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the added materials.



Boyd L. Hill  
bhlll@hkclaw.com

September 10, 2010

Coastal Commission Agenda Item W29a

Our File Number: 26803.116/4636-6650-0823v.1

**VIA FACSIMILE**

Facsimile No. (562) 590-5084

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

**RE: California Coastal Commission September 15, 2010 Agenda Item W29a  
Appeal No. A-5-LGB-10-174  
City of Laguna Beach ("City") Local CDP No. 10-26 ("Permit")**

Dear Commissioners:

This firm represents Laguna Terrace Park, LLC ("Laguna Terrace"), the holder of the subject Permit, in connection with the above-referenced Appeal (including issues raised by four separate appellants).

After reviewing the Commission Staff Report on this and prior hearings on this matter, it is plain that the Commission and Staff will go to any length to preclude the permanency of mobilehome parks located within the Coastal Zone of the State by regulating any proposed conversion to resident ownership into oblivion. The Commission's actions are at odds with express State law and policy to convert mobilehome parks into permanent residences for the benefit of mobilehome owners with little or no regulation.

The Commission's rush to hold hearings on the substance of the appeals is a deliberate effort to compound and confuse the record in the pending lawsuit with a shotgun approach of manufactured facts. The Commission seeks to achieve a fait accompli of reaching the substance of appeals over which the Commission has no jurisdiction before the lawsuit challenging Commission jurisdiction can be determined.

As you may be aware, Laguna Terrace has sued the Commission, contending that the Commission does not have jurisdiction to consider appeals of the Permit. The specific grounds for lack of commission jurisdiction are set more fully in the lawsuit which was served on the Commission and to which the Commission has already filed a response. Those grounds are not repeated herein, but are incorporated herein by this reference. A copy of the lawsuit is enclosed herewith.

As you also may be aware, Laguna Terrace is seeking a court order on September 14, 2010 staying the Commission from going forward on the substance of the appeals, including the



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above-referenced September 15, 2010 Commission hearing on whether the appeals present a substantial issue.

Without waiving its rights to contest the jurisdiction of the Commission to consider the appeals, and without waiving its rights to obtain a stay of Commission proceedings on the substance of the appeals, Laguna Terrace specially appears by way of these comments in this letter to preserve its rights regarding the merits of the above referenced September 15, 2010 hearing.

This letter will comment only on the Commission staff proposed findings regarding whether there is a substantial issue on appeal at pages 10-16 of the Commission Staff Report for the September 15, 2010 Commission hearing. The comments will be brief because of the lack of any merit to the Commission proposed findings. Laguna Terrace reserves all of its rights to comment upon all issues regarding the appeals not particularly addressed herein at the time of any Commission de novo hearing on the Permit. The issues will be addressed in the order of the findings contained in the Commission Staff Report.

1. Contention that the City Failed to Analyze Consistency of Proposed Development with All Applicable LCP Policies. Given that the proposed "development" involves the simple mapping of existing mobilehome park spaces, the City did not need to consider consistency of the mapping with all of the LCP policies, because those policies are not applicable to a "development" that does not entail any grading, construction, relocation, new housing, or change in density or intensity of use. Therefore, a consistency analysis was not necessary for those inapplicable policies. Regardless, the City did analyze the LCP policies and concluded that the proposed "subdivision" was consistent with the existing zoning for the property. What the Commission Staff and appellants are looking at instead is a phantom 270 acre parcel that is not the 19 acre mobilehome park subdivision project that the City approved.

Indeed, the City's resolution of approval (enclosed herewith) contained express findings that the project:

- Does not propose to change and/or increase the density or intensity of the use of the land;
- Does not have the potential to interfere with the public access and recreation policies of Chapter 3 of the Coastal Act;
- Will not have any significant adverse impacts on the environment;
- Will not result in any physical site changes;
- Is physically suitable for the proposed conversion;
- Would not change the site and/or surroundings; and
- Will not displace low and/or moderate income families or tenants.



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2. Contention that the City Failed to Prepare Detailed Biological Assessments. Given that the mobilehome park is already existing, the proposed "development" that is solely the mapping of the existing spaces does not and cannot have any biological impact. Since the project only includes the MHP zone and the existing areas of improvement, the City determined that there was no ESA. The problem is that the Commission Staff and appellants are substituting a 270 acre property that is not the project that was approved. Therefore, biological assessment was not required. The Commission and Staff cannot continue to assert that the "development" includes ESAs which are located outside the mobilehome park when those areas were not part of the "project" approved by the City.
3. Contention that the City Failed to Consider Fuel Modification. Given that HCD has exclusive preemptive authority over setbacks and that the "development" proposed does not include any changes to existing mobilehome locations, consideration of fuel modification was not required. The City did consider whether fuel modification was required for the mobilehome park "subdivision" project, and was not required to consider a nonexistent 270 acre project.
4. Contention that the City Separated Parcels. The "development" does not encompass any uses within land not a part of the mobilehome park. Impacts and allowable developable area within that land must be studied separately in the future when and if there is a "development" proposal for that land. Therefore, the City determined that consideration of division of ESA areas was not required.
5. Contention that the City Failed to Address Water Quality Protection. The "development" does not involve any change in the land or structures. Therefore, consideration of water quality protection was not required. The City did consider this and determined that no additional study was needed because of the limited nature of the project.
6. Contention that the City Failed to Address Seismic Hazards. The "development" does not involve any change in land or structures. Therefore, consideration of seismic hazards was not required. The City did consider this and determined that no additional study was needed because of the limited nature of the project.
7. Contention that the City Failed to Address Public Access to Trails. The "development" does not involve any change in land or structures or access. Therefore, consideration of public access to trails was not required. The City did consider this and determined that no additional study was needed because of the limited nature of the project.
8. Contention re Illegal Zone Changes. The proposed "development" is entirely within the currently permitted mobilehome park zone. Commission Staff admits that there is insufficient information to rely upon this contention as a substantial issue.
9. Contention re Replacement Rental Units. The proposed "development" is not a condominium conversion. Therefore, there was no need to consider replacement rental units. Commission Staff admits that there is insufficient information to rely upon this contention as a



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substantial issue. The approved project would protect the existing housing units and make them permanent. Ironically, it is the Commission that does not want to make them permanent.

10. Contention re Dead End Streets. The HCD and not the City has exclusive jurisdiction over mobilehome park design, construction, operation and maintenance. The City's standards for dead end streets do not apply. Therefore, compliance with City zoning requirements for dead end streets was not required.

11. Contention re Two New Lots. The HCD and not the City has exclusive jurisdiction over the creation of mobilehome lots. Those lots are existing lots under the existing HCD permit and were previously studied and approved by the City in the year 2000. The subdivision approved did not include those lots. Therefore, there is no substantial issue concerning those lots.

12. Contention re Ruby's Diner Access. The proposed "development" does not change any existing access rights. This is an issue subject to separate litigation. Therefore, City review of this issue was not required. Commission Staff admits that it does not have sufficient information to rely upon this contention as a substantial issue.

13. Contention re Preemption. Staff misstates the Laguna Terrace position. Laguna Terrace does not rely exclusively upon preemption, but relies also on lack of Commission jurisdiction over the appeals, for a number of reasons. The Pacific Palisades case addresses only preemption and includes dictum about whether or not a mobilehome park conversion is a "development," but does not squarely address the issues pertaining Commission jurisdiction for this mobilehome conversion to resident ownership.

Given the nature of the proposed "development": (1) the City was not request to show factual and legal support regarding compliance with inapplicable LCP policies; (2) the proposed "development" is insignificant in scope and extent because it simply involves the mapping of existing mobilehome spaces; (3) there will be no change in land, structures, density or intensity of use that would impact resources; (4) the Commission will risk setting a precedent that mobilehome park conversions are exempt from the Coastal Act if it continues to process the appeals.

In conclusion, we ask that the Commission refrain from holding this hearing until the jurisdictional issues can be resolved, or, alternatively, dismiss the appeals as not raising substantial issues.

Respectfully Submitted,

HART, KING & COLDREN

Boyd L. Hill



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Enclosures: City Resolution of Approval  
Copy of Lawsuit

Cc: Individual Commission Members (by U.S. Mail to home addresses)  
Ken Frank by e-mail only  
Phil Kohn by e-mail only  
John Montgomery by e-mail only  
Scott Drapkin by e-mail only

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RESOLUTION NO. 10.091A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF LAGUNA BEACH  
APPROVING VESTING TENTATIVE TRACT MAP 10-02  
(VESTING TENTATIVE TRACT MAP 17301)  
AND COASTAL DEVELOPMENT PERMIT 10-26  
(TO REPLACE VESTING TENTATIVE TRACT MAP 09-03 AND  
COASTAL DEVELOPMENT PERMIT 09-36)  
AT 30802 COAST HIGHWAY

WHEREAS, an application has been filed by the owner of property located at 30802 Coast Highway, requesting approval of Vesting Tentative Tract Map 10-02 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 10-26 to subdivide an approximate 20-acre parcel into 157 mobile home spaces and a lettered lot, for the sole 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, and would result in a decrease in allowed Park density and intensity; and

WHEREAS, on June 23, 2010, 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 10-02 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 10-26; and

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WHEREAS, on July 20, 2010, the City Council conducted a legally noticed public hearing and, after reviewing all documents and testimony, desires to approve the Vesting Tentative Tract Map 10-02 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 10-26; and

WHEREAS, the proposed subdivision is consistent with the criteria of the Certified Local Coastal Program (Laguna Beach Municipal Code Section 25.07.012 (F)(1-9)) and the required Coastal Development Permit findings can be made, as indicated below:

1. The proposed subdivision and conversion of Laguna Terrace Mobile Home Park to a resident-owned mobile home park is preempted from Municipal Code and General Plan compliance by Government Code Section 66427.5 of the California Subdivision Map Act. In addition, the proposed subdivision does not propose to change and/or increase the density or intensity of the use of land. Further, the previously approved Lot Line Adjustment 95-01 did not change and/or increase the density or intensity of the use of land. Lastly, the subdivision does not authorize development within 100 feet of a stream;

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

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

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

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1. The proposed subdivision map review is preempted by the provisions of Government Code Section 66427.5 and consistency of the map with the Laguna Beach General Plan is exempt.

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 change and/or increase the density or intensity of the use of land, change the site and/or surroundings or change the existing land use. In addition, the previously approved Lot Line Adjustment 95-01 did not change and/or increase the density or intensity of the use of land;

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

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with Government Code Section 66427.5 and will prevent the economic displacement of nonpurchasing residents.

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 10-02 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 10-26 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 residential 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.

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(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 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 to

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the Horizontal Control System established by the County Surveyor as described in Sections 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 10-02 shall expire. A one (1) year extension of the conditional

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

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

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

11. If Vesting Tentative Tract Map is determined to be appealable development subject to the California Coastal Commission and is subsequently appealed within the prescribed Coastal Act appeal time limits, the Final Map for Vesting Tentative Tract Map 09-03 (VTTM 17301) shall not be reviewed or approved by the City Council until a Coastal Development Permit has been reviewed, approved and/or issued by the California Coastal Commission. In the event that the California Coastal Commission requires modifications to the subdivision that are not in substantial conformance with the approved Tentative Map, then the applicant may be required to obtain approval of an amended Tentative Map.

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ADOPTED this 20<sup>th</sup> day of July, 2010.

/s/Elizabeth Pearson  
Elizabeth Pearson, Mayor

ATTEST:

Martha Anderson  
City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 10.091 was duly adopted at a Regular Meeting of the City Council of said City held on July 20, 2010, by the following vote:

- AYES: COUNCILMEMBER(S): Boyd, Egly, Iseman, Pearson
- NOES: COUNCILMEMBER(S): Rollinger
- ABSENT: COUNCILMEMBER(S): None

Martha Anderson  
City Clerk of the City of Laguna Beach, CA

The foregoing instrument is a correct copy  
of the original on file in this office.

Attest July 23, 2010  
City Clerk of the City of Laguna Beach,  
County of Orange, State of California.  
By: Martha Anderson  
City Clerk

1 Robert S. Coldren, Esq., Bar No. 81710  
 Boyd L. Hill, Esq., Bar No. 140435  
 2 HART, KING & COLDREN  
 A PROFESSIONAL LAW CORPORATION  
 3 200 Sandpointe, Fourth Floor  
 Santa Ana, California 92707  
 4 Telephone: (714) 432-8700  
 Facsimile: (714) 546-7457

**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF ORANGE  
 CENTRAL JUSTICE CENTER

AUG 03 2010

ALAN CARLSON, Clerk of the Court

BY J. HAINES DEPUTY

5 Attorneys for Petitioner LAGUNA TERRACE PARK LLC

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF ORANGE

8 30-2010

9 00395819

10 LAGUNA TERRACE PARK LLC, a  
 11 California Limited Liability Company,

CASE NO.

Assigned for all purposes to:

JUDGE RONALD L. BAUER

DEPT. CX103

12 Petitioner/Plaintiff,

13 VERIFIED PETITION FOR WRIT OF  
 14 MANDATE AND DAMAGES; AND  
 15 COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF

16 vs.

17 CALIFORNIA COASTAL  
 18 COMMISSION, and DOES 1-50;

19 Respondents/Defendants.

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 24 **THIS CASE IS SUBJECT TO**  
**MANDATORY ELECTRONIC FILING**  
 25 **PURSUANT TO RULE 308 OF THE LOCAL RULES**  
**OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**  
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 A PROFESSIONAL LAW CORPORATION  
 200 SANDPONTE, FOURTH FLOOR  
 SANTA ANA, CALIFORNIA 92707

Petitioner/Plaintiff Laguna Terrace Park LLC ("Laguna Terrace") alleges as follows:

INTRODUCTION

1. Laguna Terrace seeks a peremptory writ of mandate, declaratory and/or injunctive relief to vacate and set aside the decision of Respondent/Defendant California Coastal Commission ("Commission") unlawfully assuming administrative jurisdiction over the proposed conversion to resident ownership of the Laguna Terrace Mobilehome Park. A writ of mandate lies pursuant to Code of Civil Procedure sections 1085 and/or 1094.5, and Public Resources Code sections 30328, 30801 and 30804. There are four separate and distinct bases for the writ, summarized in Paragraphs 2-13 below.

2. First, as a matter of law, the Commission cannot have administrative jurisdiction because the Laguna Terrace proposed mobilehome park conversion to resident ownership does not qualify as a "development" under the Coastal Act. The Coastal Act limits the scope of Commission jurisdiction to applications for "development" in the Coastal Zone. (Pub. Res. Code, § 30600 (a)) The Coastal Act defines "development" as a "change in the density or intensity of the use of land." (Pub. Res. Code, § 30106)

3. A mobilehome park conversion to resident ownership, while technically qualifying as a "subdivision" under the Subdivision Map Act, is the simple act of mapping the existing mobilehome park, without any physical or zoning change that would allow for a change in density or intensity of use of land. (Govt. Code, 66427.5) Indeed, local agencies are prevented from even considering planning or zoning issues in connection with a simple conversion to resident ownership by the expressly preemptive language of Government Code section 66427.5 (e). (See *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270, 1299-1300)

4. Applying principles for construction of statutory language, it is clear that in order for a "subdivision" to qualify under the jurisdiction of the Coastal Act, the "subdivision" must involve "a change in the density or intensity of the use of the land." (See *California Coastal Com. v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 607 [general listed items following a particular class description must fit within the particularly

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1 described class]) A "subdivision" for a simple conversion of an existing mobilehome park to  
2 resident ownership under Government Code Section 66427.5 does not qualify as a  
3 "development" under the Coastal Act because it does not, by definition, involve any "change  
4 in density or intensity of use of land." Thus, the Commission has no jurisdiction over a  
5 "subdivision" for a simple conversion of an existing mobilehome park to resident ownership.  
6 Therefore, the Commission action in assuming administrative jurisdiction over the  
7 conversion must be vacated and set aside on the basis that the Application is exempt from the  
8 Coastal Act.

9 5. Second, as a matter of law, assuming, *arguendo*, that the Laguna Terrace  
10 proposed mobilehome park conversion to resident ownership qualifies as a "development"  
11 under the Coastal Act, the proposed conversion is exempt from Commission administrative  
12 jurisdiction under the express provisions of the Coastal Act. The Coastal Act expressly  
13 provides that no coastal development permit is required for "development" involving  
14 improvements to single family residences. (Pub. Res. Code, § 30610 (a))

15 6. The existing mobilehome park conversion to resident ownership, assuming it  
16 qualifies as "development," clearly pertains to "improvements" to single family residences in  
17 the form of establishing lot line property boundaries for conversion to resident ownership.  
18 (See 14 Cal. Code Regs., § 13253 [Commission considers conversion of commercial rental  
19 units to residential ownership to be an "improvement"]) Thus, a subdivision for a simple  
20 conversion of an existing mobilehome park to resident ownership under Government Code  
21 Section 66427.5 is an exempt "development," if any, under the Coastal Act single family  
22 residence improvements statutory exemption. Therefore, the Commission action in  
23 assuming administrative jurisdiction over the conversion must be vacated and set aside on  
24 the basis that the Application is exempt under the Coastal Act.

25 7. Third, as a matter of fact and law, assuming *arguendo*, that the Laguna Terrace  
26 proposed mobilehome park conversion to resident ownership qualifies as a "development"  
27 under the Coastal Act, the Laguna Terrace mobilehome park subdivision to be approved by  
28 the City of Laguna Beach ("City") is located entirely within the City's Local Coastal

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1 Program and does not meet the criteria for Commission appellate jurisdiction. The Coastal  
2 Act is clear that when any "new development proposed" is within the area to which a  
3 certified local coastal program applies, the local agency must be in charge of implementing  
4 the local coastal program unless the "new development proposal" meets the criteria for  
5 Commission appellate jurisdiction. (Pub. Res. Code, § 30519 (a))

6 8. In the present situation, Laguna Terrace is seeking City approval of a  
7 "subdivision" consisting solely of the mapping of the rental spaces and common area for the  
8 mobilehome park portion of the Laguna Terrace property. (See the Laguna Terrace  
9 Conversion Application, a true and correct copy of which is attached hereto as Exhibit "1"  
10 and incorporated herein by this reference) The mobilehome park lies entirely within the  
11 City's Local Coastal Program and does not encompass any of the Commission Area of  
12 Deferred Certification, as demonstrated on the City's Commission-approved Post-Local  
13 Coastal Program Certification Permit and Appeal Jurisdiction Map (the "Commission  
14 Map"), a true and correct copy of which is attached hereto as Exhibit "2" and incorporated  
15 herein by this reference. The Commission Map contains the following footnote: "In areas  
16 where a parcel is bisected by the appeal jurisdiction boundary, only that portion of the parcel  
17 within the area defined as appealable is subject to the Commission's appeal jurisdiction."  
18 Furthermore, the mobilehome park does not lie within the Commission's appellate  
19 jurisdiction because it lies beyond the first public road paralleling the sea and more than 100  
20 feet from any stream, as depicted on the Commission Map. (See Pub. Res. Code, § 30603  
21 (a) (2)) The precise boundary of the Commission's appellate jurisdiction with respect to  
22 streams is required to be that identified on the Commission Map. (See 14 Cal. Code Regs., §  
23 13577)

24 9. The Commission's reserved and appellate jurisdiction must be determined in  
25 any particular instance by reference to the boundaries of the particular "development"  
26 approved by the City, which in this instance is solely the mobilehome park. (See Pub. Res.  
27 Code, §§ 35019 (a), 30603 (a)) Neither the City nor the Commission can consider any other  
28 "development" or boundaries than those which are presented. (See *Id.*; see also Govt. Code,

1 § 66424.6 (a), (b) [omitted portion of land not included in subdivision is not to be considered  
 2 a parcel and conditions cannot be imposed on the omitted portion of land until subsequent  
 3 application for development of omitted portion]) Thus, the Laguna Terrace mobilehome  
 4 park conversion application is not subject to Commission appellate jurisdiction because the  
 5 mobilehome park property being subdivided is not identified on the Commission Map or  
 6 within the Commission's jurisdiction. Therefore, the Commission action assuming  
 7 jurisdiction over the conversion must be set aside on the basis that the proposed  
 8 "development" is not within the Commission's area of deferred certification and not within  
 9 100 feet of any stream identified on the Commission Map.

10 10. Fourth, as a matter of procedure, the Commission assumed jurisdiction of the  
 11 proposed conversion to resident ownership in violation of express principles of fundamental  
 12 fairness and due process by means of biased and undisclosed ex parte and other unofficial  
 13 communications. The California Legislature requires that the Commission conduct its affairs  
 14 in an open, objective, public and impartial manner free of undue influence and the abuse of  
 15 power and authority. The California Legislature thus restricts Commission actions to those  
 16 conducted in public on the open record. (Pub. Res. Code, § 30320)

17 11. Any private "ex parte" communication with a Commissioner concerning a  
 18 matter to be acted on by the Commission must be fully disclosed on the record of the  
 19 Commission's proceeding. (Pub. Res. Code, § 30324 (a)) Not only must the fact of the ex  
 20 parte communication be disclosed, but also the Commissioner involved must provide a  
 21 "complete description of the content of the communication," including the complete text of  
 22 any written material that was part of the communication. (Pub. Res. Code, § 30324 (b))

23 12. Most of the Commissioners involved had contact with Penny Elia, a local  
 24 activist opposed to the conversion who seemed to operate as a de facto Commission staff  
 25 member, but some of the Commissioners failed to provide a complete description of the  
 26 content of their communications with Ms. Elia. Laguna Terrace's representative James  
 27 Lawson attempted to contact Commissioners in an attempt to counter the undue influence of  
 28 Penny Elia, but most of the Commissioners claimed they were too busy to return Mr.

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1 Lawson's calls or review his e-mails, and Commissioner Esther Sanchez failed to disclose  
2 that she had received a phone call and e-mail from Mr. Lawson. The Coastal Act is clear  
3 that where ex parte communications have not been fully disclosed pertaining to an action of  
4 the Commission, the action must be revoked. (Pub. Res. Code, § 30328)

5 13. In addition to unlawful ex parte communications, the Commissioners and staff  
6 acting in collusion with Penny Elia, conspired to create the illusion of a non-existent  
7 "dispute" that would trigger the Coastal Commission action in violation of Commission  
8 regulations. (See 14 Cal. Code Regs., § 13569 [in order for Commission to act, there must  
9 be an official City decision on an actual CDP application and City request to the  
10 Commission based on a subsequent challenge by an interested person]) The Commission  
11 inappropriately treated an e-mail from Penny Elia and a response from a staff member  
12 regarding a nonexistent Coastal Development Permit ("CDP") application as an official City  
13 decision and request for Commission action, which it was not. Therefore, the Commission  
14 action assuming appellate jurisdiction of the proposed conversion to resident ownership was  
15 taken in the absence of any application and in violation of the Coastal Act proscription  
16 against ex parte communications, and the Commission action must be revoked.

17 PARTIES AND VENUE

18 14. Petitioner and Plaintiff Laguna Terrace Park LLC is a California limited  
19 liability company. Laguna Terrace owns and operates the Laguna Terrace Mobilehome Park  
20 ("Park"). The Park comprises approximately 19½ acres of an approximate 46½ acre parcel  
21 legally described and depicted in the Park Grant Deed to Laguna Terrace dated September  
22 15, 1997, a true and correct copy of which is attached hereto as Exhibit "3" and incorporated  
23 herein by this reference. The Park boundaries and rental space configuration is shown on  
24 page 1 of the proposed vesting tentative tract map of the Park ("Park Map"), a true and  
25 correct full-sized copy of which is attached hereto as Exhibit "4" and incorporated herein by  
26 this reference.

27 15. The Park is a 157 space rental mobilehome park that was built in several  
28 phases during the 1960s and has continued in operation since then. In 1997, the legal parcel

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1 on which the Park is located (Parcel 1 of Lot Line Adjustment 95-01--approximately 46%  
2 acres) was sold to Laguna Terrace. The Park provides a needed source of alternative housing  
3 within the City. The Park infrastructure has been continuously upgraded and is in good  
4 condition. The Park was established, designed, constructed, maintained and is operating  
5 pursuant to the express, exclusive and preemptive jurisdiction of the State Department of  
6 Housing and Community Development ("HCD") (See Health and Safety Code, §§ 18253,  
7 18300 (a))

8 16. Respondent and Defendant California Coastal Commission ("Commission") is  
9 the State administrative body authorized under the Public Resources Code to enforce the  
10 Coastal Act of 1976 (Pub. Res. Code, §§ 30000, *et seq.*) in a manner consistent with the  
11 limits of its jurisdiction, as defined therein. The Commission may sue and be sued. (Pub.  
12 Res. Code, § 30334 (b))

13 17. Does 1 through 50 are persons or entities unknown to Laguna Terrace at this  
14 time who may have some interest that may be affected by this action sufficient to render  
15 them necessary parties. Laguna Terrace will amend this petition and complaint to  
16 specifically identify each such person or entity as a respondent, defendant and/or real party  
17 in interest, if any when their identities become known.

18 18. Venue is proper in this Court in that the Property is located in the County of  
19 Orange.

20 **THE LAGUNA TERRACE CONVERSION APPLICATION**

21 19. Laguna Terrace desires to provide its current residents with the opportunity to  
22 purchase their rental spaces by converting the Park rental spaces to resident ownership  
23 through the special streamlined "subdivision" process of Government Code Section 66427.5.  
24 Because "subdivision" for the simple purpose of conversion to resident ownership involves  
25 mere mapping with no physical change or change in density to a mobilehome park,  
26 Government Code Section 66427.5 (e) provides that local agency consideration of such a  
27 "subdivision" is limited solely to compliance with the provisions of Government Code  
28 Section 66427.5: "The scope of the hearing shall be limited to the issue of compliance with

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1 this section.” Thus, Government Code Section 66427.5 (e) is preemptive of local agency  
2 consideration of any other factors, including but not limited to local agency planning and  
3 zoning code compliance. (See *Sequoia Park Associates v. County of Sonoma, supra*, 175  
4 Cal.App.4th at 1297, 1299-1300)

5 20. The Government Code Section 66427.5 (e) express preemption of local agency  
6 planning and zoning review for mobilehome park conversion to resident ownership is  
7 consistent with long-standing State policy. For 25 years the State has had the policy “to  
8 encourage and facilitate the conversion of mobilehome parks to resident ownership” and is  
9 willing to use public dollars to promote this policy. (Health & Safety Code, §§ 50780 (b),  
10 50782; see also *Sequoia Park Associates v. County of Sonoma, supra*, 176 Cal.App.4th at  
11 1298) Mobilehome park conversion to resident ownership allows residents of mobilehome  
12 parks the opportunity to own their land beneath their mobilehomes and thus obtain favorable  
13 financing for their mobilehomes at lower real property based lending rates.

14 21. The Government Code Section 66427.5 (e) express preemption of local agency  
15 planning and zoning review for mobilehome park conversion to resident ownership is part  
16 and parcel of the pervasive and exclusive regulation of mobilehome parks by the State  
17 Department of Housing and Community Development. “[Government Code] Section  
18 66427.5 does not stand alone. If the Legislature ever did leave the field of mobilehome park  
19 legislation to local control, that day is long past.” (See *Id.* at 1279) “These statutory  
20 schemes indicate that the state is clearly the dominant actor on this stage. Under the  
21 Mobilehome Parks Act, it is the HCD, a state agency, not localities, that was entrusted with  
22 the authority to formulate ‘specific requirements relating to construction, maintenance,  
23 occupancy, use, and design’ of mobilehome parks.” (See *Id.* at 1281, referring to Health and  
24 Safety Code §§ 18253, 18522, which is a part of the Mobilehome Parks Act)

25 22. In accordance with Government Code Section 66427.5, on March 22, 2010,  
26 Laguna Terrace submitted to the City of Laguna Beach (“City”) a revised application for a  
27 vesting tentative tract map (the “Park Map”) for subdivision of the Park to enable conversion  
28 to resident ownership (the “Application”). The City had previously approved a Laguna

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1 Terrace application for a vesting tentative map for the entire parcel on which the Park is  
2 located on January 5, 2010, but Laguna Terrace filed the revised Application to subdivide  
3 into lots solely those rental spaces and the common area within the existing Park boundaries,  
4 without including the entire parcel. The revised Park Map will supersede the vesting  
5 tentative tract map previously approved by the City upon expiration of the 90 day period for  
6 challenge or upon final judgment on any unsuccessful challenge filed to the Park Map within  
7 the 90 day period, whichever occurs first. As required and limited by Government Code  
8 Section 66427.5, the Application included the Application form, the Park Map (indicating  
9 thereon the boundary of Commission's deferred jurisdiction and 100' from existing streams  
10 as identified on the Commission Map), a preliminary (title) report, a resident survey showing  
11 approximately 2/3 resident support, and a Report on Impact of Subdivision to Residents  
12 summarizing the offer to purchase or continue leasing and rent increase limitation provisions  
13 of Government Code Section 66427.5. A copy of the Application is attached hereto as  
14 Exhibit "1."

