

## CALIFORNIA COASTAL COMMISSION

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 49th Day: January 28, 1999  
 180th Day: June 8, 1999  
 Staff: GDC-SD  
 Staff Report: January 14, 1999  
 Hearing Date: February 3-5, 1999

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved With Conditions

APPEAL NO.: A-6-ENC-98-158

APPLICANT: Encinitas Country Day School

PROJECT DESCRIPTION: Construction of an approximately 42,144 sq. ft. private school facility including classroom and administration buildings, a caretaker's residence, landscaping, playgrounds and parking facilities on a vacant 20 acre lot. Project involves the widening of Manchester Avenue resulting in the fill of approximately .09 acre of riparian marsh habitat with on-site mitigation.

PROJECT LOCATION: 3616 Manchester Avenue, Encinitas, San Diego County. (APN 262-073-24)

APPELLANTS: California Coastal Commissioners Sara Wan and Penny Allen; San Elijo Lagoon Conservancy; and, Tinker Mills.

STAFF NOTES:

The public hearing for the subject appeal was opened at the January 13, 1999, Commission meeting and continued to the February 3-5, 1999, Commission meeting.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed. Staff also recommends that the Commission deny the application at the de novo hearing because the project is inconsistent with several provisions of the City's LCP pertaining protection of the environmentally sensitive resources of San Elijo Lagoon.

Commission staff recommends denial of the application on de novo because the development constitutes an intensity of use that will result in adverse impacts to environmentally sensitive habitat areas. This intensity and resulting adverse impacts cause the proposed project to be inconsistent with the certified LCP. While the applicant has indicated that information will be made available to Commission staff to address this issue, as of the date of this report, that information has not been provided.

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SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); Appeal Applications; City of Encinitas Agenda Report for CDP 98-039 dated 9/24/98; City of Encinitas Resolution Nos. 98-91, CDP 98-039, Biological Resources and Impact Analysis by Dudec and Associates, Inc. dated July 15, 1998, Riparian Creation and Restoration Plans by RECON dated November 16, 1998 and December 23, 1998; Coastal Development Permit Nos: A-6-ENC-6-34/Fletcher; A-6-ENC-97-70 Kirkorowicz

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#### I. Appellants Contend That:

The appellants contend that the City's decision is inconsistent with several provisions of the City's LCP related to protection of environmentally sensitive habitat areas and wetlands. In particular, the appellants allege that the development is inconsistent with the LCP provisions that (1) encourage the implementation of an integrated management plan for conservation of San Elijo Lagoon and the acquisition and preservation of riparian corridors that drain into San Elijo Lagoon, (2) prohibit the southward expansion of Manchester Avenue into San Elijo Lagoon, (3) prohibit fill of wetlands unless the fill is a permitted use and there is no less environmentally damaging alternative and, (4) all on-site wetlands and buffer areas be protected by the application of an open space easement.

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#### II. Local Government Action.

The Coastal Development Permit was approved by the Encinitas Planning Commission on 9/24/98. Several special conditions were attached which address traffic and safety controls, exterior colors, outdoor lighting, impacts to coastal sage scrub, drainage impacts to San Elijo Lagoon, archaeological monitoring, and mitigation for proposed wetland impacts. It was then appealed to the City Council on October 9, 1998. The City Council denied the appeal and affirmed the Planning Commission decision on November 19, 1998.

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#### III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are

located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

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#### Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

Staff recommends that the Commission determine that SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

## MOTION

Staff recommends a NO vote on the following motion:

I move the Commission determine that Appeal No. A-6-ENC-98-158 raises no substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

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## Findings and Declarations.

1. Project Description. The proposed development involves the construction of an approximately 42,144 sq. ft. private school facility consisting of classroom and administrative buildings, a caretaker's residence, landscaping, playground/recreational areas and parking facilities on a vacant 20 acre lot. The school will accommodate a maximum of 432 students ranging from "pre-school" to eighth grade. The project also includes the widening of Manchester Avenue adjacent to the school site which will result in on-site fill of approximately .09 acre of riparian habitat (Southern willow scrub). Mitigation for the impacts is proposed through the creation of approximately .10 acre of similar habitat on-site, within the Lux Canyon Creek drainage.

The project site is located between the sea (San Elijo Lagoon) and the first public road paralleling the sea (Manchester Avenue). Specifically, the project site is located east of I-5 at the southeast intersection of Manchester Avenue and El Camino Real in the City of Encinitas. Manchester Avenue borders both the western and northern sides of the proposed development site with an approximately 20 acre vacant parcel separating the development site from San Elijo Lagoon to the south. The site is relatively flat and is set below the grade of Manchester Avenue. The site is covered by native and non-native vegetation including Eucalyptus trees and coastal sage scrub habitat. The Lux Canyon Creek drainage, which flows north/south through the western portion of the site, contains riparian habitat. In addition, a small wetland area exists within the southeastern portion of the site.

Because the site is located between the first public road and San Elijo Lagoon, the development approved by the City lies within the Coastal Commission appeals jurisdiction. The standard of review is consistency with the certified City of Encinitas Local Coastal Program.

2. Intensity of Development/Traffic Impacts. Circulation Policy 2.22 on Page C-7 of the certified LUP is applicable and states:

To avoid impacts of the expansion and improvement of Manchester Avenue on the San Elijo Lagoon and its environmental resources, right-of-way dedication and widening shall occur to the north, away from the lagoon, rather than toward the lagoon; and the use of fill shall be prohibited. The design of the Manchester/I-5

interchange shall also avoid the use of fill and locate structures as far north as possible to avoid impacts on the lagoon. When design and improvement of Manchester Avenue and the interchange are undertaken, the County Department of Parks and Recreation, the State Department of Fish and Game, the Coastal Commission and others will be notified and given opportunity to participate in the design and environmental review process.

The appellants contend that approval of the project by the City is inconsistent with this provision in that the intensity of the development will increase pressure to widen Manchester Avenue into the Lagoon. The certified City of Encinitas Local Coastal Program (LCP) designates the subject site as Rural Residential. On Page LU-33, the certified LUP summarizes the intent of this plan designation, in part:

This category will permit the development of single-family homes on large lots ranging in size from 2 to 8 acres....Lower density development provided for in this category is important so that sensitive areas of the City can be preserved, as well as ensuring that areas subject to environmental constraints are developed in a safe and rational manner. The actual density of development will depend on local topography and other development constraints or significant resources that might be present.

Thus, given a "best-case scenario", the maximum number of residential units that could be placed on this 20 acre site would be 10. This does not taken into consideration the numerous constraints on the site that include coastal sage scrub, wetlands and floodplain. While the certified LCP does allow for a school facility within the residential zone category (subject to a major use permit), the City must find that impacts from the proposed development are avoided or mitigated. As such, given the existing sensitive resources on the subject site, proximity of the subject site to San Elijo Lagoon and the very low density residential plan designation applied to the site, the proposed school facility raises serious LCP consistency concerns. Based on traffic figures only, the proposed school facility generates seven (7) times the traffic buildout of the site as a residential development would generate. The final environmental assessment prepared for the subject development indicates the school will generate approximately 691 average daily trips (ADT's). Although the environmental assessment failed to make the comparison, full buildout of the site (given a best case scenario of 10 residential homes), would generate only generate about 100 ADT's, almost seven times less than that of the proposed school. The traffic study prepared for the subject development failed to not only compare the traffic impacts of the proposed development with that of full buildout under the Rural Residential designation, but it also failed to fully address the traffic impacts along Manchester Avenue or at I-5 during peak rush hour.

Although the City's approval of the project did address and include mitigation for projected traffic related impacts adjacent to the proposed school on Manchester Avenue, no findings were made relative to impacts of the development on Manchester Avenue and the Interstate 5 (I-5)/Manchester Avenue interchange west of the subject site. The concern here is less of one of public access to the beach (as the site is somewhat removed from the coastline), but one of protection of the environmentally sensitive resources of

San Elijo Lagoon. Manchester Avenue and the I-5 interchange west of the subject site lie directly adjacent to San Elijo Lagoon and are currently constrained as to how they can be expanded in the future. The City's LCP requires any expansions to occur to the north, away from lagoon resources. However, northward expansion is limited by the amount of available space north of the interchange. If the City approves new development at a high intensity, it will reach the point where a northward expansion is insufficient to accommodate traffic. This will trigger demands for southward expansion into the lagoon, which would be inconsistent with the LCP. Thus, development that will result in traffic that cannot be accommodated by northward expansion of the interchange is inconsistent with the LCP. The proposed development will impact traffic at the interchange but whether it will result cumulatively in traffic that cannot be accommodated with northward expansion is unclear because the City failed to assess the impacts of the proposed development on the interchange. This parcel is zoned rural residential under the LCP. Low density development in this zone is important to protect sensitive areas such as the San Elijo Lagoon. Therefore, the City's approval of a school facility that will have a density almost seven times that allowed on this site without determining that the associated increased traffic can be accommodated by northward expansion of the I-5/Manchester interchange raises a substantial issue of conformity with the LCP policies

3. Wetlands. The appellants contend that approval of the project by the City is inconsistent with provisions of the City's certified LCP pertaining to permitted uses within wetlands, the need for appropriate wetland buffers and the requirement of a conservation easement to protect the existing wetlands and the wetland buffers. The City's LCP includes several provisions pertaining to the protection of wetlands. The following are relevant to the subject appeal. Policy 10.6 on Page RM-18/19 of the certified LUP states:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value whenever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:

- a. Incidental public service projects.

- b. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- c. Restoration purposes.
- d. Nature study, aquaculture, or other similar resource dependent activities.

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal E.P.A. 404(b)(1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined by regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. Replacement of wetland on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

The City shall also control use and development in surrounding area of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt-water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible. All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

In addition, Section 30.34.040(B)(3)(a) of the City's Implementation Plan contains similar language as above, limiting wetland fill to projects involving nature study, restoration, incidental public services and mineral extraction.

In review of the project by the City, it was determined that wetlands, as defined in the LCP, are present on the site and that the proposed development (requirement by the City to widen Manchester Avenue) would permanently fill approximately .09 acres of wetlands. As cited, the fill of wetlands within the City's Coastal Zone is limited to only four types of newly permitted uses and activities. The City's findings for approval of the

coastal development permit include a determination that the proposed .09 acre of wetlands fill is a permitted use under the above cited LCP policies and ordinances because it is an 'incidental public service project'. Specifically, the City found that the fill was necessary to accommodate the widening of Manchester Avenue to its ultimate width approved in the circulation element of the certified LCP. While an "incidental public service project" has generally been limited to temporary impacts of resources such as the burying of cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines, the Commission has determined in past permit decisions that limited expansion of existing circulation element roads and bridges may also be permitted as an incidental public service project where required to accommodate existing traffic. In addition, as stated previously, Policy 10.6 specifically permits fill for incidental public service projects "where there is no feasible less environmentally damaging alternative." In this case, the City did not adequately address other alternatives to avoid the need to fill this small wetland area and therefore, the approval raises a substantial issue as to conformity with City's LCP.

Lux Canyon Creek which runs north/south through the western portion of the development site contains sensitive riparian habitat. In addition, a small area in the southeastern portion of the site contains wetland habitat. The proposed project does not include fill of these wetland areas but it fails to include an adequate buffer between these wetland areas and development. The certified LCP requires that a minimum 50 foot buffer be established between any development and riparian wetlands, although the width may be reduced if resources are protected and the Dept. of Fish and Game concurs. In this case the City did not require any buffer surrounding the Lux Canyon Creek area or the other wetland area as a condition of approval of the development. In addition, the City did not require protection of the on-site wetland resources through an open space easement as specifically required by the above cited LUP policy. The failure to require buffers and to protect on-site wetland resources presents additional substantial issues as to conformity of the development with the LCP.

In summary, the proposed development raises a substantial issue of conformity with the City's certified LCP in that a traffic analysis was not performed to evaluate the impact the proposed development may have on demand to expand Manchester Avenue at San Elijo lagoon, specifically as it may affect the widening of Manchester Avenue at I-5. Also, the proposed development is inconsistent with the City's certified LCP in that the City failed to conduct an adequate alternatives analysis for the fill of the .09 acre of wetland habitat and therefore did not properly determine whether the fill is the least environmentally damaging alternative. In addition, the City did not require a 50-foot buffer area to separate the proposed development from the existing riparian wetland and did not protect existing wetland resources and buffer areas through the application of an open space easement. For these reasons, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified Local Coastal Program.

