## ORNIA COASTAL COMMISSION

South Coast Area Office 00 Oceangate, Suite 1000 Beach, CA 90802-4302 590-5071

# RECORD PACKET COPY

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Staff:

CP-LB

Staff Report: Hearing Date:

12/14/1999 January 11-14, 2000

**Commission Action:** 

# STAFF REPORT: REGULAR CALENDAR

**APPLICATION NUMBER: 5-99-162** 

**APPLICANT:** 

City of Long Beach

**AGENT:** 

Dennis Eschen, Superintendent of Planning & Development City of Long Beach Department of Parks, Recreation & Marine

PROJECT LOCATION:

5437 E. Ocean Boulevard, Alamitos Bay, City of Long Beach.

PROJECT DESCRIPTION: Enlargement of existing public pier to add 607 square feet to the existing 182 square foot pier office, attachment of a 594 square foot floating dock to the existing docks located at end of the pier, and construction of a 475 square foot boat shelter over the water

for storage of docked gondolas.

LOCAL APPROVAL:

City of Long Beach Site Plan Review, Case #9810-14, 11/18/98.

#### SUBSTANTIVE FILE DOCUMENTS:

- 1. City of Long Beach Certified Local Coastal Program, 7/22/80.
- 2. U.S. Army Corps of Engineers Permit Application No. 199915708-TJE.
- 3. California Regional Water Quality Control Board Letter, 8/5/99.
- 4. Coastal Development Permit A5-93-353 (Long Beach/U.S. Sailing Center).
- 5. Coastal Development Permit 5-97-342 (Long Beach/Costa del Sol Marina).
- 6. Eelgrass Surveys of Gondola Getaway in Alamitos Bay, By Coastal Resources Management, 10/2/98 & 7/16/99.

#### SUMMARY OF STAFF RECOMMENDATION

A coastal development permit is required from the Commission because the proposed project is located seaward of the mean high tide line on submerged lands within the Commission's area of original jurisdiction. Staff recommends that the Commission grant a permit for the proposed development with conditions to prevent adverse impacts to marine resources, regulate future uses, and require the assumption of risk. The applicant agrees with the recommendation.

#### **STAFF NOTE:**

The proposed development is located seaward of the mean high tide line (MHTL). The MHTL differentiates the Commission's area of retained (original) jurisdiction for tidelands, submerged lands, and public trust lands from the landward area for which the City has accepted coastal development permit jurisdiction pursuant to the Long Beach certified Local Coastal Program. The standard of review for the proposed development is the Chapter 3 policies of the Coastal Act.

#### STAFF RECOMMENDATION:

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

#### MOTION

"I move that the Commission approve with special conditions Coastal Development Permit 5-99-162 per the staff recommendation as set forth below."

Staff recommends a <u>YES</u> vote which would result in the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

# I. Resolution: Approval with Conditions

The Commission hereby grants, subject to the conditions below, a coastal development permit for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

#### II. Standard Conditions

 Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

- 2. <u>Expiration</u>. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Compliance</u>. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
- 4. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. <u>Inspections</u>. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
- 6. <u>Assignment</u>. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 7. <u>Terms and Conditions Run with the Land</u>. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

# III. Special Conditions

# 1. <u>Timing of Project</u>

In order to minimize adverse impacts during the least tern nesting season, no construction activity shall occur during the period commencing March 1 and ending September 31.

# 2. <u>Installation of Piles</u>

The permittee shall install a turbidity screen around all pile-driving locations to prevent fouling of the bay with suspended particles and use the best management practice of "dry" pile driving to minimize adverse environmental effects. The use of creosote treated wood products is prohibited.

# 3. Conformance with the Requirements of the Resource Agencies

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

# 4. Future Uses and Improvements

This approval is limited to the development specifically described in the project description, exhibits, and related findings of Coastal Development Permit 5-99-162. Any additional development or intensification of use, including the establishment of a restaurant or the lease of docks or pier area for commercial boating uses, shall be submitted to the Executive Director to determine whether an amendment to this permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations.

