

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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W17a

Filed: February 9, 1999
Staff: GDC-SD
Staff Report: April 22, 1999
Hearing Date: May 11-14, 1999

RECORD PACKET COPY

STAFF REPORT: REQUEST FOR RECONSIDERATION

Application No.: A-6-ENC-98-158-R

Applicant: Encinitas Country Day School
(Kathleen Porterfield)Agents: Theodore J. Griswold
Stephanie Dall
Norbert Dall
William M. Boyd

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.

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

Commission Action and Date: On February 4, 1999, the Commission found, on appeal, that the project as approved by the City of Encinitas, raised a substantial issue with respect to its conformity with the certified Local Coastal Program (LCP). The Commission then denied the application to construct the approximately 42,144 sq. ft. private school facility.

Summary of Staff's Preliminary Recommendation:

The staff recommends that the Commission deny the request for reconsideration because no new relevant information has been presented that could not have been reasonably presented at the hearing and no errors in fact or law have been identified that have the potential of altering the Commission's decision.

Substantive File Documents: Certified City of Encinitas Local Coastal Program (LCP); Appeal Applications by Commissioner Wan, Commissioner Allen, Tinker Mills and the San Elijo Lagoon Conservancy; City of Encinitas Agenda Report for CDP 98-039 dated 9/24/98; City of Encinitas Resolution Nos. 98-91, CDP 98-039; Coastal Development Permit Nos: A-6-ENC-129/Brandywine; San Elijo Lagoon Boundary Study dated February 1976 by the California State Lands Commission; Classification of Wetlands and Deepwater Habitats of the United States, 1979, by L.M. Cowardin, V. Carter, F.C. Golet

and E.T. LaRoe; The Ecology of the Tijuana Estuary: A National Estuarine Research Reserve, 1992, by J.B. Zedler, C.S. Nordby and B.E. Kus; Wetlands, 2nd Edition, 1993, by W.J. Mitsch, and J.G. Gosselink; San Elijo Lagoon Enhancement Plan dated April 1996 by the County of San Diego Department of Parks and Recreation; Transcript of Coastal Commission hearing for A-6-98-158 on February 4, 1999; San Elijo Lagoon Tidal Study by Tierra Environmental Services dated March 15, 1999; Letter from Dr. Hany Elwany date April 14, 1999; Review of San Elijo Lagoon Tidal Study, dated April 20, 1999 by Dr. John Dixon.

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote to deny a coastal development permit, the applicant of record may request that the Commission reconsider the denial. (14 CA. Admin. Code 13109.2)

The grounds for reconsideration of a permit denial are provided in Coastal Act Section 30627, which states, in part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision. (Section 30627(b)(3).)

If the Commission grants reconsideration, the de novo hearing would be scheduled for a subsequent Commission hearing.

APPLICANT'S CONTENTIONS:

In the attached letters dated 2/5/99 and 3/18/99, the applicant contends that relevant new evidence indicates that the project site is not located between the sea and the first public road and, therefore, the project is not appealable to the Commission on that basis. The applicant contends that a study completed after the February hearing on this project demonstrates that the portion of San Elijo Lagoon that is east of Interstate 5 is not the "sea" as defined in the Coastal Act. The applicant contends that its study could not have been presented to the Commission prior to the hearing because it did not understand the basis for the Commission's assertion that its project site is between the sea and the first public road paralleling the sea and because there was inadequate time to perform a scientific analysis prior to the hearing. The applicant also contends that errors of fact and law occurred because the project site is not shown as being between the sea and the first public road paralleling the sea on the draft Post-Certification Map for the City of Encinitas. In addition, the applicant contends the Commission erred in determining that traffic, wetland and cumulative impacts of the project were inconsistent with the Certified Encinitas Local Coastal Program and that the Commission disregarded evidence to the contrary.

I. MOTION AND STAFF RECOMMENDATION:

Motion:

"I move that the Commission grant reconsideration of Coastal Development Permit No. A-6-ENC-98-158-R."

Staff Recommendation:

The staff recommends a **NO** vote. This will result in a denial of reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution to Deny Reconsideration.

The Commission hereby denies the request for reconsideration of the proposed development on the grounds that no new relevant evidence has been presented that could not have been presented at the hearing nor has there been an error of fact or law with the potential of altering the Commission's initial decision.

II. FINDINGS AND DECLARATIONS.

A. Detailed History. The applicant is requesting that the Commission reconsider its denial of the applicant's request to construct 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. The project also included the widening of Manchester Avenue adjacent to the school which would have resulted in the fill of approximately .09 acre of riparian habitat.

The project 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. An approximately 20 acre vacant parcel separates 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, small wetland areas exist within the southeastern portion of the site and within the north side of the site adjacent to Manchester Avenue.

The City of Encinitas received approval of its Local Coastal Program (LCP) in November of 1994 and began issuing coastal development permits on May 15, 1995. Prior to certification of the LCP, in 1988 Commission staff prepared a draft post-certification map to show the areas of appeal and original jurisdiction for the City of Encinitas. The map

was labeled "draft" and was provided to the City for comments. The draft post-certification map depicts Highway 101 as the first public road paralleling the sea along San Elijo Lagoon. The draft map also contains a statement indicating that development along the inland extent of San Elijo Lagoon is appealable if it is located on the first row of parcels bordering the Lagoon. This draft map was not adopted by the Commission.

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. The Notice of Final Action for the project stated that the City's decision was appealable to the Commission. On December 10, 1998, the development approval was appealed to the Coastal Commission by Ms. Tinker Mills (a local resident), San Elijo Lagoon Conservancy and Commissioners Sara Wan and Penny Allen. The Commissioners' appeal treated the project as appealable based upon the project's location between the sea and the first public road paralleling the sea as well as the fact that components of the project would be within 100 feet of wetlands. On February 5, 1999 the Commission found that the proposed development raised substantial issue related to consistency with the City's certified LCP and denied the application request based on its inconsistency with specific policies of the LCP relating to the cumulative impacts of the development on traffic, wetlands and the surrounding environment.

B. Reconsideration Request. The applicant's request for reconsideration (ref. Exhibit Nos. 3 and 4) contends that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing and that errors of fact and law occurred which have the potential for altering the Commission's decision. The applicant's first contention is that based on relevant new information, the project is not appealable to the Commission on the basis of Coastal Act section 30603(a)(1), which provides that projects are appealable if they are located between the sea and the first public road paralleling the sea. The applicant does not dispute that the project site is located between Manchester Avenue and San Elijo Lagoon. Nor does the applicant dispute that Manchester Avenue is the first road bordering the northern side of San Elijo Lagoon. The applicant asserts that the portion of San Elijo Lagoon to the south of its project site is not the "sea." The applicant also contends that because the Commission's draft post-certification map does not show Manchester Avenue as the first public road paralleling the sea, the Commission cannot assert appeal jurisdiction over the project. The applicant also contends that the Commission erred when it found the proposed development inconsistent with the Certified LCP as it relates to intensity of development, traffic and wetlands. Each of the applicant's contentions are addressed below.

1. Tidal Action Study

The Commission asserted appeal jurisdiction for the proposed project partly on the basis of Section 30603(a)(1) of the Coastal Act, which provides that development approved by a certified local government is appealable if it is located between the sea and the first public road paralleling the sea. In particular, Section 30603 states, in part:

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

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

In its request for reconsideration dated March 18, 1999, the applicant states that it has completed a study which constitutes: "[e]xpert evidence that the extent of the 'sea' in San Elijo Lagoon is limited to a 'mixing zone' seaward of Interstate 5, and does not extend east of Interstate 5, . . ." Therefore, the applicant asserts, its project site, which is east of Interstate 5 ("I-5"), is not between the sea and the first public road paralleling the sea. To support its contention the applicant has submitted a study that concludes that tidal action within San Elijo Lagoon does not extend east of I-5 (San Elijo Lagoon Tidal Study prepared by Tierra Environmental Services, Inc., dated March 15, 1999, hereinafter referred to as the "Tidal Study"). The study measured changes in water elevation and salinity at various locations within San Elijo Lagoon over a four-day period from February 27 to March 2, 1999. The Tidal Study concludes that while the water level at the I-5 bridge rises and falls in a pattern similar to the predicted daily tides, the degree of change does not correspond with the predicted ocean level. In addition, the Tidal Study also concludes that because salinity levels beneath I-5 during these four surveyed days did not rise and fall with the tides, seawater is not contacting the water beneath I-5.

The Commission finds that the Tidal Study is not new relevant information which in the exercise of reasonable diligence could not have been presented at the hearing. First, the applicant could have conducted a 4-day study of tidal action any time between December 14, 1998, which is when the applicant was notified of the Commission's appeal and the Commission hearing, which occurred on February 4, 1999. In its request for reconsideration dated March 28, 1999, the applicant states: "the published Staff Report and Recommendation provided no factual rationale for the Commission's new 'first public road' assertion of jurisdiction over the project." However, the Commission staff report dated January 14, 1999, for the proposed project did indicate that the project was appealable based upon its location between Manchester Avenue, the first public road paralleling the sea, and San Elijo Lagoon, the sea. Thus, upon receipt of the staff report the applicant had notice that the Commission took the position that Manchester Avenue is the first public road paralleling the sea and that San Elijo Lagoon is the sea. It should also be noted that the Commissioner appeals, dated December 10, 1998, clearly identified LCP inconsistencies related to the entire site. Those inconsistencies could only have been considered if the Commission asserted Manchester Avenue as the first coastal roadway in this area.

Furthermore, in late January 1999, the applicant spoke with and faxed information to the Commission's technical services mapping staff in San Francisco concerning the project's location between the sea and the first public road. The applicant indicated in those

conversations that it had spoken with Dr. Hany Elwany, an oceanographer, about whether San Elijo Lagoon is subject to tidal action. The applicant acknowledged that Dr. Elwany confirmed that San Elijo Lagoon east of I-5 was subject to tidal action (see attached Exhibit No. 7). As Dr. Elwany indicates in the attached letter (Exhibit No. 8), documentation of tidal action within San Elijo Lagoon east of I-5 was previously available from measurements performed from 1994 to 1997. The applicant has also had extensive contact with the San Elijo Lagoon Conservancy during the CEQA and local review processes. The applicant was fully aware of San Elijo Lagoon Conservancy's role as a manager of the lagoon's resources and could have with reasonable diligence inquired as to the available data concerning tidal action within the lagoon. In addition to, or instead of, conducting a 4-day study of tidal action prior to the hearing, the applicant could have reviewed and addressed the existing information concerning tidal action in San Elijo Lagoon. As such the Commission finds that the applicant with reasonable diligence could have conducted and presented their tidal study or reviewed and presented other available information to the Commission at the February 4, 1999 hearing.

The Commission also finds that the applicant's submitted tidal study does not demonstrate that San Elijo Lagoon east of I-5 is not the "sea" as defined in the Coastal Act. The term "sea" is defined in Section 30115 of the Coastal Act as:

"Sea" means the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks, and flood control and drainage channels. "Sea" does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, including any river, stream, tributary, creek, or flood control or drainage channel flowing directly or indirectly into such area.

The San Elijo Lagoon, including the portion of the lagoon east of I-5 meets this definition of the term "sea" because the lagoon is an estuary. The definition of the term "sea" explicitly includes all estuaries. The U. S. Fish and Wildlife Service (Cowardin et al. 1979) defines the estuarine system as follows:

The Estuarine System...consists of deepwater tidal habitats and adjacent tidal wetlands that are usually semienclosed by land but have open, partly obstructed, or sporadic access to the open ocean, and in which ocean water is at least occasionally diluted by freshwater runoff from land.

and

The Estuarine System extends (1) upstream and landward to where ocean-derived salts measure less than 0.5 ‰ during the period of average annual low flow; Note: ‰= parts per thousand (ppt).

The Commission's regulations define the term "estuary" consistent with the above definition. California Code of Regulations section 13577(c), in part, states that:

. . . For purposes of this section, an estuary shall be defined as a coastal waterbody, usually semi-enclosed by land, having open, partially obstructed, or intermittent exchange with open ocean, and in which ocean water is at least occasionally diluted by freshwater from the land. . .

Similarly, in a standard textbook on wetland ecology, Mitsch and Gosselink (1993) state that "Coastal marshes lie on gradients of decreasing salinity from the ocean inland." and then in their Figure 9-1 (p.268) define the estuary as tidal marsh with average annual salinity greater than 0.5 ppt. These descriptions are in harmony with the dictionary definition of an estuary as "a water passage where the tide meets a river current".

It is clear that San Elijo Lagoon is an "estuary". It is a semi-enclosed area with sporadic access to the open ocean where the tide meets river currents of Escondido Creek and La Orilla Creek. Historically, it was predominantly tidal salt marsh habitat. As a result of human activities over the last 100 years or so, the lagoon mouth has been substantially altered, the tidal connection is more variable, salt marsh vegetation has declined in many areas, and brackish-water vegetation has invaded. These activities have degraded the estuary and altered the inland and upland extent. Nevertheless, San Elijo Lagoon continues to meet the dictionary and scientific definitions of the term "estuary." Under the Coastal Act definition of the term "sea" it is not clear whether the extent of tidal action within the lagoon is relevant, given that the term "sea" includes all estuaries and San Elijo Lagoon is an estuary. However, in any case, it is clear that under current conditions, tides carry seawater to the I-5 bridge and some unknown distance further inland during much of the year.

Environmental monitoring is routinely conducted at five (5) stations along the San Elijo Lagoon channel by the San Elijo Lagoon Conservancy. This is a continuation of work begun by the Pacific Estuarine Research Laboratory at San Diego State University. The most inland station is located at the I-5 bridge. Since there are no obstacles in the short distance from the bridge to the dike east of the bridge, observations at the bridge also roughly apply to waters between the bridge and dike. The effects of tides on waters east of the dike are unknown. During the period 1994-1998, the waters of the San Elijo Lagoon at I-5 had an average annual salinity between 9.3 ppt and 12.6 ppt. Salts from ocean waters are seasonally diluted by freshwater runoff from land so the salinity at any given time may vary considerably from the annual average. During 1994-1999, the salinity at the Highway 5 bridge varied seasonally, in a pattern similar to that observed at the railroad bridge near the ocean mouth, and ranged from about 0 - 5 ppt during winter periods of rainfall to over 20 ppt during the dry season (period of annual average low flow). Measurements of water depth at I-5 confirm the presence of tidal action. Continuous depth measurements recorded for the San Elijo Lagoon Conservancy during May 1994 and February 1999, show a cyclic change in water depth of a similar pattern to the local open ocean tides but with a smaller range and temporal lag.

Human perturbations have fixed the location of the lagoon mouth, constrained the channel, and reduced the water capacity of the lagoon. As a result, the mouth has been frequently closed in the past, seriously degrading estuarine habitats. Over the last 10 years, substantial effort has gone into developing management plans for the San Elijo Lagoon. The most important management activity is maintenance of a tidal connection to the sea. This has been a cooperative effort of local agencies and organizations and state and federal resource agencies. As a result, during the calendar years 1994-1998, the lagoon mouth was open, providing access to the open ocean about 50% of the time (data from San Elijo Lagoon Conservancy). The San Elijo Lagoon Conservancy is establishing a trust fund, the interest from which will pay for management of the lagoon mouth in perpetuity. The Southern California Wetlands Clearing House, a consortium of federal and state agencies (the Executive Director represents the Coastal Commission), has authorized a grant of \$1 million dollars for the trust fund. There is every reason to believe that the San Elijo Lagoon will remain a tidal estuary with increasingly healthy salt marsh habitats.

The applicant asserts that its Tidal Study demonstrates that San Elijo Lagoon east of I-5 is not subject to tidal action. However, the Commission's staff biologist has reviewed the Tidal Study and has determined that conclusions regarding tidal action in the lagoon cannot be drawn from the study. The staff biologist's analysis of and conclusions regarding the Tidal Study are set forth in a memorandum from Dr. John Dixon to the Commission's San Diego District Manager, Sherilyn Sarb, dated April 20, 1999, which is attached as Exhibit No. 5 and is hereby incorporated into this staff report.

For all of the above reasons, the Commission finds that the Tidal Study does not constitute relevant new information that could not have been presented at the hearing and that there has been no error of fact or law that would have the potential for altering the Commission's conclusion that San Elijo Lagoon, including portions east of I-5 constitutes the "sea" for purposes of determining that the proposed project is located between the sea and the first public road paralleling the sea.

2. Draft Post-Certification Maps

The applicant also contends that the Commission made an error of law because it failed to follow the appeal jurisdiction boundary in the "[Draft] Post-Certification Appellate Jurisdiction Map" prepared by the Commission for the City of Encinitas. In particular, the applicant states that the Commission "abandoned the jurisdictional limits set forth in the Post-Cert Map" when it determined Manchester Avenue to be the first public road. The applicant further contends that before the Commission could use Manchester Avenue as the first public road paralleling the sea, it would have to consult with the City of Encinitas, provide notice to the public, and adopt a formal resolution and findings of fact. The Commission finds that no error of fact or law has occurred in this regard.

Section 30603 of the Coastal Act provides that development proposed to be located in the geographic areas identified in Section 30601 is appealable to the Commission. One of the geographic areas identified in Section 30603 is the area between the sea and the first

public road paralleling the sea. Section 13577(i) of the California Code of Regulations defines the first public road paralleling the sea. It states:

(i) First Public Road Paralleling the Sea.

(1) The "first public road paralleling the sea" means that road nearest to the sea, as defined in Public Resources Code Section 30115, which:

(A) is lawfully open to uninterrupted public use and is suitable for such use;

(B) is publicly maintained;

(C) is an improved, all-weather road open to motor vehicle traffic in at least one direction;

(D) is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and

(E) does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

When based on a road designated pursuant to this section, the precise boundary of the permit and appeal jurisdiction shall be located along the inland right-of-way of such road.

In this case, Manchester Avenue east of I-5 and north of San Elijo Lagoon meets the criteria for the first public road as set forth in the above regulation, including the criteria of subsection (E) above because it "generally parallels and follows the shoreline of the sea", including the physical features of the sea which "cause the waters of the sea to extend landward of the generally continuous coastline" and it "connects to other public roads providing a continuous access system". The staff in the Commission's technical services division have confirmed that Manchester Avenue constitutes the first public road paralleling the sea under the above criteria. Exhibit No. 6, a memorandum from Jon Van Coops, Mapping Program Manager, to Sherilyn Sarb, San Diego District Manager, setting the basis for the conclusion that Manchester Avenue is the first public road, is incorporated into this report.

The Commission's regulations at Section 13576(a), also require that the Commission adopt maps to illustrate the geographic areas identified in section 30601. These maps are referred to as "post-certification" maps. The Commission has not adopted a post-certification map for the City of Encinitas. The Commission's technical services staff have previously prepared a draft of a post-certification map, but the draft map has not been adopted by the Commission. The draft map does not identify Manchester Avenue as the first public road paralleling the sea along San Elijo Lagoon. Instead, it shows Highway 101 as the first public road paralleling the sea along San Elijo Lagoon.

The applicant in effect asserts that the Commission is bound by the appeal jurisdiction delineated on the draft post certification map. However, the map is not final and has not been adopted by the Commission. Draft maps do not establish the Commission's jurisdictional boundaries. Therefore, the Commission's delineation of a first public road

that is different from the one shown on the draft post-certification map is not an "abandonment of the jurisdictional limits" set forth in the map. Further, nothing in the Commission's regulations requires that it hold a hearing or notify the public of changes to a draft post-certification map. Finally, even if the draft map were a final, adopted map, the Commission's appeal jurisdiction is based upon the statutory criteria set forth in Coastal Act section 30601. The maps are intended to reflect these criteria but they are not determinative of the Commission's jurisdiction. In fact, the Commission's regulations require that each post-certification map contain the following statement: "This plat may be updated as appropriate and may not include all lands where permit and appeal jurisdiction is retained by the Commission." Thus, even adopted post-certification maps do not limit the Commission's appeal jurisdiction if they do not accurately reflect the appealable areas identified in section 30603 of the Coastal Act.

Therefore, based on the above information, the Commission reaffirms its earlier determination that Manchester Avenue east of I-5 is the first public roadway as defined by Section 13577(i)(E) of the Commission's Code of Regulations. In addition, the Commission finds that although the "Draft Post-Certified Appellate Jurisdiction Map" for the City of Encinitas does not identify Manchester Avenue as the first public road paralleling the sea, the map is in draft form and does not limit the Commission's appeal jurisdiction, and therefore, no error of law or fact has occurred.

3. Consistency with the LCP

The applicant further contends that the Commission erred in determining the project was inconsistent with the certified LCP. In requesting the reconsideration, the applicant compiled a listing of what it determined were the Commission's findings for denial and then cited them as errors of fact or law. Although its contentions are not substantiated, the applicant generally contends that the project was not inconsistent with the LCP policies related to traffic and wetlands impacts and the cumulative impacts associated with the intensity of the development. The applicant does not raise any new issues or contentions that were not previously reviewed by the Commission in its determination to deny the application.

First, the applicant contends the proposed development would have minimal traffic impacts and that the Commission erred in disregarding the traffic study and the information provided by the City supporting its claim. The Commission, however, reviewed the applicant's traffic data and City documents and found that the intensity of the development would have negative impacts and, therefore, the development was inconsistent with Circulation Policy 2.22, Land Use Policy 2.11 and Land Use Designations and Standards for Rural Residential 1 of the Certified LCP (see attached staff report, dated January 14, 1999; Exhibit No. 9). The Commission found that the proposed development would have generated traffic at almost seven (7) times the traffic generated by the buildout of the site under its current zoning designation as residential development. In addition, the Commission determined that the applicant's traffic study did not perform a comparison of these impacts (school versus residential use), did not evaluate the traffic impacts which would occur from full development of the subject

property, and failed to fully evaluate the cumulative impact this development may have on the need to widen Manchester Avenue toward San Elijo Lagoon at Interstate 5.

Secondly, the applicant contends that the Commission erred in finding that all of the cumulative impacts associated with the project were not addressed by the City in its local approval of the project. The Commission, however, found that the western portion of the 20 acre site which was labeled "not a part" by the applicant (approximately 8 acres) was not included in review by the City in its determination of cumulative impacts associated with the project. Land Use Policy 2.11 of the LCP requires the City to not allow incremental and piecemeal development of large parcels and that environmental review include full site potential. The Commission found the proposed development inconsistent with that policy.

Thirdly, the applicant contends that the Commission erred in finding the proposed development inconsistent with the wetlands protection policies of the LCP. The proposed development included a proposal to fill .09 acre of riparian marsh habitat to accommodate the widening of Manchester Avenue on the north side of the project site. Resource Management Policy 10.6 of the LCP limits the fill of wetlands to specific uses. The City determined that the widening of Manchester Avenue was an "incidental public service project" which is a permitted use for wetlands fill. However, Policy 10.6 only allows the fill of wetlands to occur for incidental public service projects "when there is no feasible less environmentally damaging alternative". However, the City failed to perform the required alternative analysis prior to approving the project. Therefore, the Commission found the proposed development inconsistent with Policy 10.6 of the LCP.

In summary, the Commission finds that the applicant has not presented any new relevant facts or information that could not have been presented at the original hearing. In addition, the applicant has not demonstrated any error of fact or law that has the potential for altering the Commission's previous decision. Instead, the applicant merely compiled a list of what the applicant determined were Commission findings and, without substantiation, contended they were errors of fact or law. In denying the project, the Commission thoroughly examined the applicant's submitted documentation and found the project inconsistent with specific policies of the Certified LCP. As such, the Commission finds that pursuant to Section 30627 of the Coastal Act, no grounds for reconsideration exist and, therefore, the request is denied.

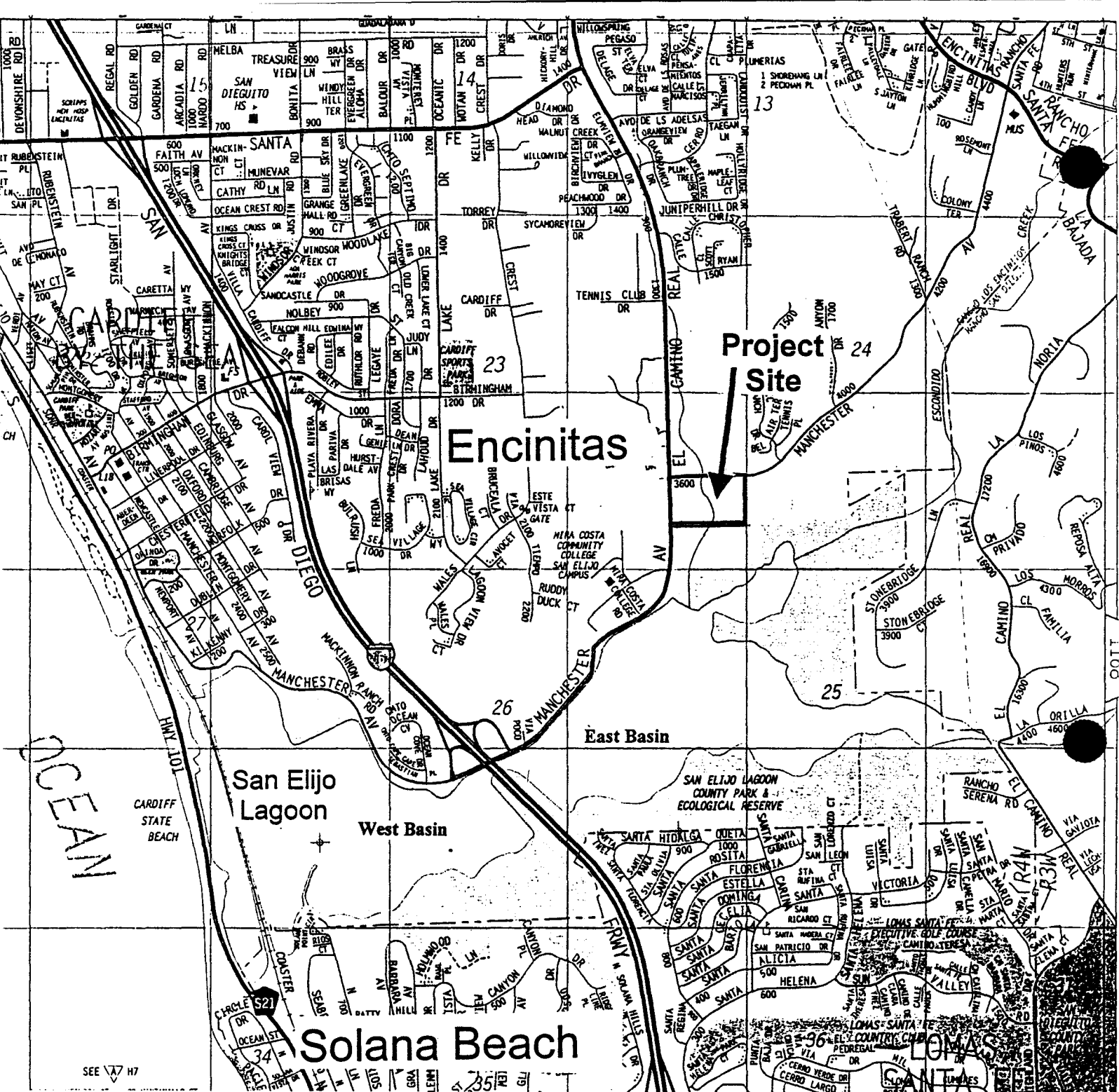
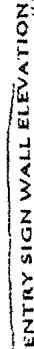


EXHIBIT NO. 1
APPLICATION NO.
A-6-98-158-R
Location Map
California Coastal Commission

-R

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1. What is the purpose of the study?
 2. What are the research objectives?
 3. What is the research methodology?
 4. What are the research findings?
 5. What are the conclusions?
 6. What are the limitations?
 7. What are the implications?
 8. What are the recommendations?
 9. What are the future research directions?
 10. What are the references?

EXHIBIT NO. 2
APPLICATION NO.
A-6-ENC-98-158
Site Plan

California Coastal Commission

Procopio
Cory
Hargreaves
& Savitch

LLP

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530 B Street • Suite 2100 • San Diego • California 92101-4469
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Theodore J. Griswold
Direct Dial 619/515-3277
Internet: tjg@procopio.com

February 5, 1999

VIA FACSIMILE AND
CERTIFIED MAIL

Peter M. Douglas, Executive Director
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

re: Request for Reconsideration of Coastal Development Permit Denial for Construction of
Encinitas Country Day School (Appeal No. A-6-98-158)

Dear Mr. Douglas:

The above referenced appeal for the Encinitas Country Day School Project was heard in a de novo hearing by the Commission on February 4, 1999. The hearing resulted in a denial of the Coastal Development Permit for the project.

