

CALIFORNIA COASTAL COMMISSION

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

Filed: 9/29/2006
49th Day: 11/17/2006
180th Day: N/A
Staff: Charles Posner - LB
Staff Report: 10/27/2006
Hearing Date: November 16, 2006
Commission Action:



Th14a

STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Long Beach

LOCAL DECISION: Approval with Conditions – Case No. 9104-23

APPEAL NUMBER: A-5-LOB-06-375

APPLICANT: Bixby Ranch Company

APPELLANTS: Coastal Commissioners Sara Wan & Dr. William A. Burke

PROJECT LOCATION: 6701 Pacific Coast Highway, City of Long Beach, Los Angeles Co.

PROJECT DESCRIPTION: Appeal of City of Long Beach approval (with conditions) of Local Coastal Development Permit Application No. 9104-23, approved for a six-lot subdivision (Parcel Map No. 19212) and realignment of Studebaker Road (and pursuant to Special Condition 25, the extension of Shopkeeper Road).

Project Area	13.2 acres (six lots)
Zoning	Planned Dev. District PD-1 (SEADIP)
Plan Designation	Planned Development - Commercial

SUMMARY OF STAFF RECOMMENDATION

On September 18, 2006, the Commission's South Coast District Office received from the City of Long Beach a Notice of Final Local Action for Local Coastal Development Permit No. 9104-23 (approved by the City Planning Commission on June 20, 1991) indicating that the City's action is appealable to the Commission. The local coastal development permit is appealable to the Commission because the City-approved subdivision and development is located within one hundred feet of wetlands and an estuary [Coastal Act Section 30603(a)(2)]. The construction of the extension of Shopkeeper Road, as required by Special Condition 25 of the local coastal development permit, would adversely affect the wetlands on the project site. According to the applicant's 1998 permit application to the Army Corps of Engineers, the construction of the proposed Shopkeeper Road extension would include the filling of 0.58 acres of wetlands on the project site. The local coastal development permit does not acknowledge that the approved development includes the filling of any wetlands, nor does it include any measures to avoid or mitigate adverse impacts to the wetland.

The staff recommends that the Commission determine that the appeal raises **a substantial issue** in regards to the locally approved development's conformity with the City of Long Beach Certified Local Coastal Program (LCP) as the City-approved project would result in unmitigated adverse impacts to wetlands. **The motion to find Substantial Issue is on Page Six.** If the Commission adopts the staff recommendation, a de novo hearing will be scheduled for a future Commission meeting.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Long Beach Certified Local Coastal Program (LCP), 7/22/80.
2. City of Long Beach Planned Development Ordinance PD-1 (SEADIP).
3. Coastal Development Permit P-78-4440 (Bixby Ranch Co.).
4. Coastal Development Permit P-79-4620 (Bixby Ranch Co.).
5. City of Long Beach Local Coastal Development Permit No. 9104-23 (Bixby Ranch Co.).

I. APPELLANTS' CONTENTIONS

Coastal Commissioners Sara Wan and Dr. William A. Burke have appealed the City's approval of Local Coastal Development Permit No. 9104-23. Local Coastal Development Permit No. 9104-23, approved by the City of Long Beach Planning Commission on June 20, 1991, authorizes a six-lot subdivision (Parcel Map No. 19212) and realignment of Studebaker Road in southeast Long Beach (See Exhibits). Special Condition 25 of the local coastal development permit calls for the construction of an extension of Shopkeeper Road. The extension of Shopkeeper Road, as required by Special Condition 25 of the local coastal development permit, would adversely affect wetlands. According to the applicant's 1998 permit application to the Army Corps of Engineers, the construction of the proposed Shopkeeper Road extension would include the filling of 0.58 acres of wetlands on the project site (CESPL-CO-R-98-00636-PMG).

The appellants contend that the City-approved development would adversely affect wetlands. Specifically, the grounds for the appeal are:

Special Condition 25 of the local coastal development permit requires the extension of Shopkeeper Road, even though there exists a marsh/wetland within the proposed road alignment. The local coastal development permit does not acknowledge the existence of any wetland or habitat in the project area, nor does it analyze or mitigate the proposed project's impacts to wetlands and sensitive habitat areas.

The local coastal development permit does not adequately address the project's consistency with the policies and standards of the certified City of Long Beach LCP, and the City-approved development does not conform to some of those standards, as follows:

- On Page III-S-4 (SEADIP – South East Area Development and Improvement Plan), the LCP states: “Natural wetlands remain in some parts, and these must be preserved for environmental reasons.” The City-approved development does not conform with this policy of the certified LCP, as the extension of Shopkeeper Road would destroy a portion of these natural wetlands.
- On Page III-R73 (6.4 Augmenting Implementations), the LCP states: “The CAC (Citizens' Advisory Committee) policy statement in 1978 was made with the presumption that the provisions of SEADIP plan for the Los Cerritos Wetlands are ecologically valid. Under this presumption of restoration and enlargement of the wetlands by the landowner/developer with the guidance and approval of the State

Department of Fish and Game the CAC policy statement addresses many of the important design and operational details during and after SEADIP-type development. Prior to any such enlargement, reconfiguration and restoration of the Los Cerritos Wetlands, two research-and-analysis studies will be conducted. In general, the first will consist of biological field surveys, water quality measurements, and the like providing a data base for defining ecological boundaries and buffers and for placing so-defined wetlands and buffers in their proper category and priority level of environmental worth. This study should begin as soon as possible. The second study should be more appropriately timed to provide information for decisions and permits regarding imminent intentions and proposals of the landowner to develop any part of the wetlands and buffers such as described for Areas 33 and 11 in SEADIP, or such as might be associated with any type of other development (e.g., power plants or oil extraction) in the vicinity of the wetlands and buffers prior to SEADIP-type residential development. This second study will address the ecological feasibility and processes of enlargement, reconfiguration and restoration of the wetlands and buffers, including possible impacts on water quality of Alamitos Bay and the ecosystems of the bay and the nearby ocean and on wildlife bird populations.” There is no evidence that either of these studies have been conducted or have been applied to this decision. Therefore, the City-approved development does not conform with this policy of the certified LCP.

- The Open Space and Recreation Element of the City’s General Plan, adopted by reference as part of the certified LCP, states (Goals: Open Space – Preservation of Natural Resources): “Goal g) To preserve areas which serve as natural habitats for fish and wildlife species and which can be used for ecologic, scientific, and educational purposes.” The project site was not evaluated for its habitat value as part of the permit. The City-approved extension of Shopkeeper Road would destroy a natural habitat area. Therefore, the City-approved development does not conform with this policy of the certified LCP.
- The local coastal development permit does not address the project’s consistency with the policies and standards of the certified LCP as set forth in Planned Development District One (PD-1: SEADIP). Specifically, Section B (Responsibility for Construction and Maintenance of Wetlands and Buffers) requires that the developer of SEADIP Subarea 25, where the proposed development is located, shall be responsible for the restoration of wetlands in Subareas 23 and 33 prior to or concurrently with the completion of the development, and that detailed phasing plans for the wetland restoration project must be approved by the permit-issuing agency prior to the issuance of the coastal development permit. The local coastal development permit does not include any reference to the wetland restoration plan required by SEADIP.

