

CALIFORNIA COASTAL COMMISSION

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

**W 12a**

Staff: Ryan Todaro
Staff Report: March 22, 2007
Hearing Date: April 11-13, 2007
Commission Action:

STAFF REPORT: APPEALABILITY**DISPUTE RESOLUTION**

NUMBER: 5-07-072-EDD

LOCAL CDP NO.: 06-85

LOCAL JURISDICTION: City of Laguna Beach

APPLICANT FOR LOCAL PERMIT: Michele Monda

PROJECT LOCATION: 3 Hillhaven Ranch Way
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 (#06-85) for the construction of a 6,511 square-foot single-family residence and a 693 square-foot attached 3-car garage, retaining walls, pool, spa and landscaping.

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 a drainage course, which, although not shown on the post-cert map as establishing the appeals area, does constitute a stream within the meaning of the Coastal Act and its implementing regulations, thus rendering development within 100 feet of this feature as appealable. Commission staff recognizes that this drainage course is not identified on the post-cert map as an "appealable" feature. 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.

Given the location of the proposed project and the City's current fuel modification requirements, it is staff's opinion that the proposed project would result in the removal of native vegetation/habitat, some or all of which may be deemed environmentally sensitive habitat area (ESHA).

As of the staff report date, the City has not taken final action on the pending permit application. Based on our knowledge of the proposed project, if approved as proposed, the City would be authorizing development within the appeals area; however, it remains possible that the applicant could voluntarily modify her proposal, or the City could condition its approval such that approved development is removed from the appeals area. Thus, the purpose of this action by the Commission is only to resolve a dispute between the City and the Commission as to whether the significant drainage course that crosses the property constitutes a "stream" and therefore establishes an appeal area that includes the proposed project site.

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. 06-85 that results in development within 100 feet of the stream 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 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. 06-85 is appealable to the Coastal Commission pursuant to Public Resources Code Section 30603.

Staff Recommendation that City of Laguna Beach Coastal Development Permit No. 06-85 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 No. 06-85 that results in development within 100 feet of the stream 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 Coastal Development Permit No. 06-85 and that approval authorizes development within 100 feet of the stream because the City's approval of CDP No. 06-85 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 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 3 Hillhaven Ranch Way, in the City of Laguna Beach, Orange County (Exhibits #1 & #2). The entire site is approximately 1 acre in size, roughly triangular in shape and is located within the OSC-RHP Zone (i.e. Open Space Conservation-Residential Hillside Protection Zone). The subject lot is bordered by single-family residences to the north and west and undeveloped area within Aliso and Wood Canyons Park to the east and south. The applicant's biological survey, conducted by Dudek, dated September 11, 2006 describes the site as having "north- and south-facing slopes" and "elevations range from approximately 280 to 400 feet above mean sea level." The site is currently undeveloped and vegetation includes a mix of native coastal sage scrub, chaparral, and non-native plant species. As is recognized by the City through a map delineation,¹ a significant drainage course that runs in a southwesterly direction is located in the middle of the property (Exhibit #2). The applicant is requesting a coastal development permit (CDP No. 06-85) from the City of Laguna Beach for a new 6,511 square-foot single-family residence and a 693 square-foot attached three-car garage, retaining walls, pool, spa and landscaping. According to the applicant's preliminary plans (Exhibit #3), the single-family residence would be located approximately 30 feet from the centerline of the significant drainage course at its closest point. Given the location of the proposed project and the City's current fuel modification requirements (Exhibit #3), it is staff's opinion that the proposed project would result in the removal of native vegetation/habitat, some or all of which may be deemed environmentally sensitive habitat area (ESHA).

On January 2, 2007, the Commission received a Notice of Public Hearing for Coastal Development Permit (CDP) No. 06-85 (Exhibit #4), stating that the project does not constitute development appealable to the Commission. On January 12, 2007, Commission staff sent a letter (Exhibit #5) to John Montgomery, Director of Community Development for the City of Laguna Beach, informing him that based on our review of available resources, City approval of a CDP for the proposed project would appear to be appealable to the Commission because the majority of the proposed project site is depicted on the Major Watersheds & Drainage Courses Map, which is part of the approved Local Coastal Program, as being within 100 feet of a significant drainage course. Commission staff received no response to the letter.

