Robert Garcia, 1st District
Suja Lowenthal, 2nd District
Gary DeLong, 3rd District
Patrick O'Donnell, 4th District

Patrick H. West, City Manager
Larry G. Herrera, City Clerk

Bob Foster, Mayor

Gerrie Schipske, 5th District
Dee Andrews, 6th District
Tonia Reyes Uranga, 7th District
Rae Gabelich, 8th District
Val Lerch, Vice Mayor, 9th District

Robert E. Shannon, City Attorney

CITY COUNCIL SUPPLEMENTAL AGENDA
FOR THE MEETING OF AUGUST 4, 2009

This Supplemental Agenda contains corrections and additions, which were posted more than 72 hours in advance of the above meeting date.

REGULAR AGENDA

DEPARTMENTAL COMMUNICATIONS:

29. 09-0784 REQUEST:

The City Manager requests that the staff report pertaining to Agenda Item No. 29 be distributed for the City Council meeting of August 4, 2009. Recommended action remains the same.

Recommendation to authorize City Manager to execute all documents necessary to enter and consummate a real estate exchange of approximately 13.4 acres of City-owned land for approximately 37.77 acres of land owned by LCW Partners, LLC. (Districts 1,3)

Office or Department: PUBLIC WORKS

Suggested Action: Approve recommendation.

nem

CITY OF LONG BEACH

DEPARTMENT OF PUBLIC WORKS

333 WEST OCEAN BOULEVARD • LONG BEACH, CA 90802 • (562) 570-6383 • FAX (562) 570-6012

R-29

August 4, 2009

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Authorize the City Manager to execute all documents necessary to enter and consummate a real estate exchange of approximately 13.4 acres of City-owned land for approximately 37.77 acres of land owned by LCW Partners, LLC. (Districts 1, 3)

DISCUSSION

The Los Cerritos Wetlands (Wetlands) cover nearly 450 acres at the southeast convergence of the City of Long Beach with the City of Seal Beach (see the attached **Exhibit A**). Historically, there have been three separate ownerships included within the Wetlands: the Hellman Property, containing approximately 174 acres, the Bryant Property, containing approximately 87 acres, and the former Bixby Property (the LCW Property), containing approximately 175 acres. The Wetlands consist of a combination of aquatic, semi-aquatic and terrestrial habitats that result from periodic flooding by tidal waters, rainfall or runoff. The Wetlands provide habitat for a vast array of organisms, including many endangered species. The Wetlands also provide a vital link between land and open water, exporting nutrients and organic material, buffering the effects of storms, filtering and assimilating many pollutants from runoff, reducing shoreline erosion and improving water quality. Most importantly, the Wetlands provide an opportunity for passive enjoyment and quiet observation of a natural habitat and national resource.

In 2002, City Council entered into a confidentiality agreement with The Trust for Public Lands (TPL), utilizing their expertise to assist in negotiating a possible acquisition of the LCW Property. In 2003, City Council authorized an amendment to the confidentiality agreement to include the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) to assist the City and TPL in negotiating for the acquisition of the LCW Property, and including the Bryant and Hellman Properties. In December 2005, City Council authorized the formation of a Joint Powers Authority, referred to as the Los Cerritos Wetlands Authority (LCWA), whose function is to acquire, protect, restore and maintain the Wetlands. The Coastal Conservancy and the City of Seal Beach joined with the RMC and the City of Long Beach as members of the LCWA.

In June 2006, the LCWA acquired 66 acres of the Bryant Property, successfully protecting a significant portion of the Wetlands. The acquired land included operating oil

wells, with a determination by the Coastal Conservancy that ongoing oil operations are compatible with the long-term goal of public access, and wetland and habitat restoration. Negotiations for the Hellman Property are ongoing with acquisition anticipated in late 2009 or early 2010. The LCW Property remained the most complicated and difficult site to acquire, primarily as a result of bifurcated ownership and the value of perceived development potential.

In 2008, LCW Partners, LLC (LCW) acquired the LCW Property. The principals of LCW have evidenced a cooperative posture during discussions regarding Wetlands acquisition. However, because of perceived development potential, and the limiting valuation criteria of State-approved appraisals, a value gap has historically impeded any progress toward acquisition.

Under direction of City Council, staff began to explore the possibility of exchanging City-owned land for the LCW Property, with the intent to subsequently sell the LCW Property to the LCWA at appraised value.

