

CALIFORNIA COASTAL COMMISSION

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Staff: ALB-LB
Staff Report: May 22, 2003
Hearing Date: June 11-13, 2003
Commission Action:

STAFF REPORT: REGULAR CALENDAR**APPLICATION NUMBER:** 5-03-091**APPLICANTS:** City of Newport Beach and The Related Companies
(On behalf of the property owner, The Irvine Company)**AGENT:** Dan Trimble, Program Administrator, City of Newport Beach**PROJECT LOCATION:** Corner of Jamboree and Pacific Coast Highway,
City of Newport Beach, Orange County

PROJECT DESCRIPTION: Development of a senior affordable housing project and passive public park on a vacant 15-acre site. The senior affordable housing project will consist of 150 units in three 3-story buildings with a community center, administrative offices, a pool/patio area and 180 parking spaces on the lower 5 acres of the site. The park will contain a bike path, park benches and primarily native vegetation on the upper 10 acres. Approximately 115,000 cubic yards of grading (75,000 c.y. cut, 40,000 c.y. fill, 25,000 c.y. export and 10,000 c.y. surcharge) is proposed for view enhancement from Pacific Coast Highway, drainage, slope stabilization and site preparation. The project also involves approval of a lot line adjustment, modifying the configuration, but not the size, of each parcel.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **DENY** the proposed development due to inconsistencies with Chapter Three policies of the Coastal Act, including Sections 30233 and 30251. The subject site is a vacant 15-acre lot located between the first public road and the sea (Upper Newport Bay) in the City of Newport Beach. The applicant proposes to create a public park on the upper portion of the site and a senior affordable housing project on the lower portion. As proposed, the project would result in the fill of wetlands to serve an unallowable purpose, residential development. The proposed project would also require a substantial amount of landform alteration to accommodate the new development. Due to the siting constraints presented, the proposed development is too intense for the subject property. Feasible alternatives, such as reducing the size of the development, exist, thus adding further reason why the current proposal cannot be approved. The primary issues addressed in the staff report are wetlands fill, landform alteration, public access/parking, and water quality.

At the time of this staff report, the applicants are in disagreement with the staff recommendation and oppose any significant modifications to the project. According to the applicants, the project cannot be redesigned to avoid Commission designated wetland areas and to retain natural landforms while remaining "affordable" and meeting the City's housing needs.

LOCAL APPROVALS: Newport Beach City Council approval of Use Permit No. 2003-003, Site Plan Review No. 2003-001 and Lot Line Adjustment No. 2003-011 and adoption of Mitigated Negative Declaration for Bayview Park and Senior Housing on February 25, 2003.

SUBSTANTIVE FILE DOCUMENTS:

City of Newport Beach Certified Land Use Plan (LUP); Circulation Improvement and Open Space Agreement (CIOSA); CIOSA Program EIR prepared by ASB Planning dated 1992; Mitigated Negative Declaration prepared by Civic Solutions, Inc. dated February 25, 2003; *Preliminary Geotechnical Investigation for the Newport Senior Lower Bayview Landing, City of Newport Beach, California*, prepared by NMG Geotechnical, Inc. dated December 18, 2002 and signed by T. Wright (CEG 1342) and K. Markouizos (RCE 50312); *Supplemental Geotechnical Investigation and Review of Rough Grading Plan for Proposed Bayview Senior Affordable Housing and Park Project, City of Newport Beach* prepared by NMG Geotechnical, Inc. and signed by T. Wright (CEG 1342) and K. Markouizos (RCE 50312), dated April 22, 2003; *Phase I Cultural Resources Investigation of the Bayview Landing Project Area* prepared by McKenna et al dated July 5, 2001; *Phase 1 Environmental Site Assessment* prepared by ENVIRON dated December 13, 2001; *Wetlands Delineation and Field Biological Evaluation* prepared by Robert 'Roy' van de Hoek dated April 6, 2003; Biological letter report prepared by Keane Biological Consulting dated March 21, 2003; *Jurisdictional Delineation of the Bayview Property* letter report prepared by Glenn Lukos Associates dated April 11, 2003; *Jurisdictional Delineation of the Bayview Property* letter report prepared by Glenn Lukos Associates dated April 11, 2003 (revised May 2, 2003).

LIST OF EXHIBITS:

1. Vicinity Map
 2. Assessor's Parcel Map
 3. Plot Plan
 4. Grading Plan, Landscaping Plan, Elevations and Floor Plans
 5. Lot Line Adjustment
 6. CIOSA EIR Vegetation Map
 7. CIOSA Constraints Map for Bayview Landing
 8. Plot Plan with Approximate Wetland Areas Depicted
 9. Correspondence from Wetlands Action Network dated March 10, 2003
 10. Correspondence from Dr. Jan Vandersloot dated March 10, 2003
 11. Correspondence from Robert A. Hamilton to Jan Vandersloot dated April 4, 2003
 12. Correspondence from Robert C. Speed dated May 5, 2003
 13. *Wetlands Delineation and Field Biological Evaluation* prepared by Robert 'Roy' van de Hoek dated April 6, 2003
 14. Correspondence from Keane Biological Consulting dated March 21, 2003
 15. Memorandum from David Bramlet to Keane Biological Consulting dated March 17, 2003
 16. Letter Report prepared by Glenn Lukos Associates dated April 11, 2003 with Exhibits 3 & 4 only
 17. Letter Report prepared by Glenn Lukos Associates dated April 11, 2003 (revised May 2, 2003) with Exhibits 3 & 4 only
 18. Memorandum from Tony Bomkamp, Glenn Lukos Associates, to John Dixon, CCC, dated May 11, 2003
 19. Memorandum from Dr. John Dixon dated May 14, 2003
 20. Cut/Fill Graphic prepared by C.W. Poss Inc. dated April 9, 2003
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I. STAFF RECOMMENDATION OF DENIAL:

Staff recommends that the Commission adopt the following resolution.

A. Motion

I move that the Commission approve Coastal Development Permit #5-03-091 for the development proposed by the applicants.

B. Staff Recommendation of Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of the majority of the Commissioners present.

C. Resolution to Deny the Permit:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

1. Project Location

The project site consists of two undeveloped parcels located at the northwest corner of Jamboree Road and Pacific Coast Highway (PCH) in the City of Newport Beach, Orange County (Exhibits 1 and 2). The site is located on the inland side of PCH, between the first public road and the sea (in this case, Upper Newport Bay). Upper Newport Bay is located to the west of the subject site, beyond the Newport Dunes Recreational Vehicle Park. The nearest vertical coastal access is available at the Newport Dunes.

The project site is surrounded by the Newport Dunes to the west, the Hyatt Newporter Hotel to the north, the Villa Point condominiums across Jamboree to the east, and the Promontory apartments across PCH to the south, as shown in Figure 1 on the following page.

The site consists of an upper terrace adjacent to PCH, a vegetated hillside and a lower level pad area adjacent to Back Bay Drive. In addition, there is a steep cliff face at the westernmost extension of the property between PCH and the Newport Dunes. The upper terrace was previously developed with a residence (1931-1947) and later a gas station (1968-1984). The lower pad area has been intermittently covered with gravel and used for temporary parking and a fruit stand. The site has also been altered in the past by road construction activities and the lower portion was used for disposal of dredged materials from Upper Newport Bay.

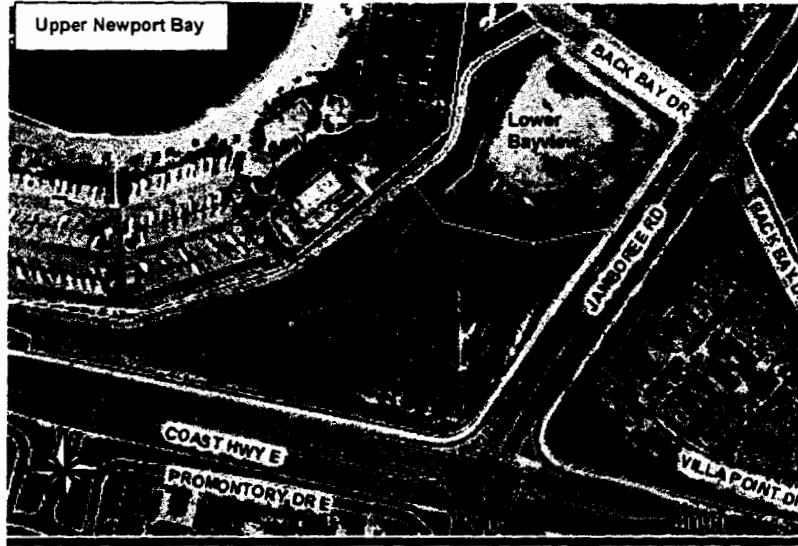


Figure 1

2. Project Description

The proposed project involves the development of a senior affordable housing project and passive park on a vacant 15-acre site (Exhibit 3). The senior housing development will be constructed on the lower 5 acres of the site and the public park will be created on the upper 10 acres of the site, as described below.

Housing

The senior affordable housing component will consist of 150 units in three 3-story buildings with a recreation/community center, administrative offices, an outdoor pool/patio area and 180 parking spaces. Project plans and elevations are included as Exhibit 4. The proposed structures will reach a height of 35' above finished grade. The structures will not exceed the height of the finished grade of the public park; therefore, they will be not visible from PCH. The structures will be visible from Jamboree, but view corridors toward Upper Newport Bay will be provided between the buildings.

Parking for the housing development will be provided in uncovered surface lots with 150 resident spaces and 30 employee/guest spaces. A reduced parking standard was applied based on the anticipated demand of the senior housing use. Parking will be discussed in Section G.

All of the 150 units will be affordable, with 30 units at 50% of Area Median Income (AMI) and 120 units at 60% AMI. According to the applicants, AMI is \$70,000 based on 2002 figures provided by the County of Orange. All of the units will be age restricted with the residents being 55 years and older. The facility will not provide assisted living services.

Park

The upper area of the site is proposed as a primarily passive park, containing an asphalt bike path, park benches, fencing and landscaping. The park area will contain primarily native vegetation, including a coastal sage scrub mitigation area. Ornamental landscaping is proposed along the edges of the development area and at the intersection of Jamboree and PCH. Vegetation will be discussed in Section E.

The Water Quality Management Plan for the proposed project includes best management practices such as a detention basin, catch basin filters, biofiltration, common area efficient

irrigation and education. The proposed detention basin is sited in the northwest corner of the site, within a Commission defined wetland area. Wetland issues will be discussed in Section B. Water quality issues will be discussed in Section F.

Grading

Approximately 115,000 cubic yards of grading (75,000 c.y. cut and 40,000 c.y. fill, with 25,000 c.y. of export and 10,000 c.y. surcharge) is proposed across almost the entire project site. The applicants indicate that grading is necessary for slope stabilization, site preparation and drainage. The majority of cut will occur in the upper park area, with the lower housing site receiving a substantial amount of the resulting fill material. Excess material will be exported outside the Coastal Zone. According to the applicants' geotechnical consultant, the current grade of the lower housing site must be raised approximately 4'-5' due to soils conditions, the shallow water table and drainage concerns. Grading within the proposed park area is intended to improve views of the Upper Newport Bay from Pacific Coast Highway. Approximately 5'-10' will be cut from the upper terrace grade to create views through the site. Additionally, much of the grading is occurring in the center of the site to create a 2:1 slope to accommodate Building 2 of the senior housing development. Grading and geologic hazards will be discussed in Section C. Scenic resources and landform alteration will be discussed in Section D.

Lot Line Adjustment

The project involves approval of a lot line adjustment, modifying the configuration, but not the size, of each parcel (Exhibit 5). Pursuant to the Development Agreement described in the subsequent section, the upper portion of the site is to be dedicated to the City of Newport Beach for use as a public park and the lower portion is to be used for private development (in this case, the operation of the senior housing facility) and will remain in the ownership of The Irvine Company. The parcel to be dedicated to the City (Parcel A) is approximately 10 acres in size and currently includes a vegetated slope area located in the center of the site. The parcel to be developed with the residential structures (Parcel 1) is approximately 5 acres and includes the entire lower portion of the site. The proposed Lot Line Adjustment will result in City acquisition of the proposed detention basin site at the lower portion of the site and will create additional private developable area within the center slope area of the project site.

3. Prior Commission Action in Subject Area

On June 10, 1993, the Commission approved a development agreement between the City of Newport Beach and the Irvine Company, known as the Circulation Improvement and Open Space Agreement (CIOSA).¹ The Development Agreement affected nine sites within the Newport Beach coastal zone (the agreement affected eleven sites total within the City). The agreement provided the City with certain traffic improvements and increased open space area and the Irvine Company with certain development entitlements. The Bayview Landing site was included in the CIOSA.

The CIOSA outlined potential land use options for the lower portion of the Bayview Landing site, including 10,000 square feet of restaurant use, 40,000 square feet for health club use or 120 units of affordable senior housing if adequate visitor serving opportunities exist within the area. (The applicant's current proposal includes 150 units, pursuant to a provision of the Housing Element, which allows a 25% density bonus for affordable units.) The upper portion of the site

¹ Pursuant to California Government Code Section 65869, a development agreement is not valid for any development project located in an area for which a Local Coastal Program (LCP) is required but has not yet been certified unless the Commission approves such a development agreement by formal Commission action. The City of Newport Beach Land Use Plan was certified by the Commission in May 1982; however, no implementation plan has ever been submitted. Therefore, no Local Coastal Program for Newport Beach has been certified to date.

is designated for open space use. These land uses are consistent with the designations for the site provided in the certified LUP.

In the CIOSA EIR (1992), the Bayview Landing site was said to support "*relatively poorly developed localized sage scrub, introduced annual grassland and ruderal habitats.*" Exhibit 6 depicts on-site biological resources discussed in the EIR. The proposal for the Bayview site anticipated that the upper portion of the site would be dedicated to the City for open space/passive park use that would affect vegetation and habitat of low biological sensitivity. However, the EIR acknowledges that bluff stabilization/remediation work related to the development of open space uses and erosion control could impact some poorly developed coastal sage scrub. In addition, the grading necessary for creation of the view park within the open space area was determined to be substantial if the City chose to modify the grade of the site to expand views of Upper Newport Bay to park users and motorists on Coast Highway. The EIR determined that grading could also impact the coastal sage scrub. As concluded in the report, "*depending in the extent and location of bluff stabilization/remediation and grading in the open space areas, these activities could cause a significant adverse impact on the California gnatcatcher and its habitat.*" The report went on to say that introduced annual grassland is the dominant vegetative feature of the western half of the upper site and ruderal vegetation is found throughout the lower level portion of the lower site. No wetlands were identified at the lower Bayview Landing site in the CIOSA EIR.

The EIR identified four mitigation measures that would protect the biological resources in the open space area. First, Mitigation Measure #17 required that open space plans be prepared in consultation with a biologist who shall determine that such plans not adversely impact sensitive resources. Second, Mitigation Measure #18 prohibited grading, stockpiling, and operation of equipment in connection with development of the lower portion of the site above the southern hillside 25-foot contour line (as shown in the Constraints Map, Exhibit 7). Mitigation Measure #24 required that coastal sage scrub or perennial native grasses be used for revegetation of graded areas. Mitigation Measure #25 restricted all non-emergency grading for bluff stabilization and remediation to the non-breeding season for the gnatcatcher.

4. Consistency with CIOSA

Though the proposed land uses are conceptually consistent with CIOSA, as previously noted, the current proposal contains components that are inconsistent with the mitigation measures cited above and with the site restrictions of the Commission approved Development Agreement. Specifically, the Development Agreement addendum included delineated "development envelopes" and defined "maximum extent of grading for non-public uses" lines, which the current proposal exceeds. In addition, Mitigation Measure #18 restricts grading above the 25-foot contour, while the current proposal includes extensive grading beyond the 25-foot contour, as will be discussed in Sections C and D. Lastly, the currently proposed project will also adversely impact sensitive resources, inconsistent with Mitigation Measure #17.

As explained in the Commission's findings in approving the Development Agreement, the purpose of Mitigation Measure #18 was to prevent disturbance of coastal sage scrub habitat present along the slope in the center of the Bayview Landing site. However, the applicants have stated "*the main intent of the 25' contour mentioned in Mitigation Measure #18 was to prevent a private developer from using the open space on top of the bluff for equipment activity and fill storage if and when the lower site was developed for commercial use. However, this was assuming that the upper and lower sites would be developed separately.*" The applicants also contend that the CIOSA EIR was a program EIR, and supplemental environmental analysis has been carried out to evaluate impacts at a project-specific level. The City recently adopted a Mitigated Negative Declaration (MND) for the Bayview Park and Senior Housing Project. The

MND concludes that coastal sage scrub replacement at a 4:1 ratio will reduce potential adverse impacts to a less than significant level.

As stated above, the Commission approved the CIOSA in June 1993, finding it to be consistent with the policies in Chapter 3 of the Coastal Act (Cal. Pub. Res. Code §§ 30200-265.5). The Commission is not a party to the agreement between the City and the Irvine Company, and consequently is not responsible for enforcing the Development Agreement. Furthermore, the Commission's approval of the agreement does not prevent it from approving alternative proposals that do not comply with the agreement (provided that they too are consistent with the Chapter 3 policies of the Coastal Act). The Commission notes that the current proposal appears to be inconsistent with the Development Agreement approved previously. Though the standard of review for the current proposal is Chapter 3 of the Coastal Act, the Commission's approval of CIOSA provides additional guidance on how the area should be developed.

At this time, the Commission has the opportunity to evaluate proposed development at the Bayview Landing site for its consistency with the Coastal Act at a more detailed level of analysis than what occurred during its consideration of the Development Agreement. The Development Agreement provided for future discretionary review at the coastal development permit stage. The Commission's findings in approving the CIOSA Development Agreement acknowledge, *"the development areas may be further limited at the coastal development permit stage based on new/more specific biological or geotechnical information."* As such, the current staff report evaluates the proposed project in light of new information.

B. WETLANDS

Section 30233 (a) of the Coastal Act states,

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings*

for public recreational piers that provide public access and recreational opportunities.

- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.*
- (8) Nature study, aquaculture, or similar resource dependent activities.*

Section 30250(a) of the Coastal Act states, in pertinent part,

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

As described previously, the applicant proposes to develop the subject site with a senior affordable housing project on the lower 5 acres and a public passive park on the upper 10 acres. The environmental document (Bayview MND) utilized to approve the project at the local level determined that no wetlands exist on the subject site. However, through subsequent review, areas that constitute wetlands under the Coastal Act have been identified within three sections of the lower portion of the site. Components of the proposed development, including one of the residential structures, the entry driveway, and the detention basin, are sited within these wetland areas (Exhibit 8).

The Coastal Act defines wetlands as "...lands within the coastal zone which may be covered periodically or permanently with shallow water...." The more specific definition adopted by the Commission and codified in Section 13577(b)(1) of Title 14 of the California Code of Regulations defines a wetland as, "...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes...." In discussing boundary determinations, the same section of the Regulations specifies that wetlands have a "predominance" of hydrophytic cover or a "predominance" of hydric soils. Although the definition is based on inundation or shallow saturation long enough for anaerobic reducing conditions to develop within the root zone², in practice hydrology is the most difficult wetland indicator to demonstrate. In California, a predominance of hydrophytes or a predominance of hydric soils is taken as evidence that the land was "wet enough long enough" to develop wetland characteristics.

² As demonstrated by the definitions of hydric soils and hydrophytes: "A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part." National technical committee for hydric soils, October 18, 1994; A hydrophyte is, "Any macrophyte that grows in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content...." Environmental Laboratory. 1987. Corps of Engineers Wetland Delineation Manual. U.S. Army Corps of Engineers, Washington, D.C.

Correspondence regarding biological resources of the subject site, specifically the presence of wetlands, has been received from the Wetlands Action Network (WAN), Jan Vandersloot, Robert Hamilton and Robert Speed (Exhibits 9-12). In addition, Robert Roy Van de Hoek submitted a *Wetlands Delineation and Field Biological Evaluation* dated April 6, 2003 (Exhibit 13). The WAN letter asserts that the biological resources report prepared for the MND contains incomplete surveys of the site and did not include an evaluation of the lower 5-acre portion of the site or the upper cliff areas. As such, it asserts, the potential wetland areas of the lower portion were not recognized. The WAN letter also states that many plant species (on both the upper and lower portions of the site) were not identified in the report. Correspondence from Jan Vandersloot echoes these concerns and identifies a number of others, including inadequate coastal sage scrub mitigation, coastal landform alteration, archaeology, vernal pools at the bluff top mesa and meadow, and public parking. The biological review letter prepared by Robert Hamilton focuses on native vegetation issues, but also describes the potential wetland areas and suggests *"a proper wetland delineation be conducted..."* The letter from Robert Speed describes the site as *"the last unprotected open space on the Upper Bay estuarine margin"* and urges that the site be returned to its original condition as a *"wetland margin and natural coastal habitat."* The Van de Hoek report finds *"three areas of definitive wetland in the 5-acre lower portion of Bayview Landing"* and discusses the hydrology, vegetation, size and dominance of each. These are shown in Exhibit 13, page 21.

Keane Biological Consulting, the biological consultant that evaluated the site for the MND, prepared a response to the WAN letter dated March 21, 2003 (Exhibit 14). The letter refutes the statement that the lower site and cliff areas were not surveyed and cites references in the report intended to describe those areas. The Keane letter states, *"the site supports no wetland soil or wetland hydrology, it is not currently associated with the wetlands of Upper Newport Bay, and it has no hydrologic source or high groundwater table to support wetlands."* Nonetheless, the Keane letter also references a subsequent survey of the site conducted by David Bramlet, a local botanist with wetland experience. Bramlet found two "ephemeral wetlands" on the site, as described in his memo to Keane dated March 17, 2003 (Exhibit 15).

The applicants later retained Glenn Lukos Associates, biological consultants, who also evaluated the wetlands in a report dated April 11, 2003 (Exhibit 16). As stated in that report,

In the lower portion of the site, two areas were identified that exhibit the characteristics of wetlands as defined by the CCC. These areas included the settling basin and the road rut areas. Both of these features exhibit evidence of standing water or soil saturation, as well as hydric soils and a predominance of hydrophytic vegetation. The sizes of these areas are approximately 400 and 750 square feet, respectively.

The Commission's Ecologist/Wetlands Coordinator reviewed the April 11, 2003 report and noted that the delineation did not include a map showing areas having a preponderance of wetland indicator species, resulting in a potentially smaller representation of the actual wetland areas. A subsequent Glenn Lukos report dated May 2, 2003 was submitted for Commission review (Exhibit 17). In that report, the consultants provide a revised wetland map and photographs to document the topography, vegetative communities and general widths of each of the waters. In the report, the consultants acknowledge *"an additional area was identified following the April 15 storm event, which may be defined as wetland by the CCC."* However, in subsequent correspondence (Exhibit 18), the consultants state,

In summary, it is our position that those portions of the basin that lack hydric characters in the soil and also are not able to hold water for more than seven days should not be considered a wetland. The area around the willows with redox in the soil meets the

minimum test for wetlands. The upper basin lacks wetland hydrology because it is not capable of ponding water for sufficient periods, a fact that is confirmed by a complete absence of redox in the soil. The presence of opportunistic annual species is not sufficient in our opinion, given the range of conditions that all of these species can tolerate. Finally, while the road rut exhibits hydrology, hydric characteristics in the soil, and the same suite of opportunistic, highly adaptable annuals, it is not appropriate to designate it as a wetland, since it is only because of regular vehicular traffic, in an established parking lot maintained to serve an operating produce stand, that created the depression and compacted the soil.

After visiting the site on April 30, 2003 and reviewing all technical documents submitted by the applicant and others, the Commission's Ecologist/Wetlands Coordinator prepared a memorandum to district staff dated May 14, 2003 (Exhibit 19). As described in the memorandum, three areas at the Bayview site were characterized as having a preponderance of hydrophytic vegetation. These were designated as 1) Settling Basin and Swale, 2) Road Rut, and 3) Upper Depressional Area in Exhibit 3 of the May 2, 2003 Glenn Lukos report (Exhibit 17, page 17). Portions of the "Settling Basin" and "Road Rut" exhibited all three wetland parameters: hydrophytic vegetation, hydric soils, and wetland hydrology. All three include a preponderance of hydrophytic vegetation. Therefore, applying the Commission's definition of a wetland, all three sites on the Bayview Landing site meet the definition of a wetland. A subsequent mapping would be necessary to establish the precise boundary of each area.

As explained in the memorandum, the three wetland areas do not appear to be natural features. The areas were probably created by human activities and have not developed the important resource values generally associated with natural wetlands. No sensitive species appear to be reliant upon them. Nevertheless, these areas qualify as wetlands by the Commission's definition and must be treated in accordance with the provisions of Section 30233 of the Coastal Act. In addition, Section 30250 of the Coastal Act requires that new residential development be located where it will not have "*significant adverse effects, either individually or cumulatively, on coastal resources.*" In this case, the development would have significant adverse effects on the designated wetland areas since two of the wetlands will be eliminated and the third will be converted into a detention basin. Moreover, the cumulative impact of development such as this (development that degrades or displaces wetlands) would have a significant impact. Consequently, the development must be redesigned to avoid such impacts through wetland preservation and the establishment of buffers. In view of the relatively degraded nature of these wetlands, the Staff Ecologist concludes "*25-foot wide buffers would be amply protective if the buffers were planted with native vegetation appropriate to the area and invasive exotics removed from the wetlands and buffers.*" Buffers provide essential open space between development and coastal resources, such as wetlands. Buffers, by separating development (such as the senior affordable housing) from wetlands, will minimize the adverse effects of the development on the wetlands, thereby avoiding significant adverse effects to resources.

The applicants have indicated that the project could be redesigned to restore and enhance the "Settling Basin and Swale" wetland as part of the proposed project. However, no plans for restoration have been submitted. In the current proposal, the Settling Basin area would be used as a detention basin to serve as a water quality best management practice (BMP). (Water quality will be discussed in Section F.) A detention basin to treat runoff from a residential development would not be an allowable use of a wetland pursuant to Section 30233 of the Coastal Act. The detention basin is a necessary component of the proposed residential development, which constitutes the unallowable use. Although the applicant may be willing to

improve and enhance the habitat value of the Settling Basin wetland area, the applicant would not be willing to avoid development in the Road Rut and the Upper Depressional wetland areas.

Fill of the Road Rut and Upper Depressional wetland areas for residential development is not allowable, regardless of what improvements are proposed at the Settling Basin wetland site. Additionally, total loss of two on-site wetlands cannot be considered the least environmentally-damaging feasible alternative, even if higher value habitat is created at one of the three sites. The on-site wetlands clearly are degraded. The degraded nature of the wetlands does not provide a basis to justify filling them. The entire lower parcel is five acres. Development of the parcel is possible without impacting the wetland habitat if a smaller footprint is used and appropriately sited. Retention of the existing wetlands is thus a feasible alternative and would be less environmentally-damaging than elimination of two of the three wetland areas. In addition, protection of all three wetland areas would be consistent with the State's "no net loss" policy, intended to prevent further loss of wetland acreage.

As stated above, Section 30233 of the Coastal Act allows the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes for eight enumerated purposes where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. In this case, the applicants propose the filling of three wetland areas to serve residential development. Residential development is not an allowable use of a wetland area. In addition, even if the fill were intended for an allowable use, the proposed project is not the least environmentally-damaging feasible alternative available. Lastly, if the fill were proposed for an allowable use and were determined to be the least environmentally-damaging alternative, a finding would have to be made that feasible mitigation measures have been provided. No mitigation has been proposed. Therefore, the Commission finds the project inconsistent with Section 30233 of the Coastal Act and the project must be denied.

C. GEOLOGY

Section 30253 of the Coastal Act states:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The project application proposes approximately 115,000 cubic yards of grading (75,000 c.y. cut and 40,000 c.y. fill, with 25,000 c.y. of export and 10,000 c.y. surcharge).³ Essentially the entire site will be subject to some form of earthwork, with the majority of cut/excavation occurring in the upper park area and the lower housing site receiving a substantial amount of the resultant fill material. Export material will be taken to the Big Canyon County Club, located outside the coastal zone. Grading of the upper area is intended to improve views of the Upper Newport Bay from Pacific Coast Highway. The applicants also indicate that grading is necessary for site stabilization and to improve drainage along the upper slope. Much of the grading is occurring to create a 2:1 slope in the center of the site to accommodate one of the residential buildings.

³ Data provided in the supplemental geotechnical report anticipates 82,700 cubic yards of raw cut and 29,200 cubic yards of raw fill, inconsistent with the figures provided in the application.

Additionally, a substantial amount of surcharge is necessary to mitigate the potential for liquefaction on the lower portion of the site. The lower portion of the site will be raised an average of four feet. The applicants state that the areas being grading are highly altered and are not natural landforms or bluffs.

To assess the feasibility of the project, the applicant submitted the *Preliminary Geotechnical Investigation for the Newport Senior Lower Bayview Landing* prepared by NMG Geotechnical, Inc. However, the grading plans were modified subsequent to the geotechnical consultant's review of the project. (The City Council modified the amount of grading allowed on the upper portion of the site at their February 25, 2003 hearing.) At the request of the Commission's Geologist, the applicants' consultant provided a supplemental geotechnical investigation and review of the rough grading plan for the proposed project. In addition, the consultant provided a cut/fill map to more clearly illustrate the proposed grading activities (Exhibit 20). As outlined in the NMG report, the project consists of the following grading activities:

- ◆ *The proposed rough grading of the Lower Bayview (housing) site generally consists of design cuts ranging from 1 to 40 feet and design fills ranging from 1 to 7 feet above the existing grades. The majority of the design cut is located in the Building 2 area.*
- ◆ *The proposed rough grading of the Upper Bayview (park) site generally consists of design cuts ranging from 1 to 5 feet and design fills ranging from 1 to 7 feet.*
- ◆ *A north facing 2H:1V cut slope, up to approximately 40 feet high, will be graded between the senior housing site and the park site.*
- ◆ *Smaller 2H:1V to 5H:1V cut and fill slopes area planned along the perimeter of the site.*
- ◆ *The park will have a paved bike trail, but generally is considered to be a nonstructural area.*
- ◆ *The plan includes pad elevation, top-of-curb elevation, pad and street dimensions and storm drain (alignment only)*
- ◆ *The detention basin is approximately 3 feet deep and has 4H:1V side slopes. The onsite storm drain system outlets into the detention basin.*

The Commission's Geologist has reviewed the grading plans, geotechnical investigations and supplemental slope stability analyses for the proposed development and concluded the project to be acceptable from a geologic hazard standpoint. In the analysis, the staff geologist acknowledges the large quantity of grading and states, *"The majority of this grading is necessary to accommodate building 2; if the project consisted only of buildings 1 and 3, much less grading would be necessary. The grading proposed is not primarily for the creation of views, but is necessary to mitigate for the presence of unsuitable fill materials, to prevent differential settlement across the cut/fill boundary beneath building 3, and to mitigate for the liquefaction hazard."*

The geotechnical investigations conclude that the proposed project is feasible from a geologic hazard/engineering perspective. However, the proposed development cannot be accommodated given the constraints on the property without substantial earthwork and significant landform alteration, indicating that the project that is too intense for the subject site. Less intense forms of development can be accommodated on site, which would avoid geologic hazard impacts as well as biologic and scenic resource impacts.

Section 30253 of the Coastal Act states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard, and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. While the

proposed project will not require the construction of protective devices, the project will require extensive grading that will alter the natural landform and affect the visual quality of the site. Therefore, although consistency with Section 30253 is not at issue, further analysis of the scenic resource impacts of the proposed landform alteration is necessary pursuant to Section 30251 of the Coastal Act.

D. SCENIC RESOURCES

Section 30251 of the Coastal Act pertains to visual resources. It states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...

The project is located at the corner of two highly traveled coastal routes—Pacific Coast Highway and Jamboree Road. The site is also visible from the Newport Dunes Recreational Park, a popular visitor destination along the Upper Newport Bay. Because the new park and senior housing development would affect views inland from PCH and from a public access point, any adverse impacts must be minimized. Consequently, it is necessary to ensure that the development be sited and designed to protect views to and along this scenic coastal area and to minimize the alteration of existing landforms.

As shown on the Cut/Fill map (Exhibit 20), the topography of the entire site will be modified by the proposed project. The existing slope in the center of the site is approximately 40' high and supports coastal sage scrub. To accommodate a new building, the applicant proposes to remove 57,953 cubic yards of material from this center slope area with a maximum cut depth of 48 feet. The proposed cut will result in approximately 200 linear feet of excavation, thus "pushing" the landform away from the Upper Newport Bay.

As described previously, the CIOSA EIR found that grading could have a significant adverse impact on the coastal sage scrub and gnatcatcher habitat. The EIR included mitigation measures to avoid impacts to the area. These included a restriction of grading above the 25' contour. The current proposal includes grading far beyond the 25' contour, to approximately the 70' contour. The proposed excavation will remove the vegetated slope to create a buildable pad adjacent to a 2:1 slope. As such, the grading associated with the proposed project will substantially degrade the character and thus the scenic quality of the natural landform.

In order to accommodate the grading necessary for the proposed residential building in the center of the site (Building 2), the applicants are proposing a lot line adjustment. The Lot Line Adjustment will shift the private development boundary over 100 feet to the south, thereby privatizing the center slope area that is currently designated for public use in the certified LUP and the approved Development Agreement. In exchange, the public will acquire the proposed detention basin in the corner of the lower lot. This lot line adjustment will facilitate substantial alteration of a natural landform for a private purpose, thereby the scenic quality of the site. Therefore, it must be denied.

The project also involves the creation of a view park at the upper portion of the site. Grading is proposed which will lower the elevation of the surface to improve views of the Upper Newport Bay from Pacific Coast Highway. The project will require an average of 10' of cut (24,307 cubic yards) along the upper terrace. Although the views toward the Upper Newport Bay will be improved for motorists, concerns have been raised that the grading is excessive and will disturb existing native vegetation along the upper terrace. Additionally, the proposed grading will benefit only the motorists and not visitors of the park. Views of the Upper Newport Bay are

currently available when standing on the upper terrace. No grading is needed to improve these existing views.

The project also involves approximately 26,346 cubic yards of fill to raise the grade of the lower portion of the site in order to accommodate the new housing development. The lower site will be raised 4'-5' from its current grade to mitigate liquefaction potential and stabilize the site. Not only does the proposed fill constitute landform alteration, it would destroy designated wetland areas for an unallowable use, inconsistent with wetland policies discussed in Section B.

The proposed project is incompatible with Section 30251 as it has not been sited and designed to prevent the need for substantial earthwork, which will alter the natural landform and degrade the available views and the visual quality of the area. A less intense form a development could be accommodated on site without the extent of landform alteration proposed, thereby preserving the natural features of the site. Therefore, the Commission finds the proposed project inconsistent with the visual resource protection policies of Section 30251 of the Coastal Act and must be denied.

E. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The CIOSEA EIR (1992) noted that the vegetation cover on the upper portion of the Bayview Landing site contained approximately 4 acres of "open, localized coastal sage scrub," and surveys at that time found one California gnatcatcher on the site. The EIR found that grading of the park site could have a significant impact on the coastal sage scrub and gnatcatcher habitat. As described previously, the EIR discussed mitigation measures to avoid impacts to the area. These included a restriction of grading above the 25' contour and timing of construction outside the potential gnatcatcher breeding season.

As part of the updated environmental analysis, the site was surveyed in 2001 to determine current conditions, potential impacts and appropriate mitigation measures. The survey found that the site is primarily covered by non-native vegetation and that small, non-contiguous fragments (approximately ¼ acre total) of native coastal sage scrub exist. Focused surveys found no indication that gnatcatchers inhabited the site at that time. Nonetheless, the mitigation measure included in the Mitigated Negative Declaration and approved by the City for the proposed project require that existing fragments of coastal sage scrub be replaced at a ratio of 4:1.

As indicated above, there is a dispute as to the quantity of coastal sage scrub (CSS) at the subject site. The 1992 EIR reported 4 acres and the biological report prepared for the MND reports ¼ acre. In correspondence received March 13, 2003 (Exhibit 10), Dr. Jan Vandersloot describes the CSS at the subject site and questions the underreporting in the MND. Dr. Vandersloot asserts that the CSS should be considered an Environmentally Sensitive Habitat Area (ESHA) because of its habitat value for the threatened gnatcatcher. As such, his letter concludes, "No less than 4 acres of CSS should be replaced (not 1 acre as proposed by the City.)" City staff responds that the difference is attributable to differing methodologies between

the biologists. As stated in the City's "Response to Comments" included in the City Council Staff Report,

"There are two possible explanations for this discrepancy. The first is that the actual amount of CSS plans could have changed between 1992 and 2001 when the most recent survey was done. CSS plants could have either died naturally or been damaged or removed during weed abatement. Staff is not aware of any instances of illegal removal of CSS since 1992, however. Conversations with the City's biologist suggest that a more likely explanation is a difference in characterization of the vegetation cover by the two biologists. Both surveys noted that the CSS on this site was not high quality, and is mostly sparse or poorly-developed. Given these conditions, it is likely that any two biologists would differ in their mapping of vegetation types. It appears that the first biologists drew CSS boundaries broadly while the second biologist was more precise and identified only those areas actually covered by CSS plants.

