

CALIFORNIA COASTAL COMMISSION

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

Item Tu22a

Filed: 7/17/01
49th Day: 9/4/01
180th Day: N/A
Staff: CP-LB
Staff Report: 8/23/01
Hearing Date: Sept. 11, 2001
Commission Action:

**STAFF REPORT: APPEAL/SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Approval with Condition

RECORD PACKET COPY

APPEAL NUMBER: A-5-VEN-01-279

APPLICANT: City of Los Angeles Department of Public Works

AGENT: Raul Rojas, Deputy City Engineer

PROJECT LOCATION: Ballona Lagoon west bank, Pacific Avenue from Canal Court to Via Marina, Venice, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Appeal of City of Los Angeles coastal development permit approval for implementation of Phase III of the Ballona Lagoon Enhancement Plan, which includes: 1) stabilizing the west bank of the lagoon with native plant landscaping, 2) improvement of the existing west bank public access trail from Grand Canal to Topsail Street, 3) construction of a split rail fence along the public access trail, and 4) construction of a public education/information area with benches at the north end of the lagoon.

APPELLANTS: Coastal Commission Executive Director Peter Douglas
Concerned Residents of Ballona Lagoon (Clare Bronowski)

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **a substantial issue exists** with respect to the proposed project's conformance the Chapter 3 policies of the Coastal Act for the following reasons:

The local coastal development permit does not adequately analyze and mitigate the potential impacts that the construction of the proposed project may have on endangered species (California least tern) and the sensitive habitat areas in and adjacent to Ballona Lagoon. Public access issues and potential restoration of the entire west bank lagoon buffer have not been fully addressed.

The motion to carry out the staff recommendation is at **top of Page Eight**.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles certified Land Use Plan for Venice, 6/12/01.
2. City of Los Angeles Local Coastal Development Permit No. 00-04.
3. Coastal Development Permit Application 5-01-257 (City of LA).
4. Coastal Development Permit 5-00-161 (City of LA).
5. Coastal Development Permit 5-95-152 & amendments (City of LA/BLMP/Conservancy).
6. Categorical Exemption (CEQA) No. CE 3093, 5/25/00.
7. Conceptual Plan for Completion of Phase II Improvements of the Ballona Lagoon Enhancement Plan for the West Bank of Ballona Lagoon, BLMP, March 1999.
8. Ballona Lagoon Enhancement Ten-year Monitoring Plan, July 1996.
9. Ballona Lagoon Enhancement Plan, BLMP & State Coastal Conservancy, August 1992.
10. Birds of Ballona, by Dock & Schreiber in Biota of the Ballona Region, 1981.

I. APPELLANTS' CONTENTIONS

City of Los Angeles Local Coastal Development Permit No. 00-04 (Exhibit #2), approved by the Board of Public Works on June 22, 2001, has been appealed by the Executive Director of the Coastal Commission, and by Concerned Residents of Ballona Lagoon represented by Clare Bronowski (Exhibit #5).

The grounds for the appeal by the Executive Director are:

- The local coastal development permit does not adequately analyze and mitigate the potential impacts of the proposed project on endangered species (California least tern) and the sensitive habitat areas in and adjacent to Ballona Lagoon.
- The local coastal development permit does not include clear delineation between the portion of the project approved within the City's permit jurisdiction and the portion of the project proposed within the Commission's area of original jurisdiction (wetlands and submerged lands).
- The local coastal development permit does not adequately address the use of easements on the west bank that have been offered for dedication as part of the proposed habitat restoration and public access (lagoon buffer).

The grounds for the appeal by Concerned Residents of Ballona Lagoon are:

- The project plans are insufficient for analyzing potential impacts of the proposed project on natural resources and nearby residents.
- The proposed project is inconsistent with certified Venice Land Use Plan (LUP) Policy II.C.3, which states, "*Pedestrian access and interpretative overlooks to the*

Ballona Lagoon shall be enhanced without invading the privacy of adjoining residents." (emphasis added).

- The proposed project is inconsistent with the Ballona Lagoon Enhancement Plan (BLEP) which states that, "*the strategy along the western shore is to limit physical access.*"
- The City has not adequately addressed its legal ability to improve the easements on the private lots that have been offered for habitat and/or public access purposes (lagoon buffer).
- The proposed project is inconsistent with the California Environmental Quality Act (CEQA).
- The proposed project would negatively impact the California least tern, the California black rail, the southern steelhead trout, and other species of fish.
- The proposed project would negatively impact visual resources of Ballona Lagoon.
- The City failed to analyze public safety issues.

II. LOCAL GOVERNMENT ACTION

The development approved by City of Los Angeles Local Coastal Development Permit No. 00-04 involves the City Department of Public Work's proposed implementation of Phase III of the Ballona Lagoon Enhancement Plan (Exhibit #2). Phase III of the Ballona Lagoon Enhancement Plan involves the restoration of the west bank of Ballona Lagoon and associated public access improvements. Prior phases of the Ballona Lagoon Enhancement Plan have been previously approved and implemented on the east bank and in the submerged areas of Ballona Lagoon pursuant to the Commission's approval of Coastal Development Permit 5-95-152 and subsequent permit amendments (City of LA/BLMP/Conservancy).

The City of Los Angeles City Engineer held a public hearing for the proposed project and Local Coastal Development Permit No. 00-04 on April 25, 2000 at the Venice Branch City Library. At the hearing, several persons spoke in opposition to the project, many objecting to the new public access improvements proposed next to their residences on the west bank.

On May 26, 2000, the City Engineer issued a Decision of Approval for Local Coastal Development Permit No. 00-04 with one condition. The one condition of approval prohibited construction within Ballona Lagoon (including lagoon banks) during the least tern nesting season, defined by the City as April 14 through August 14. The development approved by the local coastal development permit included: 1) stabilizing the west bank of the lagoon with native plant landscaping, 2) elimination of private encroachments over the Esplanade West public right-of-way and over easements that have been offered for creation of a lagoon buffer,

3) completion of a public access trail along the entire west bank of the lagoon, including a 180-foot long wooden walkway in the intertidal area, 4) construction of a split rail fence along the public access trail, 5) installation of water quality improvement devices, and 6) construction of a public education/information area with benches at the north end of the lagoon. Two small public parking lots proposed at Jib Street and Topsail Street were eliminated from the project.

Three appeals of the City's May 26, 2000 local coastal development permit approval were filed with the City of Los Angeles Board of Public Works. The three appellants were: Marina Peninsula Neighborhood Association, Jeanette Boller, and Concerned Residents of Ballona Lagoon. The appeals asserted that the City incorrectly processed the local approval and did not adequately address the proposed project's impacts to nearby residents and the natural resources of the lagoon.

On June 22, 2001, more than a year after the City's original approval, the City of Los Angeles Board of Public Works held a public hearing for the appeals of the local coastal development permit. The public hearing was held at City Hall East in downtown Los Angeles. The Board of Public Works denied all three appeals, but also modified the approved development. The Board modified the project by eliminating a 1,200-foot long section of the previously approved public access trail along the west bank of the lagoon (from Topsail Street to the south end of the lagoon), including a 180-foot long wooden walkway in the intertidal area. The deleted section of the west bank public access trail was opposed by the appellants and adjacent residents.

On July 17, 2001, a valid Notice of Final Local Action for Local Coastal Development Permit No. 00-04 was received in the Commission's South Coast District office in Long Beach, and the Commission's required twenty working-day appeal period commenced.

The appeal by Concerned Residents of Ballona Lagoon was received in the Commission's South Coast District office in Long Beach on July 16, 2001, but was filed on the first day of the appeal period, July 17, 2001 (Exhibit #5). The Commission opened and continued the public hearing on the appeal of Local Coastal Development Permit No. 00-04 at its August 6, 2001 meeting in Redondo Beach. On August 10, 2001, the Executive Director also appealed the City's action on Local Coastal Development Permit No. 00-04. The Commission's required twenty working-day appeal period closed on August 14, 2001. No other appeals were received.

Because the proposed project is located in the City and Commission's "Dual Permit Jurisdiction" area (see Section IV on Page Six) and partially in the Commission's area of original jurisdiction (submerged lands and wetlands), the City has submitted a separate coastal development permit application to the Commission for the proposed development (Coastal Development Permit Application 5-01-257). Coastal Development Permit Application 5-01-257 is currently incomplete as additional information is needed in order for staff to determine whether the proposed development is in conformity with Chapter 3 of the Coastal Act. One of the items needed to complete the "dual" application is a review of the development by the Department of Fish and Game. If possible, the public hearings and actions for both the de novo portion of this appeal (if the Commission finds that a substantial issue exists) and Coastal Development Permit Application 5-01-257 will be combined and

scheduled for concurrent action at the same future Commission meeting in Southern California.

III. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local coastal development permits.

Sections 13302-13319 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits. Section 30602 of the Coastal Act allows *any* action by local government on a coastal development permit application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act.

After a final local action on a coastal development permit, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission (Section 30602).

The appeal and local action are then analyzed to determine if a substantial issue exists as to the conformity of the project to Chapter 3 of the Coastal Act [Section 30625(b)(1)]. If the Commission finds that the appeal raises a substantial issue, the Commission then holds a public hearing in which it reviews the coastal development permit as a de novo matter.

In this case, a valid Notice of Final Local Action was received on July 17, 2001. The two appeals were filed on July 17 and August 10, 2001. Section 30621 of the Coastal Act states that the appeal hearing must be scheduled within 49 days of the receipt of a valid appeal unless the applicant waives the 49-day requirement. In this case, the Commission opened and continued the public hearing on the appeal on August 6, 2001, at its meeting in Redondo Beach.

At this point, the Commission may decide that the appellants' contentions raise no substantial issue of conformity with the Coastal Act, in which case the action of the local government stands, or the Commission may find that a substantial issue exists with respect to the conformity of the action of the local government with the Coastal Act if it finds that the appeal raises a significant question regarding consistency with the Chapter 3 policies of the Coastal Act. If the Commission finds that a substantial issue exists, then the hearing will be continued as a de novo permit request. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Section 13114.

IV. DUAL PERMIT JURISDICTION

The proposed development involves two distinct and separate types of coastal development permit jurisdiction: the City's and Commission's "*Dual Permit Jurisdiction*" area and the Commission's "*Original Jurisdiction*" area.

Section 30601 of the Coastal Act states:

Prior to certification of the Local Coastal Program and, where applicable, in addition to a permit from local government pursuant to subdivision (b) or (d) of Section 30600, a coastal development permit shall be obtained from the Commission for any of the following:

- (1) Developments between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
- (2) Development not included within paragraph (1) located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream or within 300 feet of the top of the seaward face of any coastal bluff.
- (3) Any development which constitutes a major public works project or a major energy facility.

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the *Dual Permit Jurisdiction* area, the Coastal Act requires that the development which receives a local coastal development permit also obtain a "dual" coastal development permit from the Coastal Commission. For projects located inland of the areas identified in Section 30601 (*Single Permit Jurisdiction*), the City of Los Angeles local coastal development permit is the only coastal development permit required.

The proposed project is located immediately inland of the mean high tide line on the west bank of Ballona Lagoon, which is between the sea (Ballona Lagoon) and Pacific Avenue, the first public road inland of the sea (Exhibit #4). Therefore, it is within the coastal zone area of the City of Los Angeles that has been designated in the City's permit program as the "*Dual Permit Jurisdiction*" area pursuant to Section 13307 of the California Code of Regulations.

Section 30519 of the Coastal Act states:

- (a) Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion

thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.

(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority.

The areas specified in Section 30519(b) are known as the Commission's *Original Jurisdiction* area. The proposed project is partially located seaward of the mean high tide line of Ballona Lagoon within the Commission's area of *Original Jurisdiction*. Pursuant to Section 30519 of the Coastal Act, any development located within the Commission's area of original jurisdiction requires a coastal development permit from the Commission.

In this case, the required "dual" Coastal Commission coastal development permit application and the required coastal development permit application for development proposed within the Commission's area of original jurisdiction have been combined into one application which the City has submitted for Commission review and action (Coastal Development Permit Application 5-01-257). The Commission's standard of review for the proposed development in both the *Dual Permit Jurisdiction* area and within its area of original jurisdiction is the Chapter 3 policies of the Coastal Act. The certified Venice LUP is advisory in nature and may provide guidance.

In regards to this appeal, if the Commission finds that a substantial issue exists in regards to the City's approval of the Local Coastal Development Permit No. 00-04, the subsequent de novo action on the local coastal development permit will also be combined with the required "dual" Coastal Commission coastal development permit application (Coastal Development Permit Application 5-01-257). The matter will not be referred back to the local government.

On the other hand, if the Commission finds that no substantial issue exists in regards to the City's approval of the local coastal development permit, then the local coastal development permit approved by the City will be final, and the Commission will act on the required "dual" Coastal Commission coastal development permit as a separate agenda item (Coastal Development Permit Application 5-01-257).

In order to minimize duplication, Commission staff intends to combine the de novo permit action for this appeal (if the Commission finds that a substantial issue exists) and Coastal Development Permit Application 5-01-257 into one staff report and one hearing for concurrent Commission action. If the Commission finds that a substantial issue exists, staff will schedule a combined hearing at a future Commission meeting in Southern California.

V. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to whether the approval of the project is consistent with the provisions of Chapter 3 of the Coastal Act (commencing with Section 30200), pursuant to PRC Section 30625(b)(1).

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

MOTION

*"I move that the Commission determine that Appeal No. A-5-VEN-01-279 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed."*

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

Resolution to Find Substantial Issue

The Commission hereby finds that Appeal No. **A-5-VEN-01-279** presents a substantial issue with respect to conformity with the Chapter 3 policies of the Coastal Act.

VI. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and History

Using funds obtained from a Proposition A-2 grant, the City of Los Angeles Department of Public Works is proposing to enhance public recreational opportunities and to restore natural habitat areas along the west bank of Ballona Lagoon in Venice (Exhibit #1). The certified Venice LUP designates Ballona Lagoon as an Environmentally Sensitive Habitat Area (ESHA).

The proposed development includes: 1) stabilizing the west bank of the lagoon with native plant landscaping, 2) improving the existing west bank public access trail between Grand Canal and Topsail Street, 3) constructing a split rail fence along the west bank public access trail, and 4) constructing a public education/information area with benches at the north end of the lagoon near Jib Street (Exhibit #4). As part of the proposed landscaping plan, the City proposes to spread over 600 cubic yards of topsoil on the west bank of the lagoon using small dozers. The source of the proposed topsoil would be Grand Canal; the waterway attached to the north end of Ballona Lagoon. The proposed dredging of Grand Canal is not a part of the currently proposed Ballona Lagoon enhancement project (See Appeal A5-VEN-01-280 & Application 5-01-289). Private contractors will be utilized to implement the proposed project.

