CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260 FAX (415) 904-5400

F4

NORTH CENTRAL COAST DISTRICT DEPUTY DIRECTOR'S REPORT

For the

February Meeting of the California Coastal Commission

MEMORANDUM Date: February 11, 2011

TO: Commissioners and Interested Parties

FROM: Charles Lester, North Central Coast District Deputy Director

SUBJECT: ***Deputy Director's Report***

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the North Central Coast District Office for the February 11, 2011 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the North Central Coast District.

EMERGENCY PERMITS

1. 2-10-041-G California Department Of Transportation, Dist. 4, Attn: Stefan Galvez (San Mateo, San Mateo County)
2. 2-11-005-G Fpa/Baf Land's End Associates, Llc; Rjr Engineering, Attn: Robert Anderson (Pacifica, San Mateo County)

TOTAL OF 2 ITEMS

DETAIL OF ATTACHED MATERIALS

REPORT OF EMERGENCY PERMITS

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 13142 of the California Code of Regulations because the devlopment is necessary to protect life and public property or to maintain public services.

Applicant	*Project Description*	*Project Location*
2-10-041-G California Department Of Transportation, Dist. 4, Attn: Stefan Galvez	(1) Installation of a 200 ft. long, approximately 28 ft. tall Rock Slope Protective (RSP) device using 8-ton rock; (2) removal of approximately 700 cubic yards of fallen bluff material from the toe of the bluff and reuse as soil cover for the RSP device; (3) removal and replacement of two fallen K-rail barriers 70 ft. north of the RSP site; and (4) placement of approximately 6,000 sq. ft. of paving along inland side of State Route 1.	State Route 1 at post mile 13.35, San Mateo (San Mateo County)
2-11-005-G Fpa/Baf Land's End Associates, Llc Rjr Engineering, Attn: Robert Anderson	Construction of 1) a 690-ft x 17.5-ft tie-back sea wall with public access stairs, 2) placement / retention of the minimal amount of rock necessary for toe scour protection, 3) removal of any existing rock revetment not needed for toe protection; and 4) construction of a construction and beach public access way; all as shown in the project plans prepared and submitted by RJR Engineering Group, dated January 5, 2011.	100 Esplanade Way, Pacifica (San Mateo County)

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2 219
VOICE (415) 904-5 200
FAX (4 15) 904-5 400
TDD (415) 597-5885

EMERGENCY PERMIT

Robert Young
Caltrans District 4
111 Grand Ave.
Oakland, CA 94623

Date: January 7, 2010
Emergency Permit No. 2-10-041-G

LOCATION OF EMERGENCY
State Route 1 at post mile 13.35 (San Mateo County)

EMERGENCY WORK
(1) Installation of a 200 ft. long, approximately 28 ft. tall Rock Slope Protective (RSP) device using 8-ton rock; (2) removal of approximately 700 cubic yards of fallen bluff material from the toe of the bluff and reuse as soil cover for the RSP device; (3) removal and replacement of two fallen K-rail barriers 70 ft. north of the RSP site; and (4) placement of approximately 6,000 sq. ft. of paving along inland side of State Route 1.

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of the sudden loss of 5-7 feet of bluff face that has undermined the asphalt edge of State Route 1 requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services pursuant to 14 Cal. Admin. Code Section 13009. The Executive Director of the California Coastal Commission hereby finds that:.

(a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this Emergency Permit; and
(b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,

for
PETER M. DOUGLAS
Executive Director

cc: Tami Grove

Enclosure: Acceptance Form

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the APPLICANT and returned to our office within 15 days.

2. Only that work specifically described in this permit and for the specific property listed above is authorized. Work is limited to emergency response measures described in the January 7, 2011 revised project description and plans titled Pescadero Rip Rap Repair and dated December 14, 2010. Any additional work requires separate authorization from the Executive Director.

3. All work shall take place in a time and manner to minimize any potential damages to any resources, including intertidal species, and to minimize impacts to public access.

4. The work authorized by this permit must be completed within 60 days of the date of this permit, which shall become null and void unless extended by the Executive Director for good cause.

5. The Permittee recognizes that the emergency work is considered temporary and subject to removal unless and until a regular coastal development permit permanently authorizing the work is approved. Within 60 days of this emergency permit, the applicant shall complete Coastal Development Permit Amendment Application No. 2-05-013-A2. The amended permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as offers to dedicate, easements, in-lieu fees, etc.) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

6. All fallen bluff material shall be either reused as soil cover for the RSP device or placed within the Santa Cruz littoral cell in close proximity to the project site. Within 30 days of this emergency permit, the Applicant shall submit a Bluff Material Reuse Plan for review and approval of the Executive Director to relocate any of this material within the littoral cell.

7. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.

8. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies, including but not limited to the California Department of Fish &

Game, U.S. Fish & Wildlife Service, U.S. Army Corps of Engineers, and the California State Lands Commission.

9. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall secure authorization from all involved property owners, including but not limited to the California Department of Parks and Recreation, for use of any property not owned by the applicant for construction, staging, stockpiling, and construction access purposes.

10. Public access to and along the shoreline in the project area shall be permitted and provided to the maximum extent feasible, consistent with public safety.

Construction Responsibilities:

11. The Caltrans right of way, county property, and all other areas used for construction staging and access purposes shall be kept free from any debris or trash not needed for construction. Daily debris haul shall be implemented.

12. No construction equipment or materials shall be stored on the beach.

13. If, at any time while the work authorized by this Emergency Permit is occurring, any marine mammals are located on or seaward of the subject property, work must immediately stop and the Permittee must immediately call the Marine Mammal Center is Sausalito, CA or the National Marine Fisheries Service to report that a marine mammal is located on the beach. Work must not commence until either the animal is removed by the Marine Mammal Center or the National Marine Fisheries Service, or until the animal returns to the ocean on its own without any harassment.

14. Construction activities and equipment shall avoid Pacific Ocean waters and minimize beach disturbance to the maximum extent feasible by project design and implementation including, but not limited to, limiting construction to the lowest possible tides. No construction equipment, materials, or debris shall be placed where they may be subject to ocean waters or dispersion.

15. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach and/or the adjacent marine environment are prohibited. The Permittee shall collect, contain, and properly dispose of all construction leaks, drips, by-products, and any similar contaminants through the use of containment structures or equivalent as necessary (including through the use of collection devices and absorbent materials placed below any above-ground work where such contaminants are possible and/or expected). Equipment washing, refueling, and/or servicing may not take place on the beach.

16. A copy of the signed Emergency Permit shall be maintained in a conspicuous location at the staging area site at all times, and such copy shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the Emergency Permit, including all of its terms and conditions, prior to commencement of construction.

17. The construction site and staging area(s) shall be maintained with good construction housekeeping measures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; and remove all construction debris from the beach.

18. All hazardous materials located on the property (e.g., paint cans, solvents, household chemicals, etc.), shall be removed from the property and deposited at an authorized disposal and/or storage site located inland of the State Route 1 project site.

Post-Construction Responsibilities:

19. Within seven days of completion of the work authorized by the Emergency Permit, the Permittee shall submit photographic evidence of compliance with the Emergency Permit.

20. Within 30 days of completion of the construction authorized by this Emergency Permit, the Permittee shall submit site plans and cross sections prepared by a certified civil engineer or engineering geologist, clearly identifying the work completed under the emergency authorization and a narrative description of all emergency construction activities undertaken pursuant to this Emergency Permit.

21. Within 60 days of this emergency permit, the Applicant shall submit all materials necessary to complete Coastal Development Permit Amendment Application No. 2-05-013-A2, as outlined in the January 5, 2011 letter.

22. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act.

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT ST, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5260
FAX (415) 904-5400
TDD (415) 597-5885

EMERGENCY PERMIT ACCEPTANCE FORM

RECEIVED
JAN 3 1 2011
COASTAL COMMISSION
NORTH CENTRAL COAST

TO: CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260 FAX (415) 904-5400

RE: **Emergency Permit No.** **2-10-041-G**

INSTRUCTIONS: After reading the Emergency Permit, please sign this form and return to the North Central Coast District Office within 15 working days from the permit's date.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

I also understand that the emergency work is TEMPORARY and that a regular Coastal Permit is necessary for any permanent installation. I agree to complete the regular Coastal Permit Amendment Application (no. 2-05-013-A2) within 60 days of the date of the emergency permit (by March 8, 2011 date) or I will remove the emergency work in its entirety within 150 days of the date of the emergency permit (i.e., by June 6, 2011).

Signature of Applicant or
Authorized Representative

Robert Stuart Young; Branch Chief
Name Office of Environmental Maintenance

California Department of Transportation
Address
District 4; Division of Maintenance
111 Grand Ave
Oakland CA 94623-0660

January 20, 2011
Date of Signing

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904- 5400

EMERGENCY PERMIT

Rob Anderson
RJR Engineering
3500 Camino Avenue, Suite 200
Oxnard, CA 93030

Date: January 25, 2011
Emergency Permit No. 2-11-005-G

FPA/BAF Land's End Associates, LLC
4665 MacArthur Court, Ste. 200
Newport Beach, CA 92660

LOCATION OF EMERGENCY
100 Esplanade Avenue (Pacifica, San Mateo County) APN 009-023-070

EMERGENCY WORK
Construction of 1) a 690-ft x 17.5-ft tie-back sea wall with public access stairs, 2) placement / retention of the minimal amount of rock necessary for toe scour protection, 3) removal of any existing rock revetment not needed for toe protection; and 4) construction of a construction and beach public access way; all as shown in the project plans prepared and submitted by RJR Engineering Group, dated January 5, 2011.

This letter constitutes approval of the emergency work you or your representative requested to be conducted at the location listed above. I understand from your information that an unexpected occurrence in the form of accelerated bluff erosion and failure and evidence of widespread vertical and horizontal movement of the bluff top is posing a threat to the Land's End property, driveway, and utilities; and requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services pursuant to 14 Cal. Admin. Code Section 13009. The Executive Director of the California Coastal Commission hereby finds that:

(a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this Emergency Permit; and

(b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,

Renee T. Ananda

for PETER M. DOUGLAS
Executive Director

cc: Todd Stark, Redwood Construction
City of Pacifica
Enclosure: Acceptance Form

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the property owner and returned to our office **within 15 days**.

2. Only that work specifically described in this permit and for the specific property listed above is authorized. Work shall be limited to that proposed in the emergency permit application, as shown on project plans prepared and submitted by RJR Engineering Group, dated January 5, 2011, and as may be further revised through subsequent review and approval by the Executive Director. Recordation or extinguishment of any public access easements is not authorized under this emergency permit and shall be addressed under the follow-up Coastal Development Permit application, as required under Condition No. 16 of this Emergency Permit. Any additional work requires separate authorization from the Executive Director.

3. The work authorized by this permit must be completed **within 6 months** of the date of this permit, which shall become null and void unless extended by the Executive Director for good cause.

4. PRIOR TO COMMENCEMENT OF CONSTRUCTION, Permittee shall submit a complete project implementation schedule that includes review and approval tasks; and interim coordination meetings for Coastal Commission staff to review.

5. PRIOR TO COMMENCEMENT OF CONSTRUCTION of the tie-back sea wall, the Permittee shall a) submit a formal sea wall simulation, for review and design approval by the Executive Director, showing the features for the face of the wall, as well as any treatments that will be used. The wall shall be designed and constructed to mimic, blend and be compatible with the surrounding natural landform to the maximum extent feasible, including in form, inclination, texture, and color; b) contact Coastal Commission staff upon completing placement of stakes and forms delineating the location of the tie-back sea wall for field review and approval; and c) prior to commencement of construction of the visual treatment, prepare a prototype/sample section for the proposed the tie-back sea wall in situ and contact Commission staff for field review and final design approval.

