

**CALIFORNIA COASTAL COMMISSION**

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

**W15a**

Filed: 1/25/2010  
49th Day: 3/15/2010  
180th Day: N/A  
Staff: Charles Posner - LB  
Staff Report: 2/24/2010  
Hearing Date: March 10, 2010  
Commission Action:

**STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE**

**APPEAL NUMBER:** A-5-LOB-10-015  
**APPLICANT:** 2H Properties - Sean Hitchcock  
**LOCAL GOVERNMENT:** City of Long Beach  
**PROJECT LOCATION:** 6400 E. Loynes Drive (SEADIP Subarea 23), City of Long Beach, Los Angeles County.  
**LOCAL DECISION:** Approval with Conditions – Case No. 0904-15

**APPELLANTS:** Coastal Commissioners Mary Shallenberger and Sara Wan, Los Cerritos Wetlands Trust (Elizabeth Lambe, Executive Director), Thomas Marchese, Heather Altman, Mary Suttie, David Robertson, El Dorado Audubon Society (Mary Parsell), and Our Town – Long Beach (Joan Hawley McGrath, Sandie Van Horn, Pat Towner, Cindy Crawford, Tarin Olsen, Kerrie Aley, Allan Songer & Brenda McMillan).

**PROJECT DESCRIPTION:** Appeal of City of Long Beach Local Coastal Development Permit No. 0904-15 approved to allow the import of 1,000 cubic yards of soil to re-establish and maintain cap over an existing landfill (in response to Coastal Commission Emergency Permit 5-09-068-G), and to allow weed abatement and remediation.

Project Area	9.38 acres
Building Coverage	0 square feet
Pavement Coverage	0 square feet
Parking Spaces	0
Zoning	Planned Dev. District PD-1 (SEADIP #23)
Plan Designation	Planned Development – Restoration Site

**SUMMARY OF STAFF RECOMMENDATION**

The staff recommends that the Commission determine that the appeals raise **a substantial issue** with respect to the grounds on which the appeals have been filed regarding consistency with the certified City of Long Beach Local Coastal Program (LCP). The certified LCP designates the site for restoration as a brackish pond. The certified LCP also requires that open space and natural habitat areas be preserved and that the waters of Alamitos Bay be protected from runoff. The development could adversely affect wildlife, wetlands, and the quality of adjacent tidal waters. Given the absence of a detailed and enforceable habitat protection and restoration plan, the appeals raise a substantial issue regarding the conformity of the local action with the policies of the certified LCP. If the Commission adopts the staff recommendation, a de novo hearing for the proposed development will be scheduled for a future Commission meeting. **The motion to find Substantial Issue is on Page Six.**

**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. City of Long Beach Local Coastal Development Permit No. 0904-15 (Exhibit #4).
4. Biological Resources Evaluation and Jurisdictional Waters Delineation for APN 7237017006, by Ty M. Garrison, SWCA Environmental Consultants, 5/28/2009.
5. Comments on Illegal Development and Retroactive Permit to Remediate at 6400 Loynes Drive, Long Beach, by Travis Longcore, Ph.D. and Catherine Rich, J.D., M.A., Land Protection Partners, 10/8/2009.

**I. APPELLANTS' CONTENTIONS**

The Los Cerritos Wetlands Trust, El Dorado Audubon Society, Our Town – Long Beach, two Coastal Commissioners, and four individuals have appealed the City's approval of Local Coastal Development Permit No. 0904-15 (Exhibit #4). The local coastal development permit is an after-the-fact approval for weed abatement and to allow the import of 1,000 cubic yards of soil to cap an old dump on the 9.38-acre site that had been disturbed by unpermitted grading on March 19 and 20, 2009.

The appellants contend, in general, that the local action does not comply with the requirements of the certified LCP because the local coastal development permit does not include adequate conditions to require the applicant to restore the habitat that was destroyed as a result of the unpermitted grading and vegetation removal. The appeals contend that the project site should be recognized as containing wetlands and sensitive habitat, and that it is subject to the public trust. Furthermore, the local coastal development permit, while permitting weed abatement, does not include any provisions to protect sensitive habitat and hydrophytic vegetation.

The Commissioners' appeal, copied below using *italic text*, contends that:

*The City's approval of the local coastal development permit, absent a detailed habitat restoration plan (the applicant removed the top soil layer and most of the vegetation on the site prior to applying for a coastal development permit), does not conform with or carry out the goals and policies for the project site as set forth by the City of Long Beach certified Local Coastal Program (LCP). The certified City of Long Beach LCP sets forth the following land use policy for the project site, which is Subarea 23 of SEADIP (Southeast Area Development and Improvement Plan):*

*Subarea 23*

- a. *The two wetland concepts generally outlined shall include a 8.3 acre brackish pond on Area 23 provided that the Executive Director of the California Coastal Commission determines (i) in addition to the setback for buffer, the elevation and setbacks between development and wetland edge shall be sufficient to ensure stability during liquefaction events caused by the maximum credible earthquake; (ii) that the location and operation of the proposed wetland are acceptable to the Regional Water Quality Control Board, the State Department of Health and to the Local Mosquito Abatement District.*

- b. If approval from these agencies results in reductions to the net size of the proposed wetland, restoration at this site shall only occur if the remaining area is sufficient to create a wetland at least the same size as the existing brackish pond at the Marketplace.*

*The City's approval of the local coastal development permit also does not conform with or carry out the following goals and policies contained in the Open Space Element, which are equally weighted policies of the Land Use Plan (LUP) portion of the City's LCP:*

**1. Goals: Open Space - Preservation of Natural Resources**

- b. To preserve and enhance the open space opportunities offered by the inland waterways of the city through improved access and beautification.*
- 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.*
- h. To locate, define, and protect other beneficial natural habitats in and about the city.*

**5. Goals: Open Space – Shaping Urban Development**

- a. To maintain and enhance existing and potential open space areas which are important as links, nodes, and edges, or provide relief from urban built-form.*

**8. Policies: Open Space Node – Alamitos Bay & Recreation Park**

***Conserve and enhance Alamitos Bay – Recreation Park open space node by:***

- e. Improving the quality of the Bay waters by controlling all forms of possible pollution, both in Bay and in tributaries upstream;*
- h. Maintaining close surveillance over all proposed projects in the Bay area through the environmental review process;*
- i. Exerting design controls on proposed improvements in order to prevent degradation of the aesthetic environment;*

The appeals submitted by the Los Cerritos Wetlands Trust, El Dorado Audubon Society, Our Town – Long Beach, and the individuals are attached to this report as Exhibits 5 through 10.

## **II. LOCAL GOVERNMENT ACTION**

The local coastal development permit that is the subject of this appeal is the follow-up permit for Coastal Commission Emergency Permit 5-09-068-G. Commission staff had issued the emergency permit because the certified City of Long Beach Local Coastal Program (LCP) does not contain provisions for the issuance of emergency permits.

On April 7, 2009, Coastal Commission staff issued Emergency Permit 5-09-068-G to Sean Hitchcock for emergency work at the project site (6400 E. Loynes Drive) described as:

Import 1,000 cubic yards of clean fill dirt to create a minimum six-inch thick dirt cap over an area no larger than 50,000 square feet to cover exposed trash in order to prevent methane release, per orders to comply issued by California Integrated Waste Management Board (Inspection Report, File No. 19-AK-5003 dated 3/26/2009) and South Coast Air Quality Management District (Case No. D-18289, 3/26/2009).

The site is an old dump that had been disturbed by unpermitted grading that occurred on March 19 and 20, 2009. The emergency permit was issued to allow the applicant to take immediate action to mitigate elevated methane levels (up to 7700 ppm) detected at the site by the South Coast Air Quality Management District. The applicant proceeded to construct a cap on the dump with imported fill dirt following the issuance of the emergency permit.

A condition of Emergency Permit 5-09-068-G required the applicant to apply to the City for the follow-up permit. On April 28, 2009, the applicant filed an application for a local coastal development permit with the City of Long Beach Department of Development Services. The City's Notice of Public Hearing for Local Coastal Development Permit No. 0904-15 identifies the site as being in the appealable area of the coastal zone.

