

CALIFORNIA COASTAL COMMISSION

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

F-14a



June 26, 2003

RECORD PACKET COPY

To: Coastal Commissioners and Interested Parties

From: Peter Douglas, Executive Director
Charles Lester, Deputy Director
Chanda Meek, Coastal Program Analyst

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 coastal development permit granted to Tom Carey by San Mateo County for a purported lot line adjustment between 4 contiguous parcels of undetermined legality at Coronado Avenue and Magellan Avenue in Montara, San Mateo County (APNs 048-024-180, 350, 420, and 430).

Summary of Staff Recommendation

On September 10, 2002, staff received a Notice of Final Local Decision from San Mateo County indicating that the County had granted a coastal development permit (CDP) to Tom Carey for a purported lot line adjustment between 4 contiguous parcels of undetermined legality in the R-1 zone (single family residential, 10,000 square-foot lot minimum) located at Coronado Avenue and Magellan Avenue in Montara (APNs 048-024-180, 048-024-350, 048-024-420, and 048-024-430). Staff had previously informed County Planning staff on August 8, 2002 in writing that, pursuant to Coastal Act Section 30603(a)(4), County approval of a coastal development permit for the purported lot line adjustment would be appealable to the Commission because a lot line adjustment is development and is not identified as the principal permitted use in any zoning districts within the Coastal Development overlay zone in the County, including the R-1 zone. 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 non-appealable or appealable for purposes of notice, hearing and appeals procedures (14 CCR §13569). Despite the fact that the County believes a CDP is not required for lot line adjustments in the County of San Mateo, the County informed the applicant of the dispute between the County and the Commission's Executive Director and allowed the applicant to voluntarily apply for a CDP (**Exhibit 4, page 2**).

On August 14, 2002, on appeal from the Planning Director's decision, the San Mateo County Planning Commission approved CDP PLN2001-00193 for a purported lot line adjustment between four contiguous parcels of undetermined legality. The Commission received a Notice of Final Local Action ("FLAN") from the County on September 10, 2002. The County's FLAN did not designate the project as appealable or non-appealable (**Exhibit 1**).

By letter dated September 12, 2002, Commission staff informed the County and the applicant that pursuant to 14 CCR Section 13571, the Executive Director had determined that the project

2-03-01-EDD (Carey)

was appealable and that the FLAN was deficient because it did not meet the requirements of 14 CCR Section 13571 and San Mateo County Zoning Code Sections 6328.11.1 and 6328.16 and requested that the County issue a corrected FLAN that indicates the permit is appealable and includes the procedures for appeal of the local decision to the Commission (**Exhibit 3**). The September 12, 2002 letter also informed the County and the applicant that, pursuant to Section 13572 of the Commission's regulations and San Mateo County Zoning Code Section 6328.16, the CDP approved by the County (PLN2001-00193) would remain suspended and would not become effective until a corrected notice had been issued and the ten-day appeal period to the Commission had elapsed.

On November 21, 2002 Commission staff received a FLAN dated November 19, 2002 continuing to notice CDP PLN2001-00193 as not appealable to the Commission (**Exhibit 4**). The accompanying letter to the applicant stated that the County does not consider a coastal development permit to be required for a lot line adjustment. By letter dated November 25, 2002, Commission staff informed the County and the applicant that the FLAN remains deficient (**Exhibit 5**). Commission staff also informed the County that as the County continues to disagree with the Executive Director's determination that the project comes within the Commission's appellate jurisdiction, the staff would schedule a hearing on the determination of appealability pursuant to 14 CCR Section 13569(d).

Staff recommends that the Commission determine that the County's action on the coastal development permit application authorizing the purported lot line adjustment is development appealable to the Coastal Commission pursuant to Section 30603(a)(4) of the Coastal Act.

1.0 STAFF RECOMMENDATION

1.1 Motion

I move that the Commission reject the Executive Director's determination that the coastal development permit approved by the San Mateo County Planning Commission on August 14, 2002, for Assessor Parcels 048-024-180, 048-024-350, 048-024-420, and 048-024-430 is appealable to the Coastal Commission.

Staff recommends a NO vote. Failure of this motion will result in: (1) the Commission upholding the Executive Director's determination that the coastal development permit for the purported lot line adjustment granted by the San Mateo County Planning Commission on August 14, 2002, for San Mateo County Assessor Parcel Numbers 048-024-180, 048-024-350, 048-024-420, and 048-024-430 is appealable to the Coastal Commission; and (2) the adoption of the following resolution and findings. A majority vote of the Commissioners present is required to pass the motion.

1.2 Resolution

The Commission, by adoption of the attached findings, determines consistent with Section 13569 of Title 14 of the California Code of Regulations, that the coastal development permit for the purported lot line adjustment granted by the San Mateo County Planning Commission on August 14, 2002, for Assessor Parcel Numbers 048-024-180, 048-024-350, 048-024-420, and 048-024-430 is appealable to the Coastal Commission.

2.0 Findings and Declarations

The Commission finds and declares as follows:

2.1 Authority for Determination

Title 14, Section 13569 of the California Code of Regulations states:

The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This 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 or other interested person may initiate or forward a request to the Commission's 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.

The Executive Director is required to render a determination (14 CCR §13569(c)) and, in the event the local government disagrees with the opinion, "the Commission *shall* hold a hearing for purposes of determining the appropriate designation for the area" (14 CCR §13569(d)). It is clear from a plain reading of the regulation, that where the Executive Director and the local government disagree, participation is not optional and that if a system for dispute resolution is to be effective, the requirements for implementation of the process must be observed by both the Coastal Commission and the local government. The Executive Director has therefore made a determination, the County disagrees, and the Commission will hear the matter.

2.2 Local Government Action

On August 14, 2002, the San Mateo County Planning Commission granted Coastal Development Permit PLN2001-00193 to Tom Carey for development described as:

Lot line adjustment between four parcels to create four reconfigured parcels located at Coronado Avenue and Magellan Avenue.

