

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-02-133

RECORD PACKET COPY

APPLICANT: Dan Fitzgerald AGENT: Schmitz & Associates, Inc.

PROJECT LOCATION: 5102 Pacific Avenue (Lot 16, 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), 9,000 square foot (approx.) single family residence with an attached five-car garage on a vacant lagoon-fronting lot. Approximately 990 cubic yards of excavation would be required.

SUMMARY OF STAFF RECOMMENDATION

See Page Four for the motion to approve the coastal development permit with conditions requiring all development on the lagoon-fronting lot to be set back a minimum of 25 from the wetland. The wetland is the western shoreline of Ballona Lagoon where a band of wetland vegetation extends about two meters inland of the mean high tide line (elevation +1.91') and up to the high water elevation of +2.65 (Exhibit #4). The proposed project is situated on a partially submerged lot on the west bank of Ballona Lagoon, next to two recently approved residential projects located at 5106 and 5110 Pacific Avenue [See Coastal Development Permits 5-01-306 (VDH) & 5-01-307 (VDH), both approved February 6, 2002]. The issue before the Commission involves the provision of an adequate lagoon buffer between the western shoreline of Ballona Lagoon and proposed residential development.

Ballona Lagoon, which supports a number of fish, birds and invertebrate species, is identified as an environmentally sensitive habitat area (ESHA) and critical habitat of the California least tern. The Commission has engaged in a long effort to protect the lagoon, while allowing owners of the lots that exist along its banks appropriate use of their properties. The Commission has attempted to protect the ESHA by imposing standards to protect water quality, to limit heights of structures, and most importantly, by imposing setbacks from the lagoon. In reviewing development along the lagoon, the Commission has received comments from the Department of Fish and Game (DFG) and from numerous consultants agreeing to the importance of the resource and providing advice concerning development standards (Exhibit #8).

In the late 1970s, before any homes were constructed on the east or west banks of Ballona Lagoon, DFG recommended that the Commission establish a minimal protective lagoon buffer strip of one hundred feet from the lagoon. After litigation established a development line roughly 65 feet from development on along the east bank of the lagoon, DFG revisited the development setback issue and recommended a 30-to-40-foot wide protective lagoon buffer along the west bank where the proposed project is located. The protective lagoon buffer is measured inland from the high water line and reflects the topography of the lots involved (Exhibit #8, p.1). Since then, the Commission has required the provision of a protective lagoon buffer strip as part of each development it has approved along both banks of the lagoon (Exhibits #3&9).

In a few cases, the width of the Commission-required buffer strip has been less than that recommended by DFG, and some ground level development (both permitted and unpermitted lawns, decks and fences) does exist within the protective lagoon buffer strip. However, every Commission-approved residential structure along both banks of the lagoon is set back at least 25 feet from the high water line. **The currently proposed development would encroach within 20 feet of the wetland, measured as the high water line (Exhibit #4).**

On the east bank of Ballona Lagoon, the Commission approved a master permit, before any houses were built, that included a mapped protective lagoon buffer that resulted from the settlement of litigation [See Permit A-266-77 (Exhibit #9)]. Each single family house along the east bank has been required to conform to the buffer map as a condition of approval (Exhibit #9). The settlement that mapped the east bank protective lagoon buffer allowed for a house on each lagoon-fronting lot, the maintenance of public access along the eastern shoreline of the lagoon (which the Commission found had been occurring along the edges of the lagoon), and the 30-to-40-foot wide development setback from the lagoon to protect continued use of the lagoon by foraging least terns and other birds. On the west bank of Ballona Lagoon, where the proposed project is located, the development setback necessary to preserve the ESHA has 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 25-to-45-foot wide lagoon buffer exists between each west bank home and the water (Exhibit #3).

In prior Commission approvals on the west bank of Ballona Lagoon, the protective lagoon buffer strip is 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 a visual cone for bird, and a flyway over the ESHA (except on Block 1, where the proposed project is located). Residential yards, decks and balconies are allowed within the setback provided between each house and the protective lagoon buffer strip. On every west bank lot south of Block 1, there exists an additional 5-to-20 feet of dry bank area situated between the City Esplanade and the water. This additional dry land area between the City Esplanade and the water does not exist on Block 1, where the proposed project is located (Exhibit #4). As a result, there is a 30-to-45-foot wide lagoon buffer between each house and the west bank of the lagoon. The exception is Block 1, where the City Esplanade becomes submerged and does not provide dry land for the buffer.

On Block 1, two recent Commission actions have established a minimal 25-foot wide protective lagoon buffer where the shoreline of the lagoon extends onto or near each lot. Along Block 1, most of the 25-foot wide protective lagoon buffer must be provided on each applicant's own property, rather than being partially located on the additional land situated between the lot and the water (Exhibit #4). Because no dry land exists between the applicant's lot and the shoreline, the entire 25-foot wide protective lagoon buffer would be situated on the applicant's property. This is because the applicant's eastern property line is situated below the high water line (+2.65 MHTL). The eastern edge of the applicant's lot is actually in the tidal zone of Ballona Lagoon (Exhibit #4).

The applicant is proposing a house that would encroach within 20 feet of the wetland, measured as the high water line (Exhibit #4). As proposed, the project does not provide adequate protection of the ESHA as required by the certified LUP for Venice and the Chapter 3 policies of the Coastal Act. The certified LUP for Venice specifically requires that a habitat protection buffer strip shall be provided and maintained between the lagoon and all development situated on the west bank of Ballona Lagoon (LUP Policies IV.B.1.b, IV.B.2.b & IV.B.3). 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 the band of wetland vegetation is growing along the shoreline (Exhibit #4). No development would be permitted within the

25-foot wide protective lagoon buffer strip. A minimum 25-foot wide protective lagoon buffer strip is necessary to protect the ESHA from the impacts of development and to maximize the airspace for the bird flyway and visual cone over the ESHA. Because the applicant's lot is wider than the other lots on Block 1, the recommended 25-foot wide protective lagoon buffer strip would not reduce the buildable area of the lot below that which exists on the other west bank properties (Exhibits #3&4). Even with the required 25-foot wide protective lagoon buffer strip, the applicant's proposed five-level, 9,000 square foot house would be one of the largest single family homes built along the lagoon (Exhibit #5). The homes permitted on the adjacent lots (Lot Nos. 17 & 18) are less than 4,000 square feet.

The applicant disagrees with the staff recommendation to provide a 25-foot wide protective lagoon buffer strip along his entire lot. Instead, the applicant is proposing to locate the proposed development 29 feet from the eastern (lagoon-side) property line, which would result in part of his house extending closer to the lagoon than all the other west bank homes (Exhibit #3). The other three residences on Block 1 provide the required 25-foot wide protective lagoon buffer strip and are setback 29 feet inland of the eastern property line, thus forming a building stringline (Exhibit #4). The applicant's proposal would result in the provision of a 20-to-26-foot wide protective lagoon buffer strip, measured inland from the high water line. As proposed, the southern portion of the proposed single family residence would be set back 26 feet from the high water line, and the northern portion of the proposed residence would be set back 20 feet from the high water line as the shoreline is not parallel to the property line. Therefore, the applicant is requesting that the Commission grant a 5-foot exception to the 25-foot minimum protective lagoon buffer width. He asserts that his lot is unique because it is the last developable lot that is partially submerged in this area, and an approval would not have a significant negative impact or create a negative precedent. The applicant also points to the fact that the City has issued its local approval (Project Permit Case #DIR2002-468) for the proposed single family residence with only a 5-foot distance between the high water line and the deck of the house, and that the City's approval conforms with the 15-foot setback (from the property line) required by the certified LUP for Venice.

Staff recommends that the Commission grant a permit for the proposed development only with a minimum 25-foot wide protective lagoon buffer, the proposed 29-foot setback from the property line, and the additional recommended conditions of approval. The recommended special conditions would mitigate the proposed project's impacts on the wetland and other coastal resources by addressing building setback and height, project staging, landscaping, drainage, public access, parking and future improvements (See Page Five). **See the motion on Page Four to approve the coastal development permit with conditions.**

LOCAL APPROVAL: City of Los Angeles Specific Plan Project Permit, Case #DIR2002-468.

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

ADDITIONAL PROJECT DATA:

Lot 16 Total Area	5,042 square feet
Building Coverage	2,500 square feet (Approx.)
Pavement Coverage	700 square feet (Approx.)
Landscape Coverage	1,842 square feet (Approx.)
Parking Spaces	Attached 5-car garage accessed from Pacific Avenue
Zoning	RW1-1
Plan Designation	Single Family Residence - Waterway
Maximum Height	30-38 feet above average natural grade

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 with special conditions Coastal Development Permit 5-02-133 per the staff recommendation as set forth below."

Staff recommends a **YES** vote which would result in the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

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 - Development Setback from High Water Line

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 1/16/03** staff report), shall be maintained between the approved development and Ballona Lagoon. No construction, grading, placement of fill, or other development as defined by Section 30106 of the Coastal Act shall occur within the 25-foot wide lagoon buffer, with the exception of landscaping with plants native to the Ballona Lagoon habitat area. Prohibited development within the dedicated area includes installation of permanent irrigation devices and the planting of non-native vegetation. The 25-foot wide protective lagoon buffer strip shall be maintained as an open space and natural habitat area, and it shall not be used in a manner that would in any way degrade the habitat value of the lagoon buffer.

All existing plants within the 25-foot wide protective 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 protective lagoon buffer, and shall landscape and maintain the protective lagoon buffer with native plants consistent with the landscape plan approved pursuant to Special Condition Three below. 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.

2. 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 west of the 25-foot wide protective lagoon buffer strip described in Special Condition One and east of 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 protective lagoon buffer strip described in Special Condition One.

3. 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 west of the 25-foot wide protective lagoon buffer strip described in Special Condition One and east of 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 protective lagoon buffer strip described in Special Condition One.

