

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071
FAX (562) 590-5084



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Filed: 01/28/2020
49th Day: 4/08/2020
Staff: C. Pereira-LB
Staff Report: 02/28/2020
Hearing Date: 03/13/2020

STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE

Appeal No.: **A-5-LOB-20-0006**

Applicant: **Panattoni Development Company, Inc., (Attn: Mark Payne)**

Local Government: City of Long Beach

Local Decision: Approval with Conditions

Appellants: Citizens About Responsible Planning (CARP, c/o Joe Weinstein, represented by Ann Cantrell)

Project Location: 300 North Studebaker Road, Long Beach, Los Angeles County
(APNs: 7237-018-001, 7237-017-007, 7237-017-008, 7237-017-009, 7237-019-008)

Project Description: Appeal of City of Long Beach Local Coastal Development Permit No. 18-034 to demolish 400 sq. ft. of pipeline structures and construct two industrial buildings (91,700 sq. ft. and 47,500 sq. ft. at 35 ft. high) with 211 on-site parking spaces, 43 of which would be grasscrete (dual utilization as Open Space and parking), and landscaping on a 6.69-acre site; a variance to allow 30% of required Open Space (1.81 acres) to be provided on adjacent parcels; and a lot line adjustment between vacant parcels on the west side of Studebaker Road to the east side of Studebaker Road.

Staff Recommendation: Determine that a substantial issue exists

IMPORTANT HEARING PROCEDURE NOTE: The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing unless at least three Commissioners request it. If the Commission finds that the appeal raises a substantial issue, the “de novo” phase of the hearing will follow, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

On November 7, 2019, the City of Long Beach approved Local Coastal Development Permit (CDP) No.18-034 with conditions for the proposed project, which was appealed by Citizens About Responsible Planning. The subject site is located within the Southeast Area Development and Improvement Plan (SEADIP) area; therefore the standard of review for the appeal is the City of Long Beach’s certified local coastal program (LCP) and incorporated SEADIP policies.

The project is considered new development. The appellants cite the SEADIP requirement for new development that: “A minimum of thirty percent of the site shall be developed and maintained as usable Open Space.”

The subject site is composed of an eastern project area and a western project area. The eastern project area was previously occupied by the Loynes Tank Farm, which held two large aboveground oil storage tanks with No. 6 fuel oil and the western project area may have once been a waste disposal site; therefore, the subject site may require remediation. The City allowed the applicant for this project to provide approximately 71% of the required Open Space on the western project area, which includes multiple lots that are proposed to be restored to wetlands and transferred to the Los Cerritos Wetlands Authority (LCWA). The appellants assert that the project does not comply with the LCP requirement of providing 30% of Open Space on the site because the western project area will be transferred to the LCWA and not developed or managed by the applicant. The appellants also assert that neither the applicant’s proposed project nor the City-approved CDP explicitly state which party would be required to remediate the lots of the western project area.

In addition, the appellants contend that the City-approved project did not provide adequate biological studies of the project site, especially with regard for the burrowing owl, which was previously identified on the site. The Commission’s senior ecologist concurred that based on a previous observation of the burrowing owls on the site, and the presence of mammal burrows of various sizes, that protocol over-wintering burrowing owl surveys should be conducted to adequately survey the site for the presence of sensitive burrowing owls. The Commission’s senior ecologist also recommended that formal annual plant surveys should be conducted on the site to best understand the on-the-ground natural resource conditions.

Therefore, staff recommends that the Commission find that the appeal raises a **substantial issue** in regard to its consistency with the provisions of the LCP regarding the

requirement for usable Open Space and the protection of environmentally sensitive habitat areas.

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APPENDIX

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Location Map
- Exhibit 2 – Appeal
- Exhibit 3 – Resolution No. 20-0005
- Exhibit 4 – Project Location
- Exhibit 5 – Appealable Area
- Exhibit 6 – Tentative Ruling
- Exhibit 7 – Site Overlap of Appeals: A-5-LOB-06-400 and A-5-LOB-20-0006

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LOB-20-0006 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution: The Commission hereby finds that Appeal No. **A-5-LOB-20-0006** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On November 14, 2019, Citizens About Responsible Planning filed an appeal of the City-approved project ([Exhibit 2](#)). The appellants contend that the City's approval does not comply with the City's certified LCP, with particular regard to Southeast Area Development and Improvement Plan (SEADIP). More specifically, the appellants raise the following concerns with the City-approved development:

1. Incorrect address on all documents according to Google.
2. The City should have required an Environmental Impact Report (EIR) instead of a Mitigated Negative Declaration (MND) because the project is located across the street from the environmentally sensitive habitat area.
3. The MND uses both SEADIP and Southeast Area Specific Plan (SEASP), an uncertified zoning plan, for the project, but the certified zoning plan is SEADIP, which the project is not consistent with, and therefore cannot be approved.
4. The City did not explicitly require the applicant to be the responsible party for remediation of the sites, which could ultimately make the taxpayers responsible for site remediation.
5. The City approved a Standards Variance allowing a portion of the required 30 percent of Open Space to be off-site and transferred to the LCWA, which would no longer be the developer's property and therefore cannot be counted towards the 30 percent Open Space requirement.
6. The biological studies and mitigation requirements are inadequate and new traffic studies are needed for Loynes Drive which will extend into the new facility.
7. The City did not require that all of the building facade's glass be bird-safe glazing.
8. There is inadequate mitigation for run-off.

