

CALIFORNIA COASTAL COMMISSION

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W16b

Filed: 4/5/10
49th Day: 5/24/10
180th Day: Waived
270th Day: 12/31/10
Staff: Al Padilla-LB
Staff Report: 11/30/10
Hearing Date: 12/15-17/10

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-10-076

APPLICANT: NF Marina LP and Los Angeles County Department of Beaches and Harbors

AGENT: Latham & Watkins, LLP

PROJECT LOCATION: 14015 & 14035 Tahiti Way (Parcel 8T), Marina Del Rey, Los Angeles County

PROJECT DESCRIPTION: Demolish an existing 230 boat slip marina, including removal of 117 pilings, and construct a 207 boat slip marina consisting of pre-manufactured concrete dock system, 126 concrete pilings, with an in-slip sewage pumpout for all boats and utility hookups.

LOCAL APPROVALS RECEIVED: Los Angeles County Regional Planning Conceptual approval No. RPP200801587

SUMMARY OF STAFF RECOMMENDATION:

The major issues of this staff report include possible impacts upon the California least tern, a reduction in the quantity of berthing slips available in a public recreational marina, and water quality. Staff recommends **APPROVAL** of the proposed development with the following special conditions including: 1) participation in a lower-cost boating payment program; 2) boater parking; 3) water quality management plan; 4) operation and maintenance of over-water sewer lines; 5) piling construction; 6) construction responsibilities and best management practices; 7) location of debris disposal site; 8) U.S. Army Corps of Engineers approval; 9) timing of project to avoid least tern foraging season; 10) *Caulerpa taxifolia* pre-construction survey; 11) future development; 12) assumption of risk lease restriction for the lessee; and 13) assumption of risk lease restriction for the lessor.

SUBSTANTIVE FILE DOCUMENTS: Marina Del Rey certified Local Coastal Plan, as amended in 1995; Marina Del Rey Periodic LCP Review, 2008; Dana Point

Harbor Revitalization Plan (Land Use Plan); Marina Del Rey Slip Pricing and Vacancy Study, March 2009; CDPs 4-91-55, 5-99-244, 5-02-303, and 5-97-060.

I. STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-10-076 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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.

RESOLUTION TO APPROVE THE PERMIT:

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. 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 on which the Commission voted on the application. 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. LOW COST BOATING PAYMENT

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant or successor in interest shall agree to provide:

- a. A payment to the County, or a non-profit organization acceptable to the Executive Director of the Coastal Commission, to be used for scholarships for youths to participate in boating programs, for purchase of sail training vessels, funding for transportation to bring youths to the Harbor, and for other similar programs to enhance lower cost boating opportunities. Such programs may include, but are not limited to the County's Water Awareness, Training, Education and Recreation (W.A.T.E.R.) Youth Program.
- b. The payment shall be the equivalent financial value of one 30-foot boat slip (based upon the listed per-foot annual rental rate posted at the marina on July 1 of each year for 30-foot slips) for each 100 slips greater than 30 feet in length that are constructed within the marina subject to this permit. For each slip above 100 slips that are greater than 30 foot in length the payment shall be prorated based on the rental rate of a 30-foot slip. The payment to the County will commence upon completion of the marina redevelopment construction and continue annually, throughout the life of the project.
- c. The Department of Beaches and Harbors shall provide (or shall cause the appropriate non-profit organization to provide) an annual report, for the review and approval of the Executive Director of the Coastal Commission, detailing the payments that have been collected, the lower cost boating programs developed and operated, and the number of people participating in such programs. The report shall be provided annually, no later than January 15th of each year for the proceeding calendar year.

2. **BOATER PARKING**

The number of vehicle parking spaces provided for boater parking shall be provided at a ratio of .675 or greater (parking spaces to slips), based on the total number of boat slips approved by this permit. Any future change to the number of boater parking spaces will require an amendment to this permit.

3. **WATER QUALITY MANAGEMENT PLAN**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a detailed Water Quality/Best Management Practices (BMPs) Program for controlling adverse impacts to water quality related to long-term water-borne berthing of vessels in the marina. The plan shall be prepared by a qualified professional with expertise in the control of water quality impacts related to marinas.

1. The plan shall demonstrate that long-term water-borne berthing of vessels in the marina shall be managed in a manner which protects water quality and that persons using the marina are made aware of the rules related to boat maintenance and use. To the extent to which physical features or objects (trash containers, recycling bins) are required in the plan, an attached site plan shall show the location where these features or objects will be installed.
2. The plan shall include, at a minimum, the following components or measures:
 - (a) Boat Cleaning Management Measures:
 1. The marina shall prohibit in-water boat hull washing which does not occur by hand;
 2. The marina shall prohibit in-the-water hull scraping or any process that occurs under water which results in the removal of paint from boat hulls;
 3. The marina shall ensure that marina tenants, when washing boats, utilize detergents and cleaning components that are phosphate-free and bio-degradable. Amounts used shall be minimized; and
 4. The marina shall prohibit the use of detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
 - (b) Implementation of a solid waste reduction and recycling program including, at a minimum, the following Solid Waste Management Measures:
 1. Trash receptacles shall be provided at the entrances to all docks;
 2. Containers for recyclables shall be provided and sited so that they are convenient for boaters (i.e. close to the dock); and

3. All trash and separate containers for recyclables, oil wastes, fish wastes, etc. shall be clearly marked, have the capacity to handle all waste streams, and be sited so that they are convenient for boaters (i.e. close to the dock).
4. All solid waste, including sewage, shall be properly disposed of only at appropriately designated facilities.

(c) Implementation of a liquid material control program which provides and maintains appropriate storage, transfer, containment and disposal facilities for liquid materials commonly used in boat maintenance including, at a minimum, the following Liquid Waste Management Measures:

1. The marina shall provide a secure location to store hazardous wastes, including old gasoline or gasoline with water, oil absorbent materials, used oil, oil filters, antifreeze, lead acid batteries, paints, solvents and other hazardous wastes. Storage areas shall be impervious to stored materials and shall comply with hazardous waste storage and disposal requirements of the local certified uniform permitting agency;
2. Containers for anti-freeze, lead acid batteries, used oil and used oil filters which will be collected separately for recycling shall be provided by the marina;
3. Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes; and
4. The marina shall maintain an adequate supply of absorbent pads for use by marina tenants and lessees for the cleaning of minor spills.

(d) Petroleum Control Management Measures:

1. The marina shall provide a service that reduces oily discharges from in-board engines, either a bilge pump-out facility (with an oil-water separation device) or the marina shall promote the use of oil-absorbing materials in the bilge areas or engine compartments of all boats with inboard engines. When distributing oil absorbents to boaters, the marina shall provide adequate safety warnings as to the safe use and handling of flammable materials and methods to prevent fouling the bilge pump. Oil absorbent materials should be examined at least once a year and replaced as necessary. The marina shall recycle the materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations. The marina environmental policies shall encourage boaters to regularly inspect and maintain engines, lines and hoses in order to prevent oil and fuel spills. These policies shall encourage boaters to use preventive

engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas. The use of soaps that can be discharged by bilge pumps shall be discouraged.

(e) Public Education Measures:

In addition to these specific components outlined in Special Condition 3.2.(a) through (d) above, the BMP program shall also include enforcement provisions, including eviction from the marina and notice of possible civil or criminal fines and/or penalties, to assure compliance with this program by all marina tenants. The marina shall provide information about all of the measures in the BMP program through a combination of signage, tenant bill inserts and distribution of the BMP program to new tenants and each year to repeat tenants. The program shall be posted at the dock master's office and at all dock entrances, and be included and attached to all slip lease agreements.

4. OPERATION, MAINTENANCE, AND REPAIR OF OVER-WATER SEWER LINES

The applicant shall submit, for the review and approval of the Executive Director, an operation and maintenance plan for over-water sewer lines. The over-water sewer lines include all pipes from sewage pump-out facilities, and any other pipe which leads to a sanitary sewer. The over-water sewer lines shall be visually inspected at least once per month and dye- or pressure-tested at least once every six months. All leaks shall be repaired immediately upon discovery. If the applicant determines that a more stringent procedure is necessary to ensure protection of coastal water quality, then the applicant shall update the operation and maintenance plan.

The permittee shall undertake development and ongoing maintenance and operation in accordance with the approved final plan and other requirements. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. PILING CONSTRUCTION

The applicant shall use the least damaging alternative for the construction of pilings and any other activity that will disturb benthic sediments. The applicant shall limit, to the greatest extent practicable, the suspension of benthic sediments into the water column. Construction of pilings shall comply with the requirements of Special Condition No. 9 relative to timing.

6. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to inundation or dispersion in the waters of the marina;
- (b) Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction;
- (c) No machinery or construction materials not essential for project improvements shall be allowed at any time in the intertidal zone;
- (d) If turbid conditions are generated during construction, a silt curtain shall be utilized to control turbidity;
- (e) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- (f) Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss; and
- (g) Reasonable and prudent measures shall be taken to prevent all discharge of fuel or oily waste from heavy machinery, pile drivers or construction equipment or power tools into the waters of the Marina del Rey. The applicant and the applicant's contractors shall have adequate equipment available to contain any such spill immediately.

7. LOCATION OF DEBRIS DISPOSAL SITE

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the 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.

8. U.S. ARMY CORPS OF ENGINEERS APPROVAL

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a permit issued by U.S. Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. TIMING OF PROJECT

In order to reduce impacts on the California least tern during nesting and foraging season, no pile driving activity that may generate noise or turbidity shall occur during the period commencing April 1 and ending September 1 of any year.

10. FUTURE DEVELOPMENT

This Coastal Development Permit 5-10-076 is only for the development expressly described and conditioned herein. The permittee shall undertake development in accordance with the approved coastal development permit. Any proposed changes to the development, including any change to the sequence of construction, shall be reported to the Executive Director. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

11. CAULERPA TAXIFOLIA PRE-CONSTRUCTION SURVEY

A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.

C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

1. for the review and approval of the Executive Director; and
2. to the Surveillance Subcommittee to the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043).

D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and/or buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions

to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

12. ASSUMPTION OF RISK, WAIVER OF LIABILITY, AND INDEMNITY AGREEMENT AND LEASE RESTRICTION APPLICABLE TO APPLICANT-LESSEE

A. By acceptance of this permit, the applicant/lessee, NF Marina LP, LP, on behalf of (1) itself; (2) its successors and assigns and (3) any other holder of the possessory interest in the development authorized by this permit, acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant 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 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 restrictions identified in (i) through (v).

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant, NF Marina LP, shall execute and record a lease restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The lease restriction shall include a legal description of the applicant's entire parcel (No. 21). The lease restriction shall run with the land, binding all successors and assigns. This lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

13. ASSUMPTION OF RISK, WAIVER OF LIABILITY, AND INDEMNITY AGREEMENT APPLICABLE TO APPLICANT-LESSOR

A. By acceptance of this permit, the applicant-lessor Los Angeles County Department of Beaches and Harbors acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant-lessor 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 include a provision in any subsequent lease of such property requiring the lessee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the terms of subsection A of the prior condition.

B. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the landowner shall execute and record against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant (lessor) shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes to demolish an existing 230 boat slip (plus 11 end ties) marina, including removal of 117 dock pilings, and construct a 207 boat slip with 11 end ties, marina consisting of pre-manufactured concrete dock system, 126 concrete pilings, with an in-slip sewage pumpout system and utility hookups for all boats. All existing dock floats, ramps, and pilings within the anchorage will be removed and new floats, ramps, and pilings will be constructed in a similar configuration. There will be a loss of 23 slips due to current California Department of Boating and Waterways slip width criteria, American Disability Act (ADA) access requirements, and the provision of slip sizes to meet market demand. The new anchorage will be a structural wood system with a concrete deck and polyethylene floats. The existing and proposed boat slip lengths are as follows:

Slip Length (ft.)	≤ 25	26-30	32 to 38	40+	Total
Existing	0	78	103	49	230
Proposed	13	48	104	42	207
Change	+13	-30	+1	-7	-23

The existing marina includes boat slips arranged in eleven docks with eleven gangways, with end ties at the end of each dock. The existing marina is comprised of slips in the 28, 30 to 38 and 40+ foot slip lengths.

The existing marina was constructed in 1969 and because of its age is dilapidated and needs to be replaced. Standards for marina accessibility, safety, and design have changed since the original construction. New legislation and guidelines over the years have resulted in the necessity for complete marina reconstruction in order to meet current Department of Boating and Waterway guidelines and Americans with Disability Act (ADA) access requirements.

The new anchorage will provide ten gangways, with one ADA accessible gangway leading to two docks that will provide 42 ADA accessible boat slips varying from 24 feet to 38 feet. The average slip size will increase only slightly from 34.47 feet to 34.73 feet. The existing water parcel covered by the docks and walkways will increase from 52,600 square feet to 53,922 square feet. In addition, all 117 existing 16.5-inch diameter concrete pilings will be replaced and relocated with 126 16-inch diameter new concrete pilings.

The proposed project will be located at 14015 & 14035 West Tahiti Way (Parcel 8T) in the southwestern portion of the marina, in Marina del Rey. The parcel contains approximately 7 acres of water area, with approximately 1,500 feet paralleling the bulkhead (see Exhibit No. 2 and 3).

According to the applicant, construction of the new marina will be done in phases with only portions of the slip anchorages out of service at any one time. Construction will be done one dock at a time to minimize boater displacement. Boats using the existing facility and impacted by development will have the opportunity to move other available slips within the same marina. Other available relocation options within Marina del Rey include dry dock facilities and other available slips within other anchorages found throughout Marina del Rey.

Current parking is provided in a 484 space shared surface parking lot shared by an adjacent three-story, 205 unit apartment residential development. The parking area contains 169 parking spaces for marina slip lessees and their guests and 315 spaces for the existing residential development.

B. Areawide Description

Marina Del Rey covers approximately 807 acres of land and water in the County of Los Angeles. Marina Del Rey is located between the coastal communities of Venice and Playa Del Rey. The marina is owned by the County and operated by the Department of Beaches and Harbors.

The existing marina began its development in 1962 when the dredging of the inland basin was completed. The primary use of the marina is recreational boating with other uses including residential and commercial. Marina del Rey currently provides approximately 4,731 boat slips, within approximately 26 separate anchorages/marinas. Other boating facilities include transient docks, a public launching ramp, three public pump-out stations, repair yards, charter and rental boats, harbor tours, and sailing instruction schools.

Other recreational facilities within Marina del Rey include: Burton W. Chase Park, Admiralty Park, a public beach and picnic area, bicycle trail, and limited pedestrian access along the marina bulkheads and north jetty promenade. Along with the recreational facilities, the marina is developed with multi-family residential projects, hotels, restaurants, commercial, retail and office development.

Within the marina, most structural improvements have been made by private entrepreneurs, operating under long-term land leases. These leases were awarded by open competitive bids in the early and mid-1960's. The developers were required to construct improvements on unimproved parcels in conformance with authorized uses designated in their leases and pursuant to a master plan for the marina. Most leases will expire after 2020.

Within the existing marina, development has occurred on all but one leasehold parcel. This development is generally referred to as Phase I development. Recycling, intensification, or conversion of these initial uses on leased parcels is referred to as Phase II development.

C. Public Access and Recreation

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 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.

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30234 of the Coastal Act states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public Access to the coast by...(4) providing adequate parking facilities.

Boating

The project is the demolition of a public boating marina and reconstruction of a new marina in a similar configuration but with net reduction of 23 slips, and slight modification in the slip size distribution. The marina is a privately operated facility with berthing slips available to the general public on a month-to-month fee basis. Upon completion of the proposed development, the marina slip leases will remain available to the general public. The proposed project does not include any proposed change to the method of leasing.

The slip size distribution in Marina del Rey and other marinas is important in terms of recreational boater access since pricing is based on the size of the slip. Slip rates in Marina Del Rey range from an average of approximately \$10.00 to \$16.00 per linear foot of dock. Rates for the proposed renovated anchorage will be fairly consistent with this range; however, based on past marina redevelopment projects, because the marina will be completely redeveloped, including installation of new boater amenities, such as individual pump-out stations and utility hook-ups, the slip rates will probably increase from the current rates.

In the recent Periodic Review for the Marina Del Rey Local Coastal Plan, the Commission expressed concern with the loss of slips within Marina del Rey and the protection of the existing mix of slips. The Commission found that:

...to continue to protect the public demand for boating and lower cost recreational facilities, consistent with the Coastal Act, the County should ensure that the LCP policies and objectives protect an adequate mix of slip sizes to continue to meet the demand for all boat size categories of boat owners. Furthermore, the marina should be protected from any further reduction in total slips to maximize boating recreational opportunities; and in order to protect the small boater's continued use and access to wet slips throughout the marina, slips 35 feet and under should be protected from further slip reduction.

The existing slip configuration within Parcel 8T contains a total of 230 slips (plus 11 end ties). Of this total, 78 slips, or 33% are 30 feet or less and 175 slips, or 76%, are 35 foot or less. The proposed project will reduce the total number of slips to 207 slips (plus 11 end ties), with 61 slips, or 29%, 30 feet or less. Slips 35 foot and under will decrease to 144 slips, or approximately 70% of the proposed total slips. Although slips 35 feet and under are decreasing by 31 slips, the applicant is adding, through redistribution of the slips, 13 slips that are 25-foot or less. The existing slip distribution does not provide any slips in the 25 foot or less range. The larger slips, slips 36 feet and over, will increase from 55 slips (23%) to 62 slips (30%). According to the applicant the individual slip distribution (existing and proposed) for the Bay Club Marina is as follows:

Slip Length	Existing Total	Proposed Total
22	0	1
24	0	4
25	0	8
28	14	4
29	0	4
30	64	40
32	0	1
33	16	16
34	0	1
35	81	66
36	0	1
38	6	19
40	33	18
42	7	13
44	2	2
45	0	1
46	7	7
60	0	1
Total¹	230	207
Average Length	34.47	34.73

¹ According to the applicant the total excludes 11 end ties (both existing and proposed).

