

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
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Filed: June 26, 2006
49th Day: August 14, 2006
(Waived)
Staff: YinLan Zhang-SF
Staff Report: July 27, 2006
Hearing Date: August 10, 2006
Commission Action:

APPEAL STAFF REPORT
SUBSTANTIAL ISSUE DETERMINATION

APPEAL NO.: A-2-PAC-06-007

APPLICANT: FPA/BAF Lands End Associates LP
LOCAL GOVERNMENT: City of Pacifica

LOCAL DECISION: Approval with Conditions

PROJECT LOCATION: 100 Esplanade, Pacifica, San Mateo County, APNs 009-023-070
and 009-024-010

PROJECT DESCRIPTION: Construction of an outdoor pool, expansion of an existing
clubhouse, and addition of five parking spaces

APPELLANT: Bart Willoughby

STAFF
RECOMMENDATION: No Substantial Issue

SUMMARY OF STAFF RECOMMENDATION

The City of Pacifica approved with conditions a coastal development permit for the construction of a 260 square-foot pool, the expansion of an existing clubhouse by 580 square feet, and addition of five parking spaces at the Lands End apartment complex.

The appellant contends that because the City did not consider the economic impacts of the approved development on the residents at Lands End, and because the City did not provide adequate public notice to the residents of Lands End, the approved development is inconsistent with the City's certified Local Coastal Program (LCP) concerning the protection of affordable housing and public noticing requirements.

Commission staff recommends that the Commission determine that the appeal raises no substantial issue regarding whether the development approved by the City is consistent with the LCP. The Lands End Apartments are all market-rate units, and thus, the affordable housing policies of the LCP are not applicable to the approved development. As market rate units, the City is not required to make a finding regarding the economic impact of the approved development or its consistency with the affordable housing policies of the LCP. Even if the policies could be interpreted to apply to market-rate housing that is considered “affordable” in the general sense, the approved development would still not raise a substantial issue because these policies do not prohibit improvements to apartment complexes or control the rate of rental units. Rather, the LCP affordable housing policies protect affordable housing by regulating the location and type of new development and limiting the conversion and demolition of existing affordable units. Since the approved development involves only improvements to an existing apartment complex and would not reduce the number or ownership type of the existing rental units, even if the LCP could be interpreted to apply to market-rate housing, the approved development would still not raise a substantial issue of conformity with LCP affordable housing policies.

The appellant’s contentions concerning public notice involves a procedural rather than a substantive issue and in this case do not raise a substantial issue with respect to the conformity of the approved development with the Pacifica LCP. The appellant contends that the City failed to provide adequate notice of the City Council hearing on the appeal of the Planning Commission approval. Although the City properly noticed the Planning Commission hearing at which the City approved the permit for the project, the Lands End residents did not receive notice by mail of the City Council hearing on the appeal filed by Mr. Willoughby of the Planning Commission approval. However, Mr. Willoughby has indicated that he notified some of the other apartment complex residents about the City Council hearing on his appeal. Thus, both the appellant and other Lands End residents received actual notice of the City Council hearing. As such, the City’s noticing error did not prevent the appellant or other members of the public concerned with the approved development from participating in the City Council hearing. Moreover, the approved development does not raise any issues of conformity with the coastal resource or public access policies of the LCP or the access policies of the Coastal Act. Therefore, staff recommends that the Commission find that the procedural issues related to public notice of the City Council hearing do not raise a substantial issue of conformity with the policies of the certified LCP.

Commission staff recommends that the Commission find that the project, as approved by the City, raises no substantial issue with regard to conformance of the approved development with the affordable housing and public noticing policies of the City’s LCP.

1.0 STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

Motion

I move that the Commission determine that Appeal No. A-2-PAC-06-007 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of Substantial Issue

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution of Substantial Issue

The Commission hereby finds that Appeal No. A-2-PAC-06-007 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

2.0 PROJECT BACKGROUND

2.1 Local Government Action

On November 21, 2005, FPA/BAF Lands End Associates (Lands End) submitted an application for a coastal development permit for the construction of an outdoor pool, enlargement of the existing clubhouse, and addition of five parking spaces.

On April 17, 2006, the Pacifica Planning Commission considered and approved with conditions the coastal development permit application.

On April 26, 2006, Bart Willoughby a resident of the Lands End Apartments appealed the Planning Commission's approval to the City Council.

On June 12, 2006, the Pacifica City Council County denied the appeal and upheld the Planning Commission's decision to approve the coastal development permit.

2.2 Filing of Appeal

The Commission received the Notice of Final Action for the City's action on the CDP application for the approved development on June 15, 2006 (Exhibit 1). In accordance with the Commission's regulations, the 10-working-day appeal period ran from June 16 through June 29, 2006 (14 CCR Section 13110). On June 26, 2006, within 10 working days of receipt by the Commission of the Notice of Final Local Action, Bart Willoughby appealed the City's action on the CDP to the Commission. (Exhibit 2)

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The appeal on the

above-described decision was filed on June 26, 2006 and the 49th day is on August 14, 2006. On July 12, 2006, the applicant waived its right to a hearing within 49 days of the date the appeal was filed.

In accordance with Section 13112 of Title 14 of the California Code of Regulations, on June 26, 2006, staff requested all relevant documents and materials regarding the subject approval from the City to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request from the Commission to provide the relevant documents and materials. The Commission received the local record from the City on June 30, 2006.

2.3 Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments that constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county.

The proposed development is appealable to the California Coastal Commission because it is located between the sea and the first public road paralleling the sea and within three hundred feet of the top of the seaward face of a coastal bluff.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons eligible to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted to the Commission or the Executive Director in writing.

It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it is determined that the project raises no substantial issue, the Commission will conduct a full de novo public hearing on the merits of the project at the same or subsequent hearing. If the Commission conducts a de novo hearing on the appeal, the applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program and the public access policies of the Coastal Act.

3.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

3.1 Project Location and Description

The Lands End Apartments were constructed in 1972 and are located on a bluff top in northern Pacifica at 100 Esplanade Avenue. Other apartment buildings/condominiums are located to the north and south of Lands End, Palmetto Avenue is to the east and the beach is to the west. The 9.3-acre site consists of 260 apartment units in eleven buildings and includes a 2,660 square-foot clubhouse, hot tub, and internal access roads and parking for residents and visitors. The site is designated as High Density Residential in the Pacifica Land Use Plan and zoned R-3/Coastal Zone (Multi-Family Residential/Coastal Zone).

The approved development consists of construction of a 260 square-foot outdoor pool, expansion of the existing clubhouse by 580 square feet, and addition of five parking spaces. The existing clubhouse and hot tub are located within the central western edge of the apartment complex. An internal access road and parking spaces separates the clubhouse, hot tub and adjacent apartment buildings from the blufftop. According to the site plans (Exhibit 3), the pool would be located east of the existing hot tub, approximately 200 feet from the bluff top, the existing clubhouse is located approximately 160 feet inland of the blufftop, and the new parking spaces would be located adjacent to existing parking spaces, approximately 40 feet from the bluff edge.

The City required a coastal development permit for the proposed development because pursuant to Section 9-4.4303 of the LCP and Section 13253 of the Commission regulations, improvements to structures other than single-family residences and public works facilities located between the first public road and the sea that would result in 10 percent increase in internal floor area would require a coastal development permit. The proposed improvements to the clubhouse would be located between the first public road and the sea and would increase the floor area of the existing structure by more than 10 percent, and thus a coastal development permit is required. The proposed pool also required a coastal development permit because the pool would be a new structure, unattached to any parts of an existing structure, and thus, would not be considered an improvement to a structure other than a single-family residence or public works facility which is exempt from permitting requirements.

The City's conditions of approval incorporate the recommendations of the Commission's staff geologist to ensure that the approved pool will not adversely affect the geologic stability of the site, as well as requirements to submit final building and landscaping plans, prevent discharge of polluted storm water, and restrict the noise and hours of operation of the pool.

3.2 Substantial Issue Analysis

Section 30603(b) (1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

The contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP.

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the City presents no substantial issue.

3.2.1 Affordable Housing

Appellant's Contentions

The appellant contends:

In January 2006, the new Lands End Landlord (Fowler) began an aggressive campaign in upgrading and making cosmetic improvements to individual apartment units... Additionally, for the moderate income tenants who did not have a lease agreement and renting month to month the rents increased immediately in most all cases over \$400 per month... The majority of moderate-income level tenants could not pay the substantially higher rents and were ultimately forced out so that Lands End could renovate the units and charge higher rents.

It is the intent of Lands End to change the character of the ocean front property at Lands End from moderate-income level households to higher income households.

The City of Pacifica abrogated the duty required under Public Resource Code Section 30614 in failing to make the necessary inquiries of the applicant as to the economic impact the coastal development permit would have on the residents of Land End Apartment complex consisting entirely of moderate income households.

...
The economic impact to the Lands End residents of the Coastal Development Permit was never addressed as part of the permit process...

It is clear from the applicant's behavior that Lands End is being changed from supporting moderate-income households to a resort atmosphere for the purpose of attracting high-end incomes...

It is this kind of activity that Willoughby (the appellant) believes that Public Resource Code Section 30614 forbids and that at a minimum the City and Coastal Commission have an obligation to inquire as to the economic impact of a coastal development permit has on affordable or moderate income housing in California...

The appellant asserts that the proposed development is inconsistent with Section 30614 of the Coastal Act, which states:

- (a) The commission shall take appropriate steps to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit.
- (b) Nothing in this section is intended to retroactively authorize the release of any housing unit for persons and families of low or moderate income from coastal development permit requirements except as provided in Section 30607.2.

In order for the appeal to be considered as raising valid grounds, the appellant's contentions must be liberally interpreted to raise issues about whether that the development approved by the City is inconsistent with the affordable housing policies of the LCP, which include the following in the Housing section of the LUP:

Land use regulations and housing programs shall be established which conserve the character and existing patterns of low and moderate income residential

development existing in Pacifica's coastal neighborhoods. These conservation actions include regulations for condominium/stock cooperative conversions and could include such things as zoning changes; mixed commercial residential uses; established height limitations; regulate condominium conversions; develop new approaches to off-street parking requirements; encourage rehabilitation; and modify land uses as suggested in Local Coastal Land Use Plan.

Low and moderate income housing shall be protected from replacement by higher valued housing through such programs as subsidized rehabilitation loans (HELP), rezoning to discourage intensification of residential land use, promoting Section 8 rents subsidy and being receptive to any programs available now or in the future from the State or Federal government which will preserve the existing housing stock and make it affordable to the very low and low income households in the community.

Continue the Pacifica tradition of mixed-income neighborhoods by encouraging, promoting, protecting and developing regulations, attitudes and local responsiveness of programs which will reinforce this unique quality.

Continue to assume the local share of the region's low income households and provide housing opportunities for them within the Coastal Zone as well as throughout the rest of the community.

Achieve a working balance of residential, visitor-serving and neighborhood-serving commercial activity which does not threaten affordable housing or create an enclave of such housing.

Encourage higher-valued residential development in well established neighborhoods where the new development will reinforce the existing residential character and not threaten the affordability or result in clearance of existing low and moderate income units.

...

The loss of low income units by demolition shall be monitored to insure that households in this income range can continue to gain access to their share of housing in Pacifica's Coastal Zone.

Discussion

The appellant contends that the approved development is inconsistent with the LCP's affordable housing policies because the construction of the pool, expansion of the clubhouse, and addition of parking spaces would cause rent increases and make the apartment units less affordable to the tenants, and because the City did not address the economic impacts of the development on the residents in its approval of the coastal development permit.

To analyze whether the approved development raises a substantial issue with the affordable housing policies of the LCP, the issue of whether or not Lands End Apartments are subject to the LCP affordable housing policies should first be addressed.

The City's certified LCP does not contain a definition of affordable housing. Coastal Act Section 30604 adopts the definition of affordable housing contained in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code which states:

Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

According to the state law definition above, affordable housing is determined by the percentage of the units required to be sold or rented at specified costs to very low, low, or moderate income households as defined in Sections 50093 of the Health and Safety Code or Section 65008 of the Government Code. To meet the state law definition of housing for very low, low, or moderate income households, a property owner of rental units is required to rent a certain percentage of housing units to very low, low, or moderate income households and to restrict rent on those units based on the area's median income.

According to title documents (Exhibit 4) and other records, the Lands End Apartments development was originally permitted by the City of Pacifica in 1972 as a market rate apartment project and was not subject to any affordable housing requirements. A previous owner, Points West Villa, Inc, obtained a use permit from the City in 1983 to convert the apartments to condominiums. As a condition of the use permit, the property owner recorded an agreement against the property that dedicated 40 units to low and moderate-income households if the units were sold as individual condominiums (Exhibit 5). However, while the apartments were converted to condominiums, they were never sold as individual condominium units. In 1988, after Pacifica Associates, KKB Partners, and Trollhagen Inc. acquired the property from Points West, they applied for and were granted a "reversion to acreage" from the City that converted the property back to an apartment complex (Exhibit 6). Because the apartments at Lands End were never sold as individual condominium units and have been reverted from condominiums to apartment units, the restrictions imposed by the 1983 agreement and use permit never took effect. As an apartment complex Lands End remains market-rate housing as originally permitted.

The appellant contends that the construction of the approved development at Lands End would result in the loss of apartment units for moderate income households in conflict with LCP affordable housing policies. However, because the Lands End Apartment complex is not designated as affordable housing but instead is a market-rate development, the affordable housing policies of the LCP are not applicable to the approved development. In addition, because the Lands End Apartments are market-rate units, the approved development's potential impact

on the cost of the rental units would not impact the overall availability of designated affordable housing stock in the City.

The City's findings of approval for the coastal development permit are based on sufficient factual and legal support that the proposed project conforms to the policies of the LCP. Specifically, the City found that the proposed development would be consistent with LCP policies concerning community character, coastal access and geologic hazards. The City did not make a finding regarding consistency with the affordable housing policies of the LCP. However, since the available evidence shows that Lands End Apartments are market-rate housing, the LCP affordable housing policies are not applicable to the approved development. Thus, the City of Pacifica correctly applied the policies of the certified LCP in approving the coastal development permit and the approved development does not raise a substantial issue of conformity with the affordable housing policies of the certified LCP or the public access policies of the Coastal Act.

The appellant also contends that the LCP requires the City to address the economic impacts of the approved development on the residents of Lands End. However, because Lands End Apartments are market-rate units not subject to the affordable housing policies of the LCP the City is not required to make a finding about the economic impact of the approved development. Therefore, the approved development does not raise a substantial issue of conformity with the affordable housing policies of the certified LCP or the public access policies of the Coastal Act.

