CALIFORNIA COASTAL COMMISSION
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Filed:	7/26/99
Open & Continued:	8/10/99
49th Day:	Waived
Staff:	MG-LB
SI/DN Hearing Date:	April 11, 2000
Commission Action:	**Approved w/Conditions**
Revised Finding Staff Report:	8/24/00
Revised Finding Hearing Date:	September 12-15, 2000
Commission Action:	

STAFF REPORT: REVISED FINDINGS

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

APPLICANTS: **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: Development described by the applicants in a letter from the Robert Mayer Corporation, dated January 26, 2000, as *"The filling of an isolated and degraded wetland fragment (approximately .8 acre) in conjunction with the implementation of a wetland and riparian woodland habitat restoration project at the Shipley Nature Center (approximately 2.4 acres)..., described in the application filed and approved by the City of Huntington Beach,"* and as more specifically described in the *Coastal Development Permit Request*, dated April 8, 1999 (Exhibit A) and in the application file in the Commission offices.

DATE OF COMMISSION ACTION: April 11, 2000

COMMISSION ACTION: Approval with Conditions

COMMISSIONERS ON PREVAILING SIDE: Daniels, Dettloff, Estolano, Hart, Kruer, McClain-Hill, Potter

SUMMARY OF STAFF RECOMMENDATIONS

Staff recommends that the Commission adopt the following revised findings in support of the Commission's approval with conditions of coastal development permit application A-5-HNB-99-275 on April 11, 2000. The adopted special conditions concern: 1) conditions imposed by the local government; 2) a final wetland restoration program that includes a 4:1 ratio of restoration for the fill of 0.696 acres of existing historic wetland at the subject 5.01-acre parcel; 3) evidence of restoration program completion; 4) an open space and conservation easement, and 5) an updated drainage study, erosion control plan and a drainage and runoff control plan to avoid adverse impacts to adjacent properties or resources including the salt marsh located east of the subject property across Beach Boulevard.

LIST OF EXHIBITS:

A. Robert L. Mayer Trust Letter, January 26, 2000 and Coastal Development Permit Request, April 8, 1999 (without exhibits)
B. City of Huntington Beach CDP No. 99-05
C. Appeal Form D
D. Transcript of Commission Meeting on April 11, 2000, Long Beach
E. Letters in Support of the Proposed Project and Letter of No Position
F. Letters and Petition in Opposition to the Proposed Project
G Site Vicinity Map
H. Project Location Map
I. Assessor Parcel Map
J. Photographs
K. Vegetation Types and Distribution Maps
L. Sample Elevation Points Within Project Area (LSA)
M. City of Huntington Beach Map for District 8b
N. Conservation Overlay Map 4.15
O. Excerpted Portion of the Conservation Overlay from Downtown Specific Plan
P. SEIR 82-2 Plans Depicting Proposed Residential Housing
Q. Portions of Department of Fish and Game Determination of Status of the Huntington Beach Wetlands, February 4, 1983
R. Coastal Commission Memorandum, November 23, 1999
S. Table B of LSA's December 18, 1998, Habitat Mitigation and Monitoring Proposal

SUBSTANTIVE FILE DOCUMENTS:

1. City of Huntington Beach Certified Local Coastal Program.
2. April 8, 1999, Applicants *Coastal Development Permit Request* and Exhibits
3. Local Coastal Development Permit No.99-05.
4. *Department of Fish and Game Determination of the Status of the Huntington Beach Wetlands*, February 4, 1983.
5. *The Waterfront Development Project Addendum to SEIR 82-2*, July 15, 1998.
6. *Biological Resources Evaluation and Jurisdictional/Wetland Delineation for the Waterfront Development Site, Huntington Beach, CA*, LSA Associates, Inc. (LSA), February 4, 1998.
7. *Habitat Mitigation and Monitoring Proposal (HMMP) for the Waterfront Development*, LSA, December 18, 1998.
8. *Waterfront Project – Discussion of Wetland Definitions*, LSA, August 5, 1999.
9. *Waterfront Development – Analysis of Proposed Project and Restoration Sites Relative to Coastal Zone Resources*, LSA, November 3, 1999.
10. *Waterfront Development – Analysis of Historic Conditions*, LSA, November 3, 1999.
11. *Waterfront Development –Wetland Analysis According to Coastal Act Wetland Definition*, letter from LSA to Larry Brose, The Robert Mayer Corporation, dated November 3, 1999.
12. *Waterfront Development – Alternatives Analysis of Wetland and Transitional Area Resources*, LSA, November 5, 1999
13. *Huntington Beach "Waterfront Development"*, Memorandum from John Dixon to Meg Vaughn and Teresa Henry, dated November 23, 1999.

14. *Waterfront Wetlands Restoration Project*, Letter and Attachments from the Robert Mayer Corporation to the Commission dated February 9, 2000 (Exhibit E).
15. *Waterfront Wetlands Restoration Program, Shipley Nature Center*, City of Huntington Beach Redevelopment Agency in partnership with The Robert Mayer Corporation, February and April 2000.
16. Army Corps of Engineers Letter, April 16, 1999.
17. CDFG Streambed Alteration Agreement No. 5-005-99, April 1, 1999

I. MOTION AND RESOLUTION FOR THE REVISED FINDINGS

MOTION: ***"I move that the Commission adopt the revised findings in support of the Commission's action on April 11, 2000 concerning A-5-HNB-99-275."***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the April 11, 2000 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings (see list on page 1).

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for Coastal Development Permit No. A-5-HNB-99-275 on the ground that the findings support the Commission's decision made on April 11, 2000 and accurately reflects the reasons for it.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Compliance.** All development must occur in strict compliance with the proposal set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. CONDITIONS IMPOSED BY LOCAL GOVERNMENT

The City of Huntington Beach conditions of approval for the City's Coastal Development Permit No. 99-05 are replaced by this Commission action on Coastal Development Permit No. A-5-HNB-99-275. This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

2. FINAL WETLAND RESTORATION PROGRAM

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, a revised wetland restoration program that substantially conforms to the *Habitat Mitigation and Monitoring Proposal* (HMMP), prepared by LSA and submitted to the Commission on December 18, 1998, for all wetland impacts associated with the approved project. The program shall be developed in consultation with the California Department of Fish and Game and the United States Fish and Wildlife Service, and at a minimum shall include the following revisions:

A. A detailed final site plan of the approved restoration program site at Shipley Nature Center that substantially conforms with the HMMP, prepared by LSA and submitted to the Commission on December 18, 1998, and revised as follows:

   1. The final site plan for the approved restoration program site at Shipley Nature Center must show the location of the 2.8 acres of new wetland habitat that will be created as part of the approved restoration program.

   2. The final site plan for the approved restoration program site at Shipley Nature Center shall also show the location of the 1.4 acres of existing wetland that shall be enhanced in addition to the creation of the 2.8 acres of new wetland habitat.

B. The following goals, objectives, and performance standards for the restoration program site:

1. During the 120-day establishment period, all approved restoration at Shipley Nature Center must be established and meet the one to three month performance criteria for survival and coverage identified in the *Habitat Mitigation and Monitoring Proposal* (HMMP), prepared by LSA and submitted to the Commission on December 18, 1998, prior to any fill of wetlands on the 5.01-acre parcel.

2. Following the 120-day establishment period, the performance standards for the maintenance and monitoring of the approved restoration program at Shipley Nature Center shall conform to the performance criteria set forth in the HMMP, prepared by LSA and submitted to the Commission on December 18, 1998.

3. The approved restoration program at Shipley Nature Center must create a minimum of 2.8 acres of new wetland habitat (a ratio of approximately 4:1), in addition to the proposed enhancement of 1.4 acres of existing wetland. Enhancement of existing habitat is not considered creation and no existing wetlands or riparian areas shall be disturbed or graded to provide the new wetland acreage.

C. The final design and construction methods shall evidence how the approved restoration program at Shipley Nature Center will achieve all defined goals, objectives, and performance standards identified in the final wetland restoration program. Such evidence shall include how wetlands are to be created and enhanced according to the approved one to three month performance criteria prior to the fill of any wetlands on the 5.01-acre parcel.

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

3. RESTORATION PROGRAM COMPLETION

A. **PRIOR TO ANY FILL OF WETLANDS ON THE 5.01-ACRE PARCEL**, evidence that the initial restoration program at Shipley Nature Center has been completed pursuant to the approved final wetland restoration program shall be submitted for the review and written approval of the Executive Director. Specifically, following the 120-day plant establishment period, the applicants shall submit evidence, in the form of a report, that the created and enhanced wetlands are established and meet the one to three month performance criteria for survival and coverage pursuant to the requirements of the final wetland restoration program.

B. Following the 120-day establishment period, a performance monitoring and supplemental planting program consistent with the requirements of the final wetland restoration program, shall continue for a minimum of five years and shall be conducted in consultation with the Department of Fish and Game (DFG) and the Army Corps of Engineers (USACE). Consistent with the requirements of the final wetland restoration program, annual

monitoring reports shall be submitted to the DFG, USACE and the Executive Director. The DFG, USACE and the Executive Director shall be notified if corrective actions at the approved restoration program site at Shipley Nature Center are necessary. The monitoring period for the affected area shall be extended until all defined goals, objectives and performance standards identified in the final wetland restoration program are met for the approved restoration program site.

4. OPEN SPACE AND CONSERVATION EASEMENT

A. No development, as defined in section 30106 of the Coastal Act, shall occur in the approved restoration program site at Shipley Nature Center generally described on pages 4-1 through 4-3 and depicted in Figure 1 of the *Habitat Mitigation and Monitoring Proposal* (HMMP), prepared by LSA and submitted to the Commission on December 18, 1998, except for development described in the approved wetland restoration program required by Special Conditions 2 and 3.

B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and consistent with the approved project description, the applicants shall submit evidence in a form and content acceptable to the Executive Director, that the owner of the approved restoration program site at the Shipley Nature Center has irrevocably offered to dedicate to a public agency or private association approved by the Executive Director an open space and conservation easement for the purpose of permanent maintenance of the habitat area. Such easement shall be located at the approved restoration program site at the Shipley Nature Center as generally described on pages 4-1 through 4-3 and depicted on Figure 1 of the HMMP prepared by LSA and submitted to the Commission on December 18, 1998. The recorded document shall include legal descriptions of both the applicants' entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition.

C. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

5. DRAINAGE STUDY, EROSION, AND RUNOFF CONTROL PLAN

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, (1) an updated hydrological plan that minimizes the drainage impacts of the proposed fill on the adjacent salt marsh located east of the subject 5.01-acre parcel across Beach Boulevard; (2) an erosion control plan for the approved wetland fill; and (3) a drainage and polluted run-off control plan for the approved wetland fill.

A. The updated hydrological plan shall be developed in consultation with the Department of Fish and Game and shall include:

(1) A comparison of the existing and post-project water supply;

(2) Plans designed and certified by a licensed engineer for the runoff conveyance system.

(3) A feasibility study that demonstrates that the project's runoff management system will deliver the same amount of freshwater urban runoff to adjacent properties and resources, including the adjacent salt marsh located east of the subject parcel across Beach Boulevard, as under existing conditions and in approximately the same seasonal pattern. In designing the study, hydrologic conditions shall be maintained at levels necessary to avoid any significant adverse impacts to the existing salt marsh habitat located east of the subject parcel across Beach Boulevard and associated wildlife.

(4) An implementation plan of proposed measures to ensure that the project's runoff management system will deliver the same amount of freshwater urban runoff to adjacent properties and resources, including the adjacent salt marsh located east of the subject parcel across Beach Boulevard, as under existing conditions and in approximately the same seasonal pattern. During implementation, hydrologic conditions shall be maintained at levels necessary to avoid any significant adverse impacts to the existing salt marsh habitat located east of the subject parcel across Beach Boulevard and associated wildlife.

B. The Erosion Control Plan shall demonstrate that:

(1) During filling activities, erosion on the 5.01-acre site shall be controlled to avoid adverse impacts on adjacent properties and resources including the salt marsh located across Beach Boulevard from the subject 5.01-acre site.

(2) Temporary erosion control measures shall be used during filling activities, including, but not limited to: hay bales, silt fences, desiltation basins, and/or sandbags.

(3) Following filling activities, erosion on the 5.01-acre site shall be controlled to avoid adverse impacts on adjacent properties and resources, including the salt marsh located across Beach Boulevard.

(4) The plan shall include, at a minimum, the following components:

(a) A narrative report describing all temporary run-off, and erosion control measures to be used during fill activities and all permanent erosion control measures to be installed for permanent erosion control.

(b) A site plan showing the location of all temporary erosion control measures.

(c) A schedule for installation and removal of the temporary erosion control measures.

(d) A site plan showing the location of all permanent erosion control measures.

(e) A schedule for installation and maintenance of the permanent erosion control measures.

C. The Drainage and Run-off Control Plan shall demonstrate that:

(1) Post-development peak runoff rates and average volumes shall not exceed pre-development conditions.

(2) Run-off from the approved development shall not increase sediment loads in the salt marsh located across Beach Boulevard from the subject site.

(3) Run-off from all slopes on the 5.01-acre site shall be collected, filtered or treated, and discharged to the storm drain system, and/or as needed to meet the requirements of this and the other special conditions of this permit to the salt marsh across Beach Boulevard, to avoid ponding or erosion either on or off-site.

(4) Runoff shall be collected and directed through a system of vegetated and/or gravel filter strips or other media filter devices. The filter elements shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration and/or biological uptake. The drainage system shall also be designed to convey and discharge excess runoff from the building site in a non-erosive manner.

(5) The plan shall include, at a minimum, the following components:

(a) A schedule for installation and maintenance of the filtering/sediment trap drainage system(s).

(b) A site plan showing finished grades at one-foot contour intervals and drainage improvements.

(c) Provisions for maintaining the drainage and filtration systems so that they are functional throughout the life of the approved development. Such maintenance shall include the following: (1) the drainage and filtration system shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures fail or result in increased erosion, the applicants/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicants shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

D. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to the coastal development permit unless the Executive Director determines that no amendment is required.

E. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the 2.9-acre portion of the parcel subject to the Conservation Overlay within the 5.01-acre parcel. The deed restriction shall include legal descriptions of the applicants' entire 5.01-acre parcel and the 2.9-acre portion of the parcel subject to the Conservation Overlay within the 5.01-acre parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the

enforceability of the restriction. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. REVISED FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PREVIOUS COMMISSION ACTIONS

The Commission received the notice of final action on local CDP No. 99-05 (Exhibit B) on July 12, 1999. On July 26, 1999, within ten working days of receipt of the notice of final action, two Coastal Commissioners (Estalono and Nava) appealed the local action on the grounds that the approved project does not conform to the requirements of the certified LCP (Exhibit C). At the Commission meeting in Long Beach, on April 11, 2000, the Commission found that a substantial issue did exist with regard to the City's approval of the proposed project. Subsequently, on April 11, 2000, the Commission approved the Coastal Development Permit with conditions (Exhibit D). The revised findings to support the Commissions approval and the conditions of the project are presented in this staff report.

B. STANDARD OF REVIEW

The action currently before the Commission is to adopt revised findings to support the approval of the proposed project at the April 11, 2000 de novo hearing for the coastal development permit. The City of Huntington Beach has a certified local coastal program (LCP). Therefore, pursuant to Section 30604 of the Coastal Act, the Commission's standard of review for the proposed project is the certified Huntington Beach LCP.

C. PUBLIC COMMENT

Thirty-seven (37) letters and two (2) citizen's petitions have been received regarding the subject appeal. Twenty-three (23) of the letters are in support of the proposed project (Exhibit E), and thirteen (13) of the letters oppose the proposed project (Exhibit F). The Amigos de Bolsa Chica submitted a letter on April 7, 2000 stating that the organization has no position regarding the proposed project (Exhibit E). One petition was received at the February Commission meeting and is signed by 90 citizens who are in opposition to the proposed project (Exhibit F). The second petition was received on April 5, 2000 and is signed by 271 citizens who are in opposition to the proposed project (Exhibit F).

Eight letters of support were received from representatives of the City of Huntington Beach. Three letters were received from the Robert Mayer Corporation in response to the previous Commission staff reports. The Mayer Corporation letters and attachments were handed out to the Commission at both the February and April hearings. In order to minimize the length of exhibits to this staff report, some of the attachments are 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

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), Harry Crowell (Irvine), and the Pacific Liberty Bank.

Letters in opposition to the proposed project were received from Huntington Beach City Council Member David Sullivan, 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 Bervedicktus and George Hubner (San Clemente), Tobie and Gerard Charles (Huntington Beach), Jim Yarbrough (Chatsworth), Eileen Murphy (Huntington Beach), and Nguyen Thi Trung (Huntington Beach).

D. SITE DESCRIPTION

The subject site is located approximately 1000 feet inland of the intersection of Pacific Coast Highway and Beach Boulevard (Exhibits G and H). The wetland lies immediately to the west of Beach Boulevard within a portion of a 5.01-acre parcel owned by the City of Huntington Beach (Exhibits I and J). To the west of the wetland, a mobile home park formerly existed; however, the area has been cleared and partially graded in conjunction with the overall Waterfront Development project (Exhibit J). South of the subject site is vacant land. To the east across Beach Boulevard from the subject site is a large salt marsh.

Prior to development in the area the subject site was once part of a larger wetland system that was a part of the Santa Ana River delta (LSA, 1998). With the construction of Beach Boulevard, the subject wetland was separated from the larger salt marsh system to the east. During periods of heavy rains, the subject wetland drains into the larger salt marsh east of Beach Boulevard via two drainpipe outlets under the street (LSA, 1998; Exhibit K, page 1). 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 that restrict seawater flow into the marsh during high tides (LSA, 1998). Currently, the subject wetland receives urban freshwater runoff from the properties to the west.

In addition, an LSA Associates, Inc. (LSA) report dated February 1998 also indicated that local groundwater levels directly affect the hydrology of the subject wetland. LSA's February 1998 report also states that monitoring has been conducted near the subject wetland over a period of more than ten years, and 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."* In LSA's, *"Waterfront Development – Wetland Analysis According to Coastal Act Wetland Definition"* letter, dated November 3, 1999, survey Figure 2 (Exhibit L) 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. Based on the information provided by LSA, the elevation of local groundwater in the vicinity of the subject site is generally greater than the surveyed elevation of the wetland bottom indicating that the wetland is directly influenced by local groundwater. Therefore, based on information provided by LSA, direct influence by local

groundwater may be providing the wetland with another water source in addition to urban runoff.

The subject site has a land use designation of High Density Residential/Conservation. The zoning at the subject site is covered by the Downtown Specific Plan (DTSP), which is a part of the Implementation Plan portion of the certified LCP. The wetland area is located in District 8b of the DTSP (Exhibit M). In District 8b of the City's certified LCP, permitted uses are limited to residential uses and public transportation uses subject to a conditional use permit. However, a portion of District 8b is designated with a Conservation Overlay (Exhibit N). The subject site is located within the Conservation Overlay (Exhibit N). The Conservation Overlay applies to 2.9 acres of the 5.01-acre parcel, including the area that was determined by the California Department of Fish and Game (CDFG), 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 Q).

Although the proposed project includes only the fill of the subject wetland, the wetland area is part of a larger area known as the Waterfront Development Master Plan area. To assess the potential impacts the proposed development would have on the subject site, Environmental Impact Report (EIR) 82-2 was prepared for the Huntington Beach Downtown Specific Plan (ASEIR 82-2, 1998). 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 was prepared by EIP Associates of Los Angeles, California (SEIR 82-2), and was certified by the City in 1988 (ASEIR 82-2, 1998). 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 dated July 15, 1998 (ASEIR 82-2) was prepared. EIR 82-2 and SEIR 82-2 were not included in the City's record that was provided for the proposed project. However, the most recent ASEIR 82-2 is included as part of the City's record for the proposed project. Although the project description does not describe the future use of the site, the ASEIR 82-2 indicates that the subject site will be developed as residential housing (Exhibit P).

E. PROJECT DESCRIPTION

The proposed project is the fill 0.696 of one acre of existing wetland on a 5.01-acre parcel owned by the City and wetland restoration work at Shipley Nature Center in the City of Huntington Beach. The fill proposed by the applicants would occur on a 2.9-acre portion of the parcel that is zoned for residential uses with a Conservation Overlay (Exhibit N). The northeastern most portion (approximately 1-acre) of the 2.9-acre area, which formerly contained alkali meadow habitat, has already been cleared and graded (Exhibit K, page 2). 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 both the Mayer Corporation and the City.

The proposed project includes a wetland restoration program located at the Shipley Nature Center in the City of Huntington Beach. As amended by the applicants at the April 11, 2000 hearing, the restoration program proposes to establish approximately 2.8 acres of

wetland habitat and enhance 1.4 acres of transitional wetland, upland and woodland habitats. The restoration program site is located northwest of the subject site within Huntington Central Park which borders the Coastal Zone boundary (Exhibit H). The restoration program site is approximately 1,000 feet outside of the Coastal Zone boundary (Exhibit H).

The proposed project is described in the application filed with the City of Huntington Beach, and is more specifically described in the letter from the Robert Mayer Corporation, dated January 26, 2000 (Exhibit A) and the applicants' Coastal Development Permit Request dated April 8, 1999 (CDP Request; Exhibit A) and in the application file in the Commission offices. The proposed project does not incorporate the conditions previously imposed by the City (Exhibit B). Special Condition No. 1 states that the Commission's special conditions replace those previously identified in the City's approval but have no effect on the conditions of local approval imposed pursuant to an authority other than the Coastal Act.

F. CONSERVATION OVERLAY

As discussed above, the proposed project location is contained within a Conservation Zoning Overlay in the City's certified LCP (Exhibit N). The Conservation Overlay is described in Section 4.15 of the DTSP portion of the City's certified LCP Implementation Plan. The subject site is located in District 8b of the DTSP (Exhibit M). Although District 8b extends beyond the subject site, the Conservation Overlay encompasses only the 2.9-acre portion of the 5.01-acre parcel.

The Conservation Overlay Section 4.15 of the DTSP states the following:

> *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 4.1[5]).*
>
> *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.

This same language appears in the certified Land Use Plan (LUP) in the Area-by-Area Discussion on page 126. The City's certified LCP identifies two separate situations in which *"other restoration options"* may be undertaken for the fill of wetlands for an unpermitted use. As stated above, the first circumstance in which *"other restoration options"* may be undertaken is when the wetlands have been identified by the CDFG as severely degraded pursuant to Sections 30233 and 30411 of the Coastal Act. The second circumstance in which *"other restoration options"* may be undertaken is when the subject wetlands are less than one acre in size. In a 1983 Study by the CDFG, the subject site was determined to be degraded pursuant to Section 30411 (Exhibit Q). The CDFG, the applicants' biological consultant (LSA), and the Commission's Staff Ecologist determined that the subject wetland is less than one acre in size. Therefore, an evaluation of whether the proposed project qualifies for *"other restoration options"* allowed by the certified LCP must be conducted.

1) Wetlands Degraded Pursuant to CDFG Determination and Section 30411

The first circumstance in which the certified LCP allows for *"other restoration options"* is when the subject wetlands have been identified by the CDFG as degraded (Exhibit Q) pursuant to Sections 30233 and 30411 of the Coastal Act. Section 30411(b) of the Coastal Act states in part:

Section 30411

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

(3) Whether restoration of the wetland's natural values, including its biological productivity and wildlife habitat features, can most feasibly be achieved and maintained in conjunction with a boating facility or whether there are other feasible ways to achieve such values.

One interpretation of Section 30411(b) is that it authorizes "other feasible ways" to achieve restoration than Section 30233(a)(7). However, this interpretation of Section

30411 has been invalidated by the Fourth District Court of Appeal in the *Bolsa Chica Land Trust vs. Superior Court*, 1999, 83 Cal. Rptr. 850 (Bolsa Chica) case. 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. For this reason, the Commission does not approve the proposed project as an "other restoration option" based on the degraded wetland determination by the CDFG pursuant to Section 30411. However, as discussed further below, the Commission finds that the proposed project qualifies for the *"other restoration options"* identified in the certified LCP based on the wetland's size, which is less than one acre.

2) Application of the LCP When a Wetland is Less than One Acre in Size

The second circumstance described in the Conservation Overlay in which *"other restoration options"* may be undertaken is if the wetland in question is less than one acre in size. Based on the evaluations by the CDFG (1983), the applicants' consultant LSA (1999) and the Commission's Staff Ecologist (1999), the subject wetland is less than one acre in size (Exhibit R). Based on information submitted by LSA, and a review by the Commission's Staff Ecologist, the total acreage for the existing on-site wetland has been established as 0.696 of one acre (Exhibit R) as further described in the following section.

Total Wetland Acreage

The *"Biological Resources Evaluation and Jurisdictional/Wetland Delineation for the Waterfront Development Site"*, prepared by LSA, 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 LSA to include the subject wetland. The LSA Biological Evaluation found 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 actually totaled 0.58 of one acre.

LSA's biological evaluation also assessed the soil at the subject site. The assessment found that the soil type at the subject site is described by LSA as *"Tidal Flats."* Soils of the *"Tidal Flats"* soil series are considered hydric. However, LSA's soil assessment and a previous assessment by Irvine Soils Engineering, Inc. also found that this native soil has been covered over by sandy fill material to depths of two to six feet below the ground surface. Based on LSA's review of various aerial photographs, the fill is assumed to be the result of construction activity at the site between approximately 1946 and 1953 (Exhibit E, page 16). The evaluation concludes that only the soils in the coastal brackish marsh, pickleweed, and cocklebur patches exhibit characteristics of hydric soils.

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 within the fenced area, which also constitute wetland area. The

additional wetland area totaled 0.116 of one acre. Thus, the Commission's Staff Ecologist determined that the total wetland acreage remaining on-site is 0.696 (Exhibit R).

Based on a site visit and review of the information provided by the applicants, the Commission finds that the total existing wetland acreage that remains on-site is less than one acre. Thus, the Commission finds that the Conservation Overlay language for the second restoration option described above does apply to the subject wetland. Therefore, the certified LCP Conservation Overlay standards that apply when the wetland acreage figure is less than one acre must be evaluated.

LCP Criteria to Allow Other Restoration Options

As described previously, the City's certified LCP Conservation Overlay language provides that when a wetland is less than one acre in size, *"other restoration options"* may be undertaken. With regard to the criteria that must be met to allow *"other restoration options"* to be undertaken when a wetland is less than one acre in size, the City's certified LCP Conservation Overlay states:

> *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 [Exhibit O] 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.*

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.

Accordingly, the certified LCP allows small, extremely isolated wetland parcels that are incapable of being restored to be filled and developed for uses not ordinarily allowed subject to five specific criteria. The certified LCP also requires that the action establish stable and logical boundaries between urban and wetland areas and that the applicant provide funds sufficient to accomplish an approved restoration program in the same general region. The proposed project's conformity with these criteria is discussed below:

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.***

The first LCP criterion requires that the subject wetland to be filled must be small in size, and further defines small as less than one acre in size. The subject wetland area is less than one acre in size. Therefore, the Commission finds that the subject wetland is small enough to be filled consistent with the sizing requirement of the first criterion.

The first criterion also requires that the wetland to be filled is isolated and not contiguous to a larger wetland. The subject wetland is separated from a salt marsh located east of the site by Beach Boulevard (Exhibit H). Based on the maps provided by LSA, Beach Boulevard is approximately 115 feet in width between the subject site and the adjacent salt marsh (Exhibit K). In addition, a representative of the City stated at the April 11, 2000 Commission meeting (Exhibit D, page 25) that the site is, *"...across Beach Boulevard, a major highway, 120-feet away, and at a completely different elevation than this site."* Thus, both the distance and elevation change stated above would serve to isolate the subject site from the adjacent salt marsh located across Beach Boulevard.

Various opponents have argued that the subject wetland is connected to a larger salt marsh area located south of Beach Boulevard via drainpipes, which makes the subject wetland contiguous to the larger adjacent salt marsh. Although the subject wetland is connected to the adjacent salt marsh via drainpipes, there are physical differences between the subject wetland and the adjacent salt marsh, which further serve to isolate the subject site. First, both the CDFG and LSA have determined the subject wetland is freshwater in nature, receiving water from urban runoff and most likely from groundwater as well, while the adjacent wetland is a salt marsh (CDFG, 1983; LSA Biological Evaluation, 1998). Second, according to LSA, the subject wetland does not receive the tidal influences that the salt marsh across Beach Boulevard receives from the ocean due to its higher elevation, but rather drains into the salt marsh through the drain pipes (LSA Biological Evaluation, 1998). In an alternatives analysis letter dated November 5, 1999 (Exhibit E, page 22), LSA states, *"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." Thus, the subject wetland is separated from adjacent wetlands by a road and is not contiguous to a larger wetland. Finally, the subject site is located in an urban area and has been surrounded by residential development in the past when the mobile home park was in existence. The subject site is currently bordered by a two-lane road and residential development to the north, and Beach Boulevard, a six-lane state highway, to the east. Once the proposed Ocean Grand Resort and the residential community planned in the SEIR are completed, the subject wetland, left as it is, would also be directly adjacent to a four-lane road and commercial development to the south and a residential development to the west. Therefore, the Commission finds that the subject wetland is an isolated wetland as described in the first criterion.

The first criterion also requires that the subject wetland must not be capable of recovering and maintaining a high level of biological productivity without major restoration activities. In their November 5, 1999 letter (Exhibit E, page 23), with regard to the biological productivity of the subject wetland, LSA states, *"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."*

LSA also concluded that the subject wetland is a wetland fragment that does not provide a connection to any other significant habitat area, but instead acts as a collection point for urban runoff, which is then conveyed under Beach Boulevard to the adjacent salt marsh east of Beach Boulevard. LSA further concludes that the subject wetland might provide some *"marginal utility"* by filtering urban runoff to the adjacent salt marsh, but as an isolated and degraded resource, the subject wetland does not *"function as an integral part of a larger habitat area."* LSA states (Exhibit E, page 24) that the reasons why the subject wetland does not provide a significant habitat value are, *"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."* In addition, at the April 11, 2000 Commission meeting, one of the applicants' biological consultants, Dr. Victor Leipzig, discussed the possibility of restoring the subject wetland (Exhibit D, page 30). During his discussion, Dr. Leipzig stated, *"There is simply no way that tidal influence can be returned to the site. The site can never be made tidal, and can never have connectivity with the marine ecosystem, which is a very important part of the biological function over coastal salt marshes. ... On-site restoration cannot be accomplished in any predictable time frame, or with any degree of certainty for biological success."*

The 1983 CDFG Study (Exhibit Q) concluded that this wetland area is degraded in its current condition due to its reduced size, configuration, location and overgrown condition, but that it could feasibly be restored with relatively minor restoration

activities. In addition, the 1983 CDFG Study (Exhibit Q, page 9) states in part that, *"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."* The CDFG Study follows the above language with conditions that must be met if offsite restoration is deemed necessary. These conditions are further discussed in the Restoration Program section of the staff report (Section G). In addition, at the April 11, 2000 Commission meeting (Exhibit D), various speakers who opposed the proposed project argued that the subject wetland does not require major efforts for restoration and can easily be restored to a viable habitat by removing invasive plants, planting wetland species and expanding the culverts.

At the April 11, 2000 Commission meeting (Exhibit D, page 121), Dr. Leipzig responded to questions regarding the ease of restoration by stating that the site, *"...is going to have to be scraped. The vast majority of this site would have to have its vegetation removed down to bare dirt, and a lot of the bare dirt would have to be removed, in order to turn it into wetlands. That, to my view, is major restoration."* As described in the 1983 CDFG study, the restoration that would have to occur would include creating and open water area to a 4-foot depth. Based on the information provided by the applicants' consultants LSA and Dr. Victor Leipzig, the Commission finds that the subject wetland is not capable of recovering and maintaining a high level of biological productivity without major restoration activities. Therefore, the Commission finds that the subject wetland meets the requirements of the first LCP criterion.

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).***

The second LCP criterion requires that the wetland in question must not provide significant habitat value to wetland fish and wildlife species and must not be used by rare or endangered species. As described above in the discussion of the first criterion, the applicants' consultant, LSA, has determined that the subject wetland provides only marginal habitat value. In their December 18, 1998, *Habitat Mitigation and Monitoring Proposal* (HMMP) and in a November 5, 1999, letter, LSA stated that the wildlife species that they would expect at the site include common reptiles, such as side blotched lizard and the gopher snake, and common small mammals, such as the California ground squirrel, desert cottontail rabbit and opossum.

LSA also stated that 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. LSA also noted other species of birds during previous studies including the ring-billed gull, killdeer, song sparrow, white-crowned sparrow, and common yellowthroat. LSA further noted that occasionally ducks and wading birds such as snowy egret and great blue heron may forage on site.

According to LSA, none of the wading birds are expected to nest in the vicinity of the subject wetland. LSA also references previous studies of the subject wetland, including the 1983 CDFG Study, the 1982 SEIR for the Waterfront Development project, and the Specific Plan EIR, all of which reported low wildlife use of the subject wetland due primarily to the its small size, overgrown condition and physical separation of the parcel from the salt marsh east of Beach Boulevard. Table 1 of the CDFG Study classifies the subject wetland as an area, *"Providing low value for wetland-associated avifauna ..."* (Exhibit Q, page 4).

LSA also concluded that while a few sensitive raptor species present in open areas throughout Huntington Beach, may occasionally forage over the small parcel (including rough-legged hawk, peregrine falcon, osprey, and white-tailed kite; Exhibit E, page 23) and that, *"Such species would be expected to occur only very rarely ... 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."* In the December 18, 1998 HMMP, LSA also discusses the possibility of a species of butterfly, the wandering skipper (or salt marsh skipper), occurring at the subject site. LSA concludes that the wandering skipper has not been observed at the site, and that it has not been listed by State or Federal agencies as threatened or endangered.

At the April 11, 2000 Commission meeting, opponents to the proposed project presented slides confirming the presence of red-winged blackbirds and snowy egret along with various other bird species (Exhibit D). 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."* As described above, LSA also noted that the snowy egret may occasionally forage at the subject wetland. The snowy egret and the red-winged blackbird are not listed by state or federal agencies as rare or endangered species. However, as previously discussed, LSA concluded in both the HMMP and the November 5, 1999 letter that, while sensitive species may potentially occur at the site, they would not rely on the subject wetland for foraging opportunities. In addition, at the April 11, 2000 Commission hearing, the applicants' biological consultant, Dr. Victor Leipzig, stated the following; *"...the habitat value of the site is extremely low. The site supports no rare or endangered species. It supports zero marine species. The diversity of salt marsh vegetation species on the site is a small fraction of that of the native salt marsh..."* (Exhibit D, page 29). Based on the above information, the Commission finds that the subject wetland does not provide significant habitat value and is not used by rare or endangered species.

The second criterion also states that a wetland parcel which does not provide significant habitat value would usually be surrounded by commercial, residential or industrial development which are incompatible with the existence of the wetland as a significant habitat area. In their letter dated November 5, 1999 (Exhibit E, page 24), LSA, states, *"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." LSA also indicates that on-site wetland restoration is not feasible, because if the site were restored it would provide only minimal habitat value. As stated previously, LSA has indicated that restoration of the on-site wetland would provide only minimal habitat value due to its location surrounded by urban development. The subject wetland is currently bordered by residential development to the north, and was formerly bordered by residential development to the west prior to the mobile home park demolition. The subject wetland will also be bordered to the south by commercial development following the construction of the Ocean Grand Resort, which would be incompatible with the existence of the wetland as a significant habitat area.

In addition, the applicants state in their April 8, 1999 Coastal Development Permit Request (Exhibit A) that the fill of the subject wetland to the west would establish Beach Boulevard as the logical boundary between the urban uses to the west and the salt marsh to the east. The applicants state that because Beach Boulevard is a major road designated as a State highway within a permanent right-of-way, it can be considered a stable boundary. The applicants also state that establishing Beach Boulevard as the boundary will minimize wildlife exposure to traffic hazards by eliminating a route of transit between two wetland areas. Based on the above information, the Commission finds that the site does not provide significant habitat value because it has been and will be completely surrounded by commercial and residential development, which is incompatible with the existence of and may have negative impacts to the subject wetland. Based on the above information, the Commission also finds that the proposed project establishes a stable and logical boundary between urban uses to the west of Beach Boulevard and the wetland area to the east of Beach Boulevard.

In comparison, the proposed restoration 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 proposed wetland restoration program area is entirely surrounded by existing natural habitat areas, and the wetlands at the restoration program site are fed primarily by groundwater, augmented by urban runoff and localized irrigation. Also the proposed wetland restoration program site at Shipley Nature Center is part of a larger wetland system that is connected to the Bolsa Chica that provides significant habitat value to the area. According to the applicants' consultants, the proposed wetland restoration program site will provide an area of higher habitat value than the subject wetland. Based on the information provided by the applicant's consultants LSA and Dr. Victor Leipzig, the Commission finds that the subject wetland does not provide significant habitat value to wetland fish or wildlife species and is not used by any species that is rare or endangered. Thus, the Commission finds that the subject wetland meets the requirements of the second LCP criterion.

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

To allow for the restoration of another wetland to mitigate for the fill of the wetland in question, the third LCP criterion requires that the restoration must be most feasibly achieved in conjunction with the fill of the wetland. In their November 5, 1999 letter

(Exhibit E, page 28), LSA concludes that, *"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."* LSA also concludes that the proposed wetland restoration program would be of greater benefit to wetland resources than preserving the subject wetland. Finally, LSA concludes that the proposed wetland restoration program at the Shipley Nature Center provides a greater acreage of wetland habitat, and it also provides a habitat area that is connected to a larger and more diversified habitat system, the Bolsa Chica.

The proposed wetland restoration program at Shipley Nature Center will include the creation and dedication of additional wetland area in the City of Huntington Beach. The wetland restoration program at Shipley Nature Center is proposed to compensate at greater than a 4:1 ratio for the loss of the subject wetland. In addition, the applicants propose to restore 1.4 acres of existing wetland at Shipley Nature Center to compensate for the loss of the 1.4 acres of restorable former wetland at the subject site. If the proposed project that includes the wetland restoration program was implemented, it would result in a greater area of land in the City of Huntington Beach committed to wetland acreage than would be filled at the subject site.

The Conservation Overlay provisions of the certified LCP also require that development on the parcel shall only be permitted pursuant to an overall development plan. In their April 8, 1999 Coastal Development Permit Request (Exhibit A), the applicants committed to a proposed project that includes a wetland restoration program component that will be achieved pursuant to an overall development agreement that includes an off-site wetland restoration program at Shipley Nature Center.

Various opponents have argued that the proposed wetland restoration program is not dependent on the fill of the subject wetland to move forward. However, the applicants state in their April 8, 1999, CDP Request (Exhibit A, page 12) that, *"...there are no other development projects underway or planned that would have any potential impacts upon 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."* Furthermore, although the CDFG determined that both existing wetland and restorable wetland areas are present at the subject site, the applicants have no obligation to restore existing or former on-site wetland. The applicants conclude in their CDP Request that the restoration of the wetlands at Shipley Nature Center can most feasibly be achieved with the fill of the subject wetland pursuant to the above mentioned development agreement that was entered into by the applicants and the City of Huntington Beach in September 1998. Based on the information provided by the applicants, the Commission finds that the proposed project, which includes a wetland restoration program at Shipley Nature Center, can most feasibly be achieved with the fill of the subject wetland. Therefore, the Commission finds that the subject wetland meets the requirements of the third LCP criterion.

Furthermore, to ensure that the proposed wetland restoration program at Shipley Nature Center is adequate to offset the fill of the subject wetland, the Commission imposed certain special conditions described in this report. Special Condition No. 2 requires that the final wetland restoration program provide significant habitat replacement at a 4:1

ratio (approximately 2.8 acres) for the fill of the subject degraded and isolated wetland. Special Condition No. 3 requires that the final wetland restoration program be established at Shipley Nature Center prior to the fill of the subject wetland to ensure that there will be no net loss of wetland area in the City of Huntington Beach. Special Condition No. 3 also requires a monitoring and supplemental planting program to ensure the success of the proposed wetland restoration program. In the event that a deficiency is detected during the monitoring program, corrective action is required to replace the affected habitat and to correct any causative problems or implementation deficiencies. Special Condition No. 4 requires that the applicants record an open space conservation easement for the proposed wetland restoration program site at Shipley Nature Center to ensure that the created wetland area is protected in perpetuity. Thus, as conditioned, the Commission finds that the proposed project, which includes a wetland restoration program at Shipley Nature Center, meets the requirements of the third LCP criterion.

4. ***Restoration of a parcel to mitigate for the fill (see [Exhibit O] 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).***

The fourth LCP criterion requires that the restoration of a parcel to mitigate for fill of on-site wetland must be done at a site that is next to a larger, contiguous wetland area. The fourth criterion also requires that the larger wetland area should provide significant habitat value to fish and wildlife that would benefit from the addition of wetland area. The restoration program site is located approximately four miles from the subject site, outside of the coastal zone (Exhibit H). However, Shipley Nature Center is situated next to the Bolsa Chica, which is a larger, contiguous wetland area that provides significant habitat value for wetland fish and wildlife. In their November 5, 1999 letter (Exhibit E, page 28), LSA states, *"The Shipley Nature Center restoration site was selected because it is a part of a larger wetlands and uplands habitat enhancement program," and concludes that," 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."* With regard to the habitat value of Shipley Nature Center, LSA also states (Exhibit E, page 26) that, *"...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. ...The site contains woodlands and wetlands, which serve as an urban wildlife refuge, particularly for avian and invertebrate species. ...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."* Thus, the addition of wetland at Shipley Nature Center, which is located in close proximity to the Bolsa Chica wetland area, could add valuable habitat for use by the endangered species that visit Shipley Nature Center. Therefore, based on this information, the Commission finds that the proposed project which includes a wetland restoration program at Shipley Nature Center will occur next to a larger, contiguous wetland area of significant habitat value which

would benefit from the addition of more wetland area as required in the fourth LCP criterion.

With regard to the wetland restoration program at Shipley Nature Center proposed to mitigate for the fill of the subject wetland, the fourth criterion instructs us to look at the portion of the Commission's guidelines that has been incorporated into the City's certified LCP which addresses projects that involve diking, filling or dredging of a wetland (Exhibit O). As conditioned, the proposed wetland restoration program includes the creation of 2.8 acres of new wetland area and the enhancement of 1.4 area of existing wetland by vegetation planting and removal of invasive species. The proposed wetland restoration program, as described in the December 18, 1998 HMMP, does not include the diking, fill or dredging of any of the existing wetlands at the Shipley Nature Center. Therefore, the Commission finds that the portion of the guidelines that has been incorporated into the City's certified LCP, which is referenced, in the fourth criterion does not apply to the proposed project.

In addition, the fourth LCP criterion requires that restoration must occur in the same general region, and lists as examples, the same stream, lake or estuary where the proposed fill would occur. Opponents of the proposed project have argued that the proposed wetland restoration program site is located outside of the Coastal Zone and is not located in the same stream or estuary as the subject wetland. Exhibit 2 of the applicants' Coastal Development Permit Request (Exhibit A) contains a report dated May 24, 1989 by Vail Speck Taylor, Inc., in which thirteen (13) potential mitigation sites were examined. At least six of the sites evaluated could have been considered a part of the same stream or estuary as the subject wetland. However, Vail Speck Taylor, Inc. concluded that no sites within Huntington Beach that met the criteria for wetland creation were feasibly available for the proposed project. The search for potential mitigation sites was then expanded to locations outside of Huntington Beach to Laguna Niguel, Newport Beach, Seal Beach and the Bolsa Chica. However, the Shipley Nature Center was eventually made available to the applicants and chosen as the wetland restoration program site due to its location in the City of Huntington Beach.

Although the restoration program is not located within the same wetland area where the fill would occur under the proposed project, it is located in the same City as the area of proposed fill and would provide additional wetland acreage to the same general area. In their November 5, 1999 letter (Exhibit E, page 28), LSA concludes that, *"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 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."* In Section 3 of the December 18, 1999 HMMP, LSA lists as one of the final success criteria for the proposed wetland restoration site at Shipley Nature Center, use of the site, *"...by "indicator wildlife species" that are typical of the region's wetland, riparian woodland, and coastal sage scrub habitats will constitute evidence that the mitigation site is achieving this goal."* LSA lists various amphibian, mammal and bird species as *"indicator species"*, including the common yellowthroat, song sparrow, great blue heron, red-winged blackbird, and various duck species, which are species that have also been observed at the subject wetland according to LSA. Thus,

the proposed wetland restoration program does meet the requirements of the fourth criterion because the final success criteria for the program require that it will provide habitat for the same types of species found at the wetland fill site; as such, the restoration site can be considered within the same general region as the wetland fill site. Also, as discussed above, the proposed wetland restoration program meets the other requirements of the fourth criterion because it will occur next to a larger, contiguous wetland area that provides significant habitat value to wildlife. Also, as discussed above, Shipley Nature Center provides valuable habitat to various avian species including some endangered species. Based on the information provided by LSA and the applicants, the Commission finds that the proposed project is consistent with the location requirements of the fourth LCP criterion.

In addition, Special Condition No. 4 requires that an open space conservation easement be recorded to ensure that the restoration program area will not be developed for another use. Special Condition No. 4 also ensures that the wetlands created at Shipley Nature Center will be protected in perpetuity. Thus, as conditioned, the Commission finds that the proposed project, which includes a wetland restoration program, meets the requirements of the fourth LCP criterion.

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.

The fifth LCP criterion requires that both the CDFG and the United States Fish and Wildlife Service (USFWS) review the proposed wetland restoration program and determine that it can be successfully carried out. The applicants have received approval of the proposed wetland restoration program at Shipley Nature Center from the CDFG. The applicants and the CDFG entered into a CDFG Streambed Alteration Agreement on April 1, 1999. Also, in their November 5, 1999 letter (Exhibit E, page 26), LSA states that, *"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."* Thus, the Commission finds that the CDFG was involved in the selection of the proposed restoration site and has determined that the proposed wetland restoration program can be successfully carried out pursuant to the requirements of the fifth LCP criterion.

In addition, the applicants' proposal demonstrates that they have provided funds sufficient to accomplish an approved restoration program in the same general region, consistent with the requirements of the certified LCP. In their April 8, 1999 CDP Request (Exhibit A, page 11), the applicants also state that, *"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 the CDFG. The City of Huntington Beach will thereafter assume permanent maintenance of the habitat areas, as it currently does with the balance of Shipley Nature Center."* In addition, LSA states in their November 5, 1999 letter that prior to the appeal of the proposed project, the applicants had already spent over $25,000 on the

proposed eradication of exotic species at Shipley Nature Center. As discussed in the previous section, the Commission finds that the proposed wetland restoration program is located in the same general region as the proposed fill of the subject wetland. Based on the information provided by LSA and the applicants, the Commission finds that the applicants has committed to providing sufficient funds to accomplish the proposed wetland restoration program that is located in the same general region as the proposed fill.

To ensure that the proposed wetland restoration program is adequate, Special Condition No. 2 requires a final wetland restoration program developed in consultation with the CDFG and the USFWS that includes the creation of 2.8 acres of new wetland area to offset the fill of the subject 0.696-acre wetland. Special Condition No. 3 requires that the applicants submit evidence of restoration program completion and compliance with certain performance standards pursuant to the final wetland restoration program. Thus, as conditioned, the Commission finds that the proposed project is consistent with the requirements of the fifth LCP criterion.

3) Conclusion Regarding Conservation Overlay

As discussed above, the Commission finds that the proposed project is allowable under the City's certified LCP Downtown Specific Plan Conservation Overlay, which discusses *"other restoration options."* However, the Commission also imposes special conditions on the proposed project to ensure the adequacy of the wetland restoration program and the protection of the salt marsh adjacent to the subject wetland. Special Condition No. 2 requires a final wetland restoration program that includes a 4:1 ratio of restoration program for the fill of the subject 0.696-acre wetland. Special Condition No. 3 requires that the applicants submit evidence of restoration program completion and compliance with certain performance standards pursuant to the final wetland restoration program. Special Condition No. 4 requires that an open space conservation easement be recorded for the restoration program site at Shipley Nature Center. As conditioned, the Commission finds that the proposed project meets the requirements of the five LCP criteria specified in the Conservation Overlay section of the City's certified LCP. Thus, the Commission finds that the proposed project is approvable as an *"other restoration option"* consistent with the requirements of the certified LCP. Therefore, the Commission approves the proposed project as conditioned.

G. RESTORATION PROGRAM

The restoration program 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 H). The restoration program site within the park is located approximately 1,000 feet outside of the Coastal Zone boundary.

As stated previously, the 1983 CDFG Study (Exhibit Q) that is referred to in the Conservation Overlay and the City's certified LCP states that this wetland area could feasibly be restored to 2.2 acres of wetland area. However, the CDFG also states that off-site restoration is allowable if the following four conditions are 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 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.

CDFG condition number one allows for off-site restoration if continued freshwater urban runoff is provided to the salt marsh wetland located east of the site across Beach Boulevard. The proposed project does not adequately address the first requirement, however, at the April 11, 2000 meeting, the Commission imposed Special Condition No. 5, which requires that the applicants ensure that approximately the same amount of freshwater urban runoff is provided to the salt marsh across Beach Boulevard in approximately the same seasonal pattern. Therefore, as conditioned, the Commission finds that the proposed off-site restoration program is consistent with condition one of the 1983 CDFG study.