15 23. On June 23, 2010, the City Planning Commission recommended approval of  
16 the Application for the Park Map and additionally recommended approval of a Coastal  
17 Development Permit ("CDP") for the Park Map. With respect to the Park Map, the Planning  
18 Commission found that the Application is not subject to Commission original or appellate  
19 jurisdiction because the Application is solely for the Park "subdivision" for conversion to  
20 resident ownership, the Park is outside the Commission Area of Deferred Jurisdiction, and  
21 the Park is more than 100' away from any stream identified on the Commission Map. The  
22 Planning Commission further found that the Map must be approved because Laguna Terrace  
23 complied with all requirements of Government Code Section 66427.5 and because  
24 Government Code Section 66427.5 does not allow the City to consider issues of consistency  
25 with the City's General Plan, the Local Coastal Program and/or the Municipal Code.

26 24. The Planning Commission also found that the Map complies with required  
27 City findings for a CDP, including no significant adverse environmental impacts, non-  
28 interference with public access and recreation, and General Plan and Municipal Code

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1 compliance. To be clear, Laguna Terrace did not apply for a CDP and does not concede that  
2 there is Coastal Act jurisdiction with respect to the Park Map, but Laguna Terrace will accept  
3 the benefit of the CDP to the extent that the Court rules that there is Coastal Act jurisdiction  
4 over the Map and that the Map is not exempt under the Coastal Act. A true and correct copy  
5 of the City June 23, 2010 Planning Commission Staff Report (without attachments) is  
6 attached hereto as Exhibit "5" and incorporated herein by this reference.

7 25. On July 20, 2010, the City Council considered the Application, agreed with the  
8 Planning Commission recommendation, and adopted City Resolution No. 10.091 approving  
9 by a 4-1 vote the Application, the tentative Park Map and the CDP. A true and correct copy  
10 of the City's July 20, 2010 Staff Report (without attachments) is attached hereto and  
11 incorporated herein by this reference as Exhibit "6". The City Staff Report, at page 1  
12 thereof, notes the bizarre nature of the Commission's June 9, 2010 appealability  
13 determination, noting that "it is very unusual that the Coastal Commission would review an  
14 appealability issue before a notice was distributed ...." Additionally, the City Staff Report,  
15 at page 2 thereof, concurs with the Planning Commission finding that "neither the proposed  
16 subdivision nor the previous Lot Line Adjustment 95-01 would result in a 'change in density  
17 or intensity of the use and land.'" Further, the City Staff Report, at page 3 thereof, concludes  
18 that the Park Map omits any of the Commission's area of reserved [original] jurisdiction  
19 from the Park and that the City therefore cannot review and consider the omitted portion of  
20 the Lot Line Adjustment 95-01 Parcel 1 property belonging to Laguna Terrace.

21 26. Finally, the City Staff Report considered whether the depiction of a blue line  
22 stream on a USGS map would give rise to Commission appellate jurisdiction of the  
23 recommended CDP. The City Staff Report noted that a study of the Park and USGS map by  
24 the environmental firm LSA Associates, Inc. concluded that the blue line stream did not  
25 reach within 100 feet of the Park, as depicted on the Park Map, and that an outside law firm  
26 would be submitting an opinion regarding that matter. A true and correct copy of the LSA  
27 study is attached hereto as Exhibit "7" and incorporated herein by this reference. A July 19,  
28 2010 outside counsel opinion by the law firm of Richards, Watson & Gershon ("RWG") was

1 submitted to the City at the City Council hearing on the Application, which opinion  
 2 concluded that there was no stream within 100 feet of the Park. A true and correct copy of  
 3 the RWG opinion is attached hereto and incorporated herein by this reference as Exhibit "8".

4 27. Resolution No. 10.091 approved by the City Council on July 20, 2010, a true  
 5 and correct copy of which is attached hereto and incorporated herein by this reference as  
 6 Exhibit "9" and incorporated herein by this reference, made findings in support thereof,  
 7 including but not limited to the following:

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

12 b. "[T]he proposed subdivision does not propose to change and/or increase  
 13 the density or intensity of the use of the land." [Note--this finding supports the Laguna  
 14 Terrace position that a CDP was unnecessary and that there is no Coastal Act jurisdiction  
 15 because the Application and Park Map is either exempt from or exempt under the Coastal  
 16 Act]

17 c. "[T]he previously approved Lot Line Adjustment 95-01 did not change  
 18 and/or increase the density or intensity of the site."

19 Despite those findings, paragraph 11 of Resolution No. 10.091 requires Laguna  
 20 Terrace to comply with all Commission conditions that may be imposed by the Commission  
 21 if the Commission decision regarding appealability of the CDP is determined to be valid, an  
 22 appeal from the CDP is filed, and an appeal is upheld by the Commission.

### 23 BACKGROUND RE COASTAL COMMISSION JURISDICTION

24 28. Under the Coastal Act, a local government obtains permitting jurisdiction over  
 25 coastal development when it adopts a Commission-certified Local Coastal Program  
 26 ("LCP"—see Pub. Res. Code, §§ 30519, 30604 (b)). In authorizing the adoption of LCPs,  
 27 the State Legislature recognized the need to "rely heavily on local government and local land  
 28 use planning procedures" in order to "achieve maximum responsiveness to local conditions."

1 (Pub. Res. Code, § 30004 (a))

2 29. When a local government has certified a LCP, the Commission has limited  
3 appellate jurisdiction over local coastal development, including developments "located ...  
4 within 100 feet of any wetland, estuary, or stream." (Pub Res. Code, § 30603 (a) (2)) Where  
5 a local government has an LCP, the local government determines in the first instance  
6 whether a proposed development is appealable to the Commission. (14 Cal. Code Regs., §  
7 13569)

8 30. The Coastal Act does not define the term "stream" for purposes of the  
9 Commission's appellate jurisdiction. However, by regulation, this jurisdiction applies to  
10 "any stream mapped by USGS ... or identified in a local coastal program." (14 Cal. Code  
11 Regs., § 13577) As alleged below, there is no stream identified in the LCP or mapped by the  
12 USGS that is within 100 feet of the Park.

13 31. The Commission certified the City's LCP as of 1993. The Commission's  
14 certification of the City's LCP transferred jurisdiction over coastal development, including  
15 the Application, from the Commission to the City. In authorizing the adoption of LCPs, the  
16 Legislature recognized the need to "rely heavily on local government and local land use  
17 planning procedures" in order to "achieve maximum responsiveness to local conditions."  
18 (Pub. Res. Code, § 30004(a)) "These provisions demonstrate that the Legislature intended to  
19 curb the Commission's ability to champion its own agenda over the decisions made by local  
20 governments, and over the constitutional rights of property owners who live in the coastal  
21 zone." (*Douda v. California Coastal Commission* (2008) 159 Cal.App.4th 1181, 1195)

## 22 THE COASTAL COMMISSION ACTION

23 32. Laguna Terrace is informed and believes and thereon alleges that on May 5,  
24 2010, City Senior Planner Scott Drapkin sent a "draft" Planning Commission public hearing  
25 notice regarding the Application to Penny Alia, a City resident who lives in a development  
26 near the Park and claims to represent the interests of the Sierra Club. The "draft" notice  
27 stated that the City's action on a CDP for the Park Map would not be appealable to the  
28 Commission. Laguna Terrace is informed and believes and thereon alleges that on May 18,

1 2010, Penny Alia sent an e-mail purporting to be her "disagreement" with a purported City  
 2 "determination" that a CDP for the Park Map would not be appealable based on a prior  
 3 Commission determination with respect to the prior Laguna Terrace vesting tentative base  
 4 map that included the entire parcel on which the Park was located and not just the Park.

5 33. Laguna Terrace is informed and believes and thereon alleges that City Senior  
 6 Planner Scott Drapkin sent Penny Alia a response to her May 18, 2010 e-mail on May 24  
 7 2010 stating that the proposed Park Map is different from the map previously approved by  
 8 the City and that a new CDP will be considered for the Park Map. Nothing in the Scott  
 9 Drapkin e-mail suggested an official City determination of appealability and nothing in the  
 10 Scott Drapkin e-mail suggested an official request to the Coastal Commission for an  
 11 appealability dispute determination. The Coastal Commission regulations require all of (i)  
 12 an existing CDP application, (ii) an official City determination on appealability thereof, and  
 13 (iii) an official City request to the Coastal Commission of an appealability before the Coastal  
 14 Commission Executive Director may act. (14 Cal. Code Regs., § 13569 (a), (b)) Here, none  
 15 of those criteria was satisfied. A true and correct copy of the e-mail exchanges between  
 16 Penny Alia and Scott Drapkin is attached hereto as Exhibit "10" and incorporated herein by  
 17 this reference. Interestingly, according to that e-mail exchange, the Penny Alia May 24,  
 18 2010 e-mail response to Scott Drapkin indicates that Penny Alia has had undisclosed ex parte  
 19 communication with the Coastal Commission about allocation of Commission staff time to  
 20 the Application.

21 34. On May 25, 2010, Karl Schwing, the Coastal Commission Orange County  
 22 Supervisor of Regulation and Planning sent a letter to Scott Drapkin of the City purporting to  
 23 be an "Executive Director Appealability Determination." The letter was not in the typical  
 24 Coastal Commission format for an "Executive Director" determination nor was it addressed  
 25 from or signed by the Coastal Commission Executive Director. A true and correct copy of  
 26 the May 25, 2010 Karl Schwing letter is attached hereto as Exhibit "11" and incorporated  
 27 herein by this reference. A true and correct copy of a typical Coastal Commission Executive  
 28 Director determination is attached hereto as Exhibit "12" and incorporated herein by this

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1 reference. According to the May 25, 2010 letter, Mr. Schwing, not the Executive Director,  
 2 "interpreted" the May 24, 2010 Drapkin e-mail response to Penny Alia as a "request" for an  
 3 Executive Director determination, in essence treating communications with Penny Alia as if  
 4 they were communications with the Coastal Commission Executive Director, in violation of  
 5 Coastal Commission regulations and in violation of Coastal Act prohibitions against ex parte  
 6 communications. (See 14 Cal. Code Regs., 13569; Pub. Res. Code, § 30324)

7 35. In violation of the Commission regulations establishing the prerequisites  
 8 therefore, on June 9, 2010, the Coastal Commission held a hearing on appealability to the  
 9 Commission of a an unapplied for CDP that the City was then considering issuing with  
 10 respect to the Application. The Commission voted 7-2 to uphold the inappropriate purported  
 11 "Executive Director Appealability Determination." During the hearing, the Commission  
 12 members failed to report the full extent of ex parte communications with Penny Alia  
 13 (including the text of written communications) as required by the Coastal Act and one  
 14 Commission member failed to report an ex parte communication with James Lawson of  
 15 Laguna Terrace. (See Pub. Res. Code, § 30324) A true and correct and the May 26, 2010  
 16 Coastal Commission Staff Report and June 8, 2010 Addendum are attached hereto as  
 17 Exhibits "13" and "14" and incorporated herein by this reference.

18 36. The Coastal Commission Staff Report at page 1 incorrectly states that the  
 19 Laguna Terrace Application for the Park Map includes a "pending application for [a] coastal  
 20 development permit." That statement is false. Nothing in the Laguna Terrace Application  
 21 indicates that Laguna Terrace applied for a CDP.

22 37. The Coastal Commission Staff Report incorrectly states at page 1 that the Park  
 23 Map for which Laguna Terrace is seeking approval consists of "an approximately 270 acre  
 24 area that is involved in the City's action." That statement is false. Nothing in the  
 25 Application indicates that Laguna Terrace is seeking anything other than subdivision for  
 26 conversion to resident ownership of the 19½ acre Park. For purposes of appealability, the  
 27 Coastal Commission is limited solely to consideration of the "development approved" by the  
 28 City. (See Pub. Res. Code, § 30603) The Coastal Commission Staff Report candidly admits

1 at page 1 that if it were to (correctly) treat the Application as the subdivision of the 19¼ acre  
2 Park, "the land division authorized in the City's latest action may have been isolated from an  
3 adjacent area of land where a stream/appeals area is present."

4 38. The Coastal Commission Addendum incorrectly states at page 2 that it may  
5 proceed without a City request for a Commission Executive Director Appealability  
6 Determination. That statement is false. There cannot be even an imputed request for an  
7 Executive Director Determination if there is no CDP application. Laguna Terrace did not  
8 submit a CDP application. The Coastal Commission position incorrectly relies on a fictional  
9 "pending" CDP application so that it can rely on an unpublished opinion that allowed the  
10 Commission to make an appealability determination of a pending application without a  
11 formal request. Here, there is no CDP application pending, therefore the Commission could  
12 not act on an appealability determination, if at all, until and after the City acted on its own to  
13 adopt a CDP.

14 39. The Coastal Commission Addendum incorrectly states at page 2 that because  
15 the Application qualifies as a "subdivision" under the Subdivision Map Act, it automatically  
16 qualifies as a "development" under the Coastal Act. That statement is false. Under the  
17 accepted "*ejusdem generis*" principle of statutory construction, general items that follow the  
18 enumeration of a particular class must be limited to those types which fit within that  
19 particular class. (See *California Coastal Com. v. Quanta Investment Corp. supra*, 112  
20 Cal.App.3d at 607 [note that the court in this case did not determine that all "subdivisions"  
21 were "development" under the Coastal Act]) Therefore, only those subdivisions which result  
22 in a "change in the density or intensity of use of land" qualify as "development" under the  
23 Coastal Act. (See Pub. Res. Code, § 30106) The Coastal Commission cannot point to any  
24 evidence that the Park Map will result in a change in the density or intensity of use of land.  
25 Under Government Code Section 66427.5, the City is forbidden from any consideration of  
26 planning and zoning changes that would pertain to changes in density or intensity of use.

27 40. The Coastal Commission Addendum at page 2 incorrectly states that the  
28 Application creates a "remainder lot" consisting of land subject to Coastal Commission

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1 jurisdiction that changes the development potential and/or intensity of use of the "remainder  
 2 lot." That statement is false. The Application does not create a "remainder lot" but instead  
 3 the Park Map clearly "omits" all portions of the existing parcel not a part of the Park.  
 4 Pursuant to Government Code Section 66424.6 (b), the "omitted" portion of the existing  
 5 parcel "shall not be counted as a parcel for purposes of determining whether a parcel or final  
 6 map is required, and the fulfillment of construction requirements for offsite improvements,  
 7 including the payment of fees associated with any deferred improvements, shall not be  
 8 required until a permit or other grant of approval for development is issued on the omitted  
 9 parcel." Therefore, according to the Subdivision Map Act and contrary to the Addendum,  
 10 the omitted parcel cannot by definition be considered either by the City or by the  
 11 Commission as a "development" or "change in density or intensity of use" until and unless  
 12 there is a separate new request for development of the omitted parcel.

13 41. The Coastal Commission concedes at page 3 of the Commission Addendum  
 14 that the Laguna Terrace proposed "subdivision" is not within the Commission's appellate  
 15 jurisdiction if the Commission accepts that the "subdivision" is limited to the Park  
 16 boundaries as shown on the Park Map (and as also shown on the maps attached to the  
 17 Commission Staff Report). However, the Commission incorrectly argues that the  
 18 Commission must treat the Application as one for subdivision of the entire 270 acre pre 1995  
 19 lot line adjustment parcel(s) because there was no CDP issued for the 1995 lot line  
 20 adjustment (indeed that argument is the entire premise of the Commission action). That  
 21 Commission argument is false and unsustainable as a matter of law and/or fact for several  
 22 reasons, as set forth in subparagraphs a-d below:

23 a. First and foremost, the Coastal Act does not allow the Commission to  
 24 consider for appellate jurisdiction any project other than the actual "development approved  
 25 by the local government." (See Pub. Res. Code, 30603)

26 b. Second and equally important, the Commission must as a matter of law  
 27 consider the parcel being divided as Parcel 1 of the 1995 lot line adjustment LL 95-01,  
 28 because the lot line adjustment became valid as a matter of law 90 days after it approved by

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1 the City in the year 1995, and Parcel 1 is therefore a valid legal parcel. (See Govt. Code, §  
2 66499.37 [90 day statute of limitations to challenge lot line adjustment or other subdivision  
3 of land]) The Commission incorrectly argues at page 3 of the Commission Addendum that  
4 the Commission can ignore existing legal lots under the Coastal Act and treat the Application  
5 as one including the lot line adjustment. That argument is false. The Coastal Act requires  
6 the Commission to analyze only the "development approved" by the City. (See Pub. Res.  
7 Code, 30603)

8 c. Third, assuming, *arguendo*, the Commission could review the 1995 lot  
9 line adjustment as part of the Application, the Commission presents no evidence that the  
10 1995 lot line adjustment resulted in a "change in density or intensity of use" that would  
11 qualify it as a "development" pursuant to the Coastal Act. (See Pub. Res. Code, § 30106)  
12 Indeed, the City made an express finding in its Resolution No. 10-091 approving the Park  
13 Map that the prior lot line adjustment did not result in a change in density or intensity of use.  
14 (See Exhibit 9, page 2, paragraph 1)

15 d. Fourth, assuming, *arguendo*, that the Coastal Commission could  
16 consider the existing parcel as the entire 270 acre pre 1995 lot line adjustment parcel(s)  
17 under the Coastal Act, the Park Map expressly omits all land from the "subdivision" other  
18 than the Park. Pursuant to the Subdivision Map Act, the City and thus the Commission  
19 cannot consider the omitted portion of the underlying parcel for purposes of "development"  
20 approval. (See Govt. Code, § 66424.6 (b))

21 e. Fifth, assuming, *arguendo*, that the 1995 lot line adjustment required a  
22 CDP in order to be a valid legal parcel, the Coastal Commission is equitably estopped to  
23 claim that Parcel 1 of that lot line adjustment is not a legal parcel because the Coastal  
24 Commission at all times treated Parcel 1 as a legal parcel by issuing several  
25 permits for the Parcel 1 property since 1995, including but not limited to Coastal  
26 Commission permit numbers G5-95-286, 5-95-286m 2-95-286A, 5-96-048 and 5-98-151.  
27 During the application process for permit 5-98-151, the Commission expressly requested and  
28 required information regarding the Parcel 1 property as part of the permit approval process.

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1 By granting that and prior permits, the Commission must have intended for Laguna Terrace  
2 to rely on Parcel 1 as a legal lot. At no time until a Commission dispute with the  
3 neighboring property owner did the Commission raise the issue of lack of a CDP for the  
4 1995 lot line adjustment. Laguna Terrace, having purchased Parcel 1 in 1997, was unaware  
5 for more than 10 years of any Commission contention that Parcel 1 was not a legal parcel.  
6 At all times since 1995 and until a Commission "notice of violation" in 2007, Laguna  
7 Terrace acted in reliance on the Commission's approval of its title in issuing Commission  
8 permits. A true and correct copy of the Commission file for permit 5-98-151 is attached  
9 hereto and incorporated herein by this reference as Exhibit "15".

10 42. The Commission incorrectly argues at page 4 of the Addendum that it may rely  
11 on a biological study to determine that there is a stream area not indicated on the  
12 Commission Map. That statement is contrary to law. The Commission may only establish a  
13 stream area by reference to the Commission Map or by reference to a USGS map. (See 14  
14 Cal. Code Regs., § 13577) The Commission Map does not show stream area within 100 feet  
15 of the Park, but instead, the Commission Map shows a stream area 600 feet away from the  
16 Park. While an outdated USGS map shows an intermittent blue line stream closer to the  
17 Park, those intermittent flows were long ago channeled into the City's storm drain system so  
18 that the limit of that stream is more than 100 feet from the Park. (See the July 7, 2010 LSA  
19 study and July 19, 2010 Richards, Watson & Gershon opinion at Exhibits 7 and 8)

20 43. The Commission incorrectly argues that the *Sequoia Park Associates* case has  
21 no applicability with respect to Commission jurisdiction. That statement is contrary to law.  
22 *Sequoia Park Associates* clearly established that cities cannot review of "subdivisions" for  
23 mobilehome park conversions to resident ownership to determine compliance with general  
24 and specific plans or zoning. (*Sequoia Park Associates v. County of Sonoma, supra*, 176  
25 Cal.App.4th at 1299) Local Coastal Programs pursuant to the Coastal Act "serve essentially  
26 the same function as a general plan." (*City of Chula Vista v. Superior Court* (1982) 133  
27 Cal.App.3d 472, 487) While the Commission has the right to review the LCP when it is  
28 established in connection with State policy under the Coastal Act, that does not change the

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1 essential nature of the LCP as a general plan.

2 44. The Commission incorrectly argues that the Coastal Act must be applied in full  
3 force to mobilehome park conversions to resident ownership to the disregard of the sub-  
4 panoply of exclusive preemptive mobilehome park laws such as the Mobilehome Parks Act  
5 (see Health and Safety Code §§ 18253, 18522, 18300 [giving State Dept. HCD plenary  
6 authority over mobilehome park planning, construction, use and operation]) and the  
7 Subdivision Map Act provisions of Government Code Section 66427.5 [excluding cities  
8 from considering anything else for mobilehome park conversion]). That statement is  
9 contrary to law. In *Sequoia Park Associates*, there were significant issues of construction  
10 with other State statutory schemes, including provisions of State Planning and Zoning Law,  
11 and the Court of Appeal there held that those provisions of State law must be interpreted to  
12 give priority to the comprehensive and plenary State scheme of statutes and regulations  
13 applicable to mobilehome parks, including most especially the above quoted preemptive  
14 provisions of the Mobilehome Parks Act and Subdivision Map Act in Government Code  
15 Section 66427.5. Under accepted principles of statutory construction, the later enacted and  
16 more specific provisions of Government Code Section 66427.5 have priority over any review  
17 of the City General Plan and Zoning Code under the Coastal Act. Indeed, the two statutory  
18 schemes can be interpreted harmoniously as either expressly or impliedly exempting  
19 mobilehome park conversions to resident ownership from Coastal Act review, or at least  
20 from Coastal Act review of city general plan and zoning compliance. (See *McLaughlin v.*  
21 *State Bd. of Educ.* (1999) 75 Cal.App.4th 196, 219-225 [statutory schemes construed  
22 together as implying amendment of potentially conflicting provision in earlier act])

23 FIRST CAUSE OF ACTION

24 FOR WRIT OF MANDATE

25 45. Laguna Terrace repeats and realleges the allegations of Paragraphs 1-44 as  
26 though set forth in full herein.

27 46. The Commission has clear, present and ministerial duties, including but not  
28 limited to the following duties, to:

1 a. Determine that the Application is not for "development" pursuant to the  
2 Coastal Act.

3 b. Determine that the Application is for exempt "improvements" to single  
4 family residences under the express provisions of the Coastal Act.

5 c. Not act in a biased manner on the basis of ex parte communications with  
6 Penny Alia.

7 d. Reveal the specific nature and extent of ex parte communications with  
8 Penny Alia and reveal all ex parte communications with members of the public.

9 e. Rely on the Commission Map and the actual development approved for  
10 determining whether it has jurisdiction over the Application.

11 f. Give effect to the exclusive preemptive provisions of Government Code  
12 Section 66427.5 precluding any City review of general plan or zoning issues with respect to  
13 the Application.

14 g. Not act on the basis of a nonexistent CDP "application" or on the basis  
15 of a nonexistent "executive director determination."

16 47. The Commission failed and refused to proceed in the manner required by law  
17 by determining that it had jurisdiction to act with respect to the Application.

18 48. Laguna Terrace is beneficially interested in the Commission's compliance with  
19 important public duties under the Coastal Act in that finalization of the Park Map will be  
20 delayed and/or hindered if the Commission unlawfully asserts jurisdiction over the  
21 Application and/or acts in an unlawful manner with respect to determination of whether  
22 Commission jurisdiction should apply.

23 49. Laguna Terrace performed all conditions precedent to filing this action and  
24 exhausted its administrative remedies before the Commission by presenting argument and  
25 evidence and appearing before the Commission on June 9, 2010 and before the City Planning  
26 Commission on June 23, 2010 and the City Council on July 21, 2010.

27 50. Laguna Terrace has no plain, speedy, and adequate remedy in the ordinary  
28 course of law, other than the relief sought in the Petition/Complaint for the Commission's

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1 violations in that, without such relief, Laguna Terrace will not be able to record a final Park  
2 Map unless and until Commission appeals of the Application are determined in favor of  
3 Laguna Terrace several months or years later or unless and until Laguna Terrace complies  
4 with additional unlawful, unwarranted and unnecessary Commission conditions for approval.

5 51. The Commission violated its duties under law to timely and appropriately  
6 determine that the Commission does not have jurisdiction over the Application.  
7 Accordingly, a writ of mandate must immediately issue to compel the Commission to  
8 immediately reverse its determination that it has jurisdiction over the Application.

9 52. In determining that the Commission has jurisdiction over the Application, the  
10 Commission proceeded without jurisdiction and lacks any lawful power over the Application  
11 for several reasons, including but not limited to the following reasons:

- 12 a. The Application is not for "development" under the Coastal Act.
- 13 b. The Application is for exempt "improvements" to existing single family  
14 residences under the Coastal Act.
- 15 c. The Park is not within 100 feet of a stream as demonstrated by the  
16 Commission Map.
- 17 d. The Park is not within 100 feet of any blue line stream shown on a  
18 USGS map.
- 19 e. The Commission did not act to determine jurisdiction over the  
20 Application pursuant to a valid request, a valid Executive Director determination, or a  
21 pending CDP application.
- 22 f. The provisions of Government Code Section 66427.5 preclude any City  
23 review of general plan or zoning issues with respect to the Application.

24 53. The Commission's decision that it has jurisdiction over the Application  
25 constitutes a prejudicial abuse of discretion, because the Commission has not proceeded in a  
26 manner required by law for, *inter alia*, the following reasons:

- 27 a. The Application is not for "development" pursuant to the Coastal Act.
- 28 b. The Application is for exempt "improvements" to single family

1 residences under the express provisions of the Coastal Act.

2 c. The Commission acted in a biased manner on the basis of ex parte  
3 communications with Penny Alia.

4 d. The Commission failed to reveal the specific nature and extent of ex  
5 parte communications with Penny Alia and reveal all ex parte communications with  
6 members of the public.

7 e. The Commission failed to rely on the Commission Map and the actual  
8 development approved in determining whether it has jurisdiction over the Application.

9 f. The Commission failed to take into account, ignored, overridden and  
10 failed to even wait for the City's determination regarding a CDP and issues of appealability  
11 before taking action. The Commission thus undermined both the City's authority over local  
12 coastal development and the Legislature's policy in favor of deferring to local government  
13 with LCPs in making local development decisions.

14 g. The provisions of Government Code Section 66427.5 preclude any City  
15 review of general plan or zoning issues with respect to the Application.

16 54. The Commission's decision that it has jurisdiction over the Application  
17 constitutes a prejudicial abuse of discretion, because the decision is not supported by the  
18 findings, including but not limited to the following:

19 a. There is no finding that the Application is for a CDP.

20 b. There is no finding that the Application requires a CDP.

21 c. There is no finding that the Application is for anything but the Park.

22 d. There is no finding that the City made an official determination  
23 regarding appealability.

24 e. There is no finding of a City request for a Commission Executive  
25 Director Appealability Determination.

26 f. There is no finding of an Executive Director determination contrary to a  
27 City determination.

28 g. There is no finding that the Application is for "development" under the

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1 Coastal Act.

2 h. There is no finding that the Application is for non-exempt  
3 "improvements" to existing single family residences.

4 i. There is no finding that the "omitted" portion of the Park Map is part of  
5 the Park being approved for the Park Map.

6 j. There is no finding that the "omitted" portion of the Park Map will be  
7 developed pursuant to the Application.

8 k. There is no finding that the Commission may or must consider the 1995  
9 lot line adjustment as part of the Application.

10 l. There is no finding that the 1995 lot line adjustment qualifies as a  
11 "development" that resulted in a "change in density or intensity of use" under the Coastal  
12 Act.

