

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-13-003

Applicants: City of Seal Beach, Bay City Partners, LLC & Marina Beach House

Agent: Edward Selich & Howard Zelefsky

Location: Southwest corner of 1st Street and Marina Drive, Seal Beach (Orange County)

Project Description: Subdivision of a 10.9 acre former power plant (DWP) site owned by Bay City Partners which includes the creating a 6.4 acre passive open space park master plan and a 4.5 acre, thirty-two (32) lot residential development . A Tentative Tract Map is also proposed.

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION:

The 10.9 acre project site is the former site of the Department of Water and Power (DWP) steam energy generating facility which operated from 1925 until 1967 when it was demolished. In the mid 1980s, the site underwent environmental cleanup and remediation and in 2003 the property was sold to Bay City Partners, LLC (BCP), the current owners of the site. The project site is located along the east side of the San Gabriel River in the City of Seal Beach, seaward of Pacific Coast Highway (PCH). The project site is also contiguous with the recently constructed public oceanfront recreational facility known as the River's End Staging Area (RESA), which is adjacent to both the beach and San Gabriel River. The RESA is a popular windsurfing staging area for windsurfers and also provides parking for cyclists and pedestrians who recreate on the San Gabriel River Trail. Therefore the project site is considered to be both riverfront and oceanfront.

The site has been designated and zoned for visitor-serving hotel and park use by the local government for more than 30 years and that is the land use designation approved by the Commission in its action on the Seal

Beach LUP which did not become effectively certified. BCP among other things, requests approval of a Tentative Tract Map for a thirty-two (32)-lot residential subdivision on the northern 4.5 acres of the site, and the creation of a 6.4 acre remainder parcel on the southern portion of the site. BCP also requests approval of construction of the residential infrastructure to support future construction of 32 detached single family custom residences. The proposed project required several discretionary approvals by the local government to allow residential use of the site, including: General Plan Amendment 11-1, DWP Specific Plan Amendment 11-1, Zoning Map Amendment 11-1, and Tentative Tract Map (TTM) 17425. None of the City's zoning actions for this site have been certified by the Commission.

The proposed residential subdivision and the construction of thirty-two (32)-detached single family residences is an inappropriate use of the oceanfront project site because (1) private residential use of such a site is inconsistent with the priority land use policies of the Coastal Act for land that is suitable for the development of uses that provide visitor-serving commercial, commercial recreational and coastal access opportunities for greater public enjoyment of the coast; (2) a portion of the proposed residential land use area is encumbered by a public trust easement, thereby prohibiting the use of the land for private residential purposes; and (3) the proposed residential use, which encroaches into an existing recreational boating support facility through a lot line adjustment, creates a conflict with the continuation of this priority Coastal Act use. Therefore, the staff is recommending that the Commission DENY the proposed residential use of the property.

The proposed residential subdivision incorporates land within an existing recreational boating support facility located along the San Gabriel River on the northern portion of the site. The adjacent site is zoned Service Commercial (SC). To accommodate the proposed residential project the City approved a zone change from SC to DWP Specific Plan to allow the proposed residential use. The incorporation of a portion of the adjacent recreational boat repair and boat storage facility into the proposed residential subdivision requires the approval of a lot line adjustment from the City. The application submittal material contains conflicting information as to whether the City has approved the lot line adjustment or whether this is a future action. Further, lot line adjustments in the City's coastal zone require a coastal development permit from the Commission and none have been issued for the subject property. The subject coastal development permit application does not include a request for Coastal Commission approval of the lot line adjustment. Additionally, the proposed residential subdivision includes the vacation of approximately 7,600 square feet of the 1st Street right-of-way along the east side of the project site. Although the coastal permit application includes the request for the street vacation, there is no evidence that the City Council has approved the street vacation in its local action on the proposed project. Finally, the proposed thirty-two (32)-lot residential subdivision includes land that is subject to a public trust easement. Eleven (11) of the proposed thirty-two (32) lots are affected. According to the Public Trust doctrine, waterborne commerce, navigation, fisheries, open space, recreation and visitor-serving commercial uses are allowable uses but residential use is, generally, prohibited on public trust lands. These public trust uses are consistent with the Coastal Act priority uses of the project site. The applicants have a pending application with the State Lands Commission (SLC) to exchange the public trust easement land for other privately owned land on the project site that includes both submerged water area within the San Gabriel River and land that includes a portion of the San Gabriel River Trail. However, this same land that is proposed to be transferred to SLC is also proposed to be conveyed to the City of Seal Beach pursuant to a settlement agreement between the City and the

landowner/applicant, Bay City Partners, LLC. Unless and until a land exchange is approved by SLC the proposed residential development cannot be approved and no land transfer to the City will occur.

According to the coastal permit application, the City of Seal Beach is a co-applicant and is requesting the future development of a public open space passive “habitats” park on the 6.4 acre remainder parcel created by the residential subdivision. However, due to the 2011 Settlement Agreement (Agreement) between BCP and the City regarding the subject site, it appears that the City does not have the legal right to apply for the development of the future passive park. The City does not own the land on which they are proposing a future park and the terms of the Agreement state that BCP will only convey the land to the City if the Coastal Commission approves the “Proposed Residential Project”. BCP, the owner of the 6.4 acre remainder parcel is not proposing to construct the passive open space park, only to construct water quality treatment detention basins within the designated open space park area as a part of the drainage plan for the proposed residential subdivision. Therefore, entitlement to the future passive open space park should not be considered a part of the subject application because the City has not submitted evidence that it owns a property interest in the subject area.

Nonetheless, the Coastal Act dictates that private lands suitable for visitor-serving commercial recreational facilities have priority over private residential development. The subject site is adjacent to substantial coastal recreational opportunities, including water-related coastal recreational activities of swimming, surfing, kite-surfing, kayaking and stand-up paddle boarding and land-born coastal recreational activities including biking, jogging, strolling, fishing along the San Gabriel River mouth and Seal Beach beach area. In 2011, the Seal Beach Chamber of Commerce submitted a letter to the Commission in response to the staff report recommendation for a RESA improvement project, stating that the RESA improvements will “increase utility of [the] river area....[which] in turn will benefit the City, the business community and visitor serving uses of our river trail.” The letter concluded that the RESA improvements will attract visitors to Main Street and the Pier” and “encourage both residents and visitors to enjoy the Seal Beach community in a new, deeper way.”¹ Given the Coastal Act mandate, coupled with the significant recreational resources inherent in the facilities adjacent to the subject site, the subject 6.4 acre portion of the project site should be developed with a use other than the passive park use contained in the application. Passive open space park use areas and habitat creation are generally good land uses pursuant to the Coastal Act. Passive habitat parks are normally associated with development sites that contain sensitive habitats, including former or degraded habitats that are being restored or protected. However in this case, no sensitive habitat exists on the project site and a passive habitat park is instead proposed to be created. Because of its ideal location along the coast and adjacent river and the existing adjacent commercial recreational boating services facility, there are higher priority uses for the project site that would be consistent with Chapter 3 policies of the Coastal Act. Higher priority uses of the site include: visitor-serving commercial uses that provide accommodations, goods, and services intended primarily to serve the needs of visitors, such hotels, including lower cost overnight accommodations, bed and breakfast use; commercial recreation uses such as an RV park, and marine commercial uses, restaurants, bike and surfboard rentals, and souvenir shops. Mixed-use development of the 10.9-acre site could include a number of these visitor-serving uses and could also potentially include some area devoted to active or passive park use. For these reasons, staff

¹ <http://documents.coastal.ca.gov/reports/2011/9/W13a-9-2011.pdf>. Exhibit 5, page 1.

also recommends that the Commission DENY the proposed use of the majority of the project site as a passive open space park.

Commission staff has made the City and the property owner aware of our concerns with the proposed project in comment letters on the Environmental Impact Report (EIR) (SCH# 2011061018) dated July 6, 2011 and January 9, 2012. Many issues were raised in these letters, but the main issue with the project discussed in these letters dealt with the proposed change in land use from visitor-serving to residential use. The prime location of the DWP site along the coast makes it well suited for visitor-serving and lower cost visitor and recreation uses, not residential uses, a lower priority use. Thus, the applicants have been made aware of Commission staff concerns with the project and reminded of past Commission action on the Commission's changes in the City's proposed LCP submittals that never became certified (the City never adopted the Commission's suggested modifications related to past LCP submittals) for the subject site beginning with the early planning stages of the project. However, the applicants have not modified the project to address these concerns.

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APPENDICES

Appendix 1 – Substantive File Documents

EXHIBITS

Exhibit #1 – Site Plans

Exhibit #2 – Plans showing “sewer”, “driveway”, and the “San Gabriel River Trail” parcels and the open space park

Exhibit #3 – Passive Open Space Park Site Plan

Exhibit #4 – Location Maps

Exhibit #5 – Legal Lots Plan

Exhibit #6 – Commission staff letters dated July 6, 2011 and January 9, 2012 commenting on the Draft Environmental Impact Report (SCH# 2011061018)

Exhibit #7 – Zoning Map Amendment

Exhibit #8 – Tentative Tract Map (TTM) 17425

Exhibit #9 – Settlement Agreement dated March 16, 2011

Exhibit #10 – Disposition and Development Agreement dated July 9, 2012

Exhibit #11 – Public Trust Easement Exchange Parcels

Exhibit #12 – *Peer review and Site Specific Hotel Feasibility Evaluation* prepared by Kosmont Companies date September 2011

Exhibit #13 – *Visitor-Serving Use Analysis* prepared by PKF Consulting USA, dated November 26, 2012

Exhibit #14 – Letter from BCP to Commission staff dated August 20, 2013

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-13-003 for the development proposed by the applicant.

Staff recommends that the Commission **DENY** the Coastal Development Permit application by voting **NO** on the following motion and adopting the following resolution.

Resolution:

*The Commission hereby **DENIES** a Coastal Development Permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

1. Project Description

The coastal development permit (CDP) application is a joint application between the City of Seal Beach and Bay City Partners, LLC (BCP), the landowner, for the approval of a passive open space park master plan and a thirty-two (32)-lot residential development (Exhibit #1) on the former 10.9 acre Department of Water and Power (DWP) site. Currently, the project site consists of eight (8) legal lots. The City approved a Tentative Tract Map which would subdivide the property into thirty-two (32) residential lots and a 6.4 acre remainder parcel. According to the CDP application, BCP will improve the lots with detached single-family homes (4.5 acre total). The City will construct the improvements to the passive open space park (6.4 acre total remainder parcel) area at some point in the future, if BCP sales the land to the City based upon the terms of the 2011 Settlement Agreement between the parties. BCP owns the former DWP site which includes the “sewer parcel” and the adjacent “driveway parcel” that provide vehicular and pedestrian access to the adjacent oceanfront Rivers End Staging Area (RESA) from 1st Street, as well as a parcel that consists of a portion of the San Gabriel River and a portion of the San Gabriel River Trail. Based upon a 2011 Settlement Agreement (Settlement), as modified by the 2012 Disposition and Development Agreement (DA) between the City and BCP, the City has the “driveway” and the “San Gabriel River Trail” parcels under lease until March 2015, but upon issuance of a CDP from the California Coastal Commission (CCC) for the residential project as proposed (known as the “Proposed Residential Project”), the City will get, at no cost, fee title to the “sewer”, “driveway”, the “San Gabriel River Trail” parcels and the open space park (Exhibit #2). In turn, BCP will get fee title to a portion (approximately

7,600 square feet) of the City-owned land (right-of-way) at the corner of 1st Street and Marina Drive (Exhibit #2). However, if the Commission does not approve the “Proposed Residential Project”, BCP will not convey the 6.4 passive open space park to the City and the “driveway parcel”, “sewer parcel” and “San Gabriel River Trail parcel” leases terminate 30 days from the date of Commission denial of the residential subdivision.

The future passive open space park will consist of four (4) native plant communities: Coastal Sage Scrub, Native Grasslands, Riparian/Freshwater Marsh, and Coastal Trees (Exhibit #3).

Additionally, the passive open space park area will contain the following: two (2) water quality treatment areas that are designed to have a dual function to treat runoff from both the passive open space park area and the residential area and serve as part of the riparian area; a Vista Rest Area and Interpretative Center with a seat wall with shaded trellis, bicycle racks and interpretative elements; a paved trail from the San Gabriel River Trail to the Interpretative Center and to Ocean Avenue; a decomposed granite trail throughout the open space; benches; a picnic area; San Gabriel River Trailside Signage; a San Gabriel River Trailside Rest Area located at the entrance to the passive open space park from the San Gabriel River Trail that will provide benches, a shade trellis, trash cans, drinking fountains and bicycle racks; pedestrian entrance from the RESA Parking Lot; and other pedestrian entrances from surrounding adjacent areas. However, pursuant to the Settlement, the only portion of the future passive park that will be constructed is the water quality treatment areas as a part of the drainage plan for the residential subdivision (Exhibit #8). The park is not proposed to be built by BCP, the property owner, but is to be built in the future by the City, if BCP conveys the land to the City. Although the City is a co-applicant in this CDP application, they have no legal right to obtain approval of or construct the proposed park improvements. Although BCP owns the land on which the open space park is proposed, they are not obligated to construct the park and is not proposing to do so.

The project site totals 10.9 acres. Residential development is proposed on the northern 4.5 acres. The thirty-two (32) lot residential subdivision will consist of the following: all street and alleys will be public with no gates; approximately 7,600 square feet of land at 1st Street and Marina Drive will be vacated by the City of Seal Beach and included in the project; the design of the future single family detached residences will be regulated by the Development Standards of the City RHD 20 Zoning regulations and Architectural Guidelines will be recorded with the Final Tract Map. The proposed lots range in size from 3,144 to 5,787 square feet (Exhibit #1 & Exhibit #8). According to the Settlement, no affordable housing will be provided on-site nor is BCP required to pay affordable housing in-lieu fees.

The proposed project will have sixty-nine (69) on street parking spaces and sixty-four (64) off street parking spaces (2 per residential). Grading will consist of 1,600 cubic yards of cut, 3,800 cubic yards of fill and 2,200 cubic yards of import.

2. Project Location

The proposed project is located at the southwest corner of 1st Street and Marina Drive in the City of Seal Beach, the former DWP site (Exhibit #4). The project site consists of eight (8) legal lots that consist predominantly of undeveloped, disturbed non-native grassland (Exhibit #5). Of these lots, there is a “sewer parcel” that is improved with landscaping and a sidewalk. The “sewer parcel” is adjacent to the paved “driveway parcel” that provides access to the 1st Street public beach parking

lot (Exhibit #2). The western portion of the DWP site includes a parcel that contains a segment of the San Gabriel River Trail. The project also involves two (2) adjacent properties: north of the project site is a property that contains California Everglades, a recreational boating support facility (boat repair and dry boat storage area) and also a legal non-conforming single-family residence; and another property east of the project site that is part of the current 1st Street right-of-way (ROW) located at 1st Street and Marina Drive and contains roadway pavement, curb/gutter, sidewalk, and ornamental landscaping (Exhibit #2). Land area from both these sites is proposed to be incorporated into the proposed residential subdivision and require a lot line adjustment and street vacation in order to do so. There is no evidence that either of these approvals have been obtained from the City.

East of the project site is 1st Street and residential uses; north of the project site are a legal non-conforming single-family residence on the site of the recreational boating support facility (on a property zoned as Service Commercial), Marina Drive and residential uses, west of the site is the channelized San Gabriel River and the San Gabriel Bike Trail; and south of the project site is an existing City-owned maintenance structure, storage yard, and oil processing structure, the 1st Street beach parking lot, the River's End Staging Area (RESA), and associated commercial uses (i.e., River's End Café, etc.) adjacent to the public sandy beach (Exhibit #4).

The subject site is adjacent to the RESA, a facility offering substantial coastal recreational opportunities, including water-related coastal recreational activities of swimming, surfing, kite-surfing, kayaking and stand-up paddle boarding and land-born coastal recreational activities including biking, jogging, strolling, fishing along the San Gabriel River mouth and Seal Beach beach area. The RESA is a popular area for windsurfing and kite sailing and is utilized as a recreational staging area for the San Gabriel River Trail. The Commission approved the construction of the RESA on September 11, 2011, [CDP NO. 5-10-220-(City of Seal Beach)] consisting primarily of landscape improvements, new/renovated sidewalks, new asphalt paving, signage, lighting, picnic bench facilities, and a series of low seat walls to block wind blown sand from reaching the RESA. The San Gabriel River Trail is a paved regional recreational trail along the eastern boundary of the San Gabriel River. Improvements to the San Gabriel River Trail consisted primarily of trail resurfacing, striping, signage, fencing, landscaping and irrigation. Funding for the project came from a grant from the Rivers and Mountains Conservancy. In approving the project the Commission required subsequent approval of any future changes to the public's ability to access the RESA from the "Driveway Parcel" and "Bike Trail Parcel" (which may happen as a result of the proposed project). The Commission also conditioned the project to ensure maximum public access of the facility and required the public parking lot be managed such that the vehicular gate remain open unless except for temporary closure due to public safety concerns related to natural hazards; required that the parking lot remain open, but approved the collection of fees between 7am to 10pm; and required the removal of any beach closure signs. The Seal Beach Chamber of Commerce submitted a letter to the Commission in response to the staff report recommendation for a RESA improvement project, stating that the RESA improvements will "increase utility of [the] river area....[which] in turn will benefit the City, the business community and visitor serving uses of our river trail." The letter concluded that the RESA improvements will attract visitors to Main Street and the Pier" and "encourage both residents and visitors to enjoy the Seal Beach community in a new, deeper way."² The RESA, San Gabriel River Trail and the DWP

² <http://documents.coastal.ca.gov/reports/2011/9/W13a-9-2011.pdf>. Exhibit 5, page 1.

property form a contiguous site that is a prime location for public waterfront recreation and public access to the coast. As such, the DWP site should be developed with visitor-serving commercial uses, such as overnight accommodations, including lower-cost overnight accommodations. Or additional public recreation opportunities, including commercial recreation facilities such as an RV park or a mixed-use development including these uses that may include passive or active park on a portion of the site.

B. Project Site History

1. Previous Commission LCP Actions on Project Site

In 1978-1979 the Coastal Conservancy in conjunction with the City, conducted extensive public workshops to develop a Restoration Plan (Conservancy Project #3-79) for the DWP site. This Restoration Plan was approved in concept by the Coastal Commission (CCC) in June 1979 and specified provisions which needed to be included in a final project and the range of possible uses as parameters for later permit approval. The Restoration Plan provided visitor uses and open space, more specifically a 6-½ acre park, visitor/serving development and housing, with development concentrated on the northerly 1/3 of the site, with all ground floor commercial coastal-related, visitor-serving facilities.

To guide development on the DWP site, the City of Seal Beach in 1982 adopted the 1982 DWP Specific Plan. The Specific Plan provided for visitor-serving uses defined as “A *hotel* [not to exceed 300 rooms and a 35-foot height limit] *and the necessary ancillary support uses including, but not limited to, restaurants, retail uses, service uses, meeting/conference rooms and banquet facilities limited to the northerly 30% of the parcel* [north of an imaginary westerly prolongation of Central Way]. The Specific Plan stated that the remainder 70% was for open space uses defined as “*Public parks, green belts, bike trails, nature trails, hiking trails, and any active or passive recreational uses normally located in parks or open spaces, and theater.*”

Sometime after this action, the City of Seal Beach submitted their Land Use Plan (LUP) which included the 1982 DWP Specific Plan for certification by the CCC. On July 28, 1983, the CCC held a public hearing on the City of Seal Beach LUP. Commission staff recommended that the Commission find that the LUP raise Substantial Issue and the Commission agreed. The CCC found that the DWP Specific Plan contained unclear policies and designations for this site. The uses proposed within the open space areas of the DWP site had conflicting policies and thus raised Substantial Issue with the policies of Chapter 3 of the Coastal Act. The conflict arose from a Specific Plan policy that identified permitted uses in the open space that included government buildings and facilities, and unspecified uses deemed appropriate by the Planning Commission. The lack of clearly defined uses could have allowed non-priority, non-public uses within the open space.

Following the Substantial Issue determination, the CCC held a public hearing on the City of Seal Beach LUP, as submitted. The Commission denied the LUP as submitted based on inconsistencies with the Coastal Act. Regarding the DWP site, suggested modifications were necessary to limit uses within the Open Space designation. Thus, the suggested modification provided that those uses which were inconsistent with the protection of 70% of the site for open space for parks, trails, active or passive recreation and theatre be deleted. The Commission then adopted suggested modification, which if adopted by the City would bring the Plan into conformance with provision of the Coastal

Act. The Commission found that the hotel, restaurant, retail and other proposed visitor-serving commercial uses on the remaining portion of the DWP site were consistent with the Coastal Act.

However, these suggested modifications were never adopted by the City. Therefore, the LUP was never effectively certified the DWP Specific Plan and subsequently lapsed. Thus, the standard of review is the Coastal Act. While these suggested modification regarding the DWP site were never adopted by the City, it does show the Commission's concern in 1983 of preserving the site for a lower cost open space park uses and fairly intense hotel and other visitor-serving commercial uses on the northerly 30% of the DWP site. Such uses are still strongly encouraged.

2. Previous Commission Staff Comments on Project Site

In 1996, the DWP Specific Plan was amended by the City to reduce the maximum number of rooms for the hotel use from 300 rooms to 150 rooms.

On July 6, 2011 and again on January 9, 2012, Commission staff commented on the Draft Environmental Impact Report (SCH# 2011061018) for the currently proposed Bay City Partners DWP project (Exhibit #6). The EIRs used the 1996 DWP Specific Plan as a basis for reviewing the proposal. Among the issues raised in the Commission staff letters was the proposed change in land use from visitor-serving commercial (hotel) to residential use. Staff further reiterated that the DWP site is located in a prime location along the coast that is well suited for visitor-serving and lower cost visitor and recreation uses. Each of these uses is a higher priority use in the Coastal Act since each offers an opportunity for the public to access and enjoy the coast. Residential uses on the other hand are not high priority uses since they do not provide the same beneficial uses for the broader general public.

3. Local Government Approval

The City of Seal Beach took several actions to carry out the proposed development including modifying the General Plan, Zoning Code, and Specific Plan to allow residential use of the site. Additionally, a settlement agreement and disposition and development agreement between the City of Seal Beach and BCP were agreed upon in order to carry the development forward. Given the terms of the two (2) Agreements, the Commission is not at all assured that the land proposed for the future passive park will ever be conveyed to the City or if conveyed, whether the park will actually be built since the Agreements require BCP to convey the land only if the "proposed residential project" is approved by the Commission. Although the City is a co-applicant of the subject CDP application for approval of the park master plan, it has not submitted evidence that it owns a property interest that supports its legal authority to apply for the approval and BCP is not proposing the development involved with to constructing the park site (with the exception of the drainage facilities for the residential subdivision that are proposed to be located within the park). The local actions are described below:

General Plan Amendment 11-1 (adopted by the City of Seal Beach City Council on July 9, 2012 through Resolution No. 6274). This amendment to the Land Use Element of the General Plan allowed residential development to be accommodated on the northerly 4.5 acres of the subject property. This proposed residential designation would replace the previous visitor-serving use designation, while the open space use designation would remain. This amendment has not been

certified by the Commission and is not used as guidance by the Commission in making its decision on the subject application.

DWP Specific Plan Amendment 11-1 (adopted by the City of Seal Beach City Council July 9, 2012 through Ordinance No. 1620). This amendment eliminated the visitor-serving use component and replaced it with a residential use, not to exceed thirty-two (32) single-unit detached residential units with a 25-foot height limit. The open space use designation remained. However, reference to the percentage occupation of the site by each of the two uses was replaced with language discussing the limits of use. For example, the amended Specific Plan (SP) states the following regarding the residential use: *“As shown on the Land Use Development Plan (Exhibit B), no residential parcels shall be permitted south of an imaginary western prolongation of the northerly Central Way right-of-way line.”* The open space designation would remain and be limited to the area south of the extrapolated Central Way right-of-way line. Development standards and regulations for this open space designation would remain unchanged. Residential structures authorized by this Specific Plan would be subject to a 25-foot height limit and the same development standards generally applicable to residential high density (RHD-20) development in the Old Town area of the city, where the DWP site is predominantly located within. The Commission did not review SP amendment.

Zoning Map Amendment 11-1(adopted by the City of Seal Beach City Council July 9, 2012 through Ordinance No. 1620). This amendment adjusted the boundaries of the DWP Specific Plan area to include the entirety of the subject property, which would be zoned SPR for Specific Plan Regulation. Approximately 1.4 acres of land was rezoned and added to the existing designation and a 0.005 acre northern portion of the site that is currently part of the SPR area would be re-zoned as Service Commercial (SC), which would permit it to be absorbed into the adjacent separate northern SC property (Exhibit # 7). This is further discussed below under the Lot Line Adjustment subsection.

Tentative Tract Map (TTM) 17425 (adopted by the City of Seal Beach City Council on July 9, 2012 through Resolution No. 6275). This TTM would subdivide the northerly 4.5 acres of the site into thirty-two (32) lots for detached single-family residences (Exhibit # 8). Residential lot sizes would range from 3,144 to 5,787 square feet with averaged widths between 30 and 58 feet and depths of at least 100 feet. Access to the tract would be via both Marina Drive and 1st Street. All streets and alleys would be public. Initially the TTM was for forty-eight (48)-residential lots, but after a June 6, 2012 Planning Commission hearing, the applicants made some suggested changes which included revising the TTM to include only thirty-two (32) lots. This revised project was subsequently taken to City Council and approved.

Settlement Agreement dated March 16, 2011. A settlement agreement between the City and BCP from BPC’s lawsuit challenging the City’s certification of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the River’s End Project and the City’s condemnation lawsuit against BCP, in which the City sought to acquire the “driveway parcel” and “sewer parcel” was entered into by both parties (Exhibit # 9). Concurrent with a \$900,000 payment to BCP, BCP entered into a lease with the City of Seal Beach for the “driveway parcel” and the “San Gabriel River Trail parcel” that commenced on March 31, 2011. The lease will terminate on March 31, 2015 or upon conveyance of the parcels to the City is the Coastal Commission approves the “proposed residential project”. Upon receipt of the \$900,000, BCP agreed to convey to the City an

irrevocable easement for the “sewer parcel”. Upon issuance of a CDP by the California Coastal Commission for the “proposed residential project” (defined as subdivision of forty-eight (48) residential lots at that time, the City agreed to pay BCP \$1.1 million and to convey to BCP by quitclaim deed, a portion (approximately 7,600 square feet) of the City-owned land (right-of-way) at the corner of 1st Street and Marina Drive. BCP will then convey to the City by quitclaim deed, fee title to the 6.4 acre open space areas (except for a 1,200 square foot portion of land within the proposed residential area) consisting of the “sewer”, “driveway”, and “San Gabriel River Trail” parcels and the rest of the passive open space park. The City agreed that the BCP conveyance of the open space area shall be for the purpose of future open space and park uses. The quitclaim deed from BCP to the City includes a requirement that a deed restriction be recorded against the land, limiting the uses of the open space area to passive park uses contained in the amended DWP Specific Plan. The SP limits structures in the future passive park to benches and light standards no more than 15-feet in height. The settlement agreement also states that if no CDP is issued by CCC for the residential project, the parties have no obligation to the agreement. The Commission is not a party to this agreement and is, thus, not bound, in any way, by its terms.

Disposition and Development Agreement dated July 9, 2012 (adopted by the City of Seal Beach City Council on July 9, 2012 through Resolution No. 6276). A disposition and development agreement (DA) between BCP and the City of Seal Beach followed the settlement agreement (Exhibit # 10). The DA states that upon the California Coastal Commission’s issuance of a CDP for the “proposed residential project” (which was revised from a subdivision of forty-eight (48) residential lots to thirty-two (32) lots), BCP shall donate to the City the open space, including the “sewer” and San Gabriel River Trail” parcels San Gabriel; and will convey/exchange fee title of the “driveway parcel” located within the open space to the City for a portion (approximately 7,600 square feet) of the City-owned land (right-of-way) at the corner of 1st Street and Marina Drive. The right-of-way will be incorporated into the DWP Specific Plan and zoned for residential use. This area will also form part of the Tentative Tract Map. The DA however acknowledges that the street vacation requires separate approvals. However, there is no evidence that the City Council has approved the street vacation. This agreement requires that the open space be deed restricted for open space uses as defined in the DWP Specific Plan. Further, the documentation transferring ownership of the open space to the City shall contain a right of reversion in favor of the owner and the owner’s successors-in-interest in the event the permitted open space uses are discontinued and some other use of the open space is proposed that would be inconsistent or in conflict with such permitted uses. The Commission is, also, not a party to this agreement and is, thus, not bound, in any way, by its terms.

Lot Line Adjustment. The proposed project includes a lot line adjustment between two (2) properties, a northern portion of the subject project site and an adjacent northern property. The adjacent northern property was zoned Service Commercial and is developed with an existing recreational boating support facility (boat repair and dry boat storage area) use. A portion of that property will be incorporated into the DWP site and was re-zoned SPR in Zoning Map Amendment 11-1 to allow residential use in accordance with to the DWP Specific Plan Amendment 11-1 (Exhibits #2 & #7). In exchange, the applicants will give up a portion of the existing DWP property to that northern landowner (Exhibits #2 & #7). However, the lot line adjustment has not been submitted as a part of this application. A December 2010 lot line adjustment approval was mentioned in City documents but it is unclear if they are referring to this lot line adjustment. Lot

line adjustments also must be approved by the Coastal Commission and it is not included in the subject CDP application.

4. Other Agency Approval

A portion of the subject site (Parcel A) is encumbered with a Public Trust easement and therefore needs approval from the State Lands Commission (SLC) to remove the public trust easement in order to use the land for residential development (Exhibit #11). Residential uses are prohibited on public trust land. BCP has submitted an application to the SLC requesting a land exchange to impress the public trust easement on another portion of the property so that the proposed residential project can proceed. The other piece of land that would be involved in the land exchange is Parcel B, which includes portions of the San Gabriel River Trail, as well as submerged portions of the San Gabriel River (Exhibit #11). The application has not been acted upon by SLC and unless and until the public trust easement is removed from Parcel A, the proposed residential development can not be built. The Commission notes that the land which BCP has proposed in its application to SLC to encumber with the public trust easement (Parcel B) is already committed to be conveyed to the City for public trail access purposes ("San Gabriel River Trail parcel") pursuant to the Settlement and Development Agreements. The uses that are consistent with the Public Trust are also the uses that are preferred under the Coastal Act for waterfront land and these uses should be maximized on the subject site.

5. Standard of Review

The City of Seal Beach does not have a certified Local Coastal Program (LCP) nor has the Commission certified the DWP Specific Plan. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

C. Land Use

The following Coastal Act policies support the development of higher priority uses and state things such as: require that lower-cost visitor and recreational facilities be encouraged and where feasible, provided; require water-oriented activities in coastal areas that cannot be provided at inland areas be protected for such use; require that oceanfront land suitable for recreational use be protected for that use; require that visitor-serving commercial recreational facilities have priority over private residential; require that increased recreational boating use of coastal waters shall be encouraged by providing recreational boating support facility; and require that coastal dependent development shall have priority over other development on or near the shoreline.

Section 30213 of the Coastal Act (Lower cost visitor and recreational facilities) states:

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

Section 30220 of the Coastal Act (Protection of certain water-oriented activities) states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act (Oceanfront land; protection for recreational use and development) states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act (Private lands; priority of development purposes) states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30224 of the Coastal Act (Recreational boating use; encouragement; facilities) 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 30255 of the Coastal Act (Priority of coastal-dependent developments) states:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

1. Coastal Act Priority Land Uses

Given its riverfront and oceanfront location, and adjacent recreational boating support use, the subject site is well suited for higher priority uses encouraged by the Coastal Act. Such uses include visitor-serving commercial, commercial recreation, marine commercial and lower cost visitor and recreational facility uses as they offer a greater opportunity for the general public to enjoy the coast. The subject 10.9 acre site is owned by a single entity, thereby increasing the ability to comprehensively plan and development the site. However, the applicants are proposing a residential use, specifically thirty-two (32) detached single family residences, which is not a high priority use in the Coastal Act for such a site.

Private residential uses do not provide the general public an opportunity to enjoy the coast nor does it maximize potential public enjoyment of the coast. As part of the proposed residential use, the applicant is taking a portion of the adjacent boating support facility that is located along the river to the north of the project site (Exhibit #2). The adjacent site is currently zoned Service Commercial and has an existing recreational boating support use (boat repair and dry boat storage), which is a higher priority use. In fact the Coastal Act encourages increased recreational boating by, among other things, providing and protecting boating support uses. The introduction of a residential subdivision, especially large lot, detached single family residential lots, adjacent to an existing recreational boating support use introduces a potential land use conflict could ultimately result in the elimination of the higher priority use. To avoid such a conflict, only higher priority compatible

visitor-serving commercial, commercial recreational and low-cost recreational use should be established on the project site.

The applicants are also proposing along with the residential use, a passive open space park use designation on the majority of the project site with the future creation of a habitat area consisting of four (4) native plant communities along with trails, benches, a picnic area, an interpretive center, shaded trailhead (Exhibit #3). Passive open space parks and habitat parks are positive uses that are also encouraged under the Coastal Act. However, habitat parks are normally associated with development proposals where the site has or is adjacent to existing sensitive habitat that is being restored or protected. However in this case, there is no sensitive habitat that exists and is instead being created. This created habitat area will act as a privacy buffer for the proposed residential use and provide a location for the drainage of the residential subdivision. Passive open space or habitat park use should not be eliminated in its entirety from the project site. A portion of the site could include a passive use; however because of its superior location along the coast and adjacent and nearby public recreational and access amenities that could support more active public uses, there are better uses suited for the subject site. These higher priority uses include: visitor-serving commercial, recreation and marine commercial and lower-cost visitor and recreational facilities.

Visitor-serving commercial uses are a high priority use since they provide enhanced opportunities for a greater segment of the general public to enjoy the coast. These types of uses provide accommodations, goods, and services intended to primarily serve the needs of visitors, such as hotel, bed and breakfast, hostel and other overnight accommodations; restaurants, food concessions and other eating establishments; bike and other recreational equipment rentals, and souvenir shops and other retail uses.

Commercial recreation and marine commercial uses additionally provide coastal- related and coastal-dependent uses that enhance opportunities for the public to experience to the coast. Some segments of the public currently enjoy fishing and water skiing along and within the adjacent San Gabriel River. In recent years more and more owners of smaller boats are choosing to store their boat on land as opposed to keeping them in marina slips. Thus, the need for surface dry boat storage is a growing recreational need.

Lower-cost recreational uses further maximize public opportunities to access and enjoy the coast. Therefore, partial use of the project site for these types of uses, such as active park (i.e. including sports fields, playgrounds, etc.), passive and habitat parks would be consistent with the public access and recreation policies of the Coastal Act. The Commission notes that in some Orange County cities there is a severe shortage of active parks offering soccer and baseball fields. At the Sunset Ridge Park site in Newport Beach the Commission had the difficult task of allowing active park use while protecting and enhancing sensitive habitat areas (CDP NO. 5-10-168).

2 Applicants' Analysis of the Viability of Hotel and Other Uses

A hotel use is an ideal use of the project site since a hotel is a visitor-serving use that provides for extended stay and use of the coast for a greater segment of the public than private residential use would provide. The applicants, in order to determine if hotel use is a viable use, commissioned several analyses: *Analysis of Potential Market Demand and Statements of Estimated Annual Operating Results for a Proposed Hotel to be located in Seal Beach, CA* prepared by PKF

Consulting dated July 31, 2003; *Potential Market Demand and Estimated Operating Results for a Proposed Hotel to be located in Seal Beach, California* prepared by PKF Consulting dated November 6, 2009; and *Peer Review and Site Specific Hotel Feasibility Evaluation* prepared by Kosmont Companies date September 2011.

The 2003 analysis by PKF Consulting concluded a hotel use on site would potentially be a positive use of the property due to (1) the location near the beach; (2) good access to the site from points across southern California; and (3) the excellent visibility of the site considering the low-rise nature of the surrounding area. However the analysis ultimately concluded that the project site is not a luxury site that would support a hotel that could maintain an average daily rate of between \$200 and \$300. The analysis additionally stated that the site could support approximately 200 hotel rooms if the facility is located at the southern end of the site near the beach and beach parking lot instead of placing a hotel use in the northern portion of the site near Marina Drive, which is consistent with the layout as described in the DWP Specific Plan. Thus the analysis concluded that construction of a hotel based upon the DWP Specific Plan would not be feasible. Additionally, the study felt that considering the surrounding development, a hotel of this size would be out of character.

The analysis also included a section that analyzed solely residential uses on the site, as well as a boutique hotel with surrounding residential. The analysis stated that while they are not experts in the residential field, that an approximate development of forty (40) residential units with limited open space would be the most economical feasible utilization of the site. However, the analysis does conclude that this type of use would not be favorable with the CCC. A use that the analysis does suggest that may be a better fit was a boutique hotel with surrounding residential. Such a development would consist of approximately 30 rooms and an average daily rate of \$225. Furthermore, the analysis stated that a factor that would help the performance of the boutique hotel would be the construction of residential and open space in the development. The hotel would act as an amenity to the surrounding residential and the Seal Beach community.

In 2009, PKF Consulting conducted another hotel analysis of the site. The conclusion of the 2009 analysis was that construction of a hotel as set forth in the DWP Specific Plan still was not feasible. As a result of that conclusion, BCP developed a series of scenarios that modified the DWP Specific Plan in an attempt to provide for a feasible hotel on the property. BCP identified two locations for the hotel development; 1) within the 30% area (at the intersection of 1st Street and Marina Drive) designated as visitor-serving; and 2) in the area identified as open space adjacent to the beach parking lot/beach. The analysis reviewed these options and stated that the limiting factors of the first option are: the small land area, underground parking is not feasible for cost reasons, and the location of the land area for the hotel use is less desirable since it is farther from the water. On the other hand, the analysis states that the second location is the ideal location for a hotel use since it is adjacent to the beach. The PKF analysis went further with this analysis by developing four (4) scenarios involving the two (2) land area options. The first scenario involved a 150 room hotel at the northwest portion of the site (1st Street and Marian Drive). The analysis states that this scenario will not work since it is too small of an area to construction a 150 room hotel with the required amenities and surface parking. A second scenario involved a 75 room boutique hotel, a third scenario involved a 100 room boutique hotel and a fourth scenario involved a 50 room boutique hotel located adjacent to the beach and beach parking lot and included a residential use component.

The analysis stated that while these additional scenarios could potentially work, the revenue generated by these alternatives would not be ideal.

The Commission may not act in a manner which will take or damage private property for public use, without the payment of just compensation therefor. (Section 30010 of the Coastal Act) While the Commission is sympathetic to the applicants' economic goals, the policies of the Coastal Act protecting priority land uses along the shorefront and existing case law interpreting regulatory takings law do not provide guarantees that an applicant can always achieve the most profitable or "the highest and best use" of his or her property. (*MacLeod v. County of Santa Clara*, (1984) 749 F.2d 541, 547-548, *cert. denied*, 472 U.S. 109 (1985).) So long as the Commission's denial furthers its authority to protect public's health, safety, and welfare and does not preclude an alternative development project that results in an economic use consistent with reasonable investment-backed expectations, the Commission's denial will not result in a regulatory taking. (*Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125.)

In 2011, the City of Seal Beach commissioned a peer review of the 2003 and 2009 PKF Consulting analyses (Exhibit #12). This analysis analyzed the revenues projected and the cost of developing the discussed scenarios to determine if they would generate sufficient net operating income to support the development in the current marketplace. This analysis concludes that it is unlikely that revenues generated by the proposed development considered in these reports would be sufficient to support traditional debt financing. As part of the Kosmont 2011 analysis, a smaller 60 room boutique style hotel that could be substantially or completely financed through a condominium hotel capital structure was evaluated. The analysis concludes that this may be financially feasible. However, the report author states that financing for this option based upon the inconsistency of the market and the risky project profile contribute to make the project feasibility marginal. Additionally, it was pointed out that a condominium hotel may not be permitted under the current DWP Specific Plan.

A continuing theme regarding the applicants' conclusion that a hotel use would not be ideal for the site is that it would not generate sufficient revenue. The amount of revenue is not a basis in the Coastal Act to preclude a use. Thus, while the hotel use may not generate the applicants' ideal revenue, the Commission finds that the site can still support a hotel use. These analyses also point out that some hotel options were not favorable due to the DWP Specific Plan requiring the hotel use to be located near Marina Drive instead of by the City parking lot/beach. The Coastal Act is the standard of review and the Coastal Act does not preclude any areas of the site for the hotel development. The site should be looked at as a whole for the development of a higher priority use including a location near the City beach and beach parking lot. These studies state that a residential component should accompany any hotel use. However, residential use is not consistent with Section 30222 of the Coastal Act. Therefore other visitor-serving and commercial recreation uses that are consistent with the Coastal Act should be considered prior to consideration of residential use on any portion of the site.

While these hotel studies concluded that a hotel may not be suitable for the site, there are a host of other visitor-serving uses that could be located on this site. Limiting visitor-serving development to only a hotel use is too narrow since there are other uses that would provide opportunities for the public to enjoy the coast. Other visitor-serving commercial, commercial recreation, marine commercial, lower-cost visitor and recreational uses should be considered. Additionally, while the

DWP Specific Plan limits uses and location of those uses such limitations do not exist under the Coastal Act. Additionally, a mix of these higher priority uses should also be considered. The site could be developed with a single use or a variety of higher priority uses that would create a site that maximizes opportunity for the public to access and enjoy the coast.

In order to determine if visitor-serving uses were feasible on site, the applicants commissioned the following analysis: *Visitor-Serving Use Analysis* prepared by PKF Consulting USA, dated November 26, 2012 (Exhibit #13). Some of the potential uses that this analysis evaluated were: bed and breakfast/hostel/ marine related uses, bicycle/skateboards/surfboard rentals, beach equipment rentals, visitor-serving specialty retail, beach oriented markets and restaurants. The analysis concluded that visitor-serving uses on this site were not the best use of the site for a number of reasons. The report stated that there are already sufficient visitor-serving uses in the area so additional similar uses were not needed. The analysis also stated that although the site is located near the water (San Gabriel River) and a beach, the non-navigability of the water makes any marine or water related uses not possible on site. Furthermore, since the portion of the project site which allows for visitor-serving uses is fairly distant from the beach, the analysis stated that this is not appealing for beach related purposes. The analysis also commented that since the site is surrounded by residences, it makes the site less desirable. The analysis concluded that a better utilization of the site would be residential uses, a use that conforms to the general area.

While the visitor-serving use analysis conducted by PKF Consulting concludes that such uses are not a good use of the site, the analysis fails to provide supportive information and research that shows how such visitor-serving and recreation uses are not viable. There is no data or analysis provided that leads to this conclusion. As discussed previously, while the DWP Specific Plan limits uses to specific areas of the site, the Coastal Act does not. The City amended the Specific Plan to accommodate the proposed development and it can be amended again to allow other development. Thus, limiting uses to sections of the site as dictated in the DWP Specific Plan is not a requirement. What is necessary is proper use of the site that is consistent with the higher priority uses of the Coastal Act.

The analysis claims that since other visitor-serving uses are nearby that they are not necessary at this location. The analysis is correct that there are existing visitor-serving uses approximately .5 miles east of the site along Main Street in Seal Beach and also across the San Gabriel River in the City of Long Beach, but that does not preclude such uses at this project site. The project site is uniquely located immediately adjacent to the recently developed River's End project and the sandy beach. Development of the DWP site should take this unique location into consideration. Additionally the report states that the site is adjacent to a non-navigable stream, the San Gabriel River is currently used for water skiing and fishing by some members of the public. North of the DWP site is an area that includes existing recreational boating support facility (boat repair and dry boat storage area). The existence of this facility indicates that such a higher priority uses are viable at this location and should be considered. While the site is surrounded by residential uses, the 10.9 acre site is ideal for visitor and recreation purposes nonetheless due to its adjacency to both the ocean and the river. Such uses would also be beneficial for the adjacent residents as it would enhance their experience to the coast by providing added services and recreational opportunities.

Given the historical context of the subject site involving the Commission's and staff's consistent public messages to the City that Chapter 3 policies do not support approval of a residential development on the subject site well before the applicants bought the property from the City and after the applicants became the owner and the letter's sent to the applicants regarding the proposed residential development, the applicants were aware or should have been aware of the historical treatment of the site by the Commission. This historical context provides the framework from which the Commission can determine if the applicants' investment-backed expectation to improve the site with residential development is a reasonable one. The Commission concludes that it is not a reasonable investment-backed expectation. The historical planning considerations of the site by the Commission, rather, would inform the applicants that a reasonable investment-backed expectation would be one where the applicants would expect to develop the property with a high priority development as dictated by relevant Chapter 3 policies of the Coastal Act which further promote the public's welfare by enhancing public opportunities for coastal recreation for the entire general public. Since the applicants' stated economic impact related to higher priority development on the site is based on a unreasonable investment-backed expectation of developing the property for low-priority residential purposes, the Commission need not consider that impact as significant because it is does not relate to an impact from denial of a proposed development that provides an economic use of the property based on a reasonable investment-backed expectation. Thus, the Commission's action will not interfere with an economic use of the applicants' property that is grounded in a reasonable investment-backed expectation and, thereby, will not exercise its power in a manner which will take private property for public use, without the payment of just compensation therefor. Therefore, the Commission's action will not be inconsistent with section 30010 of the Coastal Act.

3. Applicants' Offer of Mitigation for Loss of Hotel Use

In order to offset the loss of visitor-serving hotel use on the DWP property, the applicants in a letter dated August 20, 2013 to Commission staff stated that BCP is willing to pay a mitigation fee (Exhibit #14). BCP states that the fee is based upon a 2010 City of Malibu LCPA MAL-MAJ-2-09, in which a fee for 15% of the lost potential hotel rooms at a rate of \$14,494.00 was recommended by Commission staff for the loss of visitor serving zoned land. BCP adjusted the rate for inflation to \$15,159 per lost room. The fee for the Malibu LCPA was based on the number of hotel rooms that might have been built on the 24 acre site. The applicants state that while the DWP Specific Plan allowed for 150 rooms, actually only 50 rooms could be built on site after Specific Plan development standards were taken into consideration. The applicants stated that a 75 room hotel could be considered only if changes were made to adjust the height of the building. Taking those two hotel scenarios into consideration, the applicants proposed mitigation ranged from eight rooms for the 50 room hotel or 11 rooms for a 75 room hotel at \$15, 159.00. Therefore, the mitigation fee would range from \$121,272.00 to \$166,749.00, but the applicants round up the proposed mitigation to \$175,000.00. The fee is proposed by the application to go to Hostelling International for a project planned in the City of Long Beach or to another visitor-serving facility in the area.

While the payment of a mitigation fee for the loss of visitor-serving use has been approved by the Commission in other instances, it is premature to consider mitigation as an option in this case since there are a number of other higher priority uses that could be developed on site before residential option and mitigation is considered. The provision of other overnight accommodations or other use providing public visitor-serving commercial or commercial recreational uses could avoid the need for the payment of a mitigation fee. First the applicants should consider relocating an overnight

accommodation closer to the ocean, as recommended in their own studies. Other types of overnight accommodations should be considered, including but not limited to a hostel, a RV park or a combination of those uses. The applicants should first seriously consider other uses that are a higher priority than a residential use for the DWP site. Payment of a mitigation fee should not be considered until these and other potentially viable uses are considered and found to be infeasible.

While a mitigation fee is premature for this site, Commission staff did review the applicants' mitigation proposal for consistency with past Commission action concerning the payment of mitigation fees for the development of residential use on land designated for visitor-serving uses. The applicants' proposal incorrectly references the staff's recommendation as opposed to the Commission's action concerning the City of Malibu LCPA MAL-MAJ-2-09. The applicants stated that the fee determined with that LCPA was a fee for 15% of the lost potential hotel rooms at a rate of \$14,494 recommend by Commission staff for the loss of visitor-serving zoned land. However, the mitigation imposed by the Commission for the conversion of a visitor-serving commercial use to a residential designation was actually a \$2 million fee that was to go to State Parks to convert the old Malibu Ranch Motel at Topanga Beach to a low cost overnight accommodation.

The loss of visitor-serving uses is a significant concern that has been raised with other projects located within the City of Seal Beach. CDP No. 5-99-026-(Musso) and CDP No. 5-05-385-(Seal Beach Six, Inc.) both dealt with the loss of visitor serving commercial uses to residential uses. However, in these cases the Commission did agree that for the Musso application that the site was not suitable as a commercial reservoir for future visitor serving commercial use and that the Seal Beach Six location would not be suitable for re-development as an overnight accommodation. Something else that these projects held in common was that the City indicated while visitor-serving uses would be lost at these sites; there were other locations within the City that would be more suitable for these types of uses, including the subject DWP site. The DWP has long been envisioned by the City and the Commission as a location for higher priority overnight accommodation and other active visitor-serving uses.

4. Public Trust Lands

A significant portion of the proposed residential development is located on the portion of the site where there is a public trust easement. This area is identified as Parcel A in Exhibit #11. The public trust is a sovereign public property right held by the State (under the jurisdiction of the California State Lands Commission) or its delegated trustee, for the benefit of all the people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes, including visitor-serving commercial uses. Residential use is a prohibited use on public trust lands unless the Legislature or courts, either through land exchange, legislative act or adjudication, has removed public trust obligations from certain public trust resources. The public trust obligations have not been removed from the subject parcel. More specifically, portions of or entire portions of eleven (11) lots are located within the public trust easement (Exhibit #11).

