments I. and II. to this letter.)

We believe that the information and documents as to the action taken by the County in 1985, as described in the previous paragraph, should end this matter; and, the County should affirm that there is not a second parcel at 801 June Hollow Road.

While I hope you agree with the above, never-the-less, the purpose of this letter is to challenge the determination by the County that the project is not appealable to the Coastal Commission, and to request that you refer this question to the Executive Director of the Coastal Commission for resolution.

The Coastal Commission's Administrative Regulations, in Section 13569, specify that the local government shall determine whether a development is

EXHIBIT NO. 8
APPLICATION NO.
2-02-1-EDD (BURR)
PAGE 1 OF 10

ERNEST B. THOMPSON, CPA

Program. Subsection (4) states: "Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6S" is appealable. In this case, the zoning district is RM/CZ. The only principal permitted use in this district, as defined in the Zoning Regulations Section 6905(a) is "Agricultural uses" (and accessory structures, etc.)

We also assert that the issues cited as "Basis for Appeal" in our prior appeals to the Planning Commission and the Board of Supervisors as grounds for an appeal to the Coastal Commission. (Attachments IV. and V.)

Please let me know at the earliest possible time of your decision. Thank you for your timely consideration of my request.

Respectfully,



cc: Mr. Kris Kern  
California Coastal Commission  
45 Fremont St., Suite 2000  
San Francisco CA 94150

Department of Environmental Management  
Planning and Development Division

**COUNTY OF SAN MATEO**

COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063

BOARD OF SUPERVISORS  
ANNA G. ESHOO  
TOM NOLAN  
WILLIAM J. SCHUMACHER  
K. JACQUELINE SPEIER  
JOHN M. WARD

DAVID C. HALE  
PLANNING DIRECTOR

(415) 363-4161

May 31, 1985

**RECEIVED**

JAN 28 2002

CALIFORNIA  
COASTAL COMMISSION

Mario Pelligrini  
1601 Hollondale Drive  
Alexandria, VA 22306

SUBJECT: Coastal Development Permit, CDP 85-40

Your application for a Coastal Development Permit for a single-family residence located at 801 June Hollow Road (APN 037-044-010) is hereby approved. This permit is for the single-family residence only; any other development will be subject to a separate Coastal Development Permit. Approval is subject to the following conditions, to be cleared through the departments indicated:

1. The exterior walls and roof of the proposed residence shall be earth tone colors which are compatible with the physical features of the site. The colors shall be to the approval of the Planning Director prior to installation.
2. A landscaping plan for the subject parcel shall be prepared by a landscape architect or landscape designer to the approval of the Planning Director. The plan shall provide for landscaping which integrates the residence with site and breaks up the mass of the structure as viewed from the surrounding area. Plant materials shall be identified by species, container size and number.

An environmental analysis of this project was completed and the project was found to be categorically exempt from environmental review requirements under Class 3, New Construction of Small Structures. The required pre-decision public notice of this project was given; the required seven-day public comment period expired on May 30, 1985. This project, as described in the application and accompanying materials, has been found to conform to the policies, requirements and standards of the San Mateo County Local Coastal Program.

ATTACHMENT II, pp 51

**GRANADA SANITARY DISTRICT**  
OF SAN MATEO COUNTY

455 Avenue Alhambra, #8 - P. O. Box 335 - El Granada, California 94018  
Telephone: (650) 726-7093 - Facsimile: (650) 726-7090 - E-mail: gad@netwiz.net

January 4, 2002

California Coastal Commission  
North Central Coast District  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2218

Re: Appeal No. 2-SMC-01-032 (Da Rosa)  
Request for Finding Substantial Issue as to Lack of Consistency with  
LCP Zoning Standards Regarding Legality of Parcel to be Developed

Dear Members of the Commission:

The Granada Sanitary District ("GSD") Board of Directors respectfully requests your Commission find that there is a substantial issue in the above appeal regarding the lack of consistency of the project with LCP zoning standards regarding the legality of the parcel on which development is proposed. Your Staff recommends finding substantial issue for the appeal on other grounds such that a de novo hearing will be conducted on the Da Rosa application. Under these circumstances, GSD requests that your Commission refrain from making the finding recommended by your Staff that there is no substantial issue regarding parcel legality.

The substantial problem of antiquated or nonconforming parcels Statewide and in the County of San Mateo has been identified by your Commission for a number of years. The sole basis given in the Staff Report for finding no substantial issue as to parcel legality is that "the County has found that the parcel in question, APN 048-013-570, was legally created as part of the Shore Acres of Half Moon Bay Subdivision recorded December 16, 1905." As set forth below, there are two primary problems with this basis for finding no substantial issue: (1) the mere recordation of a map in 1905 does not create a parcel; and (2) voter-adopted provisions of the San Mateo County LCP require a separate Coastal Development Permit ("CDP") for a finding of parcel legality under the circumstances of this application.

GSD is particularly concerned because voter-adopted provisions of the LCP preclude GSD from constructing infrastructure capacity exceeding that which is necessary to serve buildout and buildout under the LCP excludes nonconforming lots. The voter-adopted LCP provisions requiring a CDP for establishing parcel legality are vital to assuring that development does not exceed infrastructure capacity for such vital

ATTACHMENT III pp. 1.



## Application for Appeal

## Planning and Building Division

- ☒ To the Planning Commission  
☐ To the Board of Supervisors

County Government Center - 590 Hamilton St. - Redwood City CA 94063  
 Mail Drop PLN 122-415-363-4161

CHARGE FEE TO MASTERCARD #  
 PHONED TO PLANNING AND BUILDING

## 1. Appellant Information

Name: ERNEST B THOMPSON

Address: ONE NIXHONI RD

MOSS BEACH, CALIFORNIA

Phone W: 650-225-0471 H: 650-728-5935

Zip: 94038

## 2. Appeal Information

Permit Numbers involved:

COUNTY FILE NO. PLN 2000 - 00734

APNs 037-044-020 AND 037-044-030

I hereby appeal the decision of the:

- ☒ Staff or Planning Director  
☐ Zoning Hearing Officer  
☐ Design Review Committee  
☐ Planning Commission

made on Nov 1 <sup>2000</sup> to approve ~~any~~  
 the above-listed permit applications.