13 m. There is no finding that the Commission did not treat the 1995 lot line  
14 adjustment as valid for the twelve year period from 1995 to 2007 and that Laguna Terrace  
15 did not rely on that treatment to its detriment.

16 n. There is no finding that the Park is within 100 feet of any stream shown  
17 on the Commission Map or shown on a current USGS map.

18 55. The Commission's decision that it has jurisdiction over the Application  
19 constitutes a prejudicial abuse of discretion, because the Commission's findings, if any, are  
20 not supported by the evidence, including but not limited to the following:

21 a. There is no evidence that the Application is for a CDP.

22 b. There is no evidence that the Application requires a CDP.

23 c. There is no evidence that the Application is for anything but the Park.

24 d. There is no evidence that the City made an official determination  
25 regarding appealability.

26 e. There is no evidence of a City request for a Commission Executive  
27 Director Appealability Determination.

28 f. There is no evidence of an Executive Director determination contrary to

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- 1 a City determination.
- 2 g. There is no evidence that the Application is for "development" under
- 3 the Coastal Act.
- 4 h. There is no evidence that the Application is for non-exempt
- 5 "improvements" to existing single family residences.
- 6 i. There is no evidence that the "omitted" portion of the Park Map is part
- 7 of the Park being approved for the Park Map.
- 8 j. There is no evidence that the "omitted" portion of the Park Map will be
- 9 developed pursuant to the Application.
- 10 k. There is no evidence that the 1995 lot line adjustment is part of the
- 11 Application.
- 12 l. There is no evidence that the 1995 lot line adjustment qualifies as a
- 13 "development" that resulted in a "change in density or intensity of use" under the Coastal
- 14 Act.
- 15 m. There is no evidence that the Commission did not treat the 1995 lot line
- 16 adjustment as valid for the twelve year period from 1995 to 2007 and that Laguna Terrace
- 17 did not rely on that treatment to its detriment.
- 18 n. There is no evidence that the Park is within 100 feet of any stream
- 19 shown on the Commission Map or shown on a USGS map.

20 56. The Commission's abuse of discretion is prejudicial because the Commission's

21 decision increases the costs of and delays the conversion of mobilehome parks to resident

22 ownership contrary to firm long-established State policy to facilitate such conversions and

23 because the Commission's decision will likely result in the imposition of additional

24 regulatory burdens on the Application in the form of conditions contrary to the express

25 preemptive language of Government Code Section 66427.5.

26 57. Unless and until the Court vacates and sets aside in its entirety the

27 Commission's decision asserting jurisdiction over the Application, the Commission will act

28 without jurisdiction and in abuse of its discretion by improperly asserting jurisdiction over

1 Laguna Terrace's Application and delay recordation of the final Park Map, to the severe  
2 detriment of the Park residents who seek immediate conversion to resident ownership to  
3 avoid further rent payments, thereby causing both Laguna Terrace and the Park residents to  
4 suffer irreparable injury.

5 SECOND CAUSE OF ACTION

6 FOR DECLARATORY AND INJUNCTIVE RELIEF

7 58. Laguna Terrace repeats and realleges the allegations of paragraphs 1-57 as  
8 though set forth in full herein.

9 59. An actual controversy has arisen and now exists between Laguna Terrace and  
10 the Commission relative to their respective rights and duties in that Laguna Terrace contends  
11 that the Commission does not have jurisdiction over the Application, Park Map or CDP and  
12 that the 1995 lot line adjustment is valid, legal and binding on the Commission. The  
13 Commission disputes these contentions and contends that it does have jurisdiction. A  
14 judicial determination of the parties' rights and responsibilities arising from this actual  
15 controversy is necessary and appropriate at this time so that Laguna Terrace can avoid costly  
16 and unnecessary Commission appeals proceedings.

17 60. The Commission is threatening to proceed with appeals from the City's  
18 issuance of the CDP. Commission consideration of appeals to the CDP will irreparably harm  
19 Laguna Terrace and the Park residents by delaying recordation of the final Park Map and  
20 increasing costs and conditions for approval of the final Park Map, to the severe detriment of  
21 the Park residents who seek immediate conversion to resident ownership to avoid further rent  
22 payments. A temporary restraining order and preliminary and permanent injunctions should  
23 issue restraining the Commission proceeding with appeals from the CDP or from enforcing  
24 any alleged violation relating to the 1995 lot line adjustment.

25 61. Laguna Terrace has been damaged in the additional costs it has and will spend  
26 contesting improper and illegal Commission assumption of jurisdiction over the Application.

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PRAYER FOR RELIEF

WHEREFORE, Laguna Terrace demands entry of judgment as follows:

As to the First Cause of Action

For Writ of Mandate

1. For a peremptory writ of mandate directing the Commission to vacate and set aside entirely the Commission's decision that it has jurisdiction over the Application, Park Map and/or CDP.

2. For an award of reasonable attorneys fees pursuant to Code of Civil Procedure § 1021.5;

3. For civil penalties pursuant to Coastal Act §§ 30327, 30824

As to the Second Cause of Action

For Declaratory and Injunctive Relief

4. For a temporary restraining order and preliminary injunction restraining the Commission from proceeding with any appeals from the CDP or from enforcing any alleged violation pertaining to the 1995 lot line adjustment;

5. For a declaration that the Commission does not have any jurisdiction over the Application, Park Map and/or CDP and that the 1995 lot line adjustment is valid, legal and binding on the Commission.

6. For damages according to proof at trial;

As to All Causes of Action

7. For costs of suit;

8. For such other equitable or legal relief that the Court considers just and proper.

Dated: August 3, 2010

HART, KING & COLDREN

By: *Boyd L. Hill*

Robert S. Coldren  
Boyd L. Hill  
Attorneys for Petitioner/Plaintiff  
Laguna Terrace Park LLC

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SEP 13 2010

**Sean Matsler**  
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CALIFORNIA  
COASTAL COMMISSION

September 9, 2010

Client-Matter: 43150-030

**BY FACSIMILE AND FED EX (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: Appeal A-5-LGB-10-174 (Agenda Item No. W29a)  
Laguna Terrace Mobile Home Park Subdivision  
Substantial Issue Hearing – September 15, 2010**

Dear Chair Neely and Coastal Commissioners:

On September 15, 2010, the Coastal Commission is scheduled to hold a Substantial Issue hearing in connection with three appeals of Coastal Development Permit No. 10-26 (the "Permit.") The Permit was approved on July 20, 2010 by the City of Laguna Beach ("City") in connection with the proposed subdivision of the Laguna Terrace Mobile Home Park by Laguna Terrace Park LLC ("Applicant.") The Substantial Issue Staff Report, dated August 31, 2010, recommend a finding that multiple substantial issues exist with respect to the grounds upon which the three appeals are based (e.g., Local Coastal Program consistency, public access, environmentally sensitive areas, water quality and hazards.)

By this letter, appellant Paul Esslinger wishes to communicate his **support** for Staff's substantial issue recommendation. As indicated in Mr. Esslinger's August 4, 2010 appeal, in approving the Permit, the City failed to comply with Land Use and Open Space/Conservation General Plan Elements policies; provisions of the Zoning Code; subdivision development standards in Title 21 (Plats and Subdivisions) of the City's Municipal Code; and Fuel Modification Guidelines from the General Plan's Safety Element – all of which have been made part of the City's Local Coastal Program ("LCP.") Such omissions violate, among other things, the Court of Appeals' recent holding in *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (Second District Court of Appeal, Docket No. B216515). *Pacific Palisades Bowl* held that Government Code section 66427.5 does not preclude the application of the Coastal Act to mobile home park conversions like that contemplated by the Permit (*See, e.g.*, the following language from the decision: "we conclude that section 66427.5 does not preclude the City from imposing conditions and requirements mandated by the Mello Act and Coastal Act on a

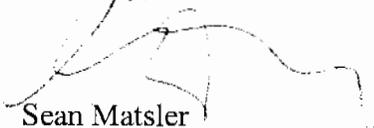
California Coastal Commission  
September 9, 2010  
Page 2

subdivider seeking to convert to resident ownership a mobile home park located in the coastal zone.”)

In addition to the Permit’s inconsistency with the LCP, the City ignored the adverse impact the Permit would have on coastal access by closing off access to adjacent property that provides visitor-serving uses, and which would have the effect of creating potential traffic congestion along Pacific Coast Highway, the major coastal access artery through Laguna Beach. The two other appeals by Sierra Club Save Hobo Aliso Task Force and Coastal Commissioners Patrick Kruer and Sara Wan raise similar concerns.

Taken together or considered individually, the concerns cited in Mr. Esslinger’s appeal and the other two appeals raise a substantial issue of consistency with the policies of the certified LCP. Should the Commission find substantial issue as your staff recommends, we would request that the legality of all unpermitted development at Laguna Terrace Park under the Coastal Act and LCP (as described in our appeal) be resolved in connection with the Commission’s *de novo* consideration of the Permit. In the interim, issuance of a Notice of Violation and Cease and Desist Order to restore the entirety of the site to its original conditions and imposition of penalties would be appropriate. Failure to rectify these ongoing violations now would have the effect of officially recognizing and validating the existence of the unpermitted development.

Sincerely,



Sean Matsler

cc: Paul Esslinger

**CALIFORNIA COASTAL COMMISSION**

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

**W29a**

Filed: August 4, 2010  
49th Day: September 22, 2010  
Staff: Karl Schwing, LB  
Staff Report: August 31, 2010  
Hearing Date: September 15-17, 2010  
Commission Action:



**STAFF REPORT:**  
**RECOMMENDATION ON APPEAL FINDING SUBSTANTIAL ISSUE**

**APPEAL NUMBER:** A-5-LGB-10-174

**LOCAL GOVERNMENT:** City of Laguna Beach

**DECISION:** Approval with Conditions

**APPLICANT:** Laguna Terrace Park LLC

**PROJECT LOCATION:** 30802 South Coast Highway, Laguna Beach (Orange County)

**PROJECT DESCRIPTION:** Subdivide the Laguna Terrace Mobile Home Park into 157 residential lots, 1 lot for common areas, and a remainder lot.

**APPELLANTS:** Sierra Club Save Hobo Aliso Task Force; Paul R. Esslinger; and Commissioners Patrick Kruer & Sara Wan

**SUMMARY OF STAFF RECOMMENDATION**

The staff recommends that the Commission, after a public hearing, determine that **A SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which Appeal No. A-5-LGB-10-174 has been filed because the locally approved development raises issues of consistency with the Laguna Beach certified Local Coastal Program (LCP) related to public access and recreation, environmentally sensitive areas, water quality, and hazards (see Motion, page 2).

The development authorized by the City has the effect of separating an existing developed area from an adjacent undeveloped area that contains significant areas of sensitive habitat. This division creates parcels that are likely not developable without also impacting the sensitive habitat areas. Thus, such land division would be inconsistent with policies of the certified LCP that protect environmentally sensitive areas (ESAs). By dividing the land into small lots that correspond with the location of existing mobile homes, this action would also have the effect of fixing the location of those existing 'mobile' structures to areas of the property that may not be suitable for development over the long term given the presence of fire and geologic hazards in the area. The certified local coastal program also contains policies that address water quality protection and the protection of existing public access and recreation opportunities that would apply to this type of land division that the City did not apply. Therefore, staff recommends that the Commission find that the appeals raise a substantial issue and cause this matter to be brought to the Commission on de novo review at a later date.

**NOTE: THE COMMISSION WILL NOT TAKE PUBLIC TESTIMONY DURING THIS PHASE OF THE APPEAL HEARING UNLESS AT LEAST THREE COMMISSIONERS REQUEST IT. IF THE COMMISSION FINDS THAT THE APPEAL RAISES A SUBSTANTIAL ISSUE, IT WILL SCHEDULE THE DE NOVO PHASE OF THE HEARING FOR A FUTURE MEETING, DURING WHICH IT WILL TAKE PUBLIC TESTIMONY. WRITTEN COMMENTS MAY BE SUBMITTED TO THE COMMISSION DURING EITHER PHASE OF THE HEARING.**

**SUBSTANTIVE FILE DOCUMENTS:**

Laguna Beach Local Coastal Program (LCP); findings and file materials in support of dispute resolution number 5-10-014-EDD; Vesting Tentative Tract Map No. 17301; Findings and file materials in support of dispute resolution number 5-10-117-EDD; Findings and file materials in support of appeal number A-5-LGB-10-039; City of Laguna Beach Agenda Bill for Item No. 18 for City Council meeting dated 1/5/10; City of Laguna Beach Agenda Bill for Item No. 24 for City Council meeting dated 7/20/10; California Coastal Commission Notice of Violation of the Coastal Act dated 5/4/2007 sent to The Athens Group and Laguna Terrace Park LLC; Letter dated October 27, 2009, from the California Coastal Commission to the Laguna Beach Planning Commission Regarding CDP No. 09-36; City of Laguna Beach Lot Line Adjustment No.s LL 95-01 and LL 95-04; Letter dated July 19, 2010 from staff of the California Coastal Commission to the City Council regarding CDP10-26; findings and approved plans for Coastal Development Permit No.s 5-95-286, 5-95-286-A1, G5-95-286, and 5-96-048; U.S. Geological Survey 7.5" Quadrangle Maps for Laguna Beach and San Juan Capistrano; Map titled *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach* Map ("post-cert map") adopted by the Commission on September 16, 1993; Letter dated July 7, 2010, prepared by LSA Associates to Mr. James Lawson titled Technical Evaluation of CCR Title 14, Section 13577(a) Stream Issue, Laguna Terrace Park, Tentative Tract No. 17301, Laguna Beach, California; Letter prepared by Mr. Steven Kaufman to Mr. Ken Frank dated July 19, 2010.

Click on the links below to go to the exhibits which are in separate files.

**LIST OF EXHIBITS:**

1. Vicinity Map
2. City of Laguna Beach Resolution No. 10.091 of the City Council adopted 7/20/2010
3. Appeal by Sierra Club Save Hobo Aliso Task Force, with Exhibit depicting site in 1986, 1994 and 2001
4. Appeal by Commissioners Pat Kruer and Sara Wan
5. Appeal by Mr. Paul R. Esslinger
6. Vesting Tentative Tract Map No. 17301
7. Staff Report/Findings in Support of the Commission's June 2010 Action on Dispute Resolution No. 5-10-117-EDD, without attached exhibits, but with addendum to report
8. A portion of U.S. Geological Survey 7.5 Minute Quadrangle for Laguna Beach Depicting Blue Line Streams
9. Graphic Depicting Location of Streams, Parcel Areas and Mobilehome Park

**I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

**MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE WITH REGARD TO APPEAL NO. A-5-LGB-10-174**

MOTION: I move that the Commission determine that Appeal No. A-5-LGB-10-174 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings that a Substantial Issue Exists. Passage of this motion will result in a finding of No Substantial Issue and the local action will

become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

## **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-5-LGB-10-174 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

### **II. APPEAL PROCEDURES**

After certification of a local coastal program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on Coastal Development Permits. Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located within 100 feet of a wetland or stream, between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, mean high tide line, or the top of the seaward face of a coastal bluff. Furthermore, developments approved by local County governments may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the four areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modifications had been properly accepted, and the City assumed permit issuing authority at that time. Section 30603(a)(2) of the Coastal Act identifies the proposed project site as being in an appealable area based on its location within 100 feet of a stream (see further discussion regarding this determination below).

Section 30603 of the Coastal Act states:

*(a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*

*(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*

*(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Section 30603(a)(2) of the Coastal Act establishes the proposed development approved by the local government as being appealable by its location within 100 feet of a stream.

In March 2010, Laguna Terrace Park LLC submitted an application to the City of Laguna Beach to subdivide the Laguna Terrace Mobilehome park for residential purposes (i.e. City CDP application number 10-26). This followed a prior application for similar development in 2009 (i.e. City CDP 09-36) that was the subject of prior actions by the City and the Commission (see dispute resolution 5-10-014-EDD and appeal A-5-LGB-10-039). The City found application for CDP number 10-26 to be incomplete. In May 2010, staff of the City of Laguna Beach provided notice that they would be

holding a Planning Commission hearing on CDP application number 10-26 and indicated their determination that their action would not be appealable to the California Coastal Commission. Since that determination was not consistent with the Executive Director's determination that the action would be appealable to the Commission, a dispute resolution hearing was held (see 5-10-117-EDD) on June 9, 2010, at which hearing the Commission upheld the Executive Director's determination that the City's decision will be appealable to the Commission (Exhibit 7). On June 23, 2010, subsequent to the city's finding the application for CDP number 10-26 to be complete, the City of Laguna Beach Planning Commission held a hearing recommending that the City Council approve that CDP application. On July 20, 2010, the Laguna Beach City Council held a public hearing at which they approved CDP number 10-26.

On July 27, 2010, the Commission received the City's Notice of Final Action regarding the project, which stated the City's determination that the project is non-appealable, but which acknowledged the Commission's determination under dispute resolution number 5-10-117-EDD that the City's action would be appealable. Therefore, on July 28, 2010, the Executive Director opened an appeal period that concluded on August 10, 2010. During this appeal period, three appeals were filed, one submitted by Ms. Penny Elia on behalf of the Sierra Club Save Hobo Aliso Task Force (filed as of August 4, 2010) (Exhibit 3), one by Mr. Paul R. Esslinger (Exhibit 5) submitted on August 4, 2010, and an appeal was filed on behalf of the Commission by Commissioners Sara Wan and Patrick Kruer on August 10, 2010 (Exhibit 4).

#### Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states:

*(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.*

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the appeal will be presumed to raise a substantial issue, and the Commission will proceed to the de novo phase of the public hearing on the merits of the project. The de novo phase of the hearing will be scheduled at the same meeting or a subsequent Commission meeting. De novo review on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding public access and recreation, environmentally sensitive areas, water quality, and hazards.

#### Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have time as established by the Commission chair to address

whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

The de novo phase of the hearing will be scheduled at a later date.

#### Factors to be Considered in Substantial Issue Analysis

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. Section 13115(b) of the Commission's regulations provides that the Commission will hear an appeal unless it finds that the appeal raises no significant question as to conformity with the certified LCP or there is no significant question with regard to the public access policies of Chapter 3 of the Coastal Act. In previous decisions on appeals, the Commission has been guided by the following factors.

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

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5. Staff is recommending that the Commission find that **a substantial issue** exists for the reasons set forth below.

### **III. APPELLANTS' CONTENTIONS**

The City of Laguna Beach approval of the proposed development was appealed on August 4, 2010 by two appellants, and again on August 10, 2010 by a third set of appellants. The project was appealed by California Coastal Commissioners Sara Wan and Patrick Kruer; by Ms. Penny Elia on behalf of the Sierra Club Save Hobo Aliso Task Force; and by Mr. Paul R. Esslinger. The appellants contend that the proposed development does not conform to the requirements of the Local Coastal Program.

The appeals by Commissioners Kruer and Wan contend that the proposed project is inconsistent with the Laguna Beach LCP, as follows:

- The City has failed to address whether the proposed land division is consistent with LCP policies regarding protection and enhancement of public access, biological resources, water quality, scenic resources, and minimization and avoidance of hazards (geologic, fire, flood, etc.). Except for making generalized findings about the project being consistent with the public access or recreation policies of Chapter 3 of the Coastal Act and consistent with criteria contained in the Certified Local Coastal Program, the City did not analyze the consistency of the proposed development with all applicable LCP policies.
- The City has failed to apply the requirements of Open Space Conservation Element Policies 8-J, 8-G, and 8-H which require the preparation of biological assessments when there is a subdivision within sensitive habitat (Environmentally Sensitive Areas/ESAs) and protection of identified habitat from impacts associated with new development and fuel modification.
- The City's action results in the creation of new parcels which are entirely within a Coastal ESA or which don't contain a site where development can occur consistent with the ESA policies of the LCP, contrary to OSCE Policy 8J.
- The City has failed to implement water quality protection requirements of the LCP that apply to new subdivisions.
- The City's action does not take into account fire hazards, geological hazards or other such hazards and the City's action will foreclose options to relocate development to avoid hazards, as opposed to defending the development against hazards in the present location.
- The City's action fails to take into account existing access trails and the requirements of Open Space Conservation Element Policy 6D and 6F, which require the protection of such trails and assurance that future provision of access will not be precluded.
- The City's action does not comply with Title 21 (Plats and Subdivision), which is part of the LCP. For instance, the subdivision doesn't comply with Section 21.12.220 regarding the maximum length of a dead end street. Street length and space for emergency vehicle turn around relate to fire safety. If infrastructure is inadequate to address fire safety then other means that have impacts on surrounding habitat, such as fuel modification, will be needed, which increases the impact of the development.

The appeal by Ms. Penny Elia identifies the following reasons for appeal:

- The City has failed to address whether the proposed land division is consistent with LCP policies regarding protection and enhancement of public access, biological resources, water quality, scenic resources, landform alteration, and minimization and avoidance of hazards (geologic, fire, flood, etc.).
- The City did not require a biological analysis nor any measures to protect ESAs, as required under the LCP.
- The City does not address fuel modification requirements and impacts associated with new subdivisions.
- The City did not address the water quality protection requirements of the LCP

- The City did not address illegal grading and land use/zoning changes that allowed for unpermitted expansion of the mobilehome park.
- The unpermitted expansion of the mobilehome park resulted in unpermitted impacts to a “Blueline Stream” identified by the U.S. Department of Water Resources [sic]<sup>1</sup>. The segment of stream impacted was located within 100 feet of the proposed development. The presence of this segment of stream is sufficient to render the development appealable to the Commission.
- The City did not address unresolved/unpermitted lot line adjustments dating back to 1995
- The City has no coastal development permit jurisdiction over the subject development because the entire development is located in an area of deferred certification where the Coastal Commission retains jurisdiction over coastal development

The appeal by Mr. Paul R. Esslinger, identifies the following reasons for appeal:

- The City failed to comply with the requirements of the City’s LCP, particularly with regard to water quality and biological protection policies.
- The City’s action fails to comply with Land Use Plan Policy 8-A, which prohibits residential condominium conversions unless an equivalent number of rental units have been developed.
- The City’s action does not comply with Title 21 (Plats and Subdivision), which is part of the LCP. For instance, the subdivision doesn’t comply with Section 21.12.220 regarding the maximum length of a dead end street.
- The property is subject to ongoing Coastal Act violations. For instance, the applicant developed two spaces with mobile home uses in the year 2000 without obtaining a CDP. The subdivision approved by the City creates lots for these illegally created mobile home sites.
- The City’s action fails to address legal access to an adjacent parcel occupied by Ruby’s Diner, which will create a traffic/public access issue along Coast Highway.

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<sup>1</sup> This appears to be a reference to so-called “blue line” streams that are depicted on U.S. Geological Survey 7.5 minute quadrangle maps of Laguna Beach that the City’s certified Local Coastal Program identifies as ‘streams’ (see Open Space Conservation Element Policy 9-C, which reads in part “...a) Streams on the Major Watershed and Drainage Courses Map which are also “blue-line” streams as identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments...). The City has recognized blue line streams as establishing appeals areas in the City (see page 3 of City staff report (‘agenda bill’) to City Council for hearing on July 20, 2010).

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

##### **A. Project Description and Location**

The subject site is an approximately 270 acre area partly developed with a mobile home park located at 30802 South 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<sup>2</sup> 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 July 20, 2010, the City Council of the City of Laguna Beach approved coastal development permit 10-26 that had the effect of separating the area of land developed with a mobilehome park from the undeveloped remainder of an approximately 270 acre area, and further dividing the land that contains the mobile home park into 157 residential lots, 1 lettered common lot, and a remainder lot. According to the City, the purpose of this land division is to "convert an existing rental space mobile home park to a resident-owned mobile home park." The City's approval relies on two lot line adjustments the City processed in 1995 (Lot Line Adjustment No.s LL 95-01 and LL 95-04). However, those lot line adjustments, which are development under the Coastal Act, were not authorized under any coastal development permit and are unpermitted. For additional analysis of this issue, see the Commission's findings regarding 5-10-117-EDD, which are incorporated by reference (see Exhibit 7). Thus, for purposes of the Coastal Act the property being subdivided is the approximately 270 acre property that existed prior to the lot line adjustments. No physical changes to the site are proposed.

##### **B. Description of Local Approval**

On July 20, 2010, the City of Laguna Beach City Council approved Coastal Development Permit 10-26 for the project with the following conditions of approval:

- The subdivider shall avoid economic displacement of all non-purchasing residents by following a number of requirements specified in the condition
- The subdivider must prepare and submit a "Public Report" in accordance with California Department of Real Estate requirements
- The subdivider must notify to the owners and residents of the park the tentative price of individual lot acquisition
- The proposed land division shall not conflict with existing public easements

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<sup>2</sup> The extent of area designated mobile home park versus open space is disputed by the appellants.

- Within 24 months of approval, the subdivider must file a Final Map with the City
- The City must be indemnified and held harmless against any legal actions brought against the City
- A deed restriction will be recorded acknowledging potential fire, erosion, landslide, mudslide, earthquake and flooding hazards, and the applicant must waive any liability claims against the City
- Permit extensions may be filed
- A maximum of 157 mobile home units/spaces are permitted within the subdivision and future changes need City approval
- Existing lease/rental agreements must be honored
- If the development is determined to be appealable to the Coastal Commission and there is an appeal, the Final Map shall not be reviewed or approved by the City Council until a Coastal Development Permit has been approved and/or issued by the California Coastal Commission. If modifications to the subdivision required by the Commission are not in substantial conformance with the Tentative Map, the applicant may be required to obtain an approval of an amended tentative map

The City limited the scope of its review of the proposed development to criteria listed in Government Code section 66427.5 with respect to mobile home park conversions. The City interpreted this provision as prohibiting local governments from imposing local coastal program requirements that go beyond the criteria listed in section 66427.5, notwithstanding the requirements of the Coastal Act. On August 31, 2010, however, the court of appeal issued a published opinion holding that section 66427.5 does not preclude local governments from requiring mobile home park conversions to comply with Coastal Act requirements. See *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, Second District Court of Appeal, Docket No. B216515.

### **C. Substantial Issue Analysis**

As previously stated, the local CDP may be appealed to the Commission on the grounds that it does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. The Commission must assess whether the appeal raises a substantial issue as to the project's consistency with the certified LCP or the access policies of the Coastal Act.

In making that assessment, the Commission considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP raise significant issues in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has regional or statewide significance.

In the current appeals of the project approved by the City of Laguna Beach City Council, the appellants contend that the City's approval of the project does not conform to various provisions of the certified LCP and requirements set forth in the Coastal Act. Not all of the contentions raised can be considered valid appeal arguments, as the grounds for an appeal are limited to an

allegation that the development does not conform to the certified LCP or the public access policies of the Coastal Act.

For clarification, the appellants' contentions have been grouped into the following categories: Valid and Invalid. Within the Valid Contentions Section, the appeals are determined to either raise "Substantial Issue" or "No Substantial Issue." Of the valid appeal contentions raised, Commission staff has recommended that the Commission find that a substantial issue exists with respect to the grounds on which the appeals have been filed. Invalid contentions are addressed on page 16.

## 1. Valid Contentions

Those contentions determined to have valid grounds for appeal are included in the subsequent section. Section (a) describes those contentions that are found to raise a substantial issue and Section (b) addresses those which are not found to raise substantial issue with the City's certified LCP and public access provisions of the Coastal Act.