II. LOCAL GOVERNMENT ACTION

On June 20, 1991, the City of Long Beach Planning Commission approved Local Coastal Development Permit No. 9104-23 and Tentative Parcel Map No. 19212 on the consent calendar (Exhibit #5). The City's 1991 notice issued for the Planning Commission's action was not a Notice of Final Action required pursuant to Public Resources Code Section 30603(d) because it did not indicate that the notice was for a "final" local government action.¹ Moreover, even if the Planning Commission's Notice of Action had been treated as the City's Notice of Final Action, it would have been deficient pursuant to Section 13571 of Title 14 CCR. The Commission finally received a Notice of Final Local Action for Local Coastal Development Permit No. 9104-23 on September 18, 2006. [Please read the correspondence attached to this report as Exhibit #6 for a detailed explanation of the Coastal Act's notice requirements and the lapse that occurred between June 21, 1991 and the present appeal.]

The City's Notice of Final Local Action, received on September 18, 2006, indicates that the City's action is appealable to the Commission, and the Commission's ten working-day appeal period was established on September 19, 2006. The Commissioners' appeal was filed on September 29, 2006. No other appeals were received. The appeal period ended on October 2, 2006.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff [Coastal Act Section 30603(a)]. In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development is located on tidelands, submerged lands, public trust lands or within one hundred feet of any wetland, estuary, or stream [Coastal Act Section 30603(a)(2)].

Section 30603 of the Coastal Act states:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a coastal development permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

¹ Planning Commission actions are *generally* appealable to the City Council.

The City of Long Beach Local Coastal Program (LCP) was certified on July 22, 1980. Section 30603(a)(2) of the Coastal Act identifies the proposed project site as being in an appealable area by virtue of its location within one hundred feet of a wetland or estuary. The project site includes wetlands, including the marsh identified on Exhibit #3 of this report. The southeastern side of the project site borders the west bank of the tidal estuary that exists at the mouth of the San Gabriel River (Exhibit #2).

A recent wetlands delineation for the site has not been submitted to the Commission, but the Commission staff analyst visited the site on October 25, 2006 and confirmed the presence of wetland vegetation and the previously mapped marsh on the eastern portion of the project site where the construction of the Shopkeeper Road extension is proposed.

The grounds for appeal of an approved local coastal development permit in the appealable area are stated in Section 30603(b)(1), which states:

(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Sections 30621 and 30625(b)(2) of the Coastal Act require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of substantial issue. If there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will hold a de novo public hearing on the merits of the application at a future meeting. A de novo public hearing on the merits of the application uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that an approved application is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Since the City approved the application on the consent calendar, there are no known persons who opposed the application before the local government. Testimony from others must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue. The Commission's finding of substantial issue voids the entire local coastal development permit action that is the subject of the appeal.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds for the appeal regarding conformity of the project with the City of Long Beach Local Coastal Program or the public access policies of the Coastal Act, pursuant to Public Resources Code Section 30625(b)(2).

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

MOTION: *"I move that the Commission determine that Appeal No. A-5-LOB-06-375 raises No Substantial Issue with respect to the grounds on which the appeal has been filed."*

Failure of this motion will result in a de novo hearing on the application and adoption of the following resolution and findings. A majority of the Commissioners present is required to pass the motion.

Resolution to Find Substantial Issue for Appeal A-5-LOB-06-375

The Commission hereby finds that Appeal No. A-5-LOB-06-375 presents a substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access policies of the Coastal Act.

V. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Project Description

Local Coastal Development Permit No. 9104-23, approved by the City of Long Beach Planning Commission on June 20, 1991, authorizes a six-lot subdivision (Parcel Map No. 19212) and realignment of Studebaker Road in southeast Long Beach (See Exhibits). Special Condition 25 of the local coastal development permit calls for the construction of Shopkeeper Road (Exhibit #5, p.8). The construction of a 760-foot long Shopkeeper Road extension, as required by Special Condition 25 of the local coastal development permit, would adversely affect wetlands. According to the applicant's 1998 permit application to the Army Corps of Engineers, the construction of the proposed Shopkeeper Road extension would include the filling of 0.58 acres of wetlands on the project site (CESPL-CO-R-98-00636-PMG). The project site includes wetlands, including the marsh identified on Exhibit #3 of this report. A recent wetlands delineation for the site has not been submitted to the Commission, but the Commission staff analyst visited the site on October 25, 2006 and confirmed the presence of wetland vegetation and the previously mapped marsh on the eastern portion of the project site where the construction of the Shopkeeper Road extension is proposed. The Commission therefore finds such wetlands to be present.

The 13.2-acre project site is part of the Market Place shopping center and business park on the eastern (inland) side of Pacific Coast Highway in southeast Long Beach (Exhibit #2). Most of the

project site is developed with two-story office buildings and paved parking areas, except for the undeveloped eastern edge of the site where it borders the Los Cerritos Wetlands and the San Gabriel River (Exhibit #3). The Market Place shopping center and the project site fall within Subareas 18 and 25 of SEADIP (Southeast Area Development and Improvement Plan), a specific plan that covers the southeast portion of the City of Long Beach. The closest beach is located about a mile south of the site in the City of Seal Beach (Exhibit #2).

B. Substantial Issue Analysis

As stated in Section III of this report, the grounds for appeal of a coastal development permit issued by the local government after certification of its Local Coastal Program (LCP) are specific. In this case, the local coastal development permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

The primary issue raised by the appeal is the project's effect on the wetlands on the eastern portion of the project site, including the area where the construction of the Shopkeeper Road extension is proposed. The construction of the Shopkeeper Road extension, as required by Special Condition 25 of the local coastal development permit, would include the filling of 0.58 acres of wetlands (according to the applicant's 1998 permit application to the Army Corps of Engineers). The proposed project, including the six-lot subdivision and Studebaker Road realignment, could result in other wetland impacts. It is not known what the full impact of the project would be on the wetlands and other habitat areas that may exist on or near the project site since the City's review and approval of the permit application does not acknowledge the existence of any wetland or habitat in the project area, nor does it analyze or mitigate the proposed project's impacts to wetlands and sensitive habitat areas.

Therefore, Commission staff has recommended a finding of substantial issue because the locally approved development is not in conformity with the City of Long Beach LCP, as asserted in the appeal and described below.

LCP Policies

The Southeast Area Development and Improvement Plan (SEADIP - Planned Development District One) is a specific plan that covers the southeast portion of the City of Long Beach. It is part of the certified City of Long Beach LCP. On Page III-S-4 (SEADIP), the LCP states: "Natural wetlands remain in some parts, and these must be preserved for environmental reasons." The City-approved development does not conform with this policy of the certified LCP, as the construction of the extension of Shopkeeper Road would destroy a portion of the natural wetlands that are known to exist on the site.

The certified LCP also requires in general that, prior to any reconfiguration or restoration of the Los Cerritos Wetlands, biological field surveys and water quality measurements shall be conducted (LCP Page III-R73, 6.4 Augmenting Implementations). There is no evidence that any studies have been conducted or have been applied to the local government's decision to require the construction of the extension of Shopkeeper Road, nor does the local government approval require any such studies. Therefore, the City-approved development does not conform with the certified LCP.

