CALIFORNIA COASTAL COMMISSION
South Coast Area Office
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March 2, 2011

W18a

ADDENDUM

To: Commissioners and Interested Parties

From: John Ainsworth, Deputy Director
Gary Timm, Coastal Program Manager
Charles Posner, Staff Analyst

Re: **Appeal No. A-5-LOB-10-015 (Loynes, LLC – Sean Hitchcock), 6400 E. Loynes Drive, City of Long Beach.**

I. Substantive File Document

On November 19, 2010, the Commission relied on the memo from Dr. Travis Longcore dated November 17, 2010 when it voted to modify Special Condition One and approve Coastal Development Permit A-5-LOB-10-015. The plant list in the memo is specifically referenced in Section A (Native Plant List) of Special Condition One. Therefore, the staff report should make reference to the memo as one of the substantive file documents in the proposed findings for the Loynes, LLC matter. A copy is attached for your reference.

Land Protection Partners

P.O. Box 24020, Los Angeles, CA 90024-0020
Telephone: (310) 247-9719

To: California Coastal Commission

From: Travis Longcore, Ph.D.

Date: November 17, 2010

Re: Hitchcock Property, 6400 Loynes Drive, Long Beach, Item F12a

This memo responds to various assertions made by attorney Tamar Stein of Cox, Castle & Nicholson for Sean Hitchcock, the owner of the property at 6400 Loynes Drive, and in the Staff Report for the project before the Commission. The Commission must decide a limited number of questions of fact to reach and support its decision on this matter. I will address each of these in a concise manner.

1. Does the project site contain wetlands?

The project site contains areas that were seasonally inundated with water and held water for some period of time during the rainy season. This cannot be disputed as these pools are visible to the eye in any number of photographs of the site and have been seen on the site as recently as October of this year.

The site supported and supports hydric soils. The PCR report in the record documents the presence of hydric soils in one of the depressions on site that was not disturbed by the illegal development.

The site supported and supports wetland indicator plants. This is also not in dispute and has been confirmed by multiple biologists, including the applicant's consultants.

The site therefore contains wetlands under the Coastal Act definition and the one-parameter rule.

No one is claiming that these are wetlands that are moist year-round or that they connect to tidal wetlands, but these are not necessary conditions for them to be considered wetlands under the Coastal Act. They are seasonal pools (also known as vernal pools) that develop on impermeable soils during rainy periods and then dry up, leaving a salty crust. A complex of flat uplands and seasonal salty pools is known as "alkali meadow." This habitat used to be extensive throughout this region, but is now limited to a few areas. This habitat type has been carefully documented by local scientists (including Dr. Eric Stein (SCCWRP), Dr. Shawna Dark (CSUN), and me) in a detailed report on the San Gabriel River (Stein et al. 2007) and subsequently in the scientific peer-reviewed literature (Stein et al. 2010).

NB: Mr. Hitchcock's attorney Tamar Stein of Cox, Castle & Nicholson (no relation to scientist Dr. Eric Stein cited above) misleadingly stated in her letter to the Commission that our previous report conceded that there were no wetlands on the site. We did not. We did acknowledge on the page referenced that the site fulfills upland habitat functions, but of course a site can have both uplands and wetlands on it. Unfortunately, Ms. Stein's letter has many misleading statements that are not grounded in the applicable regulations or biology. For example, "the fact that the site was formerly a landfill precluded it from being classified as wetlands." False. Wetlands can develop on top of a capped landfill and still be considered wetlands. "The distance between the ground surface and the water table is simply too far to support predominantly hydrophytic vegetation onsite." Perhaps true, but this is not the test for presence of wetlands under the Coastal Act.

2. Is the project site ESHA?

The site should be considered ESHA based on its unique location relative to the surrounding natural areas and the various functions that the site fulfills, which we addressed at length in our previous report. These are:

a. Contiguity with and contributing area to existing high-value open space;
b. Significant foraging area for raptors within overall open space complex;
c. Important seasonal foraging area for waterbirds when water level is high in nearby wetlands;
d. Support for rare plants such as southern tarplant (which we predicted would be present and now has been documented on site); and
e. Presence of a habitat type (alkali meadow with seasonal ponding) that is very rare.

These functions and values are critically important to the overall biological value of the Los Cerritos Wetlands complex that are easily disturbed by human activities. The site therefore meets the criteria necessary for recognition as ESHA.

3. Is an alkali meadow and associated vernal pools inconsistent with presence of the dump underneath the project site?

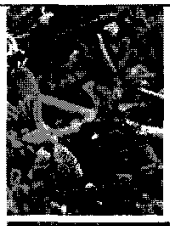
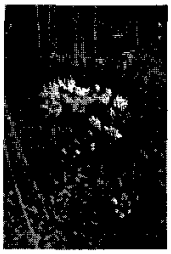
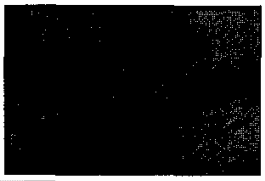
No. If the soil cap on the dump is appropriately constructed, water will not penetrate through into the dump. Ponding of water on top of the cap is to be expected and would not pose any additional risk to the dump. In fact, this is going to happen anyway, unless the entire site is graded so that all water drains off the site (but this would represent a dramatic change from pre-disturbance conditions). Pools now form on a seasonal basis and have not been reported to cause any adverse impacts for the dump.

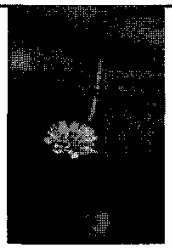
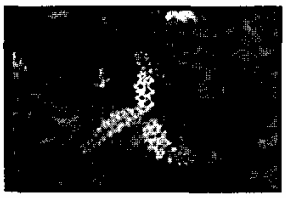
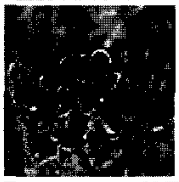
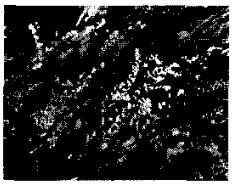
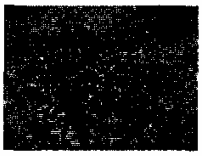
Please note that the applicant asked the Los Angeles Regional Water Quality Control Board only whether a brackish pond would be an acceptable land use on the project site. The Regional Board responded that anything that would "submerge municipal wastes under water" would not be acceptable. A soil cap that ponds water on top of it during the rainy season is precluded by this determination, and in fact, this is what has been happening on the project site since the dump was originally capped.

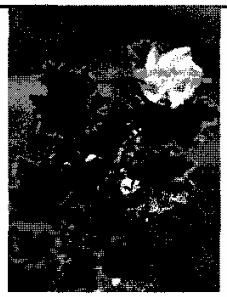
4. Does the Commission have to recognize wetlands on the site to ensure that the site is appropriately restored?

Probably not. The most important thing is for the plant list to be appropriate to the natural processes that govern the project site. This site will get wet in the rain, low points will collect water, and those pools will dry, leaving behind alkali soils and salty crusts in the depressions. These depressions should be re-contoured into the property, using the topographic map provided by LSA in its report to Ms. Stein. The plant list that LSA has suggested, however, contains many plants that are not appropriate for these conditions and have no historical precedent in this area. I have assembled the following proposed plant list, which, unlike the LSA proposal, is supported by historical botanical records for the area (see appendix of E. Stein et al. 2007) and current local observations by Eric Zahn (ecologist/botanist, Tidal Influence). I have included common names and a photo for reference (Table 1).

Table 1. Proposed Plant List for Loynes Drive Revegetation.

Family	Scientific Name	Common Name	Photograph
Aizoaceae	*Sesuvium verrucosum*	Western Sea Purslane Photo: © 2004 James M. Andre	
Asteraceae	*Isocoma menziesii* ssp. *vernonioides*	Coastal Goldenbush Photo: © 2003 Michael Charters	
Asteraceae	*Lasthenia glabrata* ssp. *coulteri*	Coulter Goldfields Photo: © 2009 Allison Rudalevige	
Asteraceae	*Ambrosia acanthicarpa*	Annual Bursage Photo: © 1995 Saint Mary's College of California	

Asteraceae	*Centromadia parryi* ssp. *australis*	Southern Tarplant Photo: © Angelika Brinkmann-Busi and CNPS	
Boraginaceae	*Heliotropium curassavicum*	Seaside Heliotrope Photo: © 1995 Saint Mary's College of California	
Brassicaceae	*Lepidium nitidum*	Shining Pepper Grass Photo: © 2007 California Native Plant Society	
Chenopodiaceae	*Suaeda taxifolia*	Woolly Sea-Blite Photo: © Jonathan Coffin	
Convolvulaceae	*Cressa truxillensis*	Spreading Alkaliweed Photo: © Batiquitos Lagoon Foundation	
Euphorbiaceae	*Croton californicus*	California Croton Photo: © 2002 Lynn Watson	
Frankeniaceae	*Frankenia salina*	Alkali Heath Photo: © 2008 R.C. Brody	

Malvaceae	*Malvella leprosa*	Alkali Mallow Photo: © 2004 James M. Andre	
Poaceae	*Distichlis spicata*	Saltgrass Photo: © 2009 Keir Morse	

LSA's plant list simply does not fit with either the existing flora of the area or the hydrological conditions on the project site. Their approach leaves out the specialized alkali species that are most appropriate for these conditions, especially on top of what should be a clay cap on a landfill. Furthermore, the plants I have suggested here should have shallower root zones and have less potential to penetrate the soil cap than those suggested in the Staff Report. It is not good restoration practice to introduce plants to an area when there is no historical record of their occurrence; such a well-intentioned but misinformed restoration attempt nearly resulted in the extinction of the El Segundo blue butterfly at the Los Angeles International Airport dunes (Longcore et al. 2000).

5. How could the Commission protect the biological resource values of the project site following the illegal development?

Approve the Staff Report but require that the topography of the site be restored to its pre-disturbance condition and that plant species appropriate to the site hydrology and historical ecology be used, as specified in Table 1 of this memorandum.

Literature Cited

Longcore, T., R. Mattoni, G. Pratt, and C. Rich. 2000. On the perils of ecological restoration: lessons from the El Segundo blue butterfly. Pages 281–286 *in* C. J. Fotheringham, editor. 2nd interface between ecology and land development in California. U.S. Geological Survey, Sacramento, California.

Stein, E. D., S. Dark, T. Longcore, R. Grossinger, N. Hall, and M. Beland. 2010. Historical ecology as a tool for assessing landscape change and informing wetland restoration priorities. Wetlands **30**:589–601.

Stein, E. D., S. Dark, T. Longcore, N. Hall, M. Beland, R. Grossinger, J. Casanova, and M. Sutula. 2007. Historical ecology and landscape change of the San Gabriel River and floodplain. SCCWRP Technical Report #499. Southern California Coastal Water Research Project, Costa Mesa, California.

Qualifications

Land Protection Partners has provided scientific review of environmental compliance documents and analysis of complex environmental issues for local, regional, and national clients for 11 years. Dr. Travis Longcore is Associate Research Professor at the USC Spatial Sciences Institute and Associate Adjunct Professor at the UCLA Institute of the Environment and Sustainability where he has taught, among other courses, Bioresource Management, Environmental Impact Analysis, World Vegetation, Field Ecology, and the Environmental Science Practicum. He was graduated *summa cum laude* from the University of Delaware with an Honors B.A. in Geography, holds an M.A. and a Ph.D. in Geography from UCLA, and is professionally certified as a Senior Ecologist by the Ecological Society of America. He has studied the historical ecology of southern California extensively, including a major effort to describe the historical habitats and floristic diversity of the San Gabriel River and surroundings. Longcore has authored or co-authored over 20 scientific papers in top peer-reviewed journals such as *Conservation Biology*, *Current Biology*, *Environmental Management*, and *Frontiers in Ecology and the Environment*.

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Filed: 1/25/2010
Approved: 11/19/2010

Staff: Charles Posner - LB
Staff Report: 2/23/2011
Hearing Date: March 9, 2011
Commission Action:

STAFF REPORT: REVISED FINDINGS

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

APPLICANT: Loynes, LLC - 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 re-vegetation and weed abatement.

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).

COMMISSIONERS ON PREVAILING SIDE: Achadjian, Blank, Bloom, Mirkarimi, Sanchez, Secord, Shallenberger, Stone, Wan and Chair Neely

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

Staff is recommending that the Commission adopt the following revised findings in support of the Commission's approval with conditions of Coastal Development Permit Application A-5-LOB-10-015 on November 19, 2010. Special Condition One requires the applicant to submit a revised re-vegetation and monitoring plan that would result in the re-creation of site's pre-disturbance topography and seasonal pools that existed on the site prior to grading. The applicant is also required to construct an impermeable cap on the dump to prevent water from infiltrating the landfill. The disturbed area shall be re-vegetated with Southern California native plants appropriate to the site's hydrology and historical ecology (alkali meadows and transitional grassland/coastal scrub – salt marsh to uplands).

A vote by the majority of the Commissioners on the prevailing side is necessary to adopt the revised findings. **See Page Two for the motion to adopt the revised findings**.

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 (Exhibit #12).
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.
9. Habitat Revegetation and Monitoring Plan, Loynes Drive Project, Long Beach, by LSA Associates, Inc., September 2010 (Exhibit #11).

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **adopt the revised findings** in support of the Commission's November 19, 2010 action to approve with conditions Coastal Development Permit Application A-5-LOB-10-015.

Staff recommends a **YES** vote on the following motion:

> **MOTION:** *"I move that the Commission adopt the revised findings proposed by staff in support of the Commission's action on November 19, 2010 approving with conditions Coastal Development Permit Application A-5-LOB-10-015."*

Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the November 19, 2010 hearing, with at least three of the prevailing members voting. The ten Commissioners on the prevailing side are:

> **Commissioners Achadjian, Blank, Bloom, Mirkarimi, Sanchez, Secord, Shallenberger, Stone, Wan and Chair Neely.**

Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

I. Resolution to Adopt Revised Findings

The Commission hereby adopts the findings set forth below for the approval with conditions of Coastal Development Permit Application A-5-LOB-10-015 on the ground that the findings support the Commission's decision made on November 19, 2010 and accurately reflect the reasons for it.

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

Staff Note: The Special Conditions below show the changes that the Commission made to the staff's recommended conditions on November 19, 2010 (only Special Condition One was changed). The portions of the conditions that were deleted are crossed-out: ~~deleted words~~. The changes added by the Commission are identified with **bold underlined text**.

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 revised re-vegetation and monitoring plan for the portions of the project site that were disturbed by prior grading on March 19 and 20, 2009 (as shown on Exhibit #4 of the Staff Report dated November 3, 2010), and including the area covered with the fill imported pursuant to Emergency Permit 5-09-068-G. The revised re-vegetation and monitoring plan shall be prepared by 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 revised re-vegetation and monitoring plan shall include all of the provisions contained in the plan entitled, "Habitat Revegetation and Monitoring Plan, Loynes Drive Project, Long Beach, by LSA Associates, Inc., September 2010" and shall also include the following provisions:

A. Native Plant List. All plants shall be Southern California native plants appropriate to the ~~natural habitat type (transitional grassland/coastal scrub – salt marsh to uplands). Appropriate native plants include, but are not limited to, forbs, grasses and small shrubs~~ **site's hydrology and historical ecology (alkali meadows and transitional grassland/coastal scrub – salt marsh to uplands). Appropriate native plants include, but are not limited to: *Sesuvium verrucosum, Isocoma menziesii* ssp. *Vernonioides, Lasthenia glabrata* ssp. *Coulteri, Ambrosia acanthicarpa, Centromadia parryi* ssp. *Australis, Heliotropium Curassavicum, Lepidium nitidum, Suaeda taxifolia, Cressa truxillensis. Croton californicus, Frankenia salina, Malvella leprosa, and Distichlis spicata [Longcore LPP Memo, Table 1, 17 November 2010].*** 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 to be 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. At the end of five years, a minimum of **eighty percent (80%)** ~~seventy-five percent (75%)~~ of the disturbed area shall be covered with native plants**.** ~~and no more than~~ **No more than five percent (5%)** ~~ten percent (10%)~~ of the disturbed area shall be covered with non-native plants **at any time**.

