

CALIFORNIA COASTAL COMMISSION

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

TH 13b

Staff: ~~FSY~~ FSY
Staff Report: February 2, 2005
Hearing Date: February 16-18, 2005
Commission Action:

**STAFF REPORT: APPEALABILITY****DISPUTE RESOLUTION
NUMBER:**

5-05-029-EDD

RECORD PACKET COPY

LOCAL CDP NO.:

02-68

LOCAL JURISDICTION:

City of Laguna Beach

APPLICANT FOR LOCAL PERMIT: Mar Vista Development Corporation**PROJECT LOCATION:**31401 Mar Vista Avenue
City of Laguna Beach, Orange County**DESCRIPTION:**

Public hearing on appealability to the Commission of the City of Laguna Beach's approval of local Coastal Development Permit No. 02-68, which authorizes an approximately 17,000 square foot residence with garage plus greenhouse, decks, swimming pool, landscaping and fuel modification upon a vacant 12-acre parcel of land.

SUMMARY OF STAFF RECOMMENDATION:

The City of Laguna Beach contends that its approval of a coastal development permit for the project is not appealable to the Coastal Commission. The City's position is based upon the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 2003, which shows the private land upon which the development is proposed as not being located within 100 feet of any stream (and not otherwise in an appealable area), and thus not appealable to the Coastal Commission. However, in this case, the Executive Director has determined that the approval is appealable because proposed development is within 100 feet of a southerly drainage course, which, although not shown on the post-cert map as establishing the appeals area, does constitute a stream within the meaning of the Coastal Act and its implementing regulations, thus rendering development within 100 feet appealable. Commission staff recognize that this drainage course is not identified on the post-cert map as an "appealable" feature. However, the post-cert map explicitly states that the map "... may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission". Commission staff recommends that the Commission uphold the Executive Director's determination that the approval is appealable based on Section 30603(a)(2) of the Coastal Act, and direct the City to submit to the Executive Director a revised Notice of Final Action indicating that the approved development is appealable so that the Executive Director can establish the required appeal period.

I. STAFF RECOMMENDATION ON APPEALABILITY DETERMINATION:

Staff recommends that the Commission adopt the following findings and resolution to determine that the City of Laguna Beach's approval of local coastal development permit 02-68 is an action on a coastal development permit application that is appealable to the Commission and that a valid notice of final local action reflecting this status must be submitted.

MOTION: I move that the Commission reject the Executive Director's determination that coastal development permit 02-68, approved by the City of Laguna Beach on October 5, 2004, is appealable to the Coastal Commission under Public Resources Code Section 30603.

Staff Recommendation that City of Laguna Beach Coastal Development Permit No. 02-68 is Appealable:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that (a) the City's approval of CDP 02-68 is an action on a coastal development permit application that is appealable to the Commission and that (b) a valid notice of final local action reflecting that the local action is appealable to the Commission must be submitted and an appeal period be opened for this appealable development, and (2) the Commission's adoption of the following resolutions and findings. A majority of the Commissioners present is required to approve the motion.

Resolution:

The Commission hereby (1) finds that (a) it has appeal jurisdiction in this matter pursuant to California Public Resources Code Section 30603(a) because the City's approval of CDP 02-68 is an action on a coastal development permit application that is appealable to the Commission and that (b) a valid notice of final local action reflecting that status must be submitted to the Commission and an appeal period be opened for this development and (2) adopts the findings to support its jurisdiction that are set forth in the staff report.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. BACKGROUND ON COASTAL COMMISSION AND CITY ACTIONS

In April 1990, prior to certification of the City's local coastal program ("LCP"), the Coastal Commission approved CDP No. 5-90-135 for the project site, which authorized a 9,952 square foot, 14-foot high residence with a 5,970 square foot garage, plus terraces/decks, swimming pool and greenhouse, paving of a driveway and construction of a ravine/streambed crossing (which was required to be a bridge as opposed to a culvert). Furthermore, CDP No. 5-90-135 authorized a lot line adjustment that lead to the present configuration of the subject lot. Several Special Conditions were imposed, including Special Condition No.4, which, among other things, required "...an open space easement, deed restriction or other instrument which provides that no subdivision or

intensity of land use [sic] may occur in the future as per the City of Laguna Beach's recommendation." Compliance with Special Condition No. 4 was demonstrated with the submittal of evidence that the landowner had granted an open space easement over certain areas of the property to the City. Based on information provided to Coastal Commission staff by the City, the driveway paving occurred and the bridge was constructed. Subsequent to the approval of CDP No. 5-90-135, in 1993, the City achieved full LCP certification.

From February 2003 to May 2003, the City of Laguna Beach Design Review Board heard and reviewed local Coastal Development Permit No. 02-68. The coastal development permit was ultimately approved on May 1, 2003, but the approval was appealed to the City Council. On June 17, 2003, the City Council took action on the permit; however, when Commission staff inquired about the lack of a notice of final local action, the City informed Commission staff that the City Council action was not complete as there was an issue regarding the trail easement that remained outstanding. From April 2004 to October 2004, the City Council addressed questions regarding the trail easement and on October 5, 2004, the City Council took final action by approving the trail easement. On October 29, 2004, the Commission received in its South Coast District office notification that the City of Laguna Beach had taken a final action to approve local Coastal Development Permit No. 02-68 with special conditions (Exhibit #1). The City's action authorizes the Mar Vista Development Corporation to construct an approximately 17,000 square foot residence with garage plus greenhouse, decks, swimming pool, landscaping and fuel modification upon a vacant 12-acre parcel of land. However, CDP 02-68, as approved by the City, also appears to authorize a public trail easement in an area that partially overlaps the area of the open space easement recorded pursuant to Special Condition No. 4 of Coastal Commission-issued CDP No. 5-90-135.

