

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 OceanGate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**W21.5a****ADDENDUM**

June 8, 2010

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM W21.5a**, COASTAL COMMISSION DISPUTE RESOLUTION  
**#5-10-117-EDD** FOR THE COMMISSION MEETING OF **June 9, 2010**.

**A. Correspondence**

Attached is correspondence as follows:

A letter in opposition to the staff recommendation dated June 3, 2010, by James. M. Lawson, representing Laguna Terrace Park LLC, and attachments including copy of letter with attachments dated February 9, 2010, by Boyd L. Hill of Hart, King & Coldren law firm, Coastline Pilot news article dated May 28, 2010, and copy of Post LCP Certification Permit and Appeal Jurisdiction Map. **NOTE:** A hard copy of the letter by Boyd L. Hill of HK&C dated February 9, 2010, is attached to the printed edition of the addendum for reference, but a copy of the voluminous attachments to that letter is not included in the printed edition since the HK&C letter and its attachments were previously distributed to the Commission at the February 12, 2010, hearing on a related matter, 5-10-014-EDD. However, the attachments to the HK&C letter are provided in the electronic copy of this addendum available on the Commission's web site.

A letter in support of the staff recommendation dated June 3, 2010, by Sean Matsler of Manatt, Phelps, Phillips representing Mr. Paul Esslinger.

**B. Revisions to Staff Report**

Commission staff recommends the following revisions to the staff report. Deleted language is in **bold strike through** and new language is in **bold, underlined italic**, as shown below:

Revise paragraph at bottom of page 3, as follows:

... On May 5, 2010, staff of the City of Laguna Beach sent a 'draft' public hearing notice to a member of the public, Ms. Penny Elia, advising her that there would be a public hearing on an application for a coastal development permit for "...the approval of 157 individual mobile home lots and one lettered lot that includes the existing private streets and common areas" at the subject site. The 'draft' notice states that the City's action would not be appealable to the California Coastal Commission. **This determination by the City that the City's decision on the revised tentative tract map would not be appealable to the Coastal Commission initiated the following chain of events leading to the subject dispute resolution.** On May 18, 2010, Ms. Elia sent a written objection to the City of Laguna Beach stating her objection to the City's determination that the currently pending proposal would not be appealable. Ms. Elia requested that the City correct its hearing notice to indicate the project would be appealable. On May 24<sup>th</sup>, in response to the May 18th email, City staff sent an email ~~that~~ **addressed to Ms. Elia, which was copied by City staff to Commission staff, indicating that City staff was awaiting a reply from Commission staff regarding its hearing notice. Where an interested person challenges a local government decision regarding appealability, Section 13569(c) requires the local government to request a formal determination from the Commission's Executive Director. Accordingly,** the Executive Director of the Commission interpreted **the email** as a request for an Executive Director's determination as to whether City approval of Coastal Development Permit (CDP) application no. 10-26 would be appealable to the Coastal Commission (Exhibit #5). **During this time period, Commission staff contacted the Director of Community Development with the City of Laguna Beach by telephone, who confirmed the City would not be identifying its action on this**

**latest CDP application to be appealable to the Commission.** On May 25, 2010, the Executive Director sent a letter to the City with his determination that the City's action would be appealable to the Commission because there are streams in the vicinity of the proposed development (a subdivision) which establish the appeals area; and the appeals area extends into a parcel that would be reconfigured as a result of the proposed subdivision (Exhibit #6). ). **Since there is disagreement between the Executive Director and the City regarding whether the project is appealable, the Commission must hold a public hearing to resolve the dispute. Title 14, Cal. Code Regs. § 13569(d). Absent action by the Commission, members of the public may be deprived of their statutory rights to appeal the project.**

Add following paragraph after the last paragraph on page 6:

**Mr. James Lawson, representing Laguna Terrace Park LLC, submitted a letter dated June 3, 2010, with comments on this latest dispute resolution. In that letter, Laguna Terrace argues that this matter is not yet ripe for Commission action because the City's Planning Commission has not yet acted on the application. Section 13569 of the Commission's regulations, however, authorizes the dispute resolution process to occur as soon as a local government first identifies whether an application is appealable, which occurs when an application is first submitted to the local government. Section 13569 does not require the Commission to wait until after a local government takes a formal action on the merits of an application. Indeed, one of the purposes of the dispute resolution procedure is to ensure that applications are properly characterized during the local review process so that interested persons are aware of which procedures apply to the application.**

**Laguna Terrace also argues that the Commission may not proceed because the City did not expressly request an Executive Director opinion regarding the appealability of the proposed development. As explained previously, however, the City did notify Commission staff regarding the existence of a dispute regarding the project's appealability and separately indicated that the City would not identify the project as appealable. Section 13569 requires local governments to request an Executive Director opinion in such circumstances. In the absence of such a request, the Executive Director may nonetheless commence dispute resolution proceedings. See North Pacifica LLC v. California Coastal Commission (2004) First District Court of Appeal Case No. A101434 (unpublished opinion). Otherwise a local government could unilaterally prevent the Commission from resolving disputes regarding appealability.**

**Laguna Terrace asserts that its proposed subdivision is not a "change in the density or intensity of use of land" and therefore does not qualify as development. Section 30106 of the Coastal Act, however, expressly defines "change in the density or intensity of use of land" to include subdivisions pursuant to the Subdivision Map Act and any other division of land. The proposed subdivision therefore qualifies a development within the meaning of the Coastal Act.**

**Laguna Terrace contends that even if the subdivision does qualify as development it is limited to the mobile home park itself and does not extend into the Commission's appellate jurisdiction. The proposed subdivision, however, changes the size, configuration, and development potential of the remainder lot, which does extend into the Commission's appellate jurisdiction. Even if the remainder lot is not considered part of the subdivision for purposes of the Subdivision Map Act, the Coastal Act's definition of development includes divisions of land other than those subject to the Subdivision Map Act. Because the proposed development divides the remainder lot from the mobile home park and changes the intensity of use of the remainder lot, it includes development that extends into the Commission's appellate jurisdiction.**

**Mr. Lawson also included several attachments to his letter, including a copy of a letter, also with attachments, dated February 9, 2010, by Boyd L. Hill of Hart, King & Coldren law firm. That letter and its attachments were previously distributed to the Commission at the February 12, 2010, hearing on a related dispute resolution, 5-10-014-EDD. In the February 9<sup>th</sup> letter, Mr. Hill raises several issues, some of which remain relevant to the current proceeding. Commission staff has previously addressed those issues in an addendum to the findings for 5-10-014-EDD (which the Commission ultimately adopted), which are incorporated here in their entirety by reference. A copy of the relevant portion of the text of the prior addendum responding to the February 9<sup>th</sup> letter is as follows:**

[Laguna Terrace disregards] the significance of the City's refusal to request an Executive Director determination regarding appealability. Where a local government has refused to request an Executive Director determination, provisions in the regulation regarding how to reply to a local government's request for a determination simply do not apply. In previous situations where local governments have failed to submit such requests, the Commission has initiated dispute resolution proceedings in order to protect the public's statutory rights to appeal. Otherwise, a local government could defeat the public's right to appeal projects by noticing projects as non-appealable and then refusing to request Executive Director determinations when challenged. In a case factually similar to this one, the First District Court of Appeal upheld the Commission's decision to institute a dispute resolution proceeding despite the lack of a formal request by the local government. See North Pacifica LLC v. California Coastal Commission (2004) First District Court of Appeal Case No. A101434 (unpublished opinion)<sup>1</sup> (Exhibit 7) to the dispute resolution report for 5-10-014-EDD, not included as an attachment to this report on 5-10-117-EDD, but is incorporated by reference].

### Appellate Jurisdiction

Laguna Terrace argues that the subdivision is located entirely outside the Commission's appellate jurisdiction. This argument turns on whether, for the purposes of Coastal Act review, the Commission must act as if lot line adjustments that were not permitted under the Coastal Act are nonetheless fully effective. If those lot line adjustments are not effective for the purposes of Coastal Act review, then the lot being subdivided under the current proposal includes a stream that is depicted on the City of Laguna Beach post-cert map. The City's action to approve subdivision of that lot would therefore be appealable pursuant to Coastal Act section 30603(a)(2).

Laguna Terrace contends that the Commission must recognize the 1995 lot line adjustments as being fully effective because of the 90-day statute of limitations for challenges to local government decisions under the Subdivision Map Act. (See Gov. Code § 66499.37.) Whether the local government properly approved the lot line adjustments for the purposes of the Subdivision Map Act, however, is irrelevant here. The Coastal Act establishes an entirely separate requirement for those engaging in development to obtain a coastal development permit. (Pub. Res. Code § 30600(a).) "Development" includes divisions of land, such as the lot line adjustments at issue here. (Pub. Res. Code § 30106; La Fe, Inc. v. County of Los Angeles (1999) 73 Cal.App.4th 231, 240-42.) No Coastal Act approvals were ever obtained for the lot line adjustments, therefore, the statute of limitations does not apply.

Laguna Terrace also argues that under the doctrine of equitable estoppel the Commission must act as if the lot line adjustments are fully effective for the purposes of the Coastal Act. Public agencies are rarely subject to equitable estoppel and only when all five of the following criteria apply: 1) the agency to be estopped is apprised of the facts; 2) the agency must have intended the other party to act in reliance on the agency's actions, or must act so that the other party reasonably believes the agency intended it to act in reliance; 3) the other party must be ignorant of the true state of the facts; 4) the other party's reliance on the agency's action caused injury; and 5) application of the doctrine would not effectively nullify a strong public policy adopted for the benefit of the public. (Feduniak v. California Coastal Commission (2007) 148 Cal.App.4th 1346, 1359-60.)

The only facts that Laguna Terrace cites in support of its estoppel argument are that the Commission has approved some coastal development permits for development located on lots affected by the lot line adjustments. As with all coastal development permit

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<sup>1</sup> Laguna Terrace asserts that the Commission may not consider the North Pacifica decision because it is unpublished. Rule of Court § 8.1115, however, simply limits the citation of unpublished decisions in the context of court proceedings. The North Pacifica decision is not binding legal precedent here, but the Commission may appropriately take into consideration the fact that a court of appeal has upheld the Commission's use of the dispute resolution process in a similar circumstance where the local government failed to request an Executive Director determination.

applications, the applicants submitted information regarding property ownership. (See 14 Cal. Code Regs. § 13053.5(b) (permit applicants must describe and document their legal interest in property where development would occur).) The applications, however, involved only smaller-scale physical development to address drainage and erosion concerns. The applications did not seek approval of the lot line adjustments and approval of the proposed physical development did not in any way imply approval of lot line configurations that were not at issue.

Laguna Terrace's contention regarding previous permit applications goes only to the issue of whether the Commission knew about the 1995 lot line adjustments at the time it acted on the permit applications. Because the Commission did not address the configuration of the lot lines in those permits and because the configuration had no bearing on the merits of whether to approve the proposed physical developments, Laguna Terrace and its predecessor-in-interest could not have reasonably relied on those actions as constituting approval of the lot line adjustments or a determination that no Coastal Act approval was required. The property owners were also in a better position than the Commission to know the details of the 1995 lot line adjustments and the fact that they had not received Coastal Act approvals<sup>2</sup>. Finally, Laguna Terrace's argument would nullify the strong public policy established in the Coastal Act that development in the coastal zone requires a coastal development permit. Laguna Terrace has therefore failed to establish that equitable estoppel applies here.

Laguna Terrace argues that the attachments to the staff report are not an accurate representation of the location of the appeals area depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map of September 16, 1993<sup>3</sup>. In fact, a copy of the relevant portions of the actual Post-LCP Cert Map is attached to the staff report as Exhibit 10 [to the dispute resolution report for 5-10-014-EDD, which is Exhibit 9 of this report on 5-10-117-EDD]. Moreover, it should be noted that the presence of a stream in the area depicted on the Post-LCP Cert Map is corroborated by recent biological studies prepared for the area such as Figure 10/22 (prepared by PCR) that is a part of the draft Aliso Creek Area Redevelopment Plan dated March 29, 2007 that is on file with the City of Laguna Beach (to be included as a substantive file document with this dispute resolution). In fact, that biological report indicates a more extensive network of streams in the area than is shown on the Post-LCP Cert Map. Laguna Terrace also intimates that the depiction of the appeals area found on Exhibit 2 is not sufficiently accurate to make an appeals determination in this case. Again, this is not true. The appeals area is squarely within the 270 acre area that is affected by the subdivision and any inaccuracy in the depiction found on Exhibit 2 does not alter this fact. Even if the depiction of the appeals area were off the actual ground-position of the stream by several hundred feet, the map would still show the appeals area being within the 270 acre area affected by the subdivision.

### Exemptions

Laguna Terrace argues that the project is exempt for two reasons.

First, it argues that the subdivision simply converts the mobile home rental spaces into separate residential lots and therefore qualifies as an exempt improvement to existing single family residences pursuant to Coastal Act section 30610(a). Laguna Terrace acknowledges, however, that the subdivision does not involve any physical improvements to mobile homes or to the mobile home park itself. Even if it did, a subdivision is not the kind of physical

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<sup>2</sup> Laguna Terrace asserts that it had no expectation that the 1995 lot line adjustments required a coastal development permit because it purchased the property in 1997, before the La Fe decision was announced in 1999. La Fe, however, was not a change in the law. The Coastal Act's definition of development, Section 30106, has not changed since the Act's original enactment. Prior to the La Fe decision, the Commission interpreted the term "development" to include lot line adjustments. The La Fe decision simply rejected arguments that lot line adjustments do not fall within the definition of development.

**development that qualifies as an improvement. (See 14 Cal. Code Regs. § 13250.) The exemption for improvements to single family residences, therefore, plainly does not apply.**

**Laguna Terrace also contends that the subdivision is exempt from the Coastal Act by virtue of the Subdivision Map Act provision regarding subdivision of mobile home parks, Government Code section 66427.5. That provision does limit the scope of local government review of mobile home park subdivisions for the purposes of the Subdivision Map Act. It does not in any way limit the applicability of other state statutory requirements such as the Coastal Act, however.**

**Laguna Terrace repeatedly cites Sequoia Park Associates v. County of Sonoma (2009) 176 Cal.App.4th 1270, which held that local governments may not impose requirements that duplicate or exceed the requirements of Section 66427.5 when reviewing an application for a mobile home park subdivision under the Subdivision Map Act. Sequoia Park Associates, however, involved a local government that invoked its own police power authority to impose requirements beyond those specified in the Subdivision Map Act. The case did not involve a local government attempting to comply with state statutory requirements other than the Subdivision Map Act, much less a situation such as here where a local government is acting pursuant to delegated state-law permitting authority.**

**Laguna Terrace mischaracterizes the Laguna Beach Local Coastal Program as “nothing more than a general or specific plan” for the coastline. To the contrary, in the coastal development permit context, the certified LCP has the status of state law by virtue of the Coastal Act. (See Charles A. Pratt Construction Co. v. California Coastal Commission (2008) 162 Cal.App.4th 1068, 1075-76.). In addition, as explained previously, the Coastal Act itself requires coastal development permits for subdivisions such as this. When the proposed development is located in an area subject to an LCP that the Commission has certified, the local government is responsible for issuance of the coastal development permit in the first instance and the certified LCP serves as the standard of review. (Pub. Res. Code §§ 30519(a), 30604(b).)**

**Where two statutory schemes apply, the California Supreme Court requires that they be read together and applied so as to give full effect, when possible, to all requirements of both statutes. (DeVita v. County of Napa (1995) 9 Cal. 4th 763, 778-779.) Here, Laguna Terrace seeks to use the Subdivision Map Act as a shield to prevent any Coastal Act review. Neither the Subdivision Map Act, the Coastal Act, nor relevant caselaw supports this argument. The proposed subdivision, therefore, is not exempt from the Coastal Act.”**

## **C. Ex Parte Communications**

# LAGUNA TERRACE PARK

**RECEIVED**  
South Coast Region

June 3, 2010

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CALIFORNIA  
COASTAL COMMISSION

Board of Commissioners  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4416  
c/o Karl Schwing, Orange County Area Supervisor

RE: California Coastal Commission June 9, 2010 Agenda Item W21.5a, Dispute Resolution  
Number 5-10-117-EDD

Dear Commissioners,

Laguna Terrace Park LLC, the applicant for a vesting tentative tract map in the City of Laguna Beach under the provisions of Government Code Section 66427.5, respectfully requests that the Commission reject the staff position on appealability pertaining to the still pending application. In addition to the grounds raised in our prior letter to the Commission on the issue of appealability, a copy of which is attached hereto and incorporated by this reference, this matter is not properly before the Commission for the following two additional grounds:

First, procedurally, this matter is not ripe. There has not been a determination by the local government in question (City of Laguna Beach) as to appealability or exemption with respect to any coastal development permit under the Laguna Beach Local Coastal Program. The Coastal Commission Regulations require that there be such a determination before the Commission may take up the matter. (14 CCR Section 13569) The Laguna Terrace Park application for a vesting tentative tract map has not even been reviewed by the City's advisory body (the Planning Commission). Thus, there has been no decision on appealability or exemption by the authorized City official/body, nor in fact can there be until after the Planning Commission considers the project and establishes its parameters. Nor has there been a telephonic request by the City to the Commission stating that there is such a City determination or that an issue that has been raised by an appropriate party following such a determination.

Staff contends that this matter is before the Commission due to the City of Laguna Beach requesting via email on May 24, 2010 an Executive Director's determination as to whether a City approval of Coastal Development Permit (CDP) application no. 10-26 would be appealable. This is simply incorrect. The City of Laguna Beach never made such a request. Rather, a local

resident whose home overlooks the subject property, Penny Elia, received an email from the City of Laguna Beach on May 24, 2010 and forwarded the email to staff. It defies credibility to define an email exchange between the City and a resident as a direct request for an Executive Director's determination. The City itself has denied ever making such a request.

It is difficult to overlook the connection Ms. Elia has to the Commission. As recently as May 23, 2010 Ms. Elia organized a Save The Whales demonstration in Laguna Beach, apparently for the WAN Conservancy, founded by Commissioner Wan (Coastline Pilot article attached). Exactly one day later, Ms. Elia is able to forward an email exchange between her and the City to Commission staff, which then "interprets" to be a direct request from the City. Again, the City never made such a request. Ms. Elia is certainly free to organize events for any organization she pleases. But the apparent connection between Ms. Elia and Commissioner Wan certainly creates at least an appearance of undue influence with the Commission, especially in light of staff's disregard of 14 CCR Section 13569.

Second, substantively, the Commission lacks jurisdiction over the Laguna Terrace Park application. The Commission only has jurisdiction over "development" as it is defined in the Coastal Act. (Pub. Res. Code Section 30600 (a)) The Coastal Act only includes under the definition of "development" those subdivisions or other divisions of land that involve a "change in the density or intensity of use of land." (Pub. Res. Code Section 30101 (4)) Here, there is no change in the density or intensity of use of land encompassed by the Laguna Terrace Park application. Therefore, neither the City nor the Commission has Coastal Act jurisdiction over the Laguna Terrace Park application for a vesting tentative tract map to require or impose a coastal development permit.

Even assuming that the proposed division of land constitutes "development" under the Coastal Act, any jurisdiction for the issuance of a Coastal Development Permit for the current proposal lies squarely with the City of Laguna Beach. The proposed subdivision is entirely within the City's LCP. The area proposed for subdivision encompasses only the existing developed area of the mobilehome park within the City's LCP, and does not meet any of the criteria for appealability to the Commission. All areas outside the limits of the mobilehome park, that may be located within the Area of Deferred Certification, and that may have an appealable feature, have been omitted entirely from the subdivision pursuant to Government Code 66424.6.

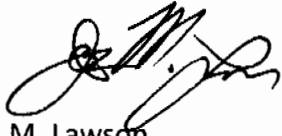
In adopting the Post-LCP Certification Permit and Appeal Jurisdiction map on September 16, 1993 (attached), the Commission also stated,

"In areas where a parcel is bisected by the appeal jurisdiction boundary, only that portion of the parcel within the area defined as appealable is subject to the Commission's appeal jurisdiction."

Regardless of the configuration of lot lines analyzed (staff contends that all analysis must assume lot configurations prior to Lot Line Adjustment 95-01), the proposed subdivision is still not appealable, as no development (subdivision or other divisions of land) is proposed on "that

portion of the parcel within the area defined as appealable.” Any determination of appealability based on property boundaries is in direct contradiction to the limitations established by the Commission.

For the foregoing reasons, Laguna Terrace Park respectfully requests that the Commission reject the staff position on appealability.

A handwritten signature in black ink, appearing to read 'James M. Lawson', written in a cursive style.

James M. Lawson  
Laguna Terrace Park LLC



February 9, 2010

Coastal Commission Agenda Item F8a

Our File Number: 26803.105/4825-8571-4437v.1

**VIA HAND DELIVERY**

Board of Commissioners  
California Coastal Commission  
200 Ocean Gate, 10th Floor  
Long Beach, CA 90802-4416  
c/o Karl Schwing, Orange County Area Supervisor

**RECEIVED**  
South Coast Region

FEB - 9 2010

CALIFORNIA  
COASTAL COMMISSION

**RE: California Coastal Commission February 12, 2010 Agenda Item F8a  
Dispute Resolution No. 5-10-014-EDD  
City of Laguna Beach ("City") Local CDP No. 09-36 ("Permit")**

Dear Commissioners:

This firm represents Laguna Terrace Park, LLC ("Laguna Terrace"), the holder of the subject Permit, in connection with the above-referenced Dispute Resolution. The Commission must reject the Staff position for the following reasons:

**Grounds for Rejection**

1. The Dispute Resolution is not properly before the Commission. There was no challenge by an interested person of the City's determination of non-appealability, there was no request by the City for an Executive Director opinion, there was no timely Executive Director opinion within 2 working days of any such challenge or request that is contrary to the City's determination, and there was no such required transmittal to the City of any such required Executive Director opinion. (14 Cal. Code Regs., § 13569)
2. The Commission does not have jurisdiction because the "development" approved by the City was a vesting tentative tract map, the boundary of which is not even close to the area identified on the Laguna Beach Post LCP Certification Map as within 100 feet of a stream. (Pub. Res. Code, § 30603 (a) (2); 14 Cal. Code Regs., § 13577 (a))
3. The "development" approved by the City was the mere mapping under the exclusive preemptive provision of the Subdivision Map Act for existing mobilehome spaces already approved by the Department of Housing and Community Development; it is therefore exempt from Coastal Act jurisdiction under the improvements to single family residences exemption. (Pub. Res. Code, § 30610 (a))

### **The Permit Approval**

On February 20, 2009, Laguna Terrace submitted an application to the City for Vesting Tentative Tract Map No. 17301 ("Map Application"). A copy of the Map Application materials is attached hereto as Attachment 1. As the Map Application and cover letter indicate, the Map Application was for the sole purpose of creating lots from existing mobilehome park spaces so that the residents could purchase their current rental spaces. The Map Application cover letter expressly states that no new improvements or grading will take place.

As the map and preliminary title report contained in the Map Application materials indicate, the parcel of land that was being subdivided was Parcel 1 of Lot Line Adjustment No. 95-01. Laguna Terrace obtained valid title to that separate legal parcel in a September 15, 1997 purchase transaction, as demonstrated by the grant deed and title policy for that property attached hereto as Attachments 2 and 3.

In a letter dated October 28, 2009 attached hereto as Attachment 4, Laguna Terrace objected to any City requirement for a local coastal permit. Laguna Terrace took the position that the Map Application was not "development" under the Coastal Act because it was the mere mapping of an existing mobilehome park for conversion to resident ownership under an exclusive and preemptive provision of the Subdivision Map Act. (See Govt. Code, § 66427.5; *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270, 1293-1296; see also Pub. Res. Code, § 30610 (a))

Despite the Laguna Terrace objection that the Map Application did not pertain to "development" and was therefore exempt from the Coastal Act, the City processed a Coastal Development Permit together with the Map Application. On January 5, 2010, the City Council approved both the Map Application and the Permit. Copies of the City's Staff Report and Resolution are attached hereto as Attachments 5 and 6.

### **Staff Has the Burdens of Production of Evidence and of Proof**

Staff has the burden of producing evidence and the burden of proof to sustain both its position that there is a disputed matter on appealability that is properly before the Commission and that there is an appealable decision under the Coastal Act. California Evidence Code Section 500 provides: "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting." California Evidence Code Section 550 (b) provides: "The burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact."

The attachments to the Staff Report do not provide substantial evidence in support of either a proper dispute or an appealable decision under the Coastal Act. In addition, as the arguments and attachments to this letter conclusively demonstrate, the "development" approved by the City is exempt from the Coastal Act and therefore not appealable.

**The Requirements for Commission Dispute Determination Have Not Been Satisfied**

Coastal Commission regulation establishes the exclusive requirements before there can be a Commission hearing on a dispute over appealability. According to those requirements, it is up to the City to make the determination of whether a particular "development" is appealable based on the Local Coastal Program and its maps: "The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program." (14 Cal. Code Regs., § 13569)

The Coastal Commission regulation expressly limits the categories of those who may question the City's determination, and none of those include the Coastal Commission Staff: "Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable." (14 Cal. Code Regs., § 13569)

The attachments to the Staff Report show that a letter discussing appealability was submitted by Coastal Commission Staff, not by an applicant, interested person or local government.