C. **Dump Cap/Topography/**Additional Fill. ~~Installation of the plants shall not result in the exposure of trash or other materials from the underlying landfill.~~ **An impermeable cap, sufficient to re-create seasonal pools, shall be provided (with additional soil and/or a liner) on the dump. The impermeable dump cap shall be designed in compliance with the specifications and requirements of the California Integrated Waste Management Board, the Los Angeles Department of Public Health (Environmental Health Solid Waste Management Program), the Regional Water Quality Control Board (Los Angeles RWQCB), and the South Coast Air Quality Management District (AQMD). The topography of the site shall be restored to its pre-disturbance conditions with depressions between bumps for seasonal pools. Creation of the seasonal pools and installation of the plants shall not adversely affect the impermeable dump cap or result in the exposure of trash or other materials from the underlying landfill.** Additional soil shall be imported to create a minimum six-inch thick layer of soil for the new plants. ~~Additional soil may be imported if it is deemed necessary to increase the thickness of the dump cap if deemed necessary by the Los Angeles Department of Public Health (Environmental Health Solid Waste Management Program) or the South Coast Air Quality Management District (AQMD).~~

D. The storage or stockpiling of soil, silt, and other organic or earthen materials shall not occur where such materials could pass into coastal waters.

E. 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.

F. Removal of Non-native Plants. Prior to the installation of the native plants, the non-native weeds and grasses shall be removed from the area to be re-vegetated. Areas where Southern Tarplant exists shall not be disturbed. 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.

G. No grading or scraping is permitted. No heavy machinery may be used. Smaller mechanized vehicles (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.

H. 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.

I. 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 Resource Specialist that the required re-vegetation plan has become successful.

J. 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 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.

K. Erosion Control. Prior to removing the non-native plants and preparation of the soil, the permittee shall employ Best Management Practices (BMPs) to ensure that erosion does not occur.

L. 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.

M. 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.

N. Monitoring. **The permittee shall provide the funding necessary to compensate a third party monitor (approved by the Executive Director) for the completion of the monitoring reports required by this condition.** 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~~ **third party monitor approved by the Executive Director** 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~~ **third party monitor** 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~~ **third party monitor** shall submit, for the review

and approval of the Executive Director, an annual re-vegetation monitoring report prepared by a qualified Resource Specialist which 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. At the end of five years, a minimum of **eighty percent (80%)** ~~seventy-five percent (75%)~~ of the disturbed area shall be covered with native plants**.** ~~and no more than~~ **No more than five percent (5%)** ~~ten percent (10%)~~ of the disturbed area shall be covered with non-native plants **at any time**. 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 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.

O. **Review and Approval by Landfill Regulators.** 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 final plan for the impermeable dump cap shall be reviewed and approved by the County of Los Angeles Department of Public Health (Environmental Health Solid Waste Management Program) and the California Integrated Waste Management Board.**

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 tee 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 (February 1 through August 31). Specifically required restoration work approved by the Executive Director is not subject to this limitation.

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 unless it is specifically authorized by the Executive Director.

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. Timing of Re-vegetation

Implementation of the approved re-vegetation plan required by Special Condition One (i.e., installation of an impermeable dump cap, removal of non-native plants, preparation of the soil, and installation of the native plants) shall commence as soon as possible following the issuance of the coastal development permit. 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. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

6. 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. Revised Findings and Declarations

Staff Note: The following revised findings include all of the staff's recommended findings that were set forth in the November 3, 2010 staff report for the Commission's November 19, 2010 hearing. The portions of those findings that are being deleted are crossed-out in the following *revised findings:* ~~deleted findings~~. The supplemental findings being added in support of the Commission's November 19, 2010 action are identified with underlined text.

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. The area disturbed by the unpermitted grading is shown on Exhibit #4 (Source: Google Earth/USDA, May 25, 2009). 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. On September 22, 2010, the applicant submitted a proposed re-vegetation and monitoring plan for the site entitled "Habitat Revegetation and Monitoring Plan, Loynes Drive Project, Long Beach, by LSA Associates, Inc., September 2010" (Exhibit #11).

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~~. The report by Dr. Longcore, however, describes the presence of wetlands on the project site [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]. Dr. Longcore's report states that there are seasonal wetlands (vernal pools) that form on lower elevations on the western side of the property, and that wetlands (areas covered periodically with shallow water) previously existed on the portion of the site where the unpermitted graded occurred in March 2009. The appellants have provided substantial evidence (e.g., photographs and testimonials) that supports the allegations that the disturbed part of the site was not flat (prior to grading), and that there were contours and low spots on the site that allowed water to pool. The bumps and contours in the disturbed area were graded flat in March 2009. Photographs taken prior to March 2009 show small pools of water in the area where the unpermitted grading occurred. The record also shows that hydric soils exist on the site, as well as a few native wetland plants (Exhibit #12, ps.11-12)

~~Although the~~ 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~~.

The certified LCP sets forth the following general provisions that relate to open space areas like the project site.

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 and natural resource preservation 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 appellants have also provided substantial evidence (e.g., photographs and testimonials) that the disturbed portion of site was not flat before the unpermitted grading occurred. The photographic evidence shows that the area where the unpermitted grading occurred had contours and low spots where seasonal pools had been observed. The observations in Dr. Longcore's report support the assertions that seasonal pools existed on the disturbed portion of the site prior to the unpermitted grading.

The implementation of a habitat protection and restoration plan, subject to the requirements of Special Condition One discussed below, 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 and restoring the site's former topography. 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 restores the previously existing topography on the site and 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. The applicant's proposal for re-vegetation of the site is attached as Exhibit #11 ("Habitat Revegetation and Monitoring Plan, Loynes Drive Project, Long Beach", by LSA Associates, Inc., September 2010).

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 to its previous contours and 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, topography 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.

Proposed Re-vegetation of the Site

Originally, the applicant was reluctant to propose any re-vegetation. He asserted that the site has mostly been re-vegetated naturally without any restoration plan. In fact, most of the site, including some of the disturbed area, is currently vegetated by non-native weeds and a few palms. Site visits by the Commission staff biologist and the applicant's biologist in March and October 2010 found very few specimens of native plants growing among the weeds, notably flowering lupin plants (in March) and southern tarplant (in October).

As previously stated, however, there is evidence that wetlands exist on the site. Dr. Longcore's report states that there are seasonal wetlands (vernal pools) that form on lower elevations on the western side of the property, and the appellants have provided substantial evidence (e.g., photographs and testimonials) that supports their allegations that the disturbed part of the site was not flat (prior to grading), and that there were contours and low spots on the site where seasonal pools had been observed. The bumps and contours in the disturbed area were graded flat in March 2009. Photographs taken prior to March 2009 show small pools of water where the grading occurred. The record also shows that hydric soils exist on the site, as well as a few native wetland plants (Exhibit #12, ps.11-12)

In September, however, the applicant submitted a proposed plan to re-vegetate part of the site with native plants (Exhibit #11: Habitat Revegetation and Monitoring Plan, Loynes Drive Project, Long Beach, by LSA Associates, Inc., September 2010). The applicant's proposal involves a grow/kill regimen that would occur prior to the planting (primarily by hydroseeding) of a wide variety of native plants (Plant List: Exhibit #11, p.10). The grow/kill regimen involves growing, then killing the non-native plants in order to deplete the non-native seed bank in the soils. The use of a wide variety of native plants is being proposed so that the biologists can see which native plant species succeed on the site. Plants shown to successfully grow on the site can be utilized in subsequent planting cycles in order to increase the amount of area covered by native plants. ~~The~~ As proposed by the applicant, the success of the re-vegetation would be based on a standard of seventy percent native plant cover and less than twenty percent coverage by non-native plants. Monitoring of the site and continuation of the re-vegetation effort would last at least five years.

Type 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/alkali meadow, or as an upland native plant habitat.

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.

The issue is whether vernal pools were disturbed by the grading. The appellants have provided substantial evidence (e.g., photographs and testimonials) that shows that the disturbed part of the site was not flat, and that there were contours on the site that allowed water to pool. Photographs taken prior to March 2009 show small pools of water in the area where the unpermitted grading occurred. Dr. Longcore's report identifies vernal ponds that still exist on the ungraded portion of the site. Therefore, the photographic evidence (showing pools of water and undulating topography) supports the allegation that vernal pools were disturbed by the grading in March 2009.

Ty Garrison's report also documents hydric soils on the dump cap.~~, but these soils are~~ The hydric soils on the site may be fill materials that were moved onto the dump from another location. On the other hand, the hydric soils on the site may have been formed in the pools shown in the photographs. Ty Garrison's report also documents ~~reports~~ two species of native plants on the site that are wetland indicators: Polypogon monspeliensis and Lepidium latifolium (Exhibit #4, p. 10). Dr. Longcore's report states that the project site appears to have supported a number of hydrophytic plant species and that plants that appeared to be seaside heliotrope (*Heliotropium curassavicum*) were observed on the site (Exhibit #12, p.12). Seaside heliotrope is found in salt marshes and it's wetland status is obligate. Southern Tarplant (*Centromadia parryi ssp. Australis*), which is listed as a 1B.1 rare plant by the California Native Plant Society,

has been observed and mapped on the disturbed portion of the site by the applicant's biologist (LSA Associates, Inc.).

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, and they have provided photographs of pools of water to support their argument ~~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)~~,~~. This, combined with the presence of vernal pools on ungraded portions of the site, as documented by Dr. Longcore, suggests that wetlands may have existed on other portions of the site prior to the unpermitted grading. Because the applicant graded the site without having first conducted any surveys of the habitat present on the site, it is not now possible to conclusively determine the extent of wetlands that existed on the site prior to the unpermitted grading. ~~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.

The Commission finds that the site's topography shall be restored to its pre-disturbance condition, with depressions between bumps for seasonal pools. The restoration of the undulating topography on the disturbed area will allow seasonal pools on the site, similar to the pools of water in the photographs that existed on the site prior to grading. The Los Angeles County 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. Therefore, in order to prevent water from infiltrating the underlying landfill, Special Condition One requires the applicant to construct an impermeable cap on the dump (with additional soil and/or a liner). The impermeable dump cap shall be designed in compliance with the specifications and requirements of the California Integrated Waste Management

Board, the Los Angeles Department of Public Health (Environmental Health Solid Waste Management Program), the Regional Water Quality Control Board (Los Angeles RWQCB), and the South Coast Air Quality Management District (AQMD). Creation of the seasonal pools and installation of the plants shall not adversely affect the impermeable dump cap or result in the exposure of trash or other materials from the underlying landfill.

Southern California native plants appropriate to the site's hydrology and historical ecology (alkali meadows and transitional grassland/coastal scrub – salt marsh to uplands) shall be used to re-vegetate the disturbed area, as recommended by the report by Dr. Longcore. The wetland alternative recommended by Dr. Longcore involves restoration of the disturbed area as an alkali meadow with seasonal pools. Alkali meadow is a valuable (and rare) type of habitat that typically existed around the edges of the marshes that were once plentiful in the San Gabriel River delta. Dr. Longcore points out that alkali meadow plants (e.g., salt grass, saltbush, mallow) have shallow roots that would not penetrate the dump cap, which could be capped with clay to allow rainwater to pool. The creation of an alkali meadow on the site will provide a valuable type of habitat to mitigate and restore the habitat destroyed as a result of the approved development. Appropriate native plants include, but are not limited to: *Sesuvium verrucosum, Isocoma menziesii* ssp. *Vernonioides, Lasthenia glabrata* ssp. *Coulteri, Ambrosia acanthicarpa, Centromadia parryi* ssp. *Australis, Heliotropium Curassavicum, Lepidium nitidum, Suaeda taxifolia, Cressa truxillensis. Croton californicus, Frankenia salina, Malvella leprosa, and Distichlis spicata [Longcore LPP Memo, Table 1, 17 November 2010].* Pursuant to Special Condition One, additional soil shall be imported to create a *minimum* six-inch thick layer of soil for the new plants. Additionally, at the end of five years, a minimum of eighty percent (80%) of the disturbed area shall be covered with native plants. No more than five percent (5%) of the disturbed area shall be covered with non-native plants at any time.

As conditioned, the revised re-vegetation and monitoring plan would restore the undulating topography of the site (thereby re-creating the vernal pools), 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.

~~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 re-vegetate part of the disturbed area with native plants.~~

~~Commission staff recommends that the entire 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 two other restoration alternatives (brackish pond or wetland) involve standing water on the site. The wetland alternative recommended by Dr. Longcore involves restoration of the disturbed area as an alkali meadow with seasonal pools. Alkali meadow is a valuable (and rare) type of habitat that typically existed around the edges of the marshes that were once plentiful in the San Gabriel River delta. Dr. Longcore points out that alkali meadow plants (e.g., salt grass, saltbush, mallow) have shallow roots that would not penetrate the dump cap, which could be capped with clay to allow rainwater to pond. While the alkali meadow alternative, if successful, would provide a valuable type of habitat, there is not substantive evidence that this type of habitat existed on the disturbed portion of the project site before the unpermitted grading occurred in March 2009. In addition, the creation of alkali meadows would displace the southern tarplants that the biologists have mapped in the central portion of the site. Southern tarplant is a federally and state-listed endangered species that grows in drier, less alkali soils.~~

~~The creation of a brackish pond or wetlands on the site could also 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 <u>re-contoured and</u> 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 revised re-vegetation plan for the portions of the project site disturbed by prior grading and by re-establishment of the dump cap. As currently proposed, the applicant's plan would re-vegetate a 50,000 square foot portion of the site where the fill was imported to cap the exposed

[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~~.

dump. The area disturbed by the unpermitted grading in March 2009 is much larger than 50,000 square feet. In fact, photographs and eye witnesses verify that the area disturbed by heavy machinery in March 2009 covers most of the nine-acre site. An areal photograph dated on May 25, 2009 shows the disturbed area that must be re-vegetated (Exhibit #4: Google Earth/USDA).

The revised re-vegetation plan must be developed 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 revised re-vegetation plan must be developed and submitted for the approval of the Executive Director within sixty days (or within such additional time as the Executive Director may grant for good cause) 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 site's hydrology and historical ecology (alkali meadows and transitional grassland/coastal scrub – salt marsh to uplands). ~~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 re-contoured, 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 provide the funding necessary to compensate a third party monitor (approved by the Executive Director) for the completion of the monitoring reports required by this condition. ~~actively monitor the site~~ The site shall be actively monitored for at least five years.~~, remove non-native plants and replant native vegetation that has failed~~. At the end of five years, a minimum of eighty percent (80%) of the disturbed area shall be covered with native plants. No more than five percent (5%) of the disturbed area shall be covered with non-native plants at any time.

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 Six 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 used for walking by the public 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 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.