The proposed project would be the third phase of the Ballona Lagoon Enhancement Plan (BLEP) to be implemented. The BLEP was developed in 1992 by the Ballona Lagoon Marine Preserve (BLMP) and the California State Coastal Conservancy. The BLMP is a non-profit group consisting of members of the local community. Prior phases of the Ballona Lagoon Enhancement Plan have been implemented on the east bank, south end, and in the submerged areas of Ballona Lagoon pursuant to the Commission's approval of Coastal Development Permit 5-95-152 and subsequent permit amendments (City of LA/BLMP/Coastal Conservancy). The City is the only applicant for the currently proposed project.

The previously approved phases of the BLEP were funded and implemented by the California State Coastal Conservancy, the City of Los Angeles and the BLMP. The completed portions of the BLEP include: 1) improvement of a public access trail and split rail fence along the entire east bank of the lagoon, 2) revegetation of the east bank of the lagoon with native plant landscaping, 3) dredging of the channel and creation of a deep-water pool at the south end of the lagoon to improve hydrological conditions, 4) construction of a public view deck/education area at the south end of the lagoon near Via Marina, and most recently 5) installation of filtered catch basins and stormceptors in the west bank storm drains that discharge into the lagoon. The filtered catch basins and stormceptors were installed in the west bank storm drains pursuant to Coastal Development Permit 5-00-161 (City of LA). The provision of the east bank public access trail was a requirement of Coastal Development Permit A-266-77 (ILA). All the other completed BLEP improvements were approved by Coastal Development Permit 5-95-152 and subsequent permit amendments (City of LA/BLMP/Coastal Conservancy).

Ballona Lagoon is located in the Silver Strand/Marina Peninsula area of Venice in the City of Los Angeles, adjacent to the Marina del Rey entrance channel (Exhibit #1). The currently proposed project site includes only the west bank of Ballona Lagoon, with some work proposed below the high water line: elevation +2.7 mean sea level (MSL). The work proposed below the high water line involves an undetermined amount of fill that the City proposes to place in two eroded west bank areas near Jib Street and Topsail Street. Some planting (pickleweed) would also occur below the high water line.

The west bank of Ballona Lagoon is comprised of City-owned lands (Esplanade West right-of-way and Lots G through P between Jib Street and Topsail Street) and 25 privately owned lots (Exhibit #4). Approximately twenty of the privately owned lots have been, or are being developed, with single family residences. Five of the privately owned lots and all of the City-owned lots remain undeveloped. The first fifteen-feet of each developed lot (adjacent to the Esplanade West) has been offered as an easement (as a condition of Commission-approved development) in order to create a lagoon buffer between the west bank homes and the water. [See Exhibit #6 for conditions of Commission-approved homes on west bank of Ballona Lagoon.] As part of the proposed project, the City proposes to add topsoil and revegetate (with native plants) all of the City-owned properties, as well as the easement areas (lagoon buffer) on the privately-owned lots which have been offered for habitat restoration and/or public access (Exhibit #3). Several of the offers of dedication for the lagoon buffer easements have not yet been accepted by the City, and private development encroaches over the easements in several locations.

An unimproved trail already exists between Canal Court and Topsail Street on the west bank. The existing trail is proposed to be realigned and improved as a five-foot wide decomposed granite public access path (Exhibit #4). The proposed new public access trail meanders along the higher elevations of the west bank near the eastern curblin of Pacific Avenue (Exhibit #4). The City proposes to install a 36-inch high split rail fence (with green vinyl-coated chain-link fence) along the east side of the meandering trail to protect the lagoon habitat area from intrusion by people and domestic animals (Exhibit #3, p.2). The proposed new trail and fence would be located entirely on City land, connecting the existing improved Grand Canal public accessway to the Pacific Avenue public sidewalk at Topsail Street (Exhibit #4, p.1). No fill will be placed below the high water line in order to create the proposed trail. The existing Lighthouse Street pedestrian bridge, the only bridge over the lagoon and an important coastal access route, will not be affected by the proposed project.

At Jib Street near the north end of the lagoon, the City proposes to construct a public education/information area next to the west bank public access trail (Exhibit #4, p.3). The public education/information area would have public benches and information kiosks. The City is still working on the final plans for this portion of the proposed project. On Pacific Avenue near the proposed public education/information area, the City proposes to close an unimproved public parking area (four spaces) situated in the Jib Street right-of-way by constructing a new curb and gutter on the east shoulder of Pacific Avenue (Exhibit #4, p.3).

B. Ballona Lagoon

As previously stated, Ballona Lagoon is located in the Silver Strand/Marina Peninsula area of Venice in the City of Los Angeles, adjacent to the Marina del Rey entrance channel (Exhibit #1). The lagoon is an artificially confined tidal slough connecting the Venice Canals to the Pacific Ocean via the Marina del Rey harbor entrance channel. The certified Venice LUP designates the 4,000-foot long lagoon as an Environmentally Sensitive Habitat Area (ESHA). It is 150-200 feet wide and contains approximately sixteen acres of open water and wetland area.

The tidal regime in Ballona Lagoon is restricted by an automated tide gate located at the south end of the lagoon where three seven-foot diameter pipes connect the lagoon to the waters of the Marina del Rey entrance channel. The Los Angeles County Department of Beaches and Harbors operates the tide gate. The automated tide gate limits the peak tidal elevation in Ballona Lagoon to approximately 2.65 feet above MSL. The low water level (MLLW) in the lagoon is recorded as -1.88 MSL.

The parts of the lagoon situated below the low water level of -1.88 MSL are referred to as subtidal habitat areas because they are habitat areas which are always under water. The parts of the lagoon which are sometimes covered by water, but are exposed when the water is at its lowest level, are referred to as intertidal habitat areas. Intertidal habitat areas, like sand bars and the mudflats located on the east and west banks of the lagoon, are exposed during the lowest tides and are underwater during the highest tides. Upland areas are located above the high water line (+2.65' MSL) and are always dry (except when irrigated and when it rains).

The water depths in the lagoon vary from zero to eight feet depending on the tide level and the location of measurement. Since the completion of the dredging approved by Coastal Development Permit Amendment 5-95-152-A1, the deepest bottom elevations (-6.0' MSL) are found in the deep-water pool that was created at the south end of the lagoon near Via Marina.

Two lots, which are remnants of the original Spanish land grant, comprise most of the submerged areas within Ballona Lagoon. At the southern end of the lagoon, the submerged area (Lot C) located between Topsail Street and Via Marina is owned by the Summa Corporation (Exhibit #4, p.1). The Summa Corporation has granted to the City of Los Angeles a permanent conservation/open space easement over Lot C. This easement allows for subtidal and intertidal habitat maintenance and the preservation of the natural and scenic character of the easement. The submerged area within the northern two-thirds of the lagoon is Lot R (Exhibit #4, p.1). Lot R, owned by the City of Los Angeles, extends north from Topsail Street to Grand Canal at the extreme northern end of lagoon.

The banks of the lagoon are remnants of coastal sand dunes. The banks are generally steep, varying from 1:1 to 1:2, and are comprised primarily of sandy silt soils. Because of the steepness and composition of the banks, erosion has been a significant problem, especially where street drains and path drains run into the lagoon. Bank erosion is especially prevalent on the west bank of the lagoon at Jib Street and Topsail Street, where gullies extend as far inland as Pacific Avenue. Due to the bank erosion on the west side of the lagoon, most of the length of the unimproved Esplanade West City right-of-way is submerged or within the intertidal area.

Ballona Lagoon is surrounded by a highly urbanized area of single and multiple family residential development. The properties which adjoin the east and west banks of the lagoon are developed with single-family residences. On the east bank of the lagoon, a public access path and lagoon buffer area, both required by Coastal Development Permit A-266-77 (ILA), separate the residential development from the waters of the lagoon. An undeveloped City right-of-way (Esplanade East) comprises part of the forty-foot wide lagoon buffer on the east bank. The remainder of the forty-foot wide east bank lagoon buffer is comprised of front yard setbacks and 24 to 30-foot wide portions of the lagoon fronting lots which have been dedicated as open space and public access easements. Pursuant to Coastal Development Permit A-266-77 (ILA), each lagoon fronting lot owner on the east bank, as a condition of individual permits for developing their property, is required to offer to dedicate a 24 to 30-foot easement for habitat protection and public access as part of the forty-foot wide lagoon buffer. [See Exhibit #6 for conditions of Commission-approved homes on west bank of Ballona Lagoon.]

A similar but narrower lagoon buffer exists on the west bank. The west bank of Ballona Lagoon is comprised of mostly of City-owned lands: Esplanade West right-of-way and Lots G through P between Jib Street and Topsail Street (Exhibit #4, p.1). The City-owned lands are undeveloped and form a protective buffer between the waters of the lagoon and Pacific Avenue. As it does on the east bank, the undeveloped City right-of-way (Esplanade West) comprises part of the lagoon buffer on the west bank, except in the eroded areas where it is submerged and is part of the water area of the lagoon. Due to bank erosion, much of the length of the Esplanade West is submerged or within the intertidal area of the lagoon.

South of Topsail Street, there are 25 privately owned lots on the west bank, of which approximately twenty have been, or are being developed, with single family residences (Exhibit #4, p.1). Five of the privately owned lots remain undeveloped. When approving coastal development permits for the construction of single family residences on the west bank of the lagoon, the Commission has required the provision of a 25-foot wide lagoon buffer between the easterly edge of the Esplanade West and the development in order to ensure that adequate area exists for habitat protection and a potential future west bank public access trail (Exhibit #6). The 25-foot wide west bank lagoon buffer is comprised of the ten-foot wide Esplanade West right-of-way and the first fifteen-feet of each developed lot adjacent to the Esplanade West. The first fifteen-feet of each developed lot (adjacent to the Esplanade West) has been offered as an easement (as a condition of Commission-approved development) in order to create a lagoon buffer between the west bank homes and the water. Several of the offers of dedication for the lagoon buffer easements, however, have not yet been accepted by the City. Private development encroaches over the easements in several locations. [See Exhibit #6 for conditions of Commission-approved homes on west bank of Ballona Lagoon.]

The north end of Ballona Lagoon connects to Grand Canal, which is part of the Venice Canals system (Exhibit #4, p.1). The northern Venice Canals are connected to the north end of Grand Canal by five three-foot diameter pipes which pass beneath the Washington Boulevard bridge. All five pipes have slide gates on the north side of Washington Boulevard, which are operated by the City of Los Angeles to allow flushing of the Venice Canals. All of the water in the Venice Canals, except for discharges from stormdrains and other sources, originates in the Marina del Rey entrance channel and must pass through Ballona Lagoon and Grand Canal before it reaches the furthest reaches of the canals system.

C. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with Chapter 3 of the Coastal Act. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appellant raises no significant questions". In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

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

Staff is recommending that the Commission find that a **substantial issue** does exist with respect to whether the approval of the project is consistent with the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

D. Substantial Issue Analysis

As stated in Section III of this report, the grounds for an appeal of a coastal development permit issued by the local government prior to certification of its Local Coastal Program (LCP) are the Chapter 3 policies of the Coastal Act. Any such local government coastal development permit may be appealed to the Commission. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act. In this case, staff has recommended that a substantial issue does exist.

The appellants contend that the local coastal development permit does not adequately analyze and mitigate the potential impacts of the proposed project on endangered species (California least tern, California black rail and southern steelhead trout), the sensitive habitat areas in and adjacent to Ballona Lagoon, and nearby residents. Ballona Lagoon is an Environmentally Sensitive Habitat Area (ESHA).

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (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.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or

economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

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 City proposes to enhance and restore the marine resources of Ballona Lagoon. While the final design of the proposed project, which includes the planting of native plants and the improvement of an existing public access path, may seem innocuous and be totally consistent with the certified Venice LUP and the Ballona Lagoon Enhancement Plan (BLEP), the City's approval includes few specifics or limitations on how the proposed project would be implemented. The local coastal development permit does not adequately analyze and mitigate the potential impacts that the construction of the proposed project may have on the environment, and the public access issues and potential for restoration of the entire west bank lagoon buffer are not fully addressed.

For example, the local coastal development permit authorizes the removal of all non-native vegetation from the west bank of Ballona Lagoon, but it does not limit the methods used for such activity by the contractor which is hired to do the work. Substantial damage occurred (e.g. loss of native plants and siltation) when a contractor used heavy machinery to remove all vegetation from the east bank of the lagoon in 1996. The local coastal development permit does not state whether such a construction method is approved for the west bank. Section 30240 of the Coastal Act requires that ESHA's be protected against any significant disruption of habitat values. The local approval's lack of specificity in identifying which types of construction methods are permitted or not permitted during construction of the project does not carry out the requirement of Section 30240 to protect the ESHA against significant disruption. Therefore a substantial issue exists in regards to the proposed project's conformity with 30240 of the Coastal Act.

Additionally, the City proposes to spread over 600 cubic yards of dredge material on the west bank using small dozers. The local coastal development permit does not include specific provisions to ensure that the placement of this material near the water will not result in siltation in the lagoon. Siltation in the lagoon would degrade the ESHA in violation of Sections 30230, 30231 and 30240 of the Coastal Act. Therefore a substantial issue exists in regards to the proposed project's conformity with the Coastal Act.

The local coastal development permit also does not state how much of the proposed fill would occur in the intertidal area, if any. It does not prohibit such fill, and the City does state that two eroded west bank areas near Jib Street and Topsail Street are proposed to be filled. In any case, the City does not have coastal development permit jurisdiction to approve any fill in the Commission's area of original jurisdiction (see Section IV on Page Six). The local coastal development permit does not include clear delineation between the portion of the project approved within the City's permit jurisdiction and the portion of the project proposed within the Commission's area of original jurisdiction (wetlands and submerged lands). The lack of clarity in regards to potential impacts to wetlands is a substantial issue in regards to conformity with Chapter 3 of the Coastal Act.

In regards to the California least tern, the single condition of the local coastal development permit prohibits construction within Ballona Lagoon (including lagoon banks) during the least tern nesting season. The local coastal development permit, however, defines least tern nesting season as April 14 through August 14. The source of the City's least tern nesting season definition is unknown. The Commission, in consultation with the Department of Fish and Game (DFG) and the U.S. Fish and Wildlife service, generally defines the least tern nesting season as April 1 through September 15, a longer and more protective period than the season defined by the City. Although the City consulted with the DFG for prior phases of the BLEP, the most recent DFG review of work proposed in Ballona Lagoon occurred in 1996. The City has not consulted with the Department of Fish and Game for the currently proposed project, and the local coastal development permit does not include any analysis of impacts to other sensitive species in the ESHA. The City's mitigation for impacts to the least tern is questionable. Therefore, a substantial issue exists in regards to the project's impacts to endangered species and the natural resources of Ballona Lagoon.

The local coastal development permit also raises a substantial issue with regards to the City's legal ability to undertake the proposed development. The City has incorrectly stated that all of the proposed development is on City land. The proposed project, however, includes the revegetation of the lagoon buffer easements that exist on the west bank private lots located south of Topsail Street (Exhibit #4, ps.7&8). The lagoon buffer easements allow the City to undertake habitat and public access improvements (Exhibit #6). Several offers of dedication for lagoon buffer easements remain unaccepted. Private development encroaches over the easements in several locations. The local coastal development permit does not address whether the City plans to accept the outstanding offers for the easements or how the City is going to proceed with the proposed project on the existing easements which are already accepted. Therefore, a substantial issue exists in regards to the City's legal ability to undertake the proposed development.