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## STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

### I. Denial.

The Commission hereby denies a permit for the proposed development on the grounds that the development will not be in conformity with the adopted Local Coastal Program, and will have significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

### II. Findings and Declarations:

1. Project Description. As previously cited in the findings for Substantial Issue of this staff report, the proposed development involves the construction of an approximately 42,144 sq. ft. private school facility consisting of classroom and administrative buildings, a caretaker's residence, landscaping, playground/recreational areas and parking facilities on a vacant 20 acre lot. The school will accommodate a maximum of 432 students ranging from "pre-school" to eighth grade. The project also includes the widening of Manchester Avenue adjacent to the school site will result in on-site fill of approximately .09 acre of riparian habitat (Southern willow scrub). Mitigation for the impacts is proposed through the creation of approximately .10 acre of similar habitat on-site, within the Lux Canyon Creek drainage.

The project site is located between the sea (San Elijo Lagoon) and the first public road paralleling the sea (Manchester Avenue). Specifically, the project site is located east of I-5 at the southeast intersection of Manchester Avenue and El Camino Real in the City of Encinitas. Manchester Avenue borders both the western and northern sides of the proposed development site with an approximately 20 acre vacant parcel separating the development site from San Elijo Lagoon to the south. The site is relatively flat and is set below the grade of Manchester Avenue. The site is covered by native and non-native vegetation including Eucalyptus trees and coastal sage scrub habitat. The Lux Canyon Creek drainage, which flows north/south through the western portion of the site, contains riparian habitat. In addition, a small wetland area exists within the southeastern portion of the site.

Because the site is located between the first public road and San Elijo Lagoon, the development approved by the City lies within the Coastal Commission appeals jurisdiction. The standard of review is consistency with the certified City of Encinitas Local Coastal Program.

2. Intensity of Development/Traffic Impacts. Circulation Policy 2.22 on Page C-7 of the certified LUP is applicable and states:

To avoid impacts of the expansion and improvement of Manchester Avenue on the San Elijo Lagoon and its environmental resources, right-of-way dedication and

widening shall occur to the north, away from the lagoon, rather than toward the lagoon; and the use of fill shall be prohibited. The design of the Manchester/I-5 interchange shall also avoid the use of fill and locate structures as far north as possible to avoid impacts on the lagoon. When design and improvement of Manchester Avenue and the interchange are undertaken, the County Department of Parks and Recreation, the State Department of Fish and Game, the Coastal Commission and others will be notified and given opportunity to participate in the design and environmental review process.

In addition, Land Use Policy 2.11 on Page LU-7 of the certified LUP is applicable and states:

Incremental development of large properties shall not be permitted without a master plan and environmental analysis of the full potential development.

Also, the certified LCP designates the subject site as Rural Residential. On Page LU-33, the certified LUP summarizes the intent of this plan designation, in part:

This category will permit the development of single-family homes on large lots ranging in size from 2 to 8 acres. ...Lower density development provided for in this category is important so that sensitive areas of the City can be preserved, as well as ensuring that areas subject to environmental constraints are developed in a safe and rational manner. The actual density of development will depend on local topography and other development constraints or significant resources that might be present.

The proposed 42,144 sq. ft. private school facility will be constructed on a vacant 20 acre site that is zoned for rural residential development. Thus, given a "best-case scenario", the maximum number of residential units that could be placed on this 20 acre site would be 10. This does not take into consideration the numerous constraints on the site that include coastal sage scrub, wetlands and floodplain. While the certified LCP does allow for a school facility within this residential zone category (subject to a major use permit), in order to approve such a development, the City must find that impacts from the proposed development are avoided or mitigated. As such, given the existing sensitive resources on the subject site, proximity of the subject site to San Elijo Lagoon and the very low density residential plan designation applied to the site, the proposed school facility raises serious LCP consistency concerns.

Specifically, based on traffic figures only, the proposed school facility will generate almost seven (7) times the traffic that buildout of the site as a residential development would generate. The final environmental assessment prepared for the subject development indicates the school will generate approximately 691 average daily trips (ADT's). Although the environmental assessment failed to make the comparison, full buildout of the site (given a best case scenario of 10 residential homes), would generate only about 100 ADT's, far less than that of the proposed school.

In addition, the project does not include development of the entire 20 acres. The western portion of the site has been labeled as "not a part" and was not restricted from further development by the City in its approval of the project. As such, as approved by the City, the western portion of the site can be developed in the future, generating even more traffic on the adjacent roadways. The traffic study prepared for the subject development failed to not only compare the traffic impacts of the proposed development with that of full buildout under the Rural Residential designation, but it also failed to fully address the traffic impacts along Manchester Avenue or at the I-5 interchange west of the subject site. As noted above, LUP Policy 2.11 requires the City to not allow incremental and piecemeal development of large parcels and that environmental review include the full site potential. The City's approval of the development did not follow this requirement and as such, leaves open the potential for future development of the remainder of the site without first reviewing the environmental consequences, inconsistent with the LCP policy.

Although the City's approval of the project did address and include mitigation for projected traffic related impacts adjacent to the proposed school on Manchester Avenue, no findings were made relative to impacts of the development on Manchester Avenue and the Interstate 5 (I-5)/Manchester Avenue interchange west of the subject site. The concern here is less of one of public access to the beach (as the site is somewhat removed from the coastline), but one of protection of the environmentally sensitive resources of San Elijo Lagoon. Manchester Avenue and the I-5 interchange west of the subject site lie directly adjacent to San Elijo Lagoon and are currently constrained as to how they can be expanded in the future. The City's LCP requires any expansions to occur to the north, away from lagoon resources. However, northward expansion is limited by the amount of available space north of the interchange, which is minimal. As such, if the City approves new development at a higher intensity than what is contemplated, it will reach the point where a northward expansion is insufficient to accommodate traffic. This will trigger demands for southward expansion into the lagoon, which would be inconsistent with the LCP. Thus, development that will result in traffic that cannot be accommodated by northward expansion of the interchange is inconsistent with the LCP. The proposed development will impact traffic at the interchange but whether it will result cumulatively in traffic that cannot be accommodated with northward expansion is unclear because the City failed to assess the impacts of the proposed development on the interchange.

In review of the City's LCP, the Commission approved various circulation element roads. The capacity of the roads and proposed necessary widths were derived from projected buildout of the City based on approved densities of development. However, through the major use permit process, a number of developments have been approved by the City in the area along the Manchester Avenue corridor that included greater intensity of development than what is called for in the certified LCP. As such, over time, this corridor is generating far more traffic trips than what was planned for. Again, the concern is that cumulatively, this will result in the need to widen the road and interchange into San Elijo Lagoon. The environmental analysis and the City's approval of the development failed to address this concern.

In summary, approval of the proposed development by the City is inconsistent with LCP provisions in that the proposed intensity of development will result in far greater traffic on Manchester Avenue than that called for in the LCP, did not include review of potential environmental impacts associated with buildout of the entire site and cumulatively may result in the need to widen Manchester Avenue and the I-5 interchange to the south, into San Elijo Lagoon. In addition, a traffic analysis of impacts from the development of this site on the roadway and interchange has not been determined. Therefore, the Commission finds the proposed development must be denied.

3. Wetlands. Due to the dramatic loss of wetlands (over 90% loss of historic wetlands in California) and their critical function in the ecosystem, and in response to Section 30233 of the Coastal Act, the City's LCP contains very detailed policies and ordinances relative to wetlands protection. The following LCP provisions are relevant to the subject development: Resource Management Policy 10.6 of the certified LUP states, in part:

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:

- a. Incidental public service projects.
- b. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- c. Restoration purposes.
- d. Nature study, aquaculture, or other similar resource dependent activities.

In addition, Section 30.34.040(B)(3)(a) of the City's Implementation Plan contains similar language as above, limiting wetland fill to projects involving nature study, restoration, incidental public services and mineral extraction.

The proposed development would involve the fill of approximately .09 acres of wetlands to accommodate the expansion of Manchester Avenue on the northern border of the subject site. As cited, the fill of wetlands within the City's Coastal Zone is limited to only four types of newly permitted uses and activities. The City's findings for approval of the coastal development permit include a determination that the proposed .09 acre of wetlands fill is a permitted use under the above cited LCP policies and ordinances because it is an 'incidental public service project'. Specifically, the City found that the fill was necessary to accommodate the widening of Manchester Avenue to its ultimate width approved in the circulation element of the certified LCP. While an "incidental public service project" has generally been limited to temporary impacts of resources such as the burying of cables and pipes, inspection of piers, and maintenance of existing intake

and outfall lines, the Commission has determined in past permit decisions that limited expansion of existing circulation element roads and bridges may also be permitted as an incidental public service project where required to accommodate existing traffic and when there is no feasible less environmentally damaging alternative. This is also the standard set in Policy 10.6 of the certified LCP. In this case, the City did not adequately address other alternatives to avoid the need to fill this small wetland area and therefore, the approval is inconsistent with the City's LCP policies addressing protection of wetlands.

4. Public Access. The project site is located on the south side of Manchester Avenue, just east of El Camino Real. Manchester Avenue in this location is designated as the first public roadway. As the proposed development will occur between the first public roadway and the sea (San Elijo Lagoon in this case), pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act.

While the proposed development is located well inland of the coast, public access and recreational opportunities, in the form of hiking, do exist in the area, providing access into San Elijo Lagoon Ecological Reserve and Regional Park. There are currently no such trails existing or planned on the subject site. The development will not impede access to the lagoon or to any public trails. Therefore, the proposed development would have no adverse impacts on public access or recreational opportunities, consistent with the public access policies of the LCP and the Coastal Act.

5. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case such a finding cannot be made.

The City of Encinitas received approval of its LCP in November of 1994 and began issuing coastal development permits on May 15, 1995. The proposed development was originally approved by the City of Encinitas Planning Commission and subsequently appealed to the City Council. The City Council approved the development on November 19, 1998. Because the subject development is located between the first public roadway and the sea it falls within the Commission's appeals jurisdiction. On December 10, 1998 the development approval was appealed to the Coastal Commission.

The subject site is zoned and planned for rural residential development in the City's certified LCP. The proposed development is not consistent with the rural residential zone and plan designation, although a school facility is a permitted use subject to approval of a major use permit.

As noted previously, the proposed development is inconsistent with several policies of the City's certified LCP. Because an insufficient traffic analysis was performed, the Commission is unable to determine the cumulative effective the proposed development

may have on the Manchester Avenue/I-5 interchange. In addition, alternatives to the proposed fill of wetlands have not been adequately assessed. As such, the Commission finds that the proposed development must be denied.