On February 4, 2007, Bill Rihn, President of the South Laguna Civic Association, sent an email (Exhibit #6) to Mr. Montgomery and Commission staff, requesting an appealability determination for CDP application No. 06-85. On February 5, 2007, the Commission received email and phone messages from John Montgomery, requesting an opinion as to whether a City approval of Coastal Development Permit (CDP) application No. 06-85 would be appealable to the Commission. In the email message, Mr. Montgomery stated that the City had determined that the project was not appealable. Mr. Montgomery's request was motivated by the fact that Mr. Rihn challenged the City's determination and formally requested 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 Mr. Rihn.

¹ See maps entitled "Biological Resource Values, South Laguna", adopted by the City of Laguna Beach on January 18, 1994

On February 7, 2007, Commission staff sent Mr. Montgomery a letter (Exhibit #7) informing the City that Commission staff would be conducting a site visit as soon as possible and that based on the information available to Commission staff at that time, the Executive Director's determination was that City approval of the pending CDP application would be appealable to the Commission.

On March 9, 2007, Commission staff conducted a site visit of the property with Department of Fish and Game staff and a representative of the project.

B. COMMISSION DETERMINATION OF APPEALABILITY AND THE FILING OF APPEALS

The Commission finds that City approval of CDP No. 06-85 is an action on a coastal development permit application that would be appealable to the Commission if the City authorizes development within 100 feet of the stream that is located on the subject property.

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.²

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

² 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).

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.³ 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 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 adjacent to 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,⁴ a significant drainage course that runs in a southwesterly direction is located in the middle of the property (Exhibit #2). During the site visit, Commission staff saw evidence that this drainage course includes defined banks and a distinct bottom (streambed/channel). The Commission’s staff biologist, Jonna Engel, also observed litter and debris that had collected in the stream bed from past water flow events. Dr. Engel summarized her observations from the March 9, 2007 site visit in a memo (Exhibit #8) in which she concludes, “In summary, the drainage feature on the property has a clear bed, banks, and channel and periodically conveys flows that originate in runoff from the surrounding watershed.” The

³ 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.”

⁴ See maps entitled “Biological Resource Values, South Laguna”, adopted by the City of Laguna Beach on January 18, 1994

drainage course located on the property therefore includes the characteristics of a stream as defined in Topic 9 in the OSC Element of the City's General Plan.

In addition, the applicant's biological survey states that "approximately 260 linear feet of one- to two-foot wide unvegetated stream channel onsite is considered a waters of the U.S./State regulated by the U.S. Army Corps of Engineers (ACOE) pursuant to Section 404 of the federal Clean Water Act (CWA), the California Department of Fish and Game (CDFG) pursuant to Section 1602 of the California Fish and Game Code, and the California Regional Water Quality Control Board (RWQCB) pursuant to Section 401 of the federal CWA and the Porter-Cologne Act." Furthermore, following the site visit, DFG staff sent an email to Commission staff on March 12, 2007 (Exhibit #9), reiterating their belief that this drainage feature is jurisdictional, which is consistent with the applicant's biological survey.

