

CALIFORNIA COASTAL COMMISSION

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 Staff Report: January 22, 1999
 Hearing Date: February 3, 1999
 Commission Action:

**STAFF REPORT: REVISED FINDINGS RECORD PACKET COPY**

APPLICATION NO.: 5-97-367

APPLICANT: Hellman Properties (LLC) AGENT: Dave Bartlett

PROJECT LOCATION: Northeast of Pacific Coast Highway (State Route 1), Southeast of the San Gabriel River, South of Adolfo Lopez Drive, West of Seal Beach Boulevard, and North of Marina Hill; City of Seal Beach; County of Orange

PROJECT DESCRIPTION: Subdivision of 196 acre site into 9 parcels, including further subdivision of one of the parcels into 70 single-family residential lots in a private community; fill or dredging of 27 acres of degraded and severely degraded wetlands to construct 39.1 acres for a salt marsh restoration project and an 18 hole public golf course and reservation of 13.2 acres of existing oil production areas for future wetland restoration; dedication of Gum Grove Park to the City of Seal Beach; construction of interpretive areas, visitor-serving recreation facilities, and a golf clubhouse; dedication of public access trails; extension of Adolfo Lopez Drive; excavation of test pits for an archaeological testing program; and 1,600,000 cubic yards of grading.

DATE OF COMMISSION ACTION: September 9, 1998 in Eureka.

COMMISSION ACTION: Approval (including approval of the proposed golf course) with conditions.

COMMISSIONERS ON PREVAILING SIDE: Allen, Brothers, Flemming, Johnson, Miller, Chairman Areias

LOCAL APPROVALS RECEIVED and SUBSTANTIVE FILE DOCUMENTS: See Appendices

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's approval with conditions of coastal development permit application 5-97-367 on September 9, 1998. The adopted special conditions concern: 1) a deed restriction which stipulates the applicant is willing to sell the lowlands property to any agency or non-profit association which requests to purchase the land for wetlands restoration and education purposes; 2) a revised land division configuration that maintains in single parcel ownership and usage the land areas proposed for the golf course and restoration as well as the area currently used for mineral production; 3) use restrictions, parking and access requirements and final plans for visitor-serving uses on the State Lands Parcel; 4) parking, use, and dedication requirements for Gum Grove Park; 5) access requirements including signage, parking, and trails; 6) reasonable mitigation measures for impacts to archaeological resources; 7) incorporation of City water quality and hazards mitigation measures; 8) notification regarding required additional coastal development permit for construction of homes; 9) demonstration of legal ability to carry out project; 10) dedication of wetland restoration area and reservation of mineral production area for future potential wetland restoration; 11) wetland restoration program including submission of final plans, monitoring and remediation

plans, and success criteria/performance standards; 12) standards for operating the golf course which mitigate impacts to wetland habitat; and 13) timing of construction.

STAFF NOTE

On January 15, 1999, a public hearing was held to discuss the adequacy of the Revised Findings. Commission staff provided two addendum to the Revised Findings, of which one included changes to the Revised Findings manuscript. The Commission decided to continue the hearing on the Revised Findings to the February 1999 hearing so that the changes to the manuscript made by the addendum could be incorporated into a final document. In addition, the Commission requested several other changes to the document including: 1) changes to the language in the addendum regarding the *alteration* of wetlands to read the dredge or fill of wetlands; 2) clarification on which areas of the salt marsh would have an elevated berm and which would not; 3) removal of specific ratios when discussing wetland habitat value increases; 4) conform all references to Section 30411(b)(3) so subsection (b)(3) is specified; 5) clarification of whether the limitation of performance standards to wading birds and shorebirds in tidal wetlands outlined in special condition 12.D.6.f. is appropriate; 6) miscellaneous format changes including bolding sentences which contain the phrase "the Commission finds" and inclusion of an executive summary which highlights and outlines the basis for approval of the proposed wetland dredge or fill.

Commission staff has incorporated the changes made by the addendum to the January 15, 1999 Revised Findings. These changes have been made to reflect the Commission's requests outlined in items 1 through 4 above. However, no changes have been made to the document to address item 5 (clarification on performance standards). The language of this special condition was included in Appendix A of the September 9, 1998 staff report. At the September 9, 1998 hearing the Commission did not discuss any changes to the language of this special condition. Therefore, Staff does not recommend changes in these Revised Findings. In addition, the findings have not been bolded, as mentioned in item 6 above. First, all of the statements contained within this document are Commission findings. Second, the findings of this staff report were not drafted so that Commission conclusions are contained solely within sentences that read "the Commission finds." Commission staff believe that, in this case, bolding would place unsuitable emphasis upon particular sentences. Accordingly, certain sentences within the findings have not been bolded.

EXECUTIVE SUMMARY

The Commission finds that the proposed project, as conditioned, is consistent with Sections 30210, 30212, 30213, 30222, 30231, 30233 (a)(3) with 30411(b)(3), 30244, 30250, 30252, 30253 of the Coastal Act.

Attention has been focused upon allowable uses within wetland habitat at the subject site and the Commission's approval of the proposed project consistent with Section 30233(a)(3) and 30411(b)(3) of the Coastal Act. Pursuant to a determination made by the California Department of Fish and Game, the proposed project would occur in degraded wetlands. Section 30233 (a)(3) states that a boating facility is an allowable use within degraded wetlands in combination with a substantial wetlands restoration. In this case, a boating facility is not feasible and, therefore, is not a feasible means of achieving substantial restoration. Pursuant to Section 30233(a)(3) and Section 30411(b)(3) of the Coastal Act, and guidance provided by the Commission's interpretive wetland guidelines, the Commission finds that the project is an "other feasible means" of achieving the goal of substantial restoration at the subject site. In addition, the project, as proposed and conditioned, is found to be the most feasible, least environmentally damaging alternative. The Commission

concludes that the least environmentally damaging feasible wetland restoration will be achieved in conjunction with the construction of a visitor serving, public recreational 18-hole golf course and other visitor serving uses, as proposed by the applicant and conditioned by the Commission.

The Commission also acknowledges that without restorative efforts, the site will continue to deteriorate and lose value as an environmental resource. The Commission also notes that at present no agency or non-profit group has come forward to purchase and restore wetland habitat at the site. The Commission finds that the proposed privately funded project will result in an overall improvement to the wetland habitat values which currently exist. The Commission also finds that the proposed project will provide open space which is less intrusive than previously proposed developments within wetlands at the site. Finally, the Commission finds that the proposed project represents the most feasible manner in which to restore the natural values of existing degraded wetlands on the site. Therefore, the Commission finds that in this case the proposed project is consistent with Section 30233 (a) (3) and Section 30411 (b)(3), and Section 30231 of the Coastal Act and consistent with the guidance provided in the Commission's Interpretive Wetland Guidelines.

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I. COMMISSION RESOLUTION FOR ADOPTING REVISED FINDINGS FOR APPROVAL WITH CONDITIONS OF CDP 5-97-367

Staff recommends that the Commission adopt the following motion. Comments from the public concerning the findings will be limited to discussing the adequacy of the findings to support the Commission's action of September 9, 1998.

Motion

I move that the Commission adopt the following revised findings in support of the Commission's approval with conditions of CDP 5-97-367.

Staff Recommendation

Staff recommends a **YES** vote, and the adoption of the following findings. An affirmative vote by a majority of the Commissioners present who voted on the prevailing side is needed to pass the motion. (See list on p. 1)

II. STANDARD CONDITIONS.

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

III. **SPECIAL CONDITIONS.**

1. ***RESERVATION OF POTENTIAL FOR LOWLANDS ACQUISITION FOR WETLANDS RESTORATION***

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and of content acceptable to the Executive Director which shall provide that:

- (a) the applicant agrees to sell the lowlands area of the property to any public agency or non-profit association acceptable to the Executive Director that requests in writing to purchase the property;
- (b) the sale shall be at fair market value as established by an appraisal paid for by the buyer and prepared by an appraiser mutually acceptable to the buyer and applicant, or, if the parties are unable to agree, by an appraiser designated by third party, or if the buyer and applicant agree through an arbitration on value; and,
- (c) for uses restricted to wetlands restoration and education purposes, with reversion rights to the State Coastal Conservancy.

The deed restriction shall be recorded over the lowlands area of the property and shall run with the land, binding all successors and assigns for the life of the golf course use approved in the coastal development permit, and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. ***REVISED VESTING TENTATIVE TRACT MAP NO. 15381.***

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two copies of a revised vesting tentative map for Tract No. 15381. The revised map shall show only five legal lots as generally depicted in Exhibit 1, page 4; namely, 1) the lot currently owned by the California State Lands Commission, 2) the lot currently owned by the City of Seal Beach Redevelopment Agency, 3) proposed Lot 2 which is proposed to be further subdivided into seventy residential lots pursuant to proposed Tentative Tract Map 15402, 4) proposed Lot 3 for the proposed dedication of Gum Grove Park, which shall be in substantial conformance with the configuration shown on the map submitted with the permit application and maintain the proposed minimum 25 wide frontage along Seal Beach Boulevard, and 5) a lot consisting of the remainder of the subject site owned by the applicant. The applicant shall record the revised map approved by the Executive Director.

3. ***STATE LANDS PARCEL.***

- A. **Lease Restriction.** Prior to the issuance of the coastal development permit, the applicant shall execute and record a lease restriction, subject to the review and approval of the Executive Director, over the property commonly known as the California State Lands Commission parcel, situated northeasterly of Pacific Coast

Highway at its intersection with First Street in the City of Seal Beach, which provides that:

- (1) This coastal development permit approves only the construction of: a) an interpretive center consisting of a raised, handicap-accessible platform with information panels containing photographs, maps, exhibits, etc., overlooking the proposed salt marsh, b) the placement only of the Krenwinkle House on the site (no uses are established), c) the construction of public parking spaces, d) construction of a structure or structures containing a maximum of 10,000 square feet of visitor-serving uses on the State Lands parcel; provided that adequate parking is supplied; e) salt marsh enhancement and/or restoration; and f) public recreational trails.
- (2) Any modifications to the development described in this condition shall require an amendment to the permit from the Coastal Commission.
- (3) An approved coastal development permit from the Coastal Commission shall be obtained prior to the establishment of uses to be contained in the Krenwinkle House after it is located on the State Lands parcel.
- (4) Only public access, public recreation, public education, and lower-cost visitor-serving commercial facilities, which are consistent with the Chapter 3 policies of the Coastal Act and with the requirements established by the California State Lands Commission for use of public lands, shall be permitted on the State Lands parcel.
- (5) All office uses are prohibited on the State Lands parcel (excepting offices which are necessary for the administration of, and are adjunct to, the public access and approved visitor-serving uses).
- (6) Parking for the visitor-serving uses on the State Lands parcel shall be provided based on the standards contained in the Hellman Ranch Specific Plan, as adopted by City of Seal Ordinance 97-2 on September 27, 1997. A minimum of sixty-two (62) public parking spaces, as depicted on Figure 5-4, Page 5-21 of the coastal development permit application, shall be provided and maintained on-site. Of these 62 public parking spaces, ten (10) shall be reserved for visitors who are not patronizing any of the commercial visitor-serving uses.
- (7) Consistent with Mitigation Measure R-5 of Seal Beach City Council Resolution No. 4562, the permittee or lessee shall install a bicycle rack near the entrance to the proposed pedestrian trail for the saltwater wetland. The bicycle rack shall; 1) be public, 2) be maintained by the permittee, and 3) accommodate a minimum of twenty (20) bicycles.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This lease restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- B. Agreement to be bound.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall obtain a written agreement from the owner of the State Lands parcel, subject to the review and approval of the Executive Director, stating that in the event of termination of the lease, and for so long as the building and facilities constructed pursuant to permit 5-97-367 exist, the owner of the State Lands parcel will agree to require each new or different tenant, occupant or operator, including itself, to sign a lease restriction or other appropriate instrument agreeing to comply with the conditions set forth in Special Condition 3.A. above.
- C. Final Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, plans for the proposed interpretive center and visitor-serving commercial building which are consistent with the requirements of this permit. The applicant shall comply with the plans approved by the Executive Director.

4. GUM GROVE PARK

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written evidence demonstrating that the area known as Gum Grove Nature Park and as delineated as Lot 3 of proposed Vesting Tentative Tract Map 15381 has been dedicated in fee to the City of Seal Beach, as proposed by the applicant. The dedication documents shall provide that:

- (a) The park shall be preserved in perpetuity as a passive recreational nature park open to the public. Active recreational activities or commercial facilities shall be prohibited.
- (b) Necessary parking facilities which are the minimum required to serve the park and which meets Americans with Disabilities Act requirements shall be provided. The existing twenty (20) striped parking spaces for Gum Grove Park shall be maintained.
- (c) All new or upgraded trails within the dedicated park area shall be constructed to be accessible to persons with disabilities consistent with Americans with Disabilities Act requirements. New or upgraded trails shall not be lighted in order to minimize impacts on wetlands.
- (d) Small scale interpretive signage which describes the Monarch Butterfly may be permitted if approved by the Executive Director.
- (e) Gum Grove Park shall be open from dawn to dusk on a daily basis. Changes in hours of operation of Gum Grove Park shall require an amendment to this permit unless the Executive Director determines that an amendment is not required.
- (f) Signage shall be conspicuously posted which states that the park is open to the general public.
- (g) That portion of proposed Lot 3 of Tentative Tract Map No. 15381, comprised of an approximately 25 foot wide strip of land which borders Seal Beach Boulevard and extends west from Seal Beach Boulevard to connect with the primarily used part of Gum Grove Park, shall be subject to the following requirements:

(1)The frontage along Seal Beach Boulevard shall not be gated, fenced, or obstructed in any manner which prevents public access from Seal Beach Boulevard.

(2)The area shall be reserved for a public trail and parking lot, which are visible, and directly accessible to the public from Seal Beach Boulevard, and which lead from Seal Beach Boulevard to the primary part of Gum Grove Park to the west. The public parking lot area shall be large enough for a minimum of ten (10) parking spaces. Where it is not feasible to reserve enough public parking area on this portion of proposed Lot 3, public parking directly accessible from Seal Beach Boulevard shall be provided for on proposed Lot 2 of Tentative Tract Map No. 15381 adjacent to proposed Lot 3, in accordance with the provisions of Special Condition 5.B. of this permit.

5. PUBLIC ACCESS PROGRAM.

- A. Public Access Signage.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a detailed signage plan which provides for the installation of signs clearly visible from Pacific Coast Highway and Seal Beach Boulevard which invite and encourage the public to use the public access, parking, and recreation opportunities proposed at Gum Grove Park, the State Lands parcel, and the public access trail and public parking linking Gum Grove Park to Seal Beach Boulevard. Key locations include but are not limited to; 1) the entrance to the State Lands parcel (intersection of First Street and Pacific Coast Highway, and 2) Gum Grove Park, both at its western entrance and at the proposed Seal Beach Boulevard entrance. The plans shall also provide for signage which designates ten (10) of the parking spaces at the State Lands parcel for the exclusive use of trail users and which clearly indicates that the bike racks on the State Lands parcel are for the general public. The plans shall indicate the location, materials, dimensions, colors, and text of the signs. The permittee shall install the signs in accordance with the signage plans approved by the Executive Director.
- B. Residential Community Streets (Vesting Tentative Tract Map No. 15402).** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: 1) public pedestrian and bicycle access to the streets and sidewalks constructed within the area subject to Vesting Tentative Tract Map No. 15402 shall not be precluded, 2) no locked gates, walls, fences, or other obstructions prohibiting public pedestrian or bicycle access to the streets and sidewalks constructed within the area subject to Vesting Tentative Tract Map No. 15402 shall be permitted, 3) no requirement to allow public vehicular access over the private streets is necessary if the applicant is willing to provide public parking within Gum Grove Park and a separate vehicular entrance from Seal Beach Boulevard to said public parking, 4) if fewer than the ten (10) public parking spaces required by Special Condition 4.(G)(2) of this permit can be constructed on proposed Lot 3 of Vesting Tentative Tract Map No. 15381, the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3 shall be reserved for the balance of the public parking spaces so that the parking spaces are directly accessible from Seal Beach Boulevard. The deed restriction shall be recorded over the entire area subject to Vesting Tentative Tract Map No. 15402 and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive

Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- C. **Revised Vesting Tentative Tract Map No. 15402.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two copies of a revised vesting tentative map for Tract No. 15402 if: (1) all of the ten public parking spaces required under Special Condition 4.(G)(2) cannot be built on proposed Lot 3 of Vesting Tentative Tract Map 15381, and/or (2) the entities with jurisdiction over Seal Beach Boulevard do not approve a separate vehicular entrance off of Seal Beach Boulevard to said public parking spaces. The revised map shall show: (1) the locations and design of said public parking spaces which cannot be built on Lot 3 and instead shall be built on the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3, and 2) the location of the public street which connects the public parking required under Special Condition 4.(G)(2) of this permit with the entrance to the subdivision proposed by Vesting Tentative Tract Map No. 15402. The revised map shall be accompanied by written documentation demonstrating that the governmental agencies which have jurisdiction over Seal Beach Boulevard and parking space standards have approved the revised map. The applicant shall record the revised map approved by the Executive Director.
- D. **Construction of Trail and Parking Lot.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE HOUSES WITHIN THE AREA SUBJECT TO VESTING TENTATIVE TRACT MAP NO. 15402, the applicant shall construct a public access trail and parking lot, which are visible and directly accessible to the public from Seal Beach Boulevard, which lead from Seal Beach Boulevard to the primary part of Gum Grove Park to the west. The public parking lot shall contain a minimum of ten (10) parking spaces and shall be directly accessible from Seal Beach Boulevard. Where it is not feasible to construct the public parking and vehicular entrance on this portion of proposed Lot 3 of Vesting Tentative Tract Map No. 15381, public parking directly accessible from Seal Beach Boulevard shall be constructed on proposed Lot 2 of Tentative Tract Map No. 15381 (i.e., the area subject to Vesting Tentative Tract Map No. 15402) immediately adjacent to proposed Lot 3, in accordance with the provisions of Special Condition 5.B of this permit.
- E. **Public Trails Deed Restriction.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:
- (1) Uses within the proposed and required trail areas generally depicted on Exhibit L of the March 19, 1998 staff report (except for the trail depicted linking Gum Grove Park to the State Lands parcel) shall be limited to public access, trail maintenance, emergency access to and from the existing mineral production facilities, and construction and maintenance of utilities and oil and gas pipelines. Any construction or maintenance activities for utilities and oil and gas pipelines, and emergency access to and from existing mineral production facilities, within the proposed trails, shall be carried out in a manner which minimizes any impact on the use of the surface area of the proposed trails for public access purposes.
 - (2) The design of the proposed and required trails and access to the proposed and required trails shall meet the requirements of the Americans with Disabilities Act.