Prior to the City's final action on the subject CDP, staff sent a letter on April 20, 2004 (Exhibit #2) raising questions to resolve the appealability issue as well as whether the applicant would need to obtain an amendment from the Commission for development within a Commission required open space easement area. The City sent a response letter in which it indicated that the proposed development would be within 100 feet of a what is known as a "blue-line" stream. Based on that, Commission staff believed that the project would be appealable. However, when the Notice of Final Action (NOFA) was received on Friday, October 29, 2004, it indicated that the City had made a determination that its action is non-appealable. This determination was based upon the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* adopted by the Commission on September 16, 2003 (herein "post-cert map" (Exhibit #3)). Meanwhile, Commission staff received an appeal from a member of the public, Devorah Hertz, within what would have been the ten (10) working day appeal period, had the NOFA listed the CDP as appealable, asserting that the subject permit ought to be appealable given the proximity of the proposed development to a stream. Staff initiated a dialogue with the City the following week of receipt of the NOFA and has had conversations with the City and letters were sent to the City and applicant regarding the above matters on November 22, 2004 (Exhibit #4) and January 28, 2005 (Exhibit #5).

B. SUMMARY OF COMMISSION DETERMINATION OF APPEALABILITY

The Commission finds that the coastal development permit approved by the City is an action on a coastal development permit application appealable to the Commission.

Section 30603 of the Coastal Act provides the basis for appeal of locally issued coastal development permits to the Commission. That section provides, in part, that:

Section 30603

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

- (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, within 300 feet of the top of the seaward face of any coastal bluff.*
- (3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*
- (4) Any development approved by a coastal county that ...*
- (5) Any development which constitutes a major public works project or a major energy facility.*

While the project site is not located between the first public road and the sea ((a)(1)), nor is it a major public works project ((a)(5)), nor is it located in a "sensitive coastal reserve area" ((a)(3)), the project is located within 100-feet of a stream ((a)(2)). Based upon resources available to Commission staff, there are at least two drainage courses that cross the 12-acre property. One drainage course, located along the northerly perimeter of the property, appears as a "blue-line" stream on USGS maps and is also depicted on the post-cert map. The adopted post-cert map depicts this northerly stream as an "appealable" feature (meaning that the geographic area over which the Commission has appeals jurisdiction is established based on this feature). The second drainage course, located along the southerly boundary of the property is identified by the City as a "significant drainage course" but is not a "blue-line" stream nor is it depicted on the post-cert map. The City only has identified as "appealable" those projects that fall within the appeals areas depicted on the post-cert map. In this case, the subject CDP was identified as not appealable because the City determined that the proposed project was not located within an appeals area depicted on the post-cert map, and it was not shown as being within 100 feet of a "blue-line" stream depicted on the post-cert map. However, based on the submitted appeal, it does appear

¹ As defined in Section 30116 of the Coastal Act as designated pursuant to Section 30502 and 30502.5.

that development approved in the subject CDP, including grading, portions of the proposed residence, decks, pools, landscaping and fuel modification, are located within 100 feet of this second, southerly drainage. Furthermore, this drainage course is identified as a major water course in City documents, and the phrase "major water course" is used in the same manner as the word "stream" in the Coastal Commission's appeals jurisdiction regulations. Therefore, the project is appealable to the Commission, as further explained in Section C. below.

Stream

The approval would be appealable under Section 30603(a)(2) of the Coastal Act if the approved development is located within 100 feet of any stream. While the City considers the second drainage course, located along the southerly boundary of the property as a "significant drainage course," it does not consider it a "blue-line" stream nor is it depicted on the post-cert map. However, there is a logical policy linkage that suggests the drainage course that crosses the southerly boundary of the project site is a "stream" within the meaning of Section 30603 of the Coastal Act and Section 25.07.006 of the City's zoning code. Treating the southern drainage as a stream, and given the fact that the development approved in the subject CDP, including grading, portions of the proposed residence, decks, pools, landscaping and fuel modification, is located within 100 feet of this second, southerly drainage, the project would be appealable to the Commission. This fact would render the City's approval appealable under Section 30603(a)(2).

C. ANALYSIS OF THE CITY'S APPEALABILITY DETERMINATION

Based upon a review of the resources available to Commission staff, there are at least two drainage courses that cross the 12-acre property. One drainage course, located along the northerly perimeter of the property, appears as a "blue-line" stream on USGS maps and is also depicted on the post-cert map. The adopted post-cert map depicts this northerly stream as an "appealable" feature. The second drainage course, located along the southerly boundary of the property is identified by the City as a "significant drainage course" but is not a "blue-line" stream nor is it depicted on the post-cert map. The City only has identified as "appealable" those projects that fall within the appeals areas depicted on the appeals maps. In this case, the subject CDP was identified as not appealable because the City determined that the proposed project was not located within 100 feet of a "blue-line" stream depicted on the post-cert map. The second, southerly drainage was not factored into this determination. However, based on the submitted appeal, it does appear that development approved in the subject CDP, including grading, portions of the proposed residence, decks, pools, landscaping and fuel modification, is located within 100 feet of the edge of the bank of this second, southerly drainage course.

Section 30603 of the Coastal Act provides the basis for appeals of locally issued coastal development permits to the Commission. It provides, in part, that coastal development permits for development located "...within 100 feet of any wetland, estuary, or stream..." are appealable to the Commission. Section 25.07.006 of the City's zoning code, which is part of the City's LCP, contains a definition of the appeals area that mirrors the language of Section 30603 of the Coastal Act. Section 13577 of the Commission's regulations, in Title 14 of the California Code of Regulations, explains how to map the location of appeals areas. In defining the boundaries of appeals areas established by the presence of streams, Section 13577 refers to streams that are "... mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program...". The City's certified LCP doesn't specifically define the term "stream"; however, narrative language under Topic 9 of the Open Space/Conservation Element of the General Plan (a component of the City's certified LCP) states that a 'watercourse' is a feature with "...a streambed, banks, a channel and

periodic although not necessarily contiguous flows" and a feature that "...serves to convey runoff that falls within the watershed". This description of "watercourse" closely mirrors the features of a "stream" that are noted within Section 13577 of the California Code of Regulations (the City uses the terms "water course" and "drainage course" interchangeably). The narrative in Topic 9 goes on to identify certain tables and maps that describe and depict the physical boundaries of the major watersheds and drainage courses within the City. These exhibits clearly go beyond "blue line" streams and illustrate other significant drainage courses. Therefore, the policy language and exhibits of the certified LCP use the "major drainage course" designation in a manner that is equivalent to the Coastal Act use of the term "stream," and development activities within 100 feet of these features would be appealable.

