

**CALIFORNIA COASTAL COMMISSION**

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# W18b

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Staff: Karl Schwing, LB  
Staff Report: September 27, 2013  
Hearing Date: October 9, 2013  
Commission Action:

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

**Appeal Number:** A-5-LGB-13-0235

**Local Government:** City of Laguna Beach

**Decision:** Approval with Conditions

**Applicant:** Jacqueline Sanson

**Project Location:** 791 Barracuda Way and adjacent parcel (APN# 056-241-66), Laguna Beach (Orange County)

**Project Description:** After-the-fact approval of a lot line adjustment to add approx. 7,200 sq.ft. of undeveloped land known to contain sensitive habitat to an existing 8,000 sq.ft. parcel developed with a single family residence

**Appellants:** Sierra Club, Save Hobo Aliso Task Force, Attn: Penny Elia  
Commissioners Brian Brennan and Mary Shallenberger

**Staff Recommendation:** Find substantial issue on the appeal &  
hold de novo hearing at a later date

### **IMPORTANT NOTE**

The Commission will not take public testimony during the 'substantial issue' phase of the appeal hearing unless at least three (3) commissioners request it. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a subsequent Commission meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

### **SUMMARY OF STAFF RECOMMENDATION:**

The subject site is a trapezoid shaped 8,000 sq.ft. lot developed with a single family residence on Barracuda Way (Lot 1) and an adjacent approximately 149 acre vacant site (Lot 2) (known to the Commission as the 'Driftwood' property) located in the Hobo/Aliso area of Laguna Beach. The applicant seeks Coastal Act authorization for the lot lines depicted in lot line adjustment No. LL 95-04 that was given local approval by the City of Laguna Beach in 1995, but which was not

authorized through any coastal development permit<sup>1</sup>. The property at 791 Barracuda Way (Lot 1) is located in the City of Laguna Beach's LCP jurisdiction area. The approximately 7,200 square feet of land to be taken from the 149 acre site (Lot 2) and added to Lot 1 is located in an area of deferred certification, thus, that area is in the Commission's jurisdiction. Since the project involves two jurisdictions, the City's and the Commission's, a coastal development permit must be obtained from each in order to approve the proposed lot line adjustment<sup>2</sup>. The matter that is before the Commission here is an appeal of the City's approval of a coastal development permit for the portion of the proposed development that is located in their jurisdiction. The applicant and adjacent property owner, Driftwood Properties LLC (who was not party to the application made to the City), has not yet applied to the Commission for approval of the development that is located in the Commission's jurisdiction.

The subject site contains existing developed areas (the house and associated appurtenances and landscaping on Lot 1) adjacent to undeveloped steeply sided canyon lands incised by ravines with small streams and covered with sensitive habitat (Lot 2). The primary issue raised by the proposed lot line adjustment is whether adding existing undeveloped land with sensitive habitat to an existing developed lot can be found consistent with the certified Local Coastal Program's policies that require protection of sensitive habitat area. The reason for expanding Lot 1 has not been made clear to Commission staff. It is the only residential lot along Barracuda Way that would have the additional lot area proposed herein. The remainder of the residential lots are about the same size and shape as the pre-LLA configuration of Lot 1.

Two appeals of the City's action were filed, challenging the consistency of the proposal with the City's certified local coastal program. Both appeals allege that the City's approval is inconsistent with LCP policies that protect sensitive habitat area. Also, the City's approach to protecting habitat in this case was to require that no structure be built on the lot area being added to the existing developed lot. While, on the one hand, that could be a sensible –though incomplete- approach; on the other the City didn't have the authority to impose such a requirement in an area where they don't have coastal development permit authority. Only the Commission itself could impose that requirement. Furthermore, the City's condition doesn't specifically address protection of sensitive habitat, it only prohibits construction of new structures. The appeals also raise concern that the City didn't consider other hazards, that it is required to consider, such as the fire hazards associated with expanding a lot into undeveloped area, and the potential for geologic hazards along the steep slopes that in the vicinity of the site.

Staff also notes that the area of land that would be taken from the Driftwood site and added to the Barracuda Way lot appears to have contained native vegetation. However, after 1995, when LLA 95-04 was recorded, some native vegetation appears to have been removed and replaced with ornamental vegetation and grass, all of which was done without benefit of a coastal development permit. The applicant hasn't yet sought Coastal Act authorization for that work. Staff intends to work with the new owner of Lot 1 and the long-time owner of Lot 2, Driftwood Properties LLC.

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<sup>1</sup> The applicant/landowner for 791 Barracuda way newly owns the property and was not involved in 1995 when LL 95-04 was originally recorded. However, the new owner was made aware of the unpermitted development during the acquisition process.

<sup>2</sup> Section 30601.3 of the Coastal Act allows for an applicant to apply to the Commission for a 'consolidated permit' in circumstances like this where proposed development occurs in the Commission's jurisdiction and a local government's jurisdiction. At this point, the applicant has not requested a consolidated permit.

The Commission has had a long history of involvement with the site (see Exhibit 6). Thus, staff will need to apply care when attempting to resolve issues related to the unpermitted development here in coordination with these other prior Commission actions, and bring that back to the Commission at a later date.

Staff agrees that the City's approval raises the issues identified in the appeals and recommends that the Commission FIND SUBSTANTIAL ISSUE. Furthermore, staff recommends the Commission hold a de novo hearing at a later date.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Location Map

Exhibit 2a – Pre-LLA configuration of lots

Exhibit 2b – Post-LLA configuration of lots

Exhibit 3 – City of Laguna Beach – Notice of Final City Action on CDP No. 13-1266

Exhibit 4 – Appeal Filed by Commissioners Brennan and Shallenberger

Exhibit 5 – Appeal Filed by Sierra Club Hobo Aliso Taskforce

Exhibit 6 - History Of Commission Actions Related To Subject Properties

## I. MOTION AND RESOLUTION ON SUBSTANTIAL ISSUE

### Motion:

*I move that the Commission determine that Appeal No. A-5-LGB-13-0235 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

### Resolution:

*The Commission hereby finds that Appeal No. A-5-LGB-13-0235 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

## II. APPEAL PROCEDURES

After certification of a local coastal program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on Coastal Development Permits.