Pursuant to Public Resources Code 30627 and Coastal Commission regulations 13109.1-6, the applicant for this project requests that the Commission reconsider its denial of the permit. The basis for this request is that there is relevant new evidence that, in the exercise of reasonable diligence, the applicant could not have presented at the hearing, and that there was an error of law and/or fact which potentially altered the decision of the Commission. The applicant requests that this reconsideration be heard at the next meeting of the Coastal Commission. Further explanation and support for this request will be forwarded to your office as soon as possible after receipt of the hearing transcripts. The hearing transcripts were requested on an expedited basis

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COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

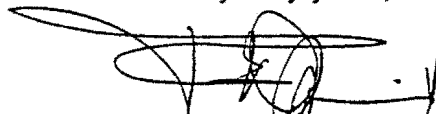
EXHIBIT NO. 3
APPLICATION NO.
A-6-98-158-R
Request for
Reconsideration

California Coastal Commission

Mr. Peter Douglas
February 5, 1999
Page 2

earlier today. Should you have any questions regarding this matter, please do not hesitate to call the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'TJG', with a large, stylized flourish extending to the left.

THEODORE J. GRISWOLD

TJG/se

cc: Rusty Areias, Chair, Coastal Commission
Jamee Jordan Patterson Esq.
Ms. Kathy Porterfield

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BY FAX AND U.S. MAIL

March 18, 1999

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Ms. Sherilyn Sarb
California Coastal Commission
San Diego Coast Area
3111 Camino del Rio North, Suite 200
San Diego, California 92108

Re: Coastal Development Permit A-6-98-158 (Encinitas Country Day School)
SUMMARY OF RELEVANT NEW INFORMATION, AND ERRORS OF FACT
AND LAW, IN SUPPORT OF FEBRUARY 5, 1999 REQUEST FOR
RECONSIDERATION

Dear Ms. Sarb:

Encinitas Country Day School ("Encinitas Country Day") is the applicant for Coastal Development Permit A-6-98-152 (the "Permit") which, although approved by the City of Encinitas (the "City") on November 19, 1998, was denied on appeal by the Coastal Commission ("Commission") on February 4, 1999.

Pursuant to Public Resources Code section 30627, on February 5, 1999, Encinitas Country Day submitted a Request for Reconsideration of the Commission's denial to your office, citing relevant new evidence as well as errors of fact and law as the basis for that request. In response to Commission staff's subsequent request, Encinitas Country Day hereby submits to the Commission the following enumeration of relevant new evidence and errors of fact and law, in support of the February 5, 1999 Request for Reconsideration.

Relevant New Evidence:

Relevant new evidence establishes that the Encinitas Country Day project site is not located between the first public road and the sea, and therefore not subject to Coastal Commission's appellate jurisdiction pursuant to the provisions of Public Resources Code Section 30603(a)(1) and Title 14, California Code of Regulations Section 13577(i).

EXHIBIT NO. 4
APPLICATION NO. A-6-98-158-R
Applicant's Stated Grounds for Reconsideration

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Expert evidence that the extent of the "sea" in San Elijo Lagoon is limited to a "mixing zone" seaward of Interstate 5, and does not extend east of Interstate 5, has been submitted to Commission staff under separate cover.

This relevant new evidence could not have been presented to the Commission prior to February 4, 1999, in the exercise of reasonable diligence, for the following reasons: First, the published Staff Report and Recommendation provided no factual rationale for the Commission's new "first public road" assertion of jurisdiction over the project.¹ As a result, Encinitas Country Day had no reasonable opportunity to respond to that assertion of jurisdiction. Second, even if Encinitas Country Day had been timely presented with the Commission's rationale for expanding its appellate jurisdiction, Encinitas Country Day -- in the limited time available to it -- could not have retained a qualified expert to conduct field studies and laboratory analysis necessary to adequately address the maximum extent of the sea in the vicinity of San Elijo Lagoon (informally identified as the pivotal issue in an oral communication by Commission technical staff in San Francisco). Moreover, the expert's analysis could not have been completed in the limited time between publication of the Staff Report and the hearing on February 4, 1999.

Errors of Fact and Law:

The Commission committed an error of law when it:

- (1) exercised appellate jurisdiction over the school project (the "Project"), which is located well east and outside of the Commission's jurisdictional boundary as set forth in the Post-Certification Appellate Jurisdiction Map ("the Post-Cert Map") prepared by the Commission's mapping unit for the City's certified Local Coastal Program ("LCP");
- (2) abandoned the jurisdictional limits set forth in the Post-Cert Map and extended those limits to Manchester Avenue without first consulting the City as required by Title 14 California Code of Regulations, Section 13576(a);
- (3) abandoned the jurisdictional limits set forth in the Post-Cert Map and extended those limits to Manchester Avenue without first notifying the public that such an action would be taken, and without adopting a formal resolution and findings of fact to formalize such an action, as required by Title 14 California Code of Regulations, Section 13576(a); and
- (4) improperly abandoned the jurisdictional limits set forth in the Post-Cert Map, and extended those limits to Manchester Avenue, on the assumption that the "sea" -- as that term is defined by Public Resources Code Section 30115 and the legal decisions interpreting it -- extends into the East Basin of San Elijo Lagoon, landward of Interstate 5.

¹As of our meeting on March 15, San Diego Coast Area Commission staff continued to deny knowledge of any factual rationale for that expansion of appellate jurisdiction.

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The Commission committed an error of fact when it:

(5) assumed, without substantial evidence in the administrative record, that the Pacific Ocean's tidal action into San Elijo Lagoon extends landward of the I-5 bridge.

The Commission committed errors of fact and law when it:

(6) determined that issuance of the permit to Encinitas Country Day would create traffic impacts that are inconsistent with the City's certified LCP;

(7) disregarded the traffic data supplied by Encinitas Country Day and the City showing that the Project, both individually and cumulatively, would have de minimis traffic impacts on local roads and intersections;

(8) disregarded the conformity of Encinitas Country Day's proposal with the certified City of Encinitas Local Coastal Program, in denying the Project on the grounds that it would not be in conformity with the certified LCP and would have significant adverse impacts on the environment within the meaning of the Coastal Act;

(9) asserted that the Project was inconsistent with the protection of the environmentally sensitive resources of San Elijo Lagoon;

(10) asserted that the Project did not comply with LCP wetland protection requirements;

(11) asserted that appropriate alternatives analyses and findings with respect to wetlands and buffers were not provided by the City of Encinitas;

(12) asserted that adequate alternatives analyses and findings with respect to traffic and intensification of use were not provided by the City of Encinitas;

(13) asserted that an adequate cumulative impacts analysis was not provided by the City of Encinitas; and

(14) objected to the Project's location and size, asserting alternately, and erroneously, that it both covered the entire site and failed to plan for the entire site.

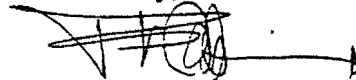
These errors of law and/or fact, both individually and cumulatively, have the potential of altering the Commission's initial decision on the Encinitas Country Day School Project.

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Encinitas Country Day reserves the right to augment the record, up to and including the hearing on the Request for Reconsideration, with additional written evidence and oral testimony.

We appreciate your staff's cooperation in addressing these issues and thank you in advance for your assistance in scheduling this matter before the Coastal Commission at the April meeting, if at all possible, or no later than May, since our client is being denied the lawful use of her property, contrary to the Coastal Act and other applicable law, during the pendency of this matter.

Sincerely,



THEODORE J. GRISWOLD, for
Procopio, Cory, Hargreaves & Savitch LLP

TJG:ej


cc: Peter Douglas, Executive Director, CCC/SF
Dr. John Dixon, CCC/SF
Jonathan Van Coops, CCC/SF
Ralph Faust, Chief Counsel, CCC/SF
Leslie Ewing, CCC/SF
Chuck Damm, CCC/SD
Deborah Lee, CCC/SD
Lee McEachern, CCC/SD
Gary Cannon, CCC/SD
Kathy Porterfield
Dall & Associates

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**MEMORANDUM**

TO: Sherlyn Sarb
Gary Cannon

FROM: John D. Dixon, Ph.D. 
Ecologist

SUBJECT: Review of San Elijo Lagoon Tidal Study: Eastern Limit of Tidal Action in San Elijo Lagoon by Tierra Environmental Services, Inc., Chris Nordby, Principal Author.

DATE: April 20, 1999

You asked me to provide a technical review of the subject study which purports to demonstrate that tidal action within the San Elijo Lagoon does not extend as far east as the I-5 bridge.

The above referenced study was based on: (1) infrequent measurements of water height and water salinity at various combinations of 10 locations at San Elijo Lagoon on 4 days (2/26-27 & 3/1-2) during the winter rainy season in 1999; (2) water chemistry for 1 sample at each of 3 locations at or east of I-5; and, (3) a qualitative comparison of the vegetation at the railroad bridge near the lagoon mouth and at the I-5 bridge.

These observations documented that: (1) the water at the I-5 bridge rose and fell with the predicted oceanic tides, but with less amplitude and with a temporal lag; (2) the salinity of the water at the I-5 Bridge varied from 0 ppt to 5 ppt during the period of observations; (3) the salt composition of water collected at or east of I-5 was different from published values for ocean waters; and, (4) the vegetation at the railroad bridge was dominated by pickleweed, a typical salt marsh plant, whereas the vegetation at the I-5 bridge was dominated by cattails and bullrushes which are brackish or fresh water marsh plants.

The authors argue that the changes in water height are not evidence of the region being tidal but rather are due to the incoming tide acting as a "dam" and backing up the freshwater outflow. In addition, they state that the lagoon is estimated to be closed to tidal action about 80% of the time and refer to a recent opening as a "rare" event. They point out that in February the total salinity and salt composition of water at the I-5 bridge was about the same as in Escondido Creek and different from that expected for seawater. Finally, they state that cattails and bullrushes are "...generally incapable of growing in prolonged saline conditions." and further assert that the dominance of these species at the I-5 bridge "...indicates that salinity levels in this area rarely exceed 5 ppt. Salinities in excess of 5 ppt for more than a few weeks would result in a die-off of these species...." Based on these arguments, the authors conclude that the "maximum extent" of tidal action at the San Elijo Lagoon is west of I-5.

Exhibit 5

Under natural conditions, the San Elijo Lagoon and other southern California estuaries are characterized by a gradient from ocean waters at the mouth to freshwater at the inland extreme. As a result of tidal fluctuations, sporadic opening and closing of the connection to the sea, seasonal variations in freshwater input, and interannual differences in weather patterns and oceanic conditions, the physical environment within these estuaries is extremely variable on several time scales. A few point estimates of environmental factors, such as in the Tierra tidal study, provide a "snap-shot" which is not useful for characterizing the range of conditions in a variable habitat.

Fortunately, long-term observations of water quality at several stations within the estuary are available (San Elijo Lagoon Conservancy Data). The eastern-most station is at the I-5 bridge, but since there are no physical obstructions in the short distance from the bridge to the dike and weir to the east, observations at I-5 are probably roughly applicable as far as that dike. At, or just west of the bridge, there is a heavy growth of cattails. The roots of these plants capture sediments and act as a shallow dam or weir.

In addition, Dr. H. S. Elwany¹ conducted a study of tidal action in the San Elijo Lagoon with field observations during April – August 1994, April – December 1995, and October 1996 – April 1997. Dr. Elwany determined inlet and channel profiles, examined aerial photographs, and measured tidal fluctuations in water depth at various locations with a continuously recording pressure gauge (personal communication). Based on this study, Dr. Elwany concluded that the estuary at the I-5 bridge is subject to tidal action (letter dated April 14, 1999).

During Dr. Elwany's study, tidal changes in depth were measured at the station under the I-5 bridge during May 1994. In addition, a continuously recording pressure gauge and salinity meter were installed at the I-5 bridge during the period 2/24 – 3/10/99 by the San Elijo Lagoon Conservancy (D. Gibson¹, personal communication). In both May 1994 (Figure 1) and during February and March 1999 (Figure 2*), there were clear semi-diurnal changes in water depth that were correlated with the predicted oceanic tides. The lower portion of the tidal fluctuations was truncated because the presence of the cattail dam sets a lower limit to the outflow of water. In addition, the 1999 measurements clearly show the influx of seawater during the highest tides. The salinity of the bottom water was generally around 2 ppt but surged to 10 ppt or greater during the four highest tides. The water at the surface was dominated by freshwater flow and remained at about 2 ppt but with small spikes in salinity at the highest tides. The difference in bottom and surface salinity reflects the fact that freshwater is less dense and floats on salt water. The relative flatness around the 2 ppt mark for the graph of bottom water compared to that for surface water is a function of the different scales for the y-axes. It is not clear why there were no significant differences in surface and bottom salinity in the Tierra samples. Both the Tierra and Conservancy measurements are no doubt accurate within the limits of their instruments. The difference in results is probably related to methodological differences. The Conservancy data are from a continuous data

*1999 measurements are relative to the starting the depth of the instrument and are not related to a standard reference elevation such as Mean Lower Low Water or National Geodetic Vertical Datum. Also, the depth scale is inverted - peaks in tidal height are downward.

¹Dr. Hany Elwany, a physical oceanographer and ocean engineer, is a Research Associate at the Scripps Institution of Oceanography, President of the consulting firm Coastal Environments, and a member of the Scientific Advisory Panel for the San Elijo Lagoon Conservancy. Mr. Douglas Gibson is the Executive Director of the San Elijo Lagoon Conservancy.

logger whereas the Tierra data are from discrete water samples which may have been collected at different parts of the channel or at different depths.

Salinity measurements have been taken about every 2 weeks at five stations within San Elijo Lagoon (San Elijo Lagoon Conservancy). Salinity varies seasonally at the I-5 bridge and is fairly well-correlated with changes near the railroad bridge (Figure 3). At both stations, salinity is generally lowest during the winter and spring and highest during the summer and fall. This annual pattern results from seasonal patterns of rainfall and runoff. At the I-5 station, salinity varies from a low of around 0-5 ppt during the rainy season to a high of about 20-25 ppt during the dry season.

The San Elijo Lagoon Conservancy also maintains records of mouth closure. These data are included as Table 1 in the Tierra study. As a result of lagoon management by the San Elijo Lagoon Conservancy in cooperation with state and federal resource agencies, there has been a much more natural tidal connection in recent years (Figure 4). During the last 5 years, the lagoon mouth has been open 50% of the time. An open lagoon mouth is not a rare event.

Although the composition of plant communities is related to environmental characteristics, existing vegetation in highly disturbed or transitional areas is an extremely poor indicator of the long-term average physical and chemical environment. At San Elijo Lagoon, for example, although there are dense stands of cattails just west of the I-5 bridge, there are also stands of pickleweed east of the bridge. These are not very useful observations in the present context and tell us little about current environmental conditions. Furthermore, the suggestion that salinities greater than about 5 ppt for more than a few weeks would kill the cattails is refuted by the data. During the dry season of each of the last 5 years, there has been a continuous period of 11 weeks or more when the salinity at the I-5 bridge was at least 10 ppt on every survey (Table 1).

Table 1. All periods since January 1, 1994 when the salinity at the I-5 bridge was greater than or equal to 10 ppt at every survey for at least 60 days. Surveys were conducted about every two weeks. Data from the San Elijo Lagoon Conservancy.

Period	Number of Days	Sample Size	Average Salinity (ppt)
07/23/94 – 11/14/94	111	11	14
07/16/95 – 01/14/96	178	14	22
10/07/96 – 02/10/97	123	10	17
08/10/97 – 10/02/97	82	7	16
05/04/98 – 09/07/98	123	10	15

Adults of brackish-water species may be highly salt-tolerant. Zedler, Nordby and Kus² pointed out that adult cattails can tolerate saline conditions as severe as 45 ppt. They suggested that the sensitivity to salt of seeds and young rhizomes was the limiting factor for

²Zedler, J.B., C.S. Nordby, and B.E. Kus. 1992. The Ecology of the Tijuana Estuary, California: A National Estuarine Research Reserve. NOAA Office of Coastal Resource Management, Sanctuaries and Reserves Division, Washington, D.C.

invasion, and concluded that, "Once brackish species have invaded an intertidal area, it is likely that they will persist. With continually augmented streamflows,...species with salt-tolerant, vegetatively reproducing adults might never die out." The invasion of freshwater species in the San Elijo Lagoon is undoubtedly due to man-made disturbances that have periodically resulted in much of the lagoon being dominated by freshwater for extended periods.

In summary, the San Elijo Lagoon is a tidal estuary. Over the last 100 years or so, the relative importance of marine and freshwater influences has changed throughout the estuary as a result of construction and other human disturbances and this has resulted in severe degradation of the intertidal salt marsh. Nevertheless, despite alterations to the natural system, it is clear that under current conditions tides carry seawater to the I-5 bridge and some unknown distance further inland during much of the year.

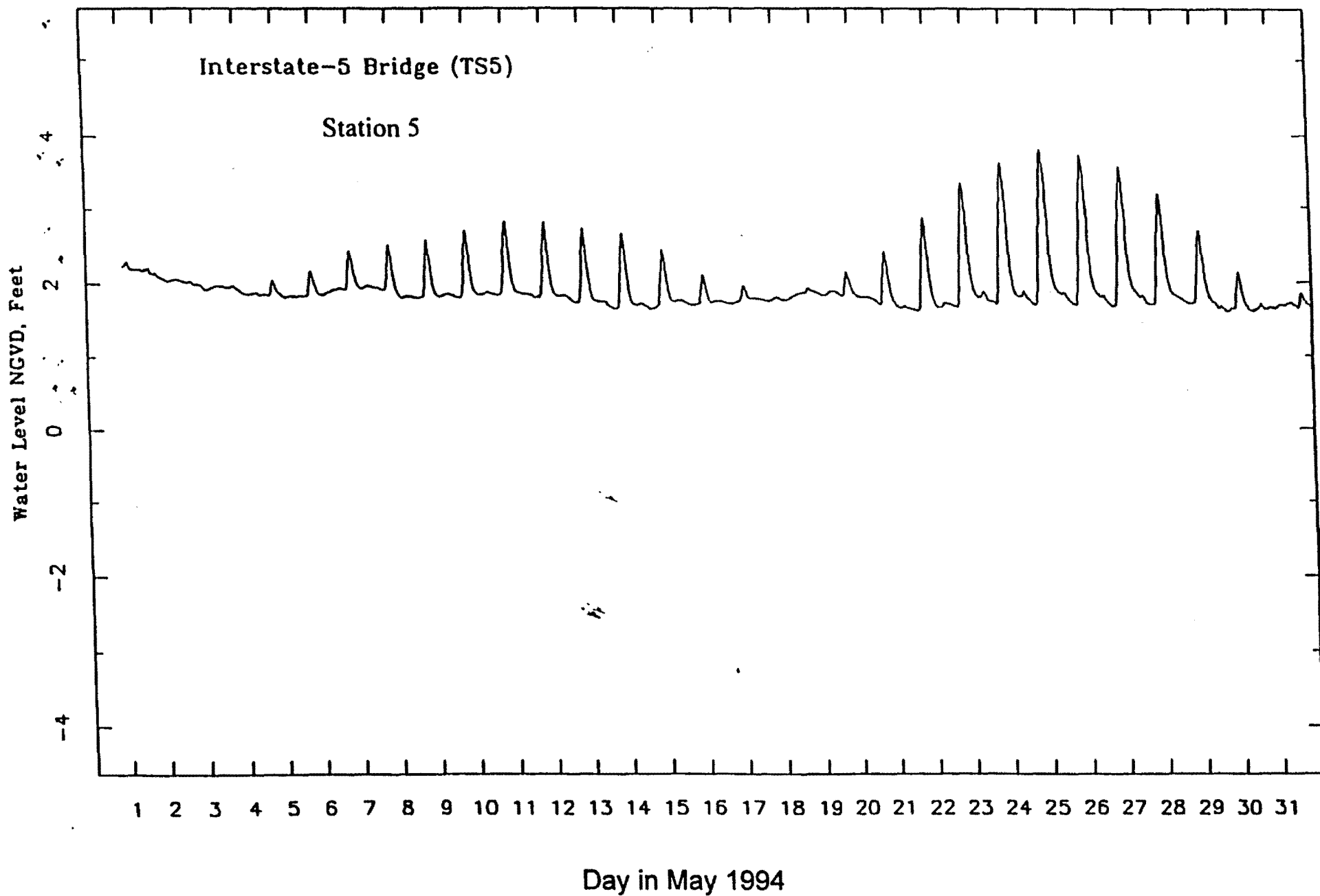


Figure 1. Water fluctuation at the I-5 bridge during the month of May 1994 (from H. Elwany).

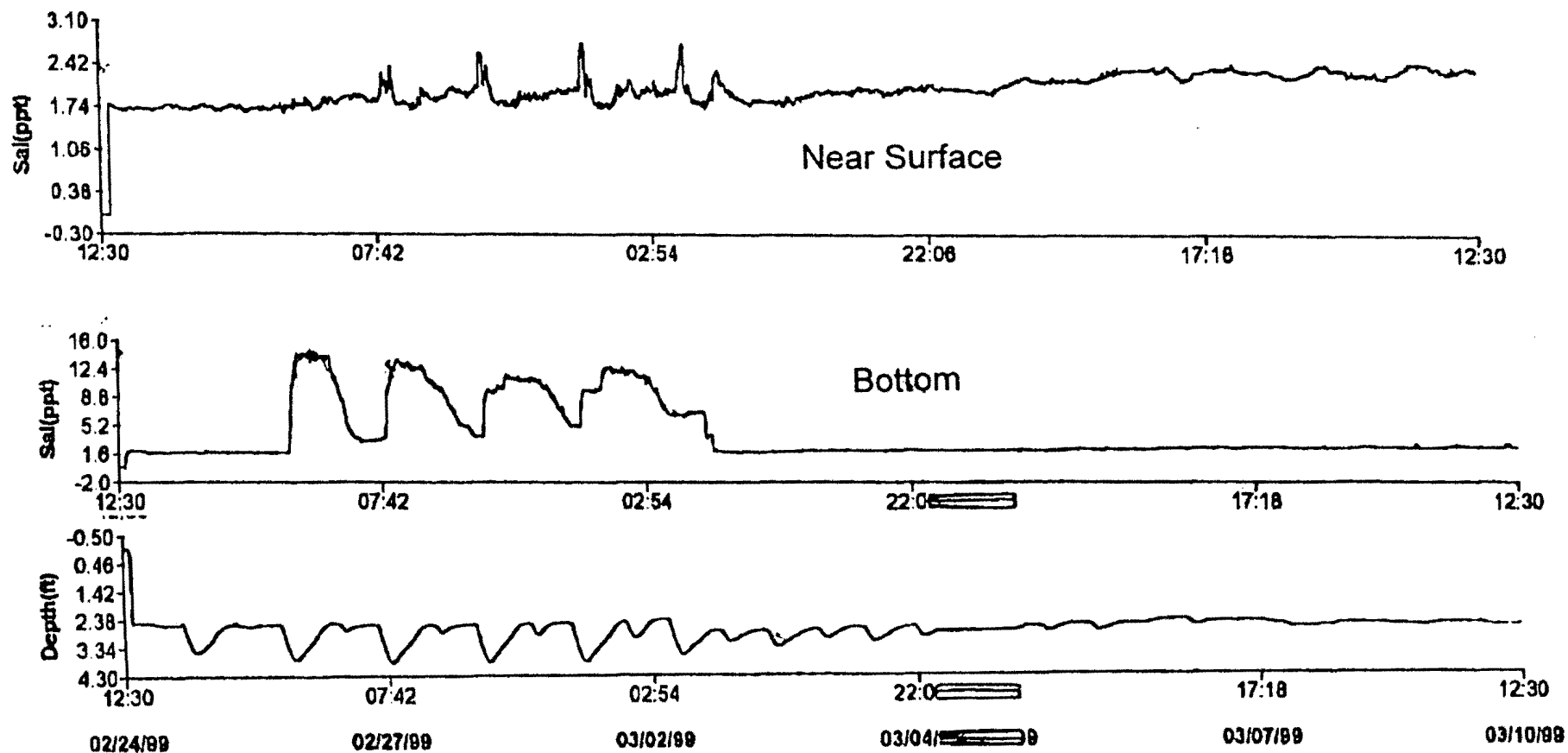


Figure 2. Salinity near the surface and near the bottom and water depth at the bottom of the channel in the San Elijo Lagoon under the I-5 bridge (San Elijo Lagoon Conservancy). Scale for the x-axis is slightly different for the two salinity plots.

Figure 3. Seasonal fluctuations in salinity in the San Elijo Lagoon near the railroad bridge and under I-5 (data from the San Elijo Lagoon Conservancy).

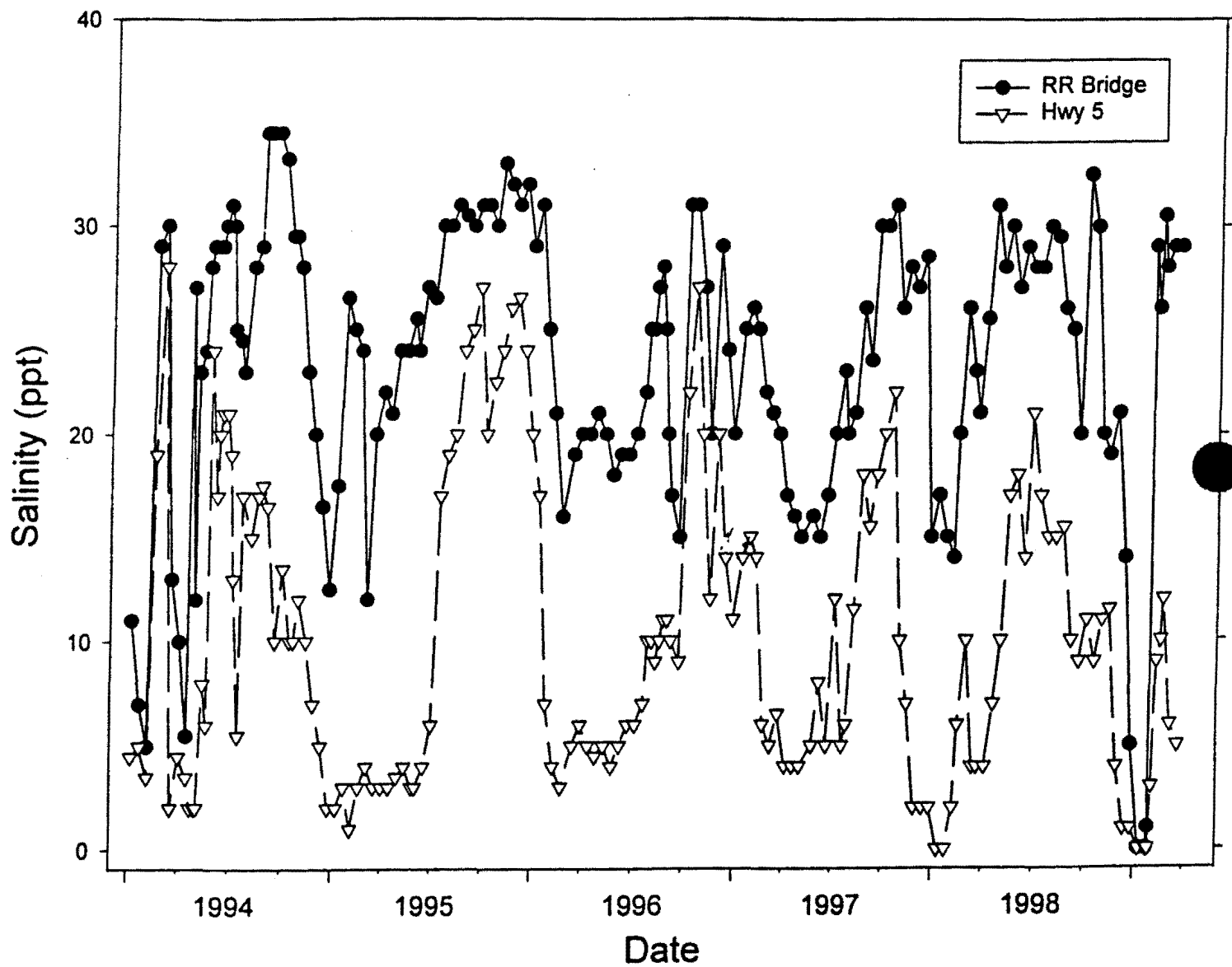
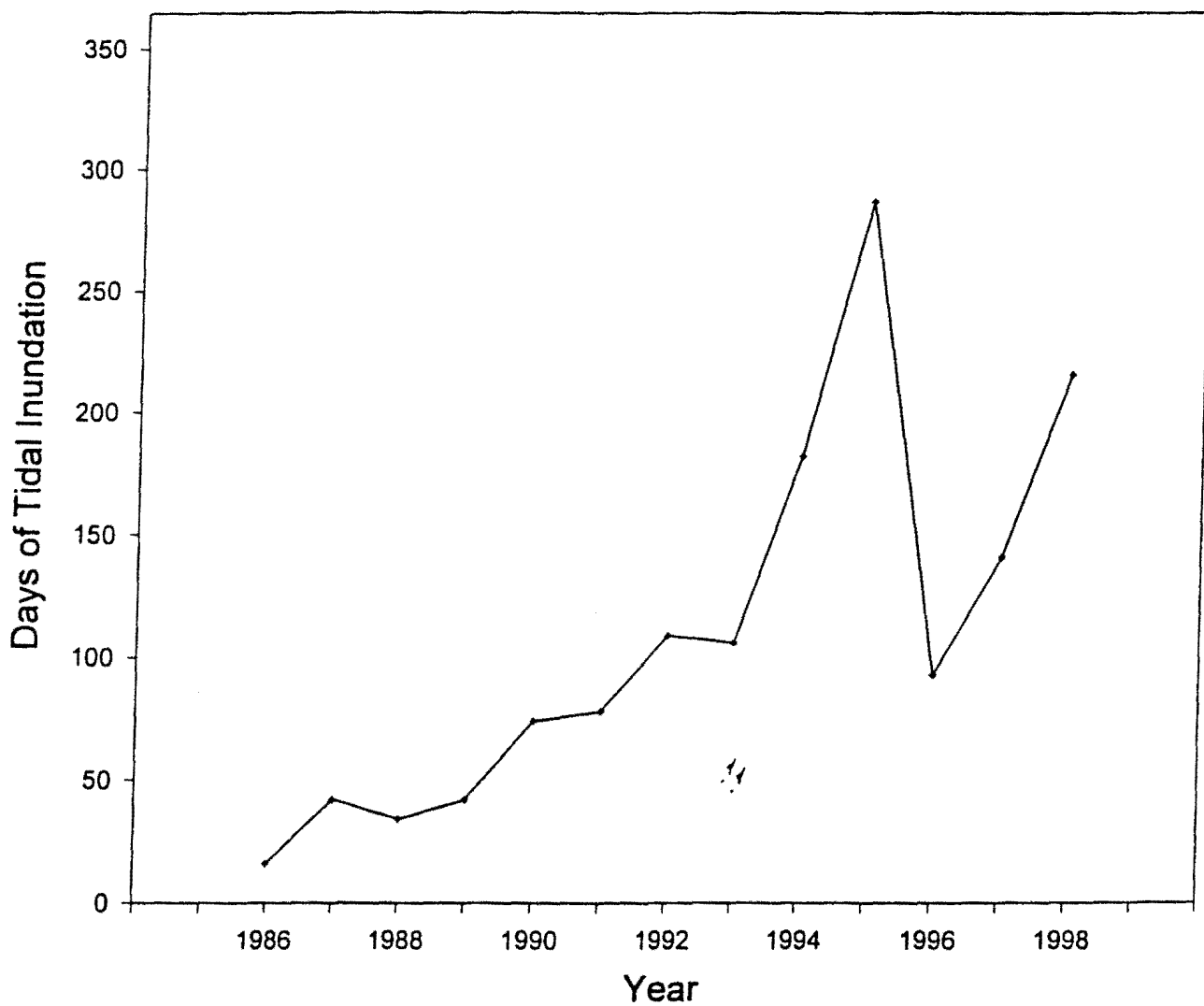


Figure 4. Number of days during the year that the mouth of the San Elijo Lagoon was open providing a connection to ocean waters.



