

June 4, 2007

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
South Coast District
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: Home Depot, Long Beach – Appeal Number A-5-LOB-06-400
Land Uses Allowable under the City of Long Beach Certified LCP

Dear Mr. Ainsworth:

This is in response to the May 8, letter you received from Robert D. Pontelle of Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP on behalf of Home Depot, U.S.A. Because the analysis set forth in the letter concerning the land uses authorized by the Long Beach Local Coastal Program (“LCP”) is flawed, appellants the Los Cerritos Wetlands Land Trust and the University Park Estates Neighborhood Association have asked me to respond.

ERRONEOUS ASSUMPTIONS MADE BY HOME DEPOT

The initial assumption, made on page 1 of the letter, that the staff position is that conditionally permitted uses are not authorized is simply wrong. Apparently, the author was referring to language on page 8 of the November 16, 2006 Staff Report that read:

“The City-approved development is a commercial land use, but not commercial self-storage. The City approved a conditional use permit for the proposed commercial retail use. Therefore, the local coastal development permit authorizes a land use that is not consistent with the certified LCP.”

In finding that the appeal raised a substantial issue, the Commission simply noted that the approval of a conditional use permit **for the proposed commercial retail use** violated the requirements of the certified LCP. The Commission did not suggest that conditional use permits were prohibited and did not assert that uses permitted by right were the only allowable uses. In fact, a careful reading of the of the City’s certified LCP shows that conditional use permits can be obtained for land uses allowable by the LCP.

In addition, the footnote on page 2 of the letter acknowledges that the author did not intend to address the issue of consistency with the City’s zoning ordinances. This concession reveals a fundamental misunderstanding of the nature and purpose of certified Local Coastal Programs in general and the Long Beach LCP in particular. Although the Land Use Plan

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
June 4, 2007
Page 2 of 5

("LUP") is a crucial part of a certified LCP, so are the Implementing Ordinances including the Zoning Ordinances ("LIP") and those ordinances cannot be ignored. That is particularly important because, in certifying the ordinances, the Commission must find that they are adequate to implement the policies of the LUP.

Another statement made in the letter may create confusion. The author states "Development of the Project Site is governed by the City's development regulations, as well as the provisions of the LCP as certified by the Commission." This formulation suggests that there are relevant City development regulations in addition to those contained in the LCP and the implication is that those additional regulations may trump or modify the requirements contained in the LCP. To put it simply, the LCP is the City's plan for land use and zoning in its Coastal Zone. Uses inconsistent with that Plan are simply not permitted until and unless the Plan is amended and the amendment is certified by the Coastal Commission.

A CONDITIONAL USE PERMIT CANNOT BE USED TO SANCTION A USE NOT ALLOWABLE BY A CERTIFIED LCP

The Coastal Development Permit approved by the City of Long Beach does not conform to the standards set forth in the City's certified LCP.

Years ago, when it prepared its original LCP the City designated the subject property as industrial. Subsequently, the Coastal Commission accepted the designation when it certified both the City's LUP and its LIP or implementing zoning ordinances (the full LCP). The City's LUP identifies the property as a part of Subarea 19 and describes the use as "Industrial."

Admittedly, the proposed project is for a commercial use, not an industrial one. However, the letter asserts, "Because a CUP was approved by the City for the Project, the Project satisfies the City's land use requirements." Apparently, Home Depot believes that since the City's zoning ordinance does contemplate the use of conditional use permits, land use designations in the LUP can be ignored. If that were the case, the LUP designation required by state law would be meaningless. That is not a defensible position.

THE COMMERCIAL USES PROPOSED ARE INCONSISTENT WITH BOTH PARTS OF THE CERTIFIED LOCAL COASTAL PROGRAM (I.E. THE LAND USE PLAN AND ITS IMPLEMENTING ZONING ORDINANCES)

The current version of the Land Use Plan designates property located in Subarea 19 as "Use: Industrial" and recites that the area is fully developed in accordance with the provisions of the IG zone. Although the LCP has been amended a number of times, the designation has remained the same. There is no question that the proposed use is inconsistent with that designation.

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
June 4, 2007
Page 3 of 5

Even if Home Depot were entitled to ignore the LUP designation in the City's own plan and interpret the LIP out of its LCP context, the proposed project still would violate the zoning requirements. Title 21 of the Long Beach Municipal Code contains the City's Zoning Ordinances. Section 21.15.1460 of the ordinance defines "Industrial" as follows:

"Industrial" means a category of land use comprised of those activities necessary to convert natural resources into finished products. These activities include all resource extracting, resource processing, manufacturing, assembling, storage, transshipping and wholesaling that precede the arrival of goods at a retail land use."

In addition, the IG zone referred to above, is described in Section 21.33.020 of the City's zoning ordinance as follows:

"General Industrial (IG). The General Industrial (IG) district is considered the City's "industrial sanctuary" district where a wide range of industries that may not be desirable in other districts may locate. The emphasis is on traditionally heavy industrial and manufacturing uses. The IG district is intended to promote an "industrial sanctuary" where land is preserved for industry and manufacturing, and where existing industries are protected from non-industrial users that may object to the operating characteristics of industry. Performance standards still must be met, but the development standards are the minimum necessary to assure safe, functional, and environmentally-sound activities.

The IG district includes uses such as large construction yards with heavy equipment, chemical manufacturing plants, rail yards, and food processing plants. The buildings that house these operations may be older industrial buildings retrofitted to accommodate the use, or new state-of-the-art manufacturing plants. As is the case with all the industrial districts, the focus of the IG district is on the operating characteristics of the use, rather than the particular product created."

In its approval of the project, the City adopted findings that described it as a Home Depot design and garden center, a restaurant and commercial retail buildings. These are commercial retail trade facilities and are not "industrial" uses as that term is defined in the zoning ordinance.

Under limited circumstances, the zoning ordinance appears to permit some ancillary commercial retail trade uses in an industrial zone pursuant to a conditional use permit. Those circumstances are not present in this case. Section 7 of Table 33-2, that appears in Chapter 21.33 of the Zoning Ordinance, allows Retail Trade uses in an Industrial District, subject to the issuance of a conditional use permit, if primarily "these uses are intended to serve nearby industries and employees, and the retail's proximity will provide convenience with minimal impact on the retail operations."

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
June 4, 2007
Page 4 of 5

In 2006, an amendment to the LUP, affecting Subarea 19, added a land use exception to the industrial designation for a very specific non-industrial use namely, "Commercial storage/self storage (21.215.570) shall be allowed by Conditional Use Permit (21.52.219.5)." The amendment reinforces the notion that, in the absence of specific exceptions, the designated use is industrial.

In short, unless the uses proposed are intended to serve nearby industries and will have a minimal impact on other retail operations, they are inconsistent with the certified LCP. The City's findings, without evidence or any basis in fact that the project will primarily serve nearby industrial uses, instead asserts that the proposed project will "Provide a conveniently located commercial retail center that includes a home improvement store as well as other retail center amenities that serve the needs of local residents, commercial and industrial developers, businesses and employers in south Long Beach." Not only does this finding fail to make the necessary industrial connection, but also it admits that the project is designed to serve other, non-industrial activities.

Even if the proposed uses were consistent with LCP requirements, they fail to meet the LCP's Conditional Use Permit requirements for industrial uses. City Zoning Ordinance 21.52.410 provides in part:

"Certain industrial uses identified in Chapter 21.33 (Industrial Uses) are subject to conditional use permit review and approval. In addition to the standard considerations and findings required to approve a conditional use permit, the following additional considerations and findings shall be made:

A. The proposed use, and the siting and arrangement of that use on the property, will not adversely affect surrounding uses nor pose adverse health risks to persons working and living in the surrounding area...

C. Truck traffic and loading activities associated with the business will not adversely impact surrounding residential neighborhoods."

The City's findings do not adequately address the impact of the project on the Los Cerritos Wetland, a major natural resource that is immediately across the street from the project site. In addition, rather than finding that the activity associated with the businesses to be conducted on the site will not adversely impact surrounding residential neighborhoods, the City adopted a resolution that there were overriding considerations while acknowledging that some environmental impacts could not be mitigated fully.

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
June 4, 2007
Page 5 of 5

THE PREVIOUSLY ISSUED PERMIT IN SUBAREA 19 WAS FOR AN INDUSTRIAL USE

The author of the letter cites the issuance of a permit for a seawater desalination facility in Subarea 19 for the proposition that conditionally permitted uses are consistent with the requirements of the LCP. Of course, there are some conditionally permitted uses allowable in the Subarea. However, citing the approval of an industrial use that required a conditional use permit in an area designated for industrial uses, does not mean that non-industrial uses are proper.

CONCLUSION

Much of the discussion above focused on the provisions contained in the City's LIP. However, it would be wrong to interpret the provisions in a complicated and somewhat convoluted set of zoning ordinances without reference to the LUP they are supposed to implement. The bottom line is that the certified LUP, and therefore the LCP, has judged that the parcel in question should be used for industrial purposes. At least, it should be used for those purposes until and unless the LCP is amended to permit some other land uses that are consistent with the California Coastal Act.

Under the circumstances, Home Depot appears to be engaged in an effort to have the Commission change the land use designation (LUP) and implementing zoning (LIP) without actually amending the LCP or conducting the Chapter Three analysis required by the Coastal Act for such amendments. Due to the strategic location of the property in the SEADIP area, the significant developments that have occurred since the early 1980s when the LCP was originally certified, and the planning process that is now going on for the area, such a change should not be considered without a Coastal Act policy review pursuant to an LCP amendment application.

Yours very truly,

Melvin L. Nutter

MLN/cc

cc: Teresa Henry, District Manager
Charles Posner, Coastal Program Analyst

Recording Requested by:
City of Long Beach

97-1958950

Stewart Title
When Recorded Mail to:

Zoning Administrator
Department of Planning and Building,
5th Floor, 333 W. Ocean Blvd.
Long Beach, CA 90802

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
11:41 AM DEC 12 1997

RECEIVED
South Coast Region

IAN 19 2007

FEE \$100.00 E

040020644

D.A. FEE Code 20

COASTAL CON

Space above this line reserved for recorder's use

GRANT OF NCPF Code 19 \$96.00
CERTIFICATE OF COMPLIANCE
IN CONJUNCTION WITH A LOT LINE ADJUSTMENT

Application: LLA 9704-09 - (Parcel 2)
Property Owner: Southern California Edison Company
Property Location: 690 Studebaker Road, Long Beach, CA 90803
Mailing Address: P. O. Box 800 - 224 Walnut Grove Avenue, Rosemead, CA 91770

The following real property, as of the date of recordation of this document (Parcel 2 of LLA 9704-09), has been determined to be in compliance with applicable provisions of the Subdivision Map Act of the State of California (Section 66410 et seq., of the California Government Code) and the Subdivision Ordinance of the City of Long Beach, California, enacted pursuant thereto. The parcel described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Future development of the parcel may require issuance of a permit or permits, or other grant or grants of approval.

The subject Certificate of Compliance is granted for the parcel of land being a subdivision of that portion of the East one-half of Section 2, Township 5 South, Range 12 West, in the Rancho Los Alamitos, as shown on Partition Map recorded in Book 700, Page 141 of Deeds, in the Office of the Los Angeles County Recorder. All necessary easements are provided by an agreement which will be recorded concurrently with recordation of this Certificate of Compliance.

SEE ATTACHED EXHIBIT A & B

Attached are the legal descriptions of the parcel and a survey plot plan which are hereby incorporated by this reference as a part of this Certificate.

Department of Planning and Building, City of Long Beach

By: Robert Benard
ROBERT BENARD
Zoning Administrator

12/10/97
Date

ACKNOWLEDGMENT

PUBLIC AGENCY (CC 1191)
State of California, County of Los Angeles

On December 10, 1997 before me, KATHLEEN BANGMA a Notary Public in and for said State, personally appeared Robert Benard, known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Kathleen Bangma



FINAL PLOT PLAN FOR LOT LINE ADJUSTMENT
IN THE CITY OF LONG BEACH, STATE OF CALIFORNIA

BEING A FINAL PLOT PLAN OF A PORTION OF SECTION 2, TOWNSHIP
5 SOUTH, RANGE 12 WEST, IN THE RANCHO LOS ALAMITOS, AS
SHOWN ON PARTITION MAP RECORDED IN BOOK 700, PAGE 141 OF DEEDS,
RECORDS OF LOS ANGELES COUNTY, CALIFORNIA

SURVEYOR'S CERTIFICATE:

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED
UPON CRITERIA ESTABLISHED BY THE DIRECTOR OF PUBLIC WORKS AND IN
CONFORMANCE WITH THE APPLICABLE LOCAL ORDINANCE AT THE REQUEST
OF SOUTHERN CALIFORNIA EDISON CO. APRIL 14, 1997.

Marissa Crowther 12-5-97
Date

Marissa Crowther, PLS 6153



DIRECTOR OF PUBLIC WORKS CERTIFICATE:

THIS PLAT HAS BEEN EXAMINED FOR CONFORMANCE WITH THE
REQUIREMENTS OF LOCAL ORDINANCE THIS 9th DAY OF
DECEMBER 1997

Director of
Public Works / By:

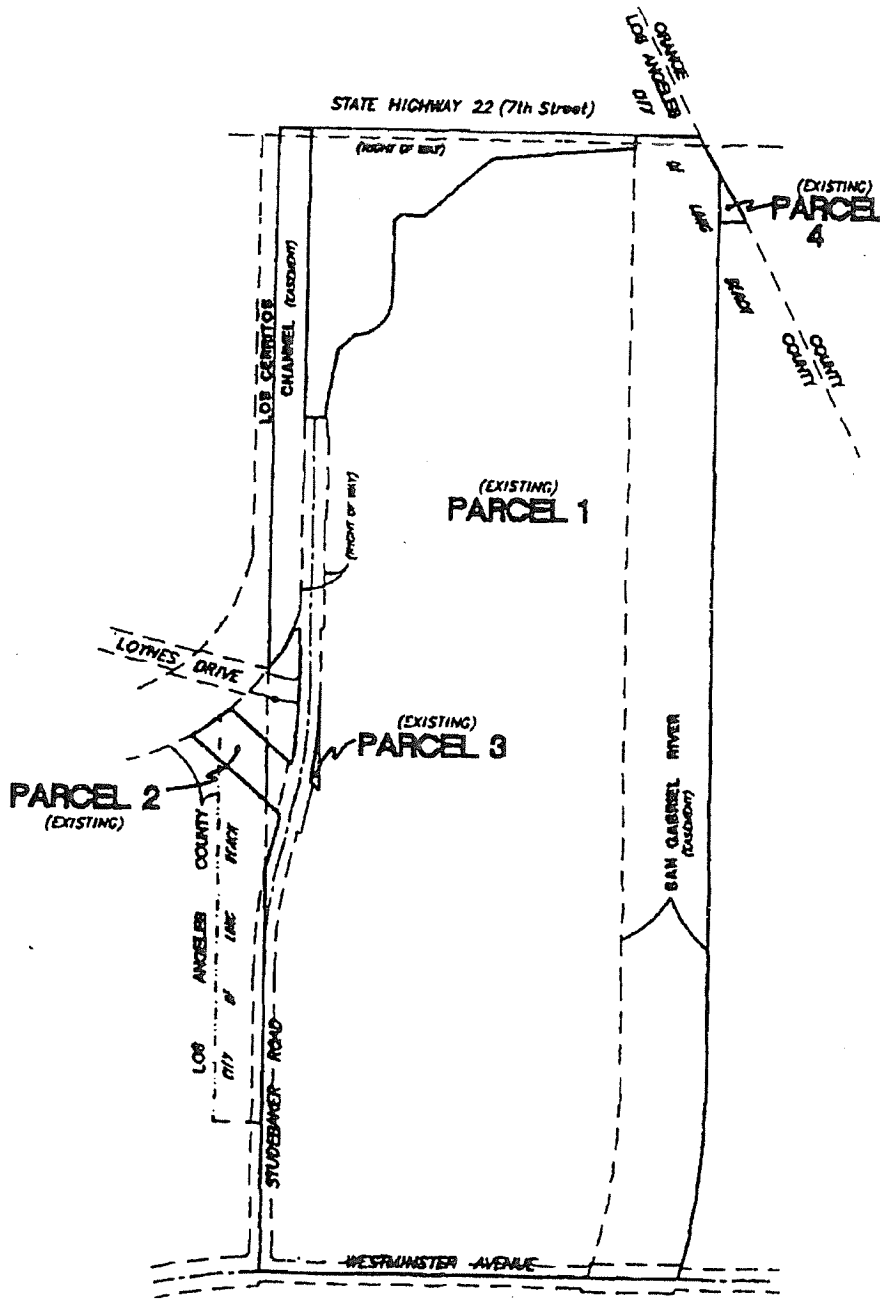
Edward J. Fitz

97-1958950

L.L.A. 9704-09

FINAL PLOT PLAN FOR LOT LINE ADJUSTMENT
IN THE CITY OF LONG BEACH, STATE OF CALIFORNIA
Existing Lot Lines

3



SCALE: 1"=200'

97-1958950

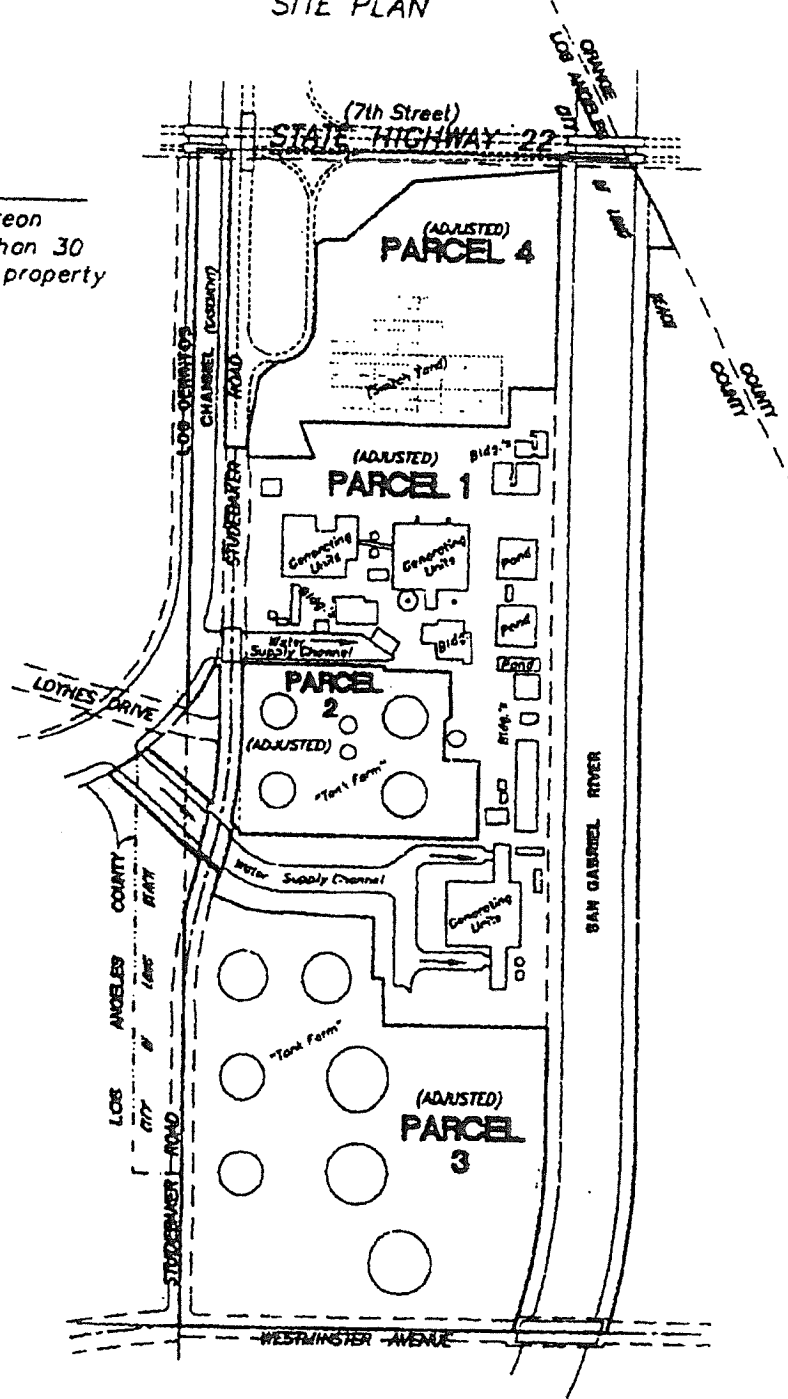
L.L.A. 9704-09

FINAL PLOT PLAN FOR LOT LINE ADJUSTMENT
IN THE CITY OF LONG BEACH, STATE OF CALIFORNIA
SITE PLAN

4

Note:

Buildings shown hereon
are located more than 30
feet from adjusted property
lines.



97-1958950



Craig Chalfant

From: Mel Nutter <melnutter@verizon.net>
Sent: Wednesday, April 22, 2015 2:40 PM
To: Craig Chalfant
Subject: AES and the Lot Line Issue
Attachments: W14a-10-2007.pdf

Craig,

I realized that the letter I left with you concerning the Home Depot matter did not contain the information I assumed it did. I am attaching a copy of the Coastal Commission staff report from 2007 that discusses the lot line issue. Based, in part, on the fact that the 1997 effort to adjust the lot lines did not include the required Coastal Development Permit, the applicant abandoned the project and the Coastal Commission did not hold a hearing. The lot line discussion appears on pages 4-6 of the attached report.

Mel

--

Melvin L. Nutter
Attorney at Law
200 Oceangate, Suite 850
Long Beach, CA 90802-4353
(562) 432-8715

CALIFORNIA COASTAL COMMISSION

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

**W14a**

Appeal Filed: 9/29/2006
180th Day: N/A
Staff: Charles Posner - LB
Staff Report: 9/20/2007
Hearing Date: October 10, 2007
Commission Action:

STAFF REPORT: APPEAL – DE NOVO

APPEAL NUMBER: A-5-LOB-06-400

APPLICANTS: Studebaker LB, LLC (Tom Dean) & Home Depot-SSC/West Coast

AGENTS: Visanthi Ramanathan and Cynthia McClain-Hill

PROJECT LOCATION: 400 Studebaker Road, City of Long Beach, Los Angeles County.

APPELLANTS: Coastal Commissioners Sara Wan & Larry Clark; Rena Akers; Heather Altman; Tim Anderson, Janice Dahl & Mary Parsell; Ann Cantrell; Melinda Cotton; Doug Drummond & Thomas Marchese; Charles W. Legeman; Mary Beth Mashburn; Jeff Miller; Dean Richardson; and Mary Suttie & Dave Robertson.

PROJECT DESCRIPTION: 1) Subdivide the project site into two lots; 2) demolish a fuel oil tank farm and complete subsurface soils investigations; 3) remediate contaminated soils; and 4) construct a 128,517 square foot home improvement and garden center, a 6,000 square foot restaurant, and two retail/commercial buildings totaling 12,000 square feet.

Project Area	16.46 acres
Building Coverage	143,673 square feet
Pavement Coverage	374,000 square feet (approx.)
Landscape Coverage	166,181 square feet (approx.)
Parking Spaces	712
Zoning	Planned Dev. District PD-1 (SEADIP)
Plan Designation	Planned Development - Industry
Ht above final grade	35 feet

SUMMARY OF STAFF RECOMMENDATION

On November 16, 2006, the Commission determined that the appeals raise a substantial issue and overturned the City's approval of the local coastal development permit for the following reasons: 1) the certified City of Long Beach Local Coastal Program (LCP) designates the project site for an industrial use, while the City approved a commercial use; 2) approval of a land use that is not consistent with the certified LCP could result in unanticipated and cumulative impacts to the adjacent area and may prejudice future decisions for the area as the LCP is currently being updated; 3) the development did not meet the LCP open space requirements; 4) the development could adversely affect wildlife, wetlands and the adjacent tidal waters; and, 5) the traffic generated by the commercial development may adversely impact coastal access.

This staff report is for the de novo portion of the hearing on the appeal where the Commission will deny or approve the proposed development. **Staff is recommending denial of the permit for the reasons listed on Page Two. The motion to deny the permit is on Page Two.**

The Commission's de novo public hearing on the merits of the application uses the certified LCP as the standard of review. In addition, since this project is located between the first public road and the sea (Alamitos Bay), the proposed development would need to also conform with the public access and recreation policies of the Coastal Act. The Commission can approve the coastal development permit only if the proposed development is found to be consistent with the certified LCP of the local government. In this case, that finding cannot be made for the following reasons: 1) the applicants' parcel where the proposed development would be built is not a legal lot; 2) the proposed commercial use is inconsistent with the certified City of Long Beach LCP which designates and preserves the project site for an industrial use; 3) approval of a land use that is not consistent with the certified LCP would result in unanticipated and cumulative impacts to the adjacent area (e.g., traffic or biological) and would prejudice future decisions regarding development in the area as the LCP is currently being updated; 4) the proposed commercial development would increase the risk of casualties to the general public in the event of an industrial accident at one of the existing adjacent industrial uses; and 5) coastal access would adversely affected by the traffic generated by additional commercial development in Subarea 19 of SEADIP if this project is approved at this time in the industrial zone.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Long Beach Certified Local Coastal Program (LCP), 7/22/80.
2. City of Long Beach Planned Development Ordinance PD-1 (SEADIP).
3. City of Long Beach Local Coastal Development Permit No. 0308-11.
4. City of Long Beach Tentative Parcel Map No. 067384.
5. City of Long Beach Lot Line Adjustment – Certificate of Compliance No. LLA 9704-09.
6. Environmental Impact Report for Long Beach Home Depot (SCH No. 2004031093).

STAFF RECOMMENDATION:

Staff recommends that the Commission **DENY** the coastal development permit application by voting **NO** on the following motion and adopting the following resolution:

MOTION: *"I move that the Commission approve Coastal Development Permit A5-LOB-06-400 for the development proposed by the applicants."*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the coastal development permit and adoption of the following resolution and findings as set forth in this staff report or as modified by staff prior to the Commission's vote. The motion passes only by affirmative vote of a majority of the Commissioners present.

I. Resolution: Denial

The Commission hereby **DENIES** a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of the certified City of Long Beach Local Coastal Program or with the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The 16.46-acre project site is currently part of an electric generating facility (c.1951) situated in the furthest reaches of Alamitos Bay between the Los Cerritos Wetlands and the San Gabriel River, immediately east of the intersection of Studebaker Road and Loynes Drive in southeast Long Beach (Exhibit #2). Rock-lined tidal channels bracket the northern and southern sides of the site, which is currently occupied by four large fuel-oil tanks, several smaller tanks, sheds, pipelines and a former hazardous material storage area (Exhibit #3). The site is mostly paved and unvegetated, except for a 313-foot long asphalt-lined drainage channel near the middle of the site where some wetland vegetation (giant horseweed) has been documented by the applicants' biologist [Jurisdictional Delineation for Proposed Home Depot Project, Long Beach, by Glenn Lukos Associates, March 7, 2007].

The applicants state that the four large fuel-oil tanks (and the land they are on) are no longer needed to run the adjacent electric generating facility since it was recently converted to run on natural gas. The project site falls within Subarea 19 of SEADIP (Southeast Area Development and Improvement Plan), a specific plan (part of the certified LCP) that covers the southeast portion of the City of Long Beach.

The proposed project includes: 1) a subdivision to create a new 1.1-acre lot within the project site in order to retain some above-ground chemical and fuel storage tanks and a retention basin still being used for energy generation; 2) the removal/demolition most of the existing development on the site (a tank farm consisting of the four largest fuel-oil tanks, piping, sheds and a former hazardous material storage area); 3) rerouting of three existing pipelines through the site; 4) soil testing and monitoring; 5) soil remediation, including removal of contaminated fill and recompaction; 6) traffic mitigation improvements along Studebaker Road; 7) improvements to the City's existing sanitary sewer system (approximately 530 linear feet of eight-inch diameter sewer pipes will be replaced with new ten-inch diameter pipes); 8) the construction of a sewer holding tank on the site and connection to the City's existing sanitary sewer system via a new two-inch diameter (double-walled) sewer line attached to the Loynes Drive Bridge; 9) connection to an existing natural gas pipeline via a new four-inch diameter natural gas pipeline; and 10) the construction of a commercial retail center anchored by a Home Depot store. The proposed grading on the site involves approximately 40,460 cubic yards of cut, and 18,490 cubic yards of fill, with a net export of approximately 21,970 cubic yards of potentially contaminated soils.

The proposed commercial retail center includes a 712-stall paved parking lot (reduced from 752 stalls)¹ with forty-foot tall light standards and water quality improvements (e.g., oil and trash separators), a 128,517 square foot home improvement and garden center (reduced from 140,000 square feet), a 6,000 square foot restaurant with a 2,050 square foot outdoor dining patio, two detached retail/commercial buildings totaling 12,000 square feet, a public sidewalk along Studebaker Road, signage and landscaping. The proposed commercial buildings would

¹ Subsequent to the Commission's November 16, 2006 Substantial Issue hearing, the applicants revised the proposed site plan in order to increase the total amount of open space area on the project site. This revision resulted in the reduction of parking spaces and store floor areas.

be 30-to-35 feet tall. Vehicular access to the proposed commercial retail center would be provided only from Studebaker Road, with the primary entrance located at an improved intersection of Studebaker Road and Loynes Drive (Exhibit #4).

The proposed traffic mitigation improvements include: an enlarged and improved intersection of Studebaker Road and Loynes Drive, new north and southbound traffic lanes added to Studebaker Road within the existing paved right-of-way, and installation of a new synchronized traffic signal system along Studebaker Road.