Section 30603 of the Coastal Act states:

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

- (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Section 30603(a)(2) of the Coastal Act establishes the proposed development as being appealable by its location within 100 feet of a stream (Exhibit 1). A stream is depicted within Lot 2 that is being modified by the proposed lot line adjustment on the Commission's *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993, on the City's environmental constraints map available on the City's web site (see Exhibit 1), on the "Laguna Beach" 7.5 minute USGS topographic quadrangle that covers the subject

site, and in various biological reports (see Substantive File Documents). The City's Notice of Final Action (Exhibit 3) also identified its action as appealable.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" or, if applicable, the public access and public recreation policies of Chapter 3 of the Coastal Act (Cal. Code Regs. title 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

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

#### **A. GROUNDS FOR APPEAL**

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

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

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project at a later date.

The de novo hearing would occur at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding the protection of sensitive habitat and avoidance of hazards.

## **B. QUALIFICATIONS TO TESTIFY BEFORE THE COMMISSION**

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

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

## **III. APPELLANTS' CONTENTIONS**

The City of Laguna Beach approval of the proposed development was appealed on August 28, 2013 by California Coastal Commissioners Brian Brennan and Mary Shallenberger (Exhibit 4) and by Penny Elia on behalf of the Sierra Club Save Hobo Aliso Task Force (Exhibit 5). The appellants contend that the proposed development is not consistent with the resource protection policies of the Local Coastal Program.

The appeals contend:

- That the proposed lot line adjustment includes a parcel of land that is identified on the City's biological resource values maps as containing high value and very high value habitat. These areas, and perhaps others, are likely also Environmentally Sensitive Areas (ESAs) that are subject to special treatment and protection under the policies of the certified LCP. LCP policies, such as Open Space Conservation Element Policy 8-J, require that detailed biological assessments be prepared for all development within and adjacent to ESAs and that identified ESAs be protected. The City's approval didn't include the required biological assessment & doesn't establish adequate protections for sensitive habitat in conjunction with the lot line adjustment, as is required in the LCP.
- The City's action didn't consider hazards such as those related to fire and attendant impacts to native vegetation associated with fuel modification. Nor did the City's action adequately address the potential effects that seismically induced landslides and liquefaction may have on the area.
- The area of land proposed to be taken from the larger approximately 150 acre parcel is located within an area where the Commission's presently retains jurisdiction. The City's approach to protecting habitat in this case was to require that no structure be built on the lot area being added to the existing developed lot. The City didn't have the authority to impose such a requirement in an area where they don't have coastal development permit authority. Only the Commission itself could impose that requirement. Furthermore, the City's condition doesn't specifically address protection of sensitive habitat.
- The subject area is addressed by Commission Cease and Desist Order No. CCC-10-CD-01, which guarantees to the State Coastal Conservancy right of first refusal to purchase all areas

of the 150 acre parcel that are appropriately part of the parcel, i.e. that were part of the parcel prior to any unpermitted LLAs, if the owner of the parcel proposes to sell the property. The Commission must ensure that all the terms and conditions relative to that CDO are properly followed with respect to this property.

#### **IV. FINDINGS AND DECLARATIONS ON SUBSTANTIAL ISSUE**

##### **A. PROJECT DESCRIPTION AND LOCATION**

The subject site is a trapezoid shaped 8,000 sq.ft. lot developed with a single family residence at 791 Barracuda Way (Lot 1) and an adjacent approximately 150 acre vacant site (Lot 2) (APN# 056-241-66)(commonly known to the Commission as the Driftwood site) located in the Hobo/Aliso area of Laguna Beach, Orange County. The pre- and post-LLA configuration of the lots that is sought by the applicant is depicted in Exhibit 2a and Exhibit 2b<sup>3</sup>. In its' pre-LLA configuration, Lot 1 is fairly typical for the area, in terms of its level topography, size and configuration, and the single family home developed on it. The adjacent undeveloped area (Lot 2) has varied topography of moderate to steep slopes and includes a mosaic of vegetation types including southern maritime chaparral, ceanothus chaparral, toyon-sumac chaparral and coastal sage scrub, which is identified in the City's LCP as high value habitat and has been determined by the Commission staff biologist to be environmentally sensitive habitat area (ESHA).

Lot line adjustments are a type of development subject to regulation under the Coastal Act and the certified LCP. The addition of undeveloped land to the existing developed parcel can result in the establishment of additional development potential and intensity of development. Thus, even though there is no physical development currently contemplated, it is important to consider the effects of such development while processing the lot line adjustment that would make such development possible.

##### **B. LOCAL COASTAL PROGRAM BACKGROUND**

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for certain areas of deferred certification (such as the Hobo Canyon/Mahboudi-Fardi property), in July 1992. In February 1993, the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time.

The subject site is partly located in the area where the City has permit authority and partly located within the Hobo Canyon/Mayer-Mahboudi-Fardi property area of deferred certification, where the Commission retains authority. Certification in this area was deferred due to issues regarding development in sensitive habitat areas.

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<sup>3</sup> As discussed elsewhere in this staff report, this ultimate lot configuration won't be achieved unless and until the property owners also obtain approval of a coastal development permit from the Commission

### **C. DESCRIPTION OF LOCAL APPROVAL**

On August 6, 2013, the City Council of the City of Laguna Beach approved coastal development permit 13-1266 that attempts to add an area of undeveloped land known to contain sensitive habitat to the existing developed residential lot. According to the City, the purpose of the City's action was to give "after-the-fact" approval of a coastal development permit for a lot line adjustment the City processed in 1995 (Lot Line Adjustment No. LL 95-04) that wasn't given all required approvals at that time. Since then, the subject lot line adjustment and an interrelated lot line adjustment, No. LL 95-01, has been the subject of ongoing enforcement matters, as well as appeals of other coastal development permits for lot line adjustments, land divisions and related litigation. The City approved the permit subject to special conditions (see Exhibit 3). Among the special conditions were:

- The added adjustment area from Parcel 2 of Lot Line Adjustment 95-04 shall be limited to landscaping only and subject to Design Review for any modifications to existing conditions.
- With the exception of irrigation, no structures of any kind shall be allowed in the adjustment area.
- Development standards including, but not limited to, setbacks and site coverage shall be determined from the pre-lot line adjustment property lines.
- This Coastal Development Permit is only applicable to the property located within the City's Coastal permitting jurisdiction.