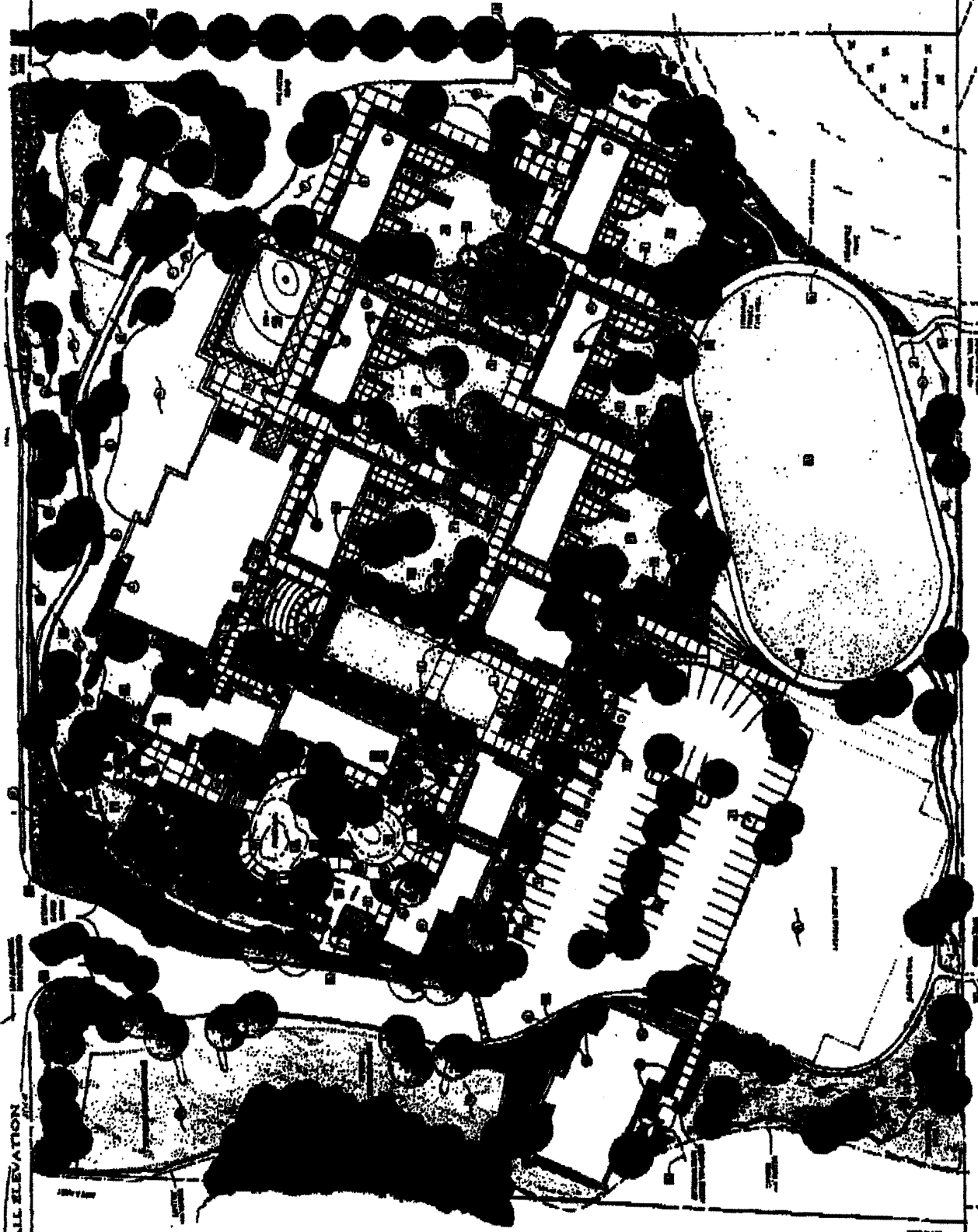
5. California Environmental Quality Act (CEQA). Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As stated previously, the development as proposed would result in impacts to environmentally sensitive habitat areas and visual resources. In addition, there are feasible alternatives to the proposed development. These feasible alternatives include development of the site with up to 10 single-family residences, which would substantially reduce traffic generation and its associated impacts. Other alternatives include development of a school facility on the site, but on a much smaller scale. Both these alternatives would lessen the cumulative potential for expansion of the Manchester Avenue and the I-5 interchange into San Eljio Lagoon and reduce any visual impacts that may be associated with a development of the scale proposed in this sensitive location. In addition, the proposed development is not the least environmentally damaging alternative and cannot be found consistent with the requirements of the City of Encinitas LCP, nor with the requirements of the Coastal Act to conform to CEQA. Thus, the proposed project must be denied.



**EXHIBIT NO. 1**  
**APPLICATION NO.**  
**A-6-ENC-98-168**  
**Location Map**

California Coastal Commission



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ENTRY SIGN WALL ELEVATION

**CONSTRUCTION LEGEND**

- 1. EXISTING CONCRETE
- 2. EXISTING ASPHALT
- 3. EXISTING GRAVEL
- 4. EXISTING GRADE
- 5. EXISTING PAVEMENT
- 6. EXISTING CURB
- 7. EXISTING SIDEWALK
- 8. EXISTING DRIVEWAY
- 9. EXISTING DRIVE
- 10. EXISTING ROAD
- 11. EXISTING HIGHWAY
- 12. EXISTING AIRWAY
- 13. EXISTING WATERWAY
- 14. EXISTING DRAINAGE
- 15. EXISTING UTILITY
- 16. EXISTING FENCE
- 17. EXISTING WALL
- 18. EXISTING SIGN
- 19. EXISTING LIGHT
- 20. EXISTING TREE
- 21. EXISTING SHRUB
- 22. EXISTING PLANT
- 23. EXISTING LANDSCAPE
- 24. EXISTING HEDGEBANK
- 25. EXISTING TREELINE
- 26. EXISTING BUFFER
- 27. EXISTING SCREEN
- 28. EXISTING BARRIER
- 29. EXISTING OBSTACLE
- 30. EXISTING HAZARD
- 31. EXISTING TRAP
- 32. EXISTING PIT
- 33. EXISTING HOLE
- 34. EXISTING CRACK
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- 37. EXISTING WEAR
- 38. EXISTING EROSION
- 39. EXISTING SETTLEMENT
- 40. EXISTING SLOTTING
- 41. EXISTING CORROSION
- 42. EXISTING WEATHERING
- 43. EXISTING DISCOLORATION
- 44. EXISTING STAINING
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- 60. EXISTING FISH
- 61. EXISTING MOLLUSCS
- 62. EXISTING CRUSTACEANS
- 63. EXISTING PLANTS
- 64. EXISTING ANIMALS
- 65. EXISTING HUMANS
- 66. EXISTING STRUCTURES
- 67. EXISTING EQUIPMENT
- 68. EXISTING VEHICLES
- 69. EXISTING MACHINERY
- 70. EXISTING TOOLS
- 71. EXISTING MATERIALS
- 72. EXISTING SUPPLIES
- 73. EXISTING SERVICES
- 74. EXISTING CONTRACTORS
- 75. EXISTING ENGINEERS
- 76. EXISTING ARCHITECTS
- 77. EXISTING PLANNERS
- 78. EXISTING DESIGNERS
- 79. EXISTING CONSULTANTS
- 80. EXISTING ADVISORS
- 81. EXISTING REVIEWERS
- 82. EXISTING APPROVERS
- 83. EXISTING SIGNERS
- 84. EXISTING SEALERS
- 85. EXISTING NOTARIES
- 86. EXISTING COMMISSIONERS
- 87. EXISTING MEMBERS
- 88. EXISTING OFFICERS
- 89. EXISTING EMPLOYEES
- 90. EXISTING VOLUNTEERS
- 91. EXISTING DONORS
- 92. EXISTING SUPPORTERS
- 93. EXISTING FRIENDS
- 94. EXISTING NEIGHBORS
- 95. EXISTING COMMUNITY
- 96. EXISTING SOCIETY
- 97. EXISTING CULTURE
- 98. EXISTING HERITAGE
- 99. EXISTING IDENTITY
- 100. EXISTING BELONGING



<b>EXHIBIT NO. 2</b>
<b>APPLICATION NO.</b>
<b>A-6-ENC-98-158</b>
<b>Site Plan</b>
California Coastal Commission

**ENCINITAS COUNTRY DAY SCHOOL**



STATE OF CALIFORNIA - THE RESOURCE AGENCY

PIETE WILSON, Governor

# CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1724  
(619) 421-1000



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

### SECTION I. Appellant(s)

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

Penny Allen  
P.O. Box 120232  
Chula Vista, Ca (619) 425-7606  
Zip 91912 Area Code Phone No.

**RECEIVED**

DEC 11 1998

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

### SECTION II. Decision Being Appealed

1. Name of local/port government: Encinitas

2. Brief description of development being appealed:

Construction of a 42,144 sq. ft. private elementary school on a 20 acre lot that involves the fill of .10 acre of riparian marsh habitat. On-site mitigation is proposed for the wetland impacts.

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

3616 Manchester Avenue, Encinitas, San Diego County. (APN: 262-073-24)

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.

Received at Commission  
Meeting

DEC 10 1998

### TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-98-158

DATE FILED: 12/10/98

DISTRICT SAN DIEGO

from: \_\_\_\_\_

EXHIBIT NO. 3
APPLICATION NO. <b>A-6-ENC-98-158</b>
Copies of Appeals <b>1 of 24</b>
California Coastal Commission

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

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

a.  Planning Director/Zoning Administrator

c.  Planning Commission

b.  City Council/Board of Supervisors

d.  Other \_\_\_\_\_

3. Date of local government's decision: November 19, 1998

4. Local government's file number (if any): 98-039 CDP

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:

Kathleen Porterfield  
Encinitas Country Day School  
2155 Encinitas Blvd.  
Encinitas, Ca 92024

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) Doug Gibson  
San Eljo Lagoon Conservancy  
P.O. Box 230634  
Encinitas, Ca 92024

(2) Tinker Mills & Janie Shankles  
3681 Manchester Ave  
Encinitas, CA 92024

(3) Theodors J. Griswold  
430 B Street, Suite 2100  
San Diego, CA 92101-4469

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.

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

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.)

See Attachment "A"

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

SECTION V. Certification

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

Signed *[Signature]*  
Appellant or Agent

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

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

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

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

### Encinitas Country Day School Appeal Attachment A

The proposed development involves the development of 16 acres of an existing 20 acre lot to include 42,144 sq. ft. of classroom and administration buildings, a caretakers residence, landscaping, playgrounds, recreational uses and parking facilities. The site is located on an undisturbed vacant parcel lying between Manchester Avenue on the north and San Elijo Lagoon to the south. Lux Canyon drainage flows from north to south through the western portion of the lot and the site includes approximately 2.8 acre of coastal sage scrub. A comparable vacant 20 acre site separates the subject site from San Elijo Lagoon. The coastal permit approved by the City allows fill of approximately .10 acre of wetlands in order to widen Manchester Avenue to accommodate a private elementary school. The City findings for approval indicated that the subject fill was permitted as an "incidental public service project". In addition, the City required an on-site mitigation plan for the proposed wetland impacts. Public views of San Elijo Lagoon from Manchester Avenue will also be affected by the proposed 42,144 sq. ft. private elementary school. As approved by the City, the development does not conform to the standards set forth in the certified local coastal program.

Resource Management (RM) Policy 10.6 of the certified LCP requires completion of an alternative analysis to limit or minimize wetland fill even for permitted uses. The City, in approving the fill of .10 acre of wetlands to widen Manchester Avenue as an "incidental public service project", failed to complete the required alternative analysis.

RM Policy 10.6 of the certified LCP also requires that unavoidable wetland impacts be mitigated through the creation of new wetlands of the same type lost at a ratio of greater than 1:1. The submitted wetland mitigation plan involves the conversion of existing .3 acre of non-native dominated riparian marsh within Lux Canyon drainage to southern willow scrub; no conversion of non-wetlands to wetlands is proposed. Therefore, since the mitigation plan does not create new wetlands, the City's approval is inconsistent with RM Policy 10.6.

RM Policy 10.6 of the certified LCP also requires that a minimum 50-foot buffer be provided between any development and that all wetlands and buffers "identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device." The City's action failed to require an open space easement be applied to the wetlands, created wetlands or the buffers and is, therefore, inconsistent with Policy 10.6.

The certified LUP designates the subject parcel as Rural Residential and would permit the development of single-family homes on large lots ranging in size from 2 to 8 acres. The goal of the designation is to provide for very low-density development in order to preserve identified adjacent sensitive resources. The proposed development involves the development of 16 acres of an existing 20 acre lot and will include 42,144 sq. ft. of classroom and administration buildings, a caretakers residence, landscaping, playgrounds, recreational uses and parking facilities. While the LCP does allow such a facility with an approved major use permit, the development is very intense for this sensitive area. The final environmental assessment for the proposed development indicates that the school operation will generate approximately 691 average daily trips, as compared to less than 100 for residential buildout.

Circulation Policy 2.22 of the certified LCP requires that any future expansion and improvement of Manchester Avenue adjacent to San Elijo Lagoon occur north, away from the lagoon. Several large institutional structures, including Mira Costa College, currently exist on the north side of

Manchester in this area. As such, the proposed development raises a concern that the intensity proposed could result in future need to expand Manchester Avenue toward the lagoon inconsistent with Policy 2.22.

Policy 4.5 of the certified LCP requires that development be designed such that "building height, bulk, roof line and color and scale shall not obstruct, limit or degrade the existing views". In addition, RM Policy 4.6 requires the City to "maintain and enhance scenic highway/visual corridors viewsheds". Finally, RM Policy 4.7 designates Manchester Avenue adjacent to the subject development as a scenic highway/visual corridor viewshed. The height, bulk and scale of the proposed development may have significant impacts to public views of San Elijo Lagoon from Manchester Avenue. The proposed development includes many structures which will impact existing views to the lagoon including 30-foot high flagpoles that are proposed for each classroom.

In summary, the proposed development raises a number of concerns relating to conformity with the above cited policies and ordinances of the certified LCP relating to intensity of development, protection of public views, impacts to wetlands and appropriate mitigation.