On October 12, 2009, the City of Long Beach Zoning Administrator held a public hearing and approved Local Coastal Development Permit No. 0904-15 to allow the import of 1,000 cubic yards of soil to re-establish and maintain the cap over the existing landfill (in response to Coastal Commission Emergency Permit 5-09-068-G), and to allow weed abatement to comply with a Fire Department order.

The decision of the Zoning Administrator was appealed to the City Planning Commission by several persons because the local coastal development permit did not include a condition requiring any restoration or revegetation of the project site.

On December 3, 2009, the Planning Commission held a public hearing and approved Local Coastal Development Permit No. 0904-15 with conditions (Exhibit #3). The appeals were denied, but the Planning Commission added Special Condition Ten, which states;

10. The applicant shall comply with a remediation plan to be prepared by staff and submitted to the Planning Commission for consideration within 90 days.

The Planning Commission's decision was not appealable to the Long Beach City Council. On January 14, 2010, the Commission's South Coast District office in Long Beach received from the City a Notice of Final Local Action for Local Coastal Development Permit No. 0904-15.

The Commission's ten working-day appeal period was established on January 15, 2010. January 29, 2010 was the last day of the appeal period.

### **III. APPEAL PROCEDURES**

After Coastal Commission certification of Local Coastal Programs (LCPs), 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 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 constitutes a "major public works project" or a "major energy facility" [Coastal Act Section 30603(a)(5)].

The City of Long Beach Local Coastal Program (LCP) was certified on July 22, 1980. Section 30603(a) of the Coastal Act identifies the proposed project site as being in the appealable area by virtue of its location. The 9.38-acre project site is situated along the north bank of Los Cerritos Channel, which is part of Alamitos Bay (Exhibit #2). The project site is located within three hundred feet of the mean high tide line of Alamitos Bay, and it is situated between the sea and the first public road paralleling the sea (Loynes Drive). Thus, the project is appealable pursuant to Section 30603(a)(1) of the Coastal Act.

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.

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 appeals 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 appeal will be presumed to raise a substantial issue, and the Commission will hold a de novo public hearing on the merits of the application. 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. Testimony from other persons 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 and with the public access policies of the Coastal Act, pursuant to Public Resources Code Sections 30625(b)(2) and 30603(b).

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

**MOTION:** *"I move that the Commission determine that Appeal No. A-5-LOB-10-015 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-10-015**

The Commission hereby finds that Appeal No. A-5-LOB-10-015 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**

The vacant 9.38-acre project site, situated between Loynes Drive and the north bank of Los Cerritos Channel (Alamitos Bay) in southeast Long Beach, is part of an old landfill operation (refuse dump) that filled coastal marshland in the 1940s and '50s (Exhibit #2). The top layer of the landfill was disturbed by unpermitted grading that occurred on March 19 and 20, 2009. That unpermitted grading altered the topography and removed most of the vegetation from the site. Apparently, the grading also exposed the old dump. Commission staff issued an emergency permit on April 9, 2009 to allow the applicant to take immediate action to mitigate elevated methane levels (up to 7700 ppm) detected at the site by the South Coast Air Quality Management District (Exhibit #3). Following the issuance of the emergency permit, the applicant constructed a new cap on the dump using 1,000 cubic yards of imported fill dirt.

The subject of this appeal, Local Coastal Development Permit No. 0904-15, is an after-the-fact approval for weed abatement and for the import of 1,000 cubic yards of soil to construct a new cap on the surface of the old dump. The project site is Subarea 23 of SEADIP (Southeast Area Development and Improvement Plan), a specific plan that covers the southeast portion of the City of Long Beach.

**B. Factors to be Considered in Substantial Issue Analysis**

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it finds that the appeal raises no significant question as to conformity with the certified LCP or there is no significant question with regard to the public access policies of Chapter 3 of the Coastal Act. In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5. Staff is recommending that the Commission find that **a substantial issue** exists for the reasons set forth below.

### **C. 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. Unless the Commission finds that the appeals do not raise a substantial issue regarding conformity with the certified LCP or the public access policies of the Coastal Act, the Commission must review the permit application de novo.

In this case, staff recommends that the Commission determine that the appeals do raise **a substantial issue** with respect to the grounds on which the appeals have been filed regarding consistency with the certified City of Long Beach LCP. The certified LCP requires that open space and natural habitat areas shall be preserved and that the waters of Alamitos Bay be protected from polluted runoff. The following goals and policies, contained in the Open Space Element of the City's General Plan, are equally weighted policies of the Land Use Plan (LUP) portion of the City's certified LCP:

#### **1. Goals: Open Space - Preservation of Natural Resources**

- b. To preserve and enhance the open space opportunities offered by the inland waterways of the city through improved access and beautification.*
- 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.*
- h. To locate, define, and protect other beneficial natural habitats in and about the city.*

#### **5. Goals: Open Space – Shaping Urban Development**

- a. To maintain and enhance existing and potential open space areas which are important as links, nodes, and edges, or provide relief from urban built-form.*

#### **8. Policies: Open Space Node – Alamitos Bay & Recreation Park**

##### **Conserve and enhance Alamitos Bay – Recreation Park open space node by:**

- e. Improving the quality of the Bay waters by controlling all forms of possible pollution, both in Bay and in tributaries upstream;*
- h. Maintaining close surveillance over all proposed projects in the Bay area through the environmental review process;*
- i. Exerting design controls on proposed improvements in order to prevent degradation of the aesthetic environment;*



The appeals contend that the project site should be recognized as containing wetlands and sensitive habitat, and that it is subject to the public trust. These assertions go right to the heart of the matter. The coastal development permit process should identify the impacts of the approved development on coastal resources, and then establish the limits on the scope of the approved development and require specific mitigation measures in order to protect open space and natural habitat as required by the certified LCP. The City's local coastal development permit findings do not acknowledge the proposed project's adverse impacts to coastal resources or attempt to explain how the adverse impacts will be minimized or mitigated. The City's findings also do not provide an adequate degree of factual support for its conclusion that the approved development conforms with the certified LCP and the public access policies of the Coastal Act.

The project site is open space, and the reports prepared for the applicant and the Los Cerritos Wetlands Trust support the assertion that the site contains wetlands and sensitive habitat. A report<sup>1</sup> for the project site submitted by the Los Cerritos Wetlands Trust indicates that the site has significant biological value because of its characteristics and its proximity to the tidal channel and the adjacent salt marshes. The Los Cerritos Wetlands are about two hundred feet south of the project site, on the south side of the Los Cerritos Channel (Exhibit #2). While the project site is primarily upland (about 16 to 20 feet of fill covering former salt marsh), the report states that there are seasonal wetlands (vernal ponds) that form on lower elevations on the western side of the property. Hydric soils and least two species of native plants that are wetland indicators (*Polypogon monspeliensis* and *Lepidium latifolium*) have been documented on the site.<sup>2</sup> The El Dorado Audubon Society and the report submitted by the Los Cerritos Wetlands Trust state that the open space is an important foraging area and refuge for several species of birds, including raptors, herons and egrets. Wildlife on the site also includes fence lizards and small mammals (squirrels, rabbits and rodents).

The local coastal development permit authorizes the removal of vegetation and the placement of 1,000 cubic yards of fill on the site, but lacks the provisions necessary to protect habitat and native vegetation on the site. The local coastal development permit also does not include adequate conditions to require the applicant to mitigate and/or restore any habitat destroyed as a result of the approved development. The local coastal development permit does not include any mitigation to protect the adjacent tidal areas from runoff and sediment that may erode from the site subsequent to the vegetation removal and grading. Even though the local coastal development permit contains Condition Ten that requires the applicant to "comply with a remediation plan to be prepared by staff", the City has not put forward any such plan. The local coastal development permit's lack of limits on the scope of the approved development and the lack of specific mitigation measures raises a substantial issue with respect to the grounds of the appeals.

Condition Ten raises a substantial issue as to its conformity with the certified LCP because it is vague and unclear. The condition does not define what needs to be remediated. Is it the dump and the methane gases, or the habitat and vegetation that must be remediated? The condition includes no details, standards or parameters. The condition should, at a minimum, describe what types of native plants must be planted on the site (and when) in order to mitigate

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<sup>1</sup> Comments on Illegal Development and Retroactive Permit to Remediate at 6400 Loynes Drive, Long Beach, by Travis Longcore, Ph.D. and Catherine Rich, J.D., M.A., Land Protection Partners, 10/8/2009.