The biologist who prepared the 2001 survey, Kathy Keane, indicated that she discussed her methodology and results with a US Fish and Wildlife Service biologist who was familiar with the site and that he agreed with her approach. It should be noted that USFWS will be the entity to review and approve the City's mitigation plan under the existing NCCP agreement. Required mitigation ratios are affected by the quality of the habitat, the location relative to other habitat areas, and the likelihood of success of the revegetation plan. Ratios ranging from 1/2 to 1 up to 3 to 1 are typical. The final determination of the acreage of CSS revegetation will be determined in consultation with the USFWS and the Coastal Commission."

If the CSS were determined to be ESHA, development that was not dependent on the resource and/or would significantly degrade the resource would be prohibited. As such, no mitigation would be necessary. The Commission's Ecologist has visited the site and determined that the coastal sage scrub does not rise to the order of ESHA. Therefore, the question of consistency with Section 30240 is not at issue. Nonetheless, if developed in the future, new landscaping should consist of native drought-tolerant vegetation to enhance and improve the habitat value of the subject site.

F. WATER QUALITY

Section 30230 of the Coastal Act states, in pertinent part:

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

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states, in pertinent part:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous

substances shall be provided in relation to any development or transportation of such materials.

Newport Harbor (Lower Newport Bay) is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies for metals, pesticides and priority organics. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed for increased scrutiny as a higher priority watershed under its Watershed Management Initiative. Consequently, projects which drain to Lower Newport Bay, should be designed to minimize or eliminate discharge of metals, pesticides and priority organics.

The applicant has submitted a comprehensive Water Quality Management Plan (WQMP) for the Bayview Landing site. The Best Management Practices (BMPs) contained in the WQMP are summarized below.

BMPs

- Essentially all of the runoff from the senior housing site and the majority of the runoff from the park will drain into grated catch basins located throughout the property. All catch basins will eventually drain to the detention basin.
- Detention basin:
 - will serve as a flood control and water quality device
 - the majority of the park site and all of the senior housing site will drain to the detention basin
 - low flow runoff will percolate into sandy soil at bottom of basin
 - the basin has been engineered to capture a 10 yr intensity, 24 hr duration event. To be conservative, the basin was sized without adding any benefit of percolation into the bottom of the basin. The basin is much larger than needed to capture and filter the first ¼ inch of rainfall ("first flush")
- Catch basin filters
 - all catch basin filters which intercept runoff from parking lot paved surfaces and building roofs will contain filtration devices (Kristar Fossil Filters).
- Filtration
 - surface runoff directed to landscaped areas and swales
- Common Area Efficient Irrigation
- Common Area Runoff-Minimizing Landscape Design
 - group plants with similar water requirements in order to reduce excess irrigation runoff and promote surface filtration
 - select plants that will minimize the need for fertilizer and pesticides
 - encourage the use of native and drought tolerant plants
- Energy dissipators
- Catch basin stenciling
- Education and Training
- Activity Restrictions
 - debris disposed in appropriate receptacles; not into streets and storm drains
- Common Area Landscape Management
 - water conservation; minimal pesticide and fertilizer use
- Common Area Litter Control
- Street Sweeping monthly

- BMP Inspection/Maintenance

In theory, the proposed water quality measures contained in the WQMP are sufficient to be deemed consistent with Sections 30230, 30231 and 30232 of the Coastal Act. However, because the WQMP depends on the creation of a detention basin in a defined wetland area to facilitate residential development, the project is inconsistent with Section 30233 of the Coastal Act and cannot be approved as proposed. In order to be found not only consistent with Section 30230, 30231 and 30232 of the Coastal Act, but ultimately approvable, the project must be redesigned to achieve the same water quality goals while avoiding wetland impacts. Therefore, the project, as submitted, must be denied.

G. PUBLIC ACCESS

Section 30252 of the Coastal Act states in pertinent part:

The location and amount of new development should maintain and enhance public access to the coast by...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

One of the strongest legislative mandates of the Coastal Act is the preservation of coastal access. Section 30252 of the Coastal Act requires that new development maintain and enhance public access to the coast by providing adequate parking or alternative means of transportation. When new development does not provide adequate on-site parking and there are inadequate alternative means of reaching the area (such as public transportation), users of that development are forced to occupy public parking that could be used by visitors to the coast. A lack of public parking and public transportation will discourage visitors from coming to the beach and other visitor-serving activities in the coastal zone. A parking deficiency will therefore have an adverse impact on public access. Until adequate public transportation is provided, all private development must, as a consequence, provide adequate on-site parking to minimize adverse impacts on public access.

The applicants propose two types of land uses on-site, residential and public recreation. The residential portion of the development will be served by 180 parking spaces in uncovered surface lots with 150 resident spaces and 30 employee/guest spaces. A reduced parking standard was applied based on the anticipated demand of the senior affordable housing use. Based on past operational characteristics and actual parking demand of other senior developments, the proposed parking ratio is 1.2 spaces per unit. The developer for the senior housing component of the project, The Related Companies, has developed other senior affordable housing projects in the region and has utilized similar reductions in each. In addition, the maximum number of employees on site at any time would be three during the day (one for leasing, one for management, and one for maintenance) and one during the evening. This will not be an assisted living facility. The remaining spaces would be used for guest/visitor parking.

No parking is proposed to serve the new public park. City staff has indicated that the park is not considered a "destination" park; therefore, no demand is anticipated. Although the site is primarily a passive park, there will be benches and a bike path traversing the site. Consequently, the public may choose to visit the site to enjoy the view or as a starting point for a bike ride. After Commission staff raised these concerns, the applicants indicated that a portion of the parking pool could be designated for park visitors. The applicants have yet to submit a revised parking plan.

The project does not provide parking sufficient to serve the public use of the park. As such, the Commission finds the project inconsistent with Section 30252 of the Coastal Act. The project must be denied.

H. ALTERNATIVES

Denial of the proposed project will not deny all economically beneficial or productive use of the applicant's property or unreasonably limit the owner's reasonable investment-backed expectations of the subject property. The LUP allows the lower portion of the site to be developed with a restaurant, health club or senior affordable housing. Those uses could still be accommodated on-site in a modified configuration. The applicant is left with various design alternatives to construct new structure(s) sited to avoid the wetland areas and reduce alteration of the landform. Among those alternatives are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

1. No Project

No changes to the existing site conditions would result from the "no project" alternative. This alternative would result in the least amount of effects to the environment and would not have any adverse effect on the current value of the property. The senior housing component of the project could be sited elsewhere within the City. Alternative locations have already been identified by local officials.

2. Redesign of Housing Project

Residential development is not an allowable use of a wetland area. As such, any use of the area for a residential project must be redesigned to eliminate any development within the wetland or buffers areas. In addition, development must minimize landform alteration. However, these siting restrictions do not prohibit development of the entire property. Development can still occur, albeit with a more limited footprint. Any new proposals must be designed to avoid the wetland areas and to minimize grading of the slope in the center of the site. A new housing proposal may be designed to accommodate the same number of residents in smaller units or a fewer number of residents in fewer units. New structures may also be designed with increased building heights along Jamboree. The Commission notes that views from PCH should be maintained; however, public views from Jamboree are less significant. Lastly, the project could be redesigned to utilize a different foundation system. The project currently proposes surcharge of the lower portion of the site to accommodate the new structures. The applicant has indicated that a different foundation system (i.e. caissons) would be cost prohibitive for an affordable housing project. However, a different foundation system would require less fill than currently proposed, thereby limiting potential wetland impacts.

3. Different Use of Site

Another alternative to the proposed project would be to develop the site with a restaurant or health club, as identified under the Development Agreement and certified LUP. Any proposed designs would have to respect the site restrictions identified in the current staff report. Uses other than affordable housing may require a smaller footprint area and be better accommodated on the subject site.

I. LAND USE PLAN

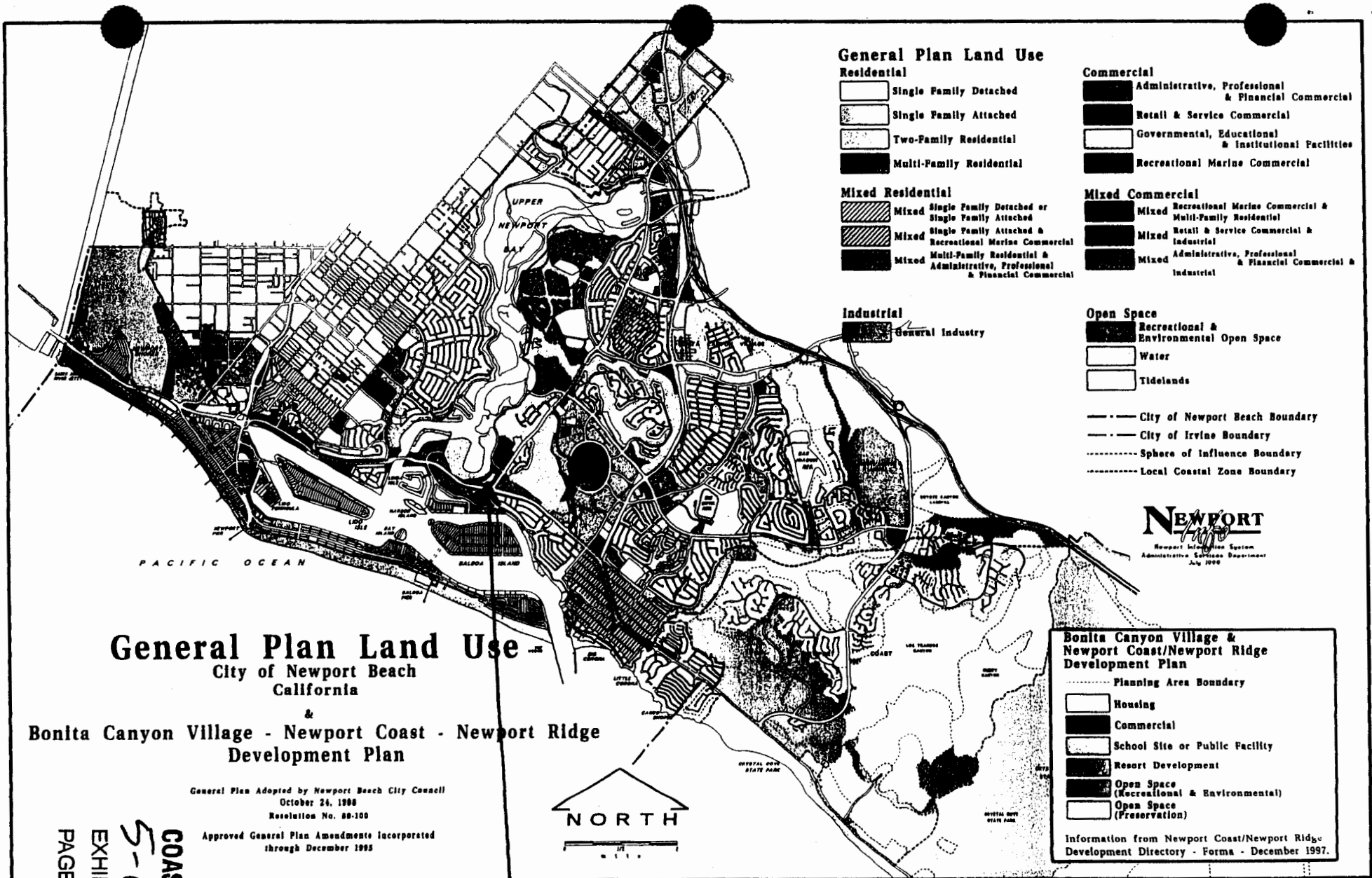
Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. Pursuant to Section 30604(a), the permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a local coastal program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan (LUP) was effectively certified on May 19, 1982. The proposed development is inconsistent with the policies of the certified Land Use Plan and Chapter 3 of the Coastal Act, specifically those relating to wetlands fill, landform alteration and public access. Therefore, the Commission finds that approval of the proposed development will prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a) and must be denied.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications 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.

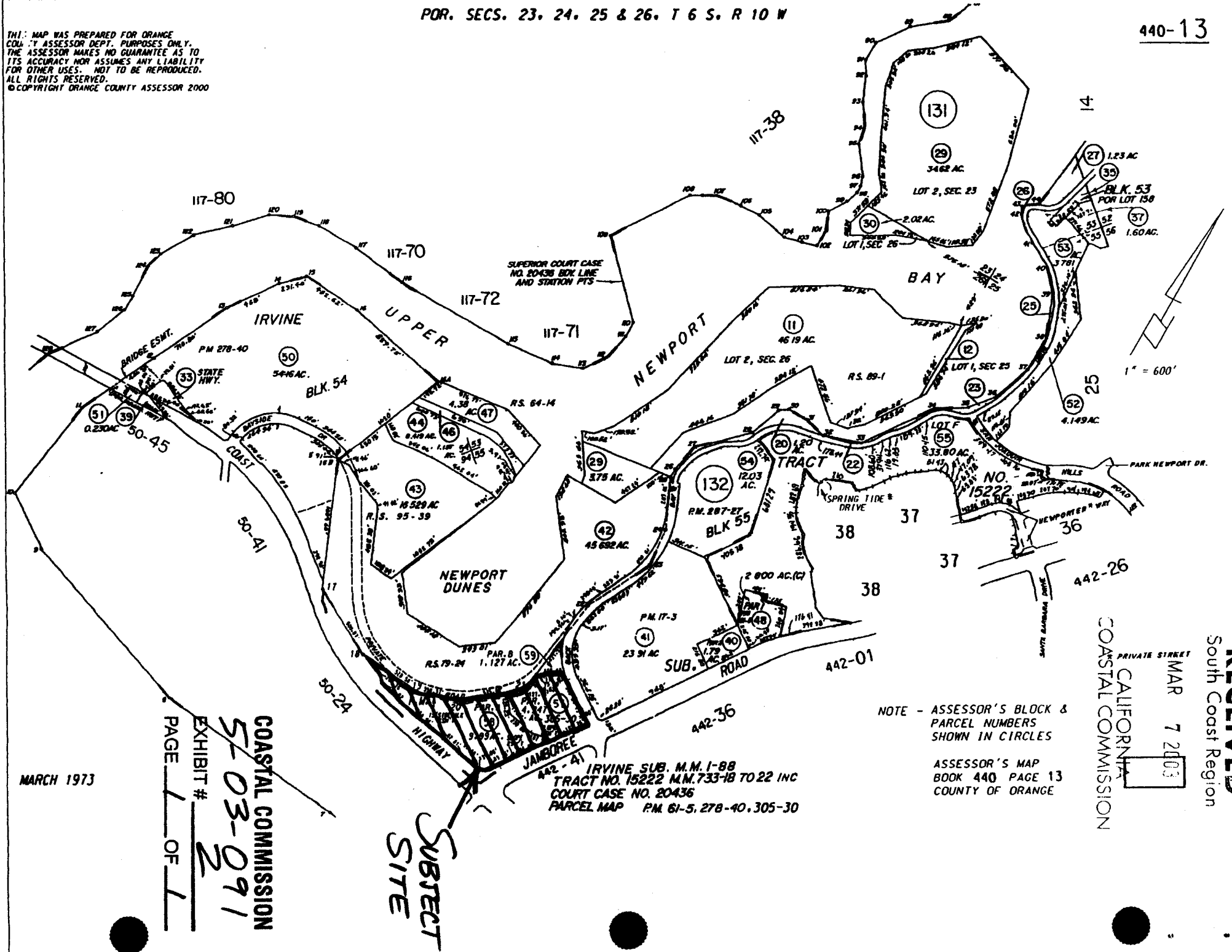
As described above, the proposed project would have significant adverse environmental impacts. There are feasible alternatives or mitigation measures available, as described in the previous section, that would substantially lessen the significant adverse impacts which the activity may have on the environment. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives which would lessen significant adverse impacts which the activity would have on the environment. Therefore, the project must be denied.



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SUBJECT
SITE

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Matchline ~ See Below

PLOT PLAN

Lower Bayview Senior Affordable Housing & Upper Bayview Park

- NOTES:**
1. ZONING: BAYVIEW LANDING PLANNED COMMUNITY
 2. NO BUILDINGS CURRENTLY EXIST ON THE SITE.
 3. BAYVIEW LANDING PLANNED COMMUNITY REGULATIONS CONTAIN INDICATION OF YARD SETBACK LINES
 4. UTILITIES WILL BE PLACED UNDERGROUND AND WILL BE APPROVED BY CITY PRIOR TO CONSTRUCTION.

CURRENT LEGAL DESCRIPTIONS:
SENIOR HOUSING PARCEL: PARCEL 1 OF PARCEL MAP NO. 95-137
PARK SITE: PARCEL "A" OF PARCEL MAP NO. 95-137
PROPOSED PARCEL LINE IS SHOWN HEREIN

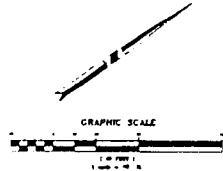
EXISTING EASEMENTS OF RECORD (AS SHOWN ON PARCEL MAP NO. 95-137):
① SLOPE, BRADSHAW & INCIDENTIAL EASEMENT TO COUNTY OF ORANGE
② WATER EASEMENT TO ORANGE COUNTY SANITATION DISTRICT NO. 5
③ 15' WIDE SIDEWALK EASEMENT TO CITY OF NEWPORT BEACH
④ 15' WIDE WATER EASEMENT TO CITY OF NEWPORT BEACH

ACREAGE STATISTICS:
EXISTING ACREAGE FROM PARCEL MAP 95-137:
PARK SITE (PARCEL "A"): 8.99 ACRES
SENIOR HOUSING (PARCEL 1): 4.95 ACRES
PROPOSED ACREAGE VIA PROPOSED LOT LINE ADJUSTMENT:
PARK SITE: 8.99 ACRES
SENIOR HOUSING: 4.95 ACRES
SITE STATISTICS:
GROSS FLOOR AREA = 130,180 S.F.
F.A.R. = 0.7
BUILDING COVERAGE = 25%

UNIT SUMMARY						
UNIT	TYPE	AREA (SQ. FT.)	BLOC. 1	BLOC. 2	BLOC. 3	TOTAL COUNT
A1	1 BEDROOM	583	34	42	50	116
A2	1 BEDROOM	583	2	2	2	6
B1	2 BEDROOM	810	10	10	10	30
			46	54	50	150

PARKING SUMMARY		
	REQUIRED STALLS	PROVIDED STALLS
RESIDENTS	(1) PER UNIT = 150 UNITS = 150 STALLS	(1) PER UNIT = 150 UNITS = 150 STALLS
GUESTS	20% = 150 UNITS = 30 STALLS	20% = 150 UNITS = 30 STALLS
TOTAL	180 STALLS	180 STALLS

* NOTE: INCLUDES 8 DISABLED ACCESSIBLE STALLS



EAST
COAST
HIGHWAY

Matchline ~ See Above

NEWPORT DUNES

BACKBAY DRIVE

JAMBORREE ROAD

Prepared by
C&L Engineering and Land Surveyors
200 S. Main St., Suite 100, Newport Beach, CA 92660
Tel: 949.440.1111 Fax: 949.440.1112

CONCEPTUAL GRADING PLAN

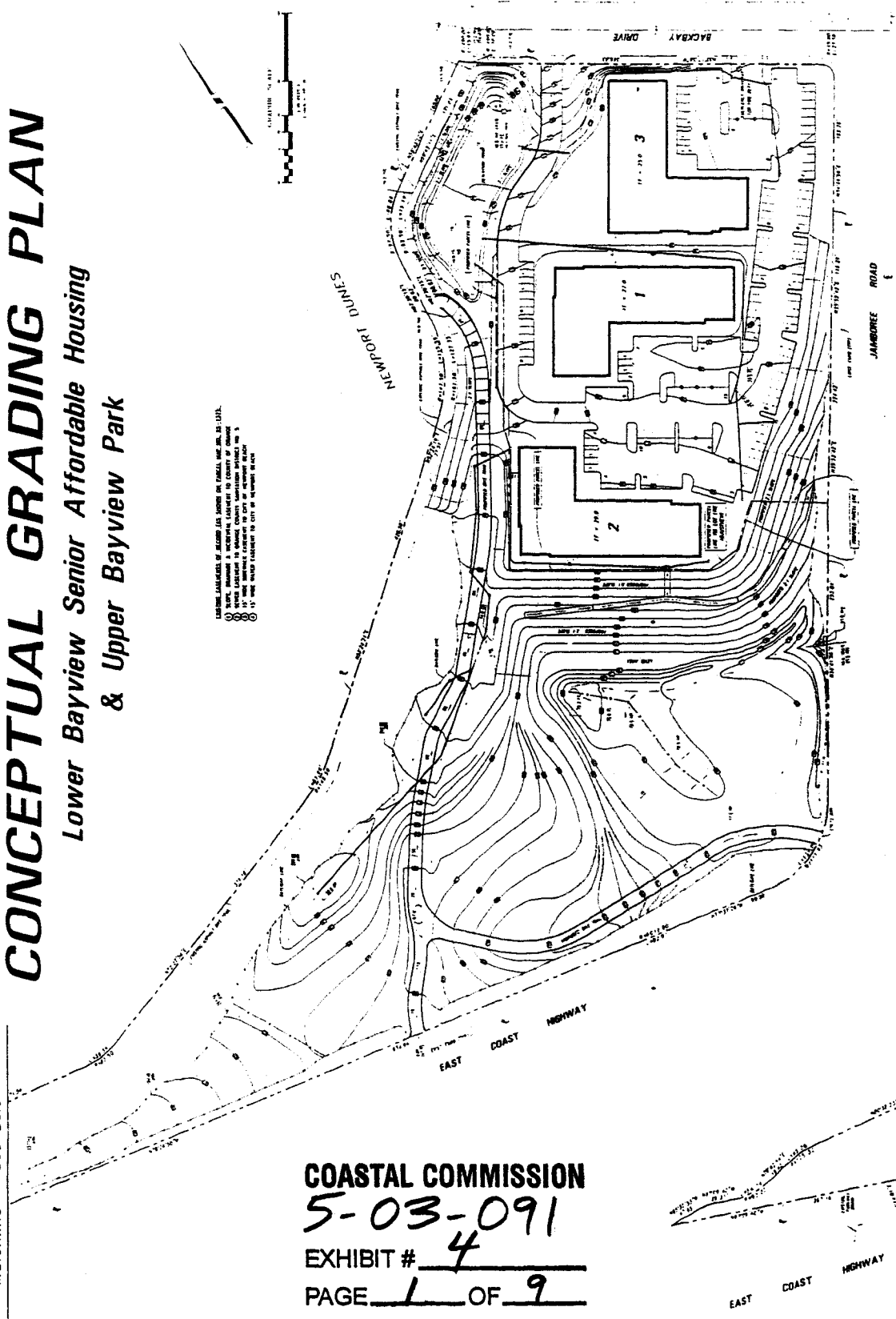
Lower Bayview Senior Affordable Housing & Upper Bayview Park

Matchline ~ See Below

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COASTAL COMMISSION
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 EXHIBIT # 4
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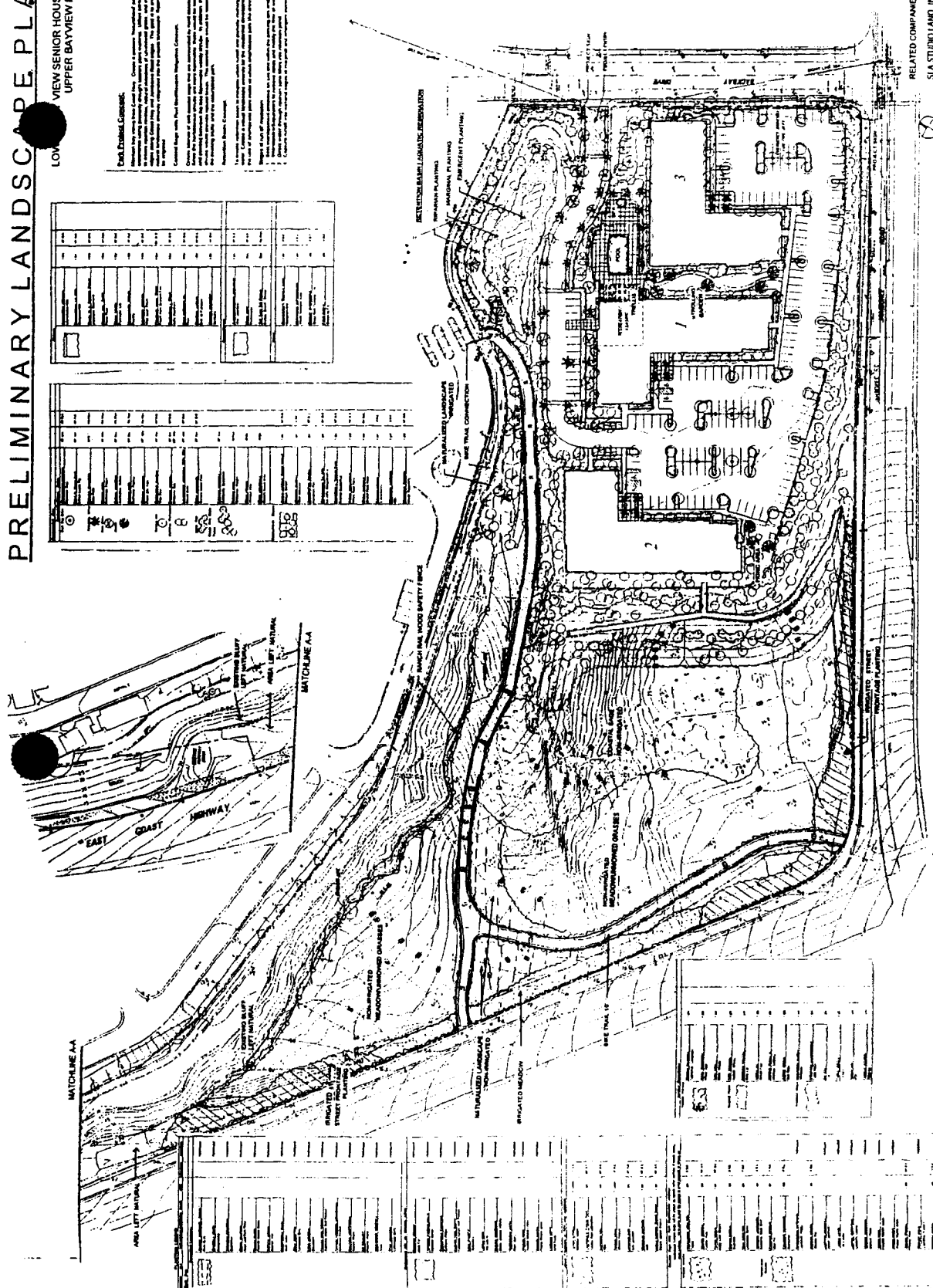
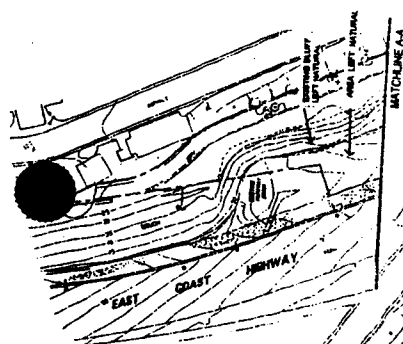
Page 1
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Matchline ~ See Above

VIEW SENIOR HOUSING:
UPPER BAYVIEW PARK

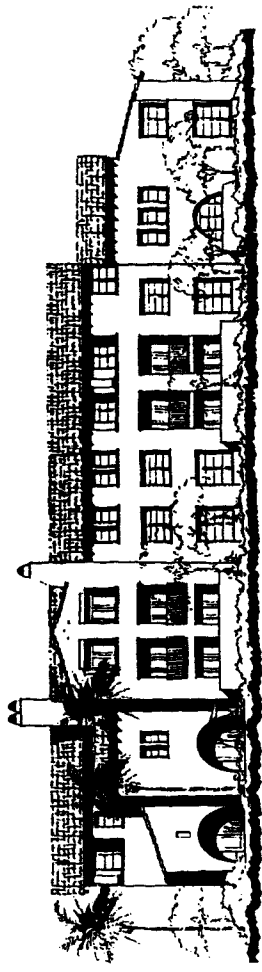
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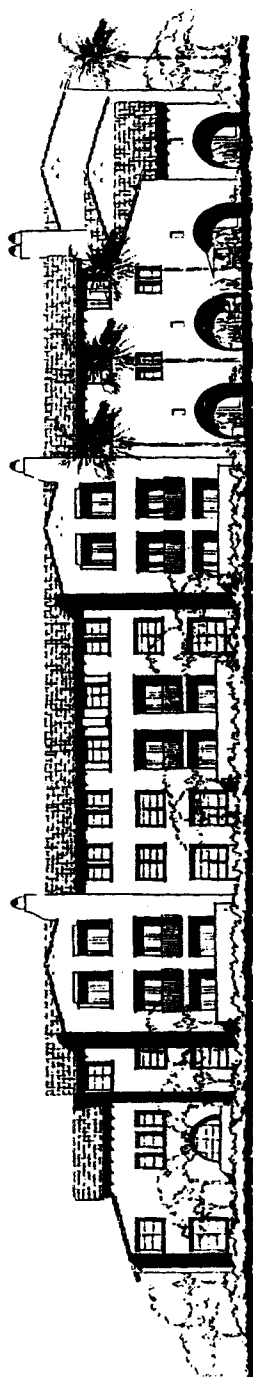


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RELATED COMPANIES
SLA STUDIO LAND, INC.
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NORTH WEST ELEVATION



NORTH EAST ELEVATION

COASTAL COMMISSION
5-03-091
EXHIBIT # 4
PAGE 3 OF 9

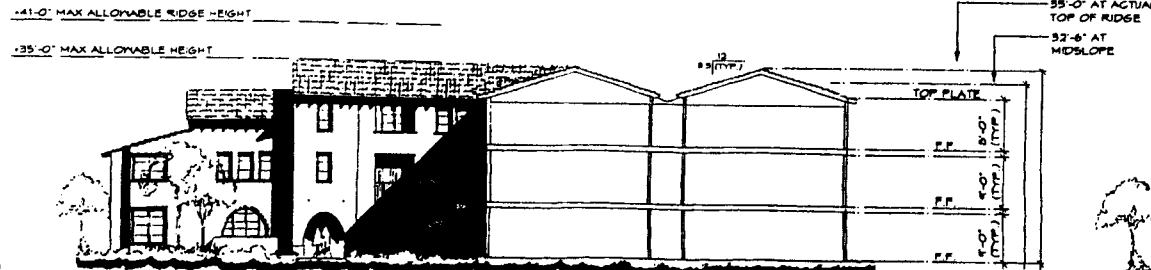
NEWPORT BACKBAY SENIOR HOUSING

SCALE : 1/8" = 1'-0"
TCA - SC070
1-31-03





PARTIAL SOUTH WEST ELEVATION
(BLDG. 2 & 3 SIM.)



PARTIAL SOUTH EAST ELEVATION
(BLDG. 2 & 3 SIM.)



SOUTH EAST & WEST END ELEVATIONS
NOTE: (TYP) END CONDITION ON BUILDINGS 1, 2 & 3

COASTAL COMMISSION
5-03-091
EXHIBIT # 4
PAGE 4 OF 9

SCALE: 1/8" = 1'-0"

TCA - C007B
1-31-03

NEWPORT BACKBAY SENIOR HOUSING

The Related Companies of California



CONC. ROOF TILES (TYP.)
SAND FINISH EXT. PLASTER (TYP.)
METAL RAILING (TYP.)
ALUMINUM WINDOWS (TYP.)



NORTH WEST ELEVATION
(BLDG. 3 SIM.)



SOUTH WEST ELEVATION
(BLDG. 3 SIM.)

