

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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**TH 22d**

Filed: 9/19/03  
Staff: AJP-LB  
Staff Report: 11/20/03  
Hearing Date: 12/11/03  
Commission Action:

**STAFF REPORT: PERMIT EXTENSION REQUEST****APPLICATION NUMBER: 5-01-143E1****APPLICANT:** Marina Two Holding Partnership and County of Los Angeles  
Department of Beaches and Harbors**AGENT:** Roger Van Wert**PROJECT LOCATION:** 13900 Marquesas Way (Parcel 12 & 15), Marina del Rey

**PROJECT DESCRIPTION:** Demolition of an existing 717 slip marina and construction of a 439 slip marina in a different dock and slip configuration within two leasehold parcels. The development includes the removal and replacement of piers, ramps, pilings, and dock floats. A mechanical lift for disabled access will be provided. In addition, five, approximately 2,080 square foot, 13 foot high, floating boater support facility structures containing restrooms, showers, laundry, and vending facilities will be constructed, with one structure on each parcel containing a dockmaster management office.

**SUBSTANTIVE FILE DOCUMENTS:** Marina Del Rey certified Local Coastal Plan, 1995.**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission find that there are no changed circumstances affecting the project's consistency with the Chapter 3 policies of the Coastal Act, thereby triggering an automatic one-year extension of the permit's expiration date.

**PROCEDURAL NOTE:**

Section 13169 of Title 14 of the California Code of Regulations provides that applications for permit extensions shall be scheduled for a hearing on whether there are changed circumstances that affect the consistency of the permitted development with the applicable standard if:

- 1) The Executive Director determines that, due to changed circumstances, the proposed development may no longer be consistent with that standard, or,
- 2) The Executive Director determines that there are no changed circumstances that could affect the development's consistency with the applicable standard, but the Executive Director receives written objections to that determination, and either:
  - a. the Executive Director concludes that the written objections identify changed circumstances that may affect the consistency of the development, or
  - b. the Executive Director concludes that the written objections do not identify changed circumstances that affect the development's consistency with the applicable standard, but when the Executive Director reports that conclusion to the Commission,
- 3) three Commissioners object to the extension on the ground on grounds that there may be changed circumstances that affect consistency.

14 C.C.R. § 13169(c) and (d).

In this case, the Executive Director determined that there were no changed circumstances that could possibly affect the consistency of the proposed development with the Chapter 3 policies of the Coastal Act and reported that determination to the Commission in October of 2003. Subsequently, the Commission received four letters objecting to the Executive Director's determination (Exhibits No. 1). Therefore, the extension request was reported to the Commission again at the November 5, 2003 hearing, along with the objection letters and the Executive Director's conclusion that the objections did not identify any changed circumstances that could affect the development's consistency with Chapter 3 of the Coastal Act. At the November 5, 2003 hearing, four (4) Commissioners objected to the extension request on the grounds that there may be changed circumstances that would affect the consistency of the proposed development with Chapter 3 and requested that the item be scheduled for hearing so that the issue of changed circumstances could be addressed. Accordingly, the Executive Director has scheduled this extension request for a hearing and presents this report to "describe any pertinent changes in conditions or circumstances." 14 C.C.R. § 13169(d).

STAFF NOTE:

Approval of this Coastal Development Permit extension request will extend the expiration date of Coastal Development Permit 5-01-143 to October 9, 2004, one year from the original date of expiration.

**I. STAFF RECOMMENDATION:**

Staff recommends that the Commission determine that there are no changed circumstances which could cause the project, as originally approved, to be inconsistent with the Chapter 3 policies of the Coastal Act, thereby granting the extension of the permit's expiration date.

## II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

### A. Project Description

The applicant has requested a one-year extension of Coastal Development Permit No. 5-01-143. The application that produced permit 5-01-143 requested authorization to demolish an existing anchorage providing 717 slips and construct a new 439 slip marina within two parcels (12 and 15) in Marina del Rey. As conditioned by the Commission, the permit required a revised boat slip size distribution and configuration so that no fewer than 25% of the total boat slips would be less than 25 feet in length. As approved, the revised plans indicate the final total slip quantity as 468 slips with 117 (25%) of the total slips 25 feet or less.

The approved development also included removal of all existing dock floats, ramps, and pilings within the main basin and construction of new floats, ramps, and pilings in a new configuration, with sewage pumpout hookups to service all slips. The new anchorage will be a structural wood system with a concrete deck and polyethylene floats.

The new anchorage will utilize five gangways with electronically controlled access gates for boater access. Each access gangway will have a "Ramp Rider" lift system installed to allow disabled access to the docks.

Five on-water, 2,080 square foot, 13 foot high buildings will be constructed as part of the dock system. The buildings will be located at the foot of each gangway. The buildings will contain restrooms, laundry facilities, vending machines and storage area. In addition, one building within each parcel will contain the offices of the dockmaster. The existing parcel coverage by the docks and walkways will increase from 144,435 square feet to 159,011 square feet. In addition, a total of 294 14-inch diameter concrete pilings will be removed and 359 14 to 22-inch diameter piles will be installed.