6. PRIOR TO COMMENCEMENT OF CONSTRUCTION of the wall and any slope reconstruction, Permittee shall a) modify project plans, dated January 5, 2011 to include geogrid reinforcement of the reconstructed slope, at the site of the former public access way, with the use of native plant species for erosion control on the slope above the tie-back sea wall; provide one or more cross-sections of the drainage plans, showing the

storm drain, BMPs, and the manner of discharge across the beach and c) submit the change for review and approval by the Executive Director.

7. PRIOR TO COMMENCEMENT OF CONSTRUCTION, Permittee shall submit, for review and approval by the Executive Director, a) a grading plan for the temporary, construction / public beach access way; and b) drainage plans with construction Best Management Practices (BMPs) that will be implemented. Construction activities shall be carried out in general conformance with the approved grading plan and drainage plan. If significant changes to the approved grading plan or drainage plan are proposed, the applicant shall notify the North Central Coast District Office to determine if additional authorization from the Executive Director is required.

8. All work shall take place in a time and manner to minimize any potential damages to any resources, including intertidal species, and to minimize impacts to public access.

9. PRIOR TO COMMENCEMENT OF CONSTRUCTION, Permittee shall submit for review and approval by the Executive Director, an access plan for providing temporary beach access for the public during construction. Public access to and along the shoreline in the project area shall be permitted and provided to the maximum extent feasible, consistent with public safety. The temporary public access plan shall include an alternative plan to be followed when construction equipment are in operation at the site, consistent with public safety.

10. **Within 14 days** of approval by the Executive Director or within such additional time that the Executive Director grants for good cause, Permittee shall provide public access to the beach consistent with condition 9. Public access to the beach shall be provided no later than the Memorial Day Weekend, 2011, unless the Executive Director determines that such provision is not feasible, consistent with public safety.

11. Equipment shall be clean and free of leaks that may deposit fluids onto the beach. Vehicles shall be checked for leaking oil, fuel, and other associated vehicle fluids, and maintained. Stationary equipment shall be positioned over drip pans.

12. The Permittee recognizes that the emergency work is considered temporary and subject to removal unless and until a regular coastal development permit permanently authorizing the work is approved by the Coastal Commission. A regular permit will be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly, including provisions to mitigate for potential impacts to public access (such as offers to dedicate, easements, in-lieu fees, etc.), mitigation for impacts to the beach area, and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred.

13. In exercising this permit, the Permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.

14. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies, including but not limited to, California Department of Fish & Game, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, and the California State Lands Commission. All work conducted under this emergency permit shall comply with the conditions and requirements of all necessary authorizations and/or permits.

15. PRIOR TO COMMENCEMENT OF CONSTRUCTION of the public access elements of the work authorized by this Emergency Permit, the Permittee shall submit a proposed design plan for the reconstructed public access on site for review and approval by the Executive Director. The design for the public access shall include at a minimum the pathway on the upper and lower bluff, benches along the entire bluff area (up coast and down coast), and additional amenities including, but not limited to a coastal information kiosk.

16. **Within 60 days** of the date of this Emergency Permit, the Permittee shall complete a regular coastal development permit application to have the emergency work be considered through the regular CDP process. Such application shall include a written timeline and description of the construction history for the existing structures being protected by work authorized under this permit, including the buildings, utilities, driveway, and public access; and an analysis of alternatives to protect the structures that are in danger, including, but not limited to, re-location of the structure(s) out of harms way, beach nourishment, and / or vertical sea wall. If after staff's review of the CDP application a request for additional information is made, the applicant shall submit this additional information within 30 days of the request. If no such application is received, or if the application remains incomplete for a period of 120 days after the Executive Director issues notice that the application is incomplete, or a follow-up CDP for retention is denied, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Executive Director. Removal of the emergency work might also require a CDP. If the follow-up CDP application is withdrawn without the Executive Director's consent, the emergency work shall be removed in its entirety within 150 days. The Permittee may also be subject to penalties or other remedial actions pursuant to the Commission's Chapter Nine enforcement authorities, as noted below.

Construction Responsibilities:

17. All areas used for construction staging and access purposes shall be kept free from any debris or trash not needed for construction. Daily debris haul shall be implemented. The

construction site and staging area(s) shall be maintained with good construction housekeeping measures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; and remove all construction debris from the beach.

18. Construction activities and equipment shall avoid Pacific Ocean waters and minimize beach disturbance to the maximum extent feasible by project design and implementation including, but not limited to, limiting construction to the lowest possible tides. Particular care shall be exercised to prevent foreign materials (e.g., construction scraps etc.) from entering Pacific Ocean waters. No construction equipment or materials shall be stored on the beach. No construction equipment, materials, or debris shall be placed where they may be subject to ocean waters or dispersion.

19. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach and/or the adjacent marine environment are prohibited. The Permittee shall collect, contain, and properly dispose of all construction leaks, drips, by-products, and any similar contaminants through the use of containment structures or equivalent as necessary (including through the use of collection devices and absorbent materials placed below any above-ground work where such contaminants are possible and/or expected). Equipment washing, refueling, and/or servicing shall not take place on the beach.

20. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions, Best Management Practices, and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or clean up of foreign materials not properly contained.

21. A copy of the signed Emergency Permit shall be maintained in a conspicuous location at the staging area site at all times, and such copy shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the Emergency Permit, including all of its terms and conditions, prior to commencement of construction.

22. If, at any time while the work authorized by this Emergency Permit is occurring, any marine mammals are located on or seaward of the subject property, work must immediately stop and the Property Owner must immediately call the Marine Mammal Center in Sausalito, CA or the National Marine Fisheries Service to report that a marine mammal is located on the beach. Work must not commence until either the animal is removed by the Marine Mammal Center or the National Marine Fisheries Service, or until the animal returns to the ocean on its own without any harassment.

Post-Construction Responsibilities:

23. All beach areas and all beach access points impacted by construction activities, except for the access road, shall be restored to their pre-construction condition or better **within three days** of completion of construction.

24. Any beach sand impacted by construction shall be filtered as necessary to remove all construction debris from the beach.

25. **Within seven days** of completion of the work authorized by the Emergency Permit, the Permittee shall submit photographic evidence of compliance with the Emergency Permit.

26. **Within 30 days** of completion of the construction authorized by this Emergency Permit, the Permittee shall submit as-built plans and cross sections prepared by a certified civil engineer or engineering geologist, clearly identifying the work completed under the emergency authorization and a narrative description of all emergency construction activities undertaken pursuant to this Emergency Permit. The Permittee shall also provide records of the actual cost of completing the authorized work and the actual amount of rock placed, such as receipts from construction firms.

27. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act. FAILURE TO A) SUBMIT A FOLLOW-UP COASTAL DEVELOPMENT PERMIT APPLICATION THAT SATISFIES THE REQUIREMENTS OF SECTION 13053.5 OF THE CALIFORNIA CODE OF REGULATIONS BY THE DATE SPECIFIED BY THIS PERMIT, OR AS EXTENDED THROUGH CORRESPONDENCE, OR B) REMOVE THE EMERGENCY WORK. (IF REQUIRED BY THIS EMERGENCY PERMIT) BY THE DATE SPECIFIED BY THIS PERMIT, WILL CONSTITUTE A KNOWING AND INTENTIONAL VIOLATION OF THE COASTAL ACT[1] AND MAY RSULT IN FORMAL ENFORCEMENT ACTION BY THE COMMISSION.

    THIS FORMAL ACTION COULD INCLUDE A RECORDATION OF A NOTICE OF VIOLATION ON YOUR PROPERTY PURSUANT TO SECTION 30812; THE ISSUANCE OF A CEASE AND DESIST ORDER AND/OR RESTORATION ORDER; AND/OR A CIVIL LAWSUIT, WHICH MAY RESULT IN THE IMPOSITION OF MONETARY PENALTIES, INCLUDING DAILY PENALTIES OF UP TO $15,000 PER VIOLATION PER DAY UNDER SECTION 30820(B), AND OTHER APPLICABLE PENALTIES AND OTHER RELIEF PURSUANT TO CHAPTER 9 OF THE COASTAL ACT.

[1] The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and, thus to the Coastal Act, unless otherwise indicated

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY EDMUND G. BROWN, JR., *GOVERNOR*

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2 219
VOICE AND TDD (415) 904-5 260
FAX (4 15) 904-5 400

EMERGENCY PERMIT ACCEPTANCE FORM

TO: CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260 FAX (415) 904-5400

RE: **Emergency Permit No. 2-11-005-G** (Land's End Apartments)

INSTRUCTIONS: After reading the Emergency Permit, please sign this form and return to the North Central Coast District Office within 15 working days from the permit's date.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

I also understand that the emergency work is TEMPORARY and that a regular Coastal Permit is necessary for any permanent installation. I agree to apply for a regular Coastal Permit by March 26, 2011 or remove the emergency work in its entirety by June 24, 2011.

_____
Signature of property owner or
Authorized Representative

_____
Name

_____
Address

_____

_____

_____

_____
Date of Signing

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT ST, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5260
FAX (415) 904-5400
TDD (415) 597-5885

RP

Memorandum

February 8, 2011

To: Commissioners and Interested Parties

FROM: Charles Lester, Deputy Director
North Central Coast District

Re: ***Additional Information for Commission Meeting Friday, February 11, 2011***

No central →

F6a, F7a & F7b

January 23, 2011

Sara Wan, Chair and
Members, Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94010

Items F6a, F7a, and F7b
2-11-004-EDD
A-2-SMC-11-001
A-2-SMC-11-003
Arthur Hofmayer
Oppose Project

Dear Chair Wan and Honorable Commissioners,

On behalf of the Montara Neighbors for Responsible Building, Appellants in the above-referenced matters, I am writing in strong support of the Staff Recommendation for finding:

1. Re: Dispute Resolution: that the proposed two single family residences on one "legal" lot on Second Street in Montara require a Coastal Development Permit, and any action by San Mateo County authorizing the residences is appealable to the Coastal Commission,
2. Re: Substantial Issue on two claims of Exemption by San Mateo County from Permit Requirements: that the two Appeals (A-2-SMC-11-001 and -003) raise a Substantial Issue as to the appealability of two residences on one "legal" lot, and
3. Re: Denial of two claims of Exemption by San Mateo County from Permit Requirements: that the development proposed by the Applicant is **not** exempt from the Coastal Development Permit requirements under the San Mateo County LCP and Coastal Act.

The staff has done an admirable job of analysis of the legal issues with respect to parcel legality that forms the basis of our Appeal. The County erroneously concluded that the issuance of Coastside Design Review Permits for two single- family residences on one legal parcel was exempt from Coastal Development Permit requirements. While the zoning of our single-family residential neighborhood allows one house per 5,000 sq. ft. legal lot, the Applicant has failed to establish the separate legal status of two 5,000 sq. ft. lots either through issuance of a Minor Subdivision or the required Certificates of Compliance. Therefore the project does not qualify for a Claim of Exemption from the permitting requirements of the Coastal Act.

We applaud the great work your staff has done on our Appeals, and urge you to vote to adopt the Staff Recommendation.