At the time of the City's original certification of the LUP in 1986, the subject site was outside of the City's corporate boundary. In 1988, the City annexed South Laguna and the subject site was brought into the City's certified area. Commission staff has not found evidence in our records that the tables and maps describing the City's major watersheds and drainage courses were updated to incorporate the annexed area. Nevertheless, the applicable protections of the certified LCP were extended to South Laguna and the project site in 1988 when the City amended the LCP to extend to the newly annexed area. For instance, Policies 9-C (a) and (b) establish minimum development setbacks from the City's major drainage courses. By necessity, the City would have to take steps to identify those drainage courses in South Laguna to which the policies would apply; and it appears the City did take such steps. For instance, maps available on the City's geographic information system (GIS) depict the drainage feature that crosses the southerly boundary of the project site as a "significant drainage course", comparable to the maps identified for the City's original LCP area (Exhibit #6).

Thus, for purposes of appealability, the drainage course that crosses the southerly boundary of the project site is a "stream" within the meaning of Section 30603 of the Coastal Act and Section 25.07.006 of the City's zoning code. Commission staff recognize that this drainage course is not identified on the post-cert map as an "appealable" feature. However, the post-cert map explicitly states that the map "...may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission". In cases where there is some uncertainty about whether a geographic feature is one that renders a site appealable, conditions on the ground, rather than as they are depicted on a map, have always been determinative.

D. CONCLUSION

Public Resources Code Section 30603(a)(2) confers the Commission with appellate jurisdiction over development that is within 100-feet of any stream. The Commission finds that, because the approval of CDP 02-68 authorizes development within 100-feet of a drainage course that meets all of the characteristics of a stream, even though the LCP does not use the term "stream," that approval is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act. The Commission further finds that a portion of the development approved by the City in local CDP No. 02-68 constitutes an amendment to Coastal Commission CDP No. 5-90-135. The applicant must therefore also obtain an amendment from the Commission to CDP No. 5-90-135 before development approved by the local CDP can be undertaken.



RECEIVED
Coastal Commission Region

OCT 29 2004

COASTAL COMMISSION

**NOTICE OF FINAL LOCAL ACTION
FOR COASTAL DEVELOPMENT PERMITS**

Date: October 28, 2004

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

Location: 31401 Mar Vista Ave., Laguna Beach

Coastal Development Project No: 02-68

Project Description: Single-family residence

Applicant: Mar Vista Development Corporation

Mailing Address, 668 North Coast Hwy., Laguna Beach, CA 92651

On June 17, 2003 a coastal development permit application for the project was

- approved
- approved with conditions
- denied

Local appeal period ended October 5, 2004

- This action was taken by:
- City Council
 - Design Review Board
 - Planning Commission

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

This project is

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

COASTAL COMMISSION

Att: CDP Resolution No. 03-015

EXHIBIT # 1
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RESOLUTION CDP 03-015

**A RESOLUTION OF THE DESIGN REVIEW BOARD OF THE
CITY OF LAGUNA BEACH APPROVING COASTAL DEVELOPMENT PERMIT
APPLICATION NO 02-68**

Whereas, an application has been filed in accordance with Title 25-07 of the Laguna Beach Municipal Code, requesting a Coastal Development Permit for the following described property located within the City of Laguna Beach:

31401 Mar Vista Avenue
APN 658-201-11

and:

Whereas, the review of such application has been conducted in compliance with the requirements of Title 25.07, and;

Whereas, after conducting a noticed public hearing, the Design Review Board has found:

1. The project is in conformity with all the applicable provisions of the General Plan, including the Certified Local Coastal Program and any applicable specific plans in that the visual impacts of the development have been minimized because the proposed structure is similar in size to neighboring buildings therefore maintaining compatibility with surrounding development.

2. The proposed development will not have any significant adverse impact on the environment within the meaning of the California Environmental Quality Act in that the proposed project, as conditioned and redesigned to minimize impacts on environmentally sensitive habitat and visual and scenic quality of coastal resources does not present any adverse impacts on the environment.

NOW, THEREFORE, BE IT RESOLVED, that a Coastal Development Permit is hereby approved to the extent indicated:

Permission is granted in the Residential Hillside Protection Zone to construct a new single-family residence.

BE IT FURTHER RESOLVED, that the following conditions are necessary to assure that the approval hereby authorized is in compliance with the Local Coastal Program:

1. The Coastal Development Permit hereby allowed is conditioned upon the privileges granted herein being utilized within two years after the effective date hereof, and should the privileges authorized hereby fail to be executed or utilized, or where some form of construction work is involved, such construction or some unit thereof has not actually commenced within such two years, and is not diligently prosecuted to completion, this authority shall become null and void, and any privileges granted hereby shall lapse. The Design Review Board, after conducting a noticed public hearing, may grant a reasonable extension of time for due cause provided the request for extension is filed in writing with the Department of

COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 5

Community Development prior to the expiration of said initial two-year period, along with any required fees.

BE IT FURTHER RESOLVED, that the subject Coastal Development Permit shall not become effective until after an elapsed period of ten (10) business days from and after the date of the action authorizing such permit.

PASSED on May 1, 2003, by the following vote of the Design Review Board of the City of Laguna Beach, California.

