

# COASTAL APPEALABLE FORM

San Luis Obispo County Department of Planning and Building

7/25/08

Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

PROJECT INFORMATION Name: HEARST HOLDINGS, INC. File Number: COALD7-0070 SUB 2007-00161

Type of permit being appealed:

- Plot Plan
- Site Plan
- Minor Use Permit
- Development Plan
- Variance
- Land Division
- Lot Line Adjustment
- Other: \_\_\_\_\_

The decision was made by:

- Planning Director (Staff)
- Building Official
- Planning Department Hearing
- Subdivision Review Board
- Planning Commission
- Other \_\_\_\_\_

Date the application was acted on: 02/02/09

The decision is appealed to:

- Board of Construction Appeals
- Board of Handicapped Access
- Planning Commission
- Board of Supervisors

## BASIS FOR APPEAL

INCOMPATIBLE WITH THE LCP. The development does not conform to the standards set forth in the Certified Local Coastal Program of the county for the following reasons (attach additional sheets if necessary).

Explain: SEE ATTACHMENT

INCOMPATIBLE WITH PUBLIC ACCESS POLICIES. The development does not conform to the public access policies of the California Coastal Act - Section 30210 et seq of the Public Resource Code (attach additional sheets if necessary).

Explain: \_\_\_\_\_

List any conditions that are being appealed and give reasons why you think it should be modified or removed.

Condition Number \_\_\_\_\_ Reason for appeal (attach additional sheets if necessary)

## APPELLANT INFORMATION

Print name: LANDWATCH SAN LUIS OBISPO COUNTY ATTY PHONEST

Address: P.O. Box 174, CAMBRIDGE Phone Number (daytime): 805-927-5102

I/We are the applicant or an aggrieved person pursuant to the Coastal Zone Land Use Ordinance (CZLUO) and are appealing the project based on either one or both of the grounds specified in this form, as set forth in the CZLUO and State Public Resource Code Section 30603 and have completed this form accurately and declare all statements made here are true.

Signature: Cynthia Paruley

Date: 2-16-09

## OFFICE USE ONLY

Date Received: \_\_\_\_\_  
Amount Paid: \_\_\_\_\_

By: \_\_\_\_\_  
Receipt No. (if applicable): \_\_\_\_\_

FINAL  
ATTACHMENT TO APPEAL OF LOT LINE ADJUSTMENT  
BY LANDWATCH SAN LUIS OBISPO COUNTY

***The application submitted by Hearst Holdings was significantly incomplete in that the question “[W]hat will the property be used for after division” was not answered.***

In its Land Division Application, the applicant left a blank after the question “[W]hat will the property be used for after division.” The failure to provide specific information about what the applicant intends to do with the property after the lot lines are adjusted has translated into multiple violations of the Coastal Act, and the San Luis Obispo County Local Coastal Program inadequacies within the CEQA review. Even though the June 17, 2008 letter from Hearst representative Roger Lyon to Airlin Singewald indicated that potential future uses include those allowed under the commercial retail and recreation land use designations, no specific uses were identified in the County’s staff report and no analyses of those uses and their conformance with the Local Coastal Plan was provided.

Land Use Ordinance section 23.02.022 requires the planning director to determine whether a land use permit application is complete and, when the application is incomplete, to notify the applicant by letter the parts of the application that are incomplete. Instead of properly requiring the critical information of “what the property will be used for after division”, the County accepted and processed the incomplete application as if the blank space on the page meant that the applicant did not intend to develop the land.

***The Subdivision Review Board was not provided with information to analyze whether the whole project as contemplated by the applicant is consistent with the Local Coastal Program and failed to support its findings with evidence in the record.***

As a result of the applicants failure to disclose on its application what the land would be used for after the lot line adjustments, it was not possible for the public or the agency decision makers to determine whether the lot line adjustments and the development planned for the newly formed parcels conform or do not conform to the Local Coastal Program and other general plan requirements. The question is asked for a reason.

Because it is assumed that the lot line adjustments will not result in any new development, no analyses of the conformance of the whole project as contemplated are provided. This assumption prevails throughout the staff report analyses even though a June 17, 2008 letter from Hearst Holdings representative Roger Lyon states explicitly that the applicant intends to develop the land.

The staff report’s analyses of the projects consistency with Coastal Plan Policies and findings that the lot line adjustments will not result in new development on the project site are not supported by evidence in the record. The application should be denied and the applicant should provide full information as required about the contemplated

development so that a proper analysis may be conducted and findings may be supported by evidence in the record.