Sincerely,

Signature on file

Arthur Hofmayer
Montara Neighbors for Responsible Building
P.O. Box 826
Montara, CA 94037

San Mateo County

League for Coastside Protection

F6a, F7a & F7b

January 27, 2011

Sara Wan, Chairperson and Members
California Coastal Commission
North Central Coast District
45 Fremont Street, Suite 2000
San Francisco, CA 94015

Items F6a, F7a and F7b
Dana Kimsey
Oppose Project

Re: Dispute Resolution and Appeal (Substantial Issue and De Novo) of Categorical Exclusion Claiming Exemption from Coastal Permit Requirements

Dear Chair Wan and Members of the Commission,

On behalf of the San Mateo League for Coastside Protection, an organization dedicated to ensuring that land use decisions in the San Mateo County Coastal Zone are consistent with the Coastal Act and Local Coastal Programs, I am writing in strong support of the Staff Recommendation on the above-referenced items.

Specifically, we support the Staff analysis and conclusion that the two proposed single family residences on one "legal" lot require a Coastal Development Permit, and any action by San Mateo County to approve the residences is appealable to the Coastal Commission. We agree that the two Appeals raise a Substantial Issue as to the appealability of the two residences, and also agree that the two houses are not exempt from the requirements for a Coastal Development Permit under the San Mateo County LCP and Coastal Act.

Accordingly, we urge your Commission to support the Staff Recommendation on all three items raised by the Appeals.

Thank you for consideration of our comments.

Sincerely,

Signature on file

Dana M. Kimsey, Co-Chair
San Mateo County League for Coastside Protection

F6a, F7a & F7b

January 28, 2011

Items F6a, F7a and F7b

Chair Sara Wan and Members

Michael Ferreira

California Coastal Commission
North Central Coast District
45 Fremont Street, Suite 2000
San Francisco, CA 94015

Re: North Central Coast, Items F6a. 2-11-4-EDD (Mahon, San Mateo Co.), F7a. Appeal No. A-2-SMC-11-1 (Mahon, San Mateo Co.) and F7b. Appeal No. A-2-SMC-11-3 (Mahon, San Mateo Co)

Dear Chair and Commissioners,

I write in strong support of the Staff Recommendation on the above-referenced items.

I request that the Commission concur that the two Appeals present a Substantial Issue as to the appealability of the two residences, and also that the Commission agree that the two houses are not exempt from the requirements for a Coastal Development Permit under the San Mateo County LCP and Coastal Act. I am in support of the Staff analysis and conclusion that the two proposed single family residences on one legal lot require a Coastal Development Permit, and that any action by San Mateo County to approve the residences is appealable to the Coastal Commission.

I therefore urge your Commission to support the Staff Recommendation as to all three items raised by the appellants.

Sincerely,

Signature on file

Michael J. Ferreira

Former Mayor of the City of Half Moon Bay

F6a, F7a & F7b

January 30, 2011

Sara Wan, Chair and
Members, Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94010

Items F6a, F7a, and F7b
2-11-004-EDD
A-2-SMC-11-001
A-2-SMC-11-003
James Rudolph
Oppose Project

Dear Chair Wan and Honorable Commissioners,

As an appellant , I urge your Commission to support the staff recommendation on all items raised by the appeals.

I am a member of the Coastside Design Review Committee appointed by the San Mateo County Board of Supervisors to review residential development projects on the Coastside. This Mahon project was the catalyst that inspired our communities to require clear standards that new homes be in harmony with their neighbors. The issues raised by this proposed development are at the heart of the Committee's efforts to maintain the rural neighborhood character of the Montara community and the Mid Coast in general.

I urge you to vote to adopt the staff recommendation.

Sincerely,

James Rudolph
P.O. Box 664
Moss Beach, CA 94038

F6a, F7a & F7b

January 31, 2011

Sara Wan, Chairperson and Members
California Coastal Commission
North Central Coast District
45 Fremont Street, Suite 2000
San Francisco, CA 94015

Items F6a, F7a and F7b
William F. Kehoe
Oppose Project

Re: Dispute Resolution and Appeal (Substantial Issue and De Novo) of Categorical Exclusion Claiming Exemption from Coastal Permit Requirements

Dear Chair Wan and Members of the Commission,

Although I am Vice Chair for the Midcoast Community Council, I am writing this letter as a private citizen and resident of the San Mateo County unincorporated midcoast. I look to the California Coastal Commission to guarantee that land use decisions in the San Mateo County Coastal Zone are consistent with the Coastal Act and Local Coastal Programs which the voters of California overwhelmingly approved almost 40 years ago. I am also grateful to you for all your efforts on behalf of the residents of California.

I am writing as an appellant who enthusiastically supports the Staff Recommendation on the above-referenced items. Specifically, I, and my family, support the Staff analysis and conclusion that the two proposed single family residences on one "legal" lot require a Coastal Development Permit, and any action by San Mateo County to approve the residences is appealable to the Coastal Commission. We agree that the two Appeals raise a Substantial Issue with respect to the grounds on which the appeal have been filed, and also agree that the two houses are not exempt from the requirements for a Coastal Development Permit under the San Mateo County LCP and Coastal Act.

I urge the Commission to support the Staff Recommendation on all three items raised by the Appeals.

Thank you for consideration of my comments.

Sincerely,

William F. Kehoe
891 Kelmore St.
Moss Beach, CA 94038
MCCBillKehoe@gmail.com
650-728-7255

COMMITTEE FOR
GREEN FOOTHILLS

F6a, F7a & F7b

February 1, 2011

Items F6a, F7a, and F7b

Sara Wan, Chair and
Members, Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94010

Lennie Roberts, for
Committee for Green Foothills
Oppose Project

Re: Dispute Resolution and Appeal (Substantial Issue and De Novo) of Categorical Exclusion Claiming Exemption from Coastal Permit Requirements

Dear Chair Wan and Commissioners,

On behalf of the Committee for Green Foothills, a regional organization working to ensure that land use decisions on the San Mateo coastside are consistent with zoning and other regulations such as the County Local Coastal Program, I am writing in strong support of the Staff Recommendation:

1. **Re: Dispute Resolution**: that the proposed two single family residences on one "legal" lot require a Coastal Development Permit and any action by San Mateo County authorizing the residences is appealable to the Coastal Commission,

2. **Re: Substantial Issue on two claims of Exemption from Coastal Development Permit requirements by San Mateo County**: that the two Appeals (A-2-SMC-11-001 and -003) raise a Substantial Issue as to the appealability of two residences on one "legal" lot, and

3. **Re: Denial of two claims of Exemption by San Mateo County from Permit Requirements**: that the development proposed by the Applicant is not exempt from Coastal Development Permit requirements under the certified San Mateo County LCP and California Coastal Act.

Staff's analysis of the legal issues with respect to parcel legality contained in the Appeal by CGF, Montara Neighbors for Responsible Building, and eight individuals, is excellent.

The San Mateo County Board of Supervisors "put the cart before the horse" in considering two Coastside Design Review Permits for two houses on one legal parcel before determining parcel legality. The County further erred in concluding that the issuance of the Design Review Permits for two single-family residences on one legal parcel was exempt from Coastal Development Permit requirements. While the zoning of this single family residential area allows one house for each 5,000 sq. ft. legal lot, the Applicant has failed to establish the separate legal status of two 5,000 sq. ft. lots. As a result, the project does not qualify for a Claim of Exemption from the permitting requirements of the Coastal Act.

Please support the Staff Recommendation, and thank you for ensuring that development up and down the coast of California complies with the Coastal Act and LCPs.

COMMITTEE FOR
GREEN FOOTHILLS
3921 E. Bayshore Road
Palo Alto, CA 94303
650.968.7243 PHONE
650.968.8431 FAX
info@GreenFoothills.org
www.GreenFoothills.org

Sincerely,

Signature on file

Lennie Roberts, San Mateo County Legislative Advocate
Committee for Green Foothills
339 La Cuesta
Portola Valley CA 94028

F6a, F7a & F7b

February 2, 2011
TO: Sara Wan Chairperson and Members
California Coastal Commission
North Central Coast District
45 Fremont Street, Suite 2000
San Francisco CA 94015

From: Constance Mitchell Oppose Project

RE: Dispute Resolution and Appeal (Substantial Issue and De Novo) of Categorical Exclusion Claiming Exemption from Coastal Permit Requirements
Items F6A, F7A, and F7B
Dispute Resolution Number 2-11-004-EDD

Dear Chair Wan and Members of the Commission:

I own a house in Montara at 650 Main Street and am therefore affected by any decision made to resolve the above dispute. Despite the house number on my address, it is actually in the 1200 block of Main Street and therefore close to 284 and 286 Second Street (I have never been able to discover why my house is so numbered.)

I am therefore writing to support the staff analysis and conclusion that the two proposed single family residences on one legal lot require a Coastal Development Permit and that any action by San Mateo County to approve the residences is appealable to the Coastal Commission. I agree the two appeals raise a substantial issue as to the appealability of the two residences, and also agree that the two houses are not exempt from the requirements for a Coastal Development Permit under the San Mateo County LCP and Coastal Act. Thus, I urge your Commission to support the staff recommnendation on all three items raised by the appeals.

I regard any attempt to circumvent the legitimate authority of the Coastal Commission with respect to development of our coastal communities as a threat to the quality of life of residents there, and to the preservation of the Coast as a natural resource and scenic treasure belonging to the whole of California. With the County seemingly heavily in favor of developers, the Commission is often a last resort of citizens wishing to preserve our State's heritage in accordance with enacted laws, regulations, and requirements. There appears to be no cogent reason to exempt the above development from Coastal Permit Requirements.

Thank you for considering my viewpoint.

Sincerely yours,

Signature on file

Constance Mitchell

THE ZUMBRUN LAW FIRM
47 Robert CT. East
Arcata, CA 95521
Tel: (707) 825-0466
Fax: (707) 825-0466
E-mail: zfirm@zumbrunlaw.com

F6a, F7a & F7b

February 2, 2011

Mr. Nicholas Dreher
Coastal Program Analyst
California Coastal Commission
North Central Coast District Office
45 Fremont St., Suite 2000
San Francisco, CA 94105

Dear Mr. Dreher:

Re: Friday, February 11, 2011 Coastal Commission Hearing
Agenda Items 6a, 7a and 7b (Mahon, San Mateo Co.)

I appreciate your phone call of last Friday when you clarified the issues. As I mentioned, we feel the appellants' efforts are premature. It would seem that the issue of the legality of Mr. Mahon's lots is paramount but premature. As the County reported to the Court, "On December 21, 2010, the Board of Supervisors concluded the hearing and conditionally approved the design review permits on the merits of the designs. Issuance of the building permits is conditioned on, inter alia, Mahon demonstrating that he has two legal buildable lots of 5,000 square feet each."

The Court has scheduled a trial on the lot legality issue for March 29, 2011 and briefing is already in progress. While this permit dispute began in 1999, the lot legality issue was not raised until April 27, 2009, one day before the scheduled April 28, 2009 Board hearing. A new legal action raising the lot legality issue was filed by Mahon on August 18, 2009.

It makes sense for the Coastal Commission to hold off until the Court rules, as a ruling against lot legality would make the issue moot. Waiting for the Court to rule would also avoid an awkward conflict of jurisdiction.

As requested, I've enclosed 25 copies of our comments to the Coastal Commission. I ask that you forward them to the Commissioners at your earliest opportunity. We will not be attending the February 11, 2011 Hearing.

Thanks again.