AYES: Kawaratani, Lenschow, Morrison, Simon

NOES: Plumb

ABSENT: None

ABSTAIN: None

ATTEST:

Chairman Simon

Staff Representative

Board of Adjustment Resolution No. CDP 03-015

COASTAL COMMISSION

EXHIBIT # 1
PAGE 3 OF 5

**CONDITIONS OF APPROVAL
FOR
31401 MAR VISTA (DESIGN REVIEW 02-401)**

1. A temporary construction fence shall be erected along the limits of the approved "disturbed areas." The location of the fence shall be established by a licensed land surveyor and certified as conforming to the approved plans. The fence shall be erected prior to any mobilization or grading operations at the site.
2. A certified field biologist, acceptable to the City, shall be present at the site during all grading operations and shall certify to the City that all work is within the approved limits.
3. The property owner shall provide a fire suppression sprinkler system within the fuel modification zones. This system shall be installed without removal of existing vegetation outside the approved "disturbed area." The fire suppression system shall be connected to the water service and also to the swimming pool to provide auxiliary capacity in the event of a fire. This system shall be designed to meet criteria established by the Fire Department.
4. The proposed structure shall be equipped with automatic fire sprinklers and shall be constructed utilizing fire resistive materials and exterior finishes.
5. During construction, the motor court, which has been designed to accommodate full fire truck turn-around capacity, shall remain clear, unobstructed and available for turn-around purposes.
6. All grading operations shall comply with Section 22.16.010 "Grading Inspection and Control" of the Municipal Code.
7. All removed material shall be transported using 10-wheel dump trucks or smaller.
8. Grading operations shall be conducted on the days and hours as stipulated in the City's Municipal Code.
9. Prior to issuance of a grading permit, the applicant shall submit a detailed haul route.
10. The property owner shall mail a detailed schedule of the days and hours of the grading operation, and the approved haul route, to all residents along the haul route(s) at least 48 hours prior to the start of the grading operations.
11. During grading, truck traffic shall be controlled by full time two-way radio traffic monitors.
12. Trucks shall be staged in a dispersed manner on public streets so that driveways or intersections are not blocked at any time.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 4 OF 5

Conditions of Approval
DR 02-401 (31401 Mar Vista)
Page 3

- 26. A representative of the property owner shall act as an ombudsman and shall be available by telephone, 24 hours a day, 7 days a week to resolve issues pertaining to construction activities. The ombudsman should be on record with the City.
- 27. The construction site shall be secured by patrols and/or electronic means at all times.
- 28. Prior to completion of the project and issuance of a "building final," the property owner shall dedicate an easement to the City of Laguna Beach or its designee and construct a trail for public access as recommended by the Open Space Committee and approved by the City Council.
- 29. A qualified biologist shall be present during construction of the trail to monitor impacts to any sensitive plant species.
- 30. If construction of the trail results in impacts to sensitive plant species, the applicant shall pay the applicable mitigation fee.
- 31. The trail proposal is to be referred to the Open Space Committee relative to feasibility, protection of flora and fauna and adjacent property owner privacy, security and erosion prevention. The Open Space Committee is to hold hearings in South Laguna and report back with a recommendation to the City Council for final action before the conditions are deemed to have been met.
- 32. New, private driveway improvements are to be constructed of materials with maximum permeability in order to reduce water runoff to the maximum extent feasible.
- 33. The haul route and trucking operations for the export of graded material must travel south on Coast Highway from the job site and shall not travel northbound on Coast Highway through the City.

Attachment

COASTAL COMMISSION

EXHIBIT # 1
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CALIFORNIA COASTAL COMMISSION

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



April 20, 2004

John Montgomery
Planning Director
City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92651

Re: 31401 Mar Vista, Laguna Beach

Dear Mr. Montgomery,

I have recently received inquiries regarding City review of proposed development at 31401 Mar Vista in the City of Laguna Beach. Subsequently a number of questions have arisen with regard to the site.

- Is a project at the above-mentioned site (or at 31500 Mar Vista) currently being reviewed by the City? If so, what is the project and what is the status of the review? Is a local coastal development permit being processed? A Notice of Public Hearing received in this office indicates that local coastal development permit No. 02-68 for that site was scheduled for Board of Adjustment/Design Review Board review on February 6, 2003. But we have not received any further notices for that local coastal development permit application.
- Has the presence of a blue line stream at the site been investigated by the City?
- Has the presence of Environmentally Sensitive Habitat (ESHA) at the site been investigated by the City?
- Do public trails or any potential prescriptive rights exist on the site?
- What structures currently exist on the site? Were any of the structures constructed pursuant to an approved coastal development permit? Our records indicate past coastal development permit applications to the Coastal Commission at the subject site (including 79-6029, 80-6035, 5-82-812, and 5-90-135). I have requested the files for these applications from our archives office.
- What is the origin of the lot where development is proposed? Is the site or any portion thereof deed restricted or otherwise designated for open space purposes? And will any of the proposed development encroach upon that open space or any trail?
- I note that the City Council is scheduled to review an Open Space Ordinance recommendation that affects this site at tonight's meeting (April 20, 2004). Can you provide more information on this action?

COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 2

Answers to these questions are necessary to understand the Coastal Commission's jurisdiction in the matter. Please do not limit your response to these questions only. Any information you have that will help to clarify the current status will be appreciated. Your earliest response will be greatly appreciated.