- (3) The proposed and required trails shall be described in metes and bounds and shall be a minimum of twenty-five feet (25') wide with the paved portion being a minimum of ten (10) feet wide.
- (4) The trails shall not be lighted in order to minimize impacts to the wetlands.
- (5) The trails shall be open to the public from dawn to dusk and shall not be gated. Any changes to the hours of operation of the trails shall require an amendment to this permit unless the Executive Director determines that no amendment is required.
- (6) The proposed view overlooks at the ends of the trails shall contain handicap accessible seating.
- (7) The trails shall be, as necessary, partially or fully enclosed with see-through structures, such as cages or arched fences, which protect trail users from errant golf balls.

The deed restriction shall be recorded over the public access trail area as generally depicted on Exhibit L of the March 19, 1998 staff report (except for the trail depicted linking Gum Grove Park to the State Lands parcel) and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. **ARCHAEOLOGY**

For purposes of this condition, "OHP" shall mean the State Office of Historic Preservation, and "NAHC" shall mean the state Native American Heritage Commission.

- A. **Research Design.** The permittee shall undertake the proposed archaeological investigation in conformance with the proposed archaeological research design entitled A Research Design for the Evaluation of Archaeological Sites within the Hellman Ranch Specific Plan Area dated November 1997 prepared by KEA Environmental, Inc. for the City of Seal Beach. Prior to issuance of the coastal development permit, the applicant shall submit written evidence, subject to the review and approval of the Executive Director, that a copy of the archaeological research design has been submitted to the OHP, the NAHC, and the Native American person/group designated or deemed acceptable by the NAHC, for their review and comment. An amendment to this permit shall be required for any changes to the research design suggested by OHP, NAHC, or the Native American group/person unless the Executive Director determines that an amendment is not required.
- B. **Selection of Archaeologist(s) and Native American Monitor(s).** The archaeologist(s) selected by the City shall meet the United States Department of Interior minimum standards for archaeological consultants, as also endorsed by the OHP. The City shall select the Native American monitor(s) in compliance with the "Guidelines for monitors/consultants of Native American cultural, religious and burial sites" issued by

the NAHC, and in consultation with the appropriate Native American person/group deemed acceptable by the NAHC.

- C. **Post-Investigation Mitigation Measures.** Upon completion of the archaeological investigation, and prior to the commencement of construction of any development (other than archaeological investigation activities or subdivision) located within proposed Lot 2 of proposed Vesting Tentative Tract Map 15381, the applicant shall submit, for the review and approval of the Executive Director, a written report regarding the following: 1) a summary of the findings of the archaeological investigation, and 2) a final written mitigation plan which shall identify recommended mitigation measures, which may include capping of archaeological sites, data recovery and curation of important archaeological resources as defined by the California Environmental Quality Act, and detailed additional mitigation measures which need to be implemented. The applicant shall also submit for review and approval of the Executive Director, a signed contract with a City-selected archaeological consultant that provides for archaeological salvage that follows current accepted professional practice, if additional archaeological data recovery measures are determined appropriate. The written report and additional mitigation measures shall also be submitted to the OHP and the appropriate Native American person/group designated or deemed acceptable by the NAHC. An amendment to this permit shall be required to implement any additional mitigation measures unless the Executive Director determines a permit amendment is not required.
- D. **Implementation of Mitigation Measures and Summary of Fieldwork.** Prior to commencement of site preparation, grading, and construction activities for any development (other than archaeological investigation activities) located within a fifty foot (50") radius of the furthest boundary of each state-identified archaeological site as delineated in the archaeological research design, all of the requirements of Special Conditions 5.A., 5.B., and 5.C. shall have been met. All development shall occur consistent with the final plan required by Special Condition 5.C. A written synopsis report summarizing all work performed in compliance with Special Conditions 5.A, 5.B, and 5.C shall be submitted to the Executive Director, OHP, and NAHC within six (6) weeks of the conclusion of field work. No later than six months after completion of field work a final report on the excavation and analysis shall be submitted to the Executive Director, OHP and the NAHC.
- E. **Monitoring of Construction Activities.** All site preparation, grading and construction activities for the proposed development shall be monitored on-site by a qualified archaeologist and Native American monitor. The archaeologist and Native American monitor shall have the express authority to temporarily halt all work in the vicinity of the discovery site should significant cultural resources be discovered. This requirement shall be incorporated into the construction documents which will be used by construction workers during the course of their work.
- F. **Discovery of Cultural Resources / Human Remains During Post-Archaeological Testing Construction Activities.**
- (1) If additional or unexpected archaeological features are discovered during site preparation, grading, and construction activities for approved development other than the archaeological investigation, all work shall be temporarily halted in the vicinity of the discovery site while the permittee complies with the following:

The archaeologist, in consultation with the Native American monitor, shall sample, identify and evaluate the artifacts as appropriate and shall report such findings to the permittee, the City and the Executive Director. If the archaeological resources are found to be significant, the archaeologist, in consultation with the Native American monitor, shall determine appropriate actions, and shall submit those recommendations in writing to the Executive Director, the applicant and the City. The archaeologist shall also submit the recommendations for the review and approval of the Executive Director and shall be prepared in accordance with the provisions outlined in Special Condition 5.C above. Any recommended changes to the proposed development or the mitigation measures identified in the final plan required by Special Condition 5.C. shall require a permit amendment unless the Executive Director determines that a permit amendment is not required.

Development activities may resume if the cultural resources are not determined to be 'important' as defined by the California Environmental Quality Act (CEQA).

- (2) Should human remains be discovered on-site during the course of site preparation, grading, and construction activities, immediately after such discovery, the on-site City-selected archaeologist and Native American monitor shall notify the City of Seal Beach, Director of Development Services and the County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted in the vicinity of the discovery site until the remains can be identified. The Native American group/person deemed acceptable by the NAHC shall participate in the identification process. Should the human remains be determined to be that of a Native American, the permittee shall comply with the requirements of Section 5097.98 of the Public Resources Code. Within five (5) calendar days of such notification, the director of development services shall notify the Executive Director of the discovery of human remains.

- G. Incorporation of Archaeology Requirements into Construction Documents. Special Condition No. 6 of coastal development permit 5-97-367 shall be incorporated in its entirety into all the construction documents which will be used by construction workers during the course of their work as well as all construction bid documents.

7. **WATER QUALITY.**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a National Pollutant Discharge Elimination System permit ("NPDES"), Storm Water Pollution Prevention Plan, and Structural and Non-structural Best Management Practices for the proposed project, in compliance with the standards and requirements of the California Regional Water Quality Control Board. The applicant shall implement and comply with the water quality measures approved by the Executive Director. Runoff from the site shall be directed to the Los Alamitos retarding basin to the maximum extent feasible. The permittee shall comply with mitigation measures WQ-5 through WQ-10 inclusive as approved by City of Seal Beach City Council resolution 4562.

8. **HAZARDS .**

Mitigation Measures WQ-1, WQ-2, WQ-3, WQ-4, GEO-1, GEO-2, GEO-3, GEO-4, GEO-5, GEO-6, GEO-7, and GEO-8 as shown on Exhibit B of City of Seal Beach City Council Resolution 4562 certifying the Hellman Ranch Specific Plan Environmental Impact Report on September 22, 1997 (Exhibit 11 of the September 9, 1998 Staff Report) are

hereby incorporated by reference as special conditions of this coastal development permit.

9. FUTURE CONSTRUCTION OF HOMES ON THE MESA

This coastal development permit does not approve development on the lots created by Vesting Tentative Tract Map No. 15402. A future coastal development permit(s) is required for development, such as site preparation, construction of streets, common walls and landscaping, and construction of the actual homes, etc. on the site. Construction spoils, materials, and equipment shall not be placed in any wetland areas.

10. LEGAL INTEREST.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written documentation demonstrating that it has the legal ability to carry out all conditions of approval of this permit.

11. WETLANDS RESTORATION AREA / CONSERVATION.

The wetlands restoration area shall consist of a minimum 52.3 acres of wetlands comprised of: 1) a minimum thirty-nine point one (39.1) acre salt marsh wetland (Phase 1 of the overall salt marsh wetland creation) to be created initially, located adjacent to the Haynes Cooling Channel and connected to the San Gabriel River by a culvert (as generally depicted on Page 4 of Exhibit 1 of the September 9, 1998 staff report as amended by the addendum), and surrounded by a buffer area consistent with the transition zone/densely vegetated berms/upland areas described in the conceptual wetlands restoration plan (dated November 1997) and addendum (dated February 1998), and 2) reservation of a minimum 13.2 acres of mineral production area for future Phase 2 and Phase 3 creation of salt marsh wetlands. The wetlands shall be created, preserved, and maintained as described in the following conditions:

- A. "Phase 1" Initial Proposed Salt Marsh Wetland Restoration Area. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency, private association, or non-profit association approved by the Executive Director an open space and conservation easement, as proposed by the applicant, for the purpose of creating and maintaining a minimum thirty-nine point one (39.1) acre salt marsh wetland (Phase 1 of the overall salt marsh wetland creation) surrounded by a buffer area consistent with the transition zone/densely vegetated berms/upland areas described in the conceptual wetlands restoration plan (dated November 1997) and addendum (dated February 1998). Such easement shall be over the area of the site located adjacent to the Haynes Cooling Channel and connected to the San Gabriel River by a culvert, including areas in the general vicinity of the green for the 12th hole and the tee for the 13th hole and in the general vicinity of the green for 5th hole and the tee for the 6th hole, as generally depicted on Page 4 of Exhibit 1 of the September 9, 1998 staff report (as amended by the addendum) for this permit. The easement shall:

- (1) Permit the applicant, its agents, and/or the accepting agency or non-profit organization to enter the property, create and maintain habitat, revegetate

portions of the area, and fence the newly created/revegetated area in order to protect such habitats.

- (2) Restrict all development, vegetation clearance, fuel modification and grading within the easement except that necessary to establish/maintain the habitat.
- (3) Permit staff of the Coastal Commission and other resources agencies (e.g., California Department of Fish and Game, U.S. Fish and Wildlife Service, etc.) to enter and inspect for purposes of determining compliance with coastal development permit 5-97-367 and other agency approvals.
- (4) No development, as defined in Section 30106 of the Coastal Act shall occur in wetland creation areas and wetland buffer areas except for the creation and maintenance of habitat and fencing of the created habitat in order to protect such habitats.

The easement area shall be described in metes and bounds. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition. The offer shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assigns, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

- B. Reservation of Mineral Production Area for Phase 2 and Phase 3 Wetland Creation.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that the allowable uses and allowable development on both the entire 4.5 acre area of mineral-production facilities immediately to the southeast of the Haynes Cooling Channel (Lot 7 of Vesting Tentative Tract Map 15381) and the 8.7 westernmost acres of mineral-production facilities immediately to the southeast of the Haynes Cooling Channel (Lot 6 of Vesting Tentative Tract Map 15381) shall, either at the time the on-site mineral-production ceases or on April 15, 2023 (whichever occurs earlier), be restricted to; 1) the removal of the existing mineral-production facilities, 2) removal of contaminants and remediation of the site, and 3) wetland habitat creation/restoration and conservation/open space. The deed restriction shall be recorded over the revised lot of Vesting Tentative Tract Map 15381 which contains the wetlands, golf course, and mineral-production facilities, and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

12. FINAL WETLAND RESTORATION PROGRAM.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a final wetland restoration program for the proposed project. The program shall be developed in consultation with the Commission, California Department of Fish and Game, and U.S. Fish and Wildlife Service and at a minimum shall include:

- A. A detailed final site plan of the existing degraded and severely degraded wetlands and a detailed final site plan of the wetland creation restored sites that substantially conform with the plans contained in the Addendum to Concept Wetlands Restoration Plan for the Hellman Ranch ("Addendum") dated February, 1998 prepared by Moffatt & Nichol Engineers in association with Coastal Resources Management (M&N File: 3693) and the Concept Wetlands Restoration Plan for the Hellman Ranch ("Concept Plan") revised November, 1997 prepared by Moffatt & Nichol Engineers in association with Coastal Resources Management, as revised as follows:

(1)The proposed initial "Phase 1" Salt Marsh Wetland shall be a minimum thirty-nine point one (39.1) acre salt marsh wetland (Phase 1 of the overall salt marsh wetland creation) surrounded by a buffer area consistent with the transition zone/densely vegetated berms/upland areas described in the conceptual wetlands restoration plan (dated November 1997) and addendum (dated February 1998).

(2)Revise Figures A1, A4, and A7 of the Addendum to reflect that the Phase 1 Salt Marsh Wetland has been expanded, to a minimum 39.1 acres, in the general vicinity of the green for the 12th hole and the tee for the 13th hole and in the general vicinity of the green for 5th hole and the tee for the 6th hole, as generally depicted on Page 4 of Exhibit 1 of the September 9, 1998 staff report (as amended by the addendum) for coastal development permit application 5-97-367.

- B. The baseline ecological assessment of the existing degraded and severely degraded wetland area submitted with the coastal development permit application.

- C. A final overlay map (if a large scale map is produced, a reduced 8 1/2"x11" or 11"x17" copy shall be included in the program) which superimposes the following:

(1)The twenty-five (25) acres of degraded wetland as mapped by the California Department of Fish and Game in its January 13, 1982 Determination of the Status of Wetlands Within the City of Seal Beach, Immediately South and East of the San Gabriel River Channel (Ponderosa Seal Beach Wetlands);

(2)The current 1996 wetlands delineation (27 acres) of the project site prepared by Coastal Resources Management & Chambers Group as shown on Figure 4-7, Page No. 4-13 of the application for coastal development permit 5-97-367;

(3)The areas of wetland fill resulting from the golf course and resulting from creation of the required minimum 39.1 acres of salt marsh; and

(4) The required minimum 39.1 acres of Phase 1 (initial creation) salt marsh areas.

D. Monitoring and Remediation

The monitoring and remediation component of the final wetland restoration program shall include the following:

(1) Statement of Goals and Objectives

The statement of goals and objectives shall specify that the goals of the restoration and habitat construction plans shall be to provide subtidal basin and channel, mudflat, low salt marsh, high salt marsh, upland transition/buffer, and similar in composition, diversity, and abundance to equivalent well-functioning natural habitats, and that it is intended that the restored and created tidal wetlands will be self-sustaining.

(2) Construction and Restoration

Construction of the Phase 1 initial wetland habitats shall occur concurrent with golf course construction. A post-construction survey, to be submitted within ninety (90) days of completion of construction to the Executive Director for review and approval, shall be carried out by the permittee to demonstrate that the wetland and transitional habitats were built to the approved specifications. If the Executive Director determines that the restoration and construction was not accomplished to specifications, the permittee shall modify the restored and created wetlands, in consultation with the California Department of Fish and Game and subject to the review and approval of the Executive Director, to meet the approved specifications within six (6) months of the post-construction survey. The Executive Director may grant a one-time extension of time to these deadlines for good cause.

The initial planting shall be completed within six (6) months after construction is completed. The applicant may continue planting and other restoration activities within the tidal wetlands for three (3) years following construction with the approval of the Executive Director.

(3) Purpose and Timing of Monitoring and Remediation

After the initial restoration and construction of the initial Phase 1 wetlands and associated upland transitional habitats is completed, the wetlands and transitional habitats will be monitored, managed, and, if necessary, remediated. Monitoring shall be implemented to determine whether the performance standards of this condition are met and, if any performance standards are not met, to determine the reasons for the inadequate performance and identify, in consultation with state and federal resources agencies (e.g., the U.S. Fish and Wildlife Service and the California Department of Fish and Game), appropriate remedial measures.

The wetlands and transitional habitats shall be monitored for a period of ten (10) years following completion of construction to measure the success of the restored and created wetlands in achieving the performance standards specified in subsection (6) below. Upon completion of ten (10) years of independent

monitoring that demonstrates that the restored and constructed habitats are in compliance with the performance standards, independent annual site inspections shall be conducted for an additional five (5) years to identify any noncompliance with the performance standards.

If the performance standards are not being met, then the permittee shall conduct an independent study to collect, in consultation with the state and federal resources agencies, the information necessary to determine what remediation is needed. The Executive Director, in consultation with state and federal resources agencies, shall determine the required remedial action based on information from the independent study. The permittee shall be required to implement any remedial measures determined necessary by the Executive Director in consultation with state and federal resources agencies. The remedial actions shall be monitored as described herein.

The monitoring plan shall describe the sampling methodology and analytical techniques, which shall be developed in consultation with state and federal resources agencies, for measuring performance relative to the performance standards set forth in subsection (6) below.

(4) Independent Monitoring Biologist

An independent biologist to monitor the establishment and success of the salt marsh shall be selected by the applicant and approved by the Executive Director, and funding for the monitor biologist shall be provided by the applicant for a period of ten (10) years.

(5) Reference Sites

At least three reference sites shall be selected, in consultation with the California Department of Fish and Game and subject to the review and approval of the Executive Director. The reference sites shall be relatively undisturbed natural tidal wetlands located in at least two separate geographic areas within the Southern California bight. The salt marsh reference sites shall have resident populations of Belding's Savannah sparrows. Reference sites must be accessible to the independent monitor and shall contain habitat of interest and shall be characterized by a muted tidal regime similar to the proposed salt marsh.

