

CALIFORNIA COASTAL COMMISSION

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Staff: Charles Posner - LB
Staff Report: 5/26/2010
Hearing Date: June 11, 2010
Commission Action:

**F9a****STAFF REPORT: APPEAL – DE NOVO HEARING**

APPEAL NUMBER: A-5-LOB-10-015

APPLICANT: 2H Properties - Sean Hitchcock

PROJECT LOCATION: 6400 E. Loynes Drive (SEADIP Subarea 23), City of Long Beach, Los Angeles County.

PROJECT DESCRIPTION: 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 weed abatement and remediation.

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).

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| 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

On March 10, 2010, the Commission determined that a substantial issue exists with respect to the grounds of the appeals because: a) the certified LCP designates the bay-fronting site for restoration as a brackish pond, b) the certified LCP requires that open space and natural habitat areas be preserved and that the waters of Alamitos Bay be protected from runoff, and c) the absence of a detailed and enforceable habitat protection and restoration plan could adversely affect wildlife, wetlands, and the quality of adjacent tidal waters.

Staff is recommending **APPROVAL** of the coastal development permit with special conditions. The recommended special conditions of the permit, which begin on Page Three, address restoration and re-vegetation of the previously graded area of the site subject to the landfill cap with native plants appropriate to the location; timing of the re-vegetation; monitoring and future maintenance of the site; and protection of water quality and marine resources. **See Page Two for the motion to adopt the staff recommendation.**

SUBSTANTIVE FILE DOCUMENTS:

1. City of Long Beach Local Coastal Program (LCP), 7/22/1980.
2. California Integrated Waste Management Board, Inspection Report, File No. 19-AK-5003, 3/26/2009.
3. South Coast Air Quality Management District, Notice to Comply No. D-18289, 4/3/2009.
4. Coastal Commission Emergency Permit 5-09-068-G, 4/7/2009.
5. Biological Resources Evaluation and Jurisdictional Waters Delineation for APN 7237017006, by Ty M. Garrison, SWCA Environmental Consultants, 5/28/2009.
6. 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.
7. City of Long Beach Local Coastal Development Permit No. 0904-15, 12/3/2009.
8. Coastal Commission Substantial Issue Staff Report (Appeal A-5-LOB-10-015), 2/24/2010.

STAFF RECOMMENDATION:

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

MOTION: *"I move that the Commission approve with special conditions Coastal Development Permit A-5-LOB-10-015 per the staff recommendation."*

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

I. Resolution: Approval of Coastal Development Permit with Conditions

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the Certified City of Long Beach Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Site Restoration, Re-vegetation and Monitoring Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval of the Executive Director, a detailed restoration and re-vegetation and monitoring plan for the portions of the project site that were disturbed by prior grading on March 19 and 20, 2009, and including the area covered with the fill imported pursuant to Emergency Permit 5-09-068-G. The detailed re-vegetation plan and monitoring program shall be prepared by a licensed Landscape Architect or a qualified Resource Specialist in consultation with the California Department of Fish and Game, the County of Los Angeles Department of Public Health (Environmental Health Solid Waste Management Program), and the South Coast Air Quality Management District (AQMD). The re-vegetation and monitoring program shall at a minimum include the following:

- A. **Native Plant List.** All plants shall be Southern California native plants appropriate to the natural habitat type (transitional scrub grassland – salt marsh to uplands). Appropriate native plants include, but are not limited to, coastal sage, buckwheat, bunch grass and annuals (e.g., lupin). All seeds and cuttings employed shall be from local sources in the Los Angeles and Orange County coastal areas. Prior to the first planting cycle, the permittee shall provide the Executive Director with the quantities and sources of all plants used in the project.
- B. **Native Plant Coverage.** The re-vegetation plan shall indicate the location, number and distribution of native plants to be installed. The re-vegetation plan shall be adequate to cover at least sixty-percent of the disturbed area with native plants within six months of initial planting.
- C. **Additional Fill.** Installation of the plants shall not result in the exposure of trash or other materials from the underlying landfill. Additional soil shall be imported to create a six-inch thick layer of soil for the new plants. The storage or stockpiling of soil, silt, other organic or earthen materials shall not occur where such materials could pass into coastal waters.

- D. Timing of Re-vegetation. Re-vegetation shall commence as soon as possible following removal of non-native plants and preparation of the soil. Installation of the native plants shall commence at the project site no later than ninety (90) days from the date of Commission approval of this permit, or within such additional time as the Executive Director may grant for good cause. The initial planting shall be completed no later than six weeks from the commencement of planting, in compliance with the re-vegetation and monitoring plan approved by the Executive Director.
- E. Removal of Non-native Plants. Prior to the installation of the native plants, all non-native weeds and grasses shall be removed from the area to be re-vegetated. Existing non-native trees shall also be removed from the area to be re-vegetated, except for individual trees that have been determined by a qualified Resource Specialist to not have any adverse effect on the adjacent habitat area and surrounding environment. No bird nests shall be disturbed at any time. Removal of non-native weeds, grasses and trees shall be done in compliance with the requirements of Special Condition Two of this permit. Prior to the removal of non-native vegetation, a qualified Resource Specialist shall survey the project site and identify with flags all areas of existing native vegetation. The permittee shall ensure that the areas of existing native vegetation are protected from disturbance during the implementation of the approved project, and that adequate water is provided to keep the plants healthy. Under the supervision of a qualified Resource Specialist, the permittee shall remove all non-native plants from the re-vegetation area using only hand-held tools while taking care to avoid disturbance of native plants and the trash in the underlying landfill. No herbicides may be employed. No grading or scraping is permitted. No heavy machinery may be used. Smaller mechanized vehicles with rubber tires (e.g. Bobcats) may be used to transport heavy loads between paved roads and work areas. No dead plants shall be left on site and no persistent chemicals shall be employed.
- F. Irrigation. A temporary irrigation system may be installed in order to provide enough water to keep the native plants healthy. No runoff shall leave the project site. The irrigation system shall be removed from the project site at the completion of the required monitoring and/or certification by the applicant's Landscape Architect or Resource Specialist that the required re-vegetation plan has become successful.
- G. Invasive Plants. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- H. Erosion Control. Prior to removing the non-native plants and preparation of the soil, the permittee shall install silt curtains along the entire length of the property lines in order to prevent runoff and siltation in the adjacent drainages and waterways. Jute matting (with no plastic netting) shall be placed on all slopes immediately following the removal of the existing plant cover. In addition, the permittee shall implement the following temporary erosion control measures during the restoration project: temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, and additional silt fencing as needed.
- I. Maintenance. Native vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the re-vegetation plan.

- J. Disposal of Plant Matter. All cut plant material shall be disposed of at an appropriate off-site location within ten days of cutting. A separate coastal development permit will be required prior to the placement of any cut plant material in the coastal zone unless the Executive Director determines that no permit is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.
- K. Monitoring. For at least five years following the initial planting, the permittee shall actively monitor the site, remove non-native plants and replant vegetation that has failed. The permittee shall monitor and inspect the site no less than once each thirty days during the first year that follows the initial planting. Thereafter, the permittee shall monitor the site at least once every ninety days. Each year, for a minimum of five years from the date of permit issuance, the permittee shall submit for the review and approval of the Executive Director, an annual re-vegetation monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist that certifies the re-vegetation is in conformance with the approved re-vegetation plan. The annual monitoring report shall include photographic documentation of plant species and plant coverage. If the annual re-vegetation monitoring report indicates the re-vegetation is not in conformance with or has failed to meet the performance standards specified in the re-vegetation plan approved pursuant to this permit, the permittee shall submit a revised or supplemental re-vegetation plan for the review and approval of the Executive Director. The revised re-vegetation plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the supplemental re-vegetation plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.
- L. Prior to any re-vegetation or disturbance of the site, the permittee shall file an 1150.1 (Excavation of Landfill Plan) with the South Coast Air Quality Management District.

The permittee shall implement the re-vegetation plan in accordance with the final plans approved by the Executive Director. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.

2. Ongoing Maintenance: Weed Abatement and Tree Trimming

Coastal Development Permit A-5-LOB-10-015 approves weed abatement, tree trimming, non-native tree removal, and ongoing maintenance of the property (6400 E. Loynes Drive) consistent with the terms of this permit. This permit does not authorize the construction of any trails or roads, or the erection of any fence, gate or wall. All weed abatement, tree trimming, ongoing maintenance, and all work carried out pursuant to any City or County issued abatement order, shall comply with the terms of this permit in order to ensure the protection of wildlife habitat and the long-term protection of breeding, roosting, and nesting habitat of state and federally listed bird species, California bird species of special concern, and bird species that play an especially valuable role in the ecosystem.

No bird nests shall be disturbed. Prior to tree trimming and weed abatement, a qualified biologist or ornithologist shall survey the project site to detect bird nests and submit a

survey report to the permittee and the Executive Director of the Coastal Commission. The survey report shall include identification of all known nests. The permittee shall maintain a file of survey reports that includes a record of nests that is to be used for future vegetation removal decisions.

All weed abatement, tree trimming, non-native tree removal, and ongoing maintenance of open space areas shall be supervised by a qualified biologist or Wetland Ecologist and shall be undertaken in compliance with all applicable codes or regulations of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the U.S. Migratory Bird Treaty Act, and shall be conducted in conformance with the following terms of this special condition.

A. Tree Trimming and Non-native Tree Removal

1. Unless otherwise specified by the terms of this permit, tree trimming and non-native tree removal shall take place only outside of bird breeding and nesting season, which is January 1 through September 30.
2. The trimming or removal of any tree that has been used for breeding and nesting within the past five years is prohibited, unless the permittee obtains a coastal development permit or emergency permit authorizing such trimming and removal. Prior to tree trimming or removal of any tree, a qualified biologist or ornithologist shall survey the trees to be trimmed or removed to detect nests and submit a survey report to the permittee and the Executive Director of the Coastal Commission. The survey report shall include identification of all trees with nests. The permittee shall maintain a file of survey reports that includes a record of nesting trees to be used for future tree trimming and removal decisions.
3. No bird nests shall be disturbed. Trimming may not proceed if a nest is found and evidence of courtship or nesting behavior is observed at the site. In the event that any birds continue to occupy trees during the non-nesting season, trimming shall not take place until a qualified biologist or ornithologist has assessed the site, determined that courtship behavior has ceased, and given approval to proceed within 300 feet of any occupied tree (500 feet for raptors).
4. No California native trees shall be removed. All existing native vegetation shall be protected.
5. Tree trimming and non-native tree removal shall be done using only hand operated equipment only (e.g., machetes, weed whackers and chain saws). No herbicides shall be used.

B. Weed Abatement

1. Unless otherwise specified by the terms of this permit, weed abatement activities shall take place outside of the marsh bird nesting season, which is February 1 through August 31.
2. Prior to weed abatement and removal of any plant material, a qualified biologist or ornithologist shall survey the project site to detect nests and submit a survey report to the permittee and the Executive Director of the Coastal Commission. The survey report shall include identification of all known nests.

