

CALIFORNIA COASTAL COMMISSION

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W 8.5 a**STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Laguna Beach

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-LGB-03-254

APPLICANT: City of Laguna Beach

PROJECT LOCATION: 31921 Coast Highway, Laguna Beach, Orange County

PROJECT DESCRIPTION: Appeal of City of Laguna Beach approval of a coastal development permit allowing realignment and replacement of a 12" storm drain with an 18" storm drain on a bluff top and face and construction of an outlet structure and energy dissipater on a sandy beach.

APPELLANTS: Patrick R. Boyd & Kamaryn T. Tanner
Gary Brown, Orange County CoastKeeper
Michael Beanan, South Laguna Civic Association

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that a **SUBSTANTIAL ISSUE** exists with respect to the grounds on which the appeal has been filed. The appellants contend that the project approved by the City is inconsistent with policies regarding Tide Pools and Marine Habitats, Water Quality and Conservation, Watersheds and Watercourses, and the Guidelines for Shoreline Protection, in the certified Local Coastal Program. As described in the findings of the report, the project approved by the City does not protect water quality and marine habitats of the South Laguna Marine Life Refuge. In addition, feasible less environmentally damaging alternatives were not considered in the review process. Thus, the locally approved development does not conform to the City of Laguna Beach certified Local Coastal Program (LCP). Therefore, staff is recommending that the Commission find that a substantial issue exists with respect to the grounds upon which the appeals were filed

The motion to carry out the staff recommendation is on page 9.

SUBSTANTIVE FILE DOCUMENTS:

1. Local Coastal Development Permit No. 03-13
2. Initial Study/Draft Mitigated Negative Declaration South Laguna at 8th Street Storm Drain Improvement
3. Laguna Beach Design Review Board Resolution CDP 03-014
4. Amended Notice of Final Action dated 5/27/03
5. City of Laguna Beach Certified Local Coastal Program.
6. Appeal of Patrick R. Boyd & Kamaryn T. Tanner
7. Appeal of Gary Brown, Orange County CoastKeeper & Michael Beanan, South Laguna Civic Association
8. City Permit Record

I. APPELLANTS' CONTENTIONS

Local Coastal Development Permit No. 03-13 approved by the Laguna Beach City Council on May 20, 2003, has been appealed by Patrick R. Boyd, Kamaryn T. Tanner (see exhibit C), Gary Brown, Orange County CoastKeeper, Michael Beanan, South Laguna Civic Association on the grounds described below (see exhibit D):

Summary of Appeal Contentions of Patrick R. Boyd and Kamaryn T. Tanner:

1. No Environmental Impact Report was prepared for the project.
2. The project will result in additional water being deposited on the sandy beach.
3. The Design Review Board minutes provided to the City Council did not accurately reflect statements made at the Design Review Board meeting and contained inaccuracies.
4. The project approved by the City is not consistent with the contract between the City and the property owners/appellants.
5. The project is inaccurately characterized by the City as a replacement storm drain project when it actually constitutes a new storm drain project.
6. The City's approval of the project did not analyze whether the project will have any impacts on health or water quality.
7. The City's approval of the project circumvented the rules with respect to the agreement between the property owner/appellant and the City.

8. The applicant, the City, does not have the legal right to build the project on private property.

Summary of Appeal Contentions of Gary Brown of Orange County CoastKeeper, and Michael Beanan of South Laguna Civic Association:

The project as approved by the City is inconsistent with the following Open Space/Conservation (OS/C) policies segment of the Land Use Plan (LUP) portion of the City's certified Local Coastal Program (LCP)

STAFF NOTE: The appellants refer to Policies contained in Topic 1.5 Seawall and Other Shore Protection Devices in the Open Space/Conservation Element. Although these policies appear to have been adopted by the City, an amendment to the City's LUP to incorporate them was not submitted for Coastal Commission review. Therefore they are not part of the City's certified LCP. However, the certified LCP Implementation Plan includes a document titled "Guidelines for Shoreline Protection," which includes very similar standards for two of the three Topic 1.5 policies cited (Policies 1.5 C and 1.5 O). The third Topic 1.5 policy cited by the appellant (Policy 1.5 S) is not part of the certified LCP and there is no equivalent standard in the "Guidelines for Shoreline Protection." Policy 1.5 S references validating and updating the "Guidelines for Shoreline Protection," thus it was not contemplated at the time the LCP was certified.

1. The City's Policy 1.5 C states: "An investigation of reasonable and feasible alternatives that accomplish the same, or similar, level of protection must be provided with every application for the construction of a shore-protection device. In the required consideration of alternatives, the lead project shall be the one with the least significant impact to the shoreline environment unless a statement of overriding considerations is adopted pursuant to CEQA Guidelines."

The similar standard contained in the certified LCP's "Guidelines for Shoreline Protection" states:

An investigation of reasonable and feasible alternatives that could accomplish the same level of protection while minimizing environmental effects must be provided.

The project did not include any investigation of reasonable and feasible alternatives.

2. The City's Policy 1.5 O states: "Any coastal engineering report prepared pursuant to the Guidelines shall include a recommendation as to the design event (i.e., 25-year, 50-year or 100-year) being considered for a specific protective device and the property owner shall record a deed restriction estimating its useful and anticipated service life, as well as any maintenance requirements identified in Policy 1.5 Q below."

The similar standard contained in the certified LCP's "Guidelines for Shoreline Protection" states:

Coastal engineering considerations must be adequately addressed.

The Engineering Report prepared for the project is inconsistent with regard to hydrology, flow rates and water quality.

3. The City's Policy 1.5 S states: "In order to validate and update the data contained in the Guidelines for Shoreline Protection, the City should maintain a beach profile and seacliff retreat monitoring program, investigate funding methods for beach-fill projects and identify a candidate site for a test beach-fill project. An on-going monitoring program is essential for the development of a comprehensive technical data base for future actions that may be needed to protect beach width and quality and to test the accuracy of assumptions and predictions contained in the Guidelines."

There is no equivalent requirement in the certified LCP.

The City has not prepared a beach profile monitoring program. The project will result in excessive scouring.

4. Policy 2 A which states:

Encourage the expansion of the Marine Life Refuges and the designation of particularly unique or ecologically sensitive coastal areas as Ecological Reserves (such as seal and bird rocks), pursuant to the provisions of the State Department of Fish and Game.

The project will significantly increase by 64% the flow rate of contaminated urban runoff and elevate the thermal/freshwater ocean pollution, which will distress and/or cause the collapse of a designate County Marine Refuge which supports new stands of recovering kelp habitat.

5. Policy 2 D which states:

As part of the City's resource management program, include provisions for monitoring of tidepools to ensure a proper balance between public beach access and the preservation of marine resources.

No baseline data has been provided by the applicant (City) to monitor pre/post project impacts to tidepools at the storm drain terminus. Also no runoff management plan has been prepared.

6. Policy 2 E which states:

Solicit interest from university faculty and students with expertise in marine ecology to study and evaluate tidepools, including changes in their ecological characteristics.

There has been no outreach to education institutions to study marine ecology at the project impact site.

7. Policies 2 G and 2 H which state:

Support non-profit organizations which provide care and rehabilitation of marine life.

Support restoration of offshore kelp beds.

The project conflicts with efforts to support improved ocean water quality ecology as an antecedent condition for restoration of offshore kelp beds and the care and rehabilitation of the state fish (garibaldi) population at the northern point of 1000 Steps beach.

8. Policies 4 C which states:

Encourage conservation of water resources for existing and new development.

Project will discharge excessive volumes (37cfs) of contaminated urban runoff rather than capture the runoff from existing development for conservation purposes. In addition, the project does not employ Best Management Practices (BMPs) and Best Available Control Technologies (BACT) as were employed in the Sun Valley prototype and the Santa Monica Program.

9. Policy 4 H which states:

Oppose activities which degrade the quality of offshore waters.

The project will degrade quality of offshore waters as described under policy 2 A above.

10. Policy 9 J which states:

Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.

Project re-directs runoff away from natural discharge characteristics and focuses 90 acre watershed into one storm drain.

11. Policy 9 M which states:

Where feasible, require flood control programs to incorporate non-structural methods, such as preservation of watershed lands and natural drainage channels, rather than structural methods such as concrete flood channels and engineering. In cases where structural methods are necessary, drainage structures shall be invisible conveyances, undergrounded and revegetated to camouflage any disturbance created during construction in order to provide the least damaging environmental alternative possible.

The subject area has no watershed flood control master plan.

12. Policy 9 V which states:

Protect Aliso Canyon Area from any increase in flow which might have adverse impacts on the water quality in Aliso Creek and prevent excessive erosion and sedimentation and emphasize the prevention of siltation from adversely impacting the South Laguna Marine Life Refuge.

The project will adversely impact the South Laguna Marine Life Refuge by discharging a 64% increase (37 cfs) of contaminated urban runoff into surrounding tidepools and ocean habitats.

II. LOCAL GOVERNMENT ACTION

The City of Laguna Beach Design Review Board held public hearings for the proposed project on March 13, 2003 and April 24, 2003. The Design Review Board approved coastal development permit 03-13 via Resolution CDP 03-014 at the April 24, 2003 hearing. In addition, the City Council held a public hearing on the matter on May 20, 2003. At the time the City Council determined that the project is necessary for public health, safety and welfare and approved coastal development permit 03-13.

A number of people spoke at the public hearing, including the appellants. Concerns raised at the public hearing included water quality, erosion, and effects of runoff on private properties.

On May 29, 2003 the Commission's South Coast District Office received the amended Notice of Final Action from the City on the project. The ten working day appeal period was established and ran through June 12, 2003. On June 11, 2003 the appeal of Patrick R. Boyd & Kamaryn T. Tanner was filed in the Commission's South Coast District Office. The appeal of Garry Brown, Orange County Coastkeeper and Michael Beanan, South Laguna Civic Association was received in the Commission's South Coast District office on June 12, 2003. Both appeals were timely filed and are attached as exhibits C and D. A third appeal of the City's action approving local coastal development permit 03-13 was received from Myron and Marolyn Wacholder on June 17, 2003. However, it was received after the ten working day appeal period and so is not valid. The issues raised in this third, invalid appeal are substantially the same as those raised in the two valid appeals. It is attached as exhibit H.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a)(2) of the Coastal Act establishes the project site as being in an appealable area because it is located within 300 feet of the top of the seaward face of a coastal bluff.