The proposed residential use on the public trust easement area is not consistent with the uses allowed under the public trust. To remedy this situation, BCP has submitted an application to SLC to exchange the public trust easement from Parcel A to Parcel B so that the proposed residential development can be undertaken. Parcel B is also located on the project site, along the San Gabriel

River and includes submerged land within the River (Exhibit #11). However, a land exchange for Parcel B would not afford the same opportunities to benefit the public as those located on the Parcel A. A significant portion of Parcel B is already undevelopable since it is submerged property. Additionally, the applicants have already agreed in the 2011 Settlement Agreement and the 2012 Development Agreement affecting the project site to convey Parcel B to the City (the “San Gabriel River Trail Parcel” which is to be used for public trail purposes). If Parcel B is conveyed to the City for public trail purposes, its value as an exchange parcel for the public trust easement is severely diminished as the land would already be protected for the uses encouraged by the Coastal Act. The public trust easement should remain on Parcel A as it is an ideal location for higher priority uses encouraged by under the Coastal Act. Those uses are also the uses that are allowed on public trust lands.

Conclusion

As proposed, the project fails to provide Coastal Act higher priority uses at a prime riverfront and oceanfront location that would maximize the public’s opportunities for the coastal access and recreation. Therefore, the Commission finds that the proposed project is inconsistent with Sections 30213, 30220, 30221, 30222, 30224 and 30255 of the Coastal Act and must be denied.

D. Alternatives

There are several alternatives to the proposed development that can be found consistent with the public access, public recreation and recreational boating support policies of the Coastal Act. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

No project

No changes to the existing site conditions would result from the “no project” alternative. As such, the site would remain undeveloped and residential use, a lower priority use, would not be constructed on site. There also would be no encroachment into the existing adjacent preferred recreational boating support use by residential use, thereby avoiding a conflict with the continuance of the existing beneficial use.

Revising the proposed project to include higher priority Coastal Act uses

Another potential alternative would be revising the proposed project so that it included higher priority uses that are encouraged by the Coastal Act, such as visitor-serving commercial including overnight accommodations, commercial recreation, and marine commercial and lower cost visitor and recreational facility uses. As opposed to the applicants’ residential proposal for the site, these uses would offer an opportunity for the site to maximize its ability to provide amenities beneficial to a greater segment of the general public. These higher priority uses could be stand alone uses or a mix of these uses could be provided. These uses could range from beach equipment rental shops, boat repair facilities, active park, RV park, etc. An additional higher priority use would be placing a passive park, similar to the applicants proposed park, but not at such a large scale that would take into account habitat concerns including foraging areas. Whichever way the site is developed with either a single use or mixed-use, these uses should be of the higher priority variety allowable under the Coastal Act.

Revising the proposed project to include a hotel use located at the southern portion of the property adjacent to the parking lot/beach

A constant theme in the applicants' hotel analyses for the site was that hotel options were not favorable due to the DWP Specific Plan requiring the hotel use to be located near Marina Drive instead of near the City parking lot/beach. The standard of review is the Coastal Act and it does not preclude any areas of the site for hotel development or other visitor-serving commercial recreational uses. The site should instead be evaluated in its entirety and the best possible higher priority use or uses for the entire site should be identified, which could include a hotel use or other type of overnight accommodation located near the City parking lot/beach or somewhere else on the property.

E. Unpermitted Development

Development has allegedly occurred on the project site without all required Coastal Act authorizations. The development consisted of: construction of the San Gabriel River Trail; removal of subsurface structures and remediation of the site for asbestos contamination; re-grading of the site; removal of the Ocean Avenue bridge ramp; installation of the perimeter fence/green screen; and mowing and disking of the site. None of this development was included with the proposed project and no previous coastal development permits have been approved for this work. Thus, this development still needs to be resolved.

F. Local Coastal Program (LCP)

Section 30600(c) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a Certified Local Coastal Program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with Section 30604 of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is inconsistent with the Chapter 3 policies of the Coastal Act and would prejudice the City's ability to prepare a Local Coastal Program for Seal Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). The applicants proposal to place a lower priority residential use at the DWP site, which is an ideal coastal location instead for higher priority uses ranging from visitor-serving commercial, recreation and marine commercial and lower cost visitor and recreational facility uses could prejudice the City's ability to prepare a LCP that is consistent with the Coastal Act.

G. California Environmental Quality Act (CEQA)

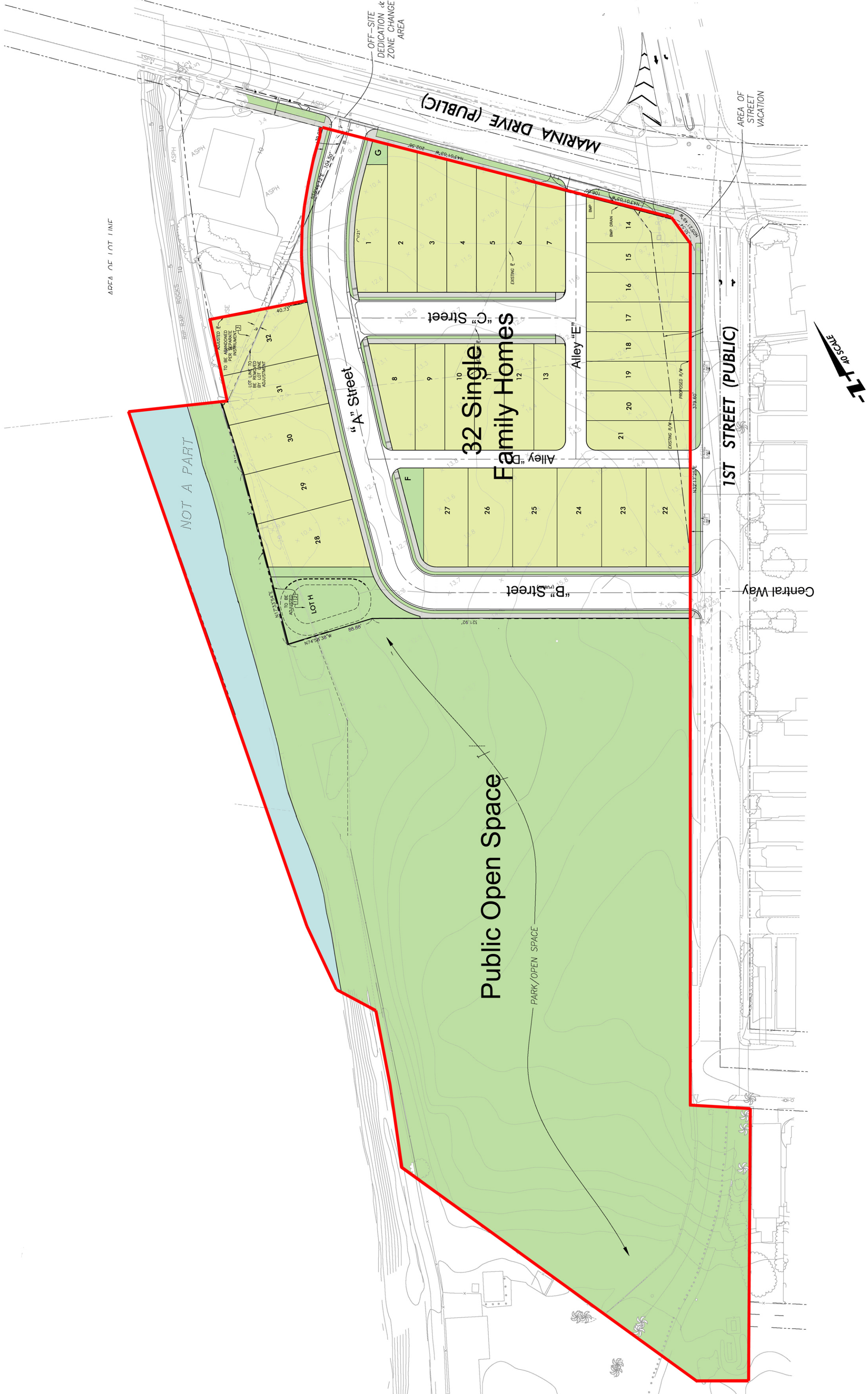
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by

any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). The City of Seal Beach is the lead agency for purposes of CEQA compliance. An Environmental Impact Report (EIR) was approved for this project in July 2012 pursuant to the provisions of CEQA. Mitigation measures included measures to minimize any impacts to aesthetics, cultural, traffic and noise. However, 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.

While the City of Seal Beach approved an EIR for the site with mitigation measures to minimize any impacts, the Commission, pursuant to its certified regulatory program under CEQA, the Coastal Act, determined that the proposed development would have both, direct and cumulative adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as a no project alternative, revising the proposed project to include higher priority Coastal Act uses, revising the proposed project to include a hotel use located at the southern portion of the property adjacent to the parking lot/beach or developing the 10.9 acre site with a mixed-use development continuing a combination of some of these uses and perhaps passive or active park use on a portion of the site. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.

APPENDIX 1

SUBSTANTIVE FILE DOCUMENTS: 1982 DWP Specific Plan; 1996 DWP Specific Plan; City of Seal Beach Approval in Concept dated January 8, 2013; CDP NO. 5-10-220-(City of Seal Beach); CDP NO. 5-10-16-(City of Newport Beach); City of Malibu LCPA MAL-MAJ-2-09-A; CCC action on the City of Seal Beach LUP dated July 24, 1983; CDP No. 5-99-026-(Musso); CDP No. 5-05-385-(Seal Beach Six, Inc.); Draft Environmental Impact Report (EIR) (SCH# 2011061018); Commission staff comment letters regarding Draft Environmental Impact Report (EIR) (SCH# 2011061018) dated July 6, 2011 and January 9, 2012; City of Seal Beach Resolution No. 6274; City of Seal Beach Resolution No. 6275; City of Seal Beach Resolution No. 6276; City of Seal Beach Ordinance No. 1620; City of Seal Beach General Plan Amendment 11-1; City of Seal Beach DWP Specific Plan Amendment 11-1; City of Seal Beach Zoning Map Amendment 11-1; City of Seal Beach Tentative Tract Map (TTM) 17425; City of Seal Beach and BCP Settlement Agreement dated March 16, 2011; City of Seal Beach and BCP Disposition and Development Agreement dated July 9, 2012; *Analysis of Potential Market Demand and Statements of Estimated Annual Operating Results for a Proposed Hotel to be located in Seal Beach, CA* prepared by PKF Consulting dated July 31, 2003; *Potential Market Demand and Estimated Operating Results for a Proposed Hotel to be located in Seal Beach, California* prepared by PKF Consulting dated November 6, 2009; *Peer review and Site Specific Hotel Feasibility Evaluation* prepared by Kosmont Companies date September 2011; *Visitor-Serving Use Analysis* prepared by PKF Consulting USA, dated November 26, 2012; Letter from BCP to Commission staff dated August 20, 2013; letter from the SLC to City of Seal Beach Director of Development Services dated April 25, 2012; and letter from and the SLC to City of Seal Beach Planning Commission dated May 2, 2012.



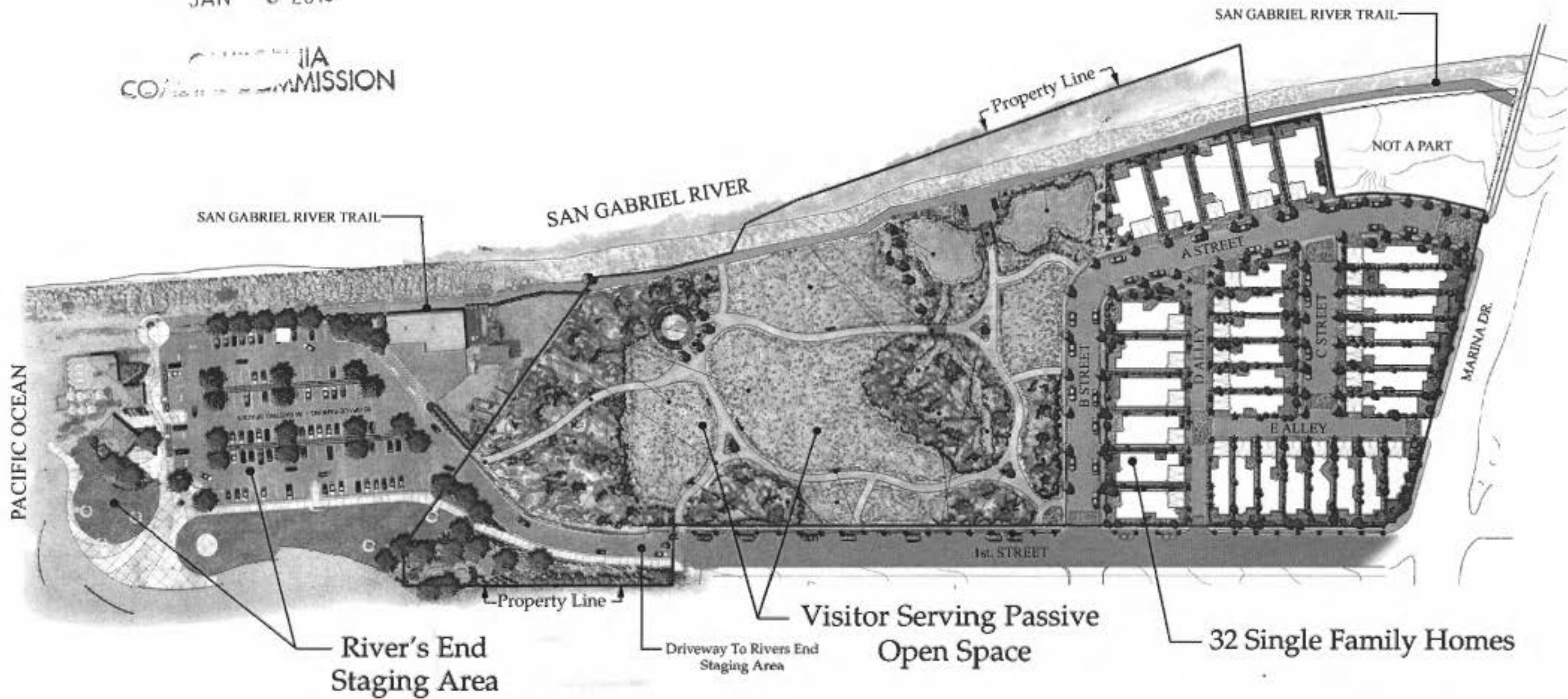
Ocean Place Development Plan

5-13-003









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South Coast Region

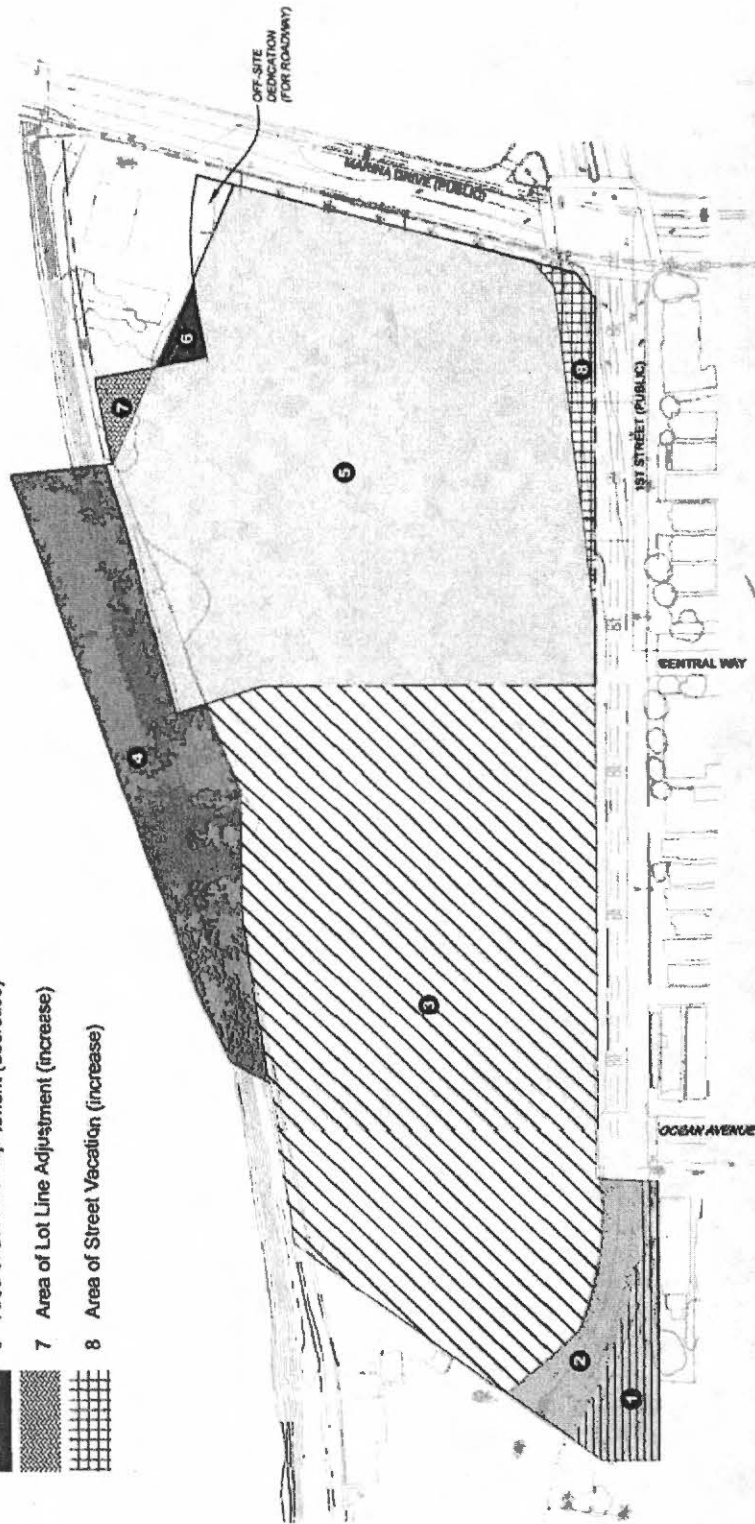
JAN 8 2013

COASTAL COMMISSION



LEGEND

- | | |
|---|--|
|  | 1 Sewer Parcel |
|  | 2 Driveway Parcel |
|  | 3 Park/Open Space |
|  | 4 River / Bike Trail Parcel |
|  | 5 Area of Residential Use |
|  | 6 Area of Lot Line Adjustment (decrease) |
|  | 7 Area of Lot Line Adjustment (increase) |
|  | 8 Area of Street Vacation (increase) |



DWP Specific Plan Area Layout

Pacific Ocean

San Gabriel River

River Trail Under
Lease To City

Visitor Serving Passive
Open Space

Residential
Development

Rivers End
Staging Area

Driveway To
River's End
Under Lease
To City

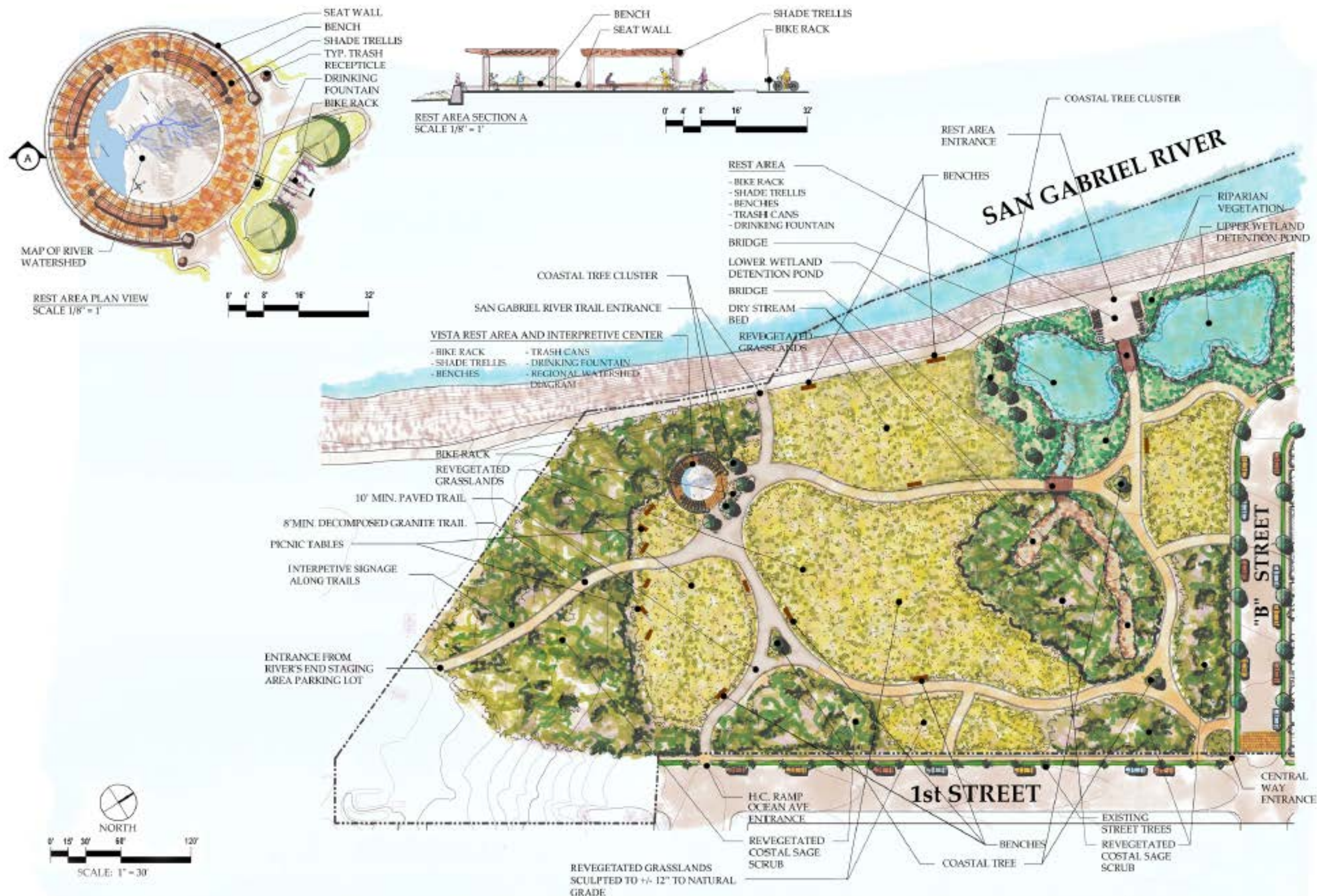
First Street

First Street Area To
Be Vacated By City

Ocean Ave

Central Way

Marina Drive



Visitor Serving Passive Open Space Master Plan



Overall Planting Diagram



Project Vicinity

Pacific Ocean

San Gabriel River

Project Area

Rivers End
Staging Area

Marina Drive

First Street

Ocean Ave

Central Way

Beach

TOPOGRAPHIC MAP

BRONX-RECORD-2 ELEVATION 20.516, MAYAD BE
 DISCOVERED BY JCS 1975 00 MILLS ALONG OCEAN AVENUE FROM THE
 PERP. AT THE JUNCTION OF FIRST STREET, 50.6 FT. SOUTH OF THE
 CURB OF OCEAN AVENUE, 12.6 FT. NORTHEAST OF POWER POLE #7073282.
 19.8 FT. SOUTHWEST OF THE SOUTHWEST CORNER OF A 74 FT BY 74 FT
 CONCRETE WALL FLUSH WITH THE GROUND, 6.6 FT. WEST OF POND ON
 WEST SIDE OF HOUSE #100, 14 FT. EAST OF EAST EDGE OF SIDEWALK
 WHICH IS ON THE EAST SIDE OF FIRST STREET, 1.5 FT. HIGHER THAN OCEAN
 AVENUE, 35.1 IN. ON TOP OF CONCRETE POST FLUSH WITH THE GROUND.

PREPARED FOR:
BAY CITY PARTNERS, LTD
AND
CHICAGO TITLE COMPANY

BEING BLOCK "C" AND PORTIONS OF BLOCK "B" AND
OCEAN AVENUE, PER MAP OF BAY CITY, M.M. 3/19,
BLOCK 100 PER. TRACT NO. 698, M.M. 3/27 AND A
PORTION OF THE LAND LOCATION NO. 157 SURVEY
NO. 108, PER PATENT BOOK 1, PAGE 251.

REVISIONS	BY	DATE	SCALE
			SURVEYED
			P.M.
			CALCULATED
			RET
			DRAWN
			CHECKED
			RDC

DATE NOVEMBER 8, 2002 JOB NUMBER 102-052



DWP Specific Plan Legal Lots

ENCROACHMENT NOTES:

THE SELV BRICK WALL OF THE HOUSE
ALONG THE NORTHEASTERN BOUNDARY
ENCROACHES OVER THE PROPERTY LINE
0.6' TO 1.3'

THE BEACH ACCESS ROAD AND MANTINES
ARE LOCATED ON THE SOUTHEASTERN
PORTION OF THE PROPERTY. THE TITLE REPORT
DOES NOT INDICATE ANY DOCUMENTS OF
RECORD FOR ANY RIGHTS THERE TO.

THE ASPHALT PATH ALONG THE SOUTHWESTERN
PORTION OF THE PROPERTY IS ENCROACHING
6' TO 14' INTO THE PROPERTY.

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

FILE COPY

July 6, 2011

Mark Persico, AICP, Director of Development Services
Development Services Department
City of Seal Beach
211 8th Street
Seal Beach, CA 90740

**Re: Department of Water and Power Specific Plan Amendment
Notice of Preparation of a Draft Environmental Impact Report (SCH# 2011061018)**

Dear Mr. Persico,

Thank you for the opportunity to review the Notice of Preparation of a Draft Environmental Impact Report for the Department of Water and Power Specific Plan Amendment. The subject site is seaward of the intersection First Street and Marina Drive in Seal Beach. The project consists of: 1) grading of the 10.7 acre site and installation of appropriate infrastructure in order to allow for future development of residential and open space/passive park uses, and 2) a General Plan Amendment, Department of Water and Power (DWP) Specific Plan Amendment, Redevelopment Plan Amendment and Tentative Tract Map that would allow for the development of a 48-lot residential development on a former power plant site in the City of Seal Beach. Additionally, a lot line adjustment is proposed that will adjust the project acreage from 4.3 acres to 4.4 acres for the residential portion of the Specific Plan area.

The proposed project is located within the Coastal Zone in the City of Seal Beach. The proposed development will require a Coastal Development Permit from the California Coastal Commission. The City does not have a certified coastal Land Use Plan or Implementation Plan (i.e. a Local Coastal Program), so, the land use issues raised by the proposal would be addressed in the context of the Coastal Development Permit application.

The following comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself. As described below, the proposed project raises issues related to land use, visual impacts, biological resources, archaeological resources, hazards, and water quality.

Below are the comments by Commission staff on the Notice of Preparation of a Draft Environmental Impact Report.

Land Use

The proposed project would change the permitted use of an area of the project site from visitor-serving to residential uses. Given its waterfront and riverfront location, the subject site is well suited for lower cost recreation and visitor-serving uses. Lower cost recreation and/or visitor-

Notice of Preparation of a Draft Environmental Impact Report
Department of Water and Power Specific Plan Amendment
Page 2 of 4

serving uses are a priority use in the Coastal Act as they offer an opportunity for the public to recreate along and have access to the coast. However, residential uses are not a priority use and do not offer the same beneficial uses that lower cost recreation and visitor-serving uses do. Lower cost recreation and visitor-serving uses should be maximized on the subject site. Additionally, the project states that there will be approximately 6.4 acres of open space/parkland as well on site. However, the proposed amendment would actually reduce the amount of open space currently called for by City planning documents from 70% to 60% within the proposed Specific Plan area. The reduction in planned open space/park area, in exchange for an increase in the quantity of residential uses (a lower priority use), is a significant concern raised by this proposal. Lower cost visitor-serving uses, as well as open space area, must be maximized and protected since they are priority uses as stated in the Coastal Act. We recommend that the EIR consider project alternatives that significantly reduce and/or eliminate the proposed residential uses on the subject site.

On July 28, 1983, the California Coastal Commission held a public hearing on the Land Use Plan for the City of Seal Beach as submitted by the City. The Commission denied the Land Use Plan as submitted based on inconsistencies with the Coastal Act. The Commission then adopted suggested modification, which if adopted by the City would bring the Plan into conformance with provision of the Coastal Act.

Suggested modification for the DWP site designated that 30% of the site be for hotel/commercial uses defined as a maximum 300-room hotel with a maximum height of 36-feet and necessary ancillary support uses to serve hotel guests. The remaining portion of the site was designated as open space with uses defined as public parks, greenbelts, trails, recreational uses and theater with a maximum height of 25-feet. Furthermore, all uses in the Seal Beach Municipal Code for public land use were permitted in open space.

However, these suggested modifications were never adopted by the City. Therefore, the Land Use Plan was never effectively certified and subsequently lapsed. While these suggested modification regarding the DWP site were never adopted by the City, it does show the Commission's concern of preserving the site as a lower cost visitor-serving and open space area in 1983 and we note that such uses are still strongly encouraged. The EIR should consider the above described land uses in its alternatives analysis (and/or variations on it).

Visual Impacts

The project site is located seaward of the first coastal roadway and public views across the site to and along the shoreline have been enjoyed by the public for a significant period of time. The Coastal Act requires the protection of public views to and along the coastline. Any adverse impacts to these scenic resources must be avoided or minimized to the greatest extent feasible. The EIR must analyze impacts to public coastal views and consider alternatives that avoid significant adverse impacts to coastal views.

Please note, the visual impact analysis should consider impacts to views as they would legally exist relative to the subject site. Any existing unpermitted fencing and/or screening should not be considered the 'existing' condition.

Biological Resources

There is potential for impacts to biological resources with the proposed project, especially since the Notice of Preparation stated that the undeveloped site has the potential to contain wetlands as defined by the United States Army Corps of Engineers (USACOE) and the California Coastal Commission (CCC). The Coastal Act identifies the types of development, which may occur in wetlands. In order for the Commission to analyze whether the proposed project is consistent with the Coastal Act you must submit a biological study, which identifies the presence and boundary of any wetland, which exists in the project area based on Coastal Act criteria (note, the USACOE and CCC criteria for identifying wetlands differ significantly). In addition, an analysis must be prepared which identifies any direct or indirect impacts upon wetlands resulting from the proposed project. Therefore, please provide a wetlands identification and biological analysis, prepared by a biologist in accordance with current professional practice, of any direct and/or indirect impacts of the proposed project upon wetlands and associated sensitive biological resources in the project area. The analysis must include a map showing the location of the existing and proposed project with respect to the location of the wetlands and/or any other biological resources located on the property. Where applicable, proper protocol surveys should be conducted for sensitive, rare and/or endangered plant or animal species that may exist on the subject site.

Archaeological Resources

The project site is located in an area where archaeological resources (i.e. Native American Resources) have been found. Thus, please provide an archaeological survey that provides, at minimum, a preliminary investigation (i.e. reconnaissance) for the presence of any archaeological resources on site. If the preliminary investigation reveals that archaeological resources exist and/or very likely exist on the subject site, a more thorough investigation will be required prior to submittal of any Coastal Development Permit application for development of the subject site. Please note that an archaeological investigation may require a Coastal Development Permit. Please contact Commission staff regarding the need for a permit prior to undertaking the investigation.

Hazards

An analysis for the potential of structural damage due to sea level rise, flooding and wave attack must be conducted for the project site. The study must be prepared by a licensed engineer with expertise in coastal processes, which analyzes whether the proposed project minimizes risks from hazards including, but not limited to, sea level rise, flooding and erosion. The study must explain whether any protective devices will be necessary to protect the proposed development from any existing or anticipated future hazards.

Water Quality

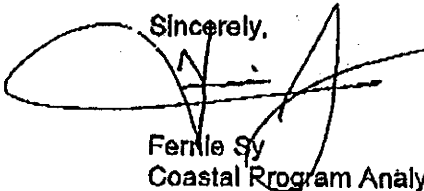
An analysis of the potential impacts to water quality resulting from the proposed project and the measures to deal those impacts is necessary. Any proposed measures must be sized and designed to mitigate water quality impacts generated by the development. The Commission has recently required that post-development peak runoff rates and average volume from the developed site shall not exceed pre-development levels for the 2-year 24-hour storm runoff event. In addition, post-construction treatment control BMPs shall be designed to mitigate

Notice of Preparation of a Draft Environmental Impact Report
Department of Water and Power Specific Plan Amendment
Page 4 of 4

(treat, infiltrate or filter) stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. If the proposed water quality mitigation measures do not meet the above criteria, water quality could be adversely impacted. The Environmental Impact Report should address whether the proposed development meets the above guidelines and any impacts upon water quality, which may result if the development is not consistent with the guidelines.

Thank you for the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the Department of Water and Power Specific Plan Amendment. Commission staff request notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when an application is submitted for a Coastal Development Permit. Please feel free to contact me at 662-590-5071 with any questions.

Sincerely,



Ferlie Sy
Coastal Program Analyst II

CC: State Clearinghouse

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



January 9, 2012

Mark Persico, AICP, Director of Development Services
Development Services Department
City of Seal Beach
211 8th Street
Seal Beach, CA 90740

**Re: Department of Water and Power Specific Plan Amendment
Draft Environmental Impact Report (SCH# 2011061018)**

Dear Mr. Persico,

Thank you for the opportunity to review the Draft Environmental Impact Report for the Department of Water and Power Specific Plan Amendment. The subject site is a former power plant site located seaward of the First Street and Marina Drive intersection in Seal Beach. The project involves amendments to the 1996 DWP (Department of Water and Power) Specific Plan (Proposed Specific Plan Amendment) that would allow for the development of a 48-lot residential development (Tentative Tract Map No. 17425). That is, the DWP Specific Plan currently designates that 30% of the site be for visitor serving uses and that 70% be for open space. As proposed, the residential component would occupy 41% of the site and be located on approximately 4.5 acres in the northern portion (landward) of the project site. The project applicant would construct, in one phase, the finished pads and all necessary infrastructure necessary to serve the new residential development. The residential units would be developed individually by homeowners as custom homes. As proposed, the remaining 59% (approximately 6.4 acres of the project site) would be used for open space/passive recreation uses.

The proposal would require a General Plan Amendment, Zone Change, DWP Specific Plan Amendment, Redevelopment Plan Amendment, Tentative Tract Map, and Lot Line Adjustment. The General Plan Amendment, DWP Specific Plan Amendment, and Zone Change, if approved, would allow the property to be developed for residential uses. The Tentative Tract Map and Lot Line Adjustment, if approved, would allow the property to be subdivided into single-family parcels. The proposed amendments are intended to address aspects of each policy document that are not consistent with the proposed project.

The proposed project is located within the Coastal Zone in the City of Seal Beach. The proposed development will require a Coastal Development Permit from the California Coastal Commission. The City does not have a certified coastal Land Use Plan or Implementation Plan (i.e. a Local Coastal Program), so, the land use issues raised by the proposal would be addressed in the context of the Coastal Development Permit application.

The following comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as

Draft Environmental Impact Report
Department of Water and Power Specific Plan Amendment
Page 2 of 4

representing the opinion of the Coastal Commission itself. As described below, the proposed project raises issues related to land use, visual impacts, biological resources, and hazards.

Below are the comments by Commission staff on the Draft Environmental Impact Report.

Land Use

The proposed project would change the permitted use of an area of the project site from visitor-serving to residential uses. Given its waterfront and riverfront location, the subject site is well suited for lower cost recreation and visitor-serving uses. Lower cost recreation and/or visitor-serving uses are a priority use in the Coastal Act as they offer an opportunity for the public to recreate along and have access the coast. However, residential uses are not a priority use and do not offer the same beneficial uses that lower cost recreation and visitor-serving uses do. Lower cost recreation and visitor-serving uses should be maximized on the subject site. The DWP Specific Plan currently designates that 30% of the site be for visitor serving uses and that 70% be for open space (to be discussed more below). This would change with the proposed project as the residential component use in the northern portion (landward) of the project site would be increased to 41% (4.5 acres) and the open space/passive recreation use component in the southern portion (oceanward) would be reduced to 59% (6.4 acres). The proposed project would reduce the amount of open space currently called for by City planning documents from 70% to 59% within the proposed Specific Plan area. The reduction in planned open space/park area, in exchange for an increase in the quantity of residential uses (a lower priority use), is a significant concern raised by this proposal. Lower cost visitor-serving uses, as well as open space area, must be maximized and protected since they are priority uses as stated in the Coastal Act. Project alternatives have been provided that include no project/no build and adherence to the current 1996 DWP Specific Plan. However, we recommend that the EIR consider additional project alternatives that significantly reduce and/or eliminate the proposed residential uses on the subject site.

On July 28, 1983, the California Coastal Commission held a public hearing on the Land Use Plan for the City of Seal Beach as submitted by the City. The Commission denied the Land Use Plan as submitted based on inconsistencies with the Coastal Act. The Commission then adopted suggested modification, which if adopted by the City would have brought the plan into conformance with provisions of the Coastal Act.

Suggested modification for the DWP site designated that 30% of the site be for hotel/commercial uses defined as a maximum 300-room hotel with a maximum height of 35-feet and necessary ancillary support uses to serve hotel guests. The remaining portion (70%) of the site was designated as open space with uses defined as public parks, greenbelts, trails, recreational uses and theater with a maximum height of 25-feet. Furthermore, all uses in the Seal Beach Municipal Code for public land use were permitted in open space.

However, these suggested modifications were never adopted by the City. Therefore, the Land Use Plan was never effectively certified and subsequently lapsed. While these suggested modification regarding the DWP site were never adopted by the City, it does show the Commission's concern of preserving the site as a lower cost visitor-serving and open space area in 1983 and we note that such uses are still strongly encouraged. While the EIR has provided alternatives to the proposed project including adherence to the current 1996 DWP Specific Plan, additional alternatives are needed that preserve the entire site as a lower cost

visitor serving and open space area. Thus, the EIR should consider the above described land uses in an additional alternatives analysis (and/or variations on it).

The proposed project would result in the significant lost of an area currently designated as open space in the City's Land Use Element of the General Plan, which could be used for parkland. In the EIR, it states that in order to meet the City's parkland-to-ratio population goal, a total of 121 acres of parkland would be required. Currently the City maintains approximately 77.3 acres of parkland. The EIR states that while the City has not met this goal, the City benefits from additional recreation amenities within its boundaries (i.e., beaches, Sunset Marina Park, etc). Nonetheless, what was the justification for the loss of this site to entirely serve as open space? Loss of the site to residential use, a non priority use, is significant. Therefore, an explanation and justification for the loss of the site as potential parkland should be included in the EIR.

Visual Impacts

The project site is located seaward of the first coastal roadway and public views across the site to and along the shoreline have been enjoyed by the public for a significant period of time. For example, views to the ocean are available from the San Gabriel Rive Bike Trail, Marina Drive and 1st Street. The Coastal Act requires the protection of public views to and along the coastline. Any adverse impacts to these scenic resources must be avoided or minimized to the greatest extent feasible. The EIR must analyze impacts to public coastal views and consider alternatives that avoid significant adverse impacts to coastal views.

Please note, the visual impact analysis should consider impacts to views as they would legally exist relative to the subject site. Any existing unpermitted fencing and/or screening should not be considered the 'existing' condition.

Biological Resources

Part of the site analysis included a wetland boundary determination based on Coastal Act criteria and based on that analysis, no wetlands were identified on the project site. However, the EIR states that nine (9) special status plant species were identified as having potential to occur on site, but due to diking, historic disturbance, and the absence of suitable habitat surrounding the project site, all nine (9) of those species are considered unlikely to occur on site. Additionally, eight (8) special status wildlife species were identified, but only five (5) of these species are considered unlikely to occur based on the same reasons. Please provide further discussion regarding the diking and historic disturbance of the site and whether or not these activities were permitted by any Coastal Development Permit. Any previous removal of major vegetation would have required approval of a Coastal Development Permit. Any existing unpermitted removal of major vegetation should not be considered the 'existing' condition for purposes of identifying biological resources impacts.

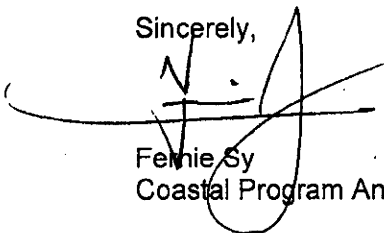
Hazards

An analysis for the potential of structural damage due to sea level rise, flooding and wave attack must be conducted for the project site. The study must be prepared by a licensed engineer with expertise in coastal processes, which analyzes whether the proposed project minimizes risks from hazards including, but not limited to, sea level rise, flooding and erosion. The study must explain whether any protective devices or other mitigation measures will be necessary to protect the proposed development from any existing or anticipated future hazards.

Draft Environmental Impact Report
Department of Water and Power Specific Plan Amendment
Page 4 of 4

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Department of Water and Power Specific Plan Amendment. Commission staff request notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when an application is submitted for a Coastal Development Permit. Please feel free to contact me at 562-590-5071 with any questions.

Sincerely,

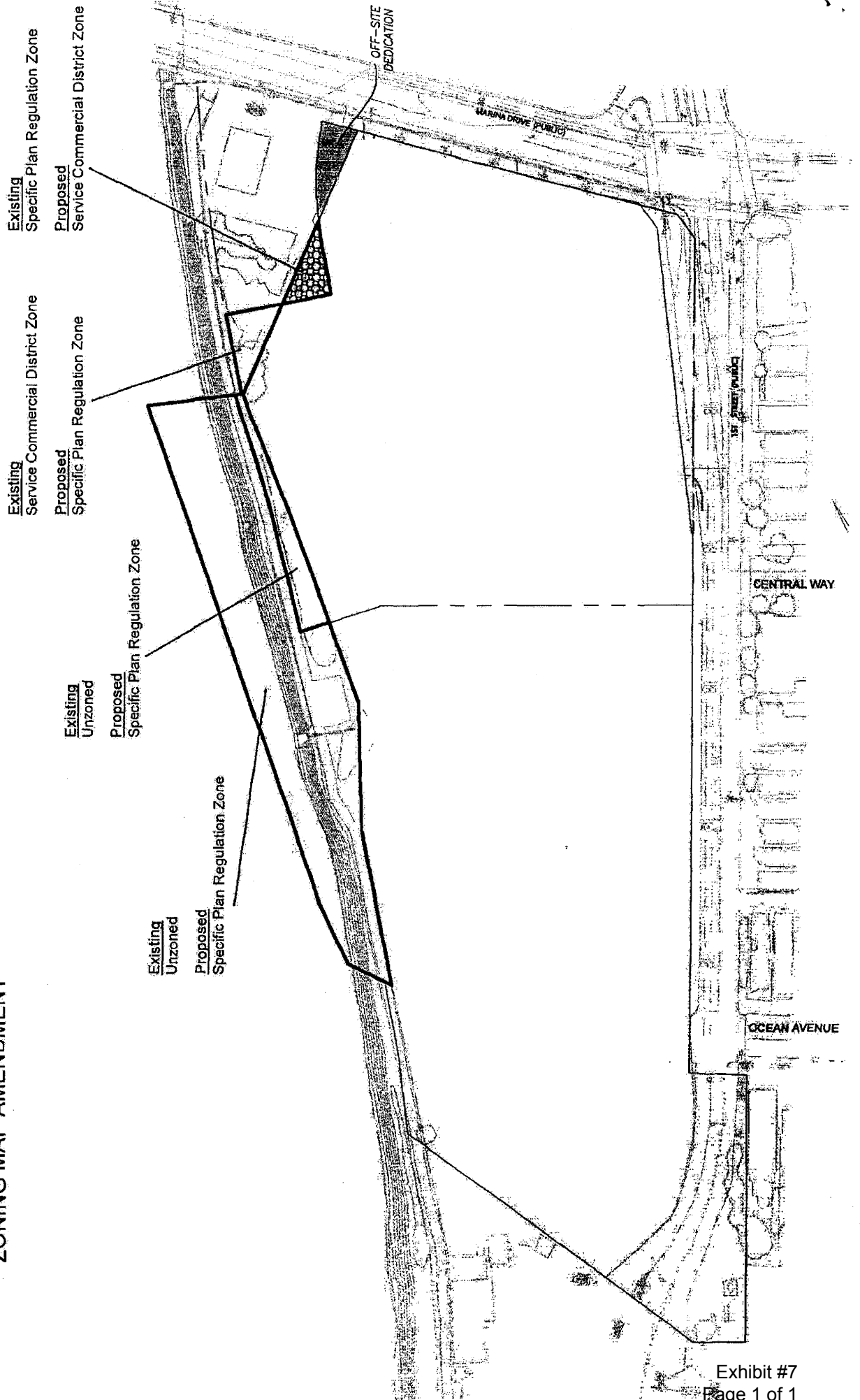


Fernie Sy
Coastal Program Analyst II

CC: State Clearinghouse

EXHIBIT "B"

ZONING MAP AMENDMENT



SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered by and between:

(a) Bay City Partners LLC, a California limited liability company (Also known as Bay Cities Partners, LLC) ("Bay City"), on behalf of itself and its successors, successors-in-interest and assigns, on the one hand; and

(b) The City of Seal Beach, a municipal corporation; the City of Seal Beach Redevelopment Agency and the City of Seal Beach Planning Commission (collectively, "City") on behalf of themselves and each of their agencies, divisions, departments, attorneys, staff members, agents and representatives, on the other.

The Agreement shall be effective as of March 16, 2011 (Effective Date).

The Agreement is entered into with respect to the following:

RENTALS

A. Bay City represents that it holds fee title to vacant land of approximately 10.697 acres located between First Street and the San Gabriel River and between Marina Drive and the City beach in the City as shown on Exhibit A attached hereto (the "Property").

Bay City's Proposed Residential Project

B. Bay City has owned the Property since approximately May 27, 2003. Bay City intends to pursue residential development of the Property.

C. Bay City seeks to develop a subdivision of 48 residential lots on the Property suitable for single-family detached homes with the balance remaining Open Space (the "Proposed Residential Project"). Such lots will be located on the Property generally and largely north of the westerly prolongation of the southern right-of-way boundary of Central Way as shown specifically on Exhibit B attached hereto (the "Proposed Residential Project Area"). Exhibit C-1 attached hereto is the legal description ("Legal Description") of the Proposed

Residential Project Area. The Proposed Residential Project is shown on plans submitted to the City and is attached hereto as Exhibit C-2 ("Proposed Residential Project Plans").

D. Beginning before 2009, Bay City applied to the City for some of the land use and other entitlements and permits required by the City for the Proposed Residential Project. These land use and other entitlements and permits consist of:

- (1) Certificate of Compliance 2009-01, approved and recorded March 10, 2009 as Instrument No. 2009000109534 in the Official Records, Orange County, California;
- (2) Certificate of Compliance 2010-01, approved and recorded August 27, 2010 as Instrument No. 2010000419498 in the Official Records, Orange County, California; and
- (3) Lot Line Adjustment, approved December 2010.

E. Bay City seeks to obtain all land use and other entitlements and permits from the City required by the City and other agencies for the Proposed Residential Project. Bay City also wishes to obtain a coastal development permit ("CDP") from the California Coastal Commission ("Coastal Commission") for the Proposed Residential Project.

F. In furtherance of this effort, Bay City intends to submit, on or before March 31, 2011, or as soon thereafter as reasonably possible, the remaining applications for all land use and other entitlements and permits required by the City for development of the Proposed Residential Project.

G. The remaining portion of the Property, not included in the Proposed Residential Project Area, lies generally and largely south of the westerly prolongation of the southern right-of-way boundary of Central Way as shown more specifically on Exhibit D attached hereto (the "Open Space").

The City's River's End Project

H. The City seeks to refurbish and improve its River's End Staging Area and San Gabriel River Bike Trail through its River's End Staging Area and San Gabriel River Bikeway Enhancement Plan (the "River's End Project"). Much of the River's End Project is located on property adjacent to the southwesterly boundary of the Property.

I. A segment of the bike trail that is part of the River's End Project crosses onto the Property along the San Gabriel River at the Property's westerly property line, as shown on Exhibit E attached hereto (the "Bike Trail Parcel"). The City wishes to acquire the Bike Trail Parcel from Bay City for the River's End Project. The City has not filed a complaint in eminent domain to acquire the Bike Trail Parcel.

J. In April 2005, the City successfully applied to the Rivers and Mountain Conservancy for a grant to help fund the River's End Project (the "RMC Grant").

K. In 2010, the City submitted an application to the Coastal Commission for a CDP for the River's End Project.

L. On October 26, 2010, Bay City submitted an objection to the Coastal Commission opposing the Commission's issuance of a CDP to the City for the River's End Project. Bay City asserted that portions of the River's End Project are located on the Property.

M. In November 2010, the Coastal Commission staff denied the City's application for a CDP for the River's End Project as incomplete.

Bay City's Challenge to the River's End Project in the CEQA Lawsuit

N. On April 19, 2010, Bay City filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the City, pursuant to the California Environmental Quality Act ("CEQA Lawsuit"). The CEQA Lawsuit is entitled *Bay City Partners LLC v. City of Seal Beach, et al.* (Orange County Superior Court Case No. 30-2010 00364553). In the CEQA Lawsuit, Bay City sought to challenge the City's certification of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the River's End Project.

O. On February 1, 2011, the Court entered Judgment in the CEQA Lawsuit. The Judgment granted Bay City's petition in part and denied it in part. On February 1, 2011, the Court issued a Writ of Mandate directed to the City. On March 1, 2011, Bay City appealed the Judgment denying its petition in part.

The City's Condemnation Lawsuit

P. On September 23, 2009, the City filed a complaint in eminent domain entitled *City of Seal Beach v. Bay City Partners LLC, et al.* (Orange County Superior Court Case No. 30-2009 00305309) ("Condemnation Lawsuit"). In the Condemnation Lawsuit, the City sought, among other things, to acquire two portions of the Property located at First Street and Ocean Avenue. In particular, the City sought to acquire:

(1) A portion of Orange County Assessor's Parcel Numbers 043-171-02 and 043-172-13, as shown on Exhibit F attached hereto, in fee simple, reserving therefrom that non-exclusive easement for transportation of oil, gas and water, as more particularly set forth in that certain Easement Agreement dated February 17, 2009 and recorded November 2, 2009, as Instrument No. 2009000593882 in the Official Records, Orange County, California (the "Driveway Parcel"). The City asserted that it sought to acquire the Driveway Parcel for an access road.