I have read and understood the attached information  
 regarding appeal process and alternatives.

☐ yes☒ no

RECEIVED

Appellant's Signature:

JAN 28 2002

CALIFORNIA  
COASTAL COMMISSION

Date:

Jan 15, 2000

## 3. Basis for Appeal

Planning staff will prepare a report based on your appeal. In order to facilitate this, your precise objections are needed. For example: Do you wish the decision reversed? If so, why? Do you object to certain conditions of approval? If so, then which conditions and why?

1. Approval of lot line adjustment subverts the intent of zoning for this area by creating a "bigger" parcel. Section 6901 (which cannot be overlooked) states that "parcels smaller than five acres in size shall continue to be legal parcels only if no adjacent property was in the same ownership at the enactment of this ordinance." Subject lots A, B, C, and D were in the same ownership at the time of the enactment of the ordinance.

The alleged lot line adjustment would not create a "legal parcel" and should therefore be denied.

2. Section 6903 states that all development proposed for location with an RM-CZ district shall require the issuance of a permit. Development is defined as the division of land into two or more parcels. In this instance two parcels are being divided. This is a new subdivision of already divided parcels that must be subject to the issuance of a permit.
3. The lot line adjustment does not conform to government code section 66412(d) in that the local zoning ordinance has not been adhered to "Section 6901"
4. Any reliance on Morehart is misplaced since it deals with only a narrow area and does not apply to this situation

The specific request of the appellant is that the property lot line adjustment be denied or that no building of additional structures/residences be allowed on the tract consisting of lots A, B, C, and D without a building permit subject to section 6903 of Chapter 36, Resource Management Coastal Zone (RM - CZ) District.



February 7, 2002

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

**RECEIVED**  
FEB 11 2002  
CALIFORNIA  
COASTAL COMMISSION

**ENVIRONMENTAL  
SERVICES  
AGENCY**

Attn: Chanda Meek

SUBJECT: Application for Lot Line Adjustment  
801 June Hollow Road, Montara  
County File No: PLN2000-00734

Agricultural  
Commissioner/ Sealer of  
Weights & Measures

I refer to the recent Notice of Final Local Decision sent to the California  
Regional Coastal Commission dated January 23, 2002 (copy enclosed).

Animal Control

This was sent out in error. The letter refers to a Coastal Development Permit.  
This project relates to a Lot Line Adjustment Application. An exemption from a  
Coastal Development Permit for this project was filed with the California  
Coastal Commission on October 17, 2000.

Cooperative Extension

I apologize for any confusion that this may have caused.

If you have any questions, I can be reached at 650/363-1829.

Fire Protection

Sincerely,

LAFCo

Gabrielle Hudson  
Project Planner

Library

c.c. Ernest Thompson.

Parks & Recreation

Planning & Building

**PLANNING AND BUILDING**

455 County Center, 2<sup>nd</sup> Floor • Redwood City, CA 94063 • Phone (650) 363-4161 • FAX (650) 363-4162

EXHIBIT NO. 9
APPLICATION NO.
2-02-1-EDD (BURR)
PAGE 1 OF 2

Ernest B. Thompson, CPA  
One Nizhoni Road  
Moss Beach, California 94038

**RECEIVED**  
FEB 11 2002  
CALIFORNIA  
COASTAL COMMISSION

Feb. 8, 2002

Dear Ms Meek:

Per our phone conversation on Fri., enclosed is an original copy (with all Exhibits) of my appeal in the matter of San Mateo Co. PLN 2000-00734 Burr. Please note that in prior copies of these document the second page of the letter from Granada Sanitary District was missing. I have now included that page.

Thank you for your consideration and helpfulness.

Sincerely,



EXHIBIT NO. 10
APPLICATION NO.
2-02-1-EDD (BURR)
PAGE 1 OF 28

**APPEAL FROM COASTAL PERMIT DECISION (AND LACK OF DECISION) OF  
LOCAL GOVERNMENT (PAGE 2)**

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

a. \_\_\_ Planning Director/Zoning  
Administrator

c. \_\_\_ Planning Commission

b. X City Council/Board of  
Supervisors

D. \_\_\_ Other: \_\_\_\_\_

1. Date of Local Government's Decision: January 15, 2001 for Lot Line Adjustment decision made; no date of decision made for failure to process and issue Coastal Development Permit for Lot Line Adjustment, failure to process and issue Coastal Development Permit to establish the parcel legality of the "lots" which were included in the Burr Lot Line Adjustment, failure to consider the new evidence provided that the 1985 Certificate of Compliance for the Burr property established such property as one parcel only, failure to notify the Coastal Commission of appellant's challenge to the determination by the County of San Mateo that the Burr Lot Line Adjustment was not appealable to the Coastal Commission, and failure of the County of San Mateo to request an opinion by the Coastal Commission Executive Director regarding that challenge.

1. Local Government's file number: PLN 2000-00734

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties:

a. Name and mailing address of permit applicant:

Kerry Burke, Applicant for Diane Burr, Owner  
Address unknown

Diane Burr, Owner  
Box 371390  
Montara, CA 94037

b. Names and Mailing Addresses as available of those who testified (either verbally or in writing) at the county hearings. Include other parties which you know to be interested and should receive notice of this appeal.

(1) Lennie Roberts, Legislative Advocate  
Committee for Green Foothills  
339 La Cuesta  
Portola Valley, CA 94028

continue to be legal parcels only if no adjacent property was in the same ownership at the enactment of this ordinance." Subject "lots "A, B, C, and D (combined by the 1985 Certificate of Compliance) were in the same ownership at the time of the enactment of Section 6901 in 1981. Under these circumstances, Section 6901 requires "lots" A, B, C, and D to be aggregated into one legal parcel.

San Mateo County Code Section 6903 (which is a part of the County LCP Implementation Ordinances) states that all development proposed for location with an RM-CZ district shall require the issuance of a permit. Development is defined as the division of land into two or more parcels. In this instance two parcels are being divided. This is at minimum a new subdivision of already divided parcels that must be subject to the issuance of a permit.