The appeal by the Concerned Residents of Ballona Lagoon states that the proposed project is inconsistent with certified Venice Land Use Plan (LUP) Policy II.C.3, which states, "*Pedestrian access and interpretative overlooks to the Ballona Lagoon shall be enhanced without invading the privacy of adjoining residents.*" (emphasis added). The appeal also asserts that the proposed project is inconsistent with the Ballona Lagoon Enhancement Plan (BLEP) which states that, "*the strategy along the western shore is to limit physical access.*"

This grounds for appeal reflects the Concerned Residents of Ballona Lagoon objections to any new public access trails and any improvements in the west bank lagoon buffer area situated between the water and their homes. The City's original proposal included the completion of a public access trail along the entire west bank of the lagoon, including a 180-foot long wooden walkway in the intertidal area. The City's original proposal would have extended the existing public access path southward 1,200 feet from its current terminus at Topsail Street to the south end of the lagoon at Via Marina. The new public access trail was proposed to be built across the afore-mentioned lagoon buffer easements on the water side of the private west bank homes located south of Topsail Street (Exhibit #4, ps.7&8). The resident's opposed this part of the proposed project raising privacy and public safety concerns.

In numerous past actions, the Commission has approved public accessways on easements near private residences finding that such trails do not invade the privacy of adjoining residents (see Coastal Development Permit A-266-77 for Ballona Lagoon East Bank public access trail). The City responded to the residents' objections and their privacy and safety concerns at the local appeal by eliminating the new public access trail from the proposed project. The local coastal development permit currently approves only the improvement of the existing west bank public access trail which is on City land located north of Topsail Street. The existing trail raises no issue of privacy of adjoining residents and provides the public no new access to west bank areas. The proposed split rail fence that would run along the waterside of the improved west bank public access trail limits physical access to the western shore of the lagoon (Exhibit #3, p.2). The Commission can address the resident's concerns and the appropriateness of a new public access trail for the west bank area located north of Topsail Street as part of the de novo permit process.

The appeal by the Concerned Residents of Ballona Lagoon asserts that the proposed project would negatively impact visual resources of Ballona Lagoon.

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.

A public education/information area and a 36-inch high fence are proposed along the public access trail. The proposed public education/information area was approved next to the west bank public access trail at Jib Street near the north end of the lagoon (Exhibit #4, p.3). The public education/information area includes public benches, signs and/or information kiosks. The City is still working on the final plans for this portion of the proposed project. Because there are no final plans for the signs and other development proposed as part of the public

education/information area, the local coastal development permit does not include a thorough analysis of the proposed project's impacts to public views and the visual resources of Ballona Lagoon. Therefore, a substantial issue exists as to whether the proposed development conforms to the requirements of Section 30251 of the Coastal Act.

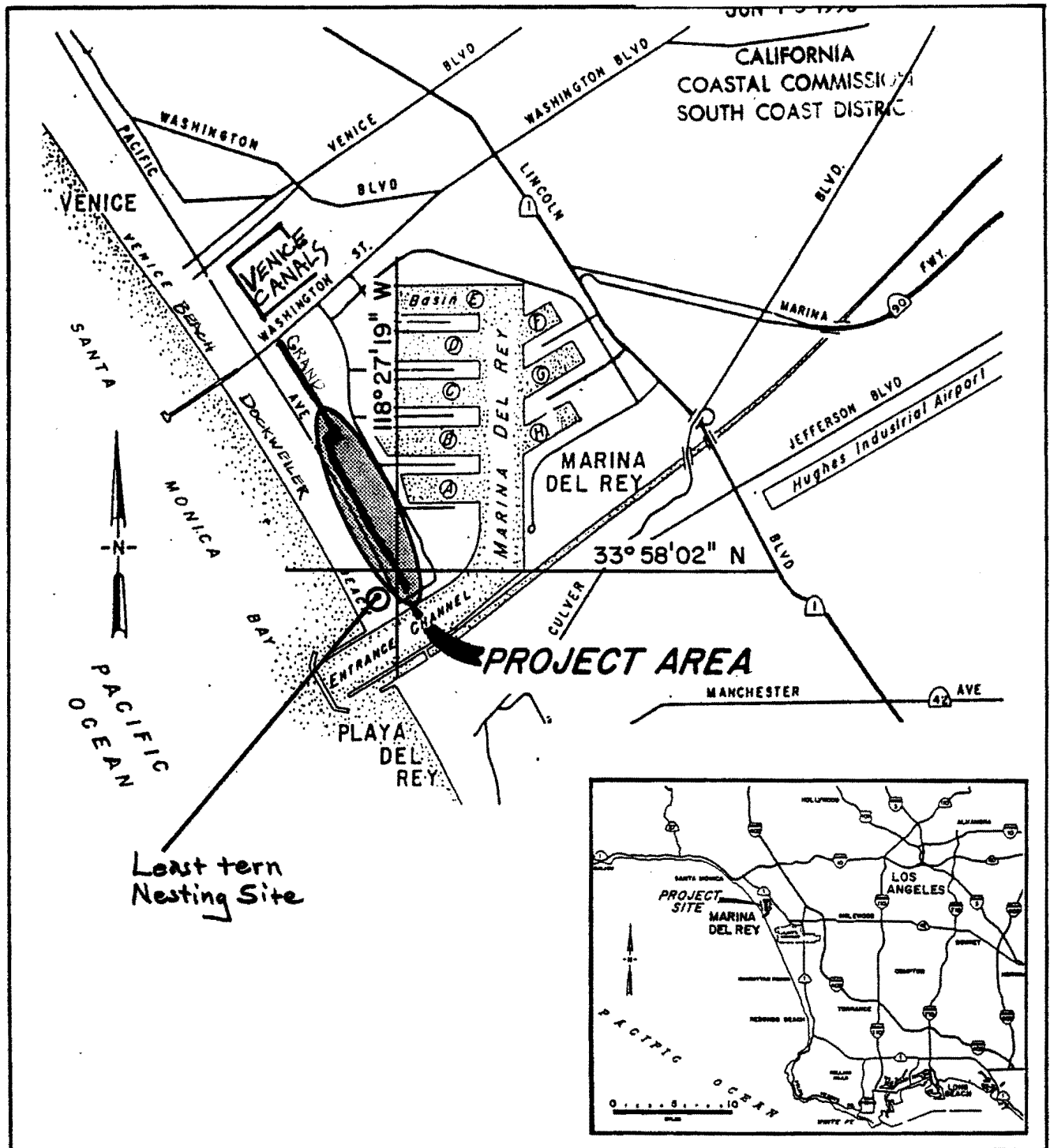
The appeal by the Concerned Residents of Ballona Lagoon also asserts that the proposed project is inconsistent with the California Environmental Quality Act (CEQA). The project's consistency with CEQA is not the standard of review for an appeal of a local coastal development permit issued by the City pursuant to Section 30600(b) of the Coastal Act. The standard of review for an appeal of a local coastal development permit issued by the City pursuant to Section 30600(b) of the Coastal Act is conformity with Chapter 3 of the Coastal Act. In this case, a substantial issue does exist as to whether the proposed project and the local coastal development permit conform to the Chapter 3 policies of the Coastal Act.

E. Conclusion

Because of the importance of the Coastal Act issues raised to by the appellants, the proposed project must be reviewed and considered by the Commission pursuant to the Chapter 3 policies of the Coastal Act. The Commission finds that a substantial issue exists with respect to the proposed project's conformance the Chapter 3 policies of the Coastal Act and with the City's approval of Local Coastal Development Permit No. 00-04 because the local coastal development permit does not adequately analyze and mitigate the potential impacts of the proposed project on endangered species (California least tern) and the sensitive habitat areas in and adjacent to Ballona Lagoon. In addition, public access issues and potential restoration of the entire west bank lagoon buffer have not been fully addressed. The Commission will have the opportunity to review and act on the proposed project at the subsequent de novo hearing, and after the public hearing for Coastal Development Permit application 5-01-257 which will be scheduled for concurrent hearing and action with the de novo permit.

The Commission' actions on the de novo permit and Coastal Development Permit application 5-01-257 will ensure that the proposed project will protect the ESHA, water quality, marine resources, public access, coastal views and lower cost recreational opportunities as required by the Coastal Act.

5-95-152



PURPOSE: WETLAND RECLAMATION

DATUM:

ADJACENT PROPERTY OWNERS:
SEE ATTACHED LIST

VICINITY MAP



BALLONA LAGOON MARINE PRESERVE
P.O. BOX 9244
MARINA DEL REY, CA. 90295

Ballona Lagoon

COASTAL COMMISSION
A5-VEN-01-279

EXHIBIT # 1
PAGE 1 OF 1

ELLEN STEIN
PRESIDENT
VALERIE LYNN SHAW
VICE-PRESIDENT
MARIBEL MARIN
PRESIDENT PRO-TEM
STEVEN CARMONA
WOODY FLEMING

JAMES A. GIBSON
SECRETARY



RICHARD J. RIORDAN
MAYOR

VITALY B. TROYAN, P.E.
CITY ENGINEER

650 SOUTH SPRING ST., SUITE 200
LOS ANGELES, CA 90014-1911

COASTAL DEVELOPMENT PERMIT

(Under authority of Sec. 30600(b) of the California Coastal Act of 1976)

PROJECT TYPE: ☒ Public ☐ Private
APPLICATION NUMBER: 00-04
NAME OF APPLICANT: City of Los Angeles, Bureau of Engineering
DEVELOPMENT LOCATION: Venice Community Plan Area

DEVELOPMENT DESCRIPTION: Implementation of Phase III of the Ballona Lagoon Enhancement Plan involves: (1) stabilizing the lagoon bank with native plant landscaping in order to provide minor erosion control, (2) improving an existing dirt public access trail from Canal Court to Topsail Street, (3) constructing a natural colored split rail fence along the public access trail, and (4) constructing a public education/information small area with benches at the north end of the lagoon.

- I. FINDINGS: In keeping with the findings and recommendations set forth in the adopted staff report incorporated herein by reference, the City of Los Angeles finds that:
- (a) The development is in conformity with Chapter 3 of the California Coastal Act of 1976, and will not prejudice the ability of the City of Los Angeles to prepare a Local Coastal Program in conformity with said Chapter 3.
 - (b) The Interpretative Guidelines established by the Coastal Commission dated August 14, 1978 and any subsequent amendments thereto have been reviewed, analyzed, and considered in the light of the individual project in making this determination, and the decision of the permit granting authority has been guided by any applicable decision of the Coastal Commission.
 - (c) If the development is located between the nearest public road and the sea or shoreline of any body of water located within the Coastal Zone, the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.
 - (d) There are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available for imposition by this authority under power granted to it which would substantially lessen any significant adverse impact that the development, as finally permitted, may have on the environment.
- II. Pursuant to a public hearing held on April 25, 2000, at the Venice Branch Library, and action by the Board of Public Works on June 22, 2001, permit application number 00-04 was approved.
- III. This permit may not be assigned to another person except as provided in Section 13170, Coastal Commission Rules and Regulations.

COASTAL COMMISSION
AS-VEN-01-279

IV. This permit shall not become effective until the expiration of twenty (20) working days after a COPY of this permit has been received by the California Coastal Commission, South Coast Area, upon which all permittee(s) or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents and unless a valid appeal is filed. If the acknowledgement has not been returned within the time for commencement of construction under Section 13156(g), the executive director shall not accept any application for the extension of the permit.

V. Work authorized by this permit must commence within two (2) years from the effective date of this permit. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

VI. Issued: June 22, 2001, pursuant to local government authority as provided in Chapter 7 of the California Coastal Act of 1976.

By _____
Raul Rojas
Deputy City Engineer

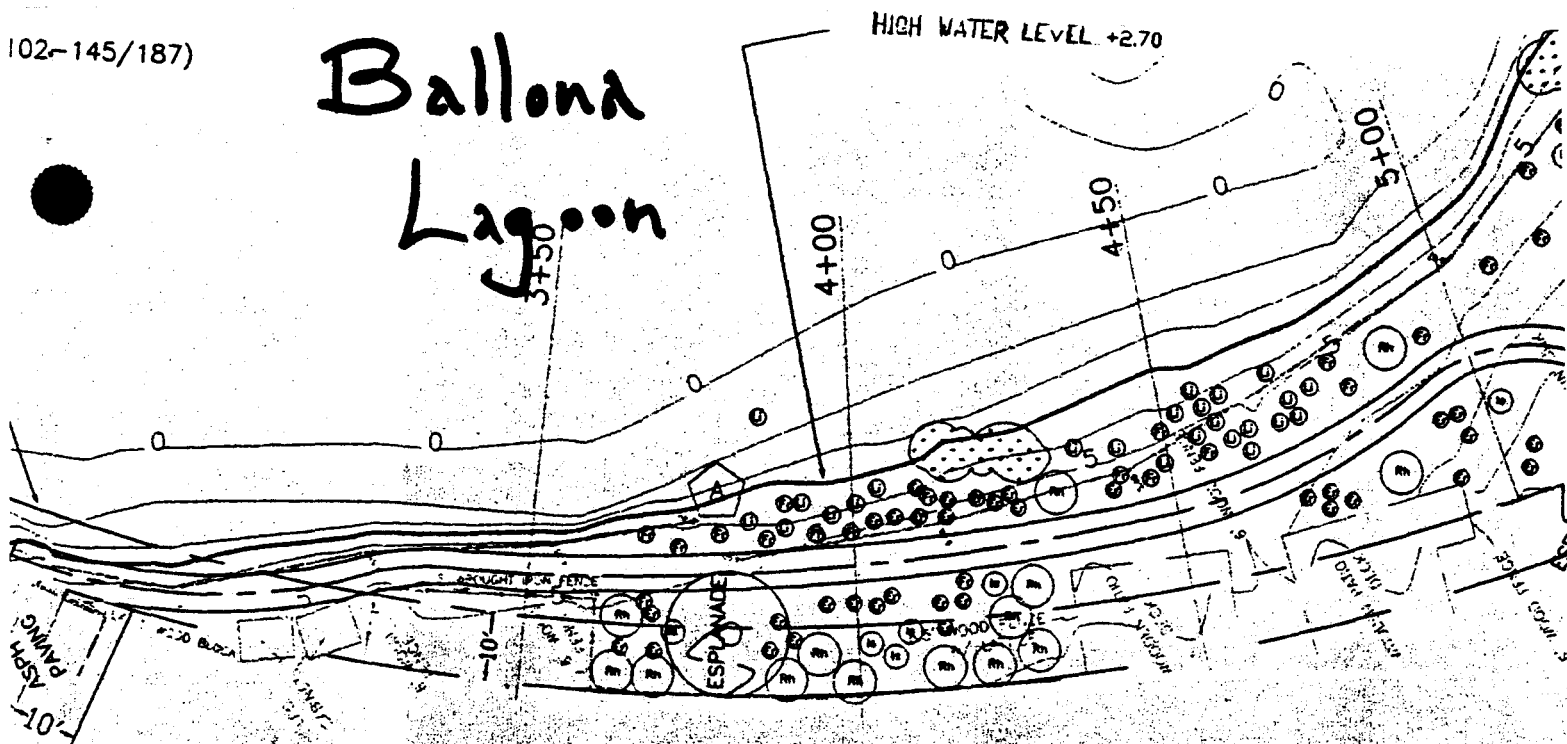
VII. I, Luis Ganaja, permittee/agent, hereby acknowledge receipt of permit number 00-04 and have accepted its contents.