The Coastal Commission regulation also requires that any authorized person with a question about appealability file a challenge with the City after the City has made its determination of appealability: "The local government shall make its determination as to what type of development is being proposed (i.e., categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures. If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion." (14 Cal. Code Regs., § 13569 (a), (b))

Here, assuming that Coastal Commission Staff could question appealability, there was no challenge filed with the City after the City's determination of appealability. The December 22, 2010 -- e-mail from Karl Schwing attached to the Staff Report was not a "challenge," but a "recommendation." The January 4, 2010 -- e-mail from Penny Alia similarly was not a "challenge," but a simple repeat of the Karl Schwing letter. There is no evidence that Penny Alia is an "interested person" under the applicable Coastal Commission regulation.

Furthermore, there was no telephonic request by the City for an Executive Director opinion. The Executive Director could not act on its own without such a request from the City. The Staff Report suggests that there is a mandatory duty by the City to make such a request, and that

therefore the Executive Director could act on its own. Staff's position is contrary to the Coastal Commission regulation (14 Cal. Code Regs., § 13569) and not the established law. The Staff Report inappropriately cites to and attaches an unpublished Court of Appeal decision (*North Pacifica LLC v. California Coastal Commission*) in a different appellate district (the property is in the Fourth not First Appellate district). The California Judicial Council and Supreme Court have made it clear that unpublished appellate decisions cannot be cited to or relied upon as the law. (Rules of Court, § 1115 (a))

The Coastal Commission regulation also requires that there be a timely Executive Director opinion responding to any challenge within 2 days of any City request: "The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable." (14 Cal. Code Regs., § 13569 (c))

There is no Executive Director determination attached to the Staff report showing a timely action or any action at all by the Executive Director. No determination was transmitted to the City or to Laguna Terrace as required by law. If, as argued by Staff, the Executive Director had authority to act on its own without a City request and without a challenge by an interested person, then he would have had to make such a determination on or before December 24, 2009, 2 days after the December 22, 2009 Karl Schwing e-mail, and would have had to transmit it to the City at that time.

It is only after all of the above-listed requirements have been satisfied that the Commission may entertain the issue of appealability as a "disputed matter:" "Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request." (14 Cal. Code Regs., § 13569 (d))

Therefore, given that there was no challenge of the City's determination of non-appealability by an interested person, no request for an Executive Director determination, no Executive Director determination, no timely Executive Director determination, no transmittal of a timely Executive Director determination, and no showing of a conflicting determination, Staff has failed to demonstrate that this matter should be before the Commission, and, without such a showing, the Executive Director is estopped from arguing that there is a pending dispute on the matter of appealability of the City's Permit.

### **The "Development" is Not Within Coastal Commission Appealability Jurisdiction**

The Coastal Act limits Coastal Commission jurisdiction over appeals from "development" approved by the City within the boundaries of its certified local coastal program to "only" certain specified situations: "After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments ..." (Pub. Res. Code, § 30603 (a))

For purposes of this matter, Staff is relying on a particular provision allowing Coastal Commission jurisdiction over "developments" approved by the local government not between the sea and the first public road paralleling the sea or within 300 feet of the beach "that are ... within 100 feet of any ... stream ...." (Pub. Res. Code, § 30603 (a) (2))

Thus, Staff had the burden of showing that the "development" approved by the City was within 100 feet of a stream in order for there to be a dispute within the Commission jurisdiction.

The applicable Coastal Commission regulation expressly limits the evidence that Staff can rely upon to establish the narrow Public Resources Code Section 30603 exceptions for Coastal Commission jurisdiction over appeals from local coastal permits: "For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria: (a) Streams. Measure 100 feet landward from the top of the bank of any stream ... identified in a local coastal program. ... For purposes of this section, channelized streams not having significant habitat value should not be considered." (14 Cal. Code Regs., § 13577 (a))

Staff attaches portions of and attempts to rely upon the Post-LCP Certification Permit and Appeal Jurisdiction Map of September 16, 2003. A partial portion of that map is attached as the final two pages of attachments to the Staff Report.

However, when that Jurisdiction Map is viewed in its entirety and juxtaposed against the actual "development" that the City approved, it is obvious that the area of Coastal Commission appeal jurisdiction is more than 100 feet away from any stream depicted on that Jurisdiction Map. A full sized copy of the Jurisdiction Map is attached hereto as Attachment 7 (we are attaching 12 full sized copies so that each voting Commissioner has a copy)

The area of the "development" approved by the City is juxtaposed against the Coastal Commission Appeal jurisdiction area on a map prepared by the City for the Permit hearing, which is attached hereto as Attachment 8 (we are attaching 12 full sized copies so that each voting Commissioner has a copy). As can be plainly seen from the depiction on the City Permit hearing map, the area 100' from stream is not contiguous with the area of "development" approved by the City.

Staff improperly attempts to introduce into evidence as Staff Report attachments 1 and 2 a City of Laguna Beach "vicinity map" purporting to show "streams" and a "map" purporting to show "appeal jurisdiction" boundaries closer to the "development", which depicted streams and boundaries clearly do not match the appeal jurisdiction depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map. Because those "maps" do not qualify as evidence pursuant to the applicable Coastal Commission regulation, and additionally because they are not authenticated as proper evidence of the existence of a stream within 100' of the subject "development," Laguna Terrace objects to their presentation as evidence at the hearing, and the Commission must disregard them as without foundation and irrelevant. (See Evid. Code, §§ 350, 403)

Staff attempts to turn the Coastal Act on its head by arguing that the Commission must not accept the boundaries of the 46 acre "development" as contained in the Map Application approved by the City. Incredibly, Staff suggests that the Commission must treat the "development" approved as the subdivision of a much larger 270 acre parcel of property that was reduced down to 46 acres by a lot split in 1995.

The express language of Public Resources Code Section 30603 clearly contradicts Staff's position. In order for there to be Coastal Commission jurisdiction, a stream must be within 100' of the actual "development" approved by the City, not within a Staff extrapolated parcel not before or approved by the City. (Pub. Res., § 30603 (a) (2))

The Staff position that the 1995 lot line adjustment is not valid and must be disregarded is contrary to the express Legislative time limitation on challenges to lots established under the Subdivision Map Act. The Subdivision Map Act expressly provides that a lot line adjustment is valid and no longer subject to challenge after the short 90 day statute of limitation. (See Govt. Code, § 66499.37) The broad language the Legislature employed within Section 66499.27 was specifically designed to include any challenge, regardless of whether procedural or substantive in character, to any subdivision-related decision of either a legislative or advisory entity, or any of the necessary precedent proceedings, acts or determinations pursued before the making of the challenged decision. (See *Presenting Jamul v. Board of Supervisors* (1991) 231 Cal.App.3d 665, 670-671)

Furthermore, the doctrine of equitable estoppel prevents the Commission from now treating Lot Line Adjustment 95-01 as void and invalid. The doctrine of equitable estoppel acts to prevent a government agency from enforcing laws regarding title to property where the government agency has acted at all times as if the party in possession had proper title and the party in possession had acted for many years to its detriment based on the government agency action or inaction concerning title to the property. (See *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-489; see also *Holt v. County of Monterey* (1982) 128 Cal.App.3d 797, 801 [same result under equitable doctrine of laches])

The Commission has approved several permits for Parcel 1 of Lot Line Adjustment 95-01 since 1995 and since Laguna Terrace acquired the property in 1997, each of which permit required that Laguna Terrace present and the Coastal Commission approve evidence that Laguna Terrace had legal title to its property. Those permits are Coastal Commission permit numbers G5-95-286, 5-95-286, 5-95-286A, 5-96-048 and 5-98-151. Permit number 5-98-151 is most significant because information regarding Lot Line Adjustment 95-01 was requested by the Coastal Commission and submitted to the Commission by the property owner. Copies of the application materials for permit 5-98-151 are attached hereto as Attachment 9. At no point during those permit applications did the Commission object to Laguna Terrace legal title. Indeed it approved those permits without objecting to title, leading Laguna Terrace and its predecessor-in-interest to believe for nearly 15 years that they had valid title without Coastal Commission approval of the lot line adjustment.

With respect to the application of equitable estoppel, it is important to note that it was not until 1999 that the California Court of Appeal determined that a lot line adjustment could be a

"development" under the Coastal Act. (See *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, 234) Therefore, when Laguna Terrace purchased the subject property in 1997, it had no expectation that the subject lot line adjustment parcel would require a Coastal Act permit, especially because it was not intended to foster development on the part of Laguna Terrace. Furthermore, the Coastal Commission in 1999 and thereafter had the opportunity to challenge the lot line adjustment with respect to a permit, but did not.

Therefore, under the equitable doctrines of estoppel and laches, the Commission is barred from denying that Laguna Terrace has valid title to Parcel 1 of Lot Line Adjustment 95-01.

Contrary to Staff statements, there is no ongoing enforcement of the 2007 notice of violation. Laguna Terrace representatives viewed the Commission file on this matter less than one month ago, and the file did not contain any mention of any action to follow up on the notice of violation over the last two plus years.

#### **The Development is Exempt**

Although the Coastal Act includes subdivisions in its definition of "development," it clearly exempts actions pertaining to existing residential development where the "development" will entail "improvements to existing single family residences." (Pub. Res. Code, § 30610 (a))

The Map Application, which seeks a mere paper conversion of existing mobilehome rental spaces to residential lots, clearly qualifies under the applicable "improvements to existing single family residences" exception of Section 30610 (a).

The Map Application is not a traditional subdivision because it will not include grading, new residences, new facilities, change of use, or new impacts to environmental resources. Nothing will change but the paper title. For that very reason, the Legislature made it clear under the Subdivision Map Act that "the scope of the hearing [on a mobilehome park conversion subdivision application] shall be limited to the issue of compliance with this section." (Govt. Code, § 66427.5 (e)) The California Court of Appeal has now held on two occasions that Section 66427.5 means what it says: "It says in effect: Local authority, you have this power, but no more." (*Sequoia Park Associates v. County of Sonoma, supra*, 176 Cal.App.4th at 1296)

Government Code Section 66427.5 must not be read in isolation. As the Court of Appeal recently explained, Section 66427.5 is part of a comprehensive and preemptive Legislative scheme governing mobilehome parks from cradle to grave: "Section 66427.5 does not stand alone. If the Legislature ever did leave the field of mobilehome park legislation to local control, that day is long past." (*Sequoia Park Associates v. County of Sonoma, supra*, 176 Cal.App.4th at 1279)

It is the California Department of Housing and Community Development, not the Coastal Commission, that is given exclusive and plenary control over mobilehome park design, construction, use and development under the Mobilehome Parks Act: "These statutory schemes indicate that the state is clearly the dominant actor on this stage. Under the Mobilehome Parks Act, it is the HCD, a state agency, not localities, that was entrusted with the authority to

formulate 'specific requirements relating to construction, maintenance, occupancy, use and design' of mobilehome parks." (*Sequoia Park Associates v. County of Sonoma, supra*, 176 Cal.App.4th at 1281)

Indeed, the mobilehome park statutory scheme is so pervasive and preemptive that the City cannot even consider general plan or zoning compliance: "As already established, section 66427.5 strictly prohibits localities from deviating from the state mandated criteria for approving a mobilehome park conversion application. Yet the Ordinance directs that the application shall be approved 'only if the decision maker finds that,' in addition to satisfying the survey and tenant impact report requirements imposed by section 66427.5, the application (1) 'is consistent with the general plan' and other local land and zoning use regulations; (2) demonstrates that 'appropriate' financial provision has been made to underwrite and 'ensure proper long term management and maintenance of all common facilities and infrastructure'; (3) the applicant shows that there are 'no conditions existing in the mobile home park that are detrimental to public health or safety'; and (4) the proposed conversion 'is a bona fide resident conversion' as measure against the percentage-based presumptions established by the Ordinance. ... However commendable or well intentioned these additions may be, they are improper additions to the exclusive statutory requirements of section 66427.5." (*Sequoia Park Associates v. County of Sonoma, supra*, 176 Cal.App.4th at 1299)

A local coastal plan under the Coastal Act is nothing more than a general or specific plan for the applicable coastline. A local coastal program "serves essentially the same function as a general plan." (*City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 487) As such, under the holding in *Sequoia Park Associates*, application of the City's local coastal plan to Laguna Terrace would be an unpermitted intrusion on the Department of Housing and Community Development jurisdiction in violation of accepted principles of statutory construction. Under principles of statutory construction, the enactment of Government Code Section 66427.5 impliedly amended the Coastal Act to prevent Coastal Act review of any existing mobilehome park subdivision application to convert to resident ownership. (See *McLaughlin v. State Bd. of Educ.* (1999) 75 Cal.App.4th 196, 219-225)

But the Commission need not here and now embroil itself in a jurisdictional conflict with the Department of Housing and Community Development over land use planning for mobilehome parks. Instead, to the extent the Commission believes it has authority to determine the appealability of the Permit at this hearing without strict compliance with the applicable regulatory requirement (14 Cal. Code Regs., § 13569), the Commission must also determine under that same regulation that the "existing residence" exemption applies to the permit. (See 14 Cal. Code Regs., § 13359) Laguna Terrace, an interested applicant, made a specific challenge to the City's determination that the subdivision was not exempt "development" and the City failed to request a determination from the Executive Director.

Therefore, to be consistent with the pervasive statutory scheme giving plenary authority over mobilehome park development to the Department of Housing and Community Development, the Coastal Commission must apply the clearly applicable Coastal Act exemption for existing single family residences (Pub. Res. Code, § 30610 (a)) to the "development" at issue here. Coastal Commission Staff in their letter dated October 27, 2009 expressly recognized that





HART, KING & COLDREN

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"there is no physical development currently contemplated" with respect to the subject "development." Thus, there simply is no "nexus" between the Coastal Act and the subject "development" that would allow the Coastal Commission to determine otherwise. (See *Dolan v. City of Tigard* (1994) 512 U.S. 374; *Nollan v. California Coastal Commission* (1987) 483 U.S. 825)

**Conclusion**

In conclusion, the Coastal Commission does not have jurisdiction over the Permit because the subject "development" is both exempt and not within the area of Coastal Commission appeal jurisdiction. In addition, the matter of the Permit appealability is not properly before the Coastal Commission as a legitimate "dispute." Therefore, Laguna Terrace respectfully requests that the Coastal Commission: (1) refuse to take up the Dispute Resolution; (2) determine that the subject Permit is not appealable under the Coastal Act; and/or (3) determine that subject "development" is exempt from permitting under the Coastal Act.

HART, KING & COLDREN

Boyd L. Hill

Enclosure: Attachments 1-9

cc:	Ken Frank	by e-mail only, without attachments
	Phil Kohn	by e-mail only, without attachments
	John Montgomery	by e-mail only, without attachments
	Scott Drapkin	by e-mail only, without attachments



California Coastal Commission  
February 9, 2010  
Page 10

bcc: Stephen W. Esslinger  
James Lawson  
Robert S. Coldren  
Burt Mazelow

by e-mail only, without attachments  
by e-mail only, without attachments  
by e-mail only, without attachments  
by e-mail only, without attachments

# **ATTACHMENT NO. 1**

# LAGUNA TERRACE PARK

February 20, 2009

**VIA MESSENGER**

Scott Drapkin  
Planning Division  
City of Laguna Beach  
505 Forest Ave.  
Laguna Beach, CA 92651

**RE: Laguna Terrace Park, LLC ("Laguna Terrace")  
Application for Vesting Tentative Tract Map No. 17301  
("Application")**

Dear Mr. Drapkin:

I enjoyed meeting with you recently regarding the City's requirements for the above-referenced Application. In accordance with those requirements, please find enclosed the following Laguna Terrace Application materials:

1. Development Review Application with Acknowledgement;
2. First American Title Company Preliminary Report dated February 29, 2008;
3. Tenant survey results;
4. Report on Impact of Subdivision to Residents; and
5. Vesting Tentative Tract Map No. 17301 (5 copies)

Exclusions

Because the proposed subdivision is a simple conversion to allow for eventual resident ownership of the lots on which existing residential manufactured homes are currently placed, many of the City's subdivision requirements for typical residential subdivisions are not applicable. Therefore, Laguna Terrace is not required to submit environmental impact information, a geologic report, a soils report, the drainage area, cut and fill slopes, tree planting plans, maximum building envelopes, sewer water and road details, or grading plans.

As set forth in the Report on Impact of Subdivision to Residents, because there will be no change of use resulting from the subdivision, provisions of the Government Code Sections 66427.4 and 65863.7 and the City Code Chapter 1.11 do not apply. There will

be no tenant relocation and therefore no need to hire a relocation consultant or to provide relocation mitigation measures.

#### Application Fee Amount

As we discussed, we remain concerned about the strict application of the City's tentative tract map fees towards the conversion. The mobile home park is already physically in place and no new construction or improvements are contemplated with the tentative map. Approval of a tentative tract map will not result in any physical changes in the environment, but merely allow for the eventual sale of individual lots to existing residents.

We of course remain committed to an application fee that is reasonably related to the tentative tract map's review. Pursuant to Government Code Section 66014, when a local agency charges fees for the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7, those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged.

In this case, not only are there no physical improvements associated with the tentative tract map, its review by the City is statutorily limited in scope by Government Code Section 66427.5, which we discussed at length at our meeting.

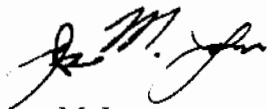
It does not appear that the City has a fee structure that ever contemplated a tentative tract map for the purposes of a mobilehome park conversion, but instead one that applies towards traditional "raw dirt" subdivision projects. The City's fee for tentative tract maps is \$3,690 plus \$615 per lot plus actual costs over minimum. A strict application of that fee structure towards the proposed tentative tract map would result in an application fee of \$103,320. Again, the map's review is statutorily limited in scope and would not involve any physical changes in the environment. In contrast, the recent fourteen-lot subdivision adjacent to the Montage Resort, a "raw dirt" subdivision project that involved extensive engineering studies, grading and infrastructure, had an application fee of \$12,300 under the same formula.

Although not strictly a condominium conversion as defined in the City's Municipal Code, our proposed tentative tract map may be more akin to the far less expensive process for a condominium conversion. The condominium conversion fees are \$2,500 plus actual costs over minimum. Clearly, while both fee structures capture actual costs over minimum, the fee structure for condominium conversions implies far less review than that for a "raw dirt" subdivision process. We feel that the application fee for a condominium conversion more closely approximates the "estimated reasonable cost" of providing the map's limited review, pursuant to Government Code Section 66014. Should the lower application fee not provide enough funds for adequate and appropriate review, we of course would deposit additional funds to maintain a funded account to pay for the project's "actual costs over minimum" as required by Resolution No. 06.017 (Planning and Zoning Fees).

Based on our previous discussions, we're confident that the enclosed materials, with the exception of the application fee, provide a complete Application for Vesting Tentative Tract Map No. 17301. Upon determination by the Community Development Department regarding the appropriate amount for the Application Fee, we will submit such amount in a timely fashion.

Please promptly advise as to the appropriate fee amount and whether the Application is complete. We look forward to working with City staff and Laguna Terrace Park residents in the process for review and approval of the Application.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Lawson". The signature is fluid and cursive, with a large initial "J" and "L".

James M. Lawson  
General Manager  
Laguna Terrace Park

c: Boyce Belt, President, Laguna Terrace Park Association  
Kelly Boyd, Mayor

## DEVELOPMENT REVIEW APPLICATION

Please completely fill-in the top-half of side one.

PROJECT LOCATION/ADDRESS <u>30802 South Coast Highway, Laguna Beach, CA 92651</u>	
OWNER <u>Laguna Terrace Park LLC</u>	AGENT <u>Laguna Terrace Park, Inc., James Lawson, Manager</u>
ADDRESS <u>30802 South Coast Highway</u>	ADDRESS <u>30802 South Coast Highway</u>
CITY <u>Laguna Beach</u> STATE <u>CA</u> ZIP <u>92651</u>	CITY <u>Laguna Beach</u> STATE <u>CA</u> ZIP <u>92651</u>
TELEPHONE NO. <u>(949) 499-3000</u>	TELEPHONE NO. <u>(949) 499-3000</u>
CELL PHONE NO. <u>(949) 290-6708</u>	CELL PHONE NO. <u>(949) 290-6708</u>
EMAIL ADDRESS <u>jamesmlawson@hotmail.com</u>	EMAIL ADDRESS <u>jamesmlawson@hotmail.com</u>
VALUATION OF WORK \$ <u>-0-</u>	LOT SIZE <u>± 46.62 acres</u>
ASSESSOR'S PARCEL NO. <u>056-240-64 and 656-191-38</u>	
DESCRIBE IN DETAIL SCOPE OF WORK <u>This is a vesting tentative map for a subdivision to be created by conversion of a 158 space rental mobilehome park to resident ownership with 158 residential lots plus 4 non-residential lots (156, 160, 161 and A).</u>	

	FLOOR AREA	GARAGE AREA	DECK AREA	STORAGE AREA	TOTAL REMODEL AREA	NO. OF STORIES
EXISTING BUILDING	as shown on map.					
NEW CONSTRUCTION	none					
TOTALS						

The remainder of side one is for staff use only. See other side for required certificates and signatures.

TYPE OF APPLICATION	FEE	DATE RECEIVED	APPLICATION NUMBER	DATE APPROVED / DENIED			
				ADMIN	BOA/DRB	PC	CC
PRE-APPLICATION SITE MEETING							
ZONING PLAN CHECK							
DESIGN REVIEW							
COASTAL DEVELOPMENT PERMIT							
VARIANCE							
SUBDIVISION							
CEQA							
OTHER:							

YARDS	MAIN BUILDING		ACCESSORY BUILDING		HEIGHTS		CLEARANCE	BY	DATE
	MINIMUM	SHOWN	MINIMUM	SHOWN	SHOWN	MAXIMUM			
FRONT							CEQA		
RIGHT SIDE							ZONING PLAN CHECK		
LEFT SIDE					SLOPE	HEIGHT FF/FG	ZONING / PLANNING		
REAR							STRUCTURAL PLAN CHECK		
DISTANCE BETWEEN BUILDINGS							FINAL CHECK		

Development Category: Coastal Development Permit  
 Coastal Development Permit is required, and it is not appealable to Coastal Commission.  
 Coastal Commission Permit is required.  
 Categorical Exclusion  
 Exempt (List Code Section)

**OWNER'S CERTIFICATE**

1. There are no assurances at any time, implicitly or otherwise, regarding final staff recommendations to the decision-making body about this application.
2. Major changes to the project may require a new application and payment of additional or new fees.
3. If this application is approved I hereby certify that I will comply with all conditions of approval. I also understand that the failure to abide by and faithfully comply with any and all conditions attached to the approval action shall constitute grounds for the revocation of said approving action by the approving authority.
4. I hereby certify that to the best of my knowledge the information I have presented in this form and the accompanying materials is true and correct. I also understand that additional data and information may be required prior to final action on this application. I have read and understand the content contained in this certificate.
5. I understand that it is the responsibility of the property owner to ensure that discrepancies do not exist between the project's description on the permit, the architectural plans and the structural plans. If discrepancies exist between the architectural plans and the structural plans, the architectural plans shall take precedence. Ultimately, the scope of work, as described on the permit that is authorizing the construction, takes precedence over the plans. If there is a discrepancy between the plans and the description on the permit, the permit governs.
6. I am the record owner of the property described in this application, and hereby consent to the filing of the application.

Laguna Terrace Park LLC

By: \_\_\_\_\_

Signature of its Manager

2/17/09

Date

**AUTHORIZATION OF AGENT**

I am the record owner of the property described in this application and hereby designate and authorize the agent as shown on the reverse of this form to act on my behalf in all matters pertaining to processing this application through the City of Laguna Beach.

Laguna Terrace Park LLC

By: \_\_\_\_\_

Signature of its Manager

2/17/09

Date



ACKNOWLEDGMENT

State of California  
County of Orange

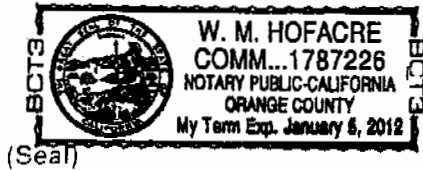
On February 17, 2009 before me, W. M. HOFACRE  
(insert name and title of the officer)

personally appeared Stephen W. Esslinger  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature W M Hofacre



(Seal)

Development Review Application

Document to which this is attached

**Amended & Updated  
through 02/29/2008**



**First American Title Insurance Company  
National Commercial Services**

**5 First American Way  
Santa Ana, CA, 92707**

Sandy W. Minger  
Wachovia Multifamily Capital  
7255 Woodmont Ave., Suite 200  
Bethesda, MD 20814-7904  
Phone: (301)321-1267  
Fax: (866)210-8438

Title Officer: Ruben Mares  
Phone: (714)250-8360  
Fax No.: (714)242-9561  
E-Mail: rumares@firstam.com

Buyer:

Owner: Laguna Terrace Park, LLC

Property: 30802 South Coast Highway, Laguna Beach, CA

**PRELIMINARY REPORT**

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Exhibit A attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

**Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.**

**It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.**

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of February 29, 2008 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

To Be Determined

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

Laguna Terrace Park LLC, a California limited liability company

The estate or interest in the land hereinafter described or referred to covered by this Report is:

Fee Simple

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

- A1. General and special taxes and assessments for the fiscal year 2008-2009 , a lien not yet due or payable.
1. General and special taxes and assessments for the fiscal year 2007-2008.