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**MEMORANDUM**


Date: April 21, 1999
To: Sherilyn Sarb
San Diego Office
From:  Jon Van Coops
Mapping Program Manager

EXHIBIT NO. 6**APPLICATION NO.****A-6-98-158-R****Technical Services
Division Discussion
of First Public Road** California Coastal Commission

Subject: City of Encinitas First Public Road Location

This memo is intended to identify and discuss the "First Public Road Paralleling the Sea" near the site of the proposed Encinitas Country Day School, in the City of Encinitas, San Diego County. It also includes a discussion of the draft post-LCP certification permit and appeal jurisdiction mapping done for the City of Encinitas. This memo also memorializes the information that I provided to you informally in December 1998 regarding the location of the First Public Road paralleling the sea along San Elijo Lagoon.

First Public Road at San Elijo Lagoon

Generally speaking, our view is that, notwithstanding the 1988 draft post-LCP certification permit and appeal jurisdiction map, the series of coastal roadways and streets listed in Figure 1 below and shown on the attached Map 1, constitute the current route of the "First Public Road Paralleling the Sea," for purposes of Public Resources Code (P.R.C.) Sections 30600.5, 30601, and 30603, 30115, and all other applicable provisions of the Coastal Act of 1976. This route is the mapping unit's present interpretation of the location of the Commission's appeal jurisdiction in this area. The above-referenced system of coastal roadways and streets is consistent with, and meets the criteria set forth in California Code of Regulations Section 13577, in particular 13577(i).

As we discussed previously, the language of C.C.R. Section 13577(i)(1) was intended to ensure that the designated "First Public Road Paralleling the Sea" (FPR) extend inland around water bodies that are considered the Sea as defined by P.R.C. Section 30115. C.C.R. section 13577 (i)(1)(E), provides that in order for a road to qualify as the first public road paralleling the sea, it must be a road that "does in fact connect with other public roads providing a continuous public access system, and generally parallels and follows the shoreline of the Sea so as to include all portions of the Sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the Sea to extend landward of the generally continuous coastline." The mapping unit considers, and has always considered San Elijo lagoon to be the Sea. Recently, a combination of discussions with our staff biologist, regional staff in San Diego, and review of documents and materials submitted by the applicant has confirmed that San

Elijo Lagoon is the Sea, at least to the location of the weir situated 700 to 1700 feet east of the I-5 bridge.

Coastal geography controls whether C.C.R. Subsections 13577(i)(1), (i)(2) or (i)(3) become operative. These subsections provide for the appeal jurisdiction in the event that there is no public road that meets **all** of the criteria in C.C.R. Section 13577(i)(1). As long as there is what could be described as a **logical** First Public Road, following the shoreline of the coast (the outer coast), or the shoreline of a water body defined as the Sea for purposes of the Coastal Act, the issue is simple. That road is the "First Public Road paralleling the Sea," and pursuant to C.C.R. Section 13577(i)(1), the appeal boundary is along the inland, or landward right of way. In the vicinity of the Encinitas Country Day School site along the northern side of San Elijo lagoon, Manchester Avenue is the road that meets the requirements of this section.

Encinitas Post-LCP Certification Mapping

As we also discussed previously, during the 1980's the Commission's Technical Services Division began a project to complete Draft Post-LCP Certification Permit and Appeal Jurisdiction maps for all local governments within or partly within the Coastal Zone. The first effort consisted of producing a set of 161 draft maps using the USGS 7.5 minute quadrangle base (scale 1:24,000), and was completed in 1981. Map 155, the Encinitas quadrangle, included the area within and around San Elijo Lagoon, in San Diego County (see attached Map 2). Copies of this regional quad-scale draft map were distributed for review to the regional commission offices and local governments in April 1981. The boundaries and map notes shown on this map were replicated on a large scale base map in 1988, and distributed to the City and San Diego staff for review (see attached Map 3).

In preparing the quad-scale map distributed in 1981, the area around the lagoon was mapped as a "section 13577(i)(2) area." This indicates that at the time it was determined that San Elijo Lagoon was the Sea for purposes of the Coastal Act, but that there appeared to be no public road, or combination of public roads in the area that encompassed the lagoon consistent with the criteria of C.C.R. Section 13577 (i)(1)(E).

A map note was included on the 1981 draft map to indicate that the appeal jurisdiction along San Elijo Lagoon inland of Highway 101 was the first row of parcels or 300 feet from the mean high tide line, whichever was the greater distance. This is the appeal jurisdiction that is provided for when there is no public road that meets **all** the criteria in C.C.R. Section 13577 (i)(1). This mapping approach was repeated in 1988, as mentioned above, and it was in late November or early December of last year that the mapping unit evaluated the current conditions and determined that presently, a system of roads does in fact exist, encompassing the lagoon, and meeting the requirements of 13577(i)(1). I am looking into the changes in the configuration of streets and roadways around the lagoon over the last 20 years, but regardless of whether that explains our previous mapping approach, the mapping staff views the current configuration of the road infrastructure as the appropriate controlling factor for determining the First Public Road paralleling the Sea, and we will be recommending adoption of a post-cert map or maps reflecting this determination at a future date.

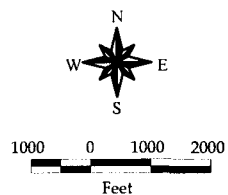
Figure 1

Description of First Public Road Paralleling the Sea in the City of Encinitas, and the San Elijo Lagoon portion (northern) of the City of Solana Beach

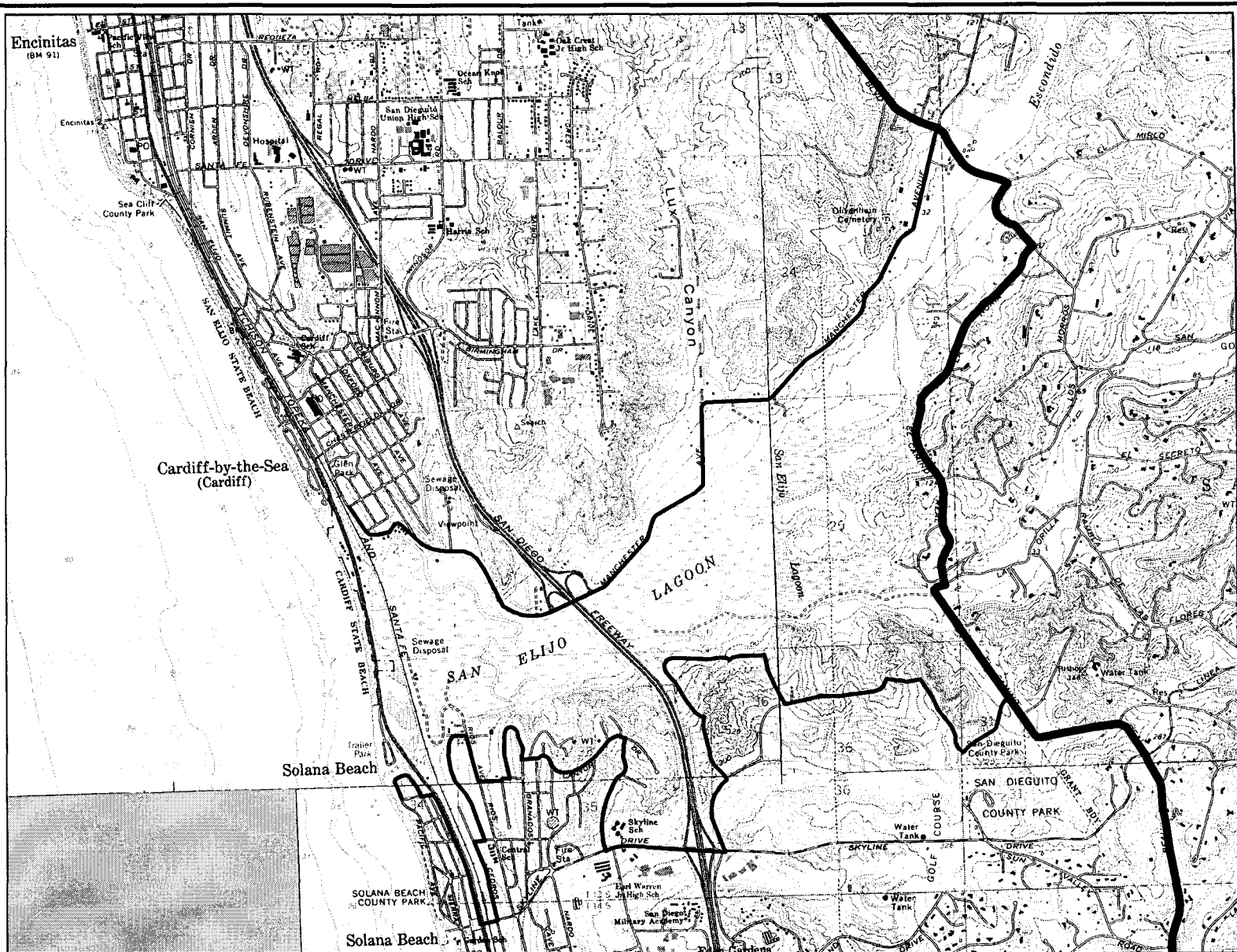
South on 1st St.
West on Grandview St.
South on Neptune Ave.
East on Sylvia St.
South on 4th St.
East on B St.
South on 3rd St.
West on C St.
South on 4th St.
East on McNeil Ave.
South on 3rd St.
West on F St.
South on 4th St.
East on H St.
South on 3rd St.
East on K St.
South on 1st St.
East on Chesterfield Dr.
South on San Elijo Ave.
East on Manchester Ave.
Southeast on Rancho Santa Fe Rd.
Southeast on La Bajada
Southwest on La Noria
South on El Camino Real
Southwest on Highland Dr.
Northwest on San Mario Dr.
West on Santa Petra Dr
West on Santa Victoria
Northwest on Santa Carina
West on Santa Queta
West on Santa Hidalgo
Southeast on Santa Florencia
South on Santa Rosita
South on Santa Helena
West on Lomas Santa Fe Dr.
North on North Solana Hills Dr.
West on Dell St.
North on Glencrest Dr.
West on Canyon Dr.
North on Granados Ave.
South on Barbara Ave.
West on Patty Hill Dr.
North on North Rios Ave.
West and South on Seabright Ln.
West on East Cliff Dr.
South on North Cedros Ave.
West on Lomas Santa Fe Dr.
North on Hwy 101
West on Ocean St.
North on Circle Dr.
South on Pacific Ave.

First Public Road Vicinity of San Elijo Lagoon

- First Public Road
- Coastal Zone Boundary



Base Map Source:
USGS 7.5' Quadrangles, 1967-68,
photorevised 1975, 1983.



ACH, 4/99

Map 1

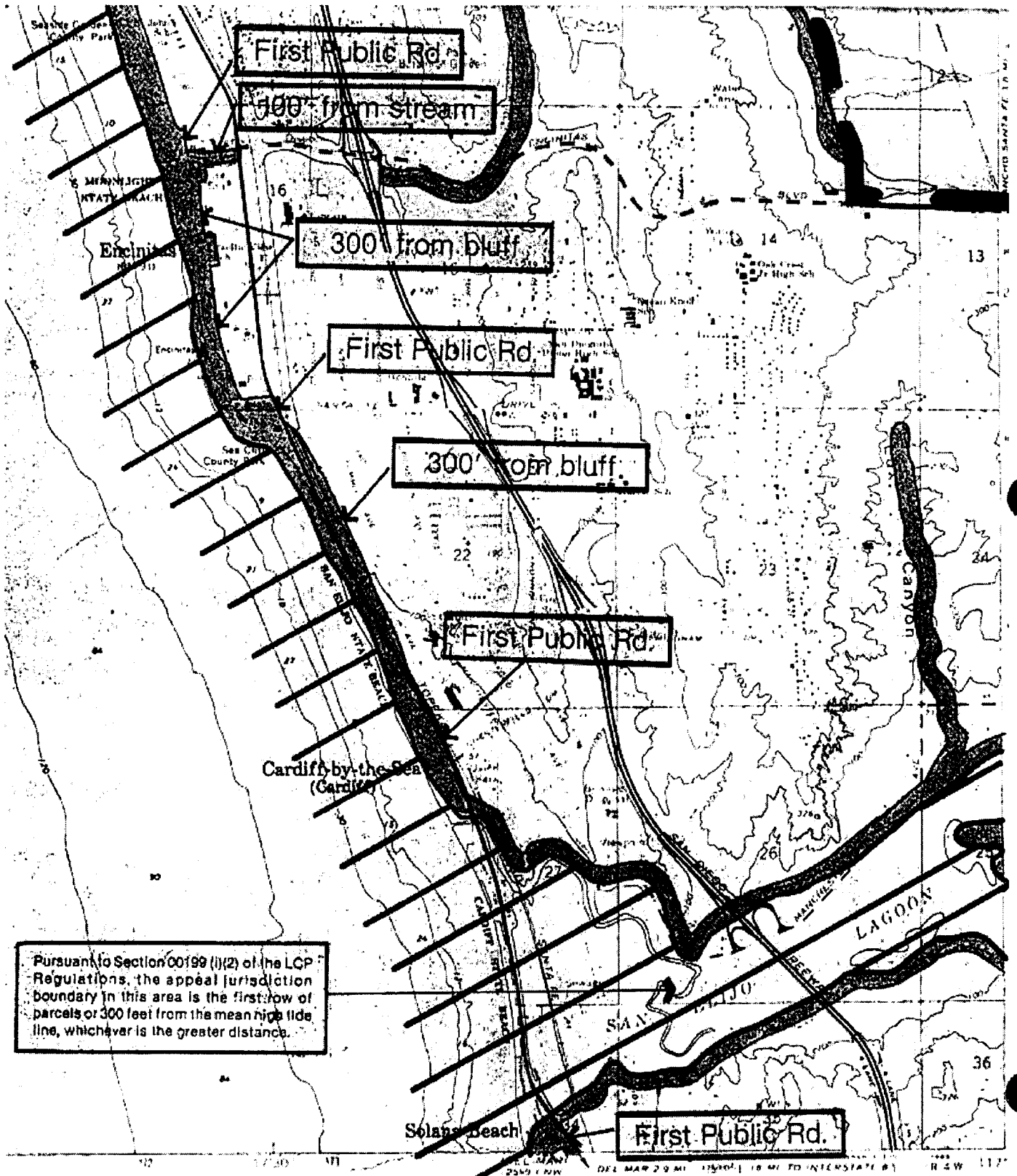
Map 2A

Portion of Draft Post-Cert Map

Number 155 (Encinitas Quadrangle)

Showing Vicinity of San Elijo Lagoon

Original Scale 1:24,000



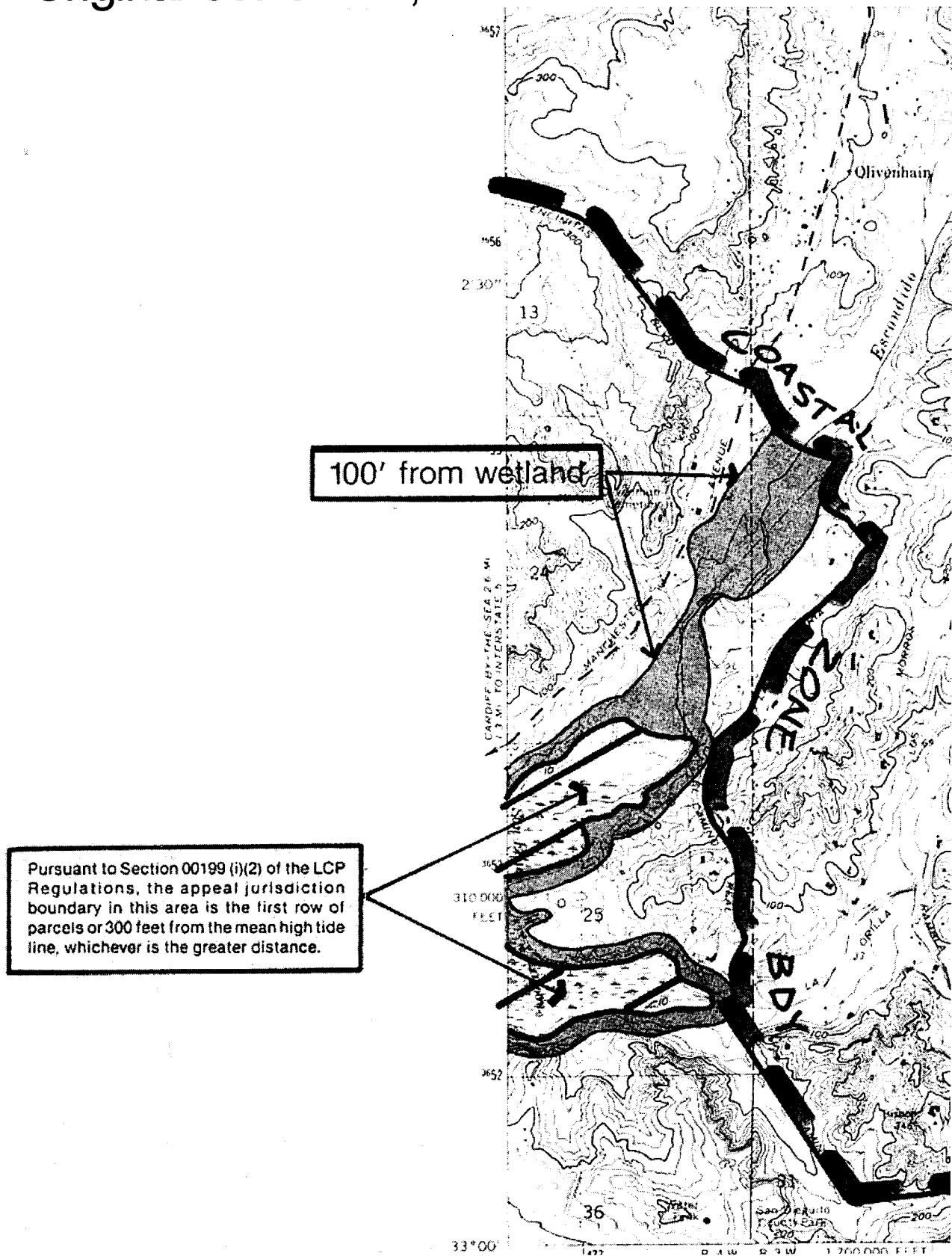
Map 2B

Portion of Draft Post-Cert Map

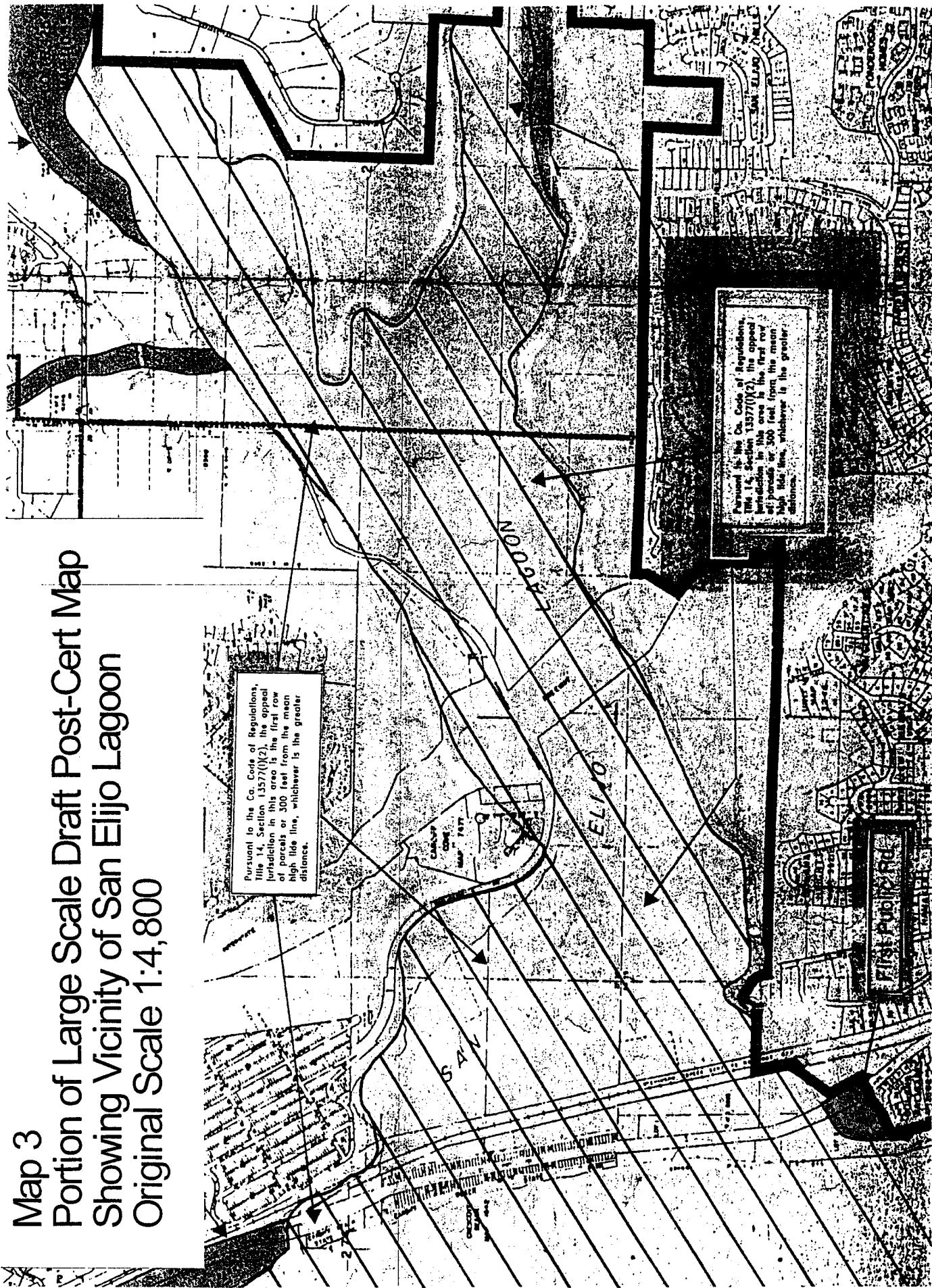
Number 156 (Rancho Santa Fe Quadrangle)

Showing Vicinity of San Elijo Lagoon

Original Scale 1:24,000



Map 3
 Portion of Large Scale Draft Post-Cert Map
 Showing Vicinity of San Elijo Lagoon
 Original Scale 1:4,800



2240 ENCINITAS BLVD, SUITE D
ENCINITAS, CA 92024-4345
Phone: (760) 633-1100
Fax (760) 633-1486

POSTAL CORNER

Fax

To: John Van Coop From: K. Porterfield - La Barge
Fax: (415) 357 3787 # Date: Fax (760) 633-1486
Phone: (415) 904 5260 Pages: January 29, 1999
Re: APP # 262-073-24-00 CC: 9 pages.

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Instructions: Mr. Van Coop: Thank you for your assistance.

