

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
3000 Ocean Gate, Suite 1000
Seal Beach, CA 90802-4302
(562) 590-5071

Tu14**STAFF REPORT: DEVELOPMENT AGREEMENT****DATE:** November 1, 2001**RECORD PACKET COPY****TO:** Commissioners and Interested Persons

FROM: Deborah Lee, Deputy Director
Teresa Henry, South Coast Area Office District Manager
Steve Rynas, Orange County Area Supervisor
Karl Schwing, Coastal Program Analyst

SUBJECT: Public Hearing and Commission Action on a Development Agreement (#5-01-207) for the Hellman Ranch located northeast of Pacific Coast Highway (State Route 1), southeast of the San Gabriel River, south of Adolfo Lopez Drive, west of Seal Beach Boulevard, and north of Marina Hill; City of Seal Beach, County of Orange (For Public Hearing and Commission Action at the November 13-16, 2001 Commission meeting in Los Angeles)

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending that the Commission APPROVE the development agreement as submitted. The proposed development agreement is in conformity with the Chapter 3 policies of the Coastal Act and with the Commission's action on CDP Amendment 5-97-367-A1 approved in October 2000. In addition, the development agreement allows for requirements that may be imposed by future Commission actions.

STAFF NOTE:

On September 9, 1998, the California Coastal Commission granted to Hellman Properties LLC Coastal Development Permit 5-97-367 for development consisting of subdivision of the 196 acre site into several lots, including further subdivision of one of the lots into 70 single-family residential lots; fill or dredging of 27 acres of degraded and severely degraded wetlands to construct 39.1 acres for a salt marsh restoration project and an 18 hole public golf course and reservation of 13.2 acres of existing oil production areas for future wetland restoration; dedication of Gum Grove Park to the City of Seal Beach; construction of interpretive areas, visitor-serving recreation facilities, and a golf clubhouse; dedication of public access trails; extension of Adolfo Lopez Drive; excavation of test pits for an archaeological testing program; and 1,600,000 cubic yards of grading.

The permit was subject to a lawsuit and settlement agreement. In response to the settlement agreement, the developer submitted a request for an amendment to the permit which eliminated the golf course and the direct impacts upon wetlands which were previously controversial and carries forward a revised residential subdivision. In addition, the developer proposed to deed restrict, for wetland restoration purposes, 157 acres of lowlands. Finally, the developer proposed a bio-swale and water quality basin to treat run-off from the proposed development. The amendment (5-97-367-A1) was approved with conditions on October 11, 2001.

The subject development agreement is designed to conform with the Commission's prior approval of Coastal Development Permit 5-97-367, as amended by Coastal Development Permit Amendment 5-97-367-A1. In addition, although the development agreement purports to vest

certain planning documents, it also makes clear that those vested components "pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit." Thus, for any project that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the development agreement imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act.

ADDITIONAL INFORMATION:

Questions concerning the subject development agreement should be directed to Karl Schwing, South Coast District Office, California Coastal Commission, 200 Oceangate, Suite 1000, Long Beach, CA 90802. (562) 590-5071.

STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL OF FINDINGS

MOTION: *I move that the Commission approve development agreement 5-01-207 as submitted.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion. Passage of this motion will result in approval of the development agreement as submitted and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

I. APPROVAL OF DEVELOPMENT AGREEMENT

The Commission hereby **APPROVES** the development agreement on the grounds that the development, located between the nearest public roadway and the shoreline, would be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access and recreation policies of Chapter 3, would not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. FINDINGS AND DECLARATIONS

A. BACKGROUND AND CONTENT OF DEVELOPMENT AGREEMENT

1. Contents of a Development Agreement

California Government Code Sections 65864-65869.5 authorizes any city, county, or city and county, to enter into a development agreement with any person having a legal or equitable

interest in real property for the development of property owned by that entity. A development agreement specifies the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. According to Government Code Section 65865.2, the development agreement "...may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time. The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time." Government Code Section 65866 states further that, "...[u]nless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies."

However, pursuant to Section 65869 "...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action." Since the City of Seal Beach does not have a certified local coastal program, any development agreement that pertains to property within the City's coastal zone must be approved by the Commission. Thus, Hellman Properties LLC has submitted the subject development agreement (herein 'DA').

2. Location of Area to be Affected by Proposed Development Agreement

The subject DA pertains to a 191.8 acre area commonly known as Hellman Ranch. Of that acreage, Hellman Properties LLC (herein 'developer') owns approximately 183.9 acres, Southern California Edison utility company owns 7.9 acres, and the City of Seal Beach owns a parcel totaling 1.4 acres¹. Although the DA pertains to the 191.8 acre Hellman Ranch area, there are certain limitations on its applicability to the Southern California Edison and City of Seal Beach property. According to Article 1 of the DA, the agreement would only apply to the property owned by Southern California Edison "...when, as and if the same is acquired by Developer" (presently Hellman Ranch LLC). In addition, the agreement would only apply to the property owned by the City of Seal Beach "...to the extent of the ability of Developer and City to contract with respect to such Parcels."

¹ City planning documents and Coastal Development Permit 5-97-367, as amended, also reference a 4.8 acre parcel owned by the State Lands Commission as a part of the "Hellman Ranch" area. However, this parcel is not subject to the DA.

The subject site is bounded on the west by Pacific Coast Highway (State Route One), on the south by the Marina Hill residential area, on the east by Seal Beach Boulevard, on the north by City of Seal Beach Police and Public Works Departments and the Los Alamitos Retarding Basin, and on the northwest by the Haynes Cooling Channel owned by the City of Los Angeles Department of Water and Power (Exhibit 1).

Included within the 191.8 acre area are approximately 160 acres of lowland areas (approx. elevation 3.5 ft to 10 ft), covered for the most part by an average of five feet of fill. Approximately 27 acres of wetlands including salt marsh, seasonally ponded water, alkaline flats, and tidal channel are located within these lowlands. A low marine terrace known as Landing Hill reaches an elevation of 66 feet and creates a distinct upland on the south and east edges of the property. Except for the approximately 11 acre slope comprising most of Gum Grove Park, the upland on the southern edge of the lowland is off-site and is developed with the existing Marina Hill residential area of the City of Seal Beach. About 20 acres of the upland on the east side of the lowlands is on the subject site, forming a mesa, and is currently vacant (Exhibit 2b, page 3).

3. Recently Approved Coastal Development Permits and Pending Applications Related to the Subject Site

a. Coastal Development Permit 5-97-367

On September 9, 1998, the Commission approved Coastal Development Permit (CDP) 5-97-367 for subdivision of the 196 acre Hellman Ranch into several parcels including a 70-home subdivision, and construction of an 18-hole golf course, construction of 39.1 acres of wetlands, dedication of a public park (Gum Grove Park), visitor serving amenities including trails and reservation of 13.2 acres of existing mineral production area for future wetlands restoration. The Commission imposed 14 special conditions which required 1) reservation of the lowlands portion of the property for acquisition for wetlands restoration; 2) a revised Vesting Tentative Tract Map No. 15381 reducing the number of lots from 9 to 5; 3) lease restrictions on the uses proposed on the State Lands Commission parcel; 4) dedication of Gum Grove Park; 5) implementation of a public access program; 6) requirements regarding the review and implementation of the archeological investigation; 7) conformance with water quality requirements; 8) implementation of mitigation measures for geologic hazards; 9) requirements to obtain future coastal development permits for the houses; 10) demonstration of legal interest; 11) requirements for wetlands restoration; 12) requirements for a final revised wetlands restoration program; 13) requirements related to operation of the golf course and implementation of a wetland education program for golfers; and 14) requirements regarding the timing of construction.

b. Coastal Development Permit Amendment 5-97-367-A1

The project approved under CDP 5-97-367 resulted in the fill of wetlands for the construction of a golf course. This approval was challenged in a lawsuit filed by the League for Coastal Protection, California Earth Corps and the Wetlands Action Network. In response to the lawsuit, a settlement agreement was reached by the parties involved. As noted in the written settlement, "[t]he basic purpose of this Agreement is to resolve litigation by remanding the subject project to the Coastal Commission for consideration of a modified Project as set forth in Exhibit "A" that would: (1) eliminate development within and impacts to wetlands that would have been caused by the golf course portion which would have resulted in the fill of 17.9 acres of existing wetlands; and (2) allow

the balance of the project within the upland areas to proceed forward...". In response to this settlement agreement, the developer filed CDP Amendment Application 5-97-367-A1 for an amendment to CDP 5-97-367 which eliminates the proposed golf course and direct impacts to wetlands. In summary, the amendment eliminated the 100 acre golf course and associated wetland impacts and wetland restoration and added a deed restriction reserving 100 acres of lowlands for acquisition for wetlands restoration; added a deed restriction reserving 57 acres of land presently used for mineral production to be made available for sale for wetlands restoration upon cessation of oil production; expanded the footprint of the 70-lot residential subdivision from 14.9 acres to 18.4 acres; reduced mass grading from 1.6 million cubic yards to 420,000 cubic yards; eliminated proposed development on a parcel of land owned by the State Lands Commission, and constructs a bio-swale, riparian corridor and water quality basin to mitigate runoff from the residential development.

At the October 2000 hearing, the Commission approved the proposed coastal development permit amendment with special conditions (Exhibit 2b, page 4). Special Conditions 1, 2, 3, 4, 5, 6, 11, 12, 13 and 14 imposed under CDP 5-97-367 were deleted by CDP amendment 5-97-367-A1. Several of these conditions were replaced by subsequent conditions. Special Condition 15 carries forward previously imposed special conditions. Special Condition 16 implements a proposed lowlands deed restriction which requires that the developer make 100 acres of lowlands available for sale for wetlands restoration. Special Conditions 17, 18 and 19 replace previously imposed Special Conditions 4 (Gum Grove Park dedication), 5 (Public Access Program) and 6 (Archeology), respectively, which were updated to reflect changes which occurred in the amendment. Special Condition 20 requires the developer to submit final plans regarding the water quality structures. Special Conditions 21 and 22 require the identification and deed restriction of at least 9.2 acres of raptor foraging habitat and the management of that habitat as raptor foraging habitat. Special Condition 23 requires the developer to implement the proposed water quality program (including bio-swale and detention basin) and mandates that such facilities be designed to mitigate runoff up to the 85th percentile 24-hour event. Special Condition 24 requires the deed restriction of land to support the required water quality treatment system. Special Condition 25 addresses construction related requirements to avoid impacts to existing wetlands. Special Condition 26 requires strict compliance with the proposal as conditioned by the Commission. Special Condition 27 replaces previously imposed Special Condition 2 and places restrictions on the subdivision of the property. Special Condition 28 implements the developer's proposal to make the 57 acres of land presently used for mineral production available for sale for wetlands restoration when oil production ceases on that land.

c. Pending Coastal Development Permit Applications

There are other pending coastal development permit applications which pertain to the subject site. For instance, CDP Application 5-01-288 relates to the construction of seventy (70) single family residences; streets; curbs; walls; landscaping, hardscaping, utilities, entry features and other appurtenances within the subdivision approved under CDP 5-97-367 and amended by CDP Amendment 5-97-367-A1. This permit application is anticipated to be heard by the Commission on the November 2001 agenda.

In addition, CDP Application E-01-017 proposes to demolish an existing oil tank farm and construct a replacement tank farm within the existing oil production area but immediately west of the water quality 'bio-swale' approved under CDP Amendment 5-97-367-A1. This application is presently incomplete and a hearing date is unknown.

5. Content of Proposed Development Agreement

The proposed DA would vest –between the City and the developer (i.e. Hellman Properties LLC)- the local planning documents used by the City in approving any City permits or authorizations related to the above applications. However, the Commission is not a party to the agreement. Pursuant to Recital G, Article 2 – Section 2.1, and Exhibit H, Item E of the DA, the DA would not constrain the Commission's ability to approve, modify, or deny any pending coastal development permit applications or any future applications.

The subject DA establishes certain agreements between the City of Seal Beach and Hellman Properties LLC which are summarized as follows and described more fully within the DA itself (Exhibits 2a and 2b): 1) Article 1 of the DA defines the affected property and establishes the term of the agreement; 2) Article 2 defines the vested local planning documents and approvals; identifies the timing of development and prohibitions against growth controls; identifies areas where mineral production is allowed and disallowed; establishes agreements regarding existing regulations, property subdivision, and changes to building and fire codes; and identifies limitations on regulatory mitigation and application fees; 3) Article 3 identifies the obligations of the developer and the City related to development of the property, impact mitigation, hazardous and toxic materials monitoring, and financial arrangements; 4) Article 4 discusses defaults and remedies; 5) Article 5 discusses the types of permitted delays and the effect of subsequent laws; 6) Article 6 discusses the City's cooperation regarding future permits and amendment to the DA; 7) Article 7 discusses mortgage protection; 8) Article 8 discusses transfers and assignments of the DA; and 9) Articles 9 through 11 discuss other procedures and general agreements related to the DA. Importantly, the DA clearly establishes that the terms of CDP 5-97-367, as amended, prevail where there is any conflict between the DA and the requirements of the coastal development permit. In addition, the DA clearly states that the vested components documents pertain to local planning only and do not serve for local coastal planning (LCP) purposes nor do they restrict the types of development which may or may not be approved by the Commission (or applicable certified local government upon certification of an LCP for the area) under any subsequent coastal development permits.

B. WETLANDS

Section 30108.2 of the Coastal Act states:

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

Section 30121 of the Coastal Act states:

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

The subject site contains 27.087 acres of scattered wetlands according to a wetlands assessment of the site (Coastal Resources Management & Chambers Group, 1996). According to the assessment, the existing wetlands are comprised of 15.91 acres of salt marsh vegetation, 2.026 acres of seasonally ponded water, 7.0059 acres of alkaline flat and 3.146 acres of tidal channel.

The majority of the wetlands are clustered: 1) around the tidal channel which runs through the middle of the property and delivers site runoff to a culvert which connects to the San Gabriel River or 2) adjacent to the Haynes Cooling Channel at the north edge of the property.

The project contemplated in the Hellman Ranch Specific Plan and which was previously proposed and approved under CDP 5-97-367 resulted in the fill of all of the existing wetlands. The proposed fill resulted from the construction of a golf course and from implementation of a wetlands restoration program. However, as noted above, the Commission approved an amendment to CDP 5-97-367 which eliminated the golf course and associated wetlands impacts and wetlands restoration.

1. Importance of Wetlands

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

Another critical reason for preserving, expanding and enhancing Southern California's remaining wetlands is because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of coastal wetlands have been lost. As described earlier, the 27 acres of existing on-site wetlands are part of only 150+ acres which remain of the former 2,400 acre Alamitos Bay wetland complex. Therefore, it is critical to maintain and enhance the remaining wetlands to ensure that wetlands exist to carry out the functions described above.

2. Section 30233 Analysis

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

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game*

pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.*
- (8) Nature study, aquaculture, or similar resource dependent activities.*

The project contemplated under the Hellman Ranch Specific Plan and CDP 5-97-367 would result in development upon wetlands regulated by Section 30233 of the Coastal Act. More specifically, construction of a golf course and wetland restoration element would have filled or dredged all 27 acres of existing on-site wetlands. However, as noted above, the Commission approved CDP Amendment 5-97-367-A1 which removed all proposed development that would cause wetland fill. In addition, the developer proposed to place deed restrictions over the 157 acre lowlands area of which 100 acres would be made immediately available for sale for wetlands restoration and the balance of which (57 acres) which would available for sale for wetlands restoration in the future upon cessation of the existing oil production operation. The Commission incorporated the developer's proposal as a special condition of CDPA 5-97-367-A1.

The proposed DA recognizes the changes to the project which occurred as a result of CDP Amendment 5-97-367-A1 and incorporates three features which establish that the requirements of any coastal development permit or Commission action supercede any development rights which may be established under the other vested components listed in the document. The first of these features is the incorporation of the special conditions imposed by the Commission under CDPA 5-97-367, as amended. The second feature is noted in Recital G and Appendix H, item E.6 of the DA which states that if any conflict arises between any provision of the DA and any provision of CDP 5-97-367, as amended, the coastal development permit shall control. The third feature occurs in Section 2.1 and within Appendix H, item E. which states that "...the vested documents [identified in the DA] pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit. The 'vested' components are considered vested between the City and Developer..." The Commission is not a party to the agreement. Accordingly, a developer would not be able to legally claim that the vesting of the Hellman Ranch Specific Plan (or any other document listed in the DA) vests their right to construct a golf course

(or any other allowable development under the local planning documents) which would result in the fill of wetlands. Any proposed fill could only occur in conjunction with a coastal development permit. The fill of any wetland would be analyzed at the time any subsequent coastal development permit application were reviewed. The standard of review would be the Chapter 3 policies of the Coastal Act or any certified Local Coastal Program effective for the area. The presence of the subject DA would not affect the Commission's ability, or the City's ability (if there is a certified LCP) to deny or modify a project which is inconsistent with Section 30233 of the Coastal Act (or equivalent LCP policies). Therefore, the Commission finds that the proposed DA would not be inconsistent with the wetland protection policies of Section 30233 of the Coastal Act.

3. Section 30231 Analysis - Wetlands

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

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

As noted previously, the subject site contains approximately 27 acres of wetlands. Most of these wetlands are concentrated around the Haynes Cooling Channel and around a linear tidal channel which roughly bisects the Hellman Ranch. However, there are also scattered wetlands around the property.

Under Section 30231 of the Coastal Act, the Commission must determine whether any portion of a proposed project would directly or indirectly cause any adverse impact upon the biological productivity of the wetland. Potential issues include, but are not limited to, changes to the quality of water as a result of the project and whether or not there is an adequate buffer area between proposed development and sensitive wetland areas. Buffers are undeveloped areas around sensitive habitat areas that serve to shield the sensitive habitat area from light, noise, or other types of encroachment into the habitat.

The project contemplated by the DA includes the subdivision of the property including dedication of public park lands, grading of portions of the property for residential development, construction of single family homes upon the upland mesa, and the construction of a water quality bio-swale and detention basin. In recognition of the encouragement in Section 30231 of the Coastal Act to undertake wetlands restoration, Hellman Properties LLC also proposed to deed restrict 157 acres of the property to make the land available for sale for wetlands restoration, open space, and environmental education purposes.

In approving CDP 5-97-367, as amended, the Commission addressed conformance of the property subdivision and grading with Section 30231 of the Coastal Act. For instance, the Commission determined that the proposed 171 to 270 foot buffer between the residential

development and wetlands would provide an adequate buffer (in terms of setback). The Commission also imposed special conditions under CDP 5-97-367, as amended, which: a) requires the developer to submit a final landscape plan for the bio-swale and detention basin to assure compatibility with adjacent habitat areas (Special Condition 20); b) requires the developer to submit a construction staging plan to assure that sensitive habitat is not trampled or otherwise disturbed (Special Condition 25); c) requires that the subdivision of the property be limited to 5 parcels, one of which could be further subdivided into 70 single family lots, in order to avoid potential future takings claims (Special Condition 27); and d) a requirement that the developer carry out the proposed reservation of the 157 acre lowlands to be made available for sale for wetland restoration, open space, and environmental education purposes. The findings in support of this approval are incorporated here by reference. In addition, the DA incorporates the special conditions and includes a protection that states that if there is any conflict between the contents of the DA and the requirements of CDP 5-97-367, as amended, the requirements of the coastal development permit control (see Recital G and Appendix H, item E.6 of the DA) .

In addition to the subdivision and grading, the DA contemplates the construction of single family homes within the 70-lot single family subdivision. The permit application to undertake construction of the homes will be heard at the November 2001 meeting, prior to the hearing on this matter. Issues raised by construction of the homes include, but are not limited to, construction staging, use of native landscaping within the development and planting of landscaping for buffering purposes, use of fencing to contain domesticated animals within the residential area, and directing lighting away from sensitive habitat areas.

Although the DA purports to vest certain planning documents, it also makes clear that those vested components "pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit." Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Section 30231 of the Coastal Act. Therefore, the Commission finds that the proposed DA would not be inconsistent with Section 30231 of the Coastal Act.

C. UPLAND BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states, in relevant part:

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The project contemplated by the DA includes dedication of a 14.8 acre passive recreational nature park, Gum Grove Park, to the City of Seal Beach. In addition, the development contemplated includes reservation of 157 acres of the property to be made available for sale for wetlands

restoration, open space and environmental education purposes. As briefly described below, and more fully described in the Commissions findings in support of approval of CDP Amendment 5-97-367-A1, Gum Grove Park and the lowlands contain natural resources which could be degraded if the development is not designed to be compatible with the continuance of the park's and lowland resources.

According to the Environmental Impact Report (EIR) for the Hellman Ranch Specific Plan, approximately 137 acres of the Hellman Ranch site can be characterized as ruderal grassland containing mostly non-native early successional herbaceous plants. Existing plant species include slender wild oat, ripgut grass, Italian ryegrass, telegraph weed, bristly ox-tongue, Australian saltbush, five-hooked bassia, alkali weed and white sweet clover. The EIR states that these areas are disced on a regular basis.

There are various bird species which nest and/or forage at the Hellman Ranch and within Gum Grove Park. The EIR and subsequent biological analyses outline species present. The federally and state listed American peregrine falcon (*Falco peregrinus anatum*) may occasionally forage at the site. Loggerhead shrikes (*Lanius ludovicianus*) (a state listed Species of Special Concern) may breed in large shrubs and small trees in ruderal areas of the property and forage on small prey such as insects and lizards which occur on the property. The white-tailed kite (*Elanus leucurus*) (a state listed Fully Protected species) may breed in Gum Grove Park and has been observed in the project area. In addition, other raptors that are state listed Species of Special Concern, such as the northern harrier (*Circus cyaneus*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), osprey (*Pandion haliaetus*), prairie falcon (*Falco mexicanus*), merlin (*Falco columbarius*) and short-eared owl (*Asio flammeus*), occasionally forage on the subject site. Among these raptors, the Cooper's hawk has the potential to breed in Gum Grove Park. Other raptors which have been observed at the project site include the turkey vulture (*Cathartes aura*), American kestrel (*Falco sparverius*), red-tailed hawk (*Buteo jamaicensis*) and red-shouldered hawk (*Buteo lineatus*). Gum Grove Park provides roosting, nesting and breeding areas for these sensitive avian species. In addition, Gum Grove Park provides potential habitat for the monarch butterfly (*Danaus plexippus*).

The project contemplated in the DA would subdivide, grade and construct residences upon 18.4 acres of ruderal upland habitat within Hellman Ranch. This ruderal area presently provides foraging area for raptors present at the subject site and which roost, nest and breed in Gum Grove Park. The California Department of Fish and Game suggested that the loss of this foraging area would have a significant adverse impact upon raptor species, especially those that are listed as sensitive or endangered. The CDFG recommended that the loss of documented raptor foraging habitat be compensated by committing some remaining upland forage area as mitigation. The CDFG recommended that losses would be adequately offset through the onsite dedication of raptor foraging habitat in an area with long term conservation potential.

In order to mitigate the identified impact, the Commission imposed several special conditions under CDP 5-97-367, as amended. For instance, the Commission imposed a condition requiring the developer to dedicate 9.2 acres of suitable raptor foraging habitat within the 157 acre lowlands portion of the property (Special Condition 22). In addition, the Commission required the developer to develop and undertake a raptor foraging habitat management plan (Special Condition 21).

The Commission also identified impacts associated with management of Gum Grove Park. For instance, the park area provides habitat for sensitive biological resources including the American

peregrine falcon, the Loggerhead shrike and the Monarch Butterfly. Use of the public park for active recreational activities, such as team field sports, could result in impacts to these sensitive resources. In addition, unleashed domesticated animals could harass sensitive wildlife. In order to address these issues, the Commission imposed a special condition under CDP 5-97-367, as amended, which reserves the park for passive recreational activities and requires the leashing of any domesticated animals using Gum Grove Park (Special Condition 17). The findings in support of approval of CDP 5-97-367, as amended, are hereby incorporated by reference. These special conditions are incorporated into the DA (see Recital G and Appendix H, item E.6 of the DA).

Also, as noted in these findings regarding wetlands, the residential development would adversely effect sensitive habitat areas if appropriate landscaping, light controls, and fencing are not installed. A coastal development permit is required for the construction of the residential development. In general, impacts would be more fully identified in any action on a coastal development permit. In reviewing a permit for the matter, the Commission would deny or modify the project to assure consistency with Section 30240 of the Coastal Act.

Although the DA purports to vest certain planning documents, it also makes clear that those vested components "pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit." Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Section 30240 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Section 30240 of the Coastal Act.

D. VISUAL RESOURCES AND COMMUNITY CHARACTER

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 of the Coastal Act states, in part:

New development shall:

...(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The DA contemplates construction of seventy (70) single family residences upon an approximately 20 acre upland area of the Hellman Ranch site which will be visible to the public. For instance, the development will be visible from vantages within Gum Grove Nature Park. Also, the lowlands portion of the Hellman Ranch are required to be made available for sale for wetlands restoration, open space, and environmental education purposes under CDP 5-97-367, as amended. When sold, these lowlands areas may be open to the public. The proposed residential development would be visible from the lowlands portion of the property. In addition, the proposed residential development would be prominent within distant views of the site across the lowlands from existing public trails located along the banks of the San Gabriel River. Finally, the site would be visible from Seal Beach Boulevard which is an important coastal access route for those wishing to visit the beach communities located in the area.

Visual resource issues related to development of the site concern the quality of views from public parks and open space areas. In order to reduce the visual impact of the residential development, vegetation may be planted to screen the area from public vantages. Trees and shrubs can break up continuous lines of walls and buildings. In addition, the choice of building materials and colors can control the appearance of the development from public vantages. Building heights may also raise issues related to views and community character. Other impacts and measures to mitigation those impacts may be identified in analyzing any application for a coastal development permit.

Although the DA purports to vest certain planning documents, it also makes clear that those vested components "pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit." Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Sections 30251 and 30253 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Sections 30251 and 30253 of the Coastal Act.

E. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212.5 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

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

Section 30252 of the Coastal Act states:

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

1. Gum Grove Park Dedication and Parking and Trail Access from Seal Beach Boulevard

The development contemplated by the DA and approved by CDP 5-97-367, as amended, required the dedication of Gum Grove Park to the City of Seal Beach. The Commission found that dedication of the park was necessary to mitigate adverse impacts the development would have upon access to the coast. The Commission imposed special conditions (Special Condition 17) which requires the developer to dedicate fee title of Gum Grove Park prior to the issuance of building permits for the residential structures. The Commission also required that the dedication documents ensure that: 1) new and upgraded trails will meet the Americans with Disabilities Act requirements and provide access to physically challenged persons, 2) the existing number of parking spaces shall be maintained, 3) signage informing the general public of the park's public nature shall be maintained, 4) changes in park hours which adversely affect public access shall be limited to demonstrated public safety concerns and shall require an amendment to this permit and 5) an area fronting on Seal Beach Boulevard shall be reserved for a public trail and ten public parking spaces which are directly accessible from Seal Beach Boulevard. The developer is required to construct the parking lot and trail. The findings in support of these requirements are incorporated by reference. The DA incorporates the Commission's requirements related to the park (see Recital G and Appendix H, item E.3 and E.6 of the DA).