First Installment:	\$2,882.94, PAID
Penalty:	\$0.00
Second Installment:	\$2,882.94, DUE
Penalty:	\$0.00
Tax Rate Area:	05-027
A. P. No.:	056-240-64
2. General and special taxes and assessments for the fiscal year 2007-2008.

First Installment:	\$30,305.44, PAID
Penalty:	\$0.00
Second Installment:	\$30,305.44, DUE
Penalty:	\$0.00
Tax Rate Area:	05-027
A. P. No.:	656-191-38
3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

4. Rights of the public in and to that portion of the land lying within any lawfully established streets, roads or highways.
5. An easement for a right of way for state highway, 80 feet wide and right to extend excavation and embankment slopes beyond limits of said 80-foot strip and incidental purposes, recorded October 23, 1926 in Book 683 of Deeds, Page 215.  
In Favor of: State of California  
Affects: As described therein
6. An easement for right to extend and maintain drainage structures, upon, over and across that portion of the land outside of the 80-foot right of way and incidental purposes, recorded in Book 683 of Deeds, Page 215 and recorded February 23, 1932 in Book 533, Page 482 both of official records.  
In Favor of: State of California  
Affects: As described therein
7. A waiver of any claims for damages by reason of the location, construction, landscaping or maintenance of a contiguous freeway, highway, roadway or transit facility as contained in the document recorded as Book 683, page 215 of Deeds and Book 533, Page 482 of Official Records.
8. An easement for public utilities and incidental purposes, recorded April 12, 1940 as Book 1042, Page 141 of Official Records.  
In Favor of: Southern California Edison Company, a Corporation  
Affects: As described therein
9. An easement for ingress and egress and to install maintain, repair, replace and use pipe lines for water and sewage and incidental purposes, recorded June 16, 1943 as Book 1189, Page 559 of Official Records.  
In Favor of: Lagunria Community Association, a corporation  
Affects: As described therein
10. An easement for water system transportation and distribution and incidental purposes, recorded August 13, 1954 as Book 2792, Page 464 of Official Records.  
In Favor of: South Coast County Water District  
Affects: As described therein
11. An easement for either or both underground lines, conduits and incidental purposes, recorded April 12, 1955 as Book 3028, Page 244 of Official Records.  
In Favor of: The General Telephone Company of California  
Affects: As described therein
12. An easement for either or both pole lines, conduits and incidental purposes, recorded April 13, 1955 as Book 3030, Page 79 of Official Records.  
In Favor of: Southern California Edison Company, a Corporation  
Affects: As described therein

13. An easement for either or both pole lines, conduits and incidental purposes, recorded April 13, 1955 as Book 3030, Page 88 of Official Records.  
In Favor of: Southern California Edison Company, a Corporation  
Affects: As described therein
14. An easement for gas pipe lines and incidental purposes, recorded December 07, 1955 as Book 3308, Page 347 of Official Records.  
In Favor of: Southern Counties Gas Company of California  
Affects: As described therein
15. An easement for either or both pole lines, conduits and incidental purposes, recorded August 06, 1958 as Book 4373, Page 594 of Official Records.  
In Favor of: Southern California Edison Company, a Corporation  
Affects: As described therein
16. An easement for either or both pole lines, conduits and incidental purposes, recorded February 3, 1960 as Book 5084, Page 436 of Official Records.  
In Favor of: Southern California Edison Company, a Corporation  
Affects: As described therein
17. An easement for either or both pole lines, conduits and incidental purposes, recorded December 1, 1960 as Book 5532, Page 37 of Official Records.  
In Favor of: Southern California Edison Company, a Corporation  
Affects: As described therein
18. An easement for ingress, egress, road and public utility purposes, as set forth in an Agreement of Lease, dated November 2, 1953, executed by and between Paul H. Esslinger and Marie M. Esslinger, as Lessors, and Alpha Beta Food Markets, Inc., a California Corporation, as Lessee, recorded January 25, 1961 in Book 5605, Page 113 of Official Records, a certificate (Memorandum) of said Lease was recorded January 14, 1955 in Book 2923, Page 461 of Official Records, over a portion of the land, said portion lying adjacent to and Northeasterly of the land described in that certain Deed to the State of California, recorded October 23, 1926 in Book 683, Page 215 of Deeds.
19. An easement for street, highway and incidental purposes, recorded April 7, 1961 as Book 5682, Page 637 of Official Records.  
In Favor of: The County of Orange  
Affects: As described therein
20. An easement for street, highway and incidental purposes, recorded April 18, 1962 as Book 6079, Page 524 of Official Records.  
In Favor of: The County of Orange  
Affects: As described therein
21. An easement for a sanitary sewer main and incidental purposes, recorded January 4, 1963 as Book 6384, Page 119 of Official Records.  
In Favor of: South Laguna Sanitary District  
Affects: As described therein

22. An easement for sewer pipelines, manholes, and other sewer facilities and appurtenances and incidental purposes, recorded January 4, 1963 as Book 6384, Page 124 of Official Records.  
In Favor of: South Laguna Sanitary District  
Affects: As described therein
23. An easement for ingress, egress road, parking and incidental purposes, recorded December 30, 1966 as Book 8141, Page 960 of Official Records.  
In Favor of: Paul H. Esslinger and Marie M. Esslinger as Trustees, as joint tenants  
Affects: As described therein
24. An easement for street, highway and incidental purposes, recorded February 17, 1967 as Book 8179, Page 286 of Official Records.  
In Favor of: The County of Orange  
Affects: As described therein
25. An easement for either or both pole lines, conduits and incidental purposes, recorded April 3, 1968 as Book 8561, Page 837 of Official Records.  
In Favor of: Southern California Edison Company, a Corporation  
Affects: As described therein
26. An easement for public sidewalk and incidental purposes, recorded June 1, 1981 as Book 14081, Page 1903 of Official Records.  
In Favor of: Santa Anita Development Corporation, a California Corporation  
Affects: As described therein
27. An easement for ingress, egress, public utility and incidental purposes, recorded April 26, 1984 as Instrument No. 84-172916 of Official Records.  
In Favor of: Marie M. Esslinger, as successor trustee of the Marilyn E. Smith Trust Established December 30, 1976, by Paul H. Esslinger and Marie M. Esslinger, Trustors, and Marie M Esslinger as successor trustee for Marilyn Esslinger Smith and Donald K. Smith, husband and wife, beneficiaries  
Affects: As described therein
28. Covenants, conditions, restrictions and easements in the document recorded April 26, 1984 as Instrument No. 84-172916 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

29. An easement for ingress, egress, public utility and incidental purposes, recorded April 26, 1984 as Instrument No. 84-172917 of Official Records.  
In Favor of: Marie M. Esslinger as successor trustee of irrevocable trust established by Interim Declaration of Trust dated December 30, 1960, and formalized by trust agreement effective January 2, 1961  
Affects: As described therein
30. Covenants, conditions, restrictions and easements in the document recorded April 26, 1984 as Instrument No. 84-172917 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
31. Covenants, conditions, restrictions and easements in the document recorded April 26, 1984 as Instrument No. 84-172918 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
32. An easement for ingress, egress, public utility and incidental purposes, recorded April 26, 1984 as Instrument No. 84-172918 of Official Records.  
In Favor of: Marie M. Esslinger, as successor trustee for Marilyn Smith and Donald K. Smith, husband and wife, beneficiaries, and Marilyn M. Smith and Paul R. Esslinger as successor co-trustees of the Esslinger Family Trust dated April 16, 1976  
Affects: As described therein
33. An easement for public utilities and incidental purposes, recorded May 27, 1986 as Instrument No. 86-217053 of Official Records.  
In Favor of: The General Telephone Company of California  
Affects: As described therein
34. An easement for public utilities and incidental purposes, recorded May 30, 1986 as Instrument No. 86-224658 of Official Records.  
In Favor of: Southern California Edison Company, a Corporation  
Affects: As described therein
35. The terms, provisions and easement(s) contained in the document entitled "Parking and Easement Agreement" recorded April 26, 1993 as Instrument No. 93-0275201 of Official Records.
36. The terms, provisions and easement(s) contained in the document entitled "Natural Gas Line Easement Agreement" recorded April 26, 1993 as Instrument No. 93-0275210 of Official Records.

37. A document entitled "Certificate of Compliance" recorded November 22, 1995 as Instrument No. 1995-0520275 of Official Records.
38. Covenants, conditions, restrictions and easements in the document recorded September 15, 1997 as Instrument No. 1997-0449412 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
39. An easement for drainage purposes to accommodate existing flow and incidental purposes, recorded September 15, 1997 as Instrument No. 1997-0449412 of Official Records.  
In Favor of: Kenneth J. Cummins, successor trustee of the Esslinger Family Trust established April 16, 1976  
Affects: As described therein
40. An easement for ingress and egress and incidental purposes, recorded September 15, 1997 as Instrument No. 1997-0449412 of Official Records.  
In Favor of: Kenneth J. Cummins, successor trustee of the Esslinger Family Trust established April 16, 1976  
Affects: As described therein
41. The terms and provisions contained in the document entitled "A Resolution of The Planning Commission of the City of Laguna Beach Approving Conditional Use Permit 00-33" recorded October 19, 2000 as Instrument No. 2000-0560374 of Official Records.
42. The terms, provisions and easement(s) contained in the document entitled "Easement Agreement" recorded January 5, 2001 as Instrument No. 2001-0008894 of Official Records.  
  
Document re-recorded January 26, 2001 as Instrument No. 2001-0046471 of Official Records.
43. A Deed of Trust to secure an original indebtedness of \$14,500,000.00 recorded February 26, 2002 as Instrument No. 2002-161340 of Official Records.  
Dated: February 25, 2002  
Trustor: Laguna Terrace Park LLC, a limited liability company organized and existing under the laws of California  
Trustee: First American Title Insurance Company  
Beneficiary: Lend Lease Mortgage Capital, L.P., a limited partnership organized and existing under the laws of Texas  
  
Document re-recorded March 25, 2002 as Instrument No. 2002-0240419 of Official Records.  
  
According to the public records, the beneficial interest under the deed of trust was assigned to Fannie Mae by assignment recorded February 26, 2002 as Instrument No. 2002-0161341 of Official Records.



44. A financing statement recorded February 26, 2002 as Instrument No. 2002-0161342 of Official Records.

Debtor: Laguna Terrace Park LLC  
Secured party: Fannie Mae

A continuation statement was recorded February 13, 2007 as Instrument No. 2007000094407 of Official Records.

45. This item has been intentionally deleted.

46. Notice of pendency of action recorded April 22, 2004 as Instrument No. 2004000341682 of Official Records.

Court: Superior Court of the State of California  
Case No.: 04CC05115  
Plaintiff: Paul R. Esslinger, an individual  
Defendant: Stephen W. Esslinger, an individual; Amy J. Esslinger, an individual; Laguna Terrace Park, LLC, a California limited liability company; The Esslinger Family Limited Partnership, a Nevada limited partnership; and DOES I through 100, inclusive  
Purpose: A real property claim

Document(s) declaring modifications thereof recorded December 10, 2004 as Instrument No. 2004001102320 of Official Records.

47. Notice of pendency of action recorded November 03, 2005 as Instrument No. 2005000887124 of Official Records.

Court: Superior Court of The State of California  
Case No.: 05CC02237  
Plaintiff: Laguna Terrace Park, LLC  
Defendant: Paul R. Esslinger, et al.  
Purpose: Title to and the right to possession

The above Notice of Pendency of Action is related to the Notice as shown as item 46 above.

48. This item has been intentionally deleted.

49. Rights of parties in possession.

### INFORMATIONAL NOTES

1. Taxes for proration purposes only for the fiscal year 2007-2008.  
First Installment: \$0.00, NO TAX DUE  
Second Installment: \$0.00, NO TAX DUE  
Tax Rate Area: 05-031  
APN: 656-191-28
2. According to the latest available equalized assessment roll in the office of the county tax assessor, there is located on the land a(n) Commercial Structure known as 30802 South Coast Highway, Laguna Beach, California.
3. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:  
  
None
4. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.
5. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:
  - A. WITH RESPECT TO A CORPORATION:
    - a. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
    - b. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
    - c. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
  - B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:
    - a. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2) to be recorded in the public records;
    - b. A full copy of the partnership agreement and any amendments;
    - c. Satisfactory evidence of the consent of a majority in interest of the limited partners to

the contemplated transaction;

- d. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:

- a. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
- b. A full copy of the partnership agreement and any amendment;
- c. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
- d. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

D. WITH RESPECT TO A GENERAL PARTNERSHIP:

- a. A certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporation Code (form GP-1), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the public records;
- b. A full copy of the partnership agreement and any amendments;
- c. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.

E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:

- a. A copy of its operating agreement and any amendments thereto;
- b. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
- c. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
- d. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:

- (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
- (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.

- e. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

F. WITH RESPECT TO A TRUST:

- a. A certification pursuant to Section 18500.5 of the California Probate Code in a form satisfactory to the Company.
- b. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.
- c. Other requirements which the Company may impose following its review of the material require herein and other information which the Company may require.

G. WITH RESPECT TO INDIVIDUALS:

- a. A statement of information.

6. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:

A. WITH RESPECT TO A CORPORATION:

- 1. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
- 2. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
- 3. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:

- 1. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2) to be recorded in the public records;
- 2. A full copy of the partnership agreement and any amendments;
- 3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
- 4. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:

1. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
2. A full copy of the partnership agreement and any amendment;
3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
4. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

D. WITH RESPECT TO A GENERAL PARTNERSHIP:

1. A certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporation Code (form GP-I), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the public records;
2. A full copy of the partnership agreement and any amendments;
3. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.

E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:

1. A copy of its operating agreement and any amendments thereto;
2. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
3. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
4. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:
  - (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
  - (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
5. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

F. WITH RESPECT TO A TRUST:

1. A certification pursuant to Section 18500.5 of the California Probate Code in a form satisfactory to the Company.
2. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.
3. Other requirements which the Company may impose following its review of the material require herein and other information which the Company may require.

G. WITH RESPECT TO INDIVIDUALS:

1. A statement of information.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company 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.

**LEGAL DESCRIPTION**

Real property in the City of Laguna Beach, County of Orange, State of California, described as follows:

PARCEL 1 AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT LL 95-01 RECORDED NOVEMBER 22, 1995 AS INSTRUMENT NO. 19950520276 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

APN: 056-240-64 and 656-191-28 and 656-191-38

**Title Wire Transfer Instructions**

*(Santa Ana - Title)*

**Date:** 12/06/2006

**Wire to:** Wells Fargo Bank  
550 California Street  
San Francisco, CA 94163

**ABA Number:** 121000248

**For Credit To:** First American Title Insurance Company

**Account Number:** 4121109052

**Reference:** File No.: NCS-269239-SA1  
Attn: Ruben Mares  
Phone: (714)250-8360

**Customer Name:**

**FUNDS FOR OTHER LOANS BEING INSURED BY FIRST AMERICAN TITLE MUST NOT BE COMBINED INTO ONE WIRE - OR FUNDS MAY BE RETURNED.**

**NOTE: ALL WIRES MUST REFERENCE (1) FIRST AMERICAN TITLE COMPANY AND (2) OUR ACCOUNT NUMBER - OR FUNDS MAY BE RETURNED**

**TO ENSURE RECORDING, THE TITLE OFFICER MUST BE ADVISED BEFORE THE WIRE IS SENT.**

**DISREGARD IF FIRST AMERICAN IS YOUR ESCROW SETTLEMENT AGENT - - CONTACT ESCROW OFFICER FOR WIRE INSTRUCTIONS.**



**The First American Corporation**  
First American Title Company  
Privacy Policy

**We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

**Applicability**

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at [www.firstam.com](http://www.firstam.com).

**Types of Information**

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

**Use of Information**

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

**Former Customers**

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

**Confidentiality and Security**

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**EXHIBIT A  
LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)**

**1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990  
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. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970  
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or

created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

**Part One**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

**Part One**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy; (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

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. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992**

*First American Title Insurance Company*

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

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:

**Part One:**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**10. AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL  
TITLE INSURANCE POLICY - 1987  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 

* land use	* land division
* improvements on the land	* environmental protection.

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.  
This exclusion does not limit the zoning coverage described in items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:

*First American Title Insurance Company*

- \* a notice of exercising the right appears in the public records on the Policy Date
- \* the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.

3. **Title Risks:**

- \* that are created, allowed, or agreed to by you
- \* that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
- \* that result in no loss to you
- \* that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- \* to any land outside the area specifically described and referred to in Item 3 of Schedule A, or
- \* in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**11. EAGLE PROTECTION OWNER'S POLICY**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

**Covered Risks 14 (Subdivision Law Violation), 15 (Building Permit), 16 (Zoning) and 18 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability**

**EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. land use
  - d. improvements on the land
  - e. land division
  - f. environmental protection

This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.This exclusion does not limit the coverage described in Covered Risk 11 or 18.

**12. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992 WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE WITH EAGLE PROTECTION ADDED**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or area of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (this paragraph (d) does not limit the coverage provided under insuring provisions 7, 8, 16, 17, 19, 20, 21, 23, 24 and 25); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon:
  - (a) usury, except as provided under insuring provision 10 of this policy; or
  - (b) any consumer credit protection or truth in lending law.
6. Taxes or assessments of any taxing or assessment authority which become a lien on the Land subsequent to Date of Policy.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (i) to timely record the instrument of transfer; or
    - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
8. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided under insuring provision 7.
9. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting title, the existence of which are Known to the Insured at:
  - (a) The time of the advance; or
  - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it **would have** been before the modification.
 This exclusion does not limit the coverage provided under insuring provision 7.

#### SCHEDULE B

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. Environmental protection liens provided for by the following existing statutes, which liens will have priority over the lien of the Insured Mortgage when they arise: NONE.

#### 13. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992 WITH EAGLE PROTECTION ADDED WITH REGIONAL EXCEPTIONS

When the American Land Title Association loan policy with EAGLE Protection Added is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 12 above are used and the following exceptions to coverage appear in the policy.

#### SCHEDULE B

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:  
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.

3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

Part Two:

1. Environmental protection liens provided for by the following existing statutes, which liens will have priority over the lien of the Insured Mortgage when they arise: NONE



JRW  
cc: RSC

The

**GIBBS LAW FIRM**

A PROFESSIONAL CORPORATION

GERALD R. GIBBS

TIMOTHY J. GIBBS

DAVID L. GIBBS

October 27, 2008

Rob Coldren  
HART, KING & COLDREN  
200 Sand Pointe # 400  
Santa Ana, CA 92702

Dear Rob:

This is to advise you that the resident Homeowner's Association has conducted a Survey of Residents as provided by Government Code Section 66427.5.

The survey as conducted complied with subsection (d) of Government Code Section 66427.5 and the results obtained are as follows:

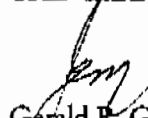
1. Survey Forms Sent	142
2. Responses Received	102
3. Responses in Support of Conversion	91
4. Responses Not in Support	5
5. Undecided Responses	6

You may report these results obtained by my client, which is the only Homeowner's Association in Laguna Terrace.

We are anxious to receive a regular update as to the progress and schedule for the conversion. In particular, a report on the recent meeting with the City of Laguna Beach would be appreciated.

Very truly yours,

THE GIBBS LAW FIRM, APC

  
Gerald R. Gibbs  
Attorney At Law

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## REPORT ON IMPACT OF SUBDIVISION TO RESIDENTS

### Laguna Terrace Mobile Home Park

February 11, 2009

#### SECTION I. SCOPE OF REPORT

This Report on Impact of Subdivision to Residents (“**Report**”) is being prepared pursuant to California Government Code Section 66427.5 and City of Laguna Beach (“**City**”) Municipal Code Chapter 1.11, copies of which are attached hereto as Exhibits “A” and “B”. The Report explains the Tentative Tract Map Applicant’s assessment of a conversion from rental spaces to subdivided lots on residents of the Laguna Terrace Mobile Home Park (“**Park**”), located at 30802 South Coast Highway, City of Laguna Beach, State of California, 92651.

The Park currently has 158 residential spaces, 93 of which are rented under long term lease agreements, and only 42 of which rented out under month to month tenancies. The remaining spaces are either vacant (17), homes with removal pending (2), Park owned (2) or occupied by homes under storage agreements with mobilehome dealers or banks (2).

#### SECTION II DEFINITIONS

**2.1 Conversion Date:** The “**Conversion Date**” is the date after the subdivision final map has been approved by the City and after the Department of Real Estate has approved the subdivision for sale and is the date on which the first Lot in the Park is sold.

**2.2 Hearing Date:** The “**Hearing Date**” is the date on which the subdivision tentative map application is first heard by the City Planning Commission.

**2.3 Home:** The “**Home**” is the manufactured home that occupies the Space where the Resident is living as of the Hearing Date

**2.4 Lot:** A “**Lot**” is the land and fixed improvements within the Space on which the Resident’s Home is located as of the Hearing Date, plus a 1/158th share of the common area and facilities and one membership in the Homeowners’ Association to be formed as part of the subdivision process.

**2.5 Resident:** A “**Resident**” is a person living in a Home in the Park who meets the requirements for receiving protections afforded by applicable law.

2.6 **Space:** The "Space" is the leased premises on which the Resident's Home is located as of the Hearing Date.

**SECTION III**      **NO ECONOMIC DISPLACEMENT OF RESIDENTS  
BECAUSE OF STATUTORY RIGHT TO PURCHASE OR  
CONTINUE LEASING**

All Residents will have the opportunity to either purchase the Lot on which their Home is situated or continue to lease their Space with statutory protections on rental rates after the Conversion Date. In either event, the Residents are statutorily protected against economic displacement resulting from subdivision.

**3.1**      **Resident's Statutory Right to Purchase Lot**

The Residents are protected from economic displacement pertaining to sale of the Lots by having the option to continue leasing their Space. Government Code Section 66427.5 (a) requires the subdivider to offer each Resident an option either to purchase the Lot or to continue renting the Space. In either event, the Resident may continue to live in its Home.

This Report cannot make determinations about impacts to the Residents resulting from the eventual sale price of the Lots under the purchase option. That is because the sale price of the Lots will not be established until some time after the tentative map subdivision approval.

After tentative map approval, the subdivider must next follow procedures and obtain approval of the subdivision from the Department of Real Estate under the Subdivided Lands Act. Only after approval by the Department of Real Estate will all of the factors that affect the Lot purchase price be established. The Resident will have the option to purchase its Lot after the Department of Real Estate approves the subdivision and issues its public report on the subdivision, and the subdivider offers the lots for sale.

The subdivider is not required to disclose an offer price at the time of filing of the tentative map application, and indeed is forbidden by the Subdivided Lands Act from making such a disclosure at that time. The first time that the Resident may become aware of even a tentative offer price for the Lot will be several weeks or months later, just prior to filing a notice of intention to sell with the Department of Real Estate under the Subdivided Lands Act.



HART, KING & COLDREN

**Report on Impact of Subdivision to Residents**

**February 11, 2008**

**Page 3**

Given that the Resident has the option to continue leasing its Space with statutory rental rate protections, as discussed below, the purchase option cannot in any event result in economic displacement of the Residents.

**3.2 Resident's Statutory Right Continue Lease of Space Under Statutory Rental Protections**

The Residents who do not exercise the option to purchase their Lots are protected from economic displacement by statutory restrictions on rental rates after the "Conversion Date." Government Code Section 66427.5 (f) limits the amount of rent increases for Residents that can take place upon conversion, thereby avoiding economic displacement, if any, from any rental increases after the Conversion Date.

For non-purchasing Residents who are not lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may only increase to market levels as determined by appraisal, and then only over a period of four years.

For non-purchasing Residents who are lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may only increase by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period. To qualify as a Low Income Household in Orange County, the following income limits were established for calendar year 2008.

Household Size (# of Persons)	1	2	3	4
Income Must be at or Below:	\$52,100	\$59,500	\$66,950	\$74,400

Thus, under the current statutory scheme, the Legislature has defined the exclusive and preempted scope of "mitigations" respecting any "economic displacement," assuming, without admitting, that increases in rent can be considered an economic displacement.

**SECTION IV NO CLOSURE OR CHANGE IN ZONING**

**4.1 No Change in Zoning or Closure**

The Park is currently zoned MH-OSC (Mobilehome-Open Space Conservation). The zoning will not change as a result of conversion of ownership to subdivided lots.

**Report on Impact of Subdivision to Residents**

**February 11, 2008**

**Page 4**

Upon the Conversion Date, the Park owner legally will no longer have the right to terminate the tenancies and no longer have the right to require the Residents to vacate the property for purposes of closure of the Park or change in use. (See Govt. Code § 66427.5) Therefore, there will not be an eviction or displacement of Residents as a result of the subdivision.

**4.2 Technical “Conversion” or “Change in Use” Only**

The term “conversion” relating to a mobilehome park sometimes is used to describe the closure of the park to enable an alternative use. This is NOT what is occurring as a result of subdivision of the Park. The Park will remain a manufactured housing community, with the existing Residents having the right to either buy their Lot or to remain and rent their Space.