The permittee shall maintain a file of survey reports that includes a record of nests that is to be used for future vegetation removal decisions.

3. No bird nests shall be disturbed. Weed abatement and removal of any plant material may not proceed within 300 feet (500 feet for raptors) of a nest where evidence of courtship or nesting behavior is observed. In the event that any birds continue to occupy nests during the non-nesting season, trimming shall not take place until a qualified biologist or ornithologist has assessed the site, determined that courtship behavior has ceased, and given approval to proceed within 300 feet (500 feet for raptors) of any nest.
 4. All existing native vegetation shall be protected.
 5. Weed abatement and removal of plant materials shall be done using only hand operated equipment only (e.g., machetes, weed whackers and chain saws). No herbicides shall be used.
- C. Disposal of plant matter. All cut plant materials shall be disposed of at an appropriate off-site location within ten days of cutting. A separate coastal development permit will be required prior to the placement of any cut plant material in the coastal zone unless the Executive Director determines that no permit is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.

All weed abatement, tree trimming and non-native tree removal shall be conducted in strict compliance with this policy. Any proposed change or deviation from the approved development as conditioned shall be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.

3. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

4. Condition Compliance

Within sixty (60) days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

5. Future Development Restriction

This permit is only for the development described in Coastal Development Permit A-5-LOB-10-015. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Coastal Development Permit A-5-LOB-10-015 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

IV. Findings and Declarations for the De Novo Permit

The Commission hereby finds and declares:

A. Project Description and History

The proposed development is: a) the import of one thousand cubic yards of soil to re-establish and maintain a cap over an existing landfill (previously authorized and undertaken pursuant to Coastal Commission Emergency Permit 5-09-068-G), b) site remediation (i.e., restoration and re-vegetation of the disturbed dump cap and area of unpermitted grading), and c) future weed abatement. 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.

The vacant 9.38-acre bay-fronting site, situated between Loynes Drive and the north bank of Los Cerritos Channel (Alamitos Bay), 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 vegetation from most of the site. Apparently, the grading also exposed part of the old dump.

On April 7, 2009, Commission staff issued an Emergency Permit 5-09-068-G 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). Although the project site is located within the primary permitting jurisdiction of the City of Long Beach pursuant to its certified LCP, the emergency permit was granted by the Executive Director of the Commission because the certified LCP does not contain any provisions for issuing emergency permits. The emergency work authorized the applicant to:

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).

Following the issuance of the emergency permit, the applicant constructed a six-inch thick cap over a 50,000 square foot portion of the dump using approximately one thousand cubic yards of imported fill dirt. A condition of Emergency Permit 5-09-068-G required the applicant to apply to the City of Long Beach 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 identified the site as being in the appealable area of the coastal zone (the site comprises part of the north bank of Los Cerritos Channel, Alamitos Bay). The local coastal development permit that is the subject of this appeal also serves as the follow-up permit for Coastal Commission Emergency Permit 5-09-068-G.

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 one thousand 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 re-vegetation 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 25, 2010, the Commission's South Coast District office in Long Beach received the first of seven valid appeals of the local coastal development permit. The appeals of the local coastal development permit call for restoration of the graded area of the site.

On March 10, 2010, the Commission determined that a substantial issue exists with respect to the grounds of the appeals because: a) the certified LCP designates the site for restoration as a brackish pond, b) the certified LCP requires that open space and natural habitat areas be preserved and that the waters of Alamitos Bay be protected from runoff, and c) the absence of a detailed and enforceable habitat protection and restoration plan could adversely affect wildlife, wetlands, and the quality of adjacent tidal waters. A remediation plan prepared by City staff was never submitted to the Planning Commission (or Coastal Commission) for consideration.

B. Local Coastal Program

A de novo public hearing on the merits of an application uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, as in this case, findings must be made that an approved application is consistent with the public access and recreation policies of the Coastal Act.

The proposed project is located within the City of Long Beach. The City of Long Beach Local Coastal Program was certified by the Commission on July 22, 1980. On March 10, 2010, the Commission determined that the appeals raised a substantial issue regarding consistency of the development with the City of Long Beach certified LCP.

The proposed project involves three inter-related phases of development: 1) re-establishment of the dump's cap, necessitated by prior unpermitted grading of the site, 2) restoration and re-vegetation of the graded area and disturbed dump cap, and 3) weed abatement. The current land use (old dump/open space) is not being changed. The proposed development is intended to improve the environmental condition of the property by reducing methane emissions (dump cap) and improving the scenic qualities and habitat values of the site (weed abatement and re-vegetation with native plants).

Land Use Designation

The certified City of Long Beach LCP designates the bay-fronting site as a restoration site; specifically as the site for a future 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. There has been no recent development in Subarea 25, and the pond in that subarea has not been filled. Any proposal to place fill in SEADIP Subarea 25 of the wetlands would require a coastal development permit from the Commission and would raise issues of consistency with Section 30233 of the Coastal Act.

The certified LCP designates the project site (Subarea 23) as a site for a brackish pond in the future. The site does not currently contain a brackish pond or any standing water. Although the unpermitted grading and the subsequent placement of soil on the site to re-establish the dump cap removed vegetation and altered the topography of the site, those activities did not disturb a pond since there is no documentation of any pond existing on the top of the old dump. The applicant is not proposing to carry-out the provisions of the SEADIP plan for this property, so the question is whether the proposed development (maintaining the site as old dump/open

space) conforms with the other more general provisions of the certified LCP that relate to open space areas.

LCP Open Space Policies

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;*

These LCP open space policies apply to the project. The current land use of the bay-fronting property is an old dump/open space, devoid of buildings, roads, or other structures on the subject site. The owner has not granted the public permission to access the property. Because, the proposed project involves disturbance of the surface and vegetation on the site by grading, removing of vegetation and depositing fill, it is important to invoke these LCP policies to ensure that this open space is enhanced to support wildlife in the Alamitos Bay habitat.

The certified LCP calls for the preservation and enhancement of open space areas that serve as natural habitat areas, especially the areas near Alamitos Bay like the project site. Although there is disagreement over the type of habitat that existed on the site prior to grading, the appellants have provided substantial evidence (e.g., photographs and testimonials) that wildlife exists on the site. Wildlife observed on the site includes fence lizards, squirrels, rabbits, rodents, raptors, herons, egrets and other common birds.

The implementation of a habitat protection and restoration plan would bring the proposed development into consistency with the requirements of the certified LCP to preserve and enhance open space areas as natural habitats. Consistent with the certified LCP, the restoration plan is also necessary to control pollution, runoff and erosion on the bay-fronting site. The proposed grading, removal of vegetation and deposition of fill on the site will have significant short-term and long-term impacts to the habitat value of the site. The short-term impacts caused by the disturbance of the site with heavy machinery to re-establish the dump cap may be unavoidable but necessary to improve the environmental condition of the property by reducing methane emissions. The re-establishment of the dump cap is necessary to protect and enhance the site and to control pollution, although it would not have been necessary to re-establish the dump cap if not for the unpermitted grading that resulted in the detection of elevated methane levels at the disturbed dump.

The longer-term impacts caused by the removal of vegetation from the site can be mitigated by the implementation of a detailed habitat protection and restoration plan that protects wildlife and the adjacent tidal waters and wetlands. The implementation of a habitat protection and restoration plan would bring the proposed development into consistency with the requirements of the certified LCP to preserve and enhance open space areas as natural habitats. A restoration plan is also necessary to control pollution, runoff and erosion on the bay-fronting site.

Therefore, in order to mitigate and/or restore the habitat destroyed as a result of the approved development, the bay-fronting site must be restored as natural open space and habitat supportive of the wildlife observed on the site and in the adjacent wetlands. The recommended permit conditions include specific provisions necessary to protect and restore the habitat and native vegetation on the site. The permit also includes mitigation and habitat enhancement measures that will help protect the adjacent tidal areas from polluted runoff and sediment that may erode from the subject site subsequent to the vegetation removal and grading.

Restoration of Habitat

The question before the Commission is what type of habitat will be provided by the restoration and re-vegetation plan. For example, the disturbed portion of the site could be restored as a brackish pond, as vernal pond wetlands, or as an upland native plant habitat. The applicant is not proposing any re-vegetation as he asserts that the site has mostly been re-vegetated naturally without any restoration plan. Most of the site is currently vegetated by non-native weeds and a few palms. A site visit by the Commission staff biologist and the applicant's biologist in March 2010 found very few specimens of native plants growing among the weeds, notably flowering lupin plants.

The appropriate type of habitat restoration necessarily depends on what type of habitat the site will support, and what species of wildlife utilize the site. Another factor is whether the disturbed portion of the site had any wetlands on it before the grading commenced on March 19, 2009. If any wetlands were destroyed by the grading, then it would be appropriate to require the applicant to mitigate for the loss of wetlands.

The following two studies of the site have been produced as a result of the investigations that followed the unpermitted grading of the site:

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

Both studies were conducted after the initial grading of the site occurred in March 2009. Both studies acknowledge that the site is generally dominated by exotic plant species. The report for the project site submitted by the Los Cerritos Wetlands Trust (by Travis Longcore, PhD) 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 Channel (Alamitos Bay) borders the southern side of the property and the Los Cerritos Wetlands tidal marsh (Steam Shovel Slough) is about three hundred feet south of the project site (Exhibit #2). While most of the project site is primarily upland (about 16 to 20 feet of fill covering former salt marsh), Dr. Longcore's report states that there are seasonal wetlands (vernal ponds) that form on lower elevations on the western side of the property. The low-lying areas on the western side of the property where Dr. Longcore's report identifies vernal ponds were not disturbed by the grading. Ty Garrison's report documents hydric soils on the dump cap, but these soils are fill materials that were moved onto the dump from another location. Ty Garrison's also reports two species of native plants on the site that are wetland indicators: *Polypogon monspeliensis* and *Lepidium latifolium* (Exhibit #4, p. 10).

The argument over the presence of previous ponding of water and the existence of native wetland plants growing on the elevated portion of the old dump cap that was graded has contributed to the controversy of what type of habitat should be restored on the site. Several appellants have insisted that the grading destroyed wetland habitat, but their assertions are not supported by substantial evidence. The appellants have submitted pictures that they describe as standing water on the site after a rain event (Exhibit #5, p.2), but no evidence has been put forward to support the allegations that areas covered with native plants (e.g., pickleweed-salicornia) were destroyed or that the top of the old dump supported an actual wetland. On the other hand, it can't be proven that wetland plant indicators were not destroyed by the grading because the pre-grading status of the vegetation on the privately-owned site is not documented.

There is, however, evidence that the site is a habitat area used by the wildlife that lives in the Los Cerritos Wetlands area. The El Dorado Audubon Society and Dr. Longcore's 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). Some of the appellants have provided photographs of various birds and coyotes on the property. As previously stated, Dr. Longcore's report states that there are seasonal wetlands (vernal ponds) that form on lower elevations on the western side of the property.