### a. Substantial Issue

The following contentions made by the appellants raise a substantial issue of consistency with the regulations and standards set forth in the certified LCP:

Applicable policies of the LCP that are identified by the appellants, are as follows:

*3A Ensure adequate consideration of environmental hazards in the development review process.*

*4A Development Planning and Design Best Management Practices (BMPs) Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs), where feasible, to reduce to the maximum extent practicable, pollutants and runoff from the proposed development. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.*

*4B Minimize Impervious Surfaces  
Ensure that development minimizes the creation of impervious surfaces, especially contiguously connected impervious areas, or minimizes the area of existing impervious surfaces where feasible.*

*4C Minimize Volume and Velocity of Runoff  
Ensure that development is designed and managed to minimize the volume and velocity of runoff (including both stormwater and dry weather runoff) to the maximum extent practicable, to avoid excessive erosion and sedimentation.*

*4D Minimize Introduction of Pollutants  
Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable.*

*4E Preserve Functions of Natural Drainage Systems  
Ensure that development is sited and designed to limit disturbances and to preserve the infiltration, purification, retention and conveyance functions of natural drainage systems that exist on the site to the maximum extent practicable.*

**4F Water Conservation and Native Plants**

*Ensure that development encourage[sic] water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides, herbicides and excessive irrigation. Prohibit the use of invasive plants, and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs).*

**6D** *Require as a condition of development approval, the dedication and improvement of public trail easements.*

**6F** *Ensure that new development does not encroach on access to trails nor preclude future provision of access.*

**8G** *When subdivision or fuel modification proposals are situated in areas designated as "High Value" habitats on the Biological Values Maps and where these are confirmed by subsequent on-site assessment, require that these habitats be preserved to the greatest extent possible.*

**8H** *When subdivision or fuel modification proposals are situated in areas designated as "Very High Value" habitats on the Biological Values Maps and where these are confirmed by subsequent on-site assessment, require that these habitats be preserved and, when appropriate, that mitigation measures be enacted for immediately adjacent areas.*

**8I** *Environmentally Sensitive Areas (ESA's) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as Environmentally Sensitive Areas: those areas shown on the Biological Resource Values Maps in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Maps and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.*

**8J** *Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:*

*1. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.*

*2. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*

*3. Where development is proposed on an existing subdivided lot which is otherwise developable (i.e., able to be served by utilities and access, and on slopes able to accommodate development consistent with City provisions on slope/density, grading,*

hazards, subdivisions and road access), and is consistent with all other policies of this Land Use Plan except for its location entirely within an identified ESA as confirmed by a site-specific assessment, the following shall apply:

a) Resource Management uses including estuaries, nature centers and other similar scientific or recreational uses are permitted subject to a Conditional Use Permit to assure that uses are sited and designed to prevent degradation of the resource value; or alternatively;

b) Transfer of a density bonus to another property in the vicinity able to accommodate increased density consistent with the policies of the Land Use Plan concurrent with the recordation of an open space easement or other similar instrument over the habitat area of the parcel;

c) Existing dwellings shall be designated as nonconforming uses but shall be allowed to be rebuilt or repaired if damaged or destroyed by natural disaster provided however, that the floor area, height and bulk of the structure not exceed that of the destroyed structure by more than 10 percent; and

d) No new parcels shall be created which are entirely within a Coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan.

9-C, reads in part "...a) Streams on the Major Watershed and Drainage Courses Map which are also "blue-line" streams as identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments...

10C Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.

The appellants contend that the City was responsible for considering all coastal resource issues addressed in the City's certified LCP that would apply to a land division including but not limited to protection and enhancement of public access, biological resources, water quality, scenic resources, and minimization and avoidance of hazards (geologic, fire, flood, etc.), but failed to do so. Except for making generalized findings about the project being consistent with the public access or recreation policies of Chapter 3 of the Coastal Act and consistent with criteria contained in the Certified Local Coastal Program, there is no evidence yet provided to the Commission that the City analyzed the consistency of the proposed development with all applicable LCP policies. The absence of such analysis is a substantial issue as there may be elements of the proposed development that do not comply with the certified LCP and the project must be modified and/or conditioned to address such issues, or denied if the issues cannot be addressed through modification or conditions.

The appellants contend that the proposed subdivision includes land that is identified on the City's biological resource values maps as high value and very high value habitat and that these areas, and perhaps others, are likely also Environmentally Sensitive Areas (ESAs). Such areas are subject to special treatment and protection under the policies of the certified LCP. LCP policies, such as Open Space Conservation Element Policy 8-J, require that detailed biological assessments be prepared for all development within and adjacent to ESAs and that

identified ESAs be protected. The City's staff report and resolution of approval of the permit makes no mention of any biological assessment or any measures to protect ESAs that are incorporated into the proposed development or imposed through special conditions on the coastal development permit. The absence of biological information and measures imposed to protect sensitive resources raises a substantial issue as to the conformity of the City's action with the requirements of the LCP

The appellants contend that policies, such as Open Space Conservation Element Policies 8-G and 8-H, that pertain to fuel modification, new subdivisions and requirements to protect sensitive habitat areas, were not addressed by the City. Fuel modification can have significant adverse impacts on sensitive habitat. Any new land division must consider siting development such that fuel modification within sensitive habitat is avoided and that adequate setbacks are incorporated into the developed area to provide all required defensible space. There is no evidence the City considered fuel modification and the impacts it would have on sensitive habitat in this action. This raises a substantial issue as to the conformity of the development with the requirements of the LCP.

Furthermore, the appellants contend that the City's action has the effect of separating the developed part of the subject site from the remaining undeveloped portions of the site, which is largely covered in sensitive habitat. The appellants contend that those remaining undeveloped portions of the site may not be able to be developed without impacting ESAs. The appellants contend that the creation of such lots would be inconsistent with several policies of the certified Land Use Plan, including Conservation Open Space Element Policy 8J, which states that "[n]o new parcels shall be created which are entirely within a Coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan." Policy 8J also prohibits new development that would impact an ESA, unless the development is resource dependent. Therefore, the City's failure to address these issues raises a substantial issue as to the conformity of the development with the certified LCP.

The appellants contend that the City did not address the water quality protection requirements of the LCP, particularly as they apply to new subdivisions. Topic 4 of the Open Space Conservation Element of the City's General Plan/LCP includes numerous policies calling for the implementation of water quality best management practices in order to protect and restore water quality in the City's streams and oceans. Title 16 (Water Quality) of the City's municipal code, which is a component of the City's LCP/Implementation Plan, makes clear that the provisions of that title apply to land divisions involving four or more housing units. Since the subject land division involves the creation of 157 residential lots, those provisions clearly apply. In fact, the proposed development is a 'priority development project' subject to water quality regulations because it involves the creation of 4 or more lots and the fact it is located within a 'water quality environmentally sensitive area', according to the definition in that title. Nevertheless, no evidence has been provided to the Commission that the City considered the requirements of the LCP and Title 16. This raises a substantial issue as to the conformity of the proposed development with the certified LCP.

The appellants contend that the site is subject to seismically induced landslides and liquefaction and that the City did not consider siting development in a manner that avoids hazards. Policy 3-A of the City's Land Use Plan states that the City must "ensure adequate consideration of environmental hazards in the development review process". Conservation Open Space Element Policy 10C states the City must "[r]equire projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space." This is

in addition to the fire hazards mentioned above. The city's findings did not include any analysis of these hazard policies as they relate to the subject property. Presently, the subject site is comprised of just a few lots. If hazards arise, the mobile nature of the existing development makes it possible to relocate structures to different areas of the property to avoid or minimize the exposure of development to hazards. However, with the proposed land division, the potential locations of structures will be fixed relative to the new lot lines, potentially foreclosing options to relocate and avoid hazards, as opposed to defending the development against hazards in the present location. Again, a substantial issue exists as to the conformity of the development approved by the City with the certified LCP.

The appellants contend that even though there are known trails on the subject site, the City did not address the requirements of policies 6D and 6F which pertain to the preservation of public access to trails. The City's resolution of approval states that no impacts to public access and recreation are possible because the site isn't seaward of the first public road. The LCP, however, is clear that these policies apply to the protection of inland trails (see Topic 6, Master Plan of Trails, Open Space Conservation Element, City of Laguna Beach Local Coastal Program). So, the City did not address these issues. Adverse impacts to public access and recreation could occur as a result. Thus, this raises issues as to the conformity of the proposed development with the certified LCP and the public access and recreation policies of the Chapter 3 of the Coastal Act.

Another contention raised in one of the appeals is that the City did not address illegal land use/zoning changes that were accompanied by unpermitted expansion of residential use and supporting uses into areas that were designated for open space uses. This issue is described more fully in a letter dated January 4, 2010, from Sean Matsler of Manatt, Phelps and Phillips to the City Council that was cited in the Sierra Club appeal. If, in fact, the development approved by the City is not consistent with certified land uses, then approval of such development would raise a substantial issue. This issue will need to be addressed by further research at the de novo stage of this process. However, the Commission doesn't currently have sufficient information to make a determination as to whether this raises a substantial issue.

One appellant contends that the City's action fails to comply with Land Use Plan Policy 8-A, which prohibits residential condominium conversions unless an equivalent number of rental units have been developed. This contention is accurate. The City's LCP does require that the City prohibit condominium conversions unless an equivalent number of rental units is provided. In this case, the division of land would allow the present renters in the mobile home park to purchase their rental space, thereby removing that space from the City's pool of residential rental units. The City's action did not require replacement of each rental space that is purchased by its occupant with an equivalent rental unit which appears to be contrary to the requirements of the LCP. However, the Commission doesn't currently have sufficient information to make a determination as to whether this raises a substantial issue.

Two appellants contend that the City's action does not comply with Title 21 (Plats and Subdivision), which is part of the LCP. The appellants identify one example, that the subdivision doesn't comply with Section 21.12.220 regarding the maximum length of a dead end street, but contend the City's action fails to comply with other provisions of Title 21 too. The example cited is cause to find that the appellants' contention raises a substantial issue. The length of dead end streets and the provision of adequate vehicle turn around at the street end is in part based on requirements for emergency vehicle access and fire protection needs. If the streets are not designed in a manner that provides for adequate emergency vehicle access, particularly for equipment to fight fires, then the fuel modification requirements for the community might need to be larger than would otherwise be required if the streets were

adequately designed. This would in turn result in more extensive impacts on sensitive habitat due to fuel modification requirements.

Two appellants point out the specific creation of two mobile home spaces in the year 2000 without obtaining a CDP and that the subdivision approved by the City creates lots for these illegally created mobile home sites. This raises a substantial issue because the creation of the mobile home sites may have had adverse impacts on coastal resources, such as sensitive vegetation and water quality.

One appellant contends that the City's action fails to address legal access to an adjacent parcel occupied by Ruby's Diner, which will create a traffic/public access issue along Coast Highway. According to the appellant, there is presently shared use of a driveway known as the Laguna Terrace North access point, which provides access to the mobile home park as well as access to the Ruby's Diner parcel. According to the appellant, this is the only access to the Ruby's Diner parcel that has a traffic control signal on Coast Highway and that, without such access, there will be additional traffic congestion on Coast Highway that will be an impediment to coastal access. The appellant contends there is a loss or potential loss of shared use of the driveway as a result of the City's approval. This issue should be addressed at the de novo stage. However, the Commission doesn't currently have sufficient information to make a determination as to whether this raises a substantial issue.

The permit applicant has contended that the City is preempted from reviewing the proposed development's compliance with any requirements other than those specified in Government Code section 66427.5. As explained in the Commission's findings regarding the appealability of this project (5-10-117-EDD), which are incorporated by reference (Exhibit 7), the Government Code does not preempt local governments with certified LCPs from reviewing coastal development applications for subdivisions of mobilehome parks for consistency with LCP requirements. In addition, Government Code section 66427.5 does not apply to state agency review of mobilehome park subdivisions, and therefore does not preclude the Commission's review of this appeal. The applicant also contends that the proposed subdivision does not qualify as development, that it would be exempt of permit requirements if it were development and that it is outside the Commission's appellate jurisdiction. The Commission's findings for 5-10-117-EDD respond to these arguments, and are incorporated by reference. Finally, on August 31, 2010, the court of appeal issued a published opinion holding that mobile home park conversions qualify as development within the meaning of the Coastal Act and that Government Code section 66427.5 does not preclude local governments from imposing conditions mandated by the Coastal Act with respect to applications to convert mobile home parks located within the coastal zone. See *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, Second District Court of Appeal, Docket No. B216515.

Therefore, the Commission finds that a substantial issue exists with regard to the grounds on which the appeals were filed. With regard to the factors that the Commission typically considers in a substantial issue analysis: 1. This is a case where there the City hasn't shown the factual and legal support for its decision that the development is consistent with the Local Coastal Program and the public access policies of the Coastal Act; 2. This is a case where the extent and scope of the development approved by the local government is significant as it involves the creation of well over a hundred new residential lots; 3. The resources that could be impacted in this case are very significant in that there are extensive sensitive habitat areas that could be impacted by the proposed development; 4. This is a case where there would be a significant adverse precedent made in that the local government didn't apply all of the requirements of the LCP given their interpretation of Government Code 66427.5, as noted above; and, 5. This appeal raises issues of regional and statewide significance given the scope of the development involved and the resources at stake. Each of the issues identified above,

where the Commission expressly has found there is a substantial issue, are individually sufficient to warrant a finding that the appeals raise a substantial issue.

**b. No Substantial Issue**

The following contentions are valid, but raise no substantial issue of consistency with the policies and standards set forth in the certified LCP.

None.

**2. Invalid Contentions**

Not all of the contentions raised by the appellants can be considered valid appeal grounds, as the grounds for an appeal are limited to an allegation that the development does not conform to the certified LCP or the public access policies of the Coastal Act. Although these issues may not be grounds for appeal, they do include concerns that should be addressed at the de novo stage of the application.

An appellant contends that the City failed to address illegal grading in the subject area and that their failure to do so raises issues as to the conformity of the City's approval with the certified LCP. The factual accuracy of this claim is currently under investigation by the Commission's enforcement unit. If grading occurred at any time that the Coastal Act was effective, such grading would require a coastal development permit. However, the City's action did not authorize any grading. Thus, this contention isn't one that could be used as a basis for substantial issue. However, it is an issue that will need to be looked at during de novo review to determine whether existing developed areas are permitted and should be established as building sites over the long term.

**D. OTHER ISSUES**

**1. Addressing Unpermitted Development**

The appellants have raised concerns about unpermitted development including lot line adjustments and grading with impacts to sensitive vegetation and watercourses. In conjunction with its de novo review of the development authorized by the City, the Commission will need to consider the extent to which any unpermitted development has a bearing on its ability to move forward on review of the land division the City authorized. For instance, as the Commission has previously notified the City and the landowners, the unpermitted lot line adjustments will need to be addressed prior to or concurrent with the land division the landowner now wishes to have endorsed. Furthermore, the applicant seeks to create lots for mobile home sites that were constructed and occupied with structures without benefit of any coastal development permit (e.g. proposed Lots 155 and 156). Commission staff does not presently believe these matters are separable from the overall request for subdivision.

**2. Appealability of the City's Action**

Following the Commission's June 2010 hearing on Dispute Resolution No. 5-10-117-EDD at which the Commission determined the City's action would be appealable to the Commission, the City continued to debate whether its action would be appealable to the Coastal Commission. During this period, it came to the attention of City staff and members of the public that the U.S. Geological Survey 7.5 minute quadrangle map for Laguna Beach depicts another approximately 1,300 foot long segment of blue-line stream closer to the existing mobilehome park (herein also 'Stream

Segment B') than the stream relied upon by the Commission in its June 2010 appealability determination (herein also 'Stream Segment A')<sup>3</sup>. (See Exhibits 8 & 9.) The most southerly/downstream portion of Stream Segment B exists in the vicinity of the northerly terminus of "K" Street and of mobile home unit space number K52 (proposed to be made into Lot No. 154) and an existing storage yard for the mobile home park. Stream Segment B continues inland until it intersects Stream Segment A and is essentially a downstream continuation of that stream. Both stream segments (i.e. Stream Segments A and B) are within the parcel of land that is involved in the subdivision<sup>4</sup>. According to Section 13577 of the Commission's regulations, blue-line streams are to be used to determine appeals areas<sup>5</sup>. Thus, Stream Segment B forms the basis for a larger appeals area than the Commission relied upon in its June 2010 appealability determination.

The status of the southerly 150 to 200 feet of Stream Segment B became the subject of some debate at the City level with regard to the appealability of this project<sup>6</sup>. The U.S. Geological Survey (USGS) map of the subject area, prepared in 1965 (photorevised in 1981) depicts Stream Segment B extending further south than it does on the ground today, according to LSA Associates<sup>7</sup>. Since preparation of the USGS map, it appears that about 150 to 200 feet of the southerly most part of Stream Segment B had been put into an underground pipe, possibly in conjunction with the construction of the existing storage area located at the northerly terminus of "K" Street. Aerial photographs of the mobilehome park and surrounding area provided to the Commission show that in 1986 there was no graded storage yard at the northerly end of "K" Street. This corroborates the USGS map that was photorevised in 1981, which depicts the Stream Segment B crossing through the area that is now a graded storage yard. The photographs show that sometime between 1986 and 1994, an area about 150 feet long by 120 feet wide at the

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<sup>3</sup> The segment of stream relied upon by the Commission in its appeals determination 5-10-117-EDD (Stream Segment A) appears on both the Commission's Post-certification map for the City of Laguna Beach, and as a blue-line stream on USGS maps. The segment of 'blue-line' stream that came to the attention of the City (Stream Segment B) is not depicted on the Commission's map titled *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993, but is depicted on the USGS map. Pursuant to Section 13576 of the Commission's regulations, the post-cert map includes a statement that the map "may not include all lands where permit and appeal jurisdiction is retained by the Commission."

<sup>4</sup> The location of the development as characterized by the City and applicant is markedly different from the Commission's characterization of the location of the proposed development. As discussed further elsewhere in these findings, the City and applicant have argued that the boundary of the 'development' is the outermost line of the new lots that are being created by the subdivision (i.e. Lots 1 through 157 and Lot A of the tentative map), and does not include the 'remainder lot' that is created as a result of the subdivision. The Commission contends the 'development' includes the 'remainder lot' as well. Since the stream is located inside the remainder lot (i.e. a lot that is being reconfigured in connection with the proposed subdivision) it is clearly within 100 feet of the development.

<sup>5</sup> California Code of Regulations Title 14 § 13577 states in part, "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 mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program..."

<sup>6</sup> See City Agenda Bill report prepared for the Laguna Beach City Council hearing on July 20, 2010; letter dated July 7, 2010, prepared by LSA Associates to Mr. James Lawson titled Technical Evaluation of CCR Title 14, Section 13577(a) Stream Issue, Laguna Terrace Park, Tentative Tract No. 17301, Laguna Beach, California; and letter prepared by Mr. Steven Kaufman to Mr. Ken Frank dated July 19, 2010; which are substantive file documents.

<sup>7</sup> LSA states that part of the blue-line stream that appears on the USGS map is no longer present and attributes loss of that portion of the stream to past expansion of the mobile home park in 1967. However, photographs from 1986 provided by one of the appellants clearly shows that such expansion didn't occur until sometime between 1986 and 1994. Such expansion would have required a coastal development permit and no such permit has been granted for that expansion.

northerly terminus of “K” Street was cleared/graded<sup>8</sup>. Commission staff has not identified any coastal development permits issued during that time period that would have authorized such clearing/grading.

However, between 1996 and 1998, the Commission approved Coastal Development Permit No. 5-95-286, 5-95-286-A1, and 5-96-048, which approved various improvements to the mobilehome park’s flood and debris control facilities and to their storm drain system. These included the replacement of an unpermitted 30” diameter corrugated metal pipe running underneath the storage yard which had been diverting the lower portion of Stream Segment B, with a 42” diameter reinforced concrete pipe. That approval was clearly characterized as replacement of an existing pipe and did not authorize or attempt to mitigate for the impact to the stream that originally occurred between 1986 and 1994 without a coastal development permit. Despite those impacts, there remains a significant length of above-ground blue-line stream upstream/inland of the Commission-authorized replacement pipe (i.e. at least 1,100 feet of Stream Segment B remains above-ground today).

As was discussed in the Commission’s findings on Dispute Resolution 5-10-117-EDD, Stream Segment A is located inside of Parcels 2 and 3 of the unpermitted Lot Line Adjustment No. 95-04, and may touch Parcel 1 of unpermitted Lot Line Adjustment LL 95-01. The above-ground portion of Stream Segment B extends onto Parcel 1 of LL 95-01. The mobile home park also sits within Parcel 1 of LL 95-01. Thus, had the lot lines in those lot line adjustments been permitted by a coastal development permit (which they weren’t), Stream Segment A would have been located on different parcels of land than the parcels occupied by the mobilehome park (i.e. Stream Segment A would have been outside of Parcel 1 of Lot Line Adjustment LL 95-01). If that were the case, Stream Segment A could serve as a basis for appealability only if it extended to within 100 feet of Parcel 1. Since parcels 1, 2 and 3 of Lot Line Adjustment LL 95-01 aren’t legally separated, however, Stream Segment A does form the basis for appealability. In any event, the current above-ground portion of blue-line Stream Segment B extends onto Parcel 1 of LL 95-01, that the mobile home park presently occupies (i.e. it is inside of Assessors Parcel No.s 056-240-64 & 656-191-38). So, even if Stream Segment A were located outside of Parcel 1 and couldn’t have been used as a basis for appealability, Stream Segment B is located inside of Parcel 1 and clearly can be used as a basis for appealability. Thus, the subject land division is clearly appealable to the Commission.

In sum, the Commission has appellate jurisdiction regardless of the legal status of the 1995 lot line adjustments. If, as the Commission has found, the 1995 lot lines should be disregarded for the purposes of Coastal Act review, both Stream Segment A and the above-ground Stream Segment B are located on a parcel that is being reconfigured as part of the proposed subdivision. If the 1995 lot lines are assumed to be effective for purposes of Coastal Act review, then the above-ground Stream Segment B extends onto a parcel that is being reconfigured as part of the proposed subdivision. Past unpermitted development that resulted in the burial of a portion of Stream Segment B does not eliminate the Commission’s appellate jurisdiction under either scenario.

### **3. Creation of the ‘Remainder Parcel’ IS Part of the Proposed Development**

Citing a provision of the California Subdivision Map Act, the City staff report for CDP 10-26 suggests that the current subdivision proposal removes any portion of the proposal from the Coastal Commission’s original permit jurisdiction. The report says: “[p]ursuant to the California Subdivision Map Act (Government Code Section 66424.6), the revised Vesting Tentative Tract

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<sup>8</sup> Information contained on plans in a later coastal development permit file, 5-95-286, further corroborates that the lower portion of Stream Segment B was diverted into a 30” diameter corrugated metal pipe that existed at the northerly end of the graded storage yard.

Map 10-02 now proposes the omission of property that will not be part of the subdivision approval. The Subdivision Map Act allows the exemption of the omitted area (remainder parcel) from the fulfillment of construction requirements and the payment of fees. The Subdivision Map Act essentially excludes a “remainder parcel” from local subdivision review and consideration.” Thus, in City staff’s view, were this proposal to be approved by the City and that action was not appealed to the Coastal Commission, the landowner would not need any further approvals from the Coastal Commission because only the “remainder parcel” is within the Commission’s jurisdiction.

The Commission disagrees with that conclusion for several reasons. First, for purposes of the Coastal Act, the creation of the “remainder parcel” is not exempt from Coastal Act requirements and does require a coastal development permit from the Coastal Commission.<sup>9</sup> The proposed subdivision would change the size, configuration, intensity of use, and development potential of the remainder parcel. It would qualify both as a division of land and as a change in the density or intensity of use of land and therefore qualifies as development under Public Resources Code Section 30106. Second, the Commission believes the mapping prepared by the City of the boundary between the City’s area of coastal permit jurisdiction and the Coastal Commission’s jurisdiction is erroneous and that part of the land division that isn’t in the “remainder parcel” is within the Commission’s area of retained jurisdiction. Finally, while still yet to be resolved, the Commission has reason to believe that the Hobo Canyon area of deferred certification (ADC) includes the entire mobilehome park and not just the undeveloped areas (more fully explained below). In fact, the Commission notes that Laguna Terrace Park previously applied directly to the Commission for prior coastal development permits (e.g. 5-95-286, 5-95-286-G, 5-96-048) for development within the mobilehome park, which again supports the position that the mobilehome park is within the ADC and that coastal permit authority for any development within the park rests with the Commission itself, and not the City. Thus, the landowner will need to obtain approval from the Coastal Commission for this subdivision proposal.

#### **4. Area of Deferred Certification**

In reviewing its files for the Commission’s dispute resolution hearing on the appealability of this matter (see 5-10-014-EDD & 5-10-117-ED), 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.”

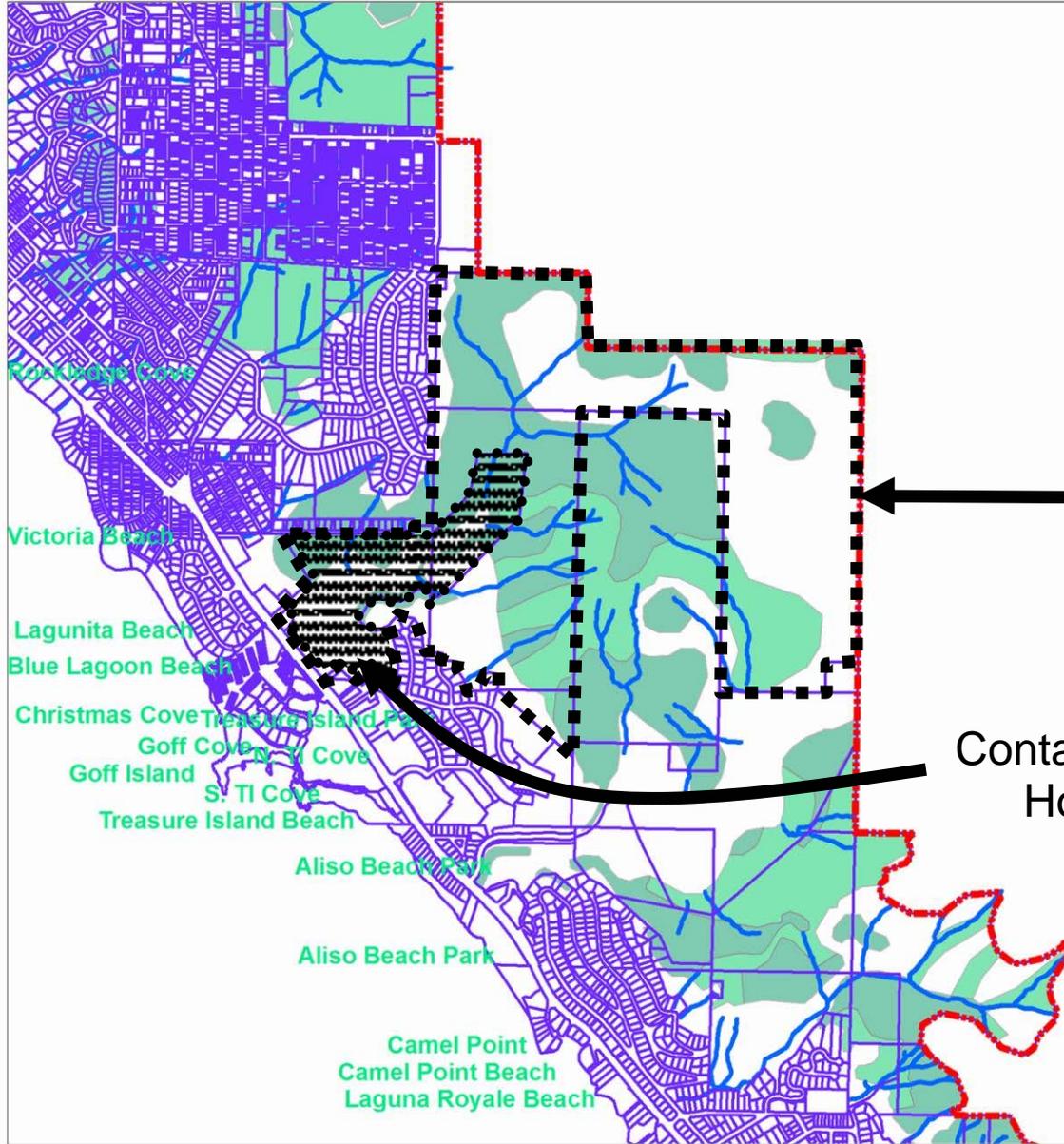
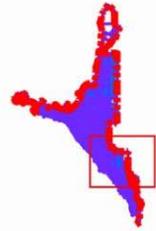
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<sup>9</sup> The permit applicant disagrees with the Commission’s use of the term “remainder parcel.” The City itself, however, used this term (e.g. see page 3 of City Agenda Bill report prepared for the Laguna Beach City Council hearing on July 20, 2010). In any event, regardless of the terminology used, the proposed development would change the size, configuration, intensity of use, and development potential of that lot and is therefore part of the development approved by the City for the purposes of Coastal Act review.

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 raises a substantial issue as to the conformity of the development with the certified LCP, 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.