### **D. SUBSTANTIAL ISSUE ANALYSIS**

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

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

Applicable policies of the LCP are as follows:

The following Land Use Element (LUE) Policies apply:

*Action 3.10.1 Establish criteria for placement of new development on the most suitable area of the lot to maximize the preservation of sensitive resources.*

*Action 7.3.2 Review all applications for new development to determine potential threats from coastal and other hazards.*

*Action 7.3.3 Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.*

*Action 7.3.4 Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

*Policy 10.2 Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations.*

*Action 10.2.4 Encourage open space dedication to guarantee preservation of natural and sensitive resources whenever appropriate.*

*Policy 10.3 - Ensure that all new development, including subdivisions, the creation of new building sites and remodels that involve building additions, is evaluated to ascertain potential negative impacts on natural resources, ESHA and existing adjacent development. Proposed development shall emphasize ESHA impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site rather than off-site, where feasible. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project.*

*Action 10.3.2 Continue to require in-depth analysis of constraint issues for properties, especially those designated on the City's hazard maps so that the nature of the constraint and the best options for mitigation or avoidance will be considered at all stages of the approval process since these constraints may affect what development is appropriate for the property.*

*Policy 10.6 Require all fuel modification to be located within the site being developed. Exceptions may be granted for existing legal building sites when findings can be made by the approval authority that other alternatives are not available and a strict application of this provision would endanger environmentally sensitive resources or deny a property owner reasonable use of an already existing legal building site. Fuel modification performed by private property owners cannot go beyond property lines without agreement by the adjacent property owners. Fuel modification on public land to protect existing development should be avoided whenever feasible; if avoidance isn't feasible, measures must be employed to minimize the amount of fuel modification necessary on public land.*

*Action 10.6.1 The development proposal should address the required fuel modification as part of the initial application and should integrate fuel modification provisions into the site plan in such a way as to minimize impact on existing native vegetation and areas of visual prominence. Any required thinning of flammable vegetation shall be conducted outside of the bird nesting season if feasible. Alternative means to thinning and/or removal of native vegetation for fire hazard*

*management such as minimizing the building envelope, and/or siting of the structure(s) away from hazard areas, and/or use of fire retardant design and materials are preferred where feasible.*

*Action 10.6.3 No new division of land shall be allowed which would require new fuel modification (e.g. vegetation removal) or new fuel breaks in environmentally sensitive habitat areas or on public open space or park lands to protect new development within the resultant lots.*

*Policy 10.10 Prohibit lot line adjustments that are inconsistent with the Municipal Code, General Plan, and Subdivision Map Act. Existing building sites which maintain a legal nonconforming lot or lots may adjust the lot lines provided that the adjustment does adversely increase the extent of nonconformities.*

Furthermore, the following policies in the Open Space Conservation Element apply:

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

*4F Water Conservation and Native Plants  
Ensure that development encourage[sic] water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides, herbicides and excessive irrigation. Prohibit the use of invasive plants, and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs).*

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

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

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

*of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.*

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

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

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

*3. Where development is proposed on an existing subdivided lot which is otherwise developable (i.e., able to be served by utilities and access, and on slopes able to accommodate development consistent with City provisions on slope/density, grading, hazards, subdivisions and road access), and is consistent with all other policies of this Land Use Plan except for its location entirely within an identified ESA as confirmed by a site-specific assessment, the following shall apply:*

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

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

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

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

*10C Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of*

*development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.*

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

The appellants contend that the proposed lot line adjustment includes land that is identified on the City's biological resource values maps as high value or very high value habitat and that these areas, and perhaps others, are likely also Environmentally Sensitive Areas (ESAs). Such areas are subject to special treatment and protection under the policies of the certified LCP. LCP policies, such as Open Space Conservation Element Policy 8-J, require that detailed biological assessments be prepared for all development within and adjacent to ESAs and that identified ESAs be protected. The City's staff report and resolution of approval of the permit makes no mention of any biological assessment or any measures to protect ESAs that are incorporated into the proposed development or imposed through special conditions on the coastal development permit. There are many other LCP policies identified above that call for identification and protection of sensitive habitat. The absence of biological information and measures imposed to protect sensitive resources raises a substantial issue as to the conformity of the City's action with the requirements of the LCP

The appellants contend that policies, such as Land Use Element Policy 10.6 and related actions and Open Space Conservation Element Policies 8-G and 8-H, that pertain to fuel modification, new subdivisions and requirements to protect sensitive habitat areas, were not addressed by the City. Fuel modification can have significant adverse impacts on sensitive habitat. Any new land division must consider siting development such that fuel modification within sensitive habitat is avoided and that adequate setbacks are incorporated into the developed area to provide all required defensible space. There is no evidence the City considered fuel modification and the impacts it would have on sensitive habitat in this action. This raises a substantial issue as to the conformity of the development with the requirements of the LCP.

The appellants contend that the site is subject to seismically induced landslides and liquefaction and that the City did not consider these hazards in their analysis of the land division, including siting development in a manner that avoids hazards. Policy/Action 7.3.2, 7.3.3 and 7.3.4 of the City's Land Use Plan states that the City must consider and address hazards in all new development. Conservation Open Space Element Policy 10C states the City must "[r]equire projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space." This is in

addition to the fire hazards mentioned above. The city's findings did not include any analysis of these hazard policies as they relate to the subject property. Thus, again, a substantial issue exists as to the conformity of the development approved by the City with the certified LCP.

Finally, the appellants contend that the subject area is addressed by Commission Cease and Desist Order No. CCC-10-CD-01, which guarantees to the State Coastal Conservancy right of first refusal to purchase all areas of the 150 acre parcel (Lot 2) that are appropriately part of the parcel, i.e. that were part of the parcel prior to any unpermitted LLAs, if the owner of the parcel proposes to sell the property. The LLA that is the subject of this appeal is intertwined with various other appeals, coastal development permits, and enforcement actions that the Commission has been involved with since at least 2007. A summary of that history is provided as Exhibit 6. The Commission must ensure that all the terms and conditions relative to any enforcement matters are properly followed with respect to the properties involved in this case.