COASTAL COMMISSION
EXHIBIT # 5-03-091
PAGE 5 OF 9

SCALE : 1/8" = 1'-0"

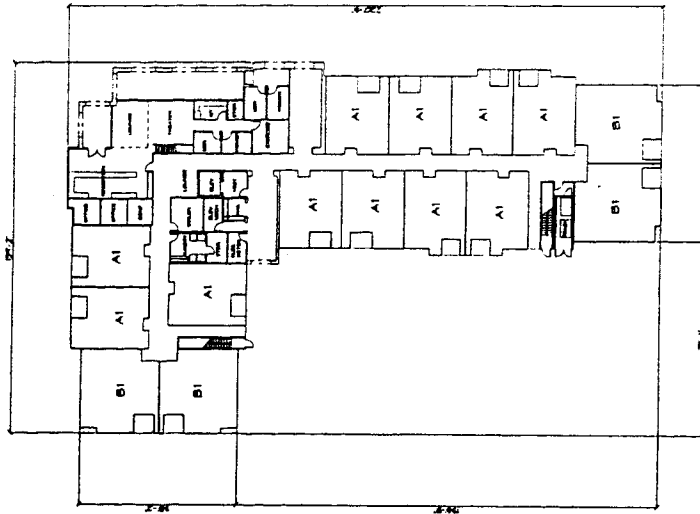
TCA - C007B
1-31-03

NEWPORT BACKBAY SENIOR HOUSING

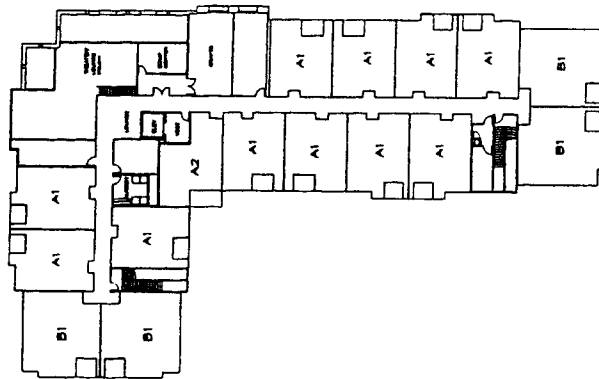
The Related Companies of California



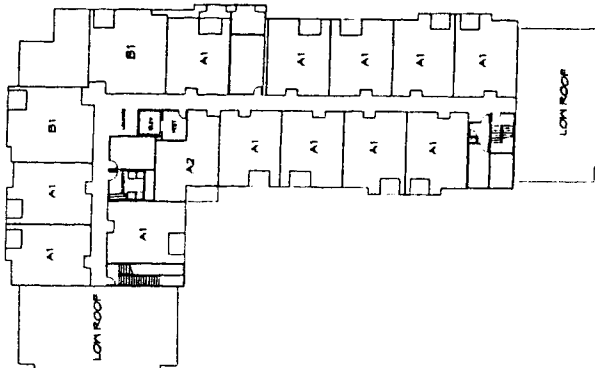
BUILDING 1 PLANS



FIRST FLOOR PLAN



SECOND FLOOR PLAN



THIRD FLOOR PLAN

NEWPORT BACKBAY SENIOR HOUSING



THE RELATED
COMPANIES OF
CALIFORNIA

1201 VICTOR AVENUE, SUITE 100
NEWPORT, CALIFORNIA 92660

COASTAL COMMISSION

5-03-091

EXHIBIT #

4

PAGE

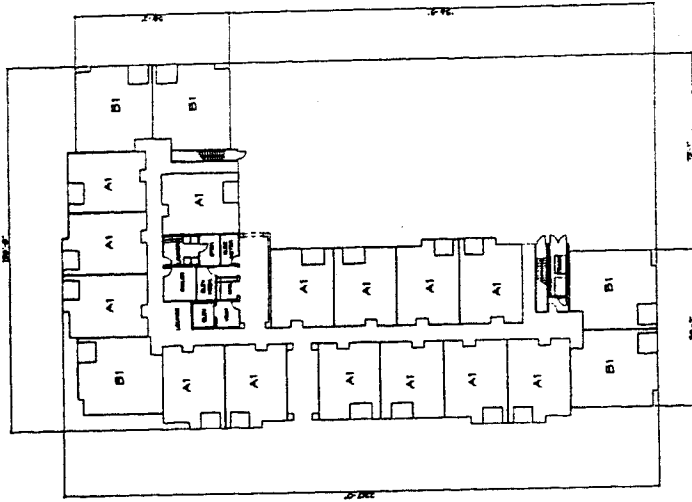
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OF

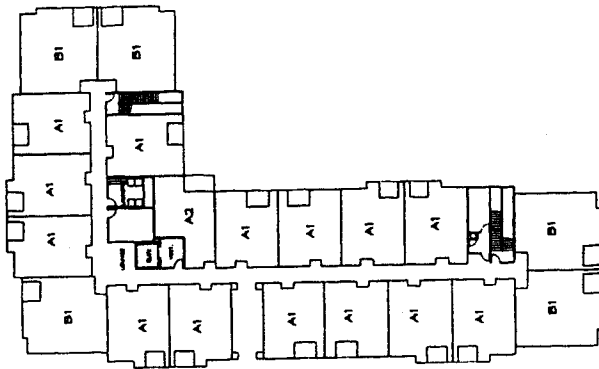
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1-23-03
TCA-C0016

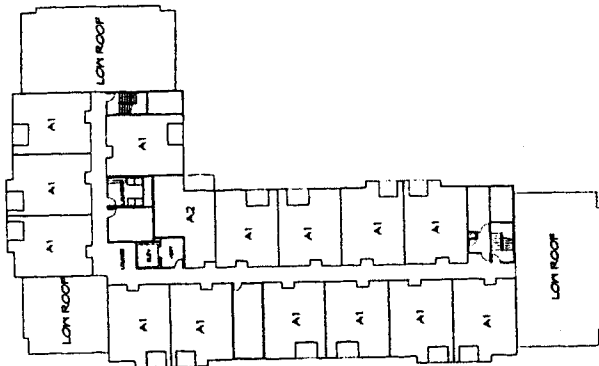
BUILDING 2 PLANS



FIRST FLOOR PLAN



SECOND FLOOR PLAN



THIRD FLOOR PLAN

NEWPORT BACKBAY SENIOR HOUSING

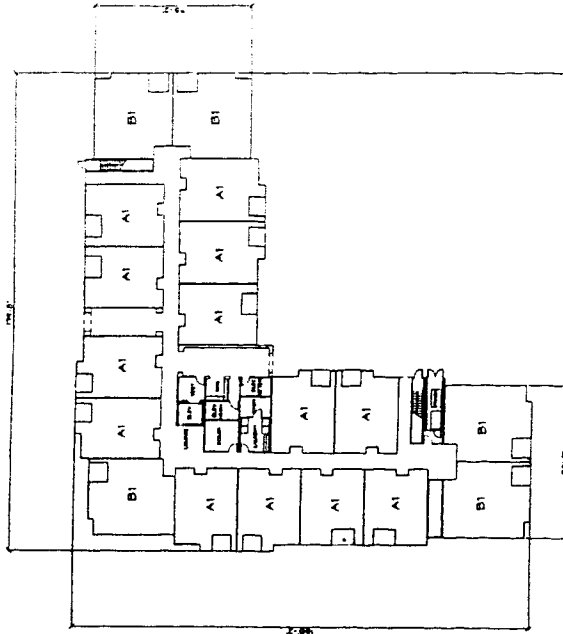


THE RELATED COMPANIES OF CALIFORNIA
1982 ALGACHTER
BUILT FOR
1981 CALIFORNIA
1981

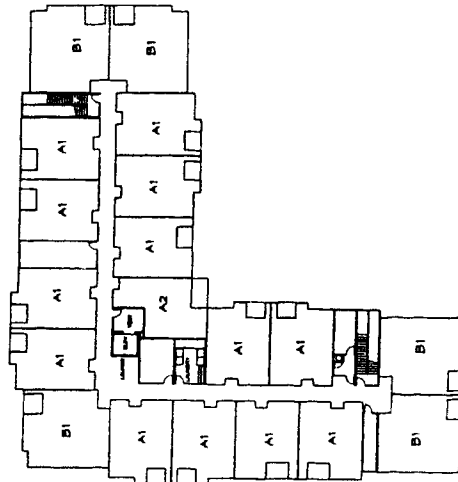
1000 JOURNAL AVENUE
SUITE 100
IRVINE, CALIFORNIA 92614

1-23-03
TCA - 00016

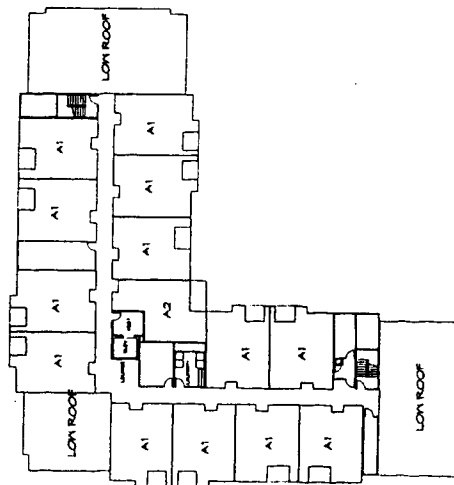
BUILDING 3 PLANS



FIRST FLOOR PLAN



SECOND FLOOR PLAN



THIRD FLOOR PLAN

NEWPORT BACKBAY SENIOR HOUSING



THE RELATED
COMPANIES OF
CALIFORNIA
1000 WEST LAMAR AVENUE
SUITE 100
SUNNYVALE, CALIFORNIA 94086
PH 415 353 1234

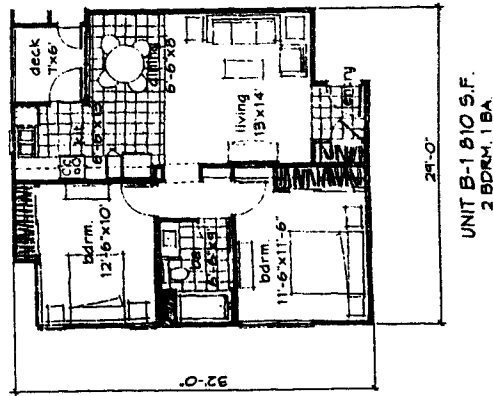
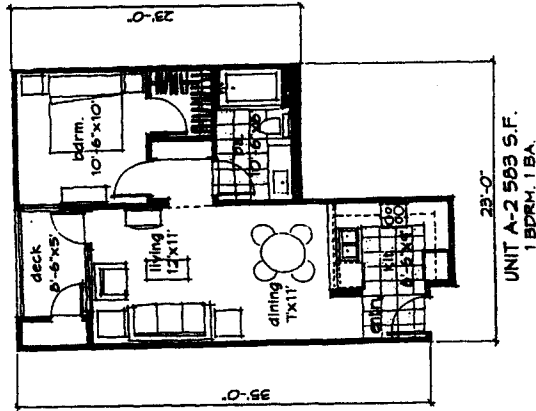
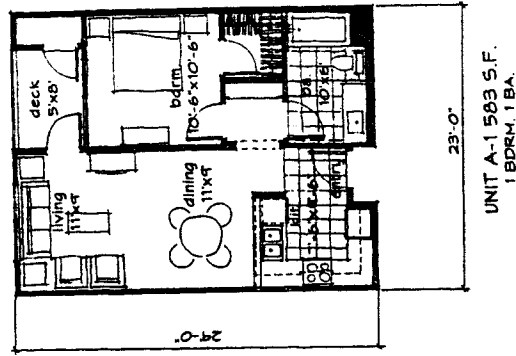
COASTAL COMMISSION

5-03-091

EXHIBIT # **4**

PAGE **8** OF **9**

1-25-05
TCA-C00718



NEWPORT BACKBAY SENIOR HOUSING



COASTAL COMMISSION
5-03-091
EXHIBIT # 4
PAGE 9 OF 9

SCALE: 1/4" = 1'-0"
TCA - 00018
1-23-03

Matchline ~ See Below

PROPOSED LOT LINE ADJUSTMENT EXHIBIT

Lower Bayview Senior Affordable Housing
& Upper Bayview Park

South Coast
FEB 18 2003

CALIFORNIA
COASTAL COMMISSION

ACREAGE STATISTICS:

EXISTING ACREAGE FROM PARCEL MAP 95-137:

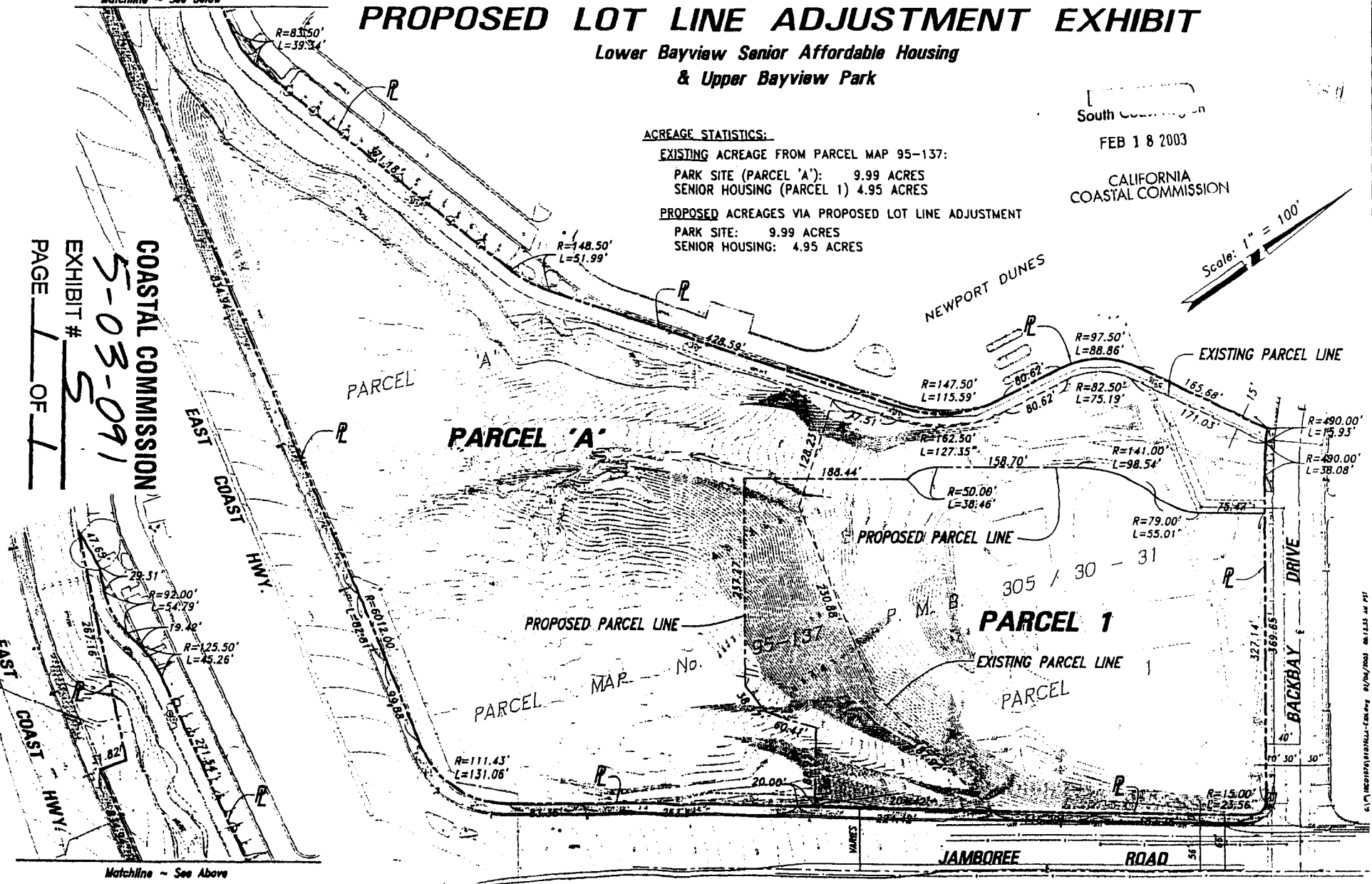
PARK SITE (PARCEL 'A'): 9.99 ACRES
SENIOR HOUSING (PARCEL 1) 4.95 ACRES

PROPOSED ACREAGES VIA PROPOSED LOT LINE ADJUSTMENT

PARK SITE: 9.99 ACRES
SENIOR HOUSING: 4.95 ACRES

Scale: 1" = 100'

COASTAL COMMISSION
EXHIBIT # 5-03-091
PAGE 1 OF 1



11/14/03 11:00 AM 11/14/03 11:00 AM 11/14/03 11:00 AM 11/14/03 11:00 AM 11/14/03 11:00 AM

NOTE: Development area denotes the portion of the site identified for development of commercial uses in the proposed PC Text. Grading related to development of commercial uses could extend beyond the area boundary. Grading could also occur for roads, open space uses, trails, and bluff restoration, outside of areas designated for development.




CALIFORNIA Gnatcatcher

♂ = MALE OBSERVED

○ = APPROXIMATE TERRITORY

COASTAL COMMISSION
5-03-091
EXHIBIT # 6
PAGE 1 OF 1

VEGETATIVE COMMUNITIES

-  INTRODUCED ANNUAL GRASSLAND
-  COASTAL SAGE SCRUB
-  RUDERAL

 DEVELOPMENT AREA

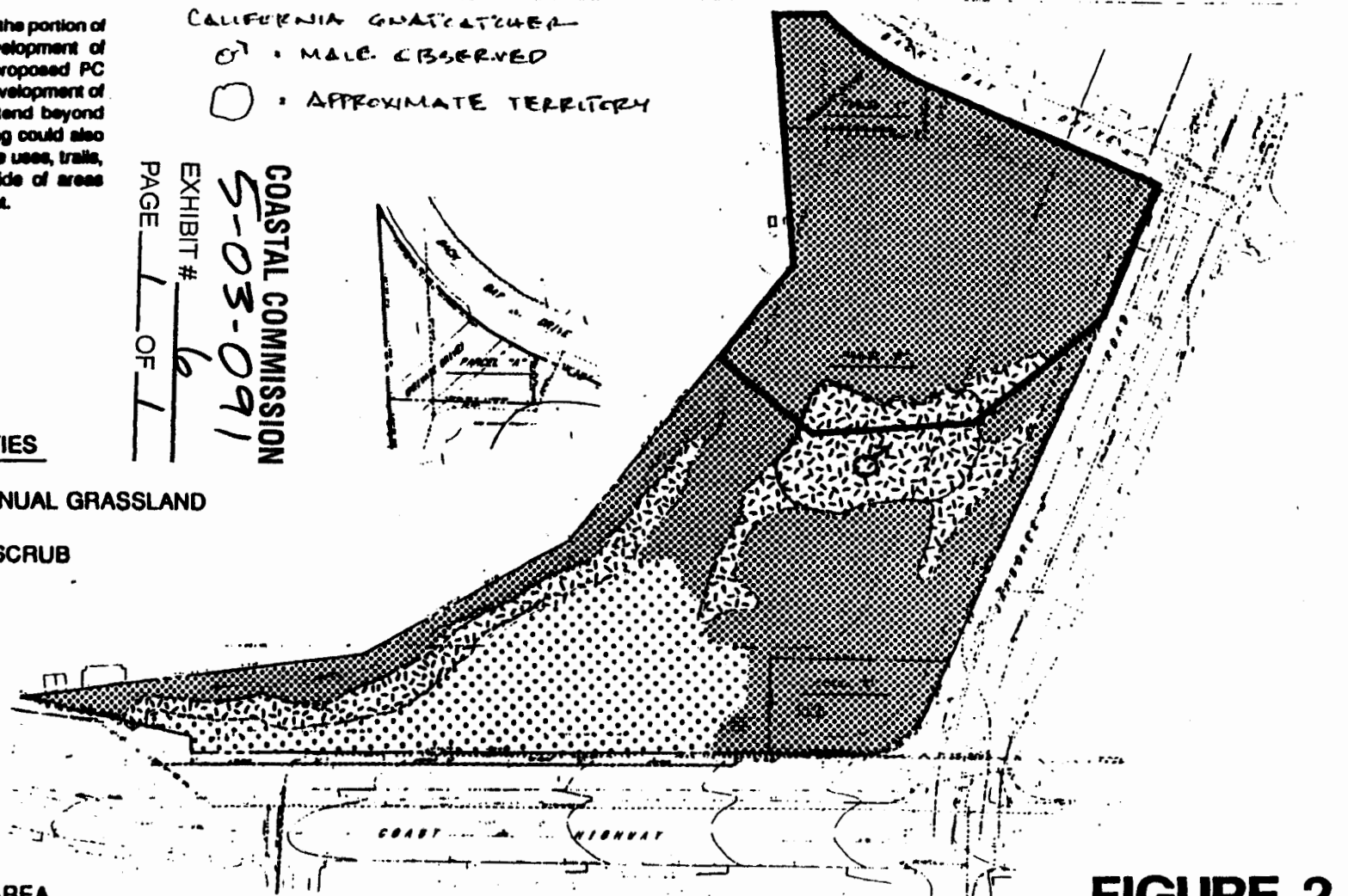


FIGURE 2

Source: Steven Nelso

BIOLOGICAL RESOURCES PROPOSED DEVELOPMENT AREAS
BAYVIEW LANDING
CIRCULATION IMPROVEMENT & OPEN SPACE AGREEMENT
City of Newport Beach



STA inc.



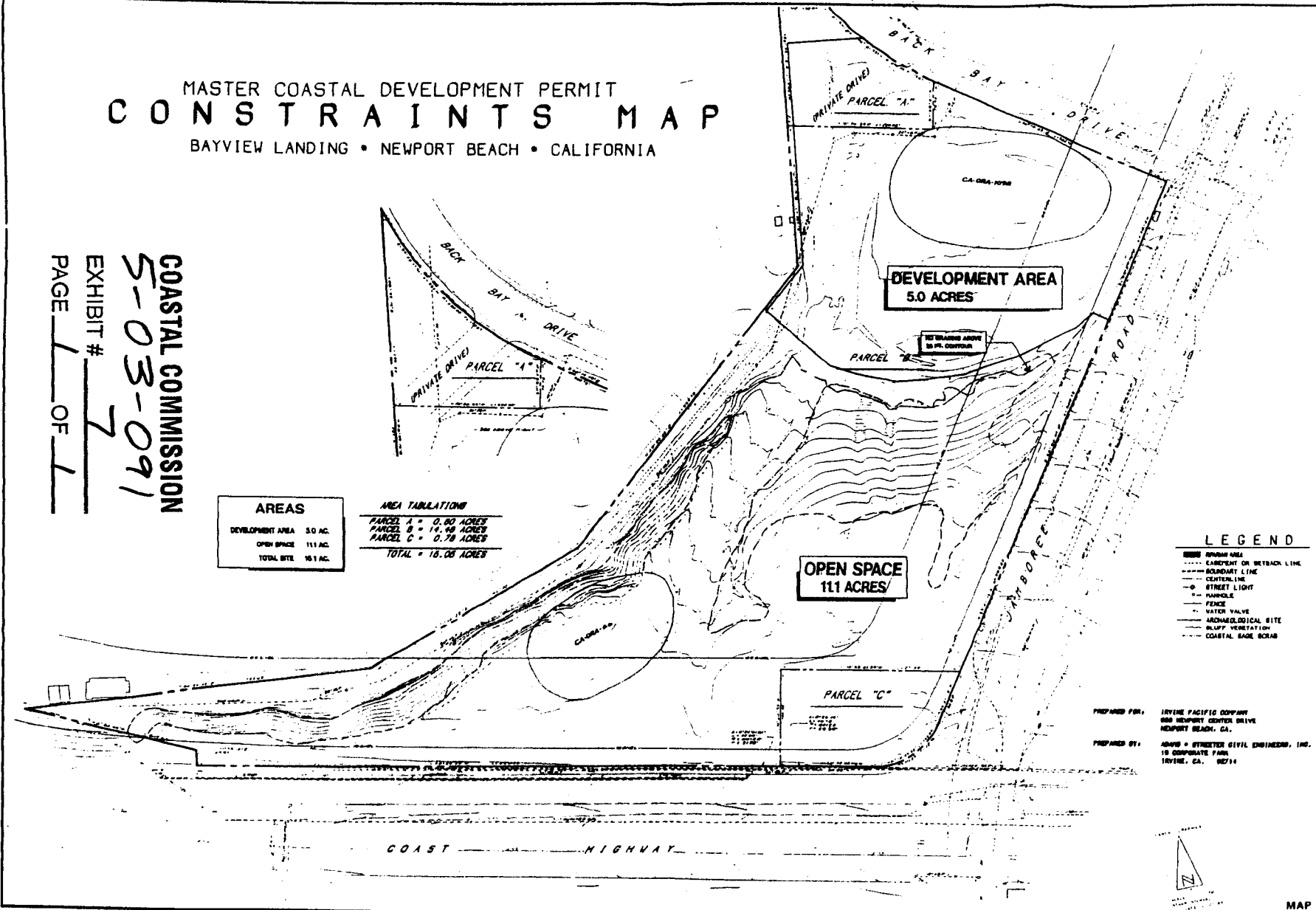
no scale

MASTER COASTAL DEVELOPMENT PERMIT
CONSTRAINTS MAP
 BAYVIEW LANDING • NEWPORT BEACH • CALIFORNIA

COASTAL COMMISSION
 5-03-091
 EXHIBIT # 7
 PAGE 1 OF 1

AREAS	
DEVELOPMENT AREA	5.0 AC.
OPEN SPACE	111 AC.
TOTAL SITE	116.1 AC.

AREA TABULATIONS	
PARCEL A =	0.80 ACRES
PARCEL B =	14.49 ACRES
PARCEL C =	0.79 ACRES
TOTAL =	16.08 ACRES



PREPARED FOR: IRVINE PACIFIC COMPANY
 888 NEWPORT CENTER DRIVE
 NEWPORT BEACH, CA.
 PREPARED BY: ADAMS & STREETER CIVIL ENGINEERS, INC.
 18 CORPORATE PARK
 IRVINE, CA. 92714

Wetlands Action Network

protecting & restoring wetlands along the Pacific Migratory Pathways

March 10, 2003

Ms. Anne Blemker
California Coastal Commission
200 OceanGate, Suite 1000
Long Beach, California 90802

sent via facsimile on 3.10.03: 562-590-5084
and send via US mail also

re: Bayview Landing, Newport Beach; applicant: City of Newport Beach

Dear Ms. Blemker:

Wetlands Action Network has become aware of a proposed project - Bayview Landing in Newport Beach - wherein our interests in protecting and restoring wetlands intersect.

We have read and conducted a preliminary review of materials relied upon by the City of Newport Beach in their approval of this project, and we are concerned about a number of issues that we think are not adequately addressed in order to comply with the California Coastal Act and other applicable regulations that the Commission regularly takes into account when considering applications. Wetlands Action Network has also visited the site, and our findings add to the concerns we have:

The Biological Resources Report dated October 29, 2001, is lacking in the following:

A. Incomplete Surveys/1/3 of site not surveyed: The report neglected the 5-acre site referred to as "Lower Bayview Landing," wherein development of a senior housing project is proposed. The upper portion of Bayview Landing was surveyed and reported on, however, it appears that the cliff area was not surveyed or reported on.

On a site visit to this area, the 5-acre site included witnessing of evidence of wetlands as defined by the California Coastal Act in several locations. There were at least three wetland sites that included either a predominance of wetland vegetation, wetland soils and/or ponded water more than a week after rains. Aquatic snails and other wetland animals were also observed in these wetlands.

Before this project can come before the Coastal Commission, a delineation of the exact areas of wetlands is needed, and a site visit by Dr. John Dixon would be welcome to confirm the presence of wetlands.

P.O. Box 1145 • Malibu, CA 90265 • (818) 222-7456 • fax: (818) 222-7897

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South Coast Region

COASTAL COMMISSION

5-03-091

EXHIBIT # 9

PAGE 1 OF 3

MAR 10 2003

CALIFORNIA

Ms. Anne Blemker
California Coastal Commission
March 10, 2003
page 2

In addition to wetland characteristics present on the 5-acre Lower Bayview Landing site, there are no wildlife surveys or details for this site. On Friday, March 7, 2003, a Great Blue Heron landed in the wetlands and stayed to forage.

B. Incomplete Surveys/many species missing from report: The 11.1-acre site -- or the Upper Bayview Landing -- includes many species not identified by the report. Perhaps this is due to the time of year. For instance, Southern tarplant (*Hemizonia parryi* ssp. *australis*), (referred to in the report as Southern spikeweed), was surveyed in June and July, while botanists familiar with the plant would suggest this is too early. August and September might have provided more potential to find the plant. Also, this plant was surveyed after the area was mowed, which might also account for it not being found, as the tops of it could have been mowed off, making it easy to miss.

In addition, there are numerous herbs and forbs (native wildflower plants), present on the 11.1 acre site, including Lupine, Fiddleneck, Wild Cucumber and Blue-eyed Grass. Also present are Goldenbush, Dudleya, Dune Buckwheat and Bladderpod. None of these native plants were mentioned in the report. It is possible that many of these plants were missed because of the timing of the surveys, which is why Wetlands Action Network advocates surveys to be conducted during each season prior to any application being considered by the California Coastal Commission.

C. Omission of mention of Vernal Pools: Evidence of vernal pools is present on the Upper Bayview Landing site, and it is curious as to why no mention of these ecosystems is in the report. Vernal pools are one of the most rare and imperiled wetland types in California, and it is possible that the time of year of surveying for the report is what led to the omission of mention of these communities. Cryptogamic algal crusts, an indication of vernal pools, were evident in several of the sites, and aquatic snails were also present in one of the drying vernal pool sites. A complete survey of these sites by a vernal pool expert is necessary in order to insure their protection. In no way should major grading or grubbing occur where these sensitive ecosystems remain.

II. Other Coastal Act concerns:

A. Alteration of coastal bluff: We object to the proposed alteration of coastal bluff in this area solely to provide alleged views from passing motorists. This marine cliff scrub community is important to maintain, as is the integrity of the natural coastal bluff.

B. Alterations of coastal prairie, maritime cliff scrub, coastal sage scrub and saltbush scrub communities: We advocate that the Coastal Commission require the maintenance and restoration of these rare important communities, not the dismissal and destruction of them, with replacement of turf grass, which is now planned by the City of Newport Beach.

EX. 9
2/3

Ms. Anne Blemker
California Coastal Commission
March 10, 2003
page 3

The failures of the Biological Resources Report alone are sufficient reason for the Coastal Commission to inquire further into this project prior to preparing a staff report.

Robert Roy van de Hoek, a wetland scientist and Director of Research & Restoration for Wetlands Action Network, is conducting a preliminary survey and report for the entire 16.1-acre site that we anticipate will be submitted to the Commission staff later this week. We trust you will include his findings in any staff report you might prepare for this project.

With best regards,

Marcia Hanscom *Robert van de Hoek*

Marcia Hanscom
Executive Director

Robert Roy van de Hoek
Director of Research & Restoration
Field Biologist & Wetland Scientist

EX. 9
3/3

JAN D. VANDERSLOOT, M.D.

2221 E16 Street

Newport Beach, CA 92663

Phone (949) 548-6326

Email JanV3@aol.com

Fax (714) 848-6643

March 10, 2003

Anne Blemker
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802

RECEIVED
South Coast Region

MAR 13 2003

Re: Bayview Landing Project in Newport Beach
Senior Affordable Housing and View Park

CALIFORNIA
COASTAL COMMISSION

Dear Ms. Blemker,

Below are my concerns relative to Coastal Act issues regarding the Bayview Landing Senior Affordable Housing and View Park, consisting of some 16 acres of land at the corner of Coast Highway and Jamboree in Newport Beach. The two developments are proposed to be considered together and were passed by the Newport Beach City Council on February 25, 2003. I believe the park should be considered a development under Section 30106 of the Coastal act because of the amount of grading to take place in the view park. The entire view park from the steep coastal bluff face eastward will be graded or stripped of its natural vegetation. The steep coastal bluff face itself will have up to 7 feet of its top cut off. As I mentioned in my phone call last week, my concerns are:

1. Wetlands

There appear to be several areas in the lowland portion of the property that should be classified wetlands that should fall under Section 30233 of the Coastal Act. There are at least 3 areas of the Lower Bayview Landing that have wetland vegetation and ponding water. I am enclosing an attached photographic description of these areas. Total acreage is estimated to be about a third of an acre. There is no mention in the Mitigated Negative Declaration (Neg Dec) of these wetland areas. The Neg Dec states that no wetlands whatsoever exist on the site. However, one of these areas is being proposed as a water runoff detention basin and the staff report for the City Council states that the reason for the elevation of grade for the housing project to 5 feet is because of the shallow water table below the site (see Supplemental Report, Agenda Item No. 18, February 25, 2003). These wetland areas need further characterization for size, extent, and significance. They should be protected with adequate buffers. Existing wetlands should not be used as runoff detention basins. Separate portions of the site could be used for the proposed detention basin.

2. Coastal Sage Scrub (CSS)

The CIOA Agreement EIR in 1992 found 4 acres of CSS with a male gnatcatcher observed in the CSS that is proposed to be graded off for the housing project (see

COASTAL COMMISSION
5-03-091
EXHIBIT # 10
PAGE 1 OF 12

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attached CIOSA EIR Nelson reference). However, the 2001 Biology Report by Keane described only a fraction of this amount, said to be ¼ acre in the staff reports, but this figure is not in the report itself (see attached Keane reference). It is not clear why the CSS is being underreported, as recent site visits show much emerging CSS vegetation such as California sage brush. Moreover, it is not clear that Keane examined the steep bluff face for CSS, as there is CSS in the top of the bluff that is proposed to be cut down, including California Box Thorn and Dudleya species that are not contained in her report. Attached is a photographic depiction of the CSS on the site, as well as actual photographs. This CSS should be considered an ESHA under Section 30240, because of its habitat for the threatened gnatcatcher. No less than 4 acres of CSS should be replaced (not 1 acre as proposed by the City)

3. Coastal Bluff Landform Alteration

The City proposes to cut down up to 7 feet of the top of the steep face of the Coastal Bluff in order to provide views of the bay for motorists on Coast Highway. However, this Coastal Bluff should be protected under Sections 30253, 30240, and 30251. The bluff face contains Coastal Bluff Scrub vegetation, a variety of CSS, and habitat. The views of the bay for the motorists lasts approximately 9 seconds. The views for the park site visitor will be unchanged, albeit closer to the motor homes at the Newport Dunes resort below the site. The motorist should be looking at the road, not to the left or right to glimpse a view. A previous cut of the bluff face was done a few years ago when Coast Highway was improved. This cut was done without permits from the Coastal Commission. It should be investigated. Examination of the top of this bluff cut shows increased erosion below the cut. Removal of more bluff face would similarly increase erosion of the bluff face. The previous unpermitted bluff cut should be mitigated. Attached is a photographic rendition of the bluff top and the previous cut bluff top and bluff face.

4. Archeology

Two archeology sites exist on the site, Ca-Ora-66 and Ca-Ora-1098. A research design should be submitted to the Coastal Commission.

5. Bluff Top Mesa and Meadow

The Neg Dec inaccurately portrays the mesa as a ruderal field. However, recent examination shows many native wildflowers and evidence of water ponding and creating seasonal ponds and/or vernal pools. See photographs attached and enclosed. This meadow and its wetlands should be further examined under section 30240 and 30233 of the Coastal Act. The City is proposing to grade off the entire meadow area and bluff east of the steep face of the bluff to accommodate the housing and park. Although the City staff and Newport Beach Planning Commission agreed to a complete natural revegetation of the park, the City Council in its decision of February 25 referred the final design of the park back to the Newport Beach Parks Commission. The Commission members who spoke at the February 25 City Council hearing asked the Council to remove the no-irrigation portions of the park plan, ostensibly to support ornamental vegetation and turf

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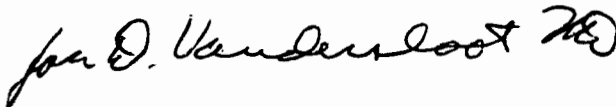
grass, rather than native restoration/revegetation. Therefore, the design of the park is not finalized. I recommend the Coastal Commission require complete natural revegetation and avoiding or recreating vernal pools on the mesa. Also, topsoil from the site should remain on the site after any grading, rather than be exported from the site. The topsoil will contain many seeds and other substrate for revegetation/restoration after grading.

6. Parking for the Park

The City Council action provided zero parking for the park. This inhibits public access to the park (Section 30210, 30212, 30212.5, 30252). The only access is walking and bicycle. This prevents the public like myself, who live miles away, from accessing the park. Parking should be required, either shared parking with the housing component, or opening up Back Bay Drive to curbside parking adjacent to the site.

Thank you for your consideration. I have consistently supported the plan for senior affordable housing on Lower Bayview Landing, and the view park on Upper Bayview Landing. However, the specifics of adherence to Coastal Act policies need further consideration and modification to the project as I have enumerated above. Attached and enclosed are photographic evidence of the site taken within the past 2 weeks and other source material, including the 1992 biology report by Nelson in the CIOSA EIR..

Sincerely,



Jan D. Vandersloot, MD

Attached:

1. Photographic Rendering of Wetland Areas, Habitat Values, Coastal Sage Scrub, Coastal Bluff Natural and Cut Faces, Natural Coastal Bluff Vegetation, Meadow Wildflowers
2. Photographs
3. Vegetation Maps from 1992 and 2001. Note decrease in CSS estimates
4. Page 2, Supplemental Staff Report, 2-25-03

WETLAND AREAS AT LOWER BAYVIEW LANDING



Lower Bayview Landing Wetland Areas



Wetland Area 1, Note Willows and Ducks



Wetland Area 1, Corner Back Bay Drive



Wetland Area 2, Note Mulefat



Wetland Area 3



Wetland Area 3

Lower Bayview Landing has three areas showing wetland characteristics. Area 1 is at the corner of Back Bay Drive and the driveway into the Dunes Recreational Area. Wetland area is approximately 9,000 square feet. Wetland Area 2 is towards the middle of north end of the site near a sewer manhole and is approximately 2,000 square feet. Note the mulefat vegetation. Area 3 is towards the southeast side of the site and is approximately 3,600 square feet. Wetland indicator vegetation is seen around the edges and dispersed throughout nearly the entire site. The estimated size of the wetland areas is 14,600 square feet or about one third of an acre.

EX. 10
4/12

BAYVIEW LANDING HABITAT VALUES



Flock of Meadowlarks: Meadow Area



Mallard Ducks, Wetland Area 1



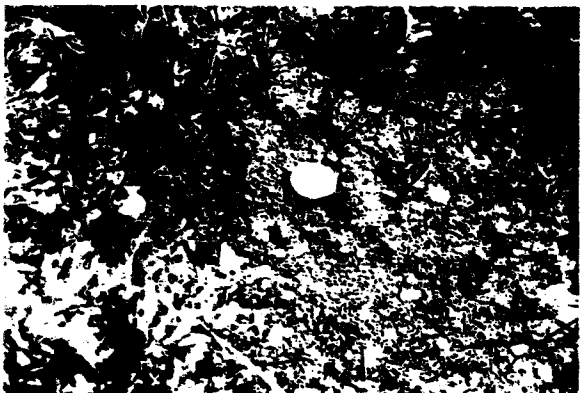
Great Blue Heron, Wetland Area 3



Aquatic Snail, Wetland Area 1



Great Blue Heron, Wetland Area 2



Aquatic Snail Below Quarter

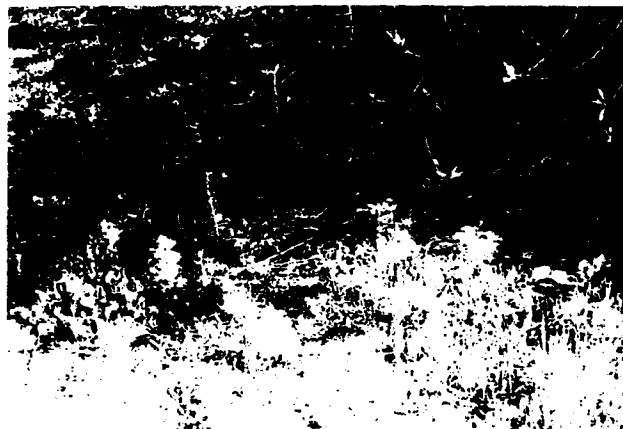
Bayview Landing Habitat Values are expressed by use of the site by many species of birds, including the Great Blue Heron, Meadowlarks, Mallard Ducks, and also observations of the California Gnatcatcher exhibiting breeding behavior in the past. Invertebrates including an aquatic snail have also been observed.

EX. 10
5/12

BAYVIEW LANDING COASTAL SAGE SCRUB



Coastal Sage Scrub on Bluff near Jamboree



Emerging Coastal Sage Scrub



Coastal Sage Scrub above Wetland Areas



Coastal Sage in Ravine



Coastal Sage at Top of Bluff



Coastal Sage Scrub Total 4 Acres

Coastal Sage Scrub totaled 4 acres in 1992. What happened between 1992 and 2001?
Emerging Coastal Sage Scrub is occurring throughout the site.