2. Trails, Parking and Public Access through Residential Development

The development contemplated includes the construction of the single family homes, landscaping, streets, utilities, perimeter walls, and common area appurtenances including community park improvements and entry gates within the subdivision approved by CDP 5-97-367, as amended. In approving the subdivision and grading of the site, the Commission previously found that the proposed development would have impacts upon public access unless the developer dedicated public park land (Gum Grove Park) and provided public parking and trails to access the park. In addition, the Commission required the developer to allow public pedestrian and bicycle access into the residential subdivision. Finally, the developer previously proposed to make the lowlands portion of the property available for wetlands restoration, open space, and environmental

education purposes. Public access through the subdivision would facilitate any future efforts toward development of the lowlands for habitat restoration and public education purposes. All development of the site must be undertaken in a manner which is consistent with the requirements imposed by the Commission in its authorization of subdivision of the property and which maximizes public access as required by the Chapter 3 policies of the Coastal Act. Any impacts associated with a project would be identified and mitigated through the coastal development permit process

3. Access and Recreation - Conclusion

The Commission has approved CDP 5-97-367, as amended, with conditions which modify the development contemplated by the DA to conform with the public access protection policies of the Coastal Act. The DA incorporates the requirements of CDP 5-97-367, as amended (see Recital G and Appendix H, item E.6 of the DA). In addition, although the DA purports to vest certain planning documents, it also makes clear that those vested components "pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit." Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with the public access and recreation policies of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Sections 30210, 30212.5, 30213 and 30252 of the Coastal Act.

F. WATER QUALITY

Section 30231 of the Coastal Act states:

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

The development contemplated in the DA would result in the construction of 70 single family homes and associated infrastructure within a subdivision previously approved by the Commission. The implementation of the project will result in two phases where potential impacts upon water quality would occur: 1) the construction phase; and 2) the post-construction phase including the commitment of an 18.4 acre area for residential purposes. Construction phase impacts include erosion and sedimentation of coastal waters during grading. Post-construction phase impacts relate to the occupation and use of the proposed residential development. Run-off from residential developments is commonly polluted with petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers,

herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

In order to assure that the residential subdivision conformed with Section 30231 of the Coastal Act, the Commission previously imposed Special Conditions 7, 23, and 24 under CDP 5-97-367, as amended. Special Condition 7 of CDP 5-97-367, as amended, requires that the developer submit a National Pollutant Discharge Elimination System permit ("NPDES"), Storm Water Pollution Prevention Plan, and Structural and Non-structural Best Management Practices for the proposed project, in compliance with the standards and requirements of the California Regional Water Quality Control Board. In addition, Special Condition 7 of CDP 5-97-367, as amended, requires that runoff from the site be directed to the Los Alamitos Retarding Basin (LARB) to the maximum extent feasible. In addition, Special Condition 7 of CDP 5-97-367, as amended, requires the permittee to comply with mitigation measures WQ-5 through WQ-10 inclusive as approved by City of Seal Beach City Council Resolution 4562.

In order to identify for the Commission the non-structural, routine structural and special structural BMPs the developer would use to address post-construction water quality impacts from the proposed development, the developer submitted a Water Quality Management Plan (WQMP), Tract 15402, Hellman Ranch, prepared by MDS Consulting of Irvine, California, dated January 2000 and a Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000. Briefly, the WQMP describes several BMPs designed to mitigate water quality impacts from the proposed development. Non-Structural BMPs include: 1) education for property owners, tenants, and occupants; 2) activity restrictions, to be a part of the Conditions, Covenants and Restrictions (CC & R's) for the development, including i) no car engine cleaning onsite, ii) car washing only allowed using bucket and sponge method, iii) a prohibition of car maintenance on site; iv) limitations on the use of chemicals and fertilizers; 3) in the CC & R's, identification of the homeowners association as the entity responsible for inspection and maintenance of structural and non-structural BMPs; 4) common area litter control; 5) inspection and maintenance of common area catch basins by October 15th of each year; and 6) street sweeping. Structural BMPs include: 1) filtration of surface runoff through landscaped areas; 2) efficient irrigation of common areas; 3) use of energy dissipaters; 4) catch basin stenciling; and 5) installation of inlet trash racks.

Expanding upon the WQMP, the developer submitted the SWM & WQCP which outlines in more detail the non-structural and structural BMPs which will be implemented to mitigate the impacts of polluted storm run-off related to the proposed development. The structural BMPs outlined in the SWM & WQCP are categorized into three zones. Zone One (1) consists of trash racks and fossil filters installed into catch basins within the proposed development. The measures in Zone 1 will primarily intercept trash, litter, grease and other hydrocarbons. Zone Two (2) consists of a bio-swale designed to control fine particle sediments, debris, soap, dirt, herbicides, pesticides, and fertilizers. The bio-swale will consist of an infiltration swale with a wetland bottom and vegetation

which will impound surface runoff and filter it as it passes through the basin floor. Zone Three (3) will consist of a filtration basin designed to control nutrients, microbial contaminants and toxic materials. This basin is designed to accommodate the first flush from a drainage area of 30.6 acres (i.e. the 18.4 acre residential subdivision and the 12.2 acres of off-site drainage area).

In order to assure that the proposed water quality measures were implemented and that the system was designed to mitigate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, the Commission imposed Special Condition 23 of CDP 5-97-367, as amended. Special Condition 23 requires the developer to submit a final SWM & WQCP for review and approval by the Executive Director. Special Condition 23 requires the proposed post-construction treatment BMPs to be sized based on design criteria specified in the condition. Since the proposed water quality management system is necessary to mitigate the water quality impacts associated with use of the development, Special Condition 23 requires that the structural elements of the SWM & WQCP, approved by the Executive Director, be implemented prior to or concurrent with construction of infrastructure for the residential subdivision (i.e. streets, utilities, etc.). Special Condition 23 also specifies that all structural and non-structural BMPs shall be maintained in a functional capacity throughout the life of the approved development. Special Condition 23 specifies that any changes to the structures outlined in the SWM & WQCP necessary to accommodate the requirements outlined in Special Condition 23, shall require an amendment to CDP 5-97-367. Finally, in order to assure that the developer and all successors-in-interest are aware of the requirements of Special Condition 23, the condition requires, prior to issuance of CDP 5-97-367, the developer shall execute and record a deed restriction reflecting the requirements outlined in Special Condition 23.

In addition, since final site plans, grading plans, structural plans and landscape plans have not been submitted related to the proposed bio-swale and water quality basin, the Commission imposed Special Condition 20 under CDP 5-97-367, as amended. Special Condition 20 requires the developer to submit final site plans, grading plans, structural plans and landscape plans for the proposed bio-swale and water quality basin which conform with the final SWM & WQCP required pursuant to Special Condition 23 of CDP 5-97-367, as amended.

In addition, the developer's SWM & WQCP indicated that land is necessary outside the area of the residential subdivision to construct the water quality measures necessary to assure the development is consistent with Section 30231 of the Coastal Act. Therefore, the Commission imposed Special Condition 24 under CDP 5-97-367, as amended, which requires the developer, prior to issuance of the coastal development permit amendment, to execute and record a deed restriction, in a form and content acceptable to the Executive Director, over the area of land identified in the SWM & WQCP (including the landscaped area surrounding the water quality basin and bio-swale). The area shall be restricted for uses related to water quality management purposes.

The water quality measures required under CDP 5-97-367, as amended, were required at the subdivision stage of the approval to ensure that adequate land area was reserved for the mitigation measures. These mitigation measures anticipated and were designed to mitigate for the water quality impacts that will be generated by the residential development contemplated in the DA. The DA incorporates the construction of the bio-swale and water quality basin.

As noted above, the conditions previously imposed under CDP 5-97-367, as amended, address construction phase erosion control and require the developer to re-vegetate graded areas, as

necessary, for erosion control purposes. These re-vegetation measures are intended as interim construction phase requirements. The Hellman Ranch Specific Plan EIR states that if soil within the project area is left bare there is a high erosion hazard. Erosion would result in sedimentation of wetlands within the lowlands. In order to assure that the erosion hazard is minimized for the operational (post-construction phase) of the project, the Commission would require the developer to submit landscape plans indicating final landscape plans for all areas that are graded for the project.

Although the DA purports to vest certain planning documents, it also makes clear that those vested components "pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit." Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Section 30231 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Section 30231 of the Coastal Act.

G. HAZARDS

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

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

1. Seismic / Geologic Hazards

The Seal Beach splay of the Newport-Inglewood fault (a major earthquake fault in Southern California) transects the Hellman Ranch property through the lowlands and Gum Grove Park in a northwesterly direction, west of the uplands mesa. The Alquist-Priolo Act requires development for human habitation to be setback 50 feet from a fault zone. The fault across the Hellman Ranch property is 20 feet wide. Therefore, structures for human habitation cannot be built within a 120 foot wide strip of land running over the fault (20 feet for the fault plus 50 feet on either side of the fault). In addition, there are areas of moderate to high soil liquefaction potential in the western-most portion of the Hellman Ranch site near Pacific Coast Highway.

The local planning documents which would be vested by the DA contemplate construction of a golf course and golf clubhouse as well as other development within the lowlands portion of the property. However, this development was removed from the project under CDP Amendment 5-97-367-A1 and the lowlands area was proposed to be deed restricted for sale for wetlands

restoration, open space and environmental education. The DA acknowledges the abandonment of the proposed development in the lowlands.

No homes or other structures for human habitation are contemplated in the lowlands or on any known fault or within any area of moderate to high liquefaction potential. However, to further minimize hazards from seismic activity, the Commission previously imposed Special Condition 8 of CDP 5-97-367, as amended, which required incorporation of the City's geological hazards mitigation measures outlined in the EIR for the Hellman Ranch Specific Plan².

2. Flood Hazards

The Hellman Ranch site is located near a major river and a flood control basin. The lowlands portion of the site is subject to occasional flooding. However, previously proposed development has been eliminated from the lowlands, with the remaining residential development located on an upland mesa well above flood level. Therefore, the residential development would not be at risk of flooding.

However, the residential development would create impervious surfaces which would increase the quantity of runoff generated from the site. This runoff would be directed toward the Los Alamitos Retarding Basin (LARB). The Hellman Ranch Specific Plan EIR states that, under extreme storm conditions (i.e. the 100-year storm), the LARB would not be able to accommodate the flows from the development. Rather, these flows would need to be detained on site in order to prevent any overflow of the LARB generated by runoff from the new development. Once detained, these flows could be released slowly to the LARB over several hours or days, as needed. The Commission previously imposed Special Condition 8 which incorporated the City's hydrology mitigation measures outlined in the City-approved EIR for the Hellman Ranch Specific Plan. These measures require final drainage plans, conformance with flood control requirements, and conformance with requirements that structures be elevated above the flood plain.

In addition, the Commission previously imposed Special Conditions 7, 23 and 24 under CDP 5-97-367, as amended, which require the developer to construct a water quality bio-swale and detention basin. The location of the required basin is identified in Special Condition 24 of CDP 5-97-367, as amended. This basin would filter and detain water prior to discharge into the LARB and the San Gabriel River.

3. Conclusion - Hazards

Although the DA purports to vest certain planning documents, it also makes clear that those vested components "pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under

² The mitigation measures identified in the Specific Plan EIR were drafted at the time the 'project' included a golf course, golf clubhouse, wetlands restoration project and other development within the lowlands. These elements of the project were removed under CDP Amendment 5-97-367-A1. The CDP Amendment 5-97-367-A1 carried forward the requirements of the above special condition to the extent that the requirements still applied. In some cases, the mitigation measures may no longer be relevant. For instance, EIR Mitigation Measure GEO-4 above refers to 'constructed wetlands'; GEO-5 refers to removal of dredged fill soils; and GEO-6 through 6.4 refers to development in places of high liquefaction potential. As amended, the project approved under CDP 5-97-367 no longer includes constructed wetlands and wetlands fill or dredging. In addition, based on Figure 5-22 of the Specific Plan EIR, the project no longer includes construction in areas of moderate or high liquefaction potential.

any subsequent coastal development permit." Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Section 30253 of the Coastal Act.

H. NEW DEVELOPMENT

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

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

The proposed development is located upon an approximately 196.6 acre site that is essentially undeveloped except for about 28.2 acres of oil production facilities and small structures housing the property owner's offices. Thus, the subject site is one of a few remaining, privately owned vacant pieces of land along the Southern California coast. The development contemplated involves subdivision of the property, grading, dedication of park land, and construction of homes, landscaping and other appurtenances within a 70 lot subdivision. The proposed development is less dense and intense than previous development proposals for the subject site. Further, the subject site is contiguous with existing urban development. Infrastructure to serve the proposed development exists in the area. Thus, the proposed development is located within an existing developed area able to accommodate it. In addition, the Commission has imposed special conditions under CDP 5-97-367, as amended, for the subdivision and grading of portions of the site, which modify the development to conform with the Chapter 3 policies of the Coastal Act. As outlined elsewhere in these findings, the Commission would impose additional special conditions necessary to assure that adverse impacts upon biological resources, public access, views and community character, and archeological resources associated with the construction of residential structures and appurtenances would be mitigated.

Although the DA purports to vest certain planning documents, it also makes clear that those vested components "pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit." Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with the Chapter 3 resource protection policies of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Section 30250 of the Coastal Act.

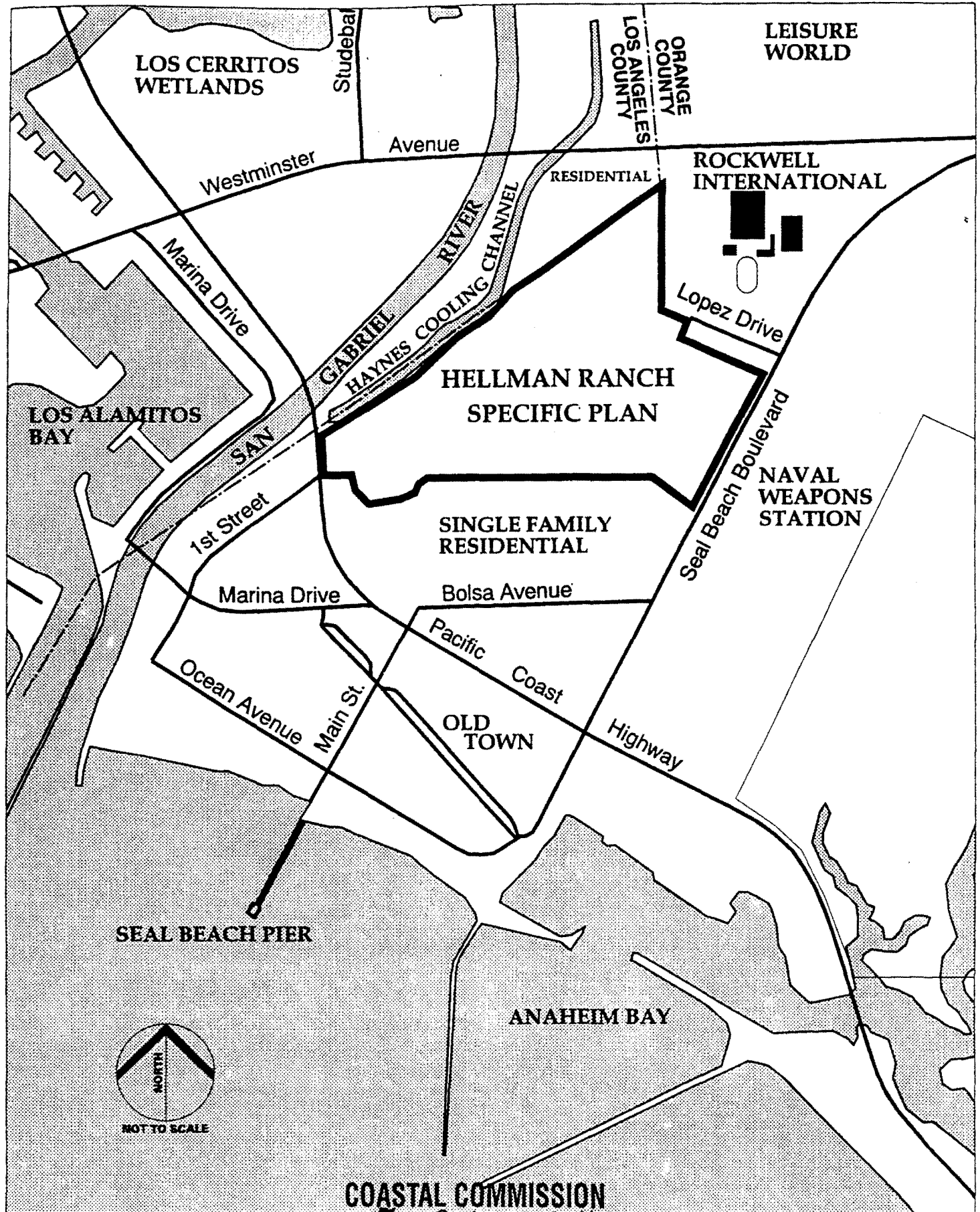
I. ARCHAEOLOGICAL RESOURCES

Section 30244 of the Coastal Act states:

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

The Hellman Ranch site contains eleven State-identified cultural resources sites. Two of these sites would be left untouched in their current location in Gum Grove Park. However, the grading approved under CDP 5-97-367, as amended, for the residential subdivision would impact seven of the other designated archaeological sites. In addition, construction of the bio-swale and detention basin, also approved under CDP 5-97-367, as amended, would potentially impact two additional sites. In order to address these impacts and to assure consistency with Section 30244 of the Coastal Act, the Commission imposed Special Condition 19 which required the developer to undertake the proposed archeological investigation, established requirements related to selection of archeologists and Native American monitors, required post-investigation mitigation measures, monitoring of construction activities, and established requirements related to construction-phase discoveries of artifacts and human remains.

Although the DA purports to vest certain planning documents, it also makes clear that those vested components "pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit." Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with the Chapter 3 resource protection policies of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Section 30244 of the Coastal Act.



COASTAL COMMISSION

5-01-207

LOCAL AREA MAP

HELLMAN RANCH SPECIFIC PLAN

EXHIBIT # 1a

PAGE 1 OF 1

FIGURE NO. 3-2
PAGE NO. 3-3

HEL JAN RANCH

Production Area
(a portion of balance
of 57 acres to be for
sale for wetlands
restoration upon
cessation of oil
production)

**SOUTHERN
CALIFORNIA
EDISON
PROPERTY**

Proposed Tract 15402

STATE LANDS PARCEL
(Not A Part of Development Agreement)

**CITY OF
SEAL
BEACH
PROPERTY**

WATER QUALITY FACILITIES

 BOEING
SPACE & DEFENSE

**Existing Oil Production Area
(a portion of balance of 57
acres to be for sale for
wetlands restoration upon
cessation of oil production)**

Approx. Limits Of 100 Acre Area To Be Deed Restricted For Sale For Wetlands Restoration

GUM GROVE PARK

EXISTING
RESIDENTIAL

EXHIBIT No. 1b

Application Number:

5-01-207

California Coastal
Commission

Exhibit is Based Upon Figure 8 of the SWM & WQCP dated 7-27-2000 by MDS Consulting

FILE COPY

APPROVED BY CITY COUNCIL	ORDINANCE NUMBER <u>1471</u>
DATE <u>4-18-01</u>	SIGNATURE <u>[Signature]</u>

AN ORDINANCE OF THE CITY OF SEAL BEACH ADOPTING THE FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SEAL BEACH AND HELLMAN PROPERTIES LLC, REGARDING THE "HELLMAN RANCH SPECIFIC PLAN"

THE CITY COUNCIL OF THE CITY OF SEAL BEACH DOES HEREBY ORDAIN:

Section 1. The City and Hellman Properties LLC entered into a development agreement pursuant to Government Code Sections 65864 through 65869.5, and Article 27.5 of Chapter 28 of the Code of the City of Seal Beach, California with respect to that certain real property commonly known as the "Hellman Ranch Specific Plan" area on October 27, 1997.

Section 2. Development of the original Hellman Ranch project approved by the City in 1997 could not proceed without a Coastal Development Permit ("CDP") issued by the California Coastal Commission ("CCC"). After approval of the project by the CCC, litigation was filed challenging the Commission approval of CDP 5-97-367 (cases consolidated as "*League for Coastal Protection et al. v. California Coastal Commission*") and a settlement agreement was eventually incorporated into the presiding Court's order for issuance of a Writ of Mandate.

Section 3. The CCC responded to the Writ by approving on October 11, 2000, issuance of an amended CDP with conditions, CDP 5-97-367-A1, providing conditions of development of a project revised in accordance with the criteria established in the Settlement Agreement.

Section 4. The major project changes encompassed in CDP 5-97-367-A1 are summarized as:

- ❑ Elimination of the previously approved golf course and the establishment of a 100-acre deed-restricted area for future wetland restoration, open space and environmental education purposes;
- ❑ Elimination of all impacts to jurisdictional state and federal wetlands; and
- ❑ Elimination of development of visitor-serving commercial uses on the State Lands Property.

COASTAL COMMISSION
5-01-207

EXHIBIT # 2a
PAGE 1 OF 78

4-16-01
J. Whitteberg

City of Seal Beach Ordinance No. 1471
Adoption of First Amended and Restated Development Agreement
City of Seal Beach and Hellman Properties LLC
April 9, 2001

☐ Establishment of a 25-year, deed-restricted area for future wetland restoration, open space and environmental education purposes over the remainder oil production area upon cessation of oil production uses.

Section 5. A request has been received from Hellman Properties to amend the Development Agreement (First Amended and Restated Development Agreement) regarding the Hellman Ranch pursuant to Development Agreement Section 6.1.2, **Modification of Development Agreement to Obtain Permits, etc.** Said request is to conform the Development Agreement provisions with the terms of the Settlement Agreement and Coastal Development Permit 5-97-367-A1.

Section 6. The City Council held a properly noticed public hearing regarding the proposed development agreement amendments on February 26, 2001.

Section 7. The City Council previously certified a Final Environmental Impact Report (FEIR) for the project in 1997. The previously certified FEIR was upheld against legal challenge and has been fully considered by the city during its consideration of this First Amended and Restated Development Agreement. There has been no new information, as that term is defined by CEQA, brought forward by any party to these proceedings to indicate that the previously certified FEIR should be supplemented. In fact, substantial evidence in the record of these proceedings demonstrates that the impacts of this project have been fully analyzed and in fact are less severe than previously disclosed. For those reasons, the previously certified FEIR remains complete and legally adequate, and this approval is fully within its scope. The City Council's previous findings and statement of overriding considerations are hereby incorporated herein by this reference.

Section 8. The City Council hereby finds that the proposed development agreement amendment is consistent with the General Plan of the City of Seal Beach and the Hellman Ranch Specific Plan.

Section 9. Based upon the foregoing, the City Council hereby approves the proposed development agreement amendment, titled "First Amended and Restated Development Agreement between the City of Seal Beach and Hellman Properties LLC, Regarding the "Hellman Ranch Specific Plan" incorporated by reference herein and attached hereto as Exhibit "A" and authorizes the Mayor to execute said development agreement on behalf of the City.

Section 10. The time within which to challenge the subject development agreement is governed by Government Code Section 65009.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Seal Beach at a meeting thereof held on the 9th day of April, 2001.

City of Seal Beach Ordinance No. 1471
Adoption of First Amended and Restated Development Agreement
City of Seal Beach and Hellman Properties LLC
April 9, 2001

4-18-01 per Whittington
DATE SIGNATURE

Patricia L. Campbell
Mayor

Attest:

Joanne M. Yeo
City Clerk

STATE OF CALIFORNIA }
COUNTY OF ORANGE } SS
CITY OF SEAL BEACH }

I, Joanne M. Yeo, City Clerk of the City of Seal Beach, California, do hereby certify that the foregoing ordinance is an original copy of Ordinance Number 1471 on file in the office of the City Clerk, introduced at a meeting held on the 26th day of March, 2001, and passed, approved and adopted by the City Council of the City of Seal Beach at a meeting held on the 9th day of April, 2001 by the following vote:

AYES: Councilmembers Patricia Campbell, Joanne Yeo, Gost
NOES: Councilmembers None
ABSENT: Councilmembers None
ABSTAIN: Councilmembers None

and do hereby further certify that Ordinance Number 1471 has been published pursuant to the Seal Beach City Charter and Resolution Number 2836.

Joanne M. Yeo
City Clerk

City of Seal Beach Ordinance No. 1471
Adoption of First Amended and Restated Development Agreement
City of Seal Beach and Hellman Properties LLC
April 9, 2001

EXHIBIT A

**FIRST AMENDED AND RESTATED
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SEAL BEACH AND
HELLMAN PROPERTIES LLC, REGARDING
THE "HELLMAN RANCH SPECIFIC PLAN"**

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO

CITY OF SEAL BEACH
OFFICE OF THE CITY CLERK
211 EIGHTH STREET
SEAL BEACH, CA 90740

The undersigned declare that this instrument is recorded at the request of and for the benefit of the CITY OF SEAL BEACH, and is therefor exempt from payment of recording fees pursuant to Government Code § 6130 and the payment of documentary transfer tax pursuant to Revenue & Taxation Code § 19222

(Space Above for Recorders Use)

FIRST AMENDED AND RESTATED DEVELOPMENT
AGREEMENT BY AND BETWEEN THE CITY OF SEAL
BEACH AND HELLMAN PROPERTIES, LLC RELATIVE
TO THE DEVELOPMENT KNOWN AS THE HELLMAN
RANCH

APPROVED IN CONCEPT
SEAL BEACH PLANNING DEPT
4-18-01 *[Signature]*

April 2001

4-18-01 *[Signature]*
DATE SIGNATURE

**FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF SEAL BEACH AND
HELLMAN PROPERTIES, LLC RELATIVE TO
THE DEVELOPMENT KNOWN AS THE HELLMAN RANCH**

(Pursuant to Government Code
Sections 65864-65869.5)

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT is entered into this _____ day of _____, 2001, by and between HELLMAN PROPERTIES, LLC, a California limited liability company ("Developer") and the CITY OF SEAL BEACH, a municipal corporation ("City"), pursuant to the authority of Sections 65864 through 65869.5 of the Government Code and Article 27.5 (Section 28-2751 et seq.) of the Code of the City of Seal Beach.

