

CALIFORNIA COASTAL COMMISSION

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

Th 14a

Staff: Ryan Todaro/Karl Schwing
Staff Report: September 21, 2006
Hearing Date: October 11-13, 2006
Commission Action:

**STAFF REPORT: APPEALABILITY****DISPUTE RESOLUTION****NUMBER:** 5-06-349-EDD**LOCAL CDP NO.:** 06-40**LOCAL JURISDICTION:** City of Laguna Beach**APPLICANT FOR LOCAL PERMIT:** Saint Catherine of Siena Catholic School**PROJECT LOCATION:** 30516 Coast Highway
City of Laguna Beach, Orange County**DESCRIPTION:** Public hearing on appealability to Commission of the City of Laguna Beach's pending coastal development permit decision on application (#06-40) for the demolition of an existing 25,421 square-foot school facility and construction of a 42,420 square-foot school facility on a 6.59 acre site.**SUMMARY OF STAFF RECOMMENDATION:**

The City of Laguna Beach contends that its pending approval of a coastal development permit for the project is not appealable to the Coastal Commission. The City's position is based upon the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 2003, which shows the private land upon which the development is proposed as not being located within 100 feet of any stream (and not otherwise in an appealable area), so that the City's pending action would not be appealable to the Coastal Commission. However, in this case, the Executive Director has determined that an approval would be appealable because the proposed development is within 100 feet of two drainage courses, which, although not shown on the post-cert map as establishing the appeals area, do constitute streams within the meaning of the Coastal Act and its implementing regulations, thus rendering development within 100 feet of these features appealable. Commission staff recognizes that these drainage courses are not identified on the post-cert map as "appealable" features. However, the post-cert map explicitly states that the map "...may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission". Commission staff recommends that the Commission uphold the Executive Director's determination that any approval of a CDP for development in the subject area will be appealable based on Section 30603(a)(2) of the Coastal Act.

I. STAFF RECOMMENDATION ON APPEALABILITY DETERMINATION:

Staff recommends that the Commission adopt the following findings and resolution to determine that any City of Laguna Beach approval of local Coastal Development Permit No. 06-40 will be an action on a coastal development permit application that is appealable to the Commission and that a valid notice of final local action reflecting this status must be submitted before the local action can become effective. See, e.g., See Cal. Code Regs., tit. 14, § 13572.

MOTION: I move that the Commission reject the Executive Director's determination that the City of Laguna Beach's approval of Coastal Development Permit No. 06-40 is appealable to the Coastal Commission pursuant to Public Resources Code Section 30603.

Staff Recommendation that City of Laguna Beach Coastal Development Permit No. 06-40 is Appealable:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that (a) any City approval of CDP 06-40 will be an action on a coastal development permit application that is appealable to the Commission and that (b) a valid notice of final local action reflecting that the local action is appealable to the Commission must be submitted and an appeal period be opened for any such appealable development, and (2) the Commission's adoption of the following resolutions and findings. A majority of the Commissioners present is required to approve the motion.

Resolution:

The Commission hereby (1) finds that (a) it will have appeal jurisdiction in this matter pursuant to California Public Resources Code Section 30603(a) if the City approves CDP 06-40 because the City's approval of CDP 06-40 will be an action on a coastal development permit application that is appealable to the Commission and that (b) a valid notice of final local action reflecting that status must be submitted to the Commission and an appeal period be opened for any such locally approved development and (2) adopts the findings to support its jurisdiction that are set forth in the staff report.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. BACKGROUND ON COASTAL COMMISSION AND CITY ACTIONS

The subject site is located at 30516 Coast Highway, in the City of Laguna Beach, Orange County (Exhibit #1). The entire site is approximately 6.59 acres in size, roughly rectangular in shape and is located within the R-1, Low Density Residential Zone and R-3, High Density Residential Zone. The subject lot is located between a fully urbanized area and an undeveloped area. The site has varied topography, ranging from moderately steep slopes to flat areas, where school buildings currently exist. Approximately 3.5 acres of the site is currently undeveloped and vegetation in

these areas is predominately coastal sage scrub habitat occupied by California gnatcatchers, which is identified in the LCP as high value habitat and has been determined by the Commission staff biologist to be environmentally sensitive habitat area (ESHA). The existing school facilities are approximately 25,421 square feet in size. The applicant is requesting a coastal development permit (CDP No. 06-40) from the City of Laguna Beach for a new 42,420 square-foot school, which would include an 8,750 square-foot gymnasium, a 2,200 square-foot administration building, a 1,200 square-foot chapel, a 450 square foot religious education building, an 8,293 square-foot elementary school building, a 5,760 square-foot middle school building and a 250 square-foot restroom.