Parcel 12 is located on Marquesas Way mole road. The parcel extends partially along the south side of Marquesas Way to the eastern end of the road ). The parcel contains approximately 11 acres of usable water area. Within this 11 acres, there are 464 boat slips. Parcel 15 is located partially along Via Marina and extends to the east along the southern side of the Panay Way mole road (see Exhibit No. 2). The parcel contains approximately 7 acres of useable water area and provides 253 boat slips. Both parcels are situated in the western portion of the marina, in Marina Del Rey.

The proposed marina replacement will be phased so that only portions of the 717 slip anchorage will be out of service at any one time. Phase one will consist of removal of 464 slips and constructing a total of 227 new slips within Parcel 12. After completion of the first phase, the second phase will commence on Parcel 15 removing the 253 existing slips and constructing 212 new slips. After completion of the first phase (Parcel 12), the second phase

will commence on Parcel 15. Boats using the boating facility on Parcel 15 will have the opportunity to move to the newly constructed slips on the Parcel 12 when completed. Other available relocation options within Marina del Rey include dry dock facilities and other slips within other anchorages.

## **B. Permit History**

Coastal Development Permit No. 5-01-143 was approved, with conditions, by the Commission on October 9, 2001. The permit was valid for two years or until development commenced, whichever occurred first. On September 19, 2003, and prior to the expiration of the permit, the applicants (Marina Two holding Partnership & Los Angeles County Department of Beaches and Harbors) submitted a request to extend the expiration date on Coastal Development Permit 5-01-143 for an additional one-year period.

The applicant has indicated that, prior to submittal of the extension request, work had occurred in preparation of development approved under the approved permit. However, at this time the applicant has not submitted substantial evidence that would indicate that work has been undertaken by the applicant, pursuant to a duly issued permit, that would constitute development specifically approved under the permit. Therefore, an extension of the permit is required.

On September 29, 2003, the South Coast District Office in Long Beach issued a notice of the Executive Director's determination that there were no changed circumstances that may affect the proposed development's consistency with the Chapter 3 policies of the Coastal Act. As required by Section 13169(b) of Title 14 of the California Code of Regulations, the Executive Director reported this determination to the Commission at its October 7, 2003, Commission meeting in Coronado.

Within the ten working-day appeal period (September 29, 2003 to October 14, 2003), during which any person may object to the Executive Director's determination, the South Coast District Office received three letters objecting to the Executive Director's determination that there are no changed circumstances that affect the proposed development's consistency with the Chapter 3 policies of the Coastal Act).

At the November hearing, the Executive Director reported the objections with the determination that the objections did not identify changed circumstances. However, at the hearing at four Commissioners requested that a hearing be held on the issue of changed circumstances. Therefore, the extension request has been scheduled for the December hearing.

## **C. Grounds for Objection**

Section 13169(c) of Title 14 of the California Code of Regulations states in part that in order to deny an extension request objections must identify changed circumstances.

Objections raised in the four letters include claims that the property is Federal property and not under the ownership of the County, and that therefore, the Coastal Commission does not have permit jurisdiction; that the property is under the jurisdiction of the State Lands Commission; that the property is located on two former oil refinery sites and a sewage treatment plant; that the applicant is now proposing to bifurcate the approved development; and that loss of boat slips impacts public boating and handicapped access (see letters attached as Exhibit No. 1). Issues raised at the November 2003 Commission meeting include lack of adequate small boater facilities.

1. Marina del Rey Ownership and Governmental Jurisdiction

Mr. John Davis, states:

- a. *Attachment D of the CaCZMP [California's Coastal Zone Management Plan] page D-1 reads:*

*(Under the provisions of (304(a) of the federal Coastal Zone Management Act of 1972, as amended, and Section 30008 of the California Coastal Act of 1976 "Excluded from the coastal zone are land, the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents".)*

*On page D-8 Marina del Rey is shown as Real Property Owned by the United States.*

*Therefore Marina is categorically excluded fro the Coastal Zone and therefore the California Coastal does not have the jurisdiction to issue Coastal Development Permit thusly the CDP in question is not valid and no extension can be approved by the Executive Director.*

- b. *Marina del Rey is a federal project governed under the U.S. Rivers and Harbors Act, information that was withheld from the Commission that could have changed the Commissions original decision to grant the permit.*
- c. *Marina del Rey is a submerged and or formally submerged land of the State of California and must be under the jurisdiction of the State land commission under the State Constitution and under the Public Resource Code Section 6301.*
- d. *Co applicant County of Los Angeles asserts that it enjoys the same benefits as the privately held Summa Corporation relative to Summa v. California State lands Commission and City of Los Angeles.*

*County of Los Angeles is a constitutional sub set of the State of California therefore, it cannot look beyond the State Constitution and assert it holds the same rights to land as a private corporation.*

The questions of ownership and jurisdiction were not raised at the original hearing when the Commission approved the project in 2001. These are new questions that raise issues regarding ownership and/or jurisdiction over Marina del Rey, which is owned and operated by the County of Los Angeles. These issues, however, do not raise any issues that may affect the development's consistency with chapter 3 of the Coastal Act. In addition, the objector does not claim that the ownership or jurisdiction status has changed in the last two years, so it could not constitute a change in a condition or circumstance from the time the project was originally approved.