Sincerely,

Signature on file

RONALD A. ZUMBRUN

Agenda Item 6a, 2-11-4-EDD
Agenda Item 7a, Appeal No. A-Z SMC-11-1
Agenda Item 7b, Appeal No. A-Z SMC-11-3
(Mahon, San Mateo County)
SUPPORT MAHON

COMMENTS TO THE COASTAL COMMISSION
ON BEHALF OF THOMAS MAHON
FEBRUARY 11, 2011 CALIFORNIA COASTAL COMMISSION HEARING

Members of the Commission:

There is quite a background to the history of Thomas Mahon obtaining his Design Review Permits and Building Permits in 1999 and beginning construction only to have the permits revoked without notice or hearing due to a neighbor claiming that she had not received notice of the project. He has spent the past eleven years embroiled in hearings and lawsuits, and on December 21, 2010 he received conditional Design Review Permits which were immediately appealed to the California Coastal Commission by the organized groups who have chosen Mahon for their opposition.

A late issue raised by Mahon's opponents on the afternoon before the April 28, 2009 hearing by the Board of Supervisors was the contention that Mahon did not have legal lots, even though in 1999 the County of San Mateo merged his four 2500 square foot lots into two 5000 square foot lots and declared them to be legal lots. He has paid taxes on both lots ever since. This issue is paramount to this matter before your Commission.

On August 18, 2009 Mahon sought declaratory relief before the San Mateo Superior Court on the issue of lot legality. As indicated in Exhibit 1 hereto, the Court has scheduled a trial on the matter for March 29, 2011 to resolve this issue. The Court also designated a briefing schedule which is already under way.

The conditions on the approval of the Design Permits were limited to the subject of design. However, issuance of a building permit was conditioned on Mahon "demonstrating that he has two legal buildable lots of 5000 square feet each." This in effect placed a stay on all matters pending the decision of the Court following the March 29, 2011 trial. It also makes action by the Coastal Commission to be premature at the February 11, 2011 Coastal Commission hearing and will create an awkward conflict with the affected branches of government.

The subject litigation has been very illuminating. Attached as Exhibit 2 is the September 15, 2010 decision of the San Mateo Superior Court issuing the Writ of Mandate requested by Mr. Mahon. The decision was appealed to the Court of Appeal and rejected. This decision discusses in detail what Mahon has been dealing with. They do not deal with the personal and family anguish that he has suffered.

It is in the interest of justice that the California Coastal Commission wait for now and not rule on the positions supported by Mahon's opponents until the Court rules.

Very truly yours,

Signature on file

RONALD A. ZUMBRUN
Attorney for Thomas Mahon
The Zumbrun Law Firm
47 Robert Court East
Arcata, CA 95521

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

THOMAS MAHON,

Petitioner and Plaintiff,

vs.

COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS,

Respondents and Defendants.

_____/

Civil No. 446698

Assigned for all purposes to Dept. 2, Hon. Marie S. Weiner

CASE MANAGEMENT ORDER #4

THOMAS MAHON,

Petitioner and Plaintiff,

vs.

COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS,

Respondents and Defendants.

_____/

Civil No. 486981

Assigned for all purposes to Dept. 2, Hon. Marie S. Weiner

On January 14, 2011, a Case Management Conference was held in Department 2 of this Court before the Honorable Marie S. Weiner. Ronald Zumbrun, Esq. appeared on behalf of Plaintiff Thomas Mahon, and Kimberly Marlow and Timothy Fox, Deputy

County Counsel, appeared on behalf of Defendants San Mateo County and the San Mateo County Board of Supervisors.

The Court heard argument regarding the Opposition to Supplemental Return to Writ of Mandate.

Counsel for the parties agreed that a settlement conference would not be fruitful until after adjudication of the lot legality issues.

Counsel for the parties stipulated on the record to a briefing schedule in anticipation of the court trial on March 29, 2011 as to the issue of lot legality on the cause of action for declaratory relief.

The Court made the following rulings on the record at the case management conference, which are set forth herein as a formal order of the Court.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Petitioner's "Opposition", which effectively constitutes an objection to the Supplemental Return on Writ, is OVERRULED.

2. In regard to all lot legality issues, and specifically the first cause of action in CIV 486981, set for adjudication by court trial on March 29, 2011, pursuant to stipulation of counsel for the parties, Plaintiff shall file and serve his Opening Brief on or before February 4, 2011, Defendants shall file and serve their Brief on or before March 4, 2011, and Plaintiff shall file and serve his Reply Brief on or before March 18, 2011.

3. Counsel shall give notice on or before March 22, 2011 to opposing counsel of any and all witnesses anticipated to give live testimony (if any) at the court trial.

DATED: January 14, 2011

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

AFFIDAVIT OF MAILING

CASE NUMBER: CIV 446698 and CIV 486891

THOMAS MAHON, vs. COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS & THOMAS MAHON vs COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS

DOCUMENT: CASE MANAGEMENT ORDER #4

I declare, under penalty of perjury, that on the following date I deposited in the United State Post Office Mail Box at San Mateo, California a true copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage prepaid thereon, and addressed to the following:

RONALD ZUMBRUN
THE ZUMBRUN LAW FIRM
47 Robert Ct. East
Arcata, CA 95521

MICHAEL MURPHY
KIMBERLY MARLOW
TIMOTHY FOX
OFFICE OF COUNTY COUNSEL
400 County Center, 6th Floor
Redwood City, CA 94063

Executed on: January 18, 2011
at San Mateo, California

JOHN FITTON
CLERK OF THE SUPERIOR COURT

By: TERRI MARAGOULAS
Terri Maragoulas, Deputy Clerk

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

THOMAS MAHON,

Petitioner and Plaintiff,

vs.

COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS,

Respondents and Defendants.

_____/

Civil No. 446698

Assigned for all purposes to Dept. 2, Hon. Marie S. Weiner

DECISION ON PETITION FOR WRIT AND ON OBJECTIONS TO RETURN TO WRIT

THOMAS MAHON,

Petitioner and Plaintiff,

vs.

COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS,

Respondents and Defendants.

_____/

Civil No. 486981

Assigned for all purposes to Dept. 2, Hon. Marie S. Weiner

On May 14, 2010, hearing/trial was held on the Objections to Return on Writ and on the Supplemental Petition. Kimberly Marlow and Timothy Fox of the County Counsel's Office appeared on behalf of Respondents and Defendants County of San

Mateo and San Mateo County Board of Supervisors. Ronald Zumbrun and Todd Ratshin of the Zumbrun Law Firm appeared on behalf of Petitioner and Plaintiff Thomas Mahon. Further briefing and evidence was presented thereafter, and the matter submitted on June 29, 2010.

The civil actions of Mahon v. County of San Mateo, Civil No. 446698, and Mahon v. County of San Mateo, Civil No. 486981 were consolidated. In Action 446698, the Court has already issued a Writ on the basis of procedurally unfairness. Respondents filed a Return on the Writ, claiming compliance. Petitioner contested compliance with the Writ in Action 446698 and has contested compliance with the Writ by Petition in Action 486981, based upon failure to Respondents to reach the merits of the proposed design permits/applications, among other things. The pleadings also consist of Complaints setting forth causes of action seeking damages or injunctive relief, which have not been adjudicated, and were previously bifurcated in these consolidated actions and stayed pending further order of this Court. By those Complaints, this Court will be asked to adjudicate whether Petitioner's/Plaintiff's property legally consists of one 10,000 square foot lot or two contiguous 5,000 square foot lots.

As these are further proceedings on Petitions for Writ and the issuance of a Writ, the Court hereby incorporated by reference, without repeating, its Statement of Decision on Petition for Writ of Mandate on First Cause of Action dated March 14, 2008, filed March 18, 2008.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Thomas Mahon sought to build two single family residences on two adjacent lots in the City of Montara. Petitioner was originally sold four contiguous lots of 2500 square feet each, but was required by Respondents to "merge" them into two 5000 square foot lots. As part of the administrative process of building, Petitioner had to have a "design review" permit, approving the design of the proposed residences. This is separate and apart from a building permit.

Petitioner's effort to build started back in **1999** by his applications to obtain appropriate design review permits from the County's Planning Department. The two applications were assigned the administrative numbers PLN1999-00015 (hereinafter "PLN15") and PLN1999-00215 (hereinafter "PLN215"). Because the applications were submitted in February/March 1999, they were subject to the laws existing at that time. The Design Review Applications were originally approved, without incident, by the Planning Division staff in the Spring of 1999.

In **October 1999,** it was discovered that Respondents, through the Planning Division, had failed to give adequate statutory notice of the applications to neighbors, and the permits were unilaterally revoked without prior notice to Petitioner. After new notice to the neighbors, there were objections to Petitioner's design review permit applications, primarily on the basis that the proposed structures were of a larger size or scale than allowed under new design review laws passed *after* Petitioner's application had been submitted and previously approved – even thought the proposed plans were in conformity with the *old* design review laws effective in early 1999.

By correspondence dated December 31, 1999, the Planning Division informed Petitioner that the design review applications for both PLN15 and PLN215 would be denied, based upon the public comments received, and that Petitioner could demand a formal decision (of denial) or file revised plans. Petitioner presented revised plans to try and address certain concerns set forth in the Planning Division's letter. In October 2000, the design review permits were approved by the Planning Division, which decision was appealed by neighbors to the Planning Commission. In January 2001, the Planning Commission granted the appeal and denied design review approval. Petitioner appealed to the Board of Supervisors, and at the hearing on August 14, 2001, Respondents referring the applications back to Planning for further discussion and redesign. Petitioner and the revised plans were then volleyed, discussed, and delayed in the Planning Department for almost three years.

Upon achieving approval of the revised plans, subject to certain conditions, the Design Review applications were approved by the Planning Administrator in 2004. A neighbor appealed to the Planning Commission, which granted the appeals and denied the design review permits. Petitioner appealed to the Board of Supervisors. At the hearing by Respondents on February 8, 2005, the Board was informed that the Planning Commission had denied the design permits, contrary to the recommendation of its staff. Opposition to the permits focused upon the size or "scale" of the proposed houses – the bottom line of which was that they did not meet the new stricter design review requirements, and thus should not be allowed to be built despite the fact that they complied with the standards in place at the time of the applications in 1999. Respondents denied the appeal and thereby Petitioner's applications for design permit were denied.

Although Petitioner's applications were determined by Respondents on the *merits*, Respondents failed to provide *procedural* fairness.

A Writ was issued against Respondents in conjunction with the Statement of Decision, finding that Respondents had not given Petitioner a fair administrative hearing and that such failure caused actual prejudice to Petitioner and his rights. The matter was remanded to Respondents to give Petitioner a "further and proper fair hearing", i.e., a procedurally fair proceeding on the merits.

At the subsequent hearings by Respondents, Respondents attempted to remedy all of the *procedural* defects identified by the Court in its Writ and Statement of Decision, but Respondents explicitly decided *not* to address the applications *on the merits*. Instead, Respondents "denied without prejudice" the Petitioner's design review applications, indicating that Respondents were refusing to decide on the merits of the design review permit applications, and that Petitioner would have to submit new applications *after* there was a court adjudication of the size of his lots and/or Petitioner went through administrative procedures to formally have his lots subdivided.

Petitioner had objected to the Return to Writ, and Petitioner has filed a new Petition for Writ, both on the basis that Respondents have failed to comply with this Court's prior Writ in conjunction with the Statement of Decision. Specifically, Petitioner asserts that the new hearing on this design review permit applications was simply at "charade", because Respondents then refused to consider the evidence on the proposed design and refused to make a decision on the merits of the design review permit applications.