Section 30603 of the Coastal Act 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 tide line of the sea where there is no beach, whichever is the greater distance.

- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The grounds for appeal of a local government action approving a Coastal Development Permit for development in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires the Commission to hold a de novo hearing on the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing may be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The Chair will set the time limit for public testimony at the time of the hearing. As noted in Section 13117 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, 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.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

If the appeal is found to raise a substantial issue, at the de novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak. The de novo hearing will occur at a subsequent meeting date. All that is before the Commission at this time is the question of substantial issue.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: I move that the Commission determine that Appeal No. A-5-LGB-03-254 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-5-LGB-03-254 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The project approved by the City includes realigning and replacing an existing 12" diameter storm drain pipe with an 18" diameter storm drain pipe, and construction of a new energy dissipater on the sandy beach. The existing and proposed storm drain lines descend a bluff and discharge on the sandy beach at the base of the bluff. The current storm drain alignment crosses beneath a private residence (currently being remodeled). The project, as approved by the City, would be realigned to the side yard area of the private residential lot and then, at a point approximately 105 feet from the southwest Pacific Coastal Highway right-of-way line, would angle 45 degrees southerly toward the center of the lot and base of the bluff. At its beginning point the new 18" pipe is proposed

to tie into the southerly end of the existing 18" Caltrans storm drain pipe. At its terminus, the proposed storm drain line would have an energy dissipater and outlet structure consisting of a 16.8 foot by 3 foot enclosed catch basin (which will provide the first level of energy dissipation) with a 1 foot minimum opening at the bottom, which will outlet onto new stone bedding. The stone bedding will extend approximately twenty feet from the catch basin opening and be a minimum of three feet wide. The catch basin and dissipater have been engineered for a 50-year storm event. During summer months, the catch basin and stone bedding will be covered with sand. During winter months, portions of the stone bedding may be exposed. Also as part of the proposed project, the City proposes to install "lips" on the gutters of the catch basin inlet at Coast Highway so that nuisance flows will not be introduced into the project storm drain and catch basin and thus will not be outletted onto the beach at this location.

The Mitigated Negative Declaration provides the following discussion on the need for the project:

"Approximately 90 acres of upstream catchment area drain to Coast Highway and then to the subject site. The present single catch basin can intercept only a fraction of the runoff from the upstream area, thus allowing the runoff to continue downstream to a point where the exiting drainage systems are not sufficient to accommodate flows from large storms. The purpose of the proposed project is to provide some relief for the accumulation of storm flows on Coast Highway."

Compared with existing conditions, the project approved by the City will significantly increase the amount of drainage area drained and quantity of water discharging to the beach at this location. The Letter Report prepared by Moffatt & Nichol, dated November 17, 2000 includes the following project discussion:

"CALTRANS has proposed to re-route some existing storm drains upland of the project location in order to increase capacity of the storm-drain system. This increased capacity is intended to reduce surface drainage, which tends to damage private property and contribute to cliff erosion. The storm-drain modifications will increase the flow to the existing 12-inch storm drain (No. 0466), which will not be able to provide the proposed flow capacity. The current proposal is to increase the capacity of the storm drain by increasing the pipe diameter to 18 inches."

Stormwater outletting from the existing storm drain creates large swales on the sandy beach during peak storm events. The existing peak flow (50 year storm event) is 5.0 cubic feet per second (fps). The anticipated peak flow of the new storm drain is 8.2 fps. The energy dissipater is proposed by the City in order to minimize the scour from the storm drain outletting onto the sandy beach.

The subject site is located at 31921 Coast Highway in the South Laguna area of the City of Laguna Beach. The subject site is a residential lot with bluff top, bluff face and sandy beach components. The site is adjacent to Thousand Steps County Beach. The beach at the base of the bluffs at Thousand Steps County Beach was the subject of a 1984 settlement agreement between the County of Orange, the State of California (State Lands Commission, the California Coastal Commission, and the Attorney General) and effected adjacent private property owners. The settlement agreement set forth the agreed upon boundary between the private beach area and the public beach area. The development approved by the City will occur entirely on private property.

B. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with the certified Local Coastal Program or the public access policies of the Coastal Act. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appellant raises no significant questions". In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Local Coastal Program;
2. The extent and scope of the development as approved by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that a **substantial issue** does exist with respect to whether the approval of the project is consistent with the provisions of certified Local Coastal Program for the reasons set forth below.

C. Appellant's Contentions that Do Not Provide Valid Grounds for Appeal

The following contentions do not raise issue with regard to consistency with the certified Local Coastal Program. In addition, they do not rise to the level described in the five factors discussed in Section B above.

1. No Environmental Impact Report was Prepared

The City did not prepare an Environmental Impact Report (EIR) for the project. The City prepared a mitigated Negative Declaration. Regardless, the City's certified LCP does not provide the standards which apply when determining whether a project merits preparation of an EIR. Such a determination is beyond the scope of the certified LCP. Thus, in approving a local coastal development permit, the City is not bound by the LCP to prepare an EIR for certain projects. The issue before the City when considering action on a local coastal development permit is whether the project conforms to the certified LCP (and the public access policies of the Coastal Act which was not one of the grounds upon which the appeal was filed). Therefore, because the LCP does not address when an EIR is required, the fact that one was not prepared for this project does not provide valid grounds for appeal.

2. Design Review Board Minutes

The appellant alleges that the City Council decision on the project was based, at least in part, on inaccurate and incomplete minutes of the Design Review Board meeting on the matter. The applicant alleges that if accurate and complete minutes had been provided to the City Council it would have acted differently. However, the accuracy of a local government's record of its public meeting is not something that can be determined based on the policies and standards of the LCP.

3. Project Approved Not Consistent with Contract Between City and Property Owner

The contract between the City and the property owner is beyond the scope of the certified LCP.

4. Project Is New Not Replacement

The project constitutes development as defined in Section 25.07.006(D) of the Implementation Plan portion of the certified LCP. The same LCP standards apply to the project whether it is characterized as new or as replacement. Thus, regardless of whether it was described by the City as a replacement project or a new project, the end product remains the same and is subject to the same standards.

5. Approval Circumvented Rules with Respect to Agreement Between Property Owner and City

The rules governing an agreement between the City and the property owner are beyond the scope of the certified LCP.

6. Applicant Does Not Have Legal Right to Build

The certified LCP does not define "the legal ability to construct". Thus, this allegation is beyond the scope of the LCP.

D. Substantial Issue Analysis

As stated in Section III of this report, the grounds for appeal of a coastal development permit issued by the local government after certification of its Local Coastal Program are specific. In this case, the local coastal development permit may be appealed to the Commission on the grounds that it does not conform to the certified Local Coastal Program or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists with respect to the grounds on which an appeal has been filed in order to decide whether to hear the appeal de novo.

In making the substantial issue assessment, the Commission typically considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP or the public access policies of the Coastal Act raise significant issues in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

In this case, the appellants contend that the City's approval of the proposed project does not conform to the requirements of the certified LCP (See Section I and exhibits C and D).

1. Water Quality & Natural Watersheds

The City's certified Local Coastal Program (LCP) Open Space/Conservation (OS/C) portion of the Land Use Plan (LUP) includes the following policies:

Water Quality and Conservation Policy 4 H:

Oppose activities which degrade the quality of offshore waters.

Watersheds and Watercourses Policy 9 J:

Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.

Watersheds and Watercourses Policy 9 M:

Where feasible, require flood control programs to incorporate non-structural methods, such as preservation of watershed lands and natural drainage channels, rather than structural methods such as concrete flood channels and engineering. In cases where structural methods are necessary, drainage structures shall be invisible conveyances, undergrounded and revegetated to camouflage any disturbance created during construction in order to provide the least damaging environmental alternative possible.

The appellants allege that although the project approved by the City will result in additional water being deposited on the sandy beach, the City did not analyze whether the project will have any adverse impact on water quality. The appellants further allege that the project will significantly increase the flow rate and increase discharge volumes of contaminated urban runoff which will result in increased ocean pollution. Also, no provision to monitor the project impacts on the tide pools was included in the City's approval. In addition, no requirement to incorporate Best Management Practices (BMPs) and Best Available Control Technologies (BACT) was included in the City's approval. As a result, the project will degrade the quality of off shore waters. Finally, the appellants allege that the project re-directs runoff away from natural discharge characteristics and focuses the 90 acre watershed into one storm drain.

Drainage flowing through the approved storm drain pipe will outlet onto the sandy beach and continue to the ocean. If the project results in polluted runoff from the storm drain flowing untreated into coastal waters, the project would degrade the quality of offshore waters. Degradation of the quality of offshore waters is inconsistent with Policy 4 H of the OSC Element of the certified LCP.

The Mitigated Negative Declaration (MND) approved by the City in conjunction with the project describes the inclusion of "lips" to deflect nuisance flows that would otherwise flow into the proposed storm drain outlet. A memorandum from the Public Works Director to the Zoning Administrator, requesting Design Review, dated February 26, 2003, includes the following description:

"The existing catch basins on Coast Highway will be modified to provide a 1- ½ inch lip on the gutter and to remove the existing grates so that no runoff from nuisance flows will enter the storm drain; with this configuration, the only time that the storm drain will receive flow from the

street will be when storm flows cause water in the gutter to exceed 1 – ½ inches in depth.”

Regarding Hydrology and Water Quality, the Mitigated Negative Declaration makes the following finding:

“The project will not violate any water quality standards that may be associated with nuisance flow. The City is proposing “lips” on the gutters of the catch basins so that nuisance flows will not be introduced into the catch basin and end up on the beach.”

There is no information in the City’s project file describing in greater detail how the “lips” work and no discussion on their expected effectiveness. There are no plans that reflect incorporation of the “lips” into the project design. Further, the “lips” are proposed to address nuisance flows only. Even if the “lips” adequately address nuisance flows, that alone does not assure protection of water quality. Non-nuisance flows must also be addressed to assure that they will not degrade the quality of offshore waters. However, the lips would not adequately address even nuisance flow. If the lips do keep the nuisance flow out of the proposed storm drain, it would simply enter the next downstream inlet. Therefore, the proposed “lips” are not adequate to assure that the quality of off shore water is not degraded. Therefore, the project approved by the City is not consistent with Policy 4 H of the certified LCP.