Luis Ganaja
Signature

6-22-01
Date

COASTAL COMMISSION
AS-VEN-01-279

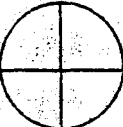












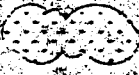
Ballona Lagoon





LEGEND

Planting Plan

QTY.	SIZE	SYMBOL	BOTANICAL NAME	COMMON NAME
------	------	--------	----------------	-------------

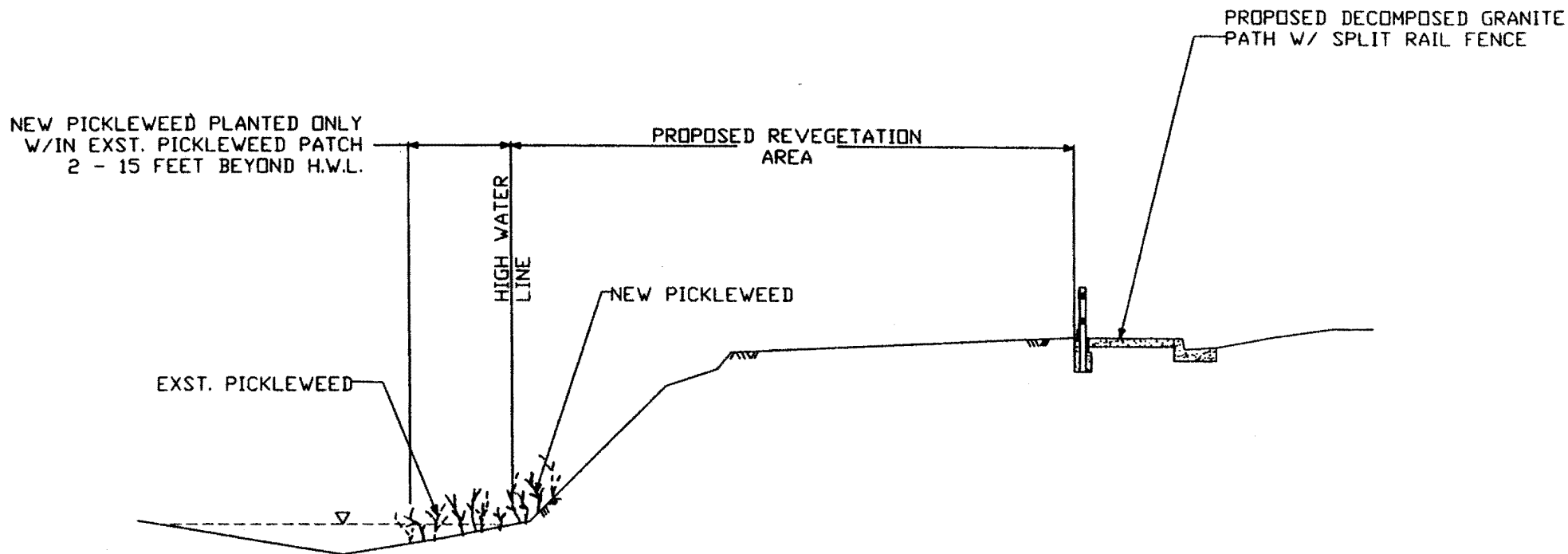
000	24" BOX		POPULUS FREMONTII	FREMONT POPLAR
004	15 GAL.		SALIX LASIOLEPIS	ARROYO WILLOW
008	5 GAL.		SALIX EXIGUA	SAND BAR WILLOW
020	5 GAL.		RHUS INTEGRIFOLIA	LEMONADE BERRY
011	1 GAL.		ARTEMISIA CALIFORNICA	CALIFORNIA SAGE
000	5 GAL.		ATRIPLEX CALIFORNICA	SALT BUSH
015	1 GAL.		ENCELIA CALIFORNICA	BUSH SUNFLOWER
145	LINER		ERIOGONUM PARVIFOLIUM	DUNE BUCKWHEAT
019	LINER		FRANKENIA GRANDIFLORA	FRANKENIA
000	1 GAL.		HAPLOPAPPUS ERICOIDES	GOLDEN BUSH
017	1 GAL.		ISOMERIS ARBOREA	BLADDERPOD
000	LINER		JUNCUS ACUTUS	SPIKE RUSH
029	LINER		LIMONIUM CALIFORNICUM	CALIFORNIA STATICE
	LINER		SALICORNIA SUBTERMINALIS SEE SPECIFICATIONS FOR PLANTING DETAILS	PICKELWEED

GROUND COVER

-  HAND SEED MIX "A" SEE SPECIFICATIONS AND DETAILS FOR LIST
-  HAND SEED MIX "B" SEE SPECIFICATIONS AND DETAILS FOR LIST

COASTAL COMMISSION
A5-VEN-01-279

EXHIBIT # 3
PAGE 1 OF 2



TYPICAL SECTION

Not to Scale

COASTAL COMMISSION

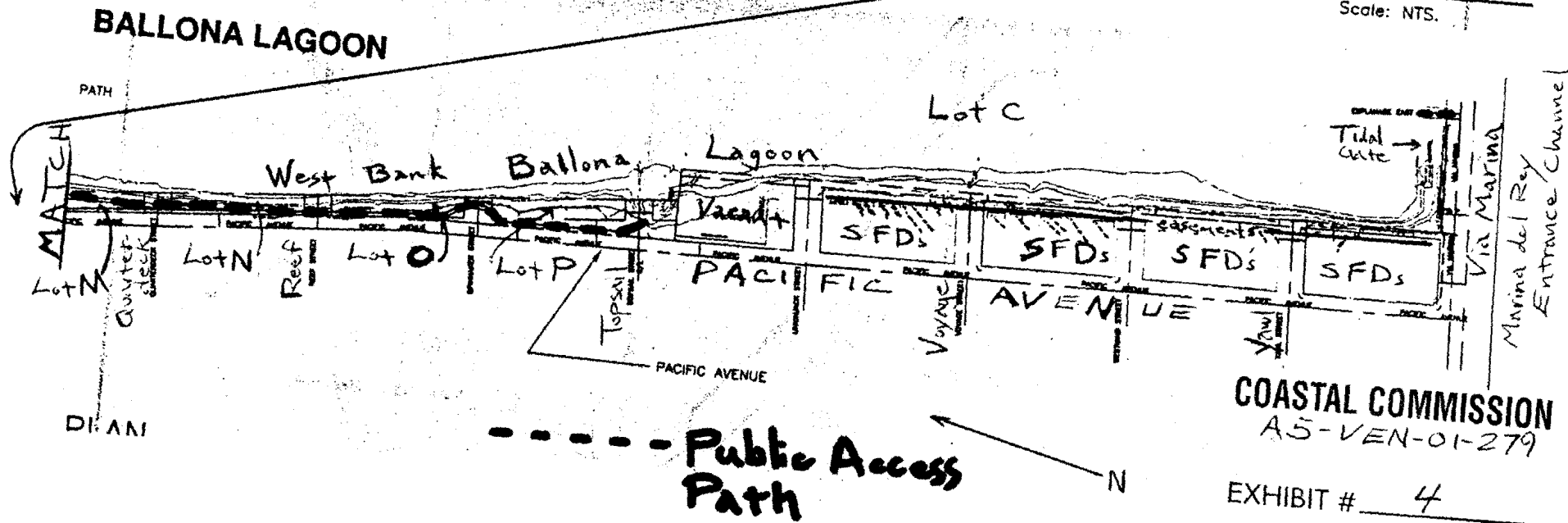
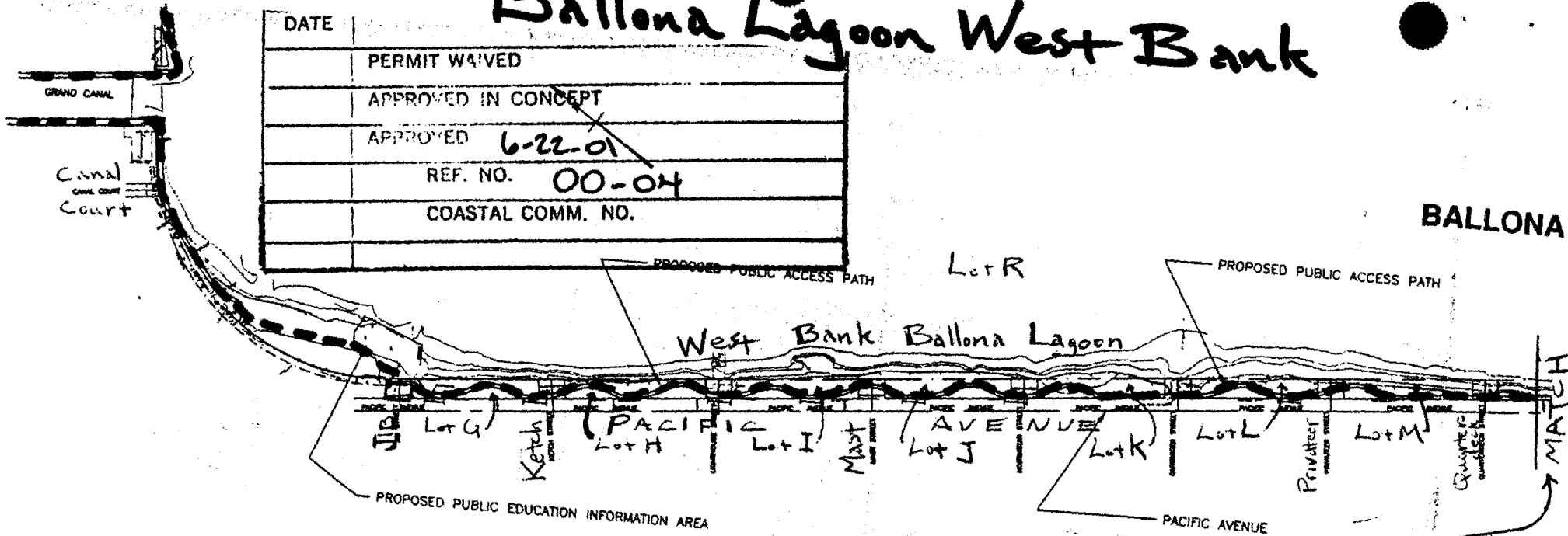
A5-VEN-01-279

EXHIBIT # 3

PAGE 2 OF 2

Ballona Lagoon West Bank

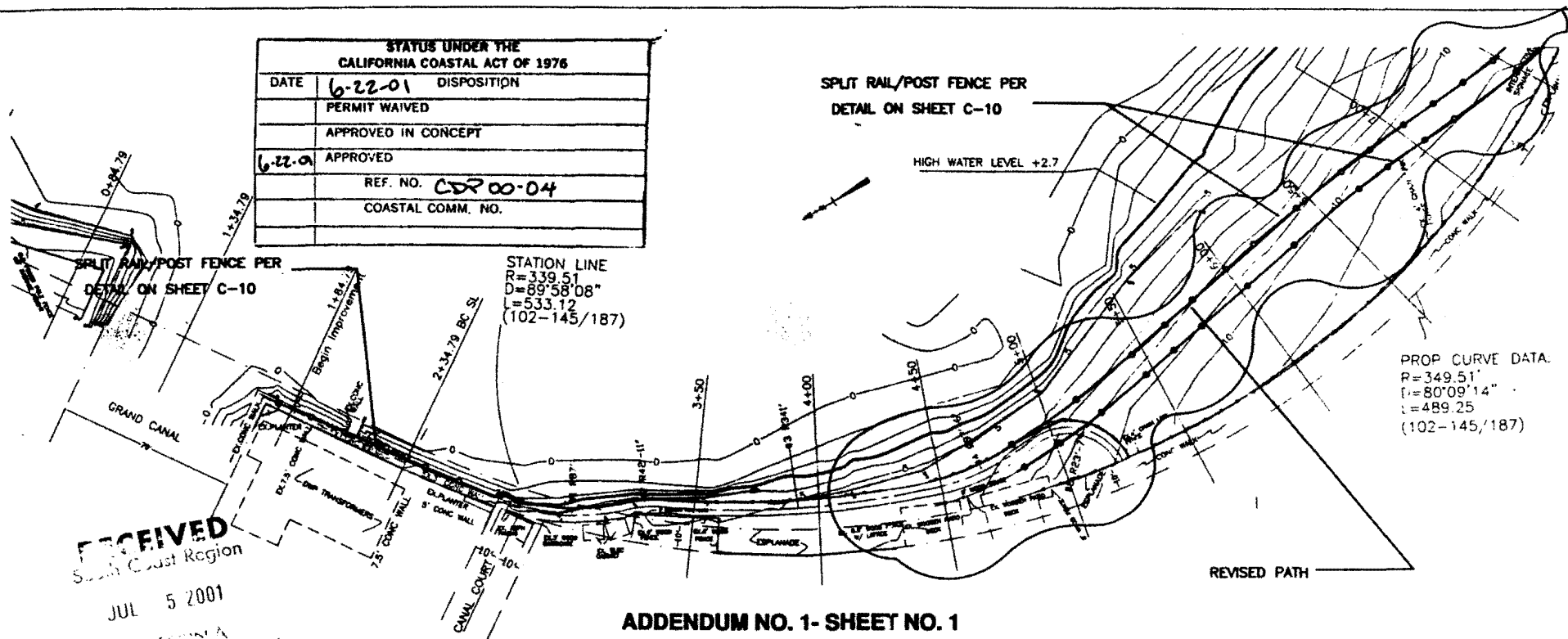
DATE	
PERMIT WAIVED	
APPROVED IN CONCEPT	
APPROVED	6-22-01
REF. NO.	00-04
COASTAL COMM. NO.	



COASTAL COMMISSION
A5-VEN-01-279

EXHIBIT # 4
PAGE 1 OF 8
See pages 2-8 for detail...

STATUS UNDER THE CALIFORNIA COASTAL ACT OF 1976	
DATE	6-22-01
DISPOSITION	PERMIT WAIVED
	APPROVED IN CONCEPT
6-22-01	APPROVED
REF. NO.	CDP 00-04
COASTAL COMM. NO.	