STATE OF CALIFORNIA - THE RESOURCE AGENCY

PETE WILSON, Governor

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1728  
(619) 521-4000



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

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

**SECTION I. Appellant(s)**

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

Sara J. Wan  
22350 Carbon Mesa Rd.  
Malibu, Ca 90265 (310-456-6605)  
Zip Area Code Phone No.

**RECEIVED**

DEC 11 1998

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**SECTION II. Decision Being Appealed**

1. Name of local/port government: Encinitas

2. Brief description of development being appealed:

Construction of a 42,144 sq. ft. private elementary school on a 20 acre lot that involves the fill of .10 acre of riparian marsh habitat. On-site mitigation is proposed for the wetland impacts.

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

3616 Manchester Avenue, Encinitas, San Diego County. (APN: 262-073-24)

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.

Received at Commission Meeting

DEC 10 1998

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-6-ENC-98-158

DATE FILED: 12/10/98

DISTRICT: San Diego

6 of 24

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

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

a.  Planning Director/Zoning Administrator

c.  Planning Commission

b.  City Council/Board of Supervisors

d.  Other \_\_\_\_\_

3. Date of local government's decision: November 19, 1998

4. Local government's file number (if any): 98-039 CDP

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:

Kathleen Porterfield  
Encinitas Country Day School  
2155 Encinitas Blvd.  
Encinitas, Ca 92024

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) Doug Gibson  
San Eljio Lagoon Conservancy  
P.O. Box 230634  
Encinitas, Ca 92024

(2) Tinker Mills & Janis Shankles  
3681 Manchester Ave  
Encinitas, CA 92024

(3) Theodors J. Griswold  
530 B Street, Suite 2100  
San Diego, CA 92101-4469

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.

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

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.)

See Attachment "A"

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

**SECTION V. Certification**

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

Signed *Lois Allen*  
Appellant or Agent

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

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

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

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



### Encinitas Country Day School Appeal Attachment A

The proposed development involves the development of 16 acres of an existing 20 acre lot to include 42,144 sq. ft. of classroom and administration buildings, a caretakers residence, landscaping, playgrounds, recreational uses and parking facilities. The site is located on an undisturbed vacant parcel lying between Manchester Avenue on the north and San Elijo Lagoon to the south. Lux Canyon drainage flows from north to south through the western portion of the lot and the site includes approximately 2.8 acre of coastal sage scrub. A comparable vacant 20 acre site separates the subject site from San Elijo Lagoon. The coastal permit approved by the City allows fill of approximately .10 acre of wetlands in order to widen Manchester Avenue to accommodate a private elementary school. The City findings for approval indicated that the subject fill was permitted as an "incidental public service project". In addition, the City required an on-site mitigation plan for the proposed wetland impacts. Public views of San Elijo Lagoon from Manchester Avenue will also be affected by the proposed 42,144 sq. ft. private elementary school. As approved by the City, the development does not conform to the standards set forth in the certified local coastal program.

Resource Management (RM) Policy 10.6 of the certified LCP requires completion of an alternative analysis to limit or minimize wetland fill even for permitted uses. The City, in approving the fill of .10 acre of wetlands to widen Manchester Avenue as an "incidental public service project", failed to complete the required alternative analysis.

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Manchester in this area. As such, the proposed development raises a concern that the intensity proposed could result in future need to expand Manchester Avenue toward the lagoon inconsistent with Policy 2.22.

Policy 4.5 of the certified LCP requires that development be designed such that "building height, bulk, roof line and color and scale shall not obstruct, limit or degrade the existing views". In addition, RM Policy 4.6 requires the City to "maintain and enhance scenic highway/visual corridors viewsheds". Finally, RM Policy 4.7 designates Manchester Avenue adjacent to the subject development as a scenic highway/visual corridor viewshed. The height, bulk and scale of the proposed development may have significant impacts to public views of San Elijo Lagoon from Manchester Avenue. The proposed development includes many structures which will impact existing views to the lagoon including 30-foot high flagpoles that are proposed for each classroom.

In summary, the proposed development raises a number of concerns relating to conformity with the above cited policies and ordinances of the certified LCP relating to intensity of development, protection of public views, impacts to wetlands and appropriate mitigation.

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1723  
(619) 521-8034



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

SAN ELIJO LAGOON CONSERVANCY

POST OFFICE BOX 230634

ENCINITAS, CA 92023-0634

( 760 ) 436-3944

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port  
government: CITY OF ENCINITAS

2. Brief description of development being  
appealed: COUNTRY DAY SCHOOL (432 STUDENT CAPACITY)

3. Development's location (street address, assessor's parcel  
no., cross street, etc.): 3616 MANCHESTER AVENUE

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: XXX

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: A-6-ENC-98-158

DATE FILED: 12/10/98

DISTRICT: San Diego

**RECEIVED**

DEC 10 1998

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

D/86

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

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: 11/19/98

7. Local government's file number (if any): 98-039 MUP/DB/GDP; APR 262-073-24

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:

KATHLEEN PORTERFIELD/ENCINITAS COUNTRY DAY SCHOOL  
ENCINITAS BLVD.  
ENCINITAS, CA

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) DOUG GIBSON, EXECUTIVE DIRECTOR, SAN ELLJO LAGOON CONSERVANCY  
POST OFFICE BOX 230634  
ENCINITAS, CA 92023-0634

(2) TED GRISWOLD, ESQ.  
530 B STREET, SUITE 2100  
SAN DIEGO, CA 92101

(3) TINKER ZIMMER  
MANCHESTER AVENUE  
ENCINITAS, CA 92024

(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.

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

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.)

SEE ATTACHMENT

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

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 knowledge.

Signed Kevin K. Johnson  
Appellant or Agent KEVIN K. JOHNSON  
PRESIDENT, SAN ELIJO LAGOON CONSERVANCY  
Date 12/10/98

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

Signed \_\_\_\_\_  
Appellant \_\_\_\_\_  
Date \_\_\_\_\_

## GROUNDS FOR APPEAL

1. The project as approved is inconsistent with the California Coastal Act and the local Coastal Plan for the City of Encinitas.

The local Coastal Plan provides that the City of Encinitas will encourage and cooperate with other responsible agencies to plan and implement an integrated management plan for the long term conservation and restoration of wetland resources at San Elijo Lagoon . . . (R.M. Policy 10.10).

The City of Encinitas has taken absolutely no steps to develop an integrated management plan for the San Elijo Lagoon and the properties adjacent to it.

This particular project has been viewed and planned in isolation as if it will have no precedence and no cumulative impact effects upon what happens to surrounding undeveloped properties and the area in and around the Lagoon.

A classic example is that the City is currently proceeding in an eminent domain action to take 20 acres due south and adjacent to the Country Day school project.

The City is currently planning parking lot installation as well as building installation as part of a diverse sports complex at that location.

The Country Day School project should have been planned and conditioned in such a way as to mitigate the cumulative impacts of at least the two projects which are currently pending. For example, we are not aware of any specific requirement that joint use of the parking lot at the Country Day school be allowed with the City's sports park project.

A joint use mitigation plan would allow the City to avoid paving valuable buffer areas next to the Lagoon and also avoid problems with hydrocarbon runoff into the Lagoon.

By having a required joint use project parking lot, security lighting immediately adjacent to the Lagoon on the southern 20 acres would not be required.

There are multiple other examples of how the two projects in the planning process should have developed joint mitigation features.

Had the City, pursuant to the directors of the local Coastal Plan, developed an integrative management plan for the Lagoon, such planning would have taken place.

Another example of the City's failure to comprehensively plan for the area is found in Policy 10.4 of the

Resource Management Element of the General Plan/Local Coastal Plan. That policy provides that the City will develop a program to acquire and preserve the entire undeveloped riparian corridor within the City of Encinitas that drains into the San Elijo Lagoon and the Batiquitos Lagoon.

Lux Creek is a riparian corridor which drains through the Country Day School property in the Lagoon. There has been no consideration whatsoever given to acquisition of that corridor nor to northerly or southerly extensions of that Creek.

The project should have included a review of a comprehensive acquisition and preservation options for the riparian corridor in question as well as for Encinitas Creek.

Once again the City has failed to plan in this regard.

Another example of the City's total failure to plan for and preserve the natural resources of the City is found in a letter dated October 1998 provided by San Diego Baykeeper to the City of Encinitas.

It is a 60-day notice of intention to sue under the Federal Clean Water Act, 33 U.S.C. §1365.

At page two of that letter, Baykeeper states that the City's "failure to develop and implement BMP's as a result of the pollutants being discharged into receiving waters, such as the Pacific Ocean, San Elijo Lagoon, Cottonwood Creek and Batiquitos Lagoon."

In essence, the City is proceeding with piecemeal development without looking at the big picture with respect to long-term viability and protection of the Lagoon and its resources.

Multiple other provisions of the Resource Management Element have been violated by the subject project.

On the subject of traffic circulation, the project has been designed to attempt to mitigate impacts immediately adjacent to Country Day school but does not adequately address the impacts on traffic at the intersection of Manchester and El Camino Real and at the intersection of Manchester and the freeway.

It is important to note that the existing zoning for the property is one lot per two acres. At best, the applicant could have built ten homes. These would have generated less than 100 ADT's a day.

In this case a school sufficient to serve 432 students has been approved. This is a huge increase over expected densities from the property.

The intersection of Manchester and El Camino Reals already fails at peak p.m. rush hours where people cannot turn left onto El Camino Real due to traffic backed-up from the interchange of Manchester and I-5.

Traffic backing up on westbound Manchester at the intersection of El Camino Real prevents people from turning right to go north onto El Camino Real.

There are no mitigation measures designed to deal with this problem.

The school itself is simply too large in terms of its traffic impacts on the subject area. Requirements by the City that the phases 2, 3 and 4 of the project, expanding beyond 250 students are helpful, however, specific conditions should declare that the City has authority to refuse further expansion of the school in the event there are unacceptable levels of service along Manchester at its intersection with El Camino Real.

From the standpoint of the local Coastal Plan, the Coastal Act and the California Environmental Quality Act, there has been incomplete analysis of traffic impacts and there is incomplete mitigation with respect to the same. There is also been a failure to fully examine cumulative impacts of traffic increases from the projects in that area and the role of the Country Day school in the future regarding those impacts.

There are multiple properties due east of the Country Day school site which are directly adjacent to and include portions of Escondido Creek. No consideration in the planning process was given to the impacts of the school from the standpoint of growth inducing and intensification impacts on those adjacent properties.

State agencies have plans to purchase properties in this area for acquisition and yet the Planning process did not consider any of these.

Finally, we note that the City failed to conduct an Environmental Impact Report thereby avoiding such key issues as cumulative impacts, alternative projects, sizes and locations and growth-inducing impacts.

Attached hereto as Exhibit "B" is a copy of Resolution number 98-91 approved by the Encinitas City Council on November 19, 1998.



CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1728  
(619) 521-8036



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

Tinker Mills + Jamie Shankles  
3681 Manchester Ave.  
Encinitas Ca 92024 (760) 753-4015  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Encinitas City Council

2. Brief description of development being appealed: Encinitas Country Day School Private School

3. Development's location (street address, assessor's parcel no., cross street, etc.): 3616 Manchester Ave 202-073-24 El Camino Manchester - Encinitas Ca 92024

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: check traffic situation & after each phase.
- 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: A-6-ENC-98-153

DATE FILED: 12/10/98

DISTRICT: San Diego

RECEIVED

DEC 10 1998

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT D/86

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

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

- a.  Planning Director/Zoning Administrator
- b.  City Council/Board of Supervisors
- c.  Planning Commission
- d.  Other \_\_\_\_\_

6. Date of local government's decision: November 19, 1998

7. Local government's file number (if any): 98-039

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:  
Kathleen Dorlerfield / Encinitas Country Day School  
2155 Encinitas Blvd  
Encinitas Ca 92024

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) Robert Ratliff  
3709 Manchester Ave  
Encinitas Ca 92024
- (2) Shaundra Pickering  
3687 Manchester Ave  
Encinitas Ca 92024
- (3) Cecelia Locke  
3689 Manchester Ave  
Encinitas Ca 92024
- (4) Robert Nunnige  
c/o Coast News P.O. 332-550  
Encinitas Ca 92023

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.

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

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.)

Traffic, these improvements on Manchester will not help the situation. Kathleen Porterfield has changed her plans and is inconsistent in her comments about her school.

See attached

photos, tape letters

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 knowledge.

