

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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**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

<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**

**CALIFORNIA COASTAL COMMISSION**

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

**W21.5a**

Staff: Karl Schwing  
 Staff Report: May 26, 2010  
 Hearing Date: June 9, 2010  
 Commission Action:

**STAFF REPORT: APPEALABILITY****DISPUTE RESOLUTION****NUMBER:** 5-10-117-EDD**LOCAL CDP APPLICATION NO.:** 10-26**LOCAL JURISDICTION:** City of Laguna Beach**APPLICANT FOR LOCAL PERMIT:** Laguna Terrace Park LLC**PROJECT LOCATION:** 30802 Coast Highway  
City of Laguna Beach, Orange County**DESCRIPTION:** Public hearing on appealability to Commission of City of Laguna Beach application for coastal development permit #10-26 to subdivide the Laguna Terrace Mobile Home Park into 157 lots for residences and one lettered lot containing streets and other commonly owned areas of land.**SUMMARY OF STAFF RECOMMENDATION:**

The City of Laguna Beach contends that a pending application for coastal development permit for the subject division of land in the Coastal Zone is not appealable to the Coastal Commission. This determination appears to be based on an erroneous understanding of the legally authorized configuration of parcels within an approximately 270 acre area that is involved in the City's action. However, Commission staff assert that based upon the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993, the proposed development involves a division of land and the reconfiguration of a parcel located within 100 feet of a stream, therefore, the City's action is appealable. Commission staff recommends that the Commission uphold the Executive Director's determination that the City's approval of a CDP for development in the subject area is appealable based on Section 30603(a)(2) of the Coastal Act.

The City appears to have made its appeals determination based on the configuration of lots/lot lines within the 270 acre area that resulted from two lot line adjustments that the City approved in 1995. However, those lot line adjustments were never authorized through any coastal development permit even though such authorization is required<sup>1</sup>. If those actions had been fully authorized, the land division authorized in the City's latest action may have been isolated from an adjacent area of land where a stream/appeals area is present. However, since the 1995 lot line adjustments were not authorized under the Coastal Act, Commission staff is looking at the proposal as separating the developed mobilehome park portion of the subject 270 acre area that the mobilehome park partly occupies from the undeveloped portion, thus creating a new undeveloped parcel with a different size and configuration than the existing parcel. Because the appeals area extends into a parcel that would be reconfigured as a result of the proposed subdivision, the City's action on the coastal permit authorizing division of the developed mobilehome park from the remainder of the 270 acre area is an action that is appealable to the Commission.

<sup>1</sup> These unpermitted lot line adjustments are the subject of an ongoing enforcement investigation (Exhibit #9) Page 6 of 12

The Commission has previously addressed the appealability of a subdivision at this site in February 2010 (5-10-014-EDD), and found substantial issue on appeals that were filed at a hearing in March 2010 (A-5-LGB-10-039). After the substantial issue hearing, Commission staff requested the remainder of the City's record and requested that the applicant address the issues raised in the findings on substantial issue. However, the Commission has not received any of the documents requested. Instead, the applicant filed a new application for a slightly modified subdivision of the site with the City, that is the subject of this dispute resolution. The City's hearing notice states that the currently pending CDP application (no. 10-26) "...if approved, would replace the previously approved Vesting Tentative Tract Map 09-03 and Coastal Development Permit 09-36 and the prior subdivision will be abandoned." The 'draft' notice also states that the current proposal is different from the prior one in that "...[t]he previously proposed subdivided area within the Coastal Commission Post Certification Development Permit Jurisdictional Area, including the open space and unimproved land, is omitted pursuant to Government Code Section 66424.6." Staff maintains that these subdivision proposals are substantially the same, and the reasons that the prior subdivision was appealable are the same reasons the current proposal is appealable.

## **I. STAFF RECOMMENDATION ON APPEALABILITY DETERMINATION:**

Staff recommends that the Commission adopt the following findings and resolution to determine that the City of Laguna Beach's approval of pending local Coastal Development Permit application No. 10-26 is an action on a coastal development permit application that would be appealable to the Commission. See, e.g., See Cal. Code Regs., tit. 14, § 13572.