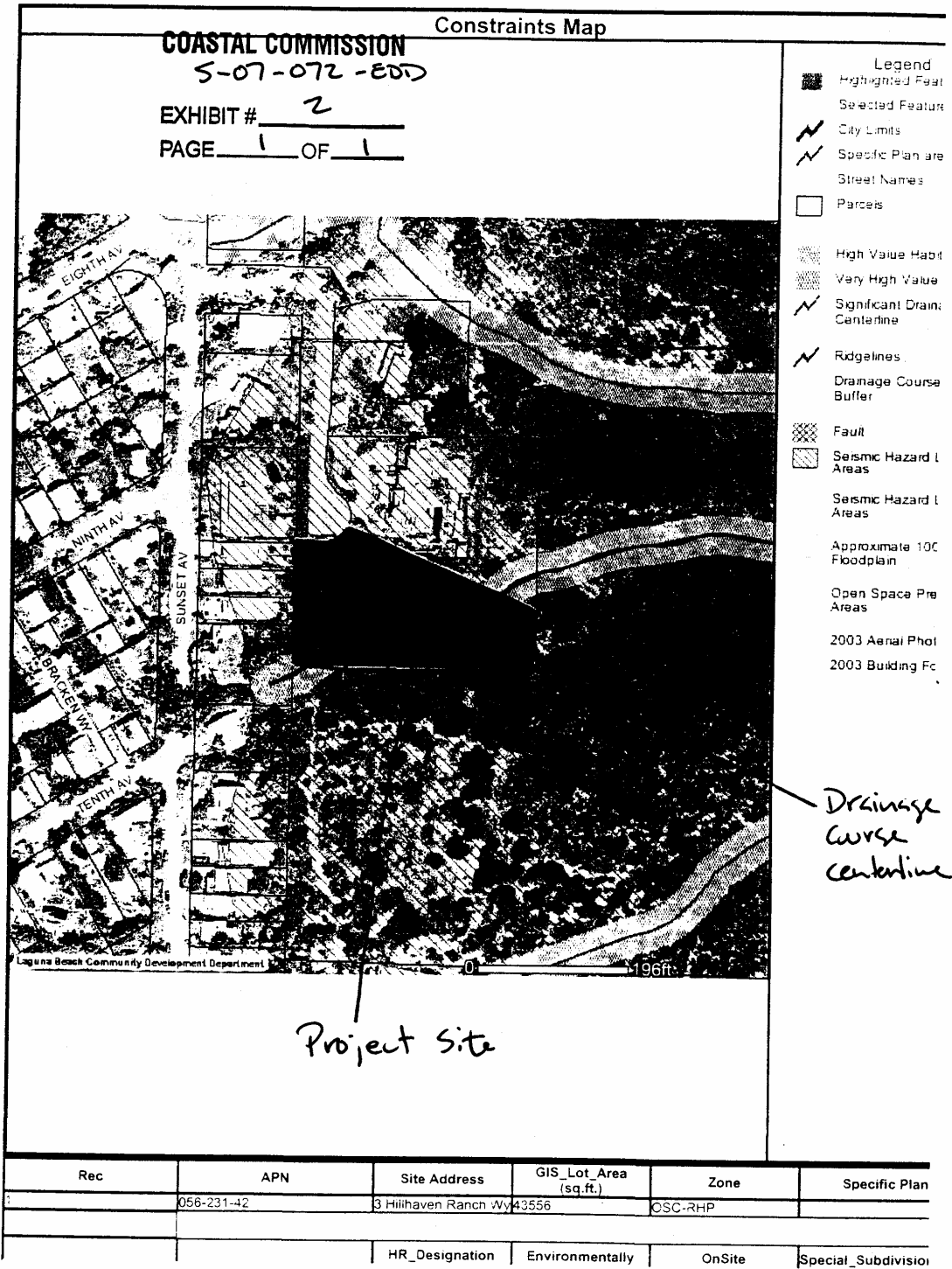
Based on the foregoing evidence, the Commission concludes that this drainage course constitutes a "stream" for purposes of PRC Section 30603(a) both because it is shown on the City's biological resource maps and because it possesses the defining features listed in Topic 9 in the OSC Element of the City's General Plan.