Signed Timber Mills  
Appellant or Agent

Date 12/7/98

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

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_

THIS LETTER IS IN REGARDS TO THE CONSTRUCTION OF A PRIVATE SCHOOL FOR THE LOCATION AT 3616 MANCHESTER AVENUE JUST EAST OF EL CAMINO REAL IN ENCINITAS.

DUE TO THE FIRST LETTER SENT TO MYSELF AND SURROUNDING NEIGHBORS FROM THE CITY OF ENCINITAS COMMUNITY DEVELOPMENT DEPARTMENT WAS VERY MISLEADING WITH THE WRONG ADDRESS WHICH WAS (2155 ENCINITAS BLVD) WHEN THE SITE MAP ON BACK REFLECTED THE SITE LOCATED AT 3616 MANCHESTER AVENUE THEREFOR WE FEEL SHOULD BE REFILED WITH THE CORRECT ADDRESS.

THE LETTER FURTHER STATES THAT THE CITY OF ENCINITAS ENVIRONMENTAL CONSULTANT FOR THE PROJECT DUDEK AND ASSOCIATES IS RECOMMENDING ADOPTION OF A NEGATIVE DECLARATION WHICH MEANS THAT THE PROJECT WILL NOT POSE ANY SIGNIFICANT ADVERSE IMPACTS ON THE ENVIRONMENT. WE ARE IN DIRECT OPPOSITION TO THIS DECLARATION FOR THE FOLOWING REASONS...

1. THE INTERSECTION ON MANCHESTER AVENUE ALREADY HAS A HIGH VOLUME OF VEHICLES DUE TO DAILY TRAFFIC. WITH THE LOCATION OF THE TURN LANES PROPOSED FOR THE SCHOOL ENTERANCES ONE IN WHICH IS ON A BLIND CURVE WHICH, HAS BEEN THE CAUSE OF NUMEROUS SERIOUS ACCIDENTS (OVERTURNED VEHICLES, HEAD ON COLLISIONS AND REAR END ACCIDENTS) NOT TO MENTION THE HIGH VOLUME OF NEAR MISS ACCIDENTS FROM SPEEDING CARS NOT PAYING ATTENTION TO SLOWER OR STOPPED VEHICLES BECAUSE OF TRAFFIC. THE PEAK HOURS OF TRAFFIC IN THE MORNING ARE 6:30am -8:30am WHICH TRAFFIC IS BACKED UP AT TIMES 1/4 MILE ON MANCHESTER AVENUE AND SOUTH BOUND EL CAMNIO REAL. AND THE PROPOSED WIDING OF MANCHESTER AVE FROM EL CAMINO REAL TO THE I-5 FREEWAY WILL NOT MAKE A DIFFERENCE DUE TO THE ONE LANE ONRAMP FROM THE WEST BOUND LANES.

2. THE IMPACT OF THE LAGOON WILL HAVE A MAJOR NEGATIVE IMPACT ON THE WILDLIFE SUCH AS THE GNATCATCHER, NESTING HAWKS, OWLS, DEER, COYOTES, AND BOBCATS. THIS IMPACT WILL BE CAUSED BY ALL THE TRASH, NOISE AND RUNOFFS FROM THE SCHOOL PARKING LOTS.

3. THE COMMUNITY OF OLIVENHAIN HAS AN ORDINANCE OF HAVING NO LIGHTS. WE FURTHER QUESTION A SCHOOL FACILITY WITHOUT HAVING SECURITY AND OTHER RELATED LIGHTS THAT A SCHOOL WOULD BE IN NEED OF.

4. HOW ARE WE GOING TO HAVE A SAFE ENTERANCE/EXIT TO OUR EASEMENT DRIVEWAY DUE TO YOUR LOCATION OF YOUR TURN LANES FOR THE PRIVATE SCHOOL? WILL WE STILL HAVE A DIRECT TURN LANE INTO OUR HOMES/OR WILL WE HAVE TO GO AND MAKE U-TURNS? I DON'T THINK SO.

5. IN COMPARISON TO ADA HARRIS SCHOOL WHICH HAS ABOUT 450 STUDENTS IS LOCATED ON WINSOR RD IN ENCINITAS IS CONSIDERED A LOW VOLUME ROAD. (NOT A MAJOR VOLUME RD LIKE MANCHESTER AVENUE) WITH SPEEDING CARS (50-60MPH AT TIMES IN WEST BOUND AND EAST BOUND LANES).
6. THE NOISE GENERATED FROM THIS SCHOOL WILL GREATLY HAVE A NEGATIVE IMPACT ON ALL OUR HOMES SURROUNDING THE SCHOOL. PLUS THE DRAMATIC DECREASE IN OUR PROPERTY VALUES DUE TO NOBODY WANTS TO LIVE NEXT TO A SCHOOL LET ALONE MORE TRAFFIC AND NOISE FROM THE CHILDREN AND VEHICLES.
7. DUE TO THE POSSIBLE CONFLICT OF INTEREST, WE ARE ALSO ASKING THAT ANYONE ON THE PLANNING COMMISSION NOT HAVE A VOTE IN THIS MATTER IF THEY HAVE A CHILD THAT WILL BE ATTENDING THIS PROPOSED SCHOOL AND OR MANAGING PROPERTY SURROUNDING THE PROPOSED SCHOOL.

I CANNOT STRESS HOW MUCH IMPACT THIS WILL HAVE ON OUR ENVIRONMENT LET ALONE MORE TRAFFIC GRIDLOCK.

THANK YOU

# Coastal Commissioners

**RECEIVED**

JAN 11 1999 CC

CALIFORNIA  
COASTAL COMMISSION  
JAN 23 1999  
COAST DISTRICT

I would like to take this opportunity to update you on Manchester Ave (3600 block) which directly relates to my current appeal of the City of Encinitas approval of the Encinitas Country Day School on Manchester Ave. (Appeal No. A-6-Enc-98-158.)

As stated before my overriding concern is traffic. On Jan 5, 1999 a motorist, driving a silver Infiniti white heading west at unsafe speeds on Manchester Ave. Unable to safely negotiate the blind curve 260' east of my and my neighbors easement road, the driver lost control and left the road coming to rest in the designated wetlands by coastal commission staff. (Pictures included)

The intersection on Manchester Ave. already has a high volume of vehicles due to daily traffic. With the location of turn lanes proposed for the school entrances, one is on a blind curve (the caretakers entrance) and has been the cause of numerous dangerous accidents, (overturned vehicles, head on collisions, and rear end accidents). Not to mention the high volume of near miss accidents from speeding cars not paying attention to slower or stopped vehicles.

Traffic is backed up at times 1/4 mile on Manchester

Ave. and southbound El Camino Real. The proposed widening of Manchester Ave. from El Camino Real to the I 5 freeway will not make a difference due to the one lane on ramp from the west bound lanes, and proposed future development in the area.

There is going to be added traffic coming from new homes being built in Carlsbad-La Costa Valley, (2400) on Rancho Santa Fe Road. In San Marcos's San Elijo Hills. (3126 homes, 272 low income housing, 135,000 sq. ft. retail center, schools and churches), the cowpasture (Shelly homes) on Rancho Santa Fe Road in Carlsbad (250), and also 35 homes on El

Camino Real in Encinitas

During the rainy season, stacking is going to be worse. It stacks clear to Pacific Ranch (map). Even if the light changes and its stacking on El Camino Real - Manchester Ave south, the people on Manchester East-West can't move. Now imagine adding school traffic trying to get into the school. If everyone is in gridlock, there poses extreme problems for emergency vehicles.

The developers propose to realign the blind curve on Manchester Ave. As homeowners, it is our belief that it will only encourage motorists to exceed the posted 40 mph speed limit.

If this school is permitted to be built, it is reasonable to expect that traffic accidents will increase accordingly.

The traffic problems also raise concerns about air quality and detrimental effects on wildlife.

*Timothy McInnis*

SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

BILL KOLENDER, SHERIFF

CASE # 99-011861-E



DEPUTY ERIC CHRISTIANSEN #2371  
ENCINAS SHERIFF'S STATION  
175 NORTH EL CAMINO REAL  
ENCINAS, CALIFORNIA 92024  
(619) 966-3600 PGR (619) 418-9303



# Cory Hargreaves & Savitch

LLP

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Theodore J. Griswold  
Direct Dial 619/515-3277  
Internet: tjg@procopio.com

January 5, 1999

## RECEIVED

JAN 05 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Mr. Lee McEachern  
California Coastal Commission  
3111 Camino Del Rio North  
Suite 200  
San Diego, CA 92108-1725

re: Coastal Commission appeal of Coastal Development Permit for Construction of  
Encinitas Country Day School

Dear Mr. McEachern:

Encinitas Country Day School appreciates the opportunity to meet with Ms. Sherilyn Sarb, Gary Cannon and yourself to provide additional information regarding the Encinitas Country Day School project. As you know, the School is very disappointed that the Commission elected to appeal this permit; however, it is optimistic that you will recommend that the appeal be withdrawn once you have had the opportunity to better understand several key aspects of the project that may not be immediately apparent in the initial review of the City's approval documents. I believe we were able to make significant progress in improving your understanding of the project at our meeting, and by this letter, we provide the additional analysis and information requested during our meeting. Additional information may be obtained from City planner Craig Olson [(760) 633-2713] and City Associate Civil Engineer Leroy Bodas [(760) 633-2777].

### Alternatives analysis associated with wetland impacts.

Your appeal indicated that you were unaware of an alternatives analysis to limit or minimize wetland fill activities. In fact, alternatives were considered in both the design process for the instant improvements and in the proposed improvements to the circulation element design in the General Plan. The following is a summary of that alternatives analysis.

#### *The wetland resource.*

The wetland area impacted by the Manchester Avenue widening project is artificially created and of limited habitat value. (See Attachment 1, Wetland Delineation Report.) The wetland area was created in the bottom of an historic agricultural excavation, with hydrology provided by road runoff and a culvert which drains runoff from the Tinker Mills property across

/COASTAL.LTR

<b>EXHIBIT NO. 4</b>
<b>APPLICATION NO.</b>
<b>A-6-ENC-98-129</b>
<b>Applicant's Response to Appeals</b>
<b>1 of 8</b>

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Mr. Lee McEachern  
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the street.<sup>1</sup> The culvert and existing runoff have caused extensive erosion within the road right of way, threatening to undermine the road. The approximately 3900 square feet of jurisdictional wetlands is completely isolated from any other wetland or surface stream source. The wetland does not impound water (water percolates to ground water) and is surrounded by ruderal and disturbed coastal sage vegetation and Manchester Avenue.

*Avoidance of wetland impacts.*

The purpose of the improvements to Manchester Avenue is to accommodate traffic flows in the area projected under the City's General Plan circulation element irrespective of the school project. In alleviating projected congestion on Manchester, the City determined first that providing alternative east-west access through construction of a new arterial road was prohibitively expensive, environmentally infeasible and unnecessary. Instead, the City concluded that improvements to Manchester, including widening and addition of turn lane features, and improvements to other east-west arterials to the north would adequately address projected traffic flows.

In designing the improvements to Manchester Avenue, the City first investigated widening the street to the north. While widening to the north would avoid impacts to the wetland area, it was determined that widening the street to the north would cause alignment problems at the intersection of El Camino Real and Manchester and would exacerbate a blind curve situation just east of the Encinitas Country Day School project site. As a result, it was determined that the widening the road to the south was the only feasible alternative, and that avoidance of the impact to the wetland area was not feasible. This conclusion was also reached in the Initial Environmental Assessment (IEA) prepared by Dudek & Associates (see. P.3 of IEA).

*Minimization of wetland impacts.*

In order to minimize the southern extent of widening for the Manchester improvements, the City chose to design the project with a central turn lane which accommodates left turns in both directions. This design allows the most efficient use of the road space and reduces the need to widen Manchester Avenue to four lanes. Nevertheless, even with the minimal increase in road width, construction of the improvement project will necessitate impacting the wetland area

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<sup>1</sup> It is debatable whether this wetland is considered a wetland under the Coastal Commission definition, which exempts "wetland habitat created by the presence of or associated with agricultural ponds and reservoirs where: (A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and (B) there is no evidence (e.g. aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir." (14 Cal Code Regs. 13577) Encinitas Country Day School believes that the subject wetland area fits this exemption; however, it has nevertheless chosen to treat the wetland as jurisdictional to maintain the environmentally-based underpinnings of its school curriculum.

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during the construction process and the southern slope bank from the road will cause the permanent loss of the wetland area.