(2) A portion of Orange County Assessor's Parcel Numbers 043-171-02 and 043-172-13, as shown on Exhibit G attached hereto, in fee simple, reserving therefrom that non-exclusive easement for transportation of oil, gas and water, as more particularly set forth in that certain Easement Agreement dated February 17, 2009 and recorded November 2, 2009, as Instrument No. 2009000593882 in the Official Records, Orange County, California (the "Sewer Parcel"). The City asserted that it sought to acquire the Sewer Parcel for a sewer maintenance area.

Q. The City asserted that it sought to acquire the Driveway Parcel for a public access roadway from First Street and Ocean Avenue to the public parking lot that serves the River's End Project. The City further asserted that it needed the Driveway Parcel in order to maintain public access to the public beach, the Pacific Ocean, Windsurfer Park, the First Street parking lot, and the River's End Café.

R. The City asserted that it sought to acquire the Sewer Parcel for a sewer maintenance area to maintain an existing City sewer line.

The Settlement

S. The intentions of Bay City and the City in entering this Agreement include, without limitation:

- (1) Good faith consideration of land use and other entitlements and permits for Bay City's Proposed Residential Project, including issuance of a CDP from the Coastal Commission;
- (2) Compensation of Bay City for the transfer to the City of fee title to the Driveway Parcel, the Sewer Parcel, the Bike Trail Parcel, and the Open Space parcel, as promptly as possible;
- (3) Resolution of all existing, current disputes and litigation between Bay City and the City, finally and completely;
- (4) Approval and issuance of a CDP from the Coastal Commission for the City's River's End Project; and
- (5) Transfer of title to the Open Space, including the Driveway Parcel, the Sewer Parcel, and the Bike Trail Parcel, to the City upon the triggering event described in the Agreement.

NOW, THEREFORE, BASED ON THESE FACTS, AND IN CONSIDERATION FOR THE COVENANTS SET FORTH BELOW, BAY CITY AND THE CITY AGREE AS FOLLOWS:

1. **Concurrent with the Effective Date of the Agreement:** The parties agree that, within fourteen (14) days of the Effective Date of the Agreement:

A. City's Obligations Concurrent With the Effective Date:

(1) **\$900,000 Payment.** The City shall pay the amount of \$900,000 to Bay City concurrent with the Effective Date of the Agreement. Such \$900,000 payment to Bay City is non-refundable. Bay City shall have no obligations hereunder unless and until such timely payment occurs. The City shall not be entitled to a refund or reimbursement of any portion of such payment. In particular, there shall be no refund or reimbursement of such

payment, regardless of whether or when the Proposed Residential Project is approved by the City or the Coastal Commission as discussed in paragraphs 2 and 4, below. The \$900,000 payment shall be payable by check to Bay City Partners LLC.

(2) **Dismissal of the Condemnation Lawsuit.** The City shall dismiss the Condemnation Lawsuit without prejudice. The Condemnation Lawsuit may be re-filed, if at all, only in accordance with paragraph 4, below. The City acknowledges that such dismissal may result in an obligation on the City's part to reimburse Bay City's ordinary court costs (but not attorneys' fees) under Code of Civil Procedure section 1032. The parties estimate and agree that such ordinary costs are less than \$10,000.

(3) **Indemnity.** As a material term of the Agreement and the Lease, the City shall indemnify, save, hold harmless and defend Bay City, its members and its successors, successors-in-interest and assigns from and all claims, suits, causes of action, and liability for any damages, personal injury or death which may arise directly or indirectly, from the use of the Driveway Parcel, the Bike Trail Parcel or the Sewer Parcel by the City or the public.

(4) **Insurance.** As a material term of the Agreement and the Lease, within fourteen (14) days of entering the Lease the City shall provide Bay City with evidence of insurance coverage carrying an annual aggregate limit of \$2,500,000 for the Driveway Parcel, the Bike Trail Parcel, and the Sewer Parcel.

B. Bay City's Obligations Concurrent With the Effective Date:

(1) **Lease of the Driveway Parcel and the Bike Trail Parcel.** Concurrent with the \$900,000 payment described in paragraph 1.A(1), above, the City and Bay City will enter a lease for the Driveway Parcel and the Bike Trail Parcel (the "Lease"), based on the terms sheet attached hereto as Exhibit H. Under the Lease, Bay City will lease the Driveway Parcel and the Bike Trail Parcel to the City. The City and Bay City agree that the term of the Lease will commence on March 31, 2011. The City and Bay City agree that the term of the Lease will terminate on the earlier of:

(a) March 31, 2015; or

(b) Conveyance of the Driveway Parcel and the Bike Trail Parcel to the City pursuant to the transaction described in paragraph 5.B, below; or

(c) If the Coastal Commission denies or declines to process further the Proposed Residential Project, then thirty (30) days thereafter such denial or declination. (Bay City shall determine, in its sole discretion, whether a Coastal Commission denial or declination has occurred. Bay City shall promptly notify the City in writing of such determination.)

(2) Irrevocable Easement for the Sewer Parcel. Upon Bay City's receipt of the \$900,000 payment described in paragraph 1.A(1), above, Bay City will convey to the City an irrevocable easement for the Sewer Parcel (the "Irrevocable Easement"). The Irrevocable Easement shall be for sewer access, installation and maintenance purposes only. The City shall be entitled to keep the Irrevocable Easement in perpetuity. The City shall not be required to reconvey to Bay City or abandon the Irrevocable Easement regardless of whether or when the Proposed Residential Project is approved by the City or the Coastal Commission as discussed in paragraphs 2 and 4, below.

Dismissal of the CEQA Lawsuit. Upon Bay City's receipt of the \$900,000 payment described in paragraph 1.A(1), above, Bay City shall also: (a) dismiss its appeal filed on March 1, 2011, of the CEQA Lawsuit; and (b) authorize its attorneys to enter into and execute a stipulation regarding the City's return to the February 1, 2011 Writ of Mandate.

(4) Cooperation on the River's End Project. Upon Bay City's receipt of the \$900,000 payment described in paragraph 1.A(1), above, Bay City shall also: (a) withdraw its opposition with the Coastal Commission to the City's application for a CDP for the River's End Project; and (b) take reasonable steps, upon written request from the City, to: (i) assist the City in obtaining a CDP from the Coastal Commission for the River's End Project; and (ii) assist the City in expediting the River's End Project to help the City avoid losing the

RMC Grant. For purposes of Bay City's obligation to take "reasonable steps" to assist the City, "reasonable steps" shall not require Bay City to spend any money or pay any money to the City.

2. **Concurrent Upon Bay City's Proposed Residential Project Application:** The parties further agree as follows:

A. **Bay City's Obligations Concurrent With Bay City's Proposed Residential Project Application:**

Bay City will submit to the City the necessary applications, information and documents for all land use and other entitlements and permits that the City requires for the Proposed Residential Project within the time frame described in paragraph F of the General Terms, above.

B. **City's Obligations Concurrent With Bay City's Proposed Residential Project Application - - City Consideration of Bay City's Proposed Residential Project:**

(1) **Consideration.** Although the City cannot guarantee approval of the Proposed Residential Project, any of Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project, Bay City and the City's staff expect that such consideration of the Proposed Residential Project will occur, and as a matter of fact, mutually represent to one another that such consideration is foreseeable, reasonable, and expected. The parties further acknowledge that all obligations of Bay City in this paragraph 2A shall be contingent on such timely consideration.

(2) In furtherance of consideration of the Proposed Residential Project, the City specifically agrees as follows:

(a) The City's staff shall use each of his or her best efforts to secure consideration of (i) the Proposed Residential Project as shown on the Proposed Residential Project Plans; and (ii) Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project subject to CEQA analysis, findings, and mitigation measures;

(b) The City's staff shall each recommend to the Planning Commission and City Council that the City's staff in good faith considered the Proposed Residential Project and Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project;

(c) The City's staff shall work diligently and in good faith with Bay City to expeditiously accomplish consideration of the Proposed Residential Project and Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project upon Bay City's submission of the applications, information and documents necessary for processing approval;

(d) The City shall process expeditiously in good faith the applications, information and documents for the Proposed Residential Project. The City shall expedite the processing of any current applications for land use and other entitlements and permits for the Proposed Residential Project already on file with the City and any future applications that Bay City may submit to the City for the Proposed Residential Project, according to a schedule developed by the parties.

(3) **Terms of Approval.** In connection with such approval, the City specifically agrees: Bay City's conveyance of the Open Space to the City discussed in paragraph 5.B, below, satisfies all of the following possible exactions for the Proposed Residential Project:

- (a) Park fees ("Quimby fees");
- (b) Park improvement obligations;
- (c) Affordable housing requirements (either in lieu fees or on-site improvements);

In no event shall the City require or impose additional park fees ("Quimby fees"); additional park improvement obligations; or additional affordable housing requirements (either as in lieu fees or on site improvements) for the Proposed Residential Project. The parties will amend the existing reimbursement agreement between the parties to

reduce planning staff overhead charges from 17.5% to 8% for the Proposed Residential Project. The City waives the Transportation Facilities Fee for the Proposed Residential Project.

(4) **Hearing on Project.** On or about March 31, 2012, or as soon thereafter as the City concludes is reasonably and legally possible, and subject to Bay City's timely submittal of all necessary applications, studies, reports and plans, the City Council will hold a hearing for final action on approval of the Proposed Residential Project and Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project.

(a) At the hearing, the City Council will consider, among other things: the terms of the Agreement; Bay City's desire to obtain prompt approval of the Proposed Residential Project; and the fact that the parties have settled current disputes and litigation between the parties through the Agreement.

(b) After all legal and necessary notices and deliberations, the City Council may issue a final approval of the Proposed Residential Project and Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project.

(c) Nothing herein shall be deemed to constrain or limit the City's legislative discretion.

(5) The City agrees that the "sitting area" shown on the River's End Project plans, attached hereto, shall be moved to a location south of the westerly prolongation of the southerly right-of-way of Central Way to allow 3,500 square feet of the San Gabriel River bike path to be incorporated into the Proposed Residential Project at no cost to the City.

3. **If And When the City Approves the Proposed Residential Project:** If and when the City Council approves the Proposed Residential Project discussed in paragraph 2, above, the City agrees to: (a) take reasonable steps to assist Bay City in obtaining a CDP from the Coastal Commission for the Proposed Residential Project; (b) testify on behalf of Bay City in favor of a CDP for the Proposed Residential Project before the Coastal Commission at any

hearing; and (c) if legally permissible, be a co-applicant with Bay City for a CDP from the Coastal Commission for the Proposed Residential Project and removal by the City of the fence surrounding the Open Space to be conveyed to the City upon receipt of a CDP by Bay City and Construction by the City of a replacement fence along the new common property line. For the purposes of City's obligations in this paragraph 3 to assist Bay City, such obligations shall not require City to spend any money or pay any money to Bay City (other than the cost associated with the fence).

4. **If No City Approval of the Proposed Residential Project:** If the City does not approve the Proposed Residential Project, then the parties have obligations under paragraph 5, below, of the Agreement. Instead, the City shall promptly consider acquiring through negotiation or eminent domain, if necessary, the Driveway Parcel and the Bike Trail Parcel. In the event the City Council authorizes the acquisition of the Driveway Parcel and the Bike Trail Parcel, Bay City and its assignees waive and all claims associated with the adoption of a resolution of eminent domain, right of way, precondemnation activities and any other claims or defenses previously waived in the eminent domain matter identified in Recital P and not related to valuation of the subject interests. The City agrees that the larger parcel for the Driveway Parcel is as previously stipulated in the eminent domain matter identified in Recital P. Such acquisition shall serve to acquire not only the Driveway Parcel and the Bike Trail Parcel as well.

5. **Concurrent With the Coastal Commission's Issuance of a CDP for the Proposed Residential Project:** Promptly upon the Coastal Commission's issuance of a CDP to Bay City for the Proposed Residential Project, the parties agree as follows:

A. **City's Obligations Concurrent With Issuance of a CDP for the Proposed Residential Project:**

(1) **\$1,100,000 Payment.** The City will pay the amount of \$1,100,000 to Bay City or its successors, successors-in-interest and assigns immediately upon recording of the deed described in paragraph B, below.

(2) **Donation Tax Credit.** The City agrees that Bay City may take a donation credit for tax purposes for all of the land Bay City transfers to the City under the Agreement. The donation credit may be for the difference between Bay City's appraised value for the land transferred and the total cash compensation of \$2,000,000 paid to Bay City for the land transferred. The City's agreement to the donation credit and to use of Bay City's appraised value does not obligate the City to agree with Bay City's appraised value.

(3) **Transfer of City-Owned Property.** The City will convey by quitclaim deed to Bay City fee simple title to approximately 7,000 square feet of land that the City owns adjacent to the corner of Marina Drive and First Street and legally described in Exhibit K attached hereto ("City-Owned Property").

B. Bay City's Obligations Concurrent with Issuance of a CDP for the Proposed Residential Project - - Purchase and Sale Agreement and Open Space:

The City and Bay City will enter into a purchase and sale agreement that contains all of the standard provisions (the "Purchase and Sale Agreement"), including a provision awarding attorneys' fees, costs and expenses to the prevailing party in any action or proceeding instituted to interpret or enforce any of the terms or provisions of the Purchase and Sale Agreement. Pursuant to the Purchase and Sale Agreement, Bay City will convey to the City, by quitclaim deed, fee title to all of the land described in Exhibit D attached hereto and identified as the "Open Space." The Open Space that Bay City will convey to the City by quitclaim deed consists of:

(1) All of the land south of the westerly prolongation of the southern right-of-way boundary of Central Way, *except* $\pm 1,200$ square feet of land within the Proposed Residential Project Area south of the westerly prolongation of the southern right-of-way boundary of Central Way as shown and identified on Exhibit J attached hereto.

- (2) The Driveway Parcel;
- (3) The Sewer Parcel; and
- (4) The Bike Trail Parcel.

The City agrees that Bay City's conveyance of the Open Space to the City shall be for the purpose of future open space and park uses. The quitclaim deed from Bay City to the City conveying the Open Space to the City will include a deed restriction limiting the uses of the Open Space to open space and park uses. The City may allow Bay City or its successors, successors-in-interest and assigns limited grading on the "Open Space" parcel as part of the review and approval process as shown on Exhibit C-2.

6. **If No Issuance of a CDP By the Coastal Commission for the Proposed Residential Project:** If the Coastal Commission does not issue a CDP for the Proposed Residential Project, the parties shall have no obligation under paragraph 5, above, of the Agreement.

7. **DCOR Oil and Gas License and Easement:**

A. Bay City and its assigns shall retain all rights to and interests in the easement for transportation of oil, gas and water, as more particularly set forth in that certain Easement Agreement dated January 17, 2009 and recorded November 2, 2009, as Instrument No. 2009000593882 in the Official Records, Orange County, California, and as shown on Exhibit L attached hereto ("DCOR Easement").

B. Bay City and its assigns shall retain all rights to and interests in the oil and gas license with DCOR Cuadras Offshore Resources, LLC ("DCOR") or its successors as shown on Exhibit M attached hereto and located within the DCOR Easement.

C. The City agrees that it will not (a) interfere with or impede the normal course of business under either the license with DCOR or the DCOR Easement; or (b) interfere with any of the pipelines existing under either the license with DCOR or the DCOR Easement.

8. **Standard Provisions:**

A. **Entire Agreement.**

The Agreement contains the entire agreement and understanding concerning the subject matter hereof between the parties, and supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral, express or implied,

of any type whatsoever. Each of the parties hereto acknowledges that neither any other party hereto, nor any agent or attorney of any other party has made any promise, representation or warranty whatsoever, expressed or implied, not contained herein concerning the subject matter hereof to induce it to execute the Agreement, and acknowledges and warrants that the Agreement is not being executed by such party in reliance on any promise, representation or warranty not contained herein.

B. Mutual Release.

(1) Bay City, for itself and each of its agents, representatives, heirs, executors, administrators, co-owners, co-tenants, subtenants, successors-in-interest, assigns past and present, officers, directors, partners, trusts, trustees, members, contractors and subcontractors, and each of them, hereby releases and discharges the City, and each of its agents, representatives, heirs, executors, administrators, co-owners, co-tenants, successors, successors-in-interest, assigns past and present, officers, directors, partners, trusts, trustees, members, contractors and subcontractors, and each of them, from any and all claims, demands, actions, causes of action, obligations, liabilities, losses, debts, contracts, covenants, duties, damages, expenses, costs, costs on appeal and charges of whatever kind, whether known or unknown, suspected or unsuspected, which exist or may exist as of the Effective Date of the Agreement regarding and arising from or pertaining to: (a) the Condemnation Lawsuit; and (b) the CEQA Lawsuit.

(2) The City, on behalf of itself and each of its agents, representatives, heirs, executors, administrators, co-owners, co-tenants, subtenants, successors, successors-in-interest, assigns past and present, officers, directors, partners, trusts, trustees, members, contractors and subcontractors, and each of them, hereby releases and discharges Bay City, and each of its agents, representatives, heirs, executors, administrators, co-owners, co-tenants, subtenants, successors, successors-in-interest, assigns past and present, officers, directors, partners, trusts, trustees, members, contractors and subcontractors, and each of them, from any and all claims, demands, actions, causes of action, obligations, liabilities, losses, debts, contracts,

covenants, duties, damages, expenses, costs, costs on appeal and charges of whatever kind, whether known or unknown, suspected or unsuspected, which exist or may exist as of the Effective Date of the Agreement regarding and/or arising from or pertaining to: (a) the Condemnation Lawsuit; and (b) the CEQA Lawsuit.

C. Civil Code Section 1542.

The parties hereto acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The parties hereto, and each of them, waive and relinquish all rights and benefits to the full extent that they may lawfully waive all such rights and benefits as existed or currently exist, but such waiver shall not apply to such claims that may arise in the future.

D. Attorneys' Fees, Costs and Expenses.

(1) Each party shall bear its own attorneys' fees and litigation expenses.

(2) In any action or proceeding instituted to interpret or enforce any of the terms or provisions of this Agreement, the prevailing party or parties shall be entitled to attorneys' fees, court costs and expenses incurred by the prevailing party in connection with such action or proceeding.

E. Successors and Assigns.

The Agreement shall inure to the benefit of and be binding upon each party hereto, including each party's respective agents, representatives, heirs, administrators, executors, successors, successors-in-interest, and assigns.

F. Counterparts.

The Agreement may be executed in one or more counterparts, each of which, when taken together, shall constitute a completely executed original. The counterparts may be transmitted by facsimile, which shall be deemed original signatures.

G. Authority.

(1) Bay City warrants and represents that each signatory to the Agreement on behalf of Bay City has authority to sign the Agreement in his or her representative capacity. Similarly, the City warrants and represents that its signatory has authority to sign the Agreement on behalf of the City.

(2) Each of the undersigned represents and warrants that he, she or it is fully authorized to enter the Agreement on behalf of his, her or its principal and to bind each principal to the terms set forth herein without further authorization of any principal.

H. Resolution of Disputes.

Pursuant to Code of Civil Procedure section 664.6, the parties agree that the Orange County Superior Court will retain jurisdiction over the parties and the Agreement. The Court shall resolve all disputes, controversies and claims relating to the Agreement and the obligations of the parties under it. The disputes, controversies, and claims covered by this paragraph include, without limitation, any dispute sounding in contract or tort, any dispute as to the making, validity, interpretation, construction or enforceability of the Agreement, and any dispute seeking legal, equitable, provisional or permanent relief relating to the Agreement.

I. Notice.

(1) If to the City:

City of Seal Beach
211 8th Street
Seal Beach, California 90740
Attn: City Manager

With Copy To:
Quinn Barrow, Esq.
Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Email: qbarrow@rwglaw.com
Fax No.: (213) 626-0078

(2) If to Bay City:

Bay City Partners LLC
2999 Westminster Avenue, Suite 211
Seal Beach, California 90740
Attn: Rocky Gentner
Email: Rockyg@gentnerandcompany.com

With Copy To:
John C. Murphy, Esq.
Murphy & Evertz LLP
650 Town Center Drive, Suite 550
Costa Mesa, California 92626
Email: jmurphy@murphyevertz.com
Fax No.: (714) 277-1777

J. Jurisdiction.

The Agreement shall be deemed by the parties to have been executed and delivered within the State of California, and the rights and obligations of the parties here to shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

K. Venue.

The parties hereto agree that any action, suit, claim or other proceeding of any type that may be prosecuted, initiated or attempted in connection with the Agreement, shall be brought in the Superior Court of the State of California, County of Orange.

L. Construction.

Each party has participated in the drafting and preparation of the Agreement, or has had the opportunity to do so. Hence, the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be employed in any interpretation of the Agreement.

M. Severability.

In the event any part of the Agreement should be found invalid, unenforceable or nonbinding, the remaining portions will remain in force and fully binding.

N. Waiver of Breach.

The waiver by any party of any breach of any term in the Agreement shall not be construed as a waiver of any subsequent breach.


O. Voluntary Agreement.

Each party hereto acknowledges and warrants that such party has been represented by counsel of its own choice throughout all negotiations which preceded the execution of the Agreement. Each party has read or has had read to such party the Agreement, and has had it satisfactorily explained to such party by counsel representing such party. Accordingly, each party is satisfied with the settlement contained herein and has signed the Agreement voluntarily.

IN WITNESS WHEREOF, the City and Bay City cause the Agreement to be executed.

Dated: 3-16, 2011

CITY OF SEAL BEACH,
A municipal corporation


Michael Le...
Mayor of City of Seal Beach

Dated: 3-16, 2011

SEAL BEACH REDEVELOPMENT AGENCY

By: 

David Sloan
Chairman

Dated: _____, 2011

BAY CITY PARTNERS LLC,
A California limited liability company

By: _____

Rocky Gentner
Member

Dated: 3/16, 2011

BAY CITY PARTNERS LLC,
A California limited liability company

By: Bob Griffith
Bob Griffith
Member

Dated: 3/16, 2011

BAY CITY PARTNERS LLC,
A California limited liability company

By: James R. Hurst
James R. Hurst
Member

Dated: 3/16/2011, 2011

BAY CITY PARTNERS LLC,
A California limited liability company

By: [Signature]
[Signature]
Member

Dated: 3-16-2011, 2011

BAY CITY PARTNERS LLC,
A California limited liability company

By: Cindy Atkinson
Cindy Atkinson
Member

APPROVED AS TO FORM:

Dated: 3-16, 2011

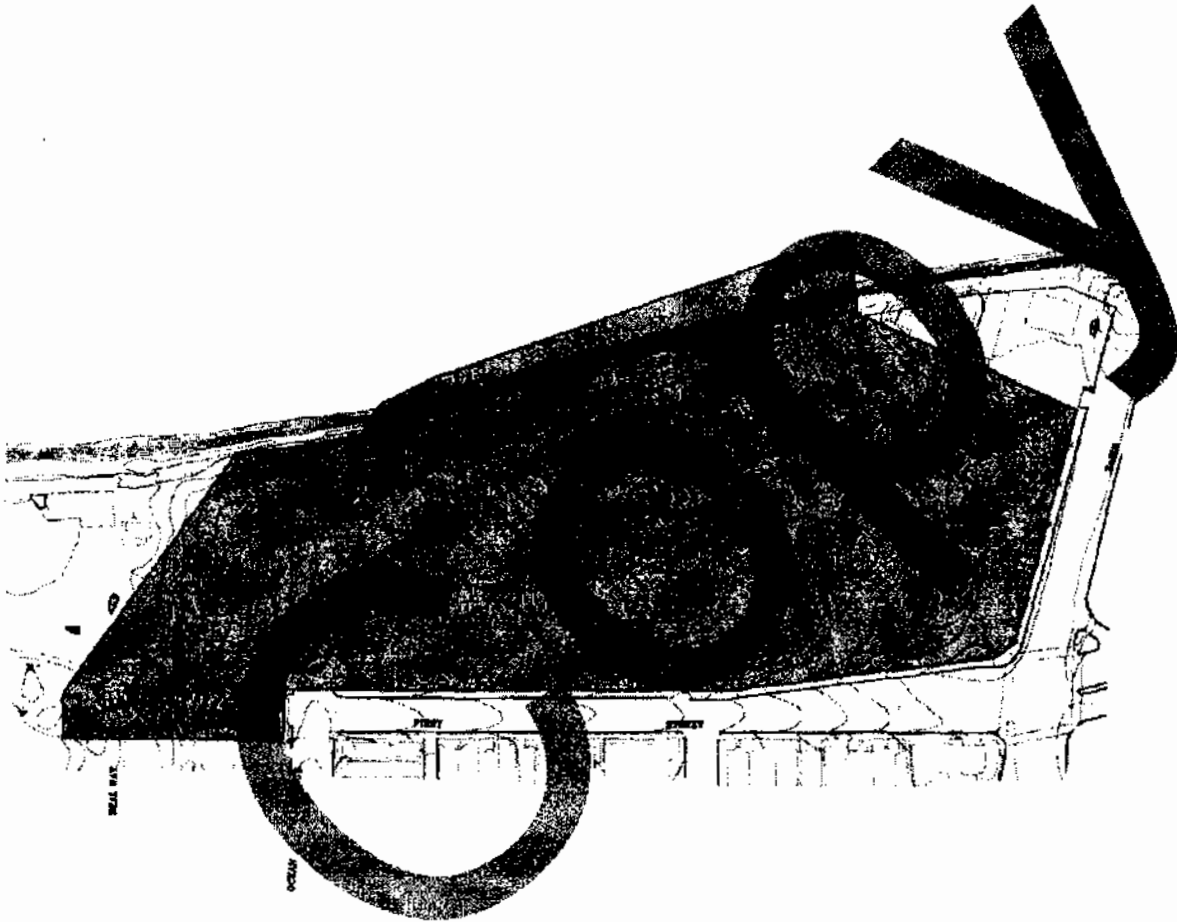
CITY OF SEAL BEACH,
A municipal corporation

By: Quinn M. Barrow
Quinn M. Barrow
City Attorney of City of Seal Beach

EXHIBIT A

BAY CITY PARTNERS LLC

THE PROPERTY



A-1

Exhibit A
Legal Description of Property

PARCEL 1:

LOTS 1, 2 AND 3 IN BLOCK 100 OF TRACT NO. 694, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OFFICIAL RECORDS OF SAID COUNTY.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, IN BOOK 20, PAGES 21-22, INCLUSIVE OF RECORD OF SURVEYS.

PARCEL 2:

THAT PORTION OF TIDE LAND LOCATION NO. 137 (SUBJECT NO. 106) AS PRESENTED BY THE STATE OF CALIFORNIA ON FEBRUARY 12, 1901 AND RECORDED APRIL 27, 1901 IN BOOK 9, PAGE 105 OF PATENTS, RECORDS OF LOS ANGELES COUNTY AND RECORDED SEPTEMBER 5, 1905 IN BOOK 1, PAGE 231 OF DEEDS, RECORDS OF ORANGE COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF THE BOUNDARY SURVEY OF THE RANCHO LOS ALAMITOS, AS PER MAP RECORDED IN BOOK 1, PAGES 461-462 OF PATENTS OF SAID LOS ANGELES COUNTY; THENCE ALONG SAID BOUNDARY NORTH 63° 00' 00" WEST 230.47 FEET TO A LINE PARALLEL WITH AND 200.00 FEET NORTHWESTERLY FROM THE RANCHO LINE; BETWEEN BOUNDARY STATIONS 49 AND 50; THENCE ALONG SAID PARALLEL LINE NORTH 54° 48' 00" EAST 1228.77 FEET TO A LINE PARALLEL WITH AND 30.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THE 200 FOOT STRIP OF LAND DESCRIBED IN OUTCLAIMED TO THE PACIFIC ELECTRIC RAILWAY COMPANY RECORDED FEBRUARY 21, 1901 IN BOOK 514, PAGE 44 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 43° 15' 00" EAST 201.52 FEET TO THE RANCHO LINE; THENCE SOUTH 54° 48' 00" WEST 1136.60 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THE PORTION Lying NORTHEASTERLY OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES RECORDED IN BOOK 426, PAGE 378 OF DEEDS, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND SUBSEQUENTLY RELINQUISHED TO THE CITY OF SEAL BEACH BY INSTRUMENT RECORDED IN BOOK 700, PAGE 260 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN STATIONS 49 AND 50 OF SAID RANCHO LOS ALAMITOS, DISTANT NORTH 54° 48' 00" EAST 213.27 FEET FROM SAID STATION 49; THENCE NORTH 43° 36' 00" WEST 202.36 FEET TO A LINE PARALLEL WITH AND DISTANT NORTHWESTERLY 200.00 FEET FROM SAID BOUNDARY LINE; THENCE NORTH 54° 48' 00" EAST 80.94 FEET ALONG SAID PARALLEL LINE; THENCE SOUTH 43° 36' 00" EAST 202.36 FEET TO SAID BOUNDARY LINE; THENCE SOUTH 54° 48' 00" WEST 80.94 FEET ALONG SAID BOUNDARY LINE TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN AS PARCEL A IN LICENSEE SURVEYORS MAP OF THE TIDELANDS EAST OF NAPLES FILED IN BOOK 2, PAGES 47 AND 48 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE.

PARCEL 3:

THAT PORTION OF THE SOUTH HALF OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST, INCLUDED WITHIN LOT C-1 OF THE RANCHO LOS ALAMITOS, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAPS 1 AND 2 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF CALIFORNIA, AND FOR THE COUNTY OF LOS ANGELES, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL ORDER OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF SAID RANCHO LOS ALAMITOS; THENCE NORTH $54^{\circ} 47' 05''$ EAST 213.27 FEET ALONG THE WESTERLY BOUNDARY OF SAID RANCHO TO THE SOUTHWESTERLY LINE OF MARINA DRIVE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 436, PAGE 107 OF THE RECORDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH $88^{\circ} 02' 55''$ EAST 33.50 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 940 FEET; THENCE SOUTHEASTERLY 127.71 FEET ALONG SAID CURVE TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON A MAP OF BAY CITY RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH $31^{\circ} 17' 50''$ WEST 137.49 FEET ALONG SAID PROLONGATION TO THE SOUTHWESTERLY LINE OF SAID LOT C; THENCE NORTH $65^{\circ} 02' 40''$ WEST 150.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 1211, PAGE 201, OFFICIAL RECORDS.

PARCEL 4:

THAT PORTION OF BLOCK B OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING NORTHWESTERLY OF THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF FIRST STREET AS SHOWN ON SAID MAP.

EXCEPT THAT PORTION THEREOF LYING NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS DESCRIBED IN THE DEED TO SAID CITY RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION THEREOF LYING SOUTHERLY AND SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF SAID SOUTHEASTERLY LINE OF FIRST STREET 273.93 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 58° 54' WEST 55.33 FEET; THENCE NORTH 22° 31' WEST 366.64 FEET; THENCE NORTH 24° 31' EAST 71.78 FEET TO THE SOUTHWESTERLY LINE OF OCEAN BOULEVARD, AS SHOWN ON SAID MAP.

PARCEL 5:

THAT PORTION OF BLOCK "B" TOGETHER WITH THAT PORTION OF OCEAN AVENUE STREET, IN THE BAY CITY TRACT, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING WEST OF THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF BLOCK "C" OF SAID BAY CITY TRACT DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON SAID MAP, WITH THE NORTHEASTERLY LINE OF SAID BLOCK "B"; THENCE NORTH 1° 17' 00" EAST 111 FEET ALONG SAID SOUTHWESTERLY PROLONGATION TO THE MOST SOUTHERLY CORNER OF SAID BLOCK "C"; THENCE NORTH 55° 40' WEST 311 FEET ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK "C" TO THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 20, 1933 IN BOOK 612, PAGE 317 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTHERLY ALONG THE SOUTHERLY PROLONGATION OF SAID EASTERLY LINE, AND THE SEAL BEACH BOUNDARY AGREEMENT NO. 1 RECORDED APRIL 8, 1968 IN BOOK 8336 PAGE 44 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY TO THE NORTHERLY TERMINUS OF THE AGREEMENT LINE BETWEEN THE STATE LANDS COMMISSION AND THE CITY OF SEAL BEACH AND THE CITY OF LOS ANGELES RECORDED AUGUST 9, 1967 IN BOOK 8336 PAGE 44 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 24° 31' 00" WEST 60.00 FEET ALONG LAST SAID AGREEMENT LINE TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO THE CITY OF SEAL BEACH RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 67° 06' 27" EAST 297.06 FEET ALONG THE SOUTHERLY LINE OF SAID LAND OF THE CITY OF SEAL BEACH, SAID SOUTHERLY LINE BEING THE SOUTHERLY LINE OF OCEAN AVENUE AS SET FORTH IN RESOLUTION NO. 1972 OF THE CITY OF SEAL BEACH AND RECORDED IN SAID BOOK 536, PAGE 49 OF OFFICIAL RECORDS, TO THE POINT OF BEGINNING.

A PORTION OF SAID OCEAN AVE. WAS VACATED UPON APPLICATION OF THE BAYSIDE LAND COMPANY AND ACTION OF THE TRUSTEES OF THE CITY OF SEAL BEACH RECORDED AUGUST 18, 1914 IN MINUTE BOOK 11 AT PAGE 51.

PARCEL 6:

BLOCK C OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT A-2, IN THE RANCHO LOS ALAMITOS INCLUDED WITHIN SAID CITY OF SEAL BEACH, AS SHOWN ON MAP NO. 1 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, LYING WESTERLY OF SAID BLOCK C AND LYING NORTHERLY OF THE WESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF SAID BLOCK C.

EXCEPT FROM THE ABOVE DESCRIBED PORTION OF SAID LOT A-2 THAT LIES THEREOF LYING WESTERLY AND SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT NORTH 65° 00' 00" WEST, 330.00 FEET FROM STATION NO. 49 OF THE PATENT BOUNDARY LINE OF THE RANCHO LOS ALAMITOS, LYING IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" AND ON THE WESTERN SHORE OF THE INLET FROM THE PACIFIC OCEAN TO ALAMITOS BAY: THENCE SOUTH 12° 00' 00" WEST, 547.80 FEET; THENCE SOUTH 6° 00' 00" WEST, 69.95 FEET; THENCE SOUTH 29° 15' 00" EAST, 38.72 FEET TO THE POINT OF INTERSECTION WITH THE NORTHEASTERLY LINE OF OCEAN AVE, AS SHOWN ON AFORESAID MAP OF BAY CITY; THENCE SOUTH 55° 43' 00" EAST, ALONG SAID LINE OF OCEAN AVENUE 1263 FEET TO THE SOUTHWESTERLY CORNER OF SAID BLOCK "C".

ALSO EXCEPT THAT PORTION THEREOF INCLUDED WITHIN TRACT 694, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 121, PAGE 201, OFFICIAL RECORDS.

EXCEPT FROM SAID PARCELS 1 THROUGH 6 ALL WATER AND WATER RIGHTS APPURTENANT TO EITHER SURFACE OR SUBSURFACE AND ALSO EXCEPT THEREFROM ALL OIL, GAS, AND PETROLEUM, OR OTHER MINERAL OR HYDROCARBON SUBSTANCES, WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OF SAID LAND FOR SUCH USE, AS RESERVED BY THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, IN THE GRANT DEED RECORDED MAY 27, 2003 AS INSTRUMENT NO. 2003000612579, OF OFFICIAL RECORDS.

END OF LEGAL DESCRIPTION

INTERVIEW NOTES

1. NO RELEASED FOR AIR
2. ALSO INFORMATION ABOUT THE
HALLS OF THE CONSTITUTION
AND THE CONSTITUTION OF THE

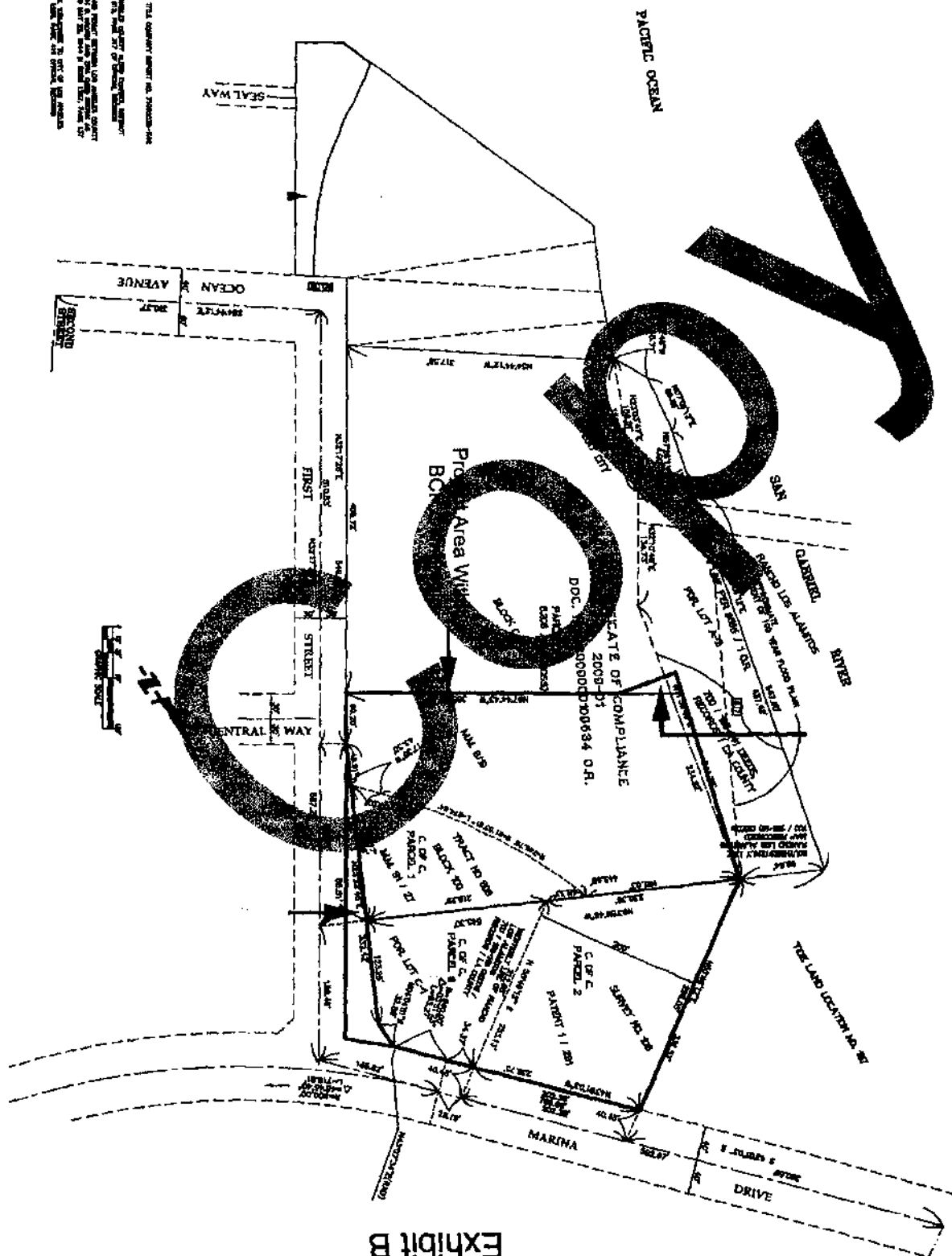


Exhibit B

EXHIBIT "C-1"

LEGAL DESCRIPTION "PROPOSED RESIDENTIAL PROJECT AREA"

LOT "D"

LOTS 1, 2 AND 3 IN BLOCK 100 OF TRACT NO. 698, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OF OFFICIAL RECORDS.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, IN BOOK 90, PAGE 30 TO 30 INCLUSIVE OF RECORD OF SURVEY.

LOT "E"

THAT PORTION OF TIDE LAND LOCATION NO. 137 (SURVEY NO. 106) AS PRESENTED BY THE STATE OF CALIFORNIA ON FEBRUARY 12, 1901 AND RECORDED APRIL 27, 1901 IN BOOK 9, PAGE 105 OF PATENTES, RECORDS OF LOS ANGELES COUNTY AND RECORDED SEPTEMBER 5, 1905 IN BOOK 1, PAGE 231 OF PATENTES, RECORDS OF ORANGE COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE STATION 49 OF THE BOUNDARY SURVEY OF THE RANCHO LOS ALAMITOS, AS PER MAP RECORDED IN BOOK 1, PAGES 46 AND 47 OF PATENTES OF SAID LOS ANGELES COUNTY; THENCE ALONG SAID BOUNDARY NORTH 00° 00' WEST 230.47 FEET TO A LINE PARALLEL WITH AND 200.00 FEET NORTHWESTERLY FROM THE RANCHO LINE BETWEEN BOUNDARY STATIONS 49 AND 50; THENCE ALONG SAID PARALLEL LINE NORTH 54° 48' 00" EAST 1226.40 FEET TO A LINE PARALLEL WITH AND 30.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THE 200 FOOT STRIP OR LAND DESCRIBED IN QUITCLAIM DEED TO THE PACIFIC ELECTRIC RAILWAY COMPANY RECORDED FEBRUARY 21, 1924 IN BOOK 5, PAGE 44 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 42° 15' 00" EAST 201.52 FEET TO SAID RANCHO LINE; THENCE SOUTH 54° 48' 00" WEST 1136.60 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION LYING NORTHEASTERLY OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES RECORDED IN BOOK 426, PAGE 378 OF DEEDS, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND SUBSEQUENTLY RELIQUISHED TO THE CITY OF SEAL BEACH BY INSTRUMENT RECORDED IN BOOK 700, PAGE 260 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN STATIONS 49 AND 50 OF SAID RANCHO LOS ALAMITOS DISTANT NORTH 54° 48' 00" EAST 213.27 FEET FROM SAID STATION 49; THENCE NORTH 43° 56' 00" WEST 202.36 FEET TO A LINE PARALLEL WITH AND DISTANT NORTHWESTERLY 200.00 FEET FROM SAID BOUNDARY LINE; THENCE NORTH 54° 48' 00" EAST 80.94 FEET ALONG SAID PARALLEL LINE; THENCE SOUTH 43° 56' 00" EAST 202.36 FEET TO SAID BOUNDARY LINE; THENCE SOUTH 54° 48' 00" WEST 80.94 FEET ALONG SAID BOUNDARY LINE TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN AS PARCEL A IN LICENSE SURVEYORS MAP OF THE TIDELANDS EAST OF NAPLES FILED IN BOOK 2, PAGES 47 AND 48

OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE.

LOT "F"

THAT PORTION OF THE SOUTH HALF OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST, INCLUDED WITHIN LOT C-1 OF THE RANCHO LOS ALAMITOS, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAPS 1 AND 2 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF SAID RANCHO LOS ALAMITOS; THENCE NORTH 54° 05' EAST 213.27 FEET ALONG THE WESTERLY BOUNDARY OF SAID RANCHO TO THE SOUTHWESTERLY LINE OF MARINA DRIVE, AS DESCRIBED IN THE DEED OF THE STATE OF CALIFORNIA, RECORDED IN BOOK 436, PAGE 107 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 44° 02' 00" WEST 100.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 940 FEET; THENCE SOUTHEASTERLY 123.71 FEET ALONG SAID CURVE TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FLEMING STREET, AS SHOWN ON A MAP OF BAY CITY RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 31° 17' 50" WEST 137.49 FEET ALONG SAID PROLONGATION TO THE SOUTHWESTERLY LINE OF SAID LOT C-1; THENCE NORTH 65° 02' 10" WEST 240.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OF OFFICIAL RECORDS.

LOT "G"

BLOCK "C" OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT A-2, IN THE RANCHO LOS ALAMITOS INCLUDED WITHIN SAID CITY OF SEAL BEACH, AS SHOWN ON MAP NO. 1 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, LYING WESTERLY OF SAID BLOCK "C" AND LYING NORTHERLY OF THE WESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF SAID BLOCK "C".

ALSO EXCEPT THAT PORTION THEREOF INCLUDED WITHIN TRACT 698, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12155, PAGE 201, OF OFFICIAL RECORDS.

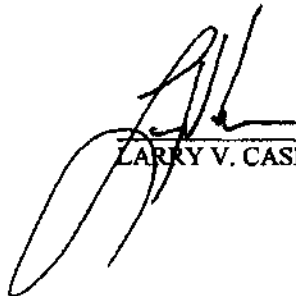
ALSO EXCEPT THAT PORTION THEREOF LYING SOUTHEASTERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

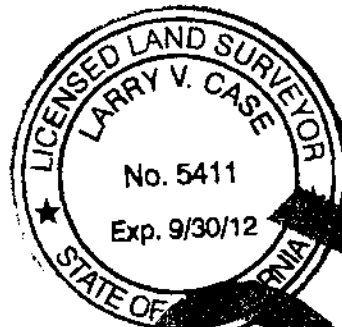
BEGINNING AT THE SOUTHEASTERLY LINE OF SAID BLOCK "C" OF BAY CITY, BEING 60.20' SOUTHERLY FROM THE MOST SOUTHERLY POINT OF THE LAND INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OF

OFFICIAL RECORDS; THENCE NORTH 58° 53' 38" WEST, 321.92 FEET; THENCE NORTH 76° 07' 33" WEST, 88.88 FEET; THENCE NORTH 16° 24' 59" EAST, 179.66 FEET; THENCE NORTH 13° 52' 27" EAST, 74.66 FEET TO A POINT IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" DISTANT NORTH 65° 00' 00" WEST, 238.07 FEET FROM STATION 49 OF THE RANCHO LOS ALAMITOS AS SHOWN ON SAID MAP OF BAY CITY.

ALL AS SHOWN ON EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:

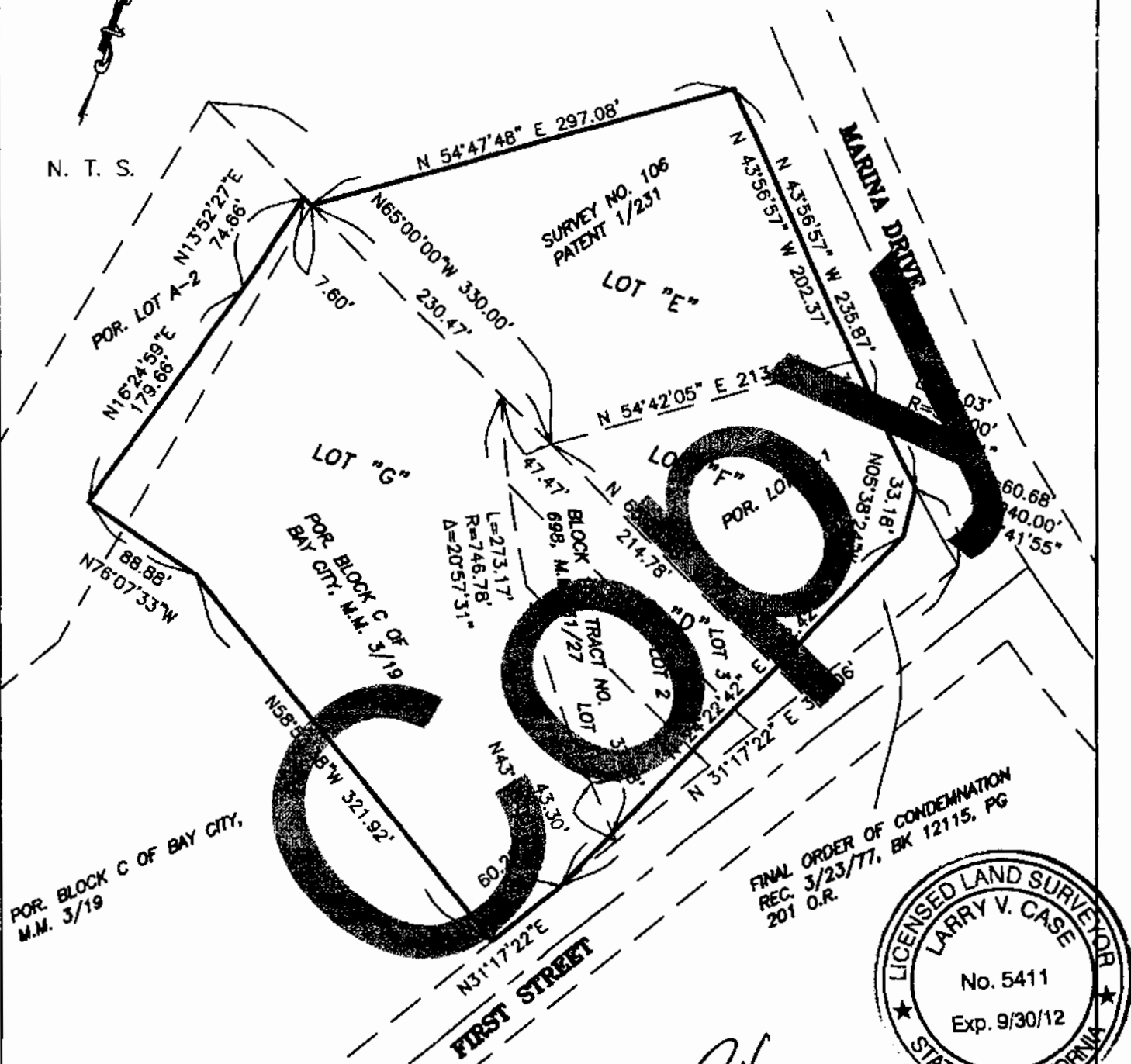
 3-17-11
LARRY V. CASE, L.S. No. 5411



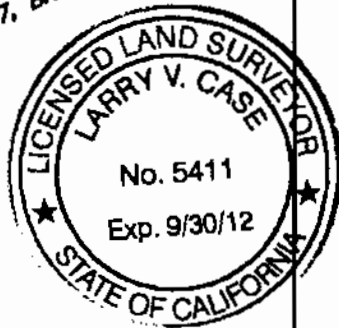
COPY

Totals = 4.274 ac.

