

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
10000 Oceanside, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**RECORD PACKET COPY**

Filed: June 24, 1997  
49th Day: August 12, 1997  
180th Day: Dec. 21, 1997  
Staff: SFR-LB  
Staff Report: October 17, 1997  
Hearing Date: November 4-7, 1997  
Commission Action: Continued from  
8/12/97

**STAFF REPORT: REGULAR CALENDAR**

**APPEAL NUMBER:** A-5-BLC-97-188

**APPLICANT:** Koll Real Estate Group

**AGENT:** Ed Mountford

**PROJECT LOCATION:** On the Bolsa Chica Mesa adjacent to the City of Huntington Beach overlooking the Bolsa Chica wetlands. Essentially south of Warner Avenue and landward of Pacific Coast Highway in unincorporated Orange County.

**PROJECT DESCRIPTION:** The placement of a pre-construction chain link security fence around the perimeter of the Bolsa Chica Mesa property owned by Koll Real Estate Group. The chain link fence will be approximately seven feet in height, will be raised six inches above grade, and will be setback fifty feet from the edge of the Bolsa Chica Mesa to allow continued public access.

**LOCAL APPROVALS RECEIVED:** Coastal Development Permit Application PA-97-0065.

**SUBSTANTIVE FILE DOCUMENTS:** See Exhibit 2.

## **SUMMARY OF STAFF RECOMMENDATION** **ISSUES TO BE RESOLVED**

On August 12, 1997 the Commission heard the proposed fence project on appeal and found substantial issue with the County's approval of a coastal development permit for the project. At the substantial issue hearing the issue to be resolved was should the fence conform to the fifty foot development setback requirement. At the De Novo stage, the applicant orally revised the project description to conform to the fifty foot setback and to raise the bottom of the fence to permit animal migration. During the course of the public hearing, Commissioners raised the following questions which this staff report will address: 1) impact of the fence on animal migration, 2) maintenance of the fence, and 3) geologic stability.

Staff recommends that the Commission approve the project with four special conditions related to: Retention of the local government conditions of approval, conformance with the fifty foot development setback, maintenance and removal of the temporary fence, and State Lands Commission review of the proposed development. The applicant has been informed of the special conditions and is in agreement with the special conditions.

### **STAFF RECOMMENDATION:**

Staff recommends that the Commission adopt the following resolution:

#### **I. APPROVAL WITH CONDITIONS**

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development, located between the first public road and the sea, will be in conformity with the provisions of the Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

## II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. SPECIAL CONDITIONS.**

#### **1. Retention of the Local Government Conditions of Approval**

The conditions of approval for PA-97-0065 approved by the Orange County Zoning Administrator on May 15, 1997 that are not in conflict with the Commission's special conditions listed below are incorporated by reference and shall remain in effect.

#### **2. Revised Plans for the Temporary Perimeter Fence and Interim Trail**

Prior to issuance of this permit, the applicant shall submit, subject to the review and approval of the Executive Director, revised plans for the Bolsa Chica Mesa perimeter fence which indicates that the entire fence shall be no closer to the existing bluff edge than fifty (50) feet.

Additionally, the revised plans shall:

- a) indicate areas where vegetation would obstruct public use of the setback area,
- b) include a plan for the removal of any vegetation obstructing public access,
- c) shall show that the base of the fence has been raised a minimum of six (6) inches above the ground to allow the movement of animals beneath the fence,
- d) shall avoid Warner Avenue Pond and shall place Warner Avenue Pond on the exterior of the proposed fencing as shown on the Fence Location Plan prepared by FORMA that was received by Commission staff on June 27, 1997, and that
- e) the fence along the eastern portion of the property line shall assure pedestrian access to the bluff edge from Los Patos Avenue.

The revised plans may include devices or other methods (such as bollards) to prevent vehicular access onto the applicant's property as long as pedestrian access is not impeded.

This permit only approves construction of the perimeter fence, vegetation removal, and devices to prohibit vehicular access on the applicant's property. The project shall be constructed consistent with the revised plans approved in this permit.

### **3. Maintenance and Removal of the Temporary Perimeter Fence**

The temporary Bolsa Chica Mesa perimeter fence approved in this permit shall be properly maintained. The temporary fence shall be removed no later than one (1) year from the date of approval of this permit if the applicant has not obtained a coastal development permit and a grading permit for the mass grading of the Mesa and commenced grading within this time period.

If approved or exempt pre-construction activities can not be completed within the time period specified above and the applicant concludes that these activities must be fenced to protect public safety, the applicant may request an amendment to this permit so that the Commission can consider whether the approved fencing may remain or whether it should be modified to be consistent with the public access provisions of the LCP and the Coastal Act.

### **4. State Lands Commission Review**

Prior to issuance of this permit, the applicant shall obtain a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or
- b. State lands may be involved in the development and all permits required by the State lands Commission have been obtained; or
- c. State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to that determination.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION AND BACKGROUND**

The coastal development permit as originally submitted to the County of Orange was for a pre-construction chain link security fence around the perimeter of the Bolsa Chica Mesa property owned by the Koll Real Estate Group (See Exhibit 7). The chain link fence will be approximately seven feet in height with three access gates proposed at selected points around the perimeter (See Exhibit 8). A portion of the fence facing the East Garden Grove Wintersburg Channel (south alignment) would have been at the base of the Mesa. The gates would permit the landowner to have vehicular access to the site through existing roads and are not intended for public use.

Without benefit of a coastal development permit, the applicant constructed the portion of the fence along the property line with the Department of Fish and Game from Warner Avenue to the Ecological Reserve overlook. The applicant, after being informed of the requirement for a coastal development permit, applied to the County in April of 1997 for a coastal development permit. As a consequence of the public hearing process before the Orange County Zoning Administrator, the project was revised. Significant project revisions included: relocating the fence along Outer Bolsa Bay to conform to the fifty foot blufftop setback policy, relocating the fence along the southerly boundary to provide a five foot wide temporary trail to accommodate interim public access, and authorizing the possible widening of vehicular access roads by the applicant on the southerly boundary if necessary to accommodate vehicles. Following the County's decision to issue a coastal development permit on May 15, 1997 this permit was appealed to the Commission on June 24, 1997 by the Bolsa Chica Land Trust and Commissioners Wan and Pavley.