The Planning Director's approval of the CDP was appealed locally to the County Planning Commission. On August 14, 2002 the Planning Commission took final action on the appeal, denied the appeal and upheld the Planning Director's approval of CDP PLN2001-00193 for the purported lot line adjustment.

The County Planning Department subsequently transmitted to Coastal Commission staff a Notice of Final Local Decision dated September 9, 2002 (**Exhibit 1**) stating:

- On August 14, 2002, the County had conditionally approved a coastal development permit for the subject lot line adjustment; and
- The County appeal period for this action ended on September 3, 2002.

2.3 Executive Director's Determination

On August 8, 2002, Commission staff received an agenda staff report for CDP PLN2001-00193 for a purported lot line adjustment between 4 contiguous parcels of undetermined legality. On August 8, 2002, Commission staff informed the County Planning Department by letter that CDP PLN2001-00193 is appealable to the Commission pursuant to Coastal Act Section 30603(a)(4) because lot line adjustments are development and are not designated as the principal permitted use under the zoning ordinance or zoning district map (**Exhibit 2**). Staff requested that the County correct the report and notice the permit application as appealable to the Commission. Staff also notified the County that if it disagreed with the Commission staff's determination of appealability, staff would schedule a dispute resolution hearing before the Commission pursuant to 14 CCR 13569.

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.*" Section 13571 of the Commission's regulations requires that a local government's Notice of Final Local Action on appealable development must include the procedures for appeal of the

local decision to the Commission. The September 9, 2002 County Notice of Final Local Decision did not meet the requirements for such notice specified by Section 13571 of the Commission's regulations and Sections 6328.11.1 and 6328.16 of the County's Zoning Code.

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 Notice of Final Local Action on CDP PLN2001-00193 was deficient and, pursuant to section 13572 of the Commission's regulations and Section 6328.16 of the County's Zoning Code, the effective date of the local government action has been suspended.

On August 14, 2002, on appeal from the Planning Director's decision, the San Mateo County Planning Commission approved CDP PLN2001-00193 for a purported lot line adjustment between four contiguous parcels of undetermined legality. The Commission received a Notice of Final Local Action ("FLAN") from the County on September 10, 2002. The County's FLAN did not designate the project as appealable or non-appealable (**Exhibit 1**).

By letter dated September 12, 2002, Commission staff informed the County and the applicant that pursuant to 14 CCR Section 13571, the Executive Director had determined that the project was appealable and that the FLAN was deficient because it did not meet the requirements of 14 CCR Section 13571 and San Mateo County Zoning Code Sections 6328.11.1 and 6328.16 and requested that the County issue a corrected FLAN that indicates the permit is appealable and includes the procedures for appeal of the local decision to the Commission (**Exhibit 3**). The September 12, 2002 letter also informed the County and the applicant that, pursuant to Section 13572 and San Mateo County Zoning Code Section 6328.16, the CDP approved by the County (PLN2001-00193) would remain suspended and would not become effective until a corrected notice had been issued and the ten-day appeal period to the Commission had elapsed.

On November 21, 2002 Commission staff received a FLAN dated November 19, 2002 continuing to notice CDP PLN2001-00193 as not appealable to the Commission (**Exhibit 4**). By letter dated November 25, 2002, Commission staff informed the County and the applicant that the FLAN remains deficient (**Exhibit 5**). Commission staff also informed the County that as the County continues to disagree with the Executive Director's determination that County approval of CDP PLN2001-00193 is appealable to the Commission, the staff would schedule a hearing on the determination of appealability pursuant to 14 CCR Section 13569(d).

2.4 Summary of Issue and Commission Determination

The issue before the Commission at this time is:

Is approval by the County of the coastal development permit for the purported lot line adjustment between 4 contiguous parcels of undetermined legality appealable to the Coastal Commission? As discussed below, the Commission finds that Section 30603(a)(4) confers the Commission with appellate jurisdiction over any “development” that is not listed as the principal permitted use in the County’s certified Local Coastal Program. Because the purported lot line adjustment between 4 parcels of undetermined legality constitutes “development” under 30106 of the Coastal Act and because lot line adjustments are not listed as the principal permitted use in the County’s Certified Local Coastal Program, the purported lot line adjustment between 4 parcels of undetermined legality is development appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act.

2.4.1 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.]

Section 30603(a)(4) confers appellate jurisdiction over any “development” approved by a coastal county that is not designated as the principal permitted use under a county’s approved zoning ordinance (See also Section 6328.3(s) of the County’s zoning code - **Exhibit 6**). Section 30106 of the Coastal Act states that “[d]evelopment” means, on land, in or under water, ... 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,” ... The Court of Appeal held in its published decision in *La Fe v. Los Angeles County* (1999) 73 Cal.App.4th 231 that lot line adjustments are development as defined in Section 30106 both because lot line adjustments constitute a division of land and because lot line adjustments result in a change in the density or intensity of use of land. A lot line adjustment thus constitutes “development” under Section 30106 of the Coastal Act.

Lot line adjustments are not designated as the principal permitted use under the San Mateo County One-family Residential (R-1) Zoning District, the Coastal Zone Overlay District (CD) or the applicable zoning district map. The property affected by the purported lot line adjustment is zoned R-1/S-94/CD. The R-1/S-94/CD Zoning District enumerates 10 different types of uses and none of these uses are designated as the principal permitted use (**Exhibit 7**). Therefore, the County’s zoning ordinance fails to designate one principally permitted use for the R-1/S-94/CD Zoning District (**Exhibit 7**). In addition, none of the ten types of uses enumerated in the R-1/S-94/CD Zoning District such as “one-family dwellings” include lot line adjustments (**Exhibit 7**). Accordingly, because a lot line adjustment constitutes “development” but is not identified as either the principal permitted use of the R-1/S-94/CD Zoning District or even a permitted use in the R-1/S-94/CD Zoning District, pursuant to Section 30603(a)(4) of the Coastal Act, any approval of a coastal development permit for a lot line adjustment in the R-1/S-94/CD zone is appealable to the Coastal Commission. Therefore, County approval of CDP PLN2001-00193 for

the purported lot line adjustment is appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act.

