

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

RECORD PACKET COPY

Filed: 7/26/99
 Open & Continued: 8/10/99
 49th Day: Waived
 Staff: MG-LB **MG**
 Staff Report: 3/30/00
 Hearing Date: April 11-14, 2000
 Commission Action:



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 wetland transitional habitat and the enhancement of 1.4 acres of existing transitional, upland, and woodland habitat is located outside of the Coastal Zone at the Shipley Nature Center.

APPELLANTS: Coastal Commissioners Cecilia Estolano & Pedro Nava

STAFF NOTE:

1. This appeal involves the City of Huntington Beach's approval of .8 acres of wetland fill for unspecified development on a 5 acre parcel owned by the City. The City's approval was based on the application of its LCP that incorporated by reference the Commission's Interpretive Guidelines relating to wetlands. The Commission's several interpretive guidelines, adopted between 1977 and 1981, were intended to assist in understanding how Coastal Act policies may be applied at the time when they were adopted. However, interpretive guidelines are what their name denotes and do not, and indeed cannot, by virtue of their own operation and effect

authorize or prohibit any particular uses of coastal resources. In this case, however, because the City of Huntington Beach elected and the Commission approved the incorporation of the wetland guidelines into the LCP, the language of those guidelines became legally enforceable and controlling provisions of the LCP. Accordingly, decisions identified as having been made pursuant to the Commission's Guidelines were in fact made pursuant to the City's certified LCP.

The Chapter 3 policies of the Coastal Act, the Commission's regulations, and the certified LCP, provide the operative authority and standards of review for regulatory and planning decisions under the Coastal Act. On appeal, the Commission reviews the project as it was proposed to and approved by the local government for its consistency with the certified LCP and where applicable, the access and recreation policies of the Coastal Act. The LCP must be interpreted in a manner consistent with the Coastal Act and its implementing regulations. As with any application of standards of review, the application must also be interpreted in light of and conform to any judicial rulings affecting the implementation of those provisions. Examples of such rulings include *Nollan v. CCC* (1987) 483 U.S. 825, *Dolan v. City of Tigard* (1994) 512 U.S. 374, *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, *Sierra Club v. CCC* (1993) 15 Cal.Rptr. 2d 779, and *Bolsa Chica Land Trust v. Superior Court* (1999) 83 Cal.Rptr. 850.

2. On April 16, 1999, the Army Corps of Engineers (Corps) provided a letter of denial without prejudice to the applicants, in response to the applicant's notification to the Corps of their intent to carry out a project under the nationwide permit (NWP) 26. Because the Commission disagreed with the Corps' consistency determination for the Nationwide Permit Process, a Coastal Zone Management Act (CZMA) consistency certification or coastal development permit must be obtained prior to the applicant proceeding under the NWP 26. Because the CDP approved by the City was appealed by the Commissioners, the applicants have not yet received the required consistency with the CZMA. The Corps letter also states that, "... provisional verification is valid for a period not to exceed two years unless the NWP is modified, reissued, revoked, or expires before that time." The NWP has been modified. Recent changes to the regulations governing the NWP 26 will go into effect on June 8, 2000. The changes to the Corps regulations will reduce the maximum area of wetland fill permitted under an NWP 26 from 3 and 1/3 acres to 0.5 acres. Under the new Corps regulations, if the applicants do not receive the required CZMA consistency by June 8, 2000, they will have to re-apply for an individual Corps permit to fill greater than 0.5 acres of wetland.

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 restoration 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)."*

With regard to wetlands less than one acre in size, the Certified LCP indicates that some fill for a non-allowable use is appropriate only if the overall project is a restoration project and if the wetland to be filled is small, extremely isolated and incapable of being restored. 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. In addition, the Fish and Game determination for the project site has determined that the freshwater wetland can feasibly be restored to a larger wetland.

With regard to other restoration projects that may be permitted under Section 30411, other than boating facilities, the Certified LCP states 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, Section 30411 of the Coastal Act cannot be used as the basis for approval of new development in wetlands for otherwise non-permitted uses. Consequently, section 30411, as referenced in the LCP, cannot 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.

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. 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 Coastal Act. Additionally, approval of the proposed project would not comply with either the Certified LCP or the California Environmental Quality Act because there are feasible mitigation measures and 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.

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. In addition, the Fish and Game determination for the project site has determined that the freshwater wetland can feasibly be restored to a larger wetland. Thus, the degraded nature of the on-site wetlands does not provide a basis to justify filling them. In addition, the entire parcel is 5.01 acres. Development of the parcel is clearly feasible without filling 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 approve wetland fill only if it is the least environmentally damaging alternative.

If the fill of wetlands here were permissible pursuant to the LCP and the Coastal Act, the mitigation approved by the City is not appropriate. 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 and transitional wetland habitat and to enhance 1.4 acres of existing 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 existing 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 and transitional wetland habitat 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 propose to impact. Using the total wetland area determined by the Commission's Staff Ecologist, 0.696 acre, the proposed mitigation ratio would then be increased approximately 1.44:1.

To ensure that adverse impacts to wetlands are fully mitigated, the Commission requires a mitigation ratio sufficient to ensure that wetland habitat is successfully created. 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 will assure that 0.696-acre of wetland habitat is successfully created.

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; and (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. Therefore, staff recommends that the Commission deny the proposed project.

STAFF RECOMMENDATIONS FOR SUBSTANTIAL ISSUE AND DE NOVO PERMIT

Procedural Note: When staff recommends substantial issue, unless three or more commissioners wish to hold a hearing on the question of substantial issue the Commission will have found substantial issue and then proceeds to a de novo hearing on the matter either at the current or a subsequent Commission meeting. If the Commission does go into a hearing on the question of substantial issue, the staff recommends that the Commission take the following actions at the conclusion of that hearing.

The staff recommends that the Commission make the following motions and adopt the following resolutions:

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

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. Letters in Support of the Proposed Project
- D. Letters and Petition in Opposition to the Proposed Project
- E. City of Huntington Beach Notice of Action
- F. Appeal Form D
- G. SEIR 82-2 Plans Depicting Proposed Residential Housing
- H. Conservation Overlay from Downtown Specific Plan
- I. Assessor Parcel Map
- J. Photographs
- K. Vegetation Types Map (LSA) and Map Showing Area Cleared Within Conservation Overlay
- L. City of Huntington Beach Map for District 8b
- M. Department of Fish and Game Determination of Status of the Huntington Beach Wetlands, February 4, 1983
- N. Coastal Commission Memorandum, November 23, 1999
- O. Sample Elevation Points Within Project Area (LSA)

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.
12. Waterfront Wetlands Restoration Project, Letter and Attachments from the Robert Mayer Corporation to the Commission dated February 9, 2000.
13. Waterfront Wetlands Restoration Program, Shipley Nature Center, City of Huntington Beach Redevelopment Agency in partnership with The Robert Mayer Corporation, February 2000.
14. Army Corps of Engineers Letter dated April 16, 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. The project approved by the City is within the City's LCP area (Coastal Zone). 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. At the de novo public hearing on the merits of the project the standard of review is the certified LCP in light of those provisions of applicable law resulting from binding judicial rulings. 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

Thirty-one (31) letters and one (1) citizen's petition have been received regarding the subject appeal. Twenty-two (22) of the letters are in support of the project approved by the City, and nine (9) of the letters oppose the project approved by the City. The petition was received at the February Commission meeting and is signed by 90 residents of the community who are in opposition to the project approved by the City and in support of the Commissioner's appeal.

Eight (8) of the letters of support were received from representatives of the City of Huntington Beach. Two letters, from the Robert Mayer Corporation, were in response to the February hearing Staff Report. The Mayer Corporation letters and attachments were handed out to the Commission at the February hearing. In order to minimize the length of exhibits to this staff report, the attachments were not included in this staff report; however, they are referenced as substantive file documents. Other letters of support were received from Orange County Supervisor, James Silva, the Amigos de Bolsa Chica, the Huntington Beach Chamber of Commerce, the Conference and Visitors Bureau, Huntington Dodge, the Huntington Beach Central Park Equestrian Center, Century Homes, the Bolsa Chica Conservancy, David Guido (Huntington Beach), Roxanne Lane (Huntington Beach), and Harry Crowell (Irvine).

Letters in opposition to the project approved by the City were received from the Bolsa Chica Land Trust (2 letters), Orange County Coastkeeper, Friends of Harbors, Beaches, and Parks, the Southeast Huntington Beach Neighbors Association, Jan Vandersloot, M.D., Nancy Donaven (Huntington Beach), and Ray Bervedickus and George Hubner (San Clemente), and Tobie and Gerard Charles (Huntington Beach).

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 E). 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 F).

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 E). 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 F). 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 G). 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 H). 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 LCP that has incorporated relevant Coastal Commission Guidelines (Exhibit H).

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 City's certified LCP indicates 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 DTSP Conservation Overlay in the City's LCP also states 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 City's LCP .

iv. Bolsa Chica Decision

In addition to the inconsistencies with the certified LCP as mentioned above, the interpretation of Section 30411 contained in the DTSP Conservation Overlay is inconsistent with the Coastal Act as (see *Bolsa Chica Land Trust vs. Superior Court* (1999) 83 Cal. Rptr. 850). The appellate court held that Section 30411 may not be used as the basis for approval of uses, which would not otherwise be permitted in Section 30233 of the Coastal Act. The City's approval relies on an interpretation of the Coastal Act that has been invalidated by an appellate court. Therefore, the project as approved by the City raises a substantial issue as to its consistency with the certified LCP's Conservation.

D. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(a)(1) of the Coastal Act states:

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

Appellants' Contentions That Raise a Substantial Issue

The contentions raised in the appeal present valid grounds for appeal in that they allege the project inconsistency with policies of the certified LCP and the Commission finds that a substantial issue is raised.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., tit. 14, section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City raises a substantial issue with regard to the appellants' contentions regarding wetlands.

i. SITE DESCRIPTION

The subject site 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. 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.

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 (Exhibits I and J). 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 northeastern most portion (approximately 1-acre) of the 2.9-acre area, which formerly contained alkali meadow habitat (Exhibit K), has already been cleared and graded. The remaining wetland area has been fenced-off. The southern 2.11-acre portion of the parcel that is not included in the conservation overlay has also been cleared and graded. Evidence of a coastal development permit for the fence and the grading and clearing activities on the 5.01 acre parcel has been requested from the City.

During periods of heavy rains, the subject wetland drains into the larger salt marsh that is across Beach Boulevard via drainpipes under the street. The 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 L). The use allowed in District 8b is "residential". However, a portion of District 8b is designated with a Conservation Overlay (Exhibit H). 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 M).

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 G).

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 H). 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 L). 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 H):

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. This same language appears in the certified LUP in the Area-by-Area Discussion on page 126. The City's LCP addresses 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 (Exhibit N), which would mean that the Conservation Overlay language applies to the site (Exhibit H).

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 K). 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. Therefore, the soil at the subject site has the 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 N).

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 M), 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 the LCP 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 N). 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 if the wetland is small, extremely isolated and incapable of being restored."

The City's certified LCP, which incorporated by reference the Commission's Interpretive Guidelines relative to wetlands and which thereby became a part of the LCP, indicates that restoration projects may include some fill for non-allowable uses (Exhibit H). However, the approved project is not itself a restoration project which might then include some fill for non-permitted uses.

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 G). 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.

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. In addition, the Fish and Game determination for the project site has determined that the freshwater wetland can feasibly be restored to a larger wetland. Therefore, the site is capable of being restored. Thus, the project does not meet the criteria of 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 approved project does not qualify as a restoration project 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 would apply is for the restoration of wetlands that have been identified by the DFG as degraded pursuant to Section 30411. The City's certified LCP

provides 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 H). The LCP, which because it incorporated the Commission's Guidelines, states: "*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.

4) Bolsa Chica Decision

The interpretation of Section 30411 contained in the City's LCP by virtue of its incorporation of the Commission's Guidelines, 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 Section 30411 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 an application of its LCP interpreting section 30411 in a manner 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 .

5) Conclusion Regarding Conservation Overlay

As identified above, the purpose of the overall project is not restoration since no wetlands will remain on site. In addition, the Fish and Game study for the project site indicates that wetland restoration at the project site can feasibly be accomplished. 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 .

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. In addition, the Fish & Game determination for the project site indicates that wetland restoration at the project site can feasibly be accomplished. 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 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. Finally, the *Bolsa Chica* decision makes clear that Section 30411 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 City's approval relies on an application of its LCP which interprets Section 30411 in a manner that has been invalidated by the appellate court in

Bolsa Chica. For these reasons, the approved project raises a substantial issue of consistency with the City's certified LCP.

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. The Commission shall interpret the Huntington Beach LCP in light of applicable court rulings.

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 northeastern most portion (approximately 1-acre) of the 2.9-acre area, which formerly contained alkali meadow habitat (Exhibit K), has already been cleared and graded. The remaining wetland area has been fenced-off. The southern 2.11-acre portion of the parcel that is not included in the conservation overlay has also been cleared and graded. Evidence of a coastal development permit for the fence, grading, and clearing activities on the 5.01-acre parcel has been requested from the applicant and the City.

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.

The proposed project has been amended by the applicant for purposes of any de novo hearing to incorporate the conditions previously imposed by the City (Exhibit E).

D. CONSERVATION OVERLAY

As discussed above, the proposed project location is subject to a Conservation Overlay in the certified LCP (Exhibit H). 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 L). 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, the Commission denies the proposed project, which does not conform to the wetland policies or implementation standards 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 the LCP 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 N). Thus the standards that apply if the wetland acreage figure is less than one acre must be considered. The LCP's Conservation Overlay (Exhibit H) provides that if the wetland is less than one acre in size, other restoration options may be undertaken if the wetland is small, extremely isolated, and incapable of being restored.

The City's certified LCP indicates that restoration projects may include some fill for a non-allowable use (Exhibit H). However, the proposed project is not itself a restoration project, which may then include some fill for non-permitted uses. The certified LCP states: "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 G). 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.

The City's certified LCP also states that restoration projects may include some fill for unpermitted uses if all of the five listed criteria are met. One of the criteria is that, "The wetland to be filled is so small (e.g., less than 1 acre) and so isolated (i.e., not contiguous to a larger wetland) that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities." Although this wetland area is less than one acre in size, it is contiguous to a larger wetland area located south of Beach Boulevard. The wetlands are connected under Beach Boulevard via pipes. This larger wetland area and the smaller wetland north of Beach Boulevard were once part of a larger wetland area associated with the mouth of the Santa Ana

River prior to its channelization (LSA, 1998). Furthermore, the 1983 CDFG Study (Exhibit M) concluded that this wetland area could feasibly be restored with relatively minor restoration activities. Based on these facts, the subject wetland does not meet LCP criteria that would allow restoration projects that include fill for unpermitted uses.

Another criteria that must be met requires that, "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." Appendix 1 of the 1983 CDFG Study (Exhibit M) on the Huntington Beach wetlands lists the presence of several wetland plant species at the subject site. LSA's studies, and the Commission's Staff Ecologist both confirmed the presence of several wetland plant species at the subject site. Staff also noted during a site visit on March 2, 2000, the presence of numerous Red-winged blackbirds (*Agelaius phoeniceus*) and one Snowy egret (*Egretta thula*) along with various other bird species. Appendix 2 of the 1983 CDFG Study is a list of the birds of the Huntington Beach wetlands. Appendix 2 of the CDFG Study lists the Snowy egret as a "Wading bird" and the Red-winged blackbird is listed under "Miscellaneous wetland-related species." It is clear that the wetland at the subject site provides habitat value to various wetland and wetland related species. Therefore, the subject wetland does not meet LCP criteria that would allow restoration projects that include fill for unpermitted uses.

Other LCP criteria that must be met prior to granting an exception for a restoration project that may include fill for non-permitted uses require that, "Restoration of a another wetland to mitigate for fill can most feasibly be achieved in conjunction with filling a small wetland," and "Restoration of a parcel to mitigate for the fill ...must occur in the same general region (e.g., within the general area surrounding the same stream, lake or estuary where the fill occurred)." The mitigation site is located approximately four miles from the subject site, outside of the coastal zone (Exhibit B). The mitigation program could go forward without the fill of the subject wetlands. Clearly, the mitigation program is neither dependent on the on-site wetlands being filled, nor is it located in the same general region as described above. Thus, the project does not meet the criteria of the LCP and so is not permissible as an "other restoration option" under the Conservation Overlay in the certified Implementation Plan.

ii. Wetlands Degraded Pursuant to CDFG Determination and Section 30411

The second circumstance in which the above-identified LCP Conservation Overlay language would apply is for the restoration of wetlands that have been identified by the CDFG as degraded pursuant to Section 30411. The City's certified LCP provides 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 H). The LCP states: "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 thus not permissible as an "other restoration option" under the certified LCP's Conservation Overlay.

In addition, even if the proposed project could be considered a restoration project, the interpretation of Section 30411 contained 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 Section 30411 can not be interpreted in a manner that permits uses that would otherwise not be permitted pursuant to Section 30233 of the Coastal Act. Therefore, the provisions of Section 30411 in the City's certified LCP cannot be used as a basis for justifying fill of wetlands inconsistent with the provisions of Section 30233, also contained in the City's LCP. Therefore, the proposed project must be denied.

iv. Conclusion Regarding Conservation Overlay

As identified above, 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. 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 the certified LCP.

a. Allowable Use

Although the proposed project does not identify a specific use for the wetland fill, the Addendum to the SEIR indicates that the use 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 30233 uses are allowed in wetlands. 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 City's certified LCP. Therefore, the proposed project is inconsistent with the wetland policies of the City's certified LCP. Therefore, the proposed project 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 (Exhibit C). 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.

However, a review of LSA's February 1998 report suggests that tidal influence can be restored to the wetland, due to its connection to the salt marsh east of Beach Boulevard through pipes under Beach Boulevard. LSA's report discusses a "flap gate" that allows water to drain from the salt marsh across Beach Boulevard from the subject site, but "prevents seawater from backing up into the marsh during high tides." Therefore, the "flap gate" restricts tidal action to the salt marsh and, consequently, to the subject wetland which is connected to the salt marsh via pipes.

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.

According to the applicants, the mobile home park was removed in mid-1999. The pavement has been removed from the area surrounding the wetland providing a more "absorbent" surface of exposed soil. Therefore, the amount of "urban runoff" reaching the subject wetland since mid-1999 has most likely been reduced. The subject wetland,

however, is still viable and is providing valuable habitat to various wetland and wetland related species as previously described in the Conservation Overlay section above.

LSA's February 1998 report also states that, "Site hydrology is also directly affected by natural groundwater levels...", and "The lowest lying area on the site, near the southern end, ponds water and appears to coincide with the level of local groundwater." LSA's February 1998 report also states that monitoring has been conducted near the subject wetland over a period of more than ten years. Although the data was not presented in LSA's report, LSA states that, "... the typical groundwater level does not exceed 1.2 feet above MSL, and probably averages less than 1.0 feet above MSL in most years." A report prepared by G.A. Nicholl, "Geotechnical EIR", dated January 22, 1998, and attached to the Addendum to SEIR 82-2 also states that groundwater elevations of monitoring wells on the Ocean Grand Resort property, "range from 1 foot above MSL to 3 inches below MSL...." An elevation survey of the subject wetland was conducted by LSA and described in, "Wetland Analysis According to Coastal Act Wetland Definition," dated November 3, 1999. LSA's survey Figure 2 (Exhibit O) indicates that the ground surface elevations above mean sea level (MSL) range from 0.09 feet above MSL in the wetland areas (wetland bottom) to 3.14 feet above MSL in the transitional and upland areas. Staff has requested that further information on the groundwater monitoring that has been conducted at the Ocean Grand Resort property, which includes the subject parcel.

Based on the information provided by LSA, the typical elevation of groundwater in the vicinity of the subject site is greater than the surveyed elevation of the wetland bottom. Direct influence by local groundwater may be providing the wetland with another, more consistent water source than urban runoff. Therefore, for the reasons stated above, the second alternative of on-site wetlands restoration cannot be dismissed by the applicants

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.

In addition, regarding the subject site, the 1983 CDFG Study (Exhibit M) 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). ... This wetland area could be enhanced by increasing both its size and the ratio of open-water to vegetated wetland areas. We find that these restorative measures are all minor, and therefore, can be feasibly accomplished.

The CDFG Study follows this language with conditions that must be met if offsite mitigation is deemed necessary. As discussed below in the section on mitigation, these conditions are not satisfied. Moreover, 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.

In addition, 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. Given the size of the 5.01-acre parcel, the parcel can be developed without impacting the wetland area. Also, the 1983 CDFG Study clearly indicates on-site restoration is feasible. 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.

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. 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 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 be the least environmentally damaging alternative. 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.

As determined in the preceding section of this report, the proposed fill of the subject wetland is not the least environmentally damaging alternative for the development of this parcel. In fact, the very nature of the proposed project will alter and destroy the existing wetland habitat at the subject site. Therefore, the proposed project is inconsistent with the policies set forth in the City's certified LCP.

In addition, as stated above, the 1983 CDFG Study (Exhibit M) that is referred to in the Conservation Overlay and the City's LCP, states that this wetland area could feasibly be restored to 2.2 acres of wetland area, and requires that certain conditions be met if off-site mitigation is deemed necessary. These conditions include the following requirements:

(2) The new mitigation should result in creation of at least 2.2 acres of wetlands which is presently the potential restoration acreage onsite.

(3) The site chosen must be non-wetland in its present condition.

The proposed project does not satisfy either of the above-identified LCP mitigation requirements. The proposed project includes off-site mitigation at an existing wetland area in 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 existing 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. Therefore, because the site chosen contains existing wetland, the mitigation is inconsistent with the LCP requirement that the site chosen be non-wetland in its present condition.

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 proposed 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, and is inconsistent with the LCP's criteria for wetland fill. In addition,

because the off-site mitigation is outside of the Coastal Zone and proposes to create only 1.0 acre total of new wetland and transitional wetland habitat, the proposed mitigation is not adequate to fully offset the proposed fill of the on-site 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 existing 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 and transitional wetland can be included in the mitigation ratio. Thus, using the 0.8-acre wetland area described in the HMMP, the mitigation ratio is actually reduced to approximately 1.25:1. The Commission's Staff Ecologist has determined the total wetland acreage to be 0.696 (Exhibit N). Using the total wetland area determined by the Commission's Staff Ecologist, 0.696 acre, the proposed mitigation ratio would then be increased from 1.25:1 to approximately 1.44:1.

The mitigation plan, however, proposes to create only 1.0 acre of new wetland and transitional wetland habitat (1 acre total) and to enhance 1.4 acres of existing transitional wetland, upland and woodland habitats. Pursuant to the 1983 CDFG Study, in order to fully mitigate the impacts of the loss of wetland, the mitigation must create at least 2.2 acres of wetland habitat. Only the creation of the 1.0 acre total of new wetland and transitional wetland habitat can be considered as appropriate mitigation for the proposed project. Therefore, the project is inconsistent with the LCP requirements that the mitigation should result in at least 2.2 acres of wetland habitat.

The HMMP does not provide a detailed discussion of the proposed monitoring field methods that will be used to determine the success of the mitigation. The mitigation proposal also indicates that the restoration consultant may perform the monitoring. To ensure that the mitigation is successful, the final determination of whether the restoration meets performance standards should take place at least three years after all restoration and maintenance activities have been completed. The proposed monitoring should also be performed by an independent consultant chosen by the permitting and resource agencies, unless the applicants propose ongoing maintenance in perpetuity.

Finally, the HMMP states on page 7-2, "Specific performance standards may be waived by the Corps and CDFG if monitoring indicates good growth towards a functional habitat, or if all reasonable corrective actions have been identified and implemented." The creation of new wetland habitat in upland areas, and areas without the appropriate naturally occurring soil types can be difficult to accomplish. The success rate of man-made wetland habitat is generally less than with the restoration of naturally occurring wetland habitat. If the performance standards can be waived as described above, the expected mitigation to compensate for the loss of existing valuable wetland habitat may not be achieved. Therefore, on-site mitigation or restoration of the existing wetland area is preferable to the proposed off-site mitigation at Shipley Nature Center.

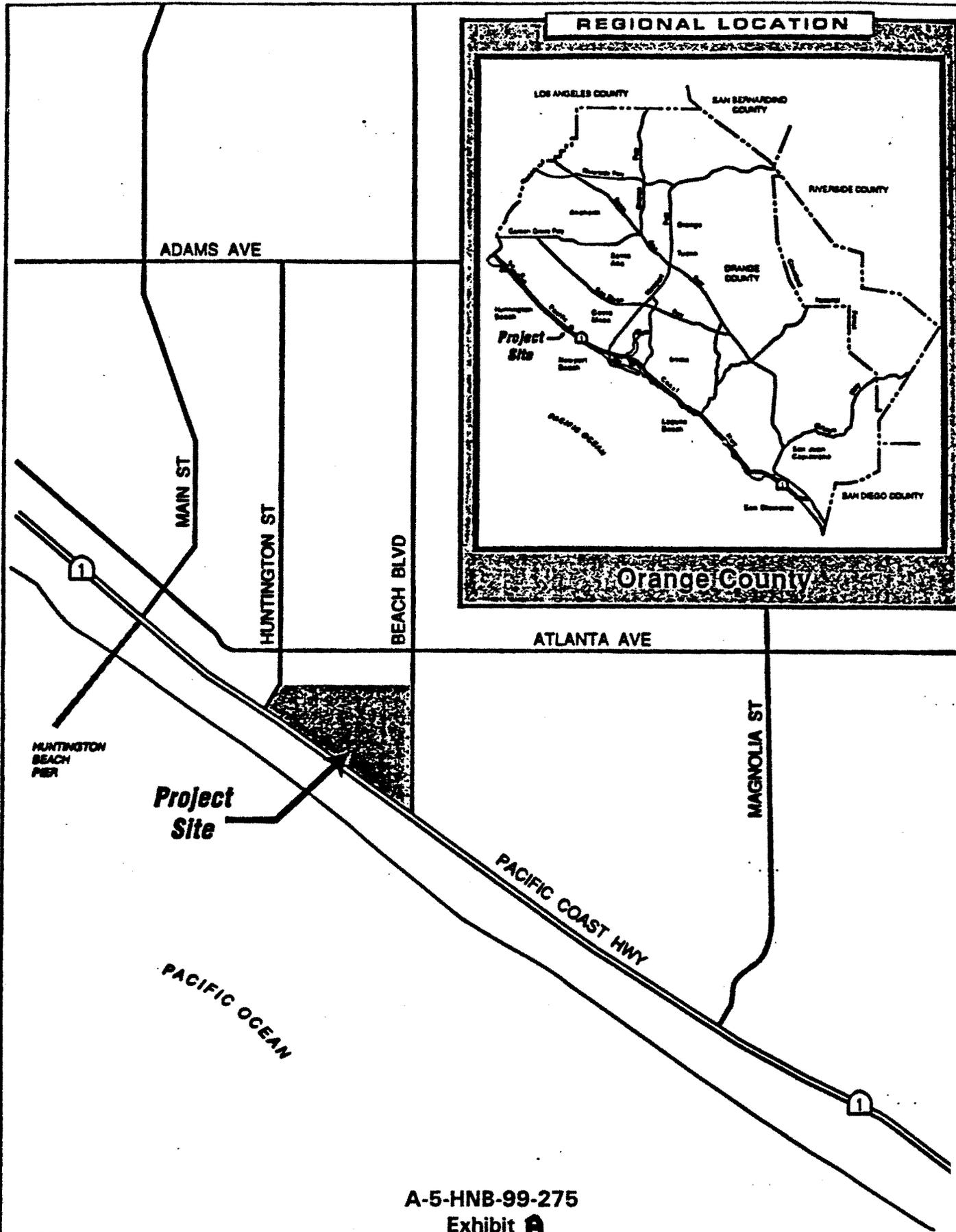
The proposed mitigation plan for the in-kind creation of a total of 1.0 acre of new wetland and transitional wetland is not sufficient to offset the proposed fill of 0.696 acre of existing wetland habitat. Neither the type nor the amount of the proposed mitigation is adequate to offset the fill of the existing 0.696-acre of existing wetland

habitat consistent with the requirements of the certified LCP. Therefore, the proposed project must be denied.

F. 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 the proposed project is not consistent with the requirements of the Coastal Act to conform to CEQA.