CDFG condition number two requires that the proposed off-site restoration program result in the creation of at least 2.2 acres of wetland. The Commission's Staff Ecologist has determined the total wetland acreage at the subject site to be 0.696 of one acre (Exhibit R). At the April 11, 2000 meeting, the applicants amended their coastal development permit application to create 2.8 acres of new wetland habitat at Shipley Nature Center, which amounts to a ratio of greater than 4:1. This ratio does not include the proposed enhancement of an additional 1.4 acres of existing transitional wetland upland and woodland habitats that is proposed by the applicants in addition to the creation of 2.8 acres of new wetland area. Special Condition No. 2 requires that a final restoration program be completed and submitted to the Executive Director for review and written approval. The final restoration program shall include the final design and plans showing the location of the 2.8 acres of the proposed new wetland area and the 1.4 acres of the proposed enhancement area. Special Condition No. 2 also requires that all approved restoration at the Shipley Nature Center be established to meet the one to three month performance criteria during the proposed 120-day establishment period that are identified in Table B of the December 18, 1998 HMMP (Exhibit S). Following the proposed 120-day establishment period the performance standards for the maintenance and monitoring of the proposed wetland restoration program shall conform to the performance criteria identified in Table B of the HMMP (Exhibit S). Therefore, as conditioned, the Commission finds that the proposed off-site restoration program is consistent with condition two of the 1983 CDFG study.

Condition number three requires that the chosen off-site restoration location must be non-wetland in its present condition. LSA concludes in their November 5, 1999 letter (Exhibit E, page 28), *" 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." The proposed wetland restoration program is outlined in LSA's, *Habitat Mitigation and Monitoring Proposal* dated December 18, 1998 (HMMP). As conditioned in Special Condition No. 2, the final restoration program will create 2.8 acres of new coastal brackish marsh and transitional wetland habitats, and enhance 1.4 acres of existing transitional wetland, upland and woodland habitats within Shipley Nature Center. The proposed wetland restoration program 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 depth to groundwater for the proposed restoration project site. The basins are designed to enlarge the existing wetland and open water habitat area in the preserve. Although the restoration proposal will enhance existing wetland, the proposed creation of 2.8 acres of new wetland in addition to the enhancement of existing wetland is consistent with the above LCP requirements. Therefore, as conditioned, the Commission finds that the proposed off-site restoration program is consistent with condition three of the 1983 CDFG study.

Condition number four allows for off-site restoration providing that the proposed wetland design, location and type are approved by the CDFG. Condition number four also implies that the type of wetland created should be freshwater, similar to the freshwater wetland which the CDFG determined in the 1983 Study to exist at the subject site. The proposed wetland restoration program was approved by the CDFG in a streambed alteration agreement (No. 5-005-99) dated April 1, 1999. Therefore, the Commission finds that the proposed off-site restoration program is consistent with condition four of the 1983 CDFG study.

In the April 8, 1999 CDP Request (Exhibit A, page 14), the applicants also propose, *"...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 the CDFG."* Special Condition No. 3 requires that following the proposed 120-day establishment period and prior to the fill of the on-site wetland, evidence that the initial restoration program at Shipley Nature Center has been completed pursuant to the final wetland restoration program must be submitted to the Executive Director. Special Condition No. 3 also ensures that the performance monitoring and supplemental planting program continue for a minimum of 5 years pursuant to the requirements of the final wetland restoration program. Special Condition No. 4 requires that only the development described in the final wetland restoration program required in Special Conditions No. 2 and 3. Special Condition No. 4 also requires that the applicants submit evidence that the City of Huntington Beach, the owner of the restoration program site at Shipley Nature Center, has irrevocably offered to dedicate to a public agency or private association approved by the Executive Director an open space and conservation easement to ensure permanent maintenance of the habitat area.

As conditioned, the Commission finds that the proposed wetland restoration program for the in-kind creation of a total of 2.8 acre of new wetland and transitional wetland, and the enhancement of an additional 1.4 acres of existing wetlands at Shipley Nature Center is consistent with the LCP requirements relating to the wetland restoration program and off-site restoration. Therefore, the Commission approves the proposed project as conditioned.

H. OTHER LUP WETLAND POLICIES

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

Section 9.5.5:

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, which 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)

Policy 9a of the City's certified LCP allows development only if it does not significantly degrade habitat values and that it is compatible with the continuance of the habitat. The proposed fill of the on-site wetland is located adjacent to a larger salt marsh east of the subject wetland across Beach Boulevard. Special Condition No. 5 requires that the applicants conduct a hydrological assessment and ensure that the proposed project's runoff management system will deliver the same amount of freshwater urban runoff to adjacent properties including the salt marsh across Beach Boulevard as it is under existing conditions and in approximately the same seasonal pattern. As conditioned, the proposed fill of the on-site wetland does not significantly degrade habitat values at the adjacent salt marsh. Therefore, as conditioned, the Commission finds that the proposed project is consistent with LUP policy 9a of the City's certified LCP.

Policy 9b of the City's certified LCP requires that new development contiguous to a wetland area include a minimum buffer setback of 100-feet. The discussion section of the LUP regarding wetlands also calls for the protection of habitat by requiring buffers. Beach Boulevard is approximately 115 feet in width between the subject site and the adjacent salt marsh (Exhibit K). With regard to the subject wetland's proximity to the adjacent salt marsh, a representative of the City stated at the April 11, 2000 Commission meeting (Exhibit D) that the site is, *"...across Beach Boulevard, a major highway, 120-feet away, and at a completely different elevation than this site."* LUP policy 9b requires that new development include buffers a minimum of 100 feet from the landward edge of the adjacent wetland. Based on the maps provided by the applicants' consultant, LSA, and the City's statement at the April 2000 meeting, the distance between the subject wetland and the salt marsh is a minimum of 115-feet, which is greater than the minimum 100-foot buffer zone. Therefore, the Commission finds that the proposed project is consistent with LUP policy 9b of the City's certified LCP.

If existing development or site configuration precludes the 100-foot buffer, LUP policy 9b also requires that a buffer shall be established in accordance with LUP policy 9c of the City's certified LCP. In this case, the distance between the subject site and the adjacent wetland is sufficient to meet the policy 9b requirements, so LUP policy 9c does not apply to the proposed project. In addition, Special Condition No. 5 requires that the hydrological conditions be maintained at levels necessary to avoid any significant adverse impacts to the salt marsh habitat across Beach Boulevard and associated wildlife. As conditioned, the Commission finds that the proposed project is approvable consistent with the wetland

policies of the City's certified LCP. Therefore, the Commission approves the proposed project as conditioned.

I. WATER QUALITY

Section 9.5.4 of the City's LUP policies relating to Water and Marine Resources states in relevant part:

The Coastal Act requires that marine resources be maintained, enhanced and where feasible, restored. The coastal zone's groundwater basins, wetlands and surface waters are continually impacted by pollutants normally associated with urban activities and land uses. New development adjacent to coastal waters and wetlands can pose additional threats to the quality of marine resources, especially if diking, dredging or filling activities are involved. The intent of the following policies is to prevent the degradation of marine resources in the coastal zone due to activities associated with an urban environment:

8. Promote measures to mitigate the adverse impacts of human activities on marine organisms and the marine environment.

8a. Require that development plans include mitigation measures to prevent the degradation of water quality of groundwater basins, wetlands, or surface water.

8b. Require containment curtains around waterfront construction projects on inland waterways to control drift of turbid waters.

8k. Require that new development employ catch basins and storm drains with baffled compartments where uncontrolled drainage could damage sensitive areas.

Policy 8 of the certified LCP promotes the use of mitigation measures to prevent degradation of water quality, control the drift turbid waters and damage to sensitive areas. The project as currently proposed does not adequately address the potential water quality impacts to the adjacent wetland across Beach Boulevard from the subject 5.01-acre parcel that may occur as a result of the proposed fill of the native on-site wetland. Therefore, at the April 11, 2000 Commission meeting, the Commission required a special condition to address the potential hydrologic impacts to the adjacent salt marsh east of the subject wetland across Beach Boulevard, and to address the potential impacts of erosion and polluted runoff to the adjacent salt marsh. Special Condition No. 5 requires that an updated hydrological study be performed to analyze the potential impacts to water supply to the adjacent wetland. Special Condition No. 5 also requires a feasibility study and implementation plan to ensure that the proposed project's runoff management system will deliver the same amount of freshwater urban runoff to adjacent properties, including the salt marsh across Beach Boulevard, as it is under existing conditions and in approximately the same seasonal pattern.

In addition, Special Condition No. 5 requires that run-off control and erosion plans be submitted to fully address the potential impacts to water quality from polluted run-off and erosion during and after construction. Special Condition No. 5 also requires that the applicants submit proposed measures to minimize adverse impacts to water quality in the adjacent wetland. Finally, Special Condition No. 5 requires that the applicants' record a deed restriction that shall run with the land reflecting the restrictions of Special Condition No. 5. The deed restriction shall not be removed or changed without an amendment to the Coastal Development Permit. As conditioned, the Commission finds that the proposed project is consistent with the water quality policies of the City's certified LCP. Therefore, the Commission approves the proposed project as conditioned.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment.

The applicants submitted an alternatives analysis prepared by LSA, dated November 5, 1999, for the proposed fill of the on-site wetland (Exhibit E, page 21). The analysis considered three alternatives: 1) to maintain the wetland on-site in its current condition; 2) to restore the on-site wetland and transitional area; and 3) to provide off-site habitat enhancement to offset proposed project impacts.

As discussed previously, LSA found that retaining the wetland on-site in its current condition is not feasible due to the size, isolated location and degraded nature of the wetland. Regarding this alternative, LSA states (Exhibit E, page 24), in part: *"As an isolated and degraded resource, the wetlands 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."* LSA did not recommend this alternative due to the fact that the wetland is no longer tidally influenced. Therefore, the first alternative to maintain the wetland in its current condition is not a feasible less environmentally damaging alternative.

As discussed previously, LSA found that the primary water supply feeding the wetland is low quality urban runoff and groundwater. LSA also determined that while wildlife species may occasionally use the subject wetland, rare or endangered species would not rely on the site for foraging opportunities. LSA also concluded that if the subject site were restored it would provide only minimal habitat value. The LSA has indicated that restoration of the on-site wetland would provide only minimal habitat value due to the fact that it has been and will be surrounded by commercial and residential development that would be incompatible with the existence of the subject wetland. Therefore, the second alternative to restore the wetland on-site is not a feasible less environmentally damaging alternative.

The third alternative, off-site restoration, was chosen by the applicants 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 area. The applicants have indicated that the Shipley Nature Center is a high value habitat area that is connected to the Bolsa Chica. The proposed restoration area is also entirely surrounded by existing natural habitat areas, while the subject wetland will be surrounded by commercial and residential development. Also, LSA has indicated that the wetlands at the restoration program site are fed primarily by groundwater augmented by urban runoff and localized irrigation, which is similar to the conditions of the on-site wetland.

While the proposed alternative would result in significant adverse wetlands impacts by filling all existing wetland on-site, it would also mitigate these impacts by creating new wetland area of higher value than the values of the existing wetland. Feasible alternatives which do not involve fill of the existing on-site wetland do not substantially lessen significant adverse effects on the existing wetland because they would not result in any increase in the value of the on-site wetland compared to the proposed project. In addition, the proposed project, as conditioned, is consistent with the wetland policies of the Huntington Beach certified Local Coastal Program. As described previously, Special Conditions Nos. 1 - 5 serve to ensure that the proposed project that includes the proposed wetland restoration program will mitigate all significant adverse impacts. The Commission therefore incorporates its findings on LCP consistency at this point as if set forth in full.

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

THE ROBERT MAYER CORPORATION

RECEIVED
FEB 01 2000
CALIFORNIA COASTAL COMMISSION

January 26, 2000

Maile Seeger Gee
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, California 90802-4416

RE: Waterfront Wetlands

Dear Maile:

You had asked for a project description for the Waterfront Wetlands permit presently before the Commission. Although I did not hear back from you exactly what it is you need, my replay is as follows.

The precise project description for the Waterfront wetlands matter is that which was described in the application filed and approved by the City of Huntington Beach. Specifically, the project description should be indicated as follows: The filling of an isolated and degraded wetland fragment (approximately 0.8 acre) in conjunction with the implementation of a wetland and riparian woodland habitat restoration project at the Shipley Nature Center (approximately 2.4 acres).

Should you have any additional questions, please do not hesitate to contact me.

Sincerely,

The Robert Mayer Corporation

Lawrence F. Brose
Vice President

LFB:hs

COASTAL COMMISSION

660 Newport Center Drive, Suite 1050
Box 8680
Newport Beach, California 92658-8680
(714) 759-8091

EXHIBIT # A
PAGE 1 OF 25

THE ROBERT MAYER CORPORATION

8 April, 1999

Ms. Amy Wolfe
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

RE: CDP Application for Wetland Restoration/Fill for Waterfront Residential

Dear Amy:

Attached herewith is the completed application request for the issuance of a Coastal Development Permit ('CDP') to enable the filling of the isolated and degraded wetland fragment in conjunction with the implementation of a wetland and riparian woodland habitat at Shipley Nature Center.

To date, the project has been reviewed and acted upon as appropriate by the following public agencies:

1. US Army Corps of Engineers: The Corps has visited the site, considered the characteristics of the degraded wetland and has reviewed the restoration plans and has agreed that the restoration program at Shipley Nature Center provides just compensation for the impact to the degraded wetland. The Corps has received confirmation from the Regional Water Quality Control Board indicating that the discharge of fill into the degraded wetland will not significantly impact water quality and that the Regional Board has waived its authority to issue a Water Quality Certification. The Corps will verify that the discharge of fill into the degraded wetland is authorized under the Nationwide Permit No. 26 ('NWP 26'), upon confirmation from the Coastal Commission that they have waived their authority to issue a determination that the project complies with the State Coastal Act. The Corps should be receiving this confirmation within the next week and will thereafter issue the NWP 26.

2. California Department of Fish and Game: Staff has reviewed and approved the restoration plan as evidenced by the issuance of the Streambed Alteration Agreement dated 1 April 1999. You already have a copy of this agreement as does Ron Hagen. There is no further action required by the State at this time.

COASTAL COMMISSION

660 Newport Center Drive, Suite 1050
Box 8680
Newport Beach, California 92658-8680
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EXHIBIT # A
PAGE 2 OF 25

3. City of Huntington Beach: Staff of Public Works and Community Services have reviewed and approved the restoration plan. This review was completed by Public Works under the direction of Darryl Smith, and included Chuck Davis, landscape architect and James Jones, Park Maintenance Superintendent. Personnel of the Community Services Department, under the direction of Ron Hagen, who have reviewed the plans include Jim Engle, Superintendent Park Development and Recreation and Dave Winkler, Park Ranger at Shipley Nature Center.

I am happy to answer any questions you might have about this application. Once again, it might prove useful to conduct a staff briefing by our team so that the intentions of the permit application are understood and met.

Sincerely,

THE ROBERT MAYER CORPORATION

Lawrence F. Brose
Vice President Residential Development

LFB:hs

Enclosure

cc: Shawn Millbern (w/o enclosure)
Scott Holbrook (w/o enclosure)

COASTAL COMMISSION

EXHIBIT # A
PAGE 3 OF 25

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.

COASTAL COMMISSION

EXHIBIT # A
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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:

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

Recommended Findings

1. The project, as proposed or as modified by conditions of approval, is consistent with the General Plan, including the Local Coastal Program. [HBMC 245.30-A-1]

2. The project is consistent with the requirements of the Downtown Specific Plan, the Conservation Overlay established in the Plan, as well as other applicable provisions of the Municipal Code. [HBMC 245.30-A-2]

3. The project does not create a demand on infrastructure in a manner inconsistent with the Local Coastal Program. [HBMC 245.30-A-3]

4. The project conforms with the public access and public recreation policies of Chapter 3 of the California Coastal Act. [HBMC 245.30-A-4]

5. Leaving the existing degraded wetland fragment in its current condition is not the least environmentally damaging alternative due to a number of factors, including:
   - (i) 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;
   - (ii) 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 wetland habitat east of Beach Boulevard, resulting in a continued decrease in habitat value; and
   - (iii) the site is subject to increasing dominance of invasive alien plant species further diminishing what little habitat value is remaining.

6. On-site restoration of the subject degraded wetland fragment is not feasible because the wetland fragment is not capable of recovering and maintaining a high level of biological productivity due to a number of factors, including:
   - (i) the primary water supply for the wetland is polluted urban runoff which together with petroleum deposits below the surface will result in unacceptable water quality not compatible with a healthy, viable ecosystem;
   - (ii) the site is surrounded by roadways and urban uses exposing the wetland and potential wildlife to impacts of light, noise and traffic hazards;
   - (iii) 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;
   - (iv) the wetland is so small (less than one acre) that it cannot support significant wildlife populations or provide sufficient habitat area for a diverse ecosystem; and,
   - (v) 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.

7. 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.

8. Restoration at the Shipley Nature Center is the most appropriate off-site restoration alternative available for a number of reasons, including:
   (i) the Shipley Nature Center is located in the same general region as the subject degraded wetland;
   (ii) it possesses a larger, existing wetland habitat of a freshwater character similar to the existing degraded wetland fragment and will benefit from the addition of more wetland area as well as more native riparian woodland habitat;
   (iii) it is in a fenced, protected area of the City's Central Park system;
   (iv) it enjoys the oversight of a full-time park ranger at the premises; and
   (v) the restoration program will additionally expand the education and enjoyment benefits for park users.
   (vi) no other alternative potential wetland restoration site possessing similar qualities or located with the same general region has been found to exist.

9. 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 was 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.

10. The subject degraded wetland fragment does not provide significant habitat value to wetland fish and wildlife species, and is not used by any rare or endangered species.

11. Fill of 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 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, and is consistent with the land use plan of the LCP as expressed in the Downtown Specific Plan. Additionally, Beach Boulevard is a permanent State highway and therefore a stable boundary.

12. The filling of the subject degraded wetland fragment as a part of the proposed Restoration Plan at the Shipley Nature Center:
   (i) does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair long-term stability of the ecosystem; i.e., natural species diversity, abundance and composition are essentially unchanged as a result of the project;

COASTAL COMMISSION

EXHIBIT # A
PAGE 21 OF 25

(ii) does not harm or destroy a species that is rare or endangered;

(iii) does not harm a species or habitat that is essential to the natural biological functioning of a wetland or estuary; and,

(iv) does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or nonconsumptive (e.g., water quality and research opportunity) values of a wetland or estuarine ecosystem.

13. 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 into the approved Downtown Specific Plan which is the implementation plan of the City's approved Local Coastal Program.

Recommended Conditions of Approval

1) A final Habitat Planting Plan, Wetland Basin Excavation Plan and Temporary Irrigation Plan consistent with the Restoration Plan (HMMP) shall be prepared by the applicant and approved by the City Landscape Architect and the Department of Community Services.

2) Work within the Shipley Nature Center shall be subject to the following:

   a) All work within the Shipley Nature Center shall be conducted by a qualified habitat restoration contractor pursuant to a written contract from The Robert Mayer Corporation approved by the Department of Community Services.

   b) No work shall occur until such contractor has provided proof of workman's compensation insurance and provided a certificate of insurance evidencing general liability coverage naming the City of Huntington Beach as an additional insured pursuant to City regulations.

   c) 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.

   d) 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.

   e) No mature trees will be removed.

   f) 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.)

   g) The excavated soils will be kept on-site in Central Park for future use, and will be placed at a location as specified by the Department of Community Services. Vegetative matter will be removed from the soil as directed by the Department of Community Services.

3) Filling or disturbance of the existing degraded wetland west of Beach Boulevard shall be allowed only if all of the following has occurred:

   a) USACE has issued a verification that such activity is allowed under Nationwide Permit No. 26, and such activity is only taken in compliance with all applicable conditions stated by USACE.

   b) CDFG has entered into a Section 1603 Streambed Alteration Agreement with the applicants and such activity is only taken in compliance with all applicable conditions stated in such agreement.

   c) Substantive physical work pursuant to the Restoration Plan (HMMP) has commenced at the Shipley Nature Center pursuant to a written contract from The Robert Mayer Corporation with a qualified habitat restoration contractor approved by the Department of Community Services.

COASTAL COMMISSION

EXHIBIT # A
PAGE 23 OF 25

d) The Robert Mayer Corporation provides proof of financing approved by the Director of Community Services sufficient to complete the restoration program at the Shipley Nature Center pursuant to the Restoration Plan (HMMP), including five years of monitoring and maintenance activities, pursuant to a budget approved by the Director.

COASTAL COMMISSION

EXHIBIT # A
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Exhibits

1. Conservation Overlay (Excerpt from City of Huntington Beach Downtown Specific Plan)
2. *Interim Report, Feasibility Analysis Off-Site Wetlands Mitigation Areas*, Vail Speck Taylor, Inc., May 24, 1989
3. Request for City Council Action, May 6, 1991, and *Shipley Nature Center Habitat Enhancement and Creation Program*, Vail Speck Taylor, Inc., September 20, 1990
4. Letter from California Department of Fish and Game, February 19, 1991
5. Letter from United States Army Corps of Engineers, December 11, 1990
6. Letter from California Coastal Commission, August 19, 1991
7. *Biological Resources Evaluation and Jurisdictional/Wetland Delineation*, LSA, February 4, 1998
8. Letter from California Regional Water Quality Control Board, Santa Ana Region, February 22, 1999
9. Letter from LSA Associates, Inc, March 17, 1999
10. *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., December 18, 1998

Exhibits to
Coastal Development Permit Request
Implementation of a Wetland Restoration Project
March 17, 1999

1. Conservation Overlay (Excerpt from City of Huntington Beach Downtown Specific Plan)
2. *Interim Report, Feasibility Analysis Off-Site Wetlands Mitigation Areas*, Vail Speck Taylor, Inc., May 24, 1989
3. Request for City Council Action, May 6, 1991, and *Shipley Nature Center Habitat Enhancement and Creation Program*, Vail Speck Taylor, Inc., September 20, 1990
4. Letter from California Department of Fish and Game, February 19, 1991
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OFFICE of ZONING ADMINISTRATOR
CITY OF HUNTINGTON BEACH · CALIFORNIA

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

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

RECEIVED
South Coast Region
AUG 9 - 1999
CALIFORNIA
COASTAL COMMISSION

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

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.

COASTAL COMMISSION

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

Ramona Kohlman, Secretary
Huntington Beach Zoning Administrator

EXHIBIT # B
PAGE 1 OF 11

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

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 COMMISSION

EXHIBIT # B
PAGE 2 OF 11

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 COMMISSI

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

2. The project is consistent with the requirements of the CZ Overlay District, Downtown Specific Plan District No. 8 (High Density Residential), as well as other applicable provisions of the Municipal Code. Grading and filling of the subject will not be injurious to the general health, welfare and safety, nor detrimental or injurious to the value of the property and improvements of the neighborhood or the City in general. The project will augment expansion of the Donald G. Shipley Nature Center natural habitat thus providing additional educational and recreational benefits to Huntington Beach residents.

3. The subject proposal will not create a demand on infrastructure in a manner that is inconsistent with the Local Coastal Program, Downtown Specific Plan and the Amended and Restated Development Agreement by and between the City of Huntington Beach and Mayer Financial, LTD, and the Waterfront Hotel, LLC. Development Agreement (Rec. No. 19980838602) adopted on September 21, 1998.

4. The development conforms with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The project will not interfere with the public access to any coastal amenity.

5. The project does not fall under the Coastal Commission's "retained jurisdiction" over "tidelands, submerged lands and Public Trust lands". The project is occurring on private property and there has never been an issue of "public trust" lands and therefore the "public trusts lands" exclusion is irrelevant. The reference to "submerged lands" is similarly not applicable as this property, while wet from time to time, is not submerged or underwater. The project does not involve any "tidelands" as the degraded wetland fragment is not tidally influenced.

6. The California Coastal Commission has declined to assert federal consistency jurisdiction for the project due to the following: a) the project has or will receive a locally issued coastal development permit and is located within an area where such permits are appealable to the Coastal Commission; and b) the proposed project does not significantly affect coastal resources or raise coastal issues of greater than local concern.

COASTAL COMMISSION

EXHIBIT # B
PAGE 4 OF 11

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 COMMISSION

EXHIBIT # B
PAGE 5 OF 11

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

13. Restoration at the Shipley Nature Center can only be feasibly achieved by the filing of the subject degraded wetland as such option is the only means available to the City to finance the costs for such restoration. Further, such financing option arranged after extensive analysis and negotiation by the City on a host of issues including the cost of the restoration program at the Shipley Nature Center, and was approved by the City after several public hearings.

14. Filling the existing degraded wetland fragment will establish a stable and logical boundary between urban and wetland areas by fixing Beach Boulevard as the boundary between the urban uses to the west and the existing salt marsh wetlands to the east. Such action reduces potential impacts to wildlife that might otherwise attempt transit of Beach Boulevard between wetland habitats.

15. The filling of the subject degraded wetland fragment as a part of the proposed restoration plan at the Shipley Nature Center; a) does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair long-term stability of the ecosystem (e.g. actual species diversity, abundance and composition are essentially unchanged as a result of the project); b) does not harm or destroy a species that is rare or endangered; c) does not harm a species or habitat that is essential to the natural biological functioning of a wetland or estuary; and d) does not significantly reduce consumptive (e.g., fishing, aqua-culture and hunting) or non-consumptive (e.g. water quality and research opportunity) values of a wetland or estuarine ecosystem.

16. The filling of the subject degraded wetland fragment as a part of the proposed restoration plan at the Shipley Nature Center complies with applicable requirements of the California Coastal Commission's Statewide Interpretive Guidelines which are incorporated by reference in the approved Downtown Specific Plan which is the implementation plan of the City's approved Local Coastal Program.

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

1. All necessary Local, Regional, State and Federal agency approvals shall be secured prior to commencement of any project activities associated with CDP No. 99-05.

2. CDP No.99-05 shall comply with all applicable agreement(s) and permit conditions of project approval imposed by Local, Regional, State and Federal Agencies.

3. CDP No. 99-05 shall comply with all applicable SEIR 82-2 and Addendum to SEIR 82-2 mitigation measures inclusive of the following Biotic Resources-Onsite Wetlands and Biotic Resources-Adjacent Wetlands mitigation measures:

   a) Subject to the approval of the Coastal Commission, as agreed upon by the City staff and Sate Department of Fish and Game staff, the amount of wetland area that shall be mitigated for is 0.8 acres. (Addendum to SEIR 82-2/ Mitigation Measure No. 7)

   b) To mitigate for the loss of on-site wetlands, the Applicant shall prepare a detailed wetland restoration plan that complies with the Coastal Act requirements discussed above and Department of Fish and Game criteria. Further discussion with the DFG, and U.S. Fish and Wildlife Service will be necessary to determine the most appropriate restoration site, the type of wetland to be restored, the monitoring plan, and other considerations. If off site mitigation is deemed appropriate, preference shall be given to enhancing/restoring wetland sites located within the City of Huntington Beach. These issues will be clarified prior to City of Huntington Beach review of the Coastal Development Permit for the affected phase of the project. (Addendum to SEIR 82-2/ Mitigation Measure No. 8)

   c) Full mitigation of the 0.8 acre site shall be completed prior to the subject wetland site being altered by the proposed project. No development permits for grading, construction or otherwise, shall be issued for the impacting phase until full mitigation has been accomplished. The mitigation measure(s) is subject to the approval of the City, and the California State Department of Fish and Game. The restoration plan shall generally state when restoration work will commence and terminate, shall include detailed diagrams drawn to scale showing any alteration to natural landforms, and shall include a list of plant species to be used, as well as the method of plant introduction (i.e., seeding, natural succession, vegetative transplanting, etc.). This condition does not preclude fulfillment of the mitigation requirement through the payment of an in-lieu fee consistent with the Coastal Commission's adopted wetland guidelines and the Huntington Beach Local Coastal Program. (Addendum to SEIR 82-2/ Mitigation Measure No. 9)

COASTAL COMMISSION

EXHIBIT # B
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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

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 COMMISSION

EXHIBIT # B
PAGE 9 OF 11

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

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

COASTAL COMMISSION

EXHIBIT # B
PAGE 11 OF 11

STATE OF CALIFORNIA - THE RESOURCES AGENCY PETE WILSON, Govern

CALIFORNIA COASTAL COMMISSION

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

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

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

Commissioner Estolano

SECTION I. Appellant(s)

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

Commissioner Estolano

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

SECTION II. Decision Being Appealed

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

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

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

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: XX

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

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

DATE FILED: July 26, 1999

DISTRICT: South Coast/LongBeach

APPEAL

A-5-HNB-99-275

Exhibit C1

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

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

a. XXPlanning Director/Zoning Administrator

b. __City Council/Board of Supervisors

c. __Planning Commission

d. __Other_____

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

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

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:
Robert Mayer Corporation
Box 8680
Newport Beach, CA. 92658

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

(1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

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 _____

C3

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

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

_____

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_____

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_____

_____

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

SECTION V. Certification

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

_____
Signature of Appellant(s) or
Authorized Agent

Date 7/26/99

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

Section VI. Agent Authorization

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

_____
Signature of Appellant(s)

C4

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)

C5

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.

C6

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

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

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.

Hnt Bch cdp 99-05 env

STATE OF CALIFORNIA

COASTAL COMMISSION

COPY

ROBERT L. MAYER, TRUST
CITY OF HUNTINGTON BEACH,
COUNTY OF ORANGE

Appeal No. A-5-98-275

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Monday
April 10, 2000
Agenda Item No. 7.a.

The Queen Mary Ship
1126 Queens Highway
Long Beach, California

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A P P E A R A N C E S

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Dave Potter, Vice Chair
Paul Daniels
Christina L. Desser
Shirley Dettloff
Cecilia Estolano
Gregg Hart
Patrick Kruer, Alternate
Cynthia McClain-Hill
Trent Orr, Alternate
Annette Rose, Alternate
John Woolley

Pat Neal, Business, Transportation & Housing Agency
Joan Dean, Trade & Commerce Agency

STAFF

Peter Douglas, Executive Director
Ralph Faust, Chief Counsel
Deborah Lee, Deputy Director
Mailee Gee, Coastal Program Analyst
Jamee Jordan Patterson, Deputy Attorney General

-oOo-

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Deputy Director Lee.....4,9,78,98,126,132
Executive Director Douglas.....15,82,126,130
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California Coastal Commission
April 11, 2000
Robert L. Mayer Trust -- Appeal No. A-5-99-275

* * * * *

EXECUTIVE DIRECTOR DOUGLAS: That takes us to 7.a. I believe.

DEPUTY DIRECTOR LEE: Item 7.a. is Appeal No. A-5-HNB-99-275, an appeal of a decision from the City of Huntington Beach.

The property in question is a five-acre parcel located about 1000 feet inland of the northwest corner of Pacific Coast Highway and Beach Boulevard. The site lies to the east of the Waterfront Hilton, and just west of Beach Boulevard. Across Beach Boulevard, further to the east, there is a much larger wetlands complex in existence.

I want to, before going further into the presentation, just indicate at the outset that staff is very appreciative of the efforts of both the city, and the developer. This has been a difficult appeal, and it has been a very professional relationship working with both parties. There has been a good exchange of information, and both of them have been very quick to respond to any questions that staff raised.

Turning to the specifics, the city's approval allows the fill of .8 acres of wetlands, and 1.4 acres of

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1 restorable wetland, for unspecified development on the 5-
2 acre parcel, which is owned by the city.
3 The remaining wetland area has been fenced off,
4 while the other portions of the property have been cleared
5 and graded. The project, as approved by the city, also
6 includes off-site mitigation, consisting of the creation of
7 one-acre of new wetland area, and the enhancement of 1.4
8 acres of existing transitional upland and woodland habitat,
9 at the Shipley Nature Center.
10 Staff is recommending that the Commission find
11 that the subject appeal raises a substantial issue, relative
12 to the wetlands preservation policies of the city's LCP. As
13 provided for in Commission procedures, substantial issue
14 would therefore be found, unless three Commissioners wish to
15 conduct a hearing on the question of substantial issue.
16 So, at this point, I'll stop and see whether or
17 not you want me to proceed with a substantial issue report,
18 or proceed to de novo.
19 CHAIR WAN: Commissioner Dettloff.
20 COMMISSIONER DETTLOFF: The city and the applicant
21 will go right into de novo, and the reason for that --
22 although they think there is no substantial issue, and I want
23 to make that very clear -- we also feel that this is an
24 important issue, and we do have respect for those who differ
25 from our position. And, as you know, in substantial those

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opposing our decision, the city's decision, would not have the opportunity to speak, so in fairness -- they would not have the opportunity to speak because this has not been appealed in over 10 years. This is the first appeal of this project. So, we will go into the de novo hearing process, following your report.

CHAIR WAN: Are there three or more Commissioners who want to hear the question of substantial issue?

[No Response]

Seeing none, we have found substantial issue.

I am going to call for ex-parte communications at this point, starting at the right-hand side of the table.

COMMISSIONER KRUER: Madam Chairman, I met this morning with Nancy Lucast, Steve Kaufmann, on Item 7.a., and basically a discussion of the project, the treatment of the site under the present LCP, and discussion of the wetland fill in the LCP, and also the applicability of Bolsa Chica, we discussed that, too.

CHAIR WAN: Commissioner Desser.

COMMISSIONER DESSER: I met last evening with Nancy Lucast. We discussed governing language in the LCP, and Coastal Commission guidelines.

CHAIR WAN: Commissioner Estolano.

COMMISSIONER ESTOLANO: On April 7 I met with Nancy Lucast, Steve Kaufmann, Steve Bone, and Larry Brose,

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about this project. They discussed the LCP language, the incorporation of the guidelines into the LCP, the standard of review as a result; the mitigation opportunities off site; the adoption of the LCP, and how it has been kept current. The discussion -- we discussed the conservation overlay in the LPC, and we also discussed the applicability of the Bolsa Chica decision, and principles of res judicata.

CHAIR WAN: Commissioner McClain-Hill.

[No Response]

Commissioner Dettloff.

COMMISSIONER DETTLOFF: Yes, I met with our Planning Director Howard Zelefsky, Planning Director for the City of Huntington Beach. I met with the applicant, and one of the owners of the property, Steve Bone. I met with one of their vice presidents, Larry Brose, with Nancy Lucast, who is representing their interests, Steve Kaufmann, and their biologist, Dr. Victor Leipzig. We spoke about, not only the merits of the project, but also spoke at great length about the LCP, and the city following that LCP in making their decision.

CHAIR WAN: Anybody else?

Commissioner Daniels.

COMMISSIONER DANIELS: On April 7 I met with Steve Bone and Larry Brose of the Robert Mayer Corporation, their attorney Steve Kaufmann, and agent Nancy Lucast, and we

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discussed -- they gave me a description of the project, showed photographs; and we discussed the mitigation efforts, or intentions toward mitigation at the Shipley Center; the history of development in the area; the background regarding the certification of the Local Coastal Program, and the amendments thereto; the incorporation of the Coastal Commission's interpretive wetland guidelines as part of the LCP; the applicability of the Bolsa Chica decision, and res judicata principles.

CHAIR WAN: Commissioner Woolley.

COMMISSIONER WOOLLEY: Yeah, this morning I was at the same breakfast with Commissioner Kruer, where he referenced the discussion with Nancy Lucast, Steve Kaufmann, representatives of the applicant.

CHAIR WAN: Commissioner Rose.

COMMISSIONER ROSE: Last Friday, I received a phone call from Nancy Lucast, but I have not discussed this issue with anyone.

CHAIR WAN: Commissioner Orr.

COMMISSIONER ORR: Yes, last evening, along with Commissioner Desser, I met with Nancy Lucast and we discussed the LCP standards, the applicability of Bolsa Chica, and off-site mitigation.

CHAIR WAN: Commissioner Hart.

COMMISSIONER HART: Yes, this morning I met with

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1 Nancy Lucast and Steve Kaufmann, and we discussed the
2 project, the treatment of the site in the LCP, the provision
3 of limited wetland fill in Local Coastal Plan, and the
4 applicability of the Bolsa Chica case.
5 CHAIR WAN: Is that it?
6 COMMISSIONER HART: That is it, thank you.
7 CHAIR WAN: With that, first let me lay out some
8 of the ground rules for the discussion. I am going to give
9 -- the applicant has requested 25 minutes, plus 5 minutes. I
10 am going to give you a total of 25 minutes, including your
11 rebuttal time.
12 If there is an organized presentation on the
13 opposing side, get your -- coordinate, and you will get the
14 same 25 minutes, for those who are presenting an organized
15 presentation. Everyone else will get two minutes, all other
16 members of the public, on both sides.
17 Staff.
18 DEPUTY DIRECTOR LEE: Thank you, Madam Chair.
19 With the project on de novo review, staff is
20 recommending that the proposed filling of these remnant
21 wetlands, and their uplands, be denied.
22 The city's findings and rationale for the locally
23 issued permit are flawed for a number of reasons. First, and
24 foremost, as cited in your staff report, the certified LCP
25 contains policies that require the preservation and

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1 enhancement of wetlands.

2 The city's certified LCP specifically incorporates
3 Section 30233 of the *Coastal Act* which enumerates only eight
4 permissible uses for filling wetlands. Filling of wetlands
5 for either an unspecified use, and what is reasonably
6 believed to be for future residential development are not
7 authorized uses under the city's LCP, or the *Coastal Act*.

8 The second issue raised in the city's action is
9 its reliance on the Commission's statewide guidelines for
10 wetlands. As certified in the city's LCP, the guidelines
11 were specifically incorporated into the LCP, and thus became
12 enforceable by virtue of their adoption into it.

13 Based on a review of the city's record, the city's
14 decision to allow the onsite filling of this remnant wetland
15 relies on its application of these now LCP provisions;
16 however, staff does not concur with the city's interpreta-
17 tion, and application of these provisions for the following
18 reasons: first, the city's LCP does provide for other
19 restoration options, if the wetlands are less than one-acre
20 in size. In this case, staff concurs with the wetland
21 acreage involved is less than one acre.

22 However, while the city's LCP does allow for
23 consideration of some fill for non-permitted uses, if the
24 wetlands involved are small and isolated, it does so only in
25 the context of a bonafide overall restoration proposal. The

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1 development proposed here involves complete removal of the
2 remnant wetlands on site, as part of a future development
3 proposal, not a restoration effort.
4 Second, relative to the LCP's provisions, and
5 their reliance to other restoration options under Section
6 30411 of the *Act*, staff again disagrees with the city's
7 application of the provisions. Staff believes that the
8 city's LCP establishes a no net loss standard for any wetland
9 area, and further requires that the proposed fill must be in
10 conjunction with another restoration option. The project as
11 approved by the city cannot be considered restoration, and it
12 would again result in the loss of all onsite wetlands.
13 Therefore, staff is recommending that the
14 Commission find that the city erred in its interpretation
15 here.
16 Third, the city's LCP also states that restoration
17 projects may include some fill for unpermitted uses if
18 specified criteria are met. Staff does not concur with the
19 city that all of the relevant criteria has been met. For
20 example, one criterion states that the wetlands must be so
21 small and isolated as to require major restoration activity,
22 to reach a high level of biological productivity.
23 The subject wetlands are clearly a fragmented
24 remnant, however, they remain in place adjacent to a larger
25 salt marsh complex east of Beach Boulevard, and connected to

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that ecosystem via pipes in the road.

In addition, the 1983 CDFG study, which is included in your report as Exhibit M, concluded that this wetland area could feasibly be restored with minor restoration work.

Another criterion specifies that the wetland must not provide significant habitat value to wetland species. Both the developer's biologist, and the Commission's ecologist, have confirmed the presence of wetland vegetation on this site. Furthermore, the Department of Fish and Game study -- again, shown in Exhibit M -- cites numerous wetland related bird species, associated with the Huntington Beach wetlands, and recent staff visits have confirm the presence of redwing blackbirds, and a snowy egret on the site, as well.

While it could be debated whether or not the habitat value afforded here is significant, staff would recommend that the Commission find it significant, given the historic loss of wetland acreage statewide.

Returning to other points, a third concern is that the city's LCP must be evaluated in the context of the *Coastal Act* as interpreted in the Bolsa Chica decision. Numerous court decisions have provided direction to the Commission, as well as other land use regulatory bodies, and these decisions redirect the Commission's focus to present

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1 conditions. Examples of these would clearly include the
2 Nollan and Dolan decisions that have been discussed before.
3 In that appellate court decision on Bolsa Chica,
4 it was found that the Section 30411 of the *Act* could not be
5 used to approve filling of wetlands that was not otherwise
6 authorized under Section 30233 of the *Act*. And again,
7 Section 30233 was specifically incorporated into the city's
8 LCP.
9 The subject proposal before you authorizes fill
10 for an unspecified purpose, but one which can reasonably be
11 deduced from the city's record as future residential
12 development. Again, filling for either an unspecified use,
13 or residential development is not allowed under the city's
14 LCP.
15 Fourth, there are serious precedential concerns
16 created here for future Commission consideration on remnant
17 wetlands. While staff concurs that the on-site wetlands are
18 certainly degraded, we do not concur that such characteris-
19 tics mean the wetland on site may be, or should be
20 eliminated. Characteristics such as degraded, isolated,
21 insignificant, or fragmented, would be commonly placed on
22 many wetland areas, and yet the *Coastal Act* clearly mandates
23 their retention, and enhancement. Given the dramatic losses
24 of wetlands statewide, and nationally, all wetlands are
25 increasingly valuable, and warrant preservation.

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1 In addition, looking at the five-acre parcel,
2 itself, there clearly remain development options for the
3 remainder of the property, even retaining the wetlands on
4 site with appropriate buffering. Furthermore, looking at the
5 anticipated larger residential proposal, it would also appear
6 very feasible to incorporate minor project revisions, and
7 retain the wetlands.
8 Staff thus believes there are less environmentally
9 damaging alternatives that are feasible, and those alterna-
10 tives are mandated under both the city's LCP, and CEQA.
11 Lastly, we also have concerns about the off-site
12 mitigation proposal, relative to its deficiency of new
13 wetland creation, its lack of in-kind habitat replacement,
14 and incomplete monitoring provisions; however, given that we
15 don't get to consider mitigation, if the fill is not for an
16 allowable use, I will not go into those issues further.
17 In summary, staff is recommending that the
18 Commission find the proposed fill is not an authorized use
19 under either the *Act*, or the city's LCP. While there may be
20 merits and certain environmental benefits presented at the
21 Shipley Nature Center, those benefits do not negate the
22 policies of the *Coastal Act* and the city's LCP. The Nature
23 Center's program should be supported through other means.
24 Finally, we continue to believe that there are
25 viable alternatives that could be implemented with the

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1 retention of the onsite wetlands.

2 And, that would conclude my comments, and we do

3 have slides available, if the Commission would like to see

4 them.

5 EXECUTIVE DIRECTOR DOUGLAS: I just have some

6 additional comments here, to underscore a couple of points

7 that Deborah made here in the staff presentation.

8 The Commission has wrestled with, over its

9 history, with the application of the law as it exists at the

10 time that you have to make a decision, in the context of

11 prior decisions or actions that may have come from the

12 Commission, precedential decisions, or actions on LCPs, land

13 use plan, or modifications, as well as long range development

14 plans, and other plans under the *Coastal Act*.

15 The fact and the law is, though, that the

16 Commission has to deal, as does local government, with the

17 facts on the grounds as they exist at the time that you make

18 the decision, when it comes to certain kinds of resources.

19 So, for example, if an environmentally sensitive

20 habitat area is identified subsequent to an LCP being

21 certified, or a land use plan being approved, or endangered

22 species, or species is listed as either threatened or

23 endangered, you have to take -- as does the local government

24 -- that factual situation into account irrespective of the

25 fact that the plan, or the document previously approved did

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1 not call for that kind of protection. We are dealing with
2 that situation all up and down the coast, because circum-
3 stances do change on the ground.
4 As well, as Deborah pointed out, there are court
5 decisions that trump previous decisions on LCPs, whether it
6 deals with private property rights, or the way that specific
7 findings are made, relative to particular areas, such as the
8 Surfside Colony decision, as well as the way the *Coastal Act*
9 is read in the application of Section 30233, relative to
10 wetlands and ESHA protection, such as the decision on the
11 Bolsa Chica case.
12 So, those are factors that have to be taken into
13 account when the decision is made, because that is the state
14 of the law at the time that you are making the decision, as
15 well as that is also applicable to the local government.
16 And, as Deborah indicated, there are in addition
17 here alternatives that allow for development of the property,
18 while at the same time protecting the wetlands that are on
19 site. So, it isn't that the staff recommendation precludes
20 all use of the particular property.
21 I think the other point is that the Commission
22 does have the ability, under the *Coastal Act* as we read it
23 now, as enlightened by the courts, does have the ability to
24 enter into a balancing kind of an undertaking, if in fact you
25 find conflicts between specific policies of Chapter 3. There

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is no such conflict that we have identified in this case, so you don't even get to the balancing approach, until and unless you find a conflict between the specific policies in Chapter 3, and then you have to make a determination on resolution whether or not the conflict can be resolved in a manner that is most protective of significant coastal resources.

And, as Deborah also pointed out, unless the use is a permissible use, you don't get to the question of mitigation. If you find that there is a permissible use, and it does involve adverse impacts to ESHA or wetlands, then you go into the question of what the appropriate mitigation for that impact is.

So, with that, Madam Chair, the staff presentation has been completed, unless counsel wishes to add anything?

CHAIR WAN: At this point?

EXECUTIVE DIRECTOR DOUGLAS: Not? no, okay.

CHAIR WAN: There may be questions for counsel.

EXECUTIVE DIRECTOR DOUGLAS: Okay.

CHAIR WAN: With that, I will open the public hearing, and call the applicant and the city for your presentation.

EXECUTIVE DIRECTOR DOUGLAS: Okay, and Madam Chair, I assume that you don't want to see the slides at this point.

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1 COMMISSIONER ORR: We want to see the slides.
2 CHAIR WAN: Oh, I think there are -- I am sorry,
3 Commissioners do like to see slides, so we will have the
4 slide presentation.
5 DEPUTY DIRECTOR LEE: Mailee Gee will go through
6 the slides for you.
7 [Slide Presentation]
8 COASTAL STAFF ANALYST GEE: Madam Chair, and
9 Commissioners.
10 This is slide No. 1, and this is a view looking
11 northwest from the alkaline meadow, and ridge rural area,
12 towards the existing coastal brackish marsh. Just for your
13 reference, if you wanted to look at -- I believe it is
14 Exhibit K, vegetation types map will give an idea of where
15 the slide is being taken.
16 Slide No. 2, this is a view looking southwest from
17 the alkaline meadow and ridge rural area towards the existing
18 coastal brackish marsh. This slide was taken approximately
19 25 feet from the edge of the marsh.
20 By the way, also, these slides were provided by
21 the applicant.
22 Slide No. 3 is the view looking west from the
23 alkaline meadow, and ridge rural area, towards the existing
24 coastal brackish marsh. This slide was taken to the south-
25 west of slide 1, and approximately 20 feet from the edge of

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1 the marsh. As you can see, there are construction trailers
2 there outside of the wetland area, so construction is going
3 on currently. Grading has been done to the south of this
4 subject wetland, and also to the north.
5 This is slide No. 4, a view looking northwest from
6 the alkaline meadow, and ridge rural area, towards the
7 existing coastal brackish marsh. In the center of the photo
8 there -- it is a little hard to tell -- that is the part of
9 the subject coastal brackish marsh area. These slides, I
10 believe, were taken last year, but -- actually, I am sorry --
11 early this year in January, prior to a lot of the heavy rains
12 we received in January and February.
13 Slide No. 5, this is the same view towards the
14 coastal brackish marsh, as seen in slide 1. This slide was
15 taken on the north side of Slide 1, approximately 50 feet
16 from the marsh edge. As you can see, the site is fenced, and
17 there is some grading visible on the other side of the fence.
18 Slide No. 6, this is a view looking south along
19 Beach Boulevard, towards PCH. This slide shows the northern
20 portion of the 2.9-acre parcel, or area of the parcel
21 containing the existing wetland. Note in the foreground that
22 the northern most portion of the subject site has been
23 graded, and there are construction materials there. This
24 also is the area that is inside of the conservation overlay,
25 which is shown in the exhibits, as well.

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1 Slide No. 7, a view looking southwest from Beach
2 Boulevard, towards PCH. Note the wetland area in the fore-
3 ground, and the imported soils stock piles in the background
4 there. It is a little hard to see.
5 And, that concludes the slide presentation.
6 CHAIR WAN: Does that complete the staff's
7 presentation?
8 DEPUTY DIRECTOR LEE: Yes.
9 CHAIR WAN: With that, I will call Howard
10 Zelefsky, and Howard, you and the other members of your team
11 have, as I said, 25 minutes including your rebuttal time.
12 So, if you want rebuttal, you are going to have to save four
13 or five minutes from your time for that. At what time do you
14 want staff to notify you, as you go through this?
15 MR. ZELEFSKY: At probably the 15-minute mark.
16 CHAIR WAN: Would you do that?
17 DEPUTY DIRECTOR LEE: Madam Chair, what was the
18 total time, again?
19 CHAIR WAN: Twenty-five minutes. That includes
20 rebuttal.
21 DEPUTY DIRECTOR LEE: Okay.
22 MR. ZELEFSKY: Good morning, Commissioners, I am
23 Howard Zelefsky. I am the planning director for the City of
24 Huntington Beach. I am here today to ask you to uphold the
25 city's approval of a Coastal Development Permit.