III. LOCAL GOVERNMENT ACTION

In September 2019, the City of Long Beach prepared a Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the subject CDP application at 300 Studebaker Road. The Draft IS/MND was circulated for public review and comment from September 6, 2019 to October 7, 2019, for a 30-day comment period. Commission staff provided a comment letter dated October 7, 2019 advising that the open space dedication might require an LCP amendment and that the City should carefully analyze hazards that may affect the project site, including flood hazards exacerbated by sea level rise, and ensure that the proposed project is designed and conditioned to minimize risks to life and property.

On November 7, 2019, the City of Long Beach Planning Commission held a public hearing on Application No. 1811-05 (City of Long Beach, Department of Development Services) and approved Local CDP No. 18-034 with conditions. Local Appeal No. APL19-009 was filed by the City by Citizens About Responsible Planning within the City's 10-day local appeal period on November 14, 2019.

On January 7, 2020, the Long Beach City Council denied the appeal and upheld the decision of the Planning Commission ([Exhibit 3](#)).

On January 13, 2020, the Coastal Commission's South Coast District Office received a valid Notice of Final Local Action (NOFA) for Local CDP No. 18-034, and the Commission's appeal period began on January 14, 2020. Appeal of Local CDP No. 18-034 by Citizens About Responsible Planning (CARP, c/o Joe Weinstein, represented by Ann Cantrell) was received on January 28, 2020, within the 10 working-day appeal period ([Exhibit 2](#)). The City and the applicant were notified of the appeal by Commission staff in a letter dated January 29, 2020. No other appeals were received before the end of the appeal period at 5:00 PM on January 28, 2020.

IV. APPEAL PROCEDURES

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 ft. of any wetland, estuary, or stream, or within 300 ft. of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be

appealed to the Commission for only the following types of developments:

- (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 ft. of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 ft. of any wetland, estuary, stream, or within 300 ft. of the top of the seaward face of any coastal bluff.

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea and within 300 ft. of the inland extent of any beach or of the mean high tide line of the sea where there is no beach.

Grounds for Appeal

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

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

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will proceed to the de novo public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. (Coastal Act Section 30604(b).) In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act. (Id. Section 30604(c).)

Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the policies set forth in the certified LCP regarding the open space requirement, or with the environmentally sensitive habitat area protection policies of the Coastal Act.

Qualifications to Testify before the Commission

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The City approved the demolition and removal of 400 sq. ft. of pipeline and associated structures and the construction of two 35 ft.-high concrete tilt-up industrial buildings (91,700 sq. ft. and 47,500 sq. ft.) with 211 on-site at-grade parking spaces (43 of which would be grasscrete and serve a dual purpose as Open Space and parking), and landscaping on a 6.69-acre site ([Exhibit 1](#)). SEADIP includes an Open Space provision which applies to all areas:

“A minimum of thirty percent of the site shall be developed and maintained as usable open space (building footprint, streets, parking areas and sidewalks adjacent to streets shall not be considered usable open space) except in oil production areas where public safety and operational concerns require limiting access. Bicycle and pedestrian trails not included within the public right-of-way may be considered usable open space.”

The City approved a variance to allow a portion of the required Open Space to be provided on the western parcels, which are proposed to be restored to wetlands and transferred to the LCWA. The proposal also includes a lot line adjustment to consolidate the western parcels to one lot to donate to the LCWA, and establish an additional parcel on the east side of Studebaker to be developed with industrial buildings. No additional lots would be created with the City-approved lot line adjustment, pursuant to Section 20.20.010 of the Long Beach Municipal Code¹ ([Exhibit 4](#)).

