

CALIFORNIA COASTAL COMMISSION

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Hearing Date: August 12, 1997
Commission Action:

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE AND DE NOVO

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

LOCAL GOVERNMENT: County of Orange

DECISION: Approval with special conditions.

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 and any additional future fencing within the proposed perimeter necessary for future site specific fencing requirements. The chain link fence will be approximately seven feet in height with three access gates proposed at selected points around the perimeter. A portion of the fence facing the East Garden Grove Wintersburg Channel will be at the base of the Mesa. The gates would permit the landowner to have vehicular access to the site through existing roads.

APPELLANTS: Bolsa Chica Land Trust, Commissioner Wan, and Commissioner Pavley

SUBSTANTIVE FILE DOCUMENTS:

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

SUMMARY OF STAFF RECOMMENDATION
ISSUES TO BE RESOLVED

The issues to be resolved are: is the approved "temporary" pre-construction security fence subject to the fifty foot setback policy of the Bolsa Chica Local Coastal Program and would the approved fencing of the entire Mesa adversely impact public access?

The applicant contends that the fence is an interim use that does not compromise the future establishment of the setback area for its intended purposes of providing a habitat buffer and for coastal access. The applicant, as a consequence, believes that the fifty foot development setback should not apply to the fence.

Commission staff contends that although the development has been characterized as a temporary pre-construction fence the applicant has not obtained coastal development permits for Mesa construction or the mass grading of the Mesa necessitating a perimeter fence. Further, the County of Orange did not tie the erection or removal of the fence to actual construction. The fence is therefore not a temporary structure for

construction and safety purposes, and could remain on the site for ten years or more. Therefore, the fence would be subject to the fifty foot development setback policy. The approval of this development by the County of Orange therefore allows the Mesa to be fenced for an indefinite period of time inconsistent with the public access provisions of the LCP and the Coastal Act.

The issue the Commission must resolve at the Substantial Issue hearing is whether the appeals of the Bolsa Chica Land Trust and Commissioners Wan and Pavley of the decision of the County of Orange to approve the proposed fence raises a substantial issue with respect to the grounds upon which they were made? The stated grounds for the appeals are that the proposed fence is inconsistent with the fifty (50) foot setback policy and the public access policies of the Bolsa Chica Local Coastal Program (LCP), and the public access policies of the Coastal Act. Should the Commission find substantial issue, the County's permit will be set aside and the Commission will then determine whether to approve, approve with conditions, or deny a coastal development permit for the proposed fence.

At the De Novo hearing, the determination must be based upon consistency of the proposed fence with the Chapter 3 policies of the Coastal Act because certification of the LCP has been set aside as a result of the decision by the Superior Court on June 4, 1997. The Bolsa Chica Local Coastal Program will be used as guidance. Should the Commission find no substantial issue, the County's coastal development permit will be upheld and the proposed project could proceed as authorized by the County.

Staff recommends that the Commission, after conducting a public hearing, determine that a **SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which the appeal has been filed for the following reasons: (1). The development has not been setback fifty feet from the bluff edge along the portion of the Mesa facing the EGGW Channel. (2). The proposed development is inconsistent with the public access policies of the LCP and the Coastal Act.

Staff recommends that the Commission at the **DE NOVO** hearing **APPROVE** the proposed project subject to special conditions necessary to bring the project into conformance with the policies of the Coastal Act. Staff is recommending special conditions which require conformance with a temporary ten foot setback, and a one year time limit for the fence.

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APPENDIXES

1. Copy of Orange County Coastal Development Permit PA-97-0065
 - a. Notice of Final Action
 - b. Minutes of the public hearing held by the Orange County Zoning Administrator on May 15, 1997
2. Copy of Appeals
 - a. Bolsa Chica Land Trust
 - b. Commissioner Wan and Commissioner Pavley
3. Correspondence Received
 - a. Eileen Murphy
 - b. Gregg and Diane Maust
 - c. Mr. and Mrs. James L. Denison
 - d. Mr. and Mrs. George Meylor
 - e. Koll Real Estate Group

I. STAFF RECOMMENDATION - MOTIONS AND RESOLUTIONS

A. MOTION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission find that Appeal No. A-5-BLC-97-188 of the County of Orange's action of approval of Coastal Development Permit PA-97-0065, raises **SUBSTANTIAL ISSUE** with the grounds listed in Section 30603(b) of the Coastal Act.

RESOLUTION:

The Commission determines that substantial issue exists as to conformity with the certified Local Coastal Program with respect to the grounds on which an appeal has been filed pursuant to Public Resources Code Section 30603, as discussed in the following findings.

MOTION:

*I move that the Commission determine that Appeal No. A-5-BLC-97-188 raises **NO** substantial issue as to conformity with the certified Bolsa Chica Local Coastal Program.*

A majority of Commissioners present is required to pass the motion. Approval of the motion means that the County's permit is valid.

Staff recommends a **NO** vote. This would result in the finding of substantial issue and the adoption of the following findings and declarations.

B. MOTION ON DE NOVO PERMIT

RESOLUTION

Staff recommends that the Commission adopt the following resolution:

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 Bolsa Chica Local Coastal Program, including the public access policies of the California Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality

II. APPELLANT CONTENTIONS

A. APPEAL OF THE BOLSA CHICA LAND TRUST

On June 24, 1997, the Coastal Commission received the appeal of the Bolsa Chica Land Trust of the County of Orange's approval of local coastal development permit number PA-97-0065. The Bolsa Chica Land Trust asserts that the approved seven foot high chain link security fence along the Mesa facing the EGGW Channel will not be in compliance with setback provisions of regulation 4.5.3 of the Planned Community Program of the LCP. Regulation 4.5.3 states that new development must be setback at least fifty (50) feet from the edge of the Bolsa Chica Mesa.

The Bolsa Chica Land Trust moreover asserts that the approved development is not in compliance with Policy 4.2.1 of the Land Use Plan. Policy 4.2.1 states that recreational uses shall be located and designed in such a manner that there will be no adverse impacts to wetland and ESHA resources. The fence, as approved by the County, would result in a pedestrian trail which will divide the raptor ESHA from the wetlands adjacent to the East Garden Grove Wintersburg flood control channel. Additionally the fence should be raised by one foot to allow small terrestrial animals the opportunity to migrate from one habitat to another. When the County adopted the Bolsa Chica LCP, the Bolsa Chica Land Trust asserts that the County agreed that ESHA values would not be disturbed until mitigation was implemented on the Huntington Mesa. The Bolsa Chica Land Trust believes that if pedestrian access is eliminated along the top of the mesa, pedestrian use would be concentrated onto the five (5) foot wide pathway at the base of the Mesa. The result of this trail would be increased human activity and disturbances to ESHA values and wetlands contrary to the Bolsa Chica Local Coastal Program and the Coastal Act.

The Bolsa Chica Land Trust further asserts that the decision by the County of Orange to approve the fence is inconsistent with the LCP since the fence would obstruct public access and views for many years. The Bolsa Chica Land Trust also asserts that if the fence is "temporary" that a reasonable time frame must be specified for the fence. Additionally, site security in the past was provided by a private security firm.

B. APPEAL OF COMMISSIONER WAN AND COMMISSIONER PAVLEY

On June 24, 1997 Commissioner Wan and Commissioner Pavley submitted to the Coastal Commission their appeal of PA-97-0065. Commissioners Wan and Pavley contend that Coastal Development Permit PA-97-0065 is not in compliance with Land Use Policy 6.2.22 of the Bolsa Chica LCP which establishes a 50 foot wide development setback along the edge of the Bolsa Chica Mesa, including the slope

facing the East Garden Grove Wintersburg Flood Control Channel. The approved fence would be inconsistent with this section of the Bolsa Chica Local Coastal Program since the fence at the base of the bluff facing the East Garden Grove Wintersburg Flood Control Channel is not being setback from the bluff edge.

The fence has been characterized as a pre-construction security fence. In the LCP public trails are to be established within the development setback zone. The Bolsa Chica Local Coastal Program allows the Mesa to be graded. The erection of a pre-construction security fence at the base of the Mesa may be necessary during the period of the initial mass grading. Prior to the mass grading or following the mass grading a pre-construction security fence would not be needed. Commissioners Wan and Pavley contend that the permit approving the pre-construction security fence is inconsistent with the land use policies of the LCP since the erection and removal of the fence has not been tied to necessity of site protection while the mass grading is underway, but has been permitted for an indefinite period of time. The applicant does not have a coastal development permit or a grading permit for mass grading of the site. Therefore, the erection of the fence would preclude use of the setback area by the public beyond the minimum that is necessary.

Commissioners Wan and Pavley contend that the approved development is inconsistent with Land Use Plan Policies 3.1.2.6 and 6.2.22 which establish that the development setback zone shall function as a buffer between the approved residential development and the lowland wetland restoration area. Construction activity in the setback zone is limited to that necessary for mass grading, establishing the buffer, and public trails. The erection of a pre-construction security fence has not been associated any of these activities.

III. APPEAL PROCEDURES

A. STANDARD OF REVIEW

The Bolsa Chica Local Coastal Program was effectively certified on July 11, 1996. As a result, the County has coastal development permit issuing authority over development located within its jurisdiction except for development located on tidelands, submerged lands, or public trust lands. The County of Orange took action on coastal development permit PA-97-0065 on May 15, 1997. After certification of a local coastal program, Section 30603 of the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. The coastal development permit ordinance for the County of Orange is contained in Section 7-9-118.6 of the Orange County Zoning Code.

After the Bolsa Chica Local Coastal Program was effectively certified on July 11, 1996, the Commission's action was challenged in court. In March of 1996, two lawsuits against the Commission were filed with the Superior Court. On June 4, 1997 Judge McConnell of the Superior Court issued a ruling setting aside the Commission's certification of the Bolsa Chica Local Coastal Program and requiring that the Commission reconsider its certification in light of the judge's decision. The Commission, as of the date of this staff report, has not reconsidered the Bolsa Chica Local Coastal Program certification. The County approved the local coastal development permit prior to the Court's decision to set aside the certification of the Bolsa Chica Local Coastal Program. Therefore, the standard of review for this substantial issue decision is the Bolsa Chica Local Coastal Program as adopted by the Commission on July 11, 1996.

B. APPEALABLE DEVELOPMENT

Pursuant to Section 30603(a) of the Coastal Act and Section 7-9-118.6(i) of the Orange County Zoning Code, only certain types of development may be appealed to the Coastal Commission. The types of appealable development include development that is located within 100 feet of any wetland or estuary, and development that is within 300 feet of the top of the seaward face of any coastal bluff.

