

**CALIFORNIA COASTAL COMMISSION**

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## STAFF REPORT: APPEAL SUBSTANTIAL ISSUE & DE NOVO

**LOCAL GOVERNMENT:** City of Oxnard

**LOCAL DECISION:** Approval with conditions

**APPEAL NO.:** A-4-OXN-03-014

**APPLICANT:** Oly Mandalay General Partnership

**APPELLANTS:** Sierra Club, Los Padres Chapter  
The Beacon Foundation

**PROJECT LOCATION:** West side of Victoria Avenue, between Wooley Road and Hemlock Street, within the Mandalay Bay Specific Plan area, Oxnard (Ventura County)

**PROJECT DESCRIPTION:** Development of the "Seabridge" project on a 135 acre site within the Mandalay Bay Specific Plan area, including: removal of prime agricultural soil; creation of channels and waterways; subdivision of three existing parcels (127.40 acres, 4.02 acres, and 3.88 acres) into 334 lots; the construction of 708 residential units (276 single-family homes, 42 multi-family units, and 390 residential units in the visitor-serving and mixed use designations); 169,000 square feet of commercial floor area on 35 acres; 16.5 acres of recreational land uses; 32.2 acres of open water; 503 boat slips (241 public and 235 private); public trail system (10,755 linear feet of lateral access and 3,841 linear feet of vertical access); and other necessary infrastructure improvements.

**SUBSTANTIVE FILE DOCUMENTS:** California Coastal Act; City of Oxnard certified Local Coastal Program (LCP); certified Mandalay Bay Specific Plan (MBSP); Coastal Commission file A-4-OXN-00-172 (Suncal Companies); City of Oxnard CDP, Planning and Zoning Permit Nos. 01-5-93 (CDP), 00-5-85 (TSM Tract No. 5266), and 02-670-2 (Development Agreement); Final Supplemental EIR, Impact Sciences, June 2002; Letter from Ventura Coastkeeper to Coastal Commission dated April 29, 2003; Letter from Heal the Bay to Coastal Commission dated February 13, 2003 (Attachment #2 of appeal); Letter from County of Ventura to City of Oxnard dated March 18, 2002 (Attachment #4 of appeal); Applicant's Response to Appeal dated March 3, 2003; Water Quality Monitoring Final Report, Moffatt & Nichol Engineers, May 2003; Memo: Response to Coastal Commission Staff Comments, Moffatt & Nichol Engineers, April 24, 2003; Memo: Response to Coastal Commission Staff Comments, Moffatt & Nichol Engineers, April 21, 2003; Memo: Cost Estimate for Water Quality Improvement Measures, Moffatt & Nichol Engineers, April 18, 2003; Seabridge Water Quality Issues: Additional Information Requested by Coastal Commission Staff, Moffatt & Nichol Engineers, March 17, 2003; Data on exceedences for enclosed beaches, Heal the Bay, June 18, 2003; Channel Island Harbor Beach Water Quality Data, Heal the Bay, May 1, 2003.

***Summary of Staff Recommendation: Substantial Issue Exists***

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a de novo hearing because the appellants have raised substantial issue with the local government's action and its consistency with the certified LCP.

The City of Oxnard approved a coastal development permit for the development of the "Seabridge" project, which is the third part of a three-part Mandalay Bay Specific Plan area involving commercial, residential and recreational components. The appellants contend that various aspects of the project approval raise substantial issue including: public access and recreation; project phasing; public and private boat slip allocation; project density and building height; prime agricultural land maintenance program; and water quality.

Commission staff recommends that the Commission find that the development, as approved by the City, raises a substantial issue in relation to conformance with the certified LCP and Specific Plan policies pertaining to public access and recreation, prime agricultural land maintenance program, and water quality.

\* The motion to adopt the Staff Recommendation for Substantial Issue is found on page 5.

***Summary of Staff Recommendation: De Novo— Approval with Conditions***

Staff recommends that the Commission approve the coastal development permit with 6 special conditions on the basis that, as conditioned by the Commission, the project is consistent with the City's certified LCP, the Specific Plan and the public access and recreation policies of the Coastal Act.

The Staff has determined that the City approved project is inconsistent with the certified LCP and Specific Plan policies pertaining to public access and recreation, prime agricultural land maintenance program and water quality.

As conditioned to offer to dedicate lateral public access along the south side of the South Island and to provide revised plans to reflect that additional accessway, the proposed project will provide lateral access throughout the entire project, and is consistent with the public access and public recreation policies of the certified LCP and the Coastal Act. The proposed project will be consistent with the agricultural preservation policies of the LCP as conditioned to develop and implement a plan to transfer prime agricultural soil, to provide evidence of the recordation of an agricultural restrictions, and to obtain all necessary permits for the soil transfer. As conditioned to submit revised plans for the shallow bay/"water park" area to delete the two swimming beaches the proposed project is consistent with the water quality policies of the LCP.

\* The motion to adopt the Staff Recommendation for De Novo is found on page 40.

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## **STAFF NOTES ON APPEAL PROCESS**

The Coastal Act provides that after certification of an LCP, a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of 10 working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

### **1. Appeal Jurisdiction**

Development approved by a local government may be appealed to the Commission if it is located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea; within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater; on state tidelands; or along or within 100 feet of natural watercourses, pursuant to Section 30603(a) of the Coastal Act. Any development approved by a coastal county that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone under Section 30603(a)(4) of the Coastal Act. Finally, development that constitutes major public works or major energy facilities may also be appealed to the Commission, as set forth in Section 30603(a)(5) of the Coastal Act.

The project site is located in the Mandalay Bay Specific Plan area in the City of Oxnard, Ventura County. The Post Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction map certified for the City of Oxnard (adopted April 10, 1996) indicates that the subject site is within the appealable jurisdiction as it is located between the sea and the first public road paralleling the sea. As such, the project is appealable because the proposed development is located on a site within the mapped appeal jurisdiction of the Commission.

### **2. Grounds for Appeal**

The grounds for appeal of development approved by a local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth under Division 20 of the Public Resources Code and pursuant to Section 30603(a)(4) of the Coastal Act.

### **3. Substantial Issue Determination**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal, unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only parties qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, parties or their representatives who opposed the application before the local government, and the local government. Testimony from other persons must be submitted in writing. Further, it takes a majority of Commissioners present to find that no substantial issue is raised by the appeal.

#### **4. De Novo Permit Hearing**

If a substantial issue is found to exist, the Commission will consider the application de novo. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing or at a later time. The applicable standard of review for the Commission to apply in a de novo review of the project is whether the proposed development is in conformity with the certified LCP and the public access and public recreation policies of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is so located, and thus this additional finding must be made in a de novo review in this case. If a de novo hearing is held, testimony may be taken from all interested persons.



## **PART 1: SUBSTANTIAL ISSUE**

### **I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

**MOTION:** *I move that the Commission determine that Appeal No. A-4-OXN-03-014 raises NO substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act.*

#### **Staff Recommendation:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the proposed development and adoption of the following resolution and findings. Passage of this motion will result in a finding of no substantial issue and the local actions will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

#### **Resolution to Find Substantial Issue:**

The Commission hereby finds that Appeal A-4-OXN-03-014 presents a **substantial issue** with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

### **II. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE**

The Commission hereby finds and declares:

#### **A. PROJECT DESCRIPTION AND LOCATION**

The applicant proposes construction of the "Seabridge" project, which consists of a planned unit development on 135 acres within the Mandalay Bay Specific Plan area (see site plan, Exhibit 18). The project is a water-oriented, mixed-use development consisting of residential, commercial, and recreational land uses, as well as associated marina channels, roadways, and other improvements. The project includes:

- Removal of 436,568 cu. yards of prime agricultural soil from the project site; transfer of this soil to a site designated as non-prime agricultural lands, and implementation of an Agricultural Monitoring Program for a period of ten years to monitor success of prime soil transfer;
- Creation of channels and waterways and construction of pads and roads, including the following quantities of grading:

Channel Excavation cut: 800,000 cu. yds. wet and 380,000 cu. yds. dry.

Site fill (to replace agricultural soil transfer): 0 cu. yds.

- Land division of 3 existing parcels (135.3 acres) into 334 lots (276 single family lots, one multi-family residential lot, 19 commercial and mixed use lots, and 38 parcels for recreational use, open water, public facilities, streets, and private facilities.)
- Construction of 276 single-family dwellings and 42 multi-family units on 33.4 acres;
- Construction of 390 residential units, along with approximately 169,000 sq. ft. of commercial space, in the visitor-serving and mixed-use designations on 35 acres along Victoria Avenue and Wooley Road.
- Development of open water (32.3 acres) and parks and recreation improvements (16.5 acres);
- Development of continuous trail access throughout the project, except for the south side of the South Residential Island (10,755 linear feet of lateral trail access and 3841 linear feet of vertical trail access);
- Development of 503 boat slips (241 public docks, 235 private docks and 27 Hemlock docks).

The project site is located on the west side of Victoria Avenue between Wooley Road and Hemlock Street, east of and adjacent to the Westport project, the most recently approved segment of the three-part Mandalay Bay Specific Plan area, and just south of the SOAR Greenbelt area (Exhibit 4, vicinity map). See Exhibit 5 for project plans.

## **B. BACKGROUND**

### **STAFF NOTES**

During the coastal permit application process at the City level, the applicant worked in cooperation with the City, Coastal Commission staff and the community in an effort to design a project, which conforms to the City's LCP. Staff was consulted during several meetings regarding the design of the project in relation to all of the issues discussed in this staff report. The applicant incorporated Staff's input into the design and the approved project reflects the applicant's efforts to consider coastal resource impacts as communicated by the Staff. The appellants have filed an appeal based on several points, three of which raise a substantial issue with respect to the LCP, as discussed in detail in Part 1: Substantial Issue below. Staff notes that with the exception of the swimming beaches in the shallow bay area (see discussion in Section C. Water Quality in Part 2: De Novo), most of the points merely require clarification and/or more detailed conditions to ensure consistency with the LCP.

### **LOCAL GOVERNMENT ACTION AND FILING OF APPEAL**

On January 28, 2003, the Oxnard City Council approved a coastal development permit for the proposed "Seabridge" project, subject to subject to 133 special conditions (PZ 01-5-93), along with approval of a tentative subdivision map (PZ 00-5-85) and an associated development agreement (PZ 02-670-2). Commission staff received the Notice of Final Action for the coastal

development permit on January 30, 2003. A ten working day appeal period was set and notice provided beginning on January 31, 2003 and extending to February 14, 2003.

The Beacon Foundation and Sierra Club, Los Padres Chapter, filed an appeal of the City's action, during the appeal period on February 14, 2003. The appeal is attached as Exhibit 6. Commission staff notified the City and the applicant of the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on February 26, 2003.

Pursuant to Section 30621 of the Coastal Act, the appeal hearing must be set within 49 days from the date that an appeal is filed. A letter from the applicant was received on March 17, 2003, which waived the applicant's right for a hearing to be set within the 49-day period to allow Commission staff sufficient time to review the project information, the appellants' contentions, and the applicant's response to those contentions.

#### ***PRIOR DEVELOPMENTS IN THE MANDALAY BAY SPECIFIC PLAN AREA***

The Seabridge project is the third and final development proposed within the Mandalay Bay Specific Plan (MBSP) Area. An Environmental Impact Report (EIR 81-2) was prepared for the build-out of the Mandalay Bay Phase IV Specific Plan area. The City of Oxnard certified the original EIR for the MBSP area in September 1982. To date, the only portion of the MBSP area that has been developed is the Harbour Pointe project, located to the southwest of the Seabridge site. The Harbour Point project includes the Harbour Island community, consisting of 129 condominiums and 3 single-family homes on Hemlock Street.

More recently, in Appeal No. A-4-OXN-00-172, the Commission approved the Suncal project (now called "Westport"), just west of the Seabridge site. The Westport project consists of 96 single-family homes, 34 duplex units, 88 townhomes, and 88 dwelling units in the mixed-use component, and is currently under construction. The Commission's approved this project subject to 15 special conditions, including conditions to offer to dedicate public parkland and accessways; to construct park improvements; to provide a signage program; to develop a boat dock plan; to restrict the use of the public boating area; to submit revised plans and to restrict commercial uses; to develop and implement a plan to transfer prime agricultural soil, to provide evidence of the recordation of an agricultural restriction, and to obtain all necessary permits for the soil transfer; to prepare and implement water quality protection plans for the construction phase, post construction, and boating; and to conform to geologic recommendations and to assume the risk of development.

With respect to the Seabridge project, the Commission staff has met on several occasions with the applicant and the City to discuss issues relating to conformity of the project with the certified LCP and the public access and recreation policies of the Coastal Act. The applicant has cooperated with staff in making revisions to the site plan, and in approving the project, the City incorporated a number of conditions recommended by staff, especially those relating to water quality. As discussed more fully below, staff's remaining concerns center on the provision of lateral access along the south side of the South Residential Island, so that lateral public access will be provided throughout the entire project; the refinement of the prime agricultural soil transfer program required by the City; and the elimination of certain vague provisions in the water quality protection plans for the project.

## C. CITY OF OXNARD LOCAL COASTAL PROGRAM STRUCTURE

The coastal development policies and standards that apply to the subject project site are found in the three documents that make up the City's LCP, namely the Land Use Plan, Coastal Zoning Ordinance, and the Mandalay Bay Specific Plan.

### The Land Use Plan

The Commission certified with suggested modifications the City of Oxnard's Land Use Plan (LUP) in July 1981. The City accepted modifications and the Land Use Plan was effectively certified in May 1982.

There are several policies and discussions in the LUP that specifically address development on the 220-acre Mandalay Bay site. These policies generally relate to agriculture, development, public access, and visitor-serving commercial recreation.

One of the key issues considered by the Commission in certifying the City's LUP was the protection of prime agriculture on the Oxnard Plain. The Mandalay Bay site was recognized as containing prime agricultural soils and as being continuously in agricultural production. The City made the case that there were urban conflicts (trespass, vandalism, theft, and neighbor's objections to pesticide spraying) that adversely affected the continuation of agricultural production on the site. The City also maintained that development of the Mandalay Bay site would complete a logical, viable neighborhood and serve to stabilize the urban/rural limit line (which is located along Wooley Road just to the north of the project site). Finally, the City proposed, through the LUP, to implement a program to transfer the prime soils from the Mandalay Bay site to agricultural sites with non-prime soils in order to mitigate the loss of prime agricultural land by preserving its soils.

In approving urban use for the Mandalay Bay site, the Commission found that the Coastal Act "strongly disfavors urbanization of agricultural land and that the arguments for allowing it in the instant case are far from compelling." However, the Commission found that the experimental technique of soil transfer, if proven, could potentially be utilized in other areas as mitigation for the loss of prime agricultural soils, and as such, its implementation could be considered to serve broader interests.

Further, the Commission agreed with the City's contentions that the visitor-serving and public recreational facilities to be included in the project area would help offset the losses incurred through conversion of agricultural land. The Commission's findings for LUP certification (July 9, 1981) state that:

***If the issue were merely whether the agricultural land could be converted for such recreational uses, the answer would be clear. PRC Section 30222 clearly assigns priority for use of private lands to agriculture over public opportunities or coastal resources (this includes agricultural lands). In finding that the 220-acre parcel may be converted and developed as proposed, the Commission does not find that the recreational benefits of the project have priority over agricultural uses. It does, however, count these benefits in its decision and accord them some weight commensurate with their value under the Coastal Act.***

Thus, although the substantial public access and recreational opportunities provided by the LUP designations and other policies of the LUP did not have priority over agricultural use of the

Mandalay Bay site, the Commission did give great weight to the public benefit of such uses in certifying the LUP.

With regard to the subject Seabridge site, which is part of the overall Mandalay Bay site, the land use map shows three land use designations for the project site: "Planned Unit Development Residential"; "Visitor Serving Commercial"; and "Mixed Use (Commercial/Residential)." The map is shown on Exhibit 7. As shown on this map, the LUP designates the area along all of the waterways for recreation.

In addition to the land use designations, there are several policies that specifically address the development of the Mandalay Bay site (Text of the policies is attached as Exhibit 8). **Policy No. 4** addresses methods to provide a buffer between development south of the urban-rural boundary (Wooley Road) and agricultural uses north of the boundary. **Policy No. 5** requires that, as a condition of approval for any development within the Mandalay Bay site, a "prime agricultural land maintenance program" (prime soils transfer) must be developed and implemented. **Policy No. 45** requires the development of a specific plan for the Mandalay Bay site and details the provisions it must contain. The provisions include the public access and recreation requirements that must be included in the specific plan. **Policy No. 72** of the LUP requires public access to and along the shoreline and the inland Waterway for all new development, with limited exceptions. Finally, **Policy No. 73** requires that adequate public parking be provided in new development with public access. A more detailed description of these policies, as applicable, is provided in the related sections below.

#### Coastal Zoning Ordinance

The City's implementation program (Coastal Zoning Ordinance) was approved with Suggested Modifications in January 1985. The City accepted modifications and the Coastal Zoning Ordinance was effectively certified in March 1985.

The coastal zoning map (Exhibit 9) shows one zone designation for the entire 220-acre Mandalay Bay site, which includes the subject project site. The designation is "Coastal Planned Community" Zone (CPC). The CPC zone applies only to the Mandalay Bay site. This zoning would allow only for agriculture/aquaculture uses or passive recreation uses on the property, unless a specific plan was developed and adopted prior to the approval of any coastal development permit for any other uses.

The CPC zone (The text of this zone is attached, beginning with Page 1 of Exhibit 10) details the components required to be included in the specific plan. Eight components are called out that must be included in the specific plan:

1. Access and recreation component which identifies the locations, standards, and quantification of the amount of land provided for lateral and vertical access, public recreation, and open space facilities;
2. Soil transfer program for relocation of the prime agricultural soils on the site;
3. Project and use map that shows the specific uses and densities for the land and water areas of the site;
4. Circulation plan which identifies streets, bike paths, and public parking areas;
5. Buffering and setback component that establishes building setbacks and agricultural buffers;

6. Urban design and landscape component to identify relationships between major design elements which establish the character of the development;
7. Utility and drainage facility component that shows sewer and storm water drainage facilities and street improvements;
8. Phasing component that indicates the phasing sequence for development and public access dedication and improvements.

In addition to the CPC zone, the Coastal Zoning Ordinances contain the development standards for the zones that may be permitted in the appropriately designated areas of the MBSP, which are as follows: R-W-1 [Single-Family Water Oriented (Sec. 37-2.2.0)]; R-W-2 [Townhouse, Water Oriented (Sec. 37-2.3.0)]; R-2-C [Coastal Low Density Multiple-Family (Sec. 37-2.4.0)]; R-3-C [Coastal Medium Density Multiple-Family (Sec. 37-2.5.0)]; CNC [Coastal Neighborhood Commercial (Sec. 37-2.8.0)]; CVC [Coastal Visitor-Serving Commercial (Sec. 37-2.9.0)]; and RC [Coastal Recreation (Sec. 37-2.13.0)].

Further, Sec. 37-3.9.0 of the Zoning Ordinance contains the Specific Coastal Development and Resource Standards for Coastal Access and Recreation (Text attached, beginning on Page 5 of Exhibit 10). These standards require the provision of public access opportunities consistent with the policies of the LUP. Finally, the Zoning Ordinance contains general provisions that apply to the Mandalay Bay site including coastal development permit requirements, and recordation of easements and dedications.

#### Mandalay Bay Specific Plan

Both the LUP and the Coastal Zoning Ordinance call for a specific plan to be approved for the Mandalay Bay site prior to any approval for individual development or subdivision. As required by the policies of the LCP, the owners of the Mandalay Bay property developed a specific plan for the whole site. In 1984, the City considered and approved the Mandalay Bay Specific Plan for development of this property, finding it consistent with the provisions of the LCP. The staff report for the City's action approving the MBSP states that:

***The Specific Plan document contains text and graphics that portray the result of the guidelines as established in the Specific Plan and Coastal Land Use Plan. Although the building site configurations shown are illustrative only, the waterway, park, open space, accessway, and street patterns will be implemented very closely to what is described in the plan document. The final configuration and amount of these factors would be established through the approval of tract maps and development permits (Coastal Development and Development Review Permits).***

The staff report further states that the City's intention was for the MBSP to be consistent with the provisions of the Coastal Zoning Ordinance and that new development would be regulated by the development standards of the ordinance. The City submitted the MBSP for consideration by the Commission concurrently with the Coastal Zoning Ordinance. The Commission considered the MBSP and approved it with suggested modifications as part of the implementation program along with the zoning ordinances in January 1985. Effective certification of the specific plan took place in March 1985.

As required by the LCP, the Mandalay Bay Specific Plan contains a land use map (Exhibit 11), park plan (Exhibit 12), circulation plan (Exhibit 13), urban/rural buffer provisions, phasing plan, utilities and drainage component, and soil transfer program. The MBSP designates the land within the 220-acre site for four different land uses: "Residential", "Visitor Serving Commercial",

"Mixed Use (Commercial/Residential)", and "Park". The Park Plan shows a linear park along the waterways, and pocket parks of varying size throughout the area. The Circulation Plan shows public and private drives of varying width and a pedestrian/bicycle path throughout the linear park areas.

The land use map certified in the MBSP designates the Westport site for three uses: "Residential", "Mixed-Use", and "Park". As shown on this map, the MBSP designates the area along all of the waterways for "park". A large area adjacent to Wooley Road is designated for "mixed use" (commercial/residential), and the remainder of the site is designated for "residential" use. The park areas include a linear park along all the waterways that provides public access via a pedestrian/bike pathway within the park. This park area is also shown on the park plan certified in the MBSP, and the pedestrian/bicycle path is called out on the circulation plan.

#### Consistency with the City's LCP

The City's certified LCP is made up of three documents: the Land Use Plan; Coastal Zoning Ordinances; and Mandalay Bay Specific Plan. The LUP and Coastal Zoning Ordinance require the preparation of a specific plan prior to development on the Mandalay Bay property. The MBSP was adopted by the City and certified by the Commission as an implementing action. The policies of the LUP, Coastal Zoning Ordinance, and MBSP that are relevant to the subject proposed project are consistent with each other. Thus, the Commission finds that the proposed project must comply with the provisions of all three parts of the City's LCP.

### **D. APPELANT'S CONTENTIONS**

The appellants claim that the approved Seabridge Project raises substantial LCP and Coastal Act issues as follows:

1. The project does not conform to the Park and Circulation maps in the certified Mandalay Bay Specific Plan (MBSP) and with the requirements in the MBSP for lateral and vertical access.
2. The City's approval fails to assure public access to recreational resources.
3. The City's approval of the prime agricultural land maintenance program is inconsistent with the LCP.
4. The City's approval of a shallow bay and swimming beaches is inconsistent with the LCP and MBSP.
5. The project phasing schedule for the development of public facilities in the City's Coastal Development Permit is rendered null and void by contradictory provisions in the Development Agreement (Exhibit 3).
6. The project does not meet the public boat dock requirements of the MBSP.
7. It is unclear whether the project is consistent with the height design concepts in the MBSP.



## **E. ANALYSIS OF SUBSTANTIAL ISSUE**

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act.

Based on the findings presented below, the Commission finds that substantial issue exists with respect to the grounds on which the appeal has been filed. The approved project is inconsistent with policies of the City of Oxnard LCP related to public access and recreation, prime agricultural land maintenance program and water quality for the specific reasons discussed below.

### **1. PUBLIC ACCESS AND RECREATION**

There are many policies, standards, and other provisions of the City's certified LCP that pertain to the provision of public access and recreation opportunities.

The certified Land Use Plan contains the following access and recreation policies:

While actually a policy regarding New Development, **Policy No. 45** (full text is included starting on Page 3 of Exhibit 8) sets forth the public access requirements that must be included in the Mandalay Bay Specific Plan area. **Policy No. 45** states that:

*The lateral access requirement shall be a minimum of 50 percent of the total linear waterfront frontage and shall be dedicated and available for public access. Exceptions to continuous lateral public access shall be allowed only for limited single family waterfront home development where adequate alternative access exists nearby.*

Additionally, the combined vertical access frontage on the water is required to be at least 10 percent of the development's total waterfront linear footage. Recreation areas are to be distributed throughout the project area and linked by pedestrian and bike paths. **Policy No. 45** also requires common recreation areas for the residents of permitted residential projects. This policy also sets forth the land uses that may be permitted and the percentage of the overall Mandalay Bay acreage that each land use may occupy. **Policy No. 45** further addresses the development of an open body of water as well as public and private boat dock facilities. Finally, this policy requires a program of signage for public access and recreation facilities, the dedication of such areas and the development of public improvements with each phase.

**Policy No. 72** of the LUP requires public access to and along the shoreline and the Inland Waterway for all new development, except in very limited circumstances, such as where it would be inconsistent with public safety, military security, or protection of sensitive resources. One exception is provided for the Mandalay Bay area:

*For Mandalay Bay inland water development, exceptions to the requirement of continuous lateral public access may be made for single-family waterfront development, but in no case shall the total public lateral access be less than 50 percent of the total shoreline frontage of the project. All vertical access shall be located and designed to minimize impacts on surrounding residential areas (reference Policy No. 45).*



**Policy No. 72** also requires that offers to dedicate public accessways and public facilities be recorded prior to issuance of any permit and developed concurrently with the approved project.

Finally, **Policy No. 73** requires the following:

***Adequate public parking shall be provided in all new development with dedicated public access areas, and shall be in addition to the parking required for new development, unless adequate facilities are provided nearby. All facilities shall be located and designed to avoid impacts on surrounding residential areas.***

The City's certified Zoning Ordinance designates the Mandalay Bay property "Coastal Planned Community." This zone (full text begins on Page 1 of Exhibit 10), found in **Sec. 37-2.6.0** of the Zoning Ordinance, requires the preparation of a specific plan for the entire 220-acre site comprising at least eight required components. Three of these components relate to the provision of public access and recreation:

Component No. 1 – Access and recreation component, which identifies the locations, standards, and quantification of the amount of land, provided for lateral and vertical access;

Component No. 3 – Project and use map that shows the specific uses and densities for the land and water areas of the site; and

Component No. 4 – Circulation plan, which identifies streets, bike paths, and public parking areas.

Additionally, **Sec. 37-1.4.14** of the Zoning Ordinance states that:

***Offers for or the execution of dedications or easements for coastal access, recreation, or open space purposes shall be recorded prior to or simultaneously with the recordation of the related land division. Where no land division is involved or required, such easements and dedications shall be recorded prior to the issuance of building permits or initiation of use, whichever comes first.***

Further, **Sec. 37-3.9.0** of the Zoning Ordinance contains the Specific Coastal Development and Resource Standards for Coastal Access and Recreation (Text attached starting on Page 5 of Exhibit 10). These standards require the provision of public access opportunities consistent with the policies of the LUP. With regard to lateral access, this section states that:

***Lateral accessways shall be located on all waterfront land to provide continuous and unimpeded lateral access along the entire reach of the sandy beach area or other usable recreational shoreline. Exceptions to this standard may include military installations where public access would compromise military security, industrial developments and operations that would be hazardous to the public safety and developments where topographic features, such as river mouths, could be hazardous to public safety.***

Additionally, these access standards state:

***Pursuant to Section 30214 of the Coastal Act with respect to regulating the time, place and manner of public access, the requirements for vertical access may be waived for specific development applications only when the reviewing body vested with the authority to approve the request finds that adequate vertical access is provided offsite but within the immediate area. Such waiver may be granted subject to the specific finding that the***

**presence of public beach with adequate access facilities nearby (within 500 feet), reduces the needed frequency of vertical accessways in coastal residential areas.**

**A granting of a waiver for lateral access is deemed inconsistent with the policies of the Oxnard Coastal Land Use Plan and therefore shall be prohibited.**

As set forth in the LCP, the MBSP addresses the required components, policies and development standards. Several provisions of the MBSP relate to the provision of public access and recreation. First, the Land Use Map (Exhibit 11) shows the relationship between the residential, mixed use, and visitor serving commercial uses and the required park areas, including a linear park located along all of the waterways (with the exception of the area along Hemlock Street) and several larger park areas linked by the linear park. Additionally, the Circulation Plan (Exhibit 13) shows a pedestrian/bicycle path (located within the linear park areas shown on the Land Use Map and Park Plan) extending along all of the waterways (with the exception of the area along Hemlock Street).

In addition to these maps, the MBSP contains discussions of the access and recreation requirements of the plan. This text is shown in the full MBSP text attached as Exhibit 14. The MBSP (page 4) states that:

**The primary public access to the waterfront of this project is satisfied by a linear park which extends throughout the entire project, except where single-family residences are proposed along Hemlock Street. This waterfront park will provide approximately 21,000 linear feet of lateral access for the public. Interspersed along this linear waterfront park are several "pocket parks" ranging from approximately one-third acre to three acres in size.**

With regard to vertical access, the MBSP states (page 4) that:

**Vertical public access for vehicular, pedestrian and bicycle access text and maps shall not be less than 10% of total linear waterfront access as depicted in the specific plan and use map (page 5). If the access is not a public thoroughfare it shall be permanently legally restricted as such (by appropriate legal instrument such as a deed restriction or easement) and shall be held and maintained by the developer, subsequent land owner(s) or appropriate third party.**

With regard to recreational boating, the text of the MBSP (page 5) states that:

**The Specific Plan incorporates a minimum of 795 boat slips in the Specific Plan area. Thirty are allocated to the 30 single-family residential lots. One-half of the remaining will be available to the public.**

The MBSP also states (page 7) that:

**Public parking lots shall be provided and located immediately adjacent to public water and public park areas including but not limited to public docks, wharfs, public boating facilities and launching ramps in order to maximum public access to these recreational areas. Public parking lots, public docks and public boating facilities shall be permanently legally restricted as public property through the appropriate legal mechanism and shall be maintained by the developer, property owner(s), or appropriate third party.**

Further, the MBSP (page 7) requires that:

***The necessary public facilities for public park and shoreline recreation use shall be listed in this plan including but limited to restrooms, picnic tables, fire pits, playing fields, playground equipment, showers and landside support equipment for recreational boaters (water faucets/washdown areas etc.).***

As previously noted, in addition to any applicable policies of the LCP, all projects located between the first public road and the sea requiring a coastal development permit, such as the proposed project, must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Coastal Act **Sections 30210** and **30211** mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, **Section 30212** of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches. Based on the access and recreation policies of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

Coastal Act **Section 30210** states that:

***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.***

Coastal Act **Section 30211** states:

***Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.***

Coastal Act **Section 30212(a)** provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.***
- (2) adequate access exists nearby, or,***
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.***

Section **30220** of the Coastal Act states that:

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

The policies, standards, and other provisions of the certified LCP, as well as the access and recreation policies of the Coastal Act, set the parameters of the type and location of public

access and recreation opportunities planned for the Mandalay Bay area. The proposed project includes lateral access along the shore throughout the entire project, including the public boating facilities, except for the south side of the South Residential Island. The proposed project also provides vertical access opportunities. The project includes public and private boating opportunities. Finally, dedication of the proposed access and recreation facilities is assured by the proposed project, except, again, for Hemlock Street. The appellants raised several issues related to the provision of public access. These issues are discussed in detail below.

### **Lateral Public Access**

The appellants first contend that it is unclear whether the quantity of lateral access specified in the MBSP is satisfied in the project.

The access and recreation policies of the certified LCP and the Coastal Act require that new development provide substantial public access opportunities on the project site.

The MBSP (on page 4) under the section titled "Public Access and Recreation" defines the criteria for lateral and vertical public access. As noted above, this section states:

*The primary public access to the waterfront of this project is satisfied by a linear park which extends throughout the entire project, except where single family residences are proposed along Hemlock Street. This waterfront park will provide approximately 21,000 linear feet of lateral access for the public. . . Public vertical access to the water will be provided for as required in the Local Coastal Plan. This plan requires that this vertical access be equal to 10% of the total linear waterfront access, or approximately 0.10 x 21,000 linear feet. This equals 2,100 feet of public vertical access to the water, which can be satisfied by docks, dock ramps, beaches etc.*

The LCP further states in **Policy No. 45b** that "the lateral access requirement shall be a minimum of 50 percent of the total linear frontage and shall be dedicated and available for public access."

The public access provided by each of the projects that comprise the Specific Plan area (Harbour Island, SunCal/Westport and Seabridge) is summarized in the following table:

### **LATERAL AND VERTICAL ACCESS SUMMARY**

	<b>Harbour Island – Voss</b>	<b>SunCal- Westport</b>	<b>Seabridge</b>	<b>Access Totals</b>
<b>Lateral Public Access - linear feet</b>	3,900 l.f. (50% of 3,900; or 1,950 l.f. req'd. per LCP)	5,865 l.f. (50% of 7,647; or 3,823 l.f. req'd. per LCP)	10,755 l.f. (50% of 13,487; or 6,743 l.f. req'd. per LCP)	20,520 l.f. (50% of 24,445; or 12,222 l.f. req'd. per LCP)
<b>Vertical Public access - linear feet</b>	400 l.f. (225 l.f. req'd per SP)	1,080 l.f. (587 l.f. req'd per SP)	3,841 l.f. (1349 l.f. req'd per SP)	5,321 l.f. (2,400 l.f. req'd per SP)

As this table shows, the project, as approved by the City, would provide 10,755 linear feet of lateral public access adjacent to the water where 6,743 linear feet are required, and 3,841 linear feet of vertical public access where 1,349 linear feet are required. Thus, in terms of

linear footage, the lateral and vertical access requirements of the LCP are exceeded by over one mile.

However, the MBSP also requires lateral access "which extends throughout the entire project, except where single family residences are proposed along Hemlock Street." The project provides public access throughout the entire project, except for the south side of the southern residential island. Thus, the project, as approved by the City, is inconsistent with the lateral access requirements of the MBSP, and therefore the Commission finds that **a substantial issue exists with respect to lateral access.**

#### **Other Public Access and Public Recreation Issues**

In addition to concern about the extent of lateral access provided in the Seabridge project, the appellants raise other issues relating to public access and public recreation. As discussed below, the Commission finds that **no substantial issue exists** with respect to these further access-related concerns.

##### **a. Shallow Bay**

The appellants contend "the status of the shallow bay as a public facility and its dedication remains in doubt."

The MBSP (page 4) states, under the heading "Public Access and Recreation":

*Approximately 8 acres of open water will be designed as a special water recreation area or "water park" . . . This public water park will be unlike any other recreational amenity in the region and will be available to the general public as well as guests and residents of the marina.*

To implement the MBSP requirement of a public water park, **Condition No. 111** of the City's coastal development permit states:

*Developer shall construct all park and access improvements as required by this permit and in accordance with the following phasing schedule matrix. Prior to the recordation of the deed or easement documents for each phase of improvements, the applicant shall submit the document for the review and approval of the Planning and Environmental Services Manager.*

The phasing matrix is summarized in City **Condition No. 111**. In particular, the recreational bay facility proposed by the Seabridge project is located in Map Phase 4, and is required to be dedicated to the City as stated in **Condition No. 111**. As shown on the site plan (see Exhibit 18), the recreational bay is surrounded by a linear public park, and has several pocket parks located along the water edge.

The City also imposed other conditions of approval, which relate to the recreational bay. **Condition No. 33** states:

*Developer shall provide park improvement features throughout the park system, to the satisfaction of the Parks and Facilities Superintendent. The Parks and Facilities Superintendent shall determine the quantity, location, and building material selections of the following items:*

- a. Sand beaches with lifeguard facility
- b. Designated public parking associated with public parks
- c. Children's play areas with equipment and safety surfacing
- d. Restroom buildings
- e. Gazebo, pergola, and trellis structures
- f. Exercise course
- g. Drinking fountains
- h. Waste Containers
- i. Picnic tables, benches and grills
- j. Seating benches
- k. Basketball court
- l. Volleyball facilities
- m. Park lighting
- n. Bicycle racks
- o. Paved walkways
- p. Focal points
- q. Park identification signage
- r. Waterfront overlooks
- s. Landscaping and irrigation
- t. Maintenance yard, perimeter block wall and building improvements
- u. Tennis court

City Condition No.109 further states:

*In accordance with Policy #45.1.3 of the Coastal Land Use Plan, Developer shall ensure that all public improvements shall be developed in accordance with CDP Condition No. 111 of this permit.*

Finally, City Condition No. 110 states:

*The park areas, lateral access ways along the channel, and vertical access point shall be restricted to public access and public recreation uses. Developer shall offer to dedicate to the City a fee interest for the recreational use and public access over the areas shown as Parcels A-S (19 parcels in all) on Tentative Tract No. 5266 dated 9/23/02.*

Consistent with these conditions, the shallow bay recreational facility is included in Map Parcel 4 on Tentative Map No. 5266, and is to be dedicated upon completion to the City of Oxnard. Thus, the City's conditions ensure that the recreational bay is a public facility, surrounded by public amenities and will be dedicated upon completion.

**b. Management of Waterways, Public Accessways and Public Parks**

The appellants also contend that creation of a Maintenance Community Facilities District will "shift responsibility to the homeowners an obligation imposed for public beaches on counties by State law." However, the Maintenance CFD is to be created by the City of Oxnard and funded through the property tax assessments on the property. As such, it is not a private entity nor is it controlled by the homeowners. Rather, as conditioned by the City, the management of the waterways, public access easements, including lateral and vertical public access trails, parkways and parks will be the responsibility of the City of Oxnard. Thus, the waterways and access parks and trails will be public amenities, owned and operated by the City, available for the use of all visitors to the Channel Islands Harbor.

**c. Conformity with LCP Park and Circulation Plan Maps**

The appellants further contend that the project "does not conform to the land uses designated on the Land Use Map certified in the Specific Plan, and that it would be necessary to map the Specific Plan in detail on the site plan." The Specific Plan (on page 3) under the section titled "Land Use" establishes minimum areas for particular land uses consistent with LCP Policy No. 45. These land use areas are expressed both in acres and as a percentage of the total project, as follows:

<u>Required Land Use</u>	<u>% of Specific Plan Area</u>	<u>Acres</u>
Open Water	25.0%	55.0 ac.
Public Recreation	12.5%	27.5 ac.
Visitor Serving Commercial	12.5%	27.5 ac.

The existing Harbour Island project, the currently-under-construction SunCal/Westport project, and the proposed Seabridge project comprise the entire MBSP area, and provide for these required land uses as shown in the table below:

<b>PROJECT</b>	<b>OPEN WATER ACRES</b>	<b>PUBLIC RECREATION</b>	<b>VISITOR SERVING COMMERCIAL</b>
<b>Harbour Island 23.5 ac.</b>	8.48 ac. = 36%	2.95 ac. = 12.5%	0 ac. provided
<b>SunCal /Westport 58.3 ac.</b>	14.57 ac. required; 14.57 ac. provided	7.28 ac. required; 8.16 ac. Provided	7.28 ac. required; 7.41 ac. provided
<b>Seabridge 135.3 ac.</b>	31.95 ac. required; <b>32.3 ac. provided</b>	16.39 ac. Required; <b>16.50 ac. provided</b>	20.2 ac. required; <b>20.2 ac. provided</b>
<b>TOTALS</b>	55.0 ac. required; <b>55.35 ac. provided</b>	27.5 ac. Required; <b>27.61 ac. provided</b>	27.5 ac. required; <b>27.51 ac. provided</b>

The table above shows that the project satisfies the allocations for specific land uses set forth in the Specific Plan and the LCP. This is also confirmed in Section 4.1 and Figure 4.1-4 of the project Final EIR, as well as an overlay map, which shows that the project does follow the land use map of the MBSP (Exhibit 11). Exhibit 19 illustrates the land use designations in comparison with the Specific Plan conceptual exhibit.

**d. Pedestrian and Bicycle Circulation**

Lastly, the appellants contend "another area of non-conformity is in the provision for pedestrian and bicycle circulation within the project." However, in reviewing the plans approved by the City, all of the public trails in the City-approved park system (25,841 linear feet) are a minimum of 8 feet wide and will be marked for, and designed to encourage, bicycle use. The trails are accessible through the vertical access corridors. The approved site pedestrian and bicycle trails and circulation plan is attached as Exhibit 13. This plan follows the design and layout guidelines in the MBSP (page 8) for both interior and exterior streets, trails, walkways and pedestrian/bicycle paths.

**e. Conclusion**

Thus, the project, as approved by the City, is consistent with respect to public access and recreation requirements of the MBSP, with the exception of lateral access as discussed above,



and therefore the Commission finds that a substantial issue does not exist with respect to the shallow bay, management of waterways, public accessways and parks, conformance to park and circulation maps, and pedestrian and bicycle circulation.

## **2. PRIME AGRICULTURAL LAND**

There are several provisions contained in the certified LCP that call for a program to mitigate the loss of the prime agricultural soils existing on the Mandalay Bay property by transferring the soils to a recipient agricultural site(s) containing non-prime soils and thereby improving the productivity of the recipient site.

**Policy No. 4** (Page 1 of Exhibit 8) of the certified Land Use Plan provides requirements for buffer measures for agricultural lands bordering the urban-rural boundary, including along Wooley Road. **Policy No. 5** (full text of this condition is on Pages 1 & 2 of Exhibit 8) requires that any development approved within the 220-acre Mandalay Bay property include a "prime agricultural land maintenance program." This program involves the transfer of the prime agricultural soils from the Mandalay site to a non-prime agricultural recipient site. **Policy No. 5** explains:

*The purpose of this condition [i.e., the Policy] is, in part, to assure that the long-term agricultural productivity in the Oxnard area is not reduced by urbanization. Therefore, prior to issuing any authorization for a planned unit development ("PUD") on the subject property, the City shall make written findings that the applicant for the PUD has obtained rights to deposit on a like amount of non-prime agricultural land, the prime soils to be taken from the subject site.*

**Policy No. 5** sets forth the standards to be required for the size, location, and soil conditions of the recipient site(s), as well as the methods to be utilized for placing the soil. Further, this policy requires the recipient site to be restricted to exclusively agricultural use for a minimum of 25 years from receipt of the prime soil through an agricultural easement or deed restriction. Finally, **Policy No. 5** requires the preparation and implementation of a 10-year monitoring program to assess the success of the soil transfer.

The "Coastal Planned Community" zone standards (Page 1 of Exhibit 10) of the certified Zoning Ordinances require the development of a specific plan for the development of the Mandalay Bay property. Of the eight components required to be included in the specific plan, the following two pertain to preserving agricultural resources:

Component No. 2 – Soil transfer program for relocation of the prime agricultural soils on the site; and

Component No. 5 – Buffering and setback component that establishes building setbacks and agricultural buffers.

The text of the MBSP (page 11) requires a soil transfer program that implements Policy 5 of the Coastal Land Use Plan. The plan is required to address several parameters, including the acreage, soils characteristics, and location of the site(s) to receive the prime soil, as well as the method and timing of soil placement. Finally, the plan is required to provide a program for monitoring agricultural production on the recipient site.



Additionally, the text of the MBSP requires the provision of an urban-rural boundary along Wooley Road. This includes a grade difference between the road and the agricultural fields to the north. Further, all street widening must occur on the south side of the road. Further, no turnout areas or on-street parking and only minimal shoulders or curbing may be provided on the north (agricultural) side of the road.

The appellants contend that the soil transfer program required by the City of Oxnard in approving the Seabridge project "does not comply with the key provisions of Policy 5 including that 'All acreage within the recipient site shall consist of nonprime agricultural soils at the time of the approval and actual application of the soil transfer program.'"

As noted above, under the provisions of the LCP, an applicant is required to mitigate the impact of the project on agricultural production resulting from the development of a site in the MBSP area with prime agricultural soils that is currently in production. The mitigation required by the LCP involves the preservation of the prime soil by transferring it to a recipient site.

The proposed project includes the transfer of 436,568 cu. yds of prime agricultural soil from the subject project site. The applicant proposes to place this soil on a site located inland of Harbor Boulevard and south of the Santa Clara River (known as the Coastal Berry Ranch). This proposed recipient site is located in part within the Coastal Zone, and is under the jurisdiction of the County of Ventura. The applicant has applied for a coastal development permit (File No. PD-1937) from the County of Ventura. Exhibit 21 shows the relative locations of the sites that would be involved in this proposed transport of soil.

The Commission considered a similar soil transfer program recently in approving the Suncal/Westport project (Appeal No. A-4-oxn-00-172), a 58-acre project containing 218 units. That project involved the transfer of 135,520 cu. yds. of prime agricultural soil to the Coastal Berry site. The soil transfer agreement for the Coastal Berry property was a three-party contract between Suncal/Westport, Seabridge (the applicant here, Oly-Mandalay Bay General Partnership) and Coastal Berry. In approving the Suncal/Westport project on appeal, the Commission imposed conditions of approval (condition nos. 8-10) requiring the submission of plans for a prime agricultural land maintenance program incorporating specific criteria for the recipient site, the soil transfer, a 10-year monitoring program, in addition to requiring an agricultural easement for a period of no less than 25 years, and evidence of a valid permit from the County or evidence that no permit is required.

The appellants contend that the Coastal Berry Ranch is not an appropriate recipient site. The Coastal Berry site (originally referred to as the "Hugo McGrath Property" site), as well as several other sites, were evaluated in connection with the preparation of the City's LCP. The Coastal Berry site was identified, tested and determined to be "non-prime" in the "Farmland Restoration Report, Southwest Five Neighborhood," which was prepared for the City of Oxnard on August 29, 1980 by DIAL Services. This Farmland Restoration Report was updated in 1999 by Daniel Engineering, and a copy is appended to the EIR as Appendix 4.1.

The Coastal Berry site is located outside the Oxnard City limits. Consequently, to utilize the site for the soil transfer operation, the applicant, like the applicant for the Suncal/Westport project, must obtain both a CDP from the County of Ventura and final ministerial approval from the City of Oxnard.

The appellants contend that the approximately 400-acre Coastal Berry Ranch is not an appropriate recipient site because a portion of the site is indicated as prime agricultural soil on the "Important Farmland Maps." However, the Coastal Berry site received detailed testing for soil characteristics in the original 1981 Farmland Restoration Report and the updated report in November 1999. The evidence before the City indicates that significant portions of the site to the north and west consist of Class III soils, deposited through prior flooding of the Ventura River. As previously noted, portions of the Coastal Berry Ranch previously have been approved for receipt of transferred soils from Suncal/Westport project. The Commission finds that if detailed conditions are imposed, like the conditions imposed by the Commission in its approval of the Suncal/Westport project, the precise areas of the Coastal Berry Ranch that may receive the transferred soil will be subject to further testing to ensure that those areas consist of only Class III soils.

The appellants further contend that the Class III soil areas on Coastal Berry Ranch are nonetheless "prime" because they are still farmed. However, non-prime soils can be farmed with artificial inputs. The applicant correctly points out that today, crops can be grown even in the absence of soil, hydroponically. Through application of fertilizers, closely-monitored irrigation regimes, and use of pesticides, marginal Class III Soils can be "farmed" to yield marginal profits. This appears to characterize the agricultural practices of the Coastal Berry Ranch, as indicated in the Farmland Restoration Report. To accept the appellant's argument, the soil transfer program would penalize growers like Coastal Berry for attempting to maintain poor soils in agricultural production, and reward only those possible recipient sites that have both marginal soils characteristics and are removed from production altogether. This would be a major disincentive to farm marginal areas, and was not the intent of the soil transfer program contemplated by the LCP and MBSP. Rather, the goal of the program was to enhance and increase agricultural production in Ventura County by promoting the preservation of, and agricultural access to, Class I and II soils through their transfer to areas of lesser agricultural quality. It is for that reason that the Commission approved the prior soil transfer to Coastal Berry Ranch in connection with the approval of the Suncal/Westport project.

With respect to the soil transfer program submitted to the City, the appellants also contend that the calculations of low-profitability for Coastal Berry Ranch for the crop economic yields are incorrect in that removal of "land lease" costs (\$1,500 per acre) from the economics would result in unrealistic economic yields that exceed the \$1,200 per acre threshold for non-prime land.

As indicated in the Prime Agricultural Land Maintenance Program prepared for the Seabridge property, the economic analysis for the Coastal Berry site is inclusive of all costs related to the land, and reflects market rental rates for vegetable land (the current crop on the Coastal Berry property targeted for soil transfer), as specified under the determination of non-prime farmland. The appellants' suggest that the land is owned by Coastal Berry in fee, and therefore no "land lease" costs should be deducted. However, Coastal Berry does not own the land in fee. Rather, according to the soil transfer program, it pays a land lease obligation equal to \$1,250 per acre per year, which is an essential part of the cost of producing a crop on the property. When "land lease" costs are considered, the Coastal Berry property meets the criteria for non-prime farmland identified in the Prime Agricultural Land Maintenance Program, and Policy 5 of the LCP.

Lastly, the Prime Agricultural Land Maintenance Program for the Seabridge project (page 9) includes information supporting the economic calculations for "non-prime" soils provided by the

current producer on the Coastal Berry Ranch land (Swift Ranch), and therefore was based on actual experience on the Coastal Berry property. The soils transfer program indicates that the area targeted for soil transfer is in vegetable production, and that specific tests demonstrate that property has a Storie Index of less than 80 and is not suitable for strawberry production. In the context of condition compliance, the Commission staff previously determined that a portion of the immediately adjacent Coastal Berry land with exactly the same crop and soil characteristics was acceptable for the Suncal/Westport soil transfer program, and thus consistent with LCP Policy No. 5. While portions of the Coastal Berry Ranch are currently utilized for strawberry production, the applicant indicates that areas to be evaluated for soil transfer will be those areas that meet the non-prime designation within the 400 acre Coastal Berry Ranch. As indicated above, more detailed conditions of approval would serve to ensure that the soil transfer program fully complies with LCP Policy No. 5.

In approving a coastal development permit for the Seabridge project, the City of Oxnard imposed **Condition No. 108**, which states:

*Consistent with Policy #5 of the Coastal Land Use Plan, this resolution is adopted subject to approval of a coastal development permit by the County of Ventura for the recipient site for the agricultural soil transfer program. For this project, Developer shall not seek a recipient site west of Edison Drive, in the Ormond Beach area. Such program has been submitted as part of this project and includes the following components:*

- *Recipient Site: Identification, location, and size of proposed site, verification of non-prime agricultural soils, designation of site for agricultural uses*
- *Soil transfer: Include timing and proposed trucking routes. The transferred soil shall be transferred directly to the recipient site and shall not be stockpiled for any period of time.*
- *Monitoring Plan: Monitoring parameters shall include data on all soil characteristics, crop types and yields, irrigation requirements, and the agricultural productivity of the recipient site. A written monitoring report shall be submitted to the Planning and Environmental Services Manager on an annual basis, for a period of not less than ten (10) years from the start of the soil transfer activities.*

In response to the appeal filed, the applicant initially asserted that the City's condition did not approve a specific recipient site or soil transfer program, and that approval of the recipient site would occur through a CDP subject to approval by Ventura County that will require verification of non-prime agricultural soils. The City has indicated that the applicant did submit a detailed "Prime Agricultural Land Maintenance Program" for the Seabridge property. Staff notes that Condition No. 108 reads as a finding, rather than a condition to be met and does not ensure that the listed criteria for the recipient site, soil transfer and the required monitoring plan are included in the submitted program. Further, the County of Ventura LCP lacks a specific prime soil transfer policy like **Policy No. 5** in the City of Oxnard's LCP. Therefore, the Commission finds that **a substantial issue exists with respect to the preservation of prime agriculture.**

### **3. WATER QUALITY**

The City of Oxnard Coastal Land Use Plan (LUP) incorporates Sections 30230 and 30231 of the Coastal Act concerning water quality and marine resources.

Section 30230 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 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.*

Local Coastal Policy 10 states:

10. *The water quality of the City's coastal waters shall be maintained and, where feasible, restored by the following:*
  - a. *The effects of wastewater discharges which release toxic substances into coastal water, streams, wetlands, estuaries and lakes shall be minimized, and where feasible toxic substances should be removed. Wastewater discharges which do not contain toxic substances and which are necessary to sustain the functional capacity of streams, wetlands, estuaries and lakes shall be maintained.*
  - b. *The entrainment of organisms (induction by subsurface cooling pipes and similar apparatus) shall be minimized.*
  - c. *The effects of increased amounts of runoff into coastal waters, streams, wetlands, estuaries and lakes due to development shall minimize through, among other means, grading and other site development controls, and buffer zones.*
  - d. *Surface water discharge from streams and rivers shall be maintained at levels necessary to sustain the functional capacity of coastal waters, streams, wetlands, estuaries and lakes.*
  - e. *Naturally occurring vegetation that protects riparian habitats shall be maintained and, where feasible, restored.*
  - f. *Alterations to natural streams shall be minimized to sustain the functional capacity of such areas.*
  - g. *Wastewater reclamation shall be encouraged through, among other means, using treated effluent to replenish groundwater supplies and providing freshwater for the restoration of streams, wetlands, estuaries and lakes.*

The Specific Plan – Mandalay Bay, Section III, Public Access and Recreation states:

*The primary public access to the waterfront of this project is satisfied by a linear park which extends throughout the entire project, except where single-family residences are proposed along Hemlock Street. This waterfront park will provide approximately 21,000 linear feet of lateral access for the public. Interspersed along this linear waterfront park are several "pocket parks" ranging from approximately one-third acre to three acres in size. These pocket parks will offer visitors and residents a variety of facilities, gardens,*

***and open space for "free play." Though auto access to the island will be private and secured (i.e., key operated gate), this linear park system will allow free access for bicyclists and pedestrians alike, and in addition will carry throughout the development a consistent landscape theme unique to this project in the Channel Island Marina. Approximately 8 acres of open water will be designed as a special water recreation area or "water park." This area will not be accessible to larger boating craft (length in excess of 8 feet), but rather will be set aside for activities such as wading, swimming, wind-surfing, and paddle boating, which otherwise would pose a hazard to and be endangered by normal boating activities. This public water park will be unlike any other recreational amenity in the region and will be available the general public as well as guests and residents of the marina.***

The appeal states that the approved project does not conform to Policy 10 of the LUP and that the City, in granting the Coastal Development Permit (CDP), has not met the burden to establish that a shallow bay with swimming beaches located at the end of a dead end channel is a feasible use consistent with water quality standards and with the recreational area requirements of the LUP and the Specific Plan. The appeal also states that pursuant to Policy 10 the water quality at the project's two swimming beaches should be required to generally meet the State water quality standards for indicator bacteria (California Health and Safety Code, sec. 115880 and California Code of Regulations, Title 17, Sec. 7956 et. seq.).

Section 30231 of the Coastal Act, which has been incorporated into the LUP, states that water quality shall be maintained to protect ecosystems and human health. Policy 10 of the LUP, cited above, provides for the maintenance of coastal waters including the minimization of impacts caused by runoff. The Specific Plan provides for a public water park for small boating craft and recreational amenities.

The approved project includes a shallow bay and two swimming beaches at the northern end of the site as part of the public water park described in the Specific Plan. The appellant contends that swimming beaches are not mandated by the Specific Plan but included among possible activities that might be included if feasible, and that information provided in the CDP and the public record does not establish the feasibility of the shallow bay to fulfill its design function of public recreation involving human water contact. The appeal states several reasons, outlined and discussed in the sections below, why the approved project, specifically the portion including the shallow bay and swimming beaches, has not been established as a feasible use and is not consistent with the water quality provisions of the LUP.

Following the submittal of the appeal, the applicant has provided additional information in response to the issues raised by the appellant. Much of this is new information that was not part of the public record at the time of appeal. The analysis and determination of substantial issue is based on information included in the public record at the time of the appeal, and does not include new information that has since been provided. This new information will, however, be reviewed as part of the De Novo consideration.

#### Enclosed Beach Trends

The appeal states that no beach can be expected to never exceed the State standard for indicator bacteria and that all beaches will fail these standards some of the time.<sup>1</sup> However,

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<sup>1</sup> The State standard for indicator bacteria is a measure of water quality impairments due to bacteria or pathogen problems at the beach. Exceedances or failures of the State standards indicate a water quality impairment. These water quality impairments can adversely impact coastal resources as well as human health.

review of water quality at California beaches conducted by Heal the Bay, a non-profit environmental group with a water quality focus, have shown that enclosed beaches in harbors tend to fail more often than other types of beaches. A Heal the Bay letter supporting the appeal (addressed to Commissioners and dated February 13, 2003) states "over a two-year period (2000-2001), 32 of the 92 enclosed beaches (35%) throughout Southern California had poor water quality during dry weather (defined as a time period when there is no rain on a specified day and the previous three days). During this same period only 37 of the 220 beaches impacted by a storm drain (17%) and 3 of the 54 open ocean locations (6%) had poor water quality." In addition, the Ventura County Environmental Health Division submitted a letter stating that "it has been EHD's experience that these types of beaches [those in enclosed harbors] have a history of not meeting bacteriological water quality standards and that on-going public notification warning public to avoid body contact may be necessary." The appeal notes that one of the beaches with the highest failure rate is Kiddie Beach, which is located just inside the Channel Islands Harbor mouth. In an ongoing review of beach water quality data called the "Beach Report Card", Heal the Bay has identified Kiddie Beach as one of ten most frequently polluted beaches along the California coastline.

The applicant notes that the data indicates that enclosed harbor beaches had poor water quality 35% of the time. Therefore, enclosed harbor beaches had acceptable or better water quality 65% of the time. [Actually, the beaches didn't have poor water quality 35% of the time, but 35% of the beaches had poor water quality during dry weather. There is a difference between these two statements that should be noted.] In addition, the applicant states that the past two years of Heal the Bay data indicates a general improvement in water quality at enclosed beaches. The applicant also acknowledges that Kiddie Beach is a localized problem and can't be extrapolated to the approved project location.

Heal the Bay's Beach Report Card website (<http://www.healthebay.org/brc/>) is a user-friendly source of California beach water quality data, and provides information on temporal trends in bacteria problems at beaches. Heal the Bay compiles bacteria data that has been collected by various County and City public agencies throughout Southern California and reports this data to the public in a user-friendly format, both weekly and annually.

Both the appellant and applicant have presented a large amount of data to Coastal Commission staff. This data represents different information, such as annual report summaries or letter grades<sup>2</sup> for certain beaches during certain times, and has been presented in various formats (tables, charts, lists of all data, etc.). To get an accurate representation of this data, Coastal Commission staff looked at the weekly data for all enclosed beaches over the past 4 years and also at the summaries regarding enclosed beach trends from the past three Annual Beach Report Cards.

There are more than 100 locations at enclosed beaches that are sampled for indicator bacteria. Coastal Commission staff reviewed weekly data for these locations over the past 4 years, looking at the number and percent of the samples that exceeded the State water quality

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<sup>2</sup> Heal the Bay gives each beach a letter grade from A – F based on daily and weekly water quality monitoring data collected by the different agencies. Beach Report Card grades are based on an analysis of the levels of three indicator bacteria in shoreline samples – total coliform, fecal coliform and enterococcus. Basically, the higher the grade a beach receives, the lower the amount of indicator bacteria present and, therefore, the lower the risk of illness.



standards.<sup>3</sup> It should be noted here that the Los Angeles Regional Water Quality Control Board (LARWQCB) has recommended, through the Total Maximum Daily Load (TMDL) process, criteria for Santa Monica Bay beaches. Although the Channel Islands Harbor is not in the Santa Monica Bay, these standards are the best and most current available criteria to use as a measure of water quality for tidally influenced swimming beaches. The adopted TMDLs stipulate that during the dry weather AB411 period there shall be no exceedances of the State standard; during the dry weather non-AB411 period there shall be only three days of exceedance; and during wet weather year round there shall be no more than 16 days of exceedance.<sup>4</sup> Another option proposed is during the non-AB411 period, regardless of weather conditions, no more than 10% of the samples shall exceed the state standards.

Exhibit 15 presents tables that have been adapted from water quality data for enclosed beaches compiled by Heal the Bay. Table 1 shows data during the dry weather AB411 period. Note that the TMDL criteria discussed above calls for no exceedances of the State standard, while the data shows that every beach sampled during this time (100%) had at least one exceedance. Table 2 shows that during the dry weather non-AB411 period, when the criterion allows for only three days of exceedances, about 67% of the locations had four or more days where samples exceeded the State standard. In Table 3, the data shows that for wet weather year round data, only 5% of the locations exceeded the criterion of no more than 16 days of exceedances. It is important to note, however, that only 12 of the 88 locations had more than 16 samples collected. Therefore, these are the only twelve locations that could have possibly exceeded the criterion. Of these 12 locations, 4 (or 25%) had more than 16 exceedances. It is also worthwhile to recognize that about half of the locations in Table 3 recorded exceedances for 50% or more of the samples taken. The data presented in Table 4 shows that during the non-AB411 period (all weather), when the criterion states that no more than 10% of the samples collected for a location shall exceed the State standard, approximately 90% of the locations exceed this 10% limit.

The information above shows that there is a definite concern with enclosed beaches and water quality. For the most part, water quality measured in enclosed beaches around Southern California over the past 4 years greatly exceeds the criteria established through the TMDL process for Santa Monica Bay beaches.

Heal the Bay has compared enclosed beach water quality data to data for other types of beaches in their recent Annual Report Cards, and noted that: "Enclosed beaches continue to have poor water quality when compared to their open-ocean counterparts. Without a doubt the worst water quality is found at enclosed beaches, probably because of the poor water circulation that is often associated with these beaches." For the data reported in 2002-2003, approximately 44% of enclosed beaches received an "A" grade during dry weather, compared to 88% of open ocean beaches and 71% of beaches impacted by a storm drain. During this same time, approximately 31% of the enclosed beaches received fair-to-poor water quality grades as opposed to 7% and 13%, respectively, of those beaches located at open ocean locations and impacted by storm drains. An astonishing 98% of enclosed beaches received an

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<sup>3</sup> Assembly Bill 411 (AB 411) required the California Department of Health Services to adopt regulations pertaining to beach safety. Hence, regulations were established in Title 17 of the California Code of Regulations and include thresholds for indicator bacteria.

<sup>4</sup> The AB411 time period is from April 1 through October 31; the non-AB411 period would be outside of those dates; and dry weather is defined as a time period when there is no rain on a specified day and the previous three days.

"F" grade during wet weather conditions for the 2002-2003 period, while 44% of open ocean beaches and, 61% of beaches impacted by a storm drain received "F" grades.

The water quality data presented clearly shows that, in general, enclosed beaches have more water quality problems than open ocean beaches, even those near storm drains. The applicants contend that the problems at Kiddie Beach are localized and can't be extrapolated to the project's shallow bay and swimming beaches. While the problems at Kiddie Beach may be partly due to local factors, it has been shown that there is a general trend of water quality problems in enclosed beaches, the same type of beaches proposed as part of this project. The locations of these enclosed beaches are varied throughout the coast, and still the trends of water quality problems persist. It is, therefore, not as much the geographical location as the particular characteristics of enclosed beaches that make them more susceptible to water quality impairments than open ocean beaches. The nature of swimming beaches in enclosed harbors is that they attract small children, often have trash and bird problems, and are affected by other harbor activities, such as boating and fishing, which all are sources of bacteria. While it is true that not all enclosed beaches have impaired water quality, it has been proven that enclosed beaches pose special water quality and human health risks and are more susceptible to water quality degradation. Thus, the Commission finds that the appellants' assertion regarding enclosed beach trends raises substantial issue with regard to the grounds that the project, as approved by the City, does not comply with the water quality provisions of the LUP.

#### Harbor Monitoring Data

Several studies have been undertaken to collect bacteria data in the Channel Islands Harbor (CIH). These studies date back to 1997 and result in limited data collected at various locations in the harbor. The appellant contends that the scope of analysis conducted by the applicant regarding water quality data is inadequate to support the applicant's conclusion that water quality is generally good in the CIH because the data that has been collected is too limited and wasn't collected in channels that would most nearly replicate expected conditions at the shallow bay.

In addition, bacteria testing was conducted by the appellant and another party in the Mandalay Bay channels of the CIH on November 3, 2002. Eight samples were taken and one of these samples yielded results far in excess of the State standard for Enterococcus bacteria, one of the types of indicator bacteria. The appellant contends that, while single date testing is not definitive of a general circumstance, this exceedance does establish the need for bacterial testing in the Mandalay Bay area to support any conclusions on existing water quality. The appeal states that no baseline has been established for the conclusion that existing water quality is so "good" that it can feasibly be used for swimming at the shallow bay.

The applicants contend that an appropriate level of testing was accomplished via both actual sampling and review of existing data provided by the Harbor District, and that the sampling locations utilized by the Harbor Department are representative of CIH water quality.