Additionally, the County's certified zoning ordinance further recognizes that the purported lot line adjustment does not qualify as a "principal permitted use" and is therefore development appealable to the Commission pursuant to Section 30603 of the Coastal Act. The County defines "principal permitted use" as "*any use representative of the basic zone district allowed without a use permit in that underlying district*" (See Section 6328.3(q) of the County's Zoning Code- **Exhibit 6**). As discussed above, a lot line adjustment is not listed as a permitted use in the County's zoning ordinance and is thus not a use representative of the basic zone district. Further, pursuant to Zoning Code Section 6133(3)(b)(1)(a) - (**Exhibit 8**), a use permit would be required for the purported lot line adjustment because one of the purported parcels to be adjusted is an unimproved, nonconforming parcel less than 5,000 square feet in size in a zone that requires a 10,000 square-foot minimum lot size. Specifically, Section 6133(3)(b)(1)(a) (**Exhibit 8**) of the City's Zoning Code states that "[d]evelopment of an unimproved non-conforming parcel shall require the issuance of a use permit when...(c) the required parcel size is >5,000 square feet but the actual nonconforming parcel size is <5,000 square feet" As stated above, a lot line adjustment constitutes "development" under 30106 of the Coastal Act. In the case of the subject property, the purported lot line adjustment would occur in a zone where the minimum lot size is 10,000 square feet and would involve a purported parcel <5,000 square feet. Thus, since one of the purported parcels is <5,000 square feet, the purported lot line adjustment would require a use permit because it constitutes development of that unimproved non-conforming parcel <5,000 square feet in a zone where the minimum lot size is 10,000 square feet. Thus, pursuant to Section 6133(3)(b)(1)(a) of the County's zoning code, the purported lot line adjustment is development that would require a use permit and does not constitute a principally permitted use in the County's zoning district. As such, the purported lot line adjustment between four contiguous parcels of undetermined legality is appealable to the Commission under Section 30603(a)(4) of the Coastal Act because it is "development approved by a coastal county that is not designated as the principal permitted use" under the County's certified zoning ordinance.

It should be noted that the four subject lots are held by two sets of owners in an antiquated subdivision in which many lots are nonconforming, substandard lots smaller than the required 10,000 square feet in the R-1/S-94/CD zone. The County did not conduct an analysis into whether or not the original subdivision of the lots was conducted in accordance with the subdivision law in effect at the time the lots were purportedly created. If the lots were not legally subdivided, then the purported lot line adjustment would constitute a subdivision. It is the Executive Director's opinion, consistent with the reasoning above, 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.

2.4.2 Review of Lot Line Adjustments in the Coastal Zone is an Issue of Statewide Significance

The Commission's appellate review of lot line adjustments for conformity with the policies of the County's LCP and the Coastal Act is a matter of statewide significance. Lot line adjustments can result in a change in the density or intensity of use of land in a manner that conflicts with the resource and/or public access protection policies of a certified LCP and the Coastal Act. In the

case of the subject property, the purpose of the purported lot line adjustment would be to allow for the reconfiguration of four contiguous parcels of undetermined legality and ranging in size of 4,400, 13,600, 11,000 and 10,600 square feet into four parcels of 9,600, 9,600, 10,400 and 10,000 square feet in a zone in which the minimum parcel size is 10,000 square feet San Mateo County has hundreds of nonconforming substandard lots purportedly "created" by subdivision map in the early 20th century. Commission staff has not yet been able to investigate the legality of the majority of these lots under laws regulating divisions of land that existed at the time of the purported subdivision. In addition, many of these lots are not counted under the existing build-out calculations of the San Mateo County LCP. A careful review of the legal status of lots to be adjusted is important in order to protect coastal resources and public access to the sea.

The California Court of Appeals acknowledges the significance of the Commission's review of lot line adjustments in *La Fe v. Los Angeles County* (1999) 73 Cal.App.4th 231). In this case, the appellate court upheld the Commission's denial of a coastal development permit application for a lot line adjustment because it would have made all of the affected lots accessible to a public street that was insufficient to provide access to the developed lots by fire fighting equipment. A lot line adjustment could also result in the configuration of property boundaries to create a 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.

The Commission recently affirmed that lot line adjustments are development that requires a local coastal development permit appealable to the Commission in an October 10, 2002 hearing. The Commission directed San Mateo County to process a coastal development permit for a purported lot line adjustment in San Mateo County and to notice it as appealable in accordance with the certified LCP and the Commission's regulations (Commission file 2-02-01-EDD, Burr).

List of Exhibits

- EXHIBIT 1: September 9, 2002 Deficient Final Local Action Notice
- EXHIBIT 2: August 8, 2002 CCC letter identifying approved development as appealable
- EXHIBIT 3: September 12, 2002 CCC Letter regarding Deficient Final Local Action Notice
- EXHIBIT 4: November 19, 2002 Final Local Action Notice
- EXHIBIT 5: November 25, 2002 CCC Letter regarding Deficient Final Local Action Notice
- EXHIBIT 6: Excerpt of San Mateo County Coastal Zone District Regulations and Definitions
- EXHIBIT 7: Excerpt of San Mateo County R-1 Zone Regulations
- EXHIBIT 8: Excerpt of San Mateo County Zoning Regulations pertaining to Non-Conforming Parcels



RECEIVED

SEP 10 2002

CALIFORNIA
COASTAL COMMISSION

September 9, 2002

NOTICE OF FINAL LOCAL DECISION

Pursuant to Section 6328.11.1 (f) of the San Mateo County Zoning Regulations

CERTIFIED MAIL

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

County File No.: PLN 2001-00193

Applicant Name: Tom Carey
Owner Name: CTJ, LLC & Helen Carey

The above listed Coastal Development Permit was conditionally approved by the County of San Mateo on August 14, 2002. The County appeal period ended on September 3, 2002. Local review is not complete.

