

CALIFORNIA COASTAL COMMISSION

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T13f

Staff: Karl Schwing-LB
Staff Report: June 1, 2006
Hearing Date: June 13-16, 2006
Commission Action:

**STAFF REPORT: APPEALABILITY****DISPUTE RESOLUTION****NUMBER:** 5-05-029-EDD**LOCAL CDP NO.:** 02-68**LOCAL JURISDICTION:** City of Laguna Beach**APPLICANT FOR LOCAL PERMIT:** Mar Vista Development Corporation**PROJECT LOCATION:** 31401 Mar Vista Avenue
City of Laguna Beach, Orange County**DESCRIPTION:** Public hearing on appealability to the Commission of the City of Laguna Beach's approval of local Coastal Development Permit No. 02-68, which authorizes an approximately 17,000 square foot residence with garage plus greenhouse, decks, swimming pool, landscaping and fire management upon a vacant 12-acre parcel of land.**SUMMARY OF STAFF RECOMMENDATION:**

In October 2004, the City of Laguna Beach approved Coastal Development Permit ("CDP") No. 02-68 for a large residence with various amenities on a large vacant parcel of land at the urban-rural fringe in Laguna Beach. This area of the City is characterized by steeply sloping hillsides covered with relatively lush native habitat (generally coastal sage scrub), some of which is designated by the City as high to very high value habitat. The City has also mapped significant drainage courses that wind down and through this hillside area. Since the City's approval of the CDP, opponents of the project have raised questions about the City's position that the approved project will not involve any development within 100 feet of any stream and its associated determination that the project is therefore not appealable to the Commission. In late 2004 and 2005, points of contention centered on whether a significant drainage course that crosses the southerly boundary of the subject site constitutes a 'stream' for purposes of establishing the Commission's appeals jurisdiction and whether the City had authorized any development within 100 feet of that drainage course. After a lengthy investigation, in October 2005, Commission staff concurred with the City's determination that the City's approval did not authorize any development within 100 feet of the drainage course, thus rendering the question of its status moot. Commission staff informed the City, the appellant, and the applicant of that determination.

Subsequent changes to the plans mandated by the City as a result of a condition compliance review between November 2005 and January 2006 re-opened these issues. At the Commission's May 2006 hearing, during the South Coast Deputy Director's report, opponents of the project made claims that the City approved grading for the construction of a 'vegetated buffer strip' within 100 feet of the southerly significant drainage course/stream. In addition, allegations were also made that a tributary to the southerly significant drainage course also constitutes a "stream" for purposes of the Commission's appeals jurisdiction, but it was not mapped accurately by the City. Opponents

alleged that the tributary extends farther upslope than is depicted on City maps and into the footprint of the proposed development. If such allegations were accurate, the scope of development that could subject the local government's action to appeal would be significantly expanded to include virtually all of the development authorized under the City's coastal development permit. Furthermore, questions remained as to whether the 'significant drainage course' depicted on City maps is a 'stream' for purposes of establishing the appealable area on the subject property. In response to these questions and allegations, the Commission requested that Commission staff bring the matter back before the Commission in the context of a full public hearing on the appealability of the project. The Commission requested that several issue areas be addressed. Each of those areas is listed below in the form of a question from the Commission and followed by a brief staff response, which will be more fully elucidated in the remainder of this report.

First, has the full extent of the significant drainage course that crosses the southerly portion of the Mar Vista site been delineated? Both City and Commission staff have received and reviewed biological information from the developer and concur with that biologist's mapping of the drainage course, which indicates that the City's delineation includes at least the full extent of the drainage.

Second, is the significant drainage course that crosses the southerly portion of the Mar Vista site a 'stream', for purposes of California Public Resources Code ("PRC") section 30603(a)(2),¹ meaning that it is an appealable feature? Commission staff believe that the main stem of the significant drainage course that crosses the southerly portion of the Mar Vista site is a stream, however, a tributary mapped by the City to that drainage course that extends up to the existing driveway/road is not a stream. In addition, staff recommends that the Commission find that the declivity that extends farther upslope from the tributary mapped by the City (i.e. upslope of the road/driveway) is not a stream as asserted by the opponents.

Third, has any development been approved by the City within 100 feet of the southerly 'significant drainage course'/stream? More specifically, given the conclusions above, will any grading be necessary within 100 feet of any significant watercourse in order that the vegetated buffer strip identified in the Water Quality Management Plan (WQMP) function appropriately? Commission staff have received information from the engineer that prepared the WQMP, who confirmed that no grading is necessary within 100 feet of the significant drainage course in order for the vegetated buffer strip to function appropriately. Furthermore, there is no other development approved by the City within 100 feet of any stream. Thus, the coastal development permit approved by the City is not appealable.

¹ All further section references are to the PRC, and thus, to the California Coastal Act of 1976, unless otherwise indicates

I. STAFF RECOMMENDATION ON APPEALABILITY DETERMINATION:

Staff recommends that the Commission adopt the following findings and resolution to determine that the City of Laguna Beach's approval of local coastal development permit 02-68 is an action on a coastal development permit application that is not appealable to the Commission.

MOTION: *I move that the Commission reject the Executive Director's determination that coastal development permit 02-68, approved by the City of Laguna Beach on October 5, 2004, is not appealable to the Coastal Commission under Public Resources Code Section 30603.*

Staff Recommendation that City of Laguna Beach Coastal Development Permit No. 02-68 is NOT 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 the City's approval of CDP 02-68 is an action on a coastal development permit application that is not appealable to the Commission, (2) the Commission's adoption of the following resolution and findings, and (3) the local government action becoming effective. A majority of the Commissioners present is required to approve the motion.

Resolution:

The Commission hereby (1) finds that it does not have appeal jurisdiction in this matter pursuant to California Public Resources Code Section 30603 because the City's approval of CDP 02-68 is not an action on a coastal development permit application that is appealable to the Commission and (2) adopts the findings recommended by staff below, or as modified at the hearing, to support the conclusions 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 31401 Mar Vista, in the City of Laguna Beach, Orange County (Exhibit #1a and 1b). The site is a large (approximately 12 acre), roughly rectangular lot, located at the urban-rural fringe in South Laguna. A portion of the lot (where the subject development is located) is designated "Hillside Management/Conservation", and the remainder of the lot is designated "Open Space," in the certified Local Coastal Program. As described in the LCP, the "Hillside Management/Conservation" designation "...is intended to promote a balanced management program focusing on the preservation of open space lands and environmentally sensitive areas, while allowing for limited residential development." The site has varied topography, including steep and gentle slopes, incised by small troughs/declivities and valley areas. The property is vegetated with some non-native species, but predominantly with coastal sage scrub habitat. Except for the area of the proposed development, much of the site is identified in the LCP as having high to very high value habitat. The subject site contains an existing road/driveway (including a bridge to cross over the southerly drainage course) that leads from Mar

Vista up a steep slope to a more gently sloping area where grading is underway to construct the approximately 17,000 square foot residence with garage, greenhouse, decks, swimming pool, and landscaping authorized by the City's coastal development permit (Exhibit #2).

In April 1990, prior to certification of the City's local coastal program ("LCP"), the Coastal Commission approved CDP No. 5-90-135 for the project site, which authorized a 9,952 square foot, 14-foot high residence with a 5,970 square foot garage, plus terraces/decks, swimming pool and greenhouse, paving of a driveway and construction of a ravine/streambed crossing (which was required to be a bridge as opposed to a culvert). Furthermore, CDP No. 5-90-135 authorized a lot line adjustment that lead to the present configuration of the subject lot. Several Special Conditions were imposed, including Special Condition No.4, which, among other things, required "...an open space easement, deed restriction or other instrument which provides that no subdivision or intensity of land use [sic] may occur in the future as per the City of Laguna Beach's recommendation." Compliance with Special Condition No. 4 was demonstrated with the submittal of evidence that the landowner had granted an open space easement over certain areas of the property to the City. Based on information provided to Coastal Commission staff by the City, the driveway paving occurred and the bridge was constructed, but the residence and other amenities were not. Subsequent to the approval of CDP No. 5-90-135, in 1993, the City achieved full LCP certification, including coverage of the newly annexed south Laguna area, but not including Irvine Cove, Blue Lagoon, Treasure Island, and Three Arch Bay.