Even if the City's LCP policies on affordable housing could be interpreted to apply to market-rate housing that is "affordable" in the general sense, the approved development still would not raise a substantial issue of conformity with LCP housing policies because these policies do not protect affordable housing through restricting improvements to existing rental properties or controlling rental rates. The LCP contains broad policies to protect affordable housing by limiting conversions of rental units to condominiums/stock cooperatives, promoting loans and federal affordable housing programs, regulating the type and location of new development, and monitoring loss of low income units through demolition. Thus, so far as these policies could be interpreted to apply to market-rate rental units such as the Lands End Apartments, the approved development would not raise a substantial issue because it does not involve conversion of rental units to condominiums or stock cooperatives or demolition and replacement of existing rental units with fewer units. Since the approved development does not result in the loss of any rental units to demolition or conversion to condominiums but consists of only improvements to the common areas of an existing apartment complex, even if the LCP policies could be interpreted to apply to market-rate housing that are considered "affordable" in the general sense, the approved development still would not raise an issue of conformity with the affordable housing policies of the certified LCP or the public access policies of the Coastal Act.

3.2.2 Public Noticing

Appellant's Contentions

The appellant contends that the City did not provide adequate and timely notice of the June 12, 2006 City Council hearing on his appeal of the Planning Commission approval, stating:

The City of Pacifica and the applicant Lands End abrogated the duty required under Section 930.61 of the Coastal Zone Management Act in failing to provide

adequate and timely notice of the appeal hearing to Lands End residents that effectively reduced the public participation of the appeal and public comments under provisions of 930.61.

City staff could not definitely confirm that the public notices had been mailed to all of the Lands [End] tenants as required...

Willoughby could find no tenant at Lands End that received the public notice and therefore concluded that the notices were actually never sent.

Again, in order for the appeal to be considered as raising valid grounds, the appellant's allegations are liberally interpreted to raise issues about whether the development approved by the City is inconsistent with the public noticing policies of the LCP contained in Section 9-4.4304 (g) of the City's Zoning Code which states:

At least seven calendar days prior to the first public Planning Commission hearing on a proposed coastal development, the Director shall provide notice by first-class mail of the pending coastal development application to:

1. The applicant and agent;
2. Property owners within three hundred feet and residents within 100 feet of the proposed project
- ...

Discussion

The public noticing provisions in the LCP seek to ensure that members of the public have ample opportunity to participate in and express their views and concerns during the consideration of a coastal development permit. The City of Pacifica held two hearings on the approved development, a Planning Commission hearing on April 17, 2006, and a City Council hearing on June 12, 2006. The appellant contends that the latter hearing was not properly noticed because the residents of Lands End did not receive notice of the hearing by mail and were only made aware of the hearing by the appellant.

City records indicate that public notice regarding the coastal development permit application was mailed on June 2, 2006, ten days before the June 12, 2006 City Council hearing (Exhibit 7). However, the mailing list used by the City does not contain addresses of any of the residents of Lands End and two residents, including the appellant, testified at the City Council hearing that they did not receive notice of the hearing. Thus, it appears that the City did not mail notices to all residents within 100 feet of the development for the June 12, 2006 City Council hearing as required by the LCP.

As noted above, the City held two hearings regarding the approved development, one by the Planning Commission on April 17, 2006 and another by the City Council on June 12, 2006. The appellant does not contest the noticing of the Planning Commission hearing. The Planning Commission received several public comments, including comments from Lands End residents (including the appellant) regarding the approved development. The appellant and other residents and neighboring property owners also testified at the Planning Commission hearing. Comments

and testimony to the Planning Commission indicate that residents and adjacent property owners were concerned with the noise from use of the swimming pool, potential impacts on rent, and the geologic stability of the bluff (Exhibit 8). The Planning Commission conditioned permit for the approved development to address the geologic and noise issues.

Although the Lands End residents did not receive notice by mail of the City Council hearing, the appellant requested that the notice be faxed to him, and he states in his appeal that he notified some of the other Lands End residents of the hearing. Both the appellant and two other Lands End residents testified at the City Council hearing. Thus, the City's failure to provide notice by mail to the Lands End residents of the City Council hearing did not prevent the appellant from participating in the City Council hearing on the appeal of the Planning Commission approval.

Both of the issues raised in the appeal to the Coastal Commission (i.e., adequacy of public noticing and impacts on affordability) were also raised in the appeal and hearing at City Council. The City Council addressed these issues during the hearing. According to the minutes from the City Council hearing (Exhibit 9), Council members requested City planning staff to clarify whether notices were sent to all of the residents at Lands End Apartments and planning staff responded that they could not confirm whether all the notices were mailed or received by the residents. The City Council also addressed the affordable housing issue and concluded that potential rent increases related to the project were not germane to its consideration of the coastal development permit. As of the date of this report, no issues concerning the conformity of the approved development with either the coastal resource and public access policies of the LCP or the public access policies of the Coastal Act have been raised that were not specifically addressed by the City in its review and action on the project. Thus, the issues related to noticing of the City Council hearing did not result in a failure by the City to address any substantive coastal resource or public access issues presented by the approved development. As such, the appellant's contentions concerning public notice involve a local procedural issue only rather than a substantive issue of regional or statewide importance concerning either the consistency of the approved development with the coastal resources and public access policies of the certified LCP or the public access policies of the Coastal Act.

In addition, the inadequate noticing of the City Council hearing does not establish any negative precedents in the City's interpretation of the LCP. Neither the planning staff nor the City Council contended that the LCP does not require the City to send notices by mail to residents within 100 feet of any proposed development. Rather, the inadequate noticing was a simple mistake on the City's part and not an intentional disregard of the LCP policies. Therefore, the noticing issue raised in this appeal does not adversely affect the City's interpretation of the noticing requirements in the LCP and raises no substantial issue with respect to establishing any negative precedents.

Therefore, for the reasons stated above, the Commission finds that the appellant's contentions regarding noticing of the local appeal hearing do not raise a substantial issue with respect to the conformity of the approved development with the policies of the Pacifica LCP.

3.2.3 Conclusion—No Substantial Issue

Applying the five factors listed in the prior section further clarifies that the appeal raises no substantial issue with respect to the conformity of the approved development with the policies of the Pacifica LCP.

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent with the LCP. The City's findings for approval of the local CDP state that the proposed project conforms to the policies of the LCP concerning community character, coastal access and geologic hazards. The appellant contends that the City's approval is inconsistent with the LCP policies on affordable housing and that the City should have considered the economic impacts of the development on the residents at Lands Ends. As discussed above, the Lands End Apartments are not designated as affordable housing and are not subject to the affordable housing policies of the LCP. Because Lands End apartments are entirely market-rate units, the City was not required to make a finding regarding the economic impacts of the approved development or its consistency with the affordable housing policies of the LCP. Thus, with respect to the appellant's contentions regarding LCP affordable housing policies, substantial factual and legal support exists for the City's action on the approved development.

The second factor is the scope of the development approved by the local government. The scope of the approved development is limited to minor improvements to an existing apartment complex. The approved development does not involve the construction of additional apartment units, new development in undeveloped or sensitive areas, an increase in the height of the existing apartment buildings, or other development that could result in significant coastal resource or public access impacts. Thus, the approved development is minor in scope.

The third factor is the significance of the coastal resources affected by the decision. The approved development involves only minor improvements within an existing apartment complex and will not affect significant coastal resources. In fact, the appellant does not raise any issues concerning impacts of the approved development on coastal resources or public access.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. As discussed above, because the approved development does not involve any designated affordable housing in the City, the City's decision to not apply the affordable housing policies was correct. In addition, the noticing issue raised by the appellant does not signify that the City disregards its public noticing requirements. Rather, City staff has indicated that the noticing error was an oversight. As such, the City's action on the approved development does not establish any negative precedent concerning the City's interpretation or implementation of its LCP.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. This appeal raises a local issue related to the City's approval of a coastal development permit for improvements to an existing apartment complex that affect the residents of the apartment complex only. The appeal does not raise any affordable housing issues of statewide significance because, as discussed, the approved development does not involve or have an impact on affordable housing. The public noticing issue raised in the appeal involves a procedural oversight on the part of the local government and does not involve an issue of regional or statewide significance.

Therefore, in conclusion, the Commission finds that the appeal does not raise a substantial issue concerning the consistency of the approved development with the policies of the Pacifica LCP.

EXHIBITS

1. City of Pacifica Notice of Final Action for Coastal Development Permit No. 265-05
2. Appeal Filed by Bart Willoughby to the Coastal Commission
3. Site Plans
4. Title Document for Lands End Apartments
5. Agreement by Points West Villa, Inc to Provide Affordable Housing Upon Conversion and Sale of Units as Condominiums
6. "Reversion to Acreage" for Lands End Apartments
7. City's Public Notice of the June 12, 2006 City Council Hearing
8. April 17, 2006 Planning Commission Minutes
9. June 12, 2006 City Council Hearing Minutes

A-2-PAC-06-007 (Lands End)
Substantial Issue



2-PAC-06-121

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

CITY HALL • 170 Santa Maria Avenue • Pacifica, CA 94044 • (650) 738-7341 • Fax (650) 359-5807

NOTICE OF FINAL LOCAL ACTION

Scenic Pacifica

Attn: Alfred Wanger, Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RECEIVED

June 14, 2006

JUN 15 2006

CALIFORNIA
COASTAL COMMISSION

VIA CERTIFIED MAIL

RE: Coastal Development Permit, CDP-265-05, Parking Exception, PE-135-05 and Sign Permit, S-99-06 for 100 Esplanade, Lands End Apartment Improvements, Pacifica (APN: 009-023-070 & 009-024-010)

Pursuant to Coastal Act Section 30603(d), Coastal Commission Regulations Section 13571, and Pacifica Zoning Code Section 9-4.4304(n), this notice will serve to confirm that the City of Pacifica approved the above-referenced Coastal Development Permit, and to furnish the following additional information:

APPLICANT: Nasser Elsalhi, Lands End Apartments, 100 Esplanade, Pacifica, Ca 94044

OWNER ADDRESS: Greg Fowler, FPA/BAF Lands End Associates, 23201 Lake Center Drive, Suite 330, Lake Forest, Ca 92630

PROJECT DESCRIPTION: Approval of a Coastal Development Permit to allow construction of an outdoor pool, expansion of the existing clubhouse, and replacement of freestanding signage.

DECISION: The subject permit was approved on appeal by the Pacifica City Council on June 12, 2006, subject to the attached conditions, and based on the required findings contained and adopted in the attached staff report(s).

APPEAL PROCEDURES: The appeals process may involve the following:

LOCAL

- ☐ The local appeal period ended on January 17, 2006, and no appeal was filed; or,
- ☒ The permit was appealed to and decided by the City Council, exhausting the local appeals process.

STATE

- ☒ The project IS within the Appeals Zone and the permit IS appealable to the State of California Coastal Commission if the appeal is made in writing to the Coastal Commission within 10 working days from the next business day following the date of receipt of this notice by the Executive Director of the Commission. For additional information, contact the California Coastal Commission @ 45 Fremont, Suite 2000, San Francisco, CA 94105-2219 (415) 904-5260; or,
- ☐ The project is NOT in the Appeals Zone and the permit is NOT appealable to the Coastal Commission.

Additional information may be obtained by contacting the Pacifica Planning Department @ 1800 Francisco Boulevard, Pacifica (650) 738-7341.

Michael Crabtree
Planning Director

Attachments: ☒ Letter of Approval with conditions ☒ Agenda Summary Report and Staff Report

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A-2-PAC-06-007
Lands End Apartments, Pacifica
Exhibit 1
Notice of Final Action
Page 1 of 5



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

CITY HALL • 170 Santa Maria Avenue • Pacifica, CA 94044 • (650) 738-7341 • Fax (650) 359-5807

Scenic Pacifica

June 14, 2006

Nasser Elsalhi
Lands End Apartments
100 Esplanade
Pacifica, CA 94044

Re: Coastal Development Permit CDP-265-05, Sign Permit S-99-06, and Parking Exception, PE-135-05; Add Lounge and Office Space to Clubhouse and New Outdoor Pool as Lands End Apartments (APN 009-023-070)

Dear Mr. Elsalhi:

The City Council of the City of Pacifica, at their regular meeting of June 12, 2006, DENIED the appeal, and UPHELD the Planning Commission's approval of the above referenced permits. Please be advised that the Coastal Commission will notify you regarding their appeal process. As you know, you cannot start plan check (submittal for a building permit) until the appeal period has expired for the Coastal Commission. The Planning permits are approved subject to the following conditions:

Planning Department

1. Development shall be substantially in accord with the plans entitled "Clubhouse Alterations for Lands End Apartments," consisting of 7 (seven) sheets of full size plans and 8 (eight) sheets of reduced sign plans, dated October 5, 2005 except as modified by the following conditions.
2. The applicant shall incorporate all recommendations from Mark Johnson, Ph.D., Coastal Commission Geologist as identified in Attachment d.
3. Prior to the issuance of a building permit, the applicant shall submit information on exterior finishes, including colors and materials, subject to approval of the Planning Director.
4. The applicant shall submit a final landscape plan for approval by the Planning Director prior to the issuance of a building permit. The landscape plan shall show each type, size, and location of plant materials. Landscaping materials included on the plan shall be coastal compatible and drought tolerant. Native plants shall

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Lands End Apartments, Pacifica
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be incorporated whenever possible. All landscaping shall be completed consistent with the final landscape plans prior to occupancy. In addition, the landscaping shall be maintained and shall be designed to incorporate efficient irrigation to reduce runoff, promote surface filtration, and minimize the use of fertilizers, herbicides, and pesticides. Landscaping on the site shall be adequately maintained and replaced when necessary as determined by the Planning Director.

5. All trash and recycling materials, if stored outdoors, shall be fully contained and screened from public view within the proposed enclosure. The enclosure design shall be consistent with the adjacent and/or surrounding building materials, and shall be sufficient in size to contain all trash and recycling materials, as may be recommended by Coastside Scavenger. Trash enclosure and dumpster areas shall be covered and protected from roof and surface drainage. If water cannot be diverted from these areas, self-contained drainage systems that drain to sand filters shall be installed. The property owner/homeowner's association shall inspect and clean the filters as needed. Applicant shall provide construction details for the enclosure for review and approval by the Planning Director, prior to building permit issuance.
6. Applicant shall submit a roof plan with spot elevations showing the location of all roof equipment including vents, stacks and skylights, prior to building permit issuance. All roof equipment shall be screened to the Planning Director's satisfaction.
7. All vents, gutters, downspouts, flashing, and conduits shall be painted to match the colors of adjacent building surfaces. In addition, any mechanical or other equipment such as HVAC attached to or protruding from the building shall be appropriately housed and/or screened to the Planning Director's satisfaction.
8. Roof drains shall discharge and drain away from the building foundation to an unpaved area wherever possible.
9. The applicant shall hereby agree to indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and /or any mitigation monitoring program. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorneys fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, City, and /or parties initiating or bringing such Proceeding. If the applicant is required to defend the City as set forth above, the

City shall retain the right to select the counsel who shall defend the City.