A-5-HNB-99-275

Exhibit A

2000 1000 0 2000
Scale in Feet



Page 1 of 1
EIP
ASSOCIATES

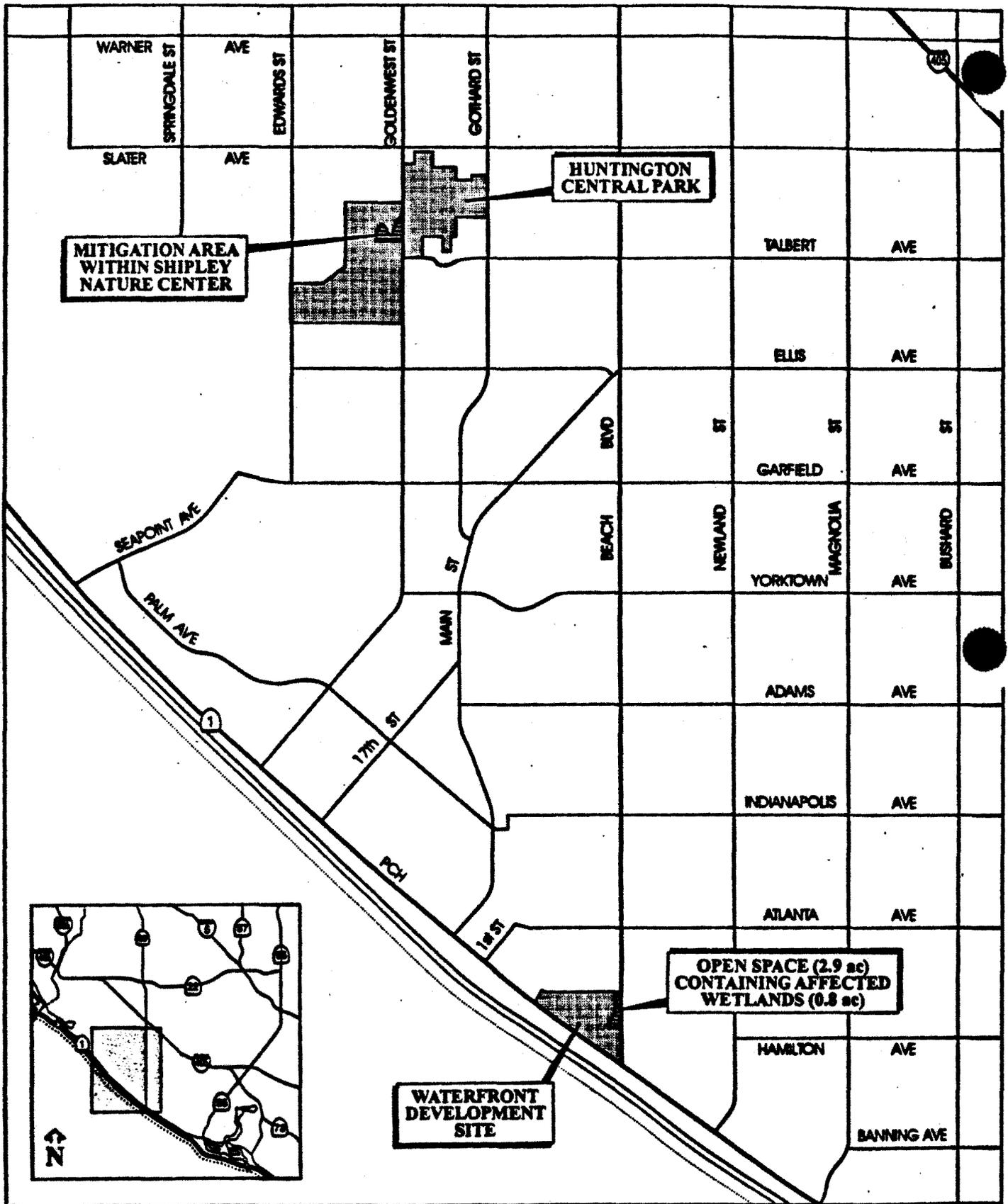
Project Vicinity & Regional Location Map

FIGURE

City of Huntington Beach • Addendum to SEII

SOURCE: USGS 7.5' Quadrangles - Newport Beach & Seal Beach, Ca., 1981

87262



10/27/98 (TRM831)

A-5-HNB-99-275

Figure

Exhibit

Page 1 of 1



LSA

Project Location

(Long Beach)



Amigos de Bolsa Chica

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

RECEIVED
AUG 24 1999
CALIFORNIA
COASTAL COMMISSION

August 23, 1999

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



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

Conference and Visitors Bureau



Long Beach

RECEIVED
SEP 03 1999

RECEIVED
SEP 8 1999

CALIFORNIA
COASTAL COMMISSION

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 Shapely 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,

Diane Baker

Diane Baker
President, CEO

A-5-HNB-99-275
Exhibit C

SEP-08-1999 WED 12:32 PM

FAX NO.

P. 01/01

Long 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,

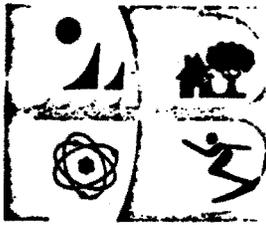


David Gulbo
21241 Lochlea Lane
Huntington Beach, CA 92646
714-536-8695

RECEIVED
SEP 08 1999

CALIFORNIA
COASTAL COMMISSION

A-5-HNB-99-275
Exhibit C
Page 4 of 74



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, 10th 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

A-5-HNB-99-275
Exhibit C

Page 5 of 74
Waitakere, New Zealand

DRUG USE
IS
LIFE ABUSE

Bolsa Chica Conservancy



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

RECEIVED
NOV 15 1999

CALIFORNIA
COASTAL COMMISSION

November 4, 1999

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

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

A-5-HNB-99-275
Exhibit C
Page 6 of 74

Tu 18a

Harry C. Crowell

Via Facsimile (562) 590-5071

February 7, 2000

California Coastal Commission

Re: Huntington Beach - Wetlands

Dear Members:

Last week, I read an article in the *Register* regarding an .8 acre site in Huntington Beach. I am concerned that your Commission and others will not allow the site to be developed as planned. The site is part of a larger scheme and appears to be well thought out and properly planned. This property has been reviewed and properly permitted, and to change the rules at this late date seems inconceivable.

There has already been a restoration program which began in conjunction with the entire area. This site is small and fragmented from other areas, with Beach Blvd. as a prime barrier. Including this .8 acre site as additional wetlands is wrong for it is surrounded by people and buildings already approved and under construction. The area impacted is barely over half an acre and was included as part of the Shipley Nature Center which was chosen after extensive study in the area.

This wetlands remainder piece was perhaps once part of a larger area but Beach Blvd. dissected it nearly 100 years ago and it has not been a viable wetlands since. It is only a remainder land depression which has been a trash area for as long as I can remember. This area will become a beautiful addition to an improvement in Huntington Beach that has been needed for many years.

We should have this site approved and start construction quickly while there is a willing party to develop and improve the area for people so we can all look across the highway and see nature at its best.

Remember, this small piece will not be a successful natural site in itself for there is no natural way to provide water. Small areas such as this cause terrible management and maintenance problems.

17780 Fluck, Suite 200 • Irvine, CA 92614 • 949/263-3340 • FAX 949/833-3642

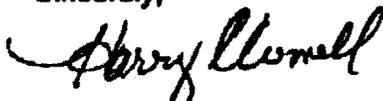
A-5-HNB-99-275
Exhibit C
Page 7 of 74

California Coastal Commission
February 7, 2000
Page Two

Please consider our ongoing costs as California residents and do not include this minor site when the time, management and money would really do us more good in a larger site which has already been provided.

Thank you for your attention and consideration.

Sincerely,



Harry C. Crowell

HCC/dks

TU 18a
A-5-HNB-99-275

CENTURY HOMES

Century Crowell Communities

California's Favorite Homebuilder

February 9, 2000

VIA FACSIMILE (562) 590-5084

California Coastal Commission
Long Beach, CA

Dear Members:

I have been informed of a situation regarding an .8 acre site in Huntington Beach. I am concerned that your Commission and others will not allow the site to be developed as planned. The site is part of a larger scheme and appears to be well thought out and properly planned. This property has been reviewed and properly permitted, and to change the rules at this late date seems inconceivable.

There has already been a restoration program that began in conjunction with the entire area. This site is small and fragmented from other areas, with Beach Boulevard as a prime barrier. Including this .8-acre site as additional wetlands is wrong for it is surrounded by people and buildings already approved and under construction. The area impacted is barely over half an acre and was included as part of the Shipley Nature Center which was chosen after extensive study in the area.

This wetlands remainder piece was perhaps once part of a larger area but Beach Boulevard dissected it nearly 100 years ago and it has not been a viable wetlands since. It is only a remainder land depression that has been a trash area for as long as I can remember. This area will become a beautiful addition to an improvement in Huntington Beach that has been needed for many years.

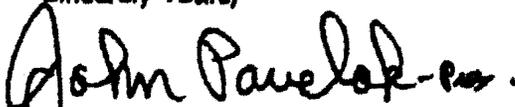
We should have this site approved and start construction quickly while there is a willing party to develop and improve the area for people so we can all look across the highway and see nature at its best.

Remember, this small piece will not be a successful natural site in itself for there is no natural way to provide water. Small areas such as this cause terrible management and maintenance problems.

Please consider our ongoing costs as California residents and do not include this minor site when the time, management and money would really do us more good in a larger site which has already been provided.

Thank you for your attention and consideration.

Sincerely Yours,



John Pavelak
President

1535 South "D" Street, Suite 200 • San Bernardino, CA 92408

(909) 381-6007 • FAX (909) 381-0041

A-5-HNB-99-275

Exhibit C

Page 9 of 74



Tu 18a

February 10, 2000

Sara Wan, Chair
California Coastal Commission
45 Fremont St., #2000
San Francisco, Ca.

Dear Chairwoman Wan:

The Huntington Beach Chamber of Commerce, representing 900 members, wishes to go on record in support of the decision by the City of Huntington Beach to grant a coastal development permit with conditions to fill 0.8 acres of wetland at the northwest corner of Pacific Coast Highway & Beach Boulevard in Huntington Beach to the Robert Mayer Corp.

After careful review, only 0.69 acres were determined to be degraded and fragmented wetlands by the Coastal Commission's own biologist. These wetlands have no daily tidal flushing and the only source of water is the runoff from Beach Boulevard and the former mobile home park. All environmental documents have concluded that the fragmented wetlands function poorly.

The plan to restore 2.4 acres of wetlands at the Shipley Nature Center was determined to be a most feasible restoration alternative since the certified LCP specifically addressed the wetlands stating that any parcel less than 1.0 acres in size and degraded, restoration options such as that proposed at Shipley could be undertaken. The project area is within a secured area with a full time ranger on-site. The plans were reviewed by the Department of Fish and Game, The Army Corps of Engineers, the California Coastal Commission and the City of Huntington Beach. In May 1991, Huntington Beach approved in concept the restoration plan. The Robert Mayer Corp. has agreed to provide funding for implementation and long-term maintenance and observation to assure the success of the wetland restoration project.

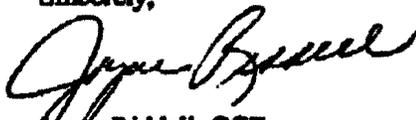
2100 Main Street, Suite 200
Huntington Beach, CA 92648
714/536-8888
(FAX) 714/960-7654



We feel that there is an issue of good faith at stake here between the Coastal Commission and local government. Our city followed the guidelines over nine years ago and proceeded with the Robert Mayer Corp. plans to develop the site. With construction already started and a tremendous amount of dollars invested, we feel that this project should be allowed to proceed as already approved with the Shipley Nature Center restoration plan.

Thank you for the opportunity to respond.

Sincerely,



Joyce Riddell, OCE
President

Cc: Dave Potter, Vice Chair
Shirley Dettloff
Cynthia McClain-Hill
Christina Desser
Pedro Nava
Cecilia Estolano
Paula Daniels
John Woolley
Mike Reilly
Christine Kehoc
City of Huntington Beach - Mayor Dave Garofalo
City of Huntington Beach - City Administrator Ray Silver



JAMES W. SILVA
VICE CHAIRMAN OF THE BOARD OF SUPERVISORS
SUPERVISOR, SECOND DISTRICT

ORANGE COUNTY HALL OF ADMINISTRATION
10 CIVIC CENTER PLAZA, P.O. BOX 687, SANTA ANA, CALIFORNIA 92702-0687
PHONE (714) 834-3220 FAX (714) 834-6109

RECEIVED
FEB 15 2000

CALIFORNIA
COASTAL COMMISSION

RECEIVED

FEB 14 2000

CALIFORNIA
COASTAL COMMISSION

February 10, 2000

Ms. Sara Wan, Chairperson
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Dear Chairperson Wan:

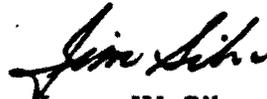
As Supervisor of the Second District of the County of Orange and a former council member and mayor of the City of Huntington Beach, I am pleased to have been part of the environmental movement of Huntington Beach. I have personally made it my agenda to protect valuable resources within the community whenever possible. Over the past years, there have been many important decisions which have improved our air and water quality and I am proud to have been a part of these actions.

I have learned that one important aspect of the environmental movement has been the question of balance. Like our everyday lives, environmental issues often require that choices be made and a balance be struck based on practical realities. The issue before the Coastal commission in February with regard to the City of Huntington Beach and The Robert Mayer Corporation is one of these questions of balance.

I understand that the City of Huntington Beach would like to have The Robert Mayer Corporation complete a wetland restoration project at the Shipley Nature Center in connection with the filling of a minor wetland west of Beach Boulevard near Pacific Coast Highway. The habitat value of this small patch of land is quite degraded and expected to worsen. Yet a restoration project at the Shipley Nature Center, where a full time ranger and security fencing protects this resource, appears to make good sense to me. I am told that from a biological standpoint, the restored habitat will be larger in size and far superior to that of the existing habitat. Therefore, I am in full support of the City of Huntington Beach on this issue.

Though there are some who will prefer that every wetland fragment such as this remain untouched, please consider the "balance" between this rigid perspective and the greater benefit to the overall environment proposed under the requested permit as you and your fellow commissioners review this item. I believe that in this specific circumstance, the benefit of wetland restoration at the Shipley Nature Center far outweighs the loss of the existing isolated wetland parcel.

Sincerely,



James W. Silva, Vice-Chairman
Board of Supervisors

JWS:DH

Cc: Coastal Commission Staff



Tu 18a

RECEIVED
South Coast Region

FEB 10 2000

CALIFORNIA
COASTAL COMMISSION

RECEIVED
South Coast Region

FEB 10 2000

CALIFORNIA
COASTAL COMMISSION

February 9, 2000

Ms. Deborah Lee
District Director
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Via Hand Delivery

Re: Waterfront Wetlands Restoration Project
Tuesday, February 15, 2000
Agenda Item: Tu 18.a
A-5-HNB-99-275

Dear Ms. Lee:

When the City of Huntington Beach approved Coastal Development Permit No. 99-05 for the Waterfront Wetlands Restoration Project, it imposed Conditions of Approval which, by definition, are incorporated into the project presently under review by the Commission. We believe the City's action to approve the restoration project is entirely consistent with the certified LCP, and therefore the Commission should find no substantial issue on the appeal. Nonetheless, if the Commission should find substantial issue, we will and hereby do amend the project description to expressly include all of the City's conditions.

Attached please find a copy of the City's Conditions and Findings for Approval, along with a detailed analysis which was submitted to the City to address certain Conditions of Approval and to demonstrate why the Project complies with the City's certified LCP, the Commission's Statewide Interpretive Guidelines and CEQA.

We have also previously submitted to Staff several letters prepared by LSA Associates, Inc., to address various issues raised. In some instances these documents were provided at the request of Staff but were not attached to the Staff Report. These include the following documents:

- LSA Letter, dated 11/3/99: "Analysis of Proposed Project and Restoration Sites Relative to Coastal Zone Resources";
- LSA Letter, dated 11/3/99: "Analysis of Historic Conditions"; and

Ms. Deborah Lee
California Coastal Commission
February 9, 2000
Page 2 of 2

- LSA Letter, dated 11/5/99: "Alternatives Analysis of Wetland and Transitional Area Resources."

We respectfully ask that this letter, including all of the attached documents, be provided to the Commission in advance of the hearing on the application. We have included 34 copies for that purpose.

A separate submittal is being prepared to respond to the Staff Report which we will provide separately to the Staff and Commissioners.

As always, we appreciate the assistance of Staff in this matter.

Sincerely,

The Robert Mayer Corporation



Lawrence F. Brose
Vice President

LFB:hs

cc: Ms. Maile Gee
Howard Zelefsky, Planning Director, City of Huntington Beach
Nancy A. Lucast
Steven H. Kaufmann

Enclosures

LSA

Ham: Tu B.a
RECEIVED
South Coast Region

FEB 10 2000

**CALIFORNIA
COASTAL COMMISSION**

LSA Associates, Inc.
Environmental Analysis
Transportation Engineering
Biology and Wetlands
Habitat Restoration
Resource Management
Community and Land Planning
Landscape Architecture
Archaeology and Paleontology

November 3, 1999

Mr. Larry Brose
The Robert Mayer Corporation
660 Irvine Center Drive, Suite 1050
Newport Beach, CA 92660

Subject: Waterfront Development - Analysis of Proposed Project and Restoration Sites Relative to Coastal Zone Resources

Dear Mr. Brose:

This letter provides information and analysis on the location of the subject project and proposed wetland restoration sites. Figure 1 (attached) shows the relationship of the proposed project and restoration sites to each other and to the Coastal Zone boundary.

The undeveloped area on the project site that contains the subject wetlands is within and immediately adjacent to the Coastal Zone boundary and Beach Boulevard, a major arterial. This area is isolated from larger areas of habitat/open space by existing or future roadways on two sides (Beach Boulevard and Pacific View Avenue) and existing/future residential uses on the other two sides. The nearest native habitat is a salt marsh remnant on the east side of Beach Boulevard, which is a six lane arterial highway. The existing wetland has very low habitat utility, due to its small size, isolation, and lack of native habitat diversity.

The proposed restoration area is approximately 1.4 miles to the northwest, within the Donald G. Shipley Nature Center, in Huntington Central Park. This open space area borders the Coastal Zone boundary on the outside of the boundary. The restoration area itself is less than 1,000 feet from the Coastal Zone boundary.

For the most part, the mix of native wetland and woodland habitats within the Nature Center exhibit moderate to high values for migratory birds and indigenous wildlife, including raptors. Large patches of highly invasive exotic species, particularly giant reed, castor bean, and salt cedar, also have become established in large patches in the southeast section of the Nature Center. Some of this vegetation is the focus of a restoration effort.

Principals

Rob Balin
Shirle Brady
Lu Card
David Clare
Ron Dobbervien
Steve Granholm
Richard Harlocker
Roger Harris
Art Homrighausen
Larry Kenning
Laura Laffer
Carolyn Labell
Bill Meyer
Rob McCann
Jill O'Connor
Anthony Petros
Oran Prucilio
Rob Schonholz
Malcolm J. Sprout
Lloyd B. Zola

Associates

Linda Abernethy
James Baum
Cornelia Calica
Tung-chen Chung, Ph.D.
Steven W. Conkling
Gary Dow
Jack Eason
Richard Erickson
Kevin Fincher
Frank Heston
Clint Kallner
Benson Lee
Judith H. Malamut
Sabrina Nicholls
M. W. "Bill" O'Connell
Amy Shriver-Cox
Lynette Sanchina

11/3/99(P:\TRM\B31\broserest.ltr.wp0)

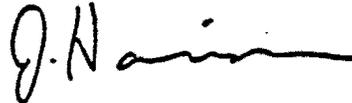
The restoration areas are entirely surrounded by existing natural habitat areas within the Nature Center. A large section of Huntington Central Park, including Talbert Lake, lies opposite the Nature Center on the east side of Goldenwest Street. The remainder of the park lies adjacent to the Nature Center to the south and west, providing a more or less continuous open space link to the native habitat and future restoration area in the Bolsa Chica reserve on the west side of Edwards Street. To the north of the restoration site, a flood control channel and associated fencing separate the Nature Center from an existing residential tract.

The proposed restoration excavation will lower the ground elevation to the expected zone of saturation, which will establish an area that exhibits wetland hydrology. Thus, the restoration site will rely on groundwater that is contiguous with groundwater in the Coastal Zone. The additional native vegetation in the restoration site will complement the existing vegetation in the Nature Center and Central Park, to enhance the habitat utility for raptors and other wildlife that utilize Coastal Zone resources.

We hope this provides useful information for the preparation of the Coastal Commission staff report on this project. If you have any questions concerning the contents of this letter, please do not hesitate to contact me at (949) 553-0666.

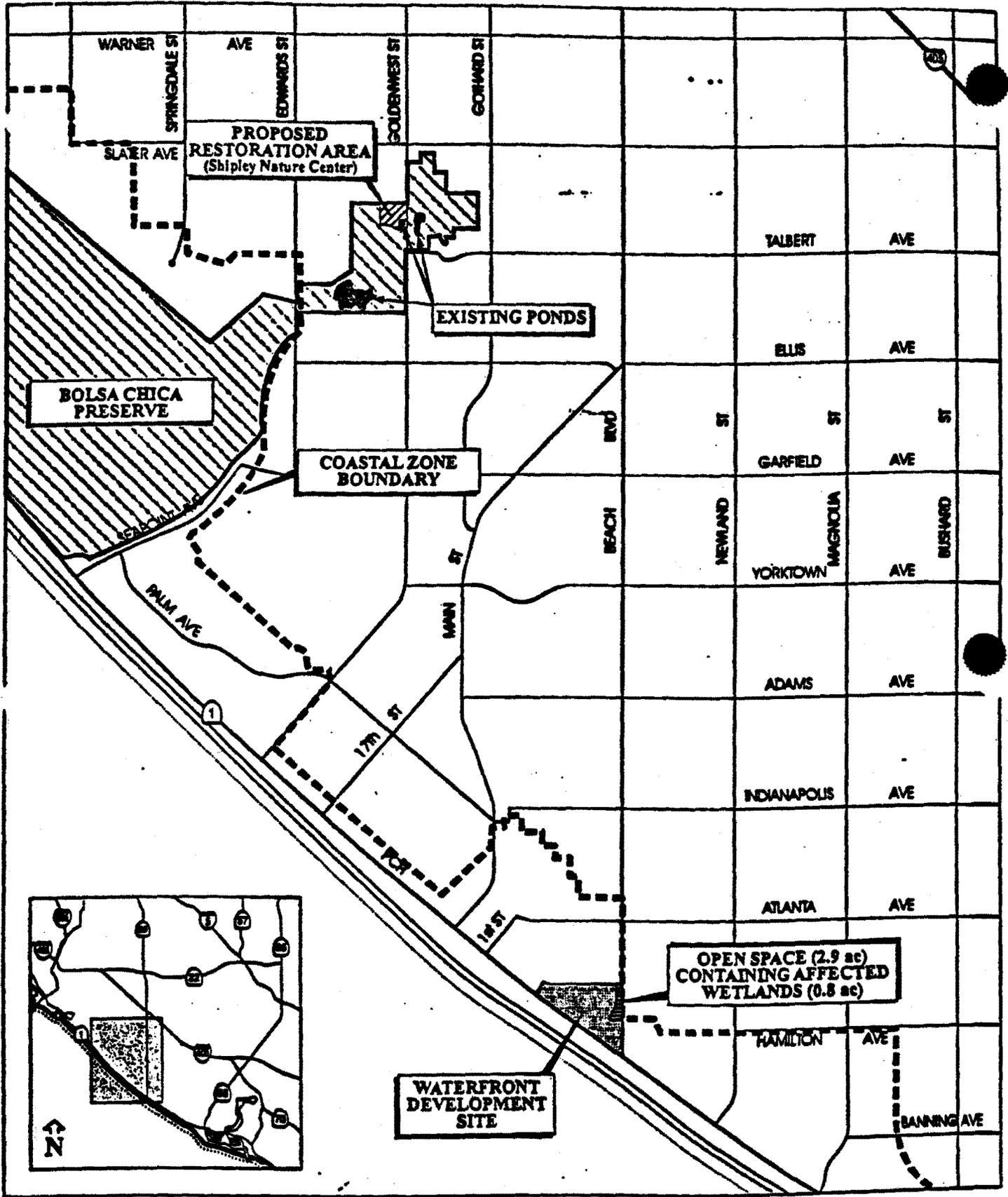
Sincerely,

LSA ASSOCIATES, INC.



for Art Homrighausen
Principal

Attachment: Figures 1



10/27/99(TRM831)

Figure

LSA

Scale in Feet
 0 1260

A-5-HNB-99-275
 Exhibit C
 Coastal Zone Boundary



Mem: Tu 18.a

LSA Associates, Inc.

Environmental Analysis
Transportation Engineering
Biology and Wetlands
Habitat Restoration
Resource Management
Community and Land Planning
Landscape Architecture
Archaeology and Paleontology

November 3, 1999

Principals

- Rob Balen
- Sheila Brady
- Les Card
- David Clore
- Ross Dobberteen
- Steve Granholm
- Richard Harlacher
- Roger Harris
- Art Homrighausen
- Larry Kennings
- Laura Lafler
- Carolyn Labell
- Bill Mayer
- Rob McCann
- Jill O'Connor
- Anthony Petros
- Deborah Prasilio
- Rob Schonholtz
- Malcolm J. Spraul
- Lloyd B. Zola

Associates

- Linda Aberbom
- James Baum
- Connie Calica
- Tung-chen Chung, Ph.D.
- Steven W. Conkling
- Gary Dow
- Jack Easton
- Richard Erickson
- Kevin Fincher
- Frank Hazelton
- Clint Kellner
- Benson Lee
- Judith H. Malamut
- Sabrina Nicholls
- M. W. "Bill" O'Connell
- Amy Shewes-Cox
- Lynette Stanchina

Mr. Larry Brose
The Robert Mayer Corporation
660 Irvine Center Drive, Suite 1050
Newport Beach, CA 92660

Subject: Waterfront Development - Analysis of Historic Conditions

Dear Mr. Brose:

This letter provides information and analysis on the historic conditions of the subject project site. The historic occurrence of fill in the project area is an important issue to be considered by the Coastal Commission. As noted in the *Procedural Guidance for Review of Wetland Projects in California's Coastal Zone*, "in determining project related impacts the CCC considers the wetland as it currently exists and not as it may have existed historically." As noted in our 1998 delineation report, "CDFG identified the remaining area of the parcel [i.e., the area greater than the 0.8 acre that CDFG identified as wetland] as 'degraded wetlands,' attributing the degraded condition to the hydrological alterations and substantial fill deposition that permanently raised the typical surface elevation over most of the site and altered site hydrology at least 30 years ago."

In order to provide further documentation of this historic fill, LSA used historical aerial photographs to determine when the project area was filled. These photographs are provided in Figures 1 through 3. An historic aerial photograph from 1946 shows that there is substantial fill around the site; however, there still appears to be a wetland in the subject area. An aerial photograph taken in 1953 shows that a drainage channel was installed, improvements to Beach Boulevard were made, and a substantial amount of fill is adjacent to Beach Boulevard, which corresponds to the higher ground of the subject site. A photograph from 1964 (when the trailer park was being built) shows the site much as it appears today, with remnants of the channel and apparent fill that corresponds with the 1953 photographs and with the higher ground on the subject site today. Thus, most of the fill around the areas identified as wetland by LSA appears to have been deposited between 1946 and 1953, supporting the CDFG estimate that fill occurred in the 1950s or earlier, and corresponding with the current site conditions.

11/3/99<<P:\TRM831\brosehist.ltr.wpd>>

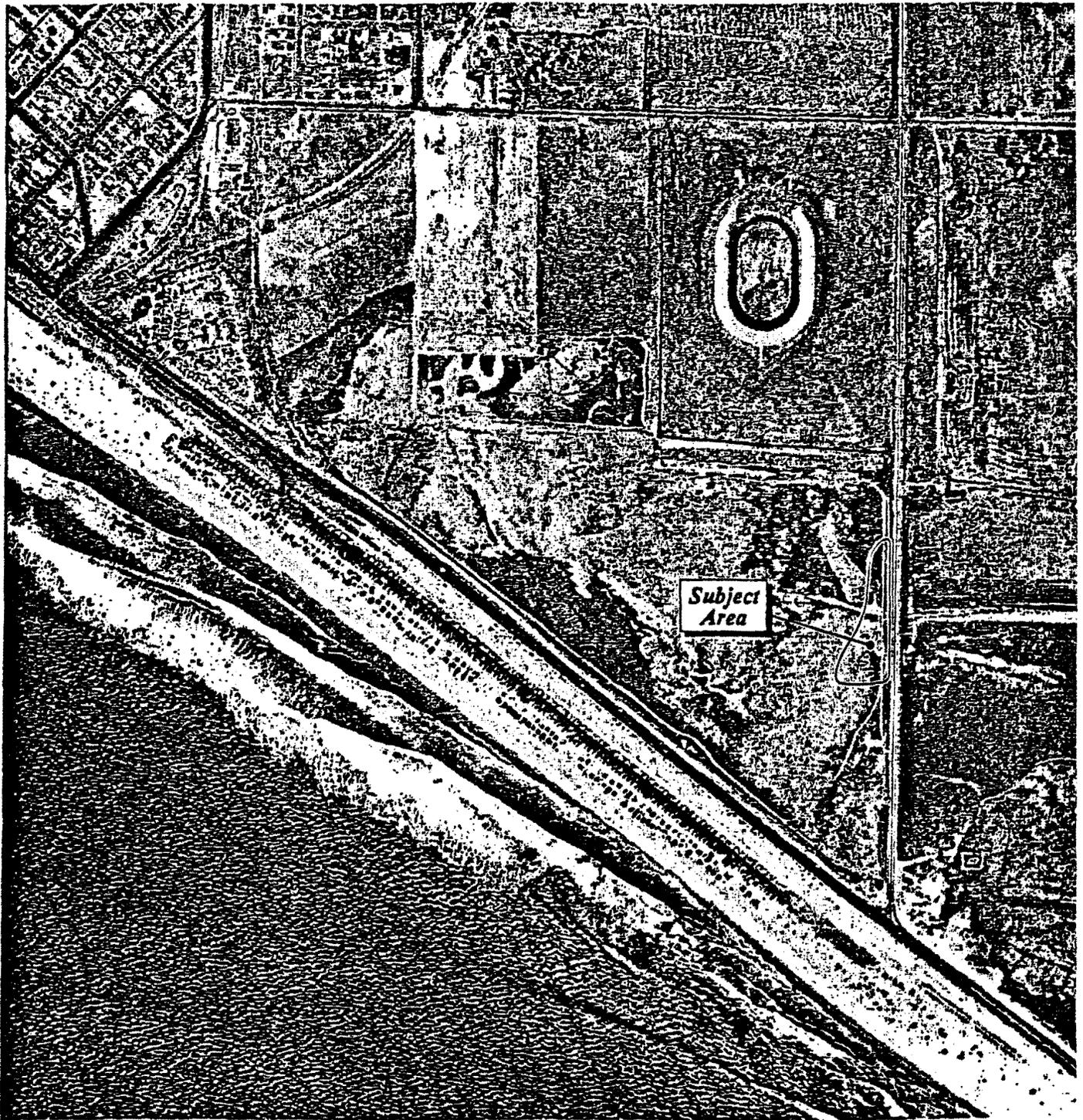
We hope this provides useful information for the preparation of the Coastal Commission staff report on this project. If you have any questions concerning the contents of this letter, please do not hesitate to contact me at (949) 553-0666.

