

GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION

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

Filed: 7/26/99
49th Day: 9/13/99
Open & Continue 8/10/99
Local Record
Received: 8/5/99
Staff: MV-LB
Staff Report: 8/26/99
Hearing Date: 9/14-17/99
Commission Action:



STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Huntington Beach

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-HNB-99-275

APPLICANT: The Robert L. Mayer Trust
c/o The Robert Mayer Corporation

AGENT: Larry Brose, The Robert Mayer Corporation

PROJECT LOCATION: Northwest corner of Pacific Coast Highway and Beach Boulevard
Huntington Beach, Orange County

PROJECT DESCRIPTION: Appeal of City of Huntington Beach approval of coastal
development permit to fill 0.8 acres of wetland.

APPELLANTS: Coastal Commissioners Cecilia Estolano & Pedro Nava

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **a substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reason: Pursuant to Section 30603(b)(1) of the Coastal Act the locally approved development does not conform to the City of Huntington Beach certified Local Coastal Program (LCP). More specifically, the locally approved development does not conform to the environmentally sensitive habitat and wetland policies of the certified LCP. The motion to carry out the staff recommendation is on page 5.

Staff further recommends that the Commission **continue the de novo hearing** to a future Commission meeting in order to allow additional information to be submitted by the project applicant and reviewed by Commission staff. The required additional information includes a wetland delineation based on the Coastal Commission wetland delineation standard rather than the federal standard and an analysis of alternatives to the proposed project. The additional information is necessary for Commission staff to analyze the project and make a recommendation for the de novo stage of the hearing.

SUBSTANTIVE FILE DOCUMENTS:

1. Local Coastal Development Permit No.99-05.
2. City of Huntington Beach Certified Local Coastal Program.
3. Department of Fish and Game Determination of the Status of the Huntington Beach Wetlands, February 4, 1983.
4. The Waterfront Development Project Addendum to SEIR 82-2, July 15, 1998
5. Biological Resources Evaluation and Jurisdictional/Wetland Delineation for the Waterfront Development Site, Huntington Beach, CA, February 4, 1998

I. APPELLANTS' CONTENTIONS

Local Coastal Development Permit No.99-05, approved by the City of Huntington Beach Zoning Administrator on June 23, 1999, has been appealed by two Coastal Commissioners on the grounds that the approved project does not conform to the requirements of the Certified LCP. The appellants contend that the proposed development does not conform to the requirements of the certified LCP in regards to the following issues:

Wetland Preservation and Enhancement

The City's Land Use Plan (LUP) portion of the certified LCP contains policies which require the preservation and enhancement of wetlands. That the subject site contains a wetland is not disputed. However, the project approved by the City relies on the federal definition of wetlands rather than the Coastal Act definition of wetlands contained in the certified LCP. The wetland fill approved by the City, therefore, raises a substantial issue as to its consistency with the certified LUP policies which require that wetlands be preserved and enhanced.

Allowable Use

The City's certified LUP specifically incorporates Section 30233 of the Coastal Act. Section 30233 of the Coastal Act limits fill to specifically enumerated uses. LUP policy 8f in Section 9.5.4 reiterates that only the uses specifically identified in Section 30233 are allowed in wetlands. Although the City's approved coastal development permit does not describe the future use of the site, the Addendum to the Supplemental EIR (SEIR 82-2) indicates that the future use is expected to be residential. Neither residential development nor grading for unspecified uses are allowable uses under 30233. Therefore the project approved by the City raises a substantial issue as to its consistency with the certified LUP policies which limit the types of use for which a wetland can be filled.

Conservation Overlay

The subject site is addressed in the Implementation Plan portion of the City's certified LUP in the Downtown Specific Plan (DTSP). The DTSP designated the subject site with a Conservation Overlay. The Conservation Overlay states: If any wetland is determined by the Department of Fish and Game to be severely degraded pursuant to Section 30233 and 30411 of the California Coastal Act, or if it is less than one (1) acre in size, other

restorations options may be undertaken, pursuant to the Coastal Commission's Statewide Interpretive Guidelines for Wetlands and other Wet Environmentally Sensitive Habitat Areas.

Based on this language the City's approval allows the on-site wetland to be filled in conjunction with an off-site mitigation program. However, with regard to wetlands less than one acre in size, the Guidelines indicate that some fill for a non-allowable use is appropriate only if the overall project is a restoration project. The project as approved by the City includes an off-site mitigation plan. Therefore, the purpose of the overall project (including the fill and mitigation together) cannot be considered solely a restoration project. The off-site mitigation program is not dependent on the on-site wetlands being filled.

In addition, the wetland delineation which resulted in the 0.8 acre figure was based on the federal wetland delineation standard, not the Coastal Commission standard. The Coastal Commission standard is based on the Coastal Act definition of wetland and is incorporated into the City's certified LCP. Based on the Coastal Act standard incorporated into the certified LCP, it appears that the actual wetland acreage may exceed one acre.

With regard to wetlands determined by the Department of Fish and Game to be severely degraded pursuant to 30411, the interpretation contained in the portion of the Commission's guidelines referred to in the DTSP Conservation Overlay has been invalidated by the Fourth District Court of Appeal in Bolsa Chica Land Trust vs. Superior Court (1999) 83 Cal. Rptr. 850. The appellate court held that the interpretation of Section 30411 contained in the Commission's "Wetlands Guidelines" may not be the basis for approval of otherwise non-permitted uses. Moreover, even if the interpretation of Section 30411 contained in the Guidelines could be utilized as the basis for approval of otherwise non-permitted uses, the Guidelines referred to in the DTSP Conservation overlay still limit when and how much fill is allowed. The Guidelines state: "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 project approved by the City would result in the loss of all on-site wetlands. Thus, even if the interpretation of Section 30411 contained in the Guidelines could be utilized as the basis for approval of otherwise non-permitted uses, the project approved by the City is not consistent with the requirements specified in those Guidelines.

Therefore the project as approved by the City raises a substantial issue as to its consistency with the certified LCP's Conservation overlay which incorporates by reference the Commission's Wetland Guidelines.

II. LOCAL GOVERNMENT ACTION

On June 23, 1999 the Zoning Administrator of the City of Huntington held a public hearing on the proposed project. At the conclusion of the public hearing, the Zoning Administrator found that the project as conditioned conformed with the Local Coastal Program and approved with conditions local coastal development permit No. 99-05. The action by the Zoning Administrator was appealable to the Planning Commission within the ten (10) working day appeal period. However, no appeals were filed to the Planning Commission.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the top of the seaward face of a coastal bluff. Also, developments approved by the local government that are located within 100 feet of any wetland, estuary, or stream may be appealed. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a)(2) of the Coastal Act identifies the proposed project site as being in an appealable area by its location being within 100 feet of a wetland.

Section 30603 of the Coastal Act states:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The grounds for appeal of an approved local Coastal Development Permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of

review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the conformity of the project with the policies of the City of Huntington Beach certified Local Coastal Program, pursuant to Public Resources Code Section 30625(b)(2).

MOTION: Staff recommends a **NO** vote on the following motion:

I move that the Commission determine that Appeal No. A-5-HNB-99-275 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The City's approval of local coastal development permit No. 99-05 allows the fill of at least 0.8 acres of wetland. The wetland area is located just inland of the intersection of Pacific Coast Highway and Beach Boulevard. The wetland lies immediately to the west of Beach Boulevard. To the west of the wetland is an existing mobile home park. South of the subject site is vacant land. Directly across Beach Boulevard from the subject site is a large salt marsh. Currently a portion of the subject wetland drains into the salt marsh via drain pipes under the street.

The subject site is land use designated High Density Residential/Conservation. The zoning at the subject site is covered by the Downtown Specific Plan (DTSP), which is a part of the Implementation Plan portion of the certified LCP. The wetland area is located in District 8b of the DTSP. The use allowed in District 8b is residential. However, a portion of district 8b is designated with a Conservation Overlay. The subject site is located within the Conservation Overlay. The

Conservation Overlay applies to the area that was determined by the Department of Fish and Game pursuant to Section 30411 as existing wetland (0.8 acre) and restorable wetland (1.4 acre). The Fish and Game wetland determination is contained in the "Department of Fish and Game Determination of the Status of the Huntington Beach Wetlands", dated February 4, 1983 (1983 Fish and Game Study).

The local coastal development permit was approved with seven special conditions. Special condition Nos. 3 through 6 address the off-site mitigation which is to be done approximately 4 miles away at the Shipley Nature Center. (see exhibit D). Special Condition No. 3 requires compliance with all applicable SEIR 82-2 and Addendum to SEIR 82-2 mitigation measures inclusive of Biotic Resources-Onsite and Biotic Resources-Adjacent Wetlands mitigation measures. The Biotic Resources-Onsite and Biotic Resources-Adjacent Wetlands mitigation measures include: a) the stipulation that the amount of wetland area to be mitigated is 0.8 acres; b) the requirement that the applicant prepare a detailed wetland restoration plan, and a requirement that the off-site location be the most appropriate, that the type of wetlands to be restored and the monitoring plan be determined; c) the requirement that full mitigation be completed prior to the subject wetland site being altered; d) that a coastal development permit be obtained for the project from the City; e) the requirement that a 404 permit be obtained from the Corps of Engineers; f) that a hydrological analysis of the drainage patterns affecting the onsite wetland area or the adjacent wetland area be conducted, and the requirement that the project's runoff management system deliver approximately the same amount of freshwater urban runoff to these wetlands as under existing conditions; g) the requirement that if the developer changes the water supply to the wetlands east of Beach Boulevard a biological analysis demonstrating that there would be no adverse impacts on the wetlands or associated wildlife be prepared.

Special condition No. 4 requires a) proof of sufficient funding to complete the Habitat Mitigation and Monitoring Program at the Shipley Nature Center and to fund five years of monitoring and maintenance; b) that a conservation easement be placed on the mitigation site; c) written documentation that the project is authorized under a Corps of Engineers Nationwide Permit.

Special condition No. 5 requires that a final habitat planting plan, wetland basin excavation plan and temporary irrigation plan consistent with Habitat Mitigation and Monitoring Proposal be approved by the City.

Special condition No. 6 requires specific requirements regarding the work activities within the Shipley Nature Center such as that the walking trail be preserved, and no grading is to occur in existing wetlands.

Although special condition No. 3 indicates that the mitigation plan and site have yet to be determined, other special conditions and the City's findings indicate that the mitigation plan and site have been finalized. In requiring that it be demonstrated that there is adequate funding for the mitigation plan, Special condition No. 4 specifies the Habitat Mitigation and Monitoring Program (HMMP) for the Waterfront Development at the Donald G. Shipley Nature Center as the project's mitigation. In addition, special condition No. 4 requires the recordation of a conservation easement against the Donald G. Shipley Nature Center wetlands mitigation site. Special conditions Nos. 5 and 6 also refer to the Habitat Mitigation and Monitoring Program (HMMP) for the Waterfront Development at the Donald G. Shipley Nature Center. In the City's findings, Item 1 states that the City approved the concept of the Donald G. Shipley Nature Center Habitat

Enhancement and Creation Program. The City's findings also refer to the specific mitigation plan in item Nos. 2, 7, 11, 12, 13, 15, and 16.

Although the project approved under the local coastal development permit includes only the fill of subject wetlands, the wetland area is part of a larger area known as the Waterfront Development master plan area. Environmental Impact Report (EIR) 82-2 was prepared for the Huntington Beach Downtown Specific Plan. The Waterfront Development project was conceptually discussed in that EIR. When a detailed development plan for the Waterfront Project was proposed in 1988, a Supplemental EIR was prepared (SEIR 82-2, certified by the City in 1988). Proposed changes to the 1988 development plan for the Waterfront Project required further environmental evaluation, and so the Addendum to the SEIR 82-2 was prepared. The Addendum to the SEIR is included as part of the City's record for the approved project. The Addendum to the SEIR indicates that the subject site is to be developed with residential development.

B. Substantial Issue Analysis

As stated in Section III of this report, the grounds for appeal of a Coastal Development Permit issued by the local government after certification of its Local Coastal Program are specific. In this case, the local Coastal Development Permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

In this case, the appellants contend that the City's approval of the proposed project does not conform to the requirements of the certified LCP (See Section I). Staff has recommended that the Commission concur that the locally approved project does not conform to the certified LCP and find that a substantial issue does exist with respect to the grounds on which the appeal has been filed.