(6) Success Criteria/Performance Standards

Performance standards shall be either fixed values or defined variables. The monitoring of the salt marsh shall be in compliance with the standards and criteria contained in the Concept Plan, except that: 1) exotic, invasive, and non-native species shall be excluded from any assessment of performance standards, and 2) the proposed performance standards shall be modified as follows for the various proposed habitat zones (the performance standards and success criteria shall be met within the first five (5) years after completion of construction of the Phase 1 salt marsh):

a. Transition Zones

The permittee shall provide a management plan for the proposed berm ringing the salt marsh which serves as transition/buffer area. The plan shall also provide for salvage and ongoing maintenance and management of coulters' goldfield and southern tarplant. The management plan shall be applied to all native species, not just sensitive species.

b. High Salt Marsh

Vegetation in the High Salt Marsh shall contain at least seventy-five percent (75%) as many of the same native species (both in quantity and type) as the least speciose reference site. The average vegetative cover (all native species combined) shall be at least as great as the average vegetative cover at the reference site with the lowest vegetative cover. The average plant height for each species shall be at least seventy-five percent (75%) of the average height of the same species at the reference site with the lowest average plant height, except that pickleweed (*salicornia virginica*) shall be no less than twenty centimeters (20 cm) in average height.

c. Low Salt Marsh

The average vegetative cover shall be at least as great as the average vegetative cover at the reference site with the lowest vegetative cover. The average plant height for each species shall be at least seventy-five percent (75%) of the average height of the same species at the reference site with the lowest average plant height, except that pickleweed (*salicornia virginica*) shall be no less than twenty centimeters (20 cm) in average height (refer also to performance standards for birds in subsection f).

d. Mud Flat

The species composition and abundance of the epifauna (i.e., invertebrates which live on top of the sediment) and infauna (i.e., invertebrates which live in the sediment), shall be estimated at both the project and reference sites. The standards for birds are discussed in subsection f below.

e. Subtidal Basin and Channels

The species composition and abundance of the epifauna and infauna shall be estimated at both the project and reference sites. The total number of fish species shall be seventy-five percent (75%) as great as the reference site with the lowest number of species. The average total number of individual fish shall be seventy-five percent (75%) as great as the reference site with the lowest average total number of individuals. The performance standards for birds are discussed in subsection f below.

f. Birds in all habitats

Performance standards will only apply to wading birds and shorebirds in tidal wetlands. For wading birds and shorebirds, the average number of species present, the average total number of individuals present, and the foraging use of the tidal wetlands shall be similar during the winter and during the summer at the project site and at the reference sites. During the winter and during the summer, a general bird survey of each habitat will be conducted to document the species present and their approximate abundance. In addition, an annual survey to document the presence, abundance, and habitat use of Belding's Savannah sparrows will be conducted in the spring of each year.

- E. The final design and construction methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards, and final construction plans.
- F. Preliminary remedial measures and provisions which require the final remedial measures to be determined in consultation with the Coastal Commission ("CCC"), California Department of Fish and Game ("CDFG"), and the U.S. Fish and Wildlife Service ("USFWS"). The determination that the wetlands have established and are functioning at a level where they no longer require remediation shall be made by the CCC, CDFG, and USFWS.
- G. Provisions for submittal, within thirty (30) days of completion of initial restoration work, of "as built" plans demonstrating that the Phase 1 saltwater marsh wetlands have been constructed in accordance with the approved design and construction methods.
- H. A written final detailed plan for financing the actual cost of constructing, establishing, and maintaining in perpetuity all approved wetlands. The plan shall provide that the landowner, property manager, and golf course owner/operator are ultimately responsible in perpetuity for wetland maintenance, as proposed in Sections 5.5.1 and 6.5.1 of the "Concept Wetlands Restoration Plan for the Hellman Ranch" revised November, 1997 prepared by Moffatt & Nichol Engineers in association with Coastal Resources Management. In addition to the restoration obligations as delineated in Special Condition 12.D. above regarding monitoring and remediation, the applicant shall be responsible for maintenance of the Phase 1 (initial construction) of the required minimum 39.1 acre salt marsh for a period of ten (10) years commencing with the start of construction of the wetlands or until the conservation easement over the salt marsh is accepted, whichever occurs later. If the conservation easement is accepted, the accepting agency shall be responsible for maintenance of the salt marsh. The plan shall indicate, at a minimum; 1) the sources of funding, 2) projected costs of constructing, establishing, and maintaining in perpetuity all approved wetlands, and 3) require that costs of on-going maintenance of the wetlands, including monitoring by the independent biologist, shall be paid out of the golf course revenue before any other costs incurred by the golf course, landowner, and its owner/operator.
- I. Periodic cleaning and maintenance of the culvert connecting the salt marsh to the San Gabriel River.

- J. Periodic removal of invasive, non-native plants from the saltwater marsh wetland areas in perpetuity to ensure maintenance of wetland habitat values.
- K. Invasive, exotic, non-native plants shall not be used anywhere in the golf course except as approved by state and federal resources agencies.
- L. All construction activities for the golf course and the wetlands, shall not occur during the nesting seasons of sensitive species unless the California Department of Fish and Game provides a written determination to the Executive Director that construction during a particular nesting season will not result in harm to the nesting species, and the determination is accepted by the Executive Director.
- M. Prior to commencement of construction of the golf course, the proposed wetland, shall be staked and signed in a manner which clearly demonstrates to construction crews that the wetland areas are not to be entered for any reason.

The permittee shall undertake development in accordance with the final wetland restoration program approved by the Executive Director. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved final program shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

13. GOLF COURSE OPERATIONS AND GOLFER WETLAND EDUCATION PROGRAM.

- A. Timing of Golf Course Construction. Prior to commencement of construction of the golf course, the proposed archaeological test program (including all required excavation and development of reasonable mitigation measures) shall have been completed for those sites impacted by golf course development (ORA-261, -262, -850, and -851).
- B. Timing of Golf Course Opening. The golf course shall not be opened for use until the Phase 1 saltwater marsh wetlands have been constructed in accordance with the final wetlands restoration program approved by the Executive Director, as required in Special Condition No. 12 regarding the Final Wetland Restoration Program.
- C. Golf ball retrieval. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a written plan which describes in detail the proposed method for retrieving golf balls from the wetland. The plan shall include the following: 1) a controlled program for golf ball retrieval which minimizes impacts to the wetlands, and 2) golf balls shall not be retrieved from the wetlands by golfers themselves under any circumstances. The golf course operator shall comply with the plan approved by the Executive Director.
- D. Golfer education on wetlands. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a detailed written plan which describes the methods by which users of the golf course will be informed of the wetlands areas (e.g., signage, brochures, instructions printed on score cards, etc., which instruct golfers not to enter wetland or wetland buffer areas).
- E. Golf Course Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

- (1) The applicant, golf course owner/operator and/or wetlands manager/owner shall implement and comply with the final wetland restoration program approved by the Executive Director.
- (2) Development and management of the golf course shall be in compliance with the document An Environmental Approach to Golf Course Development & Management prepared for Hellman Properties LLC by Siena College-Audubon International Institute dated December 1996 as proposed by the applicant.
- (3) Native plant species shall be used to the maximum extent possible throughout the golf course. No invasive exotic species listed by the California Exotic Pest Plan Council as unwanted species will be used in the golf course. In addition, the final golf course plant palette will be subject to review and approval by the Executive Director.
- (4) The applicant and golf course owner/operator shall implement and comply with the final golf ball retrieval plan approved by the Executive Director.
- (5) The golf course shall not be lighted nor shall it be open for night play.
- (6) The golfer education program approved by the Executive Director shall be complied with and implemented.
- (7) Wetlands areas shall be designated as lateral hazards, so indicated by red stakes or lines in accordance with the provisions of "the U.S.G.A. 1998 Official Rules Of Golf", in which golfers shall not enter and over which golfers shall not hit a penalty shot resulting from hitting a ball into the wetlands.
- (8) The golf course shall be open to the general public during all hours of operation.
- (9) The golf course shall not be converted to a private membership course.
- (10) Signs shall be installed which are clearly visible to the general public which inform the general public that the golf course is open for play to the public.
- (11) Public parking for the golf course shall be provided at all times based on the standards contained in the Hellman Ranch Specific plan adopted by City of Seal Beach City Council Ordinance No. 1420 on October 27, 1997 (Hellman Ranch Specific Plan Amendment 97-1).

The deed restriction shall be recorded over the revised lot, containing the golf course, wetlands, and mineral-production facilities, of Vesting Tentative Tract Map 15381 and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- F. Final Golf Course Plan Designs. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, final design and construction plans for the proposed golf course. The final plans shall be in substantial compliance with the final wetland restoration

plan approved by the Executive Director and the document entitled "An Environmental Approach to Golf Course Development & Management" prepared for Hellman Properties LLC by Siena College-Audubon International Institute dated December 1996.

- G. Final Plans for the Golf Clubhouse. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, final plans for the golf clubhouse. Public access shall be maintained to all common areas of the public golf clubhouse. Public parking for the golf clubhouse shall be provided at all times based on the standards contained in the Hellman Ranch Specific plan adopted by City of Seal Beach City Council Ordinance No. 1420 on October 27, 1997 (Hellman Ranch Specific Plan Amendment '97-1).

14. RESIDENTIAL DEVELOPMENT-TIMING OF CONSTRUCTION.

Residential development, including subdivision improvements and home construction, shall not commence until construction of the Phase 1 initial salt marsh wetlands has commenced. The homes shall not be occupied until all the following occur: 1) construction of the Phase 1 initial salt marsh wetlands has been completed, and 2) Gum Grove Park has been dedicated to the City of Seal Beach.

IV. FINDINGS AND DECLARATIONS

A. *Detailed Site and Project Description*

The subject site totals approximately 196.6 acres. Of that amount, the applicant owns approximately 183.9 acres (93% of the site). Southern California Edison utility company owns a 7.9 acre easement (4%). The California State Lands Commission owns a parcel totaling 3.4 acres (2%). Finally, the City of Seal Beach owns a parcel totaling 1.4 acres (1%). (see Exhibit 1, p. 3)

The site consists of approximately 160 acres of lowland areas, covered for the most part by an average of five feet of fill. A low marine terrace known as Landing Hill reaches an elevation of 66 feet and creates a distinct upland on the south and east edges of the property. Except for the approximately 11 acre slope comprising most of Gum Grove Park, the upland on the southern edge of the lowland is off-site and is developed with the existing Marina Hill residential area of the City of Seal Beach. About 20 acres of the upland on the east side of the lowlands is on the subject site, forming a mesa, and is currently vacant.

The lowlands is traversed by a tidal channel which is connected to the San Gabriel River which leads to the Pacific Ocean. Section 30115 of the Coastal Act states, in relevant part:

"Sea" mean the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks, and flood control and drainage channels.

Thus, this tidal channel, which is subject to tidal action with a connection to the Pacific Ocean, meets the definition of "sea" under the Coastal Act. The mesa and Gum Grove Park is therefore considered to be adjacent to the sea.

The subject site is bounded on the west by Pacific Coast Highway (State Route One), on the south by the Marina Hill residential area, on the east by Seal Beach Boulevard, on the north by City of Seal Beach Police and Public Works Departments and the Los Alamitos Retarding Basin, and on the northwest by the Haynes Cooling Channel owned by the City of Los Angeles Department of Water and Power.

1. Subdivision

There is no existing subdivision on the Hellman Ranch property (see Exhibit 1, p. 35-39). The applicant is proposing subdivision of a 196 acre site into 9 lots, including further subdivision of one of the lots into 70 single-family residential lots in a private community. Also proposed is construction of a public golf course and golf clubhouse; dedication of Gum Grove Park to the City of Seal Beach; approximately 1,600,000 cubic yards of grading (800,000 cubic yards of cut and 800,000 cubic yards of fill); creation of saltwater marsh totaling 39.1 acres (including buffer area) and reservation of 13.2 acres of existing oil production areas for future wetland restoration; construction of interpretive areas and visitor-serving recreation facilities; dedication of public access trails; and extension of Adolfo Lopez Drive.

The subdivision of the site into 9 lots is proposed under Vesting Tentative Tract Map 15381 as approved by the City of Seal Beach on September 22, 1997. The 9 proposed lots are for: oil production (3 lots comprising a total of 27.5 acres); single family detached residential use in a private community on the mesa adjacent to and west of Seal Beach Boulevard (14.9 acres); Gum Grove Park (11.1 acres), visitor-serving facilities (1.8 acres); golf course (102.5),

saltwater marsh wetlands, wetland buffers, and public trails (29.6) acres, and 1.4 acres of City owned land to extend Adolfo Lopez Drive.

2. Residential Development

The subdivision of the 14.9 acre residential site into 70 single-family residential lots (minimum lot size of 5,000 square feet with an average lot size of 6,250 square feet), 7 private open space lots for landscaping (2.08 acres), and a private roadway system is proposed under Vesting Tentative Tract Map 15402 approved by the City of Seal Beach on September 22, 1997. A gated automobile entry and guardhouse are also contemplated for the proposed private residential development.

3. Wetland Fill

A total of approximately twenty-seven (27) acres of wetlands exist on-site (Coastal Resources Management & Chambers Group, 1996). The proposed 102.5 acre public 18-hole golf course would result in the fill of 17.9 acres of existing wetlands. The proposed wetland creation would also result in the dredging and some fill of wetlands (9.1 acres).

4. Salt Marsh

A total of 52.3 acres of salt marsh (including buffers) may ultimately be provided as proposed. The applicant is proposing to construct 39.1 acres of salt marsh, including upland transition buffers, initially (Phase 1). The applicant is also proposing to reserve two existing areas which currently contain mineral production facilities for potential future wetland creation in two future phases. Phase 2 consists of a mineral production area adjacent to the Haynes Cooling Channel and would be contiguous with the proposed salt marsh. Phase 3 would consist of the westernmost portion of a 19.28 acre mineral production area towards the center of the site. The applicant proposes to set aside a combined total of 13.2 acres of existing mineral production area for potential future expansion of the Phase 1 salt marsh. If all three phases are completed, the entire salt marsh (including buffers) would be 52.3 acres. The proposed 39.1 Phase 1 salt marsh is comprised of at least: 1) 9.5 acres of subtidal basin and channels, 2.6 acres of unvegetated mudflat, 2.9 acres of low marsh pickleweed, 8.8 acres of high marsh pickleweed, and between 2 and 5 acres of transition zone/buffers. These figures do not include the additional salt marsh wetland habitat proposed by the applicant through the relocation of the mineral production facility tank farm and conversion of the previously proposed fresh water marsh to salt water marsh (these figures will be provided in the revised wetland restoration program required by Special Condition 12). The buffer areas form an elevated ring around the proposed salt marsh to ensure that potentially contaminated runoff from the golf course does not enter the salt marsh. Consistent with the conceptual wetlands restoration plan (dated November 1997) and addendum (dated February 1998) those portions of the wetland surrounded by the golf course (i.e. those wetlands which were formerly proposed as freshwater wetlands but were changed to saltwater wetlands by the applicant's August 25, 1998 amended project description (Exhibit 17, page 18)) will not have the elevated berm. The buffer areas will also serve as the location of Coulter's Goldfield plants transplanted from existing locations which will be impacted by fill. The proposed Phase 1 salt marsh would be connected by an existing culvert to the San Gabriel River. The river water would provide the source of water for the salt marsh.

The maximum tidal range would be approximately 1.5 feet, with a spring low tide at +0.6 feet Mean Sea Level and a spring high tide at +2.1 feet Mean Sea Level. The residence time (i.e., the relative frequency of tidal flushing) would be a maximum of approximately 1.3 days. Proposed tidal zones include Shallow Subtidal (-4.0' to +0.1' relative to Mean Sea Level

("MSL") and is always underwater), Occasionally Exposed-Subtidal (+0.1' to +0.3" MSL), Lower Intertidal (Mudflat; +0.3' to +1.3' MSL), Upper Intertidal (Low Marsh; +1.3' to +1.9' MSL), Super Tidal (High Marsh; +1.9' to +4.5' MSL, the zone above Mean Higher High Water level). Transition areas consisting of a densely vegetated berm to keep out golf course runoff and errant golf balls would serve as a buffer and would be upland areas never subjected to tidal influence.

5. Grading

A total of approximately one million, six hundred thousand (1,600,000) cubic yards of grading are proposed. Approximately eight hundred thousand (800,000) cubic yards of grading (cut) would be excavated to construct the salt marsh. The 800,000 cubic yards of excavated material would be used for fill for the proposed golf course and clubhouse.

6. State Lands Parcel

The parcel of land adjacent to Pacific Coast Highway currently owned by the California State Lands Commission is contemplated for visitor-serving uses. A City historic building, the Krenwinkle House, may be moved to the site to be used as a historical museum and or interpretive center for the adjacent proposed salt marsh. Also contemplated are 10,000 square feet of visitor-serving commercial uses. Sixty-two (62) parking spaces are shown on the conceptual site plan. A simple interpretive center consisting of a raised platform with displays overlooking the proposed salt marsh is also proposed.

7. Archaeology

The applicant is proposing an archaeological investigation to document the existence of cultural resources in the eleven cultural resources sites identified on the development property. The eleven State-identified cultural resources sites are CA-ORA-256, CA-ORA-260, CA-ORA-261, CA-ORA-262, CA-ORA-263/852, CA-ORA-264, CA-ORA-850, CA-ORA-851, CA-ORA-1472, CA-ORA-1473, and Area D.

The archaeological investigation consists in part of digging 30x30 centimeter square shovel test pits ("STPs") to a maximum depth of 50 centimeters. STPs will be placed at 20 meter intervals on each cultural resource site, resulting in approximately 91 STPs. An additional 19 STPs will be dug on selected sites to supplement the sampling of the 91 STPs.

In addition, the proposed archaeological investigation will consist of digging Test Excavation Units ("TEUs"). The proposed TEUs are 1x1 meter square and will be hand excavated at 10 centimeter intervals. A total of 45 TEUs (between 2 and 8 per site) are expected to be dug. The TEUs will be placed on each site based on the results of both the STPs and a ground penetrating radar survey of each site.

8. Golf Course and Clubhouse

The applicant is also proposing a 102.5 acre 18 hole golf course open to the public. The golf course is intended to be of the caliber that could host a Professional Golf Association tournament and charge green fees in the mid-range of fifty dollars (\$50) or so. A golf clubhouse, also to be open to the public, is also contemplated. An extension of Adolfo Lopez Drive across land owned by the City of Seal Beach is also contemplated.

9. Parks and Trails

The applicant is also proposing to dedicate the 11.1 acre Gum Grove Park to the City of Seal Beach. The City currently leases the park, an unimproved nature park with a eucalyptus tree grove, from the applicant. The applicant also proposes to dedicate public trails which would extend from the State Lands parcel to the north and south of the Phase 1 salt marsh and end at viewing nodes along the salt marsh.

