

**CALIFORNIA COASTAL COMMISSION**

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Commission Action:

**Item W21d****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-01-307

RECORD PACKET COPY

APPLICANT: VDH Development AGENT: Eric Lieberman, QES, Inc.

PROJECT LOCATION: 5110 Pacific Avenue (Lot 18, Block 1, Del Rey Beach Tract), Venice, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Construction of a five-level, 38-foot high (above average grade), 3,942 square foot single family residence on a vacant lagoon-fronting lot.

LOCAL APPROVAL: City of Los Angeles Specific Plan Project Permit, Case #DIR2001-2786.

**SUMMARY OF STAFF RECOMMENDATION**

The issue before the Commission is the application of an adequate lagoon buffer between the western shoreline of Ballona Lagoon and proposed residential development. Ballona Lagoon is identified as an environmentally sensitive habitat area (ESHA). Therefore, all development must be set back from the ESHA in order to protect resources that exist in the wetland. In the late 1970s, before any homes were constructed on the east or west banks of Ballona Lagoon, the Department of Fish and Game recommended that the Commission establish a **minimal protective lagoon buffer strip of 30-40 feet**, measured inland from the high water line (Exhibit #9). Since then, all Commission-approved residences along both banks of the lagoon have been set back at least 25 feet from the high water line, although some ground level development (both permitted and unpermitted lawns, decks and fences) does encroach into the buffer in some locations. The currently proposed development would **encroach within 23 feet of the high water line**, where a strip of wetland vegetation is growing along the shoreline of the lagoon (Exhibit #4). The proposed house would be also closer than the adjacent house.

On the east bank of Ballona Lagoon, the Commission mapped out the protective lagoon buffer before any house permits were issued, then each residential development has subsequently been required to conform to the buffer map as a condition of approval [See Permit A-266-77 (Exhibit #11)]. On the west bank of Ballona Lagoon, where the proposed project is located, the development setbacks necessary to preserve a protective lagoon buffer have been established on a case-by-case basis. Nonetheless, the Commission has been consistent in its application of appropriate development setbacks on the west bank; a 30-45-foot wide lagoon buffer exists between each home and the water (Exhibit #3).

In prior Commission approvals on the west bank of Ballona Lagoon, the protective lagoon buffer strip is usually provided by the combined effects of a fifteen-foot wide dedicated easement on each lot, the ten-foot wide City Esplanade right-of-way, and the additional dry bank area (Lot C) located between the Esplanade and the water (Exhibit #3). **No development is permitted within the protective lagoon buffer.** Each house is then required to be set back an additional ten feet from the upland edge of the lagoon buffer in order to maximize the bird visual cone and flyway over the ESHA. Residential yards, decks and balconies are allowed within the ten-foot setback located between the lagoon buffer and each house. Because of the additional 5-20 feet of dry bank area situated between the City Esplanade and the water, there is a 30-45-foot wide lagoon buffer on the west bank. Such a wide bank does not

exist between this applicant's lot and the shoreline. In this case, the applicant's property line is only five feet inland of the high water line (+2.65 MHTL: Exhibit #4).

Because of the minimal amount of dry bank area situated between the applicant's lot and the water, the width of the lagoon buffer on this site (between the development and the lagoon wetland) will be less than the 30-45-foot wide buffer that has been already been protected along the western shoreline of the lagoon south of the site (Exhibit #3). The applicant is proposing a house with balconies that would encroach within 23 feet of the high water line (Exhibit #4). As proposed, the project does not comply with the setback provisions of the certified Venice LUP, nor does it provide adequate protection of the ESHA as required by the Chapter 3 policies of the Coastal Act. **The Coastal Act is the standard of review** for this project.

**Staff is recommending that the applicant provide a 25-foot wide protective lagoon buffer strip, measured inland from the high water line** where a strip of wetland vegetation is growing along the shoreline of the lagoon (Exhibit #4). No development would be permitted within the 25-foot wide protective lagoon buffer strip. Additionally, in order to maximize the airspace for the bird flyway and visual cone over the ESHA, and to enforce a stringline for residences on this block (Block 1 of the Del Rey Beach Tract), **staff is recommending that the residential structure (including balconies) be set back at least 29 feet from the eastern (lagoon-side) property line.** A 29-foot structural setback and stringline is consistent with the Commission-approved setback imposed on Lot 19 in 1978 (P-78-2737), the only other existing residence on this block (Exhibits #4&8).

**The applicant disagrees** with the staff recommendation. The applicant asserts that he relied on the building standards contained in the certified Venice LUP when designing the proposed development. The proposed development, however, does not conform to the LUP's minimum 25-foot setback (from the property line) for all portions of the dwelling (LUP Policy I.A.4.c). The balcony of the proposed residence is setback only 18 feet from the lagoon-side property line which is five feet from the high water line on this lot (Exhibit #4). The applicant is also proposing to dedicate a fifteen-foot wide easement across the entire eastern portion of the project site (along the western shoreline) for habitat protection and public access.

With the proposed easement dedication, a 25-foot wide protective lagoon buffer, and the recommended 29-foot structural setback, staff recommends that the Commission grant a permit for the proposed development. The recommended special conditions would mitigate the proposed project's impacts on the wetland and other coastal resources by addressing building setback and height, landscaping, drainage, public access, parking and future improvements. **See Page Three for the motion to approve the coastal development permit with conditions.**

#### **ADDITIONAL PROJECT DATA:**

Lot Area	3,610 square feet
Building Coverage	1,740 square feet proposed
Pavement Coverage	1,200 square feet proposed
Landscape Coverage	670 square feet proposed
Parking Spaces	Attached 3-car garage accessed from Pacific Avenue
Zoning	RW1-1
Plan Designation	Single Family Residence - Waterway
Maximum Height	30-38 feet above average natural grade

**SUBSTANTIVE FILE DOCUMENTS:** See Appendix A

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

**MOTION**

*"I move that the Commission approve Coastal Development Permit 5-01-307 pursuant to the staff recommendation."*

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

**I. Resolution: Approval with Conditions**

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. Standard Conditions**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

### III. Special Conditions

#### 1. Protective Lagoon Buffer Strip

A 25-foot wide protective lagoon buffer strip (lagoon buffer), measured from the high water line (elevation +2.65 as shown on **Exhibit #4 of the 1/17/02** staff report), shall be maintained between the approved development and Ballona Lagoon. The 25-foot wide lagoon buffer includes the proposed fifteen-foot (15') wide easement over the entire width of the applicant's property as described in Special Condition Two below. No construction, grading, placement of fill, or other development shall occur within the 25-foot wide lagoon buffer, with the exception of landscaping with plants native to the Ballona Lagoon habitat area (and a public path if approved by the Commission).

All existing plants within the 25-foot wide lagoon buffer that are native to the Ballona Lagoon habitat area shall be preserved in place. The applicant shall remove by hand all non-native plants from the applicant's property situated within the 25-foot wide lagoon buffer, and shall landscape and maintain the lagoon buffer with native plants consistent with the landscape plan approved pursuant to Special Condition Four. The native plants shall be installed immediately following completion of grading for the development and prior to or concurrent with commencement of construction of the dwelling authorized under this permit. The applicant may authorize the City of Los Angeles, or other agency approved by the Executive Director, to implement and maintain the landscape plan approved pursuant to Special Condition Four. The applicant's responsibility to maintain the lagoon buffer area within the proposed fifteen-foot (15') wide easement described in Special Condition Two will end when the City of Los Angeles, or other agency approved by the Executive Director, accepts the offer to dedicate.

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

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and in accordance with the applicant's offer to do so, 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 applicant's eastern (lagoon-side) property line as shown on **Exhibit #4 of the 1/17/02** staff report.

The recorded document shall include the following paragraph: 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 and dune environment, and the development of a Commission approved pervious public walkway not exceeding five 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 and dune environment (and to construct a public walkway if approved by the Commission).

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. Building Stringline – Structural Setback from Property Line

All portions of the dwelling (including stairways, balconies, and bay windows) shall be set back at least 29 feet from the eastern (lagoon-side) property line. Any area situated between the 25-foot wide protective lagoon buffer strip described in Special Condition One and the 29-foot structural setback may be used only for native landscaping or for an uncovered and permeable deck at ground level (no more than 18" high) and fences and walls not exceeding six feet in height above natural grade. No deck, fence, wall or other accessory structure shall encroach into the lagoon buffer strip described in Special Condition One.

4. Revised Plans

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised plans to the Executive Director for review and approval. All plans associated with the project shall be revised to incorporate the following revisions to the project:

- (i) **Building Setback.** All portions of the dwelling (including stairways, balconies, and bay windows) shall be set back at least 29 feet from the eastern (lagoon-side) property line. Any area situated between the 25-foot wide protective lagoon buffer strip described in Special Condition One and the 29-foot structural setback may be used only for native landscaping or for an uncovered and permeable deck at ground level (no more than 18" high) and fences and walls not exceeding six feet in height above natural grade. No deck, fence, wall or other accessory structure shall encroach into the lagoon buffer strip described in Special Condition One.
- (ii) **Building Height.** The height of the structure within sixty horizontal feet of the mean high tide line of Ballona Lagoon at the adjacent shoreline, or within sixty horizontal feet of the inland side of the Esplanade (City right-of-way), whichever is furthest from the water, shall not exceed thirty (30') feet above the average natural 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 38 feet above the average grade of the lot. No portion of any structure (including roof access structures, roof deck railings and architectural features) shall exceed the thirty-foot height limit within sixty horizontal feet of the mean high tide line of Ballona Lagoon or the inland side of the Esplanade, whichever is furthest from the water. Chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may exceed the specified height limit by five feet.

- (iii) Landscaping. A landscape plan for the entire lot shall be prepared and submitted to the Executive Director for review and approval. All landscaping for the entire development shall be of southern California native plants appropriate to the natural habitat type, and shall be consistent with all of the following requirements:
- a) No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized on the property. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
  - b) Within the 25-foot wide protective lagoon buffer strip (lagoon buffer) described in Special Condition One, the applicant shall preserve all existing plants that are native to the Ballona Lagoon habitat area, and shall remove all non-native plants by hand. The lagoon buffer described in Special Condition One shall be landscaped only with plants native to the Ballona Lagoon habitat area.
  - c) All landscaping shall be maintained by the applicant or successor(s)-in-interest (including the City of Los Angeles pursuant to the implementation of Coastal Development Permit 5-01-257/A5-VEN-01-279). All required plantings shall be maintained in good growing condition through-out the life of the project, and whenever necessary, shall be replaced with new plant materials which conform to the requirements of this condition to ensure continued compliance with the landscape plan.
  - d) The landscape plan shall include a map showing the type, size and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and a schedule for installation of plants. The landscape plan to be submitted to the Executive Director shall be accompanied by an analysis prepared by a licensed Landscape Architect or a qualified Resource Specialist that documents that the landscape plan includes the appropriate size and types of plants for the Ballona Lagoon habitat area.
  - e) Landscaping for the 25-foot wide protective lagoon buffer strip (lagoon buffer) described in Special Condition One shall be installed immediately following completion of grading for the development and prior to or concurrent with commencement of construction of the dwelling authorized under this permit. No grading or presence of heavy machinery shall occur within the lagoon buffer described in Special Condition One. The plantings shall provide 70% cover in 90 days, unless the Executive Director grants additional time for good cause.

- f) Monitoring. Five years from the date of the completion of the installation of landscaping as required in item (e.) above, the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The applicant or successor in interest shall implement the supplemental landscaping plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.
- (iv) Lighting. No lighting associated with the project shall significantly impact adjacent environmentally sensitive habitat including adjacent wetlands and the lagoon buffer described in Special Condition One. All lighting within the development shall be directed and shielded so that light is directed away from Ballona Lagoon. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that the lighting is designed to avoid impacts upon adjacent environmentally sensitive habitat including wetlands.
- (v) Drainage. All drainage on the site (excluding the lagoon buffer described in Special Condition One) shall be directed away from Ballona Lagoon and into the City stormwater system (Pacific Avenue). During construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site into the lagoon.
- B. The permittee shall undertake development in accordance with the final plans approved by the Executive Director. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, incorporating items (i) through (v) of Special Condition 4.A. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The deed restriction shall not be removed or changed without a Commission approved amendment to this coastal development permit.

5. 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 and place sandbags between the lagoon buffer strip described in Special Condition One and the building site. No site preparation, grading or construction shall occur until the fence is constructed and the sandbags are placed inland of the lagoon buffer strip. No stock piling, storage, grading, construction, runoff, or trash disposal shall occur in the lagoon buffer strip at any time.

6. Pacific Avenue Sidewalk

In accordance with the applicant's offer to do so, the applicant shall provide an improved concrete walkway across the site along the eastern curb of Pacific Avenue as shown on **Exhibit #4 of the 1/17/02 staff report.**

7. On-site Parking Supply

In accordance with the applicant's offer to do so, the applicant shall provide and maintain a minimum of three off-street parking spaces on the project site.

8. Future Improvements

A. This permit is only for the development described in Coastal Development Permit **5-01-307**. Pursuant to Title 14 California Code of Regulations §13250 (b)(6) and §13253 (b)(6), the exemptions otherwise provided in Public Resources Code §30610 (a) and (b) shall not apply to the entire parcel. Accordingly, any future structures, future improvements, or change in intensity of use to the permitted structures approved under Coastal Development Permit **5-01-307**, shall require an amendment to Coastal Development Permit **5-01-307** obtained from the Commission or shall require a new coastal development permit from the Commission.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition. The deed restriction shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

#### IV. Findings and Declarations

The Commission hereby finds and declares:

##### A. Project Description

The applicant proposes to construct a three-story, 38-foot high, 3,942 square foot single family residence with an attached three-car garage on a vacant lagoon-fronting lot in Venice (Exhibit #9). The proposed project is situated on the west bank of Ballona Lagoon between Topsail and Union Jack Streets (Exhibit #2). The proposed three-car garage will be accessed from Pacific Avenue (Exhibit #4).