***The application submitted by Hearst Holdings was incomplete with the result that the public and decision makers were denied information required for an informed decision making process.***

Real Property Division Section 21.02.030 requires specific information that must be included in an application for a lot line adjustment. This section requires the applicant to locate, indentify and draw to scale all existing structures, wells, septic tanks, driveways and other improvements located on the original parcels. These structures were not located, identified or drawn to scale on a map.

The application must provide the locations, purpose and width of all existing and proposed easements. While the June 17, 2008 letter from Roger Lyon to Project Manager Airlin Singewald suggests that the County view descriptions of the entire Hearst Ranch Conservation Easement at named internet sites, what is called for is a mapping and discussion of the easements that affect the land involved in the lot line adjustments and no such map and discussion was provided.

Without this information, the public and decision makers rely on conclusions that are unsupported by evidence in the public record for the project. For example, no easement maps as required are provided to support the conclusion that the lot line adjustment brings the parcels into conformance with the existing easements.

The application should be denied and the applicant should provide required information so that the public and decision makers have adequate information on which to form findings and decisions that are supported by evidence in the record.

***The North Coast Area Plan was last updated in 1988 and it is impossible to make a finding of consistency with an antiquated General Plan.***

The North Coast Area Plan is over 20 years old and contains no current baseline resource data on which findings of consistency with resource protection requirements can be made. This antiquated Area Plan is inadequate and ineffective. Far reaching changes have occurred during the last 20 years in the North Coast Planning Area in terms of, among other things, population, land use, traffic, water resources, growth of visitor serving commercial facilities, and impacts to biological resources including terrestrial, riparian, and marine habitats and species. The fact that a proposed development conforms to a zoning or land use designation is not enough. Proposed projects including lot line adjustments must be found to conform to the policies and requirements for resource protection embodied by the Coastal Act and the Local Coastal Program.

In the case of the antiquated and legally inadequate North Coast Area Plan, no publically reviewed and approved baseline data is available from which applicable standards and combining designations may be developed and from which informed decisions about land use and resource uses may be made.

The Courts have held that it is impossible to find a project to be consistent with an outdated and inadequate general plan and the lot line adjustment should thus be denied until the North Coast Area Plan is updated to contain, among other things, current baseline resource and environmental data.

***No development should be allowed by way of piecemeal development-driven amendments to the North Coast Area Plan.***

Page 1-2 of the February 2, 2009 Subdivision Review Board staff report states that while the lot line adjustment is consistent with the private conservation easement placed on the Hearst Ranch, the 100 unit hotel and associated infrastructure allowed by the easement is not allowed within the Local Coastal Program Land Use Element. The staff report makes it clear that a general plan amendment would be required to allow the hotel development.

Development of the North Coast of San Luis Obispo County should not be allowed by such piecemeal, incremental amendments. Zoning and lot line adjustments should not be approved that allow development that is prohibited by the Land Use Element. This is an example of the confusion and consequent resource-threatening land uses that are approved by multiple development-driven Area Plan amendments that result in inconsistencies within the planning documents and bad planning. A comprehensive update of the Area Plan including area-wide planning based on up-to-date data on resources and full environmental review must be in place before any development including any lot line adjustments are approved.

***The application submitted contained incorrect information.***

In response to the General Application Form requirement to “[D]escribe current uses, existing structures, and other improvements and vegetation on the property” the applicant states the single word “vacant”. The land involved in the proposed lot line adjustments is not vacant. As described in the North Coast Area Plan at page 4-8, and known by people who love San Simeon Cove and Point, the site of Old San Simeon Village has multiple historic buildings including the Sebastian Store and historic buildings associated with the development of Hearst Castle including historic ware houses, a school house, and homes designed by Julie Morgan. The Sebastian Store and the Post Office currently provide services to visitors and local residents.

This failure to describe uses, structures, improvements and vegetation served to limit the discussion and analysis of the project’s consistency with the Local Coastal Program. This lack of information is compounded by a void of current data on resources.

***The project is in a sensitive resource area and the application did not include the information required by Coastal Zone Land Use Ordinance (CZLUO) section 23.07.164 and sensitive resource areas were not analyzed.***

Section 23.07.164 of the CZLUO requires the application to include “a description of measures proposed to protect the resource identified by the Land Use Element (Part II)

area plan.” Even though the project is in a sensitive resource area, no measures are proposed within the application to protect sensitive resources. This is linked to the segmenting of the lot line adjustments from the development they will facilitate and to the fiction that the project will not result in new development. Discussion of the project’s consistency with environmentally sensitive habitats concludes that the project is consistent with this policy “because it would not facilitate new development.” No authentic analyses supported by evidence in the record were provided to show whether the project is consistent or is not with requirements for protection of sensitive resource areas.