On August 12, 1997 the Commission heard the appeals. The Commission found substantial issue and continued the De Novo hearing. During the De Novo hearing the project applicant orally modified the project description to conform to the fifty foot development setback and to raise the bottom of the fence a minimum of six inches to allow for wildlife migration. In September the oral project modification was followed up with a written confirmation. The Commission continued the De Novo hearing to the October Commission meeting so that staff could address the three questions raised by the Commissioners at the August hearing. The three questions are: 1) impact of the fence on animal migration, 2) maintenance of the fence, and 3) geologic stability.

On August 18, 1997 the Executive Director issued an Emergency Permit to relocate approximately 200 linear feet of the fence along the Bolsa Chica Mesa facing the Ecological Reserve to conform to the fifty foot development setback. The fence relocation was completed on August 22, 1997 (see attached letter at the back of the staff report as Exhibit 4.

#### **B. ADOPTION OF SUBSTANTIAL ISSUE FINDINGS**

The findings and declarations on substantial issue are herein incorporated by reference.

#### **C. STANDARD OF REVIEW**

The County of Orange, prior to June 4, 1997, had a certified Local Coastal Program for Bolsa Chica. Normally the certified LCP would serve as the standard of review since Section 30604(b) of the Coastal Act states that "*After certification of the local coastal*

*program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program."* However, on June 4, 1997 the Superior Court set aside the certification of the Bolsa Chica LCP and required that the Commission reconsider its certification in light of the judge's decision.

On October 9, 1997 the Commission approved the Bolsa Chica LCP with suggested modifications that responded to the judge's ruling. However, the Orange County Board of Supervisor's has not yet acted on the Commission's suggested modifications which means that certification of the LCP is not yet effective. Certification of the LCP will become effective when the Orange County Board of Supervisor's approval is reported to the Commission by the Executive Director. Therefore, evaluation of the proposed project will be based on the California Coastal Act. The Bolsa Chica LCP will still be used as guidance by the Commission for evaluating the proposed development.

Additionally, Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea shall include a specific finding that the development is in conformity with the public access policies of Chapter 3 of the Coastal Act.

**D. CONFORMANCE WITH THE ESHA POLICIES OF THE COASTAL ACT  
AND THE DEVELOPMENT SETBACK POLICIES OF THE BOLSA  
CHICA LOCAL COASTAL PROGRAM**

In the substantial issue hearing, the Commission found that the fence was inconsistent with Land Use Policy 6.2.22 for the following reasons. First, the Commission found that since the fence would be permitted for an indefinite period of time, possibly in excess of ten years, that it constituted permanent development inconsistent with the uses allowed within the development setback area. Second, the Commission found that the fence as approved by the County did not replicate the public access plan approved by the Commission for Bolsa Chica.

Section 30240 of the Coastal Act mandates the protection of environmentally sensitive habitats. This section of the Coastal Act was also the basis for the Commission adding Land Use Policy 6.2.22 to the Bolsa Chica LCP. Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent*

*impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The fence as original proposed by the applicant to the County of Orange would have been located adjacent to environmentally sensitive habitat and recreational areas. The Commission found substantial issue with the permit issued by the County of Orange on August 12, 1997 and then initiated the De Novo hearing. At the De Novo hearing the applicant subsequently orally modified the project to comply with the fifty foot blufftop development setback and to raise the base of the fence a minimum of six inches above the ground. The applicant submitted written modification to the project description consistent with the oral change.

Additionally, at the Commission's August 1997 Commission meeting the question of the impact of the fence on wildlife migration was raised. Chain link fences, since they constitute a physical barrier, can have an adverse impact on wildlife habitat values. Adverse impacts on wildlife habitat is inconsistent with Section 30240 of the Coastal Act.

During the course of preparing the Bolsa Chica Local Coastal Program, the County of Orange prepared an Environmental Impact Report for Bolsa Chica. The "1996 Recirculated Draft Environmental Impact Report # 551 (SCN: 93-071064)" reviewed the presence of terrestrial wildlife over the entire Bolsa Chica ecosystem. The DEIR does not document the presence of large terrestrial mammals. The DEIR does acknowledge the presence of cottontail rabbit, opossum, striped skunk, coyote, long-tailed weasel, and the red fox. The DEIR notes that the red fox is considered an invasive non-native species and that the coyote is considered an important meso-predator regulator. As such the coyote is an effective biological means of controlling the red fox population.

The DEIR did not document the presence of any sensitive mammals on the Mesa. The DEIR acknowledges the presence of sensitive reptiles, amphibians, and birds throughout the whole Bolsa Chica ecosystem. The fence would have minimal impact on reptiles and amphibians taking into account their small size. The fence would have minimal impact on birds considering their ability to fly.

The findings of the DEIR concerning terrestrial animals is consistent with a field study conducted in February 1990 by C. Robert Feldmeth for CDP 5-90-1143 for the demolition of the two gun emplacements on the Mesa. Dr. Feldmeth as a consequence of his field investigation concluded that no plant or animal species listed by State or Federal government were on the property. Two sensitive species, based on habitat characteristics, could be present. These two species are the San Diego horned lizard and the burrowing owl. Dr. Feldmeth observed five species of mammals which included the: black-tailed hare, Audubon's cottontail, California ground squirrel, Botta pocket gofer, and the coyote.