A City of Los Angeles survey shows that only five feet on dry land separate the property from the high water line of the lagoon (Exhibit #3, p.1). A narrow band of wetland vegetation (salt scrub vegetation: Jaumea, alkali heath and pickleweed) exists along the water's edge in and above the tidal zone. Commission staff, during a visit to the site at noon on January 17, 2002, confirmed that the band of salt scrub vegetation is not totally submerged at high tide. No fill, however, is proposed to be placed within the lagoon or on the band of salt scrub vegetation as the applicant is not proposing any disturbance or development within eighteen feet of the eastern (lagoon-side) property line (Exhibit #4).

As proposed, a second-level balcony is set back 18 feet from the eastern (lagoon-side) property line. Therefore, the proposed balcony extends within 23 feet of the lagoon's high water line and the inland extent of the lagoon's wetland vegetation. The front of the building, excluding the second and third-level balconies, is situated 29 feet inland of the eastern (lagoon-side) property line (Exhibit #5). The roof of the proposed structure is limited to thirty feet above average grade within sixty horizontal feet of the mean high tide line of Ballona Lagoon, but roof deck railings and other parts of the proposed building would violate the thirty-foot height limit that protects the bird flyway and cone of vision over the ESHA (Exhibit #5).

The applicant, as part of the permit application, is proposing to dedicate a fifteen-foot wide easement for habitat protection and public access across the entire eastern portion of the site that abuts Ballona Lagoon (Exhibit #4). The applicant's proposed fifteen-foot wide easement dedication is the same size as other easements that have been included in each Commission-approved permit for development on similarly sited lots along the west bank of Ballona Lagoon (Exhibit #3). These easements comprise part of the 30-45-foot wide protective lagoon buffer that exists along both banks of Ballona lagoon. In this case, however, the actual distance between the water and the proposed dwelling would be less than each of the previously approved residences on the west bank of the lagoon: **23 feet**. This is because, unlike the other lots to the south, very little dry land area (5-10 feet) exists between the applicant's lot and the shoreline of the lagoon (Exhibit #4).

**B. Ballona Lagoon**

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 #2). 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). The lagoon is 150-200 feet wide and contains approximately sixteen acres of open water and wetland area. The California Department of Fish and Game has also identified the Ballona Lagoon as critical habitat for the Least Tern, and has recommended that the Commission establish a minimal protective lagoon buffer strip of 30-40 feet, measured inland from the high water line (Exhibit #9).

The Commission's responsibility to protect Ballona Lagoon is established by the habitat protection policies of the Coastal Act. These policies are also incorporated into the certified Venice LUP.

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 such resources shall be allowed within such 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 such areas, and shall be compatible with the continuance of such habitat areas.

In addition, the wetland protection policies of the Coastal Act require the protection of the biological productivity of wetland 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 certified Venice LUP also identifies Ballona Lagoon as an ESHA. However, the LUP's area specific policies establish general setback requirements without reference to individual lots. Four of the privately-owned west bank lots (all on Block 1 of the del Rey Beach Tract), including the subject property, have very little or no additional dry land area (0-5 feet) on the lagoon bank between the lot and the water (which would allow for a larger buffer than can be provided on the lot). Most of the lots along the west bank, many of which have already been developed, benefit from a 15-30-foot deep area of dry land on the lagoon bank between each lot and the water (Exhibit #3). This additional bank area is comprised of the City Esplanade West (and unimproved City right-of-way) and Lot C, a mostly submerged lot that comprises the southern portion of Ballona Lagoon.

The Coastal Act policies of the certified LUP require that the development maintain healthy populations of marine organisms or that development shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. The certified LUP also has the following policies that require the protection of marine resources.

Policy IV.B.1.b of the certified Venice LUP states (emphasis added to most relevant parts):

***IV.B.1.b Ballona Lagoon – Permitted Uses***

*Only uses compatible with preservation of this habitat shall be permitted in and adjacent to the lagoon. **Uses permitted in or adjacent to the lagoon shall be carried out in a manner to protect the biological productivity of marine resources and maintain healthy populations of marine organisms.** Such uses as open space, habitat management, controlled nature study and interpretation, and passive public recreation such as bird watching, photography, and strolling shall be encouraged and promoted. No fill shall occur in Ballona Lagoon unless it is consistent with Coastal Act Section 30233 and is the least environmentally damaging alternative. No untreated runoff shall be directed into the lagoon.*

Policy IV.B.2.b of the certified Venice LUP states:

***IV.B.2.b Ballona Lagoon Buffer Strip – West Bank***

*The City shall implement methods of permanent protection of the lagoon, including acceptance of all outstanding and future offers to dedicate open space and public access buffer strips along the east and west banks.*

***b. West Bank.*** *A habitat protection buffer strip shall be provided and maintained between the lagoon and all development permitted on the properties situated on the west bank of Ballona Lagoon. 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. Most of the lots located on the west side of the lagoon, particularly between Ironsides and Topsail Streets, are quite narrow. Given the*

location and size of these parcels, first priority for use of these parcels is permanent open space. However, in case of any development, **all structures located south of Ironsides Street to Via Marina shall be set back at least twenty-five feet from the property line** nearest the lagoon. North of Ironsides Street, an average setback of 15 feet, but not less than 10 feet, shall be maintained. (See LUP Policies I.A.4.c, I.A.4.d and I.A.7.b for specific lagoon buffer and setback requirements).

Policy IV.B.2.d of the certified Venice LUP states:

*Permitted uses within the buffer strip shall be limited to open space, habitat management, nature study and interpretation for educational purposes and pedestrian walkways for passive recreation such as bird-watching, photography and strolling. Landscaping in the buffer strip shall consist of native plants and shrubs. Non-native species shall be phased out and the area restored as feasible. (For more detailed, refer to the Ballona Lagoon Enhancement Plan.)*

Policy IV.B.3 of the certified Venice LUP states:

#### **IV.B.3 Ballona Lagoon Development Standards**

*The setbacks and height of buildings adjacent to the lagoon shall continue to be limited as provided in Policies I.A.4b, c, and d so that development is compatible with the continuance of the environmentally sensitive habitat area and avoids adverse impacts on avian flight patterns.*

*Implementation strategies:*

*... The Department of Fish and Game has consistently required a 30-40 foot wide minimum buffer along both sides of Ballona Lagoon to protect its habitat value. The development of these lots is difficult because of the buffer requirement, the narrowness of the lots and the steepness of the slope.*

Ballona Lagoon is an integral part of the larger Venice Canals/Ballona Lagoon wetlands system. Seawater enters the wetlands system through tidal gates which control the flow from the Marina del Rey entrance channel into Ballona Lagoon. Ballona Lagoon is a wetland and an Environmentally Sensitive Habitat Area (ESHA) protected by the above-stated Coastal Act policies and certified LUP policies. Unfortunately, the wetland and upland habitat in and adjacent to Ballona Lagoon (i.e., salt marsh, sidebanks, mudflats, and marine habitat) is negatively affected by the lagoon's proximity to human activity, urban runoff, and the abundance of invasive non-native vegetation. Despite this, Ballona Lagoon provides habitat for a variety of benthic invertebrates, fish and shorebirds [See Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, 1981]

Polychaetes, mollusks and other invertebrates live in the mud bottom of the lagoon. Several species of fish have been documented and are known to inhabit the lagoon and canals, including: Topsmelt, California killifish, bay pipefish, longjaw mudsuckers, halibut, arrow goby, and diamond turbot. Fish eating birds such as egrets and green herons are often seen

foraging at the water's edge. Willets, dowitchers and dabbling ducks also forage on the mud banks, while domesticated ducks are attracted by food and water left by nearby human residents. Ballona Lagoon is a critical habitat area for the California least tern, Sterna antillarum browni. Both the least terns and Brown pelicans can be seen foraging in the lagoon. Ballona Lagoon is located about five hundred feet east of the Venice Beach California least tern colony, one of the largest and most productive colonies of California least terns remaining in the state (Exhibit #2).

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. The native vegetation on the lagoon banks is comprised of wetland, dune and coastal sage scrub communities.

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 and a few duplexes. 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 (Exhibit #11). 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 24 to 30-foot wide portions of the lagoon fronting lots which have been dedicated as open space and public access easements or habitat protection. Coastal Development Permit A-266-77 (ILA) requires, as a condition of each individual permit to develop, that each lagoon fronting lot owner on the east bank offer to dedicate a 24-30-foot easement for habitat protection and public access. This easement, along with Esplanade East, makes up as part of the forty-foot wide lagoon buffer. Each lot owner on the east bank is also required to provide a 10-15 foot front yard (structural set back) outside the buffer. These requirements result in a 34-45 foot structural setback from the lagoon, depending on the depth of the individual lots.

A similar protective lagoon buffer strip exists on the west bank. The west bank of Ballona Lagoon is comprised of mostly of unimproved City-owned lands: Esplanade West right-of-way and Lots G through P between Jib Street and Topsail Street (Exhibit #2). The City acquired these lots which were too narrow to develop without severe impacts to the lagoon in exchange for other lagoon fronting lots near Grand Canal. The City-owned lots are undeveloped and form a protective buffer between the waters of the lagoon and Pacific Avenue. A dirt path runs parallel to Pacific Avenue from the north end of the lagoon to Topsail Street. 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.

South of Topsail Street, there are 25 privately owned lots on the west bank. This is where the currently proposed project is located (Exhibit #3). There is no public path south of Topsail Street along the west bank, although there is a City sidewalk on the west side of Pacific Avenue. Nineteen of the 25 privately owned lots on the west bank have already been developed with single family residences and duplexes (Exhibit #3). All but one of the existing

residential developments were built after 1978 with Commission-approved coastal development permits. Each of the Commission-approved residential projects has dedicated a portion (fifteen feet wide in most cases) of the property as an easement for the extension of the protective lagoon buffer strip. A 30-45-foot wide lagoon buffer exists on the west bank between each home and the water (Exhibit #3).

When the Commission approved the coastal development permits for the construction of residences on the west bank of the lagoon, the Commission required the provision of a 30-45-foot wide lagoon buffer strip between the water and the residential development. The protective lagoon buffer strip is usually provided by a fifteen-foot wide dedicated easement on each lot, the ten-foot wide City Esplanade right-of-way, and the additional dry bank area (Lot C) located between the Esplanade and the water (Exhibit #3). No development, not even lawns and patios, is permitted within the protective lagoon buffer. Each house is then required to be set back an additional ten feet from the protective lagoon buffer in order to maximize the bird flyway and visual cone over the ESHA. Residential yards, decks and balconies are allowed within the ten-foot setback located between the protective lagoon buffer and each house. On most west bank properties, this has resulted in a 30-45-foot wide protective lagoon buffer between the water and the residential development because of the additional 5-20 feet of dry bank area situated between the City Esplanade and the water (Exhibit #3).

Six of the privately owned lots on the west bank remain undeveloped, including the site subject to this application: **Lot 18, Block 1** of the Del Rey Beach Tract (Exhibit #3, p.1). Block 1, where the proposed project is located, includes five of the six currently undeveloped privately owned lots on the west bank of Ballona Lagoon. **Lot 19 of Block 1** is developed with a duplex (5112-5114 Pacific Avenue) approved by the Commission in 1978 pursuant to Coastal Development Permit P-78-2737 (Sevilla & Dubin)(Exhibit #8). In its approval of Coastal Development Permit P-78-2737, the Commission required the provision of a 40-47-foot wide protective lagoon buffer between the shoreline and the approved duplex. The duplex on Lot 19 of Block 1, next to the subject site, is set back 29 feet from the eastern (lagoon-side) property line (Exhibits #4&8).

An application is currently pending for the development of **Lot 17 of Block 1** [See Coastal Development Permit Application **5-01-306** (VDH Development)]. The achievement of an adequate lagoon buffer will be difficult on the three undeveloped lots located north of Lot 17 and 18 (Block 1). These vacant lots are progressively shorter (from Pacific Avenue to the shoreline) and are partially submerged (Exhibit #3, p.1). Therefore, achieving an adequate lagoon buffer and any additional setback will become more difficult.

### **C. Protective Lagoon Buffer – Development Setback from the Wetland**

In order to conform to the previously stated Coastal Act and certified LUP policies which require that the protection and enhancement of the marine resources and wetlands that exist in and along the western bank of Ballona Lagoon, the proposed development must be set back an adequate distance from the resource. A protective lagoon buffer strip, situated in the bank area between the development and the shoreline, must be provided to protect the ESHA from the impacts of the proposed development. In addition to the protective lagoon buffer strip, a building setback must be provided to avoid adverse impacts on avian flight

patterns and the cone of vision over the ESHA. The protective lagoon buffer strip is only to be used for habitat restoration and, potentially, a future public access path.

The proposed development's adverse impacts include the increase in human activity that will occur on the project site during and subsequent to construction, the shading caused by the proposed 38-foot high building, the increase in runoff from the proposed building and landscaped yard areas, and impacts from increased noise and lighting. Each of these impacts can have an adverse effect on the biota of the wetland and water areas of the lagoon. The closer the impact is to the resource, the more adverse effect the impact will have on the resource. Therefore, the proposed development must be setback from the wetland and water in order to mitigate the adverse impacts.