# 5. Assumption of Risk

By acceptance of this permit amendment, the permittee acknowledges and agrees: (i) that the site may be subject to hazards from seismic events, liquefaction, storms, waves, floods and erosion; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

# IV. Findings and Declarations

The Commission hereby finds and declares:

# A. Project Description

The City of Long Beach proposes to modify the existing public pier and floating boat docks that are located at the Leeway Sailing Center in Alamitos Bay (See Exhibits). The proposed project includes: 1) addition of 607 square feet to the existing 182 square foot office structure located on the pier, 2) attachment of a 594 square foot floating dock to the existing floating docks located at the end of the pier, and 3) construction of a 475 square foot boat shelter over the water to protect docked gondolas (Exhibit #3). No dredging is proposed in this application.

The Leeway Sailing Center, where the project is proposed, is a multi-purpose recreational facility operated by the Long Beach Department of Parks, Recreation and Marine (Exhibit #6). The Leeway Sailing Center pier is constructed over the waters of Alamitos Bay and the sandy beach. Bayshore Aquatic Playground Park, located immediately west of the project site on the shores of Alamitos Bay, includes a child's playground, basketball courts, public restrooms, and a popular public beach (Exhibit #2). Public parking for this popular coastal recreational area is provided on Ocean Boulevard and in two public beach parking lots located on either side of Ocean Boulevard.

The City states that the proposed pier office enlargement, dock additions, and boat shelter are all proposed for public use. The proposed pier improvements and boat shelter, however, will primarily serve the "Gondola Getaway" concession that has been located at the Leeway Sailing Center pier since 1982. Gondola Getaway is a commercial boating operation that provides the public with Venetian-style gondola tours through the Naples Canals and Alamitos Bay. The City of Long Beach has granted Gondola Getaway a lease to use the Leeway Sailing Center pier and the docks for the commercial gondola tours. No other commercial uses currently exist on the site.

The existing office structure on the pier was formerly used by City Lifeguards and has a floor area of 182 square feet (Exhibit #3). The proposed 607 square foot addition to the pier office would provide a 169 square foot covered outdoor waiting area for *Gondola Getaway* customers, and a 620 square foot office, reception area, and storage room (Exhibit #3). The proposed pier office addition would be attached to the side of the existing pier and supported by four new 16-inch diameter wooden piles wrapped in fiberglass. The existing width of the pier accessway will not be reduced by the proposed project.

The dock area where the "floating boathouse" boat shelter is proposed is currently used by Gondola Getaway for the docking of gondolas. The proposed 475 square foot "floating boathouse" would not require any new piles as it is proposed to be attached to the existing floating docks which are supported by four existing concrete piles (Exhibit #3).

The City states that the proposed 594 square foot floating dock to be attached to the existing floating docks at the end of the pier will not be a part of the *Gondola Getaway* concession. The proposed two-finger dock addition is for the use of the Leeway Sailing Center, a City recreational facility that provides sailing instruction to beginner and intermediate sailors. The proposed floating dock addition would be supported by two new 16-inch diameter wooden piles wrapped in fiberglass (Exhibit #3).

#### B. Marine Resources

The Coastal Act contains policies that address development in or near coastal waters. The proposed project is located in and over the coastal waters of Alamitos Bay (Exhibit #2). The standard of review development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following marine resource policies.

Sections 30230, 30231 and 30233 of the Coastal Act require the protection of biological productivity, public recreation and marine resources.

#### Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

#### Section 30231 of the Coastal Act states:

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

#### Section 30233 of the Coastal Act states, in part:

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
  - (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities...

Sections 30230 and 30231 of the Coastal Act require that marine resources and the biological productivity of coastal waters be maintained and enhanced. Section 30233 of the Coastal Act allows filling of coastal waters and wetlands only under very limited circumstances. The proposed filling of wetlands and coastal waters must be for an allowable use, mitigation measures must be provided to minimize adverse environmental effects, and it must be the least environmentally damaging alternative.