Additionally, EIP Associates evaluated the fence project in terms of its potential impacts to wildlife in September 1997. The letter concludes that the installation of a chain link fence, raised a minimum of six inches above the ground, would not impede the movement of small mammals such as coyotes, rabbits and squirrels and that the fence may discourage the movement of the red fox. However, this adverse impact is not considered significant since the red fox is considered a predator to the federally listed tern, elegant tern, and western snowy plover. The coyote, as mentioned previously, controls the population of the red fox. As such the presence of the coyote is considered biologically beneficial. A copy of the letter is attached as Exhibit 6. Based on the biological information provided, the impacts of the fence on the terrestrial animals can be minimized by requiring that the applicant raise the level of the bottom of the fence to a sufficient height to allow the terrestrial animals to pass underneath it.

The Commission recognizes that fencing is a physical barrier and that the fencing must be designed to minimize the adverse impacts that the project would have on animal migration, recreational opportunities, and that it be properly maintained. As a consequence, the Commission finds it necessary to impose special conditions to ensure that the fence be: constructed in such a manner that it would not significantly impede the movement of the mammals located on the Mesa by requiring that the base of the fence be six inches above the ground, that it be properly maintained, that it avoid Warner Pond, that it be removed one year after the approval of this permit (if mass grading of the Mesa has not been initiated), that the fence will be aligned along the eastern portion of the property line to assure pedestrian access to the bluff edge from Los Patos Avenue, and that the fence be setback a minimum of fifty feet along the entire bluff edge and that any vegetation obstructing public access be removed so that the current public recreational use of the site can remain on the blufftop.

In the case of Warner Avenue Pond, the applicant (at the time the coastal development permit was applied for with the County of Orange) submitted plans which showed the proposed fence avoiding Warner Avenue Pond. Based on the drawings the fence ranges from approximately thirty feet to nearly ninety feet in distance from the pond. At the Commission hearing on October 9, 1997 the Commission approved the Bolsa Chica LCP with a 100 foot buffer around Warner Avenue Pond. The proposed fence is compatible with the 100 foot buffer as it has been designed to allow the movement of small animals, the fence is temporary in nature as it will be removed within one year and would allow public access to the pond. To assure that the wetland values of Warner Avenue Pond are not adversely impacted the Commission is requiring that the temporary fence, in the vicinity of Warner Avenue Pond, conform to the submitted drawings that were received on June 27, 1997 by Commission staff that were prepared by FORMA showing that the fence will avoid Warner Avenue Pond and will be setback thirty to ninety feet from the pond.

These special conditions will alleviate the potential that long term development inconsistent with the buffer and public access policies of the LCP and Section 30240 of the Coastal Act would occur (i.e. a fence remaining on-site for an indefinite period of

time). Only as conditioned to minimize impacts on both wildlife and ESHA resources does the Commission find that the proposed fence is consistent with Section 30240 of the Coastal Act regarding development adjacent to environmentally sensitive habitat areas and recreation areas, and the buffer policies of the Bolsa Chica Local Coastal Program.

### ***E. Geologic Stability***

Section 30253 of the Coastal Act states that new development shall: 1) assure stability and structural integrity; 2) neither create nor contribute significantly to erosion geologic instability, or destruction of the site or surrounding area; and shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. To minimize the adverse impacts of development on geologic stability, the development should be set back from bluff edges. The purpose of a development setback is to minimize both the potential to create a geologic hazard and to protect a proposed structure from damage due to slope failure. Construction adjacent to slopes has the potential to accelerate erosion or to induce slope failure. For example, development adjacent to bluffs can alter drainage patterns and if flows are directed to the bluff edge accelerated erosion often results. Portions of the proposed temporary fence are adjacent to bluffs at Bolsa Chica. Therefore there is potential that the fence could have an adverse impact on bluff stability especially if allowed to remain in place for an extended period of time. The applicant has not prepared a geotechnical report which addresses the impact of the fence on bluff stability, but did agree at the August 12, 1997 Commission hearing to conform to the fifty foot development setback required by land use policy 6.2.22 of the Bolsa Chica LCP.

The fence is a temporary structure which has been conditioned to be removed after one year. Additionally, land use policy 3.3.2.10 of the Bolsa Chica LCP contemplates that the bluff will be remedially graded for stabilization of anticipated residential development on the Mesa. The temporary nature of the fence and compliance with the fifty foot development setback will minimize any adverse impacts to bluff stability. Only as conditioned can the Commission find the project consistent with the Section 30253 of the Coastal Act regarding the geologic stability and with the development setback provisions of the Bolsa Chica Land Use Plan.

### ***F. PUBLIC ACCESS***

Sections 30210 through 30214 of the Coastal Act mandate that maximum access be provided for all the people of the State of California. Since this project is between the first public road and sea the access policies of the Coastal Act apply to this project. Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30115 of the Coastal Act defines "sea" to include "harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean". The Bolsa Chica wetlands adjacent to the site are subject to tidal action of the Pacific Ocean. Consequently, although the subject site is not between the first public road and the Pacific Ocean, it is between the first public road and the "sea" as that term is defined in the Coastal Act. Therefore, any proposed development in the area must be found consistent with the public access policies of the Coastal Act.

During staff visits to the site, members of the public have been observed walking on the site. Members of the public have also indicated that they have used the area for walking, jogging, bicycling, and bird watching. Aerial photographs indicate an established trail along the blufftop facing both Outer Bolsa Bay and the EGGW Channel as well as other trails throughout the Mesa. Public use of the Mesa may consequently be substantial. Only a court of law can determine whether or not public rights of implied dedication actually exist. The Commission dealt with the issue of the appropriate level of public access for the Mesa area when it approved the LCP. The LCP public access program provides for extensive public access including a park and trail system. Part of the trail system is along the entire bluff edge. Another portion of the trail system provides for public access from Warner Avenue to the bluff edge and along a future public road. There will also be local public streets on the Mesa that are included in the bicycle trail system.