EXHIBIT "A"



FINAL ORDER OF CONDEMNATION
REC. 3/23/77, BK 12115, PG
201 O.R.



LARRY V. CASE

L.S. 5411

PREPARED IN THE OFFICE OF:

Case Land Surveying, Inc.

Surveying Mapping GPS Services
814 Eekhoff St.
Orange, CA. 92868
Tel (714) 828-8948
Fax (714) 628-8905

CITY OF SEAL BEACH

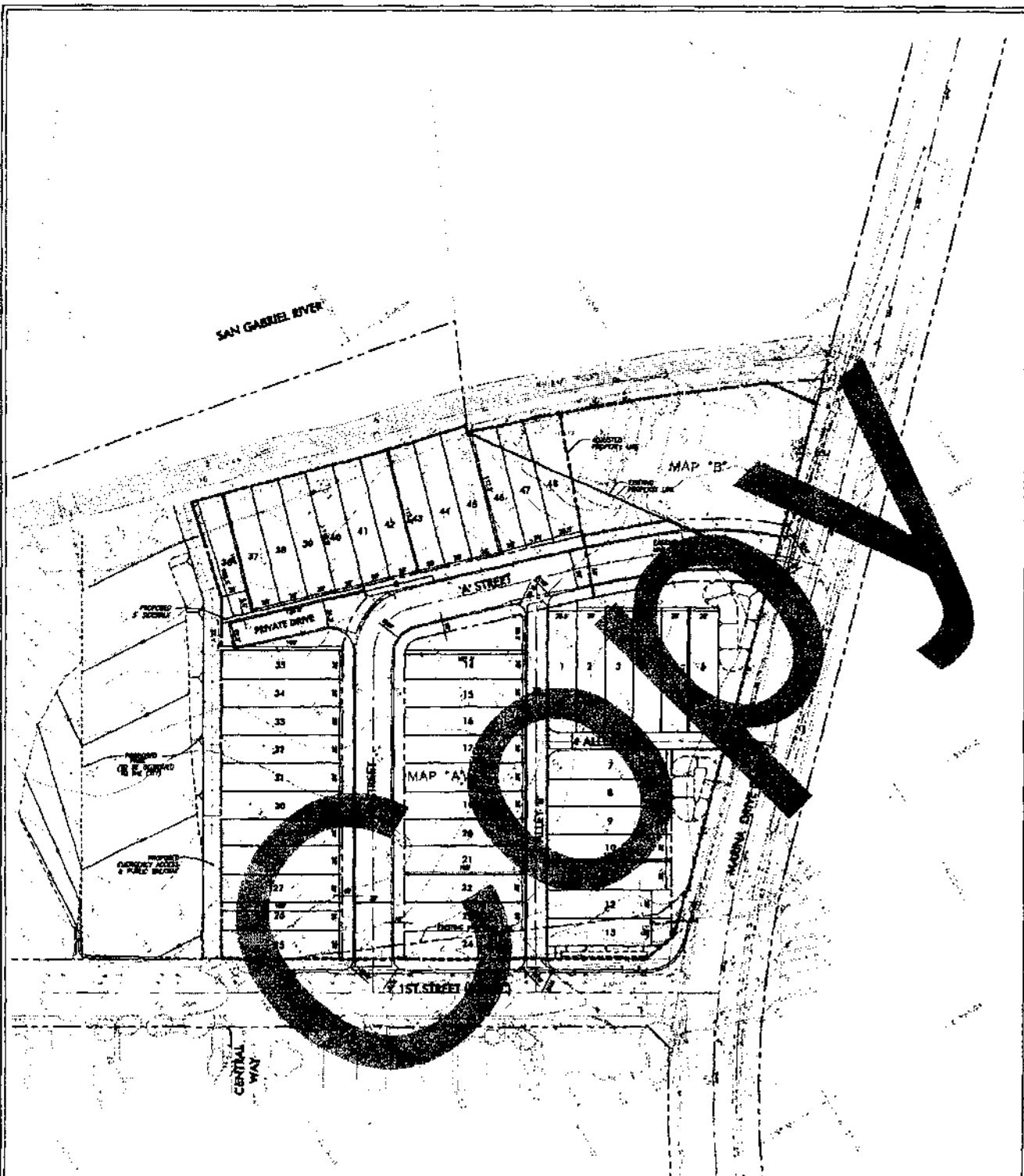
PROPOSED RESIDENTIAL PROJECT AREA

POR. OF BLOCK C, BAY CITY MAP BK 3,
PG. 19, OF MAPS, & POR. LOTS 1, 2 &
3 TR 698, MM 31/27 COUNTY OF
ORANGE, STATE OF CALIFORNIA.

SHEET
1

1 of 1

JOB NO.
11-SEA-791



LEGEND

- EXISTING RIGHT OF WAY
- EXISTING PROPERTY LINE
- PROPOSED STREET CENTERLINE
- PROPOSED RIGHT OF WAY
- PROPOSED CURB
- PROPOSED LOTLINE
- EXISTING OR LINE
- EXISTING STORM DRAIN LINE
- EXISTING WATER LINE
- MAP 'A' BOUNDARY
- MAP 'B' BOUNDARY



EXHIBIT C-2

Proposed Residential Project Plans
OCEAN PLACE DEVELOPMENT PLAN
SEAL BEACH, CALIFORNIA

Exhibit #9

FUSCOE
 ENGINEERS
 14701 Van Ness, Suite 100
 San Francisco, CA 94134
 Tel: (415) 774-1100 • Fax: (415) 774-1101
 www.fuscoecorp.com

DESIGNED BY: JAMES H. SMITH
 DRAWN BY: JAMES H. SMITH

C-1

**EXHIBIT D
CITY PARCEL**

**LEGAL DESCRIPTION
"CITY PARCEL"**

LOT "A"

THAT PORTION BLOCK "B" OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING NORTHWESTERLY OF THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF FIRST STREET AS SHOWN ON SAID MAP.

EXCEPT THAT PORTION THEREOF LYING NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS DESCRIBED IN THE DEED TO SAID CITY RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION THEREOF LYING SOUTHERLY AND SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF SAID SOUTHEASTERLY LINE OF FIRST STREET 273.93 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 55° 51' 00" WEST 55.51 FEET; THENCE NORTH 22° 51' WEST 366.64 FEET; THENCE NORTH 24° 31' 00" WEST 70.00 FEET TO THE SOUTHWESTERLY LINE OF OCEAN BOULEVARD, AS SHOWN ON SAID MAP.

LOT "B"

THAT PORTION OF BLOCK "B" TOGETHER WITH THAT PORTION OF "OCEAN AVE." A STREET, IN THE BAY CITY TRACT, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING WESTERLY OF THE SOUTHERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF BLOCK "C" OF SAID BAY CITY TRACT DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON SAID MAP, WITH THE NORTHEASTERLY LINE OF SAID BLOCK "B"; THENCE NORTH 31° 17' 00" EAST 80.11 FEET ALONG SAID SOUTHWESTERLY PROLONGATION TO THE MOST SOUTHERLY CORNER OF SAID BLOCK "C"; THENCE NORTH 55° 41' 30" WEST 317.56 FEET ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK "C" TO THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 20, 1933 IN BOOK 612, PAGE 317 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTHERLY ALONG THE SOUTHERLY PROLONGATION OF SAID EASTERLY LINE, ALONG THE SEAL BEACH BOUNDARY AGREEMENT NO. 2, RECORDED APRIL 8, 1968 IN BOOK 8565, PAGE 1 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY TO THE NORTHERLY TERMINUS OF THE AGREEMENT LINE BETWEEN THE STATE LANDS COMMISSION AND THE CITY OF SEAL BEACH AND THE CITY OF LOS ANGELES RECORDED AUGUST 9, 1967 IN BOOK 8336 PAGE 954 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 24° 31' 00" WEST 60.00 FEET ALONG LAST SAID AGREEMENT LINE TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO THE CITY OF SEAL BEACH RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 67° 06' 27" EAST 297.06 FEET ALONG THE SOUTHERLY LINE OF SAID LAND OF THE CITY OF SEAL BEACH, SAID SOUTHERLY LINE BEING THE SOUTHERLY LINE OF OCEAN AVENUE AS SET FORTH IN RESOLUTION NO. 197

BY THE TRUSTEES OF THE CITY OF SEAL BEACH AND RECORDED IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS, TO THE POINT OF BEGINNING.

A PORTION OF SAID OCEAN AVENUE WAS VACATED UPON APPLICATION OF THE BAYSIDE LAND COMPANY AND ACTION OF THE TRUSTEES OF THE CITY OF SEAL BEACH RECORDED AUGUST 18, 1914 IN MINUTE BOOK 11 AT PAGE 51.

LOT "C"

BLOCK "C" OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT A-2, IN THE RANCHO LOS ALAMITOS INCLUDED WITHIN SAID CITY OF SEAL BEACH AS SHOWN ON MAP NO. 1 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, LYING WESTERLY OF SAID BLOCK "C" AND LYING NORTHERLY OF THE WESTERLY PROLONGATION OF THE SOUTHWESTERLY CORNER OF SAID BLOCK "C".

EXCEPT FROM THE ABOVE DESCRIBED PORTION OF SAID LOT A-2 THE PORTION THEREOF LYING WESTERLY AND SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT NORTH 65° 00' 00" WEST, 330.00 FEET FROM STATION NO. 49 OF THE PATENT BOUNDARY LINE OF THE RANCHO LOS ALAMITOS, BEING IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" AND ON THE EASTERN SHORE OF THE INLET FROM THE PACIFIC OCEAN TO ALAMITOS Bay, THENCE SOUTH 65° 00' 00" WEST, 547.80 FEET; THENCE SOUTH 6° 00' 00" WEST, 69.92 FEET; THENCE SOUTH 85° 00' 00" EAST, 38.72 FEET TO THE POINT OF INTERSECTION WITH THE NORTHEASTERLY LINE OF OCEAN AVENUE, AS SHOWN ON AFORESAID MAP OF BAY CITY; THENCE SOUTH 84° 43' 00" EAST, ALONG SAID LINE OF OCEAN AVENUE 321.92 FEET TO THE SOUTHEASTERLY CORNER OF SAID BLOCK "C".

ALSO EXCEPT THAT PORTION THEREOF LYING NORTHEASTERLY AND EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHEASTERLY LINE OF SAID BLOCK "C" OF BAY CITY, BEING 60.20' SOUTHERLY FROM THE MOST SOUTHERLY POINT OF THE LAND INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OF OFFICIAL RECORDS; THENCE NORTH 85° 38' 38" WEST, 321.92 FEET; THENCE NORTH 76° 07' 33" WEST, 88.88 FEET; THENCE NORTH 16° 24' 59" EAST, 179.66 FEET; THENCE NORTH 13° 52' 27" EAST, 74.66 FEET TO A POINT IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" DISTANT NORTH 65° 00' 00" WEST, 238.07 FEET FROM STATION 49 OF THE RANCHO LOS ALAMITOS AS SHOWN ON SAID MAP OF BAY CITY.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:


LARRY V. CASE, L.S. No. 5411

3-17-11



Totals = 6.412 ac.

EXHIBIT "B"

N. T. S.

SURVEY NO. 106
PATENT 1/231

MARINA DRIVE

POR. LOT C-1

BLOCK 10
BAY CITY, M.M. 3/19

POR. BLOCK C OF
BAY CITY, M.M. 3/19

POR. LOT A-2
LOT "C"

POR. BLOCK C OF BAY CITY,
M.M. 3/19

ORDER OF CONDEMNATION
RECEIVED
2011



3-17-11

LARRY V. CASE L.S. 5411

CITY OF SEAL BEACH

CITY PARCEL

POR. OF BLOCKS B, C AND OCEAN AVE.
OF BAY CITY IN BOOK 3, PAGE 19, OF
MAPS, COUNTY OF ORANGE, STATE OF
CALIFORNIA.

SHEET
1
OF 1
JOB No.
11-SEA-791

PREPARED IN THE OFFICE OF:

Case Land Surveying, Inc.
Surveying Mapping GPS Services
614 Eckhoff St.
Orange, CA. 92868
Tel (714) 628-8948
Fax (714) 628-8905

**EXHIBIT E
BIKE TRAIL PARCEL**

THOSE PORTIONS OF BLOCKS B AND C AND OCEAN AVENUE AS SHOWN ON THE MAP OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY CORNER OF BLOCK B AS SHOWN ON RECORD OF SURVEY 2002-1090, RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG THE NORTHWESTERLY LINE OF SAID BLOCK B AND ALONG THE NORTHWESTERLY LINE OF OCEAN AVENUE THE FOLLOWING TWO (2) COURSES:

1. NORTH 25°31'25" EAST 78.63 FEET;
2. NORTH 21°26'49" EAST 80.01 FEET TO THE SOUTHERLY CORNER OF THE LAND DESCRIBED IN THE EASEMENT DEED TO THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 20, 1933 IN BOOK 612, PAGE 317 OFFICIAL RECORDS IN THE OFFICE OF SAID COUNTY RECORDER;

THENCE ALONG THE SOUTHWESTERLY LINE OF SAID EASEMENT DEED NORTH 28°13'48" EAST 5.29 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE NORTH 20°35'5" EAST 145.26 FEET; THENCE NORTH 08°18'15" EAST 25.13 FEET; THENCE NORTH 0°42'40" EAST 101 FEET; THENCE NORTH 20°50'28" EAST 87.75 FEET; THENCE NORTH 15°52'02" EAST 62.47 FEET; THENCE NORTH 18°16'30" EAST 130.33 FEET; THENCE NORTH 16°28'55" EAST 143.42 FEET; THENCE NORTH 19°04'10" EAST 9.40 FEET TO THE NORTHERLY CORNER OF SAID EASEMENT DEED; THENCE ALONG SAID NORTHERLY LINE SOUTH 63°58'48" EAST 9.40 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 15°01'22" WEST 74.86 FEET; THENCE SOUTH 17°33'5" WEST 17.11 FEET; THENCE SOUTH 74°58'38" EAST 29.41 FEET TO THE SOUTHEASTERLY LINE OF SAID EASEMENT DEED TO THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 11°36'49" WEST 11.11 FEET; THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE SOUTH 32°10'48" WEST 16.09 FEET; THENCE SOUTH 12°02'1" WEST 13.48 FEET; THENCE SOUTH 23°03'47" WEST 21.18 FEET; THENCE SOUTH 19°4'1" WEST 15.26 FEET; THENCE SOUTH 21°00'17" WEST 127.66 FEET; THENCE SOUTH 20°12'32" WEST 90.35 FEET; THENCE SOUTH 22°43'11" WEST 40.94 FEET TO THE SOUTHWESTERLY CORNER OF SAID BLOCK B; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 21°50'35" WEST 18.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 14,208 SQUARE FEET, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 18TH DAY OF MARCH, 2011

Gwen Vera del Castillo

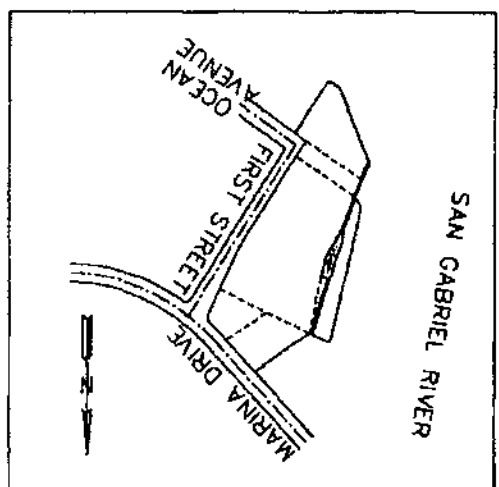
GWEN-VERA DEL CASTILLO, PLS 5108



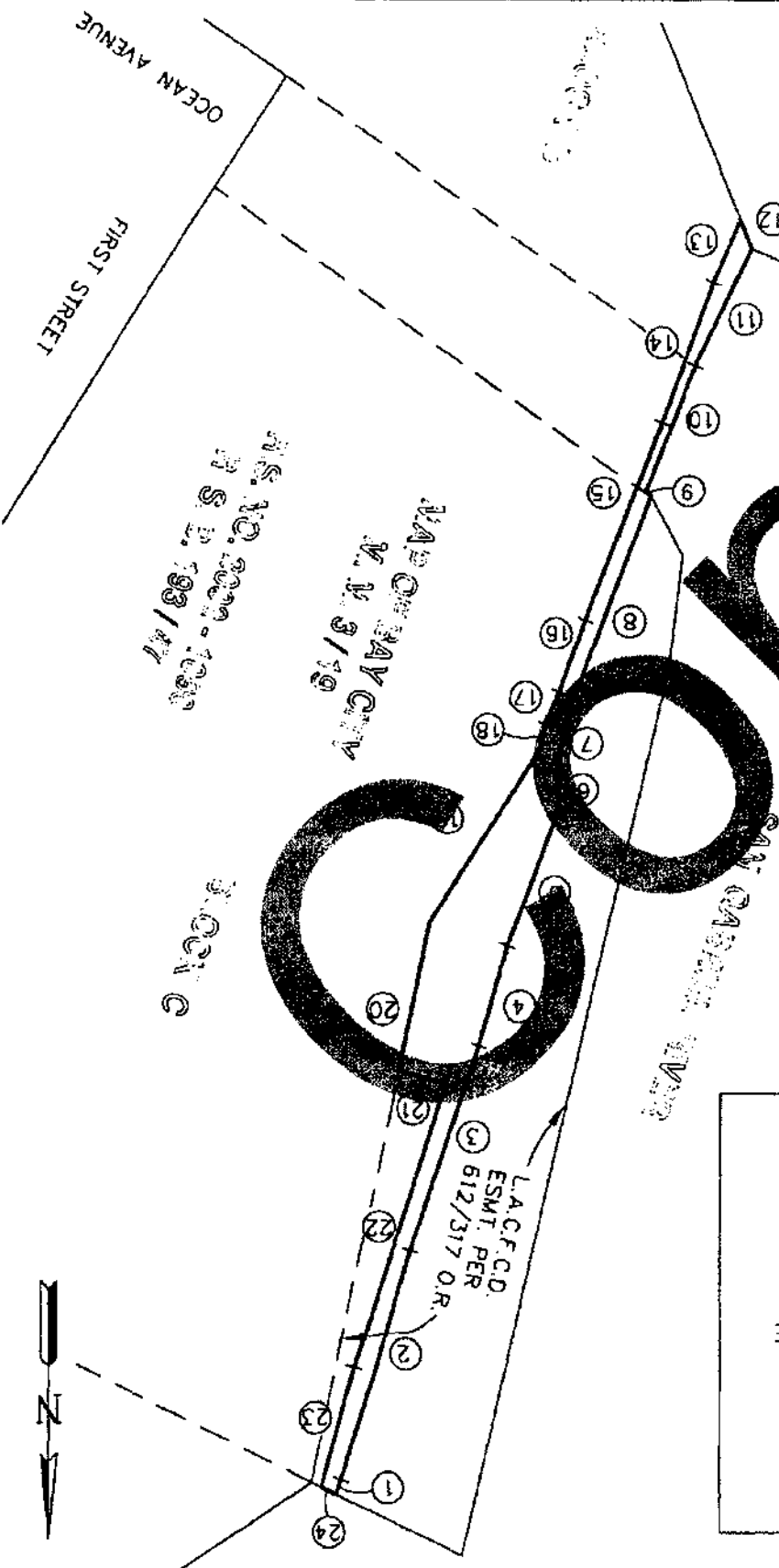
EXHIBIT "B"

COAST
 15051 PARKWAY LOOP, SUITE B
 TUSTIN, CA 92780-6527 (714) 918-6266

BEARING	DISTANCE
1	S19°04'10"W 9.40'
2	S16°20'55"W 143.42'
3	S18°18'30"W 130.33'
4	S15°52'02"W 62.47'
5	S20°50'28"W 2.75'
6	S00°42'40"W 2.01'
7	S08°18'15"W 2.75'
8	S20°35'51"W 1.15'
9	S28°13'48"E 3.85'
10	S21°26'49"W 80.01'
11	S5°31'25"W 78.63'
12	S1°50'35"W 18.54'
13	S22°43'11"E 40.94'
14	S20°12'32"E 10.35'
15	N1°00'17"E 1.66'
16	N7°40'E 2.74'
17	N1°02'30"E 21.18'
18	N13°48'E 13.48'
19	N32°00'48"E 0.09'
20	N11°49'E 29.41'
21	N74°38'W 29.41'
22	N17°35'E 179.66'
23	N15°02'E 74.66'
24	N63°58'W 9.76'



VICINITY MAP
 N.T.S.



**EXHIBIT F
DRIVEWAY PARCEL**

A STRIP OF LAND 40.00 FEET WIDE IN BLOCK B OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE SOUTHEASTERLY LINE OF WHICH STRIP OF LAND IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EXTENSION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE, NORTH 54°44'12" WEST, 13.95 FEET ALONG THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SHOWN ON RECORD OF SURVEY NO. 2003000516244 IN BOOK 193, PAGE 47 OF RECORDS OF SAID COUNTY, THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, STATE OF CALIFORNIA, TO THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING AT THE INTERSECTION OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 500.00 FEET WITH A RADIAL TO SAID CURVE AT SAID POINT BEARING NORTH 58°15'19" WEST; THENCE, SOUTHWESTERLY, 106.15 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°09'49" TO A POINT OF COMPOUND CURVE WITH A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 200.00 FEET, A RADIAL THROUGH SAID POINT OF COMPOUND CURVE BEARING NORTH 46°05'30" WEST; THENCE, SOUTHWESTERLY, 22.35 FEET ALONG SAID 200.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 6°07'37" TO A POINT OF TANGENCY WITH THE BEARING SOUTH 50°18'37" WEST; THENCE, SOUTH 50°18'37" WEST ALONG SAID TANGENT LINE 42.77 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 90.00 FEET; THENCE, SOUTHWESTERLY, 17.98 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°26'52" TO A POINT OF REVERSE CURVE WITH A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 400.00 FEET, A RADIAL THROUGH SAID POINT OF REVERSE CURVE BEARING SOUTH 28°14'31" EAST; THENCE, SOUTHWESTERLY, 78.24 FEET ALONG SAID 400.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 12°25" TO THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY NO. 2003000516244.

THE NORTHWESTERLY LINE OF SAID 40.00-FOOT-WIDE STRIP SHALL BE LENGTHENED OR SHORTENED TO TERMINATE SOUTHWESTERLY IN THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY AND NORTHEASTERLY IN THE SOUTHWESTERLY LINE OF SAID OCEAN AVENUE.

CONTAINING 10,233 SQUARE FEET, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

DRIVEWAY EASEMENT

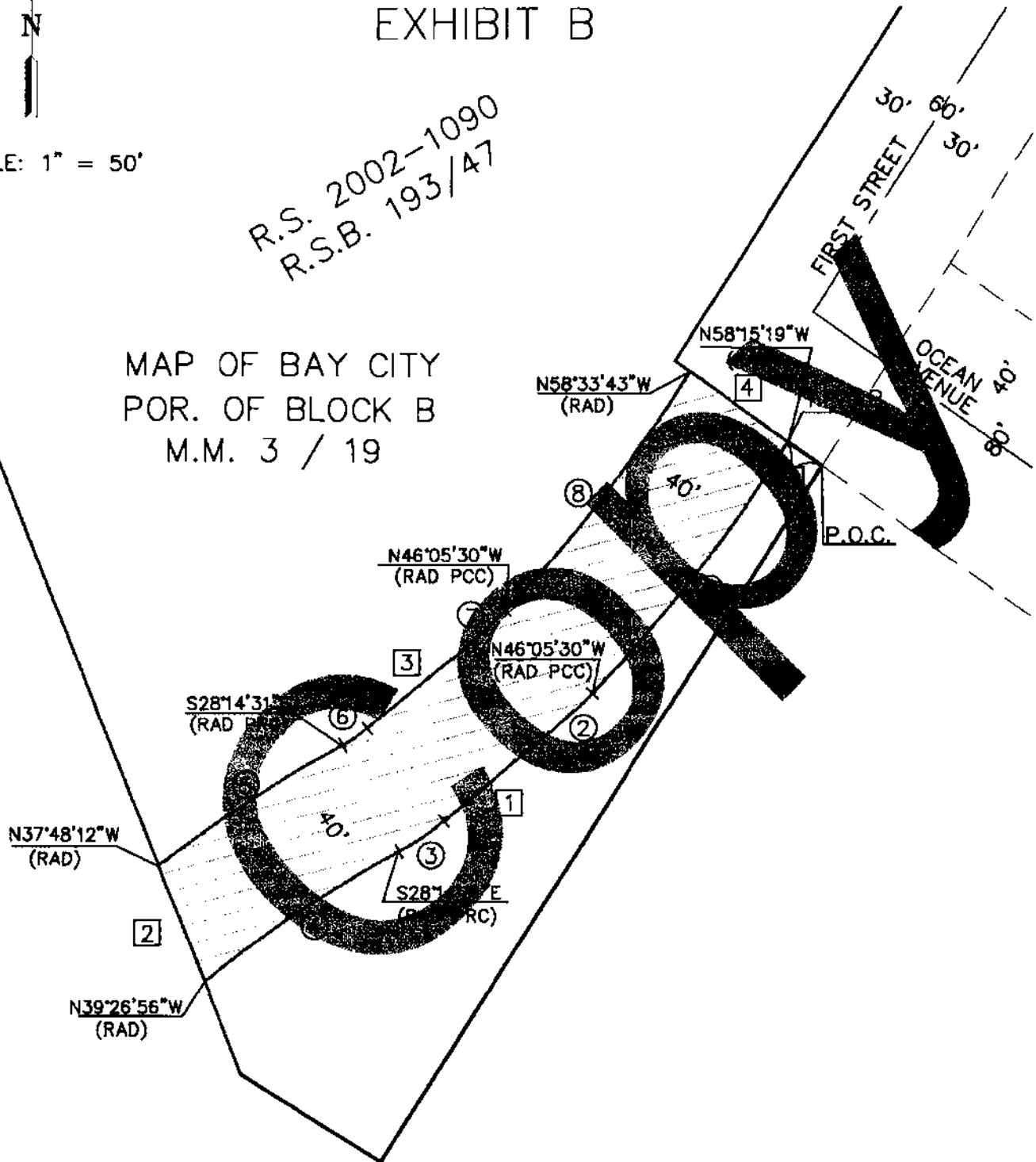
EXHIBIT B



SCALE: 1" = 50'

R.S. 2002-1090
R.S.B. 193/47

MAP OF BAY CITY
POR. OF BLOCK B
M.M. 3 / 19



○	DELTA	RADIUS	LENGTH	□	BEARING	DISTANCE
1	12° 09' 49"	500.00'	106.15'	1	S50° 18' 37" W	42.77'
2	6° 24' 07"	200.00'	22.35'	2	N21° 50' 35" W	41.78'
3	11° 26' 52"	90.00'	17.98'	3	N50° 18' 37" E	42.77'
4	11° 12' 25"	400.00'	78.24'	4	S54° 44' 12" E	40.08'
5	9° 33' 41"	440.00'	73.43'	5	S54° 44' 12" E	13.95'
6	11° 26' 52"	50.00'	9.99'			
7	6° 24' 07"	160.00'	17.88'			
8	12° 28' 13"	460.00'	100.12'			

**EXHIBIT G
SEWER PARCEL**

THAT PORTION OF BLOCK B OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE EXTENSION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE, NORTH 54°44'12" WEST, 13.95 FEET ALONG THE SOUTHWESTERLY LINE OF OCEAN AVENUE, AS SHOWN ON RECORD OF SURVEY NO. 2002-1090; THENCE, BY INSTRUMENT NO. 2003000516244 IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, STATE OF CALIFORNIA, TO A POINT ALSO BEING THE INTERSECTION OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 200.00 FEET WITH A RADIAL TO SAID CURVE AT SAID POINT BEARING NORTH 58°15'19" WEST; THENCE, SOUTHWESTERLY, 106.15 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°09'49" TO A POINT OF COMPOUND CURVE WITH A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 200.00 FEET, A RADIAL THROUGH SAID POINT OF COMPOUND CURVE BEARING NORTH 46°05'11" WEST; THENCE, SOUTHWESTERLY, 22.35 FEET ALONG SAID 200.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 6°34'07" TO A POINT OF TANGENCY WITH A LINE BEARING SOUTH 50°18'37" WEST; THENCE, SOUTH 50°18'37" WEST ALONG SAID TANGENT LINE 42.77 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 400.00 FEET; THENCE, SOUTHWESTERLY, 17.98 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°26'52" TO A POINT OF REVERSE CURVE WITH A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 400.00 FEET, A RADIAL THROUGH SAID POINT OF REVERSE CURVE BEARING SOUTH 28°14'31" EAST; THENCE, SOUTHWESTERLY, 78.24 FEET ALONG SAID 400.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 11°12'25" TO THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY NO. 2002-1090; THENCE, ALONG THE SOUTHWESTERLY AND SOUTHEASTERLY LINES OF SAID RECORD OF SURVEY THE FOLLOWING COURSES AND DISTANCES:

1. SOUTH 21°50'35" EAST, 32.84 FEET;
2. SOUTH 57°53'35" EAST, 55.32 FEET;
3. NORTH 32°17'25" EAST, 273.93 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,768 SQUARE FEET, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

SEWER EASEMENT

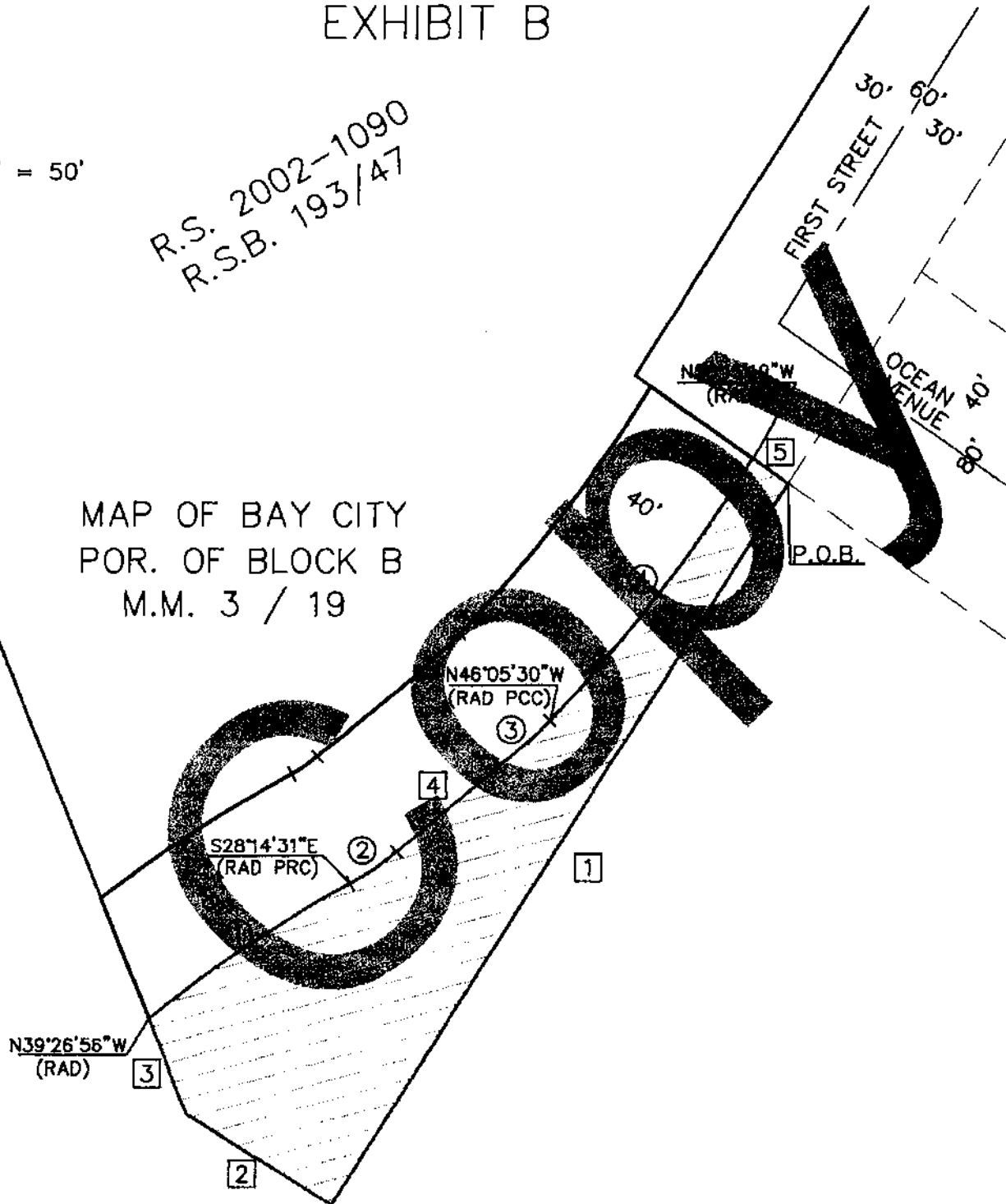
EXHIBIT B



SCALE: 1" = 50'

R.S. 2002-1090
R.S.B. 193/47

MAP OF BAY CITY
POR. OF BLOCK B
M.M. 3 / 19



○	DELTA	RADIUS	LENGTH
1	11°12'25"	400.00'	78.24'
2	11°26'52"	90.00'	17.98'
3	6°24'07"	200.00'	22.35'
4	12°09'49"	500.00'	106.15'

□	BEARING	DISTANCE
1	S32°17'25"W	273.93'
2	N57°53'35"W	55.32'
3	N21°50'35"W	32.84'
4	N50°18'37"E	42.77'
5	S54°44'12"E	13.95'

EXHIBIT H

TERMS SHEET OF THE LEASE

1. Property subject to Lease:
The Driveway Parcel as shown and legally described in Exhibit F.
The Bike Trail Parcel as shown and legally described in Exhibit E.
2. Term: At most, four years.
3. Commencement Date: March 31, 2011.
4. Expiration Date:
The earlier of:

(a) March 31, 2015;

(b) conveyance of the Driveway Parcel and Bike Trail Parcel to the City pursuant to transaction described in paragraph 5.B of the Settlement Agreement and Mutual Release;

(c) if the Coastal Commission denies or delays the City's Proposed Residential Project, then thirty (30) days thereafter such denial or delay. Bay City shall determine, in its sole discretion, whether a denial or delay has occurred. Bay City shall promptly notify the City in writing of such determination.
5. Rent: Annual One Dollar (\$1.00) per annum rental payment from the City to Bay City shall be deemed payment in full of the rent required under the Lease.
6. Use of Premises:
The Driveway Parcel shall be used for a public access roadway from First Street and Ocean Avenue to the public parking lot that serves the River's End Project in order to maintain public access to the public beach, the Pacific Ocean, Windsurfer Park, the First Street parking lot, and the River's End Campground. The Bike Trail Parcel shall be used for a public bike path. All premises shall be maintained in good condition.
7. Tenant's Liability Insurance: Annual Aggregate Limit \$2,500,000
8. Indemnity:

As a material term of the Agreement and the Lease, the City shall indemnify, save, hold harmless and defend Bay City, its members and its successors and assigns from any and all claims, costs, causes of action, and liability for any damages, personal injury or death which may arise, directly or indirectly, from the City's use of the Driveway Parcel or Bike Trail Parcel.

9. Notice:

Landlord

Bay City Partners LLC
2999 Westminster Avenue, Suite 211
Seal Beach California 90740
Attn: Rocky Gentner
Email: Rockyg@gentnerandcompany.com

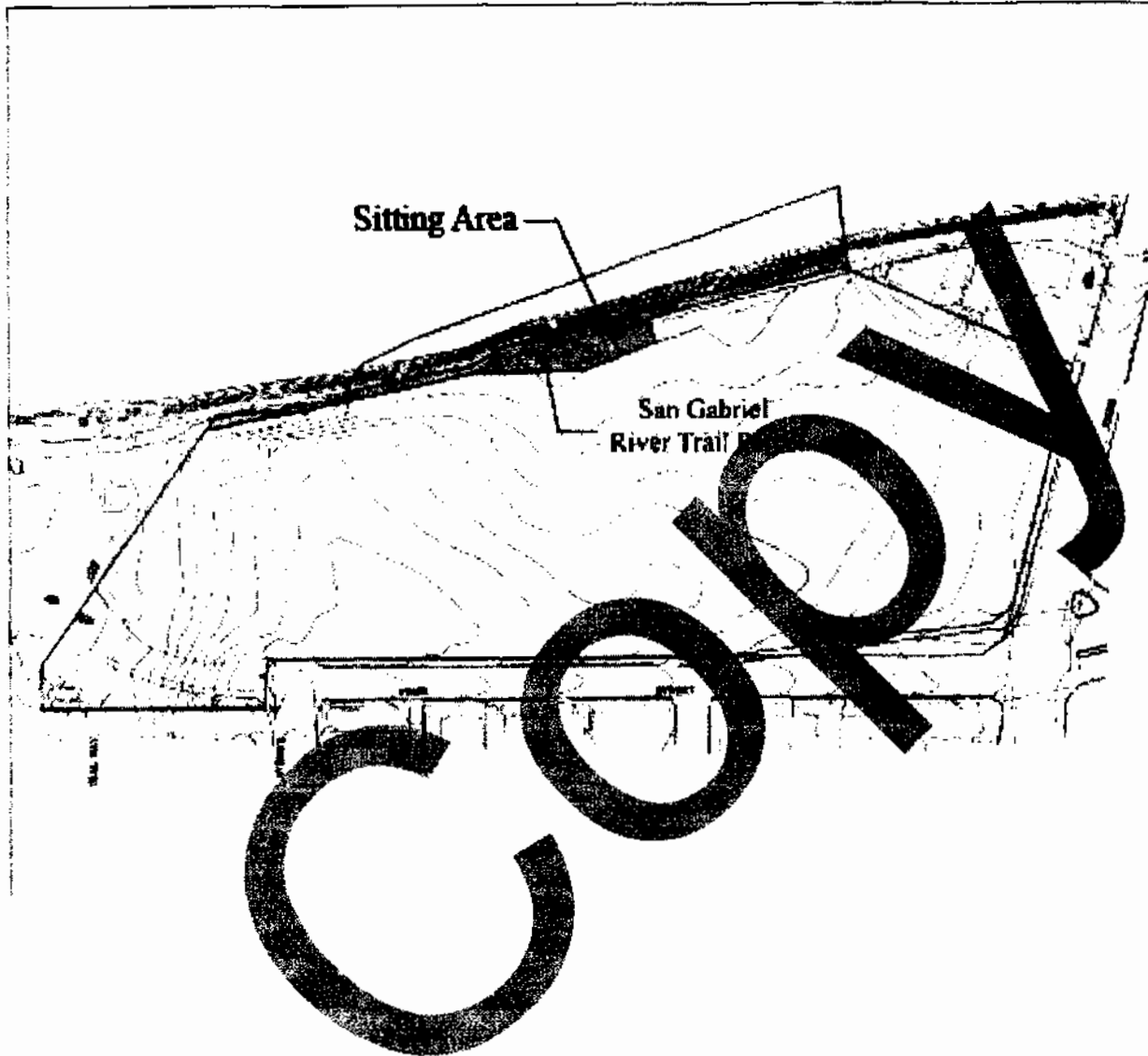
Tenant

City of Seal Beach
211 8th Street
Seal Beach, California 90740
Attn: City Manager

With Copy To:
Quinn Barrow, Esq.
Richards, Watson & Gelsinger
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Email: qbarrow@rwg.com
Fax No: (310) 626-0078

COPY

Exhibit "I"
Relocated Sitting Area



E-1

Exhibit J

1200 sq ft +/- Within
Proposed Residential
Development Area

The Bile Trail Parcel

All of the land South of the Westerly
Prolongation of the Southern Right
Of Way Line of Central Way Except
the 1200 sq ft +/- within the Proposed
Residential Project Area

The Driveway Parcel

The Sewer Parcel

PACIFIC OCEAN

OCEAN AVENUE

SEAL WAY

B-1

REMARKS:
1. THE AREA SHOWN ON THIS MAP IS THE PROPERTY OF THE CITY OF OAKLAND, CALIFORNIA.
2. THE AREA SHOWN ON THIS MAP IS THE PROPERTY OF THE CITY OF OAKLAND, CALIFORNIA.
3. THE AREA SHOWN ON THIS MAP IS THE PROPERTY OF THE CITY OF OAKLAND, CALIFORNIA.

REMARKS:
1. THE AREA SHOWN ON THIS MAP IS THE PROPERTY OF THE CITY OF OAKLAND, CALIFORNIA.
2. THE AREA SHOWN ON THIS MAP IS THE PROPERTY OF THE CITY OF OAKLAND, CALIFORNIA.
3. THE AREA SHOWN ON THIS MAP IS THE PROPERTY OF THE CITY OF OAKLAND, CALIFORNIA.

EXHIBIT "A"

Deed #224

DESCRIPTION:

THOSE PORTIONS OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST IN THE RANCHO LOS ALAMITOS AS PER MAP FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14 PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, CALIFORNIA, OF LOTS 1, 2 AND 3, BLOCK 100, TRACT NO. 698 AS PER MAP RECORDED IN BOOK 31 PAGE 27 OF MISCELLANEOUS MAPS RECORDS OF SAID ORANGE COUNTY AND OF BLOCK "C" BAY CITY AS PER MAP RECORDED IN BOOK 3 PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, ALL IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF THE LAND DESCRIBED IN PART 3 OF EXHIBIT A-1 IN A DEED TO THE CITY OF LOS ANGELES, CALIFORNIA, RECORDED IN BOOK 869 PAGE 1 OF OFFICIAL RECORDS: THENCE SOUTHWEST 17° 22' WEST 347.06 FEET ALONG THE SOUTHEAST BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES, THE SOUTHEAST BOUNDARY OF SAID LOTS 1, 2 AND 3 AND THE SOUTHEAST BOUNDARY OF SAID BLOCK "C", THENCE NORTH 24° 22' 42" EAST 332.42 FEET; THENCE NORTH 55° 38' 24" EAST 33.18 FEET TO A POINT ON THE NORTHEAST BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES SAID POINT BEING ON A CURVE INCAVE NORTH EASTERLY HAVING A RADIUS OF 940.00 FEET A RADIAL FROM SAID POINT BEARS NORTH 42° 07' 31" EAST; THENCE ALONG SAID CURVE AND THE BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES TO THE MOST EASTERLY CORNER TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, BOOK 90 PAGE 23 TO 30 OF RECORD OF SURVEY.

be and the same is hereby condemned to the use of the plaintiff, THE CITY OF SEAL BEACH, a municipal corporation, and to the use of the public for said public purposes.

DESCRIPTION	667-1000
APPROVED	APPROVED
DATE	March 8, 1977
APPROVED	APPROVED
LAWYER'S SIGNATURE	LAWYER'S SIGNATURE
DATE	March 8, 1977
BY	BY

MAP #2

SCALE 1"=40'

REC # 0320

BLOCK C
BAY CITY
MM 3/19

TR. NO. 1
BLK. 2
100
M.M. 31/27

FR. S.W. 1/4 SEC 11
T. 55. R. 12 W.
A 1. / 469, 462

332.42'
N 27° 22' 42" E

FIRST STREET
N 31° 17' 22" E

17.06

Copy

35'

K-2

MARINA DRIVE
L 60.68'
R 940'
N 65° 38' 1"

ADJMP EXCESS PARCEL
PROPOSED TAKE FOR FIRST ST.
PHASE III EXTENSION

BASIS OF BEARING -
SURVEY OF SEAL BEACH
BOUNDARY AGREEMENT N 2

Exhibit L

RECORDING REQUESTED BY
FIRST AMERICAN TITLE INSURANCE CO.
NATIONAL COMMERCIAL SERVICES
SC 1000-12/ACCUM
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Hewitt & O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612
Attn: Jay F. Palchikoff

This Document was electronically recorded by
First American National Commercial

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

RECORDED 08.00
20090000003882 11:18am 11/02/09
184 38 ED1 21
0.00 0.00 0.00 0.00 00.00 0.00 0.00 0.00

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is made in Orange County, California, on February 17, 2009, by and among Bay City Partners, LLC, a California limited liability company ("Owner"), and Atkinson LLC, a California limited liability company ("Atkinson LLC"), The Street Building, LLC, a California limited liability company ("Gentner LLC"), Main & PC LLC a California limited liability company, ("Griffith LLC"), Kyle LLC, a California limited liability company ("Kyle LLC"), and Park-e, LLC, a California limited liability company ("Parkhurst LLC"), who agree as follows:

TERMS

A. Owner is the record fee owner of that certain real property, located in the City of Seal Beach, County of Orange, State of California, described as Exhibit A attached hereto (the "Property").

B. Owner desires by this Agreement to grant Atkinson LLC, Gentner LLC, Griffith LLC, Kyle LLC and Parkhurst LLC (each, individually, an "Easement Holder" and collectively, the "Easement Holders"), tenants in common, a non-exclusive perpetual easement over, under, upon, across and through a portion of the Property for the purpose of (a) laying, constructing, installing, reconstructing, replacing, repairing, renovating, maintaining, operating, changing and removing underground pipelines and appurtenances thereto for the transportation of oil, gas, water, and surface electrical substation and related facilities and underground electrical and communications lines, wires, conductors, cables and conduits and appurtenances thereto for the transmission of electrical power and communications, and (c) for other reasonable uses related to the easement purposes described above, and (ii) set forth certain obligations of Owner and the Easement Holders with respect to said easement, on the terms and conditions set forth herein. This grant of easement shall be effective immediately.

D. Owner and the Easement Holders deem it to be in their mutual best interest to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing facts and the terms and conditions hereinafter set forth, the parties agree as hereinafter provided:

Article 1
Definitions

1.1 "Easement Area" shall mean that certain portion of the Property which is described on Exhibit B-1 and depicted on Exhibit B-2 attached hereto.

1.2 "Owner" shall mean (i) each Person owning the fee simple title to the Property, (ii) any ground tenant of the Property holding a ground tenant's interest therein, and (iii) a vendee in possession under a contract of sale or, if not in possession, the vendor or vendors under an executory contract of sale for the Property, but not a Person having an interest in the Property holding title merely as security for the performance of an obligation.

1.3 "Permitted Users" shall mean the Easement Holders, their respective heirs and assigns, employees, agents, representatives, contractors and subcontractors, licensees, invitees, customers, guests, tenants and subtenants, the employees, agents and representatives of all the foregoing described parties.

1.4 "Person" shall mean individuals, partnerships, firms, associations, trusts, corporations, limited liability companies, limited liability partnerships, limited partnerships and any other form of business entity, and the singular shall include the plural.

Article 2
Easements

2.1 Easement. Owner hereby grants to the Easement Holders, together with the right to transfer the same and to grant (and subgrant assignments of) easements, sub-easements and licenses with respect thereto, a non-exclusive easement, over, under, upon, across and through the Easement Area for the purpose of laying, constructing, installing, reconstructing, replacing, repairing, removing, maintaining, operating, changing and removing (a) underground pipelines and appurtenances thereto for the transportation of oil, gas and water and (b) up to four (4) areas selected by the Easement Holders from time to time, each not exceeding ten feet (10') in horizontal size and six feet (6') in height and each of which may be fenced or otherwise secured (each, a "Surface Installation") for one or more surface electrical substations and other facilities, including, but not limited to, electrical and communications lines, wires, conductors, cables, conduits and appurtenances thereto for the transmission of electrical power and communications, and (ii) other reasonable uses related to the easement purposes described above. This grant of easement shall be effective immediately.

2.2 Purpose and Use of Easements Permitted Users. The easements granted under this Agreement may be used by the Permitted Users only for the purposes set forth herein. The Easement Holders shall have the right to enter into any and all agreements they deem necessary or desirable to memorialize the use of the Easement Area by any of the Permitted Users, and to receive and retain any and all revenues paid by such Permitted Users in connection with the Permitted Users' use of the Easement Area; provided, however, that such revenues shall be apportioned among the Easement Holders in the percentages set forth on Schedule 1 attached hereto, subject to other agreements among the Easement Holders, including, but not limited to,

their Agreement Among Tenants in Common of even date herewith, as such agreement may be amended from time to time.

2.3 Use of Easement Area by Owner. Owner may use the Easement Area in a manner and for purposes that are not inconsistent with or contrary to and that do not interfere with the rights of the Easement Holders or Permitted Users as set forth in this Agreement. Such use shall in no event involve the erection of structures, paved roadways or other improvements, the storing of materials, or the planting of any trees upon the Easement Area (or any plants or bushes with roots extending more than 12" below ground level) without the unanimous prior written consent of the Easement Holders (which may be withheld in each Easement Holders' sole discretion). Owner shall not install a gate, fence or similar barrier entry into or out from the Easement Area without the unanimous prior written consent of the Easement Holders (which may be withheld in each Easement Holders' sole discretion). Owner shall not perform or otherwise on the Property that impede or interfere with use of the Easement Area by the Easement Holders and their Permitted Users.

2.4 Rights Reserved. Subject to Sections 2.3 above, Owner shall have right, from time to time, with the consent of the Easement Holders (which consent shall not be unreasonably withheld, conditioned or delayed), to make changes, modifications or alterations to the surface of the Easement Area in connection with the development of improvements on such Property, provided that (a) the use or accessibility of the Easement Area is not materially affected thereby, (b) any such changes, modifications or alterations shall not interfere in any manner whatsoever with facilities located within the Easement Area owned or operated by the Easement Holders or their Permitted Users, and (c) applicable governmental laws and restrictions shall not be violated. Owner shall be responsible for all real property taxes and possessory interest taxes assessed against the Property and any improvements thereon and the Easement Holders shall be responsible for all personal property taxes assessed against the Easement Holders or their Permitted Users' personal property located on the Easement Area.