While conversion of a rental mobilehome park to a Resident-owned mobilehome park is identified as a “change of use” under California Mobilehome Residency law and under the Chapter 1.11 of the City’s Ordinance, it is more accurately described under the Subdivision Map Act as a change in the form of ownership. The Park is not being closed and the Residents are not being required to vacate the property.

**4.3 Benefits of Conversion**

Subdivision provides Residents with a choice to own the Lot on which their Home is located. Lot ownership gives the Residents greater flexibility with regard to financing for their Homes and other credit opportunities. Lot ownership allows the Residents to control their economic future. Residents do not have to be tied to monthly rental payments if they choose. Lot ownership also gives the Residents the freedom to use their Lot without all of the restrictions or costs that a landlord might impose. The Residents will have the opportunity to control the Park amenities that they will enjoy and pay for through the Homeowner’s Association.

**4.4 Relocation Assistance Not Applicable**

When a subdivision is created from conversion of a rental mobilehome park to resident ownership, a different type of conversion impact report is required than when a subdivision created from a change of use to a non-mobilehome park use or when the mobilehome park is closed.

Government Code Section 66427.5 governs the type of report that must be prepared for a subdivision which is created from conversion of a rental mobilehome park to resident ownership. This Government Code Section 66427.5 Report, which does not deal with a



HART, KING & COLDFREN

## Report on Impact of Subdivision to Residents

February 11, 2008

Page 5

change in use of the property or closure of the Park, is simply required to explain the options of the Residents regarding their choice to purchase their Lot or to rent their Space.<sup>1</sup> The Park owner legally will no longer have a right to change the use of the Park or to close the Park after the Conversion Date.

This Report need not discuss displacement of Residents, replacement housing or mitigation of the reasonable costs of relocation, which issues would be involved in any subdivision resulting from a change of use of a mobilehome park or from closure of a mobilehome park. In fact Government Code Sections 66427.4 and 65863.7, which apply to subdivisions created from change of use to a non-mobilehome park use or to closure of a mobilehome park, expressly exempt from their requirements subdivisions that are created from conversion of a rental mobilehome park to resident ownership. (See Govt. Code §§ 66427.4 (e), 65863.7 (a))

#### 4.5 Government Code Sections 66427.4 and 65863.7 and City Code Section 1.11.010 (b) Do Not Apply Because There is No Change in Use of the Park Resulting from the Subdivision

Section 1.11.010 (b) of the City's Municipal Code requires that a Relocation Impact Report be completed upon a "conversion" of a mobilehome park, whether by closure, subdivision or change of use. Section 1.11.015 defines a "conversion" to mean a change in use. A "conversion" is not defined as a subdivision in which the residents are being allowed to purchase their individual lots. In fact, Section 1.11.001 expressly limits the application of Chapter 1.11 only to "a subdivision map application connected with a conversion of use for a mobilehome park." In addition, Section 1.11.015 expressly defines an "Impact Report" as one complying with all applicable requirements of Government Code Sections 66427.4 and 65863.7. The requirements in those two Government Code sections do not apply to this subdivision in which there will be no change of use. The requirements of Government Code Section 66427.4 do not apply a subdivision which is created from the conversion of a rental mobilehome park to resident ownership. (See Govt. Code § 66427.4 (e)) The requirements of Government Code

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<sup>1</sup> All of the Resident protections discussed in this Report are based upon the Applicant's assessment of the currently existing statutory scheme, and are not a promise, representation, or warranty on the part of the Applicant or its agents. The operative date for the time frame and protections described above is the Conversion Date as described in Section 2.1 above. Tenants on long-term leases will continue to have their rights under the leases after the Conversion Date. Of course, should the law change, the Applicant reserves the right to implement the conversion in accordance with the applicable valid and enforceable laws.



HART, KING & COLDREN

**Report on Impact of Subdivision to Residents**

**February 11, 2008**

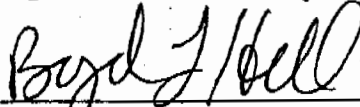
**Page 6**

Section 65863.7 do not apply to conversion of a mobilehome park to another use pursuant to the Subdivision Map Act. (See Govt. Code § 65863.7 (a))

In conclusion, the subdivision of the Laguna Terrace Mobilehome Park will not result in the relocation of any of its Residents. The vast majority of the Residents are under long-term leases that will not be impacted by the subdivision if they choose to remain tenants. The Residents also stand to gain by an opportunity to purchase their lots in a desirable beach city location.

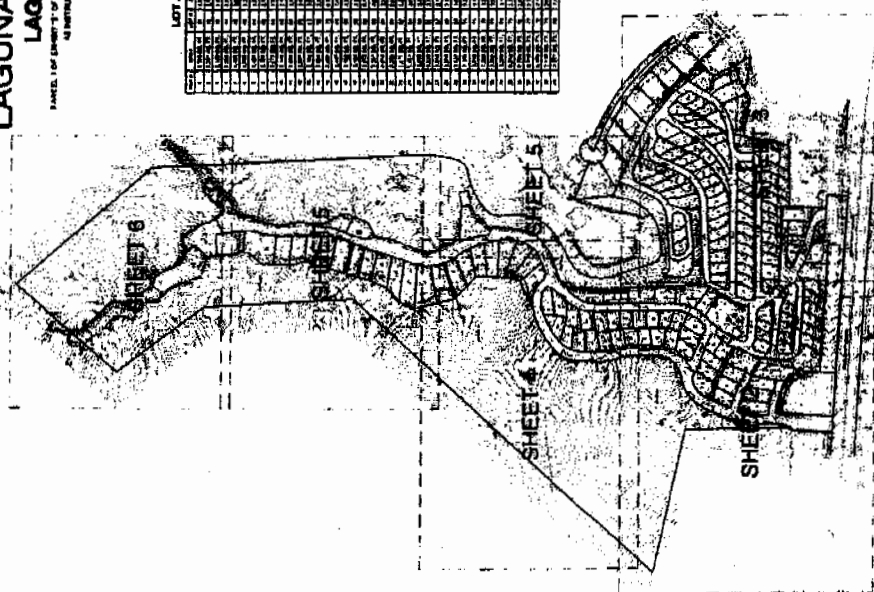
Dated: February 11, 2009

Hart, King & Coldren

By:   
Boyd L. Hill  
Attorneys for Applicant  
Laguna Terrace Park, LLC

**VESTING TENTATIVE TRACT NO. 17301**  
**LAGUNA TERRACE PARK**  
**LAGUNA BEACH, CA**

MAPS 110 EXEMPT FROM PUBLIC SALE REQUIREMENTS  
 COUNTY OF ORANGE, CALIFORNIA



**LOT AREA TABLE**

LOT NO.	ACRES	SQ. FT.
1	0.10	6,918
2	0.10	6,918
3	0.10	6,918
4	0.10	6,918
5	0.10	6,918
6	0.10	6,918
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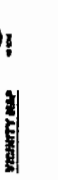
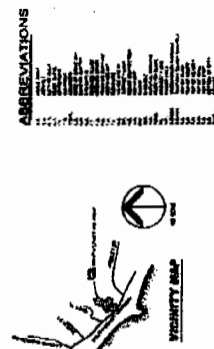
**LEGAL DESCRIPTION:**  
 The property described in this map is situated in the County of Orange, State of California, and is more particularly described as follows: ...

**BASEMENTS:**  
 The basements shown on this map are assumed to be in accordance with the existing conditions and are not to be construed as a warranty of their existence or condition. ...

**NOTES:**  
 1. The area shown on this map is for informational purposes only and does not constitute a warranty of any kind. ...

**STATE OF CALIFORNIA:**  
 I, \_\_\_\_\_, County Clerk, do hereby certify that this map is a true and correct copy of the original as filed in my office on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**UTILITY ENGINEER:**  
 I, \_\_\_\_\_, a duly licensed Professional Engineer in the State of California, do hereby certify that the utility lines shown on this map are in accordance with the existing conditions and are not to be construed as a warranty of their existence or condition. ...



**INDEX MAP**

**DEVELOPER:** \_\_\_\_\_

**ENGINEER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**PROJECT NO.:** \_\_\_\_\_

**TRACT NO.:** 17301

**CITY:** LAGUNA BEACH, CA

**COUNTY:** ORANGE

**STATE:** CALIFORNIA

**RECORDING OFFICE:** \_\_\_\_\_

**RECORDING DATE:** \_\_\_\_\_

**RECORDING NUMBER:** \_\_\_\_\_

**APPROVED:** \_\_\_\_\_

**NOTARIAL SEAL:** \_\_\_\_\_

APPROVED FOR RECORDING





TRACT MAP NO. 17301

TRACT NO. 17301  
SUBDIVISION  
DATE OF RECORDATION  
RECORDING OFFICE

OWNER'S NAME / OWNER'S ADDRESS  
OWNER'S PHONE NO.  
OWNER'S FAX NO.  
OWNER'S E-MAIL ADDRESS

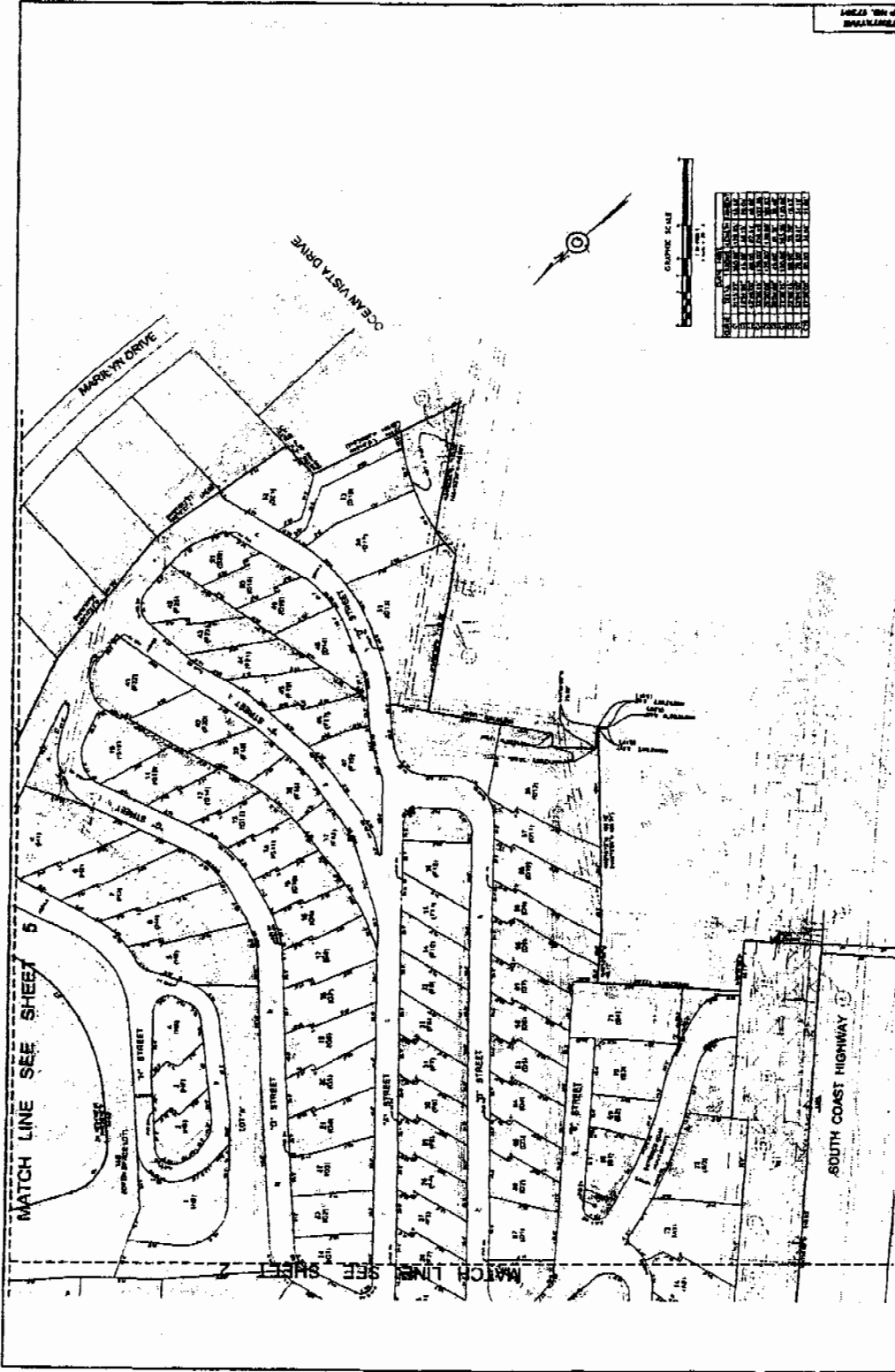
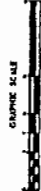
PLANNING AGENCY  
PLANNING AGENCY ADDRESS  
PLANNING AGENCY PHONE NO.  
PLANNING AGENCY FAX NO.  
PLANNING AGENCY E-MAIL ADDRESS



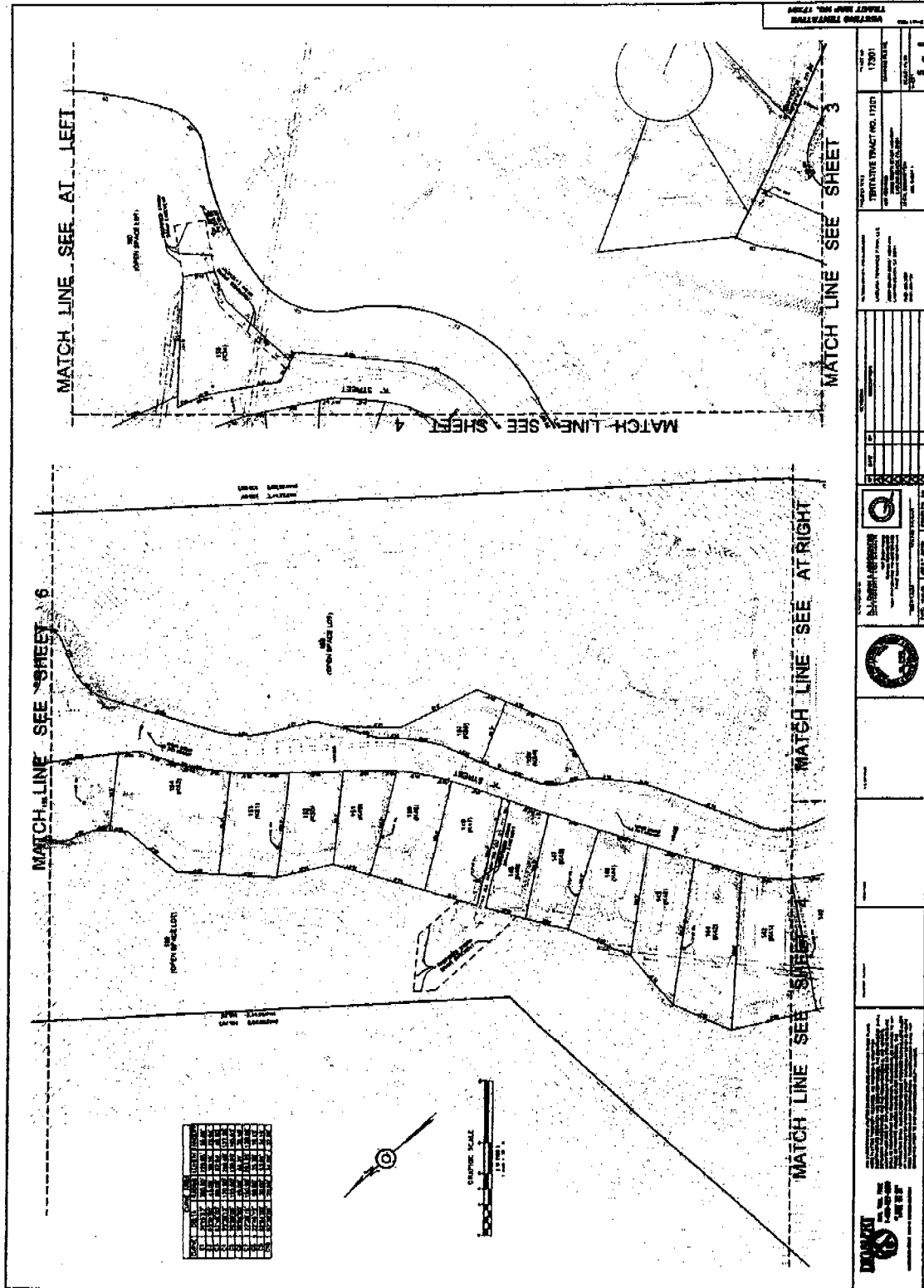
DATE OF PREPARATION  
DATE OF REVISION  
DATE OF REVISION  
DATE OF REVISION

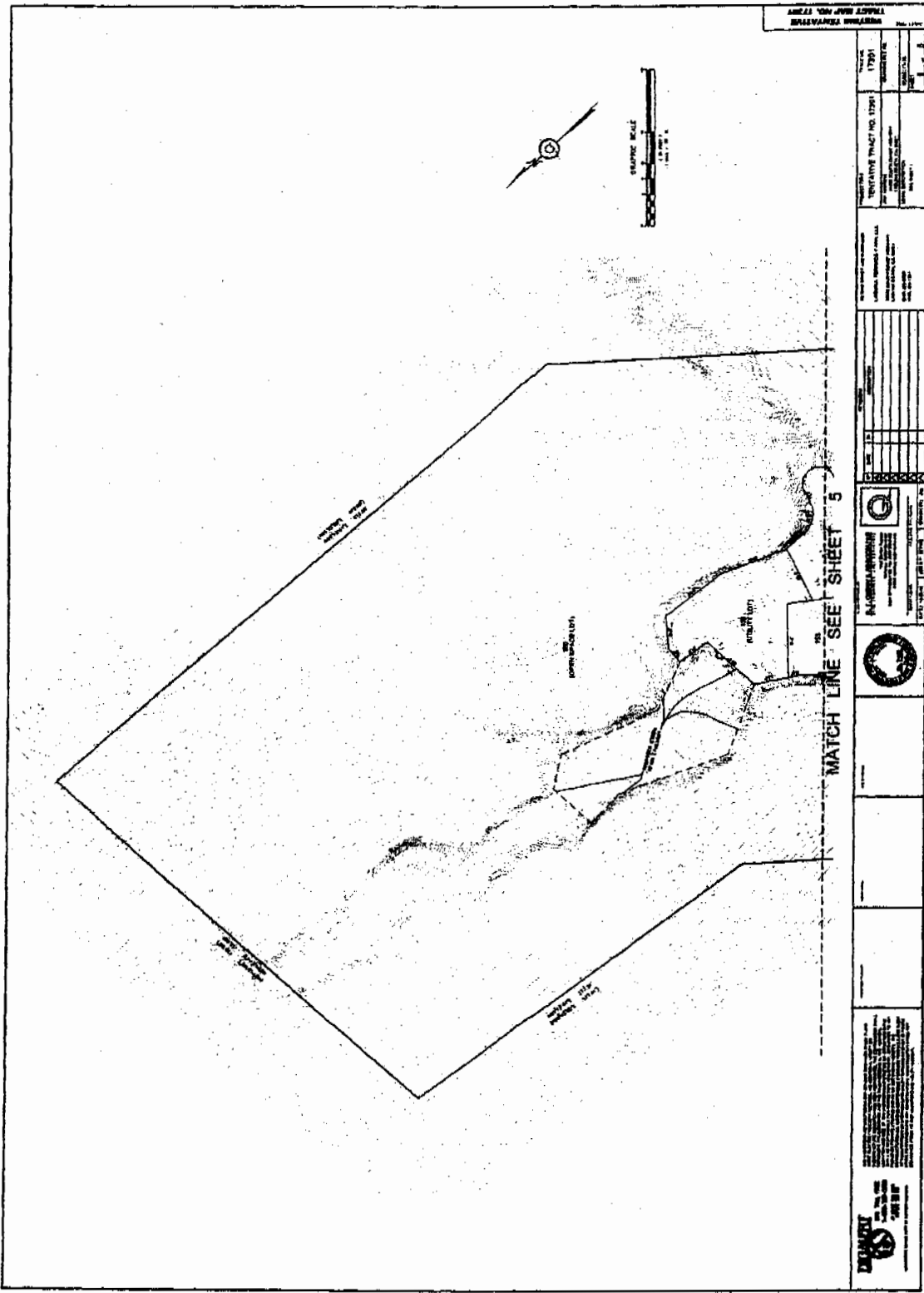
DEVELOPER  
DEVELOPER ADDRESS  
DEVELOPER PHONE NO.  
DEVELOPER FAX NO.  
DEVELOPER E-MAIL ADDRESS

AREA	AREA NO.	AREA NAME	AREA TYPE	AREA SIZE (AC)	AREA PERCENT
1	1	...	...	...	...
2	2	...	...	...	...
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50	50	...	...	...	...









REVISIONS

NO.	DATE	DESCRIPTION

PROJECT NO. 17301

TENTATIVE PRACTICE NO. 17301

DATE: 10/1/01

SCALE: AS SHOWN

OWNER: [REDACTED]

DESIGNER: [REDACTED]

DATE: 10/1/01

PROJECT NO. 17301

TENTATIVE PRACTICE NO. 17301

DATE: 10/1/01

PROJECT NO. 17301

TENTATIVE PRACTICE NO. 17301

DATE: 10/1/01

PROJECT NO. 17301

TENTATIVE PRACTICE NO. 17301

DATE: 10/1/01

PROJECT NO. 17301

TENTATIVE PRACTICE NO. 17301

DATE: 10/1/01

PROJECT NO. 17301

TENTATIVE PRACTICE NO. 17301

DATE: 10/1/01

# **ATTACHMENT NO. 2**



# First American Title Insurance Company



114 EAST FIFTH STREET, (P.O. BOX 267) SANTA ANA, CALIFORNIA 92701 • (714) 558-3211 FAX (714) 647-2235.

October 02, 1997

HARBIN & FROST  
2122 NORTH BROADWAY, SUITE 101  
SANTA ANA, CA 92706-2614

ATTN: BRUCE A. HARBIN

RE: Escrow No. 9762864M

In completion of the above referenced escrow transaction, please find enclosed the following items:

- (x) Original Title Insurance Policy- and one copy- in reference to Paul L. Esslinger

TAXES ARE YOUR RESPONSIBILITY. The law does not require that tax statements or notices be mailed, but it places the responsibility for payment entirely upon the owner after the close of escrow. First installment is due and payable November 1 and delinquent December 10; second installment is due and payable February 1 and delinquent April 10. Special district assessments and bonds of record may have different delinquency dates and are also your responsibility. If you do not receive a tax bill one month prior to delinquency, a written request, including the legal description, must be made to the County Tax Collector. However, if yours is an impounded loan, taxes and fire insurance premiums will be paid by the Lender when due.

Should you have any questions, please feel free to contact our office. It has been a pleasure to have handled your escrow. If we can be of service to you at anytime in the future, please contact us.

Sincerely,

Katherine M. Soto  
Escrow Officer

KMS/mr  
enc.  
del

1173-000001

HCF 01496

Form No. 1402.92  
(10/17/92)  
ALTA Owner's Policy



# 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 *Parker S. Kennedy* PRESIDENT

ATTEST *Mark R. Arnesen* SECRETARY

J 832516

HCF 01499

1173-00005



FIRST AMERICAN



*First American Title Insurance Company*

**POLICY  
OF  
TITLE  
INSURANCE**

HCF 01498



## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given

by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

### 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute or continue

for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

### 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

### 11. LIABILITY NONCUMULATIVE.

It is expressly understood that the Amount of Insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

### 12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**HCF 01500**

### 13. SUBROGATION UPON PAYMENT OR SETTLEMENT. 1173-000004

#### (a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant. The Company shall be subrogated to and be entitled to all

shall have validity by reason of covenants or warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

### 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against

any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

### 7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the Amount of Insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or (ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

### 8. APPORTIONMENT.

If the land described in Schedule (A)(C) consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the Amount of Insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

### 9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable

had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

### 14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

### 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

### 16. SEVERABILITY. HCF 01501

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

### 17. NOTICES, WHERE SENT 1173-000005

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at 114 East Fifth Street, Santa Ana, California 92701, or to the office which issued this policy.

**SCHEDULE A**

TOTAL FEE FOR TITLE, EXAMINATION  
AND TITLE INSURANCE \$4,940.00

AMOUNT OF INSURANCE: \$5,200,000.00

DATE OF POLICY: SEPTEMBER 15, 1997 AT 3:39 P. M.

1. NAME OF INSURED:

LAGUNA TERRACE PARK LLC, A CALIFORNIA LIMITED LIABILITY COMPANY.

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:

LAGUNA TERRACE PARK LLC, A CALIFORNIA LIMITED LIABILITY COMPANY.

4. THE LAND REFERRED TO IN THIS POLICY IS DESCRIBED AS FOLLOWS:

(SEE EXHIBIT "A" ATTACHED HERETO.)

