

## CALIFORNIA COASTAL COMMISSION

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## RECORD PACKET COPY

**STAFF REPORT AND RECOMMENDATION ON APPEAL**  
**SUBSTANTIAL ISSUE AND DE NOVO**  
**COASTAL DEVELOPMENT PERMIT**

**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  
and the City of Huntington Beach Redevelopment Agency

**AGENT:** Larry Brose, The Robert Mayer Corporation

**PROJECT LOCATION:** 5.01 acre parcel located approximately 1,000 feet inland of the 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 degraded wetland and 1.4 acres of restorable wetland for unspecified development on a 5.01 acre parcel owned by the City of Huntington Beach. Fill would occur within a 2.9-acre portion of the parcel that is zoned residential with a Conservation Overlay. The proposed off-site mitigation, which consists of the creation of 1.0 acre of new wetland and the enhancement of 1.4 acres of transitional, upland, and woodland habitat is located outside of the Coastal Zone at the Shipley Nature Center.

**APPELLANTS:** Coastal Commissioners Cecilia Estolano & Pedro Nava

**SUMMARY OF STAFF RECOMMENDATIONS**

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 because the locally approved development raises issues of consistency with the City of Huntington Beach certified Local Coastal Program (LCP). More specifically, the wetland fill approved by the City raises issues of consistency with certified LCP policies and standards that require that wetlands be preserved and enhanced.

The City's certified LUP specifically incorporates Section 30233 of the Coastal Act, which limits fill to eight enumerated uses. Although the City's approved coastal development permit (CDP) does not describe the future use of the site, a review of the City's record indicates that the future use is expected to be residential. Neither residential development nor grading for an unspecified future use are allowable uses under Section 30233. Therefore, the project approved by the City raises a substantial issue as to its consistency with the certified LUP policies that limit the types of use for which a wetland can be filled.

The subject site is also discussed in the Implementation Plan portion of the City's certified LCP 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 California Department of Fish and Game (CDFG) 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 (Commission's Guidelines). However, with regard to wetlands less than one acre in size, the Commission's Guidelines, which have been incorporated by reference into the Certified LCP, 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 proposes wetland fill for an unspecified purpose within a residential zone along with an off-site mitigation plan. Therefore, the purpose of the overall project, including the fill and mitigation, cannot be considered restoration.

With regard to other restoration projects permitted under Section 30411, other than boating facilities, the Commission's Guidelines, which have been incorporated by reference into the Certified LCP, state that such restoration projects should result in no net loss of the acreage of wetland habitat located on the site. As discussed above, the project approved by the City cannot be considered restoration and would result in the loss of all on-site wetlands. In addition, the interpretation of Section 30411 contained within the Guidelines and utilized by the City to approve the fill 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 "Wetlands Guidelines" should not be used as the basis for approval of otherwise non-permitted uses. Consequently, section 30411 can no longer be used as a basis for justifying the fill of these wetlands. Therefore, the project as approved by the City raises a substantial issue as to its consistency with the certified LCP, including the Conservation Overlay, which incorporates by reference the Commission's Wetland Guidelines.

For the reasons described below, staff also recommends that the Commission, at the **DE NOVO** public hearing, **DENY** the proposed project on the grounds that it is inconsistent with the City's certified local coastal program policies and standards regarding wetland protection. First, as discussed above, the proposed fill of wetlands for an unspecified purpose within a residential zone is not an allowable use under the Certified LCP or the Appellate Court decision on Bolsa Chica. However, even if the proposed fill was consistent with the Certified LCP or the Bolsa Chica decision, approval of the permit would not comply with either the Certified LCP or the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

The applicants have submitted an alternatives analysis to the proposed fill of the on-site wetland. The analysis considered three alternatives: 1) to maintain the wetlands on-site in their current condition; 2) to restore the on-site wetlands and transitional area; and 3) to provide off-site habitat enhancement to offset proposed project impacts.

The applicant dismisses the first alternative of retaining the wetlands on-site in their current condition due to the degraded nature of the wetlands. The applicant dismisses the second alternative of on-site wetlands restoration because the primary water supply feeding the wetlands is low quality urban runoff, and if the site were restored it would provide only minimal habitat value. The third alternative, off-site mitigation, was chosen by the applicant and the City as the preferred alternative because the proposed off-site location (Shipley Nature Center) is a part of a larger wetlands and uplands habitat enhancement program, including restoration, enhancement, and creation of additional freshwater wetland. The applicant has indicated that the Shipley Nature Center is a high value habitat area. For these reasons, the off-site mitigation alternative is being proposed.

Although the proposed mitigation site may be a significant habitat area, it does not eliminate the necessity for the proposed project to conform to the City's Certified LCP, which includes the requirements of Section 30233. Total loss of the on-site wetlands cannot be considered the least environmentally-damaging alternative, even if higher value habitat is created elsewhere. The on-site wetlands clearly are degraded. It has been argued that the only way to finance the off-site mitigation is to allow the filling of the on-site degraded wetlands. 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. The degraded nature of the on-site wetlands does not provide a basis to justify filling them. The entire parcel is 5.01 acres. Development of the parcel is clearly feasible without impacting the wetland habitat. Retention of the existing wetlands on-site is thus a feasible alternative and would be less environmentally-damaging than elimination of the wetland. Therefore, the proposed project is not the least environmentally-damaging alternative and so is inconsistent with the City's certified LCP requirement to conform to the requirements of Section 30233 of the Coastal Act.

The Commission's Staff Ecologist has determined the total wetland acreage to be 0.696 acre. Based on the Commission's criteria, the proposed off-site mitigation to create one acre of wetland is not adequate to fully offset the proposed fill of 0.696 acres of on-site wetland habitat. The mitigation plan proposes to create only 1.0 acre of new wetland habitat and to enhance 1.4 acres of transitional wetland, upland and woodland habitats. In order to fully mitigate the impacts of the loss of wetland, the mitigation must create in-kind habitat. Therefore, only the creation of 1.0 acre of new wetland habitat can be considered as appropriate mitigation for the proposed project.

The creation of new wetland habitat in upland areas, and areas without the appropriate naturally occurring soil types, can also be difficult to accomplish. The success rate of man-made wetland habitat is generally less than with the restoration of naturally occurring wetland habitat. The applicants' propose a ratio of mitigated acres to impacted acres of 3:1; however, this ratio includes the proposed enhancement of 1.4 acres of transitional wetland, upland and woodland habitats. Because neither out-of-kind mitigation nor enhancement of existing wetlands can fully mitigate the loss of wetlands, only the 1.0-acre of proposed new wetland can be included in the mitigation ratio. Thus, the mitigation ratio is reduced to approximately 1.25:1, for the 0.8 acre of wetland the applicants will be impacting. Using the total wetland area determined by the Commission's Staff Ecologist, 0.696 acre, the proposed mitigation ratio would then be increased to approximately 1.44:1.

To ensure that adverse impacts to wetlands are fully mitigated, the Commission requires a mitigation ratio for the fill of wetland habitat of 4:1. In order to meet the 4:1 ratio necessary to successfully create new wetland habitat, the proposed mitigation should be for the creation of 2.78 acres of wetland habitat. Therefore, the proposed in-kind creation of 1.0 acre of new coastal brackish marsh and transitional wetland habitat is not sufficient to offset the proposed fill of 0.696 acre of existing wetland habitat because neither the kind nor amount of the proposed mitigation is adequate to offset the fill of the existing 0.696-acre of existing wetland habitat.

Thus, the proposed project: (1) is not an allowable use under the Certified LCP because it is not for a restoration purpose and results in the loss of all on-site wetlands; (2) is not the least environmentally-damaging alternative as required by the LCP because the applicant can develop the 5.01 acre parcel without impacting the wetlands; (3) does not fully mitigate its impacts as required by the LCP because the project does not propose in-kind mitigation in an amount sufficient to successfully create wetland habitat, and (4) is inconsistent with the appellate decision in Bolsa Chica. Therefore, staff recommends that the Commission deny the proposed project.

**STAFF RECOMMENDATIONS FOR SUBSTANTIAL ISSUE AND DE NOVO PERMIT**

The staff recommends that the Commission make the following motion and adopt the following resolution:

**A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE**

**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 under § 30603 of the Coastal Act.*

**Staff Recommendation:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

**Resolution to Find Substantial Issue:**

The Commission hereby finds that Appeal No. **A-5-HNB-99-275** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

**B. MOTION AND RESOLUTION FOR DE NOVO PERMIT**

The staff recommends that the Commission make the following motion and adopt the following resolution:

**Motion:** *I move that the Commission approve De Novo Coastal Development Permit No. A-5-HNB-99-275 for the development proposed by the applicant.*

**Staff Recommendation of Denial:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Deny the Permit:**

The Commission hereby **DENIES** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of City of Huntington Beach Certified Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

**LIST OF EXHIBITS:**

- A. Site Vicinity Map
- B. Project Location Map
- C. Letter from Amigos de Bolsa Chica, August 23, 1999
- D. Letter from Huntington Beach Conference and Visitors Bureau, September 1, 1999
- E. Letter from Jan D. Vandersloot, M.D., September 7, 1999
- F. Letter from David Guido, Resident of Huntington Beach, September 8, 1999
- G. Letter from Bolsa Chica Land Trust, September 9, 1999
- H. Letter from Nancy M. Donaven, Resident of Huntington Beach, September 9, 1999
- I. Letter from the City of Huntington Beach, October 19, 1999
- J. Letter from the Bolsa Chica Conservancy, November 4, 1999
- K. City of Huntington Beach Notice of Action
- L. Appeal Form D
- M. SEIR 82-2 Plans Depicting Proposed Residential Housing
- N. Conservation Overlay from Downtown Specific Plan
- O. Statewide Interpretive Guidelines for Wetlands
- P. Assessor Parcel Map
- Q. Photographs
- R. Vegetation Types Map
- S. City of Huntington Beach Map for District 8b
- T. Department of Fish and Game Determination of Status of the Huntington Beach Wetlands, February 4, 1983
- U. Coastal Commission Memorandum, November 23, 1999

**SUBSTANTIVE FILE DOCUMENTS:**

- 1. City of Huntington Beach Certified Local Coastal Program.
- 2. Local Coastal Development Permit No.99-05.
- 3. Department of Fish and Game Determination of the Status of the Huntington Beach Wetlands, February 4, 1983.
- 4. Superior Court of the State of California, County of San Diego, Case No. 703570, Statement of Decision, Bolsa Chica Land Trust vs. The California Coastal Commission
- 5. Court of Appeal, Fourth Appellate District, Division One, State of California, Case Nos. D029161 and D030270, Statement of Decision, Bolsa Chica Land Trust v. The Superior Court of San Diego County
- 6. The Waterfront Development Project Addendum to SEIR 82-2, July 15, 1998
- 7. Biological Resources Evaluation and Jurisdictional/Wetland Delineation for the Waterfront Development Site, Huntington Beach, CA, February 4, 1998.
- 8. Habitat Mitigation and Monitoring Proposal (HMMP) for the Waterfront Development, LSA, December 18, 1998
- 9. Waterfront Development –Wetland Analysis According to Coastal Act Wetland Definition, letter from LSA to Larry Brose, The Robert Mayer Corporation, dated November 3, 1999.
- 10. Waterfront Development – Alternatives Analysis of Wetland and Transitional Area Resources, LSA, November 5, 1999
- 11. Huntington Beach "Waterfront Development", Memorandum from John Dixon to Meg Vaughn and Teresa Henry, dated November 23, 1999.

**I. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

**A. APPEAL PROCEDURES**

**i. Standard of Review**

The LCP for the City of Huntington Beach (the City) was effectively certified on March 15, 1984. As a result, the City has coastal development permit (CDP) jurisdiction except for development located on tidelands, submerged lands, or public trust lands. Therefore, the standard of review for this substantial issue decision is the City's certified LCP.

**ii. Appealable Development**

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.*

Section 30603(a)(2) of the Coastal Act establishes the proposed project site as being appealable by its location within 100 feet of a wetland (Exhibits A-B).

**iii. Grounds for Appeal**

The grounds for appeal of an approved local CDP 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.*

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.

#### **iv. Qualifications to Testify Before the Commission**

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.

At the De Novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak.

#### **v. Public Comment**

Eight letters have been received regarding the subject appeal. Five of the letters are in support of the project approved by the City, and three of the letters oppose the project approved by the City. Letters of support were received from the Amigos de Bolsa Chica, the Huntington Beach Conference and Visitors Bureau, the City of Huntington Beach, the Bolsa Chica Conservancy, and Mr. David Guido, a resident of Huntington Beach. Letters in opposition to the project approved by the City were received from the Bolsa Chica Land Trust, Mr. Jan D. Vandersloot, M.D., and Ms. Nancy M. Donaven, a resident of Huntington Beach. Copies of the letters are attached as Exhibits C-J.

### **B. LOCAL GOVERNMENT ACTION**

On June 23, 1999, the City Zoning Administrator held a public hearing on the proposed project. At the conclusion of the public hearing, the Zoning Administrator approved with conditions local CDP No. 99-05, finding that the project, as conditioned, conformed with the City's Certified LCP. The action by the Zoning Administrator was appealable to the Planning Commission within the City's ten- (10) working day appeal period. No appeals were filed to the Planning Commission (Exhibit K). The City's action was then final and an appeal was filed by two Commissioners during the Coastal Commission's 10-day appeal period (Exhibit L).

The project approved by the City includes off-site mitigation at the Shipley Nature Center. The mitigation plan proposes to establish approximately 1.0 acre of wetland habitat and 1.4 acres of transitional wetland/upland and woodland habitats. The mitigation site is approximately four miles to the northwest of the subject site, located within Huntington Central Park. Huntington Central Park borders the Coastal Zone boundary on the outside of the boundary (Exhibit B). The mitigation site is located approximately 1,000 feet outside of the Coastal Zone boundary.



The local CDP was approved by the City, with seven special conditions (Exhibit K). Special condition Nos. 3 through 6 address the off-site mitigation. 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.

**C. APPELLANTS' CONTENTIONS**

The Commission received the notice of final action on local CDP No. 99-05 on July 12, 1999. On July 26, 1999, within ten working days of receipt of the notice of final action, two Coastal Commissioners appealed the local action on the grounds that the approved project does not conform to the requirements of the Certified LCP (Exhibit L). The appellants contend that the proposed development does not conform to the requirements of the certified LCP in regards to the following issues:

**i. Wetland Preservation and Enhancement**

The City's LUP portion of the certified LCP contains policies that require the preservation and enhancement of wetlands. The subject site contains a wetland and that finding is not disputed. 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.

**ii. Allowable Use**

The City's certified LUP specifically incorporates Section 30233 of the Coastal Act. Section 30233 of the Coastal Act limits fill to eight 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 CDP does not describe the future use of the site, the Addendum to the Supplemental EIR (SEIR 82-2) for the property indicates that the future use is expected to be residential (Exhibit M). Neither residential development nor grading for unspecified uses are allowable uses under Section 30233. Therefore, the project approved by the City raises a substantial issue as to its consistency with the certified LUP policies that limit the types of use for which a wetland can be filled.

**iii. Conservation Overlay**

The subject site is addressed in the Implementation Plan portion of the City's certified LCP in the DTSP. The DTSP designated the subject site with a Conservation Overlay (Exhibit N). The Conservation Overlay states: If any wetland is determined by the CDFG 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 Guidelines (Exhibit O).