EX. 10
6/12

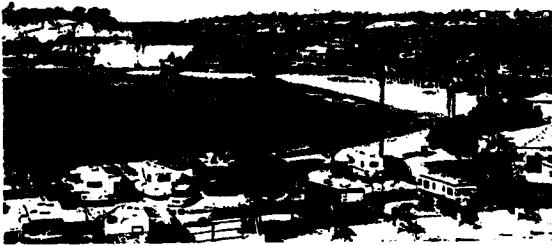
BAYVIEW LANDING COASTAL BLUFF NATURAL AND CUT FACES



Natural Coastal Bluff Proposed to be cut 7 Feet



Foreground is cut bluff without permit



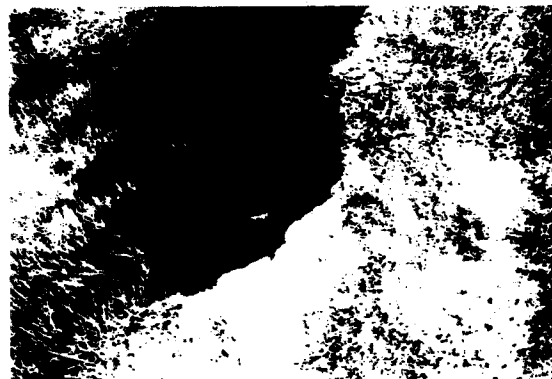
Public View From Top of Bluff



Coastal Sage at Top Of Bluff



Cut Bluff Face



Cut Bluff Face Erosion and Invasion

The top of the Natural Coastal Bluff is proposed to be cut down by up to 7 feet to give motorists a 9 second view while driving. The previously cut bluff face, done without permits, affords this view. The view is also available to the public from the park. The cut bluff face shows evidence of erosion, loss of vegetation, and invasion by non-native grasses.

EX. 10
7/12

NATURAL COASTAL BLUFF FACE VEGETATION



Dudleya, numerous examples



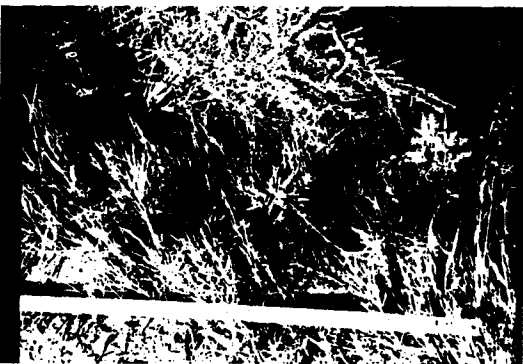
Giant Wild Rye and Coastal Sagebrush



Dudleya and Box Thorn



Bladderpod



Box Thorn, Dudleya



Dudleya

The top 7 feet of the natural coastal bluff face are populated with native Coastal Bluff Scrub, a variety of Coastal Sage Scrub. Examples include Coastal Sagebrush, Box Thorn, Giant Wild Rye and Dudleya species. These species are not mentioned in the Keane Biological Consulting report for the site. Some Dudleya species are endangered species. It is not presently known whether or not endangered species exist on this site.

EX. 10
8/12

BAYVIEW LANDING MEADOW WILDFLOWERS



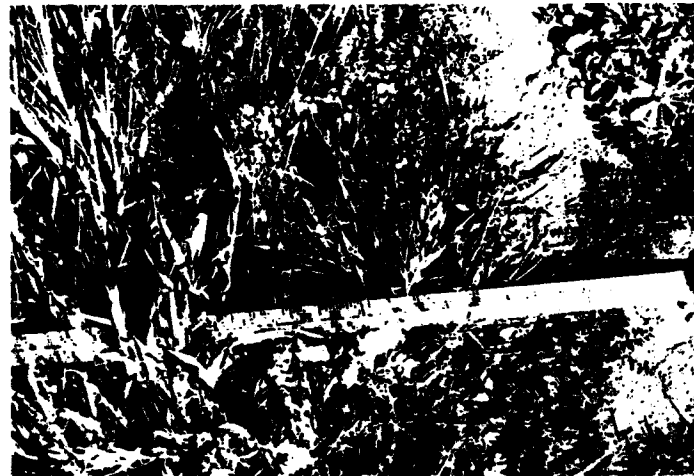
LUPINE



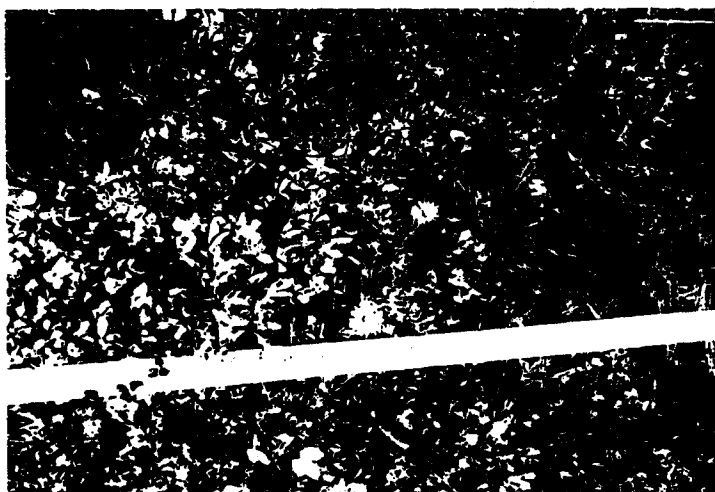
BLUE DICKS



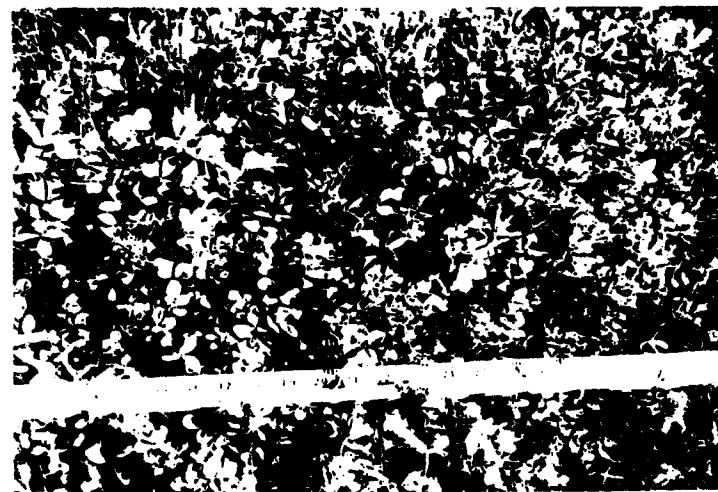
FIDDLENECK



BLUE-EYED-GRASS



ASTER



CLOVER

EX. 10
9/12




NOTE: Development area denotes the portion of the site identified for development of commercial uses in the proposed PC Text. Grading related to development of commercial uses could extend beyond the area boundary. Grading could also occur for roads, open space uses, trails, and bluff restoration, outside of areas designated for development.

CALIFORNIA GRASSLAND

○ = MALE OBSERVED

○ = APPROXIMATE TERRITORY

VEGETATIVE COMMUNITIES

-  INTRODUCED ANNUAL GRASSLAND
-  COASTAL SAGE SCRUB
-  RUDERAL

 DEVELOPMENT AREA

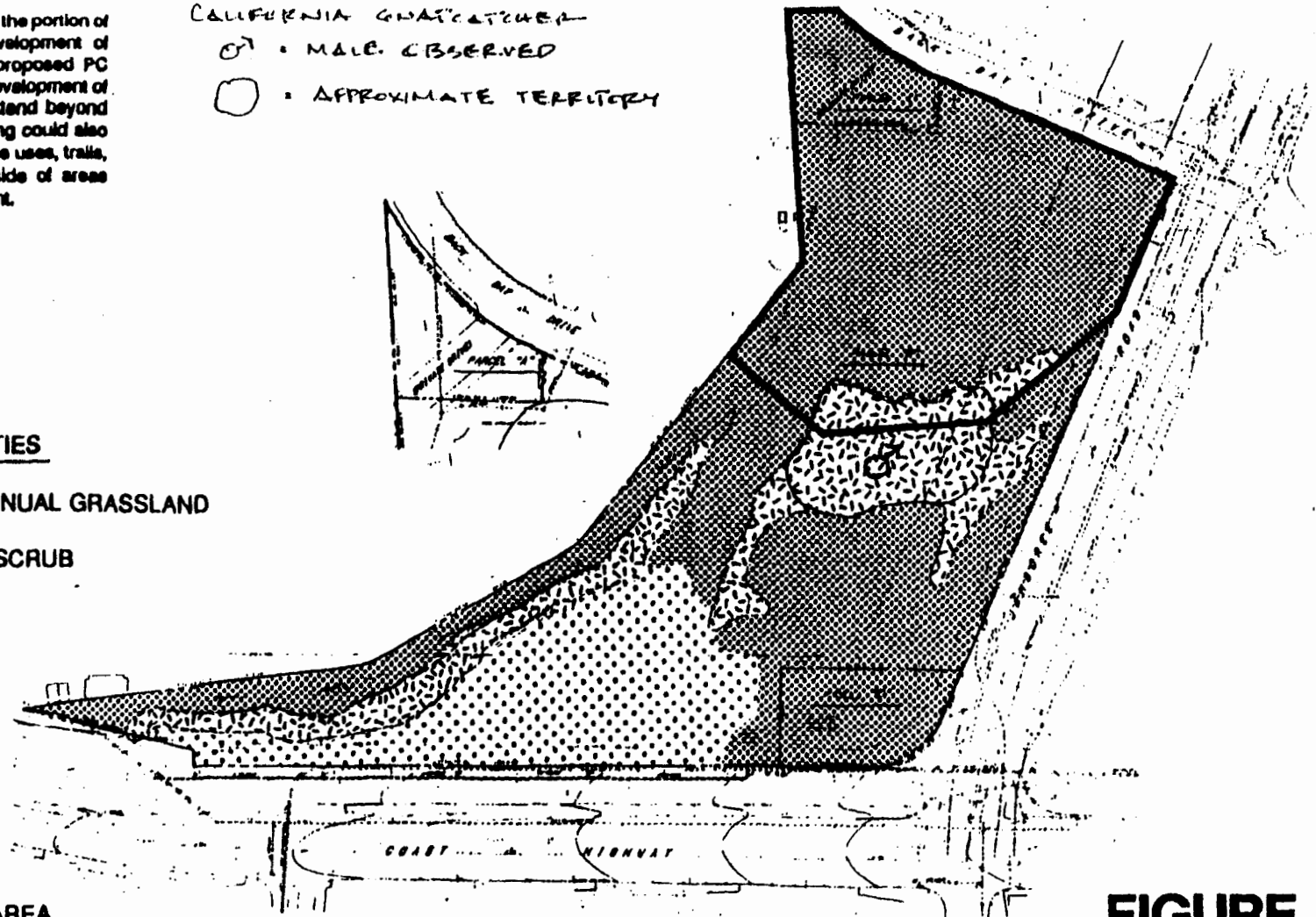


FIGURE 2

Source: Steven Nelson

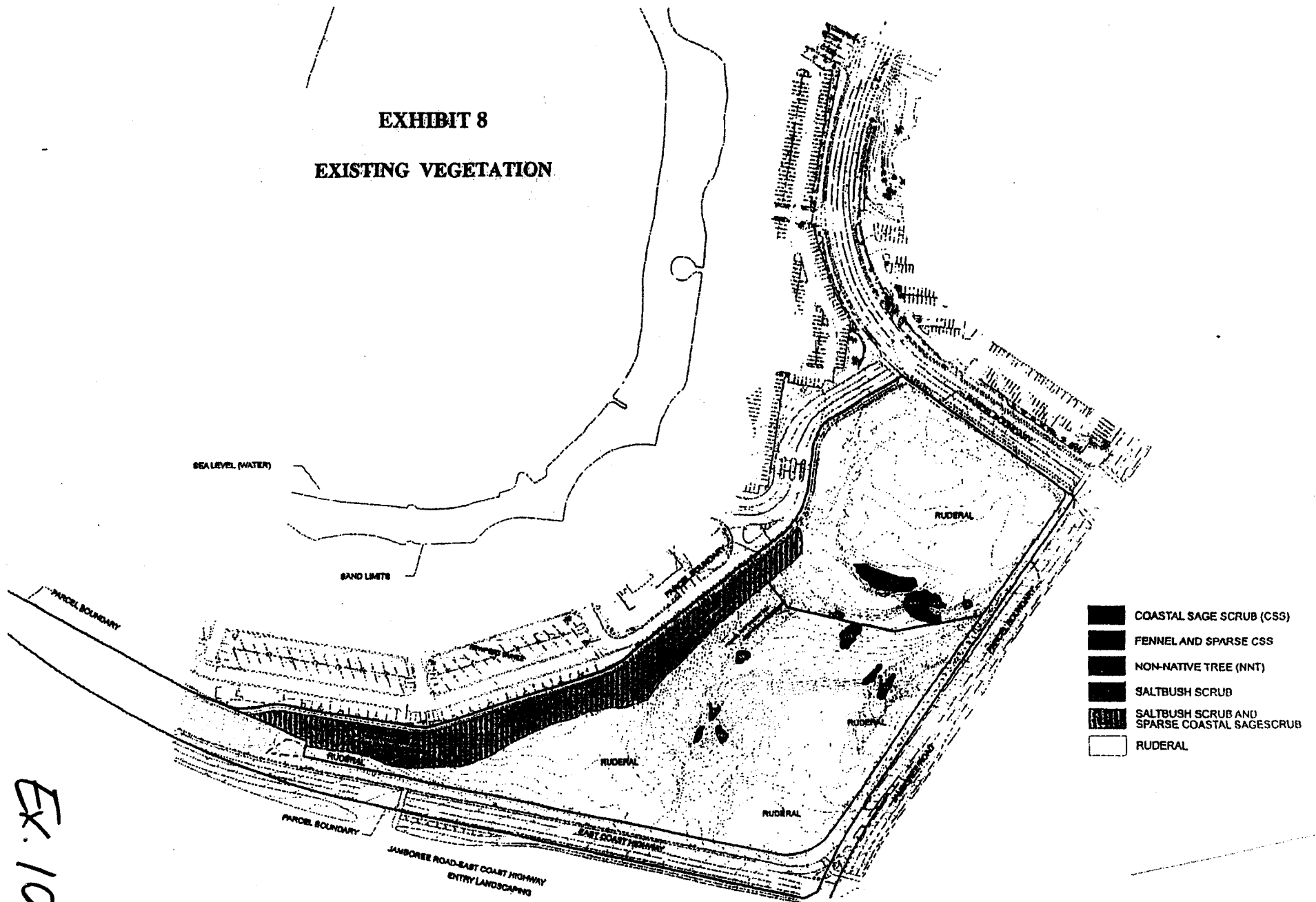
IOLOGICAL RESOURCES PROPOSED DEVELOPMENT AREAS

BAYVIEW LANDING CIRCULATION IMPROVEMENT & OPEN SPACE AGREEMENT



10/12
EX. 10

EXHIBIT 8 **EXISTING VEGETATION**



EX. 10
11/12



reasons for this is that a two person household likely would have an income higher than the limit for a one bedroom unit.

Traffic congestion – The opinion that the project would contribute to traffic congestion in the area was expressed by the public. The traffic analysis prepared for the project concludes that impacts from the project are not anticipated.

Grade alteration – The need to increase the grade was discussed. The geotechnical engineer for the project testified that the soil conditions, shallow water table and drainage engineering necessitates the increase in the grade. The Commission then considered the impact of this upon the measurement of building height and concluded that measuring the grade from natural grade was unworkable.

Building height – The findings to establish 32.5 foot height limits, measured to the midpoint of roof of the building, were debated. The Commission concluded that the design of the project, with three buildings, increased open space and provided views through the project site from Jamboree Road. This design is believed to be superior to a lower building with a larger footprint, which would decrease open space and preclude views through the site.

Public views – The only area where public views are altered in a remarkable way is the views from Jamboree Road. The Commission concluded that the alteration of these views was acceptable given the City's objective to provide affordable housing at the site. Limited views through the site are possible between the buildings.

Private views – The City has no policy on the preservation of private views; however, the City prepared view simulations from Villa Point. These simulations showed that water views from Villa Point will be maintained, although slightly reduced. First floor units will be more affected than second floor units.

Coastal sage scrub – A question of the difference in the amount of coastal sage scrub habitat identified in the CIOSA EIR biological assessment and the assessment prepared for the project was discussed. The difference is attributable to differing methodologies between the biologists. A more complete explanation prepared by the City's environmental consultant is included as Attachment B. Approximately ¼ acre will be graded and the adjacent park site will provide a mitigation site where a minimum of 1.0 acre will be planted. The Commission concluded that adequate mitigation in accordance with the CIOSA program EIR is provided for within the Mitigated Negative Declaration prepared for the project.

EX. 10
12/12



ROBERT A. HAMILTON

5-03-091

EXHIBIT # 11

PAGE 1 OF 2

April 4, 2003

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South Coast Region

APR 7 2003

CALIFORNIA
COASTAL COMMISSIONJan Vandersloot
2221 East 16th Street
Newport Beach, CA 92663

SUBJECT: BIOLOGICAL REVIEW OF BAYVIEW LANDING SITE

Dear Jan,

It is my understanding that the City of Newport Beach has certified a mitigated Negative Declaration for a proposed senior housing project at the Bayview Landing site, located between Upper Newport Bay and the corner of Jamboree Road and Pacific Coast Highway. I further understand that the project now awaits a decision from the Coastal Commission. At your request, I visited the Bayview Landing site on 14 March 2003. I met botanist David Bramlet there, and walked over the site with him. Later that morning, I met with you and some others and reviewed selected portions of the site, and you described to me the proposed actions and explained the issues that you feel may warrant further consideration in the planning of the project. During the course of my review, I briefly reviewed plant community mapping of the site completed by S. Gregory Nelson, from his report dated 12 May 1992 and more recent mapping completed by Kathy Keane, from her report dated 29 October 2001. The purpose of my visit was to offer my opinion on the biological resources of the site, review previous reports, and comment on whether any additional biological issues may warrant attention from the Coastal Commission. Although I did not receive a copy of Ms. Keane's report, I did speak with her on the evening of 13 March 2003 as part of my effort to obtain background on issues that may warrant further attention in the planning of this project.

I returned to the lower part of the site, near Back Bay Drive, on 25 March 2003, to briefly re-examine the wetter parts of the site.

COASTAL BLUFF SCRUB AND NATIVE GRASSES

One issue that appears not to have been addressed to date is the proposal to cut down the top of the western bluff, above the Dunes resort area. This bluff supports native coastal bluff scrub habitat mixed with patches of native perennial bunch grasses as well as exotic annual grasses. The scrub is dominated by such species as California Sagebrush (*Artemisia californica*), California Buckwheat (*Eriogonum fasciculatum*), California Encelia (*Encelia californica*), and Bladderpod (*Isomeris arborea*), with some California Box Thorn (*Lycium californicum*), Alkali Heath (*Frankenia salina*), and Woolly Sea-Blight (*Suneda taxifolia*). The bluff also supports stands of a native grass known as Small-flowered Melic (*Melica imperfecta*) as well as considerable numbers of Lance-leaved Dudleya (*Dudleya lanceolata*). Ms. Keane's report identified this bluff as supporting "Saltbush Scrub" (a different plant community that does occur on a manufactured slope west of the bluff, along Pacific Coast Highway), but she indicated that she did not closely examine this part of the site because it was not part of the development area she was asked to review.

I did not observe any federally threatened Coastal California Gnatcatchers (*Poliophtila californica californica*) during the field visit, and note that Ms. Keane's relatively recent focused surveys for this species had negative results. Mr. Nelson, however, did report a male California Gnatcatcher on the site on 12, 13, and 14 March 1992. As a federally permitted biologist who works extensively with the gnatcatcher, it is my

BAYVIEW LANDING BIOLOGICAL REVIEW
PAGE 2 OF 2ROBERT A. HAMILTON, CONSULTING BIOLOGIST
APRIL 4 2003

opinion the coastal bluff scrub, coastal sage scrub, and saltbush scrub on the Bayview Landing site could potentially support a pair of California Gnatcatchers during some years.

It is my opinion that the native grasses and coastal bluff scrub on the bluff, as well as coastal sage scrub vegetation elsewhere on the project site, are sensitive biological resources. I believe that on-site relocation and/or restoration of plants that comprise these native communities would be an appropriate measure to help offset the project's adverse effects on those resources.

POTENTIAL WETLANDS

On 14 March, I examined two portions of the lower part of the site—near Back Bay Drive—to assess whether any parts of the site might be classified as “wetlands.” I revisited these areas briefly on 25 March (no precipitation fell in the local area during the time between these two visits).

The first area is a small pond that measures approximately 45' x 20' (±900 square feet). This pond held standing water during both my visits to the site, and supported a mix of species that included Bur-Clover (*Medicago polymorpha*), Common Rippgut Grass (*Bromus diandrus*), Curly Dock (*Rumex crispus*), Toad Rush (*Juncus bufonius*), Salt Marsh Sand Spurry (*Spergula marina*), Mulefat (*Baccharis salicifolia*), Salt Heliotrope (*Heliotropium curassavicum* ssp. *oculatum*), and Cocklebur (*Xanthium strumarium* var. *canadense*). Most, but not all, of these species are adapted to wetland conditions.

The second area is located in the northernmost corner of the site, at the corner of Back Bay Drive and the entrance to the Dunes. This area includes a moist swale measuring approximately 120' x 30' (±3600 square feet). This area supports four Black Willows (*Salix gooddingii*) up to approximately 12 feet tall, and a stand of Italian Ryegrass (*Lolium multiflorum*). This area was muddy on 14 March, and by 25 March a car had driven through the area, leaving standing water in the tire tracks.

I am not a certified wetlands delineator, and the purpose of my visit was not to make a wetland determination, but these observations suggested to me that a proper wetland delineation should be conducted in order to determine whether either of these areas may meet the Coastal Commission's wetlands criteria.

NATIVE PLANT RESTORATION

With regard to planned restoration of native scrub on the site, it is my opinion that any such restoration should be accomplished in topographically appropriate portions of the site using primarily plant species found on the project site. The planting palette could reasonably include some other species found elsewhere around Upper Newport Bay, but I recommend against the use of plants that are not native to Upper Newport Bay in habitat restoration areas.

CONCLUSION

I appreciate the opportunity to provide this review of biological issues of potential concern to the California Coastal Commission and other relevant decision-makers. Please call me at 562-439-1480 if you have questions or comments, or send e-mail to robb.hamilton@gte.net.

Sincerely,



Robert A. Hamilton
Consulting Biologist

EX. 11
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Department of Earth System Science

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COASTAL COMMISSION

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State Coastal Commission
45 Fremont St
Suite 2000
San Francisco CA 94105

May 5, 2003

RE Lower Bayview Landing Project, Newport Beach

Dear Commissioners,

The City of Newport Beach has submitted this project to build affordable senior housing at Lower Bayview Landing for your approval.

It is my perception that there is an incomplete understanding of the environmental impact associated with this project. I bring to your attention some shortcomings.

The intended construction will line a part of the margin of the Newport Upper Bay estuary. As you know, some of this estuary is preserved as an Ecologic Reserve under state and county jurisdiction and is the finest and most complete representation of an estuarine wetland in Southern California.

The housing will be built on bluffs and adjoining flats that form the southeastern corner of the estuary. These features represent a former estuarine margin, comprising wavecut cliffs and tidal wetland modified in part by a stream tributary and by human development. The existing developments are the entrance drive to the Newport Dunes resort and the Hyatt Hotel.

The Lower Bayview Landing site may be the last unprotected open space on the Upper Bay estuarine margin. It properly belongs to the estuarine system, not to a housing project. I urge that construction be excluded from the site, that the site be added to the Upper Bay Ecologic Reserve, and that the City finds ways to return the site to its original condition as a wetland margin and natural coastal habitat.

Yours Sincerely

Robert C. Speed
Robert C. Speed

COASTAL COMMISSION

5-03-091

EXHIBIT #

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BAYVIEW LANDING in NEWPORT BEACH:

Wetlands Delineation and Field Biological Evaluation

for a 17 Acre Natural Area

by

Robert 'Roy' van de Hoek

April 6, 2003

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South Coast Region

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COASTAL COMMISSION

5-03-091

EXHIBIT # 13

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BAYVIEW LANDING in NEWPORT BEACH:

Wetlands Delineation and Field Biological Evaluation for a 17 Acre Natural Area

by

Robert 'Roy' van de Hoek

April 6, 2003

Introduction, Methods, and Results

On the mornings of 7 March 2003 and 14 March 2003, and the early evenings of 18 March 2003 and 30 March 2003, I conducted field biological investigations of the Bayview Landing site in Newport Beach, at the intersection of Back Bay Drive and Jamboree Road. It is my understanding that the City of Newport Beach has approved a senior affordable housing project on this nearly 17-acre site, and that this project will shortly come before the California Coastal Commission.

My investigations reveal that this site contains invaluable natural resources and vegetation types, including wetlands, coastal sage scrub, southern coastal bluff scrub, and coastal prairie (valley grassland). Some of the invaluable natural resources found there include two rare native plants, the presence of wetlands that had previously not been delineated. The habitat is appropriate for the presence of rare native butterflies that have not yet been inventoried, and for the presence of endangered or threatened bird species, such as the California Gnatcatcher. Even if the California Gnatcatcher is determined not to nest there this year, its presence has been documented in past years and it is likely to be recorded there in future years. It is not uncommon for a biologist to not be able to record or even miss the presence of California Gnatcatcher nesting in certain years because this bird is very secretive in its habits. In addition, California Gnatcatcher utilize this natural area as young dispersing birds after they have been fledged by their parents, who then force the birds off their natal area. Due to the fact that a undisputed nesting area of California Gnatcatcher is located in the coastal bluff above Upper Newport Bay only about 100 yards away from this nearly 17-acre natural site, it is prudent from a scientific viewpoint that this 17 acres forms a contiguous extension of the Gnatcatcher habitat because these birds are strong flying birds that can cross over from the natal (birthing) patch to the 17 acre natural area in no more than 3-5 seconds of flight time.

I visited the 17 acre site (considered 16.1 acres and 15 acres by other assessments) to assess and calculate the amount of wetlands and the ecological nature of this intact natural area. I observed and tabulated the native flora and native fauna as part of the biological evaluation. I divided the area in my surveys into two regions as

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follows: a fairly level area of 5+ acres that contains a wetland ecosystem and the Upper Bayview Landing area, an upland area of 11+ acres of both gentle slopes, steep slopes forming cliffs, a small "arroyo seco," and fairly level areas with coastal prairie and vernal pool aspects. The spatial heterogeneity of the 17 acre natural area is quite unique both as a natural landscape and its potential to assist in recovery and restoration of native flora and fauna.

The educational opportunities for the public, namely school children and adults to do recreation of a passive type, are astounding here. Such activities as watching butterflies, photographing wildflowers, viewing birds with binoculars, and taking a saunter with the intent of doing something artistic such as painting, writing poetry or prose narrative, photography, and scientific natural history studies are enormous assets of preserving this landscape as a natural area.

As background to evaluating the amount of acreage on the property my calculations came closer to 17 acres, rather than 16.1 acres. I normalized the data to also include adjustments for acreage determination of steep slopes and cliff surfaces, but also for including areas right up to the pavement-curb edge. I estimated the acreage of wetland following standard field-geographic calculations. In that sense, it is important to convert measurements in the fieldwork to a ground truthing estimate according to arithmetical analysis. The definition of one acre of land is 43,560 square feet or 4,840 square yards. Therefore, an area with a measurement of 70 yards by 70 yards is 4,900 square yards and approximates a little more than 1 acre. It follows therefore, that an area with a dimension of 35 yards by 35 yards is approximately 0.25 acre. Using my preliminary field measurements therefore at this time, I estimate the total acreage of wetland at the five acre lowland as approximately 0.75 acres. However, approximately 0.5 acres qualifies as transition wetland, where clay flats occur with very little vegetation but the vegetation that is present is predominantly marked with wetland indicator plants but no standing water was present at the time of the visit. However, there must be some standing water periodically because there are wetland plant indicators present, and as well, there are mud cracks are present. In summary therefore, I estimate that there are 0.75 acres of wetland according to US Army Corps of Engineer standards. However, I estimate there to be 1.3 acres of wetland, since we are in the coastal zone, utilizing both Fish and Game standards and Coastal Commission guidelines, as well as United States Fish & Wildlife Service standards for wetlands delineations.

Uplands at Bayview Park can be divided into four community types, none of which is ruderal in nature but all three have some weeds present that can give the false impression of ruderal vegetation. Ruderal simply means disturbed by a roadside, railroad, trail or some other man-made transportation system. Only one road went through the uplands portion of the property historically, and this road has not been used as such for several decades, and therefore the area would not be properly classified as "ruderal." Please note that on the extremely flat and level

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areas above the bluffs that accumulate water from the winter season rains, unique wetlands called "vernal pools" are present. These vernal pool wetlands are surrounded by upland vegetation of the coastal sage scrub and coastal prairie. Because these vernal pools are found in elevated upland areas, they are sometimes mistakenly lumped into annual grassland or ruderal vegetation.

LOWER BAYVIEW LANDING: THREE WETLANDS

I found three areas of definitive wetland in the 5-acre lower portion of Bayview Landing. For purposes of this report, they are named Wetland 1, Wetland 2, and Wetland 3. Wetland 1 lies at the corner of Back Bay Drive and the driveway into the Newport Dunes resort area, at the northwest corner of the Lower Bayview Landing site. It is only a short distance to the shore of Newport Bay. Wetland 2 lies in the north central portion of the Lower Bayview Landing Site, and Wetland 3 is located in the southeastern portion of the Lower Bayview Landing site. The three wetlands are separated by slightly higher ground of 1-2 feet, but the distance between the three wetlands is not great. In an ecological consideration, the three wetlands are linked together, as on 7 March 2003, I observed a Great Blue Heron land at Wetland 1, then walk through Wetland 2, and finally it moved over to Wetland 3, in search of invertebrates and vertebrates (food.) Each of the three wetlands was found to have slightly different dimensions, but the total acreage taken together is 1.3 acres. Each of the three wetlands is dominated by wetland vegetation indicators as to species richness and cover. Please see Table 1 below and narrative text, under three headings (Hydrology, Vegetation, Size and Dominance, for further explanation.)

In addition, I found approximately 0.5 acres of the 11.1 acre portion of the property to fit the ecological hydrologic characteristics to be vernal pool wetlands. These vernal pools seem to have lost the plant indicators due to disturbance by humans over the years. Algal crusts and impermeable clay-pan hard surface give further credence to a former vernal pool vegetation that was found here. Restoration and recovery of a portion of the top of the Bayview Landing as vernal pool wetland would be desirable. Guidelines followed near Goleta and University of California Santa Barbara (UCSB) by Wayne Ferren, botanist at UCSB, could be utilized to enhance the vernal pool habitat found here. Note that the vernal pool habitat atop Bayview Landing was likely impacted by a reported former gas station found there.

Hydrology: Abundant hydrologic and hydrogeomorphic evidence exists, that I determined all three areas in the lower Bayview Landing to be wetlands on this feature alone. The evidence includes ponding, which is clearly present as indicated by two important parameters. First, there are numerous mud cracks formed by repeated and cyclic-periodicity as the water evaporates from the surface and by drift-lines where small plant debris fragments floated to the shoreline of the pond. The ponding evidence of drift lines and mud cracks are indications of a

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wetland. In addition, the soil is poorly drained, and a close inspection indicates a clay-silt texture to the soil. Also, the general surface of the terrain is level with a distinct depression and swale, where rain water falls and runs down to accumulate and form the pond. Please note that the ponding has extended beyond the required minimum time required under wetland delineation guidelines. In this case, portions of Wetland 1 have been ponded continuously from last week of February 2003 through 30 March 2003, or in other words for at least 30 days. There is excellent supporting zoological evidence for presence of extended times of ponded water because 11 freshwater aquatic snails were found in the wet mud, belonging to the genus of snail known as *Physa* sp. Several photographs document that there is a large pool of water present, covering an area to such an extent that two individual aquatic waterfowl were found swimming on the surface of the water. I inspected closely a photograph taken by Jan Vandersloot that clearly shows a male Mallard swimming closely together with a female Mallard, which indicates courting of the female Mallard. On a subsequent visit to the pond, which still existed, there were no Mallards present. It may indicate that the female is now incubating on a nest adjacent to Wetland 1 in the wet meadow grass and shrub edge. The male Mallard departs to find other females and leaves her to nest alone in seclusion. Also, I observed a Great Blue Heron feeding in the shallow water. Footprints of a large Heron, perhaps a Great Egret, were also noted which indicates that a large ardeid (heron and egret family) has visited here on repeated occasions, and it is clear that it walked here when the pond and wetland were even larger and wetter, because the footprints are imbedded in the soil. On the early evening of 18 March 2003, I heard frogs performing courtship-territory calls of the species called *Pseudacris regilla* (old synonym is *Hyla regilla*), commonly known as the Pacific Tree Frog. Ripples in the water were observed as the frog dove under water when approached. The ponding lasted long enough that eggs, tadpoles, and then the adult frogs could emerge from the pond. The frogs then begin the small local migration and climb up shrubs and trees with their suction-cups on their feet, finally reaching a hiding place under the bark of the existing shrubs and trees found nearby where they will again hibernate and wait until the next year's rain fills the ponds.

Vegetation: The vegetation is distinctive enough for these areas to be classified as wetlands. In addition, an area is more assuredly a wetland when the vegetation is combined with the presence of the above hydrologic physical factors, namely ponding evidence of drift lines and mud cracks, which exist here. The zoological evidence presented above also corroborates the presence of a wetland.

Plants that occur in wetlands are divided into two categories by federal agencies and state agencies: Obligate or Facultative. Obligate plants are not further divided ^{but} facultative plants are further divided into several sub-categories with designations ranging from "facultative-wet" which is at the high end of the classification as a

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wetland indicator, to just simply facultative. In many cases there is a symbol designated, namely a "+" for positive or a "-" for minus, which indicates that the plant is found more typically in a wetland, if it is designated with a "+" symbol. When several wetland plants occur together as a "guild," or as a suite of ecological associates, the evidence is further strengthened to indicate a wetland. In the case of the three wetlands of the Bayview Landing, there is just such a guild-suite of wetland plants. A list of these wetland indicator plants that occurred together in Wetland 1 is presented below as Table 1.

Size and Dominance: The size dimensions of Wetland 1 are 71 meters on an east-west axis and 23 meters on a north-south axis. The total area is about 1563 square meters for Wetland 1, which is roughly 0.6 acres. Wetland 2 is very similar to Wetland 1, but with some subtle differences in plants present and in the size of the wetland. Wetland 2 is about 21 meters on a north-south axis by 20 meters on an east-west axis. The total area is 420 square meters for Wetland 2, with an estimate of 0.3 acres. Wetland 3 is also similar to Wetland 2 and Wetland 1 but with some distinguishable nuances both in geography and native wetland plant species. Wetland 3 has a curving dimension forming not a clear polygon, but the dimensions are about 78 meters on an east-west dimension and 35 meters on a north-south dimension. The total area for Wetland 3 is an estimate of 1260 square meters, with an estimate of 0.4 acres. This measurement as stated above was difficult due to the curving nature of its geography. Parts of the area were devoid of any vegetation making it hard to estimate, but the area is believed to be smaller than Wetland 1 from the standpoint of absence of all vegetation over some parts of its area. The total acreage is about 1.3 acres for all three wetlands added together.

Both Wetland 2 and Wetland 3 follow the same outline as explained above for Wetland 1. The only difference being that wetland 2 and 3 are smaller and have a few less species of wetland indicators. Please note that in all three wetlands, there was an absolute predominance of wetland vegetation and physical parameters of the hydrology and soil to support the scientific evidence that these are wetlands.

