

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY

W-4a



June 26, 2003

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 Miramar, 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 Miramar (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

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

CORRESPONDENCE



RECEIVED
JUL 11 2003
CALIFORNIA
COASTAL COMMISSION

July 8, 2003

Honorable Commissioner Mike Reilly, Chair and Members
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

**ENVIRONMENTAL
SERVICES
AGENCY**

Dear Honorable Commissioner Reilly and Members:

SUBJECT: Item No. F14a on your July 11, 2003 agenda, Carey lot line
adjustment, corners of Coronado and Magellan Avenues, Miramar
area, San Mateo County

Your staff recommends that you conduct a "dispute resolution hearing" on this matter and determine that this item is appealable to your Commission. We respectfully disagree and request that you simply drop this matter from your agenda as not in order and direct your staff to continue its on-going discussions with County staff on this and several other largely procedural issues about which we disagree. We have, in fact, been involved in discussions with your staff over the past few months about this disagreement and several others relating to their new interpretations of our certified LCP. We want to resolve these issues in a constructive manner that improves trust and collaboration between our agencies and eliminates confusion for our applicants.

The County's position in this matter is simple. Our certified Local Coastal Program and our certified Zoning Regulations state, "The projects listed below shall be exempt from the requirement of a Coastal Development Permit . . . Lot line adjustments not resulting in an increase in the number of lots." We and your staff have honored and followed this provision for over 20 years. Recently, however, your staff has concluded that this exemption is no longer valid, despite being part of our certified LCP, and has subsequently questioned and sometimes attempted to invalidate lot line adjustments approved by the County pursuant to this exemption. Your staff has cited the La Fe case in support of its position, but it is important to note that in La Fe the Coastal Commission had not certified an exemption for lot line adjustments as it has in our case. We don't disagree with La Fe's basic conclusion that lot line adjustments are development. Our point is simply that such development is exempt from the requirement of a Coastal Development Permit under the terms of our certified Local Coastal Program. Our position is that any change to our certified exemption for lot line adjustments should be done by amendment of our LCP, not through some sort of administrative process. Finally, we believe it follows that if a lot line adjustment is exempt from the requirement of a CDP, it cannot possibly be appealable to the Coastal Commission.

Agricultural
Commissioner/ Sealer of
Weights & Measures

Animal Control

Cooperative Extension

Fire Protection

LAFCo

Library

Parks & Recreation

Planning & Building

You may wonder, then, why a CDP was processed in the Carey case that is now before you. Recognizing your staff's position on this matter, we did not want to place applicants in a "Catch-22" where they would receive an approval of their lot line adjustment from the County only to have that approval challenged and "invalidated" by your staff. So we informed applicants of our dispute and told them that, while we would not require a CDP, we would process one if asked by them to do so. The Careys chose that route, hoping to avoid further dispute with your staff. In issuing our notices of decision in this matter, however, we could not state that this matter is appealable to the Coastal Commission because we do not believe that to be true, based on the provisions of our certified LCP. Our initial notice was thus silent on that matter but upon your staff's insistence that our notice address this issue we did so via a subsequent notice stating this project is not appealable to your Commission. Your staff, of course, disagrees and has essentially held the Carey project hostage pending our acquiescence to their point of view. Their latest step has been to schedule this dispute resolution hearing, which we believe to be out of order.

With regard to the merits of Commission staff's conclusion that the appealability of the County's action is an appropriate matter for the Commission's consideration, we note that Title 14, section 13569 of the California Code of Regulations, the very section that Commission staff relies on as authority to bring this matter to the Commission, indicates that the question of appealability will 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." That section makes it clear that the local government makes the determination as to whether a project is appealable to the Coastal Commission, with specific reference to the certified LCP. That is precisely the standard that the County employed in making its determination that approval of lot line adjustments are not appealable based on the specific exemption in the County's certified LCP. Only where that determination is challenged by the applicant or an interested person does the Coastal Commission or its staff get involved. To our knowledge, neither the applicant in this matter nor any interested person challenged our determination in this matter up through and including our initial staff decision and a subsequent appeal to the County Planning Commission. The only challenge to that determination came from your staff, in furtherance of their position that the exemption for lot line adjustments in our certified LCP is invalid. Absent a timely challenge to our conclusions in this matter by the applicant or an interested person, we believe this dispute resolution hearing is not warranted and is out of order.