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1 As a way of background, I want to indicate that
2 the city takes great pride in its upholding the *Coastal Act*,
3 not only in practice, but in spirit.
4 [Slide Presentation]
5 This particular site has been part of our LCP
6 since 1983. In fact, in 1983, the city's downtown specific
7 plan, which is the implementing ordinance of our LCP,
8 identified this site as potential wetland.
9 Next slide.
10 The city had an environmental impact report
11 prepared that was certified in conjunction with a detailed
12 development plan for the waterfront project, where this site
13 is located.
14 Next slide.
15 The city hired a biologist to analyze off-site
16 wetland mitigation, and proposed alternatives to the city.
17 The biologist determined that the most viable location for
18 wetland mitigation would be the Shipley Nature Center, which
19 is upstream from the Bolsa Chica wetlands. It is, basically,
20 almost contiguous to that area.
21 Next slide.
22 In 1990, the Army Corps of Engineers determined
23 that the proposal to fill degraded wetlands at this site was
24 in compliance with the nationwide permit.
25 Next slide.

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1 In 1991, the Department of Fish and Game accepted
2 the Shipley Nature Center as the site for the .8 acres of
3 wetland mitigation for the waterfront.
4 Next slide.
5 In '95, the Huntington Beach City Council
6 unanimously approved a major update to the city's certified
7 coastal plan, which this Coastal Commission then certified.
8 In '98, we had an addendum prepared to that EIR
9 for the waterfront project, and that addendum concluded that
10 the areas previously studied and identified wetlands, have
11 not substantially changed since the previous analysis done in
12 1990.
13 In April of 1999, just a year ago, the Department
14 of Fish and Game, and the Robert Mayer Corporation, entered
15 into a stream bed alteration agreement for the proposed fill
16 of the degraded wetlands at the waterfront. The Army Corps
17 of Engineers determined that the activity involving fill of a
18 degraded wetlands would comply with the nationwide permit.
19 The Army Corps further indicated that as long as
20 the nationwide permit's special conditions and general terms
21 were complied with the project was authorized. They
22 basically reaffirmed their position that they took in 1990.
23 The point of bringing all of these dates to the
24 Commission's attention is to call to your attention the fact
25 that the city acted openly and honestly in consultation with

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1 state and federal agencies over the period of a 10-year
2 period of time.
3 In fact, over the years the city has used this
4 very process that was established by the Coastal Commission
5 for mitigation of degraded wetlands, of less than one-acre in
6 size, in other parts of the coastal zone.
7 At this point, it might be helpful to show the
8 Commission the exact language of our LCP. I believe there is
9 an honest disagreement between the staff's interpretation of
10 our LCP, as displayed in the staff report.
11 For example, on page 3 of the staff report it
12 states, with regard to wetlands, less than one-acre in size,
13 the certified LCP indicates -- that is a key word --
14 indicates that some fill for non-allowable use is appropriate
15 only if the overall project is a restoration project, and if
16 the wetland to be filled is small, extremely isolated and
17 capable of being restored.
18 Next slide.
19 Our LCP actually has the following language,
20 Section 4.15, and this is the conservation overlay, and that
21 might be confusing to some Commissioners. The conservation
22 overlay is basically an overlay to an underlying zoning that
23 allows for residential to occur, and that language says,
24 development shall be permitted, only pursuant to an overall
25 development plan, which was approved by the city and this

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1 Commission, for the entire overlay area and subject to the
2 following as condition of any development on this parcel.
3 And, basically, the rest of that language goes out
4 and lays out a road map for how the city is to proceed, which
5 I indicated in my previous discussion. This specific
6 language is an attachment to your staff report, in Exhibit H,
7 you want to turn to it. But, it is rather clear as to what
8 the city and a property owner would have to do.
9 Next slide.
10 The staff report, also on page 3, alludes to what
11 the interpretive guidelines mean by claiming that it is not a
12 restoration project.
13 Next slide.
14 The city believes that the staff is misinter-
15 preting out this portion of the LCP as it relates to
16 Huntington Beach. We believe that the interpretive
17 guidelines has an exception that applies to this site, and it
18 states, verbatim, small, extremely isolated wetland parcels
19 that are incapable of being restored to biologically
20 productive systems, may be filled and developed for uses not
21 ordinarily allowed only if such actions establish stable and
22 logical boundaries between urban and wetland areas, and if
23 the program is in the same general region. All of the
24 following criteria must be satisfied before this exception is
25 granted.

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1 And, let me quickly go through the five criteria
2 that we believe we have met. The wetland to be filled is so
3 small, less than a acre, which this is -- it is .6 of an acre
4 -- and, it is isolated, not contiguous or adjacent to a
5 larger wetland, it is not. The wetland that was referred to
6 in the staff report is across Beach Boulevard, a major
7 highway, 120 feet away, and at a completely different
8 elevation than this site.
9 Next slide.
10 The wetland must not provide significant habitat
11 value to wetland fish and wildlife species, and must not be
12 used by any species which is rare or endangered. This site
13 is not used by any rare or endangered species.
14 The parcel would usually be completely surrounded
15 by commercial, residential, or industrial development. This
16 site will be completely surrounded by commercial and
17 residential development.
18 Next slide.
19 Restoration of another wetland to mitigate the
20 fill can most feasibly be achieve in conjunction with filling
21 a small wetland.
22 Next slide.
23 Restoration of a parcel to mitigate for fill must
24 occur at a site which is next to a larger contiguous wetland
25 area, providing significant habitat value to fish and

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1 wildlife, which would benefit from the addition of more area.
2 This is the site, Shipley Nature Center, which is upstream
3 from the Bolsa Chica.
4 Next slide.
5 Department of Fish and Game, and U.S. Fish and
6 Wildlife have determined that the proposed restoration
7 project can be successfully carried out, that has occurred.
8 It further goes on to say additional flexibility will allow
9 for restoration projects located in wetlands which are
10 degraded. These wetland have been determined to be degraded.
11 If the Commission does not support the city's
12 approval of this permit, quite frankly, as the city's
13 planning director, I am somewhat at a loss as to how to
14 advise future property owners in the coastal zone. We have a
15 certified LCP, and as the city's planning director, I am
16 usually called upon to give my assessment of how to proceed
17 through a development process. In this particular case, that
18 advice was based on a plan we prepared 17 years ago. The
19 plan was studied. It was revised. And, it was approved and
20 revised again, and approved by this Commission. I hope the
21 Commission recognizes the impact that this may have on the
22 integrity of local planning decisions.
23 As far as we can see, there is no relationship
24 between the Bolsa Chica decision, and the City of Huntington
25 Beach's issuance of this Coastal Development Permit. The

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1 city has a certified coastal plan. The County of Oranges
2 does not have a certified LCP. The comparison of this
3 Coastal Development Permit should be to our LCP, not
4 specifically to the *Coastal Act*, as was done in Bolsa Chica.
5 We therefore ask you to uphold the city's approval
6 of the Coastal Development Permit.. And, I too would like to
7 thank the staff for their professionalism in helping us
8 through this process.
9 MR. LEIPZIG: Good morning, Commissioners. I am
10 Dr. Victor Leipzig, biological consultant to the applicant.
11 I'll be reviewing with you the wetlands at the waterfront
12 development site, and at the Shipley Nature Center,
13 discussing their current biological values, and their
14 potential future values.
15 [Slide Presentation]
16 The two sites are indicated on this map. I'll
17 begin with the Shipley Nature Center indicated on an aerial
18 photo. The habitat of the center is of very high value,
19 consisting largely of willow thickets, with a fresh water
20 pond surrounded by riparian vegetation. This area is
21 historically part of the Bolsa Chica water shed, and a
22 functional part of the Bolsa Chica ecosystem.
23 The high habitat value of the Shipley Nature
24 Center is reflected in the great diversity of bird life that
25 utilizes it, especially in spring and fall migrations. The

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southwestern willow flycatcher, and the least bills verio are two federally endangered species that nest in riparian areas and have used the Shipley Nature Center in the past. Biologists with the United States Fish and Wildlife Service have indicated that the Shipley Nature Center has the potential to be used as nesting area by these two species.

An important point about Shipley Nature Center is it is not an isolated parcel of habitat. It is surrounded by hundreds of acres of park land, including additional fresh water wetlands, willow woodlands, and woodlands of other types, all with great wildlife usage, all contributing to the strength of the nature center.

The project at Shipley, shown here, would create 2.4 acres of new wetland habitat. This figure is based on an early estimate of 0.8 acres of wetland at the waterfront project site, and upon a mitigation ratio of 3:1. In fact, the waterfront site has even less wetland acreage than that early estimate, and as a result the actual mitigation ratio is higher than 3:1.

The wetland project is designed to utilize a fully natural water source, which is the naturally fluctuating ground water on site.

And, finally, not to be overlooked, is the fact that the restoration project at Shipley carries conditions that require it to be implemented prior to any fill of the

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1 wetland at the waterfront site. This will insure that there
2 is not only no net loss of wetlands due to this project, but
3 no temporary transitory loss of wetlands, either.
4 Turning to the waterfront project site, shown on
5 the map here, staff has already summarized my presentation.
6 They have pointed out four important adjectives about this
7 site: it is fragmented, it is isolated, it is degraded, and,
8 biologically it is practically insignificant.
9 There are wetlands at this site. The most recent
10 delineation indicates 0.696 acres. These wetlands are very
11 badly degraded. They are seriously overrun by invasive non-
12 native vegetation. They have been completed isolated from
13 any tidal influence for many decades, and their only source
14 of surface water is urban runoff. These wetlands are a
15 fragment of a larger wetland system on the east side of Beach
16 Boulevard, but are cut off from that wetland -- as Mr.
17 Zelefsky pointed out -- by a 6-lane, 120-foot wide arterial
18 highway.
19 Today, the habitat value of the site is extremely
20 low. The site supports no rare or endangered species. It
21 supports zero marine species. The diversity of salt marsh
22 vegetation species on the site is a small fraction of that of
23 a native salt marsh. In fact, over the decades, the
24 influence of urban runoff has converted much of what used to
25 be salt marsh wetland into now fresh water wetlands.

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1 So, what is the environmentally superior
2 alternative for dealing with this site? One alternative is
3 leaving it as is, in it current condition. Under this
4 alternative, its degraded condition would continue to
5 deteriorate as salt marsh continues to convert to cattails,
6 and as urban development continues around the site.
7 The site would continue primarily as fresh water
8 wetland, a type of habitat completely isolated from any other
9 such habitat in its vicinity. This is certainly not the best
10 alternative.
11 A second alternative is restoration on site. The
12 fundamental question is, can this be accomplished? If, by
13 restoration, we mean can the site be returned to tidal salt
14 marsh, the answer is clearly, "No". There is simply no way
15 that tidal influence can be returned to this site. The site
16 can never be made tidal, and can never have connectivity with
17 the marine ecosystem, which is a very important part of the
18 biological function over coastal salt marshes.
19 Efforts to restore the salt marsh would have to
20 utilize non-tidal salt water. That water would have to come
21 from the flood control channel across private property to the
22 east of Beach Boulevard, property which has -- again, as Mr.
23 Zelefsky pointed out -- is lower in elevation than the water-
24 front site. If the site were to be treated as the fresh
25 water wetlands that it largely is now, it would be a tiny

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1 totally isolated fragment of that habitat type, with very
2 limited potential to support wildlife populations. On-site
3 restoration cannot be accomplished in any predictable time
4 frame, or with any degree of certainty for biological
5 success.
6 All of this, Commissioners, is in sharp contrast
7 to the certainty, and the high potential, for the project at
8 the Shipley Nature Center. Clearly, restoration of the
9 habitat off site is, in fact, the environmentally superior
10 alternative in this situation. The opportunity to accomplish
11 the Shipley's wetlands project is not just a superior
12 alternative, it is a wonderful opportunity.
13 In closing, Commissioners, I would like to take
14 off my hat as a professional and put on my hat as a resident
15 of the City of Huntington Beach for many decades. I live in
16 the city. I love the city. I have spent a lot of time
17 working to protect the Bolsa Chica wetlands, and the
18 Huntington Beach wetlands, as well as the Shipley Nature
19 Center. I think that preserving this site on Beach Boulevard
20 would have little benefit to wildlife, and would result in a
21 great sacrifice at the Shipley Nature Center.
22 I will be happy to answer questions later.
23 CHAIR WAN: Your next speaker is Dr. Leipzig.
24 MR. KAUFMANN: That was Dr. Leipzig.
25 CHAIR WAN: Oh, I am sorry.

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1 MR. KAUFMANN: Good morning, Madam Chair, and
2 Commissioners. Steven Kaufmann, for the co-applicant Mayer
3 Trust.
4 This morning I would like to emphasize that there
5 is a far closer relationship between the certified LCP and
6 the guidelines than has been discussed for you in the staff
7 report, and that helps further explain why the applicants
8 followed the course laid out in the certified LCP, and why
9 the Bolsa Chica decision is not relevant to this particular
10 application.
11 The wetland guidelines were adopted in 1981. Each
12 draft to the guidelines included the less than one-acre
13 exception to Section 30233 to provide some limited
14 flexibility, flexibility that would permit the fill of an
15 unproductive, small, isolated, degraded wetland, in a manner
16 that would produce through off-site restoration a substan-
17 tially more biologically productive wetland in the same
18 general region. That is the project before you today.
19 So, it should be no surprise that after being
20 denied certification in 1981, the city on the heels of the
21 Commission's adoption of the 1981 guidelines resubmitted its
22 LCP. And, in 1982, the Commission certified it as consistent
23 with the *Coastal Act*, with language first identifying this
24 particular wetland, which Fish and Game preliminarily
25 concluded to be less than one-acre. Second, approving the

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1 city's designation of this property as residential with a
2 conservation overlay. And, third, incorporating in the
3 conservation overlay the guideline less than one-acre
4 exception.
5 The same language was repeated in the city's
6 updated downtown specific plan, and again the Commission
7 certified it in 1995. So, inclusion of the guidelines in
8 this LCP is no accident, and frankly, it makes this LCP
9 somewhat unique and exceptional.
10 My second general point -- being a lawyer, I know
11 I have to address this -- concerns the Bolsa Chica decision.
12 We are certainly mindful of this Commission's concerns in the
13 wake of that decision, but I need to emphasize that it is
14 just not relevant here.
15 Bolsa Chica involved a timely, direct legal
16 challenge to a Commission decision to certify an LCP where
17 the standard of review was LCP conformity with the *Coastal*
18 *Act*, and it was in that context that the court held a
19 different provision of the guidelines to be inconsistent with
20 Section 30233.
21 In the appeal before you today, the standard of
22 review is not the *Coastal Act*. It is the certified LCP.
23 And, the key point I want to leave you with this morning on
24 this is that while ordinarily guidelines, as you know, are
25 simply mere guidance for this Commission, their inclusion in

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1 this certified LCP makes them the law and policy for the city
2 and this applicant.
3 So, there are two reasons why Bolsa Chica doesn't
4 apply. First, it involved a different standard of review,
5 whether a proposed LCP is consistent with Section 30233 of
6 the Act. Here the review standard is whether the application
7 is consistent with Section 30233, and the less than one-acre
8 exception in the guidelines, both of which are incorporated
9 in this LCP.
10 If you listened to staff, staff concentrates on
11 Section 30233. If this LCP only incorporated Section 30233,
12 I'd have to agree with you that Bolsa Chica applies. But,
13 that is not our situation.
14 Second, in contrast to Bolsa Chica, no lawsuit was
15 ever filed challenging any of the Commission's decisions to
16 certify this LCP, and there is significance to this. By law,
17 these Commission decisions, and the resulting LCP, became res
18 judicata, as was mentioned by a couple of Commissioners at
19 the outset. This is a legal principle that favors finality.
20 In other words, the LCP can't now be challenged. It can't
21 simply be ignored.
22 And, Commissioners, the interesting thing here is
23 that this is a well settled rule of law that arises from
24 cases all involving this Commission. And, it applies even
25 where there is a subsequent change in the law, such as a new

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1 case which interprets *Coastal Act* requirements.
2 I want to emphasize to you, res judicata bars
3 application of a subsequent change of the law. Perhaps the
4 best case, by way of example, is the Hamm case, cited among
5 other cases I cited to you in my April 5 letter. There the
6 Commission imposed an access condition that the Supreme Court
7 later held in Nollan was unconstitutional. The Hamm court,
8 nonetheless, held that the failure to timely challenge that
9 condition rendered the Commission's decision res judicata,
10 and immune from collateral attack.
11 My last general point concerns the staff report,
12 which I would submit to you is not entirely accurate, in
13 characterizing the less than one-acre exception. First, it
14 incorrectly states that fill may occur only as a part of a
15 larger restoration project. The guidelines don't say that.
16 The less than one-acre exception applies, by its terms, to
17 small extremely isolated wetland parcels incapable of being
18 restored to a biologically productive system.
19 And, its language, and the whole tenor of the
20 discussion, and the criteria that Mr. Zelefsky discussed with
21 you this morning, make it clear that it permits the fill of
22 the entire wetland remnant in combination with an off-site
23 restoration project in the same general region -- with that
24 in quotes.
25 Second, the staff report states that in this

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1 context a project can't be considered a restoration project
2 if its intended primary function is residential. That is
3 irrelevant. The guidelines in the LCP permit the fill of
4 this wetland for non-permitted uses without any qualification
5 at all as to what use such fill might be put to, provided
6 that the specific criteria we have reviewed with you is met.
7 And, the best evidence of that, of how the
8 guidelines are to be applied in this LCP, certified right
9 after the adoption of the guidelines, is this LCP's
10 designation of the property as residential, then laying out
11 the course for the fill of this wetland at a less than
12 one-acre exception.
13 So, for these additional reasons, we urge you to
14 conclude, as did the city, that this project complies with
15 the certified LCP, and ask you to approve it subject to the
16 city's conditions of approval.
17 Thank you.
18 Madam Chair, Mr. Steven Bone will close for the
19 applicants.
20 MR. BONE: Good morning, Madam Chair,
21 Commissioners. My name is Steve Bone. I am the president of
22 the Robert Mayer Corporation.
23 And, my remarks are brief, and without slides.
24 This comes down to a couple of words: reliance and trust.
25 The Commission grappled with this, the city grappled with

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1 this, in '81, in '82. It said the area was residential. We
2 come along years later, not to challenge the zoning, but to
3 fulfill what was already laid down in the certified LCP.
4 There were several amendments to that LCP. Several EIRs, the
5 original one, a supplemental one, an addendum, no challenge,
6 no discussion, it sat there for many years.
7 The Department of Fish and Game have looked at
8 this -- reliance. The City of Huntington Beach has looked at
9 this. State Fish and Game has looked at this -- reliance.
10 Your own biologist has looked at this -- reliance. And, the
11 city made a decision that the Coastal Development Permit was
12 correct.
13 This second word, trust. Trust the City of
14 Huntington Beach. They are a participant with you. Are they
15 one of the cities that is aberrational? do they fight you?
16 No, they don't. They are cooperative with you. They are
17 vigilant. They fought with you for the preservation of the
18 Bolsa Chica. They are trying now to add to the biological
19 diversity of the Bolsa Chica by the restoration at the
20 Shipley Nature Center. Trust them. Let their decision
21 stand.
22 CHAIR WAN: Does that complete your testimony at
23 this time?
24 Okay, can you tell me how much time is left?
25 EXECUTIVE DIRECTOR DOUGLAS: About two minutes and

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40 seconds.

CHAIR WAN: With that -- yeah, you were supposed to give them a little bit of a warning.

DEPUTY DIRECTOR LEE: We did.

EXECUTIVE DIRECTOR DOUGLAS: We did.

CHAIR WAN: You did, okay, fine.

I'll go to the members of the general public, Ralph Bauer, followed by Richard Harkin. You have two minutes each, and when I call your name, come up and be prepared, just so we can move this quickly, be prepared to speak.

MR. BAUER: I am Ralph Bauer, city council member, former mayor of the City of Huntington Beach. So much for the introduction, and that part of it. I want to let you know that I am an environmental activist. I am a charter and life member of the Amigos de Bolsa Chica, member of the Sierra Club, member of the Surfrider Foundation, member of the Bolsa Chica Land Trust, so, so much for the qualifications.

I think it is ironic that after an approved LCP that the staff of the Coastal Commission was for it, now raises all kinds of issues, which could have been raised years and years ago. We have relied on the representations of the Coastal Commission to move ahead with this project, and indeed, to enhance the wetland situation in Huntington

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1 Beach. And, ironically enough, we have now -- staff
2 recommends to turn this thing down. And, I think that is sad.
3 Interestingly enough, some of the people who may
4 testify against us also never appeared at any of the hearings
5 over the many, many years.
6 I think something else to remember, a couple of
7 additional things, number one is if, indeed, this is
8 overturned, that means that every certified LCP has potential
9 to be overturned, and I suspect that there is going to be a
10 substantial legal action in this regard.
11 In closing, I might say that I have worked on the
12 Bolsa Chica for many, many years, and to use that as a
13 criterion for opposing this project, I don't think makes a
14 lot of sense. In fact, ironically enough, if you were to
15 apply this same principle, you could not restore the Bolsa
16 Chica, because you could now not take the mitigation from
17 L.A. Long Beach Harbor and take those mitigation credits and
18 use it to restore the Bolsa Chica. Are you going to overturn
19 that? are we going to eliminate the Bolsa Chica restoration?
20 Based on this principle, that is what you say, and of course,
21 I think that is nonsense. I think the proposal of staff is
22 also inappropriate.
23 Thank you very much.
24 CHAIR WAN: I am going to go to Tom Harmon next,
25 and then Richard Harkin.

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1 MR. HARMON: Good morning, Chairman Wan. My name
2 is Tom Harmon. I am the mayor pro-tem of the City of
3 Huntington Beach.
4 Our city has worked closely with the Commission
5 staff over the past 15 years on matters related to the city's
6 LCP. The city looked long and hard to find the most
7 reasonable way in which to provide for useful productive
8 habitat for the species involved with this wetland.
9 Ultimately, the city and the developer agreed on an off-site
10 restoration project at the Shipley Nature Center, which we
11 believe is the best solution for overall environment.
12 Turning to the issue at hand, I don't believe
13 there is a question in anyone's mind that the quality of
14 habitat within this .8 of an acre wetland is severely
15 degraded. Quite frankly, the best solution is off-site
16 mitigation. It would be the most beneficial for the habitat,
17 with a net gain of nearly two acres.
18 But, just as important, as the protection of the
19 habitat, is the equally important question faced by the City
20 of Huntington Beach -- and for that matter, all coastal
21 cities -- and the question is this: can local government rely
22 on a certified LCP in making decisions about the city's
23 future growth? In this case, the City of Huntington Beach
24 carefully followed the LCP. The certified LCP authorized the
25 city to look at off-site restoration projects in exchange for

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1 the fill of the degraded wetland. This language contained in
2 the LCP set the direction for how the city was to handle this
3 important matter. The city relied on the LCP.
4 It comes down to a question of fairness, equity,
5 and reliance on past actions of this Commission. If we
6 cannot rely on the Commission's actions in certifying the
7 LCP, how can we, or any other local government, go about our
8 business of implementing a certified LCP?
9 Somewhat like Dr. Bauer, the previous speaker, I
10 also have strong environmental background and I am proud of
11 it. I am a member of the Bolsa Chica Land Trust, the Amigos
12 de Bolsa Chica, I served for two years on the SCAG energy and
13 environment committee, and I am the founder and first
14 president of Huntington Beach Tomorrow.
15 CHAIR WAN: Your time is up, so you will have to
16 wind up.
17 MR. HARMON: Thank you very much.
18 I would urge the Commission to please deny this
19 appeal.
20 Thank you.
21 CHAIR WAN: Again, I am going to call someone out
22 of order, and that is -- sorry, Mr. Harlow, I am having
23 problems here.
24 Council member Peter Green, and then Richard
25 Harlow.

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1 MR. GREEN: Good morning, Chairman Wan, and
2 members of the Commission. My name is Peter Green. I also
3 am a member of the city council of Huntington Beach. This is
4 my 14th year on that council.
5 And, during those 14 years, I have tried to become
6 involved in environmental issues. At the present time, I am
7 on the League of Cities Environmental Quality Committee,
8 Orange County Harbors and Beaches and Parks, Orange County
9 Flood Control District, and so forth.
10 In addition to that, I hold a doctoral degree in
11 ecology, and have taught for 30 years in ecology, field
12 biology, zoology, at the Golden West College. During 25 of
13 those years, I have taken students on field trips to Bolsa
14 Chica, and to Shipley Nature Center.
15 Golden West College, like other community
16 colleges, is ethnically diverse. I have had students in
17 class -- and still have students in my class -- who have
18 never used binoculars before, never tried to identify birds,
19 know nothing about plants, know nothing about the beauty of
20 the natural beauty of the State of California.
21 And, during that time, also, I have seen Ranger
22 Dave Winkler, who is here today, speak to elementary school
23 children from Westminster, Garden Grove, Santa Ana, sometimes
24 through an interpreter, as he talks about the beauties of
25 California. So, it is a very important place for educators.

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1 And, I know that it needs restoration, over these
2 years the pond has silted in, the cattails and the bulrushes
3 are becoming smaller and smaller in their area, and native
4 plants have come in.
5 There are those who say -- and your staff also
6 says -- that we can find funding from other sources. But,
7 anyone on this Commission who is in local government knows
8 that you can barely, with great difficulty, find funding for
9 art in public places, for libraries, for parks, for open
10 space, whenever there is a pothole that has not been filled.
11 So, it will be difficult to find funding elsewhere.
12 This has --
13 CHAIR WAN: You are going to --
14 MR. GREEN: -- biologically, educationally, the
15 Shipley Nature Center is an ideal place for field trips.
16 And, don't ask those of us who have taught for
17 years, and plan to teach future generations, don't ask us to
18 take a piece of chalk and a blackboard and talk about the
19 beauties of California. It can't be done. We have to have
20 places for field trips.
21 CHAIR WAN: Your time is up.
22 MR. GREEN: And, I thank you very much.
23 CHAIR WAN: Thank you.
24 Richard Harlow, followed by Adrianne Morrison.
25 MR. HARLOW: Thank you, Madam Chair, members of

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the Commission. My name is Richard Harlow. I am a long time resident of Huntington Beach, and in my former life I was also the director of planning and environmental resources, so I have been involved in land use issues within the community, since the adoption of the *Coastal Act*, including the adoption of the LCP in 1983, and subsequent amendments which addressed the issues of this property concerning off-site mitigation.

The developers worked with the city to provide off-site mitigation to develop a plan that is consistent with the LCP, and restores a wetland area in Central Park. And, I must say that if any of you have -- and I am sure you have been to both sites -- you can see the long term benefits of upgrading the property in Central Park.

This last-minute change, so to speak, to change the LCP makes it difficult for property owners to rely on the regulations of the LCP with any predictability. This is an issue of consistency, an issue of fairness, and an issue of trust, and I urge you to approve this project with the off-site mitigation, per the adopted LCP.

Thank you very much.

CHAIR WAN: Adrianne Morrison, followed by David Winkler.

MS. MORRISON: Good morning, Madam Chairman and Commissioners. My name is Adrianne Morrison. I have been involved in environmental work for over 15 years with both

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1 the Amigos de Bolsa Chica, and now as the executive director
2 of the Bolsa Chica Conservancy.
3 Last November, the board of directors of the Bolsa
4 Chica Conservancy, submitted a letter to the Commission in
5 support of the City of Huntington Beach, and the waterfront's
6 habitat enhancement plan with the Shipley Nature Center in
7 Huntington Central Park. I would like to restate just a few
8 brief points.
9 The wetlands on Beach Boulevard have no daily
10 tidal flushing. The Coastal Commission's biologist has
11 determined that it is degraded and is fragmented wetlands on
12 a portion of it. All environmental documents conclude that
13 fragmented wetlands function poorly.
14 Shipley has been decided as the most logical place
15 to be determined as for the wetlands restoration, a 2.4 acres
16 are planned to be restored at a 3.1 restoration factor, which
17 is significant. It is within a secured area where a full-
18 time ranger will be on site, and will be able to insure its
19 success. And, Mayer has agreed to fund both the implement-
20 ation and also long term maintenance and observation, to
21 assure the success of the wetlands restoration project.
22 The restoration plans to be accomplished were
23 reviewed and accepted by the Department of Fish and Game, the
24 Army Corps of Engineers, and the California Coastal
25 Commission previously, and the City of Huntington Beach.

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1 Huntington Beach has approved in concept, and would now like
2 to see this implemented.
3 In conclusion, the restoration at Shipley Nature
4 Center is scientifically beneficial because, one, it would
5 achieve viable habitat, and two, it would increase the
6 bio-diversity of the larger Bolsa Chica ecosystem. The
7 restoration at Shipley Nature Center would also increase
8 opportunities for environmental education, and for recreation
9 in our region of the Orange County area.
10 Thank you for your attention.
11 CHAIR WAN: David Winkler, followed by Robert
12 Moore.
13 MR. WINKLER: Madam Chairman, members of the
14 Commission, my name is David Winkler. I have a degree in
15 wildlife biology. I am currently the park naturalist for the
16 Shipley Nature Center, and director of the Shipley Nature
17 Center, serving in my 25th year in that position.
18 A lot of the things that I would have said to you
19 have already been admirably stated, and so I would just like
20 to point out that the great opportunity here is for the
21 education of our children and young adults in the community,
22 and the communities around the Shipley Nature Center. We are
23 very diversely attended by various groups and organizations,
24 from the regional atmosphere around the city. Frequently,
25 our presentations have to be interpreted in several different

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languages, from the schools that these kids come from.

I think this is the greatest opportunity we have ever had in this area to take private funding and make an environmental impact that will be so positive, not only for all of these that the environment will be interpreted to, but also the wildlife in the area.

I visited the said wetlands that would be filled in, and it has little to offer; whereas, the Shipley Nature Center is so environmentally diverse. It attracts 292 species of birds to the area. We also have one bird that wasn't mentioned, the least tern, which is an endangered species, feeds in the nature center pond. This would enhance that area, make more ponds available for that.

And, the opportunity to teach what is happening to the environment to all of the citizens that come here, we will impact hundreds of thousands of people with this project. Whereas, if the project was left alone it will be insignificant, and it will be separated from the existing marsh down there by a 6-lane state highway. It is a death trap to animals that want to try and get back and forth from the various projects there.

CHAIR WAN: You are running out of time.

MR. WINKLER: Thank you, that is all that I have to say.

CHAIR WAN: Thank you.

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1 Robert Moore, followed by Joe Racano.
2 MR. MOORE: Good morning, Madam Chairman, members
3 of the Commission. Robert Moore, I am a long time resident
4 of Huntington Beach.
5 I would like to point out that the Coastal
6 Commission has previously approved this project with the
7 understanding that off-site mitigation of wetland resources
8 would be funded by the developer. The .8 acre, which the
9 appellants believe should be carved out of the Commission's
10 previous project approval is not, in fact, a wetland, which
11 the *Coastal Act* has intended to encompass for preservation.
12 It is basically a remnant of a drainage runoff from a former
13 mobile home park.
14 The California Department of Fish and Game did not
15 consider this site to be significant wetlands in 1978, when
16 the wetlands area, as they say, was much less impacted from
17 runoff from Beach Boulevard and the mobile home park.
18 The .8 acre of set aside for some uncertain
19 preservation would remain a semi-private enclave surrounded
20 by private residential development. The proposed off-site
21 restoration area in the Shipley Nature Center is part of a
22 high value wetlands upland habitat enhancement program, a
23 focal point for nature study, a very popular attraction for
24 students and the general public.
25 But, perhaps most significantly decision by the

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1 Commission to require the developer and the city to set aside
2 .8 acre for uncertain future may establish a precedent that
3 will effectively end the practice of off-site mitigation in
4 the entire State of California, and the ability of private
5 and public entities to provide much needed environmental
6 benefits to high value natural resource areas.
7 CHAIR WAN: You are going to have to wind up.
8 MR. MOORE: That's it, Madam Chairman. Thank you
9 very much.
10 CHAIR WAN: That completes the testimony of those
11 who are in favor of the project.
12 Mr. Racano, you indicated that you were concerned,
13 but had no firm position, is that --
14 MR. RACANO: I have a position, yes. I am against
15 the project.
16 CHAIR WAN: Okay, then if you will sit down, I
17 will call you with those who are opposed to the project.
18 MR. RACANO: Thank you.
19 CHAIR WAN: I couldn't tell from your slip.
20 I am going to call those who are -- we have 25
21 minutes for your prepared presentation. You have five
22 speaker slips for this. How do you want --
23 Jan Vandersloot, do you want to come up first.
24 How do you want this divided? do you want to divide it up
25 yourselves, or do you want us to give you five minutes

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1 apiece? how do you want to deal with this?
2 MR. VANDERSLOOT: We'll deal with it with
3 everybody taking up the allotted time.
4 CHAIR WAN: But, you --
5 MR. VANDERSLOOT: We don't have a specific --
6 CHAIR WAN: -- number of --
7 MR. VANDERSLOOT: -- amount of time per person.
8 CHAIR WAN: So, what do you want in the way of
9 warning for any given speaker.
10 MR. VANDERSLOOT: For me, I would like to have a
11 warning at 10 minutes.
12 CHAIR WAN: So, you are going to take 10 minutes,
13 and everybody else is going to get 15, is that what has been
14 agreed to?
15 MR. VANDERSLOOT: Yes.
16 CHAIR WAN: Fine, would you --
17 MR. VANDERSLOOT: I may take less than 10 minutes.
18 CHAIR WAN: Okay, would you give them -- how about
19 we give you a warning at 8? and, then that --
20 MR. VANDERSLOOT: Okay, that would be fine.
21 CHAIR WAN: -- give you an idea.
22 Give them a warning at 8, please.
23 MR. VANDERSLOOT: Okay, my name is Jan
24 Vandersloot. I am a board member of the Bolsa Chica Land
25 Trust, and a concerned citizen, a wetlands preservation

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activist, and I have been involved with this wetland for the past year. I drive by it every day. I would like to show some slides that should help to persuade you that this is a biologically productive wetland, that is not isolated, and that it can be restored, and therefore it is totally contrary to the Local Coastal Program, and a conservation overlay, for you to allow fill on this property.

[Slide Presentation]

The first slide is a picture taken during the recent rains. I should say the rains are less than the average rainfall in this area. It shows how this wetland fills up with water, and it shows a diverse wetland with salt marsh in the front and fresh water marsh with reeds in the back. It has willow trees. It has pickleweed.

It actually is -- if you look at the third page to the back of your staff report, under Exhibit M, page 7 of 9, you will see that this wetland has more wetland species on it, namely, seven wetland species, more than any other wetland parcel in the Huntington Beach wetlands. This particular wetlands is a more diverse wetland from a plant species standpoint than any other of the 135 acres of the Huntington Beach wetlands.

Rather than this being the least biologically productive area, it is the most biologically productive area of the Huntington Beach wetlands.

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1 This picture shows the culvert at the lower left-
2 hand corner on the east side -- or the west side of Beach
3 Boulevard connecting to the culvert on the east side of Beach
4 Boulevard. There is a direct connection under Beach
5 Boulevard, connecting the two wetlands, which allows for
6 water exchange between the two sides, and, shows that -- as
7 the staff correctly points out -- this is a contiguous
8 wetland to the Huntington Beach wetlands.
9 Now, I am starting to show some of the wildlife
10 usage. You can see some of the ducks, a pair of mallard
11 ducks have been there. And, this water -- the dates on the
12 slides are on the lower right-hand corner. March 17, this
13 water has remained ever since February, and even to this day,
14 the water is still there.
15 This is March 27.
16 This is March 29, you can see the wetland greening
17 up, unlike the previous slide that showed it dried out. We
18 start seeing redwing blackbirds appearing. The redwing
19 blackbirds are foraging over the whole area, including the
20 alkaline meadow.
21 There are a flock of redwing blackbirds. There
22 are about six of them there, that we have seen at any one
23 time. They are not reported in the environmental impact
24 report, but they are there, and they have come and set up
25 shop in this wetland area to show that this area is a

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1 biologically productive wetland. It is not a wetland that
2 does not have value. In fact, you could argue that this
3 wetland doesn't need a whole lot of restoration. It already
4 is restoring itself with the recent rains.
5 The water supply is not -- the major water supply
6 is not polluted runoff from the trailer park. The trailer
7 park is no long there. This is rain water, and a high water
8 table. This wetland does not need major restoration
9 activity, and in fact, the Department of Fish and Game, in
10 your staff report has stated that only minor restoration is
11 needed for this parcel.
12 Therefore, this parcel does not fit within the
13 less than one-acre guideline of the wetlands interpretive
14 guidelines, because number one, it is contiguous to the
15 wetland on the other side of the street, and number two, it
16 can be restored to a biologically productive wetland. In
17 fact, it already is a biologically productive wetland.
18 You cannot use the less than one-acre exception
19 because this parcel doesn't apply. It is not isolated -- it
20 is not severely isolated. And, it already shows biological
21 productivity that does not need major restoration. So, the
22 wetlands interpretive guidelines in the LCP should lead you
23 to preserve this wetland, and not get rid of it.
24 This is just a couple of days ago, on March 5,
25 again showing how the willow trees are greening up with the

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1 recent rains, without any urban runoff.
2 This is April 6, and even as I speak today, this
3 wetland -- the water is there, and the birds are there.
4 So, I ask you to uphold your staff report. I
5 think your staff has done a wonderful job in analyzing the
6 Local Coastal Program, and the conservation overlay. I would
7 like to make the point that the conservation overlay, itself,
8 states that conservation easements, dedications, or other
9 similar mechanisms shall be required over all wetland areas,
10 as a condition of development, to assure permanent protec-
11 tion.
12 The conversation overlay of the downtown specific
13 plan within the LCP, requires you, requires the city to put a
14 conservation easement over all wetland areas, including this
15 wetland area, to assure permanent protection. I don't see
16 how the city can get around that language, and how they can
17 get around the language that is in the wetlands interpre-
18 tive guidelines that says restoration projects are a
19 permitted development only if they adhere to certain
20 requirements, and one of those requirements is that the
21 wetland has to be isolated, and it cannot be restored to a
22 high level of biological productivity. We have seen that it
23 already is productive biologically, and it is not isolated
24 from the wetland from across the street.
25 Therefore, I ask that you not let this wetland fly

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1 away, and that you preserve, that you uphold the appeal, and
2 that you allow this wetland to remain, simply because it
3 would be consistent with the LCP, and also consistent with
4 the downtown specific area plan, the conservation overlay,
5 for you to require that this wetland remain and be incorp-
6 orated into the project.
7 I would also ask that you make sure that you
8 require a 100-foot buffer around it, and that you -- that the
9 project be designed so that adequate water supply is main-
10 tained to the area.
11 Thank you.
12 CHAIR WAN: How much time?
13 EXECUTIVE DIRECTOR DOUGLAS: Three minutes left.
14 CHAIR WAN: Okay.
15 Marcia Hanscom, we have a total time, so how long
16 will you need?
17 MS. HANSCOM: I just need about three, maybe four
18 minutes, at the most.
19 CHAIR WAN: Okay, then why don't you give her four
20 minutes, and at the end you'll tell me how much time is left
21 over, okay? Give her four minutes.
22 MS. HANSCOM: Honorable Commissioners, and staff,
23 my name is Marcia Hanscom. I am executive director of the
24 Wetlands Action Network, and I am also a former resident of
25 Huntington Beach, and Huntington Beach is where I learned to

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1 love wetlands, and had my eyes really opened to what majesty
2 there is. We concur completely with the staff on their
3 recommendations, and urge you to vote accordingly.
4 This area was once all historical wetlands, and
5 the policy in the federal government, and this state govern-
6 ment, currently, is to try and recover wetlands. We are
7 losing an opportunity here to recover former historical
8 wetlands, if we go ahead and approve this project.
9 We could actually expand on wetlands, and that is
10 what we are supposed to be doing. The President's federal
11 clean water action plan says we should be bringing back
12 100,000 acres of wetlands each year in this country. How are
13 we going to do that, if we continue to pave them over? We
14 don't have enough in this state as it is. We have lost 95
15 percent of our coastal wetlands, and most of them are, yes,
16 in this degraded state.
17 But, the Bolsa Chica decision, which I would argue
18 does apply here. The Bolsa Chica decision was very clear
19 about the degraded state of wetlands not being an excuse for
20 moving, or for destroying habitat.
21 And, I mean, I think you all know, many of you are
22 attorneys, the *Public Resources Code*, the *Coastal Act*,
23 governs the LCP, so we still have a law here that has been
24 upheld, and very clearly defined by a recent court decision
25 that I think you do have to pay attention to.

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1 I think lit is also very important to note the
2 Army Corps' decision that was brought up by both the staff
3 report and the applicant. The Army Corps denied this for
4 their permit for a reason, because the Coastal Commission had
5 previously determined that the *Coastal Zone Management Act*
6 consistency was not consistent with the nationwide permits.
7 Now, the nationwide permits are changing. The
8 federal government is changing their nationwide permits in
9 June, and that is very important. That is because, finally,
10 the Army Corps of Engineers in Washington, D.C. has listened
11 to those of us in the environmental community who understand
12 these wetlands, particularly in the west, that these small
13 wetlands are still important. And, so as of June 8, if you
14 have a half-acre of wetland, or more, you now cannot be just
15 given a nationwide permit as easily as you used to get one,
16 and so that says that a wetland of this size is important.
17 And, I think that if the Army Corps of Engineers
18 is determining that, that at least the Coastal Commission
19 ought to consider that.
20 In terms of off-site mitigation, this would just
21 give such a very bad precedent, in terms of the distance that
22 this mitigation site is proposed for. It is several miles
23 from the site. And, it is also not contiguous to the Bolsa
24 Chica. At one time, yes it was, but there are all kinds of
25 homes, and a big road right in the middle, between the

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1 Shipley Nature Center and Bolsa Chica. So there are a number
2 of reasons why this off-site mitigation in that location
3 doesn't make sense. But, probably the most important reason
4 is that we need to restore as many of our historical coastal
5 wetlands as possible.
6 So, again, I urge you to vote according to the
7 staff report, and to help us begin recovering our ccastal
8 wetlands.
9 Thank you.
10 CHAIR WAN: Robert Roy Vandehoek, and how long
11 will you need?
12 MR. VANDEHOEK: In the range of about three to
13 four minutes.
14 CHAIR WAN: I'll give you four minutes.
15 MR. VANDEHOEK: Okay, good morning, Commissioners.
16 My name is Roy Vandehoek. I am a biologist for the last ten
17 years in the federal government. I have worked for both the
18 Forest Service and the BLM. I am no longer with them.
19 I have switched my career to working with nature
20 centers. I have been on Catalina Island, managing a nature
21 center. I work, currently, for the Resource Conservation
22 District of the Santa Monica Mountains, as an environmental
23 educator.
24 And, I can say specifically that -- I am thinking
25 specifically about what has been proposed at the Shipley

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1 Nature Center, which I don't think needs to be an excuse for
2 giving up on this wetland.
3 At Malibu, as an environmental educator, we take
4 our trips with kids off site, away from centers, to remote
5 location, so that you can have valued nature center,
6 environmental education opportunity by going off site to a
7 site like this.
8 So, I think you have a win - win if you have the
9 Shipley Nature Center enlarged, but if you save this to have
10 a coastal salt marsh, since the distance isn't that far, you
11 could really show the diversity to children, and adults, if
12 you have a complex of wetlands to go to. Wetlands don't
13 exist in an vacuum. Birds do fly between wetlands, for
14 example. If you just increased the acreage slightly, I think
15 you could have a program to have belding savannah sparrows
16 back in here, if you increased the amount of acreage of
17 pickleweed salt marsh.
18 I am going to wrap it up to support your staff's
19 report that this needs to be saved. In the near future, I
20 think we are seeing more dollars coming our way. We are
21 seeing the Corps of Engineers having an enlarging 1135
22 restoration fund. I would suggest that this be in a couple
23 of other spots on Beach Boulevard, you could have one or two
24 more culverts added, so that you could bring more flow of
25 water into this wetland, and then you would expand it. That

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would be a real opportunity. There is mitigation funds at the City of Los Angeles and Long Beach for purchasing wetlands in new locations. So, there are funds out here, and there is kind of a nice solution, I think, to this.

And, what is my time, Commissioner?

CHAIR WAN: Yes, thank you very much.

MR. VANDEHOEK: Okay, thank you.

CHAIR WAN: Staff, can you tell me how much time is left?

DEPUTY DIRECTOR LEE: We are about 11.5 minutes.

CHAIR WAN: Okay, the next speaker --

MR. VANDEHOEK: Thank you.

CHAIR WAN: -- is Gary Brown. Mr. Brown, how long will you need?

MR. BROWN: Just about two minutes.

CHAIR WAN: Two minutes, okay.

MR. BROWN: Madam Chairman, and members of the Commission, I appreciate the opportunity to be here, but I will keep my comments brief.

As you know, piece by piece, development by development, California has lost about 95 percent of its historical wetlands forever. We have five percent left.

There is a lot of good intentioned people here today, and there are a lot of people who care about the environment, but at this point there certainly is a

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1 difference of opinion, even as demonstrated by the slides.
2 It is hard to believe that both slides were taken of the same
3 piece of land.
4 We feel that the historical wetland is more
5 valuable restored to the citizens of this state, than the
6 proposed mitigation plan, which is located four miles inland,
7 out of the coastal zone.
8 As the slide showed, that Mr. Vandersloot showed,
9 this wetland is viable, and it can be restored as verified by
10 the Department of Fish and Game. It is not isolated, and it
11 is connected to the larger wetland across the street.
12 Now, several weeks ago, I attended a meeting, a
13 joint unveiling put on and hosted by the County of Orange,
14 the City of Costa Mesa, the City of Newport Beach, and some
15 other organizations that have been working for years develop-
16 ing a wetland park along the Santa Ana River. In their plan,
17 the plan that they are pursuing, has included in that park,
18 coming all the down PCH from the Santa Ana River, and
19 including the wetland across Beach Boulevard from this site.
20 And, so there is a plan that there could be some
21 day continuity, that this wouldn't be the little isolated
22 wetland that is being portrayed.
23 I think one of the most important significant
24 things that was said this morning, by your executive officer
25 in his report, is that there are options. The development

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can go --

CHAIR WAN: To let you know, you have used up two minutes now --

MR. BROWN: Okay.

CHAIR WAN: -- so if you want to wind up --

MR. BROWN: Just one more?

CHAIR WAN: Okay, that is fine.

MR. BROWN: There are options. The development can go forward and the wetland can be restored. It doesn't have to be either, or.

We certainly would like you to pursue that vein, and other than the short term profits, we haven't seen a good justification, actually, for the sacrifice of this wetland.

You have the staff report. You have the legal grounds to protect this, and to save this wetland. We urge you to do so.

Thank you.

CHAIR WAN: Nguyen Trung, and can you tell me how long you are planning on taking?

MS. TRUNG: No more than three minutes.

CHAIR WAN: Okay.

MS. TRUNG: Madam Chair, Commissioners, my name is Nguyen Trung. I am a resident in the neighborhood of the wetland in dispute.

First of all, I sincerely thank you for

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1 undertaking this extremely difficult task of overseeing the
2 well being of this precious coast.
3 I have forgotten most of what I have learned in
4 school along time ago, except for what I want to share with
5 you. I remember, because it intrigued me so much, in
6 embryology we learned that at the beginning of a living
7 being, be it be a frog, a chicken, a human, there is one
8 cell, a fertilized cell, a complete unit of life. It is
9 miraculous how the cell quickly divides itself, and further
10 divides and grows.
11 Then, at a certain point, this blob of amorphic
12 cells evolves to become differentiated. That was a question
13 of how each cell knows what to become? The professor
14 speculated, communication between the cells. I picture in my
15 young mind the cells talk to each other. You be the nose. I
16 be the mouth. And, I be the brain. And, I be the skin.
17 And, I be the stomach, and so on. So, they creatively grow
18 together in harmony into a beautiful organism. In adulthood,
19 the growing stops. The new cells are produced only to
20 replace worn out ones.
21 Then, in some situations, certain cells decide to
22 develop, to grow and multiply. They disregard the voices of
23 others. The cancerous condition begins. If they refuse to
24 listen, and continue to grow --
25 CHAIR WAN: So you know, your three minutes time

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is up. So, if you want to use the time, fine, but just know that the three minutes are up.

MS. TRUNG: Thank you.

They eventually die together, with the whole of the organism. The planet is a cosmic organism. Only if we listen to the needs of all its parts, and manage to solve our own needs, creatively, can we hope to long for longevity for all of us.

At this, I beg you to preserve, currently, remaining wetlands of any size, and further restore them when possible. I also present to you a petition to preserve the wetland in dispute, signed by 382 people, and countless other creatures that can't sign.

Thank you.

CHAIR WAN: Thank you.

Mr. Douglas, how much time is left, because I had a request for two other speakers to be included if there was time left.

EXECUTIVE DIRECTOR DOUGLAS: There is 5.5 minutes.