Sincerely,

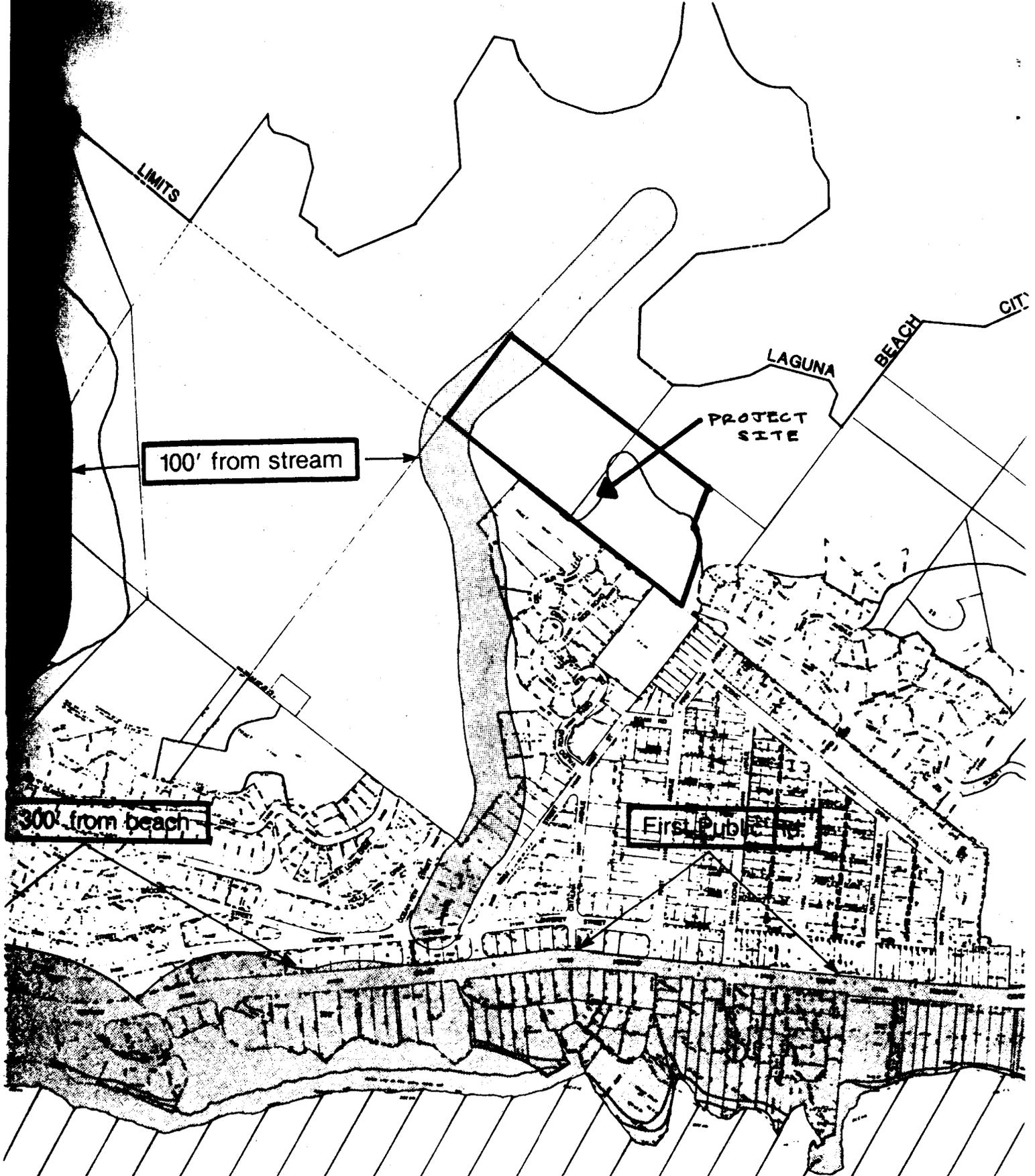


Meg Vaughn
Staff Analyst

MarVista 31401 ltr 4.20.04 mv

COASTAL COMMISSION

EXHIBIT # 2
PAGE 2 OF 2



**POST-LCP CERTIFICATION
 PERMIT AND APPEAL JURISDICTION
 MAP
 CITY OF LAGUNA BEACH**

COASTAL COMMISSION

EXHIBIT # 3
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ADOPTED BY THE COMMISSION
 ON SEPTEMBER 16, 1993

Post-LCP Certification Permit and Appeal Jurisdiction City of Laguna Beach

----- Coastal Zone Boundary



Permit Jurisdiction
This area includes only lands below the mean high tide line and lands where the public trust may exist.



Appeal Jurisdiction
This area includes lands between the sea and the designated first public road paralleling the sea or 300' from the inland extent of any beach or of the mean high tide line if there is no beach, whichever is the greater distance. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of any coastal bluff.

..... Area of Deferred Certification

This area includes lands which remain subject to the Coastal Commission's original permit jurisdiction until land use and zoning designations for this location are effectively certified.

- In addition to these geographic areas of appeal jurisdiction the following types of development are applicable throughout the Coastal Zone pursuant to P.R.C. Section 30603 (a)(4) and (a)(5):
1. Any development approved by a county that is not designated as a principal permitted use under zoning approved pursuant to the applicable Local Coastal Program;
 2. Any development that constitutes a major public works project or a major energy facility.

In areas where a parcel is bisected by the appeal jurisdiction boundary, only that portion of the parcel within the area defined as appealable is subject to the Commission's appeal jurisdiction.

NOTE

This map has been prepared to show where the California Coastal Commission retains post-LCP certification permit and appeal jurisdiction pursuant to P.R.C. §30519(b), and §30603(a)(1) and (a)(2). In addition, developments may also be appealable pursuant to P.R.C. §30603(a)(3), (a)(4) and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This map may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.

I hereby certify that this map portrays the boundaries for
THE CITY OF LAGUNA BEACH (SHEET B)
adopted by the California Coastal Commission SEPT. 16, 1993

Jonathan Van Poy
Coastal Program Analyst

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DEBORAH L. BOVE
NOTARY PUBLIC - IN JUDICIAL OFFICE
CITY & COUNTY OF
SAN FRANCISCO
My Commission Expires October 4, 1995

California Coastal Commission
Cartography Section

On this 16th day of SEPTEMBER in the year 1993 before me, DEBORAH L. BOVE, Notary Public, personally appeared JONATHAN VAN POY personally known to me (or proved to me on the basis of satisfactory evidence) to be the authorized representative of the California Coastal Commission and the person whose name is subscribed to this instrument and acknowledged that HE executed it. IN WITNESS WHEREOF I have set my hand and official seal.