# City of Laguna Beach



Subject Site  
Approximately  
270 Acre Area

Area  
Containing Mobile  
Home Park

## Legend

- City Limits
- Parcels
- Significant Drainage Course C
- Very High Value Habitat
- High Value Habitat



1: 19,634

0.6 0 0.31 0.6 Miles

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

© City of Laguna Beach

## Notes

Vicinity Map  
Exhibit #1

A-5-LGB-10-174

Please mark as  
appealable. Start  
appeal period (as  
of 7/28). Thanks,  
Susan



**RECEIVED**  
South Coast Region

JUL 27 2010

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

Date: July 26, 2010

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

Location: 30802 Coast Highway

Coastal Development Project No: CDP 10-26

Project Description: Subdivide an approximate 20-acre parcel into 157 mobile home spaces and a lettered lot, for the sole purpose of converting an existing rental space mobile home park into a resident-owned mobile home park.

Applicant: Laguna Terrace Park, c/o James Lawson

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

On July 20, 2010 a Coastal Development Permit application for the project was

- approved
- approved with conditions
- denied

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

Findings supporting the local government action and any conditions imposed are found in the attached resolution.

The City considers the project as not appealable to the California Coastal Commission; however, the Coastal Commission has made a determination that the project is appealable pursuant to Coastal Act Section 30603. Based on the Coastal Commission's determination, 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. 10.091

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RESOLUTION NO. 10.091

A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF LAGUNA BEACH  
APPROVING VESTING TENTATIVE TRACT MAP 10-02  
(VESTING TENTATIVE TRACT MAP 17301)  
AND COASTAL DEVELOPMENT PERMIT 10-26  
(TO REPLACE VESTING TENTATIVE TRACT MAP 09-03 AND  
COASTAL DEVELOPMENT PERMIT 09-36)  
AT 30802 COAST HIGHWAY

WHEREAS, an application has been filed by the owner of property located at 30802 Coast Highway, requesting approval of Vesting Tentative Tract Map 10-02 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 10-26 to subdivide an approximate 20-acre parcel into 157 mobile home spaces and a lettered lot, for the sole 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, and would result in a decrease in allowed Park density and intensity; and

WHEREAS, on June 23, 2010, 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 10-02 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 10-26; and

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WHEREAS, on July 20, 2010, the City Council conducted a legally noticed public hearing and, after reviewing all documents and testimony, desires to approve the Vesting Tentative Tract Map 10-02 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 10-26; and

WHEREAS, the proposed subdivision is consistent with the criteria of the Certified Local Coastal Program (Laguna Beach Municipal Code Section 25.07.012 (F)(1-9)) and the required Coastal Development Permit findings can be made, as indicated below:

1. The proposed subdivision and conversion of Laguna Terrace Mobile Home Park to a resident-owned mobile home park is preempted from Municipal Code and General Plan compliance by Government Code Section 66427.5 of the California Subdivision Map Act. In addition, the proposed subdivision does not propose to change and/or increase the density or intensity of the use of land. Further, the previously approved Lot Line Adjustment 95-01 did not change and/or increase the density or intensity of the use of land. Lastly, the subdivision does not authorize development within 100 feet of a stream;

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

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

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

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1. The proposed subdivision map review is preempted by the provisions of Government Code Section 66427.5 and consistency of the map with the Laguna Beach General Plan is exempt.

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 change and/or increase the density or intensity of the use of land, change the site and/or surroundings or change the existing land use. In addition, the previously approved Lot Line Adjustment 95-01 did not change and/or increase the density or intensity of the use of land;

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

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with Government Code Section 66427.5 and will prevent the economic displacement of nonpurchasing residents.

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 I (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 10-02 (Vesting Tentative Tract Map 17301) and Coastal Development Permit 10-26 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.

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3 (c) As to nonpurchasing residents who are lower income households, as defined in  
4 Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable  
5 fees or charges for use of any preconversion amenities, may increase from the preconversion  
6 rent by an amount equal to the average monthly increase in rent in the four years immediately  
7 preceding the conversion, except that in no event shall the monthly rent be increased by an  
8 amount greater than the average monthly percentage increase in the Consumer Price Index  
9 for the most recently reported period.

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

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

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

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25 5. Within 24 months of the approval of the Vesting Tentative Tract Map, or as otherwise  
26 provided by the law, a Final Map based upon a field survey shall be submitted to the City,  
27 and deemed complete for review and approval. An incomplete or inaccurate Final Map shall  
28 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

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the Horizontal Control System established by the County Surveyor as described in Sections 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 10-02 shall expire. A one (1) year extension of the conditions

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

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) and subdivision  
8 approval (pursuant to Government Code Section 66427.5). Any future subdivision lot  
9 changes and/or parcel reconfigurations are subject to the applicable Laguna Beach Municipal  
10 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 non-purchasing residents.

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17 11. If Vesting Tentative Tract Map is determined to be appealable development subject  
18 to the California Coastal Commission and is subsequently appealed within the prescribed  
19 Coastal Act appeal time limits, the Final Map for Vesting Tentative Tract Map 09-03 (VTTM  
20 17301) shall not be reviewed or approved by the City Council until a Coastal Development  
21 Permit has been reviewed, approved and/or issued by the California Coastal Commission. In  
22 the event that the California Coastal Commission requires modifications to the subdivision  
23 that are not in substantial conformance with the approved Tentative Map, then the applicant  
24 may be required to obtain approval of an amended Tentative Map.  
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ADOPTED this 20<sup>th</sup> day of July, 2010.

/s/Elizabeth Pearson

Elizabeth Pearson, Mayor

ATTEST:

Martha Anderson

City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 10.091 was duly adopted at a Regular Meeting of the City Council of said City held on July 20, 2010, by the following vote:

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

NOES: COUNCILMEMBER(S): Rollinger

ABSENT: COUNCILMEMBER(S): None

Martha Anderson

City Clerk of the City of Laguna Beach, CA

The foregoing instrument is a correct copy  
of the original on file in this office.

Attest July 23, 2010

City Clerk of the City of Laguna Beach,  
County of Orange, State of California.

By: Martha Anderson

City Clerk

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 590-5084

AUG 4 - 2010



**CALIFORNIA  
COASTAL COMMISSION**

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: Penny Elia - Sierra Club Save Hobo Aliso Task Force

Mailing Address: 30632 Marilyn Drive

City: Laguna Beach

Zip Code: 92651

Phone: 949-499-4499

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

Laguna Beach

2. Brief description of development being appealed:

Taken from Laguna Beach City Council Recap online:

24. VESTING OF TENTATIVE TRACT MAP 10-02 AND COASTAL DEVELOPMENT PERMIT 10-26  
Proposal to subdivide and convert an existing 157 rental-space mobile home park to a resident-owned mobile home park at 30802 Coast Highway.

Boyd-Egly-4/1 to adopt Resolution No. 10-091 that conditionally approves Vesting Tentative Tract Map 10-02 and Coastal Development Permit 10-26 at 30802 Coast Highway as modified, and to determine that the project is not appealable to the Coastal Commission. (No: Rollinger)

Vesting Tentative Tract No. 17301

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

30802 Coast Highway  
Laguna Beach, CA 92651

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

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

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

**TO BE COMPLETED BY COMMISSION:**

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 590-5084



APPEAL NO:	<i>A-5-LGB-10-174</i>
DATE FILED:	August 3, 2010
DISTRICT:	South Coast District Office - Long Beach

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: July 20, 2010

7. Local government's file number (if any): CDP 10-26 and VTTM 10-02/17301

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Laguna Terrace Park LLC  
30802 South Coast Highway  
Laguna Beach, CA 92651  
James Lawson - Manager  
Stephen Esslinger - Owner

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Penny Elia - Sierra Club  
30632 Marilyn Drive  
Laguna Beach, CA 92651

(2) Bill Rihn  
31681 Third Ave.  
Laguna Beach, CA 92651

(3)

(4)

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

### SECTION IV. Reasons Supporting This Appeal

#### PLEASE NOTE:

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

This appeal stems from a July 20, 2010 action by the City of Laguna Beach approving the vesting of a Tentative Tract Map and the issuance of a Coastal Development Permit. This timely appeal is brought pursuant to Public Resources Code §30603 of the Coastal Act and the City of Laguna Beach certified Local Coastal Program "LCP" (certified January 13, 1993 and amended July 20, 2004).

The City Council decision under appeal brings several areas of concern to the Commission: 1) multiple inconsistencies with the Coastal Act and the City's Local Coastal Program (LCP) 2) questionable legality of General Plan Amendment 3) questionable legality of zoning change 4) unpermitted development 5) illegal grading resulting in destruction of ESHA and mapped watercourses, including unpermitted alteration of a U.S. Department of Water Resources-designated "Blueline Stream" streambed 6) unresolved Notice of Violation from the Coastal Commission's Enforcement Division (V-5-07-006) 7) public safety hazards including flood and fire 8) City of Laguna Beach's ongoing denial that project is located in an area of deferred certification and is under the jurisdiction of the Coastal Commission.

#### Inconsistencies with Coastal Act and City's LCP

The proposed division of land is development subject to regulation under the Coastal Act and certified LCP. 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(s) for certain levels of development. The effects of such development while processing the land division that would make such development possible must be considered. The whole range of coastal resource issues addressed in the City's certified LCP should have been considered in this request for land division, including but not limited to protection and enhancement of public access, biological resources, water quality, scenic resources, landform alteration, and minimization and avoidance of hazards, i.e. geologic, fire, flood, etc.

The City's biological resource values maps indicate this area as high value and very high value habitat (this area also includes multiple endangered species). These areas are also very likely to be Environmentally Sensitive Areas (ESAs). During multiple Coastal Commission hearings over the past seven years, Karlin Marsh has been quoted extensively. Please note the following excerpt as it relates to Hobo Canyon and the surrounding environs:

South Laguna Biological Resources Inventory  
Prepared for the City of Laguna Beach  
By Karlin G. Marsh, Biological Consultant

January 20, 1992

Page 29 – 3.0 Description of South Laguna's Open Space Areas

"In terms of habitat complexity, extent and ecosystem intactness, Hobo Canyon is the most significant of South Laguna's open spaces and is indeed among the most biologically valuable open spaces in the entire city.

As observed in the field by Contributor Roberts, the land block almost seems designed (by nature) as a rare plant preserve. Five rare and threatened planet species have been found, as well as six which are of regional restricted distribution or at range edge. Among the former is the State of California threatened big-leaved crownbeard, in major stands within the heart of its small US population."

Dr. John Dixon, the Long Beach and San Francisco Commission staff have a complete report by Karlin Marsh in each of their respective offices.

LCP policies such as Open Space Conservation Element Policy 8-J requires that detailed biological assessments be prepared for all development within and adjacent to ESAs and that identified ESAs be protected. The City's staff report makes no mention of any biological assessment nor any measures to protect ESAs that are incorporated into the proposed development or imposed through special conditions on the coastal development permit.

Another concern is fuel modification as it relates to new subdivisions and requirements to protect sensitive habitat areas. A fuel modification plan is required by the City, and as staff and the Commission know after years of testimony and submitted documentation, there have been far too many fuel modification problems associated with this area already. Note Open Space Conservation Element Policies 8-G and 8-H that pertain to fuel modification. This issue is addressed again later in this appeal.

Implementation of water quality requirements of the LCP have been completely ignored in this area that is mapped with multiple watercourses and prone to flooding and mudslides. Hobo Canyon itself is a streambed and has had serious flooding problems in the past that required evacuation of many of the mobilehome units. The San Diego Regional Water Quality Control Board just adopted a newly strengthened MS4 Permit (NPDES) that must also be considered as it relates to the receiving waters of the Pacific Ocean. Topic 4 of the Open Space Conservation Element of the City's General Plan/LCP includes numerous policies requiring implementation of water quality BMPs in order to protect and restore water quality. This proposed development is a "priority development project" subject to water quality regulations because it involves the creation of four or more lots and is located within a "water quality environmentally sensitive area." The proposed development does not comply with the requirements of Title 16 and has not been analyzed for compliance. Furthermore, current residents of the mobilehome park have been advised that a sewer line repair project will begin in the next few months. Based on a recent review of the City's file on this property there are no permits for this project and no application can be located.

## Questionable Legality of General Plan Amendment, Zoning Changes AND Illegal Grading and Unpermitted Development

Coastal Commission staff is in receipt of the letter from Manatt, Phelps & Phillips, LLP dated January 4, 2010 that was sent to the Laguna Beach City Council and the City's attorney prior to the first hearing on January 5, 2010 (previously included in CCC staff report). This letter has never been addressed during the entire application process, nor during any of the public hearings (Planning Commission or City Council). The letter addresses in great detail illegal grading and zoning changes that were implemented to add to the footprint of the mobilehome park and create more lots. It also addresses the complete lack of CEQA compliance. This letter further substantiates the volumes of documentation the Sierra Club has previously submitted to Coastal Commission staff during the preparation for the vested rights claim hearing on Hobo Aliso Ridge (October 16, 2008). Please reference archived webcast for details:

<http://www.cal-span.org/cgi-bin/media.pl?folder=CCC>

### 14. VESTED RIGHTS CLAIM.

a. Application No. 5-07-412-VRC (Driftwood Properties LLC, Laguna Beach) Application of Driftwood Properties for graded pads and right to maintain pads, including fuel modification in compliance with requirements of City of Laguna Beach, at vacant land at northern terminus of Driftwood Drive, at Northern Terminus of Driftwood Drive, Laguna Beach, Orange County. (KFS-LB/LW-SF) [DENIED]

In addition to this, Commission staff has been provided with photographic evidence of illegal grading and expansion of the mobilehome park into open space, ESHA (ESAs) and multiple watercourses, including unpermitted alteration of a U.S. Department of Water Resources-designated "Blueline Stream" streambed. These aeriels also illustrate unpermitted development, but additional unpermitted grading and development are open to discovery.

The unpermitted alteration of a U.S. Department of Resources-designated "Blueline Stream" streambed, could have required multiple permits, including, California Department of Fish and Game Streambed Alteration Agreement pursuant to Section 1603 of the California Department of Fish and Game Code associated with the disturbance of wildlife habitats within Hobo Canyon. (A written agreement is required prior to allowing development that may threaten, harm, or destroy existing wildlife habitat areas of jurisdiction.) The streambed alteration could have also required a U.S. Army Corps of Engineers (USACE) Section 404 permit if the project required the dredging or filling of areas classified as "waters of the United States." (The USACE has jurisdiction over developments in or affecting waters of the United States.) A USACE permit is required prior to discharging any dredge or fill material into United States water, pursuant to Section 404 of the Clean Water Act. (Due to the fact that there was no permit issued for the original grading of this mapped Blueline Stream, the exact acreage impacted is unknown at the present. However, based on review of several aeriels, it would appear as though the acreage was extensive, and pursuant to the Federal Clean Water Act (Section 402[g]) and State General construction Activity Storm Water permit, a national Pollution Discharge Elimination System Permit (NPDES) would have been required from the Regional Water Quality Control Board (RWQCB) for the project because construction activities may have resulted in the disturbance of more than five acres.) Pursuant to Section 401(a)(1) of the Clean Water Act, a Section 401 water quality certification or waiver would have been required from the RWQCB for the project before any Federal permit such as a 404 permit would have been issued. Last, but certainly not least, a Coastal Development Permit would have also been required since the site is located in an area of deferred certification under the jurisdiction of the Coastal Commission.

Unpermitted grading and development were conducted simultaneously with projects that received Coastal Development Permits issued by the Commission including 5-98-151, 5-98-151-A1 and 5-95-286. This unpermitted grading and development are visible in multiple aerial exhibits. Coastal Development Permit 5-95-286 permitted the construction of "interim" flood protection facilities, and was issued following an Emergency Coastal Development Permit G5-95-286. Coastal Development Permit 5-95-286 was approved with conditions including, but not limited to conformity with the provisions of Chapter 3 of the California Coastal Act and the guarantee that the project would not have any adverse impacts on the environment. Furthermore, the project was considered an "interim" solution which was only to be in place until a long-term flood control solution was implemented. The staff report states that a future long-term flood control project would require a Coastal Development Permit issued by the Coastal Commission. Yet again, another unresolved issue that needs to be addressed by the Coastal Commission in light of the request for a subdivision and tract map approval.

In 2000, the land owner requested City approval of two new spaces in an area that was previously graded without permits and zoned Open Space/Conservation. Geologic reports cannot be located for any of this unpermitted grading even though it was required by the City of Laguna Beach. Please note attached City of Laguna Beach Community Development staff report, Resolution No. 00-33 approving a Conditional Use Permit, Conditional Use Permit Application and various site plans for sites K-54 and K-56. In a meeting with the Department of Housing and Community Development (HCD) the Sierra Club was advised that HCD does not provide for any type of grading permit or geologic safety protocols, but that these are requirements for lot development. Since this area is an area of deferred certification under the jurisdiction of the Coastal Commission, these two new spaces would have also required a Coastal Development Permit. However, since this area was zoned Open Space/Conservation, it is unclear as to why the City approved development in this area.

#### Unresolved Notice of Violation

On May 4, 2007, Laguna Terrace Park LLC, Stephen Esslinger, owner, was sent a Notice of Violation, V-5-07-006. Property location: APNs 056-240-64, 056-240-65, 656-191-38, 656-191-39, 656-191-40. Unpermitted development: Lot lines adjusted (via LLA 95-01 and 95-04) without benefit of required coastal development permits. This violation has not been resolved in almost three years yet the same landowner is proceeding with a subdivision application and vesting of a tentative tract map that involves parcels listed above.

Also in question is the sale by Laguna Terrace Park LLC of a related parcel to The Athens Group for the development of an off-site parking lot at 30782 Coast Hwy (APN 656-191-38). This parcel was formerly a gas station and never had any remediation action taken following the removal of the gas tanks and the development of a parking lot for off-site Montage Resort employee parking. Extensive grading and bluff stabilization were involved in the development of this parking lot that received a Conditional Use Permit (04-50), Variance 7174, Coastal Development Permit 04-91 and an associated negative declaration from the City of Laguna Beach under Resolution No. 05-032 on March 15, 2005. In conjunction with the Montage employee parking lot construction is the question of the shared access easement. This ingress/egress easement serves as a key shared access point for Laguna Terrace Park, Ruby's Diner and the Montage employee parking lot. It is the subject of ongoing litigation between the applicant and Paul Esslinger, and required CEQA review must consider the elimination of the Laguna Terrace Park/Ruby's Diner/Montage employee parking lot shared access easement. Adjacent to this parcel is unpermitted development that occurred on a large lot associated with the mobile home park that runs parallel to Coast Hwy. Unpermitted development includes grading, bluff stabilization, light installation and an irrigation system.

## Public Safety Hazards Including Flood, Fire and Geologic Instability

The application as submitted and approved by the City of Laguna Beach City Council does not address flooding, landslides, geologic instability or fire prevention. There has been absolutely no geologic studies conducted in this area consisting of extreme vertical cuts into canyon walls. Even a casual assessment of the area indicates ongoing bluff destabilization and sloughing. Runoff in this area is extensive due to the many watercourses that intersect the canyon. Please note previous comments with respect to "interim" flood protection project that has never been resolved with a long-term flood protection project. With respect to fire danger, Steve Kaufmann was retained by the City of Laguna Beach several years ago to assist them with the development of a vigorous and methodical campaign to reinstate fuel modification in "proposed" Fuel Modification Zones 10 and 11 which are areas that surround, but do not include Hobo Canyon and the subject project site. The campaign went as far as the City issuing an emergency nuisance abatement order to circumvent the Coastal Commission to allow for intensive fuel modification that would destroy ESHA and endangered species in the two zones. It is interesting to note that the City's intense concern for fire danger in this immediate area does not extend to Hobo Canyon or the proposed development. Please also note attached letter from Battalion Chief Jeffrey T. LaTendresse addressing concerns about the addition of the two sites (K-54 and K-56) mentioned previously, and the very limited water supply for Fire Department operations. Again, it is interesting to note that the City of Laguna Beach can ignore a canyon with inadequate water supply and equipment access that is subject to high fire danger, yet can go as far as issuing an emergency nuisance abatement order for the surrounding area citing extreme fire danger that requires extensive fuel mod. Where is the City's consistency?

Subject Site is located in an area of deferred certification under the jurisdiction of the Coastal Commission

The City of Laguna Beach has repeatedly rejected the fact that this project is located in an area of deferred certification under the jurisdiction of the Coastal Commission after being provided with the specific language from their own LCP on numerous occasions.

Page 16 of the Revised Findings adopted November 17, 1992 for Laguna Beach Land Use Plan Amendment 1-92 states:

"At the Hobo Canyon area (also known as 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."

In addition to overlooking their LCP, the City also does not recognize the fact that the project is within 100' of a mapped U.S. Blueline Stream. See previous comments about the termination and unpermitted alteration of this U.S. Department of Water Resources-designated "Blueline Stream" streambed.

This concludes our timely submission which constitutes the second appeal of basically the same project that was heard by the Coastal Commission on June 9, 2010 where they found substantial issue and recommended a de novo hearing.

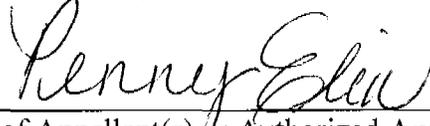
Thank you for considering this information.

Enclosures: Letter from Battalion Chief Jeffrey T. La Tendresse to James M. Lawson - 12-5-01  
City of Laguna Beach Community Development Staff Report  
Resolution No. 00-33  
City of Laguna Beach Conditional Use Permit Application  
Laguna Terrace Park Site Plans for addition of sites K-54 and K-56 (3)  
Hobo Canyon Exhibits

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

**SECTION V. Certification**

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



\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: August 3, 2010

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

**Section VI. Agent Authorization**

I/We hereby  
authorize

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

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

CITY OF LAGUNA BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT

**AGENDA ITEM:** No. 3

**DATE:** 9/13/00

**TO:** PLANNING COMMISSION

**APPROVED**

**CASE:** Conditional Use Permit (CUP)

Approval of these plans does not authorize or approve any omission or deviation from requirements of State Law or Applicable local ordinances. One set of approved plans shall be available on the project site at all times. Plans shall be replaced when they become illegible or deteriorated.

**APPLICANT:** James M. Lawson

**LOCATION:** 30802 Coast Highway

**JUN 13 2005**

**ENVIRONMENTAL STATUS:**

Categorically Exempt, Class 3  
State of California  
Department of Housing and  
Community Development  
Division of Codes and Standards

Date: Peter A. Gimes  
Signature

**PREPARED BY:** Ann Larson, Senior Planner

**REQUESTED ACTION:** The applicant requests approval to establish two new spaces to an existing mobilehome park (Laguna Terrace Park).

**BACKGROUND:** The proposed site is located within the MH, Mobile Home Zoning District. The existing mobilehome park has 156 spaces. The mobilehome park was annexed into the City in 1987.

**STAFF ANALYSIS:** The intent and purpose of the Mobile Home Zone is to encourage mobilehome park use because it provides a viable housing alternative for the community, especially for low-and moderate-income households.

A Conditional Use Permit is required to increase the density and/or increase the total number of mobilehome spaces. The actual improvement to the spaces is subject to the requirements and approval of the Department of Housing and Community Development (HCD).

In the reviewing a proposal to increase the number of spaces to an existing mobilehome park, the City's review is limited to the following two standards:

- (1) **Density** - There shall be a minimum of four thousand square feet of gross land area for each mobilehome unit.

The gross land area of the mobilehome park is 46.45 acres. The density with the addition of the two new spaces would be 12,806 square feet of gross land area for each mobilehome.

**LAGUNA TERRACE PARK**  
30802 SOUTH COAST HWY.  
(ATT:) KEVIN / OFFICE  
LAGUNA BEACH, CA 92651

**Parking** - A minimum of two parking spaces per unit shall be provided, at least one of which is covered. No required parking shall be located in any setback area.

To ensure the City's parking requirements are met, staff is recommending a condition requiring the applicant to submit the City, detailed site plans for each space prior to the issuance of permits from HCD. Staff would also send a copy of the Resolution of approval to HCD.

Given that this request maintains a density well within the allowable amount and as conditioned, the project would comply with all requirements of the Mobile Home Zone, staff recommends approval to allow two new mobilehome spaces as illustrated in the attached location plan.

**RECOMMENDATION:** Staff recommends that the Planning Commission approve Conditional Use Permit 00-33 subject to the conditions in the attached Resolution.

**ATTACHMENTS:** Exhibit A: Application  
Exhibit B: Location Map/Site Plan  
Resolution

LAGUNA TERRACE PARK  
30802 SOUTH COAST HWY.  
(ATT:) KEVIN / OFFICE  
LAGUNA BEACH, CA 92651

PG 1 A

APPROVED

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RECORDING REQUESTED BY  
CITY OF LAGUNA BEACH  
AND WHEN RECORDED MAIL TO

Approval of these plans does not authorize or approve any omission or deviation from requirements of State Law or Applicable local ordinances. One set of approved plans shall be available on the project site at all times. Plans shall be replaced when they become illegible or deteriorated.

JUN 13 2005

Date:

*Peter A. Guiver*  
Signature

CITY CLERK  
CITY OF LAGUNA BEACH  
505 FOREST AVENUE  
LAGUNA BEACH, CA 92651

State of California  
Department of Housing and  
Community Development  
Division of Codes and Standards

THIS SPACE RESERVED FOR RECORDING

RESOLUTION NO. 00-33

A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF LAGUNA BEACH  
APPROVING CONDITIONAL USE PERMIT 00-33

WHEREAS, an application has been filed by the owner of property located at 30802 Coast Highway requesting a Conditional Use Permit in accordance with the provisions of Municipal Code Section 25.05.030 to establish a allow the addition of two spaces to an existing mobilehome park (Laguna Terrace) for a total of 158 spaces;

WHEREAS, the Planning Commission of the City of Laguna Beach, acting in accordance with the provisions of Municipal Code Section 25.05.030, conducted a legally noticed public hearing regarding this proposal on September 13, 2000;

WHEREAS, the Planning Commission carefully considered the oral and documentary evidence and arguments presented at the hearing;

WHEREAS, the proposed project is exempt from the provisions of the California Environmental Quality Act in accordance with Categorical Exemption, Class 3; and

WHEREAS, the Planning Commission has made the following findings:

1. The site for the proposed use is adequate in size to accommodate said use and parking is legal, non-conforming with no intensification of use proposed.

PG 1 B

Conditional Use Permit 00-33  
September 13, 2000  
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2. The site for the proposed use has access to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use in that no additional traffic will be generated and existing conditions are adequate.

3. The proposed use will have no substantial adverse effect upon abutting property in that alterations have been conditioned to mitigate any such effect.

4. The proposed use is consistent with the objectives and policies of the City's General Plan in that the use supplements the present diversity of land use within the MH, Mobile Home Zoning District.

5. The Conditions stated in the decision are deemed necessary to protect the public health, safety and general welfare in that provisions have been included to ensure continued land use compatibility.

6. The proposed use is compatible with surrounding land uses and is consistent with the intent and purpose established for the MH, Mobile Home Zoning District in that the use provides a range of housing for residents of Laguna Beach.

NOW, THEREFORE, BE IT RESOLVED that Conditional Use Permit 00-33 is hereby granted to the following extent:

Approval to establish a allow the addition of two spaces to an existing mobilehome park (Laguna Terrace) for a total of 158 spaces.

BE IT FURTHER RESOLVED, that the following condition(s) are set forth to protect the health, safety and welfare of the community and to assure the intent and purpose of the regulations:

LAGUNA TERRACE PARK  
30802 SOUTH COAST HWY.  
(ATT:) KEVIN / OFFICE  
LAGUNA BEACH, CA 92651

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Conditional Use Permit 00-33

September 13, 2000

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1. The Conditional Use Permit shall be subject to review if written complaints are received, and shall be subject to administrative review one (1) year after issuance of the certificate of use to determine if the approved conditions of approval are in compliance. These reviews may result in a formal noticed public hearing before the Planning Commission. After the public hearing on the matter, the Planning Commission may require immediate condition compliance, amend the conditions of approval or proceed with revocation of the Conditional Use Permit as specified in Municipal Code Section 25.05.075.

2. It is understood that the conditions of approval apply herein to any future owners or lessees operating under this Conditional Use Permit. This means in legal terms that the conditions of approval for the Conditional Use Permit shall be and hereby are obligations of and binding upon the applicant and his/her heirs, successors, assigns, agents and representatives. The conditions shall constitute a covenant running with and binding the land in accordance with the provisions of California Civil Code Section 1468. Failure to comply with such conditions, and each of them, and any other related federal, state and local regulations may be grounds for revocation of the Conditional Use Permit, in addition to other remedies that may be available to the City.