According to the applicant, the proposed modification of slip size distribution is due to several factors. The existing marina was constructed over 40 years ago and new, or reconstruction of new marinas, are required to comply with the current Layout and Design Guidelines of the California Department of Boating and Waterways (DBAW) to improve accessibility and safety. Incorporation of the current design requirements, which require wider slip or berth sizes, wider docks and fairways (interior channels between docks), will result in fewer slips being redeveloped in any given water space. Furthermore, marinas have been increasing berth sizes to accommodate the wider power boat widths in order to provide the greatest flexibility for berthing of recreational boats (sailboats and power boats); and double loaded slips, which are frequently found in older marinas, are being eliminated due to the wider and longer vessel designs that are common today, which make it harder to fit two boats into a double slip. Another factor is the design requirements imposed under the Americans with Disabilities Act (ADA). Americans with Disabilities Act requires wider fingers, docks, and longer access ramps to accommodate wheelchair access. For instance, finger piers that lead to accessible slips that are currently 36 inches wide must be at least 60 inches wide. Compliance with ADA access requirements require wider gangways, platforms, and finger piers resulting in less area for slips and the loss of the four slips.

According to the applicant, the redesigned marina will lose four boat slips due to ADA access requirements. The ADA access requirements mandate that a marina allow for a minimum number of disabled-access boat slips based on the number of total available slips at the marina. In order to comply with the new ADA requirements, the federal government has suggested the consolidation of slips in one or more locations within a given marina. The applicant has proposed consolidating the accessible slips at Docks B-2700, 2900, and 3100 (See Exhibit No. 5, Proposed Slip Loss Graphic). Such consolidation, according to the applicant, will ensure compliance with the ADA access requirements while minimizing associated slip loss.

An additional loss of 19 boat slips is due to the Project's compliance with the DBAW Guidelines. Under the DBAW Guidelines, each marina must meet new minimum finger float and fairway width requirements for boat slips depending on the length of the respective slip. As applied, these new minimum standards produce boat slips that are wider than existing boat slips. As such, because each individual slip must now cover a greater area, compliance with the DBAW Guidelines will result in the loss of boat slips. According to the applicant, incorporating the DBAW Guidelines while striving to maintain existing boat slip ratios results in a loss of 19 boat slips or approximately two boat slips from each dock (generally, one in each row of slips). (See Exhibit No. 5, Proposed Slip Loss Graphic.)

Therefore, under the new ADA design requirements and DBAW guidelines, the number of slips, or berths, are being reduced from 230 to 207, a reduction of 23 slips. However, although the above mentioned factors influence the slip size distribution to a certain degree, the other factor is market demand. Marketing studies (*Marina del Rey Slip Sizing Study*, March 2009, Noble Consultants, Inc.) have shown that the greatest demand is in

the mid and larger boat sizes (36 feet and over), and to meet this demand, marinas are reducing the number of smaller slips and increasing the mid and larger range slips.

Boat ownership and boat recreation is based on a number of factors, including economics and population growth. As the economy grows, more and more people have greater disposable income which can be used to purchase boats and to pay for the anchorage fees. Furthermore, as southern California's population continues to increase, boat sales could also increase and increase the demand for anchorages in all slip lengths. Therefore, it is important to ensure that anchorages continue to provide a mix of slip lengths to provide a full range of boating opportunities for all boaters.

Marina del Rey currently provides approximately a total of 4,731 boat slips. The slips range in size from approximately 18 feet to over 51 feet in length, with the following slip distribution²:

18-25 ft.	=	1,231	(26%)
26-35 ft.	=	2,074	(44%)
36-50 ft.	=	1,146	(24%)
>51 ft.	=	280	(6%)

Currently, of the approximately 4,731 boat slips provided within Marina Del Rey, approximately 70% of the slips are 35 feet or under.

According to forecasts from the DBAW study, between 2000 and 2020, the overall number of boats (those registered with the State Department of Motor Vehicles) in all of California will increase at a rate of 13,000 to 23,000 boats per year, a growth rate of between 1.4% to 2.5% per year with most of the growth expected to be in the category of boats under 26 feet long. In contrast, the DBAW study concluded that there will be modest overall growth in the size categories 16 feet to 19 feet and over 26 feet. Based on this forecast, since boats under 26 feet are expected to experience the highest growth in ownership, it would seem that the public demand for boat slips would then be for boat slips that are 26 feet and under. However, although the largest growth in boat ownership is expected to be in the smaller boat category (less than 26 feet), the greatest demand for boat slips in all of California is for slips larger than 26 feet, with the rate of increase in demand is also highest for larger slips. This greater demand for larger slips is due, in part, to increasing cost of wet slip rentals and maintenance and/or economic changes, where the small boat owner may not have the financial resources to pay rental rates, or increased rental rates, and added maintenance costs that come with storing a boat in the water. The small boat owner, unlike the larger boat owner, has the flexibility, because of the small size of the boat, to trailer their boat and store it out of the water, which helps reduce the cost of boat ownership.

Regionally, since the early 1990's, marinas have been renovating their aging marinas and reconfiguring their slip size distribution to favor larger boats—boats 36 feet and larger—

² Marina Del Rey Slip Pricing and Vacancy Study, Prepared for Los Angeles County Department of Beaches and harbors, March 2009.

because of the decrease in demand for small boat slips and the increase in demand for larger slips. The continued loss of small boat slips could have an adverse impact on boating opportunities within the Harbor by reducing the number of these slips available to the public.

Based on statewide and regional studies, the demand for the smaller slips has been declining locally and regionally. This is also the trend statewide according to the DBAW study. This trend has been reflected in a number of local marina renovation developments. For instance, in the early 1990's, Ventura Isle Marina, in the City of Ventura, reduced their total number of slips from 597 slips to 467, and reduced the slips 25 foot and under from 26% to 9% of the total. The average slip size increased from 31.9 to 38.2 feet (Coastal Development Permit No. 4-91-55). In 1999, Sunset Harbor Marina (i.e. Sunset Aquatic Park) in Seal Beach, reduced the total number of slips from 255 to 240. Slips that were 25 feet and under, which constituted approximately 30% (78) of the total, was reduced to 16% (40) of the total. Slips 35 feet and larger were increased with the overall slip length increasing from 30.5 to 32.8 feet (Coastal Development Permit No. 5-99-244). Under a Port of Los Angeles coastal permit, Cabrillo Way Marina was reconfigured reducing the number of slips from 625 to 614. Slips that were 25 feet and under, that originally constituted 18% of the total, were eliminated. Cabrillo Marina provides no slips 25 feet or under. The average slip size increased from approximately 34.5 to 42 feet. This regional and statewide trend, indicating an increase in registered small boats but higher vacancy rates for small boat slips, is due to the fact that California's boats under 26 feet are most commonly stored on trailers on the owner's property or in dry storage, whereas most boats 26 feet or longer are kept in the water at marinas. This trend may be partially based on affordability of wet slips; however, the rates for slips continue to increase. Boat ownership and boat recreation is based on a number of factors, including economics and population growth. As the economy and population in Southern California grows, it is likely that more people will purchase boats and seek slips in a local marina. The demand for slips of all sizes is likely to increase, while the supply of slips of any size will continue to be limited. The result of increased demand will be higher slip rental rates. The higher slip rental rates will cause the boaters at the lower end of the economic scale to relinquish their slips, which tend to be shorter because they own the less expensive shorter vessels. The higher income boaters are much more likely to own a larger vessel and are better able to afford a longer slip. While the cost of recreational boating rises, the vacancy rates for shorter slips seem to be increasing, while the demand for larger slips is increasing.

It is fair to say that there is a greater demand for larger slips throughout California but it is difficult to say with certainty that there is a long term trend of decreasing demand for smaller spaces considering the Department of Boating and Waterways study data. Although there is clearly a higher number and percentage of vacancies for small boat slips in Marina Del Rey it is too soon to tell if this is a long-term trend. To encourage lower cost boating opportunities and the introduction of boating to novice recreational boaters it is necessary to protect the provision of small slips within the water as well as provide greater dry storage opportunities out of the water.