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 Commission's Guidelines, which are incorporated by reference into the City's certified LCP, 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 allows the fill of an existing wetland based on an off-site mitigation plan. Even though the City proposes off-site mitigation, the fill of an existing wetland can not be considered a restoration project. To be considered a restoration project, the existing wetland would need to be enhanced or new wetland would need to be created on-site.

The Commission's Guidelines referred to in the DTSP Conservation Overlay also limit when and how much fill is allowed. The Commission's Guidelines, which are incorporated by reference into the City's LCP, state that 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. The project approved by the City would result in the loss of all on-site wetlands. Thus, the project approved by the City is not consistent with the requirements specified in the Commission's Guidelines.

**iv. Bolsa Chica Decision**

In addition to the inconsistencies with the certified LCP as mentioned above, the interpretation of Section 30411 contained within the Commission's Guidelines and 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 used as the basis for approval of uses, which would not otherwise be permitted in Section 30233 of the Coastal Act. 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. The City's approval relies on an interpretation of the guideline that has been invalidated by an appellate court.

## **D. SUBSTANTIAL ISSUE ANALYSIS**

### **i. SITE DESCRIPTION**

The City's approval of local CDP No. 99-05 allows the fill of 0.8 acres of wetland for unspecified development on a 5.01 acre parcel owned by the City (Exhibit P). The fill approved by the City would take place on a 2.9 acre portion of the parcel that is zoned "residential" with a Conservation Overlay. The wetland area is located just inland of the intersection of Pacific Coast Highway and Beach Boulevard (Exhibits A and B). The wetland lies immediately to the west of Beach Boulevard (Exhibits Q and R). To the west of the wetland, a mobile home park formerly existed; however, the area is currently being graded in conjunction with the overall Waterfront Development project. 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 drainpipes under the street.

The subject wetland is not currently subject to tidal flushing due to the installation of flood control devices in the salt marsh east of Beach Boulevard to restrict seawater flow into the marsh during high tides. The subject wetland receives urban freshwater runoff from the properties to the west. However, even though the wetland is considered degraded, there is no dispute that the subject site contains wetlands as defined by the Coastal Act and the City's certified LCP.

The subject site is land use designated High Density Residential/Conservation. The zoning at the subject site is covered by the 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 (Exhibit S). The use allowed in District 8b is "residential". However, a portion of District 8b is designated with a Conservation Overlay (Exhibit N). The subject site is located within the Conservation Overlay. The Conservation Overlay applies to 2.9 acres of the 5.01-acre parcel, including the area that was determined by the CDFG, pursuant to Section 30411, to be existing wetland (0.8 acre) and restorable wetland (1.4 acre). The CDFG wetland determination is contained in the "California Department of Fish and Game Determination of the Status of the Huntington Beach Wetlands", dated February 4, 1983 (Exhibit T).

Although the project approved under the local CDP 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 Development project was proposed in 1988, a Supplemental EIR dated July 15, 1999 was prepared by EIP Associates of Los Angeles, California (SEIR 82-2, certified by the City in 1988). Proposed changes to the 1988 development plan for the Waterfront Development 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. Although the local approval does not describe the future use of the site, the Addendum to the SEIR indicates that the subject site is to be developed with residential development (Exhibit M).

### **ii. ANALYSIS OF CONSISTENCY WITH CERTIFIED LCP**

As stated in Section A (iii) of this report, the local CDP 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 application de novo.

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. Staff has recommended that the Commission find that a substantial issue does exist with respect to the grounds on which the appeal has been filed.

**a. Conservation Overlay**

The project location is subject to a Conservation Overlay in the certified LCP (Exhibit N). The Conservation Overlay is contained in the DTSP portion of the LCP's Implementation Plan. The subject site is located in District 8b of the DTSP (Exhibit S). Although District 8b extends beyond the subject site, the Conservation Overlay encompasses the entire project site. Development is permitted in the Overlay area only pursuant to an overall development plan for the Overlay area and subject to the following language contained in the Downtown Specific Plan Conservation Overlay (Exhibit G):

*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 primary basis for the City's approval of the wetland fill was the above referenced language contained in the DTSP Conservation Overlay (Exhibit N). This same language appears in the certified LUP in the Area-by-Area Discussion on page 126. The Commission's Guidelines (Exhibit O) referred to in the Conservation Overlay, which have been incorporated by reference into the City's LCP, address two separate restoration options where some fill of wetlands may occur for a use not specified in Section 30233. The first restoration option requires, among other things, that the subject wetland be less than one acre in size. The second restoration option applies to wetlands that have been identified by the CDFG as degraded pursuant to Section 30411. The subject site was determined to be degraded by the CDFG pursuant to Section 30411 and the wetland delineation figure and is less than one acre in size. Consequently, whether the proposed project qualifies as a restoration option allowed by the certified LCP must be evaluated.

**1) Total Wetland Acreage**

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 evaluations of the applicant's consultant, LSA Associates, Inc. (LSA) of Irvine, California and the Commission's Staff Ecologist, the subject wetland is approximately 0.696 acres, which would mean that the Conservation Overlay language applies to the site (Exhibit U).

The Biological Resources Evaluation and Jurisdictional/Wetland Delineation for the Waterfront Development Site Huntington Beach, CA prepared by LSA Associates, Inc. dated February 4, 1998 (LSA Biological Evaluation) describes the 2.9 acre portion of the subject site that is subject to the Conservation Overlay. The biological evaluation includes a Vegetation Types map (Exhibit D). The map identifies the area determined by the applicant's consultant to be the 0.8-acre wetland area. 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. The LSA Biological Evaluation finds that 0.57 acre consists of Coastal Brackish Marsh, 1.39 acre is Alkali Meadow, 0.18 acre is Ornamental Trees, and 0.72 acre of Disturbed/Ruderal vegetation. LSA concluded that only the 0.57-acre Coastal Brackish Marsh area should be considered wetland. The Commission's Staff Ecologist determined that in a later report by LSA, dated November 3, 1999, the delineated wetland areas totaled 0.58 of one acre.

LSA's 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.

The Commission's Staff Ecologist visited the subject site on October 14, 1999, and reviewed LSA's evaluations. The Staff Ecologist found additional areas of alkali heath, saltgrass, and willow, which also constitute wetland area. The additional wetland area totals 0.116 of one acre. Thus, the Commission's Staff Ecologist determined that the total wetland acreage on-site is 0.696 (Exhibit U).

Although the applicant's consultant identified only 0.57 acre of wetland at the subject site, the applicant decided to use the acreage figure based on the 1983 CDFG study (Exhibit T), which identified 0.8 acre of on-site wetland. The 0.8-acre area was the wetland figure used by the City when acting on the proposed project. Based on a site visit and review of the information provided by the applicant, Commission staff concurs with the applicant that the total existing wetland acreage on the site is less than one acre.

**2) Application of Commission's Guidelines when a Wetland is Less than One Acre in Size**

Based on the Commission's staff review of additional information provided by the applicant, the total acreage for the existing on-site wetland is 0.696 acre (Exhibit U). Thus the standards that apply if the wetland acreage figure is less than one acre must be considered. The LCP's Conservation Overlay provides that "if the wetland is less than one acre in size other restoration options may be undertaken, pursuant to the Coastal Commission's Guidelines."

The Commission's Guidelines, which have been incorporated by reference into the City's certified LCP, indicate that restoration projects may include some fill for non-allowable uses (Exhibit O). However, the approved project is not itself a restoration project which may then include some fill for non-permitted uses. The Commission's Guidelines state: "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 proposed project 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. The Addendum to the SEIR prepared for the proposed project indicates that the future use of the site will be residential (Exhibit M). A project with the intended primary function as residential cannot be considered a restoration project. Although the proposed project includes an off-site mitigation plan, the purpose of the overall project, including both the fill and mitigation, cannot be considered a restoration project. Clearly the mitigation program is not dependent on the on-site wetlands being filled. The mitigation site is located approximately four miles from the subject site, outside the coastal zone (Exhibit B). The mitigation program could go forward without the fill of the subject wetlands. Thus, the project does not meet the criteria of the Commission's Guidelines that have been incorporated by reference into the certified LCP, and so is not permissible as an "other restoration option" under the Conservation Overlay in the certified Implementation Plan. In conclusion, the proposed project does not qualify as a restoration project under the Commission's Guidelines, and is inconsistent with the certified LCP provisions that incorporate the Commission's Guidelines.

**3) Wetlands Degraded Pursuant to CDFG Determination and Section 30411**

The second circumstance in which the above-identified LCP Conservation Overlay language applies is restoration of wetlands that have been identified by the DFG as degraded pursuant to Section 30411. The Commission's Guidelines incorporated into the City's certified LCP provide for fill of degraded wetlands for a non-allowable use only if the fill is proposed in conjunction with another restoration option, and if there is no net loss of wetland acreage on the subject site (Exhibit O). The Commission's 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 approved project raises a substantial issue of

consistency with the LCP provisions that incorporate the Commission's Wetlands Guideline.

**4) Bolsa Chica Decision**

The interpretation of Section 30411 contained within the Commission's Guidelines, and referred to in the City's LCP has been invalidated by the Fourth District Court of Appeal in Bolsa Chica Land Trust vs. Superior Court, 1999, 83 Cal. Rptr. 850 (Bolsa Chica). In Bolsa Chica, the appellate court held that the interpretation of Section 30411 contained in the "Wetlands Guideline" may not be used as the basis for approval of uses, which would otherwise not be permitted pursuant to Section 30233 of the Coastal Act. The City's approval relies on a guideline that has been invalidated by the Fourth Appellate District Court of Appeal. Therefore, the project approved by the City raises a substantial issue of consistency with the certified LCP provisions that incorporate the Wetlands Guideline.

**5) Conclusion Regarding Conservation Overlay**

As identified above, the purpose of the overall project is not restoration since no wetlands will remain on site; therefore, the project is not allowable under the City's LCP Downtown Specific Plan Conservation Overlay, which discusses "other restoration options." Therefore, the approved project raises a substantial issue of consistency with the LCP provisions that incorporate the Commission's Wetlands Guideline.

**b. 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, Section 9.5.4 of the City's LUP specifically incorporates Section 30233 of the Coastal Act. Section 30233 limits the fill of wetlands to eight enumerated uses. Although the City's approved coastal permit does not identify 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 considered 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.

## **E. CONCLUSIONS REGARDING SUBSTANTIAL ISSUE ANALYSIS**

Based on an evaluation of the project approved by the City in CDP No. 99-05, it is evident that the purpose of the overall project is not restoration, since no wetlands will remain on site. Therefore, the project is not allowable under the City's LCP Downtown Specific Plan Conservation Overlay, which discusses "other restoration options." Section 9.5.4 of City's LUP also specifically incorporates Section 30233 of the Coastal Act which limits the fill of wetlands to eight enumerated uses. The Bolsa Chica decision instructs that the interpretation of Section 30411 contained in the Wetlands Guideline may not be used as the basis for approval of uses that would not otherwise be permitted in Section 30233 of the Coastal Act. 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. For these reasons, the approved project raises a substantial issue of consistency with the City's certified LCP, which incorporate, by reference, the Commission's Wetlands Guideline.

## **II. DE NOVO FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. STANDARD OF REVIEW**

The action currently before the Commission is the de novo review of a proposed project located within the jurisdiction of the certified Huntington Beach Local Coastal Program (LCP). The Commission's standard of review for the proposed development is the certified Huntington Beach LCP and Section 30603 (b) of the Coastal Act.

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

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

## **C. PROJECT DESCRIPTION**

The proposed project is the fill 0.8 acre of existing wetland and approximately 1.4 acres of restorable wetland for unspecified development on a 5.01 acre parcel owned by the City. The fill proposed by the applicants would occur on a 2.9 acre portion of the parcel that is zoned "residential" with a Conservation Overlay.

The proposed project includes off-site mitigation at the Shipley Nature Center. The mitigation plan proposes to establish approximately 1.0 acre of wetland habitat and 1.4 acres of transitional wetland/upland and woodland habitats. The mitigation site is approximately four miles to the northwest of the subject site, located within Huntington Central Park. Huntington Central Park borders the Coastal Zone boundary on the outside of the boundary (Exhibit B). The mitigation site is located approximately 1,000 feet outside of the Coastal Zone boundary.

## **D. CONSERVATION OVERLAY**

As discussed above, the proposed project location is subject to a Conservation Overlay in the certified LCP (Exhibit N). The Conservation Overlay is contained in the DTSP portion of the LCP's Implementation Plan. The subject site is located in District 8b of the DTSP (Exhibit S). Although District 8b extends beyond the subject site, the Conservation Overlay encompasses the entire project site. Based on the following evaluation of the DTSP Conservation Overlay, staff recommends that the Commission deny the proposed project, which does not conform to the wetland policies of the certified LCP.

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."*

### **i. Application of Commission's Guidelines When a Wetland is Less than One Acre in Size**

Based on Commission's staff review of additional information provided by the applicant, it appears that the total acreage for the existing on-site wetland is 0.696 of one acre (Exhibit U). Thus the standards that apply if the wetland acreage figure is less than one acre must be considered. The LCP's Conservation Overlay provides that "if the wetland is less than one acre in size, other restoration options may be undertaken, pursuant to the Coastal Commission's Guidelines (Exhibit N).

The Commission's Guidelines, which have been incorporated by reference into the City's certified LCP, indicate that restoration projects may include some fill for a non-allowable use (Exhibit O). However, the proposed project is not itself a restoration project, which may then include some fill for non-permitted uses. The Commission's Guidelines state: "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 proposed project 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. The Addendum to the SEIR prepared for the proposed project indicates that the future use of the site will be residential (Exhibit M). A project with the intended primary function as residential cannot be considered a restoration project. Although the proposed project includes an off-site mitigation plan, the purpose of the overall project, including both the fill and mitigation, cannot be considered restoration. Clearly the mitigation program is not dependent on the on-site wetlands being filled. The mitigation site is located approximately four miles from the subject site, outside the coastal zone (Exhibit B). The mitigation program could go forward without the fill of the subject wetlands. Thus, the project does not meet the criteria of the Commission's Guidelines and so is not permissible as an "other restoration option" under the Conservation Overlay in the certified Implementation Plan.

**iii. Wetlands Degraded Pursuant to CDFG Determination and Section 30411**

The second circumstances in which the above-identified LCP Conservation Overlay language applies is restoration of wetlands that have been identified by the CDFG as degraded pursuant to Section 30411. The Commission's Guidelines incorporated into the City's certified LCP provide for fill of degraded wetlands for a non-allowable use only if the fill is proposed in conjunction with another restoration option, and if there is no net loss of wetland acreage on the subject site (Exhibit O). The Commission's 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 proposed project would result in the loss of all on-site wetlands and is not permissible as an "other restoration option" under the certified LCP's Conservation Overlay.

**iv. Bolsa Chica Decision**

The interpretation of Section 30411 contained within the Guidelines referred to in the City's LCP, has been invalidated by the Fourth District Court of Appeal in Bolsa Chica Land Trust vs. Superior Court, 1999, 83 Cal. Rptr. 850 (Bolsa Chica). In Bolsa Chica, the appellate court held that the interpretation of Section 30411 contained in the "Wetlands Guidelines" may not be used as the basis for approval of uses, which would otherwise not be permitted pursuant to Section 30233 of the Coastal Act. Even if the interpretation of Section 30411 contained within the Commission's Guidelines had not been invalidated, as discussed above, the proposed project is believed to be for residential use, and is not consistent with the guidelines incorporated into the certified LCP. Therefore, the proposed project is inconsistent with the certified LCP and the Bolsa Chica decision, and must be denied.