I met with the oceanographer. He said that the traditional lead of tidal influence is the dike. He said that the fresh water plants and limited access (see map) do not change the ~~little~~ tidal influence because someday the plants could be removed etc. The lagoon mouth was cleared this winter. Today (actually Wednesday, 5PM) water flows out, as high tide approaches, even at the mouth also. There has been no change in conditions

Note: in years, therefore there was no change since the March, 1998 determination mentioned
Please contact us immediately if any of the pages of this document are not legible or are missing at (619) 633-1100

in the attached EIR record,

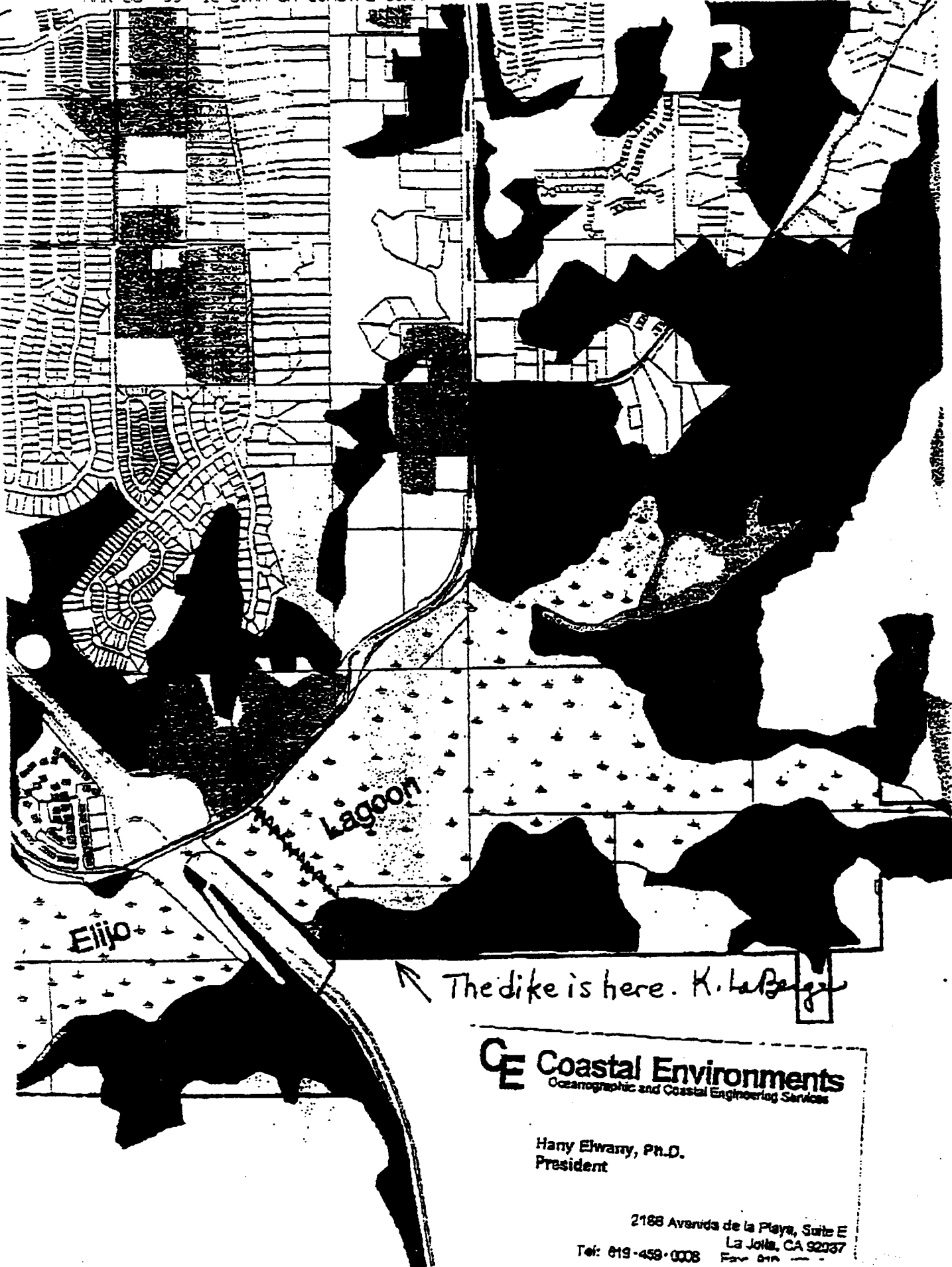
Your determination please!
Sincerely / K. Porterfield - La Barge
P.S. I took pictures. I'll send them for your
advice. I'll send an address. Thanks

EXHIBIT NO. 7

APPLICATION NO.

A-6-98-158-R

Fax from Applicant to
Commission's
Technical Services
Division



CE Coastal Environments
Oceanographic and Coastal Engineering Services

Hany Elwany, Ph.D.
President

2188 Avenida de la Playa, Suite E
La Jolla, CA 92037
Tel: 619-459-0008 Fax: 619-459-0008

RECEIVED

APR 15 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT
APR 14 1999

John Dixon, Ph.D.
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105 - 2219

RE: Water Level Elevations and Salinity Conditions in San Elijo Lagoon in the Vicinity of the I-5 Freeway.

Dear Dr. Dixon,

In response to your request for information regarding tidal elevation changes and the salinity regime in San Elijo Lagoon, in the vicinity of the I-5 Freeway, I can offer the following observations based on monitoring studies conducted by Coastal Environments in the lagoon.

The salinity regime and water level changes at this location are dictated by the status of the ocean inlet. If the lagoon is closed to the ocean, then there can be no tide influence anywhere in the lagoon. When the lagoon inlet is open to the ocean then the water level in the lagoon will change with the level of the ocean tide. Similarly, during the wet season with excessive stormwater runoff the salinity concentration at this station can be reduced to that of the runoff water. During major storms, the entire lagoon may fill with stormwater runoff, then breach the inlet berm (if present), and restore tidal exchange naturally. The health of this lagoon is strongly dependent on sustained tidal flushing.

We have conducted three experiments at San Elijo Lagoon to evaluate the possibility of keeping the existing inlet of San Elijo Lagoon open to daily tidal flushing by maintaining the inlet channel. These experiments took place during the following periods: 1) April and August 1994; 2) April and December 1995; and October 96 and April 97. Two of these experiments were conducted after winter storms (Summer experiments), and the third during the winter (Winter experiments). During these experiments water level and water quality (temperature, oxygen and salinity) measurements were made at 5 stations. Station 5 is located under the I-5 Freeway. The locations of these stations are shown in the attached Figures 1 and 2. During these experiments we installed a continuous recorder under the I-5 Freeway.

The dense cattails and narrow channels located West and near I-5 reduce the water level excursions under I-5 and East of I-5. However, when the water level in the lagoon increases during flooding tides, seawater flows through the cattails and narrow channels as is evident in Figure 3. The recorded changes in water level elevations were approximately 2 ft. was approximately The peaks in water levels shown in Figure 3 are clearly tidal and correlate very well with the tide in the ocean.

2166 Avenida de la Playa, Suite E • La Jolla, CA 92024 • Tel:(619)459-0008 •

EXHIBIT NO. 8

APPLICATION NO.

A-6-98-158-R

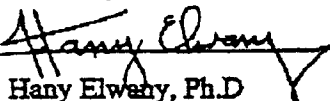
Letter from
Dr. Hany Elwany,
Oceanographer

Measurements taken in the main channel at Station 4 located West of the area of dense cattails shows a pronounced tidal response for ocean tides (> 2 ft).

We opened the inlet of the lagoon and monitored the water salinity at Station 5 before and after the opening. During the three experiments, there were changes in the water salinity at Station 5 in response to opening the lagoon. As an example, I have enclosed Figure 5 which shows the changes in the water salinity during the 1994 program. The water salinity under I-5 increased in response to opening the lagoon inlet on 17 April 1994 from 2 to 18-20 ppt. Based on these data there is no doubt that the ocean water tidal wave and ocean water propagates inside the lagoon at least to our station located under the I-5 Freeway.

I hope this information is of assistance to you in your evaluation.

Sincerely,



Hany Elwany, Ph.D

Oceanographer and Coastal Engineer

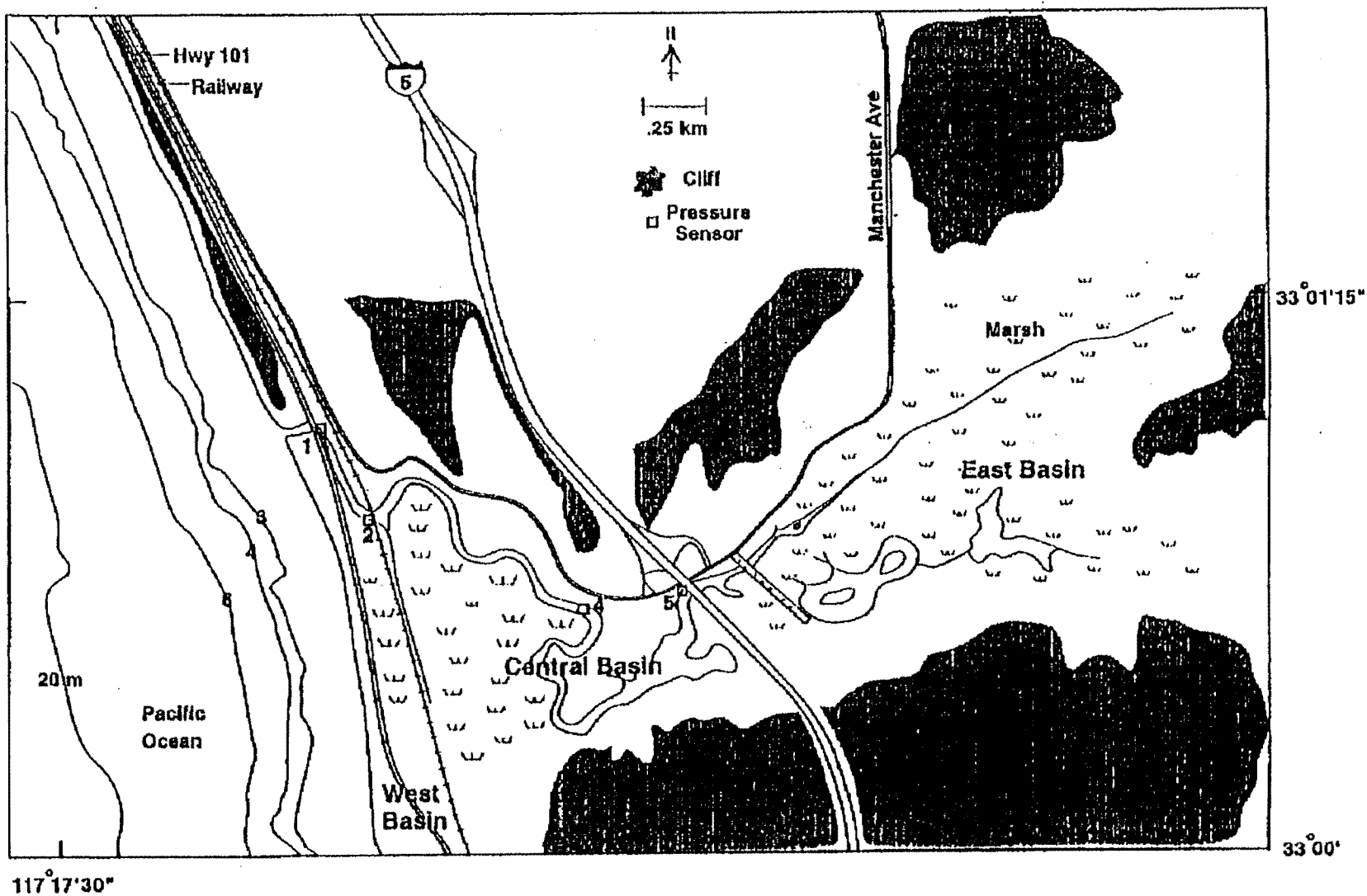


Figure 1. Map showing the location of continuous water level measurements at San Elijo Lagoon.

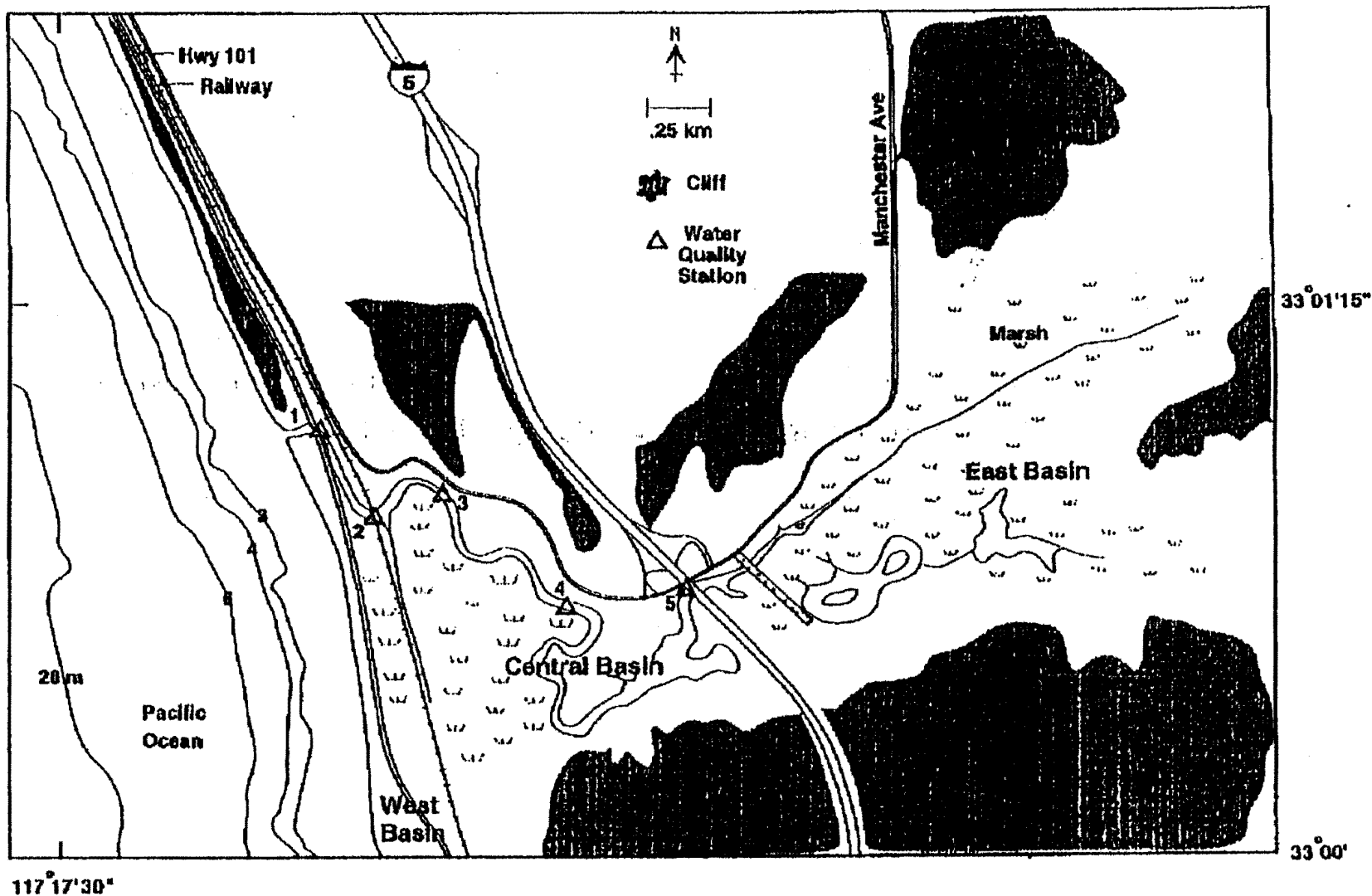


Figure 2. Map showing the location of water quality stations at San Elijo Lagoon.

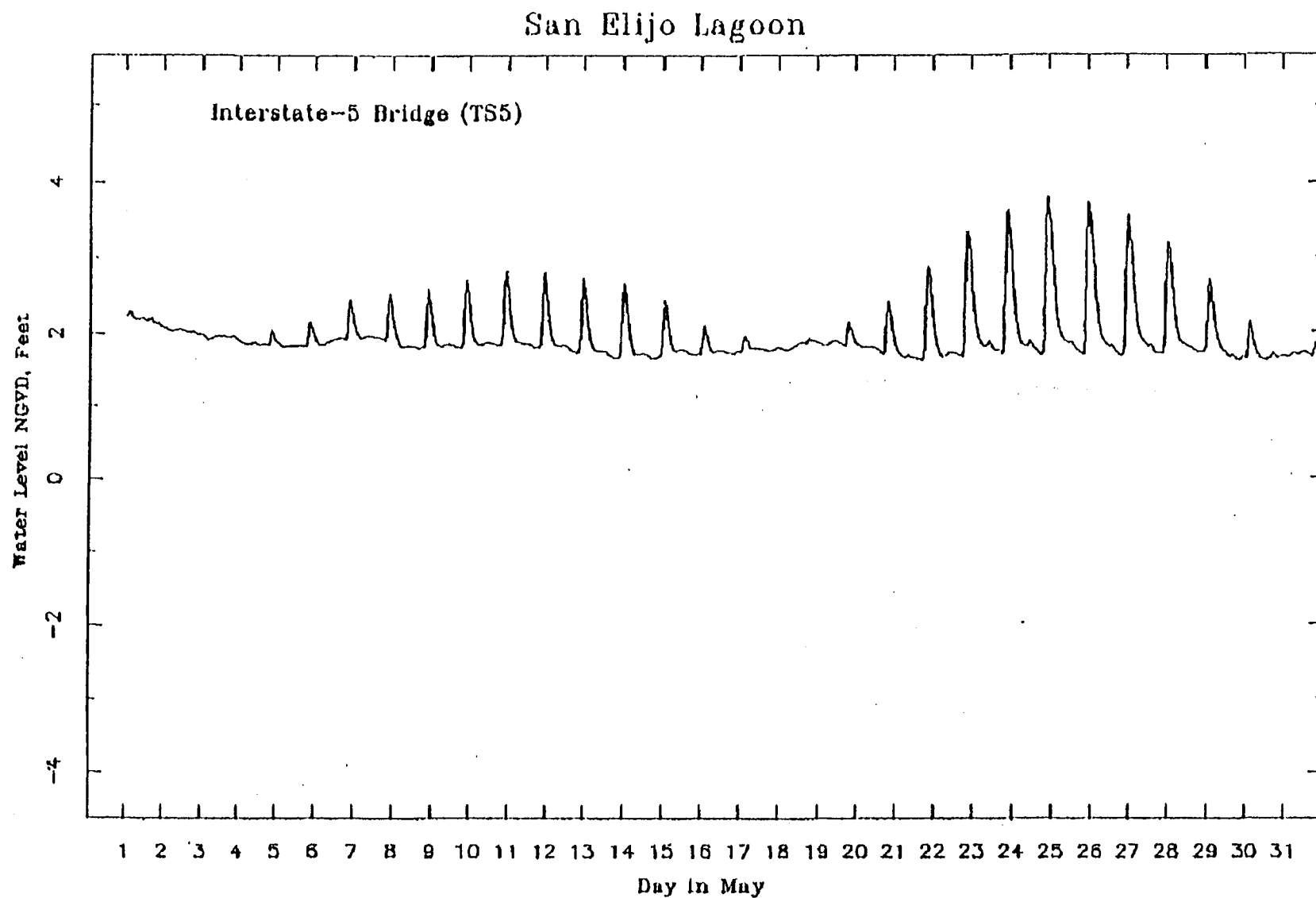


Figure 3. Water level fluctuations at TS5 during the month of May.

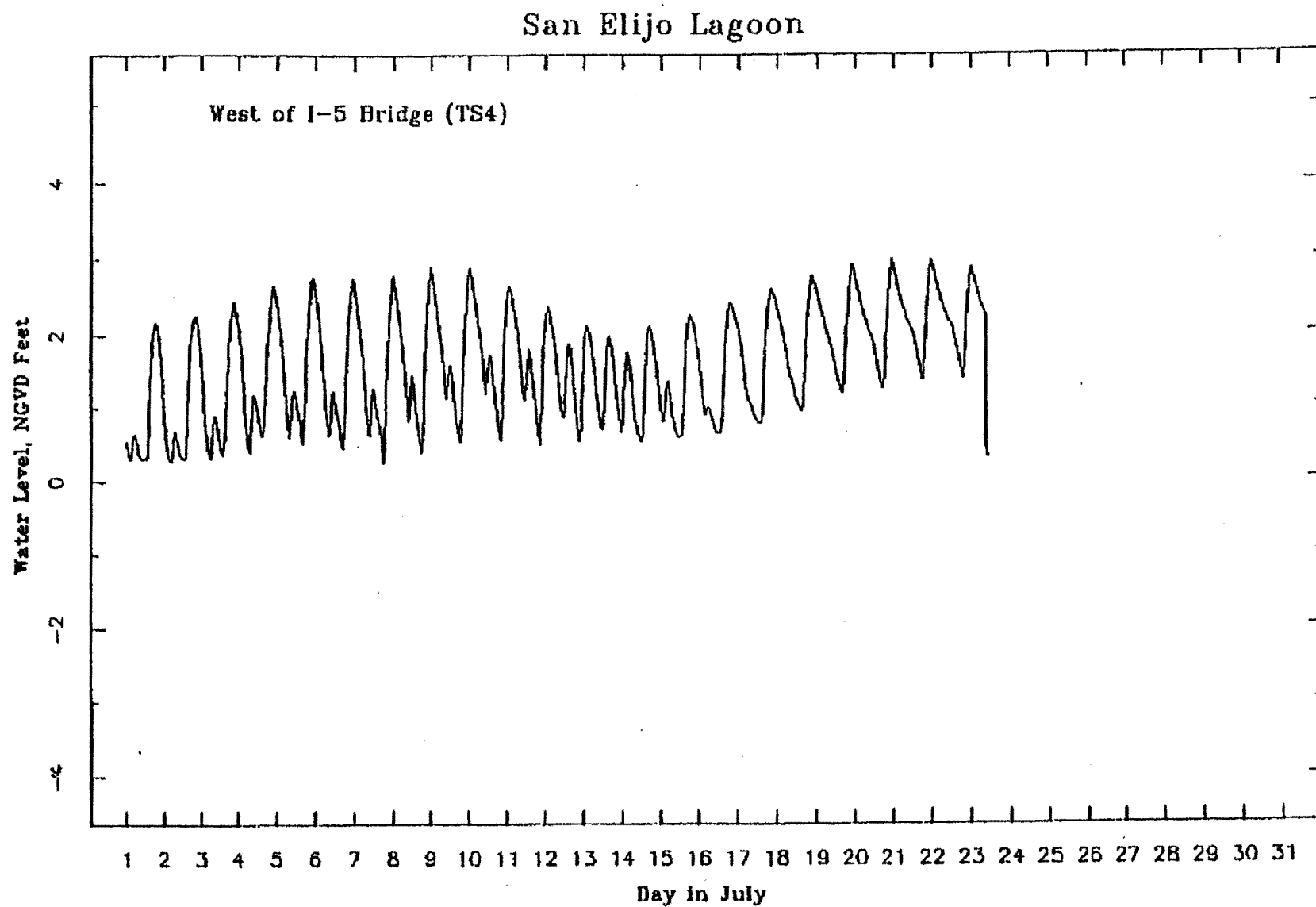


Figure 4. Water level fluctuations at TS4 during the month of July.

salinity (ppt)

SALINITY

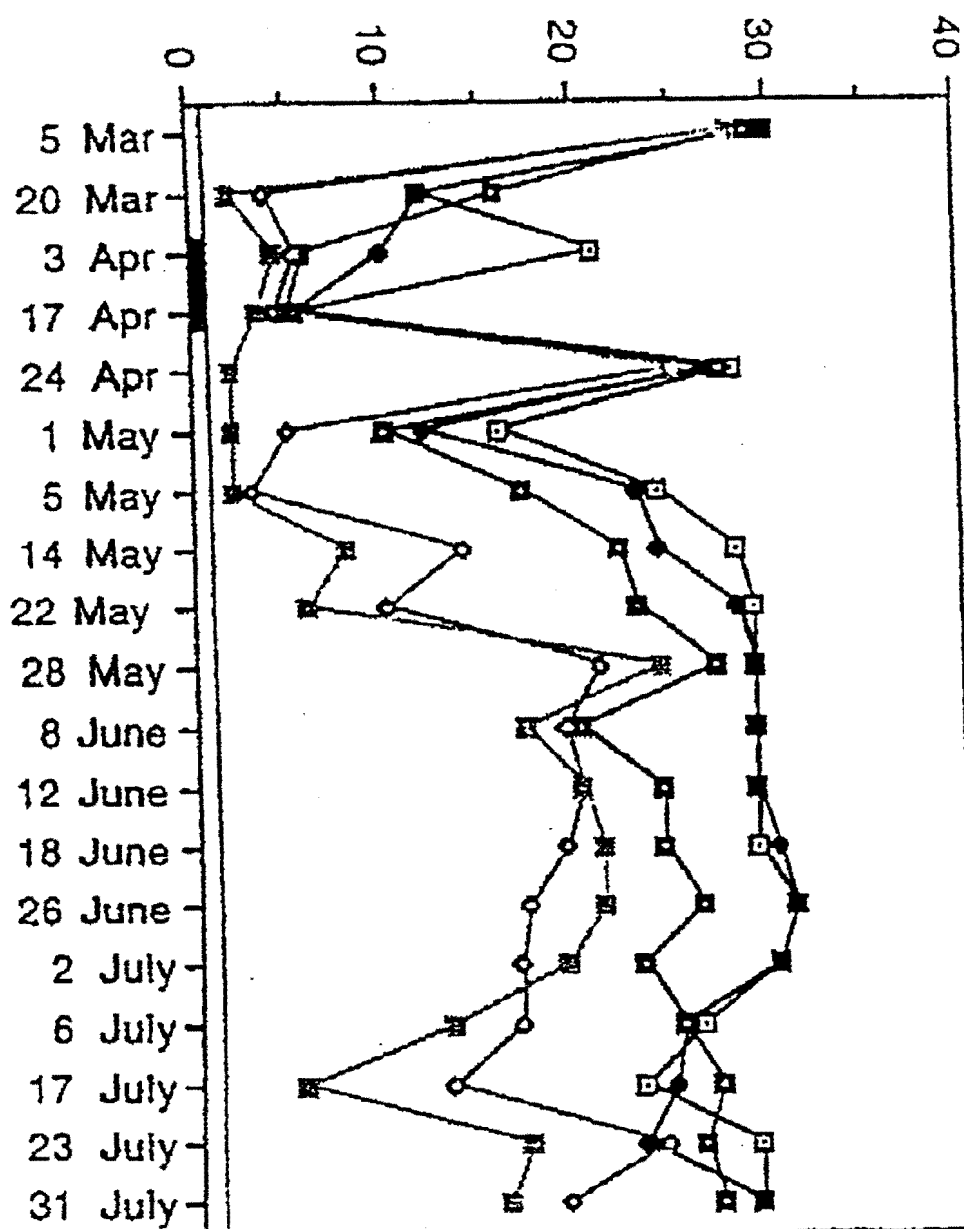


Figure 5.

Salinity of the bottom water at the five water-quality stations, from Boland and Elwany (1994).

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036



CONDITIONS, FINDINGS, ETC.
MODIFIED IN ADDENDUM

Filed: December 10, 1998
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

th 10 b

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved With Conditions

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

SEE SUBSEQUENT PAGE 14
FOR COMMISSION ACTION

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.

EXHIBIT NO. 9
APPLICATION NO.
A-6-98-158-R

Original Staff Report
for Hearing of
February 4, 1999

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.

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

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 a open space easement.

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.

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.

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.

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.

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.

(A-6-ENC-98-158 Encinitas Country Day School)

COMMISSION ACTION ON FEB 04 1999

☐ Approved as Recommended

☐ Denied as Recommended

☐ Approved with Changes

☒ Denied

☒ Other *SI*

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COASTAL COMMISSION
SAN DIEGO COAST DISTRICT COASTAL COMMISSION

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ENCINITAS COUNTRY DAY SCHOOL)
CITY OF ENCINITAS)
COUNTY OF SAN DIEGO)

Appeal No. A-6-98-158
Appealed by:
Commissioners Allen & Wan;
Tinker Mills; San Elijo
Lagoon Conservancy

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday
February 4, 1999
Agenda Item No. 10.b.

Hotel Del Coronado
1500 Orange Avenue
Coronado, California

EXHIBIT NO. 10
APPLICATION NO.
A-6-98-158-R
Transcript of
Original Hearing
February 4, 1999

 California Coastal Commission

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Sara Wan, Vice Chair
Penny Allen
Jeff E. Brothers, Alternate
Shirley Dettloff
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Gary Cannon, Coastal Staff Analyst

-000-

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1 California Coastal Commission

2 February 4, 1999

3 Encinitas Country Day School -- Appeal No. A-6-98-158

4 * * * * *

5 DISTRICT DIRECTOR LEE: The next item is 10.b.
6 This is an appeal --

7 CHAIR AREIAS: What happened? Did 10.a. get
8 canceled?

9 DISTRICT DIRECTOR LEE: Item 10.a. is trailed --

10 CHAIR AREIAS: Trailed --

11 DISTRICT DIRECTOR LEE: -- until tomorrow.

12 CHAIR AREIAS: -- oh, I am sorry.

13 DISTRICT DIRECTOR LEE: Item 10.b. is an appeal
14 from the City of Encinitas on a decision for the construction
15 of a private school facility.

16 Staff is recommending substantial issue, and
17 unless there are three Commissioners who wish to consider the
18 question of substantial issue, we are prepared to go ahead
19 and make our presentation based on our de novo review.

20 CHAIR AREIAS: Are there three or more
21 Commissioners that want to find substantial issue?

22 VICE CHAIR WAN: Don't.

23 CHAIR AREIAS: That do not want to find
24 substantial issue?

25 [No Response.]

1 You want to go to de novo, right?

2 VICE CHAIR WAN: We want to go to de novo.

3 CHAIR AREIAS: Okay, we will go straight de novo,
4 then.

5 DISTRICT DIRECTOR LEE: Okay, thank you, and Gary
6 Cannon from our San Diego Office will be making the
7 presentation.

8 CHAIR AREIAS: Mr. Cannon.

9 COASTAL ANALYST CANNON: Thank you. I will
10 incorporate several slides in the presentation.

11 This project involves the appeal of a development
12 approved by the City of Encinitas for the construction of an
13 approximately 42,144-square foot private school facility
14 consisting of classrooms and administrative buildings, a
15 caretaker's residence, landscaping, playground and
16 recreational areas, and parking facilities on approximately
17 12 acres of a vacant 20-acre lot. The remaining 8 acres are
18 not addressed with this proposal.