Sincerely,

LSA ASSOCIATES, INC.

for Art Homrighausen
Principal

Attachments: Figures 1 through 3



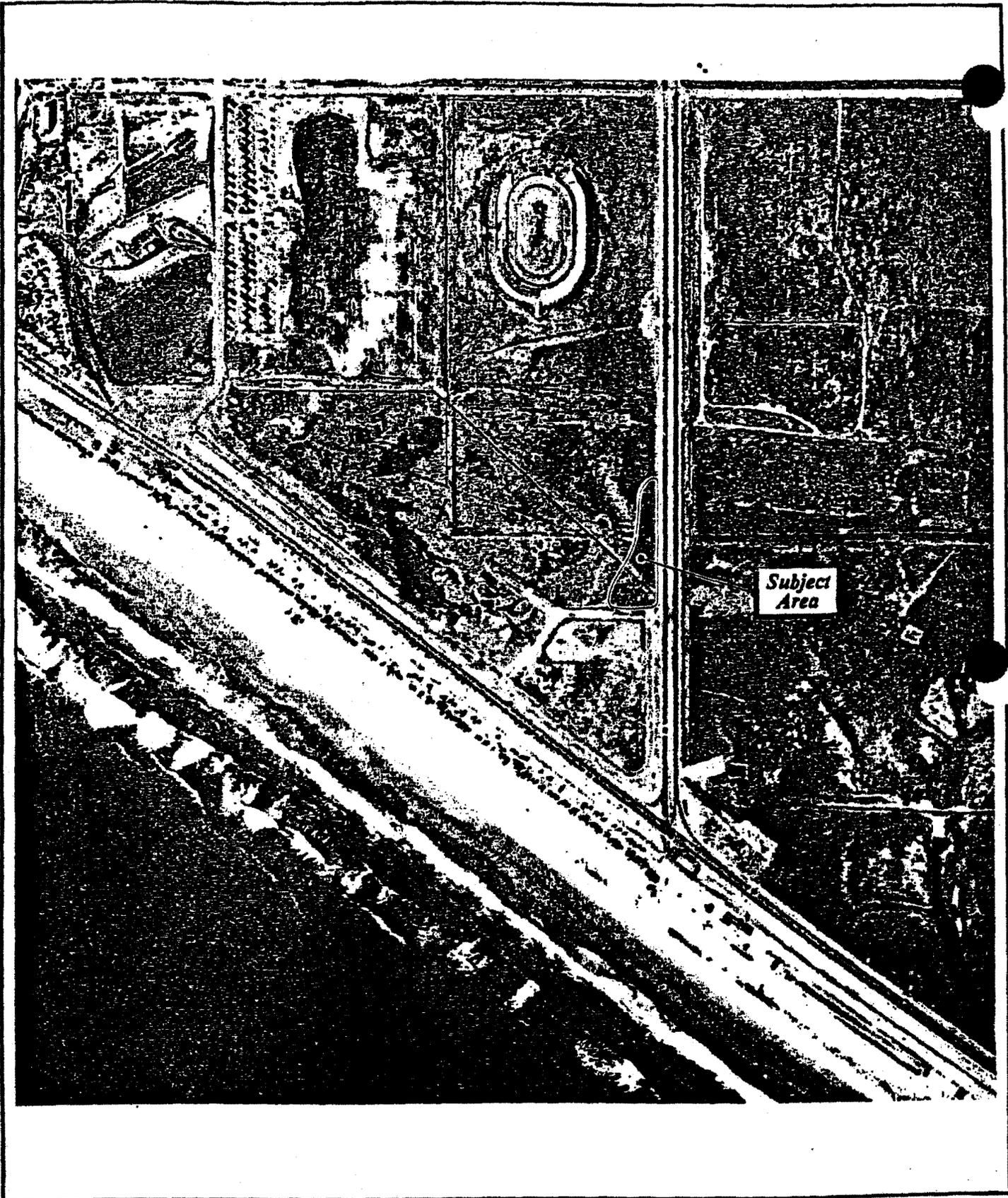
10/27/99(TRM831)

Figure 1



LSA

No Scale



Subject Area

1027/99(TRM831)

Figure 2



LSA No Scale

A-5-HNB-99-275
Exhibit C
Aerial Photograph of 1955



Subject Area

10/27/99(TRM831)

Figure 3



LSA

No Scale

A-5-HNB-99-275
Exhibit C
Aerial Photograph of 1964



Item: TU 18.9

LSA Associates, Inc.

Environmental Analysis
Transportation Engineering
Biology and Wetlands
Habitat Restoration
Resource Management
Community and Land Planning
Landscape Architecture
Archaeology and Paleontology

November 5, 1999

Principals

- Rob Balen
- Sheila Brady
- Les Card
- David Clore
- Ross Dobberteen
- Steve Granholm
- Richard Harlacher
- Roger Harris
- Art Homrighausen
- Larry Kennings
- Laura Lafler
- Carolyn Lobell
- Bill Mayer
- Rob McCann
- Jill O'Connor
- Anthony Petros
- Deborah Pracilio
- Rob Schonholz
- Malcolm J. Sproul
- Lloyd B. Zola

Associates

- Linda Abernorn
- James Baum
- Connie Calica
- Tung-chen Chung, Ph.D.
- Steven W. Conkling
- Gary Dow
- Jack Easton
- Richard Erickson
- Kevin Fincher
- Frank Haselton
- Clint Kellner
- Benson Lee
- Judith H. Malemus
- Sabrina Nicholls
- M. W. "Bill" O'Connell
- Amy Sherwin-Cox
- Lynette Stanchina

Mr. Larry Brose
The Robert Mayer Corporation
660 Irvine Center Drive, Suite 1050
Newport Beach, CA 92660

Subject: Waterfront Development - Alternatives Analysis of Wetland and Transitional Area Resources

Dear Mr. Brose:

This letter provides you with an analysis of wetland restoration alternatives for the filling of wetlands and transitional areas on the Waterfront Development site. Alternatives to project development and loss of the wetlands and transitional area include 1) preservation of the wetlands and transitional area in its existing state, 2) restoration and enhancement of the existing wetland and transitional area, and 3) restoration of an off-site wetland.

The first alternative is to maintain the wetlands in their current location. This would be the avoidance alternative. The wetlands would remain in their current condition and the developer would be required to maintain current levels of water inflow to maintain existing plant regimes. The current condition of the wetlands is described below in a description of the study site's setting.

The second alternative is to restore the on-site degraded wetlands and transitional areas. Restoration of the on-site resources would produce a functioning wetland and transitional area.

The third alternative is to provide sufficient off-site habitat enhancement to offset proposed project impacts. Off-site restoration has been considered a viable method of avoiding significant impacts resulting from filling the subject wetlands since the initial plans for site development in 1982. The 1982 Supplemental Environmental Impact Report (SEIR) evaluated the potential to conduct wetlands restoration at six alternative sites in the project vicinity, and discussed the opportunities and constraints associated with them. Several of the sites were not considered to be available, and thus were considered infeasible. Some of the sites did not offer appropriate restoration opportuni-

11/5/99<PATRME31\alternatives analysis.wpd>

ties that met City and/or resource agency objectives. A site located in the Shipley Nature Center in Huntington Central Park was eventually selected as the most advantageous restoration alternative that met City, resource agency, and applicant criteria.

The following analysis is provided to address the three available alternatives.

PRESERVATION OF THE ON-SITE WETLANDS AND TRANSITIONAL AREA RESOURCES

Prior to assessing this alternative relative to the alternative of off-site restoration, a description of the existing conditions, or setting, is provided. This description provides the context for discussion of the limited value of the on-site resources compared to the value of restoration of the nearby Shipley Nature Center property.

Study Area Existing Setting

The study area consists of a narrow, roughly rectangular parcel that is relatively flat. The study area captured some urban runoff from an adjacent mobile home park, which has since been removed. Significant runoff is directed into the area from a pipe outlet at the southwest corner of the study area. Most of the surface drainage entering this parcel originates from stormwater (urban) runoff from adjacent paved areas. Stormwater collects in the study area, mainly via dikes on the edge of Beach Boulevard. The lowest lying area on the site, near the southern end, ponds water, probably from groundwater.

Drainage from the site is conducted via two small drainage channels into two drain pipes (or small culverts), near the southeast corner of the study area, along Beach Boulevard. The latter two pipes conduct flows eastward, under the street, into a large salt marsh that then drains into the Huntington Channel via a flapper gate that allows water to drain out during periods of low tide. Site drainage patterns indicate that the site is not influenced by tidal action.

Soils maps and historic topographic mapping indicate that the site was once contained within a large tidal slough. Beach Boulevard now forms the western boundary of the remaining coastal salt marsh habitat that lies opposite the southern portion of the study area, across the street. The subject area west of Beach Boulevard is permanently cut off from direct tidal influence that continues to affect the marsh east of Beach Boulevard.

The soil is predominantly sandy. Most of the sandy surface soil appears to have been dumped on the site during construction activity in the late 1940s or early 1950s. Borings in the near vicinity of the study area indicate that the fill material overlays a very dark clay material, which once formed the topsoil of the historic tidal slough.

The plant communities on the study area have been classified into four general categories as follows: 1) Coastal Brackish marsh, 2) Alkali Meadow, 3) Ornamental Trees, 4) Disturbed or Ruderal (weedy).

Wildlife species using the site are typical of many developed urban neighborhoods in Orange County; common reptiles, such as side blotched lizard, are expected to occur, as well as common small mammals, including California ground squirrel and opossum. It is also likely that other highly mobile terrestrial animals such as gopher snake, and desert cottontail rabbit may visit the area occasionally. Birds, including native and several exotic species, are the most conspicuous wildlife in such areas.

The most common avian species observed in the study area include mourning dove, American crow, Anna's hummingbird, northern mockingbird, European starling, yellow-rumped warbler, and house finch. Other species noted during past studies include ring-billed gull, killdeer, song sparrow, white-crowned sparrow, and common yellowthroat. During brief periods when water is ponded on the site, ducks and wading birds such as snowy egret and great blue heron may forage on site, although none are expected to nest in the immediate vicinity. Raptors (birds of prey) present throughout the local area, including red-tailed hawk, red-shouldered hawk, and barn owl, are expected to forage over the subject area occasionally, feeding on insects, lizards, small mammals and birds. Also, a few sensitive raptor species, also present in open areas throughout Huntington Beach, may occasionally forage over the small parcel, primarily in winter, including rough-legged hawk, peregrine falcon, osprey, and white-tailed kite. Such species would be expected to occur only very rarely, however, and would not be reliant on this area for foraging opportunities, since populations of prey species are expected to be relatively low, and would not be able to sustain frequent predation by raptors. Moreover, considerable open space and better foraging areas, including the extensive salt marsh to the east, is available in the vicinity, away from the busy arterial street and the isolated habitat.

Previous studies of the area, including studies by the California Department of Fish and Game (CDFG), the 1982 SEIR for this project, and the Specific Plan EIR, reported low wildlife use of the small vacant parcel next to Beach Boulevard (study area) due primarily to the wetland's small size and overgrown condition as well as the physical separation of the small parcel from the extensive salt marsh east of Beach Boulevard. The site constitutes a habitat fragment, surrounded by development and isolated from the larger salt marsh area to the east by a high speed, six lane arterial road. Current observations confirm that wildlife use and species diversity on site are low. Although numerous species of birds, flying insects, and other mobile, wide ranging species may visit the site occasionally, few vertebrate species inhabit the small site on a regular basis. As the invasive, ruderal species (e.g., giant reed, castor bean, pampas grass, and Japanese honeysuckle) continue to dominate and expand over most of the site, it will become even less useful as foraging or nesting habitat for most local wildlife species.

The 1982 SEIR identified two significant impacts on biological resources that would result from the proposed Waterfront Development, and described restoration measures that would be implemented by the City of Huntington Beach and/or the Robert Mayer Corporation to offset those impacts. As stated in the SEIR, the significant impacts are as follows: 1) filling and developing both the existing wetland and the adjacent low lying area, resulting in a loss of both the existing wetland values and the potential for restoration, and 2) possible reduction in the amount of urban runoff that provides water

to the adjacent wetland on the east side of Beach Boulevard, via culverts under Beach Boulevard.

On-Site Wetlands Preservation

The wetland on the subject property (west side of Beach Boulevard) is physically and functionally separated from the larger marsh area to the east of Beach Boulevard. Due to the width of the pavement of Beach Boulevard and the isolated nature of the wetland, the habitat value is much lower for this wetland remnant completely surrounded by development and a major street. In addition, the subject wetland is no longer affected by tidal influences, and is almost completely dependant upon poor quality urban run off and, to some small extent, upon fluctuation of groundwater. In all other direction, to the north, south and west, the adjacent properties are currently, or are planned to be, developed. As such, the wetland fragment does not provide a connection or link to any other habitat area, other than as a collection point for water, which is then conveyed under Beach Boulevard to the marsh east of Beach Boulevard. The wetland and transitional areas may have marginal utility in filtering urban runoff, which is conveyed to the marsh to the east. 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. In comparison with other viable wetland habitats of greater size and greater intrinsic value as a functional habitat, the study area is not considered to be of much value. Preservation of this small isolated portion of the development parcel will have only marginal habitat value.

ON-SITE WETLANDS RESTORATION

This alternative would avoid any development on the subject site, but would entail grading the wetland and transitional area, replanting the site, and maintaining the site (as it may degrade again, without maintenance, due to the adjacency to a developed area). The existing conditions are noted above to include poor soil, filled areas, and poor water quality, which have led to the degraded condition of the wetland and transitional area.

As indicated above, the analysis of the site has been ongoing since 1982, when the City of Huntington Beach analyzed the proposed filling of the wetlands. In consideration of the applicable City of Huntington Beach, California Coastal Commission, U.S. Army Corps of Engineers, and CDFG policies, the SEIR concluded that:

"While such an (on-site) restoration effort could be undertaken, there are two major problems that could render it infeasible. First, the primary water supply is urban runoff from the adjacent mobile home park, and this along with slag or weathered petroleum deposits less than one foot below the surface may result in unacceptable water quality for restoration purposes. Secondly, even if such a restoration effort were to be successful and feasible, the restored wetland would

be completely surrounded by urban development, including residences, visitor-serving commercial uses, and Beach Boulevard. The degraded wetland east of Beach Boulevard is itself isolated and in need of restoration. While the existing wetland could be improved, other alternatives would likely result in a greater net increase in functional wetland acreage and habitat value."

In revisiting this issue for the current application request, it is apparent that the same factors that detracted from the advisability of restoring the wetlands in 1982 remain applicable in 1999. The wetlands remnant is currently isolated and has little value as habitat.

The wetland is 1) separated physically and functionally from the marsh on the east side of Beach Boulevard, and is thus isolated within an urban environment that is not compatible with long-term viability as a habitat; 2) the habitat value would be marginal because of the isolated nature of the site; and 3) the habitat value would be marginal because of the poor soil and water quality conditions of the site. As stated above for the On-Site Preservation Alternative, in comparison to other viable wetland habitats, the small size of the site, combined with its poor value as habitat, would lead to the conclusion that this alternative is not desirable. As with the preservation alternative analyzed above, the other public agencies with review authority for the project have agreed with the City's assessment that the on-site restoration effort would have marginal results and that an off-site alternative would be more beneficial.

SHIPLEY NATURE CENTER WETLAND HABITAT RESTORATION ALTERNATIVE

Pursuant to Sections 30233 and 30411 of the Coastal Act, if the proposed development is granted and the degraded wetland area is filled, a wetland of equivalent or greater acreage must be created elsewhere in the project area or off site, preferably by restoring a former wetland in the vicinity; or if both on-site and off-site replacement prove infeasible, an in lieu fee sufficient to restore a comparable area could be paid to an appropriate public agency.

The California Coastal Commission Statewide Interpretive Guideline for wetlands allows for the off-site wetland restoration where the wetland to be filled is less than one acre. An off-site restoration program has been identified for this purpose, and has received the approval of appropriate local, State, and federal governmental agencies. The City's issuance of the Coastal Development Permit (CDP) was appealed and is now being reviewed by the California Coastal Commission. A Nationwide 26 Permit was issued by the U.S. Army Corps of Engineers; the State of California Department of Fish and Game has issued a 1603 Streambed Alteration Agreement for the off-site restoration project.

The Shipley Nature Center Existing Setting

The Shipley Nature Center restoration site was selected because it is a part of a larger wetlands and uplands habitat enhancement program. The acreage and boundary of the wetland restoration area were first identified in the certified SEIR 82-2 for The Waterfront project, with the concurrence of the Department of Fish and Game.

The proposed restoration program includes restoration, enhancement, and creation of additional freshwater wetland at the Huntington Central Park Shipley Nature Center. This City owned parkland in central Huntington Beach is in a considerably degraded condition, and is an excellent opportunity to mitigate the loss of wetlands at The Waterfront site as well as enhance the ecological and educational value of the Central Park system. The proposed restoration area is approximately 1.4 miles to the northwest of the waterfront project site. This open space area borders the Coastal Zone boundary on the outside of the boundary. The restoration area itself is less than 1,000 feet from the Coastal Zone boundary.

For the most part, the mix of native wetland and woodland habitats within the Shipley Nature Center exhibits moderate to high values for migratory birds and indigenous wildlife, including raptors. Large patches of highly invasive exotic species, particularly giant reed, castor bean, and salt cedar, also have become established in large patches in the southeast section of the Shipley Nature Center. Some of this vegetation is a focus of a restoration effort.

A variety of habitats exist in the Shipley Nature Center: oak, pine, willow, redwood, alder/sycamore, grassland/shrubs, and wetlands. Several of the desired native species are competing with invasive exotic species, such as castor bean, passion vine, and tamarisk. The site contains woodlands and wetlands, which serve as an urban wildlife refuge, particularly for avian and invertebrate species. The Shipley Nature Center landscape now contains a functioning wetlands including a range of habitat types from freshwater marsh to willow woodland. Small patches of mulefat (*Baccharis salicifolia*) occur in isolated areas, but lack the density needed to provide good cover for wildlife. Several portions of the wetlands are being colonized by the invasive giant reed (*Arundo donax*). As well as being a tenacious competitor with native wetland vegetation, this species offers little in terms of habitat for avian and other native faunal species. Among the other invasive exotic species castor bean (*Ricinus communis*), salt cedar (Tamarisk) species and passion flower (*Passiflora caerulea*) comprise the greatest threat to the integrity of the Shipley Nature Center habitats.

The Shipley Nature Center wetlands are reported to be fed primarily by groundwater, augmented by urban runoff and localized irrigation. Fluctuations in the level of the aquifer over the last 15 years have resulted in a shifting mosaic of wetland habitat types surrounding the pond. While the Shipley Nature Center currently provides a variety of tree canopies as wildlife habitat, it lacks most of the understory species, which would be present in the corresponding native plant communities.

The Shipley Nature Center is a high value habitat area. Huntington Central Park is a premier bird habitat area. It is a regional bird watching location, especially in fall and

spring migrations. Its position near the coast, its large expanse of tree and shrub vegetation, and its freshwater lakes and ponds all contribute to its importance. Endangered species like the Southwestern Willow Flycatcher and Least Bell's Vireo have been seen within the park, and there is the potential that these species might someday breed within the park. Their breeding site requirements include the type of riparian habitat that will be created in the Shipley restoration plan.

Shipley Nature Center Wetlands Restoration Plan

A conceptual plan for the restoration of the Shipley Nature Center was prepared and unanimously approved by the City Council of Huntington Beach in May of 1991. The plan provided a restoration/wetland creation site, a description of the existing habitat and environmental issues, a description of the enhancement program, and a description of the wetland creation program. Final landscape and grading plans have been created based on the program and specifications described in the approved conceptual plan.

The proposed restoration program calls for the expansion of the existing pond in the Shipley Nature Center, thereby creating additional wetlands habitat. This enhancement to the Shipley Nature Center will not only provide an extension of the existing natural habitat, but will also expand the educational and enjoyment benefits for park users. The first phase of restoration of the existing habitat in the Shipley Nature Center has been to focus on the complete eradication of exotic invasive species and development of native habitat structure. The Waterfront Development owner has committed significant financial resources to begin eradication of invasive species. To date, over \$25,000 has been expended on this eradication project, relying on project approvals granted by the City, State, and federal governments.

The concept of the restoration program will be to enhance the existing habitats based on the goal of mimicking native California environments and improving the aesthetic experience for visitors by creating the illusion of being removed from the surrounding urban landscape. The proposed wetlands restoration is a public/private joint venture that is proposed to be funded by the Waterfront developer on publically owned property to be held in perpetuity for habitat conservation and management purposes. Grading will be designed to provide for a diversity of microhabitats as well as aesthetic function. All earth manipulations are designed in accordance with local, State, and federal agency requirements. Shoreline areas will be revegetated with a range of shoreline to emergent species to accommodate fluctuating water levels. Emergent areas will be planted with a combination of seeds and liners consisting of bulrushes. The newly created wetland will be fed by the groundwater that currently supports the existing wetland. The elevation of all new wetlands will be at or below the elevation of the upper limits of the existing wetland vegetation. A drip irrigation system will be provided for a minimum of two years to ensure establishment of the planted vegetation.

The restoration areas are entirely surrounded by existing natural habitat areas within the Shipley Nature Center. A large section of Huntington Central Park, including Talbert Lake, lies adjacent to the Shipley Nature Center, providing a more or less continuous open space link to the native habitat and future restoration area in the Bolsa Chica

reserve on the west side of Edwards Street. To the north of the restoration site, a flood control channel and associated fencing separate the Shipley Nature Center from an existing residential tract. The additional native vegetation in the restoration site will complement the existing vegetation in the Shipley Nature Center and Huntington Central Park, to enhance the habitat utility for raptors and other wildlife that utilize Coastal Zone resources.

The restoration area will enhance a publicly owned habitat area already connected to the Bolsa Chica Reserve. The connectivity of related habitat types within the Huntington Central Park and the adjacent Bolsa Chica Preserve, and the significant size of these connected habitats will provide significant value to the variety of coastal species.

CONCLUSION

The following points argue for allowing the Shipley Nature Center restoration project:

- For impacts to a relatively small wetland site surrounded by urban development, an off-site restoration is preferable to on-site preservation, because, even though on-site preservation is normally preferred, the site itself is isolated and does not possess good quality habitat value. Considerable open space and better foraging areas, including the extensive salt marsh to the east, are available in the vicinity, away from the busy arterial street and the isolated habitat.
- The off-site restoration is preferred to on-site restoration for the following reasons:
 - The proposed off-site restoration takes place at a site within close proximity to the project area.
 - It is connected with Huntington Central Park habitat.
 - It is connected to the Bolsa Chica Preserve.
- The restoration program refurbishes and expands an in kind wetland resource, the same type as the wetland to be filled.
- The restoration includes dedication and restoration of additional property to wetland. The land being added to the wetland area currently does not function as a wetland. The off-site wetland restoration program compensates for loss of the existing wetland and the restorable former wetland. In addition, greater acreage is being committed to wetland than is proposed to be filled.
- Shipley Nature Center is functionally within the Coastal Zone. Huntington Central Park, which includes the Shipley Nature Center, abuts directly upon the official coastal zone boundary. The boundary passes along Edwards Street, which is the line separating Bolsa Chica (within the coastal zone) from Central Park (just outside the zone). The Bolsa Chica area and the area of Central Park

have always been closed linked ecosystems, and, while affected by human use, continue to function together as a ecological system.

- The lower elevation portion of the park, including the Shipley Nature Center, was once a complex of peat bogs, freshwater wetlands, and willow woodlands, part of a ring of these habitats at the perimeter of Bolsa Chica. These areas contributed greatly to the biological complexity of the original Bolsa Chica ecosystem, but were largely lost to early farming and later urban development. Preserving and restoring the remaining fragments of these habitats should have high priority. Huntington Central Park, including Shipley Nature Center, is a valuable habitat area, and maintaining its connectivity with Bolsa Chica will enhance them both.
- The off-site restoration project has been approved by the City, the State of California Department of Fish and Game, and the federal government.
- A monitoring program to ensure the success of the wetland restoration is proposed. Should any deficiency occur, corrective action is included in the program to replace habitat that may not survive and to correct the causative problem and correct any implementation deficiency.

In assessing these alternatives, it is apparent that restoration and enhancement of off-site wetlands that meet the above criteria would be of greater benefit to wetland resources than preserving the on-site resource. The off-site restoration of the Shipley Nature Center habitat not only provides a significantly greater acreage of wetland habitat, it also provides a habitat area that functions as an integrated habitat connected to a larger and more diversified habitat system. These factors weigh heavily in favor of implementing the off-site restoration program at the Shipley Nature Center property, rather than preserving the on-site wetland and transitional area or restoring on-site resources.

Should you wish any additional information regarding these issues, please do not hesitate to call me at 949.553.0666.

Sincerely,

LSA ASSOCIATES, INC.



Art Homrighausen
Principal

**Coastal Development Permit Request
Implementation of a Wetland Restoration Project
April 8, 1999**

Executive Summary

The Robert Mayer Corporation and the City of Huntington Beach Department of Community Services are co-applicants for a coastal development permit ("CDP") to enable the filling of a small (less than one acre) isolated and degraded wetland fragment located immediately west of Beach Boulevard and north of Pacific Coast Highway in the City of Huntington Beach in conjunction with the implementation of a wetland and riparian woodland habitat restoration program. The habitat restoration program will be implemented within the Shipley Nature Center portion of the City's Central Park system, and will provide 2.4 acres of habitat restoration at that location. The habitat restoration program will be conducted pursuant to a comprehensive plan ("Restoration Plan") which has previously been reviewed by the Army Corps of Engineers and the California Department of Fish and Game. The City of Huntington Beach has the authority to issue a CDP for the requested activity. Such permit complies with the City's Local Coastal Program ("LCP"), the Coastal Act together with the California Coastal Commission's Statewide Interpretive Guidelines ("Guidelines"), and the California Environmental Quality Act ("CEQA").

History

Origin of Degraded Wetland Fragment

The subject degraded wetland is a fragment of a larger wetland system east of Beach Boulevard, but was isolated by the construction of Beach Boulevard in the early 1900's and further isolated by the development in the 1960's and 1970's of a mobile home park immediately to the west, a road and residential development to the north, and a surface parking lot to the south. Further, the subject degraded wetland fragment is entirely isolated from tidal flushing. Instead, the subject property is low in elevation in comparison to the surrounding land uses, and receives urban freshwater run-off from the property westward. As a result, the degraded wetland fragment is freshwater in character rather than saltwater. This urban freshwater run-off then drains via pipes under Beach Boulevard to the saltwater wetland system east of Beach Boulevard.

Local Coastal Program/Downtown Specific Plan

In 1983 the City of Huntington Beach adopted its Downtown Specific Plan which is the implementation plan for the City's Local Coastal Program. The Downtown Specific Plan was certified by the California Coastal Commission in 1984. The Downtown Specific Plan included the subject degraded wetland fragment in District #8, providing for high-density residential use. Additionally, the Downtown Specific Plan included a conservation overlay for this degraded wetland fragment [Exhibit 1], which stated:

"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."

As is discussed more thoroughly in the section below entitled "Compliance with the Coastal Act", the Coastal Commission's Statewide Interpretive Guidelines specifically authorize wetland restoration programs of the type herein proposed. The Guidelines state:

"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 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."

SEIR 82-2

In 1988 the City of Huntington Beach certified Supplemental Environmental Impact Report 82-2 ("SEIR 82-2") for The Waterfront development. SEIR 82-2 contained a biological evaluation and wetland delineation (*Biology/Wetlands Assessment*, LSA, September 17, 1987) of the subject degraded wetland. That wetland delineation determined that the existing degraded wetland was approximately 0.6 acres in size using the 1987 U.S. Army Corps of Engineers ("USACE") wetland delineation method. The size of the degraded wetland had previously been estimated by the California Department of Fish and Game ("CDFG") to be approximately 0.8 acres. The minor difference in acreage is likely the result of a difference in mapping techniques and/or delineation methodologies. The CDFG had previously noted low use of the subject degraded wetland fragment by wetland-associated birds, and attributed this low wildlife use to the relatively small size of the degraded wetland, its isolated situation, and the predominance of overgrown non-native vegetation. LSA's observations supported this finding. Furthermore, there were no sensitive plant or animal species observed during LSA's survey, nor are any such species expected to occur in the area.

When approving The Waterfront development for the subject site, the City Council adopted conditions of approval implementing the mitigation measures as recommended within SEIR 82-2. Condition of approval #8 (see section below entitled "Addendum to SEIR 82-2") explicitly considered the likelihood that a restoration project at an off-site location would be the best means of protecting and enhancing the resource values associated with the existing degraded wetland. The Council's approval also stipulated that the restoration site be located, if possible, within the City of Huntington Beach. The determination that on-site restoration is not the preferred alternative is based on the factors discussed in greater detail in the section below entitled "Infeasibility of On-Site Restoration".

Search for Appropriate Restoration Sites

In late 1988/early 1989 a survey and analysis of potential off-site wetland restoration opportunities was undertaken (*Interim Report, Feasibility Analysis Off-Site Wetlands Mitigation Areas*, Vail Speck Taylor, Inc., May 24, 1989) [Exhibit 2]. Thirteen potential sites in the region were analyzed, nine within the city of Huntington Beach and four outside the City but within the general area. That survey concluded that the only available area meeting the criteria for

freshwater wetland restoration was a proposed wetlands mitigation bank within the Salt Creek Community Park in Laguna Niguel. However, the proposed mitigation bank did not at that time have any specific approvals to proceed and its future was uncertain. Additionally, resource agencies and Huntington Beach staff reiterated their preference for conducting a wetland restoration project within the City. Subsequent discussions with City staff led to the consideration of a previously overlooked and unique opportunity to create a wetland restoration program at the Shipley Nature Center within the City of Huntington Beach's Central Park system, a short distance from the project site. A conceptual restoration program was then prepared in cooperation with City staff and distributed to CDFG, USACE, the California Coastal Commission and various City departments for review and comment.

Approval of Conceptual Restoration Plan at the Shipley Nature Center

On May 6, 1991, the Huntington Beach City Council unanimously approved in concept a wetland restoration program for the Shipley Nature Center (*Shipley Nature Center Habitat Enhancement and Creation Program*, Vail Speck Taylor, Inc., September 20, 1990) [Exhibit 3] which would create additional freshwater wetland and associated habitat areas. Additional conceptual approval was provided by the CDFG [Exhibit 4], USACE [Exhibit 5], and the Huntington Beach Community Services Commission (see reference in Request for Council Action included with Exhibit 3). The California Coastal Commission staff referred all permitting authority on the matter to the City of Huntington Beach, subject to the location of the existing degraded wetland within an appealable zone [Exhibit 6].