B. Unpermitted Creation of the Parcel

A major legal obstacle exists to approving any development on the project site as the parcel where the current development is proposed was created through an unpermitted lot line adjustment in 1997 (Exhibit #5). Part of the currently proposed development includes the subdivision of this parcel that was illegally created into two new lots. A coastal development permit is required for a lot line adjustment or redivision of property. In this case, although the lot line adjustment was approved at the local level, a local coastal development permit was never approved for the lot line adjustment. Since the underlying lot is not considered to be a "legal" parcel, a coastal development permit cannot be approved to develop the lot with the proposed commercial development, particularly when the proposed development includes a further subdivision of the parcel that was not legally created.

On December 10, 1997, the City of Long Beach Zoning Administrator, Robert Benard, granted to the former property owner (Southern California Edison Company) a Certificate of Compliance for a Lot Line Adjustment that re-divided a 230-acre (approx.) industrial parcel and three other very small parcels owned by Southern California Edison Company into four parcels of 126.444, 17.821, 61.736 and 28.082 acres, Parcels 1 through 4 respectively (Exhibit #5). Parcel 2 is the site of the proposed commercial development. The four parcels created by the 1997 Lot Line Adjustment are not legal because the City did not process the requisite local coastal development permit for the development.

The City of Long Beach certified LCP requires that a local coastal development permit be obtained for development on the project site because it is the first lot located adjacent to Alamitos Bay.

Section 21.25.903.B of the City of Long Beach certified LCP states:

21.25.903 Permit Required

All development in the coastal zone shall be required to obtain either a coastal permit pursuant to Section 21.25.904 or a coastal permit categorical exclusion pursuant to Section 21.25.906. Such approval must be issued prior to the start of development and shall be required in addition to any other permits or approvals required by the city.

B. Coastal Permits Issued by the City. The following categories of projects require coastal permits in accordance with the procedures set forth in this division:

1. Development on the first lot located on, adjacent to, across the street from, or abutting the beach, bay, ocean or tidelands, except minor addition

to a single-family residence as specified in Subsection 21.25.903C (categorical exclusion).

The City of Long Beach certified LCP defines development as follows:

21.15.790 Development

A. "Development" means:

1. The division of a parcel of land into two (2) or more parcels;
2. The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure;
3. Any mining, excavation, landfill or land disturbance; or
4. Any use or extension of the use of land.

B. This definition includes, but is not limited to:

1. Subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code);
2. Any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of the land by a public agency for public recreational use;
3. Change in the intensity of use of water, or of access thereto;
4. Construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and
5. The removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

C. As used in this Section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line and electrical power transmission and distribution line.

All divisions of land are considered development, including lot line adjustments. The 1997 lot reconfigurations at issue here are therefore a type of development that requires a local coastal development permit, but the City failed to issue a coastal development permit in this case. In addition, the property on which the lot line adjustments took place is between the first public road and the sea and therefore within the appealable area of the coastal zone. Cal. Pub. Resources Code § 30603. Any local coastal development permit approved for such a change to property lines would therefore be appealable to the Commission.

Moreover, the lot line adjustment here raises significant issues with respect to its conformity with the certified LCP. It is unlikely that the Commission would approve the lot configuration depicted in the 1997 Lot Line Adjustment (especially for a commercial development) because the certified LCP designates and protects the land for current and future industrial uses. Such a parcel configuration substantially reduces the size of the original industrial lot and makes the site less attractive to new industry (or expansion of the existing industrial use) because creating four smaller parcels out of one larger industrial parcel reduces the options for future large scale priority coastal related industrial uses. Putting a commercial use in the middle of the industrial land also would reduce the amount of land available for industrial development in the coastal zone.

In addition, the Commission cannot verify whether the four parcels that existed prior to the 1997 Lot Line Adjustment were actual legal lots. One of the parcels (Parcel 2) appears to be an undevelopable tidal channel. Parcel 3, less than an acre in area, appears to be a remnant of the Studebaker Road right-of-way. Parcel 4, also less than an acre in area, is situated on the opposite (eastern) side of the San Gabriel River than the other three parcels. It is also not clear how the lines of the four existing parcels were adjusted in order to arrive at the parcel configuration mapped by the 1997 Lot Line Adjustment.

As previously stated, the currently proposed project includes a further division of the industrial land in order to create a new 1.1-acre lot within the project site in order to retain some above-ground fuel storage tanks and a retention basin still being used for energy generation. Further subdivision of the unpermitted parcel cannot occur (and the unpermitted parcel cannot be developed by the applicants) unless the 1997 Lot Line Adjustment is permitted by the requisite local coastal development permit. The Commission does not recognize the underlying parcel as a legal lot and cannot approve the proposed development and subdivision of an unpermitted parcel. Therefore, this coastal development permit application is denied.

C. Land Uses Permitted by the Certified LCP

The Commission's de novo decision on this appeal must be based on whether the proposed development is consistent with the City of Long Beach's certified Local Coastal Program (LCP). The land use designation set forth for the project site in the LCP calls for an industrial land use on the project site. The proposed project is a purely commercial development with no new industrial component, and it is therefore inconsistent with the land use designation for the site. On November 16, 2006, the Commission found that the City's approval of the proposed commercial land use on the site constituted a substantial issue, and thus voided the local coastal development permit.

Certified LCP Provisions

The City of Long Beach Local Coastal Program (LCP), certified on July 22, 1980, sets forth the land use designations and development policies for the City's coastal zone. The Land Use Plan (LUP) portion of a local government's LCP generally provides a list of permitted land uses (and sometimes prohibited uses) and the general development policies for the coastal zone. A certified LCP must also include implementing ordinances to implement the development policies set forth in the LUP. In certain geographic areas of Long Beach, like the southeast portion of the City, specific plans called Planned Development Ordinances contain both the land use policies and the implementing ordinances that comprise the certified City of Long Beach LCP. According to the City's Planning Department website, these Planned Development Districts are more comprehensive than zoning and are intended to achieve a specific outcome in a geographic area.²

² All 27 of the City's Planned Development Districts are identified as "Mixed Use" land use districts in the Land Use Element of the City's General Plan because each Planned Development District can include a wide variety of land uses. In regards to the areas identified as "Mixed Use" districts, the Land Use Element of the City's General Plan states that the Planned Development Districts included in this land use district "shall be regulated by an area wide planned development plan and ordinance" and that "land use controls and design and development standards for these areas shall be contained in the planned development plan/ordinance for each area." It does not mean that any mix of uses can be permitted in the district.

The heart of the City's LCP for the southeast portion of Long Beach, where the proposed project is located, is a specific plan known as "SEADIP" or the Southeast Area Development and Improvement Plan – Planned Development District One (PD-1). The SEADIP plan sets forth the Commission-certified land uses and building standards for southeast Long Beach. It comprises the more comprehensive and specific plan for this portion of the City. The project site falls within Subarea 19 of SEADIP. The certified land use provisions³ for SEADIP Subarea 19 are set forth as follows:

Subarea 19

- a. Use: Industrial
- b. This area is fully developed in accordance with the provisions of the IG zone.
- c. Commercial storage/self-storage (21.215.570) shall be allowed by Conditional Use Permit (21.52.219.57).

The certified City of Long Beach LCP designates the project site for an Industrial land use. One non-industrial land use, commercial storage/self-storage, is allowed with an approved Conditional Use Permit (and Local Coastal Development Permit). As with other subareas that had been fully developed at the time SEADIP was completed, the designation for Subarea 19 includes a description of the type of prior development that occurred in the area. (See also SEADIP Subareas 2(a), 5(a), 6(a), 9, 10(a), 12, 13, 15, 16, 17 and 18). In this case, the subarea was already fully developed with industrial uses that were compatible with the City's general industrial zone (the IG Zone, formerly the MG zone). The SEADIP provisions for Subarea 19 thus clearly identify this area as land use designated "Industrial," with just one exception for commercial storage/self-storage.

Section 21.15.1460 of the City's certified LCP defines the "Industrial" land use designation as follows:

"A category of land use comprised of those activities necessary to convert natural resources into finished products. These activities include all resource extracting, resource processing, manufacturing, assembling, storage, transshipping and wholesaling that precede the arrival of goods at a retail land use."

Any development in Subarea 19, except for commercial storage/self-storage, must be consistent with this definition of "Industrial." The proposed Home Depot store and the other proposed commercial uses are not activities necessary to convert natural resources into finished products. The proposed use is therefore not consistent with the designated land use for Subarea 19 and it cannot be found consistent with the certified LCP.

As discussed in more detail below, the City approved the proposed commercial use, despite the fact that the designated land use for the area is "Industrial," by issuing a conditional use permit for the proposed project. In no case can a conditional use permit be invoked to permit a land use that is not allowed by a certified LCP. Doing so would render the provisions of the certified LCP meaningless. Overriding the clear provisions of an LCP would also make it impossible to make a factual finding that the proposed commercial use is consistent with the

³ The implementation provisions (e.g., height limits, open space requirements, parking standards, etc.) for all SEADIP subareas are set forth in Section A of PD-1 entitled: "Provisions applying to all areas."

provisions of the certified LCP. Regardless of how the City interprets its zoning regulations, the relevant standard of review is the certified LCP, and the LCP states that the area is land use designated "Industrial," which is incompatible with the proposed commercial use.

The land use issue is both a technical procedural issue and a practical planning issue, and it cannot be ignored or obscured with capricious legal arguments. Procedurally, a coastal development permit cannot be approved for development that is not consistent with the certified LCP for the area. As a practical matter, the finite amount of coastal industrial land should not be used for any other land use that could be located elsewhere. In addition, the land should not be developed without a having a comprehensive plan (i.e., a certified LCP) that addresses environmental issues (e.g., wetlands), traffic, and other basic land use issues. The approval of a land use that is not consistent with the certified plan for the area may result in unanticipated and cumulative impacts to the adjacent area (e.g. other tank farms, the traffic system, the Los Cerritos Wetlands and open spaces, etc.).

Relevance of the IG (General Industrial) Zone

The applicants and City assert that Subarea 19 should be developed subject to the provisions of the City's IG Zone.⁴ This is not, however, what SEADIP requires. Their argument presumably is based on the fact that the designation for SEADIP Subarea 19 acknowledges that "[t]his area is fully developed in accordance with the provisions of the IG Zone." This does not mean, however, that the IG Zone applies to Subarea 19. It is phrased in the past tense and simply describes prior development in the area. As noted above, at least eleven other descriptions of SEADIP subareas similarly describe the pattern of prior development, and with one exception, none of these descriptions even refer to specific zones. This information was included to provide some historical sense of development in the relevant subarea, as SEADIP also requires development to be designed and constructed "to be in harmony with the character and quality of surrounding development so as to create community unity within the entire area." [PD-1 Section 1(A)(9)]. If the intent was, instead, to impose specific zones in relevant subareas, then presumably that is what these sections would have said, rather than simply describing prior development.

Moreover, the City's Zoning Map does not designate SEADIP Subarea 19 as part of the IG Zone (Exhibit #6). If the description of Subarea 19 was intended to apply the IG Zone to this area, then the zoning map should reflect this intention, but it does not. Thus, whether this use could be permitted in the City's IG Zone is entirely irrelevant to this appeal. The proposed project must, instead, conform to the LCP's definition of "Industrial," and as explained above, it is inconsistent with that definition and designation.

Application of the IG Zone

Even if the City and applicants are correct that the proposed project site is zoned IG, the proposed commercial use would be incompatible with that designation. The IG Zone is the

⁴ In one other prior action, the City made a similar finding with respect to the proposed development of a temporary desalination test facility. This approval was appealed to the Commission, and substantial issue was found, thereby voiding the City's approval. The Commission ultimately approved the temporary test desalination facility, but it did not address the proposed project's compatibility with LCP's land use designation. This analysis was not necessary as the proposed desalination facility was clearly an industrial facility and therefore was consistent with the land use designation for the site.

City's "industrial sanctuary" where land shall be preserved for industrial uses. The Commission certified the IG zoning designation as part of the LCP in 1996, when it certified a general update to the zoning code in LCP Amendment No. 1-96.

Section 21.33.020.C (Industrial Districts) of the certified City of Long Beach LCP states:

"General Industrial (IG). The General Industrial (IG) district is considered the City's 'industrial sanctuary' district where a wide range of industries that may not be desirable in other districts may locate. The emphasis is on traditionally heavy industrial and manufacturing uses. The IG district is intended to promote an 'industrial sanctuary' where land is preserved for industry and manufacturing, and where existing industries are protected from non-industrial users that may object to the operating characteristics of industry. Performance standards still must be met, but the development standards are the minimum necessary to assure safe, functional, and environmentally-sound activities. The IG district includes uses such as large construction yards with heavy equipment, chemical manufacturing plants, rail yards, and food processing plants. The buildings that house these operations may be older industrial buildings retrofitted to accommodate the use, or new state-of-the-art manufacturing plants. As is the case with all industrial districts, the focus of the IG district is on the operating characteristics of the use, rather than the particular product created."

The proposed development is a commercial retail land use, not a traditional heavy industrial or manufacturing use. Such a commercial use is inconsistent with the requirements of the IG Zone that it be an "industrial sanctuary." The City approved a conditional use permit (in addition to the local coastal development permit) for the proposed commercial retail use. The applicants argue (and the City Council found) that the proposed commercial retail use is a use allowed by the City zoning ordinance, which, under certain circumstances, enables limited commercial uses to be established within industrially-zoned districts (Exhibit #7). However, the City's use of the conditional use permit process to override the provisions of the City's certified LCP is not appropriate or defensible. Even if the City's zoning ordinance allows some commercial retail uses in the IG Zone with a conditional use permit, the proposed project is not such a permitted use.

As described above, the IG Zone was designed to protect industrial uses and to be a sanctuary for the types of industrial uses not permitted in other parts of the City. Although some commercial uses may be conditionally approved in the IG Zone, they must still conform to the definition of the IG Zone cited above. These types of uses might include small stores designed to serve employees of the surrounding industrial facilities, or other commercial enterprises that compliment surrounding industrial uses. The proposed Home Depot store is not designed to serve the surrounding industrial development and is not the type of commercial project that might be compatible with the IG Zone. The City did not analyze how this proposed use conformed to the definition of the IG Zone. It instead relied solely on a table describing what types of uses *could* be allowed in such a zone, without making the required findings that this proposed use was consistent with the industrial designation.

Higher Priority Land Use

Even if this proposed commercial use were legally allowed in this area designated for industrial uses, which it is not, it still should be prohibited because it would further reduce the number of parcels available for industrial development in the coastal zone. It is important to preserve land in the coastal zone for existing and future industrial uses, especially on the few waterfront parcels where coastal dependant uses could be established without interfering with recreational activities.