Wastewater Division of Public Works

10. The pool drains shall be connected to the sanitary sewer to the satisfaction of the City Engineer.
11. No wastewater (including equipment cleaning wash water, vehicle wash water, cooling water, air conditioner condensate, and floor cleaning wash water) shall be discharged to the storm drain system, the street or gutter.

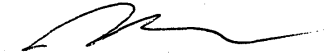
Building Department

12. Construction shall be in conformance with the San Mateo Countywide Storm Water Pollution Prevention Program. The applicant shall implement Best Management Practices during all phases of construction for the project.

Miscellaneous

13. The applicant shall construct a wall or other structures to insulate the sound from the pool equipment to the satisfaction of the Planning Director.
14. The hours of operation for the pool area shall be posted and shall be from 9 am until 9 pm, seven days a week.
15. In addition to condition #1 above, the plans shall also be substantially in accord with the drawing identified as the "Enlarged Pool Area" submitted by the applicant to the City Council on June 12, 2006, subject to review and approval by the Planning Director.

Sincerely,


Michael Crabtree
Planning Director

c: Engineering
 Building
 Fire
 Project File
 Assessor

Greg Fowler
FPA/BAF Lands End Associates
23201 Lake Center Drive, Suite 330
Lake Forest, Ca 92630

Nasser Elsalni
100 Esplanade – Lands End Apartments
June 14, 2006
Page 4

Scott Agee
Agee Engineering, Inc.
3164 Industrial Blvd.
West Sacramento, Ca 95691

EXPIRATION DATE: June 12, 2007

Coastal Development Permit, CDP-265-05,
Sign Permit, S-99-06, and Parking Exception,
PE-135-05 will expire on the above date
unless a building permit has been issued
and construction started on the site and
diligently pursued toward completion.

PLEASE NOTE THIS IS NOT A BUILDING PERMIT

A-2-PAC-06-007
Lands End Apartments, Pacifica
Exhibit 1
Notice of Final Action
Page 5 of 5



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Bart Willoughby

Mailing Address: 735 Hickey Blvd. #545

City: Pacifica, CA

Zip Code: 94044

Phone: 415.238.8837

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Pacifica, California

2. Brief description of development being appealed:

Lands End Apartments Coastal Development Permit CDP-265-05

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

100 Esplanade West of Highway 1 Pacifica, California APN: 009-023-070,009-024-010

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

- ☐ Approval; no special conditions
☐ Approval with special conditions:
☒ Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION	
APPEAL NO:	A-2-PAC-06-007
DATE FILED:	6/26/06
DISTRICT:	North Central Coast.

RECEIVED

JUN 26 2006

CALIFORNIA
COASTAL COMMISSION

Jun. 26 2006 09:54AM P2

PHONE NO. : 650 355 4443

FROM : Willoughby

A-2-PAC-06-007
Lands End Apartments, Pacifica
Exhibit 2
Appeal by Bart Willoughby
Page 1 of 13

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

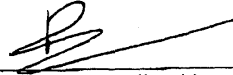
1. The City of Pacifica and the Applicant Lands End ABROGATED the duty required under Section 930.61 of the Coastal Zone Management Act in failing to provide adequate and timely notice of the appeal hearing to the Lands End residents that effectively reduced the public participation of the appeal and comments under the provisions of 930.61 subdivision (c). See attached DVD of City Council Meeting and documentation supporting the appeal request.

2. The City of Pacifica ABROGATED the duty required under Public Resources Code Section 30614 in failing to make the necessary inquiries of the applicant as to the economic impact the Coastal Development Permit would have on the residents of the Lands End Apartment Complex consisting entirely of moderate income households. See attached DVD of the City Council Meeting June 12, 2006, and documentation supporting the appeal request.

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: June 26, 2006

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

Section VI. Agent Authorization

I/We hereby authorize N/A

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

Signature of Appellant(s)

Date: N/A

1 Bart Willoughby
2 735 Hickey Blvd. #545
3 Pacifica, CA 94044
4 415.238.8837 Voice
5 650.355.4443 Facsimile

6 **APPEAL BEFORE THE CALIFORNIA COASTAL COMMISSION**
7 **NORTH CENTRAL COAST DIVISION**

8
9 **In re: FPA/BAF Lands End Associates, L.P.) PERMIT NUMBER: CDP-265-05**
10 **) APN: 009-023-070,009-024-010**
11 **) Application No 2-PAC-06-121**

12 **Comes Now** Bart Willoughby ("*Willoughby*") a six-year resident of the Lands End Apartment
13 Complex located at 100 Esplanade Pacifica, California on timely appeal before the California
14 Coastal Commission, from the Pacifica City Council ("*The City*") in denial of the appeal on June
15 12, 2006, of Planning Commission approval of the Coastal Development Permit as referenced
16 above. Willoughby timely filed written opposition to the proposed plans presented by *Fowler*
17 *Property Acquisitions/Trinity Property Management/Redwood Construction* (collectively
18 known as the "*Lands End or Applicant*") with the Planning Commission, attended and spoke at
19 the Commission Hearing on April 17, 2006.

20 This appeal involves a substantial issue under Section 930.61 of the Coastal Zone
21 Management Act and California Public Resources Code Section 30614¹ enacted in 2003 in
22 response to coastal development permits issued in affordable and moderate-income units.

23
24
25 ¹ A search in the California Reporter and California Court of Appeals Reports did not produce any
precedent case law on Public Resources Code Section 30614 or any judicial guidelines of the intent of the
law. However, AB-2158 did state: "*These units may soon be lost from the already inadequate pool of
affordable housing in the region unless steps are quickly taken...*"

1 **Factual Background**

2 Lands End Apartment Complex is a 260 multi-family complex built in 1974 and consisting
3 primarily of moderate-income residents located at 100 Esplanade, Pacifica, California West of
4 Highway 1 on the bluff over-looking the Pacific Ocean with beach access commonly known as
5 Esplanade Beach. On or about June 1, 2005, Pacific Properties former owner of Lands End
6 Apartments sold and transferred the property to a real estate investment company Fowler
7 Property Acquisitions² at a substantially reduced price.

8 In January 2006, the new Lands End Landlord (Fowler) began an aggressive campaign in
9 up-grading and making cosmetic improvements to individual apartment units (i.e. crown
10 modeling, premium cabinets, marble/granite countertops, wash/dryer in units and premium
11 appliances). Additionally, for the moderate income tenants who did not have a lease
12 agreement and renting month to month the rents increased immediately in most all cases over
13 \$400.00 per month. As lease agreements expired tenants were notified that rents would
14 increase and in most instances over \$400.00 per month. The majority of moderate-income
15 level tenants could not pay the substantially higher rents and were ultimately forced out so
16 that Lands End could renovate the units and charge higher rents.

17 It is the intent of Lands End to change the character of the ocean front property at Lands
18 End from moderate-income level households to higher income households. Lands End
19 published overview on the Fowler Website states the following: ***"Immediately following***
20 ***acquisition, a property specific business plan is implemented to maximize value. Once***
21 ***the maximum level of revenue is achieved, the property is positioned for sale"***. (See
22 attached Exhibit C of appellant's written opposition before the Planning Commission of April
23 17, 2006). As part of the planned maximizing value of the Lands End property the applicant
24

25 ² Fowler Property Acquisitions on their website www.fpacquisitions.com/Template2.cfm boast that from 1998 to the present date the corporation has purchase 238 individual multi-family units (comprising over 20,000 individual units) and having sold 191 of the 238 units within 28.5 months of purchase. Fowler averages 27.2 units a year sold and is not a permanent landlord for any length of time.

1 sought a Coastal Development Permit for enlargement of the clubhouse, parking, signage that
2 included an outdoor pool. At the Planning Commission Hearing held on April 17, 2006, Mr.
3 Kippers of Redwood Construction stated on the record the following: *"adding that it was meant*
4 *to create an atmosphere of resort living. He stated that the clubhouse also lent itself to that type*
5 *of environment"*. (See attached Planning Commission Minutes of April 17, 2006).

6 In written opposition to Planning Commission Willoughby stated that *"to maximize the value*
7 *of the Lands End property by adding or proposing in some instances useless amenities like the*
8 *outdoor pool. Moreover, it is Fowler's intent to inflate (even artificially if necessary) the market*
9 *rate rents at Lands End with such useless amenities in order to achieve the "maximum level of*
10 *revenue"*. (See attached written opposition to Planning Commission April 17, 2006). The
11 Planning Commission completely ignored the economic issues and without asking the
12 applicant about the economic impact the proposed coastal development permit would have on
13 the residents of Lands End the Planning Commission approved the project. Willoughby timely
14 appealed the Planning Commission approval of the Coastal Development Permit to the City
15 Council of Pacifica.

16 **The Pacifica City Council Hearing June 12, 2005 ³**

17 The City set the hearing on the appeal for June 12, 2006, and Willoughby provided written
18 opposition to the project including discussion of the economic issues associated with the
19 project including various flyers residents put up captioned *"Don't Get Soaked"* (Exhibit C1 & C2
20 written opposition before City Council) and where Lands End alleged to survey the residents
21 actually never did survey the residents. Even though, as stated by Mr. Kippers before the
22 Planning Commission on April 17, 2006; *"when the property was purchased, they asked the*
23
24

25 ³ As part of the record the appellant has provided a DVD of the entire City Council Hearing of June 12, 2006, as televised on the Pacifica Public Television Channel 26 the Hearing on Coastal Development Permit CD265-06 lasted 1 hour and 10 minutes. All references to locations on the DVD are made in time hours, minutes, seconds as counted on a Panasonic DVD Recorder Model DMR-55.

1 residents what amenities would make a difference...a small pool were of interest". (See attached
2 Planning Commission Minutes of April 17, 2006).

3 **The Failure to Public Notice the Appeal**

4 At the City meeting Willoughby complained that the Applicant had removed all of the Public
5 Notices of the Hearing throughout the property. Willoughby stated: "As of this hearing the
6 Applicant has failed to provide any notice to the tenants at Lands End. On June 2, 2006, I
7 received the "Notice of Hearing on Proposed Development" via facsimile from the Planning
8 Department and placed several notices throughout the Lands End Complex. On June 6th and
9 June 7th the Applicant's maintenance staff at Lands End removed all the public notices including
10 the ones placed by the City at the beach stairs location and light pole on Esplanade at Lands
11 End. The Applicant's behavior in this instance was designed to limit public participation at the
12 hearing in support of the appeal or opposition to the appeal under provision 930.61 subdivision
13 (c). While the City may proceed without required public notice the appellant does not waive the
14 public notice and the requirements that the Applicant provide notice to all tenants at Lands End.
15 Failure to notice the public by the applicant is reserved for appeal to the Coastal Commission
16 should the necessity dictate that action". (ID on DVD time stamp 17 min. 22 sec. through 18
17 min. 45 sec.).

18 DeJarnet of the City Council (ID on DVD time stamp 30 min. 00 Sec. through 31 min. 30
19 sec.) inquired about the notices issue. As did Council member Lancelle (ID on DVD time stamp
20 30 min. 10 sec. through 31 min. 30 sec.), along with Mayor Digre and Council member
21 Vreeland (ID on DVD 31 min. 31 sec. Through 32 min. 59 sec.). Staff for the City could not say
22 definitively and walked around the issue as to whether or not the notices actually were mailed
23 to each and every tenant at Lands End. Dave Sieler Senior Manager at Lands End stated that
24 he saw one notice inside the front door going out of the clubhouse. One Lands End resident
25 name Tye stated the notices on the property were taken down and that he did not receive the

1 notice from the City in the mail. (ID on DVD time stamp 43 min. 19 sec. Through 44 min. 04
2 sec.)

3 After the hearing Willoughby inquired to several residents of Lands End and could find no
4 one at Lands End who actually received the notice in the mail as stated by City Staff. Only two
5 Lands End tenants showed up at the Public Hearing and that was because Willoughby told
6 them of the hearing. Effectively Public Participation was essentially reduced at the hearing
7 because of the City of Pacifica failed to send out the notices and the behavior of the Applicant
8 in removing all of the public notices from bulletin boards in the mailrooms, laundry rooms and
9 various areas of the property. One Notice in Lands End Clubhouse inside the front door is not
10 adequate notice as the majority of tenants never go into the clubhouse and the hours of the
11 Clubhouse/Office is 9:00 AM to 6:00 PM Monday through Friday and less on Saturday and
12 Sunday. Nor is one published notice in the local newspaper on Wednesdays that is only
13 published once a week adequate notice.

14 **Failure to Address the Economic Impact on Lands End Residents**

15 Early on in the proceedings Mayor Digre attempted to try and address the questions
16 regarding the economic issues the Coastal Development Permit posed to the residents of Lands
17 End (ID on DVD at 5 min. 20 sec. Through 11 min. 10 sec.). However Planning Director
18 Crabtree stated there was no evidence presented and the economic issues to the residents was
19 not part of the Applicant's or the City's Presentation of the issues (ID on DVD at 7 min. 57 sec.
20 Through 9 min. 40 sec.). Additionally, representative of the Planning Commission stated that
21 the economic issues were not a consideration of the process (ID on DVD at 10 min. 05 sec.
22 Through 10 min. 38 sec.). Eventually, the economic impact of the Coastal Development Permit
23 upon the residents of Lands End got lost in the minutia and where the majority of the City was
24 of the opinion the economic issues were not germane to the project. Therefore, the Applicant
25 never responded nor volunteered the information to City or the Appellant. Council member

1 DeJarnet stated he didn't like what he was hearing but the economic issues as to rent were not
2 germane to the project (ID on DVD at 49 min. 51 sec. Through 50 min. 40 sec.) Council
3 member Hinton stated in 50 years the economic issues were not germane to projects (ID on
4 DVD at 52 min. 03 sec. Through 52 min. 38 sec.) and Council member Vreeland was also of
5 the opinion the economic impact to the residents was not an issue (ID on DVD at 1hour 04
6 min. 35 sec. Through 1hour 04 min. 59 sec.). The City then voted 4 to 1 to deny the appeal
7 and approve the Coastal Development Permit of the Applicant as approved by the Planning
8 Commission on April 17, 2006.