## 2. Prior Uses on Site

The letter from Mr. Davis and Mr. Raymond Collins claim that the approved project is:

*located on or adjacent to two former oil refineries and a sewage treatment plant, information that was withheld from the Coastal Commission by co-applicant Los Angeles County that could have changed the Commission's original erosion to grant the permit.*

With regards to former oil refineries and sewage treatment plants, there is no evidence submitted to indicate that such facilities are located within the project area or that the former presence of such facilities would have an impact on the proposed project or marine environment through the release of gases. Furthermore, at the 2001 hearing on the permit, the issue of toxic substances, such as hydrogen sulfide and methane gas was raised by the opponent, and the Commission found that there was no significant issue. Therefore, this objection does not raise any changed circumstances that may affect the consistency of the development with chapter 3 policies of the Coastal Act.

## 3. Bifurcation or Phasing of the Development

Mr. Davis claims that:

*The applicants have now proposed to bifurcate the development approved by the Coastal Commission*

The concern with bifurcation or phasing of the project was addressed in the original permit. The Commission approved the project in two phases, as originally proposed by the applicant, to remove from service the use of the docks on only one of the two parcels at a time during the proposed redevelopment of the docks. While the docks are closed and all boaters relocated from one of the parcels, construction will begin to replace the pilings, docks and slips, as well as other approved improvements. Once construction is

completed on the first parcel, the docks will be reopened and the docks on the second parcel will be closed, boaters relocated, and construction will begin on the second parcel. Phasing of the development of the docks was designed to minimize the temporary impacts caused by the displacement of boaters during construction.

Therefore, this objection does not raise any changed circumstances that may affect the consistency of the development with chapter 3 policies of the Coastal Act because this issue was addressed in the original proposal, and bifurcation of the development was found to be necessary to protect public access.

#### 4. Loss of Boat Slips and Boater Facilities

The letter from Carla Andrus claims that there will be a hardship on the community and recreational boating with 717 boat slips out of inventory.

At the Commission hearing an issue raised was there was a lack of small boater facilities provided.

As stated above, the development will be phased so that not all 717 slips will be out of service at once. Furthermore, with boaters from Phase I already relocated, there remains boater vacancies within Marina del Rey. Currently, with the closure of the marina at Parcel 12 (Deauville Marina) in preparation of phase I reconfiguration, and the current on-going phased construction on Parcel 111 (CDP No. 5-02-077), which is a separate project within the marina, there is an overall vacancy rate of 2.9% throughout Marina del Rey for boat slips. The vacancy breakdown for Marina del Rey is as follows:

<i>Slip Length(ft.)</i>	<i>18 to 25</i>	<i>26 to 35</i>	<i>36 to 50</i>	<i>51 or greater</i>	<i>Total</i>
<i>Available Slips</i>	58	58	13	1	130
<i>Percentage</i>	4.1%	2.7%	1.3%	0.5%	2.9%

Furthermore, the County offers mast-up storage and dingy storage as an alternative to wet slip boat storage. The County provides 304 mast-up boat spaces and currently has a 16% vacancy rate. For dingy storage, the County provides 156 spaces with a current vacancy rate of 9.6%. In addition to the dry storage offered by the County, there are approximately 6 privately leased parcels offering over 500 boat spaces in Marina del Rey.

Based on this information, there are alternative spaces currently available for boaters. Furthermore, boats within parcel 12 (464 boat slips), Phase I, have already been relocated into other slips in Marina del Rey or have found alternative facilities outside of the marina. And under the current construction phasing (approximately ten phases) on Parcel 111, only approximately 60 to 90 slips will be affected at a time. These boats are either relocated to other slips available within Parcel 111, or within Marina del Rey, or stored in dry storage, or they have found alternative facilities outside of Marina del Rey. Therefore,

the phased temporary construction of the marina on Parcel 12 will not have an adverse impact on boating within Marina del Rey.

The issue of phasing and temporary loss of slips during construction was addressed in the staff report and at the Commission hearing.

Moreover, the Commission addressed the issue of the reduction of overall number of slips within the marina and also required the marina to maintain a specific percentage (25%) of small boat slips within the new reconstructed marina. Furthermore, the approved project included, floating boater support facility structures containing restrooms, showers, laundry, vending facilities, and individual slip sewage pumpout hookups, for boaters. These facilities will be operational once dock construction is completed and the docks opened for boater use.

Therefore, the issue of phasing and loss of boat slips or boater facilities was addressed by the Commission at the original 2001 hearing and does not raise any changed circumstances that may affect the consistency of the development with Chapter 3 policies of the Coastal Act.

#### 5. Handicapped Access

The letter from Carla Andrus claims that although the waterside permit addressed ADA (Americans with Disabilities Act) requirements, the landside development did not address these issues.