***The Subdivision Review Board did not analyze whether the project conforms to mandatory standards.***

Public Resources Code section 30604(b) states that a coastal development permit shall be issued where the issuing agency or the coastal commission on appeal finds that the proposed development conforms with the certified Local Coastal Program.

Section 21.02.030(d) of the San Luis Obispo County Real Property Division sets forth the standard for approval of a lot line adjustment as follows:

The county shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the general plan, local coastal program, and zoning and building ordinances.

While ultimate findings of conformance with County ordinances and the Local Coastal Plan were made, the findings were not based on analyses of evidence in the record.

According to the Planning Area Standards for the North Coast Area Plan, standards are mandatory requirements that must be satisfied for a new land use permit to be approved. Page 7-4. The County failed to analyze whether the proposed lot line adjustments conform to applicable mandatory standards including but not limited to the following.

Areawide standard number 5 for North Coast rural areas requires land division applications in areas visible from the public road must identify potential building site envelopes. These building sites shall be in developable locations least visible from the public road. The application submitted by Hearst Holdings did not identify potential building site envelopes and conformance to this standard was not analyzed. In fact, as mentioned in this appeal, the applicant did not even disclose what the property will be used for after the lot line adjustment as required by the permit application.

Areawide standard number 9 is specific to the Hearst Ranch and requires Hearst Ranch development proposals to include provisions for organized services with the most critical identified as water supply, sewage disposal, and solid waste disposal. No provision for these critical services was provided by the applicant or analyzed for conformance by staff. While the staff report makes the conclusion that the purpose and effect of the lot line adjustments is not facilitation of development, this conclusion is not supported by any information, maps, or data in the record.

Combining designation standard for sensitive resource areas number 9 requires recreational uses to be situated to minimize adverse impacts on marine resources. Whether the lot line adjustments will affect where recreational land uses will be situated and whether the adjustments will result in adverse impacts on marine resources is not discussed and was not taken into account in the Subdivision Review Board's decision to approve the proposed lot line adjustments.

Agriculture standard number 1 is specific to the Hearst Ranch and requires the following.

Any land division proposed in the agricultural portions of Hearst Ranch shall satisfy the following criteria:

- a. The division shall constitute an individually viable agricultural unit, or
- b. The division shall improve the viability of adjacent holdings or serve a necessary public service where it can be demonstrated that the division will not otherwise significantly reduce the agricultural viability.

No information or analyses was provided and no conclusion was reached as to whether the proposed lot line adjustments conform to this mandatory standard.

Commercial standards discussed on pages 7-8 and 7-9 of the Planning Area Standards for the North Coast Area Plan limit the uses of the area within the proposed lot line adjustment and describe phases within which development is to occur. No information or analyses has been provided to show that the lot line adjustments conform to these use limits.

Again, the standards within the North Coast Area Plan are mandatory. No analyses of whether the proposed lot line adjustments conform to the above mandatory standards is provided in the staff report. Consequently, the findings that the lot line adjustments conform to the general plan and North Coast Area Plan are not supported by evidence in the record. The application should thus be denied and no development including lot line adjustments should be approved without evidence and analyses demonstrating that the proposed development conforms to all standards.

***The Subdivision Review Board did not analyze whether the project conforms to combining designations.***

Page 4-5 of the North Coast Area Plan states that:

*Additional facilities are planned on Hearst Ranch, including both campgrounds and resort lodge centers, but the number of sites are limited to protect coastline resources. All the undeveloped shoreline of the planning area is classified as Sensitive Resource Area in the combining designations to ensure review of all proposed projects. Areas of unique environmental interest should be preserved in their natural state with managed public access and recreation use limited to nature trails with interpretive signs.*

Page 1-11 explains that combining designations are areas of hazards, sensitive resource areas, environmentally sensitive habitat areas, historic and archaeologically sensitive areas, and public facilities designated within the North Coast Area.

Page 2 of the negative declaration states that the combining designations that apply to the project area include flood hazard, coastal access, sensitive resource area, geologic study area, historic area, and archaeologically sensitive area.

Even though the Area Plan states explicitly that all of the undeveloped shoreline of the entire planning area is classified as a sensitive resource area combining designation to ensure special review of all proposed projects, no special review was provided. No discussion or analysis was provided to determine whether the area affected by the lot line adjustments is an area of unique environmental interest that should be preserved. No analyses based on evidence in the record was provided to demonstrate whether the proposed lot line adjustment conforms to the combining designation requirements.

***Ultimate findings that the lot line adjustment could not have significant impacts on the environment are not supported by any baseline data or analysis.***

Land use agencies are required to support their decisions with findings which are in turn supported by evidence in the record. The ultimate findings within the negative declaration that the lot line adjustment will not have significant effects on the environment are not supported by evidence in the record.

