The Urban Wildlands Group, Inc.
P.O. Box 24020, Los Angeles, California 90024-0020, Tel (310) 276-2306

# REBUTTAL TO BOARD REPORT

## Consideration of an Appeal from City Engineer's Approval of Coastal Development Permit 00-05 for Waterview Street Landscaping Project

**May 18, 2001**

The following document serves as a rebuttal to the "Board Report" prepared by Staff of the City Engineer's office assessing the merits of the appeal of Coastal Development Permit 00-05 by The Urban Wildlands Group, Endangered Habitats League, Lepidoptera Research Foundation, Santa Monica Bay Audubon Society, Ballona Ecosystem Education Project, Sierra Club, Wetlands Action Network, Mandy Saner, and Bonnie Foster. This rebuttal was prepared by Dr. Travis Longcore of The Urban Wildlands Group whose credentials are attached.

In general, the Board Report does not substantively engage the issues raised by the appeal, and is incorrect in both fact and policy interpretations. These errors and omissions are sufficiently significant to suggest that Staff had reached a conclusion about the validity of the appeal before addressing its constituent parts, and wrote the Board Report as a *post hoc* rationalization of Staff's preconceived decision. Such defensiveness is understandable on the part of Staff; they did indeed prepare the report justifying the initial decision appealed here. However, any fair and impartial consideration of the evidence and argument in the appeal would result in reconsideration of at least some part of the initial decision. Staff's refusal to cede even the most well-established points of scientific fact indicates a less than fair treatment of the appeal, its contents, and the rights of the appellants to have a fair assessment of their basis for appeal presented to the Board.

In the pages that follow, relevant text from the Board Report is presented in italics, with responses following.

***Recommendation***
*Deny the appeal.*

As discussed below, this conclusion is not supported by the best available science, the facts at hand, or the policies of the California Coastal Act.

***Land Resources***
***Relevance of Site Conditions***
*Appellants suggest throughout their appeal that current site conditions are irrelevant to LAWA's development of the site. Staff disagrees. PRC § 30240(a) states that environmentally sensitive habitat areas (ESHAs) "shall be protected against any significant disruption of habitat values..." For this analysis, staff assumes that the project site is an ESHA. The current plan to re-vegetate the site with native plants (and some of the existing palms) requires that LAWA alter the site. In other*

*words, for LAWA to improve the site's habitat value, LAWA must alter the site. Moreover, this improvement is dependent upon the resources at the site. Staff finds that any disruption that might occur is not a "significant disruption" of habitat values since the project will improve habitat values.*

The appeal does ***not*** maintain that the site conditions prior to project implementation are not relevant. In fact, the appeal reestablishes the acknowledged fact that the project site is, and was before partial project completion, an ESHA.

The appeal does make the legal point that once the site is recognized as an ESHA, even if it is degraded, it receives the same protection under PRC § 30240(a) as a pristine ESHA. Staff does not dispute this interpretation.

The proposed project is not a resource dependent use. Prior to the condition that native plants be used, the plan would have installed exclusively exotic landscape species, many of which are invasive in dune habitats. The condition for the use of native plants underneath palm trees does not turn it into a restoration project.

Landscaping using native plants is not the same as restoring a habitat. The conditions on the project contain no guidelines that will turn a landscaping project into a restoration. Such conditions would include a plant list to ensure that the proper species are included (including *Eriogonum parvifolium*, foodplant for the endangered El Segundo blue butterfly), ensure that local sources for plants are used, and prohibit destruction of native plants spontaneously regenerating on the project site. None of these conditions are proposed, so the claim that the project is now a resource dependent use that will improve habitat values is unsubstantiated.

As documented in the appeal, the site is currently occupied by native dune plant species that would be displaced by the proposed landscaping project. This would constitute a further significant disruption of habitat values. The Board Report ignores this fact completely.