¹ “The procedures for a lot line adjustment shall apply to the adjustment of property boundaries between two (2) or more adjacent lots recorded with the County Recorder's office in conformance with the Subdivision Map Act by a final tract map, a (final) parcel map, a

The project site is an 8.5-acre area located at the intersection of Studebaker Road and Loynes Drive, at 300 North Studebaker Road in Long Beach, which straddles the appealable area ([Exhibit 5](#)) and is made up of five parcels (Assessor Parcel Numbers (APNs) 7237-017-007, 7237-017-008, 7237-017009, 7237-018-001, and 7237-019-008). The western project area is comprised of three southwestern parcels and a northwestern parcel. The three southwestern parcels (APNs 7237-017-007, 7237-017-008, 7237-017009) are across one lot, accounting for 1.32 acres, and are within the appealable area. The southwestern parcels fall within Subarea 24 South of SEADIP and the certified LCP and are designated for an overlook area and interpretive center for the bordering marsh. The northwestern parcel accounts for .49 acres across one lot, and falls within Subarea 24 North of SEADIP, which is designated to be dedicated to the City of Long Beach for park and playground purposes. In total, the western project area accounts for approximately 71% of the project's required Open Space and is proposed to be restored to wetlands and dedicated to the LCWA.

The northwestern parcel (APN 7237-018-001) and the eastern parcel (APN 7237-019-008) are not in the appealable area. The eastern parcel is referred to as the eastern project area and encompasses 6.69 acres. The eastern project area is in Subarea 19 of SEADIP and the certified LCP, and is designated for "Industrial" uses. Previously, the eastern project area was occupied by the former Loynes Tank Farm, which housed two 9.4-million-gallon above-ground storage tanks for No. 6 fuel oil that powered generating units at the Alamitos Generating Station at 690 Studebaker Road. The tanks were removed in 2010 pursuant to CDP No. 5-LOB-10-050 and the only remaining development on the site consists of 400 sq. ft. of concrete pipeline structures, which are proposed to be demolished and removed. The eastern project area is made up of a single lot which is proposed to be split into two lots and developed with the industrial buildings, parking lot, and landscaping.

The City-approved project includes both the eastern and western project areas, which encompass 8.5 acres in total, to calculate the 30% Open Space requirement, which is 2.55 acres of Open Space. The City approved the western project area to fulfill 71% of this 2.55-acre requirement and the remaining 29% to be provided on the eastern project area through landscaping (grasscrete parking area and planting areas).

The project site is located in an urbanized area that is bounded by the Cerritos Channel on the west, the Los Cerritos Wetlands to the southwest and industrial/manufacturing properties to the east, north, and south ([Exhibit 4](#)). The nearest residential uses to the project site are single-family residences located across the Cerritos Channel, approximately 400 ft. west of the western project area and approximately 630 ft. west of the eastern project area.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The project site is in the Planned Development District called SEADIP. Approved in 1977, SEADIP was the first Planned Development District in the City of Long Beach and was used to guide land use and development for 1,500-acres in southeast Long Beach. In 1980, the Commission certified the City of Long Beach's LCP, which included SEADIP. In

licensed surveyor map, or a record of survey, where land taken from one (1) lot is added to an adjacent lot and where a greater number of lots than originally recorded is not thereby created..."

2017, the City of Long Beach proposed a new development plan to replace SEADIP. The new plan, called SEASP, was adopted by the City Council on September 19, 2017. However, SEASP has not been reviewed or certified by the Commission and is not a part of the City's LCP, thus the certified LCP, including SEADIP as it is incorporated into the LCP, is the standard of review for the subject project.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 of the Coastal Act. (Public Res. Code § 30625(b)(2).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors:

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

The Commission may, but need not, assign a particular weight to a factor.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project's conformity with the policies of the certified LCP including SEADIP as it is incorporated into the LCP, as well as the public access policies of the Coastal Act. The appellants raise several substantial issues discussed in detail below. Therefore, Staff recommends that the Commission find that a substantial issue exists with respect to the grounds on which the appeal was filed, and accept the appeal for a full de novo review. See Appendix A for list of relevant and applicable definitions and policies of the LCP.

Appellants' Contention: Incorrect Address on all Documents.

The appellants assert that all the City documents associated with the project have the incorrect address according to Google. They contend that the correct address is 300 **North** Studebaker Road, not 300 Studebaker Road. While there may be a nuanced difference between 300 Studebaker and 300 **North** Studebaker when searching for the

address on Google or another search engine, the APNs used in the City-approved project are all correct and all of the maps provided by the City and applicant are correct. Therefore, this contention does not raise a substantial issue as to the conformity with the certified LCP or the public access policies of the Coastal Act.

Appellants’ Contention: CEQA Determination is Inadequate.

The appellants contend that the City’s preparation of a Mitigated Negative Declaration (MND) for the proposed project was in error because the project site is across the street from the Los Cerritos Wetlands, which is an environmentally sensitive habitat area, and an Environmental Impact Report (EIR) should have been prepared for the project instead. In this case, the City is the lead agency for purposes of the California Environmental Quality Act (CEQA), and the Commission does not have authority to review a lead agency’s CEQA determination. Thus, the appellants’ contentions do not raise a substantial issue as to the project’s conformance with the certified LCP or the public access policies of the Coastal Act.