Building limitations, like the building setback requirement and the building height limit, are necessary to prevent building encroachments from negatively affecting the bird flyway over the lagoon and its banks. Ballona Lagoon is utilized by many bird species, including the federally and state listed endangered California least tern and Brown pelican. The building limits protect against a "canyon effect" that could negatively impact the visual cone of the ESHA and thus bird flight and foraging patterns. Many species of birds will not forage or roost in an area where their cone of vision is limited or obstructed. Predators can utilize obstacles in the animal's cone of vision, and more cautious species will avoid the area all together. The Commission has consistently limited building heights within sixty feet of the shoreline to a maximum of thirty feet (measured above existing natural grade)

The proposed project is located on Lot 18 of Block 1 (Del Rey Beach Tract), a vacant lot situated on the west bank of Ballona Lagoon (Exhibit #4). A City of Los Angeles survey shows that only five feet on dry land separate the property from the high water line of the lagoon (Exhibit #3, p.1). The applicant's Biological Resources Report prepared for the site (Impact Sciences, 9/17/01) states that a narrow band of salt scrub vegetation (Jaumea, alkali heath and pickleweed) exists in the tidal zone along the water's edge (Exhibit #6). Commission staff has visited the site and confirmed the existence of wetland vegetation along the tidal zone, which runs along the three-foot contour line very close to the applicant's eastern property line (Exhibit #4). South African iceplant and other non-native plants dominate the upland area located inland of the tidal zone. No wetland vegetation has been observed where any of the proposed development would occur.

In determining the necessary building limits to provide the necessary protective lagoon buffer, the following Chapter 3 policies and certified policies of the Venice LUP area relevant. The standard of review is the Coastal Act.

Section 30240(b) of the Coastal Act states:

- (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 such areas, and shall be compatible with the continuance of such habitat areas.

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.

Policy IVB.2.b of the certified Venice LUP states, in part:

*A habitat protection buffer strip shall be provided and maintained between the lagoon and all development permitted on the properties situated on the west bank of Ballona Lagoon.*

Policy I.A.4.c of the certified Venice LUP states:

***I.A.4.c. Ballona Lagoon West Bank Properties Between Topsail and Via Marina***

*Setback: All portions of a dwelling, except for a ground level deck (no more than 18" high), shall be set back a minimum of 25 feet from the inland edge of Esplanade West, or where no Esplanade exists, from the property line which separates the parcel from the west bank of Ballona Lagoon. Ground level permeable decks, landscaping and railing and fences may encroach ten feet into the setback. The remaining 15 feet of the setback area nearest the water (lagoon buffer) shall be protected for public access and habitat restoration.*

Most of the previously approved homes on the west bank provide the minimum 25-foot building setback on each lot (15' easement + 10' building setback), as called for by Policy I.A.4.c of the certified Venice LUP (see above). Fifteen feet of the 25-foot setback, along with the dry land area between the lot and the water (including the City Esplanade), has provided the necessary 30-45-foot wide lagoon buffer on these previously approved projects (Exhibit #3).

In regards to the building setback, Policy I.A.4.c of the certified Venice LUP requires a *minimum* building setback distance of 25 feet from the eastern (lagoon-side) property line (a.k.a. the inland edge of Esplanade West). A greater setback may be required if necessary to protect the marine resources of Ballona Lagoon. The proposed project does not comply with the LUP policy, as a proposed balcony is set back only 18 feet from the property line (Exhibit #4). The LUP policy states that "All portions of a dwelling, except for a ground level deck" shall be set back a minimum of 25 feet from the property line.

The applicant proposes to provide a 23-foot wide lagoon buffer strip between the shoreline and the proposed balcony (Exhibit #4). The proposed residence would be built on the upland portion of the property situated above the five-foot contour line (Exhibit #4). The entire 3,610 square foot lot would be developed with the exception of the proposed lagoon buffer strip. The proposed lagoon buffer strip would provide a buffer between the shoreline (where the wetland vegetation is growing) and the proposed development (house and balconies).

The proposed 23-foot lagoon buffer is too small to adequately protect the bird flyway over the lagoon and the ESHA on the west bank of the lagoon. As previously stated, the project site differs from the rest of the lots on the west bank because there is significantly less dry land area situated between the lot and the water (Exhibit #3). The west bank lots located south of the project site each have 15-30 feet of dry bank area between the property line and the water's edge. With the lagoon buffer strip *and* the building setback requirements, most of the Commission-approved dwellings are set back 40-55 feet from the water's edge (buffer plus yard areas). This site has very little dry land area between the water and the lot line (5-10 feet) as the lot line abuts the water's edge (Exhibit #4). Therefore, the proposed building would encroach closer to the ESHA and further into the bird flyway than all of the previously permitted developments along the west bank of the lagoon.

In order to determine the appropriate building site and setback requirements for this project site, the Commission refers primarily to the only prior Commission action for the block on which the project is proposed: Block 1 of the Del Rey Beach Tract. Only one building has been permitted on Block 1: the duplex next door that currently exists on Lot 19 of Block 1 (Exhibit #3, p.1). In 1978, the Commission approved Coastal Development Permit P-78-2737 (Sevilla & Dubin) for the construction of a duplex on Lot 19 of Block 1 (Exhibit #8).<sup>1</sup> The building on Lot 19 has a building setback of 29 feet from the easterly property line, which results in the building being set back 40-47 feet inland of the shoreline (Exhibit #4).

The Commission, in past actions, has required the provision of a one hundred-foot buffer between new development and wetlands. In this case, the wetland vegetation is growing all the way up to the applicant's property line. The lot is 95 feet long. Therefore, a one hundred-foot buffer would render the property unbuildable. A one hundred-foot buffer would also greatly exceed the setback requirement that the Commission has imposed on the residences that have previously been approved on the west bank, south of the currently proposed project (Exhibit #3). Each of the previously approved buildings is set back 40-55 feet from the water's edge (buffer plus yard areas), although some of the lagoon buffer area between these buildings and the shoreline is located on the City Esplanade and Lot C, and not on the residential lots.

When necessary to protect the ESHA, the Commission has required building setbacks on the west bank greater than the 25-foot minimum required by the certified LUP. One notable development is the duplex located on Lot 19 on Block 1, next door to the currently proposed development (Exhibits #4&8). The duplex on Lot 19 is required to be set back 29 feet from the easterly property line, and 40-47 feet from the high water line (Exhibit #4).

Because of the minimal amount of dry bank area situated between the applicant's lot and the water, the width of the protective lagoon buffer on this site (between the development and the lagoon wetland) will be less than the 30-45-foot wide lagoon buffer that has been protected along the western shoreline of Ballona Lagoon (Exhibit #3). The applicant is proposing a building with balconies that would encroach within 23 feet of the shoreline (Exhibit #4). As proposed, the project does not comply with the setback provisions of the certified Venice LUP, nor does it provide adequate protection of the ESHA as required by the Chapter 3 policies of the Coastal Act. The Coastal Act is the standard of review for this project.

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<sup>1</sup> Coastal Development Permit P-78-2737 (Sevilla & Dubin) was amended by Coastal Development Permit 5-82-389 (Stayden) and Coastal Development Permit 5-86-929 (Stayden), although the originally approved site plan and setback requirements have not been changed.

Staff is recommending that the applicant provide a 25-foot wide protective lagoon buffer strip, measured inland from the high water line where a band of wetland vegetation is growing along the shoreline of the lagoon (Exhibit #4). No development would be permitted within the 25-foot wide protective lagoon buffer strip. Additionally, in order to maximize the airspace for the bird flyway and visual cone over the ESHA, and to enforce a stringline for residences on this block (Block 1 of the Del Rey Beach Tract), staff is recommending that the residential structure (including balconies) be set back at least 29 feet from the eastern (lagoon-side) property line. A 29-foot structural setback and stringline is consistent with the Commission-approved setback imposed on Lot 19 in 1978 (P-78-2737), the only other existing residence on this block (Exhibits #4&8).

The Commission finds that the 25-foot wide lagoon buffer strip and 29-foot structural setback from the property line is: a) the minimum necessary to protect the ESHA and bird flyway; b) the minimum necessary for Block 1 of the Del Rey Beach Tract because of the location of the property lines in relation to the water's edge (i.e. narrow lagoon bank); c) consistent with the prior Commission action and existing development on Block 1; d) would prevent the proposed dwelling from extending further east than the stringline for the existing adjacent development next door on Lot 19, and e) consistent with the requirements of the Coastal Act and the certified Venice LUP. Therefore, the Commission requires the applicant to revise the project plans in order to provide the required 25-foot wide lagoon buffer strip and 29-foot structural setback from the property line. Only as conditioned is the proposed project consistent with the marine resource and ESHA protections contained in the Coastal Act and the certified Venice LUP.

#### **D. Easement Dedication and Restoration of the Protective Lagoon Buffer Strip**

As previously stated, Ballona Lagoon is an Environmentally Sensitive Habitat Area (ESHA). In its approval of Coastal Development Permit A-266-77 (ILA), the Commission found that Ballona Lagoon, located adjacent to both the Silver Strand and Del Rey Beach Tracts, is a critical habitat area and an important coastal resource. The Commission found that the shores and water area of the lagoon had a history of public use: camping, clamming, fishing, walking, and bird watching. The Commission further found that residential development of the area would have major adverse cumulative impacts on the lagoon and its wildlife and that several measures were necessary to mitigate the adverse impacts of development.

One of the mitigation measures required that each lagoon fronting lot owner on the east bank dedicate a 24-30-foot wide easement across the lagoon-side of their property to form a protective lagoon buffer strip along the lagoon bank (Exhibit #11). Each lagoon fronting lot owner on the west bank has dedicated a 15-foot wide easement across the lagoon-side of their property to form a protective lagoon buffer strip along the west bank of the lagoon (Exhibit #3).

The dedicated easements form a contiguous lagoon buffer strip between the waters of the lagoon and the residential development on both banks (as described in Section B of this report). The lagoon buffer strip provides the space necessary to reduce the negative impacts on the lagoon (and its wildlife) caused by the adjacent residential development. The lagoon buffer strip also provides the area necessary for a public access path along the bank of the

lagoon. The protective lagoon buffer strip easements, recorded for purposes of both habitat protection and public access, were required so that the degraded habitat area on the lagoon bank could be restored. The City of Los Angeles, the California Coastal Conservancy, and the Ballona Lagoon Marine Preserve (BLMP) have successfully restored the east bank of the lagoon with native landscaping (See Coastal Development Permit 5-95-152 & amendments). The dedicated easements have also allowed a public walkway to be built along the east bank of the lagoon for public access. The Commission, on January 8, 2002, approved Coastal Development Permit 5-01-257/A5-VEN-01-279 which would permit the City of Los Angeles to restore the entire west bank of the lagoon.

As was required on the east bank of Ballona Lagoon, the Commission has also required that a protective lagoon buffer strip be provided between the lagoon and all development it has approved along the west bank of the lagoon. Each lagoon-fronting lot owner who has received a coastal development permit for development, as a condition of developing their property, has offered to dedicate a fifteen-foot wide easement for public access and habitat protection across their property. Each of the Commission-approved coastal development permits for the development of the west bank properties includes the required easement dedication.<sup>2</sup> The required protective buffer strip on the west bank is comprised of the ten-foot wide Esplanade West (City right-of-way), a fifteen-foot wide easement dedicated on each lagoon fronting property, and additional dry bank area situated east of the Esplanade (Exhibit #3).

In this case, the applicant has offered to dedicate the fifteen-foot wide easement for public access and habitat as part of the proposed project (Exhibit #4). The proposed fifteen-foot wide easement is mostly inland of the narrow band of wetland vegetation (Jaumea, alkali heath and pickleweed) that exists along the shoreline (Exhibit #6). The proposed fifteen-foot wide easement is covered primarily by South African iceplant and other non-native plants that dominate the portion of the site located inland of the tidal zone. The applicant is not proposing any development or fill within fifteen feet of the eastern property line (Exhibit #4). The applicant's proposed easement dedication is consistent with the "lagoon buffer strip" easements that have been included in each Commission-approved permit for development on similarly sited lots along the west bank of Ballona Lagoon (Exhibit #3).

The proposed easement will comprise part of the buffer for habitat protection between the proposed development and Ballona Lagoon, and will also preserve an area along the west bank for a possible public access trail to be developed at some future time. The proposed easement is consistent with the past Commission actions and will add to the strip of protected habitat which is provided by the previously recorded easements which comprise the buffer on the west bank of Ballona Lagoon. Therefore, the inclusion of the protective lagoon buffer in proposed project is consistent with Section 30240 of the Coastal Act because the development has been sited to protect the sensitive habitat areas on and adjacent to the site.

Special Condition Two requires the recordation of the offer to dedicate the easement for public access and habitat protection consistent with the applicant's offer to do so. 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

<sup>2</sup> [See Coastal Development Permits P-78-2737 (Sevilla & Dubin), P-78-3123/A-281-77 (Cashin), 5-85-371 (Wyatt), 5-86-819 (Rome), 5-87-500 (Rome), 5-88-1053 (Rome), 5-89-593 (MDR Properties), 5-97-015 (Ganezer), 5-97-363 (Paragon), 5-97-220 (Paragon), 5-98-328 (Paragon) & 5-00-001 (Garcia)].

pervious public walkway not exceeding five feet in width for public access. Prohibited development within the dedicated area includes fill, installation of permanent irrigation devices, and the planting of non-native vegetation.

The Coastal Act and the certified Venice LUP both require that the ESHA be enhanced and restored.

Section 30230 of the Coastal Act states, in part:

Marine resources shall be maintained, enhanced, and where feasible, restored...

Policy IV.B.2.d of the certified Venice LUP states:

*Permitted uses within the buffer strip shall be limited to open space, habitat management, nature study and interpretation for educational purposes and pedestrian walkways for passive recreation such as bird-watching, photography and strolling. Landscaping in the buffer strip shall consist of native plants and shrubs. **Non-native species shall be phased out and the area restored as feasible.** (For more detailed, refer to the Ballona Lagoon Enhancement Plan.)*

Therefore, in order to mitigate the impacts of the project caused by the development of the upland portion of the site, the applicant is required to restore the portion of the lagoon buffer strip on the project site with native vegetation. The proposed single family residence would displace approximately 3,000 square feet of disturbed upland habitat on the project site. The removal of non-native vegetation from the proposed lagoon buffer easement and the restoration with native landscaping will mitigate some of the impacts of the proposed development and enhance marine resources as required by Section 30230 of the Coastal Act.

Special Condition 4.A.(iii) requires the applicant to submit a landscape plan in order to mitigate the adverse impacts of the proposed project on the wetland habitat of Ballona Lagoon.

