

CALIFORNIA COASTAL COMMISSION

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Th15b

5-19-0909-A1 (SANSON)
AUGUST 11, 2022

CORRESPONDENCE



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Refer To File # 502597-0001

Th15b

Via Electronic Mail

August 4, 2022

Donne Brownsey, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

Re: Application to Amend CDP No. 5-19-0909-A1 (Jacqueline Sanson)

Hearing: Thursday, August 11, 2022, Agenda Item 15b

Dear Chair Brownsey and Commissioners:

This firm represents the Applicant, Jacqueline Sanson, who owns the single-family residence at 791 Barracuda Way, in Laguna Beach. In February 2020, the Commission approved a Consolidated, after-the-fact CDP for a lot line adjustment (LLA) to add an approximately 0.17-acre parcel (Parcel 2), which for the past 27 years has served as the developed backyard to the existing house and pool on the narrow lot fronting Barracuda Way (Parcel 1).

Pursuant to a settlement agreement, Ms. Sanson has applied to amend the 2020 permit approval with minor changes. She appreciates and agrees with the Staff Recommendation of approval and the modified Special Conditions.

Approval of the amendment request will resolve an appeal which has been pending since 2013. It will result in replacement of the existing lawn and extensive ornamental landscaping on Parcel 2 and create, for the first time in at least 27 years, a substantial native plant palette vetted and approved by Staff and the City's Fire Department and an open space deed restriction to protect the restored area. The amendment will permit Ms. Sanson to retain on Parcel 2 a small portion of an existing wrought iron pool safety fence and a small portion of existing on-grade patio consisting of sand pavers adjacent to her existing pool on Parcel 1. The Staff Report explains that based on the evidence provided by the Ms. Sanson's biological consultant, a buffer, or setback, of 90 to 95 feet is sufficient to protect coastal sage scrub and chaparral offsite and downhill from the Parcel 2.

A copy of this letter has been provided to Coastal Commission Staff

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Brief History

Ms. Sanson is the fourth owner of the property. She did none of work for which she has sought after-the-fact approval. In 2013, she bought the property. At the time, she was informed that in 1995, the City of Laguna Beach approved the LLA, but did not believe at the time that a CDP was required for a lot line adjustment. City staff advised that the process to obtain a CDP would be simple and straight-forward. She applied for the CDP and it was approved. The City's decision was appealed and in October 2013, the Commission found the appeal to present a Substantial Issue. Then, for over six years, Ms. Sanson proved a most cooperative applicant, working proactively and cooperatively with Staff in an effort to reach a mutually agreed-upon solution. This involved meetings and other contacts with Staff, creation of several iterations and improvements to a native plant landscaping palette, and an agreement to remove wooden railroad ties on Parcel 2. In February 2020, the Commission approved the LLA, but required removal of all ornamental landscaping and the small portion of pool safety fence and patio in Parcel 2, revegetation of the entire parcel with native plants, and an open space deed restriction over the entire parcel.¹

She now seeks to implement the Commission's 2020 decision, requesting that the Commission approve a 90-95 foot buffer, which will enable the existing protective pool fence and a portion of an already small on-grade patio next to the pool to remain – improvements that the site-specific biological reports prepared demonstrate will have no conceivable adverse impact on off-site habitat.

In short, Ms. Sanson seeks to achieve both the creation and maintenance of substantial native plant revegetation and protection of off-site habitat, while retaining a de minimis backyard flush to her house that is a tiny fraction of the backyard that exists today.

The Buffer Issue

The Staff Report discusses the issue of a required buffer from ESHA. Neither the Coastal Act nor the City's LCP specify any particular width for a buffer. The Staff Report correctly explains that based on the site-specific analysis performed by Ms. Sanson's consulting biologist, whether a buffer of 50 feet (his recommendation) or, more conservatively, 85 feet (proposed at the time) are provided from off-site coastal sage scrub and chapparal, the protective pool fence and small on-grade patio are outside of any necessary habitat buffer. By this amendment request, Ms. Sanson seeks approval of an even greater habitat buffer – 95 feet to permit the pool safety fence to remain and 90 feet to retain a portion of the small on-grade patio adjacent to the pool.

¹ By way of background, Ms. Sanson incorporates by reference the entire administrative record in the prior permit matter, 5-19-0909 (Sanson).

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In terms of the property's setting, Parcel 2, although basically flat, backs up to Aliso Canyon. There are special status plants in Aliso Canyon and beyond but they are a significant distance from the property. Specifically, Ms. Sanson's biologist, who, as technical consultant also to the City, helped map the vegetation, noted:

- Big-leaved crownbeard – 107 feet from the outer boundary of Parcel 2
- Catalina mariposa lily – Over 1000 feet to the southeast
- Intermediate mariposa lily – Over 200 feet to the south
- Paniculate tarplant – Approximately 635 feet to the south
- Western dichondra – 450 feet to the south
- Many-stemmed dudleya – just over 400 feet to the east

There are no special status plants within 100 feet of the boundary of Parcel 2. The biologist also noted that Gnatcatcher (CAGN) also has been identified approximately 650 feet to the north just east of the Moulton Meadows Park, where the topography is more gentle (as opposed to the steep slope here) and next to an active walking path and additionally over 1100 feet from to the south just beyond the Aliso Canyon Reserve.

Here, the buffer is drawn from coastal sage scrub and chaparral located offsite and, topographically, down a steep slope from Parcel 2. Notably, in this instance, these plant communities are not "rare," a qualification of ESHA. They are ranked as "common," with a State ranking of "5" and a Global ranking of "5". In any case, the Staff Report correctly states that "the Applicant has provided evidence to support her contention that a reduced ESHA buffer of 90 to 95 feet, and the retention of the additional patio and pool fencing, is sufficient to protect nearby coastal sage scrub and chaparral ESHA," and that "a reduced ESHA buffer from the nearest undisturbed native vegetation is sufficient to protect the adjacent biological resources." (Staff Report, pp. 3-4.)

Conclusion

For these reasons, and those set forth in the Staff Report, Ms. Sanson respectfully requests that the Commission approve the Staff Recommendation, amending the previous approval of the LLA to require a 95-foot buffer to permit a portion of her existing protective pool fence to remain and a 90-foot buffer to permit retention of a portion of her small on-grade patio. Working with the Attorney General and Staff, she additionally has proposed a prohibition on "night-lighting" on the patio and has submitted revised plans that provide yet additional native and drought-tolerant non-native plants over the remainder of Parcel 2, which then would be protected by the open space deed restriction that the Commission previously imposed.

A copy of this letter has been provided to Coastal Commission Staff

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We appreciate your consideration and look forward to briefly discussing the matter with you at the August 11, 2020 hearing.

Very truly yours,


Steven H. Kaufmann

ccs: Jack Ainsworth, Executive Director, CCC
Karl Schwing, District Director, OC, CCC
Marlene Alvarado, Coastal Program Analyst, CCC
Andrew Willis, Southern California Enforcement Supervisor, CCC
Jamee Jordan Patterson, Supervising Deputy Attorney General
Ms. Jacqueline Sanson



August 4, 2022

California Coastal Commission
455 Market Street Suite 300
San Francisco, CA 94105

Re: Th15b Permit No. 5-19-0909-A1 Sanson, Laguna Beach

Dear Chair Brownsey and Commissioners:

In February 2020, when the Commission was still conducting live meetings prior to COVID, you received extensive comments from the Sierra Club's Save Hobo Aliso Task Force on this Coastal Act violation being heard again today as a CDP after two years of litigation against the Coastal Commission. You also received extensive comments from Mark and Sharon Fudge and a letter from former Commissioners Mary Shallenberger and Brian Brennan (original appellants requesting denial). Additionally, your staff worked very hard to come to an agreement with the applicant and her representatives (Steve Kaufmann and Susan McCabe). Dr. Engel did an outstanding job of outlining the impacts to ESHA in this special area, although the violator's representatives dismissed all of her fine research and findings with absolutely baffling fabrication.