- (ii) Building Height. The building height shall be measured from the average natural grade of the lot, which is elevation +8.75' pursuant to the site survey submitted with the coastal development permit application on April 30, 2002, and labeled "Building Height Restriction Exhibit." The height of the structure within sixty horizontal feet of the inland side of the Esplanade (City right-of-way) shall not exceed thirty feet (30') above the average natural grade of the lot. For every two feet further away from the Esplanade, the structure may be one foot higher in height to a maximum height of 38 feet above the average grade of the lot. [Note: The inland side of the Esplanade, which is also the applicant's eastern (lagoon-side) property line, generally corresponds with the mean high tide line of Ballona Lagoon.] 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 inland side of the Esplanade, except that 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 (coastal sand dune), 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) The use of chemical pesticides, fertilizers, and herbicides is prohibited within the 25-foot wide protective lagoon buffer strip described in Special Condition One.
 - c) Within the 25-foot wide protective lagoon buffer strip 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 protective lagoon buffer strip described in Special Condition One shall be landscaped only with plants native to the Ballona Lagoon habitat area.
 - d) All landscaping shall be maintained by the applicant or successor(s)-in-interest. 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.

- e) 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.
- f) Landscaping for the 25-foot wide protective lagoon buffer strip 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 protective lagoon buffer strip described in Special Condition One. The plantings shall provide 70% cover within ninety days, unless the Executive Director grants additional time for good cause.
- g) Monitoring. Five years from the date of the completion of the installation of landscaping as required in item (e) above, the applicant (or successors in interest) 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 protective lagoon buffer strip 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 developed site (excluding the protective lagoon buffer strip 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.

4. Protective Lagoon Buffer Strip Protection – Water Quality

Prior to the commencement of construction, the applicant shall erect and maintain for the entire period of construction a six-foot high fence along the inland edge of the protective lagoon buffer strip described in Special Condition One. The construction fence shall be highly visible material. In addition, the applicant shall place fiber liners and sandbags along the base of the fence to prevent siltation. No site preparation, grading or construction shall occur until the fence is constructed and the sandbags and liners are placed along the inland edge of the protective lagoon buffer strip. No stock piling, storage, grading, construction, runoff, or trash disposal shall occur in the protective lagoon buffer strip at any time. All construction equipment and materials shall be stored and managed in a manner to prevent dispersal and to minimize the potential of pollutants to enter the lagoon.

5. Project Staging and Construction

The use of any property other than the project site (Lot No. 16, Block 1) for project staging, equipment and material storage, or other use, is not permitted by this coastal development permit and shall not occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required. Any use of Lot Q, which abuts the northern side of the site, is specifically prohibited.

6. Pacific Avenue Sidewalk

In accordance with the applicant's offer to do so, the applicant shall provide an improved concrete public walkway across the site along the eastern curb of Pacific Avenue, as generally shown on **Exhibit #4 of the 1/16/03** staff report. The applicant shall not interfere with public access and use of the walkway.

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

This coastal development permit is only for the development described in Coastal Development Permit 5-02-133. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future development on the site, including landscaping, improvements to the single family residence and other development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 California Code of Regulations Section 13252(a)-(b), shall require an amendment to Coastal Development Permit 5-02-133 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

9. Permit Compliance

All development must occur in strict compliance with the proposal as set forth in the application, subject to any special conditions. Any deviation from the approved plans, no matter how minor, must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.

10. Deed Restriction

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this coastal development permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel governed by this coastal development permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this coastal development permit shall continue to restrict the use and enjoyment of the subject property so long as either this coastal development permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to construct a five-level, 38-foot high (above average grade), 9,000 square foot (approx.) single family residence with an attached five-car garage on a vacant lagoon-fronting lot (Exhibit #4). The proposed project is situated on the west bank of Ballona Lagoon between Topsail and Union Jack Streets in Venice (Exhibit #2). The proposed five-car garage, located over the proposed basement, would be accessed from Pacific Avenue (Exhibit #5). Approximately 990 cubic yards of excavation would be required for the proposed basement and foundation for the house.

The applicant's survey shows that the portion of the lot located nearest the water is partially submerged by the waters of the lagoon (Exhibit #4). A two-meter band of wetland vegetation (salt scrub vegetation: Jaumea, alkali heath and pickleweed) exists along the water's edge in and above the tidal zone (Exhibit #6). 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 twenty feet of the eastern (lagoon-side) property line (Exhibit #4).

The proposed single family residence is set back 29 feet from the eastern (lagoon-side) property line. The applicant's eastern property line intersects and generally corresponds with the **lagoon's mean high tide line (+1.91')**, but the lagoon's **high water line (+2.65')** is situated a few feet up on the eastern portion of the applicant's property (Exhibit #4). The proposed single family residence would extend within twenty feet of the lagoon's high water line and the inland extent of the lagoon's wetland vegetation. The roof of the proposed structure is limited to thirty feet above average grade within sixty horizontal feet of the eastern property line, which generally corresponds to the mean high tide line of Ballona Lagoon. The average grade is elevation +8.75' pursuant to the site survey submitted with the coastal development permit application (Exhibit #5).

Unpermitted development, including grading, stockpiling of excavated soil, and storage of construction material has occurred on the subject property in approximately the same footprint as the proposed residence. On November 6, 2002, Commission staff observed during a site visit that that the unpermitted development had occurred on the subject property and on two adjacent vacant parcels as well. The unpermitted fill was placed on the subject site by the owner of two separate nearby properties (5106 and 5110 Pacific Avenue) where the Commission had previously issued Coastal Development Permits 5-01-306 (VDH) and 5-01-307 (VDH) for the construction of a new single family residence on each lot.

On December 6, 2002, a *Notice Prior to Issuance of Executive Director Cease and Desist Order and Notice of Intent to Commence Restoration Order Proceedings* ("EDCDO & NOI") was hand delivered to the alleged violator and sent certified mail (the EDCDO and NOI was also sent certified mail to the applicant, Dan Fitzgerald, as property owner of Lot 16 and to the owners of the other two separate adjacent parcels where the unpermitted fill was placed). The adjacent property owner who had placed the unpermitted fill on the subject site immediately

responded to the EDCDO and NOI and stopped work on all three properties, including Lot 16 which is the subject of this application. By December 10, 2002, the adjacent property owner had removed all construction material from the three properties, including Lot 16, and has also asserted that all stockpiled fill has been removed from Lot 16 as well. Excavation for the basement and foundation of the proposed residence will include the removal of any remaining unpermitted fill on site that has not already been removed by the contractor who originally performed the unpermitted grading.

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 Commission identified this area as an ESHA (Environmentally Sensitive Habitat Area ESHA) in 1975, and that action is reflected in the certified Venice LUP which designates the 4,000-foot long lagoon as an 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-to-40 feet, measured inland from the high water line of the western shoreline (Exhibit #8, p.1).

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, and requires that all development shall be compatible with the continuance of the 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-to-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 – Exhibit #4). Most of the lots along the west bank, nearly all of which have already been developed, benefit from a 15-to-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 (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.*

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.

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).*

IV.B.2.d Ballona Lagoon Buffer Strip- Permitted Uses

Permitted Uses. *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.)*

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].

Polycheates, 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 native vegetation on the lagoon banks is comprised of salt marsh wetland and coastal dune plant communities. 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 the City's street drains and access path drains lead 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. Deltas, formed by the eroded bank materials, have also formed in the lagoon, particularly near Jib Street and Topsail Street on the west bank. These gullies and deltas, including those near the project site (Topsail Street), have altered the western shoreline of the lagoon over time. The eroded sediments have settled in the lagoon, thus filling it, and causing western shoreline to gradually migrate toward the center of the lagoon.

A highly urbanized area of single and multiple-family residential development surrounds Ballona Lagoon. 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 #9). 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-to-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-to-15-foot front yard (structural set back) outside the buffer. These requirements result in a 34-to-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 located immediately north of the project site: 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 near the project site where the Esplanade is submerged and is part of the water area of the lagoon (Exhibit #3).

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. Twenty-one of the 25 privately owned lots on the west bank have already been developed (or are currently being developed) with single family residences and duplexes. 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 25-to-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 25-to-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 (except on Block 1 where the proposed project is located). Residential yards, decks and balconies are allowed within the setback provided between each house and the protective lagoon buffer. On every west bank lot south of Block 1, there exists an additional 5-to-20 feet of dry bank area situated between the City Esplanade and the water. This additional dry land area between the City Esplanade and the water does not exist on Block 1, where the proposed project is located (Exhibit #4). As a result, there is a 30-to-45-foot wide lagoon buffer on the west bank of the lagoon, except along Block 1.

On Block 1, two recent Commission actions have established a minimal 25-foot wide protective lagoon buffer where the shoreline of the lagoon extends onto or near each lot [See discussion below regarding Coastal Development Permits 5-01-306 (VDH) and 5-01-307 (VDH)]. Along Block 1, most of the 25-foot wide protective lagoon buffer must be provided on each applicant's own property, rather than being partially located on additional land situated between the lot and the water (Exhibit #4). Because no dry land exists between the applicant's lot and the shoreline, the entire 25-foot wide protective lagoon buffer would be situated on the applicant's property. This is because the applicant's eastern property line is situated in the lagoon below the high water line (+2.65 MHTL). The eastern edge of the applicant's lot is actually in the tidal zone of Ballona Lagoon (Exhibit #4).

Four of the privately owned lots on the west bank remain undeveloped, including the site subject to this application: **Lot 16, Block 1** of the Del Rey Beach Tract (Exhibit #3, p.1). Block 1, where the proposed project is located, includes two of the five currently undeveloped privately owned lots on the west bank of Ballona Lagoon. **Lot Q**, the other undeveloped lot within Block 1, cannot be developed because the Coastal Conservancy holds an easement for public access and habitat restoration purposes over the entire 30'x 35' lot [See Exhibit #4, Coastal Development Permit 5-86-174 (Venice Peninsula Properties) & Los Angeles County Recorded Instrument No. 91-1005242.] **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). In its approval of Coastal Development Permit P-78-

2737, the Commission required the provision of a 40-to-47-foot wide protective lagoon buffer between the shoreline and the approved duplex. The duplex on Lot 19 of Block 1 is set back more than 29 feet from the eastern (lagoon-side) property line (Exhibit #4).