In addition, the Open Space and Recreation Element of the City's General Plan, adopted by reference as part of the certified LCP, states:

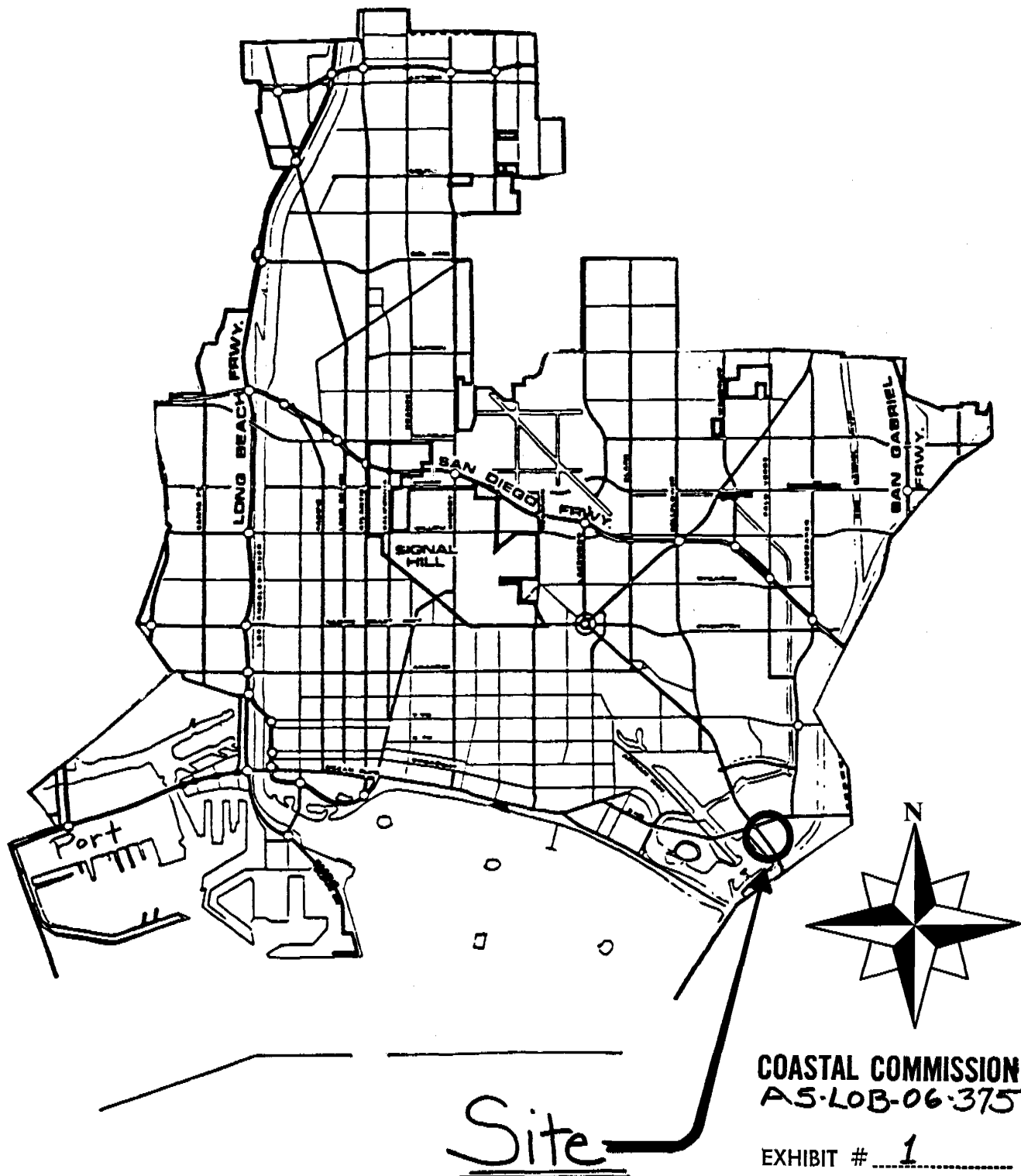
“Goal g) To preserve areas which serve as natural habitats for fish and wildlife species and which can be used for ecologic, scientific, and educational purposes.”
(Goals: Open Space – Preservation of Natural Resources)

The project site was not evaluated for its habitat value as part of the permit. The City-required construction of the extension of Shopkeeper Road would destroy part of a natural habitat area. Therefore, the City-approved development does not conform with this policy of the certified LCP.

Finally, the local coastal development permit does not address the project's consistency with the policies and standards of the certified LCP as set forth in Section B (Responsibility for Construction and Maintenance of Wetlands and Buffers) of SEADIP (PD-1) requiring that the developer of SEADIP Subarea 25, where the proposed development is located, shall be responsible for the restoration of wetlands in Subareas 23 and 33 prior to or concurrently with the completion of the development in Subarea 25. This section of the certified LCP also requires that detailed phasing plans for the wetland restoration project must be approved by the permit-issuing agency prior to the issuance of the coastal development permit. The local coastal development permit does not include any reference to the wetland restoration plan required by SEADIP, while authorizing development in of SEADIP Subarea 25.

In conclusion, the proposed development and the local coastal development permit for the proposed development do not conform to the requirements of the City of Long Beach certified LCP. The project, as approved and conditioned by City of Long Beach Local Coastal Development Permit No. 9104-23, would have an adverse effect on wetlands. Therefore, the Commission finds that the appeal raises **a substantial issue**.