Appellants’ Contention: City Used Uncertified Policies for CDP Findings.

The appellants contend that the City’s MND relies on both SEASP and SEADIP as the standard of review (including land use and zoning requirements) for the project, but SEADIP is the only approved plan that has been certified by the Commission and incorporated into the City’s LCP. Specifically, the appellants assert that the approved plans for the western project area are not in conformity with SEADIP. Since SEASP has not been certified by the Commission, it is not a standard of review for this project for the purposes of CDP findings.

SEASP has been approved by the Long Beach City Council so it may be analyzed through CEQA review as a relevant guidance document, even though SEADIP is the current standard of review for the CDP requirement. Coastal Commission staff provided a comment letter during the CEQA review process, dated October 7, 2019, which stated, in part:

Please note that the comments provided herein are preliminary in nature. More specific comments may be appropriate as the project develops. Additionally, as mentioned in the MND, the Commission has not yet heard and acted on the City’s LCP amendment request, which includes the City’s proposal to replace SEADIP with the Southeast Area Specific Plan (SEASP). If the LCP amendment is certified by the Commission prior to the City’s processing of the local CDP, then the project must be found to be consistent with SEASP and the rest of the LCP in order for the project to be approved.

In this case, the differences between the relevant SEADIP and SEASP policies relate to the western project area, specifically, Subarea 24 of SEADIP.

Specific Development and Use Standards of SEADIP PD-1 states that the use for Subarea 24 are:

- a. This designation actually applies to two distinct parcels of land, one at the southwest corner of Loynes Drive and Studebaker Road (called herein “24

South”), and the other across Loynes Drive at the northwest corner (called herein “24 North”).

b. Area 24 South is to be developed as an overlook area and interpretive center for the bordering marsh. The developer of Subarea 11 (a) shall dedicate Parcel 24 South to the State of California or other agency responsible for management of Area 33.

c. Area 24 North shall be dedicated to the City of Long Beach for park and playground purposes.”

d. The owner of Area 24 shall dedicate area along Studebaker Road for the bicycle trail to be built along Studebaker Road.

The applicant is proposing to restore both parcels of land in Area 24 (Area 24 North and Area 24 South) to wetlands and to donate them to the LCWA. This proposal is not in conformity with the SEADIP policies of the certified LCP which state that Area 24 North shall be dedicated to the City of Long Beach for park and playground purposes and Area 24 South shall be developed as an overlook area and interpretive center for the bordering marsh.

SEASP designates the western project areas as Coastal Habitat/Wetlands/Recreation. The City’s site findings about the proposed project on the western project area state that the 24 South and 24 North will be restored to native wetland habitat and donated to the Los Cerritos Wetland Authority (LCWA). The LCWA is in the process of developing a restoration plan for the entire Los Cerritos Wetlands Complex, which will require a CDP from the City and a separate CDP from the Coastal Commission.

Since there has not been an LCP amendment certified by the Commission to replace SEADIP with SEASP prior to the City’s processing of the subject local CDP, the project must be found to be consistent with SEADIP. The appeal does raise a substantial issue as to whether the project conforms to the certified SEADIP policies that establish uses for Subarea 24 on the western portion of the project area.

Appellants’ Contention: Site Remediation Responsibility.

The appellants contend that the City did not explicitly state who would be responsible for remediation of the western portion of the project site that would be transferred to LCWA and fear that the responsibility may fall on the public/taxpayers.

Condition 3 of the local CDP states:

Prior to the transfer of property to the LCWA, the project applicant shall coordinate with the LCWA regarding further hazardous materials investigations on the western open space parcels.

While the appellants acknowledge that the City addressed the coordination with LCWA to remove any hazardous materials before transference of the western parcels to LCWA, the

appellants argue the City should have explicitly stated that the clean-up of any hazardous materials at the site to be transferred is the responsibility of the current property owner, not the taxpayer.

The City's project file included a document, Phase I of the Environmental Site Assessment, produced by a consultant group, Avocet Environmental, Inc., dated July 2, 2019. The Assessment identifies the presence or likely presence of hazardous substances at the subject site. More specifically, it identifies asbestos-containing thermal system insulation on the eastern project site and the possibility of a former waste disposal site on the western project area. Thus, the western project area could be contaminated with hazardous materials, which could make it difficult to restore the area to functional wetlands, as contemplated by the permit.

SEADIP states that a minimum of thirty percent of the site shall be developed and maintained as “usable” open space. If the area that is supposed to be set aside as open space is contaminated with hazardous materials, it may not be “usable” as open space. As there are questions as to who is responsible for remediation of the hazardous materials that may be located on the site, and there is no clear mechanism currently in place for how that process will occur, there is a significant question as to whether the project complies with the requirement of the LCP to set aside a minimum of 30 percent of the site as “usable” open space.