From February 2003 to May 2003, the City of Laguna Beach Design Review Board heard and reviewed local Coastal Development Permit No. 02-68. The coastal development permit was ultimately approved on May 1, 2003, but the approval was appealed to the City Council. On June 17, 2003, the City Council took action on the permit; however, when Commission staff inquired about the lack of a notice of final local action, the City informed Commission staff that the City Council action was not complete as there was an issue regarding the trail easement that remained outstanding. From April 2004 to October 2004, the City Council addressed questions regarding the trail easement and on October 5, 2004, the City Council took final action by approving the trail easement. On October 29, 2004, the Commission received in its South Coast District office notification that the City of Laguna Beach had taken a final action to approve local Coastal Development Permit No. 02-68 with special conditions (Exhibit #3). The City's action authorizes the Mar Vista Development Corporation to construct an approximately 17,000 square foot residence with garage plus greenhouse, decks, swimming pool, landscaping and implementation of fire management measures upon a vacant 12-acre parcel of land. CDP 02-68, as approved by the City, also authorizes a public trail easement in an area that appears to partially overlap the area of the open space easement recorded pursuant to Special Condition No. 4 of Coastal Commission-issued CDP No. 5-90-135.

Prior to the City's final action on the subject CDP, Commission staff sent a letter on April 20, 2004 raising questions regarding the appealability issue. The City sent a response letter in which it indicated that the proposed development would be within 100 feet of a what is known as a "blue-line" stream. Based on that, Commission staff believed that the project would be appealable. However, when the Notice of Final Action (NOFA) was received on Friday, October 29, 2004, it indicated that the City had made a determination that its action is non-appealable. This determination was based upon the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* adopted by the Commission on September 16, 2003 (herein "post-cert map" (Exhibit #4)). Meanwhile, Commission staff received an appeal from a member of the public, Devora Hertz, within what would have been the ten (10) working day appeal period, had the NOFA listed the CDP as appealable, asserting that the subject permit ought to be appealable given the proximity of the proposed development to a stream. Staff initiated a dialogue with the City the

week following receipt of the NOFA, and letters were sent to the City and applicant regarding the above matters on November 22, 2004 and January 28, 2005.

In early 2005, Commission staff believed that a dispute existed with the City regarding the appealability of the project the City had approved. There were at least two components to the dispute, 1) whether any development was approved by the City within 100 feet of the southerly drainage course shown on the City's web-site as a "significant drainage course", and 2) whether the southerly 'significant drainage course' that crossed the property even constituted a 'stream' for purposes of appealability (the location of these drainage courses is shown on Exhibit #1b). Based on the information available at that time, it appeared to staff that development, including grading, portions of the proposed residence, decks, pools, landscaping and fuel modification, would occur within 100 feet of a drainage course/stream that crossed the property along its southerly boundary. Commission staff scheduled appealability hearings, once in February 2005 and once in April 2005. However, the City maintained that the conditions of approval imposed on the project required re-location and/or elimination of all of the development that would have been within 100 feet of the southerly drainage course/stream; thus, the development actually authorized by the City would not be appealable even if that drainage course were treated as a "stream" for purposes of Section 30603(a)(2). Given the City's stance regarding the scope of work, the appealability hearings were postponed in order to allow the City and applicant to demonstrate to Commission staff that no development was to occur within what Commission staff considered to be the appeals area.

Mid year 2005, Commission staff received a set of project plans (dated June 1, 2005) that depicted adjustments to the location of the 'disturbed area' limits as well as to the grading, the footprint of the residential structure and associated decks and landscaping, drainage structures and fuel modification, such that development is confined to the 'disturbed area' which is sited more than 100 feet from the tip or banks of the southerly drainage course/stream as shown on the City's web-site. A letter from the City of Laguna Beach, dated August 19, 2005, was also submitted, which affirmed that the June 1st plans were prepared consistent with the City's conditions of approval and that those plans had been approved by the City. Based on those plans, Commission staff concurred that the City did not authorize development within 100 feet of the banks of any stream. Commission staff sent letters to that effect to the City, the appellant, and the project proponent in October 2005. The City subsequently issued building permits to the project proponent.

Meanwhile, resolution of the question regarding whether 'significant drainage courses' are streams was deferred since the City had demonstrated to Commission staff's satisfaction that no development was occurring within 100 feet of any drainage course shown on the City's web-site, meaning either the main stem or tributary to the southerly drainage course in this circumstance. As discussed more fully below, the City maintains that the 'significant drainage courses' mapped by the City are not streams for purposes of determining appealability and that only 'blue line' streams identified by USGS establish the appealable area. The City has argued that neither it nor the Commission has previously considered 'significant drainage courses' to be streams and that doing so now would represent a significant expansion of the appeals area throughout the City. Commission staff continue to work with the City on this difficult City-wide issue. Nevertheless, Commission staff believe that, using criteria for identifying streams/watercourses in the City's LCP and the Commission's regulations, the main stem of the southerly drainage course at the subject site should be considered a stream, but the tributary (including both the segment below the existing driveway/road and the declivity farther upslope and above the driveway/road) is not (see Exhibit #1b for the location of the 'tributary', 'main stem' and the driveway/road).

In November 2005, several individuals filed an appeal with the City Council challenging the Community Development Director's administrative approval of the project plans dated June 1,

2005, alleging that the approved plans were not consistent with the City's action in 2004. A stop work order was issued by the City. The City Council upheld the appeal and directed the project proponent to make revisions to the project plans to address the height of proposed retaining walls as well as make changes to the landscaping plan to more effectively screen the development. Revised plans were submitted to the City to address the issues. Among the revised plans submitted was a revised Water Quality Management Plan (WQMP) (dated January 25, 2006). In January 2006, the City approved the revised plans and allowed construction to recommence. During this time period the developer filed a lawsuit against the City, which was settled prior to commencement of development.

Since January 2006, several opponents to the project have continued to raise questions about the project, which are recounted in numerous letters submitted to the Commission. During a public comment period at the Commission's April 2006 hearing, allegations were made that the revised project plans, specifically the WQMP, identifies a 'vegetated buffer strip' within 100 feet of the southerly significant drainage course/stream (Exhibit #2) and that the WQMP requires grading of that strip, and thus, is appealable development. At the Commission's May 2006 hearing, the claim regarding the 'vegetated buffer strip' was re-stated, along with allegations that a tributary to the southerly significant drainage course was not mapped accurately by the City and that the tributary extends farther upslope than the City's map indicates and into the footprint of the proposed development. If such allegations were accurate, the scope of development that could subject the local government's action to appeal would be significantly expanded to include virtually all of the development authorized under the City's coastal development permit. Furthermore, questions remain as to whether the 'significant drainage courses' depicted on City maps are 'streams' for purposes of establishing appealable areas. In response to these questions and allegations, the Commission requested that Commission staff bring the matter back before the Commission in the context of a full public hearing on the appealability of the project. The Commission requested that the following issue areas be addressed:

1. Has the full extent of the significant drainage course that crosses the southerly portion of the Mar Vista site been delineated?;
2. Is the significant drainage course that crosses the southerly portion of the Mar Vista site a 'stream', meaning that it is an appealable feature?;
3. Has any development been approved by the City within 100 feet of the southerly 'significant drainage course'/stream? Related to this question is the more specific question of whether any grading will be necessary within 100 feet of any significant water course in order that the vegetated buffer strip identified in the Water Quality Management Plan is designed and sized in accordance with the maximum 15% slope identified in the design and sizing guidelines included in the WQMP.

B. HAS THE FULL EXTENT OF THE SIGNIFICANT DRAINAGE COURSE THAT CROSSES THE SOUTHERLY PORTION OF THE MAR VISTA SITE BEEN DELINEATED?

The following analysis will focus on whether the drainage course mapped by the City that crosses the southerly portion of the subject site has been adequately delineated on the City's web-site for the purposes of establishing the appeals area. When undertaking such delineations, the Commission draws upon definitions, criteria and other relevant resources identified in the Local Coastal Program and applicable elements of the Coastal Act and its regulations.

Introductory narrative in Topic 9: Watersheds and Watercourses in the Open Space/Conservation Element of the City's General Plan/Local Coastal Program, states that "...to qualify as a watercourse, the feature must include a streambed, banks, a channel and periodic although not necessarily contiguous [sic] flows..." According to that same introductory narrative, the maps of significant natural watercourses in the City were initially prepared in 1974 and were "...prepared using aerial photographs, topographic maps and individual site analysis...". This mapping effort covered the boundaries of the City as they existed at that time and not South Laguna, which was annexed in the late 1980's. The drainage course maps of South Laguna were prepared and adopted by the City in the early 1990's and, according to City staff, used the same mapping methods as those employed in 1974.

On January 18, 1994, the City of Laguna Beach adopted maps for South Laguna titled "Biological Resource Values, South Laguna", upon which are depicted "Significant Natural Drainage Course[s]". Those maps depict a significant drainage course that crosses the southerly portion of the subject property². The main stem of this drainage course runs in a southwesterly direction. In addition, there is a relatively short, approximately 80 foot long tributary mapped by the City, running roughly north-south, which intersects the main stem of the drainage course (Exhibit #1b). As described more fully below, based on the facts revealed by a site specific analysis, the main stem of the drainage course has all of the features necessary to qualify as a 'watercourse'; however, the tributary does not.