The Final Supplemental Environmental Impact Report (FSEIR) (June 2002) summarizes the data that was reviewed or collected to assess water quality in the CIH. This data includes three years of sample data provided by Capco Analytical Services of Ventura County as provided to the CIH, two field surveys that comprised vertical profiles of conductivity, temperature, depth and dissolved oxygen over a full tidal cycle at 21 locations and water column currents at 20 of those 21 stations within CIH. Ten of the stations occupied in July 2000 were also sampled



during the April 1999 survey. The Capco data summarized in the FSEIR only shows 12 samples (in contrast to the 132 samples that should have been recorded), and of these 12, only 6 were sampled for indicator bacteria. In addition, this sampling was conducted in the main channels at three locations in the harbor where circulation is high and residence time is low. Thus, this data does not have much relevance to areas with reduced circulation, such as the proposed locations of the swimming beaches and the ends of channels. The field surveys in July 2000 and April 1999 did not sample for indicator bacteria. The applicant is basing their claim that the water quality in the CIH is not impacted by bacteria problems on six actual bacteria samples taken from the middle of main channels. This is an insufficient amount of data upon which to determine that the quality of water in CIH is generally good. As such, the Commission finds that the appellants' contention regarding inadequate existing harbor data raises substantial issue with respect to the grounds that the project, as approved by the City, does not conform to the water quality provisions of the LUP.

#### Water Quality Model Study and Residence Time

The applicant conducted a Water Quality Model Study as part of the FSEIR process to assess circulation and flushing in the harbor, and the impact the project will have on flushing and circulation.

The appeal cites the Water Quality Model Study, which states:

***"The water quality of small harbors is largely controlled by continual replacement and dilution of interior water by the ocean. This is the major removal mechanism for most substances contained in the water column. The intensity of flushing action is measured by the mean residence time."***

The Water Quality Model Study predicts residence times for different phases of the project. The appeal states that the configuration of the shallow bay after Phase 1 has been developed but before the next phase is developed, which results in a dead-end channel, poses special water quality vulnerabilities for the two swimming beaches. The residence time for the shallow bay after Phase 1 but before the next phase is between 6.5 and 6.6 days, with the cooling pumps on. The applicant contends that the water quality analysis based on the phased construction of the project was provided in the FSEIR, where in each phase of construction, water quality impacts were "not significant or could be mitigated."

The appeal states that the applicant's Water Quality Model Study predicts that the shallow bay will have a residence time between 6.6 to 17 days, depending on certain factors. The appellant contends that the same analysis shows the residence time in the area of the existing chronically polluted Kiddie Beach to be less than two days. The appellant further contends that the applicant offers no supporting documentation based on studies of other locations to support the position that residence times of 6.6 to 17 days are consistent with maintaining good water quality in shallow enclosed bays.

The applicant claims that typical coastal marinas in California exhibit maximum residence times on the order of 7 to 14 days. The applicant also contends that although there is no set standard for a maximum acceptable residence time, it is generally accepted that residence times of less than 14 days are desirable to maintain adequate water quality in enclosed bays and harbors, provided there is adequate control over pollutant sources.

Residence time is not the absolute indicator of water quality. A higher residence time increases the probability of having a water quality problem as poor circulation in nearshore areas exacerbates high bacteria concentrations resulting from direct or diffuse sources. This project has a number of stormwater controls, including filtration devices, permeable areas for infiltration and vegetated areas for biofiltration. However, none of these controls are designed to prevent all bacteria contaminants from entering the project waterways. The nature of swimming beaches in enclosed harbors is that they attract small children, often have trash and bird problems, and are affected by other harbor activities, such as boating and fishing, which all are sources of bacteria. Therefore, it can be assumed that the project's waterways, including the swimming beaches, will be impacted to some degree by bacteria pollution, which can lead to adverse impacts to coastal resources and human health.

The actual residence times for the shallow bay predicted by the Water Quality Model discussed in the FSEIR are between 5.5 and 17 days. The applicant contends that residence times of less than 14 days are desirable to maintain adequate water quality in enclosed bays and harbors, although they provide no supporting documentation for why 14 days is adequate. There have been studies of other enclosed beaches with lower residence times than those predicted for the shallow bay that have had significant water quality problems. For example, the residence time at Kiddie Beach is approximately 2 days, yet this site continuously fails State water quality standards. Cabrillo Beach has a residence time of only one day and also routinely exceeds State health standards. On the contrary, there are areas with greater residence times, such as Huntington Harbor (ranging between 4-16 days) that test relatively clean. Therefore, residence time cannot be used as an absolute indicator of water quality. However, the swimming beaches included in this project are likely to have impacted water quality due to presences of several sources of bacteria (i.e., stormdrains, trash, birds, boating and fishing activities) and the likelihood of high residence times (relative to other areas of the CIH). Thus, the Commission finds that the appellants' assertion regarding residence time and bacteria problems raises substantial issue with regard to the grounds that the project, as approved by the City, does not comply with the water quality provisions of the LUP.

#### Water Quality Maintenance Methods

The appellant contends that each water quality maintenance method proposed for the approved project is dependent on future actions that may cause them to be implemented long after the shallow bay beaches are in use or, possibly, never be implemented at all.

While the appellant commends the project for its methods of dealing with storm water in general, they contend that none of the planned devices are tailored specifically to concerns about bacterial contamination at swimming beaches. The appellant also contends that a complex financing method is identified to pay for continued operation of the pumps at the existing Mandalay Bay Power Plant if its private operator ceases operation and that funding for this remedial maintenance measure could trail the advent of water quality problems at the swimming beaches induced by closure of the plant. In addition, the appellant contends that a one time Developer payment of \$250,000 to the City to install the circulation pumps and aerators should water quality within the waterways degrade below standards is not sufficient based on experience elsewhere, including Kiddie Beach where \$700,000 of grant monies are allocated for circulation devices. In addition, the appellant contends that the \$250,000 would only be paid at the time that all of the Seabridge Waterways are accepted by the City, which may be years after the shallow bay has been opened for swimming.

The applicant contends that the storm water filtration devices will filter more than just debris, including petroleum-based products and other contaminants, and will be installed at over 20 locations throughout the project. The applicant also explains that the \$250,000 fee covers only the mechanical pumping equipment; there will also be significant costs incurred during construction of the piping and structures to house the pumps, required by Section 12d of the Development Agreement (Page 15 of Exhibit 3). The applicants contend that comparison with the Kiddie Beach situation is invalid due to the significantly disparate water quality factors between the beaches.

The storm water filtration devices are not specifically designed to remove bacterial contaminants, but they may indirectly assist in the removal of bacterial pollutants from stormwater. The applicant cites a study where Best Management Practices (BMPs) have been shown to reduce bacterial loads by up to 55% (Barrett 1999, cited in *Stormwater Runoff Water Quality Science/Engineering* Newsletter, Vol 3, Number 2, May 2000). Accordingly, BMPs that control gross pollutant export to the harbor are considered a valuable mechanism to assist in the control of waterway bacterial contamination. Vegetative filtering, another BMP known to help control the influx of bacteria, will also be incorporated into the final project design. There are several designs incorporated into the project that facilitate bacteria removal, including biofiltration areas, reducing impervious surfaces, and source control measures such as cleaning up after pets and covering trash areas. There will still, however, be contributions of bacteria to the waterways, either through stormwater entering the waterways or through direct pollutant loading from animal or human activity in and around CIH, as there is no proposed method to completely control bacteria pollutants.

The FSEIR concludes that the operation of the cooling water intake pumps at the Mandalay Plant is important for maintaining good water quality conditions throughout the Harbor. According to the Development Agreement, if the Mandalay Plant pumps go off and the Mandalay Plant is not required to mitigate, and if water quality falls below State standards as a result of the pumps ceasing to operate, the Maintenance Community Facilities District is required to pay to the County's Harbor Department from taxes collected during the next real property tax year the Seabridge percentage of the annual Remediation Cost incurred by City and County in connection with the implementation of the Remediation Measure. This is a somewhat complex financing method and could trail the advent of water quality problems at the swimming beaches induced by closure of the Mandalay Plant.

According to the Development Agreement, should water quality degrade below Generally Accepted State Standards (as described in Section 12h of the Development Agreement), the Remediation Measure shall be implemented. This Remediation Measure includes the placement and operation of recirculating pumps and aerators in vaults to be located within the shallow bay recreation area. The construction of the vaults, designed to house the circulating pumps, is required as a condition of the City's permit. The applicant has provided a cost breakdown to show the total cost for construction and installation of the pumps and aerators, which amounts to about \$540,000. The appellants' claim that \$250,000 is not sufficient to install the circulation pumps and aerators should water quality within the waterways degrade below standards, based on experience elsewhere, does not account for the upfront costs of the piping and structures to house the pumps incurred during construction, but only reflects the costs of the mechanical pumping equipment to be installed in the advent of degraded water quality. Taken as a whole, the cost of the construction and installation of the pumps and aerators is shown to be sufficient based on the cost estimate provided by the applicant, and is also closer in amount to similar devices at other beaches. The City's permit also requires the

Developer to pay \$250,000, which is the portion of the total construction costs required to install the circulating pumps and aerators, to the City at the time that all of the Seabridge Waterways are accepted by the City. It is unclear, however, when the Seabridge Waterways are deemed accepted, which may possibly be years after the shallow bay has been opened for swimming.

The applicant has proposed several maintenance methods to reduce the potential for water quality impairment in the shallow bay and other waterways that are part of the project. However, there will still be some contributions of bacteria to the waterways because of the nature of the swimming beaches and the absence of BMPs that specifically target bacteria pollutant removal. In addition, the mitigation proposed in the event of the Mandalay Plant pumps ceasing to operate is a somewhat complex financing method and could trail the advent of water quality problems at the swimming beaches induced by closure of the Mandalay Plant. Finally, the cost of the construction and installation of the pumps and aerators as a Remediation Measure is sufficient, however, the timing of the payment of the fee for installation of these devices is unclear and may come years after the shallow bay has been determined to be degraded. Therefore, the Commission finds that there is substantial issue raised by the appeal regarding water quality maintenance methods with respect to the appellants' contention that the project, as approved by the City, does not conform to the water quality requirements of the LUP.

#### Monitoring Requirements

The appellant contends that long before the project waterways are completed, monthly testing may well be replaced with monitoring a maximum of once every five years.

The applicant indicates that according to CDP Condition Number 142 monitoring will continue for at least five years after construction is completed and will commence the first day water is introduced into the new waterways.

There are two types of monitoring required by the CDP for this project, stormwater monitoring and bacteria monitoring. Stormwater monitoring consists of sampling near stormdrain outfalls and BMP devices to evaluate the performance of BMPs within the project. Condition 142 of the CDP specifies the requirements for this stormwater monitoring, including that the monitoring occur annually for the first five years, and then at least once every five years as long as pollutant loadings don't exceed the established thresholds. If pollutant loadings do exceed thresholds, then annual monitoring shall again be required for a period of at least five years, or until pollutant loadings no longer exceed thresholds, whichever is greater.

Bacteria monitoring is outlined in Section 12h of the Development Agreement (Page 17 of Exhibit 3). This Section states that the Maintenance Community Facilities District shall contract with County Environmental Health Department to perform water quality monitoring in the project waterways, in particular the shallow bay. The sampling program will be established to determine whether the water quality in the shallow bay has degraded below "Generally Accepted State Standards", as described in the Development Agreement. The measurements that will be taken are dissolved oxygen (DO) and three indicator bacteria tests – enterococcus, total coliform, and fecal coliform. There will be five sampling stations, including one in the shallow bay. Bacteria samples will be taken monthly, and if bacteria levels exceed the specified standards for any sampling period, sampling will be increased to weekly, and at least two additional testing stations will be added, one in each of the main channels. Weekly testing will continue until three consecutive sampling periods have shown bacteria levels at or below

desired levels. If the bacteria levels exceed the standards three times during one year, and if the problem is determined to be isolated to the shallow bay, and if recommended by a water quality expert, then aerators and/or pumps would be installed in the vaults, or other corrective measures approved by the City would be taken. If the problem is not isolated to the shallow bay but is a harbor-wide problem, the Seabridge residents shall participate in a City determined solution to the same extent as other city residents.

The regulatory requirements for public beaches include thresholds for indicator bacteria and specify that weekly monitoring be conducted from April 1 through October 31 for beaches visited by more than 50,000 people annually and located adjacent to a storm drain that flows in the summer (17 C.C.R. section 7961). The swimming beaches that are part of this project are expected to be visited by more than 50,000 people annually and will be located adjacent to a storm drain that flows in the summer. Therefore, weekly bacteria testing at the swimming beaches from April 1 through October 31 should be part of this project, rather than the monthly testing that is currently proposed. In addition, Title 17 requirements state that water samples shall be taken from locations that include areas affected by storm drains and that samples shall be taken in ankle- to knee-deep water, approximately 4 to 24 inches below the water surface (17 C.C.R. section 7961). The proposed bacteria monitoring locations only include one site in the shallow bay, and it is not specified where this would be. According to the public beach regulations, there should be bacteria sampling locations at each swimming beach in ankle- to knee-deep water and at storm drain outfalls within the shallow bay and adjacent waterways. (Id.) The proposed bacteria monitoring program, as approved by the City, does not meet these requirements, and therefore, the Commission finds that there is substantial issue raised by the appeal regarding bacteria monitoring requirements with respect to the appellants' contention that the project, as approved by the City, does not conform to the water quality provisions of the LUP.

#### **4. PROJECT PHASING**

**Policy No. 45.i.3** (Page 5 of Exhibit 8) of the certified Land Use Plan provides that for all PUD projects, which includes the Seabridge project, public improvements required of a development shall be developed concurrently and shall be completed prior to completion of the final project phase.

The MBSP (on Page 2 of Exhibit 14) provides that one objective of the Plan is to provide a plan which can be implemented in practical phases.

The MBSP also sets forth requirements for project phasing as follows:

***The development of this project will occur in a series of phases. The first phase to be developed will be the western section of the south island and the western section of the south shore. After the development of the western section of the south island and the western section of the south shore, the remaining phases may develop in any order, including concurrent development of phases, as long as the canals shown in the Specific Plan are extended to each new phase of development, each new phase of development is served by adequate vehicular and pedestrian circulation ways, as shown in this Specific Plan, and each new phase is provided with all required utility services.***

The MBSP describes geographic sections of the property which are identified as phases, and further provides that:



***Public improvement required of each phase shall be developed concurrently with private development of that phase and all public improvements required by the specific plan shall be completed before completion of the final phase.***

The appellants contend that certain provisions of the Development Agreement for the Seabridge project nullify certain conditions of approval of the coastal development permit approved by the City, including **City Condition No. 111**, which includes a phasing schedule matrix for the project and states:

***Developer shall construct all park and access improvements as required by this permit and in accordance with the following phasing schedule matrix. Prior to the recordation of the deed or easement documents for each phase of improvements, the applicant shall submit the documents for the review and approval of the Planning and Environmental Services Manager.***

The contention points to language in Section 21c of the Development Agreement, which states in part that the Development Agreement " . . . supercedes all prior agreements and understandings . . . ." See Exhibit 3 for full text of Development Agreement.

The applicant has submitted a letter from the Oxnard City Attorney (Exhibit 17) which explains that the conditions of approval of the Coastal Development Permit are not "agreements" or "understandings." Rather, they are conditions imposed on the approval of the permit which take effect if and when the permit holder decides to take advantage of the benefits of the permit and commence the project. The City Attorney explains that the language contained in Section 21(c) is standard development agreement language, and merely negates any later claims that "agreements" or "understandings" exist which were not incorporated into the Development Agreement.

Section 6(a) of the development agreement requires that the Project "be developed in accordance with the Specific Plan and the Entitlements, including TPM No. 5266 . . . ." The "Entitlements," in turn, are defined in Recital E of the Development Agreement as the tentative subdivision map, the coastal development permit and necessary conditional or planned development permits and all other land use approvals required for the Seabridge project. Consequently, the Development Agreement does require that the project be developed in accordance with the coastal development permit, including City Condition No. 111, concerning the project phasing requirements.

In addition, the purpose of the Development Agreement is to grant the developer vested rights to develop the project. This grant is found in Section 4(a) of the Development Agreement. The project is defined in Recital B of the agreement to be a development "in accordance with the Mandalay Bay Phase IV Specific Plan . . . incorporated in the Local Coastal Plan adopted by the City Council and approved by the California Coastal Commission (the "Specific Plan")." The conditions of approval of the "Entitlements" implement the development of the project in accordance with the Specific Plan.

Appellants further contend that Section 6(m) of the Development Agreement "renders null and void the phasing schedule matrix that is found in City Condition No. 111 to approval of the Coastal Development Permit." However, the Development Agreement not only incorporates this condition as a part of the "Entitlements," but Section 6(m) and Condition No. 111 are consistent when read in light of the full Agreement. Condition No. 111 establishes the improvements that must be included in each phase of development of the Project if and when



the Project is developed. Section 6(m) establishes that the Developer is not required to commence building of the Project in any time frame or at any time, or at all. Read together, the Development Agreement and Condition No. 111 state that the Developer is not required to build the Project, but if the Developer does build the Project, then the Developer must provide the facilities specified in Condition No. 111 with each of the identified phases of the Project. This reading of both documents is confirmed in the letter from the Oxnard City Attorney (Exhibit 17).

Therefore, the Commission finds that **no substantial issue exists** regarding project phasing.

## 5. PUBLIC BOAT DOCKS

There are several provisions in the certified LCP that address the allocation of both public and private boat slips.

Policy 45.b provides that:

*Residences, both single-family or multiple units, shall be oriented to the waterway, and private docking facilities may be provided.*

Policy 45.d includes a breakdown of required public and visitor-serving areas as follows:

### BREAKDOWN OF PUBLIC AND VISITOR SERVING AREAS

<u>Element</u>	<u>Minimum Acreage</u>	<u>Percent of Public Area</u>	<u>Percent of Total Project</u>
Visitor-serving, Commercial Public Recreation, and Open Water	110.0	100%	50.0%
a. Visitor-serving Commercial	27.5	25%	12.5%
b. Public Recreation	27.5*	25%	12.5%
c. Open Water **	55.0	50%	25.0%

\* Must all be on land

\* Up to 10 percent of open water may be devoted to public marinas, or boat slips available to the public.

Policy 45.g also states that:

*A public launching ramp and boat docks for day use will also be provided. Fifty percent of the docking facilities provided in the project other than those provided with single-family residences shall be available for use by people not residing within the project.*

With regard to recreational boating, the text of the MBSP (page 5) states that:

*The Specific Plan incorporates a minimum of 795 boat slips in the Specific Plan area. Thirty are allocated to the 30 single-family residential lots. One-half of the remaining will be available to the public.*

The appellants maintain that the public boat slip allocation for the approved project is nullified by the Development Agreement. The Specific Plan (page 5) "incorporates a minimum of 795 boat slips in the Specific Plan Area." In addition, the Specific Plan (also on page 5) provides

that "a minimum of 50% of the docking facilities provided in the project, other than those provided for single family residential will be available for use by people not residing within the project. Consistent with this requirement, the Seabridge project will provide 241 public boat docks and 235 private boat docks. The Specific Plan requirements are implemented through two conditions imposed by the City in its approval of the Seabridge project. City Condition No. 113 states:

***Prior to issuance of the first building permit, Developer shall submit, for the review and approval of the Planning and Environmental Services Manager a plan for the development, leasing, and management of the boat docks. The approved plan shall be subject to the following requirements and include the following components, at a minimum:***

- ***Fifty percent (50%) of the docking facilities provided in the project shall be available for use by the public. No preference shall be given to individuals residing in the project area. No private boat docks may be constructed until and unless a commensurate number of public boat docks have been constructed and are available to the general public.***
- ***The plan shall include a program for advertising the availability of the public docks, leasing (if applicable) the public boat docks, and managing the public docks for the use of the public.***

City Condition No. 114 further requires:

***Prior to the issuance of the first building permit for each phase, Developer shall execute and record a deed restriction in a form and content acceptable to the City Attorney, restricting the public boating area for that phase, as shown on the site plan, for boating facility uses available only to the general public. The deed restriction shall include legal descriptions of the entire parcel and the public boat area. The deed restriction shall run with the land, binding all successors, and assigns, and shall be recorded free of prior liens that the City determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a major modification to this permit.***

As discussed above with respect to the issue of "project phasing," the appellants' contention that the development agreement nullifies **Conditions Nos. 113 and 114** is based on a mistaken interpretation of the language and effect of the Development Agreement. Section 6(a) of the Development Agreement requires that the Seabridge project "be developed in accordance with the Specific Plan and the Entitlements. . .," and this includes both of the conditions which deal with the public boat slips.

The appellants also argue that "the lion's share of the private boat docks would be developed in phase 1 when all the single family residences having individual boat docks would be constructed." However, City Condition No. 113 dictates that the number of private boat docks cannot exceed the number of the public docks provided in each phase.

Finally, the appellants assert that the Development Agreement "relieves the developer of responsibility for building out any public boat slips," citing Section 12c of the Development Agreement, which relates to Transient Boat Docks. Section 12c states:

***Construction and Maintenance of Boater Related Facilities. If the Developer elects to construct any transient Boat Dock, then concurrently with the construction of the Transient Boat Docks, the Developer shall cause the Boater Related Facilities to be***

***constructed and shall make arrangements reasonably satisfactory to the City for the ongoing maintenance of the Boater Related Facilities.***

The City has explained that Section 12c was included in the Development Agreement to provide for the possibility that a management company might be involved in the operation and maintenance of the Public and Transient Boat Dock facilities. However, Section 12c does not negate the requirement of the coastal development permit in **Conditions Nos. 113 and 114**, above, that developer construct 50% of the dock facilities for public use. It simply provides a means for the City to insure that future operators of the Public Marina will maintain the boater related facilities in a manner acceptable to the City. As discussed above, this is consistent with the concept in the Development Agreement that the developer is not obligated to develop anything, but if the developer takes advantage of the benefits conferred by the Entitlement and commences the project, then the developer must comply with all of the Entitlements, including all of the conditions imposed by the coastal development permit.

Conditions Nos. 113 and 114 are consistent with requirements of the Specific Plan, and ensure that the project fulfills the requirement to provide the required public boating facilities. Therefore, the Commission finds that **no substantial issue exists regarding the boat slip allocation.**

## **6. HEIGHT AND DENSITY DESIGN/VISUAL RESOURCES**

The appellants contend that it is "unclear whether the project as approved by the City is consistent with the height design concepts of the Specific Plan."

The Specific Plan (page 1) explains that it is conceptual in nature, and "is intended to describe the ultimate character, scale and quality of the entire development while allowing flexibility for creative and marketable solutions to individual projects within its boundaries as they occur over time." The Specific Plan (page 6) provides general guidelines for the architectural design of the buildings within the project. It states:

***The plan's overall urban design concept establishes several cluster or concentrations of development which serve to emphasize the various projects might otherwise be lost anonymously in the overall development. These clusters are linked visually through view corridors and vistas and physically through the highly articulated 'linear park'.***

Exhibit 23 shows the view corridors through the project and the locations of "concentrations of development." Building heights reflected on illustrations within the Specific Plan (page 7) allow for structures up to 10 stories in height for residential uses and "mixed height" visitor-serving commercial structures. The Specific Plan states (page 7):

***Height zones have been established above grade as a part of the urban design concept to assure that project scale and massing conform to and accentuate the waterscape and island concepts. Buildings on the perimeter of the island and peninsula will be restricted to three stories in height (45') while buildings on the interior may increase in height from five stories (75') to as much as ten stories (130').***

The background materials submitted by the City reflect that the design of the Seabridge project evolved as a result meetings with Commission staff, surrounding neighbors, neighborhood groups and City staff. It is apparent that the building heights and locations were discussed in great detail and represent the collaborative work of all interested parties.

The Seabridge Marina Plaza commercial area along Victoria Ave. proposes a single-story element facing the street. On the water/marina side of the buildings, the buildings are two-story, with second floor terraces facing the water.

The mixed-use area along Victoria also reflects a "stepping" of the building heights. The motor-court units (townhouses and condominiums) are two stories in height adjacent to Victoria. Adjacent to the water are the three-story waterfront flats buildings. Across the marina south of the bridge crossing is another building of three-story flats on the main island, mirroring the urban design elements on the Victoria side of the channel and locating the tallest structures on the interior of the project, which measure 37 feet 6 inches maximum height.

The Wooley Road Neighborhood Village Center mixes taller building elevations orientated towards the water and lower structural profiles facing the street.

In general, the proposed development provides for taller structures on the interior of the project facing the water in many locations and lower elevations along the adjacent streets, and thus is very similar in cross-section to the illustrations in the Specific Plan, as shown on Exhibit 22. Thus, the Commission finds that, as approved by the City, the building height design concepts are consistent with the Specific Plan.

Appellants also assert that the Specific Plan "included a design concept to assure scale and to accentuate waterscape views by stepping heights so that the tallest building would be in the interior areas of the project while lower structures were to be placed in the perimeter areas. They contend that the project does not observe this stepping design concept and places the tallest building in perimeter areas." This, too, is not correct. The design and location of the buildings within the project accomplish the goals of the Specific Plan as noted above. While buildings up to 10 stories are allowed by the Specific Plan, there is no requirement in the Specific Plan for such taller buildings. The project accomplishes the view corridor and clustering goals of the Specific Plan by its design.

Lastly, appellants argue that the project "does not conform to the land uses designated on the Land Use Map certified in the Specific Plan. It would be necessary to map the Specific Plan in detail on the site plan." This further contention is also incorrect since, as explained above, specific land use areas clearly achieve the percentages and acreages required by the Specific Plan, and Exhibit 19 illustrates that the land forms and locations of the various land uses match those contained in the "conceptual" illustration within the Specific Plan.

The Specific Plan states (at page 4) under the section titled "Residential":

***The maximum number of residential units within the Specific Plan area shall be 960. A General Plan and LUP amendment would be required to increase the authorized residential density for this neighborhood. Dwelling units which may be incorporated into commercial development to create a mixed-use may exceed this limitation.***

The three Mandalay Bay Specific Plan projects include the following number of units not included within commercial Mixed-use buildings:

Harbor Island:	132 d.u.
SunCal/Westport:	218 d.u.
Seabridge:	<u>318 d.u.</u>
TOTAL	668 units

Combined, the projects propose 292 units fewer than the 960 maximum number of units allowed by the Specific Plan.

Further, Seabridge has been designed as a mixed-use project, as required by the Specific Plan and LCP. All areas in the mixed-use designation have a visitor-serving commercial component. City **Condition No. 115** states:

*The commercial space approved in the mixed use development shall be restricted to only those uses permitted in the "Coastal Visitor-serving Commercial" zone (Sec. 37-2.9.0) and the "Coastal Neighborhood Commercial" zone (Sec. 37-2.8.0) of the City of Oxnard Zoning Ordinance.*

Thus, the project complies fully with allowable densities, and the above-cited provisions of the City's Coastal Zoning Ordinance ensure visitor-serving commercial occupancies where they are designated in the plan.

Therefore, the Commission finds that **no substantial issue exists regarding density and building heights.**

## **F. CONCLUSION OF PART 1: SUBSTANTIAL ISSUE**

For the reasons discussed above, substantial issue is found with respect to the consistency of the approved development regarding water quality, preservation of prime agricultural land and public access policies of the City's certified LCP and public access and recreation policies of the Coastal Act. Therefore, the Commission finds that the appeal filed by The Beacon Foundation and Sierra Club raises substantial issue as to the City's application of the policies of the LCP in approving the proposed development.

## **PART 2: DE NOVO APPEAL**

### **STAFF NOTES**

**1. Procedure**

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the merits of the project with the LCP de novo. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application.

**2. Incorporation of Substantial Issue Findings**

The Commission hereby incorporates by reference the Substantial Issue Findings above.

**3. Submittal of Additional Information by the Applicant**

For purposes of de novo review by the Commission, the applicant has provided Commission staff with supplemental information. The supplemental information provides clarification of the proposed project and additional information regarding issues raised by the appeal that was not part of the record when the City originally acted to approve the coastal development permit.

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## **I. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT**

**MOTION:** *I move that the Commission approve Coastal Development Permit Number A-4-OXN-03-014 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote on the motion. A yes vote results in approval of the project as modified by the conditions below and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a permit for the proposed development, as modified by the conditions below and adopts the findings set forth below, on the grounds that the modified development will be in conformance with the provisions of the City of Oxnard's certified Local Coastal Program, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and recreation policies of the California Coastal Act of 1976, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).



## II. STANDARD CONDITIONS

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

## III. SPECIAL CONDITIONS

### 1. *Compliance with City Conditions*

The project shall be subject to all conditions attached to City of Oxnard approval CDP 01-5-93, Resolution No. 2002-106 (attached as Exhibit 2), except as specifically modified by this approval and any subsequent amendments to the project description. Any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to the Coastal Development Permit is required. Prior to issuance of the coastal development permit, the applicant shall submit evidence of compliance with the City's conditions.

### 2. *Lateral Public Access*

- A. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised plans showing the lateral accessway along the channel on the south side of the South Residential Island, consistent with the type, size and extent of the lateral accessway shown around the rest of the South Residential Island on Tentative Tract No. 5265 dated 9/23/02.
- B. Prior to issuance of the first building permit for the project, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, offering to dedicate to the City of Oxnard a fee interest for the recreational use and public access over the area along the channel on the south side of the South Residential Island to provide continuous lateral public access around the South Residential Island. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of

prior liens and any other encumbrances which the City determines may affect the interest being conveyed. The offer shall run with the land binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

### **3. Prime Agricultural Land Maintenance Program**

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a Prime Agricultural Land Maintenance Program detailing the transfer of prime soils from the project site to a recipient site. The plans shall incorporate the following criteria:

#### **A. Recipient Site**

The applicant shall identify the site proposed to receive the transfer of prime agricultural soils removed from the project site. The acreage of the recipient site soil shall equal or exceed the acreage of the project site. All acreage within the recipient site must consist of nonprime agricultural soils. The recipient site must be located on the Oxnard Plain, west of State Route 1 and must be influenced by coastal climatic conditions. The recipient site must be designated for agricultural use by the applicable LCP (if located in the Coastal Zone) or the applicable General Plan (if located inland). The program shall include evidence that the recipient site chosen by the applicant conforms to these standards.

#### **B. Soil Transfer**

The applicant shall identify the timing and routes to be employed in the soil transfer from the project site to the recipient site. The prime soil shall be transferred to the recipient site and returned to cultivation just prior to or concurrent with the commencement of construction on the project site. The soil shall be transferred directly to the recipient site and shall not be stockpiled for any period of time.

#### **C. Monitoring Plan**

A monitoring program shall be included to monitor agricultural production on the recipient site after the prime agricultural soils are transferred. The program shall develop and monitor data on all soil characteristics, crop types and yields, irrigation requirements, and the agricultural productivity of the recipient site. The applicant shall submit, for the review and approval of the Executive Director, on an annual basis, for a period of no less than ten (10) years from the soil transfer, a written monitoring report containing this information.

### **4. Agricultural Easement**

A. The agricultural soil transfer recipient site, that is consistent with all criteria required in Condition No. 3 above, shall be restricted to exclusively agricultural use for a period of no less than 25 years, commencing with the placement of the transferred soil. This shall be accomplished by an agricultural easement in favor of the State of California or a deed restriction.

B. Prior to issuance of the coastal development permit, a deed restriction in a form and content acceptable to the Executive Director shall be executed and recorded setting

forth the above requirements. The recorded document shall include legal descriptions of both the entire project site and the agricultural easement area. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

#### **5. Required Approvals for Agricultural Land Maintenance Program**

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, evidence of a valid permit from the applicable local government for the placement of the transferred soil on the recipient site, or evidence that no permit is required.

#### **6. Revised Plans For Shallow Bay/"Swimming Beach" Area**

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, 2 sets of revised project plans that illustrate the two swimming beaches in the shallow bay are deleted and redesigned or reconfigured into public recreation space that provides public access to the waterfront and non-swimming access and recreation at the shallow bay. The public recreation areas shall be designed so as not to attract swimmers, however, access to the shallow bay for the use of small craft boating shall be provided.

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

### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

Section A. Project Description and Background above in the "Part 1: Substantial Issue" portion of this report, is hereby incorporated by reference.

#### **A. LATERAL PUBLIC ACCESS**

There are several policies in the City's certified LCP that pertain specifically to the provision of lateral public access in the MBSP area. In addition, since the proposed development is located between the sea and the first public road paralleling the sea, Section 30604(a) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. Staff hereby incorporates the findings in Section D.1. above in the "Part 1: Substantial Issue" portion of this report, which finds that substantial issue is raised only with respect to the lateral access aspect of public access and recreation. Thus, the discussion below will address lateral access only.

**Policy No. 45** states that:

***The lateral access requirement shall be a minimum of 50 percent of the total linear waterfront frontage and shall be dedicated and available for public access. Exceptions to continuous lateral public access shall be allowed only for limited single family waterfront home development where adequate alternative access exists nearby.***

**Policy No. 45** requires that recreation areas be distributed throughout the project area and linked by pedestrian and bike paths. **Policy No. 72** further requires public access to and along the shoreline and the Inland Waterway for all new development, except in very limited circumstances, such as where it would be inconsistent with public safety, military security, or protection of sensitive resources. One exception is provided for the Mandalay Bay area:

***For Mandalay Bay inland water development, exceptions to the requirement of continuous lateral public access may be made for single-family waterfront development, but in no case shall the total public lateral access be less than 50 percent of the total shoreline frontage of the project. All vertical access shall be located and designed to minimize impacts on surrounding residential areas (reference Policy No. 45).***

**Policy No. 72** also requires that offers to dedicate public accessways and public facilities be recorded prior to issuance of any permit and developed concurrently with the approved project.

The City's certified Zoning Ordinance designates the Mandalay Bay property "Coastal Planned Community." This zone (Page 1 of Exhibit 10), found in **Sec. 37-2.6.0** of the Zoning Ordinance, requires the preparation of a specific plan for the entire 220-acre site comprising at least eight required components. Three of these components relate to the provision of lateral public access:

Component No. 1 – Access and recreation component, which identifies the locations, standards, and quantification of the amount of land, provided for lateral and vertical access;

Component No. 3 – Project and use map that shows the specific uses and densities for the land and water areas of the site; and

Component No. 4 – Circulation plan which identifies streets, bike paths, and public parking areas.

Additionally, **Sec. 37-1.4.14** of the Zoning Ordinance states that:

***Offers for or the execution of dedications or easements for coastal access, recreation, or open space purposes shall be recorded prior to or simultaneously with the recordation of the related land division. Where no land division is involved or required, such easements and dedications shall be recorded prior to the issuance of building permits or initiation of use, whichever comes first.***

Further, **Sec. 37-3.9.0** of the Zoning Ordinance contains the Specific Coastal Development and Resource Standards for Coastal Access and Recreation (Text attached starting on Page 5 of Exhibit 10). These standards require the provision of public access opportunities consistent with the policies of the LUP. With regard to lateral access, this section states that:

***Lateral accessways shall be located on all waterfront land to provide continuous and unimpeded lateral access along the entire reach of the sandy beach area or other usable recreational shoreline. Exceptions to this standard may include military installations where public access would compromise military security, industrial developments and,***

*operations that would be hazardous to the public safety and developments where topographic features, such as river mouths, could be hazardous to public safety.*

Additionally, these access standards state:

*Pursuant to Section 30214 of the Coastal Act with respect to regulating the time, place and manner of public access, the requirements for vertical access may be waived for specific development applications only when the reviewing body vested with the authority to approve the request finds that adequate vertical access is provided offsite but within the immediate area. Such waiver may be granted subject to the specific finding that the presence of public beach with adequate access facilities nearby (within 500 feet), reduces the needed frequency of vertical accessways in coastal residential areas.*

*A granting of a waiver for lateral access is deemed inconsistent with the policies of the Oxnard Coastal Land Use Plan and therefore shall be prohibited.*

The MBSP addresses the required components, policies and development standards. Several provisions of the MBSP relate to the provision of lateral public access. First, the Land Use Map (Exhibit 11) shows the relationship between the residential, mixed use, and visitor serving commercial uses and the required park areas, including a linear park located along all of the waterways (with the exception of the area along Hemlock Street) and several larger park areas linked by the linear park. Additionally, the Park Plan (Exhibit 12) shows a pedestrian/bicycle path (located within the linear park areas shown on the Land Use Map and Park Plan) extending along all of the waterways (with the exception of the area along Hemlock Street).

In addition to these maps, the MBSP contains discussions of the access and recreation requirements of the plan. This text is shown in the full MBSP text attached as Exhibit 14. The MBSP (page 4) states that:

*The primary public access to the waterfront of this project is satisfied by a linear park which extends throughout the entire project, except where single-family residences are proposed along Hemlock Street. This waterfront park will provide approximately 21,000 linear feet of lateral access for the public. Interspersed along this linear waterfront park are several "pocket parks" ranging from approximately one-third acre to three acres in size.*

In addition to any applicable policies of the LCP, all projects located between the first public road and the sea requiring a coastal development permit, such as the proposed project, must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Coastal Act **Section 30210** mandated that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, **Section 30212** of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches. Based on the access and recreation policies of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

Coastal Act **Section 30210** states that:

*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.*

Coastal Act **Section 30212(a)** provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.*
- (2) adequate access exists nearby, or,*
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30220 of the Coastal Act states that:

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

As approved by the City, the Seabridge project provides lateral public access well in excess of the linear footage required in the MBSP. The project would provide 10,755 linear feet of lateral public access adjacent to the water where only 6,743 linear feet would be required. However, the MBSP also requires lateral access "which extends throughout the entire project, except where single family residences are proposed along Hemlock Street." The applicant has proposed lateral public access throughout the entire project, except the south side of the southern residential island, and thus the project is inconsistent with the City's certified LCP (see Exhibit 20 for public access and recreation plan). Since the filing of the appeal, the applicant has agreed to provide this final trail link to ensure that continuous lateral public access will be provided throughout the project.

**Special Condition No. Two (2)** requires the applicant to record an offer to dedicate a lateral accessway along the channel on the south side of the southern residential island to provide continuous lateral public access around the South Island. In addition, the applicant is required to submit revised plans showing the lateral accessway, consistent with the type, size and extent of lateral access shown around the rest of the South Island on the approved tentative tract map. Further, the Commission finds that the Conditions attached to the City's approval of the project include numerous provisions that pertain to other aspects of public access and recreation and serve to ensure the project's consistency with the City's LCP. Thus, **Special Condition No. One (1)** requires the applicant to submit evidence of compliance with the City's conditions, except as specifically modified by this approval and any subsequent amendments to the project description. Special Condition No. One (1) provides that any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to the Coastal Development Permit is required. The Commission finds that, as conditioned, the proposed project is consistent with the public access and public recreation policies of the City of Oxnard LCP and the Coastal Act.

## **B. PRESERVATION OF PRIME AGRICULTURE**

Several provisions in the certified LCP require a program to mitigate for the loss of the prime agricultural soils existing on the Mandalay Bay property by transferring the soils to a recipient



agricultural site(s) containing non-prime soils and thereby improving the productivity of the recipient site.

In particular, Policy No. 5 (Page 1 of Exhibit 8) requires that any development approved within the 220-acre Mandalay Bay property include a "prime agricultural land maintenance program." This program involves the transfer of the prime agricultural soils from the Mandalay site to a non-prime agricultural recipient site. Policy No. 5 sets forth the standards to be required for the size, location, and soil conditions of the recipient site(s), as well as the methods to be utilized for placing the soil. Further, this policy requires the recipient site to be restricted to exclusively agricultural use for a minimum of 25 years from receipt of the prime soil (agricultural easement or deed restriction). Finally, Policy No. 5 requires the preparation and implementation of a 10-year monitoring program to assess the success of the soil transfer.

The "Coastal Planned Community" zone standards (Page 1 of Exhibit 10) of the certified Zoning Ordinances require the development of a specific plan for the development of the Mandalay Bay property. Of the eight components required to be included in the Specific Plan, the following component pertains to preserving agricultural resources:

Component No. 2 – Soil transfer program for relocation of the prime agricultural soils on the site.

The MBSP (page 11) also requires a soil transfer program to implement LCP Policy No. 5. That plan must address several parameters, including the acreage, soils characteristics, and location of the site(s) to receive the prime soil, as well as the method and timing of soil placement. Finally, the plan is required to provide a program for monitoring agricultural production on the recipient site.

Under the provisions of the LCP, the applicant is required to mitigate the impact of the project on agricultural production resulting from the development of a site with prime agricultural soils that is currently in production. The mitigation required by the LCP involves the preservation of the prime soil by transferring it to a recipient site.

The proposed project includes the transfer of 436,568 cu. yds of prime agricultural soil from the subject project site. The applicant proposes to place this soil on a site located inland of Harbor Boulevard and south of the Santa Clara River (known as the Coastal Berry Ranch). This proposed recipient site is located in part within the Coastal Zone, and is under the jurisdiction of the County of Ventura. The applicant has applied for a coastal development permit (File No. PD-1937) from the County of Ventura. Exhibit 21 shows the relative locations of the sites that would be involved in this proposed transport of soil.

The findings and conditions for the City's CDP approval addressed the requirements of the LCP with regard to the mitigation of the loss of prime agricultural soil. Recital No. 11 in the City's resolution approving the CDP states:

***Pursuant to Policy #5 of the Coastal Land Use Plan, the applicant has obtained rights to deposit on a like amount of non-prime agricultural land, the prime soils to be taken from the subject site.***

In addition, **Condition No. 108** states:

*Consistent with Policy #5 of the Coastal Land Use Plan, this resolution is adopted subject to approval of a coastal development permit by the County of Ventura for the recipient site for the agricultural soil transfer program. For this project, Developer shall not seek a recipient site west of Edison Drive, in the Ormond Beach area. Such program has been submitted as part of this project and includes the following components:*

- *Recipient Site: Identification, location, and size of proposed site, verification of non-prime agricultural soils, designation of site for agricultural uses*
- *Soil transfer: Include timing and proposed trucking routes. The transferred soil shall be transferred directly to the recipient site and shall not be stockpiled for any period of time.*
- *Monitoring Plan: Monitoring parameters shall include data on all soil characteristics, crop types and yields, irrigation requirements, and the agricultural productivity of the recipient site. A written monitoring report shall be submitted to the Planning and Environmental Services Manager on an annual basis, for a period of not less than ten (10) years from the start of the soil transfer activities.*

As previously explained, the applicant has developed a "Prime Agricultural Land Maintenance Program" for the Seabridge property, which was analyzed in the Final EIR. In addition, as noted above, the applicant has applied to the County of Ventura for a CDP to authorize the use of a portion of the Coastal Berry Ranch site as the recipient site for prime soils transferred from the Seabridge property. However, City Condition No. 108 serves more as a finding for this program than a condition that includes clear performance standards.

In order to ensure that the prime soils from the project site are transferred to an appropriate recipient site consistent with the provisions of the LCP, the Commission finds it necessary to require the applicant to submit a Prime Agricultural Land Maintenance Program, as detailed in **Special Condition No. Three (3)**. These conditions are identical to the conditions imposed by the Commission on the Suncal/Westport project, and enable Commission to review the soil transfer program as a part of condition compliance. This program must identify the recipient site, include evidence that the proposed recipient site meets all the standards of Policy No. 5 of the LUP, identify timing and routes for the transfer, and provide for annual monitoring of the success of the transfer for at least ten years. Further, **Special Condition No. Four (4)** requires the applicant to provide evidence that the recipient site has been restricted to agricultural use for at least 25 years. Finally, **Special Condition No. Five (5)** requires the applicant to provide evidence that a valid permit has been issued by the appropriate local government agency for the placement of the soil on the recipient site. The Commission finds that, as conditioned, the proposed project is consistent with the agricultural preservation policies of the City of Oxnard LCP.

### **C. WATER QUALITY**

Section D.3. Water Quality above in the "Part 1: Substantial Issue" portion of this report, is hereby incorporated by reference. As discussed in the cited section above, the project, as approved by the City, raises substantial issue with regards to the water quality provisions of the LUP. Enclosed harbor beaches, such as the swimming beaches proposed as part of this project, pose special water quality and human health risks and are more susceptible to water quality degradation than are open ocean beaches. The nature of swimming beaches in enclosed harbors is that they attract small children, often have trash and bird problems, are near other harbor activities, such as boating and fishing, and, thus, they have many potential sources of bacteria. Therefore, it can be assumed that the project's waterways, including the

swimming beaches, will be impacted to some degree by bacteria pollution, which can lead to adverse impacts to coastal resources and human health. High residence times (relative to other areas of the CIH), as are likely to occur with this project, can exacerbate these bacteria problems, resulting in impaired water quality. The proposed water quality maintenance methods may reduce some of the bacteria inputs to the waterways, but bacteria pollution will not be completely controlled. In addition, there is some question about the timing of the proposed remediation measures to be implemented should water quality fall below State standards. Finally, the monitoring program, as currently proposed, does not meet State standards (Health and Safety Code section 115880 and 17 C.C.R. sections 7956 et seq.) with respect to the frequency of monitoring and monitoring locations.

The applicant has submitted additional materials since the filing of the appeal, including a response to the appeal, several memos and a water quality monitoring report. These materials provide additional information and clarification on the issues raised in the appeal and discussed above in Section D.3. Water Quality in the "Part 1: Substantial Issue" portion of this report.

#### Water Quality Monitoring Data

The applicant has provided additional information regarding current water quality monitoring data for CIH, including reported data from monitoring studies that were not previously included in the administrative record. The new information includes bacteria sampling conducted by Rincon Consultants in 1999, 18 additional bacteria samples from the CIH provided by Capco Analytical Services, bacteria data compiled by Heal the Bay for Kiddie Beach and Hobie Beach (both located within CIH), and bacteria sampling conducted by Moffatt and Nichol Engineers (MNE) from March 6, 2003 – April 28, 2003.

The Rincon samples measured total coliform only, while the 18 additional Capco samples measured total and fecal coliform in all 18, and enterococcus in 6 of the 18 samples. In all cases, the results of the monitoring satisfied the State standards.

The data for Kiddie and Hobie beach that was summarized by the applicant included Heal the Bay dry weather data from July 1999 through March 2003 (Exhibit 16). The applicant notes a general trend in water quality improvement. However, Commission staff note that the data shown for 1999 and 2003 is not representative of the entire year, and that there were instances of poor water quality outside of the shown dates that would likely lower the average grade.<sup>5</sup> The chart in Exhibit 16 shows that Kiddie and Hobie Beach (at the beaches, not up or down coast) dry weather average grades from 1999 through 2002 average below a C grade. In 2003, the average grades for these two beaches are shown to average between an A and B grade, but as discussed above, this is not representative of the entire year and there have been recordings of poor water quality since March 2003 (<http://www.healthebay.org/>). Therefore, the water quality at Kiddie and Hobie Beaches over the past 3-4 years has been fair to poor and is showing the continuance of this as a consistent trend.

MNE conducted water quality monitoring in the CIH from March 6, 2003 – April 28, 2003 to get a better understanding of the quality of the source water for the proposed project. The results of this monitoring are presented in a report entitled Seabridge Development Water Quality Monitoring Final Report.

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<sup>5</sup> The average grades shown in Exhibit 16 are derived from an analysis of all of the available dry weather data for a given year, where the data is averaged to arrive at a final average grade.

On March 6 and March 13, MNE conducted water quality monitoring at 4 sites at two-hour intervals, totaling in 28 samples for each day. The samples collected on March 6 were analyzed for enterococcus only, while the March 13 samples were analyzed for total coliform, fecal coliform and enterococcus. There was only one exceedance of the State standards, which occurred on March 13 (it was noted that numerous seals and birds were feeding on fish in the area at that time, which could have caused the elevated bacteria levels).

From March 24 through April 28, MNE conducted a sampling program that included 11 sites in the CIH sampled twice daily to measure total coliform, *E. coli* (a sub-component of fecal coliform) and enterococcus. This resulted in 110 dry weather samples of water quality in the CIH. In general, the dry weather data was in compliance with the State standards (there were only 6 samples that exceeded one or more of the standards). These exceedances occurred at sites near a storm drain or an agricultural drain, and at Kiddie Beach. MNE concluded that the samples that exceeded the State standards were a result of runoff from residential, commercial, and agricultural areas. The report notes that surface drainage from such areas typically exhibit high contaminant loadings, including bacteria, and also that the discharge of agricultural runoff will discontinue after the project is developed, as the agricultural activity will be replaced by the development. It is true that urban and agricultural runoff contribute pollutant loadings to the receiving waterbodies, but it cannot be assumed that this pollutant loading will cease once the project is developed. There are proposed stormwater filtration devices to remove pollutants from runoff entering the project's waterways, but these will not be 100% effective and, hence, there will be some level of polluted runoff associated with the project. In addition, a small portion of the agricultural activity in the surrounding area will be replaced by the project, but a large portion of the agricultural activity in the area will continue. There is likely to be surface runoff from this agricultural activity that enters the project's waterways and contributes pollutant loadings.

In addition, a wet weather survey was conducted on two separate days (April 14 and 16), one during the storm event and one 48 hours later. The wet weather survey added 44 more water quality samples. A majority of the data collected on April 14 exceeded the State standards (19/22 samples). It is important to note, however, that only 3 out of 22 samples exceeded the State standards on April 16, only 48 hours later. The report notes that bacteria levels had fallen dramatically over a 48 hour period, and that a relatively large tidal range and clear sunny conditions providing ultraviolet radiation were the two major factors that lead to the significant reduction in bacterial contamination in the harbor.

The additional water quality data provided by the applicant shows that, in general, the water quality in CIH does not exceed the regulatory standards for public beaches, and therefore the CIH is not considered to have bacteria problems. The applicants claim that in order to ensure good water quality conditions in enclosed beaches, it is important to have good quality source water from the harbor channels adjacent to these beaches. While this is true, it is not the case that good water quality in harbor channels will definitely result in good water quality at adjacent enclosed beaches. Kiddie Beach is an example of this. Just outside of the swimming area closer to the main channel, water quality is generally good, compared to the high bacteria levels often found directly at the swimming beach. Therefore, it can be assumed that the problem at Kiddie Beach is not a result of impaired water quality in the channels flowing into the beach area, but a more localized problem at the beach itself. While it is useful to establish that there is good quality source water for the project, and important to note that water quality from the main channels isn't likely to directly contribute to impairments in the project waterways, it cannot be assumed that the project's waterways won't be impaired due to other factors such as those

typically found within enclosed beaches (that they attract small children, often have trash and bird problems, and are affected by other harbor activities, such as boating and fishing, which all are sources of bacteria).

#### Water Quality Data for Enclosed Beaches

More water quality data for enclosed beaches taken from Heal the Bay's website was presented. The applicants provided a detailed assessment of the Heal the Bay 2002 Summer Report Card grades for Ventura, Los Angeles, Orange and San Diego Counties, for both enclosed harbor and ocean beaches. Of the 344 beaches included in the analysis, 12% of the harbor beaches had Heal the Bay grades of a D or F, while 4% of ocean beaches recorded a D or F grade. This analysis shows that, while a larger percentage of harbor beaches received lower grades than did ocean beaches, the percentage of harbor beaches receiving a poor grade was minor compared to the 77% that received an A+, A or B Heal the Bay grade. The applicant claims that this shows that harbor beaches don't inherently exhibit poor water quality, and should not be considered as having water quality problems by association. Commission staff note that this data was derived from sampling that occurred during record drought conditions when perennial streams dried up and didn't flow to local beaches, resulting in relatively excellent water quality conditions throughout Southern California (<http://www.healthebay.org/>).

The applicant also compiled data for specific enclosed harbor beaches with similarities to CIH. All available dry weather data from the Heal the Bay website for 8 main enclosed harbor beaches (and several areas within these harbors) was evaluated. This data consisted of weekly grades from 1999 – 2003 that were compiled into charts to show the relative percentages of each grade recorded for all of the 8 locations. For example, one of the harbors evaluated was Marina Del Rey, containing Mothers Beach, Mothers Beach North and Mothers Beach South. For these three locations, approximately 48% of the samples taken received an A+ grade, while 20% - 30% of the samples were recorded as an F. All of the information presented for the 8 harbors confirms that some enclosed harbor beaches test relatively clean, while others consistently show poor water quality with regards to bacteria pollution. The data presented and discussed in Section D.3. in the above portion of the report under the heading "Enclosed Beach Trends" was a compilation of all of the data (wet and dry weather) from weekly testing over the past 4 years, arranged into different categories and compared to the current TMDL standard. This data presents the best overall summary of water quality trends in enclosed beaches, and shows that these areas are more susceptible to water quality degradation than are open ocean beaches and pose special water quality and human health risks.

The applicant offers several reasons for the elevated bacteria counts in some of these enclosed harbor beaches, including proximity to storm drains, proximity to residential and commercial development, and the presence and feeding of birds and other animals. These are all conditions that will and/or may occur with the proposed project. Although the applicant proposes controls on many of these factors (i.e., filters in the storm drains, signs to discourage bird feeding, etc.), these controls will not be able to prevent all pollutants from entering the waterways, and there will likely be some level of bacteria contamination.

### Residence Time

The applicant also provided additional information and added discussion on the issue of residence time. The relationship between residence time and bacteria water quality is discussed in more detail, as the applicant compared known residence times in enclosed harbors to Heal the Bay 2002 Summer Report Card grades for these same enclosed harbors. This comparison included a total of 9 sites from 3 different harbors. The results of this comparison show no apparent correlation between poor water quality and high residence time and that the water quality grade is independent of residence time. Although the number of sites were limited, based on this data and that from other harbors (as discussed in Section D.3. in the above portion of the report under the heading "Residence Time"), residence time is not an absolute indicator of water quality, but higher residence times can exacerbate poor water quality conditions that already exist.

The applicant has also provided more information regarding ways to evaluate adequacy of residence times. The applicant states that there is no set criterion regarding an acceptable range for residence times, however experience has shown that in most cases it is a good practice to keep residence times to a maximum of 14 days. The applicant quotes the US Environmental Protection Agency (EPA) Management Measures for Marina Flushing, which state:

***When a single number (e.g., 10 days) is given as the flushing time or residence time of a body of water (e.g., marina basin, harbor, or estuary), this number represents an average and doesn't accurately reflect what is happening inside the marina basin. Actually, flushing time in a marina basin can range from zero days at the boundary with the adjacent waterbody (at points of entry into the marina basin) to as much as several weeks within the marina basin at secluded locations or where in-water structures prevent water from circulating.***

The applicant goes on to state that "flushing times are typically calculated as the time to reduce initial pollutant concentrations within a semi-enclosed water body to a prescribed value. An "e-folding value" is typically selected to identify the residence time of a water body, and represents a reduction of pollutant concentrations to  $1/e$  or 36.8% of their initial value, or a reduction of 63.2%. The "residence time" is the number of days it takes for the concentrations to reduce to the e-folding value." Using this methodology, the e-folding time is approximately 45 hours or less than two days for Channel Islands Harbor, and a maximum of 7 days within the Seabridge development. The applicant contends that these are low residence times, however they represent the entire CIH or the entire Seabridge development and not just the shallow bay and swimming beaches. In fact, the maximum residence time in the Seabridge development is 7 days, much greater than the 2 days that was determined for the entire CIH. Again, the applicant offers no basis to support their conclusion that residence times less than 14 days are considered adequate for flushing and maintaining good water quality.

The applicant acknowledges that few standards exist that definitely specify residence times for the design of enclosed harbors. The applicant has reviewed publications to further elaborate on flushing criteria relating to water quality in enclosed harbors. One study (Cardwell and Koons, *Biological Considerations for the Siting and Design of Marinas and Affiliated Structures in Puget Sound*, Washington Department of Fisheries, Technical Report 60, May 1981) determined that adequate water quality was maintained within marinas that exhibit a flushing rate of 30%. Using the methodology from this study, the flushing rate in the CIH is 34.1%, which exceeds the recommended rate of 30%.



The applicant also reviewed a US Army Corps of Engineers (ACOE) Engineering Manual (EM 1110-2-1206, Section 3-2 – 1993), which states that “successful control of water quality is usually dependant upon periodic exchanges of harbor water with the parent water body.” The manual suggests that *an average daily exchange of water equivalent to about one-third of the harbor's mean tidal volume is usually sufficient to prevent water stagnation* (Dunham and Finn – 1974). With two tidal cycles and assuming a proportion of the outflowing water returns to the harbor, the average daily tidal exchange for CIH is approximately 47.3%, which exceeds the recommended amount. The manual also states that *turnover times of 2-4 days will generally prevent stagnation or the buildup of high pollution concentrations* (Boozer – 1979). Turnover times represent the time taken for the entire volume of water held within the marina to be replaced. For the CIH, the applicants calculate that the mean tidal volume would be exchanged in approximately 2 days, which is within the recommended time. Finally, the manual suggests that *a mean exchange coefficient of 30 percent was necessary to prevent serious fluctuations in DO* (Cardwell, Nece, and Richey – 1980). For the CIH, the exchange coefficient is approximately 24% both before and after the proposed development, which is slightly lower than the suggested 30%. The applicant notes that the exchange coefficient will be relatively fixed for small craft harbors in a given region because it is based on two variables – depth of the harbor and the tide range. For the shallow bay, the shallow depth will promote tidal exchange relative to deeper portions of the harbor.

These analytical methods from the ACOE manual discussed above typically relate to a single basin, with one ocean entrance. The applicant contends that CIH is more complex, with interconnected basins, and has additional flushing capacity beyond ocean tidal exchange provided by the Mandalay Plant. While these factors may promote additional flushing to prevent stagnation within the CIH, the analysis above represents flushing and water quality predictions for the entire CIH, but not specifically for the shallow bay and swimming beaches, which are proposed to be located at the northernmost end of the CIH. As shown in the FSEIR, residence times in the Seabridge waterways, especially the shallow bay and swimming beaches (between 5.5 and 17 days), are much greater than those in the main channels of the CIH. Therefore, while the CIH as a whole appears to have adequate flushing to prevent water stagnation, this is not necessarily true for all areas within the CIH (as demonstrated by water quality and stagnation problems at Kiddie and Hobie Beach). Therefore, these high residence times in the shallow bay and swimming beaches relative to the rest of the CIH may exacerbate bacteria problems, resulting in impaired water quality.

As discussed in Section D.3. of Part 1 of this report, there are several concerns with the swimming beaches proposed as a part of this project. The new information submitted provides more information about water quality monitoring data for the CIH, water quality data for enclosed beaches, and residence time. However, this additional data combined with information submitted previously does not lead to the conclusion that there won't be water quality impairments in the project's waterways, specifically the two swimming beaches. The applicant has sufficiently discussed the issues and presented information about the current water quality of the harbor, the design of the project's waterways, the proposed source control and maintenance measures to prevent impairment, and the remediation measures to be implemented in the case of impairment. Considering this information, the project demonstrates adequate control over most elements relating to water quality impacts resulting from this project, but there are still significant concerns. The nature of swimming beaches in enclosed harbors is that they attract small children, often have trash and bird problems, are near other harbor activities, such as boating and fishing, and, thus, they have many potential sources of

bacteria. High residence times (relative to other areas of the CIH), as are likely to occur with this project, can exacerbate these bacteria problems, resulting in impaired water quality. Therefore, it can be assumed that the project's waterways, including the swimming beaches, will be impacted to some degree by bacteria pollution, which can lead to adverse impacts to coastal resources and human health. Thus, the Commission finds that the project, as approved by the City, is not consistent with the water quality provisions of the LUP.

The risk of water quality impairment, as discussed previously and as seen at other enclosed beaches of this type with similar control over sources of impairments, is great enough to question the inclusion of these two swimming beaches as part of the proposed project. The Specific Plan does not require that swimming beaches be part of the public water park, but lists them among several possible amenities and activities that might be included. The intent of the swimming beaches are to serve a recreational purpose, one that would be lost if the beaches were to be posted or closed as so many other enclosed beaches in Southern California have been recently. The County of Ventura stated in their letter of March 18, 2002 that "these types of beaches have a history of not meeting bacteriological water quality standards and that on-going public notification warning public to avoid body contact may be necessary." It would defeat the purpose of these beaches if they had to be closed soon after they were opened, taking away valuable public access and recreation, and creating an attractive nuisance. Therefore, **Special Condition No. Six (6)** requires the applicant to submit revised plans that delete the two swimming beaches and instead provide public recreation areas. These areas will be designed so as not to attract swimmers, but will provide access to the shallow bay for the use of small boating craft.

Further, the Commission finds that the Conditions attached to the City's approval of the project include numerous provisions that pertain to other aspects of water quality and serve to ensure the project's consistency with the City's LCP. Thus, **Special Condition No. One (1)** requires the applicant to submit evidence of compliance with the City's conditions, except as specifically modified by this approval and any subsequent amendments to the project description. Special Condition No. One (1) provides that any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to the Coastal Development Permit is required. The Commission finds that, as conditioned to revise plans for the shallow bay/"water park" area and comply with the City's Conditions, the project is consistent with water quality policies in the City's LCP.

#### **D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096(a) of the Commission's administrative 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 Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970 and is the preferred alternative. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act and the certified LCP.



Planning and Environmental Services

## PLANNING COMMISSION STAFF REPORT

TO: Planning Commission

FROM: Sue Martin, AICP, Associate Planner

DATE: November 21, 2002

SUBJECT: Seabridge Project - Planning and Zoning Permit Nos. 00-5-85 (TSM), 01-5-93 (CDP), and 02-670-2 (Development Agreement)

1. **Recommendation:** That the Planning Commission:
  - a) Adopt a resolution approving Coastal Development Permit No. 01-5-93, subject to certain findings and conditions.
  - b) Adopt a resolution recommending that the City Council approve Tentative Subdivision Map No. 00-5-85 for Tract No. 5266, subject to certain findings and conditions.
  - c) Adopt a resolution recommending that the City Council approve a Development Agreement (PZ 02-670-2) for the proposed project.
2. **Project Description and Applicant:** A request for a coastal development permit (PZ 01-5-93) for a planned unit development on 135 acres within the Mandalay Bay Specific Plan area. The Seabridge project site is located on the west side of Victoria Avenue, between Wooley Road and Hemlock Street. The project is a water-oriented, mixed-use development consisting of residential, commercial, and recreational land uses, as well as associated marina channels, roadways, and other improvements. Consistent with coastal policies, development of this project will involve removal of prime agricultural soils, which will be transferred to a site designated as non-prime agricultural lands. A total of 708 dwelling units are planned by the project. Approximately 276 single-family dwellings and 42 multi-family units will be constructed on 33.4 acres of the site, with these units counting towards the maximum allowable density set forth by the specific plan. Under the visitor serving and mixed-use designations, the project provides an additional 390 residential units, along with approximately 169,000 square feet of commercial space. The mixed-use and visitor serving commercial areas are located along Victoria Avenue and Wooley Road. Approximately 35 acres of the project site is designated for such uses.

The balance of the project is planned for open water (32.3 acres), parks and recreation (16.5 acres), and necessary infrastructure improvements. A tentative subdivision map (PZ 00-5-85) for Tract No. 5266 and a Development Agreement (PZ 02-670-2) are also requested for the proposed development, and will be considered by the Planning Commission at this hearing. Filed by Oly-Mandalay Bay General Partnership, 600 Victoria Avenue #A600, Oxnard, CA 93035.

3. **Existing Land Use:** The site is unimproved and used for agricultural purposes.
4. **General Plan Policies and Land Use Designation Conformance:** The City's 2020 General Plan designates the subject site for Low Medium Density Residential and Visitor Serving Commercial development and uses. The residential designation limits development to 8-12 dwelling units per acre. The proposed subject site is within the Mandalay Specific Plan (MBSP), which allows a maximum of 960 dwelling units for the entire specific plan area. Of this allotment, 340 are accounted for (i.e. Harbour Island, Westport project), which leaves an allowance of 620 dwelling units for the proposed Seabridge project. In addition, the MBSP states, *"dwelling units which may be incorporated into commercial development to create a mixed-use development may exceed this [960 unit] limitation."* Consistent with the MBSP, the applicant requests an additional 88 dwelling units within the mixed-use components. Therefore, with the inclusion of the 88 units, the development proposes a total of 708 residential units.

The Coastal Land Use Plan (CLUP) for the City of Oxnard includes several policies, which pertain specifically to the subject site. Policy 4 requires the establishment of an agricultural buffer for lands bordering the urban-rural boundary. Policy 5 requires the developer to participate in an agricultural soil transfer program. Policy 45 clarifies site development requirements, and Policy 72 requires public access for inland water developments. A minimum 200-foot side buffer, consistent with the CLUP is included in the site plan. The applicant has identified a site for the soil transfer program, and development of the project is consistent with the policies of the CLUP.

5. **Environmental Determination:** On February 1, 2002, a Draft Supplemental Environmental Impact Report (DSEIR) was released for a public review and comment period, which ended on April 18, 2002. The DSEIR supplements an EIR (EIR 81-2) previously prepared to analyze buildout of the Mandalay Bay Phase IV Specific Plan.

The Final Supplemental Environmental Impact Report (EIR 02-2, SCH #2001091020) was presented to the Planning Commission at a public hearing on August 8, 2002. On that date, the Planning Commission considered the FSEIR, determined that the document adequately analyzed the environmental consequences of the proposed development, and certified the document.