TABLE 1: WETLAND INDICATOR PLANTS AT LOWER BAYVIEW NATURAL AREA

01. <i>Heliotropium curassavicum</i> (Seaside Heliotrope)	Obligate (greater than 99%)
02. <i>Frankenia salina</i> (Alkali Heath)	Facultative Wet + (near 99%)
03. <i>Atriplex watsoni</i> (Watson Saltbush)	Facultative Wet + (near 99%)
04. <i>Cressa truxillensis</i> (Alkali Plant)	Facultative Wet (67-99%)
05. <i>Salix lasiolepis</i> (Arroyo Willow)	Facultative Wet (67-99%)
06. <i>Baccharis salicifolia</i> (Seep Willow-Mulefat)	Facultative Wet (67-99%)
07. <i>Rumex crispus</i> (Curly Dock)	Facultative Wet - (near 67%)
08. <i>Lythrum hyssopifolia</i> (Loosestrife, Hyssop)	Facultative Wet (67-99%)
09. <i>Distichlis spicata</i> (Salt Grass)	Facultative Wet (67-99%)
10. <i>Ruppia maritima</i> (Widgeon Grass)	Obligate (greater than 99%), aquatic plant
11. <i>Juncus bufonis</i> (Toad Rush)	Facultative Wet + (closer to 99%)
12. <i>Spergularia marina</i> (Salt Marsh Sand Spurrey)	Obligate (greater than 99%)

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UPPER BAYVIEW LANDING
Four Upland Vegetation Types or Plant Communities

Four types of vegetation was found on the upper part of the Bayview Landing of about 11 acres. The vegetation included Southern Coastal Bluff Scrub, Coastal Sage Scrub, Saltbush vegetation, and Coastal Prairie (Valley Grassland). There was no ruderal vegetation found. Each vegetation type found in the uplands is described below. A small remnant of a once larger vernal pool was found on top of the bluffs but it is described in the previous section of this report under wetlands.

1. Southern Coastal Bluff Scrub: Dominated by *Dudleya lanceolata*, *Lycium californicum*, *Encelia californica*, *Rhus integrifolia*, *Isomeris arborea*, *Suaeda taxifolia*, *Atriplex californica*, *Opuntia littoralis*, and *Marah macrocarpus* (a vine that adds a layer of structure and thus also increased biodiversity). This vegetation type is so rare in southern California, that one of the species, *Lycium californicum*, that occurs on the bluffs of the property is determined by the California Native Plant Society (CNPS) as belonging to List Four (4). Please note that the California Department of Fish and Game and federal agencies via legal agreements and Memoranda of Agreements regard the CNPS List as to management of sensitive native plant as natural resources to be protected. There were about 20 individuals of this rare native plant. It is well known that the bird known as the Loggerhead Shrike, a state of California sensitive bird utilizes this rare native plant to impale its prey, such as beetles, grasshoppers, and lizards. This bird was not observed, nor was impaled prey observed, but it would be premature to state that this bird or its behavior would not be noted here later in the spring season, as this species of bird can be a late-breeder. Additional surveys for this bird need to be conducted later in the spring.

2. Coastal Sage Scrub: Dominated by *Artemisia californica*, with an occasional *Baccharis pilularis* and *Heteromeles arbutifolia*. Several hundred new seedlings of the native plant, *A. californica*, were observed in the range of 6 inches height to about 1 foot high. The pulse of natural recruitment on the slopes and level areas atop the bluff, are a clear indication that natural seeding is occurring and that much of the upland will once again revert to a mature coastal sage scrub community. There may be an order of magnitude increase of coastal sage scrub, but certainly a tripling or quadrupling of cover by this shrub, in the next few months to a year. This area, as it reverts to its natural status, will only improve as a coastal sage scrub community that will ultimately become even more crucial than it is now for the endangered California Gnatcatcher.

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3. Coastal Prairie: Dominated here as indicated by the presence of more kinds of wildflowers than grasses, too many to list (note that this community is often inaccurately labeled as valley grassland). Grasses were found to not be dominant in percent cover over the entire parcel, but in some areas they were dominant. The significant dominance, if using the ecological parameter of species abundance, indicated by the high number of dicot wildflowers, indicates that it is a coastal prairie, under the guidelines outlined in professional reports by Travis Longcore, Ph.D., and Rudi Mattoni, Ph.D. There are more than 15 native plant wildflowers that classify as forbs (herbaceous and perennial vegetation), and only 3 grass species, hence the vegetation easily classifies as Coastal Prairie, which is a most important and imperiled (nearly vanished) landscape in Southern California.

4. Brewer Saltbush Vegetation: Dominated by *Atriplex lentiformis* subspecies *breweri* and is found on the narrow steep slope only at the very north end of the property. California Gnatcatcher is known to nest in this vegetation type. Brewer Saltbush occurs on a bluff slope, and can be classified by slope as Coast Bluff Scrub, but this species is generally considered to be a phase of the Coastal Sage Scrub.

In summary, I report 27 species of native plants on the 11+ acres of Bayview Landing Park, including the bluffs, level areas above the bluffs, the arroyo-ravine, and the gentle slopes. I would not classify any areas of Bayview Landing Park as ruderal vegetation. In no area was there only a presence of weedy vegetation. In fact, there are many more species of native plants than ruderal plants or weeds. The report of Ms. Keane listed 17 ruderal plants or weeds, while virtually overlooking that 34 species of native plants were present. I discovered these 34 species of native plants easily in a short amount of time. Although Ms. Keane did not ^{find} very many native plants, Dave Bramlet recorded many more, including a native bunch-grass (*Melica imperfecta*). My calculations show that there are at least twice as many native plants present as there are ruderal-weedy plants in a species richness analysis. Ms. Keane neglected to indicate that several of the ruderal plants are present only as a single individual or a few individual plants, which could be weeded out permanently in a few hours of community volunteer efforts. If this were done, it would make the native plants three times more abundant than the weeds, in terms of species abundance and species richness.

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TABLE 2: Floristic List of Upland Plants in the Four Vegetation Types

Css=Coastal Sage Scrub, Cp=Coastal Prairie, Scbs=Southern Coastal Bluff Scrub, Bs=Brewer Saltbush.

01. *Sisyrinchium bellum* (Western Blue-eyed Grass), Cp;
02. *Plantago erecta* (Plantain), Cp;
03. *Dichelostemma pulchella* (known by three names: Blue Dicks or Wild Onion or Wild Hyacinth,), Cp;
04. *Eschscholtzia californica* (California Poppy), Cp;
05. *Amsinckia intermedia* (Fiddleneck), Cp;
06. *Dudleya lanceolata* (Live Forever, Stonecrop), Scbs;
07. *Polypodium californicum* (California Polypody), Scbs. I observed a specimen collected by Dave Bramlet;
08. *Lupinus bicolor* (Lupine);
09. *Lupinus succulentus* (Succulent Lupine);
10. *Lepidium nitidum* (Shining Peppergrass);
11. *Lepidium lasiocarpum* (Peppergrass);
12. *Artemisia californica* (Coastal Sagebrush);
13. *Baccharis pilularis* (Coyote Bush);
14. *Melica imperfecta* (California Melic Grass), observed by Dave Bramlet in addition to myself;
15. *Crassula erecta* (Sand Pygmy Plant);
16. *Castilleja exserta* (Owl Clover);
17. *Heteromeles arbutifolia* (Toyon);
18. *Lycium californicum* (California Boxthorn);
19. *Marah macrocarpus* (Wild native Cucumber);
20. *Encelia californica* (California Bush Sunflower);
21. *Eriogonum fasciculatum* (California Buckwheat);
22. *Eriogonum parvifolium* (Bluff Buckwheat, Dune Buckwheat);
23. *Leymus condensatus* (Giant Wild Rye);
24. *Ambrosia psilostachys* (Western Plant);
25. *Rhus integrifolia* (Lemonade Berry/Sugar Bush);
26. *Suaeda taxifolia* (Sea Lite-this new common name is used by the National Park Service at Golden Gate N.P.);
27. *Atriplex californica* (California Saltbush) SCCS.

Note: Some weeds were found among the native plants listed above. These weeds were in the minority in terms of the number of species. They included *Medicago polymorpha*., *Capsella bursa-pastoris*, *Salsola tragus*, *Erodium cicutarium*, *Erodium moschatum*, *Senecio vulgaris*, *Trifolium hirtum*, *Atriplex rosea*. The four typical non-native grasses that are found throughout coastal California, whether inside a natural preserve, ecological preserve, state park, or ruderal areas, were present: *Bromus diandrus*, *Hordeum murinum*, *Avena sp.*, and *Vulpia myuros*. It is typical to find these weeds everywhere in coastal California, even in the most pristine of natural areas that are protected as natural preserves, ecological reserves, natural parks, wildlife refuges, and wildlife sanctuaries. In these protected natural areas, the presence of these same weedy grasses, or for that matter other weedy (ruderal) plants, is not a consideration for detracting of the positive features of a natural area, nor should it be used to detract from the qualities of Bayview Landing. For example, several areas adjacent to Bayview Landing in Upper Newport Bay Reserve have the same natural landscape appearance, flora, and fauna as at Bayview Landing. Therefore, it is inappropriate and a Type 1 error in ecological logic to consider the ruderal grasses and weeds at Bayview Landing as an indication of ruderal vegetation, since these same "ruderal plants" are in the Upper Newport Bay Ecological

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Reserve. In fact, the adjacent Ecological Reserve has several ruderal plants that are not found at Bayview Landing. To summarize, these grasses are not indicative of ruderal vegetation because these same weedy grasses are found throughout lowland coastal California within boundaries of designated natural preserves, reserves, and parks. On the other hand, the list of native plants presented in Table 2 is significant because it indicates that there is a natural area on the bluffs, slopes, and level areas of Bayview Landing.

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Conclusion

The high biodiversity native flora and native fauna found on the Bayview Landing in Upper Newport Bay and the significant amount of spatial heterogeneity when compared with other lands elsewhere in Upper Newport Bay, indicate that this land would enhance and complement nearby lands of the Upper Newport Bay Ecological Reserve. The Upper Newport Bay Ecological Reserve is managed by the State of California under the jurisdiction of the California Department of Fish and Game. In addition, the California Coastal Commission, has become a significant partner at Upper Newport Bay, with its own coastal program, which includes new Commission staff (Kristina Finstad) assigned specifically to Newport Bay. She heads up the *Upper Newport Bay Marine Education and Restoration Project*, a pilot project for the California Coastal Commission. To quote the Coastal Commission goals in this program is important to consider in regard to this project:

"The Upper Newport Bay Marine Education and Restoration Project represents a new direction for the California Coastal Commission. Its overall goal is to develop coastal restoration and marine education programs throughout California. Part of the project involves compiling a curriculum to teach school groups about the importance of coastal habitat, and the impacts of human activities on that habitat. Hands-on restoration work will be included within the lesson plans to reinforce classroom instruction with experiential learning. Additionally, a restoration program will proceed independently of the curriculum, serving the vital purpose of restoring the salt marsh ecology and critical species habitat of the Upper Newport Bay through the work of community volunteers."

"By synchronizing efforts and targeting resources, the Marine Education and Restoration Project will turn what would otherwise be piecemeal efforts into a visionary and long-term approach."

"Restoration is a breathtaking concept. When a community commits to it - when people commit to the notion they can make things whole again - it opens immense possibilities. A community-based restoration project fosters a sense of pride and morale among a shared place and encourages stewardship practices that ensure the protection of an area such as Upper Newport Bay."

It is my observation, both as a scientist and educator and as the Director of Research and Restoration for Wetlands Action Network, that the above quoted passages of Coastal Commission staff Kristina Finstad ought to be directed at such pieces of land as that under consideration at Bayview Landing. First, Bayview Landing is situated

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nearly adjacent to the Upper Newport Bay ecological reserve, separated only by Newport Dunes, and is functionally linked to this reserve (birds and other species travel between), making it technically part of the Upper Newport Bay ecosystem. Second, it is land that is accessible to schoolchildren and the community. Third, this land is in need of preservation and some genuine restoration. Fourth, the Commission is to decide whether to turn down a development on this land or to act in a way that leads to protection, preservation, and perhaps the ultimate acquisition of Bayview Landing by the state of California. In recent years, two state-wide propositions with bond moneys dedicated to acquisition for park lands have been approved by the voters of the state with an overwhelming majority. The focus of these moneys is for public acquisition and restoration of natural lands, including parks with natural wetlands area characteristics.

The biological resources, wetland resources, and natural resources found at Bayview Landing add to the conclusion of this author that this natural area of land being fully restored would increase the viability, biodiversity, and sustainability of the existing Upper Newport Bay Ecological Reserve. Some of the plants and animals found at Bayview Landing are not found elsewhere in lower or upper Newport Bay. In addition, some of the species found at Bayview Landing are not common elsewhere in Upper Newport Bay, so the loss from development would place those species at other parts of Bay at further risk. These species found at Bayview Landing can be an additional resource for viability and rescuing plants that might disappear in the Ecological Reserve if a catastrophic ecological event happens there. In addition, Bayview Landing also serves as a buffer to the Upper Newport Bay Ecological Reserve due to being so close to the Reserve. Therefore, biodiversity would be impacted if these species are not preserved. In fact, the Bayview Landing, by virtue of being located inland (easterly) of Pacific Coast Highway and therefore in the lengthening arm of the bay that spreads inland past the Highway is politically part of Upper Newport Bay. In addition, Bayview Landing is hydrologically, geologically, and geographically linked to Upper Newport Bay, and not the lower part of Newport Bay. The desirable solution and vision from a scientist with knowledge in ecology, restoration, geography, and recovery of endangered species, this land has its best use to continue to function as a Natural Area and to be included within the context of an expanded Ecological Reserve.

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Appendix 1: Wildlife of Newport Bayview Landing Lower Area

Vertebrate wildlife evidence found on the entire 17 acre Bayview Landing include mammals, reptiles, and birds which are listed below in Appendix 2. Suffice it to say that there are many year-round full time vertebrate-backed animals present on Bayview Landing property. Not listed are the invertebrates as there are too many to list and identify for this report. However, numerous beetles were found, as were the freshwater snail.

Careful review of the field investigation report of Kathy Keane in 2002, and Greg Nelson in 1992, indicated that no investigation for nocturnal wildlife was conducted by those two biologists and their assistants. This oversight was corrected in the present field observations by this writer-field biologist. I observed and/or heard five species on 18 March 2003 (see Appendix 2, Faunal List of #12 to 16). In addition, it was noted that there is a very distinct "Dark Sky" at the Bayview Landing. No street lights on the property or along the streets adjacent to the property along Backbay Drive and Jamboree Road. The absence of lighting makes this yet another reason why this qualifies as a "Natural Area" and further qualifies this land to be a positive ecological addition to the Upper Newport Bay Ecological Reserve.

Faunal List of Non-Avian Vertebrate Wildlife Documented

Mammals:

1. *Thomomys bottae* (California Pocket Gopher); approximate population size = 150-250 gophers.
2. *Spermophilus beecheyi* (California Ground Squirrel); approximate population size = 50 squirrels
03. *Sylvilagus auduboni* (Audubon "Cottontail" Rabbit) 14 rabbits seen at 10:15pm on 31 March 2003.
4. *Procyon lotor* (Raccoon); approximate population size = 2 Raccoons.
5. Two species of Bats seen at dusk feeding on flying insects that emerged from the pond on 18 March 2003.

Reptiles:

6. *Sceloporus occidentalis* (Western Fence Lizard);
7. *Uta stansburiana* (Side-blotched Lizard);

Amphibians:

8. *Pseudacris regilla* (Pacific Tree Frog), chorus of 10+ frogs was heard at 7:10 pm on 18 March 2003.

Notes:

1. Mammal trapping at night would find 4-5 rodent species such as Deer Mouse, Harvest Mouse; also Shrew.
2. Bat field work would capture 4-5 species of Bats on this property during the course of one year trapping.
3. It is likely that 2-3 species of reptiles (snakes) are found at Bayview Landing, if surveyed on summer evenings.
4. It is likely that 1-2 additional species of amphibians are present if technical surveys were conducted for them.

Avifaunal List for Bayview Landing (Arranged by Rarity Status)

01. California Gnatcatcher (endangered); observed in 1992, three times by Greg Nelson;
02. Great Blue Heron in Wetland 2, and briefly near Wetland 3 for 15-20 minutes;
03. Bushtit found in native Toyon Tree (*Heteromoles arbutifolia*) (nesting material in beak);
04. Black Phoebe in native Willow and Toyon (Nesting activity of territory noted);
05. White-crowned Sparrow found in Coast Sagebrush (winter resident and migrant);
06. Mallard (two seen as documented in a photograph) not seen by this author.
07. Common Yellowthroat (singing from Seep Willow near dusk on 14 March 2003).
08. Barn Owl was heard and observed at approximately 7:30 pm on 18 March 2003.
09. Great Horned Owl was heard and observed at approximately 7:30 pm on 18 March 2003.
10. American Kestrel seen on second site visit.
11. Barn Swallow; 4 seen in a flock searching for emerged aquatic insects from the three wetlands;
12. Savannah Sparrow (one bird seen by Rob Hamilton in coastal sage scrub.

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The bird list I compiled is from four site visits, showing some overlap with the species found by Kathleen Keane. The total number of bird species that have been observed at Bayview Landing, including Ms. Keane's observations and mine, is 24 species. I saw seven species that were not reported by Ms. Keane. She saw 12 species that were not recorded by me. Two of the species that I recorded were simply observed by visiting the site at night, which is something that Ms. Keane did not do during her field investigations. We saw three species in common. As more time for observing birds is spent at Bayview Landing in different seasons, the list of birds that use this important avian habitat will likely reach approximately 71 species, if not more. I calculated this list based on the number of kinds of habitat found there.

There have been many missed plant species documented even to date due the fact that some plants will only germinate and become flowers with new seeds later in the season. Genuine protocol for surveys of rare plants requires surveys in the time of flowering-fruiting when seeds are produced so the plants are more recognizable to the scientist in the field, and for proper identification to species. Some of the species under consideration require a microscope to properly identify, as well as an expert on those plants. All botany observations can only be considered preliminary at best, and not complete nor even nearly complete.

Also field work needs to have been completed in winter and spring after sufficient rainfall has fallen, and again in late summer-autumn to find the native plants that flower during the fall season. Also, Ms. Keane's field work was done during a very dry year, when it was well known that one rare native plant *Centromadia parryi australis*, formerly *Hemizonia parryi australis*, would not have grown that year due to not enough rainfall, but instead it would remain dormant and wait till a greater rainfall year such as this year of 2003. Surveys need to be conducted in August and September for this plant.

Johnson (1990) reported his knowledge of the flora and fauna of Upper Newport Bay from 1940 to 1955 into 18 distinct natural areas. An Area 17 was delineated by a map and text as precisely the area of the Bayview property. His description of the area merits quotation as follows: "*Promontory Point, southeast bayside (Area 17): Continuing south along the east side of the bay to the Coast Highway, one reaches Promontory Point. Along its north slope near the upper edge, encelia daisies and California sagebrush formed most of the cover. In April, golden star lilies bloomed among the shrubs and grass.*" The specific mention of *Bloomeria crocea* (Golden Star Lily) for this property is of interest since this plant was not found in March and is expected to come into flowering until later in spring season around May.

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Robert De Ruff (1990) reported that 178 native plants are found in upper Newport Bay. This is a similar number of species as that reported by Bob Muns (1993). A genuine restoration at the Bayview landing would lead to having most of those 171 species recovered there. Seven species found in the low-mid tidal marsh would not be found there, but all the other habitats of Upper Newport Bay are here so it could become a unique natural area and possibly a wild garden and butterfly meadow.

Larry Orsak (1990) reported on rare butterflies that have habitat at the Bayview Landing natural area. These include the Quino Checkerspot and the Wandering Skipper. Both of these rare butterflies are protected by the State of California and U.S. federal government. I note that Kathleen Keane, although a zoologist of vertebrates such as birds, did not observe invertebrates. I can only conclude that no survey was done for insects, including rare, sensitive, and endangered species. This is a flaw in the city's biological report. On the other hand, I report that habitat is present for the Quino Checkerspot and the Wandering Skipper, because both the nectaring plants and host plants for the larva are present here. In addition, both species have been found in the immediate vicinity of this property within Upper Newport Bay. I will be conducting surveys for these two rare butterflies later in the year, when appropriate survey times for these two rare butterflies is at an optimal time. As a general rule, it can be estimated that for every native plant species present, there are roughly six times that number of insects. In our present study, the total number of native plants is about 50 species, which then multiplied by 6, comes to a total predicted number of species as 300 species of insects at Bayview Landing. The following list is therefore, very fragmented and represents only those species that were easily identified in the field.

Invertebrate Faunal List

1. *Bombus californicus* (California Bumblebee);
2. *Physa* sp. (freshwater pond snail);
3. Monarch Butterfly;
4. Darkling Beetle;
5. Miscellaneous beetles, ants, flies, that were found on the native plant wildflowers

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Appendix 2: California Gnatcatcher Ecology at Bayview Landing

Gregory Nelson (1992) in his surveys for California Gnatcatcher of the Bayview Landing Park reported both the habitat and breeding behavior of the California Gnatcatcher on this property. The surveys conducted by him were done in a relatively wet year when it would be expected to have a greater chance of finding the Gnatcatcher. Ms. Keane's surveys were done in a dry year, when Gnatcatcher populations would be low and stressed, and many nests aborted or not completed. Her data is thus inclusive to state the presence or absence of Gnatcatcher. My data suggests that Gnatcatcher utilize the area in various seasons outside just the nesting season, but in wet years when successful gnatcatcher nesting occurs. This year will be a good year to record Gnatcatchers nesting but will need to take place in the next few months. I am conducting a study to determine the presence of Gnatcatcher throughout this year at Bayview Landing.

The presence of habitat for Gnatcatcher cannot be denied at Bayview Landing. Any development here would certainly fragment the this natural area of Coastal Sage Scrub, Coastal Bluff Scrub, Saltbush Scrub, and make this area less desirable from continuous nesting locations found only about 100-200 yards away. Gregory Nelson reported the following on page 10 in the discussion section of his report:

Based on the results of the surveys conducted, it is concluded that the coastal sage scrub on the [Bayview Landing, by inference from his next paragraph], is habitat for California Gnatcatcher ... The same holds true for the lone male observed at Bayview Landing. It to may have a mate that went undetected; or, it may have been displaying breeding behavior in an effort to attract a mate. Nevertheless, the coastal sage scrub here is California Gnatcatcher habitat."

Gregory Nelson also characterized the habitat on page 8 of the Results section of his report as follows: **"Approximately four acres of this site [Bayview Landing] is covered by coastal sage scrub. Most areas of this habitat on site is represented by homogeneous stands of California sagebrush. Occasionally, other species, such as California buckwheat, California encelia, and bladder pod (*Cleome isomeris*) are found. In general, this vegetation is open, with a ground cover of brome grass (*Bromus* sp.) growing in between the larger shrubs. Larger shrubs are mostly three to four feet in height."**

My field observations of this same area is that endangered gnatcatcher habitat is still intact, now 10 years later, but that in addition, there are many more young shrubs of California sagebrush emerging with this wet winter. The pulse of recruitment of these new native plants, which the California Gnatcatcher requires to nest in as well as find its nourishment, makes the Bayview Landing, even better now, than 10 years ago for California Gnatcatcher. It is my professional opinion as a trained vertebrate wildlife biologist that the Bayview Landing is used in additional

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seasons, not just for nesting for dispersing young birds that are evicted from occupied territories of their parents. In addition, the area is suitable habitat during the winter months for young adults waiting to take up available territories of adults that die during winter from the severe elements and old age. Just 100-200 yards away and also elsewhere in the Upper Newport Bay Ecological Reserve, which is nearly adjacent to Bayview Landing are prime habitat of California Gnatcatcher, that becomes available for new young adults, only when established adults perish. The Bayview Landing serves as an area of waiting time for open territories to come open nearby. This can only be highly predictive by any scientist because the Gnatcatcher is so secretive in the non-nesting season, as to make it virtually impossible to detect its presence or absence. It is therefore standard scientific consensus and also to be conservative to do so, that if the habitat is present, it is entirely possible that Gnatcatchers are present. I conclude as does Gregory Nelson, that the habitat is present for the California Gnatcatcher at Bayview Landing.

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ROBERT ROY VAN DE HOEK

Curriculum Vitae (C.V.)

Education

B.A., Biological Science, environmental option, California State University Northridge (CSUN), 1986
B.A., Geography, California State University Northridge (CSUN), 1986
M.A. program, Geography, California State University Northridge, 1986-1990

Academic training and research focused on botany, ecology, invertebrate and vertebrate zoology, and also archaeology, vegetation analysis, historical geography, geomorphology, aerial photo interpretation, map interpretation, and geology.

Additional post-graduate education and professional training:
University of Nevada at Reno, 1988-1994

Post-graduate work emphasized hydrology, ecology, field botany, biogeography, archaeology, cultural resources management, geomorphology, and botanical classification of streams, meadows, and wetlands of the western United States.

Experience

10 years working as a biologist for the federal government, in the United States Forest Service and the United States Department of the Interior/Bureau of Land Management, 1983-1993.

25 years experience working in the field of environmental analysis, which includes:

- experience in mapping various geographies of California,
- zoological investigations including birds, mammals, herpetofauna, and invertebrates, and
- botanical investigations of rare plants, wetland plants, high-elevation meadow plants, desert plants, and forest ecosystems.

Land-use mapper, California State Department of Agriculture, 1981-82.

Qualified under federal professional series as an archaeologist and historian, and served in those capacities for ten years in the federal government. Recorded more than 75 historic sites including historic districts, architectural history and several sites that were later added to the National Register of Historic Places.

Manager and supervising naturalist for the Santa Catalina Island Interpretive Nature Center, for the Los Angeles County Department of Parks and Recreation, 1996-99.

Instructor at Bakersfield College, Cerro Coso College, Lassen College and Long Beach College.

Classes taught include: Physical Geography, Geology, Wildlife Biology, Marine Biology, and Natural History.

Instructor of an Urban Wetlands Course at the Rancho Santa Botanic Garden.

CURRENT: Director, Research & Restoration (Wetland Scientist), Wetlands Action Network, 1999-2002

Experience includes working on wetland projects in southern California, central California, Channel Islands, and northeastern California.

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Publications

Research on wetlands ecology has been presented to the California Coastal Commission and the California Department of Fish and Game.

Seaside Heliotrope Report, 39 pages, June, 2002

Great Blue Heron Report, 76 pages, January, 2001

Wandering Skipper Report, 2 pages, May, 2002

Ventura Marsh Milkvetch, 3 pages, January, 2002

Published in the California Native Plant Society book entitled *California Wild Gardens*.

Authored several reports with the U.S. Department of Agriculture and the U.S. Department of Interior.

Completed several education brochures on flora and fauna of wetlands in California.

Ecology of the White-tailed Kite, 1997

Ecology of the El Segundo Blue Butterfly, 1997

Ecology of Wetlands & Uplands, 1999

Ecology of Mammals on the Carrizo Plain, 1993

Paper presented to 20th Symposium of Southern California Botanists on Alien Plant Invasion, 1994

Volunteer, Honorary Appointment & Public Interest Sector Experience

Scientist, Environmental Review Board of the Santa Monica Mountains for the County of Los Angeles.

Working member of the Los Angeles County Committee for the Southern California Wetlands Recovery Project. (serves with federal and state agency managers and professionals, as well as NGOs - Non-governmental organizations - on this committee).

Member of the Ballona Creek Watershed Task Force of the LA County Department of Public Works.

Co-chair of the Sierra Club California Coast and Ocean Committee.

Chair of the Sierra Club Ballona Wetlands Task Force

Additional Relevant Experience

Extensively evaluated, tested and interviewed (in 1995), and subsequently rated "fully qualified" as a professional botanist, wildlife biologist, and general biologist, within the State of California, Department of Agriculture, Department of Fish & Game and Department of Parks & Recreation for possible full-time employment in any of these three agencies.

Similarly, in 1992, rated qualified as a professional botanist for employment in the U.S. Department of Interior & U.S. Department of Agriculture. Criteria evaluated was academic training, field knowledge and professional experience. In 1985, rated qualified as a professional archaeologist in the U.S. Forest Service. In 1988, rated qualified as professional hydrologist with the U.S. Forest Service. And in 1989, rated qualified as a wildlife biologist with the U.S. Department of Interior.

Completed classes with John Callaway, Ph.D., wetland delineator and scientist, at Pacific Estuarine Research Laboratory (PERL) at San Diego State University, specifically focused on Southern California wetland restoration.

Qualified Wetlands Scientist for the California coastal zone. Professionally trained to identify the presence and the predominance of wetland plants, soils, and hydrology.

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WETLANDS MAP AT BAYVIEW LANDING: R. van de Hoek April 7, 2003

LEGEND

Wetland (approximate location)

(Note: not to scale)

SITE PLAN

Lower Bayview Senior Affordable Housing
& Upper Bayview Park

- NOTES:
1. ZONING: BAYVIEW LANDING PLANNED COMMUNITY
 2. NO BUILDINGS CURRENTLY EXIST ON THE SITE
 3. BAYVIEW LANDING PLANNED COMMUNITY REGULATIONS CONTAIN NO INDICATION OF TARIFF SETBACK LINES

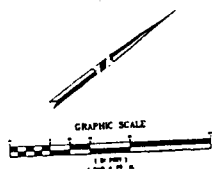
CURRENT LEGAL DESCRIPTIONS:
SENIOR HOUSING PARCELS: PARCELS 1 & 2 OF PARCEL MAP NO. 95-157
PARK SITE: PARCEL "A" OF PARCEL MAP NO. 95-157
PROPOSED PARCEL LINE IS SHOWN HEREON

- EXISTING EASEMENTS OF RECORD AS SHOWN ON PARCEL MAP NO. 95-157:
- ① 10' WIDE DRAINAGE & INCIDENTAL EASEMENT TO CITY OF ORANGE
 - ② 10' WIDE EASEMENT TO ORANGE COUNTY SANITATION DISTRICT NO. 1
 - ③ 15' WIDE SIDEWALK EASEMENT TO CITY OF ORANGE
 - ④ 15' WIDE WATER EASEMENT TO CITY OF ORANGE

BUILDING AND PARKING SUMMARY:
1. BUILDING: 44 x 33 x 41 = 620 UNITS (2000)
2. BUILDING: 10 x 10 x 10 = 30 UNITS (2000)
TOTAL UNITS: 650 UNITS
PARKING PROVIDED: 1,200 SPACES (INCLUDING 8 DISABLED ACCESSIBLE SPACES)

ACREAGE STATISTICS:
EXISTING ACREAGE (FROM PARCEL MAP NO. 95-157)
PARK SITE (PARCEL "A") 0.99 ACRES
SENIOR HOUSING (PARCELS 1 & 2) 4.95 ACRES
PROPOSED ACREAGES VIA PROPOSED PARCEL MAP NO. 95-157
PARK SITE: 0.99 ACRES
SENIOR HOUSING: 4.95 ACRES

Matchline ~ See Below



PACIFIC COAST HIGHWAY

To Newport Bay

JAMBOREE ROAD

EX. 13
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KEANE BIOLOGICAL CONSULTING

5546 Parkcrest Street

Long Beach, California 90808-2030

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Keane
Biological Consulting



March 21, 2003

Dan Trimble
City of Newport Beach
3300 Newport Boulevard
P. O. Box 1768
Newport Beach, CA 92658-8915

SUBJECT: Letter to the California Coastal Commission regarding the Bayview Landing site

Dear Mr. Trimble:

Kathy Keane of Keane Biological Consulting (KBC) has reviewed the letter dated March 10, 2003 submitted to the California Coastal Commission by Wetlands Action Network (WAN) regarding the City's Bayview Landing project site located at the northwest corner of Jamboree Road and Pacific Coast Highway.

KBC contacted Dave Bramlet, a local wetland and vernal pool expert, to survey the Bayview Landing site March 14, 2003, and the results of his survey are summarized in this letter and are attached in a memo to this letter. KBC has also reviewed each of WAN's statements about our biological report for the Bayview Landing site, and our responses follow:

Surveys of Lower Bayview

WAN claims the lower portion of the site called "Lower Bayview Landing" was not surveyed. This is a false claim. As you know, the lower portion of the site is primarily a dirt parking lot, and the vegetation map KBC prepared for the project, which was included in the biological report, refers to the majority of the lower part of the site as supporting "ruderal" or weedy vegetation, discussed in the biological report as follows:

COASTAL COMMISSION
5-03-091
EXHIBIT # 14
PAGE 1 OF 5

"the site supports a plant community termed "ruderal" (consisting of weedy, primarily non-native and/or invasive plant species), with little native vegetation (Figure 1). Predominant species are non-native annual grasses and forbs including foxtail chess (*Bromus madritensis* ssp. *rubens*), brome (*Bromus hordeaceus*), wild oat (*Avena* sp.), barley (*Hordeum* spp.), tocalote (*Centaurea melitensis*), sweet fennel (*Foeniculum vulgare*), Mediterranean mustard (*Hirschfeldia incana*), Russian thistle (*Salsola tragus*), tree-tobacco (*Nicotiana glauca*), Australian saltbush (*Atriplex semibaccata*), telegraph weed (*Heterotheca grandiflora*), common horseweed (*Conyza canadensis*), horehound (*Marrubium vulgare*), and Indian sweetclover (*Melilotus indica*)."

WAN also claims that the cliff area was not surveyed, but again, the vegetation map refers to this as "sparse coastal sage scrub," discussed in the biological report as follows; "Native plant species were limited to sparse and scattered individuals of coastal sagebrush (*Artemisia californica*), with no understory or other components typical of a coastal sage scrub plant community present."

"Wetlands"

WAN claims that their site visit indicated the presence of wetlands as defined by the Coastal Act, with "a predominance of wetland vegetation, wetland soils or ponded water more than a week after rains." KBC acknowledges that very small patches of mulefat (*Baccharis salicifolia*) and other vegetation sometimes associated with wetlands exist in the lower portion of the site. These patches were so small they were not included in the vegetation map prepared for the 2001 report. The site supports no wetland soils or wetland hydrology, it is not currently associated with the wetlands of Upper Newport Bay, and it has no hydrologic source or high groundwater table to support wetlands. Section 30121 of the California Coastal Act defines "wetlands" as "lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens." No such habitats occur on the Bayview Landing site.

Nevertheless, at the request of KBC, and after a telephone discussion about the site with John Dixon, California Coastal Commission biologist, on March 12, 2003, a site visit was conducted March 14, 2003, by Dave Bramlet. Bramlet is a well-known local botanist with many years of experience identifying wetlands pursuant to guidelines of the U.S. Army Corps of Engineers (Section 404 of the Clean Water Act), and the California Department of Fish and Game (Section 1601 of the California Fish and Game Code) and the California Coastal Act.

Bramlet did find (see the attached memo) two very small (the largest approximately ten feet by four feet) areas he considered ephemeral wetlands, as he would define them on a biological basis. (KBC's survey in 2001 did not follow heavy rains as did Bramlet's survey and thus were not identified then as potential wetlands). Bramlet believes that, due to their size and species composition (see below), these two areas would not be defined as wetlands under the jurisdiction of either the U.S. Army Corps of Engineers or the California Department of Fish and Game (see attached memo).

However, the California Coastal Commission determines the presence of wetlands on the presence of hydrophytic vegetation or hydric soils (Coastal Commission 1981). Bramlet did not conduct a test for hydric soils, which requires following detailed protocol developed by the U.S. Army Corps of Engineers. Bramlet's description of these two areas follows:

Ephemeral Wetland No. 1 was an area of temporarily ponded water that is highly isolated and disturbed, and probably resulted from grading activities on this portion of the project site. Vegetation around the margin of the pond is a mix of wetland species¹ and upland species consisting of toad rush, curly dock, salt marsh sand spurry, grass poly, ripgut brome, bur clover, alkali heliotrope, mulefat, black mustard, yellow sweet clover, white-stemmed filaree, Bermuda grass, mulefat, and small-flowered iceplant slightly above the elevation of the ponded area. It appears that although highly disturbed, the site is an ephemeral wetland. However, the presence of hydric soils has not been established, and the vegetation is characterized by a dominance of upland species with some wetland species, generally along the margin of the ponded area.

Ephemeral Wetland No. 2 was a freshwater swale, which has been recognized as a wetland type by Ferren et al. (1995). However, this swale on the project site is almost totally dominated by a facultative wetland species, Italian wild rye, and there are very few obligate wetland species found in the swale. Water does pond in the swale, but the duration of the ponding is not known, and the soils were not examined during the site visit.

WAN claims that before the project can come before the Coastal Commission, a delineation of the exact amount of wetlands is needed. Both of the two ephemeral wetlands found on the project site do exhibit ponding and/or soil saturation for an unknown period of time and do contain some wetland plant species. However, as stated above, Bramlet does not consider either of these areas jurisdictional wetlands per the U.S. Army Corps of Engineers or the California Department of Fish and Game, and each of the ephemeral wetlands he identified include several upland as well as wetland plants. Bramlet did not do a soil analysis, however, to determine whether the soils were saturated, and his findings one week after heavy rains may not have been accurate about whether the soil in these "wetlands" is truly wet. Thus, additional field surveys may be required on the existing soils to establish if these two sites meet the criteria for wetlands under the California Coastal Act (California Coastal Commission 1981).