The letter from the City (May 27, 2003) representing the Amended Notice of Final Action states that the City imposed the following requirement as a condition of approval:

“Installation of the most effective catch basin filter that is practical.”

However, there is no discussion of what standard the filter would be required to meet (e.g. treat up to 85th percentile storm event) and no discussion of how it will be implemented. In addition, the City’s project file does not include information regarding the ability of the filter to capture and treat the various types of pollutants anticipated. Specific calculations must be provided to evaluate the amount and type of runoff and pollutants entering the storm drain and the ability of the filter to treat that runoff. Information regarding the filter sizing criteria is needed. The plans do not reflect the requirement that a filter be installed. Without being required to meet any specific standards, and with no indication of how the requirement for a catch basin filter will be implemented, and no requirement for maintenance and monitoring of the filter, there is no assurance that the water outletted from the storm drain will not degrade offshore waters.

The increase in storm drain capacity is proposed to accommodate drainage from approximately 90 acres upstream. Policy 9 J requires developments to maintain runoff characteristics as near as possible to natural discharge characteristics by

maintaining the natural conditions of the watershed. Policy 9 M requires that non-structural flood control methods be incorporated, where feasible, in developments. However, the City's approval of the project did not discuss the possibility of reducing the amount of runoff that flows to Coast Highway by decreasing runoff upstream of Coast Highway. This might be accomplished by retention of natural conditions and/or other non-structural methods in the upstream area. Evaluation of the feasibility of such measures is required by Policies 9 J and 9 M. However, no such evaluation was conducted. Thus, the project approved by the City is not consistent with Policies 9 J and 9 M of the certified LCP.

For these reasons the development approved by the City is inconsistent with the Water Quality & Natural Watersheds policies of the City's certified LCP. Therefore the Commission finds that the appeal raises a substantial issue.

2. Sensitive Marine Habitat

The City's certified Local Coastal Program (LCP) Open Space/Conservation (OS/C) portion of the Land Use Plan (LUP) includes the following policies:

Tide Pools and Marine Habitats Policy 2 A:

Encourage the expansion of the Marine Life Refuges and the designation of particularly unique or ecologically sensitive coastal areas as Ecological Reserves (such as seal and bird rocks), pursuant to the provisions of the State Department of Fish and Game.

Tide Pools and Marine Habitats Policy 2 H:

Support restoration of offshore kelp beds.

Watersheds and Watercourses Policy 9 V:

Protect Aliso Canyon Area from any increase in flow which might have adverse impacts on the water quality in Aliso Creek and prevent excessive erosion and sedimentation and emphasize the prevention of siltation from adversely impacting the South Laguna Marine Life Refuge.

The appellants allege that the project will significantly increase the flow rate and increase discharge volumes of contaminated urban runoff which will result in increased ocean pollution which will distress and/or cause the collapse of a designated Marine Life Refuge which supports new stands of recovering kelp. In addition, the appellant's allege that the project conflicts with efforts to support improved ocean water quality ecology as an antecedent condition for restoration of offshore kelp beds. In addition, the appellants allege that the project will adversely impact the South Laguna Marine Life Refuge by discharging a 64%

increase of contaminated urban runoff into surrounding tide pools and ocean habitats.

The South Laguna Marine Life Refuge is immediately adjacent to the subject site. Adverse impacts to coastal water quality at the subject site will create adverse impacts on the Marine Life Refuge. Thus the area is particularly susceptible to adverse impacts from lack of protection of water quality.

The LCP policies cited above require that marine habitats be protected. The Mitigated Negative Declaration approved by the City in conjunction with the coastal development permit assessed the project's potential for adverse impacts to biological resources and found:

"The proposed improvements are located within a residentially developed lot, which is currently under remodel. Therefore, no sensitive or special status species are located on the property. In addition, the proposed project is not located within City designated High, Very High or Critical Habitat. Therefore, impacts are considered less than significant."

With regard to biological impacts to fish or wildlife the MND states:

"No movement or migratory fish or wildlife corridors will be impacted with construction of the storm drain project. In addition, the proposed improvements are located within a residentially developed lot, which is currently under remodel. Therefore, impacts are anticipated to be less than significant."

Although the project will outlet onto the sandy beach and ocean, no evaluation of potential impacts to the marine habitat was prepared. The City's assessment included review of biological impacts to land resources within the property boundary only. However the policies of the LCP cited above clearly require review of potential adverse impacts the project may have on the marine environment and habitat regardless of whether such resources are within the boundary of the lot within which the proposed development is occurring. Review of potential impacts to marine habitat is especially critical in this case because the storm drain will outlet into a designated marine life refuge.

In addition, the project approved by the City will increase the capacity of the storm drain. The City proposes to address this by including construction of an energy dissipater in the project. However, the energy dissipater will not keep the water borne contaminants out of coastal waters. As discussed above, the City has proposed lips and installation of a catch basin filter. However, as described above, there is not evidence in the City's record that the measures required would adequately protect the quality of coastal waters. If protection of the quality of coastal waters is not assured, the habitat of the marine life refuge is

jeopardized. Thus the project is not consistent with the LCP policies that require protection and expansion of the marine life refuge including kelp beds.

For these reasons the development approved by the City is inconsistent with Tide Pool and Marine Habitats and the Water Quality & Natural Watersheds policies of the City's certified LCP. Therefore the Commission finds that the appeal raises a substantial issue.

3. Alternatives

The City's certified Local Coastal Program (LCP) Open Space/Conservation (OS/C) portion of the Land Use Plan (LUP) includes the following policies:

Watersheds and Watercourses Policy 9 M:

Where feasible, require flood control programs to incorporate non-structural methods, such as preservation of watershed lands and natural drainage channels, rather than structural methods such as concrete flood channels and engineering. In cases where structural methods are necessary, drainage structures shall be invisible conveyances, undergrounded and revegetated to camouflage any disturbance created during construction in order to provide the least damaging environmental alternative possible.

Watersheds and Watercourses Policy 9 J:

Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.

In addition, the Implementation Plan (IP) portion of the certified LCP's "Guidelines for Shoreline Protection" includes the following policy:

An investigation of reasonable and feasible alternatives that could accomplish the same level of protection while minimizing environmental effects must be provided.

The appellants contend that the project approved by the City did not include any investigation of reasonable and feasible less environmentally damaging alternatives.

The project approved by the City included discussion of three alternatives for the energy dissipater: stone bedding, gabions, and extending the pipe further onto the beach. The stone bedding was chosen as the preferred alternative because of its capability of dissipating the flow energy. This alternatives analysis focuses on a single project impact, erosion. Whereas the LCP requires review of alternatives that would address all project impacts.

The LCP policies cited above require that alternatives should be considered based on their environmental impacts. Specifically, policy 9 M requires that non-structural alternatives be considered. Policy 9 J requires that when feasible, new development maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed. These policies require that less environmentally damaging, non-structural alternatives be considered. These alternatives would include methods of minimizing the runoff upstream to lessen the flow that must outlet through the storm drain onto the sandy beach and into the ocean. The alternatives considered by the City were not evaluated based on their level of environmental impacts as is required by the certified LCP.

The approved outlet structure and energy dissipater are not proposed as shoreline protection devices per se. However, they are described in the MND as protective structures. In any event, because they will result in hardening of the shoreline, construction of the outlet structure and energy dissipater will have the same effect on shoreline processes as a shoreline protective device. The Guidelines for Shoreline Protection, contained in the City's certified LCP, require that reasonable and feasible project alternatives that minimize adverse environmental effects must be provided for consideration. Such alternatives would include non-structural as well as upstream alternatives. In addition, alternative alignments and outlet locations which minimize or avoid any need for a shoreline protection device must be analyzed. However, no such alternatives were considered in the City's approval of the project. Therefore the project is inconsistent with the Guidelines for Shoreline Protection of the certified LCP.

For these reasons the development approved by the City is inconsistent with Watersheds and Watercourses policies and Guidelines for Shoreline Protection of the City's certified LCP. Therefore the Commission finds that the appeal raises a substantial issue.

4. Conclusion

In conclusion, the proposed project is not consistent with the Tide Pools and Marine Habitats, Water Quality and Conservation, Watersheds and Watercourses policies and the Guidelines for Shoreline Protection requirements of the City's certified LCP. Further, the inconsistencies raise a substantial issue due to the precedential nature of the project, the significance of the coastal resource impacted (South Laguna Marine Life Refuge), and because issues raised by the appeal are of statewide significance. The City's approval is precedential in that the policy analysis was limited to the private property on which the development occurred and did not consider impacts to habitat on adjacent property. If the City were to continue to limit the scope of their analysis of environmental impacts to the property within which the development was occurring, significant adverse direct and cumulative impacts to coastal resources would occur. In addition, minimizing adverse environmental

impacts was not one of the bases of the City's alternatives analysis. Consideration of alternatives based on environmental impacts is imperative in accurately implementing the environmental protection policies of the certified LCP. Further, the coastal resource impacted is significant and is of statewide significance because it is a designated marine life refuge. The California State Legislature created the South Laguna Beach Marine Life Refuge in 1968. Minimizing impacts to this marine life refuge is of statewide importance. Therefore, staff recommends that the Commission find that a **substantial issue exists** with the approval Local Coastal Permit 03-13 on the grounds that it does not conform to the policies of the City of Laguna Beach certified Local Coastal Program.

ADDITIONAL INFORMATION NEEDED FO DE NOVO ACTION

Before the Commission can consider the de novo action on this permit, additional information must be submitted to commission staff for the preparation of the de novo recommendation. The additional information necessary includes, but is not limited to:

- 1) An alternatives analysis that addresses the issues discussed above (e.g. non-structural alternatives, alternatives that deal with flow upstream, alternate storm drain alignments and alternate outlet locations, etc.), and a discussion of why the proposed alternative was determined to be the least environmentally damaging feasible alternative;
- 2) Detailed information about the filter required as a condition of approval including, but not limited to, standards the filter is required to meet [treat up to 85th percentile storm event, etc.], an analysis of the various types of pollutants anticipated, information regarding the ability of the filter to filter the pollutants anticipated, how the filter will be implemented, monitored and maintained, etc.), and including information on why the proposed filter was chosen;
- 3) A biological assessment of potential adverse impacts the project may have on the environment, particularly on the sandy beach and ocean and recognizing the significance of the adjacent State protected South Laguna Marine Life Refuge;
- 4) Analysis of the need for a monitoring program to assess impacts to the adjacent habitat due to the proposed project and a mitigation plan if adverse impacts are identified.