1. Conservation Overlay

The primary basis for the City's approval of the wetland fill is language contained in the Downtown Specific Plan Conservation Overlay. The relevant Conservation Overlay language states:

If any wetland is determined by the Department of Fish and Game to be severely degraded pursuant to Sections 30233 and 30411 of the California Coastal Act, or if it is less than one (1) acre in size, other restoration options may be undertaken, pursuant to the Coastal Commission's "Statewide Interpretive Guidelines for Wetlands and other Wet Environmentally Sensitive Habitat Areas."

This same language appears in the certified LUP in the Area-by-Area Discussion on page 126. The Guidelines referred to in the Conservation Overlay address two separate and distinct circumstances where some fill of wetlands may occur for a use not specified in Section 30233. The first circumstance requires, among other things, that the subject wetland be less than one acre in size. The second applies to wetlands that have been identified by the Department of Fish and Game as degraded pursuant to Section 30411. The subject site was determined to be degraded by the CDFG pursuant to Section 30411 and, based on the applicant's delineation, the wetland delineation figure is less than one acre in size.

a. Wetland Area of Less than One Acre

i) Correct Wetland Acreage Figure

One of the circumstances in which the above-identified Conservation Overlay language applies is if the wetland in question is less than one acre in size. Based on the applicant's wetland delineation, the subject wetland is 0.8 acres, which would mean this language applies. However the applicant's wetland delineation was done using the federal wetland delineation standard. Wetlands tend to display specific types of hydrology, vegetation, and soils. Typically, the federal wetland delineation standard considers only those areas where all three of these indicators are present to be wetland. However, based on the Coastal Act definition of wetland, and Section 13577(b) of the Commission's regulations, the Coastal Commission considers an area where any one or more of the three indicators are present to be a wetland. The Coastal Act definition of wetland is expressly incorporated into the City's certified LCP. The Coastal Act and LCP definition of wetland is:

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. (Public Resources Code Section 30121 and page 61 of the LCP.)

Section 13577(b) of the Commission's regulations states:

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(b) Wetlands.

(1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;

(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or

(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

A biological evaluation was prepared for the subject site in conjunction with the proposed project (Biological Resources Evaluation and Jurisdictional/Wetland Delineation for the Waterfront Development Site, Huntington Beach, CA, prepared by LSA Associates, Inc. and dated February 4, 1998). The biological evaluation states: "Therefore, this wetland delineation focuses on evaluation of three wetland parameters using the specific criteria set forth in the 1987 Corps wetland delineation manual, which is also currently utilized by the U.S. Fish and Wildlife Service and other federal agencies."

The biological evaluation includes a Vegetation Types map (figure 3 of the Evaluation, see exhibit). The map identifies the area determined by the applicant's consultant to be the 0.8 acre wetland area. The vegetation types are classified into four broad categories and then further divided within each category. Areas identified on the map as alkali meadow which includes plants such as alkali heath and saltgrass were not included as part of the wetland acreage figure. In addition, areas containing pampas grass were not included in the wetland acreage figure either. Although pampas grass is not considered to provide a high habitat value, the Commission generally considers pampas grass to be a wetland indicator.

The biological evaluation also assesses the soils. The assessment found that the soil type at the subject site is Tidal Flats. Soils of the Tidal Flats soil series are considered hydric. However, the soils assessment also found that this native soil has been covered over by sandy fill material to depths of two to six feet. The fill is assumed to be the result of construction activity during the 1960s. The evaluation concludes that only the soils in the coastal brackish marsh, pickleweed, and cocklebur patches exhibit characteristics of hydric soils.

However, hydric soils were identified at depths of two to four feet below the fill material. If the site were to be restored and enhanced this deeper soil would be conducive to establishing wetland habitat. It is not conclusive that the subject site's soil should be dismissed as not having any potential to support wetland habitat.

In order to meet the Corps hydrology parameter an area must be seasonally inundated or saturated to the surface for a consecutive number of days equal to 12.5 percent or more of the growing season in most years. Areas that are saturated to the surface between 5.0 to 12.5 percent of the growing season may or may not meet the hydrology criterion, depending on other factors. The growing season in Southern California is generally conceded to be all year. The biological evaluation concludes that the runoff collected on the subject site would quickly drain via the artificial drainage culverts or pipes. Therefore, the biological evaluation concludes that the site does not meet the saturation standards of the Corps hydrology parameter and so the site does not have wetland hydrology.

In addition to the applicant's Biological Evaluation of the subject site, the 1983 Fish and Game Study addresses the subject site. Regarding the subject site, the 1983 Fish and Game Study, which is the basis for the Conservation overlay, states:

The portion of the study area (5.0 ac.) west of Beach Boulevard, consists of 0.8 acres of fresh/brackish water marsh and 4.2 acres of former wetland and upland, of which 1.4 acres are restorable as wetland. The 0.8-acre pocket of freshwater wetland has been degraded because of its reduced size, configuration, location and overgrown condition. In order to effect restoration of this wetland such that wildlife values are improved, it would be

necessary to both expand its size and decrease the ratio of vegetated to non-vegetated wetland. In this regard, it would be highly advantageous to create non-vegetated open-water area of roughly a 4-foot depth. This 4-foot depth would be adequate to largely preclude invasion by cattails. Lastly, the wetland in this area should be fenced.

This freshwater wetland could feasibly be restored to 2.2 ac (0.8 ac of existing wetland and 1.4 ac of restorable historic wetland).

The Fish and Game Study follows this language with conditions that must be met if offsite mitigation is deemed necessary. However, it has not been demonstrated that off-site mitigation is necessary. And the Fish and Game Study clearly indicates that there would be a benefit to retaining and enhancing the wetland onsite.

The applicant's wetland delineation, which identifies 0.8 acres of on-site wetland, is based on the Army Corps of Engineers definition. However, the Corps standard applied by the biological consultant is not the standard contained in the Coastal Act or the certified LCP. As discussed above, the Coastal Act definition of a wetland, which is incorporated into the City's certified LCP, is much broader. It appears from the information in the record, particularly the Biological Resources Evaluation, that if the Coastal Act and LCP wetland delineation standard were applied to the subject site, the area identified as wetland would be expanded. Also, the Fish and Game Study determined that 1.4 acres of the subject site, in addition to the 0.8 acres, is restorable wetland. The Commission has generally found that restorable wetland that currently exhibits any of the three wetland parameters is a wetland. For these reasons, it appears possible that the total wetland acreage figure could exceed the 1.0 acre threshold that triggers application of the Conservation Overlay's language upon which the City has based its approval of the project.

Based on the vegetation depicted on the wetland delineation map prepared for the project, it appears that the actual wetland acreage figure may be as much as 2.2 acres. This figure includes both the 0.8 acres of existing wetland and the 1.4 acres of wetland previously identified as restorable by the DFG determination prepared pursuant to Section 30411. Because the Coastal Act definition of wetland, which is also in the City's certified LCP, was not applied to the subject wetland, the wetland acreage figure may not be accurate. Therefore, the project raises the issue of consistency with the City's certified LCP's wetland definition and the provisions of the LCP which allow fill of areas less than 1 acre in size for non-permitted uses.

ii) Application of Guidelines When a Wetland is Less than One Acre in Size

Even if the fill approved by the local government was less than one acre in size, the guidelines indicate that some fill for a non-allowable use is appropriate only if the overall project is a restoration project (see exhibit H). The Guidelines state: "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 found in its decision on the Chula Vista LCP that projects which provide mitigation for non-permitted development may not be broadly construed to be restoration projects in order to avoid the strict limitations of the permitted uses in Section 30233."

The project approved under local CDP 99-05 does not include any use of the subject site beyond the proposed fill itself. Grading for an unspecified use cannot be considered a

restoration project. In addition, the Addendum to the SEIR included in the City's record, indicates that the future use of the site will be residential. A project whose primary function is residential cannot be considered a project whose sole purpose is restoration. The project approved by the City includes an off-site mitigation plan. However, the purpose of the overall project (including the fill and mitigation together) cannot be considered solely a restoration project. Clearly the mitigation program is not dependent on the on-site wetlands being filled. In fact the mitigation site is located approximately 4 miles from the subject site, outside the coastal zone. The mitigation program could go forward without the fill of the subject wetlands. Therefore, the project does not meet the criteria of the Guidelines and so is not permissible as an "other restoration option" under the Conservation Overlay in the certified Implementation Plan.

Therefore, the proposed project does not qualify as a restoration project under the Guidelines and raises a substantial issue with the certified LCP provisions which incorporate those guidelines.

b. Wetlands Degraded per DFG and 30411

The second circumstances in which the above-identified LCP Conservation Overlay language applies is wetlands that have been identified by the DFG as degraded pursuant to Section 30411. The Guidelines incorporated into the City's certified LCP provide for fill of degraded wetlands for a non-allowable use only if there is no net loss of wetland acreage on the subject site (see exhibit H). The Guidelines state: "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 project approved by the City would result in the loss of all on-site wetlands. Therefore, the project is not allowable in a degraded wetland under the Guidelines.

In addition, as noted above, the interpretation contained in the portion of the Commission's guidelines referred to in the City's LCP has been invalidated by the Fourth District Court of Appeal. In *Bolsa Chica*, the appellate court held that the interpretation of Section 30411 contained in the "Wetlands Guidelines" may not be the basis for approval of otherwise non-permitted uses. (83 Cal. Rptr 850, 861-862.) Therefore, the project approved by the City raises a substantial issue of consistency with the certified LCP provisions which incorporate the Wetland Guidelines.

C. Conclusion Regarding Conservation Overlay

For the reasons identified above, (the wetland area may be greater than one acre, the purpose of the overall project is not solely restoration and no wetlands will remain on site), the project is not allowable under the LCP's Downtown Specific Plan Conservation Overlay which discusses "other restoration options." Therefore, a substantial issue is raised regarding the approved project's consistency with the certified LCP.

2. LUP Wetland Policies

The City's certified LCP Land Use Plan contains the following wetland protection policies:

Section 9.5.4, Policy 8f:

Limit diking, dredging, and filling of coastal waters, wetlands, and estuaries to the specific activities outlined in Section 30233 and 30607.1 of the Coastal Act and to those activities required for the restoration, maintenance, and/or repair of the Municipal Pier; conduct any diking, dredging and filling activities in a manner that is consistent with Section 30233 and 30607.1 of the Coastal Act.

Section 9.5.5:

Coastal Act policies clearly restrict uses and activities that are to be allowed in wetland areas. The City implements these Coastal Act policies primarily through its designation of all wetland areas in the coastal zone as Conservation. Coastal Act policy also requires that environmentally sensitive habitats be protected against the detrimental impacts of new development when proposed adjacent to these areas. The intent of the following policies is to provide for this protection:

9. Preserve and enhance environmentally sensitive habitats including the Bolsa Chica which is within the sphere of influence of the City of Huntington Beach.

9a. Approve only that development adjacent to wetlands and environmentally sensitive habitat areas that does not significantly degrade habitat values and which is compatible with the continuance of the habitat.

9b. Require new development contiguous to wetland or environmentally sensitive habitat area to include buffers which will consist of a minimum of one hundred foot setback from the landward edge of the wetland where possible. If existing development or site configuration precludes a 100 foot buffer, the buffer shall be established according to the factors listed in Policy 9c and shall be reviewed by the Department of Fish and Game.

In case of substantial development or significantly increased human impacts, a wider buffer may be required in accordance with an analysis of the factors in Policy 9c.

9c. Develop specifications for buffers taking into consideration the following factors:

Biological Significance of Adjacent Lands. The buffer should be sufficiently wide to protect the functional relationship between wetland and adjacent upland.

Sensitivity of Species to Disturbance. The buffer should be sufficiently wide to ensure that the most sensitive species will not be disturbed significantly by permitted development, based on habitat requirements of both resident and migratory species and the short- and long-term adaptability of various species to human disturbance.

Susceptibility of Parcel to Erosion. The buffer should be sufficiently wide to allow for interception of any additional material eroded as a result of the

proposed development based on soil and vegetative characteristics, slope and runoff characteristics, and impervious surface coverage.