6. Surrounding Zoning and Land Uses:

LOCATION	ZONING	GENERAL PLAN	EXISTING LAND USE
North	n/a	n/a – located in Ventura County	Agricultural
South	R-W-1	Low Medium Residential	SFD, waterfront homes
East	R-1-PD, R-3-RD, C-2-PD	Low Residential, Medium Residential, Neighborhood Commercial	SFD, multi-family units, retail commercial uses
West	CPC	Low Medium Residential and Visitor Serving Commercial	Harbour Island, existing & Westport Project, under construction

7. Analysis:

- a) **General Discussion:** The project site, consisting of approximately 135 acres, is currently in agricultural production. The subject site is bounded by Wooley Road to the north, Victoria Avenue to the east, Hemlock Street to the south, and existing Harbour Island community and the Westport project site (under construction) to the west. The proposed development consists of residential, visitor serving commercial, mixed-use commercial, expanded waterways, and park lands consistent with the City's 2020 General Plan and the Mandalay Bay Specific Plan (MBSP). It should be noted that on page 2, the MBSP states *"illustrations are conceptual in nature and are not intended to fix dimensions or locations of building or features other than general land uses and water areas."*
- b) **Relevant Project and Property History, Related Permits:** An Environmental Impact Report (EIR 81-2) was prepared for build-out of the Mandalay Bay Phase IV Specific Plan area. The Planning Commission certified the original EIR in September 1982. To date, the only portion of the MBSP area that has been developed is the Harbour Pointe project, located to the southwest of the subject site. The Harbour Pointe project includes the Harbour Island community consists of 129 condominiums, and 3 single-family homes on Hemlock Street. The Westport project, just west of the Seabridge site, is currently under construction and, when completed, will consist of 96 single-family homes, 34 duplex units, 88 townhomes, and 88 dwelling units in the mixed-use component.
- c) **Zoning Compliance:** The subject site is zoned CPC for a Coastal Planned Community. This designation allows those permitted and conditionally permitted uses found in the R-W-1 (single-family water oriented), R-W-2 (townhouse water oriented), R-2-C (coastal multi-family), R-3-C (coastal medium multi-family), CNC (coastal neighborhood commercial), CVC (coastal visitor-serving commercial), and RC (coastal recreation) zone districts. Applicable requirements of the Coastal Zoning Regulations have been evaluated for the proposed project.

Single-family homes proposed at the subject site are compared to the single-family water oriented (R-W-1) zoning requirements, as follows:

SINGLE-FAMILY HOMES (R-W-1)			
STANDARD	REQUIREMENT	PROPOSED	COMPLIES?
Max. building height	2 stories, not to exceed 28' as measured from top of curb. The MBSP also allows residential structures up to 10 stories high.	Varies with model; up to 31 feet shown.	Yes, with condition to limit SFD to 31 feet high.
Min. lot area	4,000 SF for lots which abut a waterway.	Lots range in size from 4,100 SF to 6,000 SF	Yes
Min. lot width	40 feet	40 feet minimum.	Yes
Interior yard space	15% of lot area; may include interior side yard; Need not exceed 600 SF; Min. dimension of 8 ft.	At minimum, 20% of all proposed models and typical lot configurations.	Yes
Front yard setback	15 feet; Min. 20 feet to center of garage door.	Minimum 15 feet provided.	Yes
Rear yard setback	12 feet for lots which abut a waterway.	20 feet min. for 40 and 45-foot lots; 25 feet min. for 50-foot wide lots.	Yes
Side yard setback	Interior side, 4 feet. Street side, 5 feet.	5 feet minimum for all.	Yes
Parking spaces	2 garage spaces per dwelling.	2-3 garage spaces for all.	Yes

Multi-family dwelling units are proposed as townhomes and condominium flats. These structures are compared to applicable coastal medium multi-family (R-3-C) zoning requirements, as follows:

MULTI-FAMILY DWELLING UNITS (R-3-C)			
STANDARD	REQUIREMENT	PROPOSED	COMPLIES?
Max. building height	3 stories, not to exceed 35' as measured from top of curb. The specific plan, however, allows residential development up to 10 stories in height.	14 and 17-plex townhomes: 3 stories, 35 feet shown. Marina Flats: 3 stories, 37.5 ft. shown.	Yes
Min. lot width	60 feet	Min. 60 feet	Yes
Parking spaces	2 garage spaces per dwelling.  1 visitor space for first 30 units, 1 space for every 2 units thereafter.	2 garage spaces (private or underground parking) provided for each dwelling unit. Visitor parking available at all multi-family complexes throughout.	Yes



The mixed-use visitor-serving components of the subject site are located along Wooley Road and Victoria Avenue. These structures are comparable to pertinent coastal visitor-serving (CVC) and coastal neighborhood commercial (CNC) zoning requirements, as follows:

VISITOR-SERVING (CVC) & NEIGHBORHOOD COMMERCIAL (CNC)			
STANDARD	REQUIREMENT	PROPOSED	COMPLIES?
Max. building height	3 stories, not to exceed 35' as measured from top of curb. The specific plan, however, does not restrict the height of the areas designated for "mixed height commercial" uses.	Neighborhood center: Max. 38 feet shown; 47 feet to top of central tower.	Yes
Parking spaces	<u>Commercial uses:</u> restaurant 1 space/75 SF retail 1 space/300 SF office 1 space/250 SF  <u>Residential uses:</u> 1-bdrm 1 space/unit 2+ bdrms 2 spaces/unit Visitors require 1 space for first 30 units, and 1 spaces for every 2 units thereafter.	Adequate parking for retail and commercial uses throughout the site.  2 garage spaces (private or underground parking) provided for each dwelling unit. Visitor parking available at all multi-family complexes throughout.	Yes

Future commercial uses within the designated mixed-use residential areas shall be consistent with the CNC zone district, which is established to provide convenience shopping and personal services to the coastal residential community and to visitors to this area. Uses permitted in this zone district may include, but are not limited to neighborhood services, such as banks, beauty shops, health spas, laundromats, real estate and medical offices, restaurants, cafes, markets, pharmacies, and florists. Attachment C contains Section 37-2.8.0, which details the principally and secondary permitted uses in the CNC zone district.

Future commercial uses within the designated visitor-serving areas shall be consistent with the CVC zone district, which is intended to provide coastal-dependent visitor-serving commercial and/or recreational opportunities for visitors and residents of the City. Such uses may include, but are not limited to, boat rentals, bike rentals, skating rinks, theaters, hotels, conference facilities, restaurants, boat sales and sport fishing operations. Attachment C contains Section 37-2.9.0, which details the principally and secondary permitted uses in the CVC zone district.

- d) **Site Design Analysis:** The Seabridge development is designed for consistency and conformance with the City's 2020 General Plan, Coastal Land Use Plan, Mandalay Bay Specific Plan, and the Coastal Zoning Regulations. The specific

plan establishes minimum land use requirements for the 220-acre specific plan area, as follows:

LAND USE	MIN. ACRES	% TOTAL MBSP	% PUBLIC AREA
Visitor-Serving Commercial	27.5 acres	12.5	25
Public Recreation	27.5 acres	12.5	25
Open Water	55.0 acres	25.0	50

The existing Harbour Island condominiums, approved Westport project (Tract No. 5196), and the proposed Seabridge project (Tract No. 5266) comprise the entire Mandalay Bay Specific Plan area. Buildout of the specific plan area will meet or exceed the land use requirements of the MBSP, as follows:

LAND USE	HARBOUR ISLAND	WESTPORT PROJECT	SEABRIDGE PROJECT	TOTAL
Visitor-Serving Commercial	0 acre	7.41 acres	20.2 acres	27.61 acres
Public Recreation	2.95 acres	8.16 acres	16.5 acres	27.61 acres
Open Water	8.48 acres	14.57 acres	32.3 acres	55.35 acres

The 135-acre Seabridge site provides an extensive pedestrian promenade, which provides public access to the waterways. This pedestrian trail maintains a minimum width of 15 feet throughout the site, expanding up to 30 feet in some areas. The trailway consists of an 8-foot wide concrete walk, with landscaping. To maintain the pedestrian-friendly and open space atmosphere along the trail system, those homes facing the waterways are limited to a 42-inch high fence (that is 50% or more open) on the water-side yards. All other walls/fences/hedges within the yard areas facing the trail system that are less than 50% open may not exceed 18 inches in height.

Recreational areas also include several park sites throughout the development, two public beaches on either side of the shallow bay, an outdoor amphitheater at the northern end of the shallow bay, and connections into the existing/proposed trail systems at Harbour Island and Westport. In accordance with Coastal Act policies, the park areas, lateral accessways along the channel, and vertical access points shall be restricted to public access and public recreation uses. Upon completion of the recreational improvements, the Developer shall offer to dedicate these areas to the City.

While the northern residential island will be gated to vehicular access, pedestrian access will not be restricted. Pedestrians may access the island via the pedestrian trail system or the pedestrian bridge, connecting to the mixed-use commercial areas along Victoria Avenue. The 25-foot wide bridge also serves as a secondary emergency access for fire/police response.

Development of the southern residential island will eliminate the existing access from Hemlock Street into the Harbour Island condominiums (i.e. Pearl Way). An

exclusive residential entry drive will provide access from Victoria Avenue. The Harbour Island community will retain a separate entry gate. South island residents not fronting on the access drive will enter the community through a separate gate.

As the proposed development includes mixed-use and visitor-serving components with more than 100,000 square feet of floor area, the project must participate in the City's Art in Public Places Program. The guidelines of this program are established by City Council Resolution No. 9813.

- e) ***Circulation and Parking Analysis:*** Development of the subject site will require improvements to Wooley Road and Victoria Avenue. Consistent with the MBSP, westbound Wooley Road will be widened to include a 15-foot wide parkway adjacent to the existing agricultural use and a 30-foot wide travel lane. The specific plan also requires that "a hedgerow combined with an eight-foot fence" be located along the southern boundary of the agricultural field on the north side of Wooley Road. The details of a vegetative shelter belt are clarified in the Memorandum of Understanding, recently entered into by the City of Oxnard, County of Ventura, and the Developer (see Attachment I). The project also includes a new 14-foot side median to separate the east and westbound travel lanes on Wooley Road. The eastbound lanes will provide 36 feet for vehicular travel and six feet for a bicycle lane.

Access for the project site will be provided from Wooley Road and Victoria Avenue (at Leeward Way). Access to the southern residential island will be from Victoria Avenue (at Ketch Avenue). All streets are designed to keep traffic at reduced speeds. In accordance with City Council Resolution No. 9311, all streets shall be named, consistent with the street naming guidelines, prior to City Council approval of the tentative map for Tract No. 5266.

Parking provisions for the various proposed uses are summarized, as follows:

*Single family homes*

All models for the 50-foot wide lots include three garage parking spaces, with the third space in either tandem or split configuration. In addition, driveways provide a minimum of 20 feet for additional off-street guest parking.

Each of the 45-foot wide lots includes a 3-car garage. Those homes fronting on the channels will provide minimum 20-foot driveways to allow for off-street guest parking. The non-water homes have vehicle access from the rear, off a private alley. Since parking in the alleyways are prohibitive, the streets in the community are 36 feet in width to accommodate parking at the front of the homes.

The 40-foot wide lots include a 2-car garage with an optional third garage. However, these garages are alley loaded and guest parking will be available at the front of the home, off the 36-foot wide streets.

For those residential lots with alley access, the reciprocal access drive (at least 25 feet in width) shall be maintained for passage to and from those garage units.

The City Code requires all 2-car garages to provide a minimum clear area of 20 feet in width and 20 feet in length for vehicle parking. The minimum dimensions for a single-car garage are 10½ feet in width and 20 feet in length.

Multi-family residential units

The 14 and 17-plex townhomes are designed with adequate garage parking spaces: 1-car garage for 1-bedroom units; 2-car garage for units with two or more on the ground level. The garage dimensions, however, must comply with the City Code requirements, as stated above.

The condominiums, or flats, include 42 dwelling units in each complex (e.g. Marina Flats). Consistent with the City Code, the structure includes 84 underground parking spaces for the residents.

Live/work units combined with residential condominiums are proposed at the southern end of the project site, closest to the existing Southern California Edison transfer station. A total of 121 dwelling units, including 29 live/work units are proposed. Underground parking is proposed for the building residents.

For each of these multi-family dwelling unit arrangements, adequate uncovered offstreet parking is required for visitor parking. Those structures without adequate parking must be modified so that the parking requirements, as required by the City Code, are complied with.

Community clubhouse building

The community center on the north residential island provides a number of attractive amenities: swimming pool, children's wading pool, spa, multi-purpose room, multi-media room, club room with kitchen, conference room, and exercise room. Only four parking spaces are proposed to support the proposed recreation building, which contains 4,350 square feet of building area. Staff supports the proposed uses at the recreational building, however, offstreet parking must be included with this site at the time of building permit issuance.

- f) **Building Design Analysis:** The building designs incorporate a variety of styles into the development. Specifically, the single-family homes will be presented in coastal traditional, Spanish Monterey, and craftsman architectural themes. Two color schemes will be available for each design style. The proposed color schemes include deep, rich hues. As proposed, the roofing material on some of the buildings includes compositional tile. Staff feels that this material does not compliment the higher quality roofing materials presented in the Spanish

Monterey and craftsman styles. Therefore, staff is requiring that the roof materials proposed for the coastal traditional, marina flats, and live/work units be upgraded to concrete tile. Furthermore, it should be clarified that the wood shake roof proposed for the craftsman style homes shall be fire retardant or non-combustible, as determined by the Fire Chief.

The single-family homes are designed so that one side elevation of each model includes minimal windows, especially on the first floor, thereby increasing privacy for those residents. Such elevations should not be located to face any street, pedestrian trail, or public recreation area. Furthermore, the reciprocal access and maintenance agreements for these single-family homes shall be made a part of the covenants, codes and restrictions (CC&Rs) for the development.

- g) **Signs:** The Developer has proposed a Public Park and Access Signage Program to identify the location, design, size, and wording of public park and access signs. These signs identify the public park, public vertical and lateral accessways, public boat facility area, and public parking. These signs are currently under review by the California Coastal Commission. All signs under the Public Park and Access Signage Program shall be installed prior to issuance of the first Certificate of Occupancy for that map phase. For all other project signage, the Developer shall submit a sign program that is in accordance with the City's sign ordinance.
- h) **Landscaping Code Compliance:** The project as proposed includes adequate landscaping to meet the City's landscaping requirements. The Parks and Facilities Division reviewed the proposed landscape plans and recommended several conditions of approval (see Attachment E).
- i) **Agricultural Soil Transfer Program:** In accordance with Policy #5 of the Coastal Land Use Plan, the applicant has obtained rights to a recipient site for the requisite soil transfer program, contingent upon receiving necessary approvals from the County of Ventura. The Coastal Berry Ranch site (approximately 400 acres) is located on the east side of Harbor Boulevard, between Gonzales Road and the Santa Clara River. This site had been previously identified as a suitable recipient site in the *Farmland Restoration Report for the Southwest Five Neighborhood* (dated August 29, 1980). Information provided by this report was utilized in the late 1980's with the development of the Harbour Island condominiums.

Soils at the Coastal Berry Ranch site have been classified as "non-prime agricultural land" based on the definition provided in Section 51201(c) of the California Government Code. The County of Ventura is currently reviewing a request for a coastal development permit to implement the soil transfer program. Any activity associated with the soil transfer program may not begin until the necessary approvals are granted by the County of Ventura.

The proposed Agricultural Soil Transfer Program is provided in Attachment D of this staff report.

- j) **Development Agreement:** A development agreement is a planning tool authorized by Government Code Section 65864. As of this writing, the final text of the Development Agreement was nearing completion and will be available prior to the hearing date.

In summary, the development agreement provides for a Community Facilities District and a Homeowner's Association to establish mechanisms to fund ongoing costs associated with the maintenance and operation of the project and related amenities. The development agreement also provides funding for maintenance of the seawalls and inland waterways, and code enforcement activities within the harbor. Dedications of public improvements, park and trail easements and phasing of public facilities are also delineated within the development agreement. The agreement requires three watercrafts to accomplish surface skimming and debris removal, provide additional fire protection, and accomplish waterborne code enforcement for the entire Mandalay Bay waterway system (i.e. north of Channel Islands Boulevard). The agreement also provides for acceleration of the construction of Master Planned Sewer Improvement Facilities required to serve the project, if necessary, prior to the construction of homes within the project.

Under the terms of the development agreement, funding for ongoing testing and analysis of the water quality within the project's waterways and recreational bay will be established. Specifically, if the water quality within the project waterways falls below specific State defined criterion, then specific mitigation measures will be implemented including funding of the installation of aerators and pumps if necessary to maintain circulation and water quality within the waterways.

- k) **School District Agreement:** In order to mitigate potential school impacts resulting from the proposed development, the Developer has entered into a Mitigation and Option Agreement (MOA) with the Oxnard School District (OSD). This agreement, provided in Attachment H of this staff report, provides funding of up to \$10.8 million dollars toward site acquisition and construction of a new elementary school and provides OSD with the option to purchase a school site in the northwest corner of the proposed Seabridge site along Wooley Road.

The MOA recognizes that OSD will require numerous approvals to construct a school on the Seabridge site. These approvals from various state agencies may require several years to obtain. OSD's option to purchase a site within Seabridge site expires in three years, but can be extended for an additional two years. The Developer will provide advanced funding to enable OSD to request the necessary entitlements to build a new elementary school within the Seabridge project site.



Per the MOA, OSD may abandon the Seabridge parcel as a potential school site and select another location anywhere within OSD's boundaries. The Developer will fund a substantial portion of the cost for an alternate site based on the relative valuation of the land selected by OSD.

With either a school site within the proposed development or elsewhere in the school district, OSD receives significant funding from the Developer. Statutory school fees are not affected by this agreement and will be collected by OSD in addition to any payments by the Developer.

- l) **Memorandum of Understanding:** The City of Oxnard and the Developer have entered into a Memorandum of Understanding (MOU) with the County of Ventura to resolve a number of concerns raised by the County. The MOU is included as Attachment I of this staff report.

The MOU provides funding for Harbor Patrol activities and also funds potential costs incurred for dredging the Channel Islands Harbor. In the event the pumps at the Mandalay Bay power plant cease operations the agreement requires the Developer to fund a proportionate share of the ongoing costs of running the pumps. Sharing of costs is typically calculated based on pro rata slip counts within the Channel Islands Harbor. Docking of commercial vessels and fueling operations is also prohibited within the Seabridge waterways. Rental of a homeowner's private slip to boat owners other than property owners within Seabridge is prohibited by the agreement.

The MOU contains a provision to allow the City to provide fire and police services to the area located north of the Channel Islands Boulevard. In the event that the City elects to provide these services, a transition of responsibility is outlined within the MOU.

The MOU also provides for specific traffic improvements along Victoria, including upgrades to the intersections at Olivas Park and Gonzales, as well as additional traffic mitigation fees paid to the County. As stated previously, in Section 7.e of this staff report, the MOU also provides details for the vegetative shelter belt along Wooley Road to buffer the agricultural uses to the north.

- m) **Water Supply Assessment and Verification:** Before approving new subdivisions of more than 500 dwelling units, recent legislation requires cities to identify and assess the sufficiency of the existing and planned sources of water available to current and planned development. In particular, Senate Bill 221 (Kuehl) requires the public water purveyor to verify that a sufficient water supply is or will be available prior to completion of the project. A sufficient water supply means the total water supplies available during normal, single dry, and multiple dry years

within a 20-year projection will meet the projected demand associated with the proposed project, in addition to existing and planned future uses.

In compliance with Senate Bill 221 and a companion requirement, Senate Bill 610 (Costa), the City's Water Division as the planned water supplier for the subject site has prepared a Water Supply Assessment for the Seabridge project. The Water Supply Assessment concludes that the existing and planned future water resources currently under development will be sufficient to meet projected demands, including those associated with the proposed project. On November 19, 2002, the City Council is expected to approve this Water Supply Assessment. The Planning Commission must also take action on the Water Supply Assessment (verification of the sufficiency of supplies) prepared pursuant to Government Code Sections 66455.3 and 66473.7 (see Attachment J).

8. **Development Advisory Committee (DAC) Recommendation:** The Development Advisory Committee (DAC) considered this project in great detail at several meetings. The first meeting was on December 22, 1999 and the most recent meeting was on July 24, 2002. As revised, the DAC supports the proposed project with the recommended conditions in the attached resolutions.

9. **Attachments:**

- A. Maps (Vicinity, Zoning, Coastal Plan)
- B. Reduced Project Plans
- C. CNC & CVC Zone Districts
- D. Agricultural Soil Transfer Program
- E. Resolution, Coastal Development Permit
- F. Resolution, Tentative Subdivision Map
- G. Resolution, Development Agreement
- H. School District Agreement
- I. Memorandum of Understanding
- J. Water Supply Assessment

Prepared by:	<u>SM</u> SLM
Approved by:	<u>MM</u> MM

RECEIVED

JAN 30 2003

RESOLUTION NO. 2002-106

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD APPROVING COASTAL DEVELOPMENT PERMIT NO. 01-5-93 TO ALLOW DEVELOPMENT OF THE SEABRIDGE PROJECT WITH A TOTAL OF 708 RESIDENTIAL UNITS (276 SINGLE-FAMILY HOMES AND 432 ATTACHED DWELLING UNITS), INCLUDING THOSE IN DESIGNATED MIXED-USE AREAS, AND 169,000 SQUARE FEET OF COMMERCIAL SPACE, LOCATED ON THE WEST SIDE OF VICTORIA AVENUE, BETWEEN WOOLEY ROAD AND HEMLOCK STREET, SUBJECT TO CERTAIN CONDITIONS. FILED BY OLY-MANDALAY BAY GENERAL PARTNERSHIP, 600 VICTORIA AVENUE, SUITE A-600, OXNARD, CA 93035.

WHEREAS, the Planning Commission of the City of Oxnard has considered an application for a coastal development permit filed by Oly-Mandalay Bay General Partnership in accordance with Section 37-5.3.0 et. seq. of the Oxnard City Code; and

WHEREAS, the Planning Commission certifies that the final environmental impact report was completed for this project in compliance with the California Environmental Quality Act, reflects the independent judgment of the City, was presented to the Planning Commission, and that the Planning Commission reviewed and considered the information contained in the final environmental impact report before approving the project; and

WHEREAS, the Planning Commission finds after due study, deliberation and public hearing, that the following circumstances exist:

1. The proposed use is conditionally permitted within the subject sub-zone and complies with all of the applicable provisions of Chapter 37 of the Oxnard City Code.
2. The proposed use would not impair the integrity and character of the sub-zone in which the proposed use is to be located.
3. The subject site, in terms of location and intensity of use, would be physically suitable and would protect and maintain adjacent coastal resources for the land use being proposed.
4. The proposed use would be compatible with the land uses presently on the subject property.
5. The proposed use would be compatible with existing and future land uses within the sub-zone and the general area in which the proposed use would be located.
6. There are adequate public services for the proposed use, including, but not limited to, fire and police protection, water, sanitation and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.
7. The proposed use will provide a type and level of public access consistent with the access policies and standards Use Plan.

8. The proposed use would be appropriate in light of an established need, based upon the underlying goals and objectives of specific Oxnard Coastal Land Use Plan policies, applicable to the proposed location.
9. The proposed use would be consistent with all of the applicable policies of the certified Oxnard Coastal Land Use Plan.
10. The proposed development agreement provides a funding source to address concerns raised by the County of Ventura as to the Channel Islands Harbor.
11. Pursuant to Policy #5 of the Coastal Land Use Plan, the applicant has obtained rights to deposit on a like amount of non-prime agricultural land, the prime soils to be taken from the subject site.

WHEREAS, the Planning Commission finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work, visit or live in this development in particular.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby approves said coastal development permit. The decision of the Planning Commission is final unless appealed in accordance with the provisions of Section 37-5.4.10 of the Oxnard City Code.

Note: The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. *G-1*) while some are taken from environmental documents (e.g. *MND-S2*).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic
PD	Police	B	Building Plan Checker
SC	Source Control	FD	Fire
PK	Parks	CE	Code Enforcement

## **GENERAL PROJECT CONDITIONS**

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, G-1).
2. This permit is granted for the approved plans on file with the Planning and Environmental Services Division ("the plans"). The project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning and Environmental Services Manager in accordance with an administrative modification as defined in Section 37-5.3.2.7 of the Coastal Zoning Regulations, or unless a major modification to the plans is approved by the Planning Commission in accordance with a permit amendment to be processed in accordance with Section 37-5.3.3.5 of the Coastal Zoning Regulations. A minor modification may be granted for minimal changes or increases in the extent of use or size of structures or of the design, materials or colors of structures or masonry walls. A major modification shall be required for substantial changes or increases in such items, including changes to the project conditions of approval. No change in number or footprint of buildings or structures shall be considered a minor modification. A coastal development permit amendment shall be processed to authorize any major modifications. (PL, G-2)
3. This permit shall automatically become null and void 24 months from the date of its issuance, unless Developer has diligently developed the proposed project, as shown by the issuance of a grading, foundation, or building permit and the construction of substantial improvements, or the beginning of the proposed use. (PL, G-3)
4. All required off-site and on-site improvements for the project, including structures, paving, and landscaping, shall be completed prior to occupancy unless the Development Services Manager allows Developer to provide security or an executed agreement approved by the City Attorney to ensure completion of such improvements. (DS, G-4)
5. By commencing any activity related to the project or using any structure authorized by this permit, Developer accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
6. Developer agrees, as a condition of adoption of this resolution, at Developer's own expense, to indemnify, defend and hold harmless the City and its agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of the resolution or any condition attached thereto or any proceedings, acts or determinations taken, done or made prior to the approval of such resolution that were part of the approval process. Developer's commencement of construction or operations pursuant to the resolution shall be deemed to be an acceptance of all conditions thereof. (CA, G-6)

7. Any covenants, conditions, and restrictions (CC&R's) applicable to the project property shall be consistent with the terms of this permit and the City Code. If there is a conflict between the CC&R's and the City Code or this permit, the City Code or this permit shall prevail. (CA, G-7)
8. Developer shall record with the Ventura County Recorder a "Notice of Land Use Restrictions and Conditions" in a form acceptable to the City Attorney. Before the City issues building permits or allows Developer to occupy the project, Developer shall submit a copy of the recorded document to the Planning and Environmental Services Manager. (PL, G-8)
9. Developer shall provide off-street parking for the project, including the number of spaces, stall size, paving, striping, location, and access, as required by the City Code. (PL/B, G-9)
10. Before placing or constructing any signs on the project property, Developer shall obtain a sign permit from the City. Except as provided in the sign permit, Developer may not change any signs on the project property. (PL/B, G-10)
11. Developer shall obtain a building permit for any new construction or modifications to structures, including interior modifications, authorized by this permit. (B, G-11)
12. Developer shall not permit any combustible refuse or other flammable materials to be burned on the project property. (FD, G-12)
13. Developer shall not permit any materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health to be handled, stored or used on the project property, except as provided in a permit issued by the Fire Chief. (FD, G-13)
14. If Developer, owner or tenant fails to comply with any of the conditions of this permit, the Developer, owner or tenant shall be subject to a civil fine pursuant to the City Code. (CA, G-14)

#### **PARKS STANDARD CONDITIONS**

15. Before the City issues building permits or the proposed use is initiated, Developer shall submit two copies of landscape and irrigation plans, along with the appropriate permit application and fees, to the Development Services Division and obtain approval of such plans. (PK/DS, PK-2)



16. Before the City issues a certificate of occupancy, Developer shall install landscape and automatic irrigation systems that have been approved by Parks and Facilities Superintendent. (PK, PK-3)
17. Developer shall maintain landscape planting and all irrigation systems as required by the City Code and as specified by this permit. Failure of Developer to do so will result in the revocation of this permit and initiation of legal proceedings against Developer. (PK, PK-4)
18. Before the City issues a certificate of occupancy, Developer shall provide a watering schedule to the building owner or manager and to the Parks and Facilities Superintendent. The irrigation system shall include automatic rain shut-off devices, or instructions on how to override the irrigation system during rainy periods. (PK, PK-5)
19. All trees planted or placed on the project property by Developer shall be at least 24-inch-box size. All shrubs and vines shall be at least five-gallon size, except as otherwise specified by this permit. (PK, PK-6)
20. Before the City issues building permits for a residential development that includes any model houses, Developer shall obtain the approval of the Parks and Facilities Superintendent for a low water-using landscape plan. Developer shall install low water-using landscape design and irrigation systems for at least one of the model houses in any cluster of two or more model houses, thereby demonstrating to prospective buyers the feasibility and aesthetic qualities of low water-using landscape design and irrigation systems. Developer shall provide appropriate signs, shown on the landscape plan, explaining that the model house utilizes a low water-using landscape and listing the plant materials used. (PK, PK-7)
21. Developer shall offer a low water-use front yard landscape option to buyers at no extra cost. Developer shall also provide low water-use landscape literature to each buyer. City shall provide such literature to Developer at City's cost. (PK, PK-8)
22. Developer's landscape plans for houses shall show, where appropriate, a typical landscape and irrigation treatment for north, south, east or west site orientation, for corner lots as well as internal lots. (PK, PK-9)
23. Within sixty days after a house is occupied, Developer shall install front yard and street side yard landscaping for that house. Developer shall provide proof of financial responsibility approved by the City Attorney to ensure faithful performance of this condition within the specified time. (PK/ PL, PK-10)
24. Developer shall provide an automatic irrigation controller and a written seasonal watering schedule for all front yard and street side yard landscaping. The watering schedule shall

- include variations for seasonal changes, sun and shade exposure of plants, type of plants, duration and frequency of irrigation, and suggestions as to how to conserve water. As part of the landscape plan check submittal process, the Parks and Facilities Superintendent shall review the sufficiency of instructions for the operation of the irrigation controller and the watering schedule cycles. (PK, PK-11)
25. At the close of escrow or at the time of occupancy of each dwelling unit, Developer shall review with and provide instructions to each buyer concerning the irrigation controller operation and the watering schedules. (PK, PK-12)
26. Developer shall install sod in the lawn areas of all front yards and street side yards. (PK, PK-13)
27. Developer shall submit four sets of median and parkway landscape and irrigation plans with the first submittal of public improvement plans. The City shall approve median and parkway landscape and irrigation plans when the City approves public improvement plans. Before the City issues a building permit, the irrigation plans must be approved for proper meter size, backflow prevention device, and cross connection control by the Water Production Supervisor or designee. (DS/ PK, PK-14)
28. Before the City accepts medians and parkways from Developer, the landscaping thereon must complete a plant establishment period of 90 days or such other time as specified in this permit. (PK/DS, PK-15)
29. After Developer installs irrigation and landscape improvements on the project property or on Caltrans freeway right-of-way, but before the City's final acceptance thereof, Developer shall provide the Parks and Facilities Superintendent with one set of mylar (minimum 3 mil) original drawings, which shall accurately reflect all "as-built" conditions. (PK, PK-16)
30. Developer shall provide to the Parks and Facilities Superintendent ("Superintendent") a landscape maintenance district master plan drawn at an approved scale, clearly designating areas of maintenance responsibility assumed by: (a) a landscape maintenance district; (b) a homeowners association; and/or (c) the City. After Superintendent approves such plan, Developer shall provide to Superintendent a mylar (minimum 3 mil) original drawing of the maintenance district master plan. (PK, PK-19)

#### **PARKS SPECIAL CONDITIONS**

31. At the time of building permit plan check, Developer shall submit plans including rain shut-off sensor device as a water conservation measure. Such plans shall be part of the irrigation plan submittal. (PK)

32. Developer shall improve existing medians on Victoria Avenue, fronting the project, to be in conformance with the City of Oxnard Landscape Standards. Such improvements shall be made as directed by and to the satisfaction of the Parks and Facilities Superintendent. (PK)
33. Developer shall provide park improvement features throughout the park system, to the satisfaction of the Parks and Facilities Superintendent. The Parks and Facilities Superintendent shall determine the quantity, location, and building material selections of following items (PK):
- a. Sand beaches with lifeguard facility.
  - b. Designated public parking associated with public parks.
  - c. Children's play areas with equipment and safety surfacing.
  - d. Restroom buildings.
  - e. Gazebo, pergola, and trellis structures.
  - f. Exercise course.
  - g. Drinking fountains.
  - h. Waste containers.
  - i. Picnic tables, benches and grills.
  - j. Seating benches.
  - k. Basketball court.
  - l. Volleyball facilities.
  - m. Park lighting.
  - n. Bicycle racks.
  - o. Paved walkways.
  - p. Focal points.
  - q. Park identification signage.
  - r. Waterfront overlooks.
  - s. Landscaping and irrigation.
  - t. Maintenance yard, perimeter block wall, and building improvements.
  - u. Tennis court.
34. The Landscape Maintenance Areas included within the Community Facilities District Landscape Assessment shall include (PK):
- a. All City street trees in public streets of residential front yard parkways and corner yard parkways.
  - b. Street light fixtures and mail box enclosures on public streets.
  - c. Landscape parkways on Wooley Road and Victoria Avenue.
  - d. Landscape median improvements on Wooley Road and Victoria Avenue.
  - e. All designated public linear park, pocket park, waterfront overlooks, beaches, designated public park area and public park parking lot improvements.
  - f. Maintenance yard block wall, yard and building improvements.
  - g. Buffer landscaping on north side of Wooley Road.
  - h. Pedestrian corridors, waterfront overlooks and public beaches.

- i. Landscape entry medians on public streets as agreed to by Developer and Parks and Facilities staff.
  - j. Medians on new Ketch Avenue and landscaped traffic island features.
35. Developer shall ensure that any proposed walls or fences that separate private property from the maintenance assessment district areas shall be designed so that the wall or fence, including footings, is located on the private property owners' side of the property line. Such walls or fences shall be subject to approval of the Parks and Facilities Superintendent and the Planning and Environmental Services Manager. (PK/PL)
36. The final designation of street tree selection shall be coordinated and approved by the Parks and Facilities Division as a part of the plan check submittal process (PK).
37. Developer shall not propose or allow any wall or fence to be directly adjacent to any sidewalks or trail system. Developer shall provide a minimum 5-foot wide landscape area between the sidewalk and wall or fence, which shall be planted and maintained with landscaping and irrigation, subject to approval of the Parks and Facilities Superintendent. (PK)
38. For those palm trees currently existing in the Victoria Avenue medians that are designated for removal, Developer shall transplant these trees to other locations in the medians where feasible. If such palm trees cannot be transplanted, then the economic value of the palms removed shall be placed back into new tree sizes for the median. New tree sizes would be in addition to meeting the City's minimum tree size of 24" box (PK).
39. Developer shall install meandering sidewalks along Wooley Road and Victoria Avenue. Such walks shall be consistent with Parks and Facilities Division meandering sidewalk design criteria, and shall be subject to approval of the Parks and Facilities Superintendent (PK).
40. If the neighborhood park site, located on Wooley Road just west of the North Island access road, is eliminated as a result of the Oxnard School District's implementation of a school site, then Developer shall relocate those park features shown (i.e. volleyball, children's play area, basketball, benches, picnic units, restroom, etc.) to other park locations within the Seabridge project or the adjacent Westport at Mandalay Bay project per Parks and Facilities approval. No net loss of park area shall occur within the Mandalay Bay Specific Plan area, unless otherwise approved by the California Coastal Commission. (PK)
41. At no time in the future will Harbour Island be included as part of the Community Facilities District (Assessment District) formed to support and maintain the improvements proposed by the Seabridge Development (PK).

## FIRE DEPARTMENT STANDARD CONDITIONS

42. Developer shall construct all vehicle access driveways on the project property to be at least 25 feet wide. Developer shall mark curbs adjacent to designated fire lanes in parking lots to prohibit stopping and parking in the fire lanes. Developer shall mark all designated fire lanes in accordance with the California Vehicle Code. (FD/B, F-1)
43. All roof covering materials on the project property shall be of non-combustible or fire retardant materials approved by the Fire Chief and in compliance with the City Code. (FD, F-2)
44. Before the City issues building permits, Developer shall obtain the Fire Chief's approval of a plan to ensure fire equipment access and the availability of water for fire combat operations to all areas of the project property. The Fire Chief shall determine whether or not the plan provides adequate fire protection. (FD/DS, F-3)
45. At Developer's expense, Developer shall obtain two certified fire flow tests for the project property. The first test shall be completed before City approval of building plans and the second shall be completed after construction and prior to the issuance of a certificate of occupancy. The tests must be certified by a mechanical, civil, or fire protection engineer. Developer shall obtain permits for the tests from the Engineering Division. Developer shall send the results of the tests to the Fire Chief and the City Engineer. (FD/DS, F-4)
46. All structures on the project property shall conform to the minimum standards prescribed in Title 19 of the California Code of Regulations. (FD, F-5)
47. The project shall meet the minimum requirements of the "Fire Protection Planning Guide" published by the Fire Department. (FD, F-6)
48. At all times during construction, Developer shall maintain all-weather surfaces that provide access for fire fighting apparatus to all parts of the project property. (FD/DS, F-7)
49. Developer shall identify all hydrants and fire protection equipment on the project property as required by the Fire Chief. (FD, F-8)
50. Developer shall install security devices and measures, including walkway and vehicle control gates, entrance telephones, intercoms and similar features, subject to approval of the Police Chief and the Fire Chief. (FD/PD, F-9)
51. Developer shall provide central station monitoring of the fire sprinkler system and all control valves. (FD, F-10)

52. The turning radius of all project property driveways and turnaround areas used for emergency access shall be a minimum of 48 feet. (FD, *F-11*)
53. Developer shall provide automatic fire sprinklers as required by the City Code and shall contact the Fire Chief to ascertain the location of all connections. (FD, *F-12*)
54. Developer shall install in each structure in the project an alarm system with a central station monitor that will automatically notify the Fire Department in the event of a fire in the structure. The alarm system shall include a UL or State Fire Marshal approved device, which shall not exceed design specifications, that reports the location of the fire and allows the central station monitor to inform the Fire Department of the point of entry into the structure that is nearest the fire. (FD, *F-13*)
55. Developer shall install in each structure in the project where automatic fire sprinklers are installed a system that automatically opens the skylights in areas affected by fire before the fire sprinklers are activated. (FD, *F-14*)
56. All signalized intersections shall be equipped with pre-emption equipment. (FD/TR, *F-15*)
57. Developer shall comply with Certified Unified Program Agency (CUPA) requirements regarding storage, handling and generation of hazardous materials or waste. Prior to the issuance of building permits, Developer shall contact the CUPA division of the Fire Department to ensure that such requirements are followed. (FD, *F-16*)

#### **FIRE DEPARTMENT SPECIAL CONDITION**

58. As required by the Memorandum of Understanding between the City, Developer, and County of Ventura, and the Development Agreement between the City and Developer, Developer shall provide a boat and a permanent slip at the marina for the exclusive use of the Oxnard Fire Department. (FD)

#### **POLICE DEPARTMENT SPECIAL CONDITION**

59. As required by the Memorandum of Understanding between the City, Developer, and County of Ventura, and the Development Agreement between the City and Developer, Developer shall provide a boat and a permanent slip at the marina for the exclusive use of the Oxnard Police Department. (PD)



**PLANNING STANDARD CONDITIONS**

60. The final building plans submitted by Developer with the building permit application shall depict all building materials and colors to be used in construction. (PL/B, PL-1)
61. Any application for a minor modification to the project shall be accompanied by three copies of plans reflecting the requested modification, together with applicable processing fees. (PL, PL-2)
62. Before the City issues building permits, Developer shall include a reproduction of all conditions of this permit as adopted by resolution of the Planning Commission and/or the City Council in all sets of construction documents and specifications for the project. (PL, PL-3)
63. Before the City issues building permits, Developer shall provide to the Planning and Environmental Services Manager color photographic reductions (8 1/2" by 11") of full-size colored elevations and any other colored exhibit approved by the Planning Commission. Developer may retain the full-size colored elevations after the reductions are so provided. (PL, PL-4)
64. Developer acknowledges that because of population limitations placed on the City by the Air Quality Management Program, approval of this permit does not guarantee that the City will issue building permits. The City's issuance of building permits may be delayed as a result of implementation of an air quality plan. (PL, PL-5)
65. Before the City issues building permits, Developer shall provide to the Planning and Environmental Services Manager a disk in DWG format of a 100-foot scale site plan of the project as approved. (PL, PL-6)
66. This permit is granted subject to the City's approval of a tentative map and final map and recordation of the final map. The City shall issue building permits only after such recordation, unless otherwise approved by both the Planning and Environmental Services Manager and the Development Services Manager. Before occupying any structures or initiating any use approved by this permit, Developer shall comply with all conditions of the tentative and final map. (PL/DS, PL-10)
67. Developer may not modify any use approved by this permit unless the Planning and Environmental Services Manager determines that Developer has provided the parking required by the City Code for the modified use. (PL, PL-13)
68. Developer shall provide utility meters, mail boxes and address directories, placed in decorative cabinets and clustered for efficient access for residents and service persons. All designs must be approved by the Planning and Environmental Services Manager, the

- appropriate utility service provider and the United States Postal Service, as applicable. (PL, PL-14)
69. Developer shall recess or screen roof heating and cooling systems and other exterior mechanical equipment from adjoining property and public streets, as required by this permit. Plumbing vents, ducts and other appurtenances protruding from the roof of structures shall be placed so that they will not be visible from the front of the property or other major public vantage points. Developer shall include a note on the construction plumbing drawings of exterior elevations to indicate to contractors that roof features shall be grouped and located in the described manner. Roof vents shall be shown on construction drawings and painted to match roof material color. (PL/B, PL-15)
70. For any exterior utility meter panels, Developer shall paint such panels to match the structure upon which it is located. Such panels shall be located to take advantage of screening (e.g. landscaping or other building elements) from public right-of-ways, to the maximum extent feasible. (PL, PL-16)
71. Project on-site lighting shall be of a type and in a location that does not constitute a hazard to vehicular traffic, either on private property or on adjoining streets. To prevent damage from vehicles, standards in parking areas shall be mounted on reinforced concrete pedestals or otherwise protected. Developer shall recess or conceal under-canopy lighting elements so as not to be directly visible from a public street. Developer shall submit a lighting plan showing standard heights and light materials for design review and approval of the Planning and Environmental Services Manager. (PL/B, PL-17)
72. In order to minimize light and glare on the project property, all parking lot and exterior structure light fixtures shall be high cut-off type that divert lighting downward onto the property and shall not cast light on any adjacent property or roadway. (PL, PL-18)
73. Developer shall provide for dust control at all times during project property preparation and construction activities. (B/DS, PL-19)
74. Prior to installation of any signs onsite, Developer shall submit and obtain approval from the Planning and Environmental Services Manager of a master sign program for the entire project area, which shall indicate on the site plan the elevations, the size, placement, materials, and color of all proposed free-standing and building signs. The size and placement of all signs for the project shall be in accordance with the City Code. (PL/B, PL-20)
75. Developer shall not store construction materials or vehicles outdoors on the project property. (PL/B, PL-21)

76. Developer shall stripe loading zones placed partly or wholly within a structure for loading and unloading activities only and post to prohibit storage or other non-loading activity within the loading zone. (PL/B, PL-23)
77. Developer agrees to participate in a water conservation program that includes refitting water fixtures existing on the project property with water conserving devices within residences or businesses in the City's water service area, if such a program is in effect when building permits are issued for this project. Among the requirements of such a program might be refitting existing toilets, faucets, shower heads, landscaping irrigation or other fixtures and items that consume water within the structure. (PL, PL-24)
78. Because of water limitations placed upon the City by its water providers, approval of this permit does not guarantee that the City will issue building permits. Issuance of building permits may be delayed as a result of implementation of a water conservation or allocation plan. (PL, PL-25)
79. Developer shall provide automatic garage door openers for all garages. (PL/B, PL-27)
80. Developer shall provide at least two types of driveway finishes or decorative designs. (PL, PL-28)
81. Developer shall place cluster mailbox units within decorative enclosures, as approved by this permit. (PL, PL-29)
82. Where feasible, Developer shall locate individual unit plumbing within individual unit walls, as opposed to common or shared walls, and shall paint roof vents to match the roofing material. (B, PL-30)
83. Walls separating the patio areas of attached residential units shall be of solid construction, such as masonry, stucco, or wood over wood. Ground level patios shall be enclosed by walls not less than five feet high, except as otherwise approved by this permit. (PL/B, PL-31)
84. Light standards illuminating interior walkways shall be no more than eight feet high. Light shall not intrude into private living or patio areas. Light standards serving recreational areas held in common shall be no more than 15 feet high. Light shall be directed away from dwelling units. (B, PL-32)
85. Developer shall construct each dwelling unit with separate utility systems and meters. (DS/B, PL-33)
86. Developer shall provide graphic site directories at principal access walkway points. (PL/B, PL-34)

87. Railings and enclosures proposed for patios and balconies shall provide at least 50 percent enclosure for screening and privacy. Developer shall depict the railings and enclosures on the construction documents. (PL/B, PL-35)
88. Developer shall establish a homeowners association and the association shall be responsible for the maintenance of parking, landscape, recreation and other interior areas held in common by the association and for the enforcement of CC&R's related to property maintenance. (PL/DS, PL-36)
89. Developer shall provide masonry walls on street side yard and interior lot fences. The final design and location of such walls and fences shall be reviewed and approved by the Planning and Environmental Services Manager prior to issuance of building permits. (PL/B, PL-37)
90. Street side yard walls shall be of decorative masonry construction and shall be set back 10 feet from any public sidewalk. (PL/B, PL-38)
91. Developer shall provide elevators in structures of three stories or more, except where the third story consists entirely of upper levels of residence that have entrances at the first or second story. (PL/B, PL-39)
92. Developer shall include in all deeds for the project and in the CC&R's a prohibition against parking recreational vehicles over 20 feet long in the project. (CE/PL, PL-41)
93. Developer shall provide storage areas for individual trash enclosures within garage, patio, yard or storage areas. (PL/B, PL-42)
94. Garages closer than 23 feet to the front property line shall have sectional roll-up garage doors. (PL/B, PL-43)
95. Developer shall provide a rear or side patio concrete slab of at least 100 square feet. (PL/B, PL-44)
96. Developer shall post in the sales office of the project the latest City planning documents and maps that may affect the project and adjacent properties. At a minimum, this information shall include the 2020 Oxnard General Plan and General Plan Land Use Map showing all adjacent properties, a copy of the ordinances regulating the zone, and any specific plan that may apply to the project. Such documents may be purchased at cost from the Planning and Environmental Services Manager. Developer shall require that all purchasers sign an affidavit declaring that they have familiarized themselves with the planning documents. Developer shall make such affidavits and planning information available for review upon reasonable request of the Planning and Environmental Services Manager. (PL, PL-46)

97. Developer shall install all roof and building drainpipes and downspouts inside building elements. These items shall not be visible on any exterior building elevations. (PL, PL-47)
98. In accordance with City Council Ordinance No. 2545, Developer shall pay affordable housing in-lieu fees in effect at the time the City issues building permits. (PL, PL-48)
99. Before or during escrow for the sale of property within the project, Developer shall give to the buyers a document disclosing, in large type, that:
  - a. The property was formerly used for agricultural purposes, and is near or adjacent to, land that is currently used for agricultural operations; and
  - b. The buyers may be subject to inconvenience or discomfort arising from agricultural operations on such nearby or adjacent land, including, but not limited to, frost protection measures, noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) at any hour of the day or night, storage of equipment and materials necessary to the agricultural operations, slow moving farm equipment, and spraying or other application of chemical fertilizers, soil amendments (such as manure, compost materials and mulches) and pesticides (such as herbicides, insecticides and fumigants); and
  - c. If the buyers complete the purchase of the property, the buyers should be prepared to accept such inconvenience and discomfort as a normal and necessary aspect of living near or adjacent to agricultural operations.

To show that the buyers have read the document, Developer shall require the buyers to sign the document. Developer shall retain all such documents for at least three years and shall allow the City to inspect and copy all such documents upon request. (PL, PL-49)

100. Prior to the close of escrow for each dwelling unit, Developer shall provide the buyer with a written guarantee that the exterior finishes of the dwelling unit will remain in good condition for at least five (5) years from the final building permit inspection and sign off. Developer shall provide a copy of the guarantee to Planning staff prior to final Planning Division inspection and sign off. (PL, PL-50)
101. All residential dwelling unit developments shall include architectural articulation on all four sides of each unit. Such articulation shall include, but not be limited to, window treatment; trim and a variety of finishes matching front facades; and balconies, porches, and trellises. Developer shall submit elevations depicting such articulation to the Planning Division for approval prior to issuance of building permits. (PL, PL-51)

**PLANNING SPECIAL CONDITIONS**

102. The City and Developer have entered into a Memorandum of Understanding (MOU) with the County of Ventura, which will resolve certain County concerns regarding the impacts of the project on the Channel Islands Harbor. The MOU and Development Agreement specifically address the creation of an ongoing water quality monitoring program and mitigation measures related to water quality. Developer and City have negotiated a Development Agreement, which will help implement the terms of the Memorandum of Understanding, and Developer shall execute that certain Development Agreement. The MOU and Development Agreement shall be implemented as a condition of approval of the project. (CA)
103. All mitigation measures included in the Mitigation Monitoring and Reporting Program for EIR No. 02-2 (SCH #2001091020) are incorporated herein as conditions of this project. (PL)
104. Developer shall participate in the City's Arts in Public Places Program, in accordance with Resolution No. 9813. At minimum, Developer shall incorporate such art at each of the two commercial centers within the development. The specific art work locations shall be approved by the Planning and Environmental Services Manager prior to installation. (PL)
105. Developer shall contract with a Native American monitor to be present during all subsurface grading, trenching or construction activities on native soil within the project site. Grading activities associated with the agricultural soil transfer program are exempt from this requirement. The monitor shall provide a monthly report to the Planning Division summarizing their activities during the reporting period. A copy of the contract for these services shall be submitted to the Planning and Environmental Services Manager for review and approval prior to issuance of any grading permits. The monitoring report(s) shall be provided to the Planning Division prior to approval of final building permits. (PL)
106. Upon the discovery of a potential unanticipated significant find, work is to be halted immediately. A Native American monitor and/or professional archaeologist shall be selected by the City and paid for by Developer to evaluate the discovery and determine the necessary steps for successful compliance with all applicable regulations. (PL)
107. As required by Policy #4 of the Coastal Land Use Plan, Developer shall install a staggered double row of shrubs and trees combined with an 8-foot high fence/wall (as required by the Specific Plan) to form a "shelter belt" along the southern boundary of the agricultural fields on the north side of Wooley Road. Prior to issuance of building permits, Developer shall submit the details of such "shelter belt" in conformance with the



recommendations set forth by the Ventura County Agricultural Commissioner's office, in a letter to City staff (dated July 26, 2002). (PL)

108. Consistent with Policy #5 of the Coastal Land Use Plan, this resolution is adopted subject to approval of a coastal development permit by the County of Ventura for the recipient site for the agricultural soil transfer program. For this project, Developer shall not seek a recipient site west of Edison Drive, in the Ormond Beach area. Such program has been submitted as part of this project and includes the following components (PL):
- **Recipient Site:** Identification, location, and size of proposed site, verification of non-prime agricultural soils, designation of site for agricultural land uses.
  - **Soil Transfer:** Include timing and proposed trucking routes. The transferred soil shall be transferred directly to the recipient site and shall not be stockpiled for any period of time.
  - **Monitoring Plan:** Monitoring parameters shall include data on all soil characteristics, crop types and yields, irrigation requirements, and the agricultural productivity of the recipient site. A written monitoring report shall be submitted to the Planning and Environmental Services Manager on an annual basis, for a period of not less than ten (10) years from the start of the soil transfer activities.
109. In accordance with Policy #45.1.3 of the Coastal Land Use Plan, Developer shall ensure that all public improvements shall be developed in accordance with Condition No. 111 of this permit. (PL)
110. The park areas, lateral accessways along the channel, and vertical access points shall be restricted to public access and public recreation uses. Developer shall offer to dedicate to the City a fee interest for the recreational use and public access over the areas shown as Parcels A-S (19 parcels in all) on Tentative Tract No. 5266 dated 9/23/02.

Prior to issuance of the first building permit, Developer shall execute and record a document, in a form and content acceptable to the City Attorney, setting forth the above provisions. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the City determines may affect the interest being conveyed. The offer shall run with the land binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. (PL)

111. Developer shall construct all park and access improvements as required by this permit and in accordance with the following phasing schedule matrix. Prior to the recordation of the deed or easement documents for each phase of improvements, the applicant shall submit the documents for the review and approval of the Planning and Environmental Services Manager. (PL)

Map Phase	Residential Units			Waterfront Access (Lateral) Linear Feet			Visitor Serving Uses (Acres)			Park (Acres)			Open Water (Acres)		
	This Phase	Cumulative Total	% of Project Total	This Phase	Cumulative Total	% of Project Total	This Phase	Cumulative Total	% of Project Total	This Phase	Cumulative Total	% of Project Total	This Phase	Cumulative Total	% of Project Total
1	116	116	16%	2850	2850	26%	0	0	0%	3.2	3.2	19%	5.4	5.4	17%
2	12	128	18%	900	3750	35%	0	0	0%	0.4	3.6	22%	2.9	8.3	26%
3	42	170	24%	0	3750	35%	7.7	7.7	38%	0	3.6	22%	0	8.3	26%
4	98	268	38%	2500	6250	58%	0.7	8.4	42%	4.5	8.1	49%	8.4	16.7	52%
5	124	392	55%	2200	8450	79%	2.7	11.1	55%	1.9	10	61%	9.3	26	80%
6	121	513	72%	885	9335	87%	9.1	20.2	100%	0.3	10.3	62%	2.1	28.1	87%
7	64	577	81%	1420	10755	100%				2.7	13	79%	0	28.1	87%
8	44	621	88%							0	13	79%	4.2	32.3	100%
9	87	708	100%							3.5	16.5	100%			

112. Prior to City Council approval of the tentative map, Developer shall submit, for the review and approval of the Planning and Environmental Services Manager and in consultation with the California Coastal Commission, a Public Park and Access Signage Program. The program shall provide, at a minimum, the location, design, size, and wording of public park and access signs. Signs shall be provided that identify the public park, public vertical and lateral accessways, public boat facility area, and public parking. Such signage shall be adequate to ensure that members of the public clearly identify the available public access and recreation opportunities. All signs under the Public Park and Access Signage Program shall be installed prior to issuance of the first Certificate of Occupancy for that map phase. (PL)

113. Prior to issuance of the first building permit, Developer shall submit, for the review and approval of the Planning and Environmental Services Manager, a plan for the development, leasing, and management of the boat docks. The approved plan shall be subject to the following requirements and include the following components, at a minimum (PL):

- Fifty percent (50%) of the docking facilities provided in the project shall be available for use by the public. No preference shall be given to individuals residing in the project area.

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No private boat docks may be constructed until and unless a commensurate number of public boat docks have been constructed and are available to the general public.

- The plan shall include a program for advertising the availability of the public docks, leasing (if applicable) the public boat docks, and managing the public docks for the use of the public.
114. Prior to issuance of the first building permit for each phase, Developer shall execute and record a deed restriction in a form and content acceptable to the City Attorney, restricting the public boating area for that phase, as shown on the site plan, for boating facility uses available only to the general public. The deed restriction shall include legal descriptions of the entire parcel and the public boat area. The deed restriction shall run with the land, binding all successors, and assigns, and shall be recorded free of prior liens that the City determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a major modification to this permit. (PL)
115. The commercial space approved in the mixed use development shall be restricted to only those uses permitted in the "Coastal Visitor-serving Commercial" zone (Sec. 37-2.9.0) and the "Coastal Neighborhood Commercial" zone (Sec. 37-2.8.0) of the City of Oxnard Coastal Zoning Ordinance. (PL)
116. Prior to issuance of a grading permit, Developer shall submit, for the review and approval of the City Engineer, an erosion and sediment control plan and Storm Water Pollution Prevention Plan for the construction phase of the project. The approved plan(s) shall be subject to the following requirements and include the following components, at a minimum (PL/DS):
- a. The project site shall be in compliance with State Water Resources Control Board NPDES Permit Waste Discharge Requirements for Construction Activity and shall not cause or contribute to significant adverse impacts on coastal resources.
  - b. No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to erosion and dispersion.
  - c. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction.
  - d. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activities, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, sediment must be trapped on site using fiber rolls, silt fencing or sediment basins,

disturbed areas must be stabilized with vegetation, mulch or geotextiles, all stockpiles must be covered, the storage, application and disposal of pesticides, petroleum and other construction and chemical materials must be managed and controlled, and adequate sanitary and waste disposal facilities must be provided. A pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.

- e. Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris, which may be discharged into coastal waters. Debris shall be disposed at an appropriate debris disposal site outside the coastal zone. If the disposal site is located within the coastal zone, a coastal development permit must be in place for that site before disposal can take place.
117. Prior to issuance of a grading permit, Developer shall submit for the review and approval of the City Engineer, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specification above, the plan shall be in substantial conformance with the following requirements (PL/DS):
- a. Site design, source control, and treatment control BMPs shall be implemented to minimize water quality impacts resulting from the proposed project.
  - b. The proposed single-family homes as part of this proposed development shall incorporate measures to retain and infiltrate all runoff onsite, to the maximum extent feasible. This can be accomplished by redirecting roof runoff into vegetated areas such as gardens, reducing the amount of directly connected impervious surfaces, and implementing other infiltration measures such as permeable pavement and dry wells.
  - c. Parking lots shall be designed to minimize the offsite transport of pollutants that are deposited on parking lot surfaces. Parking lots shall be designed to reduce impervious land coverage of parking areas, infiltrate runoff before it reaches the storm drain system, and treat runoff before it reaches the storm drain system. The proposed parking lots for this project shall incorporate infiltration measures such as permeable pavement, infiltration basins, or other landscaped features to ensure that all runoff is infiltrated

and/or treated onsite before it reaches the storm drain system, to the maximum extent feasible.

- d. Sidewalks, patios, driveways and other impervious areas shall be designed so that all runoff from these areas is infiltrated to the maximum extent feasible. This can be accomplished through the use of permeable pavement or by directing runoff to vegetated areas. Where feasible, rooftop runoff from commercial development shall be directed into vegetated areas, and commercial development shall be designed to minimize directly connected impervious surfaces.
- e. Commercial development shall be designed to control the runoff of pollutants from structures, parking and loading areas. Loading/unloading dock areas shall be covered or run-on and run-off of drainage shall be minimized. Under no circumstances are direct connections to the storm drains from depressed loading docks permitted. Repair/maintenance bays shall be indoors or designed in such a way that does not allow stormwater run-on or contact with stormwater runoff. Repair/maintenance bay drainage systems shall be designed to capture all washwater, leaks and spills and connect to a sump for collection and disposal. Vehicle/equipment wash areas shall be self-contained and/or covered, equipped with a clarifier, or other pretreatment facility, and properly connected to a sanitary sewer.
- f. Restaurants shall be designed to minimize runoff of oil and grease, solvents, phosphates, and suspended solids. Areas for washing/steam cleaning of equipment shall be self-contained, connected to a grease interceptor, and properly connected to a sanitary sewer. If the wash areas is to be located outdoors, it shall be covered, paved, have secondary containment, be connected to a grease interceptor and be connected to the sanitary sewer.
- g. Outdoor material storage areas shall be designed to prevent stormwater contamination from stored materials. Materials with the potential to contaminate storm water shall be placed in an enclosure such as a cabinet, shed or similar structure that prevents contact with runoff or spillage to the storm water conveyance system or protected by secondary containment structures such as berms, dikes or curbs. The storage area shall be paved and sufficiently impervious to contain leaks and spills.
- h. Trash storage areas shall be designed to prevent stormwater contamination by loose trash and debris. Trash container areas shall have drainage from adjoining roofs and pavement diverted around the area(s). Trash container areas shall be screened or walled to prevent off-site transport of trash.
- i. Treatment control BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour storm event for volume-based BMPs and/or the 85<sup>th</sup> percentile, 1-

hour runoff event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs.

- j. Runoff shall be conveyed off site in a non-erosive manner.
  - k. Energy dissipating measures shall be installed at the terminus of outflow drains.
  - l. The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.
118. Prior to issuance of the first building permit, Developer shall submit, for review and approval of the City Engineer, a detailed Water Quality/Best Management Practices (BMP) Program for controlling adverse impacts to water quality related to the public and private boating facilities. The plan shall demonstrate that boating in the project area will be managed in a manner that protects water quality and that persons maintaining boats in private or public slips or using slips on the transient basis are made aware of water quality provisions. Said plan shall include, at a minimum, the following provisions (PL/DS):
- a. Boat Maintenance Best Management Practices
    - Clean boat hulls above the waterline and by hand. Where feasible, remove the bots from the water and perform cleaning at a location where debris can be captures and disposed of properly.
    - Detergents and cleaning products used for washing boats shall be phosphate-free and biodegradable, and amounts used shall be kept to a minimum.
    - Detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye shall not be used.
    - In-the-water hull scraping or any process that occurs underwater to remove paint from the boat hull shall be minimized to the maximum extent practicable.
  - b. Solid Waste Best Management Practices Related to Boat Maintenance
    - Boat maintenance and cleaning shall be performed above the waterline in such a way that no debris falls into the water.

- Clearly marked designated work areas for boat repair and maintenance shall be provided. Work outside of designated areas shall not be permitted.
  - Hull maintenance areas, if provided, shall be cleaned regularly to remove trash, sanding dust, paint chips and other debris.
  - Public boat facility patrons shall be provided with proper disposal facilities, such as covered dumpsters or other covered receptacles.
  - Receptacles shall be provided for the recycling of appropriate waste materials.
- c. Hazardous Waste Best Management Practices
- Storage areas for hazardous wastes, including old gasoline or gasoline with water, oil absorbent materials, used oil, oil filters, antifreeze, lead acid batteries, paints, and solvents shall be provided.
  - Containers for used anti-freeze, lead acid batteries, used oil, used oil filters, used gasoline, and waste diesel, kerosene and mineral spirits which will be collected separately for recycling shall be provided in compliance with local hazardous waste storage regulations and shall be clearly labeled.
  - Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes.
- d. Sewage Pump-out System Best Management Practices
- Adequate sewage pump-out facilities to serve the proposed boat docks shall be provided to prevent the overboard disposal of untreated sewage within the project area and surrounding waters.
- e. Public Education Measures
- Developer, or his successors or assigns, shall distribute the Water Quality Management Plan to all purchasers of lots or homes with boat dock easement rights as well as to all lessees of public boat docks. The plan shall also be made available to transient users of the public boat docks. Informative signage describing and/or depicting Best Management Practices for maintenance of boats and boating facilities consistent with those specified herein shall be posted conspicuously.
119. Prior to final signoff on building permits for any structures on Lots 286 or 288, Developer shall submit to the Planning and Environmental Services Manager for approval, a plan detailing the operational parameters for the amphitheater, including enforcement actions. (PL)
120. To ensure available parking for commercial businesses, Developer shall post all surface parking area that services the mixed-use area for short-term parking during business hours. Posting of such signs shall be part of the construction plans. The extent and amount of time to be determined for short-term parking will be presented by Developer



and approved by the Planning and Environmental Services Manager prior to issuance of building permits. (PL)

121. Prior to building permit issuance, Developer shall redesign the layout of recreational building site to include additional offstreet parking. Such redesign shall be to the satisfaction of the Planning and Environmental Services Manager and the City Traffic Engineer. (PL)
122. No new curb cuts shall be permitted along the extension of Harbour Island Lane, unless approved by the Planning Commission at a legally noticed public hearing. In addition to the standard legal noticing requirements, notice of such proposal shall be provided to all property owners and residents of the south residential island, including the Harbour Island condominiums. (PL/TR)
123. Within the mixed-use units in Lots 295 & 296, the commercial/retail areas shall remain a separate legal entity (condominium) from the attached residential areas. As identified on the approved plans, the ground floor units shall be restricted to only those uses that are allowed within the Coastal Neighborhood Commercial and Coastal Visitor Serving Commercial zone districts, while the residential areas attached to such units shall be restricted to residential use only. Prior to the issuance of the first building permit for construction on Lot 295 or 296, Developer shall execute and record a deed restriction prohibiting use of the ground floor unit solely for residential occupancy. Furthermore, each deed restriction shall prohibit any division of the live/work units into separate units. Such deed restrictions shall be in a form and content acceptable to the City Attorney, and shall include legal descriptions of both Lots 295 and 296. The deed restriction shall run with the land, binding all successors, and assigns, and shall be recorded free of prior liens that the City determines may affect the enforceability of the restriction. (PL/CA)
124. Any fencing, wall, hedge, or any other screening material proposed on the water-side of the waterfront homes shall not exceed 42 inches in height. Furthermore, such screening shall be installed and maintained so that there is 50% or more visibility. Walls and solid fences, which do not exceed eighteen inches in height, may be located on the water-side of the waterfront homes. Safety-related fencing, however, is exempt from these restrictions. (PL)
125. With regard to the private extension of Napoli Drive, Developer shall modify the project, as follows (PL):
  - The wall along the east side of the private drive shall be removed.
  - A landscape strip, at least 5-feet in width, shall be provided along the west side of the private drive, up to Lot 26.
126. Prior to issuance of building permits, Developer shall upgrade the proposed roofing material for the coastal traditional design single-family homes, marina flats, and

live/work units. Such upgrade shall be to the satisfaction of the Planning and Environmental Services Manager. (PL)

127. Developer shall ensure that the final site layout does not allow for any "privacy-side" elevation on the single-family homes to be located to face any street, pedestrian trail, or public recreation area. Furthermore, Developer shall require reciprocal access and maintenance agreements for these single-family homes as a part of the covenants, conditions and restrictions (CC&Rs) for the development. (PL)
128. Developer shall, as a part of the construction drawings, clarify all building heights as measured from top of adjacent curb. Such heights shall not exceed the standards of the City Code, with the following exceptions for some single-family plans:

<u>Lot width</u>	<u>Plan #</u>	<u>Maximum Height</u>
40'	4B	29 feet
50'	3A	29 feet
50'	3C	30 feet
50'	4C	31 feet

#### **SOLID WASTE MANAGEMENT STANDARD CONDITIONS**

129. To ensure that solid waste generated by the project is diverted from the landfill and reduced, reused or recycled, Developer shall submit a "Solid Waste Management & Recycling Plan" to the City for review and approval. The plan shall provide for at least 50% of the waste generated on the project be diverted from the landfill. Plans shall include the entire project area, even if tenants are pursuing or will pursue independent programs. The plan shall be submitted to Planning & Environmental Services and Solid Waste Divisions and approved by the Solid Waste Division prior to issuance of a building permit. The plan shall include the following information: material type to be recycled, reused, salvaged or disposed; estimated quantities to be processed; management method used; destination of material including the hauler name and facility location. Developer shall use the attached Solid Waste Management & Recycling Plan form or a similar format.
130. Developer shall follow the plan and provide for the collection, recycling, and/or reuse of materials (i.e., concrete, wood, metal, cardboard, green waste, etc.) and document results during construction and/or demolition of the proposed project. After completion of demolition and/or construction, Developer shall complete the Solid Waste Management & Recycling report and provide legible copies of weight tickets, receipts, or invoices for materials sent to disposal or reuse/recycling facilities. For other discarded or salvaged materials, Developer shall provide documentation, on the disposal facility's letterhead, identifying where the materials were taken, type of materials, and tons or cubic yards disposed, recycled or reused, and the project generating the discarded materials.