After protracted discussions, staff and LCW reached concurrence on the framework of an exchange. The framework entails an exchange of the 13.4-acre Public Service Yard (PSY), depicted on **Exhibit B**, for approximately 37.77 acres of the LCW Property, depicted on **Exhibit C** (the LCW Wetland Property). Approximately 33.77 acres of the LCW Wetland Property are located south of 2nd Street, and approximately 4 acres are located north of 2nd Street. The LCW Wetland Property south of 2nd Street is zoned Business Park, providing for a land use including office commercial, light industrial, hotel and restaurants. The LCW Wetland Property north of 2nd Street is zoned Residential, providing for residential land use with a maximum density of 15.3 units per acre. At the present time, the appraised value is unknown as an appraisal cannot be prepared until a wetland delineation study is completed. Both the wetland delineation study and the appraisal will be conducted after the City takes title to the LCW Wetland Property. The City is not expected to pay for either the wetland delineation study or the appraisal. Acquisition of the LCW Wetland Property would serve to remove over 37 acres of potential density from future development, provide access to the publicly-owned Bryant property, and create nearly 100 acres of contiguous open space, straddling the San Gabriel River.

Terms and conditions of the exchange are as follows:

<u>GENERAL TERMS</u>

- Exchange 13.4 acres of PSY for 33.77 acres of LCW Wetland Property south of 2nd Street and 4 acres of LCW Wetland Property north of 2nd Street as depicted on **Exhibit C**
- LCW to reserve mineral rights (likely through a subsidiary, LCW Oil, LLC) and specified exclusive and non-exclusive surface and subsurface rights for the continuation of Oil & Gas Operations as depicted on **Exhibit D**
- City to reserve mineral rights at the PSY, without right of surface entry

- The Public Service Bureau (PSB) to consolidate onto the northerly 4 acres of the PSY and remain on site rent free for 6 months after the closing date
- Subsequent to the free rent period, the City to enter into a 5 year lease with a no-cost early termination provision. The City will lease the northerly 4 acres at $0.10/SF/Mo until permanent facilities are available. Funding for the lease cost is not budgeted and shall be reimbursed up to $500,000 upon the sale of the LCW Wetland Property to the LCWA. This amount will address the lease cost through July 2012. At that time, the lease cost will increase consistent with the increase in the Consumer Price Index. Assuming a completed transaction by end of September, this breaks down as follows:
    - $0 in FY09
    - $104,544 in FY10 (6 months)
    - $209,088 in FY 11 (12 months)
    - $174,240 through July 2012 (10 months)
- If the LCW Wetland Property is sold to the LCWA at an appraised value of less than $7.9 million, LCW Partners shall reimburse the City the difference, on a dollar for dollar basis, up to $500,000

<u>ENVIRONMENTAL TERMS</u>

LCW Wetland Property:

- LCW & LCW Oil to indemnify the City for all Oil & Gas impacts to soils and groundwater up to the closing date
- LCW Oil to indemnify the City for all Oil & Gas impacts to soils and groundwater occurring on or after the closing date
    - Clean-up obligations shall be the standard established for the existing zoning on the property which is Residential north of 2nd Street, and Business Park south of 2nd Street
    - If clean-up standards are raised as a result of the wetlands restoration to a higher level than commercial/industrial, the incremental cost increase shall be borne by the party restoring the wetlands
    - An estimate of remediation of soils impacts related to oil and gas operations has been prepared. The estimate assumes a remediation standard consistent with the existing zoning. It is estimated that 5,117 cubic yards of soil would need to be addressed. The City's consultant assumed the most expensive process to address the impacted soil, which includes, remediation planning, agency approval, excavation, loading, transport, monitoring, landfill disposal and reporting. The cost estimate per cubic yard is $225, resulting in a potential cost to remediate to standards consistent with existing zoning at $1.1 million.
    - If the remediation standard is raised to a level consistent with the Bolsa Chica Full Tidal Area Contaminant Cleanup Plan, the number of cubic yards requiring remediation could rise to an estimated 20,000 cubic yards. Utilizing the same unit cost of $225, this results in an estimated maximum clean up cost of $4.5 million. Under the proposed exchange agreement, the incremental increase of $3.4 million would be borne by the party restoring the LCW Wetland.
    - It is important to understand that these quantities include all the oil wells located within the exclusive easement areas. To the extent that some

