

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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 Long Beach, CA 90802-4302
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Filed: 1/2/2002
 49th Day: 2/20/2002
 180th Day: 7/1/2002
 Staff: CP-LB
 Staff Report: 2/14/2002
 Hearing Date: March 5, 2002
 Commission Action:

**Item Tu17j****RECORD PACKET COPY****STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-01-429**APPLICANT:** County of Los Angeles Department of Beaches & Harbors**AGENT:** Joseph J. Chesler, AICP, Chief, Planning Division**PROJECT LOCATION:** Marina del Rey North Entrance Jetty (5600 Pacific Avenue), Venice, City of Los Angeles, Los Angeles County.**PROJECT DESCRIPTION:** Remove existing post and cable safety barrier from 4,100-foot length of public walkway on jetty, and replace with 42-inch high blue vinyl and steel safety railing in same alignment.

Lot Area	N/A
Building Coverage	0 square feet
Pavement Coverage	40,000 square feet (approx.)
Landscape Coverage	3,000 square feet (approx.)
Parking Spaces	57 (See Exhibit #3)
Zoning	Open Space
Plan Designation	Shoreline Recreational Area
Ht above final grade	42 Inches

LOCAL APPROVAL: County of Los Angeles Department of Beaches & Harbors, Design Control Board.**SUBSTANTIVE FILE DOCUMENT:** City of Los Angeles certified Land Use Plan for Venice.**SUMMARY OF STAFF RECOMMENDATION**

The proposed project is located at Venice beach within the incorporated municipality of the City of Los Angeles. The Commission has not certified a Local Coastal Program (LCP) for this part of the City. Therefore, the coastal development permit that is required for the proposed development must be obtained from the Commission. Although demolition and construction is proposed to occur within twenty feet of coastal waters, no work is proposed in the water.

Staff recommends that the Commission grant a permit for the proposed development with conditions to prevent adverse impacts to marine resources, protect public recreation opportunities, and to require the applicant to assume the risks of the development. The applicant agrees with the recommendation.

STAFF NOTE:

The proposed development is located within an area of the City of Los Angeles that is not subject to a certified Local Coastal Program (LCP). Therefore, the Commission's permitting authority has not been delegated to the local government pursuant to a certified LCP. The City of Los Angeles has, however, been authorized by the Commission to issue local coastal development permits (prior to LCP certification) pursuant to Section 30600(b)(1) of the Coastal Act. Because the proposed development is located within 300 feet of the shoreline, it is within the coastal zone area of the City of Los Angeles which has been designated in the City's permit program as the "Dual Permit Jurisdiction" area. Pursuant to Section 30601 of the Coastal Act and Section 13307 of the California Code of Regulations, any development located in the Dual Permit Jurisdiction must obtain a coastal development permit from the Coastal Commission, in addition to any local coastal development permit. In this case, however, the City does not have permit jurisdiction because the applicant is the County of Los Angeles. Pursuant to Section 30600(b)(2) of the Coastal Act, the County is not required to obtain a permit from the City; the County is not subject to the City's local regulatory authority. Therefore, the coastal development permit that is required for the proposed development must be obtained from the Commission. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Los Angeles certified Land Use Plan (LUP) for Venice is advisory in nature and may provide guidance.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

MOTION: *"I move that the Commission approve Coastal Development Permit 5-01-429 pursuant to the staff recommendation."*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

I. **Resolution: Approval with Conditions**

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Revised Plans

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised plans to the Executive Director for review and approval. The revised plans shall conform to, and clearly demonstrate compliance with, the following requirements:

- (i) Alignment of Safety Railing. The proposed safety railing shall be installed in the same location and alignment as the existing post and cable barrier, thus preserving in place all of the existing alcoves that provide public viewing and seating opportunities along both sides of the jetty's paved public accessway. Additionally, the proposed safety railing shall not interfere with pedestrian access between the jetty's paved public accessway and the sandy beach located on the north side of the jetty (See Exhibit #2, p.1 of 2/14/02 staff report).
- (ii) Height of Safety Railing. The proposed safety railing shall not exceed a height of 42 inches above the jetty's paved public accessway.
- (iii) Public Benches. A public bench shall be provided and maintained within each alcove that exists along the jetty's paved public accessway.

B. The permittee shall undertake the development in accordance with the final plans approved by the Executive Director. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Protection of Marine Resources

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a project staging and construction plan, subject to the review and approval of the Executive Director, that includes specific staging and construction measures sufficient to prevent the unpermitted deposition, spill or discharge of any liquid or solid into coastal waters. At a minimum, the plan shall include the following provisions:

- A. Netting, tarps and/or other forms of barriers shall be installed between the water and the work areas to prevent any material from entering the water during demolition or construction.
- B. The storage or stockpiling of soil, silt, other organic or earthen materials, or any materials and chemicals related to the construction shall not occur where such materials/chemicals could pass into the water. Any spills of construction equipment fluids or other hazardous materials shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible.
- C. No heavy machinery shall be allowed in the intertidal or subtidal zones at any time. Construction vehicles shall be inspected daily to ensure there are no leaking fluids. If there are leaking fluids, the construction vehicles shall be serviced immediately. Equipment and machinery shall be serviced, maintained and washed only in confined areas specifically designed to control runoff and prevent discharges into coastal waters. Thinners, oils or solvents shall not be discharged into sanitary or storm sewer systems.
- D. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than fifty feet away from all stormdrains, open ditches and surface waters.
- E. All floatable debris and trash generated by construction activities within the project area shall be disposed of at the end of each day, or as soon as possible.
- F. All grading and excavation areas shall be properly covered and sandbags and/or ditches shall be used to prevent runoff from leaving the site, and measures to control erosion must be implemented at the end of each day's work.

The permittee shall implement and carry out the project staging and construction plan during all demolition and construction activities consistent with the plan approved by the Executive Director.

3. Debris Disposal

All materials removed from the project site shall be disposed of or recycled in compliance with all local, state and federal regulations. No debris is permitted to be placed in coastal waters. If a disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

4. Conformance with the Requirements of the Resource Agencies

The permittee shall comply with all permit requirements and mitigation measures of the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

5. Assumption of Risk

A) By acceptance of this coastal development permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from seismic events, liquefaction, storms, waves, floods and erosion; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to agree to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the foregoing restrictions identified in (i) through (iv).

B) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a copy of a written agreement by the applicant, in a form and content acceptable to the Executive Director, accepting all of the above terms of subsection A of this condition.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The County of Los Angeles proposes to remove and replace the existing safety barrier from the 4,100-foot long paved public walkway situated on the north entrance jetty of Marina del Rey (Exhibit #2). The existing post and cable safety barrier (Exhibit #5) would be removed, and then replaced by a 42-inch high, dark blue colored, vinyl-covered steel safety railing (Exhibit # 4). The proposed new safety railing has vertical bars spaced four inches apart. According to the applicant, the design of the new barrier is intended to minimize maintenance requirements, prevent falls, and to discourage people from climbing down the steep rock and cement embankments that exist between the public walkway and the ocean.

The proposed new safety railing would be placed in the same alignment as the existing post and cable safety barrier, extending from the City/County line to the end of the jetty (Exhibit #2). The safety barrier currently exists only along the south side of the jetty's paved public walkway, except where the jetty extends into the ocean beyond the seaward extent of the sandy beach situated on the north side of the jetty (Exhibit #2, p.1). Seaward of the sandy beach, the safety barrier exists along both sides of the jetty's paved public walkway

The County Department of Beaches and Harbors maintains the Marina del Rey entrance jetty, which is federally-owned property situated within the incorporated area of the City of Los Angeles. The U.S. Army Corps of Engineers has granted the County permission to implement the proposed railing replacement project. The City of Los Angeles does not object to the proposed development, and has no permitting authority over the County.

B. Recreation and Public Access

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. The proposed project is conditioned to conform with the following Coastal Act policies which protect and encourage public access and recreational use of coastal areas.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

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.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The proposed safety barrier is necessary for public safety needs and will not interfere with public access or public recreational opportunities. The existing post and cable safety barrier discourages people from climbing down the steep rock and cement embankments that exist between the public walkway and the ocean (Exhibit #5). The proposed new safety railing would also discourage people from climbing down the jetty's steep rock and cement embankments, but its more solid and sturdy design would make it more difficult for people (especially children) to fall or climb through the safety barrier (Exhibit #4).

A paved public walkway currently provides the public with access and recreational opportunities on the jetty. Alcoves and public benches along the public walkway currently provide the public with viewing and seating opportunities. People are able to walk, jog, sightsee and fish from the public walkway. The existing safety barrier does not block pedestrian access to the sandy beach on the north side of the jetty. The applicant asserts that the proposed new safety barrier would be placed in the same alignment and location as the existing post and cable safety barrier (Exhibit #2).

In order to ensure that existing public access and recreational opportunities are protected, Special Condition One requires the applicant to submit detailed project plans for review and approval by the Executive Director. The previously submitted plans are not detailed enough to demonstrate that the proposed new safety barrier would be placed in the same alignment and location as the existing safety barrier, as asserted by the applicant. The alignment of the safety barrier shall not be permitted to interfere with pedestrian access to the sandy beach on the north side of the jetty. In addition, the public benches and the alcoves that currently exist along both sides of the jetty walkway shall be protected and maintained. Therefore, the required plans shall conform to, and clearly demonstrate compliance with, the following requirements:

- (i) Alignment of Safety Railing. The proposed safety railing shall be installed in the same location and alignment as the existing post and cable barrier, thus preserving in place all of the existing alcoves that provide public viewing and seating opportunities along both sides of the jetty's paved public accessway. Additionally, the proposed safety railing shall not interfere with pedestrian access between the jetty's paved public accessway and the sandy beach located on the north side of the jetty (See Exhibit #2, p.1 of 2/14/02 staff report).
- (ii) Height of Safety Railing. The proposed safety railing shall not exceed a height of 42 inches above the jetty's paved public accessway.
- (iii) Public Benches. A public bench shall be provided and maintained within each alcove that exists along the jetty's paved public accessway.

The applicant shall undertake the development in accordance with the final plans approved by the Executive Director. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required. Only as conditioned can the proposed project be found consistent with the public access and recreation policies of the Coastal Act.

C. Visual Resources

Section 30251 of the Coastal Act requires that the scenic and visual resources of coastal areas be considered and protected as a resource of public importance. In addition, public views to and along the ocean and scenic coastal areas shall be protected.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The design of the proposed new safety railing is more solid and sturdy than the existing post and cable barrier (Exhibits #4&5). The views of small persons (smaller than 42") will be partially, but not fully, blocked by the vertical and horizontal bars of the proposed railing. Therefore, the proposed new safety railing is more visually obtrusive than the existing safety barrier. The proposed project, however, will not degrade the scenic and visual qualities of this coastal recreation area. The proposed barrier is only 42 inches high and is not a solid structure. Its dark blue color will help it to blend into the background when viewed from a distance. The existing public benches and viewing alcoves on the jetty walkway provide the public with good coastal viewing opportunities. Special Condition One protects the viewing alcoves and public benches. As conditioned, the proposed project is consistent with Section 30251 of the Coastal Act.

D. Marine Resources

The Coastal Act contains policies that address development in or near coastal waters. The proposed project is located within twenty feet of coastal waters (Exhibit #2). The standard of review for the proposed development is the Chapter 3 policies of the Coastal Act, including the following marine resource policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity, public recreation and marine resources.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or

economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed project involves the demolition and construction of a safety barrier on a jetty in the Pacific Ocean. No work is proposed to occur in the water. Therefore, there are no anticipated negative impacts to marine resources or water quality. However, in order to ensure that the proposed project does not result in any accidental or unanticipated discharges, spills or other activities that could harm marine resources and water quality, the permit is conditioned to require the applicant to submit plans which incorporate specific construction methods within the proposed project to prevent such occurrences.

Therefore, Special Condition Two requires the applicant, prior to the issuance of the permit, to submit a staging and construction plan, subject to the review and approval of the Executive Director, that includes measures sufficient to prevent the deposition, spill or discharge of any liquid or solid into the water. The applicant shall implement and carry out the staging and construction plan consistent with the plan approved by the Executive Director during all construction and demolition activities. Only as conditioned will marine resources and water quality be protected as required by Sections 30230 and 30231 of the Coastal Act.