2.5 Effect of Agreement. The easements, covenants, restrictions, conditions and provisions contained in this Agreement (whether affirmative or negative in nature) shall run and pass with each and every portion of the Property and be binding upon Owner and its successors and assigns and every person having title, leasehold, or other interest in the Property or any portion thereof to the extent that the covenants, restrictions, conditions, or provisions burden such interest in the Property, and shall benefit and shall be enforceable by Easement Holders and their successors and assigns.

2.6 Subdivision of Parcel. If the Property shall be subdivided into more than one Parcel, or should the lot lines of the Property be adjusted, such subdivision or lot line adjustment shall not terminate or otherwise affect the easements and rights established herein.

2.7 No Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of a Parcel or any portion thereof to or for the general public, or for any public purpose whatsoever. It is the intention of Owner and the Easement Holders that this Agreement shall be strictly limited to the purposes expressed in this Agreement. Further, the easements established in this Agreement are not intended to create, nor will they create, any prescriptive rights in the public.

2.8 **Limits on Transfer.** Owner may not transfer or assign any right, power or obligation created under this Agreement without also transferring therewith Owner's interest in the Easement Area.

Article 3 **Maintenance of Easement Area; Insurance**

3.1 **Maintenance of Easement Area.** Owner shall be obligated, at Owner's sole cost and expense, to perform or provide for performance of Maintenance (as hereinafter defined) of the surface of the Easement Area (except for the Surface Installations). As used herein, "Maintenance" means sweeping, lighting, rubbish removal, regular and customary maintenance of surfaces and landscaping, and such other maintenance and repair as is reasonably necessary to ensure a clean and sanitary area. Notwithstanding the foregoing, if an Easement Holder or any Permitted User damages any portion of the Easement Area as a result of (i) a violation of the limitations set forth in Sections 2.1 and 2.2 above or (ii) the actual misfeasance or negligent act or failure to act by such Easement Holder or Permitted User, the Easement Holders shall, at the sole cost, promptly repair the damage. Also notwithstanding the foregoing, Owner shall not be obligated to perform Maintenance of any of the Easement Holders' or Permitted Users' improvements or facilities within the Easement Area.

3.2 **Insurance.** At all times, Owner shall, at Owner's sole cost and expense, maintain public liability insurance for the Easement Area, with coverage of at least Two Million Dollars (\$2,000,000) for damage to property and/or injury or death of any person(s) per occurrence. Such insurance shall name the Easement Holders as additional insureds. Such insurance shall provide that the same shall not be cancelled or not renewed except upon thirty (30) days prior notice to the Easement Holders. Evidence of such insurance shall be provided to the Easement Holders on demand. If Owner fails to maintain such insurance, the Easement Holders may, after notice to Owner of such failure to cure within five (5) days after such notice, obtain the same, and Owner shall reimburse the Easement Holders for the cost of such insurance within ten (10) days after demand therefor.

Article 4 **Enforcement**

4.1 **Default and Remedies.** In the event of any material violation or threatened violation (a "Breach") by one party hereunder (a "Defaulting Party"), which Breach has not been cured within ten (10) days of written request therefor by the other party hereunder (a "Non-Defaulting Party") (or if any such Breach is not reasonably susceptible of cure within such ten (10) day period, then if the Defaulting Party has not commenced promptly within the ten (10) day period to effect a cure and thereafter diligently proceeded to effect such cure) (provided, however, that no such notice or cure period shall be required with respect to the third time that the same or similar Breach occurs in any consecutive twelve (12) month period), the Non-Defaulting Party shall have the following rights and remedies:

4.1.1 **Substitute Performance.** Without any obligation to do so, the Non-Defaulting Party may at its option (a) pay any unpaid sum or settle or discharge any action therefor or judgment thereon, (b) enter the Easement Area and perform such work as may be

necessary to resolve the same, (c) provide other substitute performance of any obligations of the Defaulting Party at such party's expense. In any such event, the Defaulting Party shall reimburse the Non-Defaulting Party for all direct costs or expenses connected with such performance within ten (10) days after receipt of any itemized statement showing all such direct costs of remedying such default, plus interest on all such amounts owed at the maximum legal contract rate permitted by law from the date incurred until paid;

4.1.2 Damages. A Non-Defaulting Party may bring a suit for damages for any compensable breach of any of the easements or covenants contained herein (but such damages shall in no event include punitive, special or so-called "consequential" damages) or for declaratory relief to determine the enforceability of any of the agreements contained herein and for injunctive relief thereon, including all court costs, reasonable attorneys' fees and other costs of collection or enforcement related thereto;

4.1.3 Equity. It is recognized that a breach by a party of any Person having possession under a party, of one or more of the easements or rights or covenants contained herein, may cause a Non-Defaulting Party to suffer material injury or damage not compensable in money, and that the Non-Defaulting Party shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with these restrictions or for an injunction to prevent or enjoin the continuance of such Breach.

4.2 No Waiver. No waiver of default by a party shall be implied from an omission by the other party to take any action with respect to such default. A waiver of a default hereunder shall not be deemed a waiver of any subsequent default of the same provision or any other provision contained herein.

4.3 Rights of Lenders; Subordination. No breach, enforcement or attempted enforcement of any other the terms, covenants, conditions or restrictions of this Agreement will defeat or render invalid the lien of any mortgage or deed of trust securing a loan made in good faith and for value with respect to developing, financing, permanent financing, or refinancing of the Property or any facilities thereon; provided, however, that all provisions of this Agreement will be binding upon and effective against any subsequent Owner of the Property or successor whose title to the Property or any portion of such is acquired by foreclosure, trust deed sale, or otherwise. The easements and rights established hereunder, whether now existing or granted hereafter by the Easement Holders, shall be superior to any and all mortgages, liens, ground leases, licenses, covenants, or encumbrances now or hereafter affecting the Property, as well as any of the same specifically subordinated hereto (hereinafter collectively referred to as the "Mortgages"). Any such Mortgages shall be deemed to be subordinate to this Agreement, and this Agreement shall survive any foreclosure of any such Mortgages; provided, however that nothing in this Agreement will affect the validity of any such Mortgages.

Article 5 **General Conditions**

5.1 Term. The easement and all rights and privileges related thereto established by this Agreement shall be perpetual and shall remain in effect until terminated by the recordation of a written agreement signed by all Easement Holders, or their successors or assigns.

5.2 Mechanics Lien Work Standards.

(a) Whenever under the terms of this Agreement any Easement Holder performs any work upon the Easement Area, the party performing such work will not permit any mechanics', materialmen's or similar lien to be maintained against the Property on which any labor or material has been furnished in connection with such work, and will indemnify and hold harmless Owner from and against any and all liens, claims, liabilities, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of such work. Notwithstanding the foregoing, the party performing such work may contest the validity or amount of any lien or claim of lien arising out of such work by appropriate legal proceedings diligently pursued, provided that such party obtains a surety bond or other security reasonably satisfactory to Owner to protect fully Owner and the Property against such lien or claim of lien, and provided further that such party immediately pays and discharges any judgment or settlement rendered or reached in any such proceedings and causes such lien to be released at such party's expense prior to foreclosure. Prior to the commencement of any work, the party performing the work shall also provide Owner at least ten (10) days' prior written notice of the start date, as well as evidence that appropriate insurance has been obtained. Upon completion of the work in question, the performing party shall, if applicable, cause a Notice of Completion to be recorded in the Office of the Orange County Recorder in accordance with Section 3093 of the California Civil Code and, upon request of Owner, deliver to Owner a legible copy of all permits, approvals and other documents issued by any governmental agency in connection with the work.

(b) Whenever under the terms of this Agreement Owner performs any work upon the Easement Area, Owner will not permit any mechanics', materialmen's or similar lien to be maintained against the Easement Area, and will indemnify and hold harmless Easement Holders and the Permitted Users from and against any and all liens, claims, liabilities, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of such work. Notwithstanding the foregoing, the party performing such work may contest the validity or amount of any lien or claim of lien arising out of such work by appropriate legal proceedings diligently pursued, provided that such party obtains a surety bond or other security reasonably satisfactory to Easement Holders to protect fully Easement Holders and the Easement Area against such lien or claim of lien, and provided further that such party immediately pays and discharges any judgment or settlement rendered or reached in any such proceedings and causes any lien to be released at such party's expense prior to foreclosure. Prior to the commencement of any work, the party performing the work shall also provide Easement Holders at least ten (10) days' prior written notice of the start date, as well as evidence that appropriate insurance has been obtained. Upon completion of the work in question, the performing party shall, if applicable, cause a Notice of Completion to be recorded in the Office of the Orange County Recorder in accordance with Section 3093 of the California Civil Code and, upon request of any Easement Holder, deliver to Easement Holders a legible copy of all permits, approvals and other documents issued by any governmental agency in connection with the work. All work shall be performed so as to minimize, to the greatest extent reasonably possible, interference with use of the Easement Area in question by the Permitted Users thereof.

(c) Whenever any party performs any work upon the Easement Area, the party performing such work shall commence and complete such work promptly and in a good and

workmanlike manner and in compliance with all insurance requirements, applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws now or hereafter in effect pertaining thereto.

5.3 Indemnity. Each party shall indemnify and hold harmless the other party (and its/their officers, directors, partners, members, agents, representatives and employees) from and against any claims, loss, damage, liability or expense, including reasonable attorneys' fees arising out of such party's exercise of its rights under this Agreement or such party's failure to comply with its obligations hereunder except to the extent attributable to the negligence or willful misconduct of the indemnified party.

5.4 Estoppel Certificate. The Easement Holders, upon the written request of Owner (which may not be made more frequently than three (3) times during any calendar year) shall issue to a prospective mortgagee or successor of Owner, within fifteen (15) business days of receipt of any such request, an estoppel certificate stating:

- (a) Whether the party to whom the request has been directed knows of any default by Owner under this Agreement, and if there are known defaults, identifying the nature thereof;
- (b) Whether this Agreement has been fully assigned, modified or amended in any way (and if it has, then stating the nature thereof); and
- (c) That to the Easement Holders' knowledge, this Agreement, as of the date of the estoppel certificate, is in full force and effect.

Such statement shall act as a waiver of any claim by the Easement Holders furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide purchaser for value, lender or mortgagee without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. In the event the Easement Holder being requested to give an estoppel certificate pursuant to the provisions of this Section 5.4 fail to give such certificate within the time specified time period, it shall be deemed that, as of the date of the request: (i) the Easement Holder certifies of no default by Owner under this Agreement; (ii) this Agreement has not, to the Easement Holder's knowledge, been assigned or modified or amended in any way, except as may be of record; and (iii) this Agreement is, to the Easement Holder's knowledge, in full force and effect.

5.5 Notices. Any notice or other communication given in connection with this Agreement shall be in writing and addressed to the parties at the addresses indicated below, and shall be deemed given (i) upon personal delivery, (ii) the next day following delivery by overnight courier, (iii) upon receipt of delivery confirmation following delivery by facsimile, and (iv) the fifth (5th) day following delivery by U.S. Postal Service regular mail.

If to Owner:

Bay City Partners, LLC
4592 Orion Street
Huntington Beach, CA 92649
Attn: Cindy Atkinson

Bay City Partners, LLC
2999 Westminister Avenue, Suite 203
Seal Beach, CA 92662
Attn: Rocky Gentner

Bay City Partners, LLC
1225 Catalina Avenue
Seal Beach, CA 90740
Attn: Bob Griffith

Bay City Partners, LLC
P.O. Box 179
Seal Beach, CA 90740
Attn: Brian Kyle

Bay City Partners, LLC
107 Opal
Balboa Island, CA 92662
Attn: Bob Griffith

With a copy to:

Hewitt & O'Neil
1000 MacArthur Blvd., Suite 100
Irvine, CA 92612
Attn: Ray F. Palchik

If to Atkinson LLC:

Atkinson, LLC
400 Orion Street
Huntington Beach, CA 92694
Attn: Cindy Atkinson

If to Griffith LLC:

Griffith Street Building, LLC
2999 Westminister Avenue, Suite 203
Seal Beach, CA 90740
Attn: Rocky Gentner

If to Griffith LLC:

Main & PCH, LLC
1225 Catalina Avenue
Seal Beach, CA 90740
Attn: Bob Griffith

If to Kyle LLC:

Kyle, LLC
P.O. Box 179
Seal Beach, CA 90740
Attn: Brian Kyle

If to Parkhurst LLC: Park-e, LLC
107 Opal Ave.
Newport Beach, CA 92662
Attn: Jim Parkhurst

Each party shall have the right to direct another address for notice hereunder, provided that such direction is duly served upon the other parties at the last address referred to in this Agreement.

5.6 Entire Agreement; No Modification. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. No modification or amendment hereto shall be of any force or effect unless it shall be in writing and signed by the parties hereto (or, as applicable, their successors or assigns).

5.7 Binding Effect; Constructive Notice and Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors-in-interest and assigns.

5.8 Further Assurances. The parties agree to execute, within ten (10) days of presentation, any and all further documents necessary to accomplish the intent of this Agreement.

5.9 Incorporation. The Recitals and Exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth in the body hereof.

5.10 Attorneys' Fees. In the event either party shall institute any action or proceeding against the other relating to the provisions of this Agreement, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorneys' fees and costs actually incurred.

5.11 Captions. The Section headings or captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit, define or amplify the scope or intent of the terms and provisions hereof.

5.12 Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.13 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

5.14 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute a single agreement and each of which shall be an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Owner:

Bay City Partners, a California limited liability company

By:


Rocky Gentner, Member

By:


Bob A. Griffith, Member

By:


Brian Kyle, Member

By:


James H. Hurst, Member

By:


Andy Atkinson, Trustee

Atkinson Family, LLC

Atkinson LLC:

Atkinson LLC, a California limited liability company

By:


Andy Atkinson, Member

Gentner LLC:

Gentner Street Building, LLC, a California limited liability company

By: Rocky and Deborah Gentner Family, LLC,
a California limited liability company

By:


Rocky Gentner, Managing Member

Griffith LLC:

Main & PCH, LLC, a California limited liability company

By:


Bob A. Griffith, Managing Member


Kyle LLC:

Kyle, LLC, a California limited liability company

Kyle LLC:

Kyle, LLC, a California limited liability company

By:


Brian Kyle, Sole Member

Parkhurst LLC:

Parkhurst, LLC, a California limited liability company

By:


James Parkhurst, Managing Member

COPY

STATE OF CALIFORNIA

COUNTY OF ORANGE

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On April 14, 2009, before me, Jacquelyn A. Heckethorn, a Notary Public, personally appeared Rocky Gertner, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jacquelyn A. Heckethorn
Notary Public



STATE OF CALIFORNIA

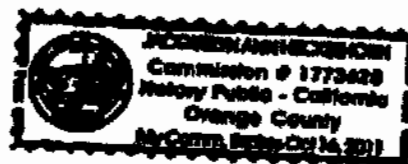
COUNTY OF ORANGE

On April 14, 2009, before me, Jacquelyn A. Heckethorn, a Notary Public, personally appeared Bob A. Griefith, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jacquelyn A. Heckethorn
Notary Public



STATE OF CALIFORNIA

COUNTY OF ORANGE

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) ss
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On April 14, 2009, before me, Jacquelyn A. Heckethorn, a Notary Public, personally appeared Brian Kyle, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jacquelyn A. Heckethorn
Notary Public



STATE OF CALIFORNIA

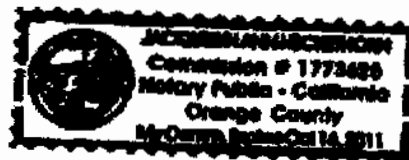
COUNTY OF ORANGE

On April 14, 2009, before me, Jacquelyn A. Heckethorn, a Notary Public, personally appeared James Parkhurst, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jacquelyn A. Heckethorn
Notary Public



ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF Los Angeles

On March 2, 2009 before me, Carol Benson
Notary Public, personally appeared
Cindy Atkinson

who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged
me that he/she/they executed the same in his/her/their authorized capacity,
and that by his/her/their signature(s) on the instrument, he/she/they, or the
person upon behalf of which the person(s) acted, executed the instrument. I certify under
PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carol Benson

(Seal)

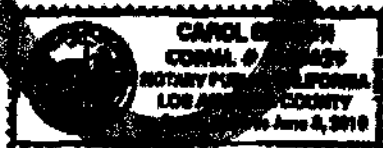


Exhibit A
Legal Description of Property

PARCEL 1:

LOTS 1, 2 AND 3 IN BLOCK 100 OF TRACT NO. 696, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12113, PAGE 201, OFFICIAL RECORDS.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, IN BOOK 90, PAGE 100, INCLUSIVE OF RECORD OF SURVEYS.

PARCEL 2:

THAT PORTION OF TIDE LAND LOCATION NO. 137 (PATENT NO. 106) AS GRANTED BY THE STATE OF CALIFORNIA ON FEBRUARY 12, 1901 AND RECORDED APRIL 27, 1901 IN BOOK 9, PAGE 103 OF PATENTS, RECORDS OF LOS ANGELES COUNTY AND RECORDED SEPTEMBER 5, 1905 IN BOOK 1, PAGE 231 OF DEEDS, RECORDS OF ORANGE COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF THE BOUNDARY SURVEY OF SAID RANCHO LOS ALAMITOS, AS PER MAP RECORDED IN BOOK 1, PAGES 40 AND 41 AND AS PER PATENTS OF SAID LOS ANGELES COUNTY, THENCE ALONG SAID BOUNDARY NORTH 80° 00' WEST 230.47 FEET TO A LINE PARALLEL WITH SAID BOUNDARY NORTHWESTERLY FROM THE RANCHO LINE, BETWEEN BOUNDARY STATIONS 49 AND 50; THENCE ALONG SAID PARALLEL LINE NORTH 54° 48' 00" EAST 122.00 FEET TO A LINE PARALLEL WITH AND 30.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THE 200 FOOT STRIP OF LAND DESCRIBED IN QUITCLAIM DEED TO THE PACIFIC ELECTRIC RAILWAY COMPANY RECORDED FEBRUARY 21, 1906 IN BOOK 514, PAGE 44 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 42° 19' 00" EAST 201.52 FEET TO SAID RANCHO LINE; THENCE SOUTH 54° 48' 00" WEST 1136.60 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION LYING NORTHEASTERLY OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES RECORDED IN BOOK 426, PAGE 178 OF DEEDS, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND SUBSEQUENTLY RELINQUISHED TO THE CITY OF SEAL BEACH BY INSTRUMENT RECORDED IN BOOK 700, PAGE 260 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN STATIONS 49 AND 50 OF SAID RANCHO LOS ALAMITOS, DISTANT NORTH 54° 48' 00" EAST 213.27 FEET FROM SAID STATION 49; THENCE NORTH 43° 56' 00" WEST 202.36 FEET TO A LINE PARALLEL WITH AND DISTANT NORTHWESTERLY 200.00 FEET FROM SAID BOUNDARY LINE; THENCE NORTH 54° 48' 00" EAST 80.94 FEET ALONG SAID PARALLEL LINE; THENCE SOUTH 43° 56' 00" EAST 202.36 FEET TO SAID BOUNDARY LINE; THENCE SOUTH 54° 48' 00" WEST 80.94 FEET ALONG SAID BOUNDARY LINE TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN AS PARCEL A IN LICENSE SURVEYORS MAP OF THE TIDELANDS EAST OF NAPLES FILED IN BOOK 2, PAGES 47 AND 48 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE.

PARCEL 3:

THAT PORTION OF THE SOUTH HALF OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST, INCLUDED WITHIN LOT C-1 OF THE RANCHO LOS ALAMITOS, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAPS 1 AND 2 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 100, DEED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF SAID RANCHO LOS ALAMITOS; THENCE NORTH 54° 47' 05" EAST 213.27 FEET ALONG THE WESTERLY BOUNDARY OF SAID RANCHO TO THE SOUTHWESTERLY LINE OF MARINA DRIVE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 436, PAGE 107 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 44° 02' WEST 33.50 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 940 FEET; THENCE SOUTHEASTERLY 115.71 FEET ALONG SAID CURVE TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON A MAP OF BAY CITY RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 31° 17' 50" WEST 137.49 FEET ALONG SAID PROLONGATION TO THE SOUTHWESTERLY LINE OF SAID LOT C-1; THENCE NORTH 65° 02' WEST 100.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 121, PAGE 201, OFFICIAL RECORDS.

PARCEL 4:

THAT PORTION OF BLOCK 12 OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING NORTHWESTERLY OF THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF FIRST STREET AS SHOWN ON SAID MAP.

EXCEPT THAT PORTION THEREOF LYING NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS DESCRIBED IN THE DEED TO SAID CITY RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION THEREOF LYING SOUTHERLY AND SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF SAID SOUTHEASTERLY LINE OF FIRST STREET 272.93 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 58° 54' WEST 55.32 FEET; THENCE NORTH 22° 31' WEST 364.64 FEET; THENCE NORTH 24° 31' EAST 78.78 FEET TO THE SOUTHWESTERLY LINE OF OCEAN BOULEVARD, AS SHOWN ON SAID MAP.

PARCEL 5:

THAT PORTION OF BLOCK "B" TOGETHER WITH THAT PORTION OF "OCEAN AVENUE" A STREET, IN THE BAY CITY TRACT, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF THE PLANNED MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING AND BEING OF THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF BLOCK "C" OF SAID BAY CITY TRACT DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON SAID MAP, WITH THE NORTHEASTERLY LINE OF SAID BLOCK "B"; THENCE NORTH 31° 17' 00" EAST 80.11 FEET ALONG SAID SOUTHWESTERLY PROLONGATION TO THE EAST SOUTHERLY CORNER OF SAID BLOCK "C"; THENCE NORTH 55° 42' 00" WEST 104.64 FEET ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK "C" TO THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 20, 1933 IN BOOK 612, PAGE 317 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTHERLY ALONG THE SOUTHERLY PROLONGATION OF SAID EASTERLY LINE, AND THE SEAL BEACH BOUNDARY AGREEMENT NO. 2, RECORDED APRIL 8, 1968 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY TO THE NORTHERLY TERMINUS OF THE AGREEMENT LINE BETWEEN THE STATE LANDS COMMISSION AND THE CITY OF SEAL BEACH AND THE CITY OF LOS ANGELES RECORDED AUGUST 9, 1967 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 28° 01' 00" WEST 60.00 FEET ALONG LAST SAID AGREEMENT LINE TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO THE CITY OF SEAL BEACH RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 67° 06' 27" EAST 297.06 FEET ALONG THE SOUTHERLY LINE OF SAID LAND OF THE CITY OF SEAL BEACH, SAID SOUTHERLY LINE BEING THE SOUTHERLY LINE OF OCEAN AVENUE AS SET FORTH IN RESOLUTION NO. 197 B, THE ORDINANCES OF THE CITY OF SEAL BEACH AND RECORDED IN SAID BOOK 536, PAGE 49 OF OFFICIAL RECORDS, TO THE POINT OF BEGINNING.

A PORTION OF SAID OCEAN AVE. WAS VACATED UPON APPLICATION OF THE BAYSIDE LAND COMPANY AND ACTION OF THE TRUSTEES OF THE CITY OF SEAL BEACH RECORDED AUGUST 18, 1914 IN MINUTE BOOK 11 AT PAGE 51.

PARCEL 6:

BLOCK C OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT A-2, IN THE RANCHO LOS ALAMITOS INCLUDED WITHIN SAID CITY OF SEAL BEACH, AS SHOWN ON MAP NO. 1 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 1, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, LYING WESTERLY OF SAID BLOCK C AND LYING NORTHERLY OF THE WESTERLY PROLONGATION OF THE SOUTHWESTERLY CORNER OF SAID BLOCK C.

EXCEPT FROM THE ABOVE DESCRIBED PORTION OF SAID LOT A-2 THE PORTION THEREOF LYING WESTERLY AND SOUTHERLY OF THE FOLLOWING DESCRIBED

BEGINNING AT A POINT NORTH 65° 00' 00" WEST, 330.00 FEET FROM SECTION NO. 49 OF THE PATENT BOUNDARY LINE OF THE RANCHO LOS ALAMITOS BEING IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" AND ON THE EASTERN SHORE OF THE INLET FROM THE PACIFIC OCEAN TO ALAMITOS BAY; THENCE SOUTH 12° 00' 00" WEST, 547.00 FEET; THENCE SOUTH 6° 00' 00" WEST, 69.93 FEET; THENCE SOUTH 29° 15' 00" EAST, 38.72 FEET TO THE POINT OF INTERSECTION WITH THE NORTHEASTERLY LINE OF OCEAN AVE., AS SHOWN ON AFORESAID MAP OF BAY CITY; THENCE SOUTH 55° 43' 00" EAST, ALONG SAID LINE OF OCEAN AVENUE 15.63 FEET TO THE SOUTHWESTERLY CORNER OF SAID BLOCK "C".

ALSO EXCEPT THAT PORTION THEREOF INCLUDED WITHIN TRACT 698, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12, PAGE 201, OFFICIAL RECORDS.

EXCEPT FROM SAID PARCELS 1 THROUGH 6 ALL WATER AND WATER RIGHTS APPURTENANT WHETHER SURFACE OR SUBSURFACE AND ALSO EXCEPT THEREFROM ALL OIL, GAS, AND PETROLEUM, OR OTHER MINERAL OR HYDROCARBON SUBSTANCES, WITHOUT THE RIGHT OF MINING ON THE SURFACE OF SAID LAND FOR SUCH USE, AS RESERVED BY THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, IN THE GRANT DEED RECORDED MAY 27, 2003 AS INSTRUMENT NO. 2003060612579, OF OFFICIAL RECORDS.

END OF LEGAL DESCRIPTION

Exhibit B-1
Legal Description of Easement Area

A STRIP OF LAND 10.00 FEET IN WIDTH OVER THAT PORTION OF BLOCK 8 OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3 PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE LAND AS SHOWN ON RECORD OF SURVEY NO. 2002-1000, AS FILED IN BOOK 1 PAGE 47 IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY NORTH 57°53'35" WEST 15.50 FEET TO THE POINT OF BEGINNING; THENCE NORTH 32°17'25" EAST 20.04 FEET TO POINT A; THENCE CONTINUING NORTH 32°17'25" EAST 20.04 FEET; THENCE NORTH 25°31'05" EAST 25.23 FEET TO THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SHOWN ON SAID RECORD OF SURVEY.

THE SIDELINES OF SAID STRIP TO BE LENGTHENED OR SHORTENED TO MEET AT ANGLE POINTS AND TO TERMINATE SOUTHWESTERLY IN THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY AND NORTHEASTERLY IN SAID SOUTHWESTERLY LINE OF OCEAN AVENUE.

TOGETHER WITH:

PARCEL A: BEGINNING AT THE HEREIN ABOVE DESCRIBED POINT A; THENCE NORTH 57°42'35" WEST 9.60 FEET; THENCE NORTH 32°17'25" EAST 44.00 FEET; THENCE SOUTH 57°42'35" EAST 18.00 FEET; THENCE SOUTH 32°17'25" WEST 44.00 FEET; THENCE NORTH 57°42'35" EAST 9.60 FEET TO THE POINT OF BEGINNING.

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHTS OF WAY AND EASEMENTS OF RECORD, IF ANY.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 13TH DAY OF MAY, 2004.


GWEN-VERA DEL CASTILLO, PLS 5108
REGISTRATION EXPIRES 6/30/07



Schedule 1

Revenue Allocations for Easement Holders

Atkinson LLC	12.5%
Gentner, LLC	25%
Griffith LLC	25%
Kyle LLC	12.5%
Parkhurst LLC	25%

Copy

Exhibit M

ASSIGNMENT OF LICENSE AGREEMENT

This Assignment of License Agreement (this "Assignment") is entered into as of February 17, 2009 (the "Effective Date") by and between Bay City Partners, LLC, a California limited liability company ("Assignor"), on the one hand, and Atkinson LLC, a California limited liability company ("Atkinson LLC"), Tenth Street Building, LLC, a California limited liability company ("Gentner LLC"), Main & PCH, LLC a California limited liability company, ("Griffith LLC"), Kyle LLC, a California limited liability company ("Kyle LLC"), and Park-e, LLC, a California limited liability company ("Parkhurst LLC") (collectively "Assignee"), on the other hand:

1. Assignment and Assumption of License Agreement. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to that certain License Agreement (the "License Agreement") dated as of February 9, 2006 by and between Assignor, as licensor, and Plains Exploration & Production Company, a Delaware corporation, assigned to Dos Cuadras Offshore Resources, LLC, a Texas limited liability company, as licensee, pursuant to that certain Letter Agreement dated March 1, 2006 (the "Letter"), as assigned to DCOR, LLC a Texas limited liability company ("DCOR") covering the property then described (the "License Area").

Assignee hereby accepts the foregoing assignment, assumes and agrees to perform all of the covenants, conditions, agreements and obligations of Assignor under the License that arise or accrue on or after the Effective Date.

2. Assignee as Easement Holder. The parties understand and agree (and, by execution below, Licensee understands and agrees) that Assignor has previously granted or concurrently herewith granting to Assignee a non-exclusive easement of the entire License Area pursuant to the certain Easement Agreement dated on this date herewith by and between Assignor and Assignee (the "Easement Agreement") and that, based on the Easement Agreement, Assignee shall be deemed to be the "Owner" under the License Agreement for all purposes, notwithstanding that Assignee does not own fee title to the License Area.

3. Indemnification. Assignor shall, from and after the Effective Date, indemnify, defend, and hold Assignee harmless from any liabilities, losses, costs, demands, damages, claims, suits, judgments or expenses (including, without limitation, attorneys' fees and costs) incurred by Assignee arising out of or connected with the License that arose or accrued prior to the Effective Date.

Assignor shall, from and after the Effective Date, indemnify, defend, and hold Assignee harmless from any liabilities, losses, costs, demands, damages, claims, suits, judgments or expenses (including, without limitation, attorneys' fees and costs) incurred by Assignor arising out of or connected with the License that arise or accrue on or after the Effective Date.

4. Representations and Warranties. Assignor and Assignee each represent and warrant to each other that it is qualified and has full power and authority to execute this Assignment, and that the person signing this Assignment on its behalf is authorized to do so. Assignor further represents and warrants to Assignee that (i) the License is in full force and effect, (ii) Assignor has the right to assign its rights under the License to Assignee, (iii) Assignor

has not previously assigned its rights under the License Agreement to any other party, and (v) Assignee shall be entitled to receive any and all revenues received from the Licensee under the License Agreement.

5. Binding Agreement. This Assignment shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

6. Attorneys' Fees. In the event of any controversy arising out of or in connection with this Assignment, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including actual attorneys' fees, disbursements, and court costs reasonably incurred by the prevailing party in connection with such action or proceeding.

7. Governing Law. This Assignment shall be governed by, interpreted under and construed in accordance of the laws of the State of California.

8. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall collectively constitute one agreement.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date written above.

Assignor:

City Partners, California limited liability company

By: [Signature]
Member

Bob A. Griffith
Bob A. Griffith, Member

Brian Kyle
Brian Kyle, Member

By: [Signature]
James Parkhurst, Member

By: [Signature]
Cindy Atkinson as Trustee of The Atkinson Family Trust

Assignee:

Atkinson LLC:

Atkinson LLC, a California limited liability company

By:


Cindy Atkinson, Member

Gentner LLC:

Tenth Street Building, LLC, a California limited liability company

By: Rocky and Deborah Gentner Family LLC, a California limited liability company

By:

Rocky Gentner, Managing Member

Griffith LLC:

Main & PCH, LLC, a California limited liability company

By:


Bob A. Griffith, Managing Member

Kyle LLC:

Kyle LLC, a California limited liability company

By:


Brian Kyle, Sole Member

Parkhurst LLC:

Parkhurst LLC, a California limited liability company

By:


James Parkhurst, Managing Member

ACCEPTED AND AGREED:

DCOR hereby acknowledges and consents to the foregoing Assignment of License Agreement by and between Assignor and Assignee. DCOR acknowledges that as a result of this Assignment, the License Agreement is now between DCOR and the Assignee (i.e., the easement holders of the License Area). DCOR further acknowledges and agrees that as a result of this Assignment, as of the Effective Date Assignor is hereby released from any and all obligations under the License Agreement, and Assignee is solely obligated thereunder. DCOR agrees, from and after November 20 2009, until notified otherwise by a majority in interest of the easement holders, to make separate payments of the amounts due under the License Agreement to each of Atkinson LLC, Gentner LLC, Griffith LLC, Kyle LLC and Parkhurst LLC according to the percentage interest held by each and at the address for each as set on Schedule attached hereto.

DCOR, LLC,
a Texas limited liability company

By: *Jeffrey E. Warren*

Name: Jeffrey E. Warren

Title: Vice President

COPY

Schedule to Assignment of License Agreement

Atkinson LLC (12.5%)
4592 Orion Street
Huntington Beach, CA 92649
Attn: Cindy Atkinson

Tenth Street Building, LLC (25%)
2999 Westminster Avenue, Suite 203
Seal Beach, CA 90740
Attn: Rocky Gentner

Main & PCH, LLC (25%)
1225 Catalina Avenue
Seal Beach, CA 90740
Attn: Bob Griffith

Kyle, LLC (12.5%)
P.O. Box 179
Seal Beach, CA 90740
Attn: Brian

Parkhurst LLC (25%)
10700 Pal Ave.
Newport Beach, CA 92662
Attn: Dan Parkhurst

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Seal Beach
211 - 8th Street
Seal Beach, CA 90740
Attn: City Clerk

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder



NO FEE

2012000479003 4:01 pm 08/20/12

276 422 A12 30

0.00 0.00 0.00 0.00 87.00 0.00 0.00 0.00

Exempt from recording fees pursuant to Govt. Code Section 27383

(Space above for recorder's use)

DISPOSITION AND DEVELOPMENT AGREEMENT

Between



City of Seal Beach
211 - 8th Street
Seal Beach, CA 90740

&

Bay City Partners, LLC
299 Westminster Avenue, Suite 211
Seal Beach, CA 90740

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of July 9, 2012, by and between Bay City Partners, LLC, a California limited liability company (hereinafter "Owner"), and the City of Seal Beach, a California charter city (hereinafter "City"). Owner and City are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

A. Owner owns approximately 10.7 acres of land located south of Marina Drive and west of 1st Street within Seal Beach, California and has proposed a project on property described with more particularity in Exhibit "A" and shown on Exhibit "B" ("Property").

B. Owner has proposed Tentative Tract Map 17425, as revised (TTM 17425) for a 32-residential lot subdivision on the northerly portion of the Property described in Exhibit C, and has applied for related approvals (the "Project"). Owner has agreed, inter alia, to donate the property described in Exhibit D ("Open Space") (excluding the property defined as Driveway Parcel in Recital C) to the City at no cost to the City, concurrently with issuance of a coastal development permit ("CDP").

C. Located within the Open Space is a driveway that provides access to the 1st street parking lot. Owner has offered to convey the driveway and the underlying fee to the City ("Driveway Parcel") in exchange for a portion of land within the right-of-way for 1st Street that is owned by the City in fee. The Driveway Parcel is described in Exhibit F.

D. City must comply with all applicable state laws prior to vacating the City-owned land within the right-of-way for 1st Street.

E. Pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq. ("CEQA")) and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000, et seq.), the City prepared an Environmental Impact Report to analyze and disclose the potential environmental impacts of the Project, including those impacts potentially arising from the disposition of City property contemplated by this Agreement. The City Council certified an Environmental Impact Report on June 25, 2012.

F. On July 9, 2012, the City Council approved TTM 17425 for a 32-residential lot subdivision and related approvals.

G. On March 16, 2011, the Parties entered into a settlement agreement and mutual release ("Settlement") of an eminent domain action filed by the City to acquire a portion of the Property and an application for a writ of mandate filed by Owner challenging the adequacy of the CEQA review of a nearby City project subject to the terms and conditions stated therein. As part of the Settlement, the City agreed to process in good faith a 48-unit residential project that Owner intended to submit to the City subsequent to the Settlement. The previously contemplated 48-unit residential project is depicted in Exhibit C-2 of the Settlement and is referred to therein as the "Proposed Residential Project."

H. The Council-approved Project is substantially different than the 48-unit Proposed Residential Project contemplated in the Settlement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Tentative Tract Map 17425. It is mutually and expressly agreed by the Parties that TTM 17425, as approved by the City Council on July 9, 2012, supersedes any reference to the "Proposed Residential Project," in the Settlement, including but not limited to Exhibit C-2 to the Settlement.

2. California Coastal Commission. The Project requires a CDP from the California Coastal Commission. In the event the Commission issues a CDP for the Project:

2.1 Owner shall donate by conveyance of fee title to the City and at no cost to the City, the "Open Space" described in Exhibit "D" attached hereto, excluding the Driveway Parcel described in Exhibit "E".

2.2 The Open Space shall be deed restricted to those permitted uses set forth in the DWP Specific Plan more specifically listed as public parks, greenbelts, bike trails, nature trails, hiking trails, driveway and drainage facilities, and any passive recreational uses normally located in parks or open spaces. To ensure the passive nature of the open space area, only light standards and park benches shall be allowed, and the height of said light standards shall not exceed 15 feet.

2.3 The documentation transferring ownership of the open space to the City shall contain a right of reversion in favor of the Owner and Owner's successors-in-interest in the event the permitted open space uses as provided in the DWP Specific Plan are discontinued and some other use of the Open Space area is proposed that would be inconsistent or in conflict with such permitted uses.

2.4 As evidence of the donation credit for tax purposes, as provided in this Agreement, Owner shall have a right to install a surface plaque or monument on the Open Space area in a location easily visible by the public with an inscription acknowledging the donation of the Open Space by Bay City Partners, LLC to the City of Seal Beach. The dimensions of the plaque or monument shall be no larger than two feet by two feet.

2.5 As to the DCOR Oil and Gas License and Easement referenced in the Settlement, the City agrees that it shall not: (a) interfere with or impede the normal course of business under either the license with DCOR or the DCOR Easement; or (b) interfere with or relocate any of the pipelines existing under either the license with DCOR or the DCOR Easement. The City further agrees to accept a restriction on the donated land that no easements or construction shall be permitted for any oil and gas pipelines other than what is needed to directly serve the donated land without Owner's or Owner's successors-in-interest approval.

2.6 The City will conduct all necessary proceedings to consider vacating approximately 7,600 square feet of land that the City owns adjacent to the corner of Marina Drive and 1st Street shown on and legally described in Exhibit "E" attached hereto. In the event the City satisfies all statutory requirements, the City shall then convey by quitclaim deed to Owner fee simple title to that property in exchange for Owner's conveyance of the Driveway Parcel. To the extent the Driveway Parcel exceeds the value of the approximately 7,600 square feet of the City owned land, Owner may use that value as a donation tax credit as provided in the Settlement.

3. Settlement. Unless modified by this Agreement, the terms and provisions of the Settlement shall remain in full force and effect and shall be binding on the Parties.

4. Termination. This Agreement may be terminated by either Party upon notice to the other upon the occurrence of any of the following events: (1) a referendum overturning any City Council's legislative approvals for the Project; (2) if termination occurs pursuant to any specific provision of this Agreement; or (3) entry after all appeals have been exhausted of a final judgment or issuance of a final order directed to the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval of the City Council of this Agreement or any land use entitlement for development of the Project.

5. Public Improvements. Owner shall provide for the installation of all Public Improvements required by the City pursuant to any condition of approval of TTM 17425 and Public Improvements required pursuant to the Mitigation Monitoring and Reporting Program adopted for the Project.

6. Green Screen Removal. Developer shall remove the green screen on the fence constructed on the perimeter boundaries of the Property on or before September 28, 2012 and shall thereafter not replace the green screen without the City's approval unless a referendum or legal challenge is filed to overturn the certification of the Project EIR or land use entitlements approved by the City for development of the Project.

7. Venue. Any legal action shall be brought in the Superior Court for Orange County, California.

8. Waivers and Delays.

8.1 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a default by the other Party hereto, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future.

8.2 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes, other labor difficulties, federal or state government regulations, court actions, or other causes beyond the Party's control.

8.3 Government Agencies. Any delay resulting from the acts or omissions of the City or any other governmental agency or public utility and beyond the reasonable control of Owner except those related to the normal and customary processing of future development approvals.

9. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or deposited in the United States mail, postage prepaid and addressed to the addresses on page 1 of this Agreement. Either Party may change the address stated therein by giving notice, in writing, to the other Party. Thereafter, notices shall be addressed and submitted to the new address. Notices shall be deemed received upon personal delivery or upon the third day following deposit in the U. S. mail in the manner set forth above.

10. Attorneys' Fees. If legal action is brought by any Party against another for breach of this Agreement, or to compel performance under this Agreement, the prevailing Party shall be entitled to an award of reasonable attorneys' fees and costs incurred in connection with such action.

11. Authority to Execute. Each person executing this Agreement on behalf of Owner warrants and represents that each has the authority to execute this Agreement on behalf of the Owner and to bind Owner to the performance of its respective obligations hereunder.

12. Severability of Terms. If any term or provision of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to enforce.

13. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with California laws. The Parties understand and agree that this Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of the City, and in particular, the City's police powers. In this regard, the Parties understand and agree that this Agreement shall not be deemed to constitute the surrender or abnegation of the City's governmental powers over the Property.

14. Legal Remedies.

14.1 Specific Performance Remedy. The City and Owner acknowledge that, if Owner fails to carry out its obligations under this Agreement, the City shall have the right to refuse to issue any permits or other approvals to which Owner would otherwise have been entitled. Therefore, the City's remedy of denying issuance of permits or terminating this Agreement shall be sufficient in most circumstances if Owner fails to carry out its obligations hereunder. Notwithstanding the foregoing, if the City issues a permit or other approval pursuant to this Agreement in reliance (explicitly stated in writing) upon a specified condition being satisfied by Owner in the future, and if Owner then fails to satisfy such condition, the City shall be entitled to specific performance for the sole purpose of causing Owner to satisfy such condition. The City's right to specific performance shall be limited to those circumstances set forth above, and the City shall have no right to seek specific performance to cause Owner to otherwise proceed with the development of the Project in any manner.

14.2 City not Liable for Damages. It is acknowledged by the Parties that City would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof. Consequently, and except for the payment of attorneys' fees in accordance with Section 10 above, City shall not be liable in damages to Owner or to any assignee, transferee or any other person, and Owner covenants on behalf of itself and its successors in interest not to sue for or claim any damages:

- (a) for any breach of, or which arises out of, this Agreement;
- (b) for the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; or
- (c) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

14.3 Breach by Action of the Electorate. The Parties hereby warrant that each enters into this Agreement with the understanding that if the City defaults on its obligations under the Agreement due to an action taken by the electorate of the City in the exercise of the reserved powers of initiative and referendum, this Agreement shall be modified or suspended and Owner's right to seek specific performance, a writ of mandate, or other mandatory relief shall be limited by such force as the action taken by the electorate may have in light of state law as determined by any court of competent jurisdiction, in which case Owner's principal remedy shall lie in reformation of this Agreement.

15. Local, State and Federal Laws. Owner, its assigns and its contractors shall carry out the design and construction of all private improvements on the Property and all Public Improvements in conformity with all applicable laws, including, without limitation, all applicable federal, state and local occupation, employment, prevailing wage, safety and health laws, rules, regulations and standards. Owner agrees to indemnify, defend and hold the City harmless from and against any cost, expense, claim, charge or liability relating to or arising directly or indirectly from any breach by or failure of Owner or its contractor(s) or agents to comply with such laws, rules or regulations. Owner's indemnity obligations set forth in this Section shall survive the termination or expiration of this Agreement.

16. Rules of Construction and Miscellaneous Terms.

16.1 Time of Essence. Time is of the essence regarding each provision of this Agreement of which time is an element.

16.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and this Agreement supersedes all previous negotiations, discussion and agreements between the Parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

16.3 Not for Benefit of Third Parties. This Agreement and all provisions hereof are for the exclusive benefit of the City and Owner and its Transferees and shall not be construed to benefit or be enforceable by any third party.

16.4 Counterparts. This Agreement may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts shall constitute one and the same agreement.

16.5 Exhibits. The following Exhibits are attached to this Agreement and incorporated herein as though set forth in full:

Exhibit A – Legal Description of the Property

Exhibit B – Map of the Project

Exhibit C – Legal Description of Residential Portion

Exhibit D – Legal Description of Open Space

Exhibit E – Legal Description of City Property at Marina Drive and First Street

Exhibit F – Driveway Parcel

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the date and year first above written.

CITY OF SEAL BEACH

By: 

Mayor Michael P. Levitt

BAY CITY PARTNERS, LLC

By: 

Rocky Gentner,
Member

ATTEST:

By: 

Linda Devine, City Clerk

BAY CITY PARTNERS, LLC

By: 

Bob Griffith,
Member

APPROVED AS TO FORM:

By: 

Quinn Barrow, City Attorney

BAY CITY PARTNERS, LLC

By: 

James Parkhurst,
Member

BAY CITY PARTNERS, LLC

By: 

Brian Kyle,
Member

BAY CITY PARTNERS, LLC

By: 

Cindy Atkinson,
Member

All signatures for Bay City Partners, LLC to be acknowledged by a Public Notary

STATE OF CALIFORNIA


)
) ss
)

COUNTY OF ORANGE

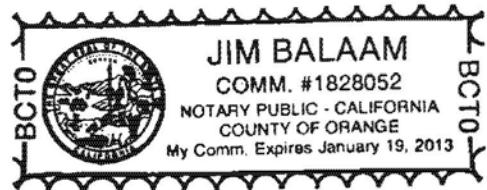
On July 5, 2012, before me, Jim Balaam, a Notary Public, personally appeared BOB GUFFIN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



STATE OF CALIFORNIA

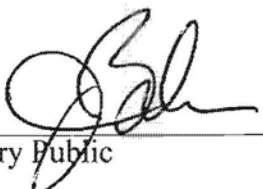
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COUNTY OF ORANGE

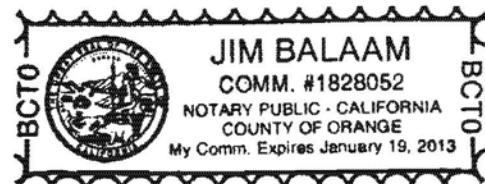
On July 5, 2012, before me, Jim Balaam, a Notary Public, personally appeared Brian Kyle, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



STATE OF CALIFORNIA

)
) ss
)

COUNTY OF ORANGE

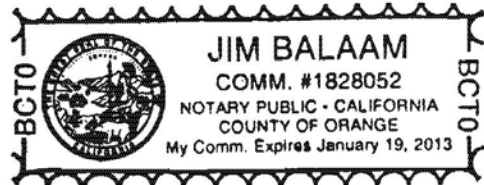
On July 6, 2012, before me, Jim Balaam, a Notary Public, personally appeared CINDY ATKINSON, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



STATE OF CALIFORNIA

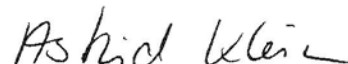
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COUNTY OF ORANGE

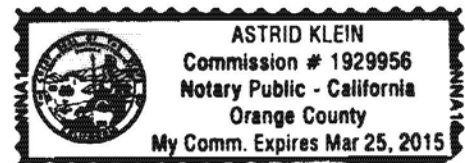
On July 18 2012, before me, Astrid Klein, a Notary Public, personally appeared Rocky W. Gentner, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



STATE OF CALIFORNIA

COUNTY OF ORANGE

)
) ss
)

On July 18, 2012, before me, Astrid Klein, a Notary Public, personally appeared James E. Parkhurst, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Astrid Klein
Notary Public



EXHIBIT "A"

LEGAL DESCRIPTION "SITE MAP DWP SPECIFIC PLAN AREA"

THAT PORTION OF LAND SITUATED IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF CERTIFICATE OF COMPLIANCE NO. 2009-01, RECORDED MARCH 10, 2009 AS INST. NO. 2009000109534, OFFICIAL RECORDS OF SAID COUNTY AND A PORTION OF THE TIDE LAND LOCATION NO. 137 AS DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS INST. NO. 20070000052124, OFFICIAL RECORDS OF SAID COUNTY AND SHOWN ON RECORD OF SURVEY NO. 2002-1090 RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND A PORTION OF FIRST STREET AND MARINA DRIVE, PUBLIC ROADWAYS DESCRIBED AS FOLLOWS:

ALL OF PARCELS 1, 4, 5 AND 6 OF SAID CERTIFICATE OF COMPLIANCE NO 2009-01

AND

PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE 2009-01

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL NORTH 55°46'12" EAST 101.79 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE NORTH 55°46'12" EAST 89.76' FEET TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 326.00 FEET, A RADIAL BEARING TO SAID CURVE BEARS NORTH 54°22'38" WEST; THENCE SOUTHWESTERLY 75.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°14'21"; THENCE NONTANGENT NORTH 68°01'12" WEST 40.73 FEET TO THE **TRUE POINT OF BEGINNING**.