On February 6, 2002, the Commission approved **Coastal Development Permits 5-01-306 (VDH) and 5-01-307 (VDH)** for the development of **Lot Nos. 17 & 18 of Block 1** each with a single family residence. The Commission required these two developments to provide the minimum 25-foot protective lagoon buffer between the high water line and all development, as is being recommended in this case (Exhibit #4). The Commission's approval of Coastal Development Permits 5-01-306 (VDH) and 5-01-307 (VDH) also established a building stringline limit for Block 1, which requires all development, except for ground level decks, to be set back a minimum of 29 feet from the eastern property line in line with the duplex approved on Lot 19 in 1978 (Exhibit #4). The development approved by Coastal Development Permits 5-01-306 (VDH) and 5-01-307 (VDH) is currently being constructed.

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 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.

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 (Exhibit #8, top of p.3). 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 altogether. The Commission has consistently limited building heights within sixty feet of the shoreline to a maximum of thirty feet (measured above existing average grade). The policies of the certified LUP for Venice specifically require that development be compatible with the continuance of the environmentally sensitive habitat area of the lagoon and avoid adverse impacts on avian flight patterns (LUP Policies IV.B.1.b, IV.B.2.b & IV.B.3).

The proposed project is located on **Lot 16 of Block 1** (Del Rey Beach Tract), a vacant lot situated on the west bank of Ballona Lagoon (Exhibit #4). The applicant's survey shows that the portion of the project site located nearest the water is partially submerged (Exhibit #4). The applicant's Biological Resources Report prepared for the site (Impact Sciences, 9/17/02) states that a two-meter wide 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 mean high tide line (+1.91') on the eastern edge of the applicant's property (Exhibit #4). South African iceplant and other non-native plants had dominated the upland area located inland of the tidal zone until late 2002 when the upland portion of the site was covered with fill that had been excavated from the adjacent property (Lot Nos. 17&18). No wetland vegetation has been observed where any of the proposed development is proposed to occur.

Unpermitted development, including grading, stockpiling of excavated soil, and storage of construction material has occurred on the subject property in approximately the same footprint as the proposed residence. On November 6, 2002, Commission staff observed during a site visit that the unpermitted development had occurred on the subject property and on two adjacent vacant parcels as well. The unpermitted fill was placed on the subject site by the owner of two separate nearby properties (5106 and 5110 Pacific Avenue) where the Commission had previously issued Coastal Development Permits 5-01-306 (VDH) and 5-01-307 (VDH) for the construction of a new single family residence on each lot (Lot Nos. 17&18).

On December 6, 2002, a *Notice Prior to Issuance of Executive Director Cease and Desist Order and Notice of Intent to Commence Restoration Order Proceedings* ("EDCDO & NOI") was hand delivered to the alleged violator and sent certified mail (the EDCDO and NOI was also sent certified mail to the applicant, Dan Fitzgerald, as property owner of Lot 16 and to the owners of the other two separate adjacent parcels where the unpermitted fill was placed). The adjacent property owner who had placed the unpermitted fill on the subject site immediately responded to the EDCDO and NOI and stopped work on all three properties, including Lot 16 which is the subject of this application. By December 10, 2002, the adjacent property owner had removed all construction material from the three properties, including Lot 16, and has also asserted that all stockpiled fill has been removed from Lot 16 as well.

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. Sections 30240(b) and 30231 of the Coastal Act are relevant, as well as certified LUP Policies IVB.2.b and Policy I.A.4.c (See Pages 11-13 of this report).

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-to-45-foot wide protective 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 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. This policy assumes that the Esplanade is on dry land, which is not the case east of the applicant's lot. Therefore, the minimum 25-foot setback should be measured from the west bank of the lagoon. The LUP allows for a greater setback if necessary to protect the marine resources of Ballona Lagoon. In this case, the proposed project shall provide a minimum protective lagoon buffer 25 feet in width, between the high water line and all development, as previously required on the two adjacent sites [See Coastal Development Permits 5-01-306 & 5-01-307 (VDH)].

The applicant is proposing to provide a 20-to-26-foot wide protective lagoon buffer between the high water line and all development by using the submerged property line, rather than the shoreline, in order to establish the setback. The applicant proposes to set the proposed single family residence back 29 feet from the submerged eastern property line (Exhibit #4). The other three residences on Block 1 are also set back 29 feet inland of the eastern property line, but they each provide the necessary 25-foot protective lagoon buffer also (Exhibit #4). The applicant's proposed project is located closer to the wetland than any other development along the wet bank of the lagoon, and would negatively affect the use of the adjacent ESHA by foraging and loafing birds.

As proposed, the southern portion of the proposed single family residence would be set back 26 feet from the high water line, and the northern portion of the proposed residence would be set back 20 feet from the high water line as the shoreline is not parallel to the property line. Therefore, the applicant is requesting that the Commission grant a 5-foot exception to the 25-foot minimum protective lagoon buffer width. He asserts that his lot is unique because it is the last developable lot that is partially submerged in this area, and an approval would not have a significant negative impact or create a negative precedent. The applicant also points to the fact that the City has issued its local approval (Project Permit Case #DIR2002-468) for the proposed single family residence with only a 5-foot distance between the high water line and the deck of the house, and asserts that that the City's approval conforms with the 15-foot setback (from the property line) required by the certified LUP for Venice.

The applicant's proposed 20-to-26-foot lagoon buffer is not adequate to 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 most of the other 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 Block 1 each have 15-to-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-to-55 feet from the water's edge (buffer plus yard areas). This site has no dry land area between the water and the lot line 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, even with the recommended 25-foot protective lagoon buffer.

In order to determine the appropriate building site and setback requirements for this project site, the Commission refers primarily to the prior Commission actions for the block on which the project is proposed: Block 1 of the Del Rey Beach Tract. Three buildings have been

permitted on Block 1: the duplex that currently exists on Lot 19 of Block 1, and the single family residences being constructed on Lot Nos. 17 and 18 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).¹ The building on Lot 19 has a required building setback of 29 feet from the easterly property line, which results in the building being set back 40-to-47 feet inland of the shoreline (Exhibit #4). On February 6, 2002, the Commission approved Coastal Development Permits 5-01-306 (VDH) and 5-01-307 (VDH) for the development of Lot Nos. 17 & 18 of Block 1 each with a minimum 25-foot protective lagoon buffer between the high water line and all development, as is being recommended in this case (Exhibit #4).

The Commission, in past actions involving other wetlands, has required the provision of a one hundred-foot buffer between new development and the wetlands. In this case, the shoreline and the wetland vegetation are located on the applicant's property (Exhibit #4). 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 on the west bank (including yards and decks) is set back at least 25 feet from the water's edge.

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. The certified policies of the LUP require the provision of an adequate setback and protection of the bird flyway (LUP Policies IV.B.1.b, IV.B.2.b & IV.B.3). Twenty-five feet is the minimum buffer width. All of the development on Block 1, the same block as the currently proposed development, has been required to be set back 25 feet from the high water line (Exhibit #4).

A minimum 25-foot wide protective lagoon buffer strip is necessary to protect the ESHA from the impacts of development and to maximize the airspace for the bird flyway and visual cone over the ESHA. Because the applicant's lot is wider than the other lots on Block 1, the recommended 25-foot wide protective lagoon buffer strip would not reduce the buildable area of the lot below that which exists on the other west bank properties (Exhibits #3&4). Even with the required 25-foot wide protective lagoon buffer strip, the applicant's proposed five-level, 9,000 square foot house would be one of the largest single family homes built along the lagoon (Exhibit #5). The recently approved homes at 5106 and 5110 Pacific Avenue were each less than 4,000 square feet (Coastal Development Permits 5-01-306 & 5-01-307).

Because of the lack 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-to-45-foot wide lagoon buffer that has been protected along most of the western shoreline of Ballona Lagoon (Exhibit #3). The amount of the applicant's property that is necessary to provide the minimum protective buffer, however, is proportionally greater than that required from other property owners. This is because the entire buffer in this case must be provided on the applicant's lot. There is no dry land area between the applicant's lot and the lagoon to provide the necessary land for the buffer. The required minimum buffer of 25 feet (from the high water line) requires that approximately one-third

¹ 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.

(about 32 feet of 95-foot long lot) of the applicant's lot remain undeveloped and preserved as the lagoon buffer and submerged land (Exhibit #4). All of the other lagoon-fronting properties along the west bank (except for the lots on Block 1) were required to dedicate less than one-fifth (15-feet of 95-foot long lots) as part of the undeveloped lagoon buffer. The applicant's lot, however, is also wider than each of the other west bank lots (55' vs. 38' lot width). Therefore, even with the requirement to provide the minimum 25-foot setback from the high water line, enough buildable area would remain on the applicant's 55-foot wide lot to build a house that contains equal or more internal floor area as the other west bank homes.

As proposed, the project does not 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. Therefore, 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 as proposed (Exhibit #4).

The Commission finds that the 25-foot wide protective 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 actions and existing development on Block 1; and d) 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 protective 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. 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 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-to-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 protective 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 protective lagoon buffer strip also provides the area that would be necessary for a public access path along the west 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 Ballona Lagoon. The Commission approval of Coastal Development Permit 5-01-257/A5-VEN-01-279, however, did not include a public access path near the water south of Topsail Street. Instead, the approved public access improvements were located away from the ESHA on the existing public street ends and along Pacific Avenue. The protective lagoon buffer strip along Block 1 and south of Block 1 was preserved for habitat restoration. Therefore, there is no requirement for a public access easement on the eastern side of the applicant's property. Public access across the applicant's property is being provided on a sidewalk proposed along Pacific Avenue (Exhibit #4).