On August 22, 2006, the Commission received an email message from John Montgomery, Director of Community Development for the City of Laguna Beach, requesting an opinion as to whether a City approval of Coastal Development Permit (CDP) application No. 06-40 would be appealable to the Commission. In this email message, Mr. Montgomery stated that the City had determined that the project is not appealable, and he recommended that a site inspection be made prior to the Executive Director's appealability determination. Mr. Montgomery's request was motivated by the fact that a member of the public, Lisa Marks, had submitted an email message to him the prior day challenging the City's determination and formally requesting an appealability determination for the proposed project due to the proximity of the proposed development to a stream. The email message from Mr. Montgomery forwarded the email message from Ms. Marks.

On August 23, 2006, the Commission received a copy of this letter from Ms. Marks (Exhibit #3). On this same day, Commission staff conducted a site visit of the property with City staff, Department of Fish and Game staff and representatives of the project.

On August 24, 2006, Commission staff sent Mr. Montgomery a letter (Exhibit #4) informing the City that the Executive Director, based on the site visit and other information available, determined that City approval of the pending CDP application would be appealable to the Commission. On August 25, 2006, the Commission received a letter from John Montgomery (Exhibit #5), stating that the City's staff determined that the pending CDP is not appealable.

B. COMMISSION DETERMINATION OF APPEALABILITY AND THE FILING OF APPEALS

The Commission finds that City approval of CDP No. 06-40 is an action on a coastal development permit application appealable to the Commission.

The Coastal Act establishes the Commission's appeals jurisdiction and makes a certified local government's approval of a CDP appealable to the Commission whenever the local CDP authorizes one of the types of development specifically listed, including, but not limited to, development "located ... within 100 feet of any wetland, estuary, or stream." Cal. Pub. Res. Code ("PRC") § 30603(a)(2). Section 25.07.006 of the City's zoning code, which is part of the City's LCP, contains a definition of the Commission's appeals jurisdiction that mirrors the language of PRC Section 30603(a).

The Coastal Act does not define "stream," but the Commission's regulations explain how to map the location and boundaries of the Commission's appeals jurisdiction. See Cal. Code Regs., tit. 14 ("14 C.C.R."), § 13577. That section provides as follows:

"For purposes of [PRC] Section... 30603 ..., the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

“(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established.” 14 C.C.R. § 13577.

Section 13577(a) explains that the Commission’s appeals jurisdiction extends 100 feet from the top of the bank of any stream mapped by USGS in a specific map series or identified in an LCP. The Coastal Act does not require that local governments “identify” streams in an LCP in any particular manner. As long as an LCP recognizes that streams exist within its boundaries and somehow identifies what features are considered streams, it will satisfy this requirement.¹

The Laguna Beach LCP identifies streams in two ways: through depictions on various maps and through the use of a definition that lists the key/defining physical characteristics. The definition requires “a streambed, banks, a channel and periodic although not necessarily contiguous [sic] flows...” and requires that the feature in question “...serves to convey runoff that falls within the watershed.” See Introductory narrative in “Topic 9: Watersheds and Watercourses” in the Open Space/Conservation Element (“OSC Element”) of the City’s General Plan (a component of the City’s certified LCP).

It is worth noting that the Laguna Beach LCP does not actually use the word “stream” at all in identifying streams, but instead uses the words “watercourse” or “drainage course,” which terms/phrases it uses interchangeably. Accordingly, the definition above is provided as a definition for the term watercourse. However, although this initially caused some confusion, given that the LCP does not use the word “stream,” and given that the definition above closely mirrors the features of a “stream” noted within 14 C.C.R. Section 13577, it is clear that in defining and displaying these watercourses, the City is identifying the same types of features that the Coastal Act refers to as “streams.” This is also evident in that the narrative in Topic 9 goes on to identify certain tables and maps that describe and depict the physical boundaries of the major watersheds and significant drainage courses within the City, and that these exhibits include both the USGS streams (which are expressly “streams” for Coastal Act purposes) and other significant drainage courses without making any distinction between them.² Therefore, the policy language and exhibits of the certified LCP use the “major drainage course” designation in a manner that is equivalent to the Coastal Act use of the term “stream,” and development activities within 100 feet of these features would be appealable.