Following a very dismal hearing in 2020 where the violator was rewarded with a CDP versus enforcement action, it was truly disappointing for Mr. Kaufmann to bring legal action against the Coastal Commission given how hard staff had worked to accommodate his client. What's even more disappointing, after two years of legal battle, is that a settlement has been reached to further reward the violator. Not only is the violator being rewarded twice, but a precedent is being set. Developers, attorneys, lobbyists and adjacent neighbors now know that development in protected Open Space has no consequences under the Coastal Act. This is a sad day for our coast and our finite natural resources. The fact is, the large compounds, not mansions, but compounds, neighboring the violator in this area, have already followed her lead and have encroached into this same Open Space with development. Why are all of these facts being ignored?

It would appear nothing that was submitted for the last hearing on this agenda item two years ago was recognized as substantial, so I am hesitant to take the time to comment again on this staff report because my comments would be nothing more than a duplication of what I submitted and testified on in 2020. Instead, I am attaching my comments from the February 2020 hearing and asking once again to have the concerns detailed in these comments, addressed by staff please. For the most part, all of the 2020 comments still have merit and this settlement has done nothing to resolve the violation in full. The only change that has taken place since these comments were submitted is related to fuel modification, which has been addressed with a CDP issued to the Laguna Beach Fire Department for extensive fuel modification in Zone 10 where this development is located. I also respectfully request that the Fudge's concerns regarding lot line adjustments, inclusion of the neighboring property owners in negotiations, full restoration, as well as the other long list of their valid concerns be addressed by staff please. It would also be helpful to receive feedback from staff on the letter from former Commissioners Brennan and Shallenberger.

In this unfortunate settlement, the violator is being given the opportunity to retain unpermitted development in supposedly “protected” Open Space. The Sierra Club, who would prefer denial, but respectfully requests that the Commission condition this recommended approval with a minimum of 4:1 mitigation given the very high-value ESHA and endangered species in this area. Dr. Engel explained to everyone in her 2020 presentation the very high value of this ESHA, so that doesn’t require any more study. The work was done by Dr. Engel, and to date, has been ignored. Again, the Sierra Club requests that staff help us understand why Dr. Engel’s findings were ignored in 2020 and continue to be ignored.

This land that has been destroyed by an overly ambitious private property owner is part of a much larger and “protected” ecosystem. These adjacent parcels are held by the Coastal Conservancy and OCTA (Environmental Oversight Committee). It is also adjacent to two existing restoration areas at Hobo Aliso Ridge being managed by Land IQ for Hometown America and SCE under the guidance of Coastal Commission enforcement and permitting staff. The Sierra Club suggests mitigation for this violator’s encroachment into Open Space being offset by a 4:1 restoration area contiguous with either the Hometown America or SCE restoration projects at Hobo Aliso Ridge. This request was made in 2020 as well, but not addressed.

Thank you for considering these comments and attachments. Please deny this CDP. Please reference the attached letter from former Commissioners Brennan and Shallenberger if there is any doubt as to why this should be denied. If you find that you are unable to deny, please, at minimum, require mitigation for this Coastal Act violation that allows for continued encroachment into our valued Open Space. Please don’t let this set a bad precedent and send the message that the Coastal Act is baseless.

Respectfully,



Penny Elia
Chair
Save Hobo Aliso Task Force
Sierra Club

Attachments:

- February 2020 written comments from Penny Elia – unanswered questions remain
- February 2020 written comments from Mark & Sharon Fudge – unanswered questions remain
- February 2020 written comments from former Commissioners Mary Shallenberger and Brian Brennan (original appellants)

Copy: Coastal Commission staff:

Karl Schwing
Marlene Alvarado
Lisa Haage
Andrew Willis
Dr. Jonna Engel
Alex Helperin
Louise Warren
Claire Wilkens

OCTA Environmental Oversight Committee:

Lesley Hill – Project Manager, Environmental Mitigation Program
Dr. Dan Silver – Committee Member, Endangered Habitats League

California Coastal Commission

45 Fremont St. Suite 2000

San Francisco, Ca. 94105

Re: Th14c- Application NO.5-19-0909 (Sanson, Laguna Beach)

Chair Padilla and Commissioners,

We are writing you and your fellow Commissioners as the two Coastal Commissioners in September of 2013 that appealed the actions of the City of Laguna Beach Coastal Development Permit No. 13-1266, which approved, after-the-fact, development effectuated by Lot Line Adjustment No. 95-04 within the City of Laguna Beach.

We appealed this decision then and firmly believed now that this CDP raises questions of consistency with the coastal resource protection policies of the City's Local Protection Program.

As a former local elected official of 16 years I know how hard it can be to go against staff recommendations on complex issues such as this but I encourage you to continue this hearing and let the Enforcement staff bring resolution to these Coastal Act violations through enforcement action.

Thank you all for your Public Service!

Brian Brennan

Mary Shallenberger



February 7, 2020

Sent via online comments/email

California Coastal Commission
45 Fremont St. Suite 2000
San Francisco, CA 94105

Re: Comments - Th14c – Application No. 5-19-0909 (Sanson, Laguna Beach)

Dear Commissioners:

For the last two plus decades, the Sierra Club's Save Hobo Aliso Task Force has worked with the Commissioners and Commission staff to protect and preserve the finite natural resources in this very special area of Laguna Beach. Your staff has provided you with a "History of Commission Actions Related to Subject Properties" as Exhibit 8 of the staff report Exhibits package. This history is extensive and complicated, but I hope you will bear with me as I point out other issues that I believe are relevant to this case that were not included in Exhibit 8.

Enforcement versus Permitting

The first item I would like to try and receive clarity on is why I was advised that this is an enforcement case and told that I am not allowed to conduct ex partes. While I feel strongly that this is an excellent case for unilateral enforcement action, it is very clearly being processed as a permitting issue without any sign of enforcement action. My reasoning for this being handled by Enforcement versus Permitting goes back 25 years ago to the first unresolved NOV for the unpermitted LLA 95-04. A second NOV on the same LLA 95-04 was issued to another violator in 2007 that has gone unresolved. Neither of these NOV's are included in Exhibit 8, the "history of commission actions related to subject properties" when they have direct bearing on the recommendation being made by staff.

The other document and enforcement related matter that's missing from Exhibit 8 is the 2013 letter from Andrew Willis (Enforcement Analyst at the time of the letter) to Ms. Sanson, clearly stating that:

Page 1 – paragraph 1

As you may know, the required number of Coastal Commissioners' recently filed an appeal of City of Laguna Beach Coastal Development Permit ("CDP") No. 13-1266, which approved, after-the-fact, development effectuated by Lot Line Adjustment No. 95-04 ("the LLA") within the City of Laguna Beach. The Commission's appeal of CDP No. 13-1266 raises questions of consistency with the coastal resource protection policies of the City's Local Coastal Program ("LCP"), and notes the jurisdictional issue (as explained below). Moreover, as discussed in more detail below, **it is not likely that Commission staff would recommend approval of the development effectuated by the LLA that is located within the Commission's coastal development permit jurisdiction.**

Page 3 – paragraph 2

For this reason and others, Commission staff would likely recommend denial of a CDP for the LLA as presently configured, and, if the Commission finds a substantial issue and holds a de novo hearing on this matter, it is likely that staff would recommend denial of the City's CDP on appeal.