In addition to any definitions/criteria identified in the Local Coastal Program that are used to delineate a stream, the Commission draws upon Section 13577(a) of the Title 14 of the California Code of Regulations ("14 CCR"), which states that for purposes of establishing the appealable areas around streams, the location of the stream and the boundaries of the appealable area

...shall be determined using the following criteria:

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

Given the criteria established in 14 CCR Section 13577(a), in order for a stream to be an appealable feature, that stream must have either 1) a stream bank, or 2) permanently established riparian vegetation, so that the 100-foot measurement can be made. As described more fully below, the main stem of the significant drainage course that crosses the property does have a stream bank. However, the tributary to that main stem does not. Neither drainage course has permanently established riparian vegetation.

² There is also a significant drainage course that runs along the northerly property line of the subject site. However, this northerly drainage course is a 'blue-line' stream that is plotted on the USGS 7.5 minute quadrangle maps, and is mapped on the City's *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map*. There is no dispute that this northerly drainage course is a stream. However, the proposed development is at least 600 feet from that stream.

Opponents of the project have made at least two contentions regarding the southerly drainage course that crosses the subject site: 1) that the total length of the 80-foot long tributary is under-represented on the City's maps and that the tributary extends at least another 100 feet farther north/upslope than City maps depict (i.e. upslope of the existing driveway/road); and 2) that the banks of both the main stem and the tributary have been under-represented in the studies prepared by the developer's consultants. The opponents have supplied a graphic (handed out at the Commission's May 2006 hearing) and several photographs to support their claims. The graphic is comprised of a copy of a section of the City-approved grading plan, which depicts existing and proposed topography, with a hand-drawn line in blue ink that follows the bottom of a v-shaped declivity that extends up the hillside. However, they have not supplied any biological or topographic analyses.

The developer disagrees with the opponents' contentions and has supplied engineering and biological analyses to refute the opponents' claims. The analyses are contained in letters dated March 18, 2005, and May 23, 2006 by LSA Associates (Exhibit #5 and #6).

As noted above, the City maps depict an approximately 80-foot long tributary which forks off the main stem of the significant drainage course. The uppermost tip of the mapped tributary is located at the point where it comes in contact with an existing driveway/road, which leads up to the site of the proposed residence, forming a T-intersection. Up-slope (i.e. north) of the existing driveway/road, there is a shallow v-shaped declivity that continues in a northerly direction into the footprint of the proposed residence.

The March 18, 2005, letter by LSA Associates states, in part, "...[a]long the mapped 'tributary' to this channel....there was no evidence of any flow, channel bank, or bed, and thus, no acclivity that separates the 'channel' from the adjacent upland. Likewise, there was no riparian vegetation that would otherwise serve to define the boundary of a 'stream.'" Therefore, this short 'tributary' should not have been mapped as a significant drainage course..." The May 23, 2006, letter by LSA Associates, goes on to explain that with regard to the area upslope/north of the driveway/road "...no evidence of runoff was observed..." and that the area "...did not exhibit any evidence of having previously conveyed any runoff or of otherwise functioning as a drainage course...". Furthermore, LSA points out that there is no culvert, drainage pipe or other structure underneath the driveway/road to convey flows from one side of the road to the other, which further suggests that the declivity that is incised into the hillside does not convey water with any frequency. The Commission's staff biologist reviewed LSA's analysis and has generally agreed with the conclusions drawn (Exhibit #9).

Thus, this 'tributary' has neither channel bank, nor bed, nor riparian vegetation nor evidence of intermittent or even ephemeral transmission of water. Based on these factors, this tributary area does not have the features that are required to be present in order for it to be deemed a 'watercourse' pursuant to the criteria established in the City's LCP. Furthermore, without a streambank or riparian vegetation, the tributary wouldn't delineate as a stream based on the criteria established in Section 13577(a) of the Commission's regulations.

On the other hand, according to LSA's analysis, the main stem of the significant drainage course does have a channel with a distinct bank and bed and does occasionally convey runoff. Thus, based on the criteria established in the LCP and found in Section 13577(a) of the Commission's regulations, Commission staff believes the main stem is a 'stream' and this determination is subject to on-going discussions with the City.

The opponents' second claim is that the stream banks have not been appropriately demarcated. In essence, the opponents' claim is that the entire "V" shaped declivity is the stream channel, while the ridges of the declivity are the channel banks. Were this accurate, the stream channel would measure tens to dozens of feet wide at various points along its length. However, this approach ignores the requirement in Section 13577 that the channel bank be demarcated along the "...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." Thus, a bank is the side of an incised channel that confines water. The sides of the "V" shaped declivity are not stream banks because they are not forming the side of an incised channel.

On the other hand, LSA determined the location of the channel bank of the main stem through their observation of the location of the drainage channel invert that conveys runoff. According to their measurements, the invert is approximately 1 foot wide, with the bank located at the top edge of the channel invert. This methodology does take into account the location of the channel which confines water within the bed and preserves the course of the stream. The Commission's staff biologist reviewed LSA's analysis and has concurred with their results. Accordingly, LSA's analysis has been prepared using the criteria identified in Section 13577(a) of the Commission's regulations and has appropriately identified the location of the bank of the main stem of the significant drainage course/stream.

C. IS THE SIGNIFICANT DRAINAGE COURSE THAT CROSSES THE SOUTHERLY PORTION OF THE MAR VISTA SITE A 'STREAM', MEANING THAT IT IS AN APPEALABLE FEATURE?

Section 30603 of the Coastal Act provides the basis for appeals to the Commission of certified local governments' actions on coastal development permit applications. It provides, in part, that approvals of coastal development permits for development located "...within 100 feet of any wetland, estuary, or stream..." are appealable to the Commission. 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 appeals area that mirrors the language of Section 30603(a) of the Coastal Act. Section 13577 of the Commission's regulations, in Title 14 of the California Code of Regulations ("14 CCR"), explains how to map the location of appeals areas. In defining the boundaries of appeals areas established by the presence of streams, 14 CCR Section 13577(a) refers to streams that are "... mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program..." [emphasis added]

The City has argued that the only areas in Laguna Beach that are appealable based on the presence of a nearby stream are areas where the nearby stream is a blue line stream mapped by USGS; all of which have been plotted on the City's *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 1993. The City has argued that since the significant drainage course that crosses the southerly portion of the Mar Vista site is not a USGS-mapped blue line stream and does not appear on the post-cert map, it does not render approvals of development in the surrounding area appealable. Furthermore, the City has argued that the significant drainage course is not an appealable feature because the drainage course maps adopted by the City that cover the South Laguna area have not been certified by the Coastal Commission and incorporated into the Local Coastal Program. Thus, according to the City, the significant drainage course is not a stream "...identified in a local coastal program..."

The City's certified LCP doesn't specifically define the term "stream"; however, narrative language under Topic 9 of the Open Space/Conservation Element of the General Plan (a component of the City's certified LCP) states that a 'watercourse' is a feature with "...a streambed, banks, a channel and periodic although not necessarily contiguous [sic] flows" and a feature that "...serves to convey runoff that falls within the watershed". This description of "watercourse"³ closely mirrors the features of a "stream" that are noted within 14 CCR Section 13577. Thus, it would be reasonable to interpret the City's mapping of such watercourses as an identification of streams, pursuant to 14 CCR Section 13577(a), even if the City does not use the word "stream" to refer to them. Moreover, the narrative in Topic 9 goes on to identify certain tables and maps, which are [made] part of the LCP, that describe and depict the physical boundaries of the "major" watersheds and "significant" drainage courses within the City. These exhibits clearly go beyond "blue line" streams and illustrate other significant drainage courses (Exhibit #7). These maps make no distinction between "blue line" streams and other significant drainage courses. Therefore, the policy language and exhibits of the certified LCP use the "major"⁴ drainage course" designation in a manner that is equivalent to the Coastal Act use of the term "stream."