Use of Existing Cultural Features to Locate Buffer Zones. Where feasible, development should be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the environmentally sensitive habitat area.

In addition to these LUP policies, the LUP includes discussion regarding the protection of wetlands (note: the LUP considers wetlands to be a type of environmentally sensitive area). Following is some of the discussion from the LUP regarding protection of wetlands:

The City's coastal plan complements efforts by State and federal agencies to protect and enhance sensitive habitat areas. Principal objectives of the plan include:

Protection of significant habitat areas by requiring wetland enhancement and buffers in exchange for development rights.

Improvement of the aesthetic and biological quality of wetland areas.
(Section 6.3, page 64)

In addition, the City's LUP specifically incorporates Section 30233 of the Coastal Act.

a. Section 30233

i) Allowable Use

Section 30233 limits the fill of wetlands to specifically enumerated uses. Although the City's approved coastal permit does not include any use beyond the wetland fill, the Addendum to the SEIR indicates that it is expected to be residential. Neither residential development nor grading for unspecified uses are allowable uses under 30233. The City's LUP Policy 8f of Section 9.5.4 reiterates that only the specifically identified uses are allowed in wetlands under Coastal Act Section 30233. The proposed fill does not constitute one of the specifically enumerated uses under Section 30233 of the Coastal Act which is specifically incorporated into the certified LUP. Therefore the project as approved by the City raises a substantial issue of consistency with the LUP wetland policies of the City's certified LCP.

ii) Alternatives

In addition to limiting fill of wetlands to specific uses, Section 30233 of the Coastal Act also requires that any allowable fill of wetland be the least environmentally damaging alternative. In the City's findings of approval alternatives are discussed under items 9 through 16 (see exhibit D).

In approving the wetland fill the City found that leaving the existing degraded wetland fragment in its current condition is not the least environmentally damaging alternative due to a number of factors, including: a) the primary water supply for the wetland is polluted urban runoff which

together with petroleum deposits below the surface will result in unacceptable and/or worsening water quality; b) the site is small, extremely isolated and surrounded by roadways and urban uses exposing the wetland and potential wildlife to light and noise impacts, as well as traffic hazards as wildlife transits to and from larger habitat area east of Beach Boulevard, resulting in a continued decrease in habitat value; and c) the site is subject to increasing dominance of invasive alien plant species further diminishing any remnants of habitat value on the project site.

The City also found that on-site restoration is not feasible because the wetland area is not capable of recovering and maintaining a high level of biological productivity due to numerous factors including those listed above and the following: the wetland is freshwater in nature and therefore dissimilar from the only nearby wetland east of Beach Boulevard which is a salt marsh subject to tidal influence; the size of the wetland cannot support significant wildlife populations or provide significant habitat area for a diverse ecosystem; and the wetland is isolated from other larger wetland ecosystems and lacks functionality resulting in a lack of contribution to species diversity and a lack of resilience to impacts, including extreme weather.

The City also found that the off-site mitigation can only feasibly be achieved by filling of the on-site degraded wetlands because that is the only means available to the City to finance the costs for the off-site mitigation. However, there is no provision in the City's certified LCP that would allow fill of existing wetlands in order to finance the enhancement of off-site wetlands.

Although the City lists a number of factors explaining why leaving the existing wetland in its current condition is not the least environmentally damaging alternative, in fact all the factors only demonstrate that the wetland is degraded. If the water quality is low, the site is small and isolated and adjacent to urban uses, and if the site may be subject to invasive plant species that indicates the wetland is degraded. These factors alone do not justify elimination of the wetland.

Based on the information in the City's findings, retaining the existing wetland on-site was not found to be the least environmentally damaging alternative due to the fact that it is a degraded wetland. However, the Coastal Act and the City's certified LCP, do not allow fill of wetlands simply because they are degraded. Therefore, the City's basis for finding that retaining the existing wetland on-site is not the least environmentally damaging alternative is not consistent with Section 30233 of the Coastal Act as incorporated into the City's certified LCP.

Additionally, as discussed previously, the 1983 Fish and Game Study found that the wetlands were degraded but found that restoration was feasible and desirable. This further underscores the fact that the alternative of retaining the wetlands on-site should be evaluated and considered.

It has not been demonstrated that the proposed fill is the least environmentally damaging alternative as required under Section 30233 of the Coastal Act which is specifically incorporated into the certified LUP. Therefore the project as approved by the City raises a substantial issue of consistency with the LUP wetland policies of the City's certified LCP.

b. Other LUP Policies

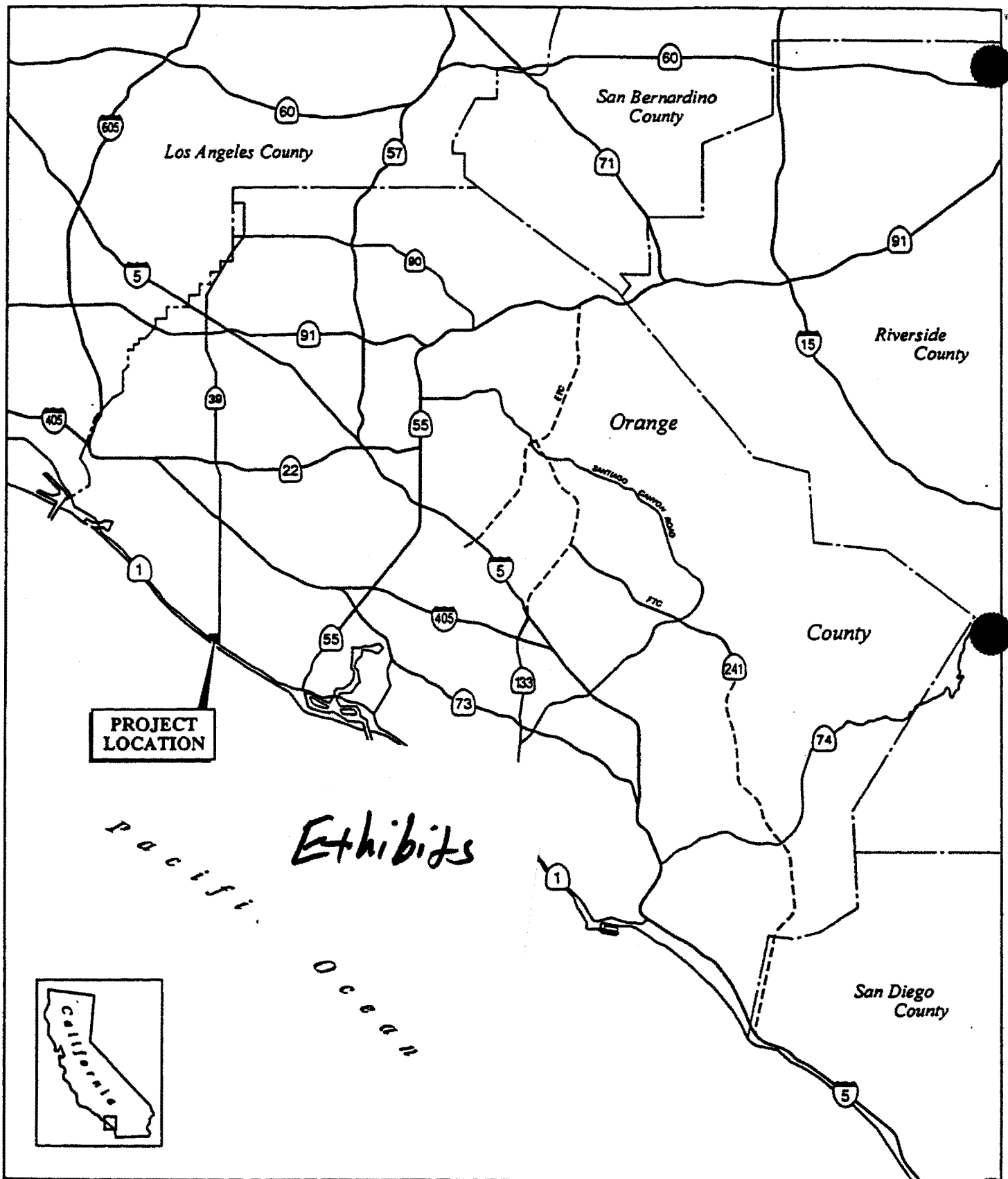
In addition to the requirements of Section 30233 of the Coastal Act which was specifically incorporated into the City's LCP, the City's additional LUP policies cited above further underscore the LCP's requirement to preserve and enhance environmentally sensitive areas such as wetlands and to limit any impacts from adjacent development. The City's

approval of the fill of at least 0.8 acres of wetland area will eliminate the on-site wetland and will not protect and enhance it as required by the certified LCP's land use policies. These LUP policies do not differentiate between degraded and non-degraded wetlands. Therefore, the wetland policies that require that wetlands be protected and enhanced apply to the subject wetland.

The project approved by the City raises significant questions with regard to consistency with several policies contained in the certified LCP. The relevant LCP policies are stated above in this report. Therefore, staff recommends that the Commission find that a substantial issue exists with regard to the City's approval of Local Coastal Permit 99-05.

C. INFORMATION NEEDED FOR DE NOVO HEARING

As discussed previously in this report, a revised wetland delineation based on the Coastal Commission's standard is necessary to evaluate the project. In addition, an alternatives analysis that includes retaining the existing wetland on site is also necessary to evaluate the project. Once this information is provided, staff can prepare a recommendation for the de novo portion of the appeal. A de novo hearing will be scheduled at a future Commission meeting.

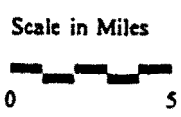


10/16/97(RMC730)

Figure



LSA



A-5-HNPB-99-275

Exhibit A

Regional Location

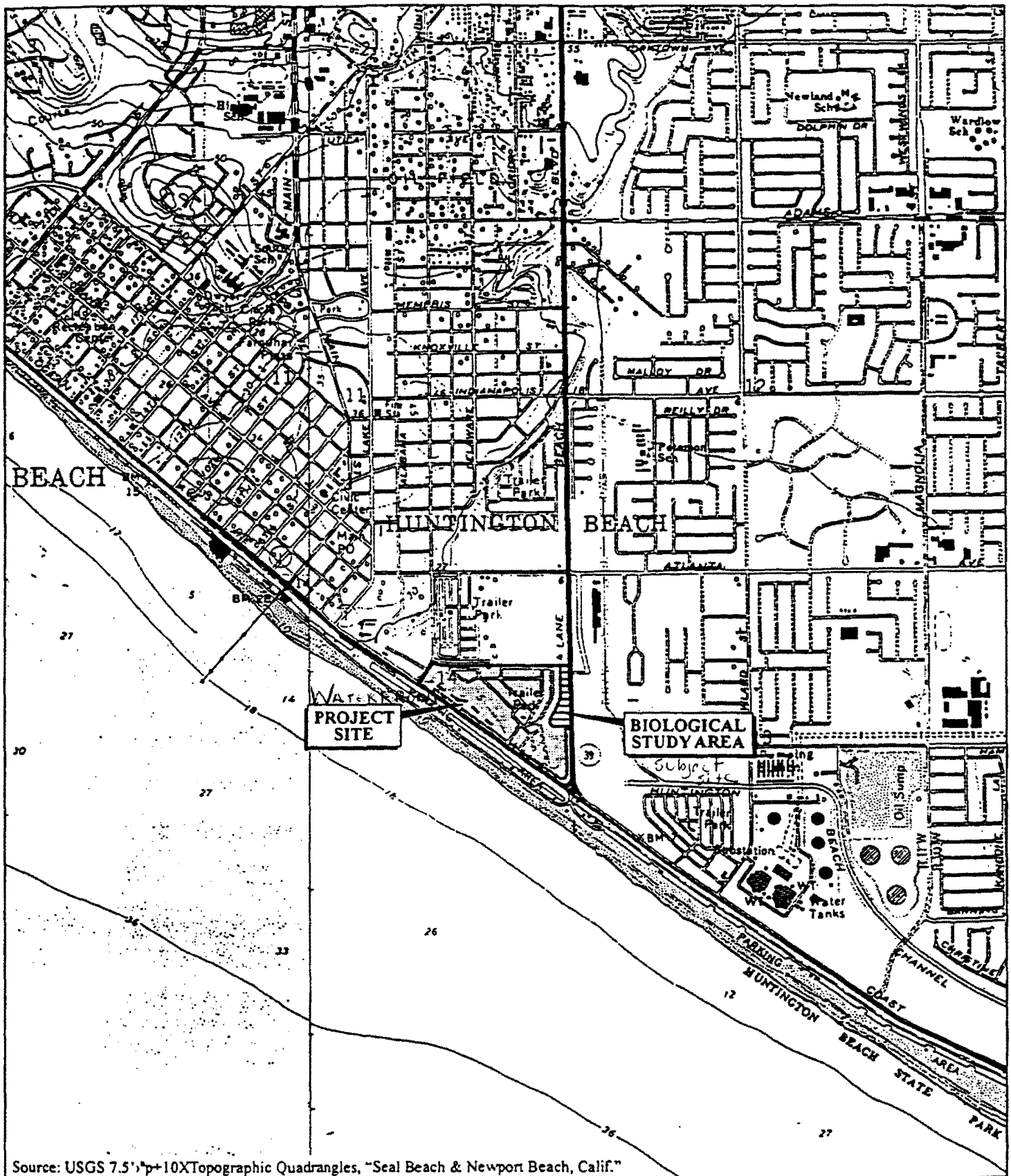


Figure 2

N

LSA

Scale in Feet

0 1000 2000

H. E. HING 49-15 EXHIBIT B.

Project Location

**CALIFORNIA COASTAL COMMISSION**

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

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT
(Commission Form D)**

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

Commissioner Estolano

SECTION I. Appellant(s)