Furthermore, the proposed use of the lot does not comply with the principal permitted use in the zoning district. Section 30603 of the Coastal Act defines which projects are appealable to the Coastal Commission after certification of a Local Coastal program. Subsection (4) states: "Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6S" is appealable to the Coastal Commission.. In this case, the zoning district is RM/CZ. The only principal permitted use in this district, as defined in the Zoning Regulations Section 6905(a) is "Agricultural uses"(and accessory structures, etc.)

In addition, the legality of the four lots underlying the parcel is questionable. See the letter (attached) from the Granada Sanitary District to the Commission regarding the appeal of the DaRosa project in Miramar. Note the citation of cases in which the Commission submitted briefs in support of the position that "prior to the statutes regulating the subdivision of land in 1929 the mere recordation of a map showing parcels did not create a parcel for land use planning purposes."

2. The failure of the County of San Mateo to process and issue a Coastal Development Permit for the Burr Lot Line Adjustment. See letter dated January 24, 2002 from Lennie Roberts, Legislative Advocate, Committee for Green Foothills to Terry Burnes, Planning Administrator for the County of San Mateo, enclosed as Exhibit 2. *LaFe v. Coastal Commission* (1999) 73 Cal.App.4<sup>th</sup> 231 requires a Coastal Development Permit (and full notice and processing thereof for a Lot Line Adjustment.
3. The failure of the County of San Mateo to process and issue a Coastal Development Permit to establish the parcel legality of the "lots" which were included in the Burr Lot Line Adjustment. This is required by San Mateo County LCP Sections 1.27 – 1.29. This is especially clear given the 1985 Certificate of Compliance which combined all of the so-called "lots" into one parcel.

County of San Mateo  
Environmental Services Agency  
Planning and Building Division

**NOTICE OF COASTAL DEVELOPMENT PERMIT AND  
RESOURCE MANAGEMENT PERMIT APPLICATION**

---

**Mailing Date:** 01/29/2002

**Date Filed:** 04/13/2000

**Owner:** Diane Burr

**Applicant:** Kerry Burke

**Project Location:** 801 June Hollow Road

**APN:** 037-044-020

**Project Description:** CDP and RM Permit for a new 4,172 sq. ft. single-family dwelling, with an attached garage and game room above, and a 436 sq. ft. detached studio. This proposal also includes the removal of three pine trees.

---

The San Mateo County Planning Commission has directed that property owners within 300 feet of the proposed project be informed when an application for a Coastal Development Permit and Resource Management Permit is being reviewed by staff.

This office will act on the above application on or after February 12, 2002. Any person wishing to comment on this application prior to that date may do so by submitting comments in writing to, or by calling:

Gabrielle Hudson  
Project Planner  
Planning and Building Division  
455 County Center  
Redwood City, CA 94063

Telephone: 650/363-1829

By contacting the above planner, you may also ask to receive a copy of our decision on this project when it is issued and information about appeal procedures.

FRM00408.DOC (12/1/1999)

4. A letter of approval, dated May 31, 1985, from Roman Gankin, approving the single family residence on the subject parcel at 801 June Hollow Road (APN-044-010).

Please note that nowhere in the documents is there any request for, or approval of, four separate parcels (Lots A,B,C,D) that comprise this 3.069 acre parcel. In fact, the Application of May 7, 1985, references the 3.069 acre parcel as consisting of Lots A,B,C, and D. Further, George Miller's letter specifically states that the (Planning Department),,,has determined that it (the subject parcel) constitutes a separate parcel. (emphasis added).

We believe that, based on the prior approval of the Certificate of Compliance, and the subsequent approval of a single family residence on this parcel, there are no entitlements based on the old paper lots underlying the subject 3.069 acre parcel. The applicant did not request, or receive, four Certificates of Compliance, only one, which legalized the larger parcel. The current Applicant, Ms. Burr, has one legal parcel, with a house, well, and septic system, which were all built according to the Pelligrini's reliance on the relevant County permits. The fact that the house straddles two of the antique parcels, B and C, and the well and septic system are located on the other parcels, is further evidence that the prior owners acknowledged that they had one legal parcel, and nothing more. Ms. Burr is now trying to circumvent every action the County and the Pelligrinis took with respect to this single parcel.

Please review this letter at your earliest opportunity and advise us as to your determination. I am sending a copy to Mike Murphy as well, in order to expedite this matter.

N.B., depending upon your determination of the above essential question, there also may be a disagreement as to whether the County action last week was appealable to the Coastal Commission. The Staff Report stated "This project is not appealable to the Coastal Commission." In order for a project to be not appealable, it would have to include the issuance of a Coastal Development Permit (CDP), otherwise the project would have been exempt from the CDP requirement. Upon reviewing the Project Description and the Staff Report, there is no reference anywhere to issuance of a CDP as part of the project approval. This failure to require a CDP is not consistent with your memo to Planning Staff of March 29, 2001, regarding the "Processing of Lot Line Adjustments in the Coastal Zone", which states: "Effective immediately, all ongoing (not yet recorded) and all future Lot Line Adjustment (LLA) applications...shall require a Coastal Development Permit (CDP)." (We are very pleased and supportive of this policy, particularly since a number of LLA's have raised major concerns about adequate protectin of coastal resources.) Further confusing the entire matter, is the Notice of Final Local Decision, dated January 23, 2002, sent to the Coastal Commission regarding this project, which states that a Coastal Development Permit issued to the project is Not Appealable.

If for some reason you conclude that you did issue a CDP for the LLA, although this action is not evident in the Staff Report to the Board of Supervisors, and that furthermore the CDP is not appealable, could you please refer this decision to the Executive Director of the Coastal Commission. The Coastal Commission's Administrative Regulations, in Section 13569, specify that the local government shall determine whether a development is categorically excluded, non-appealable, or appealable for purposes of notice, hearing and appeals procedures.