RECITALS:

A. To strengthen the public planning process, encourage private participation in comprehensive planning, reduce the economic risk of development and obtain private commitments necessary to develop well-planned, mixed use communities and procure commitments of land and financing for open space and recreational land, the Legislature of the State of California enacted Section 65864 et seq. of the Government Code ("Development Agreement Legislation"). The Development Agreement Legislation authorizes City, and an applicant for a development project, to enter into a development agreement establishing certain development rights in property that is the subject of a development project application. City has adopted Article 27.5 (Section 28-2751, et seq.) of the Code of the City of Seal Beach to implement the Development Agreement Legislation, in order to use development agreements to carry out City's planning policies.

B. Developer and City entered into a certain Development Agreement By And Between The City of Seal Beach and Hellman Properties, LLC Relative to the Development known as The Hellman Ranch (the "Development Agreement") on October 27, 1997, which was recorded on December 15, 1997 in the Office of the Recorder of the County of Orange as Document No. 19970641058. The Development Agreement pertained to a project proposed by Developer for uses on its real property, more particularly described in Exhibit A, attached hereto and incorporated herein by reference thereto (the "Subject Property"), pursuant to (i) the General Plan of City ("General Plan"), (ii) the Specific Plan for Hellman Ranch, approved as amended by Ordinance 1420 of City Council, adopted on October 27, 1997, (the "Specific Plan"), (iii) the Zoning Ordinance of City, as amended by Ordinance 1420, adopted on October 27, 1997, (iv) the Subdivision Map Approval Conditions imposed in connection with approval of the Vesting Tentative Subdivision Maps described as Tract No. 15402,

approved by Resolution 4571, and Tract No. 15381, approved by Resolution 4570 of the City Council of the City on October 20, 1997, and (v) certain other improvement conditions described in the "Vested Components" (Exhibit 5) of the Development Agreement. The development proposed to be constructed in accordance with the foregoing is referred to herein as the "Original Project".

C. The Development Agreement was entered into to provide public benefits, including, but without limitation, dedication, protection and enhancement of critical wetlands and open space resources, increased tax revenues and creation of a well-planned residential community, all within a regulatory framework that will require installation of the on and off-site road, sewer, water, drainage, landscaping, irrigation and other improvements needed to serve the Original Project as well as providing other benefits. The Original Project contemplated by the Development Agreement represented a significant reduction in density from prior development proposals on the Subject Property and provided for a major increase in public benefits.

D. Development of the Original Project could not proceed without a Coastal Development Permit ("CDP") issued by the California Coastal Commission (the "CCC"). Various opponents of the Original Project filed two lawsuits challenging the CDP for the Original Project which were consolidated under the title League for Coastal Protection et al. v. California Coastal Commission; City of Seal Beach, et al., real parties in interest, Orange County Civil Case No. 801830 (the "CDP Litigation"). The Superior Court in the CDP Litigation issued a Writ of Mandate directing the CCC to consider and act on a revised project, based upon criteria stated in a Settlement Agreement, filed on December 29, 1999. Both City and Developer were parties to the Settlement Agreement. The Settlement Agreement was incorporated in the Court's order for issuance of the Writ.

E. CCC responded to the Writ by approving on October 11, 2000, issuance of an amended CDP with conditions (the "CDP Conditions") (under its No. 5-97-367-A1). The CDP Conditions permit development of and provide conditions for development of a project revised in accordance with the criteria established in the Settlement Agreement (the "Revised Project"). A true and correct copy of the CDP Conditions is attached hereto, marked Exhibit B and incorporated herein by reference thereto. The uses approved pursuant to the CDP Conditions are shown on the site plan attached hereto, marked Exhibit C and incorporated herein by reference thereto (the "Revised Site Plan"). It is contemplated that the Superior Court will discharge the Writ based on the CDP Conditions for the Revised Project and the CDP Conditions will then constitute an adjudication of the development rights with respect to the property that is the subject of the Development Agreement to the extent of the CCC's jurisdiction.

F. The development plan for the Revised Project approved in the CDP Conditions is consistent with the Specific Plan but differs in certain respects from the plan for the Original Project. The parties desire to amend the Development Agreement to conform to the terms and conditions of the CDP Conditions and to provide for the

Revised Project. Because this Amendment is intended to conform the Development Agreement to the terms of the CDP Conditions, it is an amendment contemplated by Section 6.1.2 of the Development Agreement which reads as follows:

"Permits and approvals required from other agencies may necessitate amendments to this Development Agreement and/or to one or more of the approvals or other approvals granted by City. City shall not unreasonably withhold approval of any amendment hereof that is mandated by conditions of approval imposed by any other governmental agency.

G. Developer and City desire to utilize this First Amended and Restated Development Agreement to secure the public benefits contemplated by the CDP Conditions and to vest the entitlements created by the CDP Conditions in Developer (upon all of the terms and conditions thereof), all as provided pursuant to Government Code Sections 65864 et seq. The vesting effect of this First Amended and Restated Development Agreement is intended to apply to the CDP Conditions, to such changes therein as may be adopted by the CCC on final approval that are consistent with the CDP Conditions and do not represent material departures therefrom, and to all permits, approvals and actions implementing the same pursuant to the procedures established in or referred to in the CDP Conditions and the "Vested Components" as defined in Section 2.1 below.

H. The City Council reviewed and approved the Development Agreement. It found the Development Agreement to be consistent with City's General Plan, the Specific Plan and all applicable City ordinances, rules and regulations, and that its implementation would be in the best interest of City and the health, safety and welfare of its residents. City considered and acted upon the Development Agreement at the hearings described in Exhibit D, attached hereto and incorporated herein by this reference. The ordinance authorizing execution of the Development Agreement by City is attached hereto, marked Exhibit E and incorporated herein by this reference. The environmental impacts of the development contemplated Development Agreement, were evaluated in the Final Environmental Impact Report ("FEIR") prepared by City and certified as adequate by the City Council pursuant to the California Environmental Quality Act, through adoption of Resolution No. 4562 (State Clearinghouse No. 96121009). The City Council certified the FEIR, adopted findings and a statement of overriding considerations in connection with its approval of the Development Agreement.

I. The City Council has reviewed and approves this First Amended and Restated Development Agreement. It finds that this First Amended and Restated Development Agreement is consistent with City's General Plan, the Specific Plan and all applicable City ordinances, rules and regulations, and that its implementation is in the best interest of City and the health, safety and welfare of its residents. City considered and acted upon this First Amended and Restated Development Agreement at the hearings described in Exhibit F, attached hereto and incorporated herein by this

reference. The ordinance authorizing execution of the Development Agreement by City is attached hereto, marked Exhibit G and incorporated herein by this reference. The City Council has considered the FEIR and found that it fully and fairly addresses the environmental impacts of the Revised Project contemplated in the First Amended and Restated Development Agreement, as the Revised Project will have fewer impacts and provides for more inclusive mitigation measures than those anticipated in connection with the Original Project. The City Council finds that the certification of the FEIR, the findings and the facts that support the findings and the statement of overriding considerations adopted therein, apply with equal force to the approval of this First Amended and Restated Development Agreement.

NOW, THEREFORE, City and Developer agree as follows:

Article 1. Property Subject To This First Amended and Restated Development Agreement And Term Of This First Amended and Restated Development Agreement.

1.1. Property Subject to this First Amended and Restated Development Agreement. This First Amended and Restated Development Agreement shall (i) apply to all of the Subject Property (and that portion of the land included within the Southern California Edison Company ("SCE") right-of-way, as shown on the Revised Site Plan, when, as and if the same is acquired by Developer), (ii) run with fee title to the Subject Property, and (iii) the benefits and burdens hereof shall bind and inure to the benefit of all the successors in interest of the parties. The CDP Conditions establish or suggest uses with respect to parcels not owned by Developer as follows: (i) a parcel owned by City as shown on the Revised Site Plan (the "City Parcel"); and (ii) a parcel owned or held under easement by SCE as shown on the Revised Site Plan.

This First Amended and Restated Development Agreement also includes agreements by Developer and City with respect to the City Parcel and the District Parcel, to the extent of the ability of Developer and City to contract with respect to such Parcels.

1.2. Term.

1.2.1. Term Of First Amended and Restated Development Agreement. The term of this First Amended and Restated Development Agreement ("Term") shall commence upon the effective date of the ordinance approving this First Amended and Restated Development Agreement ("Ordinance Date") and shall continue until the twentieth (20th) anniversary of the Effective Date, unless the Term is extended by duly adopted amendment hereof, or earlier terminated in accordance with the provisions hereof; provided, however, that if the ordinance approving this First Amended and Restated Development Agreement is made the subject of a referendum or is

*First Amended and Restated Development Agreement
Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch
March, 2001*

challenged by legal action, then the Effective Date shall be the date when the referendum proceedings and/or legal proceedings have been concluded in a manner that permits the legal commencement of the parties' obligations under this First Amended and Restated Development Agreement. If the Term has not commenced by the fifth (5th) anniversary date hereof, then this First Amended and Restated Development Agreement shall have no further force or effect unless the parties extend the same by duly executed written instrument.

Notwithstanding the foregoing, however, (i) the restrictions contained in Section 2.3.1 shall apply so long as Parcel 2 is used for residential purposes; and the restrictions contained in Section 2.3.2 shall apply so long as Parcels 1, 5 and 6 are used for mineral extraction purposes, and (ii) expiration or termination of this First Amended and Restated Development Agreement shall not affect any right vested under California law independent of this First Amended and Restated Development Agreement.

1.2.2. Term Of Subdivision Maps And Use Permits. The term of any parcel map, tentative subdivision map, vesting parcel map or vesting tentative subdivision map relating to the Subject Property or any part thereof, and the term of any subdivision improvement agreement related to development of the Subject Property or any portion thereof, shall be extended (pursuant to Government Code 66452.6(a)) for the longer of (i) the Term, or (H) the term of the particular map otherwise allowed under the Subdivision Map Act, (Government Code 66410, et seq.), and City's Subdivision Ordinance.

Article 2. **Development of the Subject Property.**

2.1. Vested Components. The (i) permitted use of the Subject Property, (ii) provisions for reservation or dedication of land for public purposes, (iii) provisions for financing and construction of public improvements to protect the general fund and the public generally from the costs of development of the Subject Property, and (iv) other terms and conditions of development that apply to the Subject Property (including, but without limitation, the density or intensity of use and the maximum height and size of proposed buildings) under the "Approvals" and certain other actions and proceedings (the Approvals and all such actions being identified and defined in Exhibit H, attached hereto and incorporated herein by reference thereto), are declared "vested," and are referred to herein as the "Vested Components." The Vested Components are defined by and limited to the CDP Conditions as the same may be revised by the CCC in immaterial respects that are substantially consistent with the CDP Conditions. No part of the Vested Components may be revised or changed during the Term without the consent of the owner of the portion of the Subject Property to which the change applies, except as provided in Sections 2.4 and 2.5 hereof. After the Ordinance Date, the Vested Components shall be effective against, and shall not be amended by any ordinance or regulation enacted after the Ordinance Date, whether adopted or imposed by the City Council or through the initiative or referendum process.

2.2. Development Timing.

2.2.1. Development Scheduling. Developer shall have no obligation to initiate or complete development of any phase of the Subject Property within any period of time except (i) as may otherwise be stated in the Vested Components or a separate agreement, or undertaking that (a) is part of the Vested Components, or that (b) is entered into in support of any community facilities or assessment district financing, or (ii) as provided in the Subdivision Map Act (Gov't Code §§ 66400 et. seq.) or City's subdivision ordinance as applied to subdivision improvement agreements.

2.2.2. No Phased Growth Control. No future modification of City's code or ordinances, or adoption of any code, ordinance, regulation or other action that purports to (i) limit the rate of development over time, (ii) directly or indirectly limit the number of residential building permits issued or obtainable during any period within the Term, or (iii) alter the sequencing of development phases (whether adopted or imposed by the City Council or through the initiative or referendum process) shall apply to the Subject Property or any part thereof; nor shall any such modification or adoption of a code, ordinance or regulation modify the rights held by Developer hereunder.

2.2.3. Infrastructure Components Not Within City Control. City shall cooperate with Developer and use its best efforts to bring about construction of the infrastructure required for the development contemplated in the Vested Components that is not within City's and Developer's control; and no permits or approvals for development of the Subject Property shall be withheld pending completion of such construction unless allowing such development to proceed prior to completion of construction would (i) violate an order of court, (ii) violate an order of a governmental agency with jurisdiction over City, (iii) pose a threat to health and safety, or (iv) violate any condition of the Approvals imposed by City or any other governmental authority with jurisdiction over the Subject Property, or any mitigation measure imposed by the FEIR.

2.3. Mineral Exploitation.

2.3.1. Prohibition In Residential, Open Space And Recreational Areas. No portion of the surface of Parcel 2, as shown on the Revised Site Plan (and no portion of said Parcel 2 that lies below and within five hundred (500) feet of the surface of Parcel 2) may be utilized for extraction of oil, gas, hydrocarbon or any other mineral, metal, rock or gravel or any activities associated with or ancillary to any such activities. Nothing herein contained shall be deemed to prevent or restrict (i) movement or export of rock, gravel or earth as part of grading activity undertaken pursuant to a grading permit issued by City in connection with development allowed under the Vested Components, or (ii) creation, maintenance or operation of water wells.

2.3.2. No Restriction In Mineral Production Areas. No regulation, ordinance or rule shall be adopted by City after the Ordinance Date to prohibit, limit or

restrict mineral production, drilling and extraction activities on the surface and subsurface of Parcels 1, 6 and 7, as shown on the Revised Site Plan. All such activities on said Parcels shall continue to be governed and controlled by laws, ordinances, rules and regulations in effect on the Ordinance Date.

2.4. Rules, Regulations and Official Policies.

2.4.1. Existing Regulations Apply. Subject to the terms of Sections 2.4.2 and 2.4.3, the Vested Components shall control development of the Subject Property. As to any subject or matter not addressed in the Vested Components, development of the Subject Property shall be subject to City's General Plan, zoning ordinance, and other rules, regulations, ordinances and official policies that apply to such development on the Ordinance Date; provided, however, that any conflict between the Vested Components and such plans, ordinances, rules, regulations and policies shall be resolved by giving full effect to the Vested Components and the provisions hereof to the extent permitted by law. To the extent that any future changes in the General Plan, the zoning codes or other rules, ordinances, regulations or policies (other than the building and other codes excepted pursuant to Section 2.4.3) conflict with this First Amended and Restated Development Agreement and the Vested Components, this First Amended and Restated Development Agreement and the Vested Components shall control.

2.4.2. Subdivision Of Subject Property. Developer shall have the right from time to time to file subdivision maps and/or parcel maps with respect to some or all of the Subject Property. Nothing herein contained shall be deemed to authorize Developer to subdivide or use any of the Subject Property for purposes of sale, lease or financing in any manner that conflicts with (i) the Subdivision Map Act, or (ii) with City's subdivision ordinance. For purposes hereof, however, City's subdivision ordinance shall be limited to and mean the ordinance terms and conditions as of the Ordinance Date hereof, and no provision of a subdivision ordinance enacted, or that becomes effective, after the Ordinance Date shall reduce Developer's rights or increase its burdens under the Vested Components except to the extent that such ordinance is required to implement and carry out provisions of state law enacted after the Ordinance Date.

2.4.3. Building And Fire Code Amendments Not Precluded. Notwithstanding any other provision to the contrary, nothing herein contained shall be deemed to prevent adoption and application to improvements upon the Subject Property of laws, ordinances, uniform codes, rules or regulations pertaining to or imposing life-safety, fire protection, mechanical, electrical and/or building integrity requirements to the extent that such regulations apply generally throughout City. The City Codes that currently contain such laws and regulations are (i) Uniform Building Code, 1994 Edition, as amended by Part 2, Title 24, California Code of Regulations; (ii) Uniform Mechanical Code, 1994 Edition, as amended by Part 4 of Title 24, California Code of Regulations; (iii) Uniform Plumbing Code, 1994 Edition, as amended by Part 5

of Tide 24, California Code of Regulations; (iv) Uniform Swimming Pool, Spa and Hot Tub Code, 1994 Edition; (v) Uniform Housing Code, 1994 Edition; (vi) Uniform Code for Abatement of Dangerous Buildings, 1994 Edition; (vii) Uniform Sign Code, 1994 Edition; (viii) National Electric Code, 1993 Edition, as amended by Part 3 of Title 24, California Code of Regulations; (ix) Uniform Fire Code, 1994 Edition, including Appendices I-B through V-A, VIA, VI-E and VI-G thereof, except for Appendices H-H and IV-A, and including those amendments to that Code set forth in Tide 24, California Code of Regulations; (x) Uniform Solar Energy Code, 1994 Edition; (xi) Uniform Building Security Code, 1994 Edition; (xii) Uniform Administrative Code, 1994 Edition; and (xiii) Appendix Chapter I of the 1994 Uniform Code for Building Conservation.

2.4.4. Entitlements as to the Remainder. Notwithstanding any other provision in this Agreement, the City is not conferring upon the Developer, and Developer is not receiving, any entitlements or rights, vested or otherwise, to any use in or on the area defined as Planning Area No. 9 (the "Remainder") in the Specific Plan other than the existing mineral production uses. Any potential future use is not an entitled land use (See Table 4-2, Specific Plan).

2.5. Development, Regulatory Mitigation and Application Fees.

2.5.1. Limitations. All application fees, processing fees, development impositions and regulatory fees, set by or within the control of City (including, but without limitation, any fee or charge levied or imposed in connection with or by reason of the conduct of development or business activity within City), (i) levied upon the Subject Property or any part thereof, (ii) charged as a condition to any application for or approval of development or condition thereof, or (iii) imposed to mitigate adverse environmental impacts, shall be subject to the following limitations:

(1) Application and processing fees shall not exceed those in place as of the Ordinance Date, as increased from time to time to reflect any changes in the actual costs incurred by City in processing such applications or managing such processes;

(2) Regulatory fees shall be limited to the categories and amounts listed on Schedule I of the Vested Components and may be adjusted in the future to the lesser of (i) amounts set by City, or (ii) the amounts existing as of the Ordinance Date, revised in proportion to changes in either (a) the United States Department of Labor, Bureau of Labor Statistics' Consumer Price Index (all Urban Consumers), or (b) such other index used by City as a fair indicator of fluctuations of the costs in question, from the Ordinance Date until the date of such new fee setting (the foregoing not to be construed as authorizing creation of any new categories of fees that apply to the Subject Property or development thereof, except as provided in Section 2.5.1(3) below); and

(3) No new regulatory fees and/or development impositions, may be imposed on all or parts of the Subject Property or development thereof unless (i) they apply on a City-wide basis and are not limited to the Subject Property, or any part thereof; (ii) the amount charged has been determined in accordance with all applicable law and is based upon evidence that said amount is necessary to mitigate public health and/or safety impacts directly caused by the development against which the charge is imposed; and (iii) Developer shall be entitled to credit for fees paid and the value of work performed prior to the enactment of such regulatory fee requirements where such fees or work deal with or pertain to the same subject matter.

None of the foregoing limitations shall apply to business license fees lawfully levied and collected in a non-discriminatory manner on a City-wide basis.

2.5.2. "Regulatory Fees" Defined. "Regulatory fees" (constituting the categories and types of fees and charges that are limited pursuant to Sections 2.5.1(2) and 2.5.1(3)) shall include all charges, levies and impositions that are or would be so categorized (or as "development impositions") under applicable California law as of the Ordinance Date (in contrast with "special taxes").

Article 3. **Obligations Of The Parties.**

3.1. **Developer.**

3.1.1. Development Of The Subject Property. Developer shall develop the Subject Property in accordance with and subject to the Vested Components.

3.1.2. Impact Mitigation.

(a) **Construction Of Improvements.** The public improvements to be constructed or installed as conditions of development shall be constructed or installed without cost or expense to City except as otherwise provided in the Vested Components.

(b) **Subdivision Improvement Agreements And Bonds.** Assurance concerning performance of work required to be performed within portions of the Subject Property to be subdivided shall be required as a condition to filing the final subdivision maps or parcel maps for the portion of the Subject Property to be subdivided, such assurance to be in the form of an improvement agreement requiring construction or acquisition of such improvements, entered into in accordance with procedures established pursuant to City's Subdivision Ordinance (with bond or other surety provided as therein required), unless City approves an alternative method for providing assurance of such improvement installation, with Developer's consent, or unless a community facilities district has been formed with provision for construction or acquisition of the improvements in which case no further assurance or surety shall be required.

3.2 City.

3.2.1. Hazardous And Toxic Materials Monitoring. City shall diligently monitor the hazardous materials discharge that has occurred on property owned by City that has allegedly contaminated a portion of the subsoil and groundwater of the Subject Property, without cost or expense to Developer, for an eight year period commencing January, 1999. The annual cost of the monitoring is estimated at \$8,000 to \$12,000 and in no event shall exceed \$12,000 in any calendar year. The City's monitoring program shall be undertaken in full compliance with all applicable laws, ordinances, rules and regulations and is subject to the approval of Orange County. City shall obtain all permits and certifications required by any public authority in connection with such monitoring. City shall indemnify Developer and hold Developer harmless of and from any and all loss, cost, damage, injury or expense, arising out of or in any way related to such discharge. City further agrees to seek funding from state or federal sources to remedy the discharge.

3.2.2. Assessment Proceedings.

(a) **Construction And Acquisition Proceedings.** Developer may desire to initiate assessment and/or community facilities district proceedings to finance payment of an or portions of the design, acquisition and construction costs required to be paid for off-site improvements to be designed and constructed in connection with development of all or portions of the Subject Property pursuant to the Vested Components. City acknowledges that Developer shall have the right to initiate improvement and assessment proceedings utilizing any assessment mechanisms authorized under the law of the State of California where the property subject to assessment provides primary security for payment of the assessments. Developer may initiate such assessment proceedings with respect to a portion of the Subject Property to provide financing for design or construction of improvements for such portion without the consent of the owners of any other portion, to the extent such consent is not required, or protest permitted, by law, so long as the proceedings are conducted without cost or expense to or liability imposed upon the owners of the other portions of the Subject Property. In addition to the restrictions and limitations imposed by the legislation adopted pursuant to Proposition 218 and other applicable State and federal laws, such financing arrangements shall be subject to the following general parameters:

(i) City shall diligently process such application so long as the application:

- (aa) complies with law;
- (bb) is otherwise regular in form; and
- (cc) is consistent with City's standards.

(ii) Upon written demand of the City Manager or his/her designee, Developer shall advance amounts necessary to pay all costs and expenses

of the City to evaluate and structure any financing district, to the end that the City will not be obligated to pay any costs related to the formation or implementation of any financing district from its own general funds. City staff will meet with Developer to establish a preliminary budget for such costs, and will confer with Developer from time to time as to any necessary modifications to that budget.

(iii) City shall diligently seek to sell any bonds, to be issued and secured by such assessments upon the best terms reasonably available in the marketplace; provided, however, that City's duty to market bonds shall be suspended during any period when marketing conditions render the issuance economically infeasible. The financial viability of any assessment or community facilities district will be of material concern to City. City will consider written requests by Developer as to the size and timing of any particular bond issue, as well as the advice of any financial consultant and/or underwriter employed by City in connection therewith. Developer understands that City will have disclosure obligations under State and federal securities laws to prospective purchasers of debt incurred in connection with any public financing, and agrees to provide City with any information reasonably requested in connection with such disclosure obligations.

(iv) Any public financing shall be secured solely by assessments or special taxes levied within the respective district, and proceeds of the bonds issued that are placed in a bond fund or reserve fund for the financing. City's general fund and its tax increment revenues shall not be pledged to the repayment of any public financing contemplated by this Section.

(v) The payment of actual initial and annual administrative costs of City to be incurred in connection with any financing district shall be adequately assured, through the inclusion in any assessment or special tax methodology of appropriate provision for such costs as estimated by City, to the end that City's general fund shall never be called upon to provide for initial or any annual administrative costs related to any financing district.

(vi) All current and projected annual assessments, special taxes, real property taxes and any other amounts due to public agencies which are secured by liens on any parcel within the Property shall not exceed two percent (2 %) of the estimated market value of the property upon completion of expected public and private improvements. The estimated market value shall be determined by City staff and consultants based upon independent absorption studies, appraisals and such other data as City staff may deem relevant in the circumstances. To the extent practicable, City staff shall allow an opportunity for Developer to provide input and commentary on such data prior to its publication. Developer hereby represents that it does not anticipate the formation of any community facilities district to finance the needs of any school district arising from development of the Property.

(vii) In any such assessment proceeding, Developer shall be entitled to add the value of the land in internal streets (meaning streets within the boundaries of any parcel or subdivision map) to the assessment or other proceedings, subject to the lien-to-value ratios established herein; provided, however, that if the rights-of-way for all streets within the Subject Property are dedicated to City, title thereto shall not be subject to any assessment lien, nor shall any portion thereof be purchased directly or indirectly by City.

(b) **Maintenance District Proceedings.** City and/or Developer may determine to create maintenance districts to fund maintenance and operating costs for open space areas, trails and trailhead staging areas, wetlands mitigation areas, storm water detention areas, landscaped medians, street lighting and other improvements. Subject to the restrictions and limitations imposed by the legislation adopted pursuant to Proposition 218 and other applicable State and federal laws, City shall diligently process such applications that comply with law and are otherwise regular in form. Developer and/or City shall have the right to form or create such maintenance districts under any mechanism authorized by law where the benefited property may be assessed or charged for payment of such maintenance and operating cost. Developer and/or City may initiate proceedings for formation of such maintenance districts with respect to a portion of the Subject Property to provide for maintenance of improvements for such portion without the consent of the owners of any other portion, to the extent such consent or a protest proceeding is not otherwise required by law, so long as the proceedings are conducted without cost or expense to or liability imposed upon the owners of the other portions of the Subject Property.

(c) **Disclosure to Future Landowners.** Developer shall comply with all applicable laws as to the disclosure of the existence of any financing district to the purchasers of any portion of the Subject Property within such district. Any and all such disclosure documentation shall be filed with the office of the City Manager. City may require the Developer to submit a particular form of disclosure statement, in addition to any disclosure required under applicable law, to prospective purchasers of all or a portion of the Subject Property, provided that Developer is offered the opportunity to comment on any proposed disclosure statement prior to its publication.

(d) **Best Efforts Undertaking.** Developer acknowledges that the formation of any financing district is subject to protest hearings and, in some cases, voter approval. Although City agrees to use its best efforts to form one or more financing districts in accordance with the foregoing, it shall incur no monetary liability for its failure to form any such financing district. City staff shall meet and confer with Developer from time to time with respect to all major aspects of any financing district, but the final decisions regarding all aspects of such financing districts shall be subject to the review and approval of the City Council.