The landside development, in which the letter refers to, was approved by the County of Los Angeles under a separate permit issued by the County, and is not covered under this permit. With regards to this permit (waterside development), handicapped access to the boat slips was one reason for the project's slip reconfiguration so that the marina would comply with the current ADA requirements as well as County disability requirements. The redesigned marina was designed to comply with these requirements and was addressed in the original permit and does not raise any changed circumstances that may affect the consistency of the development with Chapter 3 policies of the Coastal Act.

#### **Conclusion**

Therefore, the submitted objections do not identify any changed circumstances that may affect the proposed development's consistency with the Chapter 3 policies of the Coastal Act. Therefore, staff recommends that the Commission grant the extension request on the grounds that there are no changed circumstances which could cause the project, as originally approved, to be inconsistent with the Chapter 3 policies of the Coastal Act.





Angeles Chapter  
Airport Marina Regional Group

10/14/03

To: Peter Douglas, Executive Director California Coastal Commission  
From: John Davis, Chair MDR Task Force Airport Marina Regional Group

Dear Mr. Douglas,

In regard to Coastal Development Permit No. 5-01-143 there are changed circumstances that must be addressed contrary to any claims of the Executive Director or anyone appointed by him and approved by the Coastal Commission under § 13032(a) of the Commissions Code of Regulations.

Attachment D of the CaCZMP page D-1 reads:

(Under the provisions of (304(a) of the Federal Coastal Zone Management Act of 1972, as amended, and Section 30008 of the California Coastal Act of 1976 "Excluded from the coastal zone are land, the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents".)

On page D-8 Marina del Rey is shown as Real Property Owned by the United States.

Therefore Marina is categorically excluded from the Coastal Zone and therefore the California Coastal does not have the jurisdiction to issue Coastal Development Permits thusly the CDP in question is not valid and no extension can be approved by the Executive Director.

The approved boundaries of Marina del Rey are correctly shown on attachment No. 1 of House of Representatives Document 389.

Furthermore that same map shows that the CDP is located on or adjacent to two former oil refineries and a sewage treatment plant, information that was withheld from the Coastal Commission by co-applicant Los Angeles County that could have changed the Commission's original decision to grant the permit.

Marina del Rey is a federal project governed under the U.S. Rivers and Harbors Act, information that was withheld from the Commission that could have changed the Commissions original decision to grant the permit.


Marina del Rey is a submerged and or formally submerged land of the State of California and must be under the jurisdiction of the State Land Commission under the State Constitution and under the Public Resource Code § 6301.

Approving this project would be an illegal gift of public trust land prohibited under the Constitution.

The applicants have now proposed to bifurcate the development approved by the Coastal Commission.

Co Applicant County of Los Angeles asserts that it enjoys the same benefits as the privately held Summa Corporation relative to Summa v California State Lands commission and City of Los Angeles.

County of Los Angeles is a constitutional sub set of the State of California therefore it cannot look beyond the State Constitution and assert it holds the same rights to land as a private corporation.

EXHIBIT NO. 1
APPLICATION NO. 5-01-143 IE1
Letters of Object
 California Coastal Commission

John Davis

3435 Wilshire Blvd. Suite 320 Los Angeles CA 90010-1904 Tel 213-387-4287 Fax 213-387-5983

CO/J. Davis P.O. 10152 Marina del Rey  
CA 90295

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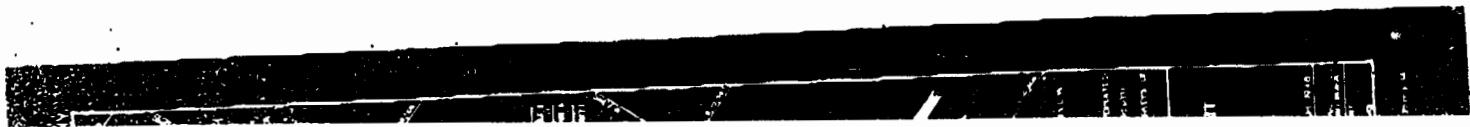
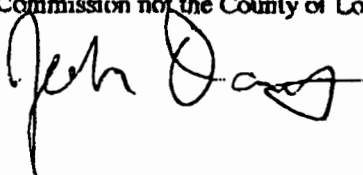
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County of Los Angeles is a constitutional sub set of the State of California therefore it cannot look beyond the State Constitution and assert it holds the same rights to land as a private corporation.

Therefore the jurisdiction of all currently submerged and or former submerged lands of the State of California belongs with the State Lands Commission not the County of Los Angeles.

John Davis  
PO 10152 Marina del Rey CA



11778



To California Coastal Commission  
From Carla Andrus  
Subject: Extension of Permit No. 5-01-143

My name is Carla Andrus and I am writing on behalf of myself, to oppose the permit extension.