CHAIR WAN: Okay, I have two other speakers, Susan Jordan and Mark Massara. I'll give you each three minutes.

MS. JORDAN: Susan Jordan, for the League for Coastal Protection. I would like to compliment the staff on a well written and clearly reasoned staff report, detailing why it is not only inappropriate, but unnecessary, to fill

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1 this wetland.

2 How this project got this far in the approval
3 process, given the clarity of the LCP, is hard to understand.
4 The argument for the fill of this wetland seems to echo that
5 familiar refrain: it is small, it is degraded, it is
6 fillable.

7 However, if you focus on the actual language in
8 the LCP, and the guidelines, it is clear that in order to
9 fill wetlands less than one acre in size, the fill has to be
10 part of a restoration project, and then only if the wetland
11 is extremely isolated, and incapable of being restored.

12 This wetland qualifies on one count, it is less
13 than one acre. It is not isolated, being adjacent to a
14 larger wetland, and connected to it by pipes, and while it is
15 degraded, the Department of Fish and Game has concluded that
16 it is capable of restoration.

17 And, finally, the proposed fill is not part of a
18 restoration project, which is supposed to be done on the
19 site. In this case, fill is for an unspecified purpose,
20 which we know to be residential development, and the
21 restoration proposed is off site, four miles away, outside of
22 the coastal zone.

23 Finally, the parcel itself is large enough to
24 allow development without the removal of all of the on-site
25 wetlands, thus the project fails the LCP requirement of being

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the least environmentally damaging alternative.

With all due respect to the city's presentation, I would like to repeat the language that they cited, but I would like to repeat in full, not exerted with key words removed. Number 1, restoration projects, only -- that is my emphasis -- may include some fill for non-permitted uses, if the wetlands are small, extremely isolated, and incapable of being restored. Not the case here.

Number 2, the restoration for such fill must occur in the same general region. That is, quote, surrounding the same stream, lake, or estuary. The proposed restoration here is in another watershed.

Finally, if this is all not clear enough, the conservation overlay is unambiguous, and I quote, conservation easements, dedications, or other similar mechanisms, shall be required over all wetland areas as a condition of development to assure permanent protection.

We urge you to uphold the intend of the LCP, and deny the project as submitted.

Thank you.

CHAIR WAN: Mark Massara, you have three minutes.

MR. MASSARA: Thank you, Madam Chair, Commissioners, I am Mark Massara. I represent the Sierra Club Coastal Program.

We support your staff and the Army Corps of

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1 Engineers, and urge you protect the wetland and deny the
2 project. There is no doubt that public parks are a
3 compelling purpose and a much needed public recreation
4 amenity. There is also no doubt that this project must be
5 denied.
6 If a park were the true purpose of this project,
7 it could easily be built without killing the wetland. No,
8 the park is a Trojan horse filled with housing, an
9 impermissible and well established illegitimate reason to
10 kill wetlands. If anyone should know this, it should be the
11 officials in Huntington Beach, and their paid experts.
12 We are completely flabbergasted that the city
13 would spend and invest so much scarce taxpayers' dollars, in
14 a project so hopeless. Worse, the mitigation is, in our
15 opinion, an outrage. Build a nature center to teach kids
16 about the importance of wetlands destroyed to build the
17 nature center. What are we teaching these children?
18 Let the wetland be protected, and expanded. Let
19 the Commission do something for children, not to them. And,
20 let the nature center be where nature is.
21 Thank you.
22 CHAIR WAN: Leonie Herting, followed by Eileen
23 Murphy. You have two minutes.
24 MS. HERTING: I am sorry to say I am not a member
25 of any organization, because then I would have more time, but

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since I just this note about this meeting in the newspaper this morning, I didn't have much time to prepare anyways.

I am a 22-year resident of the City of Huntington Beach, and I have watched the wetlands around that area, ever since we moved there. They have been getting smaller. They have been paved over. Everything is being built on. There is not much left at all.

You were right -- oh, sorry, he's gone, the representative from the City of Huntington Beach.

The larger wetlands on the east side of Beach Boulevard is at a lower elevation than the small wetlands north -- the little one that we are talking about. But, what it does, it drains into that large wetlands. Last October, the large wetlands on the east side was totally dry, because they were grading. Within a couple of weeks, or so, all of a sudden water disappeared again. It hadn't rained. You know we had late, really late winter rains. There are so many birds on the other side, that you know, the few animals that I saw this morning, which were three mallard ducks, and by the way there is a lot of water in there right now.

The drainage from the west side of Beach Boulevard makes a big impact to the east side, also. I don't consider the east side just a salt marsh area, because there is no tidal influx. Where is the water coming from? Even in the summer, when we don't have rain, there is water. It comes

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1 through those drainage pipe. Aren't drainage pipes
2 considered wetlands, also? I think so. I don't know very
3 much about it. I just know I live there, and I see what is
4 happening.
5 And, I really hope that you keep the wetland as it
6 is, and maybe they can find a way of utilizing that area as
7 open space.
8 Thank you.
9 CHAIR WAN: Eileen Murphy, followed by Stephanie
10 Pacheco.
11 MS. MURPHY: My name is Eileen Murphy, and I am
12 speaking for the Bolsa Chica Land Trust. I want to thank
13 Commissioners Nava and Estolano, and the Commissioner staff,
14 for challenging the Mayer Trust and the City of Huntington
15 Beach to fill in a wetland and mitigate it at a site four
16 miles away.
17 The danger of this act is that if you vote to
18 allow it, you will be setting a precedent, and once you start
19 down that path, there is no turning back. This is not a
20 restoration project. Mayer and the city are asking you to
21 allow them to fill in a wetland for, quote, an unspecified
22 purpose within a residential zone, along with an off-site
23 mitigation plan, unquote, therefore it is not allowed under
24 the *Coastal Act*.
25 The *Coastal Act* also states that, quote,

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1 restoration if allowed should result in no loss of acreage or
2 wetland habitat on the site, unquote. This project
3 eliminates all wetland on the site, and therefore it is a
4 violation of Section 30411 of the *Coastal Act*.
5 We all know wetlands are the lungs of the ocean,
6 and our Huntington Beaches were closed most of last summer
7 due to pollution in the ocean. Let's not lose any more of
8 the 3 percent of our wetlands we have left. They help our
9 ocean.
10 In closing, I hope that you will look out and see
11 the tall ship and the armada of boats that are sailing around
12 in silent protest of Ducheny's Assembly Bill 2310.
13 Thank you for allowing me to speak.
14 CHAIR WAN: Stephanie Pacheco, followed by Don
15 May.
16 MS. PACHECO: Honorable Commission and staff. I
17 am Stephanie Pacheco. I am the conservation chair of the
18 Orange County group of the Sierra Club, Angeles Chapter. The
19 Sierra Club supports the appeal, and urges you to vote no to
20 this project, and no to the destruction of these wetlands, as
21 proposed by the Robert Mayer Corporation.
22 Loss of these wetlands cannot be considered the
23 least environmentally damaging alternative in this situation.
24 The mitigation proposal is not appropriate for these
25 wetlands. The project does not comply with the city's LCP,

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1 nor the conservation overlay. Additionally, these wetlands
2 are adjacent to a large salt marsh wetlands areas.
3 Again, the Orange County group of the Sierra Club
4 agrees that this is a significant issue, and urge you to vote
5 "No" for this project.
6 Thank you.
7 CHAIR WAN: Don May, followed by Joseph Pacano,
8 and please hold your applause. It just delays things.
9 MR. MAY: My name is Don May, with the California
10 Earth Corps and the Los Cerritos Wetlands Task Force.
11 You have heard an awful lot about mitigation, and
12 how good a project there is over at Shipley. We support
13 that, but there is a lot of money, there is a lot of options
14 around to do that independently. Mitigation is not what is
15 before you. What is before you is filling a wetland.
16 You have heard also a lot about reliance, reliance
17 which you should rely upon is the *Coastal Act*, and the
18 *Coastal Act* is clear. If you don't follow it, not only this
19 wetland, but wetlands up and down the coast -- like the Los
20 Cerritos wetlands -- are in jeopardy. Please place your
21 reliance in the *Coastal Act*, and follow it.
22 Finally, you have heard a lot about trust, and who
23 I urge you to trust is your staff. Your staff has done an
24 excellent job. I urge you to follow your staff.
25 Thank you very much.

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1 CHAIR WAN: Joseph Racano, followed by Stephen Reg
2 Clewley.
3 MR. RACANO: Hello Commissioners, my name is Joe
4 Racano, and I am very concerned about our loss of wetlands in
5 Southern California.
6 I have done some work up in the Pacific northwest
7 with the forests, and I have worked in Florida trying to get
8 the low-light turtle law passed, which we did, the turtle-
9 excluded devices passed, which we did, which was overturned
10 by the World Trade Organization, as you know. I have worked
11 with the Lindsay Museum in Walnut Creek, and I have worked
12 with care and rehabilitation of wildlife, in Sanibel,
13 Florida.
14 I am here to tell you that when there is a wetland
15 there is a reason for it, or it wouldn't have been there in
16 the first place. These are lungs. And, interestingly
17 enough, there is a place that is a very important place, and
18 this place is where the water meets the land. It is
19 different from every other place on earth, because this is
20 where life begins.
21 Where water meets the land, you have plants that
22 grow there, and they have little organisms that are eaten by
23 bigger organisms, and so on and so forth. It couldn't be
24 more important. The Coastal Commission's job couldn't be
25 more important. There is no job more important than yours.

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1 Never mind the Shipley Center for education, never
2 mind the Bolsa Chica Conservancy for education, the true
3 education is done when we lead by example, and here is the
4 Coastal Commission's chance to lead by example, to teach the
5 children. Things that you do now will have ramifications for
6 people who aren't even born yet.
7 I am 44 years old. There are kids right now 5
8 years old. I want to know what the world is going to be like
9 for them, when they see 44.
10 Thank you.
11 CHAIR WAN: Stephen Reg Clewley, followed by Rudy
12 Vietmeier.
13 MR. CLEWLEY: I am Reg Clewley. I have read the
14 staff report. I congratulate them on some excellent work
15 here. I support their recommendation, and I urge you to do
16 the right thing, and to deny this project, sustain the appeal
17 of the Commissioners.
18 Rely on the City of Huntington Beach is reliance
19 misplaced. You can rely on these beach cities where there
20 are wetlands available, that want to destroy them, and place
21 mitigation. They want to mitigate them out of existence.
22 You are not going to be gaining anything by taking all of the
23 wetlands and placing them in a wetlands museum. There won't
24 be any, because as you corner them, it is a strategy that
25 military people use. They isolate the enemy, and in this

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case the developer's enemy is the wetland, and by isolating them in the Shipley Nature Center, they will able to go along one day and destroy those, too. Push them all together, limit their existence.

Well, there wasn't any birds. They couldn't make it there anymore, because these smaller wetlands were all gone. We destroyed them. And, how did they get destroyed? They were destroyed by these same people who are urging you to destroy more today.

"Why, look at them, they are degraded," as they stand and throw paper cups and beer bottles into them.

CHAIR WAN: You are going to have to wind up.

MR. CLEWLEY: Why can't they just -- if they want the wetlands restored, if they really wanted it, come on and do like I do, pull some money out of your own pocket, and just do it because it is right.

CHAIR WAN: Rudy Vietmeier, you have two minutes.

MR. VIETMEIER: Good morning, Commissioners. I am Rudy Vietmeier, a member of the Sierra Club.

And, I would urge you to accept the staff's recommendation. The Sierra Club has a very simple policy on wetlands. They should be preserved. They should not be traded for something else. We have other things we can trade. We only have 5 percent of our wetlands left.

I think the public sentiment has demonstrated a

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willingness to pay for environmental recreation. We have just passed Proposition 12 to provide the funds to acquire wild lands, and I think the Shipley Nature Center is a project that we applaud the effort that was done, and we would like to see that move forward, but we think it could be done by some other means. And, it should not be done by trading wetlands.

Thank you very much.

CHAIR WAN: I think that finishes all of the speaker slips on this item.

Okay -- I don't have a speaker slip for you, but -- okay.

MR. KORTHOF: Doug Korthof, from Seal Beach.

I wanted to bring back your attention to a little wetlands that got filled in Long Beach, called the Sellic wetlands.

CHAIR WAN: You have two minutes.

MR. KORTHOF: Yes, thank you, Madam Chairman.

The Sellic wetlands, where somebody came and testified from Cal State Fullerton that there is absolutely no wetlands on this property, and it is okay to build a strip mall shopping center called Marina Shores. Well, yesterday, I saw a great blue heron nesting on the water which has accumulated in that area -- no wetlands at all, but a great blue heron is there.

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Any time you fill a wetlands, you are going to have the loss of wetlands, and under the protections of the *Coastal Act*, as good as it has been, or as bad as it has been, we have still lost more of our wetlands. We keep doing these socalled mitigation projects. Every time there is a mitigation, there is a net loss.

I was going to propose the developers would really like it is if we would have one acre that if you needed 700 acres of mitigation credit, they could just mitigate this one acre 700 times, and not have to worry about blocking their projects. And, then somebody else needed 400, they could just mitigate the same one acre 400 more times. Moving wetlands just doesn't work.

Thank you very much. Please support the staff recommendation, not to fill this wetlands.

CHAIR WAN: Dave Mann, and that is the last speaker slip. You have two minutes.

MS. MANN: Yes, hi there. My name is Diana Mann, and I represent many organizations, wetlands organization, and we are having a press conference about 12:30 on the stern, on the promenade deck of the Queen Mary, and we are going to hear some speakers from wetland organizations all up and down the coast, to talk about wetlands and the importance of wetlands, and the importance of the responsibility of the Coastal Commission, and the support of the community.

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1 Please, everyone in the room, join us. Thank you,
2 very much.
3 CHAIR WAN: With that, that ends the public
4 comment.
5 The city has 2.5 minutes for rebuttal, so would
6 you give him his 2.5 minutes, please.
7 MR. KAUFMANN: Thank you, Steven Kaufmann for the
8 co-applicant Robert Mayer. I'll make two points, and then I
9 will turn it over to Mr. Leipzig.
10 Staff made the point that you have to deal with
11 the facts on the ground when this comes before you. I think
12 it is pretty clear at this point that this is not a new
13 wetland. This was known at the time the LCP was certified.
14 It was addressed, and it was planned for in the certified
15 LCP.
16 Staff also referenced balancing. Again, I think
17 you understand that there is really no need to balance here,
18 to look for policy conflicts. This application is governed
19 by the certified LCP, that is the standard of review.
20 [Slide Presentation]
21 MR. LEIPZIG: Commissioners, I would like to draw
22 your attention to the aerials of both sites, one last time.
23 The first one is the Shipley site. And, if I can
24 pull this mike out, I will just use this aerial to
25 demonstrate that, in fact, the Shipley Nature Center is, in

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fact, part of a continuous strip of open space that includes all of Huntington Central Park, and runs right down directly into the Bolsa Chica wetlands.

The other graphic aerial that I would like to show you is an aerial of the project site on Beach Boulevard. There are wetlands, 110-acres or so of wetlands from Beach Boulevard to the east. This little site, the .6 acres is on the other side of Beach Boulevard, a major arterial highway, just a little fingernail of what was at one time a very valuable site.

Today, however, this site supports redwing black-birds. I am talking about endangered species at the Shipley Nature Center. There is simply no comparison in the habitat value of the two sites under discussion.

I will close. Thank you very much, ladies and gentlemen.

CHAIR WAN: Thank you.

With that, I will close the public hearing, and return to staff.

DEPUTY DIRECTOR LEE: Thank you, Madam Chair.

I think one of the concerns that we certainly have, and that you heard indicated, goes to the heart of the local planning efforts and the integrity of that process, as well as -- as Mr. Zelefsky indicated -- a 10-year history on this site.

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However, I think what staff is trying to indicate is that we must look at those details, that history, in light of the current law, and, in light of the current interpretation of the law, and the facts that are on the ground. I believe Mr. Douglas will be addressing that aspect a little bit more.

I am going to turn more to the question of the guidelines that have specifically been adopted into the LCP, and thus we agree have become binding. We do not concur that all of the criteria cited in the city's policies have been met, with regard to allowable filling of wetlands that are less than one acre. Specifically, with regard to the first criteria, it talks about wetlands being filled that are so small that they are incapable of recovering, or maintaining productivity without major restoration efforts.

The California Department of Fish and Game's study confirmed that the subject wetlands could be feasibly restored, and specifically, as cited on page 27 of your staff report, their findings conclude with the statement: 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.

With regard to the second criteria, it states that the wetland must not provide significant habitat value to

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1 wetland fish, and wildlife species, and must not be used by
2 any species which are rare and endangered. There are two
3 clauses in the statement. We think that this area clearly
4 provides habitat value both in terms of the wetland
5 vegetation, and its use by known wetland bird species.
6 Given the dramatic loss of wetlands, staff is
7 recommending that the Commission find such habitat areas,
8 especially those that are capable of restoration, be deemed
9 to provide significant value.
10 Again, with regard to the third criteria, it talks
11 about allowing restoration of another wetland to mitigate for
12 fill, that it can be achieved in conjunction with filling of
13 a small wetland.
14 Looking at the merits of the off-site mitigation
15 program, and the habitat restoration efforts being conducted
16 at the Shipley Nature Center, while we have some concerns and
17 questions about the actual details of the mitigation
18 proposal, we have no disagreement with the merits of
19 enhancing the Shipley Nature Center efforts.
20 However, you again don't get to the question of
21 mitigation when you don't have an allowable project, and the
22 restoration is not needed in order to protect -- the
23 restoration activity is not supported only by elimination of
24 the wetlands on this site. The restoration activities at the
25 Shipley Nature Center could proceed on their own merit, in

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1 the absence of this project.

2 And, then the fourth criteria, again, restoration

3 is not, we believe, occurring in the same general region. As

4 provided in the city's own language, the general region is

5 defined as within the same general area, surrounding the same

6 stream, lake or estuary where the fill occurred.

7 So, therefore, with regard to the statements by

8 Mr. Kaufmann, staff does not believe the proposal is

9 consistent with the city's LCP, either with regard to its

10 direct inclusion of Section 30233 of the *Act*, and that it

11 eliminates all wetland habitat for an unpermitted fill, or

12 with the Commission's guidelines, which have been

13 incorporated into the LCP, as I have just noted above.

14 In addition, the site is designated for

15 residential, but with a conservation overlay, and that

16 conservation overlay specifically requires -- as some of the

17 commenters noted -- that an easement is required to

18 permanently protect any such wetlands.

19 Looking at the merits, staff believes that the on-

20 site wetlands do provide habitat value, they do lie adjacent

21 to a larger wetland complex across the road, directly east,

22 and the habitat on site is characterized as viable and

23 functioning, even in the city's record.

24 In addition, recent information, and ongoing

25 ground water monitoring suggests that on-site ground water

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1 sources may be serving this area beyond urban runoff. There
2 clearly can be a reasonable use of the 5-acre parcel, even
3 retaining the wetlands on site. And, in this regard, staff
4 believes this action poses a serious precedent for Commission
5 consideration.
6 Characterization of a degraded nature apply to
7 virtually all of our wetland systems, both large and small.
8 All of these habitats are struggling to be preserved at all,
9 or to be protected from impacts of encroaching, or increased
10 urbanization.
11 Given the historic loss of wetlands, staff
12 recommends that you reinforce and uphold the city's LCP, and
13 preserve these wetland resources.
14 EXECUTIVE DIRECTOR DOUGLAS: A couple of
15 additional observations.
16 One is to underscore again that the issue here is
17 not one of whether or not we trust the City of Huntington
18 Beach. Trust is not an issue relevant to these delibera-
19 tions. We have a good relationship with the city, and
20 certainly none of our recommendations are based on any
21 implication of lack of trust. That is simply not the issue.
22 The issue is the application of the law, as it exists today.
23 There was a question raised about can local
24 governments, and property owners, and I might add the public,
25 rely on previously certified LCPs. The answer is yes, but.

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1 We live in a dynamic society that is characterized by change,
2 change both in our laws, our institutions, and in the facts
3 and circumstances that govern the decisions that we have to
4 make about conserving and using natural resources.
5 There are changes in law, and fact, that in fact
6 have significant implications for LCPs that have been
7 previously certified, and for Commission decisions. If you
8 look at the Nollan decision alone, there was a time when the
9 Commission and local government expected public access
10 easements to be attached to just about every project on the
11 shore front. Now, 9.9 cases out of 10, you no longer do
12 that, neither does local government, because the law changed,
13 in terms of what you can do, in terms of legal land use
14 practices.
15 The same with outdated LCPs. The Commission
16 grapples with this all of the time, as you look at LCPs that
17 no longer reflect circumstances on the ground, facts on the
18 ground, as well as current existing law. It is the law that
19 is applicable today. That is the application of current law,
20 and facts, as they exist today on the ground.
21 To suggest that once an LCP is certified, it rules
22 in all subsequent applications, irrespective of court
23 rulings, court decisions, or changed circumstances on the
24 ground, is simply not an accurate statement of the law.
25 And to respond to some of those legal points that

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1 were made, I would like to turn it over to Jamee Patterson.
2 DEPUTY ATTORNEY GENERAL PATTERSON: Yes,
3 Commissioners, all of the cases cited by the applicants here,
4 involving Coastal Commission decisions regarding res
5 judicata, were Commission decisions on permits, and that is a
6 situation that is substantially different from what you find
7 yourself in here, today.
8 With regards to a challenge to a permit, a failure
9 to challenge a condition on a permit, or a decision on a
10 permit, and acceptance of the benefits of the permits,
11 precludes a later challenge to that permit, or its condi-
12 tions. That is a given. But, that is a different situation
13 than we have here. That is not a situation involving an LCP.
14 There are two kinds of challenges to an LCP.
15 There is a facial challenge. That is a challenge that is
16 brought within 60 days of the final decision by this
17 Commission approving it, such as the Mendocino case involving
18 the pygmy forest in Mendocino County.
19 Then, there is a challenge to an as-applied
20 decision, and that is a challenge to an application of the
21 LCP to a particular project. An example of that would be the
22 West Village project down in San Diego, with regard to the
23 City of Encinitas' LCP.
24 I would like to give you an example as to why the
25 res judicata analysis doesn't apply here. If we reversed the

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1 situation, and if we were to say that an LCP precluded a
2 project, which the *Coastal Act* might otherwise allow, and a
3 property owner applied for that particular allowed use, but
4 had not challenged the LCP when it was certified, would that
5 property owner seriously agree that they were precluded from
6 now challenging the application of the LCP to their
7 particular project, when the project might otherwise be
8 allowed under the *Coastal Act*? I think not.
9 I think that is why it is important to recognize
10 that there is a difference between a challenge to a permit
11 decision, where the permit has been accepted, the benefits
12 have been realized, and a subsequent challenge is no longer
13 timely, and is barred by res judicata in a situation like
14 this involving an LCP.
15 Thank you.
16 CHAIR WAN: Does that conclude the staff's
17 presentation?
18 Okay, we are going to take a 5-minute bio-break,
19 and then I will open this up for discussion by the
20 Commission.
21 [Recess; Housekeeping Items Discussed]
22 CHAIR WAN: Do we have everybody here?
23 Okay, Commissioner Dettloff, then Commissioner
24 Orr.
25 COMMISSIONER DETTLOFF: Yes, thank you, Madam

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1 Chair. I would like to give my perspective both as a coastal
2 Commissioner, and as an elected official from the City of
3 Huntington Beach.
4 I would like to let my fellow Commissioners know
5 why the city took the steps they took, why we made a decision
6 almost ten years ago, why we think that decision was valid
7 then, and is valid today. And, the most important point is
8 we had a certified LCP. We had language in the LCP that
9 allowed us to mitigate on the site at Shipley Nature Center.
10 It was clearly spelled out, so that when the decision, which
11 was a major project, the Waterfront Hilton decision was made,
12 it was based on following exactly what our LCP allowed us to
13 do, and the language therein.
14 I think that any of the Commissioners, and
15 especially staff who have worked with the City of Huntington
16 Beach -- and I think this has been acknowledged by our staff
17 -- knows that this a city that takes its LCP very seriously.
18 We were one of the first LCPs to be certified in the State of
19 California. We continually update and revise the LCP, that
20 the revisions are now again before the State Coastal
21 Commission, and we believe that this is a document that is
22 working document. It is one that we use on a daily basis.
23 We take this document very seriously because the
24 citizens of our community demand this of us. And, I think
25 that if you look around the City of Huntington Beach -- and

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1 many of you are familiar with our city -- you know that we
2 hold habitat values at the highest level. We have 8.5 miles
3 of beaches. Half of those beaches are maintained on a daily
4 basis by the City of Huntington Beach, to serve 11 million
5 visitors a year. This is a true commitment to the environ-
6 ment.
7 We also have something that I think is very unique
8 to coastal cities, our city has saved over 2500 acres of
9 wetlands. Those wetlands have been restored, or currently
10 being restored. We take our natural resources, and our
11 habitat values very, very seriously.
12 When any issue comes before the city, and the city
13 council, and the citizens of our community, we look to our
14 certified LCP to give us direction. This is the document
15 that tells us what we can do on any parcel in the coastal
16 zone of the City of Huntington Beach.
17 So, the city, in making the decision that is now
18 so controversial, and before this Commission today, relied
19 upon its LCP. We looked at the site that is now before you
20 today, and we made certain determinations in reviewing what
21 this site had to offer. We always acknowledged that this was
22 a degraded wetlands. There was no question about that. It
23 had the characteristics of a wetland, but we determined that
24 we could get better habitat value at another location.
25 We looked at the site, and what did we see? We

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1 saw 0.8 acres, which has been further reduced, and that is
2 being supported by our own biologist for the Commission. We
3 saw a site that was degraded, acknowledged by Fish and Game,
4 acknowledged by this Commission, acknowledged to this day by
5 our biologist.
6 We looked at a site that had on one side of it a
7 mobile home park, which has now been demolished. That mobile
8 home was the source, the lifeline for this wetlands was a
9 mobile home park, and its runoffs, and then any runoff that
10 you could obtain from heavy rains of a winter, or any flows
11 that might come through residential development that would go
12 through this mobile home park. That park has now been
13 demolished, and the tenants of that park have been relocated,
14 because the developer has put up funds to relocate them to
15 other sections of our city. In fact, the city has a park for
16 this relocation effort.
17 On two sides of this site, were open fields.
18 Those fields will be developed in the future with a hotel, an
19 approved hotel site.
20 We also found that on this site, and abutting
21 directly to the site, was a 6-lane highway. This is a
22 highway that has grown over the past 10 years. We made the
23 decision 10 years ago, and for the past 10 years that highway
24 has become busier and busier, because of the population
25 growth, not only of Orange County, but Riverside County. It

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1 is 6 lanes, and it services the beaches of Newport Beach, and
2 the beaches of Huntington Beach.
3 So, we looked at the site, and we said, very
4 honestly, and looking for the direction from Fish and Game,
5 and Fish and Wildlife, what would be the best way to provide
6 good habitat value? Do you provide it on this site, where
7 you have very little chance of good restoration, simply
8 because this was once a fragment of a very large historic
9 wetlands? But, the flow from the ocean was cut off years and
10 years ago, so that you have a fragment of a wetlands, and you
11 need to provide habitat values, we understood that, and so we
12 looked at other sites.
13 And, we didn't do it in a vacuum. We didn't say
14 that Huntington Beach -- the officials in Huntington Beach,
15 nor the developer, knows what is best.
16 We said, "Let's take the advice of Fish and Game,
17 Fish and Wildlife, let's get outside biologists, who will
18 come in." And, when they came in, they selected 15 sites
19 that would be good restoration candidates.
20 And, we said, "We need a site that we can almost
21 be guaranteed that we are going to be able to create a
22 wetlands. We need to have a site that really makes sense."
23 So we went to our 300-acre Huntington Beach
24 Central Park, 300 acres of passive park land. We have a
25 couple of tot lots. We have one natural lake, and one

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1 seasonal lake, at this site. We looked at it very carefully,
2 because of its close proximity to the Bolsa Chica wetlands,
3 probably one of the most important habitat areas in southern
4 California, indeed, if not the State of California, one in
5 which has, the wetlands portion of that have been saved.
6 If you were a mallard, you could fly the distance
7 in about a minute to a half-minute. If you are a human
8 being, you can walk to that site in about 5 minutes. It is
9 almost adjacent, and at one time those lands were probably
10 all a part of this wetland area, because this is a very
11 bog-like area, with bog-like conditions, which will lend
12 itself beautifully to restoration. It is also considered the
13 best birding area, Central Park, in southern California. So,
14 with all of these elements, we felt we had found a site where
15 we could have guaranteed success.
16 We again reviewed our LCP, because that is the
17 document that we know is the reference point to any decision
18 made by a city council, or a planning commission, in
19 Huntington Beach. And, when we looked at our LCP, there was
20 language there that allowed us to do this. Not only did we
21 have a certified LCP, we have a downtown specific plan, which
22 has been under review by the Coastal Commission on at least
23 two occasions, and maybe others, that actually described what
24 we were going to do on that site.
25 So, armed with this, wanting to provide good

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1 habitat value, we determined that this would be a good site
2 for restoration, but most importantly we felt that this was
3 in the best interest of the environment, the best interest of
4 Huntington Beach, but we were following our LCP, a document
5 that everyone who comes to us for development must reference
6 to. Every person who mans the counter of our planning
7 department, references immediately to our LCP. They don't go
8 forward with any plan unless it is allowable under the LCP.
9 So, I leave my Commissioners, who I know are going
10 to have to make a very difficult decision, with only one
11 question: did the City of Huntington Beach follow its
12 certified LCP, a certified LCP which incorporates the
13 wetlands guidelines? It also incorporates our downtown
14 specific plan, which details and outlines mitigation for this
15 very specific site.
16 The city was never challenged on any of these
17 decisions. We went through the planning commission. We went
18 through the city council, and had numerous public hearings
19 where these decisions were never challenge. The language in
20 the LCP clearly allows for off- site mitigation, supported by
21 our downtown specific plan, and the wetlands guidelines.
22 And, the final question I leave with my
23 Commissioners, and it is a major question: can cities up and
24 down this coast depend on their LCPs? Or must we all -- as
25 the City of Huntington Beach does on a regular basis --

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1 review those and every time something changes, even though
2 many decision had been built on that LCP, must those then
3 changes be made and different directions taken by people who
4 have come -- and I know we tried to throw out the word trust.
5 But, the only way that a city can conduct its business is
6 through reliance upon its LCP, and trust in the decision
7 makers, that the decisions they have made will be carried
8 out.
9 So, I now turn it back to the Chair, thank you.
10 CHAIR WAN: Commissioner Orr.
11 COMMISSIONER ORR: Thank you.
12 I rarely find myself disagreeing with Commissioner
13 Dettloff, and I certainly respect all of the work that the
14 city has done, and unfortunately, I think my answers to her
15 questions, I feel, come out the opposite way that she
16 suggests. It seems to me -- I am convinced by staff that
17 this doesn't meet the LCP's standards. It is not an isolated
18 wetland. At least, it didn't appear to be to me in the
19 slides. The project is not a restoration project, in which
20 it is being done.
21 And, I really am concerned about -- I think one of
22 the speakers referred to mitigating things out of existence,
23 and unfortunately, that is happening all over the state, and
24 I think here that is what would happen to this small wetland.
25 I don't think then that we need to get to this res

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1 judicata issue, but if we did, I think that the analysis that
2 Jamee Patterson gave is convincing.
3 And I think that we are being asked,
4 unfortunately, to set a horrible precedent, which is to say
5 that an LCP, even if we got beyond my first conclusion that
6 this is not in line with the LCP, but that an LCP isn't
7 modified, it isn't of necessity modified by court decision
8 that come afterwards, by changes in the law. Peter Douglas
9 gave examples of endangered species being identified after
10 the fact, or ESHA being identified.
11 And, again, I think we are being, unfortunately,
12 invited to override the law, the current state of the law, in
13 deference to the standards of an LCP that was established
14 before those changes in the law took place.
15 Finally, I want to say that I think the Shipley
16 Nature Center is a wonderful place, but I don't see the
17 coupling between the two. I don't think that that project
18 will not proceed because of this. It may be difficult to
19 find funding, it may not, but there is in my mind no link
20 between the filling and destruction of this remnant wetland,
21 and the improvement of the wetland at Shipley.
22 So, I would -- when we get to it, I definitely
23 support the appeal.
24 CHAIR WAN: Commissioner Daniels.
25 COMMISSIONER DANIELS: Thank you.

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1 I heard and understood the environmental concerns
2 raised by many of the people supporting the staff report, and
3 certainly those are worthy concerns. But, there is also a
4 competing concern here to me, and that is whether or not
5 people, and planners, can rely on the actions of their
6 government.
7 To me, it really is a question of what is the
8 standard of review here. It seems to me that the LCP is the
9 review process, and it is something that the people have a
10 right to rely on in terms of making their planning decisions.
11 How laws are made, the process by which they are changed, the
12 process by which they become laws, are very, very important
13 principles, in terms of how we proceed as a society, and that
14 to me is of paramount concern, as well.
15 So, to me it is a question of what is going to
16 apply here, in terms of how we look at this particular
17 project. If we were looking at the certification of this LCP
18 today, would I agree that this standard that has been used in
19 the conservation overlay applies? I am not sure. I don't
20 know. But, that is not the question. The question to me is
21 whether or not that conservation overlay is now the standard
22 and the law, and it seems to me that it is, because of the
23 certification of the LCP, which took place many years ago.
24 There has been some discussion about whether or
25 not this area is restorable, some opinions, with respect to

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1 the Department of Fish and Game. Those opinions, I see, were
2 also provided before -- I think they were provided in 1983,
3 and those were provided before the downtown specific plan was
4 certified, and incorporated into the LCP, and if I have the
5 chronology right, in 1984.
6 There is also some discussion about portions of
7 the conservation overlay document, Section 4.15, that say
8 that conservation easements shall be required over all
9 wetland areas. But, that portion, it seems to me, to be
10 different from other portions of that very same paragraph,
11 which specifically states that if any wetland is determined
12 by the Department of Fish and Game to be severely degraded,
13 or -- it doesn't say, and, it says, or -- if it is less than
14 one-acre in size other restoration options may be taken.
15 I understand why the City of Huntington Beach read
16 this document the way they did, and I think it is a
17 legitimate and valid interpretation. I am inclined to
18 disagree with staff at this point, and agree with the
19 position articulated by Commissioner Dettloff.
20 I would like to hear some other discussion by my
21 fellow Commissioners on this issue.
22 CHAIR WAN: Commissioner McClain-Hill.
23 COMMISSIONER MC CLAIN-HILL: I first want to say
24 that I strongly concur with the remarks made by Commissioner
25 Daniels, and in reviewing the materials have additional

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1 concerns.

2 In looking at the booklet provided by applicant,
3 on page 6, there is a reference, a quote out of a Commis-
4 sioner document, in connection with certifying the LUP, where
5 it seems to indicate, that at least at that time, there was
6 some awareness of, and some, you know, overall buy into this
7 specific mitigation of this particular wetland.

8 And, also as I read, and this is very, very
9 confusing. I sort of understand staff's rationale. I also
10 understand why the City of Huntington Beach might have
11 believed otherwise, and frankly, it appears as if -- at least
12 at some point -- people were on the same page, because also
13 -- and staff can sort of respond to this particular point.
14 It seems there is an off-site mitigation program for this
15 site? It says it was anticipated in 1982. In 1981, there
16 were 13 candidate sites evaluated, that this program was
17 submitted to the Coastal Commission staff, and approved by
18 federal and state resource agencies.

19 It just seems to me that there is significant
20 evidence that this overall project has been working through
21 the city for some time, with our full knowledge of that.
22 And, when you read the overlay, in conjunction with our
23 restoration guidelines, it seems to me that there is
24 sufficient ambiguity in those guidelines to cause the city to
25 believe that this would, indeed, permit them to perform the

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1 kinds of restoration -- or to perform the acts that they are
2 currently performing, in the overall context of a restora-
3 tion. It only makes sense in the context of an off-site
4 restoration, and the fill of a very small wetland.
5 Given that, I am very disinclined at this late
6 date to apply a different interpretation than that which has
7 been previously applied. Although, I am, frankly, interested
8 in and believe that it is important to discuss whether or
9 not, in fact, all five criteria were met, but it seems to me
10 that that is sort where we are, with respect to the actions
11 that we can take, vis-a-vis the interpretation of this
12 particular application.
13 CHAIR WAN: Commissioner Estolano.
14 COMMISSIONER ESTOLANO: I think my fellow
15 Commissioners McClain-Hill and Daniels did an excellent job
16 analyzing how we get down to incorporating the LCP policies
17 as the standard of review.
18 Having said that, I want to zero in right where
19 Commissioner McClain-Hill left off. I actually have some
20 questions on the five criteria. I am assuming that that is
21 the criteria that we will apply, and everyone has explained
22 why that makes perfect, logical, sense, and is what we are
23 called to do today.
24 So, looking at the incorporated LCP policies, and
25 the five criteria that must be met before the small acreage

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1 exception can be granted, I have a question of staff on
2 number one. To me, this is the most troubling criteria that
3 I think, of any, is questionable, whether it is met here, and
4 I understand that we are relying on a 1982 Fish and Game
5 report, and I looked through the pages that were included,
6 but I want to hear from staff, if there is any other report,
7 other than that 1980 report, '82 report, that leads us to
8 believe that we could recover and maintain a high level of
9 biological productivity, without major restoration
10 activities?
11 And, then also, just Ms. Lee, if you comment on
12 what constitutes a major restoration activity. I am just
13 trying to get the flavor of the remainder of that Fish and
14 Game Report, of which we only have, I think, about 6 or 7
15 pages.
16 DEPUTY DIRECTOR LEE: We are not aware of any
17 other separate reports.
18 There were certainly a lot of material generated
19 by the developer's biological consultant at the local level,
20 but I don't believe there is any separate site-specific
21 report.
22 We were looking both at the previous Department of
23 Fish and Game study, to address, at least in part, the one
24 question here, with reference to major restoration
25 activities.

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1 In our minds major restoration activities
2 generally would require far more significant grading of a
3 site, dredging, or removal of materials to reopen up channels
4 through an area, addressing hydrology concerns.
5 The CDFG study indicated that only minor work
6 would be required to expand some of the areas from open water
7 to vegetated areas. Our Commission's ecologist went out and
8 looked at the site, felt that there were habitat values
9 present, and that they could be both maintained on site, with
10 little additional work, and certainly could be enhanced with
11 minor restorative activities.
12 COMMISSIONER ESTOLANO: Could we focus on that? I
13 just want to understand how that actually happens
14 practically, because I understand, from all reading all of
15 the other LSA reports, that -- and even the Fish and Game
16 report, that it was principally fed by urban runoff.
17 So, if the mobile home park has been eliminated,
18 we know that there is not any tidal flushing coming in
19 through the salt water marsh and the brackish area, and we
20 know that the rest of the area is going to be developed,
21 presumably, with urban uses, I just want to understand the
22 mechanics of actually restoring it, just really black and
23 white, if our ecologist is here, somebody could explain what
24 it would entail to bring in fresh water that would be needed
25 to restore the wetland?

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DEPUTY DIRECTOR LEE: Unfortunately, John Dixon could not attend today.

The activities, they are on two levels: one, you could simply -- the area does provide habitat, we believe, and function as it sits now. It could continue to be served by urban runoff. Some of the materials that we received late, as I indicated, also appear to indicate that there may be ground water sources that are feeding the site. Even without any additional improvements, there is the linkage to the much larger wetland complex, via the drain and pipes underneath the road. Those could certainly be looked at, in terms of either expanding the ability for water exchange there.

But with very little minor work, we have not seen information that says the habitat is not functioning, or that it could not be further enhanced and retained on site.

COMMISSIONER ESTOLANO: I have got a few more questions, if the Chair will allow me.

On the overlay zones -- I was looking at the map, and I just want to clarify what constitutes the overlay zone. It is more than just the .56 acres we are talking about -- or the .08 -- or .8 acres, right? I am looking at, I guess it is Exhibit H, page 2 of 6.

DEPUTY DIRECTOR LEE: It is the 2.9-acre portion of the 5.

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1 COMMISSIONER ESTOLANO: Is it 8.b? or is it that
2 little dotted line? that little slashed portion?
3 DEPUTY DIRECTOR LEE: It is the cross --
4 COMMISSIONER ESTOLANO: The cross-hatched?
5 DEPUTY DIRECTOR LEE: -- area.
6 COMMISSIONER ESTOLANO: That is the only portion?
7 DEPUTY DIRECTOR LEE: It is both the degraded and
8 restorable wetlands --
9 COMMISSIONER ESTOLANO: Okay.
10 DEPUTY DIRECTOR LEE: -- in that little sliver
11 that comes down, and it is --
12 COMMISSIONER ESTOLANO: Okay, so when you look at
13 the conservation overlay, and it talks regulations,
14 development shall be permitted, only pursuant to an overall
15 development plan for the entire overlay area. It is really
16 only talking about that 2.-some acres, right? the cross-
17 hatched, and dotted lines?
18 I just want to make sure that there is not a
19 larger parcel that needs to be planned in conjunction with
20 this?
21 DEPUTY DIRECTOR LEE: No, it is just the overlay
22 area.
23 COMMISSIONER ESTOLANO: Okay, and the reason I ask
24 that, fellow Commissioners, is because we have heard a lot of
25 talk about the other use that has been contemplated, which is

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1 residential.

2 But, as I read the LCP, the only thing that is

3 required is that particular cross-hatched dotted line stuff,

4 come in as an overall plan.

5 Okay, and let me just go a little bit farther,

6 then.

7 You know, I am going to reserve. I am going to

8 come back. That's it.

9 CHAIR WAN: Let me make a couple of comments.

10 First of all, I think I agree with Commissioner

11 Dettloff in the sense that this is a city that in general is

12 a very good city, and I don't want anybody to think that this

13 is -- any of the comments on any of the Commissioners' part

14 is to indicate anything other than that.

15 However, when I look at this, I have to look at

16 this in terms of did the city interpret its LCP policies

17 correctly? That is what I am looking at, and frankly that is

18 essentially all I am looking at.

19 I go to the guidelines, and I go to C, restoration

20 projects permitted in Section 30233, which is where all of

21 these five conditions are. I go to the very first sentence,

22 and it says, restoration projects, which are a permitted

23 development in Section 30233 A-7, are publicly or privately

24 financed projects, in which restoration is the sole purpose

25 of the project. And, then it goes on to talk about,

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1 restoration projects may include some fill, and then you get
2 the five conditions.
3 This, unfortunately, as I look at this, I cannot
4 see how the purpose of this is as a restoration project, and
5 unless the sole purpose of the project is restoration I can't
6 even get to these other conditions. And, if I get to those
7 other conditions, I still have some concerns.
8 But, it is very, very clear to me, that this is
9 talking about the exceptions when you are dealing with a
10 restoration project, and a restoration project is defined as
11 the sole purpose. It is not residential development with a
12 restoration component to that development.
13 If I were to get beyond that, and get to these
14 five points, I still have problems. It appears, according to
15 Fish and Game, and our own biologist, that this area may be
16 easily restorable. The Shipley Center, which is outside of
17 the coastal zone, is not in the same general region. It is
18 not truly isolated, because it is connected to the wetlands
19 on the other side of Beach Boulevard -- I think that is
20 Beach? is that Beach Boulevard?
21 And, the other thing is that the guidelines -- and
22 this is an important point, too -- guidelines that were
23 adopted talk in terms of mitigation ratios, and I think they
24 -- I don't remember what they are. Are they 2:1? or 3:1? In
25 any event, they are not the mitigation ratio that the city

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1 used. The city used, in essence, a 1:1, a 1.2:1 mitigation
2 ratio. So, in many ways, this does not comply with the
3 guidelines that were incorporated into the city's LCP, and I
4 have to go to that very LCP to make my decision about whether
5 this is consistent with it, and I cannot find that it is
6 consistent with it.
7 And, again, I'll repeat, I don't know how you even
8 get to these other issues, which are ones that we could
9 debate about, when this is not -- the sole purpose of this
10 project is not restoration.
11 Commissioner Desser.
12 COMMISSIONER DESSER: Well, Commissioner Wan did
13 most of my analysis, so let me just reiterate, that I agree
14 with that position, that it is not a restoration project, as
15 that is defined in Section 30233.
16 For those who would say, well, then 30233 doesn't
17 make any sense, because under what conditions would you ever
18 have any fill, if it wasn't in a situation such as this?
19 And, I could imagine many conditions, you might need a
20 parking lot. You might need a viewing area. The
21 restoration, itself, might necessitate some sort of sandy
22 fill, in order to restore the working of the wetland.
23 So, I don't think that this section makes no sense
24 unless it is interpreted in the way that the project
25 proponents would have us develop it.

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1 But, again, even so, even if you did reach -- even
2 if you did find that 30233 obtained clearly all five of the
3 conditions are not met, we have seen slides that show that
4 not only is it capable of recovering, it is, in fact, in the
5 process of recovery.
6 That the wetland must not provide significant
7 habitat value, again, we have seen evidence that that is not
8 so, and that I, too, want to point to the language from Fish
9 and Game. This is not a situation where it could not be
10 feasibly restored. Exhibit M, in the materials that was
11 passed out to us, page 5 of 9 -- well, starting on page 4,
12 specifically states, with regard to this acreage, however, we
13 find that it still functions as a fresh water marsh. It
14 appears that it is relatively low, wildlife uses associated
15 primarily with its small size, and its overgrown condition.
16 This wetland area could be enhanced by increasing both its
17 size, and the ratio of the open water to vegetated wetland
18 areas, we find that these restorative measures are all minor,
19 and therefore can be feasibly accomplished.
20 And, I also just want to add that in terms of
21 residential development, certainly up in northern California
22 -- but we are finding it all over the country -- there is a
23 high value in areas of socalled pocket parks, or pocket wild-
24 erness areas. And, I think that by retaining this area as a
25 wilderness area that it, in fact, would dramatically enhance

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1 the residential area that is apparently planned on the site.
2 CHAIR WAN: Commissioner Kruer.
3 COMMISSIONER KRUER: Yes, Madam Chairman.
4 I heard both sides this morning, and I thought the
5 City of Huntington Beach did a very good job in their
6 presentation in the way they see it, and the facts, and also
7 the opponents, and the way they would like to see it.
8 And, listening to all of that, there is some
9 confusing language, to me being a non-lawyer in here, in what
10 has happened. But, what isn't confusing to me, as a
11 businessman, is there certainly was the spirit by the former
12 Coastal Commission, or the Commissioners at the time, and
13 staff, obviously working with the city, and Fish and Game,
14 and U.S. Fish and Wildlife, to look like what I see happened,
15 was to make some type of tradeoff for this one acre, or less,
16 for this degraded wetland, for them to negotiate into their
17 LCP, and come up with something that they thought was a
18 tradeoff for where they could develop something in this
19 particular area.
20 I personally, if this project came up, I really
21 think today I have to follow the certified LCP. I don't
22 think I would look at this project as favorable, even with
23 this degraded wetland, if they did not have a certified LCP.
24 I think the standard of review should be the LCP, not what is
25 new on the ground -- and I don't know what that means, or

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1 some of the other things that are changing.
2 I think one of the things that really troubles me,
3 is that, as one Commissioner, people have to rely on us.
4 They have property rights. They have other things. And, if
5 we have gone down the road with the City of Huntington Beach,
6 in this particular case -- and again, the language can go
7 either way -- I think it is only fair and equitable to have
8 some type -- I fall on the side, in this particular case, of
9 the City of Huntington Beach. There has been a lot of money
10 spent. There has been a lot of reliance done. There has
11 been a lot of trust. There is a lot of things.
12 I am very saddened to sit up here, and hear people
13 play with the semantics of the words, when I think the spirit
14 of all of these agreements, as a businessman, is that there
15 were tradeoffs made so something, future development of some
16 kind could occur on this site.
17 And, I certainly have not seen, from one
18 standpoint, a degraded wetland of less than one-acre, really
19 be a viable wetland in southern California, unless it takes a
20 lot of commitment, and resources, et cetera. I don't see
21 this connected to the wetland on the six lanes dividing it,
22 across the road. I honestly don't see that.
23 I think the habitat value of what the City of
24 Huntington Beach was trying to do with the Shipley Center, et
25 cetera, is far greater than if we do something on this .8

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1 acres.

2 But, again, I fall, at this point, on the fairness
3 and equity issue, reliance issue. There has got to be
4 reliance by these cities to LCPs, and if they have -- and the
5 critical question is, did they follow the certified LCP?
6 They certainly followed the spirit of the certified LCP, and
7 in my reading of it, as a layman, they probably followed the
8 legal requirements.

9 But, I am troubled, continue to be troubled, by
10 changing the process at 11:59, when somebody has spent years
11 of coming back. Where were those red flags then, from the
12 Coastal Commission, from the Fish and Game, all of the other
13 agencies that are involved in here, where were they to say,
14 "Stop, we don't want any development here, you have got to
15 come in."

16 And, this argument of saying the LCP is too old,
17 is outdated, whose fault is that? is that we don't have
18 enough staff? enough money? Let's not use that against these
19 cities, because I don't know if we could be part of the
20 problem there of why they are not updated.