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

Commissioner Estolano

Commissioner Nava (562) 590-5071
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local ~~port~~ government: City of Huntington Beach

2. Brief description of development being appealed: Fill of 0.8 acre wetland

3. Development's location (street address, assessor's parcel no., cross street, etc.): NW corner of Pacific Coast Highway and Beach Boulevard

4. Description of decision being appealed:

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-HNB-99-275

DATE FILED: July 26, 1999

DISTRICT: South Coast/Long Beach

APPEAL

A-5-HNB-99-275

Exhibit C.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

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

- a. ☒ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☐ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: June 23, 1999

7. Local government's file number (if any): CDP 99-05

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Robert Mayer Corporation
Box 8680
Newport Beach, CA. 92658

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

- (1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

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

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

See attached

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

SECTION V. Certification

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

See attached

Signature of Appellant(s) or
Authorized Agent

Date _____

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

C3

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

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

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date 7/26/99

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

24

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

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

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date

7/26/99

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date

C5

CALIFORNIA COASTAL COMMISSION

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

**Reasons for Appeal**

City of Huntington Beach Local Coastal Development Permit No.99-05 (The Robert Mayer Corporation) would allow approximately 0.8 acres of wetland to be filled. The wetland fill allowed under this permit is inconsistent with the City's certified Local Coastal Program for the following reasons.

The City's certified LCP Land Use Plan contains the following wetland protection policies:

Section 9.5.4, Policy 8f:

Limit diking, dredging, and filling of coastal waters, wetlands, and estuaries to the specific activities outlined in Section 30233 and 30607.1 of the Coastal Act and to those activities required for the restoration, maintenance, and/or repair of the Municipal Pier; conduct any diking, dredging and filling activities in a manner that is consistent with Section 30233 and 30607.1 of the Coastal Act.

Section 9.5.5:

Coastal Act policies clearly restrict uses and activities that are to be allowed in wetland areas. The City implements these Coastal Act policies primarily through its designation of all wetland areas in the coastal zone as Conservation. Coastal Act policy also requires that environmentally sensitive habitats be protected against the detrimental impacts of new development when proposed adjacent to these areas. The intent of the following policies is to provide for this protection:

9. Preserve and enhance environmentally sensitive habitats including the Bolsa Chica which is within the sphere of influence of the City of Huntington Beach.

9a. Approve only that development adjacent to wetlands and environmentally sensitive habitat areas that does not significantly degrade habitat values and which is compatible with the continuance of the habitat.

9b. Require new development contiguous to wetland or environmentally sensitive habitat area to include buffers which will consist of a minimum of one hundred foot setback from the landward edge of the wetland where possible. If existing development or site configuration precludes a 100 foot buffer, the buffer shall be established according to the factors listed in Policy 9c and shall be reviewed by the Department of Fish and Game.

In case of substantial development or significantly increased human impacts, a wider buffer may be required in accordance with an analysis of the factors in Policy 9c.

C 6

**Reasons for Appeal
City of Huntington Beach
Local Coastal Development Permit 99-05
Page 2**

In addition to these LUP policies, the LUP includes discussion regarding the protection of wetlands (note: the LUP considers wetlands to be a type of environmentally sensitive area). Following is some of the discussion from the LUP regarding protection of wetlands:

The City's coastal plan complements efforts by State and federal agencies to protect and enhance sensitive habitat areas. Principal objectives of the plan include:

Protection of significant habitat areas by requiring wetland enhancement and buffers in exchange for development rights.

Improvement of the aesthetic and biological quality of wetland areas.
(Section 6.3, page 64)

In addition, the City's LUP specifically incorporates Section 30233 of the Coastal Act. Section 30233 limits the fill of wetlands to specifically enumerated uses. Although the City's approved coastal permit does not describe the future use of the site, in a meeting held at the Commission office the applicants informed Commission staff that it is expected to be residential. Neither residential development nor grading for unspecified uses are allowable uses under 30233. The City's LUP Policy 8f of Section 9.5.4 reiterates that only the specifically identified uses are allowed in wetlands under Coastal Act Section 30233. The City's LUP policies cited above further underscore the LCP's requirement to preserve and enhance environmentally sensitive areas such as wetlands and to limit any impacts from adjacent development.

The City's approval of the fill of 0.8 acres of wetland area will eliminate the on-site wetland and will not protect and enhance it as required by the certified LCP's land use policies. The proposed fill does not constitute one of the specifically enumerated uses under Section 30233 of the Coastal Act which is specifically incorporated into the certified LUP. Therefore the project as approved by the City is inconsistent with the LUP wetland policies of the City's certified LCP.

The subject site is covered in the Downtown Specific Plan which is included in the City's certified Implementation Plan. The area is located in District 8b. The wetland area within District 8b is designated with a Conservation Overlay. The Conservation Overlay includes the following language: "If any wetland is determined by the Department of Fish and Game to be severely degraded pursuant to Sections 30233 and 30411 of the California Coastal Act, or if it is less than one (1) acre in size, other restoration options may be undertaken, pursuant to the Coastal Commission's "Statewide Interpretive Guidelines for Wetlands and other Wet Environmentally Sensitive Habitat Areas."

The Guidelines referred to in the Conservation Overlay provide guidance in interpreting the wetland policies of the Coastal Act. The Guidelines address two separate and distinct circumstances where some fill of wetlands may occur for a use not specified in Section 30233. The first circumstance requires, among other things, that the subject wetland be less than one acre in size. The second applies to wetlands that have been identified by the

Reasons for Appeal
City of Huntington Beach
Local Coastal Development Permit 99-05
Page 3

Department of Fish and Game as degraded pursuant to Section 30411. The subject site was determined to be degraded by the CDFG pursuant to Section 30411 and the 0.8 acre figure is less than one acre in size.

However, with regard to wetlands less than one acre in size, the guidelines indicate that some fill for a non-allowable use is appropriate only if the overall project is a restoration project. The Guidelines state: "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 found in its decision on the Chula Vista LCP that projects which provide mitigation for non-permitted development may not be broadly construed to be restoration projects in order to avoid the strict limitations of the permitted uses in Section 30233."

The project approved under local CDP 95-05, does not identify any use of the subject site beyond the proposed fill itself. However, the applicants have indicated verbally to Commission staff that the intended future use of the site is residential. Residential use is not one of the specifically identified uses allowed under Section 30233. Section 30233 is incorporated into the City's certified LCP. Therefore, fill for a potential future residential use is not consistent with the City's certified LCP. In addition, a project whose primary function is residential cannot be considered a project whose sole purpose is restoration. Therefore, the project does not meet the criteria of the Guidelines and so is not permissible as an "other restoration option" under the Conservation Overlay in the certified Implementation Plan.

The project approved by the City includes an off-site mitigation plan. However, the purpose of the overall project (including the fill and mitigation together) cannot be considered solely a restoration project. Clearly the mitigation program is not dependent on the on-site wetlands being filled. The mitigation program could go forward without the fill of the subject wetlands. Therefore, the proposed project does not qualify as a restoration project under the Guidelines.

The Guidelines also provide for fill of degraded wetlands for a non-allowable use only if there is no net loss of wetland acreage on the subject site. The Guidelines state: "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 project approved by the City would result in the loss of all on-site wetlands. Therefore, the project is not allowable in a degraded wetland under the Guidelines.

For the reasons identified above, (the purpose of the overall project is not solely restoration and no wetlands will remain on site), the project is not allowable under the LCP's Downtown Specific Plan Conservation Overlay which discusses "other restoration options." Therefore, the project is inconsistent with the Conservation Overlay portion of the Implementation Plan in the City's certified LCP.

In addition, the applicant's wetland delineation, which identifies 0.8 acres of on-site wetland, is based on the Army Corps of Engineers definition. However, the Commission's definition of a wetland, which is incorporated into the City's certified LCP, is much broader. Based on the

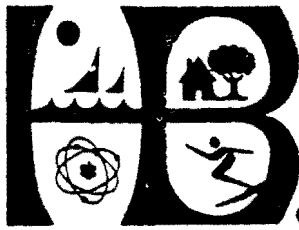
C 8

**Reasons for Appeal
City of Huntington Beach
Local Coastal Development Permit 99-05
Page 4**

vegetation depicted on the wetland delineation map prepared for the project, it appears that the actual wetland acreage figure may be as much as 2.2 acres. This figure includes both the 0.8 acres of existing wetland and the 1.4 acres of former wetland identified by the DFG determination prepared pursuant to Section 30411. The entire 2.2 acre area is subject to the Conservation Overlay in the Downtown Specific Plan. Because the Coastal Act definition of wetland, which is also in the City's certified LCP, was not applied to the subject wetland, the acreage figure may not be accurate. Therefore, the project is inconsistent with the City's certified LCP's wetland definition.

Finally, the appellate court has recently held ("Bolsa Chica decision") that only the uses enumerated under Section 30233 are allowed in wetlands. The court opined that Section 30411 and the Commission's "Wetlands Guidelines" may not be the basis for approval of otherwise non-permitted uses.

For these reasons, the proposed project is inconsistent with the City's certified LCP and must be appealed.



OFFICE of ZONING ADMINISTRATOR
CITY OF HUNTINGTON BEACH · CALIFORNIA

NOTICE OF ACTION
COASTAL DEVELOPMENT PERMIT NO. 99-05
APPEALABLE DEVELOPMENT

P. O. BOX 190-92648

PHONE (714) 536-5271

TO: South Coast Area Office
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
Attn: Theresa Henry

RECEIVED
JUL 12 1999

CALIFORNIA
COASTAL COMMISSION

APPLICANT: The Robert L. Mayer Trust, c/o The Robert Mayer Corporation,
P.O. Box 8680, Newport Beach, California 92658

PROPERTY OWNER: City of Huntington Beach Redevelopment Agency
2000 Main Street, Huntington Beach, California 92648

REQUEST: To grade/fill approximately 0.8 acres of isolated, degraded wetland
area (which will be mitigated by the implementation of a wetland
and riparian woodland restoration habitat program involving 2.4
acres at the Donald G. Shipley Nature Center).

LOCATION: Northwest corner of Pacific Coast Highway and Beach Boulevard
(Waterfront Development masterplan area)

PROJECT PLANNER: Amy Wolfe

COASTAL STATUS: APPEALABLE

DATE OF APPEAL
EXPIRATION: July 7, 1999

The above application was acted upon by the Zoning Administrator of the City of Huntington Beach on June 23, 1999, and the request was Conditionally Approved.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Zoning Administrator is final unless an appeal is filed to the Planning Commission by the applicant or an aggrieved party. Said appeal must be in writing and must set forth in detail the actions and grounds by and upon which the applicant or interested party deems himself aggrieved.