Please deny Marina Two Holding Partnership and Los Angeles County Dept. of Beaches and Harbors the requested, one-year extension on permit No. 5-01-143. It has been two long years since the California Commission granted this Permit. The hardship on this community, and recreational boating, with 717 boat slips out of inventory as been significant. So significant that the Dept. of Beaches and Harbors is proposing to re-route the boater's complaints to the Dept. of Consumer Affairs. The department of Beaches and Harbors along with the Lessers Association are tired of hearing the public's complaints

Any extended time would further impact this area. Boat slip tenants are already facing rent increases, on degraded docks in several marinas, and if they don't like it they are free to move, except there is no place to go in Marina Del Rey. This extended time would make for continuous hardship on the public. What possible reason could be given for further delay? It appears there maybe an abridgement to Section 30211 Article 2 Public Access. Development is not to interfere with the public's right to access.... There are as many as 22 different boats anchored out in the entrance channel, while these boats could have utilized the very adequate channel slips at this site, of course the other slips at that anchorage should be legally condemned, the County and Marina Two Partnership have been found liable for a three and a half million dollar, wrongful death, lawsuit due to the dangerous conditions of these docks. They are not docks they're diving boards, but that takes us down another road: lease laws, regardless of violations in the lease laws and the county's refusal to enforce those laws, which would have protected the public from this very situation, regardless, this is not under the coastal commissions jurisdiction, still I thought it would be worth mentioning here.

Surely Section 30220, Article 3, Recreation applies, and an extension of this permit does not address the protection for recreational activities, that can not readily be provided at inland water areas. Section 30234 should be considered. Facilities serving recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Mr. King laments that he ceased operations of the premises too soon, a clear violation of the Marina Master Lease, this is in no way reassuring to the public.

Article 3 Section 30224 Increased recreational boating use of coastal waters shall be encouraged.... Perhaps the waterside project should be considered over the original plan, to do all the construction at once. Some sort of phasing plan. This may over all prolong the development on the landside, but that does not have priority here. What is important is the availability for the very sought out slips, especially, since the County and Marina Two Holding has set precedence for lease extensions with no enforcement of existing lease law, by the provision which require the lessers to perform due diligent maintenance on their lease hold. This is a gift of public funds on public trust land. This sets a

dangerous precedence for other lessees to conduct business in a similar fashion. Mean while, rents are being raised on dilapidated docks and vessels are being moored outside of the protected harbor, which is unsafe.

On the waterside of permit # 5-01-143 there are new American for Disability Act, (ADA) approved ramps, these ramps are massive and have justified a reduction of boat slips, but interestingly enough no other ADA connections were made through out this development plan. One would expect parking spaces to be allocated and cut outs from the curbs, which access the new public promenade. A major concern in regard to the promenade design, passed in Feb. 2000 is the handicap unfriendly, beveled brick walkway making for a very bumpy ride in a wheel chair. There is a...

14021 Marquesas Way #204C  
Marina Del Rey, CA 90292

October 12, 2003

Peter M. Douglas  
California Coastal Commission  
South Coast Area Office  
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Long Beach, CA 90802-4302

**RECEIVED**  
South Coast Region

OCT 14 2003

CALIFORNIA  
COASTAL COMMISSION

Dear Mr. Douglas:

As a resident of Marina Del Rey, I am writing to object to the extension of Permit No. 5-01-143. I live with my wife on Marquesas Way, and I am very concerned about the health issues this project may pose in regard to my wife (who is currently forced to be at home for most of the day due to an injury).

It has been brought to my attention that the county, in obtaining this permit, did not disclose certain information to the public. While I have not yet confirmed the validity of these statements, I am troubled by reports that the site of the proposed construction sits atop an old oil refinery and possibly a sewage treatment plant.

I am gravely concerned with the safety and well being of my wife who is at home and may be subjected to pollutants, toxins, or other harmful chemicals, in addition to the welfare of my neighbors and the other inhabitants of this community.

Sincerely,



Raymond Collins

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EXHIBIT NO. 2
Application Number 5-01-143 E1
Letter From Applicant's Rep.
California Coastal Commission

ARLINGTON, VA 22201-3892  
(703) 351-5010

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(916) 442-8888

REFER TO FILE NUMBER

270535 - 0001

November 19, 2003

**VIA FACSIMILE AND OVERNIGHT DELIVERY**

Ralph Faust, Esq.  
Chief Counsel  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2219  
Facsimile No.: 415-904-5400

Re: Extension of Coastal Development Permit 5-01-143-E1 (Marina Two Holding Partnership and County of Los Angeles), Marina del Rey, County of Los Angeles

Dear Mr. Faust:

We are counsel to Marina Two Holding Partnership, the co-applicant with the County of Los Angeles ("County") for the extension of Coastal Development Permit 5-01-143-E1, referenced above ("Permit"), and are writing in connection with that application. We wish to bring two legal issues to your attention: (1) that no discretionary extension is required, since Marina Two commenced development of its Project (described below) prior to the original expiration date of the Permit, and (2) that, even if an extension is required, there are no changed circumstances, and, thus, the extension is properly granted, since the issues raised by the current opponents of the Project are virtually identical to those that these same opponents previously raised to, and that were addressed by, the Coastal Commission during its October 9, 2001 hearing (when it voted to issue the Permit), and which the opponents subsequently tried and lost in litigation, and ultimately settled and released.<sup>1</sup>

<sup>1</sup> Marina Two and the County are concurrently providing to the Coastal Commission's Staff evidence that, as a factual matter, there are no changed circumstances that may affect the Project's consistency with the policies of Chapter 3 of the Coastal Act or with the County's Local Coastal Program, and that the extension is properly granted.