(e) **Use of Proceeds.** All of the proceeds of the reimbursement agreements or other financial obligations levied or imposed on Benefited Property

pursuant to this Section shall be retained for the benefit of City and, together with all interest earned thereon, shall be allocated in the following order of priority no later than ninety (90) days from the date of collection thereof

(i) Reimbursement to City of its ordinary and necessary administrative costs incurred in the creation and administration of such reimbursement agreements.

(ii) If Developer has loaned or advanced any funds to City to fund the Improvements to which the Proceeds are applicable, to repay or reimburse Developer for such loans or advances, pursuant to Section 3.2.4 of this Agreement.

(iii) To reimburse Developer, or otherwise pay, for the costs of the planning, engineering, design, construction, acquisition or expansion of the Improvements to which the Proceeds are applicable. Proceeds shall be applied for such purposes before any fees, taxes, charges, assessments or bond proceeds.

3.2.3. City's Good Faith In Processing. City shall accept, process and review, in good faith and in a timely manner, (subject to payment of such application fees as may be charged hereunder in connection therewith) all applications required under all applicable laws, ordinances, rules and regulations for use of the Subject Property, in accordance with the terms of this Development Agreement and as required to determine the compliance of such application with applicable legal requirements. The scope of City's review of remaining or supplementary applications for development approvals shall be conducted in accordance with this Development Agreement and then applicable law, to the extent that applicable law does not conflict with this Development Agreement. To the maximum extent possible under the circumstances, applications for further approvals on the Subject Property shall be given priority in processing.

3.2.4. Right Of Reimbursement From Assessment Proceeds. Developer shall have the right to obtain reimbursement in any such assessment proceeding, special tax proceeding or other financing proceeding undertaken by City, for any costs incurred or fees paid for administration, design and construction of improvements or implementation of mitigation measures that can properly be included in such assessment proceedings, such reimbursement to be made together with interest thereon at the rate of interest being charged on the principal amount of the assessments from which said reimbursement is made or at such other rate as City determines fairly compensates for the cost of the funds to be reimbursed.

Article 4. **Default, Remedies, Termination.**

4.1 General Provisions.

4.1.1 Event's Of Default And Notice. Subject to extensions of time by mutual consent in writing, or as otherwise provided herein, material failure or delay by any party to perform any term or provision of this First Amended and Restated

Development Agreement constitutes a default hereunder. Upon default under this First Amended and Restated Development Agreement or any of its terms or conditions, the party claiming such default or breach shall give the breaching party not less than thirty (30) days written notice of default, measured from the date of personal service or delivery by certified mail, specifying in detail the nature of the alleged default and when appropriate, the manner in which said default may satisfactorily be cured. During any such thirty (30) day cure period, the party charged shall not be considered in default for purposes of termination or institution of legal proceeding.

4.1.2. Remedies. After proper notice and expiration of said thirty (30) day cure period (or such longer period as the party claiming default may specify) without cure, or if such cure cannot be accomplished within such thirty (30) day period, without commencement of cure within such period and diligent effort to effect cure thereafter, the party to this First Amended and Restated Development Agreement that has given notice of default may, at its option, institute legal proceedings to enforce this First Amended and Restated Development Agreement or give notice of intent to terminate this First Amended and Restated Development Agreement, pursuant to Government Code Section 65868. Notice of intent to terminate shall be by certified mail, return receipt requested. Upon delivery by City of notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) days in accordance with Government Code Sections 65867 and 65868. Upon consideration of the evidence presented in said review and a determination by the City Council based thereon, City may give written notice of termination of this Agreement to the defaulting party. Evidence of default also may arise during annual review pursuant to Section 4.2 below. Any determination of default (or any determination of failure to demonstrate good faith compliance as a part of annual review) made by City against Developer, or any person who succeeds to Developer with respect to any portion of the Subject Property, shall be based upon written findings supported by substantial evidence in the record. Any purported termination of this Agreement for alleged default shall be subject to review in the Superior Court of the County of Orange pursuant to Code of Civil Procedure § 1094.5(c).

4.1.3. No Waiver. Except as otherwise provided herein, any failure or delay by a party to assert any of its rights or remedies as to any default for a period of not to exceed one (1) year shall not operate as a waiver of any default or of any such rights or remedies; nor shall such failure or delay deprive any such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

4.1.4. Developer's Remedies Limited To Mandamus. City's performance of this First Amended and Restated Development Agreement is comprised of ministerial, non-discriminatory duties that the law specifically enjoins and administrative actions taken as the result of proceedings in which by law hearings are required to be given, evidence is required to be taken and discretion in the determination of facts is vested in City, and, except as otherwise provided in Section

4.1.5 below, Developer shall be entitled to obtain relief only in the form of a writ of mandate in accordance with Code of Civil Procedure Section 1085 or Section 1094.5, as appropriate, to remedy any default by City in the performance of its obligations and duties under this First Amended and Restated Development Agreement. Nothing in this Section 4.1.4 shall be deemed to alter the evidentiary standard or the standard of review that applies to any action of or approval by City pursuant to this First Amended and Restated Development Agreement or with respect to the Subject Property.

4.1.5. City Defaults. If City does not accept, review, approve or issue development permits, entitlements or other land use or building approvals, if any, for use in a timely fashion as provided in this First Amended and Restated Development Agreement or defaults in performance of the obligations on its part to be performed hereunder, Developer (or the owner of the portion of the Subject Property to which such default applies) shall have the rights and remedies provided herein or available in law or in equity, including, but without limitation, the right to seek specific performance and/or writs of mandate in an appropriate case.

4.1.6. Default Remedies Limited To Effected Parcel. Notwithstanding anything to the contrary herein contained, where a default has occurred only with respect to a particular lot or parcel, any remedy or right of termination arising hereunder shall apply solely to or with respect to such lot or parcel and affect only the owner thereof and the holders of interests therein. No liability shall be imposed against or apply to any parcel or portion of the Subject Property with respect to which no default has occurred, nor shall any obligation be imposed against or applied to the owner thereof.

4.1.7. Copies Of Default Notices. The owner of any portion of the Subject Property shall have the right to request copies of notice of default given to the owner of any other portion of the Subject Property. City and any owners of other portions of the Subject Property to whom such request has been made shall honor the same and provide such notice in the manner and to the address specified in the request.

4.1.8. Breach By Action Of The Electorate. The parties understand that the Development Agreement Law authorizes this First Amended and Restated Development Agreement to bind the City even as to actions taken by voters of City. If a court of competent jurisdiction enters a final, non-appealable order to the contrary and City fails or refuses to perform its obligations under this First Amended and Restated Development Agreement solely to comply with a measure adopted by initiative after entry of such a final, non-appealable order subjecting this First Amended and Restated Development Agreement to the effects of legislation adopted by initiative after the Ordinance Date, this First Amended and Restated Development Agreement shall be modified or suspended to the extent required by Government Code Section 65869.5 and Developer's remedies by reason thereof shall be limited to reformation or rescission of this First Amended and Restated Development Agreement.

4.2 Annual Review. Good faith compliance by Developer with the provisions hereof shall be subject to annual review, utilizing the following procedures:

4.2.1. Director Of Development Services. Review shall be conducted by the Director of Development Services ("Director").

4.2.2. Developer's Burden. During review, Developer shall be required to demonstrate good faith compliance with the terms of this First Amended and Restated Development Agreement and provide such documents in connection with such demonstration as the Director may reasonably request.

4.2.3. Director's Decision: Appeal. At the conclusion of the review, Director shall make written findings and determinations on the basis of substantial evidence, whether or not Developer or its successors have complied in good faith with the terms and conditions hereof. Any determination of failure of compliance shall be subject to the notice requirements and cure periods stated in Section 4.1. Any interested person may appeal the decision of Director directly to the City Council, such appeal to be filed within ten (10) days after Director has rendered his decision in writing or issued a Certificate of Compliance.

4.2.4. Staff Reports. At least ten (10) days prior to the conduct of any such review, Director shall deliver to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review. Developer shall be permitted an opportunity to respond to Director's evaluation of its performance by written and oral testimony at a public hearing to be held before Director.

4.2.5. Failure To Comply: Notice Of Termination. If Director determines that Developer (or any person, firm or entity owning a portion of the Subject Property) has not complied with the terms and conditions hereof, Director may recommend to the City Council that City give notice of termination or modification of this First Amended and Restated Development Agreement as provided in Government Code §§ 65867 & 65868. If termination is proposed, it shall apply solely with respect to that portion of the Subject Property (if less than all) affected by the failure to show good faith compliance and shall be subject to the provisions of Sections 4.1.2 and 4.1.4 hereof. If modification hereof is proposed, the modification shall pertain solely to the provisions hereof that apply to that portion of the Subject Property (if less than all) affected by the condition that has prompted the proposed modification.

4.2.6. Failure To Conduct Review, etc. If City fails either to (i) conduct the annual review for any year, or (ii) notify Developer in writing (following the time during which review is to be conducted) of City's determination as to compliance or noncompliance with the terms of this First Amended and Restated Development Agreement, and such failure remains uncured for sixty (60) days after the date when Developer provides to City notice that such annual review should have been conducted,

such failure shall constitute an approval of Developer's compliance with the terms hereof for purposes of the annual review to be conducted within said year.

4.2.7. Notice Of Compliance. City shall provide a written "Notice of Compliance" in recordable form, duly executed and acknowledged by City, whether City's annual review has resulted in a determination of compliance or compliance is deemed found pursuant to the preceding subparagraph. Any person owning a portion of the Subject Property shall have the right to record such Notice of Compliance.

4.3. Applicable Law/Attorneys' Fees. This First Amended and Restated Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party claiming a breach of this First Amended and Restated Development Agreement or to enforce any provision of this First Amended and Restated Development Agreement, or to obtain a declaration of rights hereunder, the prevailing party shall be entitled to actual attorneys' fees, court costs and such other costs as may be fixed by the Court.

Article 5. Permitted Delays; Effect of Subsequent Laws

5.1. Permitted Delays. Performance by any party of its obligations hereunder (other than for payment of money) shall be excused during any period of "Excusable Delay" as hereinafter defined. Excusable Delay shall also extend the Term hereof for the period of the Excusable Delay or five (5) years, whichever is the shorter. For purposes hereof, Excusable Delay shall include delay beyond the reasonable control of the party claiming the delay (and despite the good faith efforts of such party) including (i) acts of God, (ii) civil commotion, (iii) riots, (iv) strikes, picketing or other labor disputes, (v) shortages of materials or supplies, (vi) damage to work in progress by reason of fire, floods, earthquake or other casualties, (vii) failure, delay or inability of the other party to act, (viii) inability of City, after requests by Developer, to hold hearings necessary to take the actions contemplated in Sections 3.2.2 and/or 3.2.3 hereof, (ix) delay caused by governmental restrictions imposed or mandated by other governmental entities, (x) enactment of conflicting state or federal laws or regulations, (xi) judicial decisions or similar basis for excused performance; (xii) litigation brought by a third party attacking the validity of this First Amended and Restated Development Agreement, any of the approvals, or any permit, ordinance, entitlement or other action necessary for development of the Subject Property or any portion hereof, shall constitute an excusable delay as to the Subject Property or the owner affected; provided, however, that any party claiming delay shall promptly notify the other party (or parties) of any delay hereunder as soon as possible after the same has been ascertained, and give notice to the other party or parties of the end of the event or condition causing the delay as soon as reasonably possible after cessation of the event or condition causing the delay.

5.2. Arbitration Of Dispute Over Existence Of Excusable Delay.

5.2.1. Disputes Subject To Arbitration. Any dispute between the parties concerning the existence of Excusable Delay shall be resolved by arbitration. Such arbitration shall be final and binding between the parties, and the order of the arbitrator may be enforced in the manner provided for enforcement of a judgment of a court of law pursuant to the applicable provisions of the California Code of Civil Procedure. The arbitration shall be conducted in accordance with the procedures set forth in Sections 5.2.2 through 5.2.8 below.

5.2.2. Demand. Any party who has a claim (the "Demanding Party") hereunder to be resolved through arbitration shall state the claim (the "Claim") in writing. The Claim shall include (i) the item or matter in dispute, (ii) the Demanding Party's position, and (iii) a specific statement of the exact relief the Demanding Party requests.

5.2.3. Meet And Confer. The parties shall meet and confer in an attempt to resolve the matter raised by the Claim. If they are unable to reach a resolution within thirty (30) days after the date of the Claim, then within ten (10) days thereafter, the Demanding Party shall either (i) restate its Claim, (ii) amend the Claim, or (iii) withdraw the Claim. Failure on the part of the Demanding Party to withdraw or amend the Claim in writing shall constitute a restatement thereof.

5.2.4. Response. If the Claim is not withdrawn within the ten (10) day period provided for in Section 5.2.3 above, the other party (the "Responding Party") shall, within fifteen (15) days after expiration of the ten (10) day period provided for in Section 5.2.3 above, prepare a response to the Claim (the "Response") specifying (i) the Responding Party's position on the Claim, and (ii) the exact relief the Responding Party requests.

5.2.5. Submission To Arbitration. The matter or matters in dispute shall be submitted to the arbitrator on the basis of the issue as framed by the Claim (as the same may have been amended pursuant to Section 5.2.3 above) and the Response. The arbitrator shall be a person from the Orange County Area with at least five (5) 'years' experience and professional qualifications in the subject matter in dispute under the Claim and Response. If the parties are unable to agree on the selection of a single person to serve as arbitrator for the resolution of the dispute within thirty (30) days after the date of the Response, then either party shall have the right to apply for the appointment of a duly qualified person to act as arbitrator to the Presiding Judge of the Superior Court of the County of Orange, State of California, and neither party shall have any right to object to the qualifications of said Judge to make such appointment. If the arbitrator resigns or refuses to serve, then a new arbitrator shall be appointed as herein provided.

5.2.6. Hearing. As soon as convenient after appointment, the arbitrator shall meet with the parties to hear evidence and argument on their Claim or Response. The arbitrator shall not be bound by the Rules of Evidence in the conduct of such

proceeding although the arbitrator shall take account of said rules in considering the weight of the evidence. To the extent applicable, the decision of the arbitrator shall conform to law and the arbitrator shall be entitled to retain an independent attorney to advise him as to such questions of law that may arise during the proceeding. In making a decision, the sole function of the arbitrator shall be to determine whether (i) the relief requested in the Claim, or (ii) the relief requested in the Response is the more appropriate relief to be given in connection with the matter in dispute, and the arbitrator shall have no right to fashion an independent or different result.

5.2.7. Payment Of Costs By The Parties. Each party shall pay one-half (1/2) of the fees and costs of the arbitrator and all of its own costs and attorneys' fees in connection with the arbitration, except that the arbitrator may award to the prevailing party its costs and reasonable attorneys' fees, pursuant to Section 5.2.8.

5.2.8. Award Of Costs And Fees. The arbitrator shall have no right to award costs or attorneys' fees to either party unless the arbitrator determines that the Claim or the Response is based on a position totally lacking in merit or that was asserted for purposes solely of delay, in which case the arbitrator shall have the right to award costs and attorneys' fees to the Prevailing Party.

5.3. Effect Of Subsequent Laws. If any governmental or quasi-governmental agency other than City adopts any law, regulation or imposes any condition ("Law"), after the date of this First Amended and Restated Development Agreement that prevents or precludes compliance with one or more provisions of this First Amended and Restated Development Agreement, and the provisions hereof are not entitled to the status of vested right as against such Law, then the provisions of this First Amended and Restated Development Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such Law. Immediately after enactment of any such law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this First Amended and Restated Development Agreement. Developer shall have the right to challenge such Law and seek a declaration that it does not affect or diminish the provisions hereof. If any such challenge is successful, this First Amended and Restated Development Agreement shall remain unmodified and in full force and effect.

Article 6. **Cooperation of City.**

6.1. Other Governmental Permits.

6.1.1. City Action. City shall cooperate with Developer in its endeavors to obtain any other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Subject Property or portions thereof (including without limitation, public utilities or utility districts and agencies having jurisdiction over transportation facilities and air quality issues) and

shall, from time to time, at the request of Developer join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency, so long as the action of that nature will not require City to incur any cost, liability or expense without adequate indemnity against or right of reimbursement therefore.

6.1.2. Modification Of First Amended and Restated Development Agreement To Obtain Permits, etc. Permits and approvals required from other agencies may necessitate amendments to this First Amended and Restated Development Agreement and/or to one or more of the approvals or other approvals granted by City. City shall not unreasonably withhold approval of any amendment hereof that is mandated by conditions of approval imposed by any other governmental agency.

6.2. Cooperation In Dealing With Legal Challenge. If any action or other proceeding is instituted by a third party or parties, other governmental entity or official challenging the validity of any provision of the Approvals, the FEIR, or this First Amended and Restated Development Agreement, Developer and City shall cooperate in defending any such action. City shall notify Developer of any such legal action against City within ten (10) working days after City receives service of process, except for any petition for injunctive relief, in which case City shall notify Developer immediately upon receipt of notice thereof. Developer shall indemnify, hold harmless and defend City, and any of its officers, employees or agents for any claim or lawsuit brought to challenge the validity or enforcement of the Vested Components, the FEIR, or this First Amended and Restated Development Agreement, instituted by a third party or another governmental entity or official; provided, however, that if City fails promptly to notify Developer of any legal action against City, or if City fails to reasonably cooperate in the defense, Developer shall not thereafter be responsible for City's defense. Developer shall reimburse promptly all of City's defense costs including, without limitation, court costs, attorneys fees and expert witness and consultant fees. Developer shall promptly pay all monetary awards, judgments, verdicts, court costs and attorneys fees that may be awarded in such action. City shall be entitled to select counsel to conduct its defense in any such action; provided, however, that City shall instruct such counsel to cooperate with Developer as provided in this Section 6.2.

Article 7. **Mortgagee Protection; Certain Rights of Cure.**

7.1 Mortgagee Protection. This First Amended and Restated Development Agreement shall be superior and senior to any lien placed upon the Subject Property, or any portion thereof, after the date of recording this First Amended and Restated Development Agreement (other than liens to secure taxes and assessments levied by City to raise funds for construction of improvements or for other public purposes), including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms

*First Amended and Restated Development Agreement
Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch
March, 2001*

and conditions contained in this First Amended and Restated Development Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Subject Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise. The terms hereof shall be binding upon and effective against any person or entity that acquires title to the Subject Property, or any portion thereof, by foreclosure of or sale under any assessment lien levied by City to raise funds for construction of improvements or for other public purposes.

7.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 7.1 above, no Mortgagee shall have any obligation or duty under this First Amended and Restated Development Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Subject Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this First Amended and Restated Development Agreement; and provided further, however, that the purchaser or successor to any such Mortgagee shall not be relieved of any such construction obligations all of which shall immediately reattach upon conveyance by such Mortgagee.

7.3. Notice Of Default To Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default that may be given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default; and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice.

Article 8. Transfers And Assignments.

8.1. Restriction On Transfer Of Developer's Rights And Obligations. Except as provided in Section 8.2 below, Developer shall not sell, assign, transfer, mortgage, hypothecate, or similarly convey (collectively, a "Transfer") any of Developer's rights or obligations hereunder. Developer acknowledges that the identity of Developer is of particular concern to City, and it is because of Developer's identity that City has entered into this First Amended and Restated Development Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this First Amended and Restated Development Agreement. No transfer or assignment hereunder shall be deemed to release Developer from the obligations of Developer hereunder except upon the issuance of a Certificate of Compliance (as defined herein) setting forth such release with specificity.

8.2. **Permitted Transfers.** Notwithstanding the provisions of Section 8.1, Developer may make the following "Permitted Transfers," provided that such Permitted Transfers comply in all respects with the Subdivision Map Act, Government Code Sections 66410 et seq.

8.2.1. Upon the prior written approval of City, Developer may transfer this First Amended and Restated Development Agreement, or the Subject Property, to any Transferee, provided that the Transferee has the skill or experience equal to or greater than that of Developer with respect to quality, character, track record, financial ability and reputation, as determined by City in the exercise of its reasonable, good faith business judgement. City consents to the transfer of the residential parcel to WL Homes, doing business as John Laing Homes, or its successor, and to those portions of the Subject Property to be held for wetlands preservation and restoration to the Wildlife Conservation Board, the California Coastal Conservancy or another public or private entity with similar goals, objectives and purposes.

8.2.2. Developer may transfer any common areas or commonly owned improvements, located within the boundaries of a duly filed final parcel map or subdivision map and so designated on that map, to an association composed in whole or in part of the owners of lots or parcels within the boundaries of that duly filed final map.

8.2.3. Developer may execute mortgages, deeds of trust, sales and leaseback, or any other form of encumbrance or conveyance required for any reasonable method of financing from an institutional lender with the prior written approval of City (which said approval shall not be unreasonably withheld or delayed), for the purpose of securing loans or funds to be used for financing the direct or indirect costs of the development of the Subject Property (including land development costs, reasonable and customary developer fees, loan fees and costs, and other normal and customary project costs).

8.2.4. Developer may transfer any lot or parcel shown on a duly filed final subdivision map, which said parcel constitutes a lot created for the purposes of residential use in accordance with the terms of the Specific Plan and the other restrictions herein contained, without the prior approval of City.

8.3 **Release Of Transferring Developer.** Notwithstanding a Transfer, Developer (except with respect to the specific transfers to which City has consented pursuant to Article 8.2.1 which shall result in a release of Developer with respect to the portion of the Subject Property so transferred) shall continue to be obligated under this First Amended and Restated Development Agreement with respect to the portion of the Subject Property that is transferred unless Developer is released from its obligations under this First Amended and Restated Development Agreement by City, in writing, setting forth the remaining obligations, if any, pursuant to this First Amended and

Restated Development Agreement (the "Certificate Of Compliance"). Within fifteen (15) days after written demand from Developer, City shall issue a Certificate of Compliance that shall be recorded with respect to the portion of the Subject Property affected thereby and that is released from further obligations under this First Amended and Restated Development Agreement. The Certificate of Compliance shall state with specificity the completed obligations of Developer and the continuing or remaining obligations of Developer. Notwithstanding any other provision to the contrary contained in this First Amended and Restated Development Agreement, City shall not be required to issue a Certificate of Compliance during any period in which Developer is in default in performance of its obligations hereunder. Notwithstanding the foregoing (and anything to the contrary herein contained), the filing of the final subdivision map with respect to the portion of the Subject Property to be developed for residential uses under the CDP Conditions shall constitute the Certificate Of Compliance with respect to that portion of the Subject Property included within the boundaries of the final subdivision map and a release of all obligations under this First Amended and Restated Development Agreement with respect to that portion of the Subject Property except those obligations expressly made a condition of filing said final subdivision map.

8.4. No Third Parties Benefited. No third party that is not a party hereto or a successor or assign of a party hereto, may claim the benefits of any provision hereof, and any third party so benefited in fact shall have no rights greater than those that would be held by any member of the public affected by such actions or enactments without regard to this First Amended and Restated Development Agreement.

8.5. Covenants Run With The Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this First Amended and Restated Development Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entity acquiring the Subject Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this First Amended and Restated Development Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Subject Property hereunder, or with respect to any City owned property or property interest, (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

Article 9. Release Of Obligations As To Developed Portions Of Subject Property.

9.1. **Statement Of Purpose.** In this Article 9, the parties desire to provide for a discharge of the obligations of the First Amended and Restated Development Agreement upon filing of a final subdivision map or parcel map with respect to any portion of the Subject Property so that City and the purchaser (or purchasers) and encumbrancer (or encumbrancers) of any such lot or parcel need not be concerned with any of the obligations herein contained other than those made pertinent to such lot or parcel as a condition of filing of the final subdivision map or parcel map creating the same.

9.2. **Release.** All obligations of Developer shall be deemed discharged and fulfilled with respect to lots or parcels shown on duly filed final subdivision maps or parcel maps, subject to compliance with (i) the conditions imposed in connection with such filing, and (ii) the conditions upon issuance of building permits with respect to structures to be located thereon imposed pursuant to this First Amended and Restated Development Agreement. No such final subdivision map or parcel map shall be subjected to filing conditions that shall cause or require Developer to perform obligations with respect to the lands so divided in excess of those obligations required pursuant to the Vested Components. Such final subdivision map or parcel map shall be deemed to establish compliance with the requirements hereof to the full extent of a Certificate of Compliance or Estoppel Certificate provided pursuant to Section 11.7.

Article 10. Amendment.

10.1. **General Provision.** This First Amended and Restated Development Agreement may be amended in the manner provided in the Development Agreement Legislation, except as otherwise expressly provided herein.

10.2. **Administrative Amendments.** Any provision hereof or of the Vested Components that does not (i) change the density, intensity or nature of the uses permitted on the Subject Property, (ii) diminish the areas to be dedicated for public purposes, or (iii) materially reduce Developer's improvement obligations with respect to any portion of the Subject Property, may be adopted and implemented as an administrative matter, without action by the City Council, by the City Manager and Developer (or the successor to Developer with respect to the portion of the Subject Property affected by the administrative amendment). Any such amendment shall take effect fifteen (15) days after execution thereof by both parties with written notice hereof to the members of the City Council by delivery to the City Clerk.

10.3. **City Waivers.** City may waive, reduce the burden of or revise the Vested Components as they apply to any portion of the Subject Property with the consent of the owner of such portion, so long as: (i) the waiver, reduction or revision

does not conflict with the land uses, improvement or mitigation requirements of the Vested Components (or any permit or approval granted thereunder), (ii) such reduction or waiver does not increase the burden imposed upon a portion of the Subject Property owned by any other owner, and (iii) the waiver, reduction or revision does not conflict with the CDP Conditions.

10.4 Right Of Amendment. No owner of less than all of the Subject Property shall have the right to seek or consent to amendment of the terms hereof, to terminate this First Amended and Restated Development Agreement or enter into an agreement to rescind any provisions hereof in a manner that is binding upon or affects any of the Subject Property other than that owned in fee simple by said owner. City's review of an amendment to this First Amended and Restated Development Agreement shall be limited to consideration of the proposed modification solely as it relates to the portion of the Subject Property directly impacted by the modification or as it relates to the specific obligations of the person, firm or entity that owns fee simple title to the land affected by such modification, as the case may be. No unrelated amendments shall be entertained or conditions imposed by City as a condition to approving a proposed amendment.

Article 11. General Provisions.

11.1. Project is a Private Undertaking. The development proposed to be undertaken by Developer on the Subject Property is a private development. Except for that portion thereof to be devoted to public improvements to be constructed by Developer in accordance with the Vested Components, City has no interest in, responsibility for or duty to third persons concerning any of said improvements; and Developer shall exercise full dominion and control over the Subject Property, subject only to the limitations and obligations of Developer contained in this First Amended and Restated Development Agreement. Developer shall hold and save City harmless and indemnify it of and from any and all loss, cost, damage, injury or expense, arising out of or in any way related to injury to or death of persons or damage to property that may arise by reason of the physical development of the Subject Property pursuant to this First Amended and Restated Development Agreement; provided, however, that the foregoing indemnity shall not include indemnification against (i) suits and actions brought by Developer by reason of City's default or alleged default hereunder, or (ii) suits and actions caused solely by or resulting solely from City's material acts or omissions, or (iii) suits and actions arising from the sole negligence or willful misconduct of City; provided further, however, that the foregoing indemnity shall not apply to claims pertaining to ownership and operation of those portions of the Subject Property dedicated to and accepted by City arising from and after the dedication thereof.