**v. Conclusion Regarding Conservation Overlay**

As identified above, the purpose of the overall project is not restoration and no wetlands will remain on site, therefore, the project is not allowable under the City's LCP Downtown Specific Plan Conservation Overlay, which discusses "other restoration options." Therefore, the proposed project is inconsistent with the Conservation Overlay contained in the City's certified LCP. In addition, the proposed project is inconsistent with the court's instruction in the Bolsa Chica decision. The proposed project should therefore be denied.

#### **E. 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 a 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. The Coastal Act limits the fill of wetlands to the uses specified in Section 30233 and only where there is no feasible less environmentally-damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. The following subsections describe the consistency of the proposed project with Section 30233 of the Coastal Act.

**a. Allowable Use**

Section 30233 limits the fill of wetlands to eight 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 Section 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 proposed project is inconsistent with the LUP wetland policies of the City's certified LCP; therefore, the permit must be denied.

**b. Alternatives**

The applicants submitted an alternatives analysis prepared by LSA, dated November 5, 1999, for the proposed fill of the on-site wetland. The analysis considered three alternatives: 1) to maintain the wetlands on-site in their current condition; 2) to restore the on-site wetlands and transitional area; and 3) to provide off-site habitat enhancement to offset proposed project impacts.

LSA dismisses the first alternative of retaining the wetlands on-site in their current condition due to the degraded nature of the wetlands. Regarding this alternative the applicant's biological consultant states, in part: "As an isolated and degraded resource, the wetland and transitional area do not function as an integral part of a larger habitat area. The parcel recommended to be filled is of marginal habitat value due to its small size, isolation from other habitat areas, poor soil quality, poor water quality, and poor faunal representation." The consultant also dismisses this alternative due to the fact that the wetland is not tidally influenced. A review of LSA's February 1998 report indicates that tidal influence could potentially be restored to the wetland due to its connection to the salt marsh east of Beach Boulevard through drainpipes.

LSA dismisses the second alternative of on-site wetlands restoration because the primary water supply feeding the wetlands is low quality urban runoff; and, if the site were restored it would provide only minimal habitat value. The applicant's biological consultant has indicated that restoration of the on-site wetlands would provide only minimal habitat value due to its location surrounded by urban development.

The third alternative, off-site mitigation, was chosen by the applicant and the City as the preferred alternative because the proposed off-site location (ShIPLEY Nature Center) is a part of a larger wetlands and uplands habitat enhancement program, including restoration, enhancement, and creation of additional freshwater wetland. The applicant has indicated that the ShIPLEY Nature Center is a high value habitat area; that the proposed restoration area is entirely surrounded by existing natural habitat areas; and that the wetlands at the mitigation site are reportedly fed primarily by groundwater, augmented by urban runoff and localized irrigation. For these reasons, the off-site mitigation alternative is being proposed.

However, Section 30233, as expressly incorporated into the City's certified LCP, requires that any fill of wetlands, in addition to being an allowable use, must also be the least environmentally-damaging alternative. Retaining the wetland on-site and on-site wetland restoration are both feasible alternatives. Total loss of the on-site wetlands cannot be considered the least environmentally-damaging alternative, even if higher value habitat is created elsewhere. The on-site wetlands clearly are degraded. It has been argued that the only way to finance the off-site mitigation is to allow the filling of the on-site degraded wetlands. 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. The degraded nature of the on-site wetlands does not provide a basis to justify filling them.

In addition, regarding the subject site, the 1983 CDFG Study (Exhibit T) 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 CDFG 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. Off-site mitigation is only evaluated as a last resort option, and the CDFG Study clearly indicates that there would be a benefit to retaining and enhancing the wetland onsite.

The applicant has indicated that the on-site wetlands are surrounded by urban uses. However, the larger Waterfront Development project of which the subject site is a part, has not yet been developed, although grading is underway. The City's LCP includes buffer requirements for development adjacent to wetlands. LUP Policy 9b requires that new development contiguous to wetland areas include buffers of a minimum of one hundred-foot setback from the landward edge of the wetland where possible. As described in SEIR 82-2 Addendum to the Waterfront Development project, the proposed project in this area will include a residential development including a maximum of 230 homes on 22.3 acres. The SEIR addendum states that 230 homes is a maximum and that 175 are more likely, and possibly even fewer. Given the amount of area involved in the residential project and the flexibility in the maximum number of homes, it is possible to incorporate the 100-foot buffer required by LUP Policy 9b. Thus, the on-site wetland would not have to be completely surrounded by urban development immediately adjacent to it. The buffer separating the on-site wetland from future development further increases the feasibility of retaining the wetland on-site and would increase its environmental value.

Although the proposed mitigation site may not be a significant habitat area, it does not eliminate the necessity for the proposed project to conform to the City's certified LCP, which includes the requirements of Section 30233. Retention of the existing wetlands on-site is a feasible alternative and would be less environmentally-damaging than elimination of the wetland. Even on-site wetlands restoration would also be a feasible alternative that would be less environmentally-damaging than the fill of the wetland. Therefore, the proposed project is not the least environmentally-damaging alternative and so is inconsistent with the City's certified LCP requirement to conform to the requirements of Section 30233 of the Coastal Act. Therefore, the proposed project must be denied.

#### **c. Feasible Mitigation**

Section 9.5.4 of the City's LUP policies require that marine resources, including wetlands, be maintained, enhanced and restored, where feasible, to mitigate the adverse impacts of development on the City's marine resources. Section 9.5.4, Subsection 8.f. of the City's LUP relates to the fill of wetland, and states the following:

*8.f. 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.*

The City's Implementation Program policies incorporate Section 30233 of the Coastal Act and the above referenced portions of the Commission's Wetlands Guideline. The City's LCP policies do not establish any mitigation standards in addition to those incorporated from the Coastal Act and Commission's Guidelines. Therefore, the Commission's review of the proposed project mitigation for consistency with the LCP will necessarily involve review of the proposed mitigation for consistency with Section 30233.

The proposed project includes off-site mitigation at the Shipley Nature Center. The proposed mitigation is outlined in LSA's, *Habitat Mitigation and Monitoring Proposal*, dated December 18, 1998 (HMMP). The mitigation site is located approximately four miles to the northwest of the subject site within Huntington Central Park. Huntington Central Park borders the Coastal Zone boundary on the outside of the boundary (Exhibit B). The mitigation site within the park is located approximately 1,000 feet outside of the Coastal Zone boundary.

The HMMP proposes to create 1.0 acre of new coastal brackish marsh and transitional wetland habitats, and to enhance 1.4 acres of transitional wetland, upland and woodland habitats within Shipley Nature Center. The proposed mitigation plan includes establishing the hydrologic regime necessary to support the new wetland habitat. The creation of the new hydrologic regime will require excavating several basins to below the average water table depth. The basins are designed to enlarge the existing wetland and open water habitat area in the preserve while maintaining the pedestrian trail through the area.

Numerous Commission actions have established criteria for wetland fill that encourage on-site mitigation that results in no net loss of wetland habitat. If on-site mitigation is not feasible, off-site mitigation within the Coastal Zone Boundary may be allowed as a last resort. The mitigation site is located approximately 1,000 feet outside of the Coastal Zone boundary; therefore, the mitigation is not dependent on the fill of the on-site wetland. The Commission's Staff Ecologist has determined the total wetland acreage to be 0.696 (Exhibit U). Based on the Commission's criteria, the proposed off-site mitigation to create one acre of wetland is not adequate to fully offset the proposed fill of 0.696 acres of on-site wetland habitat.

Based on the 1983 CDFG Study (Exhibit T), the HMMP establishes that the total area that the mitigation will be provided for will be 0.8 acre even though the total acreage at the time the HMMP was written was estimated to be less than 0.8 acre. The mitigation plan, however, proposes to create only 1.0 acre of new wetland habitat and to enhance 1.4 acres of transitional wetland, upland and woodland habitats. In order to fully mitigate the impacts of the loss of wetland, the mitigation must create in-kind habitat. Therefore, only the creation of 1.0 acre of new wetland habitat can be considered as appropriate mitigation for the proposed project.

The creation of new wetland habitat in upland areas, and areas without the appropriate naturally occurring soil types, can also be difficult to accomplish. The success rate of man-made wetland habitat is generally less than with the restoration of naturally occurring wetland habitat. The applicants propose a ratio of mitigated acres to impacted acres of 3:1; however, this ratio includes the proposed enhancement of 1.4 acres of transitional wetland, upland and woodland habitats. Because neither out-of-kind mitigation nor enhancement of existing



wetlands can fully mitigate the loss of wetlands, only the 1.0-acre of proposed new wetland can be included in the mitigation ratio. Thus, the mitigation ratio is reduced to approximately 1.25:1, for the 0.8 acre of wetland the applicants will be impacting. Using the total wetland area determined by the Commission's Staff Ecologist, 0.696 acre, the proposed mitigation ratio would thus be increased to approximately 1.44:1. To ensure that adverse impacts to wetlands are fully mitigated, the Commission requires a mitigation ratio for the fill of wetland habitat of 4:1. In order to meet the 4:1 ratio necessary to successfully create new wetland habitat, the proposed mitigation should be for the creation of 2.78 acres of wetland habitat. Therefore, the proposed in-kind creation of 1.0 acre of new wetland is not sufficient to offset the proposed fill of 0.696 acre of existing wetland habitat. Since neither the kind nor amount of the proposed mitigation is adequate to offset the fill of the existing 0.696-acre of existing wetland habitat; therefore, the proposed project must be denied.

#### **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

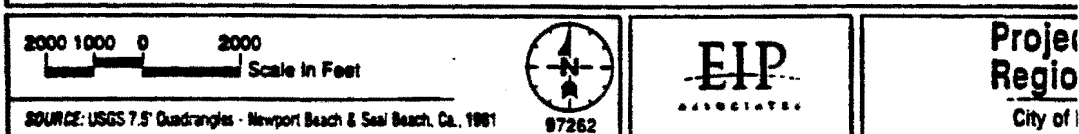
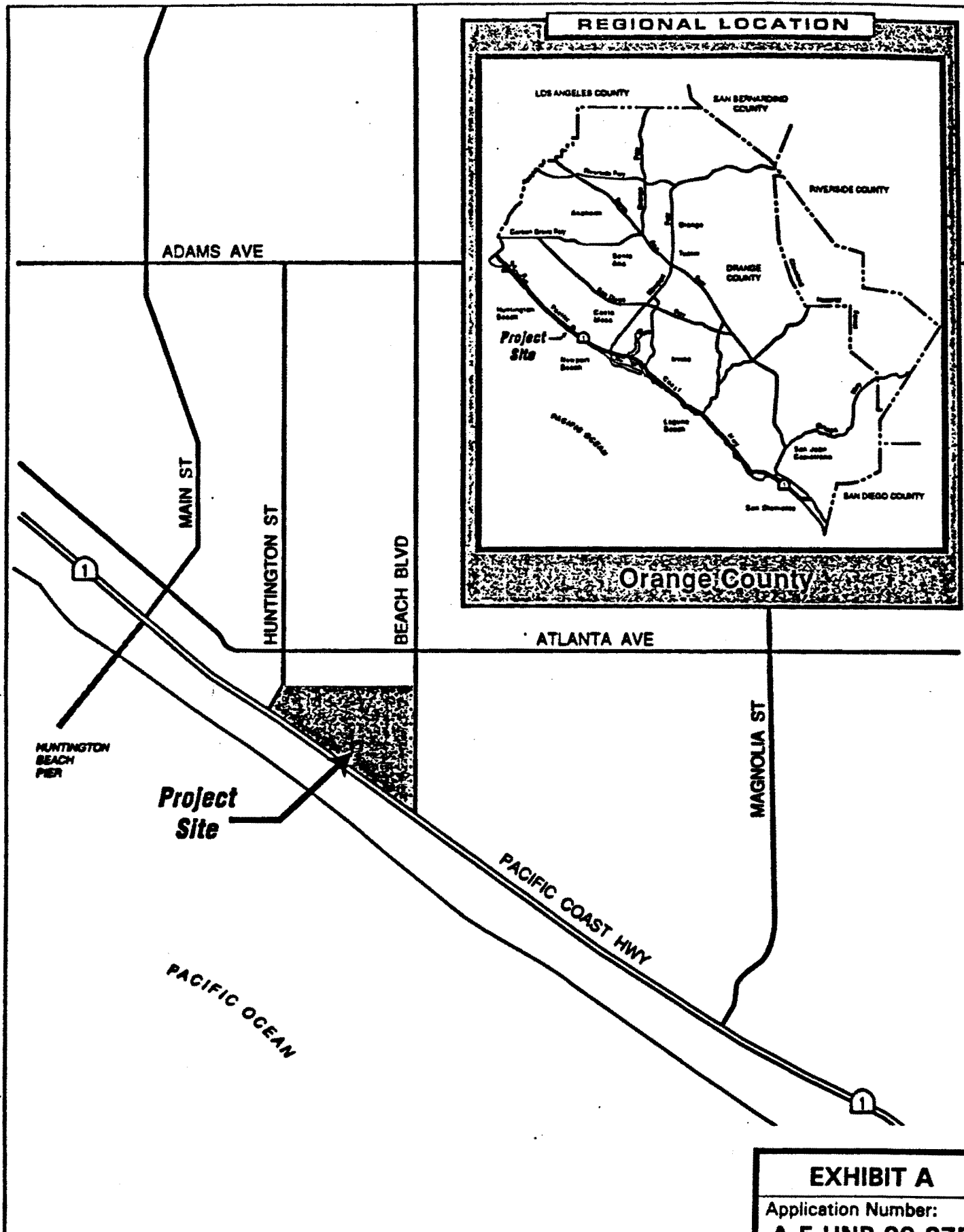
Previous sections of these findings contain documentation of the significant adverse impacts of the proposed development. Specifically, the significant adverse impact resulting from the proposed project is elimination of the existing on-site wetland inconsistent with the certified LCP's wetland protection policies. Feasible alternatives exist that would eliminate the project's adverse impacts. At a minimum, a feasible alternative would be to retain the wetland on-site and provide the buffer between it and adjacent future development. An additional alternative would be to retain and restore the wetland on-site. Therefore, there are feasible alternatives available, which would substantially lessen any significant adverse impact that the activity would have on the environment including some uses allowed in Section 30233 of the Coastal Act. Therefore, the Commission finds there are feasible alternatives that could avoid adverse impacts to the environment.

#### **H. CONCLUSIONS REGARDING DE NOVO FINDINGS**

Based on an evaluation of the project approved by the City in CDP No. 99-05, it is evident that the purpose of the overall project is not restoration, since no wetlands will remain on site. Therefore, the project is not allowable under the City's LCP Downtown Specific Plan Conservation Overlay, which discusses "other restoration options." In addition, the proposed project is inconsistent with the court's instruction in the Bolsa Chica decision. Section 9.5.4 of City's LUP also specifically incorporates Section 30233 of the Coastal Act which limits the fill of wetlands to eight enumerated uses. 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. For these reasons, the approved project raises a substantial issue of consistency with the City's Certified LCP, which incorporate, by reference, the Commission's Wetland Guidelines.