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South Coast Region

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CALIFORNIA  
COASTAL COMMISSION



Ralph Faust, Esq.  
November 19, 2003  
Page 2

Pertinent Factual Background

Marina Two holds long-term ground leases over, and owns the improvements on, two parcels of land (collectively, the "Property") in Marina del Rey: Parcel 12 (13900 Marquesas Way; "Parcel 12") and Parcel 15 (4242 Via Marina; "Parcel 15"). Prior to issuance of the Permit, the development on Parcel 12 (referred to as "Deauville") contained 120 residential units, 5,600 square feet of commercial space and 464 boat slips, and that on Parcel 15 (referred to as "Bar Harbor") contained 288 residential units, 4,400 square feet of commercial space and 253 boat slips. These developments were built in the mid-1960's.

Marina Two's Project involves demolishing the existing improvements on the Property, including all of the landside structures and the boat slips and associated structures, and construction of 437 apartments (including 35 very low-income senior citizen units), 2,000 square feet of visitor-serving commercial space, 227 boat slips and a 969-parking space garage on Parcel 12, and 585 apartments (including 47 very low-income senior citizen units), 8,000 square feet of commercial space, 227 boat slips and a 1,271-parking space garage on Parcel 15, as well as removal and replacement of piers, ramps, pilings and dock floats, installation of a mechanical lift for disabled access, and construction of five floating boater support facility structures and Dockmaster management offices ("Project").

On December 6, 2000, the County approved the entire Project, including the issuance of a local coastal development permit, a conditional use permit, a parking permit and a variance (collectively, the "County Permits") authorizing the redevelopment of both the "landside" (apartments, commercial space and parking facilities) and the "waterside" (boat slips and associated structures and boater support facilities and amenities) portions. The County Permits constitute all of the local entitlements required for Marina Two's entire redevelopment project.

The County's approval of the local coastal development permit was appealed directly to the Coastal Commission. At its February 13, 2001 hearing held on those appeals ("Appeal Hearing"), the Coastal Commission determined that the appeals failed to raise any substantial issue that the Project fails to conform either to the County's Marina del Rey Local Coastal Program or to the access policies of the Coastal Act. The sole challenge to these determinations was brought by the Coalition to Save the Marina, Inc. ("Coalition"), John Davis and David De Lange ("Landside Lawsuit").<sup>2</sup> That litigation was ultimately dismissed with prejudice by the Court in May 2002 following execution of a full Settlement Agreement, including the payment of substantial settlement funds to the Coalition, and the Coalition's release

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<sup>2</sup> Both Mr. Davis and Mr. De Lange sued as individuals and as members and representatives of the Coalition. However, both dismissed the Landside Lawsuit immediately prior to the execution of the Settlement Agreement and the dismissal of the action, with prejudice, by the Coalition.

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of all claims on behalf of itself and its members. Thus, the County Permits are now final. The County has recently extended each of the County Permits.

On April 24, 2001, Marina Two and the County, as co-applicants, filed with the Coastal Commission their application for the Permit ("Application"), seeking permission to demolish the existing boat slips and associated structures, and build new boat slips, associated structures and boater support facilities and amenities. On September 21, 2001, the Coastal Commission Staff issued its Staff Report, including its recommendation that the Permit be approved, followed by an addendum report on October 2, 2001.

The Coastal Commission held the hearing on the Application on October 9, 2001. Mr. Davis, Carla Andrus, who are currently objecting to the extension of the Permit, and James Sokalski (another Coalition member) spoke in opposition to the Project. As the transcript of the hearing demonstrates, Mr. Davis and Ms. Andrus argued, among other issues, issues virtually identical to those they are now raising again in opposition to the extension.

At the conclusion of the hearing, the Coastal Commission approved the issuance of the Permit with eleven special conditions. As applicable here, the first special condition required that, prior to issuance of the Permit, Marina Two obtain the Executive Director's approval of revised plans providing for a *minimum* of 25% of the new boat slips at the Project to be of a length of 25 feet or less. (In the original proposal, there were to be no slips 25 feet or less in length.)

In December 2001, both the Coalition and Mr. Sokalski filed legal challenges to issuance of the Permit. The Coalition's challenge to the Permit was settled concurrently with the settlement of the Landside Lawsuit. Mr. Sokalski proceeded to trial on multiple issues, including, without limitation, his claims that the County had improperly counted vacancies throughout Marina del Rey and that there are, and will be once the Project is built, an insufficient number of small boat slips in the area. Mr. Sokalski lost that trial, then settled all of his claims in exchange for a substantial settlement payment, and gave Marina Two, the County and the Coastal Commission a complete release.

The Coastal Commission issued the Permit on August 14, 2003, after Marina Two had fulfilled each of the conditions for its issuance.