In this case, the City of Long Beach proposes to enlarge a public pier and add new docks to an existing public boating facility, the Leeway Sailing Center (Exhibit #3). The proposed project involves the placement of six new 16-inch diameter wooden piles wrapped in fiberglass. All six proposed piles would be placed below the mean high tide line (MHTL).

The proposed placement of six new piles below MHTL constitutes filling of open coastal waters. According to Section 30233(a)(4) of the Coastal Act, the filling of open coastal waters for new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities is an allowable use. The proposed public pier enlargement and new docks involve fill for an expanded boating facility and public recreational pier that would provide the public with improved public access and recreational opportunities. The proposed pier enlargement will facilitate the operation of a unique water-dependent recreational activity: gondola tours of Alamitos Bay and the Naples Canals. The proposed dock addition will improve public access to the Leeway Sailing Center, a multi-purpose recreational facility operated by the Long Beach Department of Parks, Recreation and Marine that provides sailing instruction to beginner and intermediate sailors. Therefore, the proposed project is an allowable use pursuant to Section 30233(a)(4) of the Coastal Act.

Secondly, Section 30233(a) of the Coastal Act requires that mitigation measures be provided to minimize any adverse environmental effects associated with the proposed development. The applicant has incorporated specific construction methods within the proposed project to minimize the adverse environmental effects of the proposed project. For instance, the City states that tarps will be hung under the pier during construction to prevent materials from falling into the waters below. In addition, the proposed floating dock addition will be constructed off-site, barged to the project site and bolted together with minimal impact to the environment.

Before the new dock is barged to the site for assembly, however, the two piles necessary to support the dock, and the four piles to support the proposed pier office addition, must be driven at least ten feet into the soft bottom of the bay. The placement of six new piles below the mean high tide line will result in the displacement of approximately nine square feet of subtidal habitat area (1.5 sq.ft. per pile). The consulting biologist states that the six proposed piles will provide additional habitat area for the pier piling mussel community biomass and will not adversely affect any sensitive marine resources (eelgrass and clam beds) if the adverse environmental effects of pile driving are adequately mitigated.

In order to minimize the adverse environmental effects of pile driving, the City proposes to use the best management practice of "dry" pile driving. Dry pile driving reduces the adverse impacts of turbidity commonly associated with pile driving by minimizing the disruption of bottom habitat. The alternative pile-driving method of "jetting" uses high-pressure jets of water and air to clear a hole for a pile resulting in greater displacement of the bottom materials, fouled water, and high levels of turbidity. On the recommendation of the consulting biologist, the City will also install turbidity screens around all pile-driving locations to prevent fouling of the bay with suspended particles.

Therefore, in order to prevent fouling of the bay with suspended particles the permit is conditioned to require the permittee to install turbidity screens around all pile-driving locations and to use the best management practice of "dry" pile driving to minimize adverse environmental effects. In addition, the use of creosote treated wood products is prohibited.

The proposed project will not impact the **eelgrass beds** that exist in the vicinity of the proposed project (Exhibit #4). Eelgrass (Zostera marina) is a flowering marine plant that grows on mud and sand bottoms. Bottom areas vegetated with eelgrass are important because they are refuges, foraging centers, and nursery habitats for many types of coastal and bay invertebrates and fishes. Eelgrass is also recognized as a key food source for certain shorebirds. Consequently eelgrass habitat is identified as a valuable and sensitive marine resource by the California Department of Fish and Game, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service.

On October 2, 1998 and July 16, 1999, a biologist from Coastal Resources Management conducted eelgrass surveys at the location of the proposed project (Exhibit #4). The site assessment prepared by the consulting biologist states that the two eelgrass beds that exist near the site and other sensitive marine species would not be negatively impacted by the proposed project. The eelgrass beds will not be negatively affected because the proposed pier office addition, boat shelter and dock addition all avoid the eelgrass beds. In addition, the consulting biologist states that proposed improvements will shade sandy substrate, but will not shade any eelgrass habitat.