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South Coast Region

MAY 29 2003

CALIFORNIA
COASTAL COMMISSION

May 27, 2003

Ms. Meg Vaughn
California Coastal Commission
200 OceanGate, 10th Floor, Suite 1000
Long Beach, California 90802

Dear Ms. Vaughn:

**SUBJECT: AMENDMENT TO NOTICE OF FINAL ACTION FOR
COASTAL DEVELOPMENT PERMIT FOR A
REPLACEMENT STORM DRAIN AND ENERGY
DISSIPATER AT 31921 COAST HIGHWAY**

A Notice of Final Local Action was sent to you shortly after the City's Design Review Board approval of the above item at their meeting on April 24, 2003. Subsequent to that determination, the City Council of the City of Laguna Beach considered the project at their meeting of Tuesday, May 20, 2003 in accordance with the City's Municipal Code requirement that the City Council determine the project is necessary for the public health, safety and welfare. With the Council having made that determination, I am sending you the attached amended Notice of Final Local Action representing the City Council's approval of the project.

In addition to the findings and condition of approval outlined in the attached Resolution CDP 03-13, the City imposed the following conditions: 1. The storm drain shall not be extended further onto the beach and; 2. The Myoporum and Giant Reed plants shall remain at the bottom of the dissipater and; 3. Installation of the most effective catch basin filter that is practical.

If you wish any further information regarding this action, please contact this office.

Sincerely,

John R. Tilton, Jr.
Zoning Administrator

Attachments:
cc: Mr. Patrick R. Boyd

Notice of Final Action
COASTAL COMMISSION
A-5-LGB-03-254
EXHIBIT # A
PAGE 1 OF 2



(AMENDED) NOTICE OF FINAL LOCAL ACTION FOR COASTAL DEVELOPMENT PERMITS

Date: May 27, 2003

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

Location: 31921 Coast Hwy., Laguna Beach

Coastal Development Project No: 03-13

Project Description: Storm drain/energy dissipater

Applicant: City of Laguna Beach

Mailing Address: 505 Forest Ave., Laguna Beach, CA 92651

On May 20, 2003, a Coastal Development Permit application for the project was

- () approved
(X) approved with conditions
() denied

Local appeal period ended May 8, 2003

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

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

This project is

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

Att: CDP Resolution No. 03-014

A-5-LGB-03-254
A2

RESOLUTION CDP 03-914

**A RESOLUTION OF THE DESIGN REVIEW BOARD OF THE
CITY OF LAGUNA BEACH APPROVING COASTAL DEVELOPMENT PERMIT
APPLICATION NO 03-13**

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

31921 Coast Highway
APN 658-113-42

and;

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

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

1. The project is in conformity with all the applicable provisions of the General Plan, including the Certified Local Coastal Program and any applicable specific plans in that the environmentally sensitive areas have been protected because the development is limited to previously altered areas thereby preserving the majority of the existing natural vegetation.

2. Any development located between the sea and the first public road paralleling the sea is in conformity with the Certified Local Coastal Program and with the public access and public recreation policies of Chapter 3 of the Coastal Act in that the project does not present either direct or cumulative impacts on physical public access since existing public vertical and lateral access exists nearby and there are no new adverse impacts on beach access since the structure has been minimized to not impact access and will not result in any further seaward encroachment.

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

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

Permission is granted in the R-1 Zone for construction of a replacement storm drain and an energy dissipater on the sandy beach.

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

*Resolution of Approval
A-E-16B-03-254*

EXHIBIT B

1 of 2

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

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

PASSED on April 24, 2003, by the following vote of the Design Review Board of the City of Laguna Beach, California.

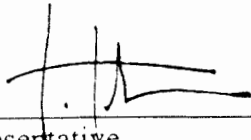
AYES: Kawaratani, Lenschow, Michel, Morrison, Plumb

NOES: None

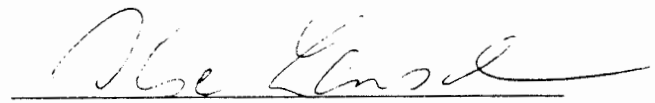
ABSENT: Simon

ABSTAIN: None

ATTEST:



Staff Representative


Chair Pro Tem Lenschow

Board of Adjustment Resolution No. CDP 03-014

B₂

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceanside, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

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



JUN 11 2003

CALIFORNIA COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

Patrick R. Boyd & Kamaryn T. Tanner
31899 Circle Drive
Laguna Beach, CA 92651 (949) 851-9800
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

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

2. Brief description of development being appealed: Installation of a new storm drain and energy dissipater on a sandy beach.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 31921 South Coast Highway, Laguna Beach, CA 92651 APN 658-113-42

4. Description of decision being appealed:

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-LGB-03-254

DATE FILED: 6.11.03

DISTRICT: South Coast/Long Beach

H5: 4/88

Appeal of Boyd + Tanner
COASTAL COMMISSION
A-5-LGB-03-254

EXHIBIT # C
PAGE 1 OF 2

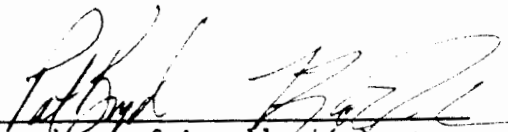
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment IV

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date 6-10-03

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

REASONS FOR THIS APPEAL.**APPROVAL BASED UPON FALSE ASSUMPTIONS**

The City of Laguna Beach approved its own Coastal Development Permit application for a storm drain by disregarding factual and its own and the Coastal Commission's procedural requirements, to expedite a public works project that does not have the right to construct. As the owners of the subject property, we are appealing this Final Action because it violates the contract between us and the City.

The City's Design Review Board wanted the City's public works department to provide an Environmental Impact Report on this project. The public works department misinformed the Design Review Board and allowed it to draw incorrect conclusions:

1. No Environmental Impact Report. The City's Design Review Board wanted an Environmental Impact Report but was lead to incorrectly believe that there was no time to obtain one, so to approve the application was the best thing for the City. The City actually has the ability to install a pipe and wait to hook-up the pipe until after an EIR and a Coastal Development Permit are obtained.

2. Additional Water to be Deposited on Sandy Beach. The public works department provided limited information to the Design Review Board to allow its members to believe that the project would not deposit significantly more water on the sandy beach. Attached are photos showing the results of the storm drain next door. The proposed plan could increase the level of water by seven times.

3. Minutes Misstate Actual Statements. The minutes from the Design Review Board meeting that were provided to the City Council misstated the objections of the neighbors and clean water activists that spoke in opposition to the application. The City Council relied upon the same inaccurate and incomplete information, and disregarded opposition from the neighborhood and photographic evidence of the contaminated pooling that already occurs on the beach from an existing storm drain on the neighboring property. The proposed drain will dramatically increase the size and duration of existing problems. The City Council also incorrectly assumed that the proposed path of the new storm drain is part of a natural watercourse, which it is not.

NO INTENDED OPPOSITION OF AGREED UPON CITY CONSTRUCTION

Our predecessor agreed not to oppose the installation of an underground pipe over our property and to extend to beyond our property line. We do not oppose the installation of a pipe over our property extending to beyond the property line. We do not and will not oppose any plan or Coastal Development Permit application made in accordance with our contract with the City. We were forced to file this appeal because the City approved a plan which was not permitted under our contract with the City and which will dump storm water from at least 3 new drains onto our property approximately 45 feet inside our property line.

NEW BURDEN BEING ADDED TO BEACH

The City's application misstates the project as a "REPLACEMENT" storm drain. In fact, there is no existing dedicated storm drain on the subject property and there is no existing or historical drain outlet on the subject property. This is a new storm drain and not a replacement.

NO ANALYSIS OF HEALTH OR WATER QUALITY ISSUES

The City has made no attempt to prevent pooling, contamination of beach sand or beach erosion, and proposes a plan that will retain most contaminants in beach sand that will not be flushed by normal tidal action.

CIRCUMVENTING RULES

City officials informed us that since they did not think the Coastal Commission would approve the installation of a new storm drain outlet on the public beach area (per the agreement), they proposed to place it on the sandy beach well inside our property line where it could be approved by the City and not require Coastal Commission approval.

NO AUTHORITY/NOT APPROPRIATE APPLICANT

The City has approved a storm drain on private property that it does not have the legal right to build. The City has the right to a 4 foot easement to install an underground pipe across the subject property. The City proposes building an up to 16 foot wide storm water catch basin and dump the storm water 45 feet inside the property line and approximately 60 feet inland of the mean high tide line, where it will pool and stagnate as shown on the attached photos. The City seeks to approve a plan that it is not legally permitted to construct. The City is not the owner of the subject property and is not the proper applicant for the permit.

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LAW OFFICES OF
BOYD & CHANG, LLP

NEWPORT GATEWAY - TOWER II
19900 MACARTHUR BOULEVARD
SUITE 660

IRVINE, CALIFORNIA 92612
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FACSIMILE: (949) 851-0159
www.boydandchang.com

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South Coast Region

JUN 11 2003

CALIFORNIA
COASTAL COMMISSION

April 30, 2003

VIA FACSIMILE & US MAIL

(949) 497-0771

Steve May, City Engineer
City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92651

Re: 31921 South Coast Highway

Dear Steve:

In following up on the design review meeting of April 24, 2003, we are not sure what the city's position is on the outlet for the storm drain in front of our house. As I have pointed out in our earlier letters, we intend to honor both the terms and the spirit of the Amended Memorandum of Agreement between the City of Laguna Beach and our predecessor-in-interest, Mr. Krutoff (the "Agreement"). We expect the City of Laguna Beach to do the same.

The terms of the Agreement grant an easement to the city to run a pipe across our property to beyond our property line. A single pipe presently runs from a drain on the inland side of Coast Highway, across the top of Dr. Wacholder's lot, down our parcel and across to Mr. Truskowski's property, down his hillside and out in front of his beach shed. The Agreement specifically provides as follows:

"1. Construction of the New Storm Drain:

(a) The City shall submit and process an application and engineering plans for a Coastal Development Permit to construct a replacement storm drain on the Subject Property.