County of San Mateo  
Department of Environmental Management  
Planning and Development Division

APPLICATION FOR CERTIFICATE OF COMPLIANCE  
WITH DEVELOPMENT REVIEW CRITERIA  
(Zoning Ordinance Chapter 20A.2)

1. Property Owner Applicant  
Name: MARIO & ELGE PELLIGRINI Name: MARK V. SAITO, ENGR.  
Address: 1601 HOLLYDALE DRIVE Address: 103 AMHERST AVE.  
ALEXANDRIA, VIRGINIA 22306 NEWLE PARK, CA 94025  
Phone: (703) 768-4313 Phone: (415) 961-6560.

2. Project Location  
Address: 801 JUNE HOLLOW ROAD, MONTCLAIR, CALIFORNIA  
Assessor's Parcel Number(s): 037-044-010 LOTS A, B, C, D.  
3. Parcel/Lot Size: 3.069 ACRES

Project Description (list all proposed buildings or structures, including roads, driveways, accessory structures, fences, utility lines, water supply and sewage disposal systems; include exterior materials and colors for each):

<u>Building/Structure</u>	<u>Material/Colors</u>
a. <u>HOUSE: STUCCO FINISH</u>	<u>SOBISH WHITE LATEX PAINT.</u>
b. <u>ROOF: MISSION TILE (BARREL)</u>	<u>THICK RED CLAY TILES.</u>
c. <u>UTILITY: ELECTRICAL</u>	<u>UNDERGROUND SERVICE.</u>
d. <u>WATER: PRIVATE WELL</u>	<u>UNDERGROUND SUPPLY.</u>
e. <u>SEWER: SEPTIC TANK/LEACH</u>	<u>UNDERGROUND.</u>
f. <u>ROADWAY: ROCK FINISH</u>	<u>SIMILAR TO COUNTY ROAD.</u>

Number and size of trees to be cut: CUT 4 PINES: 1-20", 1-14", 1-10", 1-16"

Grading required for: NONE Cubic yards: 0

Landscaping plans: LOT IS COVERED WITH GRASS AND 37  
MOUNTAIN PINES 8" TO 30" DIAMETER PLUS OVER 12 SMALLER  
PINES. EXCEPT FOR 4 TREES, THE NATURAL LANDSCAPE IS  
BEAUTIFUL AND WILL REMAIN.



LAW OFFICES OF  
JACOBS, SPOTSWOOD & RYKEN

HILTON JACOBS  
RICHARD D. SPOTSWOOD  
GREGORY J. RYKEN  
STUART E. JONES  
GERALD M. MURPHY

476 JACKSON STREET  
SAN FRANCISCO, CALIFORNIA 94111  
TELEPHONE (415) 397-7710

OF COUNSEL  
JEREMY T. HARRISON  
DONALD A. CASPER

May 7, 1985

By Messenger

Department of Environmental  
Management  
Planning & Development Division  
County of San Mateo  
590 Hamilton Street, 2nd Floor  
Redwood City, California

Attn: Kimberly Powelson,  
Planner

Re: APN 037-044-010

Dear Ms. Powelson,

As you know, I represent Mario Pellegrini, who has entered into a contract for the purchase of the above-described parcel of real property located in unincorporated Montara. Following the close of escrow, Mr. Pellegrini will seek to construct a single-family dwelling on such parcel. The parcel is located in an RM/CZ District.

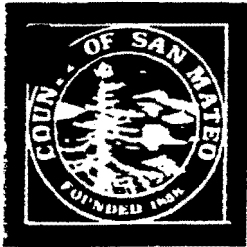
-As Mr. Pellegrini was advised by you in a letter dated January 17, 1985, the above-described parcel, to be considered a building site, must have been under individual ownership -- i.e., not under the same ownership as any contiguous parcel -- since December, 1973.

You have since identified to me the following parcels as being all those contiguous to the above-described parcel:

APN 037-043-010,  
APN 037-043-020,  
APN 037-052-270,  
and  
APN 037-042-020.

Enclosed please find photostatic copies of all deeds touching and concerning these four parcels contiguous to the above-described parcel which were recorded since December, 1973. Also enclosed are photostatic copies of all deeds touching and concerning the above-described parcel which were recorded

Department of Environmental Management  
Planning and Development Division



**COUNTY OF SAN MATEO**

COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063

BOARD OF SUPERVISORS  
ANNA G. ESHOO  
ARLEN GREGORIO  
WILLIAM J. SCHUMACHER  
K. JACQUELINE SPEIER  
JOHN M. WARD

DAVID C. HALE  
PLANNING DIRECTOR

(415) 363-4161

May 22, 1985

Mr. Donald A. Casper  
Jacobs, Sportswood and Ryken  
476 Jackson Street  
San Francisco, CA 94111

Dear Mr. Casper:

SUBJECT: APN 037-044-010

This office has reviewed the ownership deeds you submitted in respect to APN 037-044-010 and has determined that it constitutes a separate parcel.

A building permit can be issued for the property providing all County regulations are met.

Very truly yours,

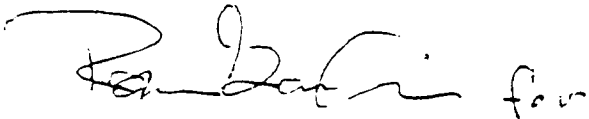
George P. Miller  
Project Planner

GPM:jmr - J1005239

May 31, 1985

This approval may be appealed by the applicant or any aggrieved party on or before 5:00 p.m. on June 14, 1985, the tenth working day following this action by the Planning Director. An appeal is made by completing and filing a Notice of Appeal, including a statement of grounds for the appeal, with the Planning and Development Division and paying a \$40 appeal fee. This project is not appealable to the Coastal Commission. Further information may be obtained by calling George P. Miller, Project Planner, at 363-4161.

FOR DAVID C. HALE, PLANNING DIRECTOR, by:

A handwritten signature in cursive script, appearing to read "Terry Burnes", followed by the word "for" in a smaller, simpler script.

Terry Burnes, Senior Planner

TLB:GPM:fc - F1005282

cc: Coastal Commission  
Mark Saito

categorically excluded, non-appealable, or appealable for purposes of notice, hearing and appeals procedures.