In prior permit actions³, the Commission has been concerned about the trend towards larger slips in marinas at the expense of the smaller slips. As larger slips occupy more space in a marina, there is less space for the smaller slips and the result is fewer overall slips and fewer slips available for the owners of small vessels. As the trend for larger boats continues and marinas convert their small boat slips to larger slips, berthing opportunities for the small boat owner will be reduced. While it is difficult to contend that recreational boating is in fact a lower cost recreational activity, in general, smaller boats are less expensive, and therefore more available to a larger segment of the population than larger boats. The Commission does not regulate the rates at which marinas rent their slips to the public, however, the Commission can regulate the design of a marina in order to ensure that the redesigned slips conform to the public access and recreation policies of the Coastal Act by providing the correct balance between the size of slips and the boaters' demand for slips in order to encourage increased recreational boating and protect existing boating opportunities including the provision of smaller slips.

Even though there appears to be a higher increase in demand for larger slips throughout California, it is forecasted that there will be an increase demand for smaller slips in Marina Del Rey. According to past studies⁴, vacancies are generally higher for boat slips under 36 feet than for boat slips 36 feet and longer. For Marina del Rey, the County's Beaches and Harbors reports that the overall average vacancy for 2008 was approximately 4% (see Exhibit No. 9). The report indicates that the vacancy rate for slips less than 36 feet was approximately 3.7% while the vacancy rate for boats 36 feet and longer was less than 1%. Although the trend for new and redeveloped marinas is for larger boats, and small boat slips show the highest vacancy rates, there will be future demand for small boat slips in the South Coast Region. In Marina Del Rey, there are over 3,000 slips 35 feet and under and approximately 1,400 slips over 35 feet in length. Although the vacancy rate is higher in the smaller slips, there is over twice the number of small slips than there are larger slips. The greater number of slips in the smaller slips indicates that the actual demand is greater for the smaller slip sizes. Furthermore, the DBAW study indicates that in the South Coast Region, 88% of 26' – 39'11" boats are stored in the water. As noted above, while owners of boats under 26 feet in California may prefer to store their boats on trailers in dry storage, the DBAW study indicates that in the South Coast Region, the demand for wet storage for boats in the 20' – 25'11" range will increase from 2,975 to between 3,866 and 4,476 from 2000 to 2020. In prior permit actions⁵, the Commission has heard testimony contending that a reduction in the availability of slips that accommodate smaller boats reduces the option for those who want to own boats and use the smaller slips. Local boaters have also expressed the need to continue to maintain smaller slips for boaters in Marina Del Rey. Based on this information, there continues to be a demand for smaller boat slips in Marina Del Rey. Moreover, if the trend continues as noted above, small boat

³ 5-05-245, Portofino Hotel Partner, LB; 5-01-143, Marina Two Holding Partnership & County of L.A. Department of Beaches & Harbors

⁴ Marina Del Rey—Boat Slip Sizing and Pricing Study, April 20, 2001, and 2004 update, prepared by Williams-Kuebelbeck & Associates, Inc.; California Boating Facilities Needs Assessment report, dated October 15, 2002, and Marina del Rey Slip Sizing Study Marina Del Rey, California, prepared by Noble Consultants, Inc, March 11, 2009.

⁵ 5-01-143, Marina Two Holding Partnership and County of Los Angeles Department of Beaches & Harbors; 5-05-245, Portofino Hotel Partners, LP

owners will not be able to find slips of a size that is appropriate for their boats. Cumulatively, this reduction would not be consistent with Coastal Act provisions that encourage lower cost facilities and support recreational boating opportunities. Therefore, it is important that the marina continue to provide a mix of slip lengths, including small boat slips, to provide a full range of boating opportunities for all boaters.

In recognizing the need to provide an adequate mix of boat slips throughout Marina Del Rey, the County is developing marina design guidelines for all marinas within Marina Del Rey to support the Department of Beaches and Harbors in the review and approval process. The County has indicated that they are considering maintaining a minimum combined percentage of 50% of slips for slips 35 feet and under for the entire Marina Del Rey area. This would result in a total net average reduction of 20% of slips 35 feet and under.

In response to the Commission's and the County's concern regarding the provision of low cost boating facilities, the proposed project is designed to retain the approximate existing boat slip mix and size ratios, with only slight reduction (-23) in total number of slips and the provision of slips in the smaller slip range--the applicant is providing 13 slips in the 25 foot and below range in a marina that did not provide slips smaller than 28 foot. The proposed marina will provide approximately 70% (145 slips) of the 207 total slips in the 35 foot and under range, with 29% (61 slips) 30 feet and under. The existing distribution includes approximately 76% of the total slips 35 feet and under and 33% of the slips 30 feet and under.

In the recent Periodic Review for the Marina del Rey Local Coastal Plan, the Commission recommended that the County should investigate other alternatives to increase recreational boating within the Marina, assure lower cost boating opportunities and adopt policies requiring implementation of such other alternatives as are found to be appropriate. Recommendation No. 3 in the Periodic Review recommended, in part, that marinas that reduce the number, or proportion of slips, to provide public access to affordable lower cost boating opportunities for the general public through such mechanisms as: contributing fees to develop new boating programs for youths, including disadvantaged youths, development of new lower cost boating facilities for all members of the general public; and encouraging boating membership programs; or similar mechanisms...

Although the applicant is providing 13 new slips in the 25 foot or less range, there will be a loss of 17 total slips 30 feet or less, and a total loss of 23 slips overall. By upgrading the older marina with new ADA compliant docks, providing new pump out facilities, and providing a wide range of slip sizes, the project will enhance the anchorage and improve and encourage recreational boating in the Marina Del Rey harbor as a whole. However, the proposed project will reduce public recreational boating opportunities and lower cost visitor and recreational opportunities within Marina Del Rey due to the net loss of total slips and net loss of smaller slips. Section 30224 of the Coastal Act encourages increased recreational boating use of coastal waters, and Section 30213 of the Coastal Act encourages developments with lower cost visitor and recreational facilities providing public recreational opportunities.

The reconstruction of the marina presents an opportunity to provide a public recreational program or opportunity to benefit youth training or boating in the harbor by providing mitigation for the loss of slips and reduction in recreational boating opportunities. The County currently offers a youth boating program that provides recreational boating and water programs. Providing funding to this program or other similar programs will increase recreational boating use and provide lower cost recreational facilities consistent with Section 30213 and 30224 of the Coastal Act. In February 2008, the Commission addressed the loss of boating opportunities and mitigation in the Channel Islands Harbor Public Works Plan Amendment 1-07. As part of the plan amendment the County included a policy requiring marina redevelopment projects to include a payment to provide lower cost boating opportunities through scholarships for youths to participate in boating programs, for purchase of sail training vessels, funding for transportation to bring youths to the harbor and for other similar programs to enhance access for other similar lower cost visitor programs to enhance coastal access opportunities for the public. The payment was based on the financial value of one 30-foot boat slip for each 100 slips greater than 30 feet that are redeveloped.

Although studies have indicated that for Marina Del Rey the demand for smaller boat slips has declined over the years, small slips in the range of 30-foot or less should be protected to continue to provide lower cost boating opportunities. Marina Del Rey does not currently have a comprehensive Commission certified marina-wide plan that addresses slip size distribution and marina-wide mitigation measures for the loss of lower cost boating opportunities throughout Marina Del Rey. Therefore, as individual marina projects come before the Commission, the Commission must address the loss of slips and loss of lower cost recreational opportunities on an individual basis. Using the Commission's most recent action addressing mitigation for the loss of boating opportunities, the payment established for the Channel Islands Harbor Public Works Plan Amendment 1-07 should also be applied to this development. Therefore, to mitigate the loss of slips and lower cost boating opportunities, the applicant shall pay a payment equivalent to the financial value of one 30-foot boat slip (based upon the listed per-foot annual rental rate posted at the marina on July 1 of each year for 30-foot slips) for each 100 slips greater than 30 feet in length that are redeveloped. For each slip above 100 slips that are greater than 30 feet in length the payment shall be prorated based on the rental rate of a 30-foot slip. Special Condition No.1 requires a payment paid to the County, or a non-profit organization, to be used for scholarships for youths to participate in boating programs, for purchase of sail training vessels, funding for transportation to bring youths to the Harbor, and for other similar programs to enhance lower cost boating opportunities. Such programs may include, but are not limited to the County's Water Awareness, Training, Education and Recreation (W.A.T.E.R.) Youth Program. The payment to the County will commence upon completion of the marina redevelopment construction and continue annually, throughout the life of the project. According to boating studies for Marina del Rey, based on the most recent information available, the current average value of a 30 ft. boat slip rental for one year is approximately \$5,500.00 (2009 cost for 26 foot-35 foot slip in Marina del Rey, based on *Marina del Rey Slip Sizing Study*, March 2009, ADK&A). Based on the 2009 rental rate and the 146 proposed slips over 30 feet in length, the total yearly payment would be \$8,030. Since this estimated payment calculation is based on 2009 rates, the first

yearly payment may change and shall be calculated based on the rental rates at the time of completion of the marina renovation with future payments adjusted annually to reflect the actual rental rates for each successive year throughout the life of the approved development. The Commission therefore finds that only as conditioned will the proposed development be consistent with Sections 30210, 30213, 30224 and 30234 of the Coastal Act.