For the abovementioned reasons, the Commission finds that the appeal raises a substantial issue as to the project's consistency with the Open Space policy of the certified LCP requiring the provision of usable open space as part of site development and maintenance.

Appellants' Contention: Western Parcels Cannot Be Used to Fulfil the Open Space Requirement.

The appellants contend that the western project area (Area 24 North and Area 24 South) cannot be considered as part of the project site for the purpose of meeting the requirement to provide 30% Open Space, consistent with the certified LCP (SEADIP), because that land will be surrendered to the LCWA and no longer a part of the project site in the future.

SEADIP's B. Provisions Applying to All Areas states:

A minimum of thirty percent of the site shall be developed and maintained as usable open space (building footprint, streets, parking areas and sidewalks adjacent to streets shall not be considered usable open space) except in oil production areas where public safety and operational concerns require limiting access. Bicycle and pedestrian trails not included within the public right-of-way may be considered usable open space.

The proposed project and City-approved CDP state that the western parcels will be transferred to the LCWA to be restored to wetlands and maintained as usable Open Space. The policy of SEADIP, quoted above, does not address who must own the portion of the “site” that must be “developed and maintained as usable open space,” nor what

entity must be responsible for maintaining the open space area in perpetuity. In this case, the western project area (including the three parcels in the appealable area of the coastal zone) is part of the project site as the project is being developed – even if it is dedicated to another entity to be managed as Open Space, it will remain Open Space consistent with the LCP requirement.

The total project area, including both the eastern and western project areas, is 8.5 acres. Thus, the applicant is required to provide approximately 2.55 acres or approximately 111,078 sq. ft. (30%) of Open Space when developing the project. The western project area, which is proposed to be all Open Space, is 1.81 acres (approximately 78,844 sq. ft.). Thus, the eastern project area is needed to make up the remaining 0.74 acres (32,234 sq. ft.) of Open Space. The applicant stated that 32,320 sq. ft. (approximately 0.74 acres) of Open Space would be provided for on the eastern project area by means of parking/landscaping area with grasscrete. It is unclear based on the City's administrative record exactly how the eastern project area's Open Space amounts to .74 acres. The City's calculation of the Open Space in the eastern project area does not raise a substantial issue as it is not in the appealable area; however, the Commission has the authority to review this issue (and the total 30% usable Open Space requirement) at the de novo stage.

Appellant's Contention: Inadequate Biological Studies.

The appellants assert that the City-approved project did not provide adequate biological studies of the project site and is not providing adequate mitigation for impacts to wildlife, especially for the burrowing owl, which has historically been present at the project site. The appellants state that, while 13 avian species were found on the project site during the applicant's biological survey, the City-certified MND states that the project site provides little habitat for wildlife species, despite cited evidence to the contrary. In addition there was no mention of the burrowing owl in the MND, even though it was found on the project site in 2007. The appellants further assert that the MND incorrectly states that the project site is not part of a migratory wildlife corridor, when, in fact, it is.

SEADIP, which is the standard of review for this project, states in Land Use Policy 5:

Environmentally sensitive habitat area, as defined by the Coastal Act Section 30107.5, shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Additionally, SEADIP Land Use Policy 6 states:

Development in areas adjacent to ESHA and parks and recreation area shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

On October 3, 2006, the Long Beach City Council approved Local CDP No. 0308-11 for a project that encompassed the eastern project area of the subject site. The approved

local CDP was for the construction of a 140,000 sq. ft. home improvement and garden center, a 6,000 sq. ft. restaurant, and two retail/commercial buildings totaling 12,000 sq. ft., with 752 parking spaces; and a subdivision to create a separate lot for above ground fuel storage tanks. The local CDP was subsequently appealed (A-5-LOB-06-400) by Coastal Commissioners Sara Wan & Larry Clark and others. On November 16, 2006, the Commission determined that the appeal raised a substantial issue and overturned the City's approval of the local CDP finding that the City-approved project would, amongst other contentions, adversely affect wildlife, wetlands, and the adjacent tidal waters. The de novo hearing for the appeal was initially scheduled for October 10, 2007, but the de novo hearing never occurred.

On December 11, 2007, the Los Angeles Superior Court tentatively ruled that the EIR certified by City of Long Beach for local CDP 0308-11 was not valid and ordered the City to prepare a new EIR for the project ([Exhibit 6](#)). In part of its decision, the court cited comments made by the California Department of Fish and Game (DFG), which expressed concern of the City's EIR finding that the project (Local CDP 0308-11) would have no potential significant impacts to burrowing owls or sensitive plant species. The DFG stated that burrowing owls had been observed at the project site and that burrows were observed in local berms and, as such, winter surveys should have been conducted, as is required by the DFG, but they were not. Additionally, the court ruling stated that the one-day sensitive plant survey was inadequate. The tentative ruling was adopted on February 21, 2008. On April 15, 2015, the landowner submitted a letter stating that he did not want to proceed with the subject appeal and withdrew the application.