Your staff's report on this matter goes on to cite various arguments as to why lot line adjustments should be subject to a coastal development permit. As noted above, the County's position is simply that, since no coastal development permit is required for this lot line adjustment, no appeal from the local decision approving that lot line adjustment can be taken. Your staff nevertheless attempts to bootstrap their argument regarding appealability by asserting that, since lot line adjustments are not listed as a principal permitted use in the R-1/S-94/CD zoning district in which the subject property lies, the approval must be appealable. Commission staff goes further by noting that lot line adjustments are not identified as a permitted use at all in that zoning district, suggesting (under Commission staff's logic) that they could never be allowed in that zoning district in the first instance, thus making the entire issue of appealability academic. In fact, lot line adjustments are not identified as an allowed use in any County zoning district because the authority for line adjustments is derived from the Subdivision Map Act, and not from the County's zoning power, and thus lot line

Honorable Commissioner Mike Reilly and Members
California Coastal Commission
July 8, 2003
Page 3

adjustments are not properly considered uses of property in the zoning context. If Commission staff's position is accepted and taken to its logical conclusion, lot line adjustments would not be allowed anywhere in the coastal zone, a result clearly in conflict with the County's LCP.

Further, Commission staff's reading of Section 6133(3)(b)(1) of the Zoning Nonconformities chapter of the County's Zoning Regulations, relating to development on non-conforming parcel, ignores the context in which the term "development" is used for purposes of the of the Zoning Nonconformities chapter. A fair reading of section 6133 in its entirety clearly indicates that the term "development" is intended to mean physical development of a parcel with a structure or building. Thus, for example, section 6133(3)(b)(1)(b) states that "proposed development on any unimproved non-conforming parcel that does not conform with zoning regulations in effect shall require the issuance of a use permit", and the use permit findings themselves, set forth in section 6133(3)(b)(3), include the finding that "(a) [t]he proposed development is proportioned to the size of the parcel on which it is being built." Because the meaning of the term "development" as used in this chapter indicates physical improvement with a building or other structure, Commission staff's conclusion that a use permit for a lot line adjustment involving a non-conforming parcel is erroneous.

While the legal points discussed in the Commission's staff report may be debatable, we believe they miss the point. The point is that your staff is attempting to amend our certified LCP and Zoning Regulations through various administrative means, including this dispute resolution hearing. That is inappropriate. The disagreement over the processing of lot line adjustments in San Mateo County should be resolved through the amendment of our certified LCP and, until such an amendment is approved, the certified LCP should govern.

We respectfully request that you simply drop this dispute resolution hearing from your July agenda and direct your staff to continue its discussions with us to resolve this and other disagreements over the interpretation of our LCP through a package of LCP amendments that would clarify the points in dispute to our mutual satisfaction and change our local regulations through a legislative rather than an administrative process. Thank you.

Sincerely,



Marcia Raines
Director of Environmental Services

MR:kdr Mlrm0960_wkrm.doc

cc: Members, Board of Supervisors
John Maltbie, County Manager
Tom Casey, County Counsel
Terry Burnes, Planning Administrator

Charles Lester,
California Coastal Commission
Tom Carey, applicant
Norm Book, Attorney for Tom Carey

CARR, MCCLELLAN, INGERSOLL, THOMPSON & HORN
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW
216 PARK ROAD, POST OFFICE BOX 513
BURLINGAME, CALIFORNIA 94011-0513

NORMAN I. BOOK, JR.
nbook@cmithlaw.com

TELEPHONE (650) 342-9600
FACSIMILE (650) 342-7685
www.cmithlaw.com

July 10, 2003

RECEIVED

JUL 11 2003

CALIFORNIA
COASTAL COMMISSION

Honorable Commissioner Mike Reilly, Chair and Members
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Item No. F14a on your July 11, 2003 agenda, Carey lot line adjustment, corners
of Coronado and Magellan Avenue, Miramar area, San Mateo County

Dear Honorable Commissioner Reilly and Members:

Our firm represents Tom Carey one of the property owners in the above captioned matter.

On the issue of appealability, we are in accord with the position of the County of San Mateo as set forth in Terry Burnes' letter of July 8, 2003. Attempting to amend the County's certified Local Coastal Program by administrative fiat is both unfair and illegal. This is particularly true as to property owners who in good faith have expended time, energy and money in complying with the County's requirements for lot line adjustments.

We request that you dismiss the dispute resolution hearing.

Very truly yours,



Norman I. Book, Jr.

NIB:om

cc: Tom Carey

24133.00001\BGLIB1\1186613.1