3. If the use authorized under this Resolution and Conditional Use Permit is abandoned or terminated for any reason for a period of at least one year, the Conditional Use Permit shall automatically expire and become void.

4. No proposed change or modification to the specifically permitted use of a allow the addition of two spaces to an existing mobilehome park (Laguna Terrace) shall be allowed except pursuant to a subsequent or amended Conditional Use Permit granted pursuant to the terms of Title 25 of the

**LAGUNA TERRACE PARK**  
30802 SOUTH COAST HWY.  
(ATT:) KEVIN / OFFICE  
LAGUNA BEACH, CA 92651

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City of Laguna Beach Municipal Code.

5. No additional expansion or grading of the two pads shall be permitted without approval by the City to determine geologic stability and location of very high value habitat for potential mitigation measures, if necessary. High or Very High Value Habitat shall in no way be disturbed on the rear hillsides.

6. Prior to the issuance of permits from the Department of Housing and Community Development, a geologic report shall be submitted to the City for the two approved spaces to assure the geologic safety of the two proposed lots.

7. Prior to the issuance of permits by the Department of Housing and Community Development for placement of the mobilehomes on the approved lots, the owner shall provide to the City, two copies of the site plans indicating the location of the two required parking spaces, one of which must be covered, for each of the two lots. The Director of Community Development will verify the parking spaces and transmit one signed copy to HCD and the other copy will be maintained in the address file of the park.

NOW THEREFORE BE IT RESOLVED that the above decision was rendered on September 13, 2000.

ADOPTED this 13th day of September, 2000.

AYES: Commissioner(s) Chapman, Pearson, Johnson, Kinsman, Pendergast

NOES: Commissioner(s) None

ABSENT: Commissioner(s) None

LAGUNA TERRACE PARK  
30802 SOUTH COAST HWY.  
(ATT:) KEVIN / OFFICE  
LAGUNA BEACH, CA 92651

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ATTEST:

Chairperson, Planning Commission  
City of Laguna Beach, California

Director/Community Development  
City of Laguna Beach, California

LAGUNA TERRACE PARK  
30802 SOUTH COAST HWY.  
(ATT:) KEVIN / OFFICE  
LAGUNA BEACH, CA 92651

CITY OF LAGUNA BEACH

PG 2

CONDITIONAL USE PERMIT APPLICATION

ID 10732

See reverse side for filing instructions

CUP Number 001

DATE: 6-28-00

OWNER/APPLICANT INFORMATION:

Laguna Terrace Park LLC

Telephone 499-3000

30802 So. Coast Hwy.

James M. Lawson

Telephone 824-8692

PROPERTY INFORMATION:

Location 30802 So. Coast Hwy.

Suite

Assessor Parcel Number 656-191-38 (31,639 sq), 056-24-64 (14,811 sq)

Current/Previous Use Fenced storage

Building/Suite Square Footage Site 1: 3050 sq, Site 2: 2200 sq

Parking Spaces 2

APPROVED

III

PROPOSED USE:

Briefly describe the specific use(s) proposed. Include information about proposed merchandise and services, business hours, etc.

2 space addition to existing 156 space mobile home park (3050 sq and 2200 sq)

Approval of these plans does not authorize or approve any omission or deviation from the requirements of State Law or Applicable local ordinances: One set of approved plans shall be available on project site at all times. Plans shall be replaced when they are illegible or deteriorated.

Date: JAN 12 2005  
Peter A. Gunn  
Signature

Similar Businesses Owned or Operated by the Applicant:

State of California  
Department of Housing and  
Community Development  
Division of Codes and Standards

IV

JUSTIFICATION:

1. Is this site appropriate for the proposed use in terms of size, parking, storage, trash, etc.?  
Lot sizes are similar to surrounding spaces. Both sites will provide 2 parking spaces each.

2. Does this site have adequate street access and on-site parking to handle the traffic generated by the proposed use?  
Existing K street provides adequate access. Both sites will provide 2 parking spaces each.

3. Is the proposed use compatible with the surrounding land uses? Explain.  
Minor addition (<2%) to existing surrounding land use.

4. Is the proposed use consistent with the goals and policies of the Downtown Specific Plan and the City's General Plan? Explain.  
General Plan residential land use. MH Zone requires 4,000 sq of gross land area per unit. Existing: 12,970 sq per unit. Proposed: 12,806 sq per unit.

V

AFFIDAVIT:

I hereby certify that all of the above information contained in this application is, to the best of my knowledge and belief, true and correctly represented and that I have read and understand Chapter 25.05.030 of the Laguna Beach Municipal Code.

James M. Lawson

0000 + [Signature]

EXHIBIT B  
Page 18 of 26

LAGUNA TERRACE PARK  
30802 SOUTH COAST HWY.  
(ATT:) KEVIN / OFFICE  
LAGUNA BEACH, CA 92651

KEVIN HORNBY FOR  
LAGUNA TERRACE PARK INC.

OCT 22 2001

SITE (B)

K-47

← 24' →  
ROAD

45' 1/2"

8"

PROPOSED RETAINING  
WALL PER ATTACHED  
PLAN. 3' 1/2" High

SITE (A)

Approval of these plans does not authorize or approve any omission  
or deviation from requirements of state laws or applicable local  
ordinances. One set of approved plans shall be available on the  
project site at all times. Plans shall be replaced when they become  
illegible or deteriorated.

APPROVED

OCT 24 2001

State of California  
Department of Housing and  
Community Development  
Division of Codes and Standards

*[Signature]*

K-46



SITE  
LOCATION

LAGUNA TERRACE PARK  
30802 SOUTH COAST HWY.  
(ATT:) KEVIN / OFFICE  
LAGUNA BEACH, CA 92651

SCALE  
1" = 300'

KEVIN HORNBY FOR  
LAGUNA TERRACE PARK INC.  
OCT 22 2001

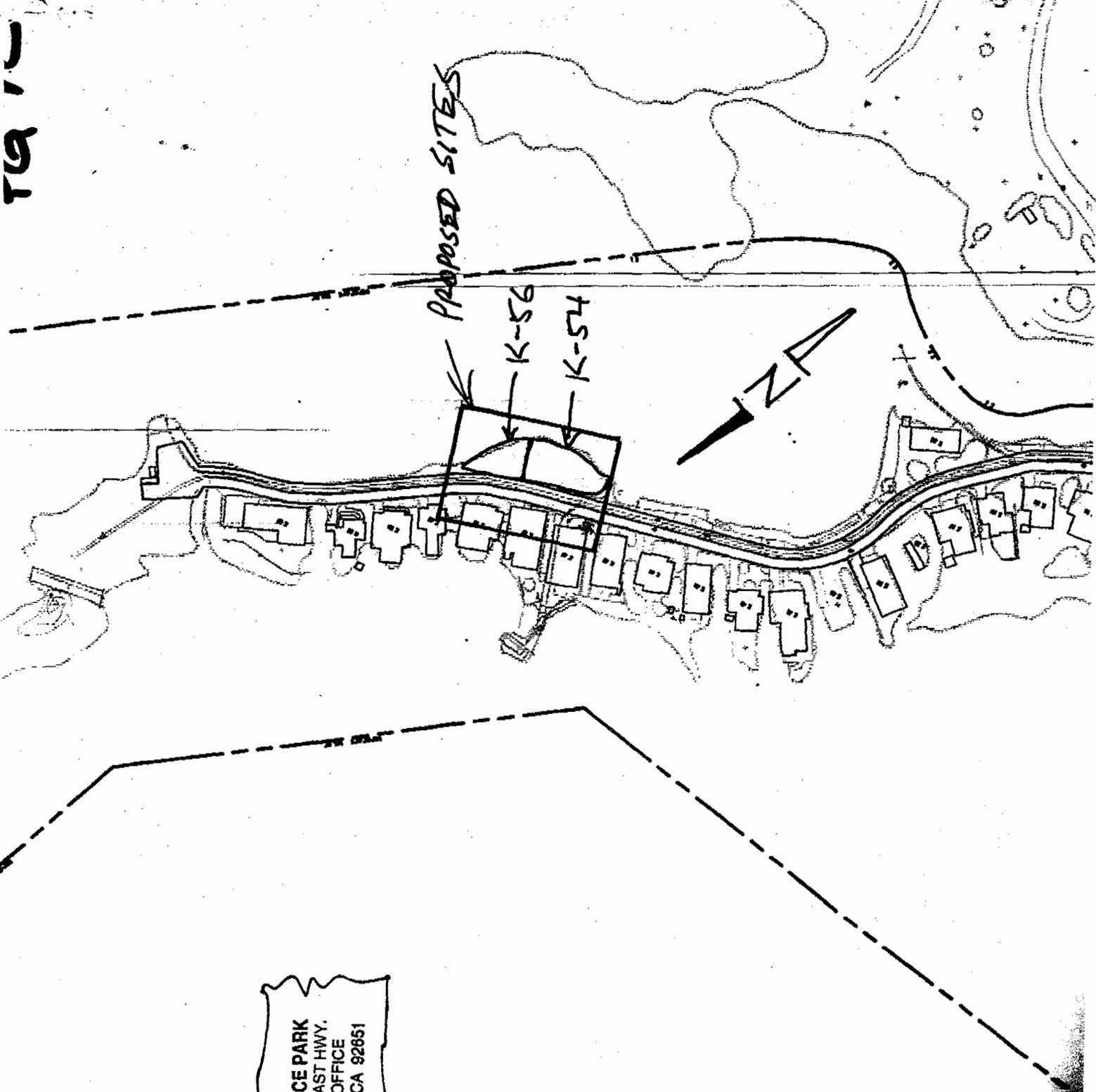
APPROVED  
Approval of these plans does not authorize or approve any omission  
or deviation from requirements of state laws or applicable local  
ordinances. One set of approved plans shall be available on the  
project site at all times. Plans shall be replaced when they become  
illegible or deteriorated.

OCT 24 2001

State of California  
Department of Housing and  
Community Development  
Division of Codes and Standards



TA 10



LAGUNA TERRACE PARK  
 30802 SOUTH COAST HWY.  
 (ATT:) KEVIN / OFFICE  
 LAGUNA BEACH, CA 92651

SCALE 1" = 150'



Fire Department

**APPROVED**

Approval of these plans does not authorize or approve any omission or deviation from requirements of State Law or Applicable local ordinances. One set of approved plans shall be available on the project site at all times. Plans shall be replaced when they become illegible or deteriorated.

James M. Reed  
Fire Chief

December 5, 2001

James M. Lawson  
Laguna Terrace Park  
30802 Coast Highway  
Laguna Beach, CA 92201

Date: JUN 13 2005  
*Peter A. Grimes*  
Signature

State of California  
Department of Housing and  
Community Development  
Division of Codes and

RE: State Department of Housing and Community Development Requirements

Dear Sir:

I have been advised that you plan to add two additional sites, or lots, to your mobile home park. As required by the State Department of Housing and Community Development, the Fire Department must agree to provide emergency services to this area prior to approval.

As you are well aware, the Laguna Terrace Mobile Home Park has very limited water supply for Fire Department operations. The hydrants that are inside the park do not provide adequate water pressure for us to engage in an effective fire attack. Given the fact that the Park sits at the bottom of a canyon surrounded by the wildland interface, the ability of our Fire Department to keep a structure fire from spreading into the interface is very limited. Additionally, a wildland fire could very easily spread to the homes with little water for the Fire Department to protect these exposures.

I believe there are viable solutions to this "lack of firefighting water." The First would be to require the two new sites be equipped with a National Fire Protection Association (NFPA) 13D Fire Sprinkler System. The second requirement would be a fuel modification zone around the site. These two solutions, working together, will greatly assist the Fire Department in defending these homes from either an internal fire or a wildland fire.

Should you have any questions regarding these two requirements, please feel free to contact me at (949) 497-0700.

Sincerely,

*Jeffrey T. LaTendresse*

Jeffrey T. LaTendresse  
Battalion Chief

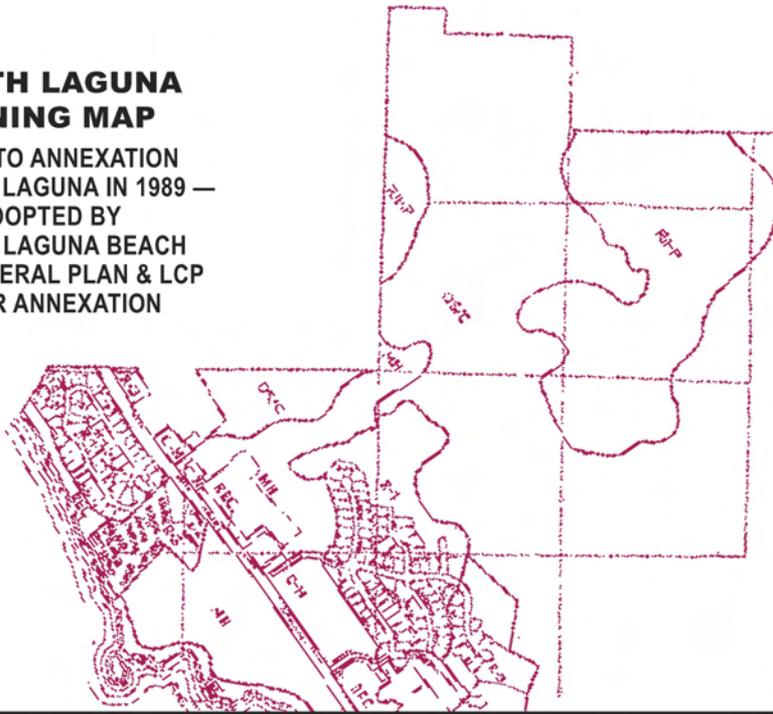
LAGUNA TERRACE PARK  
30802 SOUTH COAST HWY.  
(ATT:) KEVIN / OFFICE  
LAGUNA BEACH, CA 92651

**Working together to build a "Firesafe Community!"**

A-5-LGB-10-174  
EXHIBIT 03

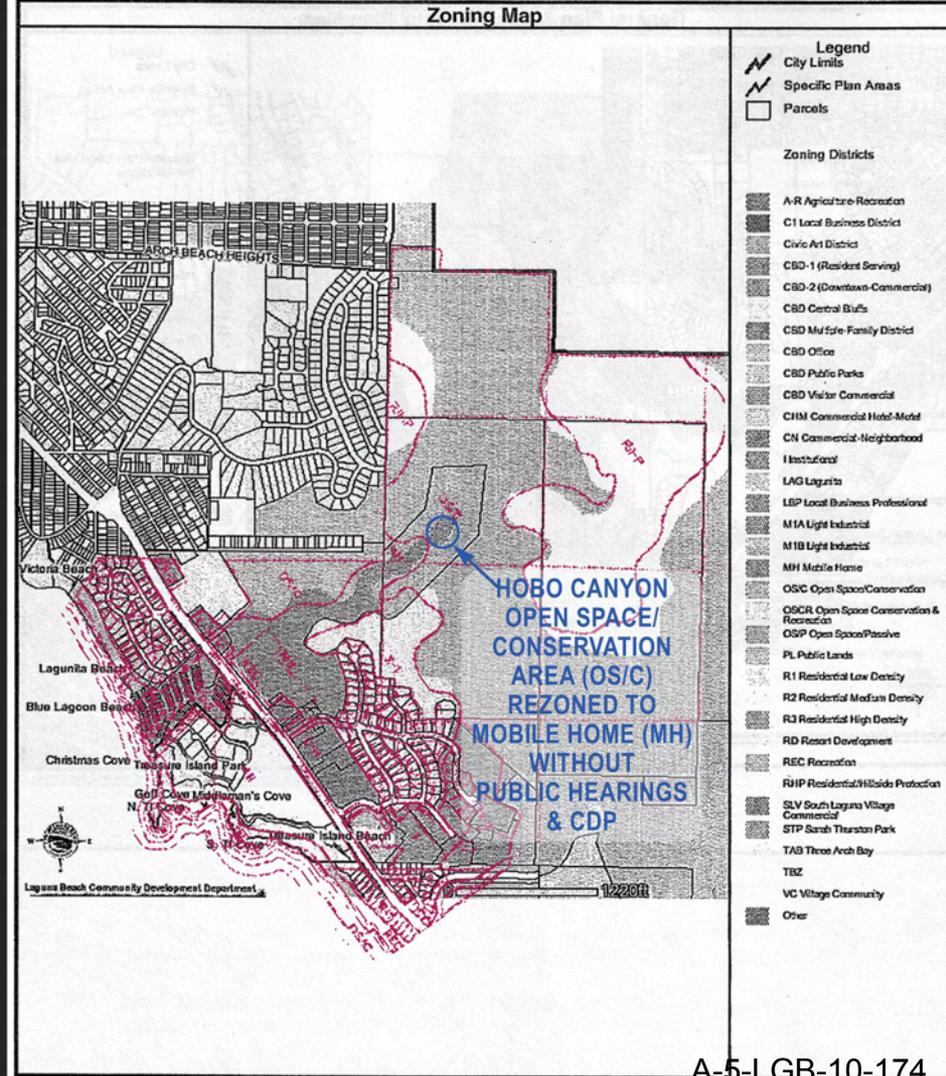
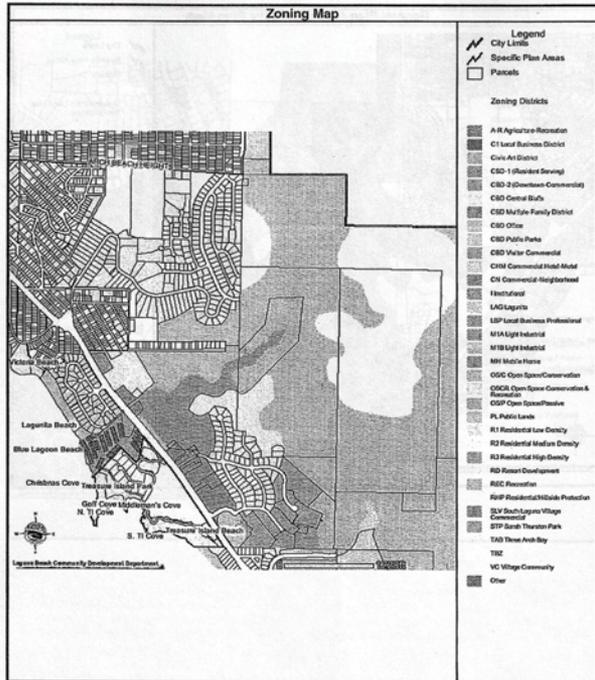
# SOUTH LAGUNA ZONING MAP

PRIOR TO ANNEXATION OF SOUTH LAGUNA IN 1989 —  
ADOPTED BY CITY OF LAGUNA BEACH INTO GENERAL PLAN & LCP AFTER ANNEXATION



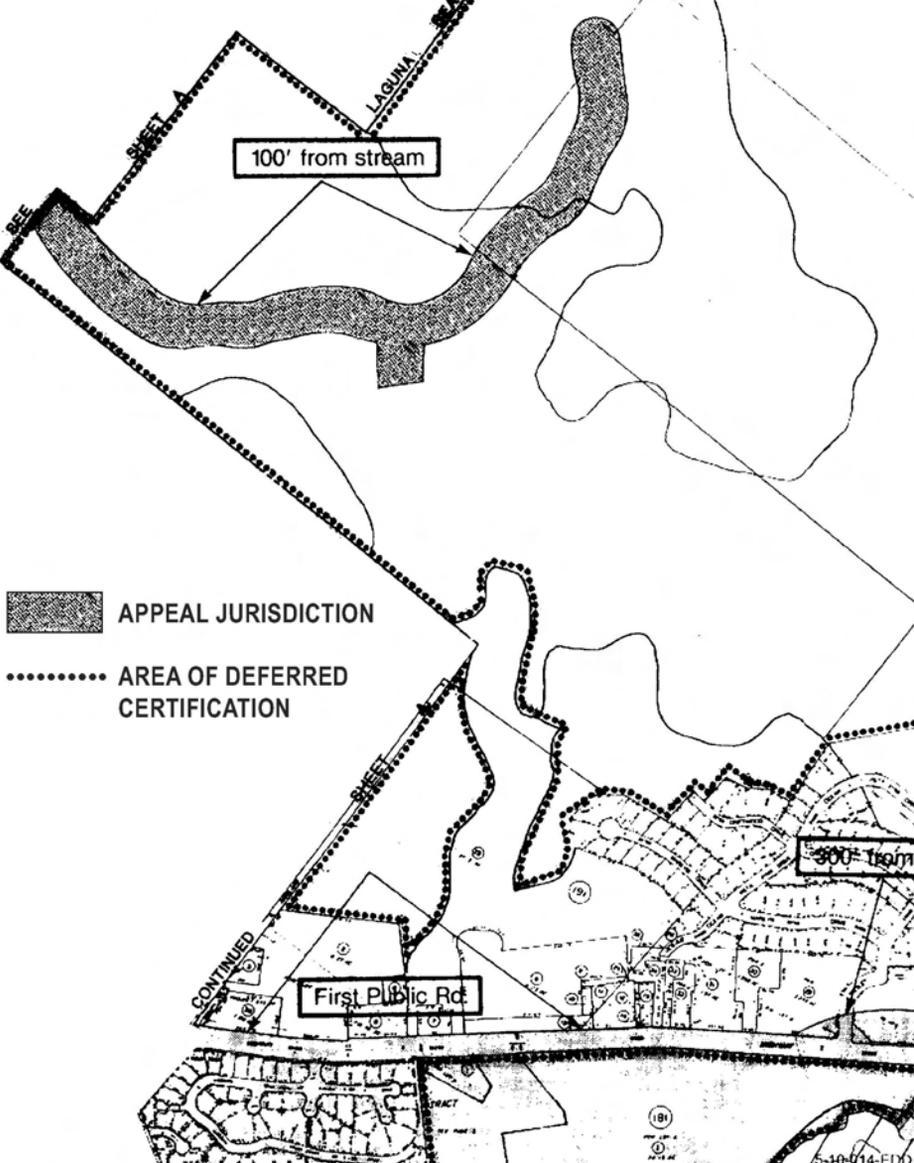
# CITY OF LAGUNA BEACH ZONING MAP

AFTER ANNEXATION IN 1989



A-5-LGB-10-174

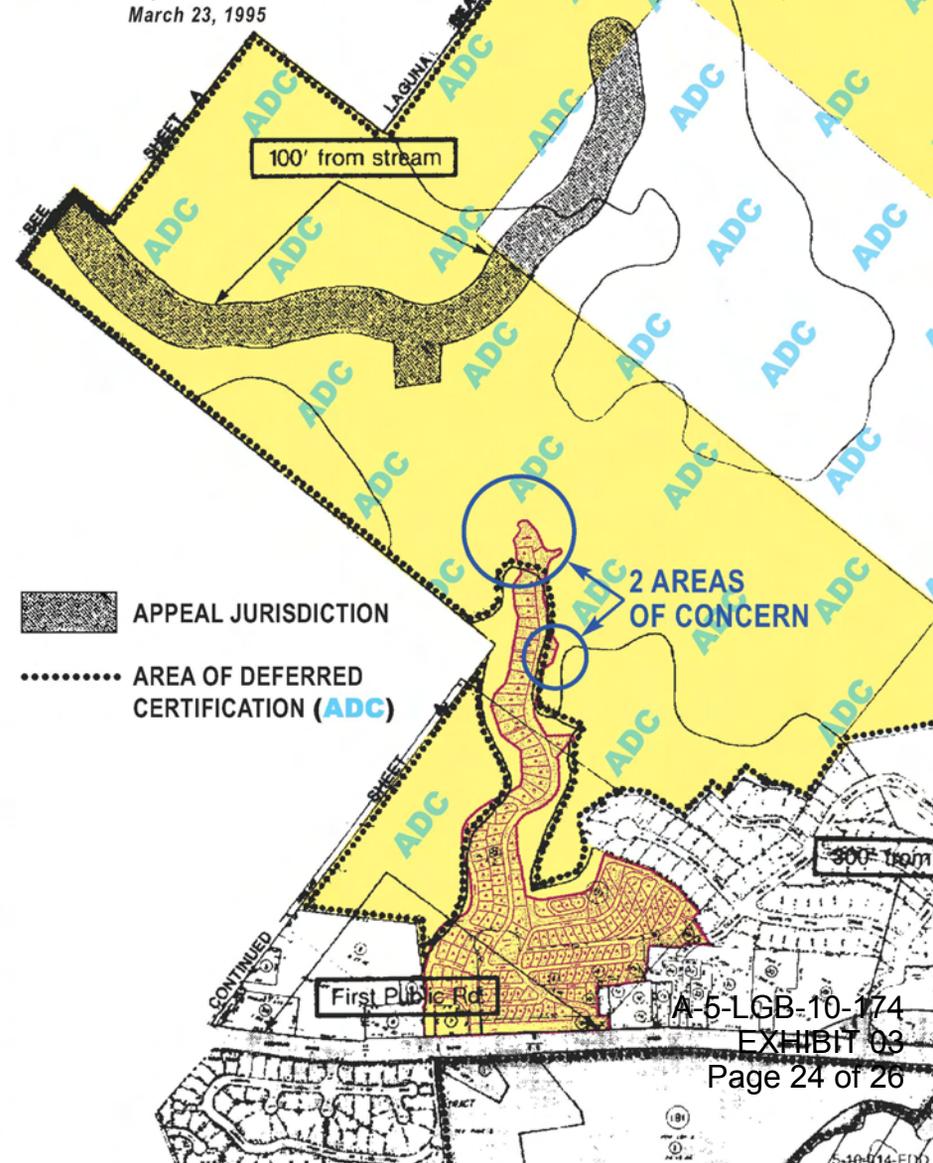
**1993  
COASTAL ZONE  
POST-LCP CERTIFICATION  
PERMIT & APPEAL  
JURISDICTION MAP**  
*City of Laguna Beach*



 **APPEAL JURISDICTION**  
 **AREA OF DEFERRED CERTIFICATION**

 **REVISED TENTATIVE TRACT MAP NO. 17301  
LAGUNA TERRACE PARK**  
*Approved by the CLB Planning Commission,  
June 23, 2010 & City Council, July 20, 2010*

 **LAGUNA TERRACE PARK PARCEL**  
*Prior to Unpermitted Lot Line  
Adjustments 95-01 & 95-04  
March 23, 1995*



 **APPEAL JURISDICTION**  
 **AREA OF DEFERRED CERTIFICATION (ADC)**

**2 AREAS OF CONCERN**

**1986**

U.S. DEPARTMENT OF WATER RESOURCES-DESIGNATED "BLUELINE STREAM"

U.S. "BLUELINE STREAM" TERMINATED BY DEVELOPMENT

HOBO CANYON ESA & VERY-HIGH VALUE HABITAT WITHIN ZONED OPEN SPACE/CONSERVATION

**LAGUNA TERRACE PARK**  
LAGUNA BEACH

**1994**

U.S. DEPARTMENT OF WATER RESOURCES-DESIGNATED "BLUELINE STREAM"

U.S. "BLUELINE STREAM" TERMINATED BY UNPERMITTED GRADING & DEVELOPMENT OF 1 STORAGE/UTILITY FACILITY SITE & 2 FUTURE HOME SITES (1986 - 1994) INCLUDES UNPERMITTED ALTERATION OF A U.S. "BLUELINE STREAM" STREAMBED

UNPERMITTED GRADING OF ESA & VERY-HIGH VALUE HABITAT WITHIN ZONED OPEN SPACE/CONSERVATION & AREA OF DEFERRED CERTIFICATION

UNPERMITTED GRADING OF ESA & VERY-HIGH VALUE HABITAT WITHIN ZONED OPEN SPACE/CONSERVATION & AREA OF DEFERRED CERTIFICATION FOR 2 FUTURE HOME SITES

**LAGUNA TERRACE PARK**  
LAGUNA BEACH

**1994**

U.S. DEPARTMENT OF WATER RESOURCES-DESIGNATED "BLUELINE STREAM"

U.S. "BLUELINE STREAM" TERMINATED BY UNPERMITTED GRADING & DEVELOPMENT OF 1 STORAGE/UTILITY FACILITY SITE & 2 FUTURE HOME SITES (1986 - 1994) INCLUDES UNPERMITTED ALTERATION OF A U.S. "BLUELINE STREAM" STREAMBED

UNPERMITTED GRADING OF ESA & VERY-HIGH VALUE HABITAT WITHIN ZONED OPEN SPACE/CONSERVATION & AREA OF DEFERRED CERTIFICATION

UNPERMITTED GRADING OF ESA & VERY-HIGH VALUE HABITAT WITHIN ZONED OPEN SPACE/CONSERVATION & AREA OF DEFERRED CERTIFICATION FOR 2 FUTURE HOME SITES

**LAGUNA TERRACE PARK**  
LAGUNA BEACH

**2001**

U.S. DEPARTMENT OF WATER RESOURCES-DESIGNATED "BLUELINE STREAM"

U.S. "BLUELINE STREAM" TERMINATED BY UNPERMITTED GRADING & DEVELOPMENT (1986 - 1994) INCLUDES UNPERMITTED ALTERATION OF A U.S. "BLUELINE STREAM" STREAMBED

UNPERMITTED GRADING OF ESA (1994 - 2001)

UNPERMITTED DEVELOPMENT OF 1 STORAGE/UTILITY FACILITY LOT & 2 HOME SITES

CITY APPROVED HOME SITES K54 & K56 (SEPT. 13, 2000) IN AN AREA OF DEFERRED CERTIFICATION WITHOUT CDP

**LAGUNA TERRACE PARK**  
LAGUNA BEACH

**CALIFORNIA COASTAL COMMISSION**

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



**APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT**

**SECTION I. Appellant(s)**

Name, mailing address and telephone number of appellant(s):

Coastal Commissioners: Patrick Kruer and Sara Wan  
200 Oceangate, Suite 1000  
Long Beach, CA 90802 (562) 590-5071

**SECTION II. Decision Being Appealed**

1. Name of local/port government: City of Laguna Beach
2. Brief description of development being appealed: Subdivide the Laguna Terrace Mobilehome Park into 157 residential lots, and some additional lots
3. Development's location (street address, assessor's parcel no., cross street, etc.): 30802 South Coast Highway, Laguna Beach, Orange County.
4. Description of decision being appealed:
  - a. Approval; no special conditions: \_\_\_\_\_
  - b. Approval with special conditions: XX
  - c. Denial: \_\_\_\_\_

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

**TO BE COMPLETED BY COMMISSION:**

**APPEAL NO:** A-5-LGB-10-174  
**DATE FILED:** August 9, 2010  
**DISTRICT:** South Coast

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: \_\_\_\_\_
  - b. City Council/Board of Supervisors:  X
  - c. Planning Commission: \_\_\_\_\_
  - d. Other: \_\_\_\_\_
6. Date of local government's decision:  7/20/2010
7. Local government's file number:  CDP 10-26

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties.  
(Use additional paper as necessary.)