If the Coastal Commission determines that these areas should be considered wetlands, a mitigation plan should be prepared for the site. A mitigation plan for these small ephemeral wetlands should include:

- > a discussion of existing conditions on the mitigation site, including a description of the composition of the habitat to be removed as well as conditions on the proposed mitigation site,
- > objectives of the mitigation (replacement ratios, habitat goals, performance standards),
- > habitat restoration implementation guidelines, including site preparation (weed control, erosion control, irrigation) and planting specifications (plant palettes and rates for seeding and container planting),
- > restored habitat maintenance guidelines, and
- > a 5-year monitoring program to document attainment of required performance standards.

The plan should include sufficient detail to allow the project landscape architect to translate into landscape drawings and specifications. It is likely that the retention basin proposed for the northwest portion of the site could serve this function.

¹ As defined by the guidelines of the U.S. Army Corps of Engineers, Region 0 (California) List of Plant Species that Occur in Wetlands (Reed, 1988).

It is unclear from WAN's letter whether the "wetlands" they identified on the site included the small ponded area or swale identified by Bramlet. However, WAN apparently included other areas in their definition of "wetlands," including depressions in the dirt parking lot of the Lower Bayview Landing site formed due to grading and use. These depressions likely became puddles filled with water during recent rains. WAN claims that a great blue heron landed in one of these puddles and "stayed to forage," which is highly possible. WAN did not state whether they actually observed the heron successfully foraging, and whether or not it was foraging within the puddle. However, several ornithological records, as well as observations by Kathy Keane of KBC, indicate that great blue herons frequently forage on ground squirrels, which are present on the Bayview Landing site. Great blue herons are known to roost in upland as well as wetland habitats, and they are also well-known to take a variety of food types, not just prey obtained from wetlands. Thus, WAN's claim of foraging by a great blue heron on the project site is entirely credible, but lends no support to WAN's claim that mud puddles on the lower part of the site are in fact "wetlands."

Plant Species

WAN claims that surveys were incomplete because WAN discovered many plant species on the project site that were not named in the report. First of all, the California Environmental Quality Act guidelines do not require a complete listing of plants on the project site, particularly for a Negative Declaration, the document in which KBC's biological resources report was included. Second, it is quite probable (as Bramlet's survey confirmed) that lupine, blue-eyed grass and other plant species are present on the project site but were not observed when KBC conducted our surveys in May and July of 2001. These annual species often observed from February through April after winters of good rains. The winter of 2001 was not one of high rainfall, and KBC's surveys in 2001 were likely too late to detect these species had they been present. None of these are sensitive plant species; thus, WAN's observation of plant species on the project site not detected by KBC does not change the conclusions of the biological report regarding project impacts, nor does it indicate that biological surveys conducted for the report are in any way incomplete.

WAN also claims that KBC's surveys for southern tarplant, a plant species listed by the California Native Plant Society (not protected by the federal or California Endangered Species Act) may have been too early in the year, during June and July, because botanists familiar with the plant suggest surveys should be conducted in August, when the plant is typically blooming. However, Kathy Keane of KBC is aware that the plant can occur even on highly disturbed soils. She conducted focused surveys and prepared a mitigation plan for southern tarplant for a project in the City of Long Beach and has observed it when it is blooming and not blooming on dirt trails along the western edge of Upper Newport Bay. Bramlet confirmed the plant would have been present in June and July and readily observable, if not blooming.

Vernal Pools


WAN claims that the biological report did not mention vernal pools. KBC was recently made aware by Bramlet of the presence of low-quality vernal pools near the Newport Beach Library on MacArthur Blvd. During the time of KBC's surveys, we were unaware of this finding. However, we were aware the upper portion of the project site previously supported a gasoline station, that it primarily supports ruderal (weedy) vegetation and that it has been subject to grading, human use and other disturbances. In addition, KBC found no indication of depressions that would indicate the presence of vernal pools on the project site. Thus, KBC did not conduct a survey for vernal pools or suggest that such a survey be conducted during the proper time of year.

During his survey for "wetlands," Bramlet, who has identified other vernal pools in the project area, also surveyed the Bayview Landing site for vernal pools. Bramlet found some open areas of compacted sands, and some clayey areas found on the upland part of the site, which he called the mesa. However, no species typical of vernal pool communities were noted in these openings. No evidence of ponding was noted in these areas, although the soil may become saturated. Therefore, no evidence of vernal pools was noted on the mesa (see attached memo).

In their letter of March 10, 2003, WAN expressed other concerns about the project that apply to the California Coastal Act but not to our report. If you have any further questions about our report or the findings of WAN with respect to the Bayview Landing site, please feel free to contact us.

Sincerely,

KEANE BIOLOGICAL CONSULTING

A handwritten signature in cursive script that reads "Kathleen M. Keane".

Kathleen M. Keane

MEMO

March 17, 2003

TO: Kathy Keane
Keane Biological Consulting

FROM: David Bramlet
Consulting Biologist

SUBJECT: Bayview Landing, Wetland and Vernal Pool Evaluation.

The Bayview Landing Site is found on the northwest corner of Jamboree and Pacific Coast Highway. The upper mesa and bluff portion of the project site is generally found north of Pacific Coast Highway, and the southern edge of the Aquatic Dunes RV Park. The lower portion of the site generally consists of a graded area, with some areas of native vegetation, that is located southwest of the corner of Jamboree, and Backbay Drive. The lower portion of the site is proposed for senior housing, while the upper mesa and bluffs are to be public open space. A negative declaration was recently completed on the project, including a biological assessment.

A letter was recently received from the Wetlands Action Network (WAN) that noted potential deficiencies in the biological surveys conducted on the project site. Specifically the comments noted the presence of wetlands on the lower portion of the site, and the existence of vernal pools on the upper mesa area.

At the request of Keane Biological Consulting, a reconnaissance level survey was conducted to determine the possible existence of vernal pools and/or wetlands on the project site. A brief examination of the entire site was then conducted by David Bramlet, botanist, from 08:00 hours to 11:00 hours on 14 March 2003.

Wetlands

Two ephemeral wetlands were noted on the lower Bayview parcel during the field examination. The following section will describe each of these possible wetlands noted during the field reconnaissance.

Ephemeral Wetland No. 1

This ephemeral wetland consists of a depression that was created during the grading of this parcel and it is found just southeast of the entrance to the lower parcel (Figures 1, 2 and 3). It is assumed that the water is from rainfall and a portion of this area appears to remain ponded for several weeks. Plants around this area are a mix of facultative wetland and upland species, and contains many species found in disturbed areas. This vegetation does not fit into any of the standard plant communities described for Orange County (Dames and Moore and Bramlet 1992), although it might be described as a disturbed freshwater seep.

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Plants found on the lower margin of this ephemeral wetland consisted of toad rush (*Juncus bufonius*) [FacW²], grass poly (*Lythrum hyssopifolia*) [FacW], curly dock (*Rumex crispus*) [FacW-], saltmarsh sand spurry (*Spergularia marina*) [Obl], alkali heliotrope (*Heliotropium curassavicum*) [Obl], cocklebur (*Xanthium strumarium*) [Fac+], Bermuda grass (*Cynodon dactylon*) [Fac], prickly sow thistle (*Sonchus asper*) [Fac], and yellow sweet clover (*Melilotus indica*) [Fac], along with three seedling mulefat shrubs (*Baccharis salicifolia*) [FacW-].

The area of ponded water was also surrounded by a large number of upland species including bur clover (*Medicago polymorpha*), ripgut brome (*Bromus diandrus*), foxtail fescue (*Vulpia myuros*), black mustard (*Brassica nigra*), red brome (*Bromus madritensis* ssp. *rubens*), New Zealand spinach (*Tetragonia tetragonioides*), wild oat (*Avena fatua*), white-stemmed filaree (*Erodium moschatum*), foxtail barley (*Hordeum murinum* ssp. *leporinum*), and small flowered iceplant (*Mesembryanthemum nodiflorum*).

Ephemeral Wetland No. 2

This wetland consists of a freshwater swale and it is found on the northwest corner of the lower parcel found just south of Backbay Drive, and east of the entrance to the Aquatic Dunes RV Park (Figures 4 and 5). This contains a long, low depression that retains water for a relatively short period of time, perhaps a week or more following a rainfall event. Soils in this swale were still saturated at the time of the survey. The vegetation in this swale is almost totally dominated by Italian wild rye (*Lolium multiflorum*) [Fac], along with lesser amounts of alkali heath (*Frankenia salina*) [FacW+], Bermuda grass, curly dock, yellow sweet clover, and salt marsh sand spurry. Three seedlings black willows (*Salix gooddingii*) [Obl] were also noted in this swale. The swale apparently is saturated for a sufficient amount of time to exclude common upland species on the site, such as bur clover or annual bromes.

Other Possible Wetland Sites

There was a small stand of five mulefat shrubs found on the northwest portion of the lower parcel, adjacent to the entrance kiosks to the aquatic park. This locality contained an undulating topography, which could retain water for a short period of time. However, any other wetland indicators at this site, such as alkali heath, and yellow sweet clover, were uncommon and the rest of the vegetation was generally characterized by upland species including California sagebrush (*Artemisia californica*), ripgut brome, black mustard, wild radish (*Raphanus sativa*), foxtail fescue, slender wild oat (*Avena barbata*), tocalote (*Centaurea melitensis*), and red-stemmed filaree (*Erodium cicutarium*).

Therefore, although this small area may retain water for a short period of time, it does not appear that the soil is saturated for a sufficient duration to develop hydrophytic species, and this locality would not be considered a wetland.

² Ob = Obligate wetland species, FacW = Facultative wetland species, Fac = Facultative species, per Region 10 (California) List of Plant Species that Occur in Wetlands (Reed, 1988)

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Vernal Pools

The letter from the WAN noted the potential of vernal pools on the mesa, in the area northwest of the corner of Jamboree, and PCH. Vernal pools are temporary ponds with a characteristic plant community. Vernal pools are known to have occurred on the mesas above Newport Backbay, and a vernal pool occurs on a parcel just north of the Newport Beach Library. A brief inspection was made within the annual grasslands found on the top of the mesa. There are some open areas of compacted sands, and some clayey areas found on the mesa (Figure 6). These areas are unique within the grassland community, and generally contained dwarf plantain (*Plantago erecta*), small-flowered iceplant, red-stemmed filaree, sand pygmy stonecrop (*Crassula connata*), schismus (*Schismus barbatus*), five-hook bassia (*Bassia hyssopifolia*), Australian saltbush (*Atriplex semibaccata*), shiny pepper grass (*Lepidium nitidum*), and Russian thistle (*Salsola tragus*).

No species typical of vernal pool communities were noted in these openings. No evidence of ponding was noted in these areas, although the soil may become saturated. Therefore, no evidence of vernal pools was noted on the mesa.

Vegetation Mapping

The vegetation mapping noted most of the stands of coastal sage scrub found on the project site, and it generally appears that the previous four acre figure from the 1992 survey is exaggerated. The mapping did overlook some small scrub habitats on the northwest portion of the project site. In addition, the saltbush scrub should be separated from the coastal sage scrub (nominally a coastal bluff scrub) found on the bluffs above the RV park.

In general I would disagree with the term ruderal habitat for most of the non-scrub habitats found on this parcel. The lower parcel has been graded and the existing vegetation in the graded areas is typical of a ruderal plant community. However, the slope and mesas contain good examples of an annual grassland community. Although this community is generally dominated by naturalized grasses and forbs, there are still native species found throughout the grassland. Some small patches of cudweed aster (*Lessingia filaginifolia*), foothill needle grass (*Nassella lepida*), blue-eyed grass (*Sisyrinchium bellum*), miniature lupine (*Lupinus bicolor*), blue dicks (*Dichelostemma capitatum*), and other native forbs were noted in these grasslands. In addition the compacted sands and eroded bluffs, found along Jamboree, represent habitat for at least three sensitive plant species known to occur in the Newport region.

The bluff areas contain a scattered scrub community that could be considered a coastal bluff community with a high diversity of species for the project site. It generally consisted of California sagebrush, California buckwheat (*Eriogonum fasciculatum* var. *fasciculatum*), and California bush sunflower (*Encelia californica*). However, bladderpod (*Isomeris arborea*), California box-thorn (*Lycium californicum*) [a CNPS List 4 Species], cudweed aster, woolly seablite (*Suaeda taxifolia*) [a CNPS List 4 species], coastal isocoma (*Isocoma menziesii*), and lemonade berry (*Rhus integrifolia*). The bluffs also contained giant wild rye (*Leymus condensatus*), small-flowered melic (*Melica imperfecta*), alkali heath, California polypody (*Polypodium californicum*), man root (*Marah macrocarpa*), Miner's lettuce (*Claytonia*

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perfoliata), blue dicks, California poppy (*Eschscholzia californica*), Parish's pickleweed (*Athrocenemum subterminale*). Large colonies of the lance-leaved dudleya (*Dudleya lanceolata*) were also observed along these slopes.

Plant Species of Special Interest

WAN noted that surveys for the southern tarplant were too early to detect this species on the project site. If surveys were conducted in July then this would have been early for the species found to be in bloom, however, the species should have been generally observable at this time in the summer. In my opinion the site has only a moderate potential for this species to occur on the project site.

The site has a higher potential for at least three species to occur within the mesa area. These include the Coulter's saltbush (*Atriplex coulteri*) [CNPS List 1B], vernal barley (*Hordeum intercedens*) [CNPS List 3], and the small-flowered microseris (*Microseris douglasii* var. *platycarpa*) [CNPS List 4]. None of these species were seen during the site reconnaissance, although it was probably too early in the year to detect these species.

Two plant species of special interest were observed on the project site. These included the California box thorn (CNPS List 4), and the woolly seablite (CNPS List 4), which were found on the bluffs overlooking the RV park. The species on List 4 are considered "Watch List" species in the CNPS inventory (CNPS 2001). Generally loss of these species on a particular project is not considered significant, unless there was a regionally important population of the species in a particular locality. However, CNPS continues to monitor the status of these species over time, and may elevate the status of a particular species if the preferred habitat and/or populations continue to be lost.

Conclusions

Two ephemeral wetlands were noted on the Bayview project site, however, in my opinion these two wetlands would not be under the jurisdiction of the U.S. Army Corps of Engineers (404 permit), nor the California Dept. of Fish and Game (1601 stream alteration agreement). The Coastal Commission determines the presence of wetlands solely on the presence of hydrophytic vegetation or hydric soils (Coastal Commission 1981).

Ephemeral Wetland No. 1, is an area of temporarily ponded water that is highly isolated and disturbed, and probably resulted from grading activities on this portion of the project site. Vegetation has developed around the margin of the pond that is a mix of wetland and upland species. Typically this consists of toad rush, curly dock, salt marsh sand spurry, and grass poly along the margin of the ponded area, and riggut brome, bur clover, alkali heliotrope, mulefat, black mustard, yellow sweet clover, white-stemmed filaree, Bermuda grass, and small-flowered iceplant slightly above the elevation of the ponded area. It would appear that although highly disturbed, the site is an ephemeral wetland. However, the presence of hydric soils has not been established, and the vegetation is characterized by a dominance of upland species with some hydrophytic species, generally along the margin of the ponded area.

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The freshwater swale (Ephemeral wetland No 2) has been recognized as a wetland type by Ferren et al. (1995). However, this wetland type is almost totally dominated by a facultative wetland species, Italian wild rye, and there are very few obligate wetland species found in the swale. Water does pond in the swale, but the duration of the ponding is not known, and the soils were not examined during the site visit.

Both of the two ephemeral wetlands found on the project site, do exhibit ponding and/or soil saturation for a unknown period of time and contain hydrophytic species. However, additional field surveys would be required on the existing soils to establish if these two sites meet the criteria for wetlands under the California Coastal Act (California Coastal Commission 1981).

Although these two sites may not represent jurisdictional wetlands, it is advisable that the total area of these two ephemeral wetlands be mitigated on a 1:1 ratio.

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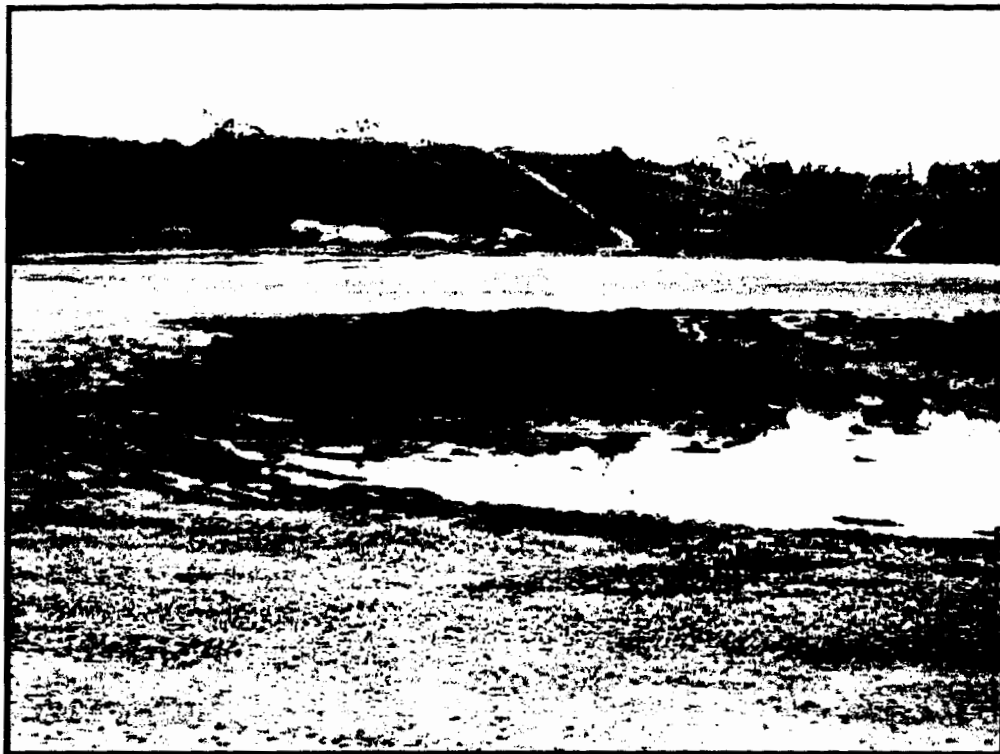


Figure 1. Ephemeral Wetland No. 1



Figure 2. Ephemeral Wetland No. 1

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Figure 3. Ephemeral Wetland No. 1



Figure 4. Ephemeral Wetland No. 2

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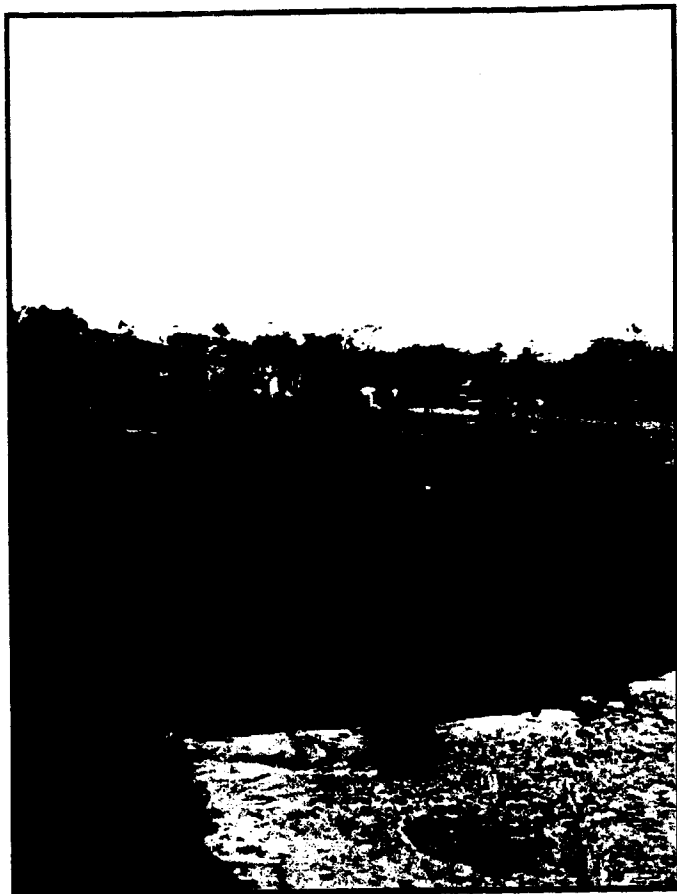


Figure 5. Ephemeral Wetland No. 2

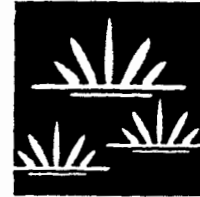


Figure 6. Open clay/compacted sand substrate on upper Bayview

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GLENN LUKOS ASSOCIATES

Regulatory Services



April 11, 2003

Dan Trimble
City of Newport Beach
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SUBJECT: Jurisdictional Delineation of the Bayview Property, Newport Beach, Orange County, California

Dear Mr. Trimble:

This letter report summarizes our preliminary findings of U.S. Army Corps of Engineers (Corps), California Department of Fish and Game (CDFG), and California Coastal Commission (CCC) jurisdiction for the above-referenced property.¹

The Bayview property in Newport Beach, Orange County [Exhibit 1], comprises approximately 16 acres and contains no blue-line drainages (as depicted on the U.S. Geological Survey (USGS) topographic map Newport Beach, California [dated 1965 and photorevised in 1981]) [Exhibit 2]. On April 4 and 9, regulatory specialists of Glenn Lukos Associates, Inc. (GLA) examined the project site to determine the limits of (1) Corps jurisdiction pursuant to Section 404 of the Clean Water Act, (2) CDFG jurisdiction pursuant to Division 2, Chapter 6, Section 1600 of the Fish and Game Code, and (3) any wetlands as defined by the CCC. Enclosed is a 40-scale map [Exhibit 3] which depicts any areas of Corps and CDFG jurisdiction, and any wetland areas as defined by the CCC. Photographs to document the topography, vegetative communities, and general widths of each of the waters are provided as Exhibit 4. Wetland data sheets are attached as Appendix A.

No Corps or CDFG jurisdiction was identified at the project site. Two areas were identified on site, which may potentially be defined as wetland by the CCC.

¹ This report presents our best effort at estimating the subject jurisdictional boundaries using the most up-to-date regulations and written policy and guidance from the regulatory agencies. Only the regulatory agencies can make a final determination of jurisdictional boundaries. If a final jurisdictional determination is required, GLA can assist in getting written confirmation of jurisdictional boundaries from the agencies.

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I. METHODOLOGY

Prior to beginning the field delineation a 100-scale color aerial photograph, a 40-scale topographic base map of the property, and the previously cited USGS topographic map were examined to determine the locations of potential areas of Corps/ CDFG jurisdiction and CCC-defined wetlands. Suspected jurisdictional areas were field checked for the presence of definable channels and/or wetland vegetation, soils and hydrology. Suspected wetland habitats on the site were evaluated using the methodology set forth in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual² (Wetland Manual). While in the field the jurisdictional area was recorded onto a 40-scale topographic base map using visible landmarks. Other data were recorded onto wetland data sheets.

The Soil Conservation Service (SCS)³ has mapped the following soil types as occurring in the general vicinity of the project site:

Balcom Clay Loam, 15 to 30 Percent Slopes

The Balcom series consists of well drained soils on uplands. The parent material is weathered from soft fine grained sandstone, calcareous soft shale, and marl. In the upper profile, these soils are typically dark grayish brown (10YR 4/2) clay loam when moist. Balcom soils are mapped in the northeast corner of the Project Site.

Beaches

Beaches consist of sandy, gravelly, or cobbly coastal shores that are washed and rewashed by tidal and wave action. Beaches are mapped in the northwestern portion of the Project Site, at the base of a coastal bluff.

Myford Sand Loam, Thick Surface, 2 to 9 Percent Slopes

The Myford series consists of moderately well drained soils on marine terraces. The parent material is sandy sediments. In the upper profile, these soils consist of brown (7.5YR 4/2) sandy loam when moist. Myford soils are mapped on a marine terrace along the southern half of the Project Site.

² Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

³ SCS is now known as the National Resource Conservation Service or NRCS.

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None of these soil units are identified as hydric in the SCS's publication, Hydric Soils of the United States⁴. Beaches are listed as a hydric soil unit in the local hydric soils list for Orange and Western Part of Riverside County California. The Myford sandy loam is listed as containing unnamed hydric inclusions in depressions in the local hydric soils list.

II. JURISDICTION

A. Army Corps of Engineers

Pursuant to Section 404 of the Clean Water Act, the Corps regulates the discharge of dredged and/or fill material into waters of the United States. The term "waters of the United States" is defined in Corps regulations at 33 CFR Part 328.3(a) as:

- (1) *All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;*
- (2) *All interstate waters including interstate wetlands;*
- (3) *All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect foreign commerce including any such waters:*
 - (i) *Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
 - (ii) *From which fish or shell fish are or could be taken and sold in interstate or foreign commerce; or*
 - (iii) *Which are used or could be used for industrial purpose by industries in interstate commerce...*
- (4) *All impoundments of waters otherwise defined as waters of the United States under the definition;*
- (5) *Tributaries of waters identified in paragraphs (a) (1)-(4) of this section;*
- (6) *The territorial seas;*

⁴ United States Department of Agriculture, Soil Conservation Service. 1991. Hydric Soils of the United States, 3rd Edition, Miscellaneous Publication Number 1491. (In cooperation with the National Technical Committee for Hydric Soils.)

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- (7) *Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1)-(6) of this section.*

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

- (8) *Waters of the United States do not include prior converted cropland.⁵ Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.*

In the absence of wetlands, the limits of Corps jurisdiction in non-tidal waters, such as intermittent streams, extend to the OHWM which is defined at 33 CFR 328.3(e) as:

...that line on the shore established by the fluctuation of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Pursuant to Article I, Section 8 of the U.S. Constitution, federal regulatory authority extends only to activities that affect interstate commerce. In the early 1980s the Corps interpreted the interstate commerce requirement in a manner that restricted Corps jurisdiction on isolated (intrastate) waters. On September 12, 1985, EPA asserted that Corps jurisdiction extended to isolated waters that are used or could be used by migratory birds or endangered species, and the definition of "waters of the United States" in Corps regulations was modified as quoted above from 33 CFR 328.3(a).

On January 9, 2001, the Supreme Court of the United States issued a ruling on *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, et al.* (SWANCC). In this case the Court was asked whether use of an isolated, intrastate pond by migratory birds is a sufficient interstate commerce connection to bring the pond into federal jurisdiction of Section 404 of the Clean Water Act.

⁵ The term "prior converted cropland" is defined in the Corps' Regulatory Guidance Letter 90-7 (dated September 26, 1990) as "wetlands which were both manipulated (drained or otherwise physically altered to remove excess water from the land) and cropped before 23 December 1985, to the extent that they no longer exhibit important wetland values. Specifically, prior converted cropland is inundated for no more than 14 consecutive days during the growing season..." [Emphasis added.]

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The written opinion notes that the court's previous support of the Corps' expansion of jurisdiction beyond navigable waters (*United States v. Riverside Bayview Homes, Inc.*) was for a wetland that abutted a navigable water and that the court did not express any opinion on the question of the authority of the Corps to regulate wetlands that are not adjacent to bodies of open water. The current opinion goes on to state:

In order to rule for the respondents here, we would have to hold that the jurisdiction of the Corps extends to ponds that are not adjacent to open water. We conclude that the text of the statute will not allow this.

Therefore, we believe that the court's opinion goes beyond the migratory bird issue and says that no isolated, intrastate water is subject to the provisions of Section 404(a) of the Clean Water Act (regardless of any interstate commerce connection). However, the Corps and EPA have issued a joint memorandum which states that they are interpreting the ruling to address only the migratory bird issue and leaving the other interstate commerce clause nexuses intact.

The term "wetlands" (a subset of "waters of the United States") is defined at 33 CFR 328.3(b) as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support...a prevalence of vegetation typically adapted for life in saturated soil conditions." In 1987 the Corps published a manual to guide its field personnel in determining jurisdictional wetland boundaries. In 1989 the Federal Interagency Committee for Wetland Delineation developed an updated methodology which was adopted by the Corps, U.S. Fish and Wildlife Service (USFWS), U.S. Environmental Protection Agency (EPA), and SCS which replaced the 1987 Wetland Delineation Manual.⁶ The use of this 1989 manual was perceived by many to excessively increase the jurisdictional limits of wetlands. After several congressional hearings, EPA, Corps, SCS, and USFWS published proposed 1991 revisions to the 1989 manual.⁷ A few days afterwards, the President signed the Energy and Water Development Appropriations Act of 1992 which, in effect, prohibits the use of the 1989 manual. Because the 1991 proposed revisions to the 1989 manual have not yet been adopted, the only remaining valid

⁶ Federal Interagency Committee for Wetland Delineation. 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and USDA Soil Conservation Service, Washington, DC Cooperative technical publication.

⁷ Government Printing Office. 1991. Federal Register, "1989 Federal Manual for Identifying Jurisdictional Wetlands; Proposed Revisions." August 14, 1991, Vol. 56, No. 157, pp 40446-40480.

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methodology is the 1987 Wetland Delineation Manual.⁸ The methodology set forth in the 1987 Wetland Delineation Manual generally requires that, in order to be considered a wetland, the vegetation, soils, and hydrology of an area exhibit at least minimal hydric characteristics. While the manual provides great detail in methodology and allows for varying special conditions, a wetland should normally meet each of the following three criteria:

- more than 50 percent of the dominant plant species at the site must be typical of wetlands (i.e., rated as facultative or wetter in the National List of Plant Species that Occur in Wetlands⁹);
- soils must exhibit physical and/or chemical characteristics indicative of permanent or periodic saturation (e.g., a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions); and
- hydrologic characteristics must indicate that the ground is saturated to within 12 inches of the surface for at least five percent of the growing season during a normal rainfall year¹⁰.

B. California Department of Fish and Game

Pursuant to Division 2, Chapter 6, Sections 1600-1603 of the California Fish and Game Code, the CDFG regulates all diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake which supports fish or wildlife.

CDFG defines a "stream" (including creeks and rivers) as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." CDFG's definition of "lake" includes "natural lakes or man-made reservoirs."

CDFG jurisdiction within altered or artificial waterways is based upon the value of those waterways to fish and wildlife. CDFG Legal Advisor has prepared the following opinion:

⁸ This delineation was performed using, where appropriate, the 1987 Wetland Manual. It is unlikely that any actions will be taken on a revised wetland manual in the near future. If a new manual is adopted, it may be necessary to review our delineation to determine its compliance with any changes set forth.

⁹ Reed, P.B., Jr. 1988. National List of Plant Species that Occur in Wetlands. U.S. Fish and Wildlife Service Biological Report 88(26.10).

¹⁰ For most of low-lying southern California, five percent of the growing season is equivalent to 18 days.

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- Natural waterways that have been subsequently modified and which have the potential to contain fish, aquatic insects and riparian vegetation will be treated like natural waterways...
- Artificial waterways that have acquired the physical attributes of natural stream courses and which have been viewed by the community as natural stream courses, should be treated by [CDFG] as natural waterways...
- Artificial waterways without the attributes of natural waterways should generally not be subject to Fish and Game Code provisions...

Thus, CDFG jurisdictional limits closely mirror those of the Corps. Exceptions are CDFG's exclusion of isolated wetlands (those not associated with a river, stream, or lake), the addition of artificial stock ponds and irrigation ditches constructed on uplands, and the addition of riparian habitat supported by a river, stream, or lake regardless of the riparian area's federal wetland status.

C. California Coastal Commission

The California Coastal Act (California Public Resources Code Division 20, Section 30240) restricts land uses within or adjacent to environmentally sensitive habitat areas (ESHAs). The Coastal Act Section 30107.5 defines an ESHA as:

...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Included within this definition are wetlands, estuaries, streams, riparian habitats, lakes, and portions of open coastal waters, which meet the rare or valuable habitat criteria.

The CCC regulates the diking, filling, or dredging of wetlands within the coastal zone. The Coastal Act Section 30121 defines "wetlands" as land "*which may be covered periodically or permanently with shallow water.*" The 1998 CCC Statewide Interpretive Guidelines state that hydric soils and hydrophytic vegetation "*are useful indicators of wetland conditions, but the presence or absence of hydric soils and/or hydrophytes alone are not necessarily determinative when the Commission identifies wetlands under the Coastal Act. In the past, the Commission has considered all relevant information in making such determinations and relied upon the advice and judgment of experts before reaching its own independent conclusion as to whether a*

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particular area will be considered wetland under the Coastal Act. The Commission intends to continue to follow this policy."

The 1998 CCC Statewide Interpretive Guidelines define riparian habitats as areas of riparian vegetation. Riparian vegetation is defined as "*an association of plant species which grows adjacent to freshwater watercourses, including perennial and intermittent streams, lakes, and other bodies of fresh water.*" Riparian habitats may encompass wetland areas, but may also extend beyond those areas.

III. RESULTS

The site consists of an upper marine terrace located in the southern portion, a coastal bluff that runs along the southwestern edge of the site, and a lower gravel pad and parking lot area located in the northern portion of the site.

A. Marine Terrace

The terrace area has been disturbed by past grading activities. This area slopes gently to the north. The topography in this area is generally flat with gentle undulations in places. A few, very small, alkaline pans were identified in this area [Exhibit 4, Photograph 1]. These pans are approximately 3-by-3 feet in area and exhibit some evidence of localized soil saturation including thin surface crusting of soils and algal mats in places. Soils in these areas were found to be brown (10YR 4/3) to dark grayish brown (10YR 4/3) when moist and exhibit no redoximorphic features in the surface horizon. Soils consist of compact sandy loam below a thin, friable sandy loam surface. None of these features exhibit the depressional basin topography typical of vernal pools. Vegetation in these areas includes plantain (*Plantago elongata*, FACW*), spergularia (*Spergularia bocconii*, UPL), filaree (*Erodium cicutarium*, UPL), burr clover (*Medicago polymorpha*, UPL), and iceplant (*Mesembryanthemum nodiflorum*, NI). As these features do not appear to support soil saturation for sufficient duration to cause the formation of redoximorphic features and do not support a predominance of hydrophytic vegetation, they would not be defined as wetlands by any agency.

Two erosional drainage features extend from the marine terrace to the pad below. The westernmost feature runs parallel to an old access road and appears to have been created by runoff along the road [Exhibit 4, Photograph 2]. This feature is incised approximately 4 feet at the deepest point and contains some evidence of recent flows including sediment deposits on vegetation. The channel banks are sloughing rapidly and the bed of the channel contains hummocky colluvial deposits consistent with the unstable, erosional nature of this feature. The channel ends abruptly

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at the base of the slope and no evidence of flowing water or sediment deposits was observed beyond the channel.

The eastern-most feature consists of a broad, excavated swale that may have served as an access road at one time [Exhibit 4, Photograph 3]. The swale is vegetated across the bottom with upland plant species including black mustard (*Brassica nigra*), lupine (*Lupinus bicolor*, UPL), California sagebrush (*Artemisia californica*, UPL), filaree (*Erodium cicutarium*, UPL), scarlet pimpernel (*Anagallis arvensis*, FAC), and non-native upland grasses. An erosional channel occurs along the eastern side of the swale in places and is heavily vegetated across the bottom with upland, ruderal species. This feature does not exhibit a defined channel bed and bank or ordinary high water mark (OHWM).

B. Coastal Bluff

The base of the coastal bluff was examined for evidence of wetlands. No wetlands were identified in this area [Exhibit 4, Photograph 4]. No evidence of standing water or hydrophytic vegetation was observed. Vegetation along the base of the bluff consists of Bermuda buttercups (*Oxalis pes-caprae*, UPL), pearly everlasting (*Gnaphalium leuteo-album*, UPL), castorbean (*Ricinus communis*, FACU), barley (*Hordeum vulgare*, UPL), pepper grass (*Lepidium latifolium*, UPL), rattail fescue (*Vulpia myuros*, UPL), rubber tree (*Ficus elastica*, UPL), and Myoporum (*Myoporum parvifolium*, UPL).

C. Gravel Pad and Margins

1. Mule Fat Scrub

A 15-by-30-foot stand of mule fat (*Baccharis salicifolia*, FACW) was identified along the western edge of the gravel pad [Exhibit 4, Photograph 5]. This stand is located on a short side slope, which ends at a paved road below. The mule fat occurs with California sagebrush (*Artemisia californica*, UPL), black mustard (*Brassica nigra*, UPL), yellow sweet clover (*Melilotus indica*, FAC), hottentot fig (*Carpobrotus edulis*, UPL), wild oat (*Avena fatua*, UPL), and ripgut brome (*Bromus diandrus*, UPL).

In the upper 16 inches, soils consist of brown (10YR 4/3) sandy loam when moist, and exhibit no redoximorphic features. These soils are well drained. No saturation was observed in the soil profile at the time of our site visit and the area exhibits no evidence of standing or flowing surface water.