In this case the County has determined that the project is not appealable to the Coastal Commission, as indicated on the first page of the Staff Report dated January 3, 2002 to the Board of Supervisors. If the determination of the local government is challenged by the applicant or an interested person, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Directors opinion.

The project is appealable for the following reasons:

1. This project is not a simple Lot Line Adjustment, but in fact is a parcel reconfiguration or re-subdivision. Four parcels are being merged into two, and the parcel line between two is being moved.
2. The legality of the underlying four parcels is questionable. I and others have submitted several arguments regarding this point. Please also see the letter (Attachment III.) from the Granada Sanitary District to the Coastal Commission regarding the appeal of the DaRosa project in Miramar.
3. New California SB 497 (which amends portions of the Government code) which became effective January 1, 2002, requires a local government agency to make a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances. In Russian Hill Improvement Association vs. Board of Permit Appeals (1967 66 Cal. 2d34). the California Supreme Court ruled that the law in effect at the time of full approval of the final permit applies.

This lot line adjustment does not conform for two reasons:

- A. LCP Section 1.29 requires a CDP to legalize parcels and this was not done.
- B. The proposed use of the lot does not comply with the principal permitted use in the zoning district. Section 30603 of the Coastal Act defines which projects are appealable to the Coastal Commission after certification of a Local Coastal

Department of Environmental Management  
Planning and Development Division

**COUNTY OF SAN MATEO**

COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063 (415) 363-4161

BOARD OF SUPERVISORS  
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ARLEN GREGORIO  
WILLIAM J. SCHUMACHER  
K. JACQUELINE SPEIER  
JOHN M. WARD

DAVID C. HALE  
PLANNING DIRECTOR

May 22, 1985

Mr. Donald A. Casper  
Jacobs, Sportswood and Ryken  
476 Jackson Street  
San Francisco, CA 94111

Dear Mr. Casper:

SUBJECT: APN 037-044-010

This office has reviewed the ownership deeds you submitted in respect to APN 037-044-010 and has determined that it constitutes a separate parcel.

A building permit can be issued for the property providing all County regulations are met.

Very truly yours,

George P. Miller  
Project Planner

GPM:jmr - J1005239

ATTACHMENT I

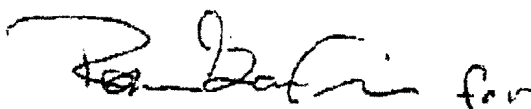
Mario Pelligrini

- 2 -

May 31, 1985

This approval may be appealed by the applicant or any aggrieved party on or before 5:00 p.m. on June 14, 1985, the tenth working day following this action by the Planning Director. An appeal is made by completing and filing a Notice of Appeal, including a statement of grounds for the appeal, with the Planning and Development Division and paying a \$40 appeal fee. This project is not appealable to the Coastal Commission. Further information may be obtained by calling George P. Miller, Project Planner, at 363-4161.

FOR DAVID C. HALE, PLANNING DIRECTOR, by:



Terry Burnes, Senior Planner

TLB:GPM:fc - F1005282

cc: Coastal Commission  
Mark Saito

ATTACHMENT II page

DeRose Appel  
January 4, 2002  
Page Two

services as sewer and water. Yet, those provisions are in danger of being circumvented. The result will be a parcel developed at a density 2.5 times the density allowed by the applicable zoning.

The Coastal Commission (through the Attorney General) submitted an *Amicus Curiae* briefs to the Court of Appeal in both *Gardner v. County Sonoma* (2001) \_\_\_ Cal.App.4<sup>th</sup> \_\_\_ and *Circle K Ranch Corp. v. Board of Supervisors of the County of Santa Barbara* (opinion republished 2000) in support of the position prior to statutes regulating the subdivision of land in 1929 the mere recordation of a map showing parcels did not create a parcel for land use planning purposes. Those *Amicus* briefs cite several cases preceding the *Circle K* case in support of the Commission's statement that "[t]he courts have consistently required more than mere recordation of a map in order to find legally created parcels." Two of those cases involve subdivision maps recorded in 1913 and created in the 1920's respectively. *Gisler v. County of Madera* (1974) 38 Cal.App.3d 303, 309; *Heys v. Venek* (1989) 217 Cal.App.3d 271. In those *Amicus* briefs, the Coastal Commission also stated that "the question of how lots may have been legally created prior to coastal permit regulation is of great importance to the Commission" and that "[r]eversal of the judgment below would seriously impact the coast through the recognition of thousands of lots as legal lots which have never been subjected to review under either the Subdivision Map Act or the Coastal Act."

Thus, it is clear that there is at least a substantial issue as to whether the mere recordation of a 1905 Map showing this parcel legally created it for land use purposes. This is particularly true given that the California State Association of Counties and the League of California Cities have also taken the position that only after legislation in 1929 first gave local governments the authority to regulate subdivision by map did recordation of maps create parcels.

As to the LCP requirement that parcel legality be determined by the CDP process, GSD submits the following. LCP Section 1.29 requires a Coastal Development permit to legalize parcels. Subsections 1.29a, b, c, and e address "illegal" parcels and require a CDP. Subsection 1.29d requires a CDP for all "undeveloped parcels" (whether illegal or possibly legal) alleged to be created before Proposition 20 (effective 1/1/1973) and located within 1000 yards of mean high tide (as is the parcel which is the subject of this application). Subsection 1.29d was adopted by the voters and legally binding precedent requires that any doubts be resolved in favor of the purpose of coastal protection inherent in Measure A adopted by the voters. Subsection 1.29d allows the public, the County and the Coastal Commission to participate in a public process which enables determination whether recognition of the parcel will have any substantial adverse impact on coastal resources and, even if not, to obtain conditions to maximize consistency with the LCP. This voter-adopted requirement establishes a substantial issue which should be considered by the Coastal Commission.