10. Acquisition of Southern California Edison Property

Prior to the September 9, 1998, Commission hearing the applicant amended the project description to provide for the acquisition of the 8 acre Southern California Edison property which bisects the proposed wetland restoration area. Prior to adding this element to the project description, the applicant would have been required to buy or lease at least 5 acres of this land to accomplish their previously proposed restoration. Therefore, this addition to the project description does not change the quantity of previously proposed wetland restoration. This addition is simply a clarification that the applicant has a responsibility to acquire or lease lands in order to carry out their proposed project.

11. Mineral Production Area - Deed Restriction/Conservation Easement

Prior to the September 9, 1998, Commission hearing the applicant amended the project description to propose to deed restrict and add a conservation easement over 13.2 acres of mineral production area that would allow for future restoration or open space upon cessation of mineral production.

B. Ownership and Existing Legal Parcels

The applicant has confirmed that there is no existing subdivision of the Hellman Ranch property. (Exhibit 1, pages 35-39) This parcel is currently utilized for mineral production, of which Hellman Properties owns the entire operating interest. (Exhibit 1, pages 35-39) Although Shell Oil (now Signal Hill Petroleum) has a 50% producing interest in APN 980-36-605, Signal Hill Petroleum has no land rights. (Exhibit 1, pages 35-39)

There are several assessor's tax parcels within the Hellman ownership, including assessor's tax parcels for mineral rights. However, County of Orange Assessor's parcels which are utilized for tax purposes are not necessarily the same as legal lots for purposes of the Subdivision Map Act.

While the City has approved Tentative Tract Map 15381 which subdivides the applicant's lot into several lots, this subdivision of the land is not valid until approved by the Commission. The applicant is thus requesting Commission approval of a subdivision of one 196.6 acre parcel in a configuration that would separate the existing mineral production areas from the proposed golf course, wetland and residential areas.

The applicant's ownership interest comes about as the result of a decree of partition filed in Los Angeles Superior Court Case 13527 (Bixby, et. al. vs. Hellman, et.al.). The applicant's ownership should not be confused with the areas of the subject site owned by the California State Lands Commission, the City of Seal Beach Redevelopment Agency, and an easement owned by the Southern California Edison electric utility.

The southerly boundary of the Hellman property is fixed by the subdivisions that created the existing residential neighborhood of the City of Seal Beach commonly known as Marina Hill. Tracts 1817 and 2590 creating Marina Hill were recorded on December 15, 1955 in Book 82, pages 26-38 (for both tracts) of the Miscellaneous Maps of Orange County. The easterly boundary of the Hellman property is fixed by Seal Beach Boulevard (formerly known as Bay Boulevard, as described in the legal description).

The eastern half of the northeasterly Hellman property line is described in a 1965 record of survey which generally describes the property now occupied by Boeing Company (formerly Rockwell International), except that the southerly portion of this land shown in the record of survey which immediately borders the Hellman property is developed with the City of Seal Beach Police Department, City of Seal Beach Public Works Department, and other City facilities. The western half of the northeasterly Hellman property line is described in the deed from the Lloyd Dinkelspiel estate to the Orange County Flood Control District.

The northwesterly Hellman property line is generally described in the deed from the Hellman family to the City of Los Angeles recorded February 15, 1961 in Book 5629, beginning with page 527, of the Official Records of Orange County.

The applicant is proposing to use an existing culvert for tidal flushing of the proposed wetland restoration. However, only a portion of the culvert occurs on the applicant's property and is owned by the applicant. Therefore, Special Condition 10 requires the applicant, prior to issuance of the coastal development permit, to demonstrate the legal ability to use those portions of the culvert which they do not presently own.

C. Chapter 3 Coastal Act Policy Analysis

1. Wetlands

Section 30108.2 of the Coastal Act states:

"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

Section 30121 of the Coastal Act states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The subject site contains 27.087 acres of scattered wetlands according to a recent wetlands assessment of the site (Coastal Resources Management & Chambers Group, 1996). According to the assessment, the existing wetlands are comprised of 15.91 acres of salt marsh vegetation, 2.026 acres of seasonally ponded water, 7.0059 acres of alkaline flat, and 3.146 acres of tidal channel. The majority of the wetlands are clustered: 1) around the tidal channel which runs through the middle of the property and delivers site runoff to a culvert which connects to the San Gabriel River, or 2) adjacent to the Haynes Cooling Channel at the north edge of the property. (see Exhibit 1 and 4) The applicant is proposing to fill or dredge all of the existing wetlands. The proposed project involves fill of 17.9 acres of the existing wetlands for a golf course, and dredging and some fill of the remaining 9.1 acres of existing wetlands for wetlands restoration.

a. Background on On-site Wetlands

The Commission found previously in its approval of coastal development permit 5-89-1087 that, historically (and as recently as the late 1890's), all of the lowland areas of the subject site were part of the 2,400 acre Alamitos Bay wetland complex at the mouth of the San Gabriel River. Over time, however, man-made alterations reduced the size and quality of the wetlands.

Substantial degradation of the wetlands on the Hellman property began with oil production in the 1920's, which resulted in the fill of wetlands for access roads and production facilities. The wetlands were further altered following the rerouting and channelization of the San Gabriel River from 1930-34. Marsh land receded further as canals and levees were built to control water on the property. The construction from 1961-63 of the adjacent Los Angeles Department of Water and Power cooling channel for the upriver Haynes power plant resulted in the deposition of large quantities of fill on the site and additional fill of wetlands.

The City of Seal Beach also allowed fill to be placed on the property during the 1960's and early 1970's, and the Commission's predecessor Coastal Zone Conservation Commission also approved fill activity between 1972-75 (see Exhibit 7, p. 11). Continued oil production and off-road vehicle use on the site currently contributes to the degradation of the wetlands.

(1) Previous California Department of Fish and Game Review

In June 1980, Bob Radovich of the California Department of Fish and Game ("CDFG") prepared "An Assessment of Wetland Resources Within the City of Seal Beach South of the San Gabriel River" at the request of the South Coast Regional Commission, the predecessor to the current Coastal Commission. (see Exhibit 4, p. 11) The assessment described existing vegetation and wetland values and possible issues regarding restoring the wetlands. The assessment indicates that "[i]n general, existing wetland values are quite poor." The assessment concludes, in part, that "[t]he primary value of the subject wetlands lies primarily in terms of what it can be."

Subsequent to this, at the request of the Commission, the CDFG prepared a formal wetlands determination of the subject site ("Determination of the Status for Wetlands Within the City of Seal Beach, Immediately South and East of the San Gabriel River Channel (Ponderosa Seal Beach Wetlands)" dated January 13, 1982) pursuant to Section 30411(b) of the Coastal Act. (see Exhibit 4, p. 2)

The 1982 determination concluded that approximately 25 acres (+ or - 0.5 acres) existed on the site at the time. The 25 acres were comprised of 3.4 acres of brackish water marsh, 18.0 acres of salt flat, and 3.3 acres of open water/estuarine wetland. CDFG determined that all of the on-site wetlands were degraded. Of these, CDFG determined that approximately 23 acres were severely degraded. While Section 30121 of the Coastal Act defines a wetland, the Coastal Act does not define a "degraded" wetland. In its determination, CDFG defined a "degraded" wetland, based on ecological factors, as:

Degraded Wetlands: A wetland which has been altered by man through impairment of some physical property and in which the alteration has resulted in a reduction of biological complexity in terms of species diversity of wetland-associated species which previously existed in wetland areas.

The determination noted, for instance, that bird use of the wetlands was consistently low, even after taking into account the possibility of influence by variations in tidal and weather

conditions. The CDFG went on to describe the feasibility of restoring the on-site wetlands. During their analysis CDFG determined that a boating facility was not a feasible manner in which to achieve on-site wetland restoration. This determination is discussed more fully below in the section under "Section 30233(a)(3) and 30411(b)(3) – CDFG Determination".

(2) Previous Commission Actions

(A) 1982 Commission Actions

In 1982, Ponderosa Homes applied for coastal development permit application 5-82-221 for the fill of all the existing on-site wetlands and construction of parks and 1,000 homes. Staff recommended that the Commission hold a hearing (May 18, 1982) to discuss the proposed development in light of the wetland and seismic hazards constraints. District log book records indicate that the application ended up being withdrawn (Nov. 17, 1982).

The California Department of Fish and Game prepared a wetlands determination of the site in conjunction with the Ponderosa project in 1982 (described later in this report). In addition, the Coastal Conservancy developed a wetlands enhancement plan for the on-site wetlands. The Conservancy plan evaluated several wetland restoration alternatives that would work around the development proposed under coastal development permit application 5-82-221.

The consolidation of the on-site wetlands into either an on-site tidal salt marsh or an on-site brackish water marsh near the culvert leading to the San Gabriel River was deemed to be technically feasible. Ultimately, however, the Conservancy determined that these alternatives presented significant problems regarding cost of wetland construction, required changes to the then-proposed Ponderosa Homes project to accommodate the wetlands, and long-term maintenance of the culvert linking the wetland with the salt marsh site.

The consolidation of the on-site wetlands into a brackish water marsh near the Los Alamitos Retarding Basin was also considered to be technically feasible. This marsh would have essentially been an extension of the seasonal wetland created when the flood control basin fills with winter storm runoff. This wetland alternative would be dependent on runoff, ground-water pumping, and diversion of runoff from the flood control basin for its water supply. Again, however, the Conservancy determined that this alternative would have required changes to the design of the then-proposed Ponderosa Homes project.

The Conservancy thus concluded that off-site restoration would provide the best chance for creation of a long-term viable and regionally significant wetland in the area. This conclusion was also based in part on minimizing changes to the then-proposed housing development, costs to the developer, and revenue loss to the City of Seal Beach. The Conservancy recommended three preferred off-site areas: the Talbert Marsh and Fairview areas of the Santa Ana River, and uplands areas next to and within the Seal Beach National Wildlife Refuge (Anaheim Bay wetlands).

The Conservancy presented these wetland alternatives to the Commission as Coastal Conservancy Project #1-82. The Commission approved the Conservancy project in concept with conditions requiring: 1) further study of all alternatives, data from which was to be presented to the Commission along with the selection of a final site, and 2) conditions addressing the specific alternatives of the on-site wetlands near the culvert, on-site wetlands near the flood control basin, and the Seal Beach wildlife refuge site. In approving the Conservancy's project, the Commission made the following finding (see Exhibit 8, page 9):

Given the magnitude of the work required, and the location of such work in a wetland, the Commission concludes that major restoration is indeed required.

None of the Conservancy project wetland restoration alternatives were undertaken because the Ponderosa Homes project was never constructed.

(B) 1989-1990 Commission Actions (MOLA)

On November 14, 1989, the Commission denied permit application 5-89-514 by the MOLA Corporation to construct 355 homes with both wetland fill and wetland restoration. The Commission then waived the 6 month waiting period required by the Regulations to rehear a project which has already been denied by the Commission. On January 12, 1990, the Commission approved coastal development permit 5-89-1087 for construction of 355 homes, 4 acres of wetland fill, 36.8 acres of wetland habitat, and 1.3 million cubic yards of cut and 1.4 million cubic yards of fill. (see Exhibit 7 for Revised Findings)

As a condition of approval, the Commission required the proposed wetland restoration area to be expanded by four acres to further mitigate the four acres of fill. The four acre expansion would have; 1) removed planned homes that would have intruded into planned wetland, 2) removed structural development from a highly liquefiable site, 3) further ensured the success of the planned wetland by creating additional wetland and buffer area, and 4) allowed the Port of Long Beach to use the site for mitigation credits. The MOLA project was also never undertaken.

b. Importance of Wetlands

One of the main reasons for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their important ecological functions. First and foremost, wetlands provide critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway a north-south flight corridor extending from Canada to Mexico used by migratory bird species. In addition, wetlands also serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands serve as natural flood retention areas.

Another critical reason for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their scarcity. As much as 75% of coastal wetlands have been lost. As described earlier, the 27 acres of existing on-site wetlands are part of only 150+ acres which remain of the former 2,400 acre Alamitos Bay wetland complex. Therefore, it is critical to maintain and enhance the remaining wetlands to ensure that wetlands exist to carry out the functions described above.

c. Sections 30233 and 30231 Analysis

Section 30233 of the Coastal Act regulates the type of development which may occur in wetlands located in the Coastal Zone. Section 30233 of the Coastal Act states, in relevant part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) *Restoration purposes.*
- (8) *Nature study, aquaculture, or similar resource dependent activities.*

Section 30231 of the Coastal Act requires wetland biological productivity to be maintained, and where feasible restored. Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed project will result in development upon wetlands regulated by Section 30233 of the Coastal Act. More specifically, construction of the golf course and wetland restoration elements of the proposed project will fill or dredge all 27 acres of existing on-site wetlands. Of the total 27 acres of wetland fill or dredge, 17.9 acres of fill will result from construction of the proposed golf course, and 9.1 acres of dredging and some fill will result from the enhancement of the proposed salt marsh wetlands. The applicant is proposing to construct a

total of 39.1 acres of restored wetlands with reservation of an additional 13.2 acres of land for potential restoration by a willing agency or non-profit entity. Thirty-nine point one (39.1) acres are proposed in Phase 1 (at the same time as the construction of the proposed golf course) and the remaining 13.2 acres, where there is currently active oil production activity, will be available for restoration.

Since the proposed project will develop section 30233 regulated wetlands, approval of the proposed wetland fill requires that the following conditions are met: (1) the proposed fill is for one of the eight allowable uses delineated in Section 30233; (2) there is no feasible less environmentally damaging alternative; and (3) all feasible mitigation measures have been provided to minimize adverse environmental effects.

(1) Section 30233(a)(7) – Fill for Restoration Purposes

Section 30233(a)(7) of the Coastal Act allows fill of existing wetlands for wetland restoration purposes. Fill for "restoration purposes" is not defined in either the Coastal Act or its implementing regulations. The Commission's 1981 *Statewide Interpretive Guidelines for Wetlands and Other Wet Environmental Sensitive Habitat Areas* clarifies the applicability of Section 30233 (a) (7) to wetland fill projects as follows:

Restoration projects which are a permitted development in Section 30233 (a) (7) are publicly or privately financed projects in which restoration is the sole purpose of the project.

The Commission's 1994 *Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone* clarifies the meaning of a "restoration project" as follows:

Restoration projects involve the re-establishment of key wetland characteristics in former wetland areas, with the eventual goal of re-establishing a functionally productive and self-sustaining wetland.

The proposed project includes the fill or dredge of 27 acres of degraded wetland habitat. Of this quantity, 9.1 acres of dredging and some fill will occur in order to carry out a proposed 39.1 acre salt water marsh restoration project. Therefore, biological productivity on 9.1 acres of existing degraded wetland habitat will be enhanced through the restoration effort. Viewed in isolation, this 9.1 acres of wetland dredging and some fill is consistent with Section 30233 (a)(7) of the Coastal Act since this portion of the proposed project is solely for restoration purposes.

However, 17.9 acres of fill will displace existing wetland habitat for the construction of the proposed golf course. This portion of the proposed project is not for restoration purposes. Construction of a golf course will not re-establish key wetland characteristics or result in the creation of a functionally productive and self-sustaining wetland on the filled 17.9 acres. Instead, mitigation for the proposed golf course fill would occur at a different location. Therefore, while some portion of the proposed wetland dredging and some fill (9.1 acres) may involve a restoration component, the entire proposed wetland fill or dredge project is not for restoration purposes. As a result, the entire project is not consistent or approvable under Section 30233 (a) (7) of the Coastal Act.

As a point of clarification, it should be noted, the applicant has contended that the golf course is needed to generate the revenue to fund the construction of the proposed wetland restoration. The applicant further contended that since the golf course will provide revenue

for the wetland restoration the golf course is an integral part of the restoration project. As a result, the applicant contended that the proposed project is solely for wetland restoration purposes. In rejecting this argument, the Commission noted the proposed project is neither physically nor financially essential to accomplish defined wetland restoration goals and objectives. According to the City-certified FEIR, it is the residential component rather than the golf course which generates the revenue necessary to meet the conservation goals and objectives. Page 7-2 of the FEIR, Volume I, Section 7.0 - Project Alternatives, states in relevant part:

The creation and restoration of the wetlands will involve construction and engineering costs totaling approximately \$3,000,000 [three million dollars]... The proposed public golf course alone would not be capable of generating sufficient revenue to fund the wetland creation/restoration. Golf courses of this type are generally unable to produce a surplus of revenue after accounting for the costs of constructing improvements, on-going maintenance and operations costs, and a reasonable rate of return on investment, even without calculating land costs. A residential component is therefore required for the project to generate the revenue necessary to meet its conservation goals and objectives. Based on projected costs and returns, it was determined that development of 70 single-family units represents the minimum number of units feasible that would allow for both a reasonable return and the attainment of the conservation/recreation uses contemplated in the proposed Hellman Ranch Specific Plan. [emphasis added]

In addition, the FEIR noted that the proposed golf course was being proposed in order to serve a local need for golfer-oriented recreation. The golf course was not solely envisioned as a way to allow the wetland restoration project to go forward. Therefore, the proposed golf course was neither financially essential for the wetland restoration, nor was it proposed to accommodate a wetland restoration project.

However, even if the golf course development was necessary to finance this wetland restoration proposal, this development would not be consistent with Section 30233(a)(7). To allow wetland fill for a purpose not enumerated in Section 30233 because it is deemed "financially necessary" to support a smaller restoration component would undermine the limitations on use which the Legislature explicitly placed in the section. Under that theory any use could be allowed, if only it be found "financially necessary." If the Legislature had intended this, it would have so provided.

The Commission finds that, for all of the reasons discussed above, rather than proposing a restoration project, the applicant is instead proposing to provide mitigation for the fill of wetland for a golf course. The golf course fill proposed by the applicant is not a restoration project per se; it is a multiple-use residential recreational development with a mitigation component. The 17.9 acres of fill at issue here results from a golf course, not from wetland restoration. Recharacterizing mitigation as "fill for restoration purposes" can not be used as a means to circumvent the strict limits in Section 30233(a) on the purposes for which fill may be placed in a wetland. It is not enough for an otherwise impermissible use of proposed fill to be allowed as fill for restoration purposes simply because an applicant may provide a substantial amount of mitigation. Otherwise, the limits of Section 30233(a) on the uses of fill would have little meaning and the limited amount of wetland acreage that remains in the coastal zone would be viewed as developable for any use so long as mitigation is provided. The result would likely be the rapid diminishment of the remaining wetlands in the coastal zone.