Parking

Current parking is provided in a 484 space shared surface parking lot adjacent to the marina, which contains 169 parking spaces for marina slip lessees and their guests and 315 spaces for the existing landside three-story, 205 unit apartment. As part of the landside improvements to the existing residential units, the applicant is proposing to increase the number of spaces by three spaces for a total of 487 spaces. The three spaces would be dedicated for the marina slip lessees and their guests, bringing the total slips available for boating to 172 (On December 23, 2009, the Los Angeles County Department of Regional Planning determined that the landside renovations qualified for an exemption from a Coastal Development Permit). Current County parking code for boat slips is .75 parking spaces per boat space. Based on the County's current code, the 207 slip marina would require 155 parking spaces. Since the applicant is providing 172, there will be a surplus of 16 spaces above the County's code requirements.

The LCP requires parking for boat slips at a ratio of .75 spaces per slip but allows a reduction to .675, if the parcel is developed with residential units. The existing landside development is residential; therefore, under the certified LCP the applicant could provide parking at a ratio of .675. These ratios are consistent with past Commission permit actions for the marina. Therefore, the parking provided to support the proposed number of boat slips is adequate. However, to ensure that the project maintains an adequate number of parking for recreational boating under this permit, Special Condition no. 2 is necessary to ensure that the applicant maintain a minimum of .675 parking spaces per boat slip. As conditioned, the project will provide adequate parking such that overflow parking will not impact other public recreational parking in the Marina Del Rey area that supports public facilities in the Marina. The project will be consistent with Sections 30210 and 30252 of the Coastal Act.

D. 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.

Section 30240(b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The Commission has reviewed numerous reports concerning the impacts of chemical pollution and siltation on marine organisms and on coastal recreation in coastal waters including public marinas. In addition, given the location of the proposed work within a marina supporting both sensitive species and recreational activities there are concerns about how the work may be performed. In response to these concerns the Commission has imposed in past permit actions conditions on development to prevent siltation, spills and pollution as a result of development.

1. Water Quality and Construction Impacts

The proposed project is for the demolition of an existing marina and construction of a new marina located in coastal waters. Due to the proposed project's location on the water, the proposed work may have adverse impacts upon water quality and the marine environment.

The proposed project was submitted to the U.S. Army Corps of Engineers for their review and approval. In the Corps review, the Corps determined that water quality would not be affected by the proposed project if the applicant implements proposed best management practices to minimize the dispersal of silt, debris, and chemicals. The best management practices include the use of turbidity screens/siltation curtains to isolate work area during pile removal and installation, floating booms to contain debris or spills, recovery of any non-buoyant debris by divers as soon as possible after loss. The Commission finds that since construction of the proposed project requires the use of best management practices to minimize impacts upon water quality, the Commission imposes Special Condition No. 3 requiring the applicant to utilize best management practices including those described above. In addition, the improper storage of construction equipment and materials during construction can contribute to water quality impacts; therefore, the Commission finds it necessary to identify the following other construction related restrictions: all construction materials and equipment shall be stored landward of the bulkhead, on impervious surfaces only; all

construction materials or waste shall be stored in a manner which prevents their movement via runoff, or any other means, into coastal waters; and that any and all construction equipment, materials and debris are removed from upland areas at the conclusion of construction. In addition, demolition of existing structures will generate debris that will need to be disposed of off-site. Since the applicant has not identified a disposal site and in order to prevent impacts to coastal waters that could occur if such debris were not properly disposed, the Commission imposes a special condition (No. 6) which requires that all demolition debris be disposed of at a legal site approved by the Executive Director. Choice of a site within the coastal zone shall require an amendment to this permit or a new coastal development permit.

Sewer lines exposed to the marine environment have the potential to break or corrode more quickly than those more sheltered from the salty air and sunlight. Because the sewer lines will be directly above the water, they could leak raw sewage directly into the water, if there are any ruptures in the pipes. Coastal Commission staff reviewed the existing operation and maintenance procedures submitted by the LA County Department of Beaches and Harbors and determined that a more stringent procedure is necessary. Visually inspecting the entire length of the lines on a monthly basis will provide the basic inspection necessary to ensure there is no leakage into coastal waters. The more strict dye or pressure tests will allow inspectors to see less visible leaks in the sewer lines; and because these tests are more expensive and labor-intensive, conducting these tests biannually is sufficient, as required in Special Condition No. 4.

The proposed project will maintain the present use and is not expected to create additional adverse impacts on marine resources. However, the Commission finds it necessary to identify the permittee's responsibilities regarding construction and the utilization of best management practices and has conditioned the project accordingly. Therefore, only as conditioned does the Commission find that the proposed project conforms with Sections 30230 and 30231 of the Coastal Act.

2. Sensitive Species Impacts

According to EIR's that have been done for various projects in the Marina area, there are no special status benthic invertebrate, fish, insects, reptiles or mammals occurring in the marine portions of the project site. However, special status birds were observed or are expected to utilize open water habitat present in the marina and on the project site. Such birds include the California Brown Pelican, Peregrine falcon, Great blue heron, and the California Least Tern.

According to a report (*Marina Del Rey Heronry*, by Jeffrey B. Froke, Ph.D., May 2006), in 2004-2005, there were no known heron or egret nesting or roosting sites within the immediate vicinity of the project site. However, the California least tern (*Sterna antillarum brownii*) nests at nearby Venice Beach and have been observed to use all portions of the Marina Del Rey harbor for foraging. Least terns feed on small fish directly under the water surface in coastal waters. Construction activity, such as pile driving, may cause turbidity in the water which would affect foraging species ability to see food normally visible in the water. In addition, pile driving would generate noise in the water column that would disturb fish and other species normally present upon which foraging least terns would normally feed.

In past marina projects in Marina Del Rey, the Department of Fish and Game has expressed concern regarding open water activities that have the potential to create water turbidity or excessive noise and vibration (e.g. pile driving) that occur during the tern nesting season, and the need for the use of silt curtains during pile driving to minimize turbidity. To reduce any potential impacts to terns, pile driving has in the past been restricted between April 1 through September 1, in order to avoid adverse impacts to the tern's foraging.

Section 30230 and 30231 of the Coastal Act state that the biological productivity and the quality of coastal waters shall be maintained. Therefore, in order to ensure that adverse impacts to the biological productivity and marine resources are avoided, the Commission finds that it is necessary to impose Special Condition No. 9 which prohibits pile driving activity, between April 1 and September 1 of any year during which construction occurs, that would impact foraging species in the area. Construction activity that does not create turbidity or excessive noise that disturbs foraging species, such as float assembly, is permitted during this time.

Other marine resources that could be impacted by the development is Eelgrass (*Rupia maritima*). Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG).

The applicant's biologist conducted a survey of the marina and determined that eelgrass is not present in the area of the proposed project site. In addition, *Caulerpa taxifolia*, which is an invasive non-native algae, was not found. The Department of Fish and Game has indicated that it is necessary to conduct a survey just prior to construction, consistent with the *Caulerpa* Control Protocol. Therefore, to ensure that *Caulerpa taxifolia* is not present at the time of construction it is necessary to require in Special Condition No. 11 that the applicant conduct a survey no earlier than 90 days and no later than 30 days prior to commencement of any development authorized under this coastal development permit.

The proposed project includes the installation of a pump-out system available at all slips. The installation of a pump-out system will provide boats a more convenient pump-out station and encourage boaters to use the facility which will help reduce illegal discharges into coastal waters. Sewer lines exposed to the marine environment, however, have the potential to break or corrode more quickly than those more sheltered from the salty air and sunlight. Because the sewer line will be directly above the water, it could leak raw sewage directly into the water if there are any ruptures in the pipes. Coastal Commission staff previously reviewed the existing operation and maintenance procedures submitted by the Los Angeles County Department of Beaches and Harbors and determined that a more stringent procedure is necessary, such as more frequent inspections and testing. Visually inspecting the entire length of the lines on a monthly basis will provide the basic inspection necessary to ensure there is no leakage into coastal waters. A dye or pressure tests will allow inspectors to see less visible leaks in the sewer lines; and because these tests are

more expensive and labor-intensive, conducting these tests biannually is sufficient. Therefore, Special Condition No. 4 requires the proper operation, maintenance, inspections, and repair of over-water sewer lines.

The U.S. Army Corps of Engineers will not authorize this project until after Commission action on the permit application. Therefore, the Commission imposes Special Condition No. 8 which requires that the applicant to submit evidence of final approval from the U.S. Army Corps of Engineers prior to commencement of construction.

As conditioned, the Commission finds that the proposed project would eliminate significant adverse impacts to marine resources and sensitive species such as the least tern. Therefore, the Commission finds that, as conditioned, the proposed project is consistent with Sections 30230, 30231 and 30240(b) of the Coastal Act.