## San Mateo County Environmental Services Agency

## Application for Appeal

## Planning and Building Division

- ☒ To the Planning Commission  
☐ To the Board of Supervisors

County Government Center - 590 Hamilton St. • Redwood City CA 94063  
 Mail Drop PLN 122-415-363-4161

CHARGE FEE TO MASTERCARD #  
 PHONED TO PLANNING AND BUILDING

## 1. Appellant Information

Name: ERNEST R THOMPSON

Address: ONE NIZHONI RD

MOSS BEACH, CALIFORNIA

Phone, W: 650-225-0471 H: 650-728-5935

Zip: 94038

## 2. Appeal Information

Permit Numbers involved:

COUNTY FILE NO. PLN 2000-00734

APNs 037-044-020 AND 037-044-030

I have read and understood the attached information regarding appeal process and alternatives.

☐ yes☒ no

I hereby appeal the decision of the:

- ☒ Staff or Planning Director  
☐ Zoning Hearing Officer  
☐ Design Review Committee  
☐ Planning Commission

Appellant's Signature:

[Signature]

Date:

Nov. 15, 2000

Made on Nov 1, 2000 to approve/deny  
 the above-listed permit applications.

## 3. Basis for Appeal

Planning staff will prepare a report based on your appeal. In order to facilitate this, your precise objections are needed. For example: Do you wish the decision reversed? If so, why? Do you object to certain conditions of approval? If so, then which conditions and why?

1. Approval of lot line adjustment subverts the intent of zoning for this area by creating a "bigger" parcel.

Section 6901 (which cannot be overlooked) states that "parcels smaller than five acres in size shall continue to be legal parcels only if no adjacent property was in the same ownership at the enactment of this ordinance." Subject lots A, B, C, and D were in the same ownership at the time of the enactment of the ordinance.

The alleged lot line adjustment would not create a "legal parcel" and should therefore be denied.

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3. The lot line adjustment does not conform to government code section 66412(d) in that the local zoning ordinance has not been adhered to "Section 6901"
4. Any reliance on Morehart is misplaced since it deals with only a narrow area and does not apply to this situation

The specific request of the appellant is that the property lot line adjustment be denied or that no building of additional structures/residences be allowed on the tract consisting of lots A, B, C, and D without a building permit subject to section 6903 of Chapter 36, Resource Management Coastal Zone (RM - CZ) District.

ATTACHMENT

IV



## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



February 28, 2002

Gabrielle Hudson  
Planning and Building Division  
455 County Center  
Mail Drop PLN122  
Redwood City, CA 94063

Subject: County File Number PLN2000-00734  
Burr CDX for lot line adjustment

Gabrielle,

This letter is in response to an appeal the Commission received from Ernest Thompson to the County's issuance of a CDP exemption for a lot line adjustment affecting a property at 801 June Hollow Road (enclosed). The appeal raises a number of issues including:

- the Coastal Act requirement of a CDP for any lot line adjustment
- the appealability of the project
- the dispute resolution process for addressing the question of appealability of the project
- the potential recognition of the parcel as one legal lot through a previously issued Certificate of Compliance
- the potential recognition of the parcel as one legal lot if the four "lots" which make up the project site have been conveyed together and have never been deeded out separately since their appearance on a map in 1915
- the LCP requirement for legalization of the parcel through the CDP process

These issues should be considered in the County's review of a coastal development permit application for a lot line adjustment.

The County action on the lot line adjustment is central to the issues raised in the appeal. First, if the proposed development does involve a lot line adjustment rather than a division, the Coastal Act does not allow Coastal Development Permit exemptions for lot line adjustments. Section 30106 defines "development" as (in relevant part):

...change in the density or intensity of 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...

EXHIBIT NO. 11

APPLICATION NO.

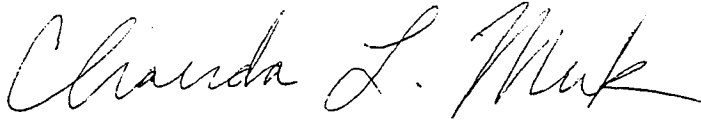
2-02-1-EDD (BURR)

PAGE 1 OF 3

February 28, 2002  
Letter to Gabrielle Hudson  
3

Please call me with any further questions at (415) 904 5219.

Sincerely,

A handwritten signature in cursive script, reading "Chanda L. Meek". The signature is written in dark ink and is positioned above the typed name and title.

Chanda Meek  
Coastal Program Analyst  
North Central Coast Division

Encl. Appeal submitted to the Coastal Commission by Ernest Thompson  
Section 13569

Cc: Kerry Burke  
Ernest Thompson  
Ann Cheddar, Coastal Commission counsel

Th 5a

Correspondence

CARR, MCCLELLAN, INGERSOLL, THOMPSON & HORN  
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FACSIMILE (650) 342-7685  
www.cmithlaw.com

September 23, 2002

California Coastal Commission  
North Central Coast District  
45 Fremont Street, Ste. 2000  
San Francisco, CA 94105-2219

RECEIVED  
SEP 25 2002  
CALIFORNIA  
COASTAL COMMISSION

Re: Burr Lot Line Adjustment  
801 June Hollow Road

Dear Members of the California Coastal Commission:

This letter is in response to the letter of the Commission dated August 8, 2002 in which the Commission staff ("Staff") ruled that the subject Lot Line Adjustment ("LLA") requires a coastal development permit ("CDP"). For the reasons stated below it is the position of our client, Dianne Burr ("Applicant"), that the unanimous decision of the Board of Supervisors of San Mateo County upholding the Planning Commission's approval of the LLA should be upheld and that such decision is not appealable to the Commission on the grounds that a CDP is required.

I. History of the Burr Application

The Applicant acquired the subject parcels in 1998, collectively referred to herein as the "Burr property." The applicant filed an application for a lot line adjustment with the County of San Mateo ("County") on April 13, 2000, approximately 2½ years ago. A chronology of events culminating in the subject LLA being approved by the Board of Supervisors on January 15, 2002 is attached hereto and marked Exhibit A.

At no time during the lengthy processing of the Burr application did the County require the applicant to file for a CDP in order to obtain the LLA. In fact, the County determined that no CDP was required and so notified the Commissioner in October of 2000. A copy of the notice is attached hereto and marked Exhibit B. Nor was this issue raised by the appellant until this appeal was filed with the Commission.