21 But, I clearly, in reading all of these documents,
22 think there is a real equity issue here, and a real reliance
23 issue, and trust, and I really think that it should fall,
24 that we should go forward with a decision, not with staff,
25 but with the City of Huntington Beach.

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1 CHAIR WAN: Commissioner Woolley.
2 COMMISSIONER WOOLLEY: Thank you, Madam Chair.
3 And, as I was at the same breakfast with
4 Commissioner Kruer, I was at that time thinking more for the
5 city. But, with the hearing, though, it is always
6 remarkable, even as a supervisor, hearings are great because
7 you really get to see the light of the day. And, I think
8 this is what happened to me today at the hearing.
9 And, in particular, with the written word, on page
10 27, I am looking at the LCP that the city had did incorporate
11 Section 30233, which does speak to the issues for me, because
12 when I look to the slides that have been presented to us, and
13 then to the Fish and Game presentation, which they had on the
14 record, as well, at the time, we find that the least damaging
15 alternative is really taking a look at this current wetland.
16 And, I think that whole record speaks for itself,
17 unfortunately, for the city, I think, in this case. I can't
18 speak as to how the city went about its business. I am not
19 sure how it ever got there without taking a look at both what
20 Fish and Game was saying, as well as what they had incorp-
21 orated already into the LCP. But, the record, to me, shows
22 today that restoring this wetland is doable, and it is the
23 only way that we can really proceed.
24 The other troubling part is that if we are to go
25 into -- which I really support what the Shipley Nature Center

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is trying to do -- if we go down that pathway, without taking a look at this one first, then when someone comes up again before us about these changes, these potential mitigation projects, we will get ourselves into an even more difficult situation.

So, I am thinking that -- and I also liked what Commissioner Desser was saying, can't we use this? can't we be able to see that this will be of a benefit to whatever is proposed on site? So, that is why I have to go with staff, at this time.

CHAIR WAN: Commissioner Potter.

[**MOTION**]

COMMISSIONER POTTER: Madam Chair, I am prepared to move this item, and recognize that there are not appropriate findings before us today, but make the motion with the intent that those findings would be brought back for adoption by those Commissioners on the prevailing side.

If I get a "second", I would just briefly speak to this.

I move that the Commission approve de novo Coastal Commission Development Permit No. A-5-HNB-99-275 for the development proposed by the applicant, recommend a "Yes" vote.

COMMISSIONER KRUER: Second.

CHAIR WAN: Moved by Commissioner Potter, seconded

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by Commissioner Dettloff.

COMMISSIONER POTTER: I make the motion, with respect to a variety of the comments that have been made before us, specifically Commissioner Daniels, and Commissioner Kruer's, and I basically get myself there by following the criteria that has to be satisfied for this exemption, the five points that were discussed previously by Commissioner Desser.

I do believe that it is a -- although it is an existing wetland -- it is less than an acre. It is not contiguous to a compatible or like-kind wetland. It is not being used specifically by rare or endangered species. The more feasible restoration project for me is the Shipley Center project, which is adjacent to a larger and more contiguous wetland, and I think the project can be carried out, and has a significant habitat value, and is simply a more feasible restoration project.

Recognizing that wetland projects have a very high rate of failure, I think that the Shipley Center brings me a level of comfort I want, as far as being sure that we will have a viable project.

CHAIR WAN: Commissioner Hart, and then Commissioner Rose.

COMMISSIONER HART: Thank you, Madam Chair.

I agree with Commissioner Potter. I think that if

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1 you look at the bigger picture, and you look at what you are
2 getting from the mitigation program, you are getting an area
3 that is protected, that is respected, that there is a
4 community member investment in maintaining. As opposed to an
5 isolated wetland that doesn't have a future, that when the
6 development that we are all recognizing is going to occur
7 around it, does occur, the runoff that would be generated
8 from that project, will be captured and protected and
9 maintained in an environmentally superior manner than
10 previously existed with the mobile home park.
11 So, a great source of the urban runoff that has
12 sustained this wetland will be gone, and we'll be left with
13 just the rainfall that lands on it, in a very seasonal
14 nature, and it won't be something that is sustainable.
15 And, I understand what Commissioner Desser was
16 talking about, about a pocket park within this development,
17 and that seems like a good idea. But, I think in the context
18 of this environment, in this situation, what you will find is
19 that, you know, people will walk their dogs in that area,
20 that it won't function as a natural wetland habitat. It will
21 be degraded by the interaction of the people in that
22 neighborhood, and I don't think that is in the long term
23 interests of this area.
24 It is much more important to protect a viable
25 wetland habitat, which is the proposal of the city, and to

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move into the Shipley Nature area, and to make the investment there, to preserve, you know, and enhance that environment, I think is a much more environmentally superior alternative.

CHAIR WAN: Commissioner Rose.

COMMISSIONER ROSE: Thank you very much.

I truly believe that on the basic issue between the staff and the City of Huntington Beach, this is a case were reasonable people may disagree, and in all good faith on all sides, and I have a lot of respect for the City of Huntington Beach.

However, I must say that accepting off-site mitigation for coastal wetlands with inland sites is not to me an acceptable tradeoff. In fact, I believe it to be an alarming precedent.

The wetlands on this area, next to the former mobile home park, have existed, and still persist today, even through very difficult circumstances, and I believe with a bit of effort, with a bit of a buffer zone, and a guaranteed adequate continued water supply through the culverts underneath the highway, I believe that this wetland can continue on in its state it is today, and in fact be improved as habitat.

In my county we have several examples of water interaction underneath Highway 101, from wetlands on both sides of the highway, and they benefit each other. They

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1 really are part of the same ecosystem, even though you may be
2 driving right down the middle of it on a highway portion that
3 has been partially filled, but not filled through the culvert
4 area.
5 So, I will be voting "No" on the motion.
6 CHAIR WAN: I am going to return to Commissioner
7 McClain-Hill, very quickly. Commissioner McClain-Hill, and
8 then Commissioner Estolano.
9 COMMISSIONER MC CLAIN-HILL: Okay, I guess, first
10 while I personally love the City of Huntington Beach, because
11 I grew up in Fountain Valley, right next door, from my
12 perspective it doesn't really matter whether they are good
13 guys or bad guys.
14 What matters is that we have -- and I think this,
15 Commissioner Wan, sort of goes to your point. I absolutely
16 appreciate your view that the guidelines incorporated into
17 the LCP essentially go to restoration projects, and so the
18 question raised was how do we get to the five factors that
19 some of us are attempting to consider, without first defining
20 this as a restoration project.
21 In my view this particular LCP, it is confusing
22 and I hope unique, in that when you go back and look at the
23 conservation overlay, when you read the regulations, it
24 essentially says that any wetland -- if any wetland is
25 determined by the Department of Fish and Game to be severely

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1 degraded, pursuant to Section 30233, and 30411 of the
2 *California Coastal Act*, or if it is less than one-acre in
3 size, other restoration options may be undertaken pursuant to
4 the Coastal Commission's statewide interpretive guidelines.
5 And, it seems to me, in that language, to essentially take a
6 wetland that is less than one-acre in size, and then tell you
7 that you can apply our statewide restoration guidelines to
8 how you dispose of that wetland. That is how I get to the
9 restoration.
10 While I agree with you that in -- sort of in a
11 vacuum, it would be very hard to get from one place to the
12 other, in this conservation overlay language, that is
13 precisely what they did, and that is my -- it is from that
14 specific provision, or device, that I get the impression that
15 this was part of the community's planning. This is what they
16 bargained for. This is what they held out for. This is what
17 they fought for in their LCP.
18 And, then when I look at the Commission's
19 comments, regarding the adoption, we seemed to recognize it
20 at that time. So, if you get from the conservation overlay,
21 which specifically says if it is less than one-acre, then go
22 to our guidelines. You go to our guidelines, and it says
23 that for small extremely isolated, et cetera, et cetera,
24 there is the exception which permits -- which permits the
25 fill with restoration off site. It is specifically

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1 permitted.

2 Once it is permitted, it then seems to me,
3 pursuant to the LCP we've then just got to determine whether
4 or not the rest of these five factors are met.

5 And, I guess in my view, number one is the
6 critical question, and as I look at it, it says -- not that
7 it can be enhanced, I mean, anything can be enhanced. The
8 criteria is, that it is not capable of recovering and
9 maintaining a high level of biological productivity without
10 major restoration activities.

11 I would simply note that the Fish and Game report
12 that we are relying on, when we talk about considering
13 factors on the ground, on the ground the wetland was larger
14 then, than it is now. So, far from being enhanced, it has
15 been further degraded. Its principle source of replenishment
16 has been removed, and if we continue to incorporate
17 Commissioner Daniels' sort of non-source, you know, sort of
18 off-source management, there isn't going to be additional
19 sources for replenishment of this wetland.

20 So, in my view, we can meet the five criteria.
21 The city did that appropriately, in applying the LCP. What
22 the city is attempting to have permitted by this Commission,
23 I mean, this project is permissible.

24 CHAIR WAN: Commissioner Estolano.

25 COMMISSIONER ESTOLANO: Commissioner McClain-Hill

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1 did a great job trying to convince me on that last point. I
2 follow her everywhere on this matter, except on number one. I
3 just don't know.
4 To me, this all rests on one thing: the first
5 criteria. The wetland to be filled is so small, e.g. less
6 that one-acre, and so isolated, i.e. not contiguous or
7 adjacent to a larger wetland, that it is not capable of
8 recovering and maintaining a high level of biological
9 productivity without major restoration activities.
10 I haven't heard anybody tell me how we take .65
11 acres and recover and maintain it at a high level of
12 biological productivity, with or without major restoration.
13 That is what I am troubled by. I am so emotionally persuaded
14 by Commissioner Desser's notions that if we could just set
15 this little parcel aside -- actually, in the context of a
16 residential development that is contemplated on the larger
17 adjoining parcel, it is wonderful. It is a wonderful thing.
18 But, that is not really the standard for me. The standard is
19 can this tiny parcel be recovered and maintained at a high
20 level of biological productivity.
21 And, I guess I would ask a birder -- actually I
22 will direct this to Commissioner Orr -- to define for me what
23 you think a high level of biological productivity is? And, I
24 have an open mind, Commissioner Orr. I just want you to
25 describe it to me.

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CHAIR WAN: Commissioner Desser.

COMMISSIONER DESSER: No, I will -- my mind is --

CHAIR WAN: Oh, okay.

COMMISSIONER ORR: Prefacing any remarks I make with the fact that I am not a biologist, you know, I am a birder.

I mean, the things that I have heard, that convince me, are one the person who pointed out the plants that are there in a variety that don't exist anywhere else. There are birds presently using this site. We have Fish and -- and it is right across the road. Birds fly. Birds don't have to come through this conduit. It is right across the road from another area.

It seems to me, that with some relatively minor, you know, removal of non-native vegetation, whatever it is, you are producing an area. And, the other problem that play out in the background in all of this is that we have lost so much of wetlands throughout the state that every little bit is critically important.

COMMISSIONER ESTOLANO: But, I would cut you off there, because I asked -- I mean, if you were somebody that I was asking a question of, that that is my standard, and I appreciate the answer.

And, I am going to turn it back over to the next person in line, Commissioner Desser.

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1 CHAIR WAN: Commissioner Desser.
2 COMMISSIONER DESSER: Just two very quick points.
3 One, in some of the discussion, this has been
4 positive as an either/or, either we save or restore the
5 Shipley Center, or we restore this area. It doesn't seem to
6 me that that is legally or logically so. Shipley has been
7 the place that has been turned to for mitigation, but in my
8 mind it ought to be a both/and situation. There is no reason
9 not to do both.
10 And, I have a high degree of respect, regard for
11 my fellow Commissioners, and I think that persuasive points
12 get made on both sides. But, at the end of the day, if the
13 law can be interpreted in either way, and perhaps it can, I
14 have a great concern for the loss of bio-diversity that is
15 happening all over southern California, and all over the
16 planet, and I don't see how then, at the end of the day, you
17 can't vote to support preservation of bio-diversity, when the
18 law, without any question as far as I am concerned, directs
19 you to do so.
20 CHAIR WAN: Commissioner Dettloff.
21 COMMISSIONER DETTLOFF: I'll ask the Chair if it
22 is appropriate, and I realize this is the applicant's
23 biologist. It happens to be, probably -- we don't have our
24 Commission biologist here -- and I spoke at great length with
25 John Dixon, but if it would be of any assistance to -- I know

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1 that some of the Commissioners are troubled by questions
2 having to do with restoration possibilities -- I would ask
3 that Dr. Victor Leipzig come forward and answer those
4 questions, if my fellow Commissioners wish to have that.
5 CHAIR WAN: No, it is up to you, if you want to
6 ask --
7 COMMISSIONER DETTLOFF: I would like to have him
8 come forward to explain, then, why this area would be either
9 impossible, or difficult to restore the characteristics of
10 it, which played into the city's decision to go off site.
11 MR. LEIPZIG: Thank you very much, Commissioner
12 Dettloff.
13 I would simply like to point out to the Commission
14 that of the site, which is approximately 2 acres that have
15 been shown on these aerial photos, we have identified the
16 amount of area that is wetlands. One thing that I failed to
17 point out to the Commission, is that the overwhelming
18 majority of the site there is non-wetlands. Wetlands
19 constitute less than .7 acres.
20 There are 1.4 acres of non-wetland area there that
21 are covered with plants like cortaderia, the darn pampus
22 grass that is such a pest, ice plant, and other non-native
23 vegetation. Those plants, for that entire 1.4 acres out of 2
24 are going to have to be removed. Why are there non-native
25 vegetation plants at those sites? Because those sites are so

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1 high in elevation relative to the sites that do contain
2 remnant pickleweed and other marsh vegetation.
3 What is going to have to happen to those sites, in
4 order to convert this project, this little parcel into a
5 restored wetland? It is going to have to be scraped. The
6 vast majority of this site would have to have its vegetation
7 removed down to the bare dirt, and a lot of the bare dirt
8 would have to be removed, in order to turn it into wetlands.
9 That, to my view, is major restoration.
10 MR. KORTHOF: May we also have --
11 CHAIR WAN: No, unless somebody has a specific
12 question --
13 MR. KORTHOF: Chairman Wan, we have another
14 biologist in the house.
15 CHAIR WAN: Excuse me.
16 MR. KORTHOF: Would you be willing to hear another
17 biologist? for our side?
18 CHAIR WAN: Do I have a question from Commissioner
19 Estolano for that biologist?
20 COMMISSIONER ESTOLANO: Yeah, I would like to ask
21 the other biologist --
22 CHAIR WAN: Then that is fine.
23 COMMISSIONER ESTOLANO: -- the same question.
24 MR. VANDEHOEK: A biologist with a bias for
25 nature.

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Willow cuttings from the existing willow trees could be planted out onto those scraped areas, and they would grow immediately. You would therefore increase from, you know, just a few willows to over an acre, into two acres, or more. Willow cuttings grow really easily.

Secondly, you have just the one opening bring water tidally under Beach Boulevard, but if you had another one right next to it, you would double the area, and that is not a major, you know, not a major project.

And, then removing the ice plant, and the arundo grass, would increase your biological productivity with more birds coming in, the great egret foraging in the upland next to it.

COMMISSIONER ESTOLANO: Could you state your name for the record, please.

MR. VANDEHOEK: It is Robert Vandehoek. I am a biologist.

COMMISSIONER ESTOLANO: Mr. Vandehoek, what would be the source of water again? It would go up? As I understand, there is a change in elevation, that the remnant wetland is a higher elevation than the salt marsh, so how would you get the water up?

MR. VANDEHOEK: No, it is with the high tides -- the elevation difference has almost no difference, so with the high tides the water does go through under Beach

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1 Boulevard.

2 CHAIR WAN: Let me add just one little comment

3 here.

4 First of all, again I go back to the LCP, because

5 that is my guidance. This really is the first -- I realize

6 there has been a long process with the city, but this really

7 is the first time it has come to the Commission.

8 And, I am going to go back to what Commissioner

9 McClain-Hill said, relative to the overlay, and as she was

10 reading it, she then said pursuant to the guidelines. The

11 overlay refers back to the Commission's interpretative

12 restoration guidelines, and again I go back to they say that

13 a restoration is the sole purpose of the project.

14 And, as far as the five issues are concerned, this

15 particular small wetlands has been maintaining itself in one

16 way or another for a long time. The fact that it only went

17 from .8 of an acre to .7 of an acre in 20 years, without any

18 maintenance indicates it is capable of maintaining itself.

19 I refer to a letter from another member of the

20 city council. I don't know what his first name is?

21 Sullivan, Dave Sullivan -- who indicates that it has had --

22 we had very little water this year, but it has water in there

23 just from the rains that are maintaining the wetland.

24 I am sure this wetland, as I have seen it

25 described, can maintain itself just the way it is, and

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1 probably only needs to have plants removed, invasive plants
2 removed, to restore a good percentage of its functioning.
3 So, I can't find that one is applicable.
4 And, again, if you go to these others, I think --
5 the other five policies -- I think Commissioner Rose made a
6 very good, and very important comment when she said that this
7 talks about restoration being, essentially, adjacent to this.
8 This, if we allow this, we are saying that you can fill
9 coastal wetlands, and mitigate for them, by the way, on
10 essentially a 1:1 ratio, which the guidelines clearly say you
11 cannot do, and that we can do it outside of the coastal zone.
12 It doesn't even have to be within our jurisdiction.
13 So, I find that aspect of it extremely troubling,
14 and I cannot support the motion.
15 COMMISSIONER ORR: Call the question.
16 COMMISSIONER POTTER: Call the question.
17 CHAIR WAN: We are going to call the question. We
18 have --
19 Commissioner Neal.
20 COMMISSIONER NEAL: Thank you, Madam Chairman.
21 I have a couple of questions that I would like to ask the
22 city, if that is permissible? is someone still here from the
23 city?
24 I would like to know how many units of housing
25 will not be built in this degraded wetlands?

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1 MR. ZELEFSKY: How many units of housing would not
2 be built?
3 COMMISSIONER NEAL: Correct, if you kept, if we
4 went with -- if the Commission went with the staff
5 recommendation, what would that do to the number of
6 residential units that would not be constructed?
7 MR. ZELEFSKY: It is about, I believe, a total of
8 about 3 to 3.5 acres, and I am not certain of the precise --
9 35? 35 units.
10 COMMISSIONER NEAL: Thirty-five units?
11 MR. ZELEFSKY: Yes.
12 COMMISSIONER NEAL: I am sure that you are aware,
13 as I am sure the audience is, that we have a severe housing
14 crisis in the State of California. We now have 15 of the 25
15 least affordable places to live in the United States, and we
16 cannot afford not to have housing.
17 So, my next question then is, when the city did
18 this planning, did you take into account both affordable
19 housing, and work force housing?
20 MR. ZELEFSKY: Yes, we did. In fact, this is part
21 of a redevelopment project area. The applicant has committed
22 to provide 15 percent of the units for affordable housing in
23 the city. The city has a very strong commitment, unlike
24 other coastal cities, to affordable housing. We have
25 complied with our housing element, and we probably exceed, or

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1 probably one of the number one cities in Orange, at least,
2 for providing affordable housing, in all ranges, not just the
3 middle range, but for low- and very low-income households.
4 COMMISSIONER NEAL: Thank you very much.
5 Thank you, Madam Chair.
6 CHAIR WAN: Thank you.
7 Mr. Douglas, and then I am going to call the roll.
8 EXECUTIVE DIRECTOR DOUGLAS: Yes, Madam Chair, if
9 the Commission is inclined to approve this, I think that you
10 ought to be thinking about what conditions you would want to
11 attach, and there are, obviously, standard conditions, and
12 then there are several special conditions that you might want
13 to consider.
14 And, one of them that I am very concerned about is
15 if this Commission does approve this, the precedent of the
16 ratio that you are talking about here is so much lower than
17 what the Commission has done, where the use is permissible.
18 You know, to go with a ratio that is less than,
19 you know, it is -- what? 1.2:1 is very significant, so I
20 think you need to consider whether you want to add a
21 condition that deals with that.
22 And then Deborah had a couple of other conditions
23 that we would suggest you consider.
24 Deborah.
25 DEPUTY DIRECTOR LEE: The work that is being done

COASTAL COMMISSION

EXHIBIT # D
PAGE 126 OF 134

1 by the city -- I will just expand on Peter's comment there.
2 If you will look on page 29, the actual wetland acreage was
3 determined to be .696 acres. At a 4:1 ratio, which the
4 Commission has typically required for fresh water, and
5 brackish marsh areas, we would be looking for new creation of
6 wetlands, at about 2.75 of an acre.
7 The mitigation proposal that is before you,
8 includes only a one-acre of new wetland, and then another
9 acre of transitional habitat, and then only enhancement of
10 1.4 acres of other existing area at the Shipley Nature
11 Center.
12 So, we would recommend that the Commission expand
13 the mitigation requirement to make it clear that it should be
14 4:1, and it should be new creation.
15 The second concern, in looking back even at the
16 city's decision, was they had a condition asking for
17 assessment of the hydrologic benefit that these wetlands
18 provide for the wetland areas across Beach Boulevard, and we
19 would recommend that the Commission retain that condition,
20 and have the developer look at a study of the relationship
21 between the on-site wetlands, and the areas east of Beach
22 Boulevard.
23 And, then finally, a third condition would be for
24 the necessary runoff and erosion control measures to be done
25 during the grading operation, if the Commission proceeds with

COASTAL COMMISSION

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the project.

CHAIR WAN: Commissioner Dettloff.

COMMISSIONER DETTLOFF: Yes, I requested of our staff, actually this morning, if they would confer with the applicant to see, knowing that the ratio was troublesome to the Commission staff, if we could find any way of enlarging upon that mitigation site.

So, I would like to ask Howard Zelefsky to come forward to see if they have made any progress.

MR. ZELEFSKY: Thank you, Commissioner Dettloff.

I did talk with the applicant this morning. In fact, I was still talking with him just now regarding additional wetlands mitigation, and they agreed they could do a mitigation of 4:1 with 2.88 acres of new created wetlands at the Shipley Nature Center. So, they would be amenable to that.

CHAIR WAN: Commissioner Potter.

COMMISSIONER POTTER: Well, I acknowledged when I made the motion that it was fairly rigid, and didn't allow even for the appropriate findings at this time.

I don't like to sit and, you know, craft something with every Commissioner adding conditions in at this time. I think it just leads for very, very difficult decisions to be interpreted by the public.

As a possibility, I would look to my fellow

COASTAL COMMISSION

EXHIBIT # D
PAGE 128 OF 134

1 Commissioners. I am willing to withdraw the previous motion,
2 and submit a motion that is specific in direction to staff,
3 to come back with conditions and findings that are addressing
4 this appropriate mitigation. I don't want to set a
5 precedent.
6 DEPUTY ATTORNEY GENERAL PATTERSON: No,
7 Commissioners, I am sorry. You can't operate in that way.
8 This Commission either has to vote a project up or
9 down, and if you approve it, it is with conditions now. You
10 cannot defer, and have staff come back with proposed
11 conditions at a later date.
12 COMMISSIONER POTTER: Because it is an appeal?
13 DEPUTY ATTORNEY GENERAL PATTERSON: Under any
14 circumstances.
15 COMMISSIONER POTTER: You can't continue a
16 project?
17 DEPUTY ATTORNEY GENERAL PATTERSON: You can only
18 continue it, but you continue --
19 COMMISSIONER POTTER: Right.
20 DEPUTY ATTORNEY GENERAL PATTERSON: -- it without
21 a vote on the merits of the project.
22 COMMISSIONER POTTER: Exactly.
23 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, If I
24 may.
25 CHAIR WAN: Yes.

COASTAL COMMISSION

EXHIBIT # D
PAGE 129 OF 135

EXECUTIVE DIRECTOR DOUGLAS: Actually, at the last meeting you did direct the staff on one matter to come back. You continued the matter before you. You directed us to prepare suggested conditions that if the Commission chose to approve the project, would address concerns that were raised, and then to bring it back to you.

We would bring it back -- and I indicated at that time -- still recommending what the staff had recommended, but we would at least have the conditions before you.

So, I think you can do that. That is different from voting on the project today, and saying coming back with conditions tomorrow.

COMMISSIONER POTTER: I appreciate that clarification.

Counsel, that was what I was attempting.

CHAIR WAN: I think we need to figure out what we are voting on here.

Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: While I generally concur that we don't want to, you know, get involved with major project condition alterations, it seems to me that the increased -- well, strike that.

I would like to make a motion, and then I will speak to my motion.

CHAIR WAN: Is this a substitute, or an amending

COASTAL COMMISSION

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motion.

COMMISSIONER MC CLAIN-HILL: I mean an amending motion, yes.

CHAIR WAN: Okay.

COMMISSIONER MC CLAIN-HILL: I would like to amend Commissioner Potter's motion to include a condition that the restoration ratio be consistent with that which the Commission has called for in the past, and that would be 4:1, if I am correct.

CHAIR WAN: And, the other conditions that staff -- additional conditions that staff recommended.

COMMISSIONER MC CLAIN-HILL: That is the only condition.

COMMISSIONER DESSER: What were the other ones?

COMMISSIONER POTTER: Did that get a "second"?

COMMISSIONER KRUER: Second.

COMMISSIONER POTTER: Okay, then I would accept that as a friendly amendment.

CHAIR WAN: Commissioner Estolano, did you want to hear the other conditions that staff recommended?

COMMISSIONER ESTOLANO: No, they are --

CHAIR WAN: No, this is incorporated into the main motion. Once you vote on it, you can't make any changes, so if you want to have anything else, this is the time that you need to listen to it.

COASTAL COMMISSION

EXHIBIT # D
PAGE 131 OF 134

1 Staff, would you go over your suggestions again.
2 DEPUTY DIRECTOR LEE: The second one was in
3 looking at the city's local decision, there was a requirement
4 that prior to the project being implemented they were asked
5 to do an analysis of how the drainage patterns, affecting
6 both the on-site wetlands and the adjacent wetland area
7 across Beach Boulevard, had to be conducted.
8 And, the sentence indicated no development grading
9 or alteration to the project site shall occur which affects
10 the wetlands or adjacent wetlands, without fully analyzing
11 the affects on the on-site wetland and the adjacent wetland.
12 There was a concern expressed by Department of
13 Fish and Game about the relationship between the on-site
14 runoff and drainage, as it affected both the on-site
15 wetlands, and underneath the road over to Beach Boulevard.
16 So, we were simply indicating that if the
17 Commission wanted to proceed, we think a similar condition
18 should be attached.
19 And, then lastly, our normal erosion and grading
20 control measures should be attached to the proposal.
21 COMMISSIONER ESTOLANO: Move we accept those.
22 COMMISSIONER MC CLAIN-HILL: Second.
23 CHAIR WAN: Commissioner Potter, do you want to
24 include that in?
25 COMMISSIONER POTTER: Yeah, I'll include those in

39672 WHISPERING WAY
OAKHURST, CA 93644

PRISCILLA PIKE
Court Reporting Services
mtnpris@sierratel.com

TELEPHONE
(559) 683-8230

1 into the main motion.
2 CHAIR WAN: And, I should note that Condition 2
3 argues for the fact that this is not an isolated wetlands.
4 Do you want to call the roll. We have a main
5 motion that incorporates the conditions, the three additional
6 conditions.
7 Would you call the roll.
8 SECRETARY GOEHLER: Commissioner Daniels?
9 COMMISSIONER DANIELS: Yes.
10 SECRETARY GOEHLER: Commissioner Desser?
11 COMMISSIONER DESSER: I must say that I find it
12 appalling that we get put to that at the 11th hour, that that
13 wasn't offered in the first place.
14 No.
15 SECRETARY GOEHLER: Commissioner Dettloff?
16 COMMISSIONER DETTLOFF: Yes.
17 SECRETARY GOEHLER: Commissioner Estolano?
18 COMMISSIONER ESTOLANO: Yes.
19 SECRETARY GOEHLER: Commissioner Hart?
20 COMMISSIONER HART: Yes.
21 SECRETARY GOEHLER: Commissioner Kruer?
22 COMMISSIONER KRUER: Yes.
23 SECRETARY GOEHLER: Commissioner McClain-Hill?
24 COMMISSIONER MC CLAIN-HILL: Yes.
25 SECRETARY GOEHLER: Commissioner Orr?

COASTAL COMMISSION

EXHIBIT # D
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COMMISSIONER ORR: No.

SECRETARY GOEHLER: Commissioner Potter?

COMMISSIONER POTTER: Aye.

SECRETARY GOEHLER: Commissioner Rose?

COMMISSIONER ROSE: No.

SECRETARY GOEHLER: Commissioner Woolley?

COMMISSIONER WOOLLEY: No.

SECRETARY GOEHLER: Chairman Wan?

CHAIR WAN: No.

SECRETARY GOEHLER: Seven, five.

CHAIR WAN: The project is approved.

EXECUTIVE DIRECTOR DOUGLAS: Madam Chair --

CHAIR WAN: That brings us to Item 7.b.

*

*

[Whereupon the hearing concluded.]

COASTAL COMMISSION

EXHIBIT # D

PAGE 134 OF 134

Long Beach

September 8, 1999

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CALIFORNIA
COASTAL COMMISSION

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

Subject: Appeal A-5-99-275

Dear Ms. Wan:

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

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

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

Very truly yours,

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

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EXHIBIT # E
PAGE 1 OF 79

City of Huntington Beach

2000 MAIN STREET CALIFORNIA 92648

OFFICE OF THE MAYOR

Telephone (714) 536-5358

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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 degrated 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 plans 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

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Bolsa Chica Conservancy

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

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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 past 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

Adrianne Morrison
Executive Director

Email
Bolsa@deltanet.com

Phone
(714) 846-1114

Fax
(714) 846-4065

3842 Warner Avenue

Huntington Beach

California 92649-4263

COASTAL COMMISSION

EXHIBIT # E
PAGE 3 OF 79

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

COASTAL COMMISSION

EXHIBIT # E

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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 Crowell

Harry C. Crowell

HCC/dks

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

CENTURY HOMES
Century Crowell Communities

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 - Pres.

John Pavelak
President

1535 South "D" Street, Suite 200 • San Bernardino, CA 92408
(909) 381-6007 • FAX (909) 381-0041

COASTAL COMMISSION

EXHIBIT # E
PAGE 6 OF 79

HUNTINGTON BEACH CHAMBER of COMMERCE

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

COASTAL COMMISSION

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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 Nauure Center restoration plan.

Thank you for the opportunity to respond.

Sincerely,

Joyce Riddell, CCE
President

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

COASTAL COMMISSION

EXHIBIT # E
PAGE 8 OF 79

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

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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.

COASTAL COMMISSION

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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

COASTAL COMMISSION

EXHIBIT # E
PAGE 10 OF 79

Tu 18a

THE ROBERT MAYER CORPORATION

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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

COASTAL COMMISSION

660 Newport Center Drive, Suite 1050
Box 8630
Newport Beach, California 92658-8680
(714) 759-8091

- 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

COASTAL COMMISSION

EXHIBIT # E
PAGE 12 OF 79

Item: 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

LSA

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COASTAL COMMISSION

November 3, 1999

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David Clore
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Richard Harlacher
Roger Harris
Art Homrighausen
Larry Kennings
Laura Lafler
Carollyn Lobell
Bill Mayer
Rob McCann
Jill O'Connor
Anthony Petros
Sarah Pracilio
Rob Schonholtz
Malcolm J. Sproul
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 Haselton
Clint Kellner
Benson Lee
Judith H. Malamut
Sabrina Nicholls
M. W. "Bill" O'Connell
Amy Skewes-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 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.

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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

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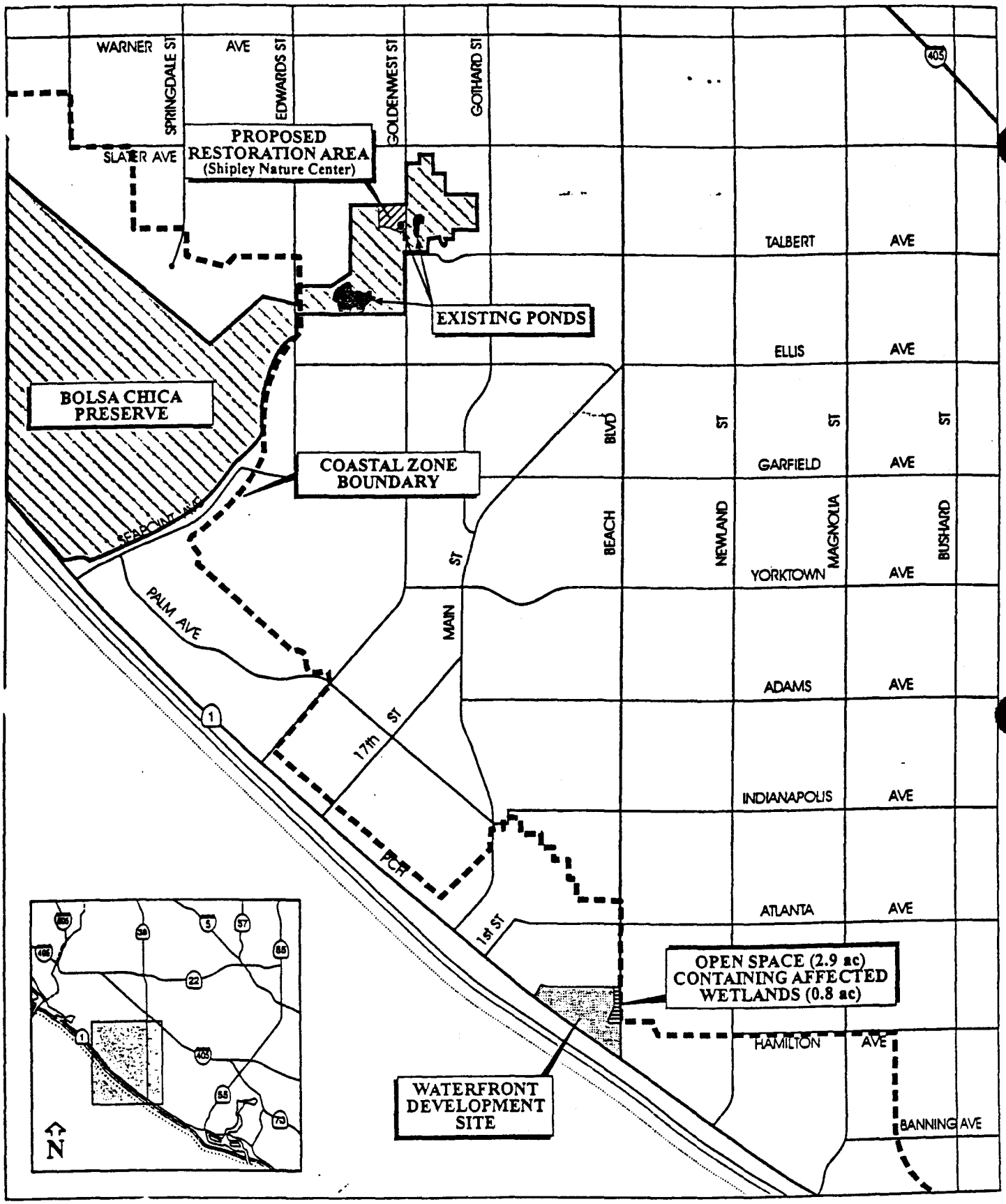

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Figure 1

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LSA

Scale in Feet
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Coastal Zone Boundary

Item: Tu 18.a

LSA

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 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.

Principals

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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

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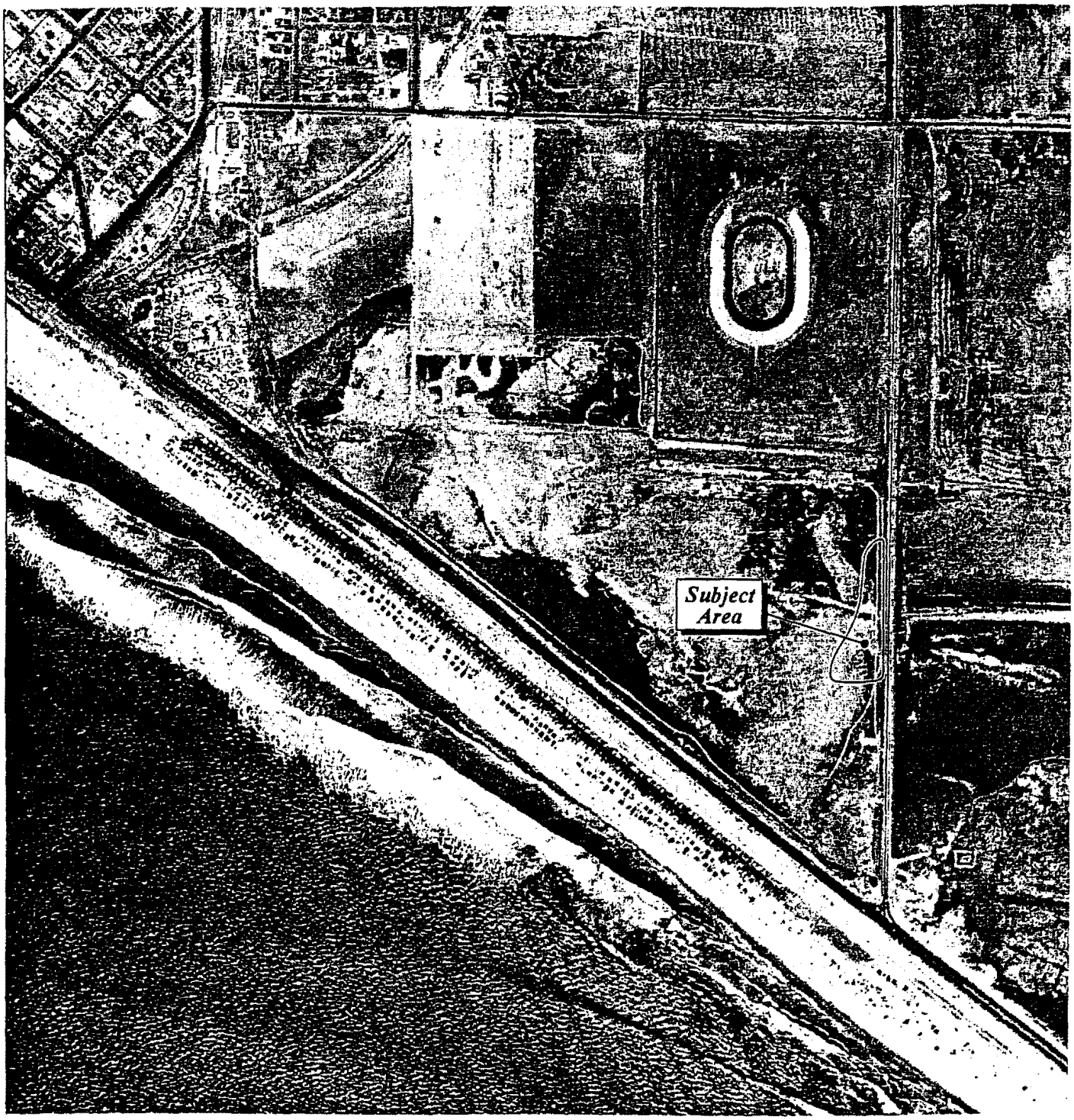

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Figure 1

N

LSA No Scale

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Aerial Photograph - 1947

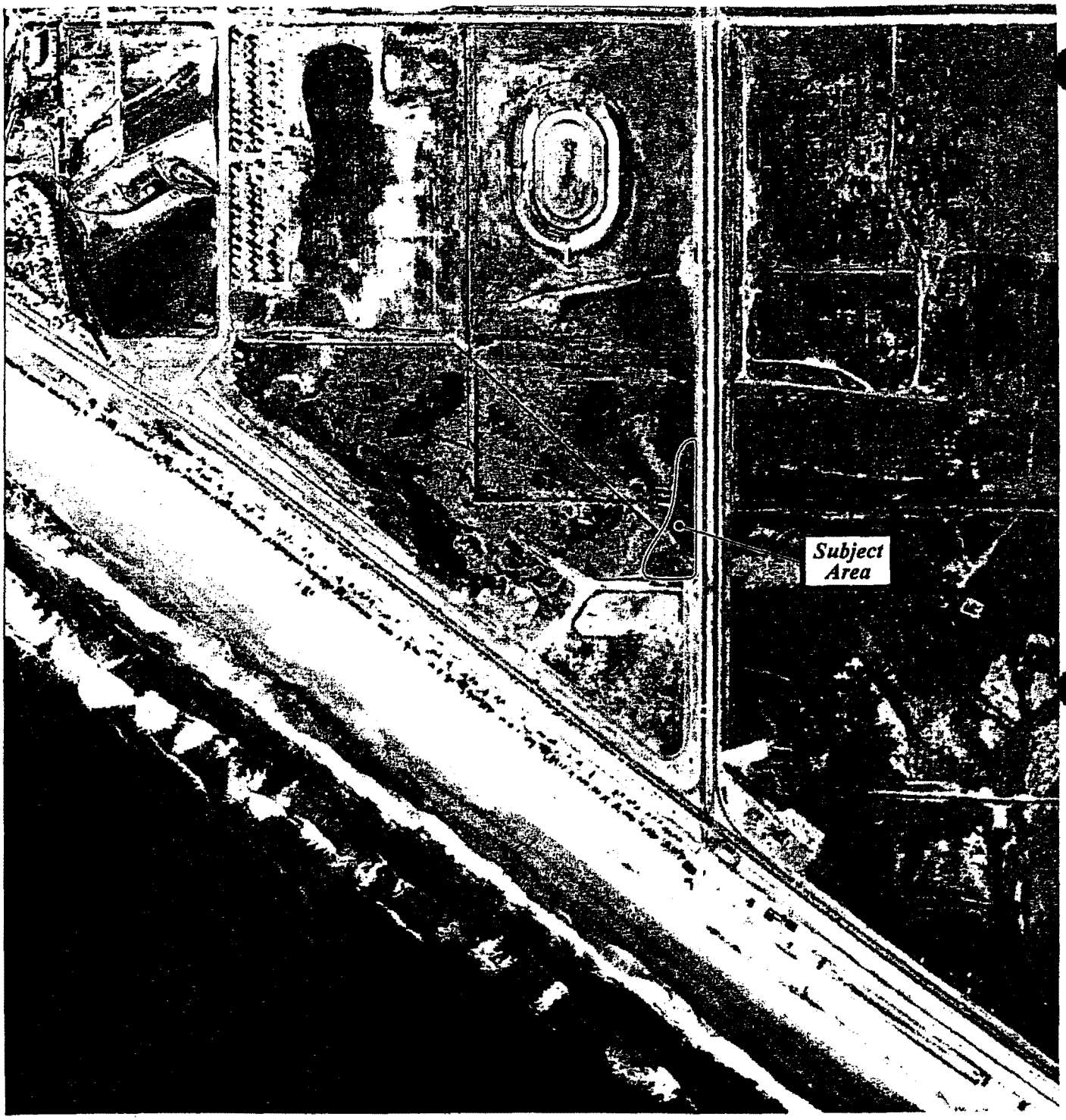

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Figure 2

N

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Aerial Photograph - 1955

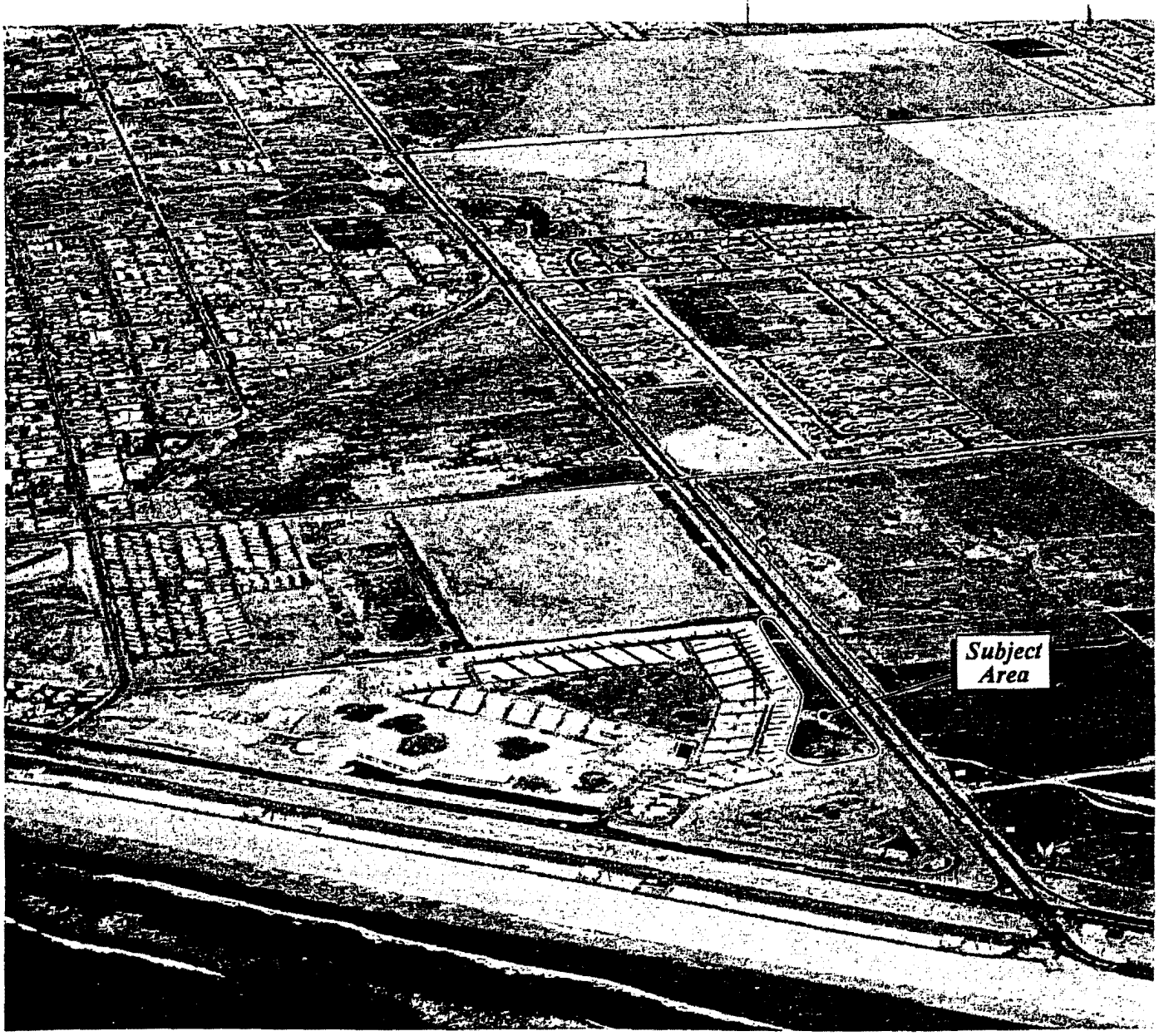

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Figure 3

N

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Aerial Photograph - 1964

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Item : Tu 18.9

November 5, 1999

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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-

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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).

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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

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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

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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.

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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

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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

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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

Art Homrighausen
Principal

TU 18a

THE ROBERT MAYER CORPORATION

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 mitigation

COASTAL COMMISSION

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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

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[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." (Ojavan Investors v. California Coastal Com. (1994) 26 Cal.App.4th 517; Patrick Media Group v. California Coastal Com. (1992) 9 Cal.App.4th 592; Rossco 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.)

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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 <u>currently</u> exists and not as it may have existed historically." (Emphasis added.)

<u>The Statewide Interpretive Guidelines Apply</u>

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

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> 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, t he 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

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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 toge ther 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.

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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

COASTAL COMMISSIO

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.

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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 preliminarily 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

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[2] Neither the Act, the regulations or the Guidelines impose or suggest any s pecific 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).)

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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

COASTAL COMMISSION

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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 IS LIFE ABUSE

February 8, 2000

RECEIVED
FEB 11 2000
CALIFORNIA
COASTAL COMMISSION

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 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

COASTAL COMMISSION

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TELEPHONE (714) 536-5553
FAX (714) 536-5233

Anjo, Japan

Waitakere, New Zealand

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/Shipley Nature Center Restoration

Dear Chairperson Wan:

I am the City of Huntington Beach's Park Naturalist at the Shipley Nature Center. The Shipley 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 Shipley 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 Shipley 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

David A Winkler
Park Naturalist

cc: Coastal Commission staff

COASTAL COMMISSIO

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City of Huntington Beach

2000 MAIN STREET CALIFORNIA 92648

Peter Green
City Council Member

DRUG USE IS LIFE ABUSE

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.

COASTAL COMMISSION

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Anjo, Japan

TELEPHONE (714) 536-5553
FAX (714) 536-5233

Warrnambool, New Zealand

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,

Dr. Peter Green
Councilman
City of Huntington Beach

cc: Staff of the Coastal Commission

COASTAL COMMISSI

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City of Huntington Beach

2000 MAIN STREET CALIFORNIA 92648

Dave Sullivan
City Council Member

DRUG USE IS LIFE ABUSE

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

COASTAL COMMISSION

EXHIBIT # E
PAGE 44 OF 79

TELEPHONE (714) 536-5553
FAX (714) 536-5233

Anjo, Japan

Waitakere, New Zealand

City of Huntington Beach

2000 MAIN STREET CALIFORNIA 92648

Pam Julien
City Council Member

DRUG USE IS LIFE ABUSE

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

Pam Julien
Councilwoman
City of Huntington Beach

cc: Coastal Commission staff

COASTAL COMMISSION

EXHIBIT # E
PAGE 45 OF 79

TELEPHONE (714) 536-5553
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Anjo, Japan

Waitakere, New Zealand

City of Huntington Beach

2000 MAIN STREET CALIFORNIA 92648

Tom Harman
Mayor Pro Tem

DRUG USE IS LIFE ABUSE

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

Tom Harman
Mayor Pro Tem
City of Huntington Beach

COASTAL COMMISSION

cc: Coastal Commission Staff

EXHIBIT # E
PAGE 46 OF 79

Anjo, Japan

TELEPHONE (714) 536-5553
FAX (714) 536-5233

Wanaka, New Zealand

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.