PROP. CURVE DATA:
 $R=349.51'$
 $\Delta=80^{\circ}09'14''$
 $L=489.25'$
 $(102-145/187)$

RECEIVED
 South Coast Region
 JUL 5 2001
 CALIFORNIA
 COASTAL COMMISSION

ADDENDUM NO. 1- SHEET NO. 1

THIS SHEET 'C-2 R' WILL REPLACE 'SHEET NO. C-2' OF PLAN NO. 'D-13956'

PLAN

Scale: 1"=20'

CURVE NO.	BC		EC		RADIUS	ELEVATION
	STATION	OFFSET/SL	STATION	OFFSET/SL		
1	2+72.87	7.79 FT	3+18.99	0 FT	87'	SEE NOTE BELOW
2	3+18.99	0	3+40.71	5.51	42'-11"	
3	3+40.71	5.51	4+43.93	10.73	341'	
4	4+43.93	10.73	4+90.78	19.86	97'-6"	
5	4+90.78	19.86	5+25.00	0.00	23'-7"	

NOTE: ALL ELEVATIONS ARE AT EXISTING GRADE

COASTAL COMMISSI

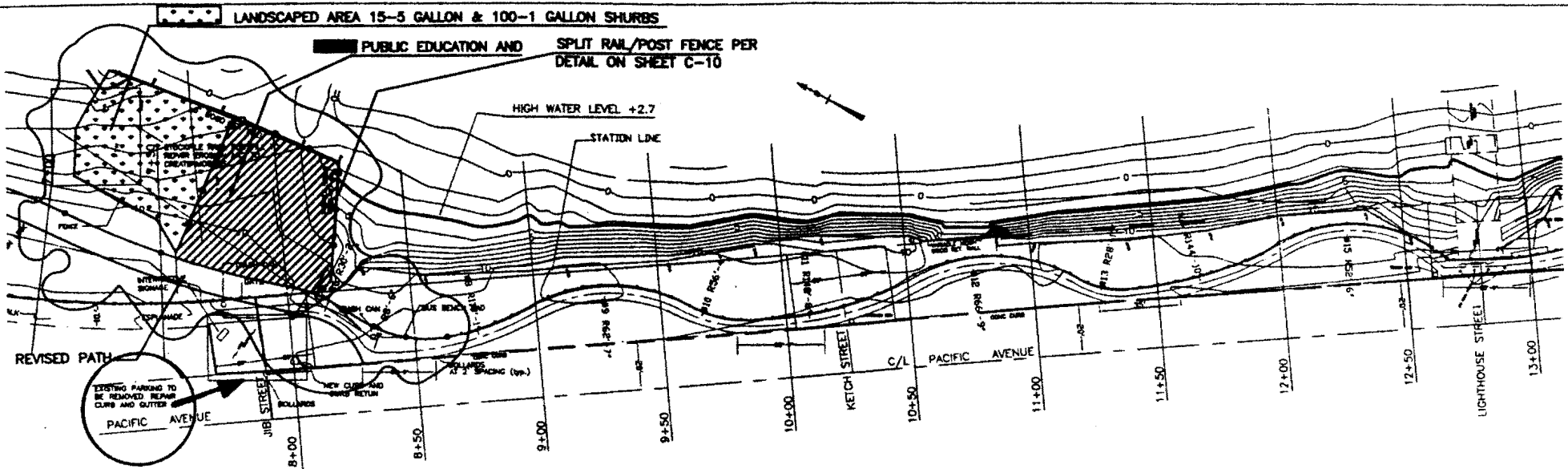
BALLONA LAGOON ENHANCEMENT P
 W.O. E1903241

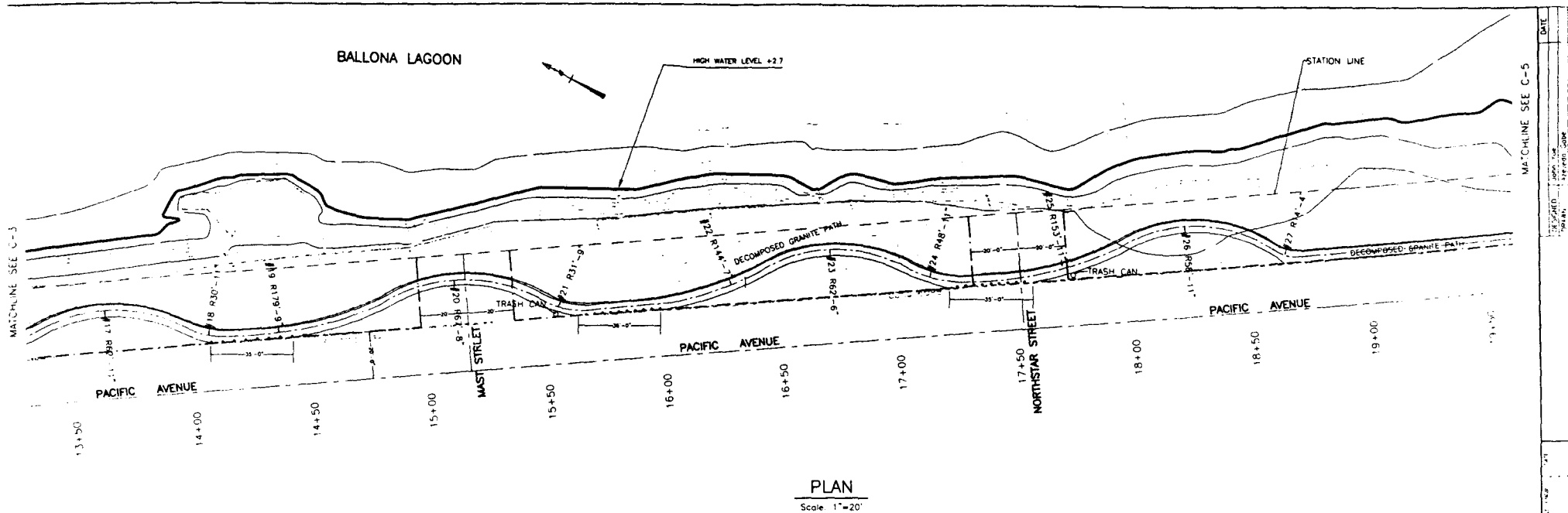
SCALES HORIZ 1" = 20'
 VERT 1" = 20'

SHEET 2 OF 26 SHEETS

EXHIBIT # 4

PAGE 2 OF 8

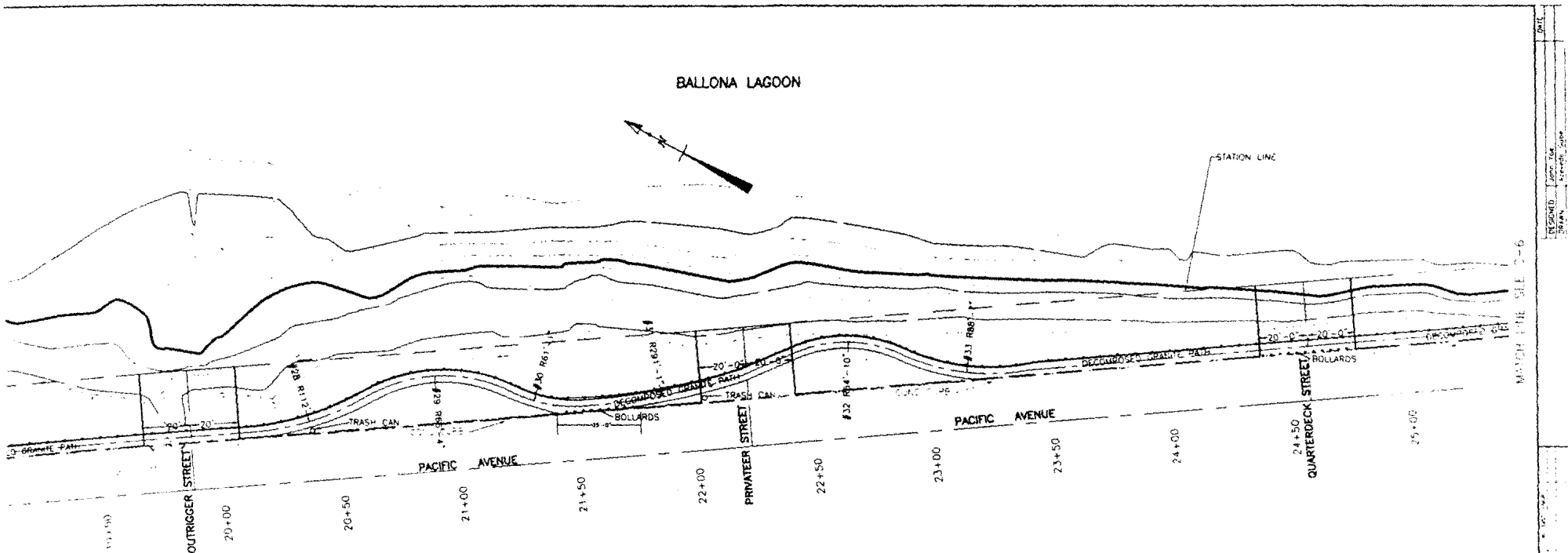




CURVE NO	BC		EC		RADIUS	ELEVATION
	STATION	OFFSET/SL	STATION	OFFSET/SL		
16	12+90.89	26.95 R	13+39.53	16.74 R	110'-10"	SEE NOTE BELOW
17	13+39.53	16.74 R	13+95.45	22.03 R	62'-11"	
18	13+95.45	22.03 R	14+09.28	27.22 R	30'-11"	
19	14+09.28	27.22 R	14+63.70	23.49 R	175'-9"	
20	14+78.20	18.89 R	15+45.59	20.68 R	67'-8"	
21	15+45.59	20.68 R	15+68.29	27.92 R	31'-9"	
22	16+02.58	27.38 R	16+39.75	16.93 R	144'-7"	
23	16+43.13	15.39 R	16+87.56	12.34 R	62'-6"	
24	17+00.00	18.17 R	17+24.94	27.77 R	48'-11"	
25	17+37.98	28.18 R	17+83.18	21.44 R	153'-11"	
26	18+00	14.99 R	18+58.50	24.35 R	58'-11"	
27	18+58.50	24.35 R	18+69.47	27.51 R	14'-4"	

COASTAL COMMISSION

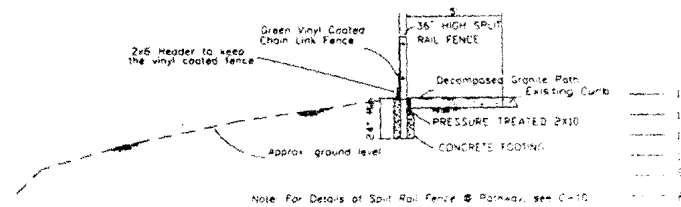
EXHIBIT # 4
PAGE 4 OF 8



PLAN
Scale: 1" = 20'

CURVE NO.	BC		EC		RADIUS	ELEVATION
	STATION	OFFSET/SL	STATION	OFFSET/SL		
28	20+13.27	27.62	20+58.79	16.86	112'	SEE NOTE BELOW
29	20+62.55	14.73	21+14.38	15.93	66'-4"	
30	21+27.21	20.69	21+35.43	25.47	61'-1"	
31	21+47.90	27.55	22+18.52	20.10	29'-1"	
32	22+39.90	13.35	22+88.74	18.59	54'-10"	

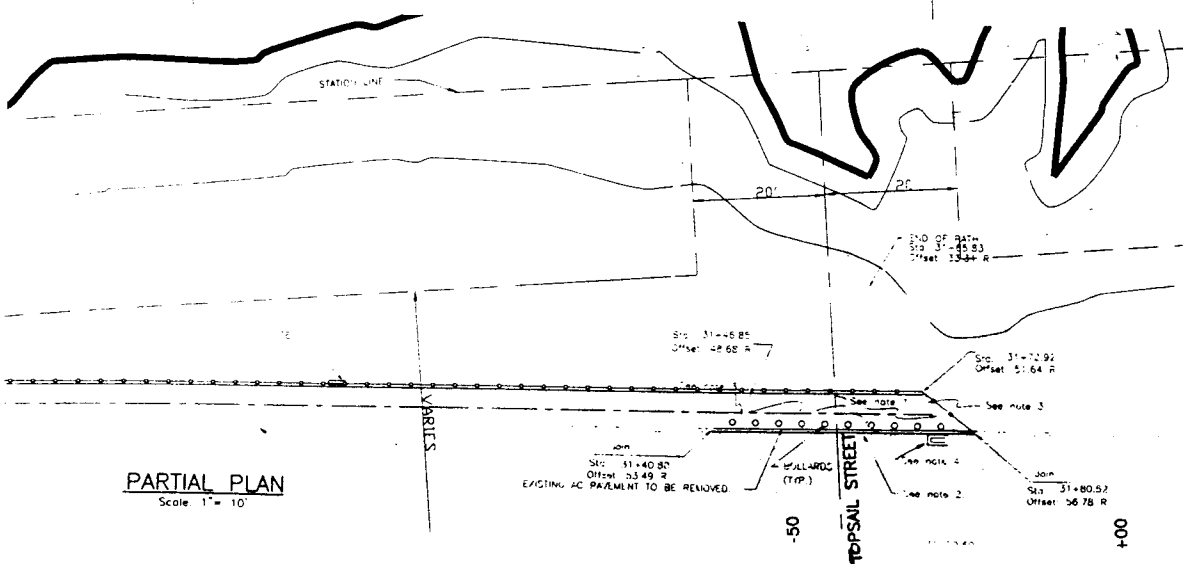
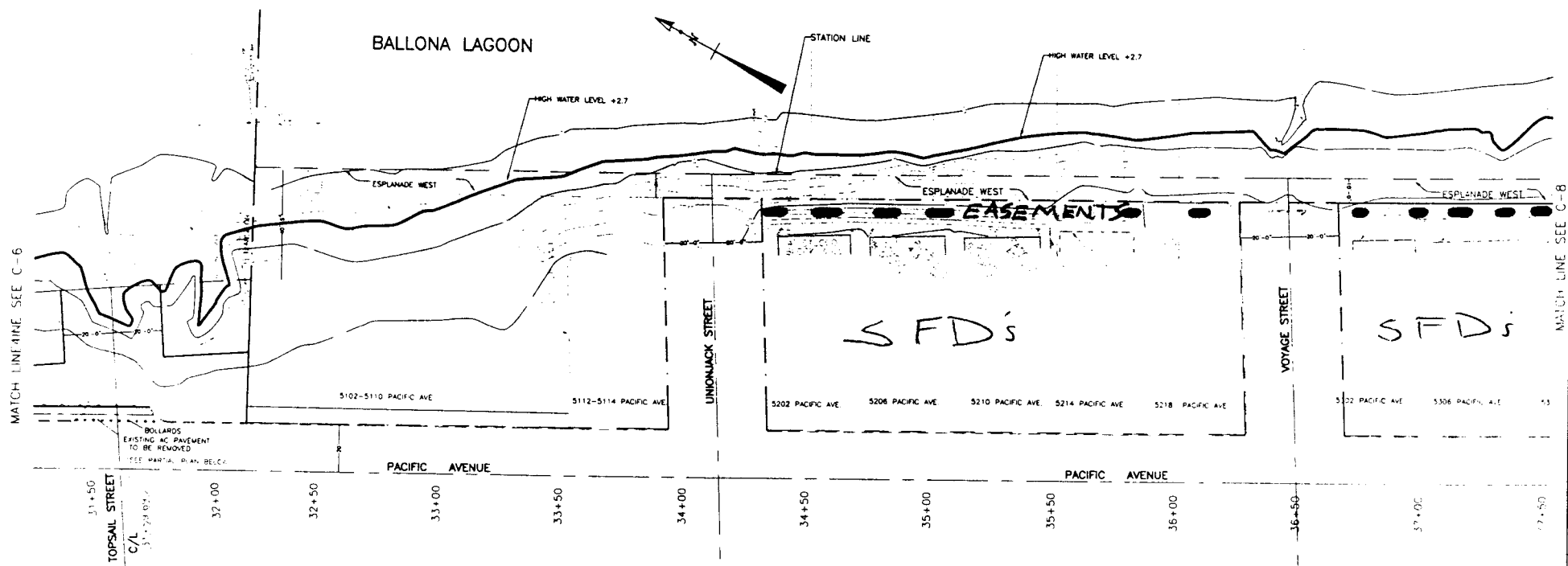
NOTE: ALL ELEVATIONS ARE AT EXISTING GRADES



TYP. SECTION @ OUTRIGGER STREET
Scale: 1" = 20'

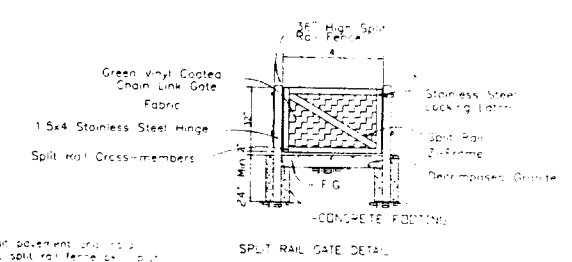


EXHIBIT # 4
PAGE 5 OF 8



PLAN
Scale: 1" = 20'

- Notes:
1. Remove existing asphalt pavement and install decomposed granite path, split rail fence and split rail gate.
 2. Construct type C concrete curb and gutter with crushed base per standard plan sheet C-9, match existing.
 3. Remove existing curb return as shown.
 4. New catch basin see C-9 for location and details.