<sup>2</sup> Biological Resources Evaluation and Jurisdictional Waters Delineation for APN 7237017006, by Ty M. Garrison, SWCA Environmental Consultants, 5/28/2009.

the loss of ground cover resulting from the approved development and to prevent erosion and runoff. The LCP requires that open space and natural habitat areas be preserved and that the waters of Alamitos Bay be protected from runoff. Given the absence of a detailed and enforceable habitat protection and restoration plan, the appeals raise a substantial issue regarding the conformity of the local action with the policies of the certified LCP.

Additionally, the local coastal development permit is unclear as to whether the City's approval of weed abatement is solely retroactive, or whether the permit is authorizing future episodes of vegetation removal activities on the site. Either way, the permit does not include the provisions necessary to protect native vegetation, wildlife and water quality from the adverse impacts of vegetation removal. Thus, a finding of substantial issue will help to clarify the scope of the approved development, and whether a coastal development permit must be obtained for any additional vegetation removal.

Another substantial issue is the conformity of the development with the LCP designation of the property. The certified City of Long Beach LCP designates the project site as a restoration site, specifically an 8.3-acre brackish pond. The project site falls within Subarea 23 of SEADIP (PD-1 - Southeast Area Development and Improvement Plan), a specific plan that covers the southeast portion of the City of Long Beach. The standards for SEADIP Subarea 23 (a component of the certified LCP) are set forth as follows:

#### SEADIP Subarea 23

- a. *The two wetland concepts generally outlined shall include a 8.3 acre brackish pond on Area 23 provided that the Executive Director of the California Coastal Commission determines (i) in addition to the setback for buffer, the elevation and setbacks between development and wetland edge shall be sufficient to ensure stability during liquefaction events caused by the maximum credible earthquake; (ii) that the location and operation of the proposed wetland are acceptable to the Regional Water Quality Control Board, the State Department of Health and to the Local Mosquito Abatement District.*
- b. *If approval from these agencies results in reductions to the net size of the proposed wetland, restoration at this site shall only occur if the remaining area is sufficient to create a wetland at least the same size as the existing brackish pond at the Marketplace.*

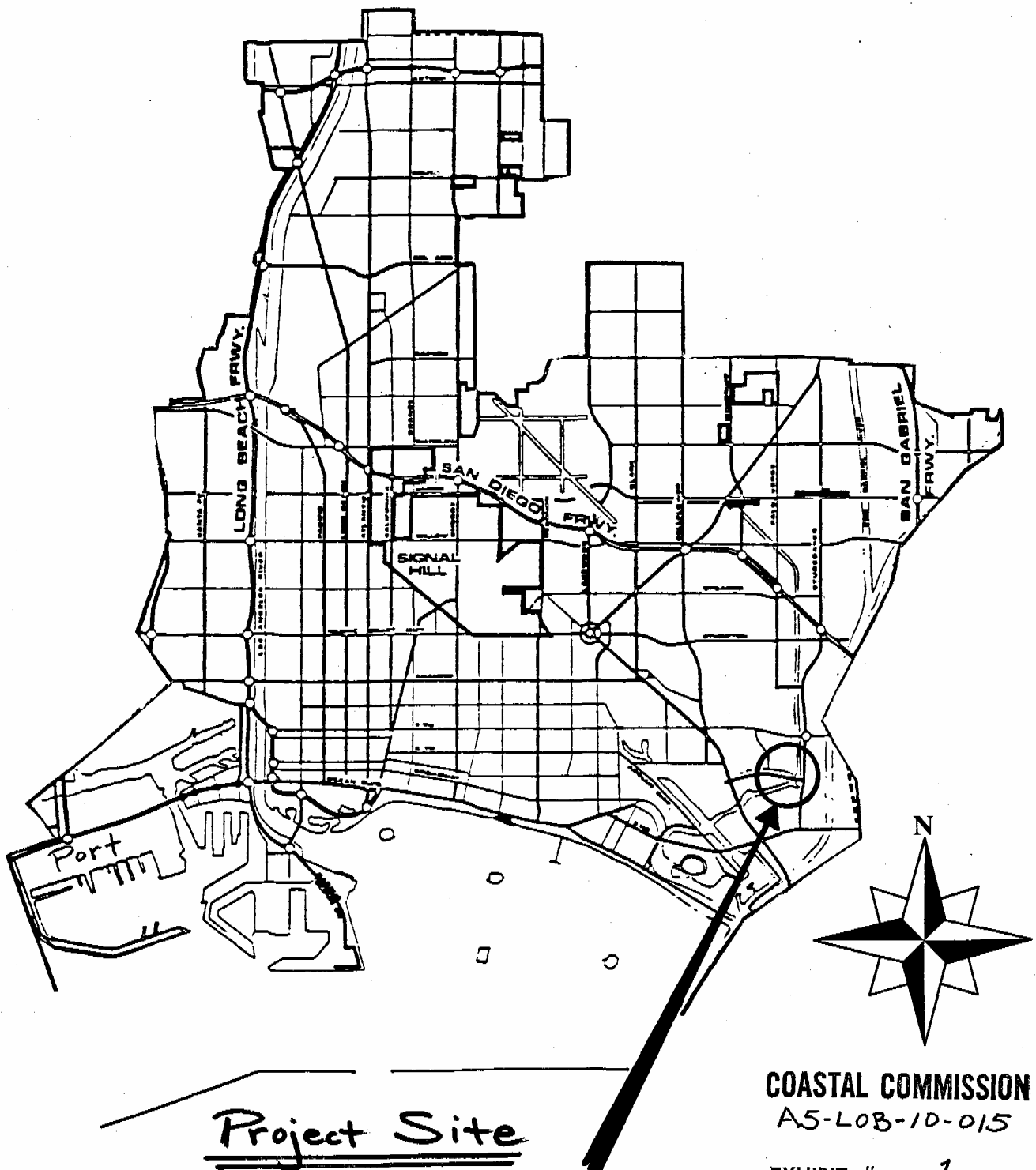
The LCP policy for SEADIP Subarea 23 refers to the brackish pond at the Marketplace because the restoration of SEADIP Subarea 23 is linked to the development plan for SEADIP Subarea 25. The brackish pond at the Marketplace is in SEADIP Subarea 25, which is an uncertified portion of the Los Cerritos Wetlands area located south of Second Street. An uncertified section of SEADIP called for filling the pond at the Marketplace (and other wetlands) and the construction of a business park in SEADIP Subarea 25. SEADIP Subarea 23 is identified as the site for mitigating the filling of the pond and wetlands in SEADIP Subarea 25.

The issues raised by the appeals are even more substantial in light of the site's designation as a site for a brackish pond. The development approved by the local coastal development permit does not conform with or carry out the provisions set forth for Subarea 23 of SEADIP. The question of whether the site, or a portion of the site, should be restored as a brackish pond, as vernal pond wetlands, or as an upland native plant garden is a substantial issue.

The Commission will address this substantial issue, and the other issues raised by the appeals, when it reviews the proposal de novo.

In conclusion, the Commission finds that the appeals raise **a substantial issue** with respect to the grounds on which the appeals have been filed regarding consistency with the certified City of Long Beach Local Coastal Program (LCP). The certified LCP requires that open space and natural habitat areas like the project site shall be preserved and that the waters of Alamitos Bay shall be protected from runoff. The local coastal development permit authorizes development that could adversely affect wildlife, wetlands, and the quality of the adjacent tidal waters. Given the absence of a detailed and enforceable habitat protection and restoration plan, the appeals raise a substantial issue regarding the conformity of the local action with the policies of the certified LCP. A de novo hearing will be scheduled for a future Commission meeting.

# City of Long Beach



COASTAL COMMISSION  
A5-LOB-10-015

EXHIBIT # 1

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**CALIFORNIA COASTAL COMMISSION**

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

**EMERGENCY PERMIT**

**DATE:** April 7, 2009

**EMERGENCY PERMIT:** 5-09-068-G

**APPLICANT:** Sean Hitchcock

**LOCATION:** 6400 E. Loynes Drive (between Loynes Drive and Los Cerritos Channel, about five hundred feet west of Studebaker Road), City of Long Beach [Los Angeles County APN 7237-017-006].