If you have any questions about this permit, please contact Miroo Desai Brewer at 650/363-1853

Miroo Desai Brewer

Miroo Desai Brewer
Project Planner

**ENVIRONMENTAL
SERVICES
AGENCY**

Agricultural
Commissioner/ Sealer of
Weights & Measures

Animal Control

Cooperative Extension

Fire Protection

LAFCo

Library

Parks & Recreation

Planning & Building

EXHIBIT NO. 1
APPLICATION NO. 2-03-1-EDD
September 9, 2002 Final Local Notice

PLANNING AND BUILDING

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904-5400



August 8, 2002

Terry Burnes
Planning and Building Division
455 County Center
Mail Drop PLN122
Redwood City, CA 94063

SUBJECT: PLN 2001-00193 (Burke/Carey and CTJ, Inc.)

Dear Mr. Burnes:

This letter is in response to the County agenda report dated August 14, 2002, and received in our offices today concerning the above referenced coastal development permit for a lot line adjustment. I note that the report states, "This project is not appealable to the California Coastal Commission."

Pursuant to Coastal Act Section 30603(a)(4) any coastal development permit that is approved by a coastal county for development that is not designated as the principally permitted use under the zoning district or zoning district map is appealable to the Coastal Commission. Since lot line adjustments are not designated as the principally permitted use under any zoning district in the County, any coastal development permit approved by the County for a lot line adjustment is appealable to the Commission. As such, Commission staff requests that you please correct the subject agenda report and notice the permit application as appealable to the Commission.

Please let me know if you disagree with Commission staff's position that the proposed development is appealable to the Commission. In such case, staff will schedule a dispute resolution hearing before the Commission to resolve this matter as provided by Section 13569 of the Commission's regulations. Please feel free to call me at (415) 904-5266 if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Kern".

Chris Kern
North Central Coast District Supervisor

cc: Michael P. Murphy, Chief Deputy County Counsel
Miroo Brewer, Project Planner

EXHIBIT NO.	2
APPLICATION NO.	
	2-03-1-EDD
CCC Letter	
	August 8, 2002

CALIFORNIA COASTAL COMMISSION

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



September 12, 2002

Terry Burnes, Chief Administrator
 San Mateo County
 Planning and Building Division
 455 County Center
 Mail Drop PLN122
 Redwood City, CA 94063

RE: Deficient Final Local Action Notice PLN2001-00193 (CTJ, LLC and Carey)

Dear Mr. Burnes:

On September 10, 2002, Commission staff received the County's Final Local Action Notice, dated September 9, 2002 concerning the referenced coastal development permit. The Notice does not comply with Section 13571, *Final Local Government Action—Notice*, of the Commission Regulations or the corresponding provisions of Sections 6328.11.1 and 6328.16 of the County's certified Local Coastal Program. The Notice is deficient in that it neither notices the approved development as appealable nor provides the procedures for appeal of the local decision to the Commission as required by Section 13571(a) of the Coastal Commission regulations and Section 6328.11.1 and 6328.16 of the County's certified Local Coastal Program.

Commission staff informed the County on August 8, 2002 that the above referenced coastal development permit is appealable to the Commission pursuant to Coastal Act Section 30603(a) and Section 6328.3 of the County's certified LCP because a lot line adjustment is not identified as the principal permitted use in any zoning districts within the Coastal Development overlay zone in the County, including the R-1 zone. We also note that Section 6328.16 of the County's certified Local Coastal Program specifies that actions by the County "may be appealed to the Coastal Commission in accordance with Coastal Commission regulations." In conformity with Sections 13569, 13570 and 13571 of the Commission regulations and Sections 6328.11.1 and 6328.16 of the County's certified Local Coastal Program, the County should accordingly issue a corrected Local Final Action Notice indicating that the permit is appealable and including the procedures for appeal of the local decision to the Commission. Pursuant to Section 13572 of the Commission regulations and Section 6328.16 of the County's certified Local Coastal Program, PLN2001-00193 will remain suspended and will not become final until a corrected notice has been issued and the appeal period to the Commission has run.

Section 13569 of the Commission regulations provides for Commission review of local government determinations of permit appealability. If the County disagrees with Director's determination that the project comes within the Commission's appellate

EXHIBIT NO.	3
APPLICATION NO.	
	2-03-1-EDD
	September 12, 2002
	Deficient Notice

Letter to Terry Burnes
Defective Notice of Final Local Action (PLN2001-00193)
September 12, 2002

pursuant to Section 30603, a Commission hearing will be scheduled in accordance with Section 13569(d) to resolve the disagreement.

I am available at (415) 904 5266 if you have further questions regarding this matter.

Sincerely,



Chris Kern
North Central Coast District Supervisor

cc: Michael P. Murphy, Chief Deputy County Counsel
Miroo Brewer, Project Planner
CTJ, LLC
Tom Carey

San Mateo County Environmental Services Agency

Planning and Building Division ■ 455 County Center ■ Redwood City
California 94063 ■ Planning: 650/363-4161 ■ Building: 650/599-7311 ■ Fax: 650/363-4849

November 19, 2002

NOTICE OF FINAL LOCAL DECISION Pursuant to Section 6328.11.1(f) of the San Mateo County Zoning Regulations

RECEIVED

NOV 21 2002

CALIFORNIA
COASTAL COMMISSION

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

County File No. : PLN2001-00193

Applicant Name: TOM CAREY
Owner Name: CTJ, LLC

The above listed Coastal Development Permit was conditionally approved by the County of San Mateo on **August 14, 2002**. The County appeal period ended on **September 3, 2002**. Local review is now complete.

This permit **IS NOT** appealable to the California Coastal Commission.

If you have any questions about this project, please contact MIROO BREWER at (650) 363-4161.