City of Long Beach

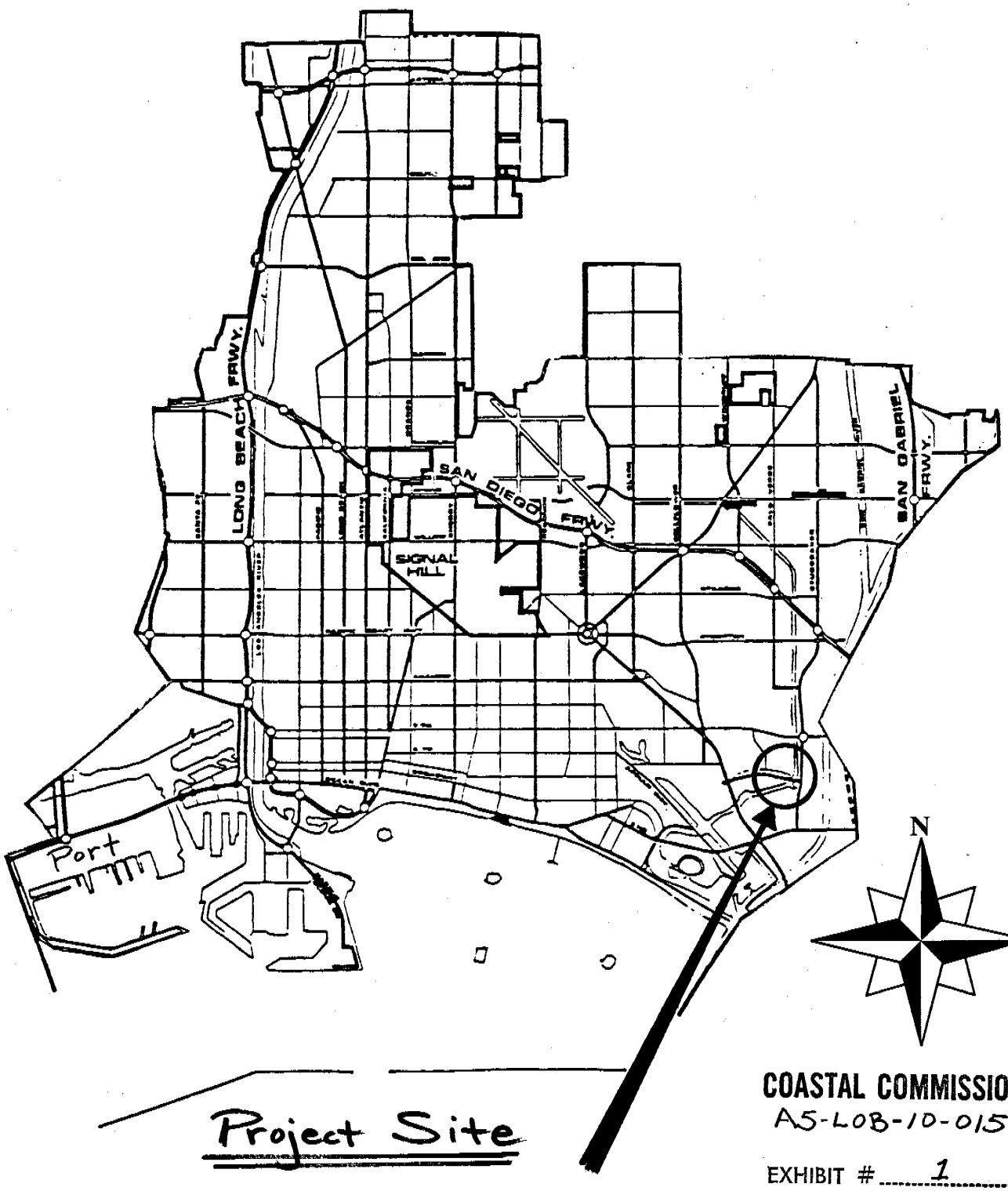

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EXHIBIT # 1

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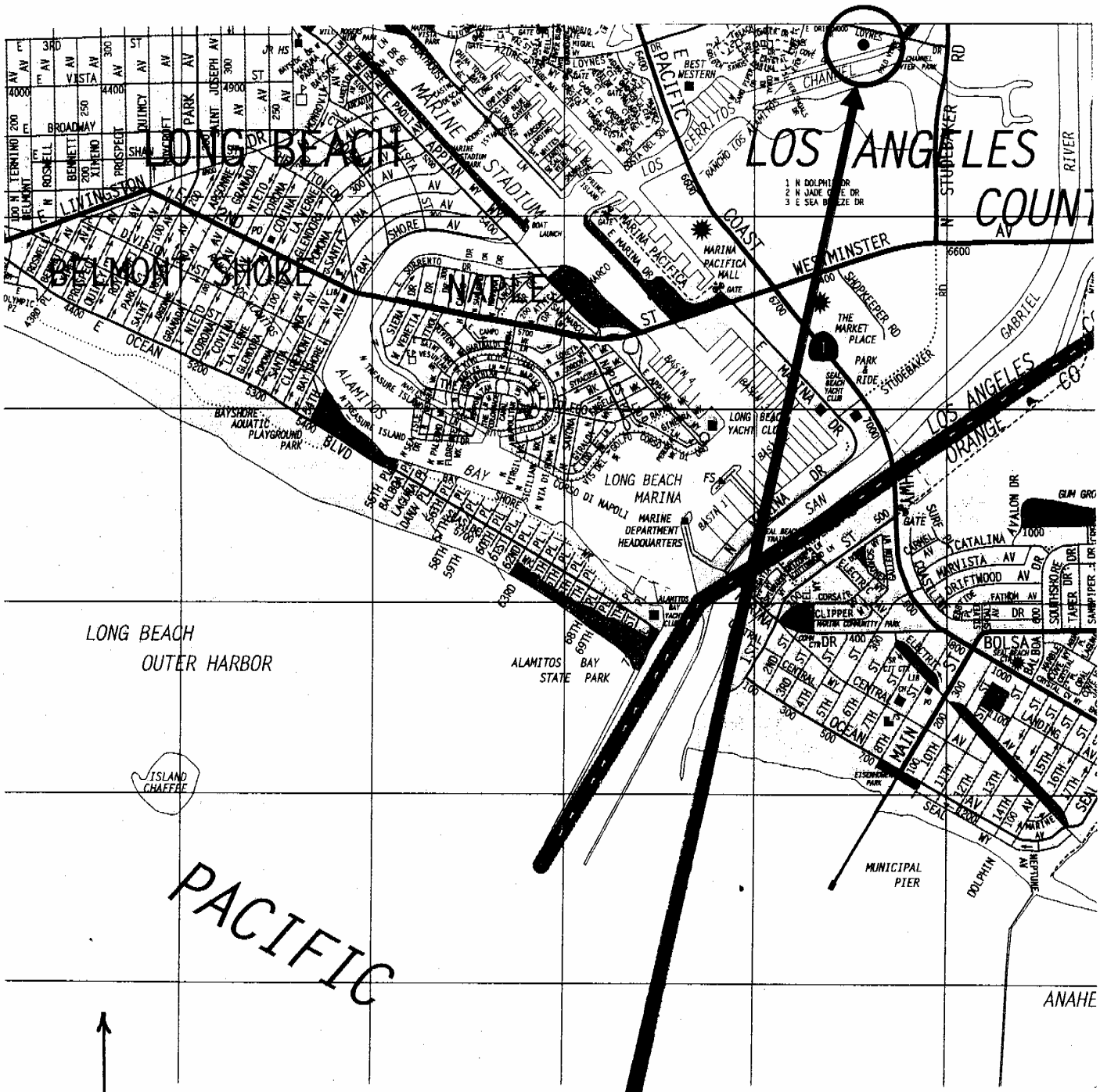

Project Site

6400 E. Loynes Drive

COASTAL COMMISSION
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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

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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

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PAGE 2 OF 2

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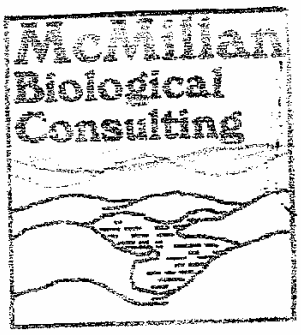
"Our Town-Long Beach"

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

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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.

COASTAL COMMISSION

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Subarea 23 has always been a wetland despite it 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 it 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 it's 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 it's 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 and2H 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

COASTAL COMMISSION

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PAGE 3 OF 4

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

Brenda McMillan Biology

COASTAL COMMISSION

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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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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,

M Farrell

El Dorado Audubon Society

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

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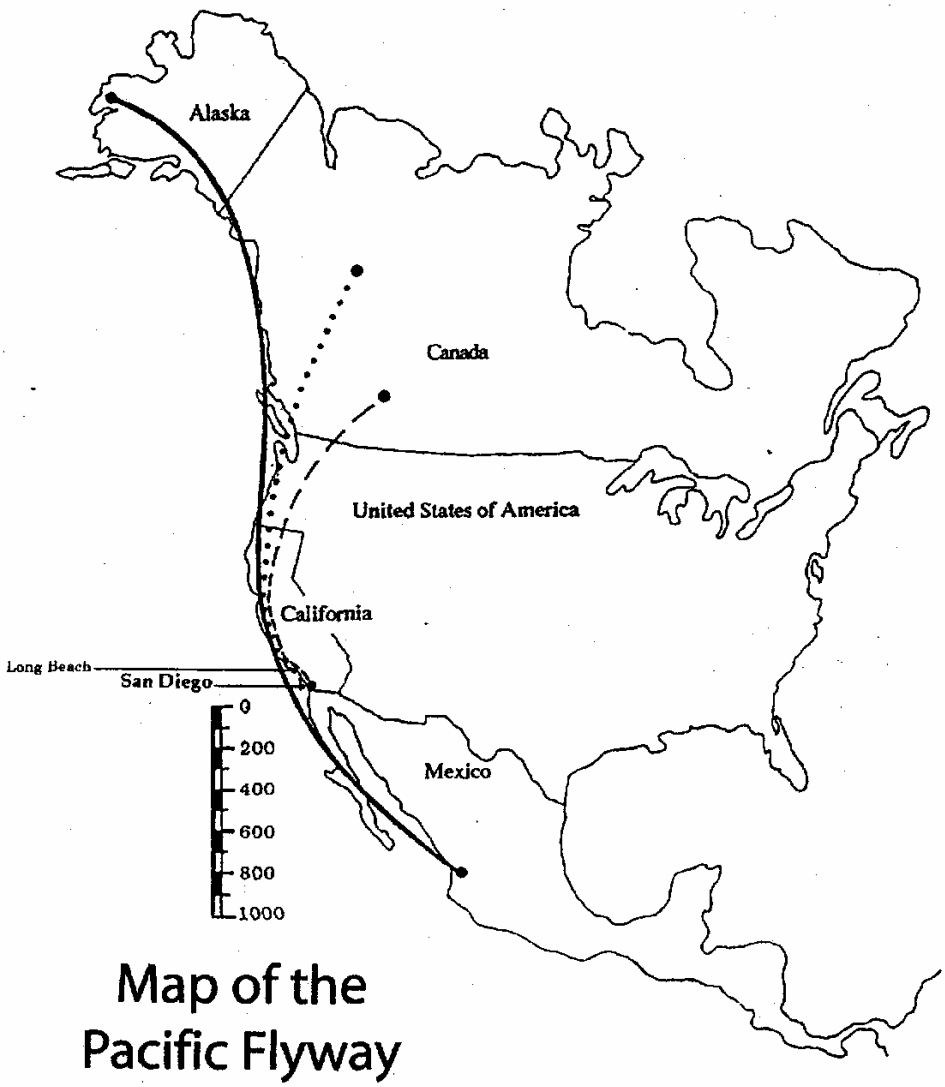

Map of the Pacific Flyway

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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

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South Coast Region

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CALIFORNIA
COASTAL COMMISSION

February 26, 2010

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

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

COASTAL COMMISSION

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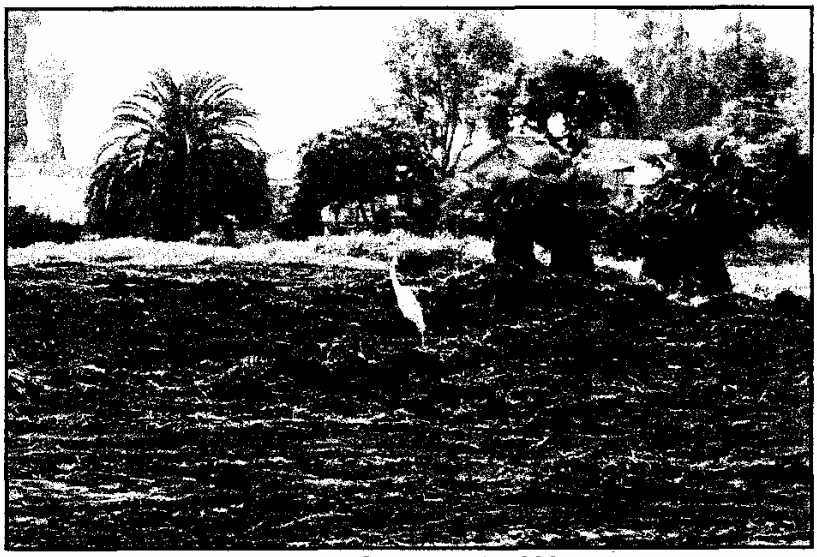
PAGE 2 OF 2

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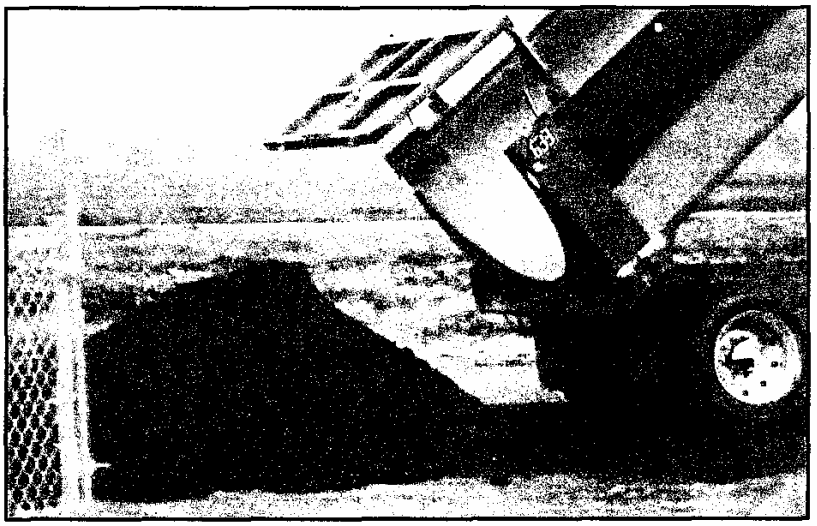
His actions were aided and abetted by Mr. Tom Dean who provided storage for Mr. Hitchcock's earth moving equipment on his property on Studebaker Road.

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.