(2) Allowable Uses - Section 30233(a)(3) & 30411(b)(3) - Fill for Boating Facilities

Section 30233(a)(3) authorizes the construction of a boating facility within degraded wetlands, so long as the California Department of Fish and Game labels the subject wetland as degraded, in accordance with Section 30411 of the Coastal Act, and a substantial portion of the degraded wetland is restored and maintained as a biological resource. Section 30233(a)(3) of the Coastal Act, in relevant part, allows wetland fill in accordance with the following:

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland... The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

Section 30411 authorizes the CDFG to conduct a study to determine whether the degraded wetland can most feasibly be restored in conjunction with a boating facility.

Section 30411 of the Coastal Act states, in relevant part:

(b) The Department of Fish and Game, in consultation with the commission and the Department of Boating and Waterways, may study degraded wetlands and identify those which can most feasibly be restored in conjunction with development of a boating facility as provided in subdivision (a) Section 30233. Any such study shall include consideration of all the following:

- (1) Whether the wetland is so severely degraded and its natural processes so substantially impaired that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.*
- (2) Whether a substantial portion of the degraded wetland, but in no event less than 75 percent, can be restored and maintained as a highly productive wetland in conjunction with a boating facilities project.*
- (3) Whether restoration of the wetland's natural values, including its biological productivity and wildlife habitat features, can most feasibly be achieved and maintained in conjunction with a boating facility or whether there are other feasible ways to achieve such values.*

As will be outlined more completely in the following discussion, the Commission finds that the proposed golf course fill is approvable pursuant to Sections 30233 (a)(3) and 30411(b)(3) of the Coastal Act because: 1) the proposed project will occur within a degraded wetland as determined by CDFG; 2) the feasibility of constructing a boating facility in conjunction with a wetlands restoration project at the site was studied by the CDFG; 3) a boating facility at the site was determined to be infeasible by the CDFG; 4) the proposed project is a feasible alternative that would result in the restoration of the on-site wetlands' natural values including its biological productivity and wildlife habitat features.

A) California Department of Fish and Game Determination

As described previously, at the request of the Commission and pursuant to Section 30411(b) of the Coastal Act, the California Department of Fish and Game ("CDFG") studied the on-site wetlands in the early 1980's, in conjunction with the development proposed under coastal development permit application 5-82-221 (Ponderosa Homes). CDFG outlined their conclusions in their final January 13, 1982 report. Among those conclusions the CDFG concluded that approximately 25 acres of wetland existed on the site at the time and that approximately 23 of those acres were "degraded" pursuant to their definition of that term.

Since a boating facility is an allowable use in a degraded wetland –so long as substantial wetland restoration accompanies the boating facility project- CDFG investigated whether a boating facility was feasible at the subject site. Their January 1982 report states the following on the matter:

Because of the character and intensity of adjacent development, it seems unlikely that a boating facility is a viable option.

The report specifically analyzes the three factors identified in Section 30411(b) in the determination of whether degraded wetlands can most feasibly be restored in conjunction with the development of a boating facility.

The first factor in determining whether a degraded wetland can most feasibly be restored in conjunction with a boating facility requires CDFG to consider whether the studied wetland is so severely degraded that the wetland cannot recover and maintain a high level of biological productivity without major restoration activities. CDFG determined that:

It is our position that restoration and enhancement may be accomplished through development of adjacent property and through a consolidation project involving that wetland area south of the tidal channel. It appears that such a project may not entail a relatively major expenditure of funds nor would it require major restoration since it could be accomplished by merely designating strategically located fill borrow sites for fill which would be required in certain developable areas.

The Commission notes that the CDFG found that the best alternative for the site was a restoration project in which restoration was accomplished through development of adjacent property and through a consolidation project involving that wetland area south of the tidal channel.

The second factor in determining whether a degraded wetland can most feasibly be restored in conjunction with a boating facility asks whether no less than 75% of the wetland can be restored and maintained as a highly productive wetland in conjunction with a boating facility. Since CDFG concluded that a boating facility is not a viable option, the CDFG's report did not elaborate further on this factor. However, the Commission finds there are additional obstacles which would preclude the construction of a boating facility on the subject site.

The first obstacle to constructing a boating facility is the fact that the subject site is not immediately adjacent to the San Gabriel River. Therefore, a boat passage cannot simply be cut into the San Gabriel River levee, as would be the case if the site was immediately adjacent to the river. Instead, a channel would have to be dug across the Haynes Cooling Channel which is located between the project site and the San Gabriel River. A channel to provide an entrance to a boating facility on the project site would involve both major construction costs and alteration of the cooling channel. As long as the power plant served

by the cooling channel remains in operation, it is unlikely that the Los Angeles Department of Water and Power would allow the channel to be altered for construction of a boat access channel to the subject site.

Another obstacle to constructing a boating facility on the subject site involves the bridges which cross the San Gabriel River. Heading south on the river from the subject site leads directly to the ocean at the river's mouth. However, south of the subject site, the Pacific Coast Highway (State Route 1) bridge and, further south, the Marina Drive bridge cross the river. Both are too low in their current configurations to allow most boats to pass underneath. Reconstruction of the Pacific Coast Highway ("PCH") bridge to accommodate a boating facility on the subject site would be unlikely because PCH is the main road into Seal Beach as well as a major coastal access road for both commuting and visitor-serving purposes. Reconstruction of the bridge would likely result in too much disruption of traffic and coastal access to be feasible.

Further, a connection to the ocean from the San Gabriel River through Alamitos Bay is also not feasible. This would involve heading north on the river and cutting a connecting channel to Alamitos Bay. In addition, the Westminster Avenue bridge across the river north of the subject site would block boat traffic. Studebaker Road would block any connection between the river and Alamitos Bay. The Commission notes that these facts are in contrast to the Bolsa Chica degraded wetlands area, which is only separated from the ocean by PCH and the beach or from Huntington Harbor by Warner Avenue. Although the County of Orange in 1994 found that a boating facility was infeasible, a boating facility was previously proposed at Bolsa Chica in 1986.

The third factor in determining whether a degraded wetland can most feasibly be restored in conjunction with a boating facility is whether restoration of the wetland values can most feasibly be achieved in conjunction with a boating facility or whether there are other feasible ways to achieve such values. Since the CDFG concluded that a boating facility was not a feasible option in its 1982 designation of the existing wetlands as degraded, it evaluated other means to achieve restoration.

The specific 1982 restoration reviewed by CDFG involved the filling of an 8.1 acre wetland area located southeast of the on-site tidal channel and the creation of an 8.1 acre wetland northwest of the tidal channel. The CDFG concluded that the existing 8.1 acre wetland southeast of the tidal channel would continue to be degraded if the then-proposed adjacent development were constructed. The CDFG determined the most advantageous wetland restoration would occur if the restored wetland were contiguous because, a contiguous wetland could more easily be buffered against impacts from development than a fragmented wetland and a contiguous wetland would be subject to greater tidal flushing and may use runoff from adjacent development more effectively. The CDFG went on to conclude the following:

For these reasons, the Department recommends the above outlined consolidation project and finds that restoration of the wetland's natural values, including its biological productivity and wildlife features can most feasibly be achieved in conjunction with such a project.

The Commission notes that the element of wetland consolidation is present in the proposed project.

(B) Use of Wetlands Interpretive Guidelines

The identification of an alternate method of achieving wetlands restoration at the site pursuant to Section 30411 (b) (3) of the Coastal Act is significant in a situation as here, in which the CDFG has determined that the degraded wetland cannot feasibly be restored in conjunction with a boating facility. The Commission's Interpretive Wetland Guidelines ("guidelines"), adopted in 1981, allow for other feasible ways of restoration if a boating facility is not feasible. These guidelines were adopted pursuant to Section 30620 of the Coastal Act.

Section 30620 of the Coastal Act states, in relevant part:

(a) By January 30, 1977, the commission shall, consistent with this chapter, prepare interim procedures for the submission, review, and appeal of coastal development permit applications and of claims of exemption. These procedures shall include, but are not limited to, the following:

(3) Interpretive guidelines designed to assist local governments, the commission, and persons subject to this chapter in determining how the policies of this division shall be applied in the coastal zone prior to the certification of local coastal programs. However, the guidelines shall not supersede, enlarge, or diminish the powers or authority of the commission or any other public agency.

The Commission notes that its guidelines are not legally binding (in that they are neither a statute nor regulations and therefore do not carry the force of law). However, the guidelines do indicate what the Commission thought about the particular issue at the particular time the guidelines were adopted. The Commission may use the guidelines for guidance on a case-by-case basis, particularly where as here, a Local Coastal Program has not been certified by the Commission.

The Commission's 1981 wetland Guidelines contain a discussion of approvability under Section 30233(a)(3) and Section 30411(b)(3). The Guidelines allow for other feasible ways of restoration if a boating facility is not feasible. The Guidelines rely upon the language contained in Section 30411(b)(3) which provides that in determining whether restoration can most feasibly be achieved in conjunction with a boating facility, the CDFG shall consider whether there are other feasible ways to achieve such values.

The Guidelines interpret the phrase "whether there are other feasible ways to achieve such values" as providing another permissible use in a degraded wetland rather than a method of considering whether the degraded wetland could most feasibly be restored in conjunction with a boating facility.

The Guidelines state that "other feasible ways" to achieve restoration include less environmentally damaging feasible alternatives which may include uses not specifically outlined in Section 30233. So, according to the Commission's Guidelines' interpretation of Section 30233(a)(3), if a boating facility is not feasible in a degraded wetland, restoration may be achieved in conjunction with a priority use such as a visitor-serving recreation facility so long as, at minimum, the project results in no net loss of acreage of wetland habitat.

As stated above, the CDFG has designated the existing wetlands on the subject site as degraded and severely degraded, pursuant to Section 30411. Further, the CDFG found that boating facilities were not feasible at this site. Since the CDFG determined that a boating facility was not feasible, the Commission finds that Section 30411(b)(3) authorizes fill in this

specific case for other less intrusive feasible uses that are not expressly enumerated by Section 30233(a). As will be discussed more fully in the following review of alternatives, one reason the Commission finds the proposed golf course use to be a less environmentally damaging alternative than a boating facility is because the proposed golf course is visitor serving and provides a form of open space. In this case, the meaning of "less intrusive" includes a comparison to the housing developments previously proposed for construction on wetlands at the site.

(C) Restoration of Substantial Portion of Degraded Wetland

Section 30411(b)(3) does not explicitly identify the "other feasible ways" of achieving restoration. However, such projects are encouraged if they promote the restoration of degraded areas and if boating facilities are not feasible. Section 30233(a)(3) of the Coastal Act also states that the diking, filling, or dredging of degraded wetlands (as identified by the California Department of Fish and Game) is allowable if, a substantial portion of the degraded wetlands is restored and maintained as a biologically productive wetland. Accordingly, at minimum, a project involving fill of degraded wetlands must have a restoration program which restores a *substantial portion* of the degraded wetland. The Commission's 1981 wetland guidelines state the following:

Projects permitted under Section 30411 other than boating facilities should result in no net loss of the acreage of wetland habitat located on the site as a minimum.

The proposed project will involve dredging and some fill of 9.1 acres of degraded wetland for the purpose of enhancing the habitat values of those 9.1 acres. In addition, 17.9 acres will be filled for a golf course which will be mitigated through the restoration of 30 acres of wetland (including buffer). Therefore, the proposed project not only enhances or restores a *substantial* portion of degraded wetland at the site, but will result in equivalent enhancement and *more than an equivalent* (no net loss) enhancement and restoration of degraded wetlands which will be maintained as biologically productive wetland. Therefore, the Commission finds that consistent with Section 30233(a)(3), a substantial portion of the degraded wetland will be restored and maintained as a biologically productive wetland through an "other feasible" way identified by CDFG pursuant to Section 30411(b)(3).

(3) Feasible Less Environmentally Damaging Project Alternatives

In addition to determining that the proposed fill is allowable under the Coastal Act, Section 30233(a) also requires a determination that there is no feasible less environmentally damaging alternative to the proposed wetland fill. Coastal Act section 30108 defines "feasible" as:

Feasible: Capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social, and technological factors.

The following discussion will identify how the Commission concluded that the proposed project is the most feasible one when considering time, economic, social, and technological factors.

(A) Feasibility of Other Identifiable Alternatives

Several alternatives were considered in the City of Seal Beach certified final environmental impact report (FEIR) which concluded that the preferred alternative was the proposed alternative. Generally speaking, alternatives to the proposed project included the reduction of the size of the proposed golf course or the deletion of the golf course entirely from the proposed project. Under either of these alternatives, potentially larger wetland restoration could occur. The FEIR for the proposed project did not consider an evaluation of feasibility of an alternative that would have fewer homes than the 70 homes proposed, because a housing component is needed to fund the construction costs of the wetland restoration (see Exhibit 11, page 72 i.e. Page 7-2 of the FEIR, Volume 1, Section 7.0 – Project Alternatives)

(1) No Project Alternative

The no project alternative would involve no change to existing site conditions. Under this alternative, no wetland fill would occur and no houses or visitor-serving facilities would be constructed. As discussed previously, the site contains degraded wetlands. The CDFG determined that wetland values would not be increased at the site without deliberate wetland restoration. If no project were undertaken, no wetland enhancement or restoration would occur. Since other alternatives do undertake wetland restoration which would increase the habitat values of wetland on-site, the no project alternative is not a less environmentally damaging feasible alternative.

(2) Build-out In Accordance with Existing General Plan Land Use Designation

This project alternative involves the development of 329 residential units, continued mineral extraction, 26 acres of parks, 3.8 acres of commercial uses, and restoration of 41.4 acres of wetlands. This project is not considered a less environmentally damaging feasible alternative because it would expose structures and residents to seismic hazards. Fault rupture may cause damage to structures and could result in the failure of existing oil and gas pipelines resulting in the release of toxic substances. In addition, some portions of the site would require remediation to decrease residents' exposure to toxic substances present from on-going mineral production activity at the site. Also, water quality would be adversely affected by increased stormwater discharges from roadways and other impervious surfaces which tend to collect pollutants. Floodwater detention and groundwater infiltration would also be decreased through the addition of impervious surfaces. Additional residential units would also lead to traffic and air quality impacts as well as increased demand upon public services. Finally, archaeological resources would be adversely impacted through the construction of the homes.

(3) Wetlands Mitigation Bank – No Golf Course

This alternative would eliminate the proposed golf course, restore 86 acres of wetlands, construct 240 residential units, allow for continued mineral production, create public parks and a commercial area. Without the golf course, buffering services such as flood attenuation and storm water filtration are not provided to the wetland habitat. Biological resources in the wetland area would be adversely affected by the lack of buffering against the residential component. Under this scenario, no wetland restoration would occur by the applicant. Instead, all restoration would occur from outside sources in need of mitigation credits. Therefore, restoration is reliant upon development projects in other areas. There is no guarantee restoration would occur under this alternative.

Similar to the previous alternative, there are seismic hazards, toxic hazards, traffic and air quality impacts. Therefore, this alternative is not a less environmentally damaging feasible alternative.

(4) 9-Hole Golf Course with Wetland Restoration

Forty three (43) acres of wetlands would be restored under this alternative. In addition, 150 residential units, a 9-hole golf course (instead of an 18-hole, as proposed), would be constructed. Also, mineral production would continue and public parks would be created. This project is not a less environmentally damaging feasible alternative because impacts from the increased number of residential units remain (i.e. stormwater discharges, traffic, air pollution, toxic hazards, and seismic hazards). In addition, the sub-regulation length golf course would have decreased attraction (compared to an 18-hole course) as a visitor serving use.

(5) 18-Hole Golf Course with Offsite Wetland Mitigation

Under this alternative 150 residential units would be constructed along with an 18-hole golf course and commercial center. Gum Grove park would be dedicated and mineral production would continue on 47.5 acres of land. No wetlands would be restored on-site. This proposal was rejected due to environmental damage to wetlands, and adverse environmental impacts from traffic, air pollution, seismic hazards, and toxic hazards.

(6) Proposed Project – Least Environmentally Damaging Feasible Alternative

The proposed configuration of enhanced and restored wetland, golf course, single-family home subdivision, parks and trails was determined to be the most feasible, least environmentally damaging alternative. The following discussion identifies the source of this conclusion.

Overall, a larger wetland restoration project may be feasible from a technical standpoint. The applicant explored this possibility in their City-certified FEIR. However, it was concluded that, due to financial considerations, a larger number of homes would be required to cover the additional cost of a larger wetland restoration project. A larger number of homes would increase impacts to wetlands due to increased run-off and a higher intensity use adjacent to the wetland. In addition, more infrastructure would be necessary to support the additional homes resulting in increased fragmentation of the wetlands. Therefore, any option which considered more than the minimum number of homes necessary to financially support the project would result in increased environmental impacts. The FEIR determined that 70 homes was this minimum quantity. Thus, an alternative with more than 70 homes is not a less environmentally damaging feasible alternative.

Furthermore, the project site is suitable for visitor-serving commercial recreation facilities, a priority use under the Coastal Act. Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Therefore, in addition to creating larger environmental impact, more homes would displace visitor-serving commercial uses on lands that are suitable for such uses.

In general terms, development, whether a golf course, houses, or other uses, could be proposed in the lowlands so as to avoid the existing wetlands by siting development on non-wetland areas. Since the existing wetlands on-site are scattered and fragmented, it is not feasible to develop the site in a manner that intersperses development between the wetlands fragments. In other words, any development proposal which avoids filling any of the wetlands for non-restoration purposes would have to avoid some of the surrounding adjacent non-wetland areas as well, preserving the ability to connect the fragmented wetlands into a better functioning wetlands with adequate wetland buffers. These lands which have been avoided may provide lower intensity uses to buffer the wetlands from higher intensity, less compatible uses. Thus, consolidation of the wetlands and placement of compatible, lower intensity adjacent uses are integral features to the least environmentally damaging feasible alternative.

The applicant researched possible visitor-serving uses of the site. It was determined in the FEIR that there is a high local and regional demand for golf-oriented recreation. The applicant concluded that a golf course was a lower intensity use (than the previously proposed large single-family home subdivisions) that would be compatible with adjacent environmentally sensitive habitat areas and provide a visitor-serving recreational opportunity within the coastal zone.