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As this area does not exhibit wetland hydrology and does not exhibit either a predominance of hydrophytic vegetation or hydric soils, it would not be defined as wetlands by any agency.

2. Settling Basin

A small depressional area was identified at the northwest corner of the site. This area is partially reinforced with plastic sheeting and sand bags, and appears to be serving as a settling basin for runoff from the surrounding developed areas. Four black willow saplings (*Salix gooddingii*, OBL) were identified near the plastic sheeting [Exhibit 4, Photographs 6 and 7]. The area exhibits signs of standing water including sediment deposits and matted vegetation. In addition to the willow saplings, vegetation in this area consists of Spanish sunflower (*Pulcaria paludosa*, FAC+ or FACW-)¹¹, burr clover (*Medicago polymorpha*, UPL), yellow sweet clover (*Melilotus indica*, FAC), and Italian rye (*Lolium multiflorum*, UPL). The willows observed in this area are of a single-age stand and appear to be approximately two to three years old. This area supports a predominance of hydrophytic vegetation, although it appears that the single obligate wetland species, the four sapling willows, established in a single year, possibly due to above-normal precipitation levels.

Soils in the area consist of a dark grayish brown (2.5Y 4/2) silty clay loam from 0 to 10 inches, overlying a dark grayish brown (2.5Y 4/2) sand from 11 to 16 inches. The upper horizon contains common prominent (7.5YR 4/6) redoximorphic root and pore linings. No redoximorphic features were identified in the lower horizon. The sharp textural discontinuity that occurs at approximately 10 inches has a controlling influence on the hydrology of this area. Water held in the capillary pores of the upper, silty clay loam horizon, will not drain into the lower, coarser horizon until a lens of saturation occurs at the interface of the two horizons. Once the lens of saturation occurs, water pressure in the overlying horizon will approach zero and water will be able to freely drain into the lower horizon. The absence of redoximorphic features in the lower horizon suggests that the stratified nature of this soil is causing sufficient saturation to occur in the upper horizon necessary to cause the formation of redoximorphic features. To date, the year 2003 has received above-normal levels of precipitation in this region. At the time of the site visit, the most recent rainfall event of significance occurred 21 days previously. Approximately four inches of rain were received in the vicinity of the site during that event. Notably, no saturation was observed within the upper 16 inches of the soil at the time of the site visit. The area meeting all three wetland parameters totals approximately 20-by-20 feet.

¹¹ This is a non-native invasive species and is not included in Reed; however, this species typically occurs in wetlands and it is the opinion of GLA Botanists that this species should be given FAC+ or FACW- indicator status.

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3. Road Rut

A large road rut occurs within the gravel pad at the northern edge of the site [Exhibit 4, Photograph 8]. This area exhibits signs of ponding from the recent rains. Soils exhibit surface cracking due to wetting and drying cycles. Soils consist of olive brown (2.5Y 4/3) clay loam with common, distinct (10YR 5/6) redoximorphic features. As this area is subject to vehicle traffic, the majority of the feature remains unvegetated; however, vegetation along the margins of the feature includes curley dock (*Rumex crispus*, FACW-), toad rush (*Juncus bufonius*, FACW+), mule fat (*Baccharis salicifolia*, FACW), heliotrope (*Heliotropium curassavicum*, OBL), rabbit foot grass (*Polypogon monspeliensis*, FACW+), burr clover (*Medicago polymorpha*, UPL), spergularia (*Spergularia bocconii*, UPL), castorbean (*Ricinus communis*, FACU), and black mustard (*Brassica nigra*, UPL). This area exhibits evidence of standing water and supports both hydric soils and a predominance of hydrophytic vegetation. The area meeting all three wetland parameters totals approximately 25-by-30 feet.

IV. **DISCUSSION**

A. Corps Jurisdiction

There is no Corps jurisdiction associated with the Bayview Project Site. The erosional drainage features identified along access roads in the upper terrace area do not exhibit the characteristics of an OHWM as defined in Corps regulations; therefore, these features are not subject to Corps jurisdiction. The settling basin and road rut areas, which exhibit characteristics of wetlands, are restricted to the Project Site and are entirely isolated from waters of the United States. These features would not be subject to Corps jurisdiction pursuant to the SWANCC decision.

B. CDFG Jurisdiction

There is no CDFG jurisdiction associated with the Bayview Project Site. The erosional drainage features identified along access roads in the upper terrace area do not exhibit the characteristics of a stream bed or bank and do not support riparian vegetation or other aquatic resources; therefore, these features are not subject to CDFG jurisdiction. The mule fat scrub, settling basin, and road rut areas are entirely isolated and are not associated with a river, stream, or lake; therefore, these features are not subject to CDFG jurisdiction.

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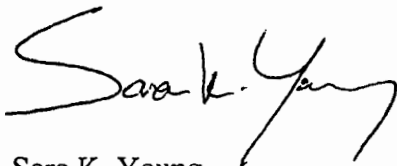
C. CCC Wetlands

No CCC-defined wetlands or vernal pools were identified on either the marine terrace or along the coastal bluff on site. In the lower portion of the site, two areas were identified that exhibit the characteristics of wetlands as defined by the CCC. These include the settling basin and the road rut areas. Both of these features exhibit evidence of standing water or soil saturation, as well as hydric soils and a predominance of hydrophytic vegetation. The sizes of these two areas are approximately 400 and 750 square feet, respectively. The mule fat scrub identified in the lower portion of the site, does not exhibit the characteristics of a wetland as defined by the CCC. This area does not exhibit wetland hydrology, hydric soils, or a predominance of hydrophytic vegetation.

If you have any questions about this letter report, please contact either Tony Bomkamp or Sara Young at (949) 837-0404.

Sincerely,

GLENN LUKOS ASSOCIATES, INC.



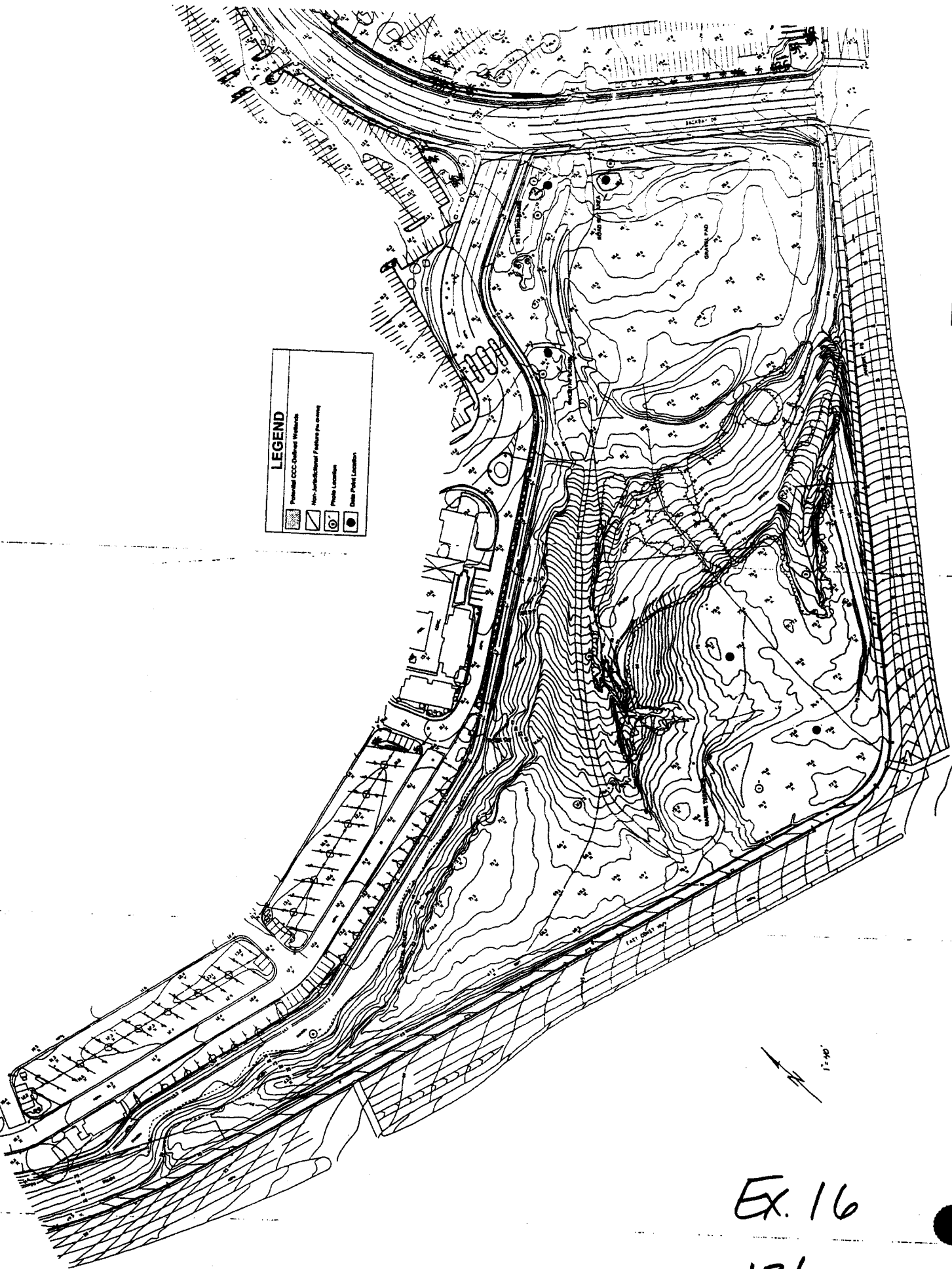
Sara K. Young
Soil Scientist/ Regulatory Specialist



Tony Bomkamp
Senior Biologist/ Regulatory Specialist

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Photograph 5 – Mule fat scrub area showing *Baccharis salicifolia*, California sagebrush (*Artemisia californica*) and hottentot fig (*Carpobrotus edulis*) in the foreground.



Photograph 7 – Settling basin area showing plastic sheeting surrounded by hottentot fig (*Carpobrotus edulis*).



Photograph 6 – Settling basin area showing willow saplings surrounded by non-native vegetation.



Photograph 8 – Road rut area showing moist soil and tire tracks with vegetation occurring on the margins.

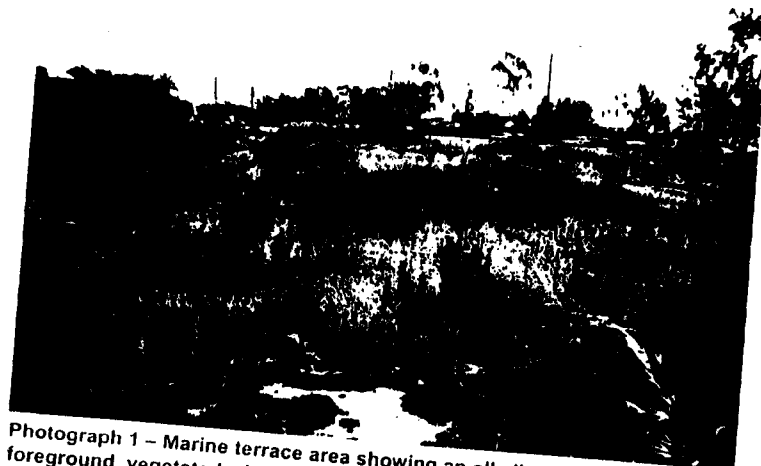


GLENN LUKOS ASSOCIATES
EXHIBIT 4

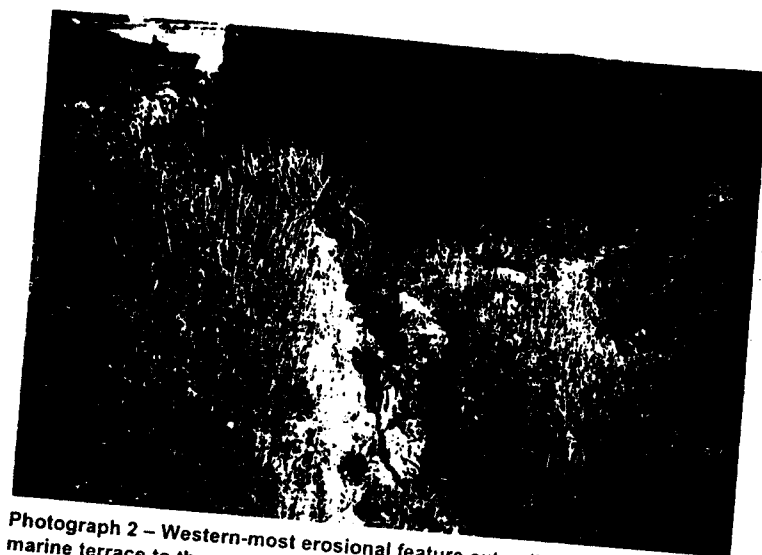
BAYVIEW

Site Photographs

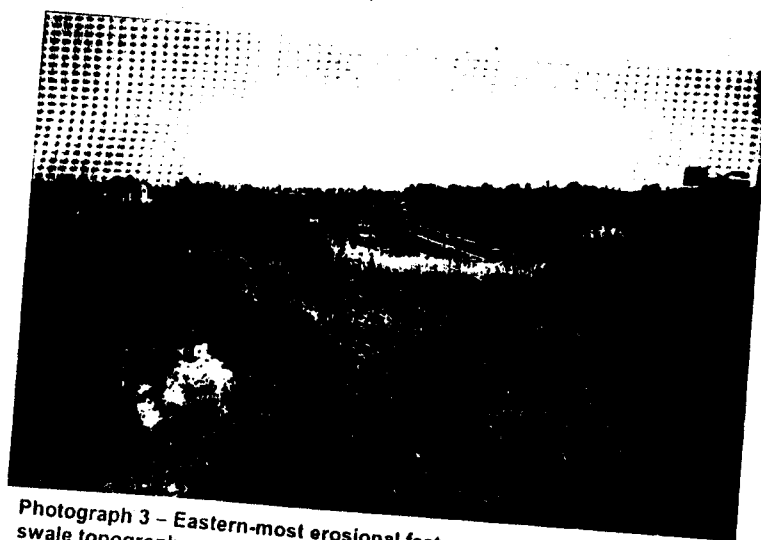
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Photograph 1 – Marine terrace area showing an alkaline pan in the foreground, vegetated with small-flowered iceplant (*Mesembryanthemum nodiflorum*).



Photograph 2 – Western-most erosional feature extending from the marine terrace to the gravel pad below.



Photograph 3 – Eastern-most erosional feature showing the broad swale topography created by excavation.



Photograph 4 – Base of the coastal bluff showing non-native upland grasses and cesterbean.



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EXHIBIT 4

VIEW

photographs

GLENN LUKOS ASSOCIATES

Regulatory Services



RECEIVED
South Coast Region

MAY 6 2003

CALIFORNIA
COASTAL COMMISSION

April 11, 2003 [Revised May 2, 2003]

Dan Trimble
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658-8915

COASTAL COMMISSION

5-03-091

EXHIBIT # 17

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SUBJECT: Jurisdictional Delineation of the Bayview Property, Newport Beach, Orange County, California

Dear Mr. Trimble:

This letter report summarizes our preliminary findings of U.S. Army Corps of Engineers (Corps), California Department of Fish and Game (CDFG), and California Coastal Commission (CCC) jurisdiction for the above-referenced property.¹

The Bayview property in Newport Beach, Orange County [Exhibit 1], comprises approximately 16 acres and contains no blue-line drainages (as depicted on the U.S. Geological Survey (USGS) topographic map Newport Beach, California [dated 1965 and photorevised in 1981]) [Exhibit 2]. On April 4 and 9, regulatory specialists of Glenn Lukos Associates, Inc. (GLA) examined the project site to determine the limits of (1) Corps jurisdiction pursuant to Section 404 of the Clean Water Act, (2) CDFG jurisdiction pursuant to Division 2, Chapter 6, Section 1600 of the Fish and Game Code, and (3) any wetlands as defined by the CCC. Two follow-up visits were conducted on April 17 and 21 following a substantial storm event, to further assess the extent of wetland hydrology at the site. Enclosed is a 40-scale map [Exhibit 3], which depicts any wetland areas as defined by the CCC. Photographs to document the topography, vegetative communities, and general widths of each of the waters are provided as Exhibit 4. Wetland data sheets are attached as Appendix A.

No Corps or CDFG jurisdiction was identified at the project site. Two areas were identified on site, which may potentially be defined as wetland by the CCC. An additional area was identified following the April 15 storm event, which may be defined as wetland by the CCC.

¹ This report presents our best effort at estimating the subject jurisdictional boundaries using the most up-to-date regulations and written policy and guidance from the regulatory agencies. Only the regulatory agencies can make a final determination of jurisdictional boundaries. If a final jurisdictional determination is required, GLA can assist in getting written confirmation of jurisdictional boundaries from the agencies.

I. METHODOLOGY

Prior to beginning the field delineation a 100-scale color aerial photograph, a 40-scale topographic base map of the property, and the previously cited USGS topographic map were examined to determine the locations of potential areas of Corps/ CDFG jurisdiction and CCC-defined wetlands. Suspected jurisdictional areas were field checked for the presence of definable channels and/or wetland vegetation, soils and hydrology. Suspected wetland habitats on the site were evaluated using the methodology set forth in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual² (Wetland Manual). While in the field potential jurisdictional areas were recorded onto a 40-scale topographic base map using visible landmarks. Other data were recorded onto wetland data sheets. Table 1 provides a summary of significant storm events recorded in the vicinity of the Bayview Property during 2003.

Table 1. 2003 Precipitation Data for Project Vicinity

STORM EVENTS	PPT (IN)
February 11-13	2.55
February 25-28	1.70
March 4	0.28
March 16-17	3.78
April 13-15	1.55
May 3-4	0.60
TOTAL THIS YEAR	14.44
AVERAGE PPT	12.18

* Data from Costa Mesa Station

The Soil Conservation Service (SCS)³ has mapped the following soil types as occurring in the general vicinity of the project site:

Balcom Clay Loam, 15 to 30 Percent Slopes

The Balcom series consists of well drained soils on uplands. The parent material is weathered from soft fine grained sandstone, calcareous soft shale, and marl. In the upper profile, these soils

² Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

³ SCS is now known as the National Resource Conservation Service or NRCS.

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are typically dark grayish brown (10YR 4/2) clay loam when moist. Balcom soils are mapped in the northeast corner of the Project Site.

Beaches

Beaches consist of sandy, gravelly, or cobbly coastal shores that are washed and rewashed by tidal and wave action. Beaches are mapped in the northwestern portion of the Project Site, at the base of a coastal bluff.

Myford Sand Loam, Thick Surface, 2 to 9 Percent Slopes

The Myford series consists of moderately well drained soils on marine terraces. The parent material is sandy sediments. In the upper profile, these soils consist of brown (7.5YR 4/2) sandy loam when moist. Myford soils are mapped on a marine terrace along the southern half of the Project Site.

None of these soil units are identified as hydric in the SCS's publication, Hydric Soils of the United States⁴. Beaches are listed as a hydric soil unit in the local hydric soils list for Orange and Western Part of Riverside County California. The Myford sandy loam is listed as containing unnamed hydric inclusions in depressions in the local hydric soils list.

II. JURISDICTION

A. Army Corps of Engineers

Pursuant to Section 404 of the Clean Water Act, the Corps regulates the discharge of dredged and/or fill material into waters of the United States. The term "waters of the United States" is defined in Corps regulations at 33 CFR Part 328.3(a) as:

- (1) *All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;*
- (2) *All interstate waters including interstate wetlands;*

⁴ United States Department of Agriculture, Soil Conservation Service. 1991. Hydric Soils of the United States, 3rd Edition, Miscellaneous Publication Number 1491. (In cooperation with the National Technical Committee for Hydric Soils.)

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- (3) *All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect foreign commerce including any such waters:*
- (i) *Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
 - (ii) *From which fish or shell fish are or could be taken and sold in interstate or foreign commerce; or*
 - (iii) *Which are used or could be used for industrial purpose by industries in interstate commerce...*
- (4) *All impoundments of waters otherwise defined as waters of the United States under the definition;*
- (5) *Tributaries of waters identified in paragraphs (a) (1)-(4) of this section;*
- (6) *The territorial seas;*
- (7) *Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1)-(6) of this section.*

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

- (8) *Waters of the United States do not include prior converted cropland.⁵ Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.*

In the absence of wetlands, the limits of Corps jurisdiction in non-tidal waters, such as intermittent streams, extend to the OHWM which is defined at 33 CFR 328.3(e) as:

...that line on the shore established by the fluctuation of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the

⁵ The term "prior converted cropland" is defined in the Corps' Regulatory Guidance Letter 90-7 (dated September 26, 1990) as "wetlands which were both manipulated (drained or otherwise physically altered to remove excess water from the land) and cropped before 23 December 1985, to the extent that they no longer exhibit important wetland values. Specifically, prior converted cropland is inundated for no more than 14 consecutive days during the growing season...." [Emphasis added.]

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presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Pursuant to Article I, Section 8 of the U.S. Constitution, federal regulatory authority extends only to activities that affect interstate commerce. In the early 1980s the Corps interpreted the interstate commerce requirement in a manner that restricted Corps jurisdiction on isolated (intrastate) waters. On September 12, 1985, EPA asserted that Corps jurisdiction extended to isolated waters that are used or could be used by migratory birds or endangered species, and the definition of "waters of the United States" in Corps regulations was modified as quoted above from 33 CFR 328.3(a).

On January 9, 2001, the Supreme Court of the United States issued a ruling on *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, et al.* (SWANCC). In this case the Court was asked whether use of an isolated, intrastate pond by migratory birds is a sufficient interstate commerce connection to bring the pond into federal jurisdiction of Section 404 of the Clean Water Act.

The written opinion notes that the court's previous support of the Corps' expansion of jurisdiction beyond navigable waters (*United States v. Riverside Bayview Homes, Inc.*) was for a wetland that abutted a navigable water and that the court did not express any opinion on the question of the authority of the Corps to regulate wetlands that are not adjacent to bodies of open water. The current opinion goes on to state:

In order to rule for the respondents here, we would have to hold that the jurisdiction of the Corps extends to ponds that are not adjacent to open water. We conclude that the text of the statute will not allow this.

Therefore, we believe that the court's opinion goes beyond the migratory bird issue and says that no isolated, intrastate water is subject to the provisions of Section 404(a) of the Clean Water Act (regardless of any interstate commerce connection). However, the Corps and EPA have issued a joint memorandum which states that they are interpreting the ruling to address only the migratory bird issue and leaving the other interstate commerce clause nexuses intact..

The term "wetlands" (a subset of "waters of the United States") is defined at 33 CFR 328.3(b) as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support...a prevalence of vegetation typically adapted for life in saturated soil conditions." In 1987 the Corps published a manual to guide its field personnel in determining jurisdictional wetland boundaries. In 1989 the Federal Interagency Committee for Wetland Delineation developed an updated methodology which was adopted by the Corps, U.S.

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Fish and Wildlife Service (USFWS), U.S. Environmental Protection Agency (EPA), and SCS which replaced the 1987 Wetland Delineation Manual.⁶ The use of this 1989 manual was perceived by many to excessively increase the jurisdictional limits of wetlands. After several congressional hearings, EPA, Corps, SCS, and USFWS published proposed 1991 revisions to the 1989 manual.⁷ A few days afterwards, the President signed the Energy and Water Development Appropriations Act of 1992 which, in effect, prohibits the use of the 1989 manual. Because the 1991 proposed revisions to the 1989 manual have not yet been adopted, the only remaining valid methodology is the 1987 Wetland Delineation Manual.⁸ The methodology set forth in the 1987 Wetland Delineation Manual generally requires that, in order to be considered a wetland, the vegetation, soils, and hydrology of an area exhibit at least minimal hydric characteristics. While the manual provides great detail in methodology and allows for varying special conditions, a wetland should normally meet each of the following three criteria:

- more than 50 percent of the dominant plant species at the site must be typical of wetlands (i.e., rated as facultative or wetter in the National List of Plant Species that Occur in Wetlands⁹);
- soils must exhibit physical and/or chemical characteristics indicative of permanent or periodic saturation (e.g., a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions); and
- hydrologic characteristics must indicate that the ground is saturated to within 12 inches of the surface for at least five percent of the growing season during a normal rainfall year¹⁰.

⁶ Federal Interagency Committee for Wetland Delineation. 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and USDA Soil Conservation Service, Washington, DC Cooperative technical publication.

⁷ Government Printing Office. 1991. Federal Register, "1989 Federal Manual for Identifying Jurisdictional Wetlands; Proposed Revisions." August 14, 1991, Vol. 56, No. 157, pp 40446-40480.

⁸ This delineation was performed using, where appropriate, the 1987 Wetland Manual. It is unlikely that any actions will be taken on a revised wetland manual in the near future. If a new manual is adopted, it may be necessary to review our delineation to determine its compliance with any changes set forth.

⁹ Reed, P.B., Jr. 1988. National List of Plant Species that Occur in Wetlands. U.S. Fish and Wildlife Service Biological Report 88(26.10).

¹⁰ For most of low-lying southern California, five percent of the growing season is equivalent to 18 days.

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B. California Department of Fish and Game

Pursuant to Division 2, Chapter 6, Sections 1600-1603 of the California Fish and Game Code, the CDFG regulates all diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake which supports fish or wildlife.

CDFG defines a "stream" (including creeks and rivers) as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." CDFG's definition of "lake" includes "natural lakes or man-made reservoirs."

CDFG jurisdiction within altered or artificial waterways is based upon the value of those waterways to fish and wildlife. CDFG Legal Advisor has prepared the following opinion:

- Natural waterways that have been subsequently modified and which have the potential to contain fish, aquatic insects and riparian vegetation will be treated like natural waterways...
- Artificial waterways that have acquired the physical attributes of natural stream courses and which have been viewed by the community as natural stream courses, should be treated by [CDFG] as natural waterways...
- Artificial waterways without the attributes of natural waterways should generally not be subject to Fish and Game Code provisions...

Thus, CDFG jurisdictional limits closely mirror those of the Corps. Exceptions are CDFG's exclusion of isolated wetlands (those not associated with a river, stream, or lake), the addition of artificial stock ponds and irrigation ditches constructed on uplands, and the addition of riparian habitat supported by a river, stream, or lake regardless of the riparian area's federal wetland status.

C. California Coastal Commission

The California Coastal Act (California Public Resources Code Division 20, Section 30240) restricts land uses within or adjacent to environmentally sensitive habitat areas (ESHAs). The Coastal Act Section 30107.5 defines an ESHA as:

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...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Included within this definition are wetlands, estuaries, streams, riparian habitats, lakes, and portions of open coastal waters, which meet the rare or valuable habitat criteria.

The CCC regulates the diking, filling, or dredging of wetlands within the coastal zone. The Coastal Act Section 30121 defines "wetlands" as land "*which may be covered periodically or permanently with shallow water.*" The 1998 CCC Statewide Interpretive Guidelines state that hydric soils and hydrophytic vegetation "*are useful indicators of wetland conditions, but the presence or absence of hydric soils and/or hydrophytes alone are not necessarily determinative when the Commission identifies wetlands under the Coastal Act. In the past, the Commission has considered all relevant information in making such determinations and relied upon the advice and judgment of experts before reaching its own independent conclusion as to whether a particular area will be considered wetland under the Coastal Act. The Commission intends to continue to follow this policy.*"

The 1998 CCC Statewide Interpretive Guidelines define riparian habitats as areas of riparian vegetation. Riparian vegetation is defined as "*an association of plant species which grows adjacent to freshwater watercourses, including perennial and intermittent streams, lakes, and other bodies of fresh water.*" Riparian habitats may encompass wetland areas, but may also extend beyond those areas.

III. RESULTS

The site consists of an upper marine terrace located in the southern portion, a coastal bluff that runs along the southwestern edge of the site, and a lower gravel pad and parking lot area located in the northern portion of the site.

A. Marine Terrace

The terrace area has been disturbed by past grading activities. This area slopes gently to the north. The topography in this area is generally flat with gentle undulations in places. A few, very small, alkaline pans were identified in this area [Exhibit 4, Photograph 1]. These pans are approximately 3-by-3 feet in area and exhibit some evidence of localized soil saturation including thin surface crusting of soils and algal mats in places. Soils in these areas were found

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to be brown (10YR 4/3) to dark grayish brown (10YR 4/3) when moist and exhibit no redoximorphic features in the surface horizon. Soils consist of compact sandy loam below a thin, friable sandy loam surface. None of these features exhibit the depressional basin topography typical of vernal pools. Vegetation in these areas includes plantain (*Plantago elongata*, FACW*), salt-marsh sand sprurry (*Spergularia marina*, OBL), filaree (*Erodium cicutarium*, UPL), burr clover (*Medicago polymorpha*, UPL), and iceplant (*Mesembryanthemum nodiflorum*, NI). As these features do not appear to support soil saturation for sufficient duration to cause the formation of redoximorphic features and do not support a predominance of hydrophytic vegetation, they would not be defined as wetlands by any agency. These features were further assessed on April 17 and 21 following a storm event, which ended on April 15. No soil saturation or ponding was observed in any of these areas on either date [Exhibit 4, Photograph 9]. Thus, it appears that these features do not exhibit the hydrology typical of vernal pools or other depressional wetlands.

Two erosional drainage features extend from the marine terrace to the pad below. The western-most feature runs parallel to an old access road and appears to have been created by runoff along the road [Exhibit 4, Photograph 2]. This feature is incised approximately 4 feet at the deepest point and contains some evidence of recent flows including sediment deposits on vegetation. The channel banks are sloughing rapidly and the bed of the channel contains hummocky colluvial deposits consistent with the unstable, erosional nature of this feature. The channel ends abruptly at the base of the slope and no evidence of flowing water or sediment deposits was observed beyond the channel.

The eastern-most feature consists of a broad, excavated swale that may have served as an access road at one time [Exhibit 4, Photograph 3]. The swale is vegetated across the bottom with upland plant species including black mustard (*Brassica nigra*), lupine (*Lupinus bicolor*, UPL), California sagebrush (*Artemisia californica*, UPL), filaree (*Erodium cicutarium*, UPL), scarlet pimpernel (*Anagallis arvensis*, FAC), and non-native upland grasses. An erosional channel occurs along the eastern side of the swale in places and is heavily vegetated across the bottom with upland, ruderal species. This feature does not exhibit a defined channel bed and bank or ordinary high water mark (OHWM).

B. Coastal Bluff

The base of the coastal bluff was examined for evidence of wetlands. No wetlands were identified in this area [Exhibit 4, Photograph 4]. No evidence of standing water or hydrophytic vegetation was observed. Vegetation along the base of the bluff consists of Bermuda buttercups (*Oxalis pes-caprae*, UPL), pearly everlasting (*Gnaphalium leuteo-album*, UPL), castorbean (*Ricinus communis*, FACU), barley (*hordeum vulgare*, UPL), pepper grass (*Lepidium latifolium*,

EX. 17
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UPL), rattail fescue (*Vulpia myuros*, UPL), rubber tree (*Ficus elastica*, UPL), and Myoporum (*Myoporum parvifolium*, UPL).

C. Gravel Pad and Margins

The lower portion of the site consists of a level pad. This area serves as a parking lot and a fruit stand is currently located in the eastern corner of the property. Gravel has been placed in high-traffic portions of the pad [Exhibit 4, Photographs 19 and 20]. Soils in this area exhibit a platy structure in the upper part, resulting from periodic grading of the area to facilitate its use as a parking area. Three areas were identified within and adjacent to the gravel pad, which exhibited some degree of ponding following the April 13-15 storm event. A fourth area, consisting of mule fat scrub, did not exhibit ponding following the April 13-15 storm event.

Mule Fat Scrub

A 15-by-30-foot stand of mule fat (*Baccharis salicifolia*, FACW) was identified along the western edge of the gravel pad [Exhibit 4, Photograph 5]. This stand is located on a short side slope, which ends at a paved road below. The mule fat occurs with California sagebrush (*Artemisia californica*, UPL), black mustard (*Brassica nigra*, UPL), yellow sweet clover (*Melilotus indica*, FAC), hottentot fig (*Carpobrotus edulis*, UPL), wild oat (*Avena fatua*, UPL), and riggut brome (*Bromus diandrus*, UPL).

In the upper 16 inches, soils consist of brown (10YR 4/3) sandy loam when moist, and exhibit no redoximorphic features. These soils are well drained. No saturation was observed in the soil profile at the time of our April 4th and 9th site visits and the area exhibits no evidence of standing or flowing surface water. The area was reassessed following the April 13-15 storm event and no ponding was observed [Exhibit 4, Photograph 10].

As this area does not exhibit wetland hydrology and does not exhibit either a predominance of hydrophytic vegetation or hydric soils, it would not be defined as wetlands by any agency.

Settling Basin and Swale

A small depressional area was identified at the northwest corner of the site. This area is partially reinforced with plastic sheeting and sand bags, and appears to be serving as a settling basin for runoff from the surrounding developed areas. A wide swale extends west of the basin and funnels runoff from the adjacent road toward the basin. Four black willow saplings (*Salix gooddingii*, OBL) were identified near the plastic sheeting [Exhibit 4, Photographs 6 and 7]. The area exhibits signs of standing water including sediment deposits and matted vegetation. In

EX. 17
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addition to the willow saplings, vegetation in this area consists of Spanish sunflower (*Pulcaria paludosa*, FAC+ or FACW-)¹¹, burr clover (*Medicago polymorpha*, UPL), yellow sweet clover (*Melilotus indica*, FAC), and Italian rye (*Lolium multiflorum*, UPL). The willows observed in this area are of a single-age stand and appear to be approximately two to three years old. This area supports a predominance of hydrophytic vegetation, although it appears that the single obligate wetland species, the four sapling willows, established in a single year, possibly due to above-normal precipitation levels.

Soils in the willow area consist of a dark grayish brown (2.5Y 4/2) silty clay loam from 0 to 10 inches, overlying a dark grayish brown (2.5Y 4/2) sand from 11 to 16 inches. The upper horizon contains common prominent (7.5YR 4/6) redoximorphic root and pore linings. No redoximorphic features were identified in the lower horizon. The sharp textural discontinuity that occurs at approximately 10 inches has a controlling influence on the hydrology of this area. Water held in the capillary pores of the upper, silty clay loam horizon, will not drain into the lower, coarser horizon until a lens of saturation occurs at the interface of the two horizons. Once the lens of saturation occurs, water pressure in the overlying horizon will approach zero and water will be able to freely drain into the lower horizon. The absence of redoximorphic features in the lower horizon suggests that the stratified nature of this soil is causing sufficient saturation to occur in the upper horizon necessary to cause the formation of redoximorphic features. To date, the year 2003 has received above-normal levels of precipitation in this region. At the time of the April 9 site visit, the most recent rainfall event of significance occurred 23 days previously. Approximately four inches of rain were received in the vicinity of the site during that event. Notably, no saturation was observed within the upper 16 inches of the soil at the time of the April 4 or 9 site visits. The area was reassessed on April 17, following the April 13-15 storm event. At that time, the entire basin and swale area was inundated [Exhibit 4, Photographs 11 and 12]. By the April 21 site visit, the entire area had drained and no ponding was observed [Exhibit 4, Photographs 13 and 14]. This observation is consistent with the coarse-over-fine textural discontinuity in the soil. The area would be expected to drain rapidly following storm events. In this case, drainage occurred in less than seven days.

In the upper part of the swale, soils exhibit the same textural discontinuity found in the basin area, but do not exhibit redoximorphic features in the upper part. This suggests that this area experiences less frequent and/or shorter duration ponding than the basin area. Vegetation in the central part of the swale consists of salt grass (*Distichlis spicata*, FACW), bermuda grass (*Cynodon dactylon*, FAC), salt-marsh sand spurry (*Spergularia marina*, OBL), Italian rye (*Lolium multiflorum*, UPL), and rabbit foot grass (*Polypogon monspeliensis*, FACW+). The

¹¹ This is a non-native invasive species and is not included in Reed; however, this species typically occurs in wetlands and it is the opinion of GLA Botanists that this species should be given FAC+ or FACW- indicator status.

EX. 17
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margins of the swale are vegetated with a predominance of Italian rye (*Lolium multiflorum*, UPL).

The area exhibiting short-term ponding totals approximately 110-by-35 feet (3,850 square feet). The area exhibiting both short-term ponding and a predominance of hydrophytic vegetation totals approximately 15-by-70 feet (1,050 square feet). The area exhibiting hydric soils totals approximately 20-by-20 feet (400 square feet).