TOGETHER WITH THAT PORTION OF THE TIDE LAND LOCATION NO. 137, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS DOCUMENT NO 2007-000052124 OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 2002-1090 RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF SAID COUNTY RECORDER, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE 2009-01; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL NORTH 55°46'12" EAST 101.79 FEET; THENCE NORTH 68°01'12" WEST 58.91 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS DOCUMENTED NO. 2007-000052124 OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ALSO SAID LINE BEING THE SOUTHEASTERLY LINE OF THE LOS ANGELES COUNTY FLOOD CONTROL CHANNEL, SAME BEING A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 2000.00 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 68°21'13" WEST; THENCE ALONG SAID NORTHWESTERLY DEED LINE THE FOLLOWING TWO COURSES:

1. NONTANGENT SOUTHWESTERLY 82.02 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°20'59";

2. THENCE NONTANGENT SOUTH 19°00'21" WEST 2.61 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 3 OF SAID CERTIFICATE OF COMPLIANCE 2009-01

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID PARCEL 3; THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY RIGHT-OF-WAY OF MARINA DRIVE AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE 2009-01, SOUTH 43°01'03" EAST, 34.37 FEET TO THE **TRUE POINT OF BEGINNING**, SAID POINT ALSO BEING THE BEGINNING OF TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 940.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND RIGHT-OF-WAY, THROUGH A CENTRAL ANGLE OF 3°51'23", AN ARC DISTANCE OF 63.27 FEET TO A NON-TANGENT POINT IN THE MOST EASTERLY LINE OF SAID PARCEL 3. A RADIAL BEARING TO SAID POINT BEARS NORTH 43°07'34" EAST. THENCE SOUTHEASTERLY ALONG SAID LINE, SOUTH 04°04'51" EAST, 3.39 FEET; THENCE NORTH 43°01'03" WEST, 65.85 FEET TO THE **TRUE POINT OF BEGINNING**.

AND

THAT PORTION OF FIRST STREET, A PUBLIC ROADWAY, DESCRIBED AS FOLLOWS: **BEGINNING** AT AFOREMENTIONED POINT "A"; THENCE NORTH 32°17'25" EAST, 379.60 FEET ALONG A LINE PARALLEL TO AND 30.00 FEET NORTHWESTERLY OF THE CENTERLINE OF FIRST STREET AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE 2009-01; THENCE NORTH 05°21'49" WEST, 30.54 FEET; THENCE NORTH 43°01'03" WEST, 40.15 FEET TO A POINT IN THE MOST EASTERLY LINE OF PARCEL 3 OF SAID CERTIFICATE OF COMPLIANCE NO. 2009-01; THENCE SOUTHEASTERLY ALONG SAID LINE, SOUTH 04°04'51" EAST, 29.50 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF SAID PARCEL 3; THENCE SOUTHWESTERLY ALONG SAID LINE, SOUTH 25°22'45" WEST, 332.42 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 10.885 ACRES, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "A-1" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

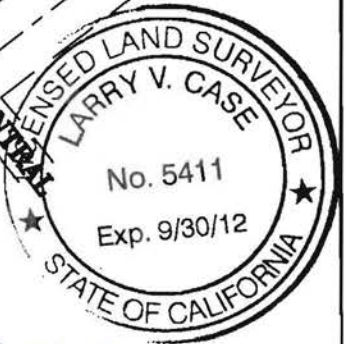
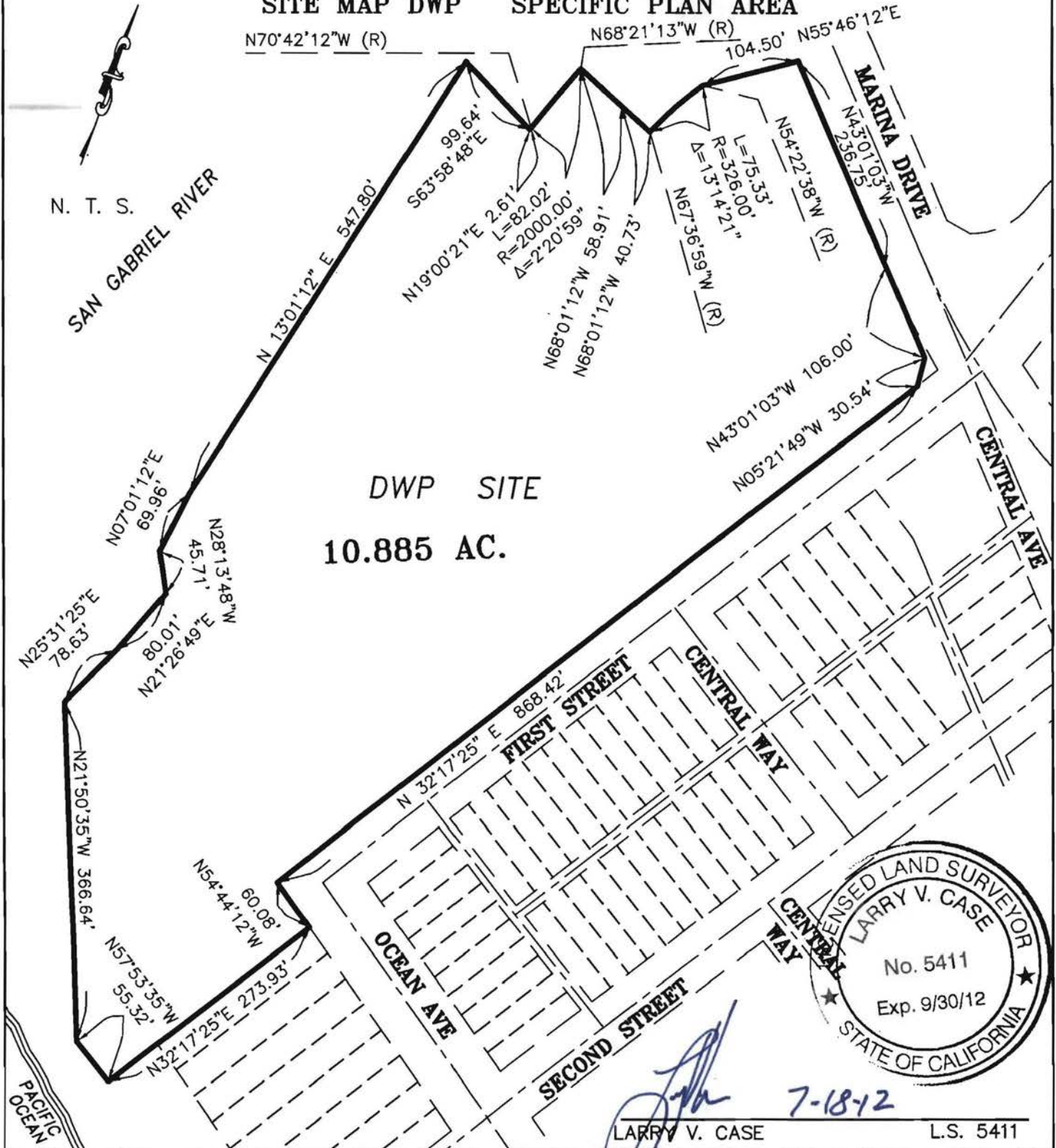
PREPARED BY:



 7-18-12
LARRY V. CASE, L.S. No. 5411

EXHIBIT "A-1"

SITE MAP DWP SPECIFIC PLAN AREA



LARRY V. CASE L.S. 5411

PREPARED IN THE OFFICE OF:

Case Land Surveying, Inc.
 Surveying Mapping GPS Services
 614 Eckhoff St.
 Orange, CA. 92868
 Tel (714) 628-8948
 Fax (714) 628-8905

CITY OF SEAL BEACH
 SITE MAP - DWP SPECIFIC PLAN AREA
 CERTIFICATE OF COMPLIANCE NO.
 2009-01, RCRD 3/10/2009, INSTR.
 2009000109534, COUNTY OF ORANGE,
 STATE OF CALIFORNIA.

SHEET
 1
 OF 1
 JOB No.
 11-SEA-791

EXHIBIT B
MAP OF PROJECT
(LAND USE DEVELOPMENT PLAN)

Exhibit "B"

Notes:

1. For purposes of determining building setbacks, Lots 1 through 7 shall have an average 12' and minimum 6' front yard setback along Marina Drive and a 5' minimum rear yard setback along "C" Street. Lots 28 through 32 shall have an average 12' and minimum 6' front yard setback along the river and a 5' minimum rear yard setback along "A" Street.
2. Solid fencing along Marina Drive shall not exceed a height of 42 inches (as measured on the side of fencing facing Marina Drive) within ten (10) feet of the Marina Drive right-of-way. The area between any such fencing and the Marina Drive right-of-way shall be landscaped and properly maintained by the homeowner.
3. Lot 22: The 6'9" required building setback area along 1st Street shall be landscaped and shall not contain any fencing or hedges above 42" in height as measured on the east side of the fencing / hedges facing 1st Street. The main entrance to the house shall be located on the east side of the building facing 1st Street. The building elevation facing east towards 1st Street shall have architecturally enhanced articulation, indicative of a typical front elevation of a residence.



Land Use Development Plan

EXHIBIT C

LEGAL DESCRIPTION OF RESIDENTIAL AREA

EXHIBIT "C"

LEGAL DESCRIPTION "PROPOSED RESIDENTIAL PROJECT AREA"

THAT PORTION OF LAND SITUATED IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF CERTIFICATE OF COMPLIANCE NO. 2009-01, RECORDED MARCH 10, 2009 AS INST. NO. 2009000109534, OFFICIAL RECORDS OF SAID COUNTY AND A PORTION OF THE TIDE LAND LOCATION NO. 137 AS DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS INST. NO. 20070000052124, OFFICIAL RECORDS OF SAID COUNTY AND SHOWN ON RECORD OF SURVEY NO. 2002-1090 RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND A PORTION OF FIRST STREET AND MARINA DRIVE, PUBLIC ROADWAYS DESCRIBED AS FOLLOWS:

ALL OF PARCEL 1 OF SAID CERTIFICATE OF COMPLIANCE NO 2009-01

AND

PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE 2009-01

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL NORTH 55°46'12" EAST 101.79 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE NORTH 55°46'12" EAST 89.76 FEET TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 326.00 FEET, A RADIAL BEARING TO SAID CURVE BEARS NORTH 54°22'38" WEST; THENCE SOUTHWESTERLY 75.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°14'21"; THENCE NONTANGENT NORTH 68°01'12" WEST 40.73 FEET TO THE **TRUE POINT OF BEGINNING**.

TOGETHER WITH THAT PORTION OF THE TIDE LAND LOCATION NO. 137, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS DOCUMENT NO 2007-000052124 OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 2002-1090 RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF SAID COUNTY RECORDER, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE 2009-01; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL NORTH 55°46'12" EAST 101.79 FEET; THENCE NORTH 68°01'12" WEST 58.91 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS DOCUMENTED NO. 2007-000052124 OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ALSO SAID LINE BEING THE SOUTHEASTERLY LINE OF THE LOS ANGELES COUNTY FLOOD CONTROL CHANNEL, SAME BEING A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 2000.00 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 68°21'13" WEST; THENCE ALONG SAID NORTHWESTERLY DEED LINE THE FOLLOWING TWO COURSES:

1. NONTANGENT SOUTHWESTERLY 82.02 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°20'59";

2. THENCE NONTANGENT SOUTH 19°00'21" WEST 2.61 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 3 OF SAID CERTIFICATE OF COMPLIANCE 2009-01

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID PARCEL 3; THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY RIGHT-OF-WAY OF MARINA DRIVE AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE 2009-01, SOUTH 43°01'03" EAST, 34.37 FEET TO THE **TRUE POINT OF BEGINNING**, SAID POINT ALSO BEING THE BEGINNING OF TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 940.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND RIGHT-OF-WAY, THROUGH A CENTRAL ANGLE OF 3°51'23", AN ARC DISTANCE OF 63.27 FEET TO A NON-TANGENT POINT IN THE MOST EASTERLY LINE OF SAID PARCEL 3. A RADIAL BEARING TO SAID POINT BEARS NORTH 43°07'34" EAST. THENCE SOUTHEASTERLY ALONG SAID LINE, SOUTH 04°04'51" EAST, 3.39 FEET; THENCE NORTH 43°01'03" WEST, 65.85 FEET TO THE **TRUE POINT OF BEGINNING**.

AND

A PORTION OF PARCEL 6 OF SAID CERTIFICATE OF COMPLIANCE 2009-01 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 6; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL, SOUTH 25°22'45" WEST 49.91 FEET; SAID POINT HERINAFTER REFERRED TO AS POINT "A"; THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE, SAID LINE ALSO BEING NORTHWESTERLY RIGHT-OF-WAY OF FIRST STREET, SOUTH 32°17'25" WEST 60.20 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE NORTH 57°44'43" WEST 321.92 FEET; THENCE NORTH 74°58'38" WEST 88.88 FEET; THENCE NORTH 17°33'54" EAST 179.66 FEET; THENCE NORTH 15°01'22" WEST, 74.66 FEET TO THE NORTHERLY LINE OF SAID PARCEL 6; THENCE ALONG SAID NORTHERLY LINE SOUTH 63°58'48" EAST 188.53 FEET TO THE NORTHERLY CORNER OF SAID PARCEL 6, BEING THE BEGINNING OF A NONTANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 746.78 FEET, A RADIAL BEARING TO SAID CURVE BEARS SOUTH 68°46'16" WEST; THENCE SOUTHEASTERLY 274.54 FEET ALONG SAID CURVE AND ALONG THE NORTHEASTERLY LINE OF SAID PARCEL THROUGH A CENTRAL ANGLE OF 21°03'51"; THENCE CONTINUING ALONG SAID NORTHEASTERLY PARCEL LINE SOUTH 42°17'35" EAST 37.07 FEET TO THE **POINT OF BEGINNING**.

AND

THAT PORTION OF FIRST STREET, A PUBLIC ROADWAY, AS SHOWN ON FINAL ORDER OF CONDEMNATION, RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201 OF OFFICIAL RECORDS DESCRIBED AS FOLLOWS:

BEGINNING AT AFOREMENTIONED POINT "A"; THENCE NORTH 32°17'25" EAST, 379.60 FEET ALONG A LINE PARALLEL TO AND 30.00 FEET NORTHWESTERLY OF THE CENTERLINE OF FIRST STREET AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE 2009-01; THENCE NORTH 05°21'49" WEST, 30.54 FEET; THENCE NORTH 43°01'03" WEST, 40.15 FEET TO A POINT IN THE MOST EASTERLY LINE OF PARCEL 3 OF SAID CERTIFICATE OF COMPLIANCE NO. 2009-01; THENCE SOUTHEASTERLY ALONG SAID LINE, SOUTH 04°04'51" EAST, 29.50 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF

SAID PARCEL 3; THENCE SOUTHWESTERLY ALONG SAID LINE, SOUTH 25°22'45" WEST, 332.42 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 4.462 ACRES, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "C-1" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:

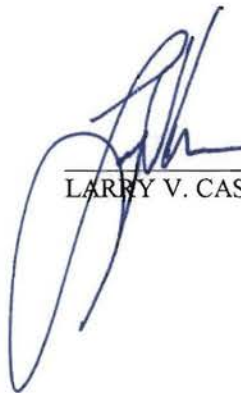
 7-18-12
LARRY V. CASE, L.S. No. 5411



EXHIBIT "C-1"

POR. TIDE LAND LOCATION NO. 137,
QUIT CLAIM DEED, REC. 01/25/07
INSTR. 2007-000052124

SAN GABRIEL RIVER

MARINA DRIVE

CENTRAL AVE

FIRST STREET

CENTRAL WAY

N. T. S.

PORTION OF PARCEL 6
CERTIFICATE OF
COMPLIANCE 2009-01,
REC. 03/10/09
INSTR. 2009000109534

POR. OF PARCEL 2
CERTIFICATE OF
COMPLIANCE 2009-01,
REC. 03/10/09
INSTR. 2009000109534

POR. OF PARCEL 3
CERTIFICATE OF
COMPLIANCE 2009-01,
REC. 03/10/09
INSTR. 2009000109534

PARCEL 1
CERTIFICATE OF
COMPLIANCE 2009-01,
REC. 03/10/09
INSTR. 2009000109534

FINAL ORDER OF CONDEMNATION
REC. 3/23/77, BK 12115, PG
201 O.R.



LARRY V. CASE L.S. 5411

PREPARED IN THE OFFICE OF:

Case Land Surveying, Inc.

Surveying Mapping GPS Services
614 Eckhoff St.
Orange, CA. 92868
Tel (714) 628-8948
Fax (714) 628-8905

CITY OF SEAL BEACH

PROPOSED RESIDENTIAL PROJECT AREA

POR. OF CERTIFICATE OF COMPLIANCE NO.
2009-01, RCRD 3/10/2009, INSTR.
2009000109534, & POR. TIDE LAND LOC. NO.
137, & POR. 1ST ST. & MARINA DR. COUNTY
OF ORANGE, STATE OF CALIFORNIA

SHEET
1
OF 1

JOB No.
11-SEA-791

EXHIBIT D

LEGAL DESCRIPTION OF OPEN SPACE

EXHIBIT "D"

LEGAL DESCRIPTION "OPEN SPACE"

THAT PORTION OF LAND SITUATED IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND BEING PARCELS 4, 5, AND A PORTION OF PARCEL 6 OF CERTIFICATE OF COMPLIANCE NO. 2009-01, RECORDED MARCH 10, 2009, AS INSTRUMENT NO. 2009000109534 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF SAID PARCEL 4, SAID POINT ALSO BEING AT THE SOUTHWESTERLY RIGHT OF WAY OF OCEAN AVENUE, 80.00' IN WIDTH AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE; THENCE ALONG THE BOUNDARY LINES OF SAID PARCEL 4 THE FOLLOWING COURSES, SOUTH 32° 17' 25" WEST, 273.93' TO AN ANGLE POINT;

THENCE NORTH 57° 53' 35" WEST, 55.32 FEET TO AN ANGLE POINT;

THENCE NORTH 21° 50' 35" WEST, 366.64 FEET TO AN ANGLE POINT;

THENCE CONTINUING ALONG SAID BOUNDARY LINE OF PARCEL 4 AND CONTINUING ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 5, NORTH 25° 31' 25" EAST, 78.63 FEET TO AN ANGLE POINT;

THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE OF PARCEL 5, NORTH 21° 26' 49" EAST, 80.01 FEET TO AN ANGLE POINT;

THENCE LEAVING SAID NORTHWESTERLY LINE PARCEL 5 AND ALONG THE BOUNDARY OF SAID PARCEL 6 THE FOLLOWING COURSES, NORTH 28° 13' 48" WEST, 45.71 FEET TO AN ANGLE POINT;

THENCE NORTH 07° 01' 12" EAST, 69.96 FEET TO AN ANGLE POINT;

THENCE NORTH 13° 01' 12" EAST, 547.80 FEET TO AN ANGLE POINT;

THENCE SOUTH 63° 58' 48" EAST, 93.14 FEET TO AN ANGLE POINT;

THENCE LEAVING SAID BOUNDARY OF PARCEL 6, SOUTH 15° 01' 22" WEST, 74.66 FEET TO AN ANGLE POINT;

THENCE SOUTH 17° 33' 54" WEST, 179.66 FEET TO AN ANGLE POINT;

THENCE SOUTH 74° 58' 38" EAST, 88.88 FEET TO AN ANGLE POINT;

THENCE SOUTH 57° 44' 43" EAST, 321.92 FEET TO THE SOUTHEASTERLY LINE OF SAID PARCEL 6 AND ALSO THE NORTHWESTERLY RIGHT OF WAY OF FIRST STREET, 60.00 FEET IN WIDTH, AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE;

THENCE ALONG SAID SOUTHEASTERLY LINE OF PARCEL 6 AND CONTINUING ALONG THE SOUTHEASTERLY LINE OF PARCEL 5, AND ALSO SAID NORTHWESTERLY RIGHT OF WAY OF FIRST STREET, SOUTH 32° 17' 25" WEST, 488.82 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL 5;

THENCE LEAVING SAID SOUTHEASTERLY LINE OF PARCEL 5, AND ALSO SAID NORTHWESTERLY RIGH OF WAY OF FIRST STREET, AND ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 4, AND ALSO THE SOUTHWESTERLY RIGHT OF WAY OF OCEAN AVENUE, 80.00 FEET IN WIDTH, AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE, SOUTH 54° 44' 12" EAST, 60.08 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 6.424 ACRES, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B-1" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:


 7-18-12
LARRY V. CASE, L.S. No. 5411



EXHIBIT "D-1"

N. T. S.

SAN GABRIEL RIVER

6.424 AC.

FIRST STREET

OCEAN AVE

CENTRAL WAY



LARRY V. CASE

L.S. 5411

CITY OF SEAL BEACH

CITY PARCEL

PARCELS 4, 5, AND POR. OF PARCEL 6
CERTIFICATE OF COMPLIANCE NO.
2009-01, RCRD 3/10/2009, INSTR.
2009000109534, COUNTY OF ORANGE,
STATE OF CALIFORNIA.

SHEET
1
OF 1

JOB No.
11-SEA-791

PREPARED IN THE OFFICE OF:

Case Land Surveying, Inc.

Surveying Mapping GPS Services
614 Eckhoff St.
Orange, CA. 92868
Tel (714) 628-8948
Fax (714) 628-8905

Exhibit #10

EXHIBIT E

**LEGAL DESCRIPTION OF CITY PROPERTY
AT MARINA DRIVE AND FIRST STREET**

EXHIBIT "E"

DESCRIPTION:

THOSE PORTIONS OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST IN THE RANCHO LOS ALAMITOS AS PER MAP FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14 PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, CALIFORNIA, OF LOTS 1, 2 AND 3, BLOCK 100, TRACT NO. 698 AS PER MAP RECORDED IN BOOK 31 PAGE 27 OF MISCELLANEOUS MAPS RECORDS OF SAID ORANGE COUNTY AND OF BLOCK "C", BAY CITY AS PER MAP RECORDED IN BOOK 3 PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, ALL IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF THE LAND DESCRIBED IN PART 3 OF EXHIBIT A-1 IN A DEED TO THE CITY OF LOS ANGELES, CALIFORNIA RECORDED IN BOOK 869 PAGE 1 OF OFFICIAL RECORDS; THENCE SOUTH 31° 17' 22" WEST 347.06 FEET ALONG THE SOUTHEAST BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES, THE SOUTHEAST BOUNDARY OF SAID LOTS 1, 2 AND 3 AND THE SOUTHEAST BOUNDARY OF SAID BLOCK "C"; THENCE NORTH 24° 22' 42" EAST 332.42 FEET; THENCE NORTH 05° 38' 24" WEST 33.18 FEET TO A POINT ON THE NORTHEAST BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 940.00 FEET A RADIAL FROM SAID POINT BEARS NORTH 42° 07' 31" EAST; THENCE ALONG SAID CURVE AND THE BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES SOUTHEASTERLY 60.68 FEET TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, IN BOOK 90 PAGE 23 TO 30 INCLUSIVE OF RECORD OF SURVEYS.

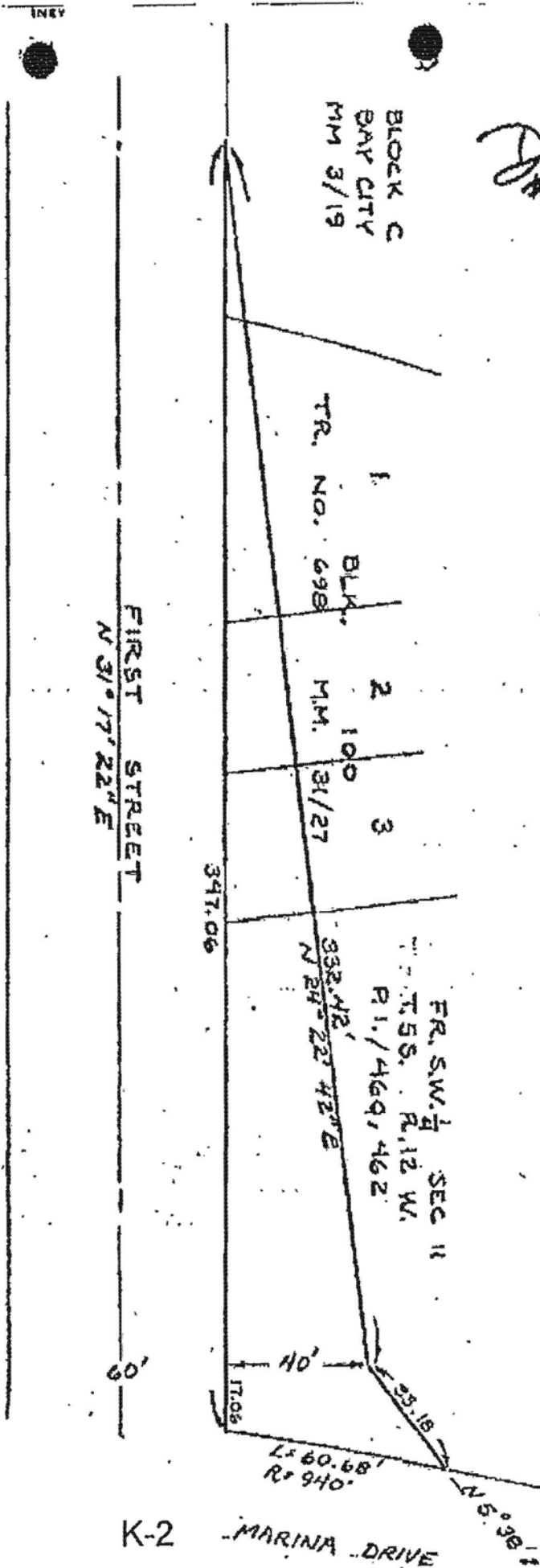
DESCRIPTION	667-12-10
APPROVED	APPROVED
DATE	March 8, 1977
APPROVED	APPROVED
LAWYER	LAWYER
DATE	March 8, 1977
BY	BY

K-1 -5-

DEED #224

MAP #2

SCALE 1"=40'



BASIS OF BEARING -
SURVEY OF SEAL BEACH
BOUNDARY AGREEMENT NO. 2

LADWP EXCESS PARCEL
PROPOSED TAKE FOR FIRST ST.
PHASE III EXTENSION

K-2

MARINA DRIVE

EXHIBIT F
DRIVEWAY PARCEL

**EXHIBIT F
DRIVEWAY PARCEL**

A STRIP OF LAND 40.00 FEET WIDE IN BLOCK B OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE SOUTHEASTERLY LINE OF WHICH STRIP OF LAND IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EXTENSION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE, NORTH 54°44'12" WEST, 13.95 FEET ALONG THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SHOWN ON RECORD OF SURVEY NO. 2002-1090 FILED AS INSTRUMENT NO. 2003000516244 IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, STATE OF CALIFORNIA, TO THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING AT THE INTERSECTION OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 500.00 FEET WITH A RADIAL TO SAID CURVE AT SAID POINT BEARING NORTH 58°15'19" WEST; THENCE, SOUTHWESTERLY, 106.15 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°09'49" TO A POINT OF COMPOUND CURVE WITH A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 200.00 FEET, A RADIAL THROUGH SAID POINT OF COMPOUND CURVE BEARING NORTH 46°05'30" WEST; THENCE, SOUTHWESTERLY, 22.35 FEET ALONG SAID 200.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 6°24'07" TO A POINT OF TANGENCY WITH A LINE BEARING SOUTH 50°18'37" WEST; THENCE, SOUTH 50°18'37" WEST ALONG SAID TANGENT LINE 42.77 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 90.00 FEET; THENCE, SOUTHWESTERLY, 17.98 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°26'52" TO A POINT OF REVERSE CURVE WITH A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 400.00 FEET, A RADIAL THROUGH SAID POINT OF REVERSE CURVE BEARING SOUTH 28°14'31" EAST; THENCE, SOUTHWESTERLY, 78.24 FEET ALONG SAID 400.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 11°12'25" TO THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY NO. 2002-1090.

THE NORTHWESTERLY LINE OF SAID 40.00-FOOT-WIDE STRIP SHALL BE LENGTHENED OR SHORTENED TO TERMINATE SOUTHWESTERLY IN THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY AND NORTHEASTERLY IN THE SOUTHWESTERLY LINE OF SAID OCEAN AVENUE.

CONTAINING 10,233 SQUARE FEET, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

DRIVEWAY EASEMENT

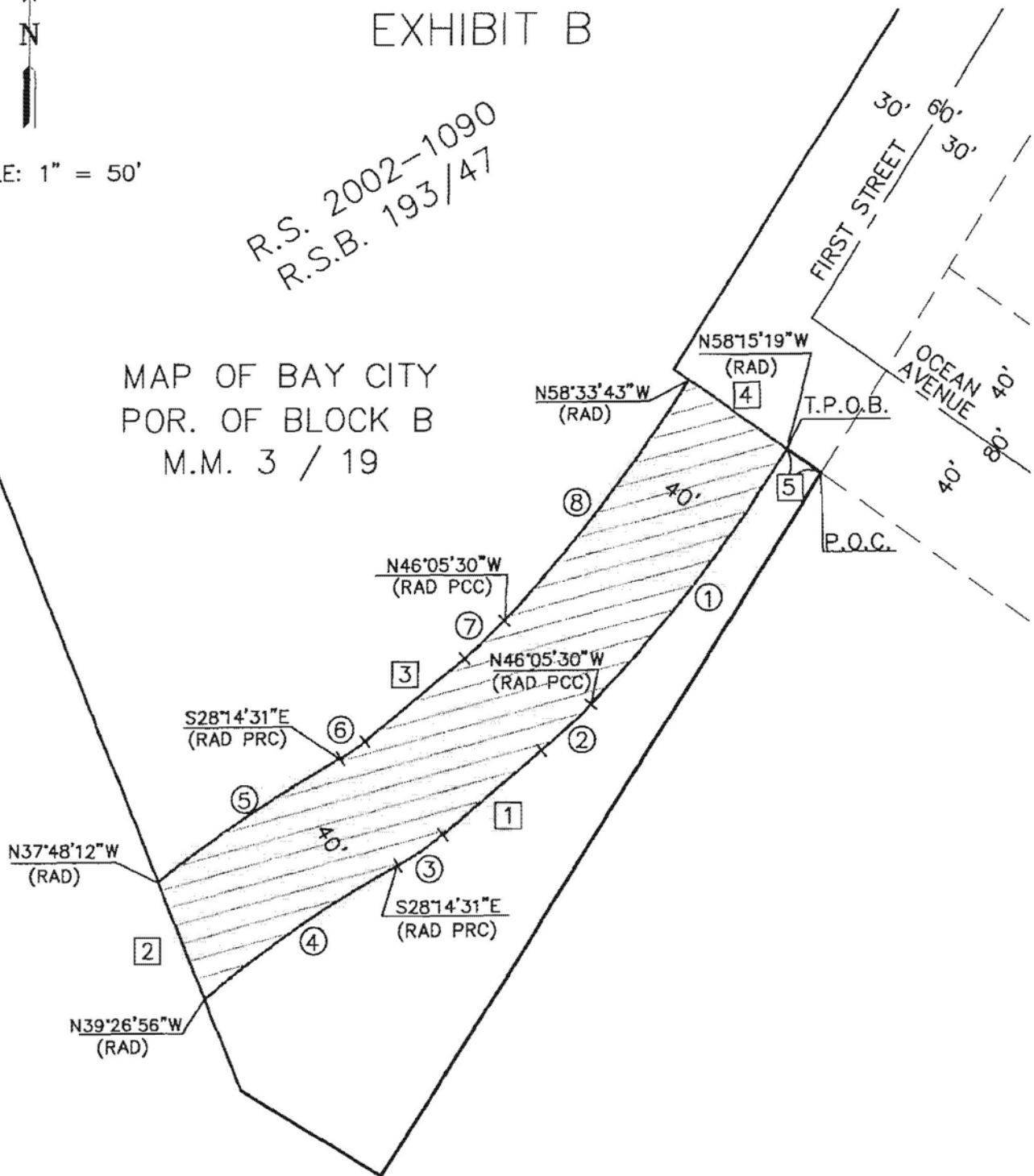
EXHIBIT B



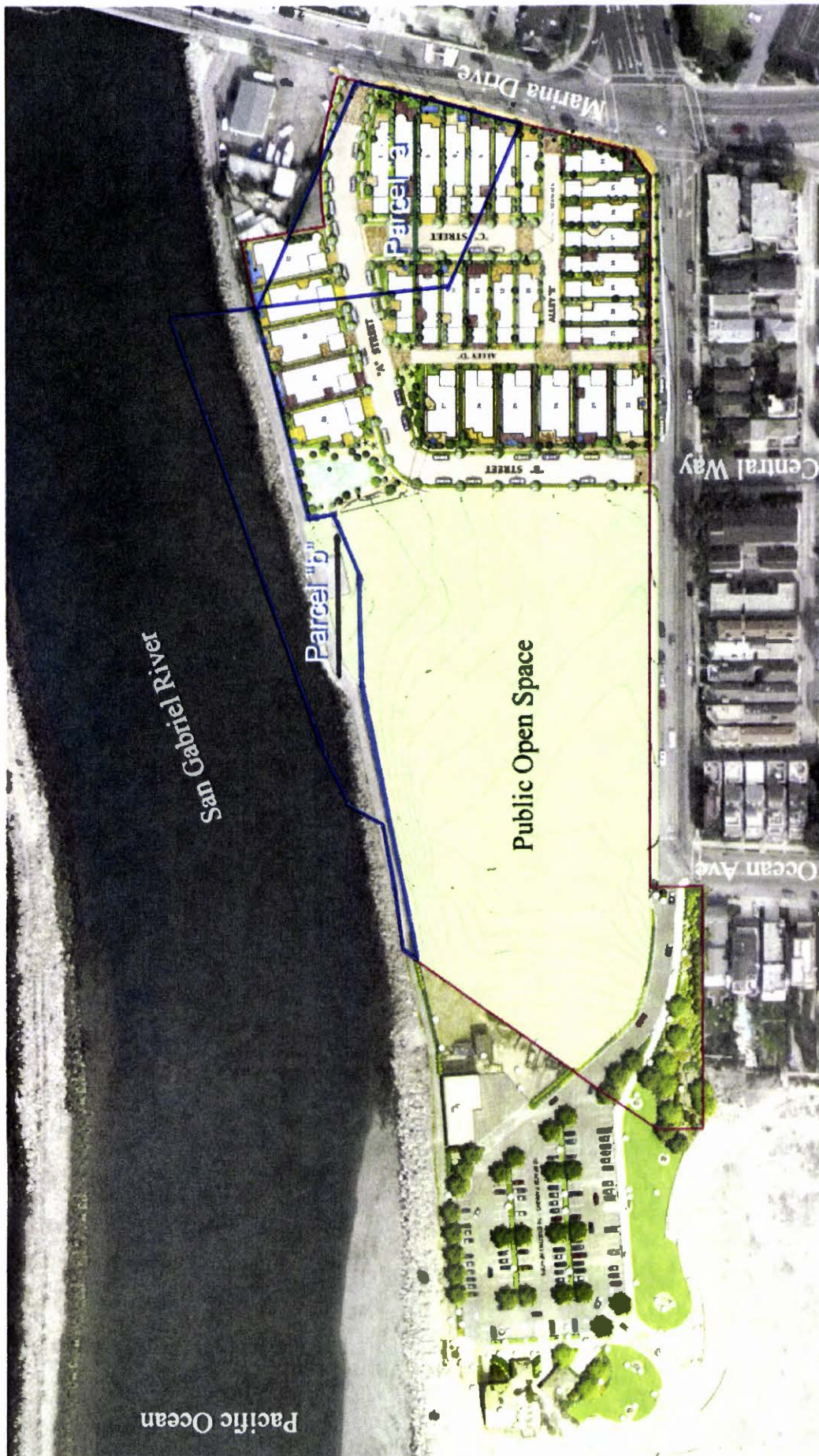
SCALE: 1" = 50'

R.S. 2002-1090
R.S.B. 193/47

MAP OF BAY CITY
POR. OF BLOCK B
M.M. 3 / 19



○ DELTA	RADIUS	LENGTH	□ BEARING	DISTANCE
1 12° 09' 49"	500.00'	106.15'	1 S50° 18' 37" W	42.77'
2 6° 24' 07"	200.00'	22.35'	2 N21° 50' 35" W	41.78'
3 11° 26' 52"	90.00'	17.98'	3 N50° 18' 37" E	42.77'
4 11° 12' 25"	400.00'	78.24'	4 S54° 44' 12" E	40.08'
5 9° 33' 41"	440.00'	73.43'	5 S54° 44' 12" E	13.95'
6 11° 26' 52"	50.00'	9.99'		
7 6° 24' 07"	160.00'	17.88'		
8 12° 28' 13"	460.00'	100.12'		



OCEAN PLACE SEAL BEACH CALIFORNIA

South Coast Region

MAY 6 2013

CALIFORNIA
COASTAL COMMISSION

Trust Termination
Parcel

(PARCEL "a")

New Public Trust[®]
Parcel (PARCEL "b")

Public Trust Easement Exchange Parcels

CITY OF SEAL BEACH

PEER REVIEW AND SITE SPECIFIC HOTEL FEASIBILITY EVALUATION



DWP COMMITTEE DRAFT – SEPTEMBER 2011



KOSMONT COMPANIES

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1.0 Background

The City of Seal Beach ("City") retained Kosmont Companies ("Kosmont") to complete a peer review of a hotel market analyses prepared by PKF Consulting ("PKF") in November of 2003 and November of 2009 evaluating the market for a hotel development on approximately 10.7 acres ("Property", "Site") located along the Pacific Ocean within the City. The City also requested that Kosmont evaluate the feasibility of developing a hotel within the requirements and constraints of a Specific Plan approved by the City in 1996 covering the property ("Specific Plan").

The 2003 and 2009 PKF studies were prepared at the request of Bay City Partners, LLC ("Developer") to evaluate the potential market and financial performance of a hotel development on the Site. The Developer stipulates that the results of PKF's analysis support its position that a hotel use on the site as prescribed by the terms and conditions of the Specific Plan, and potentially even without the restrictions imposed by the Specific Plan is financially infeasible. The Specific Plan calls for visitor serving uses on the northerly 30% of the Property, and open space on the southerly 70% of the Property. Permitted visitor serving uses specifically include hotel uses and uses ancillary to a hotel.

This analysis includes an evaluation of the PKF reports, the financial feasibility of the four hotel development scenarios discussed therein, as well as an evaluation of three additional development alternatives that would likely be permitted under the Specific Plan. The revenues projected to be generated by, and the cost of developing each of these scenarios and alternatives were evaluated to determine if they would generate sufficient net operating income to support the financing required for development as currently available in the marketplace. Based on the estimated cost of construction and current lending requirements it appears unlikely that the revenue generated by either the four PKF development scenarios or the three additional development alternatives would be sufficient to support traditional debt financing of the same.

As part of its analysis Kosmont also evaluated the potential to develop a smaller, 60 room boutique style hotel that could theoretically be substantially or completely financed through a condominium hotel capital structure. Under a condominium hotel structure individual owners hold title to individual rooms with rights to use their rooms a certain number of days a year. The remainder of the year the rooms are available to the general public during which a split of net profit accrues to the room owner. Kosmont's conclusion is that such a development may represent the most financially feasible alternative; however, such alternative would require support from private investors at a time when private investors may have difficulty accessing capital, and at a time when there may be limited interest in such properties. Additionally, such condominium hotel structure may not be permitted under the controlling 1996 Specific Plan. Kosmont's conclusion is that such an alternative may be financially feasible, but such financial feasibility is far from certain or reliable. A detailed discussion of Kosmont's analysis and conclusions follow.

2.0 Site Profile

The Property is located at the mouth of the San Gabriel River Channel along the Pacific Ocean in Seal Beach, California. The Site is comprised of three parcels (Orange County Assessor Parcel Numbers 043-141-02, 043-172-08, and 043-172-13) and was formerly home to a Los Angeles Department of Water and Power ("LADWP") power plant. Depending on the record source and the inclusion or exclusion of roadway right of ways, the three parcels total between approximately 10.1 and 10.7 acres of land. The Property is rectangular and flat and enjoys reasonably unobstructed views of the beach and ocean. The proximate area is almost completely built-out and surrounding uses are primarily residential and / or recreational in nature. A discussion of additional details about the Property location, access, suitability for hotel development, history, and a recent settlement agreement between the City and Developer specific to the Property follow.

2.1 Location & Proximate Uses

The Property is located within the City of Seal Beach, at the westernmost point of Orange County, along the northern border with Los Angeles County. The City itself is home to roughly 25,000 residents concentrated within roughly one-third of the approximately 11 square miles of land area within the City. The City has a small town atmosphere that is home to large swaths of low intensity industrial and government uses with a significant presence of open space and nature preserves. As previously introduced the Property fronts the San Gabriel River channel where the river meets the Pacific Ocean. The northwestern edge of the Site is fronted by a regional bike trail along the river channel that terminates at the beach.

Neighboring uses to the southwest and north of the Property are primarily residential. The Marina Community Park lies to the east, and marina and retail uses lie to the northwest and across the river channel to the west. Additional commercial, retail and restaurant centers are located within approximately one mile of the Property. Finally, the Site is approximately six miles southeast of downtown Long Beach which is a major business and commercial center in the region.

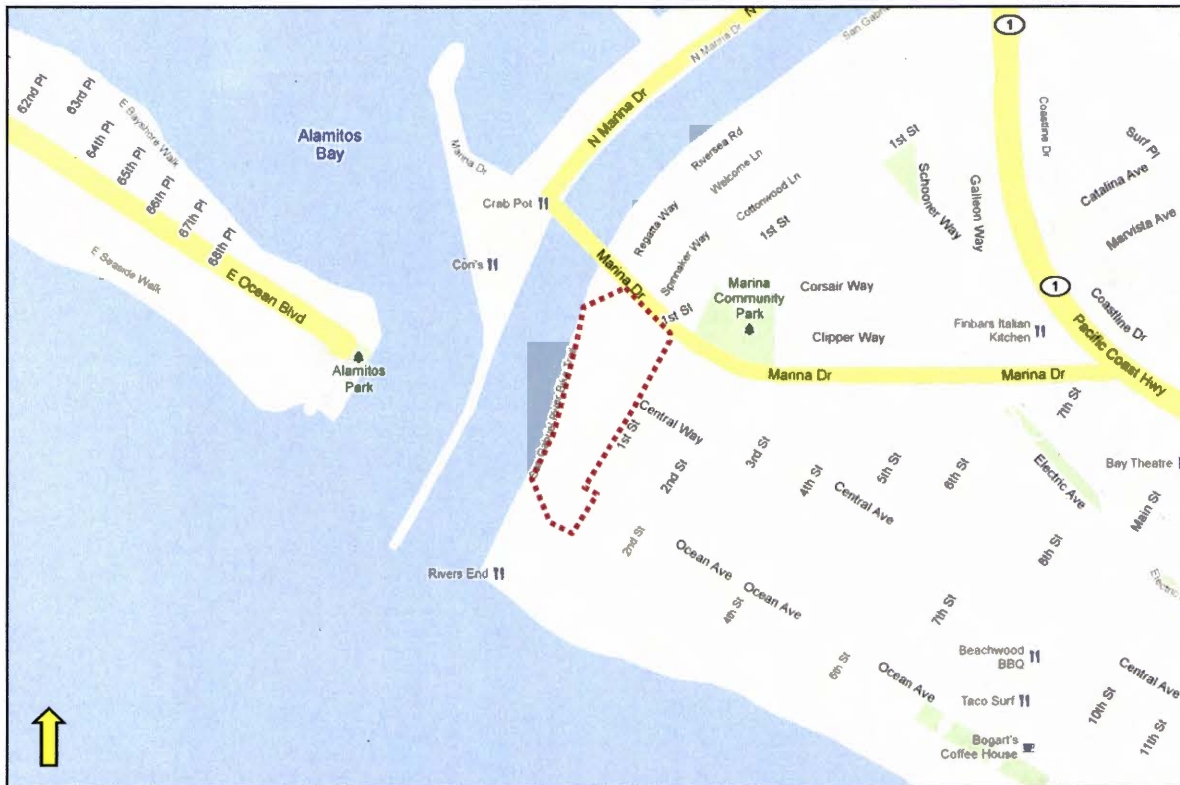
An isometric aerial image of the Property follows in Figure 1: Site Aerial, and a map of the surrounding neighborhood can be found in Figure 2: Neighborhood Map.

Note: all property boundaries are approximate depictions. The yellow arrow found in the lower right-hand corner of the maps generally points to north.

Figure 1: Site Aerial



Figure 2: Neighborhood Map



2.2 Access

Both regional and local access to the Site is commercially reasonable but not particularly convenient, nor is the Property particularly visible from primary traffic corridors. The Pacific Coast Highway runs within half of a mile of the Site, and the intersection of the regional serving I-605 and the I-405 are within three miles. Bus service is available within less than one-quarter of a mile of the Site, but overall, public transit is generally limited and requires a number of transfers to get to most major destinations. The closest light rail station with regional access is approximately five miles away. Airport service is notably good with commercial service from the Los Angeles International Airport (26 miles), the Long Beach Airport (7 miles), and the John Wayne Airport (20 miles).

A map of the greater area can be found in Figure 3: Area Map, and the Property's location within the Los Angeles basin is depicted in Figure 4: Regional Map.

Figure 3: Area Map

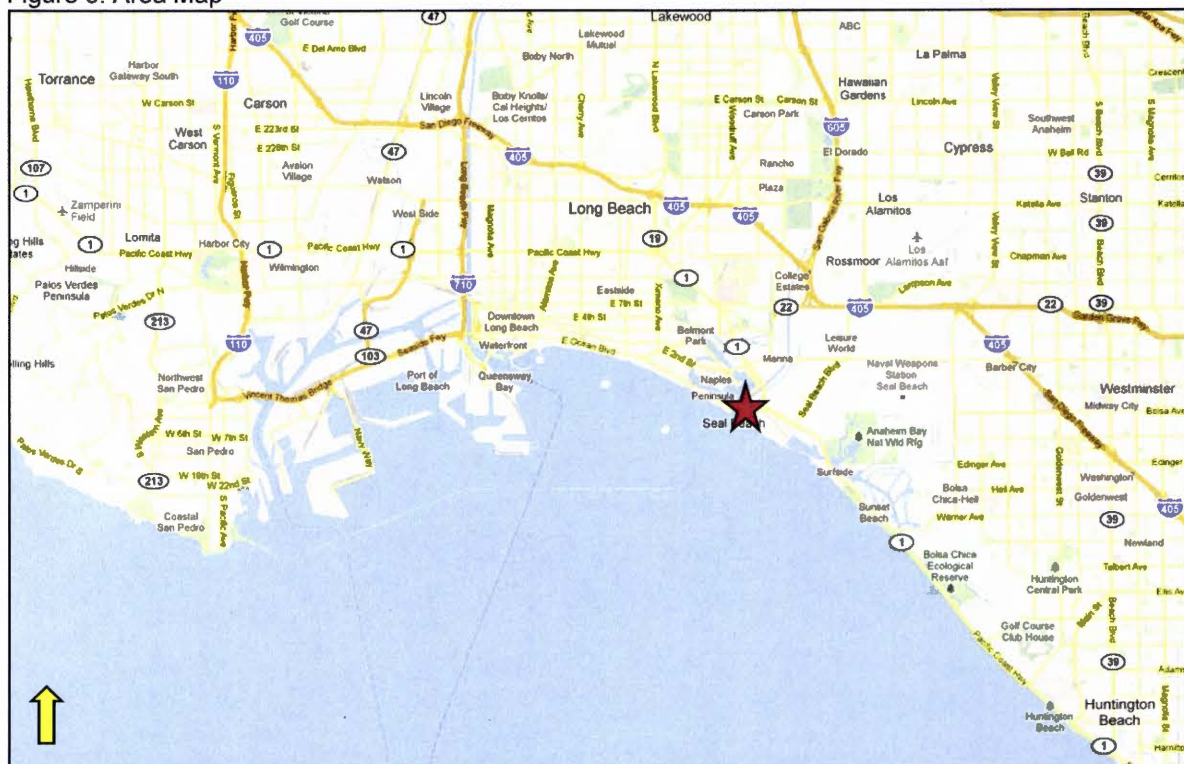
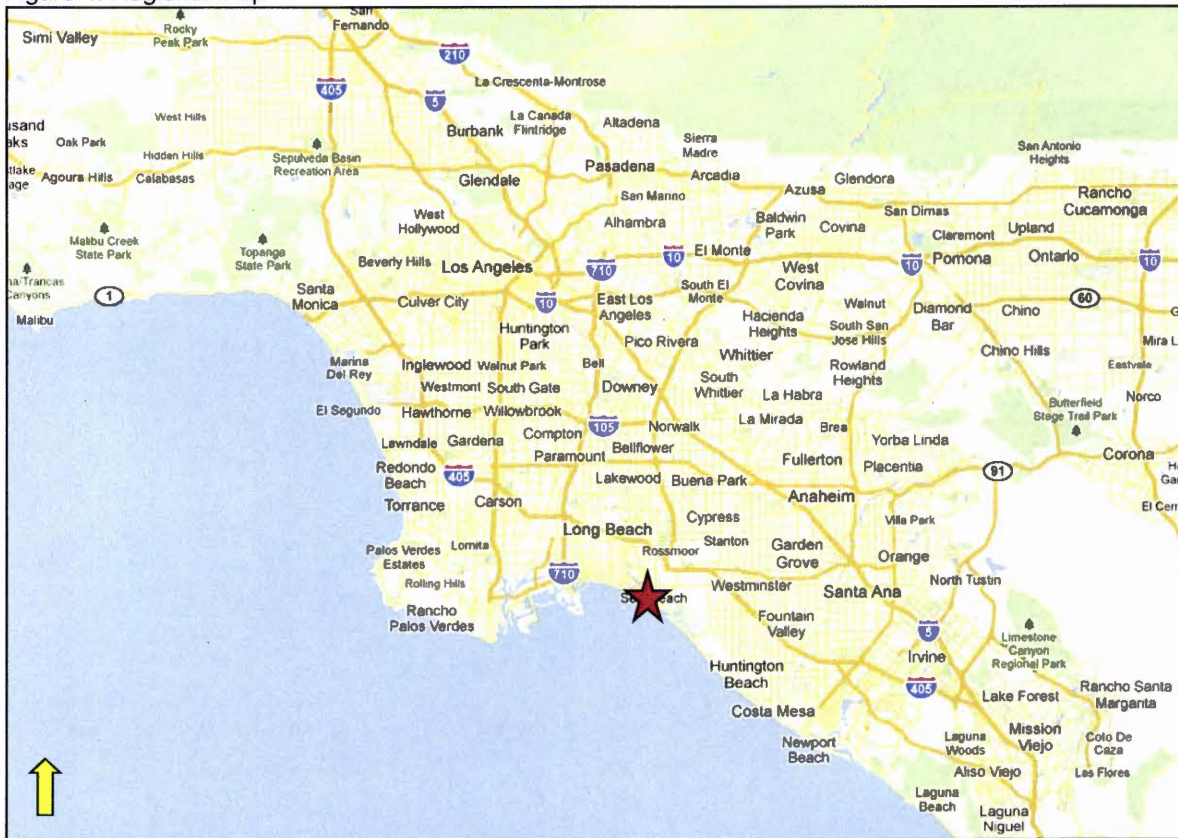


Figure 4: Regional Map



2.3 Site Suitability for Hotel Use

The characteristics that make for a commercially viable and competitive hotel location depend on the primary target market and customer base of a given hotel, but typically include some productive combination of the following:

- Transportation - Access via a variety of transportation means, and proximity to transportation corridors and nodes
- Demand Drivers – Proximity to business activity centers, conference facilities, tourist attractions, and other similar uses
- Area Amenities - Proximity and access to restaurants, retail, entertainment and recreational amenities

While overall Site access is reasonably good and there are a fair number of proximate visitor serving amenities and attractions, a hotel use on the Site would likely have to be somewhat of a destination in and of itself, with on-site amenities and attractors to buttress the ocean front appeal and drive hotel demand. In essence, the location is comparatively isolated, and a hotel on the Property would likely have to be sufficiently notable, and not reliant on incidental traffic to drive occupancy. As such, it is Kosmont's opinion that a smaller, boutique hotel with higher end amenities and a destination, resort like atmosphere would likely be the most successful on the

Property. Given the Site's access to the ocean this development profile is conceptually possible, yet current market conditions do not clearly support a choice by capital investors for this type of project, particularly because most hotel investment is flowing to existing product rather than ground-up projects such as this investment.