19 The project also includes the widening of
20 Manchester Avenue, adjacent to the school site, which will
21 result in the fill of approximately .09-acre of riparian
22 habitat. On-site mitigation is proposed.

23 The project site is located on the south side of
24 Manchester Avenue, east of I-5 in the City of Encinitas. The
25 site is just north of the San Elijo Lagoon, separated from

1 the lagoon by a 20-acre lot on the south.

2 [Slide Presentation]

3 These are views of the site taken from Manchester
4 Avenue, looking south toward the lagoon. Manchester Avenue,
5 in this location, has been determined by the Commission's
6 mapping unit to be the first public road.

7 The site is relatively flat, and for the most part
8 is set below grade of Manchester Avenue. The site contains a
9 number of sensitive coastal resources that include a
10 substantial eucalyptus grove, coastal sage scrub habitat on
11 the upland areas, riparian habitat within the Lux Canyon
12 drainage that bisects the site, and a small alkali marsh area
13 within the southeastern portion of the site.

14 The next two photos are views of the development
15 site, looking west, and Manchester Avenue is to the right in
16 the photo.

17 Staff is recommending that the Commission deny the
18 proposed development, as it is inconsistent with LCP policies
19 addressing the protection of wetlands, and the sensitive
20 resources of San Elijo Lagoon.

21 The subject site is zoned and planned for rural
22 residential development, which would allow a maximum of 10
23 homes on the site. This designation is applied to those
24 areas of the city where lower density development is
25 necessary to protect identified sensitive areas. Based on

1 traffic figures alone, the proposed school facility will
2 generate almost 7 times the traffic that buildout of the site
3 as a residential development would generate.

4 The proposed development is inconsistent with two
5 policies in particular of the certified LCP: Policy 2.11
6 prohibits incremental development of large properties without
7 an analysis of the development's effect; Policy 2.22
8 prohibits the widening of Manchester Avenue west of the
9 subject site, and towards San Elijo Lagoon.

10 Although the city's approval of the project did
11 address mitigation for projected related impacts, adjacent to
12 the proposed school on Manchester Avenue, no findings were
13 made relative to impacts of development on Manchester Avenue,
14 or the I-5 interchange west of the subject site.

15 As such, if the city approves new development at a
16 higher density than that which is contemplated, it will reach
17 the point where a northward expansion is insufficient to
18 accommodate traffic. This will trigger demand for southward
19 expansion into the lagoon, which would be inconsistent with
20 the LCP, thus development that would result in traffic that
21 cannot be accommodated by northward expansion of the
22 interchange is inconsistent with the LCP.

23 The concern here is less one of public access to
24 the beach, but rather one of protection of the environ-
25 mentally sensitive resources of the San Elijo Lagoon.

1 As seen on this slide, Manchester Avenue and the
2 I-5 interchange west of the subject site lie directly
3 adjacent to the San Elijo Lagoon, and are currently
4 constrained as to the manner in which they can be expanded in
5 the future.

6 The city's LCP requires any expansions to occur to
7 the north, away from the lagoon resources; however, northward
8 expansion is limited by the amount of available space north
9 of the intersection. While not addressed by the city in its
10 approval of the development, the applicant has subsequently
11 submitted information regarding this concern. The
12 information concludes that the development itself will only
13 place a small, insignificant, amount of traffic on Manchester
14 Avenue, and as such will have no effect on overall traffic,
15 and the need to widen Manchester Avenue, such that lagoon
16 resources would be impacted.

17 However, they have not addressed how cumulatively
18 increased intensity of development along this corridor will
19 affect the need to expand the roadway.

20 In addition, the project does not include
21 development of the entire 20 acres. The western portion of
22 the site has been labeled as not a part, and was not
23 restricted from further development by the city in its
24 approval for the project. As such, the western portion of
25 the site can be developed in the future, generating even more

1 traffic on the adjacent roadways.

2 Lastly, the development as approved by the City of
3 Encinitas is inconsistent with the certified LCP pertaining
4 to protection of wetlands. The proposed development would
5 involve the fill of approximately .09 acres of wetlands to
6 accommodate the expansion of Manchester Avenue on the
7 northern border of the subject site. The wetland habitat
8 area can be seen in the center of the photo, and consists of
9 southern willow scrub.

10 While the fill is a permitted use, as an
11 incidental public service project, the city did not
12 adequately review alternatives to avoid or minimize the
13 wetland fill as required by the certified LCP.

14 In summary, approval of the proposed development
15 by the city is inconsistent with LCP provisions, and that the
16 proposed intensity of the development will result in far
17 greater traffic on Manchester Avenue than that called for in
18 the LCP, that it did not include review of potential environ-
19 mental impacts associated with buildout of the entire site,
20 and cumulatively may result in the need to widen Manchester
21 Avenue and the I-5 interchange to the south into San Elijo
22 Lagoon.

23 In addition, there are feasible alternatives to
24 the proposed development. These alternatives include
25 development of the site with up to 10 single family

1 residences, which would substantially reduce traffic
2 generation, and its associated impacts. Another alternative
3 includes development of a school facility on this site, but
4 on a much smaller scale. Both of these alternatives would
5 lessen the cumulative potential for the expansion of
6 Manchester Avenue and the I-5 interchange into San Elijo
7 Lagoon.

8 Therefore, staff is recommending denial of the
9 development, and this concludes staff's presentation.

10 CHAIR AREIAS: Does that complete the staff
11 report?

12 DISTRICT DIRECTOR LEE: Yes.

13 CHAIR AREIAS: Okay, Ted Griswold, Encinitas Day
14 School, and this is a organized presentation, is that
15 correct?

16 MR. GRISWOLD: That is correct.

17 CHAIR AREIAS: Okay. How much time do you need
18 for the organized portion of your presentation?

19 MR. GRISWOLD: I will need about 15 minutes.

20 CHAIR AREIAS: Okay.

21 MR. GRISWOLD: I think we should be able to cover
22 everything. We would like some time for rebuttal.

23 CHAIR AREIAS: Right, I understand.

24 MS. PORTERFIELD: Hello, I am really very happy to
25 be here. I am Kathleen Porterfield, and I am the founder and

1 the director of Encinitas Country Day School.

2 The school was founded in 1988, and this is the
3 first time since 1988 that I have been before this
4 Commission.

5 I am the on-site, hands-on, director of the
6 school. Our land is this 20-acre parcel that I am very happy
7 that you saw pictures of, and as you can see from this map,
8 it is located at the farthest north part of the lagoon, and
9 it is separated by that 20-acre parcel that is below us.

10 The remaining portion of the property is undecided
11 at this time. You are going to hear that the SELC wants to
12 do something particular with the remainder parcel, and you
13 are also going to hear that the City of Encinitas does not
14 want to do that.

15 I hope that you also are going to hear that we
16 have worked so many different ways trying to make things work
17 between the SELC, and the city, and the school, and we
18 continue to have something on the table that will satisfy
19 their desire if that works for the Commission.

20 But, what I want to do is kind of ignore that for
21 a moment, and tell you what we see in the site. We chose
22 this parcel because of its proximity to the lagoon, because
23 we really believe that children should have intimate contact
24 with nature, and that they should be able to see the horizon
25 when they are at school, and be able to feel a connection

1 with nature. We want them to realize that they are connected
2 with the environment, and that their behavior needs to be
3 checked, in order to relate properly to it.

4 The plan that we have is divided into neighbor-
5 hoods, and Mr. Griswold will probably share that with you.
6 The children -- we did this because the children would then
7 learn to live in harmony within their neighborhood, and be
8 able to relate well to the other neighborhoods in the school.

9 We would love to have our nature center mark the
10 northern trail head to the San Elijo Lagoon, but we are not
11 going to interfere with the city in deciding that. We have
12 provided trails that will connect, if they decide to do that,
13 that will be wonderful. If they don't, we have made a
14 complete site within our own complex so that the children can
15 have the contact with nature that we desire.

16 We didn't develop an interest in this in order to
17 impress the Commissioners; instead, it was a determining
18 factor in the site that we choose in 1988. It is unfortunate
19 that it is not big enough, and it is unfortunate that we
20 don't have a permanent residence there, so we are looking to
21 complete our work with this site.

22 The plan before you is well thought out, and is
23 specifically designed to provide an ideal setting for our
24 school, and its programs. It is a working model of our
25 commitment to train children.

1 And, I want you to understand that we are not just
2 training children academically, but we are training children
3 in the art of living, living in harmony with themselves, with
4 the diverse cultural and religious family of man, and also in
5 harmony with their environment. It is an educational
6 experiment, and it is very, very complete, and promises to be
7 a worthy experiment with this project just the way it is.

8 Of course, we have put some effort in figuring out
9 why you would want to approve our project, and we found the
10 answer in the Coastal Act, and I would like to read you the
11 part of the Coastal Act that I would like you to note
12 particularly, it says:

13 "Because an educated and informed citizenry
14 is essential to the well being of a
15 participatory democracy, and is necessary
16 to protect California's finite natural
17 resources, including the quality of its
18 environment..."

19 And, it goes on to say:

20 "Through education, individuals can be made
21 aware of, and encouraged to accept their
22 share of responsibility for protecting
23 and improving the natural environment."

24 Now, that is Section 3012 of the Coastal Act, but
25 we recognize our school in that section, and we want you to

1 know that.

2 Mr. Ted Griswold is here to address the issues,
3 and hopefully help you see that we have addressed them
4 completely. Our technical staff is standing by to answer
5 your questions, and our friends, and students, and families,
6 who could spend the day with us, have come to lend their
7 support, and I am here to answer any questions that you have.

8 Thank you.

9 CHAIR AREIAS: Thank you very much.

10 Mr. Griswold.

11 MR. GRISWOLD: Commissioners, I thank you very
12 much for your patience. I know it has been a long day, and
13 we would like to make this a crisp presentation, regarding
14 this project, however, there are a lot of details that we
15 would like to explain to you because it is a beautiful
16 project, and if you have additional questions, or we skip
17 over something that you want to address, please feel free to
18 ask questions.

19 I think what you will find out today in our
20 presentation, is that the wetlands alternatives analysis that
21 was mentioned by staff was, in fact, done by the city, but
22 perhaps it wasn't well documented in the city's document-
23 ation, and we will address that.

24 Additionally, the traffic impacts in the I-5
25 Manchester corridor, that was adequately analyzed. The

1 issues that the Commission staff have looked at were based on
2 some erroneous assumptions, I believe, and we have provided a
3 traffic report, and traffic model which supports that claim.

4 And, finally, I would like to address the corner
5 use, and why that is not part of this project.

6 Let me first, though, go into the project, because
7 I think you need to understand the project, and the school,
8 before we go too far.

9 And, if you don't mind I would like to take this
10 off (referring to the microphone) because I am going to need
11 to refer to the map over here.

12 The school, itself, is based on environmentally
13 based education. The school, like Kathy said, really puts
14 that theme all the way through the design of the project,
15 itself, into every detail.

16 Let me tell you, she mentioned that the location
17 is based on the environmental design, but it is also many,
18 many, other aspects of the project, itself, and I am going to
19 name a few of those, but I can't possibly go through all of
20 the details in this short period of time.

21 First off, I want to point out to you here that
22 each of the classrooms has an indoor - outdoor capacity.
23 That is what you see here, with the little courtyards. Those
24 indoor - outdoor capacities, those are to allow the kids to
25 have not just an indoor education, but they have to take care

1 of the outdoor portion as well. It is part of their
2 environmental responsibility portion of their education. You
3 can see that in all of the classrooms throughout the entire
4 facility.

5 Now, up in these areas up in here, there will be
6 garden type classrooms, but down here we are limiting that,
7 and we actually are going to be using only native habitats,
8 and native vegetation, so that there isn't any possibility of
9 entraining any type of exotic vegetation down into the lagoon
10 area. That was, again, ingrained into the portion of the
11 landscaping on the entire project. The entire southern
12 portion of the project is entirely native landscape.

13 In addition, I wanted to point out to you that we
14 have -- you will see limits of buffer here, and around this
15 area right here. The project, itself, is pushed 100 feet
16 away from the closest wetlands.

17 Down here there is an alkali marsh, and the limits
18 of disturbance and of the project, itself, are a full 100
19 feet away from the alkali marsh.

20 Likewise, on the Lux Canyon Creek area, the limits
21 of development, and limits of disturbance, are a full 100
22 feet away from the wetland limitation of the Lux Canyon
23 Creek.

24 More importantly, though, when this project is
25 being built, those buffer areas, particularly the landward 50

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1 feet of that buffer, they are going to be revegetated with
2 the coastal sage species that are salvaged during -- prior to
3 the grading operation. And, that is another part of the
4 environmental education aspects of this project.

5 When that revegetation takes place -- and this was
6 not a commitment, or a requirement, or a condition of
7 approval from the city. This was part of the project as
8 originally proposed, and it is not mitigation for anything.
9 What it is is part of the educational aspect of the school
10 itself, and will be care taking and monitoring a native type
11 habitat. And, what is in there? what makes a native habitat
12 in a coastal sage? So, that is part of what we are looking
13 at in those buffer areas.

14 Additionally, in those buffer areas, it is
15 important to note that the nature of those buffer areas makes
16 them actually a little bit different than what you would
17 typically consider in a buffer area. Because it is a school,
18 which is an intermittent use -- it is just day time use, it
19 is not a night time use -- you don't have the typical
20 disturbances that you find in a buffer area such as pets,
21 noise, night time lighting, toxics, off-road vehicle
22 activity, any of those things that typically become problems
23 in buffer areas are not a problem here, because we pulled the
24 development back. It is not a night time use. It is not a
25 24 hours a day, 7 days a week use. It is a school pulled

1 back from the area.

2 Another important aspect of the project, itself,
3 is the nature center, and that is this area located here.
4 The nature center is designed not only for the nature
5 education of the kids themselves, but they will be having
6 weekend seminars from time to time for kids in the community,
7 as well, so it is going to extend beyond the limits of the
8 student clientele, as well.

9 Another aspect that is very, very important that
10 is in the design, and this goes back to the history of how
11 the design came about. That is, you will notice that there
12 are parking areas here, but there is also additional areas
13 here, and outside the buffer area, but along this section
14 right in here. This project was designed in this location
15 with the anticipation that ultimately the city would want to
16 use the area to the south, the 20 acres down to the south,
17 and perhaps even the 8 acres on the other side of Lux Canyon
18 Creek, as a soccer park. Or, maybe they were going to use it
19 as an open space park.

20 What was brought into the design of this project
21 was the consideration that was made known to us by the San
22 Elijo Lagoon Conservancy, and the city, that if there is
23 going to be a use in those 20 acres, down to the south,
24 closer to the lagoon, they would like to have the hard scaped
25 portions of that use placed out of the lagoon. So, we have

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1 incorporated that into the design of this project. We have
2 allowed for bathroom facilities in the nature center, so that
3 if there is going to be a use down here, the facilities don't
4 have to be down on that southern 20 acres. It is actually
5 part of this project as well, and will be made available to
6 the city.

7 Likewise, we have put in additional parking area
8 here, and here, so that if there is a use that takes parking
9 -- for example, a soccer field -- down in this area, they
10 wouldn't have to park down here. This wouldn't have to have
11 hard scape and runoff into closer to the lagoon area. It
12 would be up in this area, on our project site. So, it was
13 anticipated that this would be -- leave open the option for
14 the city to have a joint use of the school site for whatever
15 it chooses to do to the south. And, that was always part of
16 our design.

17 Another very important point -- and you are going
18 to hear, perhaps, a little bit more about this from one of
19 the speakers a little bit later on -- is this project was
20 designed -- and this isn't new. I don't know of any other
21 project adjacent to a wetland that has done this. There is
22 zero runoff from this project. The runoff from this project,
23 from each of the buildings, themselves, the roofs of the
24 buildings is channeled into these gardens, so the hard scape
25 off of the top of the roofs is actually set up to recycle the

1 water into the ground water at those points, and used for
2 irrigation here.

3 The rest of the runoff, which goes down the roads
4 and in the parking lot, is channeled down into this area,
5 with a French drain system. There is a separator for any
6 pollutants, and recycled. It is completely recycled, and
7 used back for the irrigation of the rest of the facility.

8 So, what we have done is we have been able to
9 recycle all of the water that is running off from this. None
10 of it gets past this border down into the lagoon. I think
11 that is a great aspect -- again, part of the environmental
12 underlying theme of this development.

13 A couple of other things -- again, I can go into
14 all of the details, and I get kind of caught up with this.
15 The night lighting, there is no night lighting. To the
16 extent that there is security lighting necessary, we have
17 anticipated to use, and we have agreed to use, close range
18 motion detector lighting, so that if someone comes within 20
19 feet of a building, then a low voltage light will come on to
20 light up that area, so the person doesn't trip over their own
21 feet, but it is going to be pointed away from the habitats in
22 the lagoon.

23 I am going to stop at this point with all of the
24 different aspects. I do want to get into what the wetland
25 vegetation -- our revegetation program is. Incidentally,

1 this project did receive at the planning commission for the
2 City of Encinitas, unanimous approval, and unanimous approval
3 of the Encinitas City Council. It has been reviewed by the
4 Fish and Wildlife Service, and the Department of Fish and
5 Game during the CEQA process, and was approved during that
6 process.

7 And, the wetland impacts that we were talking
8 about, those were approved by the Department of Fish and Game
9 by the 1603 process, and they were certainly happy with the
10 way that the city had gone through the process, and in
11 identifying alternatives.

12 Now, let me point out to you what we have here.
13 This is where the mitigation is going to be for the project
14 wetlands. The wetland area, itself, is right up in this area
15 right here. Let me tell you a little bit about that, because
16 it is an important aspect of the project. The wetland
17 impacts, themselves, are coming from the widening of the
18 road, which is something that the city had planned to do for
19 quite some time, widening the road down to the south.

20 The area where the wetlands occur is, in fact, an
21 old agricultural ditch. It was excavated. Altogether, it is
22 less than a 10th of an acre of wetland habitat. The
23 agricultural ditch, itself, would not have any hydrology but
24 for a culvert that comes from this side of the street over to
25 this side. There is also on the other side of the street,

1 where that culvert comes from, there is wetland vegetation on
2 that side, as well. We don't know what the acreage is,
3 because we weren't asked to look at that, and we didn't know
4 it was an issue until we were talking to staff earlier today.

5 Excuse me, now with this project, we have
6 anticipated impacting that .09 acres of wetlands. Now, the
7 wetlands itself consists of three willow trees, with no under
8 story, and no known species using those three willow trees.

9 What we propose to do in mitigation -- and this is
10 the mitigation plan that was reviewed and approved by both
11 the city and the Department of Fish and Game -- is to create
12 at a 1:1 ratio -- actually a little bit greater than a 1:1
13 ratio -- additional habitat down here in Lux Canyon Creek,
14 and then all of the light green area, in addition to the 1:1
15 creation, will be a 4:1 removal of exotic plant habitat, and
16 will be planting it with willows and other riparian plants,
17 to create in that area native habitat.

18 Now, from this point here, to this point here, the
19 wetland area in there is now infested with pampus grass,
20 eucalyptus, and caster bean.

21 CHAIR AREIAS: Mr. Griswold --

22 MR. GRISWOLD: Pardon me?

23 CHAIR AREIAS: -- got to begin winding it up.

24 MR. GRISWOLD: Okay.

25 And, so this whole area is, is a net reversion of

1 a non-native habitat to a native habitat.

2 Now, what I would like to do is I do need to
3 address the traffic issues, and we do have our traffic
4 engineer, John Borman, to address those very briefly, and I
5 would like to have him address those, if you don't mind, in
6 summary fashion.

7 And, then I would be happy to answer any questions
8 regarding the wetland mitigation --

9 CHAIR AREIAS: There will be that opportunity.

10 Mr. Borman.

11 Mr. BORMAN: My name is John Borman, I am with
12 Linscott, Law and Greenspan traffic engineers. I am a
13 registered traffic engineer in the State of California.

14 There are just two issues I would like to hit on
15 briefly: first of all, the staff report states it is unclear
16 whether or not the impacts to Manchester Avenue, and to the
17 Manchester Avenue I-5 interchange were considered, and they
18 certainly were considered.

19 We met with the city early on to review the
20 project, and based on San Diego's thresholds for doing
21 traffic analyses, the amount of traffic this project adds to
22 the interchange is far below the city's thresholds, and
23 therefore didn't warrant a detailed analysis, but the impacts
24 were definitely considered.

25 Secondly, staff has stated that the project, other

1 cumulative projects could result in the need to further widen
2 Manchester Avenue beyond the planned six lanes, from six
3 lanes to eight lanes, and I believe this would definitely be
4 false. The roads are sized based on the amount of peak-hour
5 volumes, generated in the city's traffic forecast traffic
6 future model, and our project generates less peak-hour
7 traffic than what is assumed for this site in the traffic
8 model; therefore, there would be no need to widen Manchester
9 above and beyond the six lanes that the staff reports states.

10 And, I would be happy to answer any questions at
11 any time.

12 CHAIR AREIAS: Thank you, Mr. Borman.

13 COMMISSIONER REILLY: One question on that.

14 CHAIR AREIAS: Mr. Reilly.

15 COMMISSIONER REILLY: I saw a lot of numbers about
16 peak-hour traffic, but what is the current LOS on Manchester
17 at peak-hour through this area?

18 MR. BORMAN: Right today it would be level of
19 service F. Within three months they will widen it to four
20 lanes, and it will be level of service C.

21 UNIDENTIFIED SPEAKER: Is that within three
22 months, or when would that be?

23 MR. BORMAN: It will be completed in August.

24 COMMISSIONER REILLY: And, will LOS C be affected
25 or downgraded by this particular project?

1 MR. BORMAN: Definitely not.

2 COMMISSIONER REILLY: Thank you.

3 CHAIR AREIAS: Thank you, Mr. Borman.

4 Cindy Jones.

5 MR. GRISWOLD: Are we done?

6 CHAIR AREIAS: Ron Holloway.

7 [No Response.]

8 John J. Lorman.

9 [No Response.]

10 Okay, Richard Houk --

11 VICE CHAIR WAN: They were all part of their
12 presentation.

13 CHAIR AREIAS: John Wilson.

14 Where is John Wilson?

15 MR. HOUK: I am Richard Houk.

16 CHAIR AREIAS: Okay, Richard.

17 MR. HOUK: You got lucky, you got one. And, where
18 do I get my traffic -- or my ticket validated for parking,
19 that is what I want to know.

20 CHAIR AREIAS: I can do it, Richard.

21 MR. HOUK: Thank you.

22 CHAIR AREIAS: Give it to me, and if it works let
23 me know, and I will go into business tomorrow, right.

24 MR. HOUK: My name is Richard Houk. I live in
25 Olivenhain. I am president and CEO of the Boys and Girls

1 Club of San Dieguito, and today I am here to speak in support
2 of the Encinitas Country Day School. What a wonderful
3 enhancement the project would be to give our community
4 combining education with the environment.

5 But, I am also here to speak to an area that you
6 may not be aware of, and that is the Encinitas Country Day
7 School is not only an outstanding educational enterprise, but
8 also an involved community partner. The Boys and Girls Club
9 of San Dieguito, and Encinitas Country Day have been
10 collaborating for the benefit of youth for over two years.
11 We serve over 1000 children at our Grisette Branch in
12 Encinitas, a wide variety and diversity of ethnic mixes.

13 Encinitas Country Day has made significant
14 contribution to those almost 1000 children. They have
15 provided computers, resource materials, staffing, and
16 training of the Boys and Girls Club staff that is available
17 to all of our children at no cost. This allows children who
18 might not have the opportunity to be exposed to some of the
19 components of a focused educational concept to benefit
20 greatly.

21 I have found Kathy Porterfield to be of the
22 highest character and commitment, and she shares the Boys and
23 Girls Club vision of making a difference in children's lives.
24 Approving this project would allow more children to learn
25 first hand to respect and love nature, and your approval

1 would allow Encinitas Country Day to further make an
2 investment in the children of our community.

3 Thank you.

4 CHAIR AREIAS: Thank you, Mr. Houk.

5 John Wilson, followed by Lou Salazar.

6 MR. WILSON: Yes, thank you for having me here
7 today.

8 I want to just make two brief points, with regards
9 to the overall project. First of all I am a Ph.D.
10 environmental scientist -- actually, my degree is in
11 statistics. Thirty years an environmental consultant, and I
12 am currently a research environmental engineer for NASA. I
13 designed the water recycling system for this project. And, I
14 can tell you that it is beyond state-of-the-art.

15 I have never seen anybody that was willing to go
16 to the degree of expense that is involved here to make sure
17 that there were no impacts on this well. And, the water
18 recycling project doesn't just have an oil-water separator,
19 it is a complete recycling system. It is called the Genesis
20 Recycling System, and it is absolutely state-of-the-art. The
21 military is now using it on all of their programs, as well.

22 I would also like to point out that Ms.
23 Porterfield has gone to an extreme amount of expense, and
24 extreme care, to make sure that there is absolutely no impact
25 on the wetlands here. The water recycling system is only one

1 example of the care that she has gone to.

2 The entire project is designed to be environment-
3 ally compatible, and in fact in my 30 years as an
4 environmental consultant, I can tell you honestly it is the
5 best designed project I have ever seen.

6 So, I would also like to point out to you that you
7 do have an opportunity here to make a real difference. I
8 have looked at Ms. Porterfield's educational program. I am a
9 college professor. I do a lot of teaching, and this program,
10 her attitude, and the way in which she teaches these
11 children, really, she doesn't just educate them, she affects
12 a real difference in their attitudes.

13 Thank you.

14 CHAIR AREIAS: Thank you, Mr. Wilson.

15 MR. WILSON: Yes.

16 CHAIR AREIAS: Lou Salazar, and Kathleen Baker is
17 next.

18 MR. REYES: Hello, my name is Mayo Reyes, and I am
19 speaking on behalf of Lou Salazar. She is not able to be
20 here, and here is a letter that she has written. If I may
21 give this to the Commission?

22 CHAIR AREIAS: That is fine. Just give it to the
23 staff, and they will take care of it. They will distribute
24 it.

25 MR. SALAZAR: And, she has written a letter, and

1 it reads:

2 "Unfortunately, because of my teaching
3 schedule, I probably won't be able to
4 attend."

5 And, ta da, ta da, ta da.

6 "For this reason, I am sending you this
7 letter to be read at the hearing. I work
8 at several different universities in San
9 Diego, training future teachers, and one
10 of the assignments that I give in one of
11 my courses is for the students, in groups
12 of four, to allow themselves to dream of
13 their ideal school. They are to design a
14 perfect school, where money and resources
15 are not a limiting factor. They are free
16 to design the physical environment, as well
17 as the academic content taught, schedules,
18 types of teachers, et cetera. I have had the
19 opportunity of observing numerous different
20 public schools, while supervising student
21 teachers in San Diego County, and I must
22 say that none of the schools I have visited
23 have come even close to that ideal place
24 that my students dare to dream of. But,
25 Encinitas Country Day does. The grounds,

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1 the buildings, the academic content,
2 the method, the principles taught to
3 the children, this school comes as close
4 to being perfect as you will ever get.
5 I can't understand how anyone genuinely
6 interested in the education of children
7 would want to stop it from becoming a
8 reality. I can't even see any political
9 reasons that would justify blocking its
10 progress, either. We are all here to help
11 our world to become a little better, and
12 this school is a big step in that direction.
13 Few people dare to dream of perfection,
14 and Kathy Porterfield has done just that,
15 only she didn't stop of dreaming, but is
16 taking steps to making that dream a reality.
17 Don't destroy a beautiful dream, that will
18 make such a big difference to thousands of
19 children in the future. Those children are
20 the future of this country, and it is our
21 responsibility to give them the best, and
22 this is the best."

23 And, I have been in education for 21 years, and I
24 only see complete positive benefits to this, thank you.

25 CHAIR AREIAS: Thank you very much.

1 Kathleen Baker, then Nicolette Crawford.

2 MS. BAKER: I came to Encinitas Country Day School
3 about 10 years ago. I was first a parent with small children
4 in the school, and then I began working in the office for
5 Kathy Porterfield. It has been a wonderful experience, and
6 my children benefited from the school, and so have about a
7 1000 other files that I have in the office. The children
8 that have stayed with us for many years have really benefited
9 from the program.

10 I know, first hand, how much dedication through
11 hard work and financial sacrifice has gone into the growth of
12 a wonderful school, and a plan for the future. We have grown
13 to capacity, and need new space.

14 About three years ago, Kathy Porterfield said
15 something to me that sums up why I am here today. She
16 commented that too often when an area is developed, the
17 children are looked at as the least citizens, and are
18 considered last. They get leftovers, and she says that
19 often, that the children get the leftovers. That should
20 change. They should be first, and have the best.