At the time of the City’s original certification of the LUP in 1986, the subject site was outside of the City’s corporate boundary. In 1988, the City annexed South Laguna and the subject site was brought into the City’s certified area. Commission staff has not found evidence in our records that the tables and maps describing the City’s major watersheds and drainage courses were updated to

¹ In enacting the Coastal Act, the Legislature recognized the need to “achieve maximum responsiveness to local conditions” and therefore found it necessary “to rely heavily on local government and local land use planning procedures.” PRC § 30004(a).

² Although the City argues that a feature cannot be a “stream” for appeals purposes unless it is identified on the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* adopted by the Commission, that map explicitly states that the map “...may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.”

incorporate the annexed area. Nevertheless, the applicable protections of the certified LCP were extended to South Laguna and the project site in 1988 when the City amended the LCP to extend to the newly annexed area. For instance, Policies 9-C (a) and (b) establish minimum development setbacks from the City's major drainage courses. By necessity, the City would have to take steps to identify those drainage courses in South Laguna to which the policies would apply; and it appears the City did take such steps. For instance, maps available on the City's geographic information system (GIS) depict the drainage feature located immediately north of the project site as a "significant drainage course", comparable to the maps identified for the City's original LCP area.

As is recognized by the City through a map delineation,³ a significant drainage course that runs in a southwesterly direction is located immediately north of the property (Exhibit #6). This drainage course constitutes a "stream" for purposes of PRC Section 30603(a) both because it is shown on the Bio Maps and because it possesses the defining features listed in Topic 9 in the OSC Element of the City's General Plan. On the site visit Commission staff saw evidence of defined banks and a distinct bottom (streambed/channel) and from the topography, it is clear that it must convey runoff; given the amount of rainfall in the area, it must have periodic flows.

In addition, a second drainage course, although not listed as such on the Bio Maps, is located on the property in the existing undeveloped area east of the existing classroom buildings. This feature, which also meets the definition of a stream for the same reasons mentioned above, appears on the City's topographic map of the site (available on the City's web site) as a trough that descends the hillside and intersects the existing developed area on the property and was observed during the site visit on August 23rd (Exhibit #7). The Executive Director has, therefore, determined that **both of these drainage courses** constitute "streams," and thus, the Commission's appeals jurisdiction in this case is based on both of these features.

In Mr. Montgomery's letter to the Commission, dated August 23, 2006, he states the following reasons as to why City staff has determined that the pending CDP is not appealable:

1. The City's certified LCP Appeal Jurisdiction Map identifies the appealable areas with the City limits, including the U.S.G.S. blue-line streams and 100-foot buffer area, and this project is not within a map-identified appealable area.

Commission response: The *Post Certification Permit and Appeal Jurisdiction, City of Laguna Beach* Map adopted by the Commission explicitly states that the map "...may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission."

2. The City's LCP included significant drainage courses (in the Open Space Element of the City's General Plan) when certification was approved, and the significant drainage courses were not included or cited as potential areas of appealability.

Commission response: Failure to treat those recognized significant drainage courses as relevant to defining the Commission's appeals jurisdiction was an oversight, as what the LCP denominates "significant drainage courses" are clearly the functional equivalent of what the Coastal Act refers to as "streams."

³ See maps entitled "Biological Resource Values, South Laguna", adopted by the City of Laguna Beach on January 18, 1994

3. The City adopted significant drainage courses in South Laguna and the Laguna Canyon Annexation area have never been certified by the Coastal Commission.

Commission response: The City tried to certify certain maps and policy changes that covered South Laguna, and the fact that it didn't happen was due to unrelated issues not relevant to the identification of streams. Moreover, whether something constitutes a stream is an empirical question, not a procedural question.

4. The City's LCP Exclusion Areas Map (Categorical Exclusion Order e-93-1) clarifies the Coastal Commission's determination of bodies of water deemed to be significant by labeling them "riparian corridors, wetlands or bodies of water." There are many significant drainage courses within these excluded areas for which coastal development permits are not required.