## 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:

#### PART ONE:

1. TAXES OR ASSESSMENTS WHICH ARE NOT SHOWN AS EXISTING LIENS BY THE RECORDS OF ANY TAXING AUTHORITY THAT LEVIES TAXES OR ASSESSMENTS ON REAL PROPERTY OR BY THE PUBLIC RECORDS.
2. ANY FACTS, RIGHTS, INTERESTS, OR CLAIMS WHICH ARE NOT SHOWN BY THE PUBLIC RECORDS BUT WHICH COULD BE ASCERTAINED BY AN INSPECTION OF SAID LAND OR BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF.
3. EASEMENTS, CLAIMS OF EASEMENT OR ENCUMBRANCES WHICH ARE NOT SHOWN BY THE PUBLIC RECORDS.
4. DISCREPANCIES, CONFLICTS IN BOUNDARY LINES, SHORTAGE IN AREA, ENCROACHMENTS, OR ANY OTHER FACTS WHICH A CORRECT SURVEY WOULD DISCLOSE, AND WHICH ARE NOT SHOWN BY PUBLIC RECORDS.
5. UNPATENTED MINING CLAIMS; RESERVATIONS OR EXCEPTIONS IN PATENTS OR IN ACTS AUTHORIZING THE ISSUANCE THEREOF; WATER RIGHTS, CLAIMS OR TITLE TO WATER.
6. ANY LIEN, OR RIGHT TO A LIEN, FOR SERVICES, LABOR OR MATERIAL THERETOFORE OR HEREAFTER FURNISHED, IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS.

#### PART TWO:

1. GENERAL AND SPECIAL TAXES FOR THE FISCAL YEAR 1997-1998, A LIEN NOT YET DUE OR PAYABLE.
2. THE LIEN OF SUPPLEMENTAL TAXES ASSESSED PURSUANT TO CHAPTER 3.5 COMMENCING WITH SECTION 75 OF THE CALIFORNIA REVENUE AND TAXATION CODE.
3. A RIGHT OF WAY FOR STATE HIGHWAY, 80 FEET WIDE, AND INCIDENTS THERETO, AND RIGHT TO EXTEND EXCAVATION AND EMBANKMENT SLOPES BEYOND LIMITS OF SAID 80-FOOT STRIP, AS CONVEYED TO STATE OF CALIFORNIA BY DEED RECORDED OCTOBER 23, 1926 IN BOOK 683, PAGE 215 OF DEEDS.
4. THE RIGHT TO EXTEND AND MAINTAIN DRAINAGE STRUCTURES, UPON, OVER AND ACROSS THAT PORTION OF THE LAND OUTSIDE OF THE 80-FOOT RIGHT OF WAY CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED IN BOOK 683, PAGE 215 OF DEEDS, AND RECORDED FEBRUARY 23, 1932 IN BOOK 533, PAGE 482 OF OFFICIAL RECORDS.
5. A WAIVER OF ANY CLAIMS FOR DAMAGES BY REASON OF THE LOCATION, CONSTRUCTION, LANDSCAPING OR MAINTENANCE OF A HIGHWAY OR FREEWAY CONTIGUOUS THERETO, IN FAVOR OF THE STATE OF CALIFORNIA, AS CONTAINED IN AN INSTRUMENT RECORDED IN BOOK 683, PAGE 215 OF DEEDS, AND IN BOOK 533, PAGE 482 OF OFFICIAL RECORDS.

6. AN EASEMENT AND RIGHT OF WAY OVER A PORTION OF THE LAND FOR AN UNDERGROUND CONDUIT SYSTEM, ETC., AS CONVEYED TO THE SOUTHERN CALIFORNIA EDISON COMPANY LTD. BY DEED RECORDED APRIL 12, 1940 IN BOOK 1042, PAGE 141 OF OFFICIAL RECORDS.
7. EASEMENTS FOR INGRESS AND EGRESS, AND TO INSTALL, MAINTAIN, REPAIR, REPLACE AND USE PIPE LINES FOR WATER AND SEWAGE, OVER A PORTION OF THE LAND, AS CONVEYED BY PAUL H. ESSLINGER AND WIFE, TO LAGUNITA COMMUNITY ASSOCIATION, A CORPORATION, BY DEED RECORDED JUNE 16, 1943 IN BOOK 1189, PAGE 559 OF OFFICIAL RECORDS.
8. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED AUGUST 13, 1954 IN BOOK 2792, PAGE 464 OF OFFICIAL RECORDS,  
IN FAVOR OF: SOUTH COAST COUNTY WATER DISTRICT.  
FOR: WATER SYSTEM TRANSPORTATION AND DISTRIBUTION, AND INCIDENTAL PURPOSES.  
OVER: A PORTION OF THE LAND.
9. AN EASEMENT FOR EITHER OR BOTH UNDERGROUND LINES, CONDUITS AND INCIDENTAL PURPOSES, INCLUDING ABOVE-GROUND APPURTENANT FIXTURES, AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 12, 1955 IN BOOK 3028, PAGE 244 OF OFFICIAL RECORDS.  
IN FAVOR OF: THE GENERAL TELEPHONE COMPANY OF CALIFORNIA.  
OVER: A PORTION OF THE LAND.
10. AN EASEMENT FOR EITHER OR BOTH POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 13, 1955 IN BOOK 3030, PAGE 79 OF OFFICIAL RECORDS.  
IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY.  
OVER: PORTIONS OF THE LAND.
11. AN EASEMENT FOR EITHER OR BOTH POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 13, 1955 IN BOOK 3030, PAGE 88 OF OFFICIAL RECORDS.  
IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY.  
OVER: A PORTION OF THE LAND.
12. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED DECEMBER 7, 1955 IN BOOK 3308, PAGE 347 OF OFFICIAL RECORDS,  
IN FAVOR OF: SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA.  
FOR: GAS PIPE LINES AND INCIDENTAL PURPOSES.  
OVER: A PORTION OF THE LAND.
13. AN EASEMENT FOR EITHER OR BOTH POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED AUGUST 6, 1958 IN BOOK 4373, PAGE 594 OF OFFICIAL RECORDS.  
IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY.  
OVER: A PORTION OF THE LAND.
14. AN EASEMENT FOR EITHER OR BOTH POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED FEBRUARY 3, 1960 IN BOOK 5084, PAGE 436 OF OFFICIAL RECORDS.  
IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY.  
OVER: PORTIONS OF THE LAND.

15. AN EASEMENT FOR EITHER OR BOTH POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED DECEMBER 1, 1960 IN BOOK 5532, PAGE 37 OF OFFICIAL RECORDS. IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY.

OVER: PORTIONS OF THE LAND.

16. AN EASEMENT FOR INGRESS, EGRESS, ROAD AND PUBLIC UTILITY PURPOSES, AS SET FORTH IN AN AGREEMENT OF LEASE, DATED NOVEMBER 2, 1953, EXECUTED BY AND BETWEEN PAUL H. ESSLINGER AND MARIE M. ESSLINGER, AS LESSORS, AND ALPHA BETA FOOD MARKETS, INC., A CALIFORNIA CORPORATION, AS LESSEE, RECORDED JANUARY 25, 1961 IN BOOK 5605, PAGE 113 OF OFFICIAL RECORDS, A CERTIFICATE (MEMORANDUM) OF SAID LEASE WAS RECORDED JANUARY 14, 1955 IN BOOK 2923, PAGE 461 OF OFFICIAL RECORDS, OVER A PORTION OF THE LAND, SAID PORTION LYING ADJACENT TO AND NORTHEASTERLY OF THE LAND DESCRIBED IN THAT CERTAIN DEED TO THE STATE OF CALIFORNIA, RECORDED OCTOBER 23, 1926 IN BOOK 683, PAGE 215 OF DEEDS.

17. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 7, 1961 IN BOOK 5682, PAGE 637 OF OFFICIAL RECORDS,

IN FAVOR OF: THE COUNTY OF ORANGE.

FOR: STREET, HIGHWAY AND INCIDENTAL PURPOSES.

OVER: A PORTION OF THE LAND.

18. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 18, 1962 IN BOOK 6079, PAGE 524 OF OFFICIAL RECORDS,

IN FAVOR OF: THE COUNTY OF ORANGE.

FOR: STREET, HIGHWAY AND INCIDENTAL PURPOSES.

OVER: A PORTION OF THE LAND.

19. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED JANUARY 4, 1963 IN BOOK 6384, PAGE 119 OF OFFICIAL RECORDS,

IN FAVOR OF: SOUTH LAGUNA SANITARY DISTRICT.

FOR: A SANITARY SEWER MAIN AND INCIDENTAL PURPOSES.

OVER: A PORTION OF THE LAND.

20. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED JANUARY 4, 1963 IN BOOK 6384, PAGE 124 OF OFFICIAL RECORDS,

IN FAVOR OF: SOUTH LAGUNA SANITARY DISTRICT.

FOR: SEWER PIPELINES, MANHOLES, AND OTHER SEWER FACILITIES AND APPURTENANCES, AND FOR INCIDENTAL PURPOSES.

OVER: A PORTION OF THE LAND.

21. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED DECEMBER 30, 1966 IN BOOK 8141, PAGE 960 OF OFFICIAL RECORDS,

FOR: INGRESS, EGRESS, ROAD, PARKING AND INCIDENTAL PURPOSES.

OVER: A PORTION OF THE LAND.

22. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED FEBRUARY 17, 1967 IN BOOK 8179, PAGE 286 OF OFFICIAL RECORDS,  
IN FAVOR OF: THE COUNTY OF ORANGE.  
FOR: STREET, HIGHWAY AND INCIDENTAL PURPOSES.  
OVER: A PORTION OF THE LAND.

23. AN EASEMENT FOR EITHER OR BOTH POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 3, 1968 IN BOOK 8561, PAGE 837 OF OFFICIAL RECORDS.  
IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY.  
OVER: PORTIONS OF THE LAND.

24. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED JUNE 1, 1981 IN BOOK 14081, PAGE 1903 OF OFFICIAL RECORDS,  
IN FAVOR OF: SANTA ANITA DEVELOPMENT CORPORATION, A CALIFORNIA CORPORATION.  
FOR: PUBLIC SIDEWALK AND INCIDENTAL PURPOSES.  
OVER: A PORTION OF THE LAND.

25. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 26, 1984 AS INSTRUMENT NO. 84-172916 OF OFFICIAL RECORDS,  
IN FAVOR OF: MARIE M. ESSLINGER, AS SUCCESSOR TRUSTEE OF THE MARILYN E. SMITH TRUST ESTABLISHED DECEMBER 30, 1976, BY PAUL H. ESSLINGER AND MARIE M. ESSLINGER, TRUSTORS, AND MARIE M. ESSLINGER AS SUCCESSOR TRUSTEE FOR MARILYN ESSLINGER SMITH AND DONALD K. SMITH, HUSBAND AND WIFE, BENEFICIARIES.  
FOR: INGRESS, EGRESS, PUBLIC UTILITY AND INCIDENTAL PURPOSES.  
OVER: PORTIONS OF THE LAND.

26. COVENANTS, CONDITIONS AND RESTRICTIONS IN AN INSTRUMENT RECORDED APRIL 26, 1984 AS INSTRUMENT NO. 84-172916 OF OFFICIAL RECORDS, BUT DELETING ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE TITLE 42, SECTION 3604(c), OF THE UNITED STATES CODES.

NOTE: AFFECTS A PORTION OF THE LAND.

27. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 26, 1984 AS INSTRUMENT NO. 84-172917 OF OFFICIAL RECORDS,  
IN FAVOR OF: MARIE M. ESSLINGER AS SUCCESSOR TRUSTEE OF IRREVOCABLE TRUST ESTABLISHED BY INTERIM DECLARATION OF TRUST DATED DECEMBER 30, 1960, AND FORMALIZED BY TRUST AGREEMENT EFFECTIVE JANUARY 2, 1961.  
FOR: INGRESS, EGRESS, PUBLIC UTILITY AND INCIDENTAL PURPOSES.  
OVER: PORTIONS OF THE LAND.



28. COVENANTS, CONDITIONS AND RESTRICTIONS IN AN INSTRUMENT RECORDED APRIL 26, 1984 AS INSTRUMENT NO. 84-172917 OF OFFICIAL RECORDS, BUT DELETING ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE TITLE 42, SECTION 3604(c), OF THE UNITED STATES CODES.

NOTE: AFFECTS A PORTION OF THE LAND.

29. COVENANTS, CONDITIONS AND RESTRICTIONS IN AN INSTRUMENT RECORDED APRIL 26, 1984 AS INSTRUMENT NO. 84-172918 OF OFFICIAL RECORDS, BUT DELETING ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE TITLE 42, SECTION 3604(c), OF THE UNITED STATES CODES.

NOTE: AFFECTS A PORTION OF THE LAND.

30. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 26, 1984 AS INSTRUMENT NO. 84-172918 OF OFFICIAL RECORDS,  
IN FAVOR OF: MARIE M. ESSLINGER, AS SUCCESSOR TRUSTEE FOR MARILYN SMITH AND DONALD K. SMITH, HUSBAND AND WIFE, BENEFICIARIES, AND MARILYN M. SMITH AND PAUL R. ESSLINGER AS SUCCESSOR CO-TRUSTEES OF THE ESSLINGER FAMILY TRUST DATED APRIL 16, 1976.

FOR: INGRESS, EGRESS, PUBLIC UTILITY AND INCIDENTAL PURPOSES.  
OVER: A PORTION OF THE LAND.

31. AN EASEMENT FOR UNDERGROUND LINES AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED MAY 27, 1986 AS INSTRUMENT NO. 86-217053 OF OFFICIAL RECORDS,  
IN FAVOR OF: THE GENERAL TELEPHONE COMPANY OF CALIFORNIA.  
OVER: PORTION OF THE LAND.

32. AN EASEMENT FOR UNDERGROUND LINES AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED MAY 30, 1986 AS INSTRUMENT NO. 86-224658 OF OFFICIAL RECORDS,  
IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY.  
OVER: PORTIONS OF THE LAND.

33. THE EASEMENTS, TERMS, PROVISIONS AND CONDITIONS CONTAINED IN A DOCUMENT ENTITLED "PARKING AND EASEMENT AGREEMENT", EXECUTED BY AND BETWEEN DARREN E. ESSLINGER, CHERYL M. WING AND JENIFER L. ENGLISH, AS CO-TRUSTEES OF THE ESSLINGER TRUST AND ROBERT D. HAYWARD AND RACHEL B. HAYWARD, RECORDED APRIL 26, 1993 AS INSTRUMENT NO. 93-0275201 OF OFFICIAL RECORDS.

34. THE EASEMENTS, TERMS, PROVISIONS AND CONDITIONS CONTAINED IN A DOCUMENT ENTITLED "NATURAL GAS LINE EASEMENT AGREEMENT", EXECUTED BY AND BETWEEN DARREN E. ESSLINGER, CHERYL M. WING AND JENIFER L. ENGLISH, CO-TRUSTEES OF THE ESSLINGER TRUST AND ROBERT D. HAYWARD AND RACHEL B. HAYWARD, RECORDED APRIL 26, 1993 AS INSTRUMENT NO. 93-0275210 OF OFFICIAL RECORDS.

35. AN INSTRUMENT ENTITLED "CERTIFICATE OF COMPLIANCE" RECORDED NOVEMBER 22, 1995 AS INSTRUMENT NO. 19950520275 OF OFFICIAL RECORDS; REFERENCE BEING MADE TO THE RECORD THEREOF FOR FULL PARTICULARS.

36. A CLAIM OF LIEN RECORDED SEPTEMBER 9, 1996 AS INSTRUMENT NO. 19960458542 OF OFFICIAL RECORDS.

LIEN CLAIMANT: ROBERTSON'S.  
AMOUNT: \$22,154.11.

NOTE: AN ACTION COMMENCED AND NOW PENDING IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CASE NO. 768856.

PLAINTIFF: ROBERTSON'S READY MIX, LTD., A PARTNERSHIP.  
DEFENDANT: T.B.S. CONTRACTING, INC.; PAUL ESSLINGER; AND DOES 1 THROUGH 100, INCLUSIVE.  
TO/FOR: FORECLOSE THE ABOVE MECHANIC'S LIEN.

NOTICE OF PENDENCY OF SAID ACTION WAS RECORDED NOVEMBER 4, 1996 AS INSTRUMENT NO. 19960558771 OF OFFICIAL RECORDS.

37. RIGHTS AS TENANTS ONLY IN POSSESSION OF THE LAND BY REASON OF UNRECORDED LEASES, IF ANY.

38. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED SEPTEMBER 15, 1997 AS INSTRUMENT NO. 19970449412 OF OFFICIAL RECORDS,

FOR: A PERPETUAL, NON-EXCLUSIVE APPURTENANT EASEMENT FOR DRAINAGE AND INCIDENTAL PURPOSES.  
OVER: A PORTION OF THE LAND.

39. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED SEPTEMBER 15, 1997 AS INSTRUMENT NO. 19970449412 OF OFFICIAL RECORDS,

FOR: A PERPETUAL, NON-EXCLUSIVE APPURTENANT EASEMENT FOR INGRESS AND EGRESS AND INCIDENTAL PURPOSES.  
OVER: THAT PORTION OF FRACTIONAL SECTION 31, TOWNSHIP 7 SOUTH, RANGE 8 WEST OF THE SAN BERNARDINO MERIDIAN, IN THE CITY OF LAGUNA BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE MAY 19, 1873 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF THE CALIFORNIA STATE HIGHWAY (PACIFIC COAST HIGHWAY) AS SHOWN ON A MAP OF TRACT NO. 1017 RECORDED IN BOOK 33 PAGES 26, 27 AND 28 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DISTANT THEREON S40° 18' 00" E, 37.50 FEET FROM THE INTERSECTION OF SAID CENTERLINE WITH THE NORTHEASTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF LOT 64 OF SAID TRACT NO. 1017; THENCE N49° 42' 00" E, AT RIGHT ANGLES TO SAID CENTERLINE, 40.00 FEET TO THE SOUTHWESTERLY CORNER OF PARCEL 1 OF THE LEASE TO UNION OIL COMPANY OF CALIFORNIA RECORDED IN BOOK 8026 PAGE 735 OF OFFICIAL RECORDS IN SAID OFFICE OF THE ORANGE COUNTY RECORDER BEING ALSO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID PACIFIC COAST HIGHWAY PER INSTRUMENT RECORDED IN BOOK 683 PAGE 215 OF DEEDS

IN SAID COUNTY RECORDER'S OFFICE BEING ALSO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING N49° 42' 00" E, 120.00 FEET; THENCE N40° 18' 00" W, 30.00 FEET; THENCE S49° 42' 00" W, 55.00 FEET; N40° 18' 00" W, 10.00 FEET; THENCE S49° 42' 00" W, 65.00 FEET TO THE NORTHEASTERLY LINE OF SAID PACIFIC COAST HIGHWAY; THENCE S40° 18' 00"E 40.00 FEET TO THE TRUE POINT OF BEGINNING.

40. A DEED OF TRUST TO SECURE AN INDEBTEDNESS OF \$6,500,000.00, RECORDED SEPTEMBER 15, 1997 AS INSTRUMENT NO. 19970449413 OF OFFICIAL RECORDS.

DATED: SEPTEMBER 12, 1997.

TRUSTOR: LAGUNA TERRACE PARK LLC, A CALIFORNIA LIMITED LIABILITY COMPANY.

TRUSTEE: SERRANO RECONVEYANCE COMPANY, A CALIFORNIA CORPORATION.

BENEFICIARY: HOME SAVINGS OF AMERICA, FSB, A FEDERAL SAVINGS BANK.

**EXHIBIT "A"**

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF LAGUNA BEACH, DESCRIBED AS FOLLOWS:

PARCEL 1 AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT LL 95-01 RECORDED NOVEMBER 22, 1995 AS INSTRUMENT NO. 19950520276 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

\* \* \* \* \*

**WARNING**

"THE MAP ATTACHED HERETO MAY OR MAY NOT BE A SURVEY OF THE LAND DEPICTED THEREON. YOU SHOULD NOT RELY UPON IT FOR ANY PURPOSE OTHER THAN ORIENTATION TO THE GENERAL LOCATION OF THE PARCEL OR PARCELS DEPICTED. FIRST AMERICAN EXPRESSLY DISCLAIMS ANY LIABILITY FOR ALLEGED LOSS OR DAMAGE WHICH MAY RESULT FROM RELIANCE UPON THIS MAP."

\* \* \* \* \*

ML



# **ATTACHMENT NO. 3**

Order No. 9732212  
Escrow No. 9762864M



9.00

WHEN RECORDED MAIL TO:

19970449412 3:39pm 09/15/97  
004 7005702 07 28  
G02 2 05 2860.00 6.00 3.00 0.00 0.00 2860.00  
0.00 0.00 0.00

DOCUMENTARY TRANSFER TAX \$ 5,720.00  
Computed on the consideration or value of property conveyed; OR  
Computed on the consideration or value less liens or encumbrances  
remaining at time of sale.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

*The Undersigned grantor*  
Signature of Declarant or Agent determining tax - Firm Name

### GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Kenneth J. Cummins, Successor Trustee of the Esslinger Family Trust established April 16, 1976 by Paul H. Esslinger and Marie M. Esslinger, Trustors

hereby GRANT(S) to

Laguna Terrace Park LLC, a California limited liability company,

the real property in the City of Laguna Beach, County of Orange, State of California, described as

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Dated September 10, 1997

*[Signature]*  
Kenneth J. Cummins, Successor Trustee of the Esslinger Family Trust established April 16, 1976 by Paul H. Esslinger and Marie M. Esslinger, Trustors

STATE OF CALIFORNIA Hawaii )  
COUNTY OF Mau )

On September 11, 1997 before me, Teri A. Elliot personally appeared Kenneth J. Cummins personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *[Signature]*

TERI A. ELLIOT  
NOTARY PUBLIC  
STATE OF HAWAII

MAIL TAX STATEMENTS AS DIRECTED TO: (same as above)



LEGAL DESCRIPTION  
FOR GRANT DEED DATED  
SEPTEMBER 10, 1997

PARCEL 1 AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT LL 95-01 RECORDED NOVEMBER 22, 1995 AS INSTRUMENT NO. 19950520276 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

GRANTOR HEREBY RESERVES ITSELF, ITS SUCCESSORS AND ASSIGNS A PERPETUAL, NON-EXCLUSIVE APPURTENANT EASEMENT FOR DRAINAGE PURPOSES TO ACCOMMODATE EXISTING FLOW (THE "DRAINAGE EASEMENT") ON, OVER, UNDER AND ACROSS THE UNIMPROVED PORTIONS OF THE PROPERTY ("DRAINAGE EASEMENT AREA"). NEVERTHELESS, IF GRANTOR MODIFIES ITS PROPERTY IN A MANNER THAT MATERIALLY COLLECTS AND ACCELERATES DRAINAGE FLOW ONTO GRANTEE'S PROPERTY, THEN GRANTOR SHALL BE OBLIGATED TO DIVERT SUCH DRAINAGE IN AN ALTERNATIVE MANNER TO THE EXTENT OF SUCH INCREASE AND/OR ACCELERATION.

GRANTOR ALSO RESERVES ITSELF, ITS SUCCESSORS AND ASSIGNS, AS THE OWNER OF PARCEL 2 (SAID PARCEL 2 BEING AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT LL 95-01 RECORDED NOVEMBER 22, 1995 AS INSTRUMENT NO. 19950520276 OF SAID OFFICIAL RECORDS), A PERPETUAL, NON-EXCLUSIVE APPURTENANT EASEMENT TO AND FROM SAID PARCEL 2, FOR INGRESS AND EGRESS ON, OVER, UNDER AND ACROSS THAT PORTION OF FRACTIONAL SECTION 31, TOWNSHIP 7 SOUTH; RANGE 8 WEST OF THE SAN BERNARDINO MERIDIAN, IN THE CITY OF LAGUNA BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE MAY 19, 1873 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF THE CALIFORNIA STATE HIGHWAY (PACIFIC COAST HIGHWAY) AS SHOWN ON A MAP OF TRACT NO. 1017 RECORDED IN BOOK 33 PAGES 26, 27 AND 28 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DISTANT THEREON S40°18'00"E, 37.50 FEET FROM THE INTERSECTION OF SAID CENTERLINE WITH THE NORTHEASTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF LOT 64 OF SAID TRACT NO. 1017; THENCE N49°42'00"E, AT RIGHT ANGLES TO SAID CENTERLINE, 40.00 FEET TO THE SOUTHWESTERLY CORNER OF PARCEL 1 OF THE LEASE TO UNION OIL COMPANY OF CALIFORNIA RECORDED IN BOOK 8026 PAGE 735 OF OFFICIAL RECORDS IN SAID OFFICE OF THE ORANGE COUNTY RECORDER BEING ALSO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID PACIFIC COAST HIGHWAY PER INSTRUMENT RECORDED IN BOOK 683 PAGE 215 OF DEEDS IN SAID COUNTY RECORDER'S OFFICE BEING ALSO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING N49°42'00"E, 120.00 FEET; THENCE N40°18'00"W, 30.00 FEET; THENCE S49°42'00"W, 55.00 FEET; N40°18'00"W, 10.00 FEET; THENCE S49°42'00"W, 65.00 FEET TO THE NORTHEASTERLY LINE OF SAID PACIFIC COAST HIGHWAY; THENCE S40°18'00"E 40.00 FEET TO THE TRUE POINT OF BEGINNING.