21 I have watched the process through the planning
22 commission and the city council. I have seen the strain on
23 Kathy, just working hard to get it through. It has been
24 long, and it has been really hard. She has shown that the
25 project is good. Please don't send us back to the city.

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1 Please, really think about what this decision means, and
2 please put the children first.

3 Thank you.

4 CHAIR AREIAS: Nicolette Crawford, and then
5 Richard LaBerge.

6 MS. CRAWFORD: Yes, my name is Nicolette Crawford,
7 and I am a music specialist. I teach a kind of specialized
8 music training for children that is not real common in this
9 country. It is more common in Japan and Europe.

10 And, in that capacity, I travel to schools a lot,
11 all throughout Orange County, and San Diego County, and I can
12 say, without a doubt, that this school -- the children in
13 this school are really set apart from the other schools.
14 And, I attribute that, not -- they do have the academic
15 standards that the best schools have, and they do have the
16 creative arts curriculums that other schools have, the best
17 schools in our community, but what they have that other
18 schools don't have is character development. And, to a
19 teacher working with children, that makes all of the
20 difference in the world. It is not an academic curriculum.
21 It is part of their every day. They are taught to be their
22 brother's keeper, respect, and consideration for each other,
23 all of those things are a huge priority.

24 And, I would just like to say that it would be a
25 tremendous service to the community to make this type of

1 curriculum available to more children, and to allow them to
2 go through the sensitive age of junior high.

3 CHAIR AREIAS: Thank you, Ms. Crawford.

4 COMMISSIONER ALLEN: Mr. Chairman, I have sort of
5 a question, and then maybe this is a comment to some of our
6 speakers.

7 I don't think any of us here are questioning -- or
8 even asking questions about the curriculum or what is being
9 presented at the school. I mean, from everything I have read
10 and heard it is really a model school, and it is marvelous.

11 But, what we need to look at here is the impacts
12 of this physical plant on the environment and particularly
13 the coastal environment, and the issues that were raised by
14 our staff. And, if people could kind of focus their remarks
15 in that area, it would be helpful, at least for me, as a
16 Commissioner, to have some response in those areas.

17 CHAIR AREIAS: All right.

18 Richard LaBerge.

19 MR. LA BERGE: I would like to give Mr. Griswold
20 my time to answer Ms. Allen's concerns.

21 CHAIR AREIAS: Well, Richard LeBerge is next,
22 isn't he?

23 MR. LA BERGE: I am he.

24 CHAIR AREIAS: Oh, you are Richard, okay.

25 MR. LE BERGE: Yes, sir.

1 CHAIR AREIAS: Well, Mr. Griswold, we will go back
2 to him, as -- we will go back to him as an applicant.

3 MR. LA BERGE: Then I will -

4 CHAIR AREIAS: Okay, we will go back to him.
5 Heather Kish.

6 MS. KISH: My comments are directed to what Ms.
7 Allen wanted to hear.

8 COMMISSIONER ALLEN: I am only one Commissioner,
9 but you know, it sounds like a wonderful school.

10 CHAIR AREIAS: Ms. Kish.

11 COMMISSIONER ALLEN: I am sorry. I don't mean to
12 shut down -- I apologize. I don't mean to stop public input.

13 CHAIR AREIAS: Ms. Kish, you have two minutes.

14 COMMISSIONER ALLEN: Go ahead.

15 MS. KISH: I don't want to --

16 COMMISSIONER NAVA: And, Mr. Chair --

17 CHAIR AREIAS: Yes.

18 COMMISSIONER NAVA: -- and just to sort of follow
19 up with what Commissioner Allen said. Obviously, it has
20 already been misunderstood. But, I don't want anybody in the
21 audience to think that what Ms. Allen said, or what I am
22 going to say, is in some way an attempt to discourage you
23 from expressing what it is you have to say.

24 But, part of how you would best serve your own
25 interest is in focusing your presentation on those areas of

1 the staff report that have been identified as deficiencies in
2 your proposal, because I will bet you dollars to donuts,
3 except for maybe the Chairman, we all like kids -- sorry,
4 Rusty. So, no one should think that that is what it is when
5 we focus the discussion. We are not saying that we don't
6 like children. We are just saying that your interests may be
7 better served by at some point later on addressing what staff
8 has identified as a problem.

9 MR. GRISWOLD: Commissioners, if it is possible,
10 many of these people are not as well versed in all of the
11 issues that the Coastal Commission staff has -- and if you
12 would allow them to --

13 CHAIR AREIAS: Mr. Griswold.

14 MR. GRISWOLD: -- defer to --

15 CHAIR AREIAS: Mr. Griswold, Mr. Griswold.

16 MR. GRISWOLD: Yes.

17 CHAIR AREIAS: Mr. Griswold, let's just continue
18 the public hearing.

19 MR. GRISWOLD: I was just going to ask you if they
20 can defer their comments to me. I could address some of
21 those issues.

22 CHAIR AREIAS: No, no, you will have an
23 opportunity.

24 MR. GRISWOLD: Okay.

25 CHAIR AREIAS: Let's just continue with the public

1 hearing.

2 Ms. Kish, Ms. Erin Cole, or Mr. Erin Cole, Brenna
3 Cole.

4 MS. KISH: If I wasn't feeling self-conscious
5 before --

6 CHAIR AREIAS: Ms. Kish, just go ahead.

7 MS. KISH: -- I really am now.

8 COMMISSIONER ALLEN: Please, I am sorry. I did
9 not mean to make anyone feel self-conscious.

10 MS. KISH: Okay, I'll get over it, don't worry.

11 CHAIR AREIAS: Ms. Allen, you need to --

12 MS. KISH: I actually teach kindergarten and first
13 grade at Country Day, but I am not here to speak to you as a
14 teacher, but rather as a student, and for the students.

15 I am pretty sure that most of us here can recall
16 the clarity of the teacher that had great impacts on our
17 lives, that teacher that inspired us, and encouraged us, and
18 always seemed to say the right things at the right times, and
19 the teacher that opened the world and showed us how to learn
20 and how to love learning. For me, that teacher was Kathy
21 Porterfield. I was in her kindergarten class the first year
22 that she taught, and I just recall that she was so young, and
23 so energetic, and she was that teacher that always had the
24 right thing to say at the right moment, and I remember
25 feeling that at 5 years old I was so lucky to be in her

1 class, and I know looking back on that at 29, that I truly
2 was lucky.

3 Kathy's dream, even then, was a school, a place
4 not just to teach math, language arts, and science, but to
5 teach integrity and honesty, compassion and charity, and
6 these are all things that can only be taught by example. I
7 learned these lessons from Kathy, and for that I am truly
8 grateful.

9 My dream in life was not to be a teacher. I am
10 not really sure what my dream is yet, but for now it is more
11 than enough to share in Kathy's dream. What an amazing
12 opportunity we have to make this vision, this dream, a
13 reality, for every child deserves to feel safe, and useful,
14 and important, and that is how she made me feel.

15 Thank you.

16 CHAIR AREIAS: Thank you, Ms. Kish.

17 Erin Cole, and Brenna Cole, and discard what Ms.
18 Allen said, and Mr. Nava.

19 COMMISSIONER KEHOE: Girls, girls, over here, over
20 here, over here, hi.

21 CHAIR AREIAS: Commissioner Nava, do you want --

22 COMMISSIONER KEHOE: The first thing we want you
23 to tell us about are your beautiful skirts. I think they
24 look so pretty.

25 CHAIR AREIAS: That is such a sexist comment.

1 Okay, go ahead, Erin and Brenna, welcome.

2 MS. BRENNIA COLE: Hi, my name is Brenna Cole.

3 MS. ERIN COLE: My name is Erin Cole.

4 MS. BRENNIA COLE: We've gone to this school since
5 we were 3-and-a-half-years old, and now we are 9. And, we
6 would like other children to share the educational
7 opportunity that we have.

8 MS. ERIN COLE: And, we would like to sing this
9 song for you about our school.

10 (Song)

11 CHAIR AREIAS: All right, very good. Thank you
12 Erin and Brenna.

13 Okay, Michael Larsen, Robert Ratlift, Jennie
14 Ratlift, Kevin Johnson, Carolyn Avalos.

15 Kevin Johnson.

16 MR. JOHNSON: Good evening, Mr. Chairman, on
17 behalf of the San Elijo Lagoon Conservancy, one of the
18 appellants, and then also Ms. Tinker Mills, we have an
19 organized presentation, and --

20 COURT REPORTER: May I have your name for the
21 record, please.

22 MR. JOHNSON: Yes, it is Kevin Johnson. I am the
23 president --

24 COMMISSIONER NAVA: Can you sing?

25 MR. JOHNSON: Can I sing? Actually, I can, but I

1 figured I was going to wait and see how things went before I
2 pulled that one out.

3 CHAIR AREIAS: Good, that was a very tough act to
4 follow, Mr. Johnson, but go ahead.

5 MR. JOHNSON: Okay.

6 In terms of time, I know it is a long day, and
7 everything. We had anticipated a coordinated presentation of
8 approximately 20 minutes, and if the Chairman could let me
9 know at 15 minutes, I'll wrap it up, and then I'll give way
10 to --

11 CHAIR AREIAS: Mr. Johnson, you --

12 MR. JOHNSON: -- Ms. Mills.

13 CHAIR AREIAS: -- have got 15 minutes, you go
14 ahead.

15 MR. JOHNSON: Okay, thank you. Is that total, or
16 just -- because Ms. Mills wanted to speak also. I just want
17 to be clear on what you said.

18 CHAIR AREIAS: Mr. Johnson, I gave -- yes, I gave
19 the proponents that much time, so and as long as you keep it
20 interesting.

21 MR. JOHNSON: Okay, very good.

22 It is an interesting position up here for the
23 Lagoon Conservancy because we, too, are educators. We run
24 several thousand children through the lagoon, our trustees,
25 the docents, every year. We have received repeated grants

1 from the County of San Diego, where we buy educational
2 materials for children, and we take them through the lagoon.

3 One of the things that we tell them is that a very
4 important part of our job is to protect the lagoon from
5 inappropriate development, not just short term inappropriate
6 development, but long term inappropriate development.

7 And, carrying with the educational theme, I
8 suppose somebody could say this is sort of nature versus
9 Socrates here, and I would give Socrates an A+ in terms of
10 micro-environmentalism, but an F in terms of macro-envi-
11 ronmentalism. And, that is the point I want to focus on and
12 develop with you.

13 Something very important that you need to know is
14 that there is no precedent in our city for an institutional
15 use of this size south of Manchester. Manchester has, for
16 better or worse, been a northern boundary for our lagoon, and
17 our watershed. And, it is basically a mark there upon which
18 we have said, and our scientists have said, we really can't
19 go beyond.

20 When people have tried over the years to encroach
21 upon our watershed, to get closer to the lagoon, to build on
22 this valuable property, you know -- all over up and down the
23 watershed we have been involved -- and we said, "You need to
24 think about this, because there are real problems with this."

25 I can tell you that right now, the size of our

1 watershed, the way it has been constrained, is already to the
2 point where the scientists will tell you that the long term
3 viability of our habitat, in terms of our ecosystem, is
4 already threatened. So, every acre that is taken away from
5 us, as we move along, is going to affect future generations,
6 and it is the children, and the grandchildren, and those
7 people beyond that that we are very, very concerned about.

8 On this subject of institutional uses, and on the
9 subject of battles, okay, nature, Socrates, education, we had
10 four years ago a long term debate with a Presbyterian Church
11 that went out and they bought 30 acres just a little farther
12 up the watershed, south of Manchester, also zoned rural
13 residential.

14 They came up with beautiful plans, and sitting
15 here tonight, it was somewhat of a deja vu experience,
16 because we heard from the church, the pastor -- this is
17 really a tough act to follow. The pastor gets up there and
18 starts talking about his message, and the environment, and
19 God, and how they are going to have this beautiful sanctuary
20 looking out over the lagoon.

21 And, we said, "Well, wait a minute. You know, you
22 want to have 50,000 square feet, and you are going to have a
23 school, and this is a regional facility, and your congreg-
24 ation is growing, and so why are you coming next to an
25 ecological reserve?"

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1 "Well, it is a beautiful spot." They said, "It is
2 an inspirational."

3 Well, sure it is, but it is supposed to be
4 inspirational for everybody, not just that congregation, not
5 just a private school. It is there for the safe-keeping of
6 future generations, and that is why we are here tonight, to
7 talk about this.

8 The newspaper wrote a story about this and the
9 headline was, "God Versus Nature". And, we set back, and we
10 said, "Oh, gee, what are we going to do with this?"

11 The ending, the story ends nicely, however,
12 because what happened was, the church met after we talked to
13 them, and we explained to them the macro-environmentalism of
14 the issue. That church's elders decided that this was not
15 the place to build the church. They sold the property. It
16 has subsequently been developed as rural residential. There
17 are three homes there. We were able to design the area, so
18 that there are contiguous habitat areas. We have
19 functionally expanded the lagoon, because things were set
20 back from the lagoon, and we have a really nice appropriate
21 development for that watershed.

22 This is the fundamental point you need to keep in
23 mind, in terms of this project that is before you now. It is
24 rural residential. They could build up to, we think seven --
25 we will give them the benefit of the doubt -- up to ten

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1 homes. Those homes could be clustered in the northern part
2 of that property, away from the reserve.

3 The city, in looking at the southern 20 acres, has
4 already indicated that they are going to be leaving the
5 eastern end of that property completely open. That creates
6 an opportunity for a corridor up into -- and wildlife habitat
7 corridors that are functional -- into that northern 20 acres.

8 So, we aren't here to say don't build on it,
9 although the property is valuable enough to where it deserves
10 to be purchased, but we are here to say that the property can
11 be looked at in a way that, you know, is fair to the property
12 owner, in terms of them getting a use on it, but it is also
13 fair to the lagoon, and the very, very critical situation
14 that the lagoon finds itself in at this particular point in
15 time.

16 Now, this project comes to you, basically, in a
17 vacuum, for some fairly unique reasons. I say vacuum because
18 there was no EIR done. There was no alternative project
19 analysis done. They didn't look at a school of 150 students,
20 or 200 students, which is what was originally talked to about
21 this site by the school, to the Conservancy when we were
22 working with them three years ago, trying to put together a
23 comprehensive plan for the area.

24 So, nobody looked at the pluses or minuses of a
25 smaller school. Nobody looked at the pluses and minuses of a

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1 mid-range school. There was no meaningful CEQA review,
2 nobody looked at cumulative impacts, in terms of taking this
3 watershed. Nobody looked at cumulative impacts in terms of
4 the impacts it was going to have on other developments, other
5 undeveloped properties in the watershed. Nobody looked at
6 the cumulative traffic impacts in this particular critical
7 area.

8 And, one of the reasons this happened was is that
9 the Conservancy, and other environmental interests in the
10 community, were still hoping that we could get the city and
11 the school together so that we might be able to plan
12 something with a much smaller school that made sense in terms
13 of the whole picture.

14 And, the school, based on balking by the city, and
15 certain administrators in the city, basically kind of gave up
16 on putting something together, dramatically expanded the
17 scope of the school that we had originally talked about,
18 determined that they had the votes on the city council to
19 push the project through, and they did.

20 And, we kind of sat back and said, "Gee, we don't
21 want to get involved, because we don't want to, you know,
22 alienate the city, because we hope that they are going to be
23 able to do something with the school," and so on and so
24 forth.

25 So, ultimately, this thing gets approved and there

1 is no EIR. Even though there are endangered species on the
2 site, there is a take, and as you all know, it is mandatory
3 law under CEQA that you do an EIR when there are endangered
4 species, let alone, when you have a project that is right
5 next to an ecological reserve.

6 So, you are here, and the fact of the matter is
7 they haven't given you enough to make a decision about their
8 impacts, because their impacts, from a macro standpoint, have
9 not been analyzed.

10 Commissioner Reilly asked about level of service
11 C. With all due respect to our advocate traffic engineer,
12 who is here for the applicant, we have submitted to you a
13 fairly detailed letter from Bill Darnell and Associates, a
14 very respected traffic engineering firm, and he points out
15 that there are multiple omissions and assumptions regarding
16 the traffic analysis that he just can't live with, from the
17 standpoint of a standard traffic engineering analysis.

18 I pointed out to you in a letter that was
19 submitted recently that there are all kinds of projects that
20 are being proposed north of Manchester that are going to
21 impact the traffic in that area. For example, directly
22 across the street from the proposed site of this school,
23 there is a temple that is going in. They just closed escrow.
24 They are in negotiations with the city, and they are going to
25 have 1700 ADT's that they are going to put into the system.

1 Did they analyze this? No. Did they analyze the 9000 other
2 homes that are being north of this particular apex of our
3 transportation system, and the impact they would have on
4 Manchester and the lagoon? No. They didn't do that.

5 Now, what I would like to do is to take a minute
6 and show you a map that Ms. Mills prepared, and I kind of
7 grabbed to steal for my presentation here.

8 Mr. Chair, how am I doing on time.

9 CHAIR AREIAS: This is very interesting, keep
10 going.

11 MR. JOHNSON: Thank you. We did not have an
12 opportunity to turn this into a vellum, but this is basically
13 four Thomas Brothers pages put together of the area.

14 You can see the lagoon there, in blue. Down here
15 at this apex is the property area, the little square there.

16 Now, you see I-5 here, El Camino Real --

17 COMMISSIONER NAVA: Can I ask staff to just help
18 him hold that up.

19 MR. JOHNSON: -- and, then Manchester.

20 Thank you very much.

21 Okay, now Ms. Mills has identified certain housing
22 developments that are sort of in the pipeline being built
23 right now -- all of which were readily picked up by anybody
24 who wanted to do a real traffic analysis on this area.

25 And, these green areas represent over 9000 homes

1 that are being built right now. Now, most everybody is going
2 to be going south when they are working, and they only go
3 south three ways within this basic funnel area, as I am
4 calling it. They go down I-5, they come down El Camino Real,
5 which is a very, very popular alternative, but crowded route,
6 or they may work their way from eastern Carlsbad down Rancho
7 Santa Fe Road to Manchester, coming in from the eastern side.

8 So, all of this traffic now is coming down, and
9 basically into the mouth of the funnel, and jamming up. And,
10 it is a major, serious problem. I take the train everyday
11 because I work in San Diego, and I hate to try and get onto
12 Manchester in the morning, and I hate to get into I-5 because
13 I just sit. It can take me 25 minutes to 30 minutes, if
14 there is not an accident, to go 6 miles on I-5. Highway I-5
15 is projected to be one of the worst segments in our entire
16 state within the next 10 years, because the traffic system in
17 the north county is just absolutely abysmal.

18 So, with this back drop that they now want to put
19 a school right here at the apex of this hotbed of traffic
20 congestion in our community, and if you look at the traffic
21 numbers -- and this was something that was not developed in
22 the traffic report -- if you compare ten rural, residential
23 lots, you are talking about 18 peak-hour ADTs. Under their
24 own traffic studies, they are talking about 689 peak-hour
25 ADTs. That is a 38-fold increase, in terms of the amount of

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1 traffic that will be hitting the streets between your option
2 of a rural residential development, versus a major institu-
3 tional development.

4 Now, I want to set this down for a moment.

5 The traffic engineer, Mr. Darnell, has also
6 pointed out that the basic assumptions that they have put
7 forward on the number of ADTs are very questionable, because
8 this is a private school. It is in an area that is very
9 dangerous, very dangerous for pedestrians. No kids are going
10 to walk to the school. No kids are going to take their
11 bicycles to the school. These kids are going to be delivered
12 by their parents to the school.

13 Now, there is going to be some effort, I
14 understand, for car pooling. But, think about it. This is a
15 private school, people -- and a lot of people are dual
16 workers in their families, they are not going to be having
17 time to sit around and go pick up a bunch of people and bring
18 them to the school.

19 We did not have a realistic assessment of how much
20 car pooling there was going to be, but we can tell you that
21 it is very probable that there is not going to be all that
22 much.

23 So, in order to determine exactly what the ADTs
24 are going to be, you really have to consider those factors,
25 and they didn't do that. And, Mr. Darnell has suggested

1 that, in fact, the ADTs could be much more than the 689 ADTs
2 that have been posited by the school.

3 And, remember, you know, they may say we
4 considered this, and we considered this, but you look at the
5 traffic report, and the traffic report shows that they didn't
6 consider a whole bunch of things, and those are listed by Mr.
7 Darnell.

8 So, you know, I don't want to be unnecessarily
9 hard on the process, basically, they had the votes on the
10 city council. They knew this thing was going to go through,
11 and they didn't need to spend a whole lot of money doing an
12 EIR, or even doing an adequate traffic study, because in fact
13 the thing was going to be approved, just like many other
14 projects that have been brought before you from the city of
15 Encinitas.

16 You know they have a track record of bringing in
17 projects where they really don't care about the environment,
18 and they don't think about traffic, and they just simply go
19 ahead and approve it. That has changed now. We have a new
20 council, effective in November. There is a letter that has
21 been submitted to you from Christy Guerin, who is a new
22 council woman, who has expressed her serious concern about
23 the scope of the school, about the location. She comments on
24 the fact that the institutional precedent in that area is one
25 of grave concern to her.

1 There are multiple other properties along this
2 watershed, and those property owners would love for you to
3 approve this use, because their property values are going to
4 skyrocket, because they can say, "We are next to this massive
5 institutional use."

6 Which brings me to --

7 DISTRICT DIRECTOR LEE: You have three minutes
8 left.

9 MR. JOHNSON: Okay, thank you.

10 Actually, let me go ahead and talk about the
11 traffic a little bit more, since we have the slide up.

12 The system I have told you about is failing, and
13 for them to say that once Manchester is expanded, at least on
14 its one leg, it is going to be level of service C is just
15 simply not correct. And, they do not have the data to back
16 that up. They have not done the studies.

17 This is southbound on El Camino Real. The light
18 there you see is the T intersection with Manchester. The
19 school is just to the left, there. That is where they would
20 site the school.

21 This is the way the traffic backs up in the
22 morning on El Camino Real through that light. The traffic
23 analysis that was done did not mention to you, or anybody,
24 that there is queuing back from the freeway. Highway I-5
25 jams up every day, and every day, depending upon the hour and

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1 the traffic levels, traffic will jam up all along Manchester,
2 from the freeway, back up through the intersection.

3 This is another picture here, taken from the
4 intersection, with the cars going that way.

5 Now, I understand -- I got these pictures from a
6 neighbor who took them at about 7:30 in the morning, so this
7 is before the 8:00 to 9:00 traffic analysis that has been put
8 forward by the applicant.

9 One of the problems that Mr. Darnell points out,
10 with the applicant's analysis, is that they didn't study the
11 a.m. peak totally, because there is heavy traffic starting
12 before 7:00 in that area, and they are going to be having
13 kids coming to their school starting at 7:30, if not sooner
14 -- not analyzed, ladies and gentlemen, at all.

15 This is a picture standing across the street from
16 Manchester, looking at the cars at the light, waiting to turn
17 left to go to the freeway. They can't go left because the
18 cars are backed up from the freeway.

19 If I could see the next picture, please.

20 Now, here you can see, again, from the same
21 location, you can see the cars backed up around the curve,
22 which goes past the junior college, back to the freeway. So,
23 they are jammed up there, and this happens every day. If it
24 rains, it can take 2 hours to go 25 miles.

25 So, ladies and gentlemen, in terms of wrapping

1 this up, here, because I am running out of time, the project
2 as proposed -- and I'll use a map here to make my final
3 point. You see here that they have taken that eastern
4 portion of that northern 20, and they have left aside that
5 parcel to the west.

6 For this intensity of use, and the impacts that
7 they are going to have, in terms of the system, you know,
8 they are going to load up the system. They are going to
9 force the roads to be expanded even more into the lagoon,
10 through the lagoon.

11 Anybody would say, "Gee, maybe we should make them
12 dedicate as mitigation the western part of the property."

13 But, what has happened, regardless of what the
14 explanation is as to how we got here is, that the property
15 owner is sitting real pretty, because they bought this
16 property out of bankruptcy for \$300,000 I am informed, and
17 believe. And, now, what they want to do is they want to take
18 rural residential, they are going to have a major
19 institutional use.

20 Once that is in, they basically will have cut out
21 that corner, and then it will be time to put in the 7/11, the
22 gas station, or whatever it is, on rural residential
23 property, because they are going to come to you and say,
24 "Gee, this is zoned rural residential, and this is
25 impractical now, because we have a major institutional use."

1 The neighbors, again, south of Manchester, right
2 on the reserve. They have property they want to develop.
3 They are going to come to us in the city, and they are going
4 to say, "We want to do this." It is a bad precedent.

5 The school, we have no beef with the school. It
6 is a great school. It is an expanding school. But, you
7 don't take a successful, expanding school, and stick it next
8 to a ecological reserve.

9 So, thank you, and let me turn the mike over to
10 Ms. Mills.

11 COMMISSIONER REILLY: One question, before you
12 leave Mr. Johnson.

13 VICE CHAIR WAN: Yes, we have a couple of
14 questions.

15 Commissioner Reilly, and then Commission Dettloff.

16 COMMISSIONER REILLY: There was a letter of
17 support for this project, or some project, from your
18 organization, dated May 28, 1997. What was -- specifically,
19 what was different about what you endorsed then, as opposed
20 to what we are looking at now?

21 MR. JOHNSON: Very good question.

22 I have a site plan, which I can show you, in
23 explanation, if I may. It will take me 20 seconds to show
24 that.

25 COMMISSIONER REILLY: I can see it, yeah.

1 MR. JOHNSON: Basically, this is the two 20-acre
2 parcels, side by side.

3 When we talked to the school, as part of a
4 compromise proposal to put this thing together, they talked
5 about -- and this is, you know, what they designed -- a
6 school up in the upper corner here. We thought it took 5 to
7 7 acres. This is what we were understanding was going to
8 happen.

9 And, everything else was going to be soccer
10 fields, and open space, with a joint use parking lot right
11 here. We were going to keep all of the hard scape off of
12 southern part of the property, and therefore all of night
13 lighting, and things of that nature.

14 So, this is what we talked about, and we were told
15 that they were thinking about 150 to 200 students. That was
16 what we understood they were going to do.

17 So, this was the project that we went together
18 with the soccer people to try and work on. There were no
19 discussions about traffic at that time, but we assumed that
20 they would do an EIR before they did the project.

21 Does that answer your question, sir?

22 VICE CHAIR WAN: Commissioner Dettloff.

23 COMMISSIONER REILLY: Okay, I guess so.

24 COMMISSIONER DETTLOFF: Actually, that was my
25 question, that a smaller school is something that you would

1 find feasible on that site? and would work with the
2 applicant, if that were the case?

3 MR. JOHNSON: A much smaller school --

4 COMMISSIONER DETTLOFF: Well, as you described?

5 MR. JOHNSON: -- yeah, was something that we felt
6 we could live with, if we could get all of these other things
7 for the lagoon.

8 In other words, we have been desperately concerned
9 about what the city was going to do with the rest of these
10 properties; and at the time, we said, you know, we'd better
11 go ahead and make something work.

12 COMMISSIONER DETTLOFF: Now, did you say that the
13 southern portion of that property, you feel the city is going
14 to put that in a conservation element? did I misunderstand
15 you?

16 MR. JOHNSON: What I said was that this whole
17 property should be set aside. It is that valuable, and
18 important.

19 But, right now, the city has been moving forward
20 with acquiring the southern parcel, and with the eye of doing
21 soccer fields, but that hasn't been finalized yet. And, one
22 of the reasons it has been slowed down, I think, is that they
23 have been waiting to see what was going to happen, in terms
24 of the school's willingness to potentially make the western
25 part of the property available.

1 COMMISSIONER DETTLOFF: Although I know that we
2 don't have an EIR on the property, you probably are
3 considered an expert when it comes to questions regarding the
4 lagoon, what impacts do you see directly upon the lagoon from
5 a project of this size on that particular site?

6 MR. JOHNSON: First of all, because they are not
7 clustering their development farthest away from the lagoon,
8 they are taking away habitat and buffer, and fringe impacts
9 are a major problem.

10 Just on the other side of the southern 20 acres
11 there are nesting sites for endangered species, and in many
12 cases you are supposed to be staying thousands of feet away
13 from them.

14 So, the scientists tell us that everything needs
15 to be as far away from these animals as they possibly can be.
16 So, we need to make sure that everything is pulled back as
17 far as possible, and this is why we were willing to, for
18 example, live with grass fields, because the grass fields,
19 basically, can be there, and they are kind of like, you know,
20 the natural terrain, if you will, and they are not going to
21 have impacts associated with them. So, everything needs to
22 be pulled back. You can't have lighting and things like
23 that, which is coming out there, because it affects the
24 predator-prey relationship, and so on and so forth.