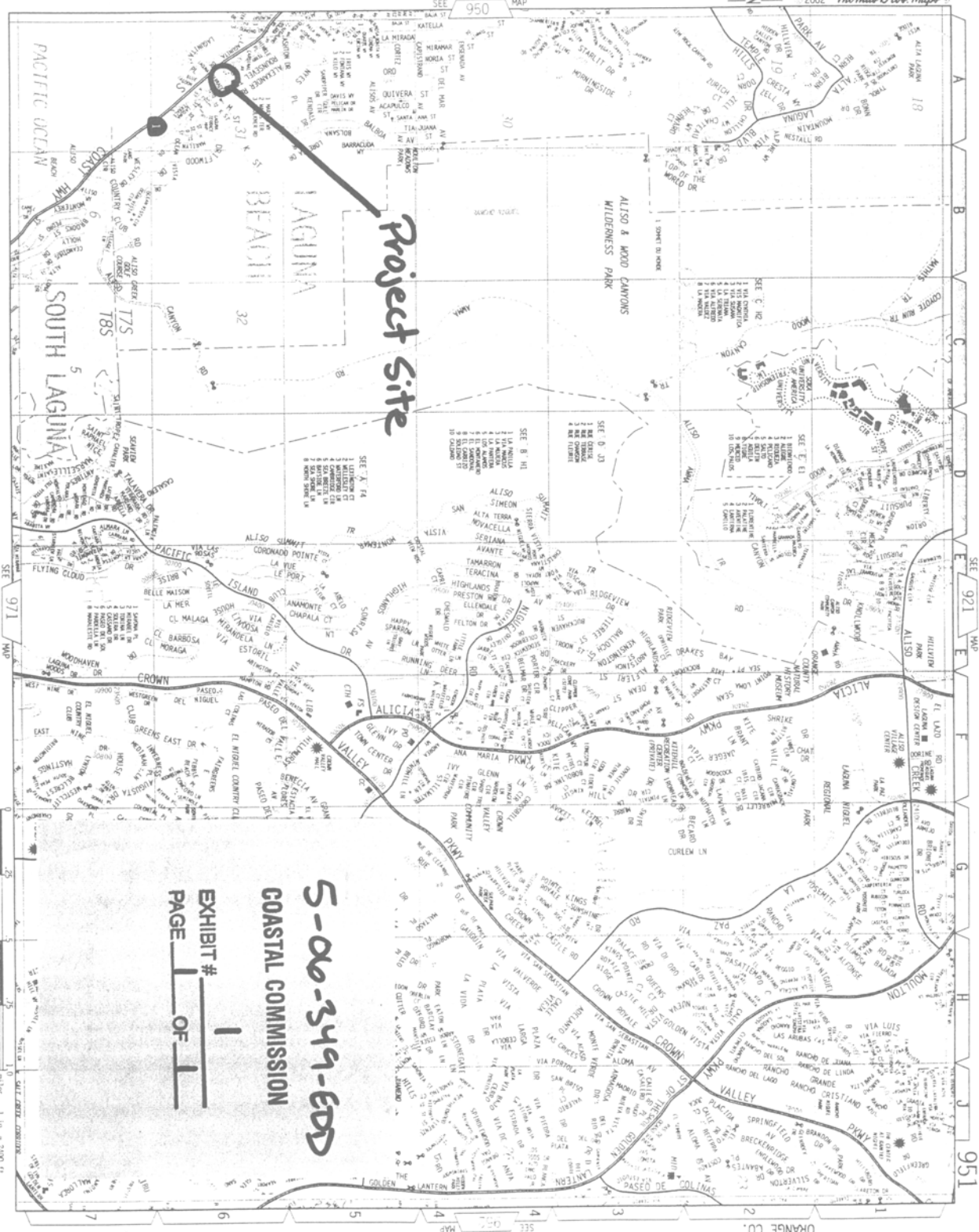
Commission response: Labeling of areas as "riparian corridors, wetlands or bodies of water" was not necessarily intended to be an exhaustive labeling of all streams.

5. The information we have indicates that there is no Coastal Act identified resource impacted by the proposed project.

Commission response: Information available to the Commission is contrary, as both ESHA and these streams would be affected by the proposed project. Nevertheless, the existence of such land-based resources that would be impacted by the development is not a necessary condition of the project being appealable.