percentage of these wells remain in place, the clean up cost will reduce proportionately.
  - If LCW is required to relocate facilities in its exclusive easement area, the cost of relocation and remediation shall be borne by the party restoring the wetlands
  - The parties shall reasonably negotiate the cheaper of relocation or purchase of oil facilities required to be relocated
- Non Oil & Gas environmental impacts existing prior to the closing date will be the liability of the responsible party
- City to indemnify LCW Oil for Non Oil & Gas environmental impacts due to the City's or public's activities on the Wetland Property after the closing date
- LCW shall include the City as an additional insured on its Environmental Insurance Policy, which shall remain in effect for 10 years after the closing date, or until the property is transferred, whichever first occurs
- LCW, LCW Oil and City will enter into an affirmative covenant to reasonably cooperate to minimize environmental liability
- The indemnity shall expire 20 years after the closing date, mirroring the PSY indemnity

PSY:
- City to indemnify LCW Partners for existing impacts to soils and groundwater up to the closing date
- Former Kerosene UST at northeast corner of Yard
  - Estimated residual clean up costs at $201,000
- Former Gasoline UST in 14th Street right of way
  - Soil and groundwater contamination exists with remediation costs estimated at $326,000
  - Groundwater continues to be monitored at a cost of about $45,000 annually
- Earthquake Fill Area
  - Soils issues of unknown extent exist, estimated at $1.7 million, to excavate, remediate and recompact 3-5 feet of soil over approximately 4 acres
  - Currently, LCW Partners' land use proposal is to use existing buildings and parking areas. This would serve to minimize exposure to potential soils issues
  - Parties will enter into an affirmative covenant to work together to minimize environmental liability
- LCW Partners to indemnify the City for impacts to soils and groundwater occurring on or after the closing date
- LCW Partners and City will enter into an affirmative covenant to reasonably cooperate to minimize environmental liability
- The indemnity shall expire 20 years after closing, mirroring the LCW Wetland Property indemnity

ENVIRONMENTAL CLEARANCE

A Categorical Exemption, CE 10-09, has been issued in connection with this proposed transaction in accordance with the provisions of the California Environmental Quality Act.

This matter was reviewed by Deputy City Attorney Richard F. Anthony on July 23, 2009 and by Budget and Performance Management Bureau Manager David Wodynski on July 27, 2009.

TIMING CONSIDERATIONS

City Council authorization is requested on August 4 2009, in order to proceed with the exchange in a timely manner.

FISCAL IMPACT

The ultimate fiscal impact of this land exchange is predicated on the actual sale proceeds received by the City from the LCWA once State funds are received by the LCWA and the value of the land is determined after the swap occurs. Aside from the environmental remediation liabilities and related costs outlined above, there are certain known costs the City will be liable for as a result of this land exchange: the lease costs for the Public Service Bureau to remain on-site; moving costs for the Public Service Bureau to a new, permanent location; and design and construction costs for a new permanent facility when a new location is identified. Other than the lease costs, the costs for the design, construction and move to a new facility is proposed to be funded by the Gas Prepay funds. Additionally, during the fiscal impact review, it was discovered that a payment from the Refuse Fund to the General Fund in 2007 was collateralized by a portion (2.1 acres) of the Public Service Yard. This will require the City to reimburse the Refuse Fund through sale proceeds, or substitute equivalent acreage (2.1 acres).

The Public Service Bureau will remain on-site until 2012 when the new facilities will be constructed. The City will lease-back 4 acres of the Public Service Yard from LCW at a rate of $0.10 per square foot of land, per month, or approximately $209,088 per year. The lease will be for a term of five years with a no-cost right of early termination. As it is unclear when the LCWA will be able to purchase the LCW Wetland Property from the City, the City will bear the lease cost in the first instance. The potential payment of up to $500,000 would cover the lease cost through July 2012. The City is seeking a loan from the Redevelopment Agency in the amount of $500,000 to assist with these costs until the LCW Wetland Property is sold to the LCWA.

As this transaction involves the sale of the Public Service Yard, and in an effort to merge and consolidate functions the City will accelerate the construction of new, permanent facilities to house the Public Service Bureau at the Gas and Oil Department site on Spring Street. It has been estimated that the design and construction costs for a new facility will be up to $5 million; however, final estimates have not been determined. Staff is proposing to fund the costs of design, construction and relocation from the Gas Prepay funds. Staff will bring the final recommended costs to the City Council once these costs have been identified.