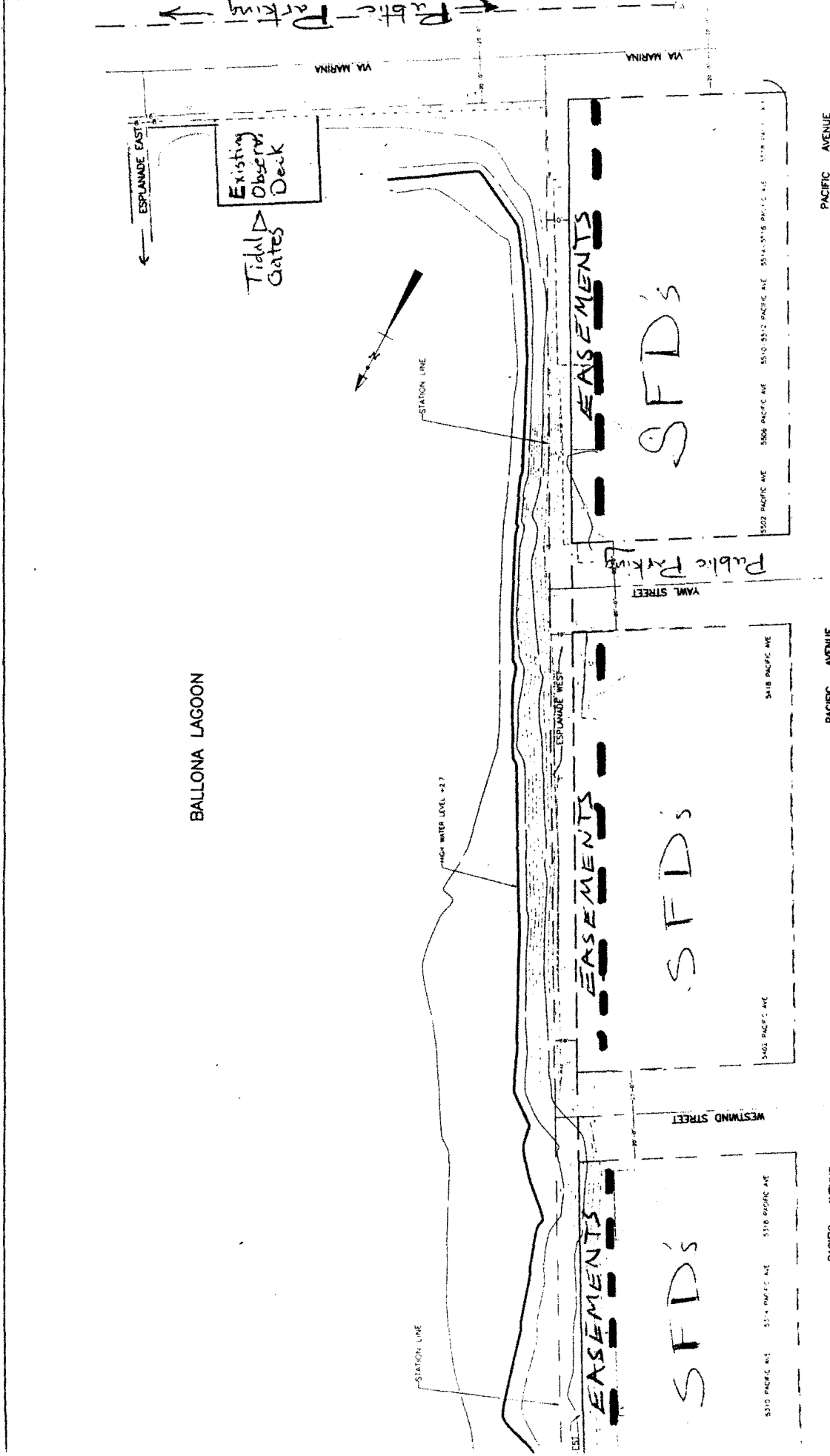


COASTAL COMMISSION

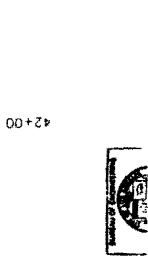
BALLONA LAGOON ENHANCEMENT

EXHIBIT # 4

PAGE 7 OF 8



COASTAL COMMISSION



PLAN
Scale 1" = 100'

EXHIBIT # 4

PAGE 8

CALIFORNIA COASTAL COMMISSION

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

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

RECEIVED
South Coast Region

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

JUL 16 2001

CALIFORNIA
COASTAL COMMISSION

SECTION I. Appellant(s)

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

Concerned Residents of Ballona Lagoon

c/o Clare Bronowski

Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP

2121 Avenue of the Stars, 18th Floor Los Angeles, CA 90067 tel: (310) 553-3000

SECTION II. Decision Being Appealed

1. Name of Local/port government: City of Los Angeles
2. Brief description of development being appealed: Phase III of Ballona Lagoon Enhancement Project comprised of public access path, viewing area, and revegetation plan.
3. Development's location (street address, assessor's parcel no., cross street, etc.): Balloona Lagoon: western shore, adjacent to Pacific Avenue in Venice
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: ~~CDP00004~~
 - c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-VEN-01-279
DATE FILED: 7.17.01
DISTRICT: South Coast

COASTAL COMMISSION
A5-VEN-01-279

EXHIBIT # 5
PAGE 1 OF 20

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

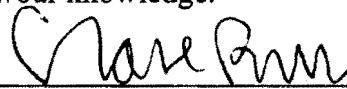
IV. REASONS SUPPORTING THIS APPEAL

On June 22, 2001, the City of Los Angeles Board of Public Works ("Board") approved Coastal Development Permit CDP 00-04, adopting several modifications recommended by Board Staff. Concerned Residents of Ballona Lagoon brings this appeal on the grounds outlined in the attached letters addressed to Board President Ellen Stein and dated June 19 and June 20, 2001.

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

SECTION V. Certification

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



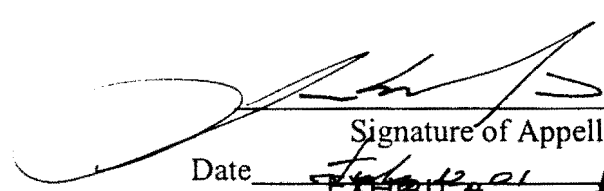
Signature of Appellant(s) or
Authorized Agent

Date 7-11-01

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

Section VI. Agent Authorization

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



Signature of Appellant(s)

Date

7-12-01
EXHIBIT # 5

PAGE 2 OF 20

LAW OFFICES
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO, LLP
2121 AVENUE OF THE STARS
EIGHTEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067-5010
(310) 553-3000
FAX (310) 556-2920

DIRECT DIAL NUMBER
(310) 282-6254

EMAIL: CBRONOWSKI@CHRISMILL.COM

June 20, 2001

BY MESSENGER

Ellen Stein, President
Board of Public Works
433 N. Spring Street, Room 600
Los Angeles, California 90013

Re: Coastal Development Permit No. CDP 00-04

Dear President Stein and Board Members:

This letter and the attached letter dated June 19, 2001 are submitted on behalf of Concerned Residents of Ballona Lagoon. Our June 19, 2001 letter and attached exhibits outline the grounds for our client's appeal of the City Engineer's decision approving Coastal Development Permit CDP 00-04 for Phase III of the Ballona Lagoon Enhancement Plan ("BLEP"). We have the following additional comments in response to the staff report entitled Report No. 1 dated June 22, 2001 ("Staff Recommendation"):

1. **Substantial Changes in the Proposed Project Require Detailed Plans and Further Discussion with the Community.**

The Staff Recommendation modifies the project to "terminate the public path from Canal Court at Topsail Street." Other changes outlined in the Staff Recommendation include changing the finish, materials and design of the proposed fencing, installing an education "small area" at the "north end," and eliminating proposed parking lots. It also appears that the alignment of the proposed path is changed and additional landscaping is proposed. These changes must be detailed in plans made available to the public and further meetings held in the community to discuss the revisions. We ask that this matter be continued and that staff be instructed to sit down with the appellants and hold an additional hearing in the community to explain the revisions.

COASTAL COMMISSION

The "modified project" as presented in the Staff Recommendation is insufficiently

defined for any meaningful review of the impacts. The location of the path, the engineering design, the location of the education area, the visual appearance of the fencing and the landscaping proposed along the path all require detailed plans and explanation before final action can be taken. Additional new impacts from the changes must be addressed, such as the visual impact of the white fencing and the inconsistency with the natural wood fencing on the other side of the lagoon.

2. **The Revised Project is Still Inconsistent With the Venice LUP and the Ballona Lagoon Enhancement Plan.**

The Staff Recommendation implies that the modifications to the project will eliminate all the grounds for appeal by eliminating inconsistencies between the project and the Venice LUP and the BLEP. This is not true. The Staff Recommendation relies upon comments from 1995 and 1996 from the United States Fish and Wildlife Service and California Department of Fish and Game, respectively. These comments pertain to the original BLEP which required further study and evaluation before implementation of Phase III. These comments simply cannot be relied upon to endorse or permit Phase III.

3. **The Staff Recommendation Splits the Project and Defers Design of the Area South of Topsail.**

In an apparent attempt to avoid some of the grounds for appeal, the Staff Recommendation deletes the wooden walkway from Topsail Street to Via Marina "from the scope of the project." However, the Staff Recommendation implies that the walking path in this area can be designed with an alternative alignment and does not commit to terminate the walking path at Topsail. In fact, the proposed project did not involve a wooden walkway all the way to Via Marina, based on the preliminary plans we reviewed. The Staff Recommendation appears to attempt to "split the project" -- which is illegal for purposes of CEQA -- to avoid the full environmental review that would be necessary if the full length of the walking path were considered at this time.

The Staff Recommendation further states that "the homeowners agreed to expand the area available for public access beyond the Esplanade on to their own properties..." (page 5). This is untrue and the staff has never included an evaluation of the legal rights of the City in the private property area south of Topsail. In fact, many of the easement documents recorded on those properties specify only that the buffer area is reserved for habitat protection and open space. There is no reference to public access or trails, and, therefore, the trail cannot legally pass over private property in those areas.

COASTAL COMMISSION

Ellen Stein
June 20, 2001
Page 3

4. The Plans for the Project are Still Insufficient.

The Staff Recommendation proposes that the access path "follow the alignment of the established historic prescriptive trail which meanders along the lagoon, significant portions of which will be aligned directly adjacent to Pacific Avenue" (page 12). This description is insufficient to put the appellants or the public on notice of the Department's new plans. There is no evidence of the existence of a prescriptive trail and no certainty as to where that location is. The plans reviewed by appellant are of insufficient detail to establish exactly where the path is proposed. The preliminary plans show portions of the path very close to the lagoon, such that fill and structural support would be needed (see June 19 letter, Exhibit B). In the year that has passed since the appeal, no more detailed plans have been made available to address some of the concerns expressed in the appeal.

The Staff Recommendation also states that "shrub masses planted on the inside edge of the access path will provide a partial habitat buffer and a physical barrier for pedestrians to protect the steep embankments of the lagoon" (page 12). Again, the plans reviewed by appellants do not include this type of detailed landscape or planting plan and there is no evidence in the record that such "shrub masses" will exist and will serve to protect the lagoon as stated.

For all of these reasons, we urge the Board to continue this item and require detailed plans and further discussions with the immediately affected community.

Sincerely,



Clare Bronowski
of CHRISTENSEN, MILLER, FINK, JACOBS,
GLASER, WEIL & SHAPIRO, LLP

CB:vs
Enclosures

cc: Valerie L. Shaw, Vice-President
Maribel Marin, Commissioner
Woody Fleming, Commissioner
Steven Carmona, Commissioner
Councilwoman Ruth Galanter

COASTAL COMMISSION

EXHIBIT # 5
PAGE 5 OF 20

LAW OFFICES
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO, LLP
2121 AVENUE OF THE STARS
EIGHTEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067-5010
(310) 553-3000
FAX (310) 556-2920

DIRECT DIAL NUMBER
(310) 282-6254
EMAIL: CBRONOWSKI@CHRISMILL.COM

June 19, 2001

Ellen Stein, President
Board of Public Works
433 N. Spring Street, Room 600
Los Angeles, California 90013

Re: Appeal Hearing, Coastal Development Permit No. CDP 00-04

Dear President Stein and Board Members:

We represent Concerned Residents of Ballona Lagoon ("Residents"), and this letter is submitted in support of the Residents' appeal of the City Engineer's approval of Local Coastal Development Permit No. CDP 00-04 ("Permit") for the Ballona Lagoon Enhancement Phase III project ("Project") dated May 26, 2000.

FACTS AND PROCEDURAL BACKGROUND

The Ballona Lagoon is a designated Environmentally Sensitive Habitat Area. The Ballona Lagoon Enhancement Plan ("BLEP") was prepared by the Ballona Lagoon Marine Preserve and the California Coastal Conservancy and adopted by the City in 1992. The purpose of the BLEP is to restore, protect, and maintain for shallow tidal and intertidal habitat the "fisheries and public access as provided in the Ballona Lagoon Enhancement Plan." The California Department of Fish and Game and the U.S. Army Corps of Engineers, with concurrent jurisdiction over the Ballona Lagoon, also approved the BLEP.