To maintain public access as specified in public access policies of the Coastal Act and as proposed in the Bolsa Chica LCP the Commission finds that it is necessary to impose two related special conditions. The first special condition requires that the temporary fence be constructed along a fifty foot setback from the bluff edge to maintain access on a temporary basis. Additionally that public access be provide from Los Patos Avenue to the Bolsa Chica Mesa blufftop along KREG's easterly property line and from Warner Avenue along the westerly property line. Further, the Commission also recognizes that future construction activity will be occurring on the Mesa in the form of mass grading. To minimize the impact of construction activity on public access a second special condition is being imposed. This special condition states that if grading is not initiated within one year, the fence will be removed.

Imposing these special conditions resolves the potential that long term development not in compliance with the public access plan contained in the Bolsa Chica LCP would be allowed. The LCP contemplates internal access through the site in the form of a public park and a public road. Allowing the temporary fence to remain for an indefinite period of time would not comply with the public access plan of the Bolsa Chica LCP.

Only as conditioned does the Commission find that the proposed temporary fence is consistent with the Coastal Act regarding public access and implementation of the public access policies of the Bolsa Chica Local Coastal Program.

#### **G. STATE LANDS REVIEW**

The Koll Real Estate Group property on the Bolsa Chica Mesa is bordered in part by State Lands. The fence, as conditioned by the Commission, is proposed to be located within the property boundary of the Koll Real Estate Group. The fence plans submitted by the Koll Real Estate Group do not show the property line between the Koll Real Estate Group and State Lands. Consequently the relationship of the fence to the property line is unknown. Section 30601.5 of the Coastal Act requires that an applicant for a proposed project must demonstrate a legal right, interest, or other entitlement to use the property. To assure that the proposed fence, as conditioned by the Commission, is in compliance with Section 30601.5 of the Coastal Act, the Commission finds that the applicant must have the project reviewed by the State Lands Commission.

#### **H. LOCAL COASTAL PROGRAM**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act. The Commission on October 9, 1997 approved the Bolsa Chica LCP. However, final certification is pending based on the adoption of the Commission's suggested modifications by the Orange County Board of Supervisors and the Executive Director's reporting of the Orange County Board of Supervisors adoption to the Commission.

The proposed fence, as conditioned to be removed within one year, is a temporary structure. The temporary fence has been conditioned to minimize impacts to wildlife movement, minimize impacts to public access, and to minimize adverse impacts to habitat by raising the bottom of the fence, avoiding Warner Avenue Pond, setting the development back from the bluff edge, and requiring that the fence be removed after one year. Impacts to public access will be minimized by requiring that the fence be setback fifty feet from the bluff edge, that vegetation obstructing public access be identified and removed, and that public access be provided along the eastern portion of the applicant's property line from Los Patos to the bluff edge. With these conditions the temporary fence is consistent with policies of the Bolsa Chica LCP. The proposed development, as conditioned by the Commission, will not create adverse impacts on coastal access or coastal resources under Chapter 3 of the Coastal Act. Therefore the Commission finds that approval of the project will not prejudice the County's ability to prepare a Local Coastal Program for Bolsa Chica.

**I. UNPERMITTED DEVELOPMENT**

Without benefit of a coastal development permit, the applicant has undertaken partial construction of the fence along the Bolsa Chica Mesa Perimeter. Coastal Commission staff confirmed the presence of the partially constructed fence on April 22, 1997 through a site visit. Coastal Commission staff contacted both the County of Orange and the Koll Real Estate Group to advise them that a coastal development permit would be required. On April 22, 1997 Koll Real Estate Group filed an application for a coastal development permit with the County of Orange.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The Bolsa Chica Local Coastal Program was used as guidance by the Commission in reaching its decision. In evaluating the proposed development, the Commission found that the proposed development, as submitted, was inconsistent the policies of the Coastal Act and with Land Use Policy 6.2.22 of the Bolsa Chica LCP. To bring the project into conformance with the ESHA and public access policies of the Coastal Act and with the buffer and public access policies of the Bolsa Chica LCP the project has been conditioned to have the fence setback fifty feet from the edge of the bluff to promote public access and minimize adverse impacts to wildlife habitat, to raise the bottom of the fence, and to impose a time frame for the removal of the fence.

Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. The Commission may take action at a future date with respect to the removal of the unpermitted development and/or restoration of the site.

**J. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the resource protection and public access policies of the Coastal Act. Mitigation measures which include: compliance with the development setback guidelines, maintenance of public access, and State Lands review will minimize all adverse impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may

have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **EXHIBIT 1**

**COPY OF ORANGE COUNTY COASTAL DEVELOPMENT PERMIT PA-97-0065**

**ATTACHMENT A**

**Findings**

(As Approved by Zoning Administrator on May 15, 1997)

The Orange County Zoning Administrator hereby finds:

- I. The project is consistent with the objectives, policies, general land uses and programs specified by the General Plan adopted pursuant to the State Planning and Zoning Laws.
- II. The project, subject to the specified conditions, is consistent with the provisions of the Orange County Zoning Code.
- III. That Final EIR 551, previously certified on June 18, 1996, satisfies the requirements of CEQA and is approved as a Program EIR for the proposed project based upon the following findings:
  - a. Based on the Initial Study, it is found that the EIR serves as a Program EIR for the proposed project; and
  - b. The approval of the previously certified Final EIR for the project reflects the independent judgment of the Lead Agency.
- IV. The location, size, design and operating characteristics of the project will not create unusual noise, traffic or other conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.
- V. The project will not result in conditions or circumstances contrary to the public health and safety and the general welfare.
- VI. The development project proposed by the application conforms with the certified Bolsa Chica Local Coastal Program.
- VII. The project will not deter the public access and public recreation policies of the California Coastal Act.
- VIII. The approval of this application will result in no modification to the requirements of the certified Bolsa Chica Local Coastal Program Land Use Plan.

**EXHIBIT No. 1**

Application Number:

**A-5-BLC-97-188**



California Coastal  
Commission



CONST DETAIL

6. Approval of this application constitutes approval in accordance with Condition #10 for the construction of an exterior security fencing around the Bolsa Chica Mesa undeveloped area. Said fence will be allowed to remain in place until the completion of grading and construction. Notwithstanding the proposed plan, upon the issuance of building or grading permits, the fence may be relocated to encompass the footprint of those construction activities. Additional temporary interior fencing of future construction related activities may be installed to a maximum six (6) feet in height subject to review and approval of the Manager, Land Use Planning.