II. A CDP Should Not Be Required for the LLA.

A. The LLA is Governed by the County's Local Coastal Program.

without requiring a CDP. The staff's letter of February 28, 2002 was sent more than eighteen months after the detrimental reliance had occurred;

b. The Commission was aware of applicant's reliance by virtue of the Section 6328.11(a) notice mailed to the Commission on October of 2000;

c. Applicant would clearly be damaged if, after two years and the expenditure of some \$160,000.00, she were now required to file a new application for a CDP; and

d. It is difficult to conceive of an application that would have less impact on the resources sought to be protected by the Coastal Act. Not only are the Burr lots far removed from the Coastside, but the Burr LLA actually reduces the number of lots involved.

Appellant argues that estoppel should not apply if doing so would violate an overriding public interest, citing the South Central Coast decision in support thereof.

The South Central decision dealt with the question of whether a developer had acquired vested rights from approved tentative subdivision maps thus precluding the need for a CDP. Although Commission staff had apparently indicated this was sufficient, the Commission ultimately required a CDP and this position was upheld. However, the South Central case did not involve a situation in which a course of conduct by the Commission was retroactively reversed.

The more relevant authority is Hock Inv. Co. v. City & County of San Francisco, 215 Cal. App. 3d 438 (1989), in which a developer filed an application to convert its apartment house to condominiums. At the time of the filing, a department of public works order was in effect providing that applications to convert would be governed by the law in effect when the application was submitted. After the owner filed, the city passed a new ordinance establishing a moratorium on conversions, and the owner's application was disapproved. A demurrer was sustained by the trial court. In reversing the trial court, the Court of Appeal stated that "an applicant who submitted its completed application prior to adoption of the new ordinance, and in reliance upon the DPW order, could reasonably expect its application to be evaluated in accordance with the ordinances in effect at that time." (Hock at p. 448).

Similarly, Applicant Burr should be entitled to rely, as she did, on the rules for processing lot line adjustments when her application was filed.

D. The La Fe Decision

maps filed before the 1929 Map Act. The proper time and place for this to occur is when an application comes forward to develop the unimproved lot created by the LLA. Applicant has always conceded that such an application would require a CDP. However, the legality of the lots is not in any way germane to the issue at hand, i.e. whether the Burr LLA required a CDP.

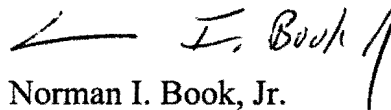
G. The County's Approval of the Burr LLA Is Not Appealable.

See the argument of County counsel as set forth in its letter to the Commission dated September 11, 2002, which is incorporated herein by this reference.

III. Conclusion

Based on the foregoing arguments we respectfully request that the Commission rule that a CDP was not required in the case at hand and that the County's approval of the LLA should be upheld.

Very truly yours,

  
Norman I. Book, Jr.

NIB:om

cc: Dianne Burr

801 June Hollow Road, Montara  
Project Chronology

- 1912: Lots A, B, C & D approved by Board of Supervisors as part of the Montara Heights subdivision  
Lot A = .7, Lot B = .76, Lot C = .81, Lot D = .77
- 1982: Approximate date property rezoned Resource Management / Coastal Zone
- 1985: Mario Pelligrini obtained Coastal Development Permit for house that sits on Lots B & C  
Well approved on Lot A, No merger on property filed by the County
- 1999: Dianne Burr purchases Lots A - D
- 4-99: County zoning books - state lots A, B, C, & D are separate legal lots
- 6-99: Well permits for lots A & B approved by County  
Drill successful well on lot A
- 9-99: Successful perk test on lot D - (A perk)
- 4-13-00: File planning application for CDP & LLA to create 3 lots from 4 legal lots  
Lot A = .83 Lot B/ C = 1.18 Lot D = .103  
House plans for Lot D meets all setback requirements  
Application accepted by county and deemed complete
- 5-00: Archeological study requested, no evidence of artifacts found
- 6-5-00: Filed revised application to address increasing Lot D only  
Lot D = 1.03 Lot B/C = 1.13 Lot A = .7
- 6-7: MCC meeting - 3 issues
- 6-21: MCC meeting - project approved, letter of approval cites additional issues
- 10-00: Botany study requested and completed - no sensitive habitats or species on site
- 11-1-00: Staff approval
- 11-15-00: Appeals filed by Thompson & Spiegler
- 2-14-01: Appeal heard by San Mateo County Planning Commission
- 2-28-01: Appeal denied 4-0, Lot Line Adjustment approved by Planning Commission with conditions  
Burr agrees to only two lots
- 3-13-01: Appeal filed by Thompson
- 5-01: All information submitted to Planning Department for conformance to all conditions  
Project planner leaves County, reassigned many times
- 1-15-02: Board of Supervisors deny appeal 5-0, approve Lot Line Adjustment

**Staff Use Only****4. Basis of Exemption or Exclusion**

Use attached review sheet to determine basis of exemption and whether project qualifies. Review basis of exemption with applicant/owner and initial appropriate category below:

**Initial**

- |  |   |
|--|---|
| <p><input type="checkbox"/> A. Improvements to Existing Single Family Residence. [PRC 30610(a), CCAG 13250, ZR 6328.5(a)]</p> <p><input type="checkbox"/> B. Improvements to Existing Structure Other Than Single Family Residence or Public Works Facility. [PRC 30610(b), CCAG 13253, ZR 6328.5(b)]</p> <p><input type="checkbox"/> C. Existing Navigation Channel. [PRC 30610(c), ZR 6328.5(c)]</p> <p><input type="checkbox"/> D. Repair or Maintenance Activity. [PRC 30610(d), CCAG 13252, ZR 6328.5(d)]</p> <p><input type="checkbox"/> E. Single Family Residence Categorical Exclusion Area. [PRC 30610(e), CCAG 13240, AB 643, ZR 6328.5(e)]</p> | <p><input type="checkbox"/> F. Agriculturally-Related Development Categorical Exclusion Area. [PRC 30610(e), CCAG 13240, ORDERS E-79-7 and E-81-1, ZR 6328.5(e)]</p> <p><input type="checkbox"/> G. Utility Connections. [PRC 30610(f), ZR 6328.5(f)]</p> <p><input type="checkbox"/> H. Replacement of Structures Following Disasters. [PRC 30610(g), ZR 6328.5(g)]</p> <p><input type="checkbox"/> I. Emergency Activities. [PRC 30611, ZR 6328.5(h)]</p> <p><input checked="" type="checkbox"/> J. Lot Line Adjustment. [ZR 6328.5(i)]</p> <p><input type="checkbox"/> K. Land Division for Public Recreation Purposes. [ZR 6328.5(l)]</p> |
|--|---|

**5. Approval**

I have reviewed the above-described project and have determined that it meets all criteria for the exemption/exclusion checked above.