COASTAL COMMISSION

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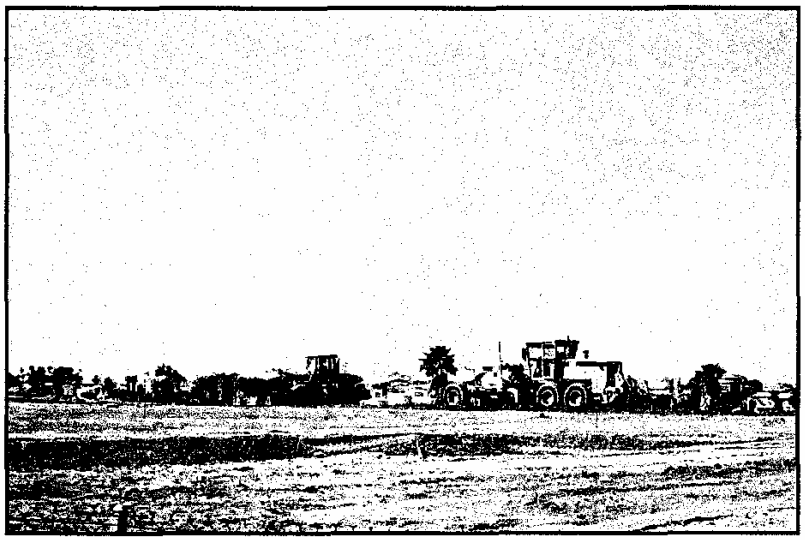
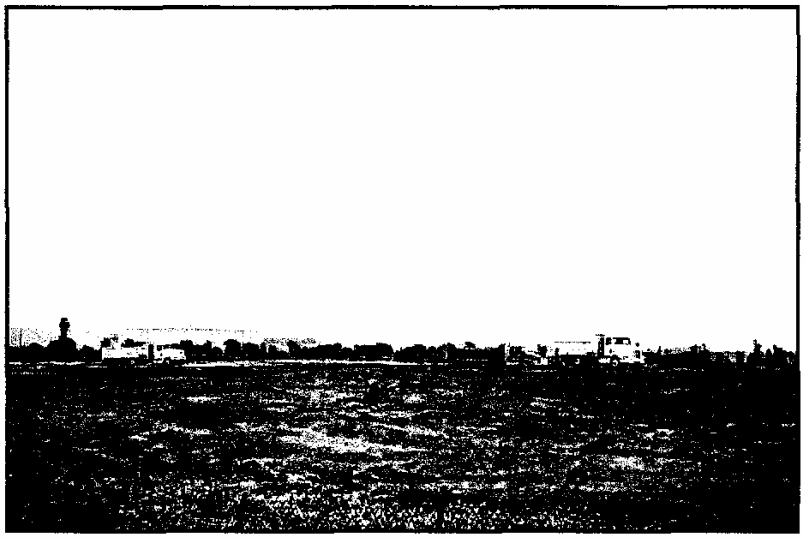
As shown below, he ignored the permit and spread landfill over most of the destroyed area with a 1" dirt cap...





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.

COASTAL COMMISSION

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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,

Mary Suttie & David C. Robertson

Mary Suttie and David Robertson

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PAGE 4 OF 4

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

CALIFORNIA
COASTAL COMMISSI

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

· State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

· This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

INTRODUCTION-HISTORICAL SETTING-WITNESS DECLARATION

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

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

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

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

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

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

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

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

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

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

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

APPEAL UNDER THE COASTAL ACT

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

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

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

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

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

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

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

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

CONCLUSION-PRAYER FOR RELIEF

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

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

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

Respectfully Submitted,

Thomas Marchese 1-28

Thomas Marchese, 6312 E 5th ST, Long Beach, CA 90803

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

Attention: Andrew Willis

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South Coast Region

JAN 2 8 2010

CALIFORNIA
COASTAL COMMISSION

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

January 27, 2010

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

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

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

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- Removal of mature trees
- Dumping waste asphalt on site.
  Removing all contours to the acreage, and then compacting the soil; thus changing the hydrology of the wetland.

- Denying neighbors, residents and community **visual access** to the wetland that once flourished on Subarea #23.

- The Local Coastal Development Permit does not address the project's consistency with the polices and standards of the certified LCP as set forth in Planned Development District one (PD-1: SEADIP) Specifically, Section B (responsibility for construction and maintenance of Wetlands and buffers.)

- The Open Space and Recreation Element of the City's General Plan, adopted by reference as part of the certified LCP, states (Goals: Open Space-Preservation of Natural Resources): To preserve areas which serve as natural habitats for fish and wildlife species and which can be used for ecologic, scientific and educational purposes. This project was not evaluated for its habitat value as part of the permit. The city approved Local Coastal Development Permit does not conform with this policy of the LCP

  - Subarea 23 is part of the Los Cerritos Wetlands Complex, and labeled as a wetland on the Coastal Conservancy map. (attached maps) It lays next to the Los Cerritos Channel Estuary as well the greater Los Cerritos Wetlands, adjacent to an existing wetlands area with ESA status which is described in City of Long Beach LCP.

  - *Mr. Hitchcock did not comply with the CCC Emergency Permit (issued on April 7,2009)

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

  Further, the CCC Emergency permits states on page # 2
  "Only that work specifically described above and for the specific property listed above is authorized".

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

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

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

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

  Indeed, the City of Long Beach on 9/21/09 gave the project-(capping of a landfill-) an exemption from CEQA.
  The last sentence in the exemption is rather telling:
  "The recapping is a step towards restoration of the project site"

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

Sincerely,

Joan Hawley McGrath

Joan Hawley McGrath, Secretary, **"Our Town-Long Beach"**
"Our Town- Long Beach" PO Box 3661 Seal Beach California 90740
Email: ourtownLB@hotmail.com Phone: 562-397-8004

Enclosures:

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HABITAT REVEGETATION AND MONITORING PLAN
LOYNES DRIVE PROJECT

LONG BEACH, CALIFORNIA

Submitted to:

Cox, Castle, & Nicholson, LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067

Prepared by:

LSA Associates, Inc.
20 Executive Park, Suite 200
Irvine, California 92614
(949) 553-0666

LSA Project No. CCN1001

LSA

September 2010

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FIGURES

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INTRODUCTION

This Habitat Revegetation and Monitoring Plan (HRMP) for the Loynes Drive Project has been prepared to support the project's California Coastal Commission (CCC) Coastal Development Permit (CDP) application package.

The project site is located at 6400 E. Loynes Drive, fronting the Los Cerritos Channel in the City of Long Beach (City), California, as shown on the United States Geological Survey (USGS) *Los Alamitos, California* 7.5-minute quadrangle (Figure 1). The site is within the Coastal Zone.

The property is part of an old landfill that was closed prior to 1961 and covered with soil. In March 2009, the landowner cleared a portion of the property without CCC authorization. In April 2009, the CCC issued an emergency permit so the landowner could mitigate for elevated methane levels resulting from the unauthorized clearing. Per the emergency permit, the landowner placed a 6-inch-thick soil cap over approximately 50,000 square feet (sf) (1.15 acres [ac]) of the property. The City subsequently issued an after-the-fact CDP. The CDP was appealed to the CCC, which resulted in a substantial issue finding. The CCC staff issued a report on May 26, 2010, for a de novo CDP action. The staff report recommended the preparation of an HRMP to be included as a condition of the CCC CDP. This HRMP has been prepared to provide direction for the remediation of the portion of the property (1.15 ac) impacted by the unauthorized clearing activities and subsequent soil placement. The 1.15 ac revegetation area is shown on Figure 2.

The current vegetation community within the proposed 1.15 ac project site is ruderal grassland. The term "ruderal" refers to weedy and/or early successional species, often nonnative grasses, that readily colonize disturbed ground. Dominant species on site include small-flowered iceplant (*Mesembryanthemum nodiflorum*), five-hook bassia (*Bassia hyssopifolia*), shortpod mustard (*Hirschfeldia incana*), garland chrysanthemum (*Chrysanthemum coronarium*), ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis*), wild oats (*Avena* sp.), and rabbitfoot grass (*Polypogon monspeliensis*).

SUPERVISION/RESPONSIBILITIES

Restoration Ecologist

The Restoration Ecologist is the landowner's representative in the field and will be responsible for monitoring the revegetation area according to the guidelines set forth in these specifications. The qualified Restoration Ecologist shall be familiar with all aspects of native revegetation. These duties will include overseeing all aspects of the work performed by the Restoration Contractor. In addition, the Restoration Ecologist will have the responsibility of documenting and reporting the progress of the native plant community to the landowner and the CCC, as well as making recommendations to achieve the goals stated above. If necessary, the Restoration Ecologist may also prescribe remedial measures.

Restoration Contractor

Qualifications and Responsibilities of the Restoration Contractor. The Restoration Contractor responsible for the native revegetation shall have successfully completed (with agency acceptance) a

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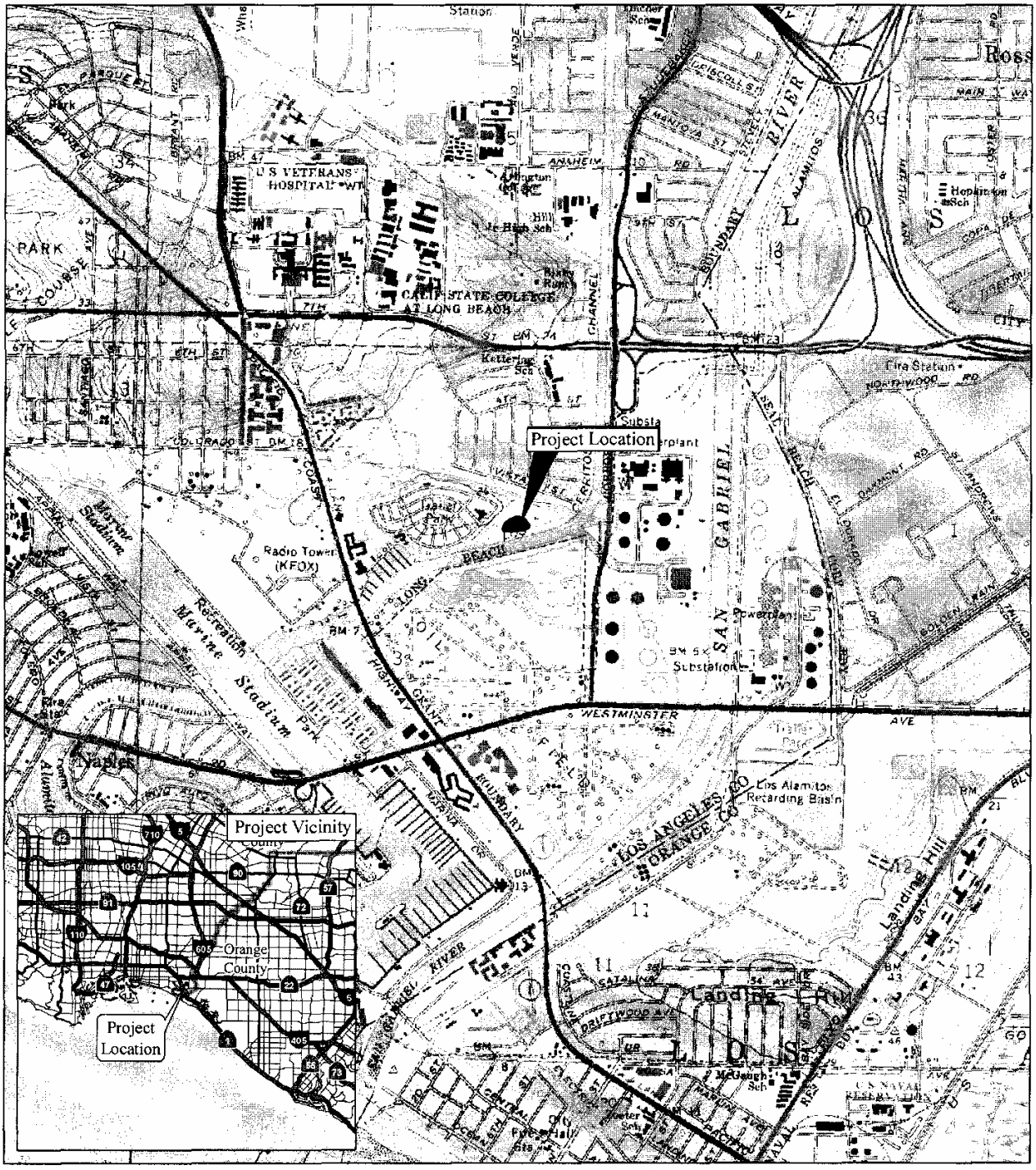

LSA

LEGEND

Project Location

FIGURE 1

0 1000 2000

FEET

SOURCE: USGS 7.5' QUAD - LOS ALAMITOS ('81)

I:\ccn1001\GIS\Fig1.mxd (8/17/2010)

Loynes Drive Revegetation

Project Location Map

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LSA

LEGEND

Actual Impact Area per Property Owner (0.81 ac)

Revegetation Area (1.15 ac)

FIGURE 2

N

0 75 150

FEET

SOURCE: Bing Maps (2009)

I:\ccn1001\GIS\SitePlan.mxd (8/17/2010)

Loynes Drive Revegetation

Site Plan

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minimum of three revegetation projects (installation and maintenance) involving establishment of native vegetation that are comparable to this project in terms of size and species composition. The Restoration Contractor shall provide at least one English-speaking person who is experienced with all aspects of native revegetation and is thoroughly familiar with all aspects of the project, including the equipment and materials being utilized or installed and the best methods for their installation and application. This person (job foreman) shall be present at all times during the execution of this work and shall direct and supervise all work performed as specified herein. The job foreman shall be on site no less than 90 percent of the time that crews are working. All prospective Restoration Contractors shall provide the resumes of the foreman and crew leader, who must meet the experience criteria listed above and whose replacements are subject to approval. Contractors who do not meet these qualifications will be disqualified from the bidding process. The Restoration Contractor will ensure that sufficient firefighting equipment (e.g., extinguishers, shovels) is available on site to help minimize the chance of human-caused wildfires.

SCOPE OF WORK

The Restoration Contractor shall furnish all labor and materials (including water) to execute this work as indicated below and as necessary to complete the contract. This includes, but is not limited to, the following:

- Performing a grow/kill regimen of the revegetated area and associated buffer prior to installation of plants and seed
- Installation and maintenance throughout the duration of the revegetation contract of any erosion control measures that may be installed within the revegetation area
- Installation, maintenance throughout the duration of the revegetation contract, and removal of the temporary irrigation system
- Hydroseeding of 68.14 pounds (lbs) of seed and 60 lbs/ac of mycorrhizal inoculum (69.0 lbs) within the 1.15 ac revegetation area
- Installation and guarantee of 75 percent survival of 870 container plants for 120 days following installation
- Maintenance of the revegetation site for 5 years following installation of the hydroseed or until the performance standards are achieved

INSPECTIONS

Preinstallation and postinstallation inspections by the Restoration Ecologist shall be requested by the Restoration Contractor to ensure that all work is completed in compliance with these specifications. Inspections shall be requested at least 48 hours prior to the time inspection is required. Inspection by the Restoration Ecologist shall be required for each phase of work listed below. In addition, the Restoration Ecologist shall inspect the site more frequently, if necessary, to ensure that it is continuously in compliance with these specifications throughout the maintenance period.

Inspection shall be required for the following phases of work:

- During the grow/kill regimen
- During the rinsing of the hydroseed tank, prior to the preparation of seed slurry to be applied
- During the application of hydroseed
- During marking of container plant locations
- Upon delivery of the container plants
- Following container plant installation
- At the end of the 120-day establishment period
- Monthly following installation and through the 120-day establishment period and at least quarterly thereafter
- Following removal of the temporary irrigation system

PROJECT SCHEDULE

Work shall commence following notice to proceed and shall adhere to the following schedule.

- All erosion control measures and the temporary irrigation system shall be installed prior to initiation of the grow/kill regimen.
- The grow/kill regimen will begin before October of the year in which these actions take place and cease one month prior to the installation of the hydroseed.
- Hydroseeding will be performed in the fall following the completion of the grow/kill regimen and will be completed no later than December 31.
- The Restoration Contractor must guarantee 75 percent survival of the container plants during the 120-day establishment period following installation.
- Container plants will be installed in the spring following installation of the hydroseed.
- The Restoration Contractor shall maintain the revegetation area for 5 years or until the performance standards are met.
- The Restoration Ecologist shall prepare progress reports in the form of field memorandums for each inspection, and an annual report will be submitted by June 30 of each year until the performance standards are achieved.
- The irrigation system shall be removed once the performance standards have been achieved or at the discretion of the Restoration Ecologist.