25 In addition, you have the whole issue of

1 precedent. This is something that is of a very big concern
2 to us, because we have got all of these other property owners
3 down there who would love to build out towards the lagoon,
4 and every time they do that, they shrink. They shrink what
5 is the effective, you know, habitat if you will, and the
6 ecosystem that everybody survives in.

7 VICE CHAIR WAN: Okay, you have one more speaker?

8 COMMISSIONER KEHOE: May I ask a question.

9 VICE CHAIR WAN: Oh, yes, go ahead. I am sorry.
10 I didn't see you.

11 COMMISSIONER KEHOE: Well, first, you know, I know
12 the soccer fields are not before us, but I am a little bit
13 stuck on the idea that soccer fields are considered -- I
14 think, you know, maybe this is too lax a summary -- but sort
15 of a superior use than the school.

16 There are impacts to the lagoon -- there would be
17 impacts to the lagoon if the city decides to go forward with
18 the soccer fields, too? wouldn't there be fertilizer,
19 irrigation? Certainly it is not consistent with habitat.

20 MR. JOHNSON: That is absolutely correct, and a
21 partial answer to your question comes from the fact that at
22 the time we were even considering --

23 COMMISSIONER KEHOE: And, another thing, to staff
24 --

25 MR. JOHNSON: Okay.

1 COMMISSIONER KEHOE: -- is there a better site map
2 of what is going on here? We have the big map, and then we
3 have a really bad Xerox of the school campus. What about the
4 rest of it?

5 MR. JOHNSON: We have a transparency that might be
6 of some help.

7 Can we put that up, Bob. That would --

8 COMMISSIONER KEHOE: I'll have to move --

9 MR. JOHNSON: -- be No. 8.

10 COMMISSIONER KEHOE: -- to look at that, so I just
11 -- to my way of thinking, soccer fields are going to be as
12 destructive of habitat as, you know, anything else that we
13 are looking at here.

14 You have got parking. You have got pads. You
15 have got fertilizer, irrigation --

16 MR. JOHNSON: That is why we want --

17 COMMISSIONER KEHOE: -- brought on --

18 MR. JOHNSON: -- that is why we wanted the two
19 projects coordinated, so all of the hard scape, all of the
20 parking, all of the lights, all those types of things would
21 be pushed away from the lagoon.

22 Right now, what we are looking at is the situation
23 where they will build -- if they do their project, and they
24 have no obligation to do a joint use. There is no condition
25 that requires them to do a joint use with the city, and in

1 fact it is in their economic interests not to do a joint use
2 with the city at this point in time. And, there is a
3 landowner out there who lives in Rancho Santa Fe, who wants
4 to make money off of this. It is not just the school making
5 the decision.

6 But, this is what you would have here with the
7 school project, leaving this area in isolation, the city will
8 build another parking lot here, which will be complete waste
9 and duplication of valuable flat land.

10 They will put hard scape down here, in terms of
11 tennis courts, and basketball courts, and things like that,
12 whereas, if we have a required joint use project, all of the
13 hard scape would have to go up north, and that is what we
14 originally contemplated.

15 So, the answer to your question is that one of the
16 problems with this school is it slipped through, under
17 circumstances where it was supposed to be integrally
18 coordinated with this other parcel, so that we could take the
19 impacts as far away from the lagoon.

20 If you approve this project unilaterally, we will
21 have not ability to condition any of these things any
22 further, and the city will be stuck at whatever, you know,
23 mercy of whatever bargain they are going to impose.

24 COMMISSIONER KEHOE: And, then would you just
25 continue to hold up that map for a minute, Kevin --

1 MR. JOHNSON: Sure.

2 COMMISSIONER KEHOE: -- the one you just had.

3 Am I reading that right, the gray at the right,
4 lower right-hand corner, that is the lagoon?

5 MR. JOHNSON: This, right here?

6 COMMISSIONER KEHOE: Yeah.

7 MR. JOHNSON: Yeah, what this is, there is a
8 cismontane alkali marsh, so what they are doing is --

9 COMMISSIONER KEHOE: Is there water? is there
10 water?

11 MR. JOHNSON: -- it is intermittent water here --

12 COMMISSIONER KEHOE: Oh, okay --

13 MR. JOHNSON: -- it is not water all year round.

14 COMMISSIONER KEHOE: All right.

15 Then, I am also seeing the soccer field corner
16 practically touching the water. Is that a 100-foot buffer
17 there?

18 MR. JOHNSON: This is one --

19 COMMISSIONER KEHOE: No.

20 MR. JOHNSON: -- design from --

21 COMMISSIONER KEHOE: Yes, right there --

22 MR. JOHNSON: -- yes, I believe there is --

23 COMMISSIONER KEHOE: -- right there --

24 MR. JOHNSON: -- a 100-foot --

25 COMMISSIONER KEHOE: Yes.

1 MR. JOHNSON: -- yes, right here.

2 COMMISSIONER KEHOE: Yes, all righty. I just
3 wanted to be clear on what I was looking at, thank you.

4 MR. JOHNSON: Thank you.

5 CHAIR AREIAS: Kevin, does that finish your
6 presentation?

7 MR. JOHNSON: Ms. Mills had a few comments that
8 she wanted to make.

9 CHAIR AREIAS: Carolyn Avalos.

10 COMMISSIONER KEHOE: Mills.

11 CHAIR AREIAS: Mills.

12 COMMISSIONER KEHOE: Yes.

13 MS. MILLS: No, number 6, or whatever was the last
14 one you had up there.

15 Good evening, Commissioners, I am Tinker Mills,
16 and I live at --

17 COMMISSIONER KEHOE: On the microphone.

18 MS. MILLS: Oh, I am too short.

19 I am Tinker Mills, and I live at 3681 Manchester,
20 right directly across the street from the proposed school.

21 I turned in a petition from all of my neighbors
22 across the street. They don't want the proposed school.

23 I have lived on Manchester for 38 years, since El
24 Camino was a dirt road, and only 15 to 20 cars a day would
25 travel Manchester. The intersection on Manchester already

1 has a high volume of vehicles, due to the daily traffic. We
2 are turning into a dumping ground from other cities of
3 traffic problems.

4 With the location of the turn lanes proposed for
5 the school entrances, one is on a blind curve -- would you
6 like to show that blind curve one? I think it is the last
7 one. The caretaker's cottage, and fire truck, and stuff, my
8 driveway is right here, by that fire hydrant, and the blind
9 curve is about 240 feet.

10 Let's see, wait a minute here. The curve has been
11 the cause of numerous, dangerous accidents. Traffic is
12 backed up at times a quarter-of-a-mile east on Manchester and
13 South El Camino and Manchester. If parents are turning left
14 out of the school, and traffic is backed up, no one moves.
15 When there is an accident on 5 it backs up even farther,
16 because the freeway is at a complete stop. The entrance from
17 the school is 750 feet from center line Manchester.

18 The proposed widening of Manchester from El Camino
19 to I-5 will not make a difference, due to the one-lane
20 on-ramps north and south bound. To widen these on ramps on
21 I-5 would cut into the San Elijo Lagoon. It could be 10
22 years before this happens, if at all.

23 The City of Encinitas had said something about
24 shaving the blind curve on Manchester. As homeowners, it is
25 our belief that it will only encourage motorists to exceed

1 the posted 40-mile per hour speed limit.

2 If this school is permitted to be built, it is
3 reasonable to expect that traffic accidents will increase
4 accordingly. A proposed light at the school entrance is not
5 a solution, just more stacking.

6 In closing, as you can see from the pictures,
7 there is a lot of stacking and grid lock. It worsens greatly
8 when it rains.

9 Show that picture, that No. 6, because it shows
10 the freeway stacking up. You can see it from -- you can see
11 I-5 freeway up there, and that is what we have to live with
12 every morning, and every afternoon.

13 Thank you.

14 VICE CHAIR WAN: Rebuttal -- take rebuttal next.

15 CHAIR AREIAS: Okay, rebuttal.

16 MR. GRISWOLD: There were also, obviously, an
17 awful lot of issues that were raised, that we did not have an
18 opportunity to address in our case-in-point.

19 What I would like to do, first off, is have John
20 Borman address some of the traffic issues, and then I would
21 like to come back on some of those scientific issues, as well
22 as the joint plan, if that is all right.

23 So, I will have John go ahead and address.

24 CHAIR AREIAS: Can you do all of that in about 5
25 minutes?

1 MR. GRISWOLD: We will do absolutely the best we
2 possibly can. I noticed that they had an awful lot longer
3 than we did in our former presentation.

4 COMMISSIONER ALLEN: No, it was --

5 CHAIR AREIAS: You did --

6 MR. GRISWOLD: We will try and get it done just as
7 quickly as we can.

8 CHAIR AREIAS: Believe, you both had a long time,
9 and I would just remind you that the mind can absorb what the
10 seat can endure, and you know, we have a long agenda here
11 tonight.

12 MR. BORMAN: John Borman, with Linscott, Law and
13 Greenspan --

14 CHAIR AREIAS: John --

15 MR. BORMAN: Yes.

16 CHAIR AREIAS: -- when you leave, we have got
17 probably 20 more items, so --

18 COMMISSIONER NAVA: Mr. Chair.

19 CHAIR AREIAS: -- go ahead.

20 COMMISSIONER NAVA: Mr. Chair.

21 CHAIR AREIAS: Yes.

22 COMMISSIONER NAVA: I am way over here -- Vic
23 Holanda.

24 CHAIR AREIAS: Commissioner Nava.

25 COMMISSIONER NAVA: I am just kind of curious.

1 Were there other speakers in opposition to the project,
2 before we went to rebuttal.

3 CHAIR AREIAS: I believe there were, but it was an
4 organized presentation. I assumed that they were all
5 together.

6 Do you want to speak?

7 MS. AVALOS: Yes, I handed in a speaker slip.

8 CHAIR AREIAS: Okay, two minutes, let's go. Two
9 minutes each.

10 Well, Ms. Wan?

11 VICE CHAIR WAN: I gave them to you.

12 CHAIR AREIAS: Going to put a letter in your file.
13 Where is it?

14 VICE CHAIR WAN: I don't know what you did with
15 it. They are all there.

16 CHAIR AREIAS: See what happens -- it has been a
17 long day.

18 MS. AVALOS: Good evening, Mr. Chairman, members
19 of the Commission. My name is Carolyn Avalos, and I serve on
20 the executive committee of the San Diego Sierra Club;
21 however, I come to you simply as a resident of Encinitas,
22 which boasts an enlightened environmental community.

23 We oppose this ill-conceived project, that targets
24 the shoreline of our lagoon. This past November, Encinitas
25 was the only north county city that replaced incumbents with

1 two environmentally sensitive city council members, in order
2 to form a three-member majority. That is to say, Encinitans
3 clearly want to stop the destruction of our home town habitat
4 and wetlands, and we want to halt the disappearance of
5 unstructured local open space. We know such losses threaten
6 our beaches.

7 North county is in the throws of unprecedented
8 exploitation. Area residents are horrified at this scale of
9 development, and traffic generation, raging through our
10 entire region, and yet governments, acting as some single
11 purpose bureaucracies proceed in approving unwise project as
12 if we had only begun to grow.

13 The people, on the other hand, know that we are
14 reaching the end of our resources. Dr. Michael Soule, last
15 year at UCSD noted with extreme regret that where he had done
16 so much research on habitat islands and wildlife corridors in
17 north county, particularly in Encinitas, there remains very
18 little, all vestigial, isolated and unprotected.

19 As you may have observed, the City of Encinitas
20 lies between the Batiquitos and San Elijo lagoons, and has a
21 special stewardship implied in this; nevertheless, in its 10
22 years of citihood, it has systematically allowed its native
23 habitat and wetlands to vanish. Despite this unrelenting,
24 insensitivity, the San Elijo Lagoon side of Manchester Avenue
25 has escaped so far. This Commission has already rejected the

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1 Korkorowitz proposal to fill in a flood plain farther up
2 Escondido Creek. Now, we have a downstream menace to the Lux
3 Canyon Creek, which is a significant tributary and buffer
4 area.

5 I offer you two reasons, among many, to reject
6 this proposal: Encinitas has no other significant native
7 wetlands and open space left on the Pacific flyway. We have
8 lost all of our options to development. And, two, at the
9 mouth of the lagoon is Cardiff Reef a world class series of
10 surf breaks, something of irreplaceable value to the economy
11 and identity of Encinitas. We are struggling to maintain an
12 acceptable beach environment with viable water quality at
13 Cardiff Reef. We cannot afford to let them deteriorate
14 further.

15 Since Governor Davis has pointed out the need for
16 Southern California to restore its 5 percent of remaining
17 wetlands, we would like to pursue this goal. We shall do so
18 with your help.

19 I urge you to encourage the City of Encinitas to
20 translate the will of its residents into a new respect for
21 our precious coastal resources.

22 Thank you.

23 COMMISSIONER REILLY: Before you leave, one point
24 of clarification.

25 Did you say you were speaking for the Sierra Club?

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1 MS. AVALOS: No, I am speaking with their
2 permission. I mentioned my executive board position, but I
3 am speaking as a resident of Encinitas.

4 COMMISSIONER REILLY: Thank you.

5 MS. AVALOS: Thank you.

6 CHAIR AREIAS: Thank you, Ms. Avalos.

7 Kevin Johnson.

8 COMMISSIONER KEHOE: No, he already spoke.

9 CHAIR AREIAS: No, I am sorry.

10 COMMISSIONER KEHOE: This woman.

11 CHAIR AREIAS: Gwen Terry.

12 MS. TERRY: Gwen Terry, a resident of Encinitas
13 almost 20 years. Chairman and Commissioners, I appreciate
14 the opportunity.

15 Over 95 percent of our wetlands in California have
16 been destroyed. The lagoons and wetlands are special, and
17 San Elijo Lagoon is a prime example. It is home to many
18 species of plants, birds, fish, reptiles, and animals, many
19 of which are rare and endangered.

20 Trees, shrubs, and other natural vegetation absorb
21 air pollutants, give off oxygen, muffle noise, provide
22 wildlife habitat, and give us pleasure. We have a right to
23 enjoy natural open space, to walk, hike, bird watch,
24 contemplate, and breath fresh air.

25 When God created this special place, he or she did

1 not intend for it to be paved over. The Native Americans
2 lived here for hundreds of years with respect and reverence
3 for the land.

4 A school on this site will have negative impact on
5 the lagoon, including destruction of critical habitat for the
6 endangered California gnat catcher, and other rare and
7 endangered species, runoff into the sensitive lagoon, noise,
8 and more traffic.

9 If we want to teach our children how to be good
10 citizens we will teach them to respect nature and not destroy
11 it. Private ownership does not mean we have a right to
12 destroy this beautiful place.

13 What do we want to say to our future generations?
14 We cared enough to save this beautiful place for you; or, we
15 were so greedy that we destroyed all of our natural areas?

16 I ask you to go deep into your hearts, and not let
17 the greed of a few destroy this little place of paradise.
18 Please deny this project. There are plenty of places to put
19 a school, without destroying this last bit of open space.

20 Thank you.

21 CHAIR AREIAS: Thank you, Ms. Terry.

22 MR. LORMAN: Chairman Areias, my speaker slip was
23 in before, and I had a misunderstanding about --

24 CHAIR AREIAS: Please identify yourself.

25 MR. LORMAN: I'm sorry, it is John Lorman.

1 CHAIR AREIAS: I thought I called you, John, but
2 go ahead.

3 MR. LORMAN: Thank you.

4 My name is John Lorman, and I am speaking here in
5 favor of the project. I am with the California Coastal
6 Conservancy Board, but I am not here on behalf of that board.

7 I am concerned about what I have heard, in regards
8 to the perspective that has been given to this project. I am
9 sure all of the speakers mean well, and spoke from the heart.
10 At the same time, to characterize this project as not being
11 sensitive to the environment is so far off base it is
12 concerning, and I am afraid that those characterizations,
13 including having control of the city council in Encinitas,
14 and other characterizations, would mislead the decision in
15 regards to this, or could.

16 This project was designed from the get-go to be
17 sensitive to the environment. It is true 10 homes in that
18 area, themselves, could have a worse impact. This project is
19 designed not to have an impact in that area, and that has
20 been demonstrated.

21 There were scientists hired by the proponent, from
22 the get-go, to deal with the potential for that impact.
23 Likewise, on the traffic, it is as if this project is
24 affecting Route 5, and that what happens on Route 5 is driven
25 by this project, when this project has a very minuscule

1 effect, something like 25 cars a day during the peak hour
2 going in that direction.

3 I just wanted to raise that because I think some
4 of the characterizations of what is going on here are
5 painting a picture that is inaccurate, and extreme.

6 Thank you.

7 CHAIR AREIAS: Thank you, Mr. Lorman.

8 Did we miss anyone else that wants to speak in
9 opposition to the project?

10 Yes, come forward, and please identify yourself.

11 I am sorry, but there were a couple of speaker
12 slips that slipped through the cracks.

13 MS. GOULD: Good evening. My name is Katherine
14 Gould. I did turn in a slip. It must have gotten lost
15 somewhere.

16 I think the school sounds like a wonderful idea,
17 but I would like to speak against it, because I think that it
18 is not in a good location. The sensitive nature of the piece
19 of property, next to the conservancy as it is -- I am sure
20 they are doing everything they can to try to mitigate and
21 make it fit, and make it work there, but I would urge you to
22 do what the Coastal Commission was set up to do, and protect
23 the coastal zone. Please say, "No".

24 Thank you.

25 CHAIR AREIAS: Thank you.

1 Okay, rebuttal time.

2 MR. GRISWOLD: I would like to first focus -- I am
3 going to have John talk about the specific traffic issues,
4 but I would like to first focus the issue on the I-5
5 Manchester corridor, which is the primary traffic issue.
6 That is the LCP consistency issue.

7 CHAIR AREIAS: You've got 7 minutes, use it
8 however you want.

9 MR. GRISWOLD: I will move it very, very quickly.

10 If you could trace along there the I-5 to
11 Manchester corridor, please. The LCP consistency issue,
12 relative to Manchester Avenue, deals with that area, and just
13 that area of Manchester. There has been a lot of talk about
14 widening Manchester to the north, and to the south, and it is
15 kind of mixed up, some of the jargon here.

16 That area along there is currently a 2-lane road.
17 In 1997 there was a series of phased improvements that will
18 widen that to 4 lanes. That is the improvement that you
19 heard about earlier, that is ongoing, is to be completed in
20 about 3 months.

21 The current traffic generation that you are
22 hearing about from the other individuals out here is under
23 the current circumstances of a 2-lane road. It is being
24 expanded as we speak to a 4-lane road. The ultimate widening
25 of this road, which is only to the north, and which is called

1 for both in the LCP and the general plan, is to widen this
2 road to a 6-lane prime arterial, and that is fully consistent
3 with the LCP. That is what was called for when the LCP was
4 adopted. That has an ADT projected for about 57,000 LOS E,
5 41,000 or 42,000 at LOS C, and that is the consistency issue
6 that you are looking at: is this project, by sending
7 ultimately traffic generation along that area -- look at the
8 amount of traffic generation there -- and is it going to
9 cause that ultimate increase, which will begin in 2006, that
10 ultimate increase in the road, beyond 6-lanes?

11 And, if it is going to send it beyond 6 lanes,
12 with its traffic generation from this project, then you would
13 have a finding of inconsistency with the LCP; however, if it
14 doesn't, then it is fully consistent.

15 Now, the point is -- I will get off and let the
16 traffic engineer address -- I have one more issue.

17 The sizing of that road, contemplated land uses,
18 throughout the city of Encinitas, and it did contemplate the
19 land uses that were up there in the colored chart that Kevin
20 showed, that had a lot of development north in the city.
21 And, it contemplated that that development would use the
22 necessary east-west connectors that they have up there to get
23 to 5, and some of them would use the north-south connector of
24 El Camino.

25 But, what it also did is that it set land uses on

1 each of the parcels in the City of Encinitas, and on this
2 parcel -- and this is very, very important -- this parcel,
3 they showed over 1200 ADTs projected in the ultimate
4 buildout. That is what was contemplated for this piece of
5 property, when that road was sized consistent with the LCP.

6 This project, in a worst case scenario, is going
7 to create 690 ADTs. It is far below what was projected for
8 this site.

9 I am going to let John Borman address some of the
10 other traffic issues.

11 MR. BORMAN: I was writing feverishly while Kevin
12 was talking. A couple of things that I think are very
13 important --

14 COMMISSIONER ALLEN: You know, you only have 7
15 minutes left, and I have to tell you that I don't think
16 traffic is the issue here.

17 The issue is building a school next to an
18 environmentally sensitive habitat with endangered species.
19 That is the issue.

20 COMMISSIONER FLEMMING: I have to disagree.
21 The staff's basis, practically, is on the traffic.

22 COMMISSIONER ALLEN: Oh, okay.

23 COMMISSIONER FLEMMING: Isn't it?

24 COMMISSIONER ALLEN: Do it any way you want.

25 VICE CHAIR WAN: Let them deal with it how they

1 want.

2 You have got 3 minutes left. Use it in any way
3 you want.

4 MR. GRISWOLD: Okay, I am fully prepared to deal
5 with the biological issues. I do have a masters degree in
6 science, as well as a law degree. I was a wetland ecologist
7 for many years before I was a lawyer.

8 COMMISSIONER FLEMMING: I am looking at --

9 COMMISSIONER REILLY: Why don't you tell us --

10 COMMISSIONER FLEMMING: -- three things.

11 COMMISSIONER REILLY: -- what is going to happen
12 to the other 20 acres.

13 MR. GRISWOLD: The other 20 -- we don't know what
14 is going to happen to the other 20 acres. And, that is the
15 reason why we have built into this project joint use, that
16 capability, so if the city wants to do something with that
17 other 20 acres, we will be there -- we will allow the joint
18 use, and they can have the hard scape for the 20 acres up on
19 our property.

20 Now, the corner portion of the property -- and if
21 you can show the Nada part portion, that is also a very
22 important aspect.

23 When this project was sized, there was a natural
24 dividing line, and that is Lux Canyon Creek. I have shown
25 you that there is a wetland buffer on both sides of that, and

1 this project will not only not impact Lux Canyon Creek, it
2 will be improving Lux Canyon Creek with the restoration plan.

3 Now, on the other side of Lux Canyon Creek, you
4 are right, we haven't planned anything for that site, and the
5 reason is we looked at the plans for the project, for the
6 school. We didn't want to make it any bigger than it was
7 necessary to be. The city had indicated a desire to purchase
8 that property, and instead of making a project bigger than it
9 had to be, we left it open for the city to acquire.

10 And, we have sent a letter -- and you will see it
11 in your materials -- that we are perfectly open to a joint
12 use agreement. We have offered to the city a joint use
13 agreement. We have also offered to the city to sell that
14 piece of property to them for whatever use they see fit.

15 We have no plans for that property, and if that
16 property ever is contemplated for use, other than open space,
17 then that will have to be brought individually before the
18 city, go through its whole CEQA process, come through this
19 process, with you, and you will see that project at that
20 time. I don't think it will happen, because we don't plan on
21 any project in that area.

22 As it relates to the endangered species issue -- I
23 think this is an important one, as well -- this project does
24 impact gnat catcher, and we have worked very closely with the
25 Department of Fish and Game, and Fish and Wildlife Service,

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1 regarding that. There is some very degraded coastal sage
2 scrub on this property. We did gnat catcher surveys. We
3 found that there were gnat catchers on the other side of Lux
4 Canyon Creek, the Nada part portion of Lux Canyon Creek.

5 The Fish and Wildlife Service, and the Department
6 of Fish and Game, indicated that they were concerned about
7 that, that if we were going to be developing on that site, or
8 if we were going to be developing on the east side, there
9 might be some indirect impact. It is not a take of a nest.
10 It is not a take of a territory.

11 CHAIR AREIAS: Thirty seconds.

12 MS. GRISWOLD: It is an indirect impact, and we
13 agreed to mitigate that through purchase of land in the Chang
14 mitigation bank, which is just about a half-a-mile up the
15 road from here, and has very high, high quality coastal sage
16 scrub.

17 So, the impacts are very minimal. Again, the Fish
18 and Wildlife Service were fully apprised, and approved, and
19 said -- quite frankly -- that this is the reason why we have
20 a 4-D rule. Projects like this that impact minimal habitat,
21 minimal value habitat, but will preserve good value habitat
22 --

23 CHAIR AREIAS: Okay.

24 MR. GRISWOLD: -- and, that came from Julia
25 Vanderweir at the Fish and Wildlife Service, at the city

1 council hearing.

2 Thank you so much.

3 CHAIR AREIAS: Thank you very much.

4 Okay, staff.

5 EXECUTIVE DIRECTOR DOUGLAS: Just before I turn it
6 back to Deborah Lee, let me just point out again that the
7 issue is not whether or not the staff, or the Commission,
8 support education, public schools, or kids. Obviously, we
9 do. That is simple not the issue here. There are clearly
10 lots of laudable aspects to this school, and its curriculum.
11 That is simply not the issue before the Commission.

12 The question is -- and neither is the question of
13 local politics. That is not at issue here at all. The
14 question simply is whether or not this proposed project is
15 consistent with the LCP standards?

16 With that, let me turn it back to Deborah.

17 DISTRICT DIRECTOR LEE: I would expand upon the
18 Executive Director's last statement: it is the question of
19 its conformance with the LCP standards, and as it relates to
20 this site, this location.

21 The need to complete, identify, and memorialize
22 the alternatives analysis, and the findings to support a
23 permitted use, and the impacts to the wetlands that are on
24 this site, is part of the LCP requirements. And, we believe
25 that there was incomplete substantiation at the local level

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1 on that.

2 The wetlands evaluation, and the conservation of
3 the buffers in the habitat areas, could probably have been
4 addressed by staff, but it was really this intensification of
5 use, where we felt that we had insufficient information on
6 the basis of the traffic analysis, and intensification of
7 uses along this corridor, in order to assure the protection
8 of San Elijo Lagoon from encroachment in the future.

9 We also cannot concur with the applicant's
10 statements with regards to the traffic modeling. We feel
11 that they are unsubstantiated. For example, the specific
12 reference that the traffic study shows 1000 ADTs on this
13 site, and their increase above what would be allowed under
14 rural residential thus represents a decrease, is difficult to
15 accept, because they failed to identify what the other land
16 use assignments in that traffic modeling were.

17 I think, as the other appellants indicated, there
18 has been no documentation of what other land use assignments,
19 and uses were included in that traffic modeling. Were other
20 sites put at a very low designation? were there other sites
21 that did not recognize other similar increases in intensifi-
22 cation of use?

23 With regard to the permit that was referenced,
24 there was a permit that was approved to widen the road to 4
25 lanes, but again, based on our conversations with the city,

1 we understood that that road will quickly fall to a level of
2 service D, rather than level of service C, as stated by the
3 applicant.

4 We recognize that there is only an incremental
5 addition here, but we are concerned about the lack of
6 cumulative analysis on the part of the city. We feel that if
7 they are not doing that as part of their local review, and
8 they continue to approve these conditional uses, or major use
9 permits, with these increases over the rural residential
10 designation, that we are going to be seeing impacts at a very
11 critical I-5 and Manchester Road.

12 And, that was the other thing that we feel their
13 traffic analysis did not address, was although they are
14 talking about the ADTs along the road, they did not provide
15 any intersection analysis of where the I-5 Manchester Avenue
16 interchange stood at this time.

17 Just one last comment relative to the questions on
18 alternatives and expectations, we did feel it was important
19 to note that the applicant did not acquire the site, but
20 rather just entered into a 99-year lease on this property.

21 And, that would conclude the staff's comments.

22 COMMISSIONER TUTTLE: Mr. Chairman, before we put
23 it in the hands of the Commission, I need to disclose an
24 ex-parte. I am sorry I didn't do it earlier.

25 CHAIR AREIAS: Ex-parte communications?

1 Go ahead, Dr. Tuttle.

2 COMMISSIONER TUTTLE: I had two calls from Ms.
3 Porterfield trying to set up a meeting with me, and then a
4 brief greeting in the hallway, but we never got around to
5 speaking about anything of substance.

6 At lunch today, had a brief conversation with
7 Kevin Johnson, and there was nothing that we discussed that
8 was not contained in his testimony.

9 COMMISSIONER ALLEN: I have an ex-parte, as well.

10 CHAIR AREIAS: Yes, go ahead.

11 COMMISSIONER ALLEN: I met with Ted Griswold, and
12 John Lorman, yesterday morning for breakfast, and they
13 outlined the project to me, and why they felt the staff was
14 in error in their recommendations, and why the project should
15 be approved.