(b) The parties acknowledge that the City currently intends, if the permit and plans therefor are approved, to extend the drainage outlet to beyond Krutoff's property line. Krutoff agrees to not oppose or object to such extension. The parties also acknowledge that, prior to obtaining approval for such extension, the City may, in its sole discretion, construct storm drain improvements in the vicinity of the proposed new building structure, and either

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BOYD & CHANG, LLP

Steve May, City Engineer
April 30, 2003
Page 2

connect such improvements to the existing outlet, or plug such improvements until the time the outlet extension to beyond Krutoff's property line is approved.

(c) The parties further acknowledge that the City currently intends, if the permit and plans therefor are approved, to connect the new storm drain to the City's sewer system to collect nuisance flows during the summer months. Krutoff agrees to not oppose or object to such connection, and he acknowledges that whether such connection is made shall be within the City's sole discretion.

(d) Upon approval of the permit and plans, the City shall commence construction of the new storm drain, and shall diligently pursue such construction to completion.

(e) The City shall either complete construction of storm drain improvements within the vicinity of the proposed new building structure, or plug the existing storm drain to allow construction of the proposed new building structure to proceed; this work shall be completed within the lesser of either six (6) months, to the day, from the "Effective Date" of this agreement, or sixty (60) calendar days following delivery of a written demand by Krutoff, to the City, to complete such construction or plugging."

A copy of the actual grant of easement is attached.

Neither the Agreement nor the Easement grant the city the right to dump drainage water on our property. In fact, the Agreement specifically states that the outlet must be beyond our property line. While the design review board may have only approved the city's application if it dumps the water on our property, the city does not have our consent to dump the storm drain on our property. It is our desire to cooperate with the city, however, that does not mean that we will consent to actions on our property that are not permitted under the Agreement, especially if they are actions which would not be otherwise permitted on public property or will effect the value, use, enjoyment, soil conditions or safety of our property.

We are concerned with both (i) the design review board's misperception, based upon incomplete data, that it has the ability to permit actions on our property applied for by others without our consent, and (ii) your comments questioning the clarity of the Agreement and implying that where the city places and dumps the pipe can be controlled by the approval process. The city's approval process is only to approve plans that are not inconsistent with the Agreement. It was evident from the meeting that the design review board was not aware that the city did not have our consent or any legal right to dump the storm water on our property.

Just because the city has received design review approval to build a storm drain on our property does not give the city any right to do so beyond rights granted in the easement under the Agreement. Additionally, the provision of the Agreement stating that the easement is subject to

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BOYD & CHANG, LLP

Steve May, City Engineer
April 30, 2003
Page 3

applicable permits, limits the rights of the city, it does not expand those rights.

In our discussions after the meeting you suggested alternatives to running the water beyond our property line. We will consider all reasonable suggestions however it is unlikely that we will accept anything on our property beyond the scope contemplated in the Agreement, that the city would not be able to do in the public areas or that would damage the value or use of our beach. The fact that you feel that the placement of the outlet on public areas might cause hazardous conditions is precisely why we do not want them on our property.

We have tried to be very forthright with your department. We are not in favor of more water on the beach, but Mr. Krutoff made a deal that we knew about before we bought the property and we will honor his agreement. Until recently, we assumed without question that the proposals by the engineering firm hired by the city and the city's actions were consistent with the terms of the Agreement. Each meeting we attend we learn more details of concerns that demonstrate to us that, without our attention to this matter, we could wind-up with a result not intended or permitted by the Agreement. In our initial zeal to work with the city, we failed to realize that, left to its own devices, a project like this could have unintended adverse consequences. It is unclear to us what amount of water or what number of storm drains Mr. Krutoff was aware of and agreeing to when he entered into the Agreement. We are assuming for the purposes of this letter that the number of storm drains to be connected and the anticipated amount of water source area has not changed since the Agreement was negotiated with Mr. Krutoff.

We have also learned from the meetings and our interaction with you that you are in a very difficult position. You are tasked with completing a project that is unpopular and subject to the criticisms of various bodies and interests. We do not want to make your already difficult and thankless job more complicated. We do however think that you should proceed exactly as provided for in the Agreement. That is:

1. Lay the pipe and drill the hillside while my foundation contractors and drillers are on site, but do not connect the pipes, just as provided in section 1(b) of the Agreement.
2. Submit Plans for a Coastal Development Permit as required in Section 1(a) of the Agreement.
3. Connect the approved pipes as provided in Section 1 (c) of the Agreement, upon Coastal Commission approval.

Dr. Wacholder suggested this course of action at the hearing. It is our understanding from the previous owners that you had already anticipated proceeding in this manner. In the interim we will attempt to contact Mr. Krutoff to find out what he remembers about the original deal.

BOYD & CHANG, LLP

Steve May, City Engineer
April 30, 2003
Page 4

Thank you for your continued cooperation, hard work and assistance in this matter.

Very truly yours,



Patrick R. Boyd

PRB:rm

Enclosure

cc: Robert Carey
Myron Wacholder, M.D.
Robert Truskowski
Hugo Soria
Clyde E. "Chip" Wullbrandt, Esq.

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Myron Wacholder
31913 Coast Highway
Laguna Beach, CA 92651
(949) 499-2674

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South Coast Region

JUN 11 2003

CALIFORNIA
COASTAL COMMISSION

May 20, 2003

City Council Members
City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92651

RE: 31921 Coast Highway (Item #25, May 20, 2003)

Dear City Council Members:

I'm sorry I am not available to attend the City Council meeting tonight. I was not able to reschedule a previous work commitment. As a long-time resident at 31913 Coast Highway and an admirer of our wonderful beaches, I would like to express to the City Council my family's concerns.

The minutes of the Design Review Board dated April 24, 2003, do not accurately reflect my comments. What I clearly stated was that I was not opposed to a storm drain on the 31921 property so long as it did not add additional volume, flow, erosion or pollution to the beach. I also stated that I was concerned by the Negative Declaration Report (see section 3, page 5 in particular) citing a potential for marked increase in flow velocity and volume.

It is incomprehensible how the Director of Public Works can believe that the addition of four new storm drains to the existing single drain, which would now drain both sides of the highway as well as run off from 8th, 9th and 10th Avenues, would not add consider volume and pollution to the beach sand on my property. I am enclosing for your review several photos from a winter storm in 2002 showing the erosion and mud residue covering virtually all of the sand on my property from our current single storm drain.

Therefore, I respectfully request that the City take the following action:

- Do nothing on the property that they could not do on public land since it will directly affect my property and my neighbors' property.
- Submit this project for Coastal Commission approval and a coastal development permit.

Please contact me at any time if you would like to discuss this further. Thank you in advance for your consideration.

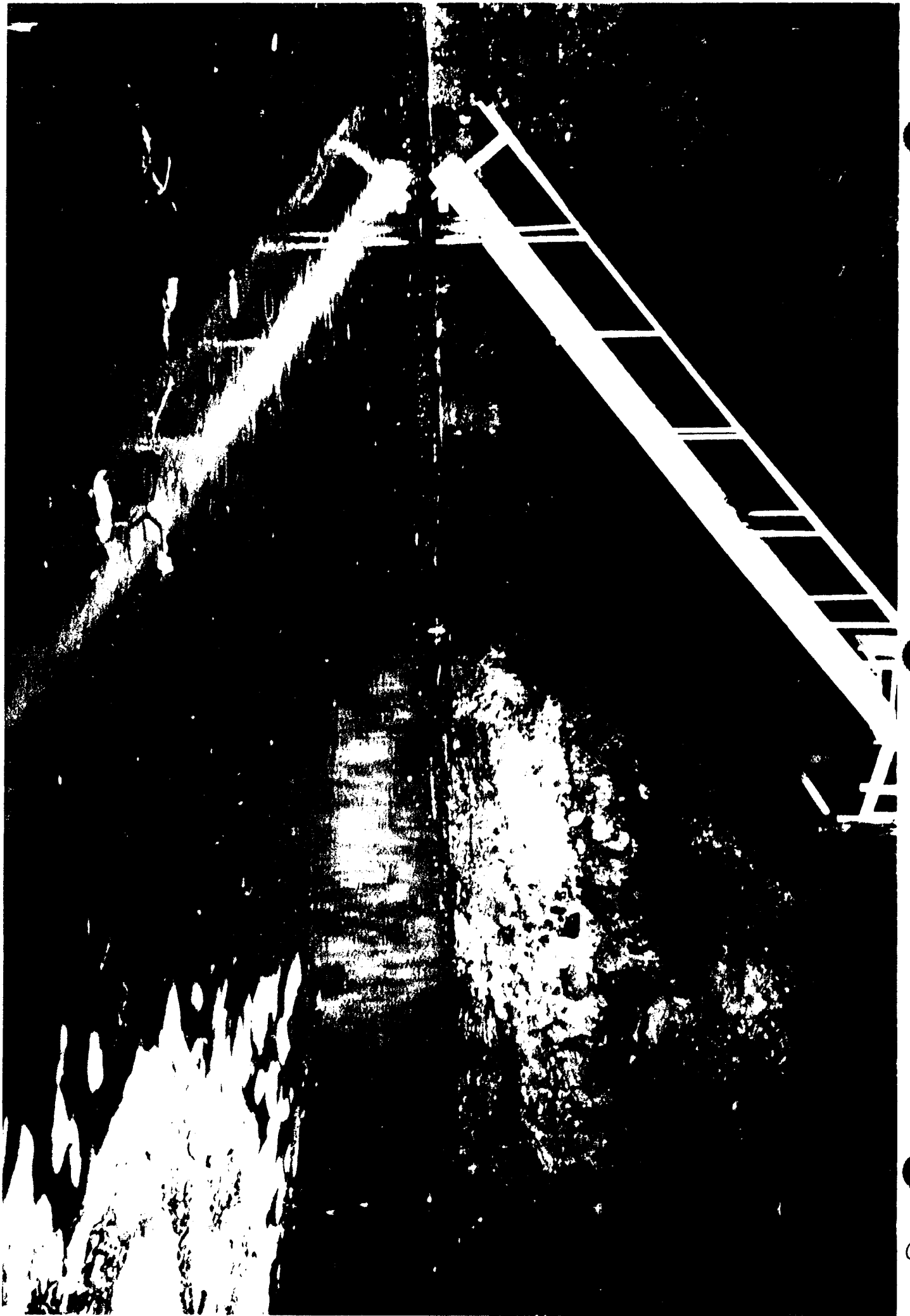
Sincerely,



Myron Wacholder and Family

cc: Patrick R. Boyd
Robert Truskowski

C9





C11



CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

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



JUN 12 2003

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

CALIFORNIA COASTAL COMMISSION

SECTION I. Appellant(s)

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

GARRY BROWN, ORANGE COUNTY COASTKEEPER
411 OLD NEWPORT BLVD
NEWPORT BEACH, CALIF. (949) 723-5424
Zip Area Code Phone No.

