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F7a



Prepared December 13, 2010 (for December 17, 2010 hearing)

To: Commissioners and Interested Persons
From: Dan Carl, District Manager
Madeline Cavalieri, Coastal Planner
Subject: **STAFF REPORT ADDENDUM for F7a**
CDP Application Number A-3-PSB-10-032 (Larson SFD)

The purpose of this addendum is to modify the staff report for the above-referenced item. Specifically, in the time since the staff report was distributed, staff, upon further review, discovered that the subdivision in question did not conform to two of the City's local ordinances that may have been in effect at the time of the approval of the subdivision. This information does not change staff's recommendation, but it is a relevant detail with respect to the question of whether the subject lot was legally created.

Although the additional information appears to further the appellants' argument that the lots were never intended to be built upon, it does not change the fact that the subdivision was apparently approved by the City, and that the approval did not in any way restrict the development of the lots. It is still unclear whether the 1959 subdivision ordinances or the 1963 zoning regulations were the applicable subdivision regulations at the time of the 1972 subdivision.

To address this additional information, the staff report dated prepared November 23, 2010 is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~striketrough~~ format indicates text to be deleted):

2. Revise the last paragraph on Page 4 of the staff report as follows:

In short, it is not clear that the map was consistent with the regulations in place at the time, including because it has not been established what regulations were in place at the time. If the 1959 ordinances were in effect, ~~and if it were otherwise consistent with these requirements,~~ it is not clear that the map was approved by the City Council as required by these ordinances, and in any case, the map did not include the required Planning Commission and City Council certifications. If the 1963 ordinances were in effect, the subdivision portion of these ordinances has not been discovered, and conformance with these 1963 ordinances, to the extent they were in effect, cannot be measured. Further, it appears that the subdivision did not conform to certain sections of both the 1959 and 1963 ordinances. The 1959 ordinances included minimum lot sizes, and the subdivision did not meet those requirements. Similarly, the 1963 ordinances define a lot as a building site that has "its principal frontage on a street, road, highway or waterway," and the lots created through the subdivision did not have such frontage. Although it is possible that the as yet undiscovered subdivision ordinances from 1963 could nullify and/or have different requirements in this respect, the criteria of at least this portion of the 1963



ordinances appears not to have been met. For these reasons Nonetheless, the Commission cannot conclude on the lot legality question because there is not conclusive information about what local laws were in place at the time, or whether the City's approval process was consistent with the applicable local laws.

Irrespective of these facts, on October 20, 2010, the City issued an unconditional certificate of compliance (COC) for lot 20. The Commission does not believe that the COC conclusively establishes lot legality because it was based on the same fact set described above and issued without the City first verifying that the parcel was subdivided in accordance with the laws and regulations that were in place at the time the subdivision map was approved, as required by the SMA. And if the City had instead issued a conditional certificate of compliance, which would appear to be more appropriate given the uncertainties described above, such conditional certificate of compliance would also have required approval of a CDP, which did not happen in this case. Although the lack of demonstrable lot legality (and the City's unconditional COC more generally) raise concerns, because the City-approved project itself would not cause significant adverse impacts to coastal resources, the City's approval of it does not raise a substantial issue of conformance with the LCP, even considering the uncertainties over the legality of the parcel.

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