As of July 7, 1999, there have been no appeals filed on the above entitlement.

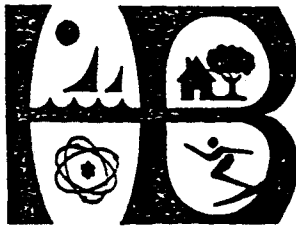
If there are any further questions, please contact Amy Wolfe at 536-5271.

Ramona Kohlman, Secretary
Huntington Beach Zoning Administrator

Attachment: Notice of Local Action for Coastal Development Permit No. 99-05

*City's Notice of Action
including Findings & Conditions*

*A-5-HNB-99-27
Exhibit D*



OFFICE of ZONING ADMINISTRATOR
CITY OF HUNTINGTON BEACH·CALIFORNIA

P. O. BOX 190-92648
PHONE (714) 536-5271

NOTICE OF ACTION

June 24, 1999

PETITION DOCUMENT: COASTAL DEVELOPMENT PERMIT NO. 99-05
(WATERFRONT WETLANDS)

APPLICANT: The Robert L. Mayer Trust, c/o The Robert Mayer Corporation,
P.O. Box 8680, Newport Beach, California 92658

PROPERTY OWNER: City of Huntington Beach Redevelopment Agency
2000 Main Street, Huntington Beach, California 92648

REQUEST: To grade/fill approximately 0.8 acres of isolated, degraded wetland
area (which will be mitigated by the implementation of a wetland
and riparian woodland restoration habitat program involving 2.4
acres at the Donald G. Shipley Nature Center).

LOCATION: Northwest corner of Pacific Coast Highway and Beach Boulevard
(Waterfront Development masterplan area)

PROJECT PLANNER: Amy Wolfe

COASTAL STATUS: APPEALABLE

Dear Applicant:

Your application was acted upon by the Zoning Administrator of the City of Huntington Beach on June 23, 1999, and your request was:

	Approved
X	Conditionally Approved
	Denied
	Withdrawn

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Zoning Administrator is final unless an appeal is filed to the Planning Commission by the applicant or an aggrieved party. Said appeal must be in writing and must set forth in detail the actions and grounds by and upon which the applicant or interested party deems himself aggrieved. Said appeal must be accompanied by a filing fee of \$200.00 if filed by a single family dwelling property owner appealing a decision on his own property and \$690.00 if filed by any

D2

other party. The appeal shall be submitted to the Department of Planning within ten (10) working days of the date of the Zoning Administrator's action. There is no fee for the appeal of a Coastal Development Permit to the California Coastal Commission. In your case, the last day for filing an appeal is July 7, 1999.

This project is in the Appealable portion of the Coastal Zone.

Action taken by the Zoning Administrator may not be appealed directly to the Coastal Commission unless Title 14, Section 13573 of the California Administrative Code is applicable. Section 13573(a)(3) states that an appeal may be filed directly with the Coastal Commission if the appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this article. The other three grounds for direct appeal do not apply.

If the above condition exists, an aggrieved person may file an appeal within ten (10) working days, pursuant to Section 30603 of the Public Resources Code, in writing to:

South Coast Area Office
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
Attn: Theresa Henry
(562) 590-5071

The Coastal Commission review period will commence after the City appeal period has ended and no appeals have been filed. Applicants will be notified by the Coastal Commission as to the date of the conclusion of the Coastal Commission review. Applicants are advised not to begin construction prior to that date.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that an application becomes null and void one (1) year after the final approval, unless actual construction has begun.

FINDINGS FOR APPROVAL - COASTAL DEVELOPMENT PERMIT NO. 99-05:

1. Coastal Development Permit No. 99-05 for the grading and filling of 0.8 acres of wetlands in conjunction with a habitat restoration program, as modified by conditions of approval, conforms with the General Plan (HBZSO 245.30-A-1), including the Local Coastal Program (HBZSO 245.30-A-3). The existing freshwater wetlands represent a small, fragmented, isolated and degraded habitat which functions minimally as a biological resource. The project site is located within the Downtown Specific Plan Area, District No. 8 (High Density

D₃

Residential) and is subject to a Conservation Overlay (HBZSO 245.30-A-2) which allows other restoration options to be undertaken, pursuant to the Coastal Commission's "Statewide Interpretive Guidelines for Wetlands and other Wet Environmentally Sensitive Habitat Areas" for wetland sites of less than one acre in size. Off-site restoration represents the best means of addressing issues associated with the value of the subject wetland area. The City of Huntington Beach approved the concept of the Donald G. Shipley Nature Center Habitat Enhancement and Creation Program (May of 1991) to provide 2.4 acres of off-site mitigation for the Waterfront Development wetlands.

2. The project is consistent with the requirements of the CZ Overlay District, Downtown Specific Plan District No. 8 (High Density Residential), as well as other applicable provisions of the Municipal Code. Grading and filling of the subject will not be injurious to the general health, welfare and safety, nor detrimental or injurious to the value of the property and improvements of the neighborhood or the City in general. The project will augment expansion of the Donald G. Shipley Nature Center natural habitat thus providing additional educational and recreational benefits to Huntington Beach residents.
3. The subject proposal will not create a demand on infrastructure in a manner that is inconsistent with the Local Coastal Program, Downtown Specific Plan and the Amended and Restated Development Agreement by and between the City of Huntington Beach and Mayer Financial, LTD, and the Waterfront Hotel, LLC. Development Agreement (Rec. No. 19980838602) adopted on September 21, 1998.
4. The development conforms with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The project will not interfere with the public access to any coastal amenity.
5. The project does not fall under the Coastal Commission's "retained jurisdiction" over "tidelands, submerged lands and Public Trust lands". The project is occurring on private property and there has never been an issue of "public trust" lands and therefore the "public trusts lands" exclusion is irrelevant. The reference to "submerged lands" is similarly not applicable as this property, while wet from time to time, is not submerged or underwater. The project does not involve any "tidelands" as the degraded wetland fragment is not tidally influenced.
6. The California Coastal Commission has declined to assert federal consistency jurisdiction for the project due to the following: a) the project has or will receive a locally issued coastal development permit and is located within an area where such permits are appealable to the Coastal Commission; and b) the proposed project does not significantly affect coastal resources or raise coastal issues of greater than local concern.

7. The California Department of Fish and Game (CDFG) has reviewed and approved the Habitat Mitigation and Monitoring Program (HMMP) concept for the project and has entered into an Agreement Regarding Proposed Stream or Lake Alteration (1603 Agreement) with the Robert Mayer Corporation, dated April 1999. The subject Agreement includes measures to protect fish and wildlife resources during the work of the project.
8. The California Regional Water Quality Control Board has, pursuant to the Clean Water Act Section 401, reviewed the proposed project and has certified that the project will not violate State water quality standards and has issued a waiver of water quality certification. (February 1999).
9. Leaving the existing degraded wetland fragment in its current condition is not the least environmentally damaging alternative due to a number of factors, including: a) the primary water supply for the wetland is polluted urban runoff which together with petroleum deposits below the surface will result in unacceptable and/or worsening water quality; b) the site is small, extremely isolated and surrounded by roadways and urban uses exposing the wetland and potential wildlife to light and noise impacts, as well as traffic hazards as wildlife transits to and from the larger habitat area east of Beach Boulevard, resulting in a continued decrease in habitat value; and c) the site is subject to increasing dominance of invasive alien plant species further diminishing any remnants of habitat value on the project site.
10. On-site restoration of the subject degraded wetland fragment is not feasible because the wetland area is not capable of recovering and maintaining a high level of biological productivity due to numerous factors including; a) the primary water supply for the wetland is urban runoff which will together with petroleum deposits below the surface will result in unacceptable water quality not compatible with a healthy, viable ecosystem; b) the site is surrounded by roadways and urban uses exposing the wetland and potential wildlife to impacts of light, noise and traffic hazards; c) the wetland is freshwater in nature and therefore dissimilar from the only nearby wetland east of Beach Boulevard which is a salt marsh subject to tidal influence; d) the size of the wetland fragment (0.8 acre) can not support significant wildlife populations or provide significant habitat area for a diverse ecosystem; and e) the wetland is extremely isolated from other larger wetland ecosystems and lacks functionality resulting in a lack of contribution to species diversity and a lack of resilience to impacts, including extreme weather conditions.
11. Off-site restoration at the Shipley Nature Center and filling of the existing degraded wetland fragment to establish a logical and stable boundary between wetland and urban areas is the only feasible and least environmentally damaging alternative for the protection and enhancement of the resource values associated with the existing degraded wetland fragment.

12. Restoration at the Shipley Nature Center is the most appropriate off-site restoration alternative available for numerous reasons inclusive of the following; a) the Shipley Nature Center is located in the same general region as the subject degraded wetland; b) it possesses a larger, existing wetland habitat of a freshwater character similar to the existing degraded fragment and will benefit from the addition of more wetland area as well as more native riparian woodland habitat; c) it is fenced, protected area of the City's Central Park system; d) it enjoys the oversight of a full time park ranger at the premises; e) the restoration program will additionally expand the education and enjoyment benefits for park users; and f) no other potential wetland restoration site possessing similar qualities or located within the same general region has been found to exist.
 13. Restoration at the Shipley Nature Center can only be feasibly achieved by the filing of the subject degraded wetland as such option is the only means available to the City to finance the costs for such restoration. Further, such financing option arranged after extensive analysis and negotiation by the City on a host of issues including the cost of the restoration program at the Shipley Nature Center, and was approved by the City after several public hearings.
 14. Filling the existing degraded wetland fragment will establish a stable and logical boundary between urban and wetland areas by fixing Beach Boulevard as the boundary between the urban uses to the west and the existing salt marsh wetlands to the east. Such action reduces potential impacts to wildlife that might otherwise attempt transit of Beach Boulevard between wetland habitats.
 15. The filling of the subject degraded wetland fragment as a part of the proposed restoration plan at the Shipley Nature Center; a) does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair long-term stability of the ecosystem (e.g. actual species diversity, abundance and composition are essentially unchanged as a result of the project); b) does not harm or destroy a species that is rare or endangered; c) does not harm a species or habitat that is essential to the natural biological functioning of a wetland or estuary; and d) does not significantly reduce consumptive (e.g., fishing, aqua-culture and hunting) or non-consumptive (e.g. water quality and research opportunity) values of a wetland or estuarine ecosystem.
 16. The filling of the subject degraded wetland fragment as a part of the proposed restoration plan at the Shipley Nature Center complies with applicable requirements of the California Coastal Commission's Statewide Interpretive Guidelines which are incorporated by reference in the approved Downtown Specific Plan which is the implementation plan of the City's approved Local Coastal Program.
- D

CONDITIONS OF APPROVAL - COASTAL DEVELOPMENT PERMIT NO. 99-05:

1. All necessary Local, Regional, State and Federal agency approvals shall be secured prior to commencement of any project activities associated with CDP No. 99-05.
2. CDP No.99-05 shall comply with all applicable agreement(s) and permit conditions of project approval imposed by Local, Regional, State and Federal Agencies.
3. CDP No. 99-05 shall comply with all applicable SEIR 82-2 and Addendum to SEIR 82-2 mitigation measures inclusive of the following Biotic Resources-Onsite Wetlands and Biotic Resources-Adjacent Wetlands mitigation measures:
 - a) Subject to the approval of the Coastal Commission, as agreed upon by the City staff and Sate Department of Fish and Game staff, the amount of wetland area that shall be mitigated for is 0.8 acres. (Addendum to SEIR 82-2/ Mitigation Measure No. 7)
 - b) To mitigate for the loss of on-site wetlands, the Applicant shall prepare a detailed wetland restoration plan that complies with the Coastal Act requirements discussed above and Department of Fish and Game criteria. Further discussion with the DFG, and U.S. Fish and Wildlife Service will be necessary to determine the most appropriate restoration site, the type of wetland to be restored, the monitoring plan, and other considerations. If off site mitigation is deemed appropriate, preference shall be given to enhancing/restoring wetland sites located within the City of Huntington Beach. These issues will be clarified prior to City of Huntington Beach review of the Coastal Development Permit for the affected phase of the project. (Addendum to SEIR 82-2/ Mitigation Measure No. 8)
 - c) Full mitigation of the 0.8 acre site shall be completed prior to the subject wetland site being altered by the proposed project. No development permits for grading, construction or otherwise, shall be issued for the impacting phase until full mitigation has been accomplished. The mitigation measure(s) is subject to the approval of the City, and the California State Department of Fish and Game. The restoration plan shall generally state when restoration work will commence and terminate, shall include detailed diagrams drawn to scale showing any alteration to natural landforms, and shall include a list of plant species to be used, as well as the method of plant introduction (i.e., seeding, natural succession, vegetative transplanting, etc.). This condition does not preclude fulfillment of the mitigation requirement through the payment of an in-lieu fee consistent with the Coastal Commission's adopted wetland guidelines and the Huntington Beach Local Coastal Program. (Addendum to SEIR 82-2/ Mitigation Measure No. 9)