Variations of golf course size were considered including a 9-hole golf course and a sub-regulation size 18-hole golf course. In this case, it was determined that, given the site's potential for visitor-serving uses, the least environmentally damaging alternative must also maximize the visitor-serving potential of the visitor-serving use. Neither a 9-hole golf course, nor a sub-regulation size 18-hole golf course were viewed as capable of maximizing the visitor-serving potential of the golf course. Therefore, a regulation size 18-hole golf course was determined to maximize the visitor serving potential of the site while also minimizing damaging environmental effects.

While a larger restoration may be technically feasible, financial considerations would require an increase in the number of proposed homes. The Commission finds that such an increase would not result in a less environmentally damaging feasible alternative because the construction of such homes would increase hardscape impacts (i.e. increased run-off, construction of infrastructure, etc.) not present in the proposed project. Moreover, an increased quantity of homes would result in the displacement of a priority, visitor-serving use. In addition, the Commission finds that the no project alternative is not a less environmentally damaging feasible alternative because needed wetland restoration would not occur under the no project alternative.

(B) Restoration by the Port of Long Beach

As an alternative, the Commission did consider whether another agency or non-profit entity could perform a larger restoration at the site. Only one group was identified, The Port of Long Beach, as an entity that may be willing to perform a larger-than-proposed restoration at the subject site.

The Port of Long Beach ("Port") conducted a preliminary study to determine whether it would be feasible for the Port to create a wetland on the subject site that could be used as mitigation for fill of coastal water for Port expansion. However, the current Port studies have come to a standstill. Based on the studies done to date, the Port has concluded that the mitigation projects identified thus far for the subject site are too costly for them to pursue. The Port has, however, identified four modifications to the projects identified thus far which would reduce the cost to a low enough level that the Port would consider this undertaking as

feasible. (see Exhibit 3) These are: 1) that the land owner agree to on-site disposal to reduce the high cost of transporting excavated material off-site, 2) the land owner dedicates, rather than sells, the land, 3) The endowment fund is as small as possible consistent with adequate long-term maintenance, and 4) field studies in the San Gabriel River (regarding water quality), which have not yet been undertaken by the Port, produce results which justify raising the port mitigation credit ratio from 0.9:1 to 1:1. However, there is no guarantee that these conditions could be met in a "reasonable period of time" which is a test of feasibility. At some future point in time, if the Port needs mitigation credit badly enough, and mitigation sites are in short supply, the Port may reconsider looking at the subject site even with a more expensive restoration project. Still, there is no certainty that this will happen.

Therefore, the Commission finds that a Port mitigation wetland restoration on the subject site is not a feasible alternative at this point in time.

(C) Potential Future Restoration

There are few potential mitigation sites left in the Southern California coastal zone for the Port to use for meaningful, substantial mitigation to accommodate fill for its planned expansions. As the scarcity of these sites increases, the Port may be more inclined to pursue restoration at the site due to a higher cost tolerance and cost decreases spurred by technological advancement. Their need for additional mitigation credits in the future is inevitable to the extent they need to fill coastal waters to continue to expand and grow.

In addition, the Commission acknowledged that the applicant is proposing a project which results in the restoration of natural resources and construction of visitor serving facilities with only private funds. However, the Commission also acknowledged that the entire lowlands area of the Hellman parcel, including areas to be used for construction of the golf course, is potentially restorable wetland given sufficient funding and the presence of an entity willing to undertake the project. Therefore the Commission imposed Special Condition number one (1) which stipulates that the applicant agrees to sell the lowlands portion of the property, including the golf course, to any public or non-profit entity wishing to perform a wetlands restoration project. Therefore, the construction of the golf course does not represent an irreversible commitment that precludes future wetland restoration of the entire lowlands portion of the property.

As stated previously, the applicant has confirmed that there is no existing subdivision of the Hellman Ranch property. (Exhibit 1, pages 35-39) In addition, this parcel is currently utilized for mineral production, of which Hellman Properties owns the entire operating interest. (Exhibit 1, pages 35-39) Further, although Shell Oil (now Signal Hill Petroleum) has a 50% producing interest in APN 980-36-605, Signal Hill Petroleum has no land rights. (Exhibit 1, pages 35-39)

The applicant is requesting approval of a subdivision of one 196.6 acre parcel in a configuration that would separate the existing mineral production areas from the proposed golf course, wetland and residential areas.

The Commission finds it necessary to approve a revised land division configuration that maintains in single parcel ownership and usage the land areas proposed for the golf course and wetland restoration as well as the area currently used for oil production which provides an economically viable use of the property. This means that should the owner of the separate lowlands parcel at some time in the future come forward with a new development proposal in the lowlands portion of the project site now before the Commission, that owner

would already have an economically viable use of the property (assuming mineral production is ongoing).

At such a point as mineral production ceases and development is proposed within the lowland area, the Commission finds it may be appropriate to impose a deed restriction over the lowland area to ensure the lowlands are developed consistent with Sections 30233 and 30240 of the Coastal Act. However, alternative uses consistent with Coastal Act policies could be considered on the mineral production parcel which might augment its economic use. Only by keeping the mineral production sites combined with the remainder of the lowlands area as one parcel can the Commission allow the subdivision of the remainder of the project site and ensure that future development proposals will not compel the Commission to allow uses in the lowlands solely to avoid a takings claim.

The Commission therefore attaches Special Condition 2 for revision of the proposed Tentative Tract Map 15381. Only as conditioned, can the Commission find the proposed project consistent with the Coastal Act.

(4) Adequacy of Wetland Mitigation Measures

Section 30233(a) requires the provision of feasible mitigation measures to minimize adverse environmental effects of an approved project.

(A) Wetland Mitigation

(1) Likelihood of Successful Wetland Restoration

There are several factors to consider in determining whether a site can be successfully restored.

First, there must be significant potential benefits. Paradoxically, those areas of historical wetlands that currently bear the least resemblance to a well-functioning tidal slough are often the best candidates for restoration because there may be the greatest increase in habitat value per dollar spent. The historical wetlands at Hellman Ranch are degraded, severely degraded, or no longer fit certain regulatory definitions of wetlands. However, far from disqualifying it, this degraded state actually makes Hellman Ranch a prime candidate for substantial wetland restoration.

A second factor that profoundly affects restoration potential is the character of the soil. The sediments that make up tidal wetlands have a high proportion of fine silt and clay particles. Therefore, it has proven difficult to create or restore wetlands from coarse terrestrial (i.e., non-marine influenced) soil. Such physical habitats drain rapidly, do not retain organic materials or added nutrients, and do not develop the anaerobic character of natural marshes. At Hellman Ranch, most of the fill came from other areas of the historic Alamitos wetlands. Much of the existing salt marsh is above the tidal zone and only sees freshwater. This material is appropriate for restoration activities because the soil has retained the salt fine-grained characteristics of the parent historic marsh. This is a significant contribution to the restoration potential of the site.

A third factor that contributes to restoration potential is the hydrological connection to marine waters. In general, a large tidal range and a rapid exchange of water with the ocean improve restoration potential. Nevertheless, many successful restoration efforts in California have been based on a muted tidal regime because of a need to avoid flooding of nearby housing or

due to lost tidal connection. At Hellman Ranch, the tidal connection has been reduced to a long 4-foot diameter pipe. With just this existing pipe, the applicants have demonstrated the feasibility of restoring something between 28 and 44 acres of wetland.

The fourth important consideration is technical feasibility. In the case of the Hellman Ranch, this is mainly a question of the feasibility of improving the hydrological connection to marine waters. In this case, an improved hydrological connection can be achieved with refurbishment of an existing culvert.

From a technical standpoint, the proposed wetland configuration will result in an adequate restoration. The existing degraded wetlands have a tidal range of about 1 foot and a residence time of 4 days. The proposed wetlands are predicted to have a 1.5 foot tidal range, and the residence time would be reduced to 1.3 days. The applicant's concept wetlands plan indicates that residence times of less than 7 days are considered acceptable. As a point of reference, the existing Bolsa Chica Ecological Reserve, a wetland managed by the California Department of Fish and Game, has only a slightly larger tidal range of 1.5 feet, and a much longer residence times of over 20 days, according to the National Marine Fisheries Service. The existing Bolsa Chica ecological reserve functions well and is considered to be an important wetland. In terms of tidal range and residence times, the proposed wetlands would be of comparable quality to the existing Bolsa Chica wetlands.

(2) Adequacy of Proposed Wetland Restoration

The success rate of wetlands restoration is less than 100%. To compensate for the potential that a wetlands creation or restoration project is not successful, the Commission has traditionally required more than a 1:1 mitigation ratio (i.e. the creation of more than one acre of wetlands for every one acre of wetland which is filled). Creating more wetlands than would be lost increases the potential that the number of acres of created wetlands which successfully establish, in the end, is at least equal to the number of wetlands filled. The applicant has proposed construction of 39.1 acres of salt marsh (including buffers) upfront under Phase 1 of the proposed project. An additional 13.2 acres of land will become available for restoration upon conclusion of oil production activity and is considered part of the overall restoration package.

The 27 acres of existing on-site wetlands are part of only 150+ acres which remain of the former 2400 acre Alamitos Bay wetland complex. Much of the material at Hellman Ranch is appropriate for restoration activities, because the soil has retained the salt fine-grained characteristics of the parent historic marsh.

The proposed Phase 1 restoration includes 9.1 acres of wetland enhancement (i.e. improvement to the habitat values of existing wetland habitat) and 30 acres of wetland restoration (restoration of former wetland habitat not presently exhibiting wetland characteristics) including buffers. This mitigation is to compensate for the dredging and some fill of 9.1 acres of wetland to accomplish the enhancement and 17.9 acres of wetland that will be filled for the golf course. This mitigation is consistent with the Commission's 1981 guidelines. The Commission's 1981 guidelines state the following in relevant part:

If the project involves diking or filling of a wetland, required minimum mitigation measures are the following:

- 2) The applicant may, in some cases, be permitted to open equivalent areas to tidal action or provide other sources of surface water. This method of mitigation would be appropriate if the applicant already owned filled, diked areas which themselves*

were not environmentally sensitive habitat areas but would become so, if such areas were opened to tidal action or provided with other sources of surface water.

The proposed project does involve filling of wetland. In addition, the site includes filled wetland which is not presently environmentally sensitive habitat, but will become so through the restoration of tidal action to relevant portions of the site. While the 1981 guidelines only call for opening an equivalent area to tidal action, the applicant is proposing to open more than an equivalent area (including buffers) to tidal action for wetland restoration purposes. In addition, the 1981 guidelines state, in relevant part:

Projects permitted under Section 30411 other than boating facilities should result in no net loss of the acreage of wetland habitat located on the site as a minimum. However, projects which result in a net increase in wetland habitat areas are greatly preferred in light of Coastal Act policies on wetland restoration and Senate Concurrent Resolution 29 which calls for an increase in wetlands by 50% over the next 20 years. For example, it has been the Commission's experience in reviewing vegetation and soils information available for degraded wetlands in Southern California that sometimes wetland and upland sites are intermixed on a parcel. Since Section 30411 discusses percentage of wetland area as the standard of review for required restoration, the Commission will consider restoration plans which consolidate the upland and wetland portions on a site in order to restore a wetland area the same size or larger as the total number of acres of degraded wetland existing on the site.

The Commission has approved the proposed fill pursuant to Section 30233(a)(3) and Section 30411(b)(3) of the Coastal Act. There is no proposed net loss of wetland habitat. In addition, the proposed project will result in a net increase of as much as 12.1 acres of wetland habitat (including buffers) and does involve consolidation of upland and wetland portions of the site to restore a wetland area that will be larger (including buffers) than the total number of existing degraded wetlands on the site.

In addition, the proposed wetland restoration will occur adjacent to the proposed wetland enhancement. A restoration project is expected to be more successful if it will occur adjacent to existing wetland habitat. This position is founded on the notion that the existing wetland may provide a base from which organisms may colonize the newly restored habitat. A restoration project is also more likely to be successful than a wetland creation (creation of wetland habitat in an area not formerly exhibiting wetland characteristics) because residual hydrologic conditions, soil conditions, and possible presence of a seed bank harboring wetland species will lend to the success of the restoration. As stated previously, some of these characteristics are present at Hellman Ranch. Such factors may strongly contribute to the success of the restoration program.

Consistent with Section 30233(a)(3), a substantial portion of the degraded wetland will be restored and maintained as a biologically productive wetland through an "other feasible" way identified by CDFG pursuant to Section 30411(b)(3). Therefore, the Commission finds that the proposed wetland enhancement and restoration is consistent with Section 30233(a)(3) and 30411 (b)(3) because there will be no net loss of wetlands, site conditions are such that restoration is likely to succeed, and this restoration will result in an overall improvement to the quality of wetland habitat at the site. The Commission also finds that this overall package is enhanced by the additional 13.2 acres that will be reserved for wetland restoration and open space/conservation. However, in order to ensure the proposed wetland restoration program is carried out, the Commission imposes Special Condition 11 which specifically identifies the applicants responsibility to provide the approved quantity of restored wetland habitat.

In addition, the applicant has proposed the reservation of lands presently used for mineral production for potential future restoration or open space (Phase 2 and Phase 3). The applicant is offering this reservation as an added component to the overall wetland mitigation/restoration program. The Commission finds that reservation for wetland restoration *or* open space is not sufficient, but that the reservation shall be for wetland restoration *and* open space. Accordingly, reservation for wetland restoration is not an option but is a requirement. In addition, the applicant has not identified a specific date when these reserved lands will become available for wetland restoration purposes. An indefinite, future dedication is not consistent with the Coastal Act because it does not assure that the land will become available for restoration. Therefore, in order to assure the proposed mitigation includes reservation for wetland restoration and to assure that the proposed mitigation occurs, the Commission imposes Special Condition 11.B. This condition states that either at the time the on-site mineral-production ceases or on April 15, 2023 (whichever occurs earlier) allowable uses of the mineral-production area are restricted to removal of the existing mineral-production facilities, removal of contaminants and remediation of the site, and wetland habitat creation/restoration and conservation/open space.

(B) Other Mitigation Measures

The salt marsh would have a proposed berm around it (excepting the salt marsh on the interior portion of the golf course which were formerly proposed as fresh water marsh) which would prevent potentially polluted runoff from the proposed public golf course from entering the salt marsh. The proposed berm would serve as the site for transplanted coulters' goldfield plants. The proposed berms would also be densely vegetated, which would help serve as a screen which minimizes the chances of errant golf balls entering the salt marsh. Further, the proposed golf course would be designed in compliance with a golf course management program prepared for the applicant which minimizes the use of pesticides. Due to the design and management of the adjacent lower intensity development, the Commission finds that a wetlands buffer, as conditioned, provides adequate protection of the wetlands. Since part of the function of the proposed berm/buffer area (which is never subject to tidal inundation) is to provide in part both a dense vegetation barrier to errant golf balls and provide a transition between wetland and non-wetland golf course vegetation, the Commission finds that the management plan for the transition zone should include all native species, not just sensitive species, to ensure adequate growth of transitional native species. Thus, the Commission imposes Special Condition 12.K and 12.D.6.a.

Both the final environmental impact report ("FEIR") certified by the City of Seal Beach for the proposed project and the Concept Wetlands Restoration Plan contain general performance standards and success criteria. However, they do not provide standards and criteria specific to the different types of habitat zones proposed for the salt marsh. The proposed salt marsh is essentially a shallow tidal depression with concentric rings of habitat defined by elevation and tidal inundation. The Commission finds that refinements of the proposed standards and criteria are necessary. Thus, the Commission imposes Special Condition 12.

In addition, the Commission finds that, to ensure objectivity, the wetlands monitor must be independently selected by the applicant and approved by the Executive Director, per Special Condition 12.D.4. To ensure accurate comparisons, reference sites must be selected which have the same types of habitat and muted tidal regimes as the proposed salt marsh, per Special Condition 12.D.5. Per Special Condition 12.6. a through f, the Commission further finds that the specific standards and criteria must be achieved within the first five years after completion of construction of the upfront proposed Phase 1 minimum 39.1 acre salt marsh,

to increase the chances of the salt marsh becoming fully functional and relatively self-sustaining. The following discussion of various habitat zones are arranged in order of their elevation, starting from highest elevation to lowest elevation.

High salt marsh generally supports a variety of native plant species. The establishment of native plant species, as well as diversity of types of native plant species, is important because native species provide habitat for sensitive animal species. The proposed high salt marsh is intended to provide suitable habitat for the Belding's Savannah Sparrow, a sensitive species. Savannah sparrow density tends to be directly correlated with the height and percent cover of salt marsh vegetation, particularly pickleweed.

To ensure a rich variety overall of native plant species, the native vegetation in the proposed High Salt Marsh zone shall contain at least as many (both in type and quantity) native species as the reference site with the lowest number of species. Further, to ensure adequate growth of vegetation, the average plant height for each species shall be at least 75% of each species at reference sites, except that pickleweed shall be no less than 20 cm in average height. Similarly, for Low Salt Marsh (which is typically dominated by pickleweed), the average cover of pickleweed should be 80% and an average height of either 75% of pickleweed at referenced sites or 20 cm, whichever is greater to ensure adequate pickleweed growth. Thus, the Commission imposes Special Condition 12.D.6.b and c.

Mud Flat is generally habitat to a great variety of invertebrates that comprise the infauna. However, sampling infauna is expensive and comparisons are difficult because there tends to be high temporal and spatial variability. If variability is high, confidence intervals tend to be large and the resultant large differences will not be judged statistically significant. However, the infauna should still be monitored and documented at the project and reference sites, even though no performance standards are presently feasible. Thus, the Commission imposes Special Condition 12.D.6.d.

For the proposed Mud Flat habitat, avifauna (i.e., birds, etc.) shall be monitored as well. Since infauna provide an important food source for many birds and fishes, the presence of large number of birds and fishes which feed off the infauna at the salt marsh implies that large numbers of infauna have established in the mudflat. The performance standard for avifauna shall be that avifauna is similar in number of species and foraging use of habitat at the reference sites. Thus, the Commission imposes Special Condition 12.D.6.f.