**MOTION:** *I move that the Commission reject the Executive Director's determination that the City of Laguna Beach's approval of pending Coastal Development Permit Application No. 10-26 would be appealable to the Coastal Commission pursuant to Public Resources Code Section 30603.*

### **Staff Recommendation that City of Laguna Beach Coastal Development Permit No. 10-26 is Appealable:**

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that (a) the City's approval of CDP 10-26 would be an action on a coastal development permit application that is appealable to the Commission and that (b) City notices must reflect that the local action to approve the development is appealable to the Commission, and (2) the Commission's adoption of the following resolutions and findings. A majority of the Commissioners present is required to approve the motion.

### **Resolution:**

The Commission hereby (1) finds that (a) it does have appeal jurisdiction in this matter pursuant to California Public Resources Code Section 30603(a) because the City's approval of CDP 10-26 is an action on a coastal development permit application that would be appealable to the Commission and that (b) City notices must reflect that the local action to approve the development is appealable to the Commission and (2) adopts the findings to support its jurisdiction that are set forth in the staff report.

Exhibits

1. Vicinity Map
- 2a. Map showing approximate parcel boundaries pre-1995 lot line adjustment & location of appeals area
- 2b. Map showing approximate parcel boundaries pre-1995 lot line adjustment, location of appeals area, & location of mobile home park area to be separated from remainder area
- 2c. Map showing location of appeals area, location of mobile home park area to be separated from remainder area & resultant remainder parcel(s)
3. Lot Line Adjustment 95-04
4. Lot Line Adjustment 95-01
5. E-mails b/t Ms. Penny Elia & Mr. Scott Drapkin re appealability dated 5/18 & 5/24, 2010
6. Executive Director's Appealability Determination dated May 25, 2010
7. Vesting Tentative Tract No. 17301 (Laguna Terrace Park) as revised 3/11/2010
8. Notice of Violation Letter dated May 4, 2007
9. A portion of *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach* Map ("post-cert map") adopted by the Commission on September 16, 1993

**II. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

**A. COASTAL COMMISSION AND CITY ACTIONS**

The subject site is an approximately 270 acre area partly developed with a mobile home park located at 30802 Coast Highway, in the City of Laguna Beach, Orange County (Exhibit #1). The developed part of the mobile home park occupies about 14 acres within and at the mouth of a steeply sided canyon. According to the applicant, the area of land occupied by the mobile home park is designated for mobile home use and surrounding lands are designated for various uses including residential, commercial and open space conservation. The majority of the developed part of the park is surrounded by undeveloped area. The site has varied topography, ranging from moderately steep slopes, and moderately sloped to flat areas at the bottom and mouth of the canyon where mobile homes and related structures currently exist. The surrounding undeveloped land is a mosaic of vegetation types including southern maritime chaparral, ceanothus chaparral, toyon-sumac chaparral and coastal sage scrub, which is identified in the City's LCP as high value habitat and has been determined by the Commission staff biologist to be environmentally sensitive habitat area (ESHA).

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. 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 the Executive Director of the Commission interpreted 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). 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).

The proposal before the City is to subdivide the Laguna Terrace Mobile Home Park into 157 lots for residences and one lettered lot containing streets and other commonly owned areas of land (Exhibit #7). This subdivision would separate the developed mobilehome park portion of the subject 270 acre property, which the mobilehome park partly occupies, from the undeveloped portion, thus creating new undeveloped parcel(s). This proposal is substantially the same as one that came before the Commission earlier this year as a dispute resolution (5-10-014-EDD, in February), and which the Commission took up on appeal as the Commission found that the appeals filed raised a substantial issue (A-5-LGB-10-039, in March). The City's 'draft' hearing notice states that the currently pending CDP application (no. 10-26) "...if approved, would replace the previously approved Vesting Tentative Tract Map 09-03 and Coastal Development Permit 09-36 and the prior subdivision will be abandoned." The 'draft' notice also states that the current proposal is different from prior one in that "...[t]he previously proposed subdivided area within the Coastal Commission Post Certification Development Permit Jurisdictional Area, including the open space and unimproved land, is omitted pursuant to Government Code Section 66424.6."