Section 30260 of the Coastal Act states:

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

In this case, the project site and adjacent parcels are the only parts of the City's coastal zone, outside of the port, that are protected for industrial uses. As the certified City of Long Beach LCP states, land should be preserved for industry and manufacturing where industries are protected from non-industrial users that may object to the operating characteristics of industry (Section 21.33.020.C). These Industrial uses include facilities such as construction yards with heavy equipment, chemical manufacturing plants, oil refineries, rail yards, food processing plants, or energy generation and seawater desalination. Industrial land should be preserved for existing and future industry because it is usually not feasible or safe to place industrial uses near residential neighborhoods or public recreation areas. It is even more unlikely that any existing land uses can be replaced by new industrial uses, so it is important to preserve the finite amount of industrial land that now exists.

If it can be determined that the project site is not needed for current or future industrial uses, the City can process an LCP amendment that proposes to change the land use designation of specific industrial lands. In this case, the City did not process any LCP amendment to change the land use designation from industry to commercial. The City approved a conditional use permit for the proposed commercial retail use on the industrial land, thus overriding the provisions of the certified LCP. Using such a method to override the list of permitted land uses set forth in the certified LCP will prejudice the entire LCP; as such an override could negate the regulatory effect and land use planning reflected by the certified LCP. In fact, if the proposed commercial land use could be approved on the project site (in direct contradiction to the LCP), then commercial uses could be approved throughout SEADIP Subarea 19 and on any of the nearby industrially-designated lands in the areas that are now used for energy production and tank farms, leaving no land for industry.

Additionally, the approval of a land use that is not consistent with the certified plan for the area may result in unanticipated and cumulative impacts to the adjacent area (e.g. other tank farms, the traffic system, the Los Cerritos Wetlands and open spaces, etc.). The certified specific

plan for the project area (SEADIP - Southeast Area Development and Improvement Plan) was developed in the 1970s and needs to be updated in order to address current concerns, issues and land use regulations. The City and the SEADIP local community advisory group are currently having meetings regarding the update of the SEADIP plan. The City should develop an updated plan for the area before any new subdivisions are approved or new land uses established. Alternative land uses for the site need to be considered (e.g., coastal-dependant industry and recreation). 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 – Special Purposes):

“Goal a) To preserve open space needed for utilities, communications and transportation facilities, sites and corridors.”

Conclusion

The local coastal development permit authorized a land use that is not consistent with the certified LCP. The City's action does not preserve the industrial site for such uses. The City's approval of a land use that is not consistent with the certified LCP would prejudice the future LCP decisions for the SEADIP area. Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. For all the reasons cited above, the coastal development permit is denied.

D. Coastal Access - Traffic Congestion

The Coastal Act requires that development shall not interfere with the public's ability to access to the coast.

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.

Congested roadways interfere with public access. The Studebaker Road/Second Street corridor, where the proposed development is located, provides a direct vehicular link between the Southern California freeway system, specifically I-405 and I-605, and Pacific Coast Highway (State Highway One). Pacific Coast Highway provides access to all the beaches in Orange County. Second Street provides access to the coastal recreation areas in the City of Long Beach. Therefore, the traffic congestion that occurs on Studebaker Road and Second Street can directly affect the public's ability to access the coast.

Several of the intersections near the proposed development are already at Level of Service (LOS)⁵ E and F, and the proposed project will only add more vehicles to the roadways. The

⁵ Level of Service (LOS) A means excellent operation/free flow, B means very good, C means good/slight delays, D means fair/noticeable delays and queuing, E means poor/long delays, and F means forced flow/congestion.

peak volume of traffic generated by the proposed project would occur on weekends and would correspond with the peak recreational traffic that uses the nearby freeway interchanges (I-405, I-605, Route 22), Studebaker Road, Pacific Coast Highway and Second Street to access the beaches and marinas in Long Beach and Orange County (Exhibit #2). The applicants, however, state that the traffic impacts of the proposed project can be mitigated with the proposed intersection and traffic signal improvements. The proposed traffic mitigation improvements include: an enlarged and improved intersection of Studebaker Road and Loynes Drive, new north and southbound traffic lanes added to Studebaker Road within the existing paved right-of-way, and installation of a new synchronized traffic signal system along Studebaker Road.

It should be noted that the addition of a southbound traffic lane on Studebaker Road would eliminate the paved shoulder lane that is currently used by cyclists and pedestrians, particularly on weekends. Elimination of this lane conflicts with the policy of the certified LCP.

Policy No. 4 of the certified City of Long Beach LCP (Page II-2) states

“Increase pedestrian and bicycle access opportunities.”

The applicants' traffic analysis for the proposed development, however, fails to take into account the cumulative impact of significantly more traffic that would be generated in the project area should their argument prevail that commercial retail uses can be approved in SEADIP Subarea 19 (even though the certified LCP designates the subarea for industrial uses). The applicants assert that SEADIP Subarea 19 can be developed with non-industrial commercial uses like a Home Depot store and restaurants, uses that generate significantly more traffic than the existing industrial uses in Subarea 19. If the applicants' (and City's) interpretation of the land use controls is correct, then all of SEADIP Subarea 19, which includes all land fronting on the east side of Studebaker Road between Second Street and Seventh Street, can be developed with commercial uses that generate much more traffic than currently exists. The cumulative effect of the traffic from a commercially-developed Subarea 19 would have significant adverse effects on coastal access by making it very difficult to exit from the freeway system onto Pacific Coast Highway via Studebaker Road and Second Street.

Additional traffic impacts to the SEADIP roadway system are already being contemplated by the City and other developers. For example, the site of the old Seaport Marina Hotel at the corner of Pacific Coast Highway and Second Street is ripe for redevelopment. In fact, a high density mixed-use residential/commercial project is currently seeking a local coastal development permit from the City (see Seaport Marina EIR, SCH#2005051096). Whatever project is approved to replace the old hotel will generate a significant amount of new traffic on Pacific Coast Highway, Studebaker Road and Second Street. In addition, the City and the SEADIP local community advisory group are currently having meetings regarding the update of the SEADIP plan. Some of the SEADIP plan revisions being considered include new high-density residential uses along both sides of Pacific Coast Highway, in addition to new commercial uses. Again, such future development will cumulatively increase traffic in southeast Long Beach. That is why it is so important to develop a comprehensive land use plan for the area and to comply with it; so that the traffic impacts (and other impacts) can be addressed in a comprehensive and intelligent manner.

Therefore, the City and developers should work within the context of the existing certified LCP (i.e. SEADIP) until such time that it can develop an updated/revised plan for the entire SEADIP area. No new subdivisions or new land uses should be established that are inconsistent with the current SEADIP plan unless and until a new plan is developed and certified as part of the City's LCP. The comprehensive planning effort must include measures to protect coastal access. Existing bike routes should not be eliminated through the ad hoc addition of traffic lanes along Studebaker Road or other streets. Public Transportation should be available along major streets leading to the coast. Even if part of SEADIP Subarea 19 is deemed appropriate for a commercial use through the LCP amendment process, the cumulative effects of any new traffic must be limited in order to protect the public's ability to access the coast.

In conclusion, the potential adverse cumulative impacts to public access to the coast resulting from increased traffic have not been adequately addressed, and therefore the project cannot be found to be consistent with the public access policies of the certified LCP and Coastal Act.

E. Biological Impacts

The Open Space and Recreation Element of the City's General Plan, adopted by reference as part of the City of Long Beach certified LCP, states (Policies: Open Space Node – Alamitos Bay & Recreation Park):

“Conserve and Enhance Alamitos Bay – Recreation Park open space node by:

- e) Improving the quality of bay waters by controlling all forms of possible pollution, both in bay and in tributaries upstream.”
- i) Maintaining close surveillance over all proposed projects in the bay area through the environmental review process.”

The project site itself, an industrial tank farm, currently provides a very limited amount and quantity of habitat for wildlife. The site is mostly paved and unvegetated, except for a 313-foot long asphalt-lined drainage channel near the middle of the site where some wetland vegetation (giant horseweed) has been documented by the applicants' biologist [Jurisdictional Delineation for Proposed Home Depot Project, Long Beach, by Glenn Lukos Associates, March 7, 2007]. However, the site is bordered by the waters of Alamitos Bay (the tidal channels on the north and south sides), is near the west bank of the San Gabriel River Estuary, and is immediately east of (across Studebaker Road) the Los Cerritos Wetlands (Exhibit #3).

The relative lack of human activity at the project site and the proximity of the project site to the water and large open space areas make it attractive for some types of animals. Several types of birds, for example, have been observed at the site (e.g., humming birds, doves, gulls, egrets, herons, killdeer, swallows, black phoebes, pigeons, sparrows, starlings, crows, falcons and hawks). Additionally, the project site has earthen berms that provide potential habitat for burrowing owls, and there have been reports of herons and egrets nesting on the tops of the oil tanks. No sensitive vegetation or animal species, however, were documented on the site by the applicants' biologist [Biological Technical Report for Home Depot, Long Beach, by Glenn Lukos Associates, March 2007].

The natural habitat areas adjacent to the project site (two tidal channels, the Los Cerritos Channel, the San Gabriel River estuary, and the Los Cerritos Wetlands) would be affected by the proposed development (or other development). The potential adverse impacts to biological resources include loss of habitat (burrowing owls), elimination of a small wetland in an asphalt-lined drainage channel, reduced water quality from site drainage, lighting impacts during the nighttime, and increased human presence and automobile traffic.

The proposed project includes specific mitigation measures to minimize the impacts to the neighboring wetlands and address the project's biological impacts, including: limiting the hours of the proposed stores' operation, limiting the lighting aspects of the development, filtering the runoff from the development that would drain into Alamitos Bay (and the Los Cerritos Wetlands) or the San Gabriel River, installation of eco-friendly landscaping.

However, if, as the applicants assert, SEADIP Subarea 19 can be developed with non-industrial commercial uses, then there would be a cumulative increase in human activity, traffic and lighting throughout southeast Long Beach 19 than there would be with the existing industrial uses. This could result in significant cumulative adverse impacts on the neighboring sensitive wetland areas. The potential cumulative impacts from increased commercial uses on surrounding wetlands should be addressed through a comprehensive update of the LCP and not through an individual permit action.

In conclusion, the potential adverse cumulative impacts to biological resources resulting from the commercial development of SEADIP Subarea 19 have not been adequately addressed, and therefore the project cannot be found to be consistent with the open space policies of the certified LCP.

F. Public Safety

Public safety is one of the main reasons why cities establish and protect industrial districts. The certified City of Long Beach LCP acknowledges that industrial land needs to be separated from non-industrial users that may object to the operating characteristics of industry (Section 21.33.020.C). Dangerous chemicals, high-voltage electricity and hot steam are part of the manufacturing process that currently exists at the project site. In fact, part of the proposed project includes a subdivision to create a new 1.1-acre lot within the project site in order to retain some above-ground fuel storage tanks and a retention basin still being used for energy generation (Exhibit #4). Energy production and manufacturing are industrial land uses that the certified LCP protects in the project area. The development of a commercial use that hopes to attract thousands of customers each day would substantially increase the risk of high casualties in the event of an accident at one of the industrial facilities that exists next to the project site. Currently, the general public has no access to the project area, as it is a secure industrial facility.

AES Alamitos, LLC (AES), the owner of the gas-fired power plant located on the northern side of the project site, has expressed concerns (and filed a lawsuit) about the risks to the public that the proposed project entails. AES objects to the project as currently proposed because it would encourage the congregation of people in and around the pre-existing industrial activities in the immediate area. AES is concerned about liability should someone be harmed by an industrial accident, and does not want to limit or reduce the industrial activities that have

historically occurred in the area. The proposed commercial development within the existing industrial area has the potential to prevent or preclude the continuance of the risk-inherent industrial activities that have been in operation there for many years.

The risk to the public is acknowledged in the EIR for the proposed project, and the EIR requires public agencies to develop emergency evacuation plans for the proposed commercial development. AES has expressed concern that the EIR could require AES to modify or limit its operations in order to mitigate the adverse effects of the applicants' proposed development. Additional mitigation measures are supposed to be developed in the future, but the only sensible mitigation measure is to not put the public in harm's way in the first place. The primary reason that industrial uses are separated from commercial and residential uses is to avoid public safety hazards and conflicts.

Any emergency evacuation or risk management plans should be developed and approved by the appropriate agencies prior to the submittal of a permit application or LCP amendment so the public, AES and the Commission can evaluate these potential risks as part of the permit or LCP review process. Otherwise, the public, AES and the Commission do not have the ability to review and consider these potential hazards.

The industrial districts are always separate from residential and commercial zones so that industries that may not be desirable in other districts may have a place to locate and where *existing industries* can be protected from non-industrial users that object to the operating characteristics of industry. Therefore, the coastal development permit is denied because the proposed commercial use is inconsistent with the City's certified LCP which designates the project site and surrounding area for industrial uses.

G. LCP Open Space Requirement

The certified City of Long Beach LCP requires a minimum of thirty-percent (30%) of the project area be preserved as usable open space (PD-1, SEADIP). Building footprint, streets, parking areas and sidewalks adjacent to streets shall not be considered usable open space. The City-approved development would maintain only 22 percent of the project site as usable open space. The applicants have revised the proposed site plan to provide 29.67 percent open space. The open space provided on the site is necessary to maximize the width of a buffer to separate the areas of intense human activity from the nearby sensitive habitat areas. However, since no development is being approved, there is no new open space requirement.

H. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

- (a) Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3

(commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

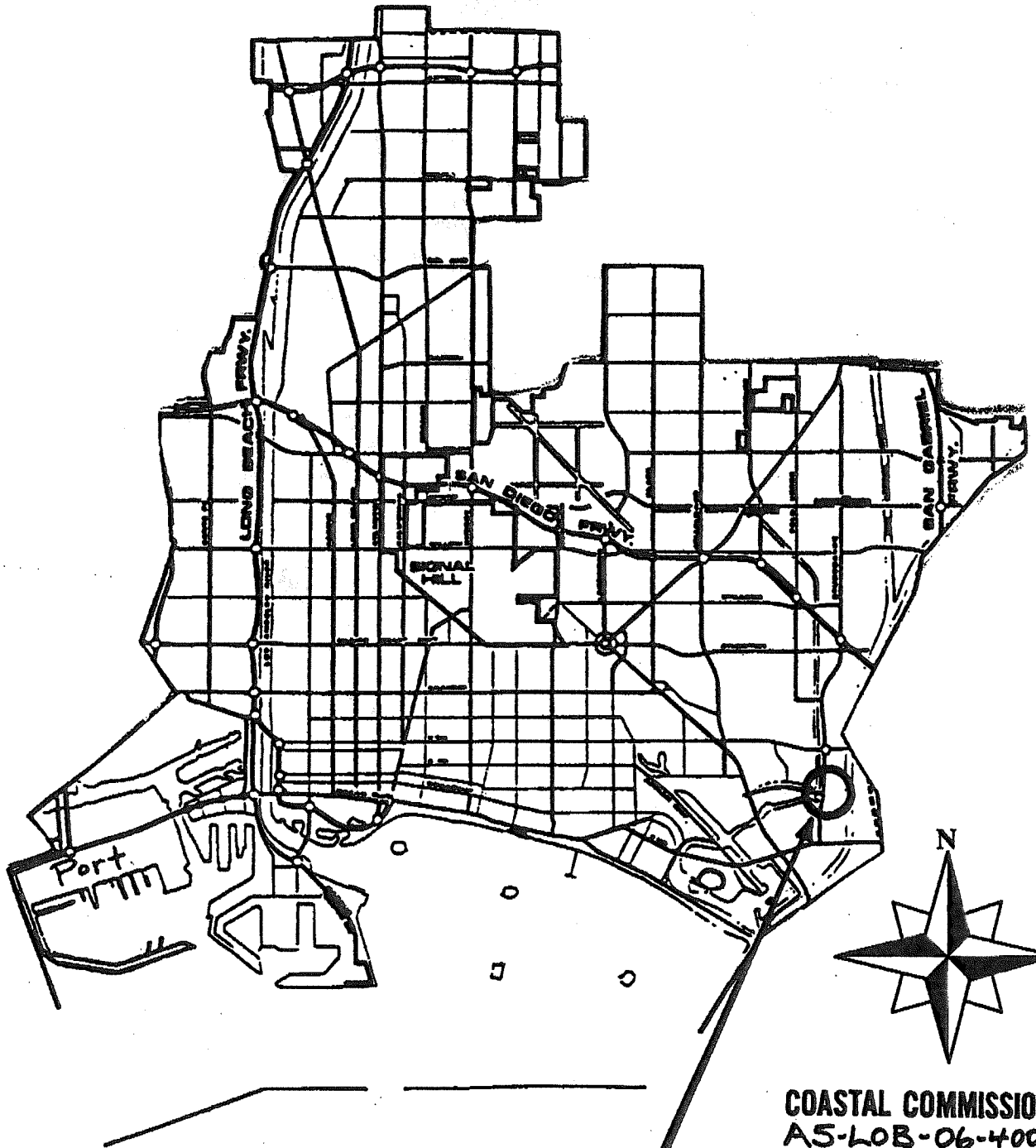
The Commission certified the City of Long Beach Local Coastal Program on July 22, 1980. For the reasons stated in this report, the proposed development is not consistent with the certified City of Long Beach LCP. The proposed commercial land use is not consistent with the certified LCP. The approval of a land use that is not consistent with the certified plan for the area may result in unanticipated and cumulative impacts to the adjacent area (e.g. other tank farms, the traffic system, the Los Cerritos Wetlands and open spaces, etc.). The City's approval of a land use that is not consistent with the certified LCP may prejudice the future LCP decisions for the SEADIP area. Therefore, the Commission denies the coastal development permit. Denial of the proposed development will not prejudice the ability of the City to prepare an LCP update for the area that is in conformity with the provisions of Chapter 3 of the Coastal Act.

I. California Environmental Quality Act

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a 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 coastal development permit is denied because all adverse impacts have not been minimized and there are feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Feasible alternatives include a wide array of future coastal-dependant industrial uses. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

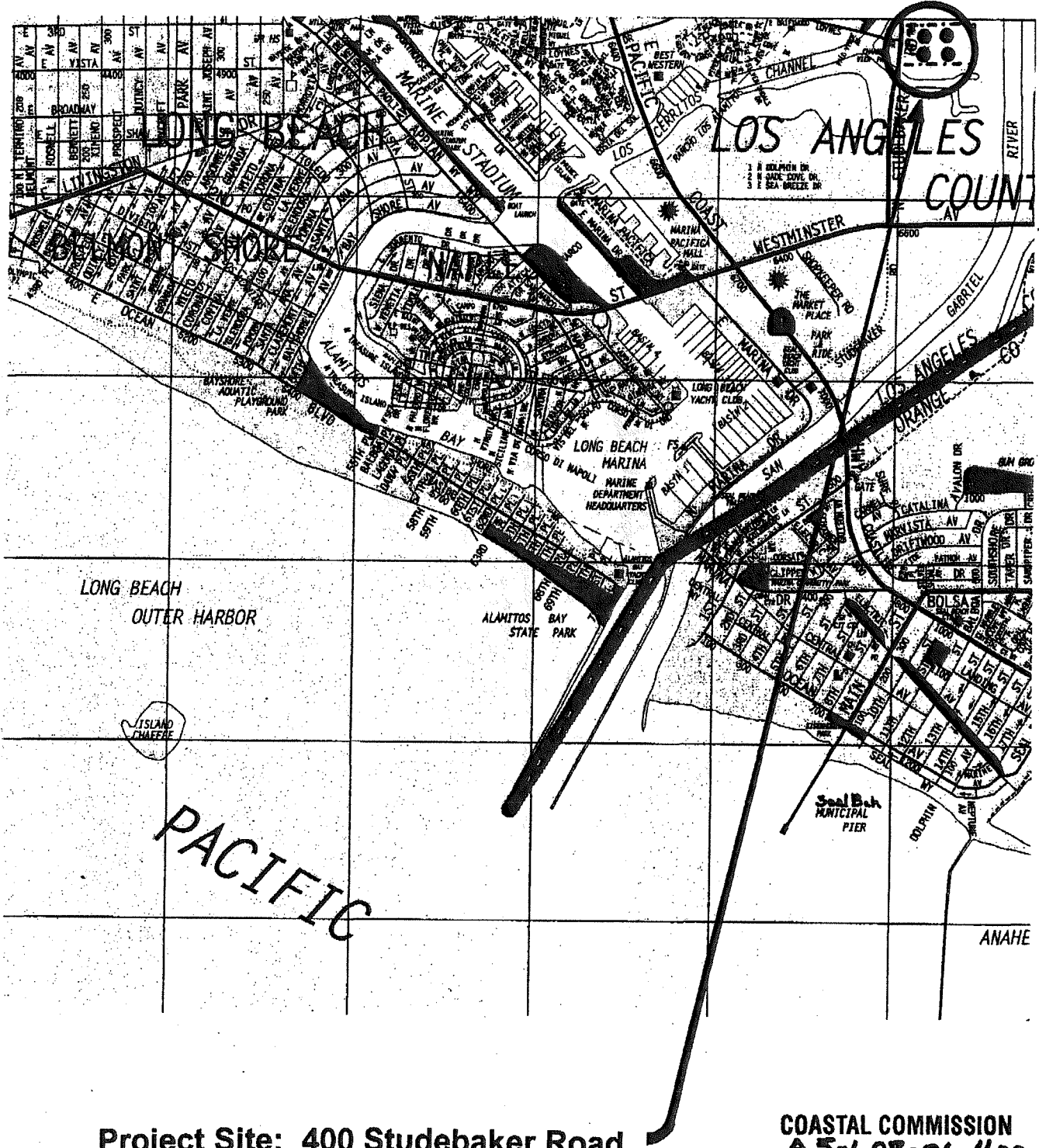
City of Long Beach



Site

COASTAL COMMISSION
A5-LOB-06-400

EXHIBIT # 1
PAGE 1 OF 1



Project Site: 400 Studebaker Road

**COASTAL COMMISSION
A5-LOB-06-400**

EXHIBIT # 2

PAGE 1 OF 1

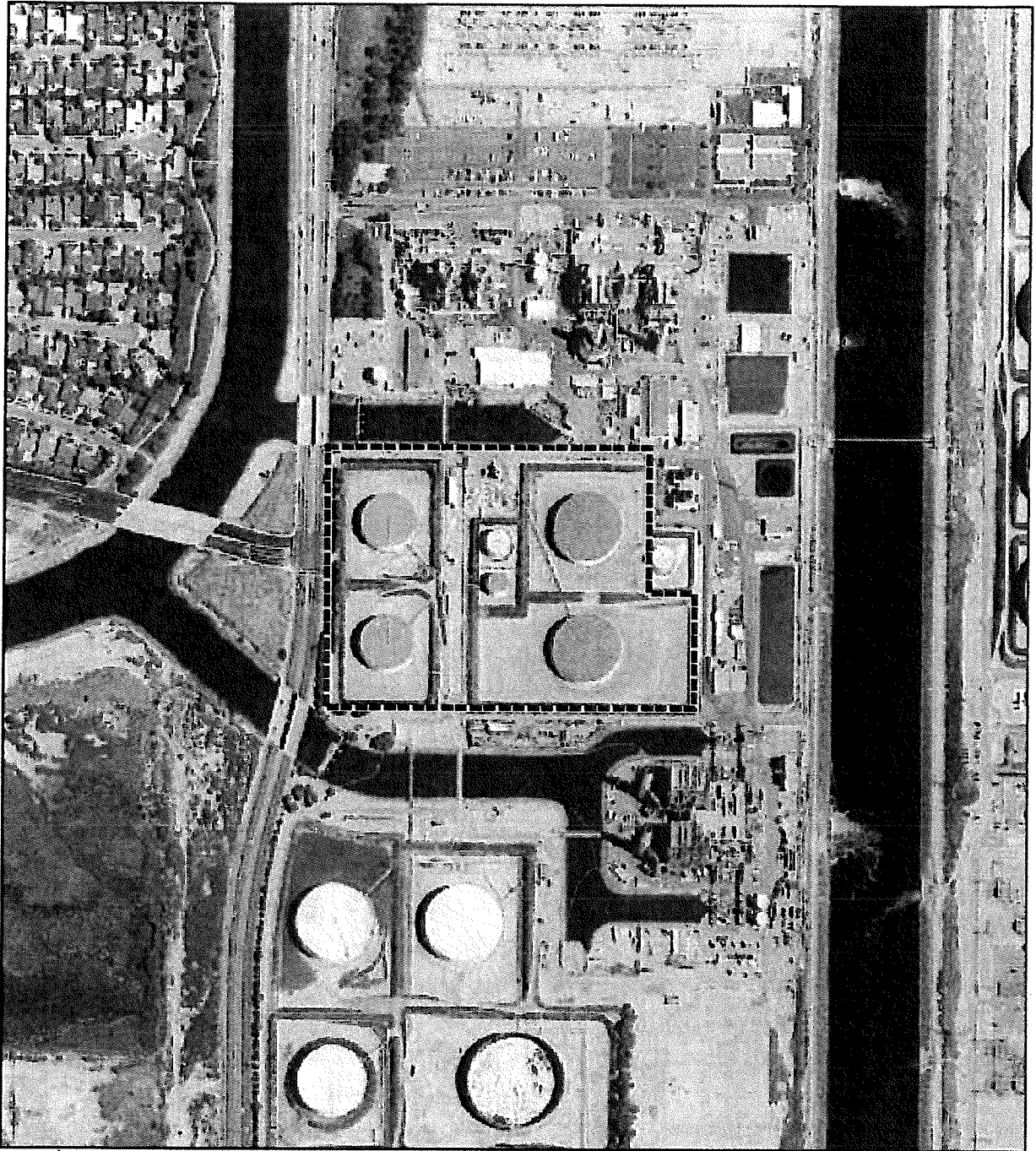


FIGURE 3.2

LSA

Legend

 Project Boundary



0 200 400

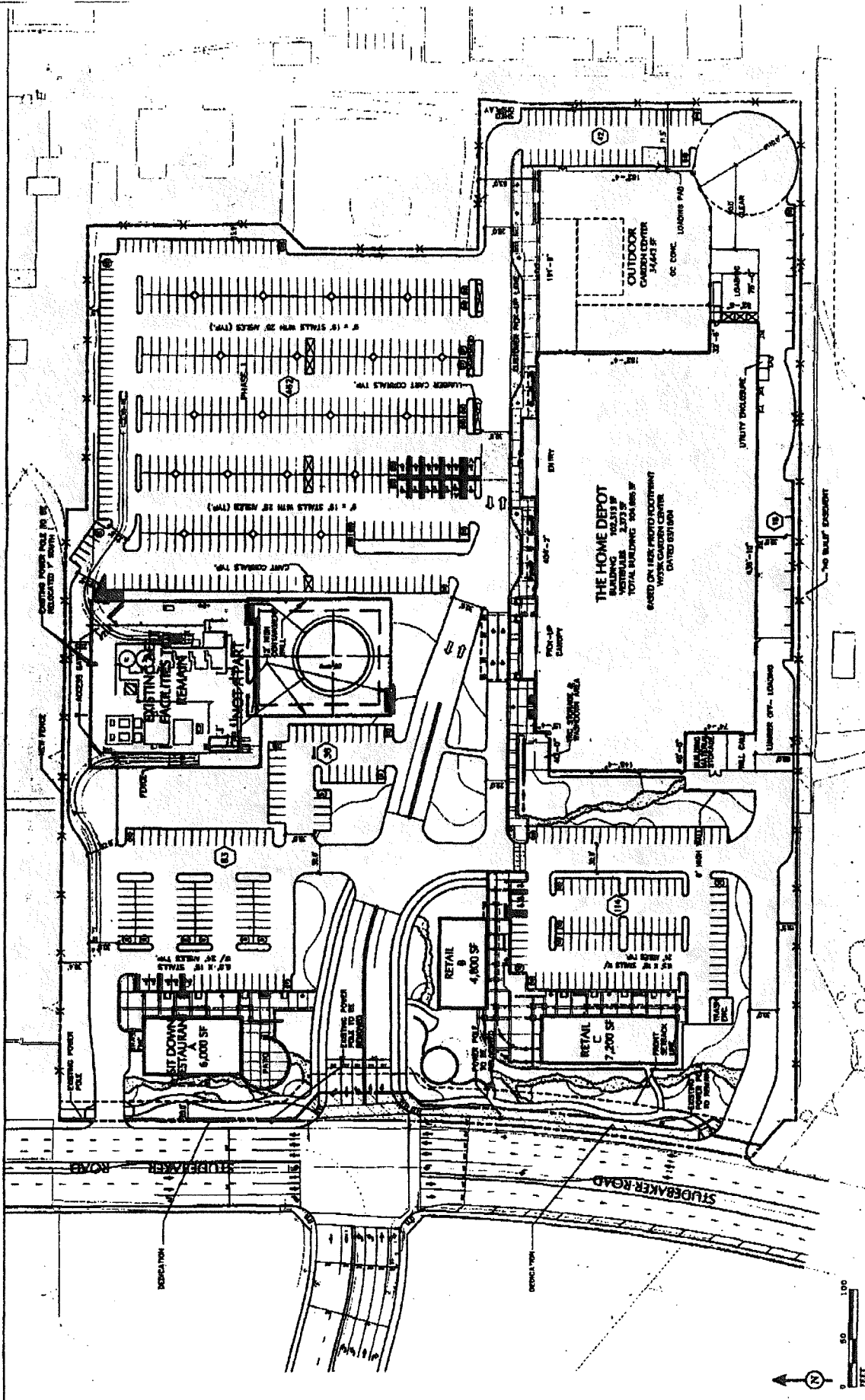
FEET

SOURCE: EAGLE AERIAL (3/2004)

1:\CLB430\G2HD ELB\Aerial.cdr (1/6/05)

Home Depot East Long Beach
Aerial Photo

Exhibit #3
Project Site
Existing Tank Farm



Proposed Site Plan

LSA

Recording Requested by:
City of Long Beach

97-1958950

Stewart Title
When Recorded Mail to:

Zoning Administrator
Department of Planning and Building,
8th Floor, 333 W. Ocean Blvd.
Long Beach, CA 90802

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
11:41 AM DEC 12 1997

RECEIVED
South Coast Region

JAN 19 2007

FEE \$100.00

040020644

D.A. FEE Code 20

CALIFORNIA
COASTAL COMMISSION

Space above this line reserved for recorder's use

**GRANT OF
CERTIFICATE OF COMPLIANCE
IN CONJUNCTION WITH A LOT LINE ADJUSTMENT**

NCPF Code 19 \$96.00

Application: LLA 9704-08 - (Parcel 2)
Property Owner: Southern California Edison Company
Property Location: 680 Studebaker Road, Long Beach, CA 90803
Mailing Address: P. O. Box 800 - 224 Walnut Grove Avenue, Rosemead, CA 91770

The following real property, as of the date of recordation of this document (Parcel 2 of LLA 9704-08), has been determined to be in compliance with applicable provisions of the Subdivision Map Act of the State of California (Section 66410 et. seq., of the California Government Code) and the Subdivision Ordinance of the City of Long Beach, California, enacted pursuant thereto. The parcel described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Future development of the parcel may require issuance of a permit or permits, or other grant or grants of approval.