7. HP HP G

ARCHAEO SURVEY

Prior to the issuance of any building permit or construction of any fence, the applicant shall provide a brief report prepared by a County certified archaeologist that reviews and maps the juxtaposition of archaeological deposits and the fence posts and, where needed, as determined in the report and approved by the Manager Coastal and Historical Facilities, a County certified archaeologist shall observe any earth-disturbing activity (such as post hole digging) and monitor for potential archaeological impacts.

8. BP BP B

CONST NOISE

Prior to the beginning of any drilling or construction activities, the project proponent shall produce evidence acceptable to the Manager, Building Permit Services, that: All Construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control). Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

9. Notwithstanding the proposed plan, prior to construction of the fence or the issuance of any building or grading permit, within the fenced area, the developer shall provide access plans and specifications meeting the approval of the Manager, Building Permit Services, that the design of the proposed entrances to the site are adequate to serve the proposed use and will provide suitable construction and emergency access.
10. Notwithstanding the proposed plan, prior to the construction of any fence, the applicant shall submit revised plans to the Manager, Land Use Planning for review and approval. Said plans shall denote the following:
- A. Relocate the fence along the westerly boundary adjacent to the State Ecological Reserve so as to provide for a minimum 50 foot setback from the bluff edge.

MINUTES

ORANGE COUNTY ZONING ADMINISTRATOR HEARING - May 15, 1997

ZONE TAPE NO.: ZA0B6  
ZA0B5

RECORDING INDEX: 00:00-E.O.T. TIME: 2:06  
32:28-E.O.T.

ITEM 1.: PUBLIC HEARING: - Coastal Development Permit No. PA97-0065, EIR 551, of Bolsa Chica LCP Project.

The Zoning Administrator introduced the project.

Planner IV Fong gave the staff presentation. She stated that the project site is located within the certified Bolsa Chica Local Coastal Program (LCP) area and is zoned residential. She noted that the project site is currently vacant but historically subjected to oil fields and agricultural activities.

Ms. Fong stated that the applicant (Koll Real Estate Group) is requesting the placement of a pre-construction chain link security fence around the perimeter of the Bolsa Chica Mesa development area. Ms. Fong stated that the applicant is also requesting that the proposed CDP include any additional future chain link fencing with a six (6) foot maximum height within the perimeter. She noted that the reason for this interior fencing was future site-specific security requirements (e.g. oil well abandonment, water well testing etc.) She stated that the fencing is requested to provide protection for interim land uses, preliminary grading and borrow site activity, removal of oil operations, geotechnical investigations, surveying, water well drilling, infrastructure evaluations and archaeological/paleontological investigations. Ms. Fong stated that the chain link fence will be approximately 7 feet in height with three access gates proposed at selected points around the perimeter.

Ms. Fong stated that the proposed temporary use is consistent with the existing certified LCP which designates the site for residential development. She stated that the use could allow the construction of chain link fences to provide for public safety and site security prior to and during development of the site. She noted that the fenced area will be kept locked during drilling, testing and future home building and other construction activity.

Ms. Fong stated that it was staff's opinion that the implementation of project design features proposed by the applicant and the Conditions of Approval will provide sufficient protection to ensure public safety and minimize any hazards from construction. She stated that staff is recommending approval of the proposed project.

2:10 P.M.: The Zoning Administrator opened the public hearing.

Ed Mountford, representing Koll Real Estate Group stated he agreed with the staff report and was available to answer questions.

Mr. Neely noted that a portion of the fence had already been erected. He asked why the fencing on the Bolsa Mesa had occurred apparently without benefit of the necessary Coastal Development Permit.

He stated that while Koll did put up the fence without benefit of permits, they were apparently misled by County staff. He noted that Koll did stop work when they were notified by the County. Mr. Neely agreed that the fence is not set back the required 50 feet from the bluff edge in one location along the westerly boundary adjoining the State Ecological Reserve.

Mr. Neely stated that he had reviewed the Terrestrial Biology Section 4.8 of EIR 551 and confirmed that there are no sensitive plants or animals located within the fenced area. He discussed the mitigation measures as listed in EIR 551 to address the upland area. He noted that the habitat to be contained by the fence consisted of non-native grassland and ruderal vegetation. The fence would encompass a eucalyptus grove that had been identified as a nesting site for raptors. EIR 551 called for mitigation of the ultimate removal of the eucalyptus trees by off-site replacement at Harriett Wieder Regional Park.

He stated that the EIR specifically addressed the need to preserve mammal movement around the perimeter of the mesa development area to connect with the lowland and wetland areas. The principal movement to be addressed was the need for Coyotes to move freely in order to provide effective control of meso-predators (red fox/domestic cats, etc.) which might prey upon endangered lowland or wetland species. He pointed out that the EIR anticipated that suitable connectivity would be maintained around the perimeter of the mesa residential area once the development was complete.

Mr. Neely stated that EIR 551 recognized a linkage between upland and lowland habitats. However, the EIR pointed out that the ecological value of the upland area (exclusive of the raptor nesting sites) had been greatly reduced by substantial historic disturbances. He noted the EIR had concluded that historic disturbance and isolation from outlying natural habitats had rendered the loss of upland habitat associated with the ultimate mesa development to be insignificant.

He stated that EIR 551 identified trail activities near the wetlands as potentially significant impacts, particularly the presence of humans and dogs. The EIR indicated that fences or barriers might need to be erected between the upland and lowland areas so as to mitigate that impact.

Mr. Neely concluded that the biological impacts of the proposed perimeter fencing were similar to those that might result from the ultimate mesa development with respect to small mammal movement.