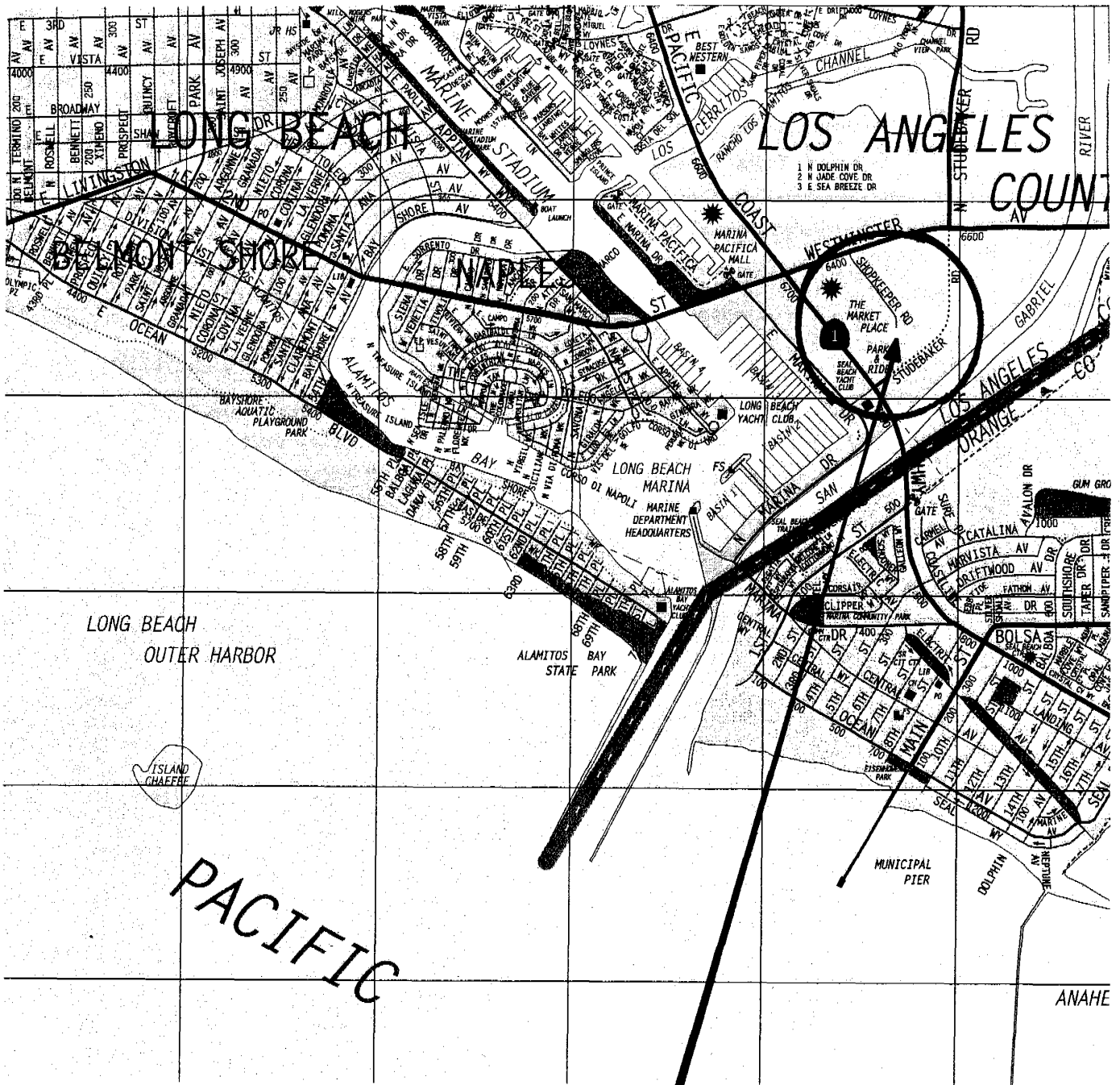
City of Long Beach



COASTAL COMMISSION
A5-LOB-06-375

EXHIBIT # 1

PAGE 1 OF 1

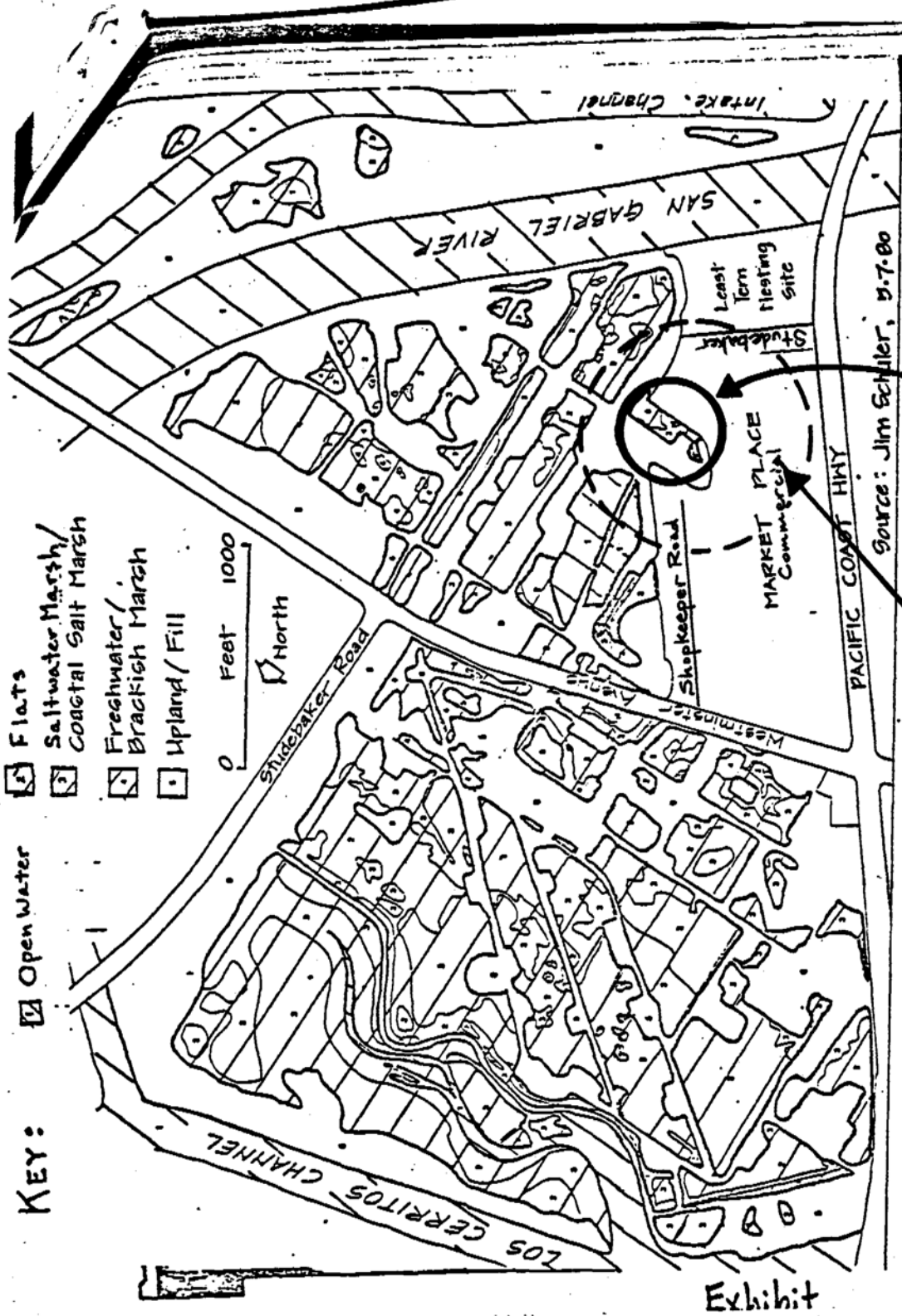


Project Site: 6701 Pacific Coast Highway



COASTAL COMMISSION
A5-LOB-06-375

EXHIBIT # 2
PAGE 1 OF 1



Los Cerritos Wetlands

Marsh Wetland in road alignment

COASTAL COMMISSION
AS-LOB-06-375

EXHIBIT # 3
PAGE 1 OF 1

Exhibit

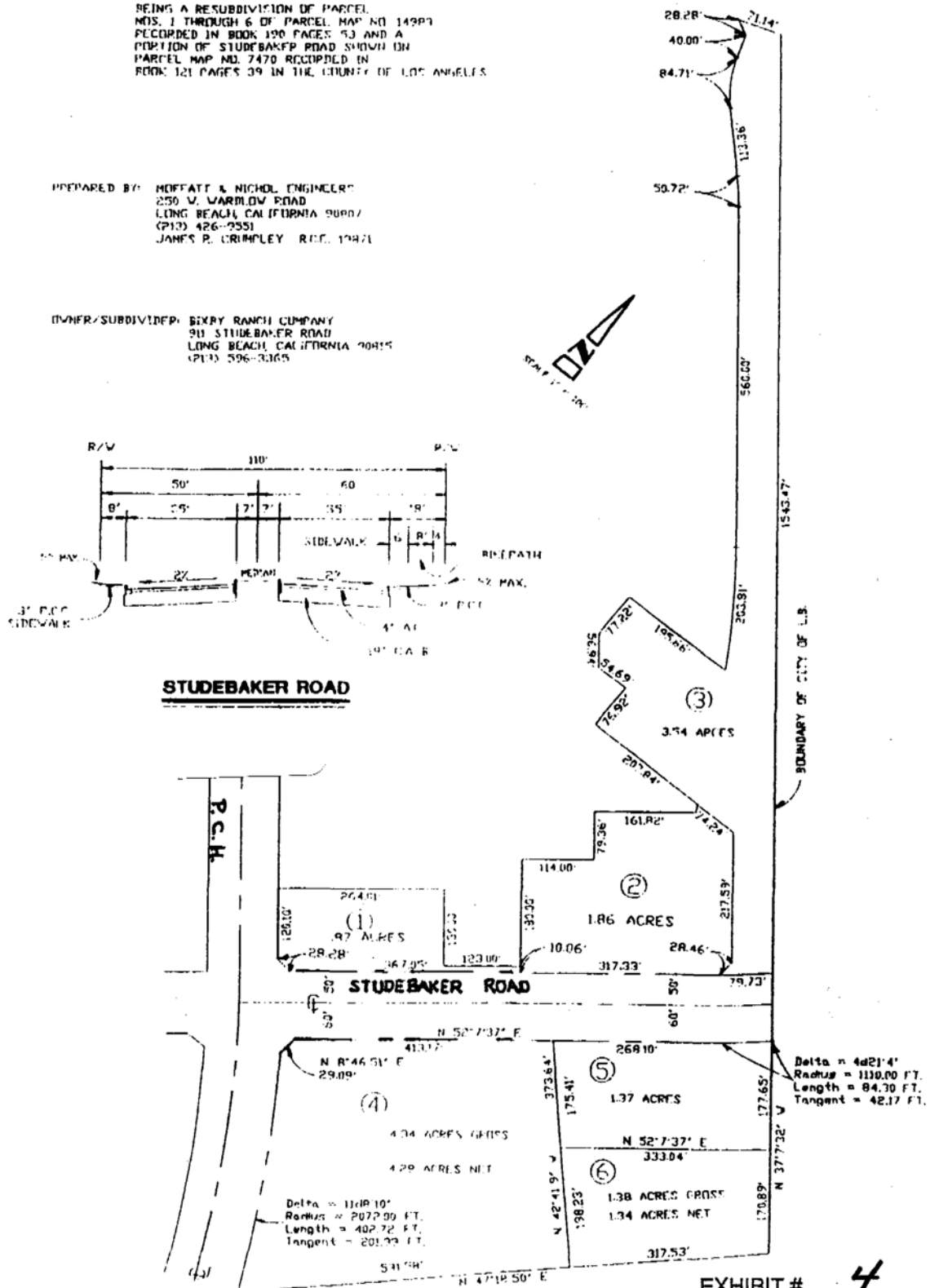
Source: Jim Schiller, D-7-00

TENTATIVE PARCEL MAP NO. 19212

BEING A RESUBDIVISION OF PARCEL NOS. 1 THROUGH 6 OF PARCEL MAP NO. 14297 RECORDED IN BOOK 120 PAGES 53 AND A PORTION OF STUDEBAKER ROAD SHOWN ON PARCEL MAP NO. 7470 RECORDED IN BOOK 121 PAGES 39 IN THE COUNTY OF LOS ANGELES

PREPARED BY: MOFFATT & NICHOL ENGINEERS
250 W. VARDOLLO ROAD
LONG BEACH, CALIFORNIA 90807
(213) 426-2351
JAMES P. CRIMPLEY R.E.C. 19471

OWNER/SUBDIVIDER: SIXBY RANCH COMPANY
911 STUDEBAKER ROAD
LONG BEACH, CALIFORNIA 90815
(213) 596-3365





CITY OF LONG BEACH

DEPARTMENT OF PLANNING AND BUILDING

333 West Ocean Boulevard • Long Beach CA 90802 • (562) 570-5972 FAX (562) 570-6068

ADVANCE PLANNING

September 7, 2006

Charles Posner
Coastal Analyst
200 Oceangate, 10th Floor
Long Beach, CA 90802

RECEIVED
South Coast Region

SEP 18 2006

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Posner:

On June 20, 1991, the Long Beach Planning Commission heard and approved a subdivision map and coastal development permit relating to the Market Place Center and Office Park. The 1991 Notice of Action stated that the Planning Commission action was not appealable to the California Coastal Commission. The Coastal Commission has subsequently opined that the permit is appealable and that a corrected Notice of Final Action should be transmitted in order to finalize the action.

The City has revised the Notice of Final Local Action to include the "appealable area" statement. The local appeal period has expired with no appeals being filed. Please find the enclosed Revised Notice of Final of Action indicating that the local decision is complete. Please do not hesitate to contact me (562-570-5972) should you have any questions.

Respectfully Submitted,

Ira Brown
Planner

Enclosure

COASTAL COMMISSION
A5-LOB-06-375

EXHIBIT # 5
PAGE 1 OF 12



CITY OF LONG BEACH

DEPARTMENT OF PLANNING & BUILDING

333 WEST OCEAN BOULEVARD 3 LONG BEACH, CALIFORNIA 90802 3 FAX (562)570-8068

NOTICE OF FINAL LOCAL ACTION (Revised)

Case No.: 9104-23

Project Location: 6701 Pacific Coast Hwy

Applicant: Bixby Ranch Co.
P.O. Box 7707
Long Beach, CA 90807

Permit(s) Requested: Parcel Map 19212
Local Coastal Development Permit

Project Description: Six lots subdivision and realignment of Studebaker.

Local action was taken by the: Planning Commission on:
June 20, 1991

Decision: Conditionally Approved

Local action is final on: June 20, 1991

This project is in the Coastal Zone and IS appealable to the Coastal Commission.

"If you challenge the action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or issues raised via written correspondence delivered to the (public entity conducting the hearing) at or prior to the public hearing."

See other side for City of Long Beach and California Coastal Commission appeal procedures and time limits.

Greg Carpenter
Planning Manager

Ira Brown, Planner
Phone No.: (562)570-5772

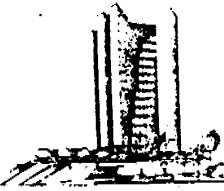
Attachments