Using the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993, the subject 270 acre area is depicted as being partly within the City of Laguna Beach's coastal permit jurisdiction, and partly within an area of deferred certification (ADC) where the Commission retains direct coastal permitting authority (i.e. the area the City called "the Coastal Commission Post Certification Development Permit Jurisdiction Area") (Exhibit 9)<sup>2</sup>. Based on a graphic plotted on the proposed subdivision map, it appears that the area of land that the applicant is proposing to divide into 157 numbered lots and one lettered lot, would be within the area the post-cert map says is City jurisdiction. However, the remainder area (i.e. remainder lot) would be in the ADC. The proposed subdivision map, apparently assuming the validity of un-permitted lot line adjustments that

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<sup>2</sup> In reviewing its files for the Commission's dispute resolution hearing on the appealability of local coastal development permit 09-36 (see 5-10-014-EDD), Commission staff discovered that the Laguna Beach post-cert map may inaccurately depict the area of deferred certification in the vicinity of the mobile home park. When the Commission certified the Land Use Plan (LUP) for southern Laguna Beach in 1992, the Commission identified Hobo Canyon (a.k.a. Mayer Group/Mahboudi-Fardi and Esslinger Property) as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an area of deferred certification to which the LUP did not apply. The following are examples from the findings which make clear that the entire Hobo Canyon site was to be deferred:

On page 16 of the Revised Findings adopted November 17, 1992 for Laguna Beach Land Use Plan Amendment 1-92, the findings state:

"At the Hobo Canyon area (also known as the Mayer/Mahboudi-Fardi parcel or the Esslinger Family Parcel), the issue at the time of the County's LCP certification was vehicular access to the property, arising from intensity and location of development. The issue at the Hobo Canyon site remains the same and so certification for this area will also be deferred."

Similar statements are made elsewhere in the report, and in the accompanying findings for the Implementation Plan amendment (1-92). There is also an exhibit, Exhibit H, attached to the findings that lists the areas of deferred certification and shows on a map the boundaries of the Hobo Canyon/ Mayer Group/Mahboudi-Fardi area, which includes the entire mobile home park.

The LUP expressly referred to the mobile home park as being within the Hobo Canyon area of deferred certification. The City has not subsequently submitted an LCP amendment to apply the LCP to Hobo Canyon. The post-cert map for the City of Laguna Beach that the Commission approved in 1993, however, depicts significant portions of the mobile home park as being within the City's coastal development permit jurisdiction. Commission staff is still investigating this matter, but, in finding that the City's action to approve a coastal development permit for the project would be appealable, the Commission does not waive any arguments that the project is located within the Hobo Canyon area of deferred certification and that the Commission therefore has permit jurisdiction over the entire project for that reason.

occurred in 1995, depicts the remainder lot as a separate lot between the proposed mobilehome park subdivision and the rest of the 270 acre area. Commission staff maintains that the creation of the remainder lot would still require a coastal development permit directly from the Commission. Therefore, the City's approval only covers part of the land division and the applicant will need to apply to the Commission for a coastal permit to cover the remainder of the land division that is located in the ADC.

Furthermore, as described more fully below, the City's approval of the coastal permit in its area of jurisdiction is appealable to the Commission, however, the City has determined that its action is not appealable to the Commission. Thus, there is a dispute between the City and the Executive Director of the Commission regarding the appealability of the City's action. When, as here, a local government and the Executive Director disagree regarding the appealability of a coastal development permit, the Commission must hold a public hearing to resolve the dispute. Title 14, Cal. Code Regs. § 13569(d).