The price the City will set for the sale of the wetlands to the LCWA will be determined by an LCWA-led delineation study and appraisal after the LCWA received available monies from the State. Proceeds are expected to be in the range of $1.5 million (which may occur if the parcel is determined to be completely wetlands and not commercially developable, based on a 2003 wetland value of $45,000 per acre for approximately 35 acres) to $9.5 million (which may occur if the parcel is determined to be 25% developable for commercial development at a current value of approximately $25 per square foot for approximately 8.75 acres). At the time of the sale of the LCW Wetland Property to the LCWA, staff will return to City Council for authority to convey the property and receive the proceeds.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

MICHAEL P. CONWAY
DIRECTOR OF PUBLIC WORKS

MPC:bs
P:CL/8.4/August 4

Exhibits A, B, C, D

APPROVED:

PATRICK H. WEST
CITY MANAGER

Exhibit A

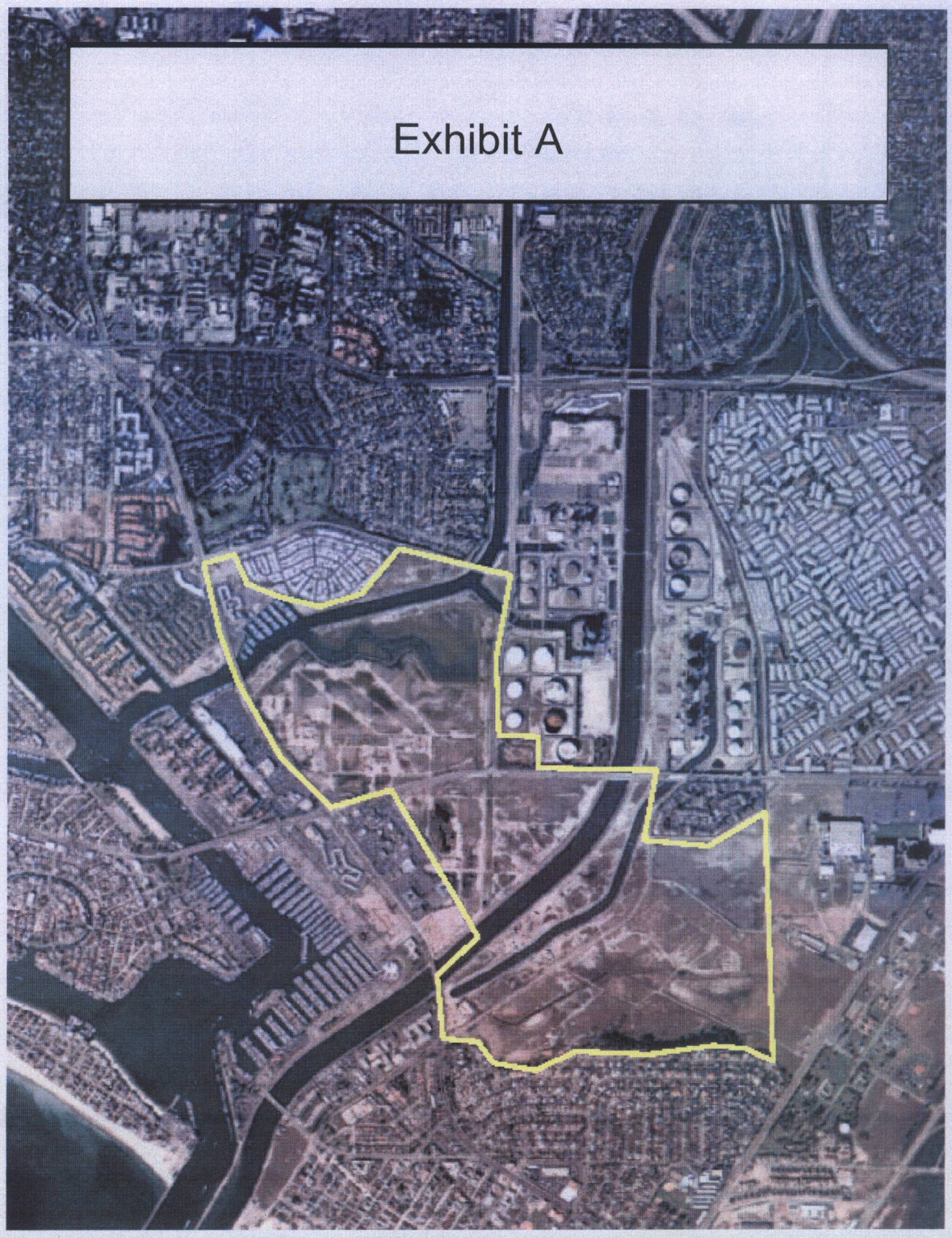
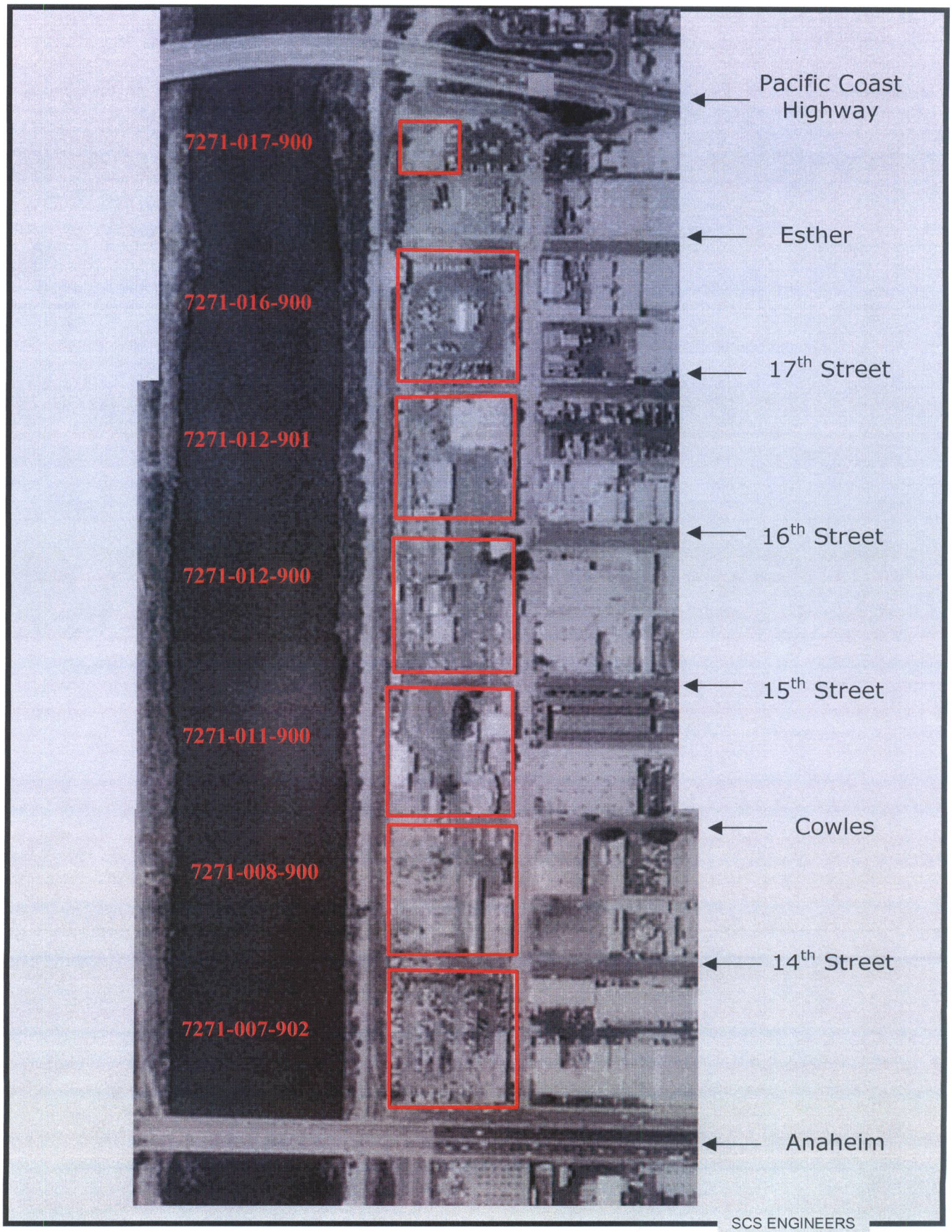