11.2. Notices, Demands and Communications Between The Parties. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if personally served or mailed by registered or certified mail, postage prepaid, return receipt requested, to the addresses of City or

Developer stated on the signature page hereto. Notice may also be given by telephone facsimile to the telephone numbers given on the signature page, with a confirming copy of the facsimile communication mailed on the same day as above provided. Notices and demands shall be effective upon receipt. Such written notices, demands, correspondence and communications may be sent in the same manner to such other persons and addresses as either party may from time-to-time designate by notice as provided in this section and the foregoing addresses may be changed by notice given as herein provided.

11.3. No Joint Venture or Partnership. Nothing contained in this Development Agreement or in any document executed in connection with this First Amended and Restated Development Agreement shall be construed as creating a joint venture or partnership between City and Developer.

11.4. Severability. If any provision of this First Amended and Restated Development Agreement is held invalid, void or unenforceable but the remainder of the First Amended and Restated Development Agreement can be enforced without failure of material consideration to any party, then the First Amended and Restated Development Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the parties. If any material provision of this First Amended and Restated Development Agreement is held invalid, void or unenforceable, however, the owner of any portion of the Subject Property affected by such holding shall have the right in its sole and absolute discretion to terminate this First Amended and Restated Development Agreement as it applies to the Subject Property so affected, upon providing written notice of such termination to City.

11.5. Interpretation. To the maximum extent possible, this First Amended and Restated Development Agreement shall be construed to provide binding effect to the Vested Components, to facilitate use of the Subject Property as therein contemplated and to allow development to proceed upon all of the terms and conditions applicable thereto, including without limitation, public improvements to be constructed and public areas to be dedicated.

11.6. Completion Or Revocation. Upon completion of performance by the parties or revocation of this First Amended and Restated Development Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer shall be recorded in the Office of the Recorder of Orange County, California.

11.7. Estoppel Certificate. Either party may, at any time, and from time to time, (but no more frequently than four (4) times in any calendar year) deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this First Amended and Restated Development Agreement is in full force and effect and a binding obligation of the parties, (ii) this First Amended and Restated Development Agreement has not been amended or modified either orally or in

*First Amended and Restated Development Agreement
Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch
March, 2001*

writing, and if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this First Amended and Restated Development Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate or give a written detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. Each party acknowledges that such a certificate may be relied upon by third parties acting in good faith. A certificate provided by City establishing the status of this First Amended and Restated Development Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party. Failure to deliver such a certificate or a written denial within the time specified above shall constitute a conclusive presumption against the party failing to provide the certificate that this First Amended and Restated Development Agreement is in full force and effect, without modification, except as may be represented by the requesting party; and that there are no uncured defaults in the performance of the requesting party except as may be so represented.

11.8. Construction. All parties have been represented by counsel in the preparation of this First Amended and Restated Development Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to interpretation or enforcement hereof. This First Amended and Restated Development Agreement fully supersedes and replaces the Development Agreement which shall have no further force or effect.

11.9. Counterpart Execution. This First Amended and Restated Development Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the parties has executed such a counterpart.

11.10. Time. Time is of the essence of each and every provision hereof.

*First Amended and Restated Development Agreement
Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch
March, 2001*

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement as of the day and year first above written.

"City"

CITY OF SEAL BEACH, a
Municipal Corporation of the
State of California

City of Seal Beach
Attn: City Manager
211 8th Street
Seal Beach, CA 90740-6379

(562) 431-2527

"Developer"

HELLMAN PROPERTIES, LLC

HELLMAN PROPERTIES, LLC
Attn: F. Jerome Tone, Agent
980 Fifth Ave, Suite 202
San Rafael, CA 94904

By:

Patricia E. Campbell

Mayor

By:

F. Jerome Tone
Agent

Its:

ATTEST:

By:

Joanne M. Yeo
Joanne M. Yeo
City Clerk

APPROVED AS TO FORM

By:

Quinn M. Barrow
Quinn M. Barrow
City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On April 12, 2001, before me Joan E. Lewis, Notary Public
Name, Title of Officer (Notary Public)

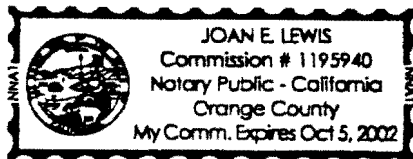
personally appeared Patricia E. Campbell

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Joan E. Lewis
(Signature of Notary)

Joan E. Lewis
(Name - Type or Print)

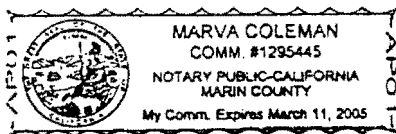


State of CALIFORNIA
County of MARIN

On 3-29-01 before me, Marva Coleman, Notary Public
(DATE) (NAME/TITLE OF OFFICER - i.e. "JANE DOE, NOTARY PUBLIC")
personally appeared F. Jerome Tone
(NAME(S) OF SIGNER(S))

☒ personally known to me -OR- ☐

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



(SEAL)

Witness my hand and official seal.

Marva Coleman
(SIGNATURE OF NOTARY)

ATTENTION NOTARY

The information requested below and in the column to the right is OPTIONAL.
Recording of this document is not required by law and is also optional.
It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document First Amendment + Restated Development Agreement Between City of Seal Beach AND HELLMAN PROPERTIES LLC
Number of Pages 33 Date of Document APRIL 2001
Signer(s) Other Than Named Above _____

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)

☐ INDIVIDUAL(S)

☐ CORPORATE _____

OFFICER(S) _____

(TITLE(S))

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY IN FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: _____

SIGNER IS REPRESENTING:

(Name of Person(s) or Entity(ies))

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)

☐ INDIVIDUAL(S)

☐ CORPORATE _____

OFFICER(S) _____

(TITLE(S))

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY IN FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: _____

SIGNER IS REPRESENTING:

(Name of Person(s) or Entity(ies))



EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

(Hellman Properties LLC - Hellman Ranch Property)

DESCRIPTION

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF SEAL BEACH, AND IS DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF SECTION 11 AND OF THE WEST HALF OF SECTION 12, TOWNSHIP 5 SOUTH, RANGE 12 WEST, WITHIN LOT C-1 OF THE RANCHO LOS ANGELES, AS PER MAPS 1 AND 2 FILED IN DECREE OF PARTITION, IN THE SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF SAID LOT C-1, ALSO BEING THE SOUTHEASTERLY LINE OF THE STRIP OF LAND 100 FEET IN WIDTH OF THE LOS ANGELES GAS AND ELECTRIC CORPORATION, WITH A LINE PARALLEL WITH AND SOUTHERLY 1056.14 FEET FROM THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 11, SAID INTERSECTION BEING ALSO THE NORTHWESTERLY CORNER OF LOT 18 OF TRACT NO. 1817 AS PER MAP RECORDED IN BOOK 82, PAGES 26 TO 31 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE; THENCE, ALONG THE NORTHERLY BOUNDARY OF SAID TRACT, AND ALONG THE NORTHERLY BOUNDARY OF TRACT NO. 2590 AS PER MAP RECORDED IN BOOK 82, PAGES 32 TO 39 INCLUSIVE OF SAID MISCELLANEOUS MAPS, THE FOLLOWING COURSES: SOUTH 89 DEGREES 47' 55" EAST 535.26 FEET; SOUTH 17 DEGREES 39' 50" EAST 224.72 FEET; SOUTH 58 DEGREES 14' 20" EAST 233.06 FEET; NORTH 83 DEGREES 25' 10" EAST 483.32 FEET; NORTH 67 DEGREES 58' 55" EAST 235.00 FEET; NORTH 13 DEGREES 25' 35" EAST 110.30 FEET; NORTH 54 DEGREES 00' 10" EAST 139.31 FEET; SOUTH 89 DEGREES 47' 55" EAST 2640.57 FEET; AND SOUTH 44 DEGREES 52' 03" EAST 548.68 FEET TO THE WESTERLY LINE OF BAY BOULEVARD; THENCE, ALONG SAID WESTERLY LINE, NORTH 30 DEGREES 38' 00" EAST 1702.41 FEET TO THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO THE REDEVELOPMENT CENTER OF THE CITY OF SEAL BEACH, RECORDED FEBRUARY 27, 1976 IN BOOK 11659, PAGE 1767 OF OFFICIAL RECORDS; THENCE NORTH 65 DEGREES 43' 42" WEST 1344.43 FEET ALONG SAID SOUTHWESTERLY LINE TO THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND SHOWN AS CONTAINING 124.077 ACRES ON A MAP FILED IN BOOK 83, PAGE 22 OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE, BEING ALSO THE SOUTHEASTERLY CORNER OF THE LAND DESCRIBED AS PARCEL

C1-104 IN THE DEED TO THE ORANGE COUNTY FLOOD CONTROL DISTRICT, RECORDED JANUARY 27, 1961 IN BOOK 5609, PAGE 69 OF OFFICIAL RECORDS; THENCE, ALONG THE BOUNDARY OF SAID LAND, NORTH 89 DEGREES 48' 27 " WEST 380.00 FEET; NORTH 53 DEGREES 34' 46" WEST 1116.68 FEET; NORTH 89 DEGREES 48' 02" WEST 310.00 FEET; AND NORTH 0 DEGREES 09' 46" EAST 60.85 FEET TO THE BOUNDARY LINE BETWEEN STATIONS 1 AND 2 OF LOS ANGELES AND ORANGE COUNTIES, AS SURVEYED BY THE COUNTY SURVEYOR OF SAID LOS ANGELES COUNTY, AND ESTABLISHED BY THE CALIFORNIA LEGISLATURE IN 1919, AND AS SHOWN ON LOS ANGELES COUNTY SURVEYOR'S MAP NO. 8175 RECORDED IN BOOK 39, PAGE 52 OF MISCELLANEOUS RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID LOS ANGELES COUNTY; THENCE SOUTH 57 DEGREES 06' 51" WEST 2979.04 FEET TO THE INTER-SECTION WITH THE LINE DESCRIBED IN SEAL BEACH BOUNDARY AGREEMENT NO. 2, AS DESCRIBED IN DOCUMENT NO. 4989 RECORDED APRIL 8, 1968 IN BOOK 9565, PAGE 1 OF OFFICIAL RECORDS; THENCE, ALONG SAID AGREEMENT LINE, BEING ALSO THE RANCHO LOS ALAMITOS LINE BETWEEN STATIONS 50 AND 51, AS PER MAP NO. 2 OF A PARTITION OF SAID RANCHO, FILED IN DECREE OF PARTITION IN SUPERIOR COURT CASE NO. 13527, IN THE SAID COUNTY OF LOS ANGELES, A COPY OF WHICH WAS RECORDED JANUARY 29, 1891 IN BOOK 700, PAGE 141 OF DEEDS IN SAID COUNTY RECORDER'S OFFICE OF LOS ANGELES COUNTY, A COPY OF WHICH WAS RECORDED MARCH 12, 1891 IN BOOK 4, PAGE 31 OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY; THENCE SOUTH 37 DEGREES 51' 40" EAST 465.20 FEET ALONG SAID AGREEMENT LINE AND RANCHO LINE, TO STATION 50 OF THE RANCHO LOS ALAMITOS; THENCE SOUTH 54 DEGREES 37' 05" WEST 613.07 FEET, CONTINUING ALONG SAID RANCHO LINE TO THE POINT OF BEGINNING.

EXCEPT THEREFROM, THAT PORTION CONVEYED TO THE CITY OF LOS ANGELES BY DEED RECORDED FEBRUARY 15, 1961 IN BOOK 3629, PAGE 527 OF OFFICIAL RECORDS.

(Southern California Edison)

DESCRIPTION

THE LAND REFERRED TO IN THIS REPORT, IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF SEAL BEACH, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

THAT PORTION OF TIDE LAND LOCATION NO. 137 "SURVEY NO. 106". AS PATENTED BY THE STATE OF CALIFORNIA ON FEBRUARY 12, 1901, AND RECORDED APRIL 27, 1901 IN BOOK 9, PAGE 105, OF PATENTS, RECORDS OF LOS ANGELES COUNTY, AND RECORDED SEPTEMBER 5, 1905 IN BOOK 1, PAGE 231, OF PATENTS, RECORDS OF ORANGE COUNTY, DESCRIBED IN THAT CERTAIN DEED TO SOUTHERN CALIFORNIA EDISON COMPANY DATED NOVEMBER 30, 1976 AND RECORDED FEBRUARY 18, 1977 AS INSTRUMENT NO. 23970 IN BOOK 12075, PAGE 340, OF OFFICIAL RECORDS, RECORDS OF ORANGE COUNTY.

EXCEPTING THEREFROM ANY PORTION THEREOF INCLUDED IN THAT CERTAIN PARCEL OF LAND DESCRIBED AND DESIGNATED AS PARCEL 13 OF EXHIBIT "D" IN THAT CERTAIN EXCHANGE AGREEMENT RECORDED APRIL 23, 1970 AS INSTRUMENT NO. 14119 IN BOOK 9272, PAGE 102 AND FOLLOWING, OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THE NORTHWESTERLY 50.00 FEET THEREOF.

(Southern California Edison)

DESCRIPTION

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, AND IS DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF TIM NORTHEAST QUARTER, ALL OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12, WEST, IN THE RANCHO LOS ALAMITOS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, AS CASE NO. 13527, A CERTIFIED COPY OF SAID DECREE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY AND THAT PORTION OF TIDE LAND LOCATION NO. 137 "SURVEY No. 106", AS PATENTED BY THE STATE OF CALIFORNIA ON FEBRUARY 12, 1901, AND RECORDED APRIL 27, 1901 IN BOOK 9, PAGE 105 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, AND RECORDED SEPTEMBER 5, 1905 IN BOOK 1, PAGE 231 OF PATENTS RECORDS OF ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT POINT "A", HEREINBEFORE REFERRED TO IN PARCEL 1; THENCE SOUTH 0° 10' 24" WEST, 419.23 FEET TO A 4 INCH PIPE SET IN CONCRETE MARKED LAG 40; THENCE SOUTH 54° 48' 00" WEST, 2721.05 FEET TO STATION NO. 50 OF SAID RANCHO; THENCE CONTINUING SOUTH 54° 48' 00", WEST, 613.69 FEET TO A POINT ON THE EASTERLY LINE OF THE PACIFIC COAST HIGHWAY AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED DECEMBER 2, 1929 IN BOOK 332, PAGE 237 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE NORTH 0° 54' 57" WEST, 120.93 FEET ALONG SAID EASTERLY LINE OF THE PACIFIC COAST HIGHWAY; THENCE NORTH 54° 48' 00" EAST, 3058.35 FEET; THENCE NORTH 27° 29' 12" EAST, 278.25 FEET; THENCE NORTH 0° 10' 24" EAST, 146.18 FEET TO SAID 4 INCH PIPE SET IN CONCRETE MARKED LAG 37, HEREINBEFORE REFERRED TO IN PARCEL 1; THENCE NORTH 57° 10' 40" EAST, 119.22 FEET TO SAID POINT "A" AND THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AND DESIGNATED PARCEL 13 OF EXHIBIT "D" IN THAT CERTAIN EXCHANGE AGREEMENT RECORDED APRIL 23, 1970 IN BOOK 9272, PAGE 140 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE PROPERTY DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 2, 1981 IN BOOK 13934, PAGE 1637 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER MINERALS OR HYDROCARBON SUBSTANCES IN AND UNDER OR WHICH MAY BE PRODUCED FROM SAID LAND, WITHOUT, HOWEVER, THE RIGHT TO USE THE SURFACE OF SAID LAND, AS EXCEPTED AND RESERVED IN THOSE CERTAIN DEEDS RECORDED SEPTEMBER 26, 1924 IN BOOK 542, PAGE 120 OF DEEDS AND RECORDED FEBRUARY 15, 1961 IN BOOK 5620, PAGE 527, OF OFFICIAL RECORDS, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

(City of Seal Beach Redevelopment Agency)

DESCRIPTION

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF SEAL BEACH, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1, AS SHOWN ON A MAP FILED IN BOOK 94, PAGE 1 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

* * * * *

*First Amended and Restated Development Agreement
Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch
March, 2001*

EXHIBIT B

DRAFT CDP CONDITIONS

CALIFORNIA COASTAL COMMISSION

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

Page: Page 1 of 19

Date:

Permit Application No.: 5-97-367-A1



DRAFT

01/22/2001 2:06 PM

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Coastal Development Permit 5-97-367 granted to Hellman Properties LLC consisting of: Subdivide 196 acre site into 9 parcels, including subdivision of one parcel into 70 single-family residential lots in a private community; construct a public golf course (including 6.8 acres of marsh integrated into the golf course) and golf clubhouse; dedicate Gum Grove Park to the City of Seal Beach; create 26.0 acres of saltwater marsh and reserve existing oil production areas for future wetland restoration; construct interpretive areas, dedicate public access trails, and visitor-serving recreation facilities; extend Adolfo Lopez Drive, and conduct an archaeological testing program, has been amended. On October 11, 2000, the California Coastal Commission granted to Hellman Properties LLC Coastal Development Permit Amendment 5-97-367-A1, subject to the attached conditions, for development consisting of: Change the proposed project description to eliminate a 100 acre golf course and associated wetland impacts and wetland restoration; add a deed restriction reserving lowlands for acquisition for wetlands restoration; expand the footprint of 70-lot residential subdivision from 14.9 acres to 18.4 acres; reduce mass grading from 1.6 million cubic yards to 420,000 cubic yards; and include changes to the language of previously imposed special conditions ...more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Orange County at Hellman Ranch; N.E. of PCH (State Route 1), S.E. of the San Gabriel River, south of Adolfo Lopez Drive, West of Seal Beach Blvd, and North of Marina Hill, Seal Beach.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on _____.

PETER DOUGLAS
Executive Director

By: _____
Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit Amendment No. 5-97-367-A1, and fully understands its contents, including all conditions imposed.

Date_____
Permittee

Please sign and return one copy of this form to the Commission office at the above

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 2 of 19

DRAFT

01/22/2001 2:06 PM

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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.

SPECIAL CONDITIONS PREVIOUSLY IMPOSED BY THE COMMISSION ON SEPTEMBER 9, 1998 WITH MODIFICATIONS FROM COASTAL DEVELOPMENT PERMIT AMENDMENT 5-97-367-A1 APPROVED BY THE COMMISSION ON OCTOBER 11, 2000 SHOWN:

1. RESERVATION OF POTENTIAL FOR LOWLANDS ACQUISITION FOR WETLANDS RESTORATION
[Deleted]. See Special Condition 16.
2. REVISED VESTING TENTATIVE TRACT MAP NO. 15381
[Deleted]. See Special Condition 27
3. STATE LANDS PARCEL
[Deleted].

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 3 of 19

DRAFT

01/22/2001 2:05 PM

4. GUM GROVE PARK

[Deleted]. See Special Condition 17

5. PUBLIC ACCESS PROGRAM

[Deleted]. See Special Condition 18

6. ARCHAEOLOGY

[Deleted]. See Special Condition 27

7. WATER QUALITY

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

8. HAZARDS

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

9. FUTURE CONSTRUCTION OF HOMES ON THE MESA

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

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 4 of 19

DRAFT

01/22/2001 2:06 PM

10. LEGAL INTEREST

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

11. WETLANDS RESTORATION AREA / CONSERVATION

[Deleted].

12. FINAL WETLAND RESTORATION PROGRAM

[Deleted].

13. GOLF COURSE OPERATIONS AND GOLFER WETLAND EDUCATION PROGRAM

[Deleted].

14. RESIDENTIAL DEVELOPMENT-TIMING OF CONSTRUCTION

[Deleted].

SPECIAL CONDITIONS FROM COASTAL DEVELOPMENT PERMIT AMENDMENT 5-97-367-A1 APPROVED BY THE COMMISSION ON OCTOBER 11, 2000:

15. PRIOR CONDITIONS

Unless specifically altered by this amendment, all regular and special conditions attached to coastal development permit 5-97-367 remain in effect.

16. RESERVATION OF POTENTIAL FOR LOWLANDS ACQUISITION FOR WETLANDS RESTORATION

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

(1) For a period of twenty-five years, the applicant agrees to sell the

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 5 of 19

DRAFT

01/22/2001 2:06 PM

non-profit association acceptable to the Executive Director that requests in writing to purchase the property or, through the normal State of California land acquisition practices if the State is the prospective buyer; and,

- (2) The sale shall be at fair market value as established by an appraisal paid for by the buyer and prepared by an appraiser mutually acceptable to the buyer and applicant, or, if the parties are unable to agree, by an appraiser designated by third party, or if the buyer and applicant agree through an arbitration on value; and,
- (3) The uses shall be restricted to wetlands restoration, open space and environmental education purposes, with reversion rights to the State Coastal Conservancy.

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

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a revised "Attachment 1" consisting of a map, prepared by an appropriately licensed professional, which (i) depicts the area to be deed restricted pursuant to subsection A. of this condition and Special Condition 28, (ii) which maintains this restriction over at least 100 acres, (iii) which removes those areas necessary for the bio-swale and water quality basin ~~and raptor foraging habitat~~ from the area to be deed restricted pursuant to subsection A. of this condition and (iv) which off-sets the removal of those areas from the deed restriction with other land within the project site suitable for a deed restriction pursuant to subsection A. of this condition.

Note: Special Condition 16 replaces Special Condition 1 in its entirety.

17. GUM GROVE PARK

PRIOR TO THE ISSUANCE OF RESIDENTIAL BUILDING PERMITS, the applicant shall submit, for the review and approval of the Executive Director, written evidence demonstrating that the area known as Gum Grove Nature Park and as delineated as Lot 3 of proposed Vesting Tentative Tract Map

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 6 of 19

DRAFT

01/22/2001 2:06 PM

15381 has been dedicated in fee to the City of Seal Beach, as proposed by the applicant. The dedication documents shall provide that:

- (a) The park shall be preserved in perpetuity as a passive recreational nature park open to the public. Active recreational activities or commercial facilities shall be prohibited.
- (b) Necessary parking facilities which are the minimum required to serve the park and which meets Americans with Disabilities Act requirements shall be provided. The existing twenty (20) striped parking spaces for Gum Grove Park shall be maintained.
- (c) All trails within the dedicated park area shall be constructed to be accessible to persons with disabilities consistent with the Americans with Disabilities Act requirements. No trails shall be lighted in order to minimize impacts on wetlands.
- (d) Small scale interpretive signage which describes the Monarch Butterfly may be permitted if approved by the Executive Director.
- (e) Gum Grove Park shall be open from dawn to dusk (one hour after sunset) on a daily basis. Changes in hours of operation of Gum Grove Park shall require an amendment to this permit unless the Executive Director determines that an amendment is not required.
- (f) Signage shall be conspicuously posted which states that the park is open to the general public.
- (g) That portion of proposed Lot 3 of Tentative Tract Map No. 15381, comprised of an approximately 25 foot wide strip of land which borders Seal Beach Boulevard and extends west from Seal Beach Boulevard to connect with the primarily used part of Gum Grove Park, shall be subject to the following requirements:
 - (1) The frontage along Seal Beach Boulevard shall not be gated, fenced, or obstructed in any manner which prevents public access from Seal Beach Boulevard.
 - (2) The area shall be reserved for a public trail and parking lot, which are visible, and directly accessible to the public from Seal Beach Boulevard, and which lead from Seal Beach Boulevard to the primary part of Gum Grove Park to the west. The public parking lot area shall be large enough for a minimum of ten (10) parking spaces. Where it is not feasible to reserve enough public parking area on this portion of

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 7 of 19

DRAFT

01/22/2001 2:05 PM

Boulevard shall be provided for on proposed Lot 2 of Tentative Tract Map No. 15381 adjacent to proposed Lot 3, in accordance with the provisions of Special Condition 18.B. of this permit.

(h) Domesticated animals (including, but not limited to, dogs) shall be leashed and under the control of the party responsible for the animal at all times within Gum Grove Park.

Note: Special Condition 17 replaces Special Condition 4 in its entirety.

18. PUBLIC ACCESS PROGRAM

- A. Public Access Signage. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a detailed signage plan which provides for the installation of signs clearly visible from Pacific Coast Highway and Seal Beach Boulevard which invite and encourage the public to use the public access, parking, and recreation opportunities proposed at Gum Grove Park, and the public access trail and public parking linking Gum Grove Park to Seal Beach Boulevard. Key locations include but are not limited to; 1) Gum Grove Park, both at its western entrance and at the proposed Seal Beach Boulevard entrance. The plans shall indicate the location, materials, dimensions, colors, and text of the signs. The permittee shall install the signs in accordance with the signage plans approved by the Executive Director.
- B. Residential Community Streets (Vesting Tentative Tract Map No. 15402). PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: 1) public pedestrian and bicycle access to the streets and sidewalks constructed within the area subject to Vesting Tentative Tract Map No. 15402 shall not be precluded, 2) no locked gates, walls, fences, or other obstructions prohibiting public pedestrian or bicycle access to the streets and sidewalks constructed within the area subject to Vesting Tentative Tract Map No. 15402 shall be permitted, 3) no requirement to allow public vehicular access over the private streets is necessary if the applicant is willing to provide public parking within Gum Grove Park and a separate vehicular entrance from Seal Beach Boulevard to said public parking, 4) if fewer than the ten (10) public parking spaces required by Special Condition 17.(g)(2) of this permit can be constructed on proposed Lot 3 of Vesting Tentative Tract Map No. 15381, the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3 shall be reserved for the balance of the public parking spaces so that the parking spaces are directly accessible from Seal Beach Boulevard. The deed restriction shall be recorded over the entire area subject

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 8 of 19

DRAFT

01/22/2001 2:06 PM

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

- C. Revised Vesting Tentative Tract Map No. 15402. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two copies of a revised vesting tentative map for Tract No. 15402 if: (1) all of the ten public parking spaces required under Special Condition 17.(g)(2) cannot be built on proposed Lot 3 of Vesting Tentative Tract Map 15381, and/or (2) the entities with jurisdiction over Seal Beach Boulevard do not approve a separate vehicular entrance off of Seal Beach Boulevard to said public parking spaces. The revised map shall show: (1) the locations and design of said public parking spaces which cannot be built on Lot 3 and instead shall be built on the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3, and 2) the location of the public street which connects the public parking required under Special Condition 17.(g)(2) of this permit with the entrance to the subdivision proposed by Vesting Tentative Tract Map No. 15402. The revised map shall be accompanied by written documentation demonstrating that the governmental agencies which have jurisdiction over Seal Beach Boulevard and parking space standards have approved the revised map. The applicant shall record the revised map approved by the Executive Director.
- D. Construction of Trail and Parking Lot. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE HOUSES WITHIN THE AREA SUBJECT TO VESTING TENTATIVE TRACT MAP NO. 15402, the applicant shall construct a public access trail and parking lot, which are visible and directly accessible to the public from Seal Beach Boulevard, which lead from Seal Beach Boulevard to the primary part of Gum Grove Park to the west. The public parking lot shall contain a minimum of ten (10) parking spaces and shall be directly accessible from Seal Beach Boulevard. Where it is not feasible to construct the public parking and vehicular entrance on this portion of proposed Lot 3 of Vesting Tentative Tract Map No. 15381, public parking directly accessible from Seal Beach Boulevard shall be constructed on proposed Lot 2 of Tentative Tract Map No. 15381 (i.e., the area subject to Vesting Tentative Tract Map No. 15402) immediately adjacent to proposed Lot 3, in accordance with the provisions of Special Condition 18.B of this permit.