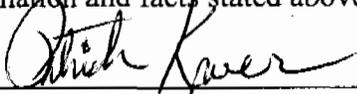
1. Name and mailing address of permit applicant:  
 Laguna Terrace Park, LLC; Attn: Jim Lawson   
 30802 South Coast Highway   
 Laguna Beach, CA 92651
2. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
- a.  Sean Matsler   
 Manatt | phelps | phillips   
 695 Town Center Drive, 14th Floor   
 Costa Mesa, California 92626
  - b.  Penny Elia   
 30632 Marilyn Drive   
 Laguna Beach, CA 92651

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

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

Signed:   
Appellant or Agent

Date: 8/9/10

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

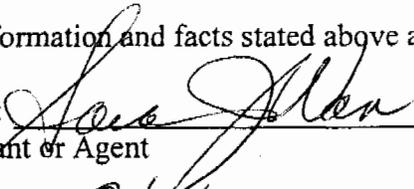
Date: \_\_\_\_\_

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

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

Signed:   
Appellant or Agent

Date: 8/9/10

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

(Document2)

## **SECTION IV. Reasons Supporting This Appeal**

**Note:** Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please state briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

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. 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 July 20, 2010, the City Council of the City of Laguna Beach approved coastal development permit 10-26 that had the effect of separating the area of land developed with a mobilehome park from the undeveloped remainder of an approximately 270 acre area, and further dividing the land that contains the mobile home park into 157 residential lots, 1 lettered common lot, and a remainder lot. According to the City, the purpose of this land division is to "convert an existing rental space mobile home park to a resident-owned mobile home park." The City's approval relies on two lot line adjustments the City processed in 1995 (Lot Line Adjustment No.s LL 95-01 and LL 95-04). However, those lot line adjustments, which are development under the Coastal Act, were not authorized under any coastal development permit and are unpermitted. Thus, for purposes of the Coastal Act the property being subdivided is the approximately 270 acre property that existed prior to the lot line adjustments. No physical changes to the site are proposed.

The division of land is development subject to regulation under the Coastal Act and the certified LCP. The division of land can result in the establishment of additional development potential and intensity of development. 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. Therefore, the whole range of coastal resource issues addressed in the City's certified LCP must be considered in this request for land division, including but not limited to protection and enhancement of public access,

biological resources, water quality, scenic resources, and minimization and avoidance of hazards (geologic, fire, flood, etc.). Except for making generalized findings about the project being consistent with the public access or recreation policies of Chapter 3 of the Coastal Act and consistent with criteria contained in the Certified Local Coastal Program, the City did not analyze the consistency of the proposed development with all applicable LCP policies. Instead, the City erroneously found that they are precluded from reviewing the development for consistency with their LCP by California Government Code Section 66427.5 relating to mobile home parks. Under the Coastal Act, the City must find proposed development to be consistent with its certified LCP before approving a coastal development permit for it. Therefore, although the City's authority is limited with respect to its review under the Subdivision Map Act, it may not approve a coastal development permit for the project pursuant to the Coastal Act without ensuring the project's consistency with the certified LCP.

For example, the proposed subdivision includes land that is identified on the City's biological resource values maps as high value and very high value habitat. These areas, and perhaps others, are likely also Environmentally Sensitive Areas (ESAs) that are subject to special treatment and protection under the policies of the certified LCP. LCP policies, such as Open Space Conservation Element Policy 8-J, require that detailed biological assessments be prepared for all development within and adjacent to ESAs and that identified ESAs be protected. The City's staff report and resolution of approval of the permit makes no mention of any biological assessment nor any measures to protect ESAs that are incorporated into the proposed development or imposed through special conditions on the coastal development permit. In addition, there are policies such as Open Space Conservation Element Policies 8-G and 8-H that pertain to fuel modification related to new subdivisions and requirements to protect sensitive habitat areas. These requirements have not been analyzed, or a determination made, as to whether or not the proposed land division is consistent with the certified LCP or the Coastal Act.

Furthermore, the City's action has the effect of separating the developed part of the subject site from the remaining undeveloped portions of the site, which is largely covered in sensitive habitat. Those remaining undeveloped portions of the site may not be able to be developed without impacting ESAs. The creation of such lots would be inconsistent with several policies of the certified Land Use Plan, include Conservation Open Space Element Policy 8J which states that "[n]o new parcels shall be created which are entirely within a Coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan." Policy 8J also prohibits new development that would impact an ESA, unless the development is resource dependent.

Another issue that must be addressed in the proposed subdivision is the implementation of water quality protection requirements of the LCP. Topic 4 of the Open Space Conservation Element of the City's General Plan/LCP includes numerous policies calling for the implementation of water quality best management practices in order to protect and restore water quality in the City's streams and oceans. Title 16 (Water Quality) of the City's municipal code, which is a component of the City's LCP/Implementation Plan, makes clear that the provisions of that title apply to land

divisions involving four or more housing units. Since the subject land division involves the creation of 157 residential lots, those provisions clearly apply. In fact, the proposed development is a 'priority development project' subject to water quality regulations because it involves the creation of 4 or more lots and the fact it is located within a 'water quality environmentally sensitive area', according to the definition in that title. Nevertheless, the proposed development does not comply with the requirements of Title 16, nor has the City staff analyzed whether or not the proposed land division can meet such requirements.

The City's maps of the site indicate the site contains areas that are subject to seismically induced landslides and liquefaction. Policy 3-A of the City's Land Use Plan states that the City must "ensure adequate consideration of environmental hazards in the development review process". Conservation Open Space Element Policy 10C states the City must "[r]equire projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space." This is in addition to the fire hazards mentioned above. There appears to have been no analysis regarding such hazards. Presently, the subject site is comprised of just a few lots. If hazards arise, the mobile nature of the existing development makes it possible to relocate structures to different areas of the property to avoid or minimize the exposure of development to hazards. However, with the proposed land division, the potential locations of structures will be relatively fixed, foreclosing options to relocate and avoid hazards, as opposed to defending the development against hazards in the present location.

The City's maps of the site also show there are trails located on the approximately 270 acre site. Open Space Conservation Element Policy 6D states that the City must "[r]equire as a condition of development approval, the dedication and improvement of public trail easements" and Policy 6F says the City must "[e]nsure that new development does not encroach on access to trails nor preclude future provision of access." The proposed development must be reviewed for impacts upon access to existing trails. The City clearly did not conduct such an analysis given that its resolution of approval states that no impacts to public access and recreation are possible because the site isn't seaward of the first public road. Clearly, such impacts could occur and need to be considered.

The City's action does not comply with Title 21 (Plats and Subdivision), which is part of the LCP. For example, the subdivision doesn't comply with Section 21.12.220 regarding the maximum length of a dead end street. The length of dead end streets and the provision of adequate vehicle turn around at the street end is in part based on requirements for emergency vehicle access and fire protection needs. If the streets are not designed in a manner that provides for adequate emergency vehicle access, particularly for equipment to fight fires, then the fuel modification requirements for the community might need to be larger than would otherwise be required if the streets were adequately designed. This would in turn result in more extensive impacts on sensitive habitat due to fuel modification requirements.

Since the City has authorized a land division that is inconsistent with the policies of the certified LCP, the development must be appealed.



**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 590-5084

AUG 4 - 2010

**CALIFORNIA COASTAL COMMISSION**

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: Paul R. Esslinger

Mailing Address: 2425 Windward Lane

City: Newport Beach

Zip Code: 92660

Phone: 949-548-8851

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Laguna Beach

2. Brief description of development being appealed:

Approval of Coastal Development Permit 10-26 ("CDP") and Vesting Tentative Tract Map 10-02, which propose 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).

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

30802 Coast Highway, Laguna Beach

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

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

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

<b><u>TO BE COMPLETED BY COMMISSION:</u></b>	
APPEAL NO:	<u>A-5-LGB-10-174</u>
DATE FILED:	<u>8/4/10</u>
DISTRICT:	<u>Long Beach/South Coast</u>

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: July 20, 2010

7. Local government's file number (if any): CDP 10-26 and VTTM 10-02

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Laguna Terrace Park LLC  
30802 South Coast Highway  
Laguna Beach, CA 92651

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Penny Elia  
30632 Marilyn Drive  
Laguna Beach CA 92651

(2)

(3)

(4)

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

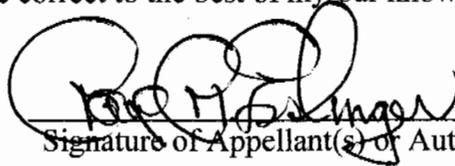
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local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

See attached Addendum #1.

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

**SECTION V. Certification**

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



Signature of Appellant(s) or Authorized Agent

Date: 8-3-2010

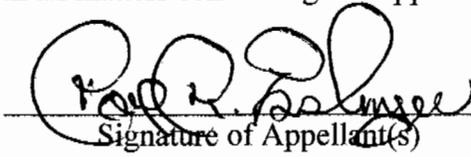
**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby  
authorize

Roger Grable and Sean Matsler of Manatt, Phelps & Phillips

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



Signature of Appellant(s)

Date: 8-3-10

**ADDENDUM #1**

## ADDENDUM #1

### Section IV: Reasons Supporting This Appeal

Section 30603(a)(2) of the Coastal Act provides that actions taken by a local government *after* certification of its local coastal program are appealable to the Coastal Commission when the proposed development is located within 100' of any stream. On June 9, 2010, the Coastal Commission held a public hearing on the question of appealability, and determined that the City's approval of CDP No. 10-26 would be appealable to the Coastal Commission pursuant to Section 30603. City staff concurred, and considered the Project to be appealable to the Coastal Commission based on Section 30603(a)(2) and the fact that the United States Geological Survey's 7.5 minute topographical map shows a stream that runs in a southwest direction within 100' of the boundary of the proposed mobile home park. The City Council ignored staff's recommendation and the Coastal Commission's guidance when, on July 20, 2010, it determined that Coastal Development Permit 10-26 and Vesting Tentative Tract Map 10-02 (the "Project") were not appealable to the Coastal Commission. The appellant strongly disagrees with this determination, and hereby appeals the City's approval of the Project in light of the following violations of the Coastal Act and the City's Local Coastal Program ("LCP"), consistent with Section 30603 of the Coastal Act:

#### 1. THE PROJECT FAILS TO COMPLY WITH THE CITY'S LCP

The City's approval of Applicant's requested permits and Applicant's ongoing and proposed activities are in violation of, and inconsistent with, the City's LCP. At a minimum, in approving Applicant's permits, the City failed to properly comply with Land Use and Open Space/Conservation General Plan Elements policies; provisions of the Zoning Code; subdivision development standards in Title 21 (Plats and Subdivisions) of the City's Municipal Code; and Fuel Modification Guidelines from the General Plan's Safety Element. All of the City documents listed above have been made part of the City's Local Coastal Program applicable to this property. For example, biological resource and water quality impacts associated with the Project have not been addressed, as required by the LCP. This is particularly egregious considering the Environmentally Sensitive Areas within the Project boundaries. As the Commission noted in its October 27, 2009 letter to the City regarding the proposed Laguna Terrace Park subdivision, "the whole range of coastal resource issues addressed in the City's certified LCP must be considered in this request for land division, including but not limited to protection and enhancement of public access, biological resources, water quality, scenic resources, and minimization and avoidance of hazards (geologic, fire, flood, etc.)." Appellant concurs, and notes the City's complete failure to conduct any environmental impact studies addressing the Project's potential impacts on coastal resources such as biological resources and water quality, as well as the effect of the Project on consistency with the Coastal Act's and LCP's public access policies. The City also failed to comply with numerous requirements of the Zoning Code (Municipal Code Title 25), which is explicitly made a part of the City's certified LCP. Some of these violations are detailed in the attached letter (Addendum #2), which was submitted to the City Council on July 19, 2010. They include the City's

failure to comply with Zoning Code Section 25.07.012 (F)(1-9), which sets forth the criteria that must be incorporated into the review of all CDP applications, and with the CDP findings under Zoning Code Section 25.07.012 (G).

In addition, the City's approval of the Project fails to comply with the General Plan's Land Use element and Title 21 (Plats and Subdivision) of the Laguna Beach Municipal Code, both of which are explicitly made a part of the LCP. For instance, Policy 8-A of the Land Use Element reads as follows: "Prohibit residential condominium conversions unless an equivalent number of rental units have been developed. Under no circumstances shall a conversion be allowed which does not comply with existing development standards." The proposed conversion of the existing Laguna Terrace Park rental mobile homes to for-sale units makes no provision for the development of rental units, and is at odds with existing development standards. One example of this is Section 21.12.220 of the Laguna Beach Municipal code (Deadend Street-length), which provides that "The maximum length of a deadend street shall not serve more than twenty-four building sites, shall not exceed seven hundred fifty feet in length and shall be terminated by a turn around." The proposed subdivision ignores this (and most other) requirements of Laguna Beach Municipal Code Title 21 (Plats and Subdivisions) with a deadend street being longer than seven hundred and fifty feet in length (K Street.) Appellant therefore requests that the Coastal Commission require the City to complete the required consistency analysis with all provisions of the City's LCP before it can approve Applicant's requested permits.

2. THE PROPERTY IS SUBJECT TO AN ONGOING COASTAL ACT VIOLATION (CUP 00-33)

Conditional Use Permit 00-33, as approved by the City in September of 2000, allowed for the addition of two mobile home spaces to the existing Laguna Terrace Park, bringing the total number of mobile home spaces from 156 to 158. According to a July 20, 2000 letter from the City's Community Development Assistant Director, the site of these mobile home spaces "...is designated as containing Very High Habitat Value on the South Laguna Biological Resources Map." The Applicant subsequently developed those two spaces with mobile home uses, and the Project therefore includes these two spaces in the proposed 157-lot subdivision.

To the best of Appellant's knowledge, no Coastal Development Permit was issued in connection with this Conditional Use Permit by either the City or the Coastal Commission. Such a failure to obtain a Coastal Development Permit violated the Coastal Act, which requires such Permits for "development." The Coastal Act's definition of "development" includes the "...change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land." (Coastal Act §31016.) Clearly, the addition of two residential lots where fenced storage previously existed constitutes a "change in the density or intensity of use of land", notwithstanding the fact that such change was approved through a Conditional Use Permit instead of a subdivision action. Therefore, approval of a Coastal Development

Permit by either the City or the Coastal Commission was required in connection with Conditional Use Permit 00-33.

If the appeal were accepted - which we urge the Commission to do - and the Applicant's Project considered by the Coastal Commission on appeal without addressing this ongoing violation of the Coastal Act, the Coastal Commission would be officially recognizing and validating the existence of these illegal home sites. We urge the Commission to enforce the provisions of the Coastal Act, to refuse to recognize these home sites until compliance with the Coastal Act and the LCP is achieved, and to issue a Notice of Violation and Cease and Desist Order to restore the site to its original conditions and impose appropriate penalties. The legality of these two lots under the Coastal Act and LCP must be resolved before the Coastal Commission acts on the proposed VTTM and CDP. As the Commission itself stated in its October 27, 2009 letter regarding the Project, "...there are issues related to ongoing violations involving the subject property that have yet to be resolved, and should be resolved prior to any further division of the subject property." The Appellant strongly concurs.

### 3. THE PLANNED CLOSURE OF THE LAGUNA TERRACE NORTH DRIVEWAY TO RUBY'S DINER WILL HINDER PUBLIC ACCESS

The northern entrance to the Laguna Terrace Park from South Coast Highway is a private road known as "Laguna Terrace North." The Applicant owns Laguna Terrace North, which is burdened by an ingress/egress easement that runs in favor of Paul Esslinger. Paul Esslinger, in turn, leases property (including his rights to this easement) to Ruby's Diner. This ingress/egress easement serves as a key shared access point for both the Laguna Terrace Park and the Ruby's Diner restaurant located at 30622 South Coast Highway. It is also the subject of ongoing litigation between the Applicant and Paul Esslinger (Laguna Terrace Park, LLC v. Paul R. Esslinger (Orange County Superior Court, Case No. 05CC02237)), in which the Applicant has offered a variety of legal theories intended to terminate the easement. If successful in this attempt, all traffic in and out of the Ruby's Diner parking lot will be forced to use one unsignalized driveway on to South Coast Highway. This should be considered to be a part of the Project.

Removing the Laguna Terrace North access point to Ruby's Diner would create potentially significant adverse coastal access impacts as a result of its potential to result in traffic and circulation impacts on South Coast Highway as northbound traffic would be required to slow to accommodate twice as many ingress and egress movements from the one remaining Ruby's driveway. Such congestion takes on special significance given that South Coast Highway is Laguna Beach's most important coastal artery, providing public access to, from, and across the coast for virtually every member of the public who visits one of the City's many beaches. As a result, the public will suffer from increased traffic and congestion if the number of public driveways at to Ruby's Diner is cut in half.

To ensure that public access is not hindered, the Coastal Commission should condition the Project to require the maintenance of the easement to Ruby's Diner at the northern entrance to Laguna Terrace Park.

4. THE COASTAL ACT REQUIRES A COASTAL DEVELOPMENT PERMIT IN CONNECTION WITH THE PLANNED CLOSURE OF THE LAGUNA TERRACE NORTH DRIVEWAY TO RUBY'S DINER

The proposed closure of the Laguna Terrace North driveway to Ruby's Diner will require the erection of physical barriers (curbs, fences, walls, etc.) to redirect automobiles that currently have access to Ruby's Diner from this driveway. The erection of such barriers clearly constitutes "development" under the Coastal Act. Section 31016 of the Coastal Act defines "development" as "... on land, in or under water, the placement or erection of any solid material or structure." However, in violation of the Coastal Act and the LCP, the Applicant has not applied for a Coastal Development Permit in connection with the proposed closure of access to Ruby's Diner from the northern entrance to Laguna Terrace North. The Coastal Commission should require that such an application be made a part of the present Vesting Tentative Tract Map and Coastal Development Permit application.

300130831.1

**ADDENDUM #2**

July 19, 2010

Client-Matter: 43150-030

**BY E-MAIL: KELLYBOYD2006@GMAIL.COM  
ELIZABETHPEARSON2@COX.NET  
TISEMAN2@AOL.COM  
JHEGLY@AOL.COM  
VERNAROLLINGER@COX.NET**

City Council  
City of Laguna Beach  
505 Forest Avenue  
Laguna Beach, California 92651

**Re: Agenda Item No. 24**

Honorable Councilmembers:

We are writing in connection with Agenda Item No. 24 on the July 20, 2010 regular meeting agenda: Coastal Development Permit 10-26 ("CDP") and Vesting Tentative Tract Map 10-02 (collectively, the "Project") at 30802 South Coast Highway ("Project Site"). As discussed in our June 21, 2010 letter to the Planning Commission (Exhibit A), which is hereby incorporated by reference, we respectfully request that the City require the Laguna Terrace Park, LLC (the "Applicant") to submit a Project application that complies with all required State and local laws, including but not limited to the California Environmental Quality Act, the Mello Act, and the City's certified Local Coastal Program ("LCP.") Based on this letter, we further request that the City (a) determine that the Coastal Commission has appeal authority over the Project regardless of whether the Blue Line stream boundaries conform to the United States Geological Survey's 7.5 minute topographical map; and (b) revise the proposed Project resolution to incorporate substantial evidence in support of the proposed CDP findings. Both points of these new points are discussed in detail below.

**A. The California Coastal Commission has Appeal Authority**

Section 30603(a)(2) of the Coastal Act provides that actions taken by a local government *after* certification of its local coastal program are appealable to the Coastal Commission when the proposed development is located within 100' of any stream. On June 9, 2010, the Coastal Commission held a public hearing on the question of appealability, and determined that the City's approval of CDP No. 10-26 would be appealable to the Coastal Commission pursuant to Section 30603. (Exhibit C). City staff concurs, and considers the Project to be appealable to the

Coastal Commission based on Section 30603(a)(2) and the fact that the United States Geological Survey's 7.5 minute topographical map (Exhibit B) shows a stream that runs in a southwest direction within 100' of the boundary of the proposed mobile home park. The Applicant disagrees, arguing instead that the stream is really located approximately 600' from the boundary of the proposed mobile home park in a location generally consistent with the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* adopted by the Coastal Commission on September 16, 1993.

We believe that the Project is appealable to the Coastal Commission regardless of whether the United States Geological Survey's map is determined to be current and accurate for two reasons. First, as discussed in various Coastal Commission staff reports (all of which are attached hereto as Exhibit C), the Project proposes to separate the developed mobilehome park portion of the Project Site from the undeveloped portion, thus creating a new undeveloped remainder parcel with a different size and configuration than the existing, approximately 270 acre, parcel. (Staff Report: Appealability 5-10-117-EDD, page 1). Because the appeals area extends into a parcel that would be reconfigured as a result of the proposed subdivision, the City's action authorizing the division of the developed mobilehome park from the remainder of the 270 acre Project Site is an action that is appealable to the Commission. (*Id.*)

Second, the Applicant's argument is premised on a fiction that the proposed subdivision only involves the approximately 19.5 acre parcel proposed for mobile home residential uses, and not the approximately 250 acre remainder parcel which would be reconfigured if the Project is approved. The Applicant believes that if the stream is not located within 100' of the mobile home parcel, then the Coastal Commission lacks appeal jurisdiction. We disagree.

The Coastal Act is concerned with the boundaries of the *entire subdivision* (mobile home parcel plus remainder parcel), not merely the boundaries of the mobile home parcel. The Coastal Act specifically defines the term "development" to include a "... subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land." (Government Code § 30106.) The Subdivision Map Act, in turn, makes it clear that "subdivisions" include remainder parcels. (*See* Government Code § 66424.6, which states in relevant part, "When a subdivision, as defined in Section 66424, is of a portion of any unit or units of improved or unimproved land, the subdivider may designate as a remainder that portion which is not divided for the purpose of sale, lease, or financing.") The creation of a remainder parcel is therefore a subdivision action under the Subdivision Map Act, and constitutes a "development" subject to the Coastal Act. As such, the presence of the stream on the proposed remainder parcel is sufficient to confer the Coastal Commission appeal authority under Section 30603(a)(2) of the Coastal Act.

**B. The City Provides no Substantial Evidence in Support of the Proposed Coastal Development Permit Findings or Criteria Consistency Determination**

The staff report prepared in connection with Agenda Item No. 24 indicates that "... the required findings for the approval of a Coastal Development Permit can be satisfied." (Page 4.) The proposed resolution approving the Project similarly indicates that "... the proposed subdivision is consistent with the criteria of the Certified Local Coastal Program (Laguna Beach Municipal Code Section 25.07.012 (F)(1-9)) and the required Coastal Development Permit findings can be made." (Page 2.) We disagree on both counts for the reasons set forth below.

**Coastal Development Permit Criteria**

Laguna Beach Municipal Code ("LBMC") Section 25.07.012 (F)(1-9) sets forth the criteria that must be incorporated into the review of all CDP applications. The proposed resolution states that the Project is consistent with such criteria, but fails to provide substantial evidence in support of that conclusion. As a general matter, there is no evidence in the record to support any of the City's Section 25.07.012 (F)(1-9) consistency determinations. In fact, specific evidence exists to refute that determination, as set forth below:

- LBMC 25.07.012 (G) - Review Criteria. *To ensure compliance with the certified local coastal program, the following criteria shall be incorporated into the review of all applications for coastal development permits*

The review criteria are premised on the Project's compliance with the City's LCP. As set forth in our June 21, 2010 letter to the Planning Commission, the Project fails to comply with the LCP for a host of reasons. At a minimum, the Applicant has failed to comply with Land Use and Open Space/Conservation General Plan Elements policies; provisions of the Zoning Code; subdivision development standards in Title 21 (Plats and Subdivisions) of the City's Municipal Code; and Fuel Modification Guidelines from the General Plan's Safety Element – all of which are a part of the LCP. For example, biological resource and water quality impacts associated with the Project have not been addressed, as required by the LCP. This is particularly egregious considering the Environmentally Sensitive Areas within the Project boundaries. As the Coastal Commission noted in its October 27, 2009 letter to the City regarding the proposed Laguna Terrace Park subdivision (Exhibit C), "the whole range of coastal resource issues addressed in the City's certified LCP must be considered in this request for land division, including but not limited to protection and enhancement of public access, biological resources, water quality, scenic resources, and minimization and avoidance of hazards (geologic, fire, flood, etc)."

In addition, the Project fails to comply with the General Plan's Land Use element and Title 21 (Plats and Subdivision) of the Laguna Beach Municipal Code, both of which are explicitly made a part of the LCP. For instance, Policy 8-A of the Land Use Element reads as follows: "Prohibit residential condominium conversions unless an equivalent number of rental units have been developed. Under no circumstances shall a conversion be allowed which does not comply with existing development standards." The proposed conversion of the existing Laguna Terrace Park rental mobile homes to for-sale units makes no provision for the development of rental units, and is at odds with existing development standards. One example of this is Section 21.12.220 of the Laguna Beach Municipal code (*Deadend Street-length*), which provides that "The maximum length of a deadend street shall not serve more than twenty-four building sites, shall not exceed seven hundred fifty feet in length and shall be terminated by a hull around." The proposed subdivision ignores this (and most other) requirements of Laguna Beach Municipal Code Title 21 (Plats and Subdivisions) with a deadend street longer than seven hundred and fifty feet in length (K Street).

- LBMC 25.07.012 (F)(2) - *The proposed development will not adversely affect marine resources, environmentally sensitive areas, or archaeological or paleontological resources*

The Project has the potential to adversely effect environmentally sensitive areas. According to the Laguna Beach General Plan Open Space/Conservation Element, the inland valley portion of the Project site is almost completely surrounded by a "Very High Value" biological resource area. Further, the Coastal Commission's May 26, 2010 staff report prepared in connection with Executive Director Dispute Resolution 5-10-117-EDD (Exhibit C) determined that "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)." (Staff Report: Executive Director Dispute Resolution 5-10-117-EDD, page 3).