The City-approved project subject to this appeal overlaps with the eastern project area of the previously proposed project ([Exhibit 7](#)), and it appears that the proper California Department of Fish and Wildlife (CDFW) protocol surveys were not conducted with regard to wintering burrowing owl surveys and sensitive annual plant surveys.

The Commission's senior ecologist, Dr. Jonna Engel, reviewed the Biological Resource Assessment Memorandum (BRAM), conducted as part of the environmental review for the proposed project by Rincon Consultants, dated July 16, 2019, and determined that the one-day field reconnaissance survey of the project site was not adequate to determine if ESHA exists on the project site. In order to fully assess the potential for the site to support sensitive species, Dr. Engel recommended that over-wintering CDFW protocol level burrowing owl surveys and United States Fish and Wildlife Service (USFWS) protocol level rare annual plant surveys be performed on the site. Dr. Engel provided the following findings:

I have been asked to review the biological materials submitted in support of the 300 Studebaker Road Industrial Park project application to determine if we have enough biological information to understand potential adverse impacts associated with the project. The proposed project site encompasses 6.69 acres of land situated east of Studebaker Road and 1.81 acres at the northwest and southwest corners of the intersection of Studebaker Road and Loynes Drive. The site is immediately adjacent to a tidally-influenced portion of the Cerritos Channel, 200 feet from Steamshovel Slough, the most pristine wetland with the larger Los Cerritos

wetlands complex, approximately 0.2 mile west of the San Gabriel River, and 1.7 miles northeast of Alamitos Bay.

On April 1, 2019, Rincon Consultants conducted a biological resources assessment (BRA - a one day reconnaissance level biological survey) at the project site that included a 100-foot buffer around the site, to document the existing site conditions and to evaluate the potential for the presence of sensitive biological resources. In preparation for the BRA Rincon conducted a California Diversity Database (CNDDDB) query to assess which sensitive plant and animal species had the potential to occur on the site. The query resulted in a list of 32 special status plants and 24 special status animals. Rincon did not observe any of the sensitive plants or animals from the CNDDDB generated list on the site on April 1, 2019. In Rincon's July 16, 2019 Biological Resource Assessment Memorandum (BRAM) they reported that none of the sensitive plant species had the potential to occur because they determined that no suitable habitat exists on the site for any of the species. They also reported in the BRAM that none of the sensitive animal species would occur on site because of the low habitat quality in disturbed and developed areas of the site, lack of native vegetation, isolation from other suitable habitat due to developed land uses surrounding the site, and high levels of human disturbance. In the BRAM, Rincon's final conclusion was that, based on their site visit observations, species know to occur regionally, and literature review:

...the project would not have substantial adverse effects on riparian habitats or sensitive vegetation communities, the adjacent waters will not be impacted by the proposed project, the site does not serve as a wildlife corridor, and that the site does not contain ESHA.

However, in the BRAM Rincon acknowledged that 'Definitive surveys for special-status wildlife and plant species generally require specific survey protocols requiring extensive field survey time to be conducted only at certain times of the year.'

The Rincon BRAM stated that the eastern parcel of the project site is bordered by a large berm that was originally constructed to contain spills from storage tanks that were once on site and that this berm contains mammal burrows of various sizes. It is my professional opinion, based on the court findings, CDFW recommendations, observations of burrowing owls on the site, and the presence of mammal burrows of various sizes, that protocol over-wintering burrowing owl surveys should be conducted to adequately survey the site for the presence of sensitive burrowing owls.

It is my professional opinion that formal annual plant surveys should be conducted on the site to best understand the on-the-ground natural resource conditions.

If and when the project is approved I recommend that the best available science be applied to the construction activities and building design regarding bird-safe glass and artificial night lighting because of the proposed project proximity to the Cerritos

Channel, Steamshovel Slough and the larger Los Cerritos wetland complex, the San Gabriel River, and Alamitos Bay that support a myriad of native animals including shore, wading and terrestrial bird species. The project site is also within the pathway of the Pacific Flyway. The “Pacific Flyway” is a descriptor for a phenomenon that encompasses the entire coast of California and beyond. Depending on the types of migrating birds, certain pathways (e.g. bordering the ocean, near creeks, rivers, and wetlands, along valleys, etc.) will be more frequented, and certain habitats (riparian areas, wetlands, etc.) will be more important stopovers, than others. Birds migrating along this route are heading to the Canadian Arctic, Canadian plains, and Canadian boreal forest in the spring, and to Mexico, South America, and Pacific Islands in the fall. Over 60 species of waterfowl, raptors, shorebirds, and songbirds are known to regularly migrate through Los Angeles county; traveling at night and stopping for a time by coastal creeks, wetlands, woods, and neighborhoods.