Addendum to SEIR 82-2

On September 14, 1998, the City Council of Huntington Beach approved an Addendum to SEIR 82-2, in conjunction with their approval of various new project entitlements for The Waterfront, including an Amended and Restated Development Agreement. That Addendum reviewed the prior environmental conditions and documentation (SEIR 82-2) for the project, reviewed the current environmental setting and new documentation, and concluded that pursuant to CEQA guidelines §15162(a)(1)-(3) and §15164, that the Addendum, rather than a subsequent or supplemental EIR, was appropriate. Included within that Addendum was a new biological evaluation and wetland delineation (*Biological Resources Evaluation and Jurisdictional/Wetland Delineation*, LSA, February 4, 1998) [Exhibit 7] of the subject degraded wetland. The Addendum concluded that since SEIR 82-2 was prepared, the environmental conditions of the site have not changed substantially. It noted that the proposed development project is essentially the same as when SEIR 82-2 was prepared, though reduced in scope, and will not result in any new or more severe effects on biotic resources.

The Addendum also recited the prior approval by the Huntington Beach City Council, the Huntington Beach Community Services Commission, the CDFG, and the USACE of the concept of a wetland restoration program for the Shipley Nature Center. Noting that the Coastal Commission staff had provided correspondence indicating that the authority with respect to the subject degraded wetland was held by the City of Huntington Beach [Exhibit 6]. Therefore, the Addendum further clarified that the conditions of approval/mitigation measures applicable to the subject degraded wetlands which were originally adopted with SEIR 82-2 in 1988 should be clarified by substituting the words "City of Huntington Beach" where previously the words

"Coastal Commission" or "Commission" appeared. Thus, the applicable conditions of approval/mitigation measures as clarified by the Addendum to SEIR 82-2 and approved by the City on September, 17, 1998, are stated below. Additional commentary regarding the status of each condition is also provided.

Condition of

Approval #7: Subject to the approval of the City of Huntington Beach, and as agreed upon by the City staff and State Department of Fish and Game staff, the amount of wetland area that shall be mitigated for is 0.8 acres.

The parties have agreed on the 0.8 acre figure for such purposes.

Condition of

Approval #8: To mitigate for the loss of onsite 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 discussions with the City of Huntington Beach, 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 offsite mitigation is deemed appropriate, preference shall be given to enhancing/restoring wetland sites located within the City of Huntington Beach. These issues shall be clarified prior to City of Huntington Beach review of the Coastal Development Permit for the affected phase of the project.

Discussions with the City of Huntington Beach, CDFG and USACE have confirmed that the Shipley Nature Center is the appropriate location to conduct a wetland restoration project. No species listed, or proposed for listing by the State or federal resource agencies are known to inhabit the subject degraded wetland; therefore, the U.S. Fish and Wildlife Service is not expected to have any direct involvement in the restoration project. In any event, USACE consults with the Service as necessary. For further information regarding the U.S. Fish and Wildlife Service see the discussion regarding USACE in the section below entitled, "Current Status of Regulatory Agencies Regarding Restoration Plan". The Restoration Plan as discussed further below in the section entitled "Habitat Restoration at the Shipley Nature Center" is the detailed wetland restoration plan referred to above. The Restoration Plan complies with the applicable Coastal Act requirements, as discussed further below in the section entitled "Compliance with Coastal Act".

Condition of

Approval #9: 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.

The Restoration Plan as discussed further below in the section entitled "Habitat Restoration at the Shipley Nature Center" is the detailed wetland restoration plan referred to above, and it complies with the requirements stated above. Due to the need to avoid harassing wildlife using adjacent habitats during the spring breeding season, the varying planting/growth cycles of different plant species to be established pursuant to the Restoration Plan and other seasonal factors, it is anticipated that the initial restoration program will be performed over an extended period (approximately six to nine months). Additionally, follow-up monitoring, revegetation and other efforts as needed will occur over an approximately five year period in order to accomplish the restoration goals described in the Restoration Plan. At the start of the initial restoration program, adequate financial resources will be provided to assure completion of the restoration program. It is anticipated that at such time, and with the concurrence of the City of Huntington Beach, the existing on-site degraded wetland will be filled in conjunction with the larger grading activities planned for The Waterfront development. No in-lieu fee payment, although permissible, is currently proposed.

Condition of

Approval #10: Prior to the alteration of the onsite wetland area, a coastal development permit shall be obtained from the City of Huntington Beach.

The above-referenced coastal development permit is the subject of this application.

Condition of

Approval #11: 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 onsite wetland area, a 404 permit from the Corps of Engineers shall be obtained.

The Regional Water Quality Control Board has issued a letter, dated February 22, 1999, indicating their waiver of water quality certification pursuant to Section 401 of the U.S. Clean Water Act for the filling of the subject degraded wetlands [Exhibit 8]. The USACE has previously inspected the subject degraded wetland and the Shipley Nature Center, and has reviewed the Restoration Plan. They have indicated their concurrence with the proposal and are expected to verify that the proposed activity is authorized under Section 404 of the U.S. Clean Water Act via Nationwide Permit No. 26: Headwaters and Isolated Waters Discharges (see section below entitled "Current Status of Regulatory Agencies Regarding Restoration Plan"). An individual USACE 404 permit is not required; however, in keeping with the above condition of approval, no filling of the subject degraded wetland will occur until the USACE has verified that such activity is authorized.

Infeasibility of On-Site Restoration

Background

Before proceeding with an off-site restoration program, it must be determined whether an on-site restoration program is infeasible. In consideration of the possibility that off-site restoration would be the best means of protecting and enhancing the resource values associated with the existing degraded wetland, the City of Huntington Beach, with the approval of the California Coastal Commission, included in its Local Coastal Program via the Downtown Specific Plan a conservation overlay that recognized this degraded wetland fragment and made the following specific statement:

"... 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.'"

Further, in establishing its conditions of approval for The Waterfront development in 1988, the City of Huntington Beach explicitly considered the likelihood that a restoration project at an off-site location would also be the best means of protecting and enhancing the resource values associated with the existing degraded wetland. Additionally, the City Council's approval also stipulated that the restoration site be located, if possible, within the City of Huntington Beach (see mitigation measure #8 enumerated previously in the section entitled "Addendum to SEIR 82-2"). And finally, on May 6, 1991, the Huntington Beach City Council unanimously approved in concept a wetland restoration program for the Shipley Nature Center [Exhibit 3].

Criteria for On-Site Restoration

The California Coastal Commission's Statewide Interpretive Guidelines, which are incorporated by reference into the City's Conservation Overlay in the Downtown Specific Plan, state the following:

"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 wetland 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."

Additionally, the Guidelines mandate the following specific criteria with regard to judging whether on-site restoration is feasible:

"The wetland to be filled is so small (e.g., less than one 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."

In summary, the criteria to judge whether on-site restoration is feasible is whether the existing degraded wetland is "capable of recovering and maintaining a high level of biological productivity" in light of its small size and lack of connectivity to a larger wetland. An expanded discussion of further criteria is contained in the letter from LSA Associates, Inc. [Exhibit 9].

Feasibility Considerations for On-Site Restoration

The subject 0.8 acre wetland fragment is not "capable of recovering and maintaining a high level of biological productivity" and therefore is not suitable for on-site restoration, for a number of reasons.

1. SEIR 82-2 concluded that, "While such an (on-site) restoration effort could be undertaken, there are two major problems that could render it infeasible. First, the primary water supply is urban runoff from the adjacent mobile home park, and this along with slag or weathered petroleum deposits less than one foot below the surface may result in unacceptable water quality for restoration purposes." Thus, the primary source of water for the wetland is polluted and will be further impacted by a layer of petroleum contamination not compatible with a healthy, viable ecosystem.
2. The second factor that SEIR 82-2 recognized is that even with an on-site restoration program, the subject wetland fragment would still be surrounded by urban uses and subjected to continuing light and noise impacts with an existing public street (Sunrise Street) to the north, an approved four lane arterial street (Pacific View Avenue) to the south, an existing six lane highway (Beach Boulevard) to the east, and residential development to the west. Moreover, with Beach Boulevard separating it from the only nearby larger wetland area, wildlife that might use this small wetland fragment are exposed to significant traffic hazards when transiting to and from the larger wetland habitat east of Beach Boulevard.
3. On-site restoration would not change the fact that due to the elevation of the subject wetland fragment relative to the property westward and to the salt marsh wetland east of Beach

Boulevard, it survives only as a result of low quality freshwater urban run-off from the property westward. It is therefore freshwater in nature and due to this differing water supply and biological character, it is even more disassociated from the larger saltwater wetland system east of Beach Boulevard. SEIR 82-2 noted, "The degraded wetland east of Beach Boulevard is itself isolated and in need of restoration. While the existing wetland could be improved, other alternatives would likely result in a greater net increase in functional wetland acreage and habitat value."

4. On-site restoration would not change the basic character of the subject wetland as being a small "patch" of wetland dependent upon urban storm water for inundation. Due to its small size, it cannot support significant wildlife populations or provide sufficient habitat area for a diverse ecosystem.
5. On-site restoration would not change the basic character of the subject degraded wetland as being extremely isolated. Again, the nearest functional wetland is across Beach Boulevard and is a dissimilar salt marsh wetland subject to tidal influence. Therefore, the subject degraded wetland cannot meaningfully contribute to or benefit from proximity to this larger saltwater wetland ecosystem. Without such connectivity, this small wetland fragment lacks functionality, resulting in a lack of contribution to species diversity as well as a lack of resilience to impacts, including extreme weather conditions.

No Feasible Less Damaging Alternative

In addition to the determination that an on-site restoration program is not feasible, Coastal Act Section 30233 requires that any restoration program resulting in the filling of a wetland be taken "when there is no feasible less environmentally damaging alternative". As noted in the letter from LSA Associates, Inc. [Exhibit 9], SEIR 82-2 analyzed several alternatives to the proposed project and found that "the No Project Alternative keeps the wetlands in their existing degraded and partially filled condition..." As LSA goes on to discuss, due to geologic conditions and flooding potential the No Project Alternative would still have adverse environmental consequences and further, would simply allow the habitat value of that area to continue to deteriorate as discussed in the Biological Evaluation. Additionally, its small, extremely isolated condition makes it especially sensitive to the ongoing degradation caused by existing light and noise impacts, traffic hazards to wildlife, and increasing dominance of invasive alien plant species. Given these facts, it is reasonable to conclude that conducting some form of wetland restoration is less environmentally damaging than leaving the existing non-functional, degraded wetland in its current state. Since an on-site restoration effort has been shown to be infeasible, it then follows that there is no feasible less environmentally damaging alternative than to perform a suitable off-site restoration program in combination with the filling of the existing degraded wetland fragment to establish a stable and logical boundary between urban and wetland areas. This is the best course of action to protect and enhance the resource values associated with the existing degraded wetland fragment.

Feasible Mitigation Measures

Coastal Act Section 30233 additionally requires that any restoration program resulting in the filling of a wetland be taken "where feasible mitigation measures have been provided to

minimize adverse environmental effects". Addendum to SEIR 82-2 contains feasible mitigation measures that will minimize the adverse environmental impacts associated with the proposal. Additionally, of special note are mitigation measures 12 and 13 of Addendum to SEIR 82-2, which require that the drainage system of The Waterfront development be designed to deliver approximately the same amount of freshwater urban runoff to the salt marsh wetlands east of Beach Boulevard as under existing conditions, and in approximately the same seasonal patterns. These mitigation measures have been incorporated into the project's design.

Feasibility Considerations for Off-Site Restoration

The Guidelines provide several criteria for judging the feasibility of an offsite restoration project. A more detailed discussion is provided in the letter from LSA Associates, Inc. [Exhibit 9]. However, in summary, the following two criteria are most noteworthy:

"Restoration of another wetland to mitigate for fill can most feasibly be achieved in conjunction with filling a small wetland."

The City does not independently possess sufficient funding to pay for the restoration program planned at the Shipley Nature Center. Further, there are no other development projects underway or planned that would have any potential impacts upon the Shipley Nature Center that would create a legal nexus to allow the City to require such restoration activity to be undertaken by or paid for as a condition to such development. However, the Redevelopment Agency of the City of Huntington Beach ("Agency") and Mayer Financial, Ltd. ("Developer") entered into an Amended and Restated Disposition and Development Agreement in September, 1998, for The Waterfront site ("DDA"). The DDA provided that certain public improvements be constructed by the Developer for the benefit of the City, including the restoration of wetlands at the Shipley Nature Center. The DDA additionally provided a funding mechanism wherein the Developer shall be reimbursed by the Agency for those and other costs from a portion of the tax revenue generated by the development of The Waterfront project which includes the subject degraded wetland fragment. Such arrangement is the result of extended analysis and negotiation by both parties plus a number of public hearings, and represents the most feasible means to pay for the restoration project at the Shipley Nature Center. Therefore, it has been concluded that restoration of wetlands at the Shipley Nature Center can most feasibly be achieved in conjunction with the filling of the subject degraded wetland fragment pursuant to the DDA.

"[Offsite] Restoration ... must occur at a site that is next to a larger, contiguous wetland area providing significant habitat value to fish and wildlife that would benefit from the addition of more area."

As referenced previously, a search was made of potential off-site restoration opportunities. The City of Huntington Beach, CDFG and USACE eventually concluded that a restoration program in the Shipley Nature Center was the preferred alternative. The Shipley Nature Center currently provides a substantial wetland habitat area that will benefit from the addition of more wetland area and native woodland habitat as proposed in the Restoration Plan.

Logical and Stable Boundary

As referenced previously, the Guidelines provide that small, isolated wetlands such as the subject degraded wetland fragment "...may be filled and developed for uses not ordinarily allowed if such actions establish stable and logical boundaries between urban and wetland areas..." By taking such action with regard to the subject degraded wetland fragment, Beach Boulevard is established as the boundary between urban uses west of Beach Boulevard and the existing salt marsh wetlands east of Beach Boulevard. Such a boundary is logical from a land use perspective and is consistent with the land uses designated in the LCP through the Downtown Specific Plan. Additionally, such boundary minimizes the exposure of wildlife to traffic hazards by eliminating a potential route of transit between wetland areas across such highway. Lastly, Beach Boulevard is a designated State highway within a permanent right-of-way for such purposes and therefore is a stable boundary. As a result of these factors, such action conforms to the requirements of the Guidelines as quoted above.

Conclusion

As a result of the above discussion, it appears that conducting some form of wetland restoration is less environmentally damaging than leaving the existing degraded wetland in its current state. Further, it is apparent that an on-site restoration program is not capable of being accomplished in a successful manner. Therefore, there is no feasible less environmentally damaging alternative for protecting and enhancing the resource values associated with the existing degraded wetland than to conduct a restoration program at an off-site location and to fill the existing wetland fragment to establish a logical boundary between wetland and urban uses. Additionally, the Guidelines establish specific criteria that must be met in order to allow off-site restoration, and as discussed further in the letter from LSA Associates, Inc. [Exhibit 9], each of those criteria are met in the subject instance. Most importantly, it is clear that a successful wetland restoration program can be implemented at the Shipley Nature Center, as discussed below in detail.

Habitat Restoration at the Shipley Nature Center

The Restoration Plan is prepared in the format and content of the USACE's Los Angeles District Regulatory Branch *Habitat Mitigation and Monitoring Proposal (HMMP) Guidelines*, issued in June, 1993. The document is entitled "*Habitat Mitigation and Monitoring Plan (HMMP) For The Waterfront Development, Huntington Beach, CA - A Conceptual Plan to Establish Native Habitat Areas on 2.4 Acres in the Donald G. Shipley Nature Center at Huntington Central Park*", LSA Associates, Inc. and is dated December 18, 1998. [Exhibit 10.]

The Restoration Plan is designed as a guide for the creation of approximately 1.0 acre of wetland habitat and 1.4 acres of transitional wetland/upland and woodland habitats, for a total habitat creation of 2.4 acres, within the unique setting of the Shipley Nature Center in Huntington Central Park. Establishing the necessary hydrologic regime for new wetland habitat will involve excavating several basins to below the average water table depth within the Shipley Nature Center. The basins are designed to enlarge the existing wetland and open water habitat area in the preserve while maintaining a pedestrian trail through the area. Nearly all the area designated for excavation is presently covered by ruderal (weedy) species, including upland areas

dominated by non-native annual herbs and grasses, and low areas dominated primarily by giant reed (*Arundo donax*) and castor bean (*Riccinis communis*), which are extremely invasive exotic species with negligible value to wildlife. The basin bottoms will be contoured to promote the development of various native hydrophytic species while providing both cover and some open water habitat for wildlife. The lower portion of the basin slopes and the islands or "mounds" within the basins will be planted and seeded with various native species that are adapted to periodic saturation.

The upper slopes of the basins and several peripheral areas around the basins will also be planted and seeded with native species to create upland habitat consisting of woodland, scrub, and perennial grassland vegetation that is representative of similar natural areas in Coastal Southern California.

In addition, numerous small patches of salt cedar (*Tamarix ramosissima*), another particularly noxious invasive pest plant, outside the primary mitigation areas, will be treated both manually and with herbicide in order to eliminate this exotic species within the Nature Center. Where these patches are of significant size (e.g., >100 sq. ft.), appropriate native trees, shrubs, and ground cover will be planted to revegetate discrete areas and help prevent the reestablishment of salt cedar and other opportunistic ruderal species.

The Robert Mayer Corporation will provide funding for the initial restoration program, as well as monitoring and supplemental planting during an approximately five year period following the completion of the initial restoration work until such time as the goals under the Restoration Plan are met as determined by a consulting biologist in cooperation with the USACE and CDFG. The City of Huntington Beach will thereafter assume permanent maintenance of the habitat areas, as it currently does with the balance of the Shipley Nature Center.

It is important to note that the Shipley Nature Center provides a unique opportunity for implementing the Restoration Plan. The Nature Center is completely fenced and provides a protected setting within the City's Central Park system. Further, a full-time park ranger operates from offices at the site, and will provide additional oversight and protection for the restoration project. The Nature Center is also a prime attraction as an excursion for local school children and families visiting the park. As stated in the City's Request for Council Action in 1991 regarding the conceptual restoration program, "this enhancement program will not only provide an extension of the existing natural habitat, but will also expand the education and enjoyment benefits for park users" [Exhibit 3].

Current Status of Regulatory Agencies Regarding Restoration Plan

California Coastal Commission

The California Coastal Commission staff has previously issued a letter indicating that the City of Huntington has permit authority with respect to the subject activity, subject to its location within an appealable zone [Exhibit 6]. Additionally, the Coastal Commission San Francisco office in charge of Coastal Zone Management Act ("CZMA") consistency coordination has indicated a

willingness to issue to the USACE a waiver of authority to make a determination of consistency with the CZMA. Such a step (or a specific finding of consistency) is required by USACE in order for USACE to issue its verification that the proposed activity is authorized under Nationwide Permit No. 26. No other involvement with the Coastal Commission is anticipated at this time.

City of Huntington Beach Department of Community Services and Department of Public Works
Staffs from both agencies have reviewed the Restoration Plan in detail. Various changes were incorporated into the Restoration Plan as a result of the suggestions made by the staff.

USACE

Staff from USACE have visited the subject degraded wetland, the Shipley Nature Center, and have reviewed both the Biological Resources Evaluation and Jurisdictional/Wetland Delineation and the Restoration Plan. USACE has indicated that they concur with the project and intend to issue a verification that the proposed activity is authorized under Section 404 of the U.S. Clean Water Act via Nationwide Permit No. 26: Headwaters and Isolated Waters Discharges. An individual USACE 404 permit is not required. It is currently anticipated that following the issuance of a waiver of authority to make a determination of CZMA consistency by the Coastal Commission San Francisco office as described above, USACE will issue its verification to allow filling of the degraded wetland based on the implementation of the Restoration Plan. It should also be noted that USACE will distribute notification of the proposed activity to the U.S. Fish and Wildlife Service ("USFWS") and other governmental agencies and interested parties. USFWS will have an opportunity to request a complete application package and provide comment. However, USACE typically reviews such proposals with appropriate scrutiny and consideration of issues that would be of concern to USFWS. Additionally, it must be noted that no species listed, or proposed for listing by the State or federal resource agencies, are known to inhabit the subject degraded wetland; therefore, it is not expected that USFWS will have comment. As a result, no direct contact by the applicants with USFWS or other agencies is required.

CDFG

Staff from CDFG have also visited the subject degraded wetland, the Shipley Nature Center, and have reviewed both the Biological Resources Evaluation and Jurisdictional/Wetland Delineation and the Restoration Plan. CDFG has also indicated that they concur with the project and have requested only a specific clarification from the City regarding its willingness to maintain the restored habitat at the Shipley Nature Center free of invasive plant species, which the Department of Community Services has issued. CDFG has issued the Streambed Alteration Agreement in accordance with Section 1603 of the California Fish and Game Code, which permits the filling of the degraded wetland based on the implementation of the Restoration Plan. Both the CDFG and The Robert Mayer Corporation have executed the Agreement.

California Regional Water Quality Control Board

On February 22, 1999, the California Regional Water Quality Control Board, Santa Ana Region issued a waiver of water quality certification pursuant to Section 401 of the U.S. Clean Water Act for the proposed filling of the degraded wetland based on the implementation of the

Restoration Plan and compliance with standard conditions for such waivers [Exhibit 8]. No further direct involvement by this agency is required.

Other Regulatory Agencies

It is not anticipated that there will be significant involvement by any other regulatory agencies.

Compliance with Local Coastal Program

As noted previously, in consideration of the possibility that off-site restoration would be the best means of protecting and enhancing the resource values associated with the existing degraded wetland, the City of Huntington Beach, with the approval of the California Coastal Commission, included in its LCP via the Downtown Specific Plan a conservation overlay that recognized this degraded wetland fragment and made the following specific statement:

"... 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 California Coastal Commission in 1984 approved that LCP conservation overlay and during the subsequent fifteen years it has existed as an important land use regulation for the subject degraded wetland. The subject degraded wetland is less than one acre in size. The Restoration Plan for the Shipley Nature Center as proposed is entirely consistent with the Guidelines. Therefore, the subject application to implement an off-site wetland restoration program and fill the existing degraded wetland to establish a stable and logical boundary between urban and wetland areas is in compliance with the city's Local Coastal Program.

Compliance with Coastal Act

Section 30233 provides that diking, filling or dredging of wetlands shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to eight enumerated uses, including Section 30233(7) which states "restoration purposes". Such restoration projects are ordinarily conducted at the same site as the wetland and for whatever reason may entail altering or partially filling such wetland, perhaps to change the natural course of the waterway resulting in an overall larger and more biologically productive habitat. However, Section 30233(7) does not explicitly require that the restoration activity to which the wetland filling is associated be at the same location as the wetland. And as previously noted, the California Coastal Commission's Guidelines specifically declare that:

"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 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."

Additionally, it must be considered that the California Coastal Commission additionally permitted specific language in the City's Local Coastal Program that referenced "other restoration options" pursuant to its Guidelines (which specifically provide for off-site restoration in the subject instance). And further, such specific language has been allowed to remain in the Local Coastal Program for some fifteen years, notwithstanding numerous amendments having been made to such Program over that period. It should also be noted that the California Coastal Commission is granted broad authority to interpret the Coastal Act, and therefore its decision to allow such specific language in the Local Coastal Program should be given great weight in interpreting the application of the Coastal Act to the subject situation.

As discussed previously in the prior section entitled "Infeasibility of On-Site Restoration", there is no feasible less environmentally damaging alternative than to perform a suitable off-site restoration program in combination with the filling of the existing degraded wetland fragment to establish a stable and logical boundary between urban and wetland areas. Further, feasible mitigation measures have been provided to minimize adverse environmental effects of this action. Therefore, it is evident by these facts and history that in this instance the Coastal Act allows the filling of the subject degraded wetland fragment in conjunction with the proposed Restoration Plan at the Shipley Nature Center, pursuant to Coastal Act Section 30233(7) and the Guidelines.

Compliance with the California Coastal Commissions Statewide Interpretive Guidelines

The Guidelines mandate a series of criteria that must be satisfied in order for an off-site restoration project to be permitted in conjunction with the filling of an existing wetland. The letter from LSA Associates, Inc. [Exhibit 9] provides a thorough discussion of those more detailed criteria. It is clear that in every instance the proposed Restoration Plan meets those criteria.

Compliance with CEQA

Subject 0.8 acre Degraded Wetland Fragment

The subject CDP is covered by Addendum to SEIR 82-2, which was approved by the City Council of the City of Huntington Beach on September 14, 1998.

Physical Work at Shipley Nature Center

The restoration work planned at the Shipley Nature is categorically exempt from further environmental review pursuant to California Environmental Quality Act § 15304(d). The following provisions will be met:

**Coastal Development Permit Request
Implementation of a Wetland Restoration Project
April 8, 1999, Page 15**

1. No mature trees will be removed.
2. No grading will occur in existing wetlands. (Removal of *Arundo*, an invasive exotic plant species, from existing wetland areas pursuant to the approved Restoration Plan is allowed.)
3. The excavated soils will be kept on-site in Central Park for future use. (Vegetative matter will be removed from the soil as directed by the Department of Community Services.)

Conclusions

The proposed coastal development permit is to enable the filling of a small (less than one acre) isolated and degraded wetland fragment located west of Beach Boulevard and north of Pacific Coast Highway in the City of Huntington Beach as a part of the implementation of a 2.4 acre wetland and riparian woodland habitat restoration program within the Shipley Nature Center. The proposed activity is the feasible and least environmentally damaging alternative for protecting and enhancing the resource values associated with the existing degraded wetland. The Restoration Plan will be conducted with the approval of the USACE, the CDFG and other applicable authorities. Additionally, the proposed coastal development permit and Restoration Plan complies with the City's Local Coastal Program, the Coastal Act together with the California Coastal Commission's Statewide Interpretive Guidelines, and the California Environmental Quality Act.

Attachments:

Recommended Findings
Recommended Conditions of Approval
Exhibits 1 through 10



TU 18a

RECEIVED
FEB 11 2000

CALIFORNIA
COASTAL COMMISSION

February 10, 2000

Chairman Sara Wan and
Members of the California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

**Re: Huntington Beach Waterfront Redevelopment Project
Tuesday, February 15, 2000
A-5-99-275 (Mayer Trust)
AGENDA ITEM 18.a**

Dear Chairman Wan and Commissioners:

At the February meeting, you will consider a small portion of the Huntington Beach Waterfront Redevelopment Project. The Staff Report raises identical issues in connection with both its recommendation on substantial issue and on the merits of the project. This letter addresses those issues and urges you to conclude that the appeal raises no substantial issue.

We believe it is important to emphasize that, in approving this project, the City of Huntington Beach scrupulously followed the course laid out by the Commission in its certification of the City's LCP and its Statewide Interpretive Guidelines ("Guidelines"), which the LCP expressly incorporates.

As originally certified in 1982, the LCP designated this property as Residential with a "Conservation Overlay." It is significant that the LCP expressly identified the small degraded wetland fragment at hand (which the Commission's ecologist confirms is 0.696 acre in size), and, with the newly adopted Guidelines in mind, the LCP stated as to that wetland:

"... 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'."

In 1995, the Commission again certified the City's updated Downtown Specific Plan with the same "Conservation Overlay" and language quoted above, recognizing that off-site mitigation under the Guidelines' "less-than-one-acre" exception to Section 30233 might well be the best means of protecting and enhancing the resource values associated with the degraded wetland.

As a result, the last 10 years have been marked by an active, coordinated planning effort between the City and the Robert Mayer Corporation involving an extensive investigation of appropriate off-site

Chairman Sara Wan
California Coastal Commission
February 10, 2000
Page 2 of 10

the City and the Robert Mayer Corporation involving an extensive investigation of appropriate off-site mitigation sites, the selection of the Donald G. Shipley Nature Center at the periphery of Bolsa Chica, and the preparation and approval of a detailed wetland restoration and monitoring plan – entirely consistent with the criteria set forth in the Guidelines and in conformity with the City's certified LCP.

While this Commission may or may not have done it differently, it simply cannot be fairly said that the City did not follow the dictates of its certified LCP in approving this project. Fairness, equity and respect for the partnership which exists between the Commission and local government in the LCP process, we think, dictate your vote of no substantial issue.

We recognize the fill of degraded wetlands in the wake of the Bolsa Chica decision remains a serious issue for this Commission. However, Bolsa Chica is irrelevant to this particular application. Bolsa Chica involved a timely, direct legal challenge to a Commission decision to certify an LCP in the first instance where the Standard of Review was the Coastal Act. The Standard of Review on the appeal now before the Commission is conformity with the certified LCP, not the Coastal Act. No lawsuit (timely or otherwise) was ever filed challenging the Commission's 1982 decision to certify the City's LCP or 1995 decision to certify the Downtown Specific Plan. As a consequence, by law both Commission decisions, and the resulting LCP and Downtown Specific Plan, became "res judicata" – i.e., the LCP, the Standard of Review for the Commission on appeal, cannot now be challenged.¹

With this in mind, we turn to address specific points raised by the Staff Report.

Project Description

First, the description of this wetlands restoration project requires a clarification. The Staff Report inaccurately describes the project as the fill of 0.8 acre of existing wetland and approximately 1.4 acre of restorable wetland.

The application specifically proposes to fill 0.696 acre of isolated, degraded existing wetlands which will be mitigated by the implementation of a detailed wetland and riparian woodland habitat

¹ It is worth noting that a veritable host of appellate decisions -- all involving the Commission -- establish the rule that the failure to timely challenge a Commission decision renders that decision res judicata and "immune from collateral attack." (Qjavan Investors v. California Coastal Com. (1994) 26 Cal.App.4th 517; Patrick Media Group v. California Coastal Com. (1992) 9 Cal.App.4th 592; Roscco Holdings, Inc. v. State of California (1989) 212 Cal.App.3d 642; Ham v. Superior Court (California Coastal Com.) (1989) 210 Cal.App.3d 1488; Leimert v. California Coastal Com. (1983) 149 Cal.App.3d 222, 233-234; Briggs v. State of California (1979) 98 Cal.App.3d 190.)

Chairman Sara Wan
California Coastal Commission
February 10, 2000
Page 3 of 10

program involving 2.4 acres at the Donald G. Shipley Nature Center.

Initially, in 1983, the Department of Fish and Game determined this wetland to be 0.8 acre in size. Based on a more recent, site-specific wetland delineation by LSA Associates, Inc., the Commission's staff ecologist has confirmed that the wetland is actually smaller, 0.696 acre.