The legal status of division of the 270 acre area into various parcels is at the center of the debate about the appealability of the City's action. In 1995 there were two unpermitted, purported lot line adjustments recorded by the landowner(s) that substantially changed the configuration of lot lines within the subject 270 acre area, and resulted in the creation of new parcels of land having a greater potential for development than previously existed (Exhibit #3 & 4). Pursuant to Section 30600(a) of the Coastal Act<sup>3</sup>, any person wishing to perform or undertake non-exempt development in the coastal zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined, in relevant part, by Section 30106 as:

***"Development" means... change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use... [underlining added for emphasis]***

Divisions of land are, as noted above, specifically included in the definition of "development" under the Coastal Act. Section 25.07.006(D) of the City's certified Local Coastal Program ("LCP"), which defines "development" for the purposes of the LCP, mirrors the definition of development in the Coastal Act and includes such land divisions. Lot line adjustments are a division of land in that they divide land by changing the boundaries of parcels. La Fe, Inc. v. Los Angeles County (1999) 73 Cal. App. 4<sup>th</sup> 231, 86 Cal. Rptr. 2d 217. Furthermore, lot line adjustments can reconfigure parcels to facilitate development, thus changing the density of intensity of use of a parcel. Id. In this sense as well, LLAs are development pursuant to the Coastal Act. Therefore, LLAs No.s 95-01 and 95-04 constitute development under the Coastal Act and LCP and require a coastal development permit.

These lot line adjustments, which require a coastal development permit, were all done without the benefit of any coastal development permit. If these lot lines had all of the required Coastal Act authorization(s), the City's latest action may not have been appealable<sup>4</sup> as the City had determined. However, since these lot lines have not received Coastal Act authorizations, the City's action is appealable because the City's action results in a division of land that changes the shape of, and intensity of use of, parcel(s) of land that is/are within 100 feet of a stream.

<sup>3</sup> The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code ("PRC"). All further section references are to the PRC, and thus, to the Coastal Act, unless otherwise indicated.

<sup>4</sup> The Commission takes no position at this time on the status of appealability of the City's action if the 1995 lot line adjustments had been fully authorized because further complicating factors would need to be analyzed, such as the potential for a larger appeals area than is indicated on the City's post-certification map due to the presence of a stream that is not depicted on the map.

The lot line adjustments that complicate this appeals determination occurred in late 1995. In October 1995, a lot line adjustment, LL 95-04 (Exhibit 3), was recorded that purported to make a relatively small adjustment to the boundary of the subject 270 acre property at its northwesterly corner near Barracuda Way, wherein about ¼ acre of the 270 acre property was taken out of the 270 acre property and added into an adjacent small lot developed with a residence. However, the drawings and descriptions of land boundaries that were part of that recorded lot line adjustment also added another lot line that did not previously exist which had the effect of dividing the 270 acre parcel (minus the ¼ acre) into two parcels that were about 153 acres and 117 acres (Exhibit 3, page 11). Subsequently, in November 1995, a second lot line adjustment was recorded, LL 95-01<sup>5</sup> (Exhibit 4), that consolidated several small parcels near Coast Highway, and moved lot lines around so that the 117 acre area grew to about 121 acres, which was subsequently divided into an approximately 46 acre area and a 75 acre area. Dividing these large parcels into smaller ones allows for greater development potential on the resultant lots than might otherwise be had with the single, larger lot. These lot line adjustments are divisions of land and increase the intensity of use of the property. They therefore qualify as development and require a coastal development permit. See Pub. Resources Code § 30106, *La Fe, Inc. v. Los Angeles County* (1999) 73 Cal.App.4<sup>th</sup> 231. Since these lot line adjustments were never approved by a coastal development permit, those lots are not recognized under the Coastal Act and cannot be used in the determination of the appealability of the City's action<sup>6</sup>. Instead, the appealability of the City's action, and the effect of the development itself, must be viewed in the context of the lot configuration as it existed prior to those lot line adjustments. With the pre-existing lot configuration, the City's action is clearly appealable.