Therefore, it can be reasonably concluded, based on Dr. Longcore's report, that the project site has significant biological value as wildlife habitat because of the animals observed on the site and its close proximity to the tidal channel and the adjacent salt marsh. Therefore, to be consistent with the relevant LCP policies, the subject site must be protected as open space habitat, and the applicant must restore the site to mitigate the impacts of the proposed development. The impacts are the loss of wildlife foraging area, loss of vegetation cover, and potential adverse impacts to water quality resulting from erosion of the disturbed dump cap.

Commission staff has identified three alternatives for restoring the project site and mitigating the adverse impacts of the development: 1) restore the site by creating a brackish pond, 2) restore the site with vernal ponds and native wetland plants, or 3) re-vegetate the site as an upland native plant habitat. The applicant's proposal is to do no re-vegetation and maintain the site as it currently exists.

Commission staff recommends that the disturbed portion of the site be re-vegetated as an upland native plant habitat in order to enhance the habitat value of the site, reduce the potential for erosion, which would help control all forms of possible polluted runoff from the site, and beautify the site as required by the open space policies of the certified LCP. Appropriate native plants for the site include, but are not limited to, coastal sage, buckwheat, bunch grass and annuals (e.g., lupin). These plants need little or no irrigation to thrive in the upland area adjacent to Alamitos Bay. It is important to limit irrigation of the site to prevent polluted runoff from entering the waters of Alamitos Bay, and to prevent water from infiltrating into the underlying landfill (and increase methane pollution).¹ The re-vegetation of the disturbed area with native plants will help protect the adjacent bay waters from polluted runoff by reducing erosion of the dump cap caused by wind and precipitation.

The other two alternatives (creating a brackish pond or wetlands on the site) could increase methane releases and pollution of the adjacent waters because those alternatives would both allow standing water on top of the landfill. The AQMD and the Los Angeles County Health Department (regulator of old dumps) strongly advise against allowing any standing water on top of the old dump because of the potential for infiltration and increased methane emissions. Landscaping of dump caps is advised, however, as long as the required irrigation is closely monitored to prevent over-watering and infiltration.

The restoration of the project site as a brackish pond, as called for by the SEADIP plan, is not appropriate at this time and does not appear to be a viable alternative. The LCP calls for the conversion of the site (old landfill into a brackish pond at the time when another site in the SEADIP area (Subarea 25) is developed. At this time there is no proposal to develop Subarea 25. Therefore, now is not the time contemplated by the LCP for the conversion of the project site to a brackish pond. There is no proposal to convert the old dump site to a brackish pond, and it would likely involve substantial environmental risk to create a pond on top of the old dump. Of course the LCP does not allow for any other use of the site, so it continues to remain open space. The proposed project does not propose to change the use of the site, but to improve the environmental condition of the property.

Restoration and Re-vegetation Plan

In conclusion, to mitigate the adverse impacts of the proposed development, the disturbed portion of the site must be re-vegetated in order to enhance its value as wildlife habitat, reduce the potential for erosion, and beautify the site as required by the open space policies of the certified LCP. Special Condition One requires the applicant to submit a detailed restoration and re-vegetation plan, prepared by a licensed Landscape Architect or a qualified Resource Specialist, for the portions of the project site disturbed by prior grading and by re-establishment of the dump cap. The restoration and re-vegetation plan must be developed in consultation

¹ Los Angeles Co. Dept. of Public Health (Thomas White, 5/12/10) confirmed that the mixture of water and decomposing materials in an old dump would likely result in increased levels of methane emissions.

with the California Department of Fish and Game, the County of Los Angeles Department of Public Health (Environmental Health Solid Waste Management Program), and the South Coast Air Quality Management District (AQMD). The restoration and re-vegetation plan must be developed and submitted for the approval of the Executive Director within sixty days of Commission action on this coastal development permit application. Only as conditioned to develop and implement a restoration and re-vegetation plan does the proposed development conform with the open space and habitat protection policies of the certified LCP.

The re-vegetation plan shall include only Southern California native plants appropriate to the natural habitat type, which is transitional scrub grassland – salt marsh to uplands. Appropriate native plants include, but are not limited to, coastal sage, buckwheat, bunch grass and annuals (e.g., lupin). All seeds and cuttings employed are required to be from local sources in the Los Angeles and Orange County coastal areas.

The disturbed open space, once restored and re-vegetated with native plants, will better support the wildlife observed on the site and in the adjacent wetlands, and will mitigate the adverse impacts to the habitat that result from the approved development, thereby complying with the relevant LCP policies. As conditioned, the permit includes specific provisions necessary to protect habitat and native vegetation on the site, and to protect the adjacent tidal areas from polluted runoff and sediment that may erode from the site subsequent to the vegetation removal and grading. For example, Special Condition One specifies that native plants already growing on the site shall be protected and that no bird nests shall be disturbed at any time. A temporary irrigation system may be employed, but the applicant is required to install erosion control during the restoration project (e.g., temporary sediment basins, silt traps, drains and swales, sand bag barriers, and silt fencing). Additionally, the permittee is required to actively monitor the site for at least five years, remove non-native plants and replant native vegetation that has failed.

Since the permit is authorizing future episodes of vegetation removal activities on the site (weed abatement, tree removal and tree trimming), the permit also includes provisions to protect native vegetation, wildlife and water quality from the adverse impacts of future vegetation removal. Special Condition Two limits the timing and specifies the appropriate methods for future tree trimming and weed abatement activities on the entire project site. All weed abatement, tree trimming, ongoing maintenance, and all work carried out pursuant to any City or County issued abatement order, shall comply with the terms of this permit in order to ensure the protection of wildlife habitat and birds. Prior to tree trimming and weed abatement, a qualified biologist or ornithologist shall survey the project site to detect bird nests. No bird nests shall be disturbed at any time. Tree trimming and non-native tree removal shall take place only outside of bird breeding and nesting season, which is January 1 through September 30. Weed abatement activities shall take place outside of the marsh bird nesting season, which is February 1 through August 31. Only as conditioned does the proposed development conform with the open space and habitat protection policies of the certified LCP.

This permit does not authorize the construction of any trails or roads, or the erection of any fence, gate or wall. Special Condition Five clarifies that future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Coastal Development Permit A-5-LOB-10-015 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

The resource agencies may require further mitigation measures to minimize or avoid impacts to marine resources. Therefore, Special Condition Three requires the permittee to comply with all permit requirements and mitigation measures of the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Prior to any re-vegetation or disturbance of the site, the permittee shall also file an 1150.1 (Excavation of Landfill Plan) with the South Coast Air Quality Management District. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed changes shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. Only as conditioned to mitigate and avoid impacts to marine resources does the proposed development conform with the open space and habitat protection policies of the certified LCP.

C. Recreation and Public Access

Because of the project's location between the first road (Loynes Drive) and the sea (Alamitos Bay), the proposed project must conform to the following public access and recreation policies of the Coastal Act.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states (in part):

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30222.5 of the Coastal Act states:

Oceanfront land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses. (Added by Ch. 1486, Stats. 1982.)

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Most of the project site is fenced and provides no public access or recreation at this time. A service road/walkway that is open to public access runs along the north bank of the Los Cerritos Channel (Alamitos Bay) along the water on the southern side of the property. This permit does not authorize the construction of any trails or roads, or the erection of any fence, gate or wall. Therefore, the proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, the proposed development conforms with the public access and recreation policies of the Coastal Act.

D. Unpermitted Development

Prior to applying for this coastal development permit, some of the development on the site occurred without the required coastal development permit. The unpermitted development includes: grading the site and removal of vegetation.

To ensure that the matter of unpermitted development is resolved in a timely manner, a special condition requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within sixty days of Commission action, or within such additional time as the Executive Director may grant for good cause.

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

E. California Environmental Quality Act (CEQA)

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

The City of Long Beach is the lead agency for the purposes of CEQA review and has determined that the proposed project is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15308 (Class 8 – Actions by Regulatory Agencies for Protection of the Environment. On September 21, 2009, the City of Long Beach issued CEQA Categorical Exemption CE-09-029.

As explained in the findings above, the proposed project has been conditioned in order to be found consistent with the certified LCP and the public access and recreation policies of the Coastal Act. As conditioned, the approved project is the environmentally preferable alternative. Mitigation measures, in the form of special conditions, provide requirements for restoration and re-vegetation of the previously graded area of the site subject to the landfill cap with native plants appropriate to the location; timing of the re-vegetation; monitoring and future maintenance of the site; and protection of water quality and marine resources.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act and CEQA.