Council District: 3

✦ This revised Notice of Final Action has been prepared to reflect that the permit is appealable to the California Coastal Commission.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 12

**CITY OF LONG BEACH**
DEPARTMENT OF PLANNING & BUILDING

333 WEST OCEAN BLVD. • LONG BEACH, CALIFORNIA 90802

(213) 590-6651

FAX (213) 590-6753

NOTICE OF ACTIONProject Location: 6701 Pacific Coast HighwayApplicant: Bixby Ranch Co.Applicant Address: P.O. Box 7707 Long Beach, CA 90807Permit Requested: PM 19212 CPProject Description: Six lots subdivision and realignment of Studebaker Road.

The above permit was:

Approved _____
conditionally _____
approved Xdenied _____
withdrawn _____continued to _____
other _____

Action was taken by the:

() Site Plan Review Committee
Date: _____() Zoning Administrator
Date: _____(X) Planning Commission
Date: June 20, 1991() City Council
Date: _____For projects in the Coastal Zone, this action _____ is X is not
appealable to the Coastal Commission.
DENNIS L. ESCHEN
ZONING ADMINISTRATORPROJECT PLANNER PHONE NO. 590-6995
COUNCIL DISTRICT 3Attachments: Conditions
FindingsEXHIBIT # 5
PAGE 3 OF 12 Rev: 1/14/91

REQUIREMENTS FOR TENTATIVE SUBDIVISION MAP
AND COASTAL DEVELOPMENT PERMIT

Case No. 9104-23 (PM 19212, CP)
Date: June 20, 1991

Requirements

1. The final map is to be prepared in accordance with the approved tentative map and shall be filed within thirty-six (36) months from the date of approval by the Planning Commission of the tentative map, unless prior to the expiration of the thirty-six (36) month period, the Planning Department has received a written request from the subdivider for an extension of time and such request is approved by the Zoning Administrator.
2. Unless specifically excepted by the Planning Commission, the final map shall conform to all conditions and exceptions and to all other requirements of the Subdivision Ordinance of the City of Long Beach.
3. The content and form of the final map shall be based upon criteria established by the Director of Public Works.
4. Prior to approval of the final map by the Director of Public Works, the subdivider shall deposit sufficient funds with the City to cover the cost of processing the map through the Public Works Department.
5. The subdivider shall be responsible for the maintenance of off-site improvements during construction of the on-site improvements. Any off-site improvements found damaged shall be reconstructed or provided for by the subdivider to the satisfaction of the Director of Public Works.
6. All required utility easements shall be provided for to the satisfaction of the concerned department or agency and shown on the final map.
7. Should any public entity or public utility hold an interest in the subdivision, the subdivider shall obtain utility clearance letters from such agency as required by Section 66436 (c) (1) of the Subdivision Map Act prior to approval of the final map.
8. All public utilities, transmission or distribution lines serving the project shall be placed underground.
9. No building permit shall be issued prior to approval of the final map, or until all public improvements required in the tentative map are provided to the

Requirements for Tentative Subdivision Map
Case No. 9104-23 (PM 19212, CP)
June 20, 1991

satisfaction of the Director of Public Works and the Director of Planning and Building, whichever occurs first.