The endangered California least tern has historically nested and foraged in the Alamitos Bay area near the site of the proposed project. In order to avoid adverse impacts to a known foraging area for the endangered seabird, the consulting biologist recommends that construction of the proposed project be scheduled to avoid the California least tern nesting season (March 1 - September 31). Construction impacts could temporarily reduce the quality of least tern foraging areas near the proposed project. Therefore, in order to reduce the proposed development's impacts on the least tern's feeding area during the birds' nesting season, the permit has been conditioned so that no construction activity shall occur during the period commencing March 1 and ending September 31.

Finally, the proposed project must be the least environmentally damaging alternative. The proposed project will improve an existing public boating facility which will enhance coastal access or recreation. Alternative projects and alternative project locations have been considered by the City which found the proposed project to be the least environmentally damaging alternative because it utilizes an existing facility and would not displace any existing uses. The above stated construction methods and conditions of approval adequately address and mitigate any potential adverse impacts to the environment caused by the proposed project. There is no feasible less environmentally damaging alternative. Therefore, as conditioned, the proposed project is the least environmentally damaging alternative and, as conditioned, is consistent with the marine resource policies of the Coastal Act.

## C. Recreation and Public Access

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. Pursuant to Section 30604(c) of the Coastal Act, because the proposed development is located between the first public road and the sea, the proposed project must be found consistent with the public access and recreation policies contained in Chapter 3 of the Coastal Act. The proposed project is consistent with the following Coastal Act policies which encourage public access and recreational use of coastal areas.

#### Section 30210 of the Coastal Act states:

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

#### Section 30213 of the Coastal Act states:

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

#### Section 30221 of the Coastal Act 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.

The Leeway Sailing Center, where the project is proposed, is a multi-purpose recreational facility operated by the Long Beach Department of Parks, Recreation and Marine (Exhibit #6). The Leeway Sailing Center pier is constructed over the waters of Alamitos Bay and the sandy beach. Bayshore Aquatic Playground Park, located immediately west of the project site on the shores of Alamitos Bay, includes a child's playground, basketball courts, public restrooms, and a popular public beach (Exhibit #2). Public parking for this popular coastal recreational area is provided on Ocean Boulevard and in two public beach parking lots located on either side of Ocean Boulevard.

The City states that the proposed pier office enlargement, dock additions, and boat shelter are all proposed for public use. The proposed project is an improvement to an existing public boating facility and public recreational pier that will provide the public with improved public access and recreational opportunities. The proposed dock addition will improve public access to the Leeway Sailing Center, a multi-purpose recreational facility operated by the Long Beach Department of Parks, Recreation and Marine that provides sailing

instruction to beginner and intermediate sailors. Expert sailing instruction is provided at the United States Sailing Center located three hundred feet east of the Leeway Sailing Center in Alamitos Bay (See Coastal Development Permit A5-93-353).

The proposed pier office enlargement will facilitate the operation of a unique water-dependent recreational activity: gondola tours of Alamitos Bay and the Naples Canals. According to the City, the existing width of the pier accessway will not be reduced by the proposed pier office addition. Therefore, the proposed pier office addition will not interfere with the Leeway Sailing Center's use of the pier and docks.

Any additional development or intensification of use at this coastal recreation area, however, could have an adverse impact on public access and recreation. Intensification of uses, such as the establishment of a restaurant or the lease of docks or pier area for commercial boating uses, could further reduce the amount of available beach area and public parking for public access. Therefore, this permit approval is limited to the development specifically described in the project description, exhibits, and related findings. Any additional development or intensification of use, including the establishment of a restaurant or the lease of docks or pier area for commercial boating uses, shall be submitted to the Executive Director to determine whether an amendment to this permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations. Only as conditioned is the proposed project consistent with the public access and recreation policies of the Coastal Act.

Construction activities could negatively impact the public's use of this popular coastal recreation area. The peak beach use season runs through the summer from May to September. Because the permit is conditioned to avoid impacts to the California least tern during its nesting season (March 1 – September 31), the proposed project will also avoid the summer beach use season. By completing the proposed project during the winter months, the permittee will avoid conflicts with the heavy beach crowds that are attracted to this portion of the state's coastline. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the public access and recreation policies of the Coastal Act.