Special Condition 4.A.(iii) states:

- (iii) Landscaping. A landscape plan for the entire lot shall be prepared and submitted to the Executive Director for review and approval. All landscaping for the entire development shall be of southern California native plants appropriate to the natural habitat type, and shall be consistent with all of the following requirements:
- a) No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized on the property. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
  - b) Within the 25-foot wide protective lagoon buffer strip (lagoon buffer) described in Special Condition One, the applicant shall preserve all existing plants that are native to the Ballona Lagoon habitat area, and shall remove all non-native

plants by hand. The lagoon buffer described in Special Condition One shall be landscaped only with plants native to the Ballona Lagoon habitat area.

- c) All landscaping shall be maintained by the applicant or successor(s)-in-interest (including the City of Los Angeles pursuant to the implementation of Coastal Development Permit 5-01-257/A5-VEN-01-279). All required plantings shall be maintained in good growing condition through-out the life of the project, and whenever necessary, shall be replaced with new plant materials which conform to the requirements of this condition to ensure continued compliance with the landscape plan.
- d) The landscape plan shall include a map showing the type, size and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and a schedule for installation of plants. The landscape plan to be submitted to the Executive Director shall be accompanied by an analysis prepared by a licensed Landscape Architect or a qualified Resource Specialist that documents that the landscape plan includes the appropriate size and types of plants for the Ballona Lagoon habitat area.
- e) Landscaping for the 25-foot wide protective lagoon buffer strip (lagoon buffer) described in Special Condition One shall be installed immediately following completion of grading for the development and prior to or concurrent with commencement of construction of the dwelling authorized under this permit. No grading or presence of heavy machinery shall occur within the lagoon buffer described in Special Condition One. The plantings shall provide 70% cover in 90 days, unless the Executive Director grants additional time for good cause.
- f) Monitoring. Five years from the date of the completion of the installation of landscaping as required in item (e.) above, the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The applicant or successor in interest shall implement the supplemental landscaping plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.

As conditioned, the proposed project protects and enhances the resources that exist on the west bank of Ballona Lagoon consistent with Sections 30240, 30230 and 30231 of the

Coastal Act. The special conditions require the recording of the dedicated easement as proposed by the applicant and also prohibit development in the protective lagoon buffer strip (except for a Commission approved public walkway no more than five feet in width and landscaping with native coastal strand vegetation).

The applicant may authorize the City of Los Angeles, or other agency approved by the Executive Director, to implement and maintain the landscape plan approved pursuant to Special Condition Four. The applicant's responsibility to maintain the lagoon buffer area within the proposed fifteen-foot (15') wide easement described in Special Condition Two will end when the City of Los Angeles, or other agency approved by the Executive Director, accepts the offer to dedicate. As previously noted, the Commission recently approved Coastal Development Permit 5-01-257/A5-VEN-01-279 permitting the City of Los Angeles to restore the entire west bank of the lagoon. If the City accepts the dedicated easement and restores the lagoon buffer on the project site before construction commences on the approved residence, then the City will have accepted the responsibility to maintain the easement (and other buffer area if the City and the landowner agree). If, on the other hand, the applicant commences construction on the approved development prior to the City's implementation of the west bank lagoon enhancement project, then it remains the applicant's responsibility to restore and maintain the lagoon buffer.

A condition of approval also requires the applicant to submit a lighting plan and a drainage plan for approval by the Executive Director. The lighting associated with the proposed project shall not significantly impact the adjacent ESHA. Therefore, all lighting within the development shall be directed and shielded so that light is directed away from Ballona Lagoon. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that the lighting is designed to avoid impacts upon adjacent ESHA including wetlands. In addition, all drainage from the site (excluding the lagoon buffer strip) shall be directed away from Ballona Lagoon and into the City stormwater system (Pacific Avenue) to prevent adverse impacts to the ESHA caused by polluted runoff. Only as conditioned is the proposed project consistent with Sections 30240, 30230 and 30231 of the Coastal Act.

Finally, in order to protect the buffer area and the lagoon from impacts caused by the construction of the proposed project, the applicant shall erect a six-foot high fence, for the period of construction, between the buffer area and the building site. No site preparation or construction shall occur until the fence is constructed, and no stock piling, grading, or trash disposal shall occur in the buffer area at any time. As conditioned, the proposed project is consistent with the ESHA, marine resource and water quality policies of the Coastal Act. Please see the following sections of the staff report for the analysis of other applicable Coastal Act sections including public access and recreation.

#### **E. Building Height**

In order to protect against a "canyon effect" which could negatively impact bird flight and foraging patterns, the Commission has established a height limit for structures adjacent to Ballona Lagoon. All development within sixty horizontal feet of the mean high tide of the lagoon or inland side of the Esplanade (City right-of-way), whichever is furthest from the water, is limited to a maximum of thirty feet above average existing natural grade. Some of

the Commission's usual exceptions to height limits in Venice, such as roof deck railings and roof access structures, are not allowed within the area adjacent to Ballona Lagoon because such structures over the thirty-foot height limit would intrude further into the bird flyway and cone of vision. In regards to building heights along the west bank of Ballona Lagoon, Policy I.A.4.c of the certified Venice LUP states:

***I.A.4.c. Ballona Lagoon West Bank Properties Between Topsail and Via Marina***

*Height: Not to exceed 30 feet within 60 horizontal feet of the mean high tide of the lagoon or inland side of the Esplanade (City right-of-way), whichever is furthest from the water. Beyond 60 horizontal feet, one additional foot in height is permitted for each two additional horizontal feet to a maximum height of 38 feet. No portion of any structure (including roof access structures, roof deck railings and architectural features) shall exceed the 30-foot height limit within 60 horizontal feet of the mean high tide line of Ballona Lagoon or the inland side of the Esplanade, whichever is furthest from the water. Notwithstanding other policies of this LUP, chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may exceed the specified height limit in a residential zone by five feet. (See LUP Policy I.A.1 and LUP Height Exhibits 13-16).*

The certified LUP height limit is consistent with the prior Commission approvals for development on the west bank of Ballona Lagoon. In order to regulate the height of structures adjacent to Ballona Lagoon so as to limit the impacts on birds, the following special condition is applied to the permit.

Special Condition 4.A(ii) states:

The height of the structure within sixty horizontal feet of the mean high tide line of Ballona Lagoon at the adjacent shoreline, or within sixty horizontal feet of the inland side of the Esplanade (City right-of-way), whichever is furthest from the water, shall not exceed thirty (30') feet above the average natural 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 38 feet above the average grade of the lot. No portion of any structure (including roof access structures, roof deck railings and architectural features) shall exceed the thirty-foot height limit within sixty horizontal feet of the mean high tide line of Ballona Lagoon or the inland side of the Esplanade, whichever is furthest from the water. Chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may exceed the specified height limit by five feet.

The above-stated height limit has been applied to this permit. Except for the proposed roof deck railings and roof equipment, the height of the proposed structure within sixty horizontal feet of the mean high tide line of Ballona Lagoon as indicated on the submitted elevations for the proposed project is under thirty feet (Exhibit #5). The proposed roof deck railings shall not exceed thirty feet within sixty horizontal feet of the mean high tide line of Ballona Lagoon as indicated on the submitted elevations. Therefore, revised plans must be submitted for approval. The maximum height of the portion of the proposed structure located more than sixty horizontal feet inland of the mean high tide line of Ballona Lagoon is 38 feet. All roof deck railings and architectural features must be lower than thirty feet in elevation if they are

located within sixty feet of the water or the eastern property line. Only as conditioned to limit the height of the structure is the proposed project is consistent with the habitat protection policies of the Coastal Act and the Commission's prior actions.

#### **F. Public Access and Recreation**

The proposed provision of the lagoon buffer easement on the eastern portion of the site will preserve an area for a public access trail across the easement if such an accessway is approved by the Commission in the future. Additionally, the applicant is proposing to provide an improved concrete walkway across the portion of the site immediately adjacent to Pacific Avenue (Exhibit #4). Therefore, the proposed project will not adversely affect public access or recreation. As conditioned, the proposed project is consistent with the public access and recreation policies of the Coastal Act.

#### **G. Parking**

In order to protect coastal access, all new development on lots adjacent to Ballona Lagoon in the Silver Strand and Del Rey Beach Tract areas are required to provide adequate on-site parking. In previous actions, the Commission has determined that three on-site parking spaces are adequate to serve single family residences in the area. The proposed project provides the necessary three on-site parking spaces in the ground floor garage. Only as conditioned to provide three on-site parking spaces is the proposed project is consistent with the public access policies of the Coastal Act and the Commission's prior actions.

#### **H. Local Coastal Program**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

- (a) Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

The City of Los Angeles does not have a certified Local Coastal Program for the Venice area. The Los Angeles City Council adopted a proposed Land Use Plan (LUP) for Venice on October 29, 1999. On November 29, 1999, the City submitted the draft Venice LUP for

Commission certification. On November 14, 2000, the Commission approved the City of Los Angeles Land Use Plan (LUP) for Venice with suggested modifications. On March 28, 2001, the Los Angeles City Council accepted the Commission's suggested modifications and adopted the Venice LUP as it was approved by the Commission on November 14, 2000. The Venice LUP was officially certified by the Commission on June 12, 2001.

The proposed project does not conform with the policies of the certified Venice LUP. As proposed, the building does not provide the necessary setback from the ESHA and violates the thirty-foot height limit within sixty feet of the Esplanade and shoreline. The recommended special conditions of approval, including the requirement to revise the project plans, would bring the project into conformity with the certified Venice LUP. Therefore, the proposed project, only as conditioned, can be found to be consistent with the certified Venice LUP. As conditioned, the project is also consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

#### **I. California Environmental Quality Act (CEQA)**

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

The proposed project, as conditioned, has been found consistent with the Chapter 3 policies of the Coastal Act. The project, if revised consistent with the recommended conditions of approval, is a feasible alternative which would substantially lessen the significant adverse impact which the activity may have on the environment. Therefore, all adverse impacts have been minimized by the recommended conditions of approval and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project as conditioned can be found consistent with the requirements of the Coastal Act to conform to CEQA.

End/cp

# APPENDIX A

## **SUBSTANTIVE FILE DOCUMENTS:**

1. City of Los Angeles certified Land Use Plan for Venice, 6/12/01.
2. Venice Specific Plan, City of Los Angeles Ordinance No. 172,897.
3. Biological Resources Report (5106-5110 Pacific Avenue), by Impact Sciences, 9/17/01.
4. Coastal Development Permit Applications 5-01-306 & 5-01-307 (VDH Development).
5. Coastal Development Permit Applications 5-01-257/A5-VEN-01-279 (City of LA).
6. Coastal Development Permit 5-95-152 & amendments (City of LA/BLMP/Conservancy).
7. Coastal Development Permit A-266-77 (ILA) & amendment.
8. Coastal Development Permit P-78-2737 (Sevilla & Dubin).
9. Coastal Development Permit P-78-3123/A-281-77 (Cashin).
10. Coastal Development Permit 5-85-371 (Wyatt).
11. Coastal Development Permit 5-86-819 (Rome).
12. Coastal Development Permit 5-87-500 (Rome).
13. Coastal Development Permit 5-88-1053 (Rome).
14. Coastal Development Permit 5-89-593 (MDR Properties).
15. Coastal Development Permit 5-97-220 (Paragon).
16. Coastal Development Permit 5-97-363 (Paragon).
17. Coastal Development Permit 5-98-328 (Paragon).
18. Coastal Development Permit 5-97-015 (Ganezer).
19. Coastal Development Permit 5-00-001 (Garcia).
20. Coastal Development Permit 5-00-161 (City of LA).
21. Proposal for The Restoration/Revegetation of the Western Bank of the Ballona Lagoon, by Roderic B. Buck, December 2001.
22. Conceptual Plan for Completion of Phase II Improvements of the Ballona Lagoon Enhancement Plan for the West Bank of Ballona Lagoon, BLMP, March 1999.
23. Ballona Lagoon Enhancement Ten-year Monitoring Plan, July 1996.
24. Ballona Lagoon Enhancement Plan, BLMP & State Coastal Conservancy, August 1992.
25. Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, 1981
26. Birds of Ballona, by Dock & Schreiber in Biota of the Ballona Region, 1981.
27. Avifauna of the Venice Canals by Charles T. Collins, Ph.D., 1986.
28. An Ecological Evaluation of Ballona Lagoon, by Dr. Richard F. Ford & Dr. Gerald Collier, May 7, 1976.