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Mayer Corporation  
Page 26

It is also evident that other feasible, less environmentally-damaging alternatives are available to the applicants, and that the proposed off-site mitigation is not adequate to offset the fill of on-site wetland. Therefore, there are feasible alternatives available, which would substantially lessen any significant adverse impact that the activity would have on the environment including some uses allowed in Section 30233 of the Coastal Act, which is incorporated by reference into the City's LCP. For these reasons, the proposed project is inconsistent with the Conservation Overlay contained in the City's certified LCP and the proposed project should be denied.

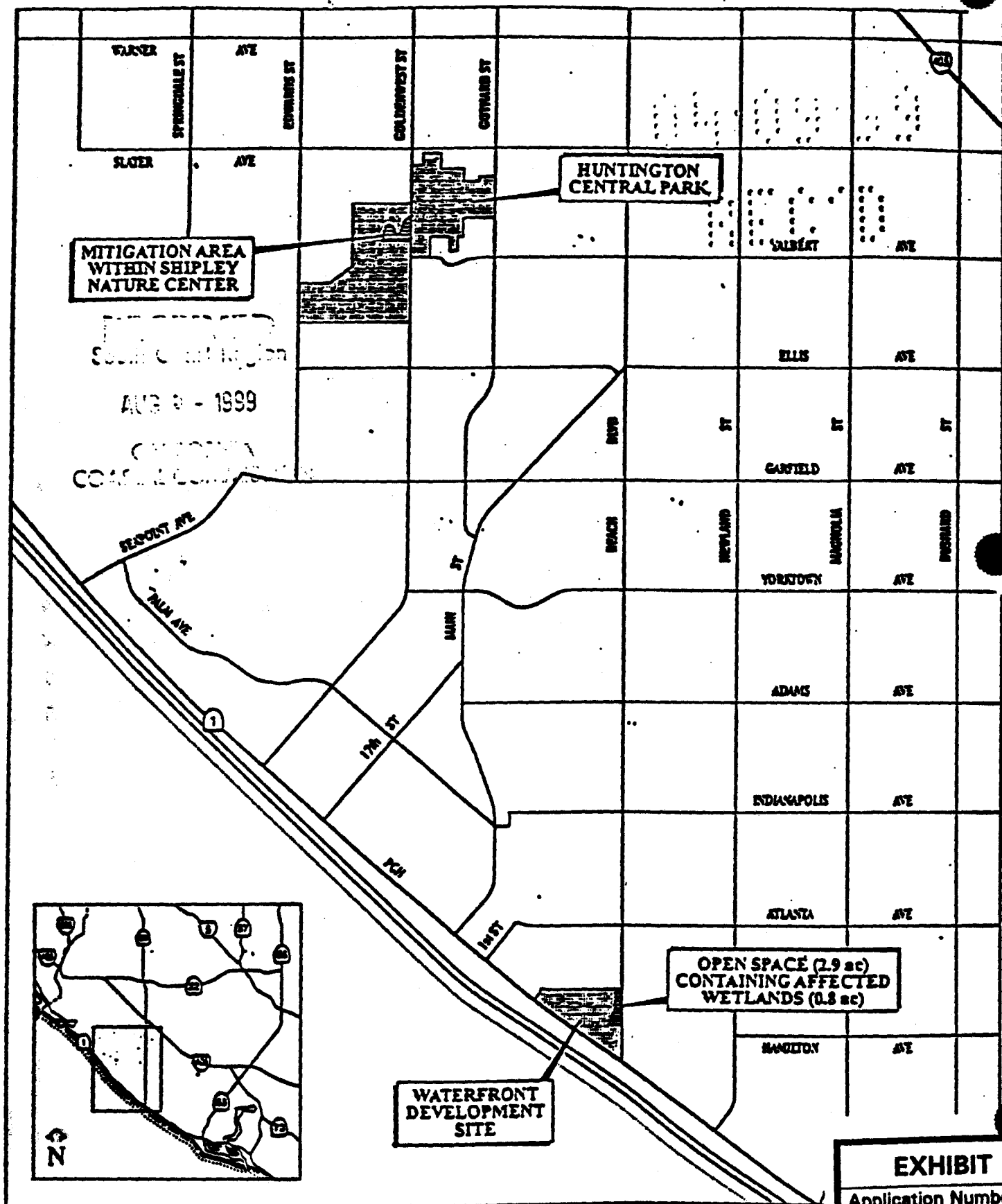


**EXHIBIT A**

Application Number:  
**A-5-HNB-99-275**

**Site Vicinity Map**

California Coastal Commission



12/1/98 (TRMS31)

## EXHIBIT B

Application Number:

**A-5-HNB-99-275**

Project Location Map

(Long Beach)



Amigos  
de  
Bolsa  
Chica

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

August 23, 1999

RECEIVED  
AUG 24 1999

CALIFORNIA  
COASTAL COMMISSION

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

Re: Appeal A-5-99-275

Dear Mrs. Wan:

On August 6 we faxed you a letter supporting the Commission staff position to reverse the permit granted to the Mayer Trust by the City of Huntington Beach to fill 0.8 acres of wetlands located in that city. We have subsequently learned that the restoration in the Shipley Nature Center will in fact result in a net increase in wetlands, information that was not available to us at the time of our letter. Although we stipulated in our letter that any mitigation must involve coastal wetlands, additional wetlands in the Shipley Nature Center makes good ecological sense. We therefore respectfully retract our support of the Commission staff position and ask you to uphold the permit of the Mayer project.

Sincerely,

*David M. Carlberg*  
David M. Carlberg  
President

EXHIBIT No. C

Application Number:

A-5-HNB-99-27

Letter from Amigo  
de Bolsa Chica

California Coast  
Commission

## Conference and Visitors Bureau

**Huntington Beach**Southern California's  
Coastal Playground

Long Beach

RECEIVED

SEP 03 1999

RECEIVED

SEP 8 1999

CALIFORNIA  
COASTAL COMMISSION

September 1, 1999

Sara Wan, Chair  
California Coastal Commission  
Via Fax (415) 904-5400

Ms. Wan:

A permit was given in June to swap 0.8 acres of a non functioning wetlands, located on the Robert Mayer Corporation's expansion property on Beach Boulevard for restoration and improvements to 2.4 acres of the Shipley Nature Center in Central Park. In exchange for the permit to fill the 0.8 acres, the developer agreed to reintroduce native vegetation to the Shipley Nature Center, which is well known, used by all ages, and frequently hosts children's field day outings. This 2.4 acres of restoration would be enjoyed by all.

Now that a permit is in question and will be reviewed by your organization, we are hopeful you will uphold the permit for the Robert Mayer Corporation to enhance the Shipley Nature Center.

Sincerely,

Jane Baker  
Chair, CEO

EXHIBIT No. D

Application Number:

A-5-HNB-99-275

Letter from HBCVB

**JAN D. VANDERSLOOT, M.D.**  
2221 East 16th Street  
Newport Beach, CA 92663  
(949) 548-6326 FAX (714) 848-6643

California Coastal Commission  
South Coast Area Office  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4302

September 7, 1999

**R**

**EXHIBIT No. E**

Application Number:  
**A-5-HNB-99-275**

Letter from Jan D.  
Vandersloot, M.D.

 California Coastal  
Commission

**CALIFORNIA  
COASTAL COMMISSION**

Re: Permit Number A-5-HNB-99-275

Applicant: The Robert L. Mayer Trust, Waterfront Hilton

Appeal of permit to fill .8 acres of wetlands west of Beach Blvd., Huntington Beach

Hearing Date: Thursday, September 16, 1999, Item No. Th 8a

Dear Coastal Commissioners,

This letter is in support of the appeal by Commissioners Estolano and Nava of the decision of the City of Huntington Beach to allow fill of the .8 acre, possibly 2.2 acre, wetland west (north) of Beach Blvd. I ask that you determine that a "substantial issue exists" with respect to the grounds on which the appeal has been filed, and that you "continue the de novo hearing" to a future meeting, to allow additional information to be developed by staff. Also the hearing should be held in southern California, near the project.

I am a co-founder and Board Member of the Bolsa Chica Land Trust, the group that successfully litigated the limits to which coastal wetlands can be used, residential housing not being a use permitted in coastal wetlands, according to the Coastal Act. This project would fill the subject wetlands in order to build residential housing, and therefore is not permitted under the Coastal Act. If you approve this project, it might set a precedent that might jeopardize other pocket wetlands such as are found on the Bolsa Chica Mesa. Thus, the Bolsa Chica Land Trust is very concerned about the ramifications of this project.

In addition, I have personally driven by these wetlands four days a week, coming and going to work, for over 18 years. I have seen bird life use these wetlands, as they also use the wetlands east (south) of Beach Blvd. at this location over the years, especially in the winter months. In reality, these wetlands are the northern tip of the Huntington Beach Wetlands, and are not severely isolated. The Huntington Beach Wetlands are traversed by Beach Blvd. at this location, just as they are traversed by Brookhurst and Magnolia Street farther to the south. These wetlands are connected by culverts across Beach Blvd. and so water is exchanged in both directions depending on the season. The vegetation includes pickleweed, so the wetland is brackish, not just fresh water. Maps dating from 1873 show the wetlands as historic wetlands extending from the mouth of the Santa Ana River.

The goals of the Shipley Center to restore and create wetlands on its site are admirable. Funds for this project can be sought from other sources, such as the Southern California Wetlands Recovery Project. Part of the Huntington Beach Wetlands should not be sacrificed for this purpose.

Thank you for your consideration.

Sincerely,

  
Jan D. Vandersloot, M.D.

SEP-08-1999 WED 12:32 PM

FAX NO.

P. 01/01

*Hunting Beach*

September 8, 1999

RECEIVED  
SEP 9 1999

CALIFORNIA  
COASTAL COMMISSION

Ms. Sara Wan  
California Coastal Commission  
Sacramento, California  
Via Fax 415-904-5400

Subject: Appeal A-5-99-275

Dear Ms. Wan:

I am a nine year resident of Huntington Beach and live less than a quarter of a mile from the 8/10 acre of "wetlands" the Robert Mayer Corporation is requesting to eliminate. I have become very familiar with the Mayer Corporation people since I am president of Huntington Beach Coastal Communities Association and worked closely with them in fighting the reopening of the oil tank farm and off-shore mooring located across the street from this site. Without their help, I am convinced we would now have an active tank farm facility once again in our backyards.

I wish to state my support of their plan to eliminate the "wetlands" on their site which is really nothing more than a patch of weeds littered with beer cans and trash in exchange for the work they intend on doing (and have already started) at the Shipley Nature Center. Shipley is a facility that has infinitely more usefulness since it is a location where people, especially children, can learn and see the importance of wetlands in nature. It is considerably larger than the 8/10 acre on Mayer Corporation's property and it has a better chance of becoming what mother nature intended it to be; a real, useful wetlands site.

I urge you to uphold the Robert Mayer Corporation permit for the Shipley site.

Very truly yours,



David Guido  
21241 Lochlea Lane  
Huntington Beach, CA 92646  
714-536-8695

RECEIVED  
SEP 08 1999

CALIFORNIA  
COASTAL COMMISSION

EXHIBIT N

Application Number:

A-5-HNB-99-275

Letter from David

Guido



# Bolsa Chica

LAND TRUST

RECEIVED  
SEP 13 1999

CALIFORNIA  
COASTAL COMMISSION

September 9, 1999

California Coastal Commission  
South Coast Area  
Post Office Box 1450  
200 Oceangate, 10th Floor  
Long Beach, California 90802-4416

**OFFICERS**

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JUANA MUELLER  
VICE PRESIDENT  
MARINKA HORACK  
SECRETARY  
NANCY DONAVEN  
TREASURER

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JAN VANDERSLOOT, MD  
CO-FOUNDER

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CONSULTANT  
JANICE L. KELLOGG, CEO  
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VINCE KONTNY, (RET)  
EXECUTIVE FLUOR  
CORPORATION

**PAST PRESIDENTS**

NANCY DONAVEN, 1996-1998  
CONNIE BOARDMAN, 1994-1996  
FLOSSIE HORGAN, 1992-1994  
CO-FOUNDER

Re: Permit Number A-5-HNB-99-275  
Applicant: The Robert L. Mayer Trust  
The Waterfront Hilton Project  
Hearing Date: Thursday, September 16, 1999  
Item No. Th 8a

Dear Coastal Commissioners:

This letter is to notify you that the Bolsa Chica Land Trust supports the "New Appeal" by Commissioners Estolano and Nava, appealing the approval of a coastal development permit to fill 0.8 acres of wetland by the City of Huntington Beach.

The Bolsa Chica Land Trust's successful lawsuit, Bolsa Chica Land Trust v. Superior Court (1999) 71 Cal.App.4th 493, is quoted by your staff as a reason to appeal the permit to the Commission. Residential housing is not a lawful purpose to fill the wetlands on this site. The Land Trust is concerned that approval of this permit could set a precedent jeopardizing wetlands on the Bolsa Chica Mesa.

Thus, we urge you to support staff's recommendation that you find that "substantial issue exists" with respect to the grounds on which the appeal has been filed, and that you "continue the de novo hearing" to a future Commission meeting, in order to allow additional information to be developed and reviewed.

Thank you.

Sincerely,



Paul Horgan, President  
Bolsa Chica Land Trust

LOCAL SPONSORS: GARDEN GROVE EDUCATION ASSOCIATION  
HUNTINGTON BEACH TOMORROW, ORANGE COAST LEAGUE OF  
NATIONAL SPONSORS: THE IZAAK WALTON LEAGUE, THE NATION,  
THE NATURE CONSERVANCY, SIERRA CLUB, SURFRIDER F



207 21ST STREET • HUNTINGTON BEACH • CALIFORNIA 92648

EXHIBIT No. G

Application Number:  
A-5-HNB-99-275

Letter from Bolsa  
Chica Land Trust

California Coastal  
Commission

Nancy M. Donaven  
4831 Los Patos Avenue  
Huntington Beach, CA 92649  
714/840 7496  
ndonaven@fea.net

**RECEIVED**  
South Coast Region

SEP 14 1999

CALIFORNIA  
COASTAL COMMISSION

September 9, 1999

California Coastal Commission  
South Coast Area Office  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802 4302

Regarding: Permit Number A-5-HNB-99-275  
Appeal of permit to fill 2.2 acres of wetlands  
Item Th, 8a

Dear Commissioners:

I wish to add my support to the appeal by Commissioners Estolano and Nava of the decision of the City of Huntington Beach to allow building of housing on 2.2 acres of wetlands.

As you know it has been amply determined by the California courts that filling of wetlands for the purpose of residential housing is not permitted.

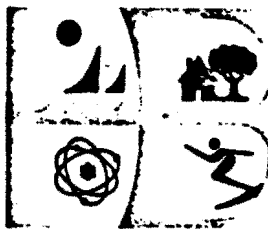
Although the mitigation purpose is a worthy one, that is the restoration of Shipley Nature Center, this objective can certainly be attained in a way other than the destruction of more of our coastal wetlands.

It may not suit the developer's purpose to accommodate the wetlands in the plan for the area but we must not give way to more destruction of any wetlands. They are too valuable to our world. Our past indiscretions have brought us to the brink of total loss of our wetlands. We must husband those wetlands which are left.