At the time of the Commission's original certification of the City's Land Use Plan (LUP) in 1986, the tables and maps depicting the physical boundaries of the major watersheds and significant drainage courses within the City were part of the LUP, but the subject site was outside of the City's corporate boundary, so the tables and maps did not show watercourses in the area of the subject site. In 1988, the City annexed South Laguna, including the subject site. In late 1992 and early 1993, the City amended its LUP to bring South Laguna into it, as well as obtained certification of its Implementation Program and the ability to issue coastal development permits throughout most of the City (except for certain 'whiteholes' and original jurisdiction areas). However, at that stage, the tables and maps describing the City's major watersheds and drainage courses were not updated to incorporate the annexed area. Between 1995 and 1997, the City made efforts to rectify the discrepancy and incorporate watershed and drainage course maps for South Laguna into its LCP. However, those amendment requests contained other changes to the LCP that Commission staff determined were inconsistent with Section 30240 of the Coastal Act (i.e. Environmentally Sensitive Habitat Area (ESHA) protections). Accordingly, Commission staff recommended modifications to address those deficiencies, including institution of procedures to analyze investment backed expectations of a landowner and takings issues. These issues had no bearing on the watershed and drainage maps, which staff had recommended approval of, without modification. The City was not in agreement with the staff-proposed modifications and subsequently withdrew its amendment requests prior to the Commission taking any action on them. However, the City had completed its mapping of the major watercourses for the South Laguna area, and the result of that mapping effort is formally available on the City's web-site.

Moreover, although the watershed and drainage maps for South Laguna have not been certified, the applicable protections of the certified LCP were extended to South Laguna and the project. Policies 9-C (a) and (b) establish minimum development setbacks from the City's major drainage courses⁵. Thus, the LCP as a whole envisions an orientation to physical features that constitute major drainage courses. The City's publicly accessible Geographic Information System (GIS) maps (available on the City's web-site) depict the southerly drainage course crossing the site and the City utilized those drainage courses when they established required setbacks for development

³ The City uses the terms "watercourse" and "drainage course" interchangeably

⁴ The City uses the terms "major" and "significant" interchangeably

⁵ These setbacks are 25 feet from the top of the stream bank for streams identified on the USGS 7.5 minute Quadrangle Series maps (i.e. 'blue-line streams') and 25 feet from the centerflow line of all other 'natural drainage courses'

on the site. Furthermore, a site-specific biological survey prepared for the project site by LSA confirms that a significant drainage course crosses the southerly portion of the project site, as is recognized by the City's web-site, and the City's approval enforces setbacks from the drainage course.

While the drainage course may not be identified on any map certified by the Commission, utilizing the definition and criteria for 'watercourse' found in the LCP and a site-specific biological survey, it is clear that the main stem of the southerly drainage course constitutes a significant watercourse, and the City recognizes this through its web-site and its actions. In fact, the post-cert 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". As described in more detail in Section B. of these findings, the southerly drainage course has a channel bank and bed and occasionally transmits water. Thus, this southerly drainage course (the main stem only, not the tributary) can be mapped using the criteria established for mapping watercourses/streams found in the Local Coastal Program and Section 13577(a) of the Commission's regulations. In fact, the City did map it and it attempted to include that mapping in its LCP. Thus, in the unique circumstances of this case the Commission finds that for purposes of appealability, the main stem of the drainage course that crosses the southerly boundary of the project site is a "stream" within the meaning of Section 30603 of the Coastal Act and Section 25.07.006 of the City's zoning code for purposes of determining the appealable area (i.e., a "jurisdictional stream"). However, the 'tributary' to the southerly drainage course does not delineate as a jurisdictional stream using the criteria identified in the Local Coastal Program and Section 13577(a) of the Commission's regulations.

D. HAS ANY DEVELOPMENT BEEN APPROVED BY THE CITY WITHIN 100 FEET OF THE SOUTHERLY 'SIGNIFICANT DRAINAGE COURSE'/STREAM?

Commission staff obtained a copy of the grading plan, site plan, landscape plan, and Water Quality Management Plan (WQMP) dated January 25, 2006, approved by the City. Supplementary information regarding the WQMP has also been received from Toal Engineering. Based on these materials, the City of Laguna Beach has not approved any development within 100 feet of the southerly significant drainage course/stream. This would be true even if one were to include the tributary that the Commission concluded is not a jurisdictional stream as part of the southerly significant drainage course/stream.

The WQMP includes a drainage system that discharges water into a 'vegetated buffer strip' located to the south of the residence in the vicinity of the "V"-shaped declivity which descends the slope to the existing driveway/road. On the downslope side of the driveway/road, the declivity continues to a point where it intersects the main stem of the southerly significant drainage course/stream; this downslope portion of the declivity, below the point where the driveway/road crosses the declivity, has been mapped by the City as a significant drainage course and is described above as the 'tributary'. As noted above, upon further study of this tributary, no portion of the 'tributary' (either upslope or downslope of the driveway/road) delineates as an appealable feature.

Opponents of the project have claimed that grading of the vegetated buffer strip will be necessary in order to create a vegetated buffer strip that conforms to the design criteria identified in the WQMP. The area identified in the WQMP as the vegetated buffer strip, appears to have an approximately 66% slope. However, Appendix C of the WQMP contains design criteria for vegetated buffer strips that state that "...slopes should not exceed 15%..." Given the discrepancy, the opponents have asserted that the developer would need to grade the area designated for the vegetated buffer strip in order to achieve a slope that doesn't exceed 15%. The opponents have

further claimed that this grading would be located within 100 feet of the 'tributary' and would render the approved project appealable.

However, both the City and the developer disagree with the opponents' assumptions and conclusions. Contrary to the opponents' claims, the WQMP states (at page 15), "...the natural vegetated areas beyond the drainage pits, and outside of the approved development limits, will act as a vegetated buffer strip. This untouched vegetation will provide filtration of site runoff discharged from the on-site drain spreader device..." In order to counter the claim that the vegetated buffer strip won't perform adequately given the steepness of the slope, the developer submitted a letter from Toal Engineering, dated May 16, 2006 (Exhibit #8), which affirms that no grading will be necessary for the buffer strip. Toal Engineering goes on to explain that the existing thick vegetation, filtration capacity of pervious soils, and the long distance over which runoff must travel before entering the storm drain system all will contribute to the adequate performance of the Best Management Practices. As an extra measure, Toal Engineering recommended the addition of an "Ultra Urban Filter with Smart Sponge Plus media" to be installed at the end of the three on-site drain system outlet pipes. This filter will capture trash, sediment and debris, and remove bacteria, hydrocarbons and other oil based pollutants from runoff before the water is discharged into the vegetated filter strip. The added filter would be installed at the end of the drainage pipe, within the limits of disturbance approved by the City, and outside of the 100-foot wide appeals jurisdiction of the Commission.

Thus, the approved project does not involve any development within 100 feet of the tributary, much less within 100 feet of the part of the mapped watercourse that the Commission considers to be a jurisdictional stream.

Opponents' to the project have raised allegations that other development is located within 100-feet of the southerly drainage course/stream, including construction of a water/utility lines and fuel modification/vegetation clearance. None of the plans approved most recently by the City support these allegations. There have also been claims that the applicant re-paved the existing road/driveway that leads up to the development site, thus, this component of the project constitutes development that is appealable. However, the existing driveway/road was previously paved. Re-paving the existing driveway/road is a repair and maintenance activity that is an exempt form of development. In addition, the City's approval does not include authorization for the repaving, so even if it did require a permit, the fact that it was done would not make the City's approval, which does not authorize it, appealable. Thus, the Commission finds that the City has not authorized any development within 100 feet of the southerly drainage course, nor within any area of the Commission's appeals jurisdiction.

E. ARE THERE ANY OTHER ASPECTS OF THE PROJECT THAT WOULD RENDER THE CITY'S APPROVAL APPELABLE?

Section 30603(a) of the Coastal Act provides the basis for appeal to the Commission of local government actions on coastal development permit applications. That sub-section provides, in part, that:

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

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or

of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, within 300 feet of the top of the seaward face of any coastal bluff.*
- (3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*
- (4) Any development approved by a coastal county that ...*
- (5) Any development which constitutes a major public works project or a major energy facility.*

The development approved by the City is not located between the first public road and the sea nor is it within 300 feet of the inland extent of any beach or the mean high tide line of the sea ((a)(1)), nor is it a major public works project ((a)(5)), nor is it located in a "sensitive coastal resource area"⁶ ((a)(3)). Subsection (a)(4) is not applicable as the project was approved by a City, not a County. Finally, the development is not on tidelands, submerged lands, or public trust lands; nor is the development within 100 feet of any wetland, estuary, or stream; nor is the development within 300 feet of the top of the seaward face of any coastal bluff ((a)(2)).