Minimizing this permanent impact through the construction of a localized retaining wall in lieu of the slope bank was deemed infeasible because it would not effectively preserve or promote the long term viability of the wetland area. Construction of a retaining wall would still require the initial impact to the wetland. Restoration of the wetland area would be ineffective because the resultant area would be on a slope perched above the adjacent school project, destabilizing the slope and dissipating water retention. The slope is created because the school is being constructed in a recessed fashion in order to avoid any visual obstruction of the coastal resources from Manchester Avenue or adjacent properties. Thus, restoring the wetland in a manner which avoids a perched condition would require raising the school grade elevation, impacting coastal viewsheds.

Moreover, because of the historic erosion caused by the culvert beneath the road, drainage from the Tinker Mills property will no longer be conveyed under the street to the agricultural excavation. Instead, the drainage from this property will be redirected to flow to the west into the Lux Canyon drainage channel. Thus, in addition to the unavoidable impacts to the wetland area during project construction, the artificial water source for the wetland area will also be removed by the project making replacement of the wetland in the same area unfeasible.

#### **Mitigation for wetland impacts**

The Coastal Commission appeal also expressed concerns that the mitigation plan for the project does not create new wetlands. This assertion is erroneous. As we indicated to Coastal Commission staff prior to the staff recommending the appeal, the revegetation plan was unclear on this point and was in the process of being clarified. The clarified Riparian Creation and Restoration Plan for the Encinitas Country Day School ("Creation Plan") is enclosed as Attachment 2.

As the Creation Plan states, mitigation for the loss of 0.09 acres of wetland habitat will include the creation of riparian wetland at greater than 1:1 ratio, consistent with the City's LCP and the Coastal Act. The creation of 0.10 acres of new wetland habitat will occur adjacent to Lux Canyon drainage. In addition, 0.40 acres of the drainage area will be restored through the removal of exotic vegetation and revegetation with native riparian species. This provides an overall mitigation ratio of 5:1.

The requirement of creation at greater than 1:1 ratio was included in the original approval of the project by the Planning Commission and the City Council, both of which incorporated by reference the Final Initial Environmental Assessment ("IEA") as the mitigated negative declaration ("MND") for the project. In adopting the IEA, the City incorporated all of its

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mitigation recommendations as conditions of approval. As a result, the obligation to complete the Creation Plan was a condition of approval of the Project by the City.

### Conservation of wetlands and buffers

The Commission Appeal also claims that the City's approval of the project failed to require that an open space easement be placed over the wetland areas and buffers. This claim is also mistaken. Since the City incorporated all of the IEA's mitigation recommendations as conditions of approval, the obligation to protect the Creation Plan area and other wetlands was a condition of approval of the Project by the City (see letter dated December 10, 1998 from Mr. Bill Weedman, City of Encinitas, Attachment 3). A copy of the proposed open space easement that will be deeded to the City prior to issuance of grading permits is also enclosed as Attachment 4. The easement encompasses the Lux Canyon Creek area, including a 50 foot buffer area on either side of the creek, and the alkali marsh area, including a 100-foot buffer area around the marsh area on the property. There is an additional 50-foot "no impact" buffer area along the eastern buffer area of Lux Canyon Creek, extending that portion of the buffer to 100 feet.

### Traffic impacts

Commission staff expressed concern regarding the level of intensity which this project brings to the area and its potential impact on traffic. The School project anticipates a worst-case scenario increase of 691 average daily trips (ADTs) at full build out. Coastal Commission staff have compared this projected traffic with the projected trip generation for the school site under the existing zoning (rural residential--approximately one dwelling unit/acre) and determined that there may be cause for concern. Under the existing zoning, the site would generate 100-120 ADTs, concentrated at typical peak a.m. and p.m. periods of traffic flow. Closer scrutiny of the traffic impacts finds staff's concerns unnecessary.

### *The City's planned road improvements.*

The City General Plan currently includes plans to improve the roads in Manchester/El Camino Real corridor, as well as the Manchester/Interstate 5 off ramp.<sup>2</sup> Some of these improvements are planned adjacent to San Elijo Lagoon; however, the City's LCP requires that it avoid and/or minimize impacts to the Lagoon by concentrating improvements to the north (upland) side of the roads and Lagoon.

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<sup>2</sup> The El Camino/Manchester corridor improvements are currently underway and are scheduled for completion in mid-1999.

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Coastal Commission staff have stated concerns regarding the City finding itself in a position of expanding the planned interchange improvements due to the increased level of traffic from future development. Staff is concerned that the Lagoon ecosystem could be impacted if the planned improvements are expanded to the south at the Manchester-Interstate 5 off-ramp. However, this project's impact on the Manchester-Interstate 5 off-ramp is minimal, given the following considerations.

*Net increase in peak hour traffic is less than stated in Coastal Commission appeal.*

The ultimate effects of project traffic generation should be considered in the context of surrounding development proposals and the nature of the school operations. The school project site is the northeast ten acre (more or less) portion of two larger 20 acre parcels. The two twenty acre parcels are zoned rural residential. As a result, under the current zoning, the properties would be allowed to develop up to 40 dwelling units, resulting in 400-480 ADTs.

Over two years ago, the school project was initially designed as a combined project with the City, with a sports park/soccer field project dominating most of the 40 acres. The City chose not to pursue that combined project, electing instead to acquire only the southern 20 acres for the sports park and directing the School to move forward on its project as a separate undertaking. Nevertheless, the school proceeded with its plans maintaining a design that would allow joint use of the school site with the City. Joint use of the school site would allow parking for the sports park to be partially located on the school site, removing hardscape improvements from the sports park site. The School has committed to negotiating a joint use agreement with the City to coordinate the joint use and has agreed to cooperate with the City, should the City decide to ultimately acquire the northwestern portion of the property as well.<sup>3</sup>

In the context of the ultimate joint use of the entire 40 acre area, it is relevant to compare the proposed traffic use of the entire 40 acres in a "before" (current zoning) and after scenario. In the before scenario, the area will create traffic demand of 400-480 ADTs. In an after scenario, the area will create a traffic demand of 690 ADTs.<sup>4</sup> Thus the net increase in traffic over existing zoning is only 210-290 ADTs, not the 550-570 ADTs stated in the Coastal Commission Appeal. The City has confirmed that this increase in ADTs is not sufficient to cause any material change in the design of the Manchester-Interstate 5 interchange.

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<sup>3</sup> Developing the joint use of the site and cooperating in the sale of the property were the main concerns raised by the San Elijo Lagoon Conservancy in their appeal. Both issues were resolved through a written agreement with the Conservancy which led the Conservancy to withdraw its appeal.

<sup>4</sup> The sports park is slated to be used primarily on weekends for soccer and other field play, providing negligible peak hour traffic generation.

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*School operations do not coincide with typical am/pm peak traffic hours.*

The school project is bifurcated into two operations: a preschool and an elementary school. The hours of operation of each facet of the School are staggered for administrative purposes, with the preschool hours (9:00 AM-2:30 PM) beginning later and ending earlier than the grade school (8:30 AM - 3:00 PM).<sup>5</sup> A condition of enrollment in the school is that, unless a special arrangement is made with the school, children cannot be dropped off at the school any earlier than ½ hour before their classes begin.

A maximum of 10% of the students have special arrangements to arrive up to one hour prior to regular school times and a maximum of 20% of the students depart one to two hours after school ends. The remaining traffic will occur from 8:30-9:30 AM and from 2:30-3:30 PM. Typical peak commuter traffic occurs from 7:30-9:00 AM and from 4:30-6:00 PM. As a result, at full buildout, the actual peak traffic generation for the school will substantially miss the peak traffic periods which dictate the capacity of the area roads. This further diminishes the actual impacts on traffic.

Despite the offset of operations by the school, the School's traffic analysis grouped the traffic expected from the project as occurring during the typical peak hour periods. A comparison of Figure 9 in the report clearly indicates the scenario in which traffic from the project impacts typical peak hour driving periods.

*Feedback mechanism measuring traffic impacts for each phase of project.*

The Project will be built in 4 phases. As a condition of approval, the City required the project to conduct additional traffic analysis reports concurrent with each phase of the project (SCD 9) (Attachment 6). These reports shall determine whether a traffic signal, other traffic control measures, or the construction of additional traffic improvements (or securing the project's "fair share" payment towards the construction of future improvements) should be required of the applicant prior to the issuance of building permits for the next phase. This condition assures that traffic associated with the School project will be adequately monitored and mitigated before the impact occurs.

*Vanpool transportation will lessen traffic impacts.*

Although not considered in the traffic analysis and not required as traffic mitigation, the school has agreed to provide mass transit vanpool service to its students to further minimize traffic impacts.

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<sup>5</sup> These are the hours of operation at the school in its current location as well.

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Mr. Lee McEachern  
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*Requested "worst case scenario" analysis.*

Ms. Sarb of your office requested that we conduct additional analysis that assumes that all of the project traffic ignores the time parameters of the project operations, and instead assumes that all students arrive at the school between 7:30 and 8:00. This scenario was not included in the projects traffic analysis report because it does not match the actual or potential hours of operation for the school. Moreover, the City's Use Permit special condition of approval SCD 6 requires that elementary school hours start no earlier than 8:30 a.m. and end no later than 4:00 p.m. This condition requires that the school operate to avoid peak traffic periods. Additionally, SCD 7 requires a minimum of 30 minutes between the preschool and elementary school start and end times to further distribute traffic.<sup>6</sup>

The analysis requested would not fit with school operations, and it would also require assuming that the school was in violation of its use permit from the City. Given the cost of this additional analysis (\$1,000-1,500), its questionable utility in estimating actual traffic impacts from the project, and the mitigation and minimization measures outlined above, the School respectfully asks that the Commission staff reconsider its request for this analysis.

**Scenic Highway/Visual Corridor Viewsheds are Preserved.**

The Commission Appeal raises a potential concern that "the height, bulk, and scale of the proposed development may have significant impacts to public views of San Elijo Lagoon from Manchester Avenue." Part of this concern was apparently based on a misconception regarding the architectural design of the school as well as the building materials. We have since provided you with the actual cross section drawings showing that the school is designed to be inset into the topography, completely below the line of sight from Manchester. We have also provided you with the materials sheets which show the natural earth-tone materials to be used in the project. The architecture is specifically designed to blend in with the natural topography of the landscape, consistent with the City's LCP Policy 4.5. The cross section drawings and the materials sheets were before the City Council when it rendered its decision.

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<sup>6</sup> Preschool will start 30 minutes after the elementary school starts and end at least 30 minutes earlier.

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The above information should satisfy your concerns that this project was approved as fully consistent with the City's LCP and the State Coastal Act. As you can see by the sensitive nature of this project and the mitigation measures that go above and beyond the regulatory requirements, this project is intended to exceed, not just meet regulatory guidelines. To that end, if the Coastal Commission has any other concerns regarding this project, we are happy to work with you. However, a lengthy appeal process (even a short one) will require that the school construction be postponed another year, costing the school hundreds of thousands of dollars as it seeks to lease an interim facility (the timing of planned construction coincides with the termination of its existing lease site).

In light of the foregoing information and your supplemental review of the project design process and conditioned approvals, Encinitas Country Day School respectfully requests that Commission Staff recommend withdrawal of the appeal initiated by the Coastal Commission. We will address the appeals of Ms. Tinker Mills and the San Elijo Lagoon Conservancy under separate cover.

Should you have any questions, please do not hesitate to call the undersigned.

Very truly yours,



THEODORE J. GRISWOLD

TJG/se  
Encs.

cc: Commissioner Penny Allen [w/ attachments]  
Commissioner Sarah Wan [w/ attachments]  
Ms. Kathy Porterfield



# Procopio Cory Hargreaves & Savitch

LLP

Founded 1946

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Theodore J. Griswold  
Direct Dial 619/515-3277  
Internet: tjg@procopio.com

January 5, 1999

**RECEIVED**

JAN 06 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Mr. Lee McEachern  
California Coastal Commission  
3111 Camino Del Rio North  
Suite 200  
San Diego, CA 92108-1725

re: Tinker Mills appeal of Coastal Development Permit for Construction of Encinitas  
Country Day School

Dear Mr. McEachern:

By this letter, Encinitas Country Day School requests that the Coastal Commission find that no significant issue is raised by the above referenced Coastal Development Permit Appeal filed by Ms. Tinker Mills on December 10, 1998. The appeal seeks to overturn the decision of the Encinitas City Council finding that the project, as approved, is consistent with the City's Local Coastal Plan. However, the appellant failed to exhaust local appeals regarding issues relevant to the Coastal Development Permit and failed to raise any issue before the City Council alleging any inconsistency with the City's Local Coastal Plan. Moreover, the appeal fails to now allege any significant question regarding inconsistency with the LCP, which is the sole available grounds for appeal. (14 Cal. Code Regs. 13113, Public Res. Code 30603(b)) Given the discussion provided below, the appeal should be dismissed because the appellant lacks standing to appeal this permit and fails to raise any significant issue relevant to the Coastal Act in her appeal.