Miroo Brewer

MIROO BREWER
Project Planner

EXHIBIT NO. 4
APPLICATION NO. 2-03-1-EDD
November 19, 2002 Final Local Notice
Page 1 of 3



November 19, 2002

Tom Carey
2920 Woodside Road
Woodside, CA 94062

Dear Mr. Carey:

**ENVIRONMENTAL
SERVICES
AGENCY**

**SUBJECT: Lot Line Adjustment, San Mateo County
File Number PLN2001-00193**

Agricultural
Commissioner/ Sealer of
Weights & Measures

The San Mateo County Planning Commission approved the subject Lot Line Adjustment (LLA), together with an accompanying Coastal Development Permit (CDP), on August 14, 2002. Following that action we sent the enclosed notice of final local decision, dated September 9, 2001, to you and the other parties indicated as copied, including the California Coastal Commission. We then received the enclosed letter from the Coastal Commission, dated September 12, 2002. You have asked for clarification of the County's position and some direction, which follow.

Animal Control

We have a disagreement with the Coastal Commission about the requirement of a CDP for a LLA. We believe that LLAs located in the unincorporated San Mateo County Coastal Zone are exempt from the requirement of a CDP pursuant to Section 6328.5(i) of the County Zoning Regulations, which is part of our certified Local Coastal Program, and reads as follows: "The projects listed below shall be exempt from the requirement for a Coastal Development Permit . . . Lot line adjustments not resulting in an increase in the number of lots." We believe your LLA qualifies for this exemption. Furthermore, it is our position that a project which is exempt from the requirement of a CDP could not possibly be appealable to the Coastal Commission, whose permit jurisdiction is limited to CDPs, not other local permits or approvals.

Cooperative Extension

Fire Protection

LAFCo

The Coastal Commission disagrees, believing for reasons best left to them to explain, that LLAs are, in all cases, subject to CDPs and that those CDPs are appealable to the Coastal Commission because LLAs are not listed as a "principal permitted use" in the zoning districts that apply to our Coastal Zone.

Library

Parks & Recreation

Not wanting to place our applicants in an untenable position, we have decided to inform applicants for LLAs in our Coastal Zone of the above dispute and allow them to make the decision as to whether to apply for a CDP in conjunction with their application for an LLA. If they choose to apply we then process the CDP along with the LLA, but we will not require them to make such an application, as we do not believe a CDP is required by law for this type of project in

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unincorporated San Mateo County. I believe that you and your co-applicants elected to apply for a CDP to accompany your application for an LLA and we processed those concurrently.

In light of the above dispute, when we sent our notice of final local decision for your project we elected not to address the question of the CDP's appealability to the Coastal Commission. We then received the Coastal Commission's September 12 letter insisting that we redo our notice indicating that your permit is suspended. As a result, we have now sent the enclosed corrected notice of final local decision, stating that your CDP is not appealable to the Coastal Commission.

Much as you would like us to provide you direction in this matter, our ability in that regard is limited. We are prepared to record your Lot Line Adjustment if and when other County requirements have been met, but will not do so unless requested by you. If your goal is to resolve the status of your CDP with the Coastal Commission before we record your LLA, we suggest you contact the Coastal Commission staff to discuss how you might do that. We would advise you to do your best to obtain their position on the LLA itself before you acquiesce to a Coastal Commission appeal period. Finally, you might want to seek the advice of an attorney in this matter.

Sincerely,



Terry Burnes
Planning Administrator

TB:kdr Tlbn1662_wkrn.doc

cc: Marcia Raines, Director of Environmental Services
Jim Eggemeyer, Development Review Services Manager
Dave Holbrook, Senior Planner
Miroo Brewer, Project Planner
Mary Raftery, Deputy County Counsel
Steve Scholl, California Coastal Commission
Chris Kern, California Coastal Commission
Chanda Meek, California Commission
Kerry Burke
Helen Carey

CALIFORNIA COASTAL COMMISSION

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



November 25, 2002

Terry Burnes, Chief Administrator
 San Mateo County
 Planning and Building Division
 455 County Center
 Mail Drop PLN122
 Redwood City, CA 94063

RE: Deficient Final Local Action Notice PLN2001-00193 (CTJ, LLC and Carey)

Dear Mr. Burnes:

On November 21, 2002, Commission staff received the County's Final Local Action Notice, dated November 19, 2002 concerning the above referenced development. The Notice does not comply with Section 13571, *Final Local Government Action—Notice*, of the Commission Regulations or the corresponding provisions of Sections 6328.11.1 and 6328.16 of the County's certified Local Coastal Program. The Notice is deficient in that it neither notices the approved development as appealable nor provides the procedures for appeal of the local decision to the Commission as required by Section 13571(a) of the Coastal Commission regulations and Section 6328.11.1 and 6328.16 of the County's certified Local Coastal Program.

Commission staff first informed the County on August 8, 2002 that any County action that includes a lot line adjustment required a coastal development permit that would be appealable to the Commission pursuant to Coastal Act Section 30603(a)(4). Any County action that includes a lot line adjustment is appealable to the Commission because a lot line adjustment is not identified as the principal permitted use in any zoning districts within the Coastal Development overlay zone in the County, including the R-1 Zone. The County's zoning ordinance fails to designate one principal permitted use for the R-1 Zoning District. In addition, none of the uses enumerated in the R-1 Zoning District such as single-family residences include lot line adjustments. Because lot line adjustments and lot mergers constitute development but are not identified as the principal permitted use of the R-1 Zoning District, any County action that include approval of a lot line adjustment or lot merger in the R-1 Zone is appealable to the Coastal Commission. The Commission recently affirmed that lot line adjustments are development that requires a local coastal development permit appealable to the Commission in an October 10, 2002 hearing. The Commission directed San Mateo County to process coastal development permits for lot line adjustments and to notice them as appealable in accordance with the certified LCP and the Commission's regulations (Commission file 2-02-01-EDD, Burr).

In the past, certain parties have contended that the coastal development permit Coastal Act Section 30600 does not apply to lot line adjustments because lot li

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Deficient Notice

not "development" under the Coastal Act. This question has been resolved in the Commission's favor by the California Court of Appeal (*La Fe v. Los Angeles County* (1999) 73 Cal.App.4th 231). The Court of Appeal held in its published decision in *La Fe* that lot line adjustments are development as defined in Section 30106 because lot line adjustments constitute a division of land and because lot line adjustments result in a change in the density or intensity of use of land.