F. CONCLUSION

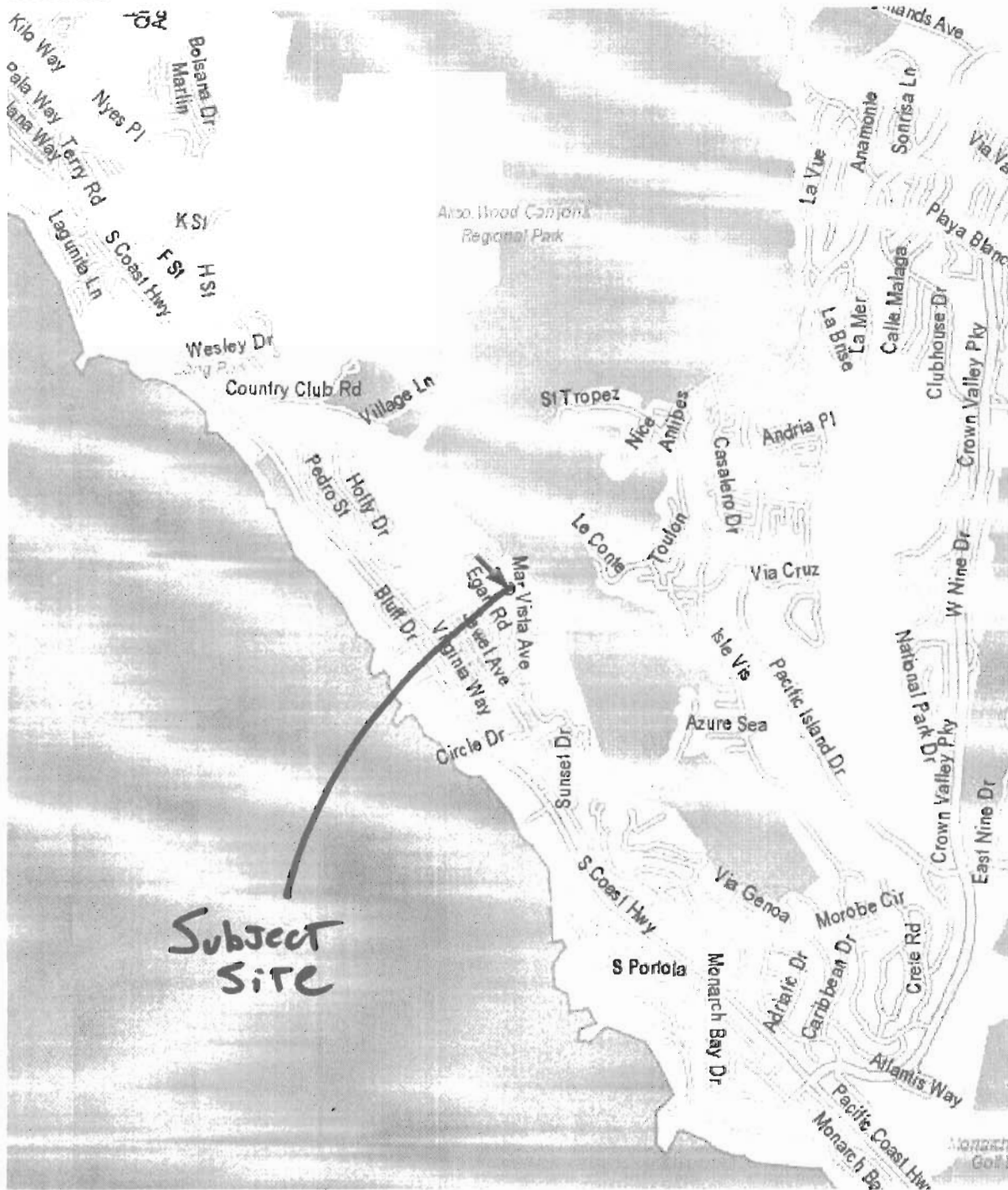
Public Resources Code Section 30603(a)(2) confers the Commission with appellate jurisdiction over development that is within 100-feet of any stream. The Commission finds that the main stem of the southerly drainage course on the subject site meets all of the characteristics of a stream, and it must therefore be used to identify the Commission's appellate jurisdiction. However, the Commission also finds that local CDP no. 02-68 approved by the City did not authorize any development within 100 feet of the southerly drainage course. Thus, the approved project is not appealable pursuant to Section 30603(a)(2) of the Coastal Act, nor is it appealable based on any other component of Section 30603(a) of the Coastal Act.

⁶ As defined in Section 30116 of the Coastal Act as designated pursuant to Section 30502 and 30502.5.

AAA Directions - Maps

Back

MAR VISTA AVENUE LAGUNA BEACH, CALIFORNIA 92651



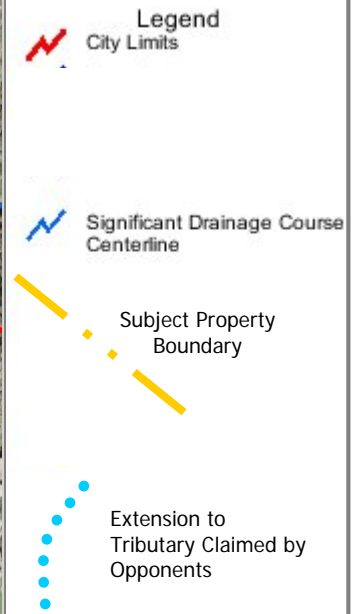
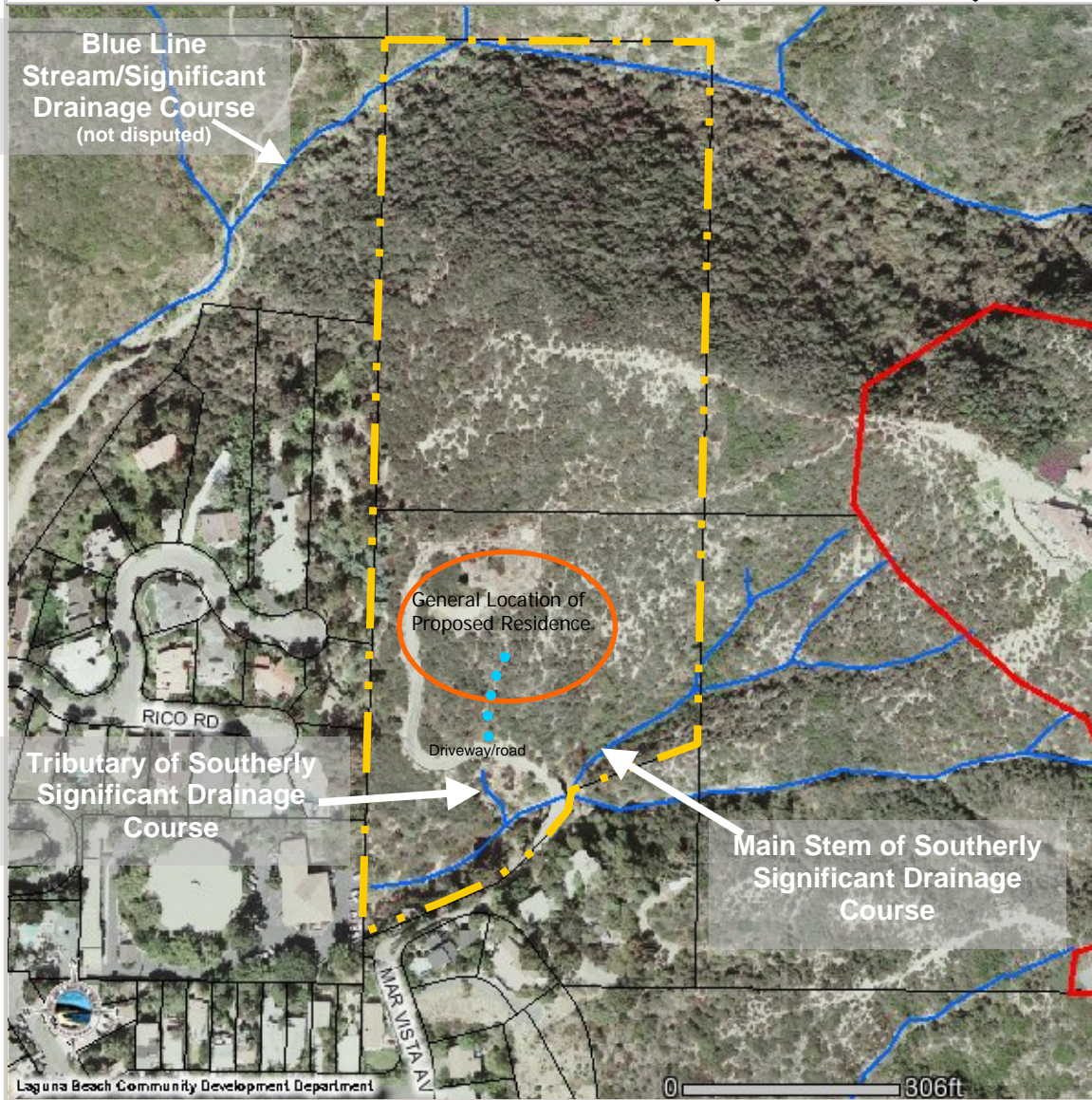
Subject Site