SITE PREPARATION

Grow/Kill Regimen

Grow/kill cycles shall be undertaken by the Restoration Contractor within the proposed revegetation area and within a 10-foot (ft) buffer zone surrounding the proposed revegetation area (Figure 2). The

Restoration Ecologist will determine the commencement and completion deadlines for grow/kill cycles throughout the year.

"Grow/kill" is a process of depleting the seed bank in the soil by promoting the growth of plants (through irrigation if rainfall is not sufficient) and then killing the seedlings with herbicide before they set seed. Unless there is adequate natural rainfall (as determined by the Restoration Ecologist), the Restoration Contractor shall begin a grow/kill cycle by irrigating the entire revegetation site, either by using a water truck or by using the temporary irrigation system. Excess irrigation runoff shall not be allowed, and the Restoration Contractor shall be responsible for the source and expense of the water needed for this task. The site shall be irrigated with sufficient water to initiate and promote vegetative growth. Once the vegetative growth reaches a height of approximately 3 inches, all vegetation on the revegetation site shall be herbicide treated in accordance with the "Herbicide Treatment Guidelines" below. Any plants that germinate within the revegetation areas during this phase shall be removed before they produce flowers, set seed, or reach a height of 6 inches, whichever occurs first. Following each grow/kill cycle, all of the thatch will be removed and legally disposed of off site. Grow/kill cycles will be conducted continuously throughout the summer and fall prior to installation of the hydroseed.

The Restoration Ecologist will visit the areas periodically to determine when grow/kill events should occur and will notify the Restoration Contractor when irrigation or herbicide treatment are necessary. Timing is crucial in the implementation of grow/kill cycles; thus, upon receiving notification, the Restoration Contractor will have 5 working days to complete the specified task. Though the Restoration Ecologist will be making recommendations regarding timing of herbicide application and irrigation, throughout this period it will be the responsibility of the Restoration Contractor to monitor the progress of the weeds on site and to remove or spray weeds before they set seed.

Erosion Control

In the case of heavy rainfall conditions, nonvegetative erosion control measures (e.g., sandbags, rice straw wattles) may need to be installed within the revegetation area. Only sandbags and straw wattles are to be used within the revegetation area. Erosion control measures shall be installed prior to the initiation of the grow/kill regimen.

The Restoration Contractor shall be responsible for all erosion control for the entire term of the contract. Erosion control shall include, but is not limited to: (1) continuation of nonvegetative erosion control, as necessary; and (2) repair of damaged plants, rutting, and washouts. The Restoration Contractor is responsible for the success of the restored plant community; therefore, it is to the Restoration Contractor's advantage to use as many erosion control measures as necessary to prevent erosion damage. All rice straw wattles will be installed along slope contours in accordance with the manufacturer's specifications. All rice straw wattles shall be manufactured from straw that is wrapped in biodegradable, natural fiber netting a minimum of 8 inches in diameter and can be purchased from California Straw Works ([916] 453-1456) or an approved equivalent.

Irrigation

To facilitate the grow/kill regimen, prevent loss of the plantings during periods of dry conditions, and help establish the newly installed native vegetation, a temporary irrigation system subject to approval

by the Restoration Ecologist shall be installed by the Restoration Contractor. Established native vegetation does not require irrigation under normal conditions, so supplemental irrigation will be applied sparingly and used primarily to establish the native plant community. The Restoration Contractor shall be responsible for the inspection, maintenance, and removal of the irrigation system. All water used for irrigation shall be free of impurities, excess chlorine, and salts.

REVEGETATION INSTALLATION

The Restoration Contractor shall supply all materials necessary to complete the following work in accordance with these specifications. All materials are subject to approval by the Restoration Ecologist.

Endo (Arbuscular) Mycorrhizal Inoculum

In order to promote the establishment and growth of the installed native vegetation, mycorrhizal inoculation of the soil will be conducted concomitantly with hydroseeding. Endo (arbuscular) mycorrhizal inoculum shall be provided by the Restoration Contractor at a rate of 60 lbs/ac. The inoculum shall contain a minimum of 60,000 propagules per pound and shall consist of spores, mycelium, and mycorrhizal root fragments in a solid carrier suitable for hydroseeding. The carrier shall be the material in which the inoculum was originally produced and may include organic materials, vermiculite, perlite, calcined clay, and other approved materials consistent with mechanical application and good plant growth. This inoculum shall carry a supplier's guarantee of the number of propagules per unit of weight or volume of bulk material. If the supplier claims more than one species, the label shall include a guarantee for each species of mycorrhizal fungus claimed. Using mycorrhizae inoculum that contains high concentrations of humus and humic acids reduces the potency of the inoculum (SERCAL, Mycorrhizae Workshop 2002). The Restoration Contractor shall supply a product that contains only mycorrhizae, roots, and growing medium such as is found in products sold by S&S Seeds ([805] 684-0436), Reforestation Technologies International ([800] 784-4769), or Bionet, LLC ([877] 777-8327). All alternative sources shall be approved by the Restoration Ecologist.

Seed

All 1.15 ac of the revegetation area will be hydroseeded. Seed will not be installed within the 10 ft buffer zone. The species to be included for the revegetation area (Table A) were selected based on the native species found within the coastal region of southern Los Angeles and northern Orange Counties. With the exception of species that are only obtainable through commercial sources, all seed shall be collected from areas within a 20-mile (mi) radius of the project site and from a similar microclimatic regime, if available. All seed substitution decisions or alternative genetic sources shall be approved by the Restoration Ecologist. Upon receipt, the seed must be stored in a manner that ensures its viability until it is sown. All seed must be sown within 48 hours of being delivered.

Table A: Revegetation Seed List

Scientific Name	Common Name	Lbs/Acre	Lbs Required (1.15 acre)
Ambrosia acanthicarpa	Sand bur	1.50	1.73
Amsinckia menziesii	Common fiddleneck	1.25	1.44
Bromus carinatus	California brome grass	5.75	6.61
Camissonia bistorta	California suncup	0.25	0.29
Camissonia cheiranthifolia	Beach evening primrose	0.25	0.29
Croton californicus	California croton	4.50	5.18
Croton setigerus	Doveweed	3.00	3.45
Deinandra fasciculata	Fascicled tarplant	1.50	1.73
Distichlis spicata	Salt grass	1.00	1.15
Eriophyllum confertiflorum	Long-stemmed golden yarrow	0.25	0.29
Eschscholzia californica	California poppy	0.50	0.58
Gnaphalium bicolor	Bicolored cudweed	0.25	0.29
Gnaphalium californicum	California everlasting	0.25	0.29
Heliotropium curassavicum	Alkali heliotrope	2.25	2.59
Hordeum brachyantherum	Meadow barley	6.00	6.90
Lasthenia californica	Coastal goldfields	0.25	0.29
Leymus condensatus	Giant wild-rye	0.75	0.86
Leymus triticoides	Beardless wild-rye	0.75	0.86
Lotus purshianus	Spanish lotus	3.00	3.45
Lotus salsuginosus	Alkali lotus	1.50	1.73
Lupinus bicolor	Miniature lupine	1.50	1.73
Lupinus succulentus	Arroyo lupine	4.00	4.60
Malacothrix saxatilis	Cliff malacothrix	1.00	1.15
Melica imperfecta	Small-flowered melic grass	1.75	2.01
Nassella lepida	Foothill needlegrass	2.00	2.30
Nassella pulchra	Purple needlegrass	5.00	5.75
Phacelia distans	Common phacelia	0.75	0.86
Plantago erecta	California plantain	2.00	2.30
Poa secunda	Perennial bluegrass	0.75	0.86
Sisyrinchium bellum	California blue-eyed grass	1.50	1.73
Solanum douglasii	Douglas' nightshade	2.25	2.59
Trifolium willdenovii	Valley clover	1.50	1.73
Verbena lasiostachys	Western verbena	0.50	0.58
Total		**59.25**	**68.14**

lbs/acre = pounds per acre

Color-Coded Wire Pin Flags

Color-coded wire pin flags shall be provided by the Restoration Contractor for marking container plant locations. Each species shall have a different color (or combination of colors). All pin flags must be new. The locations of areas where container plants will be installed must be marked with wire pin flags prior to planting. Special attention must be paid when placing the flags, taking into consideration the microclimatic requirements of each species. The layout must be approved by the Restoration Ecologist. All of the pin flags shall be separated by species prior to coordination with the Restoration Ecologist in the field.

Container Plants

Container plants in the form of plugs shall be installed within the revegetation area in the spring following installation of the hydroseed. Container plants will be installed after the seed has germinated and established itself. Container plants will be installed within areas that are devoid of native perennial species. Container plants will not be installed within the 10 ft buffer zone. All container plants that have mycorrhizal associations shall be inoculated with mycorrhizal fungi at the nursery. The genetic source of all container plants will be within 20 mi of the project site, if possible, and of similar microclimatic regime. All plant substitution decisions or alternative genetic sources shall be approved by the Restoration Ecologist. A representative sample of all container plants must be inspected and approved by the Restoration Ecologist at the time of delivery. All plants shall be healthy, be in good condition, and have a good root-to-shoot ratio (approximately 2:1). The roots shall be young roots that fill the container and must not be wrapped around the sides of the container. Any plants that, in the opinion of the Restoration Ecologist, are incapable of surviving for 120 days following proper installation techniques will be returned to the nursery to either be replaced or regrown for installation during the following growing season. Upon receipt, the container plants shall be stored in such a way that the natural elements (e.g., dryness, heat, excessive wind) will not hinder their growth or kill the plants prior to installation. Delivery of the container plants for the revegetation area may be requested at least 2 weeks prior to the scheduled planting time. All container plants shall be installed within 3 days following acceptable delivery. All container plants shall be maintained at a 75 percent survival rate throughout the first 120 days following installation. The list of container plants and densities to be installed within the revegetation area is presented in Table B. In order to maintain the integrity of the landfill's soil cap, deep-rooted species (e.g., native perennial shrubs and trees) will not be installed within the project area.

Other Materials

All other materials not specifically described herein, but required to complete this project, shall be furnished by the Restoration Contractor and are subject to the approval of the Restoration Ecologist.

INSTALLATION METHODS

Hydroseeding Technique

The revegetation area shall be seeded using a two-stage hydroseed application method. The application procedure is as follows.

Table B: Container Plant List

Scientific Name	Common Name	Container Size	Plants/ac	Plants Required (1.15 ac)
Bromus carinatus	California brome grass	Plugs	125	145
Distichlis spicata	Salt grass	Plugs	125	145
Leymus condensatus	Giant wild-rye	Plugs	125	145
Melica imperfecta	Small-flowered melic grass	Plugs	125	145
Nassella lepida	Foothill needlegrass	Plugs	125	145
Nassella pulchra	Purple needlegrass	Plugs	125	145
Total			**750**	**870**

ac = acre

First Application

- 150 lbs/ac of 100 percent long-strand wood fiber (no tackifier)
- Specified seed
- 60 lbs/ac of vesicular-arbuscular mycorrhizal inoculum
- Specified fertilizer

Second Application

- 2,000 lbs/ac of 100 percent long-strand wood fiber (no tackifier)
- 150 lbs/ac Ecology Control "M" binder

All hydroseed mixing shall be performed in a clean tank. The tank must be rinsed a minimum of three times in the presence of the Restoration Ecologist. It is the Restoration Contractor's responsibility to locate a source of clean water and a washout area where rinsing can legally be carried out. The hydroseeder must be equipped with a built-in continuous agitation and recirculation system of sufficient operating capacity to produce homogeneous slurry and a discharge system that will apply slurry to the designated areas at a continuous and uniform rate.

The slurry preparation shall take place at the project site and shall be started by adding water to the tank while the engine is running at half-throttle. Good recirculation shall be established when the water level has reached the height of the agitator shaft; at this time, the seed and fertilizer shall be added. The long-strand wood fiber shall be added when the tank is at least 30 percent filled with water. The Restoration Contractor shall commence spraying once the tank is full and homogeneous slurry has been created.

The Restoration Contractor shall spray designated areas with the slurry in a sweeping motion and in an arched stream until a uniform coat is achieved with no slumping or shadowing as the material is spread at the required rate. The hydroseed slurry should float down from the arched stream as opposed to being shot directly at the ground.

The tanks must be emptied completely during each stage of hydroseeding. Any slurry mixture that has not been applied by the Restoration Contractor within 1 hour after mixing shall be rejected and replaced at the Restoration Contractor's expense. In addition, all cost incurred for repair or replacement of bare, sparse, or damaged areas shall be the sole responsibility of the Restoration Contractor. Following application, all activity on the mulch layer must be kept to a minimum until the seed has germinated and established itself.

Planting Technique

Planting locations for container plants within the revegetation area shall be marked under the direction and supervision of the Restoration Ecologist. Plantings shall be spaced in natural-looking patterns to replicate the character of the nearby native plant communities with consideration of the microclimate requirements of each species.

In the spring following installation of the hydroseed, the Restoration Ecologist shall use pin flags provided by the Restoration Contractor to mark the planting locations of the container plants. The plantings shall be spaced in natural-looking patterns to replicate the character of adjacent natural communities, with consideration of the microclimate requirements for each species.

All container plants shall be installed in accordance with the following specifications:

- Plants will be placed into a hole that is capable of accepting the diameter and height of the container.
- Any roots wrapped around the sides of the containers shall be pulled loose from the root balls. The sides of the root balls shall be scarified to promote new root development.
- Plants shall be planted with the roots untangled and laid out in the planting holes to promote good root growth and prevent the plants from becoming rootbound.
- Roots shall be adequately protected at all times from sun and/or drying winds.
- The top of the rootball will be set slightly above finish grade, and the planting hole will be backfilled with native soil.
- The revegetation area shall be irrigated at the time of planting, with sufficient water to reach the lower roots of the installed container plants. Special care must be taken to prevent the soil from washing away from the roots and the root crown from being buried with soil.
- All empty plant containers shall be removed from the revegetation site and not left on site overnight.

REVEGETATION MAINTENANCE

Maintenance of the revegetation area must be undertaken in accordance with the following specifications until the performance standards are achieved. Normal maintenance will include weeding, herbivore control, and watering as necessary within the revegetation area and weeding within the 10 ft buffer zone.

Following installation of the hydroseed and through the first 120 days after installation of the container plants, the revegetation area and buffer zone must be maintained regularly to ensure successful establishment. At the end of the 120-day establishment period, a thorough inspection of the revegetation area shall be conducted by the Restoration Ecologist, and a list of those container plants that are dead within the revegetation area shall be submitted to the Restoration Contractor. Dead or missing container plants in excess of 10 percent will be replaced. The species and planting locations shall be determined by the Restoration Ecologist.

Nonnative Weed Control

In order to help establish the developing community, nonnative weeds shall be removed from the revegetation area and buffer zone to reduce the amount of competition for natural resources, including water, nutrients, and sunlight. The amount of weeding required will be determined by the amount of weed seed in the soil, weather conditions, and the diligence and persistence in removing the weeds before they produce more seed, thereby reducing the weed seed bank. The following weeding guidelines shall be adhered to continuously:

- The percentage of cover by nonnative weeds within the revegetation area and buffer zone must be kept below 20 percent, invasive herbaceous nonnative weeds must be kept below 10 percent, and invasive perennial nonnative weeds must be absent. Invasive species are those listed as having "High" or "Moderate" rates of dispersal and establishment on the California Invasive Plant Inventory.
- No more than 10 percent of the revegetation area and buffer zone may be covered at any time by weeds that have reached the seed dispersal stage.