**EMERGENCY WORK PROPOSED:** Import 1,000 cubic yards of clean fill dirt to create a minimum six-inch thick dirt cap over an area no larger than 50,000 square feet to cover exposed trash in order to prevent methane release, per orders to comply issued by California Integrated Waste Management Board (Inspection Report, File No. 19-AK-5003 dated 3/26/2009) and South Coast Air Quality Management District (Case No. D-18289, 3/26/2009).

This letter constitutes approval of the emergency work you have requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of elevated methane levels requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within thirty days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) As conditioned the work proposed would be consistent with the requirements of the California Coastal Act and the City of Long Beach LCP.

The work is hereby approved, subject to the attached conditions.

Sincerely,

Peter M. Douglas  
Executive Director

By: Teresa Henry  
Title: District Manager

**COASTAL COMMISSION**  
**A5-LOB-10-015**

**CONDITIONS OF APPROVAL:**

1. The enclosed form must be signed by the permittee and returned to our office within seven (7) days.
2. Only that work specifically described above and for the specific property listed above is authorized. This permit does not authorize any excavation or export of materials from the site. This permit does not authorize the disturbance or removal of any vegetation from the site.
3. The emergency development authorized by this permit is limited to a term of one-week, unless the Executive Director grants additional time for good cause.
4. A water spraying truck shall be used to minimize dust resulting from the activity.
5. In exercising this permit, the permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
7. Within thirty days, the applicant shall apply for a local coastal development permit for the proposed activity from the City of Long Beach.

Condition number three (3) indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a local coastal development permit must be obtained from the City of Long Beach (as required by Condition number seven). A regular coastal development permit would be subject to the provisions of the California Coastal Act and the certified City of Long Beach Local Coastal Program (LCP), and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate an easement), habitat restoration, and/or a requirement that a deed restriction be placed on the property assuming liability for damages. The certified City of Long Beach Local Coastal Program (LCP) sets forth the following land use policy for the project site, which is Subarea 23 of SEADIP (Southeast Area Development and Improvement Plan):

**Subarea 23**

- a. The two wetland concepts generally outlined shall include a 8.3 acre brackish pond on Area 23 provided that the Executive Director of the California Coastal Commission determines (i) in addition to the setback for buffer, the elevation and setbacks between development and wetland edge shall be sufficient to ensure stability during liquefaction events caused by the maximum credible earthquake; (ii) that the location and operation of the proposed wetland are acceptable to the Regional water Quality Control Board, the State Department of Health and to the Local Mosquito Abatement District.
- b. If approval from these agencies results in reductions to the net size of the proposed wetland, restoration at this site shall only occur if the remaining area is sufficient to create a wetland at least the same size as the existing brackish pond at the Marketplace.

If you have any questions about the provisions of this emergency permit, please call the Commission office in Long Beach (562) 590-5071.

Enclosure: Acceptance Form  
cc: Local Planning Department

EXHIBIT # 3  
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# CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802 • FAX (562)570-6068

## NOTICE OF FINAL LOCAL ACTION

Application No.:

0904-15

Project Location:

6400 Loynes Drive

Applicant:

2H Properties  
c/o Sean Hitchcock  
2651 Walnut Avenue  
Signal Hill, CA 90755

**RECEIVED**  
South Coast Region

JAN 14 2010

CALIFORNIA  
COASTAL COMMISSION

Permit(s) Requested:

Local Coastal Development Permit

**Project Description:** A Local Coastal Development Permit to allow the import of 1,000 cubic yards of soil to re-establish and maintain the cap over the existing landfill at 6400 Loynes Drive in response to California Coastal Commission Emergency Permit 5-09-068-6. Also included was approval to allow weed abatement to comply with a Fire Department order.

Local action was taken by the:

Zoning Administrator on:  
October 12, 2009

Decision:

Conditionally Approved

Planning Commission on:  
December 3, 2009

Decision:

Denied the appeal and upheld the decision of the Zoning Administrator to approve the permit conditioned upon the implementation of a remediation plan, the details of which shall be presented to the Planning Commission for consideration within 90 days.

Local action is final on:

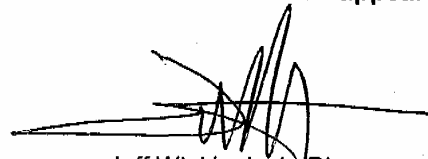
January 7, 2010

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.

  
Derek Burnham  
Current Planning Officer

  
Jeff Winklepleck, Planner  
Phone No.: (562)570-6607

Attachments

District: 3

**COASTAL COMMISSION**  
A5-LOB-10-015

EXHIBIT # 4  
PAGE 1 OF 4



Local Coastal Development Permit  
Application No. 0904-15  
December 3, 2009

**CONDITIONS OF APPROVAL  
LOCAL COASTAL DEVELOPMENT PERMIT  
Application No. 0904-15  
Date: December 3, 2009**

1. This permit shall be invalid if the owner(s) and/or applicant(s) have failed to return written acknowledgment of their acceptance of the conditions of approval on the *Conditions of Approval Acknowledgment Form* supplied by the Planning Bureau. This acknowledgment must be submitted within 30 days from the effective date of approval (final action date or, if in the appealable area of the Coastal Zone, 21 days after the local final action date). Prior to the issuance of a building permit, the applicant shall submit a revised set of plans reflecting all of the design changes set forth in the conditions of approval to the satisfaction of the Zoning Administrator.
2. The use permitted on the site shall be the previously completed import of 1,000 cubic yards of clean fill dirt to create a minimum 6-inch thick dirt cap over an area no larger than 50,000 square feet to cover exposed trash in order to prevent methane release, per orders to comply issued by California Integrated Waste Management Board (Inspection Report, File No. 19-AK-5003 dated 3/26/2009) and South Coast Air Quality Management District (Case No. D-18289, 3/26/2009). Additionally, weed abatement to comply with a Long Beach Fire Department order is also permitted.
3. Per Long Beach Fire Inspection Report 17732, weed abatement shall include removal of all flammable vegetation and combustible growth within 30 feet of buildings, structures, or property lines, whichever is nearer, per the California Code of Regulations Title 19, Division 1, Chapter 1, Article 3, Section 3.07.
4. Violation of any of the conditions of this permit shall be cause for the issuance of an infraction, citation, prosecution, and/or revocation and termination of all rights thereunder by the City of Long Beach.
5. All conditions of approval must be printed verbatim on all plans submitted for plan review to the Development Services Department. These conditions must be printed on all plans submitted for plan review.
6. The property shall be maintained in a neat, quiet and orderly condition and operated in a manner so as not to be detrimental to adjacent properties and occupants.
7. Hours of operation shall be limited from 7:00 a.m. to 4:00 p.m. Monday-Friday and Saturday 9:00 a.m. to 4:00 p.m. No work is permitted Sunday or holidays.

**COASTAL COMMISSION**  
**AS-LOB-10-015**

EXHIBIT # 4  
PAGE 2 OF 4

Local Coastal Development Permit  
Application No. 0904-15  
December 3, 2009

8. The applicant shall comply with City of Long Beach Noise regulations, Chapter 8.80 of the Long Beach Municipal Code.
9. The applicant shall defend, indemnify, and hold harmless the City of Long Beach, its agents, officers, and employees from any claim, action, or proceeding against the City of Long Beach or its agents, officers, or employees brought to attack, set aside, void, or annul an approval of the City of Long Beach, its advisory agencies, commissions, or legislative body concerning this project. The City of Long Beach will promptly notify the applicant of any such claim, action, or proceeding against the City of Long Beach and will cooperate fully in the defense. If the City of Long Beach fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Long Beach.
10. The applicant shall comply with a remediation plan to be prepared by staff and submitted to the Planning Commission for consideration within 90 days.

**COASTAL COMMISSION**  
**A5-LOB-10-015**

EXHIBIT # 4  
PAGE 3 OF 4

## LOCAL COASTAL DEVELOPMENT PERMIT FINDINGS

Application No. 0904-15

Date: December 3, 2009

Pursuant to Chapter 21.25, Division IX of the Long Beach Municipal Code, the City shall not approve a Local Coastal Development Permit unless positive findings are made consistent with the criteria set forth in the Local Coastal Development Permit regulations.