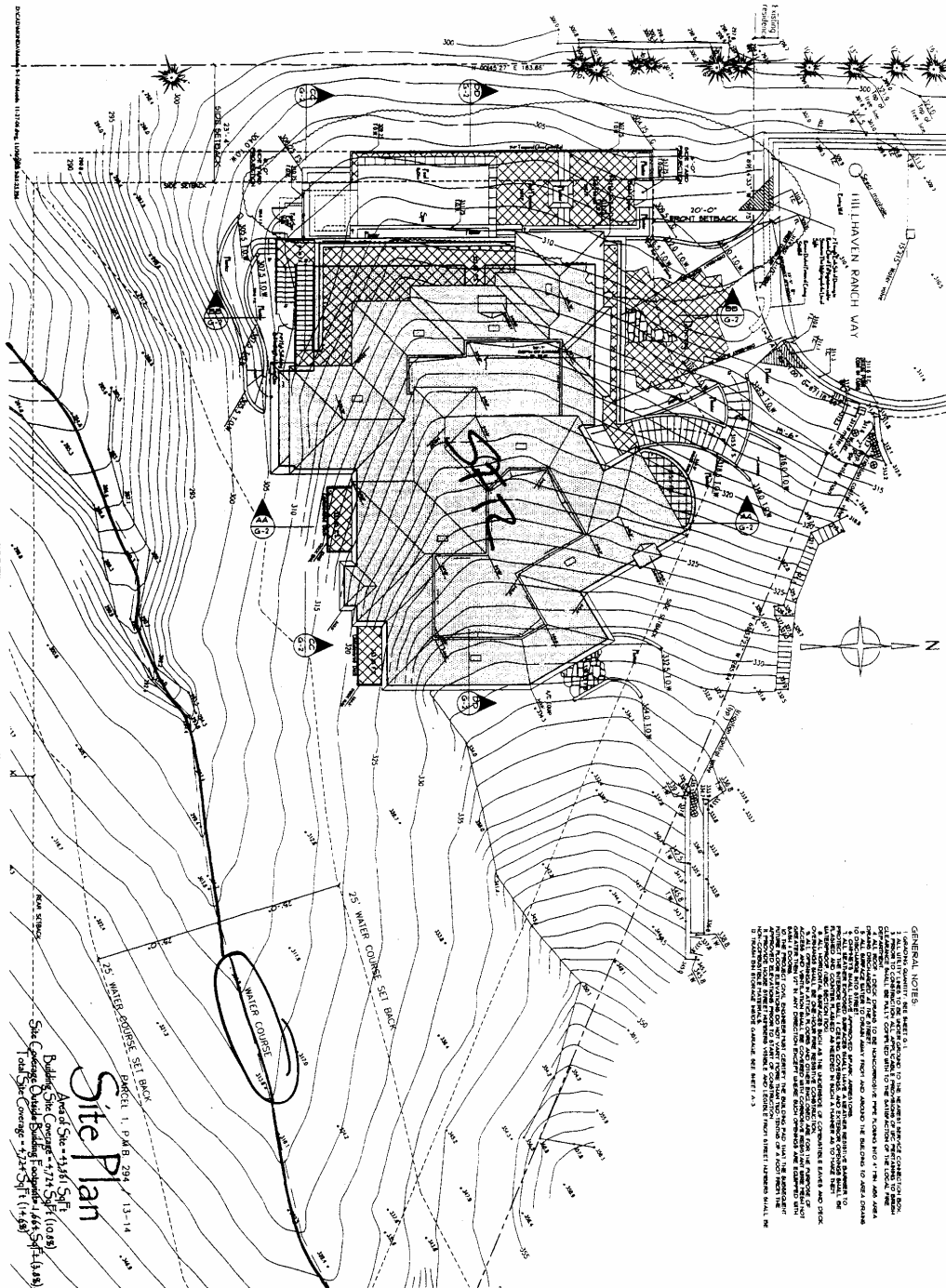
C. CONCLUSION

Public Resources Code Section 30603(a)(2) confers on the Commission appellate jurisdiction over development that is within 100 feet of any stream. The Commission finds that the drainage course that crosses the subject property meets all of the criteria in the Commission's regulations and the City's LCP for being a stream, even though the LCP does not use the term "stream" and that, pursuant to Section 30603(a)(2) of the Coastal Act, the Commission's appellate jurisdiction at the subject site includes all areas within 100 feet of this stream. Thus, if the City authorizes development within 100 feet of the stream, the City's approval of that application is appealable to the Commission.