Exemption/Exclusion is approved.

*Stephanie Wilby*  
 \_\_\_\_\_  
 Planning Division

*10/17/2000*  
 \_\_\_\_\_  
 Date

**6. Processing**

- ☒ Fee collected
- ☒ Original Certificate of Exemption to Building Inspection file.
- ☐ Copies of Certificate of Exemption to:
1. Applicant/Owner.
  2. Planning Division Exemption Binder.
  3. Any relevant Planning or Building Inspection files.
  4. Central Regional Coastal Commission, 640 Capitola Road, Santa Cruz, California, 95062.
- ☒ Update Permit\*Plan Case Screen and Actions.
- ☒ Make appropriate entries in Coastside Building Permit Monitoring Log.



and/or any significant non-attached structure such as garages, fences, shoreline protective works, docks or trees.

- (5) In areas determined to have critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.
- (b) The maintenance, alteration, or addition to existing structures other than single-family dwellings and public works facilities; however, the following classes of development shall require a permit because they involve a risk of adverse environmental impact:
- (1) Improvements to any structure on a beach, wetland, stream or lake, or seaward of the mean high tide line.
  - (2) Any significant alteration of landforms including removal or placement of vegetation, on a beach, wetland or sand dune, or within 100 feet of the edge of a coastal bluff, or stream or in areas of natural vegetation designated as a sensitive habitat.
  - (3) The expansion or construction of water wells or septic systems.
  - (4) On property located between the sea and the first public road paralleling the sea or within 300 feet of the inland intent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in scenic road corridors, an improvement that would result in an increase of 10% or more of external floor area of the existing structure, and/or the construction of an additional story (including lofts) in an existing structure.
  - (5) In areas determined to have critically short water supply that must be maintained for the protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system.
  - (6) Any improvement to a structure which changes the intensity of use of the structure.
  - (7) Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel time-sharing conversion.

- (g) The replacement of any structure, other than a public works facility, destroyed by natural disaster. Such replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10%, and shall be sited in the same location on the affected property as the destroyed structure.

As used in this subdivision, "natural disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

As used in this subdivision, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

- (h) Projects normally requiring a Coastal Development Permit but which are undertaken by a public agency, public utility or person performing a public service as emergency measures to protect life and property from imminent danger or to restore, repair or maintain public works, utilities and services during and immediately following a natural disaster or serious accident, provided such projects are reported to the Planning Director and an application for a Coastal Development Permit is submitted within five days.

- (i) Lot line adjustments not resulting in an increase in the number of lots.
- (j) Harvesting of agricultural crops, including kelp.
- (k) Timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).
- (l) Land division brought about in connection with the purchase of land by a public agency for public recreational use.
- (m) Encroachment permits.
- (n) Street closure permits.

**SECTION 6328.6. PREAPPLICATION CONFERENCE.** A prospective applicant, or his agent, may request a preapplication conference with the Planning Director or his designee prior to formal submittal of an application for a Coastal Development Permit. At such conference, the Planning Director shall acquaint the property owner with Local Coastal Program policies, plans and requirements as they apply to his property, suggest improvements to the proposed development based on review of a sketch plan provided by the property owner, and inform the owner of the steps necessary prior to formal action on the project. The sketch plan provided by the owner should be drawn

Chris Kern, Supervisor  
September 11, 2002  
Page 2

The County's coastal development permit regulations are contained at section 6328 et seq. of the County's Zoning Regulations. These regulations were originally approved and certified by the California Coastal Commission as part of the County's Local Coastal Program in the early 1980s. Section 6328.5 provides for exemptions from the requirement of a coastal development permit. Among those exemptions are "[l]ot line adjustments not resulting in the increase in the number of lots." (Zoning Regulations section 6328.5, subdivision (i).)

We acknowledge that one California court has held that lot line adjustments fall within the definition of "development" for purposes of the California Coastal Act. (La Fe, Inc. v. County of Los Angeles (1999) 73 Cal.App.4th 231.) It is not the definition of "development" that forms the basis for the exemption in the case of the County's Local Coastal Program, however, but a specific provision of the certified Local Coastal Program.

Prior correspondence with regard to this matter has also noted a memorandum dated March 29, 2001, from Terry Burnes, Planning Administrator, to Planning staff, stating that "[e]ffective immediately, all ongoing (and not yet recorded) and all future Lot Line Adjustment (LLA) applications [in the coastal zone] will require a Coastal Development Permit (CDP)." This policy directive has not been acted on by the Board of Supervisors, nor has a Local Coastal Program amendment been processed to eliminate the explicit exemption now contained in the County's certified Local Coastal Program. Until such time as that is done, the question of whether a coastal development permit is required is controlled by the provisions of section 6328.5, subdivision (i).

In short, the County's position is that no coastal development permit was required for the lot line adjustment because of an explicit exemption in the County's Local Coastal Program.

## 2. Appealability.

The Coastal Act, at Public Resources Code section 30603, provides that, after certification of a local coastal program, "an action on a coastal development permit application may be appealed to the commission" for certain specified types of developments. Since, in our view, lot line adjustments are not subject to the requirement that a coastal development permit be obtained under the provisions of section 6328.5, subdivision (i), any approval of a lot line adjustment is not "an action on a coastal development permit application" for purposes of appeal jurisdiction under the Coastal Act.