9 **Argument One**

10 The City of Pacifica and the Applicant Lands End Abrogated the Duty Required Under Section
11 930.61 of the Coastal Zone Management Act in Failing to Provide Adequate and Timely Notice
12 of the Appeal Hearing to Lands End Residents that Effectively Reduced the Public Participation
13 of the Appeal and Public Comments Under Provisions of 930.61 Subdivision (c).

14 City Staff could not definitively confirm that the public notices had been mailed to all of the
15 Lands Tenants as required. Dave Sieler Lands End Management confirmed that at least (1)
16 public notice was tacked inside the front door of the clubhouse at Lands End. However (1)
17 notice inside the clubhouse is not adequate since very few if any tenants go inside the
18 clubhouse. Willoughby requested a notice be faxed to him on June 2, 2006, and made several
19 copies of the notice and placed the notices on the bulletin boards where Lands End tenants get
20 their mail as well as in the laundry rooms and various areas of the Lands End Property. On
21 June 6 and June 7 Lands End maintenance staff removed all of the notices that Willoughby
22 had placed in areas where residents could see and read the notices.

23 One resident testified at the hearing that the notices were taken down and that he did not
24 receive the notice in the mail as staff indicated should have happened. Willoughby did not
25 receive the notice in the mail and after the hearing Willoughby canvassed several Lands End
Residents who indicated they did not receive any such notice. Willoughby could find no tenant
at Lands End that received the public notice and therefore concluded that the notices were

1 actually never sent.

2 The Applicant's removal of the public notices indicates that the Applicant did not want any
3 public participation or comment on the project. Moreover, the Applicant has attempted to shut
4 down Willoughby's attempts at the appeal process in the use of harassment and intimidation
5 early in June by stating the Willoughby's lease had expired when the lease is not expired under
6 the terms of California Civil Code Section 1945 until October 31, 2006. Furthermore, whether
7 by direct or indirect action by the Applicant, Applicant's Agent or Contractor and on June 9,
8 2006, and just prior to the hearing placed a negative flyer about Willoughby through out the
9 Lands End Complex in an attempt to limit public participation. Who else could have benefited
10 from attempting to shut down Willoughby other then the Applicant?

11 One public notice published in the Pacifica Tribune on Wednesday, May 31st prior to the
12 hearing is not adequate public notice as the Pacifica Tribune is only published once a week on
13 Wednesday and there was no further notices published after May 31st in the Pacifica Tribune.
14 More tenants at Lands End would have appeared had there been adequate and sufficient
15 public notice.

16 In some instances had adequate notice been given and where residents could not attend the
17 public hearing could have had contact information of where to send a written comment on the
18 matter. But due to the fact that no notices were mailed and notices taken down by the
19 Applicant no resident would have a point of contact for comment on the project as required
20 under 930.61 subdivision (a)(2)(4). However, there was a complete failure of the public notice
21 process by the City and the Applicant under the provisions of 930.61 subdivision (c). What
22 sanctions can be imposed in this instance is up the Coastal Commission. However, at a
23 minimum due to the failure of the City in not sending out public notices and behavior of the
24 Applicant in taking down the public notices the Coastal Commission should hold a public
25 comment on the project and provide mailings to the Lands End Tenants so that adequate
comment on the project can be made. Moreover, the Applicant needs to stop harassing and
intimidating Willoughby during the appeal process.

The City of Pacifica Abrogated the Duty Required under Public Resources Code Section 30614 In Failing to Make the Necessary Inquiries of the Applicant as to the Economic Impact the Coastal Development Permit would have on the Residents of Land End Apartment Complex Consisting entirely of Moderate Income Households.

The Applicant Lands End current owners are nothing more than real estate investors whose goal it is to buy distressed or reduced market rate properties and make cosmetic improvements to the property so as to increase the revenue stream. Once the maximum revenue stream is attained the property is placed on the open market and sold to the highest bidder. This is supported by the Applicant's own website and the evidence presented by Willoughby in the appeal process at the Planning Commission and City Council. It is clear from the Applicant's behavior that Lands End is being changed from supporting moderate-income households to a resort atmosphere for the purpose of attracting high-end incomes. This is being done to maximize the revenue stream and where Lands End will be sold once the maximum revenue of the property has been achieved. Applicant Lands End has no intention of holding on the property long term as demonstrated by the Applicant's own website information on the properties current held by the Applicant.

1 It is this kind of activity that Willoughby believes that Public Resources Code Section 30614
2 forbids and that at a minimum the City and Coastal Commission have an obligation to inquire
3 as to the economic impact of a Coastal Development Permit has on affordable or moderate
4 income housing in California. Otherwise, what is the point of Public Resources Code Section
5 30614? In search of answers Willoughby could find no case precedents in the California
6 Supreme Court Reporter or the California Court of Appeal Reports for judicial determinations
7 on the issue. This is probably due to the fact there have been no challenges to the law whether
8 by lawsuit or petition for writ of administrative mandate on review of the code. The law is so
9 new and enacted in 2003 that this is why there appears to be no cases on the issue.

10 From testimony from the City of Pacifica it is clear that the economic impact to the Lands
11 End residents of the Coastal Development Permit was never addressed as part of the permit
12 process. At each stage of the application and appeal process while questions on the economic
13 issues were presented those questions were lost in the minutia where the majority of the City
14 Council members were of the opinion that the economic issues were *not germane to the permit*
15 *process*. Willoughby contends that the City is wrong and that the Applicant has the obligation
16 to provide the economic impact of the Coastal Development Permit on the residents of Land
17 End. Moreover, Willoughby contends that Public Resources Code Section 30614 forbids Lands
18 End from changing the property from moderate-income households to higher income
19 households for the purpose of a quick sale and huge profits from the oceanfront property.

20 Failure of the Applicant to provide the information and as part of the permit process the
21 City is required under statute to make the inquiry. The City failed at all levels to make the
22 necessary inquiry. It would be interesting to see the specific business plan established by
23 Lands End that increases the revenue stream to the maximum revenue level and at what
24 income level the property would be sold.

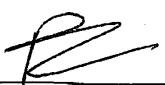
25 /////

/////

1 Given the fact the City has failed to make the necessary inquiry and the Applicant has failed
2 to provide any information as the economic impact of the Coastal Development Permit has on
3 the residents of Lands End it is now up to the Coastal Commission to make the necessary
4 inquiries on the issue. The Commission should hear the appeal and allow public comment on
5 the issues that have never been addressed. Moreover the Commission should set minimum
6 guidelines for procedures necessary to ensure that a City follows the statute and makes the
7 necessary inquiries.

8 Dated: June 26, 2006

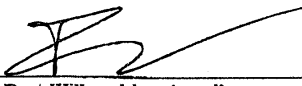
Respectfully submitted,

10 
11 Bart Willoughby, Appellant

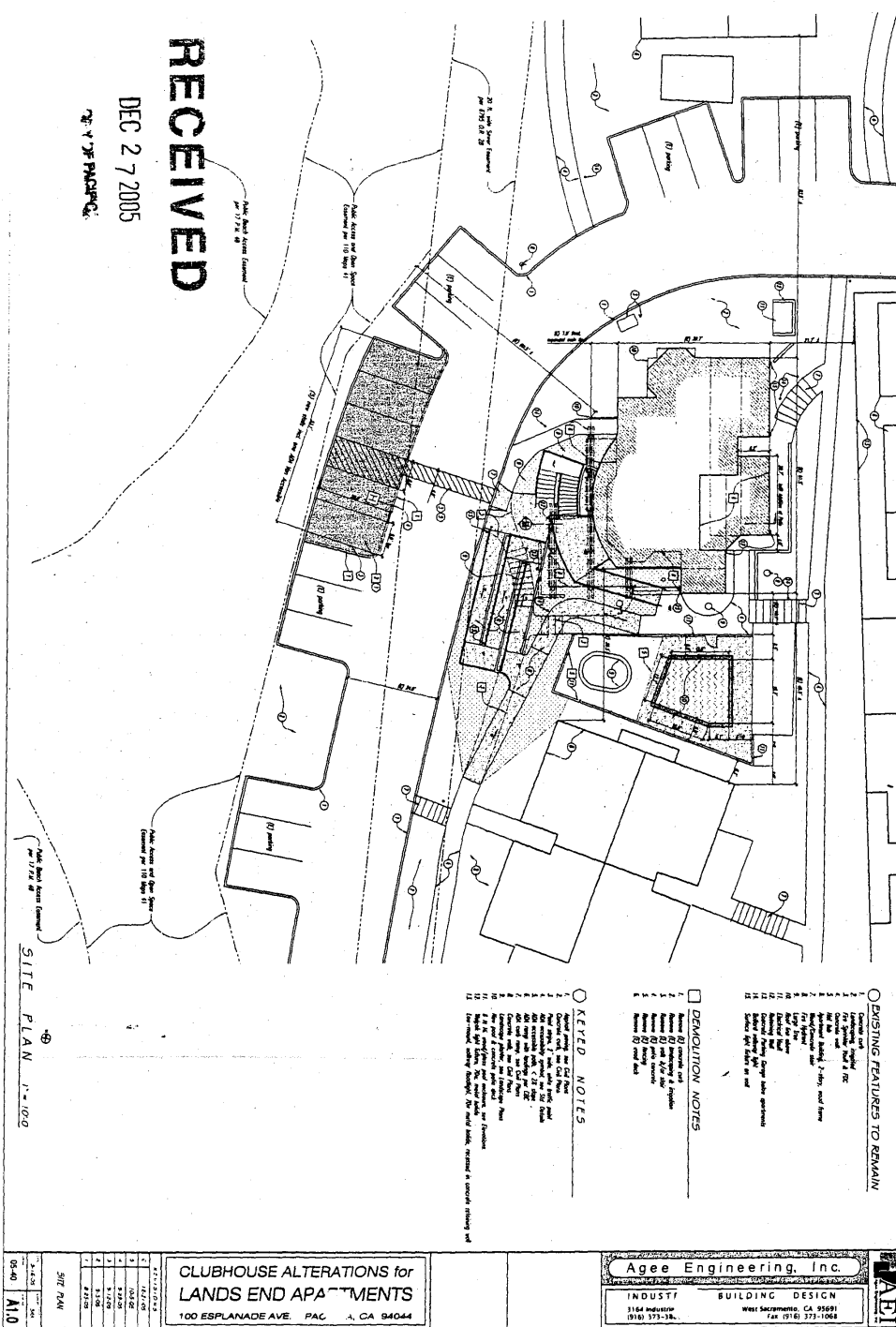
12 **Certification of DVD**

13 I Bart Willoughby herein declare that the DVD provided in this appeal is a true and
14 unaltered copy of the exact meeting held by the City Council of Pacifica on June 12, 2006,
15 regarding the appeal of the Coastal Development Permit CDP-265-06 and that meeting lasted
16 approximately 1 Hour and 10 Minutes. The meeting was television on Pacifica Public
17 Television Channel 26 and Willoughby has an original copy of the entire City Council of
18 Pacifica Meeting on VHS videotape.

19 Dated: June 26, 2006

20 By: 
Bart Willoughby, Appellant

RECEIVED
 DEC 27 2005
 CITY OF PACIFICA



Policy of Title Insurance



ISSUED BY

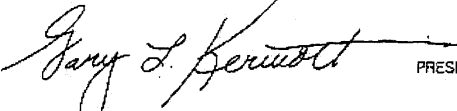

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY  PRESIDENT
ATTEST  SECRETARY



First American Title Insurance Company

A-2-PAC-06-007
Lands End Apartments, Pacifica
Exhibit 4
Title Documents
Page 1 of 5

SCHEDULE A

Premium: \$26,880.00

Amount of Insurance: \$44,800,000.00

Policy Number: NCS-165684-CC

Date of Policy: June 30, 2005 at 2:23 PM

1. Name of insured:

FPA/BAF Lands End Associates, L.P., a California Limited Partnership

2. The estate or interest in the land which is covered by this policy is:

A fee

3. Title to the estate or interest in the land is vested in:

FPA/BAF Lands End Associates, L.P., a California Limited Partnership

4. The land referred to in this policy is described as follows:

Real property in the City of Pacifica, County of San Mateo, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY LYING WITHIN THE EXTERIOR BOUNDARIES OF THAT CERTAIN MAP ENTITLED "REVERSION TO ACREAGE, BEING A REVERSION TO ACREAGE OF THAT CERTAIN SUBDIVISION KNOWN AS "POINTS WEST - A CONDOMINIUM" AS SHOWN ON THAT CERTAIN MAP RECORDED IN VOLUME 110 OF MAPS AT PAGES 41 THROUGH 53, CITY OF PACIFICA, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MAY 18, 1989 IN BOOK 119 OF MAPS AT PAGES 99 AND 100.

EXCEPTING ANY PORTION OF THE LAND WHICH MAY LIE WESTERLY OF THE LINE OF ORDINARY HIGH WATER MARK OF THE PACIFIC OCEAN.