Special Condition Three requires that all materials removed from the project site shall be disposed of or recycled in compliance with all local, state and federal regulations. No debris is permitted to be placed in coastal waters. If a disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place. Only as conditioned is the proposed project consistent with the marine resource policies of the Coastal Act.

The proposed project is located approximately four hundred feet south of the Venice Beach California least tern colony, one of the largest and most productive colonies of California least terns remaining in the state (Exhibit #2). The California least tern, *Sterna antillarum browni*, is a Federal and State listed endangered species. The least tern is migratory and generally arrives in the project area each year in early April, and departs in early autumn. Least terns capture small fish for their newly hatched chicks in the nearby ocean, wetlands, lagoons, and canals. These fish include northern anchovies, gobies, top smelt, various surf perch, killifish, mosquito fish, and other lagoon and estuarine fish species.

The U.S. Fish and Wildlife Service has reviewed the proposed project, and has determined that it would not harm the least terns in the area (Exhibit #6). Special Condition Four requires the permittee to comply with all permit requirements and mitigation measures of the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Only as conditioned is the proposed project consistent with the marine resource policies of the Coastal Act.

The special conditions of approval adequately address and mitigate any potential adverse impacts to the environment caused by the proposed project. Therefore, as conditioned, the proposed project is consistent with the marine resource policies of the Coastal Act.

E. Hazards

The Coastal Act states that new development must minimize risks to life and property and not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

Section 30253 of the Coastal Act states, in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed safety barrier is necessary for public safety needs and has been designed to minimize risks in this hazardous coastal area. However, all developments located in or near the ocean have the potential for damage caused by wave energy, floods, seismic events, storms and erosion. The proposed project is located in the Pacific Ocean and is susceptible to natural hazards. No development in the water can be guaranteed to be safe from hazard.

The Commission routinely imposes conditions for assumption of risk in areas at high risk from hazards. The condition ensures that the permittee understands and assumes the potential hazards associated with development in or near the water. Therefore, by acceptance of this coastal development permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from seismic events, liquefaction, storms, waves, floods and erosion; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the

Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to agree to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the foregoing restrictions identified in (i) through (iv).

In addition, prior to issuance of the coastal development permit, the applicant shall submit a copy of a written agreement by the applicant, in a form and content acceptable to the Executive Director, accepting all of the above terms of this condition. Only as conditioned is the proposed project is consistent with Section 30253 of the Coastal Act.

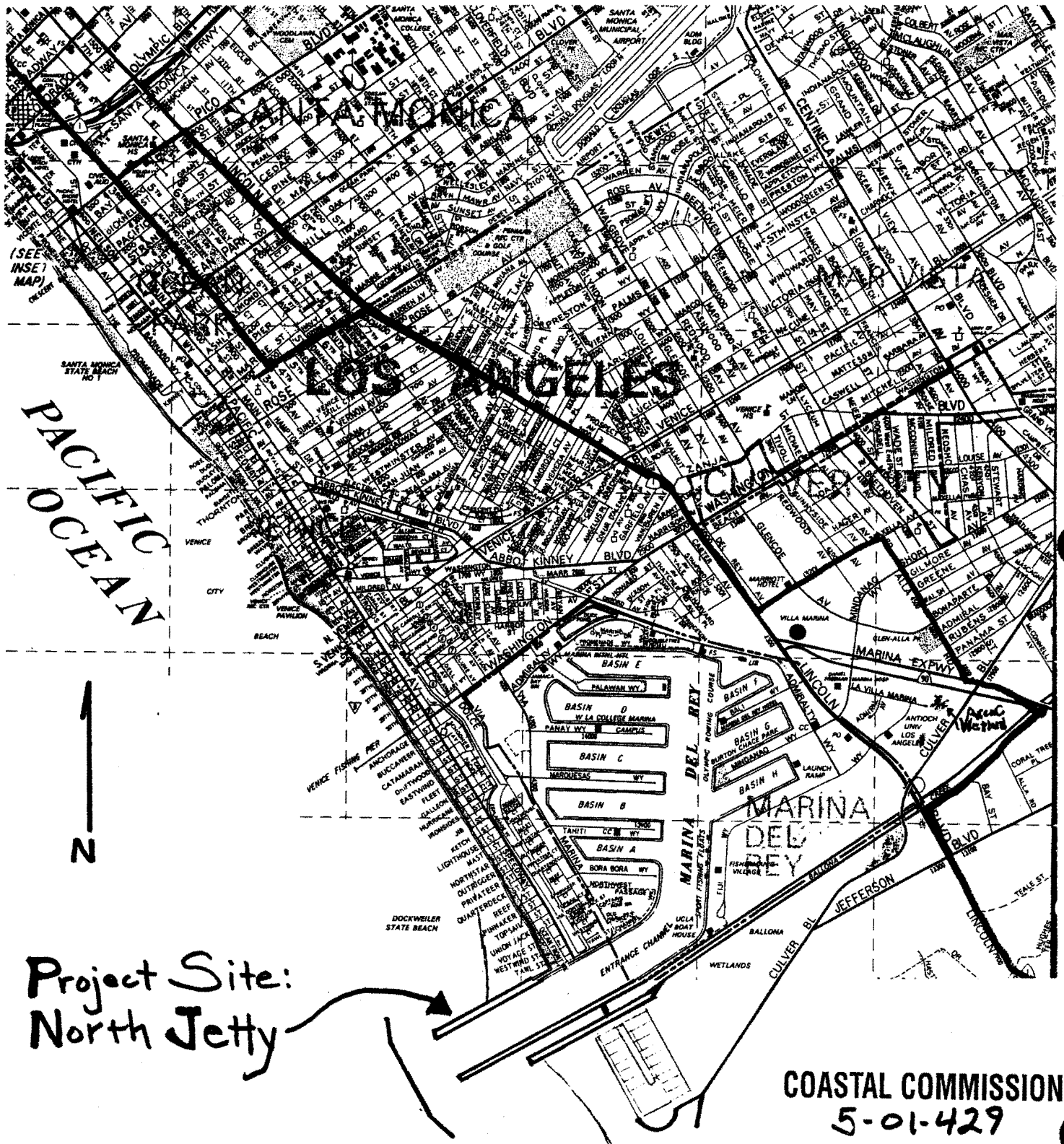
F. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of 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 proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