#### D. Hazards

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

Section 30253 of the Coastal Act states, in part:

New development shall:

(I) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Developments located in or near the ocean have the potential for damage caused by wave energy, floods, seismic events, storms and erosion. The proposed project is located in the waters of Alamitos Bay and is susceptible to natural hazards. No development in the water can be guaranteed to be safe from hazard.

The Commission routinely imposes conditions for assumption of risk in areas at high risk from hazards. The condition ensures that the permittees understand and assume the potential hazards associated with development in or near the water. Therefore, by acceptance of this coastal development permit, the permittee acknowledges and agrees: (i) that the site may be subject to hazards from seismic events, liquefaction, storms, waves, floods and erosion; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards. Only as conditioned is the proposed project is consistent with Section 30253 of the Coastal Act.

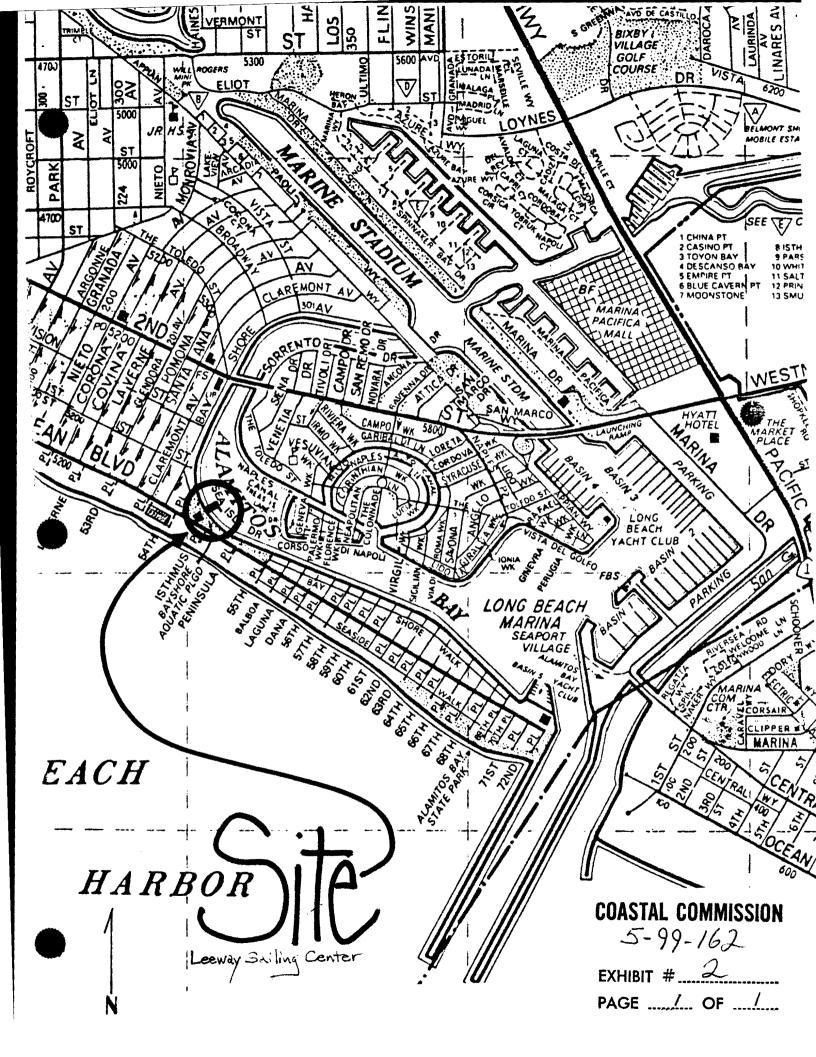
# E. California Environmental Quality Act (CEQA)