Exhibit B

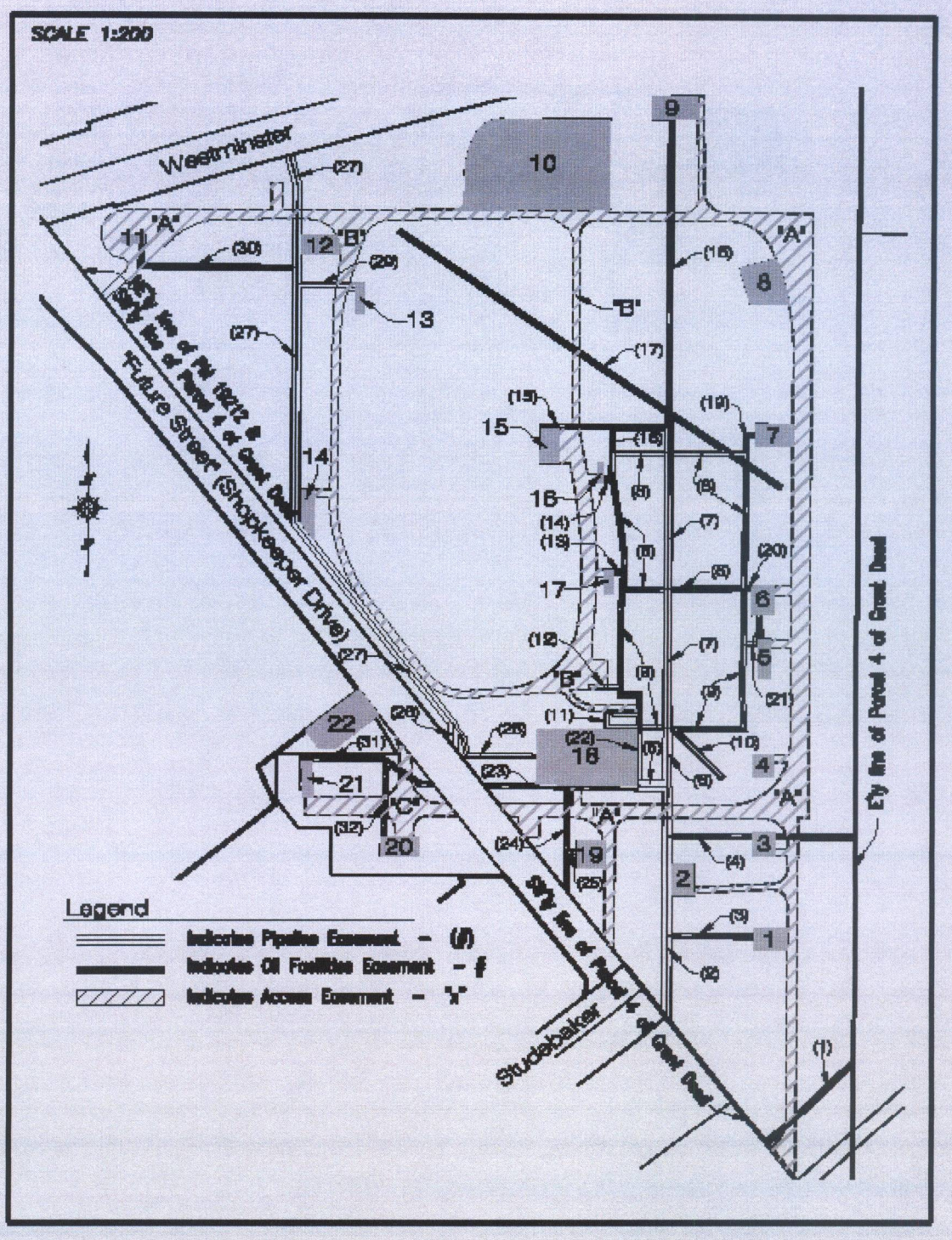


SCS ENGINEERS

Exhibit C

Value of Wetlands

Exhibit D


SCALE 1:200
Westminster
Future Street (Shopkeeper Drive)
Studebaker
Ely line of Parcel 4 of Grant Deed
Legend
Indicates Pipeline Easement - (#)
Indicates Oil Facilities Easement - #
Indicates Access Easement - "A"