Here we are nearly seven years later with staff now recommending approval of this LLA via permitting after 25 years of documented enforcement involvement. What happened and how did we arrive at this recommendation via permitting? The respondent's representative is even going as far as to ask for a waiver of fees when in fact it would seem much more appropriate to be issuing fines that could be used by the Coastal Conservancy for future restoration at Hobo Aliso Ridge or other nearby conservation easements/projects.

Protection and Preservation of Resources

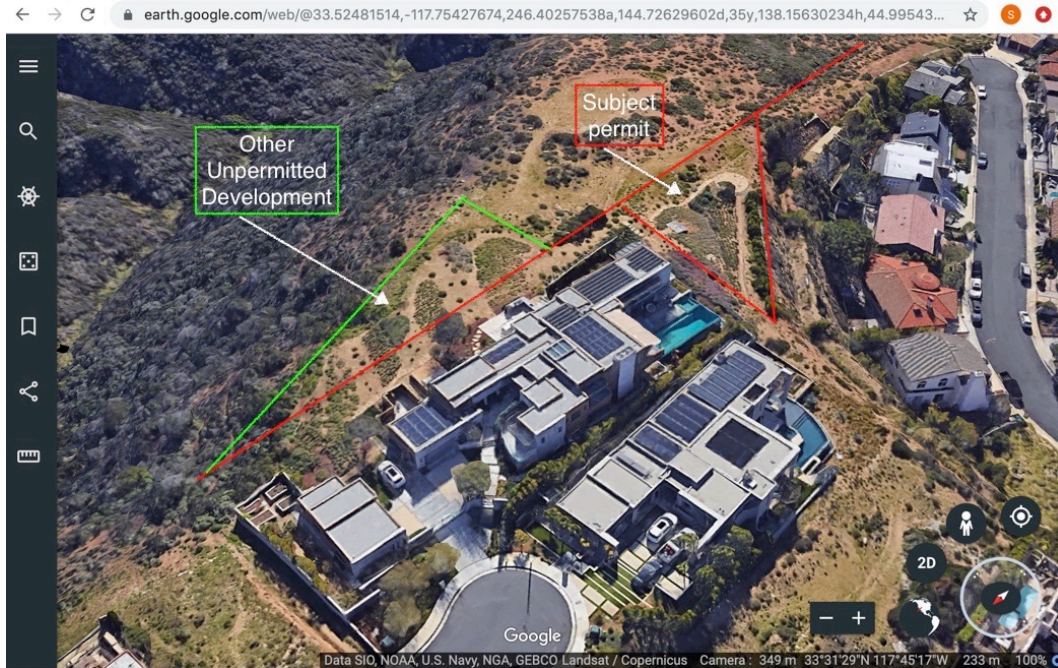
Dr. Engel has done an outstanding job on responding to GLA's technical memo. As we have seen in many other cases, GLA doesn't seem to have protection and preservation of our natural resources in mind, so thankfully we have sound science and facts being shared by Dr. Engel. And, since this case has been lingering for so long, I am very sorry to report that the wonderful woman that always represented California Native Planet Society (CNPS) on these issues in the Hobo Aliso area has passed away. Celia Kutcher, Conservation Chair for the Orange County CNPS did submit comments on the first "landscaping plan" for this property - - note, landscaping plan, not restoration plan, as she pointed out to me. Celia did not comment on the subsequent plan(s) but did make a point of stating that the intense fuel modification in this area is a detriment to the habitat and endangered species. The Save Hobo Aliso task force agrees, and prior to any Laguna Beach Fire Department approvals of a fuel mod plan for this parcel, we respectfully request that CCC staff complete the process of receiving and evaluating the City of Laguna Beach's outstanding CDP application for this fuel mod zone and that it come to hearing before this Commission so that the public may weigh in on the plan.

Staying on the topic of restoration of this area, our task force requests that since irrigation is going to be allowed for three years, that the first phase of monitoring be documented and reported in three years versus five, as recommended by staff. We also ask that at this requested three-year monitoring that either CCC staff or a representative from CNPS conduct an on-site evaluation of the recovery of this area that has been so devastated by development and fuel mod versus just requesting photo documentation. If restoration does not meet the required criteria, extend the monitoring for another three years.

Setting Precedent

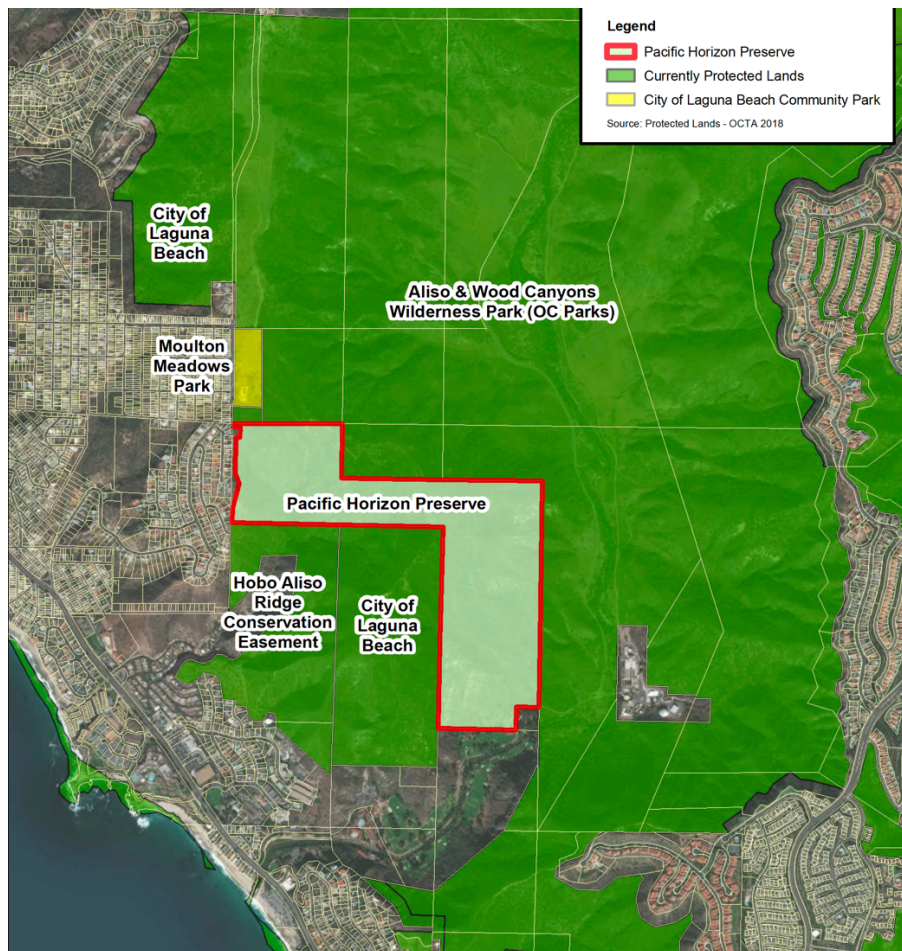
Several months ago, Chief of Enforcement Lisa Haage was advised of another enforcement matter just eight parcels away from 791 Barracuda, located at 741 Barracuda. When this was reported to her she advised that Enforcement Officer Jordan Sanchez would be investigating this matter. To date, we don't know the status of this enforcement investigation, but this particular area of Laguna Beach is known for its encroachments into open space.

This is the property located at 741 Barracuda – photo below. You'll note the landowner has taken many of the same liberties that were taken at 791, but in this case is actually asking to for more open space for development. Again, we do not know the current status of this enforcement case.