The subject Certificate of Compliance is granted for the parcel of land being a subdivision of that portion of the East one-half of Section 2, Township 5 South, Range 12 West, in the Rancho Los Alamitos, as shown on Partition Map recorded in Book 700, Page 141 of Deeds, in the Office of the Los Angeles County Recorder. All necessary easements are provided by an agreement which will be recorded concurrently with recordation of this Certificate of Compliance.

SEE APPROVED GENIEIT P.E.B

Attached are the legal descriptions of the parcel and a survey plot plan which are hereby incorporated by this reference as a part of this Certificate.

Department of Planning and Building, City of Long Beach

By: Robert Benard
ROBERT BENARD
Zoning Administrator

12/10/97
Date

ACKNOWLEDGMENT

PUBLIC AGENCY (CC 1191)
State of California, County of Los Angeles

On December 10, 1997 before me, KATHLEEN BANAMA, a Notary Public in and for said State, personally appeared Robert Benard, known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Kathleen Banama



C:\wp\wd1\cc\9704-08.ZLA

COASTAL COMMISSION
A5-LOB-06-400

EXHIBIT # 5
PAGE 1 OF 4

L.L.A. 9704-09

SHEET 1

2

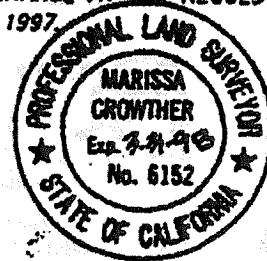
**FINAL PLOT PLAN FOR LOT LINE ADJUSTMENT
IN THE CITY OF LONG BEACH, STATE OF CALIFORNIA**

BEING A FINAL PLOT PLAN OF A PORTION OF SECTION 2, TOWNSHIP
5 SOUTH, RANGE 12 WEST, IN THE RANCHO LOS ALAMITOS, AS
SHOWN ON PARTITION MAP RECORDED IN BOOK 700, PAGE 141 OF DEEDS,
RECORDS OF LOS ANGELES COUNTY, CALIFORNIA

SURVEYOR'S CERTIFICATE:

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED
UPON CRITERIA ESTABLISHED BY THE DIRECTOR OF PUBLIC WORKS AND IN
CONFORMANCE WITH THE APPLICABLE LOCAL ORDINANCE AT THE REQUEST
OF SOUTHERN CALIFORNIA EDISON CO. APRIL 14, 1997.

Marissa Crowther 12-5-97
Marissa Crowther, PLS 6153 Date



DIRECTOR OF PUBLIC WORKS CERTIFICATE:

THIS PLAT HAS BEEN EXAMINED FOR CONFORMANCE WITH THE
REQUIREMENTS OF LOCAL ORDINANCE THIS 7th DAY OF
DECEMBER 1997

Director of
Public Works / By: Edward J. Ruiz

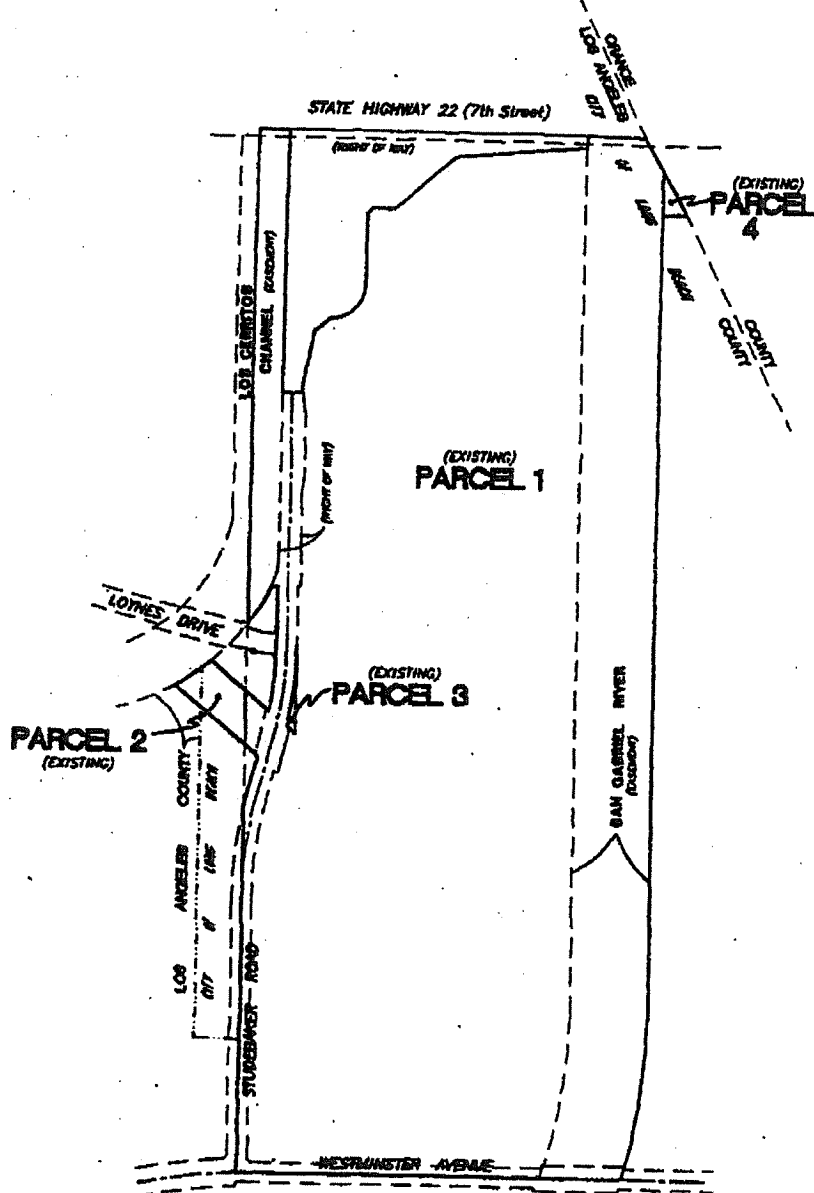
97-1958950

L.L.A. 9704-09

SHEET 2

FINAL PLOT PLAN FOR LOT LINE ADJUSTMENT
IN THE CITY OF LONG BEACH, STATE OF CALIFORNIA
Existing Lot Lines

3



97-1958950



Before Lot Line Adjustment

EXHIBIT # 5
PAGE 3 OF 4

SHEET 3

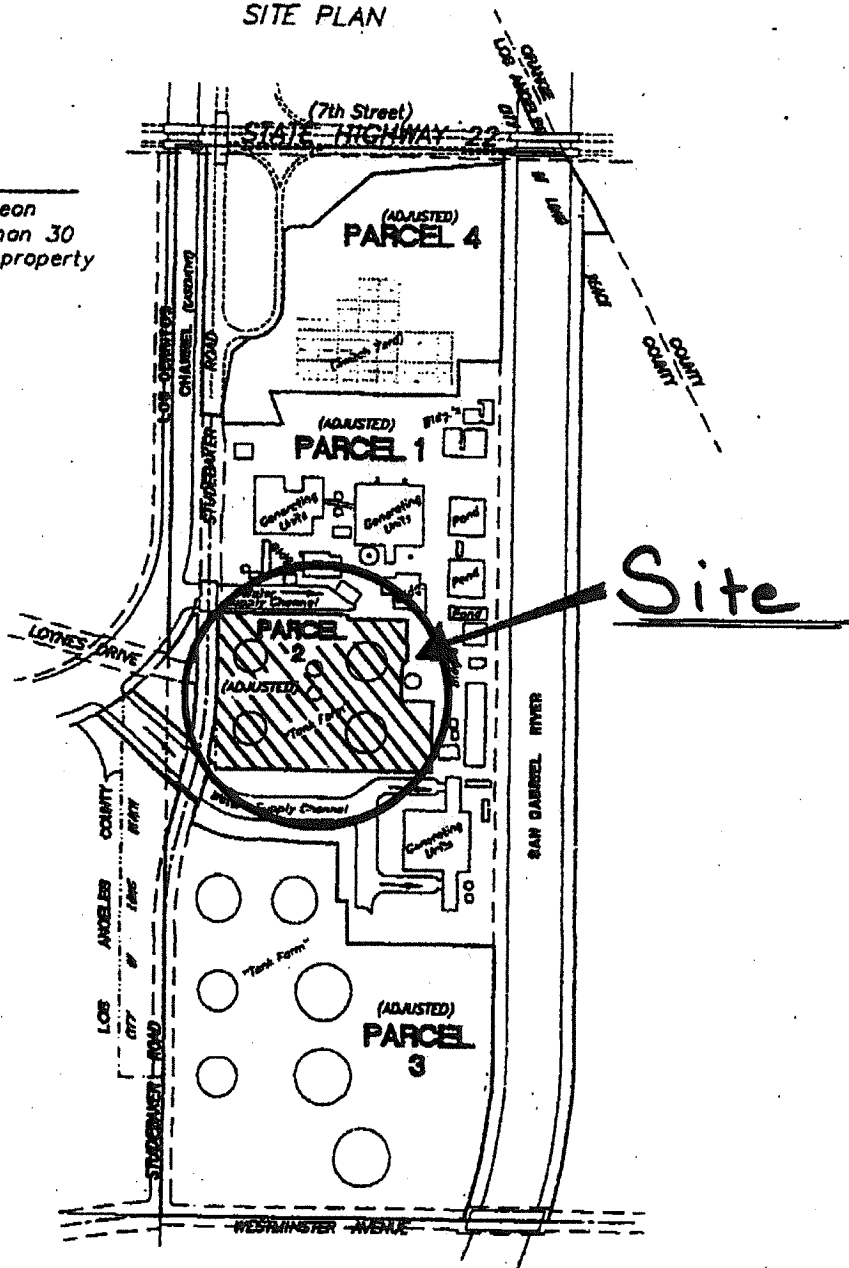
L.L.A. 9704-09

FINAL PLOT PLAN FOR LOT LINE ADJUSTMENT IN THE CITY OF LONG BEACH, STATE OF CALIFORNIA

SITE PLAN

4

Note:
Buildings shown hereon
are located more than 30
feet from adjusted property
lines.



97-1958950

After Lot Line Adjustment

EXHIBIT # 5
PAGE 4 OF 4



WESTON BENSHOOF
 ROCHEFORT RUBALCAVA MACCUISH LLP
 ATTORNEYS AT LAW

RECEIVED
 May 8, 2007 South Coast Region
 MAY 8 2007
 CALIFORNIA
 COASTAL COMMISSION
 VIA FACSIMILE AND U.S. MAIL

(213) 576-1130
 rponiale@wbcounsel.com

Jack Ainsworth, Deputy Director
 California Coastal Commission
 South Coast District
 200 Oceangate, 10th Floor
 Long Beach, CA 90802

Re: City of Long Beach Home Depot Eastside Design Center;
California Coastal Commission Appeal Number A-5-LOB-06-400

Dear Mr. Ainsworth:

This law firm represents Home Depot, U.S.A., Inc. with respect to the proposed development of the above-referenced project (the "Project"), and served as counsel during the processing of the local approvals. The purpose of this letter is to provide an analysis of the land uses authorized under the provisions of the City of Long Beach's ("City's") land use regulations and Local Coastal Program ("LCP"), both of which govern development of the Project.

As you know, the City issued several local entitlements for the Project – including a conditional use permit ("CUP") specifically authorizing the proposed uses. We understand that California Coastal Commission ("Commission") staff questions whether the Project's uses would be consistent with the City's regulations and LCP. In particular, staff has asserted that only those uses permitted by right at the project site should be authorized, and that no conditionally-permitted uses (including those proposed as part of the Project) may be developed. This letter addresses those concerns.

I. Introduction

The Project consists of a proposed Home Depot store and associated retail and restaurant uses on an approximately 16.7-acre site at the corner of Studebaker Road and Loynes Drive in the southeastern portion of the City (the "Project Site"). Development of the Project Site is governed by the City's development regulations, as well as the provisions of the LCP as certified by the Commission. The City approved

333 SOUTH HOPE STREET • SIXTEENTH FLOOR • LOS ANGELES, CA 90071 • TEL 213 576

2801 TOWNSGATE ROAD, SUITE 215 • WESTLAKE VILLAGE, CA 91361 • TEL 805 497 94
 971943.3

www.wbcounsel.com

EXHIBIT # 7
 PAGE 1 OF 9

local entitlements for the Project, including a local coastal development permit ("CDP") under the LCP, in October 2006. Various appellants appealed the local CDP to the Commission and Substantial Issue was found in November 2006.

The Project Site is located within the boundaries of the City's Southeast Area Development Improvement Plan ("SEADIP"), a Specific Plan adopted by the City in 1977 (and subsequently amended and restated on several occasions) to provide detailed standards to govern development within its boundaries. SEADIP divides the southeastern part of the City into 33 subareas, and sets forth different uses and development standards to govern each subarea. The Project site is located within Subarea 19.

The most recent restatement of SEADIP was adopted by the City on January 3, 2006 in an ordinance certified by the Commission as amendments to the LCP on May 10, 2006. These updates to SEADIP and the LCP contemplate the same types of uses as are proposed for the Project, as explained below. Moreover, the Project is consistent with both the terminology of SEADIP and the City's and Commission's previous interpretations of the same.¹

II. The City's Land Use Regulations Authorize Home Depot Uses As Conditionally-Permitted At The Project Site.

As the City determined when approving the entitlements for the Project, including both a conditional use permit ("CUP") and a local CDP, the City's governing land use documents and policies authorize the Project and its uses at the Project Site. The Project Site is located in an area identified by SEADIP as appropriate for uses consistent with the City's General Industrial (IG) zone, which is defined by the City's Municipal Code to allow the same type of uses proposed for the Project, as long as a CUP is obtained. Because a CUP was approved by the City for the Project, the Project satisfies the City's land use requirements.

