

CALIFORNIA COASTAL COMMISSION

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Commission Action:

W 5i**STAFF REPORT: CONSENT CALENDAR****APPLICATION NUMBER:** 5-05-410**APPLICANT:** Legacy Partners Neptune Marina & County of Los Angeles**AGENT:** Gregory Asher, Cash & Associates**PROJECT LOCATION:** 14126 Marquesas Way, Marina del Rey**PROJECT DESCRIPTION:** Replace deteriorating boat dock fingers, deteriorating timber on docks, and install torsion bars for stabilizing fingers, all on an as needed basis, within a 182 boat slip anchorage. There will be no change to the number, size, or configuration of the existing boat slips.**SUBSTANTIVE FILE DOCUMENTS:** CDP No. 5-04-362 (Mariners Bay)

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission grant a permit for the proposed development with conditions regarding: 1) construction responsibilities and debris removal; 2) location of debris disposal site; best management practices; 3) water quality measures, 4) assumption of risk; 5) assumption of risk for County of Los Angeles; and 6) five year time limit on completion of dock improvements. As conditioned, the proposed development conforms with all applicable policies of the Coastal Act.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application:

MOTION: *I move that the Commission approve coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all permits included on the consent calendar. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a permit, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/ or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

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

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

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

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

2. LOCATION OF DEBRIS DISPOSAL SITE

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

3. WATER QUALITY MANAGEMENT PLAN

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a detailed Water Quality/Best Management Practices (BMPs) Program for minimizing to the maximum extent practicable adverse impacts to water quality related to long-term water-borne

berthing of vessels in the marina. The plan shall be prepared by a qualified professional with expertise in the control of water quality impacts related to marinas.

1. The plan shall demonstrate that long-term water-borne berthing of vessels in the marina shall be managed in a manner which protects water quality and that persons using the marina are made aware of the rules related to boat maintenance and use. To the extent to which physical features or objects (trash containers, recycling bins) are required in the plan, an attached site plan shall show the location where these features or objects will be installed.
2. The plan shall include, at a minimum, the following components or measures:
 - (a) Boat Cleaning Management Measures:
 1. The marina shall prohibit in-water boat hull washing that does not occur by hand;
 2. The marina shall prohibit in-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls;
 3. The marina shall ensure that marina tenants, when using cleaning components and detergents for washing boats, utilize detergents and cleaning components that are phosphate-free and bio-degradable. Amounts used shall be minimized; and
 4. The marina shall prohibit the use of detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
 - (b) Implementation of a solid waste reduction and recycling program including the following Solid Waste Management Measures:
 1. Trash receptacles shall be provided at the entrances to all docks;
 2. Containers for recyclables shall be provided and sited so that they are convenient for boaters (i.e. close to the dock); and
 3. All trash and separate containers for recyclables, oil wastes, fish wastes, etc. shall be clearly marked, have the capacity to handle all waste streams, and be sited so that they are convenient for boaters (i.e. close to the dock).
 - (c) Implementation of a liquid material control program which provides and maintains appropriate storage, transfer, containment and disposal facilities for liquid materials commonly used in boat maintenance including the following Liquid Waste Management Measures:
 1. The marina shall provide a secure location to store hazardous wastes, including petroleum products, old gasoline or gasoline with water, absorbent materials, used oil, oil filters, antifreeze, lead acid batteries, paints, solvents and other hazardous wastes. Storage areas shall be impervious to stored materials and shall comply with hazardous waste

storage and disposal requirements of the local certified uniform permitting agency;

2. Containers for anti-freeze, lead acid batteries, used oil and used oil filters which will be collected separately for recycling shall be provided by the marina;
3. Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes; and
4. The marina shall maintain an adequate supply of absorbent pads for use by marina tenants and lessees for the cleaning of minor spills.

(d) Dock Painting/Sealing Maintenance

1. The protocol and schedule for painting or sealing the wood docks for maintenance shall be provided. Tarps or other type of containment material shall be used during painting or sealing to minimize debris and paint or sealant from entering the water.

(e) Petroleum Control Management Measures:

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

(f) Public Education Measures:

In addition to these specific components outlined in Special Condition 3.2.(a) through (e) above, the BMP program shall also include enforcement provisions, including eviction from the marina and notice of possible civil or criminal fines and/or penalties, to assure compliance with this program by all marina tenants. The marina shall provide

information about all of the measures in the BMP program through a combination of signage, tenant bill inserts and distribution of the BMP program to new tenants and each year to repeat tenants. The program shall be posted at the dockmaster's office and at all dock entrances, and be included and attached to all slip lease agreements.

4. ASSUMPTION OF RISK, WAIVER OF LIABILITY, AND INDEMNITY AGREEMENT AND LEASE RESTRICTION

A. By acceptance of this permit, the applicant, Legacy Partners Neptune Marina, L.P., on behalf of (1) itself; (2) its successors and assigns and (3) any other holder of the possessory interest in the development authorized by this permit, acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the restrictions identified in (i) through (v).

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant, Legacy Partners Neptune Marina, L.P., shall execute and record a lease restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The lease restriction shall include a legal description of the applicant's entire parcel. The lease restriction shall run with the land, binding all successors and assigns. This lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

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

A. By acceptance of this permit, the applicant-lessor Los Angeles County Department of Beaches and Harbors acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant-lessor and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability,

claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to include a provision in any subsequent lease of such property requiring the lessee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the terms of subsection A of the prior condition.

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

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

6. Time Limit

This permit is valid for 5 years. If at the end of the 5 year period the applicant and/or lessee has not replaced all 182 boat slips as described in this permit, the applicant and/or lessee shall submit a new application for approval to continue replacing the remaining slips.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes to replace over time, on an as needed basis, all deteriorating boat dock fingers, and install torsion bars for stabilizing docks, within an existing 182 boat slip anchorage (Exhibit No. 2). A finger is a portion of a floating dock section which is perpendicular to the walkways and is used for tying up and boarding boats (see No.4 for

typical dock layout). The new dock fingers will be the same dimensions as the existing dock fingers. There will be no additional piles or disturbance of the marine bottom.

The proposed project is located on the 4.6-acre water portion of Parcel 10R in Basin B in the western section of Marina Del Rey. The landside portion of Parcel 10R is developed with residential development.

The purpose of the project is to replace old and deteriorating dock fingers, as County required maintenance, to ensure that the anchorage is maintained in a safe and operable condition. There will not be a change to the number or size of the existing boat slips which are formed by the fingers. This permit will allow the applicant to replace all 182 dock fingers, if necessary.

Because of the age of the anchorage, the applicant is anticipating that all fingers will eventually need to be replaced as the County continues to periodically inspect the anchorage. Therefore, the applicant is applying for a permit to replace all fingers within the anchorage.

B. Public Access and Recreation

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. Marine Resources

The proposed development is the improvement of a small boat marina, which promotes recreational boating and is an encouraged marine related use. No fill of coastal waters is proposed. The proposed development will not have any significant adverse effect on sensitive marine resources, such as eelgrass. Therefore, the Commission finds that the proposed development conforms with Section 30224 of the Coastal Act.

D. Hazards

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

E. Local Coastal Program

In 1984, the Commission certified the County's Land Use Plan portion of the Marina del Rey/Ballona segment of the County of Los Angeles Local Coastal Program. In 1995, the County submitted an amendment to the LCP. In May 1995, the Commission certified the LCPA with suggested modifications. The County accepted the modifications and the LCP was effectively certified.

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

F. California Environmental Quality Act

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