The decision of the County of Orange to approve PA-97-0065 is appealable to the Commission because portions of the approved fence are within 100 feet of wetlands and portions are within 300 feet of the top of a seaward facing coastal bluff. Segments of the fence are within 100 feet of the edge of Warner Pond. The fencing overlooking Outer Bolsa Bay is within 300 feet of the top of a seaward facing coastal bluff. The fencing at the base of the Bolsa Chica Mesa facing the EGGW Channel is within 100 feet of wetlands. Thus, the entire fence qualifies as an appealable development. Therefore the decision of the County of Orange to approve PA-97-0065 is appealable to the Commission.

C. GROUNDS FOR APPEAL

Pursuant to Section 30603(b) of the Coastal Act and Section 7-9-118.6(i) of the Orange County Zoning Code, the grounds for appealing a coastal development permit to the Commission is an allegation that the development does not conform to the standards of the Bolsa Chica Local Coastal Program or the public access policies of Chapter 3 of the Coastal Act.

D. QUALIFICATIONS TO TESTIFY BEFORE THE COMMISSION

The criteria for who can speak before the Commission is different for the Substantial Issue Hearing and the De Novo Hearing. Section 13117 of the Commissions regulations which apply to the Substantial Issue hearing state: *"Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify at the Commission hearings at any state of the appeal process. All other persons may submit comments in writing to the Commission or executive director, copies or summaries of which shall be provided to all Commissioners pursuant to Sections 13060-13061."*

At the De Novo hearing, the matter is treated as if it were a new permit application and anyone can speak.

IV. LOCAL GOVERNMENT ACTIONS

On April 22, 1997 the Koll Real Estate Group filed application PA-97-0065 with the County of Orange for approval of a chain link fence around the perimeter of the Bolsa Chica Mesa and future additional fencing on the Mesa as necessary for construction purposes. This application was then heard, at a public hearing, by the Orange County Zoning Administrator on May 15, 1997. At the hearing the "Conditions of Approval" were revised to reflect public testimony provided by members of the Bolsa Chica Land Trust. Condition number nine was revised to require the developer, prior to the construction of the fence, to provide access plans meeting the approval of the Manager, Building Permit Services. The access plan referenced in condition number nine appears to refer to how the developer will access the site, not to public access. Additionally a new condition, number ten was added to relocate the fence along the westerly boundary adjacent to the State Ecological Reserve so as to provide for a minimum fifty (50) foot setback from the bluff edge; to relocate the fence along the southerly boundary adjacent to the pocket wetlands so as to provide a five (5) foot wide temporary trail to accommodate interim public access prior to commencement of construction activities; and to delete the immediate installation of barbed wire along the northerly (Los Patos) section of the fence. Condition number six (which allows the fence to be relocated and additional fencing to be installed) was revised to apply the setback provision of condition ten to the portion of the fence facing Outer Bolsa Bay. Additionally condition number six was revised to allow the fence to remain in place until the completion of grading and construction. A copy of the full text of the County's permit conditions is located in Appendix 1 at the end of the staff report.

V. FINDINGS

A. PROJECT DESCRIPTION

The coastal development permit in question approved the placement of a pre-construction chain link security fence around the perimeter of the Bolsa Chica Mesa property owned by the Koll Real Estate Group. The chain link fence will be approximately seven feet in height with three access gates proposed at selected points around the perimeter. A portion of the fence facing the East Garden Grove Wintersburg Channel will be at the base of the Mesa. The gates would permit the landowner to have vehicular access to the site through existing roads.

The proposed project also includes a request to allow the installation of additional fencing within the proposed perimeter for site specific fencing requirements as necessary. Anticipated site specific fencing requirements include: site grading, borrow site activity, oil well abandonment, water well testing, geotechnical research, and archeological investigations. The future internal fencing would be limited to a height of six feet.

As a consequence of the public hearing process, the fencing development proposed by the applicant was revised. Significant project revisions included: relocating the fence along Outer Bolsa Bay to conform to the fifty foot 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. A more complete description of the changes to the conditions of approval is provided on page 10.

At the public hearing before the Orange County Zoning Administrator, Orange County staff stated that the fence constituted a temporary use consistent with the existing LCP; that the fence would provide for public safety and site security prior to and during development of the site; and that the fenced area would be kept locked during drilling operations, testing, and future home construction.

LEGEND

LAND USE DISTRICT :

- [G] CONSERVATION
- [R] RECREATION
- [PF] PUBLIC FACILITY
- [L] LOW DENSITY RESIDENTIAL (3.5-6.5 DU/ACRB)
- [ML] MEDIUM-LOW DENSITY RESIDENTIAL (6.5-12.5 DU/ACRB)
- [MH] MEDIUM-HIGH DENSITY RESIDENTIAL (12.5-18 DU/ACRB)
- [NC] NEIGHBORHOOD COMMERCIAL
- [P] PLANNING AREA
- [C] COUNTY LCP AREA BOUNDARY