Methods of Removal. During the 5-year maintenance period, with the exception of those weed species that cannot be eradicated through manual removal (e.g., garland chrysanthemum and small-flowered iceplant), weeds present shall be removed manually. Herbicide is only permitted with the written authorization of the Restoration Ecologist (see "Herbicide Treatment Guidelines"). No weed whipping or string-line trimmers shall be permitted without the written authorization of the Restoration Ecologist. Special care must be taken to prevent damage to native plants. Native plants intentionally or unintentionally damaged shall be replaced as needed in the form of container plants during the next growing season in order to attain the performance standards. All nonnative vegetative debris accumulated as a result of weed removal activities shall be legally disposed of off site.

Herbicide Treatment Guidelines. Herbicide will be used during the grow/kill regimen and may be used with written authorization from the Restoration Ecologist during the 5-year maintenance period. In order to apply an unrestricted herbicide (Rodeo), the Restoration Contractor must have a Pest Control Business License, which requires that at least one individual employed by the Restoration Contractor be in possession of a Qualified Applicator's License (QAL). If a qualified applicator is not present during treatment, all applicators must have undergone documented herbicide application training. All licenses must be issued by the State of California, registered in Los Angeles County, and of current status.

Only Rodeo, a United States Environmental Protection Agency-approved, glyphosate-based systemic herbicide, may be used. No preemergent herbicides may be used. The following herbicide concentrations shall be used according to the type of application required:

- Foliar spray application: minimum of 3 percent solution
- Foliar wick application: 33 percent solution
- Stump treatment: 100 percent solution

A brightly colored dye shall be used in all applications. The material shall be a nontoxic, water-soluble, liquid material such as "Blazon" by Milliken Chemicals or its equivalent. "Turfmark" is not an acceptable alternative. The dye shall be mixed with the herbicide at no more than one-half the rate specified on the label (one-quarter the rate will usually suffice).

Spraying shall be conducted only when weather conditions are conducive to effective uptake of the herbicide by the targeted species (i.e., sunny, dry, and when plants are actively growing) and when wind conditions are such that herbicide drift is nonexistent (5 miles per hour or less). During herbicide application, protection or avoidance of nontargeted species (i.e., native vegetation) is required. Any nontargeted species lost within the revegetation area due to intentional or unintentional application of herbicide shall be replaced by the Restoration Contractor during the following planting season at the direction of the Restoration Ecologist.

Weed species known to occur on site include, but are not limited to, the following:

- Soft chess (*Bromus hordeaceus*)
- Garden beet (*Beta vulgaris*)
- Five-hook bassia
- Foxtail barley (*Hordeum murinum*)
- Wild oat
- Common ripgut grass
- Red brome
- Bittercress (*Cardamine* sp.)
- Garland chrysanthemum
- Small-flowered iceplant
- Lesser wart-cress (*Coronopus didymus*)
- Bermuda grass (*Cynodon dactylon*)
- Weedy cudweed (*Gnaphalium luteo-album*)
- Prickly lettuce (*Lactuca serriola*)
- Rye grass (*Lolium* sp.)

- High mallow (*Malva sylvestris*)
- Bur-clover (*Medicago polymorpha*)
- White sweet-clover (*Melilotus albus*)
- European sickle-grass (*Parapholis incurva*)
- Littleseed canary grass (*Phalaris minor*)
- Bristly ox-tongue (*Picris echioides*)
- Smilo grass (*Piptatherum miliaceum*)
- Common knotweed (*Polygonum aviculare*)
- Rabbitfoot grass
- Wild radish (*Raphanus sativus*)
- Curly dock (*Rumex crispus*)
- Milk thistle (*Silybum marianum*)
- Sand-spurry (*Spergularia* sp.)
- Tocalote (*Centaurea melitensis*)
- Shortpod mustard
- Yellow sweet clover (*Melilotus indicus*)
- Sow-thistle (*Sonchus* sp.)

Erosion Control

The Restoration Contractor shall be responsible for all erosion control maintenance required for the revegetation area for the entire term of the contract. Erosion control shall include, but not be limited to: (1) continuation of nonvegetative erosion control, as necessary; and (2) repair of damaged plants, rutting, and washouts.

Pest Control

Insect and herbivore damage control shall be the responsibility of the Restoration Contractor, using only those methods approved by the Restoration Ecologist. The Restoration Contractor shall implement control measures, which may require fencing or caging all container plants at the earliest sign of damage. In addition, the Restoration Contractor shall treat any insect infestation as necessary to protect the health and establishment of the plant community, per the recommendation of the Restoration Ecologist.

Irrigation

The Restoration Contractor shall be responsible for inspection and maintenance of the irrigation system throughout the revegetation area. The Restoration Contractor shall be responsible for removal of the irrigation system prior to the completion of the project.

Litter Removal/Site Maintenance

All trash and other debris shall be removed from the revegetation area prior to and during revegetation activities. All planted and seeded areas shall be kept neat, clean, and free of all nonvegetative debris and trash (including vegetative debris accumulated during weeding activities, which shall be removed as specified).

Pruning and Leaf Litter Removal

No pruning or leaf litter removal shall take place within the revegetation area. Therefore, all leaf litter and native thatch shall be left in place and not cleared away from the plantings.

Fertilizer

The Restoration Contractor shall not use a chemical fertilizer within the revegetation area during the maintenance period unless directed to do so by the Restoration Ecologist.

REMEDIAL MEASURES

The purpose of the remedial measures is to remedy unsuccessful revegetation efforts, as indicated by excessive nonnative species or erosion or the excessive mortality of installed plants and/or seed. Remedial measures, as identified in the monitoring reports or field memorandums, include weed eradication, replacement of dead or diseased container plantings, and/or reseeding in areas as necessary to meet the performance standards. Such actions will be taken immediately upon the identification of problems and will be implemented as often as necessary to meet the performance standards. The removal of dead and/or diseased container plants will be left to the discretion of the Restoration Ecologist. The genetic source of all remedial seed and plants shall be the same as that described in the Restoration Installation section above.

PERFORMANCE STANDARDS

The goal of this project is to establish healthy and functional native habitat of the identified revegetation area. The revegetation will be considered successful when all of the following criteria are met:

- There is greater than 70 percent relative cover by native plant species in the 1.15 ac revegetation area.

- Evidence that the site is sustainable, which includes signs of regeneration (progeny and new growth), healthy plants, a low mortality rate, and resistance to weeds (less than 20 percent nonnative weed cover, less than 10 percent cover by nonnative herbaceous invasive weeds, absence of nonnative perennial invasive weeds, and minimal weed maintenance during the previous spring season).

The site will not be eligible for CCC approval until it has gone without irrigation for a period of 3 years. It is the goal of the project to meet the performance standards within 5 years following installation of the hydroseed.

MONITORING

In order to ensure that the site is in compliance with these specifications, the site will be evaluated regularly.

The postinstallation monitoring program will be as follows:

- Monitoring for survival, appearance, function, wildlife usage, and general compliance will be completed monthly following installation of the hydroseed and through the 120-day establishment period and at least quarterly thereafter until the performance standards are met.
- A survey will be conducted in the spring of each year. Qualitative data will be collected on native and nonnative vegetation cover, species composition, survival, appearance, and function of the plant community. In addition to qualitative data, quantitative data on native and nonnative vegetation cover and species composition will be collected by performing at least 10, 1-square-meter quadrats. All wildlife species present on site shall be recorded.
- As part of the site inspections and annual surveys, the Restoration Ecologist will prepare field memorandums. The field memorandums will record general ecological observations and make maintenance recommendations, and copies will be sent to the landowner and the Restoration Contractor.
- If any special-status species are observed on or in proximity to the project site during project surveys, the Restoration Ecologist will submit California Natural Diversity Database (CNDDB) forms and maps to the CNDDB of the sightings and will provide the regional California Department of Fish and Game (CDFG) office with copies of the CNDDB forms and survey maps.

The individual who monitors the site shall be an experienced Restoration Ecologist qualified to assess the performance of the revegetation effort and to recommend corrective measures as needed.

DOCUMENTATION

Approximately 120 days following installation of the container plants, the Restoration Ecologist will prepare an as-built report that describes the installation and how the project was consistent with this HRMP. The as-built report will also document the situations where it was necessary to diverge from this HRMP. By June 30 of each following year until the performance standards are achieved, a formal report will be prepared and submitted by the Restoration Ecologist to the landowner and the CCC.

The report will include the following:

- A summary of the establishment period monthly site inspections and quarterly site inspections for the first year and a summary of the quarterly site inspections for each year thereafter
- A description of the existing condition of the revegetation area, including descriptions of vegetation composition, weed species, and any erosion problems
- A description of the maintenance activities (including revegetation and weed removal) and when they were conducted
- A summary of the qualitative and quantitative data collected
- Any observations of wildlife at the site, including sensitive and/or listed species or their sign within the revegetation area
- A discussion of any problems encountered during revegetation
- Photo documentation at specified locations
- Remedial measures (e.g., weed control, trash removal) that were implemented to correct problems or deficiencies, if any

LONG-TERM MAINTENANCE

The purpose of the revegetation effort is to replace the ruderal grassland vegetation that was impacted/ removed as a result of the unauthorized clearing with native vegetation in order to provide foraging habitat for wildlife and reduce the likelihood of erosion of the newly replaced soil cap on the old landfill. The removal of nonnative vegetation pursuant to future weed abatement notices is an allowable activity; however, the weed removal activities should be monitored to ensure that only nonnative species are removed. The land is subject to alternative future uses with an appropriate CDP.

Land Protection Partners
P.O. Box 24020, Los Angeles, CA 90024-0020
Telephone: (310) 247-9719

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COASTAL COMMISSION

Comments on Illegal Development and Retroactive Permit to Remediate at 6400 Loynes Drive, Long Beach

October 8, 2009

Prepared by:
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Prepared for:
Los Cerritos Wetlands Land Trust

COASTAL COMMISSION
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Comments on Illegal Development and Retroactive Permit to Remediate at 6400 Loynes Drive, Long Beach

Introduction

On March 19 and 20, 2009, the owner of the property at 6400 Loynes Drive in Long Beach conducted illegal grading activities that removed vegetation and recontoured the property. By mid-morning March 20, the City of Long Beach had issued a stop-work order and followed up a few days later with a letter to the owner outlining the acceptable uses of the property and the permits required for those uses. In the following weeks various State and County agencies investigated the illegal grading and various other actions were taken, including issuance of an order to cover the exposed landfill with soil to control the escape of methane gas by the South Coast Air Quality Management District and an emergency permit from the California Coastal Commission. On April 28, 2009, the property owner submitted an application to secure a Coastal Development Permit to make permanent the emergency permit and submitted a biological resources report with that application.

The Los Cerritos Land Trust has retained us to review the information regarding this matter, including the biological resources report, to provide an expert opinion on the impacts of the illegal development, and to develop recommendations how those impacts could be mitigated in the current permit process. We have reviewed all of the relevant documents that have been released by the City and those issued by the City that concern the subject property. We have also obtained aerial photographs and other historical information about the project, including a list of the birds observed on the property by observers associated with the El Dorado Audubon Society in Long Beach. The report that follows contains our expert assessment of the situation based on these information sources, a visit to the perimeter of the site on September 12, 2009, and the published scientific literature as cited.

Three interrelated questions are pertinent to the disposition of the current application to cap the landfill at 6400 Loynes Drive. The first is what happened, both physically and legally, to lead to the current situation. These facts are not in dispute. The second question is what resources were affected by the illegal activities of the property owner. These facts are somewhat more difficult to come by because the owner undertook the actions without completing any environmental assessment. Various data sources are available, however, to draw conclusions about the nature and significance of the resources that were impacted by the illegal activities. The third question is what remediation should be taken to restore the property and mitigate for the damage associated with the new cap and the illegal grading that necessitated the new cap. Guidance for this question is provided, based on the laws that were violated and the resource value of the site.

Many Laws Were Violated by Grading the Site

The events of March 19 and 20, 2009 at the property at 6400 Loynes Drive are now well documented by the City and other agencies. The property owner had large equipment grade a substantial portion of the property, removing all vegetation in the process. According to witnesses and agency records, this grading changed the existing topography and exposed trash

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and debris from the dump under the surface. Existing vegetation was removed by heavy equipment.

Apparently, no permits were obtained for the grading and the motivation appears to have been a desire to grade the site for an active recreation field. Two reports, one from the City and another from an agency, suggest that the owner was attempting to create a flat area for active recreation. A previous owner of the property indicated that he conveyed a weed abatement notice to the current owner, but the extent of grading is inconsistent with weed abatement activities, which can typically be undertaken with hand tools. The actions appear therefore to violate a number of regulations. Removal of vegetation or grading usually constitutes "development" and requires a Coastal Development Permit under the California Coastal Act. A change of use on the site is a zoning violation. Grading without a permit also violates City law. Disruption of the dump under the property violated landfill closure requirements, stormwater discharge requirements, and air quality regulations. By disrupting trees and shrubs during the nesting season, the action probably violated the Migratory Bird Treaty Act, which protects native birds from being killed and their nests from being destroyed. These actions also violate state laws on the destruction of wildlife habitat without a permit.

The nature and scope of these violations should be considered as any permits for remediation are being considered. Such blatant disregard for environmental laws should result in a return of the site to a pre-disturbance condition. This is very important because the pre-disturbance condition of the site should be the baseline for any environmental analysis of proposals to change the land use of the property in question.

Significant Biological Resources Were Destroyed by Illegal Grading

In assessing what mitigations should accompany the permit to fix the illegal grading, it is important to understand the nature of the biological resources that were harmed by the initial illegal action. Evidence of these biological values comes from the remnant conditions on the site, observations that were made of the site, and the geographic context of the site relative to other natural features. All of these lines of evidence point to the project site being an environmentally sensitive habitat area (ESHA) as defined by the California Coastal Act, being a sensitive environmental resource under the California Environmental Quality Act, and potentially supporting wetlands as defined by the California Coastal Act.

Remnant Conditions

The property owner submitted a biological assessment to the City prepared by a consultant who visited the site after the grading had been completed (or was underway) and consulted various historical documents to provide a description of the site (SWCA 2009). This report provides a plant list of species found around the perimeter of the site, in the areas that were not graded. We (TL) made a site visit. In a cursory inspection from road, we were able to observe an additional plant species not included in the SWCA report. Although this determination would have to be confirmed with access to the site, we observed what appeared to be several individuals of seaside heliotrope (*Heliotropium curassavicum*).

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Figure 1. Seaside heliotrope observed on the property from Loynes Drive. Photograph taken through binoculars on September 12, 2009.

The site is otherwise dominated by exotic species, with some natives showing up on the SWCA plant list: telegraph weed (*Heterotheca grandiflora*), western ragweed (*Ambrosia psilostachya*), common peppergrass (*Lepidium nitidum*), and Douglas' nightshade (*Solanum douglasii*). It seems unusual that *Distichlis spicata* was not observed on the project site given the location of the site and salty soils. The site also appears to have been potential habitat for the sensitive southern tarplant (*Centromadia parryi australis*).

The topography of the non-graded portions of the site revealed several locations where water would pond during rain events. These low spots were devoid of vegetation with a white surface that is probably an accumulation of salt. These depressions can best be interpreted as vernal pools, which is a conclusion supported by observations of residents of the adjacent mobile home park who report that water would pond on the project site for months during wet winters.

Figure 2. Depression in the western edge of the site where water will pond in the winter.

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Another noteworthy feature of the project site is the presence of ground squirrels (*Spermophilus beecheyi*) along the slopes leading down to the edges of the property on some edges. The presence of ground squirrels is important because they create habitat for burrowing owls and are part of the prey base for foraging raptors.