He further concluded that, since the proposed fencing retains the same wildlife movement corridors contemplated by the EIR, there would not be a significant impact. Similarly, since the fence did not impede the use of the eucalyptus trees for raptor nesting, that aspect of the project did not present significant impacts.

He stated that the fencing along the western edge needs to be set back at least 50 feet from the bluff edge. Mr. Neely noted that this fence is temporary and that construction is usually accompanied by perimeter fencing.

He pointed out that the concerns regarding the aesthetics of the fence needed to be viewed in the context of the temporary nature of the fence. Mr. Neely recognized that security requirements should be balanced with aesthetic needs.

Mr. Neely added a new Condition #10 to read as follows:

10. Notwithstanding the proposed plan, prior to the construction of any fence, the applicant shall submit revised plans to the Manager, Land Use Planning for review and approval: Said plans shall denote the following
  - A. Relocate the fence along the westerly boundary adjacent to the State Ecological Reserve so as to provide for a minimum 50 foot setback from the bluff edge.
  - B. Relocate the fence along the southerly boundary adjacent to the pocket wetland so as to provide a 5 foot wide temporary trail to accommodate interim public access prior to commencement of construction activities.
  - C. Add a note to the plan to indicate that barbed wire is not to be installed on the northerly section of fences along Los Patos from Marina View to the private driveway extension of Bolsa Chica St., unless the applicant provides evidence to the Manager, Land Use Planning that that section of fence along Los Patos has been breached by trespassers.

Mr. Mountford stated he had no objections to modifications of Conditions #6 and #9, but was concerned with Condition #10. He stated that if the fence is set back 6 feet from the edge of the pocket wetland, it would impede vehicle access along the the interior of the fence. Mr. Mountford suggested a 3 foot setback.

Mr. Neely responded that 3 feet would not be enough to provide public access. He stated that if the setback didn't allow sufficient vehicle access, the applicant might need to widen a portion of the access road by a few feet to provide minimal vehicular access. Mr. Neely stated he would reduce the setback from 6 feet to 5 feet.

Mr. Neely reopened the public hearing.

Mr. Mountford concurred with the revision.

Ms. Geier-Lahti stated that if the fence is temporary, then a time limit should be established as to when the fence must be removed. She requested a clarification of the time limit.

Mr. Neely explained that the fence would serve for pre-construction and construction related security. He stated that some portions of the fence would be moved or relocated when construction begins. He noted that the fence will remain in some locations until construction is complete. Mr. Neely explained that Koll will have to apply for Coastal Development Permits for the residential development, and since those plans would show permanent fencing, any fencing not identified on the Coastal Development Permit would need to be removed.

Ms. Geier-Lahti asked how residents will access the future park site that Koll is required to build if there is a fence.

## **SUBSTANTIVE FILE DOCUMENTS: EXHIBIT 2**

1. Bolsa Chica Local Coastal Program
2. Bolsa Chica Local Coastal Program Staff Report, Revised Findings of June 12, 1997
3. County of Orange, Coastal Development Permit Application PA-97-0065
4. County of Orange, Staff Report on Coastal Development Permit Application PA-97-0065
5. County of Orange, Initial Study for Coastal Development Permit Application PA-97-0065 dated May 7, 1997
6. County of Orange, Minutes of the Zoning Administrator Hearing of May 15, 1997
7. County of Orange, Notice of Final Decision, dated June 2, 1997
8. Superior Court of the State of California, County of San Diego, Statement of Decision (Case No. 703570) Concerning the Bolsa Chica land Trust, Huntington Beach Tomorrow, Shoshone-Gabrielino Nation, Sierra Club, and Surfrider Foundation versus the California Coastal Commission, dated June 4, 1997
9. Coastal Development Permit 5-93-060 issued by the Coastal Commission
10. Coastal Development Permit 5-90-1143 issued by the Coastal Commission
11. Emergency Coastal Development Permit A-5-BLC-97-188-G issued by the Coastal Commission

## **SUBSTANTIVE FILE DOCUMENTS: EXHIBIT 2**

1. Bolsa Chica Local Coastal Program
2. Bolsa Chica Local Coastal Program Staff Report, Revised Findings of June 12, 1997
3. County of Orange, Coastal Development Permit Application PA-97-0065
4. County of Orange, Staff Report on Coastal Development Permit Application PA-97-0065
5. County of Orange, Initial Study for Coastal Development Permit Application PA-97-0065 dated May 7, 1997
6. County of Orange, Minutes of the Zoning Administrator Hearing of May 15, 1997
7. County of Orange, Notice of Final Decision, dated June 2, 1997
8. Superior Court of the State of California, County of San Diego, Statement of Decision (Case No. 703570) Concerning the Bolsa Chica land Trust, Huntington Beach Tomorrow, Shoshone-Gabrielino Nation, Sierra Club, and Surfrider Foundation versus the California Coastal Commission, dated June 4, 1997
9. Coastal Development Permit 5-93-060 issued by the Coastal Commission
10. Coastal Development Permit 5-90-1143 issued by the Coastal Commission
11. Emergency Coastal Development Permit A-5-BLC-97-188-G issued by the Coastal Commission

## CALIFORNIA COASTAL COMMISSION

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

## EMERGENCY PERMIT



TO: Signal Bolsa Corp/Signal Co. Inc.  
4400 MacArthur Blvd., Suite 300  
Newport Beach, CA 92660

18 August 1997  
Date

A-5-BLC-97-188-G  
(Emergency Permit No.)

Bolsa Chica Mesa, along the western bluff edge, Bolsa Chica, Orange County  
Location of Emergency Work

Relocate approximately 200 linear feet of a 7 foot high chain link fence so  
that the fence is setback a minimum of fifty (50) feet from the bluff edge.

## Work Proposed

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of bluff erosion requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) As conditioned the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

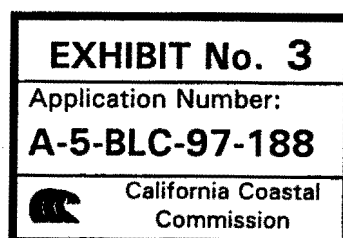
The work is hereby approved, subject to the conditions listed on the reverse.