3. Fill of Coastal Waters and Loss of Marine Habitat

The proposed project will involve the removal of 117 16.5-inches in diameter dock float guide pilings and the placement of 126 16-inches in diameter concrete guide pilings in open coastal waters. These dock float guide piles constitute fill of open coastal waters. More specifically, the existing 117 pilings to be removed constitute 173.2 square feet of fill, while the proposed pilings have a total fill of 176.4 square feet, for a total increase of approximately 3.2 square feet of fill of open coastal waters. Under Section 30233 of the Coastal Act, fill of open coastal waters is only allowed when several criteria are met, including (a) the project must fall within one of the use categories specified; (b) the proposed project must be the least environmentally damaging alternative; and (c) feasible mitigation measures to minimize adverse environmental effects must be provided. Section 30233 of the Coastal Act states, in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

The proposed project meets the first criteria because it is the replacement of an existing public boating facility. Fill of open coastal waters for the construction of a public boating facility is an allowable use under Section 30233(a)(4) of the Coastal Act.

Next, the proposed project is the replacement of a boating marina in a similar configuration. Alternatives to the proposed project include no project, a change to the proposed configuration; no change to the existing configuration.

Under the no project alternative, the applicant could only pursue simple maintenance repair activity. However, simple maintenance repair could not feasibly repair the docks, nor bring them up to present engineering and safety standards. Simple maintenance would only prevent further deterioration of the docks. In addition, marine habitat would not significantly benefit from the no project alternative since this alternative would necessitate that the structure remain in place. Continued, safe use of the facility for marine recreational purposes would be precluded without replacement of the dock system.

The second alternative, a change to the proposed configuration, due to the limited size of the marina, would not provide enough dock area to provide the same number of slips as the proposed project, which would negatively impact access and recreation opportunities on the coast.

Under the proposed alternative, the dock layout is not changing but the required guide piling layout is changing due to current construction standards. The number of proposed pilings is the minimum necessary to adhere to present engineering standards. Furthermore, it should be noted that the installation of the new pilings will result in temporary disturbance to the existing vertical substrate. The guide pilings provide a vertical substrate for mollusks and other marine organisms. However, the proposed project will replace the quantity of vertical substrate upon which mollusks and other marine organisms may settle. Therefore, no long-term impact will occur to this habitat. Therefore, the proposed project is the least environmentally damaging, feasible alternative, and includes feasible mitigation measures, such as limiting pile driving to avoid critical periods and construction measures to limit turbidity, to minimize adverse environmental effects.

Piling construction and all activities that might disturb the benthic sediments of Marina del Rey pose a threat to water quality and marine organisms because the benthic sediments are contaminated with metals and immediate oxygen demanding substances. The Marina del Rey Benthic Conditions Report, submitted to the Coastal Commission by the Los Angeles County Department of Beaches and Harbors, states that the sediments near the development project contain elevated levels of copper, iron, mercury, tributyl tin, and zinc. The sediments exceed ER-M or AET for the above-listed contaminants. ER-M is the 50th percentile of toxicity of chemicals to benthic organisms. The 1990 NOAA report entitled *The Potential for Biological Effects of Sediment-Sorbed Contaminants Tested in the National Status and Trends Program* compiles the toxicity information for most chemicals found in the marine environment, and establishes the ER-M values. A second threshold, AET, is somewhat similar to ER-M and is defined as the sediment concentration of a selected chemical above which statistically significant biological effects always occur.

Thus, the sediments near the project site in Marina del Rey, which for the contaminants listed above exceed ER-M or AET, may be toxic to marine organisms and will degrade water quality. The sediments should be prevented from entering the water column to the greatest extent possible. Methods of piling construction such as driving in pilings rather than hydraulically injecting the pilings limit the amount of sediment stirred in the water column. The less intrusive and sediment-disturbing techniques are preferred. The pounding and driving techniques, or any equivalent method of equal or lesser impact to the

environment, should be employed in the Marina del Rey construction. Therefore, Special Condition No. 5 ensures that the applicant shall use the least damaging alternative for the construction of pilings and any other activity that will disturb benthic sediments and shall limit, to the greatest extent practicable, the suspension of benthic sediments into the water column.

The proposed project will result in the fill of open coastal waters for a boating facility, which is an allowable use under Section 30233 of the Coastal Act. In addition, the proposed project is the least environmentally damaging alternative, and does provide feasible mitigation measures. Therefore, the Commission finds that, as conditioned, the proposed project is consistent with Section 30233 of the Coastal Act.

E. Visual Impacts

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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 states that new development shall:

(5) where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The proposed project is located on the water in the western portion of the marina. The Land Use category for the project site is designated Water in the LCP. The LCP provides that the height of development located on parcels designated as Water parcels is limited to 15 feet above the water surface.

The proposed project will replace an existing deteriorating dock system with a new system. As with the existing docks, the proposed docks will rise approximately 1.5 feet above the waterline. The docks will contain dock boxes, trash bins and other ancillary type structures. No restrooms, offices, or other commercial structures are proposed. Boater restrooms are provided on the landside portion of the parcels.

As proposed, the new docks will improve the visual aesthetics of the marina and will not adversely impact views of the marina. The Commission, therefore, finds that the proposed project is consistent with the visual resource protection policies of the Coastal Act and with the County's Local Coastal Program.

F. Hazards

Section 30253 of the Coastal Act provides in part:

New Development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazards...*

The proposed dock system will be designed in accordance with the County's building code for docks to ensure structural integrity. However, because of its location, the docks are potentially subject to the effects of storm waves, tsunamis and seiches. The LCP indicates that marina del Rey has sustained only minor damage in the past due to tsunami and seiches because of special design standards embodied in the moles, docks and breakwater. However, there remains the potential for damage from wave and tidal action. Therefore, the Commission finds that the lessee of Parcel 8T and lessor must assume the risks associated with the proposed development. The lessee must also record a lease restriction reflecting, among other things, the assumption of the risk of developing in an area where an extraordinary potential for damage from wave and tidal action exists as an inherent risk to life and property, and the waiver of the Commission's liability for damage that may occur as result of such hazards and the lessor must also acknowledge and assume these risks (Special Condition No. 12 and 13). This is necessary because the design is a result of a study for which the applicant and its engineer are responsible. Wave hazards cannot be predicted with certainty, so the applicant and future owners must be put on notice that the Coastal Commission is not liable for damages resulting from wave and tidal action. The Commission, therefore, finds that the proposed project, as conditioned, is consistent with Section 30253 of the Coastal Act.

G. Local Coastal Program

In 1984, the Commission certified the County's Land Use Plan portion of the Marina Del Rey/Ballona segment of the County of Los Angeles Local Coastal Program. Subsequent to the Commission's certification, the City of Los Angeles annexed over 525 acres of undeveloped land, which was a portion of the County's LCP area located south of Ballona Creek and east of Lincoln Boulevard (known as Area B and C). Subsequent to the City's annexation, the City submitted the identical Land Use Plan (the Playa Vista segment of the City's Local Coastal Program) covering the City's portion of the original County LCP area. The Commission certified the Land Use Plan Amendment for the annexed area with suggested modifications on December 9, 1986. The County also resubmitted those portions of their previously certified LUP that applied to areas still under County jurisdiction, including the area known as Area "A" and the existing marina. The Commission certified the County of Los Angeles' revised Marina Del Rey Land Use Plan on December 9, 1986.

On September 12, 1990, the Commission certified an Implementation Program pertaining to the existing marina, with suggested modifications. The undeveloped area in the County, Playa Vista Area "A" was segmented from the marina and no ordinances were certified for the area.

After accepting the suggested modifications, the Commission effectively certified the Marina del Rey LCP and the County assumed permit-issuing authority.

In 1995, the County submitted an amendment to the LCP. In May 1995, the Commission certified the LCPA with suggested modifications. The County accepted the modifications and the LCP was effectively certified. The revised 1995 LCP represented a major change in the County's approach to Marina Del Rey development. Abandoning the bowl concept, which limited height on moles and next to the water, the County presented the Commission with a redevelopment plan that allowed greatly increased heights if and when developers provided view corridors over no less than 20% of the parcel. Increased height would be contingent on the provision of increased views. Secondly, the County agreed that at the time of renegotiations of the leases, the lessees would be required to reserve an 18 foot wide promenade/fire road along the water that would be open to the public [an access promenade was reserved and approved by the County as part of the proposed landside redevelopment of Parcel 20 (CDP No. 98-172(4))].