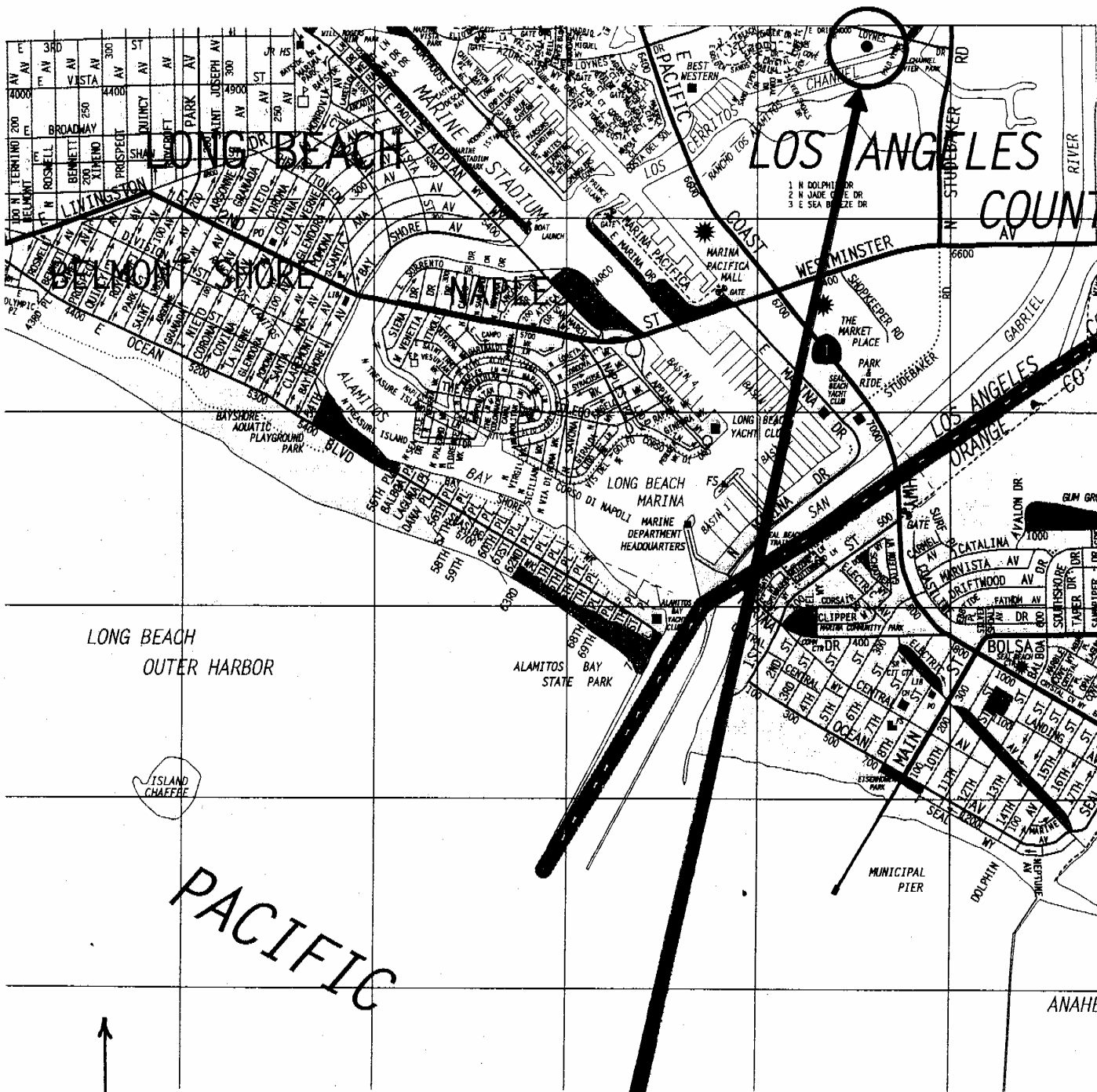
Project Site

COASTAL COMMISSION
A5-L08-10-015

EXHIBIT # 1

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A5-LOB-10-015

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PAGE 1 OF 1



Project Site

6400 E. Loynes Drive

COASTAL COMMISSION
A5-LOB-10-015

EXHIBIT # 2

PAGE 1 OF 1

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-10-05

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
PAGE 2 OF 2



Sound Science. Creative Solutions.

Pasadena Office
625 Fair Oaks Avenue, Suite 190
South Pasadena, CA 91030
Tel 626.240.0587 Fax 626.240.0607
www.swca.com

May 28, 2009

Mr. Sean Hitchcock
2651 Walnut Avenue
Signal Hill, CA 90755

RE: Biological Resources Evaluation and Jurisdictional Waters Delineation for APN 7237017006

Dear Mr. Hitchcock:

This letter reports the findings of the biological resources evaluation and wetlands and jurisdictional waters delineation conducted by SWCA Environmental Consultants in April of 2009.

Introduction

This letter reports on the biological conditions and jurisdictional waters determination found on Assessor's Parcel Number (APN) 7237017006 located west of the intersection of Studebaker Road and Loynes Drive in Long Beach, California (Figure 1). Per your statement, the property was recently subject to weed abatement activities conducted with a bulldozer. This activity resulted in complaints from local residents, resulting in your request that SWCA Environmental Consultants investigate two subject areas: the general biological conditions of the site, including the potential for the site to support sensitive biological resources; and a wetland and jurisdictional waters delineation. To adequately characterize the site, SWCA also investigated the land use history of the site. This letter describes the investigative methodology, results, context, and conclusions.

Survey Methodology

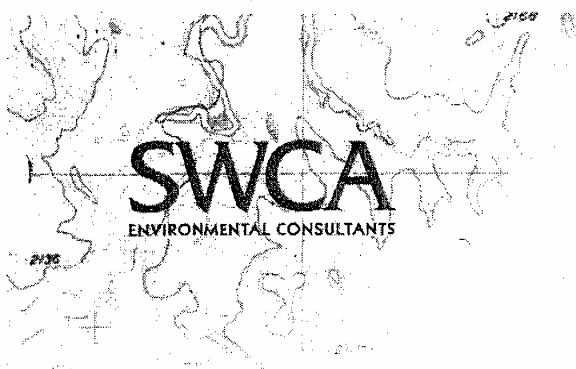
Pedestrian surveys were conducted on the site on April 13 and 20, 2009, by SWCA senior biologist Ty Garrison. On April 13, Mr. Garrison met with property owner Sean Hitchcock and City of Long Beach representative Russel Laker prior to conducting the site survey. Heavy equipment consisting of a bulldozer, water truck, and several dump trucks was working near the center of the site, depositing and compacting new fill earth over the exposed portion of the sanitary landfill. Mr. Garrison surveyed the entire site on foot, concentrating on the periphery of the site where vegetation remained, taking notes on the species observed and photographing the on-site conditions. The center portion of the site, where the vegetation had been removed and where the equipment was still working, was cursorily surveyed.

At the conclusion of the survey, Mr. Garrison noted that Mr. Hitchcock and Mr. Laker were meeting with Mr. Ken Wong and Ms. Melanie Stadler of the U.S. Army Corps of Engineers (USACE) and joined the conversation. In that conversation, Mr. Wong noted that USACE would need to make a jurisdictional determination regarding the potential presence of wetlands or jurisdictional waters of the U.S. on the site. To make that determination, USACE would require a wetland and jurisdictional waters of the U.S. delineation. USACE would determine if any violation

BIOLOGICAL RESOURCES EVALUATION AND
JURISDICTIONAL WATERS DELINEATION FOR APN 7237017006

AS-LOB-10-015

EXHIBIT # 4
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of the Clean Water Act had occurred based on the result of the jurisdictional determination and the extent of the activities that had occurred on the site. Mr. Garrison returned to the site on April 20, 2009, to conduct the wetland delineation. For that survey, he concentrated on determining if there were any water courses or drainages areas on the site, or whether any water entered the site from off-site locations. He also continued to search for any wetland indicator plant species.

Because the site has a history of varied uses, and because the site is clearly not at its original elevation, a brief historical review of the site was conducted by SWCA historian Shannon Carmack. Ms. Carmack searched newspaper records at the Long Beach Public Library and located historic aerial photographs and topographic maps from commercial sources. In addition, her personal library contained copies of some historic planning documents from the City of Long Beach. The historic record presented in this report was developed from these sources.



COASTAL COMMISSION

BIOLOGICAL RESOURCES EVALUATION AND
JURISDICTIONAL WATERS DELINEATION FOR APN 7237017006

EXHIBIT # 4²
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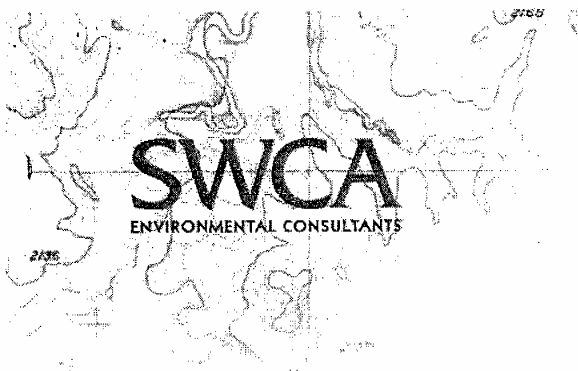


Historical Context

The history of the site is important because the site is clearly not in a natural state. The site was originally part of the Los Alamitos–Los Cerritos tidal estuary system. The elevation of the site at that time would have been between sea level and about 4 feet above mean sea level (msl).

- 1899 and 1902— U.S. Geological Survey (USGS) "Downey" topographic maps do not ascribe an elevation to the project area, but illustrate the site as coastal marshland.
- 1925— USGS "Long Beach" topographic map illustrates the construction of the Naples neighborhood and the marine stadium, which undoubtedly altered the natural flow characteristics of the site somewhat. However, the site is still shown as marsh land.
- 1947—Aerial photographs show the Los Cerritos channel has been constructed, causing freshwater to bypass the on-site marsh and flow directly into Alamitos Bay. Based on aerial photographs, it appears that the site still supports a tidally influenced marsh habitat. Oil extraction operations are also encroaching onto adjacent properties to the west.
- 1948—Long Beach Press Telegram (8/18) article notes the beginning of landfill operation on an area that includes the project site. At this time, the landfill is actually located to the west of the project site. The site is described as "tideland...of soft mud into which heavy objects sink.... Most of the area is covered with ocean water that rises and falls with the tide, but the owners have the material on hand for a dam to seal off the tide." The article also states that the operator has a 10-year contract to cut and cover 62 acres with 4 feet of earth. The article later states that it takes "an average of 20 feet of rubbish packed down by machine to create the fill."
- 1949— USGS topographic map, Los Alamitos quad, shows the construction of the Cerritos Channel but still shows the project site as marshland.
- 1953—Aerial photographs show the sanitary landfill in operation to the west of the project site, east of Pacific Coast Highway; oil operations are also getting closer to the site. A berm has been built along the western boundary of the site, which is also the City/Grant Line/County boundary. This berm effectively removes the site from tidal connection and begins drying the site.
- 1955—Los Angeles Times 2-24-55 reports that off-shore disposal of rubbish may be required because the dump is too close to the Veteran's Administration (VA) Hospital, Long Beach State College, high-class residential, and the new marina. The article also states that City Councilman Patrick Ahern considered the site "an eyesore and a menace to health, declaring it a breeding place for flies and mosquitoes."
- 1955—Los Angeles Times? 2-26-55. George Weeks reports that the City health officer inspected the site and concluded that it is not a threat to health. The article states that

COASTAL COMMISSION



"pollution of subsurface water is not a problem, since the site is in a salt-water marginal area." [Of course, at the time pollution to drinking water was the only concern.] The article goes on to state that "An average of two feet of topsoil is being placed over fill as rapidly as compaction will allow. An average of 1,100 loads of dirt is deposited at the site monthly, to be used a sealing topsoil cover." The article concludes that the site is located "in a swamp area which is being rapidly converted to a useful purpose."



- 1960—Aerial photographs show the entire site encompassed by the landfill. The neighborhood to the north is under construction, as is Loynes Drive.
- 1964—Present—USGS topographic map, Los Alamitos quad, shows the ground surface of the site as being approximately 20 feet above msl. The neighborhood to the north and trailer park to the west have both been developed.