Proposed Environmentally Sound Solution

In summary, our task force requests that this Commission please continue this hearing and allow your Enforcement staff to take the necessary steps to bring resolution to these Coastal Act violations through unilateral enforcement action. Once resolution is achieved, we recommend that this land be deeded to OCTA, the adjacent landowner. By allowing OCTA to take possession of this precious land, we can be assured of its good care and ongoing protection and preservation. This Commission approved a restoration project for OCTA on this same contiguous parcel in September 2019. We ask that the Commission allow OCTA to continue its most excellent work on this parcel and make it a part of their Pacific Horizon Preserve following complete restoration by the respondent. Note the attached OCTA mapping with the unpermitted LLA notch in the upper left hand corner of the preserve parcel. Every piece of acreage matters when it comes to protecting and preserving our finite natural resources. Let's work together to remove that notch and make it a straight property line.



Thank you for the opportunity to comment on this issue. As stated, our task force has a very long history with this land as partially chronicled in Exhibit 8. Let's please add to this "history of commission actions related to subject properties" with a positive and protective position that favors our natural resources.

Sincerely,

Penny Elia
Task Force Chair
Save Hobo Aliso Task Force
Sierra Club

Copy: Lesley Hill, Project Manager, Environmental Mitigation Program, OCTA
Dan Phu, Project Manager, Environmental Mitigation Program, OCTA

February 7, 2020

Dear Marlene,

We have several concerns about staff's recommendation of 'Approval with Conditions' for the matter entitled Permit Application **A-5-LGB-19-0909** to be heard on Thursday, February 13, 2020 (Th14c). We understand and appreciate the complicated nature of the application due to the previous history of violations and the location of the project in both a certified LCP and deferred certification area. At the onset, we request that the application be **denied outright** and returned to the City or **postponed**. Please add our comments to the record.

1. Incomplete access to the certified LCP continues

For over a year, we have been requesting a copy of the certified LCP for the City of Laguna Beach. In October of 2019 we filed a formal Public Records Act (PRA) request and came to an agreement with the Coastal Staff that delivery of the document would occur over a period of months. Until the delivery was complete, we were told that decisions reliant on the LCP would not be considered for applications in Laguna. Yet, the staff report for the subject application contains multiple (42) references to the LCP. The staff report maintains that it can be used as guidance for the Commission's decision in this instance. However, the public STILL does not have a complete copy of the document to review. This is a clear violation of the public's right to due process.

The subject application should be **postponed** until a full and complete copy of the certified LCP is available for the public's review.

2. Project as proposed does not qualify for an exemption from the Subdivision Map Act

On December 13, 2019, Coastal Staff mailed an installment of portions of the certified LCP to us. This segment of the delivery of the certified LCP contained Chapter 21 Plats and Subdivisions. Interestingly, although multiple references to the certified LCP were made in the staff report, there was not even one reference to the code that controls lot line adjustments - Chapter 21.08.030. This oversight must be corrected.

This portion of the certified LCP is important in the matter of Application A-5-LGB-19-0909 because it verifies that the Lot Line Adjustment (LLA) being requested is first and foremost, *not able to be approved* due to the lack of compliance with LBMC 21.08.030. The controlling language states that a lot line adjustment is exempt from the Subdivision Map Act, ONLY when the adjustment is done between two parcels that are building sites as defined by Title 25 (Zoning) of the code. In this case, the two parcels are NOT both building sites, therefore, this LLA is NOT exempt from the Subdivision Map Act. This particular redivision of land must be carried out pursuant to the Subdivision Map Act - in other words, a parcel map or tract map

must be created and reviewed in a public hearing. Then that map would be subject to the issuance of a CDP.

The Parcel Information Report (available on the City's GIS map) clearly indicates that Parcel 2 (Assessors Parcel No. 056-240-66¹) is NOT a building site (**EXHIBIT 1**). The parcel is *not* a legal building site pursuant to the definition of a 'building site' in section 25.08.004(1)(c) which reads that in order to be considered such, a parcel must "*abut for a minimum frontage of ten feet measured longitudinally in relationship to the paved street section and has the right to the use of a street improved to the subdivision street design standards of the city, or of a usable vehicular right-of-way of record, or of a street that does not meet the minimum standards but has been approved by means of a variance, or of a street of less than standard width as specifically approved for access by the city.*" In the case here, Parcel 2 does not have access to a street and was found to not be a building site, nor can it ever become a building site.

The City improperly exempted the lot line adjustment from the Subdivision Map Act. The Coastal Commission cannot also make that same mistake. The project should be returned to the City for a proper analysis under the proper set of rules. The project before you must be **denied**.

3. The entirety of the LLA process at the City has been invalidated

The May 4, 2007 Notice of Violation (NOV) letter regarding LLA 95-04 constituting unpermitted development clearly states that since the lot line adjustment did not receive the approval of the required coastal development permit, that the LLA was **invalid** and that future development proposed on the parcels affected by the LLA must be analyzed based on the pre-violation lot line configuration. (**EXHIBIT 2**)²

What this means is that today, the LLA being proposed must be viewed based on the pre-violation lot line configuration, but for some reason, the violation has 'disappeared'. We do not understand how the proposed project proceeded from violation to permitting and would like an explanation.

A September 18, 2013 letter from Commission Enforcement Analyst Andrew Willis regarding the 'Purported Lot Line Adjustment No. 95-04' (**EXHIBIT 3**) addressed to Ms. Sanson stated that "*it is not likely that Commission staff would recommend approval of the LLA as configured*" and that it was recommended that the property owner "*apply for a coastal development permit to authorize a new lot line adjustment that reconfigures the parcel boundaries to their original configuration and to authorize restoration of any damaged coastal*

¹ The City's GIS map recognizes Parcel 2 as APN 056-240-66, not as 056-240-67 or 056-240-68 as depicted on Th14c staff report project location.

² In addition, there are other references to the 'invalidation' of LLAs without CDPs in other staff reports such as A-5-LGB-02-265 (page 7). This is a precedent that has already been set.

resources.” Why has the staff recommendation now changed to something which allows something other than a return to the original configuration of the lots?

The invalidation of the original LLA also means that the subject permit must be reviewed in accordance with the certified LCP and the Subdivision Map Act by the City.

4. Lack of involvement of the ‘other’ property owner

Since the original LLA 95-04 is invalid, and is being reconsidered from scratch here, we are curious as to the absence of the other property owner (Orange County Transportation Authority “OCTA”) in this process³. When the City approved CDP was appealed in 2013⁴, the Commission staff report stated that *‘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.’* as well as that they (staff) intended to *“work with the new owner of Lot 1 and the long-time owner of Lot 2, Driftwood Properties, LLC.”* However, there is no evidence that collaboration has yet happened between the new owners of Parcel 2(OCTA) and Coastal staff. If not **denied** outright, consideration of the proposed application must be **postponed** until ALL parties have been included in the application process.

5. Why is there a ‘revegetation plan’ being considered instead of a ‘habitat restoration plan’?

The staff report asserts that the vegetation on the site itself does not qualify as ESHA because it was destroyed by the actions of the previous owners. While true, the location of the parcels and the surrounding areas suggests that the parcels *most likely* contained sensitive habitats prior to the unpermitted development (removal of native vegetation). If so, the habitat of the parcel should be restored and should be subject to annual monitoring. Even if a ‘revegetation plan’ is ultimately used, we feel it is inadequate protection for the environment to allow the plan to mature for five years without oversight.

6. Fuel Modification

To clarify, according to the Safety Element of the City of Laguna Beach, the entirety of the City has been designated as a Very High Fire Hazard Zone. There is nothing unique about this designation on these subject parcels. Currently, the new Fuel Modification Guidelines have not been certified by the Coastal Commission, nor has the Safety Element of the General Plan. This has created a great disservice to the protection of native vegetation throughout the City of Laguna Beach.

³ The large parcel was incorrectly identified in the staff report and exhibits as the Aliso Canyon Preserve. The name of the preserve was changed to the Pacific Horizon Preserve as announced by OCTA on February 26, 2018.