End/cp

# VENICE, CA



Project Site:  
5106 & 5110 Pacific Ave.  
(Lot 18, Blk 1)

COASTAL COMMISSION  
5-01-307

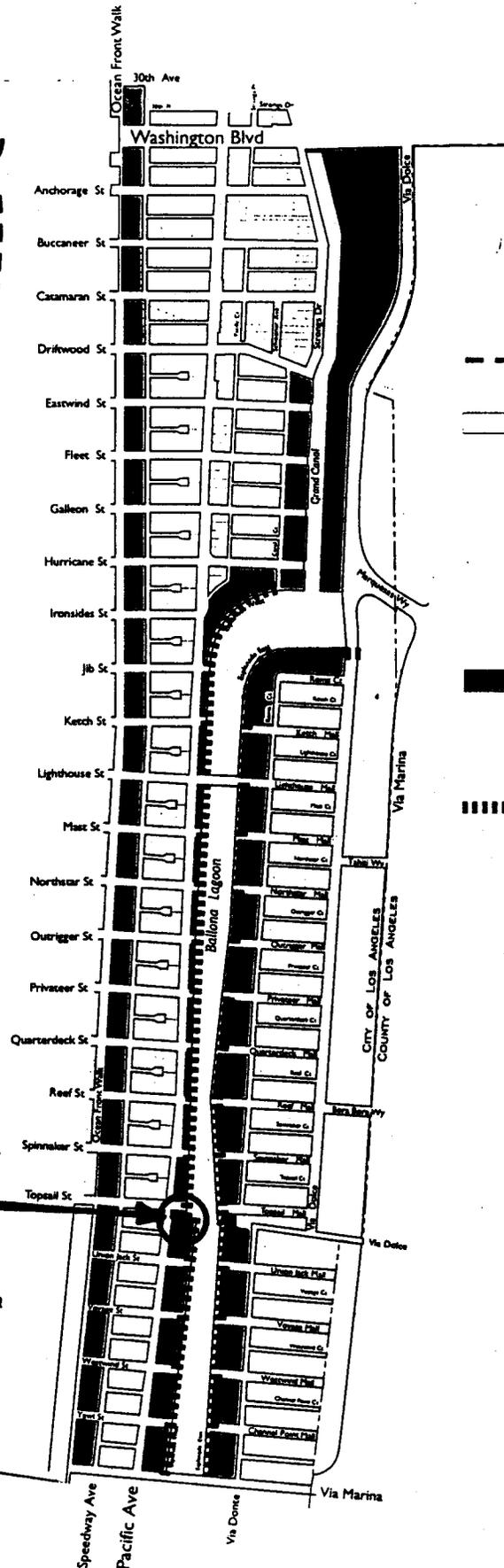
EXHIBIT # 1  
PAGE 1 OF 1

Silver Strand  
Marina  
Peninsula  
Area

Project  
Site

Least Tern  
Nesting  
Area

Marina Entrance

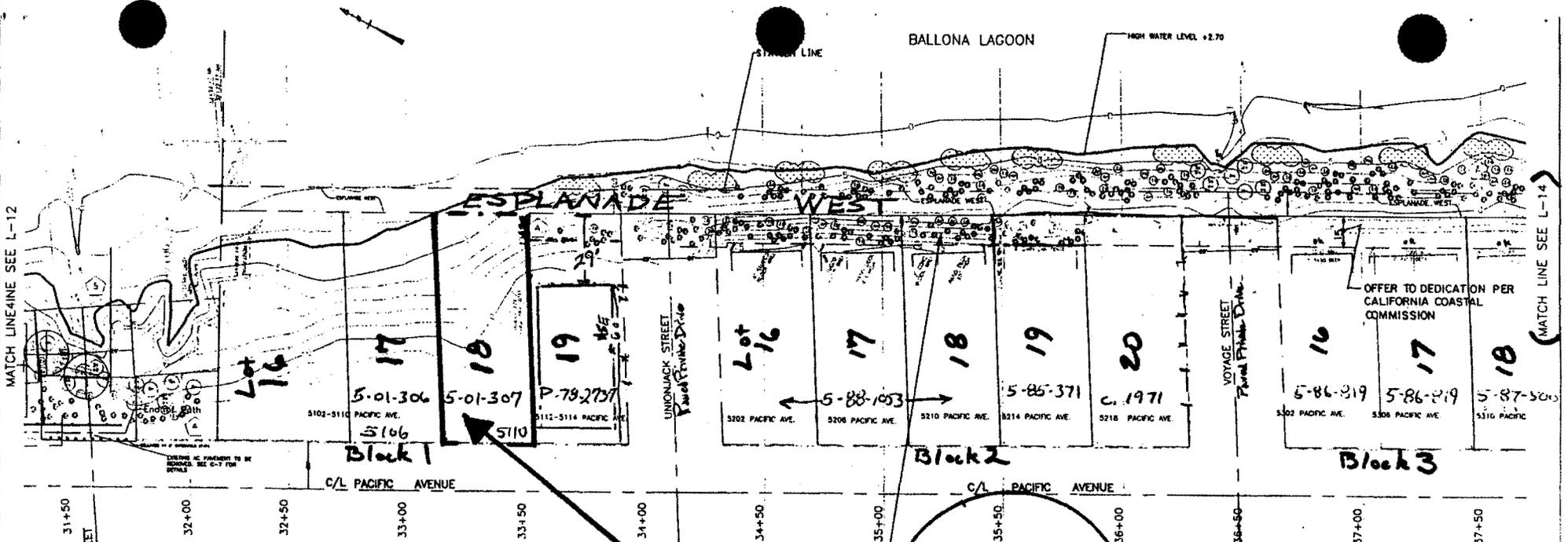


- Mean High Tide Line
- Environmentally Sensitive Habitat Areas (ESHA) (Includes lots R & C, Which include the submerged bottom of the Ballona Lagoon from Hurricane St. to Topsail St. and from Topsail St. to Via Marina, respectively.)
- █ Lots Fronting on the Environmentally Sensitive Habitat Areas (ESHA)
- ..... Habitat Protection Buffer Strip (ESHA)



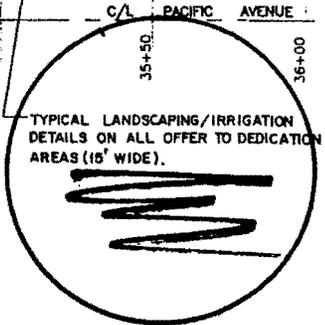
COASTAL COMMISSION  
5-01-307

EXHIBIT # 2  
PAGE 1 OF 1



LEGEND (SHEET L-11 & L-12)

QTY.	SIZE	SYMBOL	BOTANICAL NAME	COMMON NAME
004	24" BOX		POPULUS FREMENTII	FREMONT POPLAR
000	15 GAL.		SALIX LASIOLEPIS	ARROYO WILLOW
013	5 GAL.		SALIX EXIMA	SAND BAR WILLOW
024	5 GAL.		RIAS INTEGRIFOLIA	LEMONADE BERRY
060	1 GAL.		ARTEMISIA CALIFORNICA	CALIFORNIA SAGE
000	5 GAL.		ATRIPLEX CALIFORNICA	SALT BUSH
093	1 GAL.		ENCHELIA CALIFORNICA	BUSH SUNFLOWER
420	LINER		ERIDOGONUM PARVIFOLIUM	DUNE BUCKWHEAT
013	LINER		FRANKENIA GRANDIFLORA	FRANKENIA
062	1 GAL.		HAMILORAPPUS EPICLOIDES	GOLDEN BUSH
051	1 GAL.		ISONERIS ARBOREA	BLADDERPOD
010	LINER		JUNCUS ACUTUS	SPIKE RUSH
060	LINER		LIMNIMUM CALIFORNICUM	CALIFORNIA STATICE
LINER			SALICORNIA SUBTERMINALIS PICKERELLED	SEE SPECIFICATIONS FOR PLANTING DETAILS



NOTE:  
1. SEE PLAN C-2 TO C-11 FOR DETAILS OF DECOMPOSED GRANITE PATH, SPLIT RAIL FENCE AND GATE.

Project Site:  
5110 Pacific Av.  
Lot 18, Blk 1



500-257/AS-VEN-01-289  
BALLONA LAGOON ENHANCEMENT PLAN PHASE III  
W.O. E1903241

COASTAL COMMISSION  
5-01-307  
EXHIBIT # 3  
PAGE 1 OF 2

LEGEND SHEET L-13 & L-14

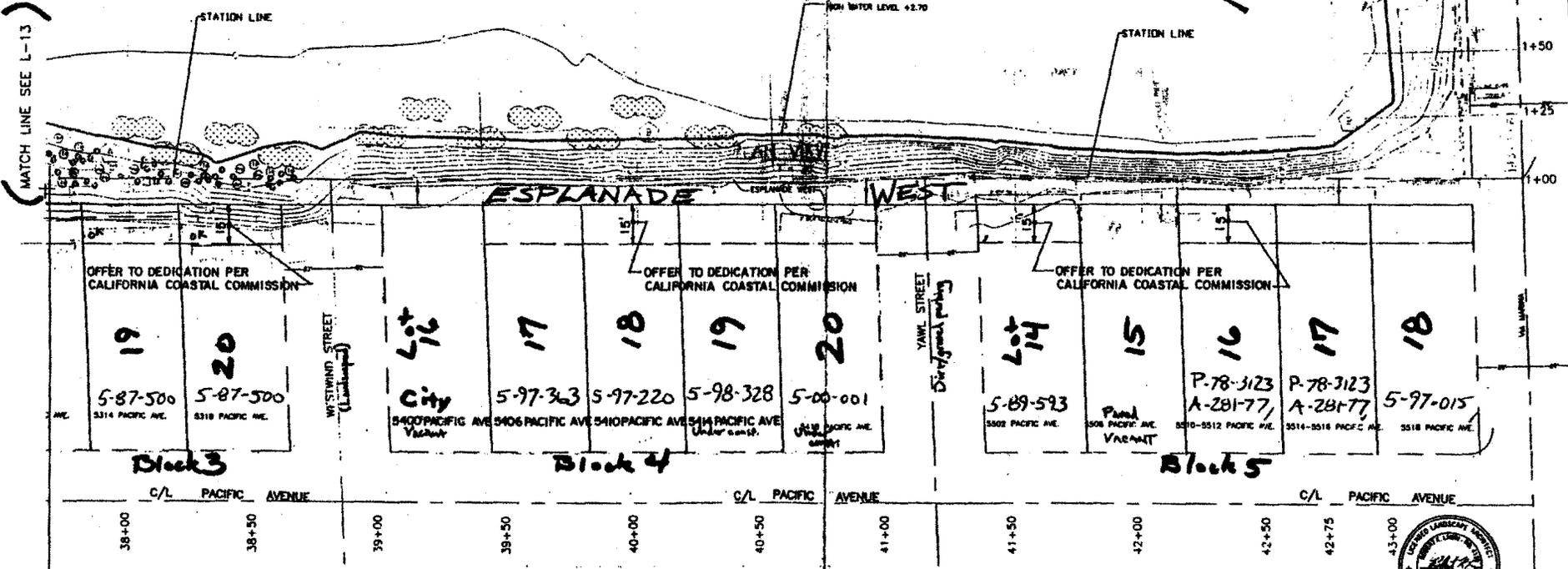
QTY.	SIZE	SYMBOL	BOTANICAL NAME	COMMON NAME
002	24" BOX		POPULUS FREMENTII	FREMENT POPLAR
000	15 GAL.		SALIX LASIOLEPIS	ARROYO WILLOW
013	5 GAL.		SALIX ERIGUA	SAND BAR WILLOW
009	5 GAL.		RHAUS INTEGRIFOLIA	LEMONADE BERRY
016	1 GAL.		ARTEMISIA CALIFORNICA	CALIFORNIA SAGE
000	5 GAL.		ATRIPLEX CALIFORNICA	SALT BUSH
008	1 GAL.		ENCELIA CALIFORNICA	BUSH SUNFLOWER
008	LINER		ERIGODNUM PARVIFOLIUM	DUNE BUCKWHEAT
000	LINER		FRANKENIA GRANDIFLORA	FRANKENIA
014	1 GAL.		HAPLOPAPPUS ERICOIDES	GO. BEN BUSH
045	1 GAL.		ISOMERIS ARABREA	BLADDERPOD
000	LINER		JUNCUS ACUTIS	SPIKE RUSH
000	LINER		LYONICH CALIFORNICUM	CALIFORNIA STATICE
LINER			SALICORNIA SUBTERNALIS PICKELVEED	SEE SPECIFICATIONS FOR PLANTING DETAILS

GROUND COVER

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

NOTE:  
 1. SEE PLAN C-8, C-9, C-11 FOR DETAILS OF RECOMMENDED GRANITE PAVING SPALL RAIL FENCE AND GATE.

**RECEIVED**  
 South Coast Region  
 NOV 30 2001  
 CALIFORNIA  
 COASTAL COMMISSION



PLAN VIEW  
 Scale: 1/2" = 10'



5-01-257/AS-JEN-61-289  
 BALLONA LAGOON ENHANCEMENT PLAN PHASE III  
 W.O. E1903241

**COASTAL COMMISSION**  
 5-01-307  
 EXHIBIT # 3  
 PAGE 2 OF 2



Hatched area is 25' wide buffer between Wetland veg. & development.

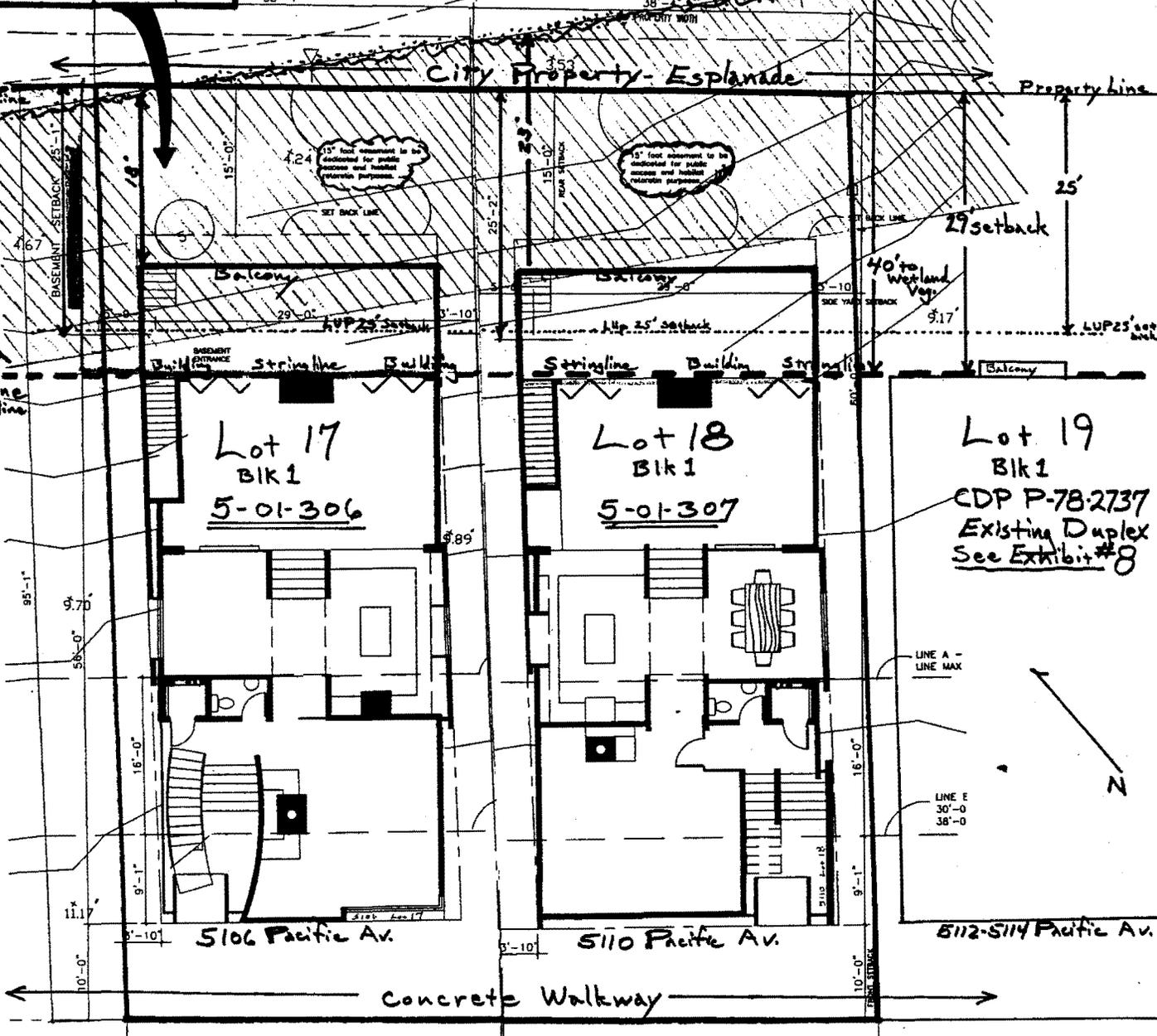
Ballona Lagoon

MEAN HIGH TIDE WATER LINE ELEVATION = 1.91'

+2.65' High Water (Wetland Veg)

High +2.65' Water  
25' buffer from Wetland Veg.