The Downtown Specific Plan of the City's certified LCP notes this isolated, degraded wetland fragment and designates this site with a Conservation Overlay, which 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 restoration options may be undertaken, pursuant to the Coastal Commission's Statewide Interpretive Guidelines for Wetlands and other Wet Environmentally Sensitive Habitat Areas."

This language, carefully crafted in discussions between Commission staff and City staff, was incorporated in the City's certified LCP to both identify – indeed call attention to – the small size and isolated, degraded nature of the subject wetland and to permit exactly the type of off-site mitigation permitted by the Guidelines and approved by the City in this application.

It bears noting that there is no dispute that the "1.4 acre of restorable wetlands" referred to in the Project Description is "historic wetland " which no longer functions as wetland. This is the result of substantial fill deposition that permanently raised the typical surface elevation over most of the site and altered site hydrology at least 30 years ago , long before even Proposition 20 . We bring this to your attention because, as has long been your practice and as explained in the Commission's *Procedural Guidance for Review of Wetland Projects in California's Coastal Zone* "in determining project related impacts the CCC considers the wetland as it currently exists and not as it may have existed historically." (Emphasis added.)

The Statewide Interpretive Guidelines Apply

The discussion in the Staff Report regarding the Statewide Interpretive Guidelines on "Restoration Projects Permitted in Section 30233" is confusing. (See Exhibit O to the Staff Report.) The Guidelines first explain the basic limitation that a "restoration project" permitted under Section 30233 is one "in which restoration is the sole purpose of the project." The Commission's decision on the Chula Vista LCP is cited as support for that proposition.

However, the Guidelines then go on in the next paragraph to state the limited "exception" to Section 30233 which applies here:

"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 region." (Emphasis added.)

The Guidelines then lay out specific criteria for this "less-than-one-acre" exception, which, among other things, contemplate "restoration of another wetland to mitigate" for fill of the small ("e.g., less than one acre") and isolated wetland "in the same general region." The criteria and requirements of the "limited exception" permitting wetland fill cited in the Guidelines and incorporated in the certified LCP precisely define the project now before you.

The Staff Report summarily dismisses the Guidelines, and fails to even acknowledge that they are part and parcel of the certified LCP, regardless of their status in the eyes of today's Commission. By way of background, the State and Regional Commissions spent 15 public hearings crafting and refining the Guidelines. The "less-than-one-acre" exception was intended to allow for limited flexibility which, in the end, would produce, through off-site restoration, wetlands with a high level of biological productivity – precisely the restoration program proposed here.

The Staff Report states that a project with the intended primary function as residential cannot be considered a "restoration project." Under the Guidelines and certified LCP, this is not correct. The Guidelines permit fill "for non-permitted uses" without qualification, providing the specific criteria set forth is met. Indeed, the best indicator of this is the Commission's certification of this City's LCP (1982) on the heels of its adoption of the Guidelines (1981), where the LCP (i) identified this specific wetland, (ii) designated the property "Residential" with a "Conservation Overlay," and (iii) specifically incorporated the "less-than-one-acre" exception, providing the wetland ultimately proved to be less than one acre.

On a commonsense level, the Staff analysis fails in its suggestion that the fill may occur only as part of a larger restoration project. The "less-than-one-acre" exception applies, by its terms, to "small extremely isolated wetlands parcels" and permits the filling of the entire parcel.

The Guidelines clearly apply here and the City meticulously applied them in determining whether and how to approve this project.

The City Correctly Determined That Off-Site Restoration Is The Least Environmentally Damaging Alternative

Despite extensive analysis to the contrary in the Supplemental EIR, studies prepared by LSA

Associates, Inc., and the City in its findings, the Staff Report expresses the view, without further evidence, that the least damaging feasible alternative is on-site restoration. In essence, the Staff Report simply ignores the numerous factors which led the City to conclude that off-site restoration at the Shipley Nature Center is the least environmentally damaging alternative.

A. The "No Project" Alternative

As to the first alternative of retaining the wetlands on-site in their current condition, the Staff Report incorrectly states: "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."

In fact, LSA has said just the opposite. It notes that two drainage pipes conduct flows eastward, under the Beach Boulevard, into the salt marsh on the east side of Beach Boulevard. However, neither the LSA report nor the SEIR remotely suggest that restoration of tidal influence is possible here. Instead, LSA explains: "The existing wetland adjacent to Beach Boulevard is not subject to tidal action, and no feasible opportunity exists to restore such flushing in the area, without creating an unacceptable potential flooding hazard." (LSA 3/99 Report, page 7; emphasis added.) Why? Because there is a significant elevation difference between the higher subject wetland fragment and the lower salt marsh east of Beach Boulevard.

Unlike the Staff Report, the City Council drew attention to several factors in its finding that the so-called "no project" alternative is not the least environmentally damaging alternative:

"9. . . . 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."

The Council not only carefully considered the on-site alternative before rejecting it, but it based its conclusion on the only evidence in the record – evidence contained in the SEIR and further analyses provided by LSA. The Staff conclusion to the contrary is without foundation.

B. On-Site Restoration Alternative

The Staff Report next suggests that on-site restoration is also an alternative that would be less environmentally damaging than the fill of the wetland. This conclusion is perplexing.

First, it ignores all of the factors that SEIR, LSA analysis and City concluded make the on-site restoration alternative clearly infeasible. These are summarized in the City's findings:

"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 together with petroleum deposits below the surface will result in unacceptable water quality not compatible with a healthy, viable ecosystem; b) the site is small, extremely isolated and surrounded by roadways and urban uses exposing the wetlands 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) cannot 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."

The Staff Report concedes that the wetland is surrounded by development and that the larger Waterfront Development "has not yet developed, although grading is underway." Even so, it then states that the wetland could still have a 100 foot setback. This, unfortunately, would not be the case. The wetland has (and would have) no buffer at all from Beach Boulevard or Pacific View Avenue, which is being extended to Beach Boulevard as part of the larger Waterfront Development already underway pursuant to a valid coastal development permit.

The Staff Report further states: "Total loss of the on-site wetlands cannot be considered the least environmentally-damaging alternative, even if higher value habitat is created elsewhere." The Guidelines, however, specifically state otherwise. The Guidelines (hence the certified LCP) explain:

"'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."

Furthermore, the Staff's comment misses the whole point of the isolated wetland exception. The exception expressly permits complete fill of a small, isolated degraded wetland for a non-permitted (by Section 30233) use if off-site mitigation is provided in the same general region and the

restoration would result in establishing a high biologically productive wetland. Under the Staff view, the exception could never apply – and there would have been no reason for the Commission to incorporate the Guidelines in the City's certified LCP to permit "other restoration options."

Finally, the Staff Report does not explain that the 1983 DFG Degraded Wetland Report included criteria to guide off-site restoration "if offsite mitigation is deemed necessary for this freshwater pocket," or that DFG, the ACOE and the RWQCB have since all reviewed and approved the detailed wetland restoration program at the Shipley Nature Center.

C. The Off-Site Restoration Alternative

The Staff Report includes little discussion on the feasibility of the off-site restoration alternative, but we think it bears discussion here. The City Council made several findings to support its conclusion that the off-site restoration alternative is the least environmentally damaging alternative, including:

"11. Off-site restoration at the Shipley Nature Center and filling of the existing degraded wetland fragment to establish a logical and stable boundary between wetland and urban areas is the only feasible and least environmentally damaging alternative for the protection and enhancement of the resource values associated with the existing degraded wetland fragment.

"12. Restoration at the Shipley Nature Center is the most appropriate off-site restoration alternative available for numerous reasons inclusive of the following: a) the Shipley Nature Center is located in the same general region as the subject degraded wetland; b) it possesses a larger, existing wetland habitat of a freshwater character similar to the existing degraded fragment and will benefit from the addition of more wetland area as well as more native riparian woodland habitat; c) it is fenced protected area of the City's Central Park system; d) it enjoys the oversight of a full time park ranger at the premises; e) the restoration program will additionally expand the education and enjoyment benefits for park users; and f) no other potential wetland restoration site possessing similar qualities or located within the same general region has been found to exist.

This option is well supported by evidence in the EIR and the various reports prepared by LSA, as well as the detailed Habitat Mitigation and Monitoring Program ("HMMP") prepared by LSA for wetland restoration at the Shipley Nature Center. There is, in short, ample support for the City's carefully considered conclusion that the off-site restoration alternative is indeed the least environmentally damaging alternative.

The Mitigation Ratio Of Nearly 3.5:1 Is More Than Adequate To Offset The Fill Of The 0.696 Acre Wetland Fragment.

At the time of the City's approval, the isolated, degraded wetland area was assumed to be 0.8 acre in size based upon a preliminary determination by DFG in its 1983 degraded wetland report. (In November 1999, LSA identified a total wetland area of 0.57 acre utilizing Coastal Act criteria. The Commission's staff ecologist then determined the total wetland acreage to be 0.696 acre.)

A detailed Habitat Mitigation and Monitoring Program was prepared by LSA for the Shipley Nature Center using the 0.8 figure even though at the time the document was prepared the extent of wetlands was understood to be less. To fully mitigate the impacts to the wetland, the HMMP required, and the City approved, the implementation of a 2.4 acre wetland and riparian restoration program.

The Staff Report explains that the basic criteria for wetland fill is "no net loss of wetland habitat." However, it takes the position that, generally, a 4:1 mitigation ratio is required, requiring the creation of 2.78 acres of wetland habitat, and that only the creation of 1.0 acre of new wetland habitat can be considered but not the proposed enhancement of 1.4 acres of transitional wetland and riparian woodland habitat.

While these criteria may or may not ordinarily apply,² there are sound reasons why they are not applicable here. First, using the wetland acreage determination made by the Commission's staff ecologist (0.696 acre), the mitigation ratio here is nearly 3.5:1. Second and perhaps more important, this restoration project is readily distinguished from others the Commission is accustomed to seeing because the off-site restoration work at Shipley Nature Center must be completed before a CDP is issued for the fill of the wetland and actual grading/filling may commence. In such other instances, the Commission has imposed a higher multiple mitigation ratio to offset the time lost between disturbance of the habitat and the ultimate creation of the mitigation area. Here, by contrast, the City's Conditions of Approval require that:

"3. Full mitigation of the 0.8 acre site shall be completed prior to the subject wetland site

² Neither the Act, the regulations or the Guidelines impose or suggest any specific mitigation ratio, other than a requirement for no net loss as reflected in Section 30233(c), which requires the wetland fill to "maintain or enhance the functional capacity of the wetland." Thus, Commission decisions have approved a range of mitigation ratios. (E.g., Hellman, CDP 5-97-367 (2:1 ratio for degraded salt marsh); Sea World, CDP 6-96-2 (4:1 ratio for seasonal salt marsh); City of San Diego, CDP 6-88-277 (3:1 ratio for Tijuana River Valley sewer outfall); Calcagno, CDP 3-85-198 (3:1 dedication, but only 2:1 restoration ratio for degraded wetlands); Calcagno, CDP 3-87-248 (1:1 ratio for historic degraded wetlands, later amendments deleting this mitigation requirement); Moss Landing Harbor District, CDP 3-88-47 (3:1 ratio for rip rap shoreline device which included a violation); Silverking Oceanic Farms, CDP 3-87-184 (2:1 ratio for fill of manmade lagoon and riparian area); Caltrans CDP 6-83-319 (1:1 ratio for filling of 9.6 acres of marsh wetlands for highway construction and 1:1 ratio for dredging and loss of intertidal mudflat).)

Chairman Sara Wan
California Coastal Commission
February 10, 2000
Page 9 of 10

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."

Finally, the HMMP has already received the review and approval of DFG, ACOE and RWQCB. Should any deficiency occur, corrective action is included in the program to replace habitat that may not survive and to correct the causative problem and any implementation deficiency.

All of these factors support the mitigation ratio established for this particular wetland restoration project, which falls well within the range of accepted ratios that the Commission has approved in other projects.

Conclusion

It bears underscoring that the Shipley Nature Center is a high value habitat area. It serves as a regional bird watching location, especially in Fall and Spring migrations. Its proximity to the coast, its large expanse of tree and shrub vegetation, and its freshwater lakes and ponds all contribute to its importance. The area to be restored will enhance a habitat area already connected to the Bolsa Chica Reserve. Indeed, the connectivity of related habitat types within the City's Central Park and the adjacent Bolsa Chica Reserve, and the significant size of these connected habitats, will provide significant value to a variety of coastal species.

Off-site wetlands mitigation was anticipated when the Commission certified the City's LCP in 1982 and more recently in 1995 when the Commission certified the City's Downtown Specific Plan. The City and the applicant have relied on the road map laid out by the Commission. The City's approval of this project fully complies with both the certified LCP and the Commission's Guidelines which are subsumed therein as policy.

For the foregoing reasons, we respectfully urge the Commission to find that the appeal raises no substantial issue, or at worse to approve the project subject to the City's Conditions of Approval.

Sincerely,

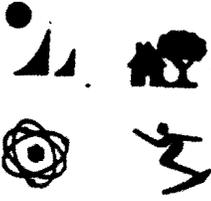
The Robert Mayer Corporation


Lawrence F. Brose
Vice President

LFB:hs

Chairman Sara Wan
California Coastal Commission
February 10, 2000
Page 10 of 10

cc: Peter Douglas, CCC
Chuck Damm, CCC
Deborah Lee, CCC
Maile Gee, CCC
Ralph Faust, Esq., CCC
Jamee Patterson, Esq., Deputy AG
Ray Silver, City of Huntington Beach
David Biggs, City of Huntington Beach Redevelopment Agency
Melanie Fallon, City of Huntington Beach
Howard Zelefsky, City of Huntington Beach
Nancy A. Lucast
Steven H. Kaufmann



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

OFFICE OF THE MAYOR
Dave Garofalo

DRUG USE
LH SE

February 8, 2000

Mrs. Sara Wan, Chair
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

RECEIVED
FEB 11 2000
CALIFORNIA
COASTAL COMMISSION

Dear Chairperson Wan:

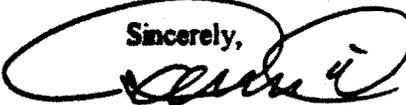
I am writing to you to request the Commission's support for Huntington Beach by upholding the permit issued by the City in the matter of Appeal No. A-5-99-275 (Mayer/Huntington Beach). The City Council members have unanimously voiced their support of the City's issuance of the Coastal Development Permit, and the proposed fill and restoration project has previously received years of scrutiny with approval from federal and state agencies.

While your staff has attempted to paint this issue with the broad brush of the Bolsa Chica court decision in reviewing a proposed LCP, what is missing in this analysis is the distinction that in Huntington Beach we already have an approved LCP that clearly contemplates the actions approved by the City in its Coastal Development Permit. Further, the Commission has frequently reviewed and upheld the City's LCP over the past many years. Therefore, we should be allowed to rely on our LCP, and our fair interpretation of what should be allowed under it.

Of most importance is the practical reality of what is best for Huntington Beach's environment. While some environmentalists want to preserve every minor patch of land no matter what its quality and future prospects for sustainability, in certain situations a more beneficial alternative may exist. Such is the case before you in the subject appeal. The existing parcel is surrounded by busy highways and development, exists solely from urban runoff, and expert biologists advise us that it has insignificant habitat value. Yet the opportunity exists to offset its minor loss with meaningful habitat restoration in a larger functioning and protected ecosystem in the Shipley Nature Center in the City's Central Park. I believe that this is by far the better course for the environment and our community.

Please do not be swayed by overly technical or emotional objections some may voice regarding this permit. The issue is one of fairness, reliance and equity; and the best overall benefit to the environment given an honest appraisal of the facts. Thank you for your consideration.

Sincerely,


Dave Garofalo
Mayor
City of Huntington Beach

cc: Staff, Coastal Commission

A-5-HNB-99-275

Exhibit C



CITY OF HUNTINGTON BEACH

2000 MAIN STREET.

CALIFORNIA 92648

COMMUNITY SERVICES DEPARTMENT

(714) 536-5486

February 8, 2000

Ms. Sara Wan, Chairperson
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Re: Coastal Development Permit Appeal
City of Huntington Beach/Shipleigh Nature Center Restoration

Dear Chairperson Wan:

I am the City of Huntington Beach's Park Naturalist at the Shipleigh Nature Center. The Shipleigh Nature Center provides a unique resource from both a biological and educational perspective. Through my offices at the on site interpretive center, I conduct tours and educational seminars regarding the wildlife and ecology at the Nature Center to several hundred school classes a year. This provides a unique field trip experience for more than 9,000 school children, as well as other frequent visits from citizens and other groups totaling 41,000 visitors per year.

I am now in my twenty-fifth year as Director of the Shipleigh Nature Center and I am intimately familiar with the ecology, plant life and unique conditions on every portion of the property. I was able to provide valuable input into the restoration plan based on my knowledge of the growing conditions that will be experienced. Further, I was able to see that the restoration plan preserved our trail system so that the educational value of the Nature Center will also be enhanced. I am confident that the proposed restoration plan will be an unqualified success and a great improvement for the community and region.

I would be the last to recommend the removal of wetlands or riparian habitat. But I know that the existing small wetland fragment west of Beach Boulevard is severely degraded and would not provide a valuable habitat no matter what efforts might be taken there. Surrounded on three sides by development and on the fourth side by a six lane state highway it would be a death trap to any wildlife species that would try to enter or exit the area. Instead, the proposed restoration program at Shipleigh will provide a far greater benefit for the environment than any other alternative. A total of 290 birds species have been identified in the park along with numerous mammals, reptiles, and insects. The endangered least tern forages in the small pond found at the center and this would only enhance that habitat. And, what a unique opportunity this restoration project can provide to educate thousands of school children about the importance of wetlands and habitat restoration! Please support the City of Huntington Beach in its issuance of the Coastal Development Permit so that this plan can proceed.

Respectfully,

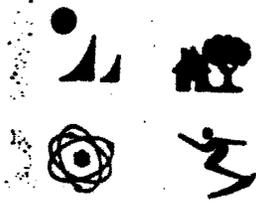
David A Winkler
Park Naturalist

cc: Coastal Commission staff

A-5-HNB-99-275

Exhibit C

Page 58 of 74



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

Peter Green
City Council Member



February 8, 2000

Mrs. Sara Wan, Chair
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Re: Appeal of Coastal Development Permit
Item No. A-5-HNB-99-275

Dear Chairperson Wan:

I am writing you this second letter as a follow up to my letter of October 19, 1999, written on behalf of the City of Huntington Beach in support of the City's Coastal Development Permit. Specifically, I wish to comment on the Coastal Commission's staff report wherein the suggestion was made that the number of acres of wetland proposed to be restored at the Shipley Nature Center was insufficient. Since no specific analysis of the proposed restoration project was undertaken by staff, nor to my knowledge was the Shipley Nature Center even visited by staff or the Commission's biologist, this conclusion is in my opinion unjustified and incorrect.

The focus should not be solely on acreage, but on habitat value and sustainability as well. The existing wetland parcel is severely degraded and non-functioning, with no tidal flushing or frequent inundation. By the Commissions own biologist, the total acreage was calculated as 0.696 acres. On the other hand, the proposed restoration involves creating new open water wetland of 1.0 acres by expanding an already existing, functioning wetland, an action with a certain outcome and a far superior habitat value. Additionally, 1.4 acres of transitional wetland/upland and woodland scrub habitat will be created, for a total of 2.4 acres. Therefore, not only is there substantially more than just replacement, but there is an extensive, balanced ecosystem of far greater habitat value that will be created at a total acreage ratio in excess of 3:1. Further, the success of the proposed restoration is assured by many factors, including adequate funding, a fully buffered and fenced site and the on site full-time monitoring by a knowledgeable park ranger/naturalist. For all these reasons, a single acreage-based ratio based on historical practices is not a fair and reasonable approach. Rather, the approvals previously received from the Army Corps of Engineers and the California Department of Fish and Game after on site inspections and thoughtful review by experienced biologists should be respected.

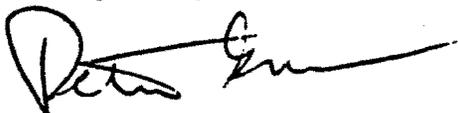
A-5-HNB-99-275

Exhibit C

Page 59 of 74

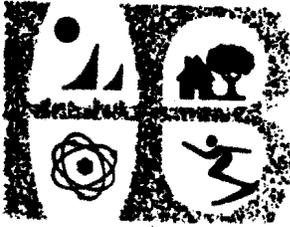
Please do not reward our aggressive efforts at providing creative solutions to improving our environment with a one-size-fits-all analysis. Instead, please consider our unique facts and local expertise in your deliberations.

Respectfully,

A handwritten signature in black ink, appearing to read "Peter Green", with a long horizontal flourish extending to the right.

Dr. Peter Green
Councilman
City of Huntington Beach

cc: Staff of the Coastal Commission



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

Dave Sullivan
City Council Member

DRUG USE
IS
PROHIBITED

February 8, 2000

Mrs. Sara Wan, Chair
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Re: Appeal No. A-5-99-275
City of Huntington Beach/Mayer Corporation

Dear Chairperson Wan:

I understand that the Coastal Commission will be considering an appeal of the City's Coastal Development Permit for the infill of a small wetland fragment on Beach Boulevard together with the restoration of habitat at the Shipley Nature Center. Due to the small (less than 0.7 acres) size and severely degraded nature of this existing wetland, I am advised that on site restoration is not a viable opportunity. Further, this wetland is not subject to any tidal flushing and is actually freshwater in character due to its receiving urban runoff from surrounding properties. Therefore, after careful review by outside biology experts retained by the City, as well as the staff biologists at the Army Corps of Engineers and the Department of Fish and Game, the decision was made to undertake the restoration project at Shipley and fill this parcel.

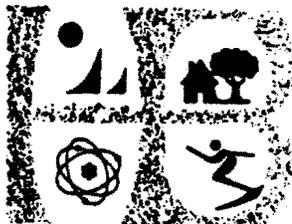
I urge you to uphold the City's decision in issuing this permit. The action was taken with informed judgement after years of study of the matter. Further, I am advised by our staff that the fill of this parcel with offsite restoration was contemplated by the City's LCP, which has been reviewed and upheld by the Commission on numerous occasions. We need to be able to rely upon our LCP and the Commission's fair and reasonable judgement in supporting the decision of local jurisdictions. The planned restoration activities are in the best interest of Huntington Beach and our environment.

Thank you for your consideration and support.

Sincerely,

Dr. David Sullivan
City Council Member
City of Huntington Beach

cc: Staff, Coastal Commission



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

Pam Julien
City Council Member

DRUG USE
IS
LIFE ABUS

February 8, 2000

Mrs. Sara Wan, Chair
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Re: Coastal Commission Appeal of City of Huntington Beach CDP

Dear Chairperson Wan:

I am writing you to express my strong support with all the other City Council Members of the City of Huntington Beach in our position that the City's Coastal Development Permit regarding the wetland restoration at Shipley Nature Center should be upheld.

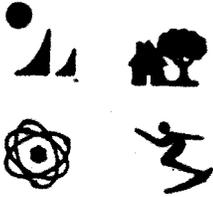
The City staff and developer have worked for many years to craft a sound solution that is a net benefit to the environment. They have received the approval of all the other applicable government agencies and have proceeded in reliance upon a fair interpretation of the City's LCP. The City acted in good faith after lengthy environmental reviews and based upon sound findings in its decision process. At various points over the years the Coastal Commission staff has received information on this proposal both formally and informally and has not expressed opposition. Further, it is clear that the environment of our community will be improved, and no opposition on a local level has been expressed.

Please consider that we believe that our local decision to create a stable and viable wetland in a centralized, protected area of our City in lieu of leaving a failing, degraded parcel surrounded by roadways and development is the correct choice. It is not appropriate to hold this small parcel hostage in a political battle over the fate of larger wetlands with regional significance, which is an entirely different issue. After a fair consideration of the sensible alternatives, I am hopeful that you agree that the permit issued by the City of Huntington Beach should be upheld.

Yours Truly,

Pam Julien
Councilwoman
City of Huntington Beach

cc: Coastal Commission staff



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

Tom Harman
Mayor Pro Tem



February 8, 2000

Mrs. Sara Wan, Chair
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Dear Chairperson Wan:

I am writing to you to express my support of the past action taken by the City of Huntington Beach in issuance of a Coastal Development Permit for the restoration of habitat at the Shipley Nature Center and fill of a small degraded wetland at Beach Boulevard. The Coastal Commission has appealed our local decision and I encourage you and your fellow Commissioners to uphold our decision.

As a member of Amigos de Bolsa Chica and a past president and co-founder of Huntington Beach Tomorrow, the city's largest environmental citizen's organization, my stand for protection and enhancement of the environment has been unwavering. In this particular instance, I believe that the best thing for Huntington Beach is the restoration of habitat at Shipley in conjunction with the filling of the degraded wetland that lacks significant biological value. Why have a degraded, isolated parcel with no credible potential for wildlife value when an opportunity exists to increase the net habitat value in the City by approving the permit requested? To me, this seems to be a fair exchange and a benefit for the environment.

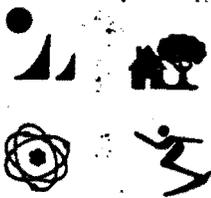
I encourage you and the Commission to view this matter with practicality. Let's do the right thing and increase the habitat value in Huntington Beach by approving this permit.

Sincerely,

Tom Harman
Mayor Pro Tem
City of Huntington Beach

cc: Coastal Commission Staff

A-5-HNB-99-275
Exhibit C
Page 63 of 74



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

Ralph Bauer
City Council Member

DRUG USE
IS
LIFE ABUSE

February 8, 2000

Ms. Sara Wan, Chairperson
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Re: Item A-5-HNB-99-275
Coastal Commission Hearing
February 15, 2000

Dear Chairperson Wan:

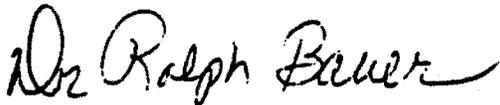
I see that the Coastal Commission is considering an appeal of a Coastal Development Permit issued by the City of Huntington Beach for a wetland restoration project with fill of a severely degraded wetland fragment near the corner of Beach Boulevard and Pacific Coast Highway. I wish to express my support for the action taken by the City and respectfully request that the Coastal Commission uphold the granting of the permit.

As a charter and life member of the Amigos de Bolsa Chica and a member of the Bolsa Chica Land Trust, I have a long history of environmental activism in Huntington Beach and have been a leader in protecting sensitive wetland habitats in the city. As such, I am confident that the overall biological values of our community are enhanced by the subject permit activity. The subject degraded wetland is an unproductive fragment of less than 0.8 acres contiguous to a six lane state highway and has no opportunity for meaningful restoration. Conversely, the efforts planned at the Shipley Nature Center in Huntington Beach's Central Park add additional wetland and habitat restoration to an existing functional wetland area in a protected, monitored setting within a larger, functioning ecosystem.

It is my belief that the City has done the right thing pursuant to its approved Local Coastal Plan and should be allowed to rely on that Plan. The objections that I understand have been put forth are technicalities at best, and overlook the practical realities. This effort has been years in the making and the Shipley Nature Center and the greater environmental values of the City are best served by this restoration effort. The City, the Army Corps of Engineers and the California Department of Fish and Game all agree with this action.

The years of close cooperation on this subject between the City and the Mayer Corporation is a blueprint for our future efforts at preservation of the environment, so please do not block this progress by denying this permit. Rather, I hope you will allow the restoration at Shipley Nature Center to proceed. Thank you for your consideration of this important matter for the citizens and environment of Huntington Beach.

Sincerely,



Dr. Ralph Bauer
City Council Member
City of Huntington Beach

cc: Coastal Commission staff

February 8, 2000

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

RECEIVE
FEB 15 2000
roXanne greggs Lane

RECEIVED
CALIFORNIA
COASTAL COMMISSION

FEB 14 2

CALIFORNIA
COASTAL COMMISSION

Dear Sirs:

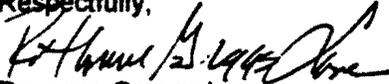
As a resident of Huntington Beach and a member of the Sierra Club, I wish to express my concern regarding the recent decision by commission members, to reopen the restoration plans on the .69 acres currently being developed by the Robert Mayer Corp. **THIS ACTION IS UNFAIR!** The Department of Fish and Game, the Army Corps of Engineers, the California Coastal Commission and the City of Huntington Beach all reviewed the restoration plans for the site, and in 1991 the city approved in concept these plans. Wetland restoration of 2.4 acres at the Shipley Nature Center was determined to be the most feasible restoration alternative, and on-site restoration of the .69 acres (currently being questioned) were determined to be degraded and fragmented wetlands by the Coastal Commission's own biologist. These wetlands have no daily tidal flushing and in fact, the only source of water is the runoff from Beach Boulevard and the former mobile home park.

Many in the community are questioning the motivation by the current commission and have characterized this recent action as an example of abuse... "causing some to worry that the moral and philosophical questions that were raised by Prop.20 in 1972 remain as urgent as ever."

Should the commission wish to focus on the real concerns of local residents...may I suggest a decision on the proposed development of 1200 residential homes on the mesa in the wetlands at Bolsa Chica and the pollution of our ocean, resulting in the closure of our public beaches. These are the real issue that require your undivided attention. If your members are looking to be a part of the solution...please help Huntington Beach protect their coast & coastal waters, by lending your voice and political power to enforce the Clean Water Act. As you know a major source of water pollution is from the failure of the State Water Resources Control Board and the California Coastal Commission to work together to develop, implement and enforce a detailed " Coastal Non-Point Pollution Control Program, thereby ensuring control of polluted runoff...as well as all "point" sources of pollution. Local governments have become the *de facto* stewards of the coastline, but they cannot protect their beaches & ocean without a partnership from agencies such as yours! **HISTORY HAS SHOWN THAT WEAK ENFORCEMENT UNDERMINES THE CLEAN WATER ACT.** Public access to the coast is affirmed within the State Constitution and the California Coastal Commission is designated with the responsibility of protecting, maintaining and enhancing public access opportunities. What's the point of having access...if our beaches are closed due to pollution from publicly owned sewage treatment plants, such as the Orange County Sanitation Plant?

I thank you for your time, consideration...and your fair and just decisions.