¹ This letter does not address the consistency of the Project with the City's General Plan or zoning, as those issues have not been raised by Commission staff. For background reference, the Project Site is designated as Land Use District No. 7, Mixed Use, and the City's zoning for the Project Site is PD-1 (Planned Development District 1). The City's Planned Development Districts are special planning and zoning areas established for specific areas of the City. PD-1 is the City's zoning designation for SEADIP.

A. SEADIP And The LCP Incorporate The IG Zone Provisions Of The City's Municipal Code.

As certified as part of the LCP and specifically incorporated by reference on page III-S-1, SEADIP provides detailed regulations governing the authorized uses and development standards for its 33 subareas. Many of SEADIP's provisions incorporate various terms from the City's Municipal Code applicable to development and land use.

With respect to Subarea 19, SEADIP specifically incorporates the provisions of the Municipal Code with respect to the IG zoning district:

SUBAREA 19

- a. Use: Industrial
- b. This area is fully developed in accordance with the provisions of the *IG zone*.
- c. Commercial storage/self storage (21.15.570) shall be allowed by Conditional Use Permit (21.52.219.5).

(See Long Beach Ordinance No. ORD-06-0001, a copy of which is attached hereto as Exhibit A, at p. 24, emphasis added.)²

Based on the SEADIP language describing Subarea 19, it is reasonable to assume that any development of the site must be carried out in accordance with the provisions of the IG zone, the details of which being found in the Municipal Code.

Yet it appears that Commission staff has interpreted this provision as referring only to the current state of development in Subarea 19, and not future uses. As a result, a conclusion that the only uses authorized in Subarea 19 would be those permitted by right under the Municipal Code's IG zone provisions has been reached.

² Ordinance No. ORD-06-0001, adopted by the City on January 3, 2006, was certified by the Commission as amending the LCP on May 10, 2006.

Jack Ainsworth
May 8, 2007
Page 4

Nothing in SEADIP or any other City land use regulation suggests that the reference to the IG zone in Subarea 19 should be interpreted in any manner different from the interpretation of the IG zone in the Municipal Code. As explained below, the Municipal Code authorizes development of several permitted and conditionally-permitted uses in the IG zone (including those uses proposed as part of the Project).

B. The City's Municipal Code Allows Home Depot Uses In The IG Zone.

Since the Project contains uses that would be conditionally-permitted under the Municipal Code's IG zoning provisions, the Project could be developed in the IG zone and therefore SEADIP Subarea 19 as well. The IG zone is set forth in the Municipal Code as the City's "General Industrial" district, which authorizes a broad range of allowable uses, many of which may not be desirable in other districts. (Long Beach Municipal Code § 21.33.020C.)³

Table 33-2 of the City's Municipal Code sets forth the types and SIC codes of uses permitted, conditionally-permitted and not permitted in the IG zone. Included in the broad range of uses conditionally-permitted in the IG zone are general retail and hardware and building supply uses, such as those associated with a Home Depot. Table 33-2 provides in relevant part:

³ Municipal Code Table 33-1 categorizes these various uses according to SIC ("SIC") codes established by the U.S. Government. (Long Beach Municipal Code § 21.33.060.) A Home Depot store would likely incorporate several types of uses, such as: 1) building materials (SIC use code 52); hardware sales (SIC use code 52); garden supply (SIC use code 52); Home furniture sales (SIC use code 57); furnishings (SIC use code 57); equipment (SIC use code 57); and miscellaneous retail (SIC use code 59). (See Municipal Code Table 33-1, which is included in Municipal Code Chapter 21.33, Industrial Districts, ~~attached as Exhibit B, at pp. 5-8.~~)

Table 33-2
 Uses In Industrial Districts

Use	IL	IM	IG	IP	*Notes and Exceptions
...					
7. Retail Trade				See item 10 in this table.	a. Primarily, these uses are intended to serve nearby industries and employees, and the retail's proximity will provide convenience with minimal impact on the retail operations.
7.1 Eating places without drive-thru service (SIC code 5812*)	Y	Y	Y		
...					
7.4 All other retail trade (SIC codes 52 through 57, 59)	Y	C	C		
7.5 Superstores					
(Retail > 100,000 sf with > 10% Floor Area nontaxable merchandise)	N	N	N	N	For superstore definition, see Section 21.15.2985.
...					

(Exhibit B at p. 11; bold and emphasis added.)⁴

Because Table 33-2 includes "All other retail trade" uses (SICs 52 through 57 and 59) as conditionally permitted uses in the IG zone, and those use classifications

⁴ The endnotes to Table 33-2 explain the letter codes for the respective uses: "Y = Permitted by right," "N = Not permitted" and "C = Conditional use permit required."

May 8, 2007

Page 6

would apply to the uses at a Home Depot store, a Home Depot would be authorized in that zone pursuant to a CUP.⁵

Similarly, because SEADIP Subarea 19 incorporates these regulations governing the uses in the IG zone, a Home Depot store (and the other retail establishments associated with the Project) would also be authorized in Subarea 19, upon issuance of a CUP.

III. The City Interprets The Provisions Of SEADIP To Incorporate The Municipal Code's Use Standards, And The Commission Has Not Disagreed.

In reliance on this reading of its land use regulations, the City has already approved projects for which SEADIP incorporates use regulations set forth in the Municipal Code. Significantly, the City previously approved another conditionally-permitted use in Subarea 19 adopting the same interpretation, and the Commission approved that project's CDP after a *de novo* review, giving no indication of the concerns which are now being raised. Accordingly, there is no basis for the City or the Commission to adopt a different interpretation with respect to this Project.

A. Another Conditionally-Permitted Use Has Been Approved In SEADIP Subarea 19.

In a case that closely mirrors the land use issues at issue in this Project, the City recently approved a CUP for another project located in the very same SEADIP Subarea 19 as the Project.

Governed by the same SEADIP and Municipal Code provisions implicated with respect to this Project, the City in 2003 approved a seawater desalination facility located in Subarea 19, just a few hundred feet from the Project Site. As explained by the

⁵ As set forth in Table 33-2 of the Municipal Code, the restaurant uses planned as a part of the Project would be permitted by right in the IG zone. Commission staff has not indicated any concerns regarding these uses.

City's Planning Commission staff report⁶, the desalination facility was required to obtain a CUP based on the use code and zoning district:

"The proposed facility, categorized as a water supply system (SIC Code 494), is *conditionally permitted* in all industrial zones..."

(A copy of this staff report is attached hereto as Exhibit C; see p. 2, emphasis added.)

The same Table 33-2 identified above in the City's Municipal Code confirms that a water supply system with SIC Code 494 is a conditionally-permitted use in the IG zone, and that such a use would only be authorized upon the issuance a CUP. It provides in pertinent part:

**Table 33-2
 Uses In Industrial Districts**

Use	IL	IM	IG	IP	*Notes and Exceptions
5.5 Electric, gas, and sanitary services (SIC code 49, except 492 and 4932. Includes refuse transfer stations)	C	C	C		

(See Exhibit B, at p. 11.)

Based on this reading of the provisions of SEADIP in tandem with those of the Municipal Code, the City on May 1, 2003 approved a CUP (and a local CDP) for the desalination facility in SEADIP Subarea 19. The Commission upheld the CDP on August 7, 2003 after a *de novo* review. (A-5-LOB-03-239/E-03-007). The fact that the desalination facility is a conditionally-permitted use in the IG zone did not impede its

⁶ The first page of the City's staff report is erroneously dated May 1, 2002 but the rest of the report and the conditions of approval are all dated May 1, 2003.

Jack Ainsworth
May 8, 2007
Page 8

Subarea 19 entitlement before either the City or the Commission. The same logic and standard of review must apply to the Project here.

B. The City Staff Report For The Project Confirms That Conditionally Permitted Uses Are Authorized At The Project Site in SEADIP Subarea 19.

Just as the City interpreted SEADIP's Subarea 19 provisions to authorize uses conditionally-permitted in the IG zone with respect to the desalination plant, the City again confirmed this interpretation in its staff report for this Project.

The August 17, 2006 staff report to the City Planning Commission recommends approval of the Project, in part because:

"This subarea [19] of SEADIP permits development and uses consistent with the provisions of the General Industrial (IG) zoning district."

(A copy of the Staff Report is attached as Exhibit D; see p. 3.)

Based on this interpretation of the governing land use regulations, the City approved the Project on October 3, 2006 given the fact that its uses would be conditionally-permitted in the IG zone.

III. Conclusion

On two separate occasions for two separate developments in Subarea 19 (*i.e.*, the desalination facility and the Project), the City both times applied a consistent interpretation of SEADIP to allow uses in Subarea 19 that are conditionally-permitted in the IG zone. With respect to the desalination facility, the Commission did not disagree and also approved that project *de novo*. To find otherwise with respect to the Project at issue here would be inconsistent with prior City and Commission action, and would also ignore the language of SEADIP which incorporates all the provisions of the IG zone.

Based on the foregoing, we can find no support for staff's view that the Project is not a permitted use at the project site. We look forward to discussing this matter with you and/or members of your legal staff as soon as possible so our positions with respect to this matter can be reconciled. A member of our project team will seek to

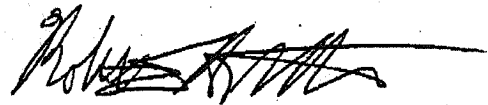
EXHIBIT # 7
PAGE 8 OF 9

Jack Ainsworth
May 8, 2007
Page 9

coordinate a meeting with your office as soon as possible. In the meantime, if you have any questions or comments concerning the foregoing, please do not hesitate to contact the undersigned.

Thank you for your attention to this matter.

Sincerely,



Robert D. Pontelle
WESTON, BENSHOOF,
ROCHEFORT, RUBALCAVA & MacCUIISH LLP

RDP/cfg
Enclosures

cc: Louise Warren, Staff Counsel
Teresa Henry, District Manager
Charles Posner, Coastal Program Analyst
Cynthia McClain-Hill, Strategic Counsel
Vansanthi Ramanathan, Greenberg Farrow
Susan McCabe, McCabe & Associates
Richard Green, Real Estate Manager, The Home Depot
Anne Jerhoff, Director Real Estate Law, The Home Depot
David Mackenbach, Studebaker LB, LLC

COASTAL COMMISSION
A5-LOB-06-400

EXHIBIT # 7
PAGE 9 OF 9

MELVIN L. NUTTER
ATTORNEY AT LAW

ARCO CENTER
200 OCEANGATE, SUITE 850
LONG BEACH, CALIFORNIA 90802-4353

Telephone (562) 432-8715
Facsimile (562) 491-0907
E-mail: MelNutter@alum.pomona.edu

June 4, 2007

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
South Coast District
200 Oceangate, 10th Floor
Long Beach, CA 90802

RECEIVED
South Coast Region

JUN 4 2007

CALIFORNIA
COASTAL COMMISSION

Re: Home Depot, Long Beach – Appeal Number A-5-LOB-06-400
Land Uses Allowable under the City of Long Beach Certified LCP

Dear Mr. Ainsworth:

This is in response to the May 8, letter you received from Robert D. Pontelle of Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP on behalf of Home Depot, U.S.A. Because the analysis set forth in the letter concerning the land uses authorized by the Long Beach Local Coastal Program (“LCP”) is flawed, appellants the Los Cerritos Wetlands Land Trust and the University Park Estates Neighborhood Association have asked me to respond.

ERRONEOUS ASSUMPTIONS MADE BY HOME DEPOT

The initial assumption, made on page 1 of the letter, that the staff position is that conditionally permitted uses are not authorized is simply wrong. Apparently, the author was referring to language on page 8 of the November 16, 2006 Staff Report that read:

“The City-approved development is a commercial land use, but not commercial self-storage. The City approved a conditional use permit for the proposed commercial retail use. Therefore, the local coastal development permit authorizes a land use that is not consistent with the certified LCP.”

In finding that the appeal raised a substantial issue, the Commission simply noted that the approval of a conditional use permit for the proposed commercial retail use violated the requirements of the certified LCP. The Commission did not suggest that conditional use permits were prohibited and did not assert that uses permitted by right were the only allowable uses. In fact, a careful reading of the of the City’s certified LCP shows that conditional use permits can be obtained for land uses allowable by the LCP.

In addition, the footnote on page 2 of the letter acknowledges that the author did not intend to address the issue of consistency with the City’s zoning ordinances. This concession reveals a fundamental misunderstanding of the nature and purpose of certified Local Coastal Programs in general and the Long Beach LCP in particular. Although the Land Use Plan

COASTAL COMMISSION
A5-LOB-06-400

EXHIBIT # 8
PAGE 1 OF 5

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
June 4, 2007
Page 2 of 5

("LUP") is a crucial part of a certified LCP, so are the Implementing Ordinances including the Zoning Ordinances ("LIP") and those ordinances cannot be ignored. That is particularly important because, in certifying the ordinances, the Commission must find that they are adequate to implement the policies of the LUP.

Another statement made in the letter may create confusion. The author states "Development of the Project Site is governed by the City's development regulations, as well as the provisions of the LCP as certified by the Commission." This formulation suggests that there are relevant City development regulations in addition to those contained in the LCP and the implication is that those additional regulations may trump or modify the requirements contained in the LCP. To put it simply, the LCP is the City's plan for land use and zoning in its Coastal Zone. Uses inconsistent with that Plan are simply not permitted until and unless the Plan is amended and the amendment is certified by the Coastal Commission.

A CONDITIONAL USE PERMIT CANNOT BE USED TO SANCTION A USE NOT ALLOWABLE BY A CERTIFIED LCP

The Coastal Development Permit approved by the City of Long Beach does not conform to the standards set forth in the City's certified LCP.

Years ago, when it prepared its original LCP the City designated the subject property as industrial. Subsequently, the Coastal Commission accepted the designation when it certified both the City's LUP and its LIP or implementing zoning ordinances (the full LCP). The City's LUP identifies the property as a part of Subarea 19 and describes the use as "Industrial."

Admittedly, the proposed project is for a commercial use, not an industrial one. However, the letter asserts, "Because a CUP was approved by the City for the Project, the Project satisfies the City's land use requirements." Apparently, Home Depot believes that since the City's zoning ordinance does contemplate the use of conditional use permits, land use designations in the LUP can be ignored. If that were the case, the LUP designation required by state law would be meaningless. That is not a defensible position.

THE COMMERCIAL USES PROPOSED ARE INCONSISTENT WITH BOTH PARTS OF THE CERTIFIED LOCAL COASTAL PROGRAM (I.E. THE LAND USE PLAN AND ITS IMPLEMENTING ZONING ORDINANCES)

The current version of the Land Use Plan designates property located in Subarea 19 as "Use: Industrial" and recites that the area is fully developed in accordance with the provisions of the IG zone. Although the LCP has been amended a number of times, the designation has remained the same. There is no question that the proposed use is inconsistent with that designation.