On January 9, 2008, the Commission approved a Periodic Review evaluation of the County's certified LCP. The Periodic Review identified policy areas where County actions have implemented the certified LCP in a manner that is not in conformity with the Coastal Act, and where the specific provisions of a certified LCP do not reflect new information or changed conditions such that the LCP is not being implemented in conformity with the Coastal Act. The Commission's recommendations included in part:

- Revises boating recommendations to include provisions to expand affordable boating opportunities through a variety of measures including reservation of slips for rental or membership clubs; creation of youth boating programs that provide low cost boating opportunities for youths; new storage facilities; day use rentals; and increased opportunities to launch and use kayaks and other smaller craft.
- Revises Boating recommendations to ensure no loss in total boat slips and slips 35 feet and under.
- Revises Water Quality recommendations to reflect requirements and ensure integration of the existing NPDES, SUSMP and TMDL requirements and to clarify application of BMPs.
- Revises Water Quality recommendations to include monitoring of all implemented BMPs.
- Revises development recommendations to recommend that the County undertake a comprehensive LCP update of anticipated future development that includes all pending project driven amendments, fulfillment of Asset Management strategies and other facilities identified through a community planning process.
- Revises Biological Resources and ESHA recommendations and acknowledges that trees currently or historically used as roosting or nesting habitats by herons, egrets or other significant avian species constitutes ESHA as defined by Section 30107.5 of the Coastal Act, and requires a marina-wide assessment of the trees that may provide habitat for birds protected by Fish and Game code and the Migratory Bird treaty Act. The recommendations

also expands areas where site-specific resource assessments should be undertaken as part of the LCP Amendment or development review process.

The recommendations made in the Periodic Review do not directly amend the certified LCP. The recommendations suggest actions that could be carried out through such means as: policy and ordinance changes in future amendments to the LCP; changes in how the County implements the LCP in issuing coastal permits; or through other implementing actions such as new studies, educational efforts or County programs.

The certified LCP designates the proposed site as "Water". Under the "Water" category of the LCP the permitted uses are recreational uses, wet boat slips, docking and fueling of boats, flood control and light marine commercial. The proposed use is a permitted use. However, the proposed development is located seaward of the mean high tide and is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The County's certified LCP is advisory in nature and may provide guidance for development. As stated in the preceding sections, as conditioned, the project will not adversely impact coastal and marine resources or coastal access. The Commission, therefore, finds that the proposed project will be consistent with the Chapter 3 policies of the Coastal Act.

H. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications 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 County of Los Angeles Department of Regional Planning, as lead agency, determined that the proposed project, which included the landside renovation of the existing multi-family residential complex, which is in the County's permit jurisdiction, and the proposed dock redevelopment, would have less than significant impacts on the environment as mitigated. Mitigation measures imposed by the County include Best Management Practices to address water quality impacts, and biota surveys to address potential biota impacts. Similar mitigation measures have been incorporated into this permit.

Identified potential impacts with regards to the Coastal Act are to boater access, marine resources, water quality, visual resources, and hazards. As conditioned, all potential adverse impacts have been adequately mitigated. As conditioned, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.



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Merina del Rey



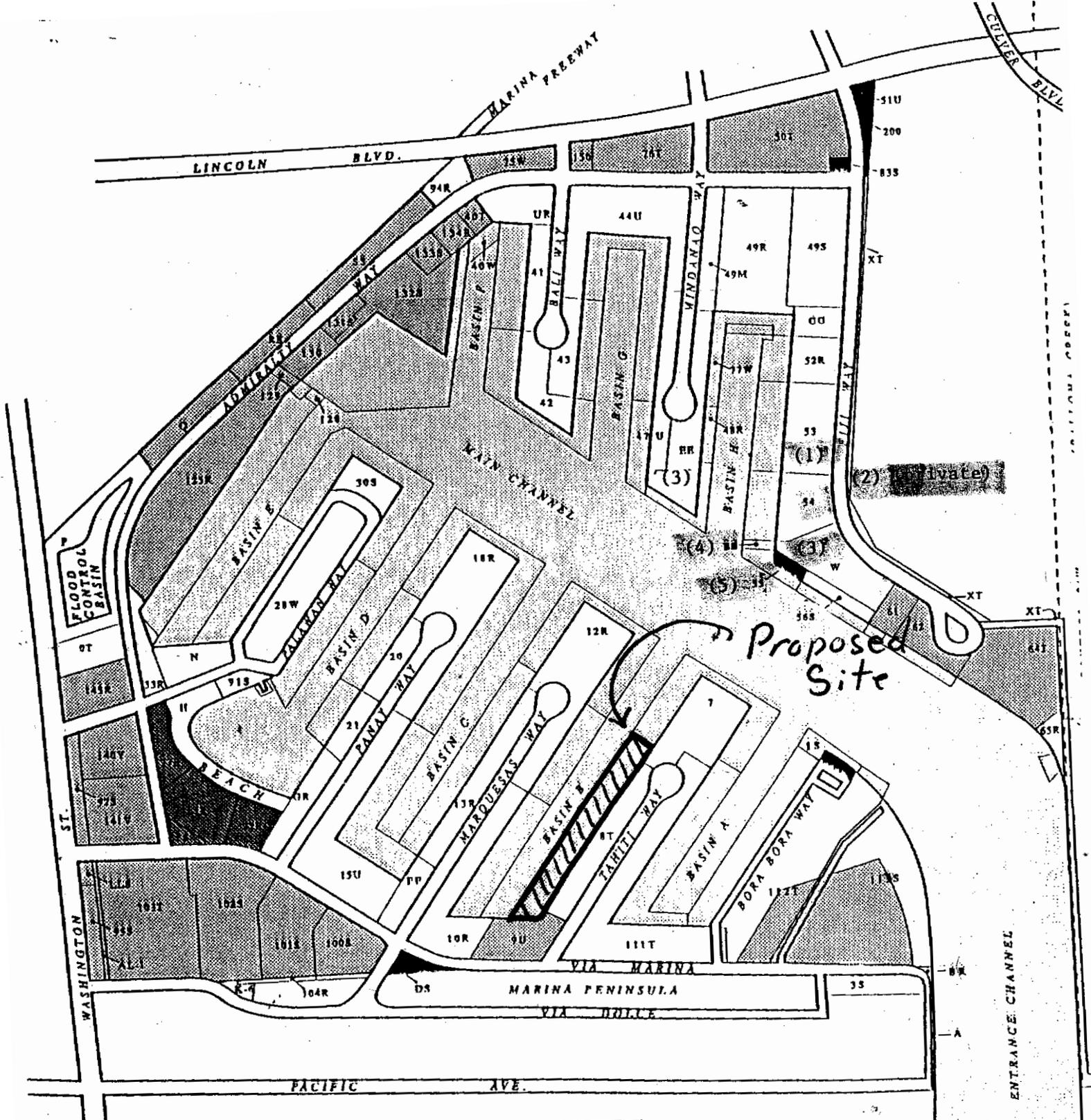
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EXHIBIT NO.	1
Application Number	5-10-76
Vicinity Map	
California Coastal Commission	