C. CONCLUSION

Public Resources Code Section 30603(a)(2) confers the Commission with appellate jurisdiction over development that is within 100 feet of any stream. The Commission finds that, because CDP application 06-40 seeks authorization for development within 100 feet of two drainage courses that meet all of the criteria in the Commission's regulations and the City's LCP for being streams, even though the LCP does not use the term "stream," approval of that application will be appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.



Project Site

S-06-349-600

COASTAL COMMISSION

EXHIBIT # 1 OF 1

ORANGE CO.

951

8/21/06

To: John Montgomery, Director of Community Development
City of Laguna Beach

RECEIVED
South Coast Region

From: Lisa Marks
31522 Eagle Rock Way
Laguna Beach

AUG 23 2006

CALIFORNIA
COASTAL COMMISSION

Re: Appealability Determination for St. Catherine's School
30516 Coast Hwy.
Coastal Development Permit # 06-40

Dear Mr. Montomery,

This is a formal request to initiate an appealability determination for the above referenced project.

The Planning Department has decided that the project is "nonappealable." However there is a significant watercourse adjacent to the property and within 100 feet. The watercourse is shown on the South Laguna Biological Resource Values Map. The map shows that the watercourse is approximately 35 feet from the existing buildings. One of the proposed buildings is approximately 10 feet closer to the watercourse. Conditions on the ground are consistent with the Biological Resource Values Map. Therefore the project is "appealable."

In accordance with Laguna Beach Municipal Code 25.07.12, I request that the City notifies the commission and requests the executive director's opinion.

25.07.012 Procedures.

(B) (2) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a coastal commission determination as to the appropriate designation, the local government shall notify the commission by telephone of the dispute/question and shall request the executive director's opinion;

(3) The executive director shall, within two working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is exempt, categorically excluded, nonappealable or appealable;

Thank you very much.

Lisa Marks

cc: Deborah Lee, Karl Schwing, Peter Douglas

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EXHIBIT # 3
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CALIFORNIA COASTAL COMMISSION

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



August 24, 2006

COASTAL COMMISSION
5-06-349-EDD

EXHIBIT # 4
PAGE 1 OF 2

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

Re: Coastal Development Permit Application No. 06-40
30516 Coast Highway, Laguna Beach, CA, APNs 656-191-02 & 656-191-06
St. Catherine of Sienna Catholic School

Dear Mr. Montgomery:

On Tuesday, August 22, 2006, the Executive Director received your verbal and written requests for an opinion as to whether a City approval of Coastal Development Permit (CDP) application no. 06-40 would be appealable to the Coastal Commission. A site visit was conducted on August 23, 2006. Based on this site visit and other information available, the Executive Director's determination is that City approval of the pending CDP application would be appealable to the Commission. As described more fully below, there are two streams in the vicinity of the proposed project, which establish the appeals area in this case; and there is development proposed, including, but not limited to, grading, demolition and construction of structures, and fuel modification within areas that are considered to be 'major vegetation,' within 100 feet of these streams. Thus, the development proposal is appealable to the Commission.

The Coastal Act establishes the Commission's appeals jurisdiction and makes a certified local government's approval of a CDP appealable to the Commission whenever the local CDP authorizes one of the types of development specifically listed, including, but not limited to, development "located ... within 100 feet of any wetland, estuary, or stream." Cal. Pub. Res. Code ("PRC") § 30603(a)(2). Section 25.07.006 of the City's zoning code, which is part of the City's LCP, contains a definition of the Commission's appeals jurisdiction that mirrors the language of PRC Section 30603(a).

The Coastal Act does not define "stream," but the Commission's regulations explain how to map the location and boundaries of the Commission's appeals jurisdiction. See Cal. Code Regs., tit. 14 ("14 C.C.R."), § 13577. That section provides as follows:

"For purposes of [PRC] Section... 30603 ..., the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

"(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland,

2006. Upon notification of any objection, we will schedule a hearing on the matter with the Commission at the next local hearing (the next two local hearings will occur in October and November). If a hearing on appealability becomes necessary, Commission staff recommend that the City postpone taking any final action on the coastal development permit application until the Commission resolves the appealability issue, to the extent legal deadlines that apply to the City's pending discretionary action will allow.