Developer shall submit and obtain approval of the Solid Waste Management & Recycling C&D Report form prior to issuance of a certificate of occupancy.

131. Developer shall arrange for materials collection during construction, demolition, and occupancy with either the City Solid Waste Reduction & Disposal Division or other City permitted hauling companies, or Developer shall arrange for self-hauling to an authorized facility.
132. FOR COMMERCIAL/INDUSTRIAL PROJECTS: If the project will generate waste on an ongoing basis during occupancy, Developer shall make provisions to divert at least 50% of the material through source reduction, recycling, reuse, and/or green waste programs. Developer shall submit an Occupancy Recycling Plan which shall include the following information: estimated quantities and materials to be generated, management method to be used to reduce landfill disposal; quantity, size and location of recycling and trash bins, destination of material including the names of haulers and facility locations. Developer shall use the attached Occupancy Recycling Plan form or a similar format. The Occupancy Plan form must be submitted and approved prior to issuance of a certificate of occupancy.

In addition, Developer shall submit an Occupancy Recycling Report annually to the Solid Waste Division on the anniversary date of the certificate of occupancy. The Report shall include the following information: material type recycled, reused, salvaged or disposed; quantities, management method, destination of material including hauler names and facility locations. Documentation must be included such as weight tickets or receipts regarding the above.

133. FOR RESIDENTIAL PROJECTS: CC&Rs developed for the project shall require the homeowner's association to make provisions to divert at least 50% of the material through source reduction, recycling, reuse, and/or green waste programs. Developer shall submit an Occupancy Recycling Plan which shall include the following information: estimated quantities and materials to be generated, management method to be used to reduce landfill disposal; quantity, size and location of recycling and trash bins, destination of material including the names of haulers and facility locations. Developer shall use the attached Occupancy Recycling Plan form or a similar format. The Occupancy Plan form must be submitted and approved prior to the first certificate of occupancy.

In addition, the CC&Rs shall require the homeowner's association to annually submit to the Solid Waste Division an Occupancy Recycling Report on the Anniversary date of the first certificate of occupancy. The Report shall include the following information: material type recycled, reused, salvaged or disposed; quantities, management method, destination of material including hauler names and facility locations. Documentation must be included such as weight tickets or receipts regarding the above.

**DEVELOPMENT SERVICES CONDITIONS:**

134. Developer shall clean on-site storm drains at least twice a year; once immediately before the first of October (the beginning of the rainy season) and once in January. The City Engineer may require additional cleanings. Developer shall inspect, and if necessary clean, all on-site post-construction stormwater quality best management practices a minimum of twice a year and after all major storm events. (DS, DS-83)
135. Developer shall maintain parking lots, private street, and public areas free of litter and debris. Developer shall sweep sidewalks, drive aisles, private streets, and parking lots regularly to prevent the accumulation of litter and debris. When swept or cleaned, debris must be trapped and collected to prevent entry into the storm drain system. Developer may not discharge any cleaning agent into the storm drain system. (DS, DS-84)
136. Before City issues a site improvement permit, Developer shall obtain the written approval of Oxnard Drainage District for all alterations to District facilities. (DS, DS-100)
137. Developer shall comply with all National Pollution Discharge Elimination System ("NPDES") permit Best Management Practice requirements in effect at the time of grading permit and site improvement permit issuance. (DS)
138. Developer shall design the storm drain system serving this subdivision to minimize degradation of stormwater quality. Using Best Management Practices (BMPs) as discussed in the project environmental impact report, Developer shall intercept and effectively prevent pollutants from discharging into the City storm drain system or project channels. The BMPs constructed for this project shall be designed and constructed in accordance with the requirements of the Ventura Countywide Municipal Storm Water NPDES Permit (Board Order No. 00-108; NPDES permit number CAS004002) issued to the City by the California Water Quality Control Board. The proposed stormwater quality design shall be approved by the Development Services Manager prior to issuance of a site improvement permit. (DS)
139. Prior to the issuance of a site improvement/grading permit and/or commencement of any clearing, grading or excavation, the Developer/Owner shall provide verification of submittal of a Notice of Intent ("NOI") to the California State Water Resources Control Board, Storm Water Permit Unit in accordance with the NPDES Construction General Permit (No. CAS000002): Waste Discharge Requirements for Discharges of Storm water Runoff Associated with Construction Activities. The Developer/Owner shall comply with all additional requirements of this General Permit including preparation of a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP shall identify potential pollutant sources that may affect the quality of discharges to storm water and shall include the design and placement of recommended BMPs to effectively prohibit the

pollutants from leaving the construction site. Verification shall consist of providing City with a copy of the letter from the State assigning a permit identification number to the NOI. A copy of the SWPPP and the NOI shall be maintained on the site and made available for City or designated representative to review upon request. (DS)

140. Developer shall consult with the City's stormwater maintenance division prior to design of long term post-construction BMPs that will be subject to maintenance by City forces. NPDES devices subject to periodic cleaning by City forces shall be located first for efficiency of pollutant removal, and then for ease of access. Final design, location and type of post-construction BMPs are subject to approval of the Development Services Manager. (DS)
141. Developer shall submit a National Pollutant Discharge Elimination System (NPDES) Best Management Practices Operations and Maintenance Program ("the Program") for proposed long-term post-construction stormwater quality devices. The Program shall specify maintenance requirements, responsible parties, anticipated costs (broken into labor, equipment, supplies, etc.) and other pertinent information regarding continued long-term maintenance of all proposed post-construction stormwater quality devices. The Program shall be reviewed and approved by the Wastewater Superintendent. Developer shall arrange to have all costs of this program perpetually funded by owners of property within the project. Developer shall be responsible for the maintenance and operation of all stormwater quality devices until the City or some other qualified entity (as approved by the Development Services Manager) accepts them for maintenance. Upon request by the City, Developer (or qualified entity after transfer of maintenance responsibility) shall provide written proof of ongoing stormwater quality device maintenance operations. (DS)
142. Developer shall prepare and implement a stormwater quality monitoring program ("Program") to evaluate the performance of BMPs within the project. The Program shall specify the pollutants of concern, reporting frequency, monitoring station locations, anticipated pollutant concentrations, thresholds of significant impact, and analytical approach for determining BMP effectiveness. The Program shall also establish facility management protocol in the event that discharge concentrations exceed the threshold of significant impact. The monitoring shall be conducted annually for the first five (5) years following commencement of development and shall occur during the first significant runoff-producing storm event of each month within the rainy season. Following this initial monitoring period, monitoring shall be conducted at no greater than five- (5) year intervals during the first significant storm event of the rainy season, provided average annual pollutant loadings are determined not to exceed the threshold of significant impact. If it is determined that pollutant loadings exceed the threshold of significant impact, Program shall begin annual monitoring (per the above requirements) for a period of at least five (5) years, or until it is determined that the average annual pollutant loadings no longer exceed the threshold of significant impact, whichever is greater. This Program shall be reviewed and approved by the Wastewater Superintendent. After

initiation of this Program, the Wastewater Superintendent may alter the requirements of this condition to conform to City policies and practices regarding stormwater testing except that the frequency of testing shall not be reduced from the requirements stated in this condition. Developer shall arrange to have all costs of this Program permanently funded by owners of property within the project. Project CC&Rs shall have a backup provision to fund this program. (DS)

143. Prior to acceptance by the City of the public portion of the storm drain system, storm drain inlets shall be labeled "Don't dump - Drains to Ocean" in accordance with City standards. (DS)
144. Developer's engineer shall prepare detailed stormwater system calculations and plans with each phase of the tract. The design and sizing of all proposed stormwater improvements shall meet the needs of the ultimate build-out as well as the interim requirements of the proposed phase. The calculations and plans are subject to the approval of the Development Services Manager prior to issuance of a grading/site improvement permit or recordation of each phase of the final map. This report shall include a study of the existing underground tile lines within the project. Developer shall be responsible for removing, relocating, or otherwise altering any underground tile lines as directed by representatives of Drainage District Number 1 and the Development Services Manager. (DS)
145. Developer shall design surface drainage to eliminate any runoff over the seawall or rip-rap. All drainage, including single-family lot drainage, shall be directed towards the street or other suitable point of discharge. Storm drain lines shall enter the channel underwater or as otherwise approved by the Development Services Manager. (DS)
146. Developer shall dedicate a storm drain easement to the City for all storm drain lines determined by the City to be accepted by the City for maintenance that are not located within proposed right-of-way. Storm drain easements shall be a minimum of 15 feet wide. Wider easements may be required where the bottom of the storm drain is deeper than eight (8) feet or access is determined by the City to require the wider easement. (DS)
147. The onsite storm drain system within private streets shall be privately owned and maintained. Developer shall provide proof that maintenance responsibility for these facilities has been included in the project CC&Rs. (DS)
148. Ownership of the boat dock easement adjoining each single-family lot shall be permanently tied to the adjoining lot. Boat dock easements cannot be sold or transferred separately from the adjoining single-family lot. (DS)





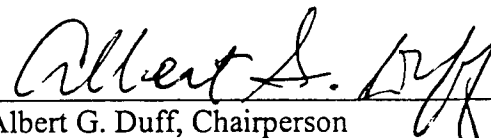
149. Developer shall submit detailed plans of boat dock construction for approval of the Development Services Manager and Operations Manager. The minimum design project depth under any portion of the floating docks or pontoons shall be minus four (-4) feet, Mean Lower Low Water (MLLW) datum. No floating dock, pontoon, or guide pile shall be located within eight (8) feet of any vertical seawall in conformance with City Standard Plates. Plans shall include setbacks from the seawall, riprap or other slope stabilization and methods of attachment to the shore. (DS)
150. Developer shall redesign the pedestrian access park areas to maximize the amount of pervious area. Drainage shall be redesigned to drain at approximately 2% away from the seawall/rip rap to a curb and gutter placed along the landward edge of the pedestrian path. The pedestrian path shall be relocated directly adjacent to the edge of the seawall or riprap (eliminate the proposed ribbon gutter). The proposed handrail shall be located directly behind the edge of the riprap or seawall. The handrail shall be designed for long-term exposure to the harbor environment. The Development Services Manager may approve alternate designs if the proposal is determined to provide superior drainage and aesthetic improvements. (DS)

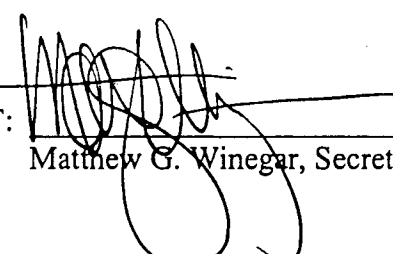
PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 5<sup>th</sup> day of December 2002, by the following vote:

AYES: Commissioners: Clarke, Burdullis, Navarro, Furr, Castillo, Liporada, Duff

NOES: Commissioners: None

ABSENT: Commissioners: None

  
Albert G. Duff, Chairperson

  
ATTEST: \_\_\_\_\_  
Matthew G. Winegar, Secretary

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RESOLUTION NO. 2002-107

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD RECOMMENDING TO THE CITY COUNCIL APPROVAL OF THE TENTATIVE SUBDIVISION MAP OF TRACT NO. 5266, LOCATED ON THE WEST SIDE OF VICTORIA AVENUE, BETWEEN WOOLEY ROAD AND HEMLOCK STREET, SUBJECT TO CERTAIN CONDITIONS. FILED BY OLY-MANDALAY BAY GENERAL PARTNERSHIP, 600 VICTORIA AVENUE, SUITE A-600, OXNARD, CA 93035.

WHEREAS, the Planning Commission of the City of Oxnard has considered the Tentative Subdivision Map of Tract No. 5266, filed by Oly-Mandalay Bay General Partnership, in accordance with Chapter 27 of the Oxnard City Code; and

WHEREAS, said tentative map was referred to various public utility companies, City departments and the Development Advisory Committee for recommendations; and

WHEREAS, the proposed subdivision, together with the provisions for its design and improvement, is consistent with the City's 2020 General Plan, Coastal Land Use Plan, and the Mandalay Bay Specific Plan adopted for the area; and

WHEREAS, the Planning Commission finds that sufficient water supply will be available during normal, single dry, and multiple dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, within the meaning of Government Code Section 66473.7; and

WHEREAS, a final environmental impact report has been certified for this project, and the Planning Commission has considered the final environmental impact report before making its recommendation herein; and

WHEREAS, the Planning Commission finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work, visit or live in this development in particular.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby recommends to the City Council approval of the Tentative Subdivision Map of Tract No. 5266, filed by Oly-Mandalay Bay General Partnership, subject to the following conditions:

Note: The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. *G-1*) while some are taken from environmental documents (e.g. *MND-S2*).

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DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic
PD	Police	B	Building Plan Checker
SC	Source Control	FD	Fire
PK	Parks	CE	Code Enforcement

### DEVELOPMENT SERVICES STANDARD CONDITIONS

1. Developer shall pay plan check and processing fees in effect at the time of construction plan submittal and shall pay development fees, encroachment permit fees, and other applicable fees in effect at the time the City issues building permits. (DS, DS-1)
2. Any parking lot structural section shall be designed by an engineer based on an analysis of the soils R-value and a Traffic Index approved by the City Engineer. The minimum structural section for parking lots is two inches of asphalt on four inches of base material. Developer shall show the proposed structural section on the site improvement plans. (DS, DS-2)
3. Developer shall have the site improvement plans prepared on standard Development Services Division mylars by a civil engineer licensed in the State of California. The plans shall incorporate recommendations from soil engineering and geology reports. Before the City issues a grading permit, the plans must be approved by the City Engineer and the original ink-on-mylar plans filed with the Development Services Division. (DS, DS-3)
4. Developer shall submit improvement plans and drainage calculations that demonstrate that storm drainage from the project property and all upstream areas will be safely conveyed to an approved drainage facility. The design and conveyance route shall be compatible with the City's Master Plan of Drainage and shall be approved by the City Engineer prior to approval of improvement plans. (DS, DS-4)
5. Developer shall protect building pads from inundation during a 100-year storm. (DS, DS-5)
6. Developer shall remove and replace all improvements that are damaged during construction. (DS, DS-6)
7. Each structure shall be served by separate sewer and water services. There shall be no interconnections between structures. (DS, DS-8)
8. Curb cut widths and design shall conform to City ordinances, standards, and policies in effect at the time the City issues an encroachment permit. (DS, DS-9)

9. Developer shall place existing overhead utility lines on and adjacent to the project underground in accordance with City ordinances in effect at the time the City issues a site improvement permit. Before issuance of a site improvement permit, Developer shall post security satisfactory to the Finance Director guaranteeing utility relocation. (DS, DS-13)
10. Developer shall enter into an agreement, approved as to form by the City Attorney, to install and construct all public improvements required by this permit and by the City Code and shall post security satisfactory to the Finance Director, guaranteeing the installation and construction of all required improvements within the time period specified in the agreement or any approved time extension. (DS, DS-14)
11. A civil engineer licensed in the State of California shall prepare the public improvement plans and documents for this project in accordance with City standards and shall submit all such plans to the City Engineer. Such plans and documents shall include, but not be limited to, grading, street, drainage, sewer, water and other appurtenant improvement plans; a master utility plan showing the layout and location of all on-site and off-site utility improvements that serve the project; construction cost estimates, soils reports, and all pertinent engineering design calculations. City will not accept an application for the final map or parcel map for the project or issue a grading, site improvement or building permit until all improvement plans have been approved by the City Engineer. (DS, DS-15)
12. Developer shall process permanent master planned improvements that are eligible for reimbursement in accordance with City policies, resolutions, and ordinances in effect at the time of subdivision map recordation or if there is no subdivision map, then at the time of public improvement plan approval. (DS, DS-17)
13. Developer agrees, as a condition of approval of this resolution, to indemnify, defend and hold harmless, at Developer's expense, City and its agents, officers and employees from and against any claim, action or proceeding commenced within the time period provided for in Government Code Section 66499.37, to attack, review, set aside, void or annul the approval of this resolution or to determine the reasonableness, legality or validity of any condition attached thereto. City shall promptly notify Developer of any such claim, action or proceeding of which City receives notice, and City will cooperate fully with Developer in the defense thereof. Developer shall reimburse City for any court costs and attorney's fees that City may be required to pay as a result of any such claim, action or proceeding. City may, in its sole discretion, participate in the defense of any such claim, action or proceeding, but such participation shall not relieve Developer of the obligations of this condition. Developer's acceptance of this resolution or commencement of construction or operations under this resolution shall be deemed to be acceptance of all conditions thereof. (DS, DS-18)

14. Developer shall provide all necessary easements for streets, highways, alleys, sidewalks, breezeways, parkways, landscaping, utilities, drainage facilities, and other improvements as required by the City. If such easements cannot be obtained from the property owner by negotiation, City may acquire them at the expense of Developer by exercise of the power of eminent domain. Developer shall bear all costs of eminent domain proceedings, including appraisal, acquisition, attorney's fees, and court costs. Before the City issues a site improvement permit, Developer shall dedicate all required easements to City. (DS, DS-19)
15. The conditions of this resolution shall prevail over all omissions, conflicting notations, specifications, dimensions, typical sections, and the like, that may or may not be shown on the improvement plans. (DS, DS-21)
16. Developer shall pay the cost of all inspections of on-site and off-site improvements. (DS, DS-22)
17. Developer shall be responsible for all project-related actions of Developer's employees, contractors, subcontractors, and agents until City accepts the improvements. (DS, DS-23)
18. Before beginning construction, Developer shall designate in writing an authorized agent who shall have complete authority to represent and to act for Developer. The authorized agent shall be present at the work site whenever work is in progress. Developer or the authorized agent shall make arrangements acceptable to the City for any emergency work. When City gives orders to the authorized agent to do work required for the convenience and safety of the general public because of inclement weather or any other cause, and the orders are not immediately acted upon by the authorized agent, City may do or have such work done by others at Developer's expense. (DS, DS-24)
19. Before approval of the subdivision map, Developer shall provide the City Engineer with written evidence from the Ventura County Clerk's Office that Developer has executed and filed with the Clerk all certificates, statements and securities required by Government Code Sections 66492 and 66493. (DS, DS-26)
20. "Standard Specifications for Public Works Construction," latest edition, and any modifications thereto by the City, and City of Oxnard Standard Land Development Specifications and all applicable City Standard Plans, shall be the project specifications, except as noted otherwise on the approved improvement plans. City reserves the right to upgrade, add to, or revise these specifications and plans and all other City ordinances, policies, and standards. If the improvements required of this project are not completed within 12 months from the date of the City's approval of the improvement plans, Developer shall comply with and conform to any and all upgraded, additional or revised specifications, plans, ordinances, policies and standards. (DS, DS-27)

21. Developer shall retain a Civil Engineer licensed in the State of California to ensure that the construction work conforms to the approved improvement plans and specifications and to provide certified "as-built" plans after project completion. Developer's submittal of the certified "as-built" plans is a condition of City's final acceptance of the project. (DS, DS-29)
22. All grading shall conform to City's grading ordinance and any recommendations of Developer's soils engineer that have been approved by the City Engineer. Developer shall conform to all applicable notes specified on the site improvement/grading plan cover sheet and grading permit. (DS, DS-30)
23. In order to mitigate any potential flooding or erosion affecting adjacent properties and public rights-of-way, Developer shall construct required drainage facilities concurrently with the rough grading operations, or with prior approval of the City Engineer, provide interim drainage improvements on a temporary basis. (DS, DS-31)
24. Storm drain, sewer and water facilities shall conform to applicable City Master Plans. Developer shall prepare plans for these facilities in accordance with City's engineering design criteria in effect at the time of improvement plan submittal. Developer shall submit plans with pertinent engineering analyses and design calculations for review and approval by the City Engineer prior to issuance of a site improvement permit. (DS, DS-34)
25. Each lot shall drain into a street, alley, or approved drain so that there will be no undrained depressions. (DS, DS-35)
26. Before City issues site improvement permits, Developer shall provide to the City Engineer easements or written consents from all affected landowners for any diversion of historical flows or change in drainage conditions caused by the project, as evidence that such landowners accept any additional water flowing over their property. (DS, DS-36)
27. Developer shall dispose of sewage and solid waste from the project by the City's wastewater and solid waste systems. (DS, DS-38)
28. By title sheet dedication at the time of filing the subdivision map, Developer shall dedicate all water rights for the project property to the City. (DS, DS-39)
29. Developer shall install water mains, fire hydrants, and water services in conformance with City Standard Plans and specifications as directed by the City Engineer. (DS, DS-41)
30. Developer shall install adequately sized water services and meters to each lot or unit in accordance with City standards in effect at the time City issues building permits. There shall be no interconnections between structures. (DS, DS-42)

31. Before the City issues building permits, Developer shall present to the City Engineer a "Proof of Payment - Authorization for Building Permits" form issued by the Calleguas Municipal Water District. (DS, DS-44)
32. Developer shall install City approved backflow prevention devices for water connections if so ordered by the City Engineer. (DS, DS-45)
33. Before designing the water system for the project, Developer shall have a certified fire flow test performed to determine existing water pressure and flow characteristics. The water system shall be designed to allow for a 10 psi drop in the static water pressure measured during the fire flow test. After construction and before the City issues a certificate of occupancy, the City Engineer may require a second test. Before performing the tests, Developer shall obtain permits from the City Engineer. Developer shall have all tests certified by a mechanical, civil, or fire protection engineer and provide written results of all tests to the City Engineer. (FD, DS, DS-47)
34. Developer shall dedicate and improve to City standards all sidewalks, parkways, streets, alleys, and street appurtenances. The City will name all streets. (DS, DS-49)
35. Street and road improvements shall conform to City standards and policies. Improvements shall include upgrading of existing pavement along the project frontage to City standards by removing and replacing or overlaying, as directed by the City Engineer. (DS, DS-51)
36. Developer shall improve all streets, alleys, sidewalks, curbs, and gutters adjacent to the project in accordance with City standards, as necessary to provide safe vertical and horizontal transitions. (DS, DS-52)
37. Developer shall provide soils reports, "R" value tests, and compaction tests for all streets. Determination of the actual structural sections shall be based on the City's design procedure, applying the appropriate traffic index specified in the City standards. (DS, DS-53)
38. Developer shall install all water, gas, sewer, storm drain, electrical, cable television, and telephone lines before any paving is placed. (DS, DS-54)
39. Developer shall temporarily protect the stub ends of all streets planned for future continuation with warning barricades, redwood headers, and berms as directed by the City Engineer. (DS, DS-55)
40. Before release of the subdivision map for recordation, Developer shall provide the City Engineer with a 100-scale base map for addressing purposes. The map shall be drawn on 18-inch by 24-inch mylar and shall show the standard address map title block, north



arrow, street names, tract number, phase boundary and lot numbers. The City will assign all addresses. (DS, DS-56)

41. Before release of the subdivision map for recordation, Developer shall post a bond or other security satisfactory to the City Attorney, guaranteeing that all monuments will be set as required by the Government Code and the City Code. (DS, DS-57)
42. Developer shall dedicate to City and improve streets abutting a park site to their full width in accordance with City standards. (DS, DS-58)
43. Developer shall submit a landscape irrigation plan prepared by a licensed professional, showing proper water meter size, backflow prevention devices, and cross-connection control. (DS, DS-59)
44. As part of the master utility plans, Developer shall submit a street lighting plan. On City's approval of the plan, Developer shall install street lights in accordance with the plan. (DS, DS-60)
45. As a part of the site improvement plans, Developer shall submit a master utility plan that shows the relative location of all public and private utilities (including gas, electric, street lights, telephone and cable television lines) in accordance with City standard plans. (DS, DS-61)
46. Before City approves any development improvement plans, Developer shall obtain approval signatures from Southern California Edison Company, Southern California Gas Company, General Telephone Company, and all cable television companies. (DS, DS-63)
47. Developer shall be responsible for and bear the cost of the replacement of all existing survey monumentation (e.g., property corners) disturbed or destroyed during construction, and shall file appropriate records with the Ventura County Surveyor's Office. (DS, DS-64)
48. Developer shall provide a 105-gallon refuse container for each project property. Developer may not store refuse containers in the public right-of-way. (DS, DS-67)
49. Developer shall provide adequate vehicle sight distance as specified by Caltrans specifications at all driveways and intersections. (TR, DS-71)
50. Developer shall install bike racks in accordance with City standards at locations approved by City Traffic Engineer. (TR, DS-73)
51. Before issuance of building permits, all traffic signal, pavement marking and sign plans shall be prepared by a registered California traffic engineer and approved by the City Engineer prior to issuance of a grading, site improvement or a building permit. (TR, DS-74)

52. Before the City issues encroachment permits, Developer's shall obtain City's approval of a contractor qualified to install traffic signals, pavement markings and signs. (TR, DS-76)

### STORMWATER QUALITY CONDITIONS

53. Developer shall clean on-site storm drains at least twice a year; once immediately before the first of October (the beginning of the rainy season) and once in January. The City Engineer may require additional cleanings. Developer shall inspect, and if necessary clean, all on-site post-construction stormwater quality best management practices a minimum of twice a year and after all major storm events. (DS, DS-83)
54. Developer shall maintain parking lots, private street, and public areas free of litter and debris. Developer shall sweep sidewalks, drive aisles, private streets, and parking lots regularly to prevent the accumulation of litter and debris. When swept or cleaned, debris must be trapped and collected to prevent entry into the storm drain system. Developer may not discharge any cleaning agent into the storm drain system. (DS, DS-84)

### DEVELOPMENT SERVICES SPECIAL CONDITIONS

55. Before City issues a site improvement permit, Developer shall obtain the written approval of Oxnard Drainage District for all alterations to District facilities. (DS, DS-100)
56. Prior to issuance of a site improvement permit, Developer shall provide to the Development Services Division a CD containing digital copies of the final subdivision map, address map, and civil improvements drawings in DWG format. Prior to improvement bond release, Developer shall provide an updated CD containing all changes that occur during construction. (DS, DS-101)
57. Developer shall pay to the County of Ventura a road mitigation fee in accordance with the "Reciprocal Traffic Mitigation Agreement" approved by the City and the County of Ventura on February 2, 1993. Proof of payment shall be provided to the Development Services Division prior to issuance of a building permit. (DS, DS-105)
58. Developer shall provide City with an assessment of the projected water demand associated with the project in accordance with subsection (d) of Water Code section 10910. (DS, DS-106) (Applicable to projects that exceed 500 residences, a business employing more than 1000 persons or having more than 250,000 square feet of floor space, or a factory employing more than 1,000 persons, occupying more than 40 acres or having more than 650,000 square feet of floor space. See Water Code section 10913). (DS, DS-106)

59. Developer shall ensure that the project property landowner and Developer take all action necessary to transfer to City all water rights appurtenant to or associated with the project property and all Fox Canyon Groundwater Management Agency (GMA) groundwater pumping allocation (historical and baseline and credits accrued thereon) associated with groundwater extraction facilities used to irrigate the project property. Action necessary to transfer water rights and the GMA allocation shall include, but not be limited to, obtaining the necessary written approvals of the owners/operators of the groundwater extraction facilities and cooperating fully with City in obtaining written approval from the GMA for transfer of the GMA allocation. The transfer of water rights and the GMA allocation shall be completed and approved by the GMA to the satisfaction of City before City issues a site improvement permit to Developer. (DS, DS-108)

## DEVELOPMENT SERVICES SPECIAL CONDITIONS

### WATER CONDITIONS:

60. Developer shall ensure that the project property landowner(s) and Developer take all action necessary to transfer to City all water rights appurtenant to or associated with the project property and all Fox Canyon Groundwater Management Agency (GMA) groundwater pumping allocation (historical and baseline and credits accrued thereon) associated with groundwater extraction facilities used to irrigate the project property or any previously developed property irrigated by water from a well located on this property. Action necessary to transfer water rights and the GMA allocation shall include, but not be limited to, obtaining the necessary written approvals of the owners/operators of the groundwater extraction facilities and cooperating fully with City in obtaining written approval from the GMA for transfer of the GMA allocation. The transfer of water rights and the GMA allocation shall be completed and approved by the GMA to the satisfaction of City prior to recordation of each phase of the final map. (DS)
61. Developer shall provide proof of permitted well destruction for all water wells within the project construction limits. Water well destruction shall be in accordance with Development Services Program's requirements. (DS)
62. Developer's engineer shall provide detailed water system calculations and plans for this project that demonstrate the proposed water system meets City standards. The design and sizing of all proposed water improvements shall meet the needs of the ultimate specific plan build-out as well as the interim requirements of the proposed phases. The onsite system shall be designed to provide a looped system capable of meeting Oxnard fire flow requirements. The water system shown on the tentative map is schematic and does not represent the final location and arrangement of the water system. The required calculations and plans are subject to the approval of the Development Services Manager prior to the issuance of a site improvement/grading permit or recordation of each phase of the final map. (DS)

63. Developer shall located water system improvements within paved areas of streets and parking lots wherever possible. The final location of improvements is subject to the approval of the Development Services Manager. (DS)
64. Developer shall provide onsite fire hydrants such that all points of all structures are located within the City required distance of a fire hydrant, or as otherwise approved by the Fire Department. Fire hydrant line improvements shall be shown on the civil engineer's improvement plans prior to issuance of a site improvement/grading permit. Developer shall provide the City with an easement over the waterline using standard City format. (DS)
65. Developer shall install water meters with remote reading capability as specified by the City's Water Superintendent. (DS)
66. Developer shall dedicate a water easement to the City for all water lines determined by the City to be accepted for maintenance that are not located within proposed right-of-way. Water easements shall be a minimum of 15 feet wide. Wider easements may be required where the water line is deeper than eight (8) feet or access is determined by the City to require the wider easement. (DS)
67. Developer shall provide a water study to determine if the proposed second water line in Hemlock Avenue is required to provide sufficient capacity or to provide a looped system. If it is determined that this second line is required, it shall not be located within the parkway. (DS)

**WASTEWATER CONDITIONS:**

68. Developer shall coordinate requests for final map approvals with the City's upgrade of the downstream trunk sewer capacity. Sufficient capacity to serve a proposed phase of the map shall exist (or other arrangements acceptable to the Development Services Manager) prior to recordation of that phase of the tentative map. (DS)
69. Developer's engineer shall provide detailed wastewater system calculations (including lift station design) and plans with each phase of the proposed tract. The design and sizing of all proposed wastewater improvements for that phase shall meet the needs of the ultimate specific plan build-out as well as the interim requirements of the proposed phase. The required calculations and plans are subject to the approval of the Development Services Manager prior to the issuance of a site improvement/grading permit or recordation of each phase of the final map. (DS)
70. Developer shall dedicate a sewer easement to the City for all sewer lines determined by the City to be accepted for maintenance that are not located within proposed right-of-way. Sewer easements shall be a minimum of 15 feet wide. Wider easements may be required

where the sewer line is deeper than eight (8) feet or access is determined by the City to require the wider easement. (DS)

71. The onsite wastewater system within private streets shall be privately owned and maintained. Developer shall provide proof that maintenance responsibility for these facilities has been included in the project CC&Rs. (DS)

**STORMWATER QUALITY CONDITIONS:**

72. Developer shall comply with all National Pollution Discharge Elimination System ("NPDES") permit Best Management Practice requirements in effect at the time of grading permit and site improvement permit issuance. (DS)
73. Developer shall design the storm drain system serving this subdivision to minimize degradation of stormwater quality. Using Best Management Practices (BMPs) as discussed in the project environmental impact report, Developer shall intercept and effectively prevent pollutants from discharging into the City storm drain system or project channels. The BMPs constructed for this project shall be designed and constructed in accordance with the requirements of the Ventura Countywide Municipal Storm Water NPDES Permit (Board Order No. 00-108; NPDES permit number CAS004002) issued to the City by the California Water Quality Control Board. The proposed stormwater quality design shall be approved by the Development Services Manager prior to issuance of a site improvement permit. (DS)
74. Prior to the issuance of a site improvement/grading permit and/or commencement of any clearing, grading or excavation, the Developer/Owner shall provide verification of submittal of a Notice of Intent ("NOI") to the California State Water Resources Control Board, Storm Water Permit Unit in accordance with the NPDES Construction General Permit (No. CAS000002): Waste Discharge Requirements for Discharges of Storm water Runoff Associated with Construction Activities. The Developer/Owner shall comply with all additional requirements of this General Permit including preparation of a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP shall identify potential pollutant sources that may affect the quality of discharges to storm water and shall include the design and placement of recommended BMPs to effectively prohibit the pollutants from leaving the construction site. Verification shall consist of providing City with a copy of the letter from the State assigning a permit identification number to the NOI. A copy of the SWPPP and the NOI shall be maintained on the site and made available for City or designated representative to review upon request. (DS)
75. Developer shall consult with the City's stormwater maintenance division prior to design of long term post-construction BMPs that will be subject to maintenance by City forces. NPDES devices subject to periodic cleaning by City forces shall be located first for efficiency of pollutant removal, and then for ease of access. Final design, location and

type of post-construction BMPs are subject to approval of the Development Services Manager. (DS)

76. Developer shall submit a National Pollutant Discharge Elimination System (NPDES) Best Management Practices Operations and Maintenance Program ("the Program") for proposed long-term post-construction stormwater quality devices. The Program shall specify maintenance requirements, responsible parties, anticipated costs (broken into labor, equipment, supplies, etc.) and other pertinent information regarding continued long-term maintenance of all proposed post-construction stormwater quality devices. The Program shall be reviewed and approved by the Wastewater Superintendent. Developer shall arrange to have all costs of this program perpetually funded by owners of property within the project. Developer shall be responsible for the maintenance and operation of all stormwater quality devices until the City or some other qualified entity (as approved by the Development Services Manager) accepts them for maintenance. Upon request by the City, Developer (or qualified entity after transfer of maintenance responsibility) shall provide written proof of ongoing stormwater quality device maintenance operations. (DS)
77. Developer shall prepare and implement a stormwater quality monitoring program ("Program") to evaluate the performance of BMPs within the project. The Program shall specify the pollutants of concern, reporting frequency, monitoring station locations, anticipated pollutant concentrations, thresholds of significant impact, and analytical approach for determining BMP effectiveness. The Program shall also establish facility management protocol in the event that discharge concentrations exceed the threshold of significant impact. The monitoring shall be conducted annually for the first five (5) years following commencement of development and shall occur during the first significant runoff-producing storm event of each month within the rainy season. Following this initial monitoring period, monitoring shall be conducted at no greater than five- (5) year intervals during the first significant storm event of the rainy season, provided average annual pollutant loadings are determined not to exceed the threshold of significant impact. If it is determined that pollutant loadings exceed the threshold of significant impact, Program shall begin annual monitoring (per the above requirements) for a period of at least five (5) years, or until it is determined that the average annual pollutant loadings no longer exceed the threshold of significant impact, whichever is greater. This Program shall be reviewed and approved by the Wastewater Superintendent. After initiation of this Program, the Wastewater Superintendent may alter the requirements of this condition to conform to City policies and practices regarding stormwater testing except that the frequency of testing shall not be reduced from the requirements stated in this condition. Developer shall arrange to have all costs of this Program permanently funded by owners of property within the project. Project CC&Rs shall have a backup provision to fund this program. (DS)
77. Prior to acceptance by the City of the public portion of the storm drain system, storm drain inlets shall be labeled "Don't dump - Drains to Ocean" in accordance with City standards. (DS)

**STORM DRAIN CONDITIONS:**

78. Developer's engineer shall prepare detailed stormwater system calculations and plans with each phase of the tract. The design and sizing of all proposed stormwater improvements shall meet the needs of the ultimate build-out as well as the interim requirements of the proposed phase. The calculations and plans are subject to the approval of the Development Services Manager prior to issuance of a grading/site improvement permit or recordation of each phase of the final map. This report shall include a study of the existing underground tile lines within the project. Developer shall be responsible for removing, relocating, or otherwise altering any underground tile lines as directed by representatives of Drainage District Number 1 and the Development Services Manager. (DS)
79. Developer shall design surface drainage to eliminate any runoff over the seawall or rip-rap. All drainage, including single-family lot drainage, shall be directed towards the street or other suitable point of discharge. Storm drain lines shall enter the channel underwater or as otherwise approved by the Development Services Manager. (DS)
80. Developer shall dedicate a storm drain easement to the City for all storm drain lines determined by the City to be accepted by the City for maintenance that are not located within proposed right-of-way. Storm drain easements shall be a minimum of 15 feet wide. Wider easements may be required where the bottom of the storm drain is deeper than eight (8) feet or access is determined by the City to require the wider easement. (DS)
81. The onsite storm drain system within private streets shall be privately owned and maintained. Developer shall provide proof that maintenance responsibility for these facilities has been included in the project CC&Rs. (DS)

**STREET CONDITIONS:**

82. Developer shall fully improve the Wooley Road frontage of the project with the first phase of improvements. (DS)
83. Developer shall improve Victoria Avenue along the project frontage with the first phase of construction. These improvements shall include, but not necessarily be limited to, median hardscape, median landscaping, median irrigation, asphalt, and curb. Improvements west of the westerly curb line (including landscaping and permanent sidewalk) may be phased to coincide with phasing of the onsite improvements. (DS)
84. Developer shall completely remove all improvements (both above and below ground) in Pearl Avenue between Hemlock Street and the proposed "I" Street traffic circle unless otherwise approved by the Development Services Manager. Developer shall be



- responsible for design and construction of replacement hardscape, landscaping, irrigation, sidewalks entry and exit gates, etc. within the portion of Pearl Street that is privately owned. Developer shall obtain the approval of the owners of the private portion of Pearl Street (Harbour Island Condominium Association) for all improvements within their property. Pearl Avenue removal shall be included in phase 8 improvement plans but shall not be started until "I" Street has been constructed and is open for traffic. (DS)
85. All proposed streets, roads, and lanes within this project, except "I" street, shall be privately owned and maintained. Developer shall provide proof that maintenance responsibility for these facilities has been included in the project CC&Rs. (DS)
86. Developer shall design and construct all project turning radii to accommodate City standard turning movements for fire and refuse trucks. Final design of all turning radii is subject to the approval of the Development Services Manager and Fire Marshall. (DS)
87. Prior to approval to construct any "lane" within this project, Developer shall provide a detail showing that "lane" design is able to accommodate City standard turning radii for fire and refuse trucks. Final design of "lanes" is subject to the review and approval of the Development Services Manager and Fire Marshall. (DS)
88. Developer shall meet with South coast Area Transit ("SCAT") and determine preliminary locations for bus stops, bus shelters, and associated infrastructure anticipated for the project. Prior to each phased final map for the project, Developer shall provide a final determination from SCAT regarding the necessity for bus stops within that phase. Developer shall construct all bus pullouts, stops, shelters and associated facilities within each phase as determined necessary by the Development Services Manager. (DS)
89. Prior to submittal of Wooley Road or Victoria Avenue street improvement plans for review, Developer shall submit a preliminary geometric design showing curbs, median and striping for preliminary approval. A Registered Traffic Engineer approved by City shall prepare the preliminary geometric plans. (TR)
90. Developer shall install new traffic signals at Victoria Avenue & Leeward Way and also at Victoria Avenue & Ketch Avenue. Developer shall modify the existing signals at Victoria Avenue & Hemlock Street and Victoria Avenue & Wooley Road including the addition of left turn arrows for Wooley Road. Developer shall install traffic signal interconnect conduit with cable on Victoria Avenue from Wooley Road to Hemlock Street and conduit only along the length of the Wooley Road frontage. Improvement to master planned primary arterials are reimbursable in accordance with City ordinances and policies. (TR)
91. No new curb cuts shall be permitted along the extension of Harbour Island Lane, unless approved by the Planning Commission at a legally noticed public hearing. In addition to the standard legal noticing requirements, notice of such proposal shall be provided to all

property owners and residents of the south residential island, including the Harbour Island condominiums. (PL/TR)

92. Developer shall widen the new Leeward Avenue roadway on the south side of the median to accommodate two traffic lanes eastbound between the roundabout and Victoria Avenue. (TR)
93. Developer shall widen the new Ketch Avenue south roadway for 400 feet on the approach to Victoria Avenue to accommodate two eastbound traffic lanes. (TR)
94. Developer shall modify the Victoria Avenue median to lengthen the southbound left turn pocket at Hemlock Street as directed by the City Traffic Engineer. Improvement to master planned primary arterials are reimbursable in accordance with City ordinances and policies. (TR)
95. Developer shall widen the west side of Victoria Avenue from a point six hundred (600) feet north of Fifth Street to Hemlock Street to provide three (3) through lanes and a bike lane for southbound traffic. Developer shall also construct a separate right turn lane for southbound Victoria Avenue at Wooley Road. Developer shall modify the median in Victoria Avenue (reduce width by two (2) feet) from a point four hundred (400) feet south of Hemlock Street to a point two hundred (200) feet north of Wooley Road and re-stripe the traffic lanes on Victoria Avenue to provide three (3) through lanes northbound from Hemlock Street to Fifth Street. Traffic lanes shall be eleven (11) feet wide and bike lanes shall be a minimum of five (5) feet wide. Improvement to master planned primary arterials are reimbursable in accordance with City ordinances and policies. Turn pockets and other improvements constructed to serve private development are not reimbursable. (TR)

#### **CHANNEL CONSTRUCTION CONDITIONS:**

96. Developer shall employ a qualified professional, experienced in the field of marine engineering, to prepare a detailed design and construction plan for the seawalls, channels, and rip-rap slope protection structures. This report shall include a detailed geotechnical investigation of the site including test borings along the proposed seawall and riprap slope alignment to assess potential for liquefaction and bank stability. These structures shall be designed to resist the potential seismic effects of lurching, lateral spreading, subsidence, and waves produced by seiche, including the ability to withstand relatively rapid, eight-to-ten foot fluctuations in water level. Proposed seawall and riprap structures shall extend deep enough and be constructed solid enough to prevent shoreline undercutting and to eliminate saturated soil on the land side from being transported under the bulkheads. The report shall recommend a minimum building setback from the seawall and riprap slopes to provide for future maintenance. At Developer's expense, City shall have the seawall, riprap, and appurtenant structures reviewed and inspected by a City designated qualified professional, experienced in the field of marine engineering.

- Developer shall deposit funds sufficient to cover the costs associated with retaining the professional review when requested by the Development Services Manager. (DS)
97. Developer shall submit an engineering study which demonstrates that loss of backfill behind the seawall will not occur as a result of soil piping underneath the foundation or leakage through weep holes or construction joints. The study shall be approved by the Development Services Manager prior to plan approval. (DS)
98. Developer shall provide an easement to the City for slope and seawall maintenance as determined necessary by the Development Services Manager. Construction of decks, ramps, or other improvements within the seawall maintenance easement or within the channel right-of-way may be allowed subject to approval of the Development Services Manager and recordation of an agreement requiring removal of the structure at the owners expense in the event removal becomes necessary for inspection, maintenance, repair, or replacement. (DS)
99. Developer shall design and construct a safety barrier along the edge of the seawall wherever it is near or adjoining a pedestrian path. Final approval of the safety barrier design is subject to the approval of the Development Services Manager for safety concerns and the Planning and Environmental Services Manager for aesthetic concerns. (DS)
100. No lot owner shall be allowed to construct any deck, fence, or other structure which could impose any lateral forces on the seawall. Developer's engineer shall provide City with a typical deck to seawall connection detail and determine the maximum allowable loads to be imposed on the seawall by decks, ramps, or other structures. (DS)
101. Ownership of the boat dock easement adjoining each single-family lot shall be permanently tied to the adjoining lot. Boat dock easements cannot be sold or transferred separately from the adjoining single-family lot. (DS)
102. Developer's engineer shall be responsible for preparing all maps, legal descriptions, and other documents required for the formation of all maintenance districts. (DS)
103. Developer shall dedicate to the City, in fee simple, all waterways to be constructed within the project. Dedication shall extend from face of seawall to face of seawall and shall include all rip rap slopes. (DS)
104. Construction of waterways, seawalls, stormwater quality devices, rip-rap, landscaping, street lighting and other improvements within this project will necessitate the formation of a City maintenance assessment district(s) whereby the expenses of maintenance and operation of the waterways, seawalls, stormwater quality devices, rip-rap, landscaping street lighting and other improvements will be assessed upon the real property within the project. Developer agrees not to protest or oppose the formation or extent of such a

district(s). Developer shall enter into an agreement with the City, in a form to be approved by the City Attorney, establishing this condition as a covenant running with the land, which will be recorded. Developer shall insert such covenant, in a form approved by the City Attorney, in each deed of real property in the project granted by Developer. Developer shall sell or grant no property in the project until after maintenance assessment district(s) has been formed and the property has been annexed into the maintenance assessment district(s). Sale of phases of the project to merchant builders may be approved with the submittal of documentation acceptable to the Development Services Manager guaranteeing formation of the district. (DS)

105. Developer shall submit detailed plans of boat dock construction for approval of the Development Services Manager and Operations Manager. The minimum design project depth under any portion of the floating docks or pontoons shall be minus four (-4) feet, Mean Lower Low Water (MLLW) datum. No floating dock, pontoon, or guide pile shall be located within eight (8) feet of any vertical seawall in conformance with City Standard Plates. Plans shall include setbacks from the seawall, riprap or other slope stabilization and methods of attachment to the shore. (DS)
106. Developer shall provide street names on the seawalls. The design, method of attachment and location of the signs shall be similar to those included in Tract 5196. Final design is subject to approval of the Development Services Manager and Street Operations Manager. (DS)

**PEDESTRIAN FACILITIES CONDITIONS:**

107. Developer shall construct concrete pedestrian paths in lieu of striping in locations where pedestrian paths crosses asphalt parking lots. (DS)
108. Developer shall not construct sidewalks that bisect landscape finger planters within parking lots. Parking lot sidewalks that are currently shown bisecting finger planters shall be redesigned such that a minimum of eight feet of landscaping is provided on one side of the sidewalk. (DS)
109. Developer shall not construct any slope within the proposed pedestrian access parks or other public parks with a slope that is steeper than 3' (Horizontal) to 1' (Vertical). Developer shall provide a minimum 2-foot level area at the top and bottom of all proposed slopes exceeding 5' (Horizontal) to 1' (Vertical). (DS)
110. Developer shall redesign the pedestrian access park areas to maximize the amount of pervious area. Drainage shall be redesigned to drain at approximately 2% away from the seawall/rip rap to a curb and gutter placed along the landward edge of the pedestrian path. The pedestrian path shall be relocated directly adjacent to the edge of the seawall or riprap (eliminate the proposed ribbon gutter). The proposed handrail shall be located directly behind the edge of the riprap or seawall. The handrail shall be designed for long-

term exposure to the harbor environment. The Development Services Manager may approve alternate designs if the proposal is determined to provide superior drainage and aesthetic improvements. (DS)

111. Developer shall provide a minimum 5-foot (6-foot if adjacent to the curb) wide pedestrian path along the west side of Victoria Avenue with the first phase of construction. The initial path may be a temporary asphalt path with the permanent sidewalk phased to coincide with onsite improvements. Temporary improvements are not subject to reimbursement. (DS)
112. Developer shall construct a minimum five-foot wide (six-feet if adjacent to the curb) sidewalk along the northwesterly side of easterly extension of "I" Street that connects Victoria Avenue to the proposed roundabout south of Lot 295. (DS)
113. Developer shall review and revise the site plan to provide convenient practical pedestrian access throughout the project. Detailed pedestrian access review shall occur with submittal of each phase of the construction improvement plans. Requirements include, but are not limited to, disabled access ramps, concrete pedestrian paths between adjoining buildings, and review of convenient pedestrian access to public facilities. Final design of pedestrian access is subject to the approval of the Development Services Manager. (DS)
114. Developer shall design and construct the pedestrian path fronting along riprap and seawalls to provide sufficient structural integrity for use by fire engines and vector trucks within the areas that are shown on the site plan as emergency access and maintenance lanes. Final designation of the location of the emergency access and maintenance lanes is subject to review by the Development Services Manager. (DS)

***MISCELLANEOUS CONDITIONS:***

115. Developer shall not locate utilities (sewer, water, or storm drain) under proposed landscape areas of traffic circles. Final layout of utilities is subject to the approval of the Development Services Manager. (DS)
116. Developer shall dedicate to the City an access easement for refuse and emergency vehicles over all private streets within the project. Access easement shall be dedicated on each phase of the final map. (DS)
117. Developer shall place all existing overhead utility lines (except 66KV lines) on or adjacent to this development underground in accordance with requirements of The Code of the City of Oxnard in effect at the time of tentative map approval. Prior to recordation of a final map, sub-divider shall post security satisfactory to the City guaranteeing placement of utility lines underground. (DS)

118. Developer shall create a grade difference between Wooley Road and the agricultural fields to the north in accordance with the specific plan requirements. This grade difference shall be clearly depicted on the civil improvement plans and shall be approved by the Development Services Manager. (DS)
119. Developer shall employ a qualified professional, specializing in the design of roundabouts, to review all proposed roundabouts (public or private) prior to submittal for City plan check. Developer shall submit the findings of the qualified professional with the first plan check submittal containing a roundabout design. Final design of roundabouts is subject to the approval of the Traffic Engineer. (DS)
120. Notwithstanding any other conditions contained in this resolution, with prior written approval of the Development Services Manager. Developer may obtain a grading permit for agricultural soil transfer and/or preliminary site grading prior to recordation of a final map or approval of complete infrastructure improvement plans. (DS)
121. A civil engineer, licensed in the State of California, shall prepare the public improvement plans and documents for this project in accordance with City standards, except as approved in the tentative map exhibit, and shall submit all such plans to the City Engineer. Such plans and documents shall include, but not be limited to, grading, street, drainage, sewer, water and other appurtenant improvement plans; a master utility plan showing the layout and location of all on-site and off-site utility improvements that serve the project; construction cost estimates, soils reports, and all pertinent engineering design calculations. City will not accept an application for a final map for the project or issue a grading, site improvement, or building permit until the City Engineer has approved all improvement plans. (DS)
122. Developer shall list all grading or air quality related environmental mitigations measures on the grading plan cover sheet. Developer shall cause all project contractors to comply with these mitigations during all phases of construction. (DS)
123. All proposed utilities shall be located in the street in accordance with City Standard utility locations unless alternative locations are specifically approved by the Development Services Manager. (DS)
124. Developer shall list the requirements of Supplemental Environmental Impact Report for Tract 5266 mitigation measures 4.7-1 through 4.7-18 on the cover sheet of the grading plans prior to issuance of a grading permit. (DS)
125. Before City issues a site improvement permit, Developer shall provide to the Development Services Division a CD containing digital copies of the final subdivision map, address map, and civil improvements drawings in DWG format. Prior to improvement bond release, Developer shall provide an updated disk containing all changes that occur during construction. (DS)

126. In conjunction with the United Water Conservation District ("UWCD"), the County of Ventura and the City of Oxnard, Developer shall prepare an inventory of know wells within the proposed project boundaries along with an action plan for each of these wells. Developer shall properly destroy wells that will no longer be used. Destruction shall occur during the initial grading phase of this project. Developer shall obtain a permit for well destruction from the City of Oxnard prior to beginning well destruction. (DS)
127. Developer shall contact the United Water Conservation District ("UWCD") and discuss transfer of ownership of the existing groundwater monitoring wells ("the Wells") within the project site to UWCD. Developer shall transfer ownership of the Wells to UWCD if UWCD is willing and able to accept ownership provided that maintaining the monitoring wells will not interfere with development of the project as determined by the Development Services Manager. Developer shall provide written verification from UWCD of the resolution of this condition. (DS)

**PHASING CONDITIONS:**

128. Developer shall provide two (2) points of vehicular access (one (1) may be temporary) to all portions of the project at all times. One of the required points of access may be restricted to emergency vehicles. (DS)
129. Developer may submit phased improvement plans corresponding to phased final maps. Extent of improvements with each phase is subject to the review and approval of the Development Services Manager. Temporary improvements such as vehicle turnarounds, barricades, waterline blow-offs, or other improvements may be required as deemed necessary by the Development Services Manager. (DS)

**PLANNING SPECIAL CONDITIONS**

130. The City and Developer have entered into a Memorandum of Understanding (MOU) with the County of Ventura, which will resolve certain County concerns regarding the impacts of the project on the Channel Islands Harbor. The MOU and Development Agreement specifically address the creation of an ongoing water quality monitoring program and mitigation measures related to water quality. Developer and City have negotiated a Development Agreement, which will help implement the terms of the Memorandum of Understanding, and Developer shall execute that certain Development Agreement. The MOU and Development Agreement shall be implemented as a condition of approval of the project. (CA)
131. The life of this map is regulated by that certain development agreement which has been drafted by and between the City and the Developer. This map shall not be effective until such time as the City and the Developer enter into such development agreement. (CA, PL)

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132. Developer shall submit proposed street names in accordance with City Council Resolution No. 9311. All streets shall be named, consistent with the street naming guidelines, prior to City Council approval of the tentative map for Tract No. 5266. (PL)
133. Developer shall construct a six-foot wide (including top of curb) sidewalk along Lane "F" on the southern residential island. Such sidewalk may be located adjacent to the curb, if necessary. The final Lane "F" configuration shall be designed to accommodate refuse and fire truck turning radii at all intersections. Prior to approval of the final map, Developer shall submit the final streetscape design for Lane "F" for review and approval by the Development Services Manager and the Planning and Environmental Services Manager. (PL/DS)

PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 5<sup>th</sup> day of December 2002, by the following vote:

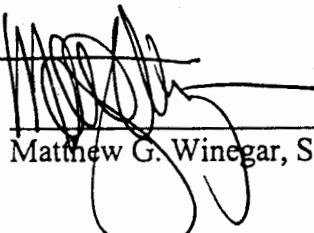
AYES: Commissioners: Clarke, Burdullis, Navarro, Furr, Castillo, Liporada, Duff

NOES: Commissioners: None

ABSENT: Commissioners: None

  
Albert G. Duff, Chairperson

ATTEST:

  
Matthew G. Winegar, Secretary

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RESOLUTION NO. 2002-108

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD RECOMMENDING TO THE CITY COUNCIL APPROVAL OF THE DEVELOPMENT AGREEMENT FOR COASTAL DEVELOPMENT PERMIT NO. 01-5-93 AND TENTATIVE SUBDIVISION MAP FOR TRACT NO. 5266 (PZ 00-5-85) TO ALLOW DEVELOPMENT OF THE SEABRIDGE PROJECT. FILED BY OLY-MANDALAY BAY GENERAL PARTNERSHIP, 600 VICTORIA AVENUE, SUITE A-600, OXNARD, CA 93035.

WHEREAS, a final environmental impact report has been certified for this project, and the Planning Commission has considered the final environmental impact report before making its recommendation herein; and

WHEREAS, the Planning Commission of the City of Oxnard has held a public hearing concerning the Development Agreement for Coastal Development Permit No. 01-5-93 and tentative subdivision map for Tract No. 5266 (PZ 00-5-85), which is known as the Seabridge project, filed by Oly-Mandalay Bay General Partnership; and

WHEREAS, the Planning Commission does find that the content of the Development Agreement is consistent with the *2020 General Plan*, City Council Resolution No. 8139, and California Government Code Section 65864 et seq.; and

WHEREAS, the Planning Commission finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this permit as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work, visit or live in this development in particular.

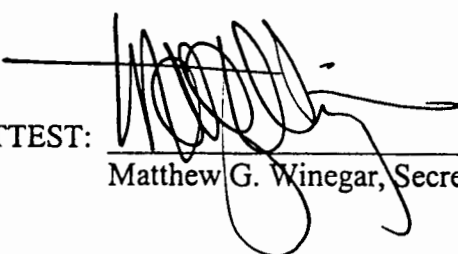
NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard recommends to the City Council approval of the Development Agreement for the Seabridge project, as contained in Exhibit A.

AYES: Commissioners: Clarke, Burdullis, Navarro, Furr, Castillo, Liporada, Duff

NOES: Commissioners: None

ABSENT: Commissioners: None

ATTEST:

  
Matthew G. Winegar, Secretary


  
Albert G. Duff, Chairperson

EXHIBIT A  
Development Agreement

This item is not included.

Please see Attachment # 4  
of the City Council staff report.

RECEIVED

JAN 3 0 2003

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

City of Oxnard  
305 West Third Street  
Oxnard, California 93030  
Attention: City Clerk

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 2003, by and between the **CITY OF OXNARD**, a municipal corporation of the State of California (the "**City**"), and **OLY MANDALAY BAY GENERAL PARTNERSHIP**, a Delaware general partnership (the "**Developer**").

### RECITALS

A. The Developer is the owner of that certain real property more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. The City is authorized pursuant to California Government Code Sections 65864 through 65869.5 and City Council Resolution No. 10,448 to enter into binding development agreements with persons or entities owning legal or equitable interests in real property located within the City.

C. The City and the Developer each desire to enter into this Agreement in conformance with California Government Code Sections 65864, *et. seq.*, and all applicable City ordinances in order to achieve the mutually beneficial development of the Property as expressly provided in this Agreement.

D. The development project which the Developer seeks to develop on the Property will consist of single-family and multi-family residential units, public recreation areas, inland water-ways and visitor serving commercial development (the "**Project**"), all in accordance with the Mandalay Bay Phase IV Specific Plan heretofore adopted by the City Council of the City ("**City Council**") and incorporated in the Local Coastal Plan adopted by the City Council and approved by the California Coastal Commission (the "**Specific Plan**").

E. The Developer is currently, and will be, processing applications with the City for land use entitlements for the Property, including, but not limited to (1) a tentative tract map, (2) a coastal development permit, and (3) necessary conditional or planned development permits. All the foregoing entitlements, together with other land use approvals previously obtained and all

Subsequent Approvals (including, if applicable, and without limitation, approval of a Coastal Development Permit by the California Coastal Commission) are hereafter collectively referred to as the "Entitlements." The Entitlements will, if approved, permit the Developer to develop the Property in accordance with Tentative Tract Map No. 5266 filed with the City as application No. \_\_\_\_\_ ("TTM No. 5266") or any other subsequent subdivision map approved by the City Council with respect to the Property or any portion thereof.

F. The City and the Developer each mutually desire to obtain the binding agreement of one another to permit and ensure that the Property is developed strictly in accordance with the provisions of this Agreement.

G. This Agreement will benefit the Developer and the City by eliminating uncertainty in planning and providing for the orderly development of the Project. Specifically, this Agreement (1) eliminates uncertainty about the validity of exactions to be imposed by the City, (2) allows installation of necessary improvements, (3) provides for the dedication of several acres of fully improved Public Recreation Areas (as defined in Section 6(f)), including, public recreation areas, park recreation equipment, and recreation trails, with a value in excess of the fees that would otherwise be due with respect to the Project pursuant to California Government Code Section 66477, (4) provides for public services and infrastructure appropriate to the development of the Property, (5) provides for the establishment of a Maintenance Community Facilities District (as defined in Section 6(k)(ii)) to pay for, among other things, the maintenance of the seawalls and inland waterways to be constructed as part of the Project, (6) provides the funding for a boat for seawall inspection, and water surface skimming, a boat for patrol of waterways and code enforcement, and a boat for fire fighting purposes, (7) provides for the implementation and construction of, among other things, public recreation areas and inland waterways contemplated by the Specific Plan adopted by the City Council, (8) provides a method for acceleration of construction of Master Planned Sewer Improvements, if necessary to provide adequate sewer service to the Project, and (9) generally serves the public interest within the City and the surrounding region.

H. The Planning Commission of the City (the "Planning Commission") and the City Council have each given notice of their intention to consider this Agreement, have each conducted public hearings thereon pursuant to the relevant provisions of the California Government Code, and have each found that the provisions of this Agreement are consistent with the City's 2020 General Plan for development within the City (the "General Plan"), City zoning ordinances, and the Specific Plan. The City Council has also specifically considered the impacts and benefits of the Project upon the welfare of the residents of the City and the surrounding region. The City has determined that this Agreement is beneficial to the residents of the City and is consistent with the present public health, safety and welfare needs of the residents of the City and the surrounding region. Additionally, a supplemental environmental impact report has been certified by the Planning Commission pursuant to Planning Commission Resolution No. 2002-71.

J. On December 5, 2002, the Planning Commission held a duly noticed public hearing wherein the Planning Commission approved this Agreement.

K. On \_\_\_\_\_, the City Council adopted Ordinance No. \_\_\_\_\_ approving this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

**1. Definitions.**

**1.1 "Actual Knowledge of the Developer"** or other similar phrases means the current actual knowledge of Bill Wynne, project manager of Developer, as of the date this Agreement is executed by the Developer, without any duty of inquiry.

**1.2 "Applicable Rules"** means the rules, regulations and official policies of the City which were in force as of the Effective Date (as defined below) governing the General Plan, City zoning ordinance and other entitlements, development conditions and standards, permitted uses, public works standards, subdivision regulations, density, growth management, environmental considerations, grading requirements, and design, improvement and construction standards, specifications and criteria applicable to the Project, but does not include the building, plumbing, mechanical, electrical, or fire codes of the State of California or the local amendments thereto by the City.

**1.3 "Boater Related Facilities"** shall have the meaning assigned to such term in Section 12(b).

**1.4 "Bridge"** means the Channel Islands Boulevard bridge that passes over Channel Islands Harbor.

**1.5 "Capital Improvement Community Facilities District"** shall have the meaning assigned to such term in Section 6(k)(i).

**1.6 "Channel Islands Harbor"** means the collective reference to Channel Islands Harbor South, the Existing Mandalay Bay Waterways, the Seabridge Waterways and the Westport Waterways.

**1.7 "Channel Islands Harbor South"** means Channel Islands Harbor south of the Bridge.

**1.8 "City Manager"** shall have the meaning assigned to such term in Section 13(a).

**1.9 "Corps"** means the U.S. Army Corps of Engineers.

**1.10 "Corps Cessation Event"** means that the Corps shall have elected to cease dredging the Harbor Entrance due to (a) over-construction and related wear and tear on the Harbor Entrance, or (b) an inadequate ratio of commercial vessels relative to recreational vessels using the Harbor Entrance, and either of the conditions described in clauses (a) or (b) above is

determined by the Corps to have resulted from the incremental increase in vessel traffic caused by the Project, or the combination of the Westport Project and the Project.

1.11 **"County"** means the County of Ventura, California.

1.12 **"Dredging Cost"** means the reasonably estimated cost of dredging the entrance to the Channel Islands Harbor incurred by the County after the occurrence of a Corps Cessation Event.

1.13 **"Earthen Levee"** shall have the meaning assigned to such term in Section 11.

1.14 **"Effective Date"** means the date on which the City Ordinance approving this Agreement becomes operative under California Government Code Section 36937.

1.15 **"Existing Mandalay Bay Waterways"** means the canal and waterway systems within the Channel Islands Harbor north of the Bridge, existing as of the Effective Date, but excluding the channel leading from the northern most portion of Channel Islands Harbor to the Mandalay Plant.

1.16 **"Generally Accepted State Standards"** means standards promulgated by the State of California or its appropriate State agency with respect to water flows and water quality for coastal harbors such as the Channel Islands Harbor.

1.17 **"Grading Plan"** shall have the meaning assigned to such term in Section 6(h).