COASTAL COMMISSION

EXHIBIT # 1a

PAGE 1 OF 1

31401 Mar Vista (APN 658-201-11)



EXHIBIT# 1b
Page 1 of 1
Application Number:
5-05-029-EDD

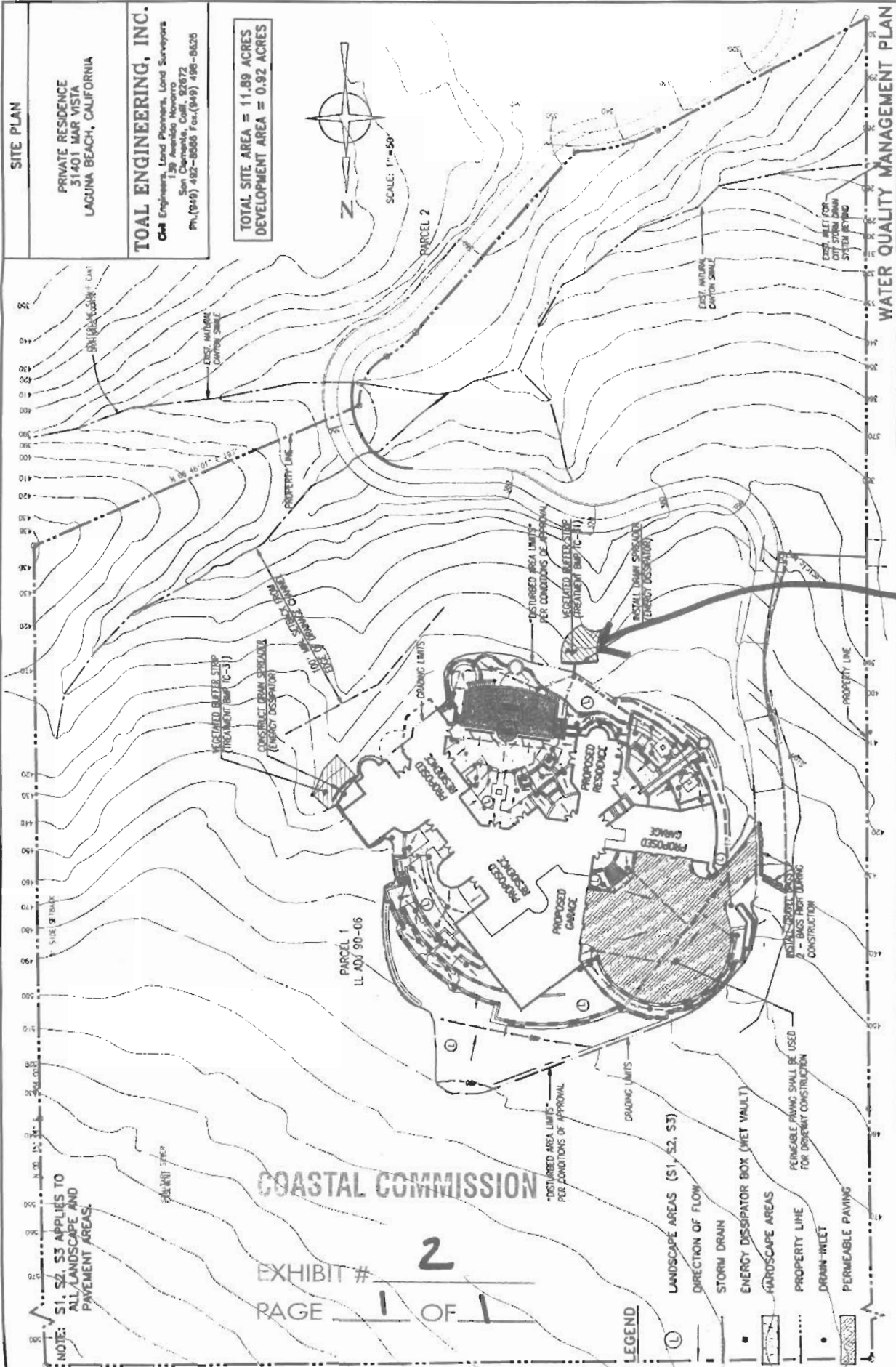
California Coastal Commission

SITE PLAN

PRIVATE RESIDENCE
31401 MAR VISTA
LAGUNA BEACH, CALIFORNIA

TOAL ENGINEERING, INC.
Civil Engineers, Land Planners, Land Surveyors
129 Avenida del Mar, Suite 200
Laguna Beach, CA 92653
Ph: (949) 492-6888 Fax: (949) 498-8825

TOTAL SITE AREA = 11.89 ACRES
DEVELOPMENT AREA = 0.92 ACRES



*Vegetated
Buffer
Strip*

NOTE: S1, S2, S3 APPLIES TO ALL LANDSCAPE AND PAVEMENT AREAS.

COASTAL COMMISSION

EXHIBIT # **2**

PAGE **1** OF **1**

- LEGEND**
- (L) LANDSCAPE AREAS (S1, S2, S3)
 - DIRECTION OF FLOW
 - STORM DRAIN
 - ENERGY DISSIPATOR BOX (WET VAULT)
 - LANDSCAPE AREAS
 - PROPERTY LINE
 - PERMEABLE PAVING SHALL BE USED FOR DRIVEWAY CONSTRUCTION
 - DRAIN INLET
 - ▨ PERMEABLE PAVING

Site Plan Showing Water Quality Features



RECEIVED
City of Laguna Beach
OCT 29 2004
PLANNING COMMISSION

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

Date: October 28, 2004

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

Location: 31401 Mar Vista Ave., Laguna Beach

Coastal Development Project No: 02-68

Project Description: Single-family residence

Applicant: Mar Vista Development Corporation

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

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

- approved
- approved with conditions
- denied

Local appeal period ended October 5, 2004

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

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

This project is

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

COASTAL COMMISSION

Att: CDP Resolution No. 03-015

EXHIBIT # 3
PAGE 1 OF 5



RESOLUTION CDP 03-015

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

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

31401 Mar Vista Avenue
APN 658-201-11

and:

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

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

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

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

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

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

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

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

COASTAL COMMISSION
EXHIBIT # 3
PAGE 2 OF 5

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

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

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

AYES: Kawaratani, Lenschow, Morrison, Simon

NOES: Plumb

ABSENT: None

ABSTAIN: None

ATTEST:

Chairman Simon

Staff Representative

Board of Adjustment Resolution No. CDP 03-015

COASTAL COMMISSION

EXHIBIT # 3

PAGE 3 OF 5

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

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

COASTAL COMMISSION

EXHIBIT # 3
PAGE 4 OF 5

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

Page 3

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

Attachment

COASTAL COMMISSION

EXHIBIT # 3
PAGE 5 OF 5



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

COASTAL COMMISSION

EXHIBIT # 4
 PAGE 1 OF 2

ADOPTED BY THE COMMISSION
 ON SEPTEMBER 16, 1993

NOTE

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

I hereby certify that this map portrays the boundaries for THE CITY OF LAGUNA BEACH (SHEET B) adopted by the California Coastal Commission 2991 (a) 10/1992.

Approved by the Coastal Program Analyst

By the 16th day of September 1992 before me, JENNIFER L. BAY, County Clerk, in the County of Orange, California, to be the authorized representative of the City of Laguna Beach, California, and the person whose name is subscribed to this instrument.

Approved L. B. Bay

STATE OF CALIFORNIA
COUNTY OF ORANGE



California Coastal Commission
Cartography Section

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

Coastal Zone Boundary

Permit Jurisdiction

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



Appeal Jurisdiction

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



Area of Deferred Certification

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

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

In areas where a permit is obtained by the appeal jurisdiction boundary, any land portion of the permit within the area defined as appealable is subject to the Commission's appeal jurisdiction.

COASTAL COMMISSION



LSA ASSOCIATES, INC.
20 EXECUTIVE PARK, SUITE 200
IRVINE, CALIFORNIA 92614

949-553-0666 TEL
949-553-8076 FAX

BERKELEY
CARLSBAD
COLMA

PORT COLLINS
PALM SPRINGS
POINT RICHMOND

RIVERSTIDE
ROCKLIN
SAN LEANDRO

RECEIVED
South Coast Region

March 18, 2005

MAY 24 2006

Mr. Allen Haynie
Latham & Watkins
600 West Broadway, Suite 1800
San Diego, California 92101

CALIFORNIA
COASTAL COMMISSION

Subject: Delineation of Drainage Channel - Mar Vista Avenue, Laguna Beach, California

Dear Mr. Haynie:

At your request, LSA Associates, Inc. (LSA) delineated a small reach of a drainage channel adjacent to the southwest corner of the project site. This is the drainage channel that is referenced in the February 2, 2005, California Coastal Commission Staff Report on pages 4-6, as the "second drainage course, located along the southerly boundary of the property." The portion of the channel that was delineated extended from the existing bridge to approximately 150 feet upstream, which is the portion of the drainage course that comes nearest to the project site; only the northern edge of the drainage course (i.e., the side closest to the project site) was delineated. This limit of the channel was delineated in order to more accurately map the distance between the "top of the bank" of the existing drainage course and the proposed development limits. In addition, LSA subsequently delineated the portion of the same drainage channel that extends approximately 100 feet downstream of the bridge, and investigated a short "tributary" to this channel that is shown on the City's map of significant drainage courses. As mapped, this "tributary" extends approximately 80 feet from the aforementioned drainage course toward the project site.