Note: Special Condition 18 replaces Special Condition 5 in its entirety.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 9 of 19

DRAFT

C1/22/2001 2:06 PM

19. ARCHAEOLOGY

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

- A. Research Design. The permittee shall undertake the proposed archaeological investigation in conformance with the proposed archaeological research design entitled A Research Design for the Evaluation of Archaeological Sites within the Hellman Ranch Specific Plan Area dated November 1997 prepared by KEA Environmental, Inc. for the City of Seal Beach. Prior to issuance of the coastal development permit for the archeological investigation, the applicant shall submit written evidence, subject to the review and approval of the Executive Director, that a copy of the archaeological research design has been submitted to the OHP, the NAHC, and the Native American person/group from the Juaneno/Aciachemem, Gabrielino/Tongva, or Luiseno people designated or deemed acceptable by the NAHC, for their review and comment. An amendment to this permit shall be required for any changes to the research design suggested by OHP, NAHC, or the Native American group/person unless the Executive Director determines that an amendment is not required.
- B. Selection of Archaeologist(s) and Native American Monitor(s). The archaeologist(s) selected by the City shall meet the United States Department of Interior minimum standards for archaeological consultants, as also endorsed by the OHP. The City shall select the Native American monitor(s) in compliance with the "Guidelines for monitors/consultants of Native American cultural, religious and burial sites" issued by the NAHC, and in consultation with the appropriate Native American person/group from the Juaneno/Aciachemem, Gabrielino/Tongva, or Luiseno people deemed acceptable by the NAHC.
- C. Post-Investigation Mitigation Measures. Upon completion of the archaeological investigation, and prior to the commencement of construction of any development approved by this coastal development permit (other than archaeological investigation activities or subdivision), the applicant shall submit, for the review and approval of the Executive Director, a written report regarding the following: 1) a summary of the findings of the archaeological investigation, and 2) a final written mitigation plan which shall identify recommended mitigation measures, which may include capping of archaeological sites, data recovery and curation of important archaeological resources as defined by the California Environmental Quality Act, and detailed additional mitigation measures which need to be implemented. The applicant shall also submit for review and approval of the Executive Director, a signed contract with a City-selected archaeological consultant that

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 10 of 19

DRAFT

01/22/2001 2:06 PM

professional practice, if additional archaeological data recovery measures are determined appropriate. The written report and additional mitigation measures shall also be submitted to the OHP and the appropriate Native American person/group from the Juaneno/Aciachemem, Gabrielino/Tongva, or Luiseno people designated or deemed acceptable by the NAHC. An amendment to this permit shall be required to implement any additional mitigation measures unless the Executive Director determines a permit amendment is not required.

- D. Implementation of Mitigation Measures and Summary of Fieldwork. Prior to commencement of site preparation, grading, and construction activities for any development (other than archaeological investigation activities) located within a fifty foot (50') radius of the furthest boundary of each state-identified archaeological site as delineated in the archaeological research design, all of the requirements of Special Conditions 19.A., 19.B., and 19.C. shall have been met. All development shall occur consistent with the final plan required by Special Condition 19.C. A written synopsis report summarizing all work performed in compliance with Special Conditions 19.A, 19.B, and 19.C shall be submitted to the Executive Director, OHP, the NAHC and the person/group from the Juaneno/Aciachemem, Gabrielino/Tongva, or Luiseno people designated or deemed acceptable by the NAHC, within six (6) weeks of the conclusion of field work. No later than six months after completion of field work, a final report on the excavation and analysis shall be submitted to the Executive Director, OHP, the NAHC and the NAHC, and the person/group from the Juaneno/Aciachemem, Gabrielino/Tongva, or Luiseno people designated or deemed acceptable by the NAHC.
- E. Monitoring of Construction Activities. All site preparation, grading and construction activities for the proposed development shall be monitored on-site by a qualified archaeologist and Native American monitor. The archaeologist and Native American monitor shall have the express authority to temporarily halt all work in the vicinity of the discovery site should significant cultural resources be discovered. This requirement shall be incorporated into the construction documents which will be used by construction workers during the course of their work.
- F. Discovery of Cultural Resources / Human Remains During Post-Archaeological Testing Construction Activities.
- (1) If additional or unexpected archaeological features are discovered during site preparation, grading, and construction activities for approved development other than the archaeological investigation, all work shall be temporarily halted in the vicinity of the discovery site while the permittee complies with the following:

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 11 of 19

DRAFT

01/22/2001 2:05 PM

The archaeologist, in consultation with the Native American monitor, shall sample, identify and evaluate the artifacts as appropriate and shall report such findings to the permittee, the City and the Executive Director. If the archaeological resources are found to be significant, the archaeologist, in consultation with the Native American monitor, shall determine appropriate actions, and shall submit those recommendations in writing to the Executive Director, the applicant and the City. The archaeologist shall also submit the recommendations for the review and approval of the Executive Director and shall be prepared in accordance with the provisions outlined in Special Condition 19.C above. Any recommended changes to the proposed development or the mitigation measures identified in the final plan required by Special Condition 19.C. shall require a permit amendment unless the Executive Director determines that a permit amendment is not required.

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

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

- G. Incorporation of Archaeology Requirements into Construction Documents. Special Condition No. 19 of Coastal Development Permit 5-97-367 shall be incorporated in its entirety into all the construction documents which will be used by construction workers during the course of their work as well as all construction bid documents.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 12 of 19

DRAFT

01/22/2001 2:06 PM

H. Sequencing of Issuance of Coastal Development Permit Related to Archeological Investigation.

In advance of compliance with the other special conditions of Coastal Development Permit 5-97-367, as amended, the Executive Director may issue a coastal development permit, consistent with the terms of subsections A through G of this condition, for the development needed to undertake the archeological investigation.

Note: Special Condition 19 replaces Special Condition 6 in its entirety.

20. FINAL PLANS

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director:

1. Final design, grading, construction, structural, and drainage plans for the bio-swale, riparian corridor and water quality basin that substantially conform with the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000, submitted to the Commission; and
2. Final landscape plans for the bio-swale, riparian corridor, and water quality basin that substantially conform with the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000, submitted to the Commission, and the letter from Glenn Lukos Associates of Lake Forest, California to John Laing Homes and Hellman Properties dated June 23, 2000, regarding Biological Benefits of Proposed Wetland Treatment System, CDP 5-97-367-A1, Hellman Ranch Property, Orange County, California. These final plans shall be prepared in consultation with the California Department of Fish and Game and U.S. Fish and Wildlife Service and shall be accompanied by written evidence of their endorsement of the landscape plans.

B. 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 this coastal development permit unless the Executive Director determines that no amendment is required.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 13 of 19

DRAFT

01/22/2001 2:06 PM

21. REQUIREMENT FOR IDENTIFICATION OF SUITABLE RAPTOR FORAGING HABITAT AND REQUIREMENT FOR MANAGEMENT PLAN

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and approval of the Executive Director, a map, prepared by a biologist in accordance with current professional standards, delineating raptor foraging habitat with long term conservation potential available within the lowlands of the subject property as identified in the letter from Glenn Lukos Associates of Lake Forest, California to John Laing Homes and Hellman Properties dated September 11, 2000, regarding Response to June 19, 2000, letter from the California Department of Fish and Game Regarding Biological Resources at Hellman Ranch. The area delineated shall not be less than 9.2 contiguous acres of raptor foraging habitat. The delineation and site selection shall occur in consultation with the California Department of Fish and Game, and the map submitted to the Executive Director shall be accompanied by a written endorsement by the California Department of Fish and Game of the raptor foraging habitat delineation, the selected site and the map; and
- B. The raptor foraging habitat to be identified in subsection A. of this condition shall have the same or better functions and values as the site to be impacted, in accordance with the biological assessment prepared by Glenn Lukos Associates in their letter dated September 11, 2000. If there are no raptor foraging habitat areas with the same or better functions and values as the site to be impacted in the area previously identified by the applicant as having such, the applicant shall obtain an amendment to this coastal development permit in order to remedy the discrepancy; and
- C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and approval of the Executive Director, a raptor foraging habitat management plan which identifies management measures necessary to, at minimum, maintain the functions and values of the raptor foraging habitat identified in subsection B. of this condition. Such measures shall include appropriate brush management measures for the maintenance of raptor foraging habitat. Measures may include brush clearance and brush mowing; planting of plant species associated with raptor foraging habitat, and exotic and invasive plant species controls for the removal of plant species which upset the functioning of the raptor foraging habitat, including, but not limited to, ice plant, pampas grass, arundo giant cane, and myoporum. Any chemical controls to be used in areas adjacent to wetlands shall be limited to those which are non-toxic to wetland organisms (e.g. Rodeo® Herbicide). The raptor foraging habitat management plan shall be prepared in consultation with the California Department of Fish and Game, and shall be accompanied by a written endorsement of the plan by the

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 14 of 19

DRAFT

01/22/2001 2:06 PM

development in accordance with the raptor foraging habitat management plan approved by the Executive Director. Any proposed changes to the approved raptor foraging habitat management plan shall be reported to the Executive Director. No changes to the approved raptor foraging habitat management plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

22. OPEN SPACE DEED RESTRICTION

A. No development, as defined in section 30106 of the Coastal Act shall occur in the raptor foraging habitat delineated by the map required pursuant to Special Condition 21 except for:

1. Activities related to raptor foraging habitat maintenance pursuant to the raptor foraging habitat management plan required pursuant to Special Condition 21.C.; and
2. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: activities related to public access, recreation, and wetland restoration provided that such development continues to designate a minimum of 9.2 acres of equivalent or better functioning raptor foraging habitat.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which shows that the open space area identified pursuant to Special Condition 21 shall be restricted as open space for raptor foraging habitat and the deed restriction shall reflect the above restriction on development in the designated open space. The deed restriction shall contain the raptor foraging habitat management plan approved by the Executive Director pursuant to Special Condition 21.C. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space area. 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. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 15 of 19

DRAFT

01/22/2001 2:06 PM

23. WATER QUALITY

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final Storm Water Management and Water Quality Control Plan (SWM & WQCP) designed to mitigate stormwater runoff and nuisance flow from development on Vesting Tentative Tracts 15381 and 15402. The final SWM & WQCP shall include structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater and nuisance runoff leaving the developed site. The final plan shall be reviewed by the consulting engineering geologist to ensure conformance with geotechnical recommendations. The final plan shall demonstrate substantial conformance with the Water Quality Management Plan (WQMP), Tract 15402, Hellman Ranch, prepared by MDS Consulting of Irvine, California, dated January 2000, and the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000, and the following requirements:
1. Post-development peak runoff rates and average volume from the developed site shall not exceed pre-development levels for the 2-year 24-hour storm runoff event.
 2. Post-construction treatment control BMPs shall be designed to mitigate (infiltrate or treat) stormwater runoff from each runoff event up to and including the 85th percentile 24-hour runoff event.
 3. The approved SWM & WQCP shall be implemented prior to or concurrent with the construction of infrastructure associated with the development on Vesting Tentative Tracts 15381 and 15402. The approved BMPs and other measures included in the final SWM & WQCP shall be in place and functional prior to the issuance of the first residential building permit within Vesting Tentative Tract 15402.
 4. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development. Maintenance activity shall be performed according to the recommended maintenance specifications contained in the California Stormwater BMP Handbooks (California Stormwater Quality Task Force, 1993) for selected BMPs. At a minimum, maintenance shall include the following: (i) all structural BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season, no later than October 1st of each year and (ii) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 16 of 19

DRAFT

01/22/2001 2:06 PM

to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to commencement of such repair or restoration work, the applicant 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.

- B. Any changes to the structures outlined in the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000, including changes to the footprint of any such structures, necessary to accommodate the requirements of subsection A of this condition, shall require an amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.
 - C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
 - D. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the requirements outlined in subsections A., B., and C. of this condition. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the deed restricted area. 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. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
24. RESERVATION OF LAND FOR WATER QUALITY PURPOSES
- A. The area of land containing the proposed water quality basin, bio-swale and riparian corridor, and associated appurtenances as depicted in Figure 8 (inclusive of the landscaped areas) of the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000, shall be reserved for water quality improvement purposes through a deed restriction as required pursuant to subsection B. of this condition. The deed restriction shall not preclude use of the same such land for wetland restoration provided the water quality improvement functions of the system described in the

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 17 of 19

DRAFT

01/22/2001 2:06 PM

to Special Condition 23, is, at minimum maintained. In addition, the deed restriction shall not preclude construction and maintenance of the access road depicted Figure 8, nor shall it preclude the construction and maintenance of the utilities and oil transmission lines depicted on Vesting Tentative Tracts 15381 and 15402, as approved by the Executive Director, nor shall it preclude the maintenance of existing oil operations, provided the water quality improvement functions of the system described in the SWM & WQCP, as revised and approved by the Executive Director pursuant to Special Condition 23, is, at minimum maintained. Finally, the deed restriction shall not preclude development associated with the archaeological investigation required pursuant to Special Condition 19.

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the deed restricted area. 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. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

25. STAGING AREA FOR CONSTRUCTION

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands.
1. The plan shall demonstrate that:
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition; and
 - (b) Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands.
 2. The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - (1) limits of the staging area(s)
 - (2) construction corridor(s)
 - (3) construction site

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 18 of 19

DRAFT

01/22/2001 2:06 PM

- (4) location of construction fencing and temporary job trailers with respect to existing wetlands

- B. 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 this coastal development permit unless the Executive Director determines that no amendment is required.

26. PERMIT COMPLIANCE

All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth herein. Any deviation from the approved plans must be reviewed and approved by the Executive Director and may require Commission approval.

27. REVISED VESTING TENTATIVE TRACT MAP NO. 15381

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two copies of a revised vesting tentative map for Tract No. 15381. The revised map shall show only five legal lots as generally depicted in Exhibit 1, page 4; namely, 1) the lot currently owned by the California State Lands Commission, 2) the lot currently owned by the City of Seal Beach Redevelopment Agency, 3) proposed Lot 2 which is proposed to be further subdivided into seventy residential lots pursuant to proposed Tentative Tract Map 15402, 4) proposed Lot 3 for the proposed dedication of Gum Grove Park, which shall be in substantial conformance with the configuration shown on the map submitted with the permit application and maintain the proposed minimum 25 wide frontage along Seal Beach Boulevard, and 5) a lot consisting of the remainder of the subject site owned by the applicant. The applicant shall record the revised map approved by the Executive Director. No further subdivision of the lot identified in sub-section 5 shall occur other than to accommodate the transfer of land to a non-profit entity, subject to the review and approval of the Executive Director, for wetlands restoration, open space and environmental education purposes and which shall require an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

Note: Special Condition 27 Replaces Special Condition 2 in its entirety.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 19 of 19

DRAFT

01/22/2001 2:06 PM

4-623. RESERVATION OF POTENTIAL FOR LOWLANDS ACQUISITION OF OIL PRODUCTION AREA FOR WETLANDS RESTORATION

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director which shall provide that:
- (1) At the time oil production ceases and for a period of twenty-five years thereafter, the applicant agrees to sell the lowlands oil production area of the property as defined in "Attachment 1" (as revised pursuant to subsection B. of this Special Condition 16) to any public agency or non-profit association acceptable to the Executive Director that requests in writing to purchase the property or, through the normal State of California land acquisition practices if the State is the prospective buyer; and,
 - (2) The sale shall be at fair market value as established by an appraisal paid for by the buyer and prepared by an appraiser mutually acceptable to the buyer and applicant, or, if the parties are unable to agree, by an appraiser designated by third party, or if the buyer and applicant agree through an arbitration on value; and,
 - (3) The uses shall be restricted to wetlands restoration, open space and environmental education purposes, with reversion rights to the State Coastal Conservancy.

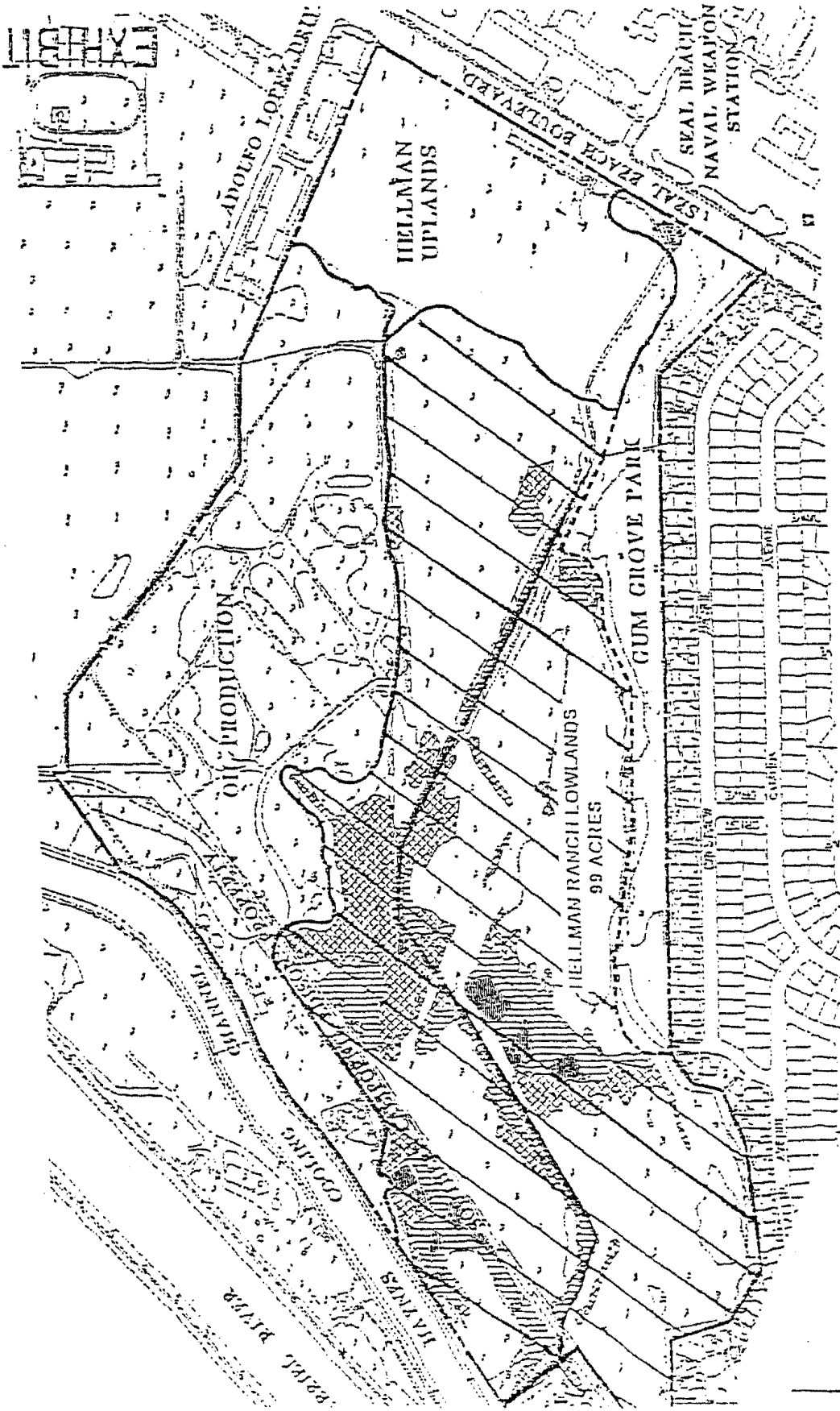
Within 30 days of the cessation of oil production, the applicant shall notify the Executive Director in writing of the date oil production ceased. The deed restriction shall remain in effect for twenty-five years from the date oil production ceases and be recorded over the lowlands oil production area of the property and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

AFTER YOU HAVE SIGNED AND RETURNED THE DUPLICATE COPY YOU WILL BE RECEIVING THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS) FROM THE SAN FRANCISCO OFFICE. WHEN YOU RECEIVE THE DOCUMENTS IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE LEGAL DEPARTMENT AT (415) 904-6200.

*First Amended and Restated Development Agreement
Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch
March, 2001*

EXHIBIT C

REVISED SITE PLAN OF PROPERTY



HELLMAN RANCH LOWLANDS

HELLMAN RANCH RESERVE PLAN

COASTAL DEVELOPMENT PERMIT NO. 5-97-77

EXHIBIT D

HISTORY OF HEARINGS AND PROCEEDINGS ON DEVELOPMENT AGREEMENT

Planning Commission Review of Development Agreement

A. Planning Commission Public Hearing regarding Hellman Ranch Development Agreement

1. Planning Commission conducted a Public Hearing on the Hellman Ranch Specific Plan, including the Final EIR and the Development Agreement on September 3, 1997.
2. At the conclusion of the Public Hearing on September 3, 1997, the Planning Commission adopted Resolution No. 97-22, A Resolution of the Planning Commission of the City of Seal Beach Recommending to the City Council the Adequacy of the Final Environmental Impact Report for the Hellman Ranch Specific Plan, on a 5-0 vote.
3. At the conclusion of the Public Hearing on September 3, 1997, the Planning Commission adopted Resolution No. 97-29, A Resolution of the Planning Commission of the City of Seal Beach Recommending to the City Council Approval of the Hellman Ranch Specific Plan, on a 5-0 vote.
4. At the conclusion of the Public Hearing on September 3, 1997, the Planning Commission adopted Resolution No. 97-34, A Resolution of the Planning Commission of the City of Seal Beach Recommending Approval to the City Council of a Development Agreement Between the City of Seal Beach and Hellman Properties LLC, Regarding the Hellman Ranch Specific Plan, on a 5-0 vote.

City Council Review of Development Agreement

A. City Council Public Hearing regarding Hellman Ranch Development Agreement

1. City Council conducted a Public Hearing on the Hellman Ranch Specific Plan, including the Final EIR and the Development Agreement on September 22, 1997.
2. At the conclusion of the Public Hearing on September 22 1997, the City Council adopted Resolution No. 4562, A Resolution of the City Council of

*First Amended and Restated Development Agreement
Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch
March, 2001*

the City of Seal Beach Certifying the Final Environmental Impact Report for the Hellman Ranch Specific Plan; Adopting the Mitigation Monitoring Program; Adopting the Findings and Facts in Support of Findings as Required by the California Environmental Quality Act; and Adopting a Statement of Overriding Considerations, on a 5-0 vote.

3. After the conclusion of the Public Hearing on September 22, 1997, on October 20, 1997, the City Council introduced Ordinance No. 1420, An Ordinance of the City Council of the City of Seal Beach Adopting the Hellman Ranch Specific Plan (Hellman Ranch Specific Plan Amendment 97-1), on a 5-0 vote. Second reading and Adoption of Ordinance No. 1420 occurred on October 27, 1997.
4. After the conclusion of the Public Hearing on September 22 1997, on October 20, 1997, the City Council introduced Ordinance No. 1422, An Ordinance of the City Council of the City of Seal Beach Adopting a Development Agreement Between the City of Seal Beach and Hellman Properties LLC, Regarding the Hellman Ranch Specific Plan, on a 5-0 vote. Second reading and Adoption of Ordinance No. 1422 occurred on October 27, 1997.

* * * *

*First Amended and Restated Development Agreement
Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch
March, 2001*

EXHIBIT E

DEVELOPMENT AGREEMENT ORDINANCE

ORDINANCE NUMBER 1422

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF SEAL BEACH ADOPTING A
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SEAL BEACH AND HELLMAN
PROPERTIES LLC, REGARDING THE
"HELLMAN RANCH SPECIFIC PLAN"

THE CITY COUNCIL OF THE CITY OF SEAL BEACH DOES HEREBY
ORDAIN:

Section 1. The City and Hellman Properties LLC desire to enter into a development agreement pursuant to Government Code Sections 65864 through 65869.5, and Article 27.5 of Chapter 28 of the Code of the City of Seal Beach, California with respect to that certain real property commonly known as the "Hellman Ranch Specific Plan" area, and more particularly described in the proposed development agreement, attached hereto as Exhibit A.

Section 2. The City Council held a properly noticed public hearing regarding the proposed development agreement on September 22, 1997.

Section 3. The City Council hereby finds that the proposed development agreement is consistent with the General Plan of the City of Seal Beach and the Hellman Ranch Specific Plan.

Section 4. The City Council hereby approves and incorporates by reference herein Resolution 97-34 of the Planning Commission of the City of Seal Beach, dated September 3, 1997, attached hereto as Exhibit "B".

Section 5. Based upon the foregoing, the City Council hereby approves the proposed development agreement, incorporated by reference herein and attached hereto as Exhibit "A" and authorizes the Mayor to execute said development agreement on behalf of the City.

Section 6. The time within which to challenge the subject development agreement is governed by Government Code Section 65009.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Seal
Beach at a meeting thereof held on the 27th day of
October, 1997.

Donald Brown
Mayor Pro Tem

Attest:

Joanne M. Yeo
City Clerk

STATE OF CALIFORNIA }
COUNTY OF ORANGE } SS
CITY OF SEAL BEACH }

I, Joanne M. Yeo, City Clerk of the City of Seal Beach, California, do hereby certify that
the foregoing ordinance is an original copy of Ordinance Number 1422 on file in
the office of the City Clerk, introduced at a meeting held on the
20th day of October, 1997, and passed,
approved and adopted by the City Council of the City of Seal Beach at a meeting held on
the 27th day of October, 1997 by the following
vote:

AYES:

Councilmembers

Brown, Campbell, Frazier, Fulton

NOES:

Councilmembers

None

ABSENT:

Councilmembers

Hastings

ABSTAIN:

Councilmembers

None

and do hereby further certify that Ordinance Number 1422 has been published
pursuant to the Seal Beach City Charter and Resolution Number 2836.