COASTAL COMMISSION

Anjo, Japan

TELEPHONE (714) 536-5553
FAX (714) 536-5233

EXHIBIT # E
PAGE 47 OF 79

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

Dr. Ralph Bauer
City Council Member
City of Huntington Beach

cc: Coastal Commission staff

COASTAL COMMISSION

EXHIBIT # E
PAGE 48 OF 79

RECEIVED
FEB 15 2000
CALIFORNIA
COASTAL COMMISSION

February 8, 2000

roXanne greggs Lane

RECEIVED
FEB 14 2000
CALIFORNIA
COASTAL COMMISSION

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

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 Greggs Lane

6252 surfpoint circle
huntington beach.california 92648-5590
714.536.5093 714.536.7806 fax
email: RoxHB@aol.com

COASTAL COMMISSION

EXHIBIT # E
PAGE 49 OF 79

Huntington Beach DODGE

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FEB 14 2000
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FEB 15 2000
CALIFORNIA
COASTAL COMMISSION

February 7, 2000

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

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

COASTAL COMMISSIO

16555 Beach Boulevard • Huntington Beach, California 92647-4801
Phone (714) 847-5515 or (800) 926-3634 • Fax (714) 847-2801 • E-mail hbdodge@hbdodge.com

Where the customer comes first

20852 Hunter Lane
Huntington Beach
CA, 92646

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

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

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 perodicall 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. Certinly 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..

COASTAL COMMISS

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 denegrate 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

COASTAL COMMISSION

EXHIBIT # E
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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 moblile 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 weland 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.

COASTAL COMMIS

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

COASTAL COMMISSION

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Clean Water Act is founded on a connection, or *nexus*, between the water body in question and interstate commerce. This connection may be direct, through a tributary system linking a stream channel with traditional navigable waters used in interstate or foreign commerce, or may be indirect, through a nexus identified in the Corps' regulations. The following definition of waters of the United States is taken from the discussion provided at 33 CFR 328.3:

> "The term waters of the United States means:
>
> (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce . . .;
>
> (2) All interstate waters including interstate wetlands;
>
> (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams)... the use, degradation or destruction of which could affect interstate or foreign commerce . . .;
>
> (4) All impoundments of waters otherwise defined as waters of the United States under the definition, and
>
> (5) Tributaries of waters defined in paragraphs (a) (1)-(4) of this section;".

The Corps typically regulates as *waters of the United States* any body of water displaying an *ordinary high water mark* (OHWM). Corps' jurisdiction over non-tidal waters of the United States extends laterally to the OHWM or beyond the OHWM to the limit of any adjacent wetlands, if present (33 CFR 328.4). The OHWM is defined as "that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area" (33 CFR 328.3). Jurisdiction typically extends upstream to the point where the OHWM is no longer perceptible.

The Corps and EPA define wetlands as follows:

> "Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions."

In order to be considered a *jurisdictional wetland* under Section 404, an area must possess three wetland characteristics: hydrophytic *vegetation*, hydric *soils*, and wetland *hydrology*. Each characteristic has a specific set of mandatory wetland criteria that must be satisfied in order for that particular wetland characteristic to be met. Several parameters may be analyzed to determine whether the criteria are satisfied.

COASTAL COMMISSION
348-6459
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Hi MARY — One More Definition — Jill

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,[1] (2) the substrate is predominantly undrained hydric soil,[2] 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 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

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

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

548-6353

EXHIBIT # E

PAGE 56 OF 79

THE ROBERT MAYER CORPORATION

TU 7a

RECEIVED
APR 06 2000
CALIFORNIA COASTAL COMMISSION

March 30, 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, April 11, 2000
A-5-99-275 (Mayer Trust)
AGENDA ITEM Tu 7.a

Dear Chairman Wan and Commissioners:

At the Commission's April 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

COASTAL COMMISSI

660 Newport Center Drive, Suite 1050
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(714) 759-8091

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]

We have enclosed a separate letter from our legal counsel which further explains why the Bolsa Chica decision does not apply here. With this brief history 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 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.

---

[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." (Ojavan Investors v. California Coastal Com. (1994) 26 Cal.App.4th 517; Patrick Media Group v. California Coastal Com. (1992) 9 Cal.App.4th 592; Rossco 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 [illegible]

COASTAL COMMISSION

EXHIBIT # E
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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 <u>currently</u> exists and not as it may have existed historically." (Emphasis added.)

<u>**The Statewide Interpretive Guidelines Apply**</u>

The discussion in the Staff Report regarding the Statewide Interpretive Guidelines on "Restoration Projects Permitted in Section 30233" is confusing. (See Exhibit "I" 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. <u>This limited exception to Section 30233</u> 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

COASTAL COMMISS

> 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 <u>isolated</u> 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.

<u>The City Correctly Determined That Off-Site Restoration Is The Least Environmentally Damaging Alternative</u>

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.

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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

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> 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.

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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 preliminarily 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.

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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 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.

---

[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).) etc.

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Response to Staff Note:

Finally, page 2 of the Staff Report includes a confusing Staff Note which incorrectly characterizes the application of recent changes to the regulations governing the U.S. Army Corps of Engineers' nationwide permit (NWP 26) to this project. In its Federal Register Notice (Vol. 64, No. 240, p. 69994), the Corps explains:

> "To provide an efficient transition from the NWP 26 to the new and modified NWPs that will replace NWP 26, Corp district offices will process all preconstruction notifications (PCNs) for NWP 26 activities that are submitted to Corps district offices on or before the publication date of the final new and modified NWPs in the Federal Register [actual publication date was Thursday, March 9, 2000]. For such NWP 26 PCNs, where the Corps subsequently determines that the project meets the terms and conditions of NWP 26, the verification will remain in effect until February 11, 2002."

The PCN for the Waterfront project falls in the category of projects under this "grandfather" provision that will continue to be processed under NWP 26 since it was received by the Corps prior to March 9, 2000.

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.

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Sincerely,

The Robert Mayer Corporation

Lawrence F. Brose
Vice President

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April 5, 2000

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1124745
OUR FILE NUMBER
12063-00002

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

Re: Legal Issues -- Response to Staff Report
Waterfront Wetlands Restoration Project
Tuesday, April 11, 2000
A-5-99-275 (Mayer Trust)
AGENDA ITEM 7.a

Dear Chairwoman Wan and Commissioners:

This office represents the Robert Mayer Corporation as co-applicant with the City of Huntington Beach Redevelopment Agency for the Waterfront Wetlands Restoration Project.

The applicants are certainly mindful of the Commission's concerns regarding the requirements which govern the fill of degraded wetlands following the recent Court of Appeal decision in Bolsa Chica Land Trust v. Superior Court (1999) 71 Cal.App.4th 493. We write to explain why, as a matter of law, the Bolsa Chica decision has no relevance to the specific application before you.

This wetland restoration project represents the exceptional circumstance for the Commission: a certified LCP which specifically incorporates the restoration options set forth in the Commission's "Statewide Interpretive Guidelines on for Wetlands and other Wet Environmentally Sensitive Habitat Areas." This includes the "limited exception to Section 30233" in the Guidelines for the fill of "small [less than one acre] extremely isolated wetland parcels that are incapable of being restored to biologically productive systems" if mitigated by off-site restoration "in the same general region" at a site next to a larger contiguous wetland area that provides significant habitat value to fish and wildlife.

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In contrast to Bolsa Chica, the Commission's decision to certify the City of Huntington Beach LCP was never judicially challenged. Thus, under well established principles of res judicata, the "less than one acre" exception to Section 30233 became the standard which guided the City's decision to approve this application and now governs the Commission's review on appeal.

It bears emphasis that if the City of Huntington Beach had simply incorporated Section 30233 of the Coastal Act in its certified LCP and nothing more, Bolsa Chica would indeed govern the proper interpretation of that provision in the LCP. However, that was not the circumstance in the case of this LCP. Instead, working with the Commission and Commission staff, the City incorporated both Section 30233 and the Statewide Interpretive Guidelines in its certified LCP, thus establishing a very different standard than the one reviewed by the Court in Bolsa Chica.

We also underscore that for many years now the City, its Redevelopment Agency and the developer have relied upon the Commission's certification of the LCP and faithfully honored their respective obligations under the LCP at considerable cost and effort. The legal principle of equitable estoppel therefore equally precludes a departure at this point from the certified LCP which the City meticulously followed in conditionally approving this application.

Background

The Staff Report is short on the chronology which explains why the City -- scrupulously following the Commission's lead in its adoption of the Wetland Guidelines and certification of the LCP -- properly applied the Guidelines' "less than one acre" exception to Section 30233 in approving this application. (A detailed chronology is attached.)

There is, first, a far closer relationship in time and substance between the certified LCP and the Guidelines than has been discussed in the Staff Report. The Wetland Guidelines were adopted in 1981. From the outset, the several drafts of the Guidelines included the limited "less than one acre" exception to Section 30233. The purpose of the exception was to provide limited flexibility -- flexibility that would permit the fill of an unproductive, small, isolated degraded wetland in a manner that produces, through off-site restoration, more biologically productive wetlands in the same general region.

Thus, it should be no surprise that after being denied certification in 1981, the City -- on the heels of the Commission's adoption of the 1981 Guidelines -- resubmitted its LCP, and in 1982 the Commission certified it as consistent with the Coastal Act with language which notably:

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- identified this specific wetland, which DFG preliminarily determined to be less than one acre;

- approved the City's designation of this property as "Residential" with a Conservation Overlay; and

- specifically incorporated the "less than one acre" exception to Section 30233 in the Guidelines.

By 1991, pursuant to the LCP which now incorporated the Guidelines, the Waterfront Wetlands Restoration Project -- including the plan for off-site wetland restoration at the Shipley Nature Center -- was formulated and approved by DFG and the Corps, and provided to your Staff for review.

Thereafter, the City updated the Downtown Specific Plan in the LCP, which re-incorporated the identical language from the original certified LCP, and in 1995 the Commission again effectively certified it as consistent with the Coastal Act.

Thus, the Commission laid out an explicit road map in the certified LCP. The criteria and requirements of the limited "less than one acre" exception permitting wetland fill -- cited in the Guidelines and incorporated in the certified LCP -- precisely define the project before you. Most importantly, no one ever timely challenged the several Commission decisions which resulted in this certified LCP -- a factor we explain below operates as a complete bar to doing so now.

Why Bolsa Chica Does Not Apply

Because the Bolsa Chica decision resulted in a more narrow reading of Section 30233 than previously was applied by the Commission, the question is whether that new interpretation now applies to the City's certified LCP and the application before you. The answer, emphatically, is "no."

In Bolsa Chica, the petitioners filed a timely, direct legal challenge to the Commission's decision to certify the LCP for Bolsa Chica. The standard of review for the Commission in that case was the Coastal Act and Chapter 3 policies. In that context, the Court of Appeal held a different provision of the Wetland Guidelines to be inconsistent with Section 30233 of the Act. (71 Cal.App.4th at 513-514.)

In the appeal now before the Commission, the standard of review is not Coastal Act, but rather the certified LCP. (Pub. Resources Code, §§ 30603((b)(1), 30604(b).) While ordinarily the Guidelines are mere guidance for this Commission, the incorporation of the Guidelines in the certified LCP makes them the law for the City and the appl

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Bolsa Chica, therefore, has no application here for two reasons. First, it involved a different standard of review -- whether the proposed LCP is consistent with Section 30233 of the Act. Here, the standard of review is whether the application is consistent with Section 30233 and the Guidelines, both of are expressly incorporated in the certified LCP.

Second, in contrast to Bolsa Chica, no lawsuit -- timely or otherwise -- has ever been filed challenging the various Commission decisions to certify the City's LCP and the City's updated Downtown Specific Plan. By law, therefore, these Commission decisions, and the resulting certified LCP and Downtown Specific Plan, became "res judicata" -- i.e., the LCP, which is the standard of review for the Commission on appeal, cannot now be challenged.

There are a host of appellate decisions that firmly establish the rule that a failure to timely challenge a decision of this Commission renders the decision res judicata and "immune from collateral attack." We stress here that this well settled body of precedent emanates from cases all involving this Commission:

- Briggs v. State of California (1979) 98 Cal.App.3d 190, 196 fn. 3 (failure to file a timely writ action "renders the State [Coastal] Commission's decision immune from objections in a collateral proceeding").

- Leimert v. California Coastal Com. (1983) 149 Cal.App.3d 222, 233-234 (failure to file timely writ action "renders the commission's decision 'immune' from collateral attack").

- Ham v. Superior Court (California Coastal Com.) (1989) 210 Cal.App.3d 1488 (failure to file timely writ action challenging the Commission's lateral access condition bars inverse claim).

- Rossco Holdings, Inc. v. State of California (1989) 212 Cal.App.3d 642, 660 (failure to file timely writ action challenging the Commission's decision bars inverse and due process claims).

- Patrick Media Group v. California Coastal Com. (1992) 9 Cal.App.4th 592, 608 fn. 9, 617-618 (failure to file timely writ action challenging the Commission's decision "renders the administrative action immune from collateral attack, either by inverse condemnation or by any other action").

- Ojavan Investors v. California Coastal Com. (1994) 26 Cal.App.4th 517, 524-525 (failure to file timely writ petition bars challenge to the Commission's TDC requirement).

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Importantly, this long-standing principle applies even where the courts acknowledge that an earlier interpretation and application of the Coastal Act by the Commission would be invalid under subsequent case law. The most compelling example is California Coastal Commission v. Superior Court (Ham), supra.

In Ham, the Commission imposed a condition requiring dedication of a lateral access easement on the rebuild of a beachfront residence. The property owner did not timely sue to invalidate the condition. A couple of years later, the United States Supreme Court, in Nollan v. California Coastal Commission (1987) 483 U.S. 825 [97 L.Ed.2d 677, 107 S.Ct. 3141], held that imposition of a similar condition on similar beachfront property constituted a unconstitutional taking. Relying on Nollan, the property owner then sued the Commission for inverse condemnation.

Applying the principles of res judicata, the Court of Appeal in Ham held that the failure to timely challenge the Commission's decision barred the property owner's subsequent attempt to collaterally attack it. The Court noted that "res judicata applies not only to those claims actually litigated in a prior proceeding, but also to those which could have been litigated as part of that cause of action. . . ." (210 Cal.App.3d at 1488; emphasis added.) Then, addressing res judicata in the context of the property owner's failure to timely sue in mandate, the Court explained:

> "The fact that it [the Commission] incorrectly analyzed the relationship between the burdens and the condition it sought to impose -- or perhaps more accurately, incorrectly anticipated the action of the United States Supreme Court -- does not mean it acted in excess of its jurisdiction in the fundamental sense. If he believed the Commission was wrong, Ham had a remedy by way of judicial review. Having failed to avail himself of that recourse, he now has no basis for complaint."

(210 Cal.App.3d at 1501.)

The Court of Appeal decision in Ham merely echoes a well settled body of law. (See e.g., Slater v. Blackwood (1975) 15 Cal.3d 791, 797 (res judicata bars application of subsequent change in the law); Bank of America v. Dept. of Mental Hygiene (1966) 246 Cal.App.2d 578, 585 (same; "rule appears clear in California that a judgment which was contrary to the Constitution because it was based upon a statute later held invalid, is nevertheless res judicata in a subsequent suit").)

Estoppel, Equity and Fairness

The legal principles of estoppel and justifiable reliance also preclude governmental agencies from revisiting decisions and approvals in certain instances. These principles apply in the land use context to prohibit government from imposing subsequent regulations or policies on a land use decision that was already decided and relied upon. The test for government estoppel is well established:

> "An equitable estoppel requiring the government to exempt a land use from a subsequently imposed regulation must include (1) a promise such as that implied by a building permit that the proposed use will not be prohibited by a class of restrictions that includes the regulation in question, and (2) reasonable reliance on the promise by the promisee to the promisee's detriment."

(Santa Monica Pines, Ltd. v. Rent Control Board (1984) 35 Cal.3d 858, 867; Russ Building Partnership v. City and County of San Francisco (1988) 44 Cal.3d 839, 858.)

While a building permit is the classic example of a governmental "promise," courts have applied the concept to a range of governmental decisions, and the principle is applicable to a LCP certified by the Commission under the Coastal Act. So long as the governmental entity has rendered a final decision on the precise issue involved (which is the case here since the certified LCP was never judicially challenged), the equitable rule provides that government may be estopped from an inconsistent future action.

Courts have applied governmental estoppel in the absence of building permits. Analogous to the facts at hand, landowners in Youngblood v. Board of Supervisors (1978) 22 Cal.3d 644, expended thousands of dollars in reliance on prior approval of a tentative map. The Court held that approval could not be later denied so long as the final map was consistent with the tentative map. (Id.) The Court reasoned that, "the date when the tentative map comes before the governing body for approval is the crucial date when that body should decide whether to permit the proposed subdivision." (Id.) Further, the Court recognized that, "the developer often must expend substantial sums to comply with the conditions attached to that approval." Similarly, in City of West Hollywood v. Beverly Towers, Inc. (1991) 52 Cal.3d 1184, the California Supreme Court held that a municipality could not enforce condominium conversion regulations which were enacted subsequent to a real estate developers securing a final subdivision map approval and permission from the Department of Real Estate.

In applying the doctrine of governmental estoppel, the guiding principle is to avoid "a manifest injustice from the retrospective application of an ordinance to an explicit regulation upon which plaintiff appears to have detrimentally relied." (Hock Investment Company v. City and County of San Francisco (1989) 215 Cal.App.3d 43

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As discussed above and in the separate letter to you from the Robert Mayer Corporation, the certified LCP contains an explicit promise by the Commission that the fill of the isolated degraded wetland at issue may proceed if restored in the manner carefully laid out in the Commission's Wetland Guidelines, and that such restoration is consistent with Chapter 3 of the Coastal Act. This promise dates back to 1982 when the LCP was originally certified and was repeated when the Commission more recently certified the City's updated Downtown Specific Plan in 1995. Throughout, the City, its Redevelopment Agency and the Robert Mayer Corporation have justifiably relied on the Commission's certified LCP. Indeed, it would be anomalous, in its "post-certification partnership" with the City, for the Commission to simply disregard the LCP and chart an entirely different course. Apart from res judicata, the principle of estoppel, therefore, equally constrains the Commission from revisiting its prior LCP decisions and findings.

Moreover, we underscore that this is a case where the public benefits to be achieved by the project outweigh competing interests. In the circumstances presented, the evidence demonstrates that the off-site restoration alternative is the least environmentally damaging alternative. The fill of this small, isolated and non-functioning wetland will be mitigated at a 3:1 ratio by implementation of a detailed Habitat Mitigation and Monitoring Program for wetland restoration at the Shipley Nature Center. This will enhance a habitat area already connected to Bolsa Chica. The size and connectivity of the related habitat types in these two contiguous areas will provide significant value to a variety of coastal bird species. This will fulfill the promise which the LCP outlined in incorporating the Guidelines' "less than one acre" exception to Section 30233.

Conclusion

For the above reasons, the recent Bolsa Chica decision is not relevant to this particular application. That case -- limited as it is to interpreting Section 30233 alone -- might well be pertinent to review of an application made to the Commission in the first instance, to review of the submission of a LCP or LCP Amendment, or to review of an application on appeal where the certified LCP does no more than incorporate Section 30233 as a LUP policy. In each instance, the standard of review would be whether the project or land use proposed is consistent with Section 30233 of the Coastal Act.

However, this application presents a entirely different standard of review -- conformity with the certified LCP, and the LCP in this case expressly incorporates both Section 30233 and the restoration options set forth in the Wetlands Guidelines. Because the City's certified LCP has never been challenged, under settled principles of res judicata and estoppel, as well as just plain equity and fairness, the LCP -- which includes the Guidelines' "less than one acre" exception to Section 30233 -- is the law which necessarily guided the City's decision to conditionally approve a CDP for this wetland restoration project, and now governs this Commission's review of the wetland restoration project on appeal.

COASTAL COMMISS

We look forward to discussing these issues with you further at the April 11, 2000 meeting.

Very truly yours,

Steven H. Kaufmann

SHK:mtc
1124745

Attachment

cc: Peter Douglas, CCC
Chuck Damm, CCC
Deborah Lee, CCC
Maile Gee, CCC
Ralph Faust, Jr., Esq., CCC
Jamee J. Patterson, Esq., Deputy Attorney General
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
Lawrence F. Brose
Nancy A. Lucast

COASTAL COMMISSION

EXHIBIT # E
PAGE 74 OF 79

WATERFRONT WETLAND RESTORATION PROJECT
(A-5-HNB-99-275)

CHRONOLOGY OF KEY COASTAL COMMISSION ACTIONS CERTIFYING THE CITY OF HUNTINGTON BEACH LCP AND RELATED AGENCY ACTIONS

❑ COMMISSION ADOPTION OF WETLAND GUIDELINES

February 1981 — Commission adopts the Wetland Guidelines after 15 public hearings. Each draft of the Guidelines, including the final version, includes a "less than one acre" exception to Coastal Act section 30233. This "limited exception to Section 20233" permits the fill of "small extremely isolated wetland parcels that are incapable of being restored to biologically productive systems" if mitigated by off-site restoration "in the same general region" at a site next to a larger, contiguous wetland area that provides significant habitat value to fish and wildlife.

❑ COMMISSION CERTIFICATION OF THE CITY'S LCP WITH THE GUIDELINES' "LESS THAN ONE ACRE" EXCEPTION TO SECTION 30233

September 1981 — Commission denies City's first LUP submittal.

November 1982 — Commission certifies City's resubmitted LUP with language:

- Identifying this particular wetland which CDFG preliminarily determined to be less than one acre.
- Approving City's designation of this property as "Residential" with a Conservation Overlay.
- Specifically incorporating the "less than one acre" exception to Section 30233 in the newly adopted Guidelines.

In certifying the LUP, Commission finds the resubmitted LUP to be consistent with Section 30233, stating: "The Residential/Conservation designation assures protection of the wetland resources by requiring as a condition of development on the site that wetland resources are protected and provides for restoration of the wetlands if determined to be severely degraded or is less than one acre in size, consistent with the Statewide Interpretive Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitats."

COASTAL COMMISSI

April 1984	Commission certifies City's Downtown Specific Plan to implement the City's LCP. The Downtown Specific Plan designates the site for high density residential use and includes the Conservation Overlay (1) identifying the subject degraded wetland fragment and (2) specifically incorporating the Guidelines' "less than one acre" exception to Section 30233.
March 1985	City's certified LCP becomes effective. No lawsuit is filed to challenge any of the decisions relating to Commission's decision to certify the LCP. The "less than one acre" exception to Section 30233 therefore becomes the standard in the City's certified LCP which governs review of the Waterfront Wetland Restoration Project by the City and the Commission on appeal.

❑ CITY, CDFG AND CORPS APPROVAL OF DONALD G. SHIPLEY NATURE CENTER AS THE MITIGATION SITE FOR THE WATERFRONT WETLANDS RESTORATION PROJECT

May 1989	City evaluates a survey and analysis of 13 potential off-site wetland restoration sites -- nine in City and four outside the City but within the general area.
September 1990	Detailed wetland restoration program is prepared for Donald G. Shipley Nature Center in Huntington Center Park contiguous to Bolsa Chica. The Plan is submitted to state and federal resource agencies, including Coastal Commission staff.
December 1990	Corps approves Nationwide Permit for wetland restoration program.
February 1991	Department of Fish and Game accepts Shipley Nature Center as appropriate mitigation site.
May 1991	City Council unanimously approves the Shipley Nature Center as the most appropriate site for off-site wetland restoration.

NO COASTAL COMMISSION

EXHIBIT # E
PAGE 76 OF 79

❑ COMMISSION CERTIFICATION OF CITY'S UPDATED DOWNTOWN SPECIFIC PLAN WHICH INCORPORATES THE GUIDELINES' "LESS THAN ONE ACRE" EXCEPTION TO SECTION 30233

June 1995 — Commission certification of City's updated Downtown Specific Plan becomes effective.

City's updated Downtown Specific Plan incorporates the identical language from the original certified LCP, (1) identifying the degraded wetland fragment, (2) including the "Conservation Overlay," and (3) incorporating the Guidelines' "less than one acre" exception to Section 30233.

No lawsuit is filed to challenge the Commission's decision to certify the updated Downtown Specific Plan. The "less than one acre" exception to Section 30233 therefore remains the standard in the City's certified LCP which governs review of the Waterfront Wetland Restoration Project by the City and the Commission on appeal.

❑ CITY APPROVAL OF A CDP FOR WATERFRONT WETLAND RESTORATION PROJECT

June 1999 — City approves a CDP for Waterfront Wetlands Restoration Project, finding:

- The project is consistent with the certified LCP and all applicable requirements of the "less than one acre" exception to Section 30233, which is incorporated in the LCP.
- The project is the least environmentally damaging alternative.
- The project will fully mitigate impacts to the wetland at a 3:1 ratio through implementation of the 2.4-acre wetland restoration program at the Shipley Nature Center, contiguous to Bolsa Chica.

The City's action represents the final design and conditioning of an off-site mitigation program approved 17 years before and with full knowledge of all involved public agencies, including the Coastal Commission.

❑ COMMISSION STAFF CONFIRMATION THAT THE SIZE OF THE SUBJECT DEGRADED WETLAND IS INDEED LESS THAN ONE ACRE

November 1999 — Commission's staff biologist issues his report confirming that the subject degraded wetland fragment is less than one acre in size -- 0.696 acre.

COASTAL COMMISSION

TU 7a

PACIFIC LIBERTY BANK

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Caleb Tio
President
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Frank J. Bird
Vice President

Susan Coe
Vice President

April 5, 2000

Sara Wan, Chair
California Coastal Commission
45 Fremont St, Ste 2000
San Francisco, CA 94105-2219

Re: Appeal No: A-5-HNB-99-275

Dear Chairperson Wan:

I wish 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 near the northwest corner of Pacific Coast Highway and Beach Boulevard to The Robert Mayer Corporation.

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. The certified LCP specifically addressed this 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 Shipley Nature Center is within a secured area with a full time ranger on-site. The restoration 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 Corporation has agreed to provide funding for implementation and long-term maintenance and observation to assure the success of the wetland restoration project.

I feel that there is an issue of good faith at stake here between the Coastal Commission and local government. Our city followed the guidelines set over nine years ago and proceeded with The Robert Mayer Corporation's plans to develop the site. I feel that this project should be allowed to proceed as already approved.

Thank you for the consideration on this matter.

Sincerely,

Rick Gamulin
President & CEO
PACIFIC LIBERTY BANK

cc: California Coastal Commission

19950 Beach Blvd., Huntington Beach, California 92648 • Tel (714) 429.2100 • Fax (714) 378-8842

COASTAL COMMISSION

EXHIBIT # E
PAGE 78 OF 79

TU 7a

Amigos de Bolsa Chica 16531 Bolsa Chica St., Ste. 312, Huntington Beach, CA 92649-3546 • (714) 840-1575

California Coastal Commission
200 Oceangate
10th Foor
Long Beach, CA 90802

April 7, 2000

RE: Appeal A5-99-275

Dear Coastal Commissioners,

After further review the Board of the Amigos de Bolsa Chica has voted to withdraw their letter of support dated August 23rd, 1999. The Amigos de Bolsa Chica wish to inform you that they are taking no position in regards to this project.

Yours

J. McCloughlin
Vice President, Amigos de Bolsa Chica

COASTAL COMMISSIO

EXHIBIT # E
PAGE 79 OF 79

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

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CALIFORNIA
COASTAL COMMISSION

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

September 7, 1999

Re: Permit Number A-5-HNB-99-275
Applicant: The Robert L. Mayer Trust, Waterfront Hilton
Appeal of permit to fill .8 acres of wetlands west of Beach Blvd., Huntington Beach
Hearing Date: Thursday, September 16, 1999, Item No. Th 8a

Dear Coastal Commissioners,

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

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

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

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

Thank you for your consideration.

Sincerely,

Jan D. Vandersloot M.D.

Jan D. Vandersloot, M.D.

COASTAL COMMISSION

EXHIBIT # F
PAGE 1 OF 40

Bolsa Chica
LAND TRUST

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

September 9, 1999

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

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

Dear Coastal Commissioners:

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

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

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

Thank you.

COASTAL COMMISSION
EXHIBIT # F
PAGE 2 OF 40

Sincerely,

Paul H

Paul Horgan, President
Bolsa Chica Land Trust

LOCAL SPONSORS: GARDEN GROVE EDUCATION ASSOCIATION
HUNTINGTON BEACH TOMORROW, ORANGE COAST LEAGUE OF WOMEN VOTERS
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207 21ST STREET • HUNTINGTON BEACH • CALIFORNIA 92648 • (714) 960-9939

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

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September 9, 1999

California Coastal Commision
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

Nancy Donaven

COASTAL COMMISSION

EXHIBIT # F
PAGE 3 OF 40

Bolsa Chica LAND TRUST

Tu 18a

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PLOESIE HORGAN, 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
Jacquline 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
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2/3/00 12:59 PM

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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

FHBP Board Of Directors:
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Sandy Genis
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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.

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Roy Byrnes
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Evelyn Hart
Jack Keating
Vic Leipzig
Claire Schlotterbeck
Jack Skinner M.D.

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

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

Jean H. Watt

Sandy Genis, Wetland Committee Rep.

COASTAL COMMISSION

EXHIBIT # F
PAGE 5 OF 40

Southeast Huntington Beach Neighborhood Association

22032 Capistrano Lane Huntington Beach, CA 92646-8309 sehbna.org
Phone: (714) 962-1746 Fax: (714) 962-3416 e-mail: vespa@earthlink.net

Tu 18a

February 7, 2000

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COASTAL COMMISSION

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

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.

COASTAL COMMISSION

EXHIBIT # F
PAGE 6 OF 40

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,

John F Scott

John F. Scott
Chairman
Southeast Huntington Beach Neighborhood Association

COASTAL COMMISSION

EXHIBIT # F
PAGE 7 OF 40

2/15/00

Received at Commission Meeting

FEB 15 2000

From:

To: California Coastal Commission.

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

Re. Agenda item 18a. 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.

COASTAL COMMISSION

EXHIBIT # F
PAGE 8 OF 40

Respectfully submitted

Ray Benedicktus

George Hubner
304 Calle Chueca
San Clemente CA 92673

RAY BENEDICKTUS
3289 PASEO GALLITA
SAN CLEMENTE, CA 92672

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

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

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

Garry Brown,
Executive Director

COASTAL COMMISSION

EXHIBIT # F
PAGE 9 OF 40

90 signatures 2/15/00 Rc'd 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 G-208 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 Ikenouchi	21260 Beach Blvd. # 201, H.B, CA 92648
SD Mensch	21272 BEACH BLVD H.B. CA 92648
Sandra Larson	21266 Beach Blvd #210
Walter Sanchez.	21272 Beach Blvd.
Martha Cocco	21270. Beach Blvd.
Alex Fullan	7162 Wheaton Circle Huntington Beach, CA
C.M. Bonifacio	21284 Beach Blvd H.B., CA 92648
Marci Muir	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 Yetiskul	21296 Beach Blvd #201 H.B CA 92648
Winter B	7785 Seagreen # HB CA 92648

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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

NAME ADDRESS

Anthony Fonceirode 9734 Fettswood, HB, CA. 92646
Eric Macklin 19165 Shoreline, #6 HB 92648
DUANE HEPPNER 19832 FELCLIFF HB BCH 92646
Steven Brilliant 62622nd 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 " "
Marsha Jimenez-Burton 4761 Pearce St #C HB 92649
Kenneth Clark " "
[illegible] 8788 CANARY AVE F.V. 92708
[illegible] 19866 BOLLARD ST HB 92646
CRAIG McCLELLAND 18062 UPPER LAKE DR H.B 92648
Shelly McClelland 18062 Upper Lake Cir H.B 92648
JAMES BAXTER 19531 Occidental Ln H.B. 92646
RON SHAPIRO 17162 FRIML LN HUNT BCH 92649
Ritva Shapiro 17162 Friml Ln H.B. 92649
Sarah Broughton 418 15th St H.B CA 92646

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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

NAME	ADDRESS
Curtis J. Sheppard	17572 Montbury Circle H.B. CA 92649
Linda Sedivy	16672 Cooper HB 92647
WILLIAM MORRIS	21791 FAIRLANE CIR. H.B 92646
Shannon Noice	7281 Coho dr. #204 HB 92648
Jessica Taylor	9281 Coho DR. #204 HB 92648
Erin Barnhill	19071 Holly st. #14 H.B. CA, 92648
KEVIN PICKARD	21284 Beach Blvd G208 H.B. CA 92648

(7)

COASTAL COMMISSI

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 GUZMAN	989 VICTORIA ST #B4 C.M. 92677
Nghi Vo	1115 N. Mariposa St. Burbank 91506
Norma Swanson	Hillside Manor E #205 Moose Lake, Mn. 55767
Bette Horton	Rt 1 Box 409A Sturgeon Lake MN 55783
AL. BILL	10702 COURT AVE STANTON CA 90680
[illegible]	10702 Court St Stanton CA 90680
WES HACKBARTH	9922 W. Broadway #9 Anaheim CA 92804
Marty Conrad	820 S. ~~Broadway~~ Webster Apt 12, ANA. 92804
Greg [illegible]	109 Vista Del Mar #5, Redondo Beach CA 90277
Carol Neuman	998-2nd ST, N - Carrington, ND 58421
Patricia Gentry	Mira Loma CA 91752
[illegible]	1632 E. Pinecrest Spokane, Wa 99205
[illegible]	17605 Mundane Ave Artesia 90701
[illegible]	16120 Indian Wk Cerritos, 90703
John G. Kamla	526-17th AVE E APT 9 Seattle WA 98112
Brent + Sherla Bishop	Fredericton NB Canada
John Superior	Salt Lake City, Ut

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EXHIBIT # F

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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

NAME ADDRESS

Jim Passwell 12203 Roseton Ave Norwalk, Calif 90650

Katie Ferguson 47 Via Zaragoza SC. CA 92672

Janet King 13476 Vine St. Thornton CO 80241

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

Roberta Partel 17333 Brookhurst St #D1 FV

Adam Broughton 904 Atwater Montreal Quebec Canada

Claudio Pallar 1805 Cliff Dr. Costa Mesa

Brandon Thomas 24332 Vista Point Ln. Dana Point

Shavaun Nation 41 Aspen Creek Lane Laguna Hills

Bobby Brung 9476 Cormorant Circle Ftn. Valley Calif 92708 Ftn. Valley CA

Joseph Brung 9476 CORMORANT CIR

Kim Nestor 500 Blake ST Pasadena CA 911

Robert Aho 5155 Brunswick Dr Cypress CA 906

Connie Aho 5155 Brunswick Dr Cypress, CA 90630

Jason Rider 7 Snowberry Irvine CA 92604

Carolyn Merel 144 KAZAN IRVINE CA 92604

Candice LeCain 1295 Grand Summit Dr # J-170 Reno, NV 8952

WES Guffey 1295 Grand Summit Dr # J-170 Reno, NV 89523

JOHN COOK 708 CLAY RD 92648

COASTAL COMMISSIO

(19)

EXHIBIT # F

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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

NAME	ADDRESS
Kandyce Schiff	22294 Bear Creek Dr. S 92562
[illegible]	[illegible]
[illegible]	[illegible]
ROBERT RUBEN	44748 MEDINA PALM DESERT
Josiah Rubin	4425 E Sixth Long Beach CA
Anna Blake	231 Keene Dr. La Habra CA 90631
Emily Gorla	166 N. Thistle Rd Orea, Ca 92821
Katie Hardman	222 Napoli Brea, CA 92821
Dave Morrissey	12342 Epsilon St. Garden Grove, C
Ansity Morrissey	12342 Epsilon St Garden Grove Ca 92840
Russ DeLaMare	9531 Duke Dr Westminster CA 92683

COASTAL COMMISSION

(11)

90 signatures

EXHIBIT # F

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VIA FAX

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

APPLICANT(S):The Robrt 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 tubs or sponges, the wetlands store water then 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 to late."

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

COASTAL COMMISSIO

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PAGE 16 OF 40

TU 7a A-5-HNB-99-275

City of Huntington Beach

DRUG USE IS LIFE ABUSE

2000 MAIN STREET CALIFORNIA 92648

Dave Sullivan
City Council Member

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COASTAL COMMISSION

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APR - 4 2000
CALIFORNIA
COASTAL COMMISSION

March 31, 2000

Mrs. Sara Wan
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
Coastal Commission Meeting April 11, 2000

Dear Chairperson Wan:

Since my letter to you February 8, 2000, concerning the wetland area on Beach Blvd., I have had an opportunity to review new information and visit the site in person. Because of this new information, I believe that it is possible and appropriate to preserve this wetland area, and that this would be in the best interest of Huntington Beach and our environment. Therefore, I would like to change my recommendation to include preservation of this site in the upcoming appeal hearing on April 11, 2000.

The new information that is available includes observation of what has happened to the site since my last letter. First of all, the trailer park is now gone, and any source of runoff from the park to the wetland has ceased. Secondly, remarkably since the rains that we had in winter, the wetland has filled with water, and the water has remained. The last rain was on March 8, but the water is still approximately a foot deep when I visited the area this morning, over 3 weeks later. Coincident with this rain, the natural vegetation on the site has flourished, including pickleweed, reeds, cattails, and willows. In addition, I observed a lot of bird use of the site, including several red-winged blackbirds, hummingbird, and an assortment of other birds. It seems to be a productive wetland as is. It is also apparent that the wetland is connected with culverts to the wetlands on the other side of Beach Blvd. which has also filled with the recent rains and therefore this wetland is not isolated from the larger wetlands to the east of Beach Blvd. The area in question actually appears to be larger than 0.8 acre, as the mapped wetlands are interspersed within the fenced area of over 2 acres. It is clear to me that this wetland is viable, that trailer park runoff is not the sole source of water, and that a viable over 2-acre wetland can be restored on the site, which would be a valuable asset to the City and its environment.

COASTAL COMMISSION

EXHIBIT # F
PAGE 17 OF 40

Anjo, Japan

TELEPHONE (714) 536-5553
FAX (714) 536-5233

After this personal review and site visit, I would recommend the Coastal Commission follow the recommendation of its staff and preserve this wetland. Thank you.

Sincerely,

Dave Sullivan

Dave Sullivan
City Council Member

DS:lp

Xc: City Council
Ray Silver

COASTAL COMMISSION

EXHIBIT # F
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Item Tu 7a

RE:
A-5-HNB-99-275
The Robert L. Mayer Trust
Eileen Murphy

I want to thank Commissioners Nava and Estolano and the Commission's staff for challenging the Mayer Trust and the City of HB to fill in a wetlands and mitigate it at a site 4 miles away. The danger of this act is that if you vote to allow it you will be setting a precedent which is what Ducheny's bill is trying to do. Once you go down this path you set a precedent and there's no turning back.

This is not a restoration project. Mayer and the city are asking you to allow them to fill in a wetland for "an unspecified purpose within a residential zone along with an off-site mitigation plan ". Therefore it is not allowed under the Coastal Act. The Coastal Act also states that restoration if allowed should result in no loss of acreage of wetland habitat on the site" This project eliminates all wetland on the site and therefore is in violation of Section 30411 of the Coastal Act.

We all know wetlands are the lungs of the ocean and our Huntington Beaches were closed most of last summer due to pollution in the ocean. Let's not lose anymore of the 3% of wetlands we have left. They help save our ocean.

Thank you.

Eileen Murphy
201 21st Street
HB.CA 92648

COASTAL COMMISSION

EXHIBIT # F
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Tu 7a

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APR 05 2000
CALIFORNIA
COASTAL COMMISSION

Item No. Tu 7a
Application Number A-5-HNB-99-275
Nguyen Thi Trung
21284 Beach Blvd. G208
Huntington Beach, CA 92648

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

Re: Permit Number A-5-HNB-99-275
Applicant: The Robert L. Mayer Trust
Appeal of decision by the City of Huntington Beach granting coastal development permit with conditions to fill 0.8 acres of wetland
Hearing Date: Tuesday, April 11, 2000

Dear Coastal Commissioners,

This letter is in support of the appeal by Commissioners Estolano and Nava of the permit issued by the City of Huntington Beach to fill the wetland West of Beach Blvd., North of the Coastal Highway.

I live in the neighborhood and have seen birds and other wildlife use this piece of wetland.

I hereby present to you the petition signed by those who support the appeal. Furthermore, I ask you to preserve this wetland.

Thank you.

Sincerely yours,

Nguyen T Trung

Nguyen Thi Trung

COASTAL COMMISSION

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

We, the undersigned, 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
ROBERTA J. WRYE	9601 LANDFALL DR. HUNTINGTON BEACH, CA 92646
Heather K Lantow	9141 Christine Dr Hunt. Bch 92646
J. & E. FEIERABEND	9681 Melinda Cir Hunt. Bch 92646
Mary K Wattand	9142 Mahalo H.B. 92646
Douglas M Wattand	9142 MAHALO DR. HUNTINGTON BEACH 92646
TERRY ROGERS	9702 ALLISON CIR. HUNTINGTON BEACH 92646
Stan Marriott	9042 Christine Dr H.B. 92646
Muriel Bagley	21771 Fairlane HB 92646
Bill Bagley	" " " "
Jane Riley	22042 Hula Cr. H.B. CA 92646
Bill Riley	" " " " " "
Lucy Brengauz	9531 Landfall Dr 92646
Alex	" " " "
Mike Lamarf	21671 Dirigo Cir H.B. 92646
Richard D Swanson	9101 CHRISTINE DR. H.B. 92646
CHRIS BUTTON	9242 CHRISTINE DRIVE HB 92646
Dennis Parker	9722 MEINDA HB 92646
Henry Wyfoot	9061 Aloha Drive, HB CA 92646

COASTAL COMMISSION

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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
Richard Loy	9062 Kahului Dr. Huntington Beach 92646
Robert B Burgess	21842 KANEONE LN HB 92646
Larry Schnitzer	21552 IMPACA CR HB 92646
RAND JONES	22061 MALIBU LN. HB 92646
John Fearnley	
MARK & VALERIE AGUIRRE	22111 MALIBU LN. H.B. 92646
TODD PONLEY	22131 LAGUNA CIR. HB 92646
Cherie Miranda	22032 Islander Lane, HB 92646
Ralph Osterkamp	9052 Aloha Dr. HB 92646
Maida Seymour	9101 Aloha Dr 92646
Jane Seymour	9101 Aloha Dr 92646
Nora C Pedersen	22122 Wood Island CA 92646
Kathi Richardson	22021 Balboa Cir 92646
Richard McKee	9171 AROHA DR 92646
[illegible] Moi	9562 BORBA CIRCLE 92646
Monika Galluccio	8182 Christine H.B 92646
Lena Yee Hayashi	9572 Castine Dr. HB 92646
John Oschman	9032 Naguel Cir 92646

COASTAL COMMISSION

EXHIBIT # F 18

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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
Tana Nguyen	14882 Benchly Circl Westminster
Jordan Dang	902 Browning Dr. H.B.
Linda Nguyen	9112 Belcaro Drive, H.B
Wesley Hall	20592 Troon Ln. HB.
Michael Turner	9432 Daytona Cir. H.B
Kyle Larsen	21091 Miramar lane, H.B.
[illegible]	10169 Ascot Cir, H.B.
[illegible]	20762 Lemon Tree Ln., H.B
Tiffany A. Natelborg	20541 Salt Air Circle H.B
Leslie Burchart	8939 Martin Ave F.V.
Jason Hall	20592 Troon Ln H.B
Megan Loughran	9872 Effingham, HB, 92646
Rita Gennawey	9842 Shorebreeze Dr. HB 92646
Donna Harris	8961 Yuba River Ave FV 92708
Jacquita Lo	16272 Walkus lane HB 92649
[illegible]	20532 Cohasset Ln. HB. 92646
Francesca Primo	21400 Magnolia HB

COASTAL COMMISSION

EXHIBIT # F 17

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NAME	ADDRESS
Kathleen Jopson-Bernier	347 Ledroit Laguna Beach 9265
Jeff Bouchreaux	1426 W 8th UPLAND 91786
Laurence Mor	14891 Burnham Circle Irvine 92604
Drury Derrick	20092 Shorewood Huntington Beach Ca 92646
Keith Lee	529 Broadway Homewood, AL 35.
[illegible]	535 Homewood Br. Bhm, AL 3524
Lisa Silva	75446 Wildflower Ln. P.D, CA 92211
[illegible]	75977 [illegible] PDCA 92211
[illegible]	1533 W. LASTER ANAHEIM, CA 92805
STAN DUONG	1206 Reggio Aisle, IRVINE, CA 92606
[illegible]	215 E Balboa Blvd Newport Beach, CA 92660
Charles W. Fletcher	P.O. Box 43 MOUNTAIN CENTER CA 92561
[illegible]	P.O. Box 43 MOUNTAIN CENTER CA 92561
Nancy O'Hara	3731 ST. RD. 14, SF. NM. 87505
Elenita M. Lapacan	15307 NE 13th Pl. 9231 Bellevue, WA 98007
Thomas B. Frankenstein	3710 WALNUT PKWY, HEMET CA 92544
Vincent [illegible] Heslanian	2442 [illegible]

COASTAL COMMISSION

EXHIBIT # F 17

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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
David Campbell	3501 Finley Ave, NB 92663
DAVID Karp	14350 AUBURN ct. Chino Hills, Ca. 91709
KERRY KARP	" " " " " "
Daniel Karp	" "
Ellen CAMPBELL	3501 FINLEY AVE NB 92663
Joice Tiffany	29352 Vein Portola LN 92667
Rosemary F Bird	219 Emerald Bay 92651
[illegible] T BONNET	900 Sea Lane #96 CDM CA 92625
Bob Blighton	364 CLIFF DR #5 LAG. BCH. CA 92651
[illegible] Porton	1485 Coral Dr. L. B.
G Davis.	246 Fairview St. L. B.
Chris Cantell	Banning Ca. 92220
Susan Foster	P.O. Box 143 Mtn. Center 92561
Tom Bartholomew	1000 Pine #173 Rollands CA 92373
[illegible] Balaton	P.O. Box 43, Mtn. Ctr, CA 92561
[illegible]	12662 ELIZABETH WY TUSTIN CA 92780
[illegible]	PO BOX 51502 [illegible] 92619

COASTAL COMMISSION

EXHIBIT # F 17

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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

We, the undersigned, 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
Ginna Nguyen	14582 Benchley Cr. Westminster, CA 92683
CANDACE Nicholson	1250 Adams Apt N-203 Costa Mesa CA 92626
Brian Kotz	43 Bennington Irvine, CA 92620
Brandon Shephard	2286 Pacific ave apt J C.M.CA, 92627
David Lowe	
[illegible] Gibson	21 Plymouth Irvine CA
Leslie A Robin	4191 Silliman Dr, Huntington Bch. CA 92649
Kelli Hangman	8312 Seaport Dr. Huntington Bch. CA, 92646
[illegible] Scott	8941 Bainford Dr HB, Ca 92646
Angelise Marcigliano	P.O. BOX 5633 H.B, CA 92615
Laura Díaz	5196 Piccadilly Circle Westminster 9268
Maureen Mertz	21852 Kaneohe Ln
Laurette Rodriguez	9583 Pettswood Dr, H.B, CA
Victoria Wang	9901 Vicksburg Dr. HB CA 92646
Shannon Spelm	20332 Tidepool Cr. #201 HB CA 926
Jeff B. Goodman	9591 Landfall Dr. HB, Ca, USA
Justin Yu	20162 South New Britain Cr. Coastal HB, Ca 92646

EXHIBIT # F
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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
Ashley Hubbard	21021 Manessa Cr., HB
Howard Cro	8801 Elgin Circle HB
Jay Force	15051 Pacific St. Apt. G Midway Gi
Andre Tutundjian	8501 Naples Dr HB
Laura Nastasi	20971 Surge Ln. HB. CA. 92646
Jay McCarty	21851 Seaside Ln. HB CA 92646
Laurette Rodriquez	9583 Pettswood Dr, Huntington Bch, CA 92646
[illegible]	80201 Beverly Drive, Huntington Beach CA 92646
Mariel Buss	8832 Dorsett Dr HB CA 92646
[illegible]	20632 Goshawk Ln. HB CA 92646
[illegible]	9062 Mahalo Dr HB CA 92646
Laura Diaz	5196 Piccadilly Circle Westminster 92683
Matt Lopez	92646 Woodcrest Drive HB CA 92646
Alexis Hickox	19671 Ditmar Ln HB, CA 92646
Christine Smith	9121 Crawford Circle HB, CA, 92646
Laral Slattery	9652 Robin Ave FV 92708
Ephraim Egan	19841 Carmania [illegible] HB, CA 926

COASTAL COMMISSION

EXHIBIT # F 17

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We, the undersigned, 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
Kim Neptune	52500 Temecula Dr. Idyllwild, CA 92549
Jameson Zeigler	PO Box 38 Idyllwild, CA, 92549
Kimber Martinson-Sawyer	PO Box 38 Idyllwild, CA, 92549
Donna Augustine	32 Mallorn D Aliso Viejo. 92656
M.G. Augustine	32 Mallorn Dr Aliso Viejo 92656
Nancy Kenyon	32 Almond Tree Ln Irvine 92612
John Hargrove	2865 Boa Vista Dr. Costa Mesa 92626
Marcia Griesser	409 62nd St Newport Beach 92663
Gary S Meredith	31201 Brooks St So Laguna 92651
DONALD E. STEWART	13 RINCON, IRVINE, CA 9262
MARK J LEWIS	21266 BEACH BLVD #101 HUNT. BCH. CA 9264
John R O'Hare	21282 Beach Blvd #207 Huntington Beach CA 9264
DANA ROE	21284 BEACH BLVD #3208 Huntington Bch 92

COASTAL COMMISSION

EXHIBIT # F

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PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

We, the undersigned, 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
Chris & Irene Kussner	2164 Kanakoa Ln.
Diana Lang	21681 Branta Circle
Frank Walker	22071 Islander LN
Janet Ridley	9132 Bermuda Dr. HB 92646
David K Specht	22052 Islander Lane, HB, Ca 92646
SID HALLBURN	9272 HUDSON DR-H.B. 92646
ADAM PALITZ	8070 WESTMINSTER
Ronald Smith	21842 SEASIDE LN., H.B. 92646
Marinka Horack	21742 Fairlane Circle, H.B. 92646
Michael + Roberta Fangrof	21671 DIRIGO CIR HB 92646
Paul Wilson	21821 Harborbrook HB 92646
[illegible]	9421 Gulstrand Cir HB 92646
Delores Proulx	21761 Oceanview Lan HB 92646
Frank J Prusa	9382 Daytona Cir H.B. 92646
Audrey Prusa	✓ ✓ ✓ ✓ ✓
Lois M. Tobles	9082 Kahului Dr. H.B. 92646
Charlotte A. Mason	

COASTAL COMMISSION

EXHIBIT # F

PAGE 29 OF 40

17

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

We, the undersigned, 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
Joanne & Rod Rasmussen	9152 Kapaa Dr. HB CA 9264
Maida Seymour	9101 Aloha Dr HB 92646
Debbie Keating	22181 Luau Lane H.B. 92646
Debbie Carpen	9372 Malahne Dr HB 92646
Cecilia J. McCourt	22122 Capistrano Ln. H.B
Bobbie Miller	9332 Tahiti Cir HB 92646
Jane Seymour	9101 Aloha Dr HB 92646
George E. Mason	21641 BAHAMA LN. HUNTINGTON BEACH 926
Christie A Pickering	22101 Jonesport LN Huntington Beach 92646
Margaret L Class	9301 La Jolla Cir HB
Fred J. Galleccio MA	9182 Christian Dr, H.B., CA 92646
Marly Ellis	9182 Rhodesia HB. 92646
LESLIE DRUCKER-POWLEY	22131 LAGUNA CIRCLE, HB 92646
STEVE REED	22082 ROCKPORT LN HB 92646
SCOTT TRACY	9092 Bermuda Dr. Hunt. Bch. 92646
Armida H. Brashears	21632 Hanakai, Huntington Beac 9264
CARLA PHILLIPS	9351 HUDSON Dr Hunt. Bch CA 9

COASTAL COMMISSION

EXHIBIT # F

PAGE 30 OF 40

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
Marie Reed	22082 Rockport HB 92646
MARK & VALERIE AGUIRRE	22111 MALIBU LN HB. 92646
Scott Cooper	9372 Malahin Dr HB 92646
Glenn Woods	22092 Surfrider Ln HB 92646
Janet Woods	22092 " " " "
Jeane Fleming	22061 Surfrider Ln HB 92646
John Fearnley	21722 Dirigo Cir HB 92646
Susan Fearnley	"
Jim Powers	22121 Lugo Lane, HB 92646
Marjorie Powers	" " " " "
Maurice R. O'Sullivan	9432 Rambler Dr. HB 92646
Mike & Linda O'Donnell	22091 Islander Ln HB 92646
[illegible]	22122 Capistrano Ln. HB 92646
John [illegible]	9122 Kahului Dr. HB
Kathleen Mooney	22101 Jonesport Lane HB 92646
Edward DeMeulle	9441 Alii Circle HB
Kay Cohen	21731 Salvia Cir HB

COASTAL COMMISSION

17

EXHIBIT # F

PAGE 31 OF 40

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
Tonya Paterno	13712 Charleville Westminster
MARC PATERNO	13712 Charleville Westminster
Miguel Paterno	13712 Charleville Westminster
Rachel Bingham	5792 Raphael Dr. Hunt Bch 92649
Jere Guedalia	5792 Raphael Dr. Hunt Bch 92649
Cynthia Weston	4656 Eaglecrest Dr. Hunt. Bch.
Judy Bookout	8851 Gallant
Suzanne Jones	1409 Applecross Ln HB. Ca 92648
Marcia Postmus	19701 Elmcrest Ln HB 92646
Marilyn Silverstone	
Melanie Bever	9091 Five Harbors Dr HB 92646
Veronica Harrington	L.B.
Ann L. Harrington	

COASTAL COMMISSION

EXHIBIT # F

PAGE 32 OF 40

12

1.

