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January 14, 2010

The Honorable Mayor and City Council Members
City of Long Beach
333 West Ocean Blvd., 14th Floor
Long Beach, CA 90802

Re: City Council Agenda for January 19, 2010, Item 29
Proposal to Authorize Acceptance of Conservation Easement by LCW Partners, LLC

Dear Mayor Foster and Council Members:

My client, the Los Cerritos Wetlands Land Trust, in a letter to the City Council in October of last year noted that the proposed creation of a new four acre parcel as part of a Los Cerritos Wetlands land swap would result in the reduction of the size of the balance of the privately owned wetland parcel. The Wetland Trust asserted that the creation of the new parcel required a Coastal Development Permit and that the proposed land division deserved careful scrutiny to assure that the division did not cause future avoidable Coastal Act issues.

The City staff now claims the City and LCW Partners, LLC (Tom Dean) can avoid the requirement that they apply for a coastal development permit by having LCW Partners, LLC retain fee ownership of the entire parcel while granting the City a permanent conservation easement over the same four acres. The claim is that the acquisition of the easement by the City will help achieve the goal of protecting wetlands.

In fact, quite the opposite may be true. Arguably, the four acre portion of the parcel has the least significant habitat and wetland value and is the most suitable portion of the parcel for future non-wetland development. Ordinarily, private property owners have a constitutional right to some economic use of the property they hold. Because the creation of a conservation easement on the four acre section of the parcel will eliminate all economic use there, as a practical matter the odds have increased substantially that the owner will be successful in obtaining approval of a commercial or other non-wetland project on a more environmentally sensitive area of the parcel in the future. In effect, the proposed conservation easement would have the same potential to negatively impact coastal resources as would a lot split. The Coastal

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Development Permit process is designed to evaluate the impact that project proposals may have on coastal resources.

A review of the definition of "Development" contained in Section 30106 of the Public Resources Code (the Coastal Act) makes it clear that a legal lot split is only one kind of property division and that other divisions are possible. By granting the City a permanent conservation easement, the property owner effectively would be surrendering all meaningful use and ownership of four acres to the City. The consequence is that a significant property right in and to four acres will be transferred from one party to another. Effectively, that is a division of land. Included within the definition of "development" is a provision that clearly states that any division of land is included even if it is not made pursuant to the Subdivision Map Act or a lot split.

In short, the Los Cerritos Wetlands Land Trust believes that a Coastal Development Permit is still required before this transaction can go forward.

Yours very truly,

Melvin L. Nutter

MLN/cc

Cc: Robert E. Shannon, City Attorney
Michael P. Conway, Director of Public Works
Patrick H. West, City Manager