Deborah L. Bove
Notary Public

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COASTAL COMMISSION

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



November 22, 2004

John Montgomery
 City of Laguna Beach
 505 Forest Avenue
 Laguna Beach, CA 92651

Re: Coastal Development Permit 02-68
 31401 & 31500 Mar Vista Avenue, Laguna Beach, Orange County

Dear Mr. Montgomery:

On October 5, 2004, the City took its final action to approve a coastal development permit (CDP) for an approximately 17,000 square foot residence with garage plus greenhouse, decks, swimming pool, landscaping and fuel modification upon a vacant 12-acre parcel of land. As we've discussed on the telephone, Commission staff received the City's Notice of Final Action regarding the subject CDP that indicates the permit not appealable to the Commission. Meanwhile, Commission staff received an appeal from a member of the public within what would be the ten working day appeal period, asserting that the subject permit ought to be appealable given the proximity of the proposed development to a stream. Commission staff is trying to determine how to proceed with the appeal and seek the City's assistance in this effort.

Based upon resources available to Commission staff, we understand there are at least two drainage courses that cross the 12-acre property. One drainage course, located along the northerly perimeter of the property appears as a "blue-line" stream on USGS maps and is also depicted on the Post-LCP Certification Permit and Appeal Jurisdiction map adopted by the Commission on September 16, 1993 (herein "post-cert map"). The adopted post-cert map depicts this northerly stream as an "appealable" feature. The second drainage course, located along the southerly boundary of the property is identified by the City as a "significant drainage course" but is not a "blue-line" stream nor is it depicted on the post-cert map. In our conversations, you have stated that the City only has identified as "appealable" those projects that fall within the appeals areas noted on the appeals maps. In this case, the subject CDP was identified as not appealable because the City determined that the proposed project was not located within 100 feet of the edge of the bank of a "blue-line" stream depicted on the post-cert map. The second, southerly drainage was not factored into this determination. However, based on the submitted appeal, it does appear that development approved in the subject CDP, including grading, portions of the proposed residence, decks, pools, landscaping and fuel modification, are located within 100 feet of this second, southerly drainage course.

Section 30603 of the Coastal Act provides the basis for appeal of locally issued coastal development permits to the Commission. It provides, in part, that coastal development permits for development located "... within 100 feet of any wetland, estuary, or stream..." are appealable to the Commission. Section 25.07.006 of the City's zoning code, which is part of the City's LCP, contains a definition of the appeals area that mirrors the language of Section 30603 of the Coastal Act. Section 13577 of the California Code of Regulations, which explains how to map the location of appeals areas, defines streams as those features that are "... mapped by USGS on the 1:50,000 scale quadrangle series, or identified in a local coastal program...". The City's certified LCP doesn't appear to specifically define the term "stream"; however, narrative under Topic 9 of the Open Space/Conservation Element of the General Plan (a component of the City's certified LCP) states that a 'watercourse' is a feature with "... a streambed, banks, a channel and periodic although not necessarily contiguous flows" and a feature that "... serves to convey runoff that falls within the

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watershed". This description of "watercourse" closely mirrors the features of a "stream" that are noted within Section 13577 of the California Code of Regulations. The narrative in Topic 9 goes on to identify certain tables and maps that describe and depict the physical boundaries of the major watersheds and drainage courses within the City. These exhibits clearly go beyond "blue line" streams and illustrate other significant drainage courses. Therefore, the policy language and exhibits of the certified LCP would thus identify all such features as "streams" and development activities within 100 feet of these features would be appealable.

At the time of the City's original certification of the LCP in 1986, the subject site was outside of the City's corporate boundary. In 1988, the City annexed South Laguna and the subject site was brought into the City's certified area. Commission staff has not yet found evidence in our records that the tables and maps describing the City's major watersheds and drainage courses were updated to incorporate the annexed area. Nevertheless, the applicable protections of the certified LCP were extended to South Laguna and the project site. For instance, Policies 9-C (a) and (b) establish minimum development setbacks from the City's major drainage courses. By necessity, the City would have to take steps to identify those drainage courses in South Laguna to which the policies would apply; and it appears the City did take such steps. For instance, maps available on the City's geographic information system (GIS) depict the drainage feature that crosses the southerly boundary of the project site as a "significant drainage course", comparable to the maps identified for the City's original LCP area.

Thus, there is a logical policy linkage that suggests the drainage course that crosses the southerly boundary of the project site is a "stream" within the meaning of Section 30603 of the Coastal Act and Section 25.07.006 of the City's zoning code. Commission staff recognize that this drainage course is not identified on the post-cert map as an "appealable" feature. However, the post-cert map explicitly states that the map "...may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission". In cases where there is some uncertainty about whether a geographic feature is one that renders a site appealable, conditions on the ground, rather than as they are depicted on a map, ought to be determinative. Thus, given the questions raised about the appealability of this project, Commission staff would recommend that a biological survey be conducted of the drainage course and surrounding area to characterize the area such that the City may determine if the feature is in fact a stream. Commission staff note that there are areas on site mapped as "high value habitat" and "very high value habitat" and that certified LCP Policies 8-F, 8-G, 8-H, 8-I, and 8-J require the City to have obtained a detailed on-site biological assessment for the site in conjunction with the processing of a CDP. Such a report should contain the information necessary to determine whether the drainage course in question is a stream. If the report doesn't contain such information, an update or new report ought to be prepared that contains sufficient information to determine whether the southerly drainage course is a stream.

In light of the policies noted above, and any supplemental information available, we also invite the City to explain further its justification that the southerly drainage course is or is not a "stream" and/or that the proposed development is or is not "appealable". If there is a determination that the CDP is, in fact, appealable, the City will need to issue an updated Notice of Final Action indicating the project is appealable. Such notice should be sent to all parties the City believes may be interested in appealing the CDP approval.

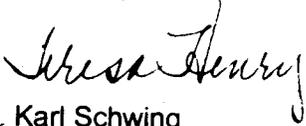
Finally, on a separate but related note, Commission staff have been advised the City took action on 31500 Mar Vista to change both the land use and zoning on that site. Please note that these changes require an LCP amendment, approved by the Coastal Commission, before those revisions are effective.

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We appreciate the City's willingness to work with staff on this issue and hope that we can expeditiously resolve the appeals question or proceed with hearing the appeal. If you have any questions, please do not hesitate to call me at (562) 590-5071, send an e-mail to kschwing@coastal.ca.gov, or send correspondence via regular mail.