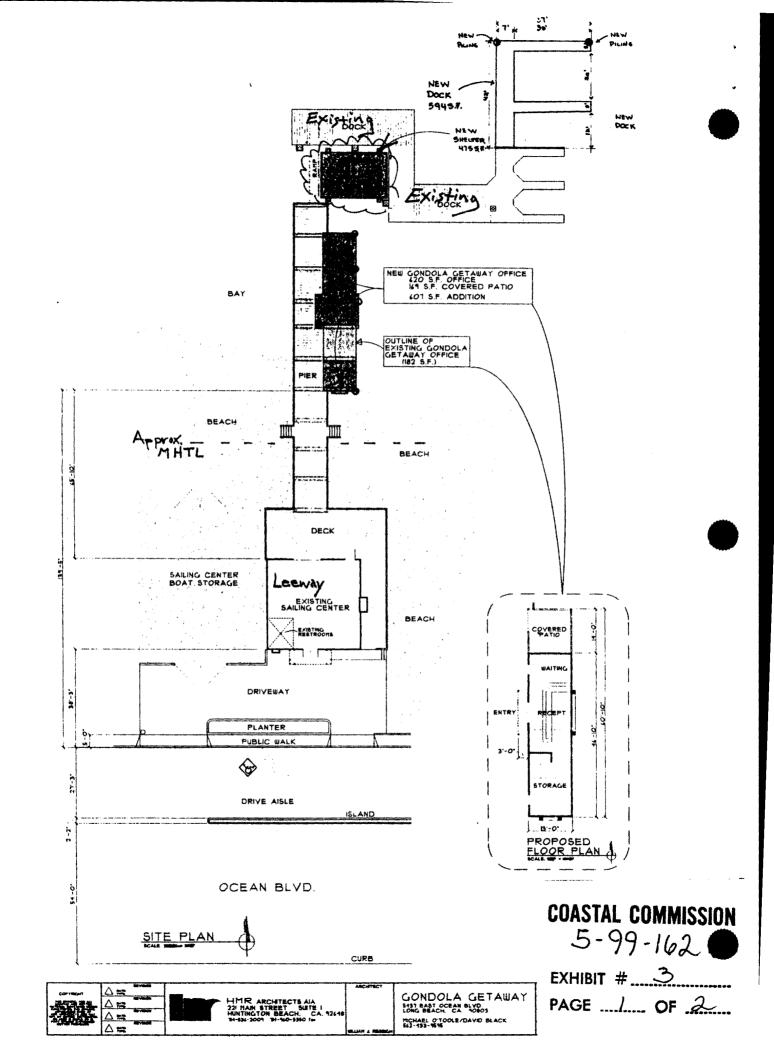
Section 13096 of the California Code of Regulations requires Commission approval of coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

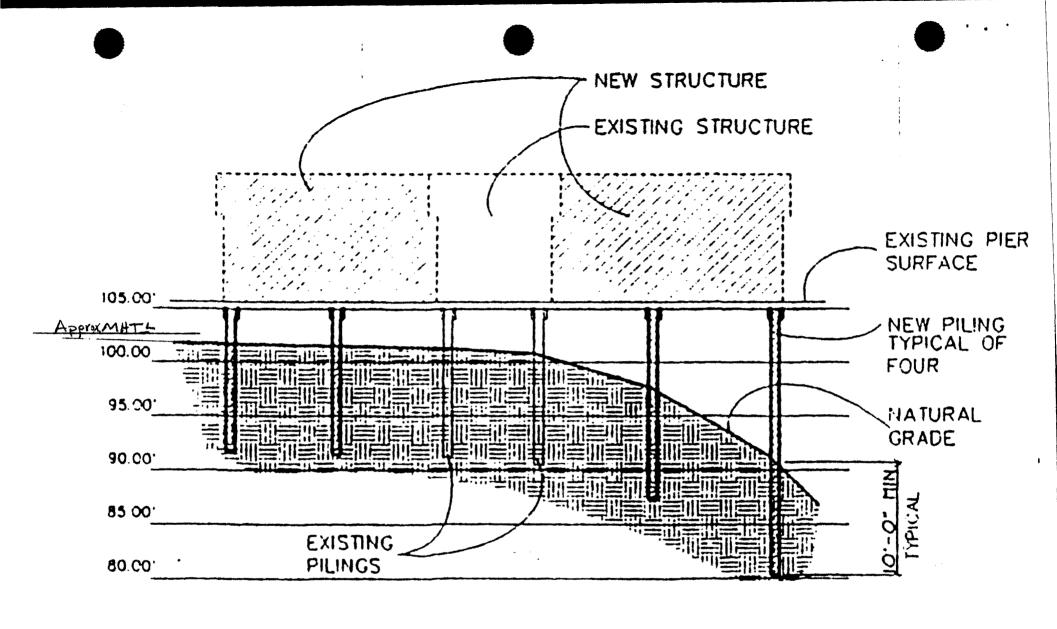
The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may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