Sincerely,

  
Nancy Donaven

<b>EXHIBIT No.</b>
Application Number: <b>A-5-HNB-99-275</b>
Letter from Nancy M. Donaven



# City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

OFFICE OF THE MAYOR

Telephone (714) 536-5358

RECEIVED  
NOV 03 1999

CALIFORNIA  
COASTAL COMMISSION

October 19, 1999

California Coastal Commission  
South Coast Area Office  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4302

**SUBJECT: Appeal of Coastal Development Permit for Phase 2 of the Ocean Grand Resort Project, Item No. A-5-HNB-99-275 - Huntington Beach, CA**

Dear Coastal Commissioners:

The City of Huntington Beach would like to comment on the California Coastal Commission's consideration of the appeal of the Coastal Development Permit (CDP) for development of Phase 2 of the Ocean Grand Resort Project. The City Council at its public meeting of October 18, 1999 voted to formally submit this letter to the Coastal Commission.

The City understands that the Coastal Commission will be reviewing the CDP that approved fill activities for Phase 2 of the Ocean Grand Resort Project for consistency with the City of Huntington Beach Certified Local Coastal Program. The degraded wetlands in question amount to less than 0.8 acres and are severely degraded and non-functioning. They are also isolated, making restoration problematic.

As mitigation, the developer has committed to fund a substantial restoration of the Shipley Nature Center in Huntington Beach. The nature center project includes habitat restoration involving woodland scrub, transitional wetland/upland, and open water/wetland habitats. The entire project includes a total of 2.4 acres of area renovated and restored, approximately one acre of which will be open water and freshwater wetlands. An extensive and ambitious planting plan has been developed for the project that includes planting over 45 different species of container plants and distributing over 30 different variation of seed. When complete, the project will help to restore the Shipley Nature Center. The project will not only restore wildlife habitat values, but will provide a regional amenity that will support nature studies, education, and passive recreational needs as well. The City believes that this benefit more than offsets the loss of degraded and non-functioning wetlands.

We implore you to consider the extensive environmental and mitigation benefits of the Shipley Nature Center Restoration Project in your deliberations concerning revocation of the CDP for the Ocean Grand Resort Expansion Project.

Respectfully,

Peter Green  
Mayor

PG:HZ:MBB:CC

Anjo, Japan

SISTER CITIES

DRUG USE  
LIFE ABUSE

**EXHIBIT No. 1**

Application Number:

**A-5-HNB-99-275**

**Letter from City of  
Huntington Beach**

California Coastal  
Commission



**Bolsa Chica  
Conservancy**



*A Non-Profit, Non-Political Corporation for the Benefit of Bolsa Chica Wetland*

November 4, 1999

Sara Wan, Chairwoman  
California Coastal Commission  
631 Howard Street  
San Francisco, CA 94105-3973

**RECEIVED**  
NOV 15 1999

**CALIFORNIA  
COASTAL COMMISSION**

Dear Ms. Wan,

The Bolsa Chica Conservancy wishes to go on record as favoring the city of Huntington Beach/Hilton Waterfront habitat enhancement plan for the Shipley Nature Center in Huntington Central Park. We see the project as an enhancement of the greater Bolsa Chica ecosystem. We encourage your support.

Huntington Beach Central Park is up stream and flows into the Bolsa Chica wetlands. At one time, the saltmarsh at Bolsa Chica was surrounded by vast freshwater marshes. These willow-dominated marshes were an important part of the overall ecosystem. Today, the only remaining example of this habitat is within Huntington Beach Central Park, which is immediately adjacent to the Bolsa Chica proper.

Conservation zoning, approved by the Commission, guarantees that there will be no development in the Edward's Thumb area of Bolsa Chica which serves as a critical wildlife corridor between Bolsa Chica and Central Park. Bolsa Chica provides habitat for shorebirds and other saltwater organisms. Shipley Nature Center (along with some other parts of Central Park) provides riparian habitat for an enormous number of songbirds. Together they make for an ecosystem of remarkable biodiversity.

The Hilton Waterfront project provides a tremendous opportunity to achieve habitat enhancement within this ecosystem. The initial project received Coastal Commission approval years ago. Please vote to allow this project to go forward.

Sincerely,

Ed Laird  
Chairman

Adrienne Morrison  
Executive Director

Email  
Bolsa@deltanet.com

Phone  
(714) 846-1114

Fax  
(714) 846-4065

3842 Warner Avenue

Huntington Beach

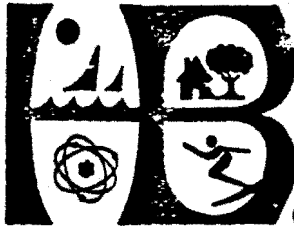
California 92649-4263

**EXHIBIT No. J**

Application Number:  
**A-5-HNB-99-275**

**Letter from Bolsa  
Chica Conservancy**

California Coast  
Commission



**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

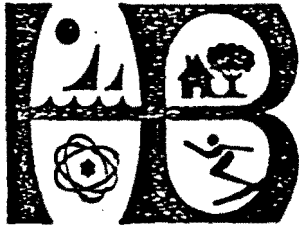
Attachment: Notice of Local Action for Coastal Development Permit No. 99-05

*City's Notice of Action*

**EXHIBIT N K**

Application Number:  
**A-5-HNB-99-275**

City's Notice of  
Action



**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.

**EXHIBIT No. K**

Application Number:

**A-5-HNB-99-275**

Page 2 of 11

California Coastal

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 isolated and degraded habitat which functions minimally as a biological project site is located within the Downtown Specific Plan Area, District

**EXHIBIT No.**

Application Number.

**A-5-HNB-99-275**

**Page 3 of 11**



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.

**EXHIBIT No. K**

Application Number:  
**A-5-HNB-99-271**

**Page 4 of 11**

California Coas

- 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.**

**EXHIBIT No. 7**

**Application Number:**

**A-5-HNB-99-275**

**Page 5 of 11**

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.

**EXHIBIT No. K**

Application Number:

**A-5-HNB-99-275**

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California Coastal  
Commission

**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)

**EXHIBIT No.**

Application Number.

**A-5-HNB-99-275**

**Page 7 of 11**

- 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 N pursuant to the wetland restoration plan (HMMP), and five years of m

**EXHIBIT No. K**

Application Number:

**A-5-HNB-99-275**

Page 8 of 11

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

D9



Vegetative matter will be removed from the soil as directed by the Department or 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

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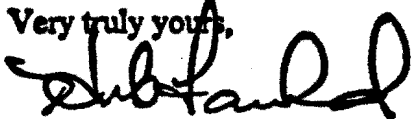
**Coastal Development Permit No. 99-05**  
**Page No. 10**

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

**EXHIBIT N**

Application Number:  
**A-5-HNB-99-275**

**Page 11 of 11**



**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**

**EXHIBIT L**

Application Number:

**A-5-HNB-99-275**

**Appeal Form D**

California Coastal  
Commission

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): CNP 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 \_\_\_\_\_

63

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.)

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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)

E4

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.)

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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 \_\_\_\_\_

L5

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 OceanGate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-8071

**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.

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**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

E<sub>7</sub>

**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

L.B.



**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.

# EXHIBIT No. M

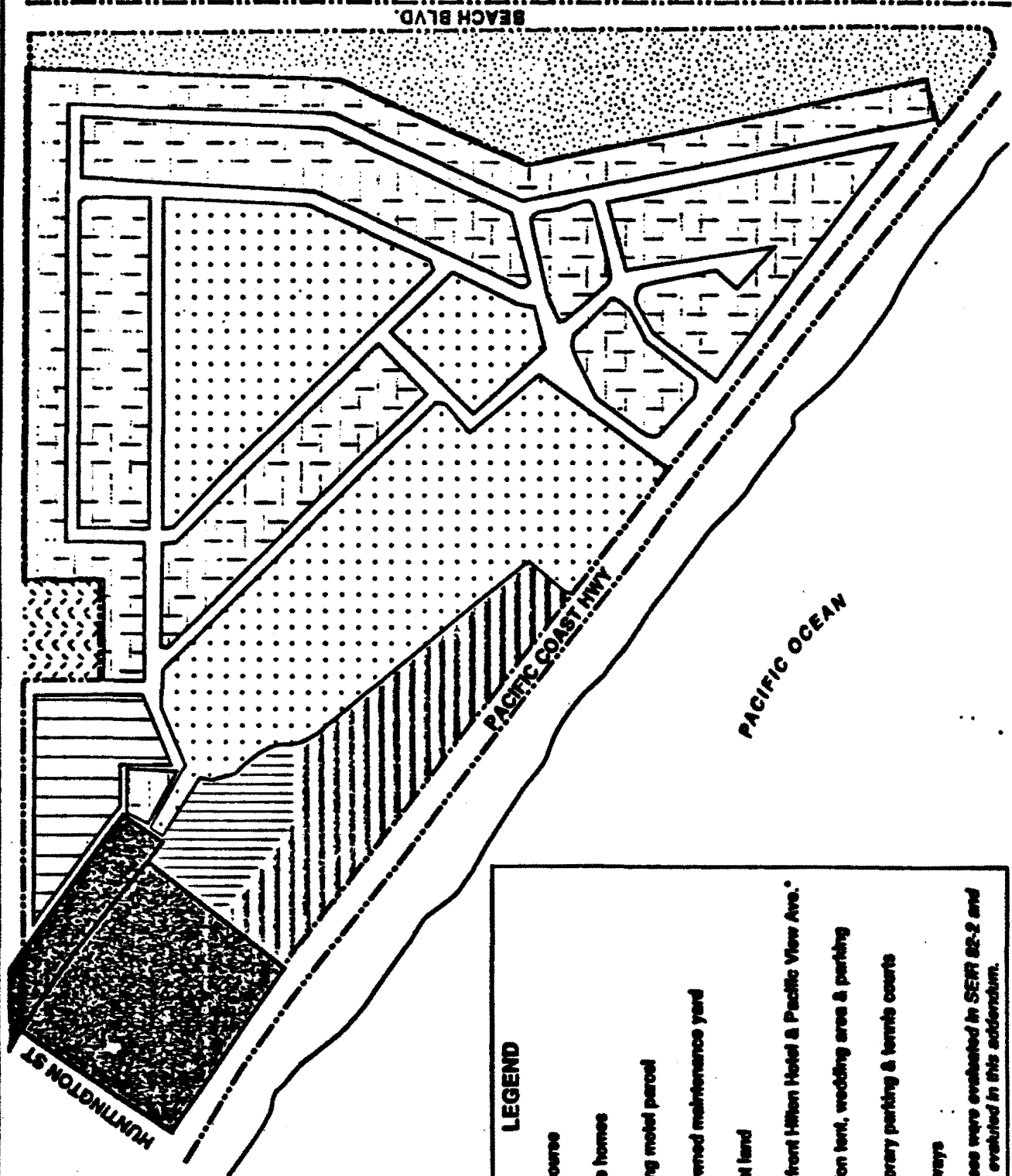
Application Number:

A-5-HNB-99-275

SEIR 82-2

Existing Use Map

California Coastal  
Commission



## LEGEND

- Golf course
- Mobile homes
- Existing motel parcel
- City-owned maintenance yard
- Vacant land
- Waterfront Hilton Hotel & Pacific View Ave.\*
- Pavilion tent, wedding area & parking
- Temporary parking & tennis courts
- Roadways

\* These land uses were evaluated in SEIR 82-2 and are not being evaluated in this addendum.