# **ATTACHMENT NO. 4**

# HK&C

HART, KING & COLDREN

Boyd L. Hill  
bhill@hkclaw.com  
Our File Number: 26803.105/4848-6339-2261v.1

October 28, 2009

**VIA FACSIMILE AND HAND DELIVERY**

Facsimile No. (714) 497-0759

Planning Commission  
City of Laguna Beach ("City")  
505 Forest Avenue  
Laguna Beach, CA. 92651  
Attn: Scott Drapkin, Senior Planner

**RE: Laguna Terrace Park LLC ("Applicant")  
Application for Vesting Tentative Tract Map No. 17301 ("Application")  
Response to Coastal Commission Request for Continuance**

Dear Planning Commissioners:

This constitutes the Applicant's response to the October 27, 2009 letter from the Coastal Commission. The issues raised by the Coastal Commission do not require continuance of tonight's hearing. Rather those issues can be resolved prior to recordation of the Final Map by means of a City imposed condition for approval of the Final Map. The condition for Final Map approval simply needs to state "The Applicant must provide evidence to the satisfaction of the City Community Development Director that all lawful requirements of the Coastal Commission have been satisfied prior to City approval of the Final Map."

While the Applicant fundamentally disagrees that the Application involves the Coastal Act, the Planning Commission need not decide that issue before acting on the Application, but can instead can reserve that issue in order to allow the Coastal Commission and Applicant to resolve the issue prior to City approval and recordation of the Final Map.

The proposed resolution is also consistent with the Planning Commission's obligations under the Subdivision Map Act. The Application is complete, and the Planning Commission is required to recommend either approval, denial, or conditional denial of the Application within 50 days of acceptance of the application. (Govt. Code, § 66452.1)

A vast majority of the mobile homeowners within the mobilehome park support immediate approval of the Application in order to enable them to obtain the benefits of lot ownership.

The Applicant's proposed condition will be consistent with the Coastal Commission's position that the subject property is purportedly not a legal lot as a result of a prior lot line adjustment. The Applicant wishes to point out that there are efforts underway to resolve the lot line adjustment issue, which efforts the Commission staff could help bring to a swift resolution without delay to the Application. The Applicant was not the property owner at the time of the

City of Laguna Beach Planning Commission  
Re: Laguna Terrace Park Subdivision  
October 28, 2009  
Page 2

prior lot line adjustment was approved with the participation of the City and prior property owners, thus the Applicant and the mobilehome owners should not be penalized for the alleged prior failure to obtain approval of the Coastal Commission.

The Coastal Commission's argument that the Coastal Act is not preempted by Government Code Section 66427.5 misses the point. The Applicant is not arguing that the Coastal Act is preempted by the mobilehome park conversion provisions of the Subdivision Map Act, but instead is arguing that the Coastal Act impermissibly conflicts with Government Code 66427.5.

Government Code Section 66427.5 sets forth the limited and exclusive requirements for converting an existing mobilehome park to resident ownership by means of a subdivision application. As recently made clear by the California Court of Appeal, Government Code Section 66427.5 does not stand alone, but must be examined in the context of the comprehensive State statutory and regulatory scheme giving plenary authority over mobilehome park development and operation to the State Department of Housing and Community Development ("HCD"). (See *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270, 1279-1282)

Any further review of a mobilehome park paper conversion under the Coastal Act based on the pretense that there will be actual development is in direct conflict with the State's comprehensive statutory and regulatory scheme for mobilehome parks under HCD jurisdiction. Therefore, under accepted principles of statutory construction, the enactment of Government Code Section 66427.5 impliedly amended the Coastal Act to prevent Coastal Act review of any existing mobilehome park subdivision application to convert to resident ownership. (See *McLaughlin v. State Bd. of Educ.* (1999) 75 Cal.App.4th 196, 219-225)

The Coastal Commission letter recognizes the fact that the Application does not involve any new development. The Coastal Commission staff position regarding its jurisdiction over the Application is based solely on a hyper-technical reading of the Coastal Act that clearly conflicts with Government Code Section 66427.5 and is itself internally inconsistent:

Thus, even though there is no physical development currently contemplated, it is important to consider the effects of such development while processing the land division that would make such development possible. (Coastal Commission staff letter, page 2 [underline added])

If the State Legislature wanted biological assessments and water quality protection requirements to apply to existing mobilehome park conversions within the Coastal zone, it would have said so when it enacted the exclusive provisions of Government Code Section 66427.5.



HART, KING & COLDREN

City of Laguna Beach Planning Commission  
Re: Laguna Terrace Park Subdivision  
October 28, 2009  
Page 3

Assuming, *arguendo*, that the Coastal Act applies to the Application, the Coastal Commission staff letter recognizes that the Planning Commission and City can proceed on their own to consider the impacts of the Application within CDP jurisdiction under the City's LCP. The Coastal Commission staff letter also recognizes that none of the Coastal Act provisions regarding appeal to the Coastal Commission appears to apply.

Therefore, in conclusion, there is nothing to prevent the Planning Commission from approving the Application tonight with the proposed condition. There is no new development requiring Coastal Act review. We look forward to discussing the Application with you this evening.

Thank you.

HART, KING & COLDREN

Boyd L. Hill

cc: Phil Kohn, City Attorney (by e-mail only)  
Kenneth Frank, City Manager (by e-mail only)  
John Montgomery, Director of Community Development (by e-mail only)

# **ATTACHMENT NO. 5**

**City of Laguna Beach**  
**AGENDA BILL**

No. 18  
Meeting Date: 1/5/10

**SUBJECT: VESTING TENTATIVE TRACT MAP 09-03 AND COASTAL DEVELOPMENT PERMIT 09-36**

**SUMMARY OF THE MATTER:**

The applicant is requesting approval of a Vesting Tentative Tract Map and a Coastal Development Permit to subdivide and convert an existing rental space mobile home park to a resident-owned mobile home park at 30802 Coast Highway (Laguna Terrace Mobile Home Park). The application is for approval of 158 individual mobile home lots and four lettered lots that include the existing private streets, a large area zoned Open Space Conservation and the Park's existing common areas. The proposed Vesting Tentative Tract Map is specifically for the purposes of conversion of the existing rental space mobile home park to resident ownership. The subdivision does not propose any physical site and/or density changes.

**BACKGROUND:** On July 7, 2009, the City Council considered an appeal of the Community Development Director's decision to require a relocation impact report for the proposed subdivision under Laguna Beach Municipal Code Section 1.11.010(a). After numerous meetings between staff and the California Department of Housing and Community Development (HCD), the City Attorney rendered an opinion that the Municipal Code provision is not applicable to the proposed conversion of a rental mobile home park to resident ownership. The City Attorney also determined that many of the provisions of the Laguna Beach Municipal Code and General Plan are not applicable to the proposed subdivision because of preemption by the California Subdivision Map. Consequently, the City Council directed staff to process the proposed subdivision without the need for a Relocation Impact Report.

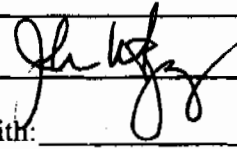
On October 28, 2009, the Planning Commission reviewed the proposed subdivision and Coastal Development Permit and heard public testimony. After receiving multiple last-minute correspondence, the Planning Commission decided to continue the public hearing, requesting that the City Attorney review and evaluate the correspondence. On November 18, 2009, the Planning Commission met with the City Attorney in closed session to discuss the legal issues raised by the correspondence. Following the public hearing conducted later that evening, the Planning Commission voted unanimously to recommend that the City Council conditionally approve the proposed Vesting Tentative Tract Map and Coastal Development Permit.

(continued)

**RECOMMENDATION:** It is recommended by the Planning Commission that the City Council:

Adopt the attached Resolution that conditionally approves Vesting Tentative Tract Map 09-03 and Coastal Development Permit 09-36 at 30802 Coast Highway.

Attachments: Application & Map; 10/28/09 & 11/18/09

Submitted by: 

P.C. Staff Reports and Minutes; 10/27/09 C.C.C. Letter;

Coordinated with: \_\_\_\_\_

6/30/2009 & 10/28/2009 City Attorney Memos; 9/11/09

Peer Review Letter; LLA 95-01 Application, Agenda

Bill and Minutes; State Gov. Code Section 66427.5;

and Resolution.

Approved: 

City Manager

**PERTINENT INFORMATION:**

Vesting Tentative Tract Map

The applicant is requesting approval of a Vesting Tentative Tract Map for a 158-lot subdivision with four lettered lots. The proposed numbered subdivided lots constitute the same rental spaces that currently exist. As indicated in Government Code Section 66427.5 (a portion of the California Subdivision Map Act) and confirmed by the State HCD, the City does not have the normal discretion to require full General Plan and Municipal Code compliance with the proposed subdivision/conversion. Further, the HCD has also indicated that the City's discretionary review of the proposed mobile home park conversion does not include consideration of compliance with local minimum lot size, setback and/or other such development standards.

California Government Code Section 66427.5

Pursuant to the California Subdivision Map Act, the City's review of the proposed land division is limited in scope to the issue of compliance with the provisions of Government Code Section 66427.5. The primary intent of Government Code Section 66427.5 is to provide a bona fide opportunity for mobile home park residents to purchase the property beneath their existing mobile homes and also to prevent the economic displacement of non-purchasing residents. The statute requires that in conjunction with a proposed mobile home park subdivision/conversion, the existing tenants be provided with the right to either purchase their lots or continue as tenants. Further, if the existing mobile home owner chooses not to purchase the property and remain as a tenant, Government Code Section 66427.5 also limits future rent increases.

In compliance with Government Code Section 66427.5, the applicant has submitted a report on the impact on residents of the mobile home park as a result of the proposed conversion to resident ownership. As required, the applicant has also obtained a survey of support of residents of the mobile home park for the proposed conversion. The survey reflects that 89% of the residents who replied support the subdivision/conversion. Staff has reviewed the resident impact report and has also had the report peer reviewed by an independent law firm that specializes in mobile home park subdivisions. The conclusion of the peer review is that the resident impact report is consistent with Government Code Section 66427.5 and that the proposed subdivision would not result in the economic displacement of non-purchasing residents in Laguna Terrace Mobile Home Park.

State Department of Housing and Community Development

The existing mobile home park is under the primary jurisdiction of the HCD. The local division of the HCD issues construction permits and conducts inspections at the Laguna Terrace Mobile Home Park, and the City has no discretionary jurisdiction over these matters. However, for certain mobile home subdivisions (including the proposed Vesting Tentative Tract Map) and increases in mobile home park density, local approval is required.

Coastal Development Permit / California Coastal Commission

The project is located within the Coastal Zone and the proposed subdivision is considered "development" pursuant to the California Coastal Act. The project is bisected/overlaid by the City's Coastal Development permitting jurisdictional area and the deferred jurisdictional area that is regulated and permitted exclusively by the California Coastal Commission. Prior to the Planning Commission review of the subdivision, the Coastal Commission staff requested that the applicant consolidate the Coastal Development Permit, thereby allowing for exclusive Coastal Commission review of the Coastal



Development Permit. However, pursuant to the Coastal Act, the applicant must agree to consolidate the Coastal Development Permit and the applicant declined the Coastal Commission staff's request. Therefore, the project necessitates independent approval of a Coastal Development Permit by both the Coastal Commission and the City of Laguna Beach for their respective jurisdictional portions of the application.

On October 27, 2009 (the day before the first Planning Commission hearing on this matter), the Coastal Commission staff submitted an email correspondence letter to the Planning Commission that indicated that the review of the proposed Vesting Tentative Tract Map is premature given a current issue regarding Lot Line Adjustment 95-01, which in 1995 modified the currently proposed subdivision map boundary. The Coastal Commission staff also indicated that even though the proposed subdivision is not accompanied by any physical development, "the division of land can result in the establishment of additional development potential and certain expectations and rights on the part of the land owner for certain levels of development." The letter suggested that "because of these expectations and establishment of additional development potential, the proposed application is subject to the whole range of resource issues including but not limited to protection and enhancement of public access, biological resources, water quality, scenic resources, and the minimization and avoidance of hazards (geologic, fire, flood, etc.)."

As indicated by the Planning Commission's recommendation to the City Council, the Commission does not agree with the Coastal Commission staff's assertions. As clarified by the City Attorney and pursuant to the California Subdivision Map Act, "the authority and discretion of the City in reviewing and acting on conversion applications is expressly limited and such issues of consistency with the City's General Plan and Municipal Code are not specifically identified as a statutory factor that may be considered in conjunction with conversions." The Planning Commission also did not agree that the proposed conversion subdivision will result in "the establishment of additional development potential and certain expectations and rights on the part of the land owner for certain levels of development." Further, any Coastal Act compliance issues that the Coastal Commission staff may have in relation to the approximately 15-year-old recorded Lot Line Adjustment would not be preempted by the approval of the currently proposed conversion/subdivision. Lastly, Condition Number 11 of the proposed Resolution approving Vesting Tentative Tract Map requires that a Final Map shall not be reviewed until a Coastal Development Permit has been approved and issued by the California Coastal Commission for the deferred area of the subdivision. Although staff is not aware of any Coastal Act inconsistencies, this Condition would provide the Coastal Commission with the opportunity to independently review any current or previous Coastal Act compliance issues deemed necessary.

#### California Environmental Quality Act

Pursuant to the California Environmental Quality Act (CEQA), the proposed project qualifies for a Class 1 (Existing Facilities) categorical exemption under Section 15301 of the State CEQA Guidelines. Pursuant to this categorical exemption, a project can be exempt from CEQA if the project "involves negligible or no expansion of an existing use." Here, the proposed project site is zoned for mobile home use, developed with a mobile home park and only a potential change in ownership would result with approval of the subdivision. Therefore, the requested subdivision qualifies for a categorical exemption as it would not physically change the site and/or surroundings, change the existing land use, or change the Park density.

**CONCLUSION:** Pursuant to California Government Code Section 66427.5(e), “a mobile home park conversion from rental to a resident ownership shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with section 66427.5.” (Emphasis added.) Further, Section 66427.5 does not provide for the City Council’s consideration of issues of consistency with the City’s General Plan and/or Municipal Code and, consequently, the discretion of the City in reviewing and acting on the proposed conversion application is expressly limited.

The proposed mobile home park conversion subdivision is a “bona fide” mobile home park resident-ownership conversion, is consistent with the Subdivision Map Act, and the required findings for the approval of a Coastal Development Permit can be satisfied. Further, the applicant has complied with the specific subdivision requirements of Government Code Section 66427.5, including submitting a report on the impact of the conversion upon residents of the mobile home park to be converted to resident ownership, obtaining a survey of support of residents of the mobile home park, and preventing the economic displacement of non-purchasing residents. Lastly, the resident survey concluded that a majority of the residents support the proposed subdivision/conversion and staff has also received many individual correspondences from current mobile home residents in support of the conversion.

# **ATTACHMENT NO. 6**



RECEIVED  
South Coast Region

FEB 01 2010

CALIFORNIA  
COASTAL COMMISSION

**NOTICE OF FINAL LOCAL ACTION  
FOR COASTAL DEVELOPMENT PERMITS**

Date: January 15, 2010

The following project is located within the City of Laguna Beach Coastal Zone:

Location: 30802 Coast Highway

Coastal Development Project No: CDP 09-36

Project Description: Vesting Tentative Tract Map 09-03 to subdivide an approximate 47-acre parcel into 157 mobile home spaces and four lettered lots, for the purpose of converting an existing rental space mobile home park into a resident-owned mobile home park.

Applicant: Laguna Terrace Park, LLC, c/o James Lawson

Mailing Address: 30802 Coast Highway, Laguna Beach, CA 92651

On January 5, 2010 a coastal development permit application for the project was

- approved
- approved with conditions
- denied

Local appeal period ended N/A

- This action was taken by:
- City Council
  - Design Review Board
  - Planning Commission

The action  did  did not involve a local appeal; in any case, the local appeal process has been exhausted. Findings supporting the local government action and any conditions imposed are found in the attached resolution.

This project is

- not appealable to the Coastal Commission
- appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission if a valid appeal is filed. Appeals must be in writing to the appropriate Coastal Commission district office and in accordance with the California Code of Regulation Section 13111. The Coastal Commission may be reached by phone at (562) 590-5071 or by writing to 200 Oceangate, 10<sup>th</sup> Floor, Long Beach, CA 90802-4416

Attach: CDP Resolution No. 10.004



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**RESOLUTION NO. 10.004**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LAGUNA BEACH, CALIFORNIA, APPROVING VESTING  
TENTATIVE TRACT MAP 09-03 (VESTING TENTATIVE TRACT  
MAP 17301) AND COASTAL DEVELOPMENT PERMIT 09-36  
AT 30802 COAST HIGHWAY.**

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WHEREAS, an application has been filed by the owner of property located at 30802 Coast Highway, requesting approval of Vesting Tentative Tract Map 09-03 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 09-36 to subdivide an approximate 47-acre parcel into 157 mobile home spaces and four lettered lots, for the purpose of converting an existing rental space mobile home park into a resident-owned mobile home park; and

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA), the proposed project qualifies for a Class 1 (Existing Facilities) Categorical Exemption, under Section 15301 of the State CEQA Guidelines because the project "involves negligible or no expansion of an existing use" inasmuch as the existing land use of the project site is a mobile home park and the requested subdivision would not physically change the site and/or surroundings, change the existing land use, or change the Park density; and

WHEREAS, on October 28, 2009 and November 18, 2009, the Planning Commission conducted legally noticed public hearings and, after reviewing all documents and testimony, voted to recommend to the City Council approval of the Vesting Tentative Tract Map 09-03 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 09-36; and

WHEREAS, on January 5, 2010, the City Council conducted a legally noticed public hearing and, after reviewing all documents and testimony, desires to approve the Vesting

1  
2 Tentative Tract Map 09-03 (Vesting Tentative Tract Map 17301) and Coastal Development  
3 Permit 09-36; and  
4

5 WHEREAS, for the portion of the proposed subdivision that is located within the  
6 City's Coastal Development Permitting jurisdiction, the proposed subdivision is consistent  
7 with the criteria of the Certified Local Coastal Program (Laguna Beach Municipal Code  
8 Section 25.07.012 (F)(1-9)) and the required Coastal Development Permit findings can be  
9 made, as indicated below:  
10

11 1. The proposed subdivision and conversion of Laguna Terrace Mobile Home Park to a  
12 resident-owned mobile home park is preempted from Municipal Code and General Plan  
13 compliance by Government Code Section 66427.5 of the California Subdivision Map Act;

14 2. The proposed subdivision is not located between the sea and the first public road  
15 paralleling the sea and, therefore, does not have the potential to interfere with the public  
16 access and public recreation policies of Chapter 3 of the Coastal Act;  
17

18 3. The proposed development will not have any significant adverse impacts on the  
19 environment within the meaning of the California Environmental Quality Act in that the  
20 proposed subdivision will not result in any physical site changes and, therefore, qualifies for  
21 a Categorical Exemption, under Section 15301 (Existing Facilities), Class 1.

22 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH  
23 does RESOLVE and ORDER as follows:  
24

25 1. The proposed subdivision map review is preempted by the provisions of  
26 Government Code Section 66427.5 and consistency of the map with the Laguna Beach  
27 General Plan is exempt.  
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2. The conversion of the existing mobile home park to resident ownership is consistent with the California Subdivision Map Act and no physical changes are proposed.

3. The site is physically suitable for the proposed conversion in that the existing land use of the project site is for a mobile home park and the requested subdivision would not physically change the site and/or surroundings, change the existing land use, or change the Park density.

4. The subdivision does not include any physical improvements/changes and, therefore, will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

5. The subdivision does not include any physical improvements/changes and, therefore, will not cause serious public health problems.

6. The subdivision does not include any physical improvements/changes and, therefore, will not conflict with any easements acquired by the public at large and which are recorded or established by judgment of a court of competent jurisdiction.

7. The proposed map meets the requirements of the Subdivision Map Act and the Laguna Beach Subdivision Ordinance, and has been reviewed as being consistent with those requirements.

8. The conversion of the existing rental mobile home park to resident ownership will not displace low and/or moderate-income families or tenants in that the subdivision complies with Government Code Section 66427.5 and will prevent the economic displacement of nonpurchasing residents.

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9. The proposed project is not located between the sea and the first public road paralleling the sea.

10. Pursuant to the California Environmental Quality Act (CEQA), the proposed project qualifies for a Class 1 (Existing Facilities) Categorical Exemption under Section 15301 of the State CEQA Guidelines and will not result in an environmental impact.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH does further RESOLVE and ORDER as follows:

Approval of Vesting Tentative Tract Map 09-03 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 09-36 subject to the following conditions:

1. Pursuant to Government Code Section 66427.5, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

(a) The subdivider shall offer each existing tenant an option to either purchase his/her subdivided lot, which is to be created by the conversion of the park to resident ownership, or to continue residency as a rental tenant.

(b) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

(c) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any



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applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

2. Prior to the approval of the Final Map by the City, the subdivider shall show proof that the applicant has submitted a "Public Report" application to the California Department of Real Estate (DRE). Within the "Public Report" application, the applicant shall provide detailed provisions for responsibility of infrastructure, maintenance of common areas and property owner rules and regulations pursuant to the DRE requirements.

3. Notwithstanding any other provision of law, the subdivider shall, prior to filing a notice of intention with the DRE pursuant to Section 11010 of the California Business and Professions Code, disclosing to the homeowners and residents of the park, by written notice, the tentative price of the subdivided interest proposed to be sold or leased.

4. The proposed subdivision and associated improvements shall not conflict with any existing public easements.

5. Within 24 months of the approval of the Vesting Tentative Tract Map, or as otherwise provided by the law, a Final Map based upon a field survey shall be submitted to the City, and deemed complete for review and approval. An incomplete or inaccurate Final Map shall not be deemed submitted pursuant to the Subdivision Map Act. Prior to the recordation of the Final Map, the surveyor/engineer preparing the map shall tie the boundary of the map in the Horizontal Control System established by the County Surveyor as described in Sections

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7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18, as may be amended. The surveyor/engineer shall also provide the City with a representation of the Final Map in digital DXF format that is positioned in the NAD83 coordinate system.

6. The landowner/subdivider shall defend, hold harmless and indemnify, at his/her/its expense, the City, City Council and members thereof, commissions, boards, officials, officers, employees, agents and representatives from any and all third party claims, actions or proceedings to the attack, set aside, void or annul and approval of this Vesting Tentative Tract Map and Coastal Development Permit, which action is brought within the time period provided for in California Government Code Section 66499.37, as same may be amended. This obligation shall encompass all costs and expenses incurred by the City in defending against any claim, action or proceeding, as well as costs or damages the City may be required by a court to pay as a result of such claim, action or proceeding. The City shall notify the landowner/developer in the defense of any claim, action or proceeding within a timely manner of receipt the same.

7. Prior to the approval of the Final Map by the City, a deed restriction acknowledging the potential fire, erosion, landslide, mudslide, earthquake and flooding hazards of the site and waiving liability claims against the City shall be filed and recorded with the Orange County Clerk and Recorder.

8. Twenty four (24) months from the date the map is approved by the City Council, Vesting Tentative Tract Map 09-03 shall expire. A one (1) year extension of the conditional

1  
2 approval may be requested by written application to the Department of Community  
3 Development for processing, if filed prior to the approved subdivision expiration.  
4

5 9. A maximum of 157 mobile home units/spaces are permitted within the proposed  
6 subdivision. Any future increase in mobilehome space density shall be approved by both  
7 Conditional Use Permit (pursuant to Laguna Beach Municipal Code Chapter 25.46) and  
8 subdivision approval (pursuant to Government Code Section 66427.5). Any future  
9 subdivision lot changes and/or parcel reconfigurations are subject to the applicable Laguna  
10 Beach Municipal Codes and/or California Subdivision Map Act provisions.  
11

12 10. In order to avoid the economic displacement of all nonpurchasing residents, after the  
13 approval of the proposed land division, the applicant/property owner(s)/future property  
14 owner(s) shall honor existing tenant-owner lease/rental agreements/contracts for all existing  
15 nonpurchasing residents.  
16

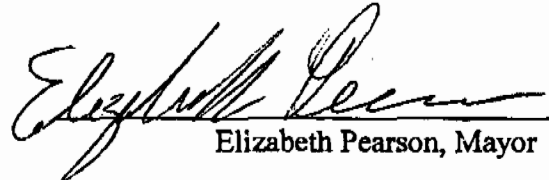
17 11. A Final Map for Vesting Tentative Tract Map 09-03 shall not be reviewed or  
18 approved by the City Council until a Coastal Development Permit has been approved and  
19 issued by the California Coastal Commission for the deferred area of the subdivision, which  
20 is located outside of the City's Coastal Development Permitting jurisdictional boundaries. In  
21 the event that the California Coastal Commission requires modifications to the subdivision  
22 that are not in substantial conformance with the approved Tentative Map, then the applicant  
23 may be required to obtain approval of an amended Tentative Map.  
24

25 12. The proposed Tentative Tract Lot 155 is not approved as a residential mobile home  
26 lot, and the Final Map shall reflect the merging of the proposed Lot 155 area within the  
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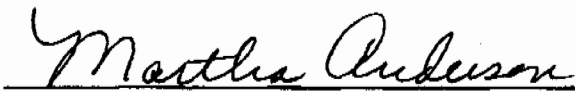
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adjacent lettered Lot B. Lot B shall not be used for the placement of a mobile home and/or associated mobile home residential purposes.