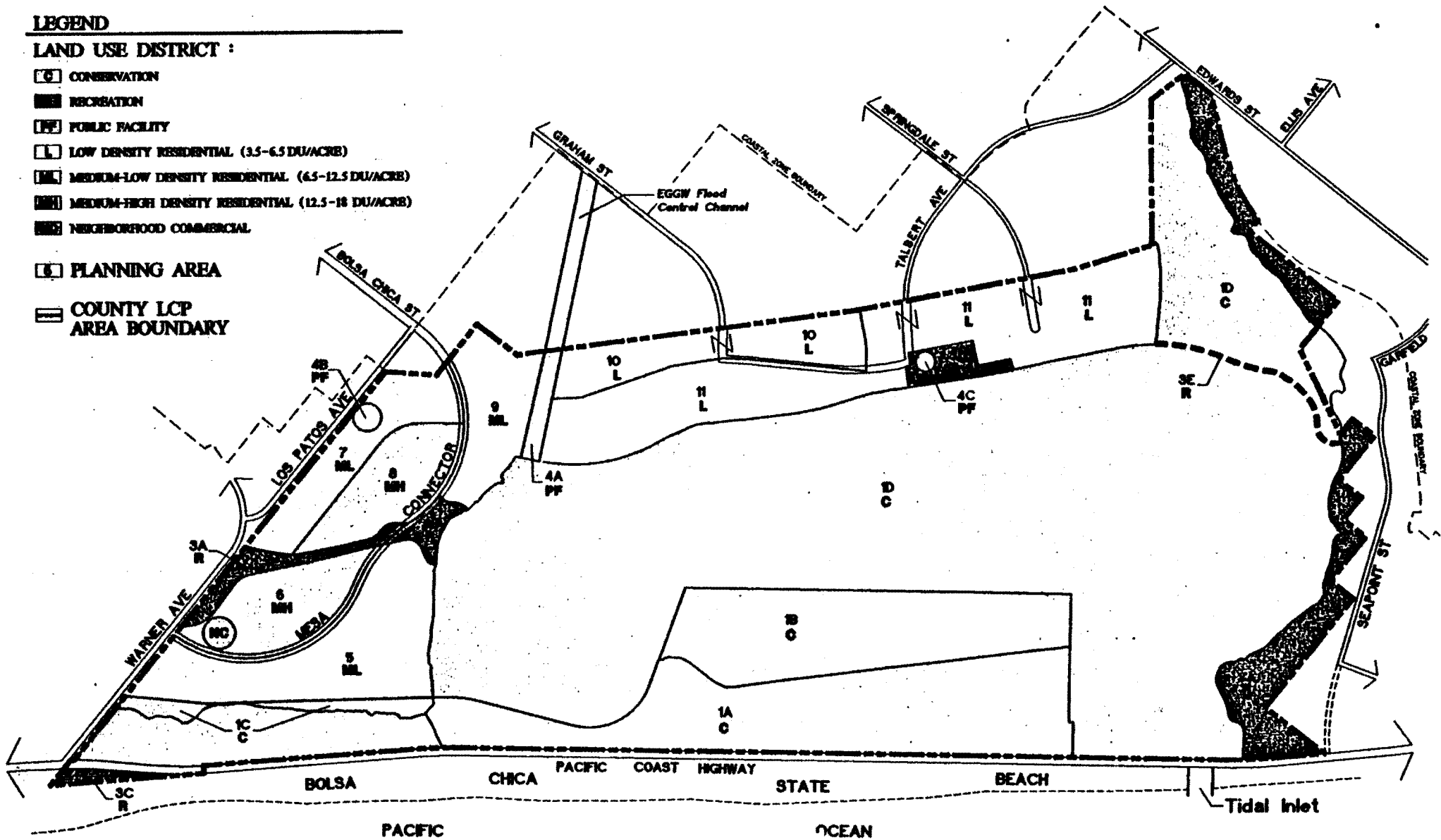


Exhibit No. 1

Bolsa Chica LCP
Land Use Plan

California Coastal
Commission

BOLSA CHICA LAND USE PLAN

BOLSA CHICA

LAND USE PLAN

0 400 1600

Location of Project

LEGEND

- PLANNING AREA
- ▨ COUNTY LCP AREA BOUNDARY

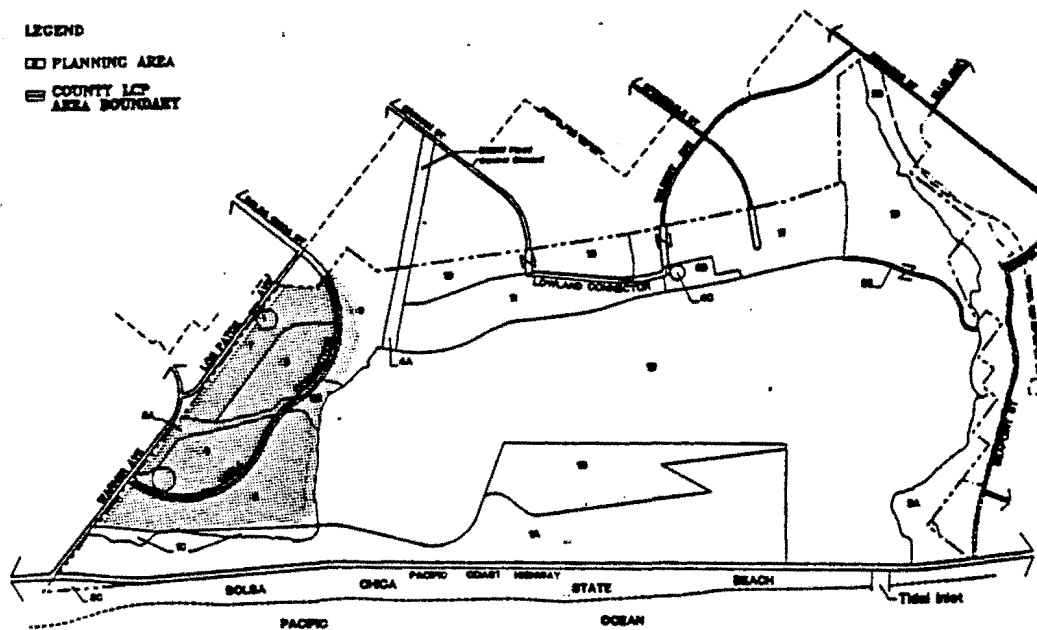


Exhibit No. 2

Bolsa Chica LCP Project Location



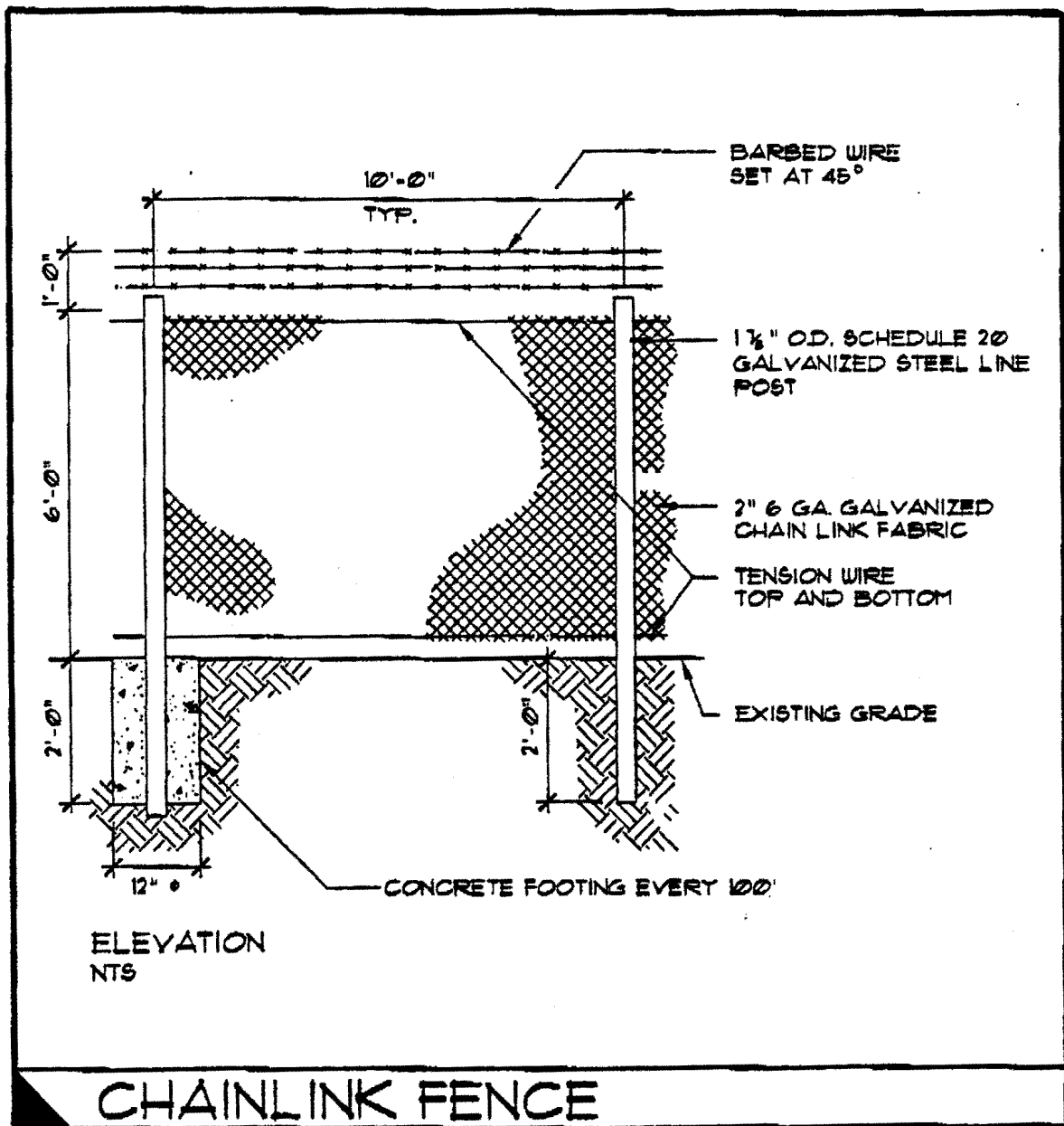
California Coastal
Commission

Exhibit No. 3

Bolsa Chica LCP
Chainlink Fence



California Coastal
Commission



B. SUBSTANTIAL ISSUE ANALYSIS**1. Appellants' Assertion of Inconsistency With Fifty Foot Setback**

Both appellants assert that the permit for the fence is inconsistent with the 50-foot setback provisions of the LCP. The Bolsa Chica Land Trust contends that the proposed fence is not in conformance with regulation 4.5.3 of the Planned Community Program, while Commissioners Wan and Pavley contend that the fence does not conform with Land Use Plan Policy 6.2.22. A detailed explanation of the appellants contention was provided starting on page 7. Following is the text of the applicable policies cited by the appellants. Regulation 4.5.3 is in the Recreation Planning Area Regulations and Standards chapter (Chapter 4) of the LCP and states:

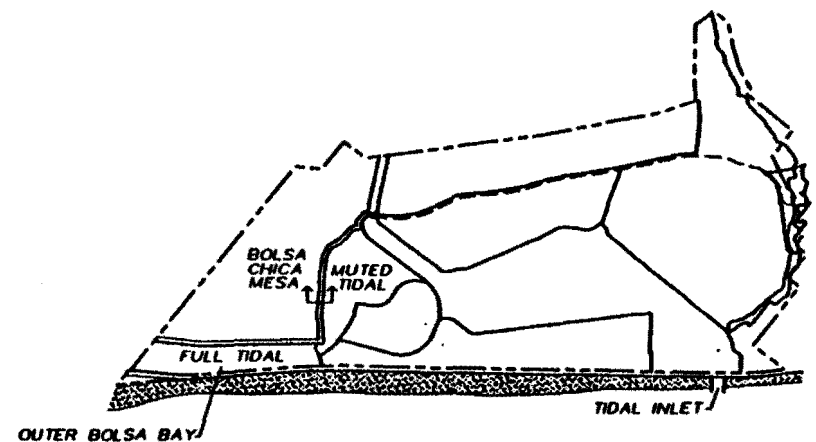
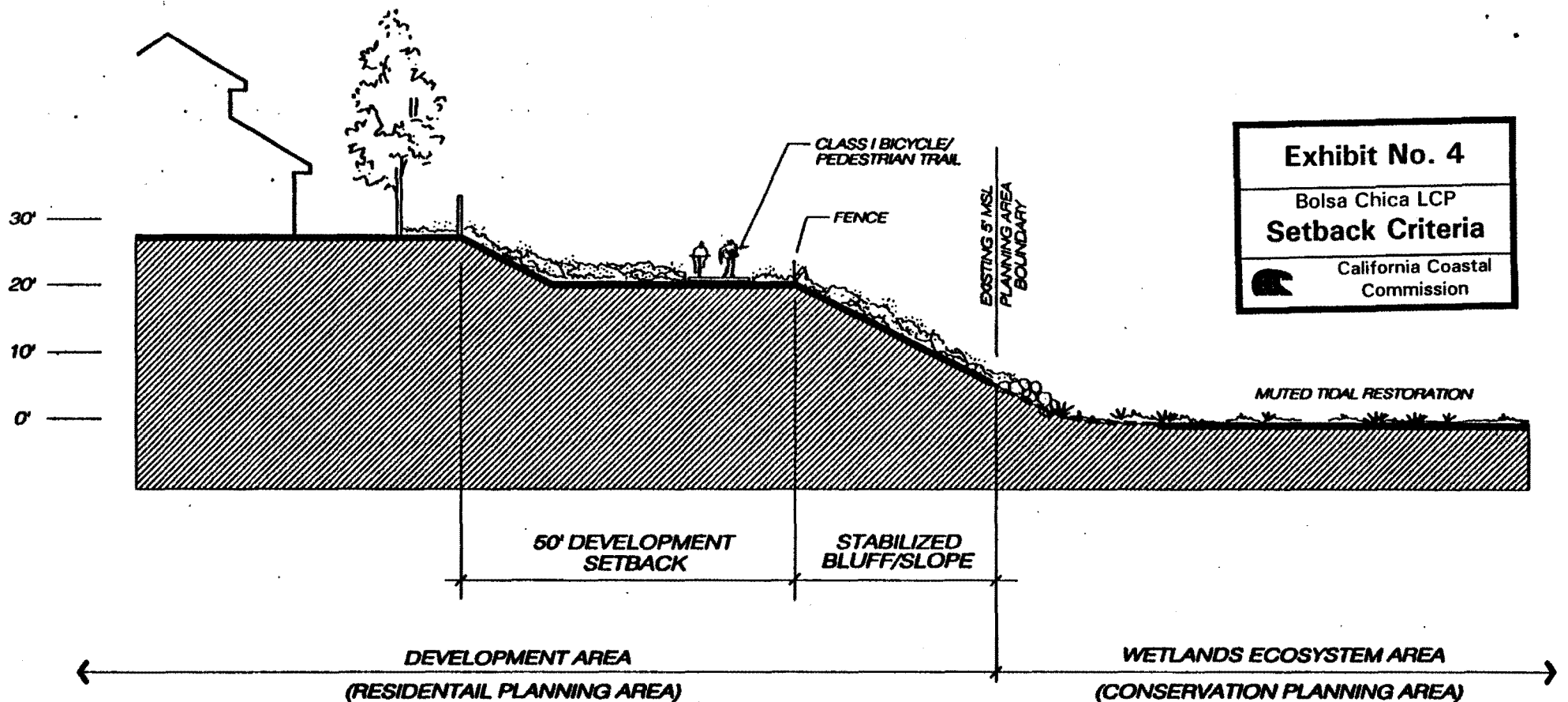
A minimum fifty (50) foot development setback shall be maintained from the edge of the Bolsa Chica Mesa as explained in Section 2.2.28."

Section 2.2.28 states:

The 50-foot development setback from the edge of the Bolsa Chica Mesa, as required in Sections 4.5.3, 5.5.1, 5.5.2, and 5.5.3 of this Planned Community Program, is illustrated in Figures 2.1 and 2.2). The development setback shall be landscaped primarily with native and drought-tolerant plant material that provides habitat value and a naturally appearing visual transition between the Wetlands Restoration Area and residential/community park areas of the Planned Community. The planting design shall avoid visually abrupt and artificially engineered changes in the type and density of plant material.