1.18 **"Harbor Entrance"** means the entrance to the Channel Islands Harbor.

1.19 **"Maintenance Community Facilities District"** shall have the meaning assigned to such term in Section 6(k)(ii).

1.20 **"Mandalay Plant"** means the Mandalay Power Generation Plant located in the City west of Harbor Boulevard adjacent to the Pacific Ocean.

1.21 **"Master Planned Sewer Improvements"** means the Wastewater Division's (as defined in Section 6(i)(i)) master plan sewer lines and other related sewer transmission equipment and improvements contemplated by the City's May 1979 Sewer Master Plan, as amended or updated prior to the Effective Date.

1.22 **"MOU"** means the Agreement entitled "Seabridge Memorandum of Understanding" made by City, Developer, and County, and effective as of September 10, 2002.

1.23 **"Periodic Review"** shall have the meaning assigned to such term in Section 13(a).

1.24 **"Permitted Exceptions"** shall have the meaning assigned to such term in Section 3.



**1.25 "Public Recreation Areas"** shall have the meaning assigned to such term in Section 6(f).

**1.26 "Qualified Lender"** shall have the meaning assigned to such term in Section 15(a)(vi)(A).

**1.27 "Remediation Cost"** shall have the meaning assigned to such term in Section 12(d).

**1.28 "Remediation Measure"** shall have the meaning assigned to such term in Section 12(d); however, the Remediation Measure shall be revised to the extent any update of the Water Study obtained by the County and the City contains a modified or alternative remediation measure that is subsequently adopted by the County and the City as a replacement for the Remediation Measure.

**1.29 "School Site"** shall mean that certain property described and/or depicted on Exhibit E.

**1.30 "Seabridge 40 Percent Cap"** means an annual maximum aggregate liability limitation on the Maintenance Community Facilities District's obligation to pay a portion of any Remediation Cost equal to forty percent (40%) of the annual (using a July 1 through June 30 year) Remediation Cost for all of Channel Islands Harbor.

**1.31 "Seabridge Dredging Cost Fee"** shall have the meaning assigned to such term in Section 12(e).

**1.32 "Seabridge Pro Rata Share"** means a fraction, the numerator of which is the total number of boat slips in the Seabridge Waterways and the denominator of which is the aggregate number of boat slips in the Channel Islands Harbor (including, without limitation, those in the Seabridge Waterways), as the Channel Islands Harbor may be expanded by the annexation of additional canals and waterways from time to time. For the purpose of the calculation described in the preceding sentence, each boat slip in the shallow bay portion of the Seabridge Waterways shall be counted as  $\frac{1}{2}$  of a boat slip. In the event of additional project development that includes boat slips connected to the Channel Islands Harbor, or the addition of boat slips to any portion of the Channel Islands Harbor, then the numerator and/or the denominator shall be adjusted accordingly. The current anticipated number of boat slips in the Channel Islands Harbor and the anticipated Seabridge Pro Rata Share (i.e., 12.05%) are set forth on Exhibit C attached hereto.

**1.33 "Seabridge Remediation Measure Fee"** shall have the meaning assigned to such term in Section 12(g).

**1.34 "Seabridge Service Agreement Fee"** shall have the meaning assigned to such term in Section 12(f).

**1.35 "Seabridge Waterways"** means the canals and waterways to be constructed as part of the Project.

1.36 "Services Agreement" means that certain agreement to be entered into between the County and the City pursuant to which, among other things, the County's Harbor Department will provide code enforcement, patrol and response services to the Seabridge Waterways.

1.37 "Subsequent Approvals" shall have the meaning assigned to such term in Section 7.

1.38 "Transient Boat Docks" means boat docks or boat slips built within the Project to accommodate the temporary, short-term use of boating visitors to Channel Islands Harbor.

1.39 "Westport Project" shall have the meaning assigned to such term in the MOU.

1.40 "Westport Waterways" shall have the meaning assigned to such term in the MOU.

2. Term of Agreement This Agreement shall become operative and commence upon the Effective Date and shall remain in effect for a term of thirty (30) years, unless the term is modified by mutual written consent of the City and the Developer. Upon the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.

3. Fee Simple Interest of the Developer To the Actual Knowledge of the Developer, the Developer represents to the City that the Developer owns fee simple title to the Property, subject to encumbrances, easements, covenants, conditions and restrictions and other matters of record or otherwise known to the Actual Knowledge of the Developer (collectively, the "Permitted Exceptions"). To the Actual Knowledge of the Developer, the Permitted Exceptions are described on Exhibit B attached hereto and incorporated herein by this reference.

4. Vested Right to Develop the Project.

(a) Applicable Rules. The City hereby grants to the Developer the vested right to develop the Project on the Property to the extent and in the manner provided in this Agreement, subject to the Applicable Rules. Any change in the Applicable Rules adopted or becoming effective after the Effective Date shall not be applicable to or binding upon the Project or the Property, except for any change consented to in writing by the Developer. This Agreement will bind the City to the terms and obligations specified in this Agreement and will limit, to the degree specified in this Agreement and under State law, the future exercise of the City's ability to regulate development of the Project.

(b) No Conflicting Enactments. Without limiting subparagraph (a) above, the City shall not apply to the Project any additional conditions or restrictions, whether by specific reference to the development of the Project or as a part of a general enactment, and whether by action of the Planning Commission, the City Council or otherwise as by initiative or referendum, which would:

(i) Limit or reduce the density or intensity of the Project development, or otherwise require any reduction in the height, number, size or square footage of lots, structures or buildings;

(ii) Expand or increase the Developer's obligations with respect to the provision of parking spaces, streets, roadways and/or any other public or private improvements, structures or dedications of land or with respect to payments of monetary exactions;

(iii) Limit or control the timing or phasing of the construction or development of the Project; or

(iv) Limit the design, improvement or construction standards or specifications or the location of buildings, structures, grading or other improvements relating to the development of the Project in a manner which is inconsistent with or more restrictive than the Applicable Rules.

5. Limitation on Increase of Fees For Five Years. As they apply to the Project, the Property or the Developer (or its successors and assigns) as the owner/developer of the Project (or a portion thereof), if at all, all fees imposed by the City in connection with the development of the Project, whether imposed in connection with map approvals, building permit issuance, certificate of occupancy issuance or otherwise, shall be fixed for a period of five (5) years after the Effective Date at the rate in effect as of the Effective Date, including, without limitation, the following fees: Bridge and Thoroughfare Fees, Growth Requirement Capital Fees, Planned Drainage Facilities Fees, Planned Traffic Circulation Facilities Fees, Planned Water Facilities Fees, Sewer Connection Fee, Sewer Conveyance Fee, Storm Drain Fee, Wastewater Treatment Fee, and Water System Connection Fee (hereinafter "Existing Impact Fees"). Additionally, any new fees enacted by the City which take effect after the Effective Date which are similar to the Existing Impact Fees in that such new fees offset or reimburse the City for the increased costs on the City's public improvements due to development shall not be applied to the Project, the Property or the Developer (or its successors and assigns) as the owner/developer of the Project (or a portion thereof) except for those portions of the Project which receive a building permit five (5) years after the Effective Date. Provided, however, nothing in this Section 5 shall limit the City Council's power to increase fees which reimburse the City for the cost of processing development applications or reimburse the City for the cost of building inspection or plan checking. Any increase in any fee applicable to the Project, the Property or the Developer (or its successors and assigns) as the owner/developer of the Project (or a portion thereof) which is not prohibited by this Agreement shall only be applicable to the Project, the Property and/or the Developer (or its successors and assigns) to the extent that any such fee increase is applied consistently and proportionately in accordance with applicable law.

6. Development of the Property.

(a) Permitted Uses. The Developer agrees that the Project shall be developed in accordance with the Specific Plan and the Entitlements, including TTM No. 5266 which was approved by the City Council on \_\_\_\_\_, 200\_\_ pursuant to Resolution No. \_\_\_\_\_, as the same may be amended by the City with the written consent of the Developer.

(b) Development Standards. All development and design requirements and standards applicable to the Project shall conform to the Applicable Rules.

(c) Maximum Height and Size. The maximum height of any buildings constructed within the Project shall not exceed the standards set forth in the Specific Plan. No single family detached residential structure (i.e., a building containing only one (1) dwelling unit) shall exceed Seven Thousand (7,000) square feet in size, and no commercial structure shall exceed One Hundred Fifty Thousand (150,000) square feet in size.

(d) Density and Intensity of Use. The maximum number of units permitted within the Project shall be as set forth in the Specific Plan.

(e) Affordable Housing Payment. Pursuant to City Council of Oxnard Ordinance No.2615, the Developer is authorized to request that, in lieu of providing certain affordable housing units within the Project, Developer may pay an affordable housing payment to the City's Affordable Housing Program in an amount calculated in accordance with Ordinance No. 2615 or subsequently enacted rule or regulation governing affordable housing ("**Affordable Housing Payment**"). Developer agrees to waive any challenge to the constitutionality of Ordinance No. 2615 or any subsequently enacted rule except that Developer reserves the right to challenge the amount of any subsequently enacted Affordable Housing Payment which increases the fee by more than the increase in the consumer price index prepared by the Bureau of Labor Statistics for the Los Angeles-Anaheim-Riverside area relating to all urban consumers since the time of enactment of Ordinance No. 2615. In connection with the issuance of building permits for residential dwelling units, Developer will pay the applicable Affordable Housing Payment without the benefit of any density bonus or other incentive.

(f) Quimby Fee. The City acknowledges that, as specified in the Specific Plan, the Project will consist of public recreation areas including, among other things, parks, linear park systems, trails, a shallow bay, beaches and other open recreational areas (collectively the "**Public Recreation Areas**"). The City and the Developer agree that the reasonable value of the Public Recreation Areas being provided by the Developer is well in excess of the park and recreation fees that the City is authorized to levy against the Developer pursuant to California Government Code Section 66477 or any similar statute. Accordingly, the Developer shall not be required to pay any amounts pursuant to California Government Code Section 66477 or any similar statute. As partial consideration for the City entering into this Agreement, in no event will the City be required to pay to the Developer any sum due to the reasonable value of the Public Recreation Areas being in excess of the amount of the fee that would otherwise be due pursuant to California Government Code Section 66477.

(g) Farmland Soil Transfer. The Developer shall undertake the farmland soil transfer program with respect to the Property as contemplated by the Specific Plan and in accordance with Policy 5 of the local coastal policies in the Coastal Land Use Plan. Such transfer program shall be undertaken either prior to or after the execution of this Agreement.

(h) Rough Grading Prior to Recordation of the Final Maps Associated With TTM No. 5266. Subject to (i) the City's receipt, review and approval of a grading plan (the "**Grading Plan**"), geotechnical report and engineering geologic report for the applicable portion

of the Property, (ii) the Developer's satisfaction of the City's bonding requirements and (iii) the Developer's satisfaction of the City's requirements for the issuance of a grading permit with respect to such Grading Plan, the City agrees to review the reports and the Grading Plan when submitted and issue a grading permit with respect to the Grading Plan, subject to the Grading Plan's compliance with all Applicable Rules. The City agrees that the reports and the Grading Plan will be reviewed by the City, that a grading permit with respect to the Grading Plan may be issued and that the Developer may grade the Property in accordance with the approved Grading Plan without the Developer first recording the final maps associated with TTM No. 5266 in the Official Records of the County. Notwithstanding the foregoing, prior to the recordation of the final maps associated with TTM No. 5266, the Developer shall only complete the rough grading with respect to the Grading Plan.

(i) Sewer Lines and Fees

(i) In connection with the development of the Project, the Developer shall construct, repair and/or upgrade to the extent necessary, as determined by the City's Wastewater Division, sewer transmission lines to the extent necessary to serve the Project. The Developer shall pay for all costs associated with the construction of the sewer line infrastructure located on the Property and servicing the Project. Subject to Section 6(i)(ii) of this Agreement, should Developer construct Master Planned Sewer Improvements on the Property, City shall agree to reimburse Developer for the City approved cost of the design and construction of the Master Planned Sewer Improvements in excess of the sewer facility and connection fees, and other sewer costs chargeable to this Project under Existing Impact Fees.

(ii) Upon the recordation of the first final map for the Project, Developer shall pay to City the amount of \$2,551,295.40 as payment in full for all of the sewer fees for the Project (the "Seabridge Sewer Fee"). City and Developer agree that Developer's payment of the Seabridge Sewer Fee represents the amount necessary to insure that adequate sewer capacity and facilities are available to properly serve the Project. In consideration for Developer's payment of the Seabridge Sewer Fee at the recordation of the first final map for the Project, City agrees not to impose any sewer fee on the Project or any portion thereof. This waiver of payment of current and future sewer fees shall remain in effect for the term of this Agreement, including any extension of this Agreement, or until build out of the Project is completed, whichever term is longer, provided that the build out of the Project occurs at substantially the same number of dwelling units, the same square footage of commercial uses, and the same density of mixed uses, as is permitted by the TTM No. 5266. If the School Site is acquired by the Oxnard School District for use as a school, then Developer shall be entitled to a refund from City in the amount of \$319,079.70. The provisions of this Section 6(i) shall survive the expiration or other termination of this Agreement.

(j) Fee Credit for Roadway Improvements.

To the extent that Developer constructs, improves or installs off-site Master Planned streets, and traffic facilities, including but not limited to, improvements to streets and intersection facilities located adjacent to the Project, Developer shall receive a credit against street facility and construction fees, such as bridge and thoroughfare fees, planned traffic circulation fees and similar fees chargeable to the Project under City's Existing Impact Fees, in

the amount of the City approved cost of the design and construction of such Master Planned streets and facilities constructed by Developer. If Developer has paid all or a portion of such fees prior to construction of the Master Planned streets and facilities, then Developer shall receive a refund of fees paid. In addition, should Developer construct off-site Master Planned streets and facilities, City shall agree to reimburse Developer for the actual cost of construction of such off-site Master Planned streets and facilities in excess of the street facility and construction and similar fee and cost chargeable to this Project under the Existing Impact Fees.

(k) Community Facilities Districts.

(i) At the Developer's request, the City shall, pursuant to California Government Code Section 53311, *et seq.*, establish a community facilities district (the "**Capital Improvement Community Facilities District**") and create bonded indebtedness for the purpose of financing the construction or acquisition cost of a portion of certain facilities associated with the Project, including, without limitation, certain recreational facilities. The establishment and maintenance of the Capital Improvement Community Facilities District shall be in accordance with City Council Resolution No. 11,630 adopted on September 14, 1999. If any of the proceeds of such bonded indebtedness are not used or if any reimbursement is received by the Capital Improvement Community Facilities District that is not used for the purpose for which the Capital Improvement Community Facilities District was established, then such unused proceeds or any such reimbursement shall be used to retire or defease (as applicable) a portion of such bonded indebtedness.

(ii) The City and the Developer, pursuant to California Government Code Section 53311, *et. seq.*, shall establish a community facilities district (the "**Maintenance Community Facilities District**") for the purpose of funding the cost of maintaining certain improvements, landscaping and facilities including, but not limited to, public recreation areas, recreation trails and equipment, and the seawalls and inland waterways to be constructed as part of the Project, providing certain services that will benefit the inland waterway component of the Project, including, but not limited to provision of lifeguard services at public swimming or wading areas, code enforcement, inspection of seawalls and surface skimming of waterways, and other services authorized pursuant to Section 53313 *et seq.* of the California Government Code, funding recreation equipment, and, if the City elects in accordance with the Memorandum of Understanding dated September 10, 2002, among City, Developer and the County of Ventura ("MOU"), a public maintenance yard, funding three boats, consisting of, a Boston Whaler or equal, to be used as a water surface skimming and debris removal boat, a twenty foot Boston Whaler or equal, with two outboard engines and a dive platform to be used as a police/code enforcement services boat, and a twenty-four to twenty-eight foot Boston Whaler or equal, configured as a fire fighting vessel, with twin engines and an internal pump, to be used as a fire/rescue services boat, or alternative fire rescue apparatus, at the discretion of the City, (provided, that, should the total cost of the three boats, or two boats and alternative fire rescue apparatus, exceed \$400,000, Developer shall provide funds up to a maximum of \$200,000, towards the cost of the boats in excess of \$400,000, and shall receive a credit against Existing Impact Fees and such other fees as would otherwise be payable to the City by Developer relating to the Project, in the amount of funds provided by Developer), funding for clean up of any spill of contaminants into the Seabridge Waterways, funding the Seabridge Service Agreement Fee, any Seabridge Dredging Cost Fee and any Seabridge Remediation Measure Fee. The



establishment and maintenance of the Maintenance Community Facilities District shall be in accordance with City Council Resolution No. 11,630 adopted on September 14, 1999.

(l) Harbor Patrol. In connection with the formation of the Maintenance Community Facilities District and to mitigate certain code enforcement and emergency response issues, a portion of the Maintenance Community Facilities District's budget shall be allocated to fund a portion of the cost to address certain of the code enforcement and emergency response issues with respect to the Project in addition to certain of those other items agreed to in writing between the City, the Developer and the County.

(m) Construction Phasing and Sequencing. The Developer shall have no obligation to develop the Project, may develop the Project in its sole discretion in accordance with the Developer's time schedule (as such schedule may exist from time to time) and may determine in its sole discretion which part of the Project to develop first and thereafter. Notwithstanding the previous sentence, the Developer may determine in its sole discretion when to record the first final map for any portion of the Property. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, the Developer and the City intend to cure that deficiency by acknowledging and providing that the Developer shall have the right (without obligation) to develop the Property in such order and at such rate and at such time as the Developer deems appropriate within the exercise of its subjective business judgment.

(n) Boat Docks and Related Facilities. At the City's option, in accordance with the MOU, the Developer shall make available, at no cost to the City, boat slips for the docking of the water surface skimmer boat, the police services boat and the fire services boat, by constructing boat slips at the City fire station located in Channel Islands Harbor South. As a part of the slip facility, Developer shall provide a boat lift capable of removing each of the boats from the water. Additionally, Developer shall provide a boat slip located within the commercial boat slip area, to be constructed near the southeast corner of the Seabridge Waterways for the dedicated use of the City's boats. Developer shall make available to the City's police department an approximately 200 square foot suite in a commercial building to be located in the vicinity of the dedicated City boat slip as a "storefront police substation," and shall provide two parking spaces, in close proximity to the storefront police substation for the exclusive use of the police department.

(o) Joint Use Park Site. The School Site, as identified in the School Alternative in the FSEIR for the Project may include 2.5 acres of land designated for public park purposes in the approved Project. City understands and acknowledges that under the terms of the mitigation agreement between Developer and the Oxnard School District, Developer may be obligated to allow the Oxnard School District to acquire the School Site for the construction and operation of an elementary school. Before the School Site can be used for school purposes, however, an amendment to the approved Local Coastal Plan must be adopted. If the Oxnard School District selects the School Site and is successful in obtaining the amendment of the Local Coastal Plan, and if the School Site includes all or a portion of the 2.5 acres of land designated for public park use, or if the Oxnard School District has not relinquished its option to acquire the



School Site by the expiration of the last date provided for exercise of that option in the School Mitigation Agreement made between Developer and the Oxnard School District, and dated June 19, 2002, then Developer agrees to pay an additional park fee to City, in the amount of Three Hundred Thousand Dollars (\$300,000), at such time as a final decision is made committing the School Site to the construction and operation of an elementary school by the Oxnard School District, and to relocate major park facilities (i.e., volley ball and basketball courts, children's play area and picnic units) into other park areas with the Project or the Westport Project areas, as approved by the City. City will attempt to obtain a joint use agreement with the Oxnard School District, for public park and school use on terms acceptable to City, in City's sole and complete discretion, that allow the portion of the School Site designated for public park use to be generally available to the public rather than restricted solely or primarily to use by students.

(p) Public Art. Pursuant to City Council Resolution No. 12,290, Developer shall participate in the City's Art in Public Places Program. City agrees that Developer's cost for the physical piece or pieces of art to be installed in the Project shall not exceed One Hundred Thousand Dollars (\$100,000). The artwork created and installed by Developer shall become the property of the City and shall be maintained through the Maintenance Community Facilities District.

(q) Exchange of Certain Property Interests. As partial consideration, and in exchange for the real property and other property interests to be conveyed to City by Developer pursuant to this Agreement, City agrees to convey to Developer a license to use a portion of the Seabridge Waterway, coupled with an interest, which license shall be irrevocable for a period of fifty (50) years, for the construction, repair, maintenance, reconstruction and operation of boat slips and a commercial slip operation. The portion of the Seabridge Waterway subject to the license shall be the portion reasonably required to provide a successful commercial slip operation for recreational vessels in the area indicated for such an operation in the approved plans for the Seabridge Project. Developer shall have the right to sublicense the licensed area to a commercial slip operator who will actually construct, repair, maintain, reconstruct or operate the boat slips and the commercial slip operation. Developer shall have the right to receive sublicensing fees in excess of those to paid to City in consideration for the sublicensing and the provision of land area and land based improvements and services to support the commercial slip operation.

(r) Public Services for the Project. City acknowledges and agrees that City has and will have sufficient capacity for sewer collection, sewer treatment and sanitation service, and water treatment, distribution and service to accommodate the Project, as each final map for the Project is recorded. City has analyzed the existing and projected water needs for the areas served by City and has determined that City has the necessary water supplies available to properly serve the Project. To the extent that City renders the services or provides the utilities referenced in this Section 6(r), City agrees to timely grant or issue hookups or service to all development in the Project upon request for such hookups and services. Notwithstanding the foregoing, City may delay the granting of requested additional water hook ups for the Project, provided that all of the following conditions precedent occur: (a) after a duly noticed public hearing, the City Council imposes a ban on all new water hookups in the City, except for a ban on emergency hookups, legally mandated hookups, hookups for essential public purposes, and pass through hookups used solely to convey emergency water through City to another public entity or public water provider; and (b) after a duly noticed public hearing, the City Council

makes findings, which are supported by substantial evidence, that the granting of additional water hookups in the Project would have a significant adverse impact on the public's health and safety. If City delays the granting of requested additional water hookups for the Project under the preceding sentence, then, at such time as City allows additional water hookups in City, new water hookups in the Project shall have first priority for connection to City's water system, with the exception of the following classes of hookups: emergency hookups, legally mandated hookups, hookups for essential public purposes and pass-through hookups used solely to convey emergency water through City to another public entity or public water provider.

7. **Subsequent Approvals.** The Developer and the City expressly intend to cooperate and diligently work to process all applications, plans, maps, agreements, documents, and other instruments or entitlements necessary or appropriate for the completion of the development of the Project, including without limitation rezoning, subdivision, design review approvals, site plan approvals, improvement agreements and other agreements, use permits, grading permits, dirt stockpile permits, encroachment permits, building permits, lot line adjustments, certificates of occupancy, sewer and water connection permits, zoning approvals, boundary adjustments, subdivision maps (including tentative, vesting tentative, parcel, vesting parcel, and final subdivision maps), preliminary and final development plans, landscaping plans, certificates of compliance, resubdivisions, and modifications to the Entitlements (collectively, "Subsequent Approvals"). Without limiting the generality of the foregoing, the Developer may apply for multiple planned development permits and subdivision maps in connection with the development of the Project.

(a) **Expeditious Processing.** The City agrees not to unreasonably withhold, condition or delay any Subsequent Approvals. Upon the filing of a complete application and payment of appropriate processing fees by the Developer, the City shall promptly commence and diligently:

(i) Schedule and convene all required public hearings in an expeditious manner consistent with the law; and

(ii) Process all Subsequent Approvals in an expeditious manner.

(b) **Incorporating Vested Project Approvals.** Upon approval of any of the Subsequent Approvals, as they may be amended from time to time, such Subsequent Approvals shall become part of the Entitlements, and Developer shall have a "vested right," as that term is defined under California law, in and to such Subsequent Approvals by virtue of this Agreement.

8. **Life of Entitlements.** The term of any subdivision map or other permit approved as part of the Entitlements shall automatically be extended to the term of this Agreement as provided under the applicable provisions of Government Code Section 66452.6(a) or Government Code Section 65863.9, unless a longer term would result under otherwise applicable State law or, in the absence of such State law, under otherwise applicable local law.

9. **Public Services.** In connection with the TTM No. 5266, the Developer has provided the City with all necessary studies required for the City to make a determination as to the availability of public facilities, utilities and services which are necessary for the Project. The

City hereby acknowledges and agrees that when the Developer completes the public improvements called for by TTM No. 5266 for a specific utility or public infrastructure element in question, the City has and will have sufficient capacity in its existing infrastructure, services and utility systems for traffic circulation, sewer collection, sewer treatment, sanitation service and, except for reasons beyond City's control, water supply, treatment, distribution and service, and drainage, except for that portion governed by the County, to accommodate the Project as provided in this Agreement. To the extent the City renders such services or provides such utilities, the City hereby agrees to grant or issue hookups or service to the Project.

**10. Other Governmental Permits and Fees.** The City shall cooperate with the Developer's efforts to obtain such other permits and approvals as may be required by other governmental or quasi-governmental agencies (including, without limitation, districts and special districts providing flood control, sewer and fire protection) having jurisdiction over the Project in connection with the development of, or provision of services to, the Property, and shall, from time to time at the request of the Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity necessary to assure the availability of such permits and approvals or services, provided such agreements are reasonable. The City shall use its best efforts to work with other governmental and quasi-governmental agencies so as to limit to the maximum extent possible the imposition of additional fees, dedications or exactions by or through such agencies.

**11. County Engineer Review Cost.** Prior to the time the Developer is issued a permit with respect to the earthen levee that will exist between the existing canals in the Mandalay Bay Waterways and the canals to be constructed by the Developer as part of the Project (the "Earthen Levee"), the Developer shall deliver a copy of the construction drawings for the Earthen Levee to the County. The Developer shall not seek a permit to construct the Earthen Levee until the County shall have had thirty (30) days after receipt of such construction drawings within which to arrange to have an engineer review such construction drawings. If the County elects to have an engineer review such construction drawings within such thirty (30) day period, then within fifteen (15) days after receiving an invoice from such engineer, the Developer shall pay the reasonable cost incurred by the County in having such engineer review such construction drawings. So long as the City's other requirements for the issuance of a permit to the Developer with respect to the Earthen Levee have been satisfied, the City will not delay the issuance of such a permit beyond any date which is beyond thirty (30) days after the date the construction drawings for the Earthen Levee have been delivered to the County.

**12. Channel Islands Harbor Mitigation.**

(a) **Channel Islands Harbor Mitigation Fees.** To mitigate the impacts on the Channel Islands Harbor infrastructure that are expected to arise from the Project, the Developer shall pay to the Harbor Department of the County a mitigation fee, at the times and in the amounts stated in the MOU.

(b) **Space and Easements for Boater Related Facilities.** The Developer shall provide within the Project and in connection with the applicable final maps associated with TTM No. 5266, space and appropriate easements for Transient Boat Docks, and restroom facilities

(collectively, the "**Boater Related Facilities**") to the extent and as depicted on Exhibit D attached hereto and incorporated herein by this reference.

(c) Construction and Maintenance of Boater Related Facilities. If the Developer elects to construct any Transient Boat Docks, then concurrently with the construction of the Transient Boat Docks, the Developer shall cause the Boater Related Facilities to be constructed and shall make arrangements reasonably satisfactory to the City for the ongoing maintenance of the Boater Related Facilities.

(d) Water Study. A Water Study has been completed prior to the execution of this Agreement and as a part of the environmental and administrative review of the approvals and permits required for the Project (the "**Water Study**"). The Water Study consisted of an environmental modeling study of water flow and water quality in the Channel Islands Harbor South, the existing Mandalay Bay Waterways, the Westport Waterways, and the Seabridge Waterways, to determine the environmental effects of a potential permanent cessation of operation of the Mandalay Plant on the water flow and water quality in these waterways. The Water Study determined that the proposed design of the Seabridge Waterway, acting in conjunction with the Channel Islands Harbor South, the existing Mandalay Bay Waterways and the Westport Waterways, would avoid any degradation below Generally Accepted State Standards, even in the event that the Mandalay Plant permanently ceased to be operated. Based on this Water Study, and other information in the Supplemental Environmental Impact Report for the Project, the Final SEIR concluded that there will be no significant impacts on water quality caused by the Project and, therefore, that no mitigation measures are required. The Water Study, also, identified the most efficient alternative for remediating water quality degradation below Generally Accepted State Standards (the "**Remediation Measure**"), should the water quality in the waterways, or any of them, degrade below Generally Accepted State Standards, and the reasonably estimated cost of implementing the Remediation Measure (the "**Remediation Cost**"). The Seabridge Percentage Share of the Remediation Cost shall be calculated in the same manner as the Seabridge Pro Rata Share, defined in Section 1.32. The Remediation Measure includes the placement and operation of recirculating pumps and aerators in vaults to be located within the shallow recreation bay, to be part of the Seabridge Waterways. As a Project condition, and not as a mitigation measure, City has required and Developer has agreed that, as part of the initial construction of the Seabridge Waterways, in the course of construction of the Project, Developer shall construct the vaults, designed to house the circulating pumps, in the Seabridge Waterway, and, at the time that all of the Seabridge Waterways are accepted by City, shall pay to City, the amount of \$250,000, which the parties agree would be sufficient to install the circulating pumps and aerators, should water quality within the waterways degrade below Generally Accepted State Standards, as determined under Section 12(h). Provision of the cash payment shall be the only contribution required of Developer should the quality of water in the waterways degrade below Generally Accepted State Standards.

(e) Payment of Seabridge Pro Rata Share of Dredging Costs. If the Corps stops periodically dredging the Harbor Entrance due to a Corps Cessation Event, then provided the County tax assessor, the Maintenance Community Facilities District and the owners of each affected property within the Project receive written notice in accordance with applicable law, on or before the date required by applicable law, from the County and the City, the Maintenance Community Facilities District shall pay to the County's Harbor Department from amounts

collected during the next real property tax year one-half of the Seabridge Pro Rata Share of the Dredging Cost (the "Seabridge Dredging Cost Fee"). The obligation of the Maintenance Community Facilities District is to pay one-half of the Seabridge Pro Rata Share of the Dredging Cost each year because the Harbor Entrance only needs to be dredged every other year. The initial value of the Seabridge Dredging Cost Fee shall be zero (0) since the Corps currently dredges the Harbor Entrance. The City and the Developer currently estimate that if a Corps Cessation Event were to occur as of the date of this Agreement, the initial annual Seabridge Pro Rata Share would be approximately One Hundred Eighty Thousand Seven Hundred Fifty Dollars (\$180,750) (that is,  $\frac{1}{2}$  of 12.05 percent of the estimated \$3,000,000 bi-annual cost of dredging the Harbor Entrance). The Seabridge Dredging Cost Fee shall not be increased in any year by more than two percent of the Seabridge Dredging Cost Fee in effect for the previous tax year.

(f) Service Agreement Funding. The Maintenance Community Facilities District shall pay to the City from funds collected during each property tax year an amount equal to the cost of the services to be provided to the Seabridge Waterways pursuant to the Services Agreement. The amount to be paid under this Section 12(f) shall not be increased in any year by more than two percent (2%) of the amount paid for the previous tax year.

(g) Seabridge Percentage Share of Remediation Cost. If (i) the Mandalay Plant is permanently closed, (ii) the owner and/or operator of the Mandalay Plant is not required to implement or make arrangements to implement mitigation measures to mitigate the effect of closing the Mandalay Plant on water flows and water quality in the Channel Islands Harbor such that the water flows and water quality in the Channel Islands Harbor are at least in conformity with Generally Accepted State Standards, and (iii) Water Monitoring determines that following the permanent closure of the Mandalay Plant the water flows and water quality in the Channel Islands Harbor have been degraded below Generally Accepted State Standards as a result of such closure, then provided the County tax assessor, the Maintenance Community Facilities District and the owners of each affected property within the Project receive written notice on or before the date as required by applicable law and the County and the City implement the Remediation Measure, the Maintenance Community Facilities District shall pay to the County's Harbor Department from amounts collected during the next real property tax year the Seabridge Percentage Share of the annual Remediation Cost incurred by the City and the County in connection with the implementation of the Remediation Measure (the "Seabridge Remediation Measure Fee"). The Seabridge Percentage Share of the Remediation Cost shall be calculated in the same manner as the Seabridge Pro Rata Share, defined in Section 1.32. Notwithstanding the foregoing, the maximum aggregate annual liability of the Maintenance Community Facilities District to pay any Remediation Cost during any year (measured from July 1 to June 30) shall not exceed the Seabridge 40 Percent Cap. The initial value of the Seabridge Remediation Measure Fee is zero (0) since the Mandalay Plant is currently in operation. The City and the Developer currently estimate that if the Mandalay Plant were to permanently close operation as of the date of this Agreement, the Remediation Cost would not exceed Two Hundred Thirty-One Thousand Dollars (\$231,000) (that being the estimated cost of running water circulation pumps at the Mandalay Plant sufficient to maintain current water flows and water quality), the Seabridge Remediation Fee would be Twenty Seven Thousand Eight Hundred Thirty Six Dollars (\$27,836) (that is, 12.05 percent of \$231,000) and the Seabridge 40 Percent Cap would be Ninety Two Thousand Four Hundred Dollars (\$92,400) (that is (40%) of \$231,000). The Seabridge



Remediation Measure Fee shall not be increased in any year by more than two percent of the Seabridge Remediation Cost Fee in effect for the previous tax year.

(h) Water Monitoring. The Maintenance Community Facilities District shall contract with the Environmental Health Department of the County of Ventura, or such other qualified governmental agency as shall be determined by the legislative body of the Maintenance Community Facilities District, to perform water monitoring of water quality in the Seabridge Waterways, and in particular within the shallow recreation bay that is to be a part of the Seabridge Waterways. Since the shallow bay has been designed to allow water contact as a beneficial use, in accordance with the Specific Plan and Local Coastal Plan, the sampling program will be established to determine whether the water quality in the shallow bay has degraded below Generally Accepted State Standards, as follows:

(i) Measurements of four constituents will be taken; dissolved oxygen (DO), enterococcus, total coliform, and fecal coliform. Five sampling stations will be established; one in the shallow bay, one in the channel between the shallow bay and the marina, and one each in the channels on the north, west and south sides of the northern island. One additional sampling station for DO will be established in the Reliant (Edison) Channel west of the southern island.

(ii) Samples for DO will be taken bimonthly. If the level of DO in the shallow bay falls to below 50% of the mean value for the six sampling stations for more than two consecutive sampling periods, then the testing frequency would be increased to weekly. At least two additional sampling stations would be added, one in each of the main channels, to determine if the problem is isolated to the shallow bay or is part of a larger pattern. Weekly testing will continue until three consecutive sampling periods have shown DO levels at or above desired levels.

(iii) Samples for bacteriological constituents will be taken monthly at the five sampling stations as identified above. These samples will be taken in the morning, when higher counts are generally found. The specified bacteria levels shall not exceed the MPN identified in the Water Quality Control Plan; California Ocean Plan, State Water Resources Control Board, 1997, Chapter II, Water Quality Objectives, Section A.1. (total and fecal coliform) and Section B. (enterococcus). If the bacteria levels rise above the specified MPN for any sampling period, bacteriological sampling will be increased to weekly, and at least two additional testing stations will be added, one in each of the main channels, to determine if the problem is isolated to the shallow bay or is part of a larger pattern. Weekly testing will continue until three consecutive sampling periods have shown bacteria levels at or below desired levels.

(iv) If the level of DO falls to below the level of the mean value of the six sampling stations or if the bacteria levels rise above the MPN numbers three times during one year, and if those instances are determined to be problems isolated to the area of the shallow bay, as opposed to conditions that affect a substantial portion of the waterways, and if recommended by a recognized expert in the field of water quality (as determined by the Maintenance Community Facilities District), then aerators and/or pumps would be installed in the vaults as discussed in Section 12(d), or other corrective measures approved by the City would be taken. If the level of DO falls or the level of bacteria rises in the area of the shallow bay, but that is

determined to be a harbor-wide problem, the Seabridge community shall only participate in a City determined solution to the same extent as other City residents.

### 13. Compliance Review.

(a) Periodic Review. Pursuant to California Government Code Section 65865.1, the City Manager of the City (the "City Manager") or the designee of the City Manager shall, not less than once in every twelve (12) months, review the Project and this Agreement to ascertain whether or not the Developer is in good faith compliance with the terms of this Agreement (the "Periodic Review").

(b) Review Procedure. The City shall deliver to the Developer a copy of all public staff reports, documents and related exhibits concerning the City's review of the Developer's performance hereunder prior to any such periodic review. The Developer shall have the opportunity to respond to the City's evaluation of the Developer's performance, either orally or in a written statement, at the Developer's election. Upon completion of a Periodic Review, the City Manager shall submit a report to the City Council setting forth the City Manager's findings. If, as a result of a Periodic Review, the City Council finds and determines on the basis of substantial evidence that the Developer has not complied in good faith with the terms or conditions of this Agreement, the City shall issue a written "Notice of Non-Compliance" to the Developer specifying the grounds therefor and all facts demonstrating such non-compliance. The Developer's failure to cure the alleged non-compliance within ninety (90) days after receipt of the notice, or, if such non-compliance is not capable of being cured within ninety (90) days, the Developer's failure to initiate all actions required to cure such non-compliance within ninety (90) days after receipt of the notice, shall constitute a default under this Agreement on the part of the Developer and shall constitute grounds for the termination of this Agreement by the City as provided for below.

(c) Termination or Modification for Non-Compliance. Pursuant to California Government Code Section 65865.1, if the City Council finds and determines, on the basis of substantial evidence, that the Developer has not complied in good faith with the terms or conditions of this Agreement, the City Council may modify or terminate this Agreement, after the expiration of the applicable cure period provided in this Agreement. Any action by the City with respect to the termination or modification of this Agreement shall comply with the notice and public hearing requirements of California Government Code Section 65867 in addition to any other notice required by law. Additionally, the City shall give the Developer written notice of its intention to terminate or modify this Agreement and shall grant the Developer a reasonable opportunity to be heard on the matter and to oppose such termination or modification by the City.

### 14. Modification, Amendment, or Cancellation by Mutual Consent.

(a) General. Pursuant to California Government Code Section 65868, this Agreement may be amended or canceled, in whole or in part, by mutual written consent of the City and the Developer or their successors in interest. Public notice of the parties' intention to amend or cancel any portion of this Agreement shall be given in the manner provided by California Government Code Section 65867. Any amendment to this Agreement shall be subject



to the provisions of California Government Code Section 65867.5. Any amendment of the Entitlements pursuant to Section 14(b) of this Agreement shall not require an amendment to this Agreement. Additionally, for purposes of this Agreement, the resubdivision of the Property or the filing of an amended subdivision map which creates new legal lots (including the creation of new lots within any designated remainder parcel) or which reflects a merger of lots, shall not require an amendment to this Agreement. Those Subsequent Approvals which are consistent with the General Plan and Amended Specific Plan also shall not require an amendment to this Agreement.

(b) Amendment of Project Approvals. Upon the written request of the Developer for a minor amendment or modification to the Entitlements including, but not limited to: (i) the location of buildings, streets and roadways and other physical facilities; or (ii) the configuration of the parcels, lots or development areas, the City's Development Services Director ("**Director**") shall determine whether the requested amendment or modification is consistent with this Agreement and the Applicable Rules. For purposes of this Agreement, the determination of whether such amendment or modification is minor shall be made by reference to whether the amendment or modification is minor in the context of the overall Project. If the proposed amendment is both minor and consistent with this Agreement and the Applicable Rules, the Director may approve the proposed amendment without notice and public hearing.

**15. Defaults, Notice and Cure Periods, Events of Default and Remedies.**

(a) Default By the Developer.

(i) Default. If the Developer does not perform its obligations under this Agreement in a timely manner, the City may exercise all rights and remedies provided in this Agreement, provided the City shall have first given written notice to the Developer and the Developer does not cure such default within the applicable cure periods as provided herein, and provided further the Developer may appeal such declaration in the manner provided in, and subject to all terms and provisions of Section 16.

(2) Notice of Default. If the Developer does not perform its obligations under this Agreement in a timely manner, the City through the Director may submit to the Developer a written notice of default in the manner prescribed in Section 21(a), identifying with specificity those obligations of the Developer under this Agreement which have not been timely performed. Upon receipt of any such written notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of any such written notice of default and shall complete the cure of any such default(s) no later than one hundred and twenty (120) days after receipt of any such written notice of default, or within such longer period as is reasonably necessary to remedy such default(s), provided the Developer shall commence the cure of any such default(s) within such one hundred and twenty (120) day period and thereafter diligently pursue such cure at all times until any such default(s) is cured.

(i) Failure to Cure Default Procedure. If after the cure period provided in Section 15(a)(ii) has elapsed, the Director finds and determines the Developer, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City

intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Director shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that the Developer, or its successors, transferees and/or assigns, as the case may be, has not cured a default under this Agreement pursuant to this Section, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Developer, and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 16. Such right of appeal shall include, but not be limited to, an objection to the manner in which the City intends to modify this Agreement if the City intends as a result of a default of the Developer, or one of its successors or assigns, to modify this Agreement. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Section 15 or this Agreement shall be construed as modifying or abrogating the City Council's review of Planning Commission actions.

(ii) Termination or Modifications of Agreement. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after such final determination of the City Council or, where no appeal is taken after the expiration of the applicable appeal periods described in Section 16. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868, irrespective of whether an appeal is taken as provided in Section 16. Notwithstanding any other provision of this Agreement to the contrary, in the event that (A) the Developer or any of its successors and assigns assigns some, but not all, of its rights under this Agreement in connection with a sale of some, but not all, of the Property and (B) thereafter the Developer or one or more of its successors in interest under this Agreement is in default under this Agreement and either the Developer or one or more of its successors in interest under this Agreement is not in default under this Agreement, then any remedy the City may have the right to take under this Agreement, including the right of termination or modification of this Agreement, shall only apply to the party(ies) that is (are) in default and the portion(s) of the Property owned by such party(ies) and shall not apply to the Developer or any successor and/or assignee of the Developer under this Agreement that is not in default hereunder.

(iii) Notwithstanding anything to the contrary contained herein, no party shall be deemed to be in default where delays in performance or failures to perform are due to wars, insurrections, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, enactment of conflicting State or federal laws or regulations, new or supplemental environmental regulations, or other similar reasons for excused performance which are not within the reasonable control of the party to be excused. At the request of any party, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

(iv) Lender Protection Provisions.

(A) Notice of Default. In addition to the notice provisions set forth in Section 15(a)(ii), the City shall send a copy of any notice of default it sends to the

Developer or any of its successors or assigns to any lender that has made a loan then secured by a deed of trust against the Property, or a portion thereof, provided such lender shall have (a) delivered to the City written notice in the manner provided in Section 21(a) of such lender's election to receive a copy of any such written notice of default and (b) provided to the City a recorded copy of any such deed of trust. Any such lender that makes a loan secured by a deed of trust against the Property, or a portion thereof, and delivers a written notice to the City and provides the City with a recorded copy of any such deed of trust in accordance with the provisions of this Section 15 is herein referred to as a "Qualified Lender."

(B) Right of a Qualified Lender to Cure a Default. If the Developer, or any of its applicable successors or assigns, fails to timely cure any default under this Agreement within the time periods specified in Section 15(a)(ii), then the City shall send a written notice of any such failure to timely cure any such default to each Qualified Lender. From and after receipt of any such written notice of failure to cure, each Qualified Lender shall have the right to cure any such default, provided the Qualified Lender(s) commence the cure of any such default within thirty (30) days after receipt of any such written notice of failure to cure and thereafter diligently pursues the cure thereof to completion. If the nature of any such default is such that a Qualified Lender cannot reasonably cure any such default without being the owner of the Property, or the applicable portion thereof, then so long as the Qualified Lender(s) is (are) proceeding to foreclose the lien of its deed of trust against the Property, or the applicable portion thereof, and after completing any such foreclosure promptly commence the cure of any such default and thereafter diligently pursues the cure of such default to completion, such Qualified Lender shall be deemed to be diligently pursuing the cure of any such default. Any lender that has made a loan to a party that owns a single family dwelling unit (whether a detached single family home, a townhome or a condominium) provided such party is not a developer of the Property or a portion thereof shall not be deemed to be a Qualified Lender.

(C) Exercise of City's Remedies. Notwithstanding any other provision of this Agreement, the City shall not exercise any right or remedy it may have under this Agreement or otherwise arising out of a default under this Agreement by the Developer or any of its successors or assigns during the period of time which the Developer, any of its successors or assigns and/or a Qualified Lender has the right to cure any such default pursuant to this Section 15.

(D) No Impairment of Development Agreement to Mortgage. No default by the Developer (or any successor or assign) under this Agreement shall subordinate, invalidate or defeat the lien of any mortgage held by a lender. Neither a breach of any obligation secured by any mortgage held by a lender or other lien against the mortgaged interest, nor a judicial foreclosure, trustee's sale or acceptance of a deed in lieu of foreclosure (a "Foreclosure") under any mortgage or other lien, shall defeat, diminish, render invalid or unenforceable or otherwise impair the Developer's rights or obligations, or constitute a default, under this Agreement. In no event shall a Foreclosure or other exercise by a lender of its pre- or post-Foreclosure rights in connection with a mortgage require any consent or approval by the City.

(E) Lender's Obligations With Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no lender shall have any obligations

or other liabilities under this Agreement unless and until the lender acquires title to the portion of the Property that was subject to the applicable mortgage. Without limiting the foregoing, no lender shall have any obligations or other liabilities under this Agreement solely because it holds a mortgage, or an interest in any party or successor or assign.

(b) Default by the City.

(i) Default. In the event the City does not accept, process or render a decision in a timely manner on necessary development permits, land use or building approvals or other Entitlements as provided in this Agreement upon compliance with the requirements therefor, or as otherwise agreed to by the parties hereto, or the City otherwise defaults under the provisions of this Agreement, the Developer shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement (which the City hereby agrees is an appropriate remedy) provided the Developer has first complied with the procedures in Section 15(b)(ii), but Developer shall not have the right to recover monetary damages other than reasonable attorneys' fees incurred, as provided in Section 21(g).

(ii) Notice of Default. Prior to the exercise of any other right or remedies arising out of a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed under this Agreement. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) no later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided the City shall continuously and diligently pursue each remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City is in default under this Agreement or whether the City has cured the default, or to seek the enforcement of this Agreement, the City and the Developer may commence legal action pursuant to Section 21(m) of this Agreement.

(c) Monetary Damages. The Developer and the City acknowledge that neither the City nor the Developer would have entered into this Agreement if either were liable for monetary damages under or with respect to this Agreement or the application hereof. Both the City and the Developer agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate the Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify such exposure. Therefore, the City and the Developer agree that neither shall be liable for monetary damages under or with respect to this Agreement or the application hereof and the City and the Developer covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement.

**16. Administration of Agreement and Resolution of Disputes.** The Developer shall at all times have the right to appeal to the City Council any decision or determination made by any employee, agent or other representative of the City concerning the Project or the interpretation and administration of this Agreement. All City Council decisions or

determinations regarding the Project or the administration of this Agreement shall also be subject to judicial review pursuant to California Code of Civil Procedure Section 1094.5, provided that, pursuant to California Code of Civil Procedure Section 1094.6, any such action must be filed in a court of competent jurisdiction not later than ninety (90) days after the date on which the City Council's decision becomes final. In addition, in the event the Developer and the City cannot agree whether a default on the part of the Developer, or any of its successors or assigns, under this Agreement exists or whether or not any such default has been cured, then the City or the Developer may commence legal action pursuant to Section 21(m).

17. Recordation of this Agreement. Pursuant to California Government Code Section 65868.5, the clerk of the City shall record a copy of this Agreement in the Official Records of the County within ten (10) days after the mutual execution of this Agreement.

18. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the City, the Developer and their respective successors and assigns. No other person or entity shall have any right of action based upon any provision of this Agreement.

19. Conflict of City and State or Federal Laws. In the event that State or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in the Entitlements, the City shall provide the Developer with written notice of such State or federal law or regulation, a copy of such law or regulation and a statement concerning the conflict with the provisions of this Agreement. The parties shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such State or federal law or regulation.

20. Assignment.

(a) Developer's Right to Assign. The Developer shall have the right to sell, lease, assign, hypothecate or otherwise transfer (a "**Transfer**") all or any portion of the Property (the "**Transferred Property**"), and to assign part or all of its rights, title and interest in and to this Agreement, to one or more persons or entities (a "**Transferee**") at any time and from time to time during the term of this Agreement, subject to the following terms and conditions:

(i) The Developer's rights and obligations under this Agreement may be transferred only in conjunction with the Transfer of the portion of the Transferred Property to which the rights and obligations apply;

(ii) The Developer shall give written notice to the City after the closing or other completion of a Transfer, and shall concurrently deliver to the City a fully executed Assignment and Assumption Agreement between the Developer and the Transferee pursuant to which the Developer shall assign and delegate to the Transferee, and the Transferee shall accept, assume and agree to perform all of the rights and obligations of the Developer under this Agreement that are allocable to the Transferred Property (the "**Assignment and Assumption Agreement**"); and

(iii) Except as otherwise provided in Section 20(b) below, upon recordation of the deed conveying title to the Transferred Property to the Transferee and delivery to the City of the fully executed Assignment and Assumption Agreement (the date of delivery to be the "Transfer Date"), the Transferee shall succeed to all of the Developer's rights under this Agreement which relate to the Transferred Property (including without limitation the right to Transfer), and to all of the Developer's obligations which relate to the Transferred Property, and the Developer shall have no further rights or obligations under this Agreement with respect to the applicable Transferred Property, except for any such rights and obligations that accrued prior to the Transfer Date.

(b) Transfer of Obligations. If the Developer so elects in its sole discretion, the Developer may enter into a separate agreement with a Transferee (a "Transfer Agreement") concerning the allocation of rights and obligations between the Developer and its Transferee with respect to the Transferred Property. Without limiting the foregoing, a Transfer Agreement may contain provisions: (i) assigning to the Transferee any obligations that otherwise would not relate to the Transferred Property (provided the Transferee expressly assumes all such obligations); (ii) releasing the Transferee from any obligations that otherwise could relate to the Transferred Property; (iii) reserving to the Developer certain rights that relate to the Transferred Property and otherwise would be assigned in the Assignment and Assumption Agreement; (iv) assigning to the Transferee any of the Developer's other rights hereunder; and (v) defining and describing the extent to which the Transferee will be deemed to be a "Developer" hereunder. To the extent a Transfer Agreement reserves obligations to the Developer that otherwise would be allocable to the Transferred Property, the Transferee shall have no liability with respect to such reserved obligations and the Developer shall remain liable with respect thereto. To the extent a Transfer Agreement delegates obligations to a Transferee that otherwise would not be allocable to the Transferred Property, the Transferee shall be liable for the performance of such delegated obligations on and after the Transfer Date and the Developer shall have no further liability with respect thereto. Such Transfer Agreement shall not be binding upon or amend the City's rights or obligations under this Agreement unless the City agrees to such assignment of rights and obligations in writing. The City's agreement shall not be unreasonably withheld.

(c) Non-Assuming Transferees. The burdens, obligations and duties of the Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor the City's consent shall be required in connection with, any single parcel improved with a completed residential structure and leased for a period of longer than one year, or conveyed to a purchaser, for use rather than re-sale. The Transferee in such a transaction and its successors shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the term. Immediately upon any such lease or conveyance, and without the execution or recordation of any further document, such parcel shall no longer be subject to or burdened by this Agreement.

(d) Covenants Run With the Land; Binding Effect. Subject to the terms, conditions and exceptions set forth in this Section 20 and elsewhere in this Agreement, this Agreement shall run with the land, and shall be binding upon and inure to the benefit of the parties' respective successors and assigns (including without limitation all Transferees). City acknowledges and agrees that the School Site is subject to acquisition by the Oxnard School District (OSD) for use as an elementary school under a School Mitigation Agreement, made by



OSD and Developer and dated June 19, 2002. City agrees to cooperate with Developer and OSD in efforts to obtain Coastal Commission approval of building and operating a school on the School Site. This Agreement shall terminate with respect to the School Site upon conveyance thereof to the OSD or release of OSD's interest therein, pursuant to the School Mitigation Agreement. Further, the burdens of this Agreement shall terminate with respect to any other lot, and such lot shall be released and no longer be subject to this Agreement, without the recordation of any further document, when a building permit has been issued for the building(s) on the lot.

**21. Miscellaneous.**

(a) Notices. All notices which are allowed or required to be given hereunder shall be in writing and (i) shall be deemed given and received when personally delivered or (ii) shall be deemed given when the same are deposited in the United States mail, with postage prepaid, to be sent by registered or certified mail or overnight mail service, addressed to the applicable designated person by one party to the other in writing, and shall be deemed received on the second business day after such mailing.

If to City:                      City of Oxnard  
   300 West Third Street  
   Oxnard, California 93030  
   Attention: City Manager  
   Tel. No.: (805) 385-7430  
   Fax No.: (805) 385-7595

with a copy to:                City of Oxnard  
   305 West Third Street  
   Oxnard, California 93030  
   Attention: Development Services Director  
   Tel. No.: (805) 385-7877  
   Fax No.: (805) 385-7854

   City of Oxnard  
   300 West Third Street  
   Oxnard, California 93030  
   Attention: City Attorney  
   Tel. No.: (805) 385-7483  
   Fax No.: (805) 385-7423

   City of Oxnard  
   305 West Third Street  
   Oxnard, California 93030  
   Attention: Planning Manager  
   Tel. No.: (805) 385-7863  
   Fax No.: (805) 385-7417

If to the Developer:        Oly Mandalay Bay General Partnership  
   600 S. Victoria Ave., Suite A600



Oxnard, CA 93035  
Attention: William Wynne  
Tel. No.: (805) 382-9244  
Fax No.: (805) 382-9245

with a copy to:

Nordman Cormany Hair & Compton  
1000 Town Center Drive, Sixth Floor  
Oxnard, CA 93031-9100  
Attention: Marc L. Charney  
Fax No.: (805) 988-7721

WMC Management Company, LLC  
5080 Spectrum Drive, Suite 1000E  
Addison, TX 75001  
Attention: John C. Tatum  
Fax No.: (972) 490-2649

(b) Severability. If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the rest of this Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part. The City and the Developer declare that they intend and desire that the remaining parts of this Agreement continue to be effective without any part or parts that have been declared invalid.

(c) Entire Agreement; Conflicts. This Agreement represents the entire agreement between the City and the Developer with respect to the subject matter hereof and supercedes all prior agreements and understandings, whether oral or written, between the City and the Developer with respect to the matters contained in this Agreement. Should any or all of the provisions of this Agreement be found to be in conflict with any other provision or provisions found in the Applicable Rules, then the provisions of this Agreement shall govern and prevail.

(d) Further Assurances. The City and the Developer agree to perform, from time to time, such further acts and to execute and deliver such further instruments as any other party or such party's legal counsel may reasonably request to effect the intents and purposes of this Agreement, provided that the intended obligations of the City and the Developer are not thereby modified.

(e) Inurement and Assignment. Subject to Section 20 above, this Agreement shall inure to the benefit of and bind the successors and assigns of the City and the Developer.

(f) Negation of Agency. The City and the Developer acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Developer joint venturers, partners or employer/employee.

(g) Attorneys' Fees. Notwithstanding Section 15(c) above, in the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief or other legal action pursuant to Section 21(m) below, the prevailing party in such action or proceeding shall be entitled to recover its court and/or arbitration costs and reasonable out-of-pocket expenses not limited to taxable costs, including, but not limited to telephone calls, photocopies, expert witness, travel, and reasonable attorneys' fees and costs to be fixed by the court or the arbitrators. Such recovery shall include, but not be limited to, court costs, arbitration costs, out-of-pocket expenses and attorneys' fees on appeal, if any. The court or the arbitrators shall determine who is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. If either party is reasonably required to incur such out-of-pocket expenses and attorneys' fees as a result of any claim arising out of or concerning this Agreement or any right or obligation derived hereunder, then the prevailing party shall be entitled to recover such reasonable out-of-pocket expenses and attorneys' fees whether or not an action is filed.

(h) Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

(i) Force Majeure. In the event of changed conditions, changes in local, State or federal laws or regulations, floods, delays due to strikes, inability to obtain materials, civil commotion, fire, acts of God, or other circumstances which substantially interfere with carrying out the Project or with the ability of either the City or the Developer to perform its obligations under this Agreement, and which are not due to actions on the part of the Developer or the City and are beyond the reasonable control of the Developer and the City, the Developer and the City agree to bargain in good faith to modify this Agreement as may be necessary to achieve the goals and preserve the original intent of this Agreement.

(j) Section Headings. The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(k) Time of Essence. Time is of the essence of this Agreement, and all performances required hereunder shall be completed within the time periods specified. Any failure of performance shall be deemed a material breach of this Agreement.

(l) Counterparts. This Agreement and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(m) Choice of Law; Jurisdiction; Venue. The parties agree that this Agreement shall be interpreted under the laws of the State of California and that the applicable law for any question or controversy arising out of or in any way related to this Agreement shall be the law of the State of California. The parties agree that any legal proceeding commenced with respect to any question or controversy arising out of or in any way related to this Agreement shall be filed and prosecuted in the Superior Court for the County of Ventura, California.

IN WITNESS WHEREOF, the City and the Developer hereto have each executed this Agreement as of the date first written above.

**DEVELOPER**

OLY MANDALAY BAY GENERAL  
PARTNERSHIP, a Delaware general partnership

By: OLY Calvest Mandalay General Partnership,  
a Delaware general partnership, its Managing  
Partner

By: Oly Mandalay III, L.P., a Delaware  
limited partnership, its Managing  
Partner

By: Oly Deal GP III, LLC, a  
Delaware limited liability  
company, its general partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: GRANITE/MANDALAY BAY, LLC,  
a California limited liability company,  
its Partner

By: Mandalay Bay Partners, LLC, a  
California limited liability  
company, its Member

By: \_\_\_\_\_  
Kenneth W. Brindley, Member

By: \_\_\_\_\_  
John C. Kelterer, Member

By: \_\_\_\_\_  
William H. Wynne, Member



By: Granite Land Company, a California  
corporation, its Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY

CITY OF OXNARD, a municipal corporation  
of the State of California

By: \_\_\_\_\_  
Dr. Manuel M. Lopez, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Gillig, City Attorney

## ACKNOWLEDGMENT

[illegible]

On \_\_\_\_\_, 2003, before me \_\_\_\_\_ personally appeared \_\_\_\_\_, personally known to me (or 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

{14152.001 10139137.DOC}  
OC DOCS\484655.2[W2000]

4  
31 of 39

## EXHIBIT A

### Legal Description of the Property

That certain real property located in the City of Oxnard, County of Ventura, State of California, more particularly described as follows:

LOTS 1 TO 290 OF TENTATIVE TRACT MAP NO. 5266, BEING A SUBDIVISION OF THE FOLLOWING:

PORTIONS OF LOTS 52, 66, 67, 73 AND 74 OF PATTERSON RANCH SUBDIVISION, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, PER THE MAP RECORDED IN BOOK 8 AT PAGE 1 OF MISCELLANEOUS RECORDS (MAPS), IN THE OFFICE OF THE RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

PARCEL 2 OF LOT LINE ADJUSTMENT NO. 2000-5-007 RECORDED JULY 3, 2000 AS INSTRUMENT NO. 2000-0104845 OF OFFICIAL RECORDS OF VENTURA COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, GAS HYDROCARBON SUBSTANCES AND OTHER MINERAL AND FISSIONABLE SUBSTANCES BUT WITHOUT THE RIGHT OF ENTRY UPON THE SURFACE OF SAID LAND OR TO A DEPTH OF 500 FEET FROM THE SURFACE THEREOF FOR THE PURPOSE OF EXPLORING FOR, DRILLING, BORING, MARKETING OR REMOVING SUCH SUBSTANCES, BUT WITH THE RIGHT TO PRODUCE AND TAKE SAID SUBSTANCES BY MEANS OF WELLS LOCATED ON OTHER LAND DIRECTIONALLY DRILLED UPON SAID PROPERTY BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, AS RESERVED BY DOMINICK MCGRATH AS REFERENCED BY A DOCUMENT RECORDED OCTOBER 20, 1994, AS INSTRUMENT NO. 94-171421 OF OFFICIAL RECORDS.

Assessor's Parcel No: A portion of 188-0-110-145 and A portion of 188-0-110-315.



## EXHIBIT B

### Schedule of Permitted Exceptions

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2001-2002.
2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation Code of the State of California.
3. Water rights, claims or title to water, whether or not disclosed by the public records.

[To Come]

7. Any matter that would be disclosed by an accurate survey of the Property.
8. Any matter that would be disclosed by a physical inspection of the Property.