- d) Prior to the alteration of the on-site wetland area, a coastal development permit shall be obtained from the City of Huntington Beach. (Addendum to SEIR 82-2/ Mitigation Measure No. 10)
 - e) Subsequent to City of Huntington Beach and Regional Water Quality Control Board approval of an appropriate wetland mitigation plan, and prior to the filling of the on-site wetland area, a 404 permit from the Corps of Engineers shall be obtained. (Addendum to SEIR 82-2/ Mitigation Measure No. 11)
 - f) Prior to the alteration of the overall project site by grading or filling activity, a hydrological analysis of the drainage patterns affecting the onsite wetland area or adjacent wetland area shall be conducted by the developer. Such analysis shall determine the drainage effects on the wetland portion of the site. No development, grading or alteration of the project site shall occur which affects the wetlands or adjacent wetlands without fully analyzing the affects on the onsite wetland and adjacent wetland. The developer shall provide evidence to the City and to the Department of Fish and Game that the project's runoff management system will deliver approximately the same amount of freshwater urban runoff to these wetlands as under existing conditions, and in approximately the same seasonal pattern. This evidence shall include; i) a hydrological analysis comparing the existing and post-project water supply, and ii) drawings and a description of the runoff conveyance system in sufficient detail for a qualified engineer to judge its adequacy. The State Department of Fish and Game shall be consulted regarding alteration of the drainage pattern of the site, which may affect the above-mentioned wetlands. The developer shall provide the Planning Department with a written report substantiating compliance with this mitigation measure prior to submittal of grading plans or permit issuance for each phase. (Addendum to SEIR 82-2/ Mitigation Measure No. 12)
 - g) If the developer proposes to increase or decrease the water supply to the wetlands east of Beach Boulevard, or to change the seasonal pattern, the developer shall provide, in addition to the evidence required in the prior mitigation measure, a biological analysis demonstrating that there would be no significant adverse impacts on the wetlands or associated wildlife. (Addendum to SEIR 82-2/ Mitigation Measure No. 13)
4. Prior to issuance of a rough or precise grading permit which would result in the filling or disturbance of the existing degraded wetland area west of Beach Boulevard the developer (The Robert Mayer Corporation) shall comply with the following conditions:
- a) Proof of sufficient funding to complete the Habitat Mitigation and Monitoring Program (HMMP) for the Waterfront Development at the Donald G. Shipley Nature Center pursuant to the wetland restoration plan (HMMP), and five years of monitoring and
- D.

maintenance activities shall be submitted to the City of Huntington Beach Planning Department.

- b) A conservation easement shall be recorded against the Donald G. Shipley Nature Center wetlands mitigation site. The conservation easement shall run with the land and obligate the permittee or their successor or assignees to maintain the mitigation site as specified in the Habitat Mitigation and Monitoring Plan in perpetuity. A copy of said record shall be forwarded to the Department of the Army, Corps of Engineers.
 - c) Written documentation, issued by the Department of the Army, Corps of Engineers, verifying that all proposed project activities are authorized under Nationwide Permit (NWP) No. 26, and will only be undertaken subject to compliance with all applicable NWP Special and General Conditions shall be submitted to the City of Huntington Beach Planning Department.
5. A final Habitat Planting Plan, Wetland basin Excavation Plan and Temporary Irrigation Plan consistent with the Habitat Mitigation and Monitoring Proposal (HMMP) for the Waterfront Development at the Donald G. Shipley Nature Center shall be prepared by the developer and approved by the City Landscape Architect, Department of Public Works, and the Department of Community Services.
6. Work activities within the Donald G. Shipley Nature Center shall be subject to the following:
- a) All work shall be conducted on dates and times authorized in advance by the Department of Community Services and shall be performed consistent with the approved final Habitat Planting Plan, Wetland Basin Excavation Plan and Temporary Irrigation Plan by a qualified habitat restoration contractor.
 - b) The walking trail around the Shipley Nature Center shall be preserved and relocated as shown on the Wetland Basin Excavation Plan. The trail will be raised as is feasible and necessary to protect it from inundation in periods of high water level.
 - c) No mature trees shall be removed.
 - d) No grading will occur in existing wetlands. (Removal of Arundo, an invasive exotic plant species, from the existing wetland areas pursuant to the approved Restoration Plan is allowed).
 - e) The peat and good quality excavated soils will be stockpiled in Central Park for future use, and will be placed and distributed as specified by the Department of Public Works Park Supervisor or Landscape Architect and Community Services Department.

D7

Vegetative matter will be removed from the soil as directed by the Department of Public Works Park Supervisor or Landscape Architect and the Department of Community Services and will be disposed of legally off-site at a suitable green waste facility or a local landfill. A stockpile permit shall be obtained from the Public Works Department based on an approved grading plan and truck haul master plan.

7. The Planning Director ensures that all conditions of approval herein are complied with. The Planning Director shall be notified in writing if any changes to the subject request are proposed as a result of the plan check process. Grading permits shall not be issued until the Planning Director has reviewed and approved the proposed changes for conformance with the intent of the Zoning Administrator's action and the conditions herein. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Zoning Administrator may be required pursuant to the HBZSO.

INFORMATION ON SPECIFIC CODE REQUIREMENTS:

1. Coastal Development Permit No. 99-05 shall not become effective until the ten day California Coastal Commission appeal period has elapsed.
2. Coastal Development Permit No. 99-05 shall become null and void unless exercised within one year of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Department of Planning a minimum 30 days prior to the expiration date.
3. The Zoning Administrator reserves the right to revoke Coastal Development Permit No. 99-05, pursuant to a public hearing for revocation, if any violation of these conditions or the Huntington Beach Zoning and Subdivision Ordinance or Municipal Code occurs.
4. An encroachment permit shall be required for all work within the right-of-way. (PW)
5. The applicant shall submit a check in the amount of \$38.00 for the posting of the Notice of Determination at the County of Orange Clerk's Office. The check shall be made out to the County of Orange and submitted to the Department of Planning within two (2) days of the Zoning Administrator's action.

The Department of Planning will perform a comprehensive plan check relating to all Municipal Code requirements upon submittal of your completed drawings.

Please be advised that the Zoning Administrator reviews the conceptual plan as a basic request for entitlement of the use applied for in relation to the vicinity in which it is proposed. The

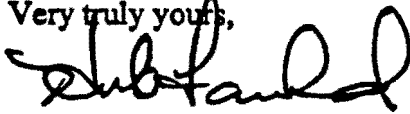
D10

conceptual plan should not be construed as a precise plan reflecting conformance to all Code requirements.

It is recommended that you immediately pursue completion of the Conditions of Approval and address all requirements of the Huntington Beach Municipal Code in order to expedite the processing of your total application.

I hereby certify that Coastal Development Permit No. 99-05 was Conditionally Approved by the Zoning Administrator of the City of Huntington Beach, California, on June 23, 1999, upon the foregoing conditions and citations.

Very truly yours,

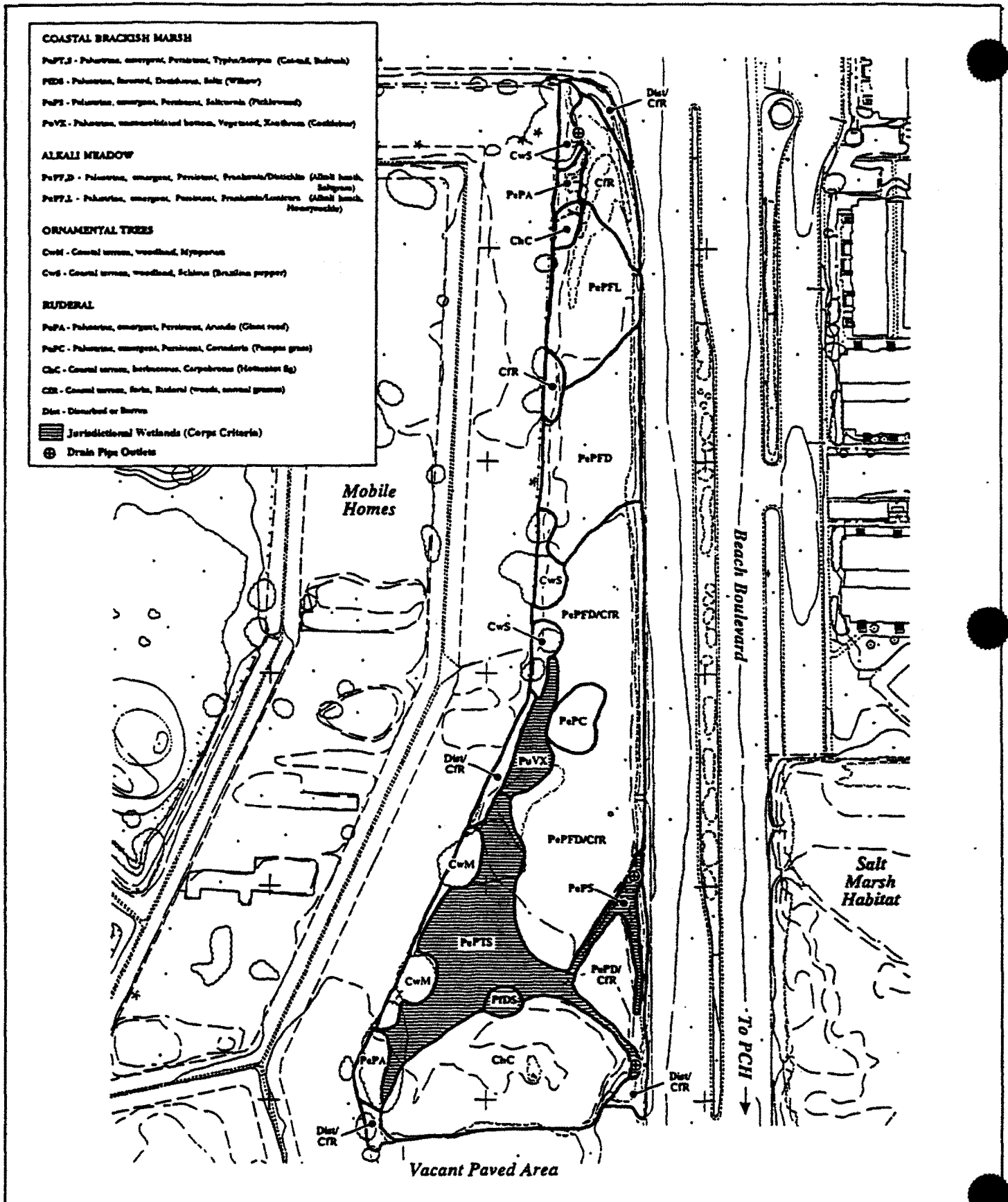


Herb Fauland
Zoning Administrator

xc: California Coastal Commission

HF:AW:rmk

D11

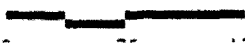


10/22/97(RMC730)

Figure 3



Scale in Feet



A-5-HNP-99-275

EXHIBIT E

Vegetation Types

CONSERVATION OVERLAY

Purpose. The conservation overlay is intended to regulate those areas which have been preliminarily identified as wetlands. Upon determination by the California Department of Fish and Game that an area is classified as a wetland the conditions of this overlay shall apply

Boundary. The State Department of Fish and Game has identified an area within District 8B as containing .8 acres of existing wetland and 1.4 acres of restorable wetland. The 2.2 acre area is immediately adjacent to Beach Boulevard (see Figure 4.14).