If the lot configuration contained in the unpermitted lot line adjustments had been permitted, the appealability of the City's action may have been different. However, without those prior lot line adjustments being recognized, and based on information available to Commission staff at this time, the area occupied by the mobile home park occupies part of two larger parcels of land (an approximately 35 acre parcel and an approximately 235 acre parcel) that combined are several hundred acres in size (i.e. about 270 acres)(Exhibits 2a-2c). The appeals area<sup>7</sup> extends into the pre-lot line adjustment 235 acre parcel (Exhibit 2a-2c and 9). In effect, the land division that is the subject of the application now pending with the City would separate the land occupied by the mobilehome park from the larger parcels (and further divide that area into about 158 lots), leaving multiple remainder parcels (Exhibit 2c). Because the appeals area extends into a parcel that would be reconfigured as a result of the proposed subdivision, the City's action on the coastal permit authorizing division of the mobilehome park area from the 270 acre area is an action that is appealable to the Commission.

The Commission has had an extensive history of contact with the City and property owner(s) with regard to the appealability of a property division, as well as contact about concerns with the land division. This contact includes emails, letters, phone calls, and public hearings, all of which are documented in the findings and record for the prior dispute resolution hearing held in February 2010 (5-10-014-EDD) and in the findings and record for the appeal that was heard in March 2010(A-5-LGB-10-039) and which are incorporated here by reference.

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<sup>5</sup> This lot line adjustment makes reference to and perpetuates the existence of the lot line 'created' by lot line adjustment LL 95-04.

<sup>6</sup> Those lot line adjustments are the subject of an ongoing enforcement investigation by the Commission (see Exhibit 8).

<sup>7</sup> The appeals area being referenced is the one based on the presence of a stream identified on the Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map ("post-cert map") adopted by the Commission on September 16, 1993

**B. COMMISSION DETERMINATION OF APPEALABILITY AND THE FILING OF APPEALS**

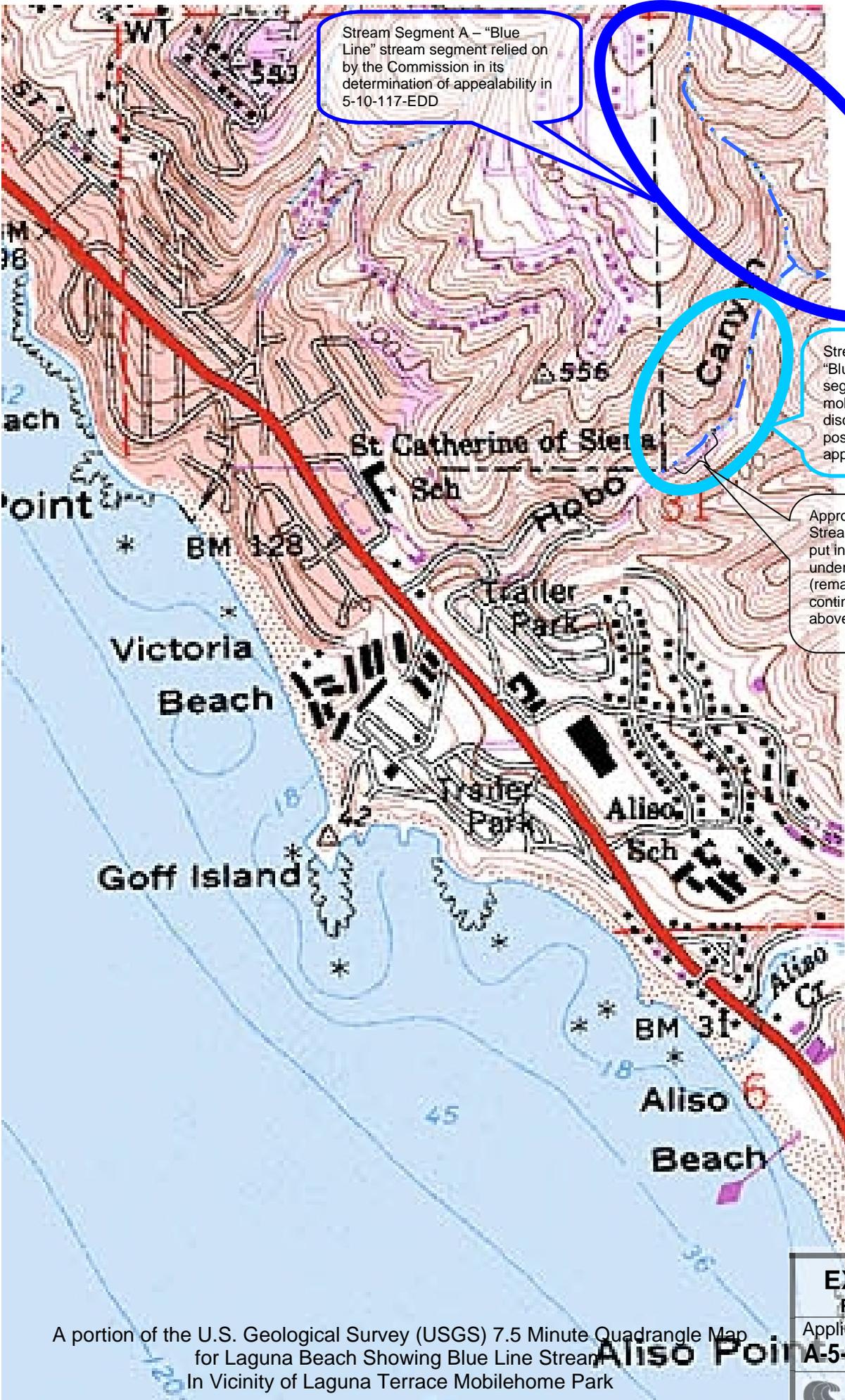
The Commission finds that City approval of CDP Application No. 10-26 is an action on a coastal development permit application that would be appealable to the Commission.