Even though it believed that it had already exercised the Permit by commencing development of the Project, Marina Two applied for the extension of the Permit in September of 2003, in an abundance of caution.

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Development of the Project Commenced Prior to Expiration of the Permit's Initial Term

No discretionary extension of the Permit is required, as the Permit has already been exercised. Marina Two commenced development of the Project prior to the expiration of the Permit's initial term.

Of course, no extension of the Permit is required if Marina Two has commenced development within the original term of the Permit. (14 Cal. Code of Regs. § 13169(a); *Trancas Property Owners Assn. v. City of Malibu* (1998) 61 Cal.App.4<sup>th</sup> 1058, 1060-10620.) The Coastal Act defines "development" extremely broadly to include not just construction and other physical activities, but also all manner of land use approvals that enable the development of land. (Pub. Res. Code § 30106; see *La Fe, Inc. v. County of Los Angeles* (1999) 71 Cal.App.4<sup>th</sup> 231, 239-242 [lot line adjustment, resulting in no new parcels, constituted "development" over which the Coastal Commission had jurisdiction]; see also *Community Development Comm. v. City of Fort Bragg* (1988) 204 Cal.App.3d 1124, 1129-1130 [Court determined that a conditional use permit had been exercised before its expiration by use where funding had been sought, professionals hired, property purchased, and plans submitted even though construction had not begun].)

In *Trancas*, supra, the Court of Appeal determined that the developer had in fact exercised its coastal development permit by obtaining a city engineer's approval of the developer's final subdivision map. (*Trancas*, supra, at pp. 1061-1062.) In so doing, the Court specifically deferred to the Coastal Commission's interpretation of its own Regulation, Section 13169:

"Here, as in other cases, it is the Commission's view that 'where the applicant has diligently performed all the acts necessary to carry out the conditions of the permit, it would be unfair to require the applicant to obtain a permit extension [as permitted by the permit and also by section 13169].' According to the Commission, the City engineer's approval of Lunita's final subdivision map is the date on which the project commenced, and the permit was therefore 'effectuated' before it expired." (Id. at p. 1061.)

Not only has Marina Two fulfilled all of the conditions for issuance of the Permit (as described below), it has also commenced development of the Project by obtaining administrative approvals from the County necessary prior to construction, by physically removing its apartment, commercial and boat slip tenants from its Deauville property and relocating them and/or their boats to other accommodations, and by physically commencing the removal of existing structures, all in reliance upon and as directed by the Permit. Marina Two has also removed its commercial tenant at Bar Harbor, and created its construction office for the Project.

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Because the Project is not a subdivision, no final subdivision map is required. However, Marina Two has obtained the following other administrative approvals needed for construction of the Project: (1) the County's approval of the boat slip layout and parking plans, (2) the County's approval "in concept" of detail plans for the construction of the boat docks, (3) the County's approval "in concept" of the plans for the construction of a typical waterside facility building, including bathrooms, showers, laundry facilities, vending machines, sewer and holding sump pump, and dockmaster offices, (4) the County's approval "in concept" of plans for disabled access and vessel pumpout system, (5) the County's approval of a haul route for the trucks carrying debris from demolition and construction, (6) the NPDES construction permit issued for dewatering the landside portion of the Project, (7) the Letter of Permission (LOP) from the Department of Army, Corps of Engineers, (8) the County's approval of the Updated Hydrology Report and Standard Urban Storm Water Mitigation Plan (SUSMP) for the construction staging area to be utilized for marina construction, (9) the County's approval of the sewer study for discharge of the boater sewer pumpouts and boater facilities buildings, and (10) the County's approval of the water connection design for water service to the boat slips and boater facilities buildings.

In addition, Marina Two has physically removed its tenants from the apartments, commercial structures and boat slips at the Deauville development, and has relocated all of its former tenants. As the County requires, Marina Two gave its tenants six months notice to relocate. During that time, Marina Two held rental fairs for the apartment dwellers and for the boat slip tenants, and invited the tenants to consider relocating to its Bar Harbor development (which will be redeveloped after Deauville) as well as to other Marina operators' facilities. In addition, Marina Two offered all of its "live-aboard" boat slip tenants the opportunity to relocate to Bar Harbor. Marina Two also expended substantial sums in improving its docks at its Bar Harbor development, even though these docks, too, will be demolished and rebuilt in the second phase of the boat slip development. These improvements included finger and main dock replacements and electrical upgrades that were made primarily to relocate and accommodate the larger boats previously docked at the Deauville development, since there were no other suitable large-boat slips in the Marina to which they could relocate. As a result of Marina Two's efforts, all of Marina Two's Deauville tenants relocated voluntarily. Contrary to the objections raised to the extension of the Permit, all of Marina Two's boat slip tenants have successfully relocated to other boat slips, the majority of which are in Marina del Rey.