Commission staff notes that the Carey lot line adjustment proposes to reconfigure four parcels in the R-1/S-94 zone, where the minimum lot size is 10,000 sq. ft. The resulting configuration will change three existing conforming lots and one nonconforming, substandard lot to two nonconforming lots and two conforming lots and as such is inconsistent with the County's Local Coastal Program Zoning Section 6133.2, Enlargement of Non-Conforming Parcels which states:

A non-conforming parcel may be enlarged through the addition of contiguous land by lot line adjustment, lot consolidation, merger, or resubdivision, provided that the enlargement does not create nonconformities on adjoining property.

Despite our letter of August 8, 2002, on September 9, 2002, the County sent the Commission a Final Local Action Notice identifying the approved development as non-appealable. On September 12, 2002 Commission staff wrote a letter to the County informing the County that its September 9, 2002 final local action notice was deficient and directed the County to issue a corrected notice, noticing the approved development as appealable and including the procedures for appeal of the local decision to the Commission. On November 22, 2002, staff received another deficient notice noticing the approved development as not appealable to the Commission. In addition, the attached letter to the applicant stated that the County does not consider a coastal development permit to be required for a lot line adjustment, but informed the applicant that they should consider the issue independently.

We note that Section 6328.16 of the County's certified Local Coastal Program specifies that actions by the County "may be appealed to the Coastal Commission in accordance with Coastal Commission regulations." In conformity with Sections 13569, 13570 and 13571 of the Commission regulations and Sections 6328.11.1 and 6328.16 of the County's certified Local Coastal Program, the County should have issued a corrected Final Local Action Notice indicating that the County's action on the approved development was appealable and including the procedures for appeal of the local decision to the Commission. Because the County's Final Local Action Notice remains deficient and pursuant to Section 13572 of the Commission regulations and Section 6328.16 of the County's certified Local Coastal Program, PLN2001-00193 will remain suspended and will not become effective until a corrected notice has been issued and the appeal period to the Commission has run.

Section 13569 of the Commission's regulations provides for Commission review of local government determinations of appealability. Since the County's second Final Local Action Notice again notices the project as non-appealable, it is apparent the County continues to disagree with the Executive Director's determination that the project comes within the Commission's appellate jurisdiction pursuant to Section 30603. Accordingly, pursuant to

Letter to Terry Burnes
Defective Notice of Final Local Action (PLN2001-00193)
November 25, 2002

Section 13569(d) of the Commission's regulations, since the Executive Director's opinion is not in accordance with the local government decision, the Commission shall hold a hearing on the determination of appealability at the next Commission meeting in the appropriate geographic region of the state. The next local hearing will be held May 5-9 in Monterey. Unless the County issues a revised Final Local Action Notice consistent with Sections 13569-13571 of the Commission's regulations and Sections 6328.11.1 and 6328.16 of the County's certified LCP, the Executive Director will schedule the matter for hearing in Monterey in May 2003.

I am available at (415) 904 5266 if you have further questions regarding this matter.

Sincerely,

Chanda Muk For Chris Kern

Chris Kern
North Central Coast District Supervisor

cc: Michael P. Murphy, Chief Deputy County Counsel
Miroo Brewer, Project Planner
CTJ, LLC
Helen Carey
Kerry Burke
Nick Licato

CHAPTER 20B. "CD" DISTRICT
(COASTAL DEVELOPMENT DISTRICT)

SECTION 6328. ESTABLISHMENT AND PURPOSE OF COASTAL DEVELOPMENT DISTRICT. There is hereby established a Coastal Development ("CD") District for the purpose of implementing the Coastal Act of 1976 (Division 20 of the Public Resources Code) in accordance with the Local Coastal Program of the County of San Mateo.

SECTION 6328.1. REGULATIONS FOR "CD" DISTRICT. The regulations of this Chapter shall apply in the "CD" District. The "CD" District is an "overlay" district which may be combined with any of the districts specified in Chapters 5 through 20A of this Part, or other districts which may from time to time be added by amendment to this Part. The regulations of this Chapter shall apply in addition to the regulations of any district with which the "CD" District is combined.

SECTION 6328.2. LOCATION OF "CD" DISTRICT. The "CD" District is and shall be coterminous with that portion of the Coastal Zone, as established by the Coastal Act of 1976 and as it may subsequently be amended, which lies within the unincorporated area of San Mateo County.

SECTION 6328.3. DEFINITIONS. For the purpose of this Chapter, certain terms used herein are defined as follows:

- "(a) "Aggrieved person" means any person who, in person or through a representative, appeared at a public hearing or by other appropriate means prior to action on a Coastal Development Permit informed the County of his concerns about an application for such permit, or who for good cause was unable to do either, and who objects to the action taken on such permit and wishes to appeal such action to a higher authority.
- (b) "Applicant" means the person, partnership, corporation or State or local government agency applying for a Coastal Development Permit.
- (c) "Approving authority" means the County officer, commission or board approving a Coastal Development Permit.
- (d) "Coastal Commission" means the California Coastal Commission.
- (e) "Coastal Development Permit" means a letter or certificate issued by the County of San Mateo in accordance with the provisions of this Chapter, approving a project in the "CD" District as being in conformance with the Local Coastal Program. A Coastal Development Permit includes all applicable materials, plans and conditions on which the approval is based.

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	CD Zone Regulations

- (f) "Coastal Policy Checklist" means a form prepared and completed by the Planning Director as a guide for reviewing a Coastal Development Permit application for conformance with the Local Coastal Program. It shall list appropriate application information, all Local Coastal Program policies, those policies with which the application does not comply and recommended conditions, if any, which could be imposed to bring the application into compliance.
- (g) "Coastal Zone" means that portion of the Coastal Zone, as established by the Coastal Act of 1976 and as it may subsequently be amended, which lies within the unincorporated area of San Mateo County.
- (h) "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 lots splits, except where the division of land 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 utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and 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).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

- (i) "Emergency" means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services.
- (j) "Historic structure" means, in accordance with Health and Safety Code Section 18955, any structure, collection of structures, and their associated sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or State governmental jurisdiction. This shall include structures on existing or future national, State, or local historical registers or official inventories, such as the National Register of Historical Places, State Historical Landmarks, State Points of Historical Interest, and city or County registers or inventories of historical or architecturally significant sites, places, historic districts, or landmarks.