Portions of the 50-foot setback will occur along the south-facing slope of the Mesa (Figure 2.1) and along the slope which adjoins Outer Bolsa Bay (i.e., Section 2.2, where the State ownership is 50 feet or less from the edge of the bluff). Public trails required by the LCP may be included within the setback. Public use of the trails shall be ensured in perpetuity by the dedication of either fee ownership or an appropriate trail easement, as determined in Coastal Development Permits for Mesa development.

Exhibit No. 4 found on page 16, graphically depicts the setback concept referred to in regulation 2.2.28 of the Planned Community Program. Exhibit No. 4 shows the



development setback following the completion of residential development on the Mesa.

Policy 6.2.22 states:

A 50-foot-wide development setback shall be established within the development Planning Areas along the edge of the Bolsa Chica Mesa. The development setback shall be landscaped primarily with native and drought-tolerant plant material that provides habitat value and a naturally appearing visual transition between the Wetlands Restoration Area and residential/community park areas of the Planned Community. The planting design shall avoid visually abrupt and artificially engineered changes in the type and density of plant material. Public trails required by the LCP may be included within the development setback.

2. Analysis and Commission Findings of the Appellants' Contentions

The Commission finds that a substantial issue exists with respect to the grounds on which the appellants have appealed the County's approval of a coastal development permit for the proposed fence.

Applicability of the Fifty Foot Setback Policy to the Approved Fence

The applicant, Koll Real Estate Group (KREG) contends that the development setback policies of the Bolsa Chica LCP do not apply to the fence: rather, they apply only after the site has been graded and the residential construction has been completed. In other words, construction activities should not be subject to the development setback requirement. In support of their assertion, KREG has pointed out that Figure 2.1 of the Planned Community Program shows the development setback in terms of the completed residential development. KREG has also submitted a letter (dated July 18, 1997) to Commission staff. The letter reiterates their concern that the buffer policies of the LCP should apply when residential development is completed. The letter states *"Requiring Koll to adhere to policies that were designed to mitigate the impact of residences on wetlands habitats as part of its pre-construction activities is simply premature."* A copy of this letter is attached to the end of this staff report at the end of Appendix 3. Policy 3.1.2.6 of the Bolsa Chica Land Use Plan defines the buffer and transition policies which apply to the fence as approved by the County of Orange since it would be located within the development setback area. Policy 3.1.2.6 states: *"Consistent with the CDFG findings that buffers reduce disturbance from adjacent urban development (CDFG, April 8, 1985), the Wetlands Restoration Program shall set design requirements to establish buffers between hydrologic regimes (habitat areas) and adjacent new urban development. The buffers may consist of native vegetation and landscape areas, open water and mudflats, rip-rap and/or other shoreline protection, open unvegetated areas, and public interpretive trails."*

When the Commission approved Policy 3.1.2.6 the Commission found that the development setback would resolve the conflicts between the proposed residential development and the wetlands. The findings of the Bolsa Chica Local Coastal Program (page 97) state that the purpose of buffers, transition zones, and development setbacks are to minimize disturbance created by urban development on wetlands through spatial separation, to provide a transitional zone between natural habitat areas and urban development, and to provide visual screening.

The approved fence constitutes long term development and it must conform with the policies and regulations of the Bolsa Chica Local Coastal Program. The Bolsa Chica LCP anticipates that residential development of the Mesa could take approximately ten years to complete. This assumes that construction would proceed in a timely manner. The LCP notes that *"The precise timing of residential construction will depend upon several factors, including market conditions, institutional lending policies, and County/other agency approvals."* Consequently, it is conceivable that the fence would remain up for an extended period of time (10 years or longer) and that, in actuality, it is permanent development. Further, the fence, as long term development not contemplated by the LCP must comply with Policy 3.1.2.6 for the following three reasons.

First, the fence has been characterized as temporary by the applicant. However, as approved by the County of Orange, the fence may remain in place for an indefinite period of time since its erection has not been tied to obtaining permits for and the actual commencement of mass grading or other activities requiring the entire Mesa to be fenced. The fence could remain in excess of ten years. Further, as the Bolsa Chica Land Trust asserts, the approved fence would force the public, on a long term basis, to use trails immediately adjacent to wetland habitats which would disturb wetland habitat values.

Second, mass grading of the Mesa would necessitate security fencing. Mass grading has not been approved and, at this time, is not proposed. The County's findings acknowledge that the perimeter fencing would have to be relocated to accommodate the mass grading when it does occur.

Third, the applicant has identified a variety of pre-construction activities such as: re-abandonment of oil wells, geotechnical work, archeological exploration and exploratory drilling. Fencing the entire site is excessive for these limited types of pre-construction activities as the fencing can be designed to protect the construction site while avoiding inappropriate development in the development setback area.

Conformance with the fifty foot development setback would promote maintenance this area in its natural state. As approval of the fence has the effect of concentrating public access to areas immediately adjacent to wetland habitats. The County's approval places the interim trail in a five foot area between the wetlands and the fence. Public

access at the base of the Mesa, on a long term basis would be disruptive to wetland habitat values and a use inconsistent with Land Use Policy 4.2.1 which requires that recreational uses be designed to avoid impacts to wetlands and ESHA resources.

Though the buffers, in terms of area, are a small part of the habitat they are very important for separating urban development from wildlife habitat. For example, six endangered or threatened bird species are known to use, or have been reported flying over the Bolsa Chica Wetlands. In 1981 the California Department of Fish and Game cited an Audubon Christmas survey which documented substantial use of the wetlands by over 80 species of birds. Maintenance of the upland and wetland habitats at Bolsa Chica is therefore a critical concern since endangered species use it and approximately seventy-five percent of the wetlands in southern California have already been lost to urban development. Bolsa Chica, as a wetland, itself has shrunk from an estimated 2,300 acres in 1894 down to approximately 900 acres today. In recognition of this state wide problem, Governor Wilson released the California Wetlands Conservation Policy in 1993 which called for a long term gain in the quantity and quality of wetlands.

Since the proposed fence along the portion of the Mesa facing the EGGW will be left in place for an indefinite period of time (possibly in excess of ten years) and it is not one of the allowed uses within the development setback, the fence is not in compliance with Policy 6.2.22 of the Land Use Plan. Therefore, the Commission finds that the proposed fence along the bluff facing the EGGW Channel, as approved by the County of Orange, raises substantial issue with the Bolsa Chica LCP based on the lack of compliance with Policy 6.2.22 of the Land Use Plan which requires that development be setback fifty feet from the bluff edge.

Conformance With Public Access Policies Required

The public access policies of the Bolsa Chica LCP are contained in Chapter 4 of the Land Use Plan. Figure 4.3-1 graphically depicts the public access plan for Bolsa Chica. Additionally, since this development is between the first public road and the sea, the access policies of the Coastal Act also apply. Sections 30210 through 30214 of the Coastal Act pertain to public access.

In approving PA-97-0065 the County did modify its initial staff recommendation to partially address the public access concerns raised by the Bolsa Chica Land Trust. For the portion of the Mesa facing Outer Bolsa Bay the County imposed a fifty foot setback for the fence. However, the County found that a five foot wide temporary public trail at the base of the Mesa facing the EGGW Channel would be sufficient. The County also found that this was in substantial conformance with the final public access plan of the Bolsa Chica LCP. In approving the permit, the Zoning Administrator made the finding that the fence replicated the ultimate access plan proposed in the LCP.

Figure 4.3-1 of the Land Use Plan depicts the final public access plan at Bolsa Chica. This figure shows a public trail system along the bluff top, a trail through the public

community park, a public road, and internal trail system. Figure 2.2 of the Planned Community Program also shows an interpretive trail along the bluff top facing the EGGW Channel. The placement of a fence prevents all public access across on Mesa except along the edge of the mesa facing Outer Bolsa Bay. Therefore the approved fence does not replicated the ultimate access plan of the LCP as the County contends in its approval of this project. Although the LCP contemplates a public access park and trail system that is triggered by various stages of residential development, it does not address public access prior to that time because it does not anticipate any other development that would impede public access on the Mesa. The LCP identifies the interim uses allowed in undeveloped areas in the Planned Community Program general regulation. 2.2.20. None of these allowed interim uses includes fencing. Further, the identified interim uses do not contemplate an interim use that would preclude all public access on the Mesa. Thus, other than residential development that would occur with construction of designated public access trails, the LCP does not allow for other development that would block off access to the Mesa.

Further, the public access policies of the Coastal Act mandate that public access to and along the shoreline be provided when new development occurs. Section 30211 also states that development shall not interfere with an existing right of access to the shoreline. The appellants have pointed out that there is a long history of public use on the Mesa. The proposed fence would interfere with that public use and would not be in compliance with the public access plan of the Bolsa Chica LCP.

In certifying the LCP, the Commission did not undertake a formal study concerning the evidence of prescriptive rights because the LCP provides that concurrent with the approval of development that would impede public access (i.e., residential subdivision approval, approval of the Master Coastal Development Permit) public trails would be dedicated. Thus, under the Coastal Act public access policies, the fence should not be approved in a location that will block public access to the Mesa trails which allow access to and along Outer Bolsa Bay and the lowlands until there has been a review of whether there is substantial evidence of a prescriptive right to access on the Mesa. Therefore, the Commission finds that the proposed location of the fence, as approved by the County of Orange, raises a substantial issue of conformity with the public access policies of the Coastal Act.