10. Any off-site improvements found damaged shall be replaced to the satisfaction of the Director of Public Works prior to approval of the final map.
11. The developer shall construct or provide for the construction of a bicycle path connection from the bike path on Pacific Coast Highway to the bike path on the San Gabriel River, to the satisfaction of the Director of Public Works.
12. The developer shall align the curb cut on the south side of Studebaker Road with the curb cut on the north side of Studebaker Road, to the satisfaction of the Director of Planning and Building.
13. The developer shall submit a study of the methane gas on the site and submit recommendations for a venting system prior to the issuance of a building permit, to the satisfaction of the Director of Public Works.
14. The developer shall provide for the relocation of the signalization at the intersection of Studebaker Road and Pacific Coast Highway in accordance with the roadway alignment, to the satisfaction of the Director of Public Works.
15. The developer shall submit a traffic circulation study, prior to the issuance of a Certificate of Occupancy, for review and approval by the Director of Public Works. The study shall address the roadway improvements, signalization modifications and curb cut realignments necessary to accommodate increased trips generated from existing and additional development in subareas 18 and 25 of the SEADIP Planned Development Plan.
16. The developer shall comply with mitigation measures contained in Negative Declaration ND-50-86.
17. The final map may be compiled from recorded or filed data if the survey information exists on Parcel Map No 7470 to locate and retrace the exterior boundary lines of the parcel map acceptable by the City Engineer and County Engineer.
18. The subdivider shall submit a soils report to the satisfaction of the Superintendent of Building and

Requirements for Tentative Subdivision Map
Case No. 9104-23 (PM 19212, CP)
June 20, 1991

Safety. Such report shall be referenced on the final map.

19. Fire Hydrants shall be provided to the satisfaction of the Fire Department.
20. A copy of the Conditions, covenants and Restrictions as required by the Department of Planning and Building shall be filed with the Planning Bureau prior to approval of the final map to the satisfaction of the Director of Planning and Building. The C.C. & R's shall clarify the following items:
 - a. Common usage of the parking facility throughout the entire office parking development including Lot 1 of Parcel Map No. 7470.
 - b. Operation and maintenance of parking facilities and landscaping areas.
 - c. Operating and maintenance of sewer, drainage and other utility systems.
21. A common easement shall be granted for cross-lot drainage and any utility systems if crossing lot lines. Such easements shall be shown or noted on the final map.
22. Any poles, hydrants, pipes or other obstructions within the proposed street improvements shall be moved by the subdivider at his expense, to the satisfaction of the Director of Public Works.
23. Pacific Coast Highway shall conform to the following requirements:
 - a. Northerly of Studebaker Road the subdivider shall provide right-of-way for a sixty-two foot half width adjacent to the proposed subdivision.
 - b. Southerly of Studebaker Road the subdivider shall provide right-of-way for a seventy-two foot half width adjacent to the proposed subdivision. Any necessary roadway slope easements shall be provided for this reach of Pacific Coast Highway to the satisfaction of the City Engineer.
 - c. The subdivider shall provide twenty-foot by twenty-foot corner cut-off at the Studebaker Road intersection.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 6 OF 12

Requirements for Tentative Subdivision Map
Case No. 9104-23 (PM 19212, CP)
June 20, 1991

- d. Vehicular access rights from the proposed subdivision to Pacific Coast Highway shall be abandoned with the final map except at the existing vehicular openings or substitute access points approved by the Director of Public Works.
 - e. Improvements to be constructed by the subdivider along Pacific Coast Highway shall consist of curb, sidewalk, necessary roadway pavement, fill and street light relocation.
 - f. Southerly of Studebaker Road, the subdivider shall construct a bicycle trail adjacent to the proposed subdivision.
 - g. All improvement work within Pacific Coast Highway shall be subject to review by the State of California.
24. Studebaker Road shall conform to the following requirements:
- a. Studebaker Road right-of-way (110 feet) within the subdivision shall be dedicated for street purposes to the satisfaction of the City Engineer.
 - b. The subdivider shall improve one-half of Studebaker Road within the subdivision. Improvements to be constructed by the subdivider within Studebaker Road shall consist of curbs, sidewalks on both sides, low energy usage street lights, and roadway pavement. Also included will be any additional roadway pavement necessary at the intersection of Pacific Coast Highway and the project driveways, all required traffic control signs and roadway fill.
 - c. The subdivider shall construct a bicycle trail along the southerly side of Studebaker Road within the proposed subdivision.
 - d. Vehicular access rights from the proposed subdivision to Studebaker Road shall be abandoned with the final map except at approved driveway locations.
 - e. The subdivider shall remove all unstable earth material within his portion of the area that is to be improved for the proposed Studebaker Road extension or provide an alternative method of

COASTAL COMMISSION

Requirements for Tentative Subdivision Map
Case No. 9104-23 (PM 19212, CP)
June 20, 1991

stabilizing this material to the satisfaction of the City Engineer.

- f. The subdivider shall be responsible for the relocation of the signalization at Studebaker Road and Pacific Coast Highway in accordance with the new street/roadway alignments.
 - g. A building permit for the development of the land between Studebaker Road and the San Gabriel River shall not be issued until a financial guarantee adequate to develop the improvements in then current costs is provided and construction begins for the bicycle trail and pedestrian path adjacent to Studebaker Road.
25. Shopkeeper Road shall conform to the following requirements:
- a. Shopkeeper Road shall be a forty-four foot roadway, eighteen foot bicycle trail (or a width acceptable to the City Traffic Engineer) and sidewalk on the west side all within a seventy-two foot public right-of-way. The subdivider shall dedicate all required width of right-of-way within the subdivision for Shopkeeper Road for future street purposes with the final map.
 - b. Improvements to be constructed or provided for by the subdivider within Shopkeeper Road shall consist of curb, sidewalk, low energy usage lights, and roadway pavement.
26. The subdivider shall be relieved of the requirement of constructing the bike trail and sidewalk on the east side of Shopkeeper Road until the adjacent land is improved.
27. The subdivider shall dedicate and improve a pedestrian walkway and bicycle trail along the northwest bank of San Gabriel River to the satisfaction of the Director of Planning and Building and the Director of Public Works and shall provide for construction of one-half of the cost of a bicycle trail under the Pacific Coast Highway bridge at the San Gabriel River. A building permit shall not be issued for the development of land located between Studebaker Road and the San Gabriel River until a financial guarantee adequate to develop the improvements in the current costs is provided and construction begun for the improvements along the northwest bank of the San Gabriel River.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 8 OF 12

Requirement for Tentative Subdivision Map
Case No. 9104-23 (PM 19212, CP)
June 20, 1991

28. The subdivider shall vacate the portions of existing Studebaker's right-of-way not needed for the new re-alignment of Studebaker Road prior to approval of the final map. The new Studebaker Road right-of-way alignment shall be dedicated with the final map to the satisfaction of the Director of Public Works.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 9 OF 12

TENTATIVE PARCEL MAP FINDINGS

Case No. 9104-23 (PM 19212, CP)

Date: June 20, 1991

Pursuant to Section 20.12.100 of the Long Beach Municipal Code, the Planning Commission shall approve a tentative map if the map complies with State and Local regulations. The tentative map can be granted only when positive findings are made consistent with the criteria set forth in the Subdivision Regulations.