Road Rut

A large road rut occurs within the gravel pad/parking lot at the northern edge of the site [Exhibit 4, Photograph 8]. This road rut is located approximately 50 feet from the driveway entrance to the gravel parking area, along an access road to the fruit stand. Evidence of frequent vehicular traffic includes the presence of tire tracts through the ponded area. This area exhibits signs of ponding from the recent rains. Soils exhibit surface cracking due to wetting and drying cycles. Soils along the margins of the ponding area consist of olive brown (2.5Y 4/3) clay loam with common, distinct (10YR 5/6) redoximorphic features. As this area is subject to vehicle traffic, the majority of the feature remains unvegetated; however, vegetation along the margins of the feature includes curley dock (*Rumex crispus*, FACW-), toad rush (*Juncus bufonius*, FACW+), mule fat (*Baccharis salicifolia*, FACW), heliotrope (*Heliotropium curassavicum*, OBL), rabbit foot grass (*Polypogon monspeliensis*, FACW+), burr clover (*Medicago polymorpha*, UPL), salt-marsh sand spurry (*Spergularia marina*, OBL), cocklebur (*Xanthium strumarium*, FAC+), and black mustard (*Brassica nigra*, UPL). Portions of this area exhibit evidence of standing water and a predominance of hydrophytic vegetation. The majority of ponding observed occurs in the unvegetated portion of the area, where vehicle traffic creates both soil compaction and depressional topography. A thick layer of fine-grained sediment has settled in this area and prolongs ponding in the lower portion of this feature. This feature was reassessed following the April 13-15 storm event. On April 17 the area exhibited ponding extending into the upper vegetated margins [Exhibit 4, Photograph 15]. On April 21, ponding had receded back to the unvegetated portion of the feature [Exhibit 4, Photograph 16]. The upper portion of this feature exhibits neither evidence of ponding or hydric soil characteristics.

The portion of this feature that exhibits ponding totals approximately 20-by-35 feet (700 square feet). The area exhibiting a predominance of hydrophytic vegetation totals approximately 35-by-35 feet (1,225 square feet).

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Upper Depressional Area

A depressional area occurs on the upper portion of the gravel pad. This area was observed to be ponded on April 17, following the April 13-15 storm event [Exhibit 4, Photograph 17]. On April 21, the area had drained completely [Exhibit 4, Photograph 18]. Soils in this area consist of very dark grayish brown (10YR 3/2) cobbly sandy loam. No redoximorphic features were observed within the profile. Soils exhibit a platy structure in the upper part and are compact below a depth of five inches. The platy structure and compaction are likely due to periodic grading of the gravel pad and are creating the short-term ponding observed at this location. Vegetation within the depression consists of glass poly (*Lythrum hyssopifolium*, OBL), toad rush (*Juncus bufonius*, FACW+), heliotrope (*Heliotropium curassavicum*, OBL), plantain (*Plantago elongata*, FACW*), and salt-marsh sand spurry (*Spergularia marina*, OBL).

The portion of this feature exhibiting short-term ponding totals approximately 25-by-35 feet (875 square feet). A predominance of hydrophytic vegetation extends beyond the ponded area to a total area of 30-by-45 feet (1,350 square feet).

IV. DISCUSSION

A. Corps Jurisdiction

There is no Corps jurisdiction associated with the Bayview Project Site. The erosional drainage features identified along access roads in the upper terrace area do not exhibit the characteristics of an OHWM as defined in Corps regulations; therefore, these features are not subject to Corps jurisdiction. The settling basin and road rut areas, which exhibit characteristics of wetlands, are restricted to the Project Site and are entirely isolated from waters of the United States. These features would not be subject to Corps jurisdiction pursuant to the SWANCC decision.

B. CDFG Jurisdiction

There is no CDFG jurisdiction associated with the Bayview Project Site. The erosional drainage features identified along access roads in the upper terrace area do not exhibit the characteristics of a stream bed or bank and do not support riparian vegetation or other aquatic resources; therefore, these features are not subject to CDFG jurisdiction. The mule fat scrub, settling basin, and road rut areas are entirely isolated and are not associated with a river, stream, or lake; therefore, these features are not subject to CDFG jurisdiction.

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13/22

C. CCC Wetlands

No CCC-defined wetlands or vernal pools were identified on either the marine terrace or along the coastal bluff on site. In the lower portion of the site, three areas were identified that exhibit characteristics, which could be indicative of the presence of wetlands, as defined by the CCC. These include the settling basin and swale, the road rut area, and the upper depressional area. These features exhibit evidence of standing water or soil saturation, as well as hydric soils and a predominance of hydrophytic vegetation. The mule fat scrub identified in the lower portion of the site, does not exhibit the characteristics of a wetland as defined by the CCC. This area does not exhibit wetland hydrology, hydric soils, or a predominance of hydrophytic vegetation.

Settling Basin and Swale

Ponding noted on April 17 in the settling basin/swale, which originated with the storm event of April 14, was observed to have completely drained by April 21. As this area appears to support only short-duration ponding, it is our finding that the majority of this area does not exhibit wetland hydrology and should not be designated wetland by the CCC. Given the formation of redoximorphic features within the upper soil horizon in a 20-by-20-foot area in the settling basin feature, it is probable that during extended rainfall events, this area may pond or become saturated for a longer duration than was observed during this analysis. Research has shown that Fe pore linings can begin to form within seven days of flooding and will become visible sometime after that.¹² Based on the occurrence of hydric soil features in the 20-by-20-foot area, it can be inferred that this area occasionally experiences longer duration ponding typical of wetlands. Conversely, the lack of redoximorphic features in the remainder of the basin/swale indicates that these areas are only experiencing short-duration ponding, which can occur in uplands as well as wetlands. It is notable that even in this above-average rainfall year, the majority of this area is dominated by an upland, annual plant species, Italian rye (*Lolium multiflorum*, UPL). Based on the available data, it is our finding that the portion of this area that should be designated wetland according to the CCC definition, totals 20-by-20 feet (400 square feet). This is the extent of area that appears to experience ponding for longer than seven days based on the vegetation and soil features observed there.

¹² 1999 - Vepraskas, M. J. 1999. Redoximorphic features for identifying aquic conditions. N. C. Agri. Res. Serv., Raleigh, NC, Tech. Bull. 301.

EX. 17
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Road Rut

Ponding noted in the road rut feature on April 17 was still present on April 21. In fact, this area was still ponded on April 30, the day of our site meeting with the CCC. This area experiences long-duration ponding and exhibits a predominance of hydrophytic vegetation. As such, it may be designated wetland according to the CCC definition. The portion of this feature exhibiting both ponding and a predominance of hydrophytic vegetation totals approximately 25-by-30 feet (875 square feet). However, it should be noted that this feature is located within an active roadway. Ponding in this area is due to vehicle traffic that has created rutting and depressional topography and has compacted the soil. Furthermore, this area exhibits disturbance related to the area's function as an access road to the fruit stand.

In considering the wetland status of this area, it is noteworthy that the soils in the road rut area exhibit a chroma of 3. A high chroma soil matrix (2.5Y 4/3) with mottles (10YR 5/6) does not meet the definition of hydric soils because a chroma of 2 or less is required when redoxymorphic features are present (chroma 1 is required in the absence of mottles). There are two important conclusions that can be made based on this observation, both of which call into question whether the area should be considered a wetland. First, the high chroma matrix could mean that the feature has not been subject to regular inundation until very recently. In other words, there has not been sufficient time for "depletion" of the soil matrix to occur, resulting in a low chroma matrix that is indicative of hydric soils. Recent creation of this feature by vehicular traffic would be consistent with this observation. The second possibility is that this feature ponds water for such a short time and so infrequently that depletion of the matrix is just not occurring.

Upper Depressional Area

Ponding noted in the upper depressional area on April 17 (originated on April 14) was observed to have completely drained by April 21. As this area appears to support only short-duration ponding, it is our finding that this area does not exhibit wetland hydrology and should not be designated wetland by the CCC. Soils in this area support this finding, as no evidence of redoximorphic features were observed. This area does exhibit a predominance of hydrophytic vegetation; however, the species observed in this feature, including grass poly (*Lythrum hyssopifolium*, FACW), toad rush (*Juncus bufonius*, FACW+), heliotrope (*Heliotropium curassavicum*, OBL), alkali plantain (*Plantago elongata*, FACW*), and salt-marsh sand spurry (*Spergularia marina*, OBL), are all highly opportunistic annual species that are able to colonize areas that only experience ponding during the wettest years, and in many cases, they will colonize upland areas when rainfall patterns provide sufficient water to allow them to germinate and persist. During typical or average rainfall years, these species remain dormant (as seed) in such areas, only to reappear during above-average rainfall events. As such, the presence of these

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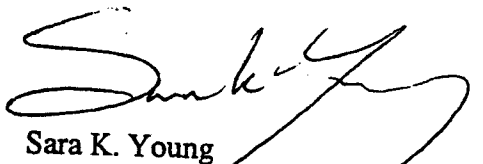
Dan Trimble
City of Newport Beach
April 11, 2003 [Revised May 2, 2003]
Page 16

species during what is not only an above-average rainfall year, but within a rainfall year where approximately three-fourths of the rainfall came between mid-February and the end of April is not surprising. The fact that this area does not appear to hold water for seven days, during the wettest six weeks of an above-average rainfall year, is compelling evidence that the area does not meet the minimal requirements of a wetland as defined by the CCC.

If you have any questions about this letter report, please contact either Tony Bomkamp or Sara Young at (949) 837-0404.

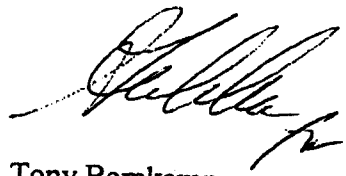
Sincerely,

GLENN LUKOS ASSOCIATES, INC.



Sara K. Young
Soil Scientist/ Regulatory Specialist

s:0560-01a.rpt

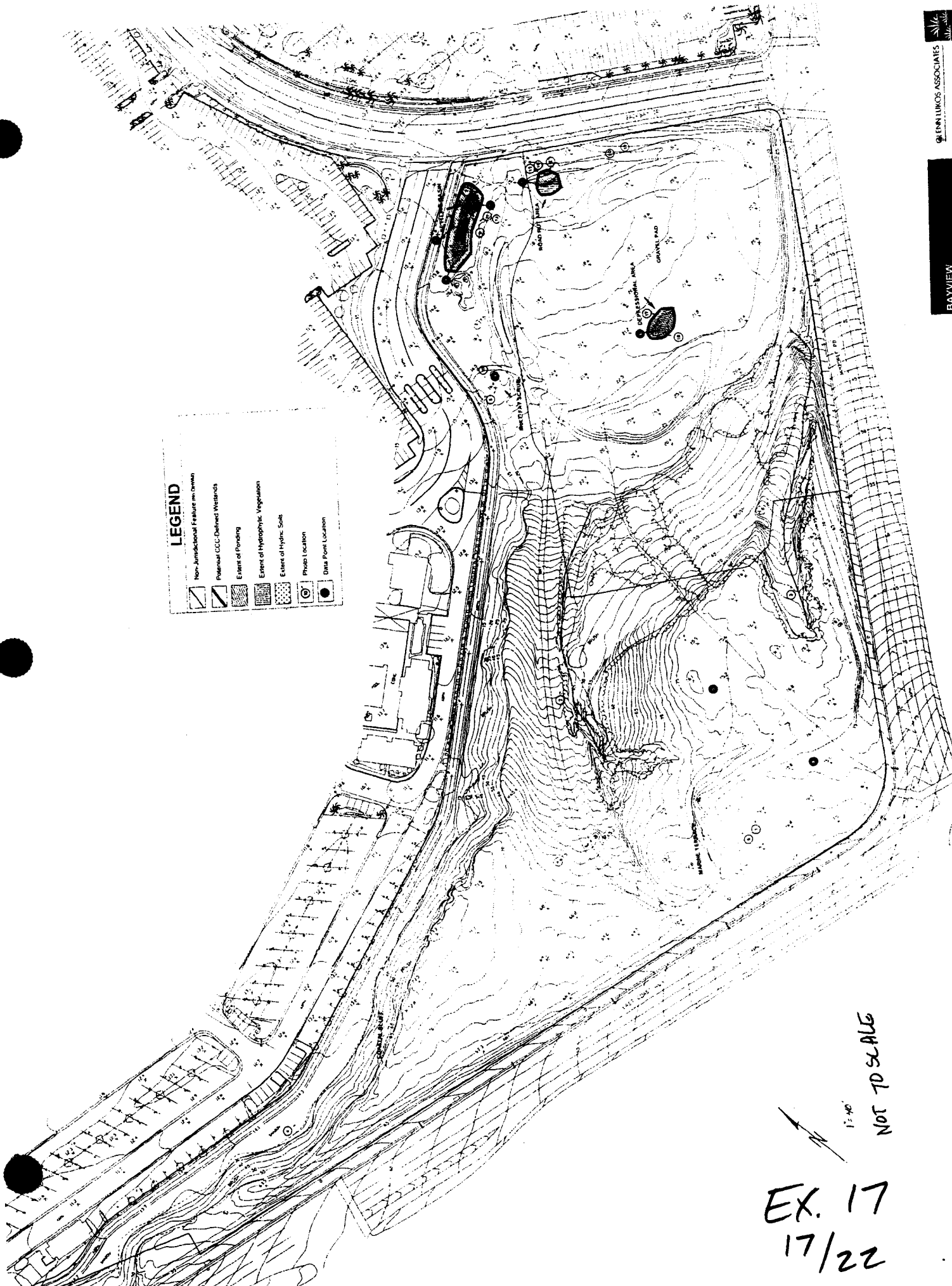


Tony Bomkamp
Senior Biologist/ Regulatory Specialist

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LEGEND

	Non-Jurisdictional Feature on Owners
	Planned CCC-Defined Wetlands
	Extent of Ponding
	Extent of Hydrophytic Vegetation
	Extent of Hyacinth Scum
	Photo Location
	State Point Location



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1" = 40'
NOT TO SCALE

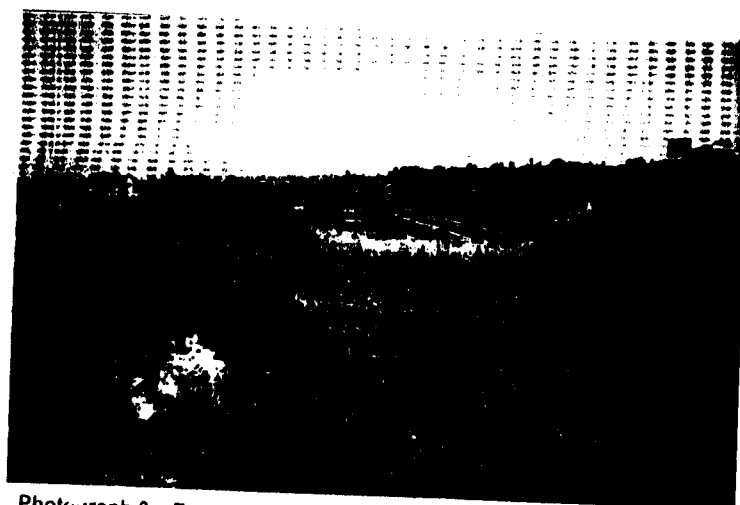
EX. 17
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Photograph 1 – Marine terrace area showing an alkaline pan in the foreground, vegetated with small-flowered iceplant (*Mesembryanthemum nodiflorum*).



Photograph 2 – Western-most erosional feature extending from the marine terrace to the gravel pad below.



Photograph 3 – Eastern-most erosional feature showing the broad swale topography created by excavation.



Photograph 4 – Base of the coastal bluff showing non-native upland grasses and castorbean.



GLENN LUKOS ASSOCIATES
EXHIBIT 4

BAYVIEW

Site Photographs

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Photograph 5 – Mule fat scrub area showing *Baccharis salicifolia*, California sagebrush (*Artemisia californica*) and hottentot fig (*Carpobrotus edulis*) in the foreground.



Photograph 7 – Settling basin area showing plastic sheeting surrounded by hottentot fig (*Carpobrotus edulis*).



Photograph 6 – Settling basin area showing willow saplings surrounded by non-native vegetation.



Photograph 8 – Road rut area showing moist soil and tire tracks with vegetation occurring on the margins.



GLENN LUKOS ASSOCIATES
EXHIBIT 4

BAYVIEW

Site Photographs

EX. 17
20/22



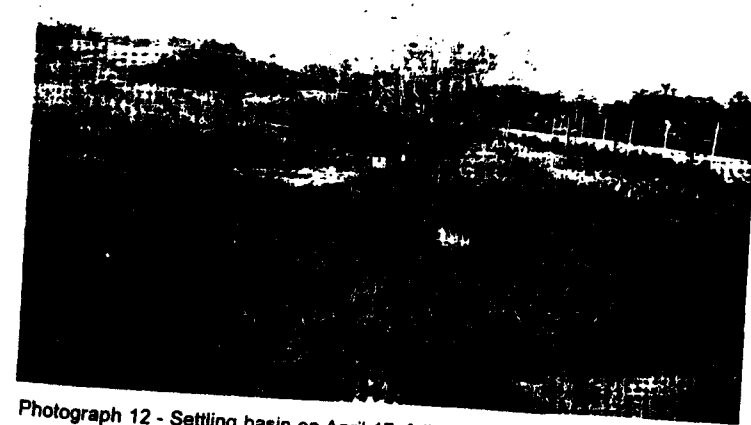
Photograph 9 - Alkaline pan on April 17, following April 13-15 storm event.



Photograph 10 - Mule fat scrub area on April 17, following April 13-15 storm event.



Photograph 11 - Settling basin on April 17, following April 13-15 storm event.



Photograph 12 - Settling basin on April 17, following April 13-15 storm event.



GLENN LUKOS ASSOCIATES
EXHIBIT 4

BAYVIEW
Site Photographs

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Photograph 13 - Settling basin on April 21, following April 13-15 storm event.



Photograph 14 - Settling basin on April 21, following April 13-15 storm event.



GLENN LUKOS ASSOCIATES
EXHIBIT 4



Photograph 15 - Road rut on April 17, following April 13-15 storm event.



Photograph 16 - Road rut on April 21, following April 13-15 storm event.

BAYVIEW

Site Photographs

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GLENN LUKOS ASSOCIATES
EXHIBIT 4

BAYVIEW
Site Photographs



Photograph 17 - Depressional area on April 17, following April 13-15 storm event.



Photograph 18 - Depressional area on April 21, following April 13-15 storm event.



Photograph 19 - Lower project site.



Photograph 20 - Lower project site.

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 05600001BAYV
TO: John Dixon
FROM: Tony Bomkamp
DATE: May 11, 2003
SUBJECT: Bayview Wetland Delineation

COASTAL COMMISSION

5-03-091

EXHIBIT # 18

PAGE 1 OF 5

On Friday afternoon, May 9, 2003, I received a phone call from Mr. Dan Trimble of the City of Newport Beach. During the conversation Mr. Trimble noted, based on a phone conversation between Mr. Trimble and Theresa Henry that you had questions about differences between the delineation report dated April 11 and the revised report dated May 2. Please understand that I am providing this memorandum based on these phone conversations; however, even if your concerns were not relayed correctly to me, I believe that this additional information should be helpful. In order to address these issues, I am providing, among other things, the thought processes that Sara Young and I have worked through in evaluating the potential wetland features on this site.

First, it is important to note that the process of wetland delineation is oftentimes more art than science, given that science is built on repeated observation that ultimately allows the investigator to reach a level of certainty or predictability. Wetland delineation, in many cases, is conducted without the luxury of repeated observations for a variety of reasons – time and budget constraints are the most common. Rather wetland delineations are typically “snapshots” from which conclusions must be drawn (usually for regulatory purposes), even where there is a paucity of data.

Lack of repeated observations is only one potential problem. A second problem is the lack of really good tools to work with. For example, the National List of Plant Species that Occur in Wetlands,¹ while useful and necessary (it's the best that we have) is not always accurate and in some cases is woefully inaccurate (e.g., I believe that you share my opinion that *Heliotropium curassivicum* should not be afforded the status of “Obligate”). The list makes no distinctions between perennial species and annual species; nor does it offer any measure of how often specific species are associated with hydric soils (which should be the real test). The list includes many phreatophytes as Obligate or Facultative Wet, even though their roots are often 40 feet below the ground surface, well below the upper 12 or 16 inches where wetland practitioners are focused.

¹ Reed, P.B., Jr. 1988. National List of Plant Species that Occur in Wetlands. U.S. Fish and Wildlife Service Biological Report 88(26.10).

MEMORANDUM

May 12, 2003

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Since the initial visits to the Bayview site by Sara Young on April 4 and 9, 2003, we have had some time to interact and attempt to make some sense of the difficult features (i.e. the Basin, Road Rut and Upper (parking lot) Pond. An important point to consider is that Sara was asked to take the lead on this delineation because of her expertise in the soils and hydrology of perched wetlands (for her Master's Thesis, Sara investigated wetlands with shallow perched water in the Palouse of eastern Washington). At the time of her initial visits, all three features in question lacked ponding and saturation. Following these visits, Sara prepared (and I reviewed the April 11, 2003 letter report). An important event occurred on April 14. A storm system moved in on the 13th with essentially all of the measurable rainfall occurring mid-day and early evening of the 14th, totaling between 1.5 and 2 inches around Orange County. During a site visit on April 17, Sara observed extensive ponding in all three features. On Monday the 21st, Sara and I visited the site together and both the basin and upper pond, which exhibited extensive ponding only four days prior, were no longer ponded. Soils pits in the basin and upper pond did not find saturation in any portion of the soil profile.

The inability of these features to hold water for seven days is very important because by any accepted convention, a minimum of seven days is required to meet the minimum criteria for wetland hydrology and/or hydric soils. This is also consistent with the lack of redoximorphic features in most of the basin (except for a small area mapped around the willows) and in the entirety of the upper pond. This lack of any long-duration ponding and the lack of redox in the soil within these areas led to questions as to why the road rut was ponding for several days longer than the basin and the upper pond and exhibiting redox. We believe that the best explanation is the combination of compaction/ rutting and fine-grained sediment accumulation in the road rut. The upper pond, even though it is located within the parking lot (as evidenced by the coarse gravel that occupies portions of this feature) and exhibits the platy soil structure typical of compacted areas, is in a low traffic area and has been subject to less of the compaction or rutting from regular automobile traffic exhibited by the road rut.² Also, the location of the road rut at the lower end of the site has caused the accumulation of fine-grained sediments in the feature, which act to hold water for longer duration in this area. Similarly, the basin is outside any traffic area and exhibits no compaction; hence, only a small portion of this feature appears to hold water for longer than seven days (at least on occasion).

The question I was asked to address was whether we have changed our determination regarding the wetland status of the road rut. A careful reading of the two reports shows that our basic description of the hydrology, redoximorphic features, and vegetation has not changed. These physical features are present. What has changed is our understanding of the site since the initial visits and the visit on April 21, when it became apparent that much of the basin and the entirety

² Sara noted in the report the presence of some compaction; probably associated with dozer work or other similar activities; however, based on our observations, the level of compaction in the upper pond is not sufficient to affect the rapidity with which the area drains.

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MEMORANDUM

May 12, 2003

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of the upper pond lacked wetland hydrology and the corresponding hydric features in the soil, which confirmed our hydrological observations. As we further described, in the discussion section at the end of the report, the lack of depletion of the soil matrix (i.e. Chroma of 3) is likely indicative of the recent formation of this feature. The observed conditions have not formed over time and this feature is nothing more than what we described – a road rut. This could be contrasted with a common set of occurrences observed in areas such as San Diego, where networks of roads crisscross historic vernal pool fields with some roads having been constructed (or trail-blazed) through vernal pools. This is easily confirmed by analyzing historic aerial photographs. In such cases, the “road ruts” are actually degraded vernal pool basins, and the soils and biota formed in the features in many instances continue to persist. This is clearly not the case here, because without the compaction and the rutting that created depressions, it is very likely that area would not pond for sufficient duration to meet the minimum requirements of a wetland. Our description of the road rut has not changed; however, our interpretation of the additional information (i.e., observations of ponding durations after the rainfall on April 14) has caused us to question whether it is appropriate to make a determination of “wetland” for this feature.

The last issue to be discussed is the vegetation that we identified within the features. I would like to address two points relative to the vegetation detected on the site. The first is the use of vegetation as an indicator in determining the presence of a wetland in the absence of wetland hydrology or hydric soils. The second is related, informing the first, and relates to the reliability or accuracy of the indicator status for some of the plants found on the site.

The 1998 CCC Statewide Interpretive Guidelines state that hydric soils and hydrophytic vegetation “are useful indicators of wetland conditions, but the presence or absence of hydric soils and/or hydrophytes alone are not necessarily determinative when the Commission identifies wetlands under the Coastal Act. In the past, the Commission has considered all relevant information in making such determinations and relied upon the advice and judgment of experts before reaching its own independent conclusion as to whether a particular area will be considered wetland under the Coastal Act. The Commission intends to continue to follow this policy.”

This language is pretty clear. All widely accepted wetland definitions, of which I am aware, start with hydrology. Wetland hydrology must be present, first and foremost, for any area to be considered a wetland. For some regulatory programs (e.g., Section 404 of the Clean Water Act) it is generally necessary to have all three parameters, hydrology, hydric soils, and a predominance of hydrophytes present for an area to be considered a wetland. When a “Single Parameter” test is used, such as under the Coastal Act, the presence of hydric soils or a predominance of hydrophytic vegetation is used as a surrogate for, or indicator of, the presence of wetland hydrology. The presence of either wetland soils or plants “confirms” the existence of a wetland

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MEMORANDUM

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because it is assumed that the hydrology is present. The presence of indicator species, in the documented absence of wetland hydrology would not be sufficient to make a case that wetlands are present. The language in the Interpretive Guidelines recognizes this explicitly.

Annual plants, such as the opportunistic species detected within the road rut and upper basin can be particularly problematic when used to make such "Single Parameter" determination. First, all of the plants noted are able to germinate and persist in upland areas during wet years. I commonly observe species such as *Juncus bufonius*, *Spergularia marina*, *Heliotropium currasivicum*, and *Lythrum hyssopifolium* in upland areas during average or above-average rainfall years. In many instances, during wet years, these species "leak" out of the wetland area into the adjacent nearby uplands. As an example, on Saturday May 10, 2003, I was conducting rare plant surveys on a large tract of land in southern Orange County. While traversing a heavily traveled dirt ranch road I noted thousands of individuals of *Juncus bufonius* growing in the road that was traversing barley fields. The road was heavily compacted and as a result was poorly drained, providing sufficient conditions for lots of toad rush during this wetter than normal year. *Spergularia marina* is also common on compacted roads in vernal pool complexes as well as other upland areas during years of adequate rainfall. This year it has been common in farm fields in both Riverside and Orange counties, especially where there is irrigation. I find heliotrope growing in upland areas more often than I find it in wetlands. In my estimation, *Spergularia* and *Heliotropium* deserve an indicator status of FAC or FACW at the best, meaning that by definition, they occur outside of wetlands between 33- and 50-percent of the time. The "wisdom" in requiring three parameters is that potential errors in judgment are substantially lessened.

It is also important to keep in mind that while many of these species have adaptations that allow them to survive long-term ponding (e.g., *Baccharis salicifolia* and *Rumex crispus*, are capable of producing extensive adventitious root systems when the plants are under water), they can also survive quite well in uplands. I could cite numerous examples of mule fat and curly dock growing with only upland species where the soils were clayey or there was just enough extra water from sheet flow to support them, but where wetland hydrology was not present. The point here is that presence of opportunistic annual plants, which are highly adaptable and able to tolerate a wide range of conditions, is not sufficient to prove the existence of a wetland when direct observations indicate that hydrology and hydric soils are missing (specifically in the case of portions of the basin and the upper pond).

In summary, it is our position that those portions of the basin that lack hydric characters in the soil and also are not able to hold water for more than seven days should not be considered a wetland. The area around the willows with redox in the soil meets the minimum test for wetlands. The upper basin lacks wetland hydrology because it is not capable of ponding water for sufficient periods, a fact that is confirmed by a complete absence of redox in the soil. The presence of opportunistic annual species is not sufficient in our opinion, given the range of conditions that all of these species can tolerate. Finally, while the road rut exhibits hydrology,

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hydric characteristics in the soil, and the same suite of opportunistic, highly adaptable annuals, it is not appropriate to designate it as a wetland, since it is only because of regular vehicular traffic, in an established parking lot maintained to serve an operating produce stand, that created the depression and compacted the soil.

I hope these comments are helpful. I know that you are working hard to synthesize the data and make a determination. If I can be of any additional help please do not hesitate to contact me.

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CALIFORNIA COASTAL COMMISSION

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MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist / Wetland Coordinator

TO: Anne Blemker

SUBJECT: Lower Bayview Project (5-03-091)

DATE: May 14, 2003

COASTAL COMMISSION

5-03-091

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Documents reviewed:

10/29/01. Keane Biological Consulting. Biological resources report, Bayview senior affordable housing and park project, City of Newport Beach, California.

03/10/03. M. Hanscom and R. van de Hoek (Wetlands Action Network). Letter to Anne Blemker (CCC) re: "Bayview Landing, Newport Beach; applicant: City of Newport Beach."

03/17/03. D. Bramlet (Consulting Biologist). Letter to Kathy Keane (Keane Biological Consulting) re: "Bayview Landing, Wetland and Vernal Pool Evaluation."

03/21/03. K. Keane (Keane Biological Consulting). Letter to Dan Trimble (City of Newport Beach) re: "Letter to the California Coastal Commission regarding the Bayview Landing site."

04/04/03. R. Hamilton (Consulting Biologist). Letter to Jan Vandersloot re: "Biological review of Bayview Landing site."

04/06/03. R. van de Hoek (Biologist/Geographer). Bayview Landing in Newport Beach: Wetlands delineation and field biological evaluation. A report submitted to the California Coastal Commission.

04/11/03. S.K. Young and T. Bomkamp (Glenn Lukos Associates). Letter to Dan Trimble (City of Newport Beach) re: "Jurisdictional delineation of the Bayview property, Newport Beach, Orange County, California."

05/02/03. S.K. Young and T. Bomkamp (Glenn Lukos Associates). Letter to Dan Trimble (City of Newport Beach) re: "Jurisdictional delineation of the Bayview property, Newport Beach, Orange County, California". Revised version of the 04/11/03 letter report.

05/11/03. T. Bomkamp. Letter to John Dixon (CCC) re: "Bayview Wetland Delineation."

The Coastal Act defines wetlands as "...lands within the coastal zone which may be covered periodically or permanently with shallow water...." The definition adopted by the Commission and codified in Section 13577(b)(1) of Title 14 of the California Code of Regulations defines a wetland as, "...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes...." In discussing boundary determinations, the same section of the Regulations specifies that wetlands have a "predominance" of hydrophytic cover or a "predominance" of hydric soils. Although the definition is based on inundation or shallow saturation long enough for anaerobic reducing conditions to develop within the root zone¹, in practice hydrology is the most difficult wetland indicator to demonstrate. In California, a predominance of hydrophytes or a predominance of hydric soils is taken as evidence that the land was "wet enough long enough" to develop wetland characteristics.

Three areas at the Bayview site were characterized as having a preponderance of hydrophytic vegetation by Glenn Lukos Associates (GLA), the City's wetland consultants. These were designated as 1) Settling Basin and Swale, 2) Road Rut, and 3) Upper Depressional Area. Portions of the "Settling Basin" and "Road Rut" exhibited all three wetland parameters: hydrophytic vegetation, hydric soils, and wetland hydrology.

"Settling Basin and Swale"

GLA recommended that, "...the portion of this area that should be designated wetland according to the CCC definition totals 20-by-20 feet (400 square feet). This is the extent of the area that appears to experience ponding for longer than seven days based on the vegetation and soil features observed there." A somewhat larger, contiguous area exhibited short term ponding during the period of observations and had a predominance of hydrophytic vegetation. It is my opinion that the latter 1,050 square-foot-area meets the definition of "wetland" under the Coastal Act and California Code of Regulations.

"Road Rut"

In their April report, GLA concluded that this area exhibits "the characteristics of wetlands as defined by the CCC." No conclusion was drawn in the May revised report,

¹ As demonstrated by the definitions of hydric soils and hydrophytes: "A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part." National technical committee for hydric soils, October 18, 1994; A hydrophyte is, "Any macrophyte that grows in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content...." Environmental Laboratory. 1987. Corps of Engineers Wetland Delineation Manual. U.S. Army Corps of Engineers, Washington, D.C.

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but it was emphasized that the ponded area was probably caused by "vehicle traffic that has created rutting and depressional topography and has compacted the soil." In his May 11 letter, Tony Bomkamp suggested that, "...while the road rut exhibits hydrology, hydric characteristics in the soil, and ... opportunistic, highly adaptable annuals, it is not appropriate to designate it as a wetland, since it is only because of regular vehicular traffic, in an established parking lot maintained to serve an operating produce stand, that created the depression and compacted the soil." I agree that this depressional area has probably been caused by relatively recent human activities and has little resource value. Nevertheless, GLA documented the presence of all three wetland characteristics and thereby demonstrated that the area currently meets the definition of "wetland" under the Coastal Act and California Code of Regulations, regardless of genesis or functional value.

A larger area ponds for long (7-30 days), and perhaps very long (>30 days), duration than is characterized by a predominance of hydrophytes. However, this is an atypical situation, since the continuing vehicular disturbance no doubt prevents the establishment of more vegetation. It is, therefore, my opinion that the area delineated as "wetland" should include the area that was ponded for long duration during the period of observations in 2003 and any adjacent areas that showed a preponderance of hydrophytic vegetation.

"Upper Depressional Area"

GLA demonstrated that this area has a preponderance of hydrophytes. Indeed, all of the five dominant species present are designated FACW or OBL². However, GLA concluded that, "[t]he fact that this area does not appear to hold water for seven days, during the wettest six weeks of an above-average rainfall year, is compelling evidence that the area does not meet the minimal requirements of a wetland as defined by the CCC."

The Coastal Commission has found that OBL, FACW, and FAC species in the U.S. Fish and Wildlife Service's "National list of plant species that occur in wetlands: California (Region 0)" are presumptively "hydrophytic" and, in general, a preponderance of those species is presumptive evidence of a wetland. The strength of this test is greater where most dominant wetland indicator species are classed as FACW or OBL³. In recognition

² "Obligate Wetland (OBL) - > 99% of occurrences in wetlands under natural conditions; Facultative Wetland (FACW) - 67-99% of occurrences in wetlands. One of the species present (*Heliotropium curassavicum*, OBL) is probably misclassified. In coastal California it appears to be Facultative (FAC) - 34-66% of occurrences in wetlands. It is Tony Bomkamp's opinion (May 12 letter), based on his field experience, that *Spergularia marina* (OBL) also would be more appropriately categorized as FAC or FACW.

³ "While both OBL and FACW species are universally recognized as useful indicators of wetlands, FAC and FACU are not reliable wetland indicators and their use in wetland delineation has been contentious (see 56 Federal Register 40446-40480, August 14, 1991). Since they occur in wetlands with some frequency and may even dominate certain types, they have the potential to be hydrophytes...." Tiner,

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of the fact that a proportion of wetland indicator plants occur in uplands, the wetland presumption may be falsified where there is strong, positive evidence of upland conditions (as opposed to a lack of evidence, for example, of hydrology).

In the present case, the only evidence presented that the "upper depressional area" is upland in character is that it ponded for at least 3 days but less than 7 days after 1.55 inches of rain following a 28-day period of no rainfall. It was also asserted that all the dominant species present are, "...highly opportunistic annual species that are able to colonize areas that only experience ponding during the wettest years, and in many cases, they will colonize upland areas when rainfall patterns provide sufficient water to allow them to germinate and persist." These observations and opinions do not, I believe, constitute strong, positive evidence of upland conditions. In addition, the fact that none of the dominant vegetation was characteristic of uplands substantially weakens the argument that each of the several wetland indicator plants occurred in the same small area by happenstance. Based on the available evidence, it is my opinion that the area that exhibited a preponderance of hydrophytic vegetation meets the definition of "wetland" under the Coastal Act and California Code of Regulations.

Other Areas

Roy van de Hoek identified several other areas that he felt were potential wetlands. These included a few small alkaline pans on the marine terrace and a patch of mulefat in the lower area. None of these areas exhibited a preponderance of hydrophytes, hydric soils, or evidence of wetland hydrology. Therefore, I conclude that these areas do not meet the definition of "wetland" under the Coastal Act and California Code of Regulations.

Buffers

The three wetland areas do not appear to be natural features. They were probably created by human activities and have not developed the important resource values generally associated with natural wetlands. No sensitive species appear to be reliant upon them. In view of their relatively degraded nature, I think that 25-foot wide buffers would be amply protective if the buffers were planted with native vegetation appropriate to the area and invasive exotics removed from the wetlands and buffers.

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