COASTAL COMMISSION

BIOLOGICAL RESOURCES EVALUATION AND
JURISDICTIONAL WATERS DELINEATION FOR APN 7237017006

EXHIBIT # 4
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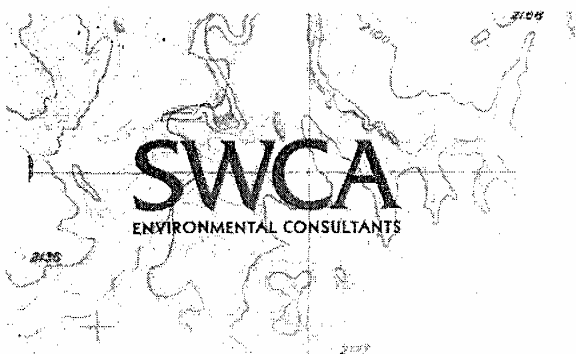
- 1976—The Southeast Area Development Plan (SEADIP) Environmental Impact Report (EIR), Department of City Planning, Long Beach:
 - illustrates the site as an upland area and specifically does not identify the site as low-lying or seasonal freshwater marsh
 - illustrates the site as Sanitary Landfill
 - illustrates the site as proposed RV Storage
 - illustrates the site as open field, described as consisting [sic] “principally of annuals, perennials, forbs, grasses and limited herbaceous materials Vegetation has been subjected to periodic disruption due to grading operation...”
 - illustrates the site as zoned R-1 Residential
 - notes that the site was zoned low density residential in the 1961 General Plan
 - Dproposes a generalized land use as industrial
- 1980—The Local Coastal Plan (LCP) is produced.
 - The SEADIP Plan is incorporated by reference into the Local Coastal Plan (LCP)
 - LCP illustrates the site as a future park dedication area
 - LCP illustrates the site as proposed Active/Passive Park. Map and key in LCP excerpted from adopted SEADIP Plan
- 1997—Long Beach General Plan revised and reprinted. The site is zoned PD (Planned Development).
- Unknown Date—Long Beach Green Vision Map denotes the site as part of the Los Cerritos Wetlands. The map states: “This map has been developed as a general planning tool through on-going collaboration between the City of Long Beach, Department of Parks, Recreation, and Marine, conservation organizations and agencies, and community groups.” The map is not a scientific evaluation of the site.
- 2006—Long Beach Wetlands Study Group includes the site in their vision for the Los Cerritos wetlands.
- 2008—Southeast Area Development Plan Update:
 - illustrates the site as PD-1, Planned Development
 - identified the site as Subarea 23. The plan states: “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.”

COASTAL COMMISSION

BIOLOGICAL RESOURCES EVALUATION AND
JURISDICTIONAL WATERS DELINEATION FOR APN 7237017006

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EXHIBIT # 4
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Biological Characteristics

Due to the recent weed clearing by scraping activity, the on-site biological resources are limited. Most of the center of the site is now unvegetated ground. This is partly due to the removal of vegetation as part of the weed-clearing operation and partly because additional fill material was imported to cap the exposed portion of the landfill that underlies most, or all, of the site.

Floral Components

Nonnative ruderal species dominate the entire site, comprising 94% of the plants noted there. These are species that are able to quickly recruit and become established in areas of ground disturbance and then out-compete many native species. Based on the interpretation of recent aerial photographs and extrapolation of existing floral characteristics of the site, it is assumed that the recently cleared portions of the site were dominated by nonnative vegetation similar to that currently present there. It is likely that the center portions of the site were more heavily populated by halophytes than the periphery of the site, where the remaining vegetation is dominated by less salt-tolerant ruderal species. However, these areas still support a substantial halophyte component. The two dominant species on the site are nonnative iceplants—hotentot fig (*Carpobrotus edulis*) and small-flowered iceplant (*Mesembryanthemum nodiflorum*). Small-flowered iceplant is highly salt tolerant and has a very similar appearance to pickleweed (*Salicornia* sp.). The small-flowered iceplant is likely the species that dominated the center portions of the site where aerial photos indicate areas of very light soil that may be interpreted as salt encrusted. The western edge of the site, near the mobile home park, is dominated by hotentot fig and a variety of landscape species that are either escapees from the residences or were intentionally planted. These landscape species include Japanese black pine (*Pinus thunbergii*), Brazilian pepper (*Schinus terebinthifolius*), southern magnolia (*Magnolia grandiflora*), avocado (*Persea americana*), and numerous South American cactus species, among others. Garland chrysanthemum (*Chrysanthemum coronarium*) is also quite abundant on the site and is dominant along the northern boundary. A complete floral list is attached at the end of this report.

Faunal Components

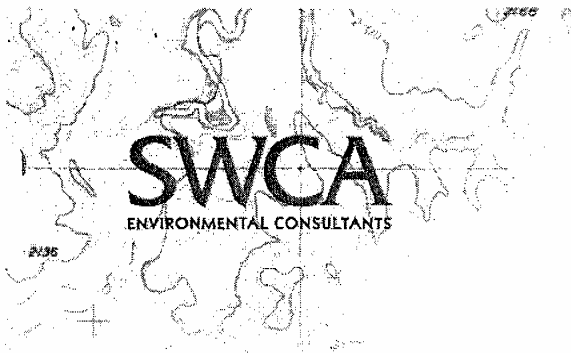
There is very little wildlife on the site, and with the exception of the western fence lizard, all of the wildlife species noted on the site are common urban residents or locally common coastal birds. A southern alligator lizard noted near the western edge of the site was the only other reptile species observed. Native bird species noted on the site at the time of the surveys were the mourning dove, white crowned sparrow, house finch, and northern mockingbird. Nonnative species on the site were the rock dove (pigeon) and house sparrow. A brown pelican, great blue heron, and mallard flew over the site during the surveys. California ground squirrels and brush rabbits were the only mammals noted, though several small rodent species are expected to occur on-site. The lack of wildlife present on the site could be attributed to the removal of habitat and equipment working on the site at the time of the initial survey, and to the relative lack of vegetation onsite during the next site survey.

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Although no extensive directed survey was conducted for breeding birds on the site, there was some indication that locally common bird species, including the northern mockingbird and house finch, might be nesting on the site. Adults of these two species were exhibiting furtive behavior typical of adults with a nest in the vicinity. These birds were located near the western edge of the site and could be nesting on the property or in the adjacent mobile home park.

Regulatory Environment

For the purposes of this report the regulatory environment consists of the regulations over wetlands, waters of the U.S., and state waters, and the agencies having jurisdiction over them. These are the Regional Water Quality Control Board (RWQCB), USACE, and the California Department of Fish and Game (CDFG).

Jurisdictional Overview

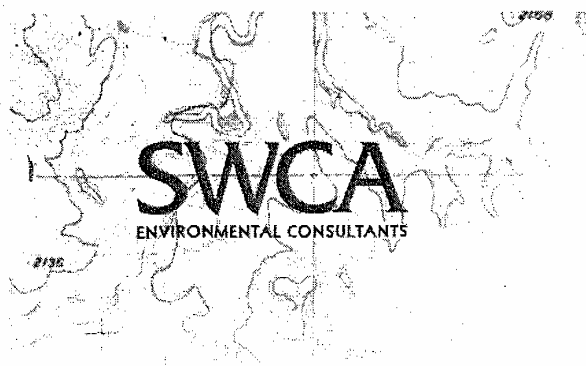
Under provisions of the Clean Water Act, the USACE administers the day-to-day activities required by Section 404. These include the individual permit decisions, jurisdictional determinations, developing policy and guidance, and enforcing provisions of Section 404. The USACE has jurisdiction over the waters of the U.S., which is defined in 33 Code of Federal Regulations (CFR) Part 328 as including all waters whose alteration could or does influence interstate or international commerce, including migratory bird habitat. These waters include navigable waters, interstate waters, intrastate lakes, rivers, streams (including ephemeral streams), mud flats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, and natural ponds that could affect interstate or foreign commerce. Also included are waters that are defined in Section 10 of the Rivers and Harbor Act of 1899 as all navigable waters, which includes the territorial seas and those waters of the U.S. that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. Waters of the U.S. do not include prior converted cropland.

The CDFG asserts jurisdiction over the bed and bank of a stream and associated wildlife and habitats as established in California Fish and Game Code Sections 1600-1616. In accordance with Section 1602 of the Code (Streambed Alteration), the CDFG regulates activities which will "substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake" and requires notification prior to such activities. In addition, Section 1603 of the Code states that "after the notification is complete, the department shall determine whether the activity may substantially adversely affect an existing fish and wildlife resource," and a Streambed Alteration Agreement may be pursued. These regulations were established to protect the wildlife resources that are associated with the riparian habitats that occur within and adjacent to ephemeral to year-round drainage systems.

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The California RWQCB regulates discharge of waste in any region that could affect the waters of the State under the California Porter-Cologne Water Quality Act or waters of the U.S. under Section 401 of the Federal Clean Water Act. Under the Porter-Cologne Act, a Report of Waste Discharge must be submitted prior to discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State (California Water Code Section 13260). Waste Discharge Requirements (WDRs) or a waiver of WDRs will then be issued by the RWQCB. Waters of the State are defined as any surface water or groundwater, including saline waters, that are within the boundaries of the state (California Codes: Public Resource Code Section 71200). This differs from the Clean Water Act definition of waters of the U.S. by its inclusion of groundwater and waters outside the ordinary high water mark in its jurisdiction. Whereas all waters of the U.S. also fall under the category of waters of the State, some waters of the State may be identified beyond the delineation of waters of the U.S., and the RWQCB may exert authority to regulate waste discharge into these waters even if the waters do not fall under USACE federal jurisdiction. All projects that have a federal component and may affect waters of the U.S., including those that require a Section 404 permit from the USACE, must also comply with Section 401 of the Clean Water Act. If discharge into waters of the U.S. is being proposed, a 401 water quality certification from the RWQCB is required (Sections 3830 through 3869, Title 23 of the California Code of Regulations) in addition to obtaining WDRs for impacts to waters of the State.

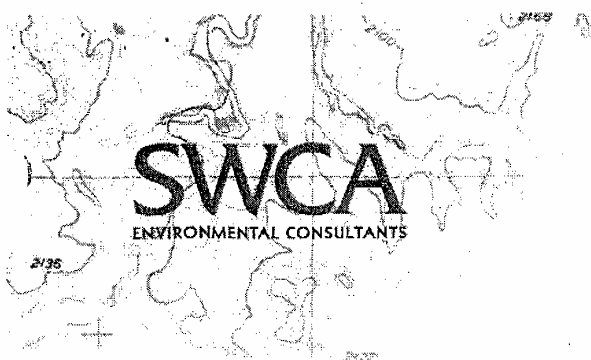
Determination of Wetlands

To determine if waters of the U.S. qualify as wetlands, there must be a positive confirmation of each of the three diagnostic environmental characteristics associated with wetlands: hydrophytic vegetation, hydric soils, and wetland hydrology.

Hydrophytic Vegetation

Hydrophytic vegetation occurs in areas where the soil characteristics are affected by frequent or sustained inundations that lead to periods of soil saturation that influences the plant life that is present. These periodic events must occur for sufficient duration to result in anaerobic soil conditions. Species that are indicators of wetlands have been classified in the U.S. Fish and Wildlife Service (USFWS) *National List of Plant Species That Occur in Wetlands: 1996 National Summary*. Frequency of a species occurrence in wetlands has been divided into five categories:

- Obligate Wetland (OBL): Occurs almost always (estimated probability >99%) under natural conditions in wetlands.
- Facultative Wetland (FACW): Usually occurs in wetlands (estimated probability 67%–99%), but occasionally found in non-wetlands.
- Facultative (FAC): Equally likely to occur in wetlands or non-wetlands (estimated probability 34%–66%).