29' Stringline from Prop. line  
Lot 16 Blk 1 Vacant



38'-4" RECEIVED  
South Coast Region  
JAN 14 2002  
CALIFORNIA COASTAL COMMISSION  
Pacific Avenue

COASTAL COMMISSION  
5-01-307  
EXHIBIT # 4  
PAGE 1 OF 1

Setback from  
Property line

29' 25'(LUP)

MAX HEIGHT 38'-0" FROM AVG. GRADE

MAX HEIGHT  
38'-0"

HEIGHT VARIES

HEIGHT SETBACK LINE (MAX HEIGHT 30'-0")

PROPERTY LINE

MAX HEIGHT 30'-0" FROM AVG. GRADE

AVG. GRADE

Lagoon

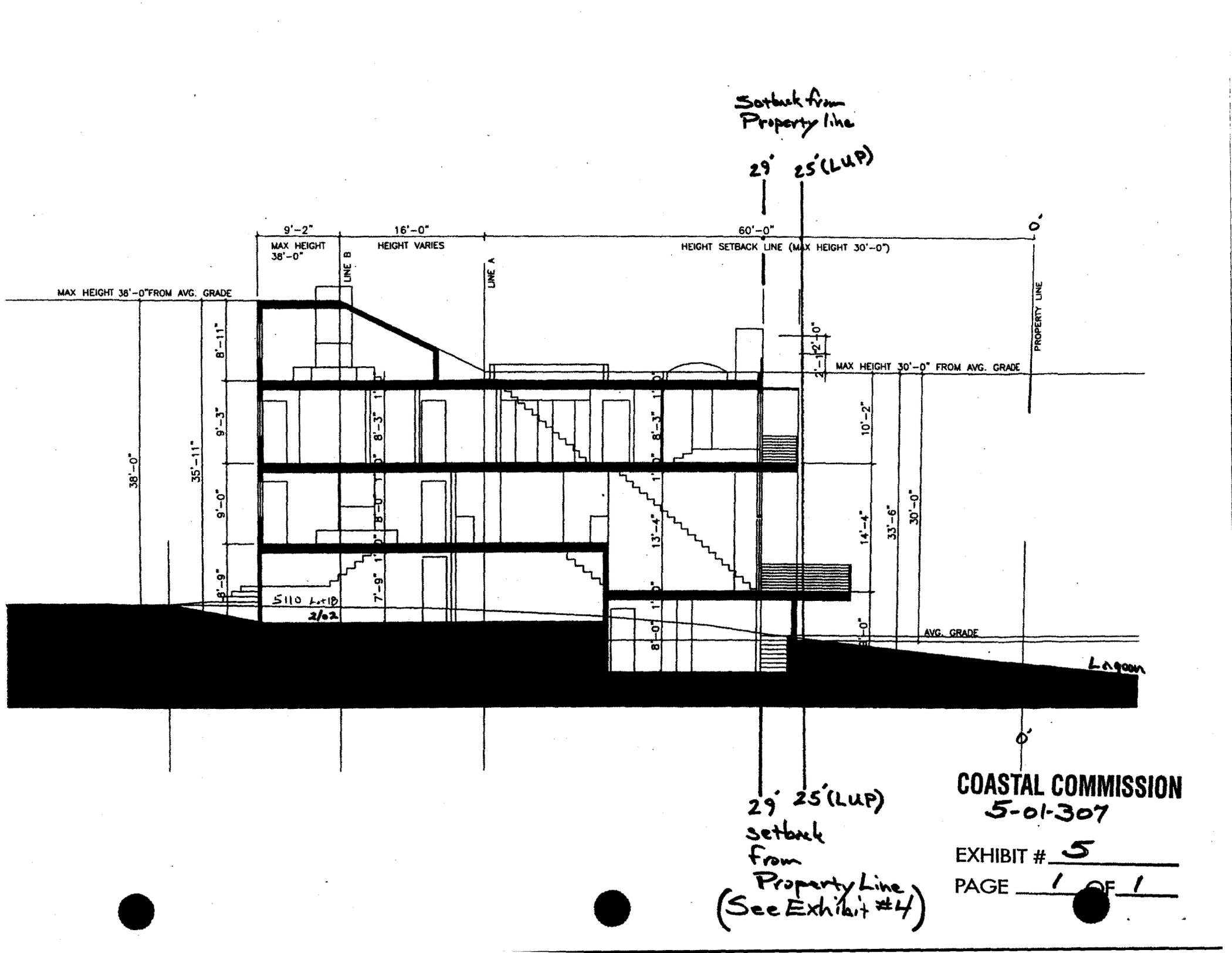
29' 25'(LUP)  
setback  
from  
Property Line  
(See Exhibit #4)

COASTAL COMMISSION

5-01-307

EXHIBIT # 5

PAGE 1 OF 1



# QES, INC.

January 2, 2002

California Coastal Commission  
State of California  
45 Fremont Street, Suite 2000  
San Francisco, CA 91405

ITEM   
APP# 5-01-307

Eric Lieberman / In favor

RE: VDH Development  
5110 Pacific Ave., Venice  
Application Number 5-01-307  
Request for Approval of Coastal Development Permit  
Commission Hearing Date: January 8, 2002

Dear Honorable Commissioners:

This office represents VDH Development, owners of the above addressed property and the applicant of the subject Coastal Development Permit. On behalf of the applicant we are requesting that the Commission approve the Coastal Development Permit and to adopt the findings for approval as have been adopted by the City of Los Angeles.

On <sup>Wed. Feb. 6</sup> ~~Tuesday January 8~~, 2002 you will have before you a Coastal Development Permit to permit the construction of a single-family home located on the west bank of the Ballona Lagoon. The project proposal was submitted to the City of Los Angeles on May 6, 2001 at which time the Venice Specific Plan was in effect. The Land Use Plan Policies were certified on June 14, 2001. In anticipation that the Land Use Plan would be certified, the project was designed in substantial conformance with design criteria of both the LUP and the Specific Plan. Utilizing the design criteria set forth, the applicant designed a structure sensitive to the site location, considering the size of the lot, proximity to the lagoon, height, location, building envelope and footprint. The project as proposed was approved by the City of Los Angeles on July 11, 2001 without controversy.

When considering the proposed Coastal Development Permit we urge you to note the following. The site design substantially conforms to the regulations set forth in the Venice Local Coastal Program Land Use Plan, Specific Plan Guidelines, Coastal Act Policies and Municipal Code requirements.

## SETBACK and LAGOON BUFFER

As required by the LUP the structure is setback 25 feet from the property line creating a variable buffer from the *mean* high tide line of 34 feet to 44 feet. The property line setback is consistent with the prevailing average setbacks of existing residential developments along the west bank of the lagoon, 25 feet. (See Photos attached) To ensure the suitability of the setback the applicant retained Impact Sciences to conduct a biological study of the site. The recommended buffer from

the biological study is 20 feet from the *mean* high tide line. (Impact Sciences Report Dated September 17, 2001 is attached) The setback as proposed exceeds the recommended buffer by 14 to 24 feet.

As with the duplex located at Union Jack and Pacific Avenue, Staff is recommending a building setback of 29 feet from the property line (38 to 48 feet from the mean high tide line) including balcony and or patio projections. As with many existing structures along the lagoon bank an artificial fill was created allowing patios, walks and landscaping to disturb the ground between the building and the water. The applicant's proposed design creates no artificial fill and leaves the setback virtually undisturbed providing a much larger area of undisturbed ground between the building and the water than that of other existing buildings. Pursuant to the biological study there are no identifiable impacts created by the applicant's proposed setback including the balcony. ***An increased setback of 4 feet recommended by Staff will not provide proportionately more protection.***

The Coastal Act requires that protection be provided for environmentally sensitive areas; as stated in the biological study, a 20-foot setback is recommended to provide adequate protection. ***The proposed setback exceeds the recommended setback of the biological study.*** The proposed 34 to 44 foot setback from the mean high tide line is a reasonable compromise between the 38 to 48 feet recommended by Staff and the 20 feet recommended by the Biologists.

#### HEIGHT

When considering the definition of Height as stated on Page 1-24 of the Certified LUP, "Height shall be measured from average natural grade to the parapet wall.... excluding roof deck railings that do not exceed 36 inches and are of an open design." The proposed design has a roof deck railing that extends two-feet above the 30-foot portion of the roof and is designed to be open and unobtrusive. Considering the existing residential buildings were built to a height of 45 feet pursuant to the specific plan guidelines, the proposed 30-foot height with an open 2-foot railing on the roof deck creates no impact when compared to mass and size of the existing structures. This design was deemed consistent with the LUP standards by the City of Los Angeles and approved as proposed.

#### PATIO / BALCONY

It appears staff misinterpreted the proposed use of the 25-foot setback. There is no ground level patio proposed within the setback. A balcony six feet above ground is proposed to extend 5 feet into the 25-foot setback. This design was chosen as an alternative to creating a fill situation in order to have a ground level deck. The proposed balcony design is less intrusive than a ground level patio and allows the opportunity to leave the ground undisturbed without fill.

We respectfully request that you also consider the following. The distance between the water line and the property line narrows at this point in the lagoon. According to the biologists the proposed project provides protection to the lagoon bank by providing an appropriate buffer. The proposed development provides adequate protection to the

January 6, 2002

lagoon without further limiting the property owner's ability to develop the site. Considering the proposed height, the undisturbed ground within the setback and the sensitivity of design given to the site this project is less intrusive than developments previously approved by the Commission.

In light of the above information and facts, we request that you allow the requirements of the Land Use Plan pursuant to Policy I.A.4.c. to apply thereby permitting the 25-foot building setback from the property line in lieu of the 29 feet proposed by Staff, determine the 2-foot roof deck railing to be within the height limit as described in the LUP and allow the balcony design off the first floor as an alternative to a ground level patio built on artificial fill.

Thank you for your time and consideration.

Sincerely,



Eric Lieberman

Cc Charles Posner  
South Coast District

**COASTAL COMMISSION**

EXHIBIT # 6  
PAGE 3 OF 5



# IMPACT SCIENCES

30343 Canwood Street, Suite 210  
Agoura Hills, California 91301  
Telephone (818) 879-1100 FAX (818) 879-1440  
impact@impactsociences.com

September 17, 2001

Design 21  
4240 Via Marina #14  
Marina del Rey, California 90292  
Attention: Mr. Roger Kurath

RE: **Biological Resources Report**  
5118 S. Pacific, Marina del Rey, and 5106 S. Pacific, Marina del Rey  
Los Angeles, County, California

Dear Mr. Kurath,

Impact Sciences, Inc. conducted biological surveys on the project sites September 7, 2001. The purpose of these investigations was: (1) to define the biological resources present; (2) to identify any special status resources present on the project sites; and (3) to generally define the limits of wetlands on the project site. At the time of the surveys, no organized vegetation or wildlife habitat was present on either of the two project sites. The majority of the sites were barren with scattered individuals of telegraph weed (*Heterotheca grandiflora*), wand chickory (*Stephanomeria virgata*) and iceplant. In the tidal zone along the bank edge (approximately two meters wide), a narrow band of salt scrub vegetation is present that is typified by species normally associated with saltmarsh that include individuals of Jaumea (*Jaumea carnosa*), alkali heath (*Frankenia salina*) and scattered individuals of pickleweed (*Salicornia virginica*).

Due to the open nature of the vegetation or the limited extent of the more dense vegetation in the tidal zone, no habitat was present that would be significantly utilized by animal species typical of natural undisturbed habitat. Rather, it is expected the site would be typically used by that association of animals normally associated with disturbed or ruderal habitat.

Special-status species include state- and federal-listed threatened and endangered species, federal and California species of concern, federal migratory non-game birds of management concern, state candidate species for listing as threatened or endangered, state protected species, California Native Plant Society listed species, and state special animals for which the Department of Fish and Game monitors the status. Special-status habitats are federal designated critical habitat and those ranked by the California Department of Fish and Game as rare and/or of high priority for inventory. Lists prepared by federal, state and local agencies were reviewed prior to the on-site field investigations to define if special status species or habitats had the potential to occur. Based on our review of these lists and the on-site field investigations, no habitat is present that would support special status plant or animal species. It should be noted that due to the proximity of the Venice Beach California least tern nesting colony, it is expected that these birds would utilize subtidal habitat (the Venice Canal) adjacent to the site for foraging.