The Coastal Act establishes the Commission's appeals jurisdiction and makes a certified local government's approval of a CDP appealable to the Commission whenever the local CDP authorizes one of the types of development specifically listed, including, but not limited to, development "located ... within 100 feet of any wetland, estuary, or stream." Cal. Pub. Res. Code ("PRC") § 30603(a)(2). Section 25.07.006 of the City's zoning code, which is part of the City's LCP, contains a definition of the Commission's appeals jurisdiction that mirrors the language of PRC Section 30603(a).

The land division authorized by the City would separate the mobilehome park area from the subject 270 acre property, and further divide the mobilehome park area into 158 lots. The *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993 identifies a stream and an appeals area within the approximately 270 acre property that is involved in the land division that is the subject of the pending coastal development permit application before the City. Therefore, if the City approves the coastal development permit, that action is appealable to the Commission.

**C. CONCLUSION**

Public Resources Code Section 30603(a)(2) confers the Commission with appellate jurisdiction over development that is within 100 feet of any stream. The Commission finds that, because CDP application 09-36 seeks authorization for development within 100 feet of a stream identified on the City's post-cert map, approval of that application is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.



A portion of the U.S. Geological Survey (USGS) 7.5 Minute Quadrangle Map for Laguna Beach Showing Blue Line Stream in Vicinity of Laguna Terrace Mobilehome Park