Regulations. Development shall be permitted only pursuant to an overall development plan for the entire overlay area and subject to the following: as a condition of any development on this parcel, topographic, vegetation, and soils information identifying the extent of any existing wetlands shall be submitted to the Director. The information shall be prepared by a qualified professional, and shall be subject to review by the California Department of Fish and Game. If any wetland is determined by the Department of Fish and Game to be severely degraded pursuant to Sections 30233 and 30411 of the California Coastal Act, or if it is less than one (1) acre in size, other restoration options may be undertaken, pursuant to the Coastal Commission's "Statewide Interpretive Guidelines for Wetlands and other Wet Environmentally Sensitive Habitat Areas." Conservation easements, dedications or other similar mechanisms shall be required over all wetland areas as a condition of development, to assure permanent protection. Public vehicular traffic shall be prohibited in wetland areas governed by a conservation easement. Specific drainage and erosion control requirements shall be incorporated into the project design to ensure that wetland areas are not adversely affected. No further subdivision of any parcel shall be permitted which would have the effect of dividing off environmentally sensitive habitat from other portions of such parcels for which urban uses are permitted in the City's Coastal Element until such time as the permanent protection of any wetland is assured. Within areas identified as wetlands in the coastal zone, the uses of the Coastal Conservation District shall supercede the uses of the FP1 and FP2 district.

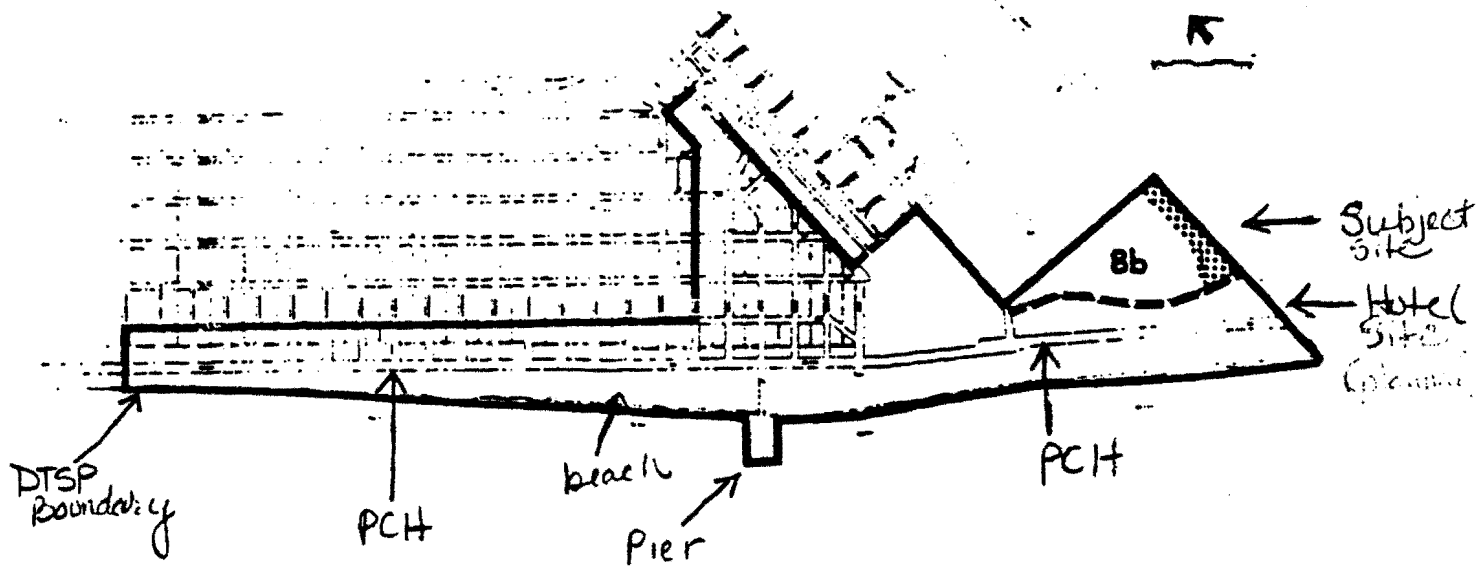
City's Conservation Overlay

from

Downtown Specific Plan
(DTSP)

A-5-FMR-97215

Exhibit F



LEGEND



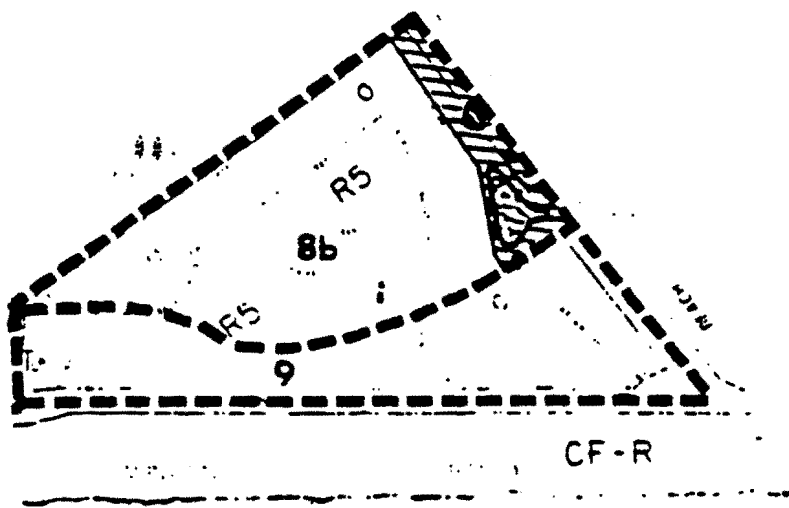
Degraded Wetlands



Restorable Wetlands



Specific Plan Boundary



Revised January 1989



HUNTINGTON BEACH CALIFORNIA
PLANNING DIVISION

Conservation Overlay



23 years
of
Stewardship

Amigos de Bolsa Chica

P. O. Box 3748, Huntington Beach, CA 92605-3748 (714) 840-1575

Tu 96

RECEIVED
AUG 06 1999

CALIFORNIA
COASTAL COMMISSION

August 6, 1999

Sera Wan, Chair
California Coastal Commission
via Fax (415) 904-5400

Re: Appeal A-5-99-275

Dear Mrs. Wan:

We wish to express our strong support for the appeal by Commissioners Estolano and Nava from the permit granted to the Mayer Trust by the City of Huntington Beach to fill 0.8 acres of wetlands located in that city. While the mitigation proposed by the Mayer Trust, native plant restoration in the Shipley Nature Center, is commendable, this action is contrary to long standing state and federal policies of no net loss of wetlands. Should the Commission uphold the permit, we would urge the Commission to require mitigation to be limited to coastal wetlands, and at a ratio of at least 2:1.

Thank you for your attention.

Sincerely,

David M. Carlberg
President

A-5-HNB-99-275

EXHIBIT C

C. Restoration Projects Permitted in Section 30233

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 found in its decision on the Chula Vista LCP that projects which provide mitigation for non-permitted development may not be broadly construed to be restoration projects in order to avoid the strict limitations of permitted uses in Section 30233.

Restoration projects may include some fill for non-permitted uses if the wetlands are small, extremely isolated and incapable of being restored. This limited exception to Section 30233 is based on the Commission's growing experience with wetlands restoration. Small extremely isolated wetland parcels that are incapable of being restored to biologically productive systems may be filled and developed for uses not ordinarily allowed only if such actions establish stable and logical boundaries between urban and wetland areas and if the applicant provides funds sufficient to accomplish an approved restoration program in the same general region. All the following criteria must be satisfied before this exception is granted:

1. The wetland to be filled is so small (e.g., less than 1 acre) and so isolated (i.e., not contiguous or adjacent to a larger wetland) that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.
2. The wetland must not provide significant habitat value to wetland fish and wildlife species, and must not be used by any species which is rare or endangered. (For example, such a parcel would usually be completely surrounded by commercial, residential, or industrial development which are incompatible with the existence of the wetland as a significant habitat area).
3. Restoration of another wetland to mitigate for fill can most feasibly be achieved in conjunction with filling a small wetland.
4. Restoration of a parcel to mitigate for the fill (see pp. 14-17 for details about required mitigation) must occur at a site which is next to a larger, contiguous wetland area providing significant habitat value to fish and wildlife which would benefit from the addition of more area. In addition, such restoration must occur in the same general region (e.g., within the general area surrounding the same stream, lake or estuary where the fill occurred).
5. The Department of Fish and Game and the U.S. Fish and Wildlife Service have determined that the proposed restoration project can be successfully carried out.

Statewide Interpretive
Guidelines for Wetlands
and other Wet Environmentally

A-5-HNB-99-275
Exhibit H

Additional flexibility will be allowed for restoration projects located in wetlands which are degraded (as that term is used in Section 30411 of the Coastal Act). Section VIII discusses the requirements of such projects.

D. Requirements for All Permitted Development

Any proposed project which is a permitted development must also meet the three statutory requirements enumerated below, in the sequence shown:

1. Diking, filling or dredging of a wetland or estuary will only be permitted if there is no feasible¹⁰ less environmentally damaging alternative (Section 30233(a)). The Commission may require the applicant to submit any or all of the information described in section III. B. above.
2. If there is no feasible less environmentally damaging alternative, feasible mitigation measures must be provided to minimize adverse environmental effects.
 - a. If the project involves dredging, mitigation measures must include at least the following (Section 30233(b)):
 - 1) Dredging and spoils disposal must be planned and carried out to avoid significant disruption¹¹ to wetland habitats and to water circulation.
 - 2) Limitations may be imposed on the timing of the operation, the type of operation, the quantity of dredged material removed, and the location of the spoil site.
 - 3) Dredge spoils suitable for beach replenishment shall, where feasible, be transported to appropriate beaches or into suitable longshore current systems.

¹⁰ "Feasible" is defined in Section 30108 of the Act to mean "... capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." A feasible less environmentally damaging alternative may involve a location for the proposed development which is off the project site on lands not owned by the applicant. Feasible under the Coastal Act is not confined to economic considerations. Environmental, social and technological factors also shall be considered in any determination of feasibility.

¹¹ To avoid significant disruption to wetland habitats and to water circulation the functional capacity of a wetland or estuary must be maintained. Functional capacity is discussed on page 17.

A-5-HNB-99-275 H/2

6. Lot configuration and location of existing development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance will be required as a buffer area for any new development permitted. However, if that distance is less than 100 feet, additional mitigation measures (e.g., planting of native vegetation which grows locally) should be provided to ensure additional protection. Where development is proposed in an area which is largely undeveloped, the widest and most protective buffer area feasible should be required.

7. Type and scale of development proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer area necessary to protect the environmentally sensitive habitat area. For example, due to domestic pets, human use and vandalism, residential developments may not be as compatible as light industrial developments adjacent to wetlands, and may therefore require wider buffer areas. However, such evaluations should be made on a case-by-case basis depending upon the resources involved, and the type and density of development on adjacent lands.

VIII. RESTORATION AND MAINTENANCE OF WETLAND HABITAT AREAS

Originally there were approximately 300,000 acres of coastal wetlands in California; now there are about 79,000 acres (excluding San Francisco Bay). In addition to those acres lost, many wetlands have been severely altered through filling and/or sedimentation. The Coastal Commission encourages public agencies and landowners to work towards restoration and enhancement of these altered wetlands.

Restoration of habitat areas is strongly encouraged in the Coastal Act. The Legislature found that the protection, maintenance, and, where feasible, enhancement and restoration of natural resources is a basic goal of the Act (Section 30001.5). Section 30230 requires that marine resources be maintained, enhanced, and restored where feasible; that special protection be given to areas and species of special biological or economic significance; and that uses of the marine environment be carried out in a manner that will sustain the biological productivity¹⁹ of coastal waters and will maintain "healthy populations"²⁰ of all species of marine organisms. Section 30231 requires that the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain "optimum populations"²¹ of marine organisms

¹⁹ In general, biological productivity means the amount of organic material produced per unit time. For the purposes of this guideline, the concept of biological productivity also includes the degree to which a particular habitat area is being used by fish and wildlife species. Thus, an area supporting more species of fish and wildlife would be considered more productive than an area supporting fewer species, all other factors (e.g., the amount of vegetative cover, the presence or absence of endangered species, etc.) being equal.