**1. THE PROPOSED DEVELOPMENT CONFORMS TO THE CERTIFIED LOCAL COASTAL PROGRAM, INCLUDING BUT NOT LIMITED TO ALL REQUIREMENTS FOR REPLACEMENT OF LOW AND MODERATE-INCOME HOUSING; AND**

The Local Coastal Program and land use regulations for the project site are contained within the Southeast Area Development and Improvement Plan (PD-1) dated January 3, 2006, and are intended to provide for a total community of residential, business and light industrial uses integrated by an extensive system of parks, open space and trails.

The zoning designation for the project site is the Southeast Area Development and Improvement Plan (PD-1) Subarea 23. The 9.38-acre site is identified to be developed as an 8.3-acre brackish pond by the developer(s) of Subareas 11a and 25.

The proposed project is in response to Emergency Permit 5-09-068-G that was issued by the California Coastal Commission on April 7, 2009. The project includes the completed import of 1,000 cubic yards of clean fill dirt to re-establish and maintain the cap over the existing landfill and weed abatement in response to an order issued by the Long Beach Fire Department.

Based on review of the Local Coastal Program, the delineation study and subsequent peer review, the proposed development (import of soil, weed abatement and remediation requirement (see Condition of Approval No. 10)) conforms to the certified Local Coastal Program.

The site is vacant and is therefore not subject to the requirements for replacement of low and moderate-income housing.

**2. THE PROPOSED DEVELOPMENT CONFORMS TO THE PUBLIC ACCESS AND RECREATION POLICIES OF CHAPTER 3 OF THE COASTAL ACT. THE SECOND FINDING ONLY APPLIES TO DEVELOPMENT LOCATED SEAWARD OF THE NEAREST PUBLIC HIGHWAY TO THE SHORELINE.**

Chapter 3 of the Coastal Act deals with the public's right to use of the beach and water resources for recreational purposes. The chapter provides the basis for state and local governments to require beach access dedication and to prohibit development that restricts public access to the beach and/or water resources.

The project as currently proposed will not reduce access or public views to the beach.

**COASTAL COMMISSION**  
**A5-LoB-10-015**

EXHIBIT # 4  
PAGE 4 OF 4

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 590-5084

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: Los Cerritos Wetlands Land Trust

Mailing Address: P.O. Box 30165

City: Long Beach

Zip Code: 90853

Phone: 714/357-8576

**RECEIVED**  
South Coast Region

JAN 25 2010

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Long Beach

2. Brief description of development being appealed:

A Local Coastal Development Permit to allow the import of 1,000 cubic yards of soil to re-establish and maintain the cap over an existing landfill in response to California Commission Emergency Permit 5-09-068-6.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

6400 Loynes Drive, Long Beach, CA

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions  
☒ Approval with special conditions:  
☐ Denial

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A5-LOB-10-015

DATE FILED: 1-25-2010

DISTRICT: South Coast

**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 1 OF 2

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

### SECTION IV. Reasons Supporting This Appeal

#### **PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

1. Without obtaining a coastal development permit or any other permits and without regard to the certified Local Coastal Program designation for the property, the property owner destroyed habitat and wetland areas on the property and breached a protective cap beneath the soil using heavy grading equipment in an effort to create a flat bare surface for a future development.

2. The Certified Local Coastal Program designation for the parcel (Subarea 23) is as follows:

"a. The two wetland concepts generally outlined shall include a 8.3 acre brackish pond on Area 23 provided that the Executive Director of the California Coastal Commission determines (i) in addition to the setback for buffer, the elevation and setbacks between development and wetland edge shall be sufficient to ensure stability during liquefaction events caused by the maximum credible earthquake; (ii) that the location and operation of the proposed wetland are acceptable to the Regional Water Quality Control Board, the State Department of Health and to the Local Mosquito Abatement District.

b. If approval from these agencies results in reductions to the net size of the proposed wetland, restoration at this site shall only occur if the remaining area is sufficient to create a wetland at least the same size as the existing brackish pond at the Marketplace."

3. The City's Planning Commission voted to issue a coastal development permit without recognizing that its action included inconsistent provisions. The Planning Commission adopted a motion to deny the appeal of a decision by the City's Zoning Administrator that did not require the property owner to restore the property or remediate the damage done, but in the same motion directed City Staff to prepare a remediation or restoration plan of undetermined standards and scope for the Planning Commission to consider and for the property owner to implement. No such plan has been prepared or considered and its enforceability is uncertain. In any event, the City has not taken its final action on this matter and it is improper to attempt to separate a permit approval from conditions of approval as if they were unrelated.

4. Except for a conclusionary finding unsupported by facts, the decision did not address the issue of its consistency, or lack thereof, with the requirements of the Local Coastal Program. The grading and destruction of wetland and habitat values that were permitted were inconsistent with the designated land use and zoning designations contained in the City's certified Local Coastal Program.

5. It is the contention of the appellant that the property should be recognized as containing wetlands and sensitive habitat and that it is subject to the public trust.

**COASTAL COMMISSION**  
**A5-L0B-10-015**

EXHIBIT # 5  
PAGE 2 OF 2

**CALIFORNIA COASTAL COMMISSION**SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 590-5084

JAN 28 2010

CALIFORNIA  
COASTAL COMMISSION**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Heather Altman

Mailing Address: P.O. Box 3825

City: Seal Beach

Zip Code: 90740

Phone: 714.322.2965

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Long Beach

2. Brief description of development being appealed:

A Local Development Permit to allow the import of 1,000 cubic yards of soil to re-establish and maintain the cap over the existing landfill.

Also included was approval to allow weed abatement to comply with a Fire Department order.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

6400 Loynes Drive, Long Beach, CA

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
- ☒ Approval with special conditions:
- ☐ Denial

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

**TO BE COMPLETED BY COMMISSION:**APPEAL NO: A-5-LOB-10-015DATE FILED: 1-28-2010DISTRICT: So. Coast**COASTAL COMMISSION**EXHIBIT # 6  
PAGE 1 OF 2

#### SECTION IV. Reasons Supporting This Appeal

##### PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The emergency permit (#5-09-068G) that was issued by the CCC stated, "within thirty days, the applicant shall apply for a local coastal development permit for the proposed activity from the City of Long Beach." The proposed activity—the illegal grading and destruction of habitat, and the import of exotic fill in response—are acts inconsistent with the certified Local Coastal Plan for the area. The parcel (sub area 23 of SEADIP) is designated for use as a brackish pond. This designation is consistent with the Coastal Act as it is resource-dependent and the only type of use allowed within an ESHA. As the applicant is not proposing a brackish pond (rather, the import of exotic fill in response to illegal habitat destruction), the proposed activity is inconsistent with the current use designation. Changes in use designation require an amendment to the certified Local Coastal Program, yet this has not been addressed at the City level nor was it identified in the Notice of Final Action as a component of the proposed activity.

Additionally, in the emergency permit, the CCC indicated that the requested coastal development permit may be conditioned to include such activities as "...habitat restoration...". The City has not included habitat restoration as a condition of the coastal development permit, rather that a remediation plan be prepared by staff.

Condition 10 of the City's Notice of Final Action states that, "The applicant shall comply with a remediation plan to be prepared by staff and submitted to the Planning Commission for consideration within 90 days." This condition is inconsistent with the approved motion which was, "to approve the recommendation with an amendment that a condition of approval be included requesting that staff work on a remediation plan for the property and bring it back to the Commission within a period of 90 days." At no point did the Planning Commissioners require that the applicant comply with the staff produced remediation plan. In fact, the applicant is required to do nothing other than get this Coastal Development Permit. Neither were details, direction nor standards included as to what would constitute a valid remediation plan, and how said plan would be produced consistent with SEADIP and the Coastal Act.

Further, given that the City of Long Beach staff has yet to prepare and submit to Planning the requested remediation plan, the City action on this matter is not yet final, and the sending of the Notice of Final Action is premature.