⁴ A-5-LGB-13-0235 staff report dated September 27, 2013 excerpt (**EXHIBIT 4**)

7. Categorical Exclusion Area 7 does not allow for a CDP exemption for the construction of the house or the LLA

Page 12 of the staff report refers to Parcel 1's location within one of the City's certified categorical exclusion areas (Cat Ex Area 7, Portafina Area). Presumably this is the reason that the existing house itself was built without benefit of a CDP. However, based on Categorical Exclusion Order E-93-01 (approved by the Commission on May 13, 1993) (**EXHIBIT 5**) item #4 requires a map to be created with a note clearly indicating that *'no development within one hundred feet from the upland limit of any stream, ...' is excluded by the terms of this order, regardless of whether such coastal waters are depicted on the exclusion map, or not.* Additionally, *"where geologic risk, high slope, environmentally sensitive habitat, open space or other similar policies of the certified local coastal program specify geographic areas of concern for natural resources, then no development shall occur in the area described in the local coastal program unless authorized by a coastal development permit."*

Because the category of a lot line adjustment is not delineated as a category of development excluded by the Exclusion Order, it is clear that the LLA itself requires a CDP for both parcels. However, since it is evident in the staff report and the exhibits that Parcel 1 is likely within one hundred feet from the upland limit of a blue line stream and adjacent to areas where there are high slopes, environmentally sensitive habitats and open space, then Exclusion Order E-93-01 would not have been applicable to the building of the single family residence itself. We therefore are requesting an 'Interpretation of Exclusion' from the executive director as allowed by 14 CCR §13231 which says any person may request an interpretation of the order granting an exclusion. The LLA application hearing should be **postponed** until an interpretation is complete.

Additionally, the Conditions of the Order, allow for the Commission to recind or relocate the Order at any time if the Commission finds by a majority vote that the terms and condition of the Order no longer support the findings specified in PRC section 30610(e). It may be time for the Commission

8. If approved, the project must be conditioned to return to the City for a Design Review Permit

Although not a part of the certified LCP, Chapter 12.18 of the LBMC requires the submittal of a Habitat Restoration Plan when native vegetation has been removed without authorization.⁵ The review of Habitat Restoration Plans require approval of the Design Review authority and the issuance of a Design Review permit (LBMC 25.05.040(B)(1)(n). We ask that this be added as a 'prior to issuance' condition if the permit application is approved.

Additionally, LBMC 25.05.040(B)(1)(q) requires that the City issue a Design Review permit for *'any instance where a coastal development permit is required to be issued by the city'*.

⁵ We have been unable to find any evidence that the removal of native vegetation was done with any type of approval or permitting.

In 2013, when the City issued CDP 13-1266 for the after-the-fact approval of LLA 95-04, they failed to issue a related Design Review approval as required. The City must also review this application according to the design review criteria as laid out in the certified 'Design Guidelines' portion of the LCP (received by us in the November 27, 2019 installment of LCP delivery) for the portion of the LLA that the City was required to issue a CDP to (i.e. Parcel 1).

Thank you for your consideration of our concerns. We are available for any questions you may have at 949-481-1100 or fudge1@cox.net.

Sincerely,


Mark and Sharon Fudge

P.O. Box 130

Laguna Beach, CA 92652-0130

Exhibit 1 - Parcel Information Report for Parcel 2 and map

Exhibit 2 - NOV-5-07-006 letter dated May 4, 2007

Exhibit 3 - Enforcement Letter dated September 18, 2013 "Re: Purported LLA No. 95-04"

Exhibit 4 - Excerpt from Staff Report dated September 27, 2013 A-5-LGB-13-0235

Exhibit 5 - Categorical Exclusion Order E-93-01

City of Laguna Beach Geographic Information System (GIS)

Parcel Information Report

02/03/2020

Site Street Address	
Assessor Parcel No. (APN)	056-240-66
Parcel ID No. (PIN)	11261
Property Owner(s)	Driftwood Properties Llc
Parcel Area (sq. ft.)	6670716
Zone(s)	OSC-REC-RHP
Specific Plan	None
General Plan Land Use Designation(s)	OS-PRP-RHP
→ Building Site Status	No
Historic Resources Inventory Rating (C, K, E, X)	
Historic Register Designation Date	
→ Environmental Constraints	Drainage/HVH/HVH/WQESA/FM/Ridge/VHFHSZ
On-Site Turnaround Required	No
Special Subdivision Map Building Setbacks	None
Special Street Plan Requirements	None
Special Subdivision Map Height Standards	None
Recommended Landscaping and Setbacks	None
FEMA Flood Zone	X,2 pct annual chance
Flood Plain Map Effective Date	12/03/2009
FEMA Flood Zone Map Panel	06059C0419J, 06059C0438J
Private Sewer Lateral Corrective Notice Date	
Private Sewer Lateral Compliance Clearance Date	

EXHIBIT 1
pg 1 of 2

Search...

Sign in

Navigation

Tasks Analysis



Home



Pan



Zoom In



Zoom Out



Initial View



Full Extent



Click to find features on the map.

Location Information

Step 2: Modify Selection

Select a geometry to modify this selection, or click continue if you are finished.

Refine your custom geometry by choosing one of the tools below, and selecting an area on the map.

Replace

Add

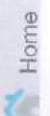
Remove

Intersect

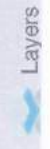
Continue



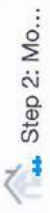
Parcel Selection (1)



Home



Layers



Step 2: Mo...



Parcels

Displaying 1 - 1 (Total: 1)

Page 1 of 1

EXHIBIT 1
page 2 of 2

May-05-07 10:53AM From: California Coastal

7002580008

1-124 P. 003/001 P-401

ARNOLD SCHWARZENEGGER, Governor

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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



NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL

May 4, 2007

Marryn Hoffmann
The Athens Group
31106 Pacific Coast Highway
Laguna Beach, CA 92651

Laguna Terrace Park LLC
c/o Stephen Esslinger
30802 Coast Highway #K-2
Laguna Beach, CA 92651

Violation File Number: V-5-07-006

Property Location: Assessor's Parcel No.s 056-240-64, 056-240-65, 656-191-38, 656-191-39, and 656-191-40, City of Laguna Beach, Orange County

Unpermitted Development: Lot lines adjusted (via LLA 95-01 and 95-04) without benefit of the required coastal development permits

Dear Mr. Hoffmann and Mr. Esslinger:

Our staff has confirmed that a purported adjustment of lot lines has occurred on properties currently owned by Driftwood Properties LLC and Laguna Terrace LLC without the benefit of the required coastal development permits. The subject properties are located within the Coastal Zone area of the City of Laguna Beach ("City") and an area of deferred certification, in which the Coastal Commission retains permit authority. The unpermitted purported lot line adjustments ("LLAs") at issue are numbered by the City of Laguna Beach as 95-01 (Orange County Recorder's Doc No. 19950520276) and 95-04 (Orange County Recorder's Doc No. 19950449870).

Pursuant to Section 30600(a) of the Coastal Act¹, any person wishing to perform or undertake non-exempt development in the coastal zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined, in relevant part, by Section 30106 as:

"Development" means... change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section

¹ The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code ("PRC"). All further section references are to the PRC, and thus, to the Coastal Act, unless otherwise indicated.

006935

EXHIBIT 2
page 1 of 3

May-05-07 10:59am From-California Coastal

+5625806884

T-724 P 005/001 F-40U

V-5-07-006 (Athens Group and Esslinger LLA's)
Page 2 of 3

66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use... [underlining added for emphasis]

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

Commission staff has researched our permit files and concluded that no coastal development permits have been issued by the Coastal Commission or the City for either LLA. The unpermitted purported LLAs affect parcels located in an area subject to the City's coastal development permit authority and an area of deferred certification, in which the Coastal Commission retains permit authority. Please note that even if the City found the LLAs to be exempt from the Subdivision Map Act because the LLAs would not result in a greater number of parcels than originally existed, they are still subject to the permit provisions of the Coastal Act and LCP, since these are separate and independent legal authorities.