In essence, Respondents originally made a determination the merits without a fair procedure, and upon remand, proceeded to have a "fair" procedure but without a determination on the merits.

FACTS FROM THE NEW ADMINISTRATIVE RECORD

Upon remand after issuance of the Writ, the design review permit applications of Petitioner were set for hearing before Respondent Board of Supervisors. County Counsel indicated that Respondents would consider Petitioner's design review permit applications and "make a decision on the merits". (Administrative Record, Mahon2 at 12.) In its report and recommendation to Respondents, dated March 23, 2009, the Planning and Building Department confirmed that "the project applicant is entitled to have his application considered on the merits". (AR Mahon2 at 65.)

At the first hearing, post-remand, on March 31, 2009, the two applications were considered separately. (AR Mahon2 at 546.) Staff recommended denial of the design review permits. (AR Mahon2 550.) At the hearing, Supervisor Richard Gordon recused himself from participating in the decision, and counsel for Petitioner was given the amount of time he requested for presentation to the Board. (AR Mahon2 543, 551-552.) At the hearing, Petitioner (through his planning consultant Beaumont) presented to Respondents, and asked Respondents to consider, a revised design which was submitted to Planning back in 2005 but was not considered by Planning Division staff and thus not presented to the Board at the time of the previous hearings in 2005. (AR Mahon2 at 559-562.) These designs went beyond the 1999 minimum design requirements and indeed were revisions targetted to address concerns raised by the Planning Commission. (Id.) Petitioner also

addressed errors in the staff reports and provided corrected details and measurements. (AR Mahon2 at 562-567.) Supporters and opponents in the public spoke at the hearing. The public comment hearing was then closed. (AR Mahon2 at 653.) It appeared to Respondents that the parties might be able to work out any remaining differences in design, and continued the matter for 30 days to have the parties confer to see if an accord could be reached. (AR Mahon2 at 653-657, 408.) Any changes were considered by Respondents to be a refinement of the design, and thus no further public hearing would be provided. (AR Mahon2 at 657.)

The Planning and Building Department submitted a new report dated April 20, 2009, now recommending that Petitioner's design review permits be approved, based upon the revised plans submitted. (AR Mahon2 at 196-222, 260-283.) Such approval was recommended subject to particular standard conditions, including obtaining a building permit. (AR Mahon2 at 205-209, 269-273.)

At the continued hearing on April 28, 2009, County Counsel reported to the Board and the public that *one day before*, Respondents received a letter from an attorney for Montara Neighbors For Responsible Building raising an issue of the legality of Petitioner's lots. (AR Mahon2 at 117-118, 339-363.) The letter dated April 27, 2009 was addressed only to the Director of the Planning and Building Department, and indicated that copies were sent to County Counsel, the Coastal Commission, and the "client", but was not sent to Petitioner.

In addition to demanding other action and making other objections, the letter highlighted that two new Court of Appeals decisions had been issued, interpreting the grandfather clause in the Subdivision Map Act, Government Code Section 66410 *et seq.*,

such that old Subdivision Maps adopted by cities, in general, do not themselves create subdivided lots.[1] The attorney questioned the legality of Petitioner's lots as being anything other than one single 10,000 square foot lot. County Counsel reported that it had previously been the opinion and position of the County Counsel that the 1908 Subdivision Map for the area which is now Montara *did* create subdivided lots – which now had to be rethought. Respondents continued the matter for two weeks to consider the issue. (AR Mahon2 662.) There is nothing in the record reflecting that Petitioner had any input in the continuance.

(It would appear that the hearing was also continued because Respondents failed to give adequate statutory notice of the continued hearing to the public, so further continuance to permit a correct mailing and posting of the notice resolved this concern raised by Montara Neighbors For Responsible Building.)

After obtaining the letter of April 27, 2009, counsel for Petitioner presented Respondents, through County Counsel, with a response letter dated May 7, 2009. (AR Mahon2 418-425.) As part of that letter response, Petitioner's counsel indicated that he believed the burden of proof fell to the objectors to demonstrate that it was *not* a legal lot. Petitioner was not informed thereafter that Respondents would required Petitioner to prove all chain of title and other evidence on the issue at the hearing of May 19th.

By letter dated May 15, 2009 – two business days prior to the scheduled Board meeting – County Counsel opined that Petitioner owned only one legal parcel of 10,000

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[1] Abernathy Valley Inc. v. County of Solano (2009) 173 Cal.App.4th 42, decided April 2009, and Witt Home Ranch Inc. v. County of Sonoma (2008) 165 Cal.App.4th 543, decided July 2008. Both cases involved the issue of subdivision of adjacent lots of *undeveloped* land.

square feet. (AR Mahon2 at 426-435.) No evidence of a factual nature was presented to the Board, or to Petitioner, in support of this conclusion.

At the continued hearing on May 19, 2009, the Director of Planning reported to Respondents that discussions between the parties had yielded an agreement, such that revised design plans submitted by Petitioner were acceptable to Planning, and recommended to Respondents that they approve the design review permit applications of Petitioner. (AR Mahon2 at 669-677.) ("So that concludes our Staff report. We are recommending that these two houses with the revisions do meet the 1999 design standards.")

At the hearing on May 19, 2009, County Counsel reported to the Board of Supervisors that it was previously believed that the Subdivision Map of 1908 effectively subdivided the lots in question[2], but now in his legal opinion, that Subdivision Map did not effect a legal subdivision. Something else would also have had to happen in order to legally subdivide the property.

Based *solely* upon the holding of the two appellate decisions, but without reliance upon any *evidence* (or at least no evidence actually presented to the Board), County Counsel "concluded that based on those two cases, that in fact only one legal parcel of 10,000 square feet has been demonstrated." (AR Mahon2 at 666.)

The evidence reflected that four contiguous lots of 2500 square feet, namely Lots 1, 2, 3, and 4 on Block 7, had been conveyed to Petitioner by a single prior owner in 1996. (AR Mahon2 at 497.) County Counsel stated that he had no evidence that the lots

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[2] In fact, there is evidence of subdivision maps dated 1906, 1907 and 1908. (See AR Mahon2 491-494.)

had ever been separately conveyed in the past – but failed to present actual evidence that, in fact, no prior separate conveyance of any of the four lots had ever occurred in their history since 1908. (AR Mahon2 at 667.) Conveyance to and acquisition by an innocent purchaser of a parcel, prior to March 1972, created a conclusive presumption of legal subdivision – and thus is one way, but not the only way, to effectuate a subdivision of lots. Govt. Code §66412.6(b). As previously stated in the letter opinion by County Counsel dated May 15, 2009, "once development has been approved for a parcel (e.g., a building permit has been issued and a home constructed) a parcel is entitled to a certificate of compliance." (AR Mahon2 at 432.)

Counsel for Petitioner presented evidence that *the County* had mandated the lots be merged into two 5000 square foot lots, and that the merger was recorded in 2000 *by the County* and that the County declared that each 5000 square foot "property now constitutes one (1) lot". (AR Mahon2 at 495-496, 500-501; 678-680, 686-688.; see also Govt. Code §66499.20 1/2, §66499.20 3/4 .) Counsel for Petitioner discussed that after the merger of the lots, Petitioner was originally granted a design review permit and a building permit on the property in 1999, which was then revoked for the procedural defect of lack of notice. (AR Mahon2 683.)

There was no discussion or consideration by Respondents of the evidence that building had previously occurred on the property, but that the building had burned down in the 1950's.

County Counsel did inform Respondents, in his opinion letter, that Petitioner "would not be precluded from demonstrating that the two 5000 square foot lots are

currently legal by virtue of some other event, other than the 1908 map, that established the lots as separate legal parcels". (AR Mahon2 at 434.)

There was no factual or legal analysis of whether the Subdivision Map adopted for the area now known as Montara constituted a "final map" or a "parcel map" bringing it within the grandfather clause of the Subdivision Map Act. See Abernathy, 173 Cal.App.4th at p. 52.

According to the official Minutes of the Meeting of May 19, 2009, Respondents "denied each of the design applications on the ground that only one legal parcel of 10,000 square feet in size has been established without prejudice for reconsideration of the design review applications when and if two legal lots are legally established." (AR mahon2 at 521-522, 523.) A letter of final Notice of Local Decision dated May 21, 2009, indicating "the Board of Supervisors denied the project without prejudice", was mailed to Petitioner. (AR Mahon2 at 535-536.

THE COURT FINDS as follows:

The Court finds that the hearings by Respondents on remand after issuance of the original Writ were an empty procedural shell of no substance. A meaningless dance of technical compliance with procedure defects previously noted was pointless exercise and certainly not consistent with the Writ in the first place – i.e., there was previously a decision on the merits without procedural fairness, and the matter was remanded so that there would be hearing on the merits *with* procedural fairness. The whole purpose was to have a fair adjudication of the design review permits and to end the decade-long dispute over the *design* of the proposed residences.

It is questionable whether an appeal of denial of design review permit applications, which were denied by the Planning Commission *on the basis of the size and scale* of the design of the proposed houses, is the appropriate procedural forum for Respondents' express decision that Petitioner only owns on 10,000 square foot lot. It would seem that adjudication of the legal size of the lot(s) is through another process.

But even if appropriate for adjudication by Respondents on consideration of a design review permit, Respondents failed to comply with the Writ, failed to provide a fair trial, and failed to decide upon the *design* on the merits for reasons unsupported by the law and the evidence.

Respondents decided "to deny each of the design review applications on the ground that only one legal parcel of 10,000 feet in size has been established without prejudice for reconsideration of the design review applications when and if two legal lots are legally established." (Administrative Record, Mahon2 at 721-723.) Despite the continuing request of counsel for Petitioner to Respondents that they decide the merits of the design, and proceed with legal adjudication of the legal lot size thereafter, so that the nine years spent on getting a determination the design could at least be concluded, Respondents refused to reach the merits on the assumption that legal lot size (one lot of 10,000 versus two lots of 5000) *had* to be adjudicated in the courts first. (AR Mahon2 722.) As stated by the Chair: "I didn't feel that we should reach the merits of this case today because we are dealing with this overriding legal issue which really has to be answered definitively before we get to the merits of the case." (AR Mahon2 722.)

The record reflects that there is and was *no legal impediment* to Respondents deciding the *design* issue on the merits.

For purposes of this case, the only limitation on the number of residences on a lot or the size of a lot are the local ordinances. Respondents seek to rely upon Local Ordinance, County Code Chapter 1.5, Section 6105.0, which states: "No permit for development shall be issued for any lot which is not a legal lot."

Although a permit might not be able to be *issued* prior to determination of the number of lots, there is no impediment to *approval* of the design and approval of the permits, issuance of which would be subject to conditions such as determination of the number of lots. (See AR Mahon2 463 ("issued", "issuance").) Indeed, County Counsel informed Respondents that this was an available option and that they could reach the merits of the design issue. (AR Mahon2 at 435.)

Indeed, it is undisputed that Petitioner has *at least* one lot and would be legally entitled to build *at least* one house on the property. (AR Mahon2 at 699.) As these were presented as two applications, there was no legal impediment to deciding the design issue on *both* applications and granting a design review permit *on at least one* of the applications so that at least one house could be built. This was not done.

It is undisputed that Petitioner had the option of formally applying for subdivision into two 5000 square foot lots, and that design review permits for two houses could be *issued* thereafter. (AR Mahon2 at 669.) Indeed, the law provides for the possibility of a conditional certificate of compliance, pending any corrective action as to the subdivision, and that permit for development shall not be *issued* until compliance. Govt. Code §66499.35.