- Facultative Upland (FACU): Usually occurs in non-wetlands (estimated probability 67%–99%), but occasionally found in wetlands (estimated probability 1%–33%).
- Obligate Upland (UPL): Occurs in wetlands in another region, but occurs almost always (estimated probability >99%) under natural conditions in non-wetlands in the region specified.

The USACE considers species that fall into the OBL, FACW, and FAC categories as being positive indicators of wetland vegetation. The prevalent vegetation that occurs in a wetland may be associated with more than one community and is characterized by the dominant species. Determining the dominant species is done using the 50/20 Rule, which states that the dominant plant comprises 50% of the species found in the stratum of the community, along with another species that makes up 20% of the stratum. (HQ USACE, 6 Mar. 1992)

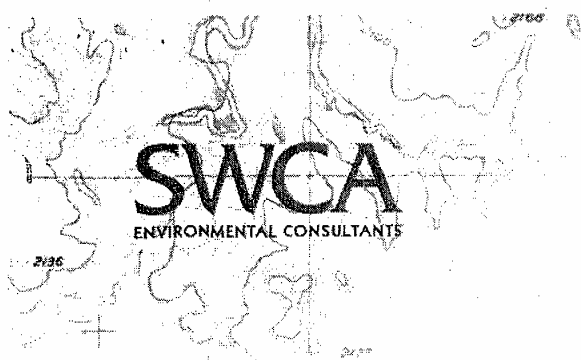
Hydric Soils

Hydric soils are formed under conditions of saturation, flooding, or ponding for long enough duration during the growing season to develop anaerobic conditions in the upper layers. The concept of hydric soils includes soils developed under sufficiently wet conditions to support the growth and regeneration of hydrophytic vegetation. Soils that are sufficiently wet because of artificial measures are included in the concept of hydric soils. Soils that were historically hydric until the hydrology that created that condition was artificially altered, resulting in the classification of the soil as non-hydric, are still considered hydric soils. Some series, designated as hydric, have phases that are not hydric depending on water table, flooding, and ponding characteristics.

There are a number of field indicators of hydric soils, including an organic composition that is greater than 50%, the presence of sulfides, gleyed soil, mottled soil, and certain soil color ranges. These will not be described in further detail because the site history makes them irrelevant.

Wetland Hydrology

Wetland hydrology includes all the hydrologic characteristics of areas that are periodically inundated or have soils saturated to the surface for some duration of the growing season. Areas with evident characteristics of wetland hydrology are those where the presence of water has an overriding influence on characteristics of hydrophytic vegetation and reduced soils. Numerous factors, such as precipitation, stratigraphy (rock layers), topography, soil permeability, and plant cover affect the moisture content of an area. Indicators of wetland hydrology may include, but are not necessarily limited to, the following: drainage patterns, drift lines, sediment deposition, watermarks, stream gage data, flood predictions, historic records, visual observation of saturated soils, and visual observation of inundation.



Jurisdictional Waters Delineation

ACOE

As explained earlier, wetland determination requires three parameters, dominant hydrophytic vegetation, hydrology, and hydric soils. The project site has none of these indicators.

Hydrophytic Vegetation

As described above and indicated in the attached floral compendium, only two of the species found on the site, rabbits-foot grass (*Polypogon monspeliensis*) and broad-leaved peppergrass (*Lepidium latifolium*), are wetland indicators. Each of these species is listed as facultative wetland and is uncommon on the site. The vast majority of the species on the site, more than 96%, are upland species. Upland species have an even greater dominance when considered by biomass or population because the two facultative wetland species on the site are uncommon.

Hydrology

The site is relatively flat and at a higher elevation than most of the surrounding area, preventing offsite runoff from entering the site. Most of the trailer park to the west is slightly higher than the site, but there are no points or drains along this boundary that would allow concentrated water flows to enter the property. There are a few low areas along the western edge of the site that are not contiguous with any channels or drainage areas. These low areas are also covered with deep hotentot fig iceplant. The north side of the site, along Loynes Drive, is bounded by an off-site concrete drainage ditch that prevents any runoff from the street from entering the site. The southern edge of the site drops off steeply to the adjacent maintenance road along the Los Cerritos Channel. These combined circumstances indicate that the site does not have any wetland or streamcourse hydrology.

Hydric Soils

As noted in the site history, there is a well-documented history of the site's use as a landfill, including the importation of the fill earth required to seal the landfill daily. At present, the ground elevation of the site is approximately 16 to 20 feet above the natural marsh that was present at the location until the 1940s. Large quantities of shell fragment and sand on the surface of the site indicate that dredge materials from the adjacent Los Cerritos Channel may also have been deposited on the site. The presence of these fill materials makes the question of whether the on-site soils are hydric or not irrelevant because they did not originate there.

Non-wetland Jurisdictional Waters of the U.S.

Other jurisdictional waters of the U.S in this situation would be indicated by the presence flow indicators such as a swale or stream with an ordinary high water mark. If there were an on-site stream or other indicator of flowing water, it would require a significant nexus with a "traditionally navigable water" to be considered jurisdictional. There are no indicators of flow on the property



and there is no connection to any "traditionally navigable water," the nearest of which is the adjacent Los Cerritos Channel.

RWQCB

There are no indicators of water flows onto or across the site, nor does any surface water originate on the site. Site history leads to the conclusion that there would be groundwater at an undetermined depth below the site but probably near sea level.

CDFG

There are no indications of a river, stream, or lake on the property. There is no riparian habitat on the project site.

Conclusions

Nesting birds are the only protected natural resource currently occupying the project site. An after-the-fact site survey cannot accurately assess whether there were any impacts to nesting birds on the project site. If any nesting birds were disturbed by the vegetation-clearing activities, it is likely that they would have been common cosmopolitan species like those noted on the site. Based on the information presented above, there are no state or federally listed or otherwise special-status species occupying the project site.

There are no wetlands or jurisdictional waters of the U.S. or waters of the state or riparian habitats under the jurisdiction of the CDFG or RWQCB on the site. If proposed activities on the site were to involve dewatering, that is, the removal of groundwater, or if they involved the addition of enough water to cause runoff from the site, the RWQCB would have jurisdiction over these activities. The recent vegetation-clearing and importation of fill material did not involve these activities; thus, there is no RWQCB jurisdiction.

I'm sure that this letter report will satisfy the requirements of the City and of the USACE. If you have any questions or require further assistance, please feel free to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Ty M. Garrison", is written over a faint, larger version of the same signature.

Ty M. Garrison
Senior Biologist
SWCA Environmental Consultants
tgarrison@swca.com

COASTAL COMMISSION

Vascular Plants

| */@ | Scientific Name | Common Name | Federal Wetland List |
|--|--|--------------------------|----------------------|
| PINACEAE - PINE FAMILY | | | |
| *@ | <i>Pinus thunbergii</i> | Japanese black pine | No entry |
| ALIZOACEAE - ICE PLANT FAMILY | | | |
| * | <i>Carpobrotus edulis</i> | Hottentot-fig | No entry |
| * | <i>Mesembryanthemum crystallinum</i> | Common ice plant | FAC |
| * | <i>Mesembryanthemum nodiflorum</i> | Small-flowered ice plant | FAC |
| ANACARDIACEAE - SUMAC FAMILY | | | |
| *@ | <i>Schinus terebinthifolius</i> | Brazilian pepper-tree | NI |
| ASTERACEAE - SUNFLOWER FAMILY | | | |
| | <i>Ambrosia psilostachya</i> | Western ragweed | FAC |
| * | <i>Centaurea melitensis</i> | Tocalote | No entry |
| * | <i>Chrysanthemum coronarium</i> | Garland chrysanthemum | No entry |
| * | <i>Conyza canadensis</i> | Horseweed | FAC |
| | <i>Heterotheca grandiflora</i> | Telegraph weed | No entry |
| * | <i>Lactuca serriola</i> | Prickly lettuce | FAC |
| * | <i>Silybum marianum</i> | Milk thistle | No entry |
| * | <i>Sonchus oleraceus</i> | Common sow-thistle | NI* |
| BRASSICACEAE - MUSTARD FAMILY | | | |
| * | <i>Brassica nigra</i> | Black mustard | No entry |
| * | <i>Lepidium latifolium</i> | Broad-leaved peppergrass | FACW |
| | <i>Lepidium nitidum</i> | Common peppergrass | FAC |
| * | <i>Raphanus sativus</i> | Wild radish | UPL |
| * | <i>Sisymbrium irio</i> | London-rocket | No entry |
| CACTACEAE - CACTUS FAMILY | | | |
| @ | Multiple South American cactus species as escapees from adjacent tract | | |
| CHENOPODIACEAE - GOOSEFOOT FAMILY | | | |
| * | <i>Atriplex semibaccata</i> | Australian saltbush | FAC |
| * | <i>Bassia hyssopifolia</i> | Five-hooked bassia | FAC |
| * | <i>Beta maritima</i> | Sea beet | No entry |
| * | <i>Salsola tragus</i> | Russian-thistle | FACU |
| CRASSULACEAE - STONECROP FAMILY | | | |
| *@ | <i>Crassula ovata</i> | Jade plant | No entry |
| FABACEAE - PEA FAMILY | | | |
| * | <i>Medicago polymorpha</i> | Bur-clover | FACU |
| * | <i>Melilotus indicus</i> | Yellow sweet-clover | FAC |
| GERANIACEAE - GERANIUM FAMILY | | | |
| * | <i>Erodium cicutarium</i> | Red-stemmed filaree | No entry |
| * | <i>Pelargonium sp.</i> | Ornamental geranium | No entry |
| LAURACEAE - LAUREL FAMILY | | | |
| *@ | <i>Persea americana</i> | Avocado | No entry |

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Vascular Plants, Continued

| */@ | Scientific Name | Common Name | Federal Wetland List |
|---------------------------------------|--|---------------------|----------------------|
| MAGNOLIACEAE-MAGNOLIA FAMILY | | | |
| *@ | <i>Magnolia grandiflora</i> | Southern magnolia | N/A |
| MALVACEAE-MALLOW FAMILY | | | |
| * | <i>Malva parviflora</i> | Cheeseweed | No entry |
| * | <i>Malva sylvestris</i> | High mallow | No entry |
| MYRSINACEAE-MYRSINE FAMILY | | | |
| * | <i>Anagallis arvensis</i> | Scarlet pimpernel | FAC |
| MYRTACEAE-MYRTLE FAMILY | | | |
| * | <i>Eucalyptus</i> sp. | Gum tree | No entry |
| OLEACEAE-OLIVE FAMILY | | | |
| *@ | <i>Fraxinus uhdei</i> | Evergreen ash | No entry |
| OXALIDACEAE-WOOD SORREL FAMILY | | | |
| * | <i>Oxalis pes-caprae</i> | Bermuda-buttercup | No entry |
| SAPINDACEAE-SOAPBERRY FAMILY | | | |
| *@ | <i>Cupaniopsis anacardioides</i> | Carrotwood tree | No entry |
| SOLANACEAE-NIGHTSHADE FAMILY | | | |
| | <i>Solanum douglasii</i> | Douglas' nightshade | FAC |
| ARECACEAE-PAIM FAMILY | | | |
| *@ | <i>Phoenix canariensis</i> | Date palm | No entry |
| *@ | <i>Washingtonia robusta</i> | Mexican fan palm | No entry |
| LILIACEAE-LILY FAMILY | | | |
| *@ | <i>Aloe</i> sp. | Aloe | No Entry |
| *@ | <i>Yucca aloifolia</i> | Spanish bayonet | N/A |
| POACEAE-GRASS FAMILY | | | |
| * | <i>Avena barbata</i> | Slender wild oat | No entry |
| * | <i>Bromus diandrus</i> | Ripgut grass | No entry |
| * | <i>Bromus madritensis</i> var. <i>rubens</i> | Red brome | No entry |
| * | <i>Cynodon dactylon</i> | Bermuda grass | FACU |
| * | <i>Hordeum murinum</i> | Hare barley | UPL |
| * | <i>Parapholis incurva</i> | Sickle grass | OBL |
| * | <i>Phalaris canariensis</i> | Annual canarygrass | FACU |
| * | <i>Polypogon monspeliensis</i> | Rabbit's-foot grass | FACW+ |

* Nonnative; @ Ornamental/Landscape.