As was required on the east bank of Ballona Lagoon, the Commission continues to require the provision of a protective lagoon buffer strip 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 has provided the protective lagoon buffer as a condition of developing their property. In the past, each applicant has offered to dedicate a fifteen-foot wide easement habitat protection (and public access) and across their property. Each of the Commission-approved coastal development permits for the development of the west bank properties includes the required easement dedication.²

In this case, the applicant has not offered to dedicate the fifteen-foot wide easement for habitat (or public access) as part of the proposed project. Such an easement, however, is not necessary in this case. The habitat in the protective lagoon buffer strip, which includes the narrow band of wetland vegetation, Jaumea, alkali heath and pickleweed, can be adequately protected through conditions of approval that require restoration and maintenance of the lagoon buffer strip as open space and habitat. 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 that, "*Non-native species shall be phased out and the area restored as feasible*"

² [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), 5-01-306 (VDH) & 5-01-307 (VDH)].

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 3.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. 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 also prohibit any development or the disturbance of vegetation within the protective lagoon buffer, with the exception of landscaping with native vegetation compatible with the preservation of the wetland coastal strand environment. Prohibited development within the dedicated area includes fill, installation of permanent irrigation devices, and the planting of non-native vegetation.

A condition of approval also requires the applicant to submit a lighting plan and 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. The City is required to control and filter the drainage from Pacific Avenue before it enters the lagoon [See Coastal Development Permits 5-00-161 & 5-01-257/A5-VEN-01-279 (City of Los Angeles)]. 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 1981, the Commission engaged the Los Angeles County Museum of Natural History Foundation to prepare a report addressing the biota of the Ballona wetlands (Schreiber, 1981). The report discussed the conflict between tall buildings and the use of the adjacent habitat areas by birds. Tall buildings have been found to be inconsistent with the continued viability of adjacent areas as bird habitat. In response to this study and in order to protect against a

"canyon effect" which could negatively impact bird flight and foraging patterns, a height limit has been established for structures adjacent to Ballona Lagoon. The height limit is included in the certified LUP for Venice, which 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).*

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. The certified LUP height limit is consistent with the prior Commission approvals for development on the west bank of Ballona Lagoon.

The applicant has agreed to the above-stated height limit, but has not yet submitted revised building 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. The inland side of the Esplanade, which is also the applicant's eastern (lagoon-side) property line, generally corresponds with the mean high tide line of Ballona Lagoon. The building height shall be measured from the average natural grade of the lot, which is elevation +8.75' pursuant to the site survey submitted with the coastal development permit application on April 30, 2002, and labeled "Building Height Restriction Exhibit."

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, the certified LUP for Venice, and the Commission's prior actions.

F. Public Access and Recreation

The applicant is proposing to provide an improved concrete walkway across the portion of the site immediately adjacent to Pacific Avenue (Exhibit #4). No development is being proposed that would interfere with access along the water's edge. Therefore, as conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

The proposed development, as conditioned, does not interfere with public recreational use of coastal resources. The proposed development, as conditioned, protects coastal areas suited for recreational activities. Therefore, the Commission finds that the proposed development, as conditioned, is in conformity with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

G. Marine Resources and Water Quality

The applicant proposes to grade approximately 990 cubic yards to construct the proposed single family residence. The lower elevation of the proposed basement may be at or below the water table which is at the same level as the lagoon water level (Exhibit #5). Such activities in and adjacent to a sensitive area pose the possibility of siltation during construction and impacts to water quality due to dewatering of the development. The impacts to water quality could result in impacts to invertebrates that are the food of the numerous shorebirds found feeding in the bottom of the lagoon and to the small fish including killifish that are the food of the endangered least tern that feeds in the lagoon.

The proposed work will be occurring in a location where there is a potential for a discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction and post-construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act.

H. 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 on-site parking supply in the proposed garage. As conditioned to provide at least 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.

I. Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development.

J. Unpermitted Development

Prior to Commission action on this coastal development permit application, unpermitted development occurred on the site without the review or approval of the Commission. The unpermitted development includes the placement of fill and storage of construction material on the subject property in approximately the same footprint as the proposed residence. The unpermitted fill was placed on the subject site by the owner of two separate nearby properties (5106 and 5110 Pacific Avenue) where the Commission had previously issued Coastal Development Permits 5-01-306 (VDH) and 5-01-307 (VDH) for the construction of two new single family residences.

On November 6, 2002, Commission staff observed during a site visit that that the unpermitted development had occurred on the subject property and on two adjacent vacant parcels as well. On December 6, 2002, a *Notice Prior to Issuance of Executive Director Cease and Desist Order and Notice of Intent to Commence Restoration Order Proceedings* ("EDCDO & NOI") was hand delivered to the alleged violator and sent certified mail (the EDCDO and NOI was also sent certified mail to the applicant, Dan Fitzgerald, as property owner of Lot 16 and to the owners of the other two separate adjacent parcels where the unpermitted fill was placed). The adjacent property owner who had placed the unpermitted fill on the subject site immediately responded to the EDCDO and NOI and stopped work on all three properties, including Lot 16 which is the subject of this application. By December 10, 2002, the adjacent property owner had removed all construction material from the three properties, including Lot 16, and has also asserted that all stockpiled fill has been removed from Lot 16 as well. The proposed residence will be located in approximately the same location where the unpermitted fill on site occurred. Excavation for the basement and foundation of the proposed residence will include the removal of any remaining unpermitted fill on site that has not already been removed by the contractor who originally performed the unpermitted grading. The remaining components of the unpermitted development that occurred on the subject site and adjacent properties will be resolved through a separate enforcement action.

Although development has taken place prior to Commission action on this permit amendment, consideration of the application by the Commission is based solely upon Chapter 3 policies of the Coastal Act. Commission action on this permit amendment application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit or permit amendment.

K. 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 Commission on June 14, 2001 officially certified the Venice LUP. 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. 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).

L. 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.

Several feasible alternatives to the proposed project exist, including a similar house with a greater set back from the shoreline, or a smaller house that is similar in size to the other homes on the wet bank of Ballona Lagoon.

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.

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 Permits 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 5-86-174 (Venice Peninsula Properties).
12. Coastal Development Permit 5-86-819 (Rome).
13. Coastal Development Permit 5-87-500 (Rome).
14. Coastal Development Permit 5-88-1053 (Rome).
15. Coastal Development Permit 5-89-593 (MDR Properties).
16. Coastal Development Permit 5-97-220 (Paragon).
17. Coastal Development Permit 5-97-363 (Paragon).
18. Coastal Development Permit 5-98-328 (Paragon).
19. Coastal Development Permit 5-97-015 (Ganezer).
20. Coastal Development Permit 5-00-001 (Garcia).
21. Coastal Development Permit 5-00-161 (City of LA).
22. Proposal for The Restoration/Revegetation of the Western Bank of the Ballona Lagoon, by Roderic B. Buck, December 2001.
23. Conceptual Plan for Completion of Phase II Improvements of the Ballona Lagoon Enhancement Plan for the West Bank of Ballona Lagoon, BLMP, March 1999.
24. Ballona Lagoon Enhancement Ten-year Monitoring Plan, July 1996.
25. Ballona Lagoon Enhancement Plan, BLMP & State Coastal Conservancy, August 1992.
26. Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, 1981
27. Birds of Ballona, by Dock & Schreiber in Biota of the Ballona Region, 1981.
28. Avifauna of the Venice Canals by Charles T. Collins, Ph.D., 1986.
29. An Ecological Evaluation of Ballona Lagoon, by Dr. Richard F. Ford & Dr. Gerald Collier, May 7, 1976.

End/cp

VENICE, CA



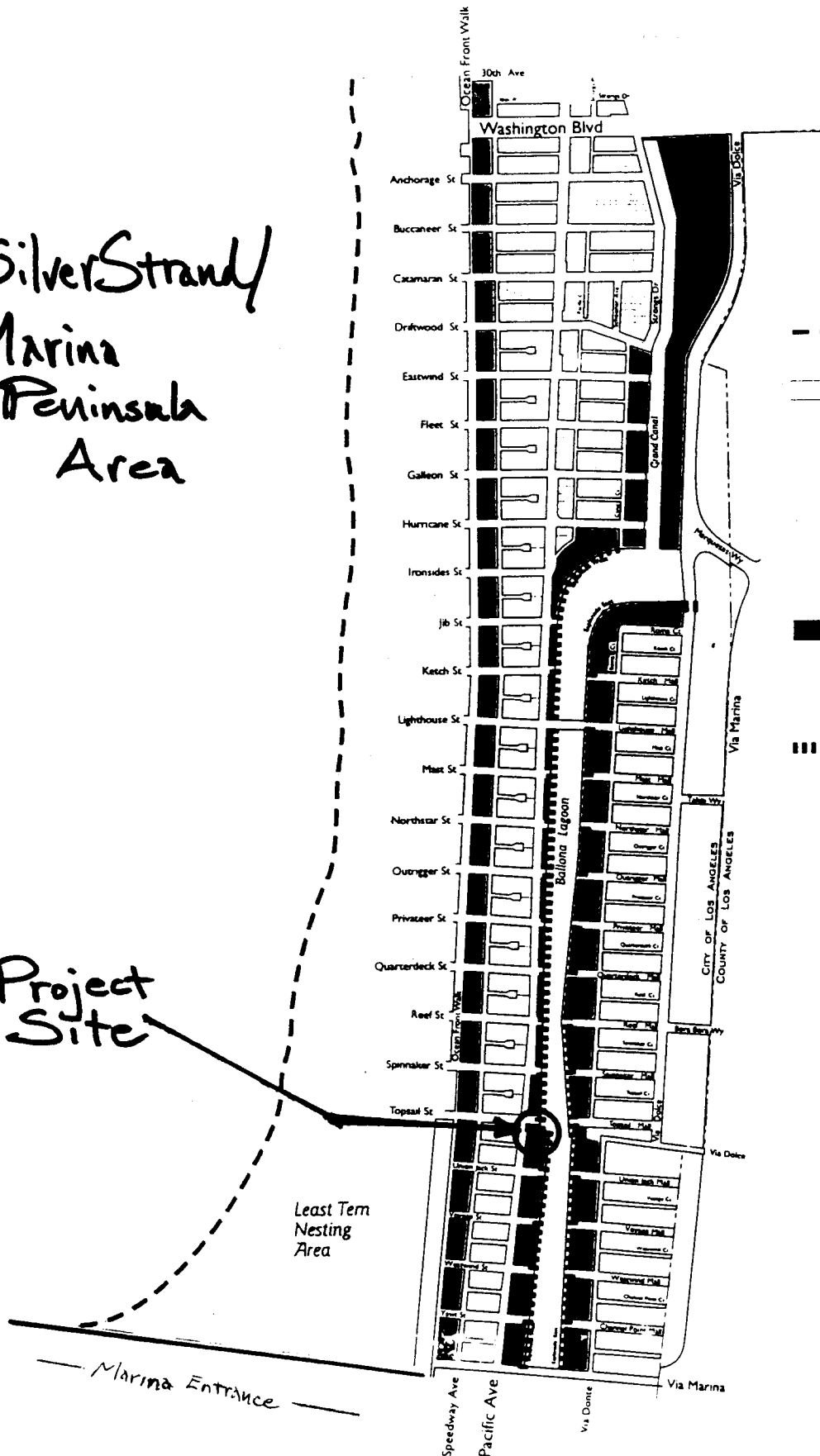
Project Site:
5102 Pacific Avenue
(Lot 16, Blk 1)