ADOPTED this 5<sup>th</sup> day of January, 2010.

  
Elizabeth Pearson, Mayor

ATTEST:


  
City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 10.004 was duly adopted at a Regular Meeting of the City Council of said City held on January 5, 2010, by the following vote:

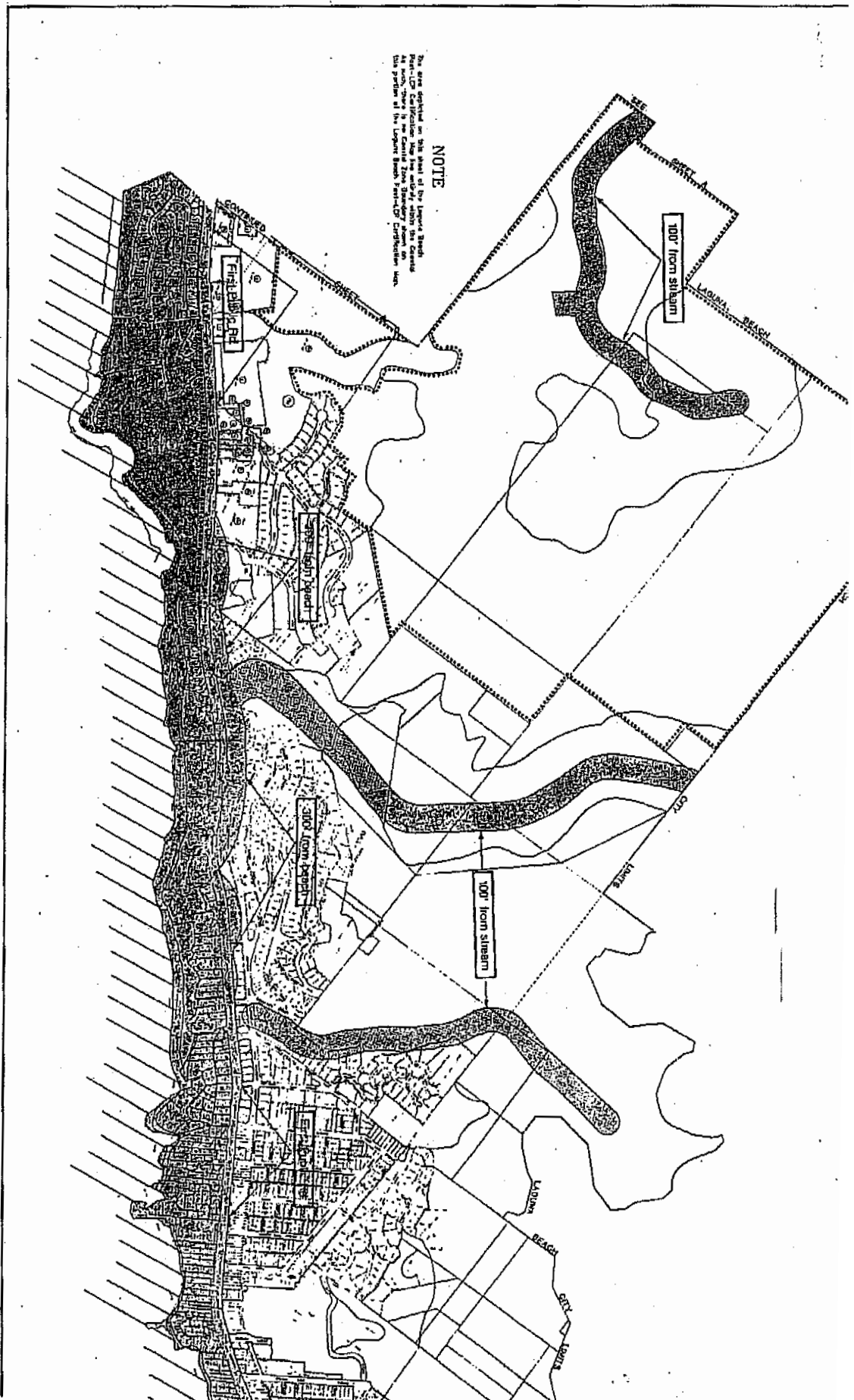
AYES: COUNCILMEMBER(S): Boyd, Egly, Pearson

NOES COUNCILMEMBER(S): Rollinger, Iseman

ABSENT COUNCILMEMBER(S): None

  
City Clerk of the City of Laguna Beach, CA

# **ATTACHMENT NO. 7**



**NOTE**  
 The area depicted on this sheet is the largest beach  
 area in the vicinity of the stream. The area shown  
 is not shown in the General Zone Standard System on  
 the portion of the largest beach area shown here.

# **ATTACHMENT NO. 8**

# Vesting Tentative Tract Map 09-03

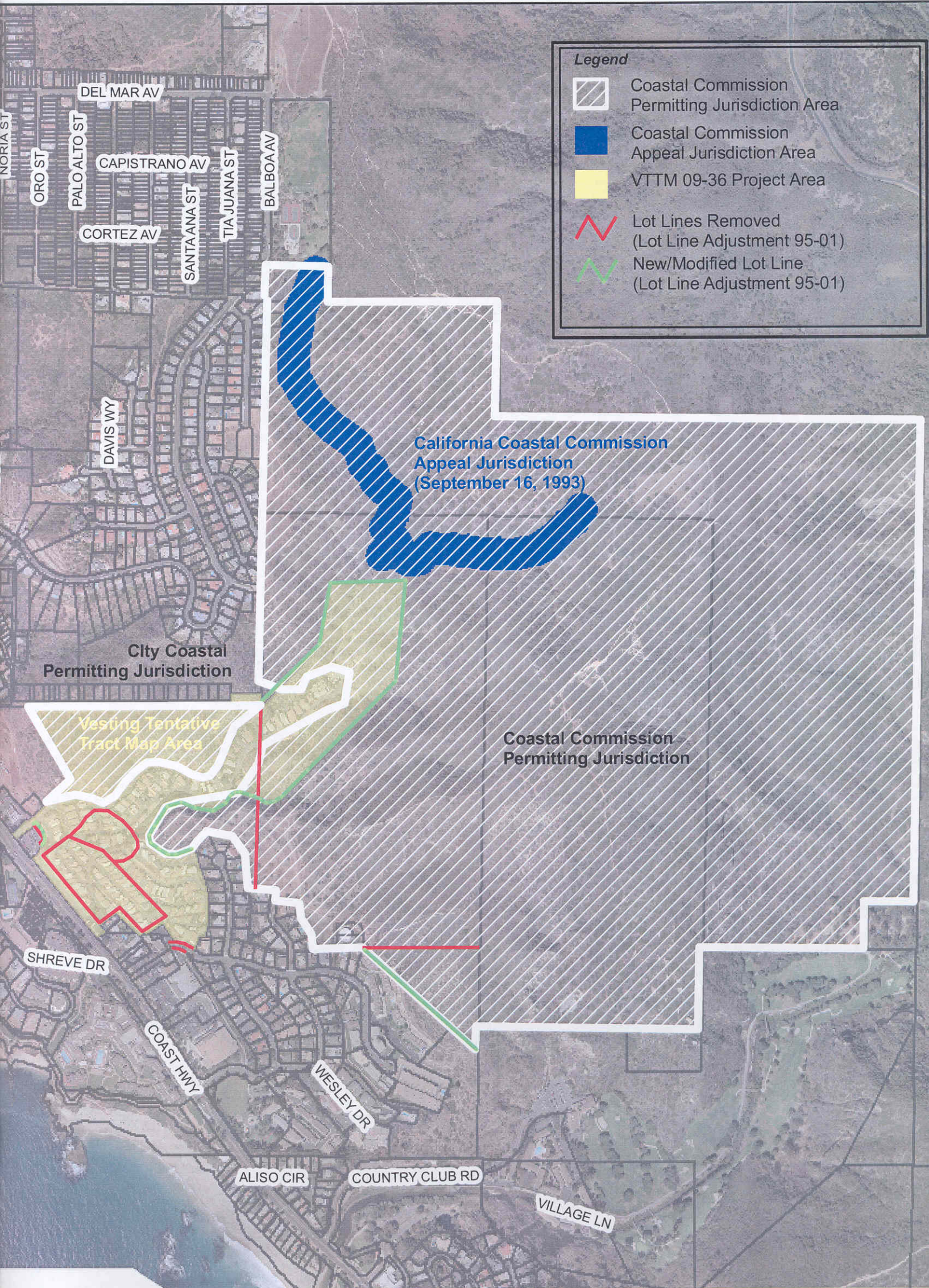
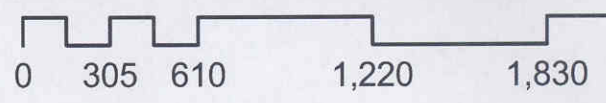


Exhibit Date: 1/5/09





# **ATTACHMENT NO. 9**

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



June 2, 1999

Ms. Darlene A. Shelley  
Vice President of Planning and Entitlement  
John M. Tettemer & Associates, Inc.  
3151 Airway Avenue, Suite Q-1  
Costa Mesa, CA 92626

Re: Coastal Development Permit Amendment Application No. 5-98-151 A  
Esslinger Family Trust

Dear Ms. Shelley,

The above referenced amendment application was received in this office on May 4, 1999. For the reasons described below the application has been deemed incomplete.

The project area includes 7.78 acres of undeveloped land, other than an unpaved road. The site is located in Hobo Canyon, which is identified as Very High Value Habitat on the South Laguna Biological Resources Values Map. How was it determined that no vegetation or candidate or sensitive species will be impacted by the proposed project? Was a biological assessment prepared? Was the site surveyed for biological resources? Please submit a Biological Assessment, based on a site survey, which evaluates the proposed project's impacts on the subject site.

Please submit information clarifying how the proposed project will modify work approved (and constructed?) under coastal development permit 5-95-286 and 5-95-286 A. Also, coastal development permit 5-98-151 approved only construction of lateral D of the overall drainage improvement work for Hobo Canyon. Given that the majority of work for the drainage improvements has been constructed(?), is the magnitude of the proposed development necessary? Please explain.

Please submit the hydrology study which was prepared for the storm drain improvements in Driftwood Drive.

Why was a Mitigated Negative Declaration prepared, rather than a Negative Declaration, if no mitigation was required? Please submit a signed copy of the Mitigated Negative Declaration.

The project description says the project includes six sediment basins, but the plans label only 4 desilting basins. Are sediment basins considered to be the same as desilting basins? Please clarify the discrepancy in the number of basins in the project description and the number shown on the plans. It appears that there is a fifth basin near "lateral E" but it is not labeled. Also, near "lateral F" there appears to be some kind of berm but it is labeled as an 18" RCP storm drain. Please clarify this. It would also be helpful to label the streets shown on the plans (I assume they are Driftwood Drive and Marilyn Drive). Also please explain what a "concrete collar" is?

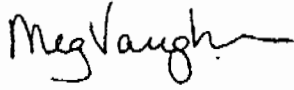
5-98-151 A (Esslinger Family Trust)  
Page 2 of 2

Previously, Caltrans has expressed concern that the drainage improvement projects will adversely impact Coast Highway in the project vicinity. Please provide comments from Caltrans regarding the proposed project.

Please submit proof of legal interest in the subject property.

Once the additional information is received in this office and the application is deemed complete, the matter will be scheduled for Commission review. Please do not hesitate to contact me with any questions regarding this matter.

Sincerely,



Meg Vaughn  
Staff Analyst

June 30, 1999



Ms. Meg Vaughn, Staff Analyst  
California Coastal Commission  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

RECEIVED  
South Coast Region

JUL 6 1999

CALIFORNIA  
COASTAL COMMISSION

Dear Ms. Vaughn:

We have received your letter of June 2, 1999 concerning the Coastal Development Permit Amendment Package we submitted to you on May 3, 1999 for the Esslinger Family Trust (EFT). The following addresses your questions concerning the project.

Although the Laguna Biological Resources Values Map indicates that the area is a Very High value Habitat, the property contains six graded pads and two graded access roads. The EFT currently uses temporary flood control measures onsite, such as sand bags and plastic cover in order to reduce flood impacts as a result of storm flows. Although the project site contains mostly ruderal vegetation we have prepared a biological assessment for the site that indicates no impacts to sensitive or rare species. The report is enclosed as Attachment One.

This project will eliminate Lateral D which originally permitted under CDP 5-98-151 not 5-95-286A. By not adding this drainage to the Laguna Terrace Trailer Park, it will reduce the amount of storm flow that the trailer park system must handle. CEP 5-98-286A was for the Laguna Terrace Trailer Park Storm Drain Improvements owned by the Esslinger Family Trust under the supervision of Steve Esslinger. CDP Number 5-98-151 is the Esslinger Family Trust under the supervision of Kenneth Cummins. Although they have the same name, they are two separate family trusts and therefore are two separate entities. The development proposed in our Amendment Package is an improvement to the original plan because it will deliver the storm flow into an existing closed city owned storm drain facility that has been designed to accept the storm flows from this property. The original project would have added storm flows to the trailer park, which connects into the system that CalTrans had expressed concerns.

The City of Laguna Beach hydrology study is enclosed as Attachment Two.

The California Environmental Quality Act document submitted was a Negative Declaration not a Mitigated Negative Declaration the Amendment Package stated this in error.

Sediment basins and desilting basins are the same. There are six of them, one for each of the graded pads. All six laterals are clearly labeled A through and including F one for each of the six basins. The berm near Lateral F is the berm for the catch basin which will have an 18" RCP pipe as part of the storm drain system as described in the project description. The two streets are Driftwood Drive and Marilyn Drive. A revised exhibit is enclosed for your files as Attachment Number Three.

Ms. Mcg Vaughn  
June 30, 1999  
Page 2

A concrete collar is a band of concrete with steel reinforcing, which is poured around the storm drainpipe joint a bends in the storm drain or at locations that connect two different kinds of pipe materials.

CalTrans' concerns were with the Laguna Terrace Park Storm Drain Improvements permitted under CDP 5-95-286A which drained to a facility at Pacific Coast Highway. We are requesting an amendment to CDP 5-98-151. The proposed project will allow the drainage to flow into an existing city storm drain facility, which as mentioned earlier was designed to handle flood flows from this property. This proposed project would have no impact to any CalTrans facilities.

[ Enclosed as Attachment Number Four is a title report from First American Title Insurance Company that was submitted with the original permit application. ]

We would like to meet with you concerning the proposed project to insure that the amendment submittal answers all of your questions and any potential questions that the Coastal Commissioners may raise. I will contact you the week of July 7, 1999 to schedule a meeting.

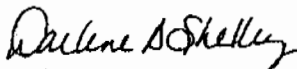
#### Attachments

- Attachment One: Biological Assesment
- Attachment Two: Hydrology Study
- Attachment Three: Revised Exhibit
- Attachment Four: Proof of Ownership

We believe that this letter and the attached documentation responds to your request of June 2, 1999, and that you can now deem this application complete.

If you have any questions, please contact me.

Sincerely,



Darlene A. Shelley  
Vice President

DAS/pf

Enclosure

**ATTACHMENT ONE**

---

**Biological Assessment**

**ATTACHMENT TWO**

---

**Hydrology Study**

**ATTACHMENT THREE**

---

**Revised Exhibit**



**ATTACHMENT FOUR**

---

**Proof of Ownership**

OR-9825506  
TITLE OFFICER - GOMEZ

## First American Title Insurance Company

114 East Fifth Street, Santa Ana, California 92701  
(P.O. Box 267, Santa Ana, California 92702)  
(714) 558-3211

CHEADLE & GARRETT  
4041 MACARTHUR BLVD., STE. 360  
NEWPORT BEACH, CA 92660  
ATTN: TOM GARRETT

YOUR NO. 056-240-55, 57, 58

IN RESPONSE TO THE ABOVE REFERENCED APPLICATION FOR A POLICY OR TITLE INSURANCE, THIS COMPANY HEREBY REPORTS THAT IT IS PREPARED TO ISSUE, OR CAUSE TO BE ISSUED, AS OF THE DATE HEREOF, A POLICY OR POLICIES OF TITLE INSURANCE DESCRIBING THE LAND AND THE ESTATE OR INTEREST THEREIN HEREINAFTER SET FORTH, INSURING AGAINST LOSS WHICH MAY BE SUSTAINED BY REASON OF ANY DEFECT, LIEN OR ENCUMBRANCE NOT SHOWN OR REFERRED TO AS AN EXCEPTION BELOW OR NOT EXCLUDED FROM COVERAGE PURSUANT TO THE PRINTED SCHEDULES, CONDITIONS AND STIPULATIONS OF THE POLICY FORMS.

THE PRINTED EXCEPTIONS AND EXCLUSIONS FROM THE COVERAGE OF THE POLICY OR POLICIES ARE SET FORTH IN EXHIBIT A ATTACHED. COPIES OF THE POLICY FORMS SHOULD BE READ. THEY ARE AVAILABLE FROM THE OFFICE WHICH ISSUED THIS REPORT.

THIS REPORT (AND ANY SUPPLEMENTS OR AMENDMENTS HERETO) IS ISSUED SOLELY FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF A POLICY OF TITLE INSURANCE AND NO LIABILITY IS ASSUMED HEREBY. IF IT IS DESIRED THAT LIABILITY BE ASSUMED PRIOR TO THE ISSUANCE OF A POLICY OF TITLE INSURANCE, A BINDER OR COMMITMENT SHOULD BE REQUESTED.

PLEASE READ THE EXCEPTIONS SHOWN OR REFERRED TO BELOW AND THE EXCEPTIONS AND EXCLUSIONS SET FORTH IN EXHIBIT A OF THIS REPORT CAREFULLY. THE EXCEPTIONS AND EXCLUSIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS PRELIMINARY REPORT IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

DATED AS OF JANUARY 26, 1998 AT 7:30 A.M.

BY  RONALD J. GOMEZ - TITLE OFFICER

*Call  
A. Gomez*

*R.B.F. Eng*

THE FORM OF POLICY OF TITLE INSURANCE CONTEMPLATED BY THIS REPORT IS:  
AMERICAN LAND TITLE ASSOCIATION OWNERS POLICY.

PAGE 1

TITLE TO THE ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

DARREN E. ESSLINGER AND CHERYL M. WING, SUCCESSOR TRUSTEES, PAUL H. ESSLINGER AND MARIE M. ESSLINGER, ORIGINAL TRUSTEE OF THE ESSLINGER FAMILY TRUST ESTABLISHED APRIL 16, 1976 BY PAUL H. ESSLINGER AND MARIE M. ESSLINGER, TRUSTORS:

THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A PEE.

AT THE DATE HEREOF EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN THE POLICY FORM WOULD BE AS FOLLOWS:

1. TAXES, BONDS AND ASSESSMENTS NOT EXAMINED. TAX AND BOND REPORT TO FOLLOW.
2. GENERAL AND SPECIAL TAXES FOR THE FISCAL YEAR 1998-1999, A LIEN NOT YET DUE OR PAYABLE.
3. THE LIEN OF SUPPLEMENTAL TAXES ASSESSED PURSUANT TO CHAPTER 3.5 COMMENCING WITH SECTION 75 OF THE CALIFORNIA REVENUE AND TAXATION CODE.
4. AN EASEMENT AND RIGHT OF WAY OVER A PORTION OF THE LAND FOR AN UNDERGROUND CONDUIT SYSTEM, ETC., AS CONVEYED TO THE SOUTHERN CALIFORNIA EDISON COMPANY LTD. BY DEED RECORDED APRIL 12, 1940 IN BOOK 1042, PAGE 141 OF OFFICIAL RECORDS.
5. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED MARCH 21, 1955 IN BOOK 3003, PAGE 204 OF OFFICIAL RECORDS.  
IN FAVOR OF: SOUTH LAGUNA SANITARY DISTRICT.  
FOR: ROAD, SEWER PIPE LINES AND INCIDENTAL PURPOSES.  
OVER: A PORTION OF THE LAND.
6. AN EASEMENT FOR EITHER OR BOTH POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED FEBRUARY 3, 1960 IN BOOK 5084, PAGE 436 OF OFFICIAL RECORDS.  
IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY.  
OVER: PORTIONS OF THE LAND.
7. AN EASEMENT FOR EITHER OR BOTH POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, AS SET FORTH IN AN INSTRUMENT RECORDED APRIL 3, 1968 IN BOOK 8561, PAGE 837 OF OFFICIAL RECORDS.  
IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY.  
OVER: PORTIONS OF THE LAND.

8. AN EASEMENT AS SET FORTH IN AN INSTRUMENT RECORDED OCTOBER 11, 1971 IN BOOK 9838,  
PAGE 779 OF OFFICIAL RECORDS,  
IN FAVOR OF: SOUTH COAST COUNTY WATER DISTRICT OF ORANGE COUNTY, CALIFORNIA.  
FOR: ACCESS ROAD, UTILITIES AND INCIDENTAL PURPOSES.  
OVER: A PORTION OF THE LAND.

9. AN INSTRUMENT ENTITLED "CERTIFICATE OF COMPLIANCE" RECORDED NOVEMBER 22, 1995  
AS INSTRUMENT NO. 19950520275 OF OFFICIAL RECORDS; REFERENCE BEING MADE TO THE  
RECORD THEREOF FOR FULL PARTICULARS.

10. RIGHTS OF PARTIES IN POSSESSION OF THE LAND BY REASON OF UNRECORDED LEASES, IF  
ANY.

11. PRIOR TO THE ISSUANCE OF ANY POLICY OF TITLE INSURANCE, THIS OFFICE WILL REQUIRE  
A FULL COPY OF THE TRUST REFERRED TO IN THE VESTING HEREIN, AND ANY AMENDMENTS  
THERE TO.

OR-9825506  
TITLE OFFICER - OOMEZ

DESCRIPTION

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF LAGUNA BEACH, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCEL 3 AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT LL 95-01 RECORDED NOVEMBER 22, 1995 AS INSTRUMENT NO. 19950320276 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL B:

PARCEL 2, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT LL 95-04 RECORDED OCTOBER 11, 1995 AS INSTRUMENT NO. 19950449870 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

OR-9825506  
TITLE OFFICER - GOMEZ

\*\*\*\*\*

WARNING

"THE MAP ATTACHED HERETO MAY OR MAY NOT BE A SURVEY OF THE LAND DEPICTED THEREON. YOU SHOULD NOT RELY UPON IT FOR ANY PURPOSE OTHER THAN ORIENTATION TO THE GENERAL LOCATION OF THE PARCEL OR PARCELS DEPICTED. FIRST AMERICAN EXPRESSLY DISCLAIMS ANY LIABILITY FOR ALLEGED LOSS OR DAMAGE WHICH MAY RESULT FROM RELIANCE UPON THIS MAP".

\*\*\*\*\*

LN  
PLATS (CC&R'S, IF ANY) ENCLOSED.

NOTE 1: ACCORDING TO THE PUBLIC RECORDS, THERE HAVE BEEN NO DEEDS CONVEYING THE PROPERTY IN THIS REPORT WITHIN A PERIOD OF SIX MONTHS PRIOR TO THE DATE OF THIS REPORT, EXCEPT AS FOLLOWS:

NONE.

NOTE 2: WIRING INSTRUCTIONS FOR SUB-ESCROW DEPOSITS ARE AS FOLLOWS:

BANK OF AMERICA	ABA 121000358
1130 S. FIGUEROA STREET	ACCOUNT #12354-19952
LOS ANGELES, CALIFORNIA	

CREDIT TO FIRST AMERICAN TITLE INSURANCE CO.

OR-9825506

TITLE OFFICER - RONALD J. GOMEZ

DISREGARD IF FIRST AMERICAN IS YOUR ESCROW SETTLEMENT AGENT ..

CONTACT ESCROW OFFICER FOR WIRING INSTRUCTIONS

PAGE 1

**NOTICE**

SECTION 12413.1 OF THE CALIFORNIA INSURANCE CODE, EFFECTIVE JANUARY 1, 1990, REQUIRES THAT ANY TITLE INSURANCE COMPANY, UNDERWRITTEN TITLE COMPANY, OR CONTROLLED ESCROW COMPANY HANDLING FUNDS IN AN ESCROW OR SUB-ESCROW CAPACITY, WAIT A SPECIFIED NUMBER OF DAYS AFTER DEPOSITING FUNDS, BEFORE RECORDING ANY DOCUMENTS IN CONNECTION WITH THE TRANSACTION OR DISBURSING FUNDS. THIS STATUTE ALLOWS FOR FUNDS DEPOSITED BY WIRE TRANSFER TO BE DISBURSED THE SAME DAY AS DEPOSIT. IN THE CASE OF CASHIER'S CHECKS OR CERTIFIED CHECKS, FUNDS MAY BE DISBURSED THE NEXT DAY AFTER DEPOSIT. IN ORDER TO AVOID UNNECESSARY DELAYS OF THREE TO SEVEN DAYS, OR MORE, PLEASE USE WIRE TRANSFER, CASHIER'S CHECKS, OR CERTIFIED CHECKS WHENEVER POSSIBLE.