Joanne M. Yeo
City Clerk

EXHIBIT F

HISTORY OF HEARINGS AND PROCEEDINGS ON FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT

City Council Review of First Amended and Restated Development Agreement

- A. City Council Public Hearing regarding Hellman Ranch First Amended and Restated Development Agreement
 - 1. City Council conducted a Public Hearing on the Hellman Ranch First Amended and Restated Development Agreement on February 26, 2001.
 - 2. At the conclusion of the Public Hearing on February 26, 2001, the City Council introduced Ordinance No. 1471, An Ordinance of the City of Seal Beach Adopting the First Amended and Restated Development Agreement Between the City of Seal Beach and Hellman Properties LLC, Regarding the Hellman Ranch Specific Plan, on a 5-0 vote.
 - 3. Staff indicated the provisions of the "Vested Components" section had not been reviewed by the City Engineer and that additional revisions may be necessary.
- B. Staff and the project proponent have met and agreed upon the additional revisions determined appropriate, and the City Attorney determined that is necessary to re-introduce the implementing ordinance.
- C. In accordance with the determination of the City Attorney, it is appropriate for the City Council to hold first reading for re-introduction of Ordinance 1471.
- D. City Council held first reading and re-introduced Ordinance No. 1471 on March 26, 2001.

* * * *

*First Amended and Restated Development Agreement
Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch
March, 2001*

EXHIBIT G

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT ORDINANCE

ORDINANCE NUMBER _____

AN ORDINANCE OF THE CITY OF SEAL
BEACH ADOPTING THE FIRST AMENDED
AND RESTATED DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF SEAL
BEACH AND HELLMAN PROPERTIES LLC,
REGARDING THE "HELLMAN RANCH
SPECIFIC PLAN"

THE CITY COUNCIL OF THE CITY OF SEAL BEACH DOES HEREBY
ORDAIN:

Section 1. The City and Hellman Properties LLC entered into a development agreement pursuant to Government Code Sections 65864 through 65869.5, and Article 27.5 of Chapter 28 of the Code of the City of Seal Beach, California with respect to that certain real property commonly known as the "Hellman Ranch Specific Plan" area on October 27, 1997.

Section 2. Development of the original Hellman Ranch project approved by the City in 1997 could not proceed without a Coastal Development Permit ("CDP") issued by the California Coastal Commission ("CCC"). After approval of the project by the CCC, litigation was filed challenging the Commission approval of CDP 5-97-367 (cases consolidated as "*League for Coastal Protection et al. v. California Coastal Commission*") and a settlement agreement was eventually incorporated into the presiding Court's order for issuance of a Writ of Mandate.

Section 3. The CCC responded to the Writ by approving on October 11, 2000, issuance of an amended CDP with conditions, CDP 5-97-367-A1, providing conditions of development of a project revised in accordance with the criteria established in the Settlement Agreement.

Section 4. The major project changes encompassed in CDP 5-97-367-A1 are summarized as:

- Elimination of the previously approved golf course and the establishment of a 100-acre deed-restricted area for future wetland restoration, open space and environmental education purposes;
- Elimination of all impacts to jurisdictional state and federal wetlands; and
- Elimination of development of visitor-serving commercial uses on the State Lands Property.

City of Seal Beach Ordinance No. _____
Adoption of First Amended and Restated Development Agreement
City of Seal Beach and Hellman Properties LLC
April 9, 2001

- Establishment of a 25-year, deed-restricted area for future wetland restoration, open space and environmental education purposes over the remainder oil production area upon cessation of oil production uses.

Section 5. A request has been received from Hellman Properties to amend the Development Agreement (First Amended and Restated Development Agreement) regarding the Hellman Ranch pursuant to Development Agreement Section 6.1.2, **Modification of Development Agreement to Obtain Permits, etc.** Said request is to conform the Development Agreement provisions with the terms of the Settlement Agreement and Coastal Development Permit 5-97-367-A1.

Section 6. The City Council held a properly noticed public hearing regarding the proposed development agreement amendments on February 26, 2001.

Section 7. The City Council previously certified a Final Environmental Impact Report (FEIR) for the project in 1997. The previously certified FEIR was upheld against legal challenge and has been fully considered by the city during its consideration of this First Amended and Restated Development Agreement. There has been no new information, as that term is defined by CEQA, brought forward by any party to these proceedings to indicate that the previously certified FEIR should be supplemented. In fact, substantial evidence in the record of these proceedings demonstrates that the impacts of this project have been fully analyzed and in fact are less severe than previously disclosed. For those reasons, the previously certified FEIR remains complete and legally adequate, and this approval is fully within its scope. The City Council's previous findings and statement of overriding considerations are hereby incorporated herein by this reference.

Section 8. The City Council hereby finds that the proposed development agreement amendment is consistent with the General Plan of the City of Seal Beach and the Hellman Ranch Specific Plan.

Section 9. Based upon the foregoing, the City Council hereby approves the proposed development agreement amendment, titled "First Amended and Restated Development Agreement between the City of Seal Beach and Hellman Properties LLC, Regarding the "Hellman Ranch Specific Plan" incorporated by reference herein and attached hereto as Exhibit "A" and authorizes the Mayor to execute said development agreement on behalf of the City.

Section 10. The time within which to challenge the subject development agreement is governed by Government Code Section 65009.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Seal Beach at a meeting thereof held on the _____ day of _____, 2001.

City of Seal Beach Ordinance No. _____
Adoption of First Amended and Restated Development Agreement
City of Seal Beach and Hellman Properties LLC
April 9, 2001

Mayor

Attest:

City Clerk

STATE OF CALIFORNIA }
COUNTY OF ORANGE } SS
CITY OF SEAL BEACH }

I, Joanne M. Yeo, City Clerk of the City of Seal Beach, California, do hereby certify that the foregoing ordinance is an original copy of Ordinance Number _____ on file in the office of the City Clerk, introduced at a meeting held on the _____ day of _____, 2001, and passed, approved and adopted by the City Council of the City of Seal Beach at a meeting held on the _____ day of _____, 2001 by the following vote:

AYES: Councilmembers _____

NOES: Councilmembers _____

ABSENT: Councilmembers _____

ABSTAIN: Councilmembers _____

and do hereby further certify that Ordinance Number _____ has been published pursuant to the Seal Beach City Charter and Resolution Number 2836.

City Clerk

*City of Seal Beach Ordinance No. _____
Adoption of First Amended and Restated Development Agreement
City of Seal Beach and Hellman Properties LLC
April 9, 2001*

EXHIBIT A

**FIRST AMENDED AND RESTATED
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SEAL BEACH AND
HELLMAN PROPERTIES LLC, REGARDING
THE "HELLMAN RANCH SPECIFIC PLAN"**

EXHIBIT H

VESTED COMPONENTS FOR HELLMAN RANCH DEVELOPMENT AGREEMENT

A. **General Plan.** General Plan of City of Seal Beach dated as of October 1, 1997, as amended by Resolutions 4563, 4564, 4565, 4566, 4567, 4568, each dated October 20, 1997. Subject Property is designated for uses described in Specific Plan, referred to in Section B. below.

B. **Specific Plan.** Specific Plan for Hellman Ranch approved as amended by Ordinance 1420 of City Council adopted on October 27, 1997, as administratively revised by the City on May 5, 2000, to allow for minor adjustments in planning area acreage, pursuant to Section 8.4.1 of the Specific Plan.

C. **Zoning.** Zoning Ordinance of the City of Seal Beach, as amended by Ordinance 1420, adopted on October 27, 1997. Subject Property is zoned for uses described in the Specific Plan referred to in Section B. above.

D. **Subdivision Map Approval Conditions.** The conditions of approval imposed in connection with approval of Vesting Tentative Subdivision Maps described as Tract No. 15402, approved by Resolution 4571 and Tract No. 15381, approved by Resolution 4570 of the City Council of the City of Seal Beach, dated October 20, 1997.

E. **Additional Approval Conditions.** The following additional approval conditions and requirements shall apply to development of the Subject Property. In certain cases, the requirements specified below may be redundant with conditions that apply to the Subject Property pursuant to the Specific Plan referred to in Section B. above and the Tentative Subdivision Map approval conditions referred to Section D. above. In the case of conflict or inconsistency, the provisions below shall control.

1. **Off-Site Improvements Required To Be Constructed and Installed In Conjunction With Development of Parcel 2 For Residential Purposes.**

(a) **Improvement Obligation.** The Developer shall construct the off-site improvements specified in subparagraph I(a)(1) through I(a)(5) below (the "off-Site Improvements") on the terms, conditions, and schedule specified therein. The Developer may satisfy the conditions relating to the Off-Site Improvements by entering into a Bonded Subdivision Improvement Agreement which (i) complies with Government Code § 66499, and (ii) is approved by the City.

(1) **New sewer pump station in Lopez Drive (at location shown on the Revised Site Plan).** The sewer pump station shall have a capacity to be determined by Developer and the City Engineer. Improvement shall be completed and operational at or prior to time of issuance of first occupancy permit for a residence on lots created on Parcel 2. Developer shall pay its fair share portion of the cost of such improvement, and City shall pay or cause others to pay the balance.

(2) **Signal modification at intersection of Forrestal Drive and Seal Beach Boulevard.** Improvement shall be completed and operational at or prior to time of issuance of first certificate of occupancy for a residence on lots created on Parcel 2. Developer shall pay the cost of the improvement. All signal modification improvements (in accordance with accepted traffic engineering principles) necessary to provide proper entrance and exit controls to serve the proposed development shall be in compliance with plans approved by the City Engineer, after consultation with Developer, including, but not limited to: signal poles; foundations; mast arms; conduit and wiring; detector loops; signal controller interconnections; and striping.

(3) **Improvements to Lopez Drive right-of-way.** Developer shall pay the cost of the improvement on Parcel 5 but shall have no liability for the cost of any improvement between Parcel 5 and Seal Beach Boulevard along the boundary of the Boeing Property. The improvement shall be completed, or a performance bond, letter of credit or other security acceptable to the City Attorney, in an amount to be determined by the City Engineer shall be accepted by the City on or before issuance of a certificate of occupancy for the final residence constructed on the lots created on Parcel 2.

(4) **Improvements to Seal Beach Boulevard.** The improvements to Seal Beach Boulevard shall include (i) frontage landscaping, (ii) undergrounding of all overhead utilities, including SCE's 12 Kv powerlines, and (iii) construction of community wall, sidewalk and monumentation wall. The cost of these Improvements is estimated at approximately Five Hundred Thousand Dollars (\$500,000). Developer shall pay the full cost of the Improvements, the foregoing statement of estimated costs not being a limitation. The Improvements shall be completed and operational at or prior to time of issuance of first certificate of occupancy for a residence on lots created on Parcel 2. Covenants, conditions and restrictions shall impose upon the homeowner's association created among the owners of residences on Parcel 2 the obligation to maintain those portions of the foregoing improvements that are not dedicated to and accepted by a public entity.

(5) **Improvements to Seal Beach Boulevard Median.** Developer shall contribute twenty-five percent (25%), but not to exceed One Hundred Thousand Dollars (\$100,000) of the cost of a landscaped median in Seal Beach Boulevard from Lopez Drive to Bolsa Avenue, which includes the cost of a sidewalk along Seal Beach Boulevard from the southern boundary of the Property to Bolsa Avenue. The estimated cost of such work is \$400,000. City shall use diligent efforts to

obtain grant funding to complete the improvements to which Developer's contribution is to be applied. In the event the City obtains grant funding that may be used for the median work contemplated by this paragraph (5), Developer contribution will be decreased (e.g., if City receives \$100,000 in grant funds for the median, instead of paying 25% of \$400,000 (\$100,000), Developer shall pay 25 % of \$300,000 (\$75,000).

(b) **Transportation Impact Fees.** In addition to paying for the improvements described in subparagraphs 1(a)(2) through (5), inclusive, at Developer's cost, and notwithstanding any other provision of this Agreement, Developer shall pay to City all applicable City Transportation Impact Fees required by Chapter 22B of the Code of the City of Seal Beach, at the then-applicable rate, to assist in mitigating transportation impacts of the Project.

(c) **Affordable Housing.** In compliance with Government Code Section 65590(d), Developer shall provide seven (7) housing units that are affordable to persons and families of very low, low, or moderate income on-site. City has determined that providing such housing units on-site is not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technical factors. Therefore, Developer has been required to pay an in-lieu affordable housing fee of fifty-three thousand seven hundred and fifty dollars (\$53,750), which has been paid by Developer and deposited by City into a special fund to be used exclusively to increase, improve and preserve the community's supply of low and moderate income housing available at affordable housing cost. Payment in full of such fee fully satisfies and discharges Developer's obligation to provide housing units pursuant to Government Code Section 65590(d).

3. **Gum Grove Nature Park.**

(a) **Dedication.** Gum Grove Nature Park ("Nature Park"), as shown on the Revised Site Plan, shall be dedicated to City not later than the date when City issues a residential building permit for construction on any lot on Parcel 2, subject to and in accordance with all of the requirements of the CDP Conditions.

(b) **Condition of Title: Condition Subsequent.** Title to the Nature Park shall be conveyed by grant deed in fee simple absolute, subject to a condition subsequent allowing Developer to recover title if all or any portion of the Nature Park is utilized at any time for purposes other than as a substantially unimproved public park, based upon the existing grove of trees and related vegetation. Uses that shall trigger the condition subsequent shall include, but without limitation, (i) removal of trees from the Nature Park to create open area other than as required for normal maintenance and tree husbandry (including removal and replacement of diseased and dead trees), (ii) creation of play areas or active recreation area (ball fields, tennis courts, etc.) within the Nature Park or any uses other than passive recreation, (iii) any residential uses, or (iv) any commercial uses.

(c) **Physical Condition.** The Nature Park shall be transferred to City ownership in its current condition. Having leased the Nature Park since 1971, City is fully familiar with its condition and agrees to accept the same "as is".

(d) **Operation.** The Nature Park shall be open to the public during hours established by City, but not earlier than dawn or later than sundown of any given day. The Nature Park shall be closed during the nighttime hours. City shall assume responsibility for locking and unlocking the Park entry gate at Avalon Drive.

(e) **Credit Against Open Space Dedication Requirements.** Dedication and conveyance of the Nature Park shall entitle Developer to full credit for all park dedication requirements under applicable City laws, ordinances, rules and regulations including, but without limitation, fees levied in lieu of park dedication requirements.

(f) **Payment By Developer.** From and after dedication of the Nature Park, Developer shall pay a total of Forty Thousand Dollars (\$40,000) to City or the Gum Grove Nature Park Group, as determined by City, to be used for maintenance, enhancement and other park related events. Payments shall be made in four installments, Ten Thousand Dollars (\$10,000) on the date of the dedication and Ten Thousand Dollars (\$10,000) each on the first, second and third anniversary dates of the dedication.

(g) **Reinterment.** Gum Grove Nature Park may be used as a reinterment site if determined appropriate by the most likely descendant of the deceased and if human remains are discovered during development activity on the balance of the Property. Developer shall be responsible for the cost and legal compliance of any such reinterment. City shall cooperate with Developer and the "most likely descendant" to the end that the handling of human remains encountered on the Property is conducted expeditiously and in a manner that meets the needs of the concerned parties.

(h) **CDP Conditions.** Gum Grove Nature Park is also subject to additional requirements concerning access, dedication and other requirements imposed pursuant to the CDP Conditions. All applicable improvements imposed pursuant to Coastal Development Permit Amendment 5-97-367-A1, Special Condition 17, "Gum Grove Park", and Special Condition 18, "Public Access Program", shall be completed and accepted by the City in accordance with the provisions of the Coastal Development Permit Amendment.

4. **Reservation For Wetlands Acquisition.** A portion of the Subject Property as shown on the Revised Site Plan shall be restricted by appropriate deed restriction for potential acquisition in accordance with the requirements of the Final CDP Conditions.

5. **Development Plan For Lands Owned By The Redevelopment Agency of the City of Seal Beach.** The Parcel owned by Redevelopment Agency of City at the foot of Lopez Drive (Parcel 5), as shown on the Revised Site Plan, shall be utilized for access (as the Revised Site Plan and the Specific Plan provide) and for other compatible uses as determined by the City Engineer in consultation with Developer. Developer shall have the right to approve any landscaping or improvements, prior to their installation, located on Parcel 5. The Lopez Drive roadway connection to be constructed on Parcel 5 shall be designed and constructed to City's specifications by Developer prior to the issuance by City of the first certificate of occupancy on Parcel 2. If feasible (as determined jointly by the City Engineer and the civil engineer employed by Developer), the sewer pump station provided for in Paragraph 1(a) above shall be located on Parcel 5.

6. **Construction: CDP Conditions Control.** Notwithstanding anything to the contrary contained in these Vested Components, the CDP Conditions shall define the limits of the right to improve and develop the Subject Property and the conditions thereon. If any conflict arises between the provisions hereof and the CDP Conditions, the CDP Conditions shall control.

7. **Water Quality Improvements: Long-Term Maintenance Responsibilities.** All applicable improvements imposed pursuant to Coastal Development Permit Amendment 5-97-367-A1, Special Condition 7, "Water Quality", Special Condition 20, "Final Plans", and Special Condition 23, "Water Quality", shall be completed and accepted by the City in accordance with the provisions of the Coastal Development Permit Amendment. In addition, all applicable mitigation measures approved by the City Council in Resolution No. 4562 shall be met. It shall be the responsibility of the Association established pursuant to approved CC&R's to maintain all required water quality structures, except those structures and facilities accepted by the City, in a manner in compliance with the above-referenced conditions of the City and California Coastal Commission.

* * * *

RECEIVED
South Coast Region

OCT 4 2001
CALIFORNIA
COASTAL COMMISSION

Administrative Revisions to the First Amended and Restated Development Agreement Between the City of Seal Beach and Hellman Properties LLC, Relative to the Development known as the Hellman Ranch

September 2001

- Purpose:** The purpose of the administrative revisions to the First Amended and Restated Development Agreement is to clarify the approved project with respect to the Coastal Development Permit (CDP 5-97-367-A1), approved by the California Coastal Commission on October 11, 2000. The following six revisions and two attachments represent the administrative revisions to the First Amendment and Restated Development Agreement.
- Revision 1:** Exhibit C modified to clarify existing land uses and uses approved under CDP 5-97-367-A1 (Modified Exhibit C attached).
- Revision 2:** Recital E modified to delete the last sentence of the paragraph and replace with: Pursuant to the terms of the Settlement Agreement, the petitioners have dismissed the actions challenging the prior Coastal Development Permit (5-97-367).
- Revision 3a:** Add clarifying language to Recital G, first sentence, as follows: Developer and City desire to utilize the First Am ended and Restated Development Agreement to secure the public benefits contemplated by the CDP Conditions and to vest the entitlements created by the CDP Conditions in Developer, (upon all the terms and conditions thereof), as against the City, as provided pursuant to Government Code Sections 65864 et seq.
- Revision 3b:** Add clarifying language to the end of Recital G, as follows: Notwithstanding anything to the contrary contained in this Development Agreement, CDP 5-97-367, as amended, shall define the limits of the right to improve and develop the subject property and the conditions thereon. If any conflict arises between the provisions hereof and CDP 5-97-367, as amended, the CDP shall control.
- Revision 4a:** Add Section 1.2.3. Term of Development Agreement and CDP. The term of the First Amended and Restated Development Agreement does not effect the term of the CDP.
- Revision 4b:** Add clarifying language to the end of Section 2.1 and Exhibit H, Item E, as follows: The vested components documents pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act nor do they restrict what may or may not be approved under any subsequent coastal development permit. The "vested" components are considered vested between the City and Developer.
- Revision 4c:** Add clarifying language to the end of Section 2.3.2. Parcels 1, 6 and 7 were the previous parcel numbers for Vesting Tentative Tract Map (VTTM) 15381 and refer to the existing oil production areas as shown in Exhibit "C". VTTM 15381 has since been revised pursuant to CDP Special Condition 27, requiring only 5 legal lots.
- Revision 4d:** Insert clarifying language to Section 2.4.2, first sentence. Developer shall have the right from time to time to file subdivision maps and/or parcel maps with the City with respect to some or all of the subject property.

COASTAL COMMISSION
5-01-207

EXHIBIT # 2b
PAGE 1 OF 22

**Administrative Revisions to the First Amended and Restated Development
Agreement Between the City of Seal Beach and Hellman Properties LLC,
Relative to the Development known as the Hellman Ranch**

September 2001

Revision 5: Add clarifying language to Section 10.3, City
Waivers, as follows: Waivers may require approval
by the California Coastal Commission.

Revision 6: Final Notice of Intent to Issue Permit (NOI) to
replace Draft NOI (Final NOI attached).

Approved by: _____

John B. Bahorsky, City Manager

Date

10/3/01

Approved as to form: _____

Quinn Barrow, City Attorney

Date

10/2/01

Approved by: _____

F. Jerome Tone, Agent
Hellman Properties LLC

Date

9/25/01

STATE OF CALIFORNIA)

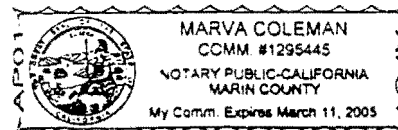
COUNTY OF MARIN)

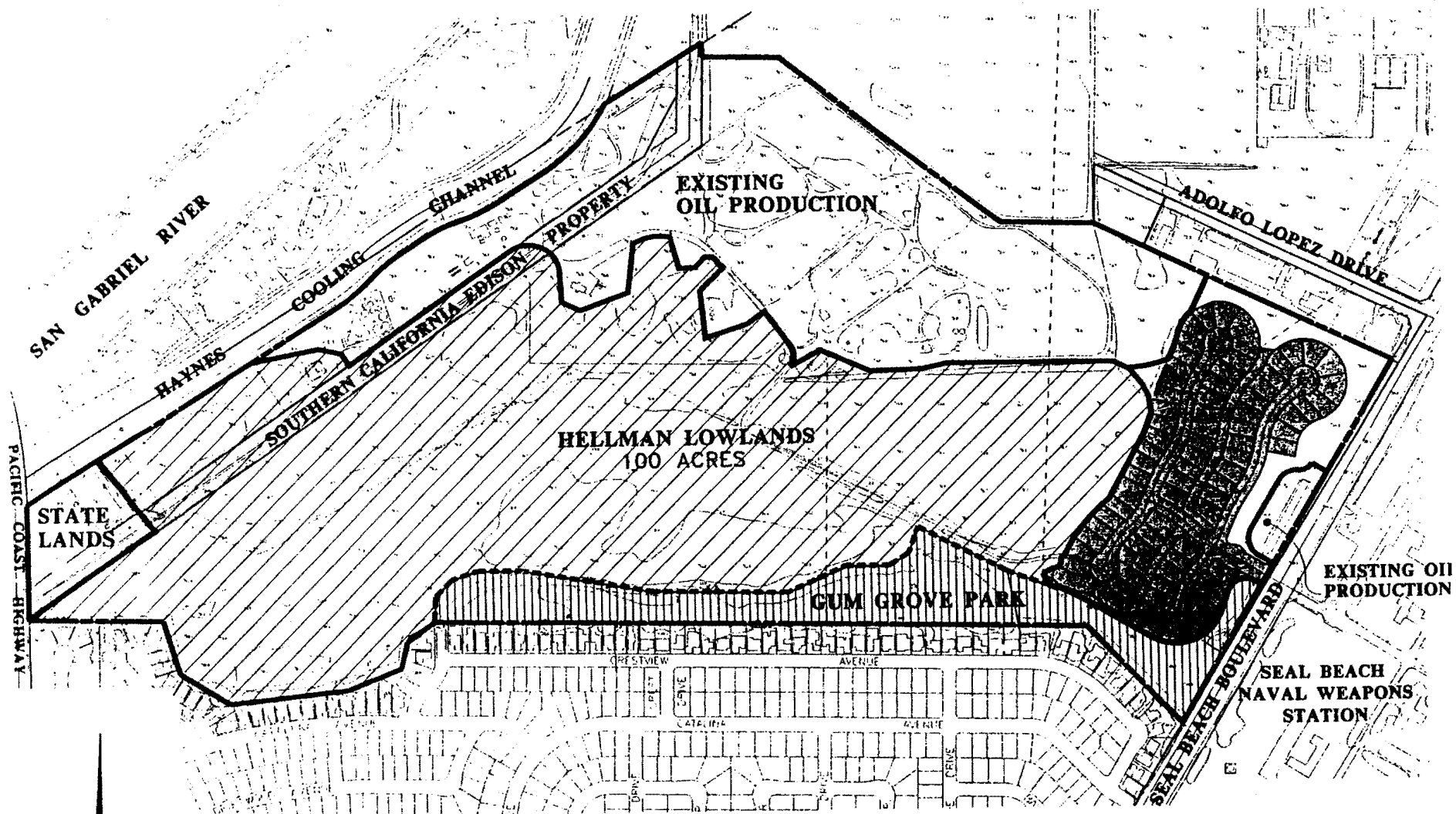
On Sept. 25, 2001, before me,
Marva Coleman, a Notary Public, personally appeared
F. Jerome Tone, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Marva Coleman





APPROVED LAND USES UNDER CDP 5-97-367-A1

LEGEND




-  LOWLANDS DEED RESTRICTED AREA
-  70 LOT SUBDIVISION
-  GUM GROVE PARK

Exhibit "C"

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION

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

Page: Page 1 of 19

Date: April 23, 2001

Permit Application No.: 5-97-367-A1

**NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT**

Coastal Development Permit 5-97-367 granted to Hellman Properties LLC consisting of: Subdivide 196 acre site into 9 parcels, including subdivision of one parcel into 70 single-family residential lots in a private community; construct a public golf course (including 6.8 acres of marsh integrated into the golf course) and golf clubhouse; dedicate Gum Grove Park to the City of Seal Beach; create 26.0 acres of saltwater marsh and reserve existing oil production areas for future wetland restoration; construct interpretive areas, dedicate public access trails, and visitor-serving recreation facilities; extend Adolfo Lopez Drive, and conduct an archaeological testing program, has been amended. On October 11, 2000, the California Coastal Commission granted to Hellman Properties LLC Coastal Development Permit Amendment 5-97-367-A1, subject to the attached conditions, for development consisting of: Change the proposed project description to eliminate a 100 acre golf course and associated wetland impacts and wetland restoration; add a deed restriction reserving lowlands for acquisition for wetlands restoration; expand the footprint of 70-lot residential subdivision from 14.9 acres to 18.4 acres; reduce mass grading from 1.6 million cubic yards to 420,000 cubic yards; and include changes to the language of previously imposed special conditions ...more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Orange County at Hellman Ranch; N.E. of PCH (State Route 1), S.E. of the San Gabriel River, south of Adolfo Lopez Drive, West of Seal Beach Blvd, and North of Marina Hill, Seal Beach.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on April 23, 2001

PETER DOUGLAS
Executive Director

By: 
Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit Amendment No. 5-97-367-A1, and fully understands its contents, including all conditions imposed.