***The County piecemealed approval of the lot line adjustments as if they were unconnected to development and thus failed to consider the cumulative effect of the whole development project.***

It is well established that CEQA requires analysis of the cumulative effects of a project. The Court in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App. 4<sup>th</sup> 713, 740 stated as follows:

CEQA requires an EIR to discuss the cumulative effect on the environment of the subject project in conjunction with other closely related past, present and reasonably foreseeable probable future projects. ( Pub. Resources Code, § 21083, subd. (b); State CEQA Guidelines, § 15130, n11 15355.) The term "[c]umulative impacts' refer[s] to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (State CEQA Guidelines, § 15355.) If an identified cumulative impact is not determined to be significant, an EIR is "required to at least briefly state and explain such conclusion." ( Citizens to Preserve the Ojai v. County of Ventura (1985) 176 Cal.App.3d 421, 432 Cal.Rptr. 247].) The importance of the cumulative effect analysis was explained in Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles (1986) 177 Cal.App.3d 300, 306 [223 Cal.Rptr. 18]: "The purpose of this requirement is obvious: consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the

natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment."

In this case the County avoided discussion of cumulative impacts altogether and piecemealed the lot line adjustments from the planned development by certifying an unmitigated negative declaration on the finding that the lot line adjustments alone "COULD NOT" (emphasis in original) have a significant effect on the environment.

The County must consider the cumulative effects of the lot line adjustments as a part of the foreseeable development of the area of the lot line adjustments as well as a part of all foreseeable development on the Hearst Ranch in order to avoid overwhelming the North Coast environment including but not limited to coastal, riparian, and marine sensitive resource areas, historical resources, archeological resources, water resources, traffic impacts, and coastal viewsheds. This can only be accomplished by way of a comprehensive update of the North Coast Area Plan which should, under circumstances, be accompanied by a specific plan for analysis of a comprehensive development plan for the Hearst Ranch.

***Mitigation measures addressing the cumulative impacts of the project have been implicitly deferred.***

Because environmental review of the project has been segmented to the point that the lot line adjustments are being treated as if they were nothing more than lines on paper, a negative declaration was issued on the ground that the project could not possibly have any significant impacts on the environment. This piecemealing has eliminated all analysis of cumulative impacts that would require mitigation and thus has deferred development and approval of appropriate mitigation measures.

***Statements of impacts in the negative declaration are not supported by evidence in the record.***

The discussions and findings within the negative declaration are not supported by evidence in the record. For example, at page 7 the statement is made that the project is consistent with the general level of development anticipated and projected in the Clean Air Plan, but there is no information about what level of development is planned.

In addition, the statement is made that any future development on the project site would require extensive geologic review and necessary mitigation. However, the conclusion is that proposed project would not result in potentially significant impacts and does not require mitigation.

While the negative declaration is based on the fiction that the lot line adjustment is not associated with development, it also discusses and cites vague elements of planned development. LandWatch is concerned that later project specific development proposals will receive limited environmental review based on the findings of no significant impacts within this negative declaration.

Based on the above, LandWatch San Luis Obispo County requests that the Board of Supervisors uphold this appeal and deny the proposed lot line adjustment and coastal development permit.

ADDENDUM TO  
ATTACHMENT TO APPEAL OF LOT LINE ADJUSTMENT COAL 07-0070  
BY LANDWATCH SAN LUIS OBISPO COUNTY

What follows is an addendum to the appeal submitted earlier today. The hard copy original of this addendum will be mailed to the County Planning Department.

***The proposed lot line adjustment requires a general plan amendment because it changes the use of land in proposed parcel 1 by creating over 7 new acres of commercial retail land use.***

Government Code section 65850 authorizes a city or county to regulate land use by adoption of an ordinance. Changes in land use are a legislative decision and can be made only through an amendment of the zoning ordinance. *City of Sausalito v. County of Marin* (1970) 12 Cal.App. 3d 550, 564.

The proposed lot line adjustment is more than an adjustment of lines – it includes changes in land use designations, more commonly known as zoning. The commercial retail land use designation for the Hearst Ranch west of the highway at San Simeon Point and Cove in the North Coast Area Plan is established as 17 acres. The proposed lot line adjustment adds over 7 new acres of commercial retail land use designation to this area.

A lot line adjustment cannot be used to change land use designations.

Changes in land use require the legislative amendment of the Local Coastal Program accompanied by proper consistency analyses, public notice, opportunity to comment, and public hearings for a general plan amendment. The County should deny the lot line adjustments because they contain a buried change in land use.