METHODS

On February 15, 2005, LSA delineated an approximately 150-foot reach of the drainage channel adjacent to the southwest corner of the project site. Consistent with Section 13577(a) of the California Code of Regulations, the delineation was based on a determination of the "top of bank" of the drainage channel. Only the north side of this channel was delineated, since this was the side nearest to the adjacent project site. Using fluorescent-orange marking paint, the maximum extent of the physical features of the drainage channel at short intervals along the channel was delineated. Chaparral habitat occurs along the steep slopes leading down into the drainage course. No riparian habitat exists in or adjacent to this drainage channel. The bottom of the channel is exposed bedrock. The drainage channel invert is approximately one foot wide and appears to convey small volumes of ephemeral runoff. The surveyors from Toal Engineering were observed as they recorded the location of the identified "top of bank."

On March 7, 2005, LSA returned to the site to delineate the reach of drainage channel below the bridge, in the same manner as on February 15. Along the mapped "tributary" to this channel, approximately 100 feet downstream of the bridge, there was no evidence of any flow, channel bank, or bed, and thus, no activity that separates the "channel" from adjacent upland. Likewise, there was no riparian

COASTAL COMMISSION

LSA ASSOCIATES, INC

vegetation that would otherwise serve to define the boundary of a "stream." Therefore, this short "tributary" should not have been mapped as a significant drainage course. The surveyors from Toal Engineering were observed as they recorded the location of the identified "top of bank" along the main drainage course.

If LSA can be of further assistance on this project or any others, or if you have any questions concerning the contents of this letter report, please feel free to contact me at (949) 553-0666. My resume is attached.

Sincerely,

LSA ASSOCIATES, INC.



Jim Harrison, Senior Botanist
Associate

Attachment

COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 2

LSA

LSA ASSOCIATES, INC.
20 EXECUTIVE PARK, SUITE 200
IRVINE, CALIFORNIA 92614

949.553.1066 TEL
949.553.8076 FAX

BERKELEY
CARLESTAD
DOWNEY

DRY CREEK
PALM SPRINGS
SANTA RICHMOND

RIVERSIDE
ROSELIN
SAN LUIS OBISPO

RECEIVED
South Coast Region

MAY 24 2006

CALIFORNIA
COASTAL COMMISSION

May 23, 2006

Mr. Allen Haynie
Latham & Watkins
600 West Broadway, Suite 1800
San Diego, California 92101

Subject: Response to Recent Coastal Commission Drainage Issue, 31401 Mar Vista Avenue,
Laguna Beach, California

Dear Mr. Haynie:

At your request, LSA Associates, Inc. (LSA) is providing you with this letter intended to respond to the allegation that a "Significant Drainage Course" not previously identified or mapped by the California Coastal Commission (CCC) or by the City of Laguna Beach (City) occurs in the area in question, which is identified in an attachment to a May 19, 2006, e-mail by Karl Schwing of the CCC.

The area in question both above and below the paved access road (as you described to me in our phone conversation of May, 22, 2006) was carefully assessed by me on different occasions. Above the paved road, no evidence of runoff was observed in the area of question or where that area intersects the paved road when evaluated on July 13, 2004, and March 7, 2005. Prior to removal of vegetation and commencement of grading in the project area (i.e., October 24, 2005), the area in question was again inspected and did not exhibit any evidence of having previously conveyed any runoff or of otherwise functioning as a drainage course. Also, LSA looked for any structures (e.g., culverts, drainage pipes) that would convey flows from one side of the paved road to the other, but no such structure exists in the area of question. This further supports the premise that a drainage course does not exist at the area in question.

Below the paved road (and approximately 100 feet downstream of the existing bridge), the area mapped by the City as a "Significant Drainage Course" did not exhibit the physical features (i.e., defined bed and banks) of a stream, creek, or other drainage course when examined on March 7, 2005. Also, there was no evidence of runoff being conveyed from the paved road into this area. LSA stated in a letter to you (dated March 18, 2005) that this "mapped tributary" exhibited "no evidence of any flow, channel bank, or bed, and thus, no acclivity that separates the "channel" from adjacent upland." Finally, LSA concluded that this "short tributary" should not have been mapped as a "Significant Drainage Course" by the City in the first place.

It is important to point out that the slope where the area in question occurs is quite steep and relatively short, resulting in very little watershed for the accumulation and conveyance of runoff. This is undoubtedly the reason a defined drainage course does not exist there. Any physical evidence of flows occurring this year in the area in question would be attributable to storm water runoff from the graded

COASTAL COMMISSION

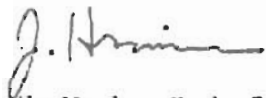
LSA ASSOCIATES, INC.

project area, where all vegetation has been removed. The thick cover of vegetation removed from the graded project area would have intercepted most, if not all, of the rainfall that normally occurs there.

If LSA can be of further assistance, or if you have any questions concerning the contents of this letter, please feel free to contact either Art Homrighausen or me at (949) 553-0666.

Sincerely,

LSA ASSOCIATES, INC.





Jim Harrison, Senior Biologist
Associate

COASTAL COMMISSION

EXHIBIT # 6
PAGE 2 OF 2

General Plan and Local Coastal Plan

Major Watersheds & Drainage Courses

 Watershed Boundary
 Drainage Course

SCALE: 1" = 1000'
 0 100 200 300 400 500 600 700 800 900 1000

South LAGUNA




City of Laguna Beach

COASTAL COMMISSION

EXHIBIT # 7
 PAGE 1 OF 1

TOAL ENGINEERING, INC.
CIVIL ENGINEERS, LAND PLANNERS, AND LAND SURVEYORS
139 Avenida Navarro, San Clemente, CA 92672
Tel: (949) 492-8586 • Fax: (949) 498-8625

RECEIVED
South Coast Region

MAY 23 2006

CALIFORNIA
COASTAL COMMISSION

May 16, 2006

City of Laguna Beach
Community Development
505 Forest Avenue
Laguna Beach, CA 92651
Attn: John Montgomery

RE: 31401 Mar Vista Avenue Water Quality Management Plan (WQMP)
City comment letter dated 4/13/06

Dear John,

We have reviewed your letter dated April 13, 2006 concerning the Water Quality Management Plan ("WQMP") for the Villa Mar Vista project ("Project"). As you know, the WQMP was previously reviewed both by the City of Laguna Beach ("City") and PBS&J, the City's outside consultant, and on January 30, 2006, was found to be in compliance with the City's Urban Runoff Management Program requirements. Construction of the Project has proceeded in reliance on the City's approval of the WQMP. Notwithstanding that prior determination, it is our understanding that the Regional Water Quality Control Board ("RWQCB") has raised an issue with the City concerning the Project's use of a natural vegetated swale as a vegetated buffer strip for water quality purposes. Specifically, the RWQCB questioned whether the natural vegetated swale complied with the guidelines of BMP TC-31 of the CASQ Manual because it has a natural gradient of more than 15%. As clearly stated in the WQMP, no disturbance of the natural vegetated swale will occur outside of the established grading limit line. Therefore, as the City knows, the approved WQMP does not include any grading of the natural vegetated swale outside of the established grading limit line. Although we question whether the application of the no more than 15% gradient requirement of BMP TC-31 should be applied under these circumstances as a result of the existing thick vegetation, filtration capacity of the pervious soils, and the relatively long distance through which the runoff will travel before entering the City storm drain system, we are prepared to add an additional BMP to the project as is allowed pursuant to the guidelines on the WQMP Owner's Certification. Consequently, we will amend the Project's WQMP as follows:

Ultra Urban Filters with Smart Sponge Plus media (manufactured by AbTech Industries) will be installed on each of the three on-site drain system outlet pipes shown on the grading plan. The filter and media will be placed immediately prior to pipe discharge providing treatment for all collected site runoff. The Ultra Urban Filter will capture trash, sediment, and debris, while the Smart Sponge Plus media is effective at removal of bacteria, hydrocarbons, and other oil derivatives per information and data from the manufacturer.