AND SOUTH LAGUNA CIVIC ASSOCIATION
PO BOX 9608
SOUTH LAGUNA, CA 92651
CONTACT: MICHAEL BEANAN
949-499-6367

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF LAGUNA BEACH

2. Brief description of development being appealed: NEW 18" STORM DRAIN - PACIFIC COAST HIGHWAY TO THOUSANDS STEPS BEACH MARINE REFUGE, COUNTY OF ORANGE, CDP 03-13

3. Development's location (street address, assessor's parcel no., cross street, etc.): 31921 PACIFIC COAST HIGHWAY, LAGUNA BEACH 9TH ST. AND PCH; APN 655-113-42

4. Description of decision being appealed:

- a. Approval; no special conditions:
b. Approval with special conditions: DRAIN BACK FILTERS 12" INLET RESTRICTOR
c. Denial:

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A5 LGB-03-254

DATE FILED: 6.12.03

DISTRICT: South Coast / Long Beach

H5: 4/88

COASTAL COMMISSION
A-5-LGB-03-254

EXHIBIT # D

PAGE 1 OF 6

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South Coast Region

JUN 12 2003

CALIFORNIA COASTAL COMMISSION

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

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

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

6. Date of local government's decision: _____

7. Local government's file number (if any): CDP 03.13

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

CITY OF LAGUNA BEACH
505 FOREST AVE
LAGUNA BEACH, CA.

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) RICK WILSON
SUPERVISOR, LAGUNA BEACH

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

TD2

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

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

ALLEGED
LCP
VIOLATIONS:

REF: LAGUNA BEACH OPEN SPACE/CONSERVATION ELEMENT (LCP)

1.5C - NO INVESTIGATION OF REASONABLE, FEASIBLE, ENVIRONMENTALLY SUPERIOR ALTERNATIVES (I.E. BIOREGIONAL WATERSHED HARVEST/RE-USE OF URBAN RUNOFFS - E.G. SUN VALLEY WATERSHED)

1.5D - INCONSISTENT ENGINEERING REPORT OF HYDROLOGY, FLOW RATES, WATER QUALITY

1.5S - NO BEACH PROFILE MONITORING PROGRAM, EXCESSIVE SCOUR IN

2A - PROJECT WILL SIGNIFICANTLY INCREASE BY 64%(H) FLOW RATE OF CONTAMINATED URBAN RUNOFF AND ELEVATE THERMAL/FRESHWATER OCEAN POLLUTION TO DISTRESS AND/OR COLLAPSE A DESIGNATED COUNTY MARINE REFUGE WITH NEW STANDARDS OF RECOVERING KELP HABITAT

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

SECTION V. Certification

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

MICHAEL DEANAN FOR SOUTH LAGUNA CIVIC ASSOCIATION
Signature of Appellant(s) or Authorized Agent

Date JUNE 12, 2003

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

Section VI. Agent Authorization

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

CEARLY BROWN
Signature of Appellant(s)

Date JUNE 12, 2003

D₃

* PLEASE SEE ATTACHED LETTER

LOP VIOLATIONS (CONT'D)

- 2D - NO BASELINE DATA PROVIDED BY APPLICANT TO MONITOR PRE/POST PROJECT IMPACTS TO TIDEPOOLS AT STORM DRAIN TERMINUS. NO RUNOFF MANAGEMENT PLAN INDICATED.
- 2E - NO OUTREACH TO EDUCATION INSTITUTIONS TO STUDY MARINE ECOLOGY AT PROJECT IMPACT SITE.
- 2G - PROJECTS CONFLICTS WITH EFFORTS TO SUPPORT IMPROVED OCEAN WATER QUALITY ECOLOGY AS AN ANTECEDENT CONDITION FOR RESTORATION OF OFFSHORE Kelp BEDS AND THE CARE AND REHABILITATION OF THE STATE FISH, I.E. GARIBAUDHI POPULATION AT NORTHERN POINT OF 1000 STEPS BEACH.
- 2H
- 4C - PROJECT DISCHARGES EXCESSIVE VOLUMINES (37cfs) OF CONTAMINATED URBAN RUNOFF RATHER THAN CAPTURE FOR CONSERVATION PURPOSES FROM EXISTING DEVELOPMENT. DOES NOT EMPLOY BMP AND BACT PRACTICES (SEE SUN VALLEY PROTOTYPE AND SANTA MONICA PROGRAM)
- 4H - PROJECT WILL DEGRADE QUALITY OF OFFSHORE WATERS (SEE 2A)
- 9J - PROJECT RE-DIRECTS RUNOFF AWAY FROM NATURAL DISCHARGE CHARACTERISTICS AND FOCUSES 90 ACRE WATERSHED INTO ONE STORM DRAIN.
- 9M - AREA HAS NO WATERSHED FLOOD CONTROL MASTER PLAN.
- 9N - PROJECT WILL ADVERSELY IMPACT SOUTH LAGUNA MARINE REFUGE BY DISCHARGING A 64%(±) (I.E. 37cfs) INCREASE OF CONTAMINATED URBAN RUNOFF INTO SURROUNDING TIDEPOOL AND OCEAN HABITATS

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South Coast Region

JUN 12 2003

CALIFORNIA
COASTAL COMMISSION

May 16, 2003

Mayor and City Councilmembers
City of Laguna Beach

Re: Negative Declaration for a Public Works Project
New Storm Drain Outlet from Pacific Coast Highway to Thousand Steps Beach Marine Refuge

Ref: Design Review 03-069, Negative Declaration and Coastal Development Permit 03-13:
31921 Pacific Coast Highway, APN 658-113-42

Our community and visitors deserve and expect the use of Best Management Practices (BMP) and Best Available Control Technologies (BACT) to address urban runoff onto our beaches and into protected, sensitive ocean habitat reserves. We invite the City Council to join the community effort to make the City of Laguna Beach an exemplar of environmental wisdom and protect both the public and aquatic wildlife health. Beach pollution happens one pipe at a time.

On April 24, 2003, the Design Review Board voted not to require an Environmental Impact Report (EIR) from City Staff for a proposed Public Works Project to install a new storm drain pipe from Pacific Coast Highway under a private residence undergoing remodeling construction to discharge contaminated runoff directly onto the public beach area at Thousand Steps Marine Refuge. This decision is unfortunate since the Proposed Project will increase runoff. We urge the City Council to properly evaluate all current and projected impacts with a full and comprehensive EIR.

Testimony provided by City Staff at the Design Review Hearing indicated that time did not permit a detailed EIR since the property owner was finally initiating construction for a project approved in 1992. Moreover, Staff assert the proposed storm drain could not await completion of the South Laguna Watershed Master Plan begun in 1992 and still undergoing revisions. A Bioregional Watershed Plan is essential to scientifically address urban runoff in this biologically unique area.

Beach and ocean pollution remains a primary concern for the South Laguna Civic Association, numerous local and regional environmental organizations and the present City Council. The proposed storm drain project does not utilize recognized Best Management Practices to reduce flow rates and contamination loads. Instead, an 18-inch pipe will direct 33% more runoff under a house situated on a coastal bluff and dump whatever is on the highway untreated onto the beach. At a projected peak flow rate of 37 cfs (cubic feet per second), the volume of contaminated runoff reaching the beach and scouring sand deposits will discharge approximately 1 MGH (million gallons per hour) (Page 6; Sec. 2.5.1 – Proposed Storm Drain and Capacity). Extrapolating for a typical 3 hour storm event increases this flow rate to 3 MGD (million gallons per day). We suggest that there are superior methods practiced daily among surrounding beach communities to better address urban runoff.

While everyone appreciates the workload on City Staff, we nonetheless recommend Councilmembers concerned with beach and ocean pollution rescind the Negative Declaration Approval by DR and direct Staff to complete a comprehensive EIR identifying all environmental and public health impacts of the proposed storm drain discharge project.

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South Coast Region

JUN 12 2003

CALIFORNIA
COASTAL COMMISSION

D5

A comprehensive EIR will take into account:

- Natural baseline and elevated runoff flow rates into the 90 acre South Laguna Watershed from the new Binion Ridgeline Development;
- Revise Project Site to include Residential Private Property, Sand Beach, Tidepool and Nearshore Marine Refuge Discharge Impact Zones (Page 14, Sec. 7.0: Surrounding Land Uses and Settings);
- Identify all Water Quality pollutants from approximately 100,000 vehicles on Pacific Coast Highway and contaminated residential yard runoff entering the proposed beach storm drain and their effect on immediate tide pool and protected cove ocean habitats (Exhibit 3, Appendix A: Photographs of Project Site). The Proposed Project will not include inlet filtration devices or address contaminated first flush rain events as standard BMPs (Page 24; 7.0 – HYDROLOGY AND WATER QUALITY).
- Evaluate known public health threats associated with the accumulation of contaminated deposits on beach sand areas (Ibid.);
- Coordinate the proposed storm drain with the South Laguna Watershed Management Plan to be completed in a time certain framework (90-180 days) by Staff and/or reputable Watershed Consultants.
- Integrate Project Impacts with Phase I Activities of kelp reforestation habitat at Thousand Steps Marine Refuge funded by a \$45,000 Supplemental Environmental Program (SEP) fund from South Coast Water District to Orange County Coastkeeper and insure the efficacy of long range coastal preservation and restoration efforts;
- Provide an opportunity, as required by CEQA guidelines, for the public and others to present “reasonable, feasible, environmentally superior alternatives” for consideration. Diversion of summer nuisance and “first flush” rain events to the South Coast Water District for treatment as is presently being provided to mitigate urban runoff from the Montage Resort would constitute one of many superior alternatives to the Proposed Project

Thank you for continuing your dedicated efforts to achieve these important community environmental and public health goals.