FIGURE

Existing Land Use Map (1998) - Plan

EIP



Scale: 1" = 100 feet

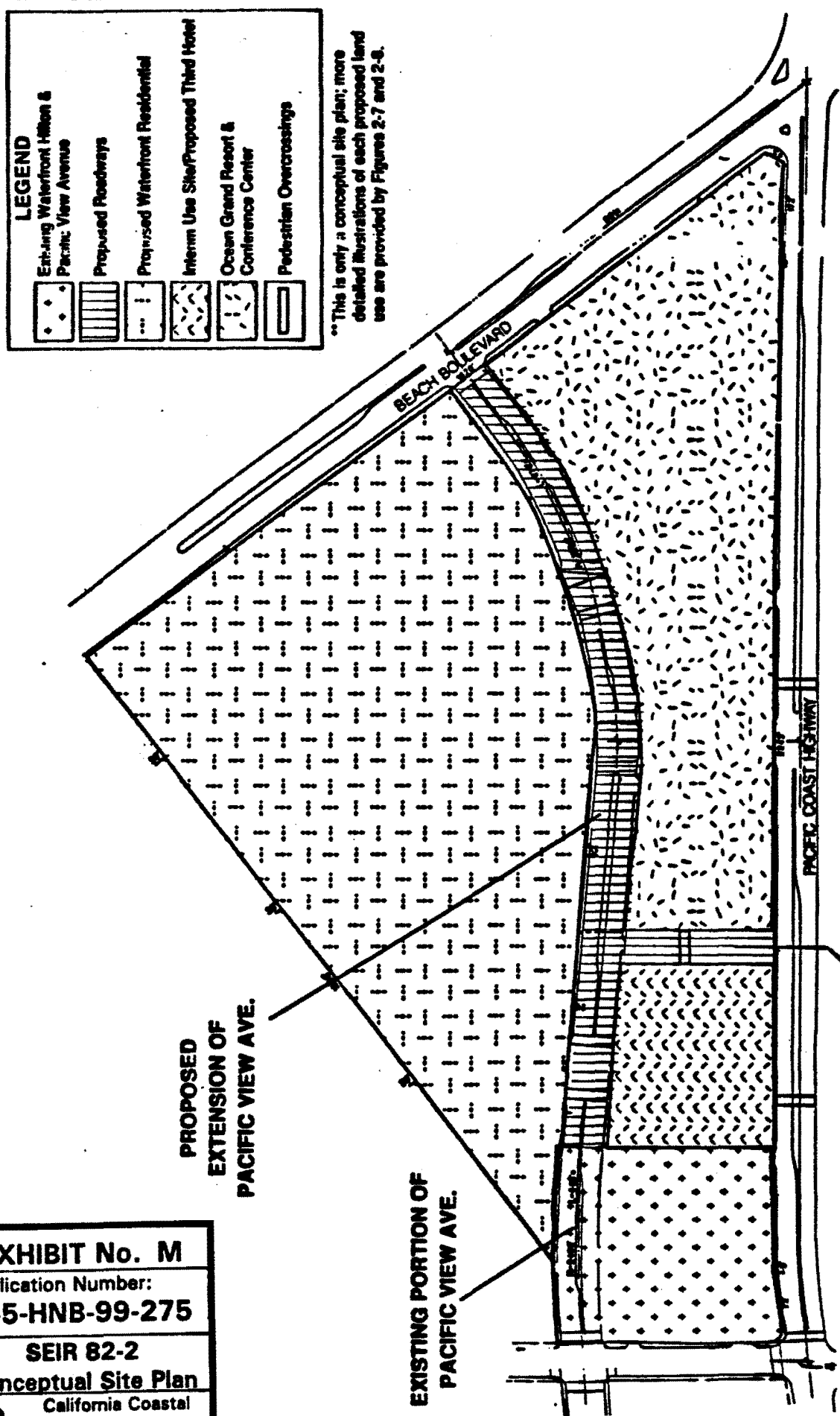
**EXHIBIT No. M**

Application Number:  
**A-5-HNB-99-275**

**SEIR 82-2**

**Conceptual Site Plan**

California Coastal



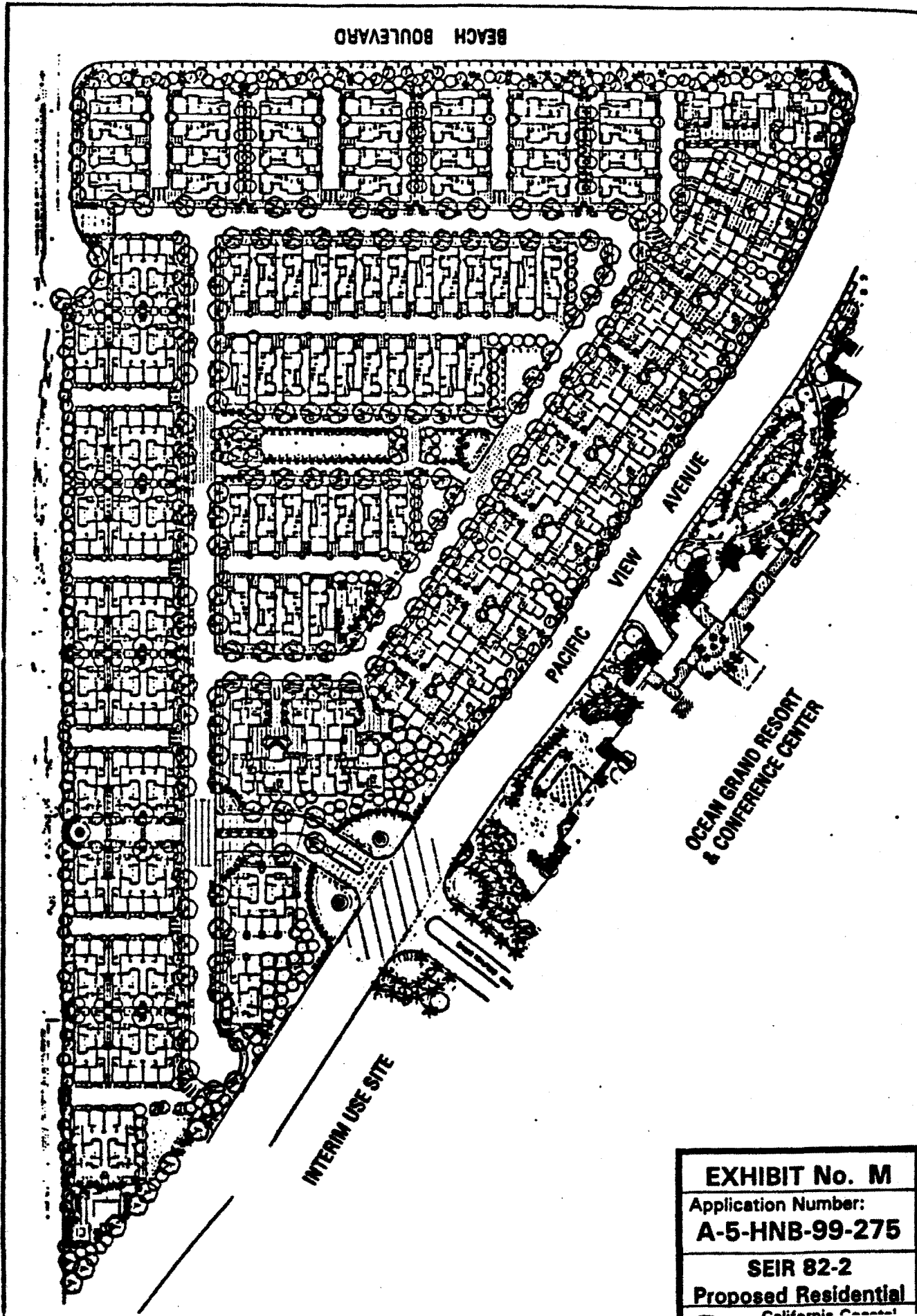


FIGURE 1  
Proposed Waterfront Residential

EIP



Scale: 1" = 100'  
 Date: 1/19/98  
 By: Robert Meyer Corp.

**EXHIBIT No. M**  
 Application Number:  
**A-5-HNB-99-275**  
 SEIR 82-2  
 Proposed Residential  
 California Coastal

4.15

**CONSERVATION OVERLAY**

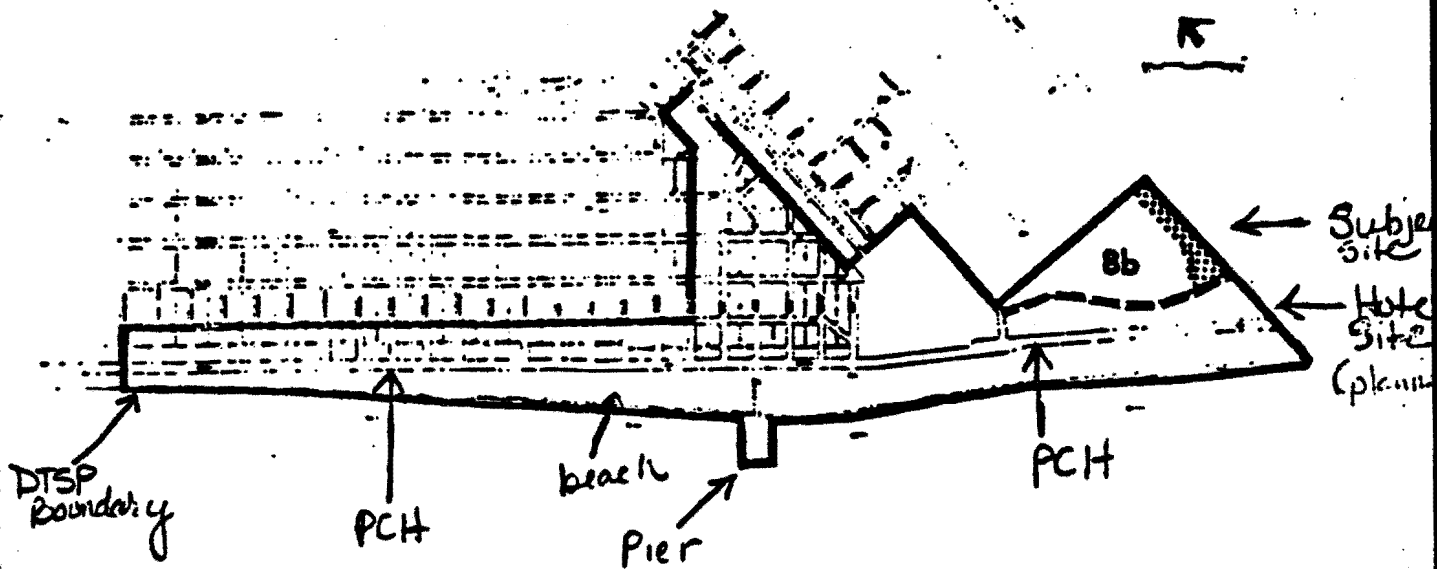
**Purpose.** The conservation overlay is intended to regulate those areas which have been preliminarily identified as wetlands. Upon determination by the California Department of Fish and Game that an area is classified as a wetland the conditions of this overlay shall apply

**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-

<b>EXHIBIT No. N</b>
Application Number: <b>A-5-HNB-99-275</b>
<b>Conservation Overlay Section 4.15 of LIP</b>
California Coastal Commission



#### LEGEND

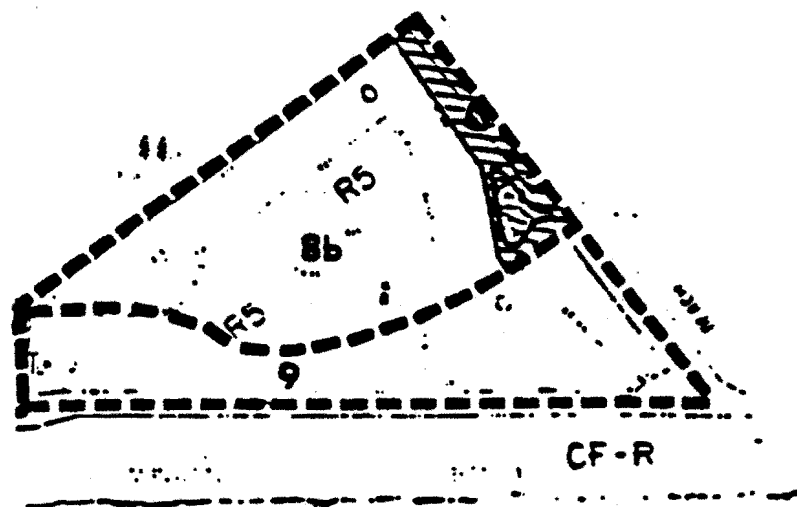


Degraded Wetlands

Restorable Wetlands



Specific Plan Boundary



Revised January 1989



HUNTINGTON BEACH CALIFORNIA  
PLANNING DIVISION

Conservation Overlay

11.1.1 H

EXHIBIT O

Application Number:

A-5-HNB-99-275

Commission Wetland  
Guidelines

 California Coastal  
Commission

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  
- which is a + Environmental

A-5-HNB-99-275

Exhibit 

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 feasible<sup>10</sup> 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 disruption<sup>11</sup> 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.

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<sup>10</sup> "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.

<sup>11</sup> 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.



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 productivity<sup>19</sup> of coastal waters and will maintain "healthy populations"<sup>20</sup> 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"<sup>21</sup> of marine organisms

---

<sup>19</sup> 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.

<sup>20&21</sup> 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-HNB-99-275

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 ways<sup>22</sup> besides a boating facility to restore the wetland.

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<sup>22</sup> "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.

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

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.

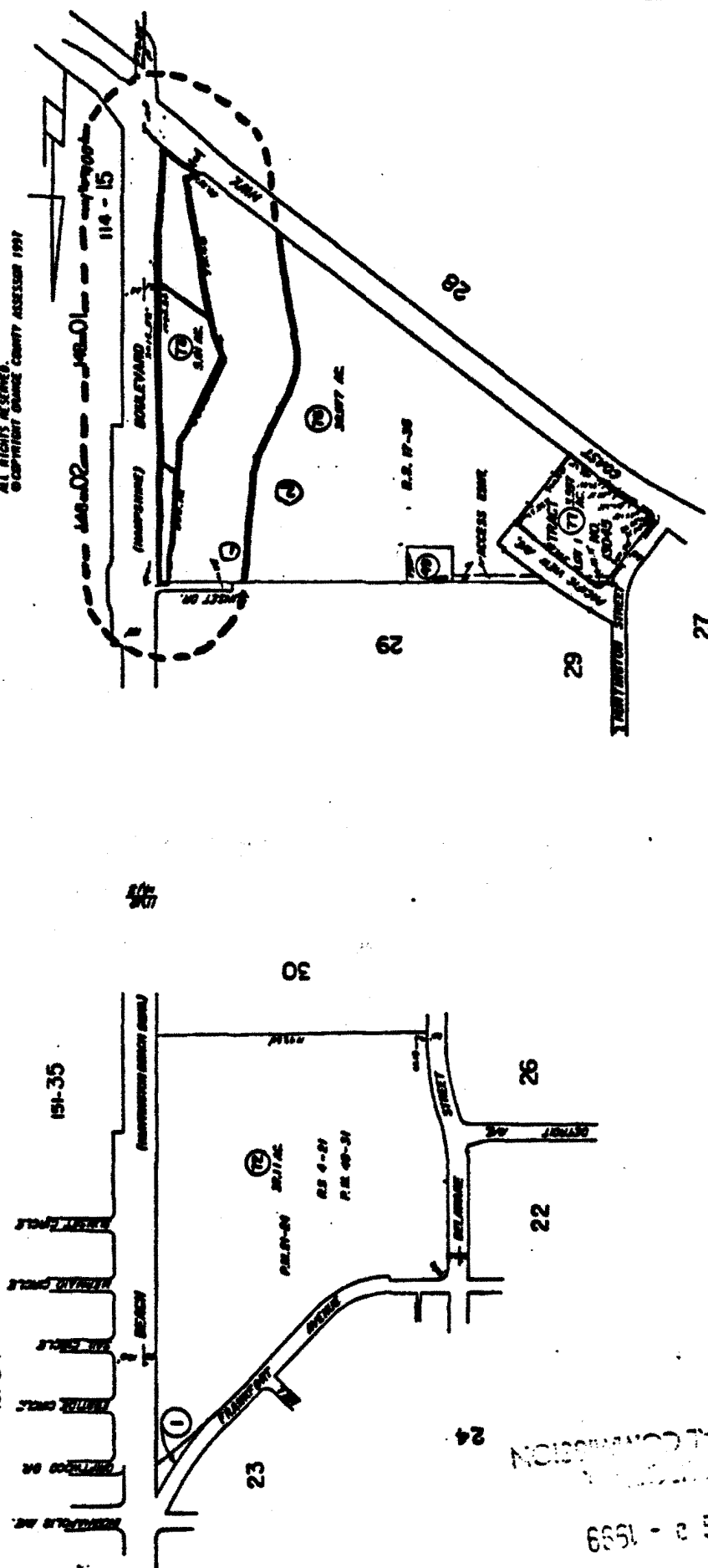
Adopted February 4, 1981

A-5-HNB-99-275

07

**24-25**

THIS MAP WAS PREPARED FOR GRANGE COUNTY ASSESSOR DEPT. PLUMMER & SONS. THE ASSESSOR MAKES NO GUARANTEE AS TO ITS ACCURACY AND ASSUMES NO LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED. OCTOBER 1991 GRANGE COUNTY ASSESSOR 1991