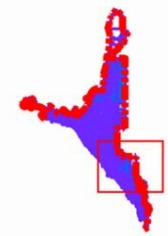
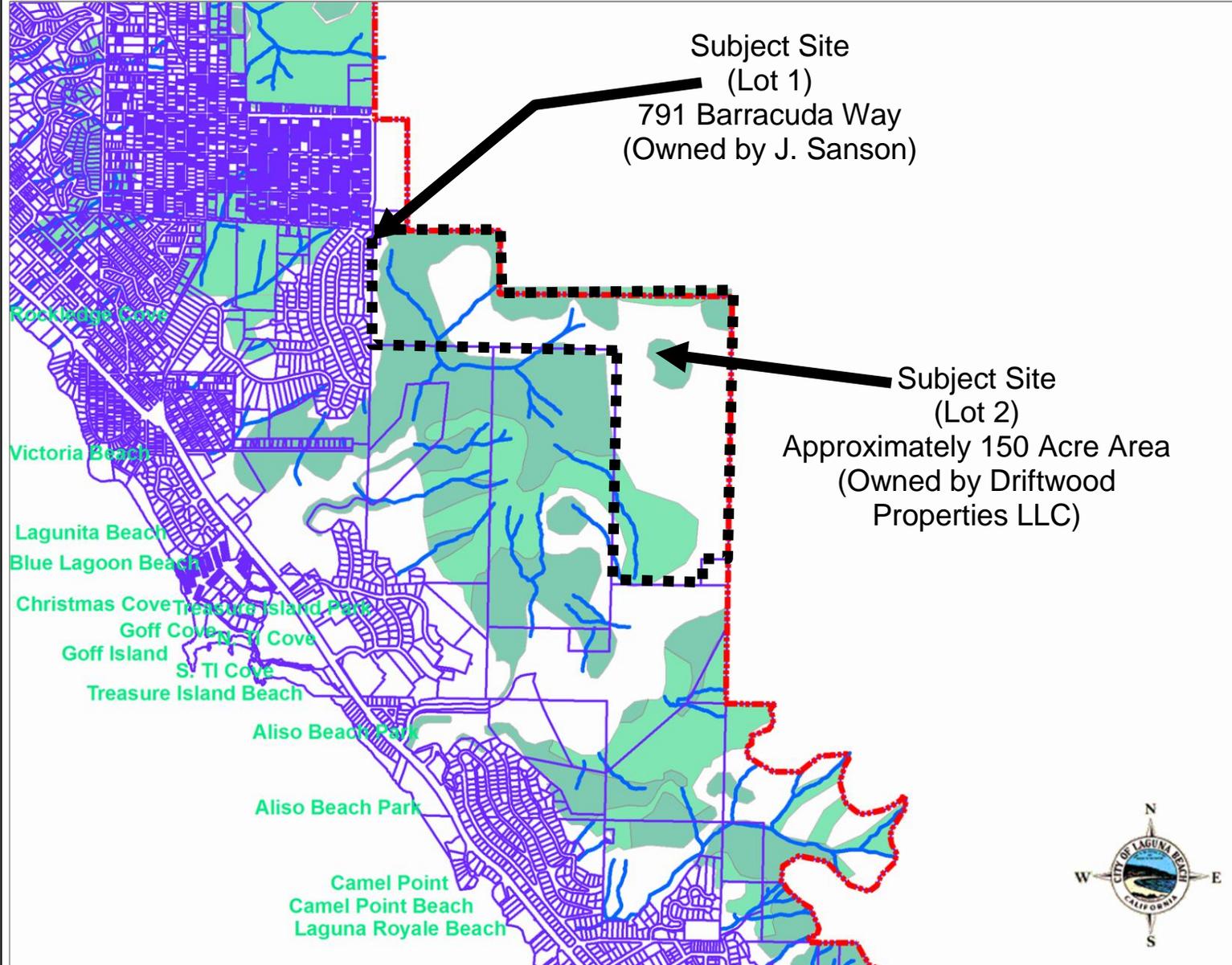
Therefore, the Commission finds that a substantial issue exists with regard to the grounds on which the appeals were filed. With regard to the factors that the Commission typically considers in a substantial issue analysis: 1. This is a case where there the City hasn't shown the factual and legal support for its decision that the development is consistent with the Local Coastal Program; 2. This is a case where the extent and scope of the development approved by the local government is significant as the area involved in the lot line adjustment is about 150 acres; 3. The resources that could be impacted in this case are very significant in that there are extensive sensitive habitat areas that could be impacted individually and cumulatively by the proposed development; 4. This is a case where there would be a significant adverse precedent made in that the local government didn't apply all of the requirements of the LCP, as noted above; and, 5. This appeal raises issues of regional and statewide significance given the resources at stake and the interrelationship between this specific proposal and the Commission's ongoing involvement in appeals, permits and enforcement actions relative to the Driftwood/Hobo Aliso area. Each of the issues identified above, where the Commission expressly has found there is a substantial issue, are individually sufficient to warrant a finding that the appeals raise a substantial issue.

## **Appendix A - Substantive File Documents:**

Laguna Beach Local Coastal Program (LCP); Revised Findings adopted November 17, 1992 for Laguna Beach Land Use Plan Amendment 1-92; findings and file materials in support of dispute resolution numbers 5-10-014-EDD, 5-10-117-EDD, and 5-11-012-EDD; Findings and file materials in support of appeal numbers A-5-LGB-10-039, A-5-LGB-10-174, and A-5-LGB-11-031; California Coastal Commission Notice of Violation of the Coastal Act dated 5/4/2007 sent to The Athens Group and Laguna Terrace Park LLC; Restoration Order CCC-06-RO-03 (Driftwood/Athens) and Consent Cease and Desist and Restoration Orders Nos. CCC-10-CD-02 and CCC-10-RO-02 (Gromet), Consent Cease and Desist Order No. CCC-10-CD-01 and Restoration Order CCC-10-RO-01; City of Laguna Beach Lot Line Adjustment No. LL 95-01; findings and approved plans for Coastal Development Permit No.s G5-95-286, 5-95-286, 5-95-286 A, 5-96-048, 5-98-151, and 5-98-151-A1, 5-07-440-G, 5-12-121; findings on claim of vested rights 5-07-412-VRC; U.S. Geological Survey 7.5" Quadrangle Maps for Laguna Beach and San Juan Capistrano; Map titled *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach* Map ("post-cert map") adopted by the Commission on September 16, 1993; Letter dated July 7, 2010, prepared by LSA Associates to Mr. James Lawson titled Technical Evaluation of CCR Title 14, Section 13577(a) Stream Issue, Laguna Terrace Park, Tentative Tract No. 17301, Laguna Beach, California; South Laguna Biological Resources Inventory prepared by Karlin Marsh for the City of Laguna Beach in 1992; Biological Resources Assessment by LSA Associates dated August 17, 2000; May 2008 Biological Report by PCR; California Coastal Commission Memorandum from Dr. John Dixon, to Karl Schwing and Louise Warren re: Driftwood Property in Laguna Beach, dated July 14, 2008; California Coastal Commission Memorandum from Dr. John Dixon to Ryan Todaro re: Habitat Characteristics on the Athens Group LLC property at Hobo Aliso Ridge (formerly known as Driftwood estates) dated April 16, 2007; Irrevocable Offer to Dedicate Open Space Conservation and Public Access Easement and Declaration of Restrictions, Document No. 2011000057040 at 4:30pm on 1/31/2011; Certificate of Acceptance Offer to Dedicate Open Space Conservation and Public Access Easement and Declaration of Restrictions, Document No. 201100129005 at 9:00 am 3/10/2011