Any attempt to conduct development in the Coastal Zone without a valid coastal development permit constitutes a violation of the Coastal Act and LCP. In order to resolve this violation, we are requesting that you take whatever steps are necessary to correct the records with all relevant departments of the City and Orange County, including, but not limited to, the County Recorder's Office, and with any other relevant regulatory bodies and state or local agencies, to accurately indicate that the line separating the two lots remains as it was prior to the purported LLAs at issue. Please contact me by no later than May 21, 2007, regarding how you intend to resolve this violation. If the lot lines are not clarified or if the unpermitted development were not otherwise resolved under the Coastal Act and LCP, we will consider taking formal enforcement action to resolve this matter. Please be aware that the Executive Director is authorized, after providing notice and the opportunity for a hearing before the Commission as provided for in Section 30812, to record a Notice of Violation against the subject properties.

Furthermore, since LLAs No.s 95-01 and 95-04 did not receive the approval of the required coastal development permit, neither LLA is valid. Thus, future development proposed on the parcels affected by the LLAs must be analyzed based on the pre-violation lot line configuration.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071, or in the event of my absence, Southern California Enforcement Supervisor Par Veasart at (805) 585-1800.

006936

EXHIBIT 2
page 2 of 3


May-08-07 10:58am From-California Coastal

96625005084

T-724 P 001/001 F-400

V-5-07-006 (Athens Group and Esslinger LLA's)
Page 3 of 3

Sincerely,


Andrew Willis
District Enforcement Analyst

cc: John Montgomery, City of Laguna Beach
Lisa Huage, Chief of Enforcement, CCC
Pat Yeosart, Southern California Enforcement Supervisor, CCC
Teresa Henry, South Coast District Manager, CCC
Karl Schwitz, Orange County Permit Supervisor, CCC
Alex Helperin, Staff Counsel, CCC

006937

EXHIBIT 2
page 3 of 3

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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



September 18, 2013

Jacqueline Sanson
791 Barracuda Way
Laguna Beach, CA 92651

Re: Purported Lot Line Adjustment No. 95-04

Dear Ms. Sanson:

As you may know, the required number of Coastal Commissioners¹ recently filed an appeal of City of Laguna Beach Coastal Development Permit ("CDP") No. 13-1266, which approved, after-the-fact, development effectuated by Lot Line Adjustment No. 95-04 ("the LLA") within the City of Laguna Beach. The Commission's appeal of CDP No. 13-1266 raises questions of consistency with the coastal resource protection policies of the City's Local Coastal Program ("LCP"), and notes the jurisdictional issue (as explained below). Moreover, as discussed in more detail below, it is not likely that Commission staff would recommend approval of the development effectuated by the LLA that is located within the Commission's coastal development permit jurisdiction.

By way of background, the California Coastal Act was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation of coastal resources. The California Coastal Commission is the state agency created by, and charged with administering, the Coastal Act. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats such as the coastal sage scrub and chaparral plant communities that blanket much of the Hobo Canyon area in the vicinity of your property.

Coastal Development Permit Requirement

Pursuant to Section 30600(a) of the Coastal Act and Section 25.07 of the City's LCP, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined, in relevant part, by Section 30106 of the Coastal Act and Section 25.07.006(D) of the City's LCP as:

"Development" means, on land, in or under water...change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the

¹California Code of Regulations Title 14, Section 13111(a) requires two Coastal Commissioners to file an appeal of a local decision for such an appeal to be effective. Aggrieved persons who have exhausted their local appeals may also file an appeal.

EXHIBIT 3
page 1 of 3

Ms. Jacqueline Sanson
September 18, 2013
Page 3 of 3

parcel into your residential parcel. Incorporation of an open space parcel into a residential parcel could lead to development of the open space area with structures and improvements, such as landscaping, that are related to the residential development. In fact, this is essentially what has occurred in this situation; the incorporated area here is developed with non-native vegetation that is wholly inconsistent with the habitat values of the surrounding undeveloped parcel and the potential open space and conservation uses of the parcel.³

→ [For this reason and others, Commission staff would likely recommend denial of a CDP for the the LLA as presently configured, and, if the Commission finds a substantial issue and holds a *de novo* hearing on this matter, it is likely that staff would recommend denial of the City's CDP on appeal. Thus, Commission staff does not feel that the City's coastal development permitting process is an effective mechanism by which to bring about a comprehensive resolution of the unpermitted LLA. Commission staff's preference is to process a consolidated coastal development permit to reconfigure the lot lines to their pre-LLA configuration and restore any damaged coastal resources. We welcome the opportunity to discuss this matter with you in more detail.]

In order to move toward an expeditious resolution of this matter, please contact me by **October 2, 2013**. We look forward to setting up a time to discuss this matter.

Sincerely,



Andrew Willis
Enforcement Analyst

encl: May 4, 2007 Notice of Violation letter

cc: John Montgomery, Laguna Beach
Sherilyn Sarb, Deputy Director, CCC
Patrick Veesart, Southern California Enforcement Supervisor, CCC
Karl Schwing, Orange County Planning Supervisor, CCC

³Pursuant to a Commission cease and desist order issued to the adjacent property owner to address unpermitted habitat removal, the State Coastal Conservancy has a right of first refusal to purchase the adjacent property as open space for purposes of preserving the significant tracts of habitat on the property.

CALIFORNIA COASTAL COMMISSION

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



W18b

Filed: 08/28/2013
49th Day: 10/14/2013
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

EXHIBIT 4
page 1 of 3

A-5-LGB-13-0235 (Sanson)
Staff Report: Substantial Issue

authorized through any coastal development permit¹. 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 adjustment². 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.

¹ 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.

² 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.

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 W. BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA 90802-4416
(310) 590-5071



June 1, 1993

Kathryn Lottes
Principal Planner
Laguna Beach Planning Department
505 Forest Avenue
Laguna Beach, CA 92651

Dear Ms. Lottes,

On May 13, 1993 the Coastal Commission approved as conditioned Categorical Exclusion Order E-93-1 for the City of Laguna Beach. Pursuant to California Code of Regulations Section 13244, the Categorical Exclusion Order will not become effective until the following occurs:

- 1) the City of Laguna Beach, by action of its governing body, acknowledges receipt of the commission's resolution of approval, including any conditions which may have been required;
- 2) the City by appropriate action of its governing body, accepts and agrees to the terms and conditions to which the categorical exclusion has been made subject; and
- 3) the Executive Director of the Commission determines in writing that the City's resolution is legally adequate to carry out the exclusion order and that the notification procedures satisfy the requirements of the exclusion order.

Once these requirements are met, the City may begin implementing the Categorical Exclusion Order. Attached for reference is a copy of Categorical Exclusion Order E-93-1 as approved by the Coastal Commission.

If you have any question regarding this matter, please contact Meg Vaughn of this office or myself.