**ASSESSOR'S MAP  
BOOK 24 PAGE 25  
COUNTY OF ORANGE**

**NOTE - ASSESSOR'S BLOCK &  
PARCEL NUMBERS  
SHOWN IN CIRCLES**

MM 628-46,47

**TRACT NO. 13043**

1944

**EXHIBIT N**

**Application Number:**

**A-5-HNB-99-275**

## Assessor's Parcel Map

## California Coast

# PHOTOS

Approximate vantage point  
corresponding to following p

RECEIVED

APR 15 1999

DEPARTMENT OF PLANNING

RECEIVED  
SOUTH COAST REGION

AUG 2 - 1999

CALIFORNIA  
COASTAL COMMISSION

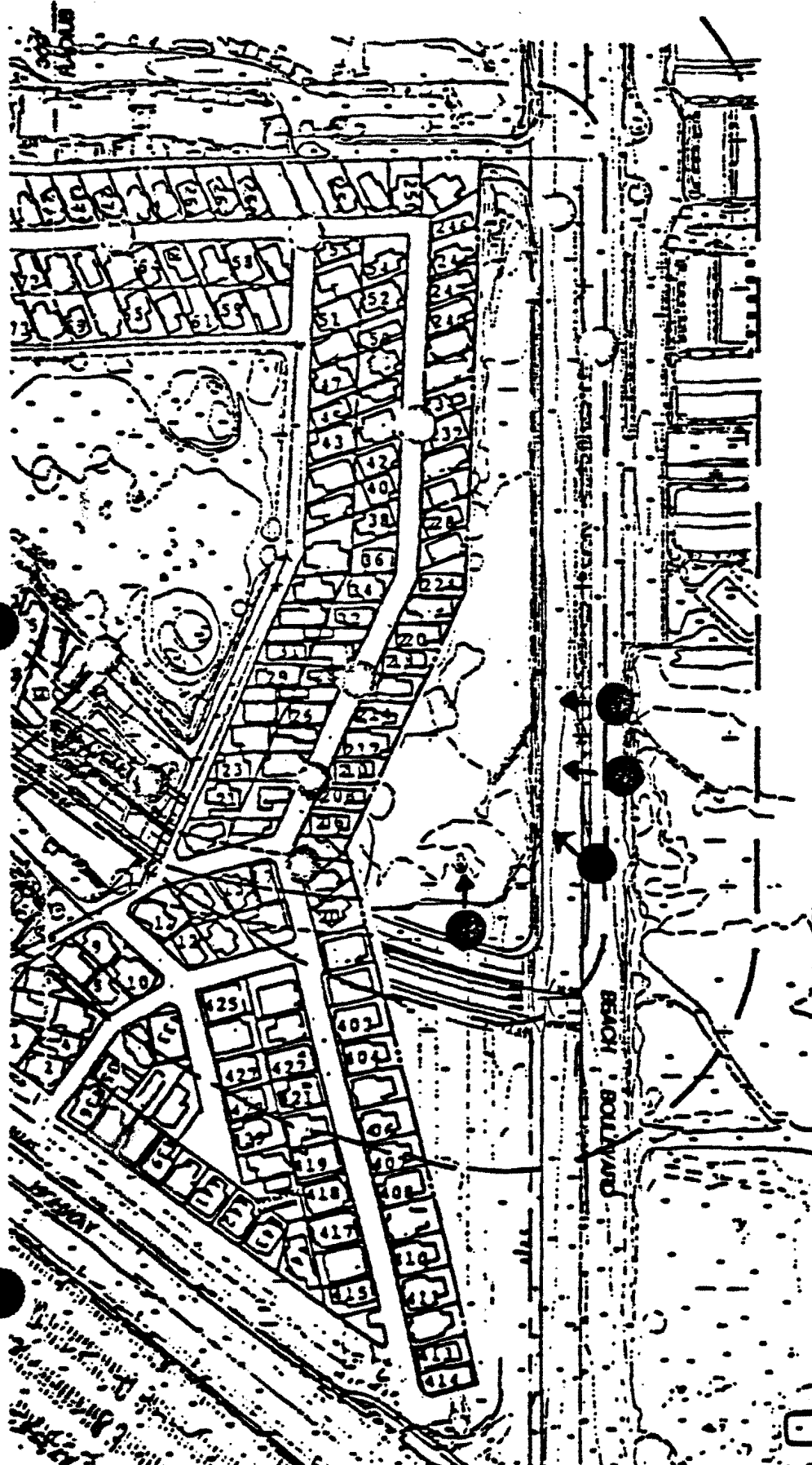


EXHIBIT No. Q

Application Number:  
A-5-HNB-99-27

Photographs

California C



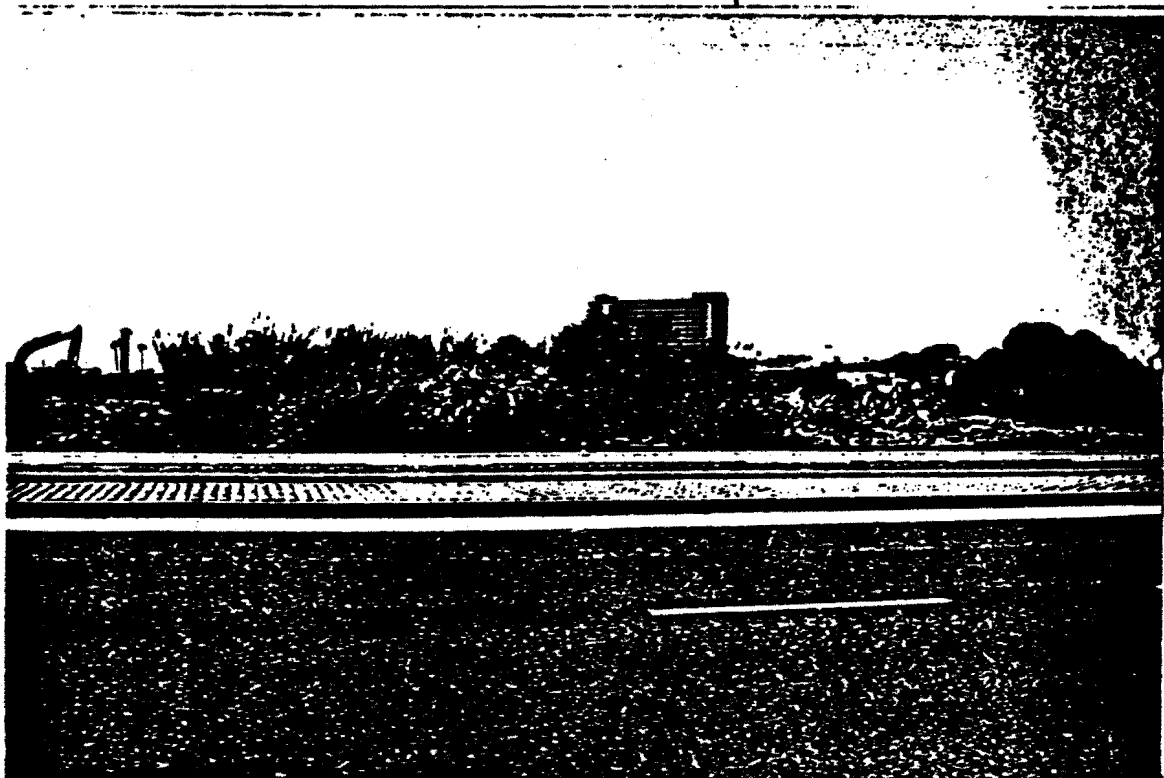
Coastal  
9 - 1999  
COMM  
MISSION

**Facing North West**

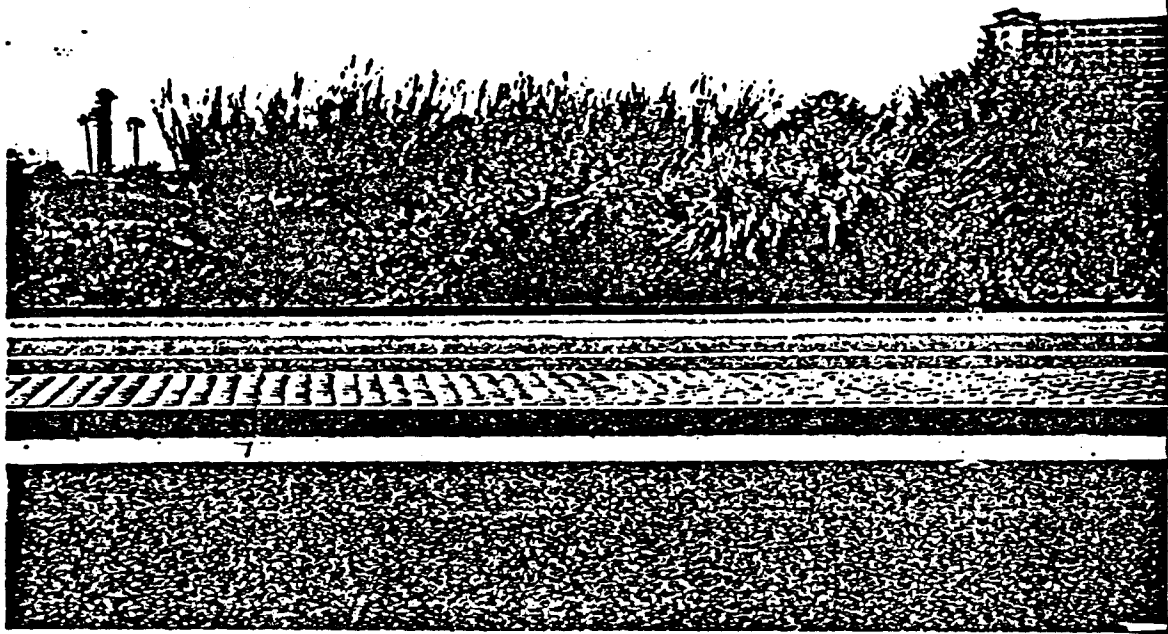
**Photo #1**

**Facing West**

**Photo #2**







AUG 3 - 1999  
 MISSOURIA  
 COMMISSION

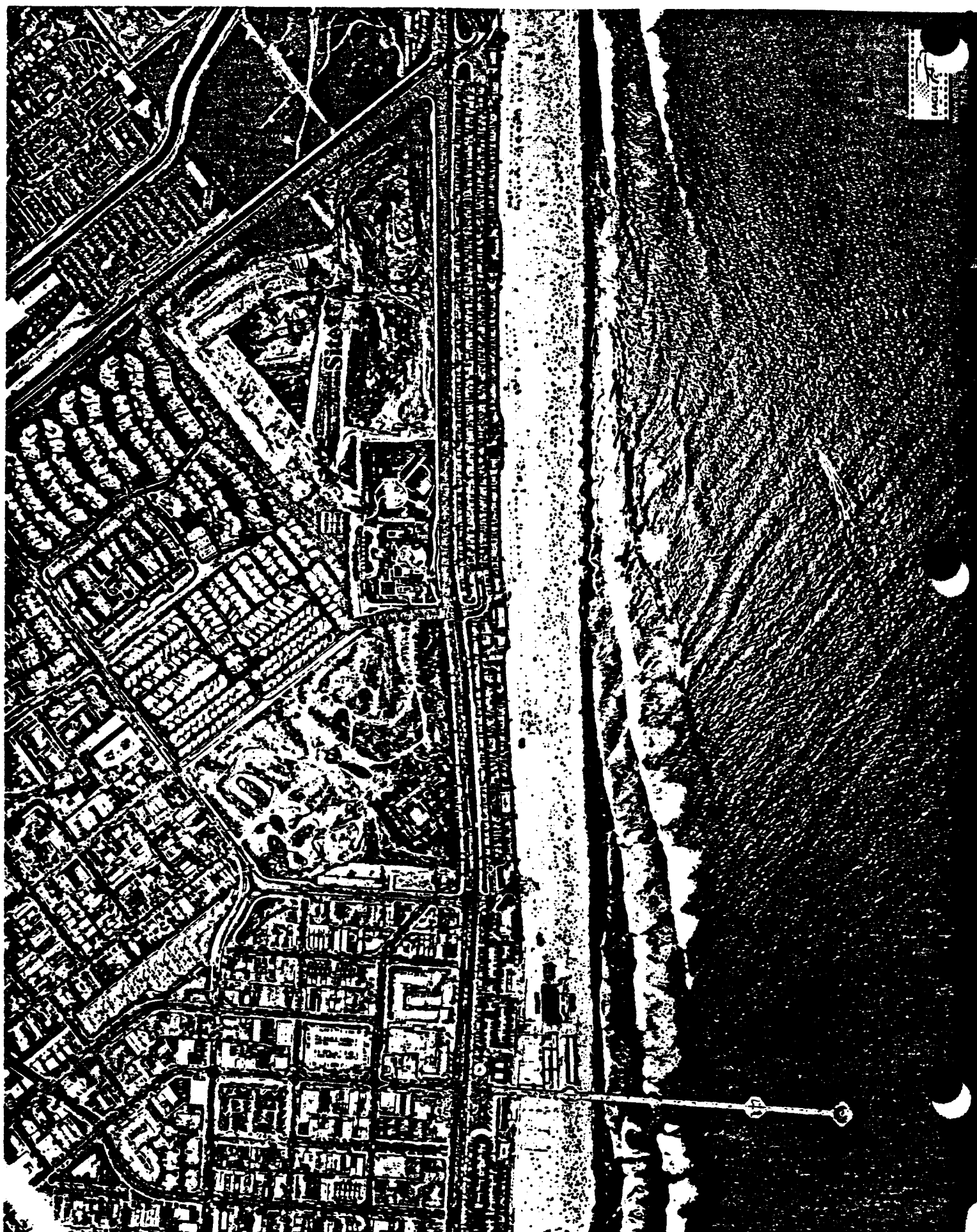
**Facing West**

**Photo #3**

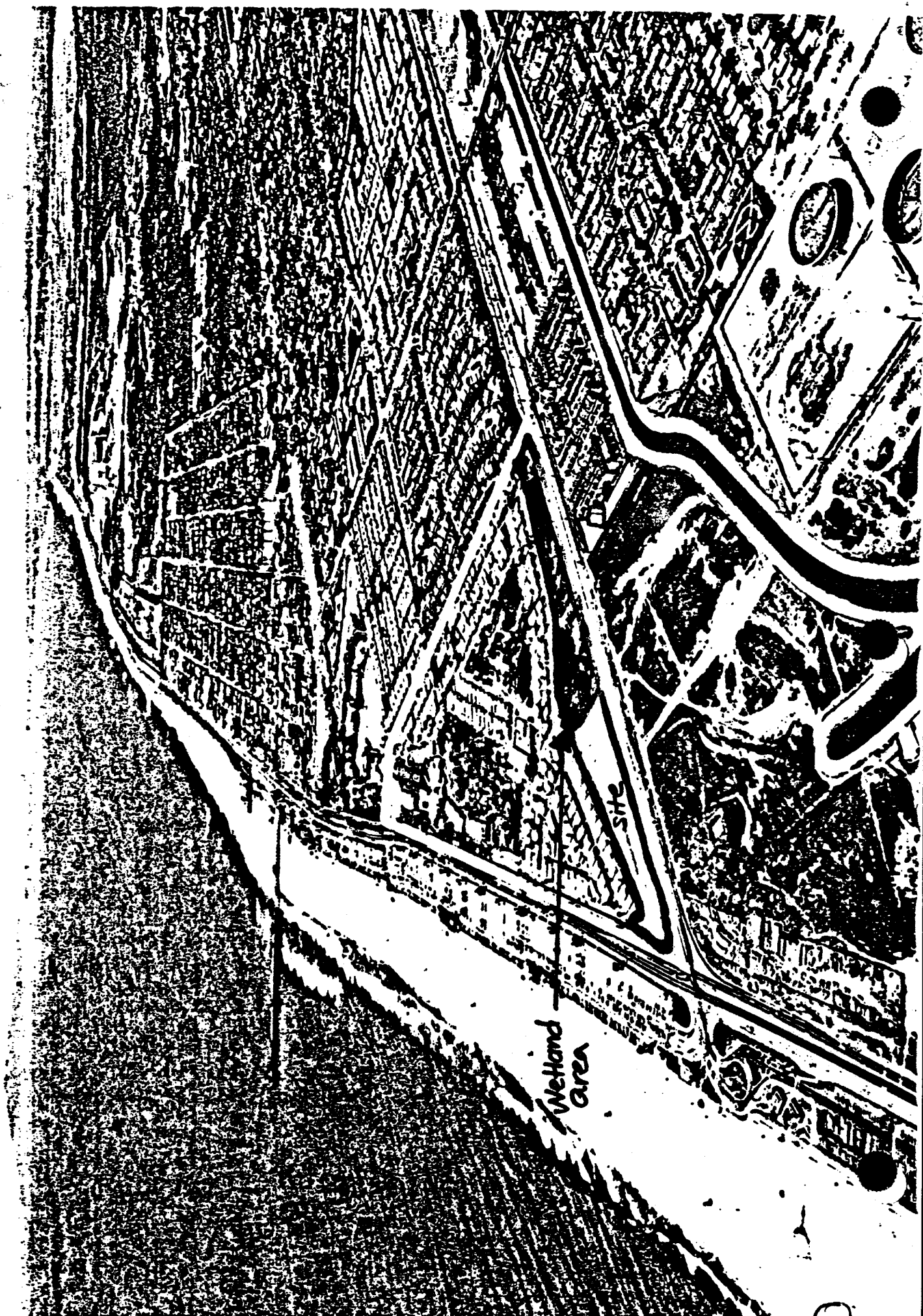
**Facing North**

**Photo #4**









# COASTAL BRACKISH MARSH

PuPTJ - *Peltandra, emergent, Peribaea, Typha/Sagittaria (Cattail, Bulrush)*

PuDS - *Peltandra, emergent, Distichlis, Salicornia (Yellow)*

PuPS - *Peltandra, emergent, Peribaea, Salicornia (Pink/White)*

PuVX - *Peltandra, emergent, Peribaea, Salicornia (Pink/White)*

## ALKALI MEADOW

PuPTJ - *Peltandra, emergent, Peribaea, Typha/Sagittaria (Cattail, Bulrush)*

PuPTJ - *Peltandra, emergent, Peribaea, Typha/Sagittaria (Cattail, Bulrush)*

## ORNAMENTAL TREES

CuM - *Casahuate, woody, Myrsine*

CuS - *Casahuate, woody, Salicornia (Grass-like)*

## RUDERAL

PuPA - *Peltandra, emergent, Peribaea, Arundo (Cattail)*

PuPC - *Peltandra, emergent, Peribaea, Corchorus (Pumpkin)*

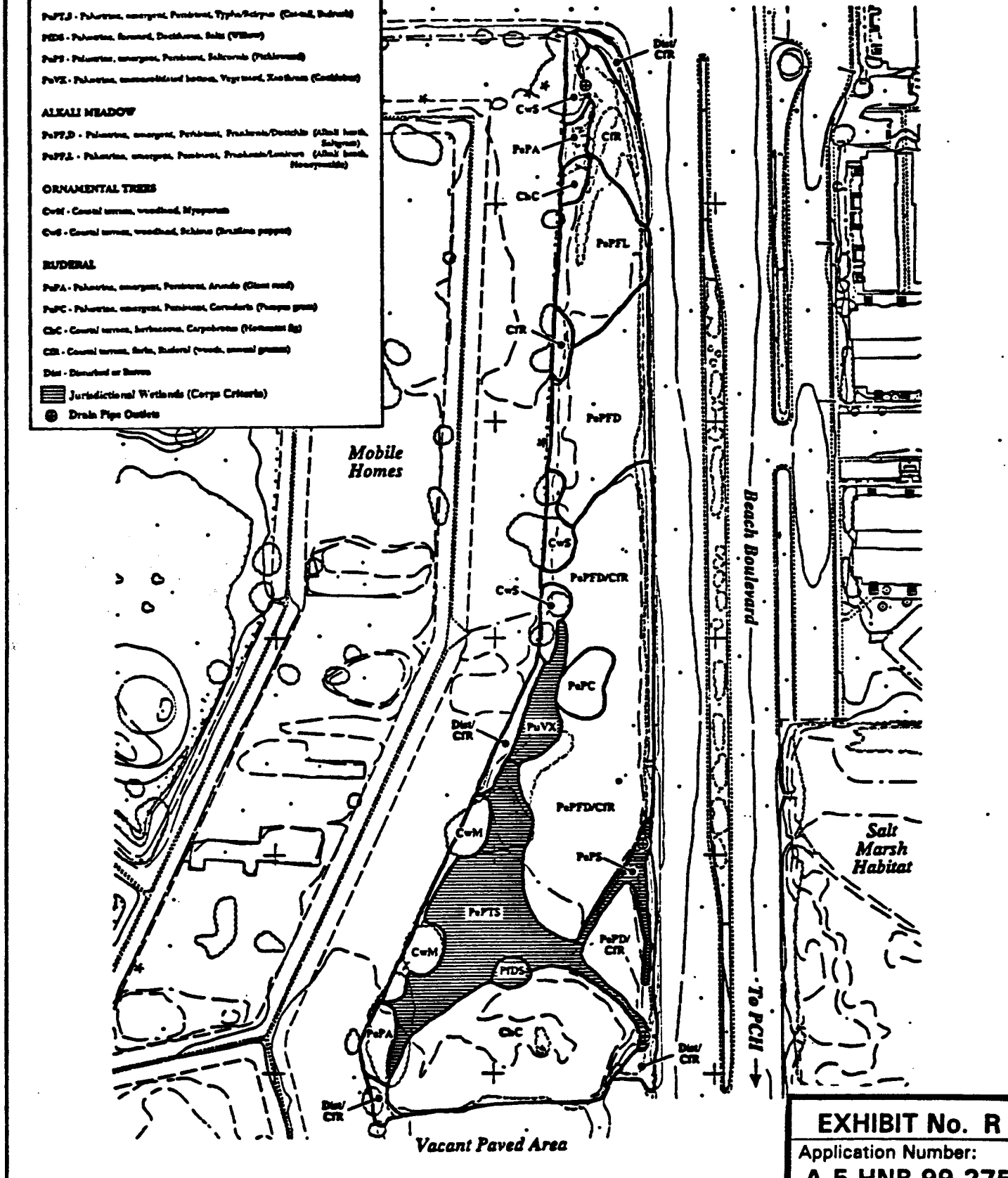
CuS - *Casahuate, woody, Salicornia, Carpobrotus (Mossy)*

CR - *Casahuate, Salicornia, Ruderal (weeds, annual grasses)*

Dist - *Disturbed or Barren*

Jurisdictional Wetlands (Corps Criteria)

Drain Pipe Outlets



10/22/97(RMC730)

IN

Scale in Feet

EXHIBIT No. R

Application Number:

A-5-HNB-99-275

Vegetation Types

California Coastal  
Commission



# SECTIONAL DISTRICT MAP • 14-6-11

## CITY OF HUNTINGTON BEACH ORANGE COUNTY, CALIFORNIA

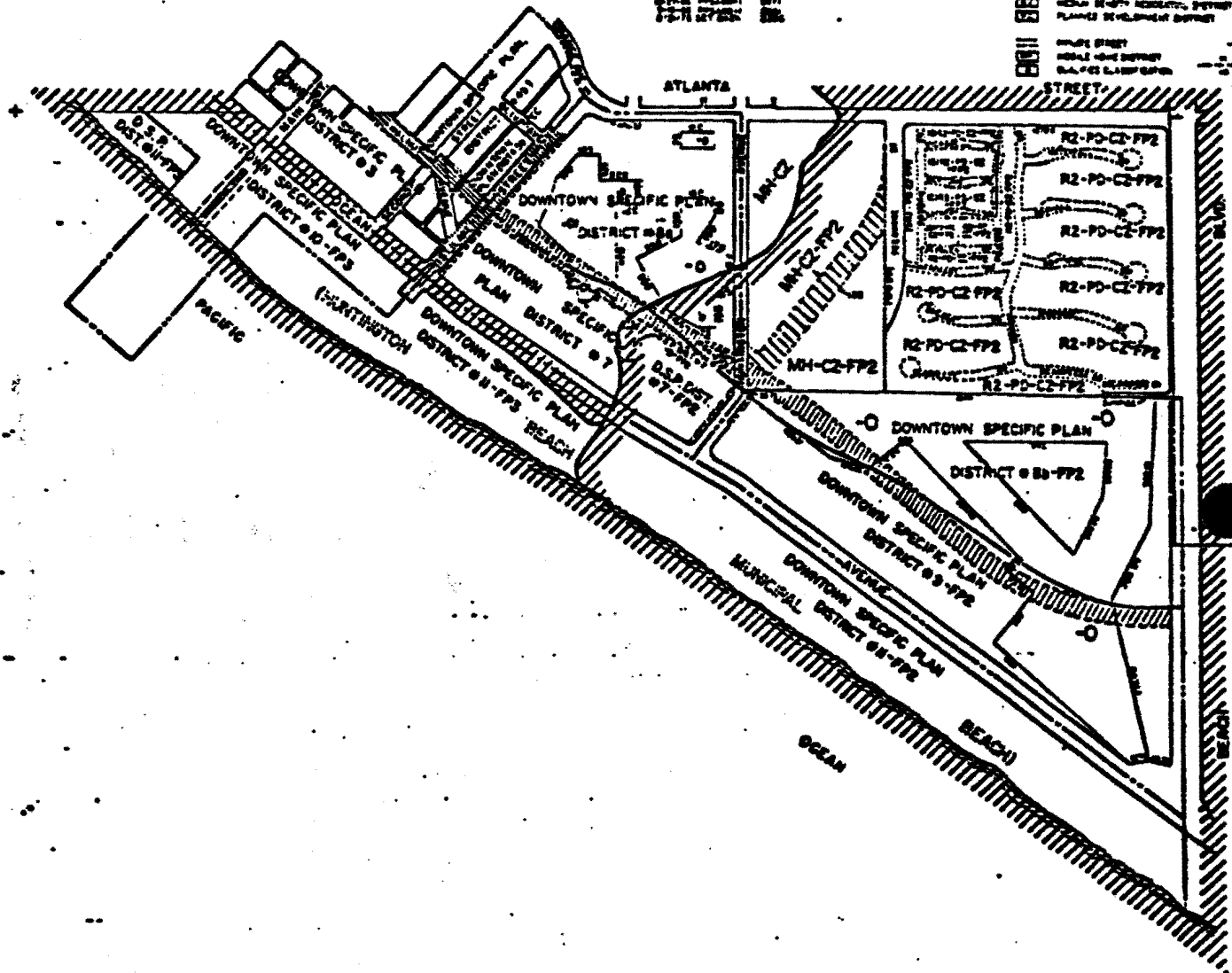


ADOPTED MAP NO. 1, 1998  
CITY OF HUNTINGTON BEACH, CALIFORNIA  
APPROVED BY THE CITY COUNCIL  
ON MAY 14, 1998  
AT THE REGULAR MEETING  
Held at the City of Huntington Beach, California  
City Hall, 1000 Pacific Avenue, Huntington Beach, California  
94901

**NOTE:**  
All dimensions are in feet  
unless otherwise noted  
The City of Huntington Beach, California  
is not responsible for any errors or omissions  
in this map.

**LEGEND:**

- RESIDENTIAL SINGLE-FAMILY DISTRICT
- RESIDENTIAL MEDIUM-DENSITY DISTRICT
- RESIDENTIAL HIGH-DENSITY DISTRICT
- COMMERCIAL DISTRICT
- INDUSTRIAL DISTRICT
- OFFICE DISTRICT
- RECREATION DISTRICT
- UNIVERSITY DISTRICT
- ARTIST DISTRICT
- TECHNOLOGY DISTRICT
- INTEGRATED PLANNING DISTRICT
- PLANNED DEVELOPMENT DISTRICT



**EXHIBIT No.**

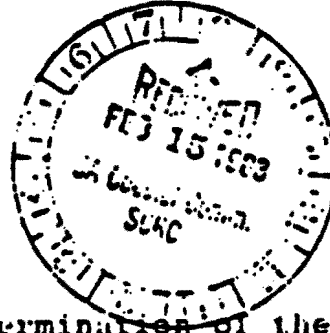
**Application Number:**  
**A-5-HNB-99-275**

**City Map for**  
**District 8b**  
**California Coastal**

## 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)

Exhib.

EXHIBIT No. T

Application Number:

A-5-HNB-99-275

CDFG 1983 Study

California Coastal  
Commission

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.



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 (0.8 ac 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

I<sub>3</sub>

- (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.

15-11-13-99-275

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-6200  
FAX (415) 904-6400

**MEMORANDUM**

**TO:** Meg Vaughn, Teresa Henry,  
Long Beach

**FROM:** John Dixon

**SUBJECT:** Huntington Beach "Waterfront Development"

**DATE:** November 23, 1999

**EXHIBIT No. U**

Application Number:

**A-5-HNB-99-275****CCC 11/23/99****Memorandum**California Coastal  
Commission