***Applicability of Bolsa Chica Land Trust v. Superior Court***
*Appellants declare that the legal decision in Bolsa Chica Land Trust v. Superior Court, 71 Cal. App. 4th 493, "provides the basis for [Appellants'] appeal . . .." In the Bolsa Chica case, a developer sought to destroy a deteriorating ESHA, build houses on the site, and mitigate the environmental damage by recreating a similar area at another site. The court held that the Coastal Act "does not permit destruction of an [EHSA] simply because the destruction is mitigated offsite." Under current plans for the project, LAWA will not destroy the ESHA, rather, LAWA will improve the habitat value by removing exotic plants and replacing them with native vegetation. Consequently, staff finds that Appellants' citations of the Bolsa Chica decision are out of context and the Bolsa Chica decision does not apply directly to this CDP decision.*

The Board Report does not address the portion of the *Bolsa Chica* decision cited in the Appeal. The fact pattern for current development project need not completely match that in the *Bolsa Chica* decision for the declarations made therein to be relevant. Staff completely avoided discussion of the actual point made by the appeal, which relates to the following paragraph of the *Bolsa Chica* decision:

> Thirdly, contrary to Commission's reasoning, section 30240 does not permit its restrictions to be ignored based on the threatened or deteriorating condition of a particular ESHA. We do not doubt that in deciding whether a particular area is an ESHA within the meaning of section 30107.5, Commission may consider, among other matters, its viability. However, where, as is the case here, Commission has decided that an area is an ESHA, section 30240 does not itself provide Commission power to alter its strict limitations. There is simply no reference in section 30240 which can be interpreted as diminishing the level of protection an ESHA receives based on its viability. ***Rather, under the statutory scheme, ESHA's, whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection***.
>
> *Bolsa Chica Land Trust v. Superior Court*, 71 Cal. App. 4th 493, 507–508 (1999) (emphasis added) (citations omitted).

The Board Report is silent on this major point in the appeal. The decision is indeed relevant, for it contradicts Staff's original justification for allowing the project, namely that the ESHA is degraded. By concentrating on another portion of the decision, Staff attempts to draw a distinction between the *Bolsa Chica* case and the current project. In doing so, Staff now claims that the project will not disrupt the ESHA, but will improve it. To the contrary, the project will destroy (and has destroyed) native vegetation in an ESHA, and therefore substantially disrupts habitat values. It is factually incorrect to now claim that the project, which included the installation of 90 palm trees in an ESHA, is now or will be a net benefit to the habitat. Furthermore, the conditions imposed by Staff on the project would only result in the use of native plants as landscaping, not in a restoration of the habitat values of the site.

***LAWA's use of Washingtonia Robusta***

*Appellants argue passionately against the palm trees, yet provide no momentous reason for their removal.*

The burden is not on the Appellants to provide a momentous reason for removal. The question is whether, when evaluating the proposed project *de novo*, it would be acceptable to plant palm trees in a coastal dune ESHA. Staff does not address this point in the Board Report. Staff instead apparently gives consideration to the fact that the palms had already been installed. This unfairly shifts the burden away from the applicant to design a project that complies with the California Coastal Act, thereby rewarding the applicant for installing the trees illegally.

*Appellants argue that the trees will occupy habitat area. Obviously, the trees will occupy some land area, but the total of this area is dramatically less than the land area that LAWA added by removing obsolete streets and other impermeable surfaces.*

Ironically, this rationalization by Staff is prohibited by the section of the *Bolsa Chica* decision that Staff cited earlier in the report. As interpreted by the court, the Coastal Act does not permit the destruction of part of an EHSA in exchange for mitigation elsewhere. In addition, Staff fails to rebut the underlying fact established by the Appellants that the installation of the palm trees

removed native vegetation in an ESHA, an impact that extended beyond the area of the palm trees themselves to include substantial construction area.

*Appellants claim that the trees will provide perch sites for raptors, but fail to show how these trees will be significantly more attractive to raptors than those immediately across a narrow residential street or, indeed, the trees that remain on the dunes from the former residential development.*

Staff fails to demonstrate how more trees will not worsen the situation. Furthermore, the palm trees will also attract non-native starlings, which congregate in flocks and utilize palm trees in high numbers. The argument that palm trees already exist does not provide justification to install more.

*Consequently, staff finds that the risk of "significant disruption of habitat values" does not exist.*

In reviewing hundreds of projects for compliance with Coastal Act habitat protection standards, I have never encountered the argument that planting invasive exotic trees in the middle of an ESHA did not constitute a significant disruption of habitat values. No more significant disruption of habitat values exists than removal of the plants that constitute a habitat. Staff's claim to the contrary is unsupportable by both science and policy.