Map Output

Page 1 of 2





Drawn By:	Darker
As Shown	Scale
Ver: 1.0	Ver: 1.0
1 st or last	Sheet #
A-1.2	

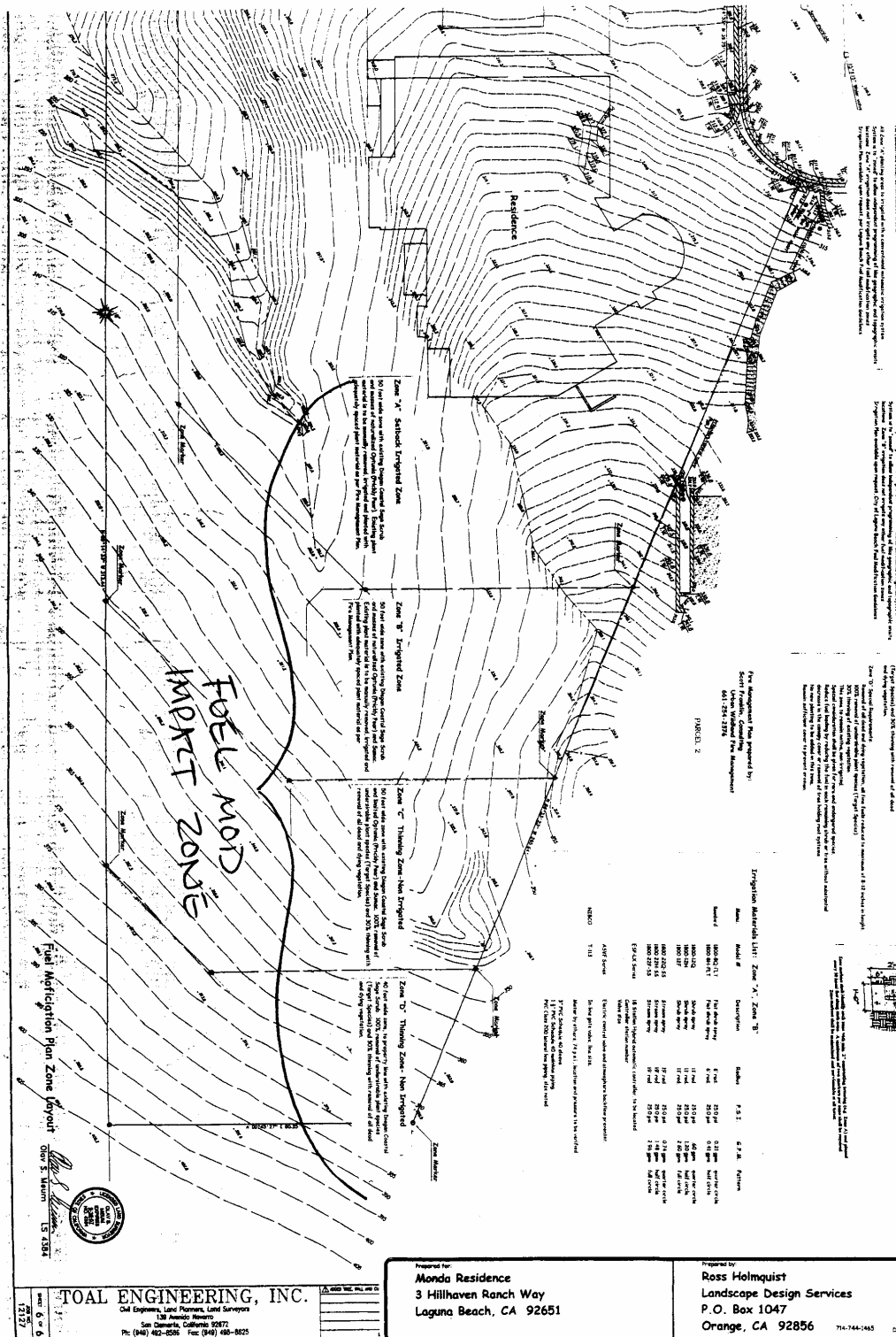
James Conrad Architect
on the web: www.jconradarchitect.com

1590 So. Coast Hwy #201
Laguna Beach, CA 92651
(949) 497-0200 Office
(949) 497-0288 Fax



Monda Residence
3 Hillhaven Way
Laguna Beach, CA 92651

Revisions
 11 August 2006
 Zeng Composites
 1 November 2006
 Zeng Composites
 30 November 2006



COASTAL COMMISSION
5-07-072-EDD
4
EXHIBIT # _____
PAGE 1 OF 1



RECEIVED
South Coast Region

JAN 2 2007

CALIFORNIA
COASTAL COMMISSION

NOTICE OF PUBLIC HEARING

LAGUNA BEACH BOARD OF ADJUSTMENT / DESIGN REVIEW BOARD

The CITY OF LAGUNA BEACH BOARD OF ADJUSTMENT / DESIGN REVIEW BOARD will hold a public hearing in the City Council Chambers, located in City Hall at 505 Forest Avenue to consider application number(s) **DESIGN REVIEW NO. 06-403 AND COASTAL DEVELOPMENT PERMIT 06-85** for property located at:

Michele Monda
3 Hillhaven Ranch Way
APN056-231-42

SAID PUBLIC HEARING TO BE HELD: **Thursday, February 8, 2007 at 6:00 p.m. NO FURTHER PUBLIC NOTICE WILL BE GIVEN.**

Project Description: The applicant requests Design Review Board approval and a Coastal Development Permit for a 6,511 square-foot single-family residence and a 693 square-foot attached 3-car garage in the OSC-RHP Zone. Design Review is required for the new structure, elevated decks (1,240 square-feet), skylights, excess covered parking, grading, retaining walls, pool, spa, fuel modification plan, landscaping, and construction in an environmentally sensitive area.

property is required to be staked with story poles at least **28 calendar days** prior to the hearing.

The City encourages anyone with questions or concerns regarding the proposed project to contact the project representative as follows: **Nancy Csira, Senior Planner (949) 497-0332**

IMPORTANT! If you have concerns about the effects this proposed project could have on your property and you wish those concerns to be considered by the Design Review Board at the public hearing, it is imperative that you invite the Board Members to view the project site and staking from your property prior to the meeting. Please contact the Board Members no earlier than the Friday before the scheduled hearing. A list of Board Members and phone numbers is available at City Hall. Board Members do visit the applicant's property prior to the hearing.