LSA Associates has done several field studies to determine the extent of wetlands on the subject property. In their original delineation<sup>1</sup>, they argued that a large portion of the site was not wetland based on a hydrological analysis and concluded that 0.60 acre was waters of the U.S. and adjacent wetland. Upon visiting the site on October 14, 1999, I found that several areas, which had not been delineated nonetheless, had a preponderance of hydrophytic vegetation. These areas had relatively discrete boundaries where different vegetation types abutted and I requested that the applicant prepare a supplementary report which showed these areas in separate polygons on the map and which discussed them separately. This was done and presented in a report<sup>2</sup> which concluded that the total wetland area was 0.57 acre, again based on a delineation that excluded those areas that had a preponderance of hydrophytic vegetation but for which the applicant's consultants concluded that there was a lack of wetland hydrology. The new polygons were coded for the dominant species but did not indicate the relative abundance. At my request, LSA gathered the latter information and provided it to me on an annotated map on November 15, 1999.

Data for the transitional areas in question are provided in Table 1. In the field, the vegetation tended to trend from pickleweed to alkali heath+saltgrass to saltgrass+bermuda+brome grasses as one moved from the west central to the east central and northern portions of the site. The delineated areas in the November 3, 1999 report add to 0.58 acre. In addition, I consider the wetland area to include those polygons in the central portion of the site which contained alkali heath and were designated "W3,T6", "T6, T8, T7", "T8, T6", "T8, T6, T7,W3"; the polygon on the eastern edge of the site designated "T8, T7" (saltgrass between patches of pickleweed), and the patch of willow in the southeastern portion of the site designated "T2." These polygons have a total area of 0.116 acre.

<sup>1</sup> LSA. 1998. Biological resources evaluation and jurisdictional/wetland delineation for the waterfront development site, Huntington Beach, CA. Report to Robert Mayer Corporation dated February 4, 1998.

<sup>2</sup> LSA. 1999. Letter (Subject: Waterfront Development - Wetland analysis according to coastal act wetland definition) from Art Homrighausen of LSA to Larry Brose of Robt. Mayer Corp. dated November 3, 1999.

Table 1. Vegetation in polygons within transitional areas. Bold areas designated as wetland in this memo report.

Polygon (Roughly N to S)	Area (ac)	Percent Pickleweed ( <i>Salicornia</i> <i>virginica</i> )	Percent Alkali Heath ( <i>Frankenia</i> <i>grandifolia</i> )	Percent Salt Grass ( <i>Distichlis</i> <i>spicata</i> )	Percent Bermuda Grass ( <i>Cynodon</i> <i>dactylon</i> )	Percent Heliotrope ( <i>Cressa</i> <i>truxillensis</i> )	Percent Arroyo Willow ( <i>Salix</i> <i>lasiolepis</i> )	Percent Ripgut Brome ( <i>Bromus</i> <i>diandrus</i> )
Wetland Status	-	OBL	FACW+	FACW*	FAC	FACW	FACW	UPL
N: U3	0.086	0	0	0	0	25	0	75
N Central: U3,T8,T7	0.092	0	0	70	15	0	0	15
E Central: T7,T8,U3	0.087	0	0	70	15	0	0	15
Central: T8,T8,T7	0.047	0	85	7	8	0	0	0
Central: T8,T6	0.019	0	20	80	0	0	0	0
W Central: T8,T6,T7,W3	0.031	60	20	15	5	0	0	0
Between E channels: T8,T7	0.015	0	0	75	25	0	0	0
SE: T2	0.004	0	0	0	0	0	100	0

\*questionable indicator status at inland sites in California

There are two additional transitional areas in the north central and east central portions of the site that are questionable. These are designated "U3,T8,T7" and "T7, T8, U3" and cover an area of 0.179 acre. I consider these polygons to be upland areas based on the admixture of upland grass, the poor indicator status of bermuda grass, and the broad moisture range of saltgrass in coastal California.

I estimate the area of wetland to be 0.696 acre. Should the Commission decide that the other transition areas with a preponderance facultative wetland species are also wetlands, the total area would be 0.875 acre.