Very Truly Yours,

Peter M. Douglas  
Executive Director

By: Jeresa Henry

Title: District Manager





Koll  
Real Estate  
Group

RECEIVED  
AUG 29 1997

CALIFORNIA  
COASTAL COMMISSION

August 25, 1997

Chuck Damm, South Coast District Director  
California Coastal Commission  
200 Ocean Gate 10th Floor  
Long Beach, Ca. 90802-4302

Dear Chuck,

I am writing to notify you that the relocation of the chain link fence on the west side of the Bolsa Chica Mesa was completed on August 22nd in accordance with permit #A-5-BLC-97-188-G. The fence has been moved back (easterly) to a minimum of 50 feet from the westerly edge of the mesa near Outer Bolsa Bay.

Thank you for your staff's cooperation in issuing the necessary permit in an expeditious manner. If you have any questions regarding this matter or would like to inspect the completed work please call me at (714) 477-0874.

Sincerely,

KOLL REAL ESTATE GROUP

Ed Mountford  
Vice President

<b>EXHIBIT No. 4</b>
Application Number: <b>A-5-BLC-97-188</b>
 California Coastal Commission

4400 MacArthur Boulevard  
Suite 300  
Newport Beach, CA 92660  
(714) 477-0873  
FAX (714) 476-2075



KOLL

KOLL  
Real Estate  
Group

September 18, 1997

Chuck Damm, South Coast District Director  
**CALIFORNIA COASTAL COMMISSION**  
200 Ocean Gate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4302

Dear Chuck:

I am writing to notify you that the relocation of the chain link fence on the west side of the Bolsa Chica Mesa was completed on August 22<sup>nd</sup> in accordance with permit #A-5-BLC-97-188-G. The fence has been moved back (easterly) to a minimum of 50 feet from the westerly edge of the mesa near Outer Bolsa Bay.

With respect to our pending permit application to complete the remainder of the fence, we concur with staff's recommendation of a 50 foot setback along the south-facing edge of the Bolsa Chica Mesa. We also agree to raise the bottom of the fence so rodents and other small animals can move through the area unobstructed.

Thank you for your staff's cooperation in issuing the necessary permit in an expeditious manner. If you have any questions regarding this matter or would like to inspect the completed work, please call me at (714) 477-0873.

Sincerely,

**KOLL REAL ESTATE GROUP**

*Ed Mountford*  
Ed Mountford  
Vice President

EM:jm

**EXHIBIT No. 5**

Application Number:

**A-5-BLC-97-188**



California Coastal  
Commission

4400 MacArthur Boulevard  
Suite 300  
Newport Beach, CA 92660  
(714) 477-0873  
FAX (714) 476-2075



E I P Associates

Comprehensive  
Environmental and  
Planning Services

13831 Roswell Ave.  
Suite D  
Chino, CA 91710

909/590-2116  
FAX 590-1937

Other Offices:  
San Francisco  
Sacramento  
Manhattan Beach

**MEMORANDUM**

**TO:** Mr. Chuck Damm, California Coastal Commission

**FROM:** Terri S. Vitar, EIP Associates *TSV*

**DATE:** September 10, 1997; revised September 11, 1997

**SUBJECT:** BIOLOGICAL OPINION REGARDING INSTALLATION OF FENCE MATERIAL  
ALONG THE BOLSA CHICA MESA

**RECEIVED**  
SEP 15 1997  
CALIFORNIA  
COASTAL COMMISSION

We have completed our review of The Koll Real Estate Group's proposal to install chain link fencing (raised six inches above the ground surface) along the Bolsa Chica Mesa and offer the following comments:

- The installation of chain link fencing, raised a minimum of six inches above the ground surface, allows the unimpeded movement of small to medium-sized mammals, including coyote, rabbits, squirrels, lizards, snakes, and possums. All of these species are common on the Bolsa Chica Mesa. There are no sensitive terrestrial species known to occur within, or to substantially use, the mesa.
- The type of fencing proposed also allows the movement of undesirable species, such as domestic cats or small dogs. However, the movement of these undesirable species would also occur if the fence were not installed.
- Installation of the fence may discourage the movement of the red fox, which is considered a predator to the federally and state listed least tern, elegant tern, and western snowy plover. All of these bird species nest in the Bolsa Chica lowlands and have historically been subject to the extensive and undesirable predation by the red fox. In addition, the red fox was recently observed in the vicinity of the Bolsa Chica Mesa during the week ending September 5, 1997 by Michael Brandman Associates' biologists.
- In our opinion, installation of the fence material (as described above) would not contribute to a significant biological impact, either by the direct loss of any species, the indirect loss of any species, or by indirect harm caused by impeded wildlife movement opportunities, decreased foraging opportunities, or decreased nesting opportunities.