End/cp

VENICE, CA



Project Site:
North Jetty

COASTAL COMMISSION
5-01-429

EXHIBIT # 1
PAGE 1 OF 1

City of Los Angeles

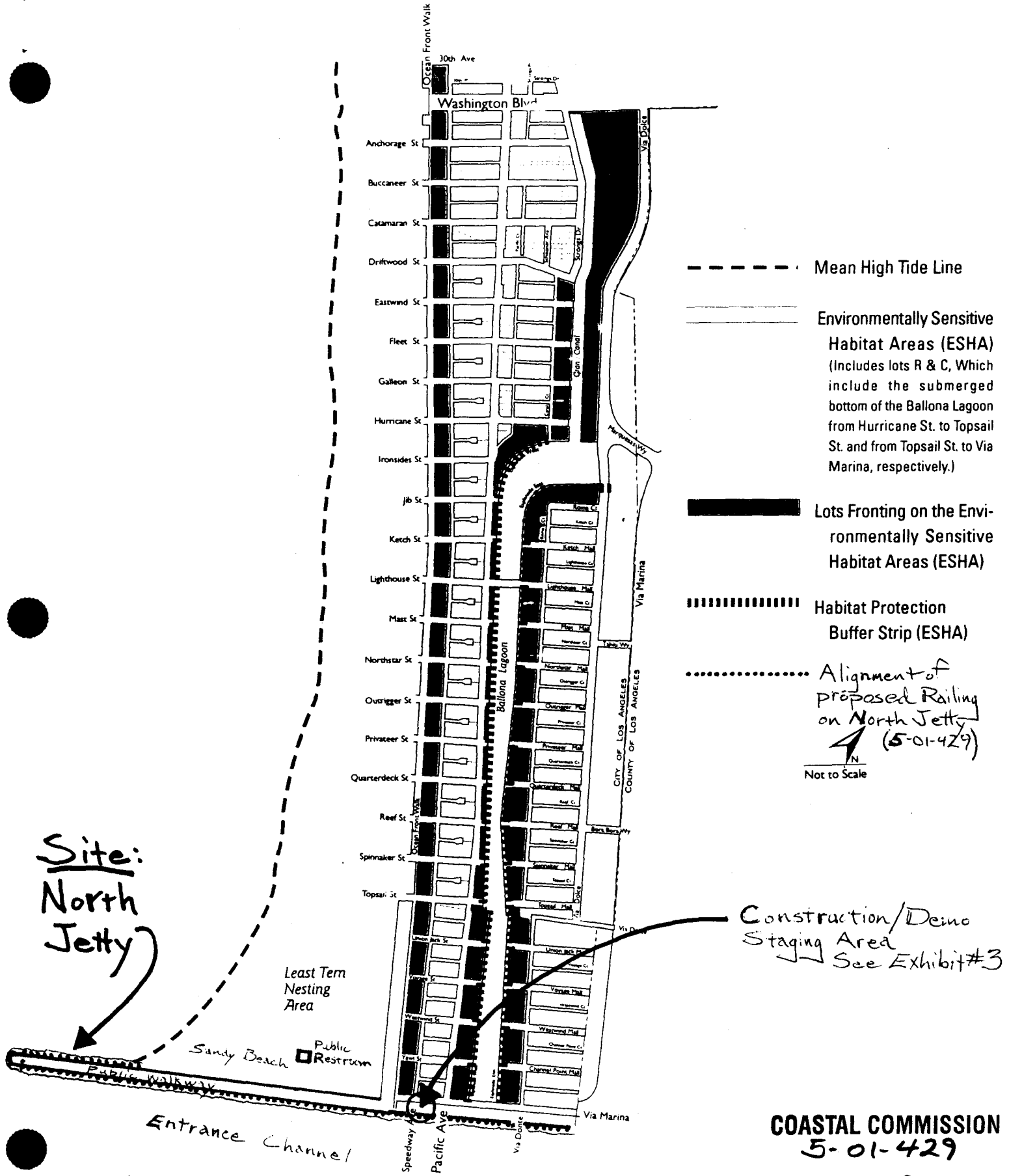




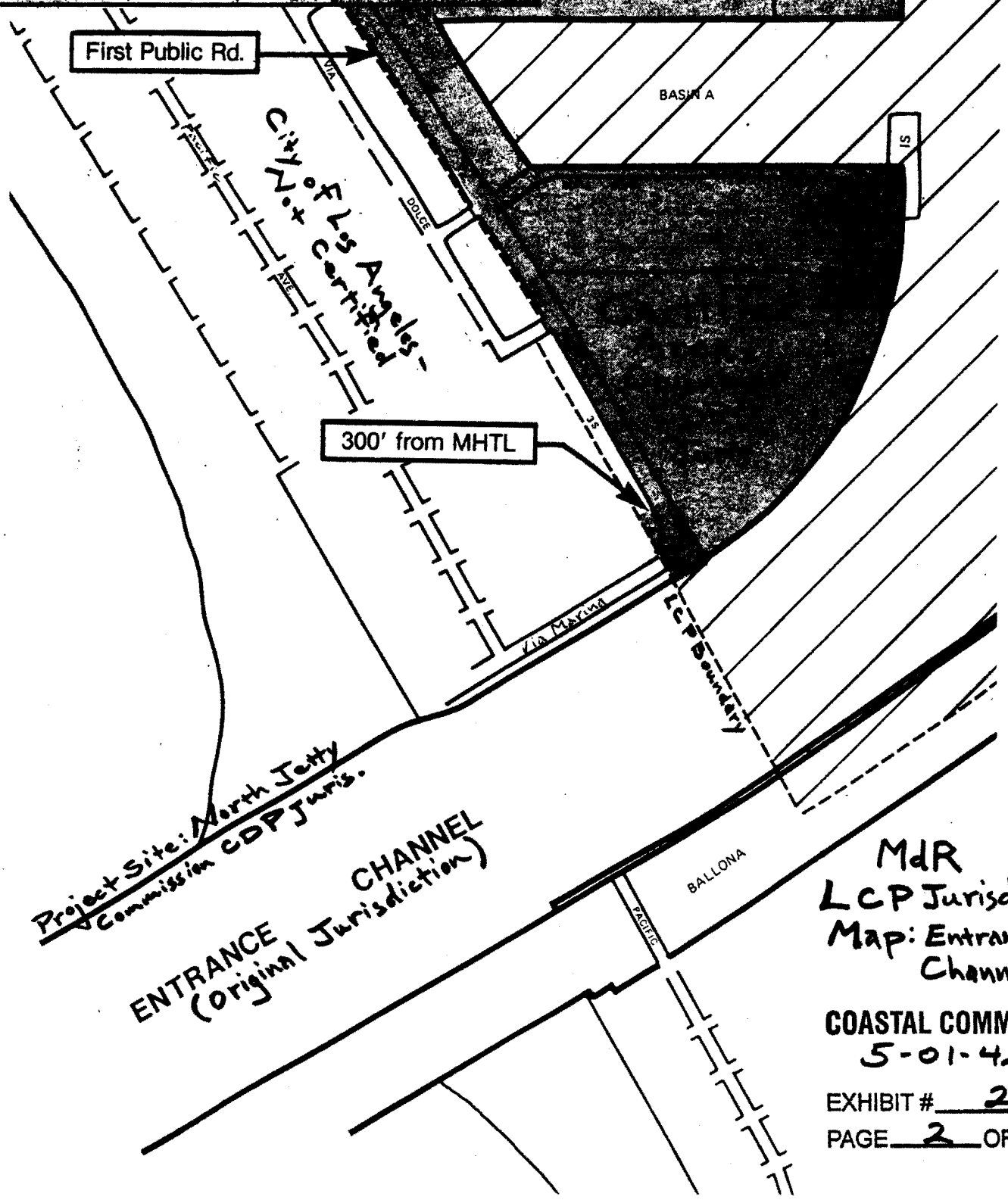
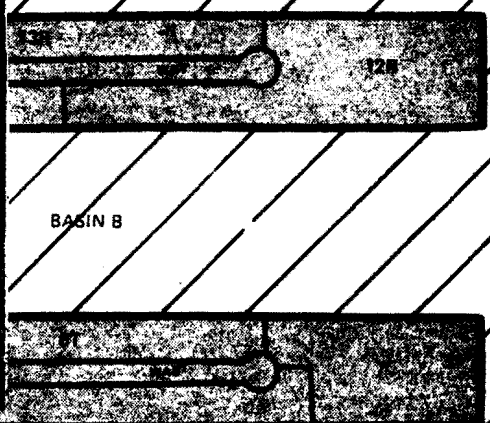
Exhibit 22c
Environmentally Sensitive Habitat Areas

COASTAL COMMISSION
5-01-429

EXHIBIT # 2
PAGE 1 OF 2

Marina del Rey, L.A. Co. LCP
Post-LCP Certification
Permit and Appeal Jurisdiction
 County of Los Angeles
 Marina Del Rey Segment

- City Boundary
-  Permit Jurisdiction - *Commission*