**EXHIBIT C**

**COUNTY OF VENTURA, EXISTING MANDALAY BAY, HARBOUR ISLAND  
CONDOMINIUMS, WESTPORT AT MANDALAY BAY, AND SEABRIDGE CHANNEL  
ISLANDS HARBOR BOAT SLIPS**

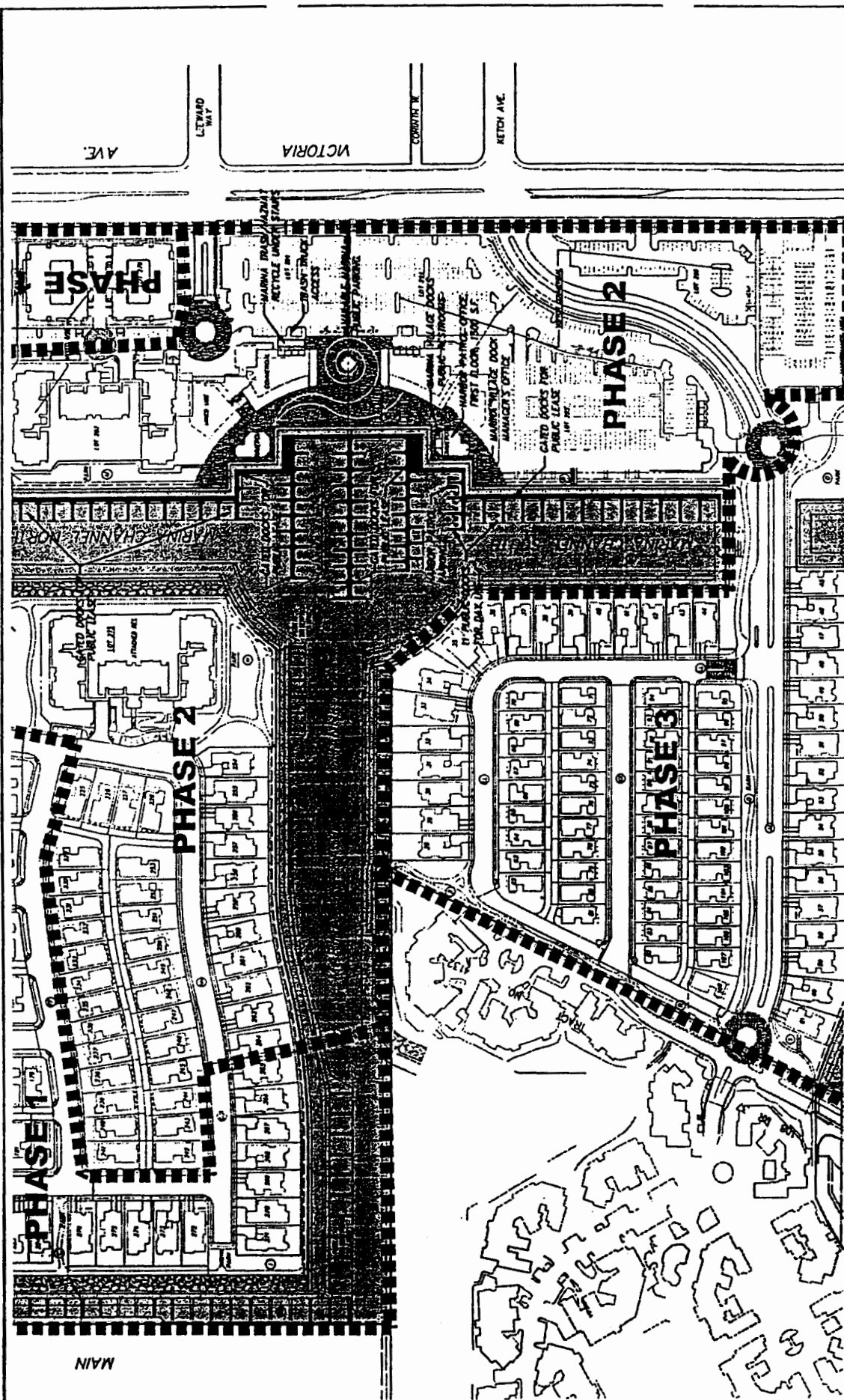
C\* - County Operated Facility; P - Privately Operated

- MOU Ratios:**

- ## ATTACHEMENT

EXHIBIT D

BOATER RELATED FACILITIES





JENSEN  
CONSTRUCTION  
CORPORATION

415 N. MARKET ST., STE. 110  
PORTLAND, OREGON 97208  
PHONE: 503/241-1000  
FAX: 503/241-1001

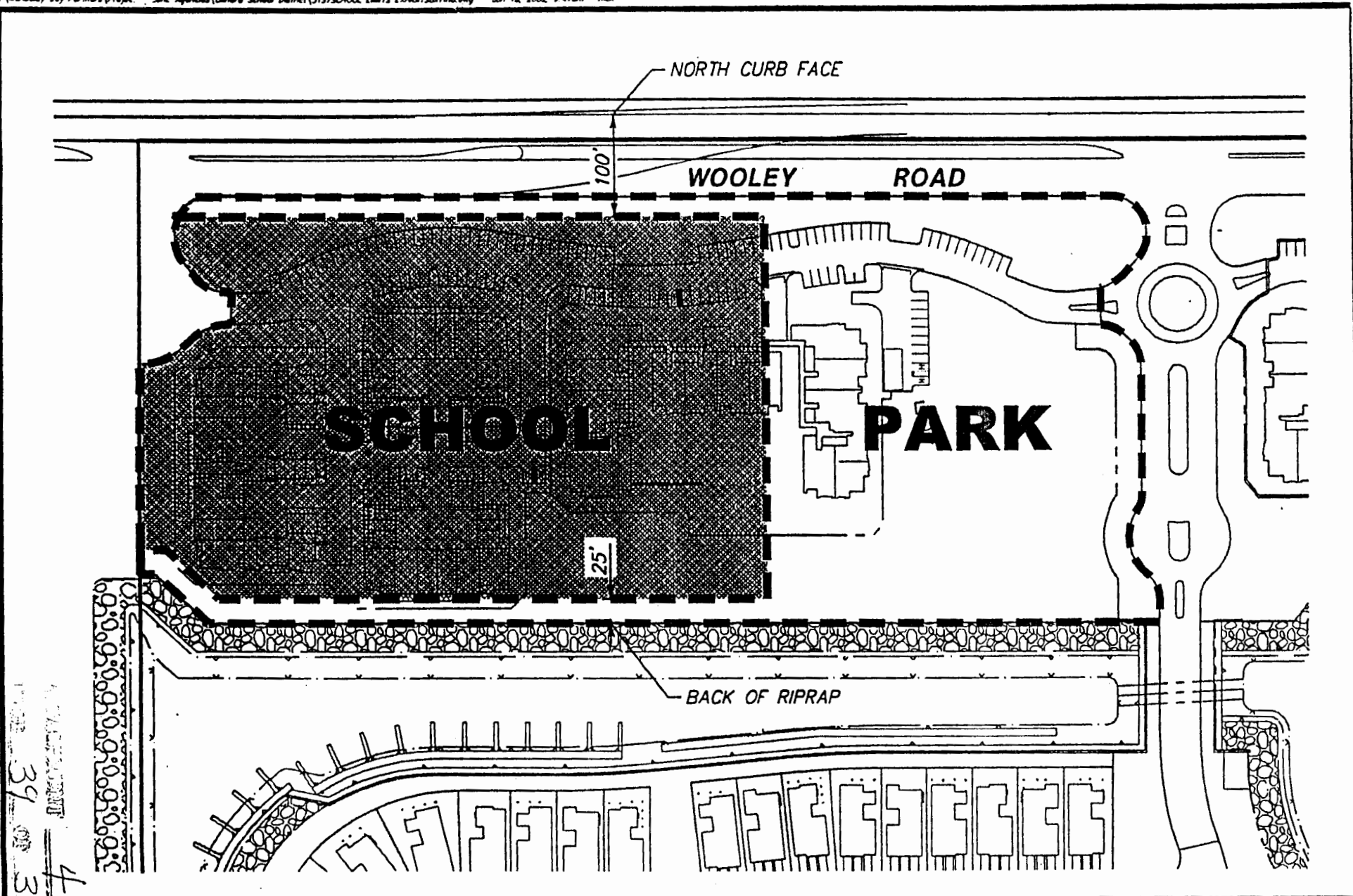


SEABRIDGE

FIGURE 2-12  
PUBLIC BOAT DOCK FACILITIES



**EXHIBIT E**  
**SCHOOL SITE**



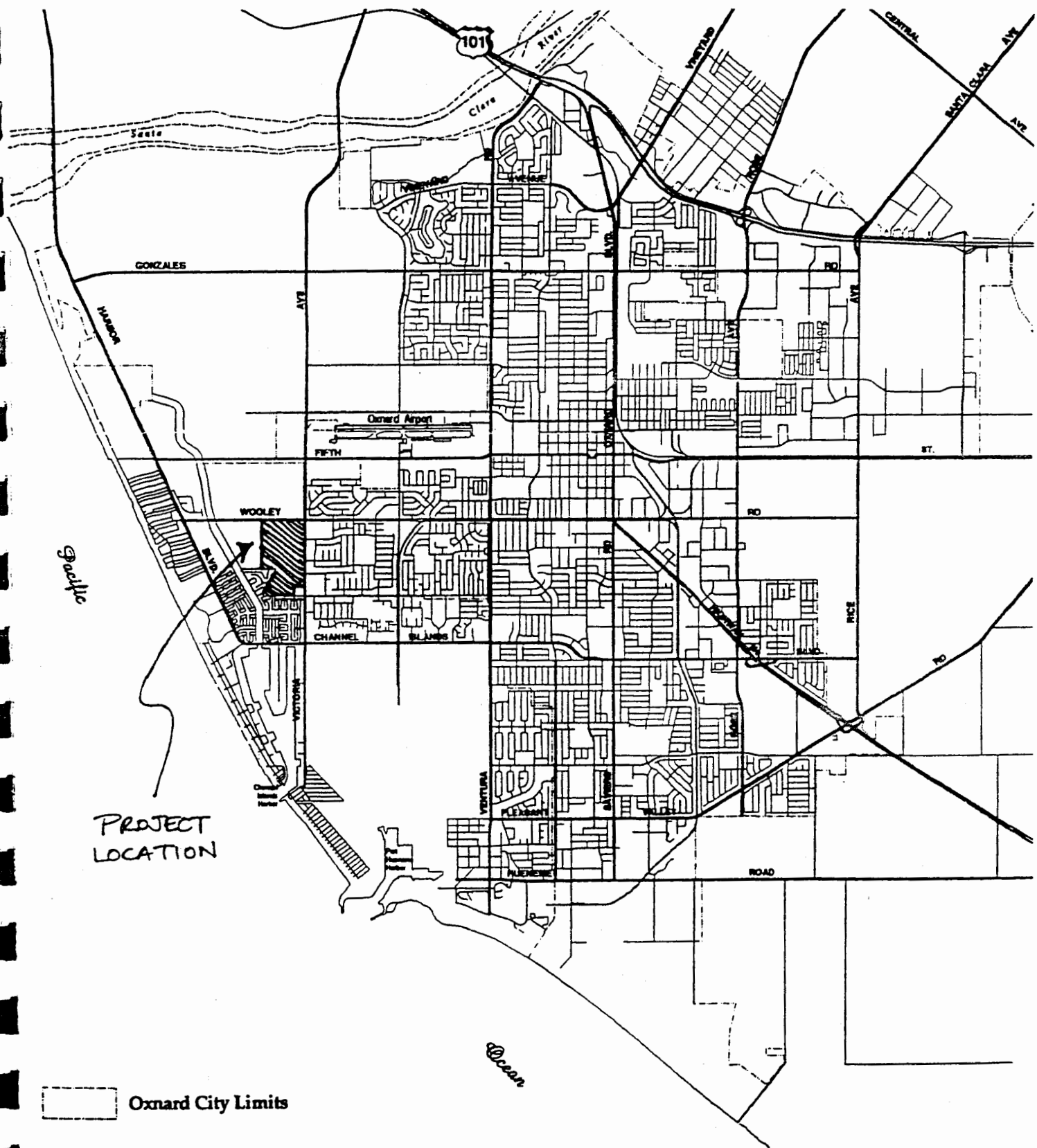
39 00 39  
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Oly-Mandalay Bay General Partnership  
600 VICTORIA AVE #A800 PHONE (805) 382-9244  
OXNARD, CA 93035 FAX (805) 382-9245

**EXHIBIT "E"**  
**SUBJECT PARCEL**





 Oxnard City Limits

City of  
**Oxnard**

**PLANNING AND  
 ENVIRONMENTAL  
 SERVICES**

File No.  
**PZ00-5-85(TSM)**

Date: **1/28/02**

Prepared By: **S. Martin**

EXHIBIT NO. 4  
 A-4-oxn-03-014  
 VICINITY MAP

PG. 14

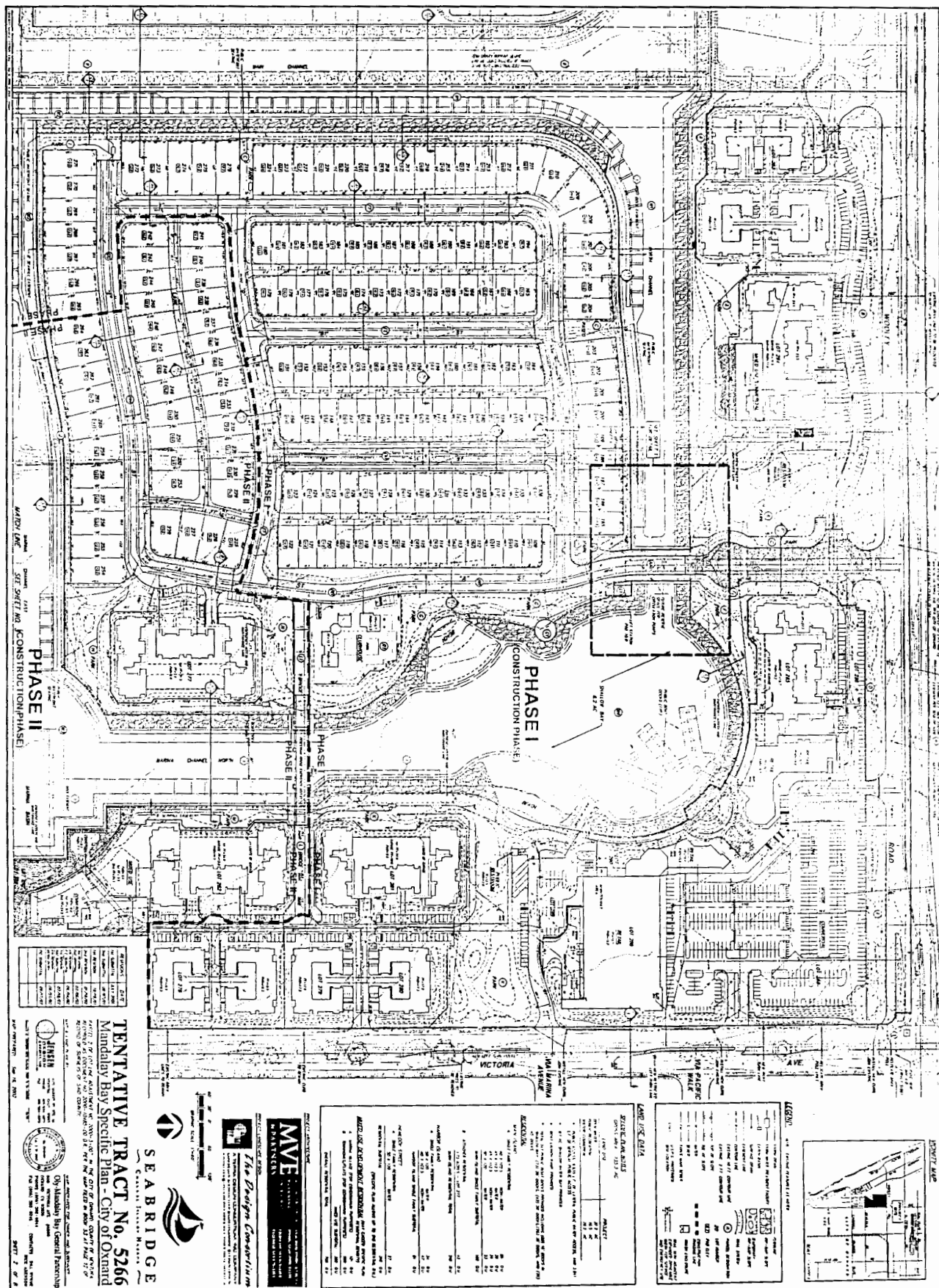
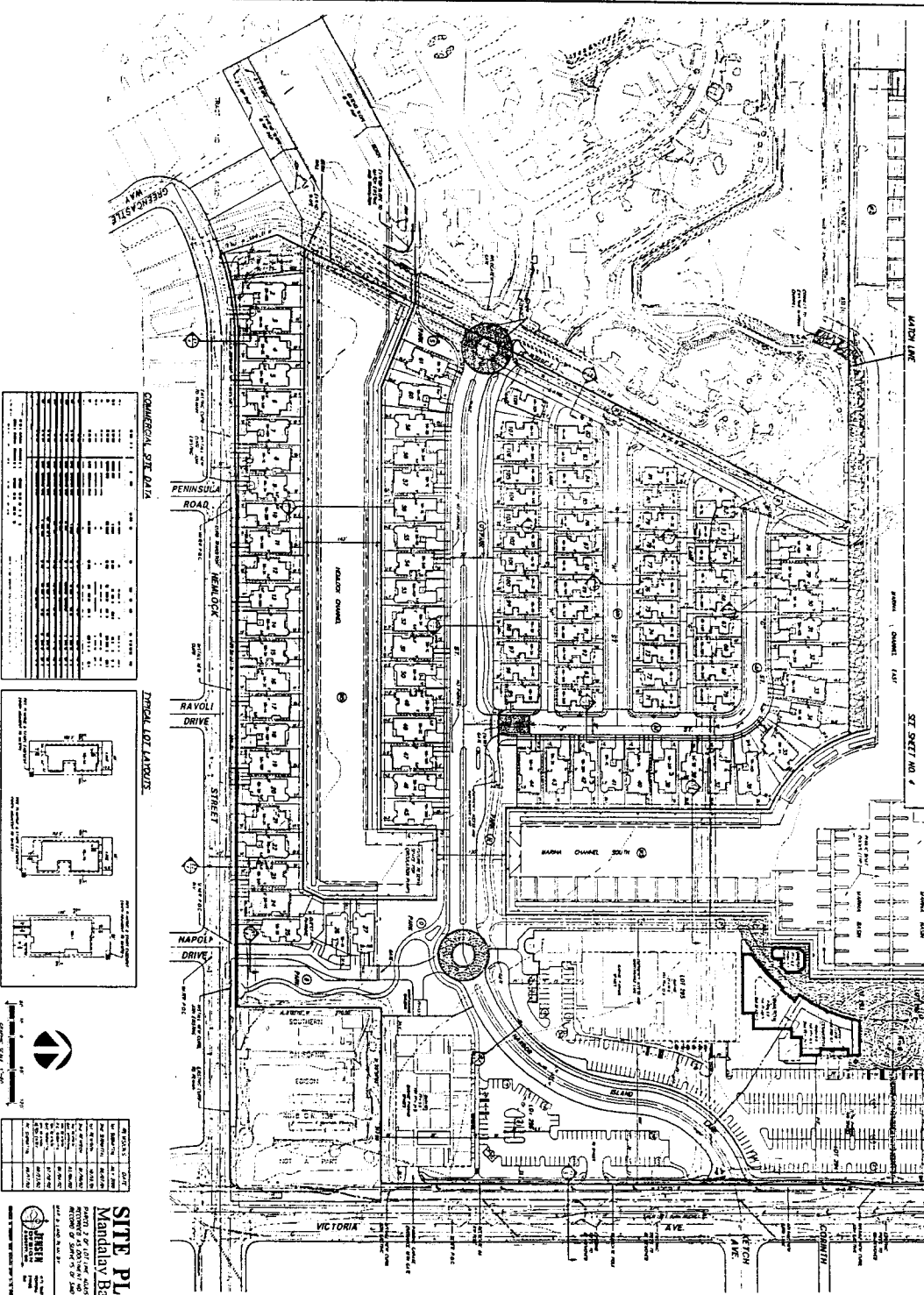
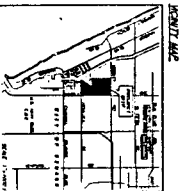
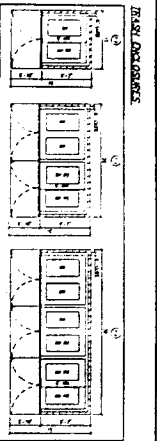


EXHIBIT NO. 5  
A-4-oxN-03-014  
PROJECT PLANS



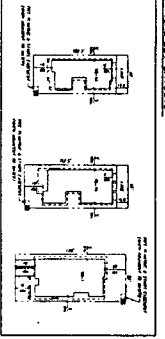






**PROPOSED LOT DATA**

LOT NO.	AREA (SQ. M.)	PERMITS	REMARKS
1	1,200	1,200	
2	1,200	1,200	
3	1,200	1,200	
4	1,200	1,200	
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100	1,200	1,200	



**SITE PLAN, TRACT NO. 5266**  
**Mandulay Bay Specific Plan - City of Oxnard**  
 PREPARED BY: MVE CONSULTANTS  
 DATE: 10/1/00  
 SHEET 3 OF 4



**MVE CONSULTANTS**  
 10000 VAN NUYS BLVD., SUITE 100  
 VAN NUYS, CA 91411  
 (818) 709-1111  
 FAX (818) 709-1112  
 WWW.MVECONSULTANTS.COM

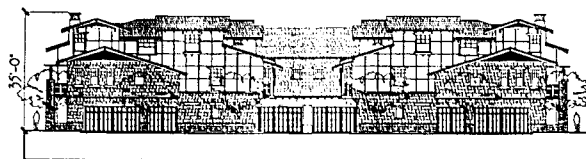
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93	1,200	1,200	
94	1,200	1,200	
95	1,200	1,200	
96	1,200	1,200	
97	1,200	1,200	
98	1,200	1,200	
99	1,200	1,200	
100	1,200	1,200	

PROPOSED LOT DATA

LOT NO.	AREA (SQ. M.)	PERMITS	REMARKS
1	1,200	1,200	
2	1,200	1,200	
3	1,200	1,200	
4	1,200	1,200	
5	1,200	1,200	
6	1,200	1,200	
7	1,200	1,200	
8	1,200	1,200	
9	1,200	1,200	
10	1,200	1,200	
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12	1,200	1,200	
13	1,200	1,200	
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32	1,200	1,200	
33	1,200	1,200	
34	1,200	1,200	
35	1,200	1,200	
36	1,200	1,200	
37	1,200	1,200	
38	1,200	1,200	
39	1,200	1,200	
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83	1,200	1,200	
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85	1,200	1,200	
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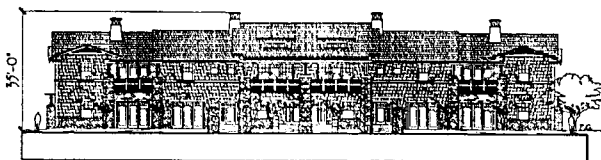
PROPOSED LOT DATA



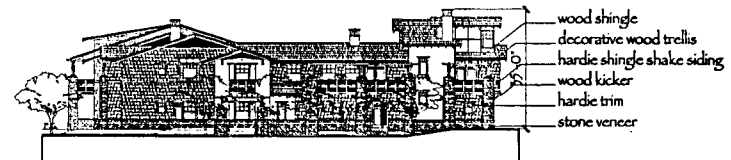
Rear Elevation



Left Elevation



Front Elevation



Right Elevation

- wood shingle
- decorative wood trellis
- hardie shingle shake siding
- wood kicker
- hardie trim
- stone veneer

A-2.1

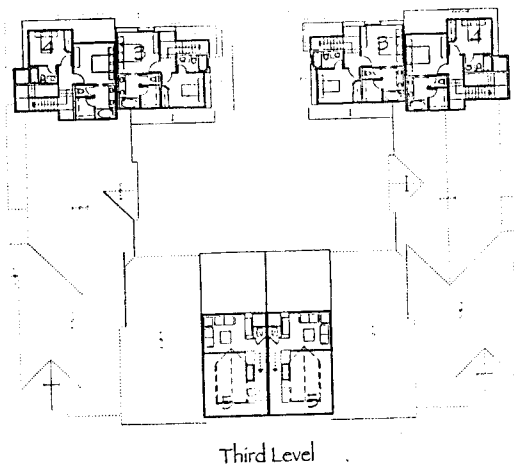
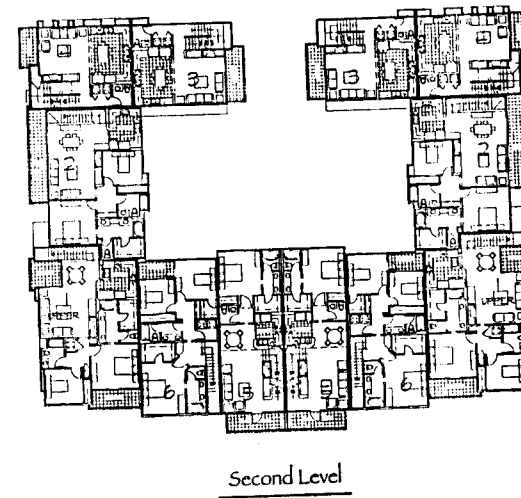
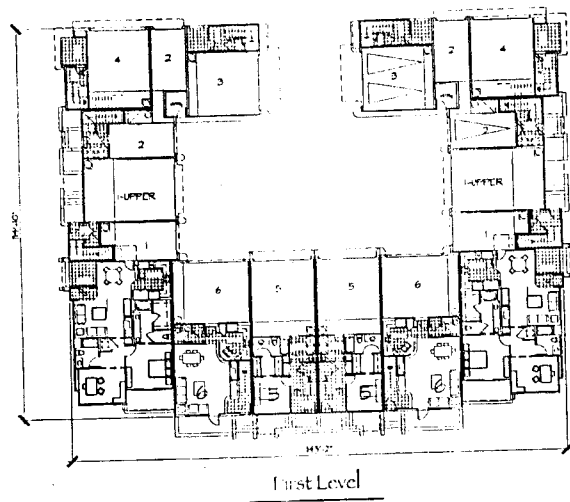
14 Plex

Conceptual Elevations

July 27, 2001

  
**Oly-Mandalay Bay General Partnership**  
 McLarand, Vasquez, Emsiek & Partners, Inc.

0 16 48  
 Scale 1/16"



A-2.2

14 Plex  
Conceptual Building Plan

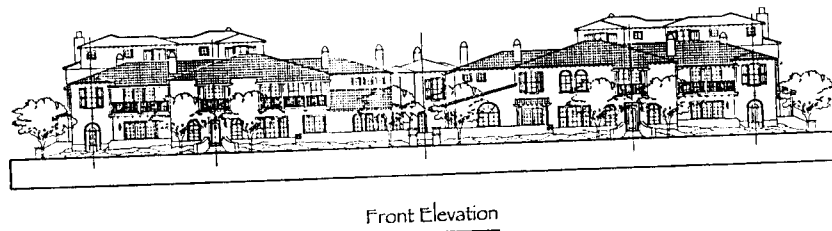
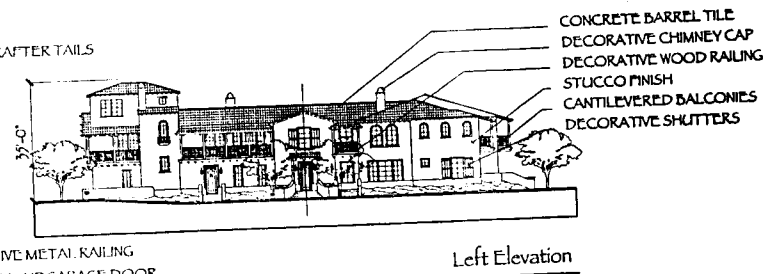
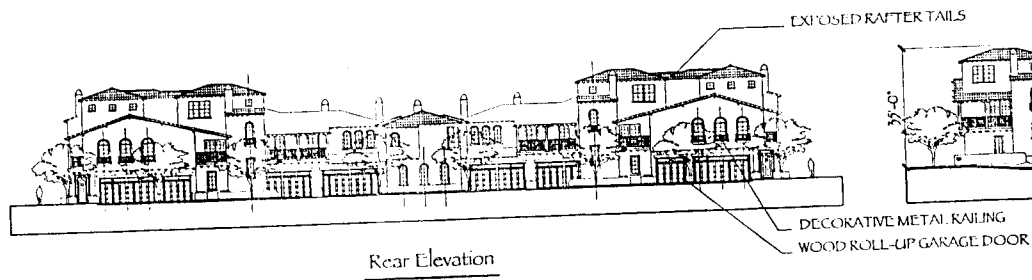


Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsick & Partners, Inc.

0 16 48 Scale 1/16

July 27, 2001





A-2.6

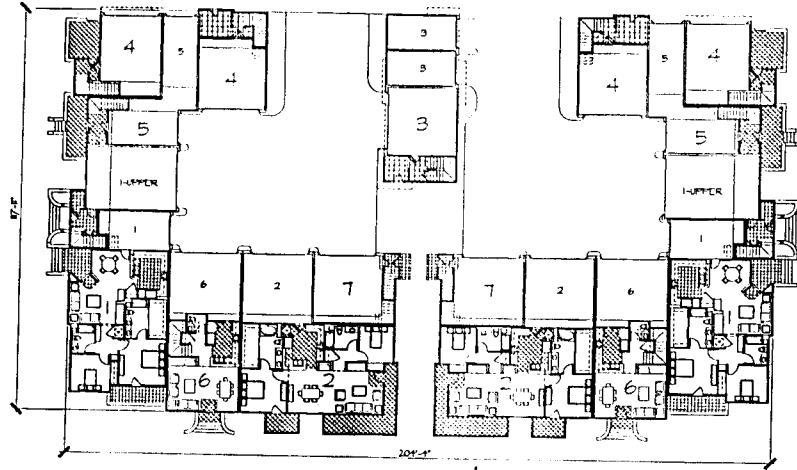
17 Plex  
Conceptual Elevations

0 16 48 Scale 1/16"

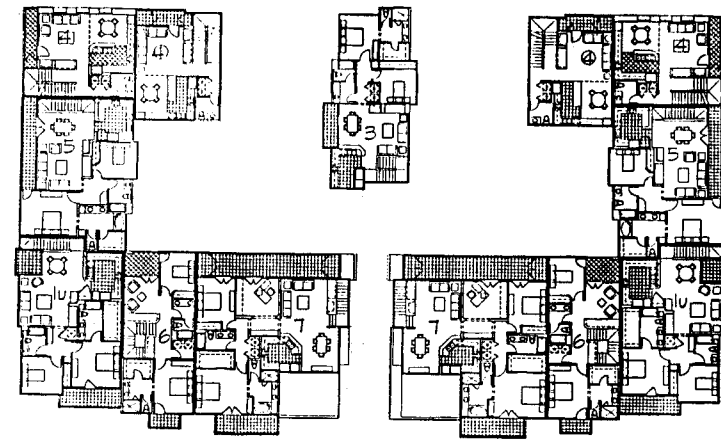


Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsick & Partners, Inc.

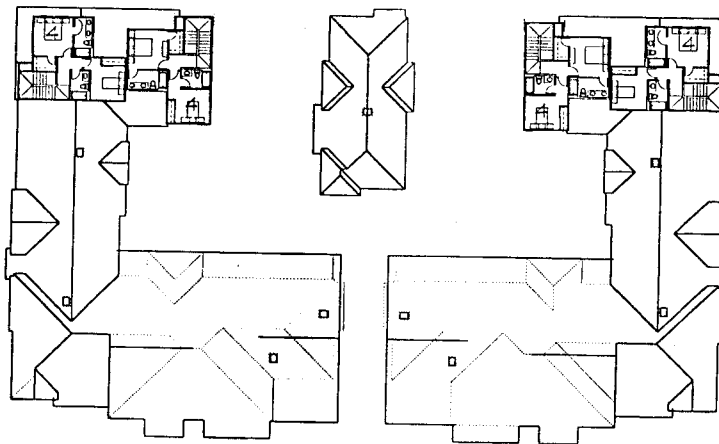
July 27, 2001



First Level



Second Level



Third Level

A-2.7



Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsick & Partners, Inc.

17 Plex  
Conceptual Building Plans

July 27, 2001

0 16 48 Scale 1/16



A-3.1

N  
Overall Site Plan

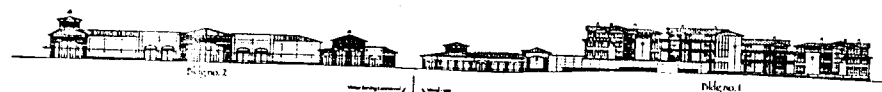


Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsiek & Partners, Inc.

Revised September 10, 2002  
July 27, 2001



Neighborhood Center Waterfront Elevation



North Elevation - Wooley Road



East Elevation - Victoria Avenue

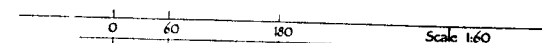
A-3.2



Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsiek & Partners, Inc.

Neighborhood Center

Overall Elevations



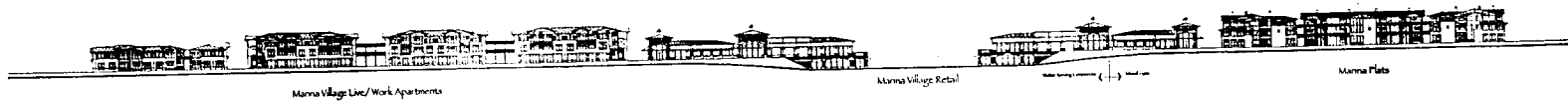
Revised June 06, 2002  
July 27, 2001



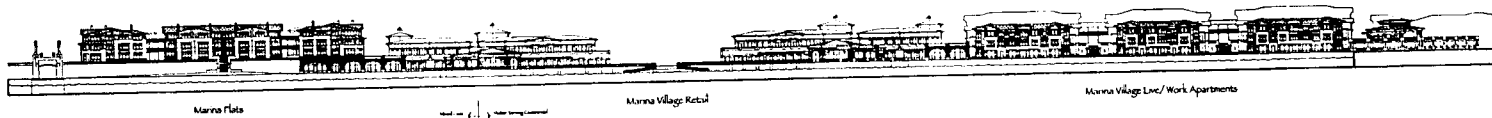
Section at Bridge



Section through Marina Village Live/Work Apartments



East Elevation - Victoria Avenue



West Elevation - Waterfront

A-3.3

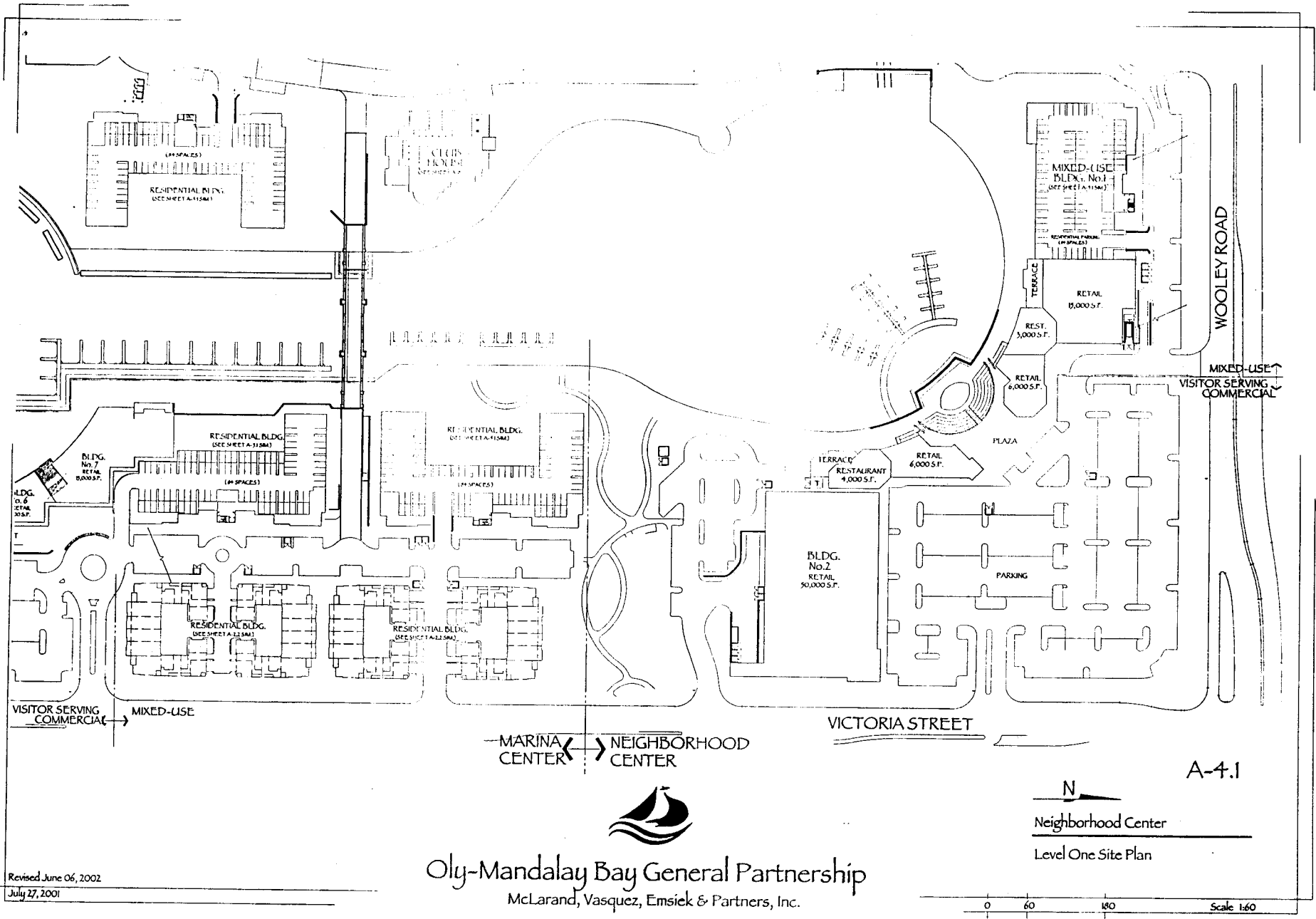


Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsick & Partners, Inc.

Marina Village  
Overall Elevations

Revised June 06, 2002  
July 27, 2001

0 60 180 Scale 1:60

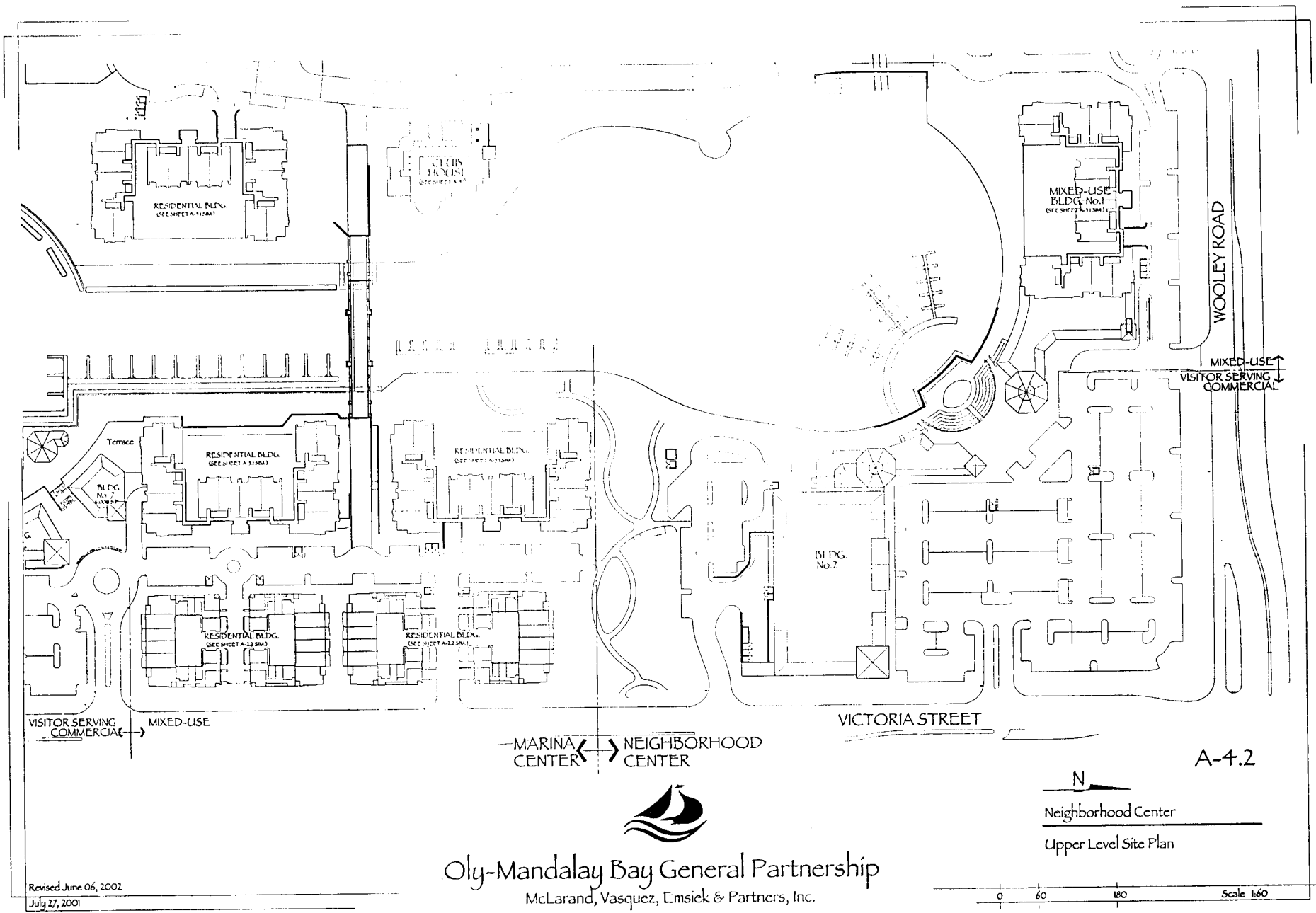


Revised June 06, 2002  
July 27, 2001

  
**Oly-Mandalay Bay General Partnership**  
McLarand, Vasquez, Emsick & Partners, Inc.

N  
Neighborhood Center  
Level One Site Plan

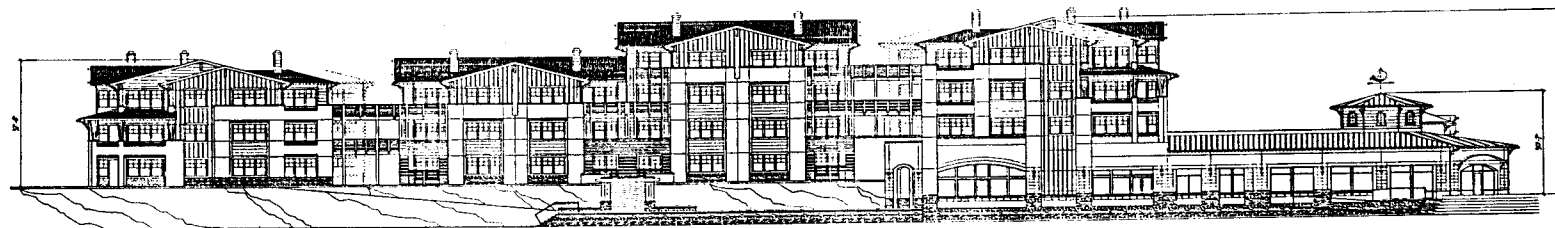
A-4.1



Revised June 06, 2002  
 July 27, 2001

Oly-Mandalay Bay General Partnership  
 McLarand, Vasquez, Emsiek & Partners, Inc.





A-4.3



Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsick & Partners, Inc.

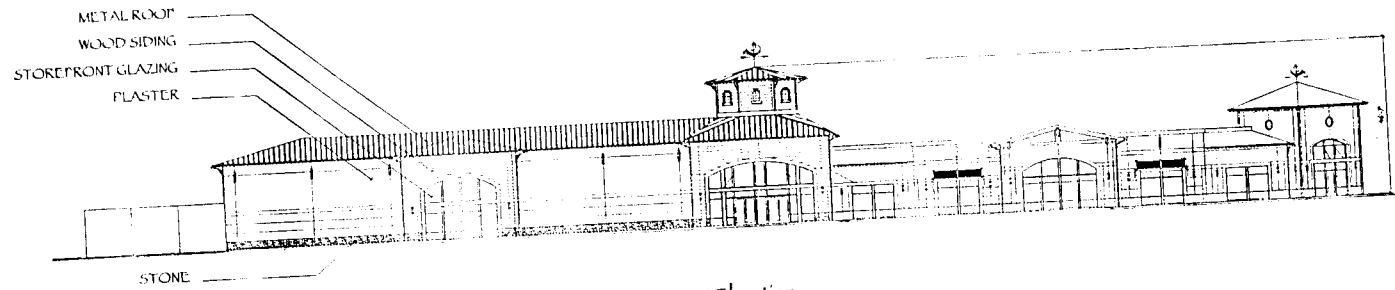
Neighborhood Center  
Mixed-Use Building No. 1

Conceptual Elevations

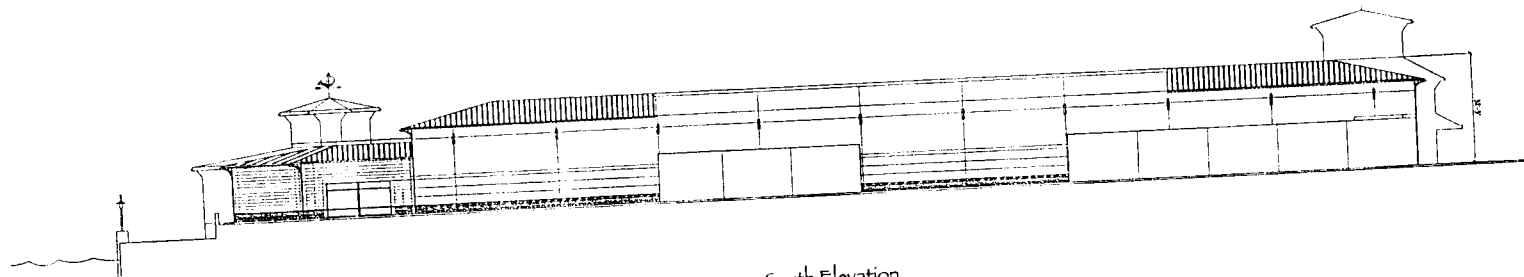
Revised June 06, 2002

July 27, 2001

0 16 48 Scale 1/16"



East Elevation



South Elevation

A-4.6

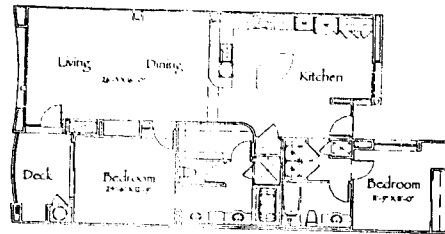


Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsick & Partners, Inc.

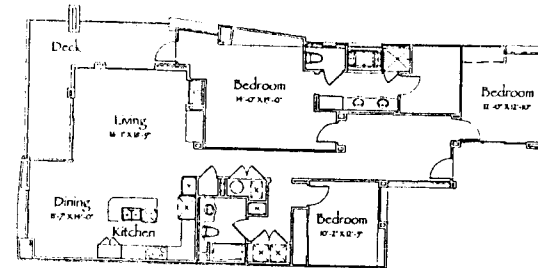
Neighborhood Center  
Building No. 2  
Conceptual Elevations

0 16 48 Scale 1/16"

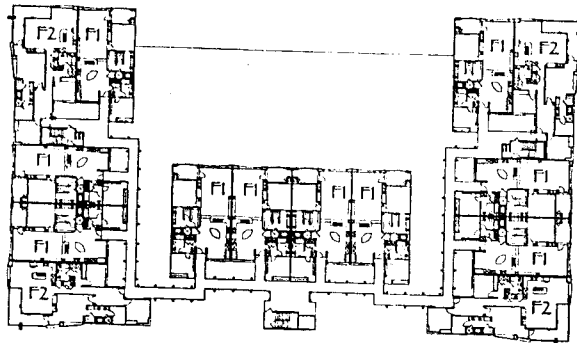
Revised June 06, 2002  
July 27, 2001



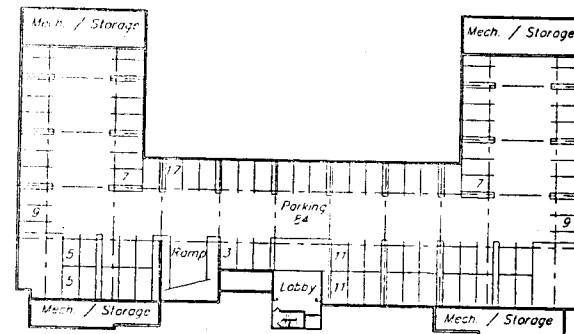
F1  
2 Bedroom Unit  
1700 S.F.  
scale: 1/8" = 1'-0"



F2  
3 Bedroom Unit  
2000 S.F.  
scale: 1/8" = 1'-0"



Conceptual Typical Plan



Conceptual Parking Plan

A-5.1

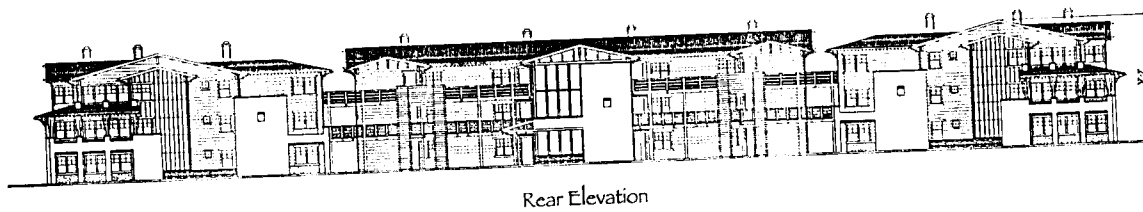


Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsick & Partners, Inc.

Marina Flats Building

Revised January 11, 2002  
July 27, 2001

0 30 90 Scale 1/30



A-5.2



Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsiek & Partners, Inc.

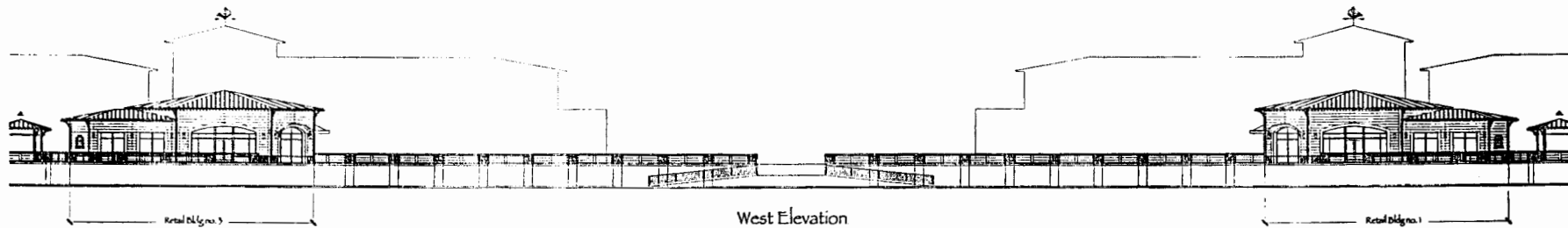
Marina Flats Building  
Conceptual Elevations

Revised June 06, 2002  
July 27, 2001

0 16 48 Scale 1/16







A-6.3

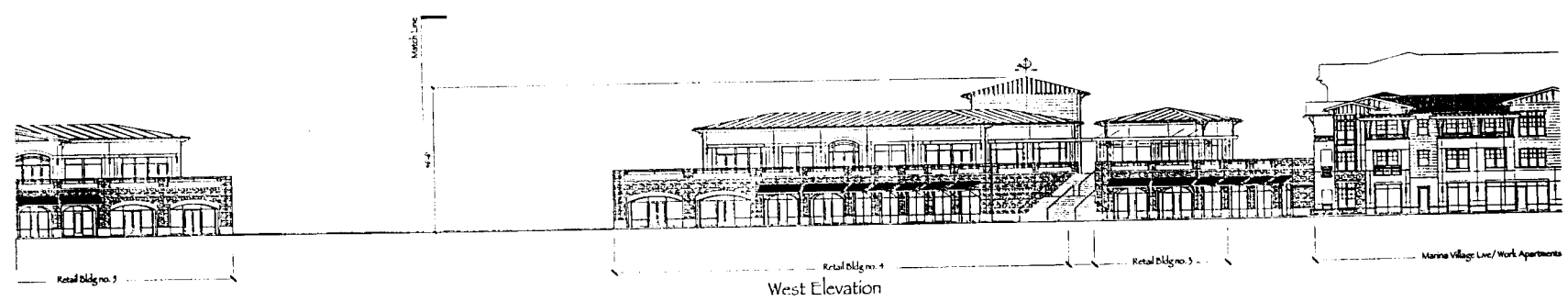
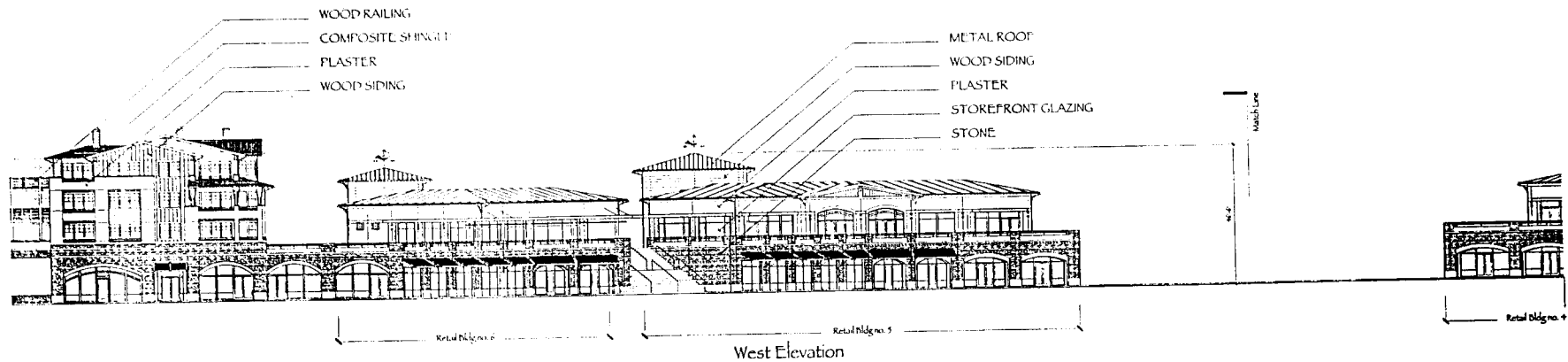
  
 Oly-Mandalay Bay General Partnership  
 McLarand, Vasquez, Emsiek & Partners, Inc.

Marina Village Retail  
 Conceptual Elevations

Revised June 06, 2002  
 July 27, 2001

0 16 48 Scale 1/16"





A-6.4

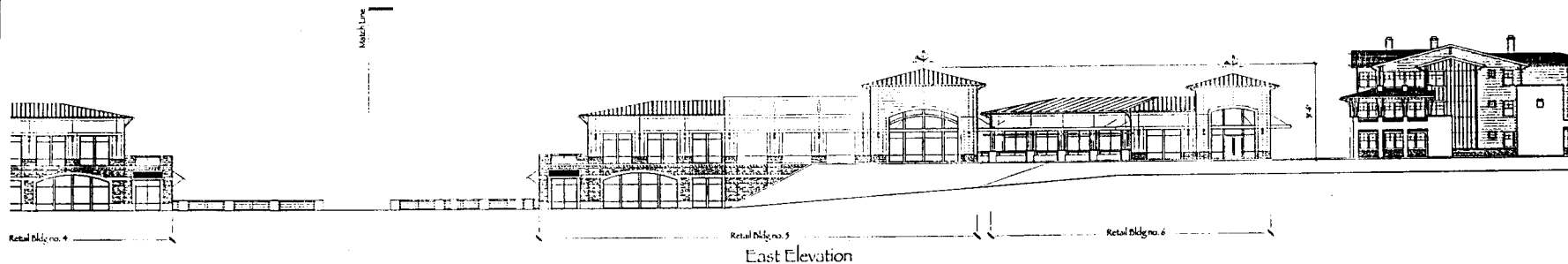
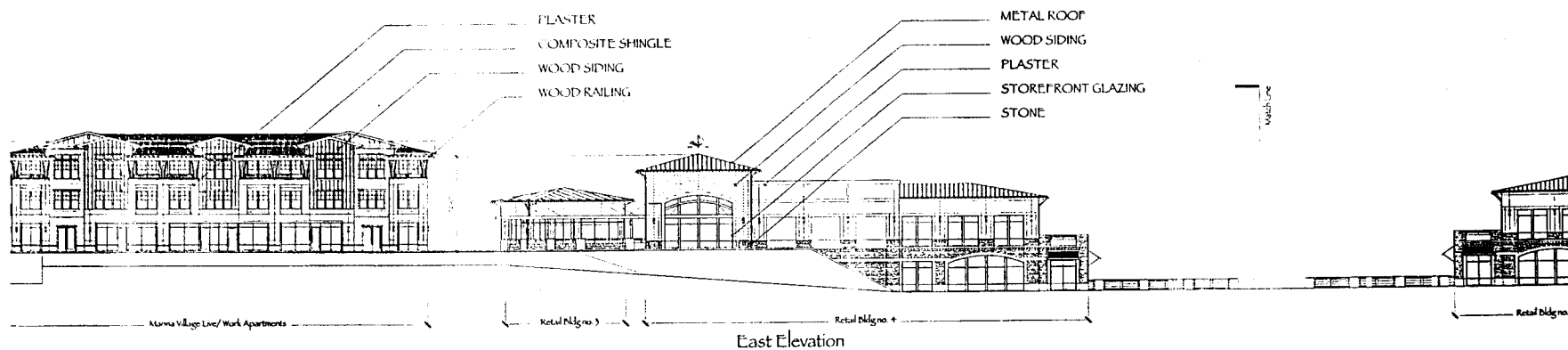


Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsiek & Partners, Inc.

Marina Village Retail  
Conceptual Elevations



August 25, 2001



A-6.5



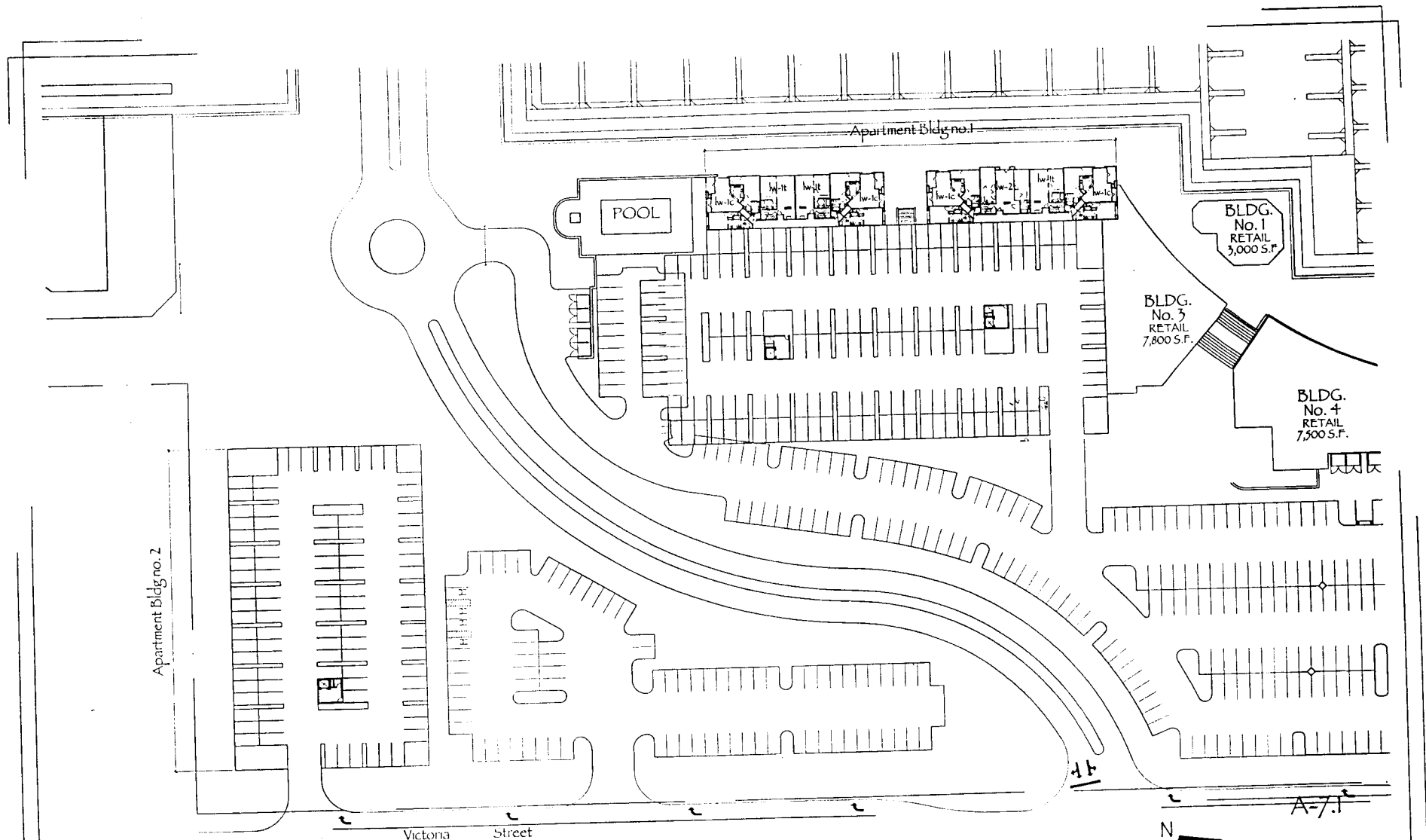
Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsiek & Partners, Inc.

Marina Village Retail

Conceptual Elevations

August 25, 2001

0 16 48 Scale 1/16



Marina Village Live/Work Apartments  
Conceptual Parking Level Plan

Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsiek & Partners, Inc.

Revised September 10, 2002  
July 27, 2001

Apartment Bldg no. 2

Apartment Bldg no. 1

POOL

BLDG. No. 1  
RETAIL  
3,900 S.F.

BLDG. No. 3  
RETAIL  
1,800 S.F.

BLDG. No. 4  
RETAIL  
7,500 S.F.

Victoria Street

N

A-7.2

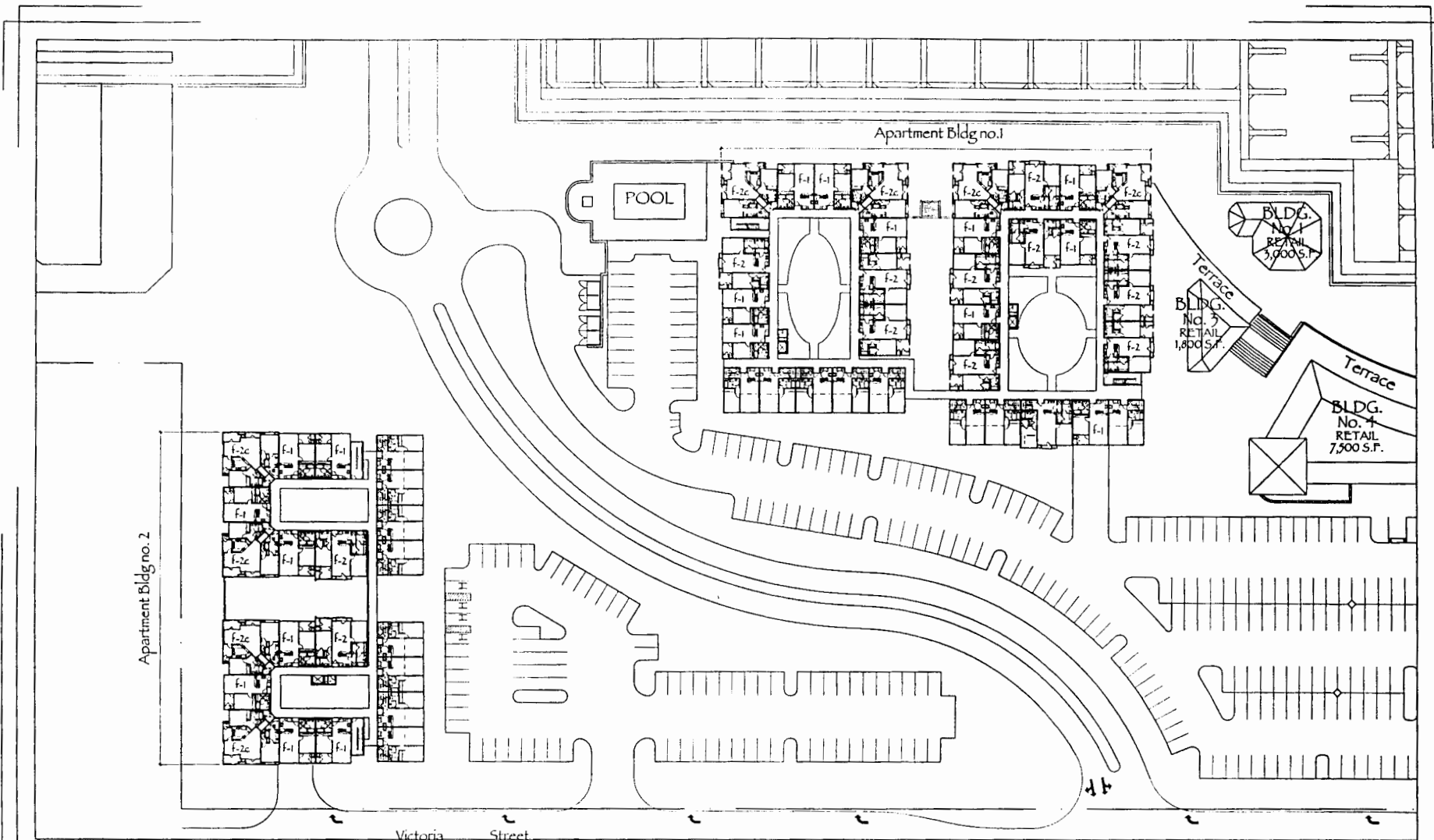
Marina Village Live/Work Apartments  
Conceptual First Level Plan



Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsiek & Partners, Inc.

Revised September 10, 2002  
July 27, 2001

0 30 60 90 Scale: 1/80

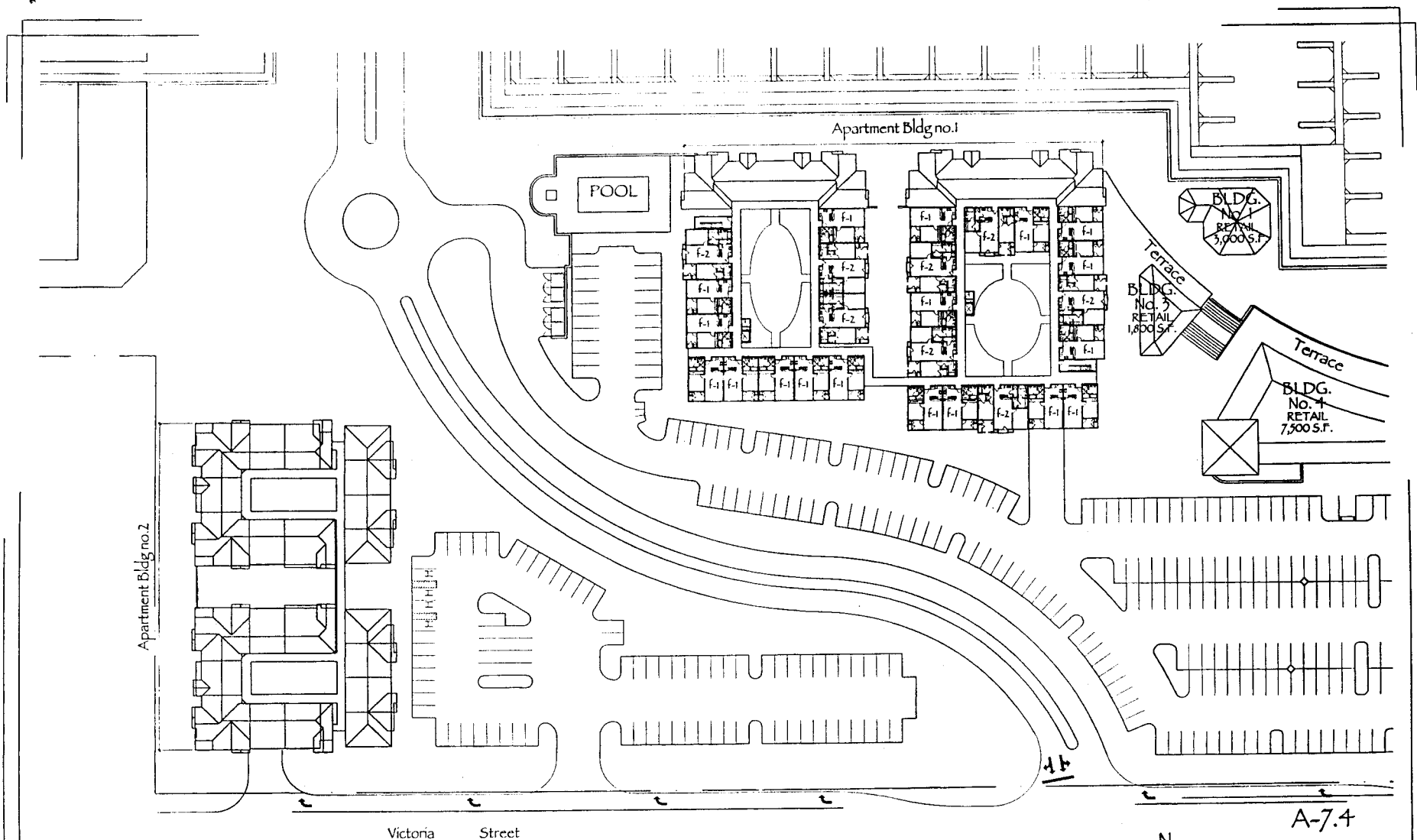


Oly-Mandalay Bay General Partnership  
 McLarand, Vasquez, Emsiek & Partners, Inc.