2.4 Ownership History

As discussed, the Site was previously owned by the LADWP and utilized for a power generation station. The power plant was demolished in the mid-1960's and the Property has remained vacant since. In 1999 the Developer entered into what was ultimately a four-year escrow to purchase the property from the LADWP for \$4,501,000. Pursuant to public records, the Developer closed escrow and acquired fee simple title to the Property on May 27, 2003.

2.5 Developer's Desired Use

The Developer has indicated that it desires to construct a residential development on the Site in-lieu of the hotel use required under the Specific Plan. To this end it has submitted a proposal for a 48-unit single family residential project on the northern portion of the Site, and the City has indicated a willingness to consider this proposal pursuant to the settlement agreement discussed below. This use would not be in conformance with the existing Specific Plan covering the Site, would require approval by the City, and given the proximity to the ocean, approval by the California Coastal Commission.

2.6 Settlement Agreement

In March of 2011 the Developer and City entered into a settlement agreement ("Settlement Agreement") related to various contentions between the two parties on the Property. Among other terms the Settlement Agreement stipulates that:

- The City will, in good faith, consider the Developer's proposed use of the Property for a 48-unit residential development.
- The City will pay the Developer \$900,000 for an irrevocable sewer easement across the eastern edge of the Property.
- Upon the granting of certain entitlements for the Developer's preferred development, the City will pay the Developer \$1,100,000 for fee title to portions of the Property to be retained as open space.

3.0 Specific Plan

Development of the Property is guided by a Specific Plan approved by the Seal Beach City Council in 1996 which explicitly details the approvable development envelope and development approval processes. For reference, the current Specific Plan was an update and successor to a Specific Plan approved by the Seal Beach City Council in 1982. Based on the approval date, the 1996 Specific Plan was in place before the Developer first entered escrow to purchase the property in 1999 and close of escrow in 2003.

The Specific Plan stipulates that development of the Property shall be limited to visitor-serving and open space uses. Visitor-serving uses are defined in the Specific Plan as a hotel and ancillary support uses including, but not limited to restaurants, retail uses, service uses, meeting / conference rooms and banquet facilities. Open space uses are defined as public parks, green belts, bike trails, nature trails, hiking trails, and any passive recreational uses normally located in parks or open spaces. Pursuant to the Specific Plan, visitor serving uses shall be limited to the northerly 30% of the Property (specifically limited to the area adjacent to Marina Drive and 1st Street) and the remaining 70% shall be for open space. As such, assuming total Site acreage of 10.7 acres, visitor serving uses are limited to approximately 3.2 acres and open space is required on the remaining 7.5 acres.

3.1 Allowable Visitor Serving Building Envelope

The 1996 Specific Plan includes a number of building parameters that establish the maximum building envelope of the visitor serving use. Pursuant to the Specific Plan, a hotel on the Site can have no more than 150 rooms or suites, building height is limited to 35 feet, and a 20 foot setback is required from both Marina Drive and 1st Street. Ancillary uses to a hotel such as restaurants, retail uses, and service uses may be provided to primarily serve hotel guests, but must also be open to the general public. Additionally, a banquet / meeting / conference room capable of accommodating up to 175 people is expressly approvable. The Specific plan allows for subterranean parking and prescribes a minimum number of parking spaces (surface or other) as follows:

- One space per room / suite
- One space per 100 square feet of gross restaurant floor area
- One space per 75 square feet of meeting room / conference room floor area
- One space per 300 square feet of retail use / service business

3.2 Maximum Development within Allowable Envelope

Pursuant to the various constraints provided by the Specific Plan the hotel must have 150 or fewer rooms, be less than 35 feet in height which is assumed to be three or fewer stories, sit on approximately 3.2 or fewer acres (139,828 square feet), and provide adequate parking pursuant

to the requirements listed above. As necessary, parking could theoretically be provided via a subterranean structure, but subterranean parking is likely a cost prohibitive solution. A discussion of development alternatives considered compliant with the Specific Plan is provided in Section 7.0.

4.0 Market Conditions

The hospitality industry is a uniquely dynamic industry that is highly responsive to economic fluctuations and consumer trends. The industry is risk prone, and can yield developers and investors healthy returns, or equity cashflow deficits. The major limiting factor to new hotel development is the ability to access financing. New developments are frequently reliant on a blend of layers of high yielding equity, lower yielding mezzanine debt, and lower cost, traditional debt. Of late, traditional debt and bond offerings have displayed an aversion to new hotel development in favor of existing hotels with ongoing operations and proven revenues. As a result, financing for new developments is often provided only to experienced operators and / or provided with comparatively higher interest rates and debt coverage cushions. Finally, hotels require somewhat frequent and significant reinvestment and improvements to maintain even stable patronage, and this can lead to unacceptable long-term returns unless initial fundamentals are strong. A discussion of key industry terms, and the overall hotel market follows.

4.1 Fundamental Lodging Industry Terms

The hotel and lodging industry utilizes several metrics and terms to describe and evaluate hotel performance that are also utilized in this report. The most pertinent metrics and terms follow.

ADR – The Average Daily Rate or “ADR” represents the average income of an occupied, revenue generating room over a given time period, expressed on a per room basis. ADR is calculated by dividing total hotel room revenue by the number of occupied, revenue generating rooms, divided by the number of days being evaluated. For example, a hotel grossing \$5,000,000 in a year with 100 available rooms would have an ADR of \$137 ($\$5,000,000 / 100 / 365$) for the year. For reference, the calculation of ADR excludes staff rooms, however some operators include complimentary room use, lowering the ADR.

Occupancy Rate – The occupancy rate is the percentage of rooms that are generating revenue in any given period. The occupancy rate is the inverse of the vacancy rate, and is calculated by dividing the number of rooms generating revenue by total number of rooms available to generate revenue. For example a 100 room hotel that, on average, has 75 occupied rooms, would have an occupancy rate of 75%.

RevPAR – The Revenue Per Available Room, or “RevPAR”, is the average revenue generated by all available rooms expressed on a per room basis. RevPAR is calculated by multiplying the ADR by the occupancy rate. Continuing the example, a hotel with an ADR of \$137 and a 75% occupancy rate would have a RevPAR of \$103 ($\$137 \times .75$).

Key - Key is an industry standard term for room. A 100 room hotel would have 100 “keys”. This term is often used in describing the cost of hotel as in “the hotel was purchased for \$200,000 a key.”

Flag – The term “flag” refers to the branding of a particular hotel by a major chain. Each brand (i.e. Hilton, Marriot, Best Western) has specific requirements including minimum room counts, design standards, and required on-site amenities. A hotel flag can help provide access to reservation systems, management expertise, and other valuable resources, but requires an operator to pay a franchise fee to the brand.

DSCR – The term Debt Service Coverage Ratio or “DSCR” is not unique to the industry, but worth defining. The DSCR is the ratio of net operating income to debt service. As an example, a lender may only provide financing if the DSCR is at or above certain levels. For new hotel developments the required DSCR is often above 1.35, meaning that for every dollar of annual debt service a hotel must have \$1.35 or more of net operating income.

LTV – The Loan-to-Value or “LTV” is the amount a lender may be willing to lend against the total value of a hotel. In recent years the required LTV has decreased meaning that lenders will provide a reduced loan amount against the value of a particular project. Currently lenders will typically provide loans for 60% to 70% of the value of a hotel. Thus for each \$1,000,000 in hotel value a lender may only provide \$600,000 to \$700,000 in financing with the balance of the required financing to be comprised of equity.

Capitalization Rate – The capitalization rate or “Cap Rate” helps to determine the theoretical value of a development or the return of an investment at a given price, and is equal to the annual cashflow of an investment before financing divided by the cost of the investment. For example a hotel generating \$1,000,000 in annual cashflow that has a value of \$10,000,000 would have a capitalization rate of 10% ($\$1,000,000 / \$10,000,000$).

Condominium Hotel – A condominium hotel or condo hotel / condotel is both a hotel ownership and financing structure. In recent years condominium hotels have emerged as an alternative financing vehicle for particularly attractive or desirable hotel operations. Through a condominium hotel individuals can purchase ownership of a hotel room and through such ownership have a right to occupy the room for a given number of days in any year. The remaining days during the year that the owner does not occupy the room, it is managed by the hotel and occupied by hotel guests. The owner and hotel typically split revenues from room occupancy less any hotel management costs. This structure is different from a time share or fractional ownership structure in that the room is not occupied by multiple owners throughout the year, but rather one owner for up to a small portion of the year and the remainder of the year it is utilized by paying hotel guests.

4.2 General Industry Performance

In recent years the market has experienced an overall decrease in revenues and operating performance. However, this decrease has been met with reductions in financing rates, required equity yields, and capitalization rates. This has served to help preserve hotel values, yet

financing terms remain more restrictive than in years past, and many hotels continue to struggle to realize growth in average room rates and occupancy.

RevPAR

One of the most important figures in evaluating the health of the lodging markets is RevPAR. RevPAR trends can vary within markets and submarkets, however most markets have experienced a fairly dramatic reduction since 2008. Between the late 1980's and 2008 the Los Angeles County market as a whole grew at an average compound annual growth rate ("CAGR") of slightly higher than 4%. Notable fluctuations during this period include fairly significant reductions in the early 1990's and double digit declines following the events on September 11, 2001. In both cases the industry saw sizable increases in RevPAR two to four years subsequent. Since 2008 the regional industry has struggled to maintain growth, and average RevPAR remains well below 2008 levels. Current economic conditions and uncertainty may be indicative of suppressed room rates for several years to come; however, near term recovery in this volatile industry would not be unprecedented.

Capitalization Rates

Capitalization rates tend to follow interest rates and required equity yields, with some influence from perceived minimum per key valuations. For the most part capitalization rates based on existing, historic revenues have been fairly low, due to low interest rates and anticipated revenue growth. The decrease in revenues has been met by decreased capitalization rates, and resulted in some preservation of hotel values as a decrease in capitalization rates results in higher hotel values. Decreases in capitalization rates also suggest some continued appetite for hotel investments.

The only use of a capitalization rate in the analyses herein is in the estimation of hotel value 10 years from initial operations, as part of an evaluation of potential Developer return. For this evaluation a capitalization rate of 8% was utilized as it is considered more indicative of historic long term averages of roughly 10%, greater than the average over the last 10 years would suggest. An 8% rate may be conservatively low, to the benefit of the developer, and promote a conclusion of financial feasibility when a higher rate that would reduce financial feasibility may be justifiable. Table 1: Capitalization Rates 2000-10 showing the approximate hotel capitalization rates over the last 10 years follows.

Table 1: Capitalization Rates 2000-10

	Cap Rate Based on Historic NOI
2000	9.2%
2001	8.2%
2002	8.9%
2003	7.9%
2004	5.8%
2005	5.2%
2006	5.5%
2007	6.0%
2008	6.7%
2009	8.0%
2010	4.6%

Average 6.9%

4.3 Hotel Financing

New “ground up” hotel development is often considered a highly speculative venture suitable only for experienced, and / or well capitalized and risk tolerant developers. In most ground up hotel development scenarios equity capital is paired with a loan or debt to finance construction costs and the completed and operational hotel. The ratio of debt and equity required can vary depending on the specific site location, proven proximate market demand, the flag, and other similar factors. Additionally, the interest rate, and required return on equity are typically based on the same factors, as well as average interest rates and yields for investment alternatives in the financial markets. Average interest rates (pertaining mostly to stabilized operations) and equity yields from 2000 to 2010 are provided below in Table 2: Hotel Mortgage Rates and Equity Yields 2000-10.

Table 2: Hotel Mortgage Rates and Equity Yields 2000-10

Hotel Mortgage		
	Interest Rate	Equity Yield
2000	8.8%	21.0%
2001	7.8%	22.2%
2002	7.0%	21.0%
2003	5.9%	21.4%
2004	6.1%	19.7%
2005	5.6%	19.7%
2006	6.4%	18.9%
2007	5.9%	21.3%
2008	6.6%	19.3%
2009	8.2%	16.9%
2010	6.2%	15.9%

Average 6.8% 19.8%

4.4 Required Equity Returns

Historically equity investments in hotel developments have yielded high returns which are commensurate with the level of risk involved in the product type. As shown above in Table 2: Hotel Mortgage Rates and Equity Yields 2000-10, over the last 10 years required equity returns have ranged from approximately 15.9% to 22.2%. For new developments, proforma returns of 20% or greater are typically required to induce new hotel development. For the purposes of the financial feasibility analyses herein a rate exceeding 20% in the most conservative of assumptions (i.e. lowest interest rates, and most developer friendly) was required over a ten year horizon to be considered even potentially financially feasible.

4.5 Site Specific Market Demand

The customer base of a viable hotel on the site would likely be comprised primarily of a blend of leisure and business travel. The leisure component would likely include patrons from inland and other regions interested in vacationing at the beach, as well as patrons interested in staying close to family and friends in proximate communities. Business patronage would likely be driven by an interest in being near Long Beach, Huntington Beach, and other proximate commercial centers. Given the notable competition in the marketplace a viable hotel on the site would likely need to differentiate itself on a factor other than price, and appropriately not target the most price conscious consumer in either the leisure or business segments. To the extent conference facilities are available on-site, group patron could be encouraged, however there are many alternatives for such users in the marketplace.

4.6 Site Specific Competition

A hotel on the Site would likely compete with a variety of existing hotels located from Long Beach to the north to Huntington Beach to the south. Within this general area there is a wide variety of alternative offerings ranging from two to five stars, in locations on the water, close to the water / beach, and well inland, and operated under a number of well known and respected flags. The occupancy and ADR performance of the existing competition suggests that a new entrant to the marketplace would likely face less than optimal performance, unless the hotel's offering was unique such as can be the case with a boutique hotel. As such, market competition is strong, and any hotel on the Site would likely need to be notably attractive or unique in order to establish a viable position within the marketplace.

4.7 Summary of Market Condition

The financial markets currently exhibit a general aversion to lending for new hotel developments. However, some new developments have been able to secure loans to support construction and at a minimum, seven to 10 years of post construction financing. The ability to secure financing is critical to new hotel developments as developers can rarely justify committing or access enough capital to fully support construction costs, and without such financing, new hotel developments are financially infeasible. Recent financing terms evaluated in the marketplace include 7-10% interest rates, initial DSCRs of 1.35 – 1.40, and LTVs of 60-70%. For reference, a lower interest rate, lower DSCR, and higher LTV would be favorable for a developer (unless the required rate of return on equity is less than the interest rate). The best of these terms would be provided to experienced and / or well capitalized developers in proven markets.

For the purposes of the financial feasibility analyses provided herein, interest rates ranging from 7-10%, a DSCR of 1.35 and a 70% LTV were utilized. The use of these assumptions is considered conservative in that if the evaluated scenarios and alternatives were not financially feasible under the most favorable assumptions, then the scenarios or alternatives are likely financially infeasible.

5.0 PKF Scenarios

Subsequent to its purchase of the Property in 2003 the Developer retained PKF to prepare a market feasibility analysis. This initial 2003 report was updated by PKF in 2009 and included an evaluation of four development scenarios. A description of the included scenarios, and an evaluation of the fundamentals of the 2009 PKF report follow.

5.1 PKF Evaluated Alternatives – 2009 Report

In the 2009 PKF Report four potential development scenarios were evaluated, with estimated operating performance provided for each of the four. The alternatives are as follows:

PKF Scenario One: A 150 room, five to six-story hotel with surface parking and standard amenities found at a commensurate sized hotel. This scenario as proposed would not comply with the Specific Plan given the proposed building height.

PKF Scenario Two: A 75 room hotel superior in quality to PKF Scenario One. PKF Scenario Two would include standard amenities as well as a spa facility. This scenario as proposed would not comply with the Specific Plan given the proposed building location, but could conceivably be relocated to comply with the Specific Plan.

PKF Scenario Three: This scenario would be similar in profile to PKF Scenario Two however, would include an additional 25 rooms for a total of 100 rooms. This scenario as proposed would not comply with the Specific Plan given the proposed building location, but could conceivably be relocated to comply.

PKF Scenario Four: At the request of the Developer PKF evaluated this fourth scenario comprised of a 50 room hotel. This scenario would be similar in quality as PKF Scenario Two and PKF Scenario Three and similarly include a spa facility. It is presumed that this scenario could be developed in conformance with the Specific Plan.

As part of the evaluation of the PKF analysis, the primary tables used to calculate and project operating performance were recreated. These recreated tables allow for verification of calculations as well as modeling exercises to evaluate financial performance and sensitivity to differing RevPAR and other assumptions. The recreated spreadsheets are provided as Attachment A through D.

Note: The figures attached do not use the same rounding methodology as found in the PKF report and as such while the figures are usually extremely close, the two may not match perfectly.

5.2 Assumed RevPAR

As part of its analysis PKF included assumed ADRs and occupancy rates which are multiplied to estimate RevPARs for each of the PKF Scenarios. The provided RevPAR assumptions are based on existing operations from comparable hotels identified by PKF. RevPAR assumptions were provided for each of the PKF scenarios as shown in Table 3: PKF Assumed RevPAR.

Table 3: PKF Assumed RevPAR

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
PKF Scenario One 150 Rooms										
Projected Occupancy	58.0%	64.0%	67.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%
Projected ADR	167.00	172.00	177.00	182.00	188.00	194.00	199.00	205.00	211.00	218.00
Projected RevPAR	96.86	110.08	118.59	131.04	135.36	139.68	143.28	147.60	151.92	156.96
PKF Scenario Two 75 Rooms										
Projected Occupancy	60.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Projected ADR	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
Projected RevPAR	114.60	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00
PKF Scenario Three 100 Rooms										
Projected Occupancy	59.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Projected ADR	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
Projected RevPAR	112.69	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00
PKF Scenario Four 50 Rooms										
Projected Occupancy	60.0%	65.0%	70.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
Projected ADR	194.00	199.00	205.00	212.00	218.00	224.00	231.00	238.00	245.00	253.00
Projected RevPAR	116.40	129.35	143.50	169.60	174.40	179.20	184.80	190.40	196.00	202.40

(Source: 2009 PKF Study)

Based on Kosmont's independent analysis of market comparables, the projected RevPAR and underlying occupancy and projected ADRs are reasonable given the development profile of each of the PKF scenarios evaluated.

5.3 Ratio Analysis

The PKF analysis is reliant upon ratios of revenues and operational expenses of various standard hotel revenue and cost centers. The ratios provided in the PKF analysis of each of the scenarios are based upon actual operating performance of existing operations of the market comparables. In Table 4: PKF Projected vs. Expected Operating Ratios which follows, the underlying ratios used to project the operating performance of each of the scenarios are provided. Additionally, the range of anticipated ratios based on the metrics of market comparables independently evaluated, are provided to the right of the ratios for each scenario. Given the slightly different profile of each of the four scenarios evaluated by PKF, the ratios for each scenario are unique. However, due to each of the scenarios having somewhat similar amenities, the ratios are relatively close overall. The primary exception to this is the higher ratio of revenue in "Other Operated Departments" in PKF Scenarios Two through Four due to the inclusion of a spa amenity.

Table 4: PKF Projected vs. Expected Operating Ratios

	Scenario One	Scenario Two	Scenario Three	Scenario Four	Expected Range	
Rooms	150	75	100	50		
Revenue						
Room Revenue	64.6%	61.3%	62.5%	54.6%	60.0%	70.0%
Food & Beverage	26.9%	26.1%	24.6%	34.3%	25.0%	30.0%
Other Operated Departments	6.7%	11.2%	11.4%	9.8%	2.0%	10.0%
Rentals & Other Income	1.8%	1.5%	1.5%	1.3%	1.5%	3.0%
Total Revenue	100.0%	100.0%	100.0%	100.0%		
Departmental Expense						
Rooms	24.3%	23.6%	23.6%	23.4%	20.0%	25.0%
Food & Beverage	74.0%	76.0%	76.0%	76.0%	73.0%	78.0%
Other Operated Departments	70.0%	70.0%	70.0%	70.0%	25.0%	80.0%
Total Departmental Expense	40.3%	42.1%	41.4%	45.7%		
Departmental Profit	59.7%	57.9%	58.6%	54.3%		
Undistributed Operating Expenses						
Administrative & General	10.3%	10.3%	9.5%	9.1%	7.5%	10.5%
Marketing	5.1%	5.5%	5.1%	4.8%	4.0%	5.0%
Franchise Fee	0.0%	0.0%	0.0%	0.0%	0.0%	7.0%
Prop. Operations & Maintenance	5.1%	5.1%	5.1%	4.5%	3.5%	5.0%
Utilities	2.4%	2.5%	2.5%	2.2%	3.0%	4.5%
Total Undistributed Operating Expenses	22.9%	23.4%	22.2%	20.6%	18.0%	32.0%
Gross Operating Profit	36.8%	34.5%	36.4%	33.7%		
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses						
Property Taxes	2.8%	2.5%	2.7%	2.3%	1.5%	2.0%
Insurance	1.3%	1.4%	1.4%	1.2%	1.0%	2.0%
Total Fixed Expenses	4.1%	3.9%	4.1%	3.5%	2.5%	4.0%
Net Operating Income Before Reserve	29.8%	27.6%	29.3%	27.2%		
Furniture, Fixture & Equipment Reserve	4.0%	4.0%	4.0%	4.0%	4.0%	5.0%
Net Operating Income After Reserve	25.8%	23.6%	25.3%	23.2%	22.0%	30.0%

(Source: 2009 PKF Study; Expected Range – Kosmont Companies)

Overall the projected ratios of each of the PKF Scenarios fall within the range of the expected ratios with few exceptions. Additionally, the few exceptions are close to the expected range, are not noteworthy, and do not significantly skew the results of the operational performance analysis.

5.4 PKF Analysis Summary

In summary, Kosmont finds the PKF analysis to be both reasonable and reliable. An independent evaluation of the marketplace and market comparables suggests that the performance assumptions utilized for each of the PKF's scenarios is supportable, and can be relied upon for an evaluation of the resulting financial feasibility.

6.0 Financial Feasibility of PKF Scenarios

The next step in evaluating the 2009 PKF report was the analysis of the financial feasibility of the four development scenarios. A development scenario was considered financially feasible if the development could support the development and financing costs, meet the performance metrics likely required to secure financing, and provide the Developer with a reasonable return commensurate with the risk of developing a hotel. This portion of the analysis includes an evaluation of development costs including the cost of land, a review of the net operating income available to support the required debt payments, and the potential developer return under a range of assumptions.

6.1 Cost of Land

Based on publicly available information, the Developer purchased the underlying Property in 2003 for \$4,501,000. Should the Developer receive payments pursuant to the existing Settlement Agreement, the Developer would receive a total of \$2,000,000. To evaluate the Developer's effective land cost it was assumed that settlement payments would be received eight years after initial acquisition expenses, accrue to the Developer, be available to offset the incurred land costs, and that an effective land value of \$4,500,000 could be recaptured upon development of the Site which was assumed to occur in 2014, roughly 10 years after acquisition. Thus, based on an initial outlay (assumed to be 100% equity) of \$4,501,000, receipt of \$2,000,000 eight years after acquisition, and in essence a sale two years later, or 10 years after acquisition for \$4,500,000, the effective return on equity would be roughly 4%. A 4% return is less than desirable to encourage development activity, but is superior to the losses many developers and land speculators have realized of late. Additionally, the Developer would accrue any gains from the ultimate development of the Site. As such, despite the required capital outlay and long holding period the Developer will likely fair reasonably well, assuming a \$4,500,000 land value upon development, and additional financial returns from the development project.

For the analyses herein a land value of \$4,500,000 in 2014 was assumed. This value was utilized as it reflects the actual cost the Developer paid for the Property, and while the property was purchased more than eight years ago, land values have not appreciated much (if they have even held value since this time period due to a significant reduction between roughly 2007 and 2010 after a period of growth ending in 2007). For reference, assuming 3.2 developable acres of land, a total price of \$4,500,000 is equal to value of \$1.4 million per acre, or approximately \$32 per square foot.

6.2 Development Costs

In order to estimate the amount of financing required to support the development and operation of each of the PKF scenarios, a range of development costs per key was estimated for each. These per key costs are unique to each development scenario, and reflect construction costs

seen in the market of late. A summary of the assumed per key construction costs follows in Table 5: PKF Scenario Development Costs. These development costs are subsequently used to estimate the total required financing and derive the annual debt service in the next part of the financial feasibility analysis.

Table 5: PKF Scenario Development Costs

	<u>PKF Scenario 1</u>		<u>PKF Scenario 2</u>		<u>PKF Scenario 3</u>		<u>PKF Scenario 4</u>	
Quality (Stars)	3		4		4		4+	
Rooms	150		75		100		50	
Cost/Room	175,000	200,000	200,000	250,000	200,000	225,000	225,000	275,000
Total Construction Cost	26,250,000	30,000,000	15,000,000	18,750,000	20,000,000	22,500,000	11,250,000	13,750,000
Cost of Land	4,500,000		4,500,000		4,500,000		4,500,000	
Total Development Cost	30,750,000	34,500,000	19,500,000	23,250,000	24,500,000	27,000,000	15,750,000	18,250,000

(Source: Kosmont Companies)

6.3 Assumed Financing Costs

A previously introduced, interest rates ranging from 7-10%, a DSCR of 1.35 and a 70% LTV were utilized in evaluating the annual debt service required to support the development of each of the PKF scenarios. These assumptions were applied to the estimated development costs above, and evaluated in relation to the projected operating performance of each of the PKF Scenarios. Additionally, the Developer's potential internal rate of return ("IRR") assuming financing could be secured was also evaluated. Tables showing the results for each of the four PKF scenarios follow in Table 6: Financial Feasibility - PKF Scenario One and Two and Table 7: Financial Feasibility - PKF Scenario Three and Four.

In each of the evaluations, both initial DSCR is below 1.35 (highlighted in red), and Developer IRR over a ten year period is less than 20%. As a result of these two critical metrics, the PKF scenarios appear financially infeasible as it is unlikely such development profiles could attract financing or produce enough cashflow to support the developer interest or investment required for construction and ongoing operations. These metrics suggest that the Developer would be unable to obtain financing with even the more aggressive and risk tolerant of lenders, and the proforma developer return would not be sufficient to warrant the risk of developing a hotel on the Site under the PKF Scenarios.

For reference, of the four PKF scenarios the two closest to financial feasibility are PKF Scenario One and Three, the 150 room and 100 room development scenarios, however, these scenarios as proposed do not comply with the 1996 Specific Plan. This scenario is estimated to realize the required DSCR in year three of operations and yield the Developer a return of approximately 16% over a 10 year horizon. Additionally RevPAR would have to be roughly 10% higher than projected for PKF Scenarios One and Three for Developer returns to exceed 20% at even the lowest interest rate of 7%, and RevPAR would have to be roughly 55% higher for the DSCRs to be at acceptable levels in the initial years. As such even these most optimistic of scenarios appear financially infeasible as, again, it is unlikely that it would produce enough cashflow to attract financing or support the developer interest or investment required to construct and operate the project.

Table 6: Financial Feasibility - PKF Scenario One and Two

PKF Scenario One												
150 Rooms	1	2	3	4	5	6	7	8	9	10		
	2014	2016	2016	2017	2018	2019	2020	2021	2022	2023		
Projected Occupancy	58.0%	64.0%	67.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%		
Projected ADR	167.00	172.00	177.00	182.00	188.00	194.00	199.00	205.00	211.00	218.00		
Projected RevPAR	96.86	110.08	118.59	131.04	135.36	139.68	143.28	147.60	151.92	156.96		
Projected NOI (After Reserve)	1,448,589	1,988,380	2,258,335	2,850,154	2,948,255	3,046,229	3,126,658	3,224,368	3,321,943	3,436,795		
Estimated Development Cost (Low)*												
Estimated Development Cost (High)*												
Estimated Financing Cost (Low)	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476		
DSCR	0.84	1.16	1.31	1.66	1.72	1.77	1.82	1.88	1.93	2.00		
Developer Cashflow	(9,494,867)	269,904	539,859	1,131,677	1,229,779	1,327,753	1,408,181	1,505,892	1,603,467	1,718,319		
Estimated Financing Cost (High)	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202		
DSCR	0.67	0.78	0.89	1.12	1.16	1.20	1.23	1.27	1.31	1.35		
Developer Cashflow	(11,444,613)	(554,823)	(284,867)	305,951	405,053	503,027	583,455	681,166	778,741	893,592		
PKF Scenario Two												
75 Rooms	1	2	3	4	5	6	7	8	9	10		
	2014	2016	2016	2017	2018	2019	2020	2021	2022	2023		
Projected Occupancy	60.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%		
Projected ADR	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00		
Projected RevPAR	114.60	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00		
Projected NOI (After Reserve)	805,656	999,713	1,267,994	1,622,806	1,670,961	1,727,670	1,775,680	1,832,240	1,888,725	1,953,757		
Estimated Development Cost (Low)*												
Estimated Development Cost (High)*												
Estimated Financing Cost (Low)	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765		
DSCR	0.74	0.92	1.16	1.49	1.53	1.59	1.63	1.68	1.73	1.79		
Developer Cashflow	(6,134,110)	(90,053)	178,229	533,041	581,196	637,905	685,914	742,475	798,959	863,991		
Estimated Financing Cost (High)	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897		
DSCR	0.47	0.58	0.74	0.95	0.97	1.01	1.04	1.07	1.10	1.14		
Developer Cashflow	(7,883,242)	(714,185)	(445,803)	(91,091)	(42,936)	13,773	61,782	118,343	174,827	239,859		
*Includes Land at \$4,500,000												

(Source: 2009 PKF Study; Development, Financing Costs - Kosmont Companies)

Table 7: Financial Feasibility - PKF Scenario Three and Four

PKF Scenario Three												
100 Rooms	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023		
Projected Occupancy	59.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%		
Projected ADR	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00		
Projected RevPAR	112.69	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00		
Projected NOI (After Reserve)	1,109,325	1,459,068	1,817,628	2,275,305	2,342,836	2,422,366	2,489,691	2,569,012	2,648,225	2,739,430		
Estimated Development Cost (Low)*											200,000	/ROOM
Estimated Development Cost (High)*											225,000	/ROOM
Estimated Financing Cost (Low)											7.0% Interest Rate	70% LTV
DSCR	0.81	1.07	1.33	1.66	1.71	1.77	1.82	1.88	1.93	2.00		
Developer Cashflow	(7,609,867)	89,875	448,435	906,113	973,643	1,053,173	1,120,499	1,198,819	1,279,033	1,370,237		
Estimated Financing Cost (High)											10.0% Interest Rate	70% LTV
DSCR	0.66	0.73	0.91	1.14	1.18	1.22	1.26	1.29	1.33	1.38		
Developer Cashflow	(8,981,007)	(531,265)	(172,705)	284,973	352,503	432,033	499,359	578,680	657,893	749,097		
PKF Scenario Four												
50 Rooms	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023		
Projected Occupancy	60.0%	65.0%	70.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%		
Projected ADR	194.00	199.00	205.00	212.00	218.00	224.00	231.00	238.00	245.00	253.00		
Projected RevPAR	116.40	129.35	143.50	169.60	174.40	179.20	184.80	190.40	196.00	202.40		
Projected NOI (After Reserve)	605,460	781,633	984,298	1,313,106	1,351,392	1,389,624	1,434,633	1,479,585	1,524,480	1,576,149		
Estimated Development Cost (Low)*											225,000	/ROOM
Estimated Development Cost (High)*											275,000	/ROOM
Estimated Financing Cost (Low)											7.0% Interest Rate	70% LTV
DSCR	0.69	0.89	1.12	1.49	1.54	1.58	1.63	1.68	1.73	1.79		
Developer Cashflow	(4,999,736)	(98,563)	104,103	432,910	471,197	509,429	554,438	599,390	644,285	695,954		
Estimated Financing Cost (High)											10.0% Interest Rate	70% LTV
DSCR	0.45	0.58	0.73	0.98	1.00	1.03	1.07	1.10	1.13	1.17		
Developer Cashflow	(6,214,858)	(563,685)	(361,019)	(32,212)	6,075	44,307	89,316	134,268	179,163	230,832		

*Includes Land at \$4,500,000

(Source: 2009 PKF Study; Development, Financing Costs - Kosmont Companies)

7.0 Other Development Alternatives

In addition to the PKF scenarios previously discussed, a variety of sample, prototypical hotel developments that could fit within the constraints of the Specific Plan were evaluated. As a result of this review the following alternatives were developed and likely represent alternatives that would comply with the requirements of the Specific Plan.

7.1 Alternative A: 150 Room Hotel

Under Alternative A, a three-story, 150 room hotel would be constructed. The hotel would include a restaurant amenity and conference amenity, each approximately 2,000 square feet, and approximately 200 surface parking spaces. Rooms would average approximately 425 square feet. This plan and footprint would require that virtually the entire 3.2 acre hotel portion of the Site be used either for building footprint or surface parking, and may not permit much landscaping. Additionally it is unlikely that the building footprint would support even a small recreational amenity, and there almost certainly would be no other room for the same on the Site. The resulting hotel profile is likely less attractive than would likely be desired and would likely impair achievable ADRs. The potential for subterranean parking was also evaluated, however as suggested in the 2009 PKF report, subterranean parking at or below the water table as may be required on this site would likely be cost prohibitive, and increase the financial infeasibility of the scenario. Finally, the alternative parking solution of an aboveground structure would likely be visually unacceptable.

7.2 Alternative B: 100 Room Hotel

Under Alternative B, a three-story, 100 room hotel would be constructed. This alternative represents a probable profile for a typical hotel constructed within the constraints of the Specific Plan. The hotel would include a restaurant amenity and conference amenity, each approximately 2,000 square feet. The hotel could include a minor recreational amenity, and surface parking for approximately 150 vehicles, slightly in excess of the required minimums under the Specific Plan. Rooms would average approximately 425 square feet each. This plan and resulting footprint of approximately 25,500 square feet would accommodate some on-site landscaping around drive isles and minimal setbacks, but such landscaping would not be notably significant. The 100 room threshold is likely the fewest rooms that a hotel chain or "flag" would be willing to brand.

7.3 Alternative C: 60 Room Boutique Condominium Hotel

Under Alternative C, a three-story, 60 room boutique hotel would be developed. Under this scenario the hotel could theoretically be mostly to completely financed through the sale of individual rooms to private owners under a condominium hotel structure. Under a condominium

hotel structure individual owners hold title to individual rooms with rights to use their rooms a certain number of days a year, and the remainder of the year the rooms are available to the general public during which a split of net profit accrues to the room owner. The reduced room count would help support slightly larger room sizes averaging 500 square feet, additional on-site amenities commensurate with boutique hotels, including up to 2,500 square feet of meeting / banquet space, 2,000 square feet of gross restaurant space, and 2,000 square feet for a spa or other similar use. Under the Specific Plan this development profile would require 120 parking spaces, which could be provided in a surface lot with a fair amount of landscaping and visual appeal.

8.0 Financial Feasibility of Development Alternatives

In order to evaluate the financial feasibility of the non-PKF development alternatives Kosmont backed into the RevPAR required to support the development of the hypothetical hotels on the Property. For the purposes of evaluating these additional development alternatives a land cost of \$4,500,000 was again used pursuant to the discussion in Section 6.1 Cost of Land above.

8.1 Estimated Cost of Development of Alternatives

The first step in the feasibility analysis was to evaluate the potential cost of construction of the hypothetical development alternatives. The cost of construction per room or key can vary widely depending on the level of service, amenities, finishes, and type of construction of any particular hotel. The hypothetical development alternatives would likely support a three-star hotel under Alternative A, a four-star hotel under Alternative B, and a four-star plus boutique hotel under Alternative C and service, amenities, finishes and construction costs commensurate with the same. A range of the estimated development costs for each of the three development alternatives evaluated follows in Table 8: Estimated Development Cost below.

Table 8: Estimated Development Cost

	<u>Alternative A</u>		<u>Alternative B</u>		<u>Alternative C</u>	
Quality (Stars)	3		4		4+	
Rooms	150		100		60	
Cost/Room	175,000	200,000	200,000	225,000	225,000	275,000
Total Construction Cost	26,250,000	30,000,000	20,000,000	22,500,000	13,500,000	16,500,000
Cost of Land	4,500,000		4,500,000		4,500,000	
Total Development Cost	30,750,000	34,500,000	24,500,000	27,000,000	18,000,000	21,000,000

(Source: Kosmont Companies)

8.2 Required RevPAR of Alternatives

The next part of the evaluation was to estimate the RevPAR (again, the revenue per available room) required to generate the NOI required to support financing for the development alternatives. Kosmont estimated the minimum required RevPAR based on actual financing terms for ground up hotel construction currently being offered in the marketplace. The assumptions used include a maximum loan-to-value ratio of 70%, a 7-10% interest rate, 30 year amortization period, and a minimum initial debt service coverage ratio ("DSCR") of 1.35. For reference, this loan profile provides for roughly a 7 – 9% cash on cash return in the initial year of stabilized operations, and growing thereafter. This figure does not take into account any additional required return from land holding costs.

The required NOI calculated as described above was then divided by typical ranges in net margins for each of the development alternatives. It should be noted that the margins evaluated are for stabilized operations, and the initial years of a hotel's operations tend to have significantly lower margins. As such, it is assumed that if the alternative developments are not financially feasible given stabilized operations and anticipated RevPAR rates, then taking into account start-up profiles would only result in further financial infeasibility. For reference anticipated RevPAR rates were based on operating hotels with profiles similar to those of the three development alternatives. Further, these figures were compared with PKF's research of market comparables and the two are similar in range.

As a result of this analysis the three development alternatives do not appear to be financially feasible with traditional financing under the parameters currently available in the market as defined above (excluding condominium hotel structures). Under each of the three development alternatives the RevPAR required to support the financing of each development was greater than the anticipated RevPAR attainable under the alternatives. The calculations and assumptions used in establishing this conclusion follow in Table 9: RevPAR Required to Support Development Alternatives – 7% Interest Rate and Table 10: RevPAR Required to Support Development Alternatives – 10% Interest Rate.

Table 9: RevPAR Required to Support Development Alternatives – 7% Interest Rate

	<u>Alternative A</u>		<u>Alternative B</u>		<u>Alternative C</u>	
Rooms	150		100		60	
Maximum LTV	70.0%		70.0%		70.0%	
Minimum Equity	9,225,000	10,350,000	7,350,000	8,100,000	5,400,000	6,300,000
Loan Principal	21,525,000	24,150,000	17,150,000	18,900,000	12,600,000	14,700,000
Amortization (yrs)	30		30		30	
Rate	7.00%		7.00%		7.00%	
Annual Payment	1,718,476	1,928,047	1,369,193	1,508,906	1,005,937	1,173,594
Minimum DSCR	1.35		1.35		1.35	
Minimum NOI	2,319,943	2,602,863	1,848,410	2,037,023	1,358,015	1,584,351
<i>Net Margin</i>	26%		25%		22%	
Minimum RevPAR	163	183	203	223	282	329
<i>Net Margin</i>	30%		29%		28%	
Minimum RevPAR	141	158	175	192	221	258

	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>
Estimate of Required RevPAR	\$ 141	\$ 183	\$ 175	\$ 223	\$ 221	\$ 329
Anticipated Stabilized RevPAR	\$ 90	\$ 115	\$ 100	\$ 125	\$ 180	\$ 215
RevPAR +3 Yrs Growth	\$ 98	\$ 126	\$ 109	\$ 137	\$ 197	\$ 235

(Source: Kosmont Companies)

Table 10: RevPAR Required to Support Development Alternatives – 10% Interest Rate

Rooms	<u>Alternative A</u>		<u>Alternative B</u>		<u>Alternative C</u>	
	150		100		60	
Maximum LTV	70.0%		70.0%		70.0%	
Minimum Equity	9,225,000	10,350,000	7,350,000	8,100,000	5,400,000	6,300,000
Loan Principal	21,525,000	24,150,000	17,150,000	18,900,000	12,600,000	14,700,000
Amortization (yrs)	30		30		30	
Rate	10.00%		10.00%		10.00%	
Annual Payment	2,266,767	2,543,202	1,806,042	1,990,332	1,326,888	1,548,036
Minimum DSCR	1.35		1.35		1.35	
Minimum NOI	3,060,136	3,433,323	2,438,157	2,686,949	1,791,299	2,089,849
<i>Net Margin</i>	26%		25%		22%	
Minimum RevPAR	215	241	267	294	372	434
<i>Net Margin</i>	30%		29%		28%	
Minimum RevPAR	186	209	230	254	292	341

	<i>Min</i>	<i>Max</i>	<i>Min</i>	<i>Max</i>	<i>Min</i>	<i>Max</i>
Estimate of Required RevPAR	\$ 186	\$ 241	\$ 230	\$ 294	\$ 292	\$ 434
Anticipated Stabilized RevPAR	\$ 90	\$ 115	\$ 100	\$ 125	\$ 180	\$ 215
RevPAR +3 Yrs Growth	\$ 98	\$ 126	\$ 109	\$ 137	\$ 197	\$ 235

(Source: Kosmont Companies)

In summary, as shown above, even at an aggressive 7% interest rate, Alternative A would likely require RevPAR of \$141 – \$183 or more to even attract financing, yet anticipated stabilized RevPAR is \$90 - \$115 and RevPAR with three years of growth is anticipated to be \$98 - \$126. Required RevPAR with a 7% interest rate under Alternative B is estimated to be \$175 - \$223, yet anticipated RevPAR is only \$100 - \$125 and \$109 - \$137 respectively. Finally, assuming an aggressive 7% interest rate under Alternative C, required RevPAR is estimated to be \$221 - \$329, and anticipated RevPAR is only \$180 – \$215, and while with three years of growth the anticipated RevPAR of \$197 – \$235 provides some overlap, actual results would have to be the best case just to entice financing, and the overlap is not considered significant enough support a determination of financial feasibility.

Additionally, the above figures represent calculations based on stabilized operations, and as such, predict financial infeasibility even in stabilized operations, and further, provide no margin to support start-up operations. As such Kosmont concludes that the development of the three alternatives under traditional financing options currently available in the marketplace is likely financially infeasible.

8.3 Condominium Hotel Alternative

Alternative C meets the profile of developments potentially suitable for development financing through the sale of condominium hotel rooms. Under this scenario individual owners would purchase title to rooms and make up-front deposits and ultimately payments to the Developer to support the cost of construction and repay construction financing for the development of this alternative.

The financial feasibility of this structure is highly dependent on the attainable sales price for individual rooms. Based on Kosmont's calculations as provided below, a minimum average sale price of approximately \$225,000 per room would be required to begin to attain financial feasibility for development.

For reference, other condominium hotels in local, superior markets with proven, stable operations have been trading in the range of \$400,000 to \$450,000 per room. Traditionally, new ownership opportunities trade at a significant discount until development risk is reduced, hotel operations are established, and market interest clearly determined. Additionally, the ability for prospective buyers to obtain financing for the purchase of to be built units can be limited, and the pool of potential buyers reduced given the current economic environment. The assumptions and results of this analysis follow in Table 11: RevPAR Required - Alternative C, Condominium Hotel Financing

Table 11: RevPAR Required - Alternative C, Condominium Hotel Financing

	Alternative C	
Quality	4+	
Rooms	60	
Cost/Room	225,000	275,000
Total Construction Cost	13,500,000	16,500,000
Cost of Land		4,500,000
Total Development Cost	18,000,000	21,000,000
Average Price of Condo Hotel Unit		225,000
Revenue from Condo Sales		13,500,000
Required RevPAR		
Maximum LTV	70.0%	
Minimum Equity	-	-
Loan Principal	4,500,000	7,500,000
Amortization (yrs)	30	
Rate	7.00%	
Annual Payment	359,263	598,772
Minimum Coverage	1.35	
NOI Split with Property Owner	50%	
Minimum Gross NOI	970,011	1,616,685
Days/Year Fractional Owner Use		60
Adjustment Factor	-16.4%	
Net Margin	22%	
Minimum RevPAR	201	336
Net Margin	28%	
Minimum RevPAR	158	264
	<u>Min</u>	<u>Max</u>
Estimate of Required RevPAR	\$ 158	\$ 336
Anticipated RevPAR	\$ 150	\$ 180

(Source: Kosmont Companies)

In summary, as shown above in Table 11: RevPAR Required - Alternative C, Condominium Hotel Financing, based on the minimum required RevPAR of \$158 and anticipated effective RevPAR ranging from \$150 - \$180 (reduced based on owner use of unit) this alternative may be financially feasible. However, given the range of required RevPAR, and reliance on a minimum sales price of \$225,000 per unit the financial feasibility of this alternative is not certain. Further, small boutique hotel projects are typically projects that reflect the individual passion and skill set of a specialized boutique developer / operator, frequently requiring significant design amenities and operating distinctions (class A restaurant and progressive lounge and / or cabana pool scene) that while possible to achieve, significantly increase the costs and as a result, the risk profile of the project as well. Such an operation may also not be in keeping with local resident preferences as to users and peak usage times. Overall, the boutique hotel project may be viable but in current market conditions sufficiently challenging to predict a reliable result for, and therefore an unattractive option for potential developers.

9.0 Summary & Conclusions

In conclusion, Kosmont evaluated the PKF reports on the projected performance of hotel development scenarios, and separately performed an evaluation of the financial feasibility of additional hotel development alternatives on the Site.

As a result of this analysis it appears that the four development scenarios included in the 2009 PKF report are financially infeasible as the projected net operating income would not be sufficient to secure development financing, and equity returns would be too low to encourage developer investment. Additionally Kosmont developed and evaluated three additional alternatives likely in conformance with the 1996 Specific Plan covering the property. The three additional alternatives evaluated were a 150 room hotel, a 100 room hotel, and a 60 room condominium boutique hotel.

The first two alternatives were evaluated for financial feasibility based on current market conditions including average room rates and financing available for ground up hotel construction. Based on this evaluation, it is Kosmont's conclusion that it is unlikely that the revenue required to support the potential development profiles could be generated by either alternative, and as such concludes that these two development alternatives are financially infeasible.

Finally the analysis of the 60 room condominium hotel suggests that this alternative may be financially feasible. However, a potential lack of financing available for prospective buyers, uncertainty of and sensitivity to market interest and attainable sales values, and a risky project profile based on whether the hotel will deliver precisely the right and somewhat unique product type to engender consistent demand, all contribute to make project feasibility marginal. As such, financial feasibility of even this alternative is far from certain and this uncertainty likely represents a legitimate and fatal hurdle to developer interest in such a project.