16 And, additionally, I had a very brief conversation
17 with John Lorman this afternoon, indicating to me what his
18 conversation with staff had been, and that they had been
19 unable to resolve their differences.

20 CHAIR AREIAS: I had a discussion with Ms.
21 Porterfield, but more in line with setting up a meeting, and
22 finally, I think we agreed out in the hallway, that I would
23 just be listening very carefully to the presentation, and
24 that was kind of the extent of it.

25 Any other ex-partes?

1 COMMISSIONER KEHOE: Mine are on file, but I did
2 talk to Ms. Porterfield in the lobby yesterday, and she let
3 me know of her intense dedication of seeing this school
4 through.

5 And, my staff persons had numerous contacts with
6 both the proponents, and opponents, of the project on several
7 occasions.

8 COMMISSIONER DETTLOFF: I spoke very briefly to
9 Ms. Porterfield.

10 CHAIR AREIAS: Any other discussion?

11 COMMISSIONER REILLY: I have another question of
12 staff.

13 CHAIR AREIAS: Mr. Reilly.

14 COMMISSIONER REILLY: I am still trying to get a
15 handle on this .09 acre of wetland marsh fill that is here,
16 and I am just not clear if that is being filled as a function
17 of the school going in, or it is being filled as a function
18 of a road project that would happen with or without the
19 school?

20 DISTRICT DIRECTOR LEE: As I indicated on that one
21 issue, we do think that we would have been able to resolve
22 that question.

23 We have received materials from the applicant, and
24 do concur that the buildout of the road itself, as permitted
25 in the LCP, is what would be the factor, or the reason for

1 the elimination of the wetland.

2 We did look at a minor revision, which might have
3 saved a very small amount of it by doing it with a retaining
4 wall, but frankly, it would leave very little area, and it
5 would eliminate the drainage to the wetland anyway.

6 So, we do believe the road expansion, just under
7 existing conditions, would substantiate the wetland impacts,
8 with mitigation, and other considerations.

9 COMMISSIONER REILLY: Does that mean it would
10 happen? the road expansion is going to happen, even if the
11 school isn't there?

12 DISTRICT DIRECTOR LEE: It would not be
13 precipitated right at this time, but the road as certified in
14 the LCP will be widened at some point, and this wetland will
15 be impacted --

16 COMMISSIONER REILLY: Okay.

17 DISTRICT DIRECTOR LEE: -- at some point in the
18 future.

19 COMMISSIONER ALLEN: Mr. Chairman.

20 COMMISSIONER REILLY: Just so I am clear, then,
21 because the wetland fill thing was a real issue for me. I
22 mean, I think we have to look at that issue whenever it comes
23 up, but if it is going to happen as a function of road
24 widening, and not of the school, then we are really looking
25 at some debated traffic impacts, and the fact that the City

1 of Encinitas never does a decent alternatives analysis for
2 any project they send forth. I mean, that seems like the
3 issues on the table.

4 COMMISSIONER FLEMMING: True.

5 DISTRICT DIRECTOR LEE: We would concur.

6 COMMISSIONER ALLEN: Mr. Chairman.

7 CHAIR AREIAS: Commissioner Allen.

8 COMMISSIONER ALLEN: Thank you, sir.

9 I am glad you said that, Commissioner Reilly, that
10 is sort of where I came down. This is an absolutely
11 wonderful project. I mean, what they are planning here is
12 kind of a model for what we talk about, what we would like
13 education to be, and we put a lot of money into educational
14 programs that teach children about living with the
15 environment, and doing it in a sensitive manner, and I have
16 no question that the way that this has been designed, and the
17 philosophy behind it is exactly the kind of project we would
18 like to see.

19 But, I am tremendously troubled by what I have
20 been hearing about, really what was the lack of due diligence
21 on the part of the City of Encinitas. I mean, I think this
22 project is poorly sited, and it really should not be where it
23 is, or it should be smaller, or it should be different.

24 And, I don't want to try to redesign the project
25 in a public hearing, but I am uncomfortable allowing this

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1 without really having looked at some other alternatives, to
2 have less of an impact, and be more sensitive to the siting
3 of right next to a very sensitive lagoon.

4 COMMISSIONER NAVA: Mr. Chairman.

5 CHAIR AREIAS: Further discussion.

6 Commissioner Nava.

7 COMMISSIONER NAVA: Well, I am going to make a
8 motion, and the language I find on page 9, and I make a
9 motion to deny the permit for the proposed development, on
10 the grounds that the development will not be in conformity
11 with the adopted Local Coastal Program, and will have
12 significant adverse impacts on the environment, within the
13 meaning of the California Environmental Quality Act.

14 EXECUTIVE DIRECTOR DOUGLAS: Excuse me, Mr.
15 Chairman.

16 The motion would have to be per applicant. We are
17 recommending a "No" vote, and what you just read would be the
18 findings. If we incorrectly put it in the report, I am
19 sorry.

20 CHAIR AREIAS: Mr. Nava, you want to start over?

21 COMMISSIONER NAVA: Never mind.

22 VICE CHAIR WAN: Just move per applicant --

23 COMMISSIONER NAVA: All right, page 4.

24 VICE CHAIR WAN: -- and recommend a "No" vote.

25 COMMISSIONER NAVA: Then I move the Commission

1 determine that appeal --

2 VICE CHAIR WAN: No.

3 COMMISSIONER NAVA: Does somebody want to tell me
4 where this motion is?

5 EXECUTIVE DIRECTOR DOUGLAS: There is no motion in
6 there.

7 COMMISSIONER NAVA: Thank you very much.

8 EXECUTIVE DIRECTOR DOUGLAS: It would just be per
9 applicant.

10 [MOTION]

11 COMMISSIONER NAVA: All right.

12 I move as per applicant, and recommend a "No"
13 vote.

14 COMMISSIONER POTTER: Second.

15 CHAIR AREIAS: Moved by Commissioner Nava,
16 seconded by Commissioner Potter?

17 COMMISSIONER POTTER: Yes.

18 COMMISSIONER FLEMMING: Discussion?

19 CHAIR AREIAS: Discussion.

20 Commissioner Nava.

21 COMMISSIONER NAVA: Well, as the maker of the
22 motion, I think staff has outlined some of the issues that
23 were here.

24 I was impressed with the presentation that
25 addressed the fact that a development of this size is not to

1 be found on this side of Manchester. I think there are some
2 legitimate concerns, with respect to the impacts that it
3 would have in that area.

4 I also have to question why it is, when the area
5 is zoned rural residential, you have an institution of this
6 size that is approved to fit, sort of, in that location, and
7 it just appears to me that there was an inadequate analysis.

8 CHAIR AREIAS: Commissioner Potter.

9 COMMISSIONER FLEMMING: And, then I would like to
10 speak.

11 CHAIR AREIAS: Then Commissioner Dettloff.

12 COMMISSIONER POTTER: I think that the points have
13 been hit on fairly well. It is an awkward day. I mean,
14 this isn't something I want to do. I am quite supportive of
15 the concept here, but as was said earlier, I don't think an
16 adequate analysis was done at the local level.

17 I am bothered by a project of this magnitude that
18 goes forward with no EIR process, and quite frankly, the site
19 impacts are huge from this project. I mean, it totally
20 covers the entire site. And, there are even areas that are
21 proposed for additional impacts. I think it is our job here
22 today not to set a value on education, but to set a value on
23 the environment in this area, and for me this project is of
24 too great a magnitude to sit here and endorse it, and say
25 education is a higher priority.

1 CHAIR AREIAS: Commissioner Dettloff.

2 COMMISSIONER DETTLOFF: Thank you, Mr. Chairman.

3 CHAIR AREIAS: And, then we will go back to Nancy.

4 COMMISSIONER DETTLOFF: Well, as a former teacher
5 I am behind this project, and it is a project that I think
6 would be very beneficial to this community, but that is not
7 what we are faced with today.

8 I think both the supporters and the opponents of
9 this project made a very articulate presentation on the
10 merits of the school, and I certainly applaud the type of
11 facility that you are striving to have on that site. But, I
12 think the mistake was an EIR was not done on this project.
13 With an EIR, I think you could have found what some of the
14 project problems were, possibly have corrected those.

15 A smaller project might fit that location, because
16 I think what you are trying to accomplish is very worthwhile,
17 very worthy, and I wish we could assist you, but based on
18 what our decisions have to be, as a Coastal Commission, I
19 think the impacts are too great.

20 CHAIR AREIAS: Commissioner Flemming.

21 COMMISSIONER FLEMMING: I keep hearing that there
22 was no EIR, and yet there seems to be a letter stating that
23 there is. Was there? or was there not an EIR?

24 COMMISSIONER REILLY: A negative dec, right?

25 CHAIR AREIAS: It is a negative declaration, is

1 that right, Ms. Lee?

2 DISTRICT DIRECTOR LEE: Our understanding was
3 there was no EIR. There was only a negative declaration done
4 at the local level.

5 CHAIR AREIAS: Mr. Griswold --

6 COMMISSIONER FLEMMING: Could I --

7 CHAIR AREIAS: -- Mr. Griswold, is that correct?

8 COMMISSIONER FLEMMING: -- ask him, yes --

9 CHAIR AREIAS: It was a negative declaration?

10 COMMISSIONER FLEMMING: -- because I --

11 MR. GRISWOLD: This is the --

12 CHAIR AREIAS: That the EIR process was --

13 COMMISSIONER FLEMMING: Right.

14 MR. GRISWOLD: -- document, the environmental
15 document that was done for this project. It is an
16 environmental -- it is called "A Final Environmental Initial
17 Assessment" and as you can see by the size of it, it is
18 comparable to an EIR. It is the process that the city goes
19 through. It, essentially, goes through the same analysis,
20 and again that is the reason --

21 COMMISSIONER FLEMMING: Thank you, that is what --

22 MR. GRISWOLD: -- why we have it here.

23 COMMISSIONER FLEMMING: -- I was referring to.

24 CHAIR AREIAS: So, it is a mitigated negative dec,
25 is what it is.

1 MR. GRISWOLD: The ultimate approval was a
2 mitigated negative dec.

3 CHAIR AREIAS: Okay.

4 MR. GRISWOLD: The analysis was comparable to an
5 EIR.

6 COMMISSIONER FLEMMING: Right, and with
7 cooperation from Fish and Game.

8 I will be the lone person here, I imagine, that
9 will -- I don't support the motion. I was struck by the
10 appellant making allegations, and not having proof, and
11 making statements that seemed extremely prejudicial. I was
12 surprised by that.

13 I think that the school is the one that has done
14 due diligence, has complied in every way that they can,
15 possible, with the city and the LCP, and I support the
16 school's project.

17 CHAIR AREIAS: Any further discussion on this?

18 COMMISSIONER REILLY: Yeah, a little bit.

19 CHAIR AREIAS: Mr. Reilly, and then Mr. Brothers.

20 COMMISSIONER REILLY: This is the only project I
21 can think of recently, where I became more sympathetic to the
22 applicant, as I listened more to the appellant.

23 I think the environmental grounds, both on staff's
24 part, and on the appeal for denial of this project, are among
25 the weakest that we've had come before us. You know, the

PRISCILLA PIKE

1 fill issue is off the table. The traffic issue is -- I mean,
2 I think this is a thimble in a, you know, in a stream, in
3 terms of the impacts.

4 And, the problems that are up there, there is no
5 question about the problems, but I don't think this project
6 is going to make it that much better or worse one way or the
7 other.

8 And, so what we are really talking about here is
9 the process thing, and I just get concerned that, you know,
10 you have got a good project that got hung out to dry because
11 of a poor city process, and you know, if the votes are here
12 to deny this, I mean, I certainly would like to send it back
13 with, you know, without prejudice or in some manner that
14 would allow it to be, you know, reprocessed through the city,
15 perhaps in a more formalized way to get back to us in a shape
16 that we could look at it from a process standpoint, and I
17 would feel more comfortable about it.

18 CHAIR AREIAS: Commissioner Brothers.

19 COMMISSIONER BROTHERS: I concur with Commissioner
20 Reilly's comments, and I just have, I guess, a question of
21 staff.

22 If, indeed, we deny the project today, what then
23 is the process for a potential reconsideration of this
24 project? I would like to know what that process would be?

25 DISTRICT DIRECTOR LEE: I don't think there would

1 be a reconsideration. It would be a matter of them returning
2 to the city, and completing the proper review, and doing the
3 analysis, and the cumulative impact assessment on the road
4 conditions, and alternatives analysis.

5 CHAIR AREIAS: Commissioner Wan.

6 VICE CHAIR WAN: Well, the reason I would like it
7 to go back to the city, to have it look at this again, is
8 because if you are going to put a school here, this school,
9 as it is designed, is very, very intense use of the land. It
10 basically covers the entire parcel, and the entire property.

11 We are talking about rural residential, and we
12 have -- in order to change it to an institutional use like
13 this, you really do need to look at what is appropriate, make
14 the appropriate findings, and my guess is you would reduce
15 the -- if you are going to do it, you are going to reduce the
16 size and the intensity, and the amount of land that is going
17 to be covered by that institution.

18 And, it does need to go back to the city to have
19 it reviewed for that purpose.

20 CHAIR AREIAS: Further discussion?

21 COMMISSIONER TUTTLE: And, just to --

22 CHAIR AREIAS: Dr. Tuttle.

23 COMMISSIONER TUTTLE: -- I'm sorry, I'm sorry.

24 And, just to add onto that, what we are struggling
25 with, in part, is the siting of this, and the way that the

1 footprint of the whole development takes up the entire
2 parcel, and then it leaves an adjacent piece as an island
3 that does not have a connectivity to the lagoon, that it
4 ought to have, and I would rather see the uses reconfigured.
5 That is what alternative analysis is about, so that you can
6 consider that adjacent piece, and see if you can push the
7 school into a more dense configuration, further away from the
8 lagoon.

9 CHAIR AREIAS: Any further discussion?

10 Question, Ms. Flemming.

11 COMMISSIONER FLEMMING: I just think this kind of
12 discussion has been really productive, and I really support
13 that idea. Let's take it back.

14 CHAIR AREIAS: This is -- I want to say that this
15 is one of the most difficult ones we've seen in some time,
16 and part of that is a credit to the proponents, and the great
17 -- although at times we were talking more about educational
18 issues more than we were talking about the environmental
19 issues, which -- and the resource issues, resource protection
20 issues, that we all took an oath to uphold.

21 And, Erin and Brenna, you did a great job, in
22 terms of your part of the presentation. I know it is getting
23 late, and you are getting tired, as we are, but I think there
24 is a project here. I just don't think it is here tonight,
25 but there is a project here, and I think you have got to go

1 back, and I hate to say that, but we are being victimized.
2 We are being victimized as a Commission, by a local process
3 that was inadequate, and we see a lot of projects. We do
4 this every month, you know, day in, and day out, and it is
5 unfortunate. I am really torn.

6 COMMISSIONER ALLEN: It is a tough one.

7 CHAIR AREIAS: Anyway, I think we have really
8 exhausted it.

9 Commissioners.

10 COMMISSIONER REILLY: Call for the question.

11 CHAIR AREIAS: The question has been called for.
12 Secretary, call the roll on the motion.

13 SECRETARY GOEHLER: Commissioner --

14 COMMISSIONER FLEMMING: No -- yes?

15 VICE CHAIR WAN: Wait, the maker of the motion is
16 asking for a "No" vote.

17 COMMISSIONER NAVA: For a "No" vote. Yes, we will
18 accept that, thank you.

19 CHAIR AREIAS: Commissioner Nava is asking for a
20 "No" vote, okay.

21 COMMISSIONER FLEMMING: Yes.

22 SECRETARY GOEHLER: Commissioner Kehoe?

23 COMMISSIONER KEHOE: No.

24 SECRETARY GOEHLER: Commissioner Nava?

25 COMMISSIONER NAVA: No.

1 SECRETARY GOEHLER: Commissioner Potter?
2 COMMISSIONER POTTER: No.
3 SECRETARY GOEHLER: Commissioner Reilly?
4 COMMISSIONER REILLY: Yes.
5 SECRETARY GOEHLER: Commissioner Tuttle?
6 COMMISSIONER TUTTLE: No.
7 SECRETARY GOEHLER: Commissioner Wan?
8 VICE CHAIR WAN: No.
9 SECRETARY GOEHLER: Commissioner Allen?
10 COMMISSIONER ALLEN: No.
11 SECRETARY GOEHLER: Commissioner Brothers?
12 COMMISSIONER BROTHERS: Yes.
13 SECRETARY GOEHLER: Commissioner Dettloff?
14 COMMISSIONER DETTLOFF: No.
15 SECRETARY GOEHLER: I can't hear you?
16 COMMISSIONER DETTLOFF: No.
17 SECRETARY GOEHLER: Chairman Areias?
18 CHAIR AREIAS: Abstain.
19 SECRETARY GOEHLER: Three, seven, and one.
20 CHAIR AREIAS: Three, seven, one, the project is

21 denied.

22 *

23 *

24 [Whereupon the hearing was concluded.]
25

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By Facsimile and Courier

April 21, 1999

Dorothy Dickey, Esq.
Deputy Chief Counsel
California Coastal Commission
45 Fremont Street, 20th Floor
San Francisco, California 94105-2219

RECEIVED

APR 22 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SUBJECT: ENCINITAS Encinitas Country Day School - APPEALS JURISDICTION

Dear Dorothy:

As you know, former Commission chief counsel Bill Boyd, Ted Griswold, and this firm represent Encinitas Country Day School in its request for reconsideration of the Commission's February 4, 1999 decision to deny its coastal permit on appeal from the decision of the City of Encinitas ("City"), pursuant to its certified Local Coastal Program ("LCP").

We thank you for joining our meeting with Commission technical services staff in the San Francisco office last Monday, April 19, 1999, to review and discuss the physical and legal considerations relating to the location of the Encinitas Country Day School development project site vis-a-vis the California Coastal Commission's ("Commission") appellate jurisdiction.

In response to your inquiry, we submit the following summary of points regarding jurisdictional issues raised in the pending reconsideration request:

- The Commission provided a Post-LCP Certification Permit and Appeals Jurisdiction Map, stamped "Draft" (the "Appeals Jurisdiction Map"), to the City in conjunction with the City's assumption of coastal development permit jurisdiction pursuant to the certified LCP and PRC Section 30519(a).
- The Commission subsequently noticed, then postponed, a public hearing and adoption of a draft Post-LCP Certification Permit and Appeals Jurisdiction Map for the City on June 16, 1995.
- The Appeals Jurisdiction Map designates Highway 101 ("Old Coast Highway") as the "first public road (paralleling the sea)" for purposes of implementation of PRC Section 30603(a)(1) and the Commission's permit and appeal jurisdiction regulations at 14 Cal. Code of Regulations ("CCR") Section 13576 et seq.

EXHIBIT NO. 11

APPLICATION NO.
A-6-98-158-R

Letter from
Applicant's Agent

- PRC Section 30115 defines the term "sea" to mean "the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding non-estuarine rivers, streams, tributaries, creeks, and flood control and drainage channels." (Emphasis added.)
- The Commission's regulations define the extent of tidal action in an estuary, such as San Elijo Lagoon, through the mean high tide line, which "shall be defined as the statistical mean of all the high tides over a cyclical period of 18.6 years, and shall be determined by reference to the records and elevations of tidal benchmarks established by the National Ocean Survey." (14 CCR Section 13577(c).)
- A "Note" on the Appeals Jurisdiction Map indicates that "(i)n areas where a parcel is bisected by the appeals jurisdiction boundary, only that portion of the parcel within the area defined as appealable is subject to the Commission's appeal jurisdiction."
- The Encinitas Country Day School development project site is located three (3) miles to the east of Old Coast Highway and more than one (1) mile east of Interstate Highway 5 ("I-5"). The school development project was specifically designed to be located at least 100 feet from the Lux Canyon intermittent stream and small wetlands that occur on other portions of the parcel, and hence outside the Commission's appellate jurisdiction.
- In March, 1998, Commission staff transmitted to the City a formal jurisdictional boundary determination ("Boundary Determination", BD No. 26-96) for the parcel that is located between the Encinitas Country Day School parcel and San Elijo Lagoon ("the intermediate parcel").
- The Boundary Determination specifically asserts no "first public road" or "300 feet of the mean high tideline" appellate jurisdiction over this intermediate parcel, but identifies areas of retained and appellate Commission jurisdiction over portions of the intermediate parcel based on the 100-foot distance from a wetland and/or stream criteria. (PRC Section 30603(a)(1) and (a)(2).) In its action on February 4, 1999, the Commission on recommendation of staff identified no issues of LCP inconsistency with respect to these 100-foot areas.
- The City's notice of hearing for the Encinitas Country Day School coastal permit correctly identified non-structural buffer, setback, and habitat restoration or mitigation project components as being within the 100-foot band along the Lux Canyon intermittent stream and small wetlands, and therefore as being within the mapped Commission appellate jurisdiction.
- During the City Planning Commission and Council public hearings on the Encinitas Country Day School coastal permit, the scope of Commission's appellate jurisdiction was discussed by the City and explained to the public and the applicant.

- At no time during the City's review of Encinitas Country Day School's coastal permit application did Commission staff notify the City or the applicant of any disagreement with the City's determination of the applicable appellate jurisdiction or proceed in the manner specified in the Commission's regulations at 14 CCR Section 13569 for addressing or resolving disagreements over a local government's determination.
- Following City Council approval of the Encinitas Country Day School coastal permit, the City on November 24, 1998 issued a "Notice of Final Local Action" to the Commission and applicant, in which City indicates that only a portion of the parcel is located within the Commission's appellate jurisdiction.
- On November 25, 1998, Commission staff issued a "Notice of Appeal Period" to City, applicant, and the public in which it identified the Commission's appellate jurisdiction as "100 feet from a wetland", but made no assertion that the Encinitas Country Day School parcel is located within any "first public road" appellate jurisdiction pursuant to PRC Section 30603(a)(1).
- In December, 1998, appeals of the City's approval of the Encinitas Country Day School coastal permit were filed with the Commission's staff by Commissioners Allen and Wan, San Elijo Lagoon Conservancy, and two neighbors with Commission staff.
- On January 14, 1999, Coastal Commission staff issued its Staff Report and Recommendation to find substantial issue on the appeal of City's approval of a coastal permit for Encinitas Country Day School and to deny the coastal permit on de novo hearing. For the first time in the eleven-month long coastal permit proceedings since filing of the Encinitas Country Day School application, Commission staff asserted that the entire parcel is subject to Commission appellate jurisdiction pursuant to the "first public road" criteria of PRC Section 30603(a)(1).
- Encinitas Country Day School objected in correspondence to the Commission that it lacked authority to find that the appeal raised substantial issue based on an underlying "first public road" appellate jurisdictional claim, but was denied any opportunity to present oral arguments thereon to the Commission when it declined to conduct a hearing on whether the appeal raised substantial issues and instead proceeded immediately to a hearing on the project de novo.
- At no time, including through April 21, 1999, has the Commission scheduled a public hearing to either update the Appeals Jurisdiction Map, as required and provided in 14 CCR Section 13576, or to make the determination required by 14 CCR 13569 where Commission staff's appeal zone boundary conclusion differs from that made by the City.
- No factual boundary determination information supporting the Commission's assertion of appellate jurisdiction under color of the "first public road" criterion in PRC Section 30603(a)(1) was on file with the Commission at the time of its action on February 4, 1999.

- In late January, 1999, Commission staff advised Encinitas Country Day School that new landward encroachment of the "sea" was the basis for Commission staff's decision to reinterpret the location of the "first public road paralleling the sea" from Old Coast Highway to Manchester Avenue and a successive warren of street segments east and south of San Elijo Lagoon. In addition, Commission staff advised Encinitas Country Day School that proof that such encroachment did not extend east of I-5 would result in further reinterpretation of the "first public road paralleling the sea" to exclude the Encinitas Country Day School parcel from PRC Section 30603(a)(1) appellate jurisdiction.
- In reliance on Commission staff's advice, Encinitas Country Day School expended substantial effort and funds in February-March, 1999 for independent San Elijo Lagoon expert Chris Nordby to conduct a multi-factor (biology, hydrology, and salinity) study of San Elijo Lagoon tidal action.
- The 35-page report and data sheets, which update and corroborate the substantive finding of hydrologist Phil Williams & Associates (1992) that the quantitative potential mean tidal prism in the East Basin of San Elijo Lagoon (east of I-5) is zero (0), were submitted to, and discussed with, Commission staff on March 16, 1999. On April 20, 1999, Commission staff advised Encinitas Country Day School that this report would not be transmitted to Commissioners as an exhibit to the staff report and recommendation and the request for reconsideration.
- On April 19, 1999, Commission staff instead advised Encinitas Country Day School that the entirety of the geographical place called "San Elijo Lagoon" had all along constituted the "sea", but that at the time of preparation of the draft Post-LCP Certification Permit and Appeal Jurisdiction Map the criteria set forth in 14 CCR Section 13577(i)(1) could not be met by the street network that runs north-east, east, and south of the entire Lagoon. Commission staff advised that, therefore, in preparing the draft Map, Commission staff had relied on the criteria in subdivision (i)(2).
- Street maps of the area around San Elijo Lagoon contradict Commission staff's assertion that a loop or network of street segments that constitutes a continuous public first road paralleling the lagoon is available now, but was not available in 1995 (when the Appeals Jurisdiction Map was transmitted to the City); in March, 1998 (when the Boundary Determination on the intermediate parcel was transmitted to the City); and in November, 1998 when the City transmitted its Notice of Final Local Action and Commission staff issued its Notice of Appeal Period regarding the subject Encinitas Country Day School project.
- Quantitative hydrologic, wetlands biological, and salinity studies of the tidal channel, Central Basin "mixing zone", and vegetative types within San Elijo Lagoon confirm the cooperative 1982 mapping by the National Ocean Survey and other federal agencies that depicts the reach of tidal action, as defined in 14 CCR Section 13577(c), within the Lagoon to not extend east of I-5. These studies, reports, and maps have been submitted

by Encinitas Country Day School to Commission staff.

For the above reasons, Encinitas Country Day School respectfully submits that the subject school development project is not located within the Commission's post-LCP certification appellate jurisdiction pursuant to the "first public road paralleling the sea" criterion of PRC Section 30603(a)(1).

We appreciate your, and your colleagues', meeting with us to review these issues and concerns last Monday. If any additional information, including any scientific field data sets regarding tidal action in San Elijo Lagoon, are received by the Commission or staff from any party, please provide us with a copy or notice that we may send our copying service to the appropriate Commission office. Encinitas Country Day School will further brief these, and other pertinent, issues upon receipt of the Commission staff report on the request for reconsideration.

We look forward to such additional consultation with senior Commission staff, as may be indicated prior to the Commission's May, 1999 meeting, to further clarify and resolve this matter.

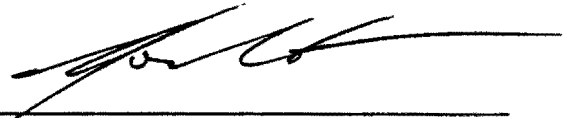
Sincerely yours,

DALL & ASSOCIATES

by:



Stephanie D. Dall
Partner



Norbert H. Dall
Partner

copy: Ralph Faust, Esq., Chief Counsel, CCC-SF
Mr. Chuck Damm, Senior Deputy Director, CCC-SD
Ms. Deborah N. Lee, Deputy Director, CCC-SD
Ms. Sherilyn Sarb, San Diego District Manager, CCC-SD
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APR 22 1999

MEMORANDUM

OUR FILE: 9920.046

TO: DOROTHY DICKEY, ESQ.
MR. GARY CANNON

DATE: 21 APR 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

FAX: +415.904.5400; 619.521.9672

PAGES: 1

FROM: NORBERT H. DALL

COPY: S. DALL

SUBJECT: MEMO OF APRIL 21, 1999 - ERRATA

B. BOYD
T. GRISWOLD

Dear Dorothy and Gary:

In re-reading the letter memorandum to you of earlier today regarding the Encinitas Country Day School matter, I belatedly caught the following inadvertent typographical errors, for which I apologize and which I wish to correct:

On page 3, in the fourth point at lines 3-4, the words "with Commission staff." at the end of the sentence are surplusage and should be deleted.

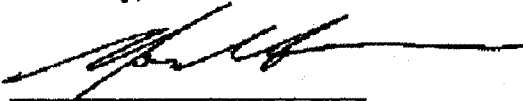
On page 4, in the third point at line 1, the author's name of the report should be inserted for clarity:

"The 35-page Nordby report ..."

On page 4, in the third point at line 7, the word "and" after the word "recommendation" should be "or":

"as an exhibit to the staff report and recommendation ~~and on~~ the request"

Sincerely,



Norbert H. Dall

223:210499

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01/98