LEGEND

- CLASS I (OFF-STREET) BICYCLE AND HIKING TRAIL
- CLASS II (ON-STREET) BICYCLE LANE
- EQUESTRIAN AND HIKING TRAIL
- oooooooooooo INTERPRETIVE TRAIL (LIMITED ACCESS)

- PUBLIC PARKS
- PUBLIC BEACH
- (P) PROPOSED PUBLIC PARKING
- VISUAL OVERLOOK
- INTERPRETIVE AREA
- SHORELINE ACCESS
- COUNTY LCP AREA BOUNDARY

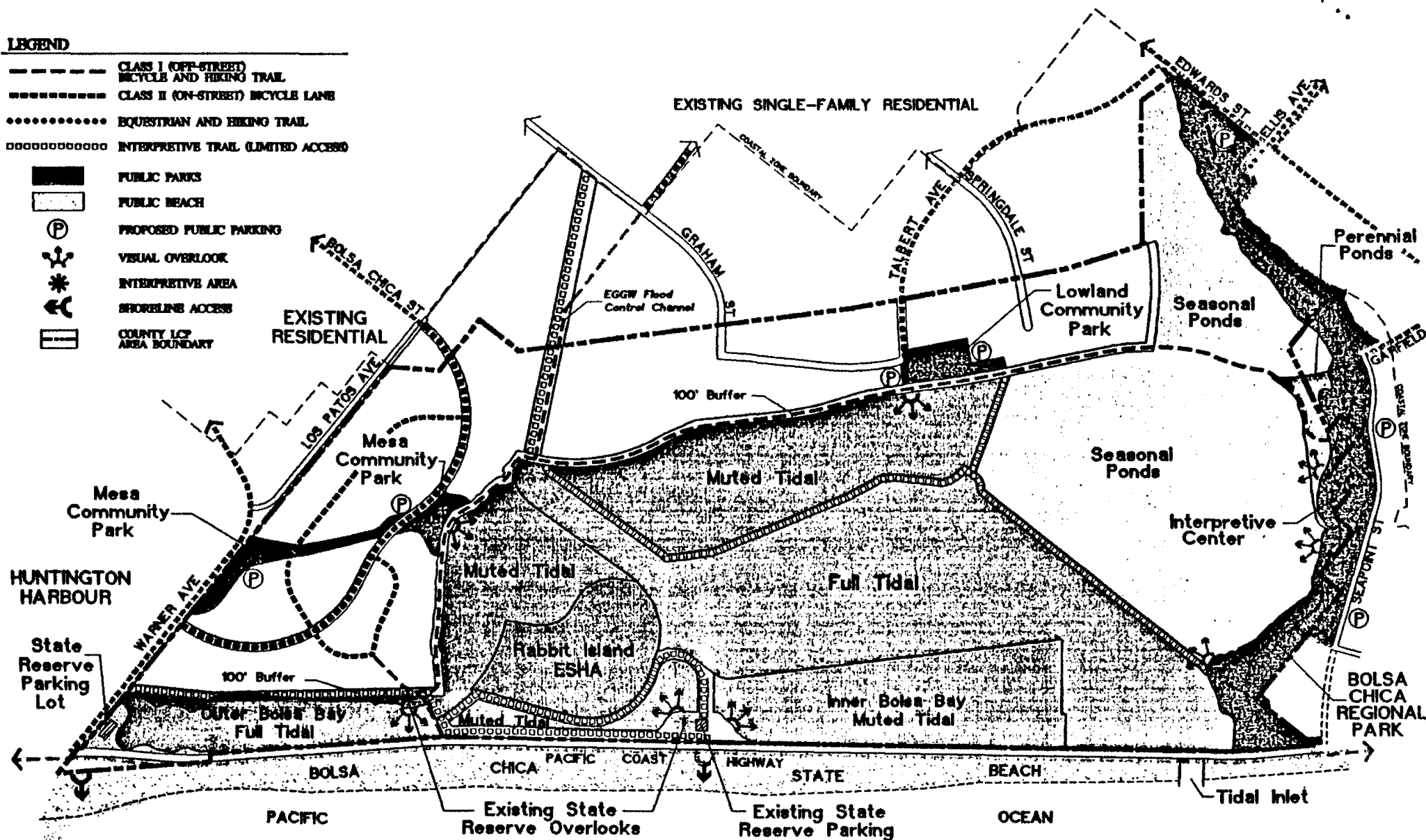


Exhibit No. 5

Bolsa Chica LCP
Public Access Plan



California Coastal
Commission

COASTAL ACCESS AND RECREATION PLAN

0 400 800 1600

BOLSA CHICA
LAND USE PLAN

3. Appellants' Contentions Which Do NOT Raise a Substantial Issue

The Bolsa Chica Land Trust contends that the proposed fence would divide the raptor habitat and that the County agreed that ESHA habitats would not be disturbed until mitigation was implemented on the Huntington Mesa. Land Use Policy 3.1.2.6 is the basis for this assertion. Land Use Policy 3.1.2.6 requires that a twenty acre native tree and shrub ESHA along the Huntington Mesa shall be provided for the loss of raptor habitat provided by the eucalyptus grove.

The key phrase in this policy is that prior to the issuance of a coastal development permit that would result in the elimination of the eucalyptus grove that the replacement ESHA will be implemented. The proposed fence will not result in the destruction of the eucalyptus grove. Additionally, the minutes of the hearing conducted by the Orange County Zoning Administrator analyze the impact of the fence on wildlife. The Orange County Zoning Administrator stated that the proposed fence would not impede the use of the eucalyptus trees by raptors. Further, the County through PA-97-0039 in May of 1997 issued a permit to initiate construction of the replacement habitat on Huntington Mesa. Though the fence will have minor impacts to wildlife, the top of the Mesa has been designated for future residential development; the Commission therefore finds that the fence will not impede use of the eucalyptus grove by raptors and that the County's action is in conformance with land use Policy 3.1.2.6 since the County, at this time, has not proposed elimination of the eucalyptus grove.

VI. DE NOVO STAFF REPORT AND RECOMMENDATION

The Commission finds and declares as follows:

A. *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.

B. 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. Revise Alignment of 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 alignment of the Bolsa Chica Mesa perimeter fence which indicates that the entire fence is located on the bluff top and on the south edge the fence shall be no closer to the existing bluff edge than ten (10) feet. The alignment of the fence shall avoid Warner Avenue Pond and shall place Warner Avenue Pond on the exterior side of the proposed fencing. The alignment of the fence along the eastern and south eastern portion of the property line shall assure that there is pedestrian access to the bluff edge from Los Patos Avenue. The interim public trail required by the County shall also be relocated to the bluff top within the ten foot area between the bluff edge and the proposed fence. 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 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. Removal of the Temporary Perimeter Fence

The temporary Bolsa Chica Mesa perimeter fence approved in this permit 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.

C. ADOPTION OF SUBSTANTIAL ISSUE FINDINGS

The findings and declarations on substantial issue are herein incorporated by reference. Additionally, the project description (as stated in the Substantial Issue portion of this staff report) remains the same for the De Novo portion of the staff report.

D. 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. As a consequence of this court action, evaluation of the proposed project will be based on the California Coastal Act. Although the certification for Bolsa Chica LCP was set aside, 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.

**E. 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 portion of this staff report, the Commission found that the approved 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 by the County for an indefinite period of time, possibly in excess of ten years, that it constituted 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. The Commission's findings contained in the substantial issue portion of this staff report are hereby incorporated into this section of the staff report.

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 proposed fence will be located adjacent to environmentally sensitive habitat and recreational areas. Based on the Commission's findings for substantial issue, the proposed long term fence and interim trail at the base of the Mesa facing the EGGW Channel is inconsistent with Section 30240 of the Coastal Act since it would be development not contemplated within the buffer area. Additionally, the proposed temporary trail would result in increased human activity and disturbances to ESHA values and wetland habitats. Therefore, the proposed development would not be compatible with the continuance of habitat values and recreational uses.

In recommending the insertion of Land Use Policy 6.2.22 (based on Section 30240 of the Coastal Act) into the Bolsa Chica LCP the Commission found: *"To incorporate the bluff protection concepts discussed above, a new Policy 53 has been inserted to require that urban development on the Mesa will be setback fifty feet as measured horizontally inland from the bluff edge. This policy will also protect the bluff face by restricting urban development on the bluff face itself. Further, landscaping vegetation within the transition zone and development setback will be limited to drought tolerant native*

vegetation that will provide habitat value and visual compatibility with the adjacent wetlands. Public trails and low-intensity interpretive signage will be allowed on the bluff face. These two uses are consistent with maintenance of the bluff face as a buffer since it provides a transition zone with limited urban development in an open space area which retains some habitat value." The proposed fence is not an identified use in the policy and is not consistent with the fifty foot setback policy, buffer policies of the Bolsa Chica LCP, and the recreational policies of the Bolsa Chica LCP as expressed by the public access plan contained in the LCP.

The project through modification can found be consistent with Section 30240 of the Coastal Act and the Bolsa Chica LCP. The Commission acknowledges that temporary fencing is necessary on a case by case basis for proposed construction activity. When the County approved the coastal development permit it did not provide adequate criteria for when the fence would be erected and removed. The Commission, as a consequence finds it necessary to impose a special condition to require that the fence be removed one year after the approval of this permit if mass grading of the Mesa has not been initiated. The fence can remain now while the approved and exempt pre-construction activities occur. Additionally, the Commission is imposing a special condition to require that the fence be setback a minimum of ten feet from the bluff edge of the Mesa facing the East Garden Grove Wintersburg Channel so that the current public use of the site can remain on the bluff top instead of adjacent to the wetlands at the base of the bluff.

These two special conditions will alleviate the potential that long term development inconsistent with the development setback policies of the LCP and Section 30240 would be permitted on a permanent basis. Only as conditioned to comply with a ten foot temporary setback 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.

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.

The proposed location of the fence along the base of the Mesa facing the EGGW Channel would prohibit the ability of the public to continue to use the bluff top setback zone for purposes of public access. 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 bluff top 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. The proposed fence, which could remain on the site for ten or more years, will obstruct public use of the area inconsistent with the public access plan for Bolsa Chica as approved by the Commission.

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 fence along the south edge of the Mesa, on a temporary basis, be constructed along a ten foot setback from the bluff edge to maintain access on a temporary basis. The County had required a fifty foot setback on the west bluff edge facing Outer Bolsa Bay. Further, the Commission also recognizes that 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.

These two special conditions are being imposed because the fence which the County approved would have a long term adverse impacts on public access. The fence has been characterized as "temporary" by the County. However, as discussed in the Substantial Issue portion of the staff report exactly when the fence would be removed is unclear. Further, the fence, as approved by the County, would concentrate public access adjacent to existing wetland habitats which over the long term would be disruptive to the habitat values. Should construction be delayed, the fence could remain up for an indefinite period of time. As long as the fence remains up, public

access would be impacted. Therefore, the Commission is imposing a specific period of time for when the temporary fence would actually be allowed to remain in place.

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. The access plan is depicted in Exhibit No. 5 on page 21. Allowing the 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 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. 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 development policies of the Coastal Act and with Land Use Policy 6.2.22 of the Bolsa Chica LCP the project has been conditioned to have the fence setback ten feet from the edge of the buffer and 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.

H. 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 policy and maintenance of public access, 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.

I. CORRESPONDENCE RECEIVED

Attached as Appendix 3 are the letters received by the Long Beach office from the public while this staff report was under preparation.