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
IRA ASPR	20332 Tidepool Circle, #202, HB, CA 92646
MARTHA DURKEE Martha Durkee	8655 Fresno Circle #5010 Huntington Beach 92646
Stephanie M. Meier	16511 Golden West Ste* G. H.B. Ca. 92647.
Pantelo Roberta	17333 Brookhurst IV 90728
Rosemarie Chiever	16091 Hilton HB 92647
Vernon L. Wagner	6474 Frampton Cr H.B. 92648
Kim Jackson	219 Newport Ave #5 LB 90803
[illegible]	21382 Pensacola Circle HB 92646
Geri Ortega	6951 Lawn Haven Dr. HB 92648
Kathy Carreras	16897 Bluewater Lane HB 92649
Lee Chaney	4714 Arena Circle HB 92649
[illegible]	8300 Castilean HB 92646
Kristine Honand	6561 Churchill Dr., HB 92648
Shana Harris	P.O. Box 3435, M.V 92690
Sean Speights	11901 Tunstall GG 92845
Renee Speights	11901 Tunstall GG 92845

COASTAL COMMISSION

16

EXHIBIT # F

PAGE 33 OF 40

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS	
Rolando Sy	Riverside	92555
McCarthy Avt	Westminster	92683
[illegible]	Fountain	92708
Schencic A.	7102 Rutgers	92683
Jeannette Ring	Santa Monica	92625
Kelly Wyckoff	Huntington Bch	92646
Lorna Russo	F. V.	92708
Barbara L Williams	Huntington Bch	92647
John R Simons Jr	14972 Malaga Plaza	Westminster 926.
David J Whitney	8282 Atlanta Ave #2, HB	92646
David Orelkna	Huntington Beach	92648
Danny Engle	6772 Sicily Circle HB	92648
Betty Miller	5361 El Parque	Long Beach 90815
Vera Kuehl	6761 Via Angelina	H.B 92647
Jo Ann King	8352 Cade Cir	H.B. 92646
[illegible]	8441 Poe.	HB, Ca 92646
Suzanne Medeiros	405 12th St	HB 92648

COASTAL COMMISSION

17

EXHIBIT # F

PAGE 34 OF 40

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
Cole M Fulwider	8101 Newman Ave H.B 92647
Anne Heck	8566 Corusa Cr 90JE HB 92646
Patricia LeMonnier	21291 Cupar LN HB 92646
Linda Sargent	25871 Vicar Way Lakeforest 92630
Cheryl Vandersloot	2221 E 16th St N.B. 92663
LINDA MARCHI	1119 MAIN H.B. 92648
Lilian Orellana	HB. 92648
Judy Lalnai	3484 Sweetwater Corona 92882
Judith Zschoche	21291 Cupar LN Hunt Bch 92646
[illegible]	14416 ARANZA DR LAMIRADA 90638
Margaret Ellis	7311 Mast Dr HB 92648
Alyson Gillett	193 Virginia pl CM 92627
JEFF ABRAHAM	9851 Oceanview H.B. 92646
Jewell L Morton	537 N. MAGNOLIA #207 Ana 92801
J. Claire Pieraccioli	17455 McHenry St Fountain Vly 92708
Diane Edmondson	3902 Sirius Dr HB CA 92649
Jamie Jaensch	4922 Berton Circle La Palma CA 90623

COASTAL COMMISSION

17

EXHIBIT # F

PAGE 35 OF 40

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
Tim Anderson	7801 14th St. Westminster CA 92683
Don May	4927 Montana Lakewood 90712
Eileen Murphy	201-21st-HB. 92648

COASTAL COMMISSION

EXHIBIT # F

PAGE 36 OF 40

3

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
Ron & Cheryl Ross	9391 Gulstrand Cir Hunt. Beach 92646
Penny Dettmann	22121 Islander Ln — HB. CA 92646
Elizabeth J Sander	9421 Gulstrand Cir. HB CA 92646
Rick Mortimer	9002 Christine Dr HB CA 92646
Don Churchward	9021 Adelia Circle 92646
Raquel Churchward	9021 Adelia Cir. 92646
Mr & Mrs Peter Porkovich	9111 Kahului HB 92646
Chris & Irene Kussner	21611 Kanakoa H.B 92646
Cheryl Elliott	21652 Branta Cir., H. B. 92646
John F Scott	22032 Capistrano Ln HB 92646
Linda J Scott	22032 Capistrano Ln H.B. 92646

COASTAL COMMISSION

EXHIBIT # F

PAGE 37 OF 40

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
[illegible]	21221 Fern Cir Huntington Beach, CA 92646
Heather Mandell	20811 Crestview Ln. HB, CA 92646
[illegible]	
[illegible]	21262 Lemon Tree Ln. HB, CA 92646

COASTAL COMMISSION

EXHIBIT # F

PAGE 38 OF 40

4

PETITION TO SUPPORT APPEAL and PRESERVE WETLAND

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NAME	ADDRESS
Kae Arima	9181 El Cortez Avenue Fv, 92708
Devin Kato	21021 Shaw Lane HB, 92646
Kristi Kirksey	6052 [illegible] HB 92648
Talia Shandling	18852 Rockinghorse Ln H.B
Daniel Takeuchi	20161 Imperial Cove Ln H.B. 92646
William Chan	19792 Elmcrest Lane HB, 92646

COASTAL COMMISSION

EXHIBIT # F

PAGE 39 OF 40

RECEIVED
South Coast Region

JUN 5 2000

CALIFORNIA
COASTAL COMMISSION

JIM YARBROUGH
10829 COZYCROFT AVE.
CHATSWORTH, CA 91311
31 MAY, 2000

DEAR CECILIA ESTOLANO,

THE VOTE BY GREGG HART AND SHIRLEY DETLOFF TO FILL WETLAND AT LITTLE SHELL, HUNTINGDON BEACH, WAS, IN MY OPINION, A VIOLATION OF THE COASTAL ACT. WHY ARE THERE NO CRIMINAL PENALTIES FOR COMMISSIONERS LIKE HART, DETLOFF AND McCLAIN-HILL WHO VOLATE THE COASTAL ACT TO SATISFY DEVELOPERS?

I SUPPORT SARA WAN, PEDRO NAVA, JOHN WOOLEY AND CHRISTINA DRESSER IN THEIR EFFORTS TO UPHOLD THE COASTAL ACT AND PROTECT FOR THE PUBLIC OUR ENDANGERED WETLANDS AND CALIFORNIA COAST. I HAVE REQUESTED THAT GOV. DAVIS, SENATOR JOHN BURTON AND ASSEMBLY SPEAKER HERTZBERG MONITOR THEIR APPOINTEES AS TO THEIR COMPLIANCE WITH CALIFORNIA COASTAL ACT.

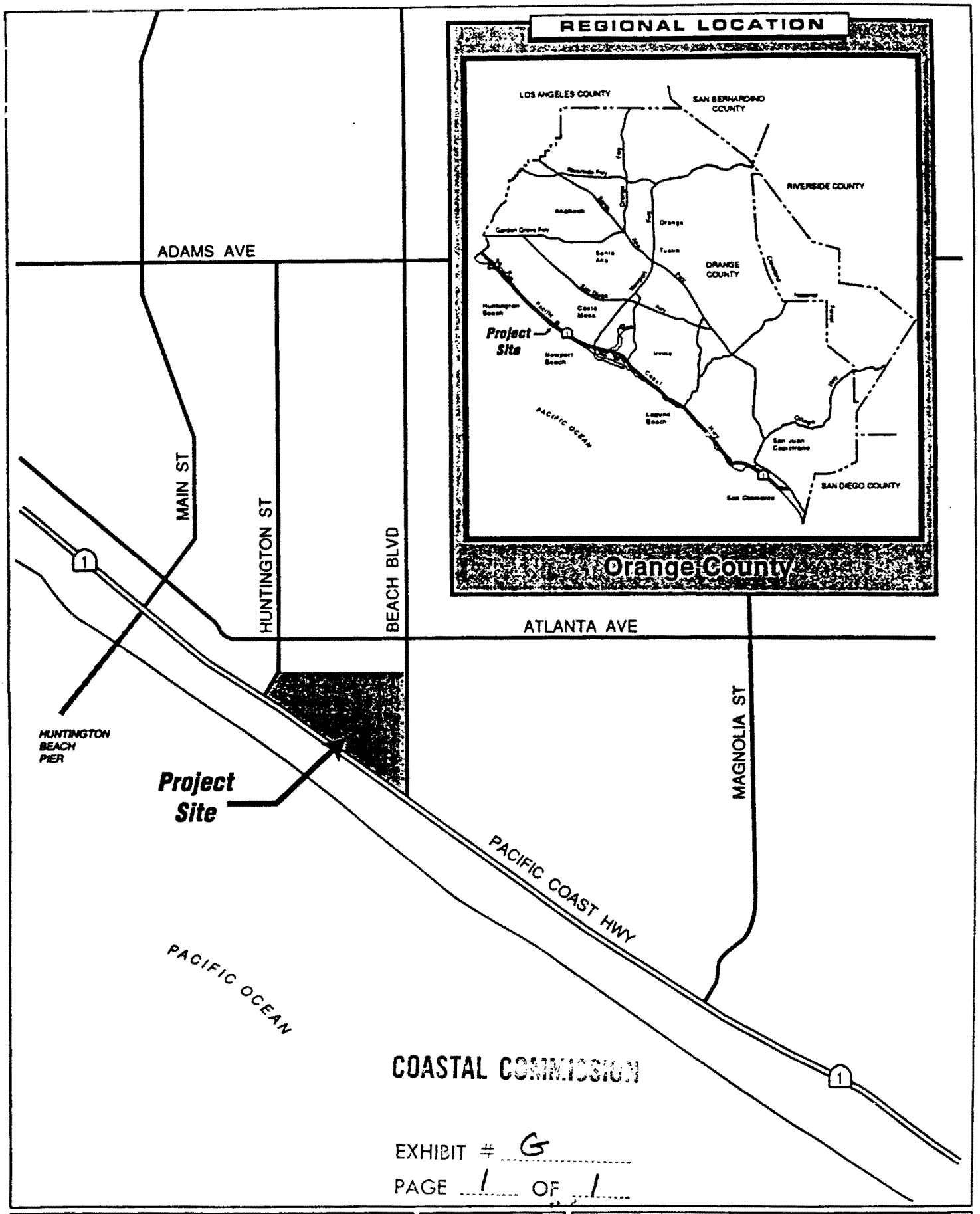
THE SENSITIVITY SHOWN BY NAVA AND WOOLLEY TO NATIVE AMERICAN CONCERNS ABOUT MALIBU PROPERTY OF A-TRENTO AT 25126 PCH [redacted] WAS PRAISEWORTHY.

DETLOFF AND McCLAIN-HILL WERE INSENSITIVE TO THE ARCHEAOLOGICAL AND CULTURAL VALUES HERE (AT 25126 PCH).

PLEASE STOP IRVINE COMPANY'S PLAN TO DESTROY [redacted] COASTLINE AT CRYSTAL COVE. DO NOT ALLOW CRYSTAL COVE TO BECOME A LUXURY RESORT. PLEASE STOP KOLL COMPANY'S EFFORTS TO DESTROY WETLANDS TO BUILD HOUSING AT BOLSA CHICA. PLEASE STOP CITY OF OCEANSIDE FROM GIVING PUBLIC BEACH TO DEVELOPERS OF THE MANCHESTER RESORT. PLEASE STOP ARCO FROM DESTROYING COAST IN SANTA BARBARA TO BUILD GOLF COURSE.

Jim Yarbrough

COASTAL COMMISSION



2000 1000 0 2000
Scale In Feet

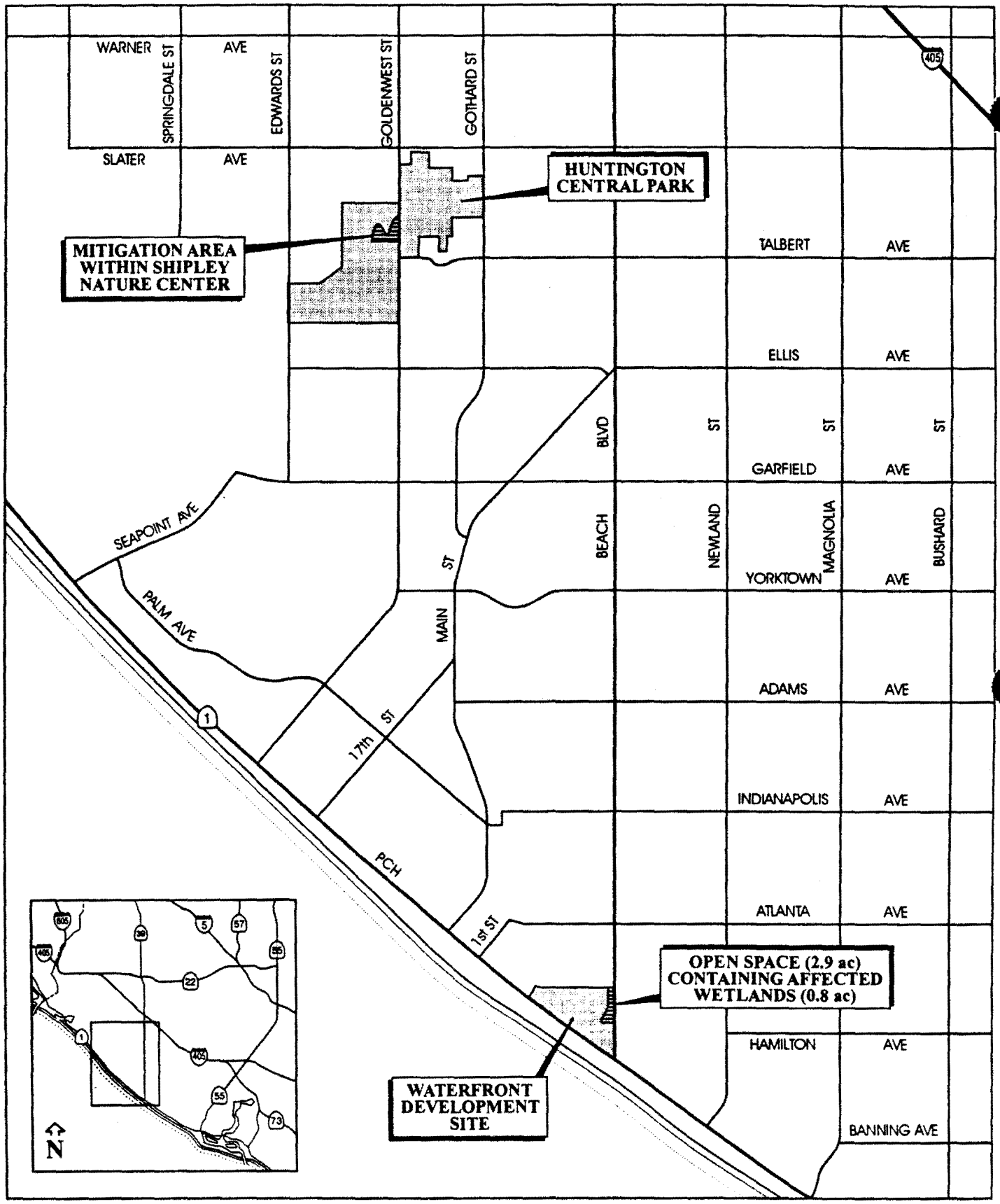
SOURCE: USGS 7.5' Quadrangles - Newport Beach & Seal Beach, Ca., 1981

97262

EIP ASSOCIATES

Project Vicinity & Regional Location Map — FIGURE 2-1

City of Huntington Beach • Addendum to SEIR 82-2



10/27/98(TRM831)

COASTAL COMMISSION

Figure 1

N

LSA

EXHIBIT # 4

PAGE 1 OF 1

Project Location

POR. E.1/2, SE.1/4, SEC.11, T.6S., R.11W.
POR. E.1/2, SEC.14, T.6S., R.11W.

THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR DEPT. PURPOSES ONLY. THE ASSESSOR MAKES NO GUARANTEE AS TO ITS ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.
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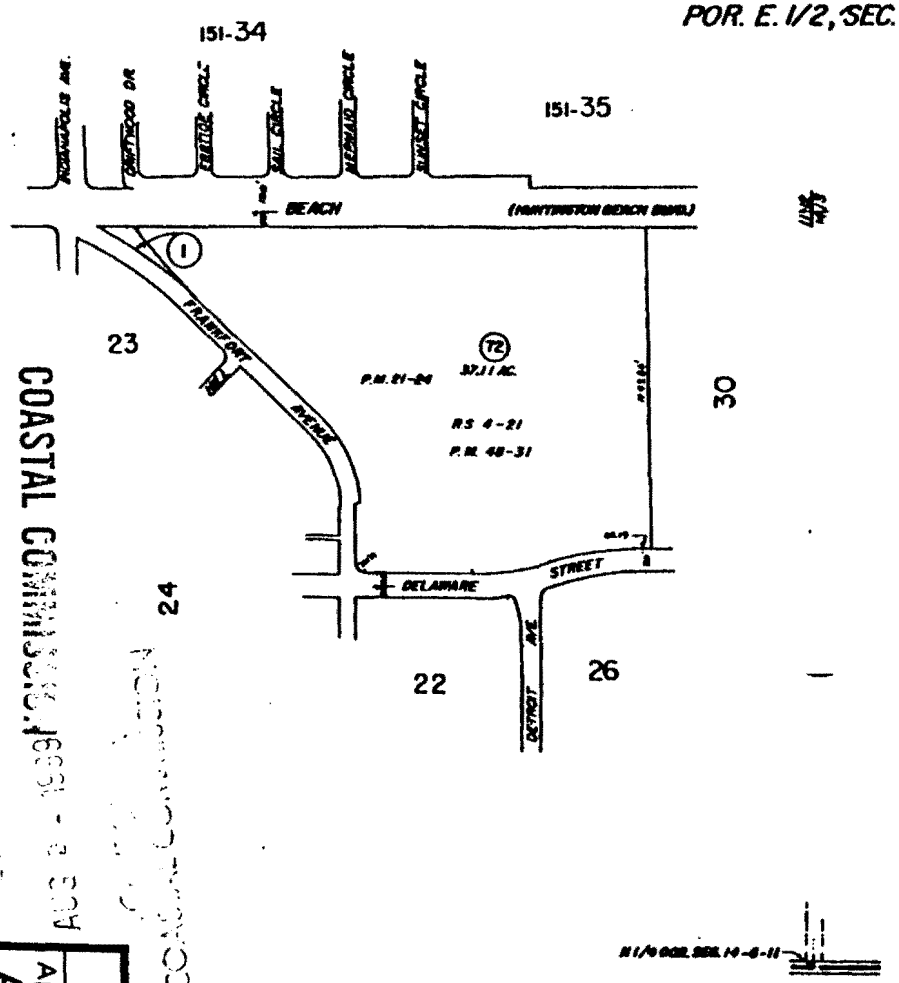
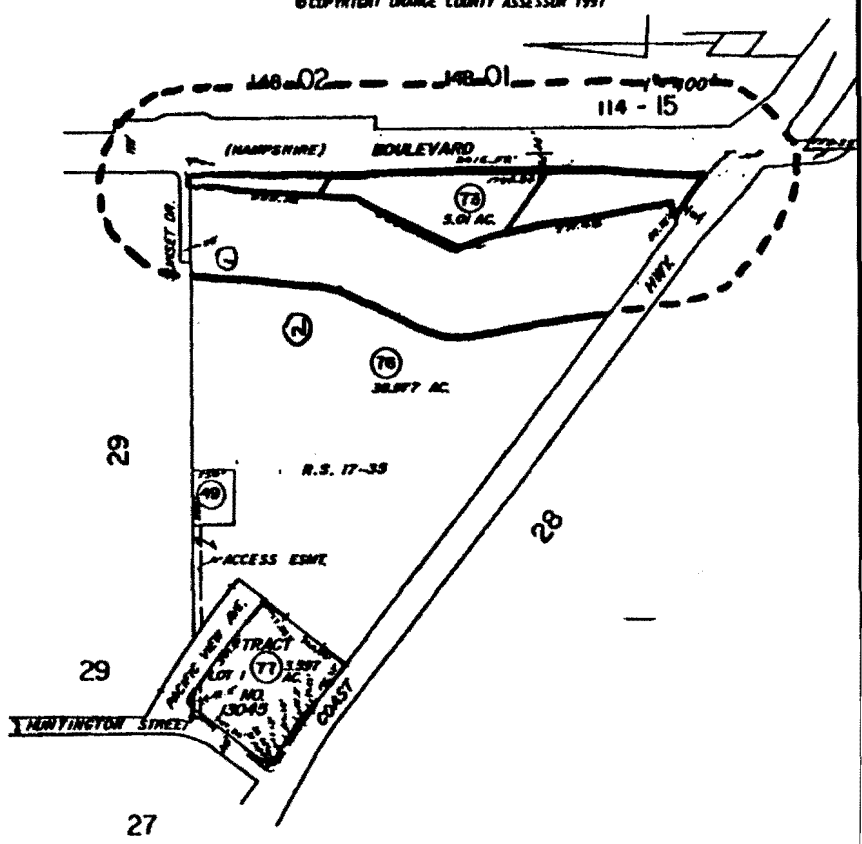




MARCH 1948

TRACT NO. 13045 M.M. 628-46,47

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

ASSESSOR'S MAP BOOK 24 PAGE 25 COUNTY OF ORANGE

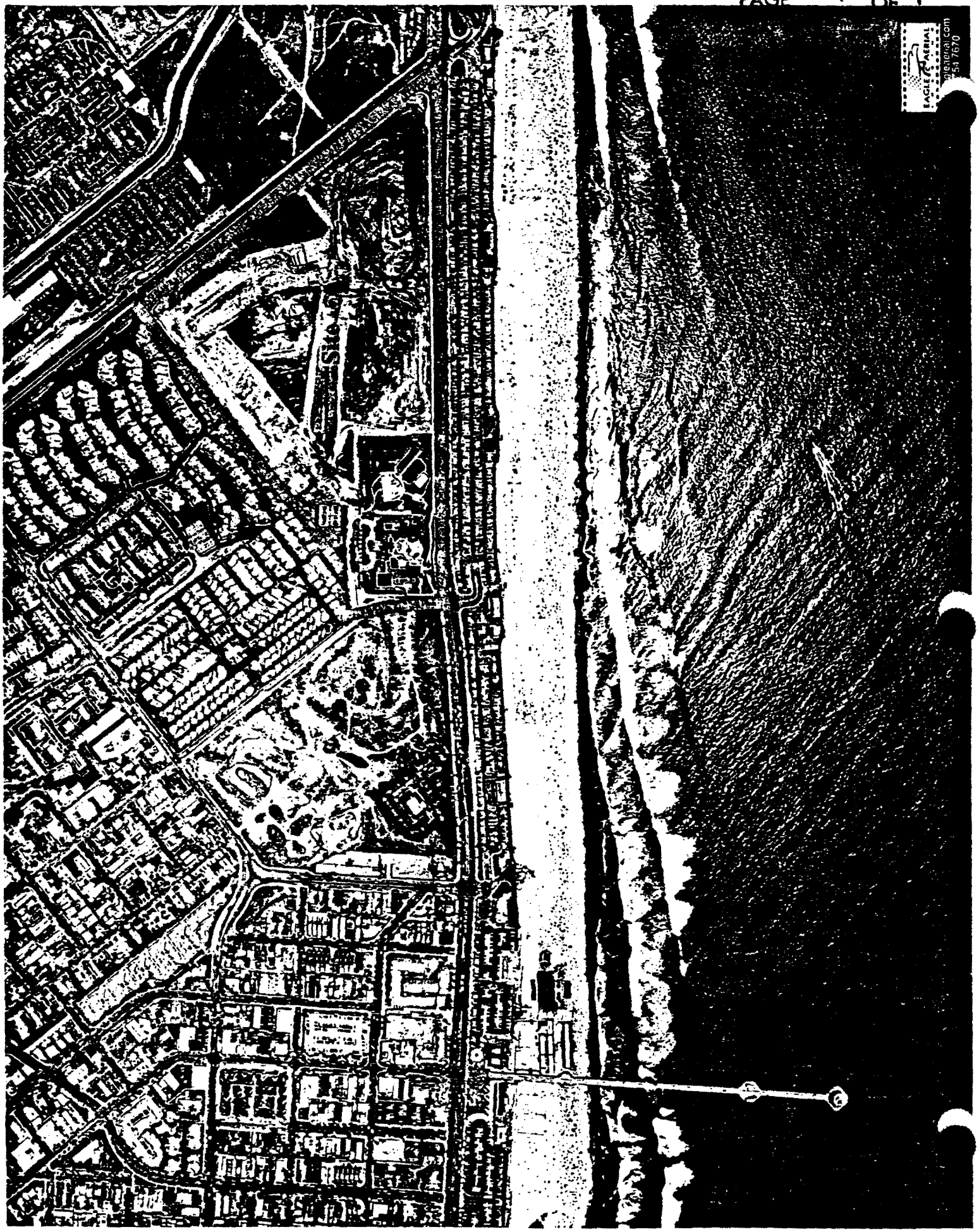
EXHIBIT # 1
PAGE 1 OF 1

COASTAL COMMISSION

EXHIBIT No.
Application Number:
A-5-HNB-99-275
Assessor's Parcel Map
California Coastal Commission

EXHIBIT # J

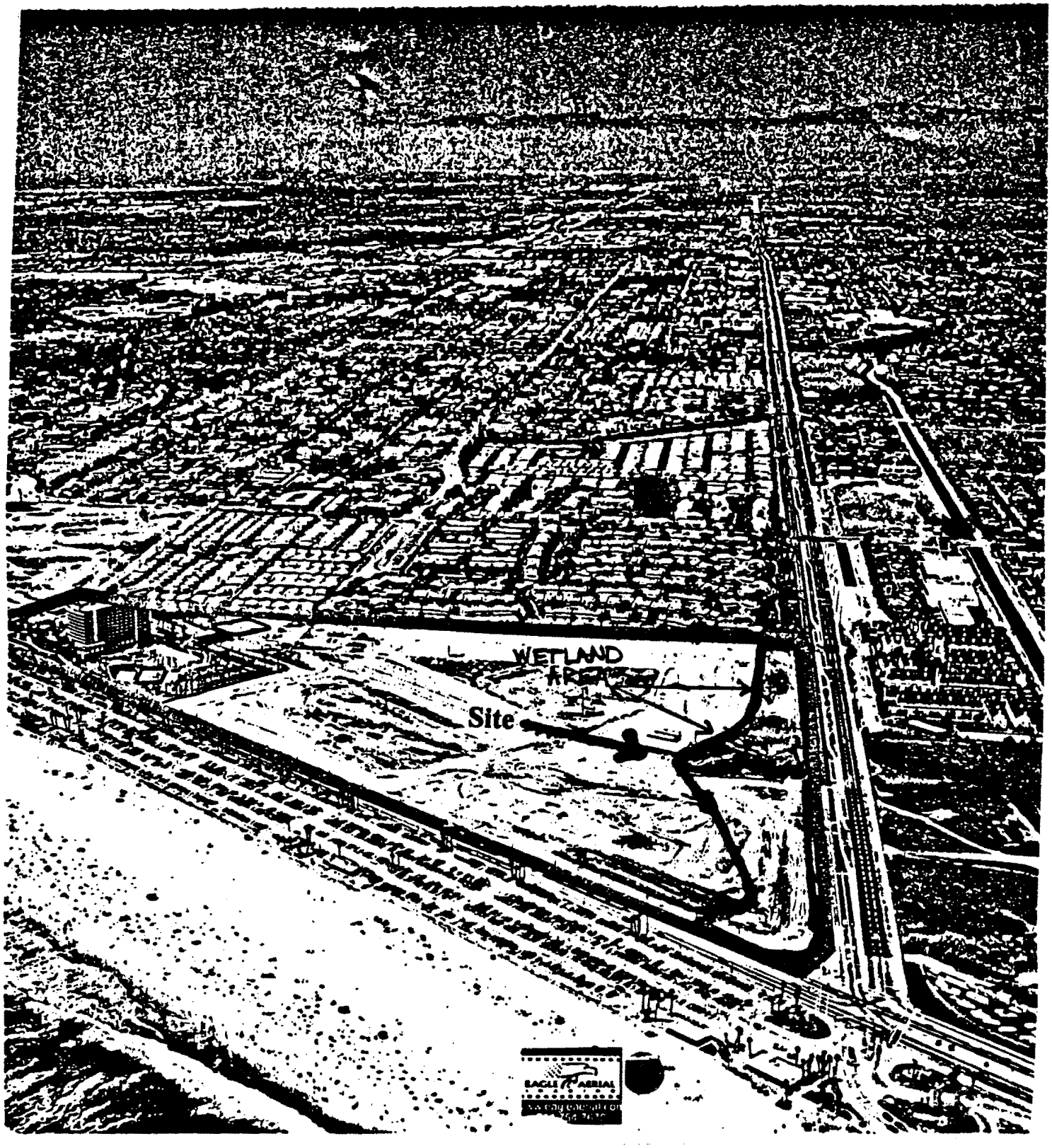
PAGE 1 OF 1

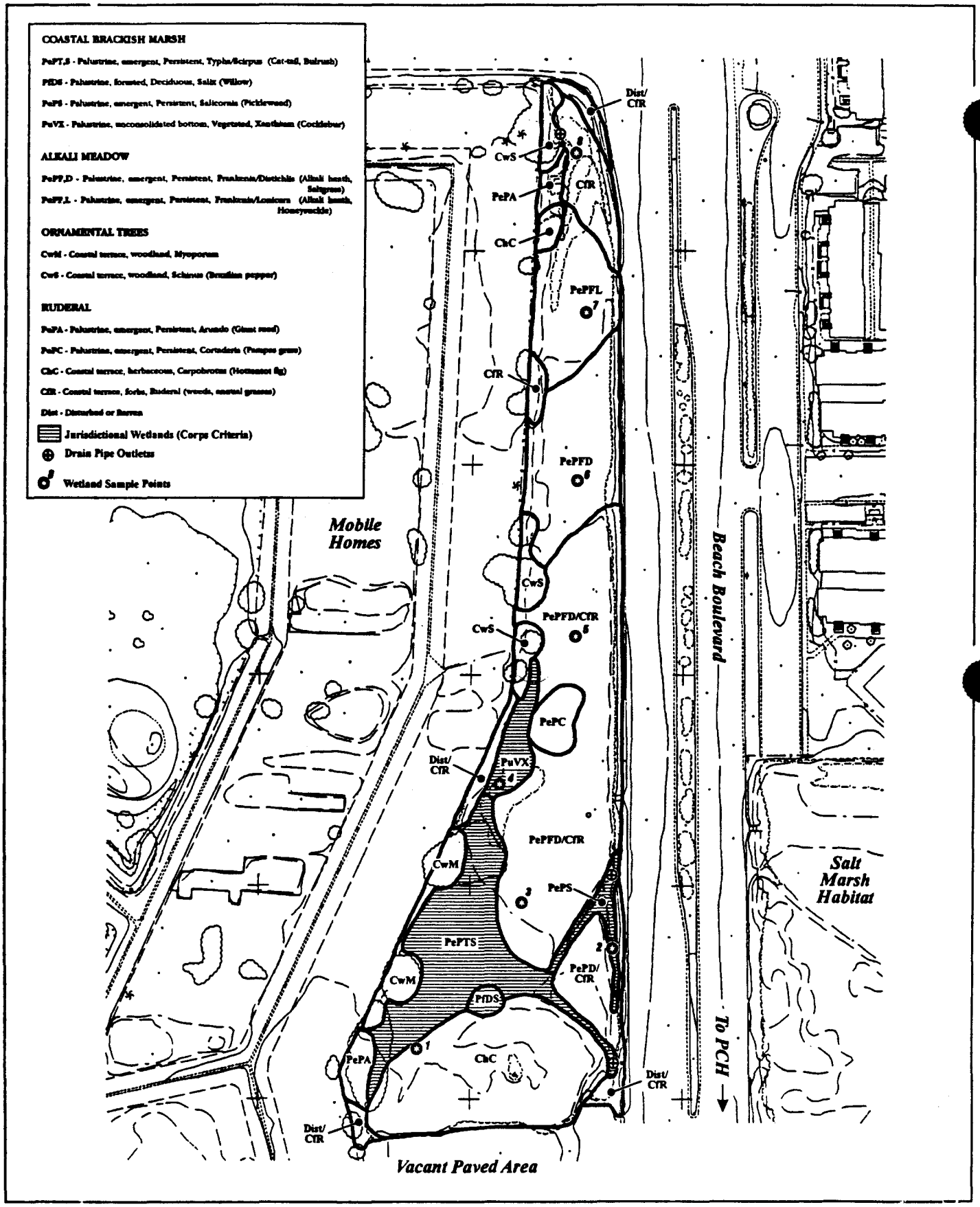


COASTAL COMMISSION

EXHIBIT # J

PAGE 1 OF 1





10/30/97(RMC730)

COASTAL COMMISSION

Figure 2

N

LSA

Scale in Feet

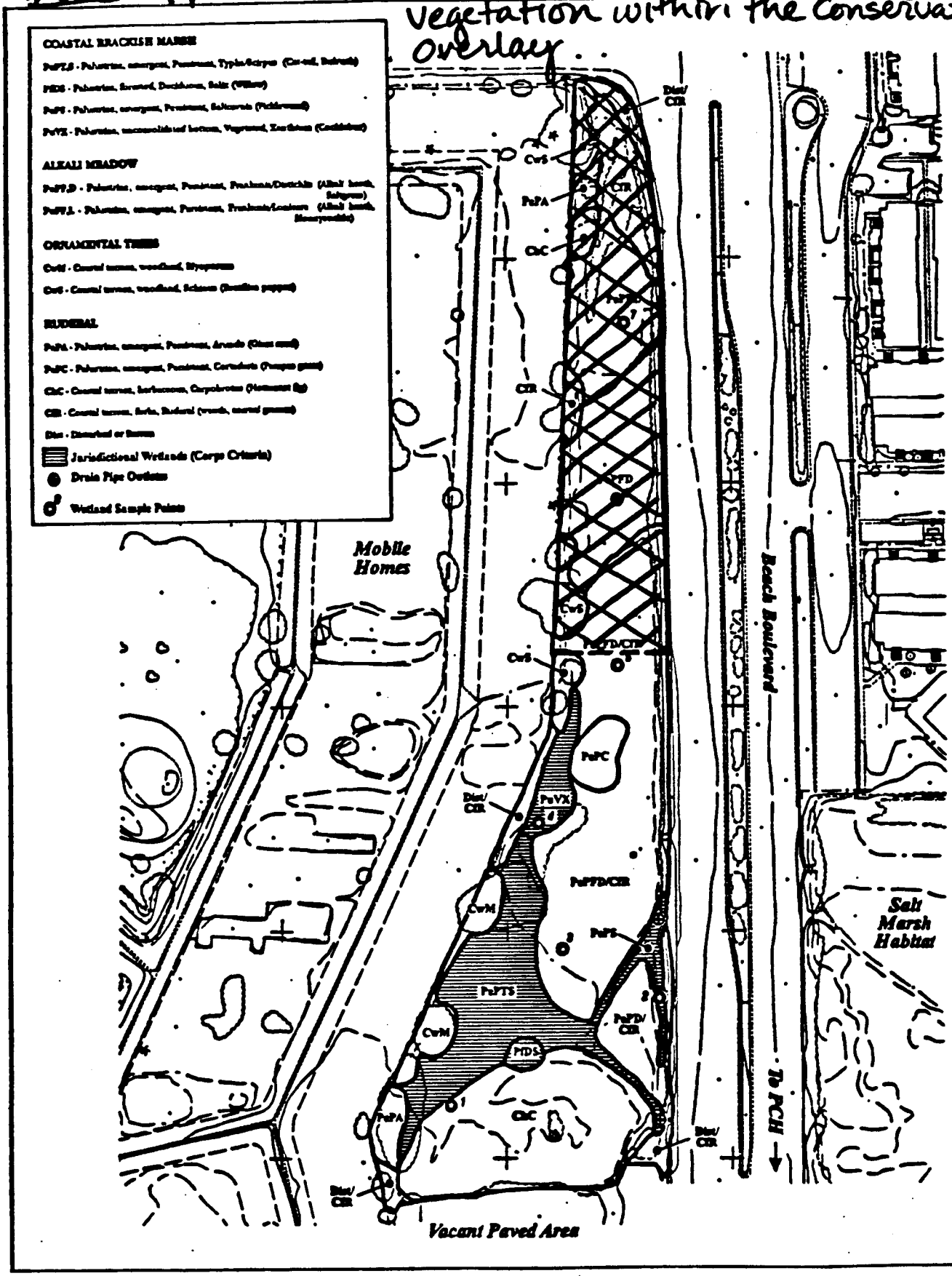
0 75 150

EXHIBIT # K

PAGE 1 OF 3

Vegetation Types
Jurisdictional Areas

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



10/30/97(RMC730)

Figure 2

N

LSA

Scale in Feet

0 75 150

A-5-HNB-99-275
Exhibit K
page 2 of 3

Vegetation Types
Jurisdictional Areas

U **Upland Vegetation** (Non-hydrophytes)

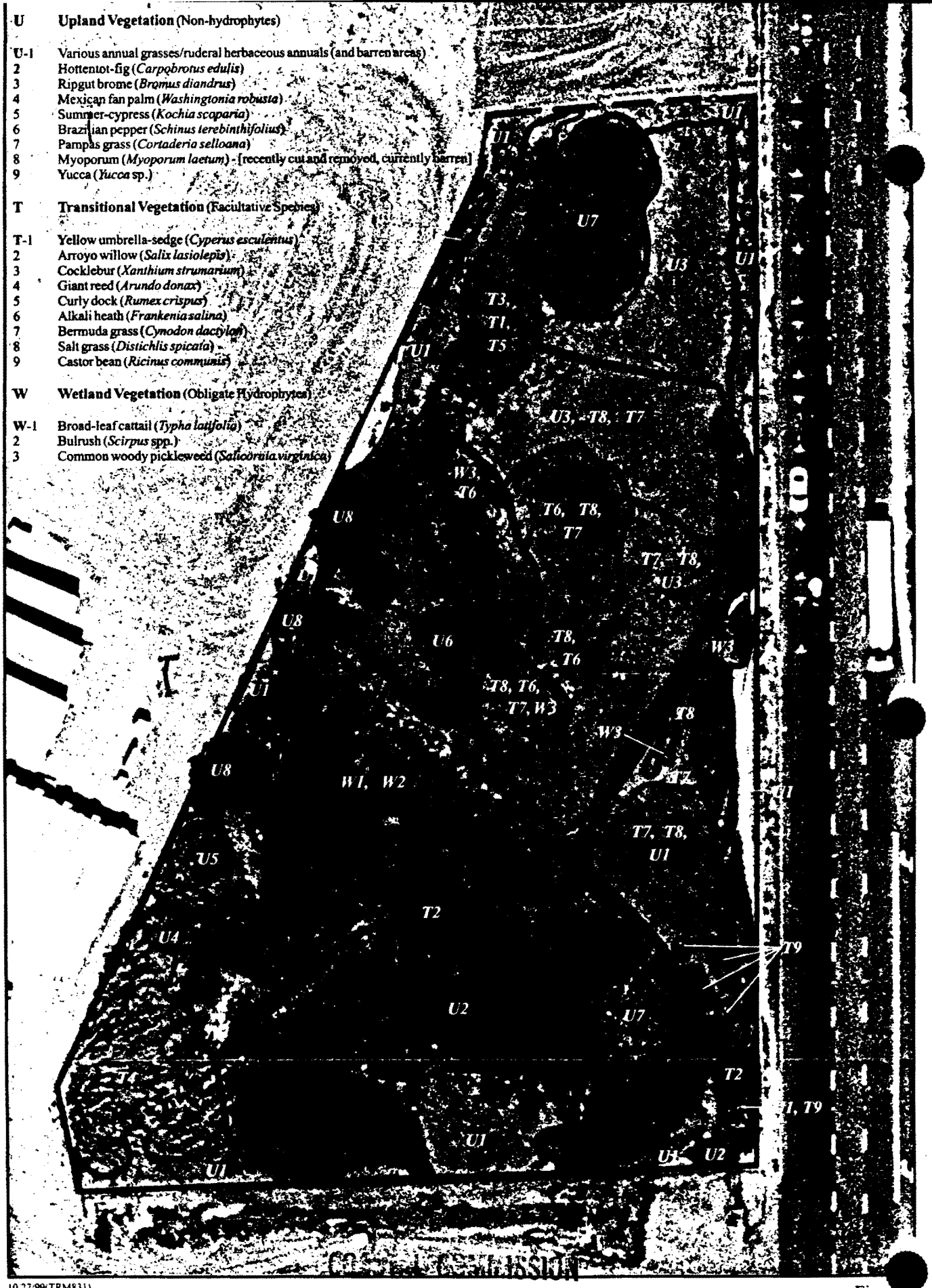
U-1 Various annual grasses/ruderal herbaceous annuals (and barren areas)
2 Hottentot-fig (*Carpobrotus edulis*)
3 Ripgut brome (*Bromus diandrus*)
4 Mexican fan palm (*Washingtonia robusta*)
5 Summer-cypress (*Kochia scoparia*)
6 Brazilian pepper (*Schinus terebinthifolius*)
7 Pampas grass (*Cortaderia selloana*)
8 Myoporum (*Myoporum laetum*) - [recently cut and removed, currently barren]
9 Yucca (*Yucca* sp.)