Sincerely,

Teresa Henry
Assistant District Director

8747E

EXHIBIT 5
page 1 of 5

A. CATEGORY OF EXCLUDED DEVELOPMENT

The Commission by a two-thirds vote of its appointed members hereby adopts an order, pursuant to Public Resources Code Section 30610(e) and 30610.5(b) which excludes the following categories of development in the designated areas of the coastal zone of the City of Laguna Beach from the permit requirements of the California Coastal Act of 1976. However, no development located on tidelands or submerged lands, beaches, lots immediately adjacent to the inland extent of any beach, or the mean high tide line of the sea where there is no beach and all land and water subject or potentially subject to the public trust is excluded by this order. In addition, no development in areas of deferred certification or development appealable under Public Resources Code Section 30603 is excluded by this order. The Commission hereby orders that the following developments within the excludable area shall not require a coastal development permit:

1. Single Family Residential Development

Single family residential development in eleven areas zoned for single family residential development as shown on Exhibit E unless within the LCP mapped areas of high slope or geologic risk as shown on the Slope map and Geologic Conditions map. The areas to be excluded are known as: (1) Hillcrest and (2) High, located north of Laguna Canyon Road and inland of Pacific Coast Highway; (3) Skyline, (4) High School, (5) Temple Hills, (6) Summit, (7) Alta Vista, (8) Portafina, (9) Arch Beach Heights and (10) Top of the World, all located south of Laguna Canyon Road and inland of Pacific Coast Highway; and (11) South Laguna Village Community, located in the South Laguna area inland of Pacific Coast Highway.

2. Signs

Signs which comply with the City's sign regulations as incorporated into the Local Coastal Program or as subsequently modified through LCP amendments.

3. Commercial Changes

Commercial interior and exterior changes which do not result in an intensification of commercial usage.

4. Public Improvements Up to \$50,000

Public improvement projects of up to \$50,000 provided they do not limit parking or impair beach access or do not serve, affect, or otherwise impact regional or statewide recreational use of the coast.

5. Replacement-in-Kind/Maintenance of Public Improvements

Public improvement projects which are limited to replacement-in-kind or maintenance and which are not located in environmentally sensitive areas as shown on the LCP Biological Resource Values map or open space areas, the Downtown Specific Plan, oceanfront properties or public buildings or parks or do not serve, affect, or otherwise impact regional or statewide recreational use of the coast.

6. Grading Projects

Grading projects which do not require a grading permit (as provided in the exceptions provision of Section 22.10.010 (E) of the Municipal Code), except those projects described in Section 22.10.010(E)(5) or within areas shown on the LCP Biological Resource Values map.

→ B. SPECIAL CONDITIONS

→ Exclusion Limitations

→ [These exclusions will not apply to any areas of deferred certification or to developments upon any lands and waters subject to or potentially subject to the public trust, such as tide or submerged lands, beaches, lots immediately adjacent to the inland extent of any beach, or the mean high tide line of the sea where there is no beach. Also, these exclusions will not apply to any areas appealable to the Coastal Commission under Public Resources Code Section 30603.]

1. Areas of Geologic Risk

The Categorical Exclusion Order shall not apply to areas that are mapped as high and very high slope areas and areas of geologic risk in the City's certified Land Use Plan.

2. Revised Grading Description

The categorical exclusion order shall not apply to Section 22.10.010 (E)(5) of the Laguna Beach Municipal Code.

3. Public Improvement Projects

The categorical exclusion order shall apply only to public improvement projects that do not exceed \$50,000, do not limit parking or impair beach access and that do not serve, affect or otherwise impact regional or statewide recreational use of the coast.

4. Mapping

This order of categorical exclusion shall not be implemented until the City submits to the Executive Director of the Coastal Commission and the Executive Director approves, in writing, a map depicting all of the following:

- a. The geographic areas excluded by the Commission Order;
- b. The zoning designations of the excluded order;
- c. The areas of potential public trust (areas subject to the public trust are seaward of the line of mean high tide);
- d. All coastal bodies of water, riparian corridors, and wetlands as may be shown on any Land Use Plan Resources Maps, or background studies;

CITY OF LAGUNA BEACH
CATEGORICAL EXCLUSION ORDER E-93-1
PAGE 3

e. The boundaries of all lots immediately adjacent to the inland extent of any beach, or the mean high tide line of the sea where there is no beach;

f. A map note which clearly indicates that the written terms of this order should be consulted for a complete listing of non-excludable developments. The note shall, to the maximum extent practicable, indicate the topical areas which are non-excludable. It shall state that no development within one hundred feet from the upland limit of any stream, wetland, marsh, estuary, or lake, or within 300 feet of the top of the seaward face of any bluff is excluded by the terms of this order, regardless of whether such coastal waters are depicted on the exclusion map, or not. The map note shall further state that where geologic risk, high slope, environmentally sensitive habitat, open space or other similar policies of the certified local coastal program specify geographic areas of concern for natural resources, then no development shall occur in the area described in the local coastal program unless authorized by a coastal development permit.

5. Determination by the Executive Director

The order granting a categorical exclusion for these categories of development in the City of Laguna Beach shall not become effective until the Executive Director of the Commission has certified, in writing, that the local government has taken the necessary action to carry out the exclusion order pursuant to Section 13244 of the Coastal Commission regulations.

5. Exclusion Limited to Coastal Permits

This exclusion shall apply to the permit requirements of the Coastal Act of 1976, pursuant to Public Resources Code 30610(e) and 30610.5(b), and shall not be construed to exempt any person from the permit requirements of any other federal, state or local government agency.

6. Records

The City of Laguna Beach shall maintain a record of any other permits which may be required for categorically exempt development which shall be made available to the Commission or any other interested person upon request.

7. Notice

Within five working days of local approval of a development covered by this exclusion, the Coastal Commission area office and any person who has requested such notice shall receive notification of development exempted under this order on a form containing the following information:

- a. name of the developer;
- b. street address and parcel number of the subject property;
- c. description of the development;
- d. date of application for other permits; and
- e. all terms and conditions of approval imposed by the local government in granting other permits.

EXHIBIT 5
page 4 of 5

CITY OF LAGUNA BEACH
CATEGORICAL EXCLUSION ORDER E-93-1
PAGE 4

8. Conformity with the LCP

Development under this exclusion shall conform with the City of Laguna Beach's LCP in effect on the date of this exclusion as adopted by the Commission or to the terms and conditions of this exclusion where such terms and conditions specify more restrictive development criteria.

9. Amendment of LCP

In the event an amendment of the LCP is certified by the Coastal Commission pursuant to Section 30514 of the Coastal Act, development under this order shall comply with the amended LCP except where the terms and conditions of this order specify more restrictive criteria. However, such amendment shall not authorize the exclusion of any category of development not excluded herein, nor shall such amendment alter the geographic areas of the exclusion.

10. Limitation

Any development not falling within this exclusion remains subject to the coastal development permit requirements of the Coastal Act of 1976.

C. RECISION AND REVOCATION

Pursuant to Title 14 of the California Code of Regulations Section 13243(e), the Commission hereby declares that the order granting this exclusion may be rescinded at any time, in whole or in part, if the Commission finds by a majority vote of its appointed membership, after public hearing, that the terms and conditions of the exclusion order no longer support the findings specified in Public Resources Section 30610(e). Further, the Commission declares that this order may be revoked at any time that the terms and conditions are violated.

8748E

EXHIBIT 5
page 5 of 5



ATTORNEYS AT LAW

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 34th Floor
 Los Angeles, CA 90017
 T 213.612.7800
 F 213.612.7801

Steven H. Kaufmann
 D 213.612.7875
 skaufmann@nossaman.com

Refer To File # -

Th15b

Via Electronic Mail

August 9, 2022

Donne Brownsey, Chair
 Honorable Commissioners
 California Coastal Commission
 45 Fremont Street, Suite 2000
 San Francisco, CA 91405

Re: Application No. 5-19-0909-A1 (Jacqueline Sanson)

Hearing: Thursday, August 11, 2022, Agenda Item 15b

Dear Chair Browsey and Commissioners:

On behalf of Jackie Sanson, the Applicant for the amendment request before you, I write to supplement our letter to you of August 4, 2022. This briefly responds to the August 4, 2022 letter to you from Penny Elia, which attaches three letters, discussed below, that previously were submitted when the matter was initially heard by the Commission in February 2020.