Evidence in the record reflects that, before Petitioner bought the property, a structure was previously built on the subject property, and specifically merged Lots 1 and

2, but burned down in a fire in the 1950's. (AR Mahon2 at 564.) This may be important, because County Code Chapter 1.5, section 6105.4(b) defines a "lot" as including "a lot for which development has been previously approved by the County." Also Section 6132(8) defines "legal parcel" to include a parcel which was "subsequently developed with a building or structure to serve the principal use of the parcel, for which a valid building permit was issued."

Placing conditions on a permit is commonplace, and even the design review permits proposed here were anticipated to have conditions. (E.g., AR Mahon2 at 68-72.) Petitioner does not yet have a building permit. There is no barrier to consideration of the *design* issue now, only a potential condition of legal lot determination, i.e., one lot or two lots, prior to actual issuance of the design permit and/or building permit. Or even, there appears to be no impediment at all for issuance of all permits *for at least one house*, since it is undisputed that Petitioner owns at least one legal lot.

Instead, Respondents refused to even consider the evidence on the design until after there was administrative proceedings and/or court adjudication of the legal lot(s) owned by Petitioner.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

Petitioner's objections to the Return on Petition for Writ in CIV446698 are SUSTAINED. The Petition for Writ, as the "second cause of action", in CIV 486981 is GRANTED. A writ of mandate shall be issued to vacate and set aside the decisions of the Board of Supervisors of the County of San Mateo on May 19, 2009, May 20, 2009 and May 21, 2009 regarding design review permit applications PLN1999-00215 and PLN1999-00015. The matter is remanded to the Board of Supervisors of the County of San Mateo to decide the appeal of the Planning Commission's denial of Petitioner's design review permits, and specifically to decide Petitioner's design review permit applications, namely PLN1999-00215 and PLN1999-00015, *on the merits* of the proposed design plans. Any decision to approve the design review permits may be subject to appropriate conditions prior to *issuance* of the design review permits and/or issuance of building permits.

Petitioner is the prevailing party for purposes of award of statutory costs.

Petitioner's request for award of attorneys' fees pursuant to Code of Civil Procedure Section 1021.5 is DENIED WITHOUT PREJUDICE for failure to present evidence supporting a finding that Petitioner meets the requirements of Section 1021.5.

Petitioner's request for judicial notice of post-hearing evidence is DENIED and Respondents' objections to the request for judicial notice are SUSTAINED.

Petitioner shall prepare, circulate and submit a proposed form of Writ within 10 days from the date of this Decision.

DATED: September 14, 2010

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

ENDORSED FILED
SAN MATEO COUNTY

SEP 15 2010

Clerk of the Superior Court
By TERRI MARAGOULAS
DEPUTY CLERK

AFFIDAVIT OF MAILING

CASE NUMBER: CIV 446698 & CIV 486981

THOMAS MAHON, vs. COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS & THOMAS MAHON vs COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS

I declare, under penalty of perjury, that on the following date I deposited in the United State Post Office Mail Box at San Mateo, California a true copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage prepaid thereon, and addressed to the following:

SEE ATTACHED SERVICE LIST

Executed on: September 15, 2010
at San Mateo, California

JOHN FITTON
CLERK OF THE SUPERIOR COURT

By: TERRI MARAGOULAS
Terri Maragoulas, Deputy Clerk

SERVICE LIST
Mahon v. County of San Mateo
Civil Nos. 446698 and 486981
as of September 2010

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www.co.sanmateo.ca.us/planning

February 7, 2011

Nicholas B. Dreher
California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94103

Dear Commissioners and Staff:

SUBJECT: Items F6a, F7a and 7b
Hearing Date – February 11, 2011
Applicant: Thomas Mahon

Agenda Items F6a, F7a & 7b for your February 11, 2011 meeting relate to two Design Review permits recently conditionally approved by the San Mateo County Board of Supervisors. I write to clarify an important aspect of these permit approvals.

The Design Review permits are the subjects of a petition for Writ of Mandate that was decided by the San Mateo County Superior Court on September 15, 2010 (enclosed). The decision of the Superior Court commanded the Board of Supervisors to approve or disapprove the permits "on the merits of the proposed design plans." The Board of Supervisors was expressly ordered by the Court *not to consider* parcel legality in connection with its approval of the permits. The order required the County to take action on "Petitioner's design review permit applications, namely PLN1999-00215 and PLN1999-00015" -- in other words, to decide the matter based on the designs submitted by the applicant, and nothing else. By our reading of the Court's order, *any other potential impediment to development*, such as parcel legality, could become a condition to the Design Review permits' issuance, but could not be the basis of a disapproval.

The County disagrees with the action of the Superior Court. In fact, in 2009 the Board of Supervisors had denied the Design Review permits outright on the basis now being asserted by Commission staff, i.e., that under the *Abernathy Valley, Inc.* and *Witt Home Ranch, Inc.* cases, the applicant had not demonstrated that his parcel had ever been divided into the two lots depicted in his plans. We were then told by the Court we could not deny the permits on that basis; rather, the County was required to decide the permits on the basis of the designs only, without regard to parcel legality.

Believing this was error, we timely sought a writ from the First District Court of Appeals, but we were unsuccessful in obtaining appellate writ review at this stage of the proceedings.

The action ultimately taken by the Board, which was to approve the designs but to defer issuance of building permits until the issue of parcel legalization is resolved, was the only practical way for the County to comply with the Court's order while still vindicating the substantive parcel legality requirements of the Local Coastal Plan and the Coastal Act.

The Court has scheduled a declaratory relief court trial to decide the lot issue on March 29, 2011. It is the County's intention to contend that the lots have not been divided, and that the only land division that has occurred on this property is when a previous purchaser bought a single 10,000 square foot parcel, separating it by deed from surrounding properties in separate ownership. We are hopeful that the Court will see the correctness of that position after the court trial is concluded.

We note that coastal commission staff also contends that the project is within 100 feet of a wetland and does not qualify for an exclusion. We have reviewed the County's aerial photos and sensitive habitats maps and determined the nearest wetland is greater than 160 feet from the subject project sites. We still content the project qualifies with the exclusion area defined by Categorical Exclusion Order E-81-1, which by definition includes only parcels that are more than 100 feet from a mapped wetland.

We ask that the Commission take its action with due regard for the peculiar circumstances in order to avoid putting the people of San Mateo County in a more difficult position than necessary for the proper resolution of the controversy.

Very truly yours,

Jim Eggemeyer
Community Development Director

Jkev0092_wrn(Coastal)

Enclosures

cc: Mike Murphy, County Counsel
Tim Fox, Deputy County Counsel
Charles Lester, Senior Deputy Director
Ruby Pap, District Supervisor

copy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

THOMAS MAHON,

Petitioner and Plaintiff,

vs.

COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS,

Respondents and Defendants.
_____/

Civil No. 446698

Assigned for all purposes to Dept. 2, Hon. Marie S. Weiner

DECISION ON PETITION FOR WRIT AND ON OBJECTIONS TO RETURN TO WRIT

THOMAS MAHON,

Petitioner and Plaintiff,

vs.

COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS,

Respondents and Defendants.
_____/

Civil No. 486981

Assigned for all purposes to Dept. 2, Hon. Marie S. Weiner

On May 14, 2010, hearing/trial was held on the Objections to Return on Writ and on the Supplemental Petition. Kimberly Marlow and Timothy Fox of the County Counsel's Office appeared on behalf of Respondents and Defendants County of San

Mateo and San Mateo County Board of Supervisors. Ronald Zumbrun and Todd Ratshin of the Zumbrun Law Firm appeared on behalf of Petitioner and Plaintiff Thomas Mahon. Further briefing and evidence was presented thereafter, and the matter submitted on June 29, 2010.

The civil actions of Mahon v. County of San Mateo, Civil No. 446698, and Mahon v. County of San Mateo, Civil No. 486981 were consolidated. In Action 446698, the Court has already issued a Writ on the basis of procedurally unfairness. Respondents filed a Return on the Writ, claiming compliance. Petitioner contested compliance with the Writ in Action 446698 and has contested compliance with the Writ by Petition in Action 486981, based upon failure to Respondents to reach the merits of the proposed design permits/applications, among other things. The pleadings also consist of Complaints setting forth causes of action seeking damages or injunctive relief, which have not been adjudicated, and were previously bifurcated in these consolidated actions and stayed pending further order of this Court. By those Complaints, this Court will be asked to adjudicate whether Petitioner's/Plaintiff's property legally consists of one 10,000 square foot lot or two contiguous 5,000 square foot lots.

As these are further proceedings on Petitions for Writ and the issuance of a Writ, the Court hereby incorporated by reference, without repeating, its Statement of Decision on Petition for Writ of Mandate on First Cause of Action dated March 14, 2008, filed March 18, 2008.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Thomas Mahon sought to build two single family residences on two adjacent lots in the City of Montara. Petitioner was originally sold four contiguous lots of 2500 square feet each, but was required by Respondents to "merge" them into two 5000 square foot lots. As part of the administrative process of building, Petitioner had to have a "design review" permit, approving the design of the proposed residences. This is separate and apart from a building permit.

Petitioner's effort to build started back in **1999** by his applications to obtain appropriate design review permits from the County's Planning Department. The two applications were assigned the administrative numbers PLN1999-00015 (hereinafter "PLN15") and PLN1999-00215 (hereinafter "PLN215"). Because the applications were submitted in February/March 1999, they were subject to the laws existing at that time. The Design Review Applications were originally approved, without incident, by the Planning Division staff in the Spring of 1999.

In **October 1999,** it was discovered that Respondents, through the Planning Division, had failed to give adequate statutory notice of the applications to neighbors, and the permits were unilaterally revoked without prior notice to Petitioner. After new notice to the neighbors, there were objections to Petitioner's design review permit applications, primarily on the basis that the proposed structures were of a larger size or scale than allowed under new design review laws passed *after* Petitioner's application had been submitted and previously approved – even thought the proposed plans were in conformity with the *old* design review laws effective in early 1999.

By correspondence dated December 31, 1999, the Planning Division informed Petitioner that the design review applications for both PLN15 and PLN215 would be denied, based upon the public comments received, and that Petitioner could demand a formal decision (of denial) or file revised plans. Petitioner presented revised plans to try and address certain concerns set forth in the Planning Division's letter. In October 2000, the design review permits were approved by the Planning Division, which decision was appealed by neighbors to the Planning Commission. In January 2001, the Planning Commission granted the appeal and denied design review approval. Petitioner appealed to the Board of Supervisors, and at the hearing on August 14, 2001, Respondents referring the applications back to Planning for further discussion and redesign. Petitioner and the revised plans were then volleyed, discussed, and delayed in the Planning Department for almost three years.

Upon achieving approval of the revised plans, subject to certain conditions, the Design Review applications were approved by the Planning Administrator in 2004. A neighbor appealed to the Planning Commission, which granted the appeals and denied the design review permits. Petitioner appealed to the Board of Supervisors. At the hearing by Respondents on February 8, 2005, the Board was informed that the Planning Commission had denied the design permits, contrary to the recommendation of its staff. Opposition to the permits focused upon the size or "scale" of the proposed houses – the bottom line of which was that they did not meet the new stricter design review requirements, and thus should not be allowed to be built despite the fact that they complied with the standards in place at the time of the applications in 1999. Respondents denied the appeal and thereby Petitioner's applications for design permit were denied.

Although Petitioner's applications were determined by Respondents on the *merits*, Respondents failed to provide *procedural* fairness.