Previous Site Observations

Neighbors and interested parties have observed conditions at the project site over many years. The El Dorado Audubon Society has compiled a list of birds that have been confirmed to be present on the project site at various times leading up to the illegal grading. Based on the location of the site and the habitat in the surrounding areas, this list is almost certainly a sample of the total bird diversity. A few species deserve special note. First, species of open areas such as Western Meadowlark are declining regionally. The number of locations that support open land birds is declining and presence of such species is important on a local and regional scale. Also notable is the presence of Savannah Sparrow. These birds were not observed close enough to determine if they were of the State endangered subspecies *beldingi*. The statewide surveys for Belding's Savannah Sparrow document presence in the nearby Los Cerritos Marsh, just across the channel from the project site (Zembal & Hoffman 2002). It is likely that the project site is used by this salt marsh species during periods of high water or as a foraging location. Significance of upland habitats to Belding's Savannah Sparrow is unknown, in part because their salt marsh habitats are frequently adjacent to urban development without an upland that could be used (Powell 2006). The transitional "high marsh" habitat was not historically identified as wetland because inundation was less frequent, so the importance of these habitats to foraging and nesting for Belding's Savannah Sparrows has not been established (Powell & Collier 1998). Use of the project site by Savannah Sparrows that could be *beldingi* both illustrates the importance of the project site as bird habitat and as an opportunity for further research — which would have occurred had the site not been graded illegally.

The project site was used extensively by a suite of waterbirds for foraging and potentially for nesting. According to observers associated with the El Dorado Audubon Society, Snowy Egret, Great Egret, and Great Blue Heron were all regular visitors, especially foraging in the seasonal ponds. Foraging and use by Great Egret and Snowy Egret suggests regular inundation because these species typically forage in wetlands, including brackish ponds, wet meadows, etc. (McCrimmon et al. 2001; Parsons & Master 2000). Great Blue Herons have more flexible foraging habits and extend into grasslands and other uplands, but their presence too is evidence of a strong ecological link with the surrounding wetlands (Butler 1992).

The significance of the site is also shown by the presence of a range of raptor species (Red-tailed Hawk, Red-shouldered Hawk, American Kestrel, Cooper's Hawk, and Merlin). The number of species and the active use of the site gives it special status that must be considered in any environmental assessment. Removal of this area of raptor foraging habitat would be considered a significant impact under the California Environmental Quality Act.

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Table 1. Birds observed on project site by individuals associated with the El Dorado Audubon Society.

Species	Comments
Black Phoebe	Pair seen on day of grading
Say's Phoebe	
House Finch	
American Goldfinch	
Lesser Goldfinch	
Western Meadowlark	
Red-winged Blackbird	
Black-headed Grosbeak	
Bullock's Oriole	
Hooded Oriole	
Mourning Dove	
Savannah Sparrow	These birds were not observed close enough to determine if they were the State endangered *beldingi* subspecies
Great Blue Heron	Nested in palm tree near the site and mobile home park, numerous years, seen flying in and out of site
Great Egret	Reported by residents to fly in and out, residents believe there were nests
Snowy Egret	Reported by residents to fly in and out, residents believe there were nests
Killdeer	
Red-tailed Hawk	Frequently seen
Red-shouldered Hawk	Frequently seen
Cooper's Hawk	Photos by various residents on the fence, etc.
American Kestrel	Frequently seen
Merlin	
Turkey Vulture	

Another source of information about the site are recollections by area residents about the history of the site, especially the transition from being used as a dump to a covered open space. Mary Parsell of the El Dorado Audubon Society transcribed the following notes from a longtime resident about the history of the project site:

> In the late '60's high clay impermeable soil was imported from open fields where Bixby Golf Course and surrounding homes now stand.
>
> The purpose was to prevent downward water migration or leaching into the capped dump. Don May used to say that this was Long Beach's first attempt at a wetlands restoration to restore the area to a natural setting.
>
> The land was purposefully rolled and dipped with highs and lows in 10 to 12 water collecting areas to create seasonal ponds and to "get the frogs" back.

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The land was contoured and tapered so that water would roll off to Loynes (and to the concrete ditch along Loynes) and the Los Cerritos Channel.

Kids could play hide and seek because the "hills" or "mounds" were six to twelve feet tall. There were three different areas or gulches. This was created by bulldozers.

At one time the water was tested and it was slightly saline. When SEADIP came about later after enactment of the Coastal Act the area was designated for a 8.8 acres brackish pond.

Figure 3. Aerial photographs of the project site on July 31, 2007, March 16, 2006, December 2003, and May 31, 1994 from Google Earth. Areas devoid of vegetation that would be inundated in the winter are visible in each.

This account describes a conscious effort to provide biological resource value at the project site through the development of vernal pools or vernal ponds with heavy clay soils used to cap the site. The City of Long Beach should investigate its records to confirm this account, but the physical evidence supports it on many accounts. The remnant topography on the site after the illegal grading still shows drainage being directed toward Loynes Drive, and there are still low areas that collect water in the winter (e.g., the southwestern corner of the site; Figure 2).

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Furthermore, recent aerial photographs available through Google Earth show similar barren areas that would be the sites of winter pools (Figure 3), which is consistent with the description of intentional mounding of soil to create ponds. This pattern would not have occurred had the site been graded flat when the clay cap was added. Finally, oblique aerial photographs taken of the site in January 2005 show what are apparently a series of ponds, again consistent with the description of the site as an intentionally created wildlife habitat (Figure 4).

Figure 4. Aerial photograph of subject property in January 2005 provided by Los Cerritos Wetlands Land Trust showing ponded water on the site.

Geographic Position

The project site is important as well because of its location within the landscape. The resource value of the property is enhanced by its proximity to the nearby channel and Los Cerritos Wetlands. As established above, there are seasonal wetlands that occur on the subject property, but the majority of the site would be considered upland. These uplands are important to the ecological function for salt marsh habitats for several reasons.

Uplands are refuges for mobile species during flood events and are valuable foraging habitat. The value of the site for foraging is evident from the many observations of birds on the property, including herons and egrets, and Savannah Sparrows, likely foraging individuals that are resident in the nearby marsh. The scientific literature describes the extensive use of such vernal pools by a variety of bird and mammal species (Baker et al. 1992; Silveira 1998; Zedler 1987; Zedler & Black 1992). This use is not predicated on the presence of characteristic vernal pool plant species but rather on the presence of water and associated invertebrate larvae and adults. These values are provided by the site notwithstanding the presence of many exotic plant species.

Second, uplands provide habitat for species that are essential for the ecological functioning of marshes. One example of this is the use of uplands as nest sites and habitats for species that

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pollinate salt marsh species. Experiments with the endangered plant Salt Marsh Bird's-Beak (*Cordylanthus maritimus* ssp. *maritimus*), a species that used to be found in the alkali meadows of north Long Beach (Stein et al. 2007), showed that pollination success depended on the presence of certain genera of pollinators, including bumblebees (*Bombus* spp.) (Parsons & Zedler 1997). Bumblebees cannot nest in marsh habitat and nest sites in surrounding uplands are necessary to ensure pollination and reproductive success of some salt marsh plants. Similarly illustrating the interrelationship between wetlands and uplands, reestablishment of vernal pool flowers depends on the presence of bee species with specific upland nesting requirements (Thorp & Leong 1998). The location of this site near foraging sites (both this property and the nearby wetlands) makes it attractive to herons and egrets. Great Blue Herons have been shown to locate colonies central to foraging resources (Gibbs 1991; Gibbs & Kinkel 1997).

The project site is also significant because it contributes area to a network of open space that includes various parcels across the former Los Cerritos Wetlands extent and its remnant pieces. It is a fundamental truth of ecology that species number increases with area. Scientists have firmly established the predictable relationship between habitat area and the number of species supported by that area (Arrhenius 1921; Preston 1948). The relationship, referred to as the "species–area curve," is expressed by the equation $S = cA^z$ where S is number of species, A is area, and c and z are constants that vary by the ecosystem type and the geographic configuration of the area. If A decreases, then S also decreases. For mainland fragments (as opposed to islands), data have shown that when area is reduced by a factor of ten, the number of species is diminished by half. These losses are to be predicted even if the vegetation to be lost is not native. Non-native vegetation and disturbed areas, as long as they are still open space, can and do support a wide array of native wildlife species.

Implications of Pre-Violation Biological Condition of the Site

The project site had significant biological value, as can be adduced from the remnant conditions, previous observations, and geographic location. These values have significant implications for the issuance of a Coastal Development Permit for the repair of damage done during the illegal grading. Although the presence of jurisdictional wetlands is important for conformance with Section 1600 of the Fish and Game Code (streambed alteration) or for protection of waters of the United States under the Clean Water Act, it is similarly important whether the site has areas that meet the definition of wetland or environmentally sensitive habitat area under the California Coastal Act. The applicant's biological report purports to address the Department of Fish and Game and Army Corps of Engineers definitions of wetlands (although it does this poorly), but is completely silent on the question of resource value under the Coastal Act, even though the report is in support of an application for a Coastal Development Permit.

Under the California Coastal Act of 1976, wetlands are defined as "land within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens" (Pub. Res. Code §30121). Ample evidence is available to conclude that areas of the project site that were illegally graded were covered "periodically … with shallow water." These can be thought of as vernal pools or ponds within what is likely an alkali meadow. This was the historical habitat on this site, as reconstructed from multiple archival sources (Stein et al. 2007),

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even though the pool and meadow complex is at a higher elevation than it was historically and the plant community appears to have been dominated by exotics.

Further definition of wetlands under the Coastal Act is as follows:

> [L]and where the water table is at near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to vegetated wetland or deepwater habitats (14 CCR 13577).

The Commission therefore looks to three elements in defining wetlands — 1) hydrology, 2) hydric soils, and 3) hydrophytic vegetation — but unlike some other agencies, presence of one element without another is sufficient to identify an area as wetland. Definitive statements are not possible for those areas that have been graded, but the project site appears to have supported a number of hydrophytic plant species — *Heliotropium curassavicum* (OBL), *Parapholis incurva* (OBL), *Lepidum latifolium* (FACW), *Polypogon monspeliensis* (FACW+), has bare areas that appear to have accumulated high concentration of salts, and has areas that have surface water during some time during the year. Furthermore the limit of wetlands without vegetation is legally defined as "the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not" (14 CCR 13577). Those areas that retained water on the project site, and did so because of intentional contouring to create ponds for frogs, meet the definition of wetlands under the Coastal Act.

The project site also meets the criteria for being recognized as an ESHA under the Coastal Act, which is based on the use of the area by wildlife and its special role in the ecosystem. The Coastal Act (Pub. Resources Code §30107.5) defines environmental sensitive area as: "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." The features described above provide support for this determination. First, the site is used by sensitive and rare species, including many raptor species, waterbirds, and what is very likely State endangered Belding's Savannah Sparrow. There may have been nests of protected species, but the site was illegally graded so this cannot be known. Second, ephemeral wetlands with alkali buildup are particularly rare and alkali meadows are the habitat that has been most destroyed by development in the Lower San Gabriel River watershed (Stein et al. 2007). Third, uplands near a salt marsh habitat are a rare feature in California (Powell 2006; Powell & Collier 1998). Fourth, the area has high value as an upland near marsh habitat because of the ecological interactions between uplands and wetlands, such as pollination (Parsons & Zedler 1997; Thorp & Leong 1998). Fifth, the area of the site as part of a larger extent of open space makes the site particularly significant, the loss of which would result in a decrease of species diversity for the wetland complex as a whole. These features, taken together, indicate that the project site met the definition of ESHA at the time of the violation.

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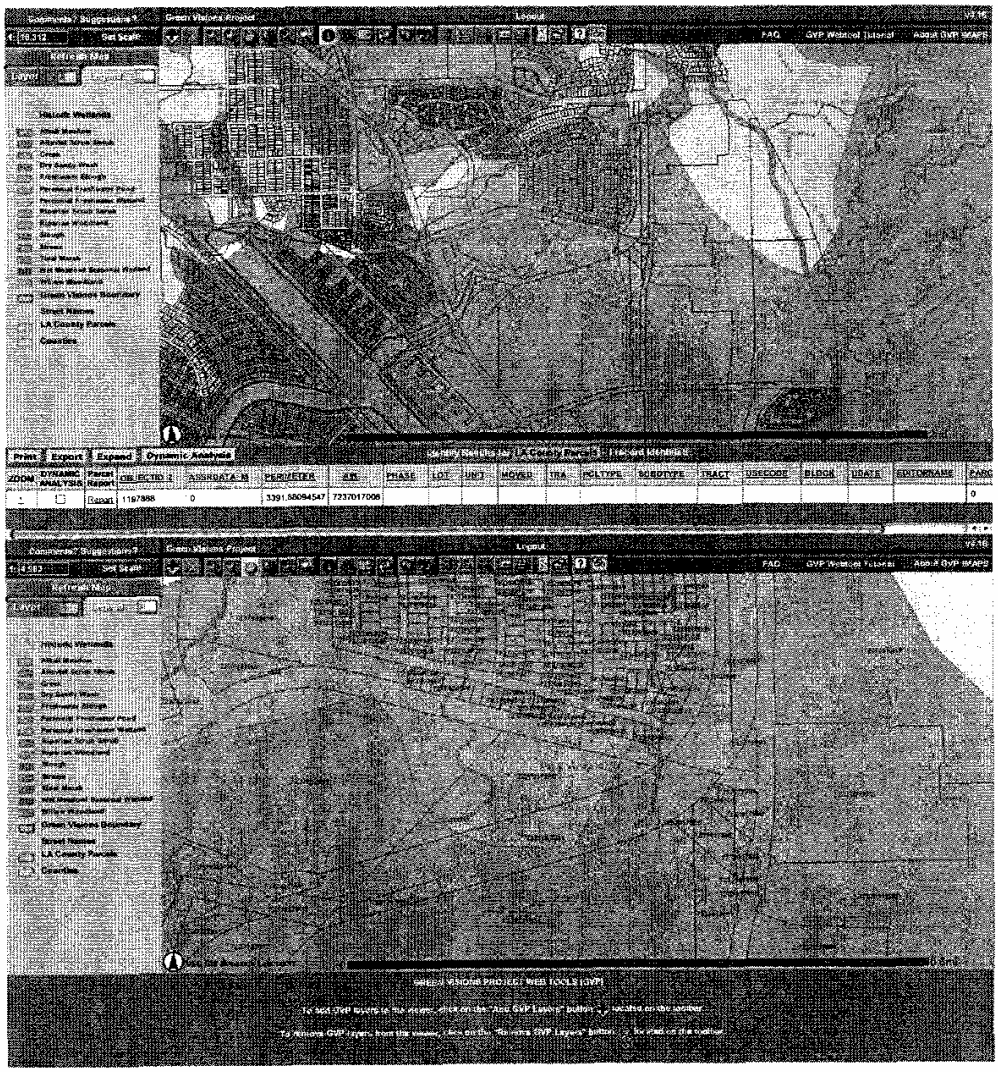

Figure 5. Location of subject property relative to historical wetland features. The property is outlined in orange on the top panel and a closer view is provided in the bottom. The maps are screen shots from the online planning tools provided as part of the Green Visions Plan for 21st Century Southern California (www.greenvisionsplan.net). The historical wetland coverage is from data provided by Stein et al. (2007). The purple area is tidal marsh, while the brown surrounding it is classified as alkali meadow.

There may have been other features that further established the site as ESHA, such as the presence of southern tarplant (*Centromadia parryi australis*, a sensitive species found on other similar parcels in the region), but the illegal grading activity precluded surveys that could have established this.

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What Should Happen as a Result of Obtaining a Permit to Fix the Violation?

To obtain a retroactive permit for fixing the air quality problems caused by the illegal grading, the landowner should be responsible for restoring the damage done to the property through that illegal grading. Such restoration should also be undertaken as mitigation for the import and addition of exotic fill for use as a landfill cap.

