

CALIFORNIA COASTAL COMMISSION

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

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT
(Commission Form D)**

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South Coast Region



NOV 15 2002

CALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

- 1Bolsa Chica Land Trust, 5200 Warner Avenue Suite 108,
Huntington Beach, California 92649 (714) 960-9939
- 2Neighbors for Wintersburg Wetlands Restoration, 17451 Hillgate
Huntington Beach, California 92649 (714) 625-0875

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Huntington Beach

2. Brief description of development being appealed: To permit subdivision and development of a 170 single family residential development (PUD) and associated infrastructure improvements and dedicate and improve 8.2 acres for public park purposes (CDP 96-18 Parkside Estates)

3. Development's location (street address, assessor's parcel no., cross street, etc.): 49.9 acres at 17301 Graham Street (west side of Graham Street, south of Warner Avenue and north of Slater Avenue, adjacent to Garden Grove Wintersburg F.C. Channel

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: X
- c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

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5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other _____
6. Date of local government's decision: _____
7. Local government's file number (if any): _____

SECTION III. Identification of Other Interested Persons

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

- a. Name and mailing address of permit applicant:
Ron Metzler, Vice President, Planning Development,
Shea Homes, 603 So. Valencia Avenue, Brea CA 92833

- b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
- (1) Amigos de Bolsa Chica, 16751 Bolsa Chica Street
#312, Huntington Beach, CA 92649

- (2) Wetlands Action Network, P.O. Box 1145, Malibu,
CA 90265

- (3) _____

- (4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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

Please see the attached "Reasons for Appeal"

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

SECTION V. Certification

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

Gerald L. Chapman
Signature of Appellant(s) or
Authorized Agent

Date Nov 11, 2002

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

Section VI. Agent Authorization

I/We hereby authorize Gerald L. Chapman to act as my/our representative and to bind me/us in all matters concerning this appeal.

Mark Bixby
Mark Bixby for Wintersburg
Neighbors

Date 11/15/02

Gerald L. Chapman G. Chapman
Signature of Appellant(s) for BCLT

Date Nov 11, 2002

Reasons for Appeal

1. As to the parkland:

Initially, the proposed parkland portion (8 acres) of the planned development project within the certified LCP area is inconsistent with the language of Public Resources Code Section 30233. The proposed parkland portion of the project (as well as the remaining portion of the project where homes are proposed) and which is outside the LCP, would be located on wetlands. We understand that, to construct the park, the builder would perform diking and filling procedures.

The diking and filling of wetlands is strictly prohibited by Public Resources Code Section 30233, and the proposed park construction is not permissible within the confines of the statute. The Local Coastal Program incorporates and is otherwise subject to the provisions of Section 30233 and other Coastal Act policies, and, as such, the coastal development permit in question does not conform to the standards set forth in the LCP (see also Public Resources Code Section 30200.)

2. As to the remainder of the project:

We understand from the Coastal Commission's notice of November 8, 2002, that the remainder of the project is not appealable. However, we are somewhat confused about the segregation of the project for appeal purposes. As such, we submit the following for the purpose of preserving all rights appellants have to contest the residential construction under the Coastal Act. If the following is not relevant in any fashion for the purposes of that which may be appealed to the Coastal Commission, it is to be disregarded for purposes of this appeal.

The project violates section 30233 of the Coastal Act because it allows unpermitted construction upon wetlands within the 45 acre portion in the existing city limits of Huntington Beach. In particular, the EPA delineated an 8.3 acre portion of the parcel as jurisdictional wetlands in 1989. Although this portion has been declared to be non-jurisdictional for purposes of the Army Corps of Engineers jurisdiction because of a 1992 Prior Converted Cropland designation and concurrence by the Natural Resource Conservation Service at the federal level, it still appears to be jurisdictional for the California Coastal Commission under the Coastal Act guidelines for wetlands. That is, the length of time water ponds on the site criteria, hydric soils and wildlife habitat use, should qualify this site for Coastal Act protection under Section 30233. Moreover, proper buffers of up to 100 meters should be required to protect these wetlands.

We contend further that the wetlands delineation by Tom Dodson Associates of December 1997 is inadequate and outdated. Test data was not done in proper areas within this site, the field data were apparently not included in the report, and subsequent evidence developed by citizen photographs of water ponding and additional studies

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indicate that this site should qualify as a jurisdictional wetland under the Coastal Commission guidelines. A new, complete wetland delineation should be required for this site before any Coastal Development permit or LCP approval is granted by the Coastal Commission.

Other areas within the 45 acre City portion also appear to qualify for Coastal Act protection under section 30233. In particular, ponding areas adjacent to the Wintersburg Flood Control Channel have been identified through serial photographs and review of aerial photographs over the years. This area extends approximately 3.3 acres. This area should also be accorded the benefit of a new wetlands delineation before approval is granted by the Coastal Commission.

Another area within the City portion is the area visible on aerial photographs as the original tidal slough running through the center of the property. This area is depicted on an 1873 USGS map as a tidal area and has required the issuance of a federal Section 10 Rivers and Harbors Act permit by the Army Corps of Engineers. This specific area should be analyzed for tidal influence since 3 test wells on the May 2002 LSA wetland delineation on the County portion showed tidal influence. This approximately 1.5 acre area should receive a new wetland delineation for Coastal Commission purposes.

Finally, appellants contend that there has been insufficient water quality analyses under the Clean Water Act and the National Pollution Discharge System program so that the proposed construction may proceed.