5-01-307  
EXHIBIT # 6  
PAGE 4 OF 5

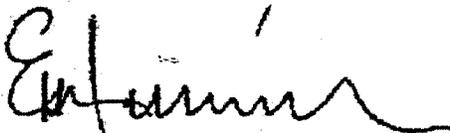
Special status habitat would be limited to the potential presence of saltmarsh. A zone of salt scrub vegetation occurs adjacent to the bank edge of the Venice Canal and the adjacent upland. It is assumed that the salt scrub present at this location occurs as a result of the high salt content present in the soil. This salt content is likely the result of two factors that include periodic inundation at extremely high tides and the constant presence of a salt spray aerosol that occurs above the waterline of the canal. Species composition is dominated by individuals of Jaumea (*Jaumea carnosa*), alkali heath (*Frankenia salina*) and scattered individuals of pickleweed (*Salicornia virginica*). Categorizing this area as saltmarsh (a special status plant community) appears to be ambitious. However, this narrow band of vegetation should be afforded some protection.

Due to the elevated nature of the site, a bank is present along the edge of the Venice Canal. Although no formal wetlands delineation was conducted, wetlands present on the project site would be limited to a narrow band that extends no further inland than the upper edge of the mean high tide line.

Recommendations would include measures to protect the narrow band of salt scrub vegetation that occurs inland of the mean high tide line and the adjacent subtidal habitat. In response, it is recommended that no development or landscaping occur 20 feet inland of the mean high tide line.

It was a pleasure preparing this information for your review. Should you have any questions or comments regarding this letter please call.

Very truly yours,  
IMPACT SCIENCES, INC.



Eric Sakowicz  
Principal

COASTAL COMMISSION

EXHIBIT # 6  
PAGE 5 OF 5

December 7, 2001

Application Files 5-01-306 & 5-01-307.

I looked over the biological surveys you sent me. The results of those surveys correspond to my recollection of the site from our visit of a couple months ago. There is a narrow strip of saltmarsh vegetation at the water's edge and then a slope covered with iceplant. The lots themselves are mostly bare ground with scattered ruderal vegetation. The highest reach of the tides reaches or nearly reaches the property line of each of the lots. I think any buffer should be measured from the highest reach of the tides or the upper edge of the saltmarsh vegetation, whichever is highest. As for buffer width, the Commission generally requires a minimum of 100 feet around wetlands and I think there is good justification for requiring wider buffers in some important habitats such as coastal lagoons and saltmarsh. However, this area has already been subject to a great deal of development a good deal closer to the lagoon than 100 feet. At this point, the decision becomes as much a planning issue as a biological one. I'd say the wider the better with the caveat that buffers significantly wider than those of adjacent properties won't be proportionally more protective because of the existing disturbances.

John

---

John D. Dixon, Ph.D.  
Ecologist / Wetlands Coordinator  
Technical Services Unit  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA 94105  
415-904-5250; fax 415-904-5400  
jdixon@coastal.ca.gov  
<http://www.coastal.ca.gov>

**COASTAL COMMISSION**

**5-01-307**

EXHIBIT # 7

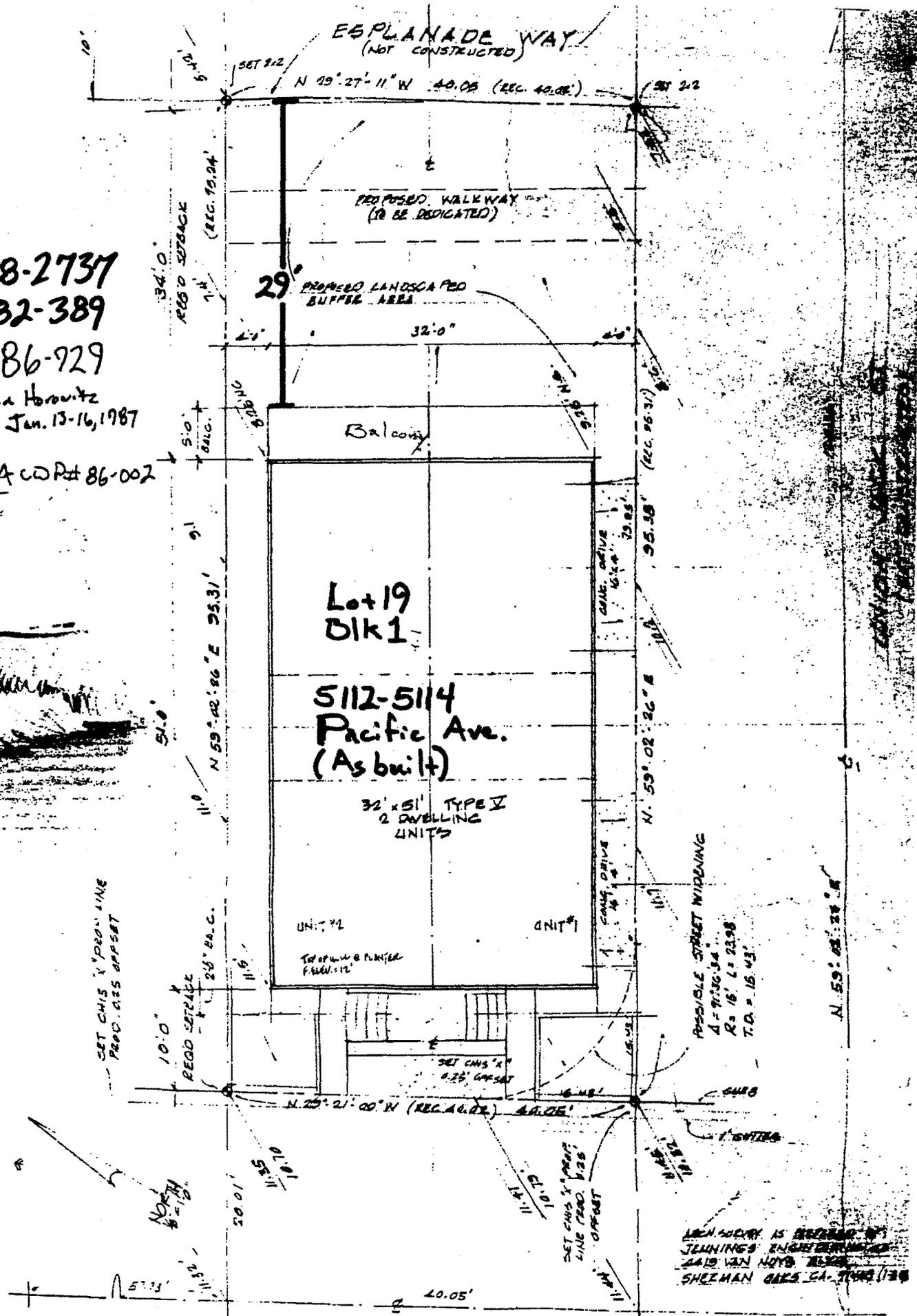
PAGE 1 OF 1

P-78-2737  
5-82-389

5-86-929

Lisa Horowitz  
Jan. 13-16, 1987

LA CDP# 86-002



PACIFIC AVENUE

EXHIBIT # 8  
PAGE 1 OF 1

LA

KEY

**Memorandum**

To : Ms. Stephanie Hoppe, Legal Counsel  
California Coastal Commission  
1540 Market Street  
San Francisco, California 94102

Date: January 26, 1978

RECEIVED  
JAN 30 1978

From : Department of Fish and Game - Wildlife Management - Region 5  
CALIFORNIA COASTAL COMMISSION

Subject: Ballona Lagoon - Appeals No. 281-77 (Cashin) and 373-77 (Graner)

In response to your letter of December 16, 1977 requesting additional review of the above projects on Ballona Lagoon, I met on site with Steve Cashin and Chris Graner Didlake on December 27, 1977.

The Cashin site (Appeal 281-77) is located on the west side of the lagoon at the inlet from the main channel of the marina.

The ground is disturbed and the edge of the shear bank shows some erosion. The top of the bank is approximately 16.0 feet and the mean higher high water tide line is 5.6 feet. At this site, the west bank is much higher than the east bank of the lagoon. Public access to the lagoon's clam beds would occur from the east bank.

A minimal buffer strip 30-40 feet measured from the M.H.H.W. line would protect this area of the lagoon as adequately as the strip required by the Coastal Commission along the east side of the lagoon. The east side requirement met and in-part, exceeded the Department's recommended minimum 30-40 feet measured from the M.H.H.W. line.

Due to the steep vertical separation of the top of the bank in relation to the bottom of the lagoon and M.H.H.W. line, the esplanade path placed at least five feet from the edge of the top of the bank would be acceptable. The exact location could be determined when a landscape design is planned for the whole west side of the lagoon.

The Graner site (Appeal 373-77) presents a different design problem. It is located on a curve and the exact distance from the esplanade path to the M.H.H.W. line is unknown. Ms. Didlake is to provide a topographic survey before I make any recommendations on this site.

*Earl M. Lauppe*  
Earl M. Lauppe  
Associate Wildlife Manager-Biologist  
Region 5

EML:dh

cc: Mr. Stephen E. Cashin, Westridge Development Corporation  
2665 Thirtieth Street, Suite 210, Santa Monica, California 90405

Ms. Chris Graner Didlake, 2525 Lemon Ave., Long Beach, California 90806

EXHIBIT 9

1/2/02

Jack Posner, Coastal Program Analyst  
CA Coastal Commission  
South Coast Area  
P.O. Box 1450  
200 Oceangate, 10th Fl.  
Long Beach, CA 90802-4416

**RECEIVED**  
South Coast Region  
JAN 4 2002  
CALIFORNIA  
COASTAL COMMISSION

RE: Opposition to 5-01-306 and 5-01-307

Dear Mr. Posner:

We are submitting this material regarding Permit Numbers 5-01-306 and 5-01-307. Our objections are related to the fact that the proposed construction will be much closer to the water's edge of Ballona Lagoon than any other property along the west bank of the Lagoon. Such construction will encroach severely on the wetlands that remain in this area, having a potential serious deleterious effect on the flora and fauna supported by those wetlands, especially the birds. It is a major question whether those lots are buildable at all, given their narrowness and their proximity to the Lagoon. Our strong recommendation is that there be a significantly greater setback for these two construction projects, requiring at least a 35-foot distance from the property line. Indeed, it would make great sense to require that building construction be allowed no closer to the Lagoon than the eastern wall of the property already existing on Pacific just north of Union Jack. This would cause no further damage to the wetlands and makes aesthetic sense. Please convey this objection to the Coastal Commissioners prior to the hearing on January 8.

Very truly yours,

*Daneka Vallejo*

Daneka Vallejo  
6045 Whitsett #17  
N. Hollywood, CA 91606

COASTAL COMMISSION

EXHIBIT # 10  
PAGE 1 OF 6

January 2, 2002

RECEIVED  
South Coast Region

JAN 2 2002

CALIFORNIA  
COASTAL COMMISSION

Chuck Posner, Coastal Program Analyst  
CA Coastal Commission  
P.O. Box 1450  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4416

RE: Opposition to 5-01-306 and 5-01-307

Dear Mr. Posner:

We write regarding Permit Numbers 5-01-306 and 5-01-307. Our objections are related to the fact that the proposed construction will be much closer to the water's edge of Ballona Lagoon than any other property along the west bank of the Lagoon. Such construction will encroach severely on the wetlands that remain in this area, having a potential serious deleterious effect on the flora and fauna supported by those wetlands, especially the birds. It is a major question whether those lots are buildable at all, given their narrowness and their proximity to the Lagoon. Our strong recommendation is that there be a significantly greater setback for these two construction projects, requiring at least a 35-foot distance from the property line. Indeed, it would make great sense to require that building construction be allowed no closer to the Lagoon than the eastern wall of the property already existing on Pacific just north of Union Jack. This would cause no further damage to the wetlands and makes aesthetic sense. Please convey this objection to the Coastal Commissioners prior to the hearing on January 8.

Very truly yours,

*Cate Riegner*

Cate Riegner  
2002 Greenfield Avenue  
Los Angeles, CA 90025

COASTAL COMMISSION

EXHIBIT # 10  
PAGE 2 OF 6

Ite

January 2, 2002

Via Facsimile: 562-590-5084  
Hard copy via regular mail

Chuck Posner, Coastal Program Analyst  
CA Coastal Commission  
South Coast Area  
PO Box 1450  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4416

RE: Opposition to 5-01-306 and 5-01-307

Dear Mr. Posner:

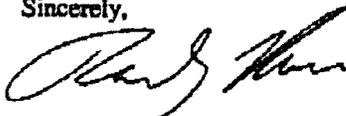
I am writing to you with regard to Permit Numbers 5-01-306 and 5-01-307 and my objection to the intended setbacks from the edge of Ballona Lagoon.

As currently proposed, the construction of the two new homes will be much closer to the water's edge of Ballona Lagoon than the other properties along the west bank of the Lagoon. If the construction is allowed as proposed, it will severely encroach on the little remaining wetlands in the Marina and would have a negative effect on the fauna and flora supported by those wetlands, especially birds that nest and live in the area.

On the East side of Pacific, the undeveloped land north of Union Jack drastically narrows as it approaches Topsail. When looking at the three lots, it appears that only the two Southern lots seem even remotely developable, as the most Northern lot is extremely narrow. Although it appears questionable whether the two lots in question are developable at all, I would strongly suggest that there is consideration of a larger setback from the water's edge. This would allow not only for less damage to the wetlands but would also make sense from an aesthetic standpoint (from Pacific Street for both cars and pedestrians as well as from the canals edge on both the Western and Eastern sides). I am not sure of the exact measure but as you look at the narrowing land, it would make the most sense that new homes are set back at least as far as the eastern wall of the property that already exists on the East side of Pacific just north of Union Jack. This would better agree with the current configuration of the existing land and buildings and their relationship with the water's edge. Despite a requirement to have a larger setback from the water, the developer will still be allowed to build a home that is an appropriate size and economic value on the Marina Peninsula.