Respectfully,


Roxanne Gregg Lane

6252 surfpoint circle

huntington beach.california 92648-5590

7145365093 714536.7806 fax

email: RoxHNB@aol.com

A-5-HNB-99-275

Exhibit C

Page 66 of 74



Huntington Beach DODGE



February 7, 2000

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RECEIVED
FEB 14 2000
CALIFORNIA COASTAL COMMISSION
RECEIVED
FEB 15 2000
CALIFORNIA COASTAL COMMISSION

Dear Commissioners,

As a native Californian, surfer and father of a teenage surfer, I feel that I appreciate our ocean and beaches probably as much as anyone. The coast provides me great tranquility when my life is tilting in the opposite direction.

As a business owner I see the need for controlled development, for the continued creation of new enterprise, which in turn creates local jobs providing continued revenue streams for all businesses and government. Nature and free enterprise can coexist. Like everything else in life, there are tradeoffs.

In my opinion, the stance taken with regards to 2.2 acres at the corner of Beach Boulevard and Pacific Coast Highway in Huntington Beach by the Coastal Commission is wrong. The area in question being redeveloped as part of the Waterfront Hilton Conference Complex and is only .69 acres in total. This small parcel has been determined to be degraded and fragmented wetlands by the Coastal Commission's own biologist. These wetlands have no daily tidal flushing and the only source of water is the runoff from Beach Boulevard and the former mobile home park. All environmental documents have concluded that the fragmented wetlands function poorly. As stated earlier, life is full of tradeoffs, in this case, if this parcel in question can be developed; the developer would agree to restore 2.4 acres at the Shipley Nature Center. The tradeoff allows the development to proceed as scheduled; the citizens of Huntington Beach receive three times the acreage as a useable environmental area and everybody wins.

As a native Californian, I generally agree with actions taken by the Coastal Commission, but in this case, I think the commission is wrong. I'm urging you to reconsider your decision.

Sincerely,

Clay James
President

February 11, 2000

Appeal #A-5-HNB-99-275

The Robert Mayer Corporation and the City of Huntington Beach

RECEIVED
FEB 15 2000

California Coastal Commission
South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302

CALIFORNIA
COASTAL COMMISSION

Commissioners:

My name is Donald F. Thomas. I am a resident of Huntington Beach and a Park Ranger in Huntington Beach Central Park. In my capacity as a Ranger I am charged with interpreting the flora & fauna of the Shipley Nature Center. I must state, however; that I have no authority to represent either the Shipley Center or the City of Huntington Beach. Huntington Beach Central Park other than as a citizen of Huntington Beach and an advocate for educating our children in the wonders of nature.

I find myself in the very awkward position of opposing old friends, allies and associates on an issue where the philosophic and legal high ground is clearly in their hands. I am arguing for the greater good, not in the context of the laws, policies and rules which favor their position, but rather in the benefits accruing to an alternative, I believe I am speaking for the hundreds of school children who annually get a taste of nature on guided tours of the Shipley Nature Center. The creation of a fully functional wetlands in the center would greatly enhance the experience for all visitors to the center, but it is the children who would benefit most from this restoration, and if we can't convince the children that nature is worth preserving then all environmentalists are wasting their time and effort. There is no use to saving anything if our children see no value in it.

I recognize that Commission members very likely agree with this position, but may believe, as many others do, that the City of Huntington Beach should fund such a restoration, and there is no doubt that they could. On the other hand, should the citizens of Huntington Beach be asked to take on an additional expense burden when we have a developer with money in hand that is willing and able to fund the entire restoration without using a cent of our tax money.

And the cost would be the loss to the environment would be of a tiny patch of drastically degraded wetland within a metropolitan area. A property that is wetland in name only, whose source of water is the polluted runoff of city streets. Somewhere in your report it states that this "wetland" would be recharged periodically by water flowing through a culvert from the east side of Beach Blvd. Unfortunately the west side is higher than the east and all flow will be in the wrong direction. But let us presume that by some herculean and very expensive restoration we were able create a wetland where none exists today; what then would we have? At the very best we would make an isolated postage stamp of a swamp where highly limited flora and only very small species of animal life could be sustained. Certainly it could not support land mammals, or water life of any size. If we further assume that certain migrant bird species such as shore birds, and dabbling ducks could find a meal here, they would still be faced with the formidable problem of flying into and out this liquid cul-de-sac. It is impossible to estimate the number of birds that will be killed by trying to take off across high speed Beach Blvd.. It is possible, and even likely that we would be threatening the very creatures that are the only real reason for restoration..

A-5-HNB-99-275

Exhibit C

Page 68 of 74

In summary, it mocks the intent of preserving wetlands if we insist on blindly following principles, philosophies, and regulations, no matter how damaging and self-defeating. Basic philosophies, principles, and regulations underpinning just causes are absolutely necessary and I will not denigrate them, but they cannot relieve critical people of the duty to examine each situation for maximum benefit to all concerned. Can we not sit down with common sense by our side and do what will best serve both nature and man by accepting this investment in a safe and useful haven for nature's creatures.

Sincerely:

Donald F. Thomas
A concerned citizen



**Huntington Central Park
Equestrian Center**

18381 Goldenwest Street
Huntington Beach, CA 92648
(714) 848-6565
(714) 848-6858 - fax
email: hcpec@aol.com

RECEIVED
FEB 23 2000

**CALIFORNIA
COASTAL COMMISSION**

RECEIVED

FEB 22 2000

**CALIFORNIA
COASTAL COMMISSION**

February 10, 2000

California Coastal Commission
45 Fremont Street Suite 2000
San Francisco, Calif. 94105-2219

Re: Shipley Nature Center

Dear California Coastal Commission,

This letter is in reference to the Shipley Nature Center in Huntington Beach, California. It is my understanding that this neglected nature park could become a place that Huntington Beach residents would be proud of and visitors could admire, with the funding coming from a local corporation.

The site which I understand is holding up this unique opportunity for renovation is a .69 acre site on a state highway, Beach Boulevard, in Huntington Beach. This small, fragmented and extremely isolated "wetland" area has no daily tidal flushing with the only water source being the occasional runoff from Beach Boulevard and the former mobile home park. It was also determined that if this property was left alone, non-native invasive plant material such as Arundo will ultimately overrun the degraded wetland vegetation.

Being a business woman, I understand that there are two sides to every situation. Please help me to understand why the Coastal Commission would not allow for the opportunity of restoration to a viable wetland in exchange for a site that by generic terms of a wetland is not a viable wetland. The Department of Fish and Game, the Army Corps of Engineers, the California Coastal Commission and the City of Huntington Beach reviewed the restoration plans for the nature center and approved the concept of the restoration plan in 1991. To allow a corporation to provide funding for implementation and long-term maintenance and observation of the Shipley wetland restoration project, in my opinion, is a smart and to the visitors and citizens of Huntington Beach, the only way to go.

From the information I have gathered, the proposal from the local corporation makes great sense, not only for the community but for the environment. Thank-you for your time in this matter. A response to this issue would be greatly appreciated.

page 2
California Coastal Commission
2/10/00

Sincerely,

Mary Warren
Owner/Operator
Huntington Central Park Equestrian Center

xc: Commissioner Sara Wan
Commissioner Dave Potter
Commissioner Shirley Dettloff
Commissioner Cynthia McClain-Hill
Commissioner Christina Desser
Commissioner Pedro Nava
Commissioner Paula Daniels
Commissioner John Woolley
Commissioner Mike Reilly
Commissioner Christine Kehoe

enclosure

Hi MARY - One more

Definite. — JAO

WETLANDS AND DEEPWATER HABITATS

Concepts and Definitions

Marshes, swamps, and bogs have been well-known terms for centuries, but only relatively recently have attempts been made to group these landscape units under the single term "wetlands." This general term has grown out of a need to understand and describe the characteristics and values of all types of land, and to wisely and effectively manage wetland ecosystems. There is no single, correct, indisputable, ecologically sound definition for wetlands, primarily because of the diversity of wetlands and because the demarcation between dry and wet environments lies along a continuum. Because reasons or needs for defining wetlands also vary, a great proliferation of definitions has arisen. The primary objective of this classification is to impose boundaries on natural ecosystems for the purposes of inventory, evaluation, and management.

Wetlands

In general terms, wetlands are lands where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface. The single feature that most wetlands share is soil or substrate that is at least periodically saturated with or covered by water. The water creates severe physiological problems for all plants and animals except those that are adapted for life in water or in saturated soil.

WETLANDS are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

The term wetland includes a variety of areas that fall into one of five categories: (1) areas with hydrophytes and hydric soils, such as those commonly known as marshes, swamps, and bogs; (2) areas without hydrophytes but with hydric soils—for example, flats where

The U.S. Fish and Wildlife Service is preparing a list of hydrophytes and other plants occurring in wetlands of the United States

The U.S. Soil Conservation Service is preparing a preliminary list of hydric soils for use in this classification system.

drastic fluctuation in water level, wave action, turbidity, or high concentration of salts may prevent the growth of hydrophytes; (3) areas with hydrophytes but nonhydric soils, such as margins of impoundments or excavations where hydrophytes have become established but hydric soils have not yet developed; (4) areas without soils but with hydrophytes such as the seaweed-covered portion of rocky shores; and (5) wetlands without soil and without hydrophytes, such as gravel beaches or rocky shores without vegetation.

Drained hydric soils that are now incapable of supporting hydrophytes because of a change in water regime are not considered wetlands by our definition. These drained hydric soils furnish a valuable record of historic wetlands, as well as an indication of areas that may be suitable for restoration.

Wetlands as defined here include lands that are identified under other categories in some land-use classifications. For example, wetlands and farmlands are not necessarily exclusive. Many areas that we define as wetlands are farmed during dry periods, but if they are not tilled or planted to crops, a practice that destroys the natural vegetation, they will support hydrophytes

Deepwater Habitats

DEEPWATER HABITATS are permanently flooded lands lying below the deepwater boundary of wetlands. Deepwater habitats include environments where surface water is permanent and often deep, so that water, rather than air, is the principal medium within which the dominant organisms live, whether or not they are attached to the substrate. As in wetlands, the dominant plants are hydrophytes; however, the substrates are considered nonsoil because the water is too deep to support emergent vegetation (U. S. Soil Conservation Service, Soil Survey Staff 1975).

Wetlands and Deepwater Habitats are defined separately because traditionally the term wetland has not included deep permanent water; however, both must be considered in an ecological approach to classification. We define five major systems, Marine, Estuarine, Riverine, Lacustrine, and Palustrine. The first four of these include both wetland and deepwater habitats but the Palustrine includes only wetland habitats.

Limits

The upland limit of wetland is designated as (1) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; (2) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or (3) in the case of wetlands without vegetation or soil, the boundary between land that is

548-6358

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

RECEIVED
SEP 09 1999

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.

A-5-HNB-99-275 Sincerely,

Exhibit D

Page 1 of 16

Jan D. Vandersloot M.D.
Jan D. Vandersloot, M.D.

Bolsa Chica

LAND TRUST

A-5-HNB-99-275

Exhibit D

Page 2 of 1

RECEIVED
SEP 13 1999

CALIFORNIA
COASTAL COMMISSION

September 9, 1999

OFFICERS

PAUL HORGAN
PRESIDENT
JUANA MUELLER
VICE PRESIDENT
MARINKA HORACK
SECRETARY
NANCY DONAVEN
TREASURER

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

BOARD OF DIRECTORS

CONNIE BOARDMAN
NANCY DONAVEN
SANDI GENIS
MARINKA HORACK
STAN KRUTSICK
BUCK MARRS, PHD
KAREN MERICKEL
EILEEN MURPHY
BOB WILLIAMS
ROBERT WINCHELL, PHD
JAN VANDERSLOOT, MD
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

ADVISORY COUNCIL

SENATOR BARBARA BOXER
RALPH BAUER,
IMMEDIATE PAST MAYOR
HUNTINGTON BEACH
ROBERT SHELTON, (RET)
GOVERNMENT RELATIONS
CONSULTANT
JANICE L. KELLOGG, CEO
KELLOGG SUPPLY, INC.
WALTER W. NELL, DIRECTOR
EXTERNAL AFFAIRS, ARCO
VINCE KONTNY, (RET)
EXECUTIVE FLUOR
CORPORATION

Dear Coastal Commissioners:

This letter is to notify you that the Bolsa Chica Land Trust supports the "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 WOMEN VOTERS
NATIONAL SPONSORS: THE IZAAK WALTON LEAGUE, THE NATIONAL AUDUBON SOCIETY,
THE NATURE CONSERVANCY, SIERRA CLUB, SURFRIDER FOUNDATION

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, 10th 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

Bolsa Chica



LAND TRUST

Tu 18a

OFFICERS

PAUL HORGAN
PRESIDENT
JUANA MUELLER
VICE PRESIDENT
MARINKA HORACK
SECRETARY
NANCY DONAVEN
TREASURER

BOARD OF DIRECTORS

CONNIE BOARDMAN
NANCY DONAVEN
SANDI GENIS
MARINKA HORACK
STAN KRUTSICK
BUCK MARRS, PHD
KAREN MERICKEL
EILEEN MURPHY
BOB WILLIAMS
ROBERT WINCHELL, PHD
JAN VANDERSLOOT, MD
CO-FOUNDER

ADVISORY COUNCIL

SENATOR BARBARA BOXER
RALPH BAUER,
IMMEDIATE PAST MAYOR
HUNTINGTON BEACH
ROBERT SHELTON, (RET)
GOVERNMENT RELATIONS
CONSULTANT
JANICE L. KELLOGG, CEO
KELLOGG SUPPLY, INC.
WALTER W. NEEL, DIRECTOR
EXTERNAL AFFAIRS, ARCO
VINCE KONTNY, (RET)
EXECUTIVE FLUOR
CORPORATION

PAST PRESIDENTS

NANCY DONAVEN, 1994-1998
CONNIE BOARDMAN, 1998-1999
FLOSIE NORMAN, 1992-1994
CO-FOUNDER

Feb.3,2000

CCC Staff
% Steve Rynas:

On behalf of the Bolsa Chica Land Trust's Water Committee we would like to support the two Commissioners Cecilia Estolano and Pedro Nava who challenged the City of HB and the developer Hearthside Homes/Koll.

The Water Committee also supports the CCC Staff's recommendation to support the challenge by the Commission members that the .08 acres of wetlands be saved.

We know that the Coastal Act allows the filling of wetlands for only 8 reasons, one of them is wetlands restoration. This is the exception that developers have used for years to justify projects that destroy wetlands on the construction site BUT finance restoration or creation of wetlands elsewhere- a move we feel ignores the Coastal Acts intent.

A recent Court decision denied Hearthside Homes/Koll the right to move an ESHA from Bolsa Chica Mesa so that they could build on the site. They wanted to move it to another location and were denied.

We feel this is the same situation on a smaller area but still the same proposition. You can't move a wetlands and mitigate it by restoring it someplace else.

Sincerely,
Eileen Murphy
Bob Winchell
Dean Albright
Mary Jane Wiley
Jacqueline Lahti
Jan Vandersloot
Stan Cohen
Sandi Genis
Rudy Vietmeir
Bill Bernard



LOCAL SPONSORS: GARDEN GROVE EDUCATION ASSOCIATION, HUNTINGTON BEACH CITY COUNCIL,
HUNTINGTON BEACH TOMORROW, ORANGE COAST LEAGUE OF WOMEN VOTERS
NATIONAL SPONSORS: THE IZAAK WALTON LEAGUE, THE NATIONAL AUDUBON SOCIETY,
THE NATURE CONSERVANCY, SIERRA CLUB, SURFRIDER FOUNDATION



FHBP Board Of Directors:

Jean Watt, President
Alice Sorenson, Vice President
Don Thomas, Treasurer
Carolyn Wood, Secretary
Howard DeCruyenaere
Marilyn Ganahl
Sandy Genis
Shirley Grindle
Stephanie Pacheco
Matt Rayl
Janet Remington
Theresa Sears
Nancy Skinner

Executive Director:
Bob Fisher

Supporting Organizations:

Amigos de Bolsa Chica
Audubon Society,
Sea & Sage Chapter
Bolsa Chica Land Trust
Caspers Wilderness Park
Volunteers
Equestrian Coalition of O.C.
Friends of Newport Bay
Laguna Canyon Conservancy
Laguna Canyon Foundation
Laguna Greenbelt, Inc.
Newport Conservancy
Southeast Huntington Beach
Neighborhood Association
Surfrider Foundation,
Newport Beach Chapter
Stop Polluting Our Newport.
Wilderness Park Trust Fund.

Advisory Board:

Marian Bergeson
Marilyn Brewer
Ilse Byrnes
Roy Byrnes
Louise Greeley
Evelyn Hart
Jack Keating
Vic Leipzig
Claire Schlotterbeck
Jack Skinner M.D.

Post Office Box 9256
Newport Beach, CA 92658-9256
949-399-3669

February 1, 2000

Chairman Sara Wan and Members of the Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

RE: A-5-HNB-99-275

Dear Chairman Wan and members of the Commission:

Friends of Harbors, Beaches and Parks, Orange County wishes to support the recommendation of Coastal Commission staff that a significant issue exists with regard to the proposed Waterfront Hilton project. Particular issues of concern relate to the proposed elimination of wetlands existing on the site as discussed in more detail as follows:

- Fill of wetlands on the site appears to conflict with the California Coastal Act (Section 30233) and with the findings of the court in Bolsa Chica Land Trust v. California Coastal Commission, 71 Cal.App.4th 493 (1999). The concept that habitat could be destroyed as long as lost habitat was to be balanced elsewhere has been found unacceptable. To return to former balancing practices and proceed with fill on the site could set a precedent for destruction of other, similar wetlands areas.
- It appears that the wetlands area may actually be significantly larger than the 0.8 acres initially identified, requiring a larger mitigation area. Areas outside those mapped as wetlands by the developer's consultant support vegetation indicative of at least occasional inundation. The Habitat Mitigation and Monitoring Program (HMMP) does not utilize the wetlands criteria provided under the Coastal Act and implementing regulations. This difference is noted by Coastal Commission staff.
- The HMMP does not provide for like habitat for the full amount of mitigation.

Based on these three issues, even if one were to agree in concept that filling of wetlands could be allowed with off-site mitigation, the HMMP as currently proposed would warrant further examination by the Coastal Commission.

Friends of Harbors, Beaches and Parks urges the Coastal Commission to make a finding that a significant issue exists and hold a full hearing on the proposed project. We would also like to take this opportunity to thank Commission staff for its commitment to upholding the letter and spirit of the Coastal Act in this manner.

Very Truly Yours,

Jean H. Watt, President

Sandy Genis, Wetland Committee Rep.

A-5-HNB-99-275
Exhibit D
Page 5 of 16

Tu 18a
RECEIVED
South Coast Region

FEB - 7 2000

CALIFORNIA
COASTAL COMMISSION

Southeast Huntington Beach Neighborhood Association

22032 Capistrano Lane Huntington Beach, CA 92646-9309 sehbna.org
Phone: (714) 962-1746 Fax: (714) 962-3416 e-mail: vespa@earthlink.net

February 7, 2000

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Tu 18a
RECEIVED
FEB 09 2000

CALIFORNIA
COASTAL COMMISSION

Re: Appeal Number A-5-HNB-99-275; Appeal of City of Huntington Beach's approval of a coastal development permit to fill 0.8 acres of wetland

To the Members of the Coastal Commission:

The Southeast Huntington Beach Neighborhood Association (SEHBNA) represents the residents of over 1700 homes within two miles of the coastal wetlands area that are the subject of the referenced appeal and De Novo Coastal Permit.

The Board of Directors of SEHBNA unanimously support your staff's recommendation of a NO vote on the appeal motion in that a substantial issue has been raised in the staff report with respect to the grounds on which the appeal has been filed. The developer proposes to fill what is claimed to be 0.8 acres of degraded coastal wetlands as determined from Federal wetlands standards. Approval of this appeal motion would deprive the state and its citizens of an area of coastal wetlands that is easily seen by the public (it's immediately adjacent to a heavily used street) while currently providing suitable habitat for many species of plants and wildlife. In addition (and perhaps more importantly), the developer (with the full knowledge of the City of Huntington Beach) intends to fill this coastal wetlands area for residential construction, and that is clearly not in accordance with Section 30233 of the Coastal Act.

We also recommend a NO vote on the motion for a De Novo Coastal Development Permit. Neither the developer nor the City of Huntington Beach consider the fact that this coastal wetlands is but part of a much larger coastal wetlands area stretching over two-miles along the coast just inland of Pacific Coast Highway. Only Beach Boulevard separates this large expanse of coastal wetlands from the 2.2 acre coastal wetlands, and there is evidence of water flow under Beach Boulevard clearly indicating the areas are both connected and contiguous. This entire area of both fresh and salt water coastal wetlands must be preserved and must be considered as adjoining coastal wetlands in determining whether or not this "small" area can be filled. If contiguous coastal wetlands areas are to be filled 0.8 acres at a time, there will undoubtedly soon be no coastal wetlands remaining.

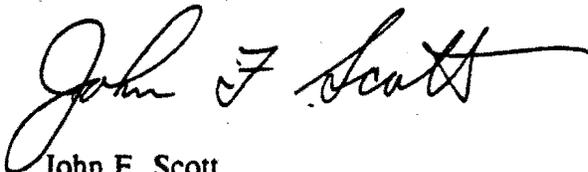
A-5-HNB-99-275
Exhibit D

If the developer would put the same resources into saving the existing wetlands that he appears willing to put into mitigation for filling the wetlands, a viable coastal wetlands area could be preserved and made a noteworthy part of his development plan. Filling coastal wetlands areas in order to preserve inland wetlands areas elsewhere does a great disservice to both the residents of and visitors to the coastal area where the wetlands now exists. Swapping the filling of coastal wetlands areas in order to provide resources to upgrade inland wetlands areas is just not rational policy. Using that same reasoning, it could be assumed that any area of coastal wetlands could be filled if a generous enough inland wetlands upgrade project could be found. In short, it just doesn't make sense to trade away coastal wetlands areas for the benefit of inland wetlands areas.

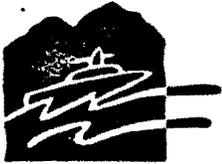
SEHBNA's Board of Directors and members urge a NO vote on the appeal motion and a NO vote on the De Novo Coastal Permit.

We thank the Coastal Commission and your staff for the concern you continuously demonstrate in the preservation of California's precious coastal wetlands areas for the benefit of both current and future citizens.

Sincerely,

A handwritten signature in cursive script that reads "John F. Scott". The signature is written in black ink and is positioned above the typed name and title.

John F. Scott
Chairman
Southeast Huntington Beach Neighborhood Association



ORANGE COUNTY COASTKEEPER

441 Old Newport Blvd. Suite 103 Newport Beach, California 92663
Office: (949) 723-5424 Fax: (949) 675-7091 Email: coastkeeper1@earthlink.net
<http://www.coastkeeper.org>

February 10, 2000

RECEIVED
FEB 15 2000

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, Ca. 90802-4302

CALIFORNIA
COASTAL COMMISSION

Subject: Appeal A-5-HNB-99-275

Dear Chairman Wan and Honorable Members of the Coastal Commission:

We urge you to determine that a substantial issue exists due to the fact that the grounds for the appeal are inconsistent with the certified Huntington Beach Local Coastal Plan. Secondly, at the DE NOVO public hearing, we request that you deny the proposed project on the grounds that it is both inconsistent with the certified LCP and current case law establishing standards regarding wetland protection.

The applicant should incorporate into their development plans both maintenance and restoration of the existing wetland. Of course, the land is worth more money as residential housing across the street from the beach. However, allowing the demise of this viable wetland stands against every standard we currently use to protect such sites. To approve the applicants request to destroy this wetland gives the appearance of invalidating the same standards we use to protect similar ESHA's with maybe less economic value to a developer and City.

There is no question this small wetland requires restoration. Even with the surrounding development and long-term neglect, it is viable now and can be made more viable as two large pipes connect it to the larger wetland across Beach Boulevard. It is an orphan wetland that needs adoption. We are working to that end.

The Orange County CoastKeeper concurs with the Coastal Commission staff's four conclusions as basis for recommending denial of this proposed project. The only counterbalance to the overwhelming arguments for denial is the economic value to the co-applicants. Surely that is not reason enough to ignore the same standards we hold dear in other situations.

Sincerely,

Garry Brown,
Executive Director

A-5-HNB-99-275
Exhibit D

90 signatures

2/15/00
Rcd at
Hearing

18a

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

We, the undersigned residents of Huntington Beach, do hereby petition the Coastal Commission to support the appeal of the permit issued by the City of Huntington Beach to fill the wetland West of Beach Blvd., North of the Coastal Highway, and we ask the Coastal Commission to preserve this wetland.

| NAME | ADDRESS |
|---------------------|--|
| Nguyen T. Trung | Huntington Breakers 21284 Beach Blvd G208 Huntington Beach, CA 92648 |
| Ana Flores | 6401 Warner Ave #141, H.B. CA, 92647 |
| Ramiro Garcia S. | 21294 Beach Blvd #108 H.B. CA 92648 |
| Suzanne Le | 21260 Beach Blvd. # N. 102 |
| Chiharu Kenouchi | 21260 Beach Blvd # 21, H.B, CA 92648 |
| SD Mendez | 21272 BEACH BLVD H.B. CA 92648 |
| Sandra Larson | 71766 Beach Blvd #710 |
| walter sanchez. | 21272 beach Blvd. |
| Martha Casas | 81270. Beach Blvd. |
| Alex Fullam | 7162 WHEATON CIRCLE HUNTINGTON BEACH, CA |
| M. Sinfili | 21284 Beach Blvd. H.B. CA 92648 |
| Magali Marin | 21274 Beach Blvd. #102 H.B. CA 92648 |
| Natalina Langer | 21274 Beach Blvd. #107 H.B. CA 92648 |
| Bernadette Sullivan | 21294 Beach #I208 HB CA 92648 |
| Kevin Calbert | 21294 Beach #I207 H.B. CA 92648 |
| Erkan Yotiskul | 21296 Beach Blvd #201 H.B. CA 92648 |
| Whitehead | 7785 SENGLE # HB CLIFF 92648 |

17

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

NAME

ADDRESS

Anthony Ranceford 9734 Pottswood, HB, CA 92646
Eric Marklin 19165 Shoreline, #6 HB 92646
DWANE HEPNER 19832 FACUFF HV BUN 92646
Steven Brilliant 626 22nd St HB 92648
Amelia Shryer 6502 Paris Circle HB 92647
PETER HAMBORG 21322 SEAFORTH LANE H.B. 92646
Kathy Hamborg 21322 Seaforth Ln. HB. 92646
Michael Shilinski 219 15th St #4 HB 92648
Carolyn Gullotta " " "
Maisha Jimenez-Burton 4761 PALCE ST HB 92646
Kenneth Clark " " "
~~Ray~~ 8788 CANARY AVE F.V. 92700
Pearl Keller 19865 BUCHARD ST HB. 92646
CRAIG MCCLELLAND 18062 UPPER CAVE DR H.B. 92648
Shelly McClelland 18062 Upper Cave Cir HB 92648
JAMES BAXTER 19531 Occidental Ln HB. 92646
Ron SHAPIRO 17162 FRIM LN HUNT RCH 92649
Ritva Shapiro 17162 Frim Ln H.B. 92649
Barik Bradford 418-15th St. H.B. CA 92646

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

NAME

ADDRESS

Curtis J. Sheppard 17572 Montbury Circle H.B. CA 92648

Linda Sedivy 16672 Cooper HB 92647

WILLIAM MORRIS 21791 FARLANE CIR. H.B. 92646

Shannon Noice 7281 Coko Dr. #204 HB 92648

Jessica Taylor 9281 Coko DR #204 HB 92648

Erin Barnhill 14071 Holly St. #14 H.B. CA, 92648

KENN PICKARD 21284 Beach Blvd 6208 H.B. CA 92648

(7)

Multiple horizontal lines for additional entries.

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

We, the undersigned visitors to Huntington Beach, do hereby petition the Coastal Commission to support the appeal of the permit issued by the City of Huntington Beach to fill the wetland West of Beach Blvd., North of the Coastal Highway, and we ask the Coastal Commission to preserve this wetland.

NAME ADDRESS

DONNA SUZMAN 989 VICTORIA ST #24 C.M. 92677

Nyoni Vo 1115 N. MARINA ST. BURLINGAME 91502

Norma Swanson Hillside Manor #205 More Lake, Minn. 5576

Bette Horton Rt 1 Box 409A Sturgeon Lake MN 55783

AL. BILL 10702 COURT AVE STANTON CA 90680

Angel D. Juarez 10702 Court St Stanton CA 90680

Wes HACKBARTH 9922 W. BROADWAY #9 ANAHEIM CA 92804

Marty Conrad 830 S. WEBSTER APT 12 ANAHEIM, CA 92804

Guy Delaluni 109 Vista Rd Matts, Redondo Beach CA 90270

Carol Nieman 998-2nd St N - Carrington ND 58421

Patricia Dentry Mira Loma CA 91752

John Connell 1632 E. Pinecrest Spokane WA 99203

Ann Schuff 17605 Mundoro Ave Artesia 91701

Allen King 11020 Indian Way CORNITOS, 9070

John H. Kama 526-17th AVE E APT 9 Seattle WA 98112

Brent + Sherie Bishop Irudimuten NB Canada

Robin Simpson Salt Lake City, UT

17

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

NAME

ADDRESS

Jim Russell 17203 RESOTON AVE. NORWALK, CALIF 90650

Kate Ferguson 47 Via Zaragoza SC. CA 92072

Spurt King 13476 Vine St. Thornton CO 80241

Barry Gantel 17333 BROOKHURST ST. D-1. F.V.