Finally, as was noted during the August 23rd site visit, Commission staff do believe the proposed project raises significant resource issues. Our field assessment suggests that the undeveloped area on the hillside above the existing school is very high value habitat that would qualify as Environmentally Sensitive Habitat Area. Local Coastal Program (LCP) policies prohibit impacts to such habitat. As disclosed in our site visit, grading and construction of structures as well as fuel modification would impact this habitat area. We believe such impacts would be inconsistent with the City's LCP. It is our hope that, if the City approves the CDP application, the City will require modifications to the project such that impacts to sensitive resource areas are avoided.

Thank you for your attention to these matters. If you have any questions, please contact me at (562) 590-5071.

Sincerely,



Karl Schwing
Supervisor, Regulation and Planning
Orange County Area

COASTAL COMMISSION
S-06-349-EDD
EXHIBIT # 4
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Cc: Jenifer Murillo, Planner, City of Laguna Beach
The Roman Catholic Diocese of Orange, Property Owner

August 23, 2006

Karl Schwing, Supervisor
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90802-4302



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AUG 25 2006

COASTAL COMMISSION
5-06-349-EDD

CALIFORNIA
COASTAL COMMISSION

EXHIBIT # 5
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Dear Karl,

The letter is in relation to the City's recent request per Municipal Code Section 25.07.008(B) to obtain an Executive Director's opinion regarding whether or not the required Coastal Development Permit for the proposed redevelopment of a private school at 30516 Coast Highway is nonappealable or appealable. I sent this request per "interested person" Lisa Mark's request by email and a telephone call to you on Tuesday, August 22, 2006.

Municipal Code Section 25.07.008(B) states the following:

"(B) Where an applicant, interested person or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is exempt, categorically excluded, nonappealable or appealable:

- (1) The local government shall make its determination as to what type of development is being proposed and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures;
- (2) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Coastal Commission determination as to the particular development. The local government shall notify the Commission by telephone of the dispute/question and shall request the executive director's opinion;
- (3) The Executive Director shall, within two working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is exempt, categorically excluded, nonappealable or appealable;
- (4) Where, after the Executive Director's investigation, the Executive Director's determination is not in accordance with the local government determination, the Coastal Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the State) following the local government request."

The proposed project consists of the demolition of the existing school structures and the construction of replacement school facilities for kindergarten through the 8th grade. City staff's determination is the Coastal Development Permit (CDP) is not appealable based on the following reasons:

1. The City's certified Local Coastal Program (LCP) Appeal Jurisdiction Map identifies the appealable areas within the City limits, including the U.S.G.S. blue-line streams and 100-foot buffer area, and this project is not within a map-identified appealable area.
2. The City's LCP included significant drainage courses (in the Open Space Element of the City's General Plan) when certification was approved, and the significant drainage courses were not included or cited as potential areas of appealability.
3. The City adopted significant drainage courses in South Laguna and the Laguna Canyon Annexation area have never been certified by the Coastal Commission.
4. The City's LCP Exclusion Areas Map (Categorical Exclusion Order E-93-1) clarifies the Coastal Commission's determination of bodies of water deemed to be significant by labeling them "riparian corridors, wetlands or bodies of water." There are many City significant drainage courses within these excluded areas for which Coastal Development Permits are not required.
5. The information we have indicates that there is no Coastal Act identified resource impacted by the proposed project.

Despite assurances from Coastal staff, there seems to have been a Coastal Commission unilateral determination that any drainage course within the City is an appealable area. It was our understanding that coastal staff would tour some of the City's significant drainage courses (which was done) and then meet with City staff to discuss a way to resolve the differing opinions regarding the appropriate appealable areas. This follow-up discussion with City staff has never been requested. Is it the intention of the Coastal Commission to have the entire City be a potential appealable area driven by calls made to Coastal staff? A consistent, legitimate process of CDP review, including which areas of the City are appealable, has to be agreed upon.

Please take the above into account during the process of determining the appealability of the proposed project at 30516 Coast Highway.