IF YOU HAVE ANY QUESTIONS ABOUT THE EFFECT OF THIS NEW LAW, PLEASE CONTACT YOUR LOCAL FIRST AMERICAN OFFICE FOR MORE DETAILS.

\*\*\*\*\*

**NOTICE**

IN ACCORDANCE WITH SECTIONS 14602 AND 14608 OF THE REVENUE AND TAXATION CODE, A BUYER MAY BE REQUIRED TO WITHHOLD AN AMOUNT EQUAL TO THREE AND ONE-THIRD PERCENT OF THE SALES PRICE IN THE CASE OF THE DISPOSITION OF CALIFORNIA REAL PROPERTY INTEREST BY EITHER:

1. A SELLER WHO IS AN INDIVIDUAL WITH A LAST KNOWN STREET ADDRESS OUTSIDE OF CALIFORNIA OR WHEN THE DISBURSEMENT INSTRUCTIONS AUTHORIZE THE PROCEEDS BE SENT TO A FINANCIAL INTERMEDIARY OF THE SELLER, OR

2. A CORPORATE SELLER WHICH HAS NO PERMANENT PLACE OF BUSINESS IN CALIFORNIA.

THE BUYER MAY BECOME SUBJECT TO PENALTY FOR FAILURE TO WITHHOLD AN AMOUNT EQUAL TO THE GREATER OF 10 PERCENT OF THE AMOUNT REQUIRED TO BE WITHHELD OR FIVE HUNDRED DOLLARS (\$500).

HOWEVER, NOTWITHSTANDING ANY OTHER PROVISION INCLUDED IN THE CALIFORNIA STATUTES REFERENCED ABOVE, NO BUYER WILL BE REQUIRED TO WITHHOLD ANY AMOUNT OR BE SUBJECT TO PENALTY FOR FAILURE TO WITHHOLD IF:

1. THE SALES PRICE OF THE CALIFORNIA REAL PROPERTY CONVEYED DOES NOT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000), OR

2. THE SELLER EXECUTES A WRITTEN CERTIFICATE, UNDER THE PENALTY OF PERJURY, CERTIFYING THAT THE SELLER IS A RESIDENT OF CALIFORNIA, OR IF A CORPORATION, HAS A PERMANENT PLACE OF BUSINESS IN CALIFORNIA, OR

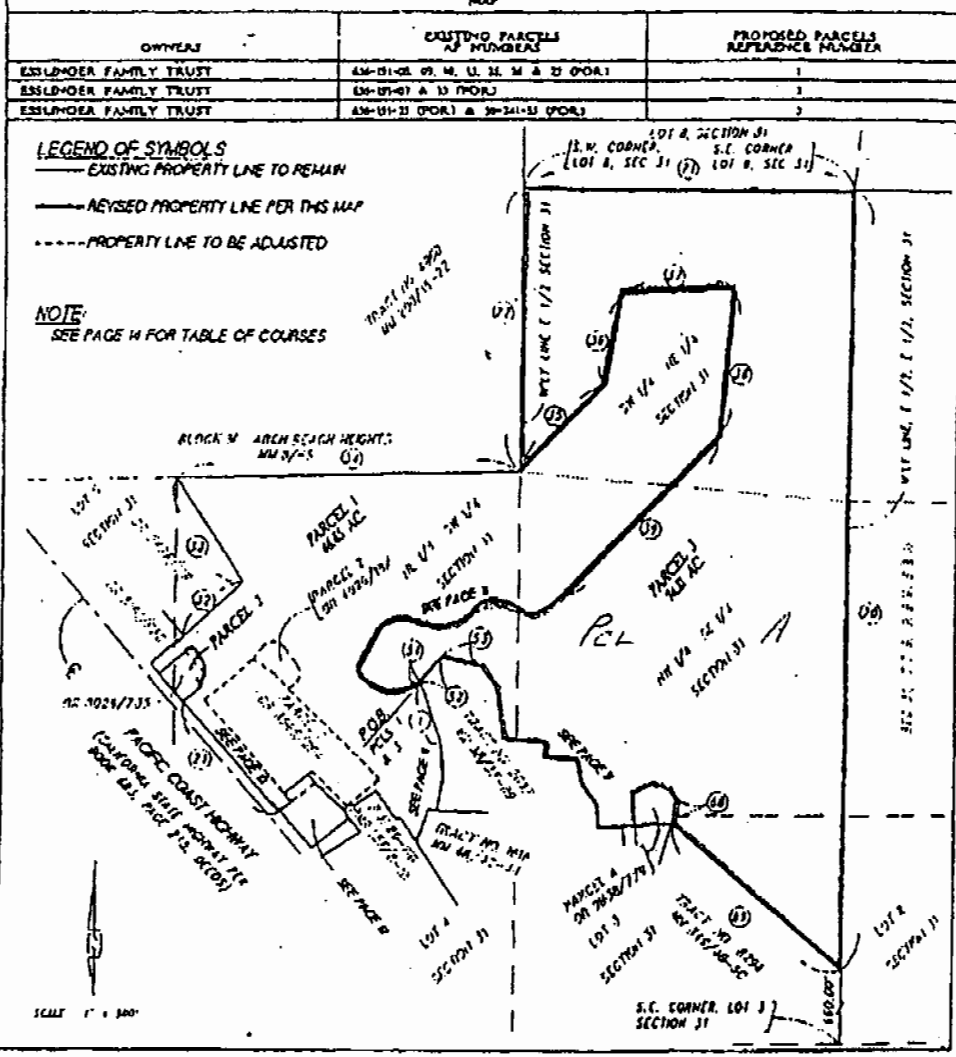
3. THE SELLER, WHO IS AN INDIVIDUAL, EXECUTES A WRITTEN CERTIFICATE, UNDER THE PENALTY OF PERJURY, THAT THE CALIFORNIA REAL PROPERTY BEING CONVEYED IS THE SELLER'S PRINCIPAL RESIDENCE (AS DEFINED IN SECTION 1034 OF THE INTERNAL REVENUE CODE).

THE SELLER IS SUBJECT TO PENALTY FOR KNOWINGLY FILING A FRAUDULENT CERTIFICATE FOR THE PURPOSE OF AVOIDING THE WITHHOLDING REQUIREMENT.

THE CALIFORNIA STATUTES REFERENCED ABOVE INCLUDE PROVISIONS WHICH AUTHORIZE THE FRANCHISE TAX BOARD TO GRANT REDUCED WITHHOLDING AND WAIVERS FROM WITHHOLDING ON A CASE-BY-CASE BASIS.

THE PARTIES TO THIS TRANSACTION SHOULD SEEK AN ATTORNEY'S, ACCOUNTANT'S, OR OTHER TAX SPECIALIST'S OPINION CONCERNING THE EFFECT OF THIS LAW ON THIS TRANSACTION AND SHOULD NOT ACT ON ANY STATEMENTS MADE OR OMITTED BY THE ESCROW OR CLOSING OFFICER.

**EXHIBIT "B"**  
**19950520276 LOT LINE ADJUSTMENT**  
**LL 95-01**  
 MAP





coastlinepilot.com/news/cpt-whaleday05282010172019,0,1181832.story

# Coastline Pilot

## Save the Whales Day draws a crowd

### Protesters brave blustery winds at Main Beach to take a stand against resumption of worldwide whaling.

By Barbara Diamond

May 28, 2010

An enthusiastic crowd responded Sunday to a rallying cry to raise awareness of and declare opposition to the resumption of commercial whaling..

More than 75 people gathered at Main Beach in Laguna to sign petitions and videotape a plea to President Obama to keep his pledge to support the moratorium on the business of hunting whales. The Orange County event was coordinated with 14 other coastal counties organized by the Western Alliance for Nature.

"We have a voice — whales don't," said Greenpeace representative Nick Hurley, who led the chant: "President Obama, keep your promise. Save the whales."

The signatures were gathered to show popular opposition to the April 15 announcement by the United States that it was brokering an agreement to legalize commercial whaling. Quotas are to be left up to Iceland, Norway and Japan, which have been accused of violating the moratorium, in place since 1986.

"We've collected hundreds of signatures here," said local event organizer Penny Elia, clad in a Save the Whales T-shirt from a previous protest, among her various environmental activities.

"You know you have been doing it too long when you go into a drawer and say, which topic shall I wear today?" Elia said.

Petitions opposing commercial whaling and the video were to be forwarded to Coastal Commissioner Sara Wan, who founded the alliance with her husband, Larry, for transmission to Washington, D.C.

The city of Laguna Beach co-sponsored the demonstration against commercial whaling.

"We are here to say that this will not happen," said City Councilwoman Verna Rollinger, who served as mistress of ceremonies for the event.

Laguna Beach was the only Orange County site for a demonstration and residents from surrounding communities braved the blustery, bone-chilling winds that blew off the white-capped Pacific Ocean to participate.

Monrovia residents Kathy Ashmore and her daughter, Laura, made the Save the Whales signs waved at drivers passing Main Beach Park.

"Save Japan Dolphins let me know about it," the elder Ashmore said.

Kaitlyn Huie, 17, said her mother received an e-mail about the event.

"We both wanted to come," the San Clemente High School student said.

Marilyn Broughton and Evalie Du Mars, two of a set of triplets, came from Corona Del Mar.

"We were told that this [Laguna] was where Orange County was meeting," Broughton said.

One and all, they came to register their protest and to hear the speakers.

"Japan killing 2,000 whales a year is not good — letting other countries slaughter whales is horrible," Hurley said.

Denise Penn, speaking for 35th District Assemblyman Pedro Nava, said whales are threatened by oil drilling and ocean pollution — the last thing they need is commercial hunting.

Besides, she said, whales are worth more alive than dead. They bring tourists.

"Japan could make more money whale watching than whale killing," said Doug Thompson, an author and organizer and leader of more than 100 natural history expeditions from Mexico to New Zealand.

The whales being hunted are the ones that swell the hearts of locals and visitors as they migrate past Laguna, Thompson said.

"We need to send two messages: No off-shore drilling, and stop hunting whales," said Gerrie Schipske, Long Beach council member and executive director of the Democratic Party of Orange County.

"It should not be lost that they are connected. We have to stop it."

Speaker Dave Anderson spent five years filming his award-winning documentary, "Wild Dolphins and Whales of Southern California, and worked with Laguna Beach filmmaker Greg McGillivray on his IMAX film, "Dolphins."

He was on the team that helped free the whale called Lily which fetched up in Dana Point Harbor tangled in a net.

"Thousands of dolphins and whales are caught in these nets," said Anderson, owner of Capt. Dave's Dolphin Safari in Dana Point.

"This is a moral issue. Most people in our country would agree it is not right. Others disagree."

Anderson said Japanese tourists on his boat saw a sperm whale, which is rare, but they still believe there is nothing wrong with catching and eating whales.

"In these days of scorched earth, we need to show we can save something," said San Clemente resident Mike Bursk, full-time captain of the Dana Point Ocean Institute R/V Sea Explorer for six years.

"I heard a 10-year-old kid walk off the boat saying, 'This changed my life,'" Bursk said.

Rebecca Robles, chair of the Sierra Club Native American Sacred Sites Task Force, said the whales need to be protected for the generations of children to come.

"What we do here today will have a ripple effect," Robles said. "It will go out to Obama. It will go out to all our friends. What we are doing is important."

Thompson urged everyone to lodge their opposition to commercial whaling by calling (202) 456-1111, the Washington D.C., comment line.

"Hearing these speakers has made me recommit to saving the whales," Rollinger said. "I am going to make that call over and over again until they get the message."

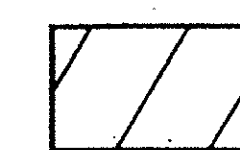
The event concluded with the protesters forming a circle and chanting their demand to Obama to keep his word.

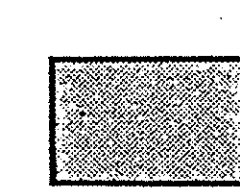
However, the opposition must not flag, Elia said.

Letters to the president may be sent to the White House, 6000 Pennsylvania Ave., Washington D.C., 20500. Letters to California's senators may be sent to the Hart Senate Building, Washington D.C., 20510; Suite 112 for Sen. Barbara Boxer and Suite 331 for Sen. Dianne Feinstein. Rep. John Campbell may be reached at 1728 Longworth House Office Building at the same ZIP code as the Senate, in Washington.

### Post-LCP Certification Permit and Appeal Jurisdiction City of Laguna Beach

----- Coastal Zone Boundary

 Permit Jurisdiction  
This area includes only lands below the mean high tide line and lands where the public trust may exist.

 Appeal Jurisdiction  
This area includes lands between the sea and the designated first public road paralleling the sea or 200' from the inland extent of any beach or of the mean high tide line if there is no beach, whichever is the greater distance. Also included are lands within 100' of streams and wetland lands within 200' of the top of the seaward face of any coastal bluff.

\*\*\*\*\* Area of Deferred Certification  
This area includes lands which remain subject to the Coastal Commission's original permit jurisdiction until land use and zoning designations for this location are effectively certified.  
In addition to these geographic areas of appeal jurisdiction the following types of development are applicable throughout the Coastal Zone pursuant to P.R.C. Section 30603 (a)(4) and (a)(5):  
1. Any development approved by a county that is not designated as a prohibited permitted use under zoning approved pursuant to the applicable Local Coastal Program;  
2. Any development that constitutes a major public works project or a major energy facility.  
In areas where a parcel is bisected by the appeal jurisdiction boundary, only that portion of the parcel within the area defined as applicable is subject to the Commission's appeal jurisdiction.

#### NOTE

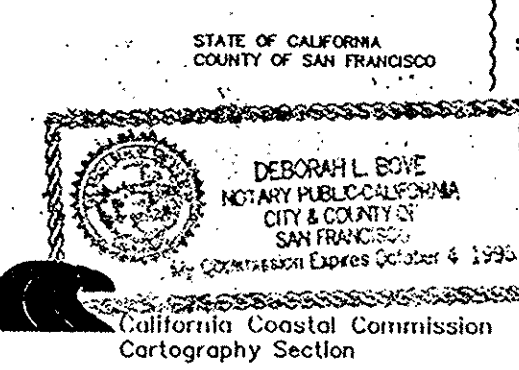
The area depicted on this sheet of the Laguna Beach Post-LCP Certification Map lies entirely within the Coastal Zone. As such, there is no Coastal Zone Boundary shown on this portion of the Laguna Beach Post-LCP Certification Map.

#### NOTE

This map has been prepared to show where the California Coastal Commission retains post-LCP certification permit and appeal jurisdiction pursuant to P.R.C. §30519(b), and §30603(a)(1) and (a)(2). In addition, developments may also be appealable pursuant to P.R.C. §30603(a)(3), (a)(4) and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This map may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.

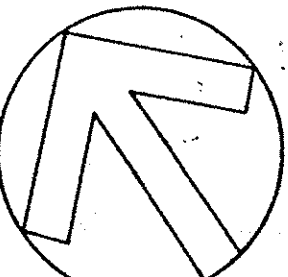
I hereby certify that this map portrays the boundaries for  
THE CITY OF LAGUNA BEACH (SHEET B)  
adopted by the California Coastal Commission SEPT 10, 1993

Signature: *Jonathan Anderson*  
Title: *Coastal Program Analyst*



On this 16th day of September in the year 1993, before me, DEBORAH L. BONE, Notary Public, personally appeared JONATHAN ANDERSON, known to me (or proved to me on the basis of satisfactory evidence) to be the authorized representative of the California Coastal Commission and the person whose name is subscribed to this instrument and acknowledged that HE executed it.

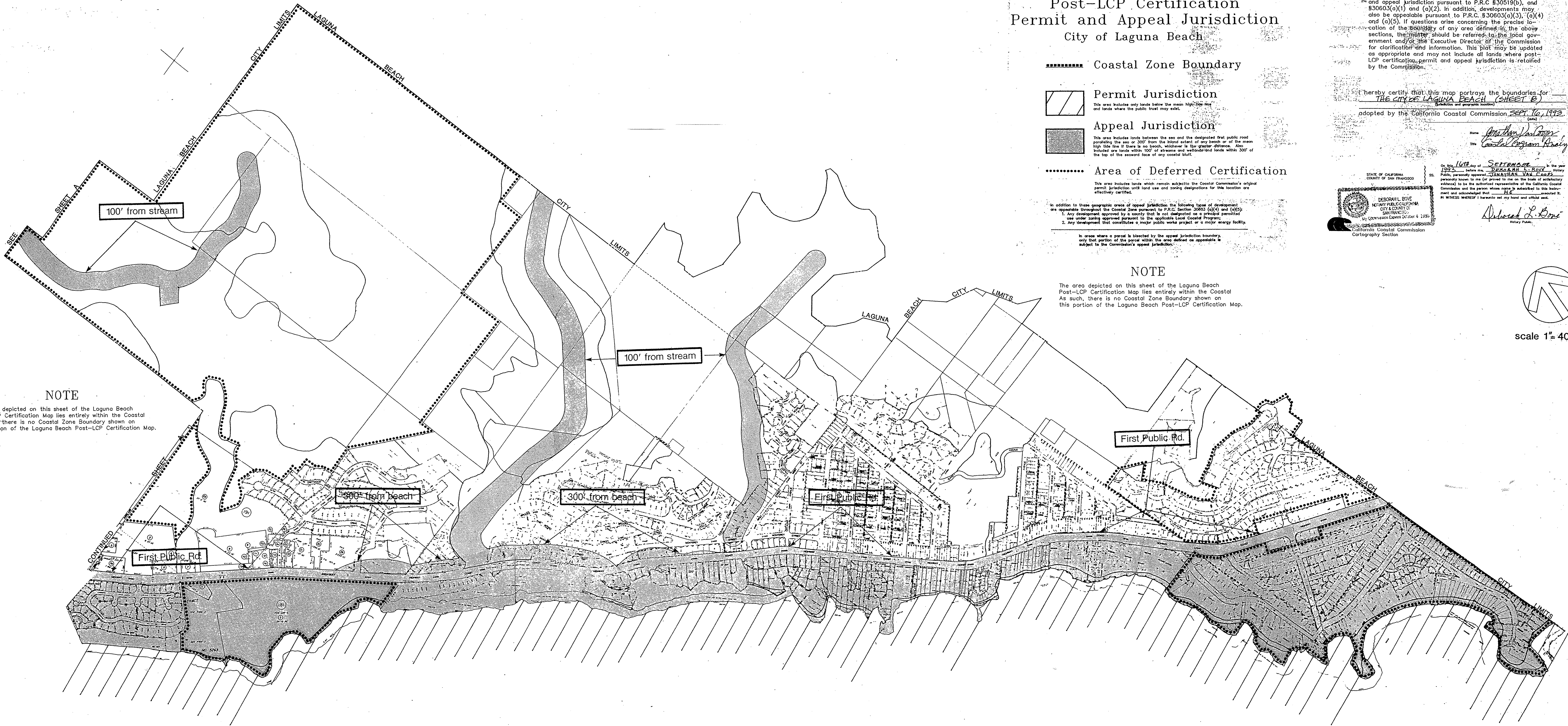
Signature: *Deborah L. Bone*  
Title: *Notary Public*



scale 1" = 400'

#### NOTE

The area depicted on this sheet of the Laguna Beach Post-LCP Certification Map lies entirely within the Coastal Zone. As such, there is no Coastal Zone Boundary shown on this portion of the Laguna Beach Post-LCP Certification Map.



LCP MAP

June 3, 2010

Client-Matter: 43150-030

**BY FED EX AND FACSIMILE (562) 590-5084**

Bonnie Neely, Chair and Members of the California Coastal Commission  
c/o Karl Schwing  
South Coast District Office  
California Coastal Commission  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4416

**Re: Dispute Resolution No. 5-10-117-EDD  
Laguna Terrace Park LLC, Laguna Beach  
Agenda Item No. 21.5**

Dear Chair Neely and Coastal Commissioners:

On June 9, 2010, the Coastal Commission is scheduled to hold a Dispute Resolution hearing in connection with the appealability of Coastal Development Permit #10-26 (the "CDP"). The CDP application was recently submitted by Laguna Terrace Park LLC (the "Applicant") to the City of Laguna Beach (the "City") in connection with the proposed residential subdivision of the Laguna Terrace Mobile Home Park (the "Project"). It will be considered by the City's Planning Commission on June 23, 2010. By this letter, Paul Esslinger wishes to communicate his support for Staff's recommendation that the City's action on the CDP should be appealable to the Coastal Commission.

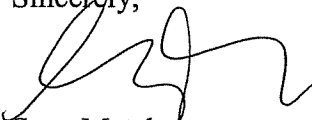
As the Commissioners are aware, the Applicant received City Council approval for a subdivision and Coastal Development Permit with substantially the same characteristics as the Project in January, 2010. An appeal of that approval is now pending before the Coastal Commission (Commission Appeal No. A-5-LGB-10-039). The City's approval of that application required, among other things, the issuance of a Coastal Development Permit by the Coastal Commission prior to issuance of the Applicant's Final Map.

The present CDP application is fundamentally the same as that first application. The key change is a slight modification to the boundaries of the proposed subdivision. The Applicant believes that this modification has removed the Coastal Commission's review authority over the Project. The Applicant is wrong. The Applicant apparently fails to understand that both the prior and current applications are subject to Coastal Commission review because both projects propose to separate the Laguna Terrace Mobile Home Park from the larger 270-acre property.

Members of the California Coastal Commission  
Agenda Item No. 21.5  
Page 2

This 270-acre property contains streams that make it a Coastal Commission appeals area. By separating the proposed residential subdivision from the balance of the 270-acre property, the Project would create a remainder lot within a Coastal Commission appeal area. As a result, the Project itself is clearly appealable to the Coastal Commission.

Mr. Esslinger respectfully requests that the Commission accept staff's recommendation to enforce the provisions of the Coastal Act by allowing an appeal of the Project to the Commission.

Sincerely,  
  
Sean Matsler

cc: Paul Esslinger

300106361.1

**FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATION**

**Date and time of communication:**  
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

June 4, 2010, 10:00am

**Location of communication:**  
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Commissioner Neely's Eureka Office

**Person(s) initiating communication:**

Maggy Herbelin, Local ORCA Representative

**Person(s) receiving communication:**

Commissioner Bonnie Neely

**Name or description of project:**

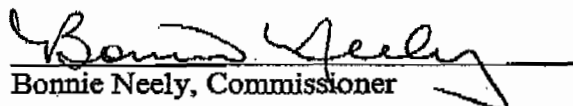
W21.5.a. Dispute Resolution No. 5-10-117-EDD (Laguna Terrace Park LLC, Laguna Beach) Public hearing on appealability to Commission of City of Laguna Beach action on application for coastal development permit No. 10-26 to subdivide Laguna Terrace Mobile Home Park into 157 individual lots for residences, and 1 lettered lot that includes existing private streets and common areas, at 30802 South Coast Highway, Laguna Beach, Orange County. (KFS-LB)

**Detailed substantive description of content of communication:**  
(If communication included written material, attach a copy of the complete text of the written material.)

Commission staff is recommending that the commission find that the CDP is appealable.  
We are speaking for the Sierra Club Save Hobo Aliso Task Force.

We support the staff recommendation. The city's claim that the CDP is not appealable is based on a prior lot split, but that split was never approved by the commission, so the CDP is considered to be within commission jurisdiction.  
.....

**Date:** January 6, 2010

  
Bonnie Neely, Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

**FORM FOR DISCLOSURE OF  
EX-PARTE COMMUNICATIONS**

Name or description of the project: Agenda Item W.21.5.a. Dispute Resolution No. 5-10-117-EDD (Laguna Terrace Park LLC, Laguna Beach) Public hearing on appealability to Commission of City of Laguna Beach action on application for coastal development permit No.10-26 to subdivide Laguna Terrace Mobile Home Park into 157 individual lots for residences.

Time/Date of communication: Friday, June 4, 2010, 9:30 am

Location of communication: Harry's, La Jolla

Person(s) initiating communication: Dave Grubb, Penny Elia, Gabriel Solmer, Sarah Devine speaking for the Sierra Club Save Hobo Aliso Task Force.

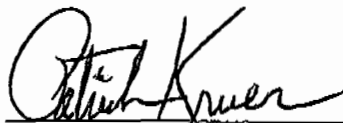
Person(s) receiving communication: Patrick Kruer

Type of communication: Meeting

Commission staff is recommending that the commission find that the CDP is appealable.

We support the staff recommendation. The city's claim that the CDP is not appealable is based on a prior lot split, but that split was never approved by the commission, so the CDP is considered to be within commission jurisdiction.

Date: June 4, 2010



Patrick Kruer



**FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS**

Name or description of project, LCP, etc.: W 21.5a Dispute Resolution NO. 5-10-117-EDD (Laguna Terrace Park LLC, Laguna Beach)

Date and time of receipt of communication: 6/1/10, 1:00 pm

Location of communication: Board of Supervisor's Offices, Santa Cruz, California

Type of communication: In person meeting

Person(s) initiating communication: Sarah Damron  
Grant Weseman

Person(s) receiving communication: Mark Stone

Detailed substantive description of content of communication:  
(Attach a copy of the complete text of any written material received.)

Sarah and Grant represent ORCA. They agree with the staff recommendation that the CDP is appealable.

Date: 6/1/10 Signature of Commissioner: Mark Stone

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred within seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used; such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.