This restoration and mitigation should be guided by the applicable land use plans and the California Coastal Act. The project site is zoned for ecological restoration in the City of Long Beach's Southeast Area Development and Improvement Plan (SEADIP). This plan identifies that site as the location for restoration of a brackish pond. This use of the parcel is designated in the Local Coastal Program certified in 1980, which is evidence that the City and Coastal Commission believed that the site had valuable resource attributes and potential. The use as a brackish pond is consistent with the Coastal Act because it is a resource-dependent use, which is the only type of use that is allowed within an environmentally sensitive habitat area. Changing this use would require an amendment to the approved Local Coastal Program.

The topography of the site prior to disturbance should be restored (i.e., to a series of basins that collect winter rains into a series of pools and ponds). A full restoration plan should be prepared and approved by the City that includes an exotic species management plan, monitoring, and performance criteria. These actions should be done before any consideration of an amendment of the SEADIP to change the land use to allow active recreation (as is suggested in two letters written about the violation by the City of Long Beach on March 23, 2009, and by the California Regional Water Quality Control Board on May 6, 2009). The current violation and permit should be adjudicated and all mitigations and associated conditions implemented before any consideration of alternative proposals for the site. Such an active recreation proposal would conflict with the California Coastal Act (Section 30240) because it is not a resource-dependent use. To allow any consideration of other uses to proceed before the site has been restored and mitigations completed for the current permit would be to reward the property owner for violating the law.

The restoration plan for the site should incorporate elements of the historical ecology of the site, which was a transition between alkali meadow and tidal salt marsh, with two sloughs that ran through the site (Stein et al. 2007, see Figure 5). Within this historical context, the City's current designation of construction of a brackish pond is reasonable. An appropriate plant list for such a restoration could be developed from other brackish features in the area and the list of species documented historically around the lower reach of the San Gabriel River provided in the appendices to Stein et al. (2007).

Restoration of the site and additional mitigation stemming from the CDP for importing fill are consistent with the emergency permit issued by the California Coastal Commission, which indicates that obtaining a CDP for the repairs may include requirements for public access, habitat restoration, and deed restrictions. It is not appropriate for the City to wait for the Coastal Commission to impose these conditions, but rather the City should do so as part of the retroactive permit now under consideration.

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California Coastal Commission
200 Oceangate
Long Beach, CA 90802
November 1, 2010

RECEIVED
South Coast Region
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CALIFORNIA
COASTAL COMMISSION

Attention: Charles Posner

RE: Staff Report related to Subarea #23 (Appeal A-5-LOB-10-105)

Dear Mr. Posner,

As big advocates for the Coastal Commission, we applaud your continued efforts to protect our coastline and wetlands.

However, after reading the 5/26/2010 staff report relating to Appeal A-5-LOB-10-015, we are mystified at some of the conclusions set forth. As appellants (Audubon and "Our Town –Long Beach") we pooled some concerns with the staff report and your recommendations.

Wetland Parameters:

In the staff report, it is stated that evidence is scanty regarding wetland parameters.

"Our Town-Long Beach's" biologist, Brenda McMillan found 3 wetland parameters, Hydrophonic, Hydrology and hydric soils. Travis Longcore, stated the site was a seasonal wetland and both he and the city's own biologist found evidence of hydric soils. Even SWCA's Ty Garrison, biologist for Sean Hitchcock found evidence of hydric soils but dismisses this as irrelevant as he claims they were imported to the site as landfill cover in the 1940's and 50's. But were they? Subarea #23 used to be nicknamed the "Wazey" dump-one of the many dump sites in the area. We have been advised that when holes were dug for the landfill, the soil extracted was stockpiled in the vicinity (i.e. what was to become Loynes Drive, what was to become Bixby Village and the adjacent PCH and Loynes dump. When needed the soil would be bulldozed back over the site. This dump was owned by a private entity that would not have spent any money on imported

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"topsoil." The soil was not imported, but reused! All soil in this area was alluvial clay soil.
*Note: Ty Garrison's historical facts are faulty. The LA Times article he quotes from- never suggests imported soil—only says soil was deposited. Strangely This article cannot be found in the archives. How can anyone consider research relevant when even the date of the article has a question mark following it? We believe the only imported soil brought onto subarea #23 was that trucked in by 2H.

A-5-LOB-10-015
Project Description and History
Mr. Hitchcock violated the CCC Emergency permit. He spread exotic fill over the entire bulldozed area of subarea 23.
The CCC Emergency Permit directed Mr. Hitchcock (2H) to spread 1000 cubic yards of clean fill soil at a depth of 6 inches not to exceed 50,000 square **feet** to cover the trash on site. Converting cubic **yards** to square **feet** at the 6" depth would cover approximately 1 and ¼ acre. This would agree with the map (see attached) that Mr. Hitchcock had directing him where to place the fill.
But he covered the entire area that he bulldozed. (Approximately 8 acres as the sides were left untouched). Although there were eye witnesses to this—they are not needed because his lawyer. Charles Hoganson admitted such in the December 3, 2009 LB Planning Commission Hearing. There were questions from the Commissioners regarding the inadequacy of the fill.
His answers confirmed—"well it hasn't leaked". (Review video on the 12/03/09) Planning Commission meeting.

Therefore, the temporary cap over the methane leak as well as the rest of the site has probably only an inch + of fill on it of imported fill. Why is this important? In your restoration plan you are ordering the applicant to place an additional 6" of fill on the site for new plants. This is inadequate. Seven or 8 inches will not give new plants enough support for growth. Another query: Why would only 60% of the site be allotted for new vegetation? Why not 100% to help any erosion in the soil?
And finally--he dumped imported fill on a wetland (over the allotted 50,000 square feet) and it states in the emergency CCC permit (5-09-068-G) that, "Only the work specifically described and for the specific property listed above is authorized."

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ESTURIES

We were able to find that the Los Cerritos Channel –adjacent to subarea #23 is documented as Estuary. Three pieces of documentation was included in the "Our Town- Long Beach"/Audubon Appeal to the California Coastal Commission. Isn't an Estuary considered part of the wetland?

A-5-LOB-10-015
Land Use Designation Page 10
SEADIP Subarea 23

Subarea 25 is indeed mitigation for subarea 23. However—so is area 11 A, (behind "In and Out") on Second Street. SEADIP clearly states on page #4 Part B- Responsibility for Construction and Maintenance of Wetlands and Buffers"

"The wetlands and associated habitats and all fresh, brackish and tidal water supply shall be constructed at the expense of areas 11A, 25 and 26.....
....The developer(s) of area 11 A and 25 shall be responsible for wetlands development of areas 23 and 33".

11A (zoned Residential) was almost in a development phase last year!

It is premature at this time to speak about the brackish pond or bring forth arguments in its favor. However, it is interesting just to to note that Bixby Golf Course, (across Loynes Drive from Subarea 23 and formerly a dump) was built using a substantial regulation cap, is contoured and has water holes.

A-5-LOB-10-015
Page 13/Paragraph#3
"The appellant have submitted pictures that they describe as standing water on the site after a rain event (exhibit 5page #2)"
The aerial shots referred to were taken in 2005. Enclosed please find pictures taken after the illegal grading (in **January and February** of this year, 2010) of water ponding on subarea #23 and lingering well over 14 days.

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Page #4 (Item E) *"Smaller mechanized vehicles with rubber tires (e.g. Bobcats) may be used to transport heavy loads between paved roads and work area. No dead plants shall be left on site...."*

Since the staff reports that no new roads nor trails will be built the question is how will you remove the dead plants? The only paved road is Loynes. A more concrete plan should be made. And trails will have to be on site to avoid damaging new growth. Who will police this?

An example of this: (following pictures) Mutilated palms on subarea 23 (1A) that 2H had uprooted on March 23, 2009.

2H finally cutting down dead palm debris (May 27, 2010) Dead palm debris still lying on site (October 25, 2010). Who will oversee the removal in the future?

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C. RECREATION AND PUBLIC ACCESS: Page 17 /Paragraph#7 – *"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....."Therefore the proposed development will not affect the public's ability to gain access to/and/or to make use of the coast.....therefore, the proposed development conforms with public access and recreation policies of the Coastal Act."*

There is no public access. From Loynes Dr, which is fenced and padlocked with a "No Trespassing" sign continuing down the service road to the southern side of the property – which is also fenced and padlocked, there is no public access. **(Please see pictures)**.

We appreciate your taking the time to read our concerns regarding the De Nova Staff Report.

Sincerely,

Appellants.

Questions regarding these concerns.
Cindy Crawford: Phone: 562-508-1369
Email:cin4711@aol.com

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Staff report A5-LOB-10-15
Comments on III. Special Conditions

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CALIFORNIA
COASTAL COMMISSION

Cindy Crawford

Summary:

Special Conditions:

1. Site Restoration, Re-Vegetation and Monitoring Plan and
2. On-going Maintenance: Weed Abatement and Tree Trimming

The two special conditions above seem to conflict regarding some requirements. As written the two conditions seem convoluted and confusing. I would suggest revision to avoid confusion or further mishandling of the land and to avoid the potential for further damage to the habitat and wildlife.

Special Condition 1, Item E states: *"Removal of non-native weeds, grasses and trees shall be done in compliance with the requirements of Special Condition two of this permit".*

Special Condition 1 extensively states work should be planned and/or supervised by a "Resource Specialist" or "landscape architect" and lacks non-native plant removal/supervision and bird surveys by a qualified biologist, wetlands ecologist or ornithologist prior to any vegetation removal. But at the same time Special Condition 1 states it should comply with Special Condition 2 which states for on-going maintenance (non-native plant removal/tree trimming), supervision and surveys prior to work should be done only by qualified biologists, wetlands ecologists or ornithologist. Why should the two conditions require different expertise?

It has already been established some native plant species do exist on the site as is and both photographic and testimonial evidence has been presented on the wildlife and birds. Special Condition 1 should have the same requirements of site surveys and work supervision by qualified biologist(s), wetlands ecologist and/or ornithologist just the same as Special Condition 2.

Specific Points:

We have additional concerns on the Special Conditions, specific points are listed below under the citations of the staff report:

III. Special Conditions, 1. Site Restoration, Re-vegetation and monitoring Plan states in paragraph 1 "The detailed monitoring re-vegetation plan and program shall be prepared by a licensed Landscape Architect or a qualified Resource Specialist..."

Item 1E in Special Conditions states "smaller Mechanized vehicles with rubber tires (e.g. Bobcats) may also be used to transport heavy loads..."

Other nearby areas have also been issued Coastal Permits, reference 5-08-348 to the Los Cerritos Wetlands Authority for weed abatement, non-native tree removal and maintenance at Studebaker and 2nd Street. The staff report for this permit stated:

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"All work will be supervised by a qualified biologist or wetland ecologist. Weed removal will take place outside of marsh bird nesting season, which is February 1 through August 31. Tree trimming and tree removal will take place outside of the breeding and nesting season of other bird species, which is January 1 through September 30..."

First subject staff report A5-LOB-10-15 the landscaping restoration/vegetation removal in Special Condition 1 is not required to be carried out or even supervised by a qualified biologist or wetlands ecologist as other permits. Other nearby areas have not been restored either but to remove trees and weeds biologists or ecologist had to oversee the work.

Second other permits require only hand tools with no mention of allowing small tractors or mechanical vehicles (such as bobcats)—which have already been there, leading to this appeal. The concern is further damage to any remnant native plant species that still remain.

Third "Landscape Architect" does not indicate any special qualifications are required of the person planning the restoration—since this land is next to a tidal channel/estuary and directly across the channel from a wetlands classified as an ESA shouldn't someone specifically experienced in restorations in or around wetlands be employed for this task (biologist or wetlands ecologist)?

My gardener will say he is a "Landscape Architect" although he has no experience in habitat restoration it appears he would be qualified to make the restoration plans and then a "Resource Specialist" supervises the permittee in vegetation removal and all other aspects of the restoration plan. In the area of site restoration the staff report should more clearly spell out the qualifications required for all aspects of vegetation removal and expertise of persons carrying out Special Condition 1 and should match the expertise required under Special Condition 2.

Could we please re-word Special Condition 1 to state bird surveys, identification of existing native plants, non-native plant removal and tree trimming should all be carried out and/or supervised by biologists, wetlands ecologists and ornithologists rather than just a cryptic reference to compliance to special condition 2?

III. Special Conditions under 1C "additional fill" it states "additional soil shall be imported to create a six-inch thick layer of soil for the new plants".

Since the site is a closed landfill it would seem California Integrated Waste Management, Title 27 would apply. Title 27 describes an erosion-resistant top layer of not less than 1 foot, if vegetation is to be planted on the site (Section 29010 a 3 A 1). The proposed six-inch thick layer of soil for new plants hardly seems acceptable both by landfill cap standards and the fact many native plant species root deeper than 6 to 12 inches. Even factoring in the few inches or less of fill already imported it still does not add up to the 1 foot minimum specified in CIWMB Title 27.

"Special Condition 1A 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..."

Specifically mature buckwheat (which is usually in reference to California Buckwheat *Eriogonum fasciculatum*) has a rooting depth of 130.8 cm (51.5 inches)* -- therefore 6" to 12" of fill soil would not be sufficient for a root system of this depth. However adding deeper fill in some areas, perhaps higher "mounds" or "contours" could support plants with deeper rooting systems while also returning the landscape topology more similar to it's state prior to grading.

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The use of native plants more typical of alkali meadow may be more appropriate on some, or all of the restoration site as determined by qualified restoration biologists or wetlands ecologists. (Salt grass, alkali heath, salty susan, alkali mallow for example, all plants found in adjacent areas and are found in alkali meadows.) Historically areas near or adjacent to Alamitos Bay were dominated by alkali meadows so this would seem fitting for restoration.**

*reference study "Root Depth of Coastal Sage Scrub Shrub Seedlings under Adaptive Management Irrigation" by EARTHWORKS Restoration and Nakae & Associates Restoration Contractors (revegetation project located on the slopes of the San Joaquin Hills Toll Road in Orange County).

**Historical Ecology and Landscape Change of the San Gabriel River and Floodplain, SCCWRP Technical Report #499

Other Comments:

IV. Findings and Declarations for the De Novo Permit
Restoration of Habitat
"...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..."

Since there is no proposal by anyone to create the brackish pond on Subarea 23 described in SEADIP could we leave out whether or not this future plan is feasible? Additionally, according to the current SEADIP revision, the future plans of 8.3 acre brackish pond for Subarea 23 depend on development of Subarea 25 resulting in filling of the brackish pond located on Subarea 25 which will not happen as the City of Long Beach has acquired Subarea 25 to be restored as wetlands instead of developed (the "Landswap"). SEADIP needs revision regarding both Subarea 23 and 25.

Also the findings seem to down play any native plants that existed on the site and any ponding prior to grading, although many residents have testified as to pond presence after heavy rains. Ponding still occurs on the west end un-graded area and at least 3 natives I recognize still exist at the edges. However any evidence of native plants, ponding or hydric soils of course were removed by grading. But like in the Mills case in Huntington Beach where wetlands were also graded, we could also say in our case--since it still exists at the un-graded edges we can assume it probably existed in the graded areas as well.

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...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.

I do not believe there is public access as described...for years the service road/walkway on the North side of the channel/Southern side of the properly (Subarea 23) has been locked up and has a no trespassing sign posted, which is still there today (see attached picture dated 3-22-09). Perhaps a new public access plan needs devised. Unless you own a boat or you are capable of kayaking in the river or kayaking in the wetlands on the South side of the channel this is the only access that only a few members of the public have. Please note that Subarea 23 is a prime viewing spot of the ESA classified natural wetlands on the Southern Side of Los Cerritos Channel.

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3.22.09