The BLEP sets forth the planned enhancement and restoration of the Ballona Lagoon in three phases. Phases I and II were previously implemented along the eastern shore of the lagoon and approved in accordance with a Mitigated Negative Declaration to comply with CEQA. The eastern shore contains a pedestrian esplanade. Residential development along the eastern shore was generally constructed above the eastern esplanade with architectural features to provide security and privacy for the residents.

COASTAL COMMISSION

225252.1

EXHIBIT # 5
PAGE 6 OF 20

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 2

Phase III of the BLEP concerns the western shore, and is distinct from Phases I and II in several important respects.

First, the western shore serves as a roost for the endangered least tern. While the eastern shore does, to some degree, serve this same function, residents' observation has been that the presence of the walking path, and the accompanying foot and animal traffic, has discouraged the least tern from using the eastern shore in favor of the western shore. In addition, the replacement of robust non-native plants during Phases I and II of the Project reduced the amount of foraging material available on the eastern shore. The proposed Phase III footpath and revegetation plans would make it considerably more difficult for these birds to forage and to escape from human activity and harassment by roosting on the western shore.

Second, the geography of the western shore is steeper and has eroded in portions such that higher-impact trail construction methods will be necessary. In fact, a stretch of the western esplanade south of Topsail Street has eroded to the point that it currently lies below the mesne high tide of the Ballona Lagoon. The Bureau plans to recapture the eroded portion of the western esplanade by filling the lagoon and constructing a 180-foot wooden walkway. This is in contravention of the BLEP's plans to limit physical access to and preclude trail improvements on the western shore because of these steep slopes, erosion problems, and wildlife-protection concerns. Indeed, the BLEP specifically routes pedestrians off the western shore and onto Pacific Avenue to protect steep slopes and wildlife.

Third, the western shore is generally characterized by residential construction which did not anticipate the presence of a public walking trail directly beyond the homes' backyards. Accordingly, these homes did not incorporate features designed to protect the residents' security and privacy under the changed circumstances brought about by the Project. In contrast, the majority of houses on the eastern shore, which have generally been developed more recently, did anticipate the presence of such a trail, and have been built accordingly -- raised and with high walls to protect residents' privacy and security. Some of the western shore residents have no such protection, and the modified Project does not adequately address these residents' legitimate concerns for their own safety and privacy.

The 1992 BLEP envisioned a project on the western shore which -- unlike the Project presently planned -- would be compatible with these distinct features. Specifically, the BLEP states, "the strategy along the western shore is to limit physical access." BLEP §7.3.4. The BLEP proposes, instead, that concrete sidewalks adjacent to Pacific Avenue from just south of Jib Street might be appropriate. *Id.*

COASTAL COMMISSION

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 3

In contradiction to the BLEP provisions, the Project will thus encourage physical access to the western shore, "improve" the trail despite the BLEP plan to limit physical access, and direct access onto the shore and not, as envisioned in the BLEP, adjacent to Pacific Avenue.

Furthermore, rather than directing human pedestrian activity into the least tern's preferred roosting area as the Project proposes, the BLEP prescribes shrub masses between the sidewalk and the lagoon to "serve as physical barriers to pedestrians to provide protection for the steep embankments of the lagoon and the birds which roost along the western shore." BLEP §7.3.4 (emphasis added). Finally, the BLEP requires that "[c]are must be taken in the design of the planting along the western shore not to create security problems for the pedestrians and adjacent homeowners." In direct contradiction to the BLEP, the Project approval provides no analysis whatsoever regarding security issues and no mitigation for admitted security problems.

These Project features are also inconsistent with the Venice Local Coastal Plan ("Venice LCP"), which envisions that the "environmentally sensitive habitat area" affected by the Project must be protected; public access must not invade the residents' privacy; and future study must be done before any "improvements" on the western shore are implemented. (Appendix A, Modified LUP (November 2000); pp. 3-28 - 3-29.)

The Project is thus totally inconsistent with the BLEP and the Venice LCP and cannot be approved. Approval of the Project is particularly inappropriate because the Bureau has relied on the claim that the Project is merely Phase III of the already-approved BLEP to justify not conducting the in-depth environmental and additional state agency review of the Project which would otherwise be required absent the BLEP. Given that the Bureau has fundamentally changed the physical configuration of Phase III, such reliance is unjustified. Furthermore, the BLEP formed the basis for prior coastal development permits with the expectation that completion of the BLEP would be in accordance with the particular requirements set forth in the BLEP for Phase III. The BLEP cannot now be amended or unilaterally changed without a series of public hearings to seek input from the public, the Department of the Fish and Game, the U.S. Department of Fish and Wildlife, and other interested agencies.

Despite the serious discrepancies between the BLEP Phase III and the Phase III currently proposed, the Bureau granted itself a Local Coastal Permit to complete Phase III. The City intends to stabilize the west bank of the Ballona Lagoon, replace introduced plant species with native plant landscaping, construct a pedestrian trail with an observation area at the north end, and build a 180-foot wooden walkway structure south of Topsail Street linking to the Esplanade West right-of-way. As part of the Project, the Bureau plans to import rip-rap fill material to the western bank and drive 8 pairs of 12-inch wood piles 15 feet into the lagoon to support the

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 4

wooden walkway. The Bureau also intends to sink an 8-inch railroad tie as a continuous pathway retaining wall and construct a 36-inch high split-rail fence along the esplanade.

A public hearing of the Project was held on April 25, 2000. At that hearing, residents spoke out against the Phase III plan, raising concerns over potential environmental impacts and public safety issues. The Bureau then revised the Phase III plan to eliminate proposed parking areas and reduce an interpretive unit to a smaller observation area with benches. Then, rather than holding a second public hearing on the revised Project, which addresses some but by no means all of the residents' concerns, the Bureau simply approved its own application for the reconfigured Ballona Lagoon Enhancement Phase III on May 26, 2000. It prepared a Notice of Exemption as its compliance with CEQA.

Notice of the approval was reportedly mailed on May 31, 2000. Legal counsel was then retained by the Residents and this appeal followed on June 9, 2000. Marina Peninsula Residents' Association filed a separate appeal.

For almost a year since the date of the appeal, the Department took no action. It is only after several letters from our office to the Department to request written confirmation of the abandonment of the Permit that, nearly a year after the appeal was filed, the Department sent out a notice dated June 4, 2001, of this appeal hearing, scheduled June 22, 2001.

GROUND'S FOR APPEAL

I. The Project has been effectively abandoned by the lapse of time.

Over a year will have passed between the time of the Residents' appeal and the time the appeal will be heard. Such an extensive delay is in direct contravention of Los Angeles Municipal Code ("L.A.M.C.") §12.20.2(H)(4), which requires that any appeal filed with the City Engineer "shall be heard and decided within 30 days of the filing of the appeal." (Emphasis added.) This delay, in itself, constitutes an effective abandonment of the Project.

The problems engendered by this delay are exacerbated by the fact, despite Bureau staff member Doug McPherson's explicit assurances to the Residents that another hearing would be held in the community prior to a decision on the Project, no such hearing took place. The Bureau approved the Project on May 26, 2000 without a second public hearing being held, without the public being informed that the promised public hearing would not be held, and without the public having the opportunity to be heard on the Bureau's responses to their concerns. Furthermore, changes have been made to the plans without any input from the community. For this reason as

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 5

well, this appeal should be granted.

II. The Project approval does not comply with the California Environmental Quality Act

Rather than preparing an Initial Study to determine whether an Environmental Impact Report pursuant to CEQA would be necessary, the Bureau simply issued a Notice of Exemption ("Notice"), citing Categorical Exemptions Class 4(5) and 11(3) (City CEQA Guidelines) and §15300.4 (State CEQA Guidelines). The Notice states,

"The project will construct a walkway and improve wildlife habitat in an existing designated ecological area, activities which are categorically exempt. The project is consistent with the Venice Local Coastal Plan and with the Ballona Lagoon Enhancement Plan prepared by the Ballona Lagoon Marine Preserve and approved by the California State Coastal Conservancy. No construction will occur during the least tern nesting season."

However, no categorical exemption applies to this Project; the project is *not* consistent with either the Venice LCP or the BLEP; and there is substantial evidence that the Project will have substantial environmental impacts that have neither been studied nor mitigated.

A. **The Project does not qualify for any exemption under CEQA.**

The Bureau's Notice of Exemption that the Project is categorically exempt from CEQA pursuant to 14 California Code of Regulations ("CCR") Section 15300.4 and the City CEQA Guidelines Classes 4(5) & 11(3) is incorrect. The Project is not exempt from CEQA compliance; neither of the cited exemptions apply.

1. *The Class 4(5) exemption is inapplicable.*

The Class 4(5) exemption cited in the Notice applies to:

"*Minor alterations* in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities *which result in improvement of habitat* for fish and wildlife resources or greater fish production."

City CEQA Guidelines Art. VII, Sec. 1 Class 4(5). (Emphasis added.)

COASTAL COMMISSION

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 6

Unfortunately, the Project is not a minor alteration in land; nor will it improve habitat for fish and wildlife. Rather, the Project will degrade habitat for the least tern, baby halibut, and other fish and wildlife by increasing and expanding human activity on the west bank of the lagoon. Eyewitness accounts by several area residents attest to the fact that the least tern and other birds and wildlife seek refuge along the west bank of the lagoon to escape from human activity and harassment on the east bank.

Indeed, a study by Sapphos Environmental, Inc. ("Sapphos Report," attached as Exhibit A to this letter) found that the proposed reconfiguration of Phase III of the BLEP may have substantial adverse effects on sensitive or endangered wildlife or vegetation. That study found that:

- 1) The Project may have an adverse effect on the food resources available to at least three endangered or threatened species: the California least tern (state-listed endangered), the California black rail (state-listed threatened), and the southern steelhead trout (federally endangered). (p. 4.)
- 2) The Project "could potentially interfere with feeding of fledgling California least tern, which are known to feed in the lagoon," as a result of the increased turbidity anticipated during construction. (p. 5.)
- 3) The increased human presence, domestic animal intrusion, and potential pollution from the Project walkway may cause substantial interference "with the migratory fish and birds along the Pacific Flyway." (p. 5.)
- 4) The Project may have a significant adverse impact on the habitat "based on the loss of the proposed native plant restoration effort to restore the southern dune scrub, southern coastal salt marsh, and southern foredune plant communities," all of which are considered sensitive by the California Natural Diversity Database. (pp. 4-5.)
- 5) The Project "may have a substantial adverse effect on the waters of the Ballona Lagoon due to the direct removal, fill, hydrological interruption, and turbidity anticipated to be caused by construction activities." (p. 5.)

For all of these reasons, it is unclear whether the Project will actually "improve habitat," as required by this exemption.

The proposed land alteration, moreover, is hardly "minor." A letter summarizing

COASTAL COMMISSION

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 7

results of CalEX Engineering Company's review of the preliminary landscaping and site development plans for Phase III catalogs the intensiveness of this Project. ("CalEX Letter," attached as Exhibit B to this letter.) That letter states,

"(Based upon the material and the plans), [a] retaining system will be required. The proposed railroad tie retaining wall will be grossly inadequate to retain the soil while equipment is working to compact this walkway as indicated.... If this wall is installed per plan excessive and potentially catastrophic erosion will take place during the first significant rain storm."

Furthermore,

"(The timber walkway proposed) requires proper support in the soil ... typically ... deepened footings or piles to extend into dense material. A standard method of achieving this type of support ... is driven piles. If utilized, driven piles would require capacity calculations, load requirements, design tip elevations, test piles, utility location/removal/relocation. There will be minimum access requirements of at least (50 feet) for pile driving, earthmoving and compaction equipment as well as normal construction support activities. These access requirements and these types of construction activities will make this project impossible to build."

There is thus substantial evidence that the construction activities will be neither "minor" nor likely to "improve" habitat. For all of these reasons, the Class 4(5) exemption cited by the Bureau is inapplicable to the Project.

2. *The Class 11(3) exemption is inapplicable.*

The Class 11(3) exemption cited in the Notice applies to Accessory Structures, particularly:

"Game courts, play equipment, drinking fountains, restrooms, fences, walks, visual screens, or single tennis courts constructed in residential areas."

City CEQA Guidelines Art. VII, Sec. 1 Class 11(3).

Reliance on this exemption for the Project is indefensible on its face. The exemption is intended to apply to routine public infrastructure in residential areas. It is manifest bureaucratic gamesmanship to attempt to apply this exemption to a project proposing to fill a wetland,

construct a wooden walkway through a wildlife management area, and introduce human activity to an endangered species' preferred roosting area.

3. *Categorical Exemptions are not available where, as here, the "exceptions" to those exemptions apply.*

Even if the language of the exemptions applied to the Project, CEQA expressly forbids the use of *any* exemption under several circumstances applicable here.

First, Guideline §15300.2(a) states that several classes of exemptions, including Classes 4 and 11,

"are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of ... critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies."

This Project is situated in just such a "particularly sensitive environment," a designated Ecologically Sensitive Habitat Area ("ESHA").

Next, Guideline §15300.2(b) states, "All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time, is significant." In this case, Residents' observation has been that the least terns prefer to use the western shore because of the human activity on the eastern shore. If there were no path on the eastern shore, it might be that the Project's effects on the least tern would be less severe, but the cumulative impact of having paths on *both* shores renders the Project's effects significant. It is therefore ineligible for a categorical exemption on this ground as well.

Finally, Guideline §15300.2(c) states that categorical exemptions "shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Such unusual circumstances exist here. Considerable uncontradicted evidence cited by the Residents at the April 25, 2000, hearing and cited herein demonstrates that the Project will have significant biological, water quality, and public safety impacts requiring analysis in an EIR. Indeed, the Notice of Exemption acknowledges this at least in part by prescribing a mitigation measure -- no construction during the least tern nesting season -- to avoid a potentially significant impact. However, this

mitigation measure is insufficient to achieve its aim, there is no evidence or discussion to support the sufficiency of the measure, and of course the measure does not address the many other potentially substantial impacts of the Project. In fact, there is no provision in CEQA which permits the use of a "Mitigated" Categorical Exemption.

4. *The Bureau failed to meet its burden of producing substantial evidence justifying its conclusion that the project is exempt.*

It is well-established under CEQA that the public agency has the burden of producing substantial evidence to justify its conclusion that the project is exempt from CEQA and to support its decision not to prepare an EIR.

Neither the April 25, 2000 staff report nor the May 26, 2000 approval and accompanying Draft Local Coastal Development Permit contain any evidence supporting the categorical exemption. After merely restating that the exemption applies, the primary evidence offered by the Bureau in support of that statement is that Phases I and II of the Ballona Lagoon Enhancement were approved according to a Mitigated Negative Declaration and, because Phase III is a purportedly less intense Project, Phase III should be categorically exempt. No such doctrine or justification for an exemption exists under CEQA. This rationale is particularly inapt where, as here, there may be significant cumulative effects, and the project is located in a sensitive environment.