COASTAL COMMISSION
5-02-133

EXHIBIT # 1
PAGE 1 OF 1

Silver Strand
Marina
Peninsula
Area

Project
Site



- 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)



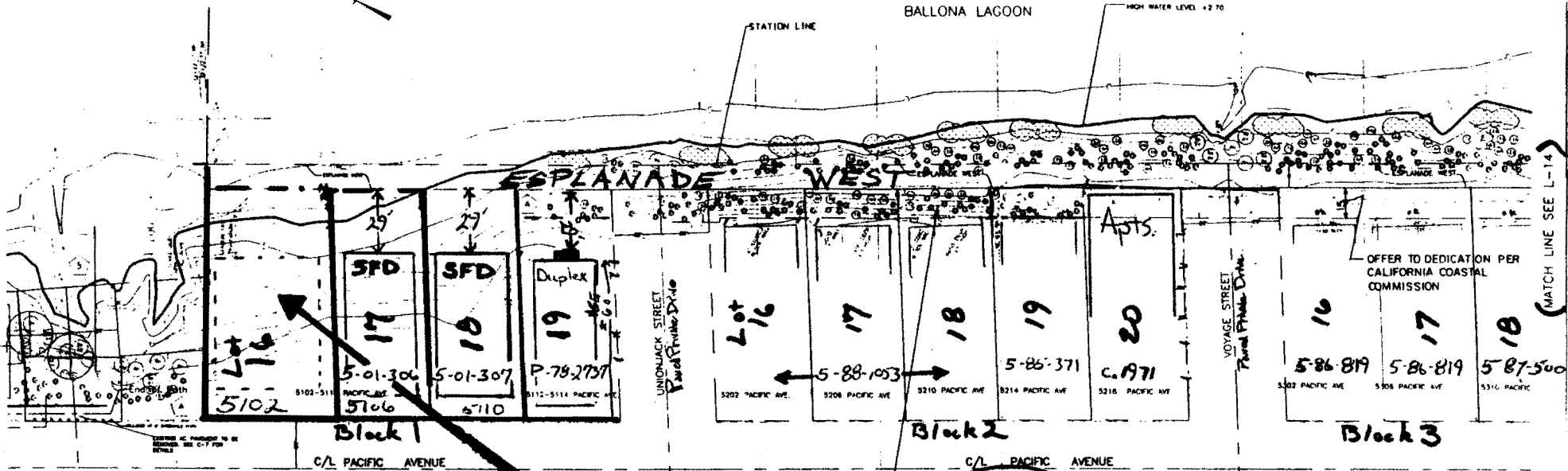
MATCH LINE SEE L-12

BALLONA LAGOON

HIGH WATER LEVEL +2.70

STATION LINE

ESPLANADE WEST



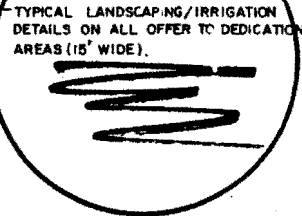
MATCH LINE SEE L-14

Block 1
C/L PACIFIC AVENUE

Block 2
C/L PACIFIC AVENUE

Block 3

PLAN VIEW



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

LEGEND (SHEET L-11 & L-12)

QTY	SIZE	SYMBOL	BOTANICAL NAME	COMMON NAME
004	24" BOX		POPULUS FREMONTII	FREMONT POPLAR
0	15 GAL		SALIX LASIOLEPIS	APRIVOY WILLOW
015	5 GAL		SALIX ERICOIDES	SAND BAR WILLOW
024	5 GAL		RHUS INTEGRIFOLIA	LEMONADE BERRY
060	1 GAL		ARTEMISIA CALIFORNICA	CALIFORNIA SAGE
000	5 GAL		ATRIPLEX CALIFORNICA	SALT BUSH
093	1 GAL		ENCELIA CALIFORNICA	BUSH SWEETWOOD
470	LINER		ERIOGONUM PARRYI	DRY WOODRUSH
013	LINER		FRANKENIA GRANDIFLORA	FRANKENIA
022	1 GAL		HAPLOPHRAGMUM ERICOIDES	GOLDEN BUSH
051	1 GAL		ISOMERIS ARBUSCULA	BLACKBERRY
010	LINER		JUNIPERUS ACUTIS	SPINE BUSH
003	LINER		LONICERA CALIFORNICA	CALIFORNIA STEELE
LINER			SALICORNIA SUBTERMINALIS	PICKERELLED SEE SPECIFICATIONS FOR PLANTING DETAIL

See next page

Project Site:
J 5102 Pacific Av.
Lot 16, Blk 1
(See Also Exhibit #4)

City of Los Angeles
Survey for 5-01-257
& AS-VEN-01-279



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EXHIBIT # 3
PAGE 1 2

LEGEND SHEET L-13 & L-14

QTY.	SIZE	SYMBOL	BOTANICAL NAME	COMMON NAME
002	24" BDX		POPULUS FREMONTII	FREMONT POPLAR
000	15 GAL		SALIX LASIOLEPIS	ARROYO WILLOW
013	3 GAL		SALIX EXIGUA	SAND BAR WILLOW
009	3 GAL		RHUS INTEGRIFOLIA	LEMONADE BERRY
016	1 GAL		ARTEMISIA CALIFORNICA	CALIFORNIA SAGE
000	5 GAL		ATRIPLEX CALIFORNICA	SALT BUSH
008	1 GAL		ENCELIA CALIFORNICA	BUSH SUNFLOWER
058	LINER		ERIOGONUM PARVIFOLIUM	DUNE BUCKWHEAT
000	LINER		FRANKENIA GRANDIFLORA	FRANKENIA
014	1 GAL		HAPLOPAPPUS ERICCIDES	DEADEN BUSH
043	1 GAL		ISOMERIS ARBorea	BLADDERPOD
000	LINER		JUNCUS ACUTUS	SPIKE RUSH
000	LINER		LIMNOLIN CALIFORNICUM	CALIFORNIA STATICE
LINER			SALICORNIA SUBTERRANEALIS PICKELVEED	SEE SPECIFICATIONS FOR PLANTING DETAILS

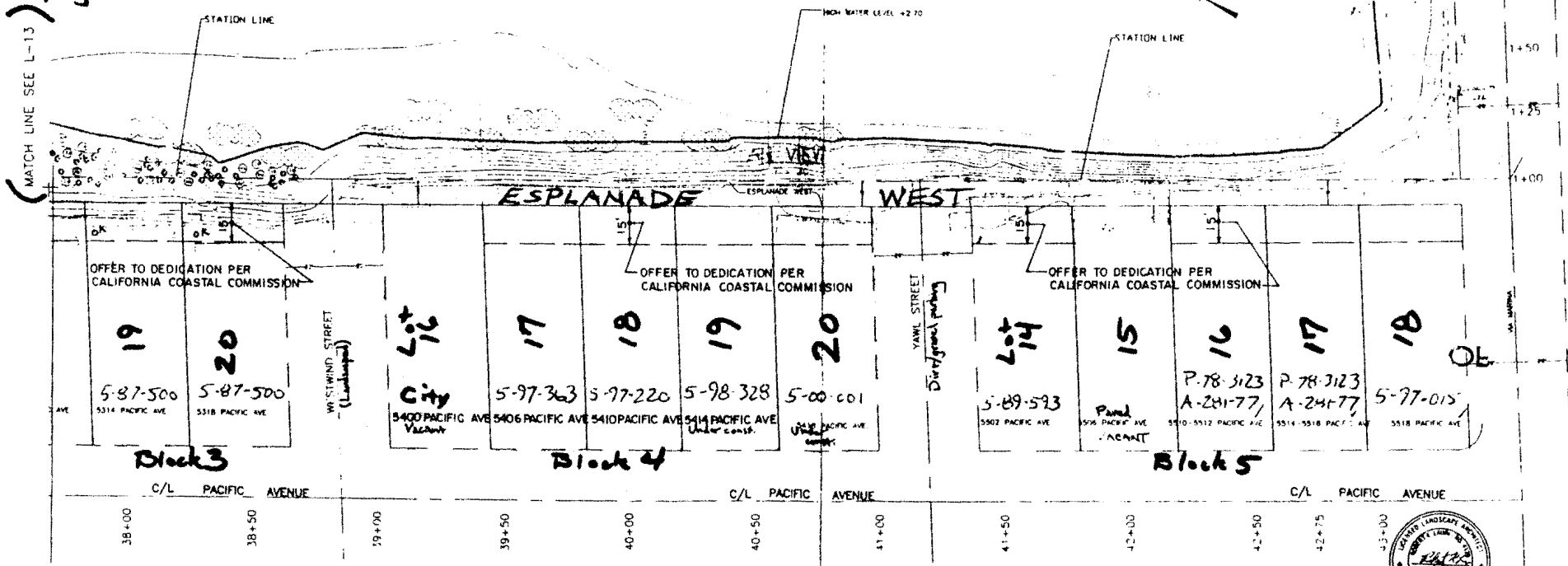
GROUND COVER

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

NOTE:
~~SEE PLAN C-8 TO C-11 FOR DETAILS OF DECOMPOSED GRANITE PATH, SPIT RAIL FENCE AND GATE~~

RECEIVED
 South Coast Region
 NOV 30 2081
 CALIFORNIA
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Use previous page