Attachment: A
PKF Scenario One

PKF Scenario One 150 Rooms	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023
Occupancy	58.0%	64.0%	67.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%
Average Daily Rate:	167.00	172.00	177.00	182.00	188.00	194.00	199.00	205.00	211.00	218.00
Average Daily Rate (Adjusted):	167.00	172.00	177.00	182.00	188.00	194.00	199.00	205.00	211.00	218.00
		3.0%	2.9%	2.8%	3.3%	3.2%	2.6%	3.0%	2.9%	3.3%
Revenue Per Available Room	96.86	110.08	118.59	131.04	135.36	139.68	143.28	147.60	151.92	156.96
Revenue										
Room Revenue	5,303,085	6,026,880	6,492,803	7,174,440	7,410,960	7,647,480	7,844,580	8,081,100	8,317,620	8,593,560
Food & Beverage	2,210,098	2,511,744	2,705,921	2,989,998	3,088,570	3,187,141	3,269,284	3,367,855	3,466,426	3,581,426
Other Operated Departments	552,730	628,169	676,732	747,777	772,429	797,081	817,625	842,277	866,929	895,889
Rentals & Other Income	147,011	167,076	179,993	198,889	205,446	212,002	217,466	224,023	230,580	238,229
Total Revenue	8,212,924	9,333,870	10,055,448	11,111,104	11,477,404	11,843,705	12,148,955	12,515,255	12,881,555	13,308,905
Departmental Expense										
Rooms	1,442,439	1,554,935	1,636,186	1,743,389	1,800,863	1,858,338	1,906,233	1,963,707	2,021,182	2,088,235
Food & Beverage	1,792,389	1,951,625	2,061,912	2,212,599	2,285,541	2,358,484	2,419,270	2,492,213	2,565,156	2,650,256
Other Operated Departments	386,911	439,719	473,712	523,444	540,701	557,957	572,337	589,594	606,850	626,983
Total Departmental Expense	3,621,739	3,946,279	4,171,810	4,479,432	4,627,105	4,774,779	4,897,840	5,045,514	5,193,187	5,365,473
Departmental Profit	4,591,185	5,387,591	5,883,637	6,631,673	6,850,299	7,068,926	7,251,115	7,469,741	7,688,368	7,943,432
Undistributed Operating Expenses										
Administrative & General	1,043,041	1,073,395	1,106,099	1,138,888	1,176,434	1,213,980	1,245,268	1,282,814	1,320,359	1,364,163
Marketing	521,521	536,698	553,050	568,889	587,643	606,398	622,026	640,781	659,536	681,416
Prop. Operations & Maintenance	521,521	536,698	553,050	568,889	587,643	606,398	622,026	640,781	659,536	681,416
Utilities	243,103	251,081	258,425	265,555	274,310	283,065	290,360	299,115	307,869	318,083
Total Undistributed Operating Expenses	2,329,185	2,397,871	2,470,623	2,542,221	2,626,030	2,709,840	2,779,681	2,863,490	2,947,300	3,045,077
Gross Operating Profit	2,261,999	2,989,720	3,413,014	4,089,452	4,224,269	4,359,086	4,471,434	4,606,251	4,741,068	4,898,354
Management Fee	246,388	280,016	301,663	333,333	344,322	355,311	364,469	375,458	386,447	399,267
Fixed Expenses										
Property Taxes	273,000	306,900	313,038	319,299	325,685	332,198	338,842	345,619	352,532	359,582
Insurance	129,764	134,408	137,760	142,222	146,911	151,599	155,507	160,195	164,884	170,354
Total Fixed Expenses	402,764	441,308	450,798	461,521	472,596	483,798	494,349	505,815	517,416	529,936
Net Operating Income Before Reserve	1,612,847	2,268,396	2,660,553	3,294,598	3,407,351	3,519,977	3,612,616	3,724,979	3,837,206	3,969,151
Furniture, Fixture & Equipment Reserve	164,258	280,016	402,218	444,444	459,096	473,748	485,958	500,610	515,262	532,356
Net Operating Income After Reserve	1,448,589	1,988,380	2,258,335	2,850,154	2,948,255	3,046,229	3,126,658	3,224,368	3,321,943	3,436,795

(Source: 2009 PKF Study)

PKF Scenario One 150 Rooms		1 2012	2 2013	3 2014	4 2015	5 2016	6 2017	7 2018	8 2019	9 2020	10 2021
Revenue											
Room Revenue	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%
Food & Beverage	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%
Other Operated Departments	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%
Rentals & Other Income	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%
Total Revenue	100.0%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Departmental Expense											
Rooms	24.30%	27.2%	25.8%	25.2%	24.3%	24.3%	24.3%	24.3%	24.3%	24.3%	24.3%
Food & Beverage	74.00%	81.1%	77.7%	76.2%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Other Operated Departments	70.00%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%
Total Departmental Expense		44.1%	42.3%	41.5%	40.3%	40.3%	40.3%	40.3%	40.3%	40.3%	40.3%
Departmental Profit		55.9%	57.7%	58.5%	59.7%	59.7%	59.7%	59.7%	59.7%	59.7%	59.7%
Undistributed Operating Expenses											
Administrative & General	10.25%	12.7%	11.5%	11.0%	10.3%	10.3%	10.3%	10.3%	10.3%	10.3%	10.3%
Marketing	5.12%	6.4%	5.8%	5.5%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Prop. Operations & Maintenance	5.12%	6.4%	5.8%	5.5%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Utilities	2.39%	3.0%	2.7%	2.6%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%
Total Undistributed Operating Expenses	22.9%	28.4%	25.7%	24.6%	22.9%	22.9%	22.9%	22.9%	22.9%	22.9%	22.9%
Gross Operating Profit		27.5%	32.0%	33.9%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses											
Property Taxes	Formula	3.3%	3.3%	3.1%	2.9%	2.8%	2.8%	2.8%	2.8%	2.7%	2.7%
Insurance	1.28%	1.6%	1.4%	1.4%	1.3%	1.3%	1.3%	1.3%	1.3%	1.3%	1.3%
Total Fixed Expenses		4.9%	4.7%	4.5%	4.2%	4.1%	4.1%	4.1%	4.0%	4.0%	4.0%
Net Operating Income Before Reserve		19.6%	24.3%	26.5%	29.7%	29.7%	29.7%	29.7%	29.8%	29.8%	29.8%
Furniture, Fixture & Equipment Reserve	4.00%	2.0%	3.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Net Operating Income After Reserve		17.6%	21.3%	22.5%	25.7%	25.7%	25.7%	25.7%	25.8%	25.8%	25.8%

(Source: 2009 PKF Study)

Attachment: B
PKF Scenario Two

PKF Scenario Two										
75 Rooms										
	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023
Occupancy	74.0%	60.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Average Daily Rate:	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
Average Daily Rate (Adjusted):	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
		3.1%	3.0%	3.0%	2.9%	3.3%	2.7%	3.1%	3.0%	3.3%
Revenue Per Available Room	114.60	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00
Revenue	3,137,175	3,451,440	3,834,416	4,233,818	4,355,363	4,497,165	4,618,710	4,760,513	4,902,315	5,064,375
Room Revenue	1,332,954	1,466,482	1,629,205	1,798,906	1,850,550	1,910,800	1,962,443	2,022,694	2,082,944	2,151,802
Food & Beverage	571,047	628,251	697,963	770,664	792,788	818,600	840,724	866,536	892,348	921,847
Other Operated Departments	75,730	83,316	92,561	102,203	105,137	108,560	111,494	114,917	118,340	122,252
Rentals & Other Income	5,116,906	5,629,489	6,254,145	6,905,590	7,103,837	7,335,125	7,533,371	7,764,659	7,995,947	8,260,276
Total Revenue										
Departmental Expense	828,214	880,117	939,432	1,000,874	1,029,608	1,063,130	1,091,863	1,125,385	1,158,907	1,197,218
Rooms	1,107,685	1,183,451	1,274,038	1,367,169	1,406,418	1,452,208	1,491,457	1,537,247	1,583,038	1,635,369
Food & Beverage	399,733	439,776	488,574	539,465	554,952	573,020	588,507	606,575	624,643	645,293
Other Operated Departments	2,335,632	2,503,344	2,702,044	2,907,508	2,990,977	3,088,358	3,171,827	3,269,208	3,366,588	3,477,880
Total Departmental Expense										
Departmental Profit	2,781,274	3,126,146	3,552,101	3,998,082	4,112,860	4,246,767	4,361,545	4,495,452	4,629,359	4,782,395
Undistributed Operating Expenses										
Administrative & General	649,847	669,909	694,210	713,347	733,826	757,718	778,197	802,089	825,981	853,286
Marketing	347,950	360,287	368,995	379,807	390,711	403,432	414,335	427,056	439,777	454,315
Prop. Operations & Maintenance	322,365	332,140	343,978	352,185	362,296	374,091	384,202	395,998	407,793	421,274
Utilities	158,624	163,255	168,862	171,259	176,175	181,911	186,828	192,564	198,299	204,855
Total Undistributed Operating Expenses	1,478,786	1,525,592	1,576,045	1,616,599	1,663,008	1,717,153	1,763,562	1,817,707	1,871,851	1,933,731
Gross Operating Profit	1,302,488	1,600,554	1,976,057	2,381,484	2,449,852	2,529,614	2,597,982	2,677,745	2,757,507	2,848,665
Management Fee	153,507	168,885	187,624	207,168	213,115	220,054	226,001	232,940	239,878	247,808
Fixed Expenses										
Property Taxes	154,000	173,000	176,460	179,989	183,589	187,261	191,006	194,826	198,723	202,697
Insurance	86,987	90,072	93,812	95,297	98,033	101,225	103,961	107,152	110,344	113,992
Total Fixed Expenses	240,987	263,072	270,272	275,286	281,622	288,485	294,967	301,978	309,067	316,689
Net Operating Income Before Reserve	907,994	1,168,597	1,518,160	1,899,030	1,955,115	2,021,075	2,077,015	2,142,827	2,208,562	2,284,168
Furniture, Fixture & Equipment Reserve	102,338	168,885	250,166	276,224	284,153	293,405	301,335	310,586	319,838	330,411
Net Operating Income After Reserve	805,656	999,713	1,267,994	1,622,806	1,670,961	1,727,670	1,775,680	1,832,240	1,888,725	1,953,757

(Source: 2009 PKF Study)

PKF Scenario Two 75 Rooms		1 2012	2 2013	3 2014	4 2015	5 2016	6 2017	7 2018	8 2019	9 2020	10 2021
Revenue											
Room Revenue	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%
Food & Beverage	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%
Other Operated Departments	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%
Rentals & Other Income	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%
Total Revenue	100.0%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Departmental Expense											
Rooms	23.64%	26.4%	25.5%	24.5%	23.6%	23.6%	23.6%	23.6%	23.6%	23.6%	23.6%
Food & Beverage	76.00%	83.1%	80.7%	78.2%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%
Other Operated Departments	70.00%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%
Total Departmental Expense		45.6%	44.5%	43.2%	42.1%	42.1%	42.1%	42.1%	42.1%	42.1%	42.1%
Departmental Profit		54.4%	55.5%	56.8%	57.9%	57.9%	57.9%	57.9%	57.9%	57.9%	57.9%
Undistributed Operating Expenses											
Administrative & General	10.33%	12.7%	11.9%	11.1%	10.3%	10.3%	10.3%	10.3%	10.3%	10.3%	10.3%
Marketing	5.50%	6.8%	6.4%	5.9%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
Prop. Operations & Maintenance	5.10%	6.3%	5.9%	5.5%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Utilities	2.48%	3.1%	2.9%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Total Undistributed Operating Expenses	23.4%	28.9%	27.1%	25.2%	23.4%	23.4%	23.4%	23.4%	23.4%	23.4%	23.4%
Gross Operating Profit		25.5%	28.4%	31.6%	34.5%	34.5%	34.5%	34.5%	34.5%	34.5%	34.5%
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses											
Property Taxes	Formula	3.0%	3.1%	2.8%	2.6%	2.6%	2.6%	2.5%	2.5%	2.5%	2.5%
Insurance	1.38%	1.7%	1.6%	1.5%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
Total Fixed Expenses		4.7%	4.7%	4.3%	4.0%	4.0%	3.9%	3.9%	3.9%	3.9%	3.8%
Net Operating Income Before Reserve		17.7%	20.8%	24.3%	27.5%	27.5%	27.6%	27.6%	27.6%	27.6%	27.7%
Furniture, Fixture & Equipment Reserve	4.00%	2.0%	3.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Net Operating Income After Reserve		15.7%	17.8%	20.3%	23.5%	23.5%	23.6%	23.6%	23.6%	23.6%	23.7%

(Source: 2009 PKF Study)

Attachment: C
PKF Scenario Three

PKF Scenario Three 100 Rooms	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023
Occupancy	74.0%	59.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Average Daily Rate:	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
Average Daily Rate (Adjusted):	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
		3.1%	3.0%	3.0%	2.9%	3.3%	2.7%	3.1%	3.0%	3.3%
Revenue Per Available Room	112.69	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00
Revenue										
Room Revenue	4,113,185	4,601,920	5,112,555	5,645,090	5,807,150	5,996,220	6,158,280	6,347,350	6,536,420	6,752,500
Food & Beverage	1,620,266	1,812,788	2,013,938	2,223,714	2,287,553	2,362,031	2,425,870	2,500,348	2,574,827	2,659,945
Other Operated Departments	747,613	836,445	929,258	1,026,052	1,055,508	1,089,873	1,119,329	1,153,694	1,188,060	1,227,334
Rentals & Other Income	100,033	111,919	124,337	137,289	141,230	145,828	149,769	154,368	158,966	164,221
Total Revenue	6,581,096	7,363,072	8,180,088	9,032,144	9,291,440	9,593,952	9,853,248	10,155,760	10,458,272	10,804,000
Departmental Expense										
Rooms	1,098,220	1,173,490	1,252,576	1,334,499	1,372,810	1,417,506	1,455,817	1,500,514	1,545,210	1,596,291
Food & Beverage	1,356,163	1,463,827	1,574,899	1,690,023	1,738,540	1,795,144	1,843,661	1,900,265	1,956,868	2,021,558
Other Operated Departments	523,329	585,511	650,481	718,236	738,855	762,911	783,530	807,586	831,642	859,134
Total Departmental Expense	2,977,712	3,222,828	3,477,956	3,742,758	3,850,205	3,975,561	4,083,009	4,208,364	4,333,720	4,476,983
Departmental Profit	3,603,384	4,140,244	4,702,132	5,289,386	5,441,235	5,618,391	5,770,239	5,947,396	6,124,552	6,327,017
Undistributed Operating Expenses										
Administrative & General	789,732	809,938	836,005	861,667	886,403	915,263	940,000	968,860	997,719	1,030,702
Marketing	414,609	427,058	441,725	456,123	469,218	484,495	497,589	512,866	528,143	545,602
Prop. Operations & Maintenance	414,609	427,058	441,725	456,123	469,218	484,495	497,589	512,866	528,143	545,602
Utilities	210,595	213,529	220,862	227,610	234,144	241,768	248,302	255,925	263,548	272,261
Total Undistributed Operating Expenses	1,829,545	1,877,583	1,940,317	2,001,523	2,058,983	2,126,020	2,183,480	2,250,516	2,317,553	2,394,166
Gross Operating Profit	1,773,840	2,262,661	2,761,815	3,287,863	3,382,251	3,492,371	3,586,760	3,696,879	3,806,999	3,932,850
Management Fee	197,433	220,892	245,403	270,964	278,743	287,819	295,597	304,673	313,748	324,120
Fixed Expenses										
Property Taxes	217,000	244,000	248,880	253,858	258,935	264,113	269,396	274,784	280,279	285,885
Insurance	118,460	117,809	122,701	126,450	130,080	134,315	137,945	142,181	146,416	151,256
Total Fixed Expenses	335,460	361,809	371,581	380,308	389,015	398,429	407,341	416,964	426,695	437,141
Net Operating Income Before Reserve	1,240,947	1,679,960	2,144,831	2,636,591	2,714,493	2,806,124	2,883,821	2,975,242	3,066,556	3,171,590
Furniture, Fixture & Equipment Reserve	131,622	220,892	327,204	361,286	371,658	383,758	394,130	406,230	418,331	432,160
Net Operating Income After Reserve	1,109,325	1,459,068	1,817,628	2,275,305	2,342,836	2,422,366	2,489,691	2,569,012	2,648,225	2,739,430

(Source: 2009 PKF Study)

PKF Scenario Three 100 Rooms		1 2012	2 2013	3 2014	4 2015	5 2016	6 2017	7 2018	8 2019	9 2020	10 2021
Revenue											
Room Revenue	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%
Food & Beverage	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%
Other Operated Departments	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%
Rentals & Other Income	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%
Total Revenue	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Departmental Expense											
Rooms	23.64%	26.7%	25.5%	24.5%	23.6%	23.6%	23.6%	23.6%	23.6%	23.6%	23.6%
Food & Beverage	76.00%	83.7%	80.8%	76.2%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%
Other Operated Departments	70.00%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%
Total Departmental Expense		45.2%	43.8%	42.5%	41.4%	41.4%	41.4%	41.4%	41.4%	41.4%	41.4%
Departmental Profit		54.8%	56.2%	57.5%	58.6%	58.6%	58.6%	58.6%	58.6%	58.6%	58.6%
Undistributed Operating Expenses											
Administrative & General	9.54%	12.0%	11.0%	10.2%	9.5%	9.5%	9.5%	9.5%	9.5%	9.5%	9.5%
Marketing	5.05%	6.3%	5.8%	5.4%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Prop. Operations & Maintenance	5.05%	6.3%	5.8%	5.4%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Utilities	2.52%	3.2%	2.9%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Total Undistributed Operating Expenses	22.2%	27.8%	25.5%	23.7%	22.2%	22.2%	22.2%	22.2%	22.2%	22.2%	22.2%
Gross Operating Profit		27.0%	30.7%	33.8%	36.4%	36.4%	36.4%	36.4%	36.4%	36.4%	36.4%
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses											
Property Taxes	Formula	3.3%	3.3%	3.0%	2.8%	2.8%	2.8%	2.7%	2.7%	2.7%	2.6%
Insurance	1.40%	1.8%	1.6%	1.5%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
Total Fixed Expenses		5.1%	4.9%	4.5%	4.2%	4.2%	4.2%	4.1%	4.1%	4.1%	4.0%
Net Operating Income Before Reserve		18.9%	22.8%	26.2%	29.2%	29.2%	29.2%	29.3%	29.3%	29.3%	29.4%
Furniture, Fixture & Equipment Reserve	4.00%	2.0%	3.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Net Operating Income After Reserve		16.9%	19.8%	22.2%	25.2%	25.2%	25.2%	25.3%	25.3%	25.3%	25.4%

(Source: 2009 PKF Study)

Attachment: D
PKF Scenario Four

PKF Scenario Four 50 Rooms	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023
Occupancy	80.0%	65.0%	70.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
Average Daily Rate:	194.00	199.00	205.00	212.00	218.00	224.00	231.00	238.00	245.00	253.00
Average Daily Rate (Adjusted):	194.00	199.00	205.00	212.00	218.00	224.00	231.00	238.00	245.00	253.00
		2.6%	3.0%	3.4%	2.8%	2.8%	3.1%	3.0%	2.9%	3.3%
Revenue Per Available Room	116.40	129.35	143.50	169.60	174.40	179.20	184.80	190.40	196.00	202.40
Revenue										
Room Revenue	2,124,300	2,360,638	2,618,875	3,095,200	3,182,800	3,270,400	3,372,800	3,474,800	3,577,000	3,693,800
Food & Beverage	1,335,619	1,484,212	1,646,575	1,946,057	2,001,134	2,056,211	2,120,467	2,184,724	2,248,981	2,322,417
Other Operated Departments	381,884	424,370	470,793	556,421	572,169	587,917	606,289	624,662	643,034	664,031
Rentals & Other Income	50,996	56,669	62,868	74,303	76,406	78,509	80,962	83,416	85,869	88,673
Total Revenue	3,892,798	4,325,889	4,799,111	5,671,981	5,832,509	5,993,036	6,180,319	6,367,601	6,554,884	6,768,921
Departmental Expense										
Rooms	552,318	590,159	628,530	722,729	743,184	763,638	787,502	811,366	835,230	862,502
Food & Beverage	1,109,899	1,190,338	1,281,035	1,479,003	1,520,862	1,562,720	1,611,555	1,660,390	1,709,225	1,765,037
Other Operated Departments	267,318	297,059	329,555	389,495	400,518	411,542	424,402	437,263	450,124	464,822
Total Departmental Expense	1,929,536	2,077,557	2,239,120	2,591,227	2,664,564	2,737,900	2,823,460	2,909,019	2,994,579	3,092,361
Departmental Profit	1,963,262	2,248,332	2,559,991	3,080,754	3,167,945	3,255,136	3,356,859	3,458,582	3,560,305	3,676,560
Undistributed Operating Expenses										
Administrative & General	435,993	449,892	460,715	514,449	529,009	543,568	560,555	577,541	594,528	613,941
Marketing	233,568	237,924	244,755	274,524	282,293	290,063	299,127	308,192	317,256	327,616
Prop. Operations & Maintenance	214,104	220,620	230,357	254,105	261,296	268,488	276,878	285,269	293,659	303,248
Utilities	105,106	108,147	110,380	123,649	127,149	130,648	134,731	138,814	142,896	147,562
Total Undistributed Operating Expenses	988,771	1,016,584	1,046,206	1,166,726	1,199,747	1,232,768	1,271,292	1,309,816	1,348,340	1,392,367
Gross Operating Profit	974,492	1,231,748	1,513,785	1,914,027	1,968,198	2,022,368	2,085,567	2,148,766	2,211,965	2,284,193
Management Fee	116,784	129,777	143,973	170,159	174,975	179,791	185,410	191,028	196,647	203,068
Fixed Expenses										
Property Taxes	116,000	130,000	132,600	135,252	137,957	140,716	143,531	146,401	149,329	152,316
Insurance	58,392	60,562	60,949	68,631	70,573	72,516	74,762	77,048	79,314	81,904
Total Fixed Expenses	174,392	190,562	193,549	203,883	208,530	213,232	218,312	223,449	228,643	234,220
Net Operating Income Before Reserve	683,316	911,409	1,176,263	1,539,985	1,584,602	1,629,345	1,681,846	1,734,289	1,786,676	1,846,906
Furniture, Fixture & Equipment Reserve	77,856	129,777	191,964	226,879	233,300	239,721	247,213	254,704	262,195	270,757
Net Operating Income After Reserve	605,460	781,633	984,298	1,313,106	1,351,392	1,389,624	1,434,633	1,479,585	1,524,480	1,576,149

(Source: 2009 PKF Study)

PKF Scenario Four 50 Rooms										
	1 2012	2 2013	3 2014	4 2015	5 2016	6 2017	7 2018	8 2019	9 2020	10 2021
Revenue										
Room Revenue	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%
Food & Beverage	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%
Other Operated Departments	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%
Rentals & Other Income	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%
Total Revenue	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Departmental Expense										
Rooms	23.35%	23.35%	23.35%	23.35%	23.35%	23.35%	23.35%	23.35%	23.35%	23.35%
Food & Beverage	76.00%	76.00%	76.00%	76.00%	76.00%	76.00%	76.00%	76.00%	76.00%	76.00%
Other Operated Departments	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%
Total Departmental Expense	49.6%	48.0%	46.7%	45.7%	45.7%	45.7%	45.7%	45.7%	45.7%	45.7%
Departmental Profit	50.4%	52.0%	53.3%	54.3%	54.3%	54.3%	54.3%	54.3%	54.3%	54.3%
Undistributed Operating Expenses										
Administrative & General	9.07%	10.4%	9.6%	9.1%	9.1%	9.1%	9.1%	9.1%	9.1%	9.1%
Marketing	4.84%	5.5%	5.1%	4.8%	4.8%	4.8%	4.8%	4.8%	4.8%	4.8%
Prop. Operations & Maintenance	4.48%	5.1%	4.8%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%
Utilities	2.18%	2.5%	2.3%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%
Total Undistributed Operating Expenses	20.6%	23.5%	21.8%	20.6%	20.6%	20.6%	20.6%	20.6%	20.6%	20.6%
Gross Operating Profit	25.0%	28.5%	31.5%	33.7%	33.7%	33.7%	33.7%	33.7%	33.7%	33.7%
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses										
Property Taxes	3.0%	3.0%	2.8%	2.4%	2.4%	2.3%	2.3%	2.3%	2.3%	2.3%
Insurance	1.5%	1.4%	1.3%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%
Total Fixed Expenses	4.5%	4.4%	4.0%	3.6%	3.6%	3.6%	3.5%	3.5%	3.5%	3.5%
Net Operating Income Before Reserve	17.6%	21.1%	24.5%	27.2%	27.2%	27.2%	27.2%	27.2%	27.3%	27.3%
Furniture, Fixture & Equipment Reserve	2.0%	3.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Net Operating Income After Reserve	15.6%	18.1%	20.5%	23.2%	23.2%	23.2%	23.2%	23.2%	23.3%	23.3%

(Source: 2009 PKF Study)

November 26, 2012



Mr. Edward Selich
Project Manager
Bay City Partners
627 Bayside Drive
Newport Beach, CA 92660

Dear Mr. Selich:

In accordance with your request we have completed an analysis of potential Visitor-Serving uses for the vacant site located at the intersection of Marina Drive and 1st Street in Seal Beach, California. As agreed, we have not performed an in depth market study for each potential use but rather utilized our general market knowledge coupled with the steps enumerated below to develop our conclusions.

The scope of our work included, but was not limited to, the following:

- Tour and analysis of the subject site, immediate surroundings, and adjacent neighborhoods;
- Review of existing supply of Visitor-Serving uses in Seal Beach and surrounding neighborhoods;
- Review of Seal Beach demographics and visitor profile; and
- Evaluation of potential visitor-serving uses at the subject site.

This report is subject to the attached Statement of Assumptions and Limiting Conditions.

Our analysis is presented in the following paragraphs.

INTRODUCTION

PKF Consulting was retained by Bay City Partners to conduct an analysis relative to the viability of potential Visitor-Serving uses at a site located at the intersection of Marina Bay Drive and 1st Street in Seal Beach, California. In our analysis, we reviewed historical economic, demographic, and tourism indicators for the overall market area, and assessed the strength of the Seal Beach market relative to the potential uses of the site. In a previous study performed in 2003, PKF Consulting concluded that the development of a hotel as determined by the Specific Plan would not be feasible at the site due to its location in a highly residential area, lack of visibility, and difficulty of access, amongst other reasons. In this study, we have analyzed potential Visitor-Serving uses other than hotel, to determine their viability at the subject site. Based on our general knowledge of the market and

research relative to this assignment, we developed preliminary conclusions in regards to the potential viability of other Visitor-Serving uses at the subject site.

Our preliminary conclusions regarding the highest and best use of the site are:

- The subject site is underutilized as it sits vacant. Therefore it is not producing the maximum financial returns for the ownership and the City of Seal Beach;
- Current demographics, visitor profile, and existing development in the City of Seal Beach do not support the addition of retail or office space at the subject's location at this time;
- Though the site is located on the water, this portion of the San Gabriel River is a non-navigable waterway, therefore, excluding all potential water/marine related uses;
- The subject site is located on a highly residential area and fairly distant to the main entertainment district of Seal Beach;
- There are several restaurants and shops across the river that are not performing too well due in part to their location and accessibility; and,
- There is sufficient supply of Visitor-Serving uses in the City of Seal Beach and surrounding neighborhoods based on the current visitor profile.

The following text provides background for the foregoing conclusions.

ECONOMIC OVERVIEW

The purpose of an economic overview is to determine whether the overall economic environment of an area appears capable of supporting a proposed commercial development. Past economic and demographic data provide an indication of the future economic potential of a market area, as a proposed facility is largely dependent upon local economic conditions. The paragraphs that follow present an economic profile of the Seal Beach area including population, employment, and tourism.

- The City of Seal Beach consists of 11.97 square miles on the coast of northwestern Orange County. As of 2010, the city had a population of approximately 24,168 people. Seal Beach offers two strikingly different experiences. The quaint beach town to the west of Pacific Coast Highway is of greatest interest to tourists. East of PCH is tract housing, the gated Leisure World retirement community, shopping, freeways, and high-tech space and defense facilities, such as Seal Beach Naval Weapons Station and Boeing. The space and defense industries attract many visitors to the region who also love to play "tourist" when not working on assignment or contract.
- As of September 2012, Seal Beach's unemployment rate stands at 5.2 percent, down from 6.4 percent in September of 2011. According to a study performed

by the Southern California Association of Governments (SCAG), in 2009, the sector of employment providing the highest salary per job in the city was Professional-Management (\$70,611), while the Leisure-Hospitality sector provided the lowest annual salary per job (\$17,544). However, Leisure-Hospitality was the largest job sector in 2010, accounting for approximately 26.8 percent of total jobs in the city. According to the US Census Bureau, the 2010 median household income for the City of Seal Beach was \$58,990. Median Existing Home Sales Price in 2010 was \$685,000, with a homeownership rate of 77.2 percent, as compared to Orange County's figures of \$433,000 and 61.5 percent, respectively.

- According to SCAG's report, retail sales in Seal Beach increased by 64.1 percent between 2000 and 2005, and decreased by 2.7 percent between 2005 and 2009. Between 2007 and 2010, the number of retail trade jobs in the city decreased by 12.4 percent, accounting for 9.5 percent of the jobs in 2010.
- Tourism is a moderate economic driver in Seal Beach. Popular activities include swimming, surfing, boogie-boarding, fishing, bicycling, and walking around the beach, pier, and shops. Old Town Seal Beach features Main Street, a three-block segment filled with restaurants, shops, and galleries that is very popular amongst locals and visitors. Seal Beach is known as a great location for windsurfing and has a kite-surfing launch area at the western end of 1st Street. The main beach provides one mile of white sandy beaches attracting nearly one million visitors per year.

SITE DESCRIPTION

The subject site consists of approximately 11.0 acres. The boundaries of the 12-acre site consist of Marina Drive to the north, the San Gabriel River Channel and Alamitos Bay Marina to the west, public beach access and Pacific Ocean to the south, and 1st Street to the east. Further east is Seal Beach Municipal Pier located at the foot of Main Street. The subject site is located over 28 miles southeast of Los Angeles International Airport and is three miles west of the 405 freeway.

The area immediately surrounding the subject site is largely residential and relatively close to the Seal Beach Pier. Further east of the subject's coastal community are additional residential neighborhoods and a fair amount of corporate activity generated by Boeing and the Naval Weapons Station. Given Seal Beach's smaller size, it tends to benefit from activity generated by its neighboring cities of Long Beach and Huntington Beach.



Primary access to the site is provided from automobiles. Access from the Los Angeles International Airport can be provided by heading east on I-105 towards the 405 Freeway South and exiting at Studebaker Road and turning right on 2nd Street/Westminster Avenue, and again on Marina Drive and following the road until crossing the bridge. Access is also provided via Pacific Coast Highway from the north and south, by heading west on 1st Street if traveling from the south or connecting with 2nd Street if traveling from the north.

It is our understanding that the site is governed by the City of Seal Beach under a Specific Plan. There are two principal land use categories within the Specific Plan area: Residential (formerly Visitor-Serving) and Publicly-Owned Open-Space Uses with very restrictive improvements allowed. Currently, according to the Specific Plan, the Residential uses (formerly Visitor-Serving) are limited to the northerly 4.5 acres of the parcel, which is the area adjacent to Marina Drive and First Street. The remaining 6.5 acres are limited to Publicly-Owned Open-Space uses.

Our 2003 study concluded that “the construction of the hotel as set forth in the Specific Plan would not be feasible.” Our opinion on the development scenario has not changed. The subject site’s location adjacent to the ocean warrants that any development on the site will be low-rise, in order to maintain the seaside, quaint atmosphere that is consistent throughout Seal Beach. We have analyzed other potential Visitor-Serving land uses for the subject site. The following paragraphs present our analysis.

ANALYSIS OF POTENTIAL VISITOR-SERVING LAND USES

Other potential visitor-serving uses at the site include bed and breakfast, hostels, RV Park/Campground, commercial beach parking lot, bicycle rentals, skateboard rentals,

Segway Rentals and Tours, restaurants, marine related offices and other office uses serving visitors, dry boat storage yard, boat sales and brokers, beach equipment rentals, visitor-serving specialty retail, and beach oriented markets, amongst others. Following is our analysis of some of these uses.

- **Bed and Breakfast/Hostels** - The area surrounding the site is mainly residential, with no retail amenities within walking distance. As such, it is our opinion that a hostel or bed and breakfast would not be the best use of the site, as guests staying at these lodging establishments usually want to have easy access to shops, restaurants, and other convenience stores within a short walk.
- **Marine Related Uses** - As previously mentioned, the site is bound to the north and west by the San Gabriel River channel. The channel is a non-navigable waterway. Therefore, any marine/water related uses would not be possible at the site.
- **Bicycle/Skateboard/Surfboard Rentals** - There are numerous of these stores in the area, which, in our opinion, are already fulfilling this need. Further, several of these other stores are located in more commercial areas than the subject site, allowing for easier access and visibility.
- **Beach Equipment Rentals** - The site is bound by the beach on the south. However, the portion of the site that allows for visitor-serving uses is the northern portion of the site, therefore making it too distant from the beach for these types of operations.
- **Visitor Serving Specialty Retail** - The area surrounding the site is mainly residential. Visitors looking for gifts, souvenirs, sundries, etc., usually do so closer to the main entertainment districts of a town. In the case of Seal Beach, that would be Main Street or areas closer to the beach with a more commercial setting. As such, it is our opinion that this is not the best use of the site.
- **Beach Oriented Markets** - As mentioned earlier, the portion of the site where a visitor-serving use would be developed is the northernmost portion. As such, it is considerably far for people to walk from the beach to get a quick drink or snack.
- **Restaurants** - There are a few restaurants north of the site, on the other side of the bridge, which do not perform very well in general. Further, the area surrounding the site is mostly residential, with not many other commercial uses around. Further, the site does not enjoy easy access or visibility, making a restaurant targeting visitors not a good use of the site, as it wouldn't be within the main traffic areas.

The following is a list of identified existing visitor-serving uses other than restaurants within the City of Seal Beach and neighboring area of Los Alamitos.

- Canvas Shop – surf shop
- Alternative Surf – surf shop
- Harbour Surf Boars – surf shop

- Inflight Surf & Sail – surf shop
- Glyder Surfboards – surf shop
- Katin Surf Shop
- Southern California Kiteboarding
- Captain Kirk's Kitesurf & Windsurf & Standup
- Long Beach Windsurf & Kayak
- Alamitos Bay Yacht Club
- Main Street Cyclery
- Sunset Beach Rentals
- Star Party Cruises
- Long Beach Marina Sport Fishing
- The Pacific Inn
- Main Street Travel
- Catalina by Design
- Vida Organic Life Massage
- Old Town Seal Beach Gallery
- Captain's Locker – marine supplies
- California Seashell Company
- Sailing Pro Shop
- Big Fish
- Marine Stadium Park
- Bay Boat Rentals
- Long Beach Sailing
- Stan Miller Yachts
- Scuba Duba Corporation
- Corks Away Wine Cruises

The preceding list is only a sample of identified visitor-serving uses in the area. In addition, there are numerous restaurants, many of them which are located in more commercial areas of Seal Beach, enjoying better access and visibility.

CONCLUSIONS

Based on our knowledge of the Seal Beach market and our research relative to this assignment, it is our opinion that there is sufficient supply of visitor-serving uses in the area. In addition, although the site is bordered by a water stream and close to the beach, the non-navigability of the water stream makes any marine or water related uses not possible at the site. Further, the portion of the site which allows for visitor-serving purposes is fairly distant from the beach to be appealing for any beach related purposes. The subject site is located within a mostly residential area and the area surrounding the site, composed mainly of residences, makes the site less desirable for commercial visitor serving uses. As such, it is our opinion the site would be better utilized for residential development, a use that conforms with the general area.

This completes our analysis. We appreciate the opportunity to work on this assignment and look forward to answering any questions you may have regarding our findings and conclusions presented herein.

Sincerely,

PKF Consulting USA



By Bruce Baltin
Senior Vice President

ADDENDA

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

This report is made with the following assumptions and limiting conditions:

Economic and Social Trends - The consultant assumes no responsibility for economic, physical or demographic factors which may affect or alter the opinions in this report if said economic, physical or demographic factors were not present as of the date of the letter of transmittal accompanying this report. The consultant is not obligated to predict future political, economic or social trends.

Information Furnished by Others - In preparing this report, the consultant was required to rely on information furnished by other individuals or found in previously existing records and/or documents. Unless otherwise indicated, such information is presumed to be reliable. However, no warranty, either express or implied, is given by the consultant for the accuracy of such information and the consultant assumes no responsibility for information relied upon later found to have been inaccurate. The consultant reserves the right to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

Hidden Conditions - The consultant assumes no responsibility for hidden or unapparent conditions of the property, subsoil, ground water or structures that render the subject property more or less valuable. No responsibility is assumed for arranging for engineering, geologic or environmental studies that may be required to discover such hidden or unapparent conditions.

Hazardous Materials - The consultant has not been provided any information regarding the presence of any material or substance on or in any portion of the subject property or improvements thereon, which material or substance possesses or may possess toxic, hazardous and/or other harmful and/or dangerous characteristics. Unless otherwise stated in the report, the consultant did not become aware of the presence of any such material or substance during the consultant's inspection of the subject property. However, the consultant is not qualified to investigate or test for the presence of such materials or substances. The presence of such materials or substances may adversely affect the value of the subject property. The value estimated in this report is predicated on the assumption that no such material or substance is present on or in the subject property or in such proximity thereto that it would cause a loss in value. The consultant assumes no responsibility for the presence of any such substance or material on or in the subject property, nor for any expertise or engineering knowledge required to discover the presence of such substance or material. Unless otherwise stated, this report assumes the subject property is in compliance with all federal, state and local environmental laws, regulations and rules.

Zoning and Land Use - Unless otherwise stated, the projections were formulated assuming the hotel to be in full compliance with all applicable zoning and land use regulations and restrictions.

Licenses and Permits - Unless otherwise stated, the property is assumed to have all required licenses, permits, certificates, consents or other legislative and/or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

Engineering Survey - No engineering survey has been made by the consultant. Except as specifically stated, data relative to size and area of the subject property was taken from sources considered reliable and no encroachment of the subject property is considered to exist.

Subsurface Rights - No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether the property is subject to surface entry for the exploration or removal of such materials, except as is expressly stated.

Maps, Plats and Exhibits - Maps, plats and exhibits included in this report are for illustration only to serve as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced or used apart from the report.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

(continued)

Legal Matters - No opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate consultants.

Right of Publication - Possession of this report, or a copy of it, does not carry with it the right of publication. Without the written consent of the consultant, this report may not be used for any purpose by any person other than the party to whom it is addressed. In any event, this report may be used only with proper written qualification and only in its entirety for its stated purpose.

Testimony in Court - Testimony or attendance in court or at any other hearing is not required by reason of rendering this report, unless such arrangements are made a reasonable time in advance of said hearing. Further, unless otherwise indicated, separate arrangements shall be made concerning compensation for the consultant's time to prepare for and attend any such hearing.

Archeological Significance - No investigation has been made by the consultant and no information has been provided to the consultant regarding potential archeological significance of the subject property or any portion thereof. This report assumes no portion of the subject property has archeological significance.

Compliance with the American Disabilities Act - The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We assumed that the property will be in direct compliance with the various detailed requirements of the ADA.

Definitions and Assumptions - The definitions and assumptions upon which our analyses, opinions and conclusions are based are set forth in appropriate sections of this report and are to be part of these general assumptions as if included here in their entirety.

Dissemination of Material - Neither all nor any part of the contents of this report shall be disseminated to the general public through advertising or sales media, public relations media, news media or other public means of communication without the prior written consent and approval of the consultant(s).

Distribution and Liability to Third Parties - The party for whom this report was prepared may distribute copies of this report only in its entirety to such third parties as may be selected by the party for whom this report was prepared; however, portions of this report shall not be given to third parties without our written consent. Liability to third parties will not be accepted.

Use in Offering Materials - This report, including all cash flow forecasts, market surveys and related data, conclusions, exhibits and supporting documentation, may not be reproduced or references made to the report or to PKF Consulting in any sale offering, prospectus, public or private placement memorandum, proxy statement or other document ("Offering Material") in connection with a merger, liquidation or other corporate transaction unless PKF Consulting has approved in writing the text of any such reference or reproduction prior to the distribution and filing thereof.

Limits to Liability - PKF Consulting cannot be held liable in any cause of action resulting in litigation for any dollar amount which exceeds the total fees collected from this individual engagement.

Legal Expenses - Any legal expenses incurred in defending or representing ourselves concerning this assignment will be the responsibility of the client.

RECEIVED
South Coast Region

AUG 21 2013

CALIFORNIA
COASTAL COMMISSION

Bay City Partners

2999 Westminster Avenue, Suite 211
Seal Beach, California 90740

562-594-6715

Ms Teresa Henry
District Director
California Coastal Commission
200 OceanGate
10th Floor
Long Beach, CA 90802-4416

August 20, 2013

Re: DWP Specific Plan Implementation Project Application

Dear Teresa,

As a follow up to our meeting of August 13, 2013 the City of Seal Beach and Bay City Partners, as co applicants, have met to discuss the concerns expressed by Coastal Staff and are submitting the attached proposed conditions which we would agree to as part of our application.

Condition No. 1

This is a proposed mitigation fee to offset the loss of Visitor Serving Land. It is based on previous applications wherein the Coastal Commission conditioned the projects for the loss of Visitor Serving opportunities through the payment of a mitigation fee. In particular we are using the City of Malibu LPCA No. MAL-MAJ-2-09-A since it is a directly parallel example. In that a fee for 15% of the lost potential hotel rooms at a rate of \$14,494 per lost room was recommended by Coastal Staff for the loss of 24 acres of visitor serving zoned land. This was in 2010 and adjusted for inflation it is now \$15,159 per lost room.

As in the Malibu LPCA the number of hotel rooms was based on what might actually have been able to have been built on the 24 acres. Although the DWP Specific Plan allowed for up to 150 rooms, as a practical matter only a 50 room hotel would fit on the designated Visitor Serving area when height, setback limits and other specific plan development standards are taken into consideration. A 75

room hotel would only have been possible if changes were made to lower the grade in combination with a flat roof instead of a pitched roof.

If we use the Malibu formula we would mitigate in the range of 8 rooms (for a 50 room hotel)-11 rooms (for a 75 room hotel) at \$15,159 or in the range of \$121,272 to \$166,749. We would round that up to \$175,000. As stated in the attached condition the fee would go to Hosteling International for a project planned in Long Beach, or if the Long Beach Hostel did not move forward in a reasonable amount of time, to another visitor serving facility in the area.

Condition No. 2

Condition No 2 guarantees that the open space creation and landscaping will actually be accomplished by the project applicants. The City of Seal Beach and/or Bay City Partners would construct the improvements in Visitor Serving Passive Open Space Area. Further details need to be worked out in the agreements between the applicants but this guarantees that one or both will complete the improvements.

Condition No. 3

To respond to your concern over noise from the adjacent Boat Sales and repair use we are proposing a condition to mitigate sound through appropriate sound wall techniques along the northerly property line of lot 32 and the westerly right of way line of "A" Street. Through this, the nearby residents will not be able to either see or hear what happens on that adjacent property and thus there will be no basis for any objection to the continued operation of that facility.

Condition No. 4

As a supplement to Condition No 1 we are proposing language guaranteeing that the City of Seal Beach, as part of their upcoming Local Coastal Plan, which they are committed to seeing done as fast as practical, will to the greatest extent feasible make a good faith effort to add new Visitor Serving designations in their land use plan.

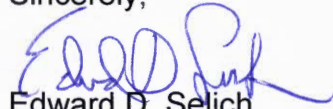
We feel these proposed conditions address your concerns sufficiently to determine that the proposed project meets the requirements of the Coastal Act and ask that you recommend approval of this project. In addition to meeting all of the requirements of the Coastal Act this project has significant public benefits which will be lost if it does not move forward. It will, among other things, guarantee in perpetuity public access to the beach through the driveway to the Rivers End parking lot and San Gabriel River Trail and provide over 6 acres of

open space that will be designed to create new and beneficial habitat adjacent to the river.

Should the substance of the proposed conditions be acceptable to the Coastal Commission staff, subject to some fine tuning by Coastal staff may want to do, we are agreeable to a 90 day continuance with the understanding the hearing would be held in November in Newport Beach.

Thank you very much for your consideration in this matter.

Sincerely;



Edward D. Selich
Bay City Partners Project Manager
627 Bayside Drive
Newport Beach Ca 92660
949-723-6383
edselich@roadrunner.com

Cc: Jim Basham Community Development Director City of Seal Beach

Attachments:

1. Proposed Conditions
2. Tentative Tract 17425 Condition 7.5
3. City of Seal Beach Noise Ordinance

Proposed Conditions

August 20, 2013

Suggested Condition # 1 Mitigation Fee for the Loss of Visitor Serving Land

Prior to the issuance of a Building or Grading Permit for the residential portion of the project, the applicant, Bay City Partners shall pay a mitigation fee of \$175,000 for the loss of Visitor Serving Commercial land in the City of Seal Beach. Said fee, is to be paid to Hostelling International to specifically supplement their existing fund to create a new Hostel facility in the Coastal Zone of the City of Long Beach. The applicant shall provide documentation to the Executive Director of the Coastal Commission that full payment of the fee has been made, prior to commencing any construction activity. If construction of the Hostel in Long Beach is not commenced within 5 years from payment of mitigation fee, the funds shall be made available to another public agency or private non-profit association designated by the Executive Director to be used for the acquisition of land and/or construction of a low-cost visitor serving hostel facility or campsites in the coastal area of Orange or Los Angeles County.

Suggested Condition #2 Improvement of the Visitor Serving Passive Open Space Area

Prior to issuance of a Certificate of Occupancy for the first housing unit, the applicants, the City of Seal Beach and/or Bay City Partners, shall commence construction (grading) on the Visitor Serving Passive Open Space Area. The Open Space area shall be complete and final, no longer than 12 months after issuance of the grading permit. Final approval and completion of the Open Space Area shall be to the satisfaction of the Coastal Commission staff.

Suggested Condition #3 Noise Mitigation

Supplemental to the attached TM 17425 Condition 7.5 the required landscaping/fencing treatment between "A" Street and the commercial site to the west of the tract shall attenuate the sound from the adjacent commercial property to conform to the attached standards of Section 7.15.015 of the Seal Beach Municipal Code entitled "Exterior Noise Standards". In addition, the required northerly property line wall of lot 32 shall also attenuate sound from the adjacent commercial property to conform to the attached standards of Section 7.15.015 of the Seal Beach Municipal Code entitled "Exterior Noise Standards".

Suggested Condition #4 City of Seal Beach LCP

The City of Seal Beach will continue to work with the Coastal Commission staff and make a good faith effort to plan for visitor serving commercial land use designations as part of the Local Coastal Program process.

Tentative Tract Map 17425
Condition of Approval 7.5

Services, prior to placing the Final Map on City Council agenda for approval.

- 7.3 Any structure that crosses any property line on the tentative map shall be demolished prior to final map approval. The subdivider shall obtain all required building/demolition permits prior to any such demolition and comply with any and all conditions of such permits.
- 7.4 Prior to City Council approval and recordation of the final tract map, a boundary line adjustment, land exchange agreement or other instrument shall be approved by the State Lands Commission that resolves any public trust restrictions on the property.
- 7.5 Prior to City Council approval and recordation of the final tract map, plans shall be submitted to the Community Development Department demonstrating to the satisfaction of the Community Development Director the landscape/fencing treatment interface between "A" Street and the commercial site to the west of the tract.
- 7.6 As to each residential lot, construction of a residential structure must be completed thereon no later than 2 years after the first conveyance of that lot following recordation of the final map. This requirement shall be included in the subdivision agreement required by Condition 7.2.2.

Chapter 7.15 Noise

§ 7.15.005 County Code Adopted by Reference.

Except as provided in this chapter, the noise code for the county, set forth at Orange County Code Section 4-6.1 et seq., is hereby adopted by reference as the noise ordinance for the city.

§ 7.15.010 Designated Noise Zones.

The noise zones of the city are as follows:

- A. Noise Zone 1: Residential properties.
- B. Noise Zone 2: Commercial properties.
- C. Noise Zone 3: Industrial, manufacturing and oil properties.

§ 7.15.015 Exterior Noise Standards.

A. Unless otherwise specifically indicated, the following exterior noise standards shall apply to all property within a designated noise zone:

Noise Standards:

<u>Noise Zone</u>	<u>Noise Level</u>	<u>Time Period</u>
1	55 db(A) 50 db(A)	7:00 a.m. – 10:00 p.m. 10:00 p.m. – 7:00 a.m.
2	65 db(A)	At any time
3	70 db(A)	At any time

In the event the alleged offensive noise consists of impact noise, simple tone noise, speech, music or any combination thereof, each of the above noise levels shall be reduced by 5 db(A).

B. No person shall create any noise, or allow the creation of any noise, on property owned or occupied by such person when such noise causes the noise level to exceed the following when measured from a residential property:

1. The exterior noise standard for a cumulative period of more than 30 minutes in any hour.

2. The exterior noise standard plus 5 db(A) for a cumulative period of more than 15 minutes in any hour.

3. The exterior noise standard plus 10 db(A) for a cumulative period of more than 5 minutes in any hour.

4. The exterior noise standard plus 15 db(A) for a cumulative period of more than 1 minute in any hour.

5. The exterior noise standard plus 20 db(A) for any period of time.

C. In the event the ambient noise level exceeds any of the first 4 noise limit categories in paragraph B, the cumulative period applicable to such category shall be increased to reflect that ambient level. In the event the ambient noise level exceeds the fifth noise limit category, the maximum allowable noise level under such category shall be increased to reflect the maximum ambient noise level.

§ 7.15.020 Interior Noise Standards.

A. Unless otherwise specifically indicated, the following interior noise standards shall apply to all residential property within a designated noise zone:

Noise Standards:

<u>Noise Zone</u>	<u>Noise Level</u>	<u>Time Period</u>
1	55 db(A)	7:00 a.m. – 10:00 p.m.
	50 db(A)	10:00 p.m. – 7:00 a.m.

In the event the alleged offensive noise consists of impact noise, simple tone noise, speech, music or any combination thereof, each of the above noise levels shall be reduced by 5 db(A).

B. No person shall create any noise, or allow the creation of any noise, on property owned or occupied by such person when such noise causes the noise level to exceed the following when measured from another dwelling unit on residential property:

1. The interior noise standard for a cumulative period of more than 5 minutes in any hour.

2. The interior noise standard plus 5 db(A) for a cumulative period of more than 1 minute in any hour.