- (k) "Local Coastal Program" means the County's land use plans, zoning ordinances, zoning maps and implementing actions certified by the Coastal Commission as meeting the requirements of the California Coastal Act of 1976.
- (l) "Major energy facility" means any energy facility as defined by Public Resources Code Section 30107 and exceeding \$25,000 in estimated cost of construction.
- (m) "Major public works project" means any public works project as defined by California Administrative Code Section 13012 and exceeding \$25,000 in estimated cost of construction.
- (n) "Other permits and approvals" means permits and approvals, other than a Coastal Development Permit, required by the San Mateo County Ordinance Code before a development may proceed.
- (o) "Overlay district" means a set of zoning requirements, described in the ordinance text and mapped, which is imposed in addition to the requirements of one or more underlying districts. Development in such districts must comply with the requirements of both the overlay district and the underlying district(s). The "CD" District is an overlay district.
- (p) "Permittee" means the person, partnership, corporation or agency issued a Coastal Development Permit.
- (q) "Principal permitted use" means any use representative of the basic zone district allowed without a use permit in that underlying district.
- (r) "Project" means any development (as defined in Section 6328.3(h)) as well as any other permits or approvals required before a development may proceed. Project includes any amendment to this Part, any amendment to the County General Plan, and any land division requiring County approval.
- (s) "Project appealable to the Coastal Commission" if approved by the Board of Supervisors means:
 - (1) Projects between the sea and the first through 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) Projects in County jurisdiction 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.
 - (3) Any project involving development which is not a principal permitted use in the underlying zone, as defined in Section 6328.3(p).

- (t) "Project appealable to the Coastal Commission" if approved, conditioned, or denied by the Board of Supervisors means any project involving development which constitutes a major public works project or a major energy facility (as defined in Section 6328.3).
- (u) "Scenic Road Corridor" means any scenic road corridor as defined and mapped in the Visual Resources Component of the Local Coastal Program.
- (v) "Underlying district" means any district with which the "CD" District is combined.
- (w) "Working day" means any day on which County offices are open for business.

SECTION 6328.4. REQUIREMENT FOR COASTAL DEVELOPMENT PERMIT.

Except as provided by Section 6328.5, any person, partnership, corporation or state or local government agency wishing to undertake any project, as defined in Section 6328.3(r), in the "CD" District, shall obtain a Coastal Development Permit in accordance with the provisions of this Chapter, in addition to any other permit required by law. Development undertaken pursuant to a Coastal Development Permit shall conform to the plans, specifications, terms and conditions approved or imposed in granting the permit.

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.

- (a) The maintenance, alteration, or addition to existing single-family dwellings; however, the following classes of development shall require a permit because they involve a risk of adverse environmental impact:
 - (1) Improvements to a single-family structure on a beach, wetland 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 50 feet of the edge of a coastal bluff.
 - (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 extent 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 internal floor area of an existing structure, the construction of an additional story (including lofts) in an existing structure,

CHAPTER 6. "R-1" DISTRICTS
(ONE-FAMILY RESIDENTIAL DISTRICT)

SECTION 6160. REGULATIONS FOR "R-1" DISTRICTS. The following regulations shall apply in all "R-1" districts and shall be subject to the provisions of Chapter 22 of this Part.

SECTION 6161. USES PERMITTED.

- (a) One-family dwellings.
- (b) Public parks and public playgrounds.
- (c) Crop and tree farming and truck gardening.
- (d) Home occupations.
- (e) Accessory buildings and accessory uses appurtenant to a residential use, provided, however, that such accessory buildings shall not be constructed until the main building shall have been constructed.
- (f)
 - (1) Keeping of pets in association with a one-family dwelling.
 - (2) Limited keeping of pets in association with a second unit.
- (g)
 - (1) Animal Fanciers in association with a one-family dwelling, subject to an animal fanciers' permit issued in accordance with County Ordinance Code, Division III, Part Two, Chapter 6.3.
 - (2) Catteries in association with a one-family dwelling, subject to a kennel/cattery permit issued in accordance with County Ordinance Code, Division III, Part Two, Chapter 12.
- (h) Reverse vending machines at public facilities.
- (i) Small collection facilities for recyclable materials at public facilities, subject to obtaining a building permit, provided that there is no additional mechanical processing equipment on site, that collection facilities shall not be located within 50 feet of a residence, nor decrease traffic or pedestrian circulation or the required number of on-site parking spaces for the primary use, and all litter and loose debris shall be removed on a daily basis.

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R-1 Zone Regulations	

- (j) Large Residential Day Care Facilities for Children (Family Day Care Homes; 7-12 children), subject to a large family day care permit issued in accordance with the County Zoning Regulations, Chapter 22, Section 6401.2.
- (k) The following uses subject to securing a use permit in each case:
 1. Churches, schools, libraries and fire stations.
 2. Golf courses with standard length fairways and country clubs.
 3. Non-commercial clubs.
 4. Nurseries and greenhouses used only for the propagating and cultivating of plants, provided that no retail sales shall be allowed. The granting of such use permits shall generally be confined to those areas of the County in which the nurseries and greenhouses are already established, and use permits granted to applicants presently operating such greenhouses and nurseries shall normally cover the proposed future development of all property owned or controlled by the applicant.
 5. A second residential unit on a parcel at least 7,000 sq. ft. in size in the Coastal Zone.

SECTION 6162. SECOND DWELLING UNITS. See Chapter 22.5 for provisions to allow second dwelling units to locate in the R-1 Zoning Districts.