Sincerely,



ks Karl Schwing
Supervisor, Regulation & Planning
Orange County Area

Cc: Applicant
Appellant

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CALIFORNIA COASTAL COMMISSION

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



January 28, 2005

John Montgomery
City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92651

Larry Nokes
Nokes & Quinn
450 Ocean Avenue
Laguna Beach, CA 92651

Re: Coastal Development Permit (CDP) 02-68
31401 Mar Vista Avenue¹, Laguna Beach, Orange County

Dear Mr. Montgomery and Mr. Nokes:

In our letter dated November 22, 2004, Commission staff requested the City's assistance to determine whether the subject coastal development permit is appealable. As you know, we received a completed appeal form on November 15, 2004. In addition, we received an e-mail inquiry from the City in December and a letter from the City dated January 5, 2005. We also have received letters from Mr. Nokes dated December 23, 2004, and January 7th and January 27th, 2005. Finally, we've recently received files from our archives that contain information that affects the current situation. Thus, we are taking this opportunity to inform you of the content of the files from our archives and to respond to your letters and e-mail inquiry.

- Relationship Between CDP 02-68 & Coastal Commission-issued CDP 5-90-135

Commission staff have received from our Sacramento archives the files related to CDP 5-90-135, which applies to the subject property. In April 1990, the Coastal Commission approved CDP 5-90-135, which authorized a 9,952 square foot, 14-foot high residence with a 5,970 square foot garage, plus terraces/decks, swimming pool and greenhouse, paving of a driveway and construction of a ravine/streambed crossing (which was required to be a bridge as opposed to a culvert). Based on information provided to us by the City, the driveway paving occurred and the bridge was constructed. Furthermore, CDP 5-90-135 authorized a lot line adjustment that lead to the present configuration of the subject lot. Several special conditions were imposed, including Special Condition 4, which among other things, required "...an open space easement, deed restriction or other instrument which provides that no subdivision or intensity of land use [sic] may occur in the future as per the City of Laguna Beach's recommendation." Compliance with Special Condition 4 was demonstrated with the submittal of evidence that the landowner had granted an open space easement over certain areas of the property to the City. The Commission's findings adopted in support of CDP 5-90-135 and the City recommendation clarify that the condition was intended to prevent any *increase* in the intensity of the land use then proposed.

Under CDP 02-68 approved by the City, it appears that a public trail easement was authorized in an area that partially overlaps the area of the open space easement described above and required by Special Condition 4 of Coastal Commission-issued CDP 5-90-135. Creation of such an easement would effectively change the intensity of land use for those areas from protected open space, to a public access corridor. Thus, authorization for the newly approved public trail easement conflicts with Special Condition 4 of the previously granted permit and the open space easement recorded pursuant thereto in that an "intensity of land use" would occur where such change in intensity of land use is presently prohibited by the condition and open space easement. Since the open space easement was a requirement of a Commission-issued CDP, the landowner will need to obtain an amendment to that Commission-issued CDP in order to resolve the conflicting easements. Any other activities approved by the City in the open space area, such as

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¹ Based on information in our records, the subject site was once known as 31500 Mar Vista. However a lot line adjustment resulted in a change to the configuration of this lot and the now-adjacent lot that resulted in a change to the address for each lot.

but not limited to, grading or vegetation removal/thinning (e.g. fuel modification) would also require approval of a permit amendment from the Commission.

Furthermore, as noted above, the prior permit authorized a residential structure on the site. The structure now proposed differs from the prior structure. Thus, an amendment would be necessary to address these differences.

- City's Request for Information Regarding the Definition of a Stream

On December 15, 2004, the City requested that staff identify "...the salient points that Coastal staff uses in determining if a topographical feature (drainage course) is a "stream" resource..." In response, Commission staff direct you to Section 13577(a) of the California Code of Regulations that identifies how the 100-foot jurisdictional area should be measured from a stream. Section 13577(a) states:

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams not having significant habitat value should not be considered.

Thus, the 100-foot appeal jurisdiction limit should be measured from the top of the bank of the stream or from the line of riparian vegetation if there is no discernable stream bank.

- Preliminary Response to Mr. Nokes' Letters and City's letter

Mr. Nokes' letter dated December 23, 2004 makes various claims about 1) whether the development authorized by the City's permit is appealable and 2) the timeliness (or un-timeliness) of the appeal we received on November 15, 2004. Mr. Nokes' included a civil engineer's survey stating that the "...dry creek-bed [is] 102 feet from the proposed grading limit at the nearest point" and thus the proposed project is not appealable. The City's letter dated January 5, 2005 also makes reference to this survey and draws conclusions based on the survey. Other than the statement that the measurement was taken from the creek-bed, no topographic map or other information was provided to show the point from which the survey measurement was made. As described above, the measurement must be made from the top of the bank of the stream, not the stream-bed. Furthermore, grading is not the only type of development authorized that appears to be within 100 feet of the drainage course. Based on drawings of the City-approved development in our files, vegetation thinning/clearing (i.e. fuel modification) and drainage outlet structures are located within 100 feet of the drainage course. These features are "development" and, if within 100 feet of a "stream," would render the approval appealable. The survey submitted does not provide any measurements relative to the proximity of these other types of development to the drainage course.

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With respect to the timeliness of the appeal, Mr. Nokes has argued that, although there is no evidence the City submitted a Notice of Final Action to the Commission in 2003 regarding the approval of CDP 02-68, the Commission had actual notice of the City's approval some time in 2003.

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and that the appeal period should have run from the point the Commission had 'actual' notice. Commission staff disagree with this position. Section 13571 of the California Code of Regulations requires that a local government provide written notice to the Commission that they have taken their final action (herein "Notice of Final Action" or NOFA). Furthermore, the NOFA must be accompanied by "...conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission...". That notice wasn't received by our office until October 29, 2004. Thus, an appeal period couldn't have commenced until that time, at the earliest. However, the NOFA stated that the project was not appealable to the Coastal Commission. We have been corresponding with the City since that time requesting that they send out a new NOFA indicating that the project is appealable or substantiate their assessment that the development is not appealable (i.e. not within 100 feet of a stream).