The appeal raises a significant issue as to whether the applicant conducted adequate surveys to determine if any ESHA or other sensitive plant or animal species exist within the project site, as required by the certified LCP/SEADIP.

Appellants’ Contention: Inadequate Bird-Safe Glass Required and Inadequate Studies on Effects of LED and Truck Headlights.

The appellants assert that Special Condition 5 of the local CDP is inadequate and arbitrary with respect to reducing the amount of untreated glass to less than 35% of the building façade. The appellants contend that the City-approved project did not include studies on how Light Emitting Diode (LED) and truck headlights will affect animals and plants in the Los Cerritos Wetlands across Studebaker from the 24/7 facility.

Special Condition 5 of the local CDP reads:

- “The applicant shall provide for “bird-safe” glazing on all buildings as follows:
- a. Fritting, permanent stencils, frosted, nonreflective or angled glass, exterior screens, decorative latticework or grills, physical grids placed on the exterior of glazing, or UV patterns visible to birds shall be used to reduce the amount of untreated glass or glazing to less than thirty-five percent (35%) of the building facade.
 - b. Where applicable, vertical elements within the treatment pattern should be at least one-quarter inch (1/4") wide at a maximum spacing of four inches (4") and horizontal elements should be at least one-eighth inch (1/8") wide at a maximum spacing of two inches (2").
 - c. No glazing shall have a "Reflectivity Out" coefficient exceeding thirty percent (30%). That is, the fraction of radiant energy that is reflected from glass or glazed surfaces shall not exceed thirty percent (30%).
 - d. The building owners and operators shall participate in "Lights Out for Birds" programs or similar initiatives by turning off lighting at night, particularly during bird migration periods.”

The City special condition appears to have been written based on the standards of (PD-6 - Downtown Shoreline Planned Development District) and may not be appropriate for an area with more sensitive biological resources. Given that the applicant's biological resources surveys may not have been adequate to determine potential ESHA on the site and the applicant incorrectly stated that the project site is not part of a migratory wildlife corridor, this condition may not be protective enough of nearby resources. Additionally, the City's conditions for bird-safe glazing were not based on any evidence in the record and further exploration by staff is necessary to determine if the City's conditions were adequate for this particular project area. The bird-safe glazing applies to the project elements in the eastern project area, which is not in the appealable area, and therefore does not raise a substantial issue; however, the Commission has the authority to review this issue at the de novo stage.

As to the lack of LED and truck headlight studies, the City's approval of LCDP 18-034 requires building owners/operators to turn unnecessary lights off at night through the "Lights Out for Birds" program or similar initiatives, especially during bird migration periods. Additionally, the City's conditions state that lights shall be shielded to prevent the intrusion of light and glare onto adjacent area, compliant with the appropriate backlight/uplight/glare rating systems. Furthermore, while the facility would operate 24 hours per day, truck access would be limited to Studebaker Road and not allowed access on Loynes Drive.

While there are no specific LCP policies for LED and truck headlight studies per se, there are LCP policies requiring protection of ESHA. Further analysis by staff is necessary to determine if the City's conditions are adequate in regard to LED and truck headlights affecting neighboring plants and animals in the western project area, which encompasses an area appealable to the Commission. Therefore, this contention raises a substantial issue.

Appellant's Contention: No Adequate Traffic Studies and Noise Studies for Operations.

The appellants contend that the City should have required the applicant to conduct new traffic studies to ensure that no significant impacts from traffic from the proposed project would occur from Loynes Drive. The appellants contend that noise studies should have been conducted in order to determine if the proposed project would have any adverse effects from the around the clock operations of the proposed project.

The City's LCP does not contain policies identifying when a project must provide traffic studies, however, the applicant provided a Traffic Impact Analysis (TIA), which was conducted in July 2019, and concluded that the project would not significantly impact the project site and surrounding area.

The City's IS/MND for the project provided a Noise Measurement and Analyses Data which stated:

"Overall, operation of the proposed project would not generate sources of noise that are new to the existing area considering the existing industrial uses north, east, and

south of the project site. Onsite operational noise generated by the project would not exceed the City's noise standard."

In addition, the IS/MND provided a Construction Noise Reduction mitigation measure.

There are no specific LCP policies regarding noise abatement requirements for non-oil production areas or for transportation noise, however, the applicant provided noise studies, transportation noise studies and traffic studies. Therefore, the appellants' contentions do not raise a substantial issue, but the Commission may look further into these issues under de novo review.

Appellant's Contention: Mitigation for Parking Lot Run-Off.

The appellants assert that the City-approved project did not provide adequate mitigation for impacts of run-off from the parking lot into the two channels on either side of the project site which could impact the adjacent wetland area in the Commission's appealable area.