Condition 3 of the City's Notice of Final Action states that, "...weed abatement shall include removal of all flammable vegetation and combustible growth..." As evidenced in all 4 produced biological reports, this parcel is known to contain hydrophytic vegetation. Removal of hydrophytic vegetation is inconsistent with the policies outlined in the Coastal Act. Additionally, absent are any stipulations which require compliance with the Migratory Bird Treaty Act. Also absent is a lack of identification/direction as to how this weed abatement activity will be conducted (i.e. using hand tools or a dozer).

**COASTAL COMMISSION**  
**A5-LOB-10-015**

EXHIBIT # 6  
PAGE 2 OF 2

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South Coast Region

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

JAN 28 2010

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 590-5084

CALIFORNIA  
COASTAL COMMISSION



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: MARY SUTTIE & DAVID ROBERTSON

Mailing Address: 331 LINARES AVENUE

City: LONG BEACH

Zip Code: 90803

Phone: (562) 439-8727

SECTION II. Decision Being Appealed

1. Name of local/port government:

CITY OF LONG BEACH

2. Brief description of development being appealed:

LOCAL COASTAL DEVELOPMENT PERMIT FOR IMPORT  
OF 1,000 CUBIC YARDS OF SOIL TO RE-ESTABLISH AND  
MAINTAIN THE CAP OVER THE EXISTING LANDFILL.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

6400 LOYNES DRIVE  
LONG BEACH  
ASSESSOR'S PARCEL NO. 7237-017-006  
CROSS STREET / STUDEBAKER RD.

4. Description of decision being appealed (check one.):

☐ Approval; no special conditions

☒ Approval with special conditions:

☐ Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-LOB-10-015

DATE FILED: 1-28-10

DISTRICT: So. Coast

COASTAL COMMISSION  
A5-LOB-10-015

EXHIBIT # 7

PAGE 1 OF 6



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
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UNIDENTIFIED PLANS & SOURCES OF FUNDS  
TO COMPLETE RESTORATION

THE ZONING DESIGNATION FOR THE PROJECT  
SITE IS THE SOUTHEAST AREA DEVELOPMENT  
AND IMPROVEMENT PLAN (PD-1) SUBAREA 23.  
THE 9.38-ACRE SITE IS IDENTIFIED TO BE  
DEVELOPED AS AN 8.3 ACRE BRACKISH POND  
BY THE DEVELOPER OF SUBAREAS 11A AND 25.

PLEASE SEE ATTACHED.

**COASTAL COMMISSION**  
A5-L03-10-015

EXHIBIT # 7  
PAGE 2 OF 6

January 27, 2010

Dear Commissioners,

Mr. Hitchcock, the owner of 6400 Loynes Drive, claimed he was acting under a weed abatement order which turned out not to exist. In fact, as shown by the following pictures, Mr. Hitchcock not only did not have an abatement order or permit, but he actually made no effort to abate weeds within 30 feet of the residential mobile home park as required under the typical weed abatement orders.



Pictures from March 2009



In reality, for some reason, Mr. Hitchcock undertook the deliberate destruction of the wildlife habitat with his bull dowzers for the "revised" purpose of a soccer field development in violation of the California Coastal Act. In the process, he penetrated the cap on the landfill under the site, releasing high levels of methane gas per the South Coast AQMD and in violation of the LA County Solid Waste Management Program.

Page 2

His actions were aided and abetted by Mr. Tom Dean who provided storage for Mr. Hitchcock's earth moving equipment on his property on Studebaker Road.



Mr. Hitchcock was also aided and abetted by Mr. Mike Conway – head of the Public Works Department for the City of Long Beach. Per emails discovered in a “freedom of information request,” Mr. Conway re-directed a large load of asphalt gravel to Mr. Hitchcock at the request of Mr. Dean. This gravel was provided to Mr. Hitchcock free of charge.



The illegal actions were finally halted. Due to the methane release and AQMD violations, Mr. Hitchcock was given an emergency permit by the California Coastal Commission to put dirt over the penetrated cap. The plan was to provide a 6" dirt cap to cover a 50,000 SF area.



Page 3

As shown below, he ignored the permit and spread landfill over most of the destroyed area with a 1" dirt cap...



April 13 2009 Pictures

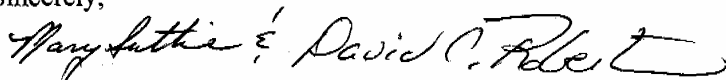
We commend the City of Long Beach Planning Commission for requiring a remediation/restoration plan to be developed for this destroyed wetlands habitat. But, to date, there has been no "open" discussion as to the type and extent of the restoration plan. In fact, Mr. Craig Beck, was discovered to be taking unreported favors from lobbyists and removed as the Director of the Development Services Department.

Page 4

Based upon the above facts, we are asking the California Coastal Commission to approve our appeal of the actions of the City of Long Beach. We ask you to assess Mr. Hitchcock a more appropriate fine. We ask you to require a comprehensive restoration condition - which for compliance with the City of Long Beach Local Coastal Program and SEADIP should be a restoration to a wetlands/brackish pond habitat. This brackish pond habitat should have occurred with the past development of area 11A - the In & Out Burger development.

We appreciate your consideration of our appeal.

Sincerely,



Mary Suttie and David Robertson

COASTAL COMMISSION  
A5-LOB-10-015

EXHIBIT # 7

PAGE 6 OF 6

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
SECTION IV. Reasons Supporting This Appeal  
PLEASE NOTE:

CALIFORNIA  
COASTAL COMMISSION

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
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INTRODUCTION-HISTORICAL SETTING-WITNESS DECLARATION

My name is Thomas Marchese J.D.. I am a percipient witness to this event having been the first to observe this intense grading and habitat destruction early on the morning of March 19, 2009. I attempted to stop this illegal grading by asking the contractors to show me their permits and explain to me, the Past President and current Vice President of the adjacent University Park Estates Neighborhood Association, when and where they obtained approval for such major excavation.

I was told that they had obtained all necessary approvals and that they were; "Working for the City". I physically intervened on a few occasions and advised them that they were in fact breaking the law, in the original permit jurisdiction of the Coastal Zone, on a lot zoned 'Brackish Pond Wetlands', that my residents had received no Notice of such major excavation, and that they were unearthing a closed toxic land fill which had been capped and restored to a functioning habitat area. I was then assured that everything was legal, and ordered off of the property at threat of arrest.

I returned to my office, began notifying the Mayor, Council, Coastal Staff, my Homeowners Board, witnesses, the City Manager, Council and others. As an effort to stop this complete destruction of the area proceeded, the City did nothing until late the following day when the entire earthmoving, grading and infill procedures were complete. By the time the City Manager arrived, about 3 PM the following day, the area was 95% destroyed, and infill exceeding 8 feet had occurred, and grading had lowered the raised mounds, and elevated contours, by 6 to 8 feet in some areas.

A person referred to as a City inspectors observed much of this activity but avoided talking to a range of witnesses who sought his assistance.

For the record, and as historical context, my father was the City Engineer who capped this former salvage area in the 60's. 6 to 8 feet of high clay, impermeable, native soil was imported from the adjacent wetlands to re create a natural aesthetic. Staff engineers purposely re designed this area to roll and fall, and drain, and pond, similar to the adjacent habitat area. Staff engineers openly restored this area by designing this town's first actual wetlands/uplands restoration.

This open space was re-designed, repaired, and remediated as an adjunct to the adjacent ocean, and housing tract.

COASTAL COMMISSION  
A5-LOB-10-015

EXHIBIT # 8  
PAGE 1 OF 3

For over 40 years, I have personally walked and inspected this area which had returned to a thriving, functioning habitat area full of a range of native species. I personally observed at least 100 different forms of life there over the years, from nesting brown burrowing owls, to Belding savannah sparrows, herons, egrets, hawks, eagles, a range of shore birds, Canadian geese and many more species.

A range of mammals from coyotes, red foxes, kit foxes, raccoons, possums, squirrels, and similar species lived, fed, or nested there. A wide range of invertebrates were there.

Ponding water was common there in 10 places where hydrophytes were known. When the City restored the area, they designed in 10 to 12 small ponding areas to allow seasonal rain to collect in order to provide water for wintering animals. As an assistant to our staff engineers, we actually tested the percolation and retention features, over a period of years, to insure that small water sources were functioning for the benefit of the plant, insect and animal life.