- (Section 6161(f) - Amended by Ordinance No. 3423 - November 10, 1992)
- (Section 6161(g) - Amended by Ordinance No. 3423 - November 10, 1992)
- (Section 6161 (h) - Amended by Ordinance No. 1427 - September 27, 1960)
- (Section 6161 (h)(5) - Added by Ordinance No. 2705 - December 16, 1980)
- (Section 6161(h) - Amended/Added by Ordinance No. 3131 - December 15, 1987)
- (Section 6161(i) - Amended/Added by Ordinance No. 3131 - December 15, 1987)
- (Section 6161(h), (i), and (j) - Amended/Added by Ordinance No. 3157 - September 13, 1988)
- (Section 6161(j) - Amended by Ordinance No. 3791 - October 21, 1997)
- (Section 6161(j) - Added by Ordinance No. 3791 - October 21, 1997)
- (Sections 6162, 6163, 6164 - Repealed by Ordinance No. 1483 - October 10, 1961)
- (Section 6162 - Added by Ordinance No. 2877 - January 24, 1984)
- (Section 6162 - Amended by Ordinance No. 3057 - March 4, 1986)

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(7/12/99)

12. Non-Conforming Structure. Any legal building or structure that does not conform with the development standards required by the zoning regulations currently in effect including, but not limited to, density (number of dwelling units per parcel area), setback, height, floor area, daylight plane, and lot coverage requirements.
13. Non-Conforming Use. Any legal land use that does not conform with the uses permitted by the zoning regulations currently in effect. A non-conforming use includes the area devoted to the use, the structure(s) housing the use, and all use related activities.
14. Non-Conforming Situation. Any zoning nonconformity that is not a non-conforming parcel, non-conforming use or non-conforming structure. Examples include non-conforming parking, landscaping, or signs.
15. Principal Use. The primary or predominant use of any parcel.
16. Residential Use. One-family dwellings, two-family dwellings, multiple-family dwellings, second dwelling units, and residential accessory uses, buildings or structures.
17. Unimproved Parcel. Any parcel that is not developed with a building or structure to serve the principal use of the parcel, e.g., a parcel in a residential district not developed with a dwelling unit.
18. Zoning Nonconformity. Any legal parcel, use, building, structure, or other situation that does not conform with the zoning regulations currently in effect.
19. Zoning or Building Code Regulations Currently in Effect. Those regulations in effect at the time when final approval is given to an entitlement under this Chapter. Final approval does not occur until all administrative appeals are exhausted.

SECTION 6133. NON-CONFORMING PARCELS.

1. Continuation of Non-Conforming Parcels. A non-conforming parcel may continue as a separate legal parcel, subject to the merger provisions of the County Subdivision Regulations, and compliance with all other provisions of this Chapter.
2. Enlargement of Non-Conforming Parcels. A non-conforming parcel may be enlarged through the addition of contiguous land by lot line adjustment, lot consolidation, merger, or resubdivision, provided that the enlargement does not create nonconformities on adjoining property.

EXHIBIT NO.	8
APPLICATION NO.	
	2-03-1-EDD
Regulations for Non-Conforming Parcels	

3. Development of Non-Conforming Parcels

a. Development Not Requiring Use Permit

- (1) Unimproved Non-Conforming Parcel. Development of an unimproved non-conforming parcel may occur without the issuance of a use permit when any of the following circumstances ((a), (b), (c), or (d) below) exist:

<u>Required Minimum Parcel Size</u>	<u>Actual Non-Conforming Parcel Size</u>
(a) 5,000 sq. ft. (area)	≥3,500 sq. ft. (area)
(b) 50 ft. (width)	≥35 ft. (width)
(c) >5,000 sq. ft. (area)	≥5,000 sq. ft. (area)
(d) ≥50 ft. (width)	≥50 ft. (width)

Proposed development on the unimproved non-conforming parcel shall conform with the zoning and building code regulations currently in effect.

- (2) Improved Non-Conforming Parcel. Development of an improved non-conforming parcel may occur without requiring the issuance of a use permit provided that the proposed development conforms with the zoning and building code regulations currently in effect.

b. Development Requiring a Use Permit

- (1) Unimproved Non-Conforming Parcel

- (a) Development of an unimproved non-conforming parcel shall require the issuance of a use permit when any of the following circumstances ((a), (b), (c), or (d)) exist:

<u>Required Minimum Parcel Size</u>	<u>Actual Non-Conforming Parcel Size</u>
(a) 5,000 sq. ft. (area)	<3,500 sq. ft. (area)
(b) 50 ft. (width)	<35 ft. (width)
(c) >5,000 sq. ft. (area)	<5,000 sq. ft. (area)
(d) ≥50 ft. (width)	<50 ft. (width)

- (b) Proposed development on any unimproved non-conforming parcel that does not conform with the zoning regulations in effect shall require the issuance of a use permit
- (2) Improved Non-Conforming Parcel. Proposed development on an improved non-conforming parcel, that does not conform with the zoning regulations currently in effect, shall require the issuance of a use permit.
- (3) Use Permit Findings. As required by Section 6503, a use permit for development of a non-conforming parcel may only be issued upon making the following findings:
 - (a) The proposed development is proportioned to the size of the parcel on which it is being built,
 - (b) All opportunities to acquire additional contiguous land in order to achieve conformity with the zoning regulations currently in effect have been investigated and proven to be infeasible,
 - (c) The proposed development is as nearly in conformance with the zoning regulations currently in effect as is reasonably possible,
 - (d) The establishment, maintenance, and/or conducting of the proposed use will not, under the circumstances of the particular case, result in a significant adverse impact to coastal resources, or be detrimental to the public welfare or injurious to property or improvements in the said neighborhood, and
 - (e) Use permit approval does not constitute a granting of special privileges.

SECTION 6134. NON-CONFORMING USES.

1. Continuation of Non-Conforming Uses. A non-conforming use may continue provided all other provisions of this Chapter are met.

The Board of Supervisors, upon recommendation by the Planning Commission at a public hearing, can require that any non-conforming use (except residential) be removed or converted to a permitted use within a prescribed period of time, as allowed by law, and upon findings that (1) the non-conforming use is detrimental to the health, safety or public welfare of the surrounding area, and (2) it degrades the neighborhood character.