Marina Two has also physically commenced the construction process, by readying the Deauville site for demolition and construction. It has installed devices to prevent birds from nesting on, and to keep sea lions away from, the docks that are shortly to be demolished. It has roped off all slips scheduled for demolition. It has installed perimeter construction fencing around the site and hired a 24-hour security guard to patrol it. It has removed several fingers from the docks.<sup>3</sup> It has removed power centers and accessory facilities

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<sup>3</sup> Fingers are the "spines" jutting out from the docks that form the boat slips.

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such as storage lockers, etc. from the docks. It has shut off the utilities at the docks. It has closed the boater restrooms and other facilities.

In addition, in order to take down the Permit, Marina Two fulfilled each of its 11 special conditions. It obtained the Coastal Commission's approval of the slip length configuration (condition 1). It agreed in writing to employ construction Best Management Practices, identified the location of a debris disposal site, and agreed to use the least damaging method to construct the pilings, to develop only as the Permit allows, and to observe the construction limitations from April 1 to September 1 (conditions 2, 3, 10, 6 and 5, respectively). It obtained all necessary ACOE approvals (condition 4). It obtained from the Executive Director approval of a detailed Water Quality Management Plan, prepared by a qualified professional with expertise, etc. as required in the Permit (condition 7). It obtained the Executive Director's approval of an on-site boater parking plan (condition 9). It recorded against the Property the assumption of risk lease restriction in a form acceptable to the Executive Director (condition 8B). Finally, it obtained the Executive Director's approval of an operation and maintenance schedule for over-water sewer lines (condition 11). Again, the Permit was issued August 14, 2003, just after the last litigation settlement closed (August 5).

Finally, Marina Two has retained all of the consultants whose services are required to complete the Project planning, design and construction: Moffatt and Nichol Engineers (marina design firm), Atlantic-Meeco (dock manufacturer and contractor), Snowden Engineering (dock structural engineer), Psomas (civil engineer), and Togawa and Smith (architect of boater facilities buildings). The design of the Project is over 80% complete and construction bids have been received for the Project construction.

Marina Two has, in short, taken every development step feasible to exercise the Permit, given the restrictions posed by meritless lawsuits by the Coalition and individuals connected with it. Requiring an extension under these circumstances would validate the opponents' stalling tactics and open the door for yet another round of pointless litigation for both the applicants and the Commission.

For each of these reasons, Marina Two must be determined to have commenced development of the Project, and thereby to have exercised the Permit. As stated previously, Marina Two requested an extension in an abundance of caution, but that request was unnecessary. We request that the Coastal Commission find that Marina Two has exercised its Permit, that no extension is necessary and that, consequently, no objections to an extension can be heard.

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The Objections Raised to the Extension Mirror Those Raised to the Coastal Commission in the Original October 9, 2001 Hearing, Litigated in Court and Finally Settled

The current opponents of the extension erroneously argue that there are changed circumstances that require that the extension be denied. There are no such changed circumstances. From a legal point of view, the arguments that are now being raised in opposition to extending the Permit are essentially the same as those that were originally raised to the Coastal Commission in connection with its October 9, 2001 hearing on the Permit (as well as those raised impermissibly in the appeal to the Commission following issuance of the County Permits), and those that were raised, determined in favor of the Commission's issuance of the Permit, and ultimately settled in the litigation matters described above.<sup>4</sup> It would be grossly unfair, and a gross perversion of the Coastal Commission's processes, to allow these same issues to be raised again now, when so much time and effort has been expended over the last two years proving those issues to be utterly without merit.

The Coalition and the individual petitioners (Messrs. Davis, De Lange and Sokalski) all raised these issues "on behalf of the public." Mr. Davis, both personally and as a member of the Coalition, raised many of the same issues that he raises now in the Landside Lawsuit. Although Mr. Davis and Mr. De Lange dismissed their part of Landside Lawsuit just prior to the settlement, their claims were included in the Settlement Agreement and its release. Mr. Sokalski, who remained the only petitioner challenging issuance of the Permit, raised all of the claims currently raised here in his litigation, and lost each and every one of them at trial in November of 2002.

Given the delay that litigation imposes, and for no other reason, Marina Two paid substantial sums both to the Coalition and to Mr. Sokalski personally for dismissal of the lawsuits and a full and final release of all claims. The Coalition's settlement covenants and representations were made both for itself and for each of its members. Therefore, all of the current claims have been determined against the opponents' positions by a trial court, and have been settled and released. There are no changed circumstances.

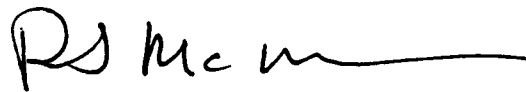
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<sup>4</sup> We are happy to provide copies of the three Petitions for Writ of Mandate, with exhibits, filed in challenge to the local and Coastal Commission approvals of the Project, should you so request.

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On behalf of Marina Two, we respectfully request that the Coastal Commission determine that Marina Two has exercised the Permit and that no extension is required. In the alternative, we request that the Commission determine, based on this letter and the information being provided to Staff by Marina Two and the County, that there are no changed circumstances to prevent granting the extension.

Very truly yours,

A handwritten signature in black ink, appearing to read "R I McMurry", with a long horizontal flourish extending to the right.

Robert I. McMurry  
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

RIM

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