Response to Ms. Elia's 2/7/20 Letter

Ms. Elia's February 7, 2020 highlights that Ms. Sanson's application for a LLA involves a long-standing violation. This is true. But, this application is intended to resolve the violation.

It bears emphasis – Ms. Sanson is not the violator. She is the cooperator. She is the one who has stepped to the plate in an effort to resolve the enforcement issue and to bring closure to it. The original LLA was sought by the original owner/builder and approved by the City in 1995. At that time, the City of Laguna Beach, like some other coastal cities, believed that a LLA was not a “development” requiring a CDP. Thus, the City approved the LLA, but without a CDP. The original owner later sold the property to Owner #2. Owner #2 sold the property to Owner #3. And, Owner #3 sold the property to Ms. Sanson in 2013. It was sometime between 1995 and 2002 that the previous owner or owners installed the lawn and ornamental vegetation on the majority of Lot 2, as well the small on-grade patio and the protective fence along the pool close to the house.

A copy of this letter has been provided to Coastal Commission Staff

Donne Brownsey, Chair
Honorable Commissioners
August 9, 2022
Page 2

Ms. Sanson learned while in escrow that a CDP was required for the LLA and had not been obtained. She contacted the City and was told by City staff that this would be simple and straight-forward. She herself then applied to the City for the LLA. The City's hearing was in fact simple and straight-forward. The video shows it was perfunctory and lasted for less than a minute. And it was appealed to the Commission, which found substantial issue.

Thus, it is a 27-year old violation, but Ms. Sanson is the key to resolving it. To simply punctuate her proactive efforts to cooperate with Staff for the last 9 years, a detailed timeline is attached after Staff inadvertently informed her that the City's decision had become final.

Ms. Elia also points to Dr. Engel's response to GLA's technical memo. We take no issue with Dr. Engel's general buffer comments. But, the GLA technical memos were site-specific. Mr. Bomkamp had the opportunity to walk the property. Staff did not conduct a site visit. His site-specific analysis, which included a further detail regarding the offsite habitats and their distance from this property, the topography of the property both onsite and offsite where it descends to the canyon bottom below, and the native plant revegetation proposed over the vast majority of Lot 2 – all in relation to a protective pool fence and small on-grade patio next to the house -- is far more informative in tailoring an appropriate buffer than a generalized buffer discussion.

Ms. Elia also suggests approval would set a precedent. It would not because the circumstances and history surrounding the LLA here are unquestionably unique and the resolution here would require native plant revegetation.

Ms. Elia also suggests that the Commission just continue the matter and take the property that Ms. Sanson purchased and to which she currently holds title. That would be far more legally complicated without any clear path forward than restoration proposed by Ms. Sanson's application, which would be straight-forward and can be achieved in a relatively short period of time and paid for by Ms. Sanson. Indeed, as a practical matter, there is no one else who could access this property given its location, remove the current landscaping, pool fence, and patio, removal of the ornamentals and perform extensive native plant revegetation on this lot and maintain it. It is Ms. Sanson, and no one else, who has stepped to the plate to accomplish this.

Response to the Fudge's 2/7/20 Letter

Mr. and Mrs. Fudge argue the project, as proposed, does not qualify for an exemption from the Subdivision Map Act. This is directed to the wrong entity since the Commission does not undertake Map Act regulation. It is also many, many years too late because the non-Coastal Act approval was granted in 1995, and thus would be barred in any event by the 90-day statute of limitations in Government Code section 66499.37.

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In the context of their Map Act issue, the Fudges also state that Lot 2 is not a legal building site, pursuant to City Municipal Code section 25.08.004(1)(c), because it “does not have access to a street.” This, again, has no relevance to the Commission’s review, but it is worth pointing out that Mr. Fudge raised this very argument unsuccessfully in *Fudge v. City of Laguna Beach*, 2019 WL 6044765, another case that we handled. There, he argued that “Scout Camp” a parcel used by The Ranch at Laguna Beach hotel at the rear of its property could not be used as hotel event space and was not a “legal building site” because it had no direct access to a street. The Court of Appeal rejected the argument, stating:

“. . . [T]he mere fact that the Scout Camp parcel is landlocked does not preclude it from being a legal building site. Moreover, when the Scout Camp and the Ranch properties are viewed as a single property, the Scout Camp would meet the access requirements.

The same is true here.

The Fudges also question why this is a “revegetation plan” instead of a “habitat restoration plan.” It is basically both. As Staff determined, this property is not ESHA, and indeed the issue before the Commission is the extent of the buffer from ESHA. It also is in FMZ B, which under the City’s Fuel Modification Guidelines is an irrigated zone which must be planted with native plants. FMZ 10 would be a 50% thinning zone, having nothing to do with ESHA, but involving plants that don’t burn.

Here, we have proposed a native plant revegetation plan that has been extensively vetted by Commission Staff and, importantly, by the City’s Fire Department. Lawn and ornamental landscaping will be replaced with a native plant palette, and, equally important, it will end up as far more highly quality, more dense, and more extensive in terms of native habitat than any of the other properties along the back side of Barracuda Way. Those properties do have vegetation canyonward of the homes, but they are for most part marked by disturbed scrub, non-natives and ice plant.

The Fudges assert that Categorical Exclusion Area 7 does not allow for a CDP exemption for the construction of the house or the LLA. This is nonsense. They assert that Parcel 1, where the house was built in the early 1990s, is likely within 100 feet from the upland limit of a blue line stream and adjacent to areas where there are high slopes, ESHA, and open space, and he questions whether the application of the Categorical Exclusion properly applied to permit the building of the house itself. This is factually and legally wrong. Sections 30610.1 and 30610.2 were added to the Coastal Act in 1979 to provide that prior to certification of an LCP, a CDP would not be required for construction of a single-family residence on a vacant lot meeting certain criteria. The City’s LCP was certified in 1993. At that time, the Commission approved Categorical Exclusion Order 93-1, which specifically exempted from the CDP requirement the construction of homes on all of the lots on Barracuda Way. This includes Lot 1 of the LLA here, on which Ms. Sanson’s house and pool are located. The 1993 Categorical Exclusion was not challenged, and it is years too late to do so now. But, there would be no basis for such a challenge because Lots 1 and 2 are

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well more than 100' from a blueline stream, do not involve ESHA, and in any case Lot 2 is not part of the City's LCP at this time.

Finally, the Fudges state that if approved, the project must be conditioned to return to the City for a design review permit for the native plant revegetation. The question of whether this process should be procedurally protracted any further and of the legal effect of the Commission's Coastal Act and CEQA functional equivalent decision as it relates to the City would be questions for the City to determine if the Commission approves the LLA, as Ms. Sanson has proposed it. Design review is a City issue, not an issue for the Commission.

2/7/20 Letter from Brian Brennan

Finally, Mr. Brennan's letter indicates that he was one of two Commissioners who appealed the City's 2013 CDP decision on the LLA. The letter offers no substantive argument, but states that the CDP "raises questions of consistency with the coastal resource protection policies of the City's Local Protection Program." The simple answer is that it does not because Lot 2 lies in the uncertified area of the City. As the Staff Report correctly explains, this means that until that area is certified, the Commission retains original jurisdiction and the issue is consistency with the Chapter 3 policies of the Coastal Act, not the LCP.

Ms. Sanson agrees with the Staff Recommendation and the Modified Special Conditions. For these additional reasons, she respectfully requests that her application for amendment be approved, as proposed.

Thank you.

Very truly yours,


Steven H. Kaufmann
Nossaman LLP

ccs: Jack Ainsworth, Executive Director, CCC
Karl Schwing, District Director, OC, CCC
Marlene Alvarado, Coastal Program Analyst, CCC
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Ms. Jacqueline Sanson