APPENDIX 1

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



County of Orange
Planning & Development Services Department

THOMAS B. MATHEWS
DIRECTOR

300 N. FLOWER ST.
THIRD FLOOR
SANTA ANA, CALIFORNIA

MAILING ADDRESS:
P.O. BOX 4048
SANTA ANA, CA 92702-4048

TELEPHONE:
(714) 834-4643
FAX # 834-2771

DATE: June 2, 1997

NOTICE OF FINAL COUNTY DECISION

On May 15, 1997, the Orange County Zoning Administrator
(Date) (Approving Authority)

took action to Conditionally Approve Planning Application PA 970065
(Nature of Action) (Coastal Development Permit No.)

by Koll Real Estate Group, 4400 MacArthur Blvd., #300, Newport Beach, CA 92660
(Applicant and Address)

for placement of a chain link fence around the perimeter of the Bolsa Chica Mesa and within the perimeter.
(Project Description)

Located at Bolsa Chica Mesa adjacent to the City of Huntington Beach.
(Project Address or Location) (APN No. 11001521)

 AN APPEAL OF THIS PROJECT WAS ACTED ON AS STATED ABOVE.

 X THE COUNTY'S ACTION ON THE ABOVE PROJECT WAS NOT APPEALED
WITHIN THE LOCAL APPEAL PERIOD.

This project is in the coastal zone and (X is/ is not) an "appealable development" subject to Coastal Commission appeal procedures.

Approval of an "appealable development" may be appealed to the California Coastal Commission within 10 working days after the Coastal Commission receives this Notice. Appeals must be in writing and in accordance with the California Code of Regulation Section 13111. For additional information write to the California Coastal Commission at 200 Oceangate, 10th Floor, Long Beach, CA. 90802, or call (562) 590-5071.

MAIL TO: Applicant
California Coastal Commission
City of Huntington Beach

GF:sf
7042907414684

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.

ATTACHMENT B

CONDITIONS OF APPROVAL

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

1. LU NA NA

BASIC/ZONING REGULATIONS

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2. LU NA NA

BASIC/TIME LIMIT

This approval is valid for a period of 24 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

3. LU NA NA

BASIC/PRECISE PLAN

Except as otherwise provided herein, this permit is approved as a precise plan. After any application has been approved, if changes are proposed regarding the location or alteration of any use or structure, a changed plan may be submitted to the Director-EMA for approval. If the Director determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4. LU NA N

BASIC/COMPLIANCE

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

5. LU NA NA

BASIC/OBLIGATIONS

Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve applicant of his/her obligations under this condition.

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.

- 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 plans 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 Street, unless the applicant provides evidence to the Manager, Land Use Planning that that section of fence along Los Patos has been breached by trespassers.

GF:sf
7050615053741

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.

Senior Planner Tippets stated that prior to the erection of the fence, the applicant had asked the County if any permits were required and was told no County Building Permits were needed. He stated that at the time of the inquiry, a CDP was not mentioned because the County did not believe one was required. He stated that after the applicant put up a portion of the fence, the Coastal Commission staff informed the County that a Coastal Development Permit (CDP) was required. Staff then informed the applicant and a stop work order was issued and complied with.

Jacqueline Geier-Lahti, resident of Huntington Beach, stated that this was not the first time that Koll Real Estate Group erected a fence without benefit of a permit. She noted that they erected a fence two years ago and had to take it down. She felt that Koll knew they needed a permit. She stated that wildlife is being fenced in and fenced out. She noted that the fence looks like a prison fence. She stated that the water testing, geotechnical and surveying are all complete, including archaeological and paleontological studies. She requested that the fencing be set back 50 feet from the boundary. She stated that this fence would be overkill. Ms. Geier-Lahti stated that heavy equipment will damage the wetlands and cause animosity with the residents of Huntington Beach. She discussed the status of the bunkers located on the property.

Eileen Murphy, resident of Huntington Beach, presented a newspaper clipping of the project site depicting the fence and a video tape of the fence being erected. She stated that the fence does not reflect a 50 foot buffer and is in violation of the LCP. She requested that the fence be removed and the project denied.

Mr. Neely asked Mr. Mountford to clarify the status of the fence from pre-construction through construction. He noted that the proposed fencing would need be moved to accommodate grading. He asked Mr. Mountford if the proposed fence would have to be moved again for future construction.

Mr. Mountford confirmed the Zoning Administrator's assumptions.

Mr. Neely stated that he did visit the site and walked the perimeter where the fencing was proposed. He noted the fence would appear to eliminate certain liabilities to Koll which might result from illegal trespass on the site. He asked Mr. Mountford if the intent behind the fence was to reduce liability or provide general construction security.

Mr. Mountford responded that both security and liability reduction were project objectives. He stated that there are conflicting activities currently on site and gave examples. He stated that the purpose of the fence was to secure the property for the owner.

Ms. Geier-Lahti stated that in the past Koll secured the property by using a security guard, and she saw no reason why a security guard couldn't be hired to secure the property on weekends.

Mr. Neely closed the public hearing and noted that nine letters of opposition had been received. He addressed the concerns raised in the letters and at the public hearing.

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.

Most of the fencing abuts open space or roads and the security needs warrant the use of barbed wire in those locations. However, along Los Patos, houses fronting on the site would be most effected by the use of barbed wire. He noted that the proximity of the homes and the ongoing surveillance by residents probably reduced the need for the extra security provided by barbed wire. He indicated that a condition would be added to prohibit the use of barbed wire in this area unless it were subsequently demonstrated that this section of the fence was being breached.

In response to the demand that fines be levied against Koll, Mr. Neely acknowledged that the Zoning Code states that a double fee can be levied against a project. However, in this case, since the County gave out erroneous information which Koll acted upon, a fine would not be appropriate or legally defensible.

Mr. Neely addressed the issue of public access. He noted that the access provided upon the completion of the fence would replicate the ultimate public access contemplated by the approved LCP to the maximum extent practicable. The access around the perimeter of the development site would be assured by relocating the fence along the western bluff to provide the minimum 50' setback, and by establishing a 6' setback along the southern edge adjacent to the pocket lowland. By adjusting the placement of the fence to facilitate perimeter access to replicated the ultimate public access proposed in the LCP, Mr. Neely indicated the proposed project was in compliance with the goals and objectives of the LCP.

Mr. Neely noted that the concern expressed regarding the integrity of archaeological sites would be addressed by Condition 7.

Mr. Neely stated that the landowner does have the right to secure the project site against liability and that such temporary fencing is not prejudicial to the pending lawsuits. He addressed the eight findings that must be made in order to approve this project.

Mr. Neely modified Condition #6 and #9 to read as follows:

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.
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.

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.

Mr. Neely stated that once grading and construction for Phase 1 has been completed and the park is in, the fencing will be removed.

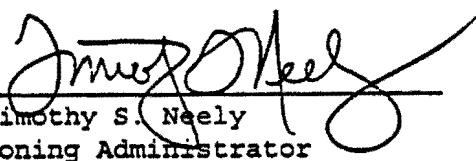
Mr. Mountford stated that the perimeter fencing will not be needed when the grading has been completed. He stated that public roads will be in place, and that access to the park will be from Warner Avenue. He stated that after Phase I is complete, the remaining undeveloped area will still need perimeter fencing until it is constructed.

Mr. Tippetts stated that local park area must be dedicated before permits are issued. He noted that there are provisions in place to ensure that this happens.

Mr. Neely clarified that Condition #10 would allow Koll to obtain permission to install barbed wire along Los Patos only if the fence is breached in that area.

3:20 P.M.: No one else wishing to be heard, the Zoning Administrator closed the public hearing.

ACTION: 3:30 P.M.: The Zoning Administrator approved Coastal Development Permit No. PA97-0065 with 8 Findings and 10 Conditions as recommended in the Environmental Project Planning Division report, dated May 15, 1997 with modifications to Conditions #6 and #9 and new added Condition #10.


Timothy S. Neely
Zoning Administrator

ps(7051609320135)
sf/so:7051609320135

APPENDIX 2

COPY OF APPEALS

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
PO Box 1450
200 OceanGate, 10th Floor
LONG BEACH, CA 90802-4416
(562) 590-5071

**COMMISSION NOTIFICATION OF APPEAL**

DATE: June 25, 1997

TO: William Melton
County of Orange, Environmental Management Agency
P.O. Box 4048
Santa Ana, CA 92702-4048

FROM: Steve Rynas, Orange County Area Supervisor

RE: Commission Appeal No. A-5-BLC-97-188

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Section 30602 or 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: PA 97-65

Applicant(s): Koll Real Estate Group

Description: The placement of a chain link fence around the perimeter of the Bols Chica Mesa and any additional future fencing within the proposed perimeter necessary for future site-specific fencing requirements...

Location: Bolsa Chica Mesa Adjacent To The City Of Huntington Beach Overlooking The Bolsa Chica Wetlands., Bolsa Chica (Orange County) (APN(s) 110-015-21)

Local Decision: Approved w/ Conditions

Appellant(s): Commissioner Sara Wan; Commissioner Fran Pavley; Bolsa Chica Land Trust, Attn: Nancy Donovan

Date Appeal Filed: 6/24/97

The Commission appeal number assigned to this appeal is A-5-BLC-97-188. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Orange's consideration of this coastal development permit must be delivered to the South Coast Area office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Steve Rynas at the South Coast Area office.

CALIFORNIA COASTAL COMMISSION

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



APPEAL OF COASTAL DEVELOPMENT PERMIT DECISION BY THE COUNTY OF ORANGE

I. APPELLANTS

Commissioner Sara Wan 415-904-5200
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Commissioner Fran Pavley 415-904-5200
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

II. DECISION BEING APPEALED

A. *Local Government:*

County of Orange

B. *Description of Development Being Appealed*

The placement of a chain link security fence around the perimeter of the Bolsa Chica Mesa and any additional future fencing within the proposed perimeter necessary for future site specific fencing requirements. The chain link fence will be approximately seven feet in height with three access gates proposed at selected points around the perimeter.

<u>TO BE COMPLETED BY COMMISSION STAFF</u>	
Appeal Number:	A-5-BLC-97-188
Date Filed:	June 24, 1997
District:	South Coast

Jan D. Vandersloot, MD
221 East 16th Street
Newport Beach, CA 92663

Juana Mueller
603 Twenty-First Street
Huntington Beach, CA 92648

IV. REASONS SUPPORTING THIS APPEAL

Coastal Development Permit PA-97-0065 issued by the County of Orange permits the construction of a chain link fence along the base of the Bolsa Chica Mesa bluff facing the East Garden Grove Wintersburg Flood Control Channel. Land Use Policy 6.2.22 establishes a 50 foot wide development setback along the edge of the Bolsa Chica Mesa, including the slope facing the East Garden Grove Wintersburg Flood Control Channel. This Land Use Policy is implemented by section 2.2.28 of the Planned Community Program regulations. The proposed fence would be inconsistent with these sections of the Bolsa Chica Local Coastal Program since the fence along the East Garden Grove Wintersburg Flood Control Channel is not being setback from the bluff edge.