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# City of Laguna Beach

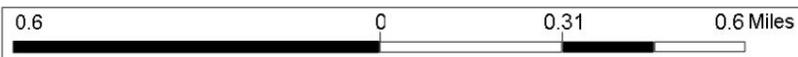


## Legend

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



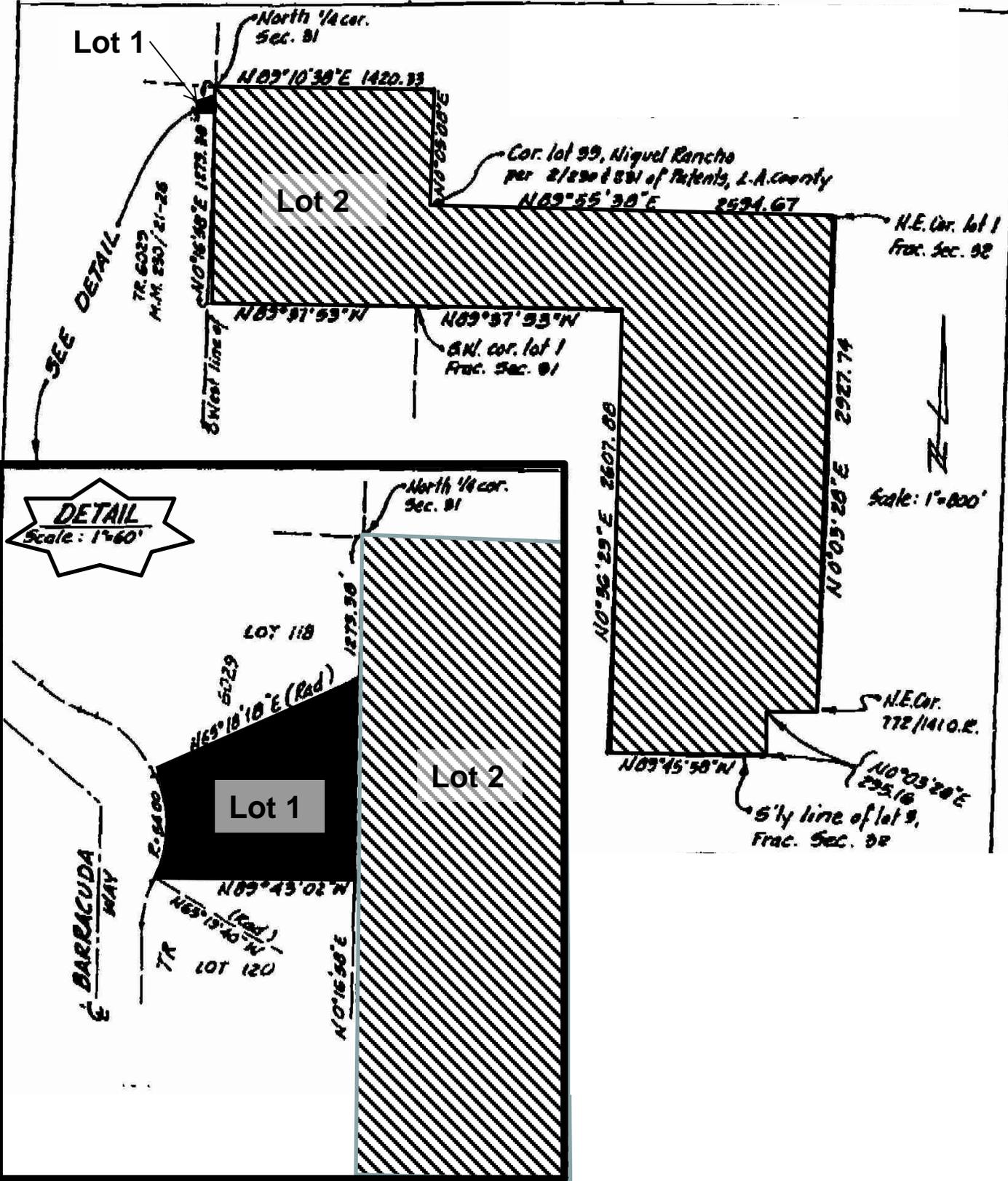
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This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.  
THIS MAP IS NOT TO BE USED FOR NAVIGATION

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# Pre-LLA "Lot" Configuration



Lines Are Approximate & Illustrative Only.

A-5-LGB-13-0235  
Exhibit 02a





RECEIVED  
South Coast Region

AUG 14 2013

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

Date: August 12, 2013

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

Location: 791 Barracuda Way

Coastal Development Project No: CDP 13-1266

**Project Description:** A request for the approval of Coastal Development Permit 13-1266 at 791 Barracuda Way. The Coastal Development Permit request is in conjunction with the previously approved Lot Line Adjustment 95-04. Lot Line Adjustment 95-04 was approved by the City Council on September 5, 1995 without a Coastal Development Permit. The property owner is requesting approval of the application to correct a Coastal Commission issued violation notice.

Applicant: Jacqueline Sanson

Mailing Address: 791 Barracuda Way, Laguna Beach, CA 92651

On 8/6/13 a coastal development permit application for the project was

- approved
- approved with conditions
- denied

Local appeal period ended: N/A

This action was taken by:

- City Council
- Design Review Board
- Planning Commission

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

This project is

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

Attach: Resolution No. 13.049

505 FOREST AVE.

LAGUNA BEACH, CA 92651

TEL (949) 497-3311

FAX (949) 497-0771



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**RESOLUTION NO. 13.049**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA  
BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT  
PERMIT 13-1266 AT 791 BARRACUDA WAY.**

---

WHEREAS, an application has been filed by the property owner of 791 Barracuda Way requesting approval of Coastal Development Permit 13-1266 in conjunction with a Lot Line Adjustment that was approved in 1995 by the City Council (LLA 95-04) and modified the boundaries between two properties in accordance with the provisions of the California Subdivision Map Act and the Laguna Beach Municipal Code; and

WHEREAS, on August 6, 2013, the City Council conducted a legally noticed public hearing and, after reviewing all documents and testimony, desires to approve Coastal Development Permit 13-1266;

WHEREAS, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH declares, finds and determines as follows:

1. The project is in conformity with all the applicable provisions of the General Plan, including the certified Local Coastal Program and any applicable specific plans in that the previously approved Lot Line Adjustment 95-04 complies with the Municipal Code and has been previously approved by the City Council;

2. The property is not located between the sea and the first public road paralleling the sea and therefore no adverse impacts are anticipated to public access and public recreation, pursuant to Chapter 3 of the Coastal Act; and

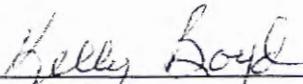
3. The lot line adjustment is exempt from the requirements of the California Environmental Quality Act for the purpose of the lot line adjustment application. (State CEQA Guidelines section 15305).