5/7/01

Date


Permittee

Please sign and return one copy of this form to the Commission office at the above address.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 2 of 19

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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **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.

**SPECIAL CONDITIONS PREVIOUSLY IMPOSED BY THE COMMISSION
ON SEPTEMBER 9, 1998 WITH MODIFICATIONS FROM COASTAL
DEVELOPMENT PERMIT AMENDMENT 5-97-367-A1 APPROVED BY
THE COMMISSION ON OCTOBER 11, 2000 SHOWN:**

1. **RESERVATION OF POTENTIAL FOR LOWLANDS ACQUISITION FOR
WETLANDS RESTORATION**
[Deleted]. See Special Condition 16.
2. **REVISED VESTING TENTATIVE TRACT MAP NO. 15381**
[Deleted]. See Special Condition 27
3. **STATE LANDS PARCEL**
[Deleted].

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 3 of 19

4. GUM GROVE PARK

[Deleted]. See Special Condition 17

5. PUBLIC ACCESS PROGRAM

[Deleted]. See Special Condition 18

6. ARCHAEOLOGY

[Deleted]. See Special Condition 19

7. WATER QUALITY

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

8. HAZARDS

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

9. FUTURE CONSTRUCTION OF HOMES ON THE MESA

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

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 4 of 19

10. LEGAL INTEREST

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

11. WETLANDS RESTORATION AREA / CONSERVATION

[Deleted].

12. FINAL WETLAND RESTORATION PROGRAM

[Deleted].

13. GOLF COURSE OPERATIONS AND GOLFER WETLAND EDUCATION PROGRAM

[Deleted].

14. RESIDENTIAL DEVELOPMENT-TIMING OF CONSTRUCTION

[Deleted].

**SPECIAL CONDITIONS FROM COASTAL DEVELOPMENT PERMIT
AMENDMENT 5-97-367-A1 APPROVED BY THE COMMISSION ON
OCTOBER 11, 2000:****15. PRIOR CONDITIONS**

Unless specifically altered by this amendment, all regular and special conditions attached to coastal development permit 5-97-367 remain in effect.

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

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

(1) For a period of twenty-five years, the applicant agrees to sell the lowlands area of the property as defined in "Attachment 1" (as revised pursuant to subsection B. of this condition) to any public agency or

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 5 of 19

non-profit association acceptable to the Executive Director that requests in writing to purchase the property or, through the normal State of California land acquisition practices if the State is the prospective buyer; and,

- (2) The sale shall be at fair market value as established by an appraisal paid for by the buyer and prepared by an appraiser mutually acceptable to the buyer and applicant, or, if the parties are unable to agree, by an appraiser designated by third party, or if the buyer and applicant agree through an arbitration on value; and,
- (3) The uses shall be restricted to wetlands restoration, open space and environmental education purposes, with reversion rights to the State Coastal Conservancy.

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

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a revised "Attachment 1" consisting of a map, prepared by an appropriately licensed professional, which (i) depicts the area to be deed restricted pursuant to subsection A. of this condition and Special Condition 28, (ii) which maintains this restriction over at least 100 acres, (iii) which removes those areas necessary for the bio-swale and water quality basin from the area to be deed restricted pursuant to subsection A. of this condition and (iv) which off-sets the removal of those areas from the deed restriction with other land within the project site suitable for a deed restriction pursuant to subsection A. of this condition.

Note: Special Condition 16 replaces Special Condition 1 in its entirety.

17. GUM GROVE PARK

PRIOR TO THE ISSUANCE OF RESIDENTIAL BUILDING PERMITS, the applicant shall submit, for the review and approval of the Executive Director, written evidence demonstrating that the area known as Gum Grove Nature Park and as delineated as Lot 3 of proposed Vesting Tentative Tract Map

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 6 of 19

15381 has been dedicated in fee to the City of Seal Beach, as proposed by the applicant. The dedication documents shall provide that:

- (a) The park shall be preserved in perpetuity as a passive recreational nature park open to the public. Active recreational activities or commercial facilities shall be prohibited.
- (b) Necessary parking facilities which are the minimum required to serve the park and which meets Americans with Disabilities Act requirements shall be provided. The existing twenty (20) striped parking spaces for Gum Grove Park shall be maintained.
- (c) All trails within the dedicated park area shall be constructed to be accessible to persons with disabilities consistent with the Americans with Disabilities Act requirements. No trails shall be lighted in order to minimize impacts on wetlands.
- (d) Small scale interpretive signage which describes the Monarch Butterfly may be permitted if approved by the Executive Director.
- (e) Gum Grove Park shall be open from dawn to dusk (one hour after sunset) on a daily basis. Changes in hours of operation of Gum Grove Park shall require an amendment to this permit unless the Executive Director determines that an amendment is not required.
- (f) Signage shall be conspicuously posted which states that the park is open to the general public.
- (g) That portion of proposed Lot 3 of Tentative Tract Map No. 15381, comprised of an approximately 25 foot wide strip of land which borders Seal Beach Boulevard and extends west from Seal Beach Boulevard to connect with the primarily used part of Gum Grove Park, shall be subject to the following requirements:
 - (1) The frontage along Seal Beach Boulevard shall not be gated, fenced, or obstructed in any manner which prevents public access from Seal Beach Boulevard.
 - (2) The area shall be reserved for a public trail and parking lot, which are visible, and directly accessible to the public from Seal Beach Boulevard, and which lead from Seal Beach Boulevard to the primary part of Gum Grove Park to the west. The public parking lot area shall be large enough for a minimum of ten (10) parking spaces. Where it is not feasible to reserve enough public parking area on this portion of proposed Lot 3, public parking directly accessible from Seal Beach

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 7 of 19

Boulevard shall be provided for on proposed Lot 2 of Tentative Tract Map No. 15381 adjacent to proposed Lot 3, in accordance with the provisions of Special Condition 18.B. of this permit.

- (h) Domesticated animals (including, but not limited to, dogs) shall be leashed and under the control of the party responsible for the animal at all times within Gum Grove Park.

Note: Special Condition 17 replaces Special Condition 4 in its entirety.

18. PUBLIC ACCESS PROGRAM

- A. **Public Access Signage.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a detailed signage plan which provides for the installation of signs clearly visible from Pacific Coast Highway and Seal Beach Boulevard which invite and encourage the public to use the public access, parking, and recreation opportunities proposed at Gum Grove Park, and the public access trail and public parking linking Gum Grove Park to Seal Beach Boulevard. Key locations include but are not limited to; 1) Gum Grove Park, both at its western entrance and at the proposed Seal Beach Boulevard entrance. The plans shall indicate the location, materials, dimensions, colors, and text of the signs. The permittee shall install the signs in accordance with the signage plans approved by the Executive Director.
- B. **Residential Community Streets (Vesting Tentative Tract Map No. 15402).** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: 1) public pedestrian and bicycle access to the streets and sidewalks constructed within the area subject to Vesting Tentative Tract Map No. 15402 shall not be precluded, 2) no locked gates, walls, fences, or other obstructions prohibiting public pedestrian or bicycle access to the streets and sidewalks constructed within the area subject to Vesting Tentative Tract Map No. 15402 shall be permitted, 3) no requirement to allow public vehicular access over the private streets is necessary if the applicant is willing to provide public parking within Gum Grove Park and a separate vehicular entrance from Seal Beach Boulevard to said public parking, 4) if fewer than the ten (10) public parking spaces required by Special Condition 17.(g)(2) of this permit can be constructed on proposed Lot 3 of Vesting Tentative Tract Map No. 15381, the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3 shall be reserved for the balance of the public parking spaces so that the parking spaces are directly accessible from Seal Beach Boulevard. The deed restriction shall be recorded over the entire area subject to Vesting Tentative Tract Map No. 15402 and shall run with the land,

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 8 of 19

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

- C. **Revised Vesting Tentative Tract Map No. 15402.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two copies of a revised vesting tentative map for Tract No. 15402 if: (1) all of the ten public parking spaces required under Special Condition 17.(g)(2) cannot be built on proposed Lot 3 of Vesting Tentative Tract Map 15381, and/or (2) the entities with jurisdiction over Seal Beach Boulevard do not approve a separate vehicular entrance off of Seal Beach Boulevard to said public parking spaces. The revised map shall show: (1) the locations and design of said public parking spaces which cannot be built on Lot 3 and instead shall be built on the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3, and 2) the location of the public street which connects the public parking required under Special Condition 17.(g)(2) of this permit with the entrance to the subdivision proposed by Vesting Tentative Tract Map No. 15402. The revised map shall be accompanied by written documentation demonstrating that the governmental agencies which have jurisdiction over Seal Beach Boulevard and parking space standards have approved the revised map. The applicant shall record the revised map approved by the Executive Director.
- D. **Construction of Trail and Parking Lot.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE HOUSES WITHIN THE AREA SUBJECT TO VESTING TENTATIVE TRACT MAP NO. 15402, the applicant shall construct a public access trail and parking lot, which are visible and directly accessible to the public from Seal Beach Boulevard, which lead from Seal Beach Boulevard to the primary part of Gum Grove Park to the west. The public parking lot shall contain a minimum of ten (10) parking spaces and shall be directly accessible from Seal Beach Boulevard. Where it is not feasible to construct the public parking and vehicular entrance on this portion of proposed Lot 3 of Vesting Tentative Tract Map No. 15381, public parking directly accessible from Seal Beach Boulevard shall be constructed on proposed Lot 2 of Tentative Tract Map No. 15381 (i.e., the area subject to Vesting Tentative Tract Map No. 15402) immediately adjacent to proposed Lot 3, in accordance with the provisions of Special Condition 18.B of this permit.

Note: Special Condition 18 replaces Special Condition 5 in its entirety.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 9 of 19

19. ARCHAEOLOGY

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

- A. **Research Design.** The permittee shall undertake the proposed archaeological investigation in conformance with the proposed archaeological research design entitled A Research Design for the Evaluation of Archaeological Sites within the Hellman Ranch Specific Plan Area dated November 1997 prepared by KEA Environmental, Inc. for the City of Seal Beach. Prior to issuance of the coastal development permit for the archeological investigation, the applicant shall submit written evidence, subject to the review and approval of the Executive Director, that a copy of the archaeological research design has been submitted to the OHP, the NAHC, and the Native American person/group from the Juaneno/Acjachemem, Gabrielino/Tongva, or Luiseno people designated or deemed acceptable by the NAHC, for their review and comment. An amendment to this permit shall be required for any changes to the research design suggested by OHP, NAHC, or the Native American group/person unless the Executive Director determines that an amendment is not required.
- B. **Selection of Archaeologist(s) and Native American Monitor(s).** The archaeologist(s) selected by the City shall meet the United States Department of Interior minimum standards for archaeological consultants, as also endorsed by the OHP. The City shall select the Native American monitor(s) in compliance with the "Guidelines for monitors/consultants of Native American cultural, religious and burial sites" issued by the NAHC, and in consultation with the appropriate Native American person/group from the Juaneno/Acjachemem, Gabrielino/Tongva, or Luiseno people deemed acceptable by the NAHC.
- C. **Post-Investigation Mitigation Measures.** Upon completion of the archaeological investigation, and prior to the commencement of construction of any development approved by this coastal development permit (other than archaeological investigation activities or subdivision), the applicant shall submit, for the review and approval of the Executive Director, a written report regarding the following: 1) a summary of the findings of the archaeological investigation, and 2) a final written mitigation plan which shall identify recommended mitigation measures, which may include capping of archaeological sites, data recovery and curation of important archaeological resources as defined by the California Environmental Quality Act, and detailed additional mitigation measures which need to be implemented. The applicant shall also submit for review and approval of the Executive Director, a signed contract with a City-selected archaeological consultant that

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 10 of 19

provides for archaeological salvage that follows current accepted professional practice, if additional archaeological data recovery measures are determined appropriate. The written report and additional mitigation measures shall also be submitted to the OHP and the appropriate Native American person/group from the Juaneno/Acjachemem, Gabrielino/Tongva, or Luiseno people designated or deemed acceptable by the NAHC. An amendment to this permit shall be required to implement any additional mitigation measures unless the Executive Director determines a permit amendment is not required.

- D. **Implementation of Mitigation Measures and Summary of Fieldwork.** Prior to commencement of site preparation, grading, and construction activities for any development (other than archaeological investigation activities) located within a fifty foot (50') radius of the furthest boundary of each state-identified archaeological site as delineated in the archaeological research design, all of the requirements of Special Conditions 19.A., 19.B., and 19.C. shall have been met. All development shall occur consistent with the final plan required by Special Condition 19.C. A written synopsis report summarizing all work performed in compliance with Special Conditions 19.A., 19.B., and 19.C shall be submitted to the Executive Director, OHP, the NAHC and the person/group from the Juaneno/Acjachemem, Gabrielino/Tongva, or Luiseno people designated or deemed acceptable by the NAHC, within six (6) weeks of the conclusion of field work. No later than six months after completion of field work, a final report on the excavation and analysis shall be submitted to the Executive Director, OHP, the NAHC, and the person/group from the Juaneno/Acjachemem, Gabrielino/Tongva, or Luiseno people designated or deemed acceptable by the NAHC.
- E. **Monitoring of Construction Activities.** All site preparation, grading and construction activities for the proposed development shall be monitored on-site by a qualified archaeologist and Native American monitor. The archaeologist and Native American monitor shall have the express authority to temporarily halt all work in the vicinity of the discovery site should significant cultural resources be discovered. This requirement shall be incorporated into the construction documents which will be used by construction workers during the course of their work.
- F. **Discovery of Cultural Resources / Human Remains During Post-Archaeological Testing Construction Activities.**
- (1) If additional or unexpected archaeological features are discovered during site preparation, grading, and construction activities for approved development other than the archaeological investigation, all work shall be temporarily halted in the vicinity of the discovery site while the permittee complies with the following:

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 11 of 19

The archaeologist, in consultation with the Native American monitor, shall sample, identify and evaluate the artifacts as appropriate and shall report such findings to the permittee, the City and the Executive Director. If the archaeological resources are found to be significant, the archaeologist, in consultation with the Native American monitor, shall determine appropriate actions, and shall submit those recommendations in writing to the Executive Director, the applicant and the City. The archaeologist shall also submit the recommendations for the review and approval of the Executive Director and shall be prepared in accordance with the provisions outlined in Special Condition 19.C above. Any recommended changes to the proposed development or the mitigation measures identified in the final plan required by Special Condition 19.C. shall require a permit amendment unless the Executive Director determines that a permit amendment is not required.

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

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

- G. Incorporation of Archaeology Requirements into Construction Documents. Special Condition No. 19 of Coastal Development Permit 5-97-367 shall be incorporated in its entirety into all the construction documents which will be used by construction workers during the course of their work as well as all construction bid documents.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 12 of 19

H. Sequencing of Issuance of Coastal Development Permit Related to Archeological Investigation.

In advance of compliance with the other special conditions of Coastal Development Permit 5-97-367, as amended, the Executive Director may issue a coastal development permit, consistent with the terms of subsections A through G of this condition, for the development needed to undertake the archeological investigation.

Note: Special Condition 19 replaces Special Condition 6 in its entirety.

20. FINAL PLANS**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director:**

1. Final design, grading, construction, structural, and drainage plans for the bio-swale, riparian corridor and water quality basin that substantially conform with the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000, submitted to the Commission; and
2. Final landscape plans for the bio-swale, riparian corridor, and water quality basin that substantially conform with the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000, submitted to the Commission, and the letter from Glenn Lukos Associates of Lake Forest, California to John Laing Homes and Hellman Properties dated June 28, 2000, regarding Biological Benefits of Proposed Wetland Treatment System, CDP 5-97-367-A1, Hellman Ranch Property, Orange County, California. These final plans shall be prepared in consultation with the California Department of Fish and Game and U.S. Fish and Wildlife Service and shall be accompanied by written evidence of their endorsement of the landscape plans.

B. 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 this coastal development permit unless the Executive Director determines that no amendment is required.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 13 of 19

21. REQUIREMENT FOR IDENTIFICATION OF SUITABLE RAPTOR FORAGING HABITAT AND REQUIREMENT FOR MANAGEMENT PLAN

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and approval of the Executive Director, a map, prepared by a biologist in accordance with current professional standards, delineating raptor foraging habitat with long term conservation potential available within the lowlands of the subject property as identified in the letter from Glenn Lukos Associates of Lake Forest, California to John Laing Homes and Hellman Properties dated September 11, 2000, regarding *Response to June 19, 2000, letter from the California Department of Fish and Game Regarding Biological Resources at Hellman Ranch*. The area delineated shall not be less than 9.2 contiguous acres of raptor foraging habitat. The delineation and site selection shall occur in consultation with the California Department of Fish and Game, and the map submitted to the Executive Director shall be accompanied by a written endorsement by the California Department of Fish and Game of the raptor foraging habitat delineation, the selected site and the map; and
- B. The raptor foraging habitat to be identified in subsection A. of this condition shall have the same or better functions and values as the site to be impacted, in accordance with the biological assessment prepared by Glenn Lukos Associates in their letter dated September 11, 2000. If there are no raptor foraging habitat areas with the same or better functions and values as the site to be impacted in the area previously identified by the applicant as having such, the applicant shall obtain an amendment to this coastal development permit in order to remedy the discrepancy; and
- C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and approval of the Executive Director, a raptor foraging habitat management plan which identifies management measures necessary to, at minimum, maintain the functions and values of the raptor foraging habitat identified in subsection B. of this condition. Such measures shall include appropriate brush management measures for the maintenance of raptor foraging habitat. Measures may include brush clearance and brush mowing; planting of plant species associated with raptor foraging habitat, and exotic and invasive plant species controls for the removal of plant species which upset the functioning of the raptor foraging habitat, including, but not limited to, ice plant, pampas grass, arundo giant cane, and myoporum. Any chemical controls to be used in areas adjacent to wetlands shall be limited to those which are non-toxic to wetland organisms (e.g. Rodeo® Herbicide). The raptor foraging habitat management plan shall be prepared in consultation with the California Department of Fish and Game, and shall be accompanied by a written endorsement of the plan by the California Department of Fish and Game. The permittee shall undertake

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 14 of 19

development in accordance with the raptor foraging habitat management plan approved by the Executive Director. Any proposed changes to the approved raptor foraging habitat management plan shall be reported to the Executive Director. No changes to the approved raptor foraging habitat management plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

22. OPEN SPACE DEED RESTRICTION

- A. No development, as defined in section 30106 of the Coastal Act shall occur in the raptor foraging habitat delineated by the map required pursuant to Special Condition 21 except for:
1. Activities related to raptor foraging habitat maintenance pursuant to the raptor foraging habitat management plan required pursuant to Special Condition 21.C.; and
 2. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: activities related to public access, recreation, and wetland restoration provided that such development continues to designate a minimum of 9.2 acres of equivalent or better functioning raptor foraging habitat.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which shows that the open space area identified pursuant to Special Condition 21 shall be restricted as open space for raptor foraging habitat and the deed restriction shall reflect the above restriction on development in the designated open space. The deed restriction shall contain the raptor foraging habitat management plan approved by the Executive Director pursuant to Special Condition 21.C. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space area. 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. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 15 of 19

23. WATER QUALITY

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final Storm Water Management and Water Quality Control Plan (SWM & WQCP) designed to mitigate stormwater runoff and nuisance flow from development on Vesting Tentative Tracts 15381 and 15402. The final SWM & WQCP shall include structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater and nuisance runoff leaving the developed site. The final plan shall be reviewed by the consulting engineering geologist to ensure conformance with geotechnical recommendations. The final plan shall demonstrate substantial conformance with the Water Quality Management Plan (WQMP), Tract 15402, Hellman Ranch, prepared by MDS Consulting of Irvine, California, dated January 2000, and the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000, and the following requirements:
1. Post-development peak runoff rates and average volume from the developed site shall not exceed pre-development levels for the 2-year 24-hour storm runoff event.
 2. Post-construction treatment control BMPs shall be designed to mitigate (infiltrate or treat) stormwater runoff from each runoff event up to and including the 85th percentile 24-hour runoff event.
 3. The approved SWM & WQCP shall be implemented prior to or concurrent with the construction of infrastructure associated with the development on Vesting Tentative Tracts 15381 and 15402. The approved BMPs and other measures included in the final SWM & WQCP shall be in place and functional prior to the issuance of the first residential building permit within Vesting Tentative Tract 15402.
 4. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development. Maintenance activity shall be performed according to the recommended maintenance specifications contained in the California Stormwater BMP Handbooks (California Stormwater Quality Task Force, 1993) for selected BMPs. At a minimum, maintenance shall include the following: (i) all structural BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season, no later than October 1st of each year and (ii) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 16 of 19

to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to commencement of such repair or restoration work, the applicant 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.

- B. Any changes to the structures outlined in the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27 2000, including changes to the footprint of any such structures, necessary to accommodate the requirements of subsection A of this condition, shall require an amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.
- C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- D. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the requirements outlined in subsections A., B., and C. of this condition. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the deed restricted area. 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. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

24. RESERVATION OF LAND FOR WATER QUALITY PURPOSES

- A. The area of land containing the proposed water quality basin, bio-swale and riparian corridor, and associated appurtenances as depicted in Figure 8 (inclusive of the landscaped areas) of the Storm Water Management & Water Quality Control Plan, (SWM & WQCP) prepared by MDS Consulting and Fuscoe Engineering of Irvine, California, dated July 27, 2000, shall be reserved for water quality improvement purposes through a deed restriction as required pursuant to subsection B. of this condition. The deed restriction shall not preclude use of the same such land for wetland restoration provided the water quality improvement functions of the system described in the SWM & WQCP, as revised and approved by the Executive Director pursuant

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 17 of 19

to Special Condition 23, is, at minimum maintained. In addition, the deed restriction shall not preclude construction and maintenance of the access road depicted on Figure 8, nor shall it preclude the construction and maintenance of the utilities and oil transmission lines depicted on Vesting Tentative Tracts 15381 and 15402, as approved by the Executive Director, nor shall it preclude the maintenance of existing oil operations, provided the water quality improvement functions of the system described in the SWM & WQCP, as revised and approved by the Executive Director pursuant to Special Condition 23, is, at minimum maintained. Finally, the deed restriction shall not preclude development associated with the archaeological investigation required pursuant to Special Condition 19.

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the deed restricted area. 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. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

25. STAGING AREA FOR CONSTRUCTION

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands.
1. The plan shall demonstrate that:
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition; and
 - (b) Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands.
 2. The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - (1) limits of the staging area(s)
 - (2) construction corridor(s)
 - (3) construction site

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 18 of 19

- (4) location of construction fencing and temporary job trailers with respect to existing wetlands

- B. 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 this coastal development permit unless the Executive Director determines that no amendment is required.

26. **PERMIT COMPLIANCE**

All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth herein. Any deviation from the approved plans must be reviewed and approved by the Executive Director and may require Commission approval.

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

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two copies of a revised vesting tentative map for Tract No. 15381. The revised map shall show only five legal lots as generally depicted in Exhibit 1, page 4; namely, 1) the lot currently owned by the California State Lands Commission, 2) the lot currently owned by the City of Seal Beach Redevelopment Agency, 3) proposed Lot 2 which is proposed to be further subdivided into seventy residential lots pursuant to proposed Tentative Tract Map 15402, 4) proposed Lot 3 for the proposed dedication of Gum Grove Park, which shall be in substantial conformance with the configuration shown on the map submitted with the permit application and maintain the proposed minimum 25 wide frontage along Seal Beach Boulevard, and 5) a lot consisting of the remainder of the subject site owned by the applicant. The applicant shall record the revised map approved by the Executive Director. No further subdivision of the lot identified in sub-section 5 shall occur other than to accommodate the transfer of land to a non-profit entity, subject to the review and approval of the Executive Director, for wetlands restoration, open space and environmental education purposes and which shall require an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

Note: Special Condition 27 Replaces Special Condition 2 in its entirety.

NOTICE OF INTENT TO ISSUE PERMIT AMENDMENT

Permit Application No. 5-97-367-A1

Page 19 of 19

28. RESERVATION OF POTENTIAL FOR ACQUISITION OF OIL PRODUCTION AREA FOR WETLANDS RESTORATION

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director which shall provide that:
- (1) At the time oil production ceases and for a period of twenty-five years thereafter, the applicant agrees to sell the oil production area of the property as defined in "Attachment 1" (as revised pursuant to subsection B. of Special Condition 16) to any public agency or non-profit association acceptable to the Executive Director that requests in writing to purchase the property or, through the normal State of California land acquisition practices if the State is the prospective buyer; and,
 - (2) The sale shall be at fair market value as established by an appraisal paid for by the buyer and prepared by an appraiser mutually acceptable to the buyer and applicant, or, if the parties are unable to agree, by an appraiser designated by third party, or if the buyer and applicant agree through an arbitration on value; and,
 - (3) The uses shall be restricted to wetlands restoration, open space and environmental education purposes, with reversion rights to the State Coastal Conservancy.

Within 30 days of the cessation of oil production, the applicant shall notify the Executive Director in writing of the date oil production ceased. The deed restriction shall remain in effect for twenty-five years from the date oil production ceases and be recorded over the oil production area of the property and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

AFTER YOU HAVE SIGNED AND RETURNED THE DUPLICATE COPY YOU WILL BE RECEIVING THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS) FROM THE SAN FRANCISCO OFFICE. WHEN YOU RECEIVE THE DOCUMENTS IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE LEGAL DEPARTMENT AT (415) 904-5200.

HELLMAN RANCH SPECIFIC PLAN LAND USES

CONSERVATION PLANNING AREA	LAND USE DESIGNATION	GOODS PLANNING AREA	FUNCTION & CHARACTERISTICS
1	WETLANDS	201	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
2	WETLANDS	202	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
3	WETLANDS	203	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
4	WETLANDS	204	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
5	WETLANDS	205	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
TOTAL CONSERVATION			
6	WETLANDS	206	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
7	WETLANDS	207	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
8	WETLANDS	208	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
9	WETLANDS	209	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
10	WETLANDS	210	WETLANDS ADJACENT TO THE COASTLINE TO PROTECT COASTAL RESOURCES, TIDE, 20000 PER ACRES.
TOTAL DEVELOPMENT			
TOTAL SPECIFIC PLAN			



COASTAL COMMISSION
5-01-207

EXHIBIT # 3
PAGE 1 OF 1

LEGEND:
4 PLANNING AREA NUMBER

LAND USE PLAN
HELLMAN RANCH SPECIFIC PLAN
FIGURE NO. 4-1
PAGE NO. 4-5