N  
 A-7.3  
 Marina Village Live/Work Apartments  
 Conceptual Second Level Plan

0 50 90 Scale 1:50

Revised September 10, 2002  
 July 27, 2001

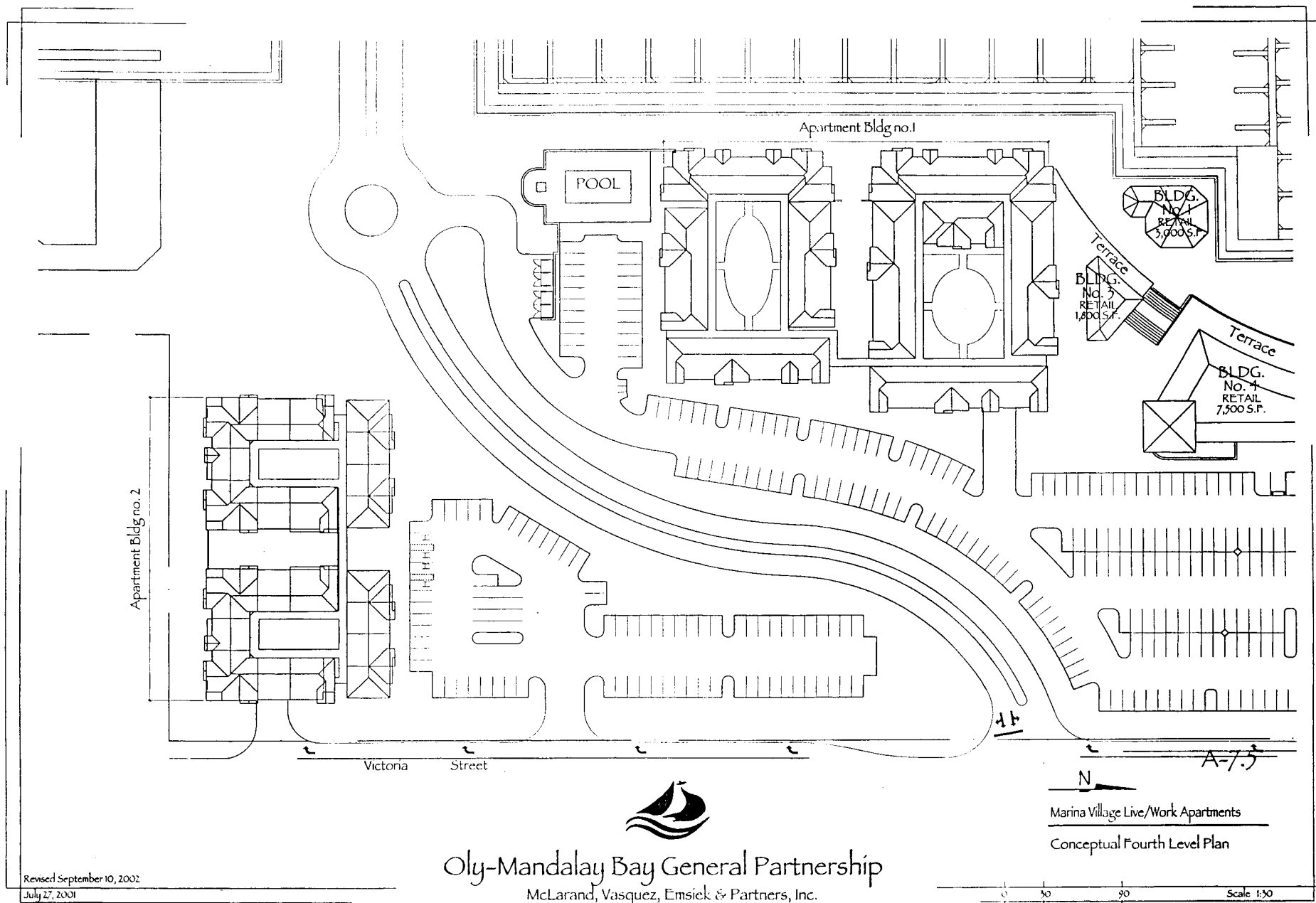


Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsiek & Partners, Inc.

Revised September 10, 2002  
July 27, 2001

Marina Village Live/Work Apartments  
Conceptual Third Level Plan

0 40 80 Scale 1/30



Revised September 10, 2002  
July 27, 2001

  
**Oly-Mandalay Bay General Partnership**  
McLarand, Vasquez, Emsiek & Partners, Inc.



COMPOSITE SHINGLES  
WOOD SIDING  
PLASTER

WOOD RAILING



West Elevation

WOOD SIDING  
METAL ROOF  
PLASTER  
STOREFRONT GLAZING  
STONE



West Elevation

A-7.8

Marina Village Live/Work Apartments

Conceptual Elevations



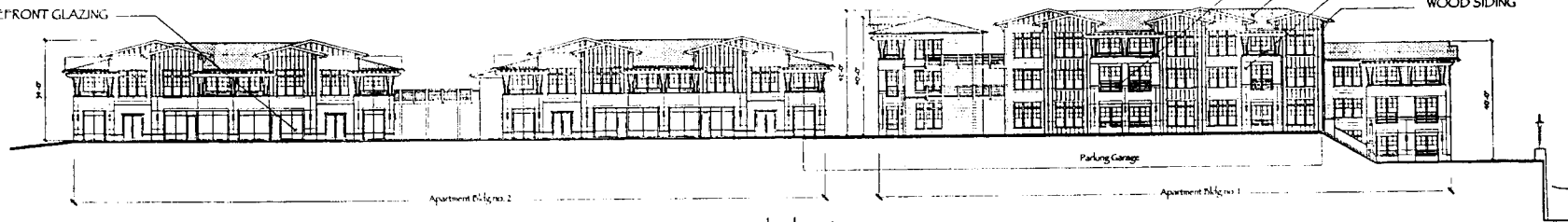
Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Umsick & Partners, Inc.

August 25, 2001

0 16 48 Scale 1/16

STOREFRONT GLAZING

WOOD RAILING  
COMPOSITE SHINGLE  
PLASTER  
WOOD SIDING



North Elevation

A-7.10



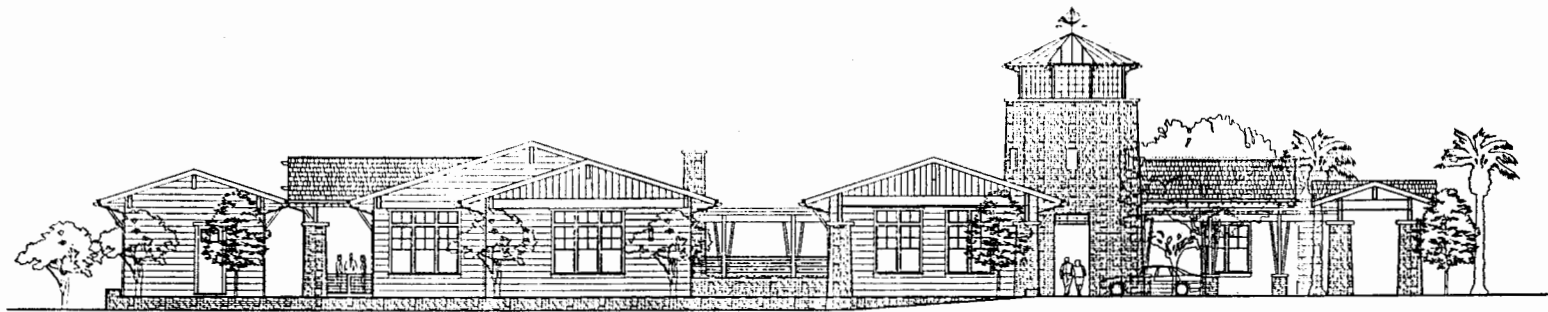
Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsick & Partners, Inc.

Marina Village Live/Work Apartments

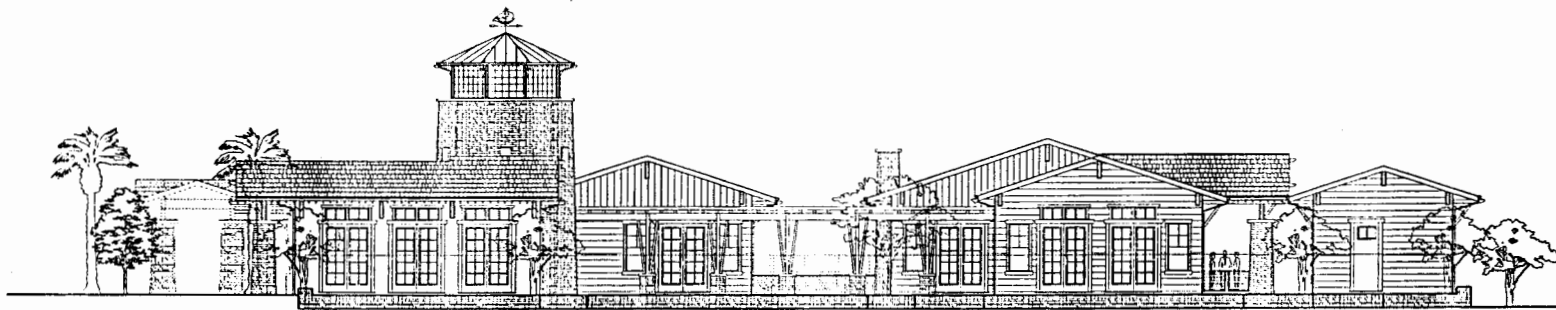
Conceptual Elevations

August 23, 2001

0 16 48 Scale 1/16"



West Elevation



East Elevation

A-8.2



Oly-Mandalay Bay General Partnership  
McLarand, Vasquez, Emsiek & Partners, Inc.

Recreation Building  
Conceptual Elevations

July 27, 2001

0 8 24 Scale 1/8"

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., 2ND FLOOR  
VENTURA, CA 93001  
(805) 641-0142

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT



Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

The Beacon Foundation	Sierra Club, Los Padres Chapter
PMB 352	232 N. Third Street
3844 W. Channel Islands Blvd	Port Hueneme, CA, 93041
Oxnard, CA	Area Code Phone No.
Zip 93035	
(805) 985-9595	(805) 488-7988

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Oxnard

2. Brief description of development being appealed: "Seabridge" at Mandalay Bay in Channel Islands Harbor developing 135 acres and including removal of prime agricultural soil, creation of new channels and waterways, construction of 708 dwelling units, 169,000 sq ft of commercial, 440 boat slips and two swimming beaches.

3. Development's location (street address, assessor's parcel no., cross street, etc.): west side of Victoria Avenue between Wooley Road and Hemlock Street.

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: \_\_\_\_\_ X \_\_\_\_\_
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

H5: 4/88

RECEIVED

FEB 14 2003

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☒ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: January 28, 2003

7. Local government's file number (if any): PZ 00-5-85 and Coastal Development Permit 01-5-93

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Oly-Mandalay General Partnership  
Suite A-600  
600 Victoria Avenue  
Oxnard, CA 93035

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

~~See attached statement of reasons for this appeal.~~

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Sierra Club, Los Padres Chapter  
Alan Sanders, Conservation Chair

The Beacon Foundation by  
Vickie Finan, President

Alan Sanders  
Signature of Appellant

Vickie Finan  
Signature of Appellant(s) or  
Authorized Agent

Date 2/14/03

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

Section IV.

REASONS FOR APPEAL OF COASTAL PERMIT OF CITY OF OXNARD

**Re: "Seabridge" project at Mandalay Bay Channel Islands Harbor**

The Beacon Foundation is a nonprofit 501 (c)(3) environmental organization focused on coastal Ventura County. We have testified at every public hearing conducted by the Oxnard Planning Commission or the Oxnard City Council on the Coastal Development Permit for this project. We have also filed extensive written comments.

The Sierra Club, Los Padres Chapter is a part of a national nonprofit environmental organization. The Sierra Club testified at the public hearing conducted by the Oxnard City Council on the Coastal Development Permit for the Project.

The substantial inconsistencies with the Land Use Plan (LUP) and/or with the approved Mandalay Specific Plan (Specific Plan) that are the basis of our joint appeal include:

1. Project "phasing" compliance with the LUP and Specific Plan.
2. Water quality and swimming beaches.
3. Failure to provide the required allocation of public boat slips.
4. Non-conforming transfer of prime agricultural soil.
5. Failure to assure public access to recreational resources.
6. Non-conformity with Park and Circulation Plan Maps and  
With requirements for lateral and vertical access
7. Density and building height design concept.

**1. Project "phasing" and compliance with the LUP and the Specific Plan**

The Coastal Development Permit includes (p. 18, sec 111) a "phasing schedule matrix" that divides the project into an unmapped nine phases. As each phase is constructed it is to include quantities of park and access improvements listed in a table. This phasing scheduled is designed to require the development of public facilities in the project to track, in a proportional way, the build out of the residential and commercial portions of the Project. **The phasing schedule of the Coastal Development Permit is rendered null and void by contradictory provisions of a later approved Development Agreement between the City and the Developer.**

The Development Agreement was provided to the City Council as Exhibit A to Attachment G of the November 21, 2002 Staff Report prepared for Planning Commission and, subsequently, City Council review and approval of the Coastal Development Permit. We hereby incorporated the entire November 21, 2002 Staff Report and its Attachments and Exhibits into this Appeal.

The approved Development Agreement for the Project (page 11, sec. 6 m) provides:

"The Developer shall have no obligation to develop the Project, may develop the Project in its sole discretion in accordance with the Developer's time schedule (as such schedule may exist from time to time) and may determine in its sole discretion which part of the Project to develop first and thereafter."

And further:

"... the Developer shall have the right (without obligation) to develop the Property in such order and at such rate and at such time as the Developer deems appropriate within the exercise of its subjective business judgment."

The Development Agreement received final approval by the City Council on February 4, 2003. That was one week after the Council approval, on January 28, 2003, of the Coastal Development Permit. The Development Agreement provides (p. 26, sec. 21 c) that as to its subject matter it "supercedes all prior agreements and understandings...." It thus appears the Coastal Development Permit is superseded in all regards, such as "phasing", where it differs from the later adopted Development Agreement.

The Coastal Development Permit provision phasing construction of public facilities to corresponding increments in construction of private facilities is an essential feature. Without it, the Coastal Development Permit fails to assure implementation of any of the public facility and access requirements of the LUP and the Specific Plan. This failure of the Coastal Development Permit is exacerbated by the extraordinary completion time granted by the Development Agreement.

The Development Agreement grants (p 6, sec. 2) up to **thirty years** to complete the project. The Coastal Development Permit (page 3, General Condition 3) provides it shall expire **twenty four months** from date of issue but **only if** the Developer has failed to begin any substantial part of the project within that time and it specifies that an act such as issuance of a grading permit will suffice. Thus, the Coastal Development Permit effectively relinquishes any effective time limit on its requirements for public facilities pursuant to the LUP and the Specific Plan.

The Developer has said publicly it will develop the project in phases. It has indicated one possibility is three phases depicted in Exhibit D to the Development Agreement. Exhibit D is provided here as Attachment #1 (we have reformatted the Exhibit on a single page and colored it for ease of reading). The Developer is no more bound by



the three phases shown in Attachment #1 than it is by the nine phases contemplated by the Coastal Development Permit. In view of the express provisions of Section 6 (m) of the Development Agreement, there is no safeguard that public facilities of the Project will be constructed **proportionately** as the project phases are built out.

The Development Agreement undermines the sufficiency of the Coastal Development Permit to fulfill its purpose as a set of requirement for the Project that preserves the public facilities of the LUP and the Specific Plan. The City has given the Developer, via the Development Agreement, total discretion to dissect the Project into any number of Sub-Projects. Up to thirty years may transpire before the project is either completed or concluded without completion. The consequence is that the public facility and access requirements of the LUP and the Specific Plan may either be delayed inordinately or even denied if the whole project is not built out.

Since these two agreements are fundamentally inconsistent, the Coastal Development Permit must either be amended to establish its primacy or the Development Agreement (since it contemplates a Project different in significant ways) must itself require a new Coastal Development Permit. This is a substantial issue that pertains to the basic effect and integrity of the Coastal Development Permit process for this Project.

## **2. Water Quality and swimming beaches.**

A singular feature setting this residential development apart from all others in the Channel Islands Harbor is its inclusion of a shallow bay and two swimming beaches. Policy No 10 of the LUP states: "The water quality of the City's coastal waters shall be maintained, and where feasible, restored ...."

Pursuant to Policy 10 the water quality at the project's two swimming beaches should be required to generally meet the standards for unrestricted use set by California Health and Safety Code, sec. 115880 and California Code of Regulations, Title 17, Sec. 7956 et. seq. These sections set requirements for bacteria testing and for posting or closure of public beaches that exceed indicator bacteria standards.

The November 21, 2002 City Staff Report to the Oxnard Planning Commission noted (page 6) the "recreational areas" of the Project include "... two public beaches on either side of the shallow bay...." The three acre shallow bay is by far the single largest water feature to be created by the Project. It is designed (SFEIR p ES-2) "... for activities such as wading, swimming, wind surfing, or paddleboats." Without the shallow bay or a substitute facility of equal size the Project would not even arguably fulfill the number of acres of "Open Water Areas" and of "Public Recreation Areas" required by the Specific Plan. The Specific Plan (page 4) contemplates that one public recreation feature of the development shall be a "water park" area not accessible to larger boat traffic. This "water recreation area" shall be set aside for "activities **such as** [emphasis added] wading, swimming, wind-surfing, and paddle boating." Swimming beaches are not mandated by the Specific Plan but included among possible activities that might be included if feasible.

Information provided in the Coastal Development Permit and the public record for this Project does not establish the feasibility of the Shallow Bay to fulfill its design function of public recreation involving human water contact. Indeed, based on common experience with other beaches of this type, it appears that it cannot reliably perform these functions in general consistency with water standards for public beaches set by California law and regulation.

No swimming beach can reasonably be held to never exceeding the State standard for indicator bacteria. All beaches will fail some of the time but common experience has shown that some types of beaches fail far more than others. Among the worst cases are enclosed beaches in harbors as shown by studies by the environmental organization, Heal the Bay. It compiles and analyses bacterial testing data for more than 400 beaches in California.

One of the beaches with the highest failure rate is the one existing Kiddie Beach (official name: Channel Islands Beach Park) located just inside the Channel Islands Harbor mouth and fronting the main channel. In each of its past three annual reports, Heal The Bay has identified Kiddie Beach as one of ten most frequently polluted beaches surveyed. Provided as Attachment #2, is a Heal The Bay letter dated February 13, 2003 to the California Coastal Commission regarding pollution problems of enclosed beaches generally and specific concerns about water quality of the Seabridge shallow bay.

On February 4, 2003 ( Attachment #3 ) the State of California Water Quality Control Board adopted a resolution designating the existing Kiddie Beach as an impaired site pursuant to Section 303(d) of the Federal Clean Water Act. It notes that this decision is based on data collected in 1999, 2000 and 2001 showing bacteria exceeded State standards in 54 of 99 water samples. On the same date and in the entire Channel Islands Harbor was designated as a Section 303(d) site due to the presence of lead and zinc in sediment.

Attachment #4 is a letter to the City regarding the Seabridge project from the Environmental Health Division of the Resource Management Agency of Ventura County dated March 18, 2002. It states the known experience in Ventura County and elsewhere that swimming beaches in enclosed harbors "have a history of not meeting bacterial water quality standards...."

The Developer used the engineering firm of Moffatt & Nichols as its consultant on water quality. In the record (FSEIR Appendix 4.4) is the consultant's "Water Quality Model Study." This study reports computer modeling of water circulation in the existing Harbor and in the proposed new channels and shallow bay of the Project. It notes (p. 2-1):

"The water quality of small harbors is largely controlled by continual replacement and dilution of interior water by the ocean. This is the major removal mechanism for most substances contained in the

water column. The intensity of flushing action is measured by the mean residence times."

The Moffett & Nichols computer analysis predicts, based on various variables, that the residence time in the shallow bay will be 6.6 to 17 days. The same analysis shows the residence time in the area of the existing chronically polluted Kiddie Beach to be less than 2 days.

To support its conclusions on water quality, Moffett & Nichols took water samples (FSEIR page 4.4-2) at 21 harbor locations on one date and at 10 locations on a second date. These samples were used to profile "conductivity, temperature, depth and dissolved oxygen over a full tidal cycle." Also considered by Moffett & Nichols were results of water tests performed by the Channel Islands Harbor Department at three locations on just twelve dates from 2/97 to 4/01. The Harbor Department tests measured pH, salinity, dissolved oxygen and, on some but not all dates, bacteria levels and the presence of soluble metals. Finally, Moffett & Nichols took into account single sample water tests done at eight Channel Islands Harbor locations by Larry Walker Associates on September 15, 2000. This is the totality of known empirical data regarding water quality testing in the Harbor that was consulted by Moffett & Nichols to support the conclusion (FSEIR page 4.4-1) that "Existing sampling data indicates that water quality is generally good ..." in the Channel Islands Harbor.

The scope of analysis done by Moffett & Nichols is inadequate to support any conclusion that existing water quality in the Harbor is sufficiently "good" to make feasible the human water contact uses for which the shallow bay is designed.

**The analysis is inadequate** for the following reasons:

- Moffett & Nichols performed no bacterial testing.
- The bacterial sampling done by the Harbor Department and Walker and Associates is too limited and none of it was done in channels of the existing Mandalay Bay that would most nearly replicate expected conditions at the shallow bay.
- All three sampling locations used by the Harbor Department in deep water at locations with circulation that is several times greater than the Moffett & Nichols forecast for the shallow bay.
- Moffett & Nichols offers no supporting documentation based on studies of other locations to support the position that residence times of 6.6 to 17 days are consistent with maintaining good water quality in shallow enclosed bays.

**The only actual bacterial testing in the Mandalay Bay channels of the Harbor we know of was done by The Beacon Foundation and the Ventura CoastKeeper on November 3, 2002. Using a Heal The Bay protocol, samples**

were taken in dry weather at eight locations in channels of Mandalay Bay. The samples were analyzed by the Heal The Bay laboratory and one of the sampling sites yielded results far in excess of the State standard for Enterococcus bacteria. This sample registered 538 colony forming units of Enterococcus per 100 ml of water --- more than five times the State maximum level of 104 per 100 ml. Single date testing is not definitive of a general circumstances but The Beacon Foundation and the Sierra Club Los Padres Chapter do maintain that the November 3, 2002 testing establishes the need for bacterial testing in the Mandalay Bay area to support any conclusions on existing water quality.

A December 5, 2002 Moffett & Nichols letter to the City (Attachment #5) disputes certain water quality concerns raised by The Beacon Foundation in the Coastal Development Permit review process.

Page 2 of the Moffett & Nichols letter responds to our comments on Figure 3-12 of its circulation study forecasting results after twelve days if a pollutant were released in all parts of the Harbor at a constant level. The highest level after twelve days is in the shallow bay. The residual contamination in the shallow bay would be more than one and a half times greater than the mean level in the Harbor as a whole. Please note that in Figure 3-12 (Attachment #6) the shallow bay is the circular area at the far upper right. Please also note Figure 2-2 (Attachment #7) depicting the shallow bay in red as part of "phase 1" of the Project and depicting in yellow the channels that are part of phases 2 and 3.

Until the channels shown in yellow in Figure 2-2 are constructed the shallow bay is at the end of the longest dead end channel in Mandalay Bay. The Moffett & Nichols letter states that Figure 3-12 depicts a "scenario" that "consists of only the first phase of construction being completed, resulting in a temporary dead-end channel configuration ...." Given the absolute right and stated intention of the Developer to construct the Project in phases this dead-end channel configuration will become a reality and may persist for many years or forever if the Developer discontinues construction after Phase 1. This configuration poses special water quality vulnerabilities for the two swimming beaches.

**We conclude that no baseline has been established for the conclusion that existing water quality is so "good" that it can feasibly be used for swimming at the shallow bay. Without a proven baseline for "good" existing water quality, any assumptions about the effectiveness of mechanical water quality maintenance devices are insupportable.**

We will only briefly review here an additional and common failing of each of the water quality "maintenance" methods underlying the Coastal Development Permit. This is that each method is dependent on future actions that may cause them to be implemented long after the shallow bay beaches are in use or, possibly, never be implemented at all.

- Considerable design effort has gone into storm water discharge from the Project. While commendable for its methods of dealing with storm water in general, none of the planned devices are tailored specifically to concerns about bacterial contamination at swimming beaches. None of the devices would treat storm water for bacteria and there is no present commitment to use the filtration devices for anything other than catching debris. There is no provision under any circumstance for diverting storm drains during dry weather into the sanitary sewer lines ( a remedial means employed at the present Channel Islands Kiddie Beach and elsewhere in Southern California). The Coastal Development Permit calls (sec. 142) for once a month storm discharge monitoring for the first five years "following commencement of development." Standards to identify significant impacts via the monitoring depend on a separate and later agreement between the Developer and the City. After five years the monitoring drops to "no greater than five (5) year intervals." Thus, long before the project waterways are completed, monthly testing may well be replaced with monitoring a maximum of once every five years.
- A complex financing method is identified to pay for continued operation of the pumps at the existing power plant at the north end of the Harbor if its private operator ceases operation. Financing depends to a very significant degree on future creation of a Maintenance Community Facilities District that will impose charges on future homeowners in the Project. Funding for this remedial maintenance measure could trail the advent of water quality problems at the swimming beaches induced by closure of the plant.
- The Development Agreement provides (sec 12 d) that "vaults" are to be included in Seabridge Waterways in the course of their construction. It provides a one time Developer payment of \$250,000 to the City "which the parties agree would be sufficient to install the circulating pumps and aerators, should water quality within the waterways degrade below Generally Accepted State Standards...." The sufficiency of this payment is unlikely given experience in the remediation of pollution at the existing Kiddie Beach in the Channel Islands Harbor. Ventura County has received a \$1.5 million grant for remediation there. Of that, some \$120,000 is being expended to study circulation and to engineer alternative mechanical means to increase circulation. An additional amount, in excess of \$700,000, is budgeted within the grant for the circulation devices at the small existing Kiddie Beach. The shallow bay is much larger than the area of Kiddie Beach. Also, the \$250,000 would only be paid "at the time that all of the Seabridge Waterways are accepted by City...." That may be years, if not decades, after the shallow bay has been opened for swimming.

The Project does not conform to Policy 10 of the LUP that "the water quality of the City's coastal waters shall be maintained, and where feasible, restored...."

The City, in granting the Coastal Development Permit, has not met the burden to establish that a shallow bay with swimming beaches located at the end of a dead end channel is a feasible use consistent with water quality standards and with the recreational area requirements of the LUP and the Specific Plan. The Project is inconsistent with Whereas 3 of the Coastal Development Permit stating:

"The subject site, in terms of location and intensity of use, would be physically suitable and would protect and maintain adjacent coastal resources for the land use being proposed."

### **3. Failure to provide the required allocation of boat slips.**

The Project does not meet the public boat dock requirements of the Specific Plan. The Specific Plan (page 5) states:

"The Specific Plan incorporates a minimum of 795 boat slips in the Specific Plan area. Thirty are allocated to the 30 single-family residential lots. One half of the remaining will be available to the public."

The Specific Plan area includes both the Seabridge project and the previously approved Westport Project.

The Coastal Development Permit approved by the City for Seabridge includes (p. 18, sec 113) the following boat dock requirements to meet the Specific Plan requirements for this Project:

"Fifty percent (50%) of the docking facilities provided in the project shall be available for use by the public. No preference shall be given to individuals residing in the project area.

No private boat docks may be constructed until and unless a commensurate number of public boat docks have been constructed and are available to the general public."

These key provisions for public docking facilities are nullified by the Development Agreement approved by the City subsequent to its approval of the Coastal Development Permit (see Part 1. above of this Appeal).

Attached to the Development Agreement as Exhibit D (and to these comments as Attachment #1) is a map depicting development of "Boater Related Activities" in three phases. The lions share of the private boat docks would be developed in phase 1 when all the single family residences having individual boat docks would be constructed. In phase 1, as depicted in Exhibit D, only a handful of public docking facilities are shown -- all within the shallow bay. They aggregate far less than 50% of the private boat docking facilities shown in phase 1.



The Development Agreement actually relieves the Developer of responsibility for building out **any** public slips. It provides (p. 12, sec. 6 q) for a 50 year license to the developer for a portion of the Seabridge waterways for boat slips and commercial boat slip operations that the Developer may sublease. No actual obligation is placed on the Developer to construct or to cause a licensee or other entity to construct any number of public or private boat slips. The Developer is only required to provide space for the "boater related facilities" depicted in Exhibit D but has no obligation to actually construct them or cause them to be constructed by others. Further, Section 12 ( c) of the Development Agreement provides:

"If the Developer **elects to construct any** [emphasis added] Transient Boat Docks, then concurrently with the construction of the Transient Boat Docks, the Developer shall cause the Boater Related Facilities to be constructed and shall make arrangements reasonably satisfactory to the City for the ongoing maintenance of the Boater Related Facilities.

The Development Agreement turns the positive Specific Plan obligations stated in the Coastal Development Permit into optional undertakings. This nullifies the boater related facilities requirements of the LUP and Specific Plan and undermines and negates the Coastal Development Permit provisions for compliance with LUP and Specific Plan requirements related to boating facilities.

#### **4. Non-conforming transfer of prime agricultural soil.**

Section 110 of the Coastal Development Permit states Policy 5 of the LUP is satisfied by a Project program that has identified a qualified recipient site and established a monitoring plan. Section 110 further states that City approval of this program is subject to "a coastal development permit by the County of Ventura for the recipient site." No such coastal permit has been provided.

Policy 5 of the LUP seeks "to insure that the overall amount of prime agricultural land is not reduced by urbanization." This policy specifically applies to the Project site which is all prime agricultural land. The agricultural land removal program adopted by the City for this Project is provided as Attachment D to the City Staff Report of November 21, 2002 that was utilized by the City Planning Commission and the City Council in their respective review and approval of the Coastal Development Permit.

The program calls for topsoil to be removed from all 135 acres of the Project and transported to a specific recipient site known commonly as the Coastal Berry property. To accommodate the transfer, top soil will first need to be removed from the Coastal Berry site to a third site yet to be identified or approved.

This program does not comply with key provisions of Policy 5 including that "**All acreage within the recipient site** [emphasis added] shall consist of nonprime agricultural soils at the time of the approval and actual application of the soil transfer

program." This key deficiency is stated in a letter to the City from the Office of The Agricultural Commissioner of Ventura County dated April 17, 2002 that is provided here as Attachment #8.

A triggering definition of "prime agricultural land" contained in Policy 5 is that it has a normal annual return of more than \$200 per acre. A site yielding a greater normal annual return cannot be a recipient site for soil removed from Seabridge pursuant to Policy 5.

The recipient Coastal Berry transfer site for the Seabridge topsoil violates Policy 5 for each of the following reasons:

- The Developer's own expert study of the Coastal Berry Recipient site (Staff Report of 11/21/02, Attachment D, Table 3-1) **discloses that 23 acres of the recipient Site (that is 17%) is prime agricultural soil.** This 17% prime soil estimate may be conservative given that the California State Department of Conservation Farmland Monitoring Program, "Important Farmland Maps (Oxnard Quad)" designates a large portion of Coastal Berry as "Prime Farmland" and "Farmland of Statewide Importance." (see Agricultural Commissioners letter provided as Attachment #8 to this Appeal.)
- The Developer's own expert study of the Coastal Berry site establishes that **income from some crops (celery and lima beans) would, even after extensive and unsupported adjustments, yield a normal income in excess of \$1,377 against the maximum \$1,200 per acre maximum yield for a recipient site** (\$1,200 is the expert's adjustment of the \$200 threshold to "2000/2001 dollars"). **Among the anomalies is inclusion in the costs of production of a charge of \$1,500 per acre as a "land lease."** **The Developer's study discloses that Coastal Berry owns the land in fee so any lease is part of its normal income and not part of its costs. When the inappropriate \$1,500 lease cost is removed all of the expert's hypothetical crop scenarios show the Coastal Berry site yielding income per acre in excess of the \$200 per acre income per acre limit for recipient sites – even if the adjustment to a \$1,200 ceiling in "2000/2001 dollars" is accepted.**
- The estimates of crop revenues and expenses in the Developer' expert study **are not based on any actual production data at the Coastal Berry site. It makes no analysis for production of strawberries on the site – a crop actually grown there that yields higher revenues than any of those included in its hypothetical crop scenarios.** The reality of strawberry productions on the existing Coastal Berry site can be verified visually (they are currently being sold on site for \$2 a basket). It is also confirmed by Appendix E to the expert's report (Appendix E is referenced but omitted from the November 21, 2002 City Staff report but it is found in the full version of this report published as Appendix 4.1 to the FSEIR). Appendix E is an agreement between the Developer and Coastal Berry that specifically states, sec. 2(b), that "A significant portion of the Coastal Berry Property is currently



utilized for the planting of strawberries." This agreement goes on to provide that when the Coastal Berry top soil is being transferred out and Seabridge top soil is coming in there shall be a payment by the Developer, clause 2(a), for loss of production "... at the rate of \$1,500 per acre per year for vegetable land and \$1,800 per acre per year for strawberry land..." and that on strawberry land this payment shall increase by \$100 per acre per year commencing in 2005. Disruption payments alone exceed the "adjusted" maximum yield of \$1,200 for recipient sites and strawberries are recognize as the most profitable use of the Coastal Berry site.

The Program detailed in the City Staff Report will actually result in a net decrease in prime agricultural land in violation of Policy 5 of the LUP. Prime agricultural soil from Seabridge will replace the 17% of Coastal Berry acreage that is already grade 1 agricultural soil. It also replaces at this whole site agricultural soils with a normal dollar yield far in excess of the limit for recipient sites. There is no requirement that the soil being removed from the Coastal Berry site to accommodate the Seabridge top soil will be used in any way for agriculture at the third, as yet unidentified, site to which it will be taken. As the Agricultural Commissioner noted (Attachment #9):

"Coastal Berry Ranch, the recipient property for the transferred soils, already is in agricultural production, and according to *the Important Farmland Maps*, is comprised of high quality agricultural soils. Therefore, land that historically has not been in production will not be made viable for production through the soil transfer program. As a result, the soils transfer program is not full mitigation for the loss of agricultural soils from project development."

The Coastal Commission was deeply troubled by loss of agricultural soil when it approved the LUP in July 1981. Although it approved the urbanization of 220 acres in the Mandalay Bay area (including the Seabridge Project site) it found that the Coastal Act: "strongly disfavors urbanization of agricultural land and that the arguments for allowing it in the instant case are far from compelling." Highly significant in persuading the Commission to give its approval was Policy 5 and the expectation that if properly applied the agricultural use could be preserved at an alternate non productive sites.

Neither the letter nor the intent of Policy 5 have been followed in the City's Coastal Development Permit for this Project.

#### **5. Failure to assure public access to recreational resources.**

The Coastal Development Permit provides (sec 110) that "The Park areas, lateral access ways along the channel, and vertical access points shall be restricted to public access and public recreational use." It further provides for an offer to dedicate to the City a fee interest in some 19 parcels so identified in the Tentative Tract map.

This provision and offer to dedicate leaves the public or private status unclear of the largest public recreational feature of the project --- the shallow bay containing two swimming beaches. Contrary to the LUP and the Specific Plan, the status of the shallow bay as a public facility and its dedication remains in doubt.

The Development Agreement imposes on a Maintenance Community Facilities District to be formed in the future an obligation for homeowners in the Project to finance water quality testing for the swimming beaches in the shallow bay and to make decisions regarding the results of such testing. This is an attempt to shift to homeowners an obligation imposed for public beaches on counties by State law (California Health and Safety code, sec. 115880 and California Code of Regulations, title 17, sec 7956 et seq.). Imposing this obligation on private citizens is inconsistent with the shallow bay being a public facility.

Further suggesting a private rather than public status of the shallow bay is an interview with Bill Wynne, a Partner in the Development firm, published in the VCReporter newspaper on January 30, 2003. This interview, at page 14 of an article entitled "Treading Water," is provided here as Attachment #9. Mr. Wynne states that if water monitoring programs indicate pollution in the shallow bay in excess of state standards "...there won't be anything going on in there." He goes on to state that a "water patrol" employed by the homeowner association would "enforce the ban on water contact." This control by a homeowner association contradicts the status of the shallow bay as a public recreational facility. If it is a private facility only open to the public at the option of the homeowner's association then it does not fulfill the requirements for public recreational facilities as required by the Specific Plan and the LUP.

#### **6. Non-conformity with Park and Circulation Plan maps and with requirements for lateral and vertical access.**

The Project, as approved by the City Coastal Development Permit, does not conform to the land uses designated on the Land Use Map certified in the Specific Plan and the City has not filed a prior amendment to conform this Project with the Specific Plan. The Land Use Map of the Specific Plan is provided as Attachment #10.

It would be necessary to map the Specific Plan in detail on the site plan for the Seabridge Project to definitely determine inconsistencies. However, even a rough comparison reveals that the expanded area of single family residences with private boat docks does not conform to the designation of linear parks shown on the Land Use Map or the Park Plan (Attachment #11). This is indicative of many differences between the Specific Plan and the Project as now proposed that raise substantial issues of conformity with the land use designations of the Specific Plan.

Another area of non-conformity is in the provision for pedestrian and bicycle circulation within the Project. Provided as Attachment #12 is the circulation map from the Specific Plan showing a pedestrian/bicycle path along all of the waterways. The Coastal Development Permit approved by the City never mentions access by

bicycles. Paths are referred to as pedestrian access ways. Their compatibility for use by bicycles is not established or required. Further, these linear public access ways do not enjoy access to all of the waterways. In addition, it is apparent (see Attachment #1) that phased development of the project will cause even those lateral paths that are planned for the Project to be interdicted and remain incomplete for many years or forever depending on what portions of the project are built out during the City granted construction period of thirty years.

It is uncertain whether the quantity of lateral access specified in the Specific Plan is satisfied in the Project as approved by the City. The Coastal Development Permit does not address the provision of vertical access and it is unclear whether this requirement is met. The Specific plan (page 5) calls for "Vertical public access for vehicular, pedestrian, and bicycle access" to be "not less than 10% of total linear waterfront access...." As earlier noted, bicycle access to linear access is not specified in the Coastal Development Permit. Also, various streets within the Project are private and there is no indication that vertical access to such streets will be legally restricted for public use as vertical access.

#### **7. Density and building height design concepts**

It is unclear whether the Project as approved by the City is consistent with height design concepts of the Specific Plan.

The Specific Plan also included a design concept to assure scale and to accentuate waterscape views by stepping heights so that the tallest building would be in the interior areas of the Project while lower structures were to be placed in the perimeter areas. The Project does not observe this stepping design concept and places the tallest buildings in perimeter areas.

The building density of the Project, exceeds the density provided in the Specific Plan. The primary basis for allowing increased density in the Seabridge Project is a version of "mixed use" that incorporates visitor serving commercial use on the lower floor of multi-story residential buildings. The practical consequence of creating such units is uncertain. The mechanism, if any, to actually assure genuine visitor serving commercial use of the lower floors of these units is not established. There is no requirement, for example, that the lower floor area be actually rented for a visitor serving commercial use as a precondition for the use of the upper floors as a residence.

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**In accord with the "Note" to Section IV stated on the Coastal Commission Appeal form, we reserve the right, subsequent to the filing of this appeal, to "submit additional information to the staff and/or Commission to support the appeal request." We would also be pleased to respond to any Commission staff requests for further information or for clarification or expansion of our comments in this appeal.**

# COASTAL PLAN LAND USE MAP

PACIFIC OCEAN

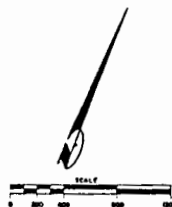
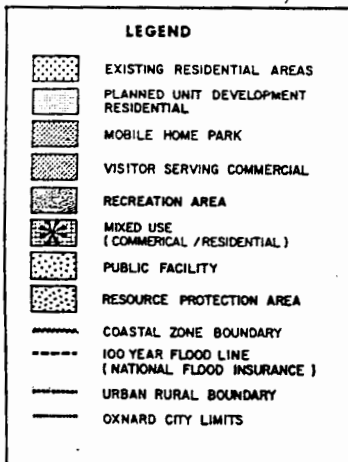


EXHIBIT NO. 7  
A-4-oxn-03-014  
LUP LAND USE MAP

DATE: MAY 1990

### Local Coastal Policies

3. All urban development shall be restricted to the area within the urban-rural boundary, as defined by Map 1 and the Land Use Map.
4. The agricultural lands bordering the urban-rural boundary will require buffer measures in addition to the designated adjacent buffer land uses in order to adequately protect their viability. Design features for the improvements required on Wooley Road as a result of urbanization to the south of Wooley Road shall include mitigation measures to buffer the urban uses from the agricultural lands. Possible design techniques which will provide the necessary mitigation measures include the following:
  - a. All widening shall occur on the south side of Wooley Road;
  - b. A grade difference shall be created between the road and the agricultural fields, with a drainage ditch located along the north side of the road;
  - c. There shall be no provision of turn-out areas or on-street parking, minimal shoulders and construction of a curb along the northern edge of the roadbed;
  - d. All sidewalks and bicycle paths shall be located only on the south side of Wooley Road; and
  - e. A hedge or tree row, combined with an eight-foot fence, shall be located on the crop side, on the north side of Wooley Road.
5. This policy shall apply only to that single specific 220-acre property located north of Hemlock Street, south of Wooley Road, east of the Edison Canal, and west of Victoria Avenue, commonly known as the Mandalay Bay project. The purpose of this condition is, in part, to assure that the long-term agricultural productivity in the Oxnard area is not reduced. As a condition of development of prime agricultural soils, a "prime agricultural land maintenance program" shall be undertaken to assure that the overall amount of prime agricultural land is not reduced by urbanization. Therefore, prior to issuing any authorization for a planned unit development ("PUD") on the subject parcel, the City shall make written findings that the applicant for the PUD has obtained rights to deposit on a like amount of nonprime agricultural land, the prime soils to be taken from the subject site. The conversion of the prime agricultural soil on the Mandalay Bay site to urban uses is conditioned upon the approval of a planned unit development which satisfies all requirements of Policy 45 of this land use plan.

Conditions of project approval shall, at a minimum, consist of the following actions and restrictions:

- a. The acreage of the recipient area shall equal or exceed the converted prime agricultural lands. If the recipient area consists of two or more parcels, each site shall contain a minimum of 40 contiguous acres to which the soil shall be applied. All acreage within the recipient sites shall consist of nonprime agricultural soils at the time of the approval and actual application of the soil transfer program.

- b. The recipient areas must be west of State Route 1 within that agricultural area directly influenced by coastal climatic conditions on the Oxnard Plain. Land to be upgraded located within the coastal zone must be identified for agricultural use within the Land Use Element of the applicable LCP. Land identified for upgrade status which is outside the coastal zone must be designated for agriculture in the applicable General Plan. The recipient area shall be restricted to exclusively agricultural use for a minimum of 25 years from the date of receipt of the transferred soil. This shall be accomplished by an agricultural easement in favor of the State of California or a deed restriction.
- c. The City shall require that the following procedures be used on all recipient sites of the prime agriculture soil transferred from the Mandalay Bay project donor site.
  - 1) Clear recipient site of all debris
  - 2) Level land to desired farming and irrigation grade which shall be the final elevation
  - 3) Uniformly overlay site with 12 inches below projected new surface
  - 4) Slip plow or deep disc to 28 inches below projected new surface
  - 5) Uniformly overlay site with 12 inches of imported soil
  - 6) Farmer to subsoil and landplane as desired for intended crop
  - 7) There shall be no stockpiling of transferred prime soils which shall be moved directly from the donor site to the recipient sites. Procedures shall be undertaken in such a way as to prohibit compacting of the newly deposited soils by heavy equipment and to otherwise protect their capabilities.
- d. Concurrent with the commencement of construction of each phase, the prime soils shall have been transferred to suitable recipient sites and returned to cultivation. As an alternative, a performance bond shall be posted to assure the transfer of soils and the restoration of the recipient sites.
- e. The applicant for the PUD permit shall establish a program for monitoring agricultural production on the recipient sites and reporting resulting data to the Coastal Commission and the U.S. Soil Conservation Service (SCS). The SCS shall be consulted in the design of the monitoring and reporting program. The program shall continue for at least 10 years from the date of transfer of the soils and shall be fully funded by the applicant. The program shall develop and monitor data on all soil characteristics, crop types and yields, irrigation requirements, and the agricultural productivity of each donor site.



## Local Coastal Policies

45. The Mandalay Bay project site, a 220-acre property located north of Hemlock Street, south of Wooley Road, and between the Edison Canal and Victoria Avenue, has been designated Planned Development. The purpose of the designation is to ensure the well-planned development of this large area which is proposed for water-oriented development. The following policies apply specifically to this development area:

- a. The entire site shall be planned as a unit. A specific plan showing the ultimate development of the site shall be required prior to any project or subdivision approval.
- b. Overall densities shall not exceed those established in the land use plan. The site design shall include expansions of the existing Inland Water/Edison Canal system. Residences, both single-family or multiple units, shall be oriented to the waterway, and private docking facilities may be provided. Public vertical access to the waterway shall be required; the combined public vertical access frontage on the water shall not be less than 10 percent of the development's total linear waterfront footage, unless adequate access is provided nearby and shall be included in the specific plan. The lateral access requirement shall be a minimum of 50 percent of the total linear frontage and shall be dedicated and available for public access. Exceptions to continuous lateral public access shall be allowed only for limited single-family waterfront home development where adequate alternative access exists nearby. All public accessways and facilities shall be provided in accordance with Policy 72. Recreational areas shall be distributed throughout the project with pedestrian and bicycle linkages between pocket parks, play areas, overlooks and other small-scale public areas offering the public and residents of the project recreational opportunities. No project on this site shall be approved without concurrent approval of all components of the "prime agricultural land maintenance program."

(Please refer to Policy 5 of this Plan)

- c. Common (nonpublic) open space shall be required for all multiple-family or attached units and shall include, but is not limited to, recreational facilities intended for the residents' use, including swimming pools, tennis courts, playgrounds, community gardens, or common landscaped areas. Streets, driveways and parking lots shall not be considered as a common open space.
- d. Public open space shall include, but is not limited to, public parks other than identified neighborhood and community parks, beaches, parking lots for public use and access corridors, including pedestrian paths and bikeways. Streets, property for private use, sensitive habitat areas and other nonusable areas shall not be considered as public open space.
- e. At least 20 percent of the net area of the site shall be designated for common open space for multiple-family or attached-unit developments unless adequate facilities are provided nearby. Not less than 20 percent of the net area of the site for all areas designated Planned Development on the land use map shall be public open space, unless adequate open space is provided nearby. Areas designated by the LCP as neighborhood or community parks shall

not be included in the site area and may not be counted towards the required percentage of public open space. The area of the waterway may be included in the tabulations.

- f. Land uses shall consist of a mix of visitor-serving commercial, residential and public recreational areas oriented to an expansion of the existing Inland Waterway. The visitor-serving commercial, public recreation and open water shall comprise at least 50 percent of the overall project area. At least 12.5 percent of the total project area shall be public recreation areas and at least 12.5 percent of the total project area shall be visitor-serving commercial. Water area shall comprise the remaining 50 percent of the visitor-serving commercial and public recreation area.

- Total Project Site: 220 acres (100 percent)
- Area required for visitor-serving commercial, public recreation and open water: 110 acres (50 percent)
- Area for residential development: 110 acres (50 percent)

#### BREAKDOWN OF PUBLIC AND VISITOR SERVING AREAS

<u>Element</u>	<u>Minimum Acreage</u>	<u>Percent Of Public Area</u>	<u>Percent of Total Project</u>
Visitor-serving Commercial Public Recreation and Open Water	110.0	100	50.0
a. Visitor-serving Commercial	27.5	25	12.5
b. Public Recreation	27.5*	25	12.5
c. Open Water**	55.0	50	25.0

- g. The development of an open body of water shall be an integral part of this land use designation. The development of this water area, however, may only proceed consistent with the other policies of this plan. A public launching ramp and boat docks for day use will also be provided. Fifty percent of the docking facilities provided in the project other than those provided with single-family residences shall be available for use by people not residing within the project. Full and unimpaired public access to and use of all open water areas, consistent with security and safety requirements, shall be assured. The location of and design of all development shall provide for public access and use of the project's water and immediate shore area.

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\*Must all be on land

\*\* Up to 10 percent of open water may be devoted to public marinas or boat slips available to the public



- h. The project design shall also provide for significant buffer areas within the project, not including active public or visitor-serving uses, which will effectively protect all adjacent agricultural land uses from conflicts with urban uses and activities.
- i. For all PUD project, the following requirements are imposed:
  - 1) A program of signing shall be developed and implemented to inform and direct the public as to the access and recreational opportunities, and the public obligations and constraints. Public recreational areas shall be located and designed to provide for ready access and identification by the public.
  - 2) All public areas shall be offered for dedication for public use prior to issuance of a permit for development.
  - 3) Public improvements required of a development shall be developed concurrently and shall be completed prior to completion of the final project phase.
- 46. Areas designated for visitor-serving commercial uses shall be planned and designed to maximize aesthetics, have a common theme and blend with surrounding uses. Permitted uses include motels, hotels, restaurants and visitor-oriented retail commercial. Where designated, neighborhood convenience commercial may also be permitted, provided that the commercial uses remain predominantly visitor-oriented.
- 47. The Ventura County Air Quality Management Plan (AQMP) is incorporated into the LCP by reference. All new development located within the coastal zone shall occur in a manner consistent with the AQMP.
- 48. Avoidance is the preferred mitigation in all cases where a proposed project would intrude on the known location of a cultural resource. Therefore, proposed project areas should be surveyed by a qualified archaeologist and resulting findings taken into account prior to issuing discretionary entitlements.

Should any object of potential cultural significance be encountered during construction, a qualified cultural resources consultant shall be contacted to evaluate the find and recommend any further mitigation needed. All potential impacts shall be mitigated to the maximum extent feasible.

Any unavoidable buried sites discovered during construction shall be excavated by a qualified archaeologist with an acceptable research design. During such site excavation, a qualified representative of the local descendants of the Chumash Indians shall be employed to assist in the study, to ensure the proper handling of cultural materials and the proper curation or reburial of finds of religious importance or sacred meaning.
- 49. The Colony, a 115-acre planned development site located between Harbor Boulevard and the Pacific Ocean, north of Channel Islands Boulevard and south of Falkirk Avenue, is a recognizable residential and resort facility. Public access to the beach is provided by means of a promenade and bike path which extends along the entire length of the overall development.

71. On vacant oceanfront lots in the Oxnard Shores Neighborhood, the City shall, in its permit process, ensure that evidence of public use is protected according to PRC 30211. In the event prescriptive rights are not fully established by a court of law, funds shall be sought for acquisition of these lots through the Transfer of Development Rights program. As funds designated for beach acquisition become available, the City shall attempt to acquire these vacant lots for public beach purposes. Once acquisition of the vacant lots is complete, the city may complete the linear park by acquiring the developed lots and removing the structures.
72. Public access to and along the shoreline and the Inland Waterway shall be required as a condition of permit approval for all new developments between the shoreline and the first public roadway inland from the shore, except as provided below:
  1. Exceptions may be made when access would be inconsistent with public safety, military security, the protection of fragile coastal resources, or when agriculture would be adversely affected.
  2. Exceptions for vertical accessways may be made when adequate vertical access exists nearby (500 feet).
  3. For Mandalay Bay inland water development, exceptions to the requirement of continuous lateral public access may be made for single-family waterfront development, but in no case shall the total public lateral access be less than 50 percent of the total shoreline frontage of the project. All vertical access shall be located and designed to minimize impacts on surrounding residential areas (reference Policy No. 45).
  4. Offers to dedicate public accessways and public facilities shall be recorded prior to the issuance of the permit and they shall be developed concurrently with the project. However, public access facilities need not be open to the public until a public agency or private association agrees to accept the responsibility for maintenance and liability of the access. Recorded offers of dedication shall not be revocable for 20 years.
73. Adequate public parking shall be provided in all new development with dedicated public access areas, and shall be in addition to the parking required for the new development, unless adequate facilities are provided nearby. All facilities shall be located and designed to avoid impacts on surrounding residential areas.
74. Bicycle routes shall be required in new developments wherever appropriate.
75. A bus route from the downtown area out Fifth Street past the airport to the new City/County Park at Fifth and Harbor, and on to McGrath State Beach Park, would provide excellent low-cost access to a more remote section of the coast. Although not possible under SCAT's current funding structure, it would be possible if it were to be jointly subsidized by State Parks, Oxnard Airport, the City and the County, and run by SCAT. Unlike other SCAT routes, this recreational route would run most frequently on summer weekends. This option should be explored further by the City.



Sec. 37-2.6.0 CPC (Coastal Planned Community) Zone

Sec. 37-2.6.1 Purpose

The purpose of the CPC zone is to provide a method which will ensure the orderly development of a large-scale mixed-use planned development on property located in an area bounded by Wooley Road on the north, Edison Canal on the west, Hemlock Street on the south, and Victoria Avenue on the east in accordance with the provisions of the Oxnard Coastal Land Use Plan. The provisions of this zone shall apply exclusively to the property zoned CPC as designated on the official Oxnard Shores Land Use Map of the certified Oxnard Coastal Land Use Plan.

The CPC zone is further intended to provide for the integration of residential, and visitor-serving commercial, and public recreational and open space uses consistent with the certified Oxnard Coastal Land Use Plan and provide for appropriate public access to the extensions of the Inland Waterway; and to provide a development which will optimize the utilization of property to conserve energy and promote the efficient use of limited resources.

Sec. 37-2.6.2 Permitted Uses

1. Agriculture and aquaculture
2. Passive recreation uses both on land and water

Sec. 37-2.6.3 Other Uses - Coastal Development Permit or Development Permit Review Required

Residential, visitor-serving commercial, public passive and active recreation uses may be permitted subject to the adoption of a specific plan for the planned unit development which shall establish the development pattern for the project site. Permitted and conditionally permitted uses shall then be allowed subject to the provisions of the Oxnard Coastal Land Use Plan and the general provisions of this chapter. Permitted and conditionally permitted uses shall be only those allowed in the R-W-1, R-W-2, R-2-C, R-3-C, CNC, CVC, and RC zones.

Sec. 37-2.6.4 Specific Plan Required

Pursuant to the policies of the Oxnard Coastal Land Use Plan, a specific plan for the entire property designated PUD-C shall be prepared and adopted prior to the issuance of any development permits and land divisions for development on the project site. The specific plan shall provide for development of the property in accordance with Policies 4, 5, and 24 of the Oxnard Coastal Land Use Plan specifically and with other general policies of the LUP.

Sec. 37-2.6.5 Specific Plan Contents

A. The specific plan shall contain the following components:

1. Access and recreation component

The specific plan shall contain a component which identifies the location of standards for improvements, and quantification of the amount of land area provided for lateral and vertical access, and public recreation, and open space facilities and areas, including parks, beaches, public marinas, and bikeways. All access shall be in accordance with the certified Oxnard Coastal Land Use Plan.

2. Soil transfer program

The specific plan shall require the provision of a soil transfer program upon submittal of the tentative map for each phase as required by Policy 5 of the Oxnard Coastal Land Use Plan.

3. Project and use map

The specific plan shall contain a map of the location and amount of specific uses and densities for land and water areas as for the entire CPC designated property required by the Oxnard Coastal Land Use Plan. Uses within water areas shall also be quantified.

4. Circulation component

The specific plan shall contain a circulation plan which identifies all public streets which will support the proposed project. The circulation plan shall also identify the location of bike paths and other alternative circulation improvements including those related to public transportation. An accompanying text shall identify the types of street and intersection improvements that are necessary. Street cross sections shall be provided, and the location of all required or proposed public parking areas serving public accessways shall be shown.

5. Buffering and setback component

The specific plan shall contain illustrations and text establishing the nature and location of building setbacks from thoroughfare and collector streets and from the waterway. In addition, the plan shall include descriptions and cross sections of urban use buffers as required for the project by the Oxnard Coastal Land Use Plan in accordance with Policy 4.

6. Urban design and landscape component

The specific plan shall contain illustrations and text as necessary to identify the relationships between major design elements which shall establish the character of the development. Elements to be identified shall include but not be limited to: view corridors; access and circulation corridors; public recreation use area and facilities (including beaches, plaza, boardwalks, etc.); overall project landscaping character; overall project architectural character; preliminary streetscape plan; project entries; and gateways.

7. Master utility and drainage facility component

The specific plan shall contain illustrations and text indicating the preliminary proposals and phasing for interim and ultimate sewer and stormwater drainage facilities, and street improvements.

8. Phasing component

The specific plan shall contain illustrations and text indicating the phasing sequence for development and public access dedication and improvements.

- B. The specific plan for the planned unit development shall consist of text and illustrations providing adequate data and criteria to fully express the proposed standard and character of development.

Sec. 37-2.6.6 Land Use and Access

The specific plan for the planned unit development shall provide for the amounts of visitor-serving commercial, public recreation and water use areas as required by Policy 24 of the Oxnard Coastal Land Use Plan. The specific plan shall also provide for the amount of vertical and lateral access in accordance with Policy 24 of the Coastal Land Use Plan and consistent with the access provisions of this chapter.

Sec. 37-2.6.7 Findings

In addition to those findings contained in Sec. 37-5.3.0, the specific plan for the planned unit development may be approved only if the following findings of fact can be made:

1. The specific plan for the planned unit development provides the appropriate percentage of visitor-serving commercial, public recreation and water area as required by the Oxnard Coastal Land Use Plan.
2. The specific plan for the planned unit development provides the appropriate amount area of vertical and lateral access as required by the Oxnard Coastal Land Use Plan.
3. The specific plan for the planned unit development contains a soil transfer program consistent with the policies of the Oxnard Coastal Land Use Plan.
4. The specific plan for the planned unit development is consistent with all other applicable and general policies of the Oxnard Coastal Land Use Plan.

Sec. 37-2.6.8 Permits Required

No new development or initiation of any conditionally permitted use shall be allowed on any area covered by the planned unit development until the following actions have occurred:

1. The property proposed for development has been zoned CPC.
2. A specific plan in accordance with the provisions of this article and the policies of the Oxnard Coastal Land Use Plan has been prepared and adopted for the entire property designated CPC.
3. A coastal development or development permit review has been granted by the City in accordance with the provisions of this article.

Sec. 37-2.6.9 Application of Planned Unit Development

Concurrent with any application for a land division, or as required above, a coastal development permit shall be approved which shall serve as the application for a Planned Unit Development (PUD). Development standards and regulations which differ or vary from the standards of the coastal zones to be applied may be proposed and adopted as provisions of the coastal development permit.

Sec. 37-2.6.10 Applicable Regulations

All uses shall be subject to the applicable regulations of Chapter 37, including standards which are located in the following sections:

1. Sec. 37-1.4.0 General requirements
2. Article 3 Specific coastal development and resource standards
3. Article 4 General coastal development and resource standards
4. Article 5 Administration

Sec. 37-3.9.0 Coastal Access and Recreation

Sec. 37-3.9.1 Purpose

The coastal zone includes substantial opportunities for public access to the ocean and related recreational uses. The purpose of this section is to guide the acquisition and development of access facilities and vertical and lateral easements for public use within the coastal zone as part of a comprehensive program for implementing the Oxnard Coastal Land Use Plan.

Sec. 37-3.9.2 Applicability and Specific Standards

All development within the Oxnard coastal zone which would have an affect on public access to and enjoyment of the coastline shall comply with the provisions of this section.

1. Specific standards are contained in Policy Nos. 51, 52, and 55 and appendices Policy Nos. 22 and 23 of the Oxnard Coastal Land Use Plan. In addition, the provisions in Paragraphs B, C, D, and all other applicable LUP policies shall apply.
2. Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development except where:
  - a. It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.
  - b. Adequate access exists nearby consistent with applicable policies of the certified Oxnard Coastal Land Use Plan.
  - c. Agriculture would be adversely affected.
3. Dedicated accessways shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessways.
4. For the purposes of this section, new development as defined by Section 30212(b) of the Coastal Act does not include the following:
  - a. Structures destroyed by natural disaster

Replacement of any structure pursuant to the provisions of subsection (g) of Section 30610 of the Coastal Act.

b. Demolition and reconstruction

The demolition and reconstruction of a single-family residence, provided that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.



c. Improvements

Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height or bulk of the structure by more than 10 percent, which do not block or impede access, and which do not result in a seaward encroachment by the structure.

d. Repair and maintenance

Any repair or maintenance activity for which the City has determined pursuant to Section 30610 of the Coastal Act that a coastal development permit will not be required unless the Land Use Advisors determine that such activity will have an adverse impact on lateral public access along the beach.

Sec. 37-3.9.3 Waiver of Access Requirements

Pursuant to Section 30214 of the Coastal Act with respect to regulating the time, place and manner of public access, the requirements for vertical access may be waived for specific development applications only when the reviewing body vested with the authority to approve the request finds that adequate vertical access is provided offsite but within the immediate area. Such waiver may be granted subject to the specific finding that the presence of public beach with adequate access facilities nearby (within 500 feet), reduces the needed frequency of vertical accessways in coastal residential areas.

A granting of a waiver for lateral access is deemed inconsistent with the policies of the Oxnard Coastal Land Use Plan and therefore shall be prohibited.

Sec. 37-3.9.4 General Coastal Access Standards

The following standards apply to all new development subject to Policy Nos. 1-34 (Appendix III-Access) of the certified Oxnard Coastal Land Use Plan, the provisions of Chapter 34 and are intended to provide for the establishment of access right-of-way designations dedications and easements on both public and private lands:

1. Coastal access facilities shall be located where they safely accommodate public use and should be distributed throughout an area to prevent crowding, parking congestion, and misuse of coastal resources. Accessways shall be sited and designated:
  - a. To minimize alteration of natural land forms conforming to the existing contours of the land and be subordinate to the character of their setting;
  - b. To prevent unwarranted hazards to the land and public safety;
  - c. To provide for the privacy of adjoining residences and to minimize conflicts with adjacent or nearby established uses;
  - d. To be consistent with military security needs;

- e. To prevent misuse of environmentally sensitive habitat areas; and
  - f. To ensure that agriculture will not be adversely affected.
2. Public access to the environmentally sensitive habitat areas such as wetlands, sand dunes, tidelands or riparian areas, shall be evaluated on a case-by-case basis. Such accessways shall be designed and constructed so as to avoid adverse affects on the resources consistent with Policy Nos. 1, 2, 4, 6, 12, 13, 16, 20, and 21 of the certified Coastal Land Use Plan.
  3. Coastal accessways located in areas of erosion hazard shall be constructed and managed in a manner that does not increase the hazard potential. Access facilities on productive agricultural land can be temporarily closed during harvest or pesticide times. Where appropriate coastal accessways shall be designed to correct abuses resulting from existing use.
  4. Access facilities constructed on access easements should be no wider than necessary to accommodate the numbers and types of users that can be reasonably expected.
  5. The design and placement of accessways shall provide for the privacy of adjoining residences. Each vertical access easement in a residential area shall be sufficiently wide to permit the placement of an appropriate accessway facility, such as a stairway, ramp, walkway and fencing, and/or landscape buffer as necessary to ensure privacy and security. Depending on local considerations in a single-family residential neighborhood, vertical accessways may be fenced on the property line and use restricted to daylight hours.
  6. Unless otherwise authorized in a specific zone, use of lateral accessways shall be limited to the right of public pass and repass, active and passive recreational use, or as otherwise designated by the certified Oxnard Coastal Land Use Plan.