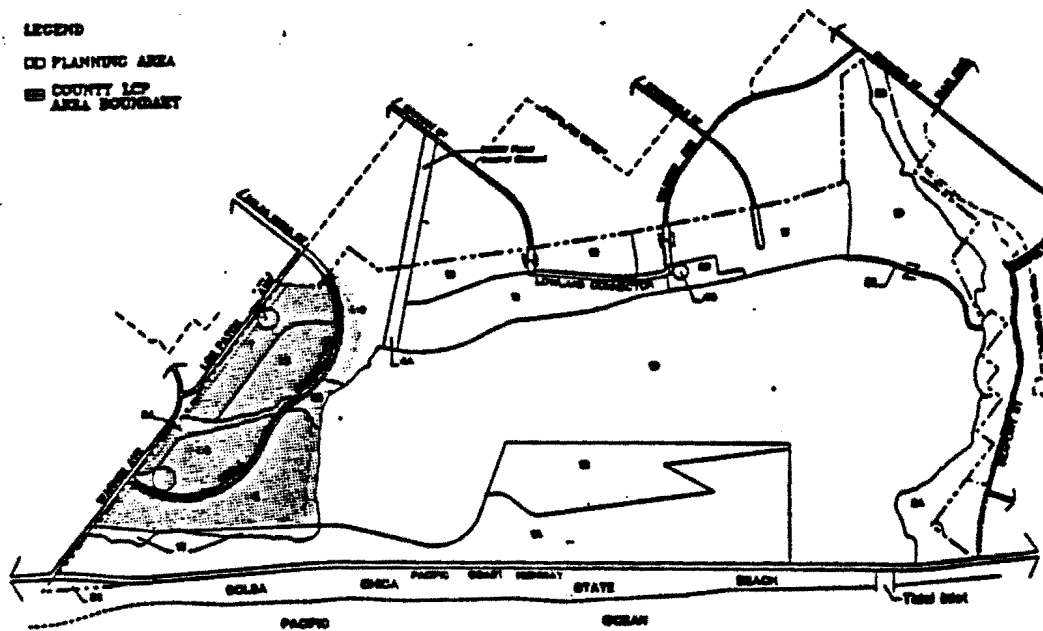
If you have any questions, please do not hesitate to contact Terri Vitar at EIP Associates at 310-937-1580.

cc: Ed Mountford, The Koll Real Estate Group

<b>EXHIBIT No. 6</b>
Application Number: <b>A-5-BLC-97-188</b>
 California Coastal Commission

## Location of Project

LEGEND  
 --- PLANNING AREA  
 --- COUNTY LCP  
 --- AREA BOUNDARY



**EXHIBIT No. 7**

Application Number:

**A-5-BLC-97-188**



California Coastal  
 Commission



# Amigos de Bolsa Chica

P.O. Box 3748, Huntington Beach, CA 92605-3748 • (714) 897-7003

September 22, 1997

RECEIVED  
SEP 23 1997

CALIFORNIA  
COASTAL COMMISSION

CALIFORNIA COASTAL COMMISSION  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Re: October 7, 1997 Agenda Item #15(f)  
BOLSA CHICA FENCE

Dear Commissioners:

Amigos de Bolsa Chica has been the primary advocate for the public access, acquisition, restoration and protection of the Bolsa Chica Wetlands for over 22 years.

We appreciate your positive response to our request that the public's right of access to this valuable environmental and recreational resource not be impeded before, during or after any construction activity on the Bolsa Chica Mesa, as reflected by the action taken at your August 12, 1997 meeting. We encourage you to maintain that position.

It is important that a minimum 50 foot setback be maintained and that trails allowing the public to walk along the wetlands remain open and available for use.

We are confident that the State can manage problems such as illegal camping and dumping by implementing appropriate regulations and without interfering with the public's access.

Thank you for your action in support of the public's use and enjoyment of the Bolsa Chica.

Sincerely,

*Tom Livengood / lw*

TOM LIVENGOOD  
President

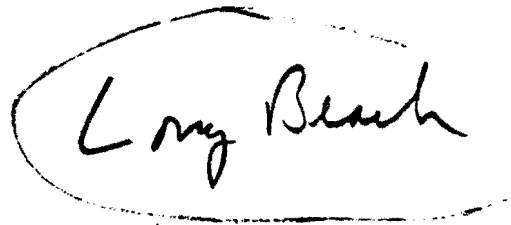
EXHIBIT No. 9

Application Number:

A-5-BLC-97-188



California Coastal  
Commission



Sept.28,1997

Re: A-5-BLC-97-188

Dear Commissioners:

I hope that you realize that the Koll Real Estate Group (KREG) has not complied in a friendly or caring manner in removing the fence which they put up without a permit. The fence is at some points along the westerly direction not fifty feet from the property line but JUST BARELY fifty feet at some points from the bluff edge. They have left barbed wire, chunks of cement and other impediments in the path where the public can get hurt walking on the bluff. Last Saturday, Sept.20th, I was working on the mesa planting plants along the path from Warner Ave. to the Observation Point I witnessed these violations first hand.

I wish that it were convenient for each of you commissioers to walk on this path. It is really a beautiful experience and you would see for yourself. this callous disregard for public safety on KREG's part..

Sincerely,

Eileen Murphy

201 21st Street

H.B. CA 92648

RECEIVED  
SEP 30 1997

CALIFORNIA  
COASTAL COMMISSION

**EXHIBIT No. 10**

Application Number:

**A-5-BLC-97-188**California Coastal  
Commission

Sept. 28, 1997

Dear CCC:

Re: A-5-BLC-97-188:

We are very opposed to the seven foot high chain link "pre-construction" security <sup>fence</sup> around the perimeter of the Bolsa Chica mesa for several reasons:

1) there shouldn't be any construction on the mesa;

2) the fence is a hazard to the animals that use the wetlands as habitat.

Please oppose the fencing. Thank you! Sincerely,  
Mr. & Mrs. J.L. Denison

EXHIBIT No. 11
Application Number:
A-5-BLC-97-188
California Coastal Commission



Koll  
Real Estate  
Group

September 29, 1997

Mr. Chuck Damm, South Coast District Director  
**CALIFORNIA COASTAL COMMISSION**  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802

RECEIVED  
OCT 6 1997

CALIFORNIA  
COASTAL COMMISSION

RE: Bolsa Chica Fence Permit -  
October 7<sup>th</sup> Agenda - Item 15A

Dear Mr. Damm:

The purpose of this letter is to request a continuance of the Bolsa Chica Fence Permit item to the Commission's November 1997 meeting. It appears more appropriate to consider this permit in view of the Commission's action on the Bolsa Chica LCP on October 9<sup>th</sup>.

I appreciate your consideration of this request.

Sincerely,

KOLL REAL ESTATE GROUP

Ed Mountford  
Vice President

EM:jm



4400 MacArthur Boulevard  
Suite 300  
Newport Beach, CA 92660  
(714) 477-0873  
FAX (714) 476-2075