*Appellants claim that the trees will invade the dunes habitat, but provide no evidence that this is a genuine threat. Appellants offer a photograph of a small cluster of young palms sprouting near Vista del Mar and suggest that this isolated phenomenon will invade the dunes, yet on 300 acres of dunes maintained by LAWA this is the only location staff observed and the only location noted by the Appellants. In light of the thousands of* Washingtonia robusta *that surround the site-indeed, currently occupying the dunes from the former residential development-this isolated occurrence is inconsequential. Again, staff finds that the risk of "significant disruption of habitat values" does not exist.*

First, the Appellants would have been trespassing had they surveyed the entire dunes for sprouting palm trees, therefore it is understandable that an example on the perimeter of the dunes is noted. Staff claims to have surveyed the entire 300 acres, yet fails to provide any documentation of this survey . Furthermore, Staff indicates no knowledge of the many other wildlands up and down the southern California coast where *Washingtonia* palms have invaded natural habitats. The Vista del Mar site proves that these palms can and do invade dune habitats. Given the indefinite life of the project, the inclusion of palm trees unnecessarily subjects the El Segundo dunes ESHA to an even greater invasive exotic plant species burden. Staff offers lay opinions in place of those of qualified, scientific experts and repeats the discredited argument that because the dunes are partially degraded it is acceptable to degrade them further.

***Irrigation***

*Appellants suggest that permanent irrigation could harm the site's habitat value. Staff agrees. For that reason staff stated in its Final Staff Report:*

> *Staff received several comments concerning permanent irrigation systems. These comments generally indicated that permanent irrigation would increase populations of nonnative and/or undesirable species. Since this staff report presupposes that LAWA will plant*

> *predominantly native species in conformance with the conditions imposed herein, plants will require irrigation only until they become established. Once established, both the native plants and palms should no longer require irrigation. Staff anticipates that LAWA will remove all aboveground irrigation components once LAWA deems that the plants are fully established. Consequently, staff concludes that no Coastal Act concern regarding irrigation remains.*

*Appellants provide no argument why the City Engineer should change this position.*

If Staff agrees with the threat, then the project should be conditioned to reflect that concern. Without the condition, the project, despite assurances and assumptions about the future behavior of the applicant, the project remains noncompliant.

***Pedestrian Path***
*In their appeal, Appellants object to construction of the decomposed granite path, stating that it "will encourage use of a sensitive habitat area by pedestrians and pets." However, staff notes that during the public hearing appellant Sierra Club encouraged construction of the path and proposed creating a walking tour for school children and others. Staff finds that the pedestrian path will serve to confine pedestrian traffic to a limited area, the path, rather than indiscriminate encroachment upon the area, as permitted previously.*

Since the public hearing, the Appellants have observed the destructive use of the project area by pedestrians and their dogs, strengthening their conviction that the project degrades the ESHA. Staff presents no evidence of the use of the site prior to project implementation, and therefore has no factual support for the claim that the project reduces impacts by pedestrians and dogs. The only evidence presented on this topic (by the Appellants in the appeal) is ignored by Staff in the Board Report. While the Sierra Club supported the path conditioned on education programming for the project site, this suggestion was rejected by Staff, making the Staff's invocation of this comment as support for the pedestrian path somewhat disingenuous.

***Selection of Native Plant Sources***
*Appellants seek to not only specify how LAWA will restore and/or develop the site, but also the sources from which LAWA will obtain its native plants. Specifically, Appellants seek to substantiate the "dangers of nonlocal sources" by referencing an article co-authored by three (3) UWG leaders. Yet, even this article concedes that "[d]ebate centers around the relative importance of matching local ecotypes when reestablishing plants on a restoration site." Appellants do not clarify what they consider to constitute "local" ecotypes and fail to present a compelling argument why LAWA should be restrained in exercising its best judgement in this case.*

Staff cites a sentence completely out of context from a peer-reviewed, published, scientific article. (Staff seems to imply that this article is suspect because "leaders" of The Urban Wildlands Group were authors. To the contrary, that the Appellants have published peer-reviewed scientific articles on the habitat under consideration should, if anything, lend credibility to the appeal.) The full paragraph from which Staff partially cites is as follows:

> A second aspect of the definition of restoration is what has been called "the ecotype question" (Cairns 1987: 316, Kline and Howell 1987: 84). Debate centers around the relative importance of matching local ecotypes when reestablishing plants on a restoration site. Although academic consensus seems to support using local ecotypes (see Millar and Libby 1989, Read et al. 1996, Allen 1997), we illustrate the importance of local ecotypes on higher trophic levels and the maintenance of biodiversity.