APN: 009-023-070-7 and 009-024-010-2

First American Title Insurance Company

A-2-PAC-06-007
Lands End Apartments, Pacifica
Exhibit 4
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SCHEDULE B
EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. General and special taxes and assessments for the fiscal year 2005-2006, a lien not yet due or payable.
2. The lien of supplemental taxes assessed after the date hereof resulting from change of ownership or construction occurring on or after the date of this policy, pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
3. An easement shown or dedicated on the map filed or recorded September 14, 1972 in Book 17, Page 48 of Parcel Maps
For: Public beach access and incidental purposes.
4. An easement for non-exclusive easement for the construction and maintenance of water lines and appurtenances with right of ingress and egress thereto and incidental purposes, recorded May 22, 1973 as Instrument No. 36790-AG in Book/Reel 6394, Page/Image 139 of Official Records.
In Favor of: North Coast County Water District
Affects: The land
5. An easement for non-exclusive easement for the construction and maintenance of sanitary sewer and storm drain lines with right of ingress and egress thereto and incidental purposes, recorded May 22, 1973 as Instrument No. 36791-AG in Book/Reel 6394, Page/Image 141 of Official Records.
In Favor of: Mc Kie W. Roth and Doris Yvonne Roth, his wife, as joint tenants
Affects: The land
6. An easement for the right from time to time to construct, place, inspect, maintain, replace and remove communication facilities consisting of underground conduits, pipes, manholes, service boxes, wires, cables, other electrical conductors, aboveground marker posts, risers and terminals, and other appurtenances, together with a right of way therefor and the right of ingress thereto and egress therefrom and incidental purposes, recorded June 8, 1973 as Instrument No. 42542-AG in Book/Reel 6406, Page/Image 190 of Official Records.
In Favor of: The Pacific Telephone and Telegraph Company, its successors and assigns
Affects: The land

First American Title Insurance Company

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Lands End Apartments, Pacifica
Exhibit 4
Title Documents
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7. An easement for the right from time to time to construct, place, inspect, maintain, replace and remove communication facilities consisting of underground conduits, pipes, manholes, service boxes, wires, cables, other electrical conductors, aboveground marker posts, risers and terminals and other appurtenances, together with a right of way therefor and the right of ingress thereto and egress therefrom and incidental purposes, recorded September 6, 1973 as Instrument No. 72049-AG in Book/Reel 6464, Page/Image 554 of Official Records.
In Favor of: Pacific Gas and Electric Company, a California corporation
Affects: The land
8. An easement for the construction, operation, repair, maintenance and replacement of a sanitary sewer pipe and incidental purposes, recorded March 6, 1975 as Instrument No. 27463-AI in Book/Reel 6795, Page/Image 28 of Official Records.
In Favor of: George E. Congdon III and Carolyn W. Congdon, his wife, as to an undivided 1/2 interest and Myron Daniel Castle and Mary C. Castle, his wife, as to an undivided 1/2 interest
Affects: The land
9. An easement shown or dedicated on the map filed or recorded August 18, 1983 in Map Book 110, Pages 41 through 53 of San Mateo County Records
For: Public access & open space and incidental purposes.
10. The terms and provisions contained in the document entitled "Agreement to Provide Low and Moderate Income Housing at Points West, a Condominium" recorded August 18, 1983 as Instrument No. 83088546 of Official Records. By and between City of Pacifica, a municipal corporation and Points West Villa, Inc. and Points West Developments, Ltd.

Said agreement has no affect on current use as an apartment complex but may become effective if converted into condominiums in the future.
11. The terms and provisions contained in the document entitled "Irrevocable Offer to Dedicate" recorded November 17, 1988 as Instrument No. 88157268 of Official Records. By and between KKB Partners IV, a CA Gen. Ptr., Lakewood Apartments, a Gen. Ptr. Marlin Spike Werner, Clinton White & Evelyn White, Daryl E. Murdoch and The California Coastal Commission.
12. The terms and provisions contained in the document entitled "Irrevocable Offer to Dedicate Public and Access Easement and Declaration of Restrictions" recorded November 17, 1988 as Instrument No. 88157271 of Official Records. By and between Pacifica Associates, a CA Ltd., Ptr., KKB Partners IV, a CA Gen. Ptr., Lakewood Apartments, a Gen. Ptr., Marlin Spike Werner, Clinton & Evelyn White, Daryl E. Murdoch.
13. The terms and provisions contained in the document entitled "Irrevocable Offer to Dedicate Public and Access Easement and Declaration of Restrictions" recorded November 17, 1988 as Instrument No. 88157272 of Official Records. By Pacifica Associates, a CA Ltd., Ptr., KKB Partners IV, a CA Gen. Ptr., Lakewood Apartments, a Gen. Ptr., Marlin Spike Werner, Clinton & Evelyn White, Daryl E. Murdoch.
14. An easement shown or dedicated on the map filed or recorded May 18, 1989 in Book 119, Pages 99 and 100 of Maps
For: Public street purposes and incidental purposes.

First American Title Insurance Company

15. The terms and provisions contained in the document entitled "Notice of Conditions of Approval of Coastal Development Permit CDP 239-03" recorded October 12, 2004 as Instrument No. 2004-203071 of Official Records.
16. The terms and provisions contained in the document entitled "Resolution No. 3 - 88 A Resolution of the City Council of the City of Pacifica Approving the Reversion to Acreage Application for the Lands End Apartments" recorded October 12, 2004 as Instrument No. 2004-203072 of Official Records.
17. A Deed of Trust to secure an original indebtedness of \$31,000,000.00 recorded June 30, 2005 as Instrument No. 2005-109943 of Official Records.

Dated:	June 30, 2005
Trustor:	FPA/BAF Lands End Associates, L.P., a California Limited Partnership
Trustee:	American Securities Company
Beneficiary:	Wells Fargo Bank, National Association

18. Any facts, rights, interests or claims that may exist or arise by reason of the following matters disclosed by an ALTA/ACSM survey made by Allwest on June 21, 2005, designated Job Number 25125.90:

A. The fact that there are electrical boxes, water vault, water meter, telephone vaults, electric cabinet, fire department connection and cable tv boxes, located on various portions of the land.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

First American Title Insurance Company

A-2-PAC-06-007
Lands End Apartments, Pacifica
Exhibit 4
Title Documents
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RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

RF	14
LN	
MF	2
W	16

83088046

RECORDED AT NEW YORK

TY AND AMERICA TITLE
INSURANCE COMPANY
JUN 16 4 05 PM 1983

SAN MATEO COUNTY
OFFICIAL RECORDER

A.P. # 009-023-070, 009-024-010

AGREEMENT TO PROVIDE LOW AND MODERATE
INCOME HOUSING AT POINTS WEST, A CONDOMINIUM

THIS AGREEMENT is made and entered into this 29th day of June, 1983, by and between CITY OF PACIFICA, a municipal corporation (hereinafter called "City"), and POINTS WEST VILLA, INC. (hereinafter called "Subdivider"), and POINTS WEST DEVELOPMENTS, LTD. (hereinafter called "Developer"), with respect to the real property commonly known as "Points West Apartments" (hereinafter called "Points West"), more particularly described in Exhibit "A" hereto and incorporated by reference herein.

R E C I T A L S:

A. California Government Code Section 65590 requires that provision be made for replacement of units occupied by persons of low and moderate income when rental housing in the Coastal Zone is converted to condominium ownership;

B. City has granted to Subdivider Use Permit UP 569-81 permitting conversion of the Points West Apartments to condominium, and Subdivider has presented to City for approval a final subdivision map entitled "Points West, A Condominium";

NOW, THEREFORE, the parties hereto agree as follows:

1. Condition Precedent. Subdivider's and Developer's obligations pursuant to this Agreement are conditioned upon the sale of Points West as individual condominiums pursuant to UP 569-81.

2. Determination of the Number of Low- and Moderate-Income Units. A survey conducted by City in November, 1982, determined that fifteen percent (15%) of the units at Points West (40 units) were inhabited by low- or moderate-income persons. Accordingly, twelve (12) units are classified for reservation as low-income units and twenty-eight (28) units as moderate-income units. These units

shall be provided as follows:

Studios	5 low-income units 8 moderate-income units
One-bedroom	7 low-income units 17 moderate-income units
Two-bedroom	3 moderate-income units

3. Provision of Low- and Moderate-Income Units. Selection of the low- and moderate-income units shall be made by Subdivider or Developer. Subdivider or Developer may provide these units by rentals, sales, any combination of rentals and sales, or by the alternative methods set forth in paragraph 6 of this Agreement.

4. Sales. Sales of low- and moderate-income units shall be as follows:

(a) The initial selling prices of the units shall be based on the median income for San Mateo County as adjusted for family size, as follows:

(i) If financing is available (through Subdivider or Developer or elsewhere) to the qualified low- and moderate-income buyers at a fixed rate of eleven and one-half percent (11 1/2%), for 25 years, at two points plus \$200.00 loan origination fee, or more favorable terms, the price of low-income units shall not exceed two and one-half times eighty percent (80%) of the County median annual income level, and the price of moderate-income units shall not exceed two and one-half times one hundred twenty percent (120%) of the County median annual income level.

(ii) If financing is not available to the qualified low- and moderate-income buyers at the terms specified in (i) above, then the price of low-income units shall not exceed two and one-quarter times eighty percent (80%) of the County median annual income level, and the price of moderate-income units shall not exceed two and one-quarter times one hundred twenty percent (120%) of the County median annual income level.

(iii) If incomes in the low- and moderate-income ranges specified in subparagraphs (b) and (c) are insufficient to permit otherwise qualified buyers to qualify for loans in the amount of ninety percent (90%) of the purchase prices specified in subparagraphs (i) and (ii), then Subdivider or Developer shall provide an alternative financing or sales program to effectuate the sale of low- and moderate-income units, which shall be approved by

the Planning Administrator of City, or, alternatively, the Subdivider or Developer may provide the required low- and moderate-income units through rentals until such sales become feasible.

(b) Sales of low-income units shall be to persons whose incomes are within the range of fifty percent (50%) to eighty percent (80%) of the County median income (hereinafter called "low-income persons").

(c) Sales of moderate-income units shall be to persons whose incomes are within the range of eighty-one percent (81%) to one hundred twenty percent (120%) of the County median income (hereinafter called "moderate-income persons").

(d) The down payment for sales of low- and moderate-income units shall not be required to exceed ten percent (10%).

(e) The transfer of low- and moderate-income units shall be by deeds referencing this Agreement and restricting transfer as herein set forth for a period of twenty-five (25) years from the date of recording of this Agreement.

(f) City shall have an option to purchase the low- and moderate-income units at the option price set forth in subparagraph (g) upon resale by an initial or any subsequent purchaser. City may assign this option to San Mateo County, or any other governmental or nonprofit organization. Prior to the resale of a low- or moderate-income unit, the owner shall notify City or its assignee (hereinafter called "optionee") in writing of the intention to sell. The optionee shall have forty-five (45) days from the date of receipt of such notice within which to exercise the option, by delivery of written notice to the seller. Escrow shall be closed within forty-five (45) days after delivery of the notice of exercise of the option.

(g) The option price shall be the original sales price of the unit, plus an increase, if any, equal to the percentage of increase in the County median income since the time of the original sale. If the City or another governmental or nonprofit organization is the optionee, it shall have the right to deduct from the option price a fee for its reasonable costs of qualifying and counseling purchasers, exercising the option, and administering this resale control program, not exceeding four percent (4%) of the sales price.

(h) If the option is not exercised within the time provided hereinabove, the seller may offer and sell the unit to a low- or moderate-income person, according to

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the classification of the unit, at the option price set forth in subparagraph (g), for a period of sixty (60) days. During said period, the City may participate with the seller, and the seller shall cooperate with the City, in locating a buyer. If no sale is made within that period, the seller may offer and sell the unit to any purchaser, at the option price set forth in subparagraph (g), without regard to income qualifications. Upon subsequent resale, the restrictions on resale and the option provided herein shall again apply.

(i) Except as provided in subparagraph (h), Subdivider, Developer or any subsequent owner of a low- or moderate-income unit shall not sell, lease, rent, assign, or otherwise transfer the unit without submitting to optionee proof that the unit will be sold to persons whose income qualifies them for purchase, as set forth hereinabove, and without obtaining the express written approval of optionee. In the event of foreclosure, sale by deed of trust or other involuntary transfer, title to the unit shall be taken subject to this Agreement; provided, however, that this Agreement may be subordinated to a first deed of trust securing a bona fide loan to a low- or moderate-income purchaser, if required by the institutional lender.

(j) The optionee may assign this option to an individual private purchaser (hereinafter called "individual optionee"); provided, however, that a seller shall not be required to notify an individual optionee of the intention to sell, nor shall Subdivider, Developer or any subsequent owner be required to obtain written approval from an individual optionee of the transfer of a replacement unit.

5. Rentals. Rentals of low- and moderate-income units shall be at the maximum rents for comparable housing established by the Department of Housing and Urban Development ("HUD") to low- and moderate-income persons who meet the standards of HUD for rent subsidies under Section 8 of the Housing Act of 1937, as amended, and applicable regulations; or at the maximum rent established by any other rent subsidy or funding program that provides rental housing for low- and moderate-income households, whichever is greater. Subdivider and Developer shall use their best efforts to accomplish the intent of this provision; including, but not limited to, entering into any contracts offered by HUD, a local housing authority, or any other agency administering a rent subsidy program for low- and moderate-income households, and refraining from taking any action to terminate such rent subsidy program entered into unless it may be replaced with another.

In the event that, during the term of this Agreement, a housing subsidy program is not available, Subdivider and

Developer shall maintain the rental levels for the rented low- and moderate-income units at amounts that would otherwise be the maximum for Section 8 housing, and shall rent the units to low- and moderate-income tenants. In the event that Section 8 or comparable maximum rental levels are no longer published, maximum rental levels shall be the base rents established by the last rental ceilings published for the Section 8 program, adjusted by percentages equal to the percentages of increase in the County median income levels.

6. Alternative Methods For Provision of Low- and Moderate-Income Units. Instead of providing low- and moderate-income units at Points West, Subdivider or Developer may satisfy the requirements of Government Code Section 65590 by either of the following methods:

(a) If City adopts an "in lieu fee" to provide for replacement of low- and moderate-income housing within the community, Subdivider may, at the time of commencement of sales, elect to pay the in lieu fee.

(b) Replacement units may be provided off-site within the City of Pacifica. If feasible, the units shall be within the Coastal Zone or, alternatively, within three (3) miles of the Coastal Zone. Subdivider or Developer shall enter into an agreement, to the satisfaction of the City Attorney, that units shall be provided and available for use within three (3) years from approval of a final map. The agreement shall stipulate that the off-site units shall conform to the terms and conditions provided hereinabove with respect to sale or rental rates and procedures assuring sale or rental to persons of low or moderate income.

In the event Subdivider or Developer performs this Agreement by either of the above alternatives, all restrictions on sales by Subdivider and Developer shall terminate, and the deed restriction referred to in subparagraph 4(e) above shall not be required.

7. Extended Leases. Extended leases granted to tenants at Points West whose incomes are in the low- or moderate-income range shall qualify as rentals of low- and moderate-income units. If any such tenant vacates a unit prior to the end of the term of this Agreement, the rental or sale of the unit shall be in accordance with the requirements of this Agreement.

8. Binding on Successors. This Agreement shall be binding upon Subdivider's and Developer's successors and assigns, and on future owners of low- and moderate-income units, and shall be recorded in the Office of the San Mateo

County Recorder. The provisions of this Agreement constitute covenants running with the land, and shall be subject to no prior liens, except tax liens and easements of record for public utilities and public access.

9. Term of Agreement. This Agreement shall be for a period of twenty-five (25) years from the date of recording.

10. Waiver, Modification or Amendment. Any provision of this Agreement may be waived, modified or amended by the City Attorney of City, if deemed necessary, in the City Attorney's discretion, to obtain financing for the sale of one or more low- or moderate-income units. Any provision of this Agreement may be waived, modified or amended by the Planning Administrator of City if, in the judgment of the Planning Administrator, performance of such provision becomes impossible or impracticable.