A. THAT THE PROPOSED MAP IS CONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.

The subject site is within the South East Area Development Improvement Plan District Subarea (SEADIP Plan). This area permits a business park. The proposed subdivision is to re-subdivide the existing office park for sale or for financing purpose. Thus, the proposed map is consistent with the SEADIP Plan.

B. THAT THE DESIGN OR IMPROVEMENT OF THE PROPOSED SUBDIVISION IS CONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLAN.

All development projects within the site must conform to development standards specified in the SEADIP Plan. This subdivision complies and all buildings on the site will be individually reviewed for compliance.

C. THAT THE SITE IS PHYSICALLY SUITABLE FOR THE TYPE OF DEVELOPMENT.

The site was partially a former fill site. To mitigate this soil problem the subdivider is required to submit a study of the methane gas on the site and submit recommendations for a venting system prior to approval of relevant construction permits for each building and roadway.

D. THE SITE IS PHYSICALLY SUITABLE FOR THE PROPOSED DENSITY OF DEVELOPMENT.

The SEADIP Plan permits a business park for the site. The proposed subdivision will have no effect on the physical development of the site, except to adjust the road location to better conform to updated plans.

E. THE DESIGN OF THE SUBDIVISION OR THE PROPOSED IMPROVEMENTS ARE NOT LIKELY TO CAUSE SUBSTANTIAL ENVIRONMENTAL DAMAGE OR SUBSTANTIAL AND AVOIDABLE INJURY TO FISH AND WILDLIFE OR HABITAT.

COASTAL COMMISSION

EXHIBIT # 5

PAGE 10 OF 12

Tentative Parcel Map Findings
Case No. 9104-23 (PM 19212, CP)
June 20, 1991
Page 5

The Negative Declaration ND 50-86 issued for the previously approved subdivision indicated no significant environmental impact.

- F. THE DESIGN OF THE SUBDIVISION OR TYPE OF IMPROVEMENT IS NOT LIKELY TO CAUSE SERIOUS PUBLIC HEALTH OR SAFETY PROBLEMS.

The subdivider will be required to provide proper easements for sewer, drainage and other utility systems. The site exists with two office buildings with no known public health or safety problems.

- G. THE DESIGN OF THE SUBDIVISION OR THE TYPE OF IMPROVEMENTS WILL NOT CONFLICT WITH EASEMENTS ACQUIRED BY THE PUBLIC AT LARGE FOR ACCESS THROUGH OR USE OF PROPERTY WITHIN THE PROPOSED SUBDIVISION.

A public bicycle path and pedestrian walkway is required along Pacific Coast Highway and along the San Gabriel River.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 11 OF 12

LOCAL COASTAL DEVELOPMENT PERMIT
FINDINGS

Case No. 9104-23 (PM,CP)
Date: June 20, 1991

1. THE PROPOSED DEVELOPMENT CONFORMS TO THE CERTIFIED LOCAL COASTAL PLAN.

The proposed subdivision is for financial and for sale purpose so each office building or a commercial building will be on a separate lot. All development projects within the site must conform to the SEADIP Plan which has been incorporated into the Local Coastal Plan. Thus, the Planning staff finds the proposed subdivision is consistent with the Local Coastal Plan.

2. FOR THE DEVELOPMENT SEAWARD OF THE NEAREST PUBLIC HIGHWAY TO THE SHORELINE: THE PROPOSED DEVELOPMENT CONFORMS TO THE PUBLIC ACCESS AND RECREATION POLICIES OF CHAPTER 3 OF THE COASTAL ACT.

The site is landward of the first public highway.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 12 OF 12

CALIFORNIA COASTAL COMMISSION

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



May 24, 2006

Greg Carpenter, Zoning Administrator
City of Long Beach Planning Department
333 West Ocean Boulevard
Long Beach, CA 90802

Re: Local Coastal Development Permit Case No. 9104-23 (Bixby Ranch Company).

Dear Mr. Carpenter:

On May 19, 2006, our office received the City's letter (dated May 18, 2006) asserting that the City had issued a Local Coastal Development Permit in 1991 (Case No. 9104-23) that authorizes, among other development, the construction of an extension of Shopkeeper Road at the Market Place shopping center in southeast Long Beach (6701 Pacific Coast Highway). We write now for two reasons. The first is to explain that this purported 1991 permit is not valid. The second is to explain why the effective date of the City's 1991 action remains suspended even now, and to give you the opportunity to correct the errors that have caused that suspension so that the process can move forward.

With respect to the City's 1991 action, Commission staff explained in 1999 (see letter dated August 19, 1999) that Local Coastal Development Permit Case No. 9104-23 cannot authorize the Shopkeeper Road extension because the Commission never received a valid Notice of Final Local Action for the permit, so the permit never took effect. The only notice our office has received is the Planning Commission's "Notice of Action" stating that on June 20, 1991 the Planning Commission approved the permit with conditions. That could not have been a notice of "final" action, as is required by Public Resources Code ("PRC") Section 30603(c)¹ because, by law, a local action on an application for development is not "complete," until all local rights of appeal have been exhausted, California Code of Regulations, Title 14 ("14 CCR"), Section 13570, and a Long Beach City Planning Commission action on a permit application is appealable to the City Council. Thus, the 1991 Notice of Action was not a Notice of Final Local Action, and the Commission never treated it as one.

In addition, pursuant to 14 CCR Section 13572, even once a local government's decision on an application for an appealable development is final, it still becomes "effective" only after the appeal period ends, and not even then if the local government's Notice of Final Local Action does not meet the requirements of 14 CCR Section 13571. Again, in this case, the Commission never received a valid Notice of Final Local Action, so the appeal period never began to run, and the City's action could not have become effective. See Cal. PRC Section 30603(c); see also 14 CCR Section 13110. Moreover, even if the Notice of Action sent in 1991 were treated as a Notice of Final Local Action, it would have been deficient, for the reasons listed below; so once again, the City's action did not become effective. Therefore, our office does not agree that a valid coastal development permit exists for the proposed road extension.

¹ All references to the PRC are to the Coastal Act, which comprises PRC sections 30000 to 30900.

COASTAL COMMISSION
AS-LOB-06-375

Shopkeeper Road, Long Beach
May 24, 2006
Page 2 of 2

The City's letter dated May 18, 2006, states that the permit was issued. It thereby implies that no appeal was ever filed and that the Planning Commission's 1991 action constituted a complete local decision. On that basis, and in order to assist the City in bringing this matter to resolution, we are proceeding to treat that letter, together with the attached 1991 Notice of Action, as a Notice of Final Local Action, and we analyze it as such. However, for the following reasons, we conclude that, as a Notice of Final Local Action, that submittal is deficient. There are three reasons why the City's letter dated May 18, 2006 and the 1991 Notice of Action is not a valid Notice of Final Local Action and would therefore be deficient if it were treated as a Notice of Final Local Action.

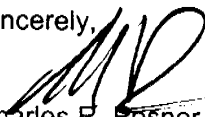
First, the 1991 Notice of Action states that the local coastal development permit is not appealable to the Coastal Commission. This is incorrect as PRC Section 30603(a)(2) states that any local coastal development permit approval that authorizes development within one hundred feet of a wetland is appealable to the Commission. According to a 1998 application filed with the U.S. Army Corps of engineers (CESPL-CO-R-98-00636-PMG), the proposed extension of Shopkeeper Road at the Market Place shopping center includes placing fill in 0.58 acres of wetlands. Therefore, any local coastal development permit authorizing such an extension of Shopkeeper Road is appealable to the Commission. By misstating the appealable status of the local action, the notice is inconsistent with 14 CCR Section 13571 and deficient pursuant to 14 CCR Section 13572.