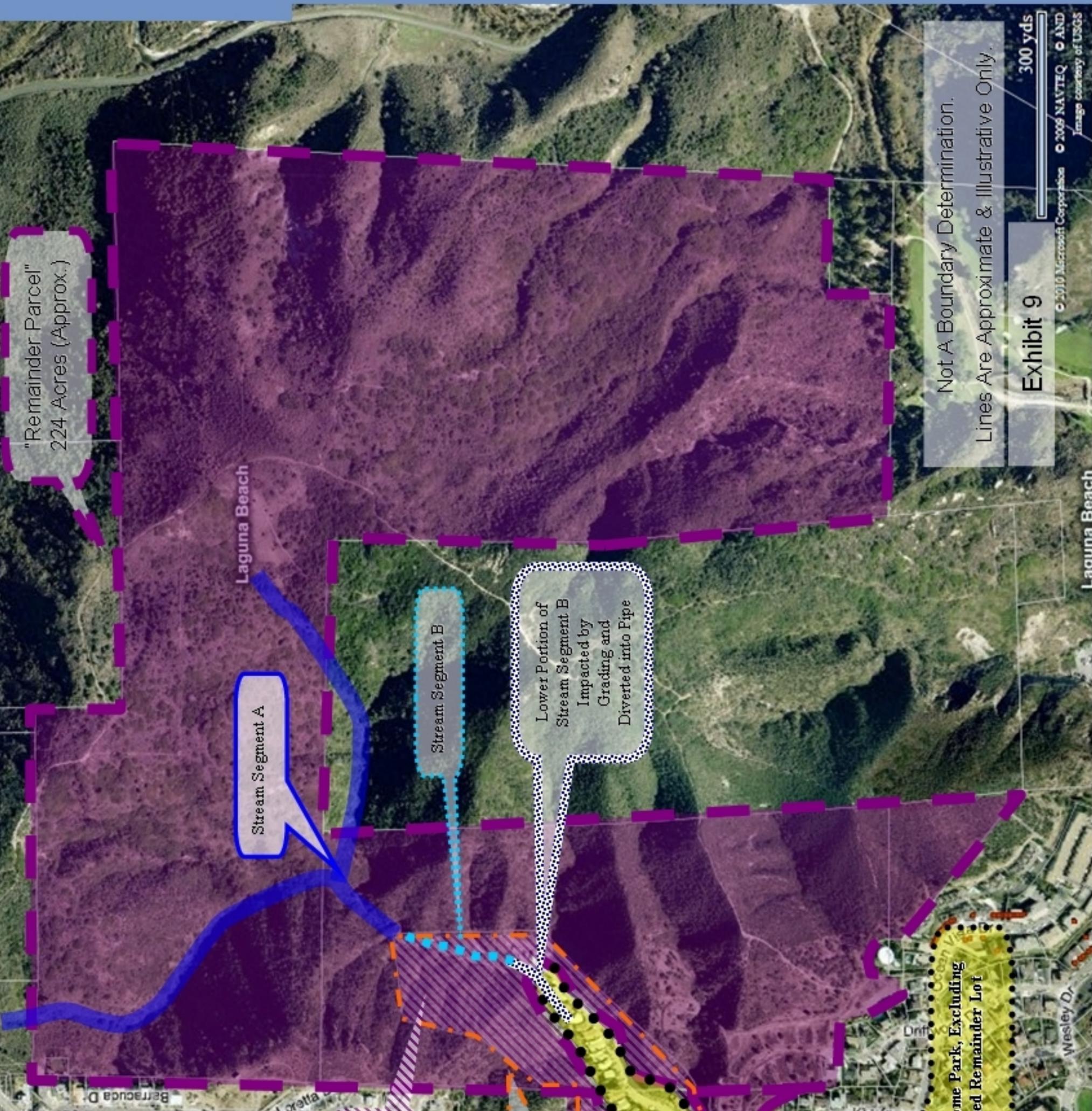
<b>EXHIBIT#8</b>	
Page 1 of 1	
Application Number:	
<b>A-5-LGB-10-174</b>	
California Coastal Commission	

# Key

-  = Remainder Parcel
-  = Boundary of Tentative Map
-  = Mobilehome Park
-  = Remainder of Parcel 1
-  = Stream Segment A (on Post-Cert and Blue Line)
-  = Stream Segment B (Lower Above-ground)
-  = Stream Segment B (Lower Portion of Blue Line Stream Put Into Pipe)

*Area in Purple Crosshatch is the Remainder Portion of Parcel 1 that Will Exist if the Proposed Subdivision Map were Recorded*

Boundary of Proposed Tentative Map (Also Purported Boundary of Parcel 1 of LL 95-01 (Unpermitted) that Mobilehome Park Occupies)



"Remainder Parcel"  
224 Acres (Approx.)

Laguna Beach

Stream Segment A

Stream Segment B

Lower Portion of Stream Segment B Impacted by Grading and Diverted into Pipe

Not A Boundary Determination.  
Lines Are Approximate & Illustrative Only.

Exhibit 9

300 yds

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A-5-LGB-10-174

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