11. Assignment. Subdivider and Developer may assign their rights under this Agreement to one or more persons or entities who will undertake the condominium conversion and/or sales; the assumption by the assignees of Subdivider and Developer of full responsibility and liability for due performance of all terms and conditions of this Agreement shall discharge Subdivider and Developer from all such performance, responsibility and liability arising after the date of assignment.

12. Notices. All notices herein required shall be in writing and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044

Notices required to be given Subdivider and Developer shall be addressed as follows:

Pointe West Developments, Ltd./
Pointe West Villa, Inc.
1050 Ralston
Belmont, CA 94002

provided, however, that any party may change such address by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

IN WITNESS WHEREOF, two identical counterparts of this Agreement; each of which shall be deemed an original hereof, have been duly executed on the day and year first above written.

POINTS WEST VILLAS, INC.

By: [Signature]
By: [Signature]

"Subdivider"

POINTS WEST DEVELOPMENTS, LTD.
By: Taube Associates, Inc.,
General Partner

By: [Signature]
Kenneth Ambrose
Executive Vice President
"Developer"

CITY OF PACIFICA, a municipal corporation

By: [Signature]
Planning Administrator

Attest: [Signature]
By: [Signature]
City Manager/Clerk

"City"

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CONSENT OF OWNER

The undersigned, as owner of the above-described real property, consents to the above Agreement, and agrees to be bound by its terms should title to the property remain with owner due to optionee's failure to exercise its option to purchase.

Trustee of the JOSEPH KORET
1980 REVOCABLE TRUST, dated
March 28, 1980

By: [Signature]
KENNETH A. MOLINE

By: [Signature]
THADDEUS TAUBE

By: [Signature]
RICHARD L. GREENE

[Signature]
THADDEUS W. TAUBE, as Trustee
of The Taube Family Trust,
dated March 12, 1982

[Signature]
BENJAMIN F. JOHNSON

RESOLUTION NO. 3-88

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PACIFICA
APPROVING THE REVERSION TO ACREAGE
APPLICATION FOR THE LANDS END APARTMENTS,
100 ESPLANADE

WHEREAS, an application for condominium conversion of the Points West, aka Lands End Apartments, was approved by the City Council on July 27, 1981, and a Final Map was approved on July 11, 1983, and

WHEREAS, an application for a reversion to acreage was submitted by the the property owners, Pacifica Associates, KKB Partners I, and Trollhagen Inc., on October 23, 1987, and

WHEREAS, the City Council held a duly advertised public hearing on January 11, 1988 to consider the requested reversion to acreage.

NOW, THEREFORE, BE IT RESOLVED, that the City Council makes the following findings:

(a) Pursuant to Government Code Section 66499.16, the Council finds that certain dedications, or offers of dedication are necessary for the reversion to acreage. In particular, the Council finds that the offers of dedication which apply to the subject property are those dedications or offers of dedication required as a condition of approval of the original condominium conversion for the sandy beach area, bluff top trail, and vertical access to the beach. These offers of dedication shall be irrevocable, are necessary for present or prospective public purposes as specified in the Pacifica Subdivision Ordinance, and are required to be continued in full force and effect. The Council also finds that the owners of the subject property have consented to the reversion and no lots shown on the Final Map have been sold.

(b) The City Council finds that none of the grounds for denial of a Tentative Map can be met. In particular, the proposed map is consistent with the General Plan, Coastal Plan and zoning provisions in that it preserves rental housing. No physical change to the site is proposed, therefore, none of the grounds for denial regarding physical suitability of the type or density of

development, or the potential for substantial environmental or public health damage apply. Furthermore, no change to the design or type of improvements are proposed and, therefore, no conflicts with easements will occur.

(c) The City Council finds that pursuant to the Subdivision Map Act and the City's Subdivision Ordinance, the reversion to acreage may not be approved unless dedications, or offers of dedication to be vacated or abandoned by the reversion to acreage, are unnecessary for present or prospective public purposes. However, both the Subdivision Map Act and the local Subdivision Ordinance allow the Council to require as a condition of the reversion, that owners dedicate or offer to dedicate streets, public rights-of-way or easements. Furthermore, other conditions of reversion as are necessary to accomplish the purposes of the Subdivision Ordinance, or to protect the public health, safety, and welfare, are allowed to be required.

The City Council is requiring as a condition of reversion an irrevocable offer of dedication for the sandy beach, bluff top trail and vertical access to the beach. Both the City and the Coastal Commission required recordation of such offers of dedication when the conversion project was originally approved. Continuance of the requirement is necessary to accomplish the purposes of the Subdivision Ordinance and to protect public health, safety, and welfare.

Pursuant to the Subdivision Map Act and the local Subdivision Ordinance, a Tentative Map cannot be approved if the design of the subdivision or the type of improvements would conflict with easements acquired by the public-at-large for access through, or the use of property within the proposed subdivision. As stated above, easements were required as conditions of approval for the original condominium conversion. In addition, Section 66478.11 of the Subdivision Map Act states that no local agency shall approve a coastal subdivision which does not provide reasonable public access to the ocean.

A Tentative Map may not be approved if it is not consistent with the General Plan and the Local Coastal Plan. The project is identified in the City's Coastal Land Use Plan where it is recommended that the owner be encouraged to continue to maintain the stairway and to keep it open to the public. It is also recommended that a sign be installed indicating public access to the stairway. Finally, maintenance of the stairway is required to be continued by the property owner.

The LUP policy and the requirement for an offer of dedication are also necessary to achieve compliance with the Coastal Act. Coastal Act Policy 30211 states in part that development shall not interfere with the public's right of access to the sea where acquired through use and Section 30212 requires that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects.

The requirement for dedication of the beach, stairway, and bluff top trail is necessary to avoid the adverse impact which would be created if public access were restricted from the three areas. The requirements for an offer of dedication protects the existing pattern of use. The stairway was constructed to provide access to the beach at the time that the apartment project was originally built. It has provided an important access since 1972 to an area of existing high density development where no other access to the beach exists. The requirement for dedication is necessary to mitigate the impact of the project which would be created if public access were denied.

Finally, the City Council finds that the owner should be required to continue to maintain the privately owned stairway until such a time as it is accepted for public dedication. Construction of the stairway was required as part of project approval and its upkeep is necessary to protect the public health, safety, and welfare.

(d) In approving the Tentative Map for the reversion to acreage, the City Council finds that the following conditions of approval are necessary to accomplish the purposes of the Subdivision Ordinance and to protect the public health, safety, and welfare:

- (1) The applicants shall remove and replace cracked and raised sidewalk sections where they could present a possible hazard, to the satisfaction of the City Engineer;
- (2) Applicant shall repair the access stairs and erosion as necessary to make the stairway safe and accessible to the beach. Such repairs shall be to the satisfaction of the City Engineer and the access stairs shall be maintained while the property remains in private ownership;
- (3) Landscaping shall be trimmed from the bottom to the satisfaction of the Crime Prevention Officer and Planning Administrator;
- (4) Additional lighting shall be provided along the interior walkways, in the driveways, and for the grass area and the gazebo. Lighting shall also be improved inside the garages. All lighting improvements shall be to the satisfaction of the Crime Prevention Officer;
- (5) Any garage gates which are not currently operable shall be repaired and shall be maintained in working condition;
- (6) Applicant shall schedule an inspection with the Fire Marshal to verify installation of smoke detectors;

- (7) The applicant shall extend the deadline for affected tenants to decide whether or not to move to 30 days after notification to tenants of recordation of the Final Map, and the deadline to vacate and accompanying rent increase to 90 days after such notification. A moving expense of at least \$1,500 shall be offered to tenants who choose to move. Phased rent increases may be provided for any of the affected tenants who choose to remain. Any such phased rent increases may not commence until after recordation of the Final Map and shall extend over a two-year period with four approximately equal increases, bringing rent levels to a maximum of 95% of market;
- (8) The irrevocable offers of dedication for the sandy beach area, bluff top trail, and vertical access to the beach shall continue to apply to the apartment project and shall continue in full force and effect. Signed and recorded copies of the offers of dedication shall be provided to City planning staff prior to recordation of the Final Map;
- (9) A copy of the amended Coastal Permit shall be provided to City planning staff prior to recordation of the Final Map;
- (10) The north end of the asphalt path shall be paved and connected to the adjacent bluff top trail.
- (11) All of the above requirements, excepting any rental increase, shall be implemented prior to recordation of the Final Map.


NOW, THEREFORE, BE IT FINALLY RESOLVED, that the City Council approves the reversion to acreage for the Lands End Apartments, 100 Esplanade, subject to the above listed conditions.

* * * * *

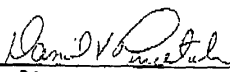
Passed and adopted at a public hearing of the City Council of the City of Pacifica on the 11th day of January 1988 by the following vote:

AYES, Councilmembers:	Galehouse, Loeb, Curry, Howard, and Mayor Jaquith
NOES, Councilmembers:	None
ABSENT, Councilmembers:	None

ABSTAIN, Councilmembers: None


Gerry Silva Jaquith, Mayor

ATTEST:


Daniel V. Pincetich, City Manager-Clerk



Scenic Pacifica

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

CITY HALL • 170 Santa Maria Avenue • Pacifica, CA 94044 • (650) 738-7341 • Fax (650) 359-5807

June 2, 2006

**NOTICE OF HEARING
ON
PROPOSED DEVELOPMENT**

RECEIVED

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CALIFORNIA
COASTAL COMMISSION

NOTICE IS HEREBY GIVEN that the City Council of the City of Pacifica will conduct a public hearing on Monday, June 12, 2006, at 7:00 p.m., in the Council Chambers, 2212 Beach Boulevard, Pacifica, to consider the following:

APPEAL of PLANNING COMMISSION APPROVAL of COASTAL DEVELOPMENT PERMIT, CDP-265-05, SIGN PERMIT, S-99-06, and PARKING EXCEPTION, PE-135-05, filed by Bart Willoughby, for construction of a new outdoor pool and other improvements to the clubhouse and parking at 100 Esplanade, Pacifica (Lands End Apartments), (Assessor's Parcel Number 009-023-070). The project is located in the Coastal Zone. Recommended California Environmental Quality Act status: Exempt.

At the public hearing, the City Council will consider testimony by the applicant and any other interested party prior to rendering its decision. Members of the public will have three minutes to address the Council. The City Council may approve, deny, or modify the decision of the Planning Commission or refer the matter back to the Planning Commission for reconsideration. Action on this Coastal Development Permit can be appealed to the California Coastal Commission, in accordance with the California Coastal Act, Section 30603.

A reduced preliminary site plan is copied on the back of this notice. Detailed plans and additional information are available for public review in the Planning and Economic Development Department, 1800 Francisco Boulevard, Pacifica by contacting Kathryn Farbstein, Assistant Planner, at 738-7341. Anyone interested may appear and be heard at the time and place noted above. If any of the above actions are challenged in court, issues which may be raised are limited to those raised at the public hearing or in written correspondence delivered to the City at, or prior to, the public hearing.

The City of Pacifica will provide special assistance for disabled citizens upon at least 24 hours advance notice to the City Manager's office (650-738-7300). If you need sign language assistance or written material printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to the disabled.

Michael Crabtree
Planning Director

Path of Portola 1769 • San Francisco Bay Discovery Site



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A-2-PAC-06-007
Lands End Apartments, Pacifica
Exhibit 7
Notice of City Council Hearing
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PUBLIC HEARINGS:

2. CDP-265-05 **COASTAL DEVELOPMENT PERMIT, SIGN PERMIT, and**
 S-99-06 **PARKING EXCEPTION, to add lounge and office space to the**
 PE-135-05 **clubhouse, build a new outdoor pool, and replace freestanding**
 signs at 100 Esplanade, Lands End Apartments (APN-009-023-
 070). The project is located in the Coastal Zone. Recommended
 CEQA status: Exempt.

Assistant Planner Farbstein presented the staff report.

Commissioner Maykel asked if they could attach the CEQA information with the material in the future.

Assistant Planner Farbstein responded that they would attach the information from the CEQA code.

Commissioner Lee referred to information in the packet regarding the police responding to activities at the complex, and he asked if this project had been run past the Police Department.

Assistant Planner Farbstein stated that the project was sent to the Police Department and she hadn't gotten any comments back from them.

Chair Nathanson invited the applicant to speak.

Rick Kippers, general contractor, stated that he was representing the ownership. He presented the Commission with ownership's answer to the geological report for the pool from the geological engineer, addressing each issue and the proposed solutions, stating the he was available to answer any questions by the Planning Commission. He referred to the objections in letters submitted, and stated that several solutions were easy, specifically, the equipment of the existing spa and new fencing to lock down the spa after hours, as well as the misconception that the new pool was in the common area. He asked the Planning Commission if there were any other questions.

Commissioner Leon noted the geologist's report was conditioned as part of the approval process for the project, and he asked if the applicant had an exception to the statements that any recommendations would be complied with for approval.

Mr. Kippers stated that it was not a problem because it was a condition of the approval. He added that their geologist had addressed the recommendations, adding that the two had been conversing.

Commissioner Leon reiterated that, absent any further response from Mr. Mark Johnson, his recommendations would be the conditions of approval and he was confirming that the applicant understood that was the case.

Mr. Kippers responded affirmatively.

Commissioner Bray stated that the signage and extension to the club looked great, but he felt the pool looked like an afterthought because it was so small and he thought it was a nuisance.

Mr. Kippers responded that, when the property was purchased, they asked the residents what amenities would make a difference. The fitness center, the spa and a small pool were of interest. He agreed that the reality dictated that they couldn't build anything more than that size, adding that the heating would be exorbitant with anything larger. However, he didn't think they would be doing laps.

Commissioner Bray stated that it was really only a soaker.

Mr. Kippers agreed, adding that it was meant to create an atmosphere of resort living. He stated that the clubhouse also lent itself to that type of environment.

Commissioner Bray stated that his in-laws lived in a place where the residents get together once a week. He asked if they did that sort of thing or if they were all on their own.

Mr. Kippers stated that, when they got involved in properties, they looked for something where they could get into that and they set a bar area for community events, possibly once a month. Mr. Kippers concluded by stating that it was great to be in Pacifica, adding that this was the first time for him, and he looked forward to completing this. He stated that the ownership had set aside money to fix a lot of deferred maintenance on the property.