1  
2  
3 WHEREAS, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH does hereby  
4 RESOLVE and ORDER that Coastal Development Permit 13-1266 is hereby approved subject  
5 to the following conditions:  
6

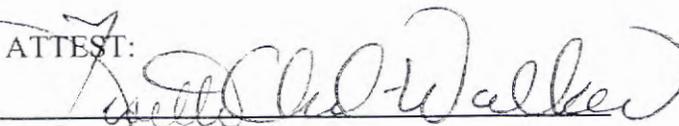
- 7 1. The added adjustment area from Parcel 2 of Lot Line Adjustment 95-04 shall be limited to  
8 landscaping only and subject to Design Review for any modifications to existing  
9 conditions.  
10 2. With the exception of irrigation, no structures of any kind shall be allowed in the  
11 adjustment area.  
12 3. Development standards including, but not limited to, setbacks and site coverage shall be  
13 determined from the pre-lot line adjustment property lines.  
14 4. This Coastal Development Permit is only applicable to the property located within the  
15 City's Coastal permitting jurisdiction.  
16

17 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH  
18 does further RESOLVE and ORDER that Coastal Development Permit 13-1266 are hereby  
19 approved.  
20

21 ADOPTED this 6<sup>th</sup> day of August, 2013.

22  
23   
\_\_\_\_\_  
24 Kelly Boyd, Mayor

24 ATTEST:

25   
\_\_\_\_\_  
26 City Clerk  
27  
28

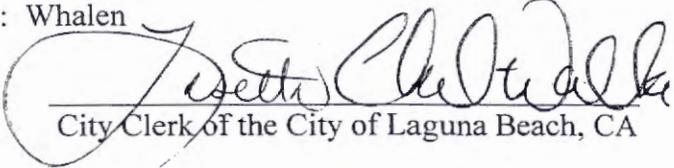
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I, LISETTE CHEL-WALKER, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 13.049 was duly adopted at a Regular Meeting of the City Council of said City held on August 6, 2013, by the following vote:

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

NOES: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): Whalen

  
City Clerk of the City of Laguna Beach, CA

**CALIFORNIA COASTAL COMMISSION**

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

AUG 28 2013



CALIFORNIA  
COASTAL COMMISSION

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

**SECTION I. Appellant(s)**

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

Coastal Commissioners: Brian Brennan & Mary Shallenberger  
200 Oceangate, Suite 1000  
Long Beach, CA 90802 (562) 590-5071

**SECTION II. Decision Being Appealed**

1. Name of local/port government: City of Laguna Beach
2. Brief description of development being appealed: approval of a lot line adjustment to add undeveloped land to an existing parcel developed with a single family residence.
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
791 Barracuda Way, Laguna Beach, Orange County.
4. Description of decision being appealed:
  - a. Approval; no special conditions: \_\_\_\_\_
  - b. Approval with special conditions: XX
  - c. Denial: \_\_\_\_\_

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

**TO BE COMPLETED BY COMMISSION:**

**APPEAL NO:** A5-LGB-13-0235  
**DATE FILED:** 8/28/2013  
**DISTRICT:** South Coast

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: \_\_\_\_\_
  - b. City Council/Board of Supervisors:  X
  - c. Planning Commission: \_\_\_\_\_
  - d. Other: \_\_\_\_\_
6. Date of local government's decision:  08/06/2013
7. Local government's file number:  CDP 13-1266

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

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

- 1. Name and mailing address of permit applicant:  
 Jacqueline Sanson   
 791 Barracuda Way   
 Laguna Beach, CA 92651
- 2. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
  - a.  Penny Elia   
 30632 Marilyn Drive   
 Laguna Beach, CA 92651

**SECTION IV. Reasons Supporting This Appeal**

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

The subject site is a residential lot at 791 Barracuda Way and an adjacent approximately 150 acre undeveloped parcel, in the City of Laguna Beach, Orange County. The residential lot is developed with a single family residence. The adjacent undeveloped area has varied topography of moderate to steep slopes and includes a mosaic of vegetation types including southern maritime chaparral, ceanothus chaparral, toyon-sumac chaparral and coastal sage scrub, which is

identified in the City's LCP as high value habitat and has been determined by the Commission staff biologist to be environmentally sensitive habitat area (ESHA).

On August 6, 2013, the City Council of the City of Laguna Beach approved coastal development permit 13-1266 that had the effect of adding an area of undeveloped land known to contain sensitive habitat to the existing developed residential lot. According to the City, the purpose of this lot line adjustment is to give "after-the-fact" approval of a coastal development permit for a lot line adjustment the City processed in 1995 (Lot Line Adjustment No. LL 95-04) that wasn't given all required approvals at that time. Since then, the subject lot line adjustment and an interrelated lot line adjustment, No. LL 95-01, has been the subject of ongoing enforcement matters, as well as appeals of other coastal development permits for land divisions and related litigation. No physical changes to the site are proposed.

Lot line adjustments are a type of development subject to regulation under the Coastal Act and the certified LCP. The addition of undeveloped land to the existing developed parcel can result in the establishment of additional development potential and intensity of development. Thus, even though there is no physical development currently contemplated, it is important to consider the effects of such development while processing the land division that would make such development possible. Therefore, the whole range of coastal resource issues addressed in the City's certified LCP must be considered in this request for land division, including but not limited to protection and enhancement of biological resources, water quality, and minimization and avoidance of hazards (geologic, fire, flood, etc.). Except for making generalized findings about the project being consistent with the public access or recreation policies of Chapter 3 of the Coastal Act and consistent with criteria contained in the Certified Local Coastal Program, the City did not analyze the consistency of the proposed development with all applicable LCP policies. Under the Coastal Act, the City must find proposed development to be consistent with its certified LCP before approving a coastal development permit for it. Therefore, it may not approve a coastal development permit for the project pursuant to the Coastal Act without ensuring the project's consistency with the certified LCP.