Bill Rihn
President



Michael Beanan
Director

D6

SOUTH LAGUNA

subject site

PACIFIC OCEAN

VICINITY MAP
COASTAL COMMISSION

A-5-66B-03-254

EXHIBIT # E
PAGE 1 OF 1

MINARH BAY COMMUNITY STREETS
ALSO KNOWN AS MINARH BAY DR

- 1 GREEN LATHRONE CT
- 2 EMERALD WY
- 3 THORNHURST DR
- 4 GLEN ANN CT
- 5 LINDA TIV CT
- 6 KING JOHN LN
- 7 KING WILLIAM CT
- 8 KING FREDRICK LN
- 9 LORAIN COAST DR
- 10 KING CHARLES LN
- 11 KING FERDINAND IV CT
- 12 BEACH CLUB DR
- 13 SURF BREAKERS DR
- 14 SURF WEST DR

SEE B HS

- 1 BAYNEST PL
- 2 TAMMY POINT
- 3 PALMID MARINO DR
- 4 REKAPOND
- 5 RIDGE LINE CT
- 6 SARETSTONE CT
- 7 WINDY WATER CT
- 8 STIMBEL WY
- 9 LINDENBERG
- 10 WINDMILL WY

SEE E Jb

- 1 ST OF THE ANCHOR LANTERN
- 2 ST OF THE WESTERN LANTERN
- 3 ST OF THE SPORE LANTERN
- 4 ST OF THE STARBOARD LANTERN
- 5 ST OF THE PORT LANTERN
- 6 ST OF THE COVE LANTERN

SEE C JS

- 1 SWIN OULFT CT
- 2 SANDLBER CT
- 3 RISING TIDE CT
- 4 SARET WY
- 5 SEA MIST WY
- 6 STAREFISH WY
- 7 SUNFISH WY

SEE F HS

- 1 SEA GULL CT
- 2 SANDWICH CT
- 3 MOON RING CT
- 4 DIVERS CT
- 5 SEA SHELL WY
- 6 EVENING STAR DR
- 7 SEACALL WY
- 8 NORTH STAR WY
- 9 MORNING STAR LN

SEE D/ G1

- 1 NEW CHARDON
- 2 PICKNEY CLOSE

MARINE STUDIES INSTITUTE



DANA POINT HARBOR

SEE 912 MAP

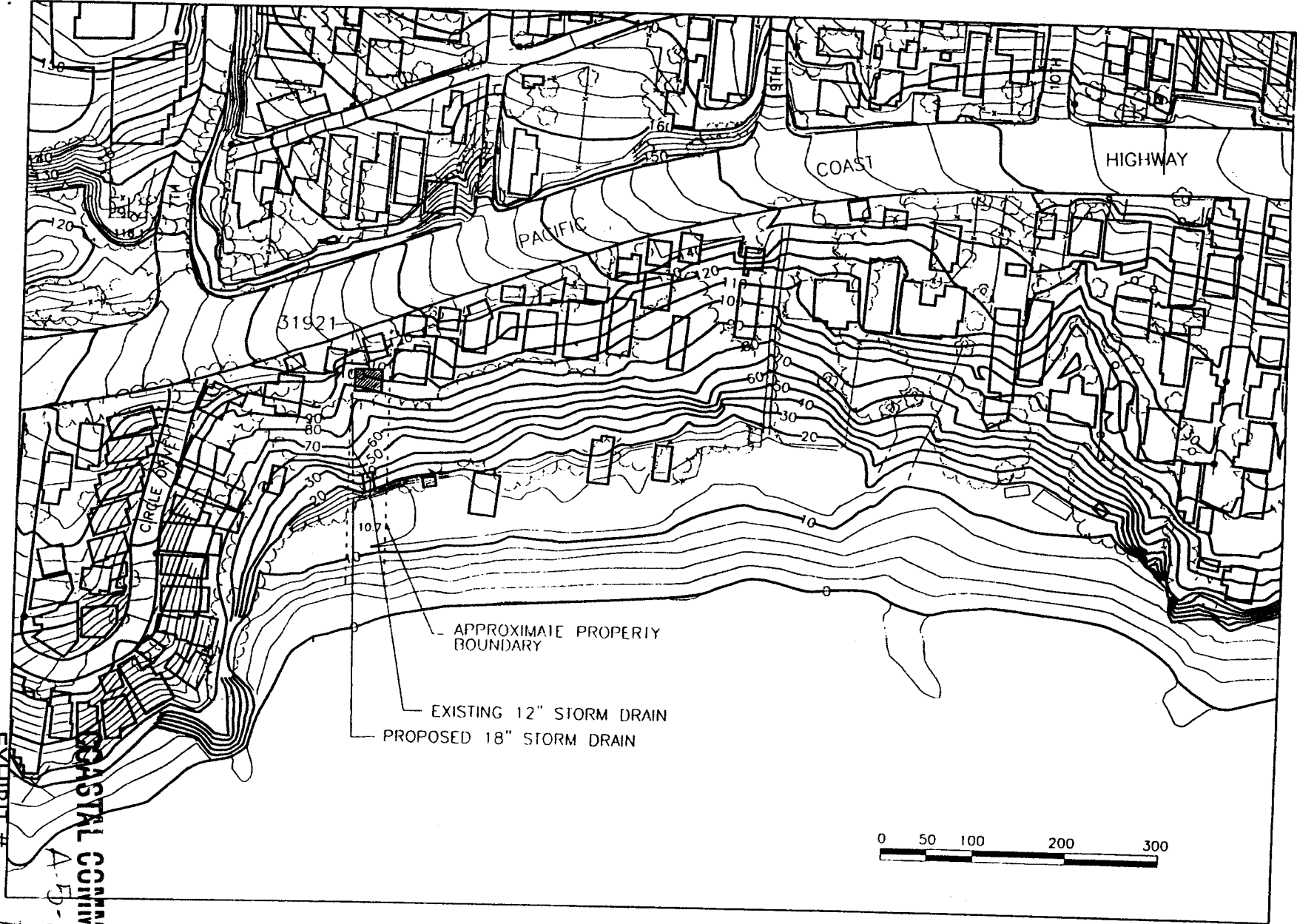
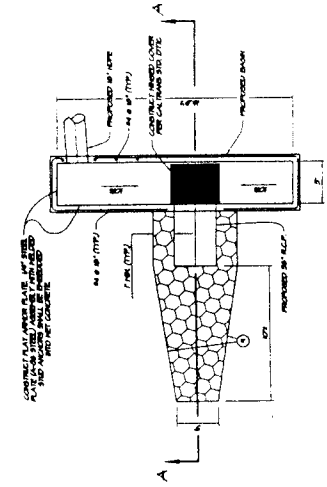
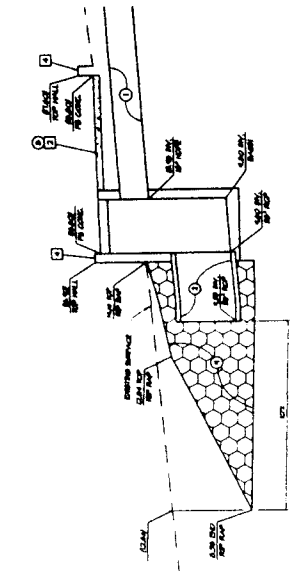


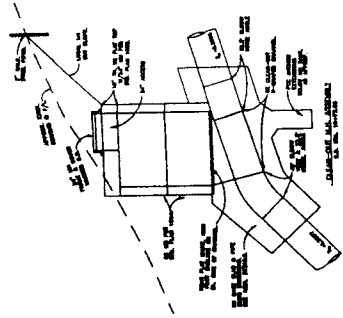
Figure 1. Site plan of project area.



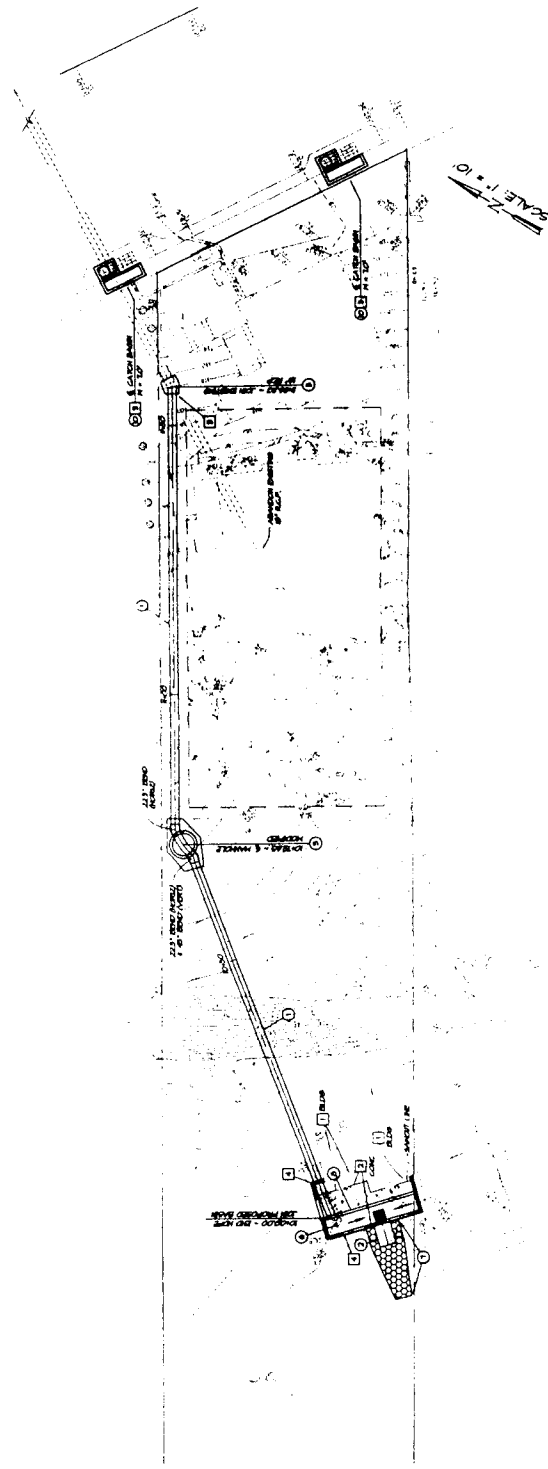
BASIN & OUTLET STRUCTURE DETAIL
N.T.S.



SECTION A - A
N.T.S.



MODIFIED MANHOLE DETAILS
N.T.S.