Chair Nathanson opened the Public Hearing.

Bart Willoughby, resident of Land's End, stated that he had filed written opposition to the pool. He explained that, at the time he filed it, he hadn't read Mark Johnson's recommendations from the Coastal Commission. He mentioned that the issue of the liquefaction hazard had never been fully investigated at Land's End, and should be a major consideration because, going out on the property now, one could sink down to the ankles. He stated that the same conditions existed at both the bluff and the proposed pool location, and he felt they should adopt the recommendations by the Coastal Commission to do the reinforced pool rather than the Gunite pool, mentioning a preliminary memorandum from 1995 which addressed the issue of erosion of the bluff because of the soil condition, but the liquefaction had never been fully addressed.

Suresh Kerwar, 202 Palmetto, stated that he had a question about the erosion problems in the area. He mentioned that, when the stairs washed out, it took the Lands End owners a year and a half to repair the stairs and he questioned whether the Planning Commission had thought about the potential erosion problems related to building the pool.

Chair Nathanson closed the Public Hearing.

Commissioner Bray stated that Mark Johnson recommended ways of building a double hole for the swimming pool, and the Commission apparently had O'Neill's answer to his report. He stated that the only hang up he had was with the swimming pool, however, he referred to O'Neill's suggestion that they have a visqueen-lined shield prior to the Gunite, and asked the applicant if they were still thinking about doing rebar.

Mr. Kippers stated that they would do whatever was recommended. He added that they were putting a spa in Sacramento and doing the same thing, and the reinforcement wasn't bad. He stated that it was all subject to the review and approval of the geologist.

Commissioner Bray stated that he was only thinking of the leaking underground, recalling that there were some major issues with landslides from blocked drains which created sinkholes.

Mr. Kippers stated that the pool deck would help, clarifying that the pool was not on the bluff.

Commissioner Bray also mentioned the nearby residents' other issues, such as noise from the mechanical equipment. He asked if he was taking steps to help them out.

Mr. Kippers responded that, to the south, they had a cinder block wall with fountain heads to keep noises from going that direction and, on the east side, they needed to readdress the drainage issues and would be building the equipment into an enclosure which would match the wall height to give uniformity, as well as help defer the sound.

Commissioner Bray asked if they were shutting down pool access at 8:00 p.m. or 10:00 p.m.

Mr. Kippers thought it was 10:00 p.m.

Commissioner Ranken mentioned that there were concerns about the geotechnical issues and potential for liquefaction, and they were aware of the ocean advancing year by year. They preferred not to encourage it by allowing pool water to seep in or some other issue. He asked staff if there were any comments on the issues raised from a geotechnical perspective or from a safety perspective to enlighten the Commission.

Assistant Planner Farbstein mentioned that, in addition to the comments from the Coastal Commission geologist, if the project were approved with the swimming pool, a step in the future would be to send the project out to peer review to make sure all the requirements were met and the pool was safe.

Commissioner Ranken asked if that consultant would look over the geotechnical information already present to ensure that it was as safe as can be.

Assistant Planner Farbstein stated that they would forward all the information gathered to date to the consultant.

Commissioner Leon stated that there were a few comments regarding the noise issue, and the applicant mentioned construction of a block wall in answer to the concerns regarding noise. He asked what level of satisfaction would they have that the walls would be built or be sufficient enough and were they part of the conditions.

Assistant Planner Farbstein stated that she was not aware of the wall as described by the applicant and, if it was not showing on the plans, an added condition of approval would be appropriate.

Commissioner Leon then asked what wall height would be satisfactory to the Planning Department to mitigate the sound.

Assistant Planner Farbstein stated that the equipment needed to be part of the condition of approval, and then stated that the satisfactory height was a difficult question to answer.

Planning Director Crabtree explained that they were not noise experts but would expect such a wall to be higher than the equipment itself. He didn't know how high the equipment was, and

would not know how high the wall had to be, but that would be the minimum height. He stated that they would ask the building and engineering departments for advice on how high and wide the wall might need to be. He stated that the Planning Commission could ask the applicant to submit an analysis from a noise expert, at an added expense, to ensure that the wall was going to do what it needed to do, although he didn't know if they felt they needed to take that extra step.

Commissioner Cicerone commented on whether the Commission would have to add the wall on as another condition of approval. He stated that his only concern with the project had to do with the possible erosion, and there was a very thorough letter from the staff geologist of the California Coastal Commission with recommendations for the pool, which were already incorporated into the conditions of approval. He felt that, if the project was approved, the recommendations of the California Coastal Commission geologist would be in effect per condition #2. He felt the geology was there and there would be a peer review to be sure all of that was considered, adding that Commissioner Leon brought up an excellent point regarding the wall, and he thought they should add that as a condition of approval.

Commissioner Cicerone moved that the Planning Commission find that the project is exempt from CEQA and **APPROVE** Coastal Development Permit, CDP-265-05, Sign Permit, S-99-06 and Parking Exception, PE-135-05, subject to conditions 1 through 12, with condition 12 being the addition wall to insulate the sound from the equipment to the satisfaction of the Planning Director, and adopt findings contained in the April 17, 2006 staff report and incorporate all maps and testimony into the record by reference; Commissioner Bray seconded the motion.

Chair Nathanson thanked Mr. Willoughby for the packet of information that he included which was complete and helpful, and she appreciated that effort.

The motion carried 7-0.

Ayes: Commissioners Lee, Bray, Ranken, Cicerone, Maykel,
Leon, and Chair Nathanson.
Noes: None.

Chair Nathanson declared that anyone aggrieved by the action of the Planning Commission has ten (10) calendar days to appeal the decision in writing to the City Council.

PUBLIC HEARINGS:

8. **Public Hearing to Consider Appeal of Planning Commission Approval of Coastal Development Permit, CDP-265-06, Sign Permit, S-99-06 and PE-135-05 to Construct Improvements Including a New Swimming Pool at the Lands End Apartments Located at 100 Esplanade.**

Assistant Planner Farbstein presented the staff report.

Planning Commissioner Ranken stated that the geotechnical issue was of great concern to the Commission, and ultimately the decision was made that this would be addressed by the experts through the process. The Commission also felt that the level of detail was adequate for the Commission to make a decision, with the knowledge that greater detail would be required by the Building Department. They felt it was not the Planning Commission's purview regarding whether the residents were surveyed about the pool, but felt that, from a land use and safety perspective, it was appropriate.

Councilmember Hinton stated that he had heard some concerns about the building standards. He asked whether, in conjunction with the pool, all the construction had been brought up to code and met the building standards or would be addressed by the building official.

Planning Director Crabtree responded that the building official would make sure that all aspects of the construction conformed to the Uniform Building Code.

Mayor Digre stated that, following a meeting she attended in Monterey, they said the way to go was for the Council to ask questions of the experts. Because it was west of Highway 1, she asked whether an EIR was necessary. She also said the Local Coastal Plan philosophy was to maintain the ability of residents to live there and she asked if adding this type of pool would mean their rents would be so high they would have to leave. She stated that the letter in the packet from the Coastal Commission had some serious comments.

Planning Commissioner Ranken stated that, if she could refer to the serious comment more specifically, he would attempt to give her feedback.

Mayor Digre asked if the improvements would create higher rents and whether that was covered under the Local Coastal Plan.

Planning Director Crabtree stated that he wasn't sure that the section of the Coastal Plan to which she was referring applied to improvements to existing structures.

Mayor Digre stated that what she was really getting at, because the Council was a policy decision maker and the Local Coastal Plan was policy as well as law, was whether the pool would increase the cost to live in the development. Then, she referred to the Local Coastal Plan stating that the area should be accessible to everyone, and if the pool forced people out, she questioned whether it was within the purview of the mission of the Local Coastal Plan.

Planning Director Crabtree stated that one of the findings that the Planning Commission had to make was whether the project was consistent with the Coastal Plan, and if the City Council didn't agree that it was consistent with the Coastal Plan, the Council had the authority to turn down the project. He added that there was no evidence presented to the Planning Commission in regard to

the economic issues raised by the Mayor that the rents would be raised such that the present residents would no longer be able to afford to live there.

Mayor Digre asked Commissioner Ranken if the Planning Commission looked at the aspect of the Local Coastal Plan regarding its mission to ensure that people in the area would continue to be able to afford to live there.

Planning Commissioner Ranken stated that they had looked at the entire Coastal Plan. He reiterated Planning Director's comments that no evidence was presented that the rates of rent would have been raised. He added that they might have been reluctant to apply a blanket prohibition on all property improvements west of Highway 1. While they didn't discuss that directly, that would be his intuition and his personal position.

Mayor Digre stated that she might be beating a dead horse, but they did have to deal with affordability. She asked if Mark Johnson was the geotech that staff used.

Assistant Planner Farbstein responded that he was the Coastal Commission's staff geologist, and he was the one that staff used.

Mayor Digre stated that, in the letter Mr. Johnson wrote to a Mr. Willoughby, he recommended that Land's End address the issue of the existing spa overflow problem, and she thought she read it hadn't been addressed, with the spa separate from the pool.

Councilmember Lancelle mentioned that she made the same mistake.

Mayor Digre acknowledged that it was actually Mr. Willoughby who agreed that any uncontrolled water on the bluff top was to be avoided.

Councilmember Vreeland reminded the Mayor that they were only asking questions of staff, and they hadn't heard from the applicant or the public.

Mayor pro Tem DeJarnatt added that they hadn't heard from the appellant either.

Councilmember Vreeland stated that he would like to have some input from the public before they started deliberating.

Mayor Digre thanked him for reminding her, stating that she had forgotten.

Councilmember Lancelle noticed that there was a recommendation for double wall construction because of a possible leak, and she asked if the geologist determined that the proposal was adequate.

Planning Director Crabtree stated that it was determined to follow the recommendations of the Coastal Commission's geologist report, which was a condition of approval.

Councilmember Lancelle stated that the geologist's report stated visqueen or double wall construction.

Assistant Planner Farbstein quoted the geologist's recommendation for construction.

Councilmember Lancelle stated that it conflicted with the geotechnical recommendations.

Planning Director Crabtree asked to which she was referring.

Councilmember Lancellic stated that it was the geotech.

Planning Director Crabtree asked if she was referring to the applicant's geotech.

Councilmember Lancellic responded that it was Bob Kim, staff engineer, and Robert Holmar.

Planning Director Crabtree stated that the condition of approval required that the Coastal Commission's geologist's report recommendations be followed, and it wouldn't matter if another geotechnical report recommended visqueen.

Bart Willoughby, appellant, resident of Lands End, stated that the coastal act required the applicant to provide public notice of the appeal, but as of this meeting, the applicant had not provided notice. He stated that he had provided public notices for the tenants which the applicant had subsequently had removed. He then spoke specifically of the various concerns regarding the applicant's failure to address the water overflow problem of the existing spa and how it would affect the construction of the new pool, mentioning that the Coastal Commission's geologist voiced a possible concern if the spa problems were not addressed first. He felt that the applicant's many errors and omissions, including the failure to address the issues on appeal, were endemic in how the applicant approached construction of the project. He added that the new owners of Land's End had already raised rents forcing tenants to move.

Rick Kippers, applicant representative, stated that David Syler, representing management, was also present. He stated that the plans provided for the appeal had not been revised.

Councilmember Vreeland asked the City Attorney why the Council would look at new plans during the appeal process.

City Attorney Quick stated that the issue was the appeal of the Planning Commission decision, and she didn't know why new plans would be submitted.

Mr. Kippers stated that they weren't new plans, but answers on paper to Bart Willoughby's questions to avoid future questions. He stated that all plans for the pool would go through the building department during construction. He stated that his purpose was to address each issue and give answers. He mentioned that sound was not an issue on the original proposal, but it was a valid issue and they would have experts give them the proper approach to it. The issue of the spa problem was also valid, although he thought the Planning Commission didn't need to address that but the ownership did. The solutions used in other sites would be used here to address the drainage problem around pool and spa, as well as the block wall for sound. There would be an extension on the pool equipment roof, which should help for Bart Willoughby's apartment above the pool. He didn't have a problem addressing the issue of the request for a change in pool hours. The potential liquefaction was also an issue for everyone, which he stated would be resolved between the geologists from Neil Anderson and the Coastal Commission. The plans showed the experts' suggested approach regarding the issue of drainage around spa and the sound.

Mayor pro Tem DeJarnatt asked about the concern that the tenants hadn't been noticed.

Mr. Kippers stated that he didn't know about the process but acknowledged that there were notices on the property, at this moment, right on the front door.

Mayor pro Tem DeJarnatt asked staff to respond to that.

Assistant Planner Farbstein stated that the applicant was supposed to notice all the tenants on the site, and she understood that was the case.

Mayor pro Tem DeJarnatt asked when that was supposed to happen.

Assistant Planner Farbstein stated that the City did a mailing ten days before the public hearing.

Mayor pro Tem DeJarnatt asked if they did do that, as they always do.

Assistant Planner Farbstein responded that every property owner within 300 feet was notified and every tenant within 100 feet was also notified.

Councilmember Lancelle asked if it was 100 feet from the site of the pool.

Assistant Planner Farbstein clarified that it was 100 feet from the property boundary.

Councilmember Lancelle asked if it was everyone in the complex and properties located 100 feet beyond the project property.

Assistant Planner Farbstein responded affirmatively.

Mayor Digre clarified that it would mean everyone in the complex, but not some of the neighbors.

Assistant Planner Farbstein responded affirmatively.

Mayor Digre stated that they were hearing that they weren't.

Councilmember Vreeland reiterated that it was the City's requirement that everyone in the apartment complex, owner or not, be notified ten days before this hearing, and he stated that staff was saying they didn't know if that took place.

Planning Director Crabtree responded that, once the notices leave the city, they can't guarantee that they get to their destination. He stated that the City required that the applicant provide labels for every resident within 100 feet of the property, including the tenants, and the notice was then mailed from the City. He again stated that they could not guarantee that they get to their destination.

Councilmember Vreeland clarified that the labels were provided by the applicant.

Planning Director Crabtree responded affirmatively.

Mayor Digre asked if staff recalled the amount of notices sent out.

Assistant Planner Farbstein stated that she didn't recall the number.

Mayor Digre stated that she was looking for assurances that the numbers were correct.

Councilmember Hinton stated that the plans indicated that the overflow from the spa was going to run into the storm drain, and he asked staff if that was acceptable.

Planning Director Crabtree responded that staff would pass that particular issue in front of the Public Works, Engineering and wastewater treatment people.

Councilmember Hinton reiterated that the issue would be addressed.

Planning Director Crabtree responded affirmatively.