Roberta Pates 17333 Brookhurst St #1 FV

Adam Broughton 904 Athletes Montreal Quebec Canada

Claudia Keller 1805 Cliff Dr. Costa Mesa

Brandon Thomas 24332 Vista Fox Ln. Laguna Hills

Shawnun Nation 41 Aspen Creek Lane Ft. Valley Calif

Bobby Berg 9476 Cormorant Circle 927

Joyce Berg 9476 Cormorant Cir FTN. VALLEY

KIM NASTAR 50 Blake St Pasadena CA

Robert Aho 5155 Brunswick Dr Cypress CA

Connie Aho 5155 Brunswick Dr Cypress, CA 9063

Jason Kider 7 Snowbark Trl CA 92604

Carolyn Hertz 111 KAZAN ZAVINE CA 92604

Candice LeCain 1295 Grand Summit Dr # 3-170 Reno, NV 89

WES GUFFY 1295 Grand Summit Dr # 3-170 Reno, NV 89

JOHN COOK 708 WAY RD 92148

19

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

NAME

ADDRESS

Kandye Schutt 22294 Bear Creek Dr. S 92562
Lynne J. J. and Pamela A. Slob

Darwin Fox 41046 White Leaf Lane
ROBERT RUBEN 44748 MEDINA
PALM DESERT
John Kuzn 4425 E SIXTH Lodi, CA

Anna Blake 231 Keene Dr. La Habra CA 9063
Emily Gloria 166 N. Thistle Rd Pico, CA 92871

Kate Hardeman 222 Napoli Brea, CA 92821

DAVE McMISSY 12342 Epsilon St. GARDEN GROVE,
Anita McMISSY 12342 Epsilon St Garden Grove CA 92840

Russ DeLaMar 9531 Duke Dr Westminster CA 926

11

90 signatures

2/15/00

Received at Commis Meeting

FEB 15 2000

From:

To: California Coastal Commission

From: Ray Benediktus, San Clemente
George Hubner, San Clemente

Re. Agenda item 18 a. Appeal # A-5-99-275

We support Commissioners Estolano and Nava's appeal to rescind the City of Huntington Beach's permit to fill in 0.8 acres of wetland.

We fully support the 4th district court's ruling prohibiting building of residences on wetlands.

We have a similar wetland issue in San Clemente on a property called Marblehead Coastal involving 6.45 acres of wetlands and several canyons. The developers' application for a CDP is currently with your staff which has twice rejected the application as incomplete and deficient.

We are strongly in favor of protecting and preserving our wetlands, canyons, environment and habitats and trust that the commission will support our position.

Respectfully submitted

Ray Benediktus

RAY BENEDEKTUS

3289 PASEO GALLITA

SAN CLEMENTE, CA 92672

George Hubner

304 Calle Chueca

San Clemente CA 92673

2000 211 2112

VIA FAX

CALIFORNIA COASTAL COMMISSION
SOUTH COAST AREA
P.O. Box 1450
200 Oeangate, 10th Floor
LONG BEACH, CA 90802-4416

APPLICANT(S): The Robt L. Mayer Trust
APPLICATION NUMBER: A-5-HNB-99-275

This letter is regarding the decision by the City of Huntington Beach granting a coastal development permit to the Robert L. Mayer Trust to fill approximately 1 acre of wetland, at the northwest corner of Pacific Coast Highway & Beach Boulevard in the City of Huntington Beach.

"Being ignorant is not so much a shame as being unwilling to learn."
Benjamin Franklin (1706-1790)

The wetland degradation problem in Huntington Beach is smudged with ignorance. Wetlands themselves take a backseat to other issues, knowledge about the wetlands is scarcely distributed among our local citizens.

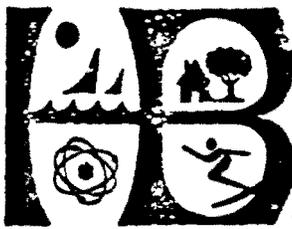
California has lost 91% of their original wetlands. The numbers should begin to mean something; the wetlands are invaluable for many reasons. Wetlands benefit our City in many ways. First: the wetlands greatly improve water quality and are paramount to the water system, which affects our everyday lives. Wetlands do this by acting as filters before open water; they intercept surface runoff and pollutants, and remove or retain nutrients. They process organic wastes and, finally, reduce sediment before it reaches the receiving water. Second: wetlands reduce the likelihood of flood damage. By functioning as natural sumps or sponges, the wetlands store water than slowly release it. Furthermore, coastal wetlands buffer the impact of storm tides on populated uplands and stabilize shorelines and riverbanks. (It is estimated that it would cost \$300 to replace each acre-foot of floodwater storage, and \$5 million for a least cost substitute, not including operation and maintenance fees.) Third: wetlands serve as important spawning and nursery areas.

There are laws that protect wetlands. However, the question lies in whether or not (or how strictly) they are enforced. Wetlands are among the most biologically productive natural ecosystems, comparable to rain forests and coral reefs, and they are a fundamental part of the environment. The main reason is that they provide the food and habitat for multitudes of fish and wildlife. The U.S. Fish and Wildlife Service estimates that up to 43% of the endangered species, including the wood stork, the Florida panther, and the whooping crane, rely on wetlands as primary habitats.

Most citizens either consider wetlands to be waste areas or place them low on the environmental list of priorities, and for these reasons we see them converted and otherwise degraded.

Because of intense development pressures on the Coast, wetlands are facing an unknown future; wetlands lost to development cannot be replaced at any cost. The question is not whether to address wetland loss. The question is when to address it. This writer says, "Before it's too late."

Tobie & Gerard Charles
P.O. Box 5751
Huntington Beach CA 92615
Home (714) 842-9592
Pager (714) 351-4390



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.

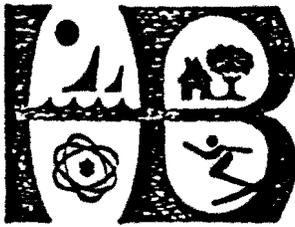
If there are any further questions, please contact Amy Wolfe at 536-5271.

Ramona Kohlman, Secretary
 Huntington Beach Zoning Administrator

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

A-5-HNB-99

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



OFFICE of ZONING ADMINISTRATOR
CITY OF HUNTINGTON BEACH · CALIFORNIA

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

NOTICE OF ACTION

June 24, 1999

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

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

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

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

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

PROJECT PLANNER: Amy Wolfe

COASTAL STATUS: APPEALABLE

Dear Applicant:

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

| | |
|---|------------------------|
| | Approved |
| X | Conditionally Approved |
| | Denied |
| | Withdrawn |

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

Coastal Development Permit No. 99-05
Page No. 2

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

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

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

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

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

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

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

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

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

Coastal Development Permit No. 99-05
Page No. 3

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 Restated Development Agreement by and between the City of Huntington Beach and May 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.

Coastal Development Permit No. 99-05
Page No. 4

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

Coastal Development Permit No. 99-05
Page No. 5

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 filling 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.

Coastal Development Permit No. 99-05

Page No. 6

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

D

**Coastal Development Permit No. 99-05
Page No. 7**

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

Coastal Development Permit No. 99-05
Page No. 8

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

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

Coastal Development Permit No. 99-05
Page No. 9

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

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

INFORMATION ON SPECIFIC CODE REQUIREMENTS:

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

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

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

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

D,

STATE OF CALIFORNIA - THE RESOURCES AGENCY

PETE WILSON

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceanside, 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

| | |
|--------------------------|------------------------|
| <u>Commissioner Nava</u> | <u>(562) 590-5071</u> |
| 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

A-5-HNB-99-275

DISTRICT: South Coast/Long Beach

APPEAL

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 B680
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.

C₂

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 _____

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

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

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date 7/26/99

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

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 Mayor 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.

C6

**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 Bf of Section 9.5.4 reiterates that only the specifically identified uses are allowed in wetlands under Coastal Act Section 30233. The City's LUP policies cited above further underscore the LCP's requirement to preserve and enhance environmentally sensitive areas such as wetlands and to limit any impacts from adjacent development.

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

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

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

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

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

However, with regard to wetlands less than one acre in size, the guidelines indicate that some fill for a non-allowable use is appropriate only if the overall project is a restoration project. The Guidelines state: "Restoration projects which are a permitted development in Section 30233 (a)(7) are publicly or privately financed projects in which restoration is the sole purpose of the project. The Commission found in its decision on the Chula Vista LCP that projects which provide mitigation for non-permitted development may not be broadly construed to be restoration projects in order to avoid the strict limitations of the permitted uses in Section 30233."

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

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

The Guidelines also provide for fill of degraded wetlands for a non-allowable use only if there is no net loss of wetland acreage on the subject site. The Guidelines state: "Projects permitted under Section 30411 other than boating facilities should result in no net loss of the acreage of wetland habitat located on the site as a minimum." The project approved by the City would result in the loss of all on-site wetlands. Therefore, the project is not allowable in a degraded wetland under the Guidelines.

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

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

**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 ("Boisa 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.

CALIFORNIA COASTAL COMMISSION

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

**Reasons for Appeal**

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

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

Section 9.5.4, Policy 8f:

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

Section 9.5.5:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

However, with regard to wetlands less than one acre in size, the guidelines indicate that some fill for a non-allowable use is appropriate only if the overall project is a restoration project. The Guidelines state: "Restoration projects which are a permitted development in Section 30233 (a)(7) are publicly or privately financed projects in which restoration is the sole purpose of the project. The Commission found in its decision on the Chula Vista LCP that projects which provide mitigation for non-permitted development may not be broadly construed to be restoration projects in order to avoid the strict limitations of the permitted uses in Section 30233."

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

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

The Guidelines also provide for fill of degraded wetlands for a non-allowable use only if there is no net loss of wetland acreage on the subject site. The Guidelines state: "Projects permitted under Section 30411 other than boating facilities should result in no net loss of the acreage of wetland habitat located on the site as a minimum." The project approved by the City would result in the loss of all on-site wetlands. Therefore, the project is not allowable in a degraded wetland under the Guidelines.

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

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

**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.

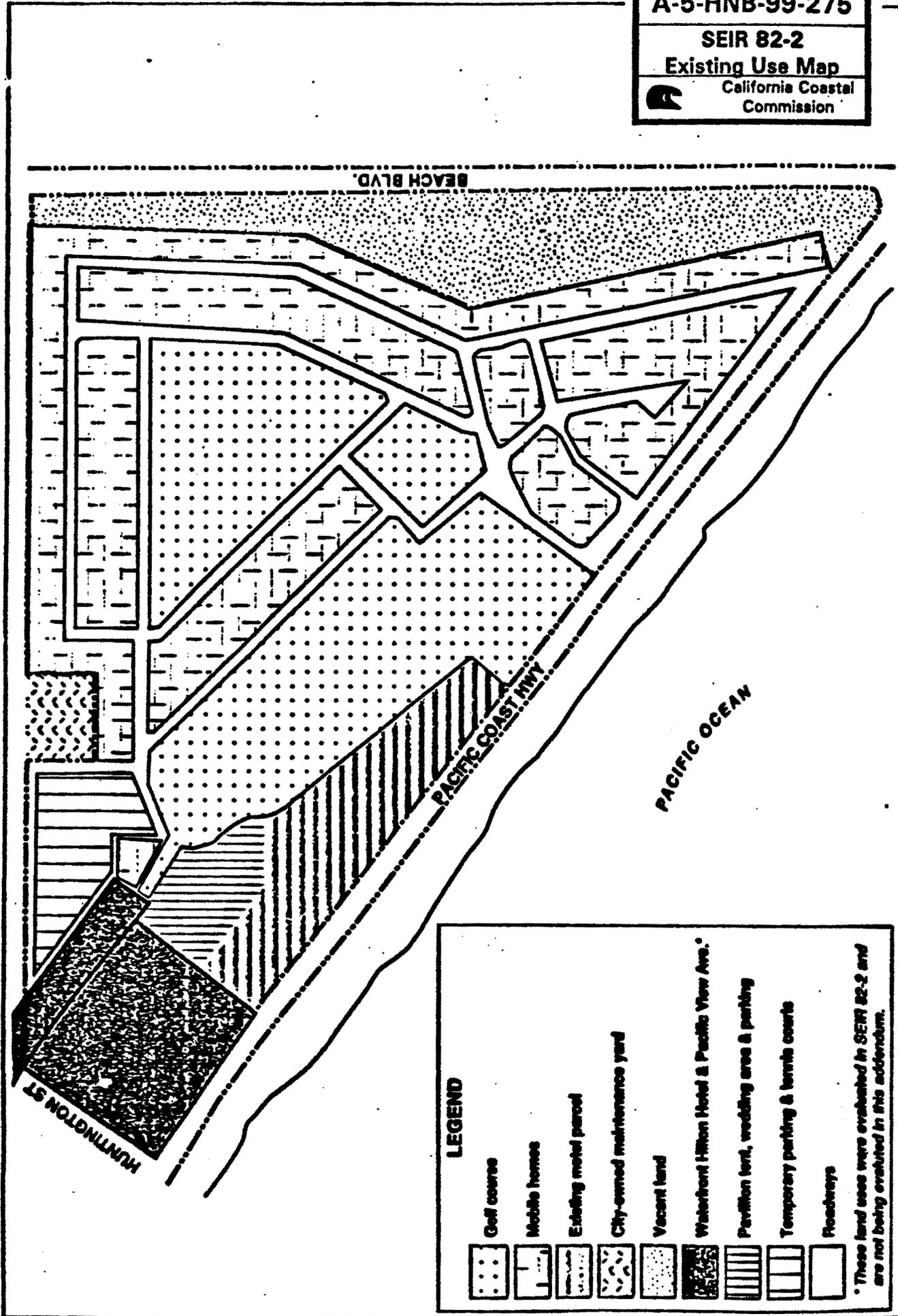
EXHIBIT No. G

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

SEIR 82-2

Existing Use Map

California Coastal
Commission

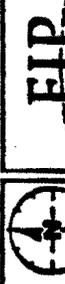


LEGEND

-  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 2-5a
Existing Land Use Map (1998) - Plan View



Scale in Feet
0 100 200

LEGEND

-  Existing Waterfront Hotel & Pacific View Avenue
-  Proposed Roadways
-  Proposed Waterfront Residential
-  Intermix Use Site/Proposed Third Hotel
-  Ocean Grand Resort & Conference Center
-  Pedestrian Overcrossings

***This is only a conceptual site plan; more detailed illustrations of each proposed land use are provided by Figures 2-7 and 2-8.*

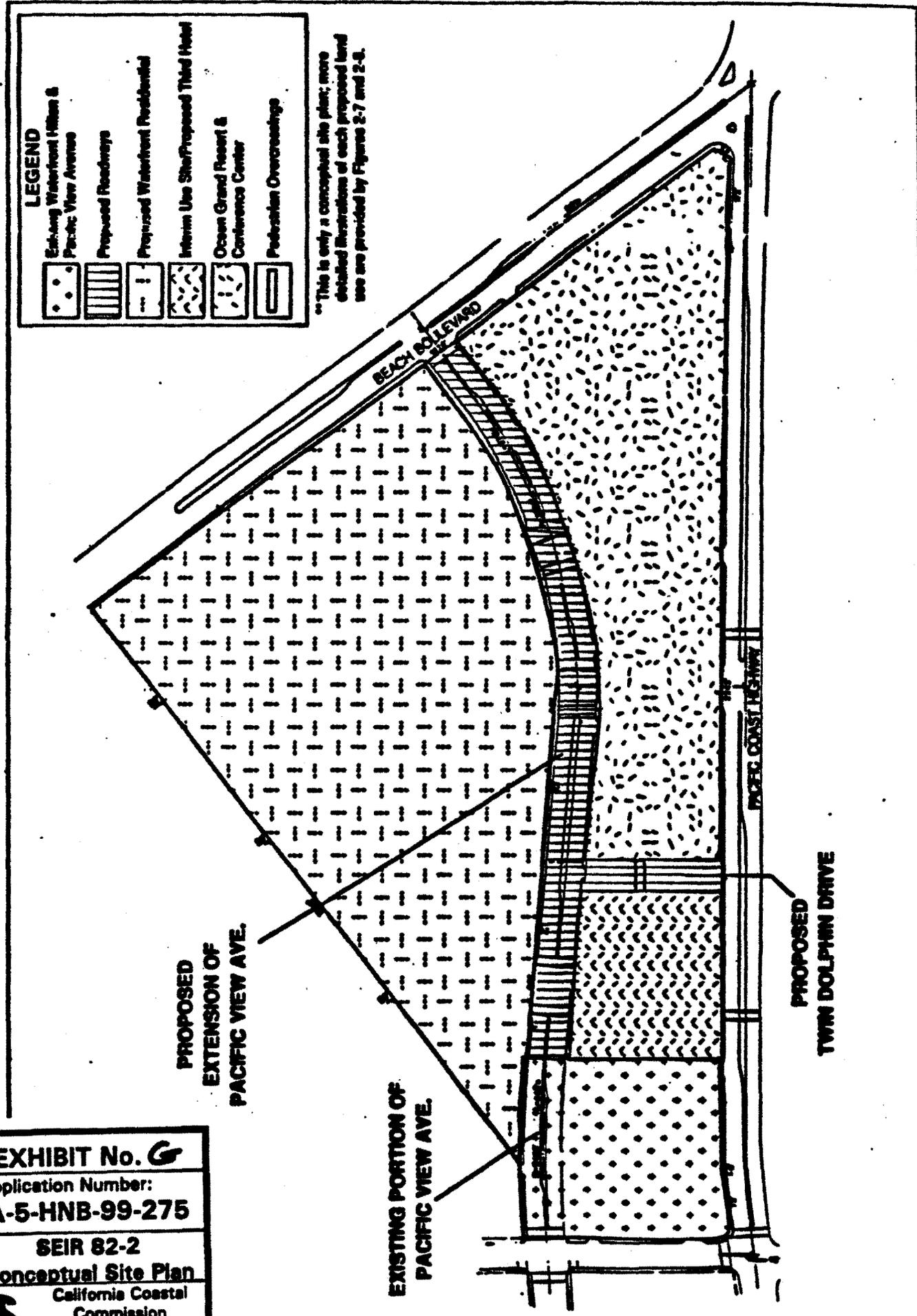


EXHIBIT No. G

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

SEIR 82-2

Conceptual Site Plan

California Coastal Commission

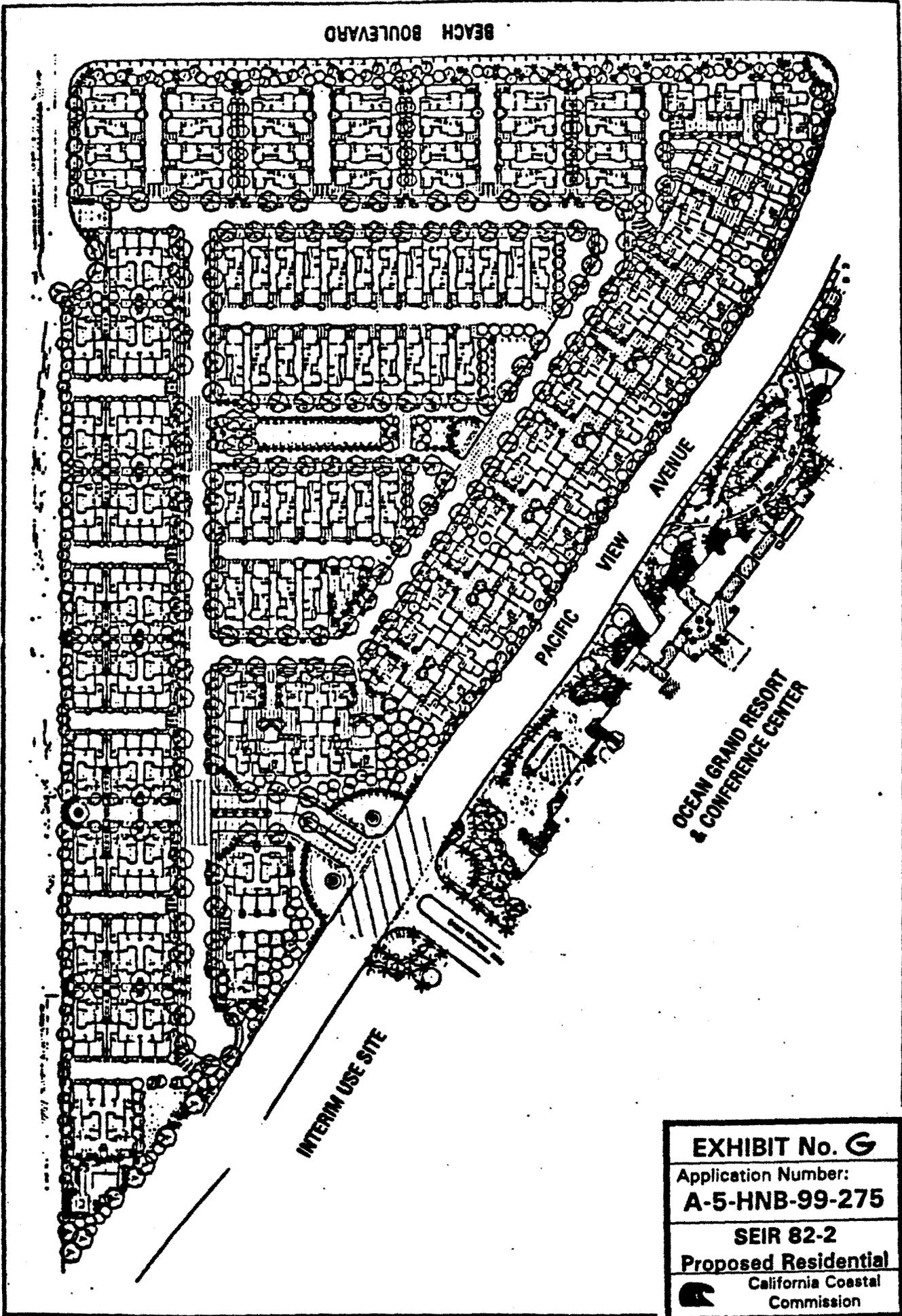
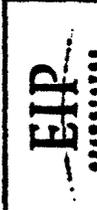


FIGURE 2-8
Proposed Waterfront Residential



| |
|--|
| EXHIBIT No. G |
| Application Number: A-5-HNB-99-275 |
| SEIR 82-2 |
| Proposed Residential |
| California Coastal Commission |

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.

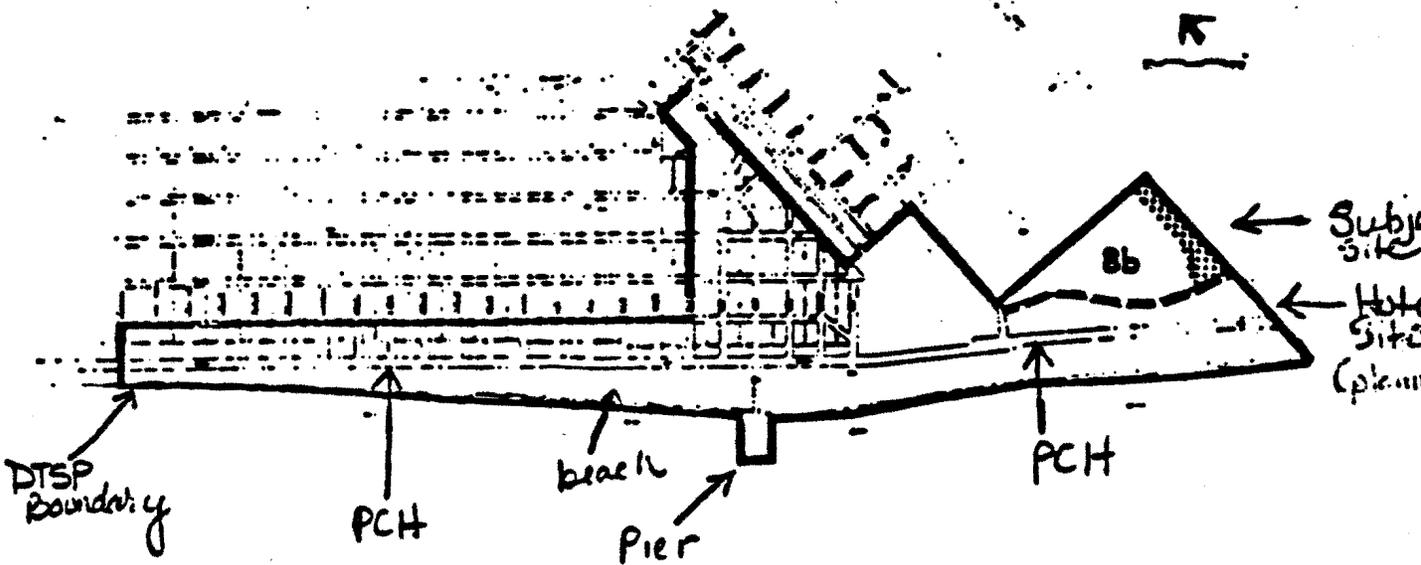
City's Conservation Overlay

from

Downtown Specific Plan
(DTSP)

A-5-HNB-99-275

Exhibit



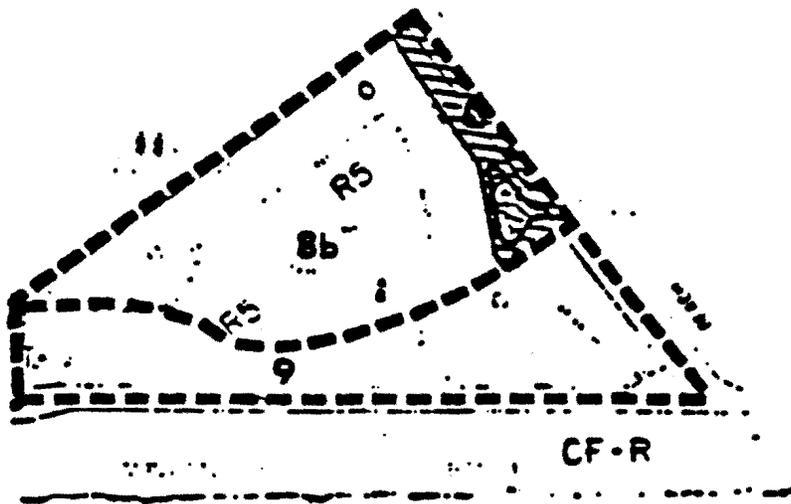
LEGEND



Degraded Wetlands

Restorable Wetlands

Specific Plan Boundary



Revised January 1981



HUNTINGTON BEACH CALIFORNIA
PLANNING DIVISION

Conservation Over

Incorporated LCP Policies

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.

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 feasible¹⁰ less environmentally damaging alternative (Section 30233(a)). The Commission may require the applicant to submit any or all of the information described in section III. B. above.

2. If there is no feasible less environmentally damaging alternative, feasible mitigation measures must be provided to minimize adverse environmental effects.

a. If the project involves dredging, mitigation measures must include at least the following (Section 30233(b)):

- 1) Dredging and spoils disposal must be planned and carried out to avoid significant disruption¹¹ to wetland habitats and to water circulation.
- 2) Limitations may be imposed on the timing of the operation, the type of operation, the quantity of dredged material removed, and the location of the spoil site.
- 3) Dredge spoils suitable for beach replenishment shall, where feasible, be transported to appropriate beaches or into suitable longshore current systems.

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

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

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

H

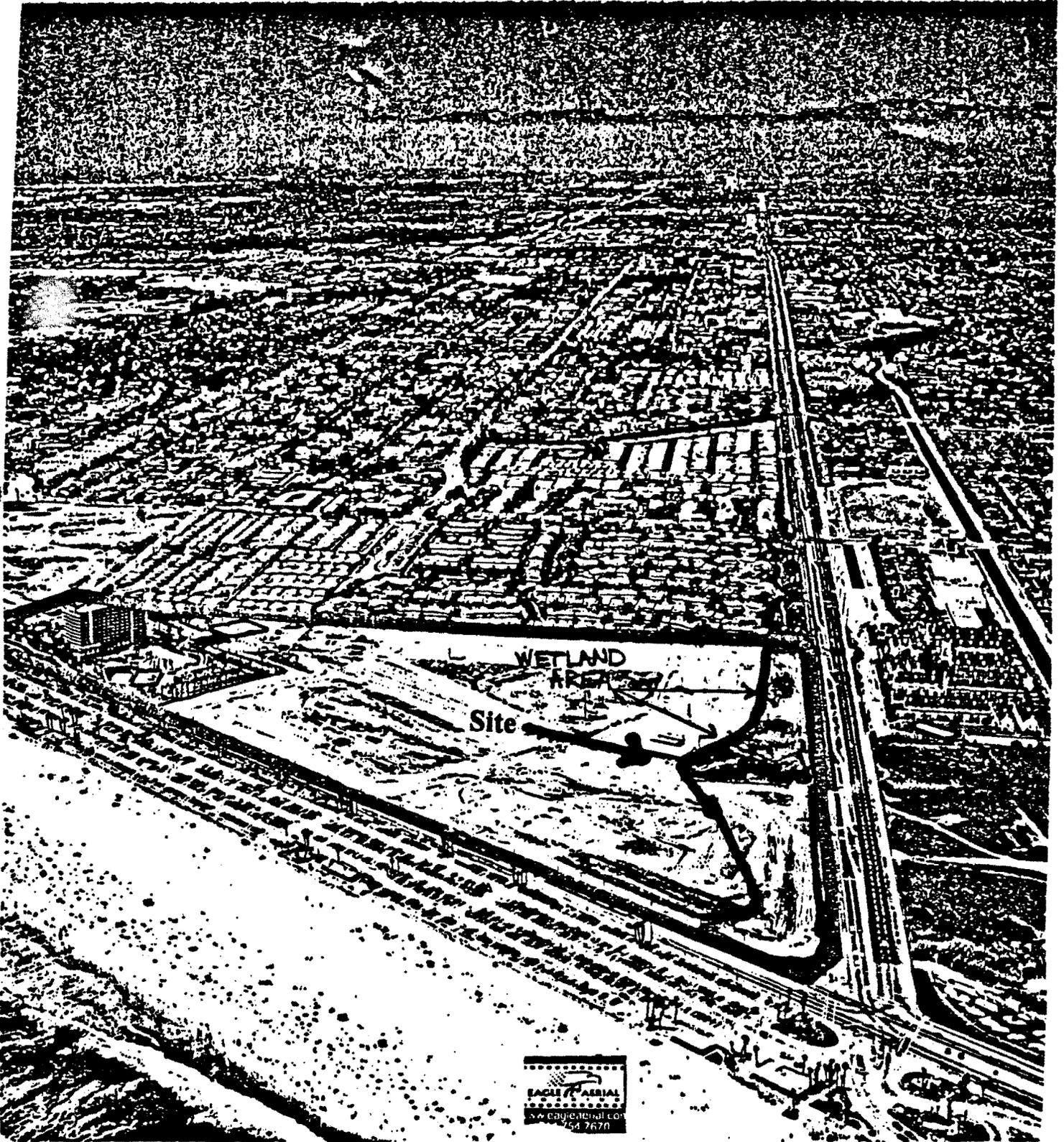
Commission's experience in reviewing vegetation and soils information available for degraded wetlands in Southern California that sometimes wetland and upland sites are intermixed on a parcel. Since Section 30411 discusses percentage of wetland area as the standard of review for required restoration, 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.