The proposed basin and channels provide important habitat for fishes and invertebrates. To ensure adequate provision of habitat, there shall be a similar number of species and individuals at the proposed salt marsh in similar basin and channel habitat at reference sites. Demersal fishes and water column fishes should be evaluated separately to ensure a more specific, accurate reading of these types of fishes. Similarly, adult and juvenile fishes should also be counted separately. Thus, the Commission imposes Special Condition 12.D.6.e.

The Commission finds that adequate funding must be provided which ensures that the proposed wetlands are created, established, and maintained. To ensure adequate funding, the wetlands plan must identify a long-term funding plan. The golf course operator must also be responsible for the maintenance of the wetlands, including their replacement if lost or impacted due to natural disasters such as flooding in an El Nino event. To ensure adequate funding for golf course maintenance, the permit must stipulate that wetland maintenance costs must be paid first out of the golf course revenues before all other golf course capital and operating costs. Thus, the Commission imposes Special Condition 12.H.

In addition, to ensure an effective wetland restoration program, the Commission finds that non-native species (except for grasses for fairway, green, and tee turf) shall not be used in the golf course. Also, to minimize disturbance to sensitive species, no construction activities shall occur during the nesting seasons of sensitive species. Proposed wetlands areas must be clearly staked as being off-limits to construction crews to minimize disturbance of the wetland areas from construction activities for the golf course. Thus, the Commission imposes Special Condition 12.J through M.

Further, the mitigation measures adopted by the City regarding wetland protection (i.e., lighting, pesticide use, wetland design, water quality measures, etc.) must be incorporated by reference. The Commission also finds that the golf course must not be lighted. Golf balls cannot be retrieved out of the proposed salt marsh by golfers since this would harm the functioning of the wetland. Any golf ball retrieval must occur in an environmentally sensitive manner consistent with an Executive Director approved golf ball retrieval plan. Thus, the Commission imposes Special Conditions 13.C. and 13.E.

Since golfers, especially first time users of the golf course, will likely be unfamiliar with the proposed wetlands around them, a golfer education program must be required. The program must employ as many educational methods as possible, including signage, handing out brochures, printing instructions on score cards, and designating wetland areas as out-of-bounds. Thus the Commission imposes Special Conditions 13.C. and D.

To further ensure that the mitigation measures described herein are adhered to, the Commission finds that the conditions must be recorded in a deed restriction which runs with the land over the golf course, since the golf course is supposed to fund the maintenance of the wetland after it is created, to ensure that the permittee and future golf course owners/operators are aware of the wetland obligation. Thus, the Commission imposes Special Condition 13.E.

d. Use of Section 30007.5 to Balance Conflicting Chapter 3 Policies

Section 30007.5 of the Coastal Act states:

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

The text of section 30007.5 directs that in carrying out the provisions of this division (i.e., the Coastal Act), conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. Thus, even if a conflict can be identified in this matter that was before the Commission, given the existing provisions of Section 30233 of the Coastal Act, such a conflict would necessarily be resolved in favor of wetland resources. However, whether a conflict exists which must then be balanced must be decided by interpreting the first sentence of section 30007.5 which states that "conflicts may occur between one or more policies of the division."

The Commission finds that the phrase "policies of the division" only includes the policies contained within chapter 3, the chapter which contains the standards by which the adequacy of Local Coastal Programs and proposed developments are determined. Support for this

finding is found in Chapter 3, Article 1, section 30200 which is entitled "Policies as standards; resolution of policy conflicts." Section 30200 reads as follows:

(a) Consistent with the coastal zone values cited in section 30001 and the basic goals set forth in section 30001.5, and except as may be otherwise specifically provided in this division, the policies of this chapter shall constitute the standards by which the adequacy of local coastal programs, as provided in Chapter 6 (commencing with section 30500), and, the permissibility of proposed development subject to the provisions of this division are determined. All public agencies carrying out or supporting activities outside the coastal zone that could have a direct impact on resources within the coastal zone shall consider the effect of such actions on coastal zone resources in order to assure that these policies are achieved.

(b) Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

(emphasis added.)

In rejecting Section 30007.5 as a basis for approval, the Commission specifically rejected the applicant's argument that urged the Commission to balance the prohibitions against the fill of wetlands contained in Section 30233 with other Sections of the Coastal Act, including Section 30411. In doing so, the Commission specifically rejected the applicant's contention that the Commission may balance conflicting sections of the Coastal Act which are not contained in Chapter 3. The applicant relies on the phrase "policies of the division" to argue that the Commission may balance all sections contained within Division 20; i.e., the Coastal Act.

However, Section 30007.5, which contains the balancing provision, expressly limits balancing to the "policies" of Division 20. Sections 30200, 30512, and 30604 of the Coastal Act expressly provide that the policies of Chapter 3 of the Coastal Act are the standards by which the permissibility of proposed projects are determined. The Coastal Act does not contain any policies to assess proposed development other than the policies contained in Chapter 3.

Thus, in order to resolve a conflict between policies of the Coastal Act, the Commission must first determine whether a substantial conflict between statutory directives contained in Chapter 3 of the Coastal Act in fact exists. In making this determination, the Commission must examine whether the proposed project itself actually falls within the protection of two or more sections in Chapter 3 which actually conflict. The Commission must also compare the specific wording of the potentially conflicting Chapter 3 sections to determine if the extent of discretion left to the Commission is parallel in each.

During the hearing, the Commission reviewed evidence concerning the need to balance competing policies with respect to this permit application. The Commission found unanimously that, in this case, there is no conflict between two or more Chapter 3 policies that must be resolved pursuant to section 30007.5 of the Coastal Act.

e. Uniqueness of Hellman Properties Site

The Commission finds that approval of the Hellman Properties project will not be a precedent for other degraded wetlands due to the planning status of the City of Seal Beach, the uniqueness of the property, and its historical and factual background. In approving the permit for the Hellman Properties' golf course and subdivision, the Commission rejected the applicant's characterization of the project as a restoration project under Section 30233 (a)(7) and expressly chose not to rely upon balancing under Section 30007.5. Instead, the Commission used the Wetlands Interpretive Guidelines and Sections 30233(a)(3) and 30411(b)(3) as the basis for its approval. Where a city has a certified local coastal program, that program is the standard for Commission review; where a city has a certified land use plan, that plan provides guidance to the Commission on how the policies of the Coastal Act should be applied in the city. In the absence of either a certified local coastal program or land use plan, the Commission may look to the guidelines under appropriate circumstances. The use of these guidelines is appropriate here because the City of Seal Beach does not have either a certified local coastal program with which development must be consistent or a certified land use plan which would serve as guidance to the Commission. Given that most coastal jurisdictions now have either a certified local coastal program or land use plan, reliance upon the guidelines has become increasingly rare. Here, such reliance is appropriate because of the lack of certification of a local coastal program or land use plan and because of the studies conducted by the CDFG of the wetlands on the site.

The history and background of this property also make it unusual. The wetlands on the property have been filled sporadically since at least 1952. In 1975, the Regional Commission under the Commission's predecessor, the California Coastal Zone Conservation Commission, declined to assert permit jurisdiction over fill that occurred on site because it believed the fill was an ongoing project not subject to permit jurisdiction. (Exhibit 8 of these findings.) However, based upon subsequent Attorney General's opinion, the Commission concluded that the fill activities were subject to permit jurisdiction because they were erratic and not continuous. When the Commission approved the Coastal Conservancy project for the Hellman property in 1982, the Commission concluded that some of the fill on the site was legal and some was illegal. (Exhibit 8). Regardless of the legal status of the fill, the size and quality of the wetlands has diminished over time because of the fill.

The Commission concludes that Hellman wetlands are unique due to the factual and historical background of the property including prior Commission permit decisions and actions of the Commission's predecessor, the fact that there is no certified program or plan for the property, and the fact that CDFG has determined that a boating facility is infeasible on this site. Given this uniqueness, the Commission concludes that approval of this project will have limited precedential impacts on wetlands in California.

f. Conclusion (Wetlands)

As stated previously, while the restoration component of the proposed project (9.1 acres) may be found consistent with Section 30233 (a)(7), the entire project is not consistent with this section of the Coastal Act. Therefore, the Commission finds that the proposed project is not approvable based on Section 30233 (a) (7) of the Coastal Act. However, pursuant to Section 30233 (a)(3) and 30411 of the Coastal Act, and pursuant to a determination made by the California Department of Fish and Game, the Commission finds that the proposed project would occur in degraded wetlands, and that a boating facility is not a feasible means of achieving restoration. The Commission also finds that the biological productivity of the severely degraded wetland will be restored and then maintained consistent with Section

30231 of the Coastal Act. Pursuant to Section 30233(a)(3) and Section 30411(b)(3) of the Coastal Act, and guidance provided by the Commission's interpretive wetland guidelines, the Commission finds that the project is an "other feasible means" of achieving the goal of substantial restoration at the subject site. The Commission concludes that wetland restoration will be achieved through the construction of a visitor serving, commercial recreational 18-hole golf course and other visitor serving uses, as proposed by the applicant and conditioned by the Commission. The project, as proposed and conditioned, is found to be the most feasible, least environmentally damaging alternative.

The Commission also acknowledges that without restorative efforts, the site will continue to deteriorate and lose value as an environmental resource. The Commission also notes that at present no agency or non-profit group has come forward to purchase and restore wetland habitat at the site. The Commission finds that the proposed privately funded project will result in an overall improvement to the wetland habitat values which currently exist. The Commission also finds that the proposed project will provide open space which is less intrusive than previously proposed developments within wetlands at the site. Finally, the Commission finds that the proposed project represents the most feasible manner in which to restore the natural values of existing degraded wetlands on the site. Therefore, the Commission finds that in this case the proposed project is consistent with Section 30233 (a) (3) and Section 30411 (b)(3), and Section 30231 of the Coastal Act and consistent with the guidance provided in the Commission's Interpretive Wetland Guidelines.

2. Archaeological Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The subject site contains eleven State-identified cultural resources sites. Five of the sites would be left untouched in their current location in Gum Grove Park. However, the proposed development would impact the other six designated archaeological sites.

The sites have been documented during the course of previous archaeological investigations. However, because of differences in the methodologies of the previous investigations, the precise location of each archaeological site is uncertain. Therefore, the applicant is proposing to undertake an archaeological investigation prior to the commencement of development of the other proposed components (i.e., construction of the wetlands, golf course, and homes) to document the precise extent of cultural resources on-site. To ensure the applicants' measures are implemented, Special Condition 13.A. , 6.C., and 6.D. are attached by the Commission.

The applicant has prepared an archaeological research design that attempts to reconcile as best as possible the uncertain locations of the identified cultural resources sites using the best information and methods available. The research design will guide the proposed archaeological investigation. The proposed investigation will consist of excavation of small sections within the areas of the overall development site thought to contain the identified cultural resources sites.

The Commission finds that the following reasonable mitigation measures shall be required. First, to minimize impacts to cultural resources Special Condition 6A requires that the

archaeological testing program must be done in accordance with the approved research design. Second, Special Condition 6A also requires that the State Office of Historic Preservation ("OHP"), the state Native American Heritage Commission ("NAHC"), and the Native American group/person deemed acceptable by NAHC, shall have the opportunity to review and comment on this research design.

Further, Special Condition 6.B. requires that selection of the archaeologist must be in accordance with accepted guidelines endorsed by the OHP. Also, because of the likelihood of Native American remains being found, Special Condition 6.E. requires that a Native American monitor must monitor the archaeological activities. The Native American monitor shall be selected by the City in accordance with NAHC guidelines in consultation with the Native American group/person deemed acceptable by the NAHC.

To ensure that impacts to cultural resources are minimized, no development (besides the archaeological testing program) shall take place until the archaeological testing has been completed and mitigation measures that minimize impacts to cultural resources have been implemented. However, since the locations of many of the cultural resources sites are in dispute and not precisely known, it is possible that the archaeological test program may miss cultural resources that are then discovered during development activities for the golf course and other proposed development. Therefore, the Commission finds that the permit must require that development be temporarily halted in the vicinity of the discovery site until appropriate mitigation measures are developed for resources discovered during the course of post-investigation construction activities. These requirements are contained in subsections C, D and F of Special Condition 6.

In addition, the Commission finds that all mitigation measures must comply with the requirements of the State Office of Historic Preservation and the Native American Heritage Commission. Therefore, Special Condition 6.F. requires that a qualified Native American monitor shall also be present during construction activities to ensure sensitive treatment of Native American cultural resources. Should human remains be found, the Special Condition 6.F. requires that construction shall be temporarily halted in the vicinity of the discovery site and the County Coroner notified to initiate identification proceedings. The Native American group/person shall participate in the identification process. Should the remains be determined to be that of a Native American, the applicant must comply with the provisions of Public Resources Code Section 5097.98. However, the Commission notes that PRC Section 5097.98, which governs procedures when human remains of a Native American are found, exempts these procedures from the requirements of the Coastal Act.

Finally, to ensure that contractors and workers are notified of their obligations related to archeological conditions at the site, Special Condition 6.G. requires that the content of the special condition be incorporated into all documents that will be used by contractors and workers for construction related activity, including bids.

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30244 of the Coastal Act.

3. Public Access and Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to

protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

a. Proposed Gum Grove Park Dedication

The applicant proposes to dedicate Gum Grove Park to the City of Seal Beach. The applicant currently leases the land to the City for public park purposes. The park, even though it is leased, is currently signed as being a public park and has been used as such. The Commission finds that prior to issuance of the coastal development permit the applicant must submit written evidence that they have dedicated the park to the City for passive recreation, as proposed, to ensure maximum public recreation, as proposed. Therefore, the Commission imposes Special Condition 4. Further, to provide maximum public access and recreation opportunities, the Commission finds that the dedication documents must ensure that: 1) new and upgraded trails will meet Americans with Disabilities Act requirements and provide access to physically challenged persons, 2) the existing number of parking spaces shall be maintained, 3) signage informing the general public of the park's public nature shall be maintained, 4) changes in park hours which adversely affect public access shall be limited to demonstrated public safety concerns and shall require an amendment to this permit, and 5) an area fronting on Seal Beach Boulevard, as proposed, shall be reserved for a public trail and ten public parking spaces which are directly accessible from Seal Beach Boulevard.

b. Trails

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

(1) Trails Linking Gum Grove Park to Seal Beach Boulevard - Public Parking

The applicant is proposing Tentative Tract Map No. 15402 which would subdivide proposed Lot 2 of Tentative Tract Map No. 15381 into lots for seventy (70) single-family residences,

common areas, and private streets. The proposed community would be gated. The proposed subdivision is located at the eastern end of the subject site adjacent to Seal Beach Boulevard, a major thoroughfare which runs to the beach to the south and the freeway to the north. Assuming there are at least three people occupying each of these 70 proposed homes, the proposed development will result in an increased burden of at least 210 people on existing public recreation facilities.

In addition, as part of the proposed project and subdivision, the applicant is proposing to create Lot 3 of proposed Tentative Tract Map No. 15381 for the purposes of conveying Gum Grove Park to the City of Seal Beach. Proposed Lot 3 has been configured to include a finger that extends from the area generally used as Gum Grove Park eastward to Seal Beach Boulevard. (see Exhibit 1, p. 4) The Commission finds that this finger would provide a second public access entrance to Gum Grove Park. Currently, the only entrance to Gum Grove Park is at the far western end of Gum Grove Park. The current park entrance is tucked away in the existing residential subdivision adjacent to the south side of the subject site. No signs on major public thoroughfares such as Pacific Coast Highway or Seal Beach Boulevard currently point the way to the existing park entrance. This requires people driving or biking down Seal Beach Boulevard to find their way through the existing residential neighborhood clear to the other side of the park. Since Gum Grove Park is a long, linear park, a second public entrance at its eastern end would promote public access to the park. An eastern entrance from Seal Beach Boulevard would also link the park with the public bike lane on the west side of Seal Beach Boulevard, thus encouraging non-automobile trips to the park. Also, a park entrance right on Seal Beach Boulevard, a well-traveled arterial which leads both to the beach to the south and freeway to the north, would be much more visible to the public than the current entrance and thus promote public access.

Therefore, this finger of land within the area proposed for dedication by the applicant shall be reserved for a public access trail and public parking lot directly accessible from Seal Beach Boulevard. Further, the Commission finds that the applicant shall construct the trail and ten public parking spaces within the reserved area. Since parking is prohibited on both sides of Seal Beach Boulevard for at least a half mile in either direction of the subject site, the Commission finds that there is a need for public parking to make the trail accessible by the public. The two go hand-in-hand. The Commission finds that the construction of a public trail and ten parking spaces would require a minimal amount of improvement over the mostly flat, relatively narrow strip of land in question. In addition, the ten public parking spaces are similar in number to the 10 spaces required at the State Lands parcel for visitors who are not patronizing proposed commercial visitor-serving uses at that site. Ultimately, if a large-scale wetland restoration is undertaken over much of the lowlands, the public trail from Seal Beach Boulevard could be part of a larger trail that connects this public parking on Seal Beach Boulevard with the proposed parking and visitor-serving uses at the State Lands parcel.

Thus, the Commission attaches Special Condition No. 4 to permit 5-97-367 which requires that the park dedication documents for the proposed dedication of Gum Grove Park provide for the provision of a public trail connecting to Seal Beach Boulevard and the construction of public parking.

If the ten public parking spaces cannot be provided entirely on the dedicated Gum Grove Park area, then the spaces which cannot be built on Lot 3 shall be built on the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3. Thus, the Commission also attaches Special Condition 5. The Commission finds that even if all ten parking spaces were to be built on the area covered by Vesting Tentative Tract Map No. 15402, they would only occupy a small portion of the residential site. Assuming a parking space dimension of 9'x20', ten spaces at this size would occupy only about 0.04 acres, which is a fraction of the

14.94 acres covered under Vesting Tentative Tract Map No. 15402. Further, the parking spaces would be at the edge of the residential site so as to be adjacent to the proposed Gum Grove Park dedication area. Thus, the small area and location at the edge of the subdivision would be the least intrusive method of providing needed public parking for trail access which cannot be provided on the dedicated Gum Grove Park land itself.

The Commission finds that the public parking spaces must also be directly accessible from Seal Beach Boulevard. The Commission finds that the applicant could redesign the proposed subdivision to relocate the subdivision entrance in a manner which minimizes the need for a long public street in the subdivision (e.g., locate the subdivision entrance adjacent to the dedicated Gum Grove Park area).