The plans and application may be examined and reviewed at the DEPARTMENT OF COMMUNITY DEVELOPMENT between the hours of 8:00 a.m. – 3:00 p.m. any regular workday. Comments may be made in person at the hearing, or in writing prior to the hearing, when brought or mailed to City Hall. It is recommended that written correspondence be delivered to City Hall at least 10 days prior to the public hearing. It is possible that this project may be continued to some specific future date and/or modified during the Design Review process. If you challenge the nature of the proposed project in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Board at, or prior to, the Public Hearing. The City staff has determined the project to be subject to a (X) Categorical Exemption () Negative Declaration, pursuant to the California Environmental Quality Act.

This project is located within the City of Laguna Beach Coastal Zone. The Coastal Development Permit application was filed on December 1, 2006 and does not constitute development appealable to the California Coastal Commission.

uant to the Americans with Disabilities Act, persons with a disability who require a disability-related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may request such modification or accommodation from the Community Development Department at (949) 497-0723 (telephone) or (949) 497-0759 (facsimile). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to the meeting.

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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



COASTAL COMMISSION

January 12, 2007

5-07-072-EDD

EXHIBIT # 5

PAGE 1 OF 2

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

Re: Notice of Public Hearing for Coastal Development Permit No. 06-85
3 Hillhaven Ranch Way., APN 056-231-42

Dear Mr. Montgomery:

The above referenced Notice of Public Hearing was received by this office on January 2, 2007. Commission staff have reviewed this notice and have the following concerns:

- **Project Appealability**

The notice stated that the project does not constitute development appealable to the Coastal Commission. Based on our review of available resources, City approval of a CDP for the proposed project would appear to be appealable to the Coastal Commission. Section 30603(a) of the California Public Resources Code states, in relevant part:

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

...(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, or within 300 feet of the top of the seaward face of any coastal bluff....*

Section 13577 of Title 14 of the California Code of Regulations further identifies the criteria for permit and appeal jurisdiction boundary determinations. This section states, in part:

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, 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. For purposes of this section, channelized streams not having significant habitat value should not be considered.*

The majority of the proposed project site is depicted on the Major Watersheds & Drainage Courses map, which is part of the approved Local Coastal Program, as being within 100 feet of a significant

drainage course (i.e. a stream). Thus, if the City approves any development on the site, including, but not limited to, grading, construction of any structures (e.g. house, decks, walls, flatwork, etc.), landscaping, or fuel modification, within 100 feet of the top of the bank of the stream (or from the line of permanently established riparian vegetation closest to the stream if there is no discernable stream bank) then the City's approval of a CDP for such development would be appealable, and the application should be noticed as an appealable project. Our preliminary assessment is that approval of the proposed project would be appealable and that a new public hearing notice should be issued stating the project is appealable. However, if you disagree, we would like to discuss that matter with you further.

Please do not hesitate to contact me with any questions regarding this matter.

Sincerely,

Ryan Todaro
Coastal Program Analyst
South Coast District

Cc: Liane Schuller, Zoning Director

COASTAL COMMISSION

5-07-072-EDD

EXHIBIT # 5

PAGE 2 OF 2

COASTAL COMMISSION
5-07-072-EDD

EXHIBIT # 6
PAGE 1 OF 1

February 3, 2007

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

Re: Appealability Determination for Project at 3 Hillhaven,
Laguna Beach, CA. Coastal Development Permit # 06-85

Dear Mr. Montgomery,

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 the project is approximately 30 feet from a watercourse mapped on the South Laguna Biological Resource Values Map. Conditions on the ground are consistent with the Biological Resource Values Map. For these reasons, it is our opinion that the project is "appealable" to the California Coastal Commission.

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.

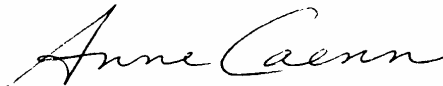
(B)(2) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a coastal commission determination as to the appropriate designation, the local government shall notify the commission by telephone of the dispute/question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

We would like to note that a request for determination of appealability is different from an actual appeal. While we feel that projects of this magnitude should not be placed in the coastal sage scrub and into the watercourse, at the present time, we are focused upon defending the appealability rights of the citizens of Laguna Beach.

Thank you very much.