The area includes only lands below the mean high tide line and lands where the public trust may exist.
-  Appeal Jurisdiction
The area includes lands between the sea and the designated first public pier extending the sea or 300' from the lateral extent of any beach or of 300' from high tide line if there is no beach, whichever is the greater distance. This includes any land within 100' of directly and substantially and directly within the top of the seaward face of any coastal bluff.



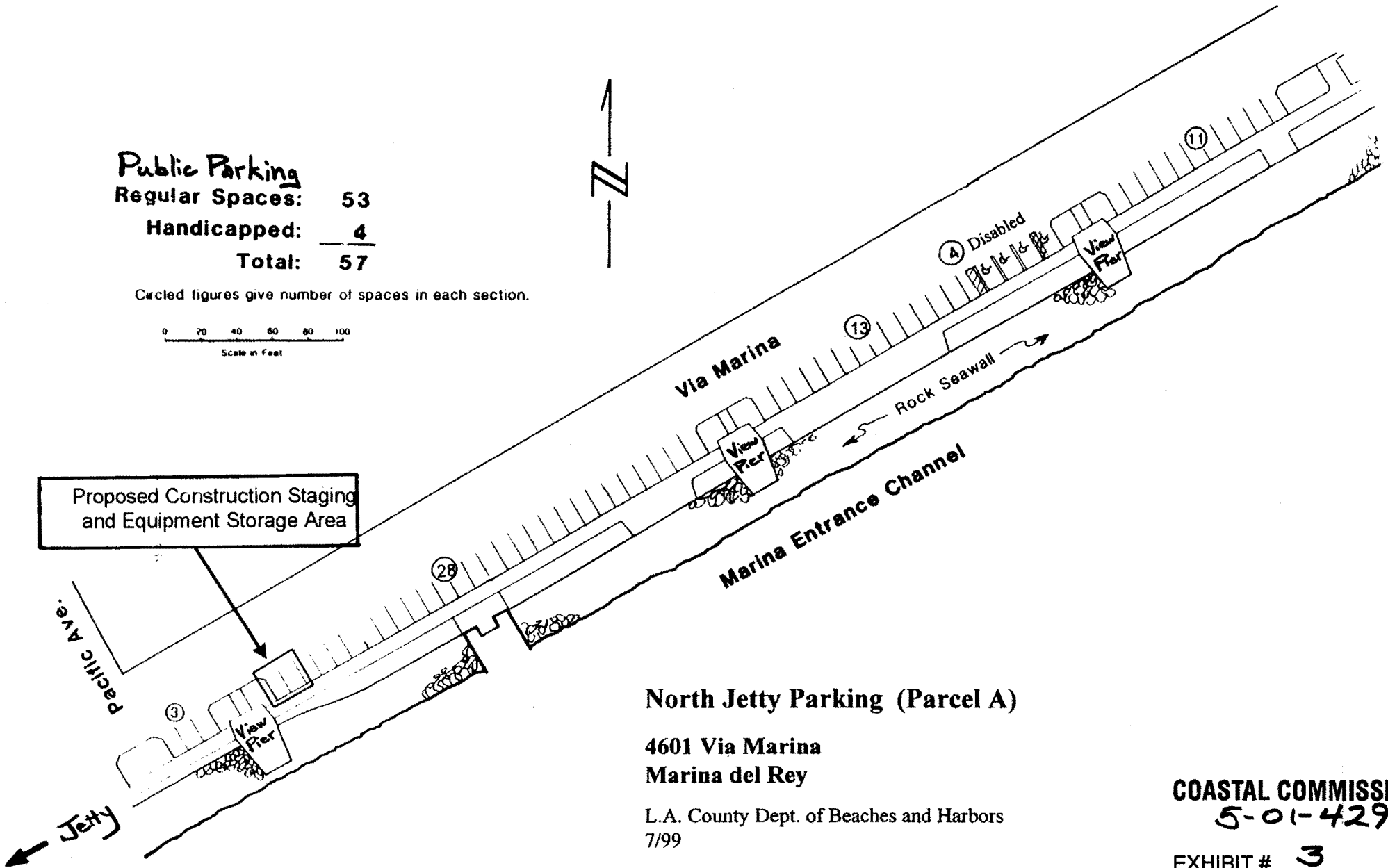
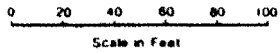
MdR
LCP Jurisdiction
Map: Entrance
Channel