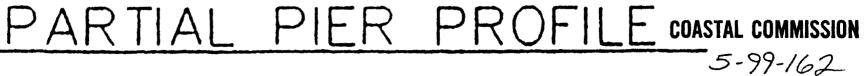
# City of Long Beach







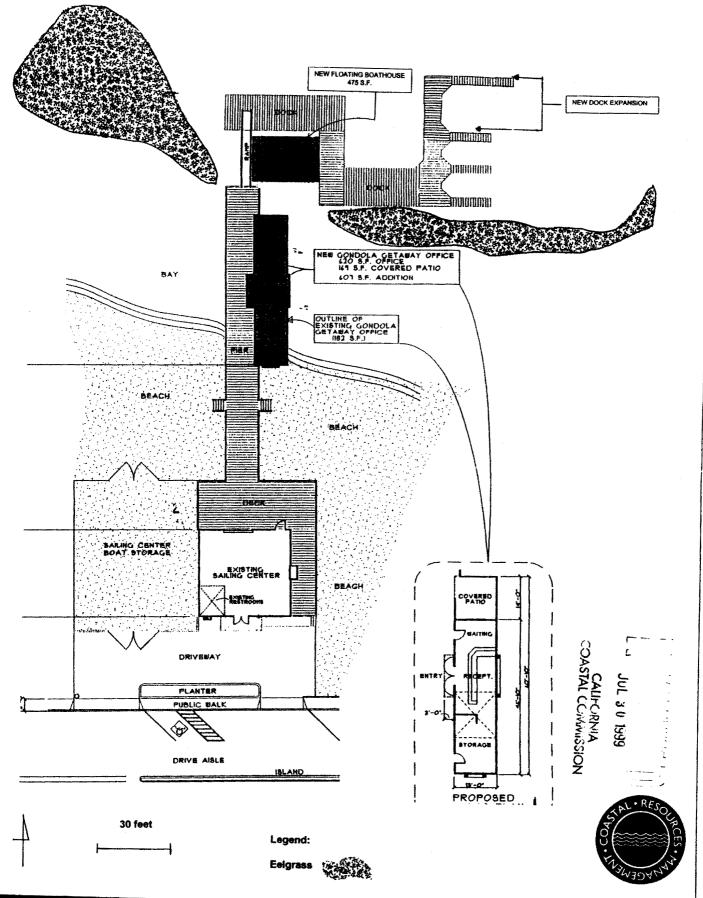




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EXHIBIT # 3

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# COASTAL CUMMISSIUN 5-99-162

EXHIBIT # ..... 4 PAGE \_\_/\_ OF \_\_/\_

EELGRASS (ZOSTERA MARINA) HABITAT MAP City of Long Beach Department of Parks, Recreation, and Marine (and) the Gondola Getaway Dock and Pier improvements, Alamitos Bay, Long Beach, California

Coastal Resources Management Date of Surveys: October 2<sup>nd</sup>, 1998 and July 16, 1999

COASTAL COMMISSION 5-99-162 EXHIBIT # .....S... lew of pier from Alamity Bay looking South 5-99-162<sup>COASTAL</sup>COMMISSION

COASIAL COMMISSION PRO POSED BUILD ING ON PIER Existing CITY Bulding

View of site looking North from Ocean B