Bill Rihn
President,
South Laguna Civic Association



Anne Caenn,
President,
Village Laguna

cc: S. Sarb, R. Todaro, K. Schwing, P. Douglas

CALIFORNIA COASTAL COMMISSION

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



COASTAL COMMISSION
5-07-072-EDD
EXHIBIT # 7
PAGE 1 OF 3

February 7, 2007

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

Re: City of Laguna Beach Coastal Development Permit Application No. 06-85
3 Hillhaven Ranch Way, Laguna Beach, CA, APN 056-231-42
Emil Monda

Dear Mr. Montgomery:

On Monday, February 5, 2007, the Executive Director received your email in which you forwarded a request for an appealability determination from a member of the public for Coastal Development Permit (CDP) application no. 06-85. Commission staff will conduct a site visit as soon as possible. However, based on the information available to Commission staff at this time, 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 is a stream in the vicinity of the proposed project, which establishes the appeals area in this case; and there is development proposed, including, but not limited to, grading and construction of a single-family residence within areas that are considered to be 'major vegetation,' within 100 feet of this stream. 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,

Executive Director Determination on Appealability
Monda/CDP 06-85
Page 2 of 3

COASTAL COMMISSION
5-07-072-EDD

EXHIBIT # 7
PAGE 2 OF 3

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 explains what physical characteristics must be present. 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 of the City's General Plan (a component of the City's certified LCP).

As is recognized by the City through a map delineation,² a significant drainage course that runs in a southwesterly direction is located in the middle of the property. The biological report prepared for the proposed project by Dudek, dated September 11, 2006, concludes that the drainage on site is "considered a waters of the U.S./State regulated by the U.S. Army Corps of Engineers (ACOE) pursuant to Section 404 of the federal Clean Water Act (CWA), the California Department of Fish and Game (CDFG) pursuant to Section 1602 of the California Fish and Game Code, and the California Regional Water Quality Control Board (RWQCB) pursuant to Section 401 of the federal CWA and the Porter-Cologne Act." Furthermore, CDFG has notified the Executive Director that they believe the drainage course on site is in fact jurisdictional. The Executive Director has, therefore, determined that this drainage course constitutes a "stream," and thus, the Commission's appeals jurisdiction in this case is based on this feature.

At this juncture, Commission staff recommend that the City revise and re-issue any public hearing notices to reflect the Executive Director's appeals determination. Please be sure that you send a copy of all public hearing notices on this matter to the Commission's Long Beach office (based on a review of our records we presently are not receiving such notices on this matter). Furthermore, the City's eventual Notice of Final Action should indicate that any approval of this CDP application is appealable to the Coastal Commission.

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 Maps entitled "Biological Resource Values, South Laguna", adopted by the City of Laguna Beach on January 18, 1994.

Executive Director Dispute Resolution 5-07-072-EDD
3 Hillhaven Ranch Way
Page 17

Executive Director Determination on Appealability
Monda/CDP 06-85
Page 3 of 3

If the City decides to object to the Executive Director's determination, please advise us of your objection, in writing, as soon as possible but preferably no later than February 16, 2007. Upon notification of any objection, we will schedule a hearing on the matter with the Commission at the next local hearing, which is in April. 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, Commission staff do believe the proposed project raises significant resource issues. The biological report states that the project will impact approximately .41 acres of coastal sage scrub habitat and such habitat could qualify as Environmentally Sensitive Habitat Area (ESHA). Local Coastal Program (LCP) policies prohibit impacts to such habitat. Since Commission staff has not yet reviewed the plans for the development, it is unclear whether there would be impacts to the drainage course. The development must be appropriately setback from this drainage course, in accordance with requirements in the 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
5-07-072-EDD
EXHIBIT # 7
PAGE 3 OF 3

Cc: Bill Rihn, South Laguna Civic Association
Erinn Wilson, California Department of Fish and Game
Emil Monda, Property Owner

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



MEMORANDUM

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Ryan Todaro, Coastal Analyst

SUBJECT: 3 Hillhaven Ranch Way

DATE: March 14, 2007

COASTAL COMMISSION

5-07-072-EDD

EXHIBIT # 8

PAGE 1 OF 1

Documents reviewed:

Biological Resources Letter Report for 3 Hillhaven Ranch Way, City of Laguna Beach, California, prepared by Dudek, dated September 11, 2006.