PLAN VIEW
 Scale: 1" = 10'



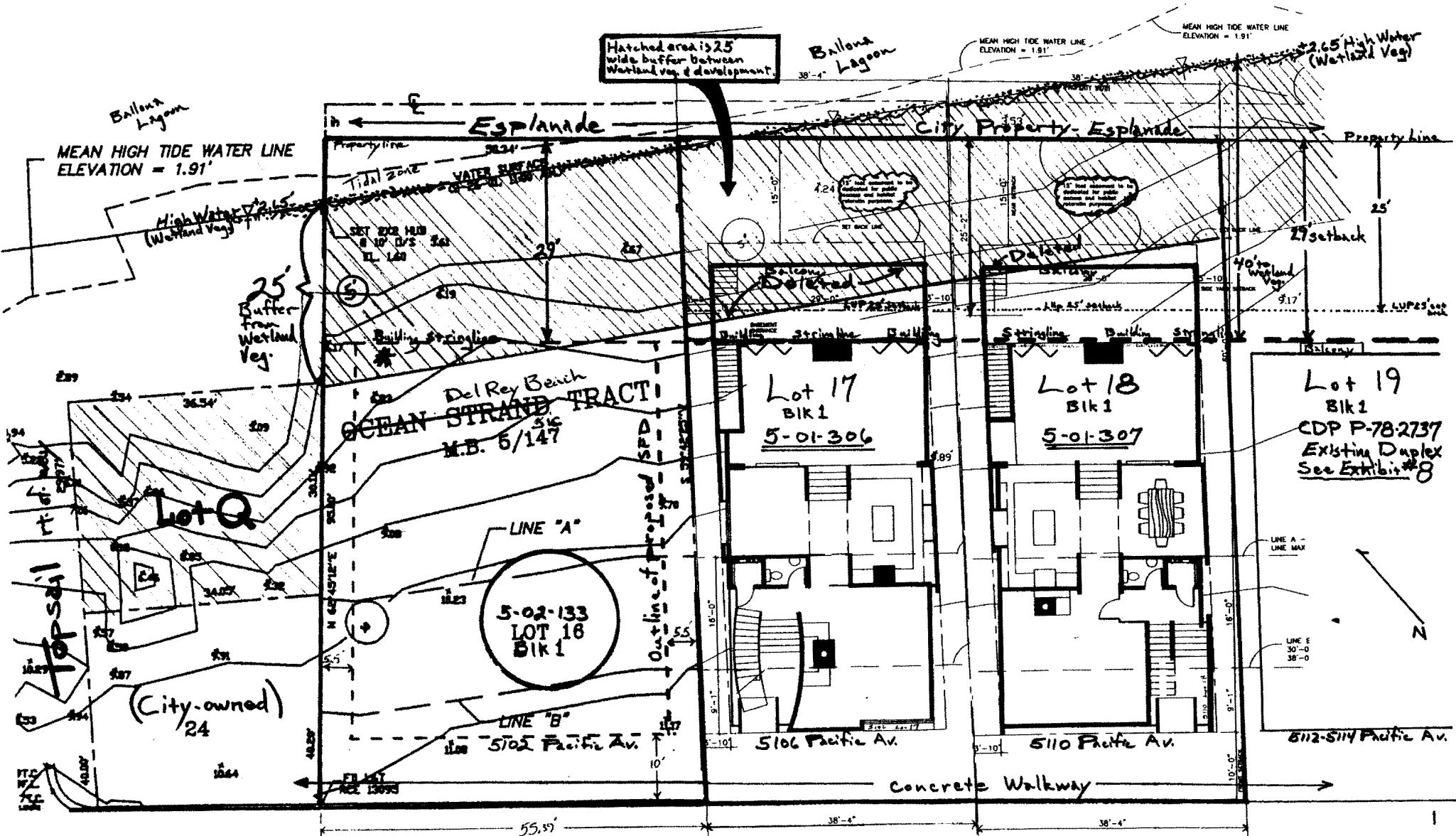
5-01-257/AS-VEN-81-289
 BALLONA LAGOON ENHANCEMENT PLAN PHASE III
 W.O. E1903241

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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'

MEAN HIGH TIDE WATER LINE ELEVATION = 1.91'

2.65 High Water (Wetland Veg)

MEAN HIGH TIDE WATER LINE ELEVATION = 1.91'

High Water 2.65 (Wetland Veg)

25' Buffer from Wetland Veg

40' Wetland Veg

Del Rey Beach OCEAN STRAND TRACT M.B. 6/147

Lot Q

(City-owned) 24

5-02-133 LOT 18 Blk 1

Lot 17 Blk 1 5-01-306

Lot 18 Blk 1 5-01-307

Lot 19 Blk 1 CDP P-78-2737 Existing Duplex See Exhibit #8

5106 Pacific Av.

5110 Pacific Av.

5112-5114 Pacific Av.

concrete Walkway

Pacific Avenue

Exhibit #4: Based on the site survey submitted on April 30, 2002 with Coastal Development Permit Application No. 5-02-133, and labeled "Building Height Restriction Exhibit."

Site
5102 Pacific Avenue

Block 1

* Portion of proposed SFD in buffer.

COASTAL COMMISSION
5-02-133

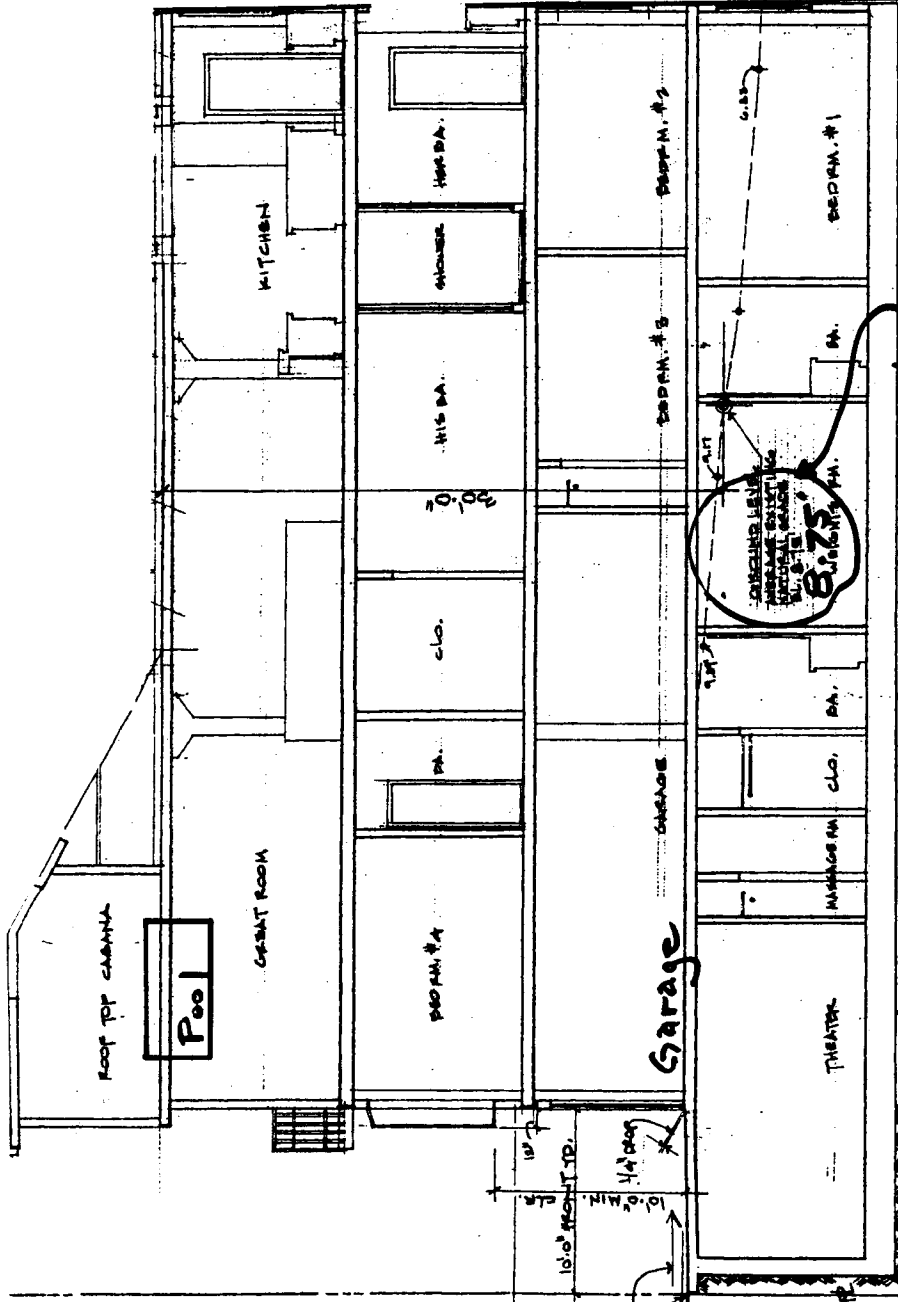
EXHIBIT # 4

PAGE 1 OF 1

60' to MHTL →

— 30' MAX

38' MAX.