EXHIBIT # 8
PAGE 2 OF 5

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
June 4, 2007
Page 3 of 5

Even if Home Depot were entitled to ignore the LUP designation in the City's own plan and interpret the LIP out of its LCP context, the proposed project still would violate the zoning requirements. Title 21 of the Long Beach Municipal Code contains the City's Zoning Ordinances. Section 21.15.1460 of the ordinance defines "Industrial" as follows:

"Industrial" means a category of land use comprised of those activities necessary to convert natural resources into finished products. These activities include all resource extracting, resource processing, manufacturing, assembling, storage, transshipping and wholesaling that precede the arrival of goods at a retail land use."

In addition, the IG zone referred to above, is described in Section 21.33.020 of the City's zoning ordinance as follows:

"General Industrial (IG). The General Industrial (IG) district is considered the City's "industrial sanctuary" district where a wide range of industries that may not be desirable in other districts may locate. The emphasis is on traditionally heavy industrial and manufacturing uses. The IG district is intended to promote an "industrial sanctuary" where land is preserved for industry and manufacturing, and where existing industries are protected from non-industrial users that may object to the operating characteristics of industry. Performance standards still must be met, but the development standards are the minimum necessary to assure safe, functional, and environmentally-sound activities.

The IG district includes uses such as large construction yards with heavy equipment, chemical manufacturing plants, rail yards, and food processing plants. The buildings that house these operations may be older industrial buildings retrofitted to accommodate the use, or new state-of-the-art manufacturing plants. As is the case with all the industrial districts, the focus of the IG district is on the operating characteristics of the use, rather than the particular product created."

In its approval of the project, the City adopted findings that described it as a Home Depot design and garden center, a restaurant and commercial retail buildings. These are commercial retail trade facilities and are not "industrial" uses as that term is defined in the zoning ordinance.

Under limited circumstances, the zoning ordinance appears to permit some ancillary commercial retail trade uses in an industrial zone pursuant to a conditional use permit. Those circumstances are not present in this case. Section 7 of Table 33-2, that appears in Chapter 21.33 of the Zoning Ordinance, allows Retail Trade uses in an Industrial District, subject to the issuance of a conditional use permit, if primarily "these uses are intended to serve nearby industries and employees, and the retail's proximity will provide convenience with minimal impact on the retail operations."

EXHIBIT # 8
PAGE 3 OF 5

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
June 4, 2007
Page 4 of 5

In 2006, an amendment to the LUP, affecting Subarea 19, added a land use exception to the industrial designation for a very specific non-industrial use namely, "Commercial storage/self storage (21.215.570) shall be allowed by Conditional Use Permit (21.52.219.5)." The amendment reinforces the notion that, in the absence of specific exceptions, the designated use is industrial.

In short, unless the uses proposed are intended to serve nearby industries and will have a minimal impact on other retail operations, they are inconsistent with the certified LCP. The City's findings, without evidence or any basis in fact that the project will primarily serve nearby industrial uses, instead asserts that the proposed project will "Provide a conveniently located commercial retail center that includes a home improvement store as well as other retail center amenities that serve the needs of local residents, commercial and industrial developers, businesses and employers in south Long Beach." Not only does this finding fail to make the necessary industrial connection, but also it admits that the project is designed to serve other, non-industrial activities.

Even if the proposed uses were consistent with LCP requirements, they fail to meet the LCP's Conditional Use Permit requirements for industrial uses. City Zoning Ordinance 21.52.410 provides in part:

"Certain industrial uses identified in Chapter 21.33 (Industrial Uses) are subject to conditional use permit review and approval. In addition to the standard considerations and findings required to approve a conditional use permit, the following additional considerations and findings shall be made:

A. The proposed use, and the siting and arrangement of that use on the property, will not adversely affect surrounding uses nor pose adverse health risks to persons working and living in the surrounding area...

C. Truck traffic and loading activities associated with the business will not adversely impact surrounding residential neighborhoods."

The City's findings do not adequately address the impact of the project on the Los Cerritos Wetland, a major natural resource that is immediately across the street from the project site. In addition, rather than finding that the activity associated with the businesses to be conducted on the site will not adversely impact surrounding residential neighborhoods, the City adopted a resolution that there were overriding considerations while acknowledging that some environmental impacts could not be mitigated fully.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 4 OF 5

Attn: Jack Ainsworth, Deputy Director
California Coastal Commission
June 4, 2007
Page 5 of 5

**THE PREVIOUSLY ISSUED PERMIT IN SUBAREA 19 WAS FOR AN INDUSTRIAL
USE**

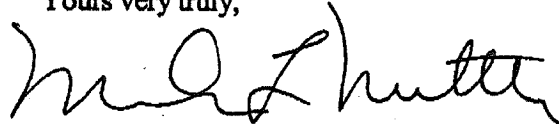
The author of the letter cites the issuance of a permit for a seawater desalination facility in Subarea 19 for the proposition that conditionally permitted uses are consistent with the requirements of the LCP. Of course, there are some conditionally permitted uses allowable in the Subarea. However, citing the approval of an industrial use that required a conditional use permit in an area designated for industrial uses, does not mean that non-industrial uses are proper.

CONCLUSION

Much of the discussion above focused on the provisions contained in the City's LIP. However, it would be wrong to interpret the provisions in a complicated and somewhat convoluted set of zoning ordinances without reference to the LUP they are supposed to implement. The bottom line is that the certified LUP, and therefore the LCP, has judged that the parcel in question should be used for industrial purposes. At least, it should be used for those purposes until and unless the LCP is amended to permit some other land uses that are consistent with the California Coastal Act.

Under the circumstances, Home Depot appears to be engaged in an effort to have the Commission change the land use designation (LUP) and implementing zoning (LIP) without actually amending the LCP or conducting the Chapter Three analysis required by the Coastal Act for such amendments. Due to the strategic location of the property in the SEADIP area, the significant developments that have occurred since the early 1980s when the LCP was originally certified, and the planning process that is now going on for the area, such a change should not be considered without a Coastal Act policy review pursuant to an LCP amendment application.

Yours very truly,



Melvin L. Nutter

MLN/cc

cc: Teresa Henry, District Manager
Charles Posner, Coastal Program Analyst

COASTAL COMMISSION

EXHIBIT # 8
PAGE 5 OF 5

RECEIVED
South Coast Region

SEP 17 2007

CALIFORNIA
COASTAL COMMISSION

September 14, 2007

STATE OF CALIFORNIA COASTAL COMMISSION
Re: LOS CERRITOS WETLANDS (Home Depot)

Dear Commissioners,

First, we commend you for undertaking the responsibility of protecting and preserving the California Coastal areas and habitats. Your decisions and enforcement activities will help preserve the beautiful coast of California for the generations to come including our children, grandchildren, and beyond.

We commend you for your efforts to meet that awesome responsibility in spite of a drastically reduced budget for enforcement and the pressures from the major campaign donations from developers and land owners seeking their personal profits versus a better future for all. Today we are writing to ask you for your vote against projects that will destroy coastal habitats – for the huge profits accruing to a few people.

The first project is the proposed Home Depot project located adjacent to or in the Los Cerritos Wetlands. This project was approved by a city motivated by tax dollars. They have approved a project without regards to zoning, traffic, or the impact of the project to migrating endangered birds (the Savannah Sparrow) and other birds using the flyway. These and other problems addressed in the EIR were waived off as mitigating circumstances (for the money).

The second project is a huge mixed-use project with a large residential base proposed by Lennar. In their efforts to have this project approved, city officials have tried to rush through a zoning change. Over the last 3 years, we have witnessed the gradual destruction of the Los Cerritos Wetlands for the purpose of minimizing the “wetlands” designated areas. The City of Long Beach has allowed owners to drain water from large ponds, to use herbicides that kill natural flora habitat, to bring in big rig trucks to unload dirt and debris. (Please take time to see these destructive actions and their results in the power point presentation on the enclosed CD and in the attached pictures).

We know that with your reduced budget, it is difficult if not impossible for you to police the destructive actions that have been allowed to occur by the City of Long Beach. Each city in the coastal zone is and has been given the position of a trustee to preserve their coastal areas. It appears evident that the City of Long Beach is in gross violation of its position as a trustee. (Look at the recent Peninsula situation).

Could we also ask the Coastal Commission to strip the City of Long Beach of its position as trustee for the Coastal Commission based on the City's blatant disregard of their duty to preserve the California coast??? Is it a drastic action? Maybe. Is it warranted? Most certainly.

Thank you for considering our requests to stop these ill-advised developments.

Mary Suttie & David Robertson

Mary.Suttie@Verizon.Net

COASTAL COMMISSION
AS-LOB-06-400

EXHIBIT # 9

PAGE 1 OF 1

**FORM FOR DISCLOSURE OF
EX PARTE COMMUNICATIONS**

CALIFORNIA
COASTAL COMMISSION

22 2007

Name or description of project, LPC, etc.: Home Depot, Long Beach
Date and time of receipt of communication: May 10 2007, 12:30
Location of communication: Marcello's, San Pedro
Type of communication (letter, facsimile, etc.): Lunch meeting
Person(s) initiating communication: Susan McCabe, Cynthia McClain-Hill
Detailed substantive description of content of communication:

A5-LOB-06-400

The agents presented the following information:

The Commission, in addition to local appellants, appealed the project based on several issues:

- Commission staff has asserted that the industrial zone for the site (IG) will not allow a commercial use. Home Depot supports the city's position that commercial uses are an allowed use by CUP in the commercial zone.

They have identified another case in Long Beach where the Commission found that CUP uses are allowed in the industrial zone (IG) zone.

- Commission staff has questioned whether the project will have impacts wildlife in the nearby wetlands and if impacts have been adequately mitigated. Home Depot believes the city's conditions adequately mitigate impacts. Home Depot is additionally working with CCC staff to adopt protective measures to minimize corvids on site.
- Commission staff has questioned whether there will be impacts on public access from traffic generated by the project. Home Depot's mitigation measures will actually improve the flow of traffic near the site.
- Commission staff has asserted that the project doesn't meet the LCP requirement for 30% on site open space requirement. The city allowed Home Depot to meet the requirement partially through off-site open space. Home Depot has eliminated the outdoor garden center which increases the total on-site open space to 29.67%.

The have identified another project where the Commission found 28% on-site open space consistent with the LCP.

- Commission staff raised the issue of whether the site should be reserved for future energy projects as an alternative to LNG. Home Depot has noted that there is a currently operating power plant on the site next door and that that site also contains a decommissioned peaker plant. The oil tank farm became obsolete when the power plant converted to natural gas. The owner of the power plant sold the tank farm

A5-LOB-06-400

EXHIBIT # 10
PAGE 1 OF 2

because they determined that the site was unnecessary for the long term operation of their power plant.

Home Depot did not challenge the SI determination in November, 2006. Staff has indicated the denovo hearing will probably occur in July.

5/12/2007
Date



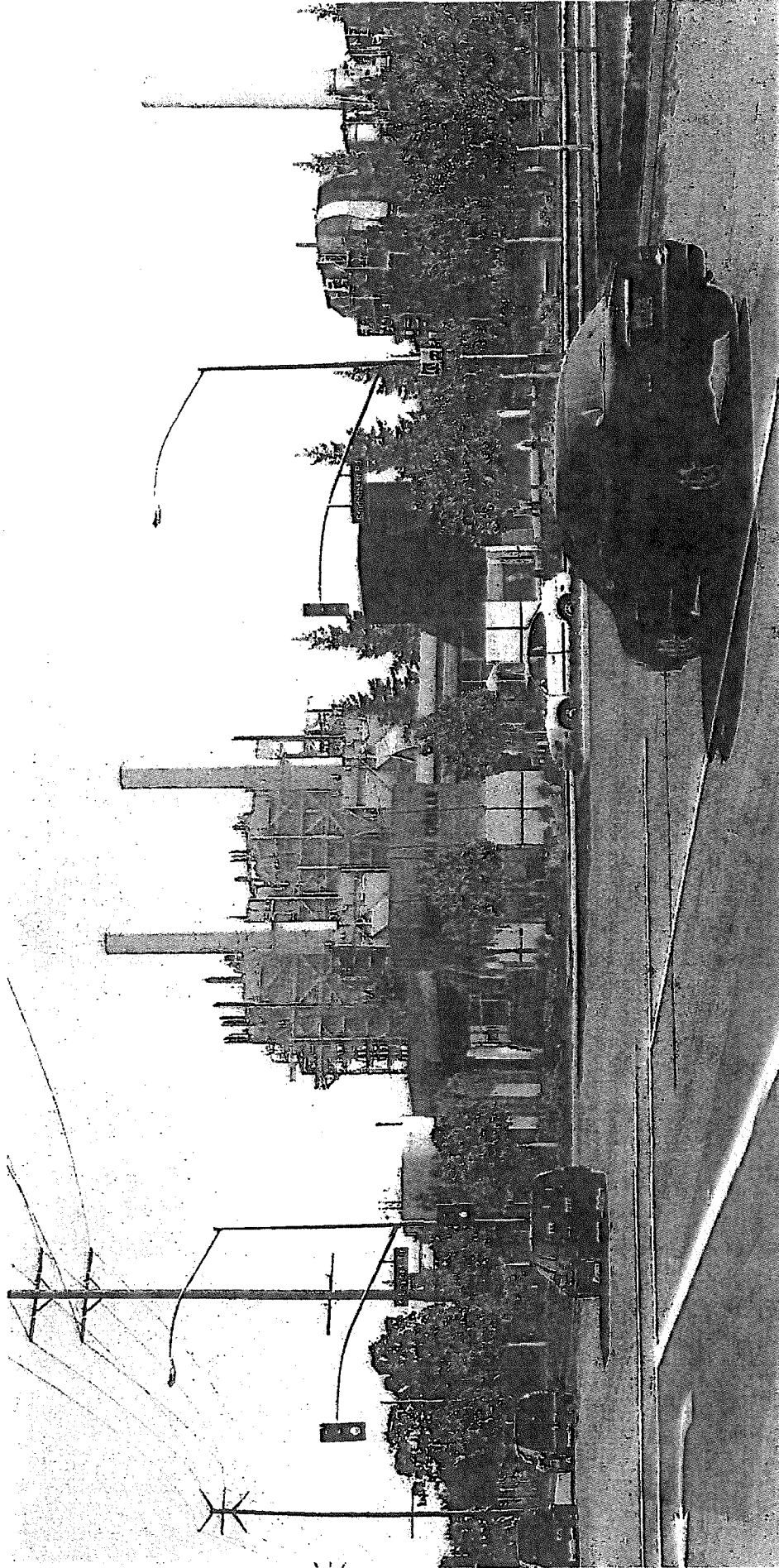
Signature of Commissioner

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication.

COASTAL COMMISSION

EXHIBIT # 10

PAGE 2 OF 2



THE HOME DEPOT - LONG BEACH
STUDEBAKER ROAD & LOYNES DRIVE, LONG BEACH, CA
THE HOME DEPOT U.S.A., INC.
20020884.2



PERSPECTIVE

VIEW OF RESTAURANT

10/15/2005

COASTAL COMMISSION
A5-L0B-06-400

EXHIBIT # 11
PAGE 1 OF 1