Councilmember Hinton stated that the spa had been there for a number of years but, if any grandfathered structure was causing a hazard or erosion, he asked the City Attorney if that could be addressed no matter how long it had been there.

City Attorney Quick stated that there were two different issues. The first was that it was not a subject of the project per se, in which case it would not be a part of the Planning Commission determination or Council determination, adding that, separate from that, if the spa was being operated in a way that it was malfunctioning and creating a public health and safety hazard, it could be addressed as a nuisance of some kind independent of the public hearing process.

Councilmember Hinton understood that they were two different issues, but he asked if it could be addressed by City staff to correct a hazard.

City Attorney Quick stated that, if it was a hazard and violating health and safety regulations, it could be addressed.

Councilmember Hinton reiterated that it was not part of this project.

City Attorney Quick stated that she would have to defer to the Planner but she understood that the spa was a preexisting condition and was not a part of this project.

Councilmember Hinton asked the Planner if they were doing some remodeling to the spa.

Assistant Planner Farbstein stated that she would defer the questions to the applicant. She thought that they were doing some remodeling to the adjacent clubhouse structure, but she understood that there wasn't anything being done to the spa.

Councilmember Hinton stated that it was moot since the Planning Director had stated that it would be run by the appropriate departments in the City.

Councilmember Lancelle referred to the plans presented in response to the appellant and stated that it showed a trench drain circling the pool and connecting to the existing storm drain system. She stated that, while she could ask Public Works Director Holmes, she thought it needed to be connected to the sewer.

Mr. Kippers stated that there were two issues. The perimeter drain was going to be from rainfall and splash overflow from the pool and he thought they would want that to go into the storm drain, not the sanitary system.

Mayor Digre asked if Planning Director Crabtree had a comment on that.

Planning Director Crabtree stated that staff would take the plans, circulate them to the wastewater, engineering and public works departments and they would ensure that the drainage went to the proper area. He did not have the expertise to tell them where the drainage needed to go, but it was typically handled during the plan check process and not normally brought up during the planning process. He stated, if the drainage was not supposed to go where it was shown on the plans, the City would not allow it. If they were required to change it and weren't able to change it, they would not be allowed to build the project.

Mayor Digre referred to a document from Mark Johnson addressing the lack of information on the bluff and the liquefaction issues and asked if the specifics of the letter would be covered.

Assistant Planner Farbstein responded affirmatively, stating that, if the project was approved, they would take all the information and pass it to Mark Johnson, as well as send it out for peer review, at the end of the plan check process.

Mayor Digre again asked if the comment about the difficulty of evaluating the effect of the pool on the bluff because of a lack of an adequate site map would be addressed with a new site map.

Assistant Planner Farbstein responded affirmatively.

Mayor Digre asked about the proper jurisdiction on the issue of the spa.

Planning Director Crabtree stated that staff's position was that the spa was a separate issue.

Mayor Digre stated that she realized that, and was asking if the spa would get ignored or would someone have responsibility for it at any time.

Planning Director Crabtree stated that, if there was a hazardous condition, the property owner was responsible for addressing it.

Mayor Digre stated that, as a Councilmember, she felt it needed to be addressed.

Councilmember Hinton stated that the thrust of his question to the City Attorney was that the issue could be addressed by other agencies at another time and was a separate issue, and the Council was dealing only with the pool at this time.

Mayor Digre opened the Public Hearing.

Diane Tomassetti, 269 Gateway Drive, a former Land's End resident, was attesting to the fact that they were increasing rents, some being increased inappropriately. She stated that they had attorneys looking at this because some of the leases were illegal. She stated that she was just one of the residents who left because of the increased rents.

Tiger Cosmos, 106 Esplanade Avenue, stated that he lived in the complex but he wasn't told about the meeting. He stated that there was something posted about the meeting but was taken down quickly. He stated that they hadn't received anything in the mail. He also stated that rents had been increased.

Mr. Willoughby stated that the appellant had offered a solution early in the appeal process, which was to upgrade the existing spa rather than build a pool. He felt that the applicant had not been forthright about the project, and he was leaving it to the City Council to make the decision to do

what was right and not what was easy. He then thanked the people who attended the meeting in support of this appeal.

Mr. Kippers again reiterated that all issues should be discussed and would be appropriate at the building department review level. He requested that the City Council deny the appeal. He felt he addressed all the issues.

Mayor Digre closed the Public Hearing.

Mayor Digre stated that she had made her issues clear, and she thought they needed to tighten up this thing, as they needed to tighten up a lot of other things.

Councilmember Lancelle addressed the City Attorney stating that, if the plans provided by the applicant gave details about how they would address some of the issues raised by the appellant, that was as useful as a verbal rebuttal.

City Attorney Quick stated that the Council could consider any evidence presented to them, but her one question was whether staff had an opportunity to review it and make any comment on it.

Planning Director Crabtree stated that staff looked at the drawing which was felt to be essentially the same drawing which was seen by the Planning Commission, but had some annotations to respond to some of the issues. He mentioned that a seating area was added, but the others appeared to be identical to the original plan seen by the Planning Commission.

Councilmember Lancelle stated that she differed with that, mentioning the seating, wall height and drench drain. She asked if those were added.

Planning Director Crabtree stated that he had mentioned that there were some notations added which were not on the Planning Commission drawing, and the seating area was also added. If he missed anything else, it was his error.

Councilmember Lancelle stated that the drench drain wasn't on the original plans.

Planning Director Crabtree stated that it was added to respond to what was raised during the appeal.

Mayor pro Tem DeJarnatt stated that rent increases may or may not be something that he was happy about; however, it was not particularly germane to this issue. He stated that the proposal would enlarge the clubhouse and add the new pool adjacent to the spa and the Coastal Commission geologist's comments and recommendations would be incorporated into the project, meaning that all the issues would have to be addressed before anything could be built, and an additional peer review could be done if necessary. He thought noise was a concern, but he thought it would be adequately addressed by conditions of approval. He thought it was a reasonable project. He was not 100% comfortable with what he had heard, but the project was reasonable. He felt the appeal should be denied. He stated that he would prefer the hours of the pool operation to be 9:00 a.m. to 9:00 p.m.

Councilmember Hinton concurred with Mayor pro Tem DeJarnatt. He stated that, as long as he could remember, the issue of economics was not a consideration when making requirements for a project. He stated that they didn't have jurisdiction over the rents and again, he also didn't believe it was germane to this issue. He stated that the appeal was for the pool, and he hoped it

was for the safety considerations and not for the impact on rent rates. He commented that the applicant's geotech said it was safe, and the Coastal Commission's geologist stated that it was acceptable, and he thought the Coastal Commission was extremely conservative. He also felt confident that the planning staff would have a peer review and make further determinations as to whether the slope was stable enough for a pool. He believed that the other issues, including sound barriers, were addressed. He could see no reason to deny the pool.

Councilmember Lancelle stated that she would deny the appeal but would like to add something to the conditions of approval, asking if that was appropriate. Specifically, in Condition #10, she would like to say the pool area, including the existing hot tub.

City Attorney Quick stated that it would exceed the nexus for this project. She stated that, once they had made a motion on the project, they could direct enforcement staff to inspect the spa and take any necessary steps, but it was not a part of the project application and couldn't be included in the conditions of approval.

Councilmember Lancelle mentioned that the applicant presented a drawing showing the french drain encircling the pool and around the existing hot-tub, and she thought it would be a reasonable idea if they were willing to do that.

City Attorney Quick asked planning staff if that was still a pool drain or if they had modified or expanded the project.

Planning Director Crabtree stated that the plans didn't say anything about the drain connecting to the spa. Based on the plans, he couldn't interpret it as being a spa drain, but it looked like the drain for the pool.

Councilmember Lancelle read the annotation on the plans which mentioned the patio deck sloped to a french drain encircling the pool and connected to the existing storm drain.

Planning Director Crabtree stated that it was a surface drain.

Councilmember Lancelle asked if that was the issue regarding water from the pool, mentioning that condition #10 talked about the pool drains under the actual pool.

City Attorney Quick stated that the Public Works Director had a comment about the plans, and she thought he was of the opinion that they were not "spa" plans per se.

Public Works Director Holmes stated that the french drain was usually a subsurface drain and it took ground water that didn't connect to the sanitary sewer, connecting the drain to the spa and the pool to the sanitary sewer.

Councilmember Lancelle asked what drain they were talking about.

Public Works Director Holmes stated that it appeared that she wanted to connect the french drains to the sanitary sewer, and he stated that you didn't normally do that because it was not connecting to the surface. It was a ground water drain with two purposes, and one purpose was to relieve pressure from the ground water to avoid fracturing the pool if it was drained, and was not dealing with surface water.

City Attorney Quick asked if the drains had to drain into some kind of facility or if there was a condition which could be created to make sure that other drains are designed in accordance with applicable codes.

Public Works Director Holmes stated that there was visqueen around the pool to prevent leakage of the pool into the french drain. He stated that they were concerned about the chlorine discharge when they drain the pool, and any drains associated with the filter went into the sanitary sewer and for the rest a subsurface drain connected to the storm drain system.

Councilmember Lancelle asked about a drain on the pool deck.

Public Works Director Holmes stated that he would have to look at the pool deck, because if it didn't take a lot of water, it drained to the storm drain system. He stated that the problem with a large concrete patio draining into the sanitary sewer was that there was a lot of rain water and other issues. He stated that, with spas, they tried to have the water go back into the pool.

City Attorney Quick asked, in reference to condition #12's wording regarding conformance with the San Mateo Countywide Storm Water Pollution Prevention Program, if the french drain met that standard.

Public Works Director Holmes stated that he wasn't sure unless he looked at the drawing, but he stated that there were surface drains which go into the storm drain system. He stated that the french drain was a subsurface drain.

City Attorney Quick stated that she was trying to figure out if there needed to be an additional condition or if the existing condition covered it.

Public Works Director Holmes stated that the condition was adequate.

Councilmember Hinton thought his comment was discussed, but he would state, for clarification, that the patio drain was like a gutter in the street but had a grate over it. It collected storm and rain water, not chlorine water, and he doubted that they would want it to go into the sanitary sewer because during rain, the plant was overwhelmed with leakage from the other systems and they would like to keep the storm water out of the sanitary system and not have to treat it.

Councilmember Lancelle stated that she thought a french drain was underground.

Councilmember Hinton understood that the drain under discussion on the plans was a drain that drained the surface of the patio into a depression and came into the storm drain at the end.

Public Works Director Holmes stated that it was the intent of that.

Councilmember Lancelle stated that the description of a french drain as she imagined was something outside the visqueen which was catching subsurface water and rocks.

Councilmember Hinton stated that she was probably essentially correct, but he thought they were talking about a different type of drain than a french drain.

Councilmember Lancelle stated that she didn't want to belabor this, but she liked the idea that the applicant wanted to add something that would be helpful and address one of the appellant's

issues. She stated that she was looking for a way to keep it in, but maybe it could be a direction to staff.

City Attorney Quick asked the Planning Director if the drawing was incorporated into the project.

Planning Director Crabtree stated that this drawing had annotations on it that were not part of the Planning Commission submittal.

Councilmember Vreeland stated that he heard a lot of things about the drains, the geotechs, and a lot of things. He would like to support the Planning Commission and approve the project without too much further discussion of issues staff had addressed or the economic issues which were outside the purview of the project.

Councilmember Vreeland moved that the City Council **DENY** the appeal and uphold the Planning Commission approval of the project, based on the conditions and findings contained in the April 17, 2006 staff report, and incorporate all maps and testimony into the record by reference.

Mayor pro Tem DeJarnatt asked the maker of the motion if he would be willing to add a condition of approval to change the hours of operation from 9:00 a.m.-10:00 p.m. to 9:00 a.m.-9:00 p.m.

Councilmember Vreeland agreed, applauding the applicant for bringing it up.

Mayor pro Tem DeJarnatt seconded the motion.

Mayor Digre disagreed that it was not within their purview. She asked the City Attorney to look into the Coastal mission regarding it.

Councilmember Lancelli stated that she would like to see the details in the drawing be incorporated into it.

City Attorney Quick stated that, since the applicant stated he planned to build it that way, the Council could add a separate condition requiring that it be incorporated into the project, subject to any geotechnical issues being addressed at the same time as the rest of the geotech issues were addressed.

Councilmember Lancelli asked the maker of the motion if he would be willing to add condition #13 to incorporate the drawing as clarified by the City Attorney.

Councilmember Vreeland responded that it would be great.

Mayor pro Tem DeJarnatt stated that they were going to be addressed anyway; and it didn't matter. However, as the second, he would go along with it.

Councilmember Hinton stated that he had a concern with it because they were restricting it to the document that the Public Works Department had not reviewed. He stated that it might not be adequate or complete. He stated that the staff would review it and they would come back with a correct configuration. He felt this map was not complete and not accurate.

Councilmember Vreeland agreed, and he had looked to the Planning Director who had indicated that it didn't matter because it was not a technical drawing but a visual representation responding to some concerns addressed.

Planning Director Crabtree understood Councilmember Hinton's concern and stated they would treat the map the same as any other kind of planning document, knowing that there may be changes necessary in order to issue a building permit.

Councilmember Hinton stated that, as long as it was not unequivocally binding, he would go along with it.

Councilmember Vreeland stated that he agreed or he wouldn't have accepted the motion.

Mayor pro Tem DeJarnatt also agreed.

Councilmember Lancelle also agreed.

Mayor Digre stated that she appreciated all the questions, and mentioned that the League of Councilmembers encourage Councilmembers to question everything even with experts. She realized that there was a philosophical difference and they could ask questions as representatives.

City Attorney Quick stated that, to address Councilmember Hinton's concerns, it should be clear that the condition was subject to review and approval by staff.

Councilmember Vreeland accepted that.

Mayor pro Tem DeJarnatt stated that it was already subject to approval by staff but he was happy with that also.

ROLL CALL VOTE:

Ayes: Councilmembers: Vreeland, Hinton, DeJarnatt, and Lancelle.

Noes: Councilmembers: Digre.

Motion passed: 4-1

Mayor Digre called a one-minute break then reconvened the meeting.

The City Council agreed to take Item #11 ahead of Items #9 and 10.

CONSIDERATION

11. Approval of Contract with Veraloft Wireless Internet.

Acting City Manager Lennon presented the staff report.

Mayor Digre opened public comment.

Ken Restivo, 544 Canyon Drive, commended staff on negotiating the contract. He stated that most of his concerns had been addressed, only pointing out a concern about the two channels and questioning where the point of presence would be if not at the police station.