#### Sec. 37-3.9.5 Establishing Access Areas

The establishment of required vertical and lateral accessways shall be accomplished in one of the following methods:

1. Deed restriction. This method may be used only where an owner, association, or corporation agrees to assume responsibility for the maintenance and liability of the public accessway. City approval is first required of the person or entity assuming responsibility.
2. Grant of fee interest. This method may be used when a public agency or private organization approved by the City is willing to assume responsibility for ownership, maintenance and liability for the public accessway.
3. Grant of easement. This method may be used in the same instances as those identified above.
4. Offer of dedication. This method is to be used when no public agency, private organization or individual is available to accept the granting of fee interest or easement and the owner is not

willing to accept responsibility for the accessway. Any offer of dedication shall not be accepted until responsibility for maintenance and liability is provided.

Sec. 37-3.9.6 Specific Coastal Access Standards

The standards for the location and distribution of both vertical and lateral accessways involving public and private lands contained in this section shall apply to all new development within the City's coastal zone.

Sec. 37-3.9.7 Lateral Access

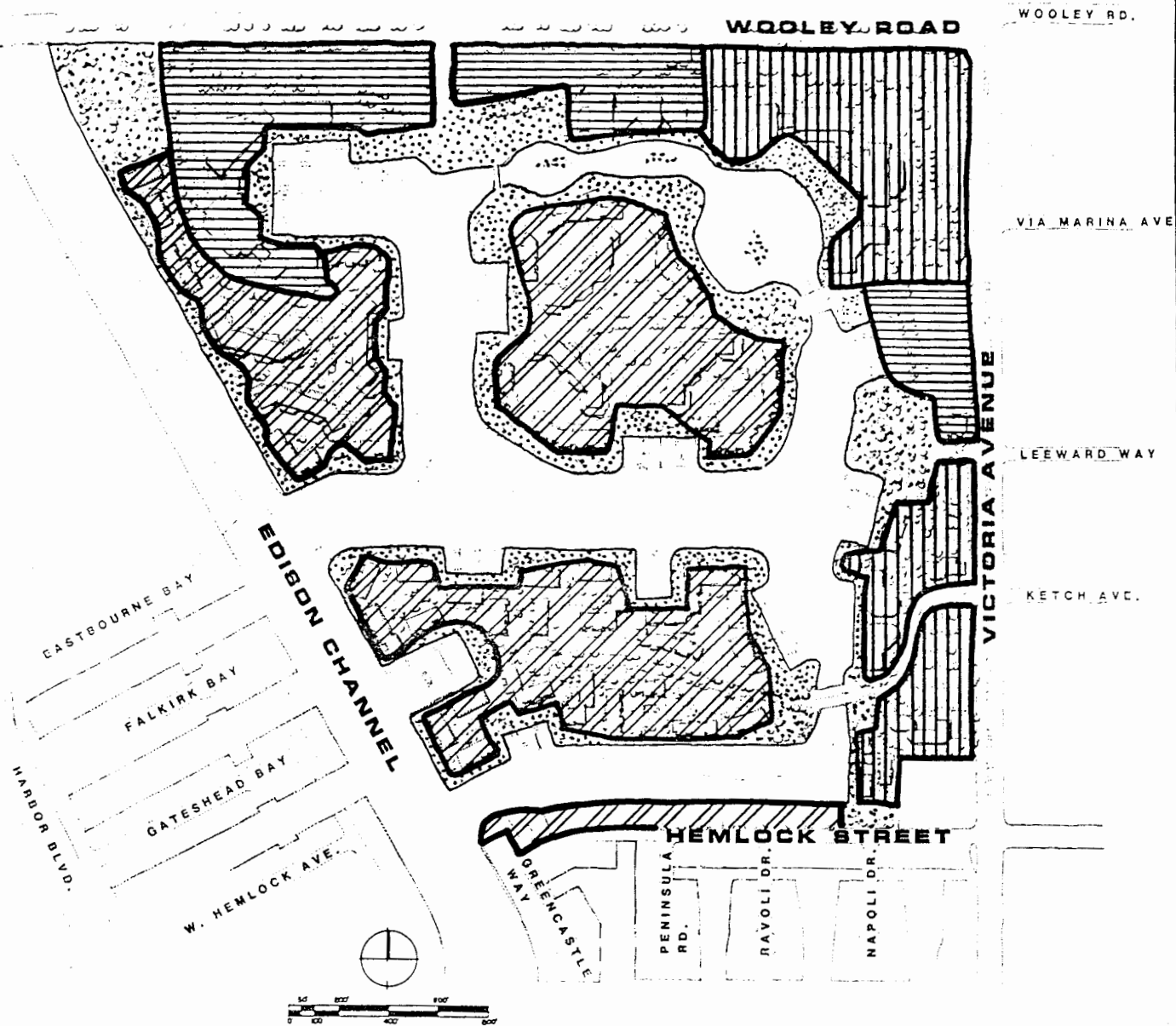
1. Lateral accessways shall include a minimum width of 25 feet of dry sandy beach to the extent feasible, given periodic climatic conditions, or should include the entire sandy beach area if the width of said beach is less than 25 feet. Said accessways should not extend further landward than the foot of an existing shoreline protective device or be closer than 10 feet to an existing single-family residence unless another distance is specified by the Oxnard Coastal Land Use Plan. Where development poses a greater burden on public access, a larger accessway shall be provided.
2. Lateral accessways shall be located on all waterfront land to provide continuous and unimpeded lateral access along the entire reach of the sandy beach area or other usable recreational shoreline. Exceptions to this standard may include military installations where public access would compromise military security, industrial developments and operations that would be hazardous to the public safety and developments where topographic features, such as river mouths, could be hazardous to public safety.
3. The proximity of the Pacific Ocean periodically precludes any development on these narrow accessways other than portable support facilities, such as trash receptacles, picnic tables and benches, or retractable ramps or boardwalks designed for use by persons with disabilities.

Sec. 37-3.9.8 Vertical Access

1. Vertical accessways shall be a minimum of 10 feet wide.
2. Accessway surface materials shall be as follows:
  - a. Where the nature soil is sand, no other surfacing material is required unless accessway is in a dune habitat, then wooden planking shall be required.
  - b. Where accessways are to be constructed in areas where sand does not exist, or where conditions required an improved accessway one of the following materials shall be used:
    - 1) Asphalt or concrete
    - 2) Masonry paving units including flat stone, concrete blocks, bominite, stamped concrete or other similar materials which provide a smooth, even surface

- 3) Smooth, rounded gravel, which is approximately one-half inch in diameter or less, laid to a minimum depth of five inches within an area contained by wood or concrete headers. Gravel shall be underlaid with plastic which is at least four mil thick.
  - 4) Wood platform or walkways, provided that the wood shall be treated and waterproofed
  - 5) Other materials or systems may be approved by the Land Use Advisors.
- c. All accessways in designated wetlands or resource protection areas shall be subject to the granting of a coastal development permit.
3. Vertical accessways shall be established in all beachfront areas and should be evenly distributed and carefully located throughout such area to the maximum extent feasible. They should be located where they provide access to onshore or offshore recreational areas.
  4. Where single-family development exists or is planned, vertical accessways should be located where streets end at the shoreline, once every six residential parcels or not less than once every 500 feet. New multiple-family residential projects of five dwelling units or more should provide sufficient open space within the project for a vertical accessway public parking area and for construction of the access facility.
  5. Visitor-serving commercial or recreational developments on shoreline parcels shall enhance the shoreline experience by providing (or preserving) view of the ocean, vertical access through the project, and accessway facilities and maintenance as part of the project. Industrial development near beachfront parcels shall provide vertical access and parking improvements appropriate to safe public shoreline use and equal to the potential public use of the shoreline displaced by the industrial facility.
  6. Subdivision of beachfront parcels shall provide a vertical accessway to the beach area either as a separate parcel or as an easement over the parcels to be created.
  7. Vertical accessways may be developed with a range of facilities including stairways, ramps, trails, right-of-way overpasses and underpasses or any combination thereof. Vertical accessways shall include design features which minimize bluff and shoreline erosion. This may include, but not be limited to, drainage systems, planting of native cover, fencing, and elevation of stairways away from bluff area. Vertical accessways shall include appropriate support facilities, such as signs and fencing.
  8. In determining the specific siting of an accessway the protection of the right-of-privacy of the adjacent residence shall be considered. Where a residential structure is located on the beach with no physical barrier such as a seawall separating the residential structure from the accessway, said accessway shall not extend any closer than 10 feet to the occupied residential structure. In such cases, the area from 10 to 20 feet from the residential structure may be used for pass and repass with all areas seaward of the 20-foot line available for passive recreational use. In determining an appropriate access buffer, the need for privacy should be considered in light of the public's right to obtain access and use along the shoreline. The buffered area should not act to preclude the public's right of access to and use of publicly owned tidelands.

Where a vertical accessway for pedestrian use is sited on a parcel where a residential structure exists or is anticipated for construction in the proposed project, the access shall not be sited any closer than five feet from the residential structure. This five-foot buffer shall be provided to protect the privacy rights of the residents of the site. In some instances, re-siting of the proposed project may be required to provide the needed access corridor and still allow for a buffer between the accessway and the residential structure.



**RESIDENTIAL**



**VISITOR SERVING  
COMMERCIAL**



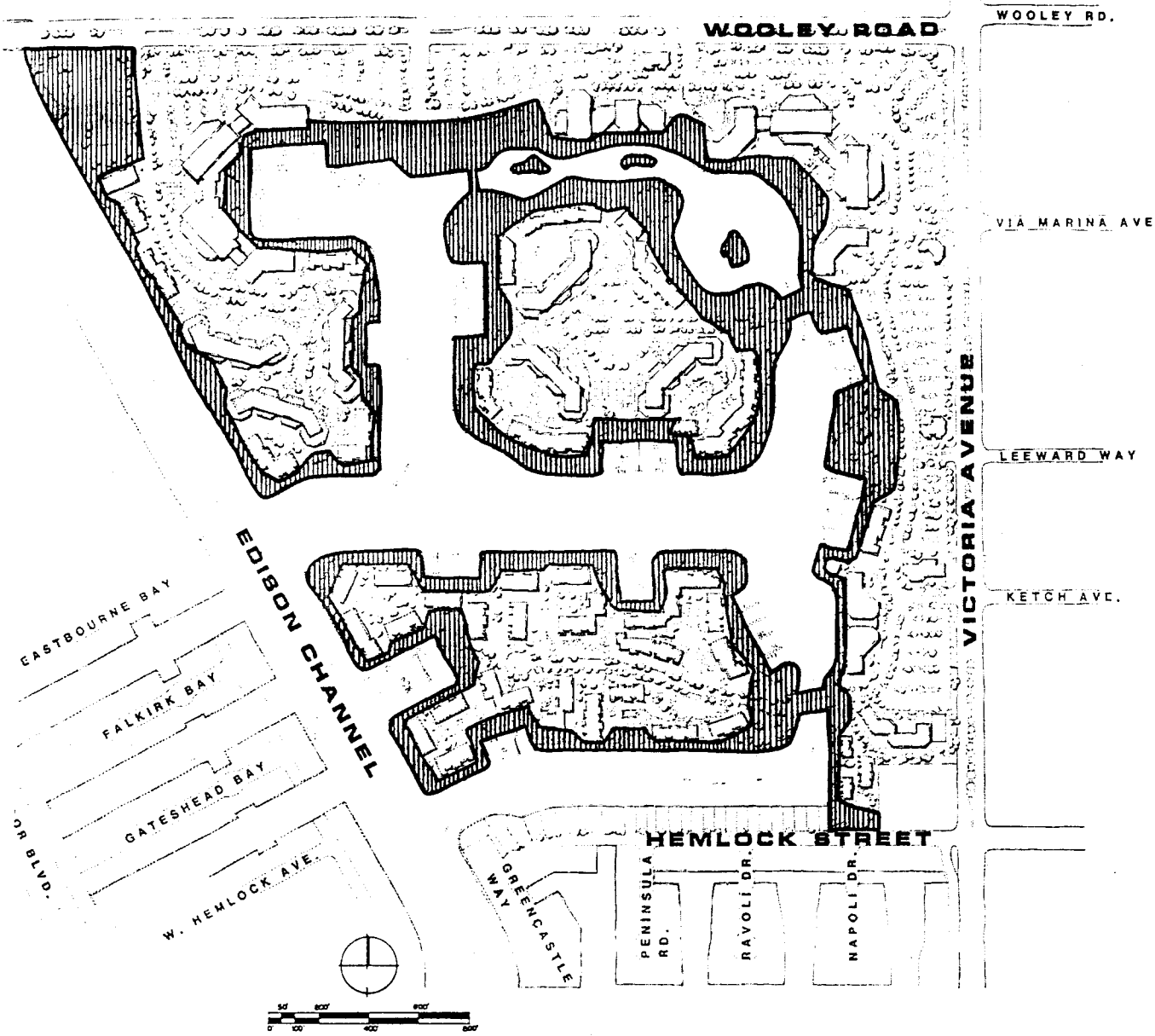
**MIXED USE  
(COMMERCIAL/RESIDENTIAL)**



**PARK**

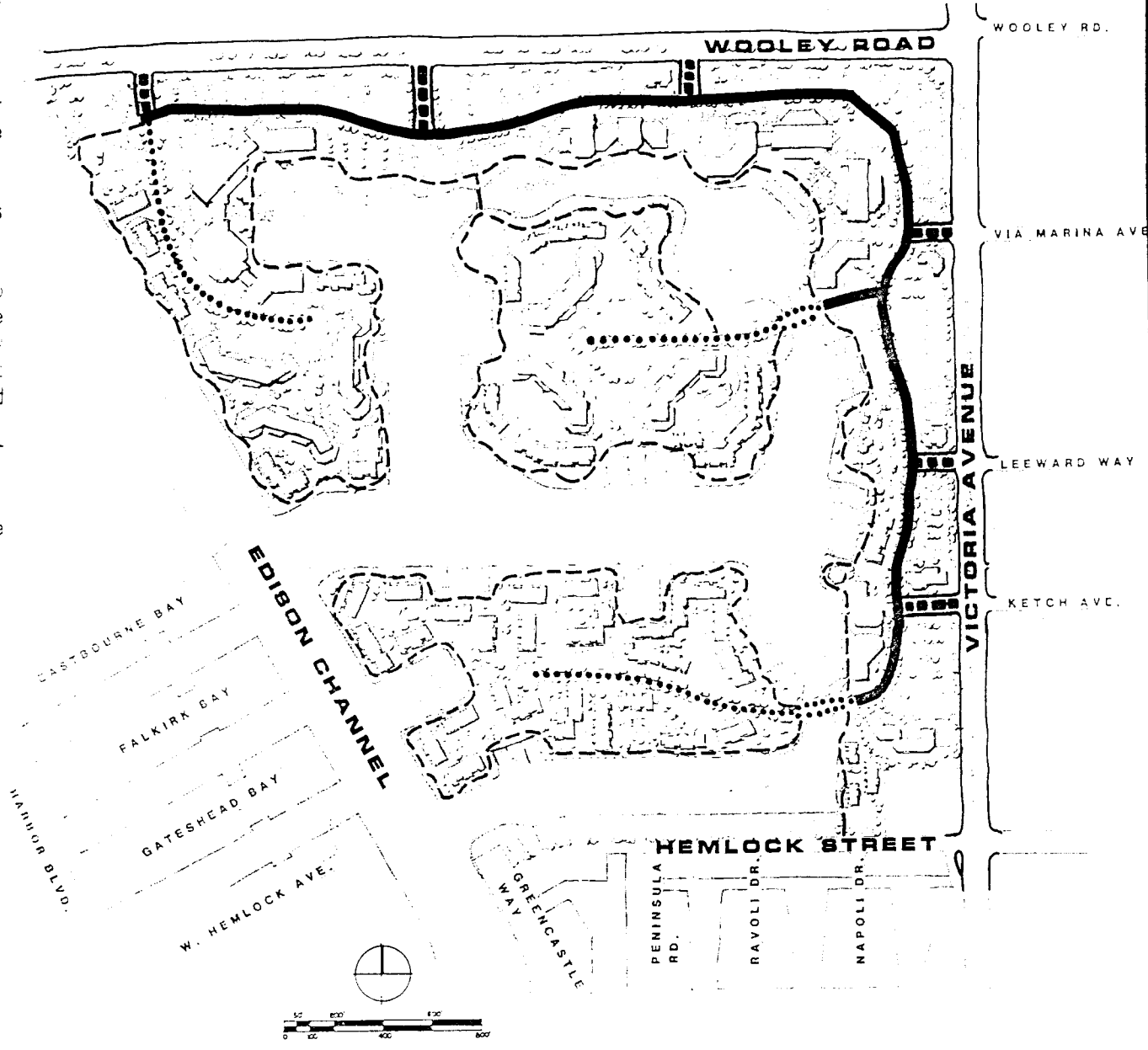
EXHIBIT NO. 11  
A-4-oxn-03-014  
MSBP LAND USE MAP





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## PARK PLAN

EXHIBIT NO. 12  
A-4-oxN-03-014  
MSBP PARK PLAN



-  MEDIANED ENTRIES
-  32' WIDE PUBLIC DRIVE
-  25' WIDE PRIVATE DRIVE
-  PEDESTRIAN/BICYCLE

**CIRCULATION**



### Visitor Serving Commercial:

For the purposes of this specific plan, this category includes all uses permitted in the CNC, CVC and PC zones. The conceptual land use plan incorporated into this specific plan establishes three primary focal points for commercial activities. Each of these focal points has a strong orientation to the water and waterfront development. The intent is to create commercial focal points whose activities complement and support each other, rather than directly compete.

### Mixed-Use (Residential and Commercial):

Mixed-use will be considered as an appropriate land use, containing Neighborhood or Visitor Serving support commercial uses within the same complex or structure with residential uses.

### Public Access and Recreation:

The primary public access to the waterfront of this project is satisfied by a linear park which extends throughout the entire project, except where single-family residences are proposed along Hemlock Street. This waterfront park will provide approximately 21,000 linear feet of lateral access for the public. Interspersed along this linear waterfront park are several "pocket parks" ranging from approximately one-third acre to three acres in size. These pocket parks will offer visitors and residents a variety of recreational amenities, from vista points and look-outs to picnic facilities, gardens, and open space for "free play." Though auto access to the island will be private and secured (i.e., key operated gate), this linear park system will allow free access for bicyclists and pedestrians alike, and in addition will carry throughout the development a consistent landscape theme unique to this project in the Channel Islands Marina. Approximately 8 acres of open water will be designed as a special water recreation area or "water park." This area will not be accessible to larger boating craft (length in excess of 8 feet), but rather will be set aside for activities such as wading, swimming, wind-surfing, and paddle boating, which otherwise would pose a hazard to and be endangered by normal boating activities. This public water park will be unlike any other recreational amenity in the region and will be available to the general public as well as guests and residents of the marina.

Vertical public access for vehicular, pedestrian, and bicycle access text and maps shall not be less than 10% of total linear waterfront access as depicted in the specific plan and use map (page 5). If the access is not a public thoroughfare it shall be permanently legally restricted as such (by appropriate legal instrument such as a deed restriction or easement) and shall be held and maintained by the developer, subsequent land owner(s) or appropriate third party. This equals approximately 2,100 feet of public vertical access to the water, vertical access to the water, which can be satisfied by public roads, walkways and bikeways, docks and launching ramps.

## SECTION VII: PHASING

The development of this project will occur in a series of phases. The first phase to be developed will be the western section of the south island and the western section of the south shore. After the development of the western section of the south island and the western section of the south shore, the remaining phases may develop in any order, including concurrent development of phases, as long as the canals shown in the Specific Plan are extended to each new phase of development, each new phase of development is served by adequate vehicular and pedestrian circulation ways, as shown in this Specific Plan, and each new phase is provided with all required utility services.

The following is a description of the geographic sections of the property which are identified as phases. The improvements associated with each of the phases shall be set forth in a circulation and utilities plan and further specified in the tentative maps of the respective phases.

WESTERN SECTION OF SOUTH ISLAND AND WESTERN  
SECTION OF SOUTH SHORE PHASE (SOUTHWEST  
SECTION)

EASTERN SECTION OF SOUTH ISLAND, EASTERN  
SECTION OF SOUTH SHORE AND EAST SHORE PHASE  
(SOUTHEAST SECTION)

SOUTH PENINSULA PHASE

NORTH PENINSULA AND NORTHWEST SHORE PHASE

NORTH ISLAND PHASE

NORTHEAST SHORE PHASE

Public improvements required of each phase shall be developed concurrently with private development of that phase and all public improvements required by the specific plan shall be completed before completion of the final phase.

## **SECTION X: EDISON CHANNEL**

The Edison Canal will be widened to 300 feet with bulkheads or rip rap on the easterly bank to the intersection of the northerly east-west canal to be contained in the project. The City will seek direction and confirmation from Southern California Edison regarding their recommended treatment of the waterway and banks north of the northern east-west canal to Wooley Road. A final determination of the treatment will be made at the tentative map stage (or any earlier application for land use entitlement) for the peninsula. The City would like to stabilize the existing bank on Edison property by creating a linear park and will evaluate in the future methods for funding and the extend of the City's participation.

## **SECTION XI: SOIL TRANSFER**

A soil transfer program to implement Policy 5 of the local coastal policies in the Coastal Land Use Plan will be required at the submittal of a tentative subdivision map.

The plan shall consist of:

- a) Identified (i.e. mapped) recipient sites consisting of non-prime soils; and
- b) Sites west of Route 1 in the Oxnard Plan and identified as agriculture in the applicable land use plan; and
- c) Standards for applying the agricultural soil to the site (set forth in LUP policy 5(c); and
- d) A program for monitoring agricultural production on these recipient sites; and
- e) Transfer of soils prior to commencement of construction of each place or alternatively posting of a performance bond for cost of soil transfer; and
- f) Written agreements from recipient site owners for deposit of agricultural soils.

## **SECTION XII: IMPLEMENTATION**

Implementation will be subject to the regulations of the Coastal Land Use Plan and coastal zoning regulations and zone maps as adopted.

Table 1

April 1 - October 31 Dry Weather Data  
April 1999 - May 2003

Location Name	Number of Exceedances of State standards	Number of Samples collected	Percent Exceedance
11th Street Beach	1	69	1%
N Street Beach	1	66	2%
Garnet Avenue Beach	1	66	2%
Avalon Beach- South End	1	24	4%
Avalon Beach- adjacent to Busy Bee Rest.	1	24	4%
Carlsbad, Aqua Hedionda (boat launch)	1	21	5%
Mission Bay, Fiesta Island Bridge (south side)	1	42	2%
Mission Bay, DeAnza Cove, swim area	1	7	14%
Mission Bay, Crown Point-watercraft area	1	14	7%
Mission Bay, Beach at La Cima	1	15	7%
Mission Bay, Santa Clara Cove, east	1	12	8%
Mission Bay, San Juan Cove (west of boat launch)	1	40	3%
Mission Bay, Bahia Point-swim area	1	16	6%
Mission Bay, Quivera Basin (w/basin) at Lifeguard station	1	41	2%
Mission Bay, Perez Cove	1	39	3%
C. I. Harbor-Beach Park at S. end of Victoria Av., 50' south	1	38	3%
Colorado Lagoon-center	2	67	3%
Sea Gate	2	69	3%
Trinidad Lane Beach	2	69	3%
Mother's Beach-Orange County	2	69	3%
Park Avenue Beach	2	66	3%
10th Street Beach	2	66	3%
Sapphire Avenue Beach	2	66	3%
Abalone Avenue Beach	2	66	3%
Newport Dunes-West	2	67	3%
Avalon Beach- 50 yards south of Pier	2	24	8%
Avalon Beach- 50 yards north of Pier	2	24	8%
San Diego Bay, north of Kellogg St.	2	102	2%
Mission Bay, Sail Bay (proj. of Whitting Ct.)	2	42	5%
Mission Bay, Ventura Cove	2	55	4%
Guest Dock - End (West Basin)	2	68	3%
Alamitos Bay-shore float	3	122	2%
Colorado Lagoon-south	3	67	4%
Onyx Avenue Beach	3	66	5%
Alvarado/ Bay Isle Beach	3	66	5%
Rocky Point Beach	3	66	5%
Newport Dunes-Middle	3	68	4%
San Diego Bay, Glorietta Bay Park at boat launch	3	99	3%
Mission Bay, Tecolote Playground (watercraft area)	3	28	11%
Mission Bay, swim area at Visitor's Center	3	14	21%
Youth Dock	4	68	6%
Humboldt Beach	4	70	6%
Bayshore Beach	4	67	6%
Via Genoa Beach	4	67	6%
15th Street Beach	4	69	6%
San Diego Bay, Shelter Island Yacht Basin (proj. Bessemer St.)	4	63	6%
Mission Bay, Tecolote Shores (was Pacific Passage)	4	105	4%
Mission Bay, north Pacific Passage	4	68	6%
Mission Bay, Crown Point Shores	4	102	4%

EXHIBIT NO. 15

A-4-oxn-03-014

ENCLOSED BEACHES DATA  
COMPILED BY HEAL THE BAY

Adpated from data compiled by Heal the Bay

Table 1

April 1 - October 31 Dry Weather Data  
April 1999 - May 2003

Location Name	Number of Exceedances of State standards	Number of Samples collected	Percent Exceedance
Marina del Rey, Mothers' Beach-lifeguard tower	4	863	0%
C.I. Harbor-Beach Park at S. end of Victoria Av., 50' north	4	40	10%
C.I. Harbor - Beach Park at the end of Rocks	4	74	5%
2nd St. Bridge & Bayshore	5	124	4%
Marina del Rey, Mothers' Beach-btwn. Tower and Boat dock	5	53	9%
Mission Bay, Hidden Anchorage	5	50	10%
Mission Bay, Riviera Shores (proj. of La Cima Dr.)	5	102	5%
Mission Bay, Mariners Basin (proj. of Balboa Ct.)	5	102	5%
Mother's Beach-Long Beach	6	126	5%
Swim Area - Baby Beach	6	68	9%
38th Street Beach	6	66	9%
Grand Canal	6	67	9%
Marina del Rey, Mothers' Beach-Playground area	6	54	11%
Avalon Beach-btwn. storm drain & Pier (1/3)	6	102	6%
Buoy Line - Baby Beach	7	68	10%
Lido Yacht Club Beach	7	67	10%
Avalon Beach-btwn. BB rstmt. & Tuna Club	7	122	6%
San Diego Bay, Spanish Landing Park beach	7	105	7%
Mission Bay, Leisure Lagoon	7	107	7%
Mission Bay, Fanuel Park (proj. of Fanuel St.)	7	102	7%
Mission Bay, Santa Clara Cove (proj. Portsmouth Ct.)	7	65	11%
Mission Bay, Santa Barbara Cove (proj. Santa Barbara Pl.)	7	97	7%
West End - Baby Beach	8	68	12%
Newport Dunes-East	8	67	12%
Newport Dunes-North	8	67	12%
Avalon Beach- underneath Pier	8	24	33%
San Diego Bay, Tidelands Park (proj. of Mullinix Dr.)	8	105	8%
Mission Bay, Wildlife Refuge near fence (proj. of Lamont St.)	8	102	8%
Mission Bay, Bonita Cove (north cove)	8	144	6%
East End - Baby Beach	9	69	13%
19th Street Beach	9	66	14%
San Diego Bay, Shelter Island (Shoreline Beach Park)	9	139	6%
Colorado Lagoon-north	10	76	13%
Avalon Beach-btwn. storm drain & Pier (2/3)	10	102	10%
Avalon Beach-btwn. Pier & BB rstmt. (1/3)	10	101	10%
San Diego Bay, Bayside Park (projection of J Street)	10	124	8%
Mission Bay, Campland (west of Rose Creek)	10	122	8%
Avalon Beach-btwn. Pier & BB rstmt. (2/3)	11	101	11%
Mission Bay, Bahia Point-northside (apex of Gleason Rd.)	11	115	10%
Cabrillo Beach - harborside at boat launch	13	860	2%
Mission Bay, Tecolote Creek outlet	13	101	13%
43rd Street Beach	14	66	21%
Harbor Patrol Beach	14	69	20%
Marina del Rey, Basin H boat launch	14	56	25%
Mission Bay, DeAnza Cove (mid-cove)	14	125	11%
C.I. Harbor-Hobie Beach Lakshore Dr.	15	121	12%
C.I. Harbor-Beach Park at S. end of Victoria Av.	15	166	9%
Mission Bay, Visitor's Center (proj. of Clairemont Dr.)	17	131	13%
Cabrillo Beach- harborside at lifeguard tower	34	860	4%



Table 2

November 1 - March 31 Dry Weather Data  
April 1999 - May 2003

Location Name	Number of Exceedances of State standards	Number of Samples collected	Percent Exceedance
Youth Dock	1	30	3%
Trinidad Lane Beach	1	33	3%
Abalone Avenue Beach	1	30	3%
N Street Beach	1	30	3%
Rocky Point Beach	1	30	3%
Mission Bay, DeAnza western shore	1	2	50%
Mission Bay, Santa Barbara Cove (proj. Santa Barbara Pl.)	1	19	5%
Mission Bay, Mariners Basin (proj. of Balboa Ct.)	1	4	25%
Guest Dock - End (West Basin)	1	30	3%
C. I. Harbor-Beach Park at S. end of Victoria Av., 50' north	1	21	5%
Park Avenue Beach	2	30	7%
Bayshore Beach	2	31	6%
Newport Dunes-East	2	31	6%
C. I. Harbor-Beach Park at S. end of Victoria Av., 50' south	2	21	10%
Colorado Lagoon-north	3	33	9%
Sea Gate	3	36	8%
Onyx Avenue Beach	3	31	10%
Via Genoa Beach	3	31	10%
Sapphire Avenue Beach	3	31	10%
Grand Canal	3	30	10%
San Diego Bay, Bayside Park (projection of J Street)	3	5	60%
San Diego Bay, north of Kellogg St.	3	8	38%
Fiesta Island, NW shore	3	3	100%
Mission Bay, Sail Bay (proj. of Whitting Ct.)	3	21	14%
Alamitos Bay-shore float	4	60	7%
Mother's Beach-Long Beach	4	59	7%
2nd St. Bridge & Bayshore	4	60	7%
Mother's Beach-Orange County	4	35	11%
Ruby Avenue Beach	4	31	13%
Alvarado/ Bay Isle Beach	4	30	13%
Newport Dunes-Middle	4	32	13%
Newport Dunes-West	4	35	11%
Garnet Avenue Beach	4	32	13%
Harbor Patrol Beach	4	36	11%
LAC Fire Dock	4	8	50%
Mission Bay, Fiesta Island Bridge (south side)	4	25	16%
Mission Bay, Leisure Lagoon	4	32	13%
Mission Bay, Riviera Shores (proj. of La Cima Dr.)	4	27	15%
Mission Bay, San Juan Cove (west of boat launch)	4	21	19%
Mission Bay, Bahia Point-northside (apex of Gleason Rd.)	4	29	14%
Colorado Lagoon-center	5	34	15%
38th Street Beach	5	32	16%
Mission Bay, swim area at Visitor's Center	6	10	60%
Mission Bay, Wildlife Refuge near fence (proj. of Lamont St.)	6	34	18%
Mission Bay, Crown Point Shores	6	28	21%
Mission Bay, Fanuel Park (proj. of Fanuel St.)	6	30	20%
Colorado Lagoon-south	7	37	19%

Table 2

November 1 - March 31 Dry Weather Data  
April 1999 - May 2003

Location Name	Number of Exceedances of State standards	Number of Samples collected	Percent Exceedance
Newport Dunes-North	7	32	22%
C.I. Harbor - Beach Park at the end of Rocks	7	38	18%
Marina del Rey, Mothers' Beach-Playground area	8	23	35%
Marina del Rey, Basin H- boat launch	9	23	39%
Mission Bay, DeAnza Cove (mid-cove)	9	38	24%
West End - Baby Beach	10	29	34%
Swim Area - Baby Beach	10	29	34%
Marina del Rey, Mothers' Beach-btwn. Tower and Boat dock	10	23	43%
Mission Bay, Hidden Anchorage	10	35	29%
Mission Bay, Tecolote Shores (was Pacific Passage)	10	30	33%
East End - Baby Beach	11	29	38%
43rd Street Beach	11	30	37%
19th Street Beach	11	36	31%
10th Street Beach	11	34	32%
11th Street Beach	12	39	31%
San Diego Bay, Shelter Island (Shoreline Beach Park)	12	39	31%
Mission Bay, Tecolote Creek outlet	13	32	41%
Buoy Line - Baby Beach	19	29	66%
Mission Bay, Bonita Cove (north cove)	20	46	43%
C.I. Harbor-Hobie Beach Lakshore Dr.	26	58	45%
Mission Bay, Visitor's Center (proj. of Clairemont Dr.)	27	60	45%
Mission Bay, Campland (west of Rose Creek)	28	61	46%
Cabrillo Beach - harborside at boat launch	33	487	7%
C. I. Harbor-Beach Park at S. end of Victoria Av.	35	86	41%
Marina del Rey, Mothers' Beach-lifeguard tower	81	487	17%
Cabrillo Beach- harborside at lifeguard tower	251	487	52%

Table 3

Year Round Wet Weather Data  
April 1999 - May 2003

Location Name	Number of Exceedances of State standards	Number of Samples collected	Percent Exceedance
Mission Bay, Quivera Basin (w/basin) at Lifeguard station	1	9	11%
Colorado Lagoon-south	1	5	20%
Colorado Lagoon-north	1	5	20%
San Diego Bay, Bayside Park (projection of J Street)	1	4	25%
San Diego Bay, Shelter Island (Shoreline Beach Park)	1	2	50%
Avalon Beach- South End	1	1	100%
Avalon Beach- 50 yards south of Pier	1	1	100%
Avalon Beach- underneath Pier	1	1	100%
Avalon Beach- 50 yards north of Pier	1	1	100%
Avalon Beach- adjacent to Busy Bee Rest.	1	1	100%
Marina del Rey, Mothers' Beach-25 ft. inside south end	1	1	100%
San Diego Bay, Shelter Island Yacht Basin (proj. Bessemer St.)	1	1	100%
Mission Bay, Tecolote Playground (watercraft area)	1	1	100%
Mission Bay, north Pacific Passage	1	1	100%
Sea Gate	2	12	17%
Mission Bay, Santa Barbara Cove (proj. Santa Barbara Pl.)	2	10	20%
Mission Bay, Sail Bay (proj. of Whitting Ct.)	2	9	22%
Mission Bay, Vacation Isle (btwn Ingram St. and south cove)	2	9	22%
Avalon Beach-btwn. storm drain & Pier (1/3)	2	6	33%
Avalon Beach-btwn. Pier & BB rstnt. (2/3)	2	6	33%
C. I. Harbor-Beach Park at S. end of Victoria Av., 50' south	2	6	33%
San Diego Bay, Tidelands Park (proj. of Mullinix Dr.)	2	3	67%
Youth Dock	3	18	17%
Guest Dock - End (West Basin)	3	18	17%
15th Street Beach	3	14	21%
Humboldt Beach	3	12	25%
Trinidad Lane Beach	3	12	25%
Alamitos Bay-shore float	3	11	27%
2nd St. Bridge & Bayshore	3	11	27%
Mother's Beach-Long Beach	3	10	30%
Mission Bay, Hidden Anchorage	3	9	33%
Mission Bay, Riviera Shores (proj. of La Cima Dr.)	3	9	33%
Mission Bay, San Juan Cove (west of boat launch)	3	9	33%
Mission Bay, Perez Cove	3	9	33%
Avalon Beach-btwn. BB rstnt. & Tuna Club	3	7	43%
Avalon Beach-btwn. storm drain & Pier (2/3)	3	6	50%
C. I. Harbor-Beach Park at S. end of Victoria Av., 50' north	3	6	50%
Mission Bay, Tecolote Shores (was Pacific Passage)	4	12	33%
Mission Bay, Leisure Lagoon	4	10	40%
LAC Fire Dock	4	5	80%
Park Avenue Beach	5	15	33%
Ruby Avenue Beach	5	15	33%
Sapphire Avenue Beach	5	15	33%
N Street Beach	5	15	33%
Grand Canal	5	15	33%
11th Street Beach	5	12	42%



Table 3

Year Round Wet Weather Data  
April 1999 - May 2003

Location Name	Number of Exceedances of State standards	Number of Samples collected	Percent Exceedance
Mission Bay, Bonita Cove (north cove)	5	12	42%
Davenport Beach	5	12	42%
C.I. Harbor - Beach Park at the end of Rocks	5	12	42%
Mission Bay, Fanuel Park (proj. of Fanuel St.)	5	9	56%
Avalon Beach-btwn. Pier & BB rstrnt. (1/3)	5	6	83%
Abalone Avenue Beach	6	15	40%
Lido Yacht Club Beach	6	15	40%
Mission Bay, Visitor's Center (proj. of Clairemont Dr.)	6	13	46%
Mission Bay, DeAnza Cove (mid-cove)	6	13	46%
Mission Bay, Crown Point Shores	6	12	50%
Mission Bay, Bahia Point-northside (apex of Gleason Rd.)	6	10	60%
Bayshore Beach	7	15	47%
10th Street Beach	7	15	47%
Garnet Avenue Beach	7	15	47%
Mother's Beach-Orange County	7	12	58%
West End - Baby Beach	8	18	44%
Onyx Avenue Beach	8	15	53%
19th Street Beach	8	15	53%
Alvarado/ Bay Isle Beach	8	15	53%
Rocky Point Beach	8	15	53%
East End - Baby Beach	9	18	50%
Via Genoa Beach	9	15	60%
Marina del Rey, Basin H- boat launch	9	14	64%
43rd Street Beach	10	15	67%
Newport Dunes-East	10	15	67%
Newport Dunes-North	10	15	67%
Mission Bay, Tecolote Creek outlet	10	13	77%
Mission Bay, Campland (west of Rose Creek)	11	17	65%
38th Street Beach	11	15	73%
Newport Dunes-Middle	11	15	73%
Newport Dunes-West	11	15	73%
Marina del Rey, Mothers' Beach-Playground area	11	14	79%
Marina del Rey, Mothers' Beach-btwn. Tower and Boat dock	11	14	79%
Mission Bay, Wildlife Refuge near fence (proj. of Lamont St.)	12	16	75%
Harbor Patrol Beach	12	15	80%
Buoy Line - Baby Beach	13	18	72%
C.I. Harbor-Hobie Beach Lakshore Dr.	14	29	48%
Swim Area - Baby Beach	14	18	78%
C. I. Harbor-Beach Park at S. end of Victoria Av.	26	36	72%
Cabrillo Beach - harborside at boat launch	71	245	29%
Marina del Rey, Mothers' Beach-lifeguard tower	103	247	42%
Cabrillo Beach- harborside at lifeguard tower	181	245	74%

Table 4

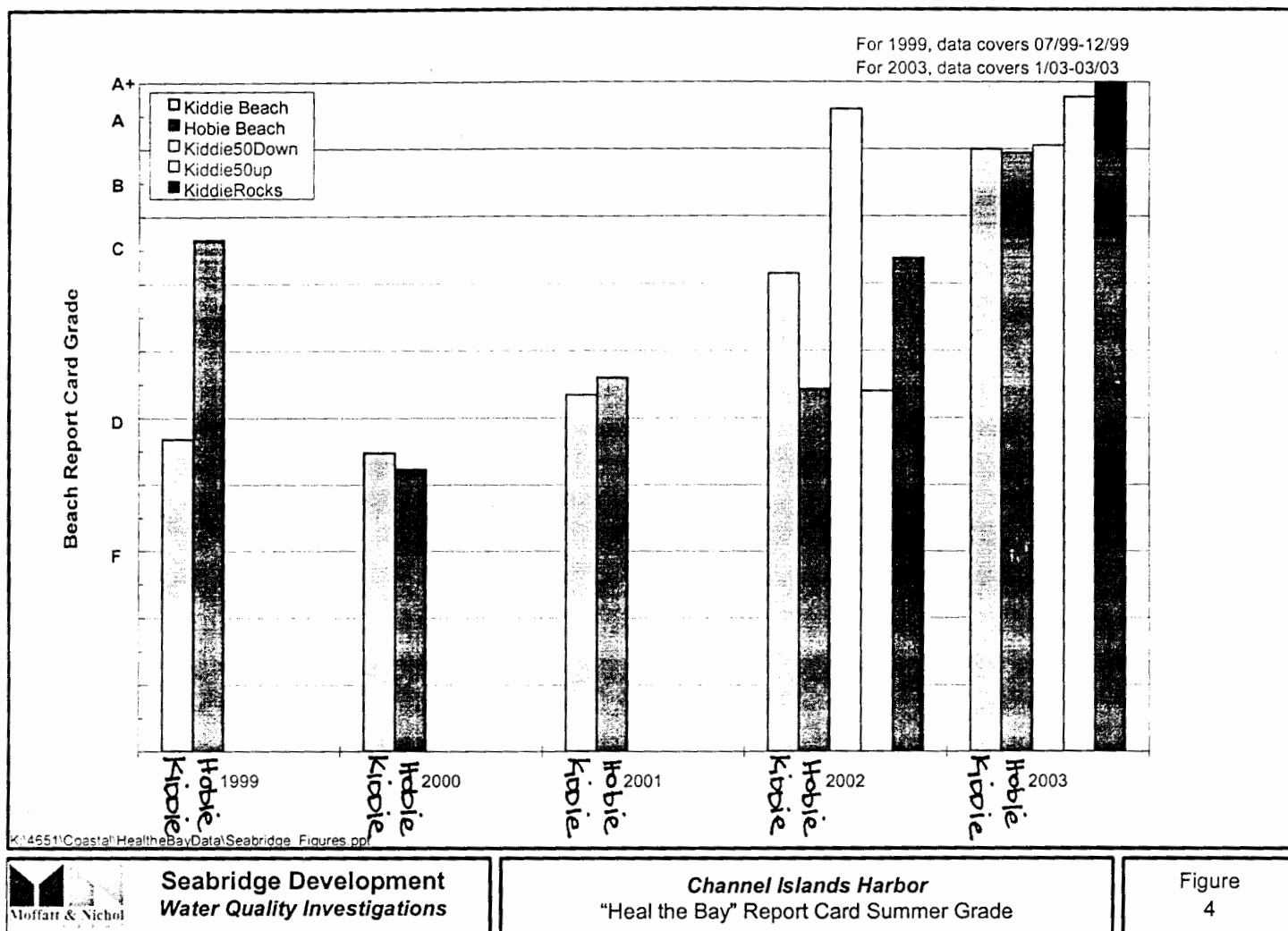
November 1 - March 31 Wet and Dry Weather Data  
April 1999 - May 2003

Location Name	Number of Exceedances of State standard	Number of Samples collected	Percent Exceedance
Trinidad Lane Beach	2	44	5%
Alamitos Bay-shore float	5	68	7%
2nd St. Bridge & Bayshore	5	68	7%
Youth Dock	3	45	7%
15th Street Beach	1	12	8%
Mother's Beach-Long Beach	6	66	9%
Cabrillo Beach - harborside at boat launch	61	687	9%
Guest Dock - End (West Basin)	4	45	9%
Humboldt Beach	1	11	9%
Colorado Lagoon-north	4	37	11%
Sea Gate	5	47	11%
Mission Bay, Santa Barbara Cove (proj. Santa Barbara Pl.)	3	27	11%
Park Avenue Beach	5	43	12%
N Street Beach	5	43	12%
Mission Bay, Quivera Basin (w/basin) at Lifeguard station	1	8	13%
Bayshore Beach	6	44	14%
Abalone Avenue Beach	6	43	14%
Grand Canal	6	43	14%
Colorado Lagoon-center	5	34	15%
Mission Bay, Leisure Lagoon	6	39	15%
Ruby Avenue Beach	7	44	16%
Sapphire Avenue Beach	7	44	16%
Rocky Point Beach	7	43	16%
Newport Dunes-East	7	44	16%
Mission Bay, Fiesta Island Bridge (south side)	4	25	16%
Mission Bay, Sail Bay (proj. of Whitting Ct.)	5	29	17%
Marina del Rey, Mothers' Beach-lifeguard tower	114	688	17%
C. I. Harbor-Beach Park at S. end of Victoria Av., 50' north	4	24	17%
C. I. Harbor-Beach Park at S. end of Victoria Av., 50' south	4	24	17%
Garnet Avenue Beach	8	45	18%
Colorado Lagoon-south	8	41	20%
Mother's Beach-Orange County	9	46	20%
Onyx Avenue Beach	9	44	20%
Alvarado/ Bay Isle Beach	9	43	21%
Newport Dunes-West	10	48	21%
Mission Bay, Riviera Shores (proj. of La Cima Dr.)	7	34	21%
C.I. Harbor - Beach Park at the end of Rocks	9	43	21%
Newport Dunes-Middle	10	45	22%
Harbor Patrol Beach	11	49	22%
Via Genoa Beach	10	44	23%
Mission Bay, San Juan Cove (west of boat launch)	7	29	24%
Mission Bay, Bahia Point-northside (apex of Gleason Rd.)	9	37	24%
Mission Bay, Crown Point Shores	9	36	25%
Mission Bay, Vacation Isle (btwn Ingram St. and south cove)	2	8	25%
Mission Bay, Mariners Basin (proj. of Balboa Ct.)	1	4	25%

Table 4

November 1 - March 31 Wet and Dry Weather Data  
April 1999 - May 2003

Location Name	Number of Exceedances of State standard	Number of Samples collected	Percent Exceedance
Mission Bay, DeAnza Cove (mid-cove)	12	47	26%
Mission Bay, Wildlife Refuge near fence (proj. of Lamont St.)	12	46	26%
Newport Dunes-North	12	45	27%
Davenport Beach	3	11	27%
Mission Bay, Hidden Anchorage	12	42	29%
Mission Bay, Fanuel Park (proj. of Fanuel St.)	11	38	29%
11th Street Beach	15	50	30%
Lido Yacht Club Beach	4	13	31%
San Diego Bay, Shelter Island (Shoreline Beach Park)	12	39	31%
38th Street Beach	14	45	31%
Mission Bay, Tecolote Shores (was Pacific Passage)	13	39	33%
10th Street Beach	16	47	34%
19th Street Beach	17	49	35%
West End - Baby Beach	16	44	36%
San Diego Bay, north of Kellogg St.	3	8	38%
Mission Bay, Perez Cove	3	8	38%
East End - Baby Beach	17	44	39%
Swim Area - Baby Beach	18	44	41%
C. I. Harbor-Beach Park at S. end of Victoria Av.	47	114	41%
Mission Bay, Bonita Cove (north cove)	23	55	42%
Cabrillo Beach- harborside at lifeguard tower	297	687	43%
Marina del Rey, Mothers' Beach-btwn. Tower and Boat dock	15	35	43%
43rd Street Beach	19	43	44%
Mission Bay, Visitor's Center (proj. of Clairemont Dr.)	32	71	45%
Marina del Rey, Mothers' Beach-Playground area	16	35	46%
Mission Bay, Tecolote Creek outlet	19	41	46%
C.I. Harbor-Hobie Beach Lakshore Dr.	37	80	46%
Mission Bay, Campland (west of Rose Creek)	35	75	47%
Marina del Rey, Basin H- boat launch	17	35	49%
Mission Bay, DeAnza western shore	1	2	50%
San Diego Bay, Bayside Park (projection of J Street)	3	5	60%
Mission Bay, swim area at Visitor's Center	6	10	60%
LAC Fire Dock	8	13	62%
Buoy Line - Baby Beach	28	44	64%
Avalon Beach- South End	1	1	100%
Avalon Beach- 50 yards south of Pier	1	1	100%
Avalon Beach- underneath Pier	1	1	100%
Avalon Beach- 50 yards north of Pier	1	1	100%
Avalon Beach- adjacent to Busy Bee Rest.	1	1	100%
Marina del Rey, Mothers' Beach-25 ft. inside south end	1	1	100%
Fiesta Island, NW shore	3	3	100%





GARY L. GILLIG  
City Attorney

Office of the City Attorney  
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March 4, 2003

William H. Wynne  
OLY Mandalay Bay General Partnership  
600 Victoria Avenue, Suite A-600  
Oxnard, CA. 93035

RE: SEABRIDGE COASTAL PERMIT APPEAL

Dear Sir:

The appellants in the above matter contend that certain provisions of the Development Agreement for the Seabridge Project ("Project") nullify certain conditions of approval of the Coastal Development Permit approved for the Project. This contention is incorrect and is based on a misinterpretation of the language and effect of the Development Agreement.

The appellants contend that because the second reading of the ordinance adopting the Development Agreement occurred after the Oxnard City Council approval of the Coastal Development Permit, the Development Agreement supercedes the conditions of approval of the Coastal Development Permit. They base this on language in Section 21c of the Development Agreement which states in part that the Development Agreement "... supercedes all prior agreements and understandings ...".

The conditions of approval of a Coastal Development Permit, or any discretionary permits, are not agreements or understandings. They are conditions imposed on the approval of the permit that take effect if and when the holder of the permit seeks to take advantage of the benefits of the permit. The language contained in Section 21(c) simply negates any claim that agreements or understandings existed that were not incorporated into the Development Agreement.

The Development Agreement grants the developer certain vested rights to develop the Project. The Project is defined, in Recital B to be a development "in accordance with the Mandalay Bay Phase IV Specific Plan ... incorporated in the Local Coastal Plan adopted by the City Council and approved by the California Coastal Commission (the "Specific Plan")." The grant of vested rights is found in Section 4(a) of the Development Agreement.

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Section 6(a) of the Development Agreement specifically requires that the Project "be developed in accordance with the Specific Plan and the Entitlements, including TPM No. 5266 . . .". The Entitlements are defined in Recital E of the Development Agreement to be the Tentative Tract Map, the Coastal Development Permit and Necessary Conditional or Planned Development Permits and all other land use approvals required for the Project. The Entitlements, including the conditions imposed on their approval, are not outside of the Agreement but included in the Development Agreement.

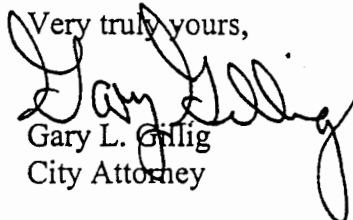
The appellants contend that Section 6(m) of the Development Agreement "renders null and void the phasing schedule matrix that is found in Condition No. 111 to approval of the Coastal Development Permit. This is incorrect. The Development Agreement incorporate this condition as a part of the Entitlements. The two provisions are consistent when read in light of the full Development Agreement. Condition No. 111 establishes the improvements that must be included in each phase of development of the Project if and when the Project is developed. Section 6(m) establishes the fact that the developer is not required to build the Project in any time frame or at any time, or at all. When read together, the Development Agreement and Condition No. 111 state that the developer is not required to build the Project, but if the developer does build the Project, then the developer must provide the facilities specified in Condition No. 111 with each of the identified phases of the Project.

The appellants contend that the Development Agreement nullifies the requirements contained in the Coastal Development Permit for the provision of public docking facilities. This ignores the fact that the Development Agreement requires development in accordance with the Specific Plan and with the conditions of the Entitlements.

The appellants state that Section 12(c) of the Development Agreement relieves the developer of the obligation to construct public boat docks. Read in context, however, Section 12(c) merely provides that the developer is not required to provide boater related facilities unless the developer proceeds with the development of transient boat docks. Again, this is consistent with the concept that developer is not obligated to develop anything, but if the developer takes advantage of the benefits conferred by the Entitlements, then the developer must comply with the conditions of the Entitlements.

There is no merit to the appellants claims that the Development Agreement supercedes or nullifies any portion of the Coastal Development Permit or that the Development Agreement allows the Project to develop in a manner that is inconsistent with the Specific Plan. The appellants contentions are based solely on an attempt to take portions of the Development Agreement out of context and to ignore the clear language and the parties intention as to the effect of the Development Agreement.

Very truly yours,



Gary L. Gillig  
City Attorney





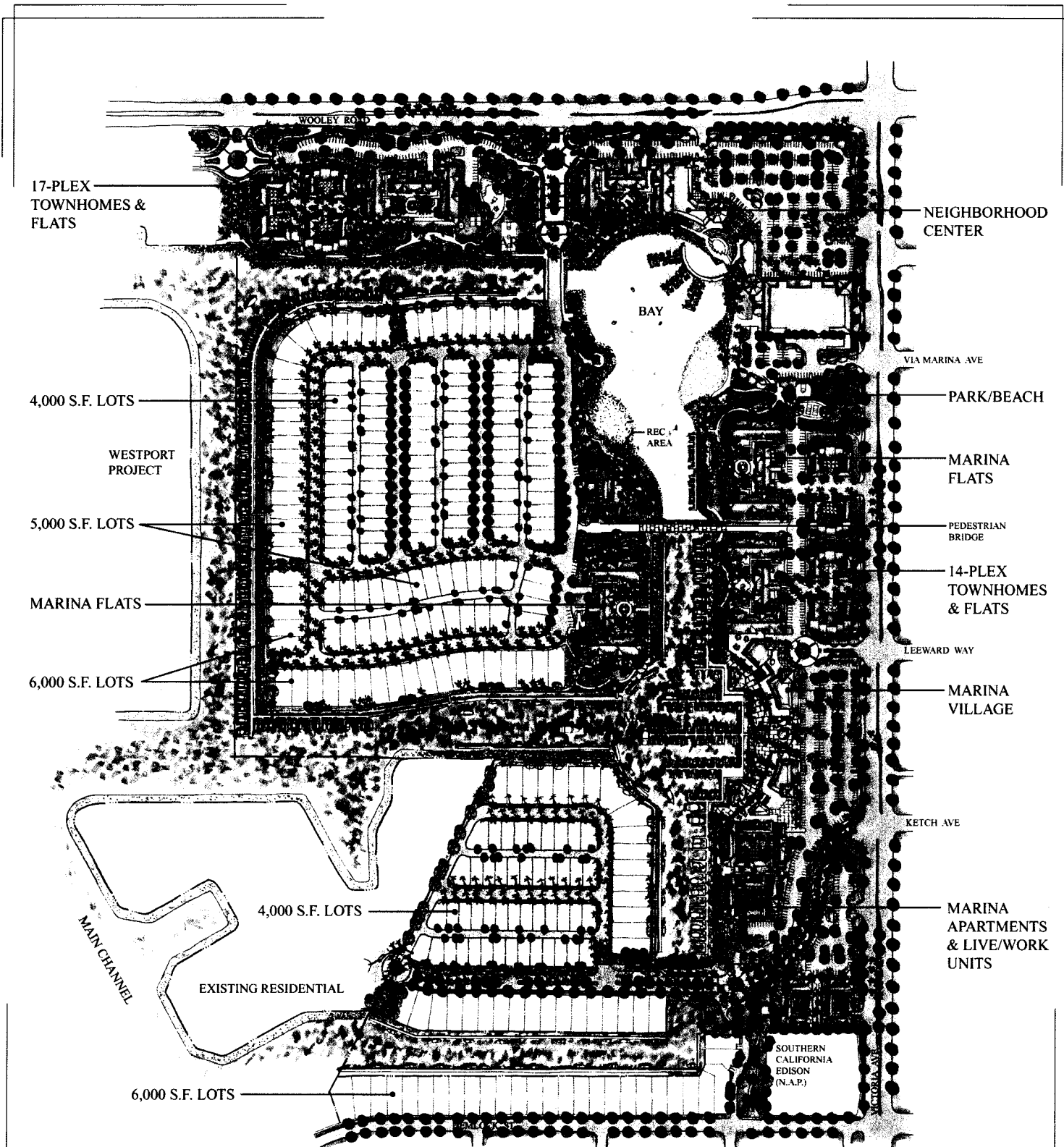


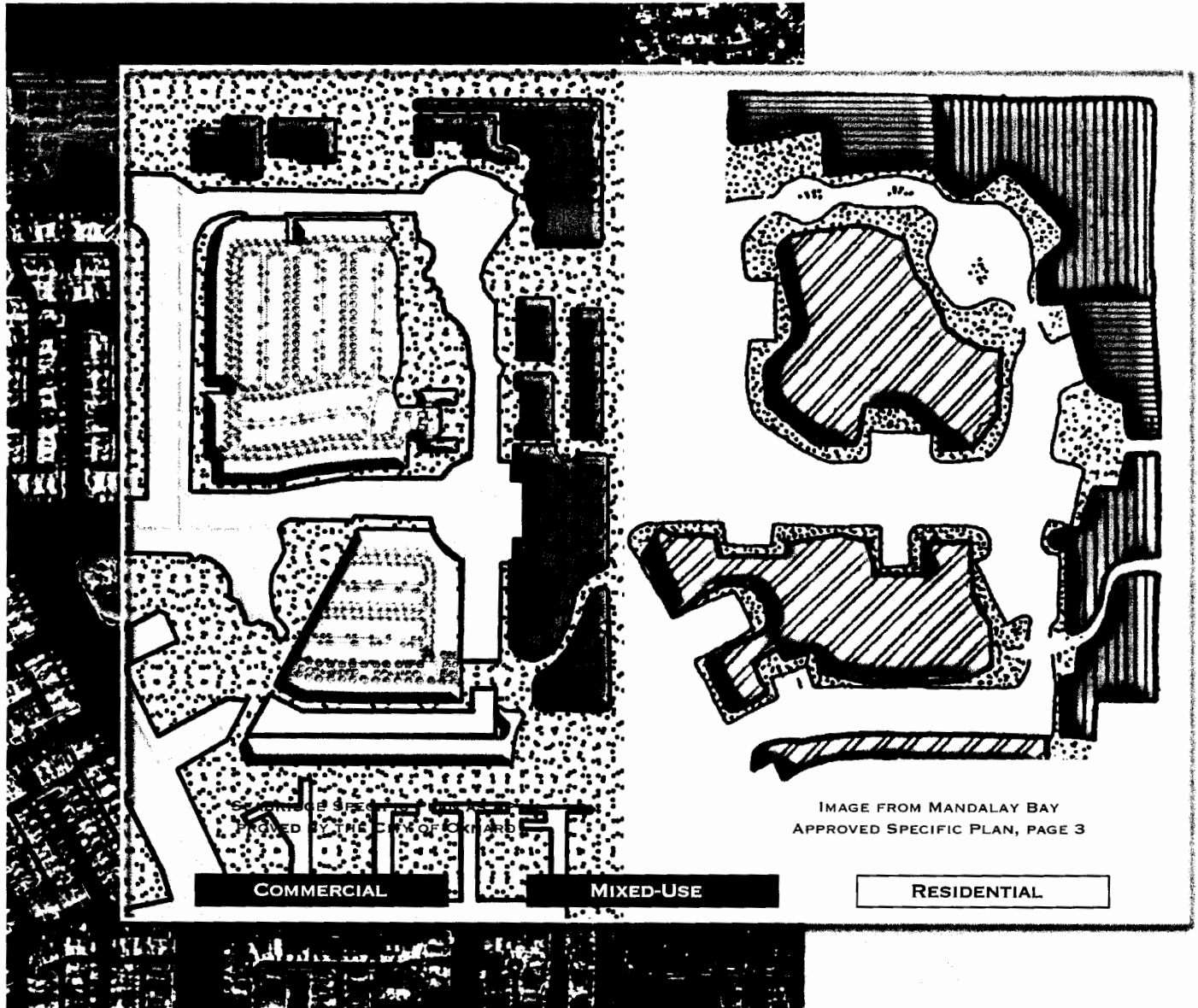
EXHIBIT NO. 18  
A-4-oxn-03-014  
SITE PLAN

Conceptual Site Plan  
A-0.1





# Land Use Comparisson





# Public Parks and Waterfront Trails



Public Neighborhood Parks



Public Plazas

Public Waterfront (lateral access)  
Linear Parks, Trails and  
Bridges (over 2 miles)



Public Access (vertical access)  
Linear Parks and Trails (3/4 mile)



Public Overlooks

EXHIBIT NO. 20

A-4-oxN-03-014

PUBLIC ACCESS AND RECREATION



# Soil Transfer

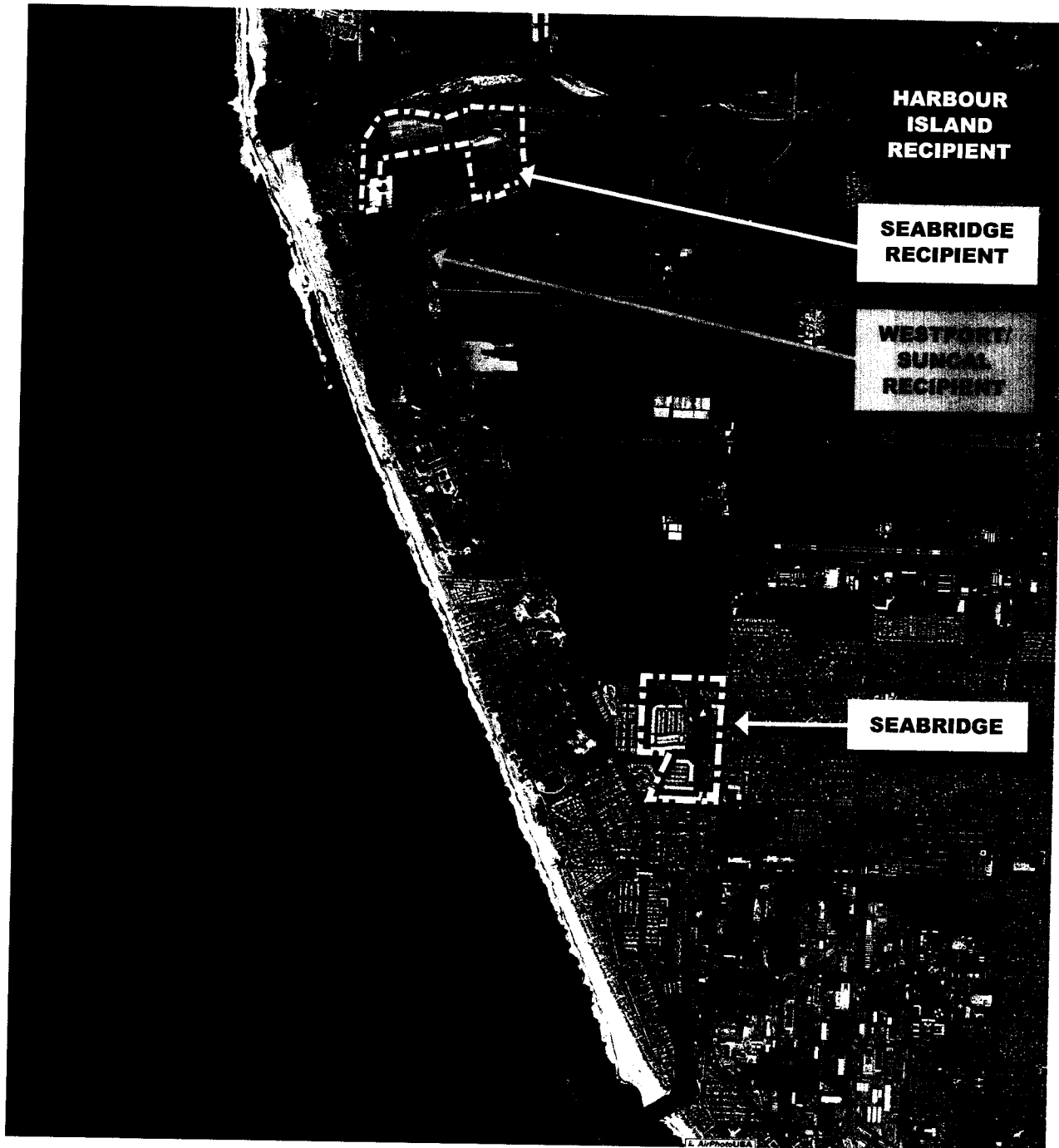


EXHIBIT NO. 21  
A-4-oxN-03-014  
AGRICULTURAL SOIL TRANSFER  
LOCATIONS



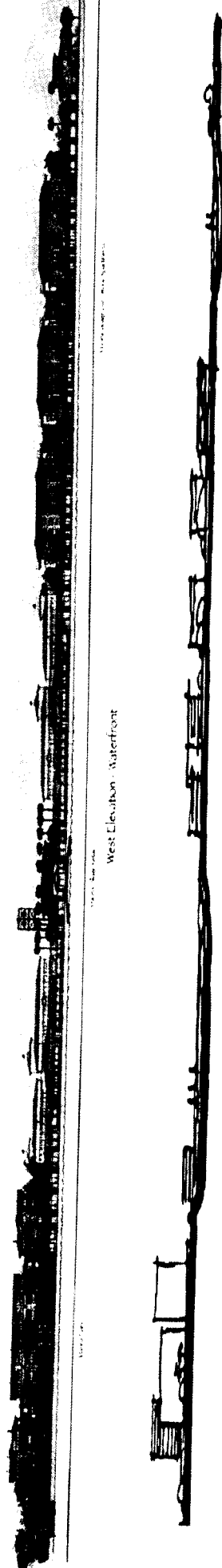


EXHIBIT NO. 22  
A-4-oxN-03-014  
HEIGHT DESIGN COMPARISON





# Public View Corridors



EXHIBIT NO. 23  
A-4-oxn-03-014  
VIEW CORRIDORS

11