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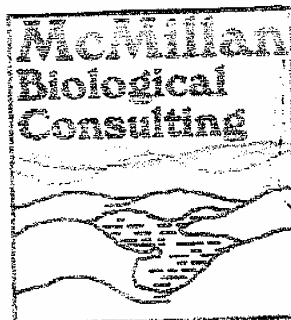
"Our Town-Long Beach"

P.O. Box 3661

Seal Beach, CA 90740

(562) 397-8004

email: ourtownlb.com



September 29, 2009

To whom it may concern:

When Subarea 23 was destroyed on March 19 and 20, 2009, I was contacted by *"Our Town-Long Beach"* to help assess the historical and current biological resources found within site, commonly referred to as SEADIP (Southeast Area Development and Improvement Plan) Subarea 23 (SEADIP 1984-2008) and located at 6400 Loynes Drives. In short what has occurred is a wetlands tragedy. This piece of land is a wetland and 2H Construction and its owner Mr. Sean Hitchcock, have destroyed valuable habitat and a crucial linkage to the Los Cerritos Wetlands. Neighbors passer-by's and drivers alike have seen a multitude of wildlife species on site using it's plants, soil, water, and animals for food and shelter. The basic needs for birds, bugs, rabbits, and coyotes were being met by the habitat that was found on this site before it was graded.

My name is Brenda McMillan and I am a professional botanist/biologist with nearly 15 years experience working with our native southern California plants, ecosystems and wetlands. I am also a native southern Californian who grew up in this area; for 30 years I have been driving past this piece of land.

I have reviewed the Biological Resources Evaluation and Jurisdictional Waters Delineation letter report by SWCA Environmental Consultants and believe that the conclusions presented in that letter were hasty, and inconclusive. SWCA came to the conclusion that this site was not considered a wetland without even doing a wetland delineation investigation. There are provisions in the Field Guide for Wetland Delineation, 1987 Corps of Engineers Manual (WTI 1987) that allow for a routine wetlands delineation to be conducted on a site that has been graded (Section F, Atypical Situations). The new Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (ACOE 2006) also has provisions for interpreting soils in our drier climate. In the SWCA Biological Resources Report on page 1, Mr. Garrison (the letter's author and senior biologist) stated that during a conversation with representatives from the U.S. Army Corps of Engineers (ACOE), the ACOE said that they would need jurisdictional routine wetland delineation before they could determine the potential of

A5-LOB-10-015

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onsite. On page 2, Mr. Garrison states that he returned to the site on 4/29/09 to conduct a jurisdictional wetland delineation, per the request of a U.S. Army Corps of Engineer representative. There is no evidence, in the data presented, that a jurisdictional wetland delineation was performed. Hydric soils were not evaluated, hydrophytic vegetation was missed during the evaluation, and hydrology was only cursorally evaluated.

The presence of hydrophytic (water loving) vegetation is one parameter for investigating the presence of a wetland. From Loynes Dr. I was able to spot wetland indicator plant species such as dock (*Rumex* sp.), western ragweed (*Ambrosia psilostachya*), rabbit's foot grass (*Polypogon monspeliensis*), and sow thistle (*Sonchus oleraceus*). These are just a few of the species seen easily from Loynes Dr. and along the access road that runs along the Los Cerritos Channel to the south. Even walking by the site after the grading I observed dock, ambrosia, and bristly ox-tongue (*Picris echoides*). Yet several wetland indicator plant species that I could easily identify from the road were absent from the Floral Compendium. The aforementioned wetland plant species are considered hydrophytic. Their origin (i.e., native vs. nonnative) is not of importance for a wetland determination, therefore to claim the site is covered in ruderal vegetation as a reason for concluding Subarea 23 does not support wetland vegetation is placing value on the plant species; not determining if the ratio of hydrophytic vegetation to non-hydrophytic vegetation is high enough (<50%) to meet the parameter.

The second parameter that was overlooked was hydrology (how the water moves across the landscape). I have seen standing water on the site after winter rain events; standing water was also observed again in 2005 (please see attached aerial photograph). Subarea 23 has been hydrologically altered as a result of the drainage ditch along Loynes Dr. and the construction of the Los Cerritos Channel, however, physical evidence that Subarea 23 remains hydrologically active was present on site even after the grading of Subarea 23.

Soils are the third parameter for a wetland determination. Hydric soils (soils that hold water) were not investigated in the field by SWCA. They concluded that wetland or hydric soils were not found on site based on a historical literature search, not a field investigation. From the access road along the channel I observed a fluffy salt layer on the soil surface. This is usually caused by the rate of evaporation of standing water and the duration of soil saturation. This area could be considered for further investigation.

I observed the three routine wetland delineation parameters; wetland plants, hydrology and wetland soils, within the area known as Subarea 23 from Loynes Dr. and the Los Cerritos Channel access road. SWCA concluded that none were present on site and therefore the site held no wetland or wildlife value. There is no mention of the site functioning as a wildlife corridor or that this site support breeding bird and foraging habitat; there is no mention of habitat at all. I have witnessed birds such as killdeer and egrets visiting the site. I have watched monarch butterflies stop for nectar as they pass by. Neighbors have told me they have seen coyotes use the site for hunting squirrels and even crossing the Los Cerritos Channel to visit the Los Cerritos Wetland complex on the other side. SWCA concluded that this site does not support wildlife habitat and act as a linkage to the neighboring wetlands.

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Subarea 23 has always been a wetland despite its colorful land use past. Dating as far back as there are maps of this area it has been called a wetland. As seen in the 1938 aerial photograph (see Attachment), Subarea 23 of SEADIP is a part of the Los Cerritos Wetland Complex. And although it is currently fragmented from the larger Los Cerritos Wetland complex it was once a part of, and is still a vital linkage to its long-term survivability. As a habitat linkage it provides a passage from the more urbanized portion of the channel to the more natural wetland complex. It also serves as a refuge for small animals, which are often targeted as prey, and the vegetation and trees on site provide areas for nesting and foraging. The plants and animals associated with the broader ecosystem (i.e., Los Cerritos Wetlands) are dependent on the association between wetlands, transitional areas and uplands. To write off the habitat value of this wetland is reducing the overall functions and values of the Los Cerritos Wetland complex. As urbanization has increased along the fringes of the Los Cerritos Wetland, mitigation for the loss of wetlands is imperative. Please refer to Sections B and C of SEADIP for discussions regarding about the baseline conditions and the anticipated land use for Subarea 23.

According to the CEQA flowchart found on the City of Long Beach website would lead the applicant, 2H Construction and the City of Long Beach to the conclusion that there is no project as this has already been recognized as a wetland according to the adopted SEADIP. For the City of Long Beach to ignore that and then instruct 2H Construction to apply for a permit following the CEQA flowchart seems irresponsible and would lead one to conclude that the City of Long Beach Planning Department Employee(s) did not understand the very permit application process they are enforcing.

In conclusion, in my professional opinion the Biological Resources study that was conducted on Subarea 23 after the grading is hasty in its conclusions, it lacks any real wetland study or investigation and it is missing key elements as to the history of the site as well as the current land uses allowed and approved for this site. Therefore, based on the information presented in the letter report dated May 28, 2009, there is not enough physical data for SWCA to make a sound decision about the habitat value (i.e., wetlands or wildlife usage, wildlife corridors, or habitat connections) this property potentially represents. It is clear from this biologists' perspective that Subarea 23 is and has always been a wetland. Its habitat value was recognized in the approved SEADIP. As urbanization has increased along the fringes of the Los Cerritos Wetland, mitigation for the loss of wetlands is imperative. I have included an excerpt about the baseline conditions and the anticipated land use of Subarea 23 as discussed in Section B of SEADIP (and all its amendments) The development of Subarea 23 as a soccer field is inappropriate at this location as this site is a wetland, is part of the Los Cerritos Wetland complex and it is considered an Environmentally Sensitive Habitat Area under the California Coastal Act.

The City of Long Beach must be reminded that Subarea 23 has been set aside as a part of the associated Los Cerritos Wetland Complex. The City of Long Beach and 2H Construction need to understand that they have no project therefore there is nothing to require a permit action for. This land has been called out for the creation of an 8.3 acre brackish pond and conservation of this area. We request that Subarea 23 be restored to pre-grading conditions until the creation of the brackish pond can occur. Furthermore, we would like to

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see all pertinent environmental studies and analyses be conducted, before any further manipulation of this land is performed or decisions regarding the future of this site are made.

Sincerely,



Brenda McMillan

Brenda McMillan Biology

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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.