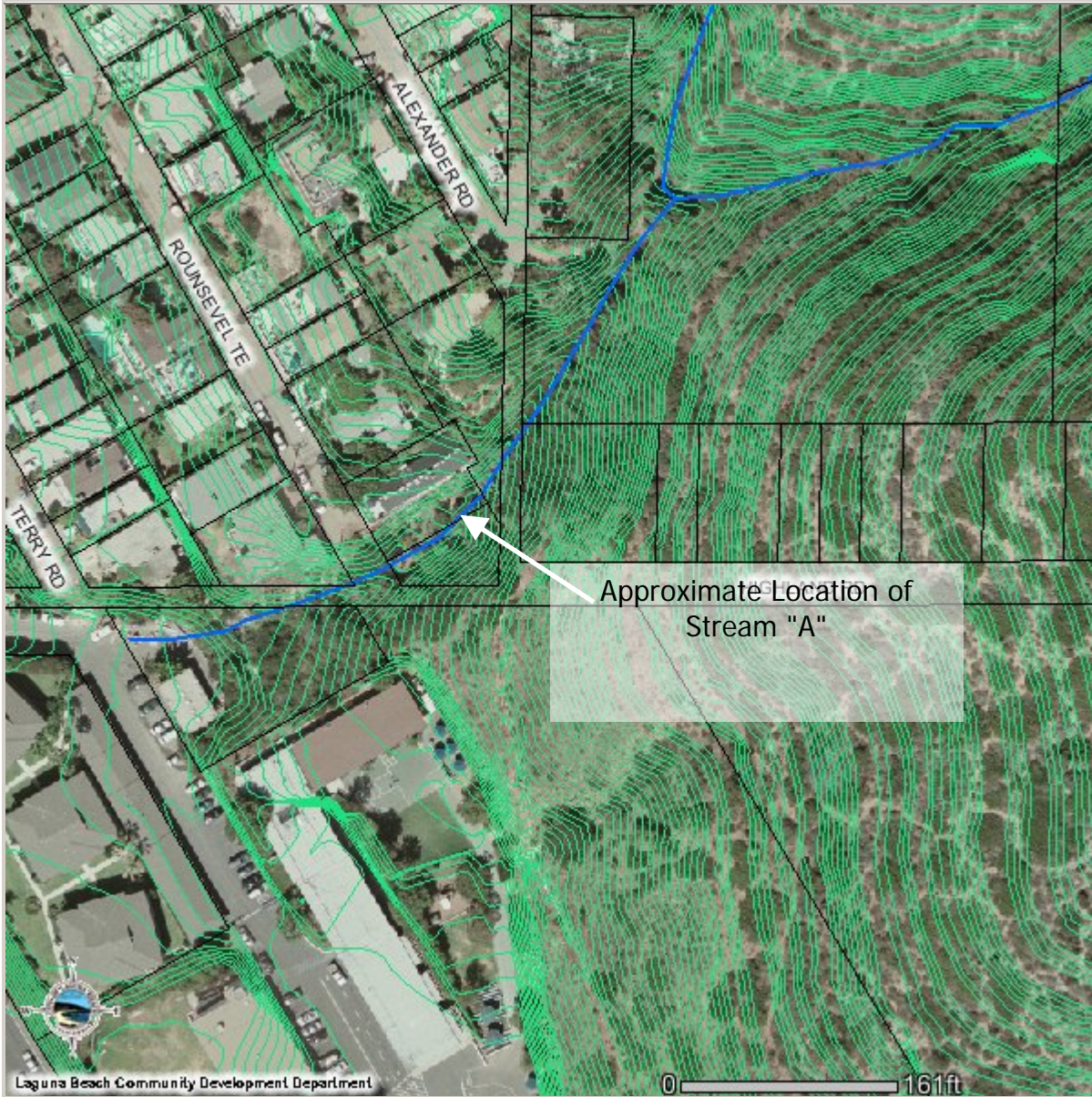
Sincerely,



John Montgomery
Director
Community Development

COASTAL COMMISSION
5-06-349-EDD
EXHIBIT # 5
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St. Catherine of Sienna/Stream A



- Legend**
- City Limits
 - Specific Plan areas
 - Street Names
 - Parcels
 - Significant Drainage Course Centerline
 - 2003 2-ft. Contours
 - 2003 Aerial Photos
 - 2003 Building Footprint

Laguna Beach Community Development Department

0 161ft

EXHIBIT#6
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 California Coastal Commission

St. Catherine of Sienna/Stream B



- Legend**
- City Limits
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Laguna Beach Community Development Department

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EXHIBIT#7
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