The Bureau has all but ignored its responsibility to justify on the basis of substantial evidence not only that the exemption applies, but also that the Project does not have potentially significant impacts requiring further analysis. Rather than produce evidence to justify these decisions as required by law, the Bureau merely states that "[n]o reasons are known to indicate the phase 3 project would create any substantial adverse environmental effects."

B. The Project is not consistent with the Venice Local Coastal Plan

On November 14, 2000, the California Coastal Commission ("Commission") approved, with modifications, the Land Use Plan (LUP) portion of the proposed Venice Local Coastal Program. While the Commission indicated that public access should be encouraged along both lagoon banks (see p. 2-22, §d; p. 5-13, West Bank, §§b, d), the LUP also made it clear that the "environmentally sensitive habitat area" affected by the Project must be protected. The LUP states, "non-intrusive public access amenities" in the area south of Ironsides to Topsail should be permitted "in a manner that protects the environmentally sensitive habitat area." (p. 2-22, §d.) The Project as currently configured does not protect that area, and is inconsistent with the LUP

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 10

on that ground alone.

In addition, the Coastal Commission's modification to the LUP retained various prior policies pertaining to this area with which the Project is not consistent. Specifically,

- Policy II.C. 3. states: "Pedestrian access and interpretive overlooks to the Ballona Lagoon shall be enhanced *without invading the privacy of adjoining residents.*" (emphasis added). The Phase III considered in the BLEP proposed a path adjacent to Pacific Avenue, not the west bank itself. Such a path, unlike the one currently planned, would not invade the residents' privacy, and *would* be consistent with the LUP. Appendix A, Modified LUP (November 2000), Page 3-28.
- Policy II. C. 3.'s implementation strategy for the western shore states: "Because of the steep embankment and the need to provide some buffering from the automobile traffic on Pacific Avenue, the strategy along the western shore is to limit physical access. *A future study shall be done*, as part of the Ballona Lagoon Enhancement Plan, *before any public access along the western shore is improved.*" Appendix A, Modified LUP (November 2000), Page 3-29.

This requirement of a future study before additional "improvements" are implemented in the LUP post-dates the BLEP by approximately 8 years, suggesting that the Bureau's reliance on the BLEP as a justification for proceeding with the Project in its current form – and relying on the BLEP to avoid conducting environmental review – is misplaced, and in direct conflict with the LUP.

A project not in conformity with the Plan cannot be approved pursuant to L.A.M.C. §12.20(G)(1), which states that "the permit-granting authority shall not approve or conditionally approve a permit" unless it finds the project to be in conformity with the Venice LCP. The Project is not; therefore the Bureau abused its discretion in approving the Project.

C. The Project not consistent with the Ballona Lagoon Enhancement Plan.

As discussed above (see Facts and Procedural Background, supra), the 1992 BLEP envisioned a project on the western shore which would "limit physical access"; direct foot traffic onto concrete sidewalks adjacent to Pacific Avenue from just south of Jib Street; plant shrub masses between the sidewalk and the lagoon to "serve as physical barriers to pedestrians to

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 11

provide protection for the steep embankments of the lagoon and the birds which roost along the western shore"; and use care "in the design of the planting along the western shore not to create security problems for the pedestrians and adjacent homeowners." BLEP §7.3.4 (emphasis added). In contrast, the Project plans to direct physical access onto the western shore; ignores the BLEP's preference for concrete sidewalks and shrub mass barriers; and makes no provisions for the security of the residents.

In addition to these specific issues, the primary purpose of the BLEP is to *protect* this sensitive environment, not harm it. There is clearly abundant evidence that the Project will do just what it is intended to protect against.

D. A fair argument exists that the Project will have a significant effect on the environment, and, thus, an EIR is required.

There are a number of reasons why the project may have a significant adverse effect on the sensitive and protected environment of Ballona Lagoon.

1. Fish and Wildlife Impacts.

The Project will have significant impacts to fish and wildlife resources by introducing unfettered human and domesticated animal activity into an area of refuge for the endangered least tern and other wildlife species as well as by filling and pile-driving into known fish habitats.

The Project prescribes some conditions intended to mitigate potential impacts to the endangered least tern. In addition to a 36-inch fence intended to "discourage pets and people from entering the lagoon," the Bureau requires that no construction take place during the least tern nesting season. The construction limitation was imposed by the California Coastal Commission with regard to a related project to install three storm drains and catch basins in the lagoon and was incorporated in the Project approval. The Bureau relies on these conditions as sufficient mitigation for preventing potential impacts to least tern and other wildlife.

The conditions listed by the Bureau are not only legally deficient according to CEQA, but are also contrary to simple common sense. The proposed 36-inch split-rail fence will not discourage people or pets from entering the lagoon. Furthermore, any fence high enough and formidable enough to prevent pets and people from entering the lagoon would also deny visual access to the lagoon, resulting in a significant and unavoidable impact to aesthetics and scenic views. Therefore, because the proposed fence will not reasonably prevent access, physical access to the lagoon must be assumed to occur if pedestrians are directed to the western shore. The only

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 12

way to prevent potentially significant impacts of physical intrusion into the western shore is to revise the Project to be consistent with the BLEP, and direct pedestrians to Pacific Avenue.

The restriction on construction during the least tern nesting season is also woefully inadequate to ensure that future impacts to least tern remain less than significant. This measure unreasonably assumes that the least tern nesting sites on the western shore will not be disturbed by unfettered human activity in the seasons following construction. If the least tern requires protection from harassment and disturbance during its nesting season—which it does—the Project contains no impact analysis of or mitigation measures for unfettered human activity in the least tern nesting habitat during nesting seasons subsequent to construction. The undeniable impact will be harassment of nesting sites, possibly leading to the loss of least tern eggs and hatchlings. Another very dangerous result of the Project is to provoke nesting least terns, which are very aggressive when defending nests. In addition, the presence of people and pets on the western shore will likely discourage the least terns from foraging in that area, thus reducing their access to a needed nearby food source. Indeed, the Sapphos Report found that the proposed reconfiguration of Phase III of the BLEP may have an adverse effect on the food resources available to at least three endangered or threatened species: the California least tern (state-listed endangered), the California black rail (state-listed threatened), and the southern steelhead trout (federally endangered). (p. 4.)

In its defense, the Bureau asserts that an Audubon Society report indicates that pedestrian activity on the eastern shore has not resulted in adverse impacts to wildlife. The conclusion may be correct, but only because the birds and other wildlife have sought refuge from human and pet intrusion on the western shore where humans and pets intrusion occurs far less frequently. Several eyewitness accounts attest to the harassment birds endure on the eastern shore where the public has unfettered access to the lagoon.

The Bureau's comparison to pedestrian trails in extensive wetlands such as the Bolsa Chica wetlands is also misplaced. Trails in such wetlands are used for birdwatching and nature study and are almost exclusively used by people and professionals familiar with the sensitive ecosystems of wetland habitats. These remote wetland trails are not used by the routine neighborhood pedestrians, pets, and unsupervised children that will use a trail adjacent to a well-traveled roadway such as the proposed trail on the western shore. The wetlands the Bureau references as comparable are not located immediately adjacent to and in plain view of a busy street such as Pacific Avenue.

The Project will also have potentially significant impacts to fish. The Project completely ignores the potential impacts of pile-driving and filling on known fish habitat. Ballona Lagoon is

known as a halibut spawning ground as well as the source of fish populations providing food for the endangered least tern. Fill material, even fill material taken from the eastern shore of the lagoon, may change the content and quality of the existing bed of the western shore. The proposed dredging and fill may uncover or otherwise expose hazardous materials that have accumulated over decades of human activity and may pose risks which must be analyzed and publicly reviewed. In addition, the heavy equipment necessary to construct the Project may inadvertently deposit petroleum products and other extremely harmful substances capable of permanently damaging the delicate ecosystem of the western shore. Changes to the beds of wetland areas are known to cause significant impacts to fish, which are extremely sensitive not only to disruptions in the content of the soil but also to changes in visibility caused by sediment disruption.

The Project contains no analysis of the potential impacts to fish or the habitat fish depend upon. The Project fails to set forth a single mitigation measure intended to prevent wetland bed disruption, impacts to halibut spawning, or water quality degradation.

2. *Aesthetic and View Impacts.*

The Project will permanently alter the beautiful aesthetic and scenic qualities of the western shore that are enjoyed by residents and visitors alike. That the western shore of the lagoon is an area of aesthetic and scenic beauty is undeniable. It is equally undeniable that construction of a 180-foot wooden walkway, fence, and benches will have a permanent and demonstrable negative effect on the aesthetic and scenic qualities on the western shore. Yet, the Project fails to address these impacts. Not a single diagram or description within the Project approval or staff report shows the relationship of the proposed structures to its surrounding environment. Arguably, the profound aesthetic and scenic impacts of the Project cannot be mitigated below a level of significance, but at the very least should be studied. One of the primary benefits of such an analysis would be the opportunity to publicly consider Project alternatives that would lessen or avoid many of these environmental impacts.

3. *Public Safety Impacts.*

Without any analysis of the potential impacts on public safety, the Project proposes to introduce pedestrian activity into an unlit and off-street area behind unprotected private residences that were built with the reasonable expectation that, when Phase III of the BLEP was implemented, pedestrians would be directed to Pacific Avenue.

The Project will exacerbate existing public safety problems in the area. The primary

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 14

public safety problems in the area surrounding Ballona Lagoon are vagrancy, residential burglary, assault, and various crimes of opportunity associated with vagrancy. Unlit areas with benches that are screened from public street view are very attractive to vagrants, and are considered a public safety hazard.

The Project fails to analyze these public safety impacts. Instead, the staff report states-- without any evidence from the L.A.P.D. Pacific Division to support it-- that the Los Angeles Police Department will provide security. No mitigation measures are proposed to address potential public safety impacts. Among the mitigation measures that should be considered are removing all benches from the Project, providing directed low-level lighting, eliminating the 180-foot wooden walkway, and granting affected residential properties the right to construct over-height security and privacy rear walls in the open space easement behind most lots. One of the primary benefits of such an analysis would be the opportunity to publicly consider Project alternatives that would lessen or avoid many of these environmental impacts.

VI. The City does not have the property right to construct the walkway in some areas.

It is undisputed that due to natural and gradual changes in the contours of the lagoon shoreline the western esplanade right-of-way from Topsail Street lies below the mesne high tide of the lagoon. The Bureau proposes to recapture the right-of-way by filling that portion of the lagoon and constructing a 180-foot wooden walkway. However, the City has no evidence or analysis justifying the legality of this proposal. It is very possible that this portion of the right-of-way has been irretrievably lost under the common law doctrine of deliction.

Deliction is the loss of land by gradual, natural changes such as erosion resulting from a change in the course of a body of water. The common law doctrine of deliction states that a boundary marked by a water line is a shifting boundary, going landward with erosion (deliction) and waterward with deposits (accretion).

The common law doctrine of deliction, therefore, calls into question the City's legal right to the right-of-way from Topsail Street, where once the right-of-way was above water but now is essentially submerged. It is very likely that the City no longer possesses any interest in this stretch of the right-of-way and has no legal right construct a pedestrian walkway in that area.

In addition, the easements granted over private property in these areas do not all include a grant for public access purposes. Some of the properties involved have easements limited to open space and habitat protection purposes that would preclude the use of a public trail. There is no analysis by staff of the legal basis for the trail over private property.

Ellen Stein, President
Board of Public Works
June 19, 2001
Page 15

CONCLUSION

For all of the above reasons, the Concerned Residents of Ballona Lagoon respectfully submit that this Appeal should be granted.

Sincerely,



Clare Bronowski
of CHRISTENSEN, MILLER, FINK, JACOBS,
GLASER, WEIL & SHAPIRO, LLP

CB:vs
Attachments

cc: Board Members
Valerie L. Shaw, Vice-President
Maribel Marin, Commissioner
Woody Fleming, Commissioner
Steven Carmona, Commissioner
Councilwoman Ruth Galanter

COASTAL COMMISSION

Special Conditions for Single Family Residence on West Bank of Ballona Lagoon

1. Lagoon Buffer Strip

A 25-foot wide lagoon buffer strip, measured from the easterly edge of the Esplanade West (City right-of-way), shall be maintained between the approved development and Ballona Lagoon. Development within the buffer strip is prohibited, with the exception of a Commission approved pervious public walkway and landscaping with native vegetation.

2. Offer to Dedicate Easement for Public Access and Habitat Protection

Prior to issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association acceptable to the Executive Director an easement for public access and habitat protection. The easement shall include a fifteen-foot (15') wide strip of land over the entire width of the applicant's property as measured from the westerly edge of the Esplanade West (City right-of-way).

No disturbance of vegetation or development shall occur within the dedicated area, with the exception of landscaping with native vegetation compatible with the preservation of the wetland coastal strand environment, and the development of a Commission approved pervious public walkway not exceeding eight feet in width for public access and passive recreation use. Prohibited development within the dedicated area includes installation of permanent irrigation devices and the planting of non-native vegetation. The accepting agency or association shall have the right to access the easement to landscape it with native vegetation compatible with the preservation of the wetland coastal strand environment, and to construct a public walkway no wider than eight feet.

The document shall be recorded free of prior liens and any other encumbrances that may affect said interest. The offer and restriction shall run with the land in favor of the People of the State of California, binding successors and assigns. The offer shall be irrevocable for a period of 21 years commencing upon the date of recording.

3. Setback from Lagoon Buffer Strip

All portions of the dwelling (including stairways, decks, and bay windows), except for an uncovered patio on the ground floor level, shall be set back from the westerly edge of the buffer strip at least ten feet. The uncovered patio on the ground floor level, including any solid fences or walls around the patio, shall not exceed six feet in height above natural grade. No fence, wall or other accessory structure shall encroach into the lagoon buffer strip.

COASTAL COMMISSION
A5-VEN-01-279

EXHIBIT # 6

PAGE 1 OF 2

4. Lagoon Buffer Strip Protection

Prior to the commencement of construction, the applicant shall erect and maintain for the period of construction a six-foot high fence between the lagoon buffer strip and the building site. No site preparation or construction shall occur until the fence is constructed. No stock piling, storage, grading, construction, runoff, or trash disposal shall occur in the lagoon buffer strip at any time.

5. Drainage

Prior to issuance of the coastal development permit, the applicant shall submit drainage plans, subject to the review and approval of the Executive Director, which provide that all drainage on the site is directed away from Ballona Lagoon. The permittee and all successors in interest shall maintain the approved development consistent with the drainage plans approved by the Executive Director.

6. Building Height

The height of the structure within sixty horizontal feet of the mean high tide line of Ballona Lagoon at the adjacent shoreline shall not exceed thirty (30') feet above the average grade of the lot. For every two feet further away from the lagoon, the structure may be one foot higher in height to a maximum height of 45 feet above the average grade of the lot.

7. Parking

The permittee shall provide and maintain a minimum of three off-street parking spaces on the project site.

COASTAL COMMISSION
A5-VEN-01-279

EXHIBIT # 6

PAGE 2 OF 2