For example, the proposed lot line adjustment includes a parcel of land that is identified on the City's biological resource values maps as containing high value and very high value habitat. These areas, and perhaps others, are likely also Environmentally Sensitive Areas (ESAs) that are subject to special treatment and protection under the policies of the certified LCP. LCP policies, such as Open Space Conservation Element Policy 8-J, require that detailed biological assessments be prepared for all development within and adjacent to ESAs and that identified ESAs be protected. The City's staff report and resolution of approval of the permit makes no mention of any biological assessment nor any valid measures to protect ESAs that are incorporated into the proposed development or imposed through special conditions on the coastal development permit. In addition, there are policies such as Land Use Element Policy 10.6, 10.8, 10.9 and 10.10 (and related "actions") and Open Space Conservation Element Policies 8-G and 8-H that pertain to protecting sensitive habitat areas in conjunction with new land divisions and lot line adjustments including, but not limited to, impacts associated with fuel modification. These requirements have not been analyzed, or a determination made, as to whether or not the proposed lot line adjustment is consistent with the certified LCP or the Coastal Act. The cumulative adverse impact of nearby residential properties also extending into undeveloped areas must be considered.

The City's maps of the site indicate that it contains areas that are subject to seismically induced landslides and liquefaction. Policy 3-A of the City's Land Use Plan states that the City must "ensure adequate consideration of environmental hazards in the development review process". Conservation Open Space Element Policy 10C states the City must "[r]equire projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space." This is in addition to the fire hazards mentioned above. There appears to have been no analysis regarding such hazards.

The area of land proposed to be taken from the larger approximately 150 acre parcel is located within an area where the Commission's presently retains jurisdiction. When the Commission certified the Land Use Plan (LUP) for southern Laguna Beach in 1992, the Commission identified Hobo Canyon (a.k.a. Mayer Group/Mahboudi-Fardi and Esslinger Property) as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an area of deferred certification to which the LUP did not apply. The area remains uncertified. Therefore, the subject lot line adjustment requires a coastal development permit directly from the Commission for that portion of the proposed development located in the area of deferred certification. The City imposed several special conditions in its action on the subject coastal development permit. One of those conditions prohibits the construction of structures of any kind within the area of land being taken from the 150 acre parcel. However, that condition applies to an area where the City doesn't have the authority, under their LCP, to impose such a condition. The subject area is within the Commission's permit jurisdiction, thus, only the Commission could impose such a condition, as well as more protective conditions that, for instance, limit removal of native sensitive vegetation and installation of non-native vegetation, which is potentially inappropriate for areas adjacent to an ESHA. The Commission must ensure any such conditions are properly imposed and enforceable.

Furthermore, this same area is addressed by Commission Cease and Desist Order No. CCC-10-CD-01, which guarantees to the State Coastal Conservancy right of first refusal to purchase all areas of the 150 acre parcel that are appropriately part of the parcel, i.e. that were part of the parcel prior to any unpermitted LLAs, if the owner of the parcel proposes to sell the property. The Commission must ensure that all the terms and conditions relative to that CDO are properly followed with respect to this property.

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

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

**SECTION V. Certification**

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



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

Date:

8/28/13

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

**Section VI. Agent Authorization**

I/We hereby  
authorize

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

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

Date:

\_\_\_\_\_

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

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

SECTION V. Certification

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

Signed: Mary K. Stallenberg  
Appellant or Agent

Date: 8/28/2013

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

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

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

A-5-LGB-13-0235  
RECEIVED

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 591-5084

SEP 9 2013



CALIFORNIA  
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

Mailing Address: 30632 Marilyn Drive

City: Laguna Beach

Zip Code: 92651

Phone: 949-499-4499

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Laguna Beach

2. Brief description of development being appealed:

Approval of lot line adjustment to add parcel with very high value habitat (ESA) to an existing developed parcel.

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

791 Barracuda Way, Laguna Beach, Orange County

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

Approval; no special conditions

Approval with special conditions:

Denial

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

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	A-5-LGB-13-0235
DATE FILED:	9.9.13
DISTRICT:	South Coast

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

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

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

6. Date of local government's decision: 8/6/13

7. Local government's file number (if any): CDP 13-1266

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

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

a. Name and mailing address of permit applicant:

Jacqueline Sanson  
791 Barracuda Way  
Laguna Beach, CA 92651

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

(1)

(2)

(3)

(4)

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

### SECTION IV. Reasons Supporting This Appeal

#### PLEASE NOTE:

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

This appeal stems from an August 6, 2013 action by the City of Laguna Beach City Council approving a lot line adjustment to add undeveloped land within an area of deferred certification to an existing developed parcel. This timely appeal is brought pursuant to Public Resources Code §30603(a)(1).

The subject site is a residential lot at 791 Barracuda Way and an adjacent 150-acre undeveloped parcel in Laguna Beach. The adjacent acreage is an area of deferred certification where the California Coastal Commission (CCC) retains jurisdiction. It is also a highly valued area for its natural resources, including a variety of endangered and threatened species – both flora and fauna. The City's LCP has identified the area as high value habitat and the CCC's staff biologist (Dr. Dixon) has determined the area to be environmentally sensitive habitat area (ESHA).

The NOFA filed by the City of Laguna Beach appears to suggest that the City is correcting an enforcement action taken by the CCC in 2007, but in fact, the City does not retain jurisdiction of this area so is unable to issue a CDP, after-the-fact or otherwise, or impose conditions. As stated previously it is an area of deferred certification where the CCC retains jurisdiction. During the City Council hearing on this item, one of the council members stated that he was very upset that the state continues to try and move control of local authority away from local authority up to Sacramento. It is a bit disconcerting that the Laguna Beach City Council is so unclear on the jurisdictional boundaries within their own city, especially when the CCC is only trying to protect and preserve finite natural resources. There is a long history of destruction of ESHA in this neighborhood that the majority of the Laguna Beach City Council is aware of. They should fully understand why the CCC is utilizing its jurisdictional authority to correct this situation. As a concerned party that has been involved in saving, protecting and preserving this acreage for over a decade, the goal of this appeal would be to see this area restored to ESHA with a comprehensive monitoring program attached.

1. The proposed permit does not assess biological resources and impacts in an ESA or provide for the protection of sensitive habitat areas.