Second, neither the 1991 Notice of Action nor the City's May 18, 2006 letter lists the procedures for appeal to the Commission as required by 14 CCR Section 13571(a). Thus, the City's current submittal is deficient pursuant to 14 CCR Sections 13571 and 13572, just as the original 1991 Notice of Action would have been, had it been a Notice of Final Local Action.

Third, the Planning Commission's action could have been appealed to the City Council, and our office has not yet received any explicit notice from the City indicating whether the City's final local appeal period has closed, as required by Section 21.25.904 of the certified City of Long Beach LCP implementing ordinances. While the City's letter dated May 18, 2006 may imply that no appeal was ever filed with the City Council, the City is obligated to confirm the finality of the local action in writing, and that the Planning Commission's action constitutes a complete local decision. See also 14 CCR Section 13570 ("A local decision on an application for a development shall not be deemed complete until . . . all local rights of appeal have been exhausted.") A valid Notice of Final Local Action must indicate either that local appeals had been exhausted because the Planning Commission's decision was appealed to the City Council (and what action the City Council had taken) or that the period for such an appeal had expired with no appeal being filed.

As a result of the deficiencies noted, the effective date of the local government action has been suspended, and the ten working day Commission appeal period will not commence until a sufficient Notice of Final Local Action is received in this office. (14 CCR Sections 13570 and 13572.) Please call me if you have any questions.

Sincerely,


Charles R. Posner
Coastal Program Analyst

COASTAL COMMISSION

EXHIBIT # 6
PAGE 2 OF 5

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



August 19, 1999

RECEIVED
AUG 20 1999**CALIFORNIA
COASTAL COMMISSION**

Stephanie R. Scher
Kane, Ballmer & Berkman
515 South Figueroa Street, Suite 1850
Los Angeles, CA 90071

Subject: NE-41-99 (Proposed Extension of Studebaker and Shopkeeper Roads (CESPL-CO-R-98-00636-PMG), City of Long Beach, Los Angeles County).

Dear Ms. Scher:

The Coastal Commission staff received your April 27, 1999, request for federal consistency review and a finding from the Commission that the above-referenced project is consistent with the California Coastal Management Program (CCMP). The proposed project involves the construction of a roadway to extend Shopkeeper Road by 760 feet and Studebaker Road by 730 feet, and includes placing fill in 0.58 acres of wetlands at the project site in the southeast portion of the City of Long Beach. The project is proposed by the Bixby Ranch Company (the property owner) and the City of Long Beach.

The Commission staff reviewed the information that you presented regarding previous City of Long Beach and Coastal Commission actions in the project area and we have determined that: 1) a valid coastal development permit **does not exist** that authorizes the proposed development and wetland impacts; and 2) a valid coastal development permit is required **before** the applicant may proceed with the proposed project. As a matter of policy, the Commission gives priority to the coastal development permit process over the federal consistency process. A Commission-approved coastal development permit, or Commission action on an appeal of a local government-approved permit, is equivalent to Commission concurrence with a consistency certification.

Concerning the information that you presented regarding previous City and Commission actions, none of those actions authorizes the contemplated development. First, Coastal Commission Permit Nos. P-2-7-73-216, P-4-11-74-3067 and P-78-4440 did not authorize the proposed extension of Studebaker and Shopkeeper Roads or any impacts to the adjacent wetlands. Second, City of Long Beach Local Coastal Development Permit Case No. 169-86 is not valid because it has expired. Third, City of Long Beach Local Coastal Development Permit Case No. 9104-23 is not a valid coastal development permit because the Commission never received a Notice of Final Local Action from the City. (Section 13572 of the California Code of Regulations and Section 21.25.904 of the Long Beach Municipal Code and the City's certified Local Coastal Program (LCP) require the City to provide the Commission with a Notice of Final Local Action for any appealable development

COASTAL COMMISSION

EXHIBIT # 6
PAGE 3 OF 5

before an action may become effective. Because the Commission did not receive a Notice of Final Local Action for City of Long Beach Local Coastal Development Permit Case No. 9104-23, the necessary ten working day appeal period to the Commission has not yet been established.) Finally, neither the City of Long Beach SEADIP specific plan or the City of Long Beach's certified LCP constitute authorization for any development in the coastal zone.

Concerning the method of achieving Coastal Act compliance, the coastal development permit process, rather than the federal consistency process, is the correct method for the proposed project to receive a determination of consistency with the Coastal Act. Section 30600(a) of the Coastal Act requires that in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit. The City and the property owner are persons undertaking development in the coastal zone and therefore must obtain a coastal development permit.

The applicant for the proposed development must obtain a valid coastal development permit prior to proceeding with the proposed development. If any portion of the proposed project is located within the portion of the City of Long Beach that is covered by the Long Beach certified Local Coastal Program (LCP), then the applicant would apply to the City for a local coastal development permit. A coastal development permit approved by the City would be appealable to the Commission if it authorizes development within one hundred feet of a wetland. In addition, the applicant must apply directly to the Coastal Commission for a coastal development permit for any portion of the proposed development that is located on tidelands, submerged lands, or public trust lands, or on lands located within an uncertified area of the coastal zone.

Pursuant to the requirements of the federally-certified California Coastal Management Program (CCMP), a coastal development permit issued by the Commission will function as a consistency certification. Therefore, no additional consistency review would be necessary for that part of the proposed project that is located within the Commission's permit jurisdiction. However, a coastal development permit approved by the City of Long Beach for that part of the project within the city's permit jurisdiction **will not** satisfy the federal Coastal Zone Management Act requirements for federal consistency review. However, Commission action on an appeal of a local government-issued coastal development permit is equivalent to a consistency certification. If no appeal is made, it is necessary for the applicant to either submit a consistency certification to the Commission for that portion of the project, or request the Commission to waive the federal consistency requirement because the proposed activity does not significantly affect coastal resources.

The Commission staff has determined that your April 27, 1999, letter is **not** a consistency certification because it is lacking the information and data required by Section 15 CFR 930.58 of the NOAA implementing regulations. Section 930.60 of the regulations states in part that:

(a) Except as provided in Section 930.54(e), State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the

COASTAL COMMISSION

EXHIBIT # 6
PAGE 4 OF 5

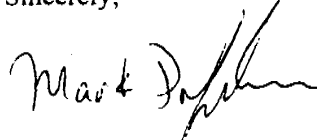
Stephanie R. Scher
August 19, 1999
Page 3

consistency certification, and the information and data required pursuant to Section 930.58.

Therefore, the time period for Commission review of the proposed development under the federal consistency process has not started. Furthermore, and as noted above, we believe the coastal development permit process is the appropriate mechanism for project review and analysis of conformance with the Coastal Act.

Please contact James Raives, Federal Consistency Coordinator, at (415) 904-5292 should you have any questions regarding the federal consistency process. Please contact Charles Posner at (562) 590-5071 should you have any questions regarding the Commission's coastal development permit process, or the site permit history cited earlier in this letter.

Sincerely,



(for) PETER M. DOUGLAS
Executive Director

cc: Phelicia M. Gomes, Corps of Engineers
Jack Humphrey, City of Long Beach Planning Department
Jack Fancher, U.S. Fish and Wildlife Service

COASTAL COMMISSION

EXHIBIT # 6
PAGE 5 OF 5



A-5-LOB-06-375
Exhibit #7

Photograph of the Market Place and project site, with Shopkeeper Road shown on the right. The proposed development includes the construction of a 760-foot long extension of Shopkeeper Road (toward the left side of the picture).