Thus, Special Condition No. 5 also requires signage to inform the public of the public trail entrance to Gum Grove Park and public parking off of Seal Beach Boulevard, as well as the requirement to provide for public parking directly accessible from Seal Beach Boulevard on the area covered by proposed Vesting Tentative Tract Map No. 15402, in the event not all the public parking can be built on the dedicated Gum Grove Park area.

Finally, the Commission finds that there is no need to require that the proposed subdivision's streets be public or allow public vehicular access over private streets if public parking and a separate vehicular access entrance off of Seal Beach Boulevard to the parking is provided. However, the Commission does not sanction exclusivity in the coastal zone and finds that gates which preclude pedestrian and bicycle access cannot be approved consistent with the access and recreation policies of the Coastal Act. Therefore, the Commission attaches Special Condition No. 5 which prohibits the installation of gates precluding pedestrian and bicycle access to the subdivision proposed under Vesting Tentative Tract Map No. 15402.

(2) Proposed Trails around Salt Marsh

The applicant is proposing trails around the proposed salt marsh. One trail would extend from the proposed interpretive area along the north side of the marsh and end in a viewing point. The other trail would be similar except it would be on the south side of the marsh. The Commission finds that the applicant must execute and record a deed restriction over the proposed trail area to ensure public access is indeed provided and maintained in perpetuity. Therefore, the Commission attaches Special Condition 5.E. To assure maximum public access, the Commission finds that the deed restriction shall require: 1) that trail use shall be limited to public access, trail maintenance, and construction and maintenance of utilities and oil and gas pipelines provided any such use is carried out in a manner which minimizes impacts upon trail use for public access; 2) that trails shall meet the requirements of the Americans with Disabilities Act; 3) that trailways shall be a minimum of 25 feet wide with paved portions being a minimum 10 feet wide; 4) that trails shall not be lighted to minimize impacts upon wetlands; 5) that trails shall not be gated and shall be open from dawn to dusk; 6) the provision of benches at the viewing node to allow trail users to rest; 7) that trail users shall be protected from errant golf balls by erecting see-through protective structures on the trails, as necessary.

c. Golf Course

The golf course and contemplated clubhouse are proposed to be public. Therefore, the Commission finds that a deed restriction must be recorded which requires signage to inform the public of the public access opportunities at the golf clubhouse, as well as ensure that the golf course is not changed to a members only club, to ensure that the public and future golf

course owners are aware of the public access requirements. Thus, the Commission attaches Special Condition 13.

In addition, to ensure adequate parking at the golf course, Special Condition 13 requires that the golf course must provide a minimum of eight parking spaces per hole, as well as one space per each golf course employee, consistent with the Commission's regularly used parking standards for golf courses.

d. Parking

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by . . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation . . .

When a development does not provide adequate on-site parking, users of that development who cannot find an on-site parking space are forced to occupy off-site public parking that could be used by visitors to the coastal zone. A lack of public parking discourages visitors from coming to the beach and other visitor-serving areas, resulting in adverse public access impacts. Thus, all development must provide adequate on-site parking to minimize adverse impacts on public access. The proposed project involves the provision of public access opportunities such as trails and parks. The subject site is a large site that offers the opportunity to spread public parking facilities throughout the area.

As mentioned above, up to 10,000 square feet of visitor-serving uses are proposed. The Commission finds that only the amount of visitor-serving commercial use which can be satisfied by on-site parking shall be allowed. Thus, the Commission finds that, to provide adequate parking and minimize adverse impacts to public access, the visitor-serving uses must provide parking according to the Commission's regularly used standard for commercial uses in Seal Beach (e.g., one space for every 225 square feet of gross floor area for retail uses, and one space for every 50 square feet of public service area for restaurants).

The conceptual plan indicates approximately sixty-two on-site parking spaces. To ensure that the site provides adequate parking to serve both the future visitor-serving uses as well as users of the proposed public trails, the Commission finds that at least sixty-two parking spaces must be provided on-site to minimize adverse coastal access impacts resulting from the lack of adequate on-site parking. Therefore, the Commission attaches Special Condition 3. In addition, to ensure that the public has access to the trails proposed which begin at the State Lands parcel, Special Condition 3 requires that a minimum of ten parking spaces must be reserved for the exclusive use of trail users (i.e., these spaces cannot be used by patrons of the visitor-serving commercial uses on-site).

e. Conclusion (Public Access and Recreation)

Therefore, as conditioned, the Commission finds that the proposed project is consistent with the public access and recreation policies of the Coastal Act.

4. Visitor Serving Uses

a. State Lands Parcel

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30213 of the Coastal Act also encourages the provision of lower-cost visitor-serving uses. Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

The applicant is proposing visitor-serving uses and an interpretive center at the parcel of land owned by the California State Lands Commission ("CSLC"). The CSLC is restricted to the types of uses that it can allow on land it owns. Such uses are generally for the public benefit and generally are consistent with the visitor-serving uses required under the Coastal Act.

However, to ensure that the subject site is used for visitor-serving uses as proposed, especially in the event that the CSLC sells the land, the Commission finds that a lease restriction must be recorded, as well as an owner's agreement-to-be-bound to the special conditions of this permit, to notify the applicant and future owners of the limitation on use of the site, including that the site be limited to lower-cost visitor-serving commercial uses and public access and recreation uses consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission attaches Special Condition 3. Further, since the applicant has not proposed detailed plans for the proposed visitor-serving uses, the Commission finds that final plans must be submitted to the Executive Director for review. In addition, office uses (a low-priority use under the Coastal Act) cannot be allowed unless those office uses are adjunct to, and the minimum necessary for the administration of on-site visitor-serving commercial uses (e.g., the manager's office in the non-customer areas of a restaurant).

Finally, given the proximity of the site to the heavily used San Gabriel River bike trail and to encourage non-automobile access, the Commission finds that the EIR mitigation measure adopted by the City for a bike rack shall also be a Commission requirement. Therefore, Special Condition 3 requires a bike rack that would accommodate a minimum of twenty bicycles and that the bike rack shall be clearly signed as being available to the general public.

b. Golf Course

The 18-hole golf course, as proposed and conditioned, provides a visitor serving recreational opportunity for coastal zone users. Per Special Condition 13, the proposed golf course will be open to the public with no membership requirement. Signs visible to the general public

will announce the presence of the golf course and that the golf course is open to the general public. In addition, the golf course will be approximately 6,000 yards in length, and is intended to be a regulation length golf course.

c. Conclusion (Visitor-Serving Uses)

Therefore, as conditioned, the Commission finds that the proposed project is consistent with the visitor-serving policies of the Coastal Act.

5. Hazards

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

a. Seismic / Geologic Hazards

The Seal Beach splay of the Newport-Inglewood fault (a major earthquake fault in Southern California) transects the site in a northwesterly direction. The Alquist-Priolo Act requires development for human habitation to be setback 50 feet from the a fault zone. The fault across the subject site is 20 feet wide. Therefore, structures for human habitation cannot be built within a 120 foot wide strip of land running over the fault (20 feet for the fault plus 50 feet on either side of the fault).

No homes or other structures for human habitation are proposed on the fault. Only the golf course and wetlands are proposed. However, to further minimize hazards from seismic activity, the Commission finds that the City's geological hazards mitigation measures must be incorporated by reference as conditions of approval. Thus, the Commission attaches Special Condition 8. These measures include requirements such as proper recompaction of fill material and construction of buildings in accordance with the latest seismic standards.

b. Flood Hazards

The subject site is located near a major river and a flood control basin. Most of the structural development will be located on an upland mesa well above flood level. However, to minimize flood hazards, the Commission finds that the City's hydrology mitigation measures must be incorporated by reference as conditions of approval. Thus, the Commission attaches Special Condition 8. These measures include conformance to floodplain elevation standards and compliance with requirements for the adjacent flood control basin.

c. Conclusion (Hazards)

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act.

6. Water Quality

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The subject site drains into the San Gabriel River through the proposed salt marsh and the adjacent Los Alamitos Retarding Basin. Polluted runoff generated by development of the site which enters the San Gabriel River would result in adverse impacts to the river's water. Therefore, the Commission finds that National Pollutant Discharge Elimination System ("NPDES") requirements must be met. The Commission finds that approved NPDES permits, Storm Water Pollution Prevention Plans, and Best Management Practices in compliance with California Regional Water Quality Control Board mandates must be submitted and reviewed and approved by the Executive Director. In addition, the Commission finds that runoff from the future residential development shall be directed ultimately into sewage treatment facilities rather than into storm drains which lead into the San Gabriel River or the ocean. Therefore, the Commission attaches Special Condition 7. Thus, as conditioned, the Commission finds that the proposed development would be consistent with Section 30231 of the Coastal Act.

7. New Development

Section 30250 of the Coastal Act states, in relevant part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The subject site is approximately 196.6 acres in size and is essentially undeveloped except for about 28.2 acres of oil production facilities and small structures housing the property owner's offices. Thus, the subject site is one of a few remaining, non-public vacant pieces of land along the Southern California coast. The proposed development involves subdivision for 70 homes, an 18 hole golf course and clubhouse, 10,000 square feet of visitor-serving uses, park uses, wetlands, and public access trails. The proposed development is less dense and intense than previous development proposals for the subject site. Further, the subject site is completely surrounded by urban development. Infrastructure to serve the proposed development exists in the area. Thus, the proposed development is located within an existing developed area able to accommodate it. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Section 30250 of the Coastal Act.

8. Other Conditions

The applicant has proposed further subdivision of the mesa for 70 single family residential lots. However, plans for development of the lots, including the footprint, height, and design of the homes, grading and landscaping, were not submitted. Therefore, the Commission

finds that a separate permit must be required for the homes to allow the Commission to review the proposed homes for consistency with Chapter 3. Therefore, the Commission attaches Special Condition 9.

D. Development Agreement

The applicant has entered into a development agreement with the City of Seal Beach for the proposed development. California Government Code Section 65869 stipulates that development agreements shall not be applicable to development in the coastal zone unless, prior to certification of the local coastal program ("LCP") for the jurisdiction in which the development is located, the Commission, through formal action, approves the development agreement.

Since the LCP for the City of Seal Beach has not been certified, the Commission will have to approve the development agreement before the agreement can be effective. The development agreement will be acted on by the Commission as a separate hearing item.

E. Local Coastal Program.

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the permitted development will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter Three policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development, as conditioned, is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified local coastal program consistent with the Chapter Three policies of the Coastal Act.

F. 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)(A) 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 effect which the activity may have on the environment.

While the proposed alternative would result in significant adverse wetland impacts by filling of existing wetlands on-site, it would also mitigate these impacts by creating new wetlands of higher value than the values of the existing wetlands. Feasible alternatives which do not involve fill of the existing on-site wetlands do not substantially lessen significant adverse effects on the existing wetlands because they would not result in any increase in the value of the on-site wetlands compared to the proposed project.

Development, whether a golf course, houses, or other uses, alternatively could be proposed in the lowlands so as to avoid the existing wetlands by siting development on non-wetland areas. Because the existing wetlands on-site are scattered and fragmented, however, such development would impede the ability to restore the wetlands by eliminating contiguous areas which would be needed to connect the existing wetlands in an effort to restore them.

An alternative which proposes no development whatsoever in the 100+ acre lowlands area would leave open the possibility of an entity to acquire all of the lowlands for restoration or off-site mitigation for wetland impacts on other sites. However, unless all the lowlands are also restricted to habitat creation uses, there is no guarantee that the lowlands would be used to create new wetlands.

The proposed development is located in an urban area. All infrastructure necessary to serve the site exist in the area. The proposed project has been conditioned in order to be found consistent with the wetlands, public access, ESHA, natural hazards, water quality, and archaeology policies of Chapter Three of the Coastal Act. The required mitigation measures will minimize all significant adverse effects which the activity will have on the environment.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: Substantive File Documents

1. COASTAL DEVELOPMENT PERMITS AND COMMISSION ACTIONS

- A. Coastal Conservancy Project #1-82; Approved 4/22/82
- B. 5-82-221 (Ponderosa Homes); withdrawn 11/17/82
- C. 5-89-514 (MOLA Development Corporation); denied 11/14/89
- D. 5-89-1087 (MOLA Development Corporation); approved 1/12/90
- E. 6-90-219 [Batiquitos Lagoon restoration and enhancement]

2. WETLAND DOCUMENTS

- A. An Assessment of Wetland Resources Within the City of Seal Beach South of the San Gabriel River, prepared by Bob Radovich of the California Department of Fish and Game, June 1980.
- B. Determination of the Status of Wetlands Within the City of Seal Beach, Immediately South and East of the San Gabriel River Channel (Ponderosa Seal Beach Wetlands), prepared by the California Department of Fish and Game, January 13, 1982.
- C. Conceptual Wetlands Restoration Plan for the Hellman Ranch dated November 1997 prepared by Moffatt & Nichol Engineers in association with Coastal Resources Management.
- D. Addendum to Concept Wetlands Restoration Plan for the Hellman Ranch dated February, 1998 prepared for Hellman Properties LLC by Moffatt & Nichol Engineers (M&N) File: 3693) in association with Coastal Resources Management
- E. Hellman Ranch Wetland Restoration Feasibility Study dated July 20, 1998 prepared for The Port of Long Beach by Moffatt & Nichol Engineers (M&N File: 3693)

3. OTHER DOCUMENTS

- A. Final Environmental Impact Report for the Hellman Ranch Specific Plan dated August 1997 prepared by P&D Consultants for the City of Seal Beach (State Clearinghouse No. 96121009) and certified by City of Seal Beach City Council Resolution 4562 on September 19, 1997.
- B. "Development Agreement by and Between the City of Seal Beach and Hellman Properties, LLC Relative to the Development known as the Hellman Ranch" dated October 27, 1997

- C. An Environmental Approach to Golf Course Development & Management prepared for Hellman Properties LLC by Siena College-Audubon International Institute dated December 1996
- D. A Research Design for the Evaluation of Archaeological Sites within the Hellman Ranch Specific Plan Area dated November 1997 prepared by KEA Environmental, Inc. for the City of Seal Beach

APPENDIX B: Local Approvals

- 1) City of Seal Beach City Council Resolution 4570 approving Tentative Tract Map No. 15381 (subdivision of site into 9 lots)
- 2) City of Seal Beach City Council Resolution 4571 approving Tentative Tract Map No. 15402 (Residential subdivision);
- 3) City of Seal Beach Ordinance 1420 adopting the Hellman Ranch Specific Plan
- 4) City of Seal Beach Resolution 4562 approving the Final Environmental Impact Report for the Hellman Ranch Specific Plan; October 27, 1997
- 5) Development Agreement

LIST OF EXHIBITS

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August 19, 1998 Letter To The Commission From The City Attorney	Page 22
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Documentation Regarding Property Ownership	Page 35
Map Showing General Area of Public Access Trails (as referenced in Special Condition 5	Page 40

Exhibit 2

<u>1. June 4, 1998 Letter From The Applicant To The Coastal Commission With Attachments.</u>	
<u>Attachment A: Applicant's Summary Of The Legal Framework For Approval In Their Opinion:</u>	Page 8
<u>Attachment B: Applicant's Suggested Findings For Approval:</u>	Page 14
<u>Attachment C: Matrix Form Of Applicant's Requested Changes To The Special Conditions Of Approval As Recommend In The March 19, 1998 Staff Report:</u>	Page 45
<u>Attachment D: Applicant's April 7, 1998 Public Hearing Transcript:</u>	Page 49
<u>Attachment E: Biological Success Of The Hellman Wetland Restoration Program:</u>	Page 66
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<u>Attachment G: Economic Feasibility Of The Golf Course:</u>	Page 74
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<u>Attachment I: Letter From The City Attorney To The Coastal Commission Dated June 3, 1998:</u>	Page 80
<u>2.Applicant's Requested Revisions (In Strikethrough And Underline Version) To The Special Conditions Of Approval As Recommended In The March 19, 1998 Staff Report:</u>	Page 85

Exhibit 3: Port Of Long Beach

Hellman Ranch Wetland Restoration Feasibility Study Dated July 20, 1998 Prepared For The Port Of Long Beach By Moffatt & Nichol Engineers (M&N File: 3693)

Exhibit 4: Wetlands/Resources Agencies

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1980 Department Of Fish And Game Wetlands Assessment	Page 11
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Exhibit 5: Applicant's November 1997 Concept Wetlands Plans

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Coastal Salt Marsh Wetland Functional Assessment Page 1
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Exhibit 7: 4/26/1990 Revised Findings For Permit 5-89-1087

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Exhibit 9: Pesticide Information

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May 11, 1998 Memo From Audubon International To The Applicant, Page F3
With The UC-IPM Pest Management Guidelines Attached Page F5
"An Environmental Approach To Golf Course Development And Management,"
December 1996 Prepared By Audubon International Page F81

**Exhibit 10: Information From Applicant On Other Golf Courses And Water Quality
Constraints**

Exhibit 11: Documentation Regarding The Project Final Environmental Impact Report
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Exhibit 12: Hard Copy Of The Applicant's Visual Presentation At The June 10, 1998 Hearing

Exhibit 13: Hard Copy Of The Applicant's Visual Presentation At The April 7, 1998 Hearing

**Exhibit 14: Letters In Support Of The Golf Course Received: 1) From The Public Since The
June Hearing Through Noon On August 25, 1998; And 2) Previously Received
From Government Officials**

**Exhibit 15: Letters Regarding Archaeology Previously Received As Well As Received Since
The June Hearing.**

**Exhibit 16: Letters In Opposition To The Golf Course Received Since The June Hearing
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**Exhibit 17: Items Transmitted To Coastal Commissioners As Addendum #1 For The
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**Exhibit 18: Letters Of Opposition To The Golf Course (Excluding Letters Regarding
Archaeology) Which Were Included In Previous Staff Reports And Addenda**

Transmitted To Coastal Commissioners As Addendum #2 For The
September 9, 1998 Hearing

Exhibit 19: A Portion Of The Coastal Commission's *Statewide Interpretive Guidelines For Wetlands And Other Wet Environmental Sensitive Habitat Areas* Adopted February 4, 1981

Exhibit 20: Letter of Opposition To The Proposed Project Received Since the September 9, 1998 Hearing

Exhibit 21: Hard Copy of the Applicant's Visual Presentation at the September 9, 1998 Hearing

Exhibit 22: Letters Regarding the Adequacy of the Revised Findings