Open Space Conservation Element Policy 8-J The City's staff report does not address any biological assessment or measures to protect ESA as required by this policy.

2. The proposed permit does not provide for impacts associated with fuel modification.

Land Use Element Policy 10.6, 10.8, 10.9 and 10.10 and Open Space Conservation Element Policies 8-G and 8-H require protection of sensitive habitat areas in conjunction with new land divisions and lot line adjustments including, but not limited to, impacts associated with fuel modification.

3. The proposed permit fails to protect critical habitat and wildlife.

Open Space / Conservation Element Policy 8C Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of the species.

Open Space / Conservation Element Policy 8M When new development proposals are situated in areas adjacent to "Environmentally Sensitive Areas" require that development be designed and sited to prevent impacts which would degrade such areas.

Open Space / Conservation Element Policy 8O Preserve and protect fish and/or wildlife species for future generations.

As stated earlier, this area is home to a variety of threatened and endangered species. There are no provisions for protection of these species.

4. The proposed permit does not consider environmental hazards.

Land Use Plan, Policy 3-A requires that the City must ensure adequate consideration of environmental hazards in the development review process.

Conservation Open Space Element Policy 10C states the City must requires projects located in geological hazard areas to be designed to avoid hazards, where feasible.

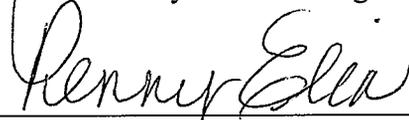
This site contains areas that are subject to seismically induced landslides and liquefaction according to the City's maps.

In conclusion, and as addressed earlier in this appeal with respect to the saving, protection and preservation of this area, the State Coastal Conservancy has been guaranteed the right of first refusal to purchase all areas of the 150-acre contiguous parcel under CCC Cease and Desist Order No. CCC-10-CD-01. It is the responsibility of the CCC to ensure all terms and conditions of this Cease and Desist Order be properly administered.

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

**SECTION V. Certification**

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



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

Date: September 5, 2013

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

**Section VI. Agent Authorization**

I/We hereby  
authorize

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

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

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

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## HISTORY OF COMMISSION ACTIONS RELATED TO SUBJECT PROPERTIES

The Commission has granted several prior coastal development permits (and amendments thereto) that involve the subject site and nearby sites, as follows: coastal development permits G5-95-286, 5-95-286, 5-95-286 A, 5-96-048, 5-98-151, and 5-98-151-A1 which approved various improvements to the nearby mobilehome park's flood and debris control facilities and to its storm drain system, and the placement of other runoff controls on a portion of the vacant land. In 2007, an emergency coastal development permit, 5-07-440-G, was issued for the temporary placement of sand bags to control runoff. In 2012 the Commission approved Coastal Development Permit 5-12-121 for after the fact approval of a lot line adjustment for a 122 acre site that consolidates several parcels into three lots. In addition, a claim of vested rights (5-07-412-VRC) asserting a vested right to graded pads and the maintenance of those pads, was rejected by the Commission in October of 2008.

There are also several prior actions by the City and the Commission relating to land divisions and appealability involving the subject parcels. To summarize, in 2009 the City approved a CDP for a land division (i.e. City CDP 09-36). The appealability of the City's action was determined in Commission dispute resolution 5-10-014-EDD, and that action was appealed under A-5-LGB-10-039. In March 2010, Laguna Terrace Park LLC submitted another application to the City of Laguna Beach to subdivide the Laguna Terrace Mobilehome park for residential purposes (i.e. City CDP application number 10-26). The Commission found that the City's action on that application would be appealable (see 5-10-117-EDD) on June 9, 2010. On July 20, 2010, the Laguna Beach City Council held a public hearing at which they approved CDP number 10-26. Appeals were subsequently filed, and the Commission found those appeals raised a substantial issue on September 15, 2010 (see A-5-LGB-10-174). In January 2011, the City of Laguna Beach approved CDP 10-57 for a lot line adjustment between the mobile home park and an adjacent hotel. The Commission found that the City's action on that application would be appealable (see 5-11-012-EDD) on February 9, 2011. Appeals were subsequently filed, and the Commission found those appeals raised a substantial issue on March 9, 2011 (see A-5-LGB-11-031). There has been litigation over several of the above-identified actions. Therefore, the Commission hasn't taken action on the de novo components of the appealed matters, pending resolution of the litigation.

There have also been previous enforcement actions connected with the subject site, including the Commission's July, 2006 issuance of Restoration Order CCC-06-RO-03 (Driftwood/Athens) and its April, 2010 issuance of Consent Cease and Desist and Restoration Orders Nos. CCC-10-CD-02 and CCC-10-RO-02 (Gromet), both of which were to address restoration and mitigation for the unpermitted removal of Big-leaved Crownbeard, an endangered plant species, from a portion of the subject site and adjacent property. Most recently, in December 2010, the Commission approved Consent Cease and Desist Order No. CCC-10-CD-01 and Consent Restoration Order CCC-10-RO-01 ("Consent Orders"), to address the unpermitted removal of major vegetation (including coastal sage scrub and maritime chaparral plant species) and the resulting impacts; and the unpermitted placement and replacement of approximately 5,500 sandbags, sand/gravel berms, filter fabric over the berms, and plastic discharge pipes, in violation of the Coastal Act. The unpermitted development activities occurred on an approximately 6-acre portion of property characterized by undeveloped graded pads. Through the Consent Orders, the property owners agreed to, among other things: 1) remove the unpermitted development from the properties subject to the Consent Orders, 2) remove all non-native plant species from the approximately 6-acres of graded pads, 3) execute and record an irrevocable offer to dedicate an open space conservation and public access easement over an approximately 75 acre area, 4) transfer fee title over the 75-acre area to the City of Laguna Beach, 5) record a "Preemptive Purchase Right Agreement" in favor of the California State Coastal Conservancy ("SCC") over an additional approximately 80 acre portion of land involved in the subject LLA (Lot 2), and 6) effectively<sup>1</sup> dismiss, with prejudice, all aspects of a lawsuit filed by Driftwood Properties LLC (Driftwood) against the California Coastal Commission over the Commission's October, 2008 denial of Driftwood's Vested Rights Claim No. 5-07-412-VRC.

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<sup>1</sup> Driftwood had already dismissed the lawsuit without prejudice but simultaneously entered into a tolling agreement so they could re-file, if necessary. So, instead of actually dismissing the lawsuit (which had already been done), they waived their rights under the stipulation to re-file, so the dismissal became with prejudice and irrevocable.