Thank you in advance for conveying this objection to the Coastal Commissioners prior to the hearing on January 8.

Sincerely,



Randy Koss  
27 Union Jack, Unit B  
Marina Del Rey, CA 90292  
310.305.3062

COASTAL COMMISSION

EXHIBIT # 10 PAGE 01 \*\*  
PAGE 3 OF 6

January 2, 2002

Via Facsimile: 562-590-5064  
Hard copy via regular mail

Chuck Posner, Coastal Program Analyst  
CA Coastal Commission  
South Coast Area  
PO Box 1450  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4416

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Thank you in advance for conveying this objection to the Coastal Commissioners prior to the hearing on January 8.

Sincerely,



Amit Kothari  
27 Union Jack, Unit A  
Marina Del Rey, CA 90292  
310.305.3062

COASTAL COMMISSION

EXHIBIT # 10  
PAGE 4 OF 6

1/2/02

Chuck Posner, Coastal Program Analyst  
CA Coastal Commission  
South Coast Area  
P.O. Box 1450  
200 Oceangate, 10th Fl.  
Long Beach, CA 90802-4416

**RECEIVED**  
South Coast Region  
JAN 4 2002  
CALIFORNIA  
COASTAL COMMISSION

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Very truly yours,



Dave Allen  
5315 Harmony Dr. #311  
N. Hollywood, CA 91601

**COASTAL COMMISSION**

EXHIBIT # 10  
PAGE 5 OF 6

1/2/02

Chuck Posner, Coastal Program Analyst  
CA Coastal Commission  
South Coast Area  
P.O. Box 1450  
200 Oceangate, 10th Fl.  
Long Beach, CA 90802-4416

**RECEIVED**  
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Very truly yours,



Maya Feric  
8424A Santa Monica Blvd., #261  
W. Hollywood, CA 90069

**COASTAL COMMISSION**

EXHIBIT # 10  
PAGE 6 OF 6

CDP  
 A-266-77 ← SDF  
 5-87-112 →

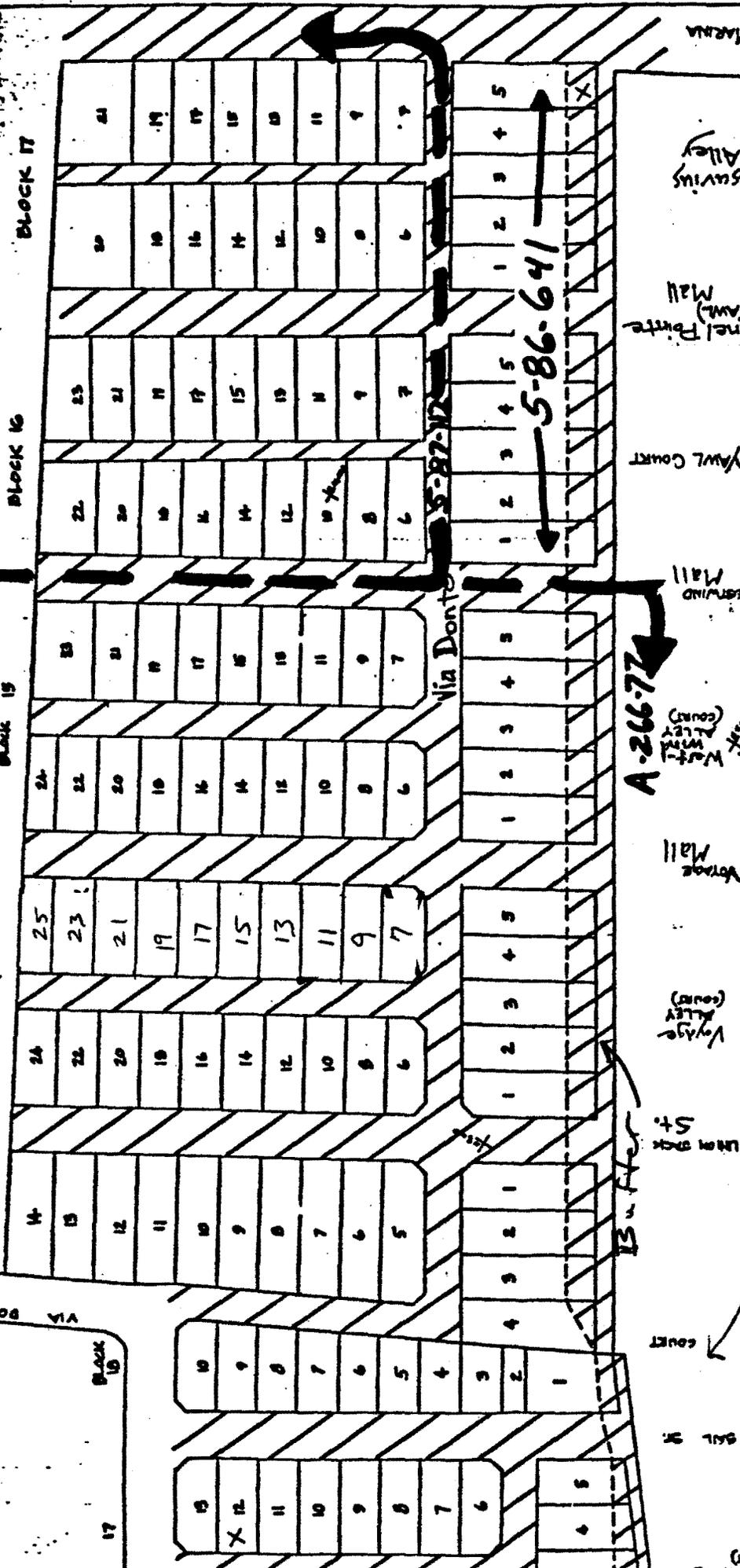
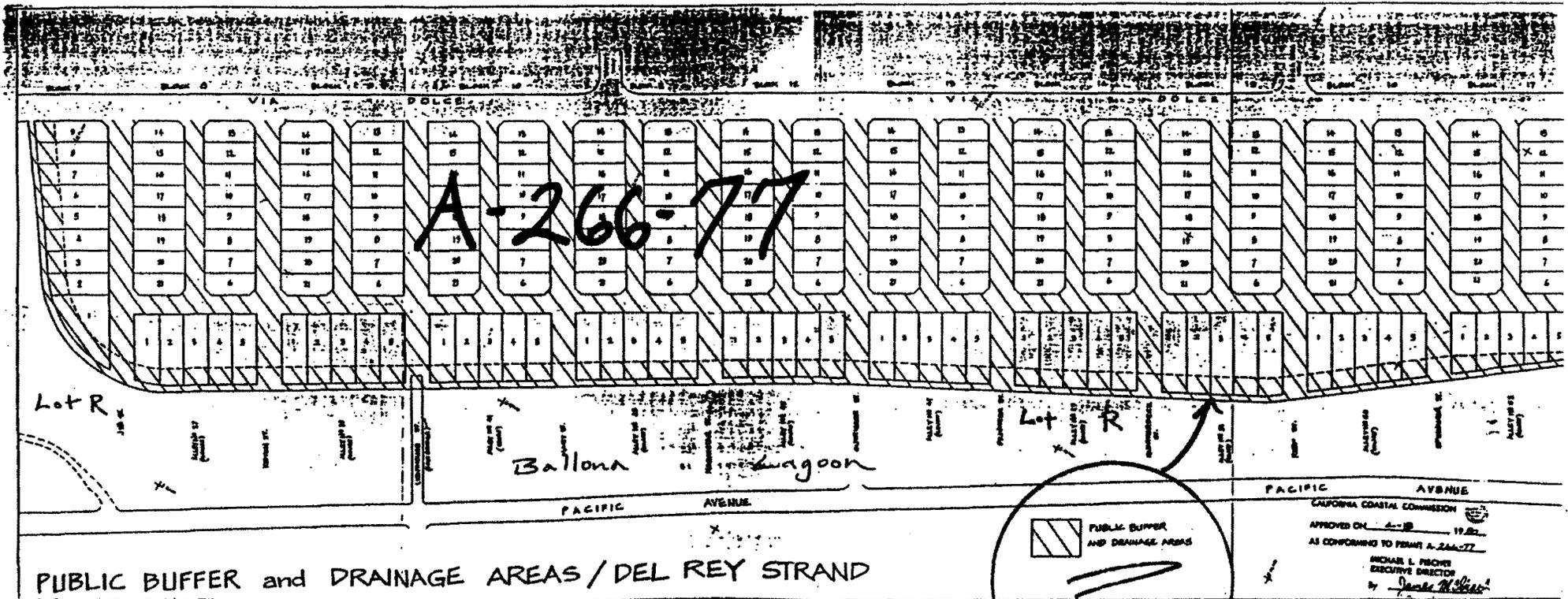


EXHIBIT NO. 11  
 APPLICATION NO. 5-01-307  
 East Bank  
 1 of 2

VIA MARINA  
 CALIFORNIA COASTAL COMMISSION  
 11/13/78, 11/14/78  
 APPROVED ON 12/12/78  
 AS CONCERNING TO PERMITS 5-87-112 & 5-86-641 RESPECTIVELY.  
 MICHAEL L. FISCHER  
 EXECUTIVE DIRECTOR  
 by James M. Sherk  
 Title Coastal Analyst

Beach

C D P A-266-77  
Lagoon Buffer

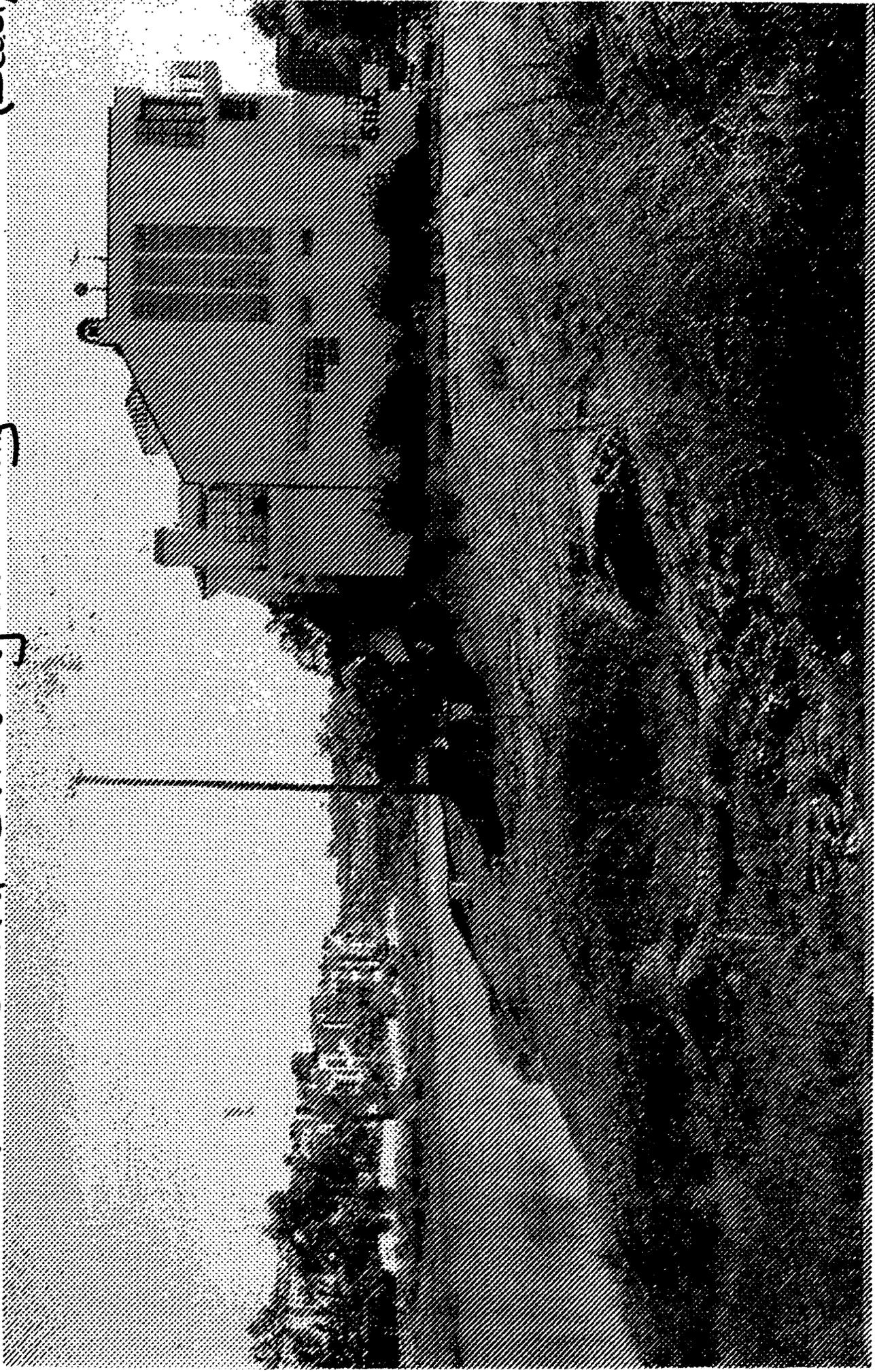


East Bank Ballona Lagoon

COASTAL COMMISSION  
5-01-307

EXHIBIT # 11  
PAGE 2 OF 2

WEST BANK of Ballona Lagoon - Looking South (Dec 01)



Lots 17, 18 & 19 of Block 1, Del Rey Boh Tract (in foreground)  
(5106-5114 Pacific Avenue, Venice)

COASTAL COMMISSION

EXHIBIT # 12