**Appellant lacks standing to appeal this Coastal Development Permit decision.**

Coastal Commission Regulations and the City of Encinitas LCP clearly state that an appeal may be filed only by the applicant, *an aggrieved person who exhausted local appeals*, or by any two members of the Commission. (14 Cal Code Regs. 13111(a), Encinitas Municipal Code 30.80.160.B.). The appellant fits none of these criteria, and thus lacks standing to appeal. The appellant is not the applicant, nor is she a Coastal Commissioner. The appellant may be considered an aggrieved person; however, she failed to exhaust her local appeals by never raising before the local authorities (City Council and Planning Commission) any claims of inconsistency with the City's LCP.

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<b>EXHIBIT NO. 5</b>
<b>APPLICATION NO.</b> <b>A-6-ENC-98-129</b>
<b>Applicant's Response to Appeal by Tinker Mills</b>
<b>1 of 3</b>

LAW OFFICES OF  
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

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The Commission's regulations specifically adopt the doctrine of exhaustion of administrative remedies (14 Cal Code Regs section 13111) which requires that a person disagreeing with the City's decision on a coastal development permit exhaust their appeals before the City before asking the Commission to review that decision. The requirement to disclose arguments before the lower decision making body is the essence of the exhaustion of remedies doctrine and of the appeals process. *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal. App. 3d 1194, 1198. However, in this instance, Ms. Mills never raised an issue of LCP consistency before the City Council or Planning Commission.

The Commission has previously received all copies of written materials submitted to the City by Ms. Mills regarding this project. Attached to this letter are the transcripts from oral testimony provided by Ms. Mills before the Planning Commission and the City Council.<sup>1</sup> Examination of the written and oral testimony clearly show that Ms. Mills at no time raised before the City any question or concern regarding the projects consistency with the City's LCP. As a result, she has never allowed the City the opportunity to respond to her LCP consistency concerns, if any.

Failing to previously raise the issues now appealed to the Commission is not a harmless error. Ms. Mills has effectively withheld arguments that could have and should have been made before the City Council for the purpose of drawing out the appeal process and delaying the construction of the project. In so doing, Ms. Mills threatens to cause the project applicant hundreds of thousands of dollars in delays because if the Commission hears the appeal, the project cannot begin construction until September 1999.<sup>2</sup> The integrity of the exhaustion doctrine should be upheld, and the Commission should find that Ms. Mills does not have standing to appeal the coastal development permit decision.

**Appellant fails to raise any significant issue relevant to the Coastal Act in her appeal**

Public Resources Code section 30603 limits the grounds for appeal of a coastal development permit to a claim that the permit is inconsistent with the City's LCP. There are no exceptions, and this requirement is clearly stated on the Coastal Commission Appeal form and information sheet provided to Ms. Mills. Nevertheless, the Mills appeal raises no issues or

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<sup>1</sup> Copies of the tape recordings of the full Planning Commission and city Council Hearings are also provided for the Commission's reference.

<sup>2</sup> Because the project requires grading of a small portion of coastal sage habitat (fully mitigated), project grading cannot occur during the gnatcatcher breeding season--February 15-September 15. Hearing the appeal at the February Commission hearing would precluding grading before the February 15 deadline.

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PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

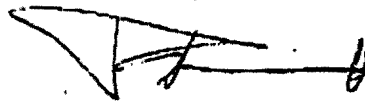
Mr. Lee McEachern  
January 5, 1999  
Page 3

allegations that the coastal development permit is inconsistent with the LCP. As a result, the subject matter of the appeal is beyond the jurisdiction of the Coastal Commission, and the Coastal Commission should find that the appeal raises no significant question as to the conformity of the coastal development permit with the City's LCP.

Ironically, even if the Commission had jurisdiction to review the concerns of Ms. Mills, it would find them already resolved. Ms. Mills' concerns regarding the traffic impacts at the Manchester Avenue/El Camino Real intersection are being resolved by the City's improvements to that intersection, which will occur within the next 90 days.<sup>3</sup> The issues of habitat impacts, lighting and noise were fully addressed in the environmental documentation and considered adequately minimized and mitigated by the City and resource agencies.

Given the above facts and information regarding the Tinker Mills appeal, Encinitas Country Day School requests that the Commission find that the appeal lacks standing and raises no significant question regarding conformity with the certified LCP, and the appeal should be dismissed. Should you need any additional information, please do not hesitate to call the undersigned.

Very truly yours,



THEODORE J. GRISWOLD

TJG/se  
Encs.

cc: Commissioner Penny Allen [w/ attachments]  
Commissioner Sarah Wan [w/ attachments]  
Ms. Tinker Mills  
Ms. Kathy Porterfield

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<sup>3</sup> Plans for the improvements were provided to Mr. Gary Cannon of your office on January 5, 1999.

January 8, 1998

**RECEIVED**

JAN 11 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Mr. Lee McEachern  
California Coastal Commission  
3111 Camino Del Rio North  
Suite 200  
San Diego, CA 92108-1725

re: Coastal Commission appeal of Coastal Development Permit of construction for  
Encinitas Country Day School

Dear Mr. McEachern:

Thank you for taking the time to talk with me today so that I may further clarify the direction I received during my meeting with Gary Cannon yesterday. As we discussed, Mr. Cannon told me that the Coastal Commission staff will be recommending that our project be denied because there are substantial unresolved issues as follows:

1. the proposed development is "too intense for a rural residential zone" specifically:
  - a. the City must confirm that our project would not be the cause of future widening (toward the Lagoon) of the Manchester/El Camino Real corridor at Interstate 5.
  - b. our traffic engineer must present a "worst case scenario" of our project impacts upon the surrounding streets.
2. the City has failed to justify the filling of the wetland
3. the City has failed to properly place the open space deed restriction on the property

Mr. Cannon stated that we have, "arguably mitigated" items two and three. Since the filling of the wetland is incorporated in the certified LCP and the deed restriction is part of our conditions of approval, we would agree. Mr. Cannon went on to state that the serious obstacle is item one.

My call to you was for clarification of item one so that I might meet with our traffic engineer to specifically address clarifying our report to address your concerns. From our discussion, I understand that you want the engineer to look at the following and compare to residential use:

1. project 100% of the school's AM traffic to arrive during the Streets' AM peak hour which is in the case of Manchester Avenue from 8-9 AM
2. project 100% of the school's PM traffic to leave across the three PM peak hours from 3-6 PM.

EXHIBIT NO. 6
APPLICATION NO. A-6-ENC-9-02
1 of 6
Additional Letter from Applicant

**3. look at the effect the school's westbound, left turning traffic will have on the Interstate 5 intersection.**

I met with our engineer today. The additional clarification will be sent to you on Monday. Mr. Cannon has stated that the deadline for the staff report for the next hearing is January 15th. He will not be making a copy available until that time. Will it say what you have agreed to above? We are depending upon your integrity in this regard.

Lee, two other subjects were discussed during our conversation that bear mentioning here. The first is in regard to the Encinitas Sports Park.

I am happy to learn that my original impression (that the Sports Park was a familiar project to the Coastal Commission staff and that it was supported in the form that the City had presented to you) is correct and that the statements that Mr. Cannon made to the contrary were in error. Since we have adjusted our plan to accommodate the joint use of our parking, should the City decide to complete the comprehensive plan, we feel that we have "left the door open" for the coordinated planning that is desired by the Lagoon Conservancy. Since we have worked with them in good faith, and even given them a year of our precious time, we respectfully ask that they not be assisted in holding us responsible for City delays that are beyond our control. Please join us in acknowledging that our plan respects their desire for a joint plan.

The last point of discussion was in regard to the procedures we would face at the hearing on January 13th. I was deeply disturbed to hear you say that the Commission would not be deciding the question of finding substantial issue at that hearing. This is directly contrary to the notice you sent to me and Coastal Commission regulations governing that notice. As I stated, I know that the City responded immediately to your request. I do not understand why Staff chose to write the report on the second day and now say that because the report lacks a staff recommendation, the Commissioners will not be allowed to decide the issue. Of course I sought more information on this problem since it will severely impact my school:

*Coastal Commission regulations require that the Commission receive the requested materials from the City within 5 days of receipt of the notice of appeal. Provided the materials are received in that time frame, at the next Commission meeting following the filing of the appeal, the commission is required to determine if the appeal raises a significant issue as to the conformity with the City's certified Local Coastal Program (LCP). If the Commission does not receive the materials, it can open and continue the hearing on the appeal until the relevant materials are received. You received the materials.*

*In our case, the appeal was filed on December 10, and the Notice of Appeal was received by the City on December 15, 1998. This allowed the City until December 20 to provide all relevant information on this project. On December 16th, the City forwarded to you the entire City file on the project (see copy of Transmittal form, attached). The City received no request for additional information from Commission Staff. Nevertheless, on December 17, just two days after the Notice of Appeal was received, Commission Staff completed the staff report on this appeal stating that the City's materials had not been received and as a result "the Commission must open and continue the hearing until*

**receipt of the local government's file." Section 13112 of your regulations requires Staff to allow at least 5 days to pass before it makes staff recommendation in this case.**

**Which brings us back to the original purpose of this letter: Because of the extreme impact of the February 15 deadline, we have asked you to let us know what issues Commission staff is concerned about so that we may satisfy those concerns. We hoped to avoid a February hearing by satisfying all concerns and having the Commission either withdraw its appeal, or find at the January hearing that no substantial question exists regarding the project's conformity with the City's Local Coastal Program.**

**In case you have forgotten, I'll review my predicament and the impact of your decision to preclude a January hearing on the substance of these appeals. As you know, the school has received authorization from the US Fish and Wildlife Service to mitigate for the project's impacts to coastal sage habitat by mitigating offsite. However a condition of that approval is that the school cannot grade the coastal sage habitat from February 15-September 15, due to the gnatcatcher's breeding season. If the project is held up and not decided until the February Coastal Commission hearing, it will be virtually impossible to obtain grading permits and begin the grading of the property before the February 15th deadline. If we do not begin grading by February 15th, we will have to wait until next September to begin construction. This delay will result in a one year delay in the opening of the school and force our oldest students to leave because of lack of space. This is traumatic for our students and unnecessary in light of the remaining issues.**

**Granted, you have allowed that your recommendation could change if we are able to satisfactorily answer your concerns as stated above. But that recommendation will be for a February hearing and will not be issued until after the January hearing to show substantive issue. Why is half a month lead time sufficient to produce a timely staff recommendation for a February hearing but a full month not enough to produce a staff recommendation for our critical need? As always, we continue to make all of our resources available to you in order to resolve this appeal in an expedited manner.**

**By this time you know (through supporting documents), that we have provided an environmentally sensitive project that deserves to have it's long sought approval upheld. The taking of the incidental wetland is in keeping with General Plan Circulation Element and certified by the Coastal Commission approval of the City's Local Coastal Plan. The easement is a condition of approval for our project. The use of the property is an "allowed use" within a rural residential zone. Our traffic engineer's clarification of his report points out that the school's peak hour traffic counts were applied to the peak hour of the street. And the City's traffic department has certified that our project will not be the cause of widening the Manchester-El Camino corridor toward the lagoon. I make no mention here of the other issues you cited in the appeal because our agreement, this date, confirms that we have answered those questions and that the above questions are the only remaining questions.**

**It is unfortunate that the Coastal Commission Appeal Zone map that the City uses in conjunction with it's certified LCP, lead us to believe that our project would be of no interest to you unless we impacted within one hundred feet of the San Elijo Lagoon or the Lux Canyon Creek. Had we**