A Writ was issued against Respondents in conjunction with the Statement of Decision, finding that Respondents had not given Petitioner a fair administrative hearing and that such failure caused actual prejudice to Petitioner and his rights. The matter was remanded to Respondents to give Petitioner a "further and proper fair hearing", i.e., a procedurally fair proceeding on the merits.

At the subsequent hearings by Respondents, Respondents attempted to remedy all of the *procedural* defects identified by the Court in its Writ and Statement of Decision, but Respondents explicitly decided *not* to address the applications *on the merits*. Instead, Respondents "denied without prejudice" the Petitioner's design review applications, indicating that Respondents were refusing to decide on the merits of the design review permit applications, and that Petitioner would have to submit new applications *after* there was a court adjudication of the size of his lots and/or Petitioner went through administrative procedures to formally have his lots subdivided.

Petitioner had objected to the Return to Writ, and Petitioner has filed a new Petition for Writ, both on the basis that Respondents have failed to comply with this Court's prior Writ in conjunction with the Statement of Decision. Specifically, Petitioner asserts that the new hearing on this design review permit applications was simply at "charade", because Respondents then refused to consider the evidence on the proposed design and refused to make a decision on the merits of the design review permit applications.

In essence, Respondents originally made a determination the merits without a fair procedure, and upon remand, proceeded to have a "fair" procedure but without a determination on the merits.

FACTS FROM THE NEW ADMINISTRATIVE RECORD

Upon remand after issuance of the Writ, the design review permit applications of Petitioner were set for hearing before Respondent Board of Supervisors. County Counsel indicated that Respondents would consider Petitioner's design review permit applications and "make a decision on the merits". (Administrative Record, Mahon2 at 12.) In its report and recommendation to Respondents, dated March 23, 2009, the Planning and Building Department confirmed that "the project applicant is entitled to have his application considered on the merits". (AR Mahon2 at 65.)

At the first hearing, post-remand, on March 31, 2009, the two applications were considered separately. (AR Mahon2 at 546.) Staff recommended denial of the design review permits. (AR Mahon2 550.) At the hearing, Supervisor Richard Gordon recused himself from participating in the decision, and counsel for Petitioner was given the amount of time he requested for presentation to the Board. (AR Mahon2 543, 551-552.) At the hearing, Petitioner (through his planning consultant Beaumont) presented to Respondents, and asked Respondents to consider, a revised design which was submitted to Planning back in 2005 but was not considered by Planning Division staff and thus not presented to the Board at the time of the previous hearings in 2005. (AR Mahon2 at 559-562.) These designs went beyond the 1999 minimum design requirements and indeed were revisions targetted to address concerns raised by the Planning Commission. (Id.) Petitioner also

addressed errors in the staff reports and provided corrected details and measurements. (AR Mahon2 at 562-567.) Supporters and opponents in the public spoke at the hearing. The public comment hearing was then closed. (AR Mahon2 at 653.) It appeared to Respondents that the parties might be able to work out any remaining differences in design, and continued the matter for 30 days to have the parties confer to see if an accord could be reached. (AR Mahon2 at 653-657, 408.) Any changes were considered by Respondents to be a refinement of the design, and thus no further public hearing would be provided. (AR Mahon2 at 657.)

The Planning and Building Department submitted a new report dated April 20, 2009, now recommending that Petitioner's design review permits be approved, based upon the revised plans submitted. (AR Mahon2 at 196-222, 260-283.) Such approval was recommended subject to particular standard conditions, including obtaining a building permit. (AR Mahon2 at 205-209, 269-273.)

At the continued hearing on April 28, 2009, County Counsel reported to the Board and the public that *one day before*, Respondents received a letter from an attorney for Montara Neighbors For Responsible Building raising an issue of the legality of Petitioner's lots. (AR Mahon2 at 117-118, 339-363.) The letter dated April 27, 2009 was addressed only to the Director of the Planning and Building Department, and indicated that copies were sent to County Counsel, the Coastal Commission, and the "client", but was not sent to Petitioner.

In addition to demanding other action and making other objections, the letter highlighted that two new Court of Appeals decisions had been issued, interpreting the grandfather clause in the Subdivision Map Act, Government Code Section 66410 *et seq.*,

such that old Subdivision Maps adopted by cities, in general, do not themselves create subdivided lots.[1] The attorney questioned the legality of Petitioner's lots as being anything other than one single 10,000 square foot lot. County Counsel reported that it had previously been the opinion and position of the County Counsel that the 1908 Subdivision Map for the area which is now Montara *did* create subdivided lots – which now had to be rethought. Respondents continued the matter for two weeks to consider the issue. (AR Mahon2 662.) There is nothing in the record reflecting that Petitioner had any input in the continuance.

(It would appear that the hearing was also continued because Respondents failed to give adequate statutory notice of the continued hearing to the public, so further continuance to permit a correct mailing and posting of the notice resolved this concern raised by Montara Neighbors For Responsible Building.)

After obtaining the letter of April 27, 2009, counsel for Petitioner presented Respondents, through County Counsel, with a response letter dated May 7, 2009. (AR Mahon2 418-425.) As part of that letter response, Petitioner's counsel indicated that he believed the burden of proof fell to the objectors to demonstrate that it was *not* a legal lot. Petitioner was not informed thereafter that Respondents would required Petitioner to prove all chain of title and other evidence on the issue at the hearing of May 19th.

By letter dated May 15, 2009 – two business days prior to the scheduled Board meeting – County Counsel opined that Petitioner owned only one legal parcel of 10,000

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[1] Abernathy Valley Inc. v. County of Solano (2009) 173 Cal.App.4th 42, decided April 2009, and Witt Home Ranch Inc. v. County of Sonoma (2008) 165 Cal.App.4th 543, decided July 2008. Both cases involved the issue of subdivision of adjacent lots of *undeveloped* land.

square feet. (AR Mahon2 at 426-435.) No evidence of a factual nature was presented to the Board, or to Petitioner, in support of this conclusion.

At the continued hearing on May 19, 2009, the Director of Planning reported to Respondents that discussions between the parties had yielded an agreement, such that revised design plans submitted by Petitioner were acceptable to Planning, and recommended to Respondents that they approve the design review permit applications of Petitioner. (AR Mahon2 at 669-677.) ("So that concludes our Staff report. We are recommending that these two houses with the revisions do meet the 1999 design standards.")

At the hearing on May 19, 2009, County Counsel reported to the Board of Supervisors that it was previously believed that the Subdivision Map of 1908 effectively subdivided the lots in question[2], but now in his legal opinion, that Subdivision Map did not effect a legal subdivision. Something else would also have had to happen in order to legally subdivide the property.

Based *solely* upon the holding of the two appellate decisions, but without reliance upon any *evidence* (or at least no evidence actually presented to the Board), County Counsel "concluded that based on those two cases, that in fact only one legal parcel of 10,000 square feet has been demonstrated." (AR Mahon2 at 666.)

The evidence reflected that four contiguous lots of 2500 square feet, namely Lots 1, 2, 3, and 4 on Block 7, had been conveyed to Petitioner by a single prior owner in 1996. (AR Mahon2 at 497.) County Counsel stated that he had no evidence that the lots

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[2] In fact, there is evidence of subdivision maps dated 1906, 1907 and 1908. (See AR Mahon2 491-494.)

had ever been separately conveyed in the past -- but failed to present actual evidence that, in fact, no prior separate conveyance of any of the four lots had ever occurred in their history since 1908. (AR Mahon2 at 667.) Conveyance to and acquisition by an innocent purchaser of a parcel, prior to March 1972, created a conclusive presumption of legal subdivision -- and thus is one way, but not the only way, to effectuate a subdivision of lots. Govt. Code §66412.6(b). As previously stated in the letter opinion by County Counsel dated May 15, 2009, "once development has been approved for a parcel (e.g., a building permit has been issued and a home constructed) a parcel is entitled to a certificate of compliance." (AR Mahon2 at 432.)

Counsel for Petitioner presented evidence that *the County* had mandated the lots be merged into two 5000 square foot lots, and that the merger was recorded in 2000 *by the County* and that the County declared that each 5000 square foot "property now constitutes one (1) lot". (AR Mahon2 at 495-496, 500-501; 678-680, 686-688.; see also Govt. Code §66499.20 1/2, §66499.20 3/4 .) Counsel for Petitioner discussed that after the merger of the lots, Petitioner was originally granted a design review permit and a building permit on the property in 1999, which was then revoked for the procedural defect of lack of notice. (AR Mahon2 683.)

There was no discussion or consideration by Respondents of the evidence that building had previously occurred on the property, but that the building had burned down in the 1950's.

County Counsel did inform Respondents, in his opinion letter, that Petitioner "would not be precluded from demonstrating that the two 5000 square foot lots are

currently legal by virtue of some other event, other than the 1908 map, that established the lots as separate legal parcels". (AR Mahon2 at 434.)

There was no factual or legal analysis of whether the Subdivision Map adopted for the area now known as Montara constituted a "final map" or a "parcel map" bringing it within the grandfather clause of the Subdivision Map Act. See Abernathy, 173 Cal.App.4th at p. 52.

According to the official Minutes of the Meeting of May 19, 2009, Respondents "denied each of the design applications on the ground that only one legal parcel of 10,000 square feet in size has been established without prejudice for reconsideration of the design review applications when and if two legal lots are legally established." (AR mahon2 at 521-522, 523.) A letter of final Notice of Local Decision dated May 21, 2009, indicating "the Board of Supervisors denied the project without prejudice", was mailed to Petitioner. (AR Mahon2 at 535-536.

THE COURT FINDS as follows:

The Court finds that the hearings by Respondents on remand after issuance of the original Writ were an empty procedural shell of no substance. A meaningless dance of technical compliance with procedure defects previously noted was pointless exercise and certainly not consistent with the Writ in the first place – i.e., there was previously a decision on the merits without procedural fairness, and the matter was remanded so that there would be hearing on the merits *with* procedural fairness. The whole purpose was to have a fair adjudication of the design review permits and to end the decade-long dispute over the *design* of the proposed residences.

It is questionable whether an appeal of denial of design review permit applications, which were denied by the Planning Commission *on the basis of the size and scale* of the design of the proposed houses, is the appropriate procedural forum for Respondents' express decision that Petitioner only owns on 10,000 square foot lot. It would seem that adjudication of the legal size of the lot(s) is through another process.

But even if appropriate for adjudication by Respondents on consideration of a design review permit, Respondents failed to comply with the Writ, failed to provide a fair trial, and failed to decide upon the *design* on the merits for reasons unsupported by the law and the evidence.

Respondents decided "to deny each of the design review applications on the ground that only one legal parcel of 10,000 feet in size has been established without prejudice for reconsideration of the design review applications when and if two legal lots are legally established." (Administrative Record, Mahon2 at 721-723.) Despite the continuing request of counsel for Petitioner to Respondents that they decide the merits of the design, and proceed with legal adjudication of the legal lot size thereafter, so that the nine years spent on getting a determination the design could at least be concluded, Respondents refused to reach the merits on the assumption that legal lot size (one lot of 10,000 versus two lots of 5000) *had* to be adjudicated in the courts first. (AR Mahon2 722.) As stated by the Chair: "I didn't feel that we should reach the merits of this case today because we are dealing with this overriding legal issue which really has to be answered definitively before we get to the merits of the case." (AR Mahon2 722.)

The record reflects that there is and was *no legal impediment* to Respondents deciding the *design* issue on the merits.