The fence has been characterized as a pre-construction security fence. Public trails are contemplated to be established within the development setback zone. The Bolsa Chica Local Coastal Program allows the Mesa to be graded. The erection of a construction security fence at the base of the Mesa may be necessary during the period of the initial mass grading. Prior to the mass grading or following the mass grading a security fence would not be needed. The permit approving the security fence is inconsistent with these land use policies since the erection and removal of the fence has not been tied to necessity of site protection while the mass grading is underway, but has been permitted for an indefinite period of time. Therefore, the erection of the security fence would preclude use of the setback area by the public beyond the minimum that is necessary.

Land Use Plan Policies 3.1.2.6 and 6.2.22 establish that the development setback zone shall function as a buffer between the proposed residential development and the lowland wetland restoration area. Therefore construction activity in the setback zone is limited to that necessary for mass grading, establishing the buffer, and public trails. The erection of a security fence has not been associated with implementing the buffer in the setback zone. Placing a security fence adjacent to the wetlands for an indefinite period of time implies that the development setback zone will actually be part

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

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

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date

6/24/97

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

RECEIVED
JUN 24 1997
CALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

Nancy Donaven, President
Bolsa Chica Land Trust
207 21st St. Hunt. Bch. 92648 (714) 960-9939
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port
government: County of Orange

2. Brief description of development being
appealed: chain link fence around perimeter of Bolsa Chica Mesa

3. Development's location (street address, assessor's parcel
no., cross street, etc.): On the Bolsa Chica mesa adjacent to City
of Huntington Beach overlooking Bolsa Chica wetlands. See attached map.

4. Description of decision being appealed:

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A5-BLC-97-188

DATE FILED: 6.24.97

DISTRICT: South Coast / Long Beach

H5: 4/88

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

a. ☒ Planning Director/Zoning Administrator c. ☐ Planning Commission

b. ☐ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: Thursday, May 15, 1997

7. Local government's file number (if any): PA 970065

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Kell Real Estate Group
4400 MacArthur, Suite 300
Newport Beach, CA 92660
(714) 477-0874

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

- (1) See attached list

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

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

see attached.

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

SECTION V. Certification

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

Nancy Draven

Signature of Appellant(s) or
Authorized Agent

Date June 24, 1997

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

BACKGROUND

On April 15, 1997, Koll Real Estate Group began construction of a seven foot tall chain link fence around the perimeter of Bolsa Chica Mesa without benefit of a Coastal Development Permit. After numerous citizen complaints, Koll applied for a permit and a public hearing was held on May 15, 1997. Approval was granted by the Orange County Zoning Administrator and a notice of final decision was filed with the California Coastal Commission on or about June 10, 1997.

APPELLANT'S CONTENTIONS:

County policy 4.5.3 requires a minimum fifty foot development setback from the edge of the Bolsa Chica Mesa. The policy does not differentiate between west facing bluffs and south facing bluffs which means that the 50-foot setback should be honored for both west and south facing bluffs. Condition of Orange County approval #10A requires Koll to "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." According to a map presented to the County by Koll, the fence is proposed to be installed at the BASE of the Bluff adjacent to the pocket lowlands. (See map attached.) Therefore, the development permit violates the Coastal Commission approved LCP by not requiring a 50-foot setback along the south facing blufftop.

County Policy 4.2.1 states that recreational uses shall be located and designed in such a manner that there will be no adverse impacts to wetland or ESHA resources. The proposed fence results in a pedestrian trail which will divide the raptor ESHA from wetlands adjacent to the Wintersburg Flood Control Channel. The ESHA provides habitat to eleven raptor species including the endangered peregrine falcon. As stated in the Coastal Commission's adopted Land Use Plan Findings, (p.93) many of these raptors are dependent upon the wetlands to obtain their food. When the County adopted the LCP, they agreed that ESHA values would not be disturbed until mitigation was implemented on Huntington Mesa. If pedestrian access is eliminated along the top of the mesa, pedestrian use will be concentrated onto a 5 foot wide pathway dissecting the ESHA and wetlands. Condition #10B states: "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." The result of this temporary trail will be increased human activity and disturbance to ESHA values and wetlands contrary to the Coastal Act and the assurances of the approved LCP.

As noted in the minutes, the alleged purpose of the fence is to provide security for the site; it is not to accommodate grading and in fact the fence "would need to be moved to accommodate grading." (See p.2 of the minutes.) At the same time, the minutes state that "perimeter fencing will not be needed when the grading has been completed." (See p.6 of minutes.) These inconsistent comments do not conform with the condition of approval which allows the fence to remain up until after construction is completed. Public access and views could be infringed for many years under this condition.

The County in their approval of the fence has required that the fence on the west facing bluff be placed a minimum of 50 feet from the edge of the bluff as required in the LCP. However, the fence which was in process before the permit was requested is much closer than that. With this placement of the fence within just a few feet of the edge of the bluff, public access and safety are impaired. The bluff edge at this point has been subject to erosion, sinkholes and gullies which appear to have been filled in by some unknown party, as pointed out by Troy Kelly and John Anderson of the Department of Fish and Game in a walk-by on April 19, 1997. This unstable edge of the bluff will endanger the public using the trail and will impede access along the bluff edge. It is very important that the fence be moved in compliance with the County conditions. Insofar as the housing project is required to have a setback of 50 feet from the bluff edge, it seems inappropriate to place a "temporary" fence so close to the bluff edge, when the fence may be there for years.

Until the LCP was approved, the property was secured by a private security company. Since that time, there has been no security and no need for it.

In addition to the fact that the fence does not conform to the Coastal Commission requirements, the County has termed it a "temporary" fence but no time limit has been set for its use. We believe that if this is truly a temporary structure that a reasonable time frame must be established for it.

Also no provision has been made for the coming and going of the terrestrial animals as was required when the bunker was demolished. At that time the fences around the pocket wetlands on the mesa were required to be raised one foot off the ground to accommodate these animals. We believe this fence should be raised one foot to accommodate the terrestrial animals.

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

Ed Mountford
Koll Real Estate Group
4400 MacArthur, Suite 300
Newport Beach, CA 92660

Jacqueline Geier-Lahti
17192 Lynn Street
Huntington Beach, CA 92649

Nancy Donaven
Bolsa Chica Land Trust
4831 Los Patos
Huntington Beach, CA 92649

Eileen Murphy
201 21st St.
HB, CA 92648

Jan Vandersloot
2221 East 16th St.
Newport Beach, CA 92663

Miriam Wedemeyer
4165 Warner Ave. #103
HB, CA 92659-4255

Frank Hoffman
4025 Aladdin Dr.
HB, CA 92649

Doris and Irving Shyken
4165 Warner Ave. #305
HB, CA 92649

Juana Mueller
603 21st St.
HB, CA 92648

Debbie Cook
6692 Shetland Circle
HB, CA 92648

APPENDIX 3

CORRESPONDENCE RECEIVED

Coastal Commission
South Coast Area office
200 Oceangate, #1000
Long Beach, CA-90840-4302

July 17, 1997

I would like the record to show that Koll Real Estate Group (KREG) has a practice of not complying with any permits or appeals.

My examples are two.

1. Admittedly KREG was given wrong information. They asked if they needed a permit for a fence on Bolsa Chica and the County told them they didn't. BUT when they were told to stop erecting the fence until they obtained a permit they said they stopped and they hadn't.

They were told by the County and the Coastal Commission to stop on April 16th. They said they stopped (Minutes of meeting on May 15th Zone tape# ZOAB6 and ZAOB5)
They were filmed working on the fence on the 18th.

The Land Trust appealed the ruling and had a 15 day grace period. KREG put up the posts for more fence along Warner Ave from PCH to Warner Pond and from Marine View to Sandra Lee on Los Patos during this period and were told to stop and finally did comply.

Their attitude seems to be it's easier to ask forgiveness than comply but they lied about complying.

Respectfully submitted.

Eileen Murphy
201 21st Street
H.B. CA 92648

CC: County Planning and Development Services Department

7-3-97

Maust

TO: THE COASTAL
Commission

We are shocked that
you have allowed
the Koll Corp to
erect a new fence
at Bolsa Chica.
If you allow this
& other reckless
actions to destroy
what we have left
of the Calif
wet lands - what will
be left for your
children & their
children's children?
Thank you for your

Denson

Dear CCC, July 8, 1997
we understand that the "temporary" fence
Koll is constructing around their property on
the Bolsa Chica Mesa is within 1,000' of
Outer Bolsa Bay so is of questionable
legality.
We are among the millions of Southern Californians
who want to keep Bolsa Chica as an integrated
nature and history park.
Please address the fact that the fence does not
comply with the provisions of the MCP. Sincerely,
Thank You! Mr. & Mrs. J. Denson

Meylor

© Produced by Palphot Ltd. Tel-052-555238 Print
Photography by Garo Nalbandian



Mr. and Mrs. George Meylor
13560 Cedar Crest Lane, #109L
Seal Beach, CA 90740



The protest the
Koll fencing on
the mesa - allowing
the fence is a
gross decision.
The decision is
irresponsible
at best.

6 25637
The Mount of Beatitudes
Le Mont des Beatitudes
Der Berg der Seligkeit

Calif Coastal
Commission
So. Coast Dist 0
200 Oceanside, 10th
Long Beach Ca 90802

Do not write below this line - No escribir por debajo de esta línea - Schreiben sie nicht unter diese Zeile - Ne rien écrire au-dessous de cette ligne

Mrs. George Meylor / We urge you to
Revoke permission

July 18, 1997

Charles Damm
California Coastal Commission
200 Occangate, 10th floor
Long Beach, CA 90802

Re: Appeal No. A-5-BLC-97-188; Placement of Fence on Bolsa Chica Mesa

Dear Chuck:

As a follow-up to our meeting last week, I wanted to reiterate the position of the Koll Real Estate Group ("Koll") regarding the appeal filed by Commissioners Wan and Pavley and the Bolsa Chica Land Trust to the County of Orange's approval of a permit to place a chain link fence around the perimeter of Bolsa Chica Mesa for security and public safety purposes.

The Bolsa Chica Local Coastal Program ("LCP") was designed to provide a comprehensive program which integrated wetlands restoration and protection with urban development. As part of that program, policies were adopted to provide buffers between wetlands habitat and adjacent new urban development in order to reduce potential disturbance from adjacent urban development (Land Use Plan Policy 3.1.2.6), and to provide a naturally appearing visual transition between the restored wetlands and residential community (Land Use Plan Policy 6.2.22). Koll has every intention to implement these policies at such time as the residential community is built. However, Policy 6.2.22 which serves as the basis for the appeal does not apply in the case of a temporary fence because it addresses residential development setbacks after the site has been graded and homes constructed (please see attached exhibits from the Bolsa Chica LCP). Requiring Koll to adhere to policies that were designed to mitigate the impact of residences on wetlands habitats as part of its pre-construction activities is simply premature. The placement of an interim fence neither violates the intent or language of these policies, nor in any way compromises the future establishment of the development setback zone as part of the residential development.