COASTAL COMMISSION
5-01-429

EXHIBIT # 2
 PAGE 2 OF 2

Public Parking
 Regular Spaces: 53
 Handicapped: 4
 Total: 57

Circled figures give number of spaces in each section.



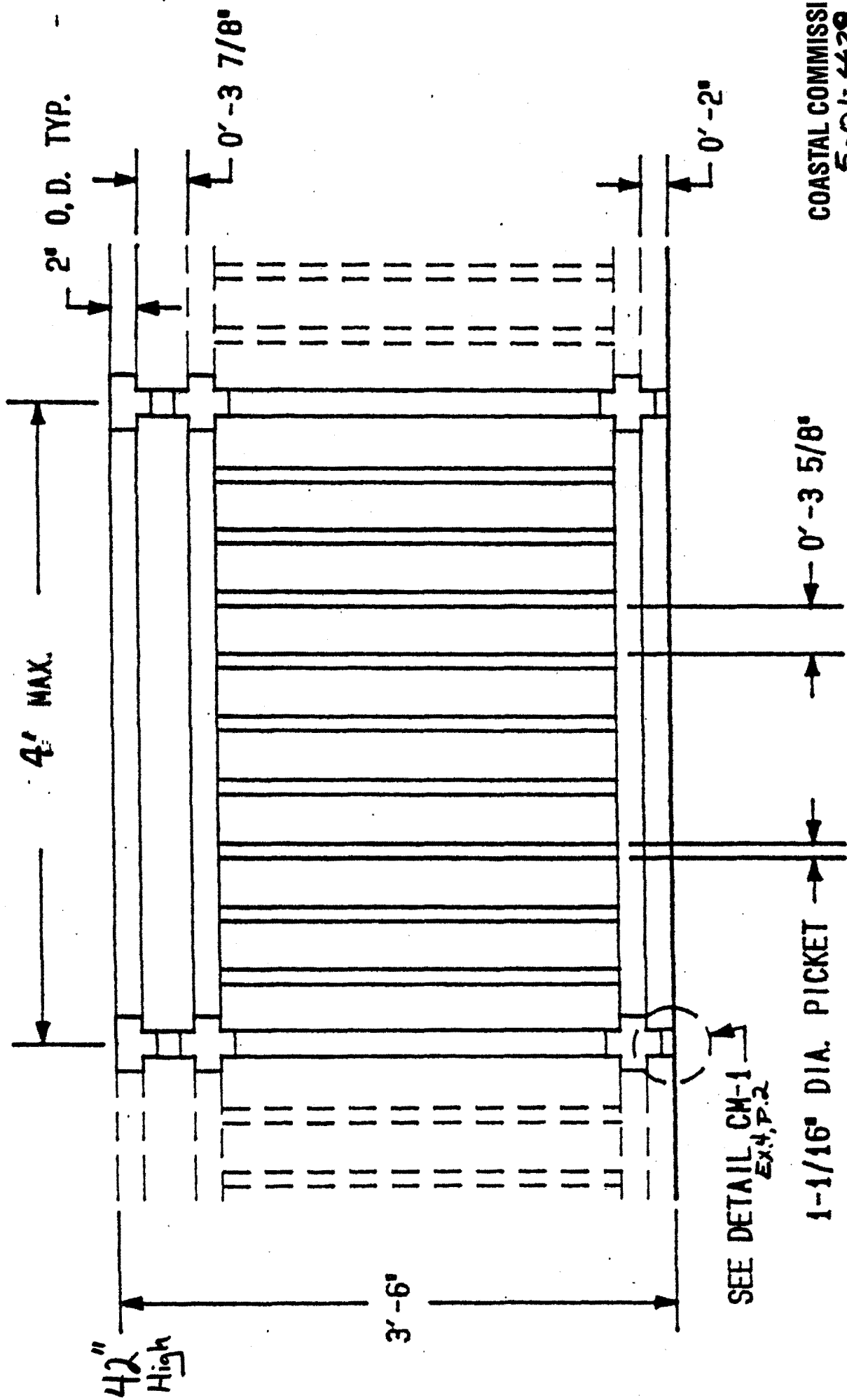
North Jetty Parking (Parcel A)