Lagoon →

129' to property line

Height limit from Ave. Natural grade

Proposed SFD 5102 Pacific Ave.

Pacific Ave.

COASTAL COMMISSION
5-02-133

EXHIBIT # 5
PAGE 1 OF 1



IMPACT SCIENCES

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

September 17, 2002

Con-Tec Development
Century Club
10131 Constellation Boulevard
Los Angeles, CA 90067

Attention: Mr. Daniel S. Fitzgerald

RE: **Biological Resources Report; 5102 S. Pacific (Lot 16), and Adjacent Lots 24 and 15, Marina del Rey, Los Angeles, County, California**

Dear Mr. Fitzgerald:

Impact Sciences, Inc. conducted a biological survey on August 5, 2002 of the aforementioned parcels located southeast of the intersection of Pacific Avenue and Topsail Road, Marina Del Rey, California (Figure 1). The survey was conducted in two parts including a literature search of agency databases as well as a field survey of the lots. The purpose of the investigation was to: (1) define the biological resources present on the parcels; (2) to identify any special-status resources there; and (3) to generally define the limits of wetlands on the parcels.

Existing Conditions

Vegetation

Methods

Vegetation composition was determined by identifying individual plant species and estimating percent cover and density of those species (including bare ground) within a 1-meter square (3.3 feet) area at 5-meter (16.5 feet) intervals along a linear transect that extended the length of the lot **Table 1**. Dominant species were those that occurred most frequently within each quadrant.

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EXHIBIT # 6
PAGE 1 OF 5

Table 1
Vegetation Cover Analysis -
Fitzgerald

Transect 1

% Cover	Q1	Q2	Q3	Q4	Q5	Q6
Bare	20	33	88	5	0	20
Litter	80	65	0	0	0	0
Rooted Veg.	0	2	12	95	100	80
Dominant Species	none	telegraph weed	jumea	pickle weed	pickle weed	pickle weed

Results

Cover on the parcels (lots 15, 16 and 24) (Figure 2) is best characterized as mostly bare with a scattered ruderal vegetation composition of upland plant species such as telegraph weed (*Heterotheca grandiflora*), brome grass (*Bromus* sp.), and iceplant (*Carpobrotus chiliensis*). The smaller lots (24 and 15) are moderately degraded and eroded from run-off funneled off residential streets along the western edge of the parcels (Appendix A). On parcels 15 and 16, a narrow zone of salt scrub vegetation (approximately two meters (6 feet) wide) occurs between the water's edge of the Venice canal and the upland portions of the sites. The salt scrub present at this location likely occurs as a result of the high salt content present in the soil from either tidal inundation and/or aerosol salt spray that occurs above the waterline of the canal. Vegetation on each lot is dominated by individuals of jaumea (*Jaumea carnosa*), alkali heath (*Frankenia salina*), iceplant and pickleweed (*Salicornia virginica*). A list of plant species observed on the site is found in Table 2.



Table 2

PLANT SPECIES LIST
CON-TEC, MARINA DEL REY, CA

<u>COMMON NAME</u>	<u>SPECIES NAME</u>
Telegraph weed	<i>Heterotheca grandiflora</i>
Cheese weed (common mallow)	<i>Malva neglecta</i>
Sand verbena	<i>Abronia maritima</i>
Sour grass	<i>Oxalis corniculata</i>
Salt grass	<i>Distichlis spicata</i>
Russian thistle	<i>Salsola kali</i>
Bermuda grass	<i>Cynodon dactylon</i>
Pickle weed	<i>Salicornia</i> sp.
Wand chicory	<i>Stephanomeria virgata</i>
Horseweed	<i>Conyza bonariensis</i>
Beach evening primrose	<i>Camissonia cheiranthifolia</i>
Bur sage	<i>Ambrosia chamissonis</i>
Wild radish	<i>Raphanus sativus</i>
Ragweed	<i>Ambrosia artemisiifolia</i>
Lotus	<i>Lotus scoparius</i>
Castor bean	<i>Ricinus communis</i>
Fireweed	<i>Epilobium</i> sp.
Sea fig	<i>Carpobrotus chiliensis</i>
Jaumea	<i>Jaumea carnosa</i>
Alkali heath	<i>Frankenia salina</i>
Brome grass	<i>Bromus</i> sp.

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EXHIBIT #

6

PAGE 3 OF 5



Wildlife

Methods

The absence or presence of wildlife use of the parcels was determined by the direct observation of individuals or observations of "sign" such as scat, tracks, feathers, or vocalizations.

Results

With the exception of one fiddler crab (*Uca* sp.) located along the waterline of lot 16, no evidence of wildlife use of the parcels was observed; however, the lots appear to be heavily utilized by domestic dogs, which may exclude the use of these parcels by most wildlife species. No special-status species were observed; however, the literature search done for this report indicates that the narrow band of salt marsh habitat present on parcels 15 and 16 (5102 Pacific) may be suitable foraging habitat for the California least tern (*Sterna antillarum*), a state and federally-listed endangered species, and California fully-protected species that is known to nest nearby in the area of Venice Beach.

Special-status Species

Special-status species are those plant or animal species that are as listed by state or federal resources agencies as "threatened" or "endangered" or "species of concern". Special-status species also include those (species) listed as "federal migratory non-game birds of management concern"; federal or state "candidate species" for listing as threatened or endangered; "state (California) protected" species; species listed by the California Native Plant Society; and state "special animals". Local city or county agencies may also designate "special-status" to "at risk" species considered locally important. Habitat for special-status species may also be federally designated as "critical habitat", habitat afforded legal protection as important habitat for the continued existence of a particular species. Likewise, habitat may be ranked by the California Department of Fish and Game or local government agencies as rare and/or of high priority for protection.

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EXHIBIT # 6

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Wetlands

A formal wetlands delineation was not conducted on the parcels; however, wetlands present on the project site would be limited to a narrow band that extends no further inland the upper edge of the mean high tide line.

Conclusions

Based on the ruderal, degraded condition of each lot, it is unlikely that the upland portions of these lots represents important habitat for common or special-status species that may occur in the area. Nevertheless, the strip of salt marsh habitat that occurs along the canal edge may be considered important foraging habitat for the listed California least tern and local aquatic wildlife that utilize the canal.

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

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EXHIBIT # 6

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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>

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EXHIBIT # 7

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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

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DEPARTMENT OF FISH AND GAME

350 Golden Shore
Long Beach, California 90802
(213) 590-5113

March 23, 1982

RECEIVED

MAR 29 1982

CALIFORNIA
COASTAL COMMISSION

Ms. Pam Emerson
California Coastal Commission
South Coast Regional District
666 E. Ocean Blvd., Suite 3107
Long Beach, California 90801

Dear Ms. Emerson:

The Department of Fish and Game received a letter February 17, 1982 from the Coastal Commission. This letter requested information pertaining to the protection of Ballona Lagoon and the Venice Canals, areas that are under the jurisdiction of the Venice Canals/Marine Peninsula Local Coastal Program (LCP) at the City of Los Angeles. We believe that the following responses to the six items discussed in the letter should be of assistance to the Coastal Commission and the City.

1. Storm Water

In our previous letter dated December 11, 1981, to the Coastal Commission, we indicated our preference is to prevent storm drain water from going into Ballona Lagoon. We wish to reiterate this concern because we believe that storm drain water may be deleterious to the various organisms of the Lagoon.

We are concerned about the cumulative effects that can occur from the uptake of toxic substances by marine organisms which are in turn preyed upon by animals higher in the food chain. These substances may not necessarily cause obvious impacts such as fish kills, but they may cause physiological stress to populations of organisms in the form of reduced fertility, smaller brood sizes, increased metabolism, etc.

2. Building Height

Many species of birds, including shorebirds and ducks, are found at the Lagoon. In reviewing several studies, it is our belief that a 45-foot height limitation in conjunction with the very narrow buffer strip, might lead to a preclusion of use of the Lagoon by some bird species.

Many of the bird species at Ballona Lagoon, particularly some of the species that use the Lagoon on a seasonal or sporadic basis, are primarily birds of large open areas. Scoters, which are sometimes found in the Lagoon, are primarily birds of the open sea. The many species of shorebirds found at the Lagoon are also primarily birds of open expanses. It is possible that the cumulative effects of tall buildings and the possible increased disturbances

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from additional people living in the area may cause a total cessation of bird use by some species in the Lagoon.

Schrieber (1981) mentions the importance of limiting building height right to the Lagoon. Tall buildings would have a "Canyon Effect" as described by Schrieber. Many bird species, such as sea ducks and shorebirds, will tend to leave an area if a large percentage of the horizon is blocked out by buildings. This probably occurs because the birds instinctively sense that they are more vulnerable to predators under these conditions.

3. Building Heights on Southernmost Lots and Parking Lot Drainage Provisions.

It is conceivable that tall buildings may cause a reduction of bird use because they may tend to preclude birds from entering the Lagoon from the Marina del Rey entrance channel. This is documented by Schrieber (1981).

We do not wish to see parking lot runoff enter the Lagoon. We would prefer that all parking lot runoff go directly into the Marina del Rey entrance channel and that any drainage be located as far from the entrance to Ballona Lagoon as possible. The proposed parking lot would be located in an area adjacent to a popular clamming site in the lower end of the Lagoon. We do not wish to see the clams, fish, numerous species of shorebirds, and other forms of flora and fauna impacted by the various forms of petroleum wastes and other products that could drain into the lower Lagoon.