In order to construct the future residential community, Koll has to undertake a number of pre-construction and construction-related activities. The interim fence will help mitigate potential issues of liability, public safety and site security. The following pre-development activities are currently underway or will be shortly: (1) reabandonment of oil wells, pipelines and other facilities; (2) geotechnical work; (3) archaeological mitigation required by EIR 551; and (4) exploratory drilling for a water well. All of these activities require the use of heavy construction

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

Mr. Charles Damm

Page 2

July 18, 1997

equipment such as drilling rigs and leave the site with holes, pits, trenches, and uneven terrain which can result in injury to an unsuspecting member of the public attempting to cross this area either on foot or on bicycle. Therefore, given this level of activity, it is entirely appropriate to fence the site.

These issues and the question of public access were the subject of extensive discussion during the public hearing before the Orange County Zoning Administrator. Prior to the hearing, the Zoning Administrator visited the site to determine what conditions of approval were necessary to provide public access around the perimeter of the property. As a result, the County added a new condition of approval (#10) requiring that the fence be setback from the edge of the property line to allow public access. If you read the minutes of the Zoning Administrator hearing you will see the County adopted findings stating that public access was provided and "would replicate the ultimate public access contemplated by the LCP to the maximum extent practicable."

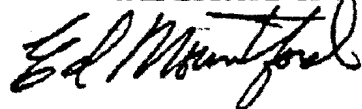
Before the Commission takes action on this appeal, I would like to remind them that limiting the placement of the fence or prohibiting a fence altogether would significantly compromise Koll's ability to implement the development authorized under the LCP and substantially increases the risks to the public and liability of the landowner -- responsibilities for which the Coastal Commission has not at this time stepped forward to assume.

In conclusion, the coastal development permit issued by the County of Orange is entirely consistent with the LCP and provides ample public access. The LCP policies cited by the appellants as evidence that the fence is in violation of the LCP simply do not apply at this stage of the development.

I understand that this appeal has been calendared for the Coastal Commission's August hearing. If you have any questions or would like to discuss this matter further, please call me at (714) 477-0874.

Very truly yours,

KOLL REAL ESTATE GROUP



Ed Mountford
Vice President

EM:dd

PLANNED COMMUNITY PROGRAM

2. GENERAL REGULATIONS**2.2.28 Development Setback Along the Bolsa Chica Mesa**

The 50-foot development setback from the edge of the Bolsa Chica Mesa, as required in Sections 4.5.3, 5.5.1, 5.5.2, and 5.5.3 of this Planned Community Program, is illustrated in Figures 2.1 and 2.2. The development setback shall be landscaped primarily with native and drought-tolerant plant material that provides habitat value and a naturally appearing visual transition between the Wetlands Restoration Area and residential/community park areas of the Planned Community. The planting design shall avoid visually abrupt and artificially engineered changes in the type and density of plant material.

Portions of the 50-foot setback will occur along the south-facing slope of the Mesa (Figure 2.1) and along slope which adjoins Outer Bolsa Bay (i.e., Section 2.2, where the State ownership is 50 feet or less from the edge of the bluff). Public trails required by the LCP may be included within the setback. Public use of the trails shall be ensured in perpetuity by the dedication of either fee ownership or an appropriate trail easement, as determined in Coastal Development Permits for Mesa development.

2.2.29 ATIP Financing

1. An ATIP funding program for all Full Construction and Fair-Share Participation ATIP improvements shall be submitted with the Coastal Development Permit application for approval of the first tentative tract map, except a map for financing and conveyance purposes. The funding program shall be satisfactory to the Director/EMA.
2. Security for all "Full Construction" ATIP improvements within an ATIP phase shall be a required condition of approval of the first Coastal Development Permit for a residential unit within that phase. Security may consist of a bond, letter of credit, or establishment of a funding mechanism such as an assessment district or community facilities district. Security shall be provided prior to issuance of the first building permit for residential development.

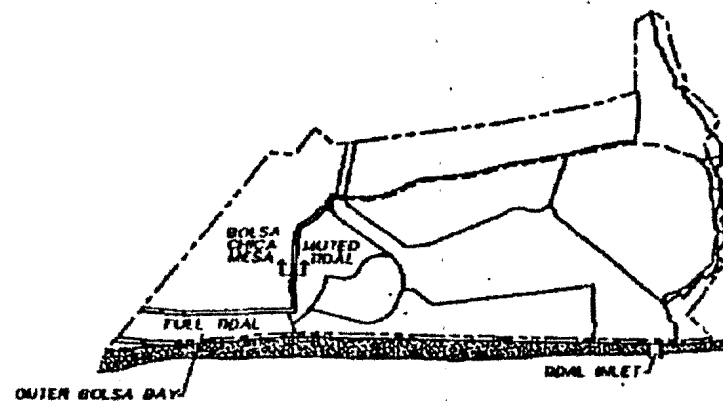
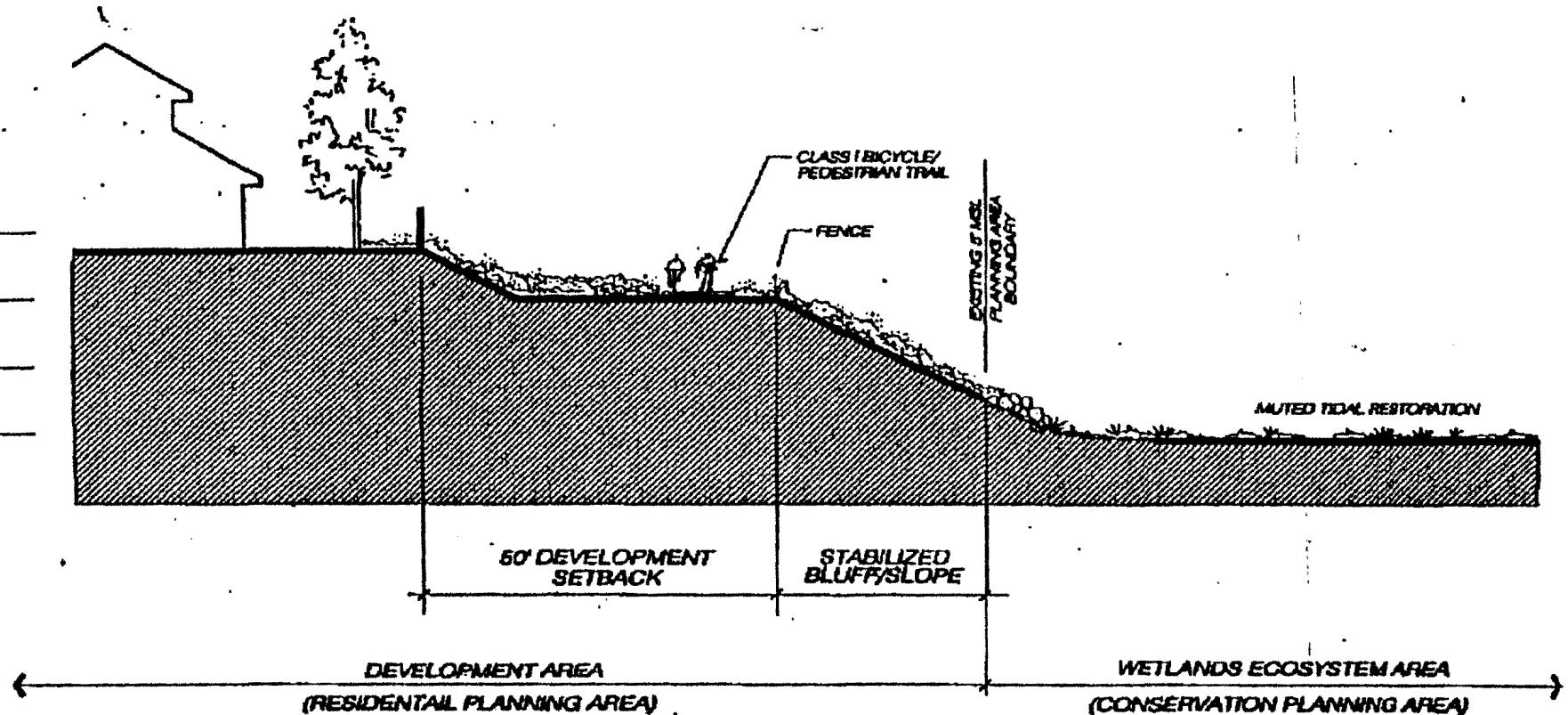


Figure 2.1
DEVELOPMENT SETBACK ALONG THE SOUTH-FACING SLOPE OF THE BOLSA CHICA MESA



KOLL
Real Estate
Group

July 24, 1997

Chuck Damm
California Coastal Commission
200 Oceangate, 10th floor
Long Beach, CA 90802

Dear Chuck,

Attached please find a fax we received yesterday from Bob Hight at the State Lands Commission containing an E-Mail message he received from Jack Fancher of the Fish and Wildlife Service. Judging from this message it appears that a fence around the mesa would help solve problems the state is experiencing on their property. I mentioned the problem of illegal dumping in a meeting with your staff two weeks ago regarding the need for a fence. Maybe this will help substantiate my claim. Perhaps State Lands will testify in support of the fence at the appeal hearing. I look forward to seeing you at the Commission meeting.

Sincerely,

A handwritten signature in cursive script that reads "Ed Mountford".

Ed Mountford

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

From: <jack_tancher@mail.fws.gov>
To: SLCDOWN.SMTPT ("pwolf@hq.dfg.ca.gov", "trout@slc.ca.gov")
Date: 7/22/97 3:42pm
Subject: Forgot to Mention at Steering Committee Mtg 7-18

While exploring Bolsa Chica with Mickey on July 18, I observed a shelter was constructed in a large bush and a cooking fire was burning inside. This "homeless" residency is located in the northwest corner of the "pocket" at the base of the Bolsa Chica Mesa. Pedestrian access to this spot is across Koll's property or off of the CDFG loop trail.

Also, observed in the area, but probably not related, were two pickup truck sized piles of wood debris (looked like old house demolition products) had been dumped. Vehicle access to this spot is only possible across Koll's property. The illegal dumping needs to be curtailed before it gets out of hand, don't you think?

Do you know anything about this?
Can you help?

From: Bob Hight
to: Lucy Deann