4601 Via Marina
 Marina del Rey

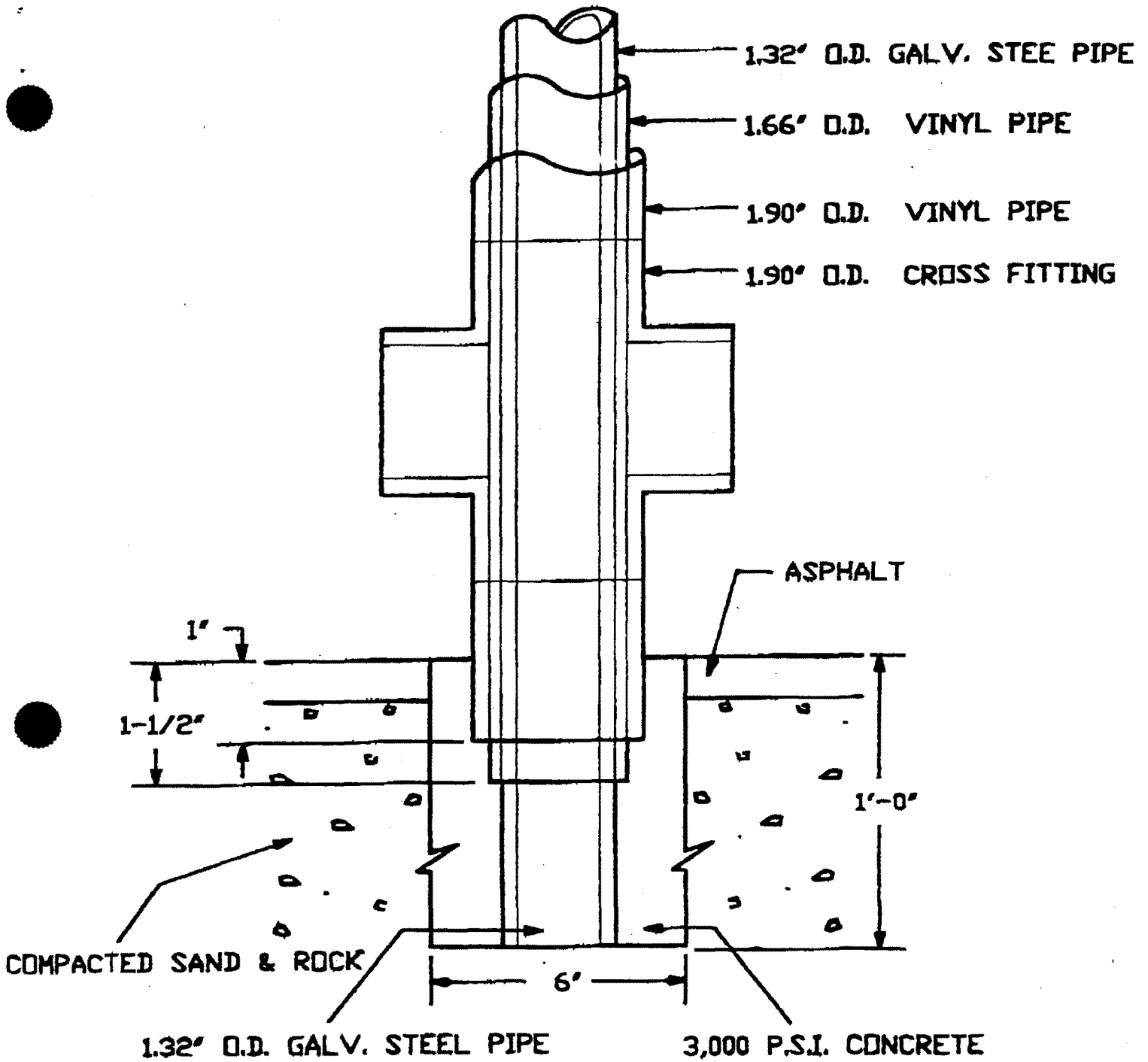
L.A. County Dept. of Beaches and Harbors
 7/99

COASTAL COMMISSION
 5-01-429

EXHIBIT # 3
 PAGE 1 OF 1



Proposed Design



PROJECT: MARINA DEL RAY-PHASE II

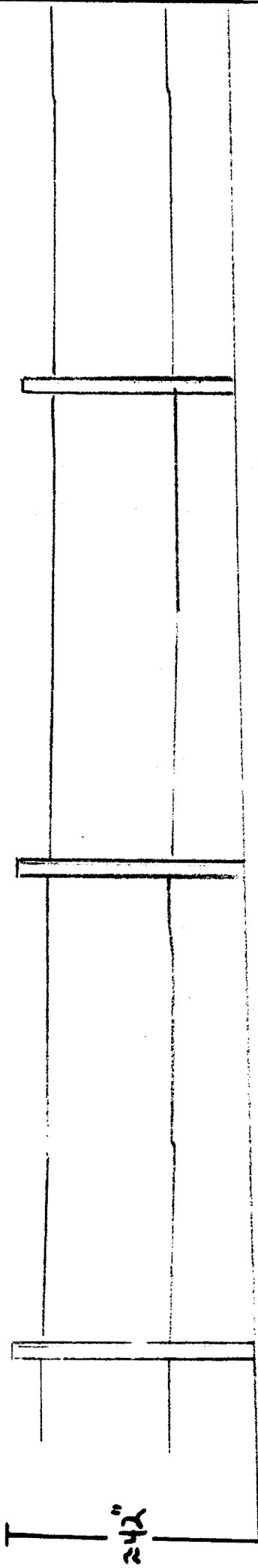
SUBJECT: CORE MOUNT DETAIL

COASTAL COMMISSION

5-01-429

EXHIBIT # 4

PAGE 2 OF 2



← Public Walkway →

Existing Post & Cable Barrier



United States Department of the Interior
Fish and Wildlife Service
 Ecological Services
 Carlsbad Fish and Wildlife Office
 2730 Loker Avenue West
 Carlsbad, California 92008



In Reply Refer to:
 FWS-LA-1565.1

Joe Chessler, AICP
 Chief, Planning Division
 County of Los Angeles
 Department of Beaches and Harbors CALIFORNIA
 13837 Fiji Way COASTAL COMMISSION
 Marina Del Rey, California 90292

RECEIVED
 South Coast Region

NOV 1 2001

Department of Beaches and Harbors	APR 16 2001	File No.	
	APR 18 '01	Director	Chesler
		Deputy Director	Joe Chessler
	Deputy Director	Joe Chessler	
	Executive Assistant	Joe Chessler	
	Admin. Services		
	Asset Management		
	Facilities Property Mgmt	Joe Chessler	
	Community Services		
	Planning		