4. Bridges

We believe that bridges might cause impacts to birds, partially because of the same reasons as expressed for item #2. Although a pedestrian bridge now exist near the north end of the Lagoon, it is possible that the two additional bridges over the Lagoon would disrupt the flight paths of some bird species and preclude some of the bird use that presently occurs at the Lagoon. It is also possible that the disturbance to birds caused by the bridges might result in some part from the human activities associated with the bridge. Such activities as jogging, throwing objects, and noise may all have the effect of disturbing birds and causing them to leave an area.

Burger (1981) documents the effects of various forms of human activity on seabirds. Some of the findings may have implication with regard to bridges. For example, birds tended to be disturbed most by people jogging. They tended to be disturbed to a lesser extent by people working or walking.

The study discusses several behavioral trends of birds. For example, shorebirds tend to vacate an area after being disturbed and not return. Also, gull and terns tend to be less affected by human disturbance.

We believe that the aforementioned study does help illustrate the need for careful planning of bridges and other development.

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5. Buffer Reassessment

The proposal to remove the buffer strip in five years, as discussed on page 10A of the LCP, is clearly not acceptable to the Department. Buffer strips are established with the intent of maintaining habitat values. There should be no need to consider the elimination of the buffer in five years if proper planning measures are undertaken to avoid impacts. These include maintaining a low horizon, avoiding direct disturbances to wildlife, and minimizing the introduction of pollutants. Should development be desired within the buffer areas, it is conceivable that the incentive for maintaining the Lagoon as a sensitive habitat will be lessened. We believe significant resource values will be protected by the buffer strip.

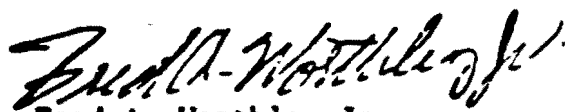
6. Venice Canals Drainage

We do not concur with having less restrictive drainage requirements in the Venice Canals. We believe that it is essential to avoid allowing storm drainage or other runoff into the canals. Such a policy is partially contingent upon the establishment of a good flushing regime. In order to help alleviate the stagnant water conditions in the Venice Canals and to establish better water quality in the Lagoon, a tidal connection established between Grand Canal and the sea would be commendable. We would also like to see the establishment of automatic, float-activated valves for the flood gates at Washington Street as specified in the LCP.

With regard to the inquiry about the effect of the development near the Lagoon on the least tern colony, it is difficult to predict what impacts, if any, will occur. The primary feeding grounds for the least terns at the Venice Beach colony are in ocean waters. A limited amount of least tern feeding does occur in the Lagoon, but available evidence appears to indicate that the development planned for the Lagoon will not preclude or impair this activity.

If you have any questions please contact Frank Gray of our Coastal Planning staff at (213) 590-5142.

Sincerely,



Fred A. Worthley Jr.
Regional Manager
Region 5

cc: M. Pletcher
Mike Mulligan
Earl Lauppe
Jim McGrath/
Don Schultze
John Gastafson
Sharon Lockhart

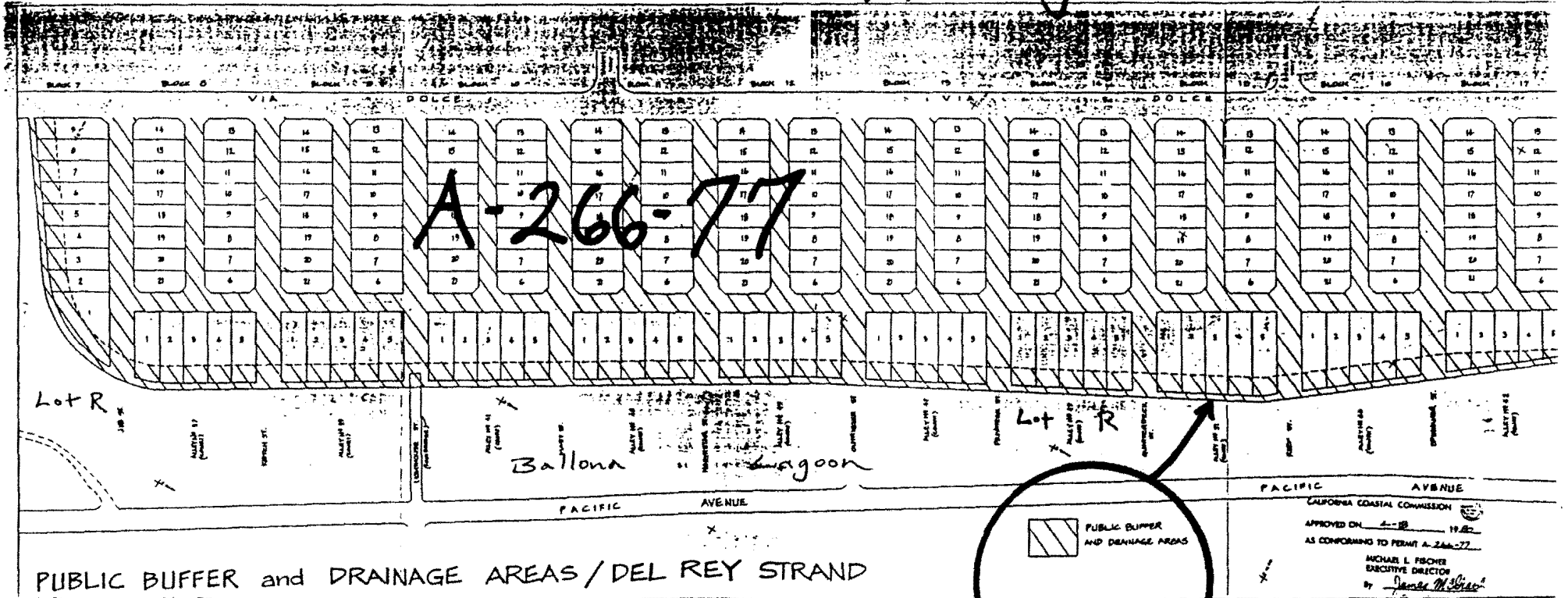
COASTAL COMMISSION

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CDP A-266-77 Lagoon Buffer



East Bank Ballona Lagoon

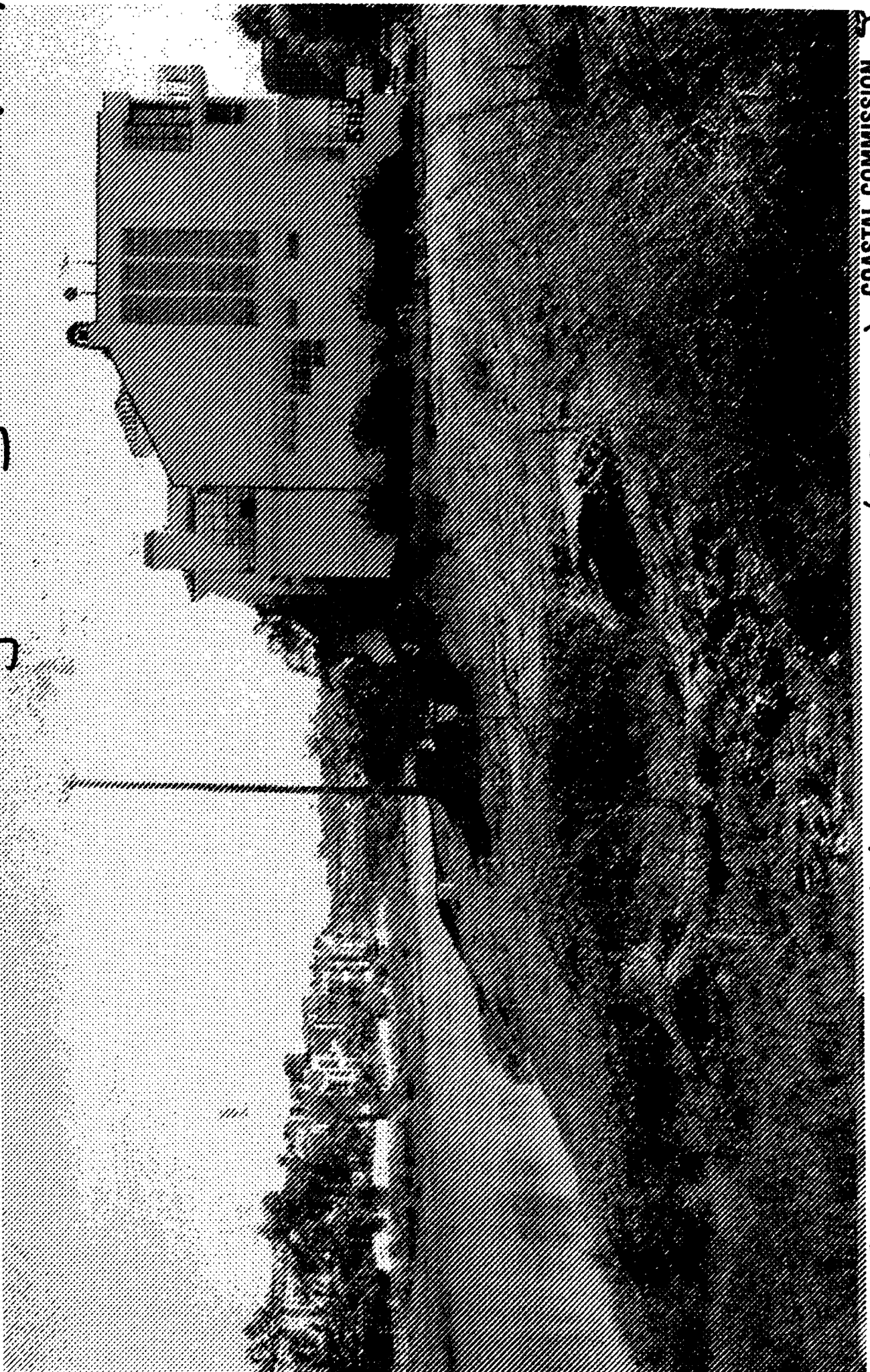
COASTAL COMMISSION

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



●ots 17, 18 & 19 of Block 1, Del Rio Beach Tract (in foreground)

COASTAL COMMISSION