REVISIONS

NO.	DATE	DESCRIPTION

REFERENCES

NO.	DATE	DESCRIPTION

- CONSTRUCTION NOTES**
1. CONSTRUCT AS SHOWN UNLESS OTHERWISE NOTED.
 2. ALL CONCRETE SHALL BE 3000 PSI STRENGTH.
 3. ALL REINFORCING SHALL BE #4 BARS.
 4. ALL DIMENSIONS SHALL BE AS SHOWN UNLESS OTHERWISE NOTED.
 5. ALL FINISHES SHALL BE AS SHOWN UNLESS OTHERWISE NOTED.
 6. ALL UTILITIES SHALL BE PROTECTED AND DEEPLY REPAIRED.
 7. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND DEEPLY REPAIRED.
 8. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND DEEPLY REPAIRED.
 9. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND DEEPLY REPAIRED.
 10. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND DEEPLY REPAIRED.

31921 Coast Hwy
STORM DRAIN IMPROVEMENT PLANS FOR
8TH STREET STORM DRAIN
PLAN AND DETAIL SHEET

CITY OF LAGUNA BEACH
PUBLIC WORKS DEPARTMENT

ALBERT CIVIL ENGINEERING, INC.
REGISTERED PROFESSIONAL ENGINEER
381 N. Newport, Suite 2, Orange, CA 92668 • (714) 832-0228

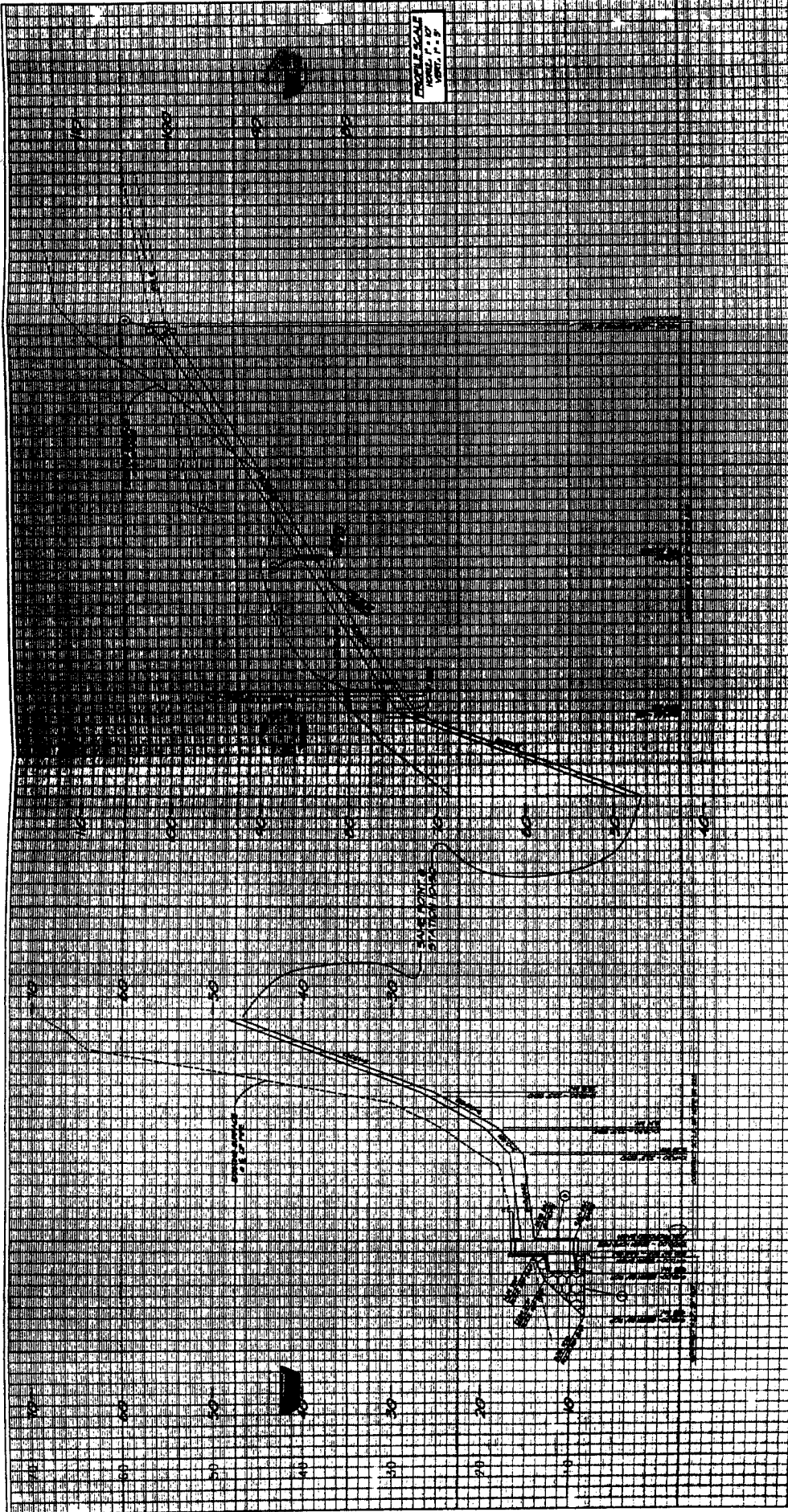
SCALE 1" = 10'

DATE 7/10

NO. APPROVALS BY SHEET NO. 1

NO.	DATE	DESCRIPTION

SECT. 1 OF 3
PLAN
PAGE



PROFILE SCALE
 HORIZ. 1" = 40'
 VERT. 1" = 5'

12

11+50

11

10+50

10+50

10

9+50

FOR THE CITY OF LAGUNA BEACH, CALIFORNIA
 PREPARED BY THE ENGINEERING OF
ROBERT CIVIL ENGINEERING, INC.
 202 S. BROADWAY, SUITE 2, OCEANA, CA 92650 - (714) 778-0228



**STORM DRAIN IMPROVEMENT PLANS FOR
 STORM DRAIN @ SHIP COAST HWY.**



PROFILE SHEET
 CITY OF LAGUNA BEACH
 FILE NUMBER: 11-00000000

- CONSTRUCTION NOTES**
1. ALL DIMENSIONS ARE AS SHOWN UNLESS OTHERWISE NOTED.
 2. CONTRACTOR SHALL VERIFY ALL DIMENSIONS.
 3. CONTRACTOR SHALL VERIFY ALL DIMENSIONS.
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 10. CONTRACTOR SHALL VERIFY ALL DIMENSIONS.

- REFERENCES**
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- REVISIONS**
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Handwritten initials or signature.

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

JUN 17 2003



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

CALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

Miron and Marilyn Wacholder
31913 Coast Hwy
Laguna Beach CA 92651 (449) 499-2674
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

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

2. Brief description of development being appealed: Installation of new storm drain with water dissipater on sandy beach

3. Development's location (street address, assessor's parcel no., cross street, etc.): 31921 Coast Hwy, Laguna Beach CA 92651 APN 658-113-42

4. Description of decision being appealed:

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

Appeal Received After
Close of Appeal Period
(+ so not a valid appeal).

Exhibit H
1 of 5

A-5-LGB 03-254

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

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

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

6. Date of local government's decision: May 20, 2003

7. Local government's file number (if any): CDP 03-13

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

City of Laguna Beach
505 Forest Ave
Laguna Beach CA 92651

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) Patrick Boyd
31899 Circle Drive
Laguna Beach CA 92651
- (2) Robert Truskowski
31925 Coast Hwy
Laguna Beach CA 92651
- (3) Roger Van Buren
Cedar Water Now PO Box 4711
Laguna Beach CA 92651
- (4) _____

SECTION IV. Reasons Supporting This Appeal

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

H₂

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

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

See Attachment Section IV

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

SECTION V. Certification

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

Raymond Walker

Signature of Appellant(s) or
Authorized Agent

Date 6/12/03

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

H3

SECTION IV

REASONS FOR APPEAL

The City of Laguna Beach has had a Memorandum of Agreement with the then property owner, Robert N. Krutoff, for almost four years (August 6, 1999). They agreed to abide by the Coastal Commission's procedural requirements. The City's Design Review Board wanted the City's Public Works Department to provide an Environmental Impact Report. Despite nearly four years for the City to do what it agreed to do, neither has happened.

1. No Environmental Impact Report (EIR)

The City has a valid right to install a pipe while the new home construction is underway. For the City to state that it suddenly doesn't have time to obtain an EIR is not a valid excuse. It can install but not connect to the street's storm drains while an EIR is obtained.

2. No Impact on Sandy Beach

The Public Works Department provided incomplete and inaccurate information to the Design Review Board. There is currently (and for the past 30 years that I have lived next door to the project property) a single 12" pipe and storm drain that empties onto the beach. The catchment basin is on the opposite side of the highway across from said property. The proposed new storm drain will add four new catchment basins along both sides of the highway and extending south approximately 400 yards. All water along both sides of the highway, as well as significant runoff from 8th, 9th and 10th Avenues onto the Coast Highway, will eventually drain onto the sand at this site.

To inform the Design Review Board and City that we should not experience any significant increase in water volume is ludicrous. The energy dissipater may very well decrease flow velocity and subsequent erosion, but it will do nothing to decrease the obvious anticipated increase in pollutants to the sand and water. Mr. Boyd has provided you with photos of a mud pond of polluted runoff onto my property and the adjoining beach from a recent storm. Please recall that this was from one catchment basin, not the planned for five.

3. Closure of Previous Storm Drain

Until a few years ago another storm drain existed approximately 300 yards further south on Coast Highway along the ocean side of the street. For reasons I am not clear about (the City of Laguna Beach I'm certain knows why) that storm drain, and any other catchment basins connected to it, was sealed. The impact further validates the anticipated increase in volume and pollutants.

H4
Nguyen Waelander

4. Not Adhering to Other Provisions of Agreement

I believe the agreement was to extend the drain beyond the property line on the sandy side of the property. Although potentially problematic in terms of erosion, ongoing maintenance, aesthetics and water pollution, it would lessen longstanding pollution of the sand. Which is worse, children being constantly exposed to pollutants, bacteria and viruses, and possible carcinogens in the sand or increased pollutants being discharged into the ocean?

I understand the City's dilemma. It's not easy to make these difficult decisions. On the other hand, our beaches and coastal waters are amongst the City's most treasured resources. I respectfully request the Coastal Commission's consideration in mandating the City do the right thing. A long-term solution to preserve our coastal area is far more important than a quick fix solution to get one more issue off the desk.