^{20&21} These phrases refer generally to the maintenance of natural species diversity, abundance, and composition.

be maintained and where feasible restored, through, among other means, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section IV C previously discussed "restoration purposes," a permitted use in Section 30233(a)(7). Projects which qualify for consideration as a "restoration purpose" will be solely restoration projects, including only those permitted uses listed in Section 30233(a). Such projects may be carried out on wetlands which have not been determined to be degraded by the Department of Fish and Game. It is anticipated that public or private agencies performing restoration of wetland habitat areas by restoring tidal action, removing fill, establishing appropriate contours, and performing other similar activities will be permitted under Section 30233.

This section discusses a second alternative approach to wetland restoration, applicable only to wetlands formally determined by the Department of Fish and Game to be degraded and in need of major restoration activities, according to the procedures and requirements of Section 30411. By including Section 30411 in the Coastal Act, the Legislature provided the Commission and the Department with a means to encourage landowners and public agencies to develop restoration projects which can be implemented with public or private funds. Restoration projects under this approach may include uses that are not permitted in Section 30233 if the project meets all of the other requirements of Section 30233 and 30411.

The Commission has closely examined the relationship of the two alternative approaches to restoration. The Coastal Act expressly distinguishes degraded from non-degraded wetlands. The importance of the distinction is related to the flexibility in consideration of permitted uses. Thus, Section 30233 allows the Commission to consider seven enumerated permitted uses in all wetlands without the mandatory involvement of the Department of Fish and Game. Section 30233 expressly allows only one additional use, a boating facility, in wetlands which the Department has determined to be degraded and in need of major restoration. In making this determination, the Department must consider all "feasible ways" other than a boating facility to accomplish restoration of degraded wetlands. The Commission interprets the boating facilities reference in Section 30233(a)(3) to include the "other feasible ways" of restoration which the Department must consider in Section 30411(b)(3). The remainder of this Section addresses the requirements of Section 30411.

A. Identification of Degraded Wetlands

The Department of Fish and Game must identify degraded wetlands. Generally, coastal wetlands are considered degraded if they were formerly tidal but their present resource value has been greatly impaired because they are presently diked or otherwise modified and, as a result, tidal influence has ceased or is greatly diminished. The Department has not yet transmitted to the Commission its criteria or procedures for identifying degraded wetlands, but the Commission considers the following factors relevant to determining whether or not a particular wetland is degraded.

1. Amount and elevation of filled areas.

A-5-LNB-99-275

H4

2. Number and location of dikes and other artificial impediments to tidal action and freshwater flow and the ease of removing them to allow tidal action to resume.
3. Degree of topographic alterations to the wetland and associated areas.
4. Water quality.
5. Substrate quality.
6. Degree of encroachment from adjacent urban land uses.
7. Comparison of historical environmental conditions with current conditions, including changes in both the physical and biological environment.
8. Consideration of current altered wetland conditions and their current contribution to coastal wetland wildlife resources with relation to potential restoration measures.
9. Chemical cycling capabilities of the wetland including water quality enhancement, nutrient accumulation, nutrient recycling, etc.

As part of this identification process, the extent of wetlands on the site must be identified with precision.

B. Requirements Applicable to All Restoration Projects

Under the Act, the Department of Fish and Game, in consultation with the Commission and the Department of Boating and Waterways, is responsible for identifying those degraded wetlands which can most feasibly be restored in (a). If the Department undertakes a study, it shall include facts supporting the following determinations:

- (1) The wetland is so severely degraded and its natural processes are so substantially impaired that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.
- (2) Restoration of the wetlands' natural values, including its biological productivity and wildlife habitat features, can most feasibly be achieved and maintained in conjunction with a boating facility.
- (3) There are no other feasible ways²² besides a boating facility to restore the wetland.

²² "Other feasible ways" includes only less environmentally damaging alternative restoration projects; but may include uses not permitted in Section 30233(a)(3) according to priorities discussed herein.

A-5-ANB-99-275 H5

C. Requirements applicable to Restoration of Degraded Wetlands in Conjunction with boating Facilities

Section 30411 explicitly provides for the construction of boating facilities when this is the most feasible and least environmentally damaging means to restore a particular degraded wetland. Recognition of boating facilities as a use in Section 30411 is consistent with the Coastal Act's emphasis on promoting recreational use of the shoreline (see Section 30224). The specific requirements for boating facilities are discussed in overlapping portions of Sections 30233 and 30411 as follows:

1. At least 75% of the degraded wetland area should be restored and maintained as a highly productive wetland in conjunction with the boating facilities project (Section 30411(b)(2)).
2. The size of the wetland area used for the boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, cannot be greater than 25 percent of the total area to be restored (Section 30233(a)(3)).

D. Requirements Applicable to Restoration of Degraded Wetlands Using Projects Other Than Boating Facilities

Section 30411 does not explicitly identify the other types of restoration projects. However, such projects are encouraged if they promote the restoration of degraded areas and if boating facilities are not feasible. An example would include flood control projects undertaken by a public agency. Such projects may be permitted under Section 30411 if they restore channel depths, are designed to enhance the functional capacity of the wetland area, and are the least environmentally damaging alternative to achieve restoration.

Boating facilities may be compatible with a wetland ecologically if they provide increased tidal flushing and deep-water habitat, but nonetheless it may not be physically or economically feasible to locate such facilities in a particular wetland. On the other hand, boating facilities may be feasible, but may be more environmentally damaging than other feasible means. For example, they may displace scarce intertidal habitats, introduce toxic substances, or damage natural estuarine channels by causing excessive scouring due to increased current velocities.

According to Section 30411, at least 75 percent of a degraded wetland area must be restored in conjunction with a boating facility, and Section 30233 requires that a boating facility cannot exceed 25 percent of the wetland area to be restored. However, this may still result in the net loss of 20 percent of the wetland area. The Coastal Act allows this tradeoff because additional boating facilities in the coastal zone are a preferred coastal recreation use and the Coastal Act explicitly provides for this type of wetland restoration project. 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

A-5-HNB-99-275

File

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 first priority for restoration projects is restoration as permitted under Section 30233(a)(7). Other preferred options include restoration in conjunction with visitor serving commercial recreational facilities designed to increase public opportunities for coastal recreation. Thus, the priority for projects used to restore degraded wetlands under the Coastal Act in a list are as follows:

1. "Restoration purposes" under 30233(a)(7).
2. Boating facilities, if they meet all of the tests of section C. (above).
3. Visitor serving commercial recreational facilities and other priority uses designed to enhance public opportunities for coastal recreation.
4. Private residential, general industrial, or general commercial development.

The Coastal Act does not require the Department of Fish and Game to undertake studies which would set the process described in this section in motion. Likewise, the Commission has the independent authority and obligation under Section 30233 to approve, condition or deny projects which the Department may have recommended as appropriate under the requirements of Section 30411. This section is, however, included to describe, clarify, and encourage, public and private agencies to formulate innovative restoration projects to accomplish the legislative goals and objectives described earlier.

Adopted February 4, 1981

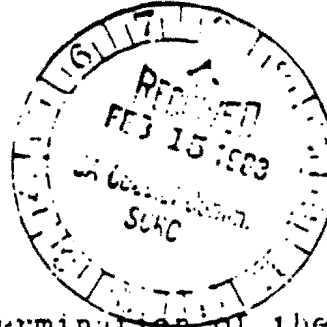
A-5-HNB-99-275

H7

Memorandum

To : Michael Fischer, Executive Director
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, CA 94105

Date : February 4, 1983



From : Department of Fish and Game

Subject: Department of Fish and Game Determination of the Status of the
Huntington Beach Wetlands

In response to your request, the Department has completed the attached report concerning the status of the Huntington Beach Wetlands. Our report addresses those specific considerations required of the Department pursuant to Coastal Act Section 30411.

Please contact Don Iollock, Chief, Environmental Services Branch, or Bob Radovich, Fishery Biologist, Environmental Services Branch, at (ATSS) 485-1383, should you, your staff or members of the Commission have questions regarding our determination.

Director

cc: Huntington Beach Planning Department
U. S. Fish & Wildlife Service - Laguna Niguel
Amigos De Bolsa Chica - Lorraine Faber, President
Fred Worthley, Earl Lauppe, Kit Novick - DFG-Region 5
California Coastal Commission - South Coast Regional Office

Dept. of Fish & Game
Determination of the Status
of the Huntington Beach Wetlands
(pursuant to Sec 302411)

Exhibit I

A-5-HNB-99-275

DEPARTMENT OF FISH AND GAME DETERMINATION
OF THE STATUS OF THE HUNTINGTON BEACH WETLANDS

Introduction

In making the subject determination, the Department of Fish and Game has responded to those specific considerations mandated by Section 30411 of the California Coastal Act of 1976. This act acknowledges the Department of Fish and Game and the Fish and Game Commission as the principal state agencies responsible for the establishment and control of wildlife and fishery management programs. Coastal Act Section 30411(b) stipulates that the Department, in consultation with the Coastal Commission and Department of Boating and Waterways, may study degraded wetlands and identify those which can be most feasibly restored in conjunction with a boating facility, or whether there are "other feasible ways" to achieve restoration.

This report represents the Departments' determinations regarding the Huntington Beach Wetlands pursuant to Coastal Act Section 30411(b). This report includes the following sections: Summary of Major Findings; General History; Extent of Historical Wetlands; Present Status, Designation of Wetlands and Criteria and Definition Applied; Determination of Degraded Wetlands; Restoration of Wetlands within the study area; and Feasibility of Restoring and Enhancing Wetlands within the study area.

A-5-HN13-99-275

I₂

water-associated birds should be maintained. That is to say that some seasonally flooded wetlands should be maintained or created.

The portion of the study area (5.0 ac.) west of Beach Boulevard, consists of 0.8 acres of fresh/brackish water marsh and 4.2 acres of former wetland and upland, of which 1.4 acres are restorable as wetland. The 0.8-acre pocket of freshwater wetland has been degraded because of its reduced size, configuration, location and overgrown condition. In order to effect restoration of this wetland such that wildlife values are improved, it would be necessary to both expand its size and decrease the ratio of vegetated to non-vegetated wetland. In this regard, it would be highly advantageous to create non-vegetated open-water area of roughly a 4-foot depth. This 4-foot depth would be adequate to largely preclude invasion by cattails. Lastly, the wetland in this area should be fenced.

This freshwater wetland could feasibly be restored to 2.2 ac (0.8ac of existing wetland and 1.4 ac of restorable historic wetland). However, if offsite mitigation is deemed necessary for this freshwater pocket, the following conditions must be met:

- (1) Continue to allow freshwater urban runoff from the trailer park to flow to the wetlands southeast of Beach Boulevard.
- (2) The new mitigation site should result in creation of at least 2.2 acres of wetlands which is presently the potential restoration acreage onsite.

A-5-HNB-99-275

I₃

- (3) The site chosen must be non-wetland in its present condition.
- (4) The wetland design, location and type (i.e. freshwater) must be approved by the Department.

Feasibility of Restoring and Enhancing Wetlands within the
Huntington Beach Study Area

Pursuant to Coastal Act Section 30411(b) this Department is authorized to study degraded wetlands. Once this study is initiated, we are required to address essentially three considerations. These considerations are discussed below.

A. Section 30411(b)(1)

This Coastal Act Section requires the Department to determine whether major restoration efforts would be required to restore the identified degraded wetlands. We find that major restoration efforts are not required for the 113.9 acres of existing wetland located south of Beach Boulevard. These wetlands could easily be enhanced by reestablishing controlled tidal flushing due to their existing low elevation (less than 2 ft. MSL), their immediate adjacency to the tidal waters of the flood control channel, and the demonstrated ease and efficiency with which this water may be used for restorative purposes.

With respect to the 0.8 acres of existing wetland located west of Beach Boulevard, the Department has found low use by wetland-associated birds on this parcel. However, we find that it still functions as a freshwater marsh.

A-5-HNB-99-275

I4