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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,

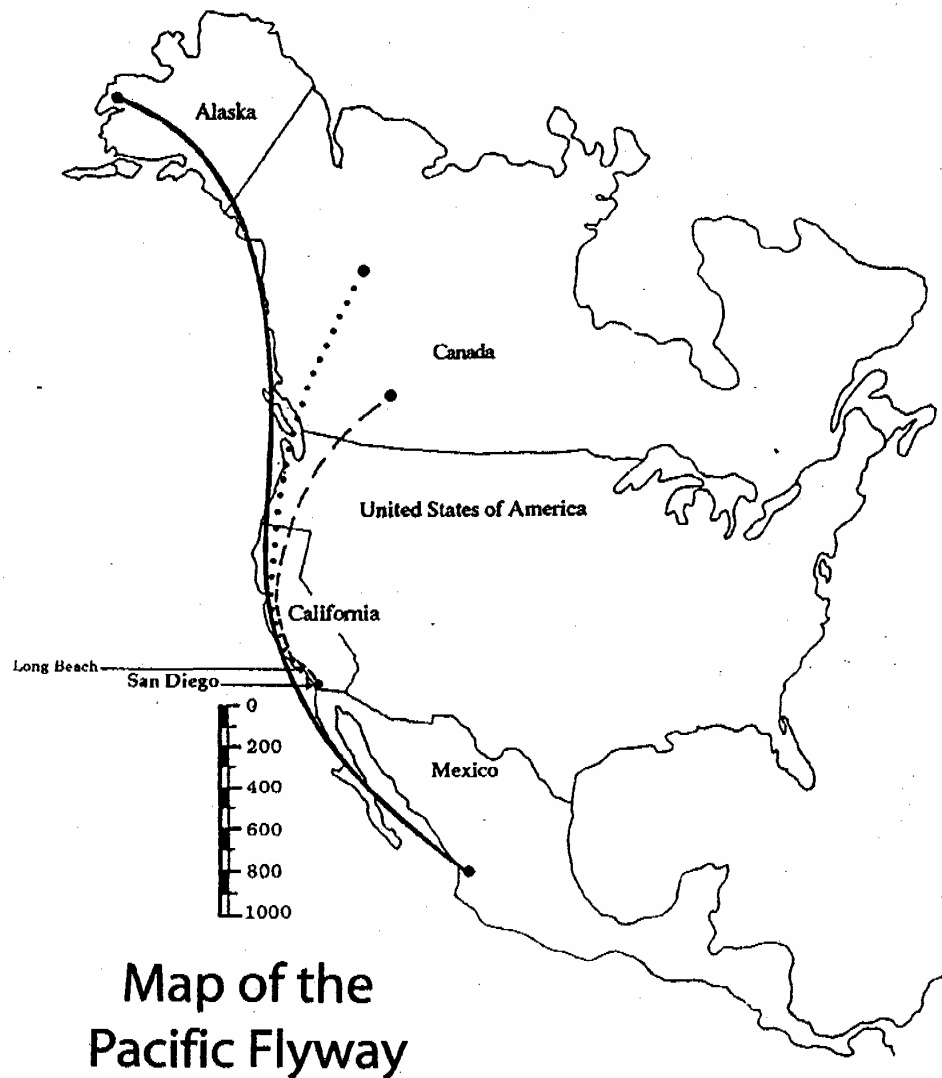


El Dorado Audubon Society

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

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Los Cerritos Wetlands Land Trust
for Long Beach and Seal Beach

PO Box 30165
Long Beach, CA 90853

562-293-3011
www.lcwlandtrust.org

RECEIVED
South Coast Region

MAR 1 2010

CALIFORNIA
COASTAL COMMISSION

Hon. Chair Bonnie Neely and Commissioners
California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, CA. 94122

February 26, 2010

Dear Commissioners:

Re: 2H Properties
Substantial Issue Determination A-5-LOB-10-15
W15a March 10, 2010

Dear Coastal Staff and Commissioners

We represent Los Cerritos Wetlands Land Trust (LCWLT). LCWLT is a nonprofit organization established in 2001 for the sole purpose of protecting and restoring the unique and vitally important local estuarine environment located in and around the communities of Long Beach and Seal Beach.

At your upcoming meeting, on March 10, you will determine whether substantial issue exists to hear and further condition a coastal development permit (CDP) issued for 6400 Loynes Drive, Long Beach, Los Angeles County in order to legitimize emergency actions taken to re-establish a landfill cover and to insure future remediation of wetlands, ESHA, wildlife and natural resources located onsite.

The underlying facts are not in dispute. On March 19 & 20, 2009, the property owner, without benefit of permits or environmental analysis or review of any kind, employed heavy machinery to scrape and destroy wetlands, wildlife and ESHA habitat across the entirety of the property. In the process, the landowner also endangered the surrounding community by unearthing and exposing a historic landfill underlying the habitat.

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In subsequent statements and information, it now appears the property owner undertook the illegal grading to facilitate future development of the site.

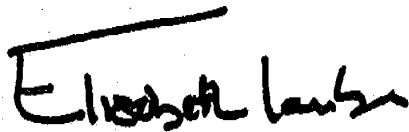
It is critical that the Commission insure the property is restored to pre-development condition prior to consideration of any additional modification or development of the property. LCWLT has retained biological experts and produced a report entitled "Comments on Illegal Development and Retroactive Permit to Remediate at 6400 Loynes Drive, Long Beach" by Land Protection Partners, which outlines the actions and parameters needed to achieve remediation and restoration of the property. This report has been provided to coastal staff and is available for your review at www.lcwlandtrust.org

We believe your actions in 2006 involving illegal dune grading at 7300 W. Ocean Front at the mouth of the Santa Ana River in Newport Beach are illustrative in this case. There, when five families paid a contractor to level sand dunes fronting their homes, you imposed a \$225,000 fine and required restoration and long term monitoring (Cease & Desist Order CCC-06-CD-01 and Restoration Order CCC--6-RO-01). The restoration has been a success and the fine has no doubt discouraged others from similar actions. Your complete report is at <http://documents.coastal.ca.gov/reports/2006/2/W17-s-2-2006.pdf>

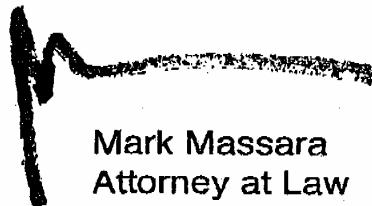
The case at 6400 Loynes Drive is much more severe. In Newport the graded dunes only comprised a 150-ft by 30-ft area. At Loynes, nearly 10 acres of habitat and wetlands have been destroyed. In Newport, the dunes were restored in just five years. At Loynes, the restoration efforts may take decades.

Given the numerous Coastal Act and Local Coastal Program policies at stake, the circumstances involved and the need to insure full restoration and long term monitoring, we urge the Commission to find Substantial Issue and initiate a complete and comprehensive review of the emergency work and future remediation of the property.

Sincerely,



Elizabeth Lambe
Executive Director



Mark Massara
Attorney at Law

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PAGE 2 OF 2

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



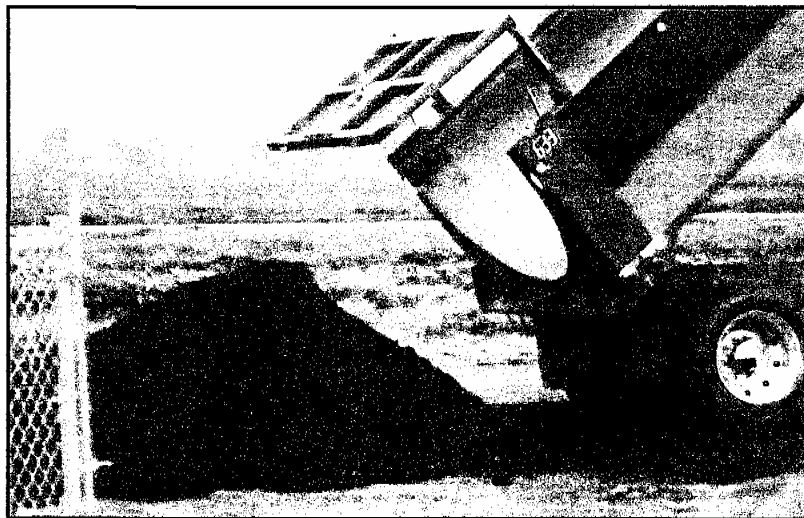
In reality, for some reason, Mr. Hitchcock undertook the deliberate destruction of the wildlife habitat with his bull dowsers for the "revised" purpose of a soccer field development in violation of the California Coastal Act. In the process, he penetrated the cap on the landfill under the site, releasing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

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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.



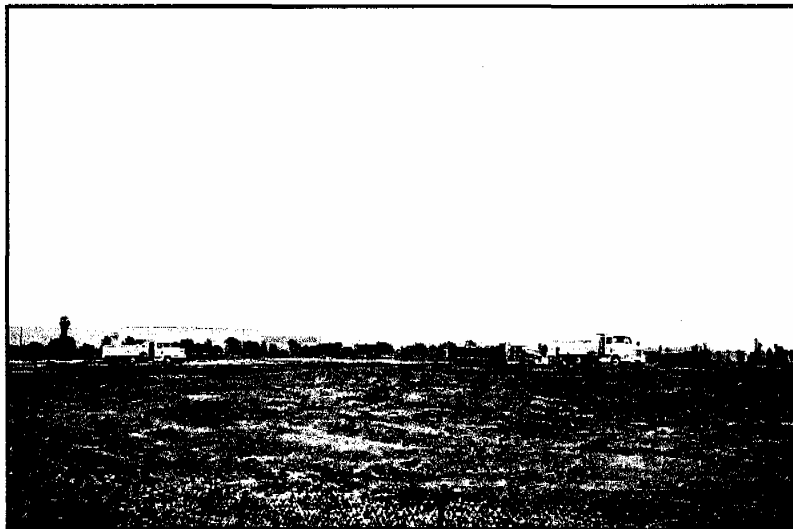
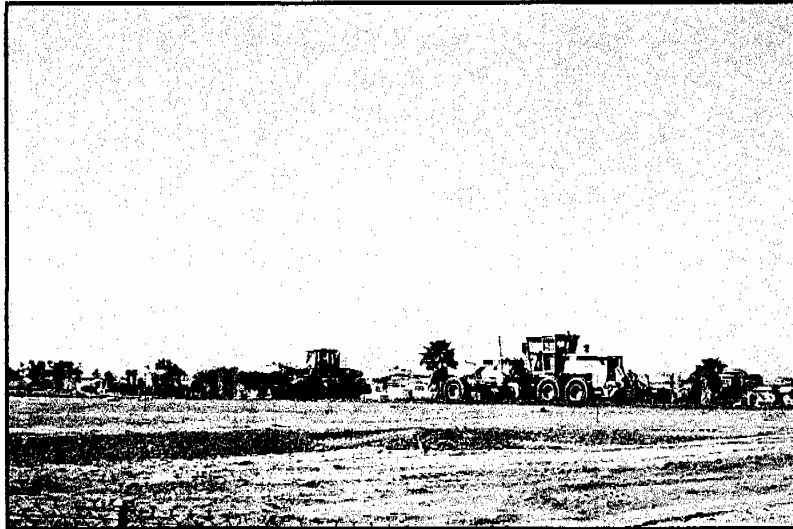
The illegal actions were finally halted. Due to the methane release and AQMD violations, Mr. Hitchcock was given an emergency permit by the California Coastal Commission to put dirt over the penetrated cap. The plan was to provide a 6" dirt cap to cover a 50,000 SF area.

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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.

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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,

A handwritten signature in cursive script, appearing to read "Mary Suttie & David C. Robertson".

Mary Suttie and David Robertson

COASTAL COMMISSION
AS-LOB-10-015

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