The next section of the paper, and the references cited therein, thoroughly describe the necessity of the use of local ecotypes in restoration. Pulling the single sentence out of context is a mischaracterization designed to bolster support for Staff's position. Perhaps the Board was not made aware of the actual content of the paper in the Board Report because it did not support Staff's position.

Staff also fails to discuss the other two scientific papers submitted in full on the question of local ecotypes. Science makes progress, and from the time that the paper cited by staff was written (1997), additional research has conclusively shown the genetic importance of local ecotypes in restoration plantings. These two additional papers, published in two prestigious journals (*American Journal of Botany* and *Conservation Biology*) are absent from Staff's reconsideration of the appeal, and indeed, are not even mentioned. These articles (which were not written by members of The Urban Wildlands Group) did not support Staff's position, and Staff completely ignores their inclusion in the appeal. Science-based natural resource management does not allow one to pick and choose sentences and articles to one's liking. Rather it should consider the state of the science, which in this instance supports conditions to limit propagule sources to local ecotypes. "Local" in this context means from the El Segundo dunes, or as close as feasibly possible from environmentally similar habitats.

This request for a condition on propagule source is consistent with Coastal Commission policy; the Commission recommended local sources as early 1994. In that year, the Commission developed a set of guidelines for restoration that included, among other recommendations, a statement on propagule sources, summarized by Coastal Commission Staff as follows:

> It is generally recommended that materials used to restore a site are of local origin, such as seeds, cuttings, salvaged plants, micro-organisms, and topsoil originating from the subject site.[1]

This article is posted in its entirety on the California Coastal Commission website.

***Views to and Along the Ocean and Scenic Coastal Areas***

*Appellants contend that LAWA's application should be denied under PRC § 30251, which requires that new "development shall be sited and designed to protect views to and along the ocean and scenic coastal areas" and shall "be visually compatible with the character of surrounding areas . . . ." Specifically, Appellants claim that the palm trees degrade the "natural visual quality" of the area (emphasis added). Staff rejects this argument. First, PRC § 30251 does not address only*

[1] California Coastal Commission (prepared by Troy Alan Doss and Susan P. Friend). 1995. Restoration of Unpermitted Development within the California Coastal Zone. Presented at the Society for Ecological Restoration Conference.

*"natural visual quality." To interpret PRC § 30251 this way would preclude any development that did not restore "natural" conditions. This is clearly not the intent of PRC § 30251 or any other part of the Coastal Act. Second, Appellants' argument ignores the fact that the project site is in an area occupied by extensive remnants of the former residential development, including streets, building slabs and foundations, and landscaping that includes palm trees. Third, Appellants' argument ignores the project's compatibility with the existing adjacent residential development.*

Visual compatibility and aesthetic values are some of the most difficult decisions to be made in implementing environmental impact analysis. The Appellants stand behind their contention that palm trees are visually incompatible with southern California coastal dunes.

*Appellants also claim that "views to the ocean . . . are blocked" by the palm trees. Staff recognizes that viewers can sometimes see the palm trees when viewing the ocean from the adjacent residential area, but staff finds that the palm trees' slender character and their scattered placement allow "views to and along the ocean and scenic coastal areas." Moreover, staff notes that LAWA promised at the public hearing and in letters to neighbors that it will remove the trees that are reportedly most visible to those neighbors who oppose the trees. Consequently, staff finds that the project complies with PRC § 30251.*

Staff is off point on this issue. The Coastal Act and the Commission are concerned with views from public areas, not from private residences. Staff is silent on views from public areas, and does not deny that the view to the ocean is degraded by the presence of the palm trees. Slender or not, 90 palm trees "scattered" in the line of sight further degrades the scenic character of the El Segundo dunes.

***Conclusion***

*In consideration of the foregoing, staff recommends that the Board find that the City Engineer did not err in his decision that the Board deny the appeal.*

The Appellants ask that the Board carefully consider information presented in the appeal independent of Staff's recommendation in the Board Report to ensure compliance with the resource protection policies of the California Coastal Act.