Over time, a range of wetland/upland vegetation had returned including salt marsh grass, pickle weed, coastal sage and other native vegetation. Abundant exotic and non native vegetation had allowed significant nesting and breeding cover as well.

At the conclusion of this two day event, all, or substantially all of the above features were completely destroyed, graded under, or otherwise destroyed absent any legal right to perform any such work.

#### APPEAL UNDER THE COASTAL ACT

1. Without imparting and Actual or Constructive Notice to the adjacent residents or stakeholders, or obtaining a coastal development permit or any other permits and without regard to the certified Local Coastal Program designation for the property, the property owner destroyed habitat and Wetland areas on the property, killed or displaced a range of animals, vegetation, and sub species and breached a protective cap beneath the soil using heavy grading equipment in an effort to create a flat bare surface for a future development.

After this event, toxic methane gas was released and the residents had to call out EPA inspectors. Methane caused illness, nausea and intense odor.

2. The Certified Local Coastal Program designation for the parcel (Subarea 23) is as follows:

"a. The two wetland concepts generally outlined shall include a 8.3 acre brackish pond on Area 23 provided that the Executive Director of the California Coastal Commission determines (i) in addition to the setback for buffer, the elevation and setbacks between development and wetland edge shall be sufficient to ensure stability during liquefaction events caused by the maximum credible earthquake; (ii) that the location and operation of the proposed wetland are acceptable to the Regional Water Quality Control Board, the State Department of Health and to the Local Mosquito Abatement District,

b. If approval from these agencies results in reductions to the net size of the proposed wetland, restoration at this site shall only occur if the remaining area is sufficient to create a wetland at least the same size as the existing brackish pond at the Marketplace."

**COASTAL COMMISSION**

**A5-LOB-10-015**

EXHIBIT # 8

PAGE 2 OF 3

3. The City's Planning Commission voted to issue a coastal development permit without recognizing that its action included inconsistent provisions. The Planning Commission adopted a motion to deny the appeal of a decision by the City's Zoning Administrator that did not require the property owner to restore the property or remediate the damage done, but in the same motion directed City Staff to prepare a remediation or restoration plan of undetermined standards and scope for the Planning Commission to consider and for the property owner to implement. No such plan has been prepared or considered and its enforceability is uncertain. In any event, the City has not taken its final action on this matter and it is improper to attempt to separate a permit approval from conditions of approval as if they were unrelated.

4. Except for a conclusionary finding unsupported by facts, the decision did not address the issue of its consistency, or lack thereof, with the requirements of the Local Coastal Program. The grading and destruction of wetland and habitat values that were permitted were inconsistent with the designated land use and zoning designations contained in the City's certified Local Coastal Program.

5. It is the contention of the appellant that the property should be recognized as containing wetlands and sensitive habitat and that it is subject to the public trust.

#### CONCLUSION-PRAYER FOR RELIEF

I believe, as a Director of The Los Cerritos Wetlands Land Trust, that this matter raises a Substantial Issue. I request that an Order to Restore be evaluated and issued, along with a substantial fine to set local precedent that such senseless destruction will not be tolerated.

This was the most wanton and reckless habitat destruction that I have been ever forced to witness. This senseless attempt to illegally build a soccer field actually caused demonstrable emotional distress to several people, including myself. Tragically, this event was so egregious that one senior citizen actually vomited while observing animals rush back into their dens to avoid the heavy equipment, only to be crushed as the machines compacted the soil.

I further observed women and children crying, wailing, fleeing in anguish and pleading; "Please, please stop", and words to that effect. Another elderly resident had sinking spells and nearly fainted. All the while the workers proclaimed, "The City knows all about this, we are working for them, there is no problem". I also observed the workers repeatedly taunt, insult, berate, laugh at, and curse at several of the witnesses.

Respectfully Submitted,

*Thomas Marchese 1-28*

Thomas Marchese, 6312 E 5<sup>th</sup> ST, Long Beach, CA 90803

*A5-LOB-10-015*

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**El Dorado Audubon Society**  
Post Office Box 90713  
Long Beach, CA 90809-0713

January 25, 2010

*RE: Certified Local Coastal Plan, SEADIP, Subarea 23, between Loynes Drive and the Los Cerritos Channel, Appeal to CCC of Long Beach Planning Commission, 12/3/10*

To: California Coastal Commission

The mission of Audubon is to conserve and restore natural ecosystems focusing on birds and other wildlife and their habitats for the benefit of humanity and the earth's biological diversity.

The 12/3/10 decision of the Long Beach Planning Commission is inconsistent with the Certified LCP and Chapter 3 of the Coastal Act.

El Dorado Audubon is a California chapter of The National Audubon Society and has a long history of protecting Los Cerritos Wetlands in Long Beach and Seal Beach. El Dorado Audubon has been engaged in saving remaining open space from residential home construction and reducing the threat of exotic or pest species that threaten nesting marsh birds. This includes the fight for purchase and/or protection of the Los Cerritos Wetlands and oil fields and adjacent Hellman Property.

The property in question is: Long Beach Certified Local Coastal Plan, SEADIP Subarea 23, 6400 Loynes Drive nr. Studebaker Road, 8.8 acre brackish pond. The Los Cerritos Wetlands Authority map includes Subarea 23. It is part of an Audubon Important Bird Area.

It is for these reasons that El Dorado Audubon committed funds to engage the services of a biologist to do a biological assessment after habitat destruction occurred in March of 2009. We joined "Our Town - Long Beach" in hiring Brenda McMillan. For the 12/3/09 hearing we asked that: that the land be re-contoured, habitat restored, with 5-year monitoring of restoration. We cited bird species observed on the site.

***Orange Coast Wetlands Important Bird Area***

Audubon California has named Los Cerritos Wetlands as part of the Orange Coast Wetlands Important Bird Area, which along with Bolsa Chica, Huntington Beach wetlands, Hellman Property, and Seal Beach, comprise some of the most important remnant wetlands in southern California, and one of only two estuaries remaining in Los Angeles County. It is an important stop along the Pacific Flyway and there is a concentration of endangered and sensitive species within its coastal marshes and beaches.

**COASTAL COMMISSION**  
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California Coastal Commission  
January 25, 2010  
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Orange Coast Wetlands Important Bird area was identified as part of Audubon's ongoing scientific analysis of sites with significant avian values. This effort is led by our Important Bird Areas Program, which is part of a global ornithological effort led by Birdlife International.

Orange Coast Wetlands qualifies as an Important Bird area for several reasons: concentrations of migratory and wintering shorebirds; concentrations of wintering waterfowl; 19 sensitive species including Western Snowy Plovers (federally threatened); and significant concentrations of California Least Terns (federally and state endangered) and Belding's Savannah Sparrow (state endangered). Los Cerritos Wetlands is a foraging area for locally breeding terns, and supports a modest number of Belding's Savannah Sparrow in salt marsh habitat.

Raptors, herons and egrets are known to forage on Subarea 23. Avian species using the site include Great Blue Herons, Great Egrets, Snowy Egrets, Red-winged Blackbirds, Black Phoebe, Say's Phoebe, American and Lesser Goldfinches, Western Meadowlarks, Savannah Sparrows, White-crowned Sparrows, Turkey Vulture, Red-tailed Hawk, American Kestrel, Copper's Hawk, Northern Harrier, and Merlin.