- LBMC 25.07.012 (F)(3) - *The proposed development will not adversely affect recreational or visitor-serving facilities or coastal scenic resources*

The Project could impact access to the City's recreational and coastal resources. The northern entrance to the Laguna Terrace Park is a private road known as

Laguna Terrace North. The Applicant owns Laguna Terrace North, which is burdened by an ingress/egress easement that runs in favor of Paul Esslinger. Paul Esslinger, in turn, leases property (including his rights to this easement) to Ruby's Diner. This ingress/egress easement serves as a key shared access point for both the Laguna Terrace Park and the Ruby's Diner restaurant located at 30622 South Coast Highway. It is also the subject of ongoing litigation between the Applicant and Paul Esslinger (*Laguna Terrace Park, LLC v. Paul R. Esslinger* (Orange County Superior Court, Case No. 05CC02237)), in which the Applicant has offered a variety of legal theories intended to terminate the easement. Removing this access point would force all Ruby's traffic to use a single point of ingress and egress.

The termination of the Laguna Terrace North must be considered to be a part of the "Project" for two reasons: (a) because this litigation is being pursued concurrently with the Project application; and (b) because it would create potentially significant adverse traffic and circulation impacts on South Coast Highway as northbound traffic would be required to slow to accommodate twice as many ingress and egress movements from the one remaining Ruby's driveway. Such congestion takes on special significance given that South Coast Highway is Laguna Beach's most important coastal artery, providing access to, from, and across the coast for virtually every member of the public who visits one of the City's many beaches. As a result, the public will suffer from increased traffic and congestion if the number of public driveways to Ruby's Diner is cut in half.

- LBMC 25.07.012 (F)(5) - *The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards*

A large portion of the Project Site is located in a valley, surrounded by steep canyon walls. Given this topography, it is possible that the Project may expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides.

The Coastal Commission's February 25, 2010 staff report prepared in connection with Appeal A-5-LGB-10-039 (Exhibit C) provided additional evidence raising concerns about geologic hazards, as follows: "Policy 3-A of the City's Land Use Plan states that the City must 'ensure adequate consideration of environmental hazards in the development review process'. Conservation Open Space Element Policy 10C states the City must '[r]equire projects located in geological hazard areas to be designed to avoid the hazards, where feasible.

Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.’ This is in addition to the fire hazards mentioned above. There appears to have been no analysis regarding such hazards. Presently, the subject site is comprised of just a few lots. If hazards arise, the mobile nature of the existing development makes it possible to relocate structures to different areas of the property to avoid or minimize the exposure of development to hazards. However, with the proposed land division, the potential locations of structures will be fixed relative to the new lot lines, potentially foreclosing options to relocate and avoid hazards, as opposed to defending the development against hazards in the present location.” (Staff Report: Substantial Issue A-5-LGB-10-039, page 11).

- LBMC 25.07.012 (F)(8) - *The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities*

The Project is at odds with numerous existing development standards. For example, as discussed above, the Project proposes a deadend street being longer than seven hundred and fifty feet in length (K Street) in violation of Section 21.12.220 of the LBMC.

### **Coastal Development Permit Findings**

Page 2 of the proposed resolution approving the Project states that the required CDP findings can be made in connection with the Project. However, no evidence is provided in support of that conclusion, as required by Section 1094.5 of the California Code of Civil Procedure. The City’s approval of the Project with such legally inadequate findings would constitute an abuse of discretion under Section 1094.5. Conclusory findings such as these that do not recite the specific facts upon which such findings are based are not legally sufficient. *See Village Laguna, Inc. v. Board of Supervisors*, 134 Cal. App. 3d 1022. Detailed and documented findings are necessary because there is no presumption that a city’s decisions rest upon necessary findings. *See J.L. Thomas, Inc. v. County of Los Angeles*, 232 Cal. App. 3d 916. Instead, cities must expressly state their findings and must set forth the relevant facts supporting them. *Id.* That was not done here, as shown below.

- LBMC 25.07.012 (G)(1) - *The project is in conformity with all the applicable provisions of the general plan, including the certified local coastal program and any applicable specific plans*

The City lacks evidence upon which to make this finding. In fact, the City has already determined that "... the proposed design of the subdivision appears to be inconsistent with numerous General Plan and Municipal Code provisions; including but not limited to: density, required parking, required access, circulation and required fuel modification." (City of Laguna Beach 6/16/09 Appeal Report). These issues must be addressed pursuant to General Plan Land Use Policy 10-C, which discourages the approval of subdivisions that do not conform to design and zoning standards. Addressing these issues, in turn, may require the removal of certain nonconforming mobile homes and the displacement of existing mobilehome residents. (City of Laguna Beach 6/16/09 Appeal Report).

- LBMC 25.07.012 (G)(3) - *The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act*

The City lacks evidence upon which to make this finding. Without preparation of an Initial Study, and Negative Declaration or Environmental Impact Report, the City lacks any foundation upon which to make this finding. The need for such a California Environmental Quality Act document is discussed at length in our June 21, 2010 letter to the Planning Commission.

**C. Conclusion**

In light of the above, we respectfully request that the City require the Applicant to submit a Project application that complies with all required State and local laws, including but not limited to CEQA, and the LCP. We also request that the City prepare legally adequate findings in support of the proposed resolution.

Sincerely,



Sean Matsler

cc: Scott Drapkin (via e-mail)  
Phil Kohn, Esq. (via e-mail)  
Martha Anderson (via e-mail)

**EXHIBIT A**

**June 21, 2010 Letter From Manatt, Phelps & Phillips, LLP to  
the Planning Commission**

June 21, 2010

Client-Matter: 43150-030

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City of Laguna Beach Planning Commissioners  
City of Laguna Beach  
505 Forest Avenue  
Laguna Beach, California 92651

**Re:    Agenda Item No. 7 (CDP 10-26 and VTTM 10-02)**

Honorable Commissioners:

We are writing on behalf of Mr. Paul Esslinger in connection with Coastal Development Permit 10-26 and Vesting Tentative Tract Map 10-02 at 30802 South Coast Highway (collectively, the "Project.") At the outset, we note our disappointment that Laguna Terrace Park, LLC (the "Applicant") did not take advantage of the time since the Planning Commission's approval of Vesting Tentative Tract Map 09-03 and Coastal Development Permit 09-36 in October 2009 (collectively, the "Predecessor Project") to remedy the Project's serious flaws. Instead, the Project has undergone only slight alterations in that time, all of which were calculated to remove the California Coastal Commission's appeal jurisdiction over the Project. As the Commissioners are aware, this effort failed when, on June 9, 2010, the Coastal Commission determined that it retains appeal jurisdiction over this Project, just as it did over the Predecessor Project.

This letter will focus on the following five key areas of concern with the proposed Project:

- (A) There is a clear mandate for California Environmental Quality Act review in connection with the Project, which review must include the proposed termination of the shared Laguna Terrace Park/Ruby's Diner access easement;
- (B) Contrary to repeated pronouncements by the Applicant, the City is authorized to impose conditions of approval on this Project because the Government Code

restrictions on mobilehome subdivisions do not extend to the Coastal Development Permit;

- (C) The Project is subject to the *Mello Act* and therefore must provide for replacement housing (which, like the Project itself, is subject to California Environmental Quality Act review);
- (D) The Project fails to comply with the City's Local Coastal Program; and
- (E) The Project is subject to ongoing development violations that must be remedied before any City approvals occur.

Each of these points is detailed below.

**A. THE PROJECT IS SUBJECT TO ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The City's Department of Community Development has determined that the Project is categorically exempt from environmental review under the California Environmental Quality Act ("CEQA"). We disagree. As demonstrated below, the Project *is* subject to CEQA, and *is not* covered by any CEQA exemption. Therefore, the City may not approve the Project without first completing an analysis of its potential environmental impacts under CEQA.

**(1) The Project is a "Project" Under CEQA**

Under CEQA, the term "project" is defined as an activity that (a) may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and (b) involves the issuance to a person of a permit or other entitlement for use by one or more public agencies. (*See* Pub. Res. Code § 21065). The Project satisfies both elements. First, as discussed in greater detail below, the Project could result in potential impacts to one or more of the following environmental areas: air quality, biological resources, cultural resources, aesthetics, traffic, noise, utilities, water quality, geology/soils, population/housing, and land use. Second, the City is being asked to approve two discretionary actions – a Tentative Tract Map and a Coastal Development Permit – both of which have the potential to result in a physical change to the environment. (*See* Laguna Beach Municipal Code §§ 11.12.050 and 25.07.012, respectively). Therefore, the Project qualifies as a "project" for purposes of CEQA, and requires preparation of an appropriate CEQA environmental review document.

(2) CEQA Analysis Must Consider Reasonably Foreseeable Indirect Physical Changes to the Environment

A “project” under CEQA is “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (Public Resources Code § 21065). Local agency decisions that are precursors to development, expanded use, or other environmental impacts are subject to CEQA. (*Practice Under the California Environmental Quality Act*, 2nd ed., § 4.20). Such decisions *must* be treated as a projects subject to CEQA if they are necessary steps that start in motion a chain of events that will foreseeably result in environmental impacts. (*Id.*).

The Project is more than a mere paper conversion of existing rental mobilehomes to individually owned mobilehomes. According to the information submitted by the Applicant in connection with the Predecessor Project, today the Park has 158 residential spaces, 135 of which are rented under either long term or month to month tenancies. The remaining 23 residential 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). The Project’s VTTM 10-02 proposes 157 individual mobilehome lots. As a result, if approved, the Project would effectively green-light the construction of at least 19 mobilehomes (17 vacant + 2 lots with removal pending).

Given these facts, it is reasonably foreseeable that approval of the Project would start in motion a chain of events that will foreseeably result in environmental impacts. Specifically, Project approval will result in the construction and occupation of at least 19 mobilehomes, the potential environmental effects of which must be analyzed under CEQA.

(3) The Required CEQA Review Must Consider the Elimination of the Laguna Terrace Park/Ruby’s Diner Shared Access Easement

The northern entrance to the Laguna Terrace Park is a private road known as Laguna Terrace North. The Applicant owns Laguna Terrace North, which is burdened by an ingress/egress easement that runs in favor of Paul Esslinger. Paul Esslinger, in turn, leases property (including his rights to this easement) to Ruby’s Diner. This ingress/egress easement serves as a key shared access point for both the Laguna Terrace Park and the Ruby’s Diner restaurant located at 30622 South Coast Highway. It is also the subject of ongoing litigation between the Applicant and Paul Esslinger (*Laguna Terrace Park, LLC v. Paul R. Esslinger* (Orange County Superior Court, Case No. 05CC02237)), in which the Applicant has offered a variety of legal theories intended to terminate the easement. Removing this access point would force all Ruby’s traffic to use a single point of ingress and egress.

The termination of the Laguna Terrace North must be considered to be a part of the “project” for purposes of CEQA for two reasons: (a) because this litigation is being pursued concurrently with the Project application; and (b) because it would create potentially significant adverse traffic and circulation impacts on South Coast Highway as northbound traffic would be required to slow to accommodate twice as many ingress and egress movements from the one remaining Ruby’s driveway. Such congestion takes on special significance given that South Coast Highway is Laguna Beach’s most important coastal artery, providing access to, from, and across the coast for virtually every member of the public who visits one of the City’s many beaches. As a result, the public will suffer from increased traffic and congestion if the number of public driveways at to Ruby’s Diner is cut in half.

(4) The Project is *Not* Exempt from CEQA Review

Although certain discretionary projects are exempt from CEQA review, the Project is not one of them. The Community Development Department has apparently determined that the Project is exempt under CEQA Guidelines Section 15301, which relates to the minor alteration of existing structures involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. However, CEQA Guidelines Section 15300.2 provides an *exception* to that exemption “...where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” As discussed in Section A(5) of this letter (immediately below), the Project may result in any number of significant effects on the environment, none of which have been analyzed (much less mitigated) by the Applicant or the City. As a result, the claimed CEQA exemption is inapplicable.

(5) The Project may Result in Numerous Significant Effects on the Environment

According to the information submitted by the Applicant in connection with the Predecessor Project, the Laguna Terrace Park currently has 158 residential spaces, 135 of which are rented under either long term or month to month tenancies. The remaining 23 residential 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). Since the proposed tract map includes 157 residential lots, it is reasonably foreseeable that approval of the proposed Tentative Tract Map and a Coastal Development Permit would result in occupation of all 157 residential spaces proposed by VTTM 10-02, as well as the reconstruction of the two homes with removal pending. The Project therefore has the potential to result in environmental impacts relating to, among other things, air quality, biological resources, cultural resources, aesthetics, traffic, noise, utilities, water quality, geology/soils, population/housing, and land use.

- Air Quality – The addition of at least 19 mobilehomes will cause an increase in peak hour traffic volume and intersection congestion that may (a) conflict with or obstruct implementation of the applicable air quality plan; (b) violate air quality

standards; (c) expose sensitive receptors to substantial pollutant concentrations; and/or (d) create objectionable odors affecting a substantial number of people. The construction of those 19 mobilehomes may result in similar air quality impacts. In addition, any CEQA document prepared in connection with the Project must consider the potential incremental contribution of the additional residential occupations on cumulative global warming impacts.

- **Biological Resources** – According to the Laguna Beach General Plan Open Space/Conservation Element, the inland valley portion of the Project site is almost completely surrounded by a “Very High Value” biological resource area. Further, the Coastal Commission’s May 26, 2010 staff report prepared in connection with Executive Director Dispute Resolution 5-10-117-EDD determined that “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).” (Staff Report: Executive Director Dispute Resolution 5-10-117-EDD, page 3).

Environmental review under CEQA is therefore required to determine whether the proposed Project will (a) have a substantial adverse effect, either directly or through habitat modifications, on any California Department of Fish and Game or U.S. Fish and Wildlife Service candidate, sensitive, or special status species; (b) have a substantial adverse effect on any California Department of Fish and Game or US Fish and Wildlife Service riparian habitat or other sensitive natural community; (c) have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act; (d) interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites; (e) conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; and/or (f) conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

- **Cultural Resources** – The proposed Project may involve grading and/or excavation. Such activities may, in turn, cause a substantial adverse change in the significance of a historical resource, an archaeological resource, and/or a paleontological resource. Human remains may also be disturbed. All of these potential impacts must be analyzed in connection with a comprehensive cultural resources study prepared in connection with a legally-adequate CEQA document.

- Aesthetics – The Laguna Beach Scenic Highways Element designates Pacific Coast Highway as a scenic highway. Environmental review under CEQA is required to assess whether and how the Project may affect existing scenic vistas, generally, and views from scenic highways like Pacific Coast Highway, specifically. It must also consider the potential for the Project—in both its construction and operational phases—to substantially degrade the existing visual character and quality of the site and its surroundings. Finally, increased light and glare from the added automobile traffic must be addressed.
- Traffic – The addition of at least 19 mobilehomes may cause an increase in peak hour traffic volume and intersection congestion that may be substantial in relation to the existing traffic load and capacity of the street system. It may also result in a shortage of parking, and inadequate emergency access to/from the park. The construction of those 19 mobilehomes may result in similar transportation impacts.
- Noise – Noise associated with the construction traffic and increased residential traffic may expose area residents to noise levels in excess of standards established standards, and may result in an increase in ambient noise levels in the Project vicinity. The proposed Project may also expose area residents to the generation of excessive groundborne vibration and/or groundborne noise levels.
- Utilities – The addition of at least 19 mobilehomes may exceed the current capacities of the existing utility system, triggering the need for new or expanded water or wastewater treatment facilities, and/or new or expanded water drainage facilities. The construction of such facilities could, in turn, cause significant environmental effects, and must therefore be addressed.
- Water Quality – A large portion of the Project site is located in a valley and is surrounded by steep canyon walls. Given this topography, it is possible that the Project may expose people or structures to a significant risk of loss, injury or death involving flooding. The proposed Project may also substantially alter the existing drainage pattern of the site or area in a manner which would result in substantial erosion or siltation or flooding on- or off-site. Finally, demolition of existing residences associated with the relocation of tenants may also give rise to adverse water quality impacts.

The Coastal Commission's February 25, 2010 staff report prepared in connection with Appeal A-5-LGB-10-039 provided additional evidence raising concerns about water quality, as follows: "Topic 4 of the Open Space Conservation Element of the City's General Plan/LCP includes numerous policies calling for

the implementation of water quality best management practices in order to protect and restore water quality in the City's streams and oceans. Title 16 (Water Quality) of the City's municipal code, which is a component of the City's LCP/Implementation Plan, makes clear that the provisions of that title apply to land divisions involving four or more housing units. Since the subject land division involves the creation of 157 residential lots, those provisions clearly apply. In fact, the proposed development is a 'priority development project' subject to water quality regulations because it involves the creation of 4 or more lots and the fact it is located within a 'water quality environmentally sensitive area', according to the definition in that title. Nevertheless, no evidence has been provided to the Commission that the City considered the requirements of the LCP and Title 16." (Staff Report: Substantial Issue A-5-LGB-10-039, page 11).

- Geology/Soils – As stated above, a large portion of the Project site is located in a valley, surrounded by steep canyon walls. Given this topography, it is possible that the Project may expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides.

The Coastal Commission's February 25, 2010 staff report prepared in connection with Appeal A-5-LGB-10-039 provided additional evidence raising concerns about geologic hazards, as follows: "Policy 3-A of the City's Land Use Plan states that the City must 'ensure adequate consideration of environmental hazards in the development review process'. Conservation Open Space Element Policy 10C states the City must '[r]equire projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.' This is in addition to the fire hazards mentioned above. There appears to have been no analysis regarding such hazards. Presently, the subject site is comprised of just a few lots. If hazards arise, the mobile nature of the existing development makes it possible to relocate structures to different areas of the property to avoid or minimize the exposure of development to hazards. However, with the proposed land division, the potential locations of structures will be fixed relative to the new lot lines, potentially foreclosing options to relocate and avoid hazards, as opposed to defending the development against hazards in the present location." (Staff Report: Substantial Issue A-5-LGB-10-039, page 11).

- Population/Housing – The proposed Project would induce population growth by at least 19 residential units. In addition, an unknown number of existing renters will not be able to afford to purchase the converted mobilehome lots or to pay the increased rent contemplated by Government Code Section 66427.5. The Project may therefore result in environmental impacts associated with the relocation of these renters to other areas (e.g., demolition and removal of debris).
- Land Use – In addition to the individual General Plan conflicts cited throughout this letter, the City itself has identified a number areas in which the proposed Project conflicts with the adopted General Plan. According to the City’s June 16, 2009 Agenda Bill, “... the proposed design of the subdivision appears to be inconsistent with numerous General Plan and Municipal Code provisions; including but not limited to: density, required parking, required access, circulation and required fuel modification. General Plan Land Use Policy 10-C discourages the approval of subdivisions requests that do not conform to design and zoning standards. In addition, subdivision design improvements must be in compliance with the Municipal Code and the General Plan in order to approve the proposed subdivision and make the Coastal Development Permit and Tentative Tract Map findings. Consequently, the proposed subdivision design may require the removal of certain nonconforming mobile homes, which again creates the possibility of displacing existing mobile home residents.” (City of Laguna Beach 6/16/09 Agenda Bill).

**B. THE CITY IS NOT PROHIBITED FROM IMPOSING CONDITIONS OF APPROVAL**

Local ordinance allows the City to impose conditions of approval in connection with the proposed Coastal Development Permit. The Laguna Beach Municipal Code provides that, “[i]n approving an application for a coastal development permit, the approving body may impose conditions necessary to enable the required findings to be made. When conditions pertaining to public access and/or open space or conservation easements are imposed, notification of such action shall be submitted to the executive director of the coastal commission in accordance with Section 25.07.018.” (Laguna Beach Municipal Code § 25.07.012(H)). The applicable findings include:

- (1) The Project is in conformity with all the applicable provisions of the general plan, including the certified local coastal program and any applicable specific plans;
- (2) Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal program and with the public access and public recreation policies of Chapter 3 of the Coastal Act;

- (3) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

(Laguna Beach Municipal Code § 25.07.012(G)). Findings #1 and #3 cannot be made today, and Finding #2 is inapplicable because the Project is not located between the sea and the first public road paralleling the sea.

With respect to Finding #1, the City has already determined that "... the proposed design of the subdivision appears to be inconsistent with numerous General Plan and Municipal Code provisions; including but not limited to: density, required parking, required access, circulation and required fuel modification." (City of Laguna Beach 6/16/09 Appeal Report). These issues must be addressed pursuant to General Plan Land Use Policy 10-C, which discourages the approval of subdivisions that do not conform to design and zoning standards. Addressing these issues, in turn, may require the removal of certain nonconforming mobile homes and the displacement of existing mobilehome residents. (City of Laguna Beach 6/16/09 Appeal Report).

Similarly, Finding #3 cannot be made today. Without preparation of an Initial Study, and Negative Declaration or Environmental Impact Report, the City lacks any foundation upon which to determine that "The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act."

#### C. THE CONVERSION MUST BE EVALUATED FOR MELLO ACT COMPLIANCE

Laguna Terrace Park is located within the Coastal Zone. As such, the City must comply with the *Mello Act*. (Cal. Govt. Code § 65590(a). Under the *Mello Act*, the conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income is not allowed unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. (Cal. Govt. Code § 65590(b)). The term "conversion" is specifically defined to include the change of a residential mobilehome to a condominium, cooperative, or similar ownership form. (Cal. Govt. Code § 65590(g)(1)).

The Applicant must provide the City with evidence of the income levels of the existing residents in order to determine the scope of required *Mello Act* compliance. In the event that the Applicant is required to provide replacement housing, potential impacts associated with that relocation must be evaluated as part of the Project's CEQA document. Separate evaluations of the Project and the replacement housing would subject the CEQA document to segmentation—or so-called "project-splitting"—challenges.

Notably, the City's own peer review law firm (Endeman, Lincoln, Turek & Heater) agrees that Mello Act compliance is required in connection with the Project. In a September 11,

2009 letter, the Endeman firm wrote that "...the proposed subdivision may have impacts that go beyond those on Park residents. First, the 1982 Mello Act, California Government Code sections 65590 and 65590.1, regulates the conversion of existing residential units occupied by persons and families of low or moderate income as defined in Health and Safety Code section 50093. Among other things, the Act requires the provision of replacement housing prior to approval of the conversion of such units. The Staff Report acknowledges that the Park is within the coastal zone within the meaning of the Mello Act." Again, we are aware of no evidence of the income levels of the current occupants of the Park having been provided to the City.

**D. THE PROJECT FAILS TO COMPLY WITH THE CITY'S LOCAL COASTAL PROGRAM**

The Applicant's violations of the Local Coastal Program ("LCP") are too numerous to list. At a minimum, the Applicant has failed to comply with Land Use and Open Space/Conservation General Plan Elements policies; provisions of the Zoning Code; subdivision development standards in Title 21 (Plats and Subdivisions) of the City's Municipal Code; and Fuel Modification Guidelines from the General Plan's Safety Element. For example, biological resource and water quality impacts associated with the Project have not been addressed, as required by the LCP. This is particularly egregious considering the Environmentally Sensitive Areas within the Project boundaries. As the Coastal Commission noted in its October 27, 2009 letter to the City regarding the proposed Laguna Terrace Park subdivision, "the whole range of coastal resource issues addressed in the City's certified LCP must be considered in this request for land division, including but not limited to protection and enhancement of public access, biological resources, water quality, scenic resources, and minimization and avoidance of hazards (geologic, fire, flood, etc)."

In addition, the Applicant has failed to comply with the General Plan's Land Use element and Title 21 (Plats and Subdivision) of the Laguna Beach Municipal Code, both of which are explicitly made a part of the Local Coastal Program. For instance, Policy 8-A of the Land Use Element reads as follows: "Prohibit residential condominium conversions unless an equivalent number of rental units have been developed. Under no circumstances shall a conversion be allowed which does not comply with existing development standards." The proposed conversion of the existing Laguna Terrace Park rental mobile homes to for-sale units makes no provision for the development of rental units, and is at odds with existing development standards. One example of this is Section 21.12.040 of the Laguna Beach Municipal code (*Width of streets—Minimum*), which provides that "The minimum street pavement width in all cases, excepting access driveways, shall be twenty feet for two travel lanes, excluding parking lanes." The proposed subdivision ignores this (and most other) requirements of Laguna Beach Municipal Code Title 21 (Plats and Subdivisions) with two-way streets 20 feet in width (D Street).

E. THE PROJECT IS SUBJECT TO ONGOING VIOLATIONS

The legality of all unpermitted development at Laguna Terrace Park under the Coastal Act and LCP must be resolved before the City approves the Project. The unpermitted development includes, but is not limited to, Conditional Use Permit 00-33. As approved by the City in September of 2000, Conditional Use Permit 00-33 allowed for the addition of two mobile home spaces to the existing Laguna Terrace Park, bringing the total number of mobile home spaces from 156 to 158. According to a July 20, 2000 letter from the City's Community Development Assistant Director, the site of these mobile home spaces "...is designated as containing Very High Habitat Value on the South Laguna Biological Resources Map." The Applicant subsequently developed those two spaces with mobile home uses, and the Project therefore includes these two spaces.

To the best of our knowledge, no Coastal Development Permit was issued in connection with this Conditional Use Permit by either the City or the Coastal Commission. Such a failure to obtain a Coastal Development Permit violated the Coastal Act, which requires such Permits for "development." The Coastal Act's definition of "development" includes the "...change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land." (Coastal Act §31016). Clearly, the addition of two residential lots where fenced storage previously existed constitutes a "change in the density or intensity of use of land", notwithstanding the fact that such change was approved through a Conditional Use Permit instead of a subdivision action. Therefore, approval of a Coastal Development Permit by either the City or the Coastal Commission was required in connection with Conditional Use Permit 00-33.

We urge the City to enforce the provisions of the Coastal Act by refusing to recognize this additional development until compliance with the Coastal Act and the LCP is achieved. The legality of all unpermitted development at Laguna Terrace Park under the Coastal Act and LCP must be resolved before the City approves the Permit. Failure to rectify these ongoing violations now would have the effect of officially recognizing and validating the existence of the unpermitted development.

F. THE RECENT SEQUOIA PARK ASSOCIATES CASE IS INAPPLICABLE

The recent *Sequoia Park Associates v. County of Sonoma* (176 Cal. App. 4th 1270 (Cal. App. 1st Dist. 2009)) has no bearing on the Project. The issue before the Court of Appeal in that case related to the validity of the County's mobilehome conversion implementation ordinance. The Court held that regulation of such conversions was expressly preempted by State statute. Importantly, nothing in the Court's decision challenged the applicability of state laws including

City of Laguna Beach Planning Commissioners  
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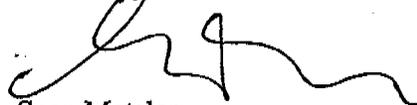
but not limited to CEQA, the Coastal Act or the *Mello Act* to mobilehome conversions. Because preemption is not an issue here, the *Sequoia Park Associates* decision is inapplicable.

Further, the holding in *Sequoia Park Associates* made an important assumption regarding the pre-conversion status of the mobilehome park which does not apply to the Project. Specifically, that Court stated that "... that the predicate of the statutory examination is a functioning park with existing tenants with *all necessary permits and inspections needed for current operation*. As Sequoia points out: 'Mobilehome parks being converted under section 66427.5 have already been mapped out, plotted out, approved under zoning and general plans, and subjected to applicable health and safety regulations.'" (*Sequoia Park Associates v. County of Sonoma* (176 Cal. App. 4th 1270 (Cal. App. 1st Dist. 2009); Emphasis added). As discussed above, the Project does not have all necessary permits and inspections for current operations. Conditional Use Permit 00-33 is just one example illustrating this fact.

G. CONCLUSION

In light of the above, we respectfully request that the City require the Applicant to submit a Project application that complies with all required State and local laws, including but not limited to CEQA, the Mello Act, and the LCP.

Sincerely,



Sean Matsler

cc: Scott Drapkin (via e-mail)  
Phil Kohn, Esq. (via e-mail)  
Martha Anderson (via e-mail)

300112911.1

**EXHIBIT B**

**United States Geological Survey's 7.5 Minute  
Topographical Map**



**EXHIBIT C**

**California Coastal Commission Documents:**

- (1) Determination on Appealability: (June 15, 2010)**
- (2) Staff Report on Appealability: (May 26, 2010)**
- (3) Notification of Action on Substantial Issue: (March 16, 2010)**
- (4) Staff Report on Appeal No. NO. A-5-LGB-10-039 (February/March 2010)**
- (5) Notification of Appeal: (February 23, 2010)**