For purposes of this case, the only limitation on the number of residences on a lot or the size of a lot are the local ordinances. Respondents seek to rely upon Local Ordinance, County Code Chapter 1.5, Section 6105.0, which states: "No permit for development shall be issued for any lot which is not a legal lot."

Although a permit might not be able to be *issued* prior to determination of the number of lots, there is no impediment to *approval* of the design and approval of the permits, issuance of which would be subject to conditions such as determination of the number of lots. (See AR Mahon2 463 ("issued", "issuance").) Indeed, County Counsel informed Respondents that this was an available option and that they could reach the merits of the design issue. (AR Mahon2 at 435.)

Indeed, it is undisputed that Petitioner has *at least* one lot and would be legally entitled to build *at least* one house on the property. (AR Mahon2 at 699.) As these were presented as two applications, there was no legal impediment to deciding the design issue on *both* applications and granting a design review permit *on at least one* of the applications so that at least one house could be built. This was not done.

It is undisputed that Petitioner had the option of formally applying for subdivision into two 5000 square foot lots, and that design review permits for two houses could be *issued* thereafter. (AR Mahon2 at 669.) Indeed, the law provides for the possibility of a conditional certificate of compliance, pending any corrective action as to the subdivision, and that permit for development shall not be *issued* until compliance. Govt. Code §66499.35.

Evidence in the record reflects that, before Petitioner bought the property, a structure was previously built on the subject property, and specifically merged Lots 1 and

2, but burned down in a fire in the 1950's. (AR Mahon2 at 564.) This may be important, because County Code Chapter 1.5, section 6105.4(b) defines a "lot" as including "a lot for which development has been previously approved by the County." Also Section 6132(8) defines "legal parcel" to include a parcel which was "subsequently developed with a building or structure to serve the principal use of the parcel, for which a valid building permit was issued."

Placing conditions on a permit is commonplace, and even the design review permits proposed here were anticipated to have conditions. (E.g., AR Mahon2 at 68-72.) Petitioner does not yet have a building permit. There is no barrier to consideration of the *design* issue now, only a potential condition of legal lot determination, i.e., one lot or two lots, prior to actual issuance of the design permit and/or building permit. Or even, there appears to be no impediment at all for issuance of all permits *for at least one house*, since it is undisputed that Petitioner owns at least one legal lot.

Instead, Respondents refused to even consider the evidence on the design until after there was administrative proceedings and/or court adjudication of the legal lot(s) owned by Petitioner.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

Petitioner's objections to the Return on Petition for Writ in CIV446698 are SUSTAINED. The Petition for Writ, as the "second cause of action", in CIV 486981 is GRANTED. A writ of mandate shall be issued to vacate and set aside the decisions of the Board of Supervisors of the County of San Mateo on May 19, 2009, May 20, 2009 and May 21, 2009 regarding design review permit applications PLN1999-00215 and PLN1999-00015. The matter is remanded to the Board of Supervisors of the County of San Mateo to decide the appeal of the Planning Commission's denial of Petitioner's design review permits, and specifically to decide Petitioner's design review permit applications, namely PLN1999-00215 and PLN1999-00015, *on the merits* of the proposed design plans. Any decision to approve the design review permits may be subject to appropriate conditions prior to *issuance* of the design review permits and/or issuance of building permits.

Petitioner is the prevailing party for purposes of award of statutory costs.

Petitioner's request for award of attorneys' fees pursuant to Code of Civil Procedure Section 1021.5 is DENIED WITHOUT PREJUDICE for failure to present evidence supporting a finding that Petitioner meets the requirements of Section 1021.5.

Petitioner's request for judicial notice of post-hearing evidence is DENIED and Respondents' objections to the request for judicial notice are SUSTAINED.

Petitioner shall prepare, circulate and submit a proposed form of Writ within 10 days from the date of this Decision.

DATED: September 14, 2010

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

ENDORSED FILED
SAN MATEO COUNTY

SEP 15 2010

Clerk of the Superior Court
By TERRI MARAGOULAS
DEPUTY CLERK

AFFIDAVIT OF MAILING

CASE NUMBER: CIV 446698 & CIV 486981

THOMAS MAHON, vs. COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS & THOMAS MAHON vs COUNTY OF SAN MATEO and SAN MATEO COUNTY BOARD OF SUPERVISORS

I declare, under penalty of perjury, that on the following date I deposited in the United State Post Office Mail Box at San Mateo, California a true copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage prepaid thereon, and addressed to the following:

SEE ATTACHED SERVICE LIST

Executed on: September 15, 2010
at San Mateo, California

JOHN FITTON
CLERK OF THE SUPERIOR COURT

By: TERRI MARAGOULAS
Terri Maragoulas, Deputy Clerk

SERVICE LIST
Mahon v. County of San Mateo
Civil Nos. 446698 and 486981
as of September 2010

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Source: Mid-Coast Sensitive Habitat (3/15/2006)

F6a, F7a; F7b

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February 8, 2011

Sara Wan, Chair and Members, Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94010

Re: Items F6a (2-11-004-EDD); F7a (A-2-SMC-11-001); and F7b (A-2-SMC-11-003)

Dear Chair Wan and Honorable Commissioners:

On behalf of Committee for Green Foothills and Montara Neighbors for Responsible Building, we urge the Commission to decide this appeal as scheduled, and as recommended by Staff.

By letter dated February 7, 2011, the applicant's attorney has requested that the Commission postpone a decision on this appeal pending resolution of a declaratory relief action in the San Mateo Superior Court. However, as explained in more detail below, the issues raised in this appeal involve the Coastal Act and are distinct from the Subdivision Map Act (SMA) issues before the Court. In fact, the judicial action could quite possibly result in circumvention of the Coastal Act requirements, in addition to already avoiding the County's administrative process on the question of parcel legality. In any event, the issues are distinct, and there is nothing to preclude the Commission from taking action on these appeals forthwith (indeed the rule of "exhaustion of administrative remedies" likely requires it.) (*McAllister v. County of Monterey* (2007) 147 Cal. App. 4th 253, 284-285.)

To be sure, the administrative procedural posture of this project has been unconventional, to say the least. However, the bulk of these procedural irregularities and delays have been a result of the Applicant's own actions.[1] Most recently, the Applicant has forced the County, through judicial intervention, to issue a decision on Design Review for two houses even though the applicant has not demonstrated that he has two separate buildable parcels (and likely can not do so). That Design Review determination (ordered by the Court) made express findings that the project was entitled to two categorical exclusions granting exemptions from Coastal Act permitting requirements, making this appeal both timely and necessary.

[1] As the Applicant's attorney points out, this project does indeed have a long history. However, what the letter does not mention is the fact that the Project's delays and the difficulty with the neighbors has been mostly the result of the Applicant's insistence that the Design Review "rules" don't apply to him and that he is entitled to build two enormous houses completely out of scale with the surrounding neighborhood.

Regardless, the issue of parcel legality (e.g. entitlement to a certificate of compliance) under the Subdivision Map Act is a separate and distinct legal question from the issue of whether the project constitutes "development" under the Coastal Act so as to require a CDP. Indeed, even if the Applicant were to demonstrate entitlement to two separate parcels for the purposes of the Subdivision Map Act (which the County has determined he has not), he would still be required to demonstrate Coastal Act compliance prior to any final action by the County recognizing the subject parcels as lawfully created. *(La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal. App. 4th 231, 235) ("Under section 30600, subdivision (a), of the [Coastal] act, anyone who wishes to undertake development in a coastal zone must obtain a permit from the commission. This is in addition to any other permit required by law.")

The *La Fe* case clearly establishes that the Coastal Act imposes additional regulations on land divisions within the Coastal Zone above and beyond Subdivision Map Act regulations. There, the developer sought to adjust the lot lines between parcels of its land, and the county approved the lot line adjustments in concept, but advised the landowners that they were still required to demonstrate Coastal Act compliance. After the Commission denied the proposed land division, the landowners petitioned for writs of mandate and related relief against the county and the commission requesting that certificates of compliance be issued. In denying those certificates of compliance, the Court explained:

> Under section 30600, subdivision (a), of the act, anyone who wishes to undertake development in a coastal zone must obtain a permit from the commission. **This is in addition to any other permit required by law**.
>
> Section 30600, subdivision (a), provides: 'In addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person . . . wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit.' (Citations). 'Development' is defined for purposes of the act in section 30106, which provides in relevant part: 'Development' means, on land, in or under water . . . change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act . . . and any other division of land, **including lot splits** . . ." (E.g., *California Coastal Com. v. Quanta Investment Corp., supra*, 113 Cal. App. 3d at p. 609 [conversion of existing apartments into stock cooperative constitutes development].)

(La Fe, Inc., supra, 73 Cal. App. 4th at 235; emphasis added). The Court went on to conclude:

> ... that given the undisputed facts in this case, liberally construed (§ 30009; *California Coastal Com. v. Quanta Investment Corp., supra*, 113 Cal. App. 3d at

> p. 609), "development," as defined in section 30106, includes lot line adjustments. Specifically, "development" means "change in the density or intensity of use of land, *including, but not limited to*, subdivision . . . , and any other division of land, including lot splits . . ." (§ 30106, italics added.) The Legislature's stated intent was to grant the commission permit jurisdiction with respect to any changes in the density or intensity of use of land, including any division of land. Section 30106 by its terms recognizes that a subdivision of land or a lot split can result in changes in the density or intensity of use of property. A lot line adjustment can, as here, have the same effect. More to the point though, section 30106 explicitly applies to a "subdivision . . . and any other division of land . . ." A lot line change constitutes a "division of land." The key point is that section 30106 applies to a "division of land" and such occurred here.

(Id. at 240; original italics.) Thus, the Legislature specifically intended "development" to include ***any*** division of land, including divisions which fall outside the purview of Subdivision Map Act regulation. In other words, even if despite County Counsel's conclusion to the contrary, the parcels qualify for an Unconditional Certificate of Compliance under the Subdivision Map Act, there are circumstances (such as here) in which recognition of the parcel would still require a Coastal Development Permit under the Coastal Act.

Moreover, case law further provides that the Coastal Act trumps the Subdivision Map Act on the issue of land divisions occurring within the Coastal Zone. (See, e.g. *Ojavan Investors v. Cal. Coastal Com.* (1997) 54 Cal.App.4th 373, 388) ("... local regulation of property within the particular area of the coastal zone gives way to the state's authority to preserve the coast's natural resources; otherwise the Coastal Act's purposes would be hindered and the Coastal Act would not specifically refer to the Subdivision Map Act.")

Applying the above principles to this situation, it becomes clear that the question of permitting requirements for this Project under the Coastal Act is entirely distinct from the question of parcel legality under the SMA which the applicant is trying vainly to bring before the court. For example, even if the court were to decide that the 1999 Notices of Merger resulted in the creation of two separate 5000 sq. ft. parcels from the original 10,000 sq. ft parcel under the SMA, there would still be a "division of land" requiring a CDP. Accordingly, there is no reason for the Commission to delay action in this case, nor would such action be premature. **In fact, the Court may actually benefit from having the Coastal Commission's analysis before it (as would ordinarily be the case has the Applicant exhausted his administrative remedies.)** (*Yamaha Corp. of America v. State Bd. of Equalization,* (1998) 19 Cal. 4th 1, 7)

Thank you for your consideration.

Sincerely,
WITTWER & PARKIN, LLP

Signature on file

Jonathan Wittwer

cc: Ronald Zumbrun, Esq.
Charles Lester, Senior Deputy Director
Jim Eggemeyer, Community Development Director
Mike Murphy, County Counsel
clients