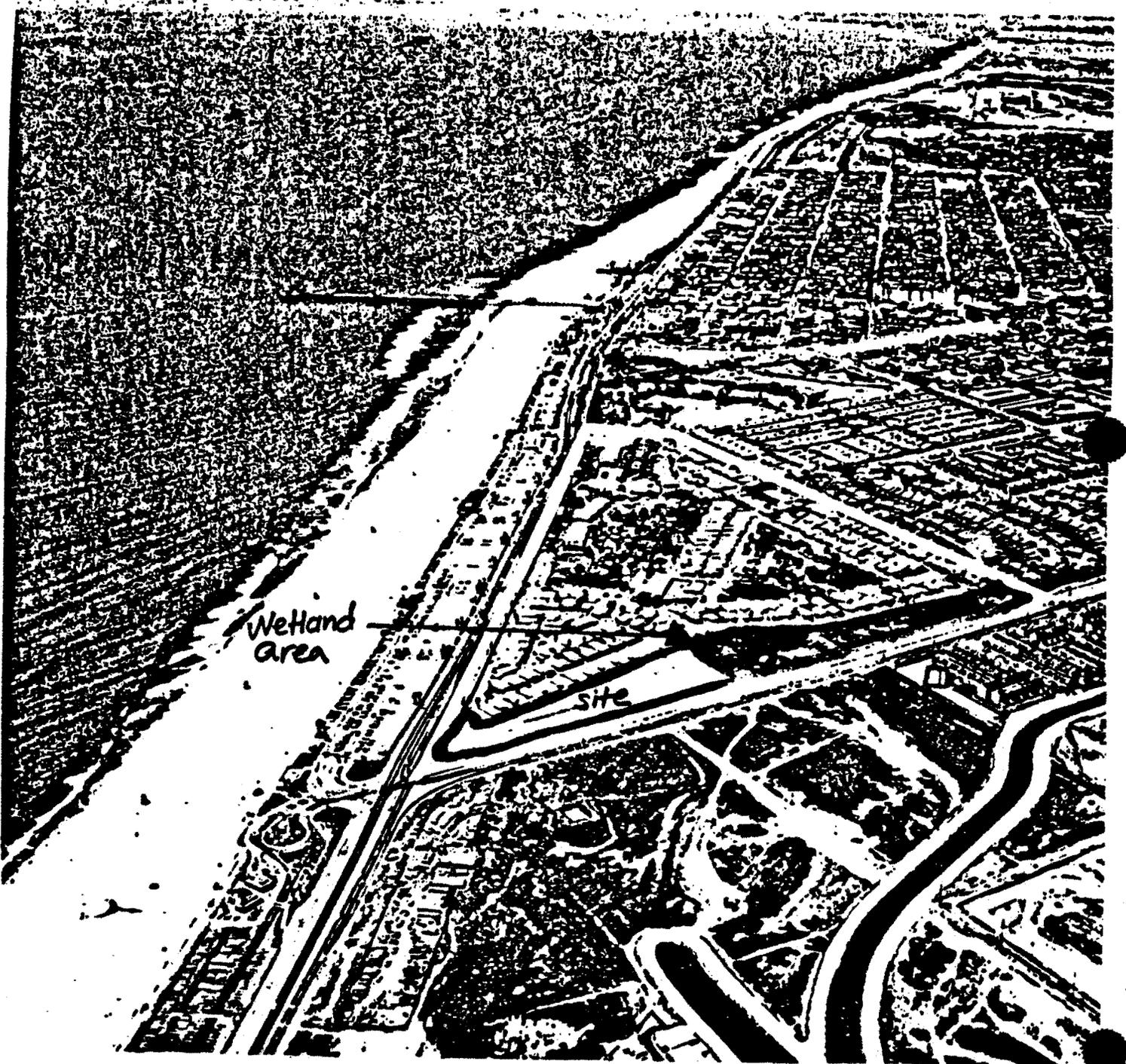
The first priority for restoration projects is restoration as permitted under Section 30233(a)(7). Other preferred options include restoration in conjunction with visitor serving commercial recreational facilities designed to increase public opportunities for coastal recreation. Thus, the priority for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

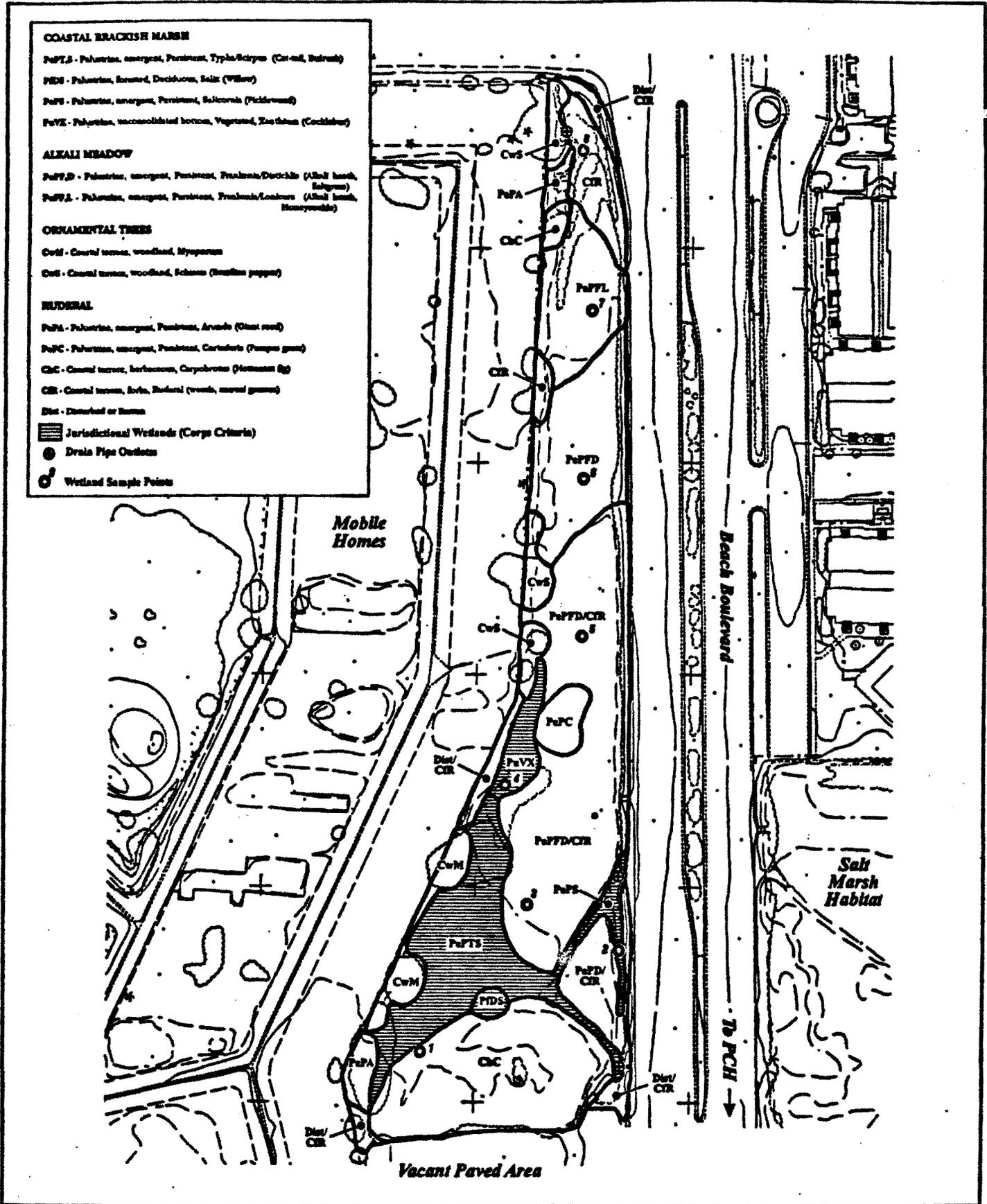
1. "Restoration purposes" under 30233(a)(7).
2. Boating facilities, if they meet all of the tests of section C. (above).
3. Visitor serving commercial recreational facilities and other priority uses designed to enhance public opportunities for coastal recreation.
4. Private residential, general industrial,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

H,







10/30/97(RMC730)

Figure 2

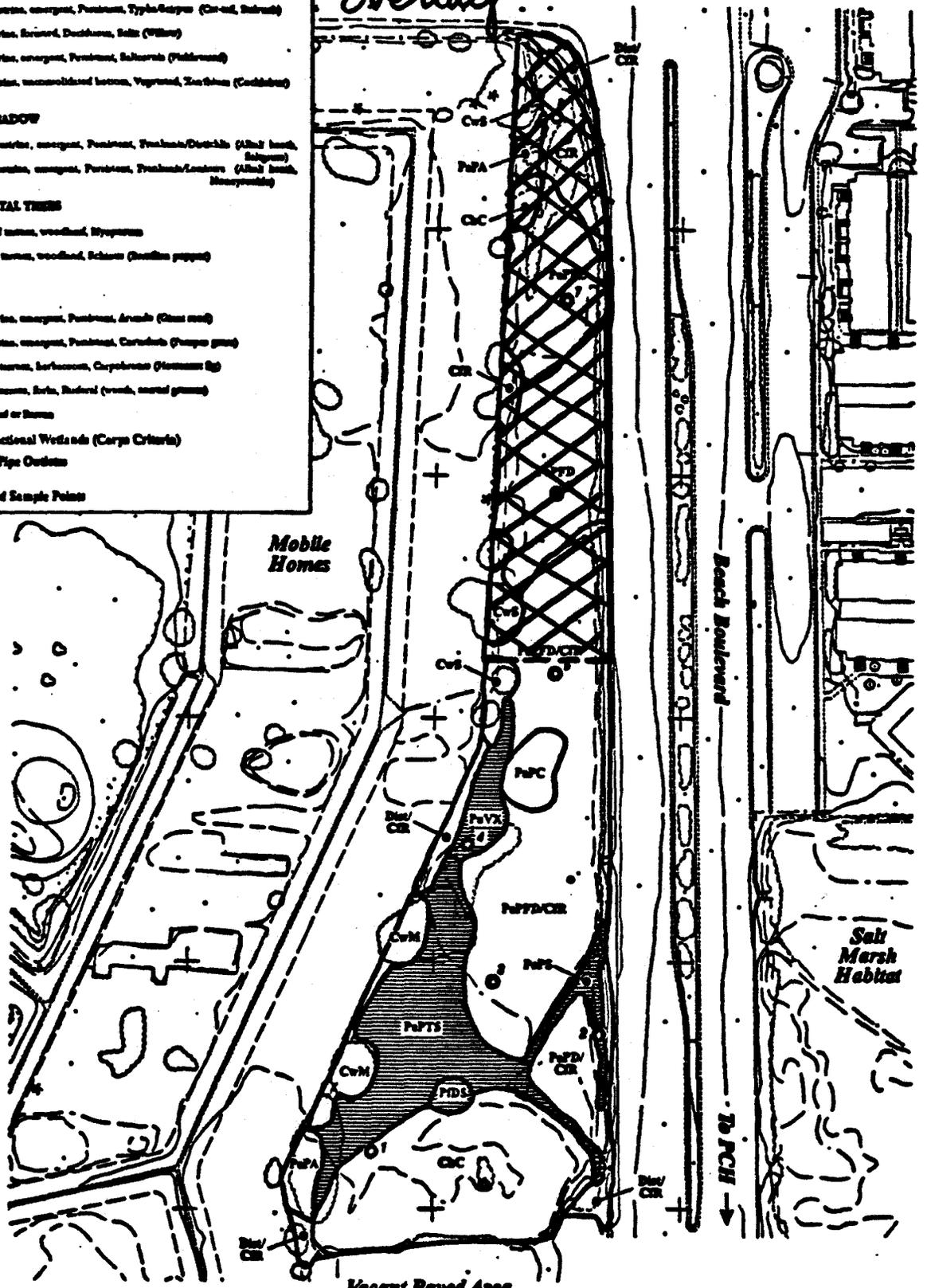


A-5-HNB-99-275
Exhibit K
Page 1 of

Vegetation Types
Jurisdictional Areas

XXXX approximate area that has been cleared of vegetation within the Conservation Overlay

- COASTAL BRACKISH MARSH**
- PuF2.5 - *Peltandra, emergent, Periwinkle, Typha/Sagittaria (Coastal, Subtidal)*
 - PuF2 - *Peltandra, emergent, Duckweed, Salt (Wetland)*
 - PuF1 - *Peltandra, emergent, Periwinkle, Saltwater (Wetland)*
 - PuF1.5 - *Peltandra, unconsolidated bottom, Vegetated, Saltwater (Wetland)*
- ALCALI MEADOW**
- PuF1.5 - *Peltandra, emergent, Periwinkle, Freshwater/Duckweed (Alkali marsh, Subtidal)*
 - PuF1.5 - *Peltandra, emergent, Periwinkle, Freshwater/Lotus (Alkali marsh, Emergent)*
- ORNAMENTAL TREES**
- CuF1 - *Carex, woody, woody, Myrica*
 - CuF - *Carex, woody, woody, Salix (Shrub/Tree)*
- RUBERAL**
- PuF1 - *Peltandra, emergent, Periwinkle, Arundo (Shrub/Tree)*
 - PuF1 - *Peltandra, emergent, Periwinkle, Carex (Shrub/Tree)*
 - CuF - *Carex, woody, woody, Carex (Shrub/Tree)*
 - CuF - *Carex, woody, Salix, Salix (Shrub, emergent grass)*
 - Sh - *Shrub or Tree*
- Jurisdictional Wetlands (Corps Criteria)
 - Drain Pipe Outlets
 - Wetland Sample Points



10/30/97(RMC730)

Figure

N

A-5-HNB-99-275

Exhibit K

Page 2 of 2

LSA



Vegetation Types
Jurisdictional Areas

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 Lollock, Chief, Environmental Services Branch, or Bob Radovich, Fishery Biologist, Environmental Services Branch, at (ATSS) 465-1383, 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

Exhibit

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.

-20-

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.

- (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.

It appears that its relatively low wildlife use is associated primarily with its small size and its overgrown condition. This wetland area could be enhanced by increasing both its size and the ratio of open-water to vegetated wetland areas. We find that these restorative measures are all minor, and therefore, can be feasibly accomplished.

We note that the study area affords a tremendous opportunity for restoration of historic wetlands. Of the 31.2 acres of former wetlands located southeast of Beach Boulevard, the Department finds that most of these (17.6 acres) could be restored in conjunction with enhancement of the existing wetlands and would not entail a major restorative effort.

For the above reasons, the Department finds that 114.7 acres of wetland can be restored without major restoration activities. In addition, a potential opportunity exists to restore approximately 19 acres (17.6 ac. southeast and 1.4 ac. west of Beach Blvd.) of former wetlands.

B. Section 30411(b)(2)

The consideration mandated of this Department pursuant to Coastal Act Section 30411(b)(2) speaks in terms of minimum and maximum. It is obvious to us that a boating facility can be of sufficiently small size that a restored wetland area meeting the minimum 75% area requirement of Section 30411(b)(2) can be maintained as a highly productive wetland in conjunction with such a project. Notwithstanding this finding, the Department believes that a boating facility is not a feasible use within the study area, and that a boating facility is

3. Retain and enhance the existing 11.6 acres of environmentally sensitive upland habitat all of which is presently in State ownership.
4. Arrange to exchange the 9.7 acres of state-owned, non-sensitive, non-restorable, and apparently developable property for all or portions of the 10.9 acres of restorable former wetland in private ownership. These 10.9 acres would, by virtue of their elevation and location, be almost effortlessly restored in conjunction with restoration and enhancement of other restorable and existing wetland areas.
5. Permit development of the 4.8 acres of non-sensitive, non-restorable property in private ownership.

Shifting focus to the portion of our study area west of Beach Boulevard, there are 0.8 acres of existing wetland and an additional 1.4 acres which may be easily restored as wetland. As previously indicated, the Department considers on-site restoration of these 2.2 acres to be feasible.

In summary, establishment of an upland/wetland ecosystem of 126.3 acres consisting of 114.7 acres of wetland and 11.6 acres of environmentally sensitive upland is feasible since this system is presently functioning within the study area. It appears that it is feasible to establish an upland/wetland ecosystem of as much as 145.3 acres in size consisting of 133.7 acres of wetland and 11.6 acres of environmentally sensitive upland if the five steps listed above are followed. This course of action would additionally result in private development of 14.5 acres

A-5 HNB-99-275
Exhibit M.
Page 6 of 9

-27-

3. Retain and enhance the existing 11.6 acres of environmentally sensitive upland habitat all of which is presently in State ownership.
4. Arrange to exchange the 9.7 acres of state-owned, non-sensitive, non-restorable, and apparently developable property for all or portions of the 10.9 acres of restorable former wetland in private ownership. These 10.9 acres would, by virtue of their elevation and location, be almost effortlessly restored in conjunction with restoration and enhancement of other restorable and existing wetland areas.
5. Permit development of the 4.8 acres of non-sensitive, non-restorable property in private ownership.

Shifting focus to the portion of our study area west of Beach Boulevard, there are 0.8 acres of existing wetland and an additional 1.4 acres which may be easily restored as wetland. As previously indicated, the Department considers on-site restoration of these 2.2 acres to be feasible.

In summary, establishment of an upland/wetland ecosystem of 126.3 acres consisting of 114.7 acres of wetland and 11.6 acres of environmentally sensitive upland is feasible since this system is presently functioning within the study area. It appears that it is feasible to establish an upland/wetland ecosystem of as much as 145.3 acres in size consisting of 133.7 acres of wetland and 11.6 acres of environmentally sensitive upland if the five steps listed above are followed. This course of action would additionally result in private development of 14.5 acres

Appendix 1. List of Wetland Plant Species Present within the Huntington Beach Wetlands ¹

| <u>Landowner</u> | <u>Location</u> | <u>Wetland Species Present (See Legend)</u> | <u>Legend</u> |
|----------------------------|--|---|-----------------------------------|
| State of California | 1. Santa Ana River to Brookhurst St. | 1 8 10 | 1 <i>Salicornia virginica</i> |
| | 2. Brookhurst St. to Magnolia St. | 1 3 4 6 8 11 | 2 <i>Salicornia subterminalis</i> |
| | 3. East of Beach Blvd. | 1 3 8 9 12 13 | 3 <i>Frankenia grandifolia</i> |
| City of Huntington Beach | 1. West of Beach Blvd. | 1 3 5 6 7 8 9 | 4 <i>Juncus acutus</i> |
| Southern California Edison | 1. West of Magnolia St. | 1 8 | 5 <i>Scripus olneyi</i> |
| Thorpe | 1. East of Magnolia St. | 1 3 8 | 6 <i>Scripus californicus</i> |
| | 2. West of Magnolia St. | 1 3 4 12 | 7 <i>Cyperus sp.</i> |
| Hills Land & Water Co. | 1. North and east of the flood control channel | 1 3 * | 8 <i>Distichlis spicata</i> |
| | 2. West of the flood control channel | 1 3 | 9 <i>Typha sp.</i> |
| | | | 10 <i>Ruppia maritima</i> |
| | | | 11 <i>Jaumea carnosa</i> |
| | | | 12 <i>Scripus robustus</i> |
| | | | 13 <i>Cotula coronopifolia</i> |

A-5-HNB-89-275
 ERWbit M
 Page 7 of 9

This list is not intended to be exhaustive but rather represents the most common wetland indicator species present on August 23, 1982.

Mostly dead vegetation as a result of discing.

APPENDIX 2

BIRDS OF THE HUNTINGTON BEACH WETLANDS

These bird species are known to occur in the subject wetland area. The following list is not intended to be exhaustive. The list is based on actual field observation by the Department and other reliable sources.

Wading birds:

| | |
|---------------------------|------------------------------|
| Great blue heron | <u>Ardea herodias</u> |
| Great egret | <u>Casmerodius albus</u> |
| Snowy egret | <u>Egretta thula</u> |
| Cattle egret | <u>Bubulcus ibis</u> |
| Black-crowned night heron | <u>Nycticorax nycticorax</u> |

Surface ducks

| | |
|-------------------|---------------------------|
| Mallard | <u>Anas platyrhynchos</u> |
| Northern Pintail | <u>Anas acuta</u> |
| Green-winged teal | <u>Anas crecca</u> |
| Blue-winged teal | <u>Anas discors</u> |
| Cinnamon teal | <u>Anas cyanoptera</u> |
| American wigeon | <u>Anas americana</u> |
| Northern Shoveler | <u>Anas clypeata</u> |

Diving ducks

| | |
|--------------|--------------------------------|
| Lesser scaup | <u>Aythya affinis</u> |
| Surf scoter | <u>Melanitta perspicillata</u> |
| Bufflehead | <u>Bucephala albeola</u> |

Stiff-tailed ducks

| | |
|------------|---------------------------|
| Ruddy duck | <u>Oxyura jamaicensis</u> |
|------------|---------------------------|

Kites, hawks, falcons (observed foraging in wetland areas)

| | |
|-----------------------|--------------------------|
| Black-shouldered kite | <u>Elanus caeruleus</u> |
| Red-tailed hawk | <u>Buteo jamaicensis</u> |
| Northern harrier | <u>Circus cyaneus</u> |
| American kestrel | <u>Falco sparverius</u> |

Shorebirds

| | |
|----------------------|------------------------------------|
| Semipalmated plover | <u>Charadrius semipalmatus</u> |
| Killdeer | <u>Charadrius vociferus</u> |
| Black-bellied plover | <u>Pluvialis squatarola</u> |
| Long billed curlew | <u>Numenius americanus</u> |
| Whimbrel | <u>Numenius phaeopus</u> |
| Willet | <u>Catoptrophorus semipalmatus</u> |
| Greater yellowlegs | <u>Tringa melanoleucus</u> |

Shorebirds

| | |
|----------------------|--------------------------------|
| Least sandpiper | <u>Calidris minutilla</u> |
| Dunlin | <u>Calidris alpina</u> |
| Western sandpiper | <u>Calidris mauri</u> |
| Marbled godwit | <u>Limosa fedoa</u> |
| American avocet | <u>Recurvirostra americana</u> |
| Black-necked stilt | <u>Himantopus mexicanus</u> |
| Red-necked phalarope | <u>Phalaropus lobatus</u> |
| Dowitcher spp. | <u>Limnodromus spp.</u> |
| Wilson's phalarope | <u>Phalaropus tricolor</u> |
| Sanderling | <u>Calidris alba</u> |
| Lesser yellowlegs | <u>Tringa flavipes</u> |
| Lesser golden plover | <u>Pluvialis dominica</u> |
| Spotted sandpiper | <u>Actitis macularia</u> |

Gulls and terns

| | |
|-----------------------|---------------------------------|
| Western gull | <u>Larus occidentalis</u> |
| Herring gull | <u>Larus argentatus</u> |
| California gull | <u>Larus californicus</u> |
| Ring-billed gull | <u>Larus delawarensis</u> |
| Bonaparte's gull | <u>Larus philadelphia</u> |
| Heerman's gull | <u>Larus heermanni</u> |
| Forster's tern | <u>Sterna forsteri</u> |
| California least tern | <u>Sterna antillarum browni</u> |
| Caspian tern | <u>Sterna caspia</u> |

Miscellaneous wetland-related species

| | |
|----------------------------|---|
| American coot | <u>Fulica americana</u> |
| Belding's savannah sparrow | <u>Passerculus sandwichensis beldingi</u> |
| Red-winged blackbird | <u>Agelaius phoeniceus</u> |
| Eared Grebe | <u>Podiceps nigricollis</u> |
| Double-crested cormorant | <u>Phalacrocorax auritus</u> |
| Belted kingfisher | <u>Ceryle alcyon</u> |
| Marsh wren | <u>Cistothorus palustris</u> |

Miscellaneous species not directly related to wetland habitat

| | |
|----------------------|-------------------------------|
| Mourning dove | <u>Zenaidura macroura</u> |
| American crow | <u>Corvus brachyrhynchos</u> |
| Northern mockingbird | <u>Mimus polyglottus</u> |
| European starling | <u>Sturnus vulgaris</u> |
| English sparrow | <u>Passer domesticus</u> |
| Western meadowlark | <u>Sturnella neglecta</u> |
| House finch | <u>Carpodacus mexicanus</u> |
| American goldfinch | <u>Carduelis tristis</u> |
| Lesser goldfinch | <u>Carduelis psaltria</u> |
| Song sparrow | <u>Melospiza melodia</u> |
| Cliff swallow | <u>Hirundo pyrrhonota</u> |
| Barn swallow | <u>Hirundo rustica</u> |
| Violet-green swallow | <u>Tachycineta thalassina</u> |

CALIFORNIA COASTAL COMMISSION

A-5-HNB-99-275

Exhibit **A**

Page 1 of 2

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-8200
FAX (415) 904-8408



MEMORANDUM

TO: Meg Vaughn, Teresa Henry,
Long Beach

FROM: John Dixon

SUBJECT: Huntington Beach "Waterfront Development"

DATE: November 23, 1999

LSA Associates has done several field studies to determine the extent of wetlands on the subject property. In their original delineation¹, 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 report² 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.

¹ 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.

² 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 virginica</i>) | Percent Alkali Heath (<i>Frankenia grandifolia</i>) | Percent Salt Grass (<i>Distichlis spicata</i>) | Percent Bermuda Grass (<i>Cynodon dactylon</i>) | Percent Heliotrope (<i>Cressa truxillensis</i>) | Percent Arroyo Willow (<i>Salix lasiolepis</i>) | Percent Ripgut Brome (<i>Bromus 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: T6,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 | 0.016 | 0 | 0 | 75 | 25 | 0 | 0 | 0 |
| SE: T2 | 0.004 | 0 | 0 | 0 | 0 | 0 | 100 | 0 |

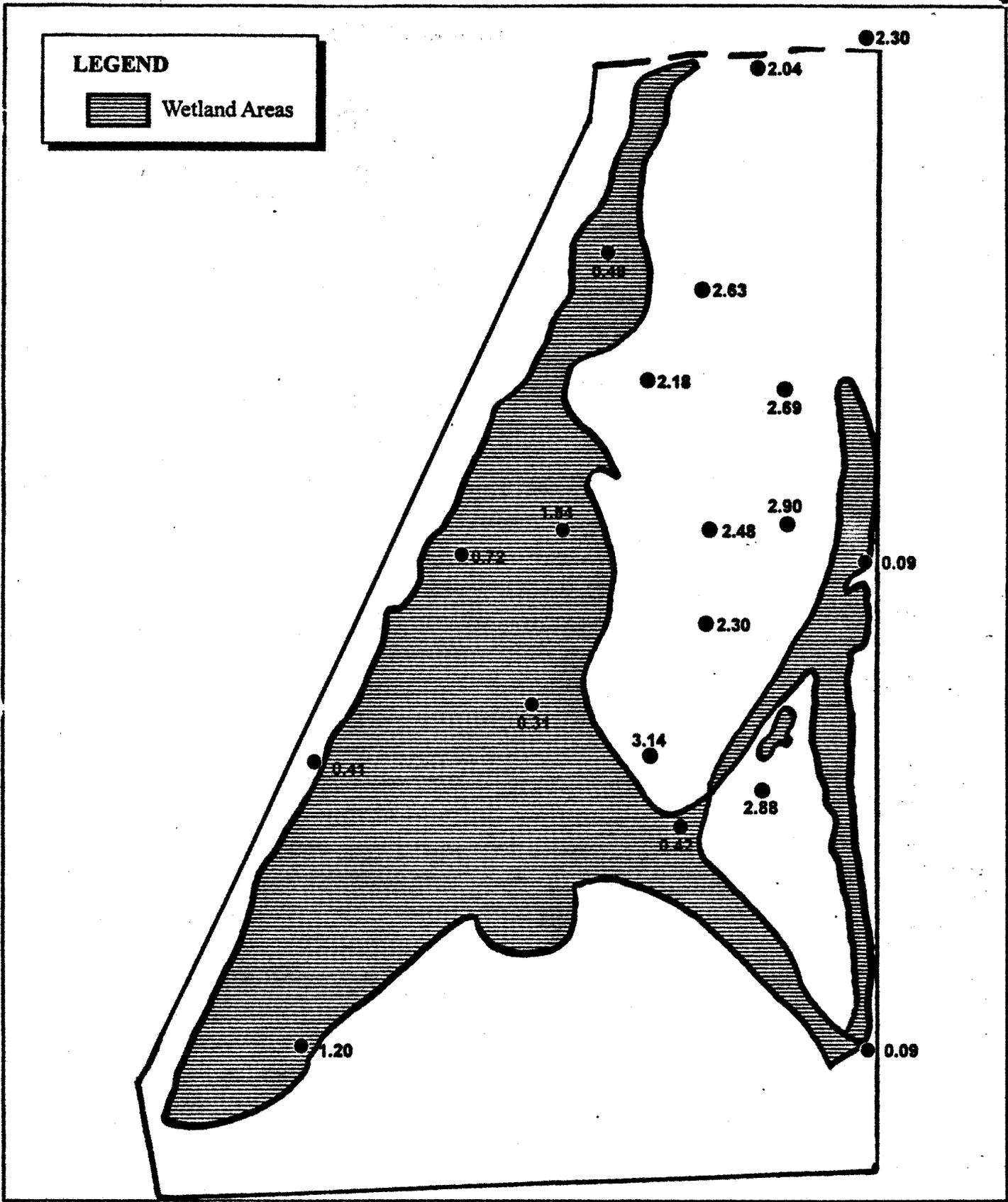
*questionable indicator status at inland sites in California

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.

LEGEND

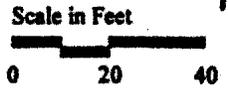
 Wetland Areas



10/28/99(TRM831)

*A-5-HNB-99-275
Exhibit O
Page 1 of 1*

Figure 2



Sample Elevation Points
Within Project Area