The City's Site Plan Findings indicate that:

"All drainage across the adjusted lot line shall be eliminated or necessary easements are provided to the satisfaction of the director of public works; and as conditioned, the applicant shall provide easements to the City of Long Beach for existing and/or proposed public utility facilities to the satisfaction of the Concerned department or public agency. The proposed project would comply with current National Pollutant Discharge Elimination System and LA County MS4 permit regulations and would also include storm water Low Impact Development Best Management Practices."

The City found that the existing site conditions generate 11.3 cfs of run-off (50-year storm) while the proposed site conditions generate 9.8 cfs of run-off (50-year storm). The approved conditions include best management practices to reduce the runoff generated by the site by 1.5 cfs and conform with the relevant stormwater standards. This contention does not raise substantial issue, but the Commission may look further into this issue under de novo review.

SUBSTANTIAL ISSUE FACTORS:

The Commission applies five factors in making a determination whether an appeal raises a substantial issue per Section 13115(b).

1. The degree of factual and legal support for the local government's decision that the development is consistent with the relevant provisions of the certified LCP.

The City did not substantially support its approval of the project's consistency with reference to all of the applicable policies of the certified LCP. In addition, while there is some factual support for the City's approval, it did not contain all of the information necessary to determine that that project is consistent with LCP policies. Specifically, the City's record does not include factual support identifying the project's consistency with SEADIP's 30% usable Open Space requirement and does not include adequate surveys to

determine if any ESHA or other sensitive plant or animal species exist within the project site. Therefore, there is a low degree of factual and legal support for the local government's decision, and this factor supports a substantial issue finding.

2. The extent and scope of the development as approved or denied by the local government.

The local government granted a CDP for the demolition and removal of 400 sq. ft. of pipeline and associated structures and the construction of two 35 ft.-high concrete tilt-up industrial buildings (91,700 sq. ft. and 47,500 sq. ft.) with 211 on-site at-grade parking spaces (43 of which would be grasscrete and serve a dual purpose as Open Space and parking), and landscaping on a 6.69-acre site. The scope of the project is large, in terms of developable area and Open Space to be set aside and managed. However, the City's record is missing information concerning the extent and scope of the remediation responsibility for the potential hazardous materials on the western project area, which is set to be donated to the LCWA. In addition, there are unanswered questions about the presence of sensitive biological resources, including, all plant and animal species, on the project site, which may affect the scope of development. Therefore, there are fundamental questions concerning the extent and scope of the project, and this factor supports a finding of substantial issue.

3. The significance of the coastal resources affected by the decision.

It is unclear if the project site is located in or adjacent to ESHA. Development in or adjacent to ESHA can have significant impacts on sensitive biological resources. Here, there is a history of sensitive species on the project site, and it appears the applicant did not conduct adequate surveys to determine whether the project site currently qualifies as ESHA. The project also involves the dedication and potential future restoration of wetlands habitat, which is an important biological resources that warrants special protections under the Coastal Act and the certified LCP/SEADIP. Therefore, this factor supports a finding of substantial issue.

4. The precedential value of the local government's decision for future interpretations of its LCP.

Allowing the local government's decision to approve development in or adjacent to potentially sensitive biological resources, without conducting adequate surveys to determine if ESHA exists, and without fulfillment of the obligation to set aside and protect adequate Open Space areas as part of the project, could set a negative precedence for future interpretations of the City's certified LCP. If the subject local CDP is found to be consistent with the certified LCP based on the current record, there is a potential that future applicants will reference this permit if they wish to develop near the project site. Without adequate information concerning the extent and scope of the proposed development, allowing the City's local CDP approval to stand could result in adverse precedence regarding application of the LCP's resource protection policies. Additionally, the local government did not cite the SEADIP designations for the specific western parcels, which may not be consistent with the proposed uses. This factor supports a finding of substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance.

Protecting ESHA is an issue of regional and statewide significance, given that ESHA is found throughout the state, not just in the City of Long Beach. Requiring local governments to make decisions consistent with their certified LCP is a matter of statewide importance. Unsubstantiated application of these policies could have regional or statewide ramifications regarding similar LCPs and their policies regarding ESHA or providing for LCP Open Space requirements in project development. This factor supports a finding of substantial issue.

Conclusion

In conclusion, staff recommends that the Commission find that a substantial issue exists with respect to whether the local government action conforms to the policies of the City's certified LCP.

Appendix A – Substantive File Documents

1. Coastal Commission Comment Letter Dated October 7, 2019
2. Notice of Final Local Action (NOFA)
3. Section 20.20.010 of the Long Beach Municipal Code
4. Local CDP No. 5-LOB-10-050 (Loynes Tank Farm Removal)
5. A-5-LOB-06-400 (Staff Report: Appeal – Substantial Issue, 400 Studebaker Road)