Re: North Jetty Hand Rail Replacement at Venice Beach, Los Angeles County, California

Dear Mr. Chessler:

We have reviewed the information provided by your office on March 15 and April 10, 2001, regarding the hand rail replacement project proposed on the north jetty at Venice Beach, Los Angeles County, California. We are providing the following determination based on our review of the information provided, and our knowledge of biological resources within Los Angeles County. We provide these comments in keeping with our agency's mission to work "with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people." Specifically, we administer the Endangered Species Act of 1973 (Act), as amended. Section 7 of the Act requires Federal agencies to consult with the U.S. Fish and Wildlife Service should it be determined that their actions may affect federally listed threatened or endangered species. Section 9 of the Act prohibits the "take" (e.g., harm, harassment, pursuit, injury, kill) of federally listed wildlife. "Harm" is further defined to include habitat modification or degradation where it kills or injures wildlife by impairing essential behavioral patterns including breeding, feeding, or sheltering. Take incidental to otherwise lawful activities can be permitted under the provisions of sections 7 (Federal consultations) and 10 (permits) of the Act.

The project proposes to replace the existing post and cable fencing along 4,154 feet of the north jetty at Marina Del Rey. Drilling and other construction will be conducted within the asphalt walkway on top of the jetty. No in-water construction is proposed. Noise-generating construction equipment scheduled to be used include air compressors, concrete breakers, generators, pneumatic tools, and power hand saws. The project is scheduled to start June 1, 2001, and will continue for approximately two weeks.

The project area is approximately 400 feet south of the federally endangered California least tern [*Sterna antillarum* (=albifrons) browni, "tern"] colony located at Venice Beach. Potential

COASTAL COMMISSION
 5-01-429

EXHIBIT # 6
 PAGE 1 OF 2

impacts to the terns from the proposed project include elevated background noise levels that may impair the terns' ability to hear juvenile begging calls when returning to the colony, or compressive noises that may flush the terns off nests or otherwise modify their behavior. Research conducted at other tern colonies has shown that background noise levels on beaches is surprisingly high, and that construction or other human-produced noise levels of approximately 65 dBA at the colony do not appear to modify tern behavior. This is consistent with research on noise impacts to songbirds showing that 65 dBA is the threshold at which behavioral modification may occur.

Construction equipment noise level information shows that the equipment to be used for the proposed project will generate noise levels that will dissipate to 65 dBA or below at distances of 400 feet. ~~Therefore, we have determined that the proposed project is not likely to harass or otherwise result in the take of terns, therefore, your agency is not required to obtain incidental take authorization under either section 7 or 10 of the Act. Should project plans change, or if additional information on the effects of noise on tern behavior becomes available, this determination may be reconsidered.~~

If you have any questions regarding this letter, please contact Fish and Wildlife Biologist Kevin Clark of this office at (760) 431-9440.

Sincerely,

Anne Hoelter

for Karen A. Evans
Acting Assistant Field Supervisor

cc: Lt. Kent W. Smirl, CDFG

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EXHIBIT # 6

PAGE 2 OF 2



**Marina Peninsula Neighborhood Association, Inc.
A California Nonprofit Public Benefit Corporation
28 Westwind St., Marina Peninsula, CA 90292**

October 23, 2000

Mr Stan Wisniewski, Director
Department of Beaches and Harbor
County of Los Angeles
Fax: 310-821-6345
13837 Fiji Way
Marina Del Rey, CA 90292

RE Your letter dated October 18, 2000

Dear Mr. Wisniewski:

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Thank you for your letter dated October 18, 2000. Regarding the bathroom at the end of the Peninsula, we appreciate very, very much your cooperation in keeping that bathroom neutral in color/sandy color so as to make it blend in rather than stick out. We still are unsure why you don't prefer placing a handicap bathroom closer to the park and closer to the handicap parking at the end of the jetty, but we appreciate the fact that if you are going to make the handicap bathroom addition, that you make it blend in according to our requests. Trust me, we are very grateful for your department's cooperation with our wishes.

As to the Jetty Railing we don't have the same appreciation. We are grateful that your department plans on replacing the dilapidated cable and post protection along the walkway by the jetty. We agree that that protection needs to be updated. However, we disagree with the proposed alternative as it is proposed. Our neighborhood believes that it looks too much like a jail and does not allow enough "view-through" the bars. Perhaps you could make more space between the bars. Perhaps you could use a similar pattern of vertical bars with a "mesh" instead of bars. Perhaps, and what the community would like the most, is to simply replace the old post and cable with a new post and cable with perhaps three lines of cables or four instead of two. That should prevent children from falling, yet allot sufficient viewing room for everyone to enjoy.

Regardless of what you plan to place there, we would appreciate that you place it where the existing railings are. That is, we would prefer not to have a boxed-in feel beginning at Ocean Front Walk all the way to the end of the jetty with railings on both sides. No one has fallen on to the sand on the north side of the jetty-walkway, so we do not need to spend taxpayer funds on railings where they are not needed. Of course, when the jetty goes over the rocks on both sides, we perfectly understand as to having railings on both sides. However, we stress that we prefer the cable and post scenario. You may want to make a compromise and have the bar-railing project along the jetty from the park on the East side of Via Marina to Ocean Front Walk. Then from OceanFront walk onward do the Post and Cable (3 or four cables) extension from there. This latter approach would be a compromise that everyone could live with: it would prevent children from falling in the most visited and dangerous areas and would allow for maximum viewing in the areas of least traffic and the areas where the residents of the area view.

In any case, we also extend an invitation to present this project to our members at our annual membership meeting at the Terrace (7 Washington Blvd) on Nov 1, 2000 at 6pm.

Thank you for keeping us informed. Even though we may voice our opinions, we do appreciate you letting us know what is going on in the area.

Sincerely,

Plinio J. Garcia, Jr. 310-466-8815 or pliniogarcia@earthlink.net

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5-01-429

EXHIBIT # 7
PAGE 1 OF 1