RECEIVED
South Coast Region
&
CALIFORNIA
COASTAL COMMISSION

HUNTINGTON BI

Channel
OCEAN



Proposed Site

LOS ANGELES COUNTY
DEPT. OF BEACHES AND HARBORS

MARINA DEL REY
PARCEL MAP



PACIFIC OCEAN

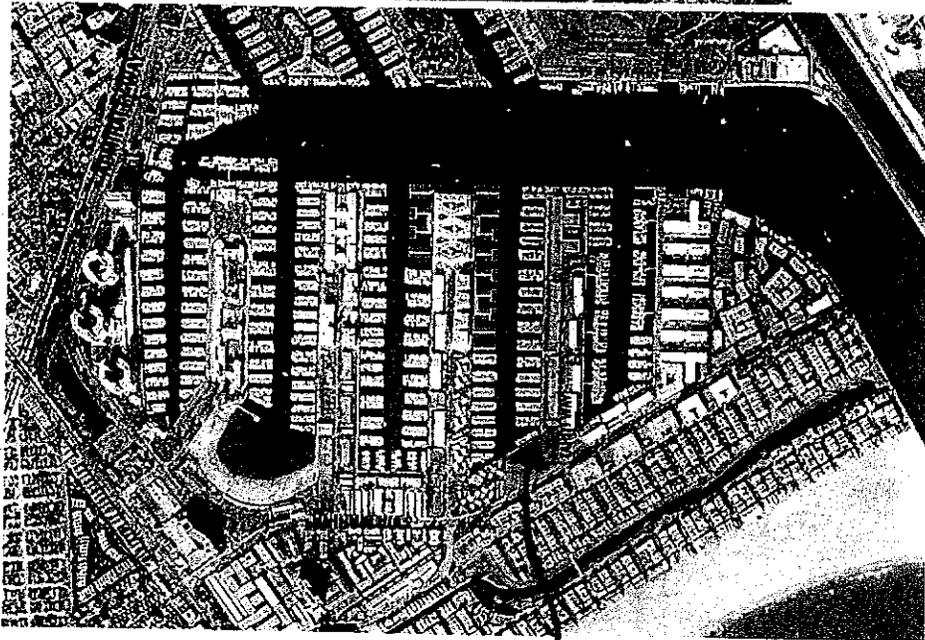
EXHIBIT NO. 2

Application Number

5-10-76

Parcel Map

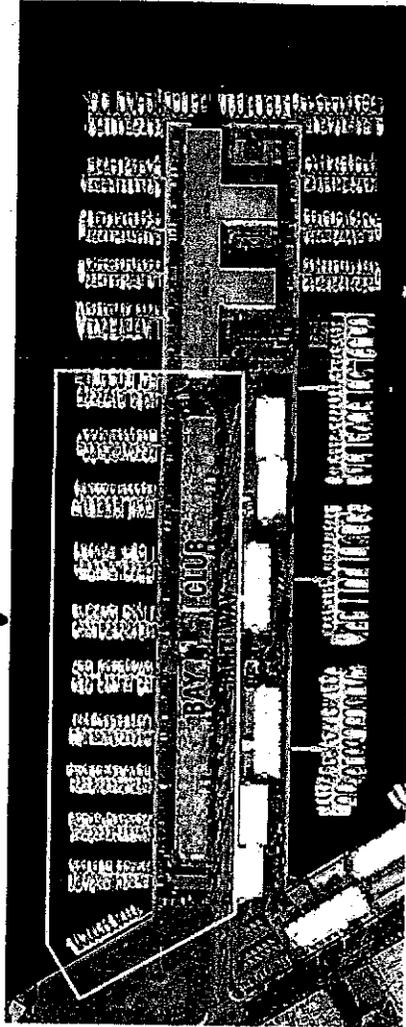
California Coastal Commission



Project Site

Vicinity - Context

Existing Dock Layout



Site

Context

EXHIBIT A-2

PARCEL 8T

THE BAY CLUB - Marina del Rey, Ca

MF Marina, LP

applicant: Inveshield

developer/contractor agent: Decron Properties Corp.

prepared by: VAN LA BURG, BRAYBROOK & SUTHERLAND, INC.

06.23.09

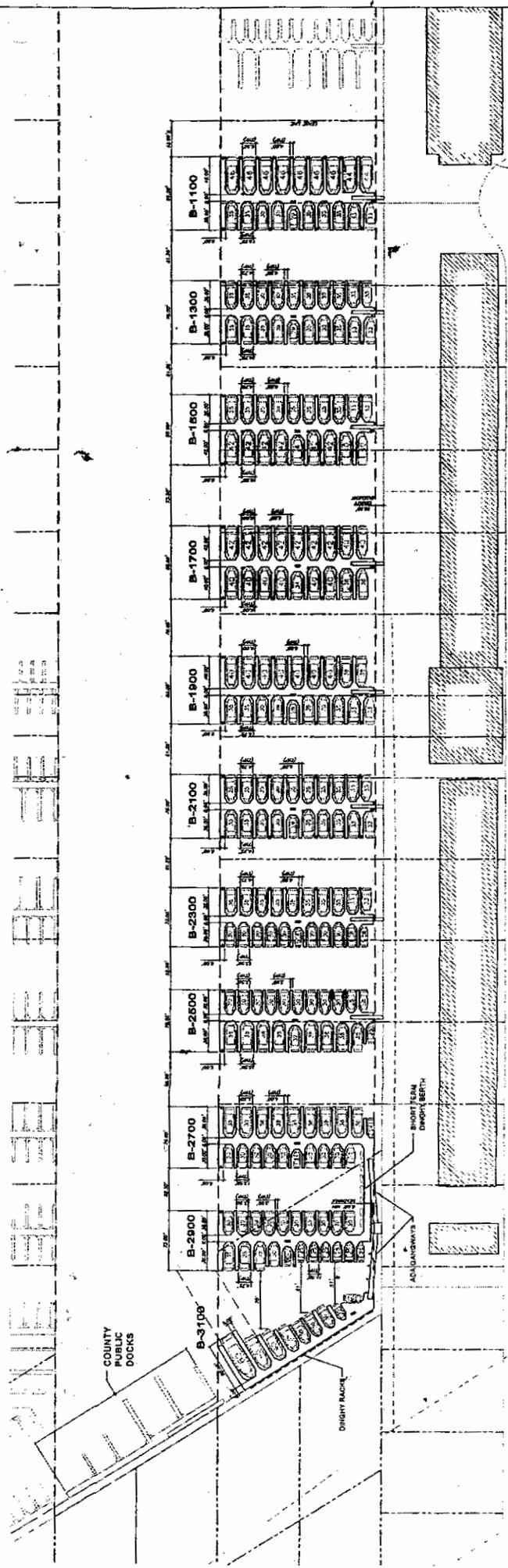
EXHIBIT NO. 3

Application Number

5-10-76

Project Site &

Existing Layout



**Totals: 207 Boat Slips
11 End Ties**

THE BAY CLUB

PROPOSED SLIP MIX

SLIP LENGTH	TOTAL OVERALL CITY LENGTH
10	10
12	12
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EXHIBIT NO. 4
 Application Number
 5-10-76
 Proposed layout
 Plan
 California Coastal Commission



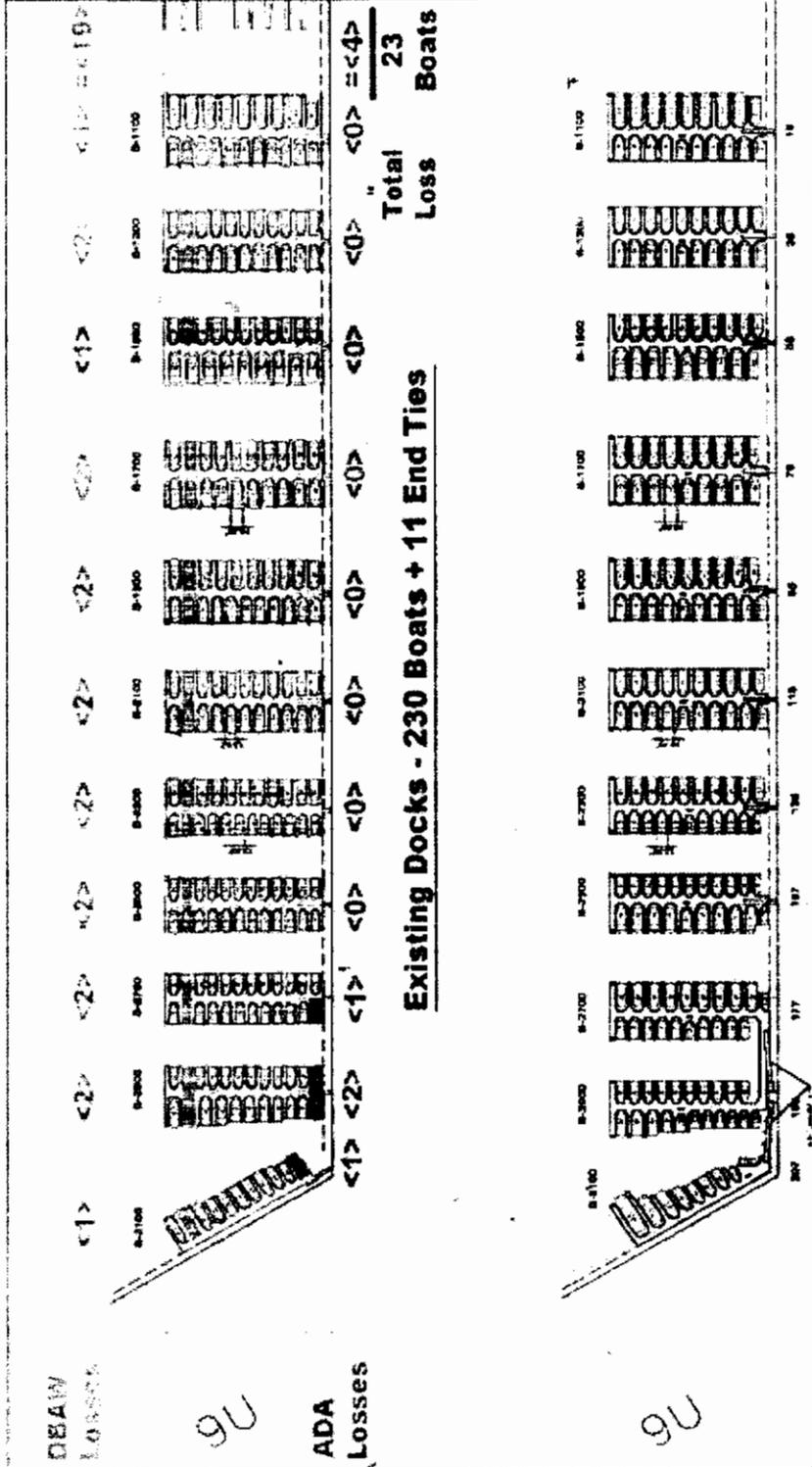


EXHIBIT NO. 5
 Application Number
 5-10-076
 Proposed Slip
 Loss Graphic
 California Coastal Commission

Total
 Loss
 Boats
 23



Scale
 1" = 100'