Also, as noted in Mr. Nokes letter dated January 27, 2005, PRC section 30621 establishes a 49-day deadline for setting a hearing on an appeal. However, that section also states that the 49 day deadline runs from the date on which the appeal is "filed" (*id.* at § 30621(a)) and that for an appeal to be "considered to be filed" it must be "properly submitted" (*id.* at § 30621(b)). The appeal submitted by Ms. Hertz was not properly submitted, as it was submitted prior to the opening of the appeal period. This is because the appeal period is not opened until a proper notice of final action is received, listing the appeals procedures. Thus, the appeal is not yet filed, and the 49-day appeal period has not begun to run. This procedure was confirmed by a recent court of appeal decision. See North Pacifica, LLC v. California Coastal Comm'n, 2004 WL 2958370 (Dec. 22, 2004).² The court held that, where a city issued a notice of final action listing its approval of a CDP as not being appealable, but, in fact, the approval was subsequently found to be appealable, the city's notice was defective for failing to include appeal procedures. The court then stated that such a defective notice "does not trigger the time period allowed for appeals." *Id.* at *4.

- Conclusion and Next Steps

At this juncture, neither the City nor the landowner has provided sufficient information to persuasively resolve the questions over the appealability of the City's approval. We continue to extend our invitation for your assistance in that matter, as outlined in our letter dated November 22, 2004. However, at this point we believe we must move forward to resolve the questions regarding the appealability of the project and the validity of the appeal filed on November 15th. Thus, Commission staff plan to place the issue on the Commission's February 2005 agenda. Meanwhile, as a separate, but related matter, the landowner needs to seek the amendments identified above.

Sincerely,



Karl Schwing
Supervisor, Regulation & Planning
Orange County Area

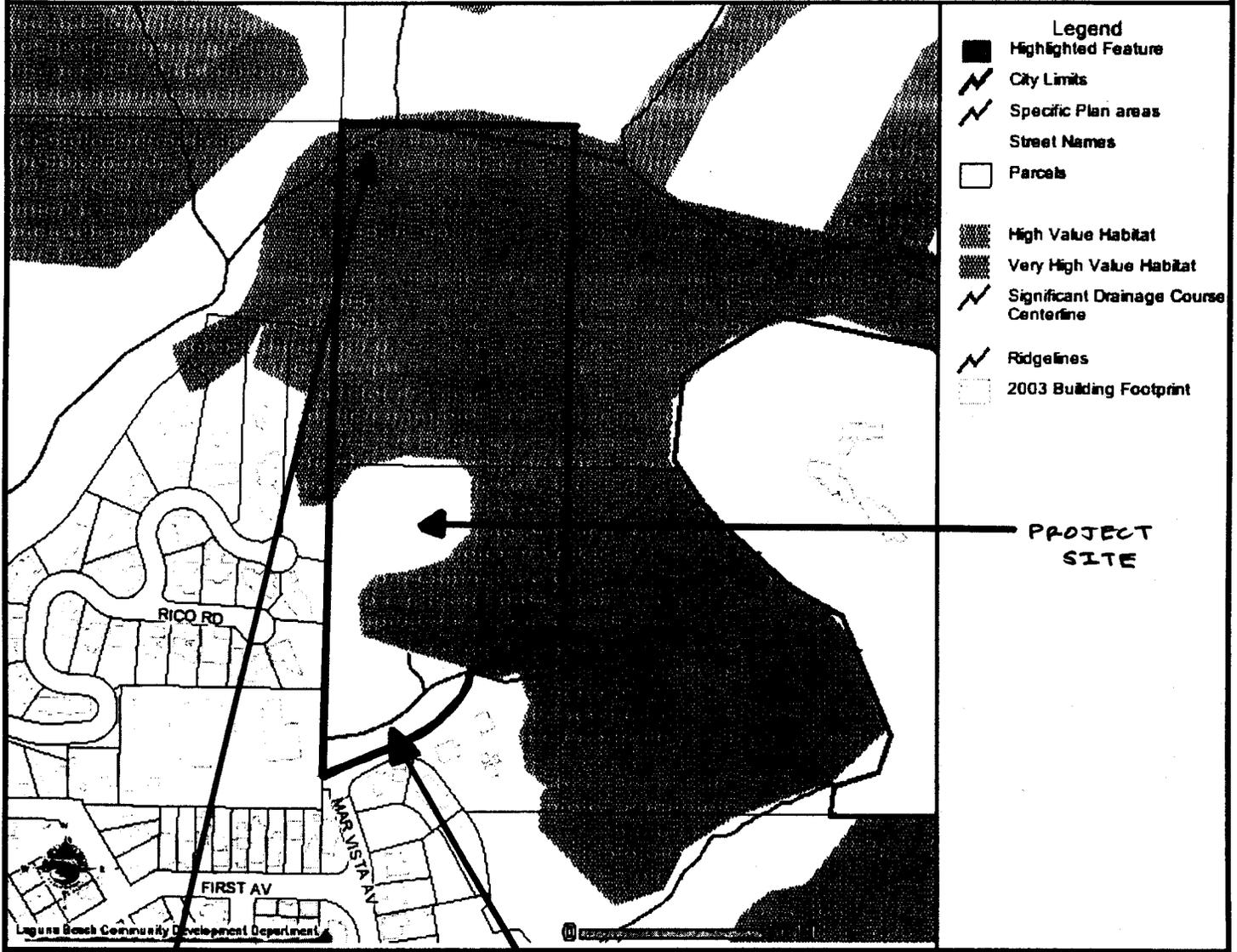
Cc: Applicant
Appellant

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² At the present time, this case is not published. However, the Coastal Commission's request for publication is currently pending before the California Supreme Court.

31401 Mar Vista Ave



NORTHERLY SIGNIFICANT DRAINAGE COURSE / "BLUE-LINE" STREAM

SOUTHERLY SIGNIFICANT DRAINAGE COURSE / DRAINAGE NOT FACTORED INTO APPEALABILITY

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