T **Transitional Vegetation** (Facultative Species)

T-1 Yellow umbrella-sedge (*Cyperus esculentus*)
2 Arroyo willow (*Salix lasiolepis*)
3 Cocklebur (*Xanthium strumarium*)
4 Giant reed (*Arundo donax*)
5 Curly dock (*Rumex crispus*)
6 Alkali heath (*Frankenia salina*)
7 Bermuda grass (*Cynodon dactylon*)
8 Salt grass (*Distichlis spicata*)
9 Castor bean (*Ricinus communis*)

W **Wetland Vegetation** (Obligate Hydrophytes)

W-1 Broad-leaf cattail (*Typha latifolia*)
2 Bulrush (*Scirpus* spp.)
3 Common woody pickleweed (*Salicornia virginica*)



10/27/99(TRM831)

Figure 1

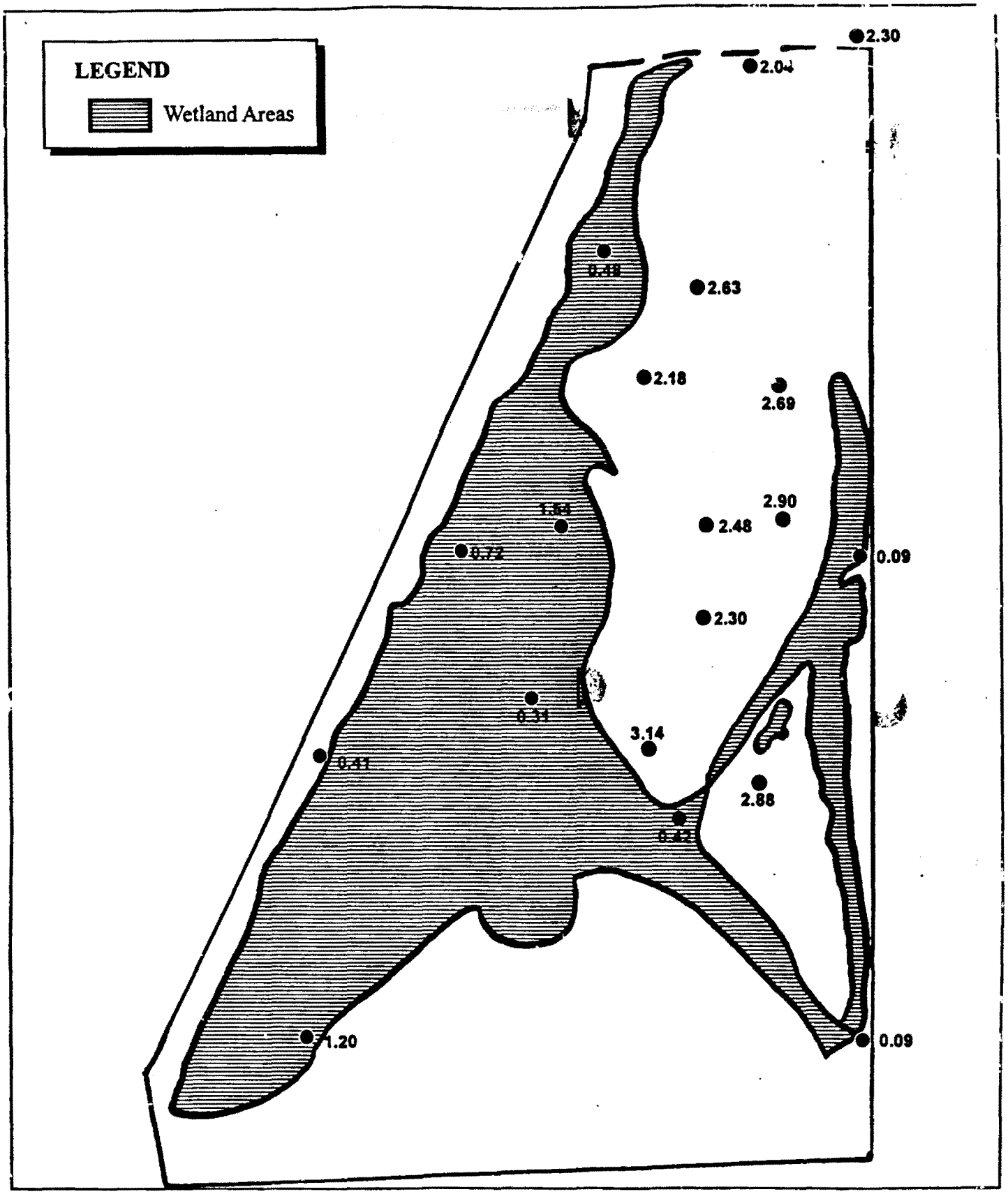
N

LSA Scale in Feet 0 16.5 33

EXHIBIT # K

PAGE 3 OF 3

Vegetation Distribution



10/28/99(TRM831)

Figure 2

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

N

LSA

Scale in Feet

0 20 40

Sample Elevation Points
Within Project Area

SECTIONAL DISTRICT MAP • 14-6-11

CITY OF HUNTINGTON BEACH

ORANGE COUNTY, CALIFORNIA

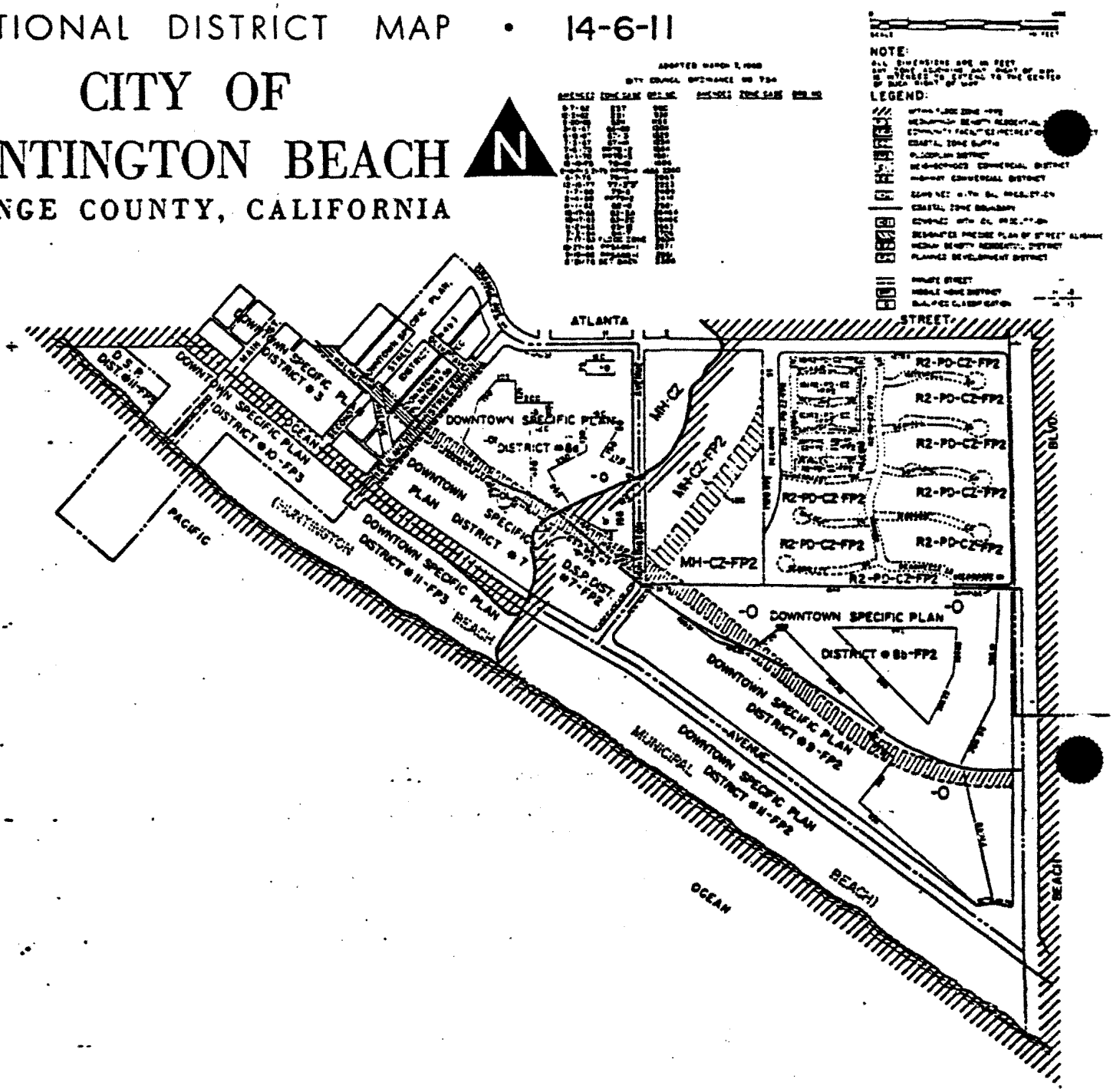


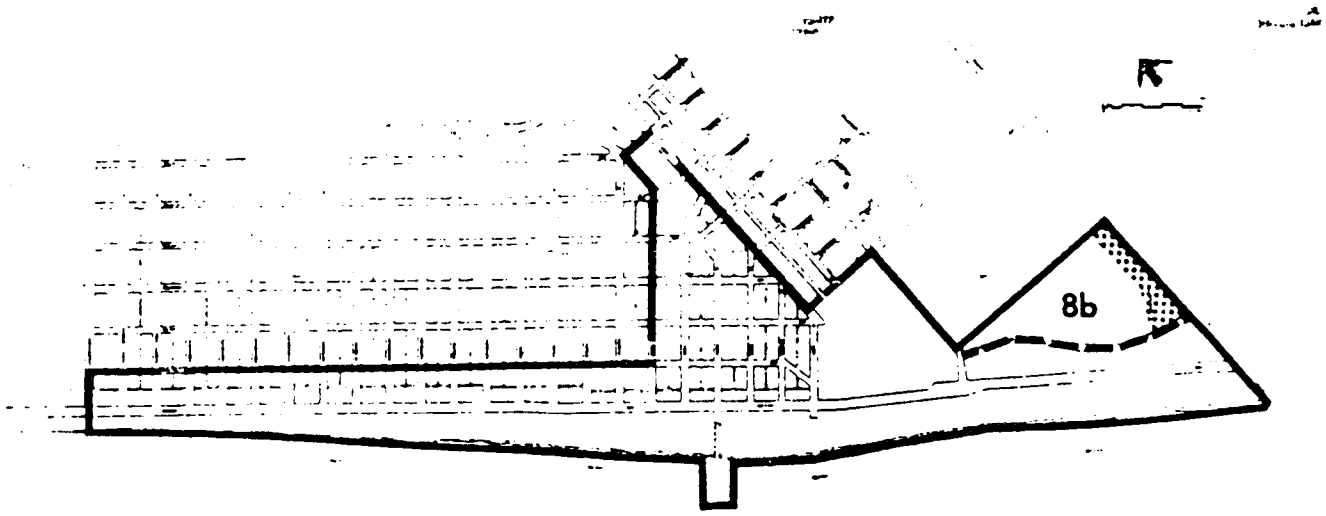
EXHIBIT No. M

Application Number:

A-5-HNB-99-2

City Map for District 8b

California Coastal Commission

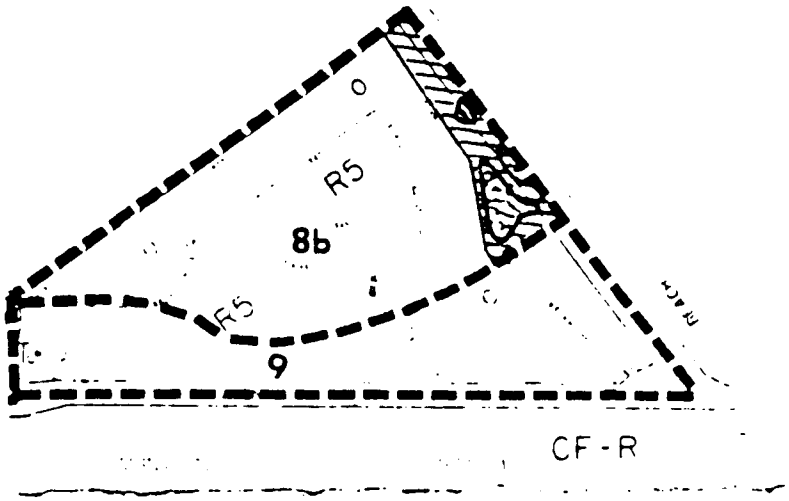


LEGEND

Degraded Wetlands

Restorable Wetlands

Specific Plan Boundary



COASTAL COMMISSION

EXHIBIT # N

PAGE 1 OF 1

Revised January 1989

HUNTINGTON BEACH CALIFORNIA
PLANNING DIVISION

Conservation Overlay

FIGURE 4.15

COASTAL COMMISSION

D. Requirements for All Permitted Development

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

1. Diking, filling or dredging of a wetland or estuary will only be permitted if there is no feasible[10] less environmentally damaging alternative (Section 30233(a)). The Commission may require the applicant to submit any or all of the information described in section III. B. above.

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

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

1) Dredging and spoils disposal must be planned and carried out to avoid significant disruption[11] 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.

4) Other mitigation measures may include opening up areas to tidal action, removing dikes, improving tidal flushing, or other restoration measures.

The Executive Director or the Commission may request the Department of Fish and Game to review dredging plans for developments in or adjacent to wetlands or estuaries. The Department may recommend measures to mitigate disruptions to habitats or to water circulation.

b. If the project involves diking or filling of a wetland, required minimum mitigation measures are the following:[12]

1) If an appropriate restoration site is available, the applicant shall submit a detailed restoration plan which includes provisions for purchase and restoration of an equivalent area of equal or greater biological productivity[13] and dedication of the land to a public agency or otherwise permanently restricts its use for open space purposes. The site shall be purchased before the dike or fill development may proceed.

2) The applicant may, in some cases, be permitted to open equivalent areas to tidal action[14] or provide other sources of surface water. This method of mitigation would be appropriate if the applicant already owned filled, diked areas which themselves were not environmentally sensitive habitat areas but would become so, if such areas were opened to tidal action or provided with other sources of surface water.

---

[12] Mitigation measures shall not be required for temporary or short-term fill or diking, if and only if a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. For the purposes of this guideline, short-term generally means that the fill or dikes would be removed immediately upon completion of the construction of the project necessitating the short-term fill or diking (Section 30607.1).

[13] For an area to be of "equal or greater biological productivity," it must provide equivalent or greater habitat values to the same type and variety of plant and animal species which use the area affected by the proposal.

[14] "Opening up equivalent areas to tidal action" means to permanently open to tidal action former intertidal wetlands capable of providing equal or greater biological productivity. Mitigation measures should restore areas which are no longer functioning in a manner beneficial to wetland species. For example, returning a diked-off, formerly saltwater, but presently freshwater marsh to tidal action would not constitute mitigation. However, improving tidal flushing by removing tide gates, digging tidal channels and clearing culverts might qualify, if the Commission determines that such actions would restore an area to equal or greater habitat value than the area lost.

3) However, if no appropriate restoration sites under options 1 and 2 are available, the applicant shall pay an in-lieu fee of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area.

This third option would be allowed only if the applicant is unable to find a willing seller of a potential restoration site. The public agency may also face difficulties in acquiring appropriate sites even though it has the ability to condemn property. Thus, the in-lieu fee shall reflect the additional costs of acquisition, including litigation, as well as the cost of restoration. If the public agency's restoration project is not already approved by the Commission, the public agency may need to be a co-applicant for a coastal development permit to provide adequate assurance that conditions can be imposed to assure that the purchase of the mitigation site shall occur prior to issuance of the permit. In addition, such restoration must occur in the same general region (e.g., within the same stream, lake, or estuary where the fill occurred).

A preferred restoration program would remove fill from a formerly productive wetland or estuary which is now biologically unproductive dry land and would establish a tidal prism necessary to assure adequate flushing. Few if any restoration projects have been implemented for a sufficient length of time to provide much guidance as to the long-term restorability of such areas. Since such projects necessarily involve many uncertainties, restoration should preceed the diking or filling project. At a minumum, the permit will be conditioned to assure that restoration will occur simultaneously with project construction. Restoration and management plans shall be submitted with the permit application.

The restoration plan should generally state when restoration work will commence and terminate, should include detailed diagrams drawn to scale showing any alterations to natural landforms, and should 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.).

The management plan would constitute an agreement between the applicant and the Commission to guarantee the wetland is restored to the extent established under stated management objectives and within a specified time frame.

The plan should describe the applicant's responsibilities in maintaining the restored area to assure the Commission that the project will be successful. The management plan should generally include provisions for a monitoring program and for making any necessary repairs or modifications to the mitigation site.

The applicant should periodically submit reports on the project which give information on the following:

- distribution and type of vegetation established
- benthic invertebrate abundance
- bird useage and establishment of endangered species
- fish and other vertebrate abundance

3. Diking, filling or dredging of a wetland or estuary must maintain or enhance the funtional capacity of the wetland or estuary [Section 30233(c)]. Functional capacity means the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity[15]. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:

a. That the project does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance and composition are essentially unchanged as a result of the project.

b. That the project does not harm or destroy a species or habitat that is rare or endangered.

c. That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary.

d. That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or nonconsumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem.

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[15] The intention here is to convey the importance of not only how many species there are but also the size of their populations (abundance) and the relative importance of the different species to the whole system (composition). It cannot be overemphasized that the presence of a species by itself is an inadequate indicator of the condition of a natural system. In a "healthy" wetland ecosystem, the absolute number of individuals of a species and the relative number compared to other species will depend on the size of the organism and its place in the food web (what it feeds on, what feeds on it, and what competes with it for the same food or other resources). Major changes in absolute or relative numbers of some species will have far-reaching consequences for the whole ecosystem because of their interactions with other species.

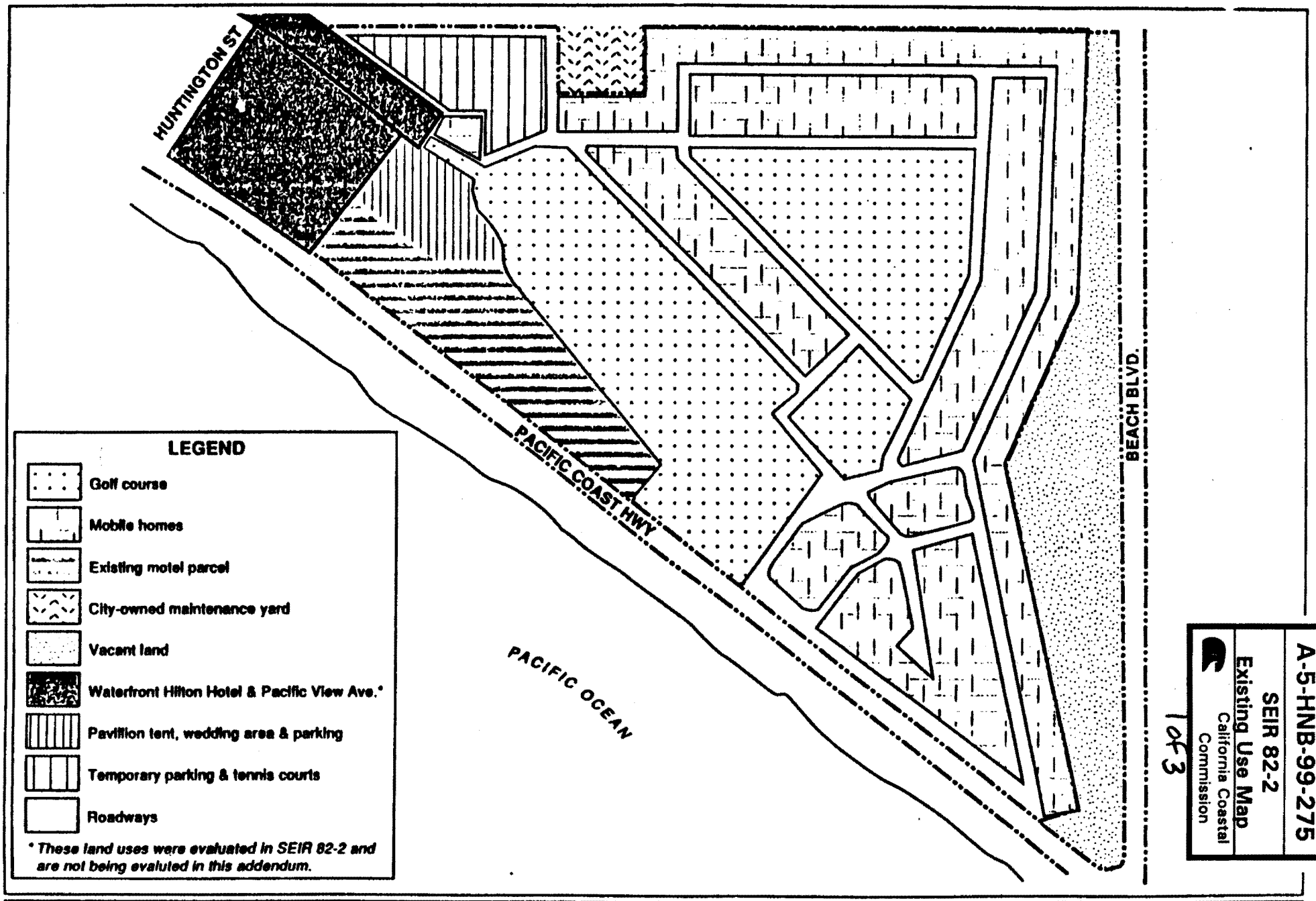

EXHIBIT NO. 1
Application Number:
A-5-HNB-99-275
SEIR 82-2
Existing Use Map
California Coastal Commission

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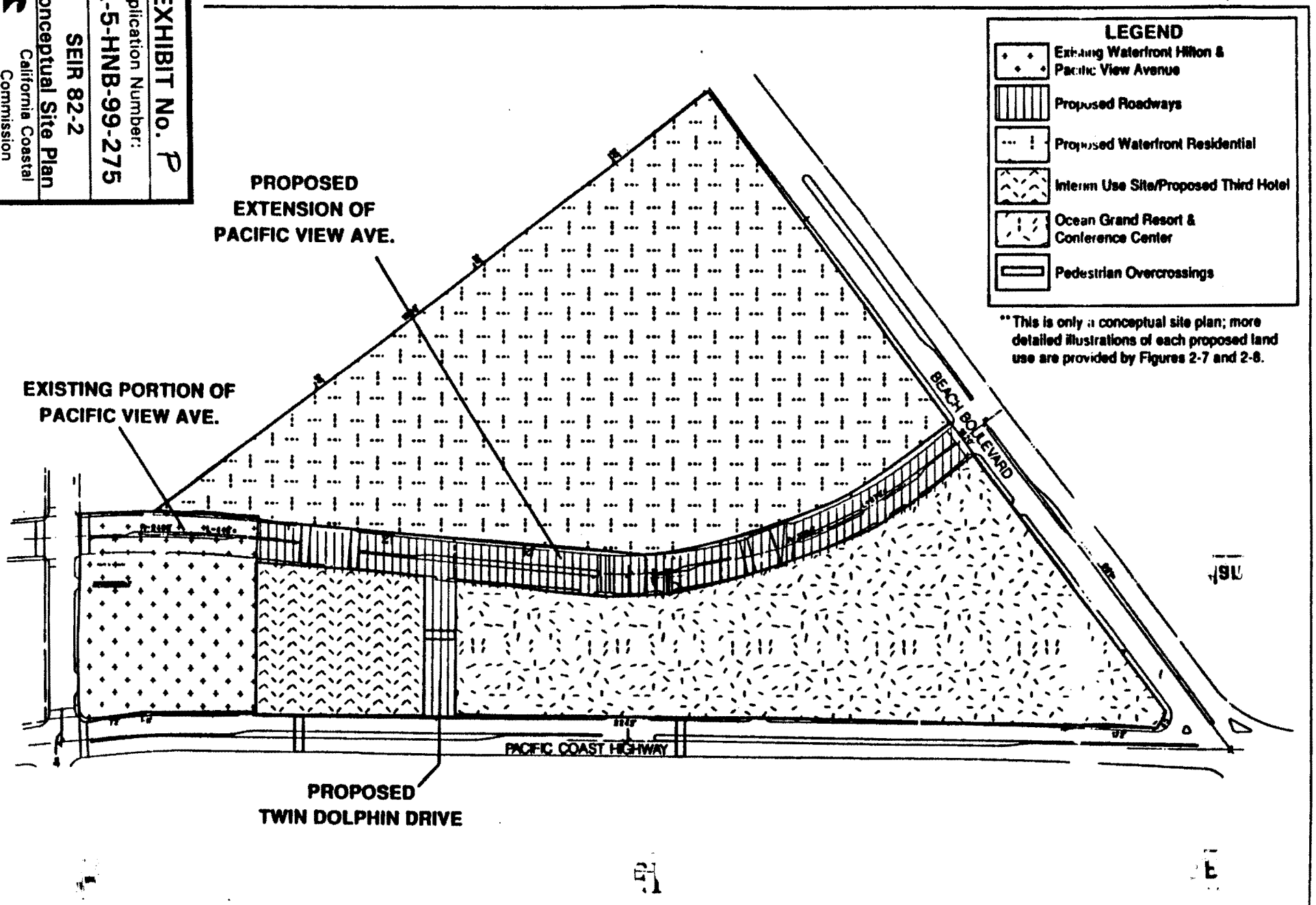
FIGURE 2-5a
Existing Land Use Map (1998) View

SOURCE: City of Huntington Beach, 1997

City of Huntington Beach - Addendum to SEIR 82-2

EXHIBIT No. P
Application Number:
1-5-HNB-99-275
SEIR 82-2
Conceptual Site Plan
California Coastal Commission

2 of 3



400 200 0 400 Scale in Feet

SOURCE: Robert Mayer Corporation, 1997

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EIP ASSOCIATES

FIGURE 2-6
Conceptual Site Plan (1998)
City of Huntington Beach • Addendum to SEIR 82-2

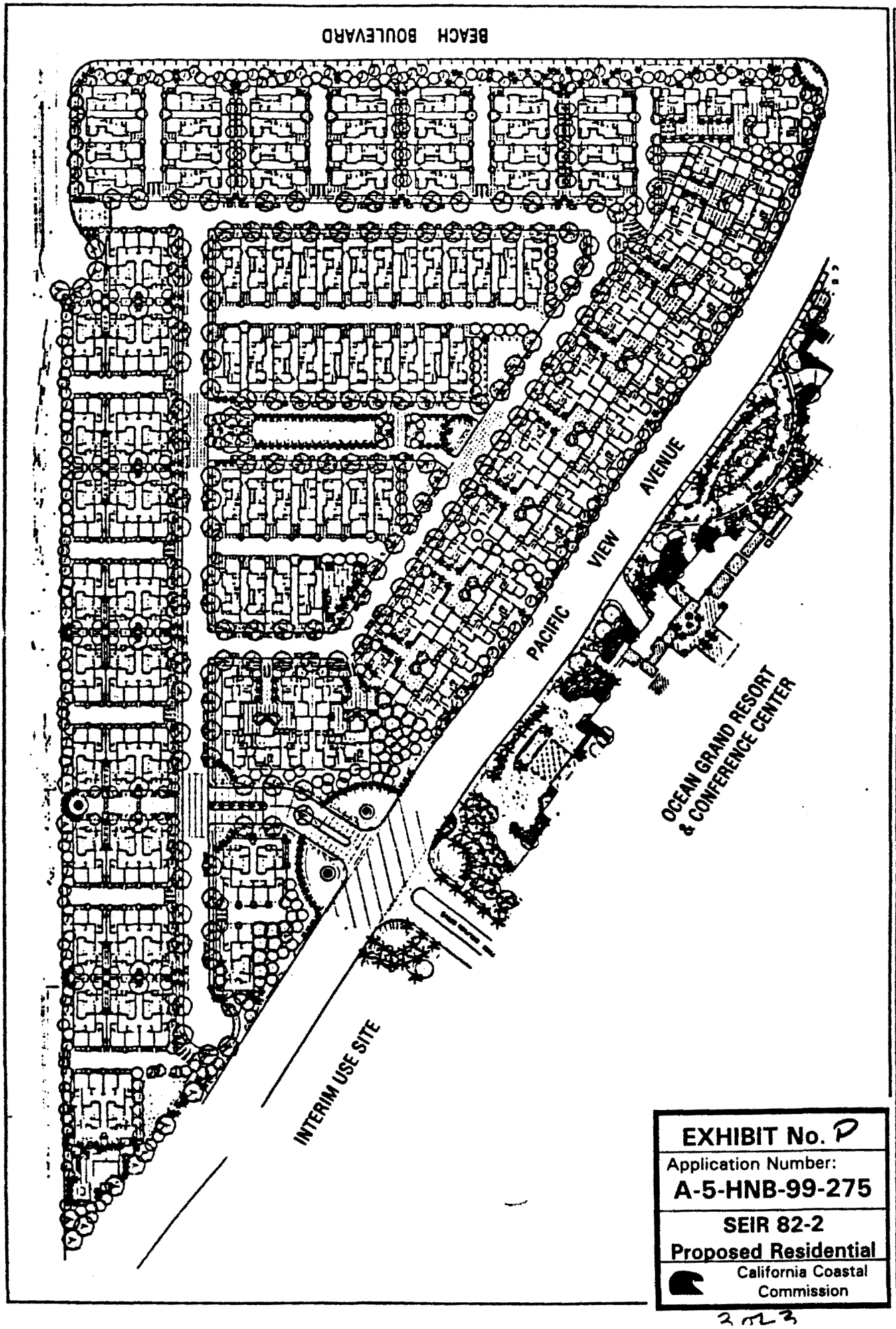

FIGURE 2-8
Proposed Waterfront Residential

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

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State of California

The Resources Agency

Memorandum

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

Date : February 4, 1983

RECEIVED FEB 15 1983 California Coastal Commission SCRC

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

Director

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

COASTAL COMMISSION

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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.

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Summary of Major Findings

Based upon examination of historical mapping, existing biological data, and upon the definitions and criteria outlined herein, the Department finds that of the 162.6 acres within the study area, 149.9 acres are historic wetland and 12.7 are historic upland (Table 1). We find that of the 149.9 acres of historic wetland within our study area, 114.7 acres (76.5%) continue to function viably as wetlands. The Department finds that all 114.7 acres of wetland identified are degraded pursuant to the definition established herein. However, we also find that 113.9 of these 114.7 wetland acres (99%) provide either high or moderate habitat values to wetland-associated birds. Further, the Department finds that major restoration efforts would not be required to restore and enhance wetland values on 114.7 acres identified in this report.

Some historic wetlands (31.2 ac) located southeast of Beach Boulevard have been so severely degraded that they no longer function viably as wetlands. These former wetlands however, provide an excellent potential opportunity for restoration. Most of the former wetlands (17.6 ac.) in this area may be feasibly restored with less than major effort while only 10.7 acres are not feasibly restorable. Historic wetlands (4.8 ac.) located west of Beach Boulevard have also undergone severe degradation. Of these historic wetlands only 0.8 acres continue to function as wetlands. However, some former wetlands (1.4 ac.) adjacent to this site could be restored to create a 2.2-acre freshwater marsh.

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TABLE 1. Historic wetlands and uplands within the Huntington Beach wetlands.

Class	State of California	Thorpe	Mills Land & Water Co.	City of Huntington Beach	Southern California Edison	Total
I. Historic Wetlands (acres)						
A. Non-degraded wetlands	-	-	-	-	-	0
B. Degraded but viably functioning wetlands.						
1. Providing documented high and moderate habitat value to wetland-associated avifauna.	38.8	44.6	15.3	-	15.2	113.9
2. Providing low value for wetland-associated avifauna and areas not yet thoroughly evaluated.	-	-	-	0.8	-	0.8
Subtotal	38.8	44.6	15.3	0.8	15.2	114.7
C. Historic wetlands no longer viably functioning as wetlands.						
1. Restorable	9.6	0.6	8.3	1.4	2.0	21.9
2. Not Restorable	5.9	-	2.9	2.6	1.9	13.3
Subtotal	15.5	0.6	11.2	4.0	3.9	35.2
Historic Wetland Total (acres)	54.3	45.2	26.5	4.8	19.1	149.9
II. Historic Uplands (acres)	12.5	-	-	0.2	-	12.7
GRAND TOTAL (acres)	66.8	45.2	26.5	5.0	19.1	162.6

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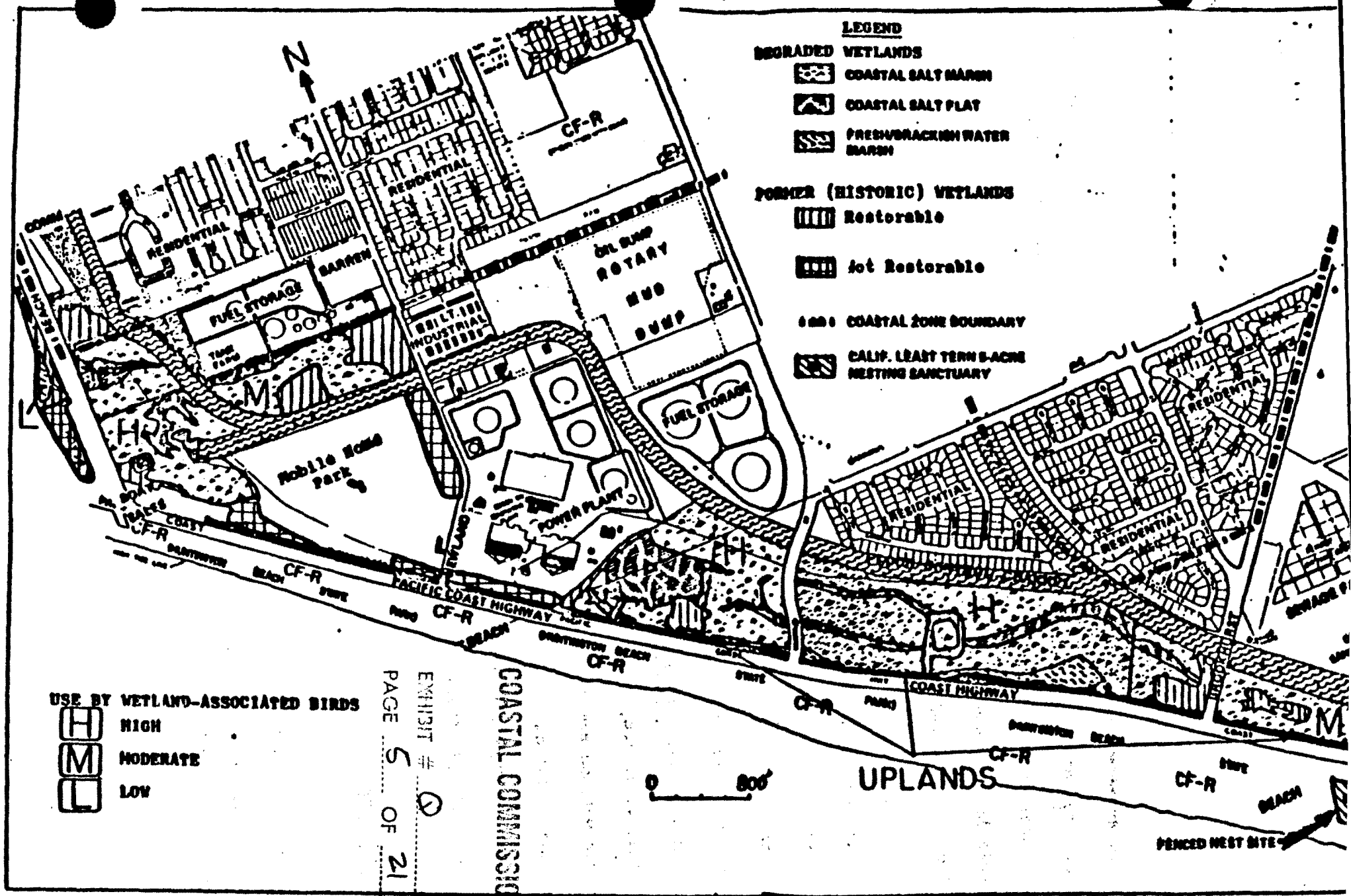

Figure modified by the Dept. of Fish and Game.

HUNTINGTON BEACH CALIFORNIA
PLANNING DIVISION

WETLANDS

As Depicted By The Dept. O

Figure 2

COASTAL COMMISSION
EXHIBIT # 1
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Fresh/Brackish Water Marsh- A wetland, as previously defined, exhibiting a water regime which maintains vegetation which is typically adapted to fresh or brackish water conditions. For the purposes of this report, the fresh/brackish water marsh designation includes areas which are at least 30% vegetated and where fresh/brackish water plants predominate. Fresh/brackish water marsh indicator plant species include spiny rush (Juncus acutus), sedge (Cyperus ssp.), bulrushes (Scirpus ssp.), cattails (Typha ssp.) and others. (E1/E2EM1VB(MVD(K2/3+dh)*.

We again refer to the Coastal Act wetland definition: "Lands within the Coastal Zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open and closed brackish water marshes, swamps, mudflats and fens." Clearly, wetlands classified in this report and on the accompanying map as "coastal salt marsh" and "fresh/brackish water marsh" are wetlands by explicit inclusion in the Coastal Act definition.

"Coastal Salt Flat" areas designated in this report and on the accompanying map are periodically inundated and saturated on a seasonal basis and are, therefore, also wetlands by Coastal Act definition. Additionally, it is reasonable to conclude that periodicity, as it is referred to in Coastal Act Section 30121 means often enough to support a dominance of plant species adapted to, or tolerant of inundation, and often enough to largely preclude the growth of plants which are not so adapted. All areas designated as wetlands in this report and on the accompanying map exhibit ecologically dominant plant species which are both tolerant of and dependent upon periodic inundation or substrate saturation.

*USFWS classification system

Determination of Degraded Wetlands

Neither Section 30121 of the Coastal Act nor the U.S. Fish and Wildlife Service Wetland Classification System define or discuss "degraded wetlands." However, PRC Section 30233(a)(3) recognizes the existence of such areas, and states that these areas shall be identified by the Department of Fish and Game. Implicit in this mandate is that the Department must define "degraded wetlands" since undefined areas cannot be identified.

The word "degrade" has several definitions. Some of these definitions are extremely negative and, therefore, inadequate to enable this Department to emphasize the significant wildlife values which exist in many "degraded wetlands." Therefore, from the various definitions available, we have concluded that the following definition of the term "degraded wetland" is as ecologically accurate a definition as is possible:

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

We emphasize that this definition is to be applied only when the alteration is induced by man, and is not meant to apply to natural succession from a complex to a more simplified wetland community.

As has been previously discussed, 149.9 acres in our study area (92%) were historically wetland. This historic wetland area was tidal in nature. These wetlands were once populated by a highly diverse compliment of organisms which inhabited a diverse assemblage of ecological communities similar to those present today in the wetlands of Anaheim Bay, Bolsa Chica and Upper Newport Bay. Today, existing wetlands in the study area are essentially non-tidal in nature. Fish, molluscs, and other marine and estuarine organisms have been largely eliminated. The 114.7 acres of existing wetland is populated by a less complex group of organisms than that which previously existed due to the impairment of tidal and freshwater flow by construction of dikes and PCH (in the study area). We find that these 114.7 acres of wetlands are degraded.

This degraded wetlands determination is not meant to imply that these non-tidal wetlands do not provide significant wildlife values nor that they are not highly productive. In fact, pickleweed-dominated salt marshes are among the most productive natural plant communities on earth. Although we have not conducted extensive measurements of productivity in the study area, preliminary measurements conducted by Department personnel in 1979 indicated a net annual productivity on the order of 1500 g. dry wt/m^2/yr in the pickleweed-dominated salt marsh of the study area. We emphasize that this figure is not definitive due to the cursory nature of the study. However, this figure is compatible with the findings of other wetland ecologists on the west coast. In general, Salicornia-dominated high salt marsh in restricted or non-tidal wetlands exhibits a mean annual productivity of between 1000 and 2500 g. dry wt/m^2/yr (Eilers 1980) depending upon the method of calculation used.

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

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

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

(1) Continue to allow freshwater urban runoff from the trailer park to flow to the wetlands southeast of Beach Boulevard.

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

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(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

not the least environmentally damaging means of enhancing or restoring the wetlands due to their proximity to the flood control channel and the apparent ease with which they may be restored.

C. Section 30411(b)(3)

Pursuant to Coastal Act Section 30411(b)(3), the Department is required to determine how restoration and enhancement of degraded wetlands can most feasibly be achieved. The term "feasible" is defined in Coastal Act Section 30108 as follows:

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

As indicated previously, it is our conclusion that from a technological as well as environmental perspective it is possible to swiftly restore and enhance the existing wetlands as described. In addition, Coastal Act Section 30108 requires the consideration of social and economic factors. Since the analysis of the feasibility of restoration activities in degraded wetland areas is required of this Department pursuant to Section 30411(b)(3), it follows that the Department must make feasibility determinations based on social and economic factors as well as environmental and technical factors.

What is meant by "social factors" is not precisely clear to this Department, however, after careful consideration we conclude that the only potentially negative

and arguably social effects of wetland restoration in the study area appear to relate to flood problems and mosquito production problems.

Considering the existing potential problem of flooding, the Department believes that if culverts with selective water control structures as well as dikes were constructed to protect the trailer park, PCH, where necessary, and perhaps Beach Boulevard, the existing threat of flooding could actually be decreased. These dikes would be constructed in association with a restoration project and would effectively and safely increase the potential storage capacity of water in the subject area. This increased storage capacity could involve several hundred acre-feet of water which under existing conditions might cause damage not only to the areas identified above, but also to residential and commercial uses located inland from the flood control channel.

If appropriate diking and selective water control structures and culverts are used, the Department finds these restoration activities feasible taking into account the social factors associated with flood threat.

The Department finds that the restoration project outlined above (which incorporates increased tidal flushing and the establishment of a considerably more complex group of marine and estuarine-oriented organisms) would effectively decrease mosquito production. The combined effect of increased salinities and a more constant water regime would allow the presence of year-round active mosquito predators (California killifish, topsmelt, Gambusia, etc.) and would tend to eliminate those environments wherein most mosquitoes thrive (Reynolds, 1983). Therefore, the Department finds that the restoration activities outlined above are

feasible taking into account the social factors associated with mosquito production.

Regarding the economic feasibility of wetland restoration, the Department concludes that activities specifically related to restoration would be relatively inexpensive to accomplish. Such activities could, as previously indicated, include such minor restorative measures as the placement of culverts, limited channelization, and erection of necessary peripheral dikes.

In summary, based upon the stated reasons, the Department concludes that the restoration plan outlined above is feasible as the term feasibility is defined in Section 30108 of the Coastal Act.

In addition to determining the feasibility of wetland restoration, Section 30411(b)(3) requires this Department to determine if the most feasible means of restoration involves a boating facilities project or whether there are other feasible means of restoring wetland values. In responding to Coastal Act Section 30411(b)(2), the Department has already determined that a boating facilities project is not the most feasible means of effecting restoration. This is based upon the demonstrated ease of restoring wetlands by utilizing the adjacent tidally-influenced flood control channel in conjunction with selective water control structures. Therefore, the following discussion shall consider other means of restoring and enhancing wetland values in the study area.

Focusing upon that portion of our study area between Beach Boulevard and the Santa Ana River, there are (as previously indicated) 17.6 acres of restorable former

wetlands (taking into account the environmentally sensitive nature of the 2.9 acres adjacent to Brookhurst Street and our desire to retain these 2.9 acres as upland). Of these 17.6 acres, 6.7 acres are owned by the State and 10.9 acres are in private ownership. Of the 14.5 acres of non-sensitive, non-restorable property located between Beach Boulevard and the Santa Ana River, 4.8 acres are in private ownership and 9.7 acres are owned by the State. Of the 10.9 acres of restorable former wetland in private ownership, 5.1 acres do not appear to be developable since they are scattered throughout the study area, consist of small parcels, and are generally contained within existing wetland areas. Additionally, there is a 5.8 acre area adjacent to Newland Street of which 4.3 acres were filled and scraped in 1981. Although these 5.8 acres are not presently wetlands, they are nonetheless easily restorable as wetlands. On the other hand, all 9.7 acres of non-sensitive, non-restorable property owned by the State appears to be developable and desirably located for development because these 9.7 acres front directly on Pacific Coast Highway. For these reasons, the Department recommends the following means of feasibly restoring and enhancing wetlands values in the area between Beach Boulevard and the Santa Ana River:

1. Restore and enhance 113.9 acres of existing wetland. Specifics of this restoration concept were previously discussed.

2. Restore the 6.7 acres of restorable former wetland owned by the State. This acreage could be easily restored as a function of the restoration plan outlined previously.

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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

between Beach Boulevard and the Santa Ana River and 2.8 acres of City development within the 162.6 acre study area (Figure 3).

Lastly, regarding the 16.4 acre area bounded by Newland Street, the flood control channel, and the fuel storage facility, this area involves special considerations. As previously mentioned, 8.3 of these acres were recently tilled and are involved in litigation. A further 4.3 acres of wetland were filled and scraped in 1981 without benefit of a Coastal Development Permit. Assuming that this 4.3 acre area is not recolonized by wetland vegetation, or does not otherwise reestablish itself as a wetland in the future, and further assuming development of all or portions of the 5.8 acre area near Newland Street (of which the 4.3 acre area is part), then restoration of the balance of the 16.4 acre parcel should be required as a condition of any Coastal Development Permit approved for development of all or portions of the 5.8 acre area.

This concludes our formal determinations for this area pursuant to Coastal Act Section 30411(b). Please know the Department remain available to answer any question concerning this report.

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

Landowner	Location	Wetland Species Present (See Legend)
State of California	1. Santa Ana River to Brookhurst St.	1 8 10
	2. Brookhurst St. to Magnolia St.	1 3 4 6 8 11
	3. East of Beach Blvd.	1 3 8 9 12 13
City of Huntington Beach	1. West of Beach Blvd.	1 3 5 6 7 8 9
Southern California Edison	1. West of Magnolia St.	1 8
Thorpe	1. East of Magnolia St.	1 3 8
	2. West of Magnolia St.	1 3 4 12
Mills Land & Water Co.	1. North and east of the flood control channel	1 3 *
	2. West of the flood control channel	1 3

Legend

1 *Salicornia virginica*
2 *Salicornia subterminalis*
3 *Frankenia grandifolia*
4 *Juncus acutus*
5 *Scirpus olneyi*
6 *Scirpus californicus*
7 *Cyperus sp.*
8 *Distichlis spicata*
9 *Typha sp.*
10 *Ruppia maritima*
11 *Jaumea carnosa*
12 *Scirpus robustus*
13 *Cotula coronipifolia*

[1] 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.

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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	*Ardea herodias*
Great egret	*Casmerodius albus*
Snowy egret	*Egretta thula*
Cattle egret	*Bubulcus ibis*
Black-crowned night heron	*Nycticorax nycticorax*

Surface ducks

Mallard	*Anas platyrhynchos*
Northern Pintail	*Anas acuta*
Green-winged teal	*Anas crecca*
Blue-winged teal	*Anas discors*
Cinnamon teal	*Anas cyanoptera*
American wigeon	*Anas americana*
Northern Shoveler	*Anas clypeata*

Diving ducks

Lesser scaup	*Aythya affinis*
Surf scoter	*Melanitta perspicillata*
Bufflehead	*Bucephala albeola*

Stiff-tailed ducks

Ruddy duck	*Oxyura jamaicensis*

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

Black-shouldered kite	*Elanus caeruleus*
Red-tailed hawk	*Buteo jamaicensis*
Northern harrier	*Circus cyaneus*
American kestel	*Falco sparverius*

Shorebirds

Semipalmated plover	*Charadrius semipalmatus*
Killdeer	*Charadrius vociferus*
Black-bellied plover	*Pluvialis squatarola*
Long billed curlew	*Numenius americanus*
Whimbrel	*Numenius phacopus*
Willet	*Catoptrophorus semipalmatus*
Greater yellowlegs	*Tringa melanoleucus*

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Shorebirds

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

Gulls and terns

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

Miscellaneous wetland-related species

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

Miscellaneous species not directly related to wetland habitat

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

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Northern Rough-winged swallow	Stelgidopteryx serripennis
Bank swallow	Riparia ripagia
Loggerhead shrike	Lanius ludovicianus
Northern flicker	Colaptes auratus
Anna's hummingbird	Calypte anna
Black phoebe	Sayornis nigricans
Rock dove	Columba livia
Raven	Corvus corax
White-crowned sparrow	Zonotrichia leucophrys
Water pipit	Anthus spinoletta
Yellow rumped warbler	Dendroica coronata
Brewer's blackbird	Euphagus cyanocephalus
Brown towhee	Pipilo fuscus

CALIFORNIA COASTAL COMMISSION
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MEMORANDUM

TO: Meg Vaughn, Teresa Henry, Long Beach

FROM: John Dixon

SUBJECT: Huntington Beach "Waterfront Development"

DATE: November 23, 1999

COASTAL COMMISSION

EXHIBIT # R

LSA Associates has done several field studies to determine the extent of wetlands on the subject property. In their original delineation[1], they argued that a large portion of the site was not wetland based an hydrological analysis and concluded that 0.60 acre was waters of the U.S. and adjacent wetland. Upon visiting the site on October 14, 1999, I found that several areas, which had not been delineated nonetheless, had a preponderance of hydrophytic vegetation. These areas had relatively discrete boundaries where different vegetation types abutted and I requested that the applicant prepare a supplementary report which showed these areas in separate polygons on the map and which discussed them separately. This was done and presented in a report[2] 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.

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[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 (Salicornia virginica)	Percent Alkali Heath (Frankenia grandifolia)	Percent Salt Grass (Distichlis spicata)	Percent Bermuda Grass (Cynodon dactylon)	Percent Heliotrope (Cressa truxillensis)	Percent Arroyo Willow (Salix lasiolepis)	Percent Ripgut Brome (Bromus diandrus)
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	**0.015**	0	0	75	25	0	0	0
SE: T2	**0.004**	0	0	0	0	0	100	0

*questionable indicator status at inland sites in California

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

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

COASTAL COMMISSION

EXHIBIT # P
PAGE 2 OF 2

Table B - Summary of Performance Criteria

Survival/Cover

Plant Material	1 month	3 months	6 months	1 Year	2 Years	3 Years	4 Years[1]
Freshwater Marsh Plantings	90% survival	90% survival	80% survival	40% cover	50% cover	60% cover	70% cover
Native Wood-land Plantings	90% survival	80% survival	70% survival	20% cover	40% cover	50% cover	60% cover
Native Sage Scrub Plantings	90% survival	80% survival	70% survival	25% cover	45% cover	60% cover	70% cover
Seed Mixes	Adequate germination	25% cover in any 400 square foot area	30% cover in any 400 square foot area;	40% relative cover in any 400 square foot area;	50% relative cover in any 400 square foot area;	60% relative cover in any 400 square foot area;	70% cover in any 400 square foot area;

Tree Height

Common Name	Scientific Name	Average Height (Feet) 3 years	Average Height (Feet) 5 years
California live oak	*Quercus agrifolia*	8	10
Engelman oak	*Quercus engelmanni*	8	10
California walnut	*Juglans californica*	9	12
Western sycamore	*Platanus racemosa*	12	18
Fremont cottonwood	*Populus fremontii*	12	18

COASTAL COMMISSION
EXHIBIT # 5
PAGE 1 OF 1

[1] Standards during fourth and fifth years must be met without human support (e.g., irrigation, weeding, herbivore control).