I visited the property at 3 Hillhaven Ranch Way on Friday, March 9, 2007. The proposed single family residence is located on a 1.0 acre parcel that is bisected by a significant unnamed natural drainage. This intermittent stream is bounded by steep slopes on both sides. The narrow stream bed (approximately 10" to 20") forms a channel that is filled with small and medium sized rocks. Leaf litter and debris have accumulated in bunches among rocks in the stream bed from past water flow events. The eroded and bare, 3" to 10" high stream bank, quickly transitions to the vegetated steep slope. The slopes on either side of the stream support non-native grasses and a transitional coastal sage scrub/chaparral plant community. The lower portion of the drainage supports native and non-native trees. This natural drainage conveys runoff that falls on the upper slopes of the canyon and watershed where 3 Hillhaven Ranch Way is located.

The biology report for the property states that the unvegetated stream channel comprises 1% of the property acreage and is "considered waters of the U.S./State and is regulated by the U.S. Army Corps of Engineers pursuant to Section 404 of the federal Clean Water Act, the California Department of Fish and Game pursuant to Section 1602 of the California Fish and Game Code, and the California Regional Water Quality Control Board pursuant to Section 401 of the federal Clean Water Act and the Porter-Cologne Act".

In summary, the drainage feature on the property has a clear bed, banks, and channel and periodically conveys flows that originate in runoff from the surrounding watershed.

Executive Director Dispute Resolution 5-07-072-EDD
3 Hillhaven Ranch Way
Page 19

Ryan Todaro

From: Erinn Wilson [EWilson@dfg.ca.gov]
Sent: Monday, March 12, 2007 12:36 PM
To: Ryan Todaro
Subject: 3 Hillhaven Ranch way

Ryan

The Department of Fish and Game (Department) met with Coastal Commission staff and the applicant on March 9, 2007 regarding the 3 Hillhaven Ranch Way, and has reviewed the site for its potential to impact sensitive resources.

As a Trustee Agency (CEQA Guidelines, Section 15386), the Department reviews CEQA documents prepared by the City as CEQA Lead Agency. The Department is also a Responsible Agency under CEQA Guidelines Section 15381 over those aspects of a proposed project that come under the purview of the California Endangered Species Act (Fish and Game Code Section 2050 et seq.) and Fish and Game Code Section 1600 et seq. The Department also administers the Natural Community Conservation Planning Program.

The Department has also reviewed the biological report prepared by Dudek, dated September 11, 2006, for the Single Family Development proposed on 3 Hillhaven Ranch Way. The Department has the following preliminary concerns/comments regarding the Project.

1) The biological report concludes that the drainage on site is jurisdictional to the Department under Section 1600 et seq. of the Fish and Game Code and that impacts would occur to jurisdictional waters as a result of the development. Subsequent to the biological report, the configuration of the house was shifted to avoid the drainage. At the March 9, 2007 site visit, the jurisdictional determination was verified, moreover, it was determined that impact to the drainage would occur regardless of the reconfiguration. Additionally, impacts to the drainage did not assume fuel modification which would also require notification. I advised the applicant that his project has the potential to impact a stream, which would require written Notification to the Department, for the Department to determine if a Lake or Streambed Alteration Agreement (Agreement). I also advised him that failure to notify the Department prior to work within this drainage or its associated vegetation could result in violation of Section 1600 of the Fish and Game Code.

2) The Department considers vegetation clearing for fuel modification a permanent impact. The clearing of 170 feet (typical City clearance distance) would be significant and must be mitigated. These impacts should also be included in the CEQA document. If a MND was circulated, it should be recirculated to include these impacts.

3) The biological report concludes that one plant with a CNPS B1 status and that is a state species of concern [intermediate mariposa lily (Calochortus weedii var. intermedius)] likely occurs on the project site. According to the biological report the species could not be distinguished from the more common form (surveys were completed after the flowering period). However, the sensitive intermediate variety is typical to Laguna Beach and is likely the species which occurs on site. One emerging Calochortus spp. was observed within the limits of grading during the site visit on March 9, 2007. Impacts to this sensitive species are considered significant. Because the project will impact the individual which is likely the sensitive species, additional surveys should be conducted during the flowering period to verify the presence of the sensitive plant species and the applicant should include appropriate avoidance, minimization, and mitigation measures for this species and the coastal sage scrub on site.

Let me know if you have any questions.

COASTAL COMMISSION
5-07-072-EDD

EXHIBIT # 9
PAGE 1 OF 1

Drainage Course
at bottom of ravine



COASTAL COMMISSION

5-07-072-800-

EXHIBIT # 10

PAGE 1 OF 1