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The location and footprint for installation of these units will not require grading outside of current grading limits. These filter systems will be in addition to the natural vegetated areas shown on the WQMP Site Plan. Although the RWQCB has raised a question whether these natural vegetated areas qualify as "Vegetated Buffer Strips" within the meaning of BMP TC-31 of the CASQA manual, as discussed above, they will have very significant water treatment effects because of the thick vegetation, filtration capacity of the pervious soils, and the relatively long distance through which the runoff will travel before entering the City storm drain system. The combination of the Ultra Urban Filters and the natural vegetated swale will be more than adequate to address the water quality issues associated with the Project's runoff.

In specific response to the two questions raised in your letter, we also offer the following:

Response to Comment #1:

The intent of the approved WQMP was to identify the existing, untouched vegetated areas beyond the drainage spreaders as "buffer strips" for treatment of site runoff. The on-slope vegetated areas are desirable from a water quality standpoint due to biological treatment processes including filtration and infiltration; however, the RWQCB has expressed a concern because the natural gradient does not meet the design criteria provided in the CASQA manual for BMP TC-31, as noted above. We propose to use AbTech Ultra Urban Filters with Smart Sponge Plus media to further enhance the proposed site storm water treatment system. These devices, together with the natural vegetated areas through which the runoff will flow, will provide more than acceptable water quality treatment.

Response to Comment #2:

We have calculated that the exit velocity at the drainage spreader's multiple outlets will be less than 3 feet per second during peak flow for a 100-year storm event (see attached calculation). Water will rise approximately one and a half inches above the drainage outlets in a vertical direction and thus with zero velocity in a horizontal direction. The spreader reduces the potential for erosion by spreading runoff over a wider area. We have used this device on many projects in Laguna Beach and elsewhere and it has proven to be highly effective.

The spreader at the most westerly outlet drains into a natural, undisturbed swale. The swale is highly vegetated and has no definable drainage bed longitudinally, indicating little or no erosion. Bedrock therein also is very shallow. The length of the swale is approximately 100 feet. Normal dry weather flow from the Project will infiltrate and transpire before reaching its end and entering the City's storm drain system. Post development runoff from the Project will not be appreciably greater than pre-development runoff. Therefore, since there is no definable drainage bed, future erosion is unlikely, even given the steepness of the swale.

The most easterly spreader outlet drains into a larger drainage area drained by a swale with a definable drainage bed. However, the sides of the swale, though steep, are highly vegetated with rock outcroppings visible. The drainage area is relatively small, only 0.2 acres. Any erosion which may occur will be deposited in the vegetated swale prior to reaching the City storm drain system.

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The swales are too irregular, the slopes too steep, and the runoff volumes too small to apply commonly used rational methods of calculation of velocity and depth of flow of runoff therein. However, as stated above, the natural swales will provide significant water quality treatment to runoff from the Project, especially in combination with the aforementioned Ultra Urban filters.

If you have any questions regarding the above please do not hesitate to call.

Regards,



Raymond R. Toal

RRT/mb

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Hydraulic Calculations for Velocity of Runoff Exiting Drain Spreader

$$Q = C * I * A$$

Maximum Drainage Area tributary to drain spreaders:

Area = 0.9 acres

Coefficient of Runoff:

C = 0.7

Intensity of rainfall:

I = 4" per hour = equivalent to a 100- year storm.

$$Q = 0.7 * 4 * 0.9$$

Q(100) = 2.5 cubic feet per second

Velocity exiting drain spreader

$$Q = V * A$$

V = Q / A where Q = flow (ft³/sec) & A = area of outlets

Q = 2.5 cfs,

A = 10 risers - 4" diameter

$$= 10 * (0.33^2 * 3.14 / 4)$$

A = 0.9 sq. ft.

$$V = 2.5 / 0.9$$

V = 2.8 feet/sec < vertical velocity

This vertical velocity will produce an energy head of $v^2/2g$ where V = velocity, g = acceleration of gravity = 32.2 ft/sec

$$\text{Vertical rise of water exiting drain spreader} = 2.8^2 / (2 * 32.2) = 0.12 \text{ ft.} = 1.5 \text{ in.}$$

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CALIFORNIA COASTAL COMMISSION

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MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist / Wetland Coordinator

TO: Karl Schwing

SUBJECT: 31401 Mar Vista Avenue, Laguna Beach, California

DATE: June 1, 2006

Documents reviewed:

Christoph, A. No date. Annotated map showing drainages in vicinity of proposed development at 31401 Mar Vista Avenue in Laguna Beach, California submitted to CCC staff.

Harrison, J. (LSA). March 18, 2005. Letter to A. Haynie (Latham & Watkins) re "Delineation of drainage channel - Mar Vista Avenue, Laguna Beach, California."

Harrison, J. (LSA). May 23, 2006. Letter to A. Haynie (Latham & Watkins) re "Response to recent Coastal Commission drainage issue, 31401 Mar Vista Avenue, Laguna Beach, California."

LSA. April 1, 2005. Mar Vista Biology, Photo Orientation Map and 16 associated photographs.

Schwing, K. (CCC). May 2006. Two photographs of a V-shaped declivity at the subject site that has had the vegetation mechanically removed. This feature is an extension of the drainage swale at "15" on the LSA photo orientation map and the upper reach is apparently cut off from the lower reach by an access road.

Aerial photograph with overlays showing location of planned development at 31401 Mar Vista Avenue and nearby drainages (Exhibit 1b to CCC Staff Report concerning the appealability of City of Laguna Beach Local Coastal Development Permit Number 06-68)

To my knowledge there is no universally accepted definition of "stream." Regulatory definitions will generally be different from geomorphological or ecological definitions. Streams or watercourses are often defined on the basis of a channel with a distinguishable bed and bank. However, since Section 13577 of the Commission's regulations refers to "areas where a stream has no discernable bank," this is not

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necessary feature for the Commission. In fact, many lower order streams along the California coast are ephemeral (i.e., only convey flow during and shortly after rainfall), are often steep, do not have a distinguishable bed and bank, and have no riparian vegetation. A definition that may be more appropriate to these ephemeral streams is “any channel or declivity showing evidence of annual scour or deposition.”¹ In other words, the fundamental characteristic of a “drainage,” “stream,” or other watercourse is that it is a linear topographic depression that periodically conveys water.

In the context of delineating streams, a term that is often used is “ordinary high water mark.” This is “a line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.”² The ordinary high water mark demonstrates that flow has occurred. It is often coincident with the top of the bank but not necessarily so. An ephemeral drainage without distinguishable bed and bank may still have an ordinary high water mark caused by flowing water.

In the photographs you took in May 2006 looking downhill across a cleared area on the subject site, a V-shaped declivity or swale is apparent that appears to slope relatively steeply downhill toward the access road to the site. This feature appears to be an extension of the swale that continues on the other side of the road to connect to the stream at the bottom of the hill. Beyond the road, this is the feature marked by point 15 on the LSA photo orientation map, which is referred to by Harrison (2005) as “...a short ‘tributary’ to [the main] channel that is shown on the City’s map of significant drainage courses.” As I understand it, an important issue that must be resolved is whether the portion of this topographic feature that is uphill from the access road constitutes a “significant drainage” or “stream.”

On February 15 and March 7, 2005, LSA delineated drainage channels at the subject site based on “the determination of the top of bank.” The “tributary” below the road did not have a bed and bank and no evidence of flow was observed (Harrison 2005). Harrison (2006) later states that there was no evidence that either of these depressions (above and below the road) had previously conveyed water when examined on July 13, 2004, March 7, 2005, and October 24, 2005. I spoke to Jim Harrison on May 31, 2006 to obtain additional detail on how the observations were made and on the characteristics of the site. He reported that LSA personnel examined the bottom of the “tributary” in question very closely. They found no evidence of sediment deposits or scour that would indicate running water and they found no break in the chaparral vegetation along a transect across the declivity. They also examined the area where the upper portion of the “tributary” is dammed by the access road and found no deposits of debris or sediments. These observations were made before the area was cleared of

¹ Furniss, M.J. and S. A. Flanagan (USDA Forest Service). 1992. Low-Order Stream Channel Mapping. A new component of Coordinated Resource Inventory. Watershed Management Council Newsletter: Winter 1992, Volume 4 No. 3

² 33 CFR Part 328: Definition of Waters of the United States



vegetation and their conclusion was that the declivity does not function as a water course and that rainwater is either infiltrated or moved by sheet flow in this area.

In summary, according to LSA, the tributary does not have a distinguishable bed and bank nor does it have riparian vegetation either above or below the access road and there is no ordinary high water mark or other evidence of flowing water. Therefore, if the reported facts are correct, there does not appear to be any basis for calling that declivity a "stream" or "drainage."