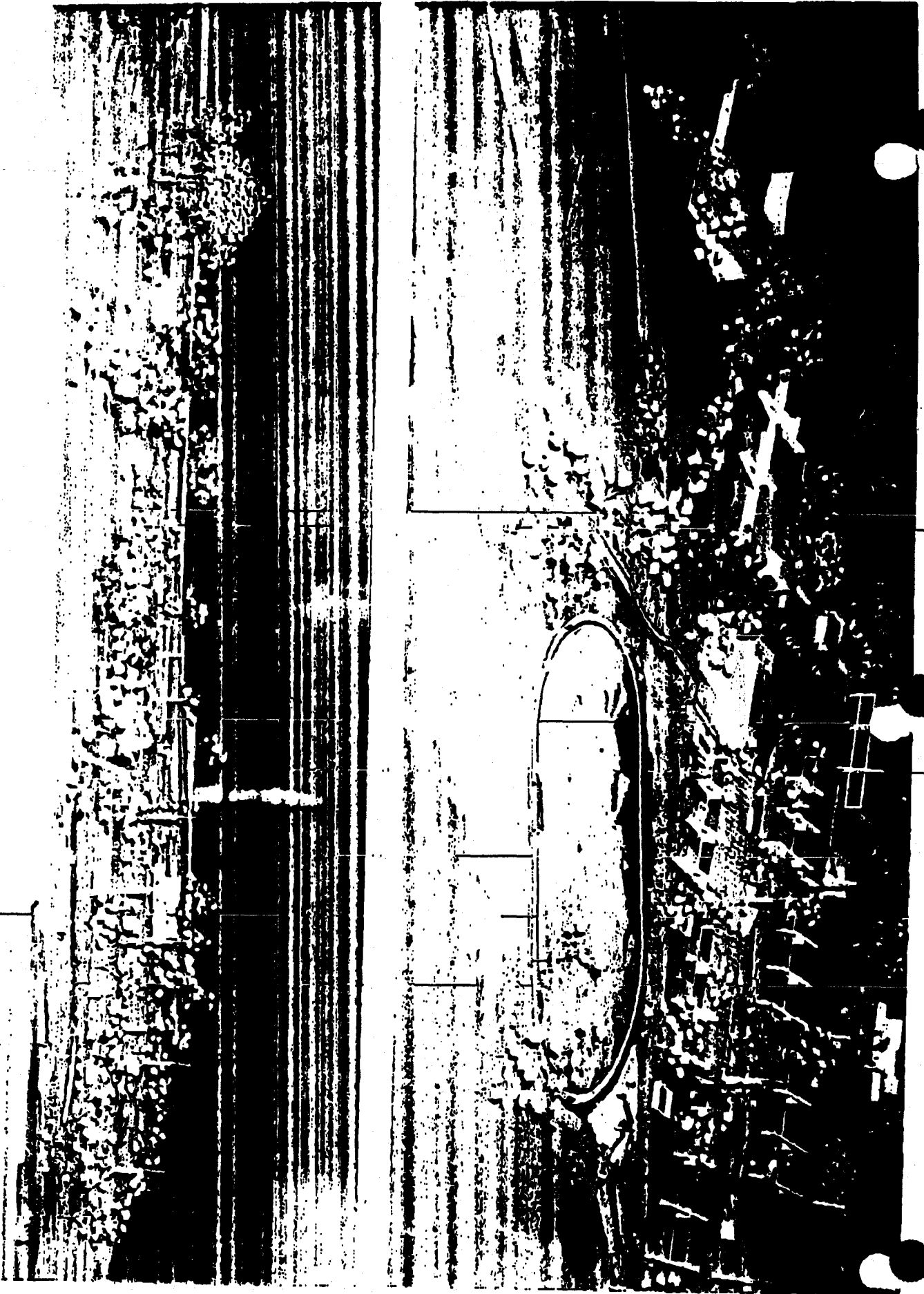
known otherwise we would have worked with you throughout the process. Nevertheless, we respected your presumed interest in our project (because of it's proximity to the lagoon), by creating 100 foot buffers to the sensitive areas. In addition, we designed a project that impacts less than 18% of the land east of the Lux Canyon Creek area with impermeable surfaces, avoids impacts to the view corridor and generously mitigates impacts to low quality habitat with high quality creation, re-vegetation and offsite purchases. Our project even provides a collection and filtration system to collect and filter any contaminated runoff. The City sent a copy of our environmental document to your Commission during the review period. We responded to all who commented. We took your lack of response to be approval, the document was certified, and we continued on our way. Our approval by the City Planning Commission and reaffirmation by the City Council in the appeal process, was won with great effort and flexibility on our part. The entire process took more than a year. We designed our project according to the limitations given us by the City and modified it to meet the legitimate concerns or demands of every agency that chose to comment. We even produced a plant list that had previously been approved by the Lagoon Conservancy. We presented a project that was designed for approval. As a school, we are dedicated to the education of young citizens. We believe in the necessity to provide youngsters with intimate contact with nature so that they can be trained in the respectful use of natural resources. We are their role models, so we were extremely determined to be the "good guys" in the development process. Our success was acknowledged by the City Planning Commission and confirmed by the City Council.

Since the day, early in December, that you determined to review our project, we have answered every question and produced every proof you have requested. You have had access to our model, materials board, colored site plan and elevations, environmental document, easement document, tentative agreement with the Lagoon Conservancy, mitigation plan, written clarifications as requested and our ongoing good will. We respectfully ask that you review the additional clarification we have submitted and your position in regard to our project. Please offer us the safe passage we have so diligently worked for. Our livelihood and the fate of many of our students is hanging in the balance.

Sincerely,  
ENCINITAS COUNTRY DAY SCHOOL



Kathleen M. Porterfield  
Executive Director



Photos of Model  
 Actual model seen by  
 Staff.

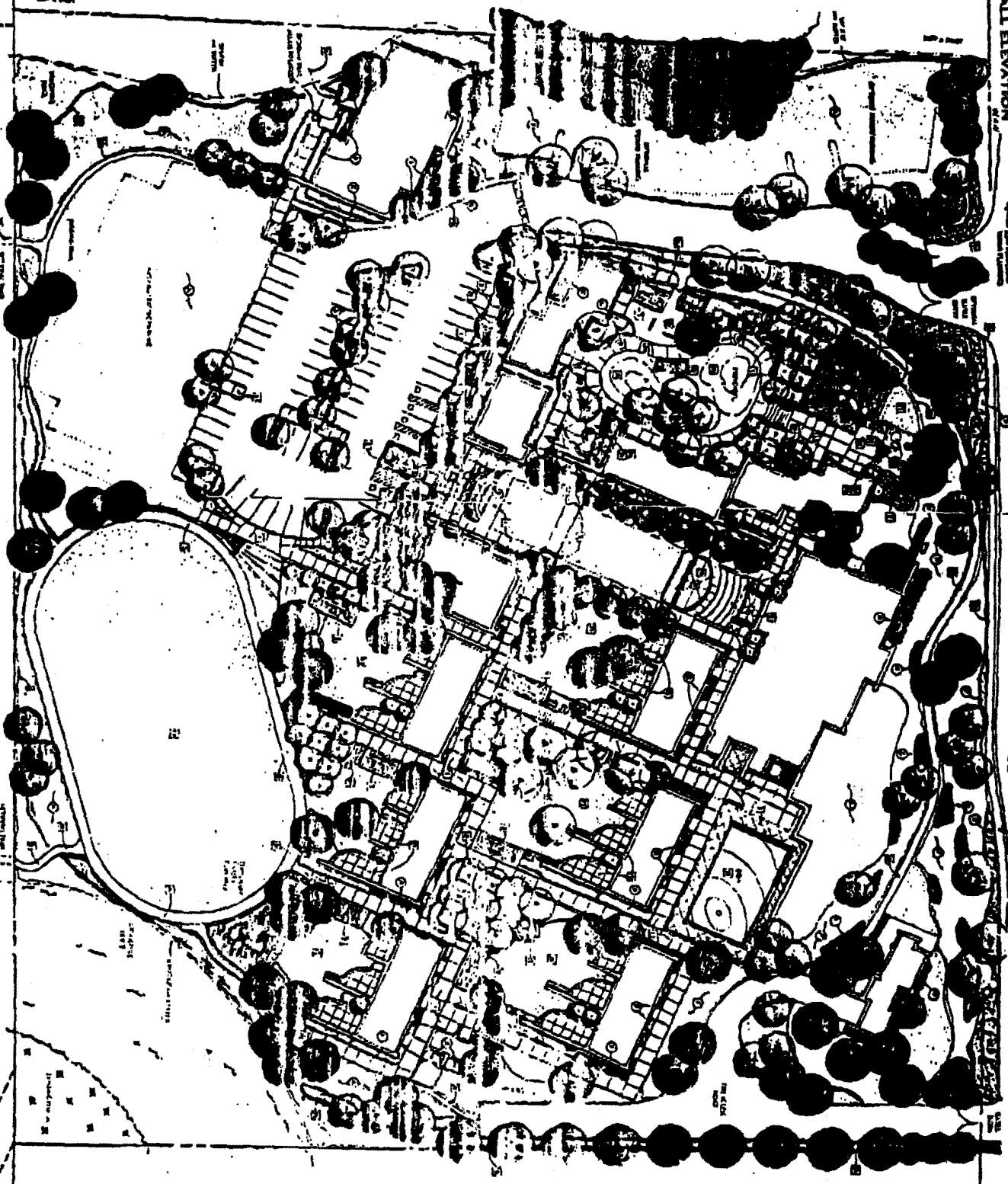


ENCINITAS COUNTRY DAY SCHOOL

CONSTRUCTION LEGEND

- 1. EXISTING CONCRETE DRIVEWAYS
- 2. EXISTING ASPHALT DRIVEWAYS
- 3. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED
- 4. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED
- 5. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB
- 6. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK
- 7. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK AND BIKEWAY
- 8. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK AND BIKEWAY AND LANDSCAPE
- 9. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK AND BIKEWAY AND LANDSCAPE AND LIGHTS
- 10. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK AND BIKEWAY AND LANDSCAPE AND LIGHTS AND SIGNAGE
- 11. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK AND BIKEWAY AND LANDSCAPE AND LIGHTS AND SIGNAGE AND FENCE
- 12. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK AND BIKEWAY AND LANDSCAPE AND LIGHTS AND SIGNAGE AND FENCE AND WALL
- 13. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK AND BIKEWAY AND LANDSCAPE AND LIGHTS AND SIGNAGE AND FENCE AND WALL AND PAINT
- 14. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK AND BIKEWAY AND LANDSCAPE AND LIGHTS AND SIGNAGE AND FENCE AND WALL AND PAINT AND TRIM
- 15. EXISTING ASPHALT DRIVEWAYS TO BE REPAIRED AND REPAVED WITH CURB AND SIDEWALK AND BIKEWAY AND LANDSCAPE AND LIGHTS AND SIGNAGE AND FENCE AND WALL AND PAINT AND TRIM AND FINISH

ENTRANCE WALL ELEVATION



IMPLICATIONS NOTES

1. ALL OF THE ABOVE NOTES ARE TO BE USED TO DETERMINE THE LOCATION AND CHARACTER OF THE PROPOSED IMPROVEMENTS TO THE EXISTING DRIVEWAYS AND TO BE SHOWN ON THE CONSTRUCTION LEGEND.

2. THE LOCATION AND CHARACTER OF THE PROPOSED IMPROVEMENTS TO THE EXISTING DRIVEWAYS AND TO BE SHOWN ON THE CONSTRUCTION LEGEND SHALL BE DETERMINED BY THE ENGINEER AND SHALL BE SHOWN ON THE CONSTRUCTION LEGEND.

3. THE LOCATION AND CHARACTER OF THE PROPOSED IMPROVEMENTS TO THE EXISTING DRIVEWAYS AND TO BE SHOWN ON THE CONSTRUCTION LEGEND SHALL BE DETERMINED BY THE ENGINEER AND SHALL BE SHOWN ON THE CONSTRUCTION LEGEND.

4. THE LOCATION AND CHARACTER OF THE PROPOSED IMPROVEMENTS TO THE EXISTING DRIVEWAYS AND TO BE SHOWN ON THE CONSTRUCTION LEGEND SHALL BE DETERMINED BY THE ENGINEER AND SHALL BE SHOWN ON THE CONSTRUCTION LEGEND.

5. THE LOCATION AND CHARACTER OF THE PROPOSED IMPROVEMENTS TO THE EXISTING DRIVEWAYS AND TO BE SHOWN ON THE CONSTRUCTION LEGEND SHALL BE DETERMINED BY THE ENGINEER AND SHALL BE SHOWN ON THE CONSTRUCTION LEGEND.

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