Sincerely,

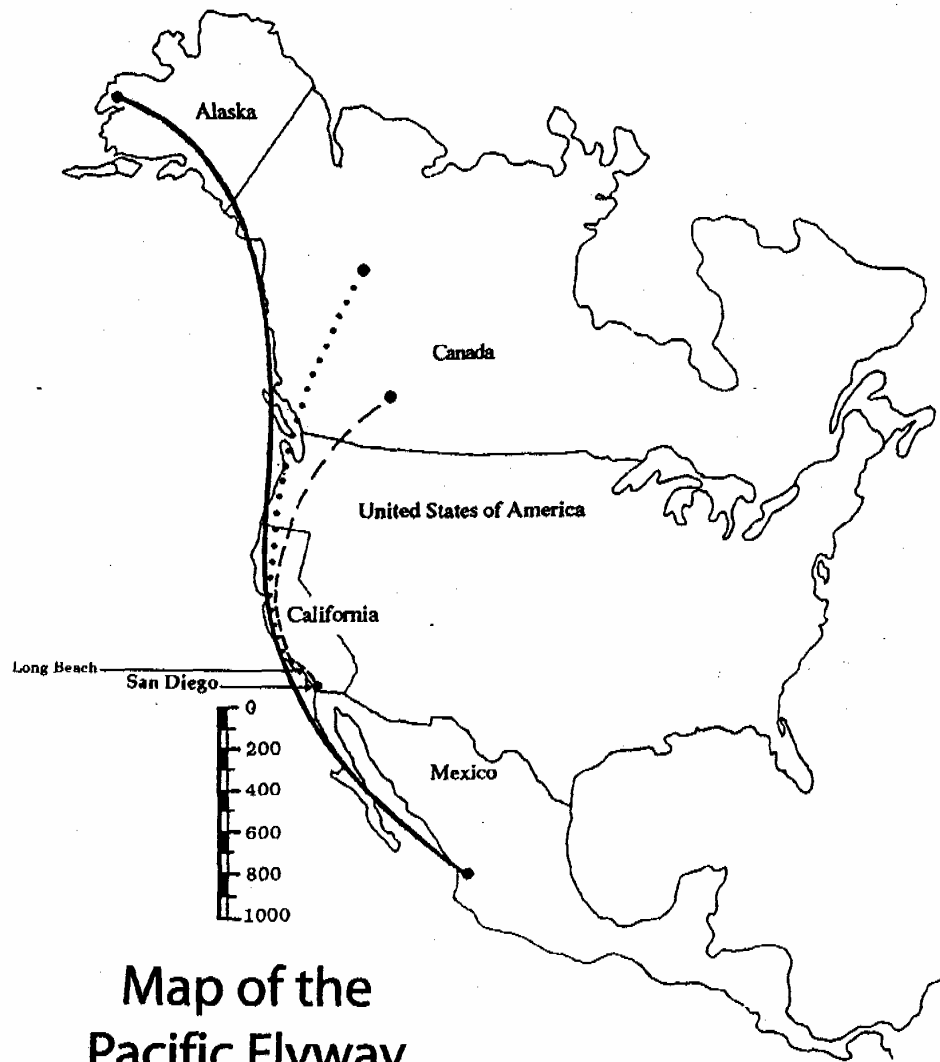


El Dorado Audubon Society

Andrea Jones, IBA Programs Director, Audubon California  
Garry George, Chapter Network Director, Audubon California

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A5-L0B-10-015

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California Coastal Commission  
South Coast District Office  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4416

Attention: Andrew Willis



**RECEIVED**  
South Coast Region

JAN 28 2010

CALIFORNIA  
COASTAL COMMISSION

RE: 6400 Loynes  
Long Beach California 90803  
LCD 0904-15

January 27, 2010

"Our Town- Long Beach", and El Dorado Audubon wish to appeal the Long Beach California Planning Commission's decision (December 3, 2009) granting approval to property owner, Mr. Sean Hitchcock for a Local Coastal development permit. #0904-15 with conditions attached. This permit was a retroactive permit in response for emergency work done, ordered by a California Coastal Commission Emergency permit, #5-09-068 G dated April 7, 2009 to cover the methane that 2H (Mr. Hitchcock's Construction Company) unearthed during illegal grading of the parcel which constituted a health hazard. On March 19 and March 20, 2009, in the guise of weed abatement, 2H bulldozed and grubbed a 40 year old landfill, flattened the parcel, removing all sensitive habitat, wetland vegetation and uprooting mature palm trees, used as nesting sites for herons.

The 9.8 acre site is located in the Coastal Zone at 6400 Loynes, Long Beach 90803 (near the corner of Loynes and Studebaker) and is described in SEADIP, (Southeast area Development and Improvement Plan) as subarea 23, zoned as wetlands to create a "wetlands/Brackish pond". This is the LAND USE for this parcel, and is part of the Long Beach certified LCP. The California Coastal Commission's emergency permit called out the land use for this site, (Coastal Act, SEADIP, LCP). We feel the conditions of the emergency permit were not enforced by the city, or understood by the city during the City of Long Beach Planning Commission hearing.

- The unpermitted development consisted of destroying a wetland with no local, state nor Coastal permits obtained:
- Unearthing a landfill
- Removal of wetland vegetation
- Removal of habitat/home for the birds and mammals that lived there
- Import and placement of non-native fill dirt beyond the "50,000 sq ft specified in the emergency permit"
- Grading a wetland

**COASTAL COMMISSION**  
**A5-LOB-10-015**

EXHIBIT # 10  
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- Removal of mature trees
- Dumping waste asphalt on site.  
Removing all contours to the acreage, and then compacting the soil; thus changing the hydrology of the wetland.
- Denying neighbors, residents and community visual access to the wetland that once flourished on Subarea #23.
- 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.)
- 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): To preserve areas which serve as natural habitats for fish and wildlife species and which can be used for ecologic, scientific and educational purposes. This project was not evaluated for its habitat value as part of the permit. The city approved Local Coastal Development Permit does not conform with this policy of the LCP
  - Subarea 23 is part of the Los Cerritos Wetlands Complex, and labeled as a wetland on the Coastal Conservancy map. (attached maps) It lays next to the Los Cerritos Channel Estuary as well the greater Los Cerritos Wetlands, adjacent to an existing wetlands area with ESA status which is described in City of Long Beach LCP.
  - \*Mr. Hitchcock did not comply with the CCC Emergency Permit (issued on April 7,2009)

*"Import 1,000 cubic yards of clean fill dirt to create a minimum six inch thick dirt cap over an area no larger than 50,000 square feet to cover exposed trash in order to prevent methane release, per orders to comply issued by California Integrated Waste Management Board and South Coast Air Quality Management District".*

***Further, the CCC Emergency permits states on page # 2***

*"Only that work specifically described above and for the specific property listed above is authorized".*

Done correctly, this fill would indeed have given the 6 inch thick dirt cap over the exposed trash,(a little over an acre). Unfortunately, 2H rolled the dirt over the entire parcel thus creating fill on the entire acreage which was not ordered.

Mr. Hitchcock provided his own biological report that argues that subarea #23 is not a wetlands.

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However, both "Our Town-Long Beach" and El Dorado Audubon commissioned their own biologist, Brenda McMillan (report attached) who found the wetland indicators. Two other noted biologists also testified as to wetland habitat

- City of Long Beach edited language from the CCC emergency permit on city agendas and in hearings (Zoning and Planning Commission)
- Appellants were not allowed to rebut the testimony of either Mr. Hitchcock's lawyer nor the biologist he hired, Ty Garrison of SWCA, at the Planning Commission's appeal.
- The city included in the Local Coastal Development Permit, a permit for weed abatement. Although appellants asked for hand held tools and a biologist on site- the city denied this request.
- The Long Beach Planning Commissions also tacked on an amendment to the Local Coast Development Permit requesting that city staff bring back a plan for remediation of the site within 90 days. Appellants had asked for an order to fully restore the site, (re-contour, and restore vegetation with a minimum 5 year monitoring process). We feel that the city will claim that remediation was already done by the capping of the landfill.

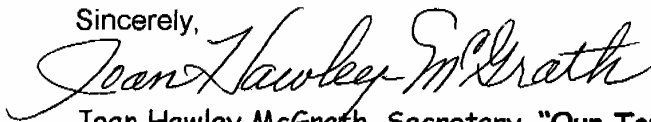
Indeed, the City of Long Beach on 9/21/09 gave the project-(capping of a landfill-) an exemption from CEQA.

The last sentence in the exemption is rather telling:

"The recapping is a step towards restoration of the project site"

For the above reasons, we ask that the local coastal development permit # 0904-15 be denied to Sean Hitchcock, (2H). We ask that subarea #23 be fully restored including the recontouring of the land, habitat vegetation, and a minimum 5 year monitoring of the site.

Sincerely,



Joan Hawley McGrath, Secretary, "Our Town-Long Beach"

"Our Town- Long Beach" PO Box 3661 Seal Beach California 90740

Email: ourtownLB@hotmail.com Phone: 562-397-8004

Enclosures:

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