### **CALIFORNIA COASTAL COMMISSION**

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071 Filed: 6/13/06 49th Day: 8/01/06 Staff: Al Padilla-LB Staff Report: 8/22/06

Hearing Date: 9/13-15/06



W 15a.

## STAFF REPORT: APPEAL SUBSTANTIAL ISSUE for A-5-MDR-06- 234

**LOCAL GOVERNMENT:** County of Los Angeles

**LOCAL DECISION:** Approval with Conditions

APPEAL NUMBER: A-5-MDR-06-234

**APPLICANT:** County of Los Angeles

**PROJECT LOCATION:** 4801 Lincoln Boulevard (Parcel 51U), Marina Del Rey, County

of Los Angeles

**PROJECT DESCRIPTION:** Demolition of an automobile service station and

establishment of a passive public park with landscaping in the Visitor-Serving/Convenience Commercial category of

the Marina del Rey Specific Plan.

APPELLANTS: Coastal Law Enforcement Action Network/Wetlands Action

Network (Marcia Hanscom)

### SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that <u>no</u> <u>substantial issue exists</u> with respect to the grounds on which the appeal has been filed because the project approved by the County is consistent with the County's certified Local Coastal Plan and the public access and recreation policies in Chapter 3 of the Coastal Act.

### SUBSTANTIVE FILE DOCUMENTS:

1. Marina Del Rey certified Local Coastal Plan.

### I. APPEAL PROCEDURES

After certification of a local coastal program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on Coastal Development Permit applications. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, mean high tide line, or the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a) of the Coastal Act identifies which types of development are appealable. Section 30603(a) states, in part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
  - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or 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 the greater distance.
  - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The County approval of the proposed project is appealable because the project is located between the sea and the first public road paralleling the sea and within 300 feet of the inland extent of the mean high tide line of the sea.

Section 13111 of Title 14 of the California Code of Regulations allows an appeal of a local government's decision on a coastal development permit application once the local appeal process has been exhausted. In accordance with Section 13573 An appellant shall be deemed to have exhausted local appeals once the appellant has pursued his or her appeal to the local appellate body, except that exhaustion of all local appeals shall not be required if:

- (1)The local government or jurisdiction require an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the coastal zone, in the implementation section of the Local Coastal Program.
- (2) An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.

- (3) An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Article.
- (4) The local government jurisdiction charges an appeal fee for the filing or processing of appeals.

The grounds for appeal of an approval of a local Coastal Development Permit in the appealable area are stated in Section 30603(b)(1), which states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a de novo hearing on the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If the Commission finds that a substantial issue is raised by the appeal, the de novo hearing will be scheduled at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, in order for the Commission to approve such projects, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

At the hearing 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 persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

Pursuant to Section 30621 of the Coastal Act, a hearing on a Coastal Development Permit appeal shall be set no later than 49 days after the date on which the appeal is filed with the Commission. An appeal on the above described decision was submitted prior to the South Coast District office receiving notification of the County's action and thus prior to the opening

of the appeal period. Therefore, the appeal was considered filed on the first day of the appeal period, on June 13, 2006, following the receipt of the County's notice of final action.

In accordance with Section 13112 of Title 14 of the California Code of Regulations, staff notified the County of Los Angeles of the appeal and requested, on June 19, 2006, that the County forward all relevant documents and materials regarding the subject permit to the Commission's South Coast Office. Section 13112 required the County to submit the requested documents and materials to the Commission within five working days of receiving the Notice of Appeal. However, as of July 12, 2006, when the Commission was scheduled to hear the appeal, none of the County's materials had not been received. Therefore, pursuant to Section 13112, the Commission open and continued the substantial issue hearing at the July 12-14, 2006 meeting. Subsequently, on August 7, 2006, the South Coast Office received the County's materials and scheduled the substantial issue hearing for the September 2006 hearing, being the next hearing that was more than 10 days later, in order to provide adequate notice.

### II. APPELLANTS' CONTENTIONS

The County approval of the proposed development was appealed on June 13, 2006, by Coastal Law Enforcement Action Network/Wetlands Action Network (Marcia Hanscom). The appellant contends that the proposed development is not consistent with the requirements of the Local Coastal Program (see Exhibit No. 1 for the submitted appeal letter) and the resource protection policies of the Coastal Act.

The appeal by Coastal Law Enforcement Action Network/Wetlands Action Network (Marcia Hanscom), contends:

- 1. The County issued the permit after the work was completed.
- 2. Landscaping includes nonnative, invasive plants that are incompatible with the Ballona Wetlands Ecological Reserve, which is immediately adjacent to the property;
- 3. Lights and irrigation are also inappropriate for this site, given the proximity to the Ecological Reserve;
- 4. [No evidence of] Proper abandonment of the underground fuel tanks.

### III. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that the appeal of the County's approval of the project raises **no substantial issue** with respect to the grounds on which the appeal was filed, pursuant to Public Resources Code Section 30625(b)(2).

**MOTION:** Staff recommends a **Yes** vote on the following motion:

I move that the Commission determine that Appeal No. A-5-MDR-06-234 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

### **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission finds that Appeal No. **A-5-MDR-06-234** does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 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.

### IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

### A. Project Description and Area History

The applicant proposes the removal of an automobile service station, including pumps, service building, asphalt surfacing and underground tanks, and replacement with the construction of a passive park. The passive park will have a decomposed granite path, landscaping, seven pilasters with lighting, and irrigation. The gas station had planters with palm trees and ground cover, irrigation, and a three-foot high concrete block retaining wall on part of the property. These pre-existing improvements will remain, except that new plantings from the plant list prepared by the County's landscape consultant will replace the existing ground cover.

The proposed project is located on Parcel 51U on the southwest corner of Fiji Way and Lincoln Boulevard, in Marina del Rey. The parcel is rectangular in shape and is approximately .5 acres in size (see Exhibit No. 1-3). The site is adjacent to and north of a portion of Ballona Wetlands (Area A). Adjacent to the property to the west is a utility substation; and to the north and east of the property, separated by Fiji Way and Lincoln Boulevard, are commercial, office and multi-family residential developments.

The project site is located in the Fiji Way Development Zone, as specified in the Marina del Rey Local Coastal Program. The Marina del Rey Local Coastal Program designates Parcel 51U as Visitor-Serving/Convenience Commercial. Permitted uses in the Visitor-

Serving/Convenience Commercial designation include parks. Therefore, under the approved LCP, the proposed use is consistent with the LCP.

The County of Los Angeles' Department of Regional Planning issued an after-the-fact Coastal Development Permit (2005-00001-(4)) for the demolition and park improvements.

### B. <u>Areawide Description</u>

Marina Del Rey covers approximately 807 acres of land and water in the County of Los Angeles. Marina Del Rey is located between the coastal communities of Venice and Playa Del Rey. The Marina is owned by the County and operated by the County Department of Beaches and Harbors.

The existing Marina began its development in 1962 when the dredging of the inland basin was completed. The primary use of the parts of the Marina that are under water is recreational boating. The marina provides approximately 5,923 boating berths. Other boating facilities include transient docks, a public launching ramp, repair yards, charter and rental boats, harbor tours, and sailing instructions.

Other recreational facilities include: Burton W. Chase Park, Admiralty Park, a public beach and picnic area, bicycle trail, and limited pedestrian access along the marina bulkheads and north jetty promenade.

Along with the recreational facilities the Marina is developed with multi-family residential projects, hotels, restaurants, commercial, retail and office development.

Within the Marina, most structural improvements have been made by private entrepreneurs, operating under long-term land leases. These leases were awarded by open competitive bids in the early and mid 1960's. The developers were required to construct improvements on unimproved parcels in conformance with authorized uses designated in their leases and pursuant to a master plan for the Marina. In the case of this project site the property was leased and developed as an automobile service station since 1966. The site was operated as a service station until approximately 2002.

### C. Local Coastal Program Background

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. Subsequent to the Commission's certification, the City of Los Angeles annexed over 525 acres of undeveloped land that had been within the County's LUP area located south of Ballona Creek and east of Lincoln Boulevard (known as Areas B and C). The LUP identified 40 acres of wetlands in Area A, which remained within the County's LUP area, but it permitted the wetlands to be dredged and filled for a marina and related residential and commercial development. The wetlands were to be replaced in an adjoining area within the City of Los

Angeles, Area B. Therefore, the 1984 LUP policies assumed that Area A would not continue to support wetlands or other habitat areas.

Subsequent to the City's annexation, the City submitted a near-identical Land Use Plan (the Playa Vista segment of the City's Local Coastal Program) covering the City's portion of the original County LCP area. The Commission certified the LUP for the annexed area with suggested modifications on December 9, 1986. The County also resubmitted those portions of its previously certified LUP that applied to areas still under County jurisdiction, including the area known as Area "A", and the existing Marina. The Commission certified the County of Los Angeles' revised Marina Del Rey land Use Plan on December 9, 1986 as well. This LUP required the County to enforce its part of the transfer of wetland to Area B; and the developer of Area A was required to restore 160 acres of wetland in Area B. Again the LUP presumed that Area A would not be a wetland, but did include polices that addressed the protection of marine resources and required a 100 foot buffer from wetland areas.

In September, 12 1990 the Commission approved segmentation of the developed Marina Del Rey from Area A for purposes of its implementation program (LIP) and deferral of the development of implementation standards for the undeveloped area of Area A until issues with respect to Playa Vista were resolved. At the same hearing the Commission certified, with suggested modifications, an Implementation Program pertaining to the existing marina. No ordinances were certified for Area A. After the County accepted the Commission's suggested modifications, the Commission effectively certified the Marina Del Rey LCP and the County assumed permit issuing authority, again excluding Area A from its coverage.

In 1994, the County submitted an LUP amendment that addressed the Marina del Rey. This amended Land Use Plan removed policies addressing environmentally sensitive habitat from the LCP, because all identified wetlands were in Area A and in the City of Los Angeles, and not in the marina. Policies protecting water quality (marine resources) remained. The County also submitted amended implementation ordinances. In May 1995, the Commission again approved segmentation of the Marina del Rey from the Area A portion of the County's coastal zone for purposes of the LCP, and certified the LCP Amendment with suggested modifications. The County accepted the modifications and the amended LCP was effectively certified. In 2002, the Commission approved a second amendment (MDR LCPA 1-01) to the LCP, which involved a land use change to a specific parcel (Parcel 20) and transfer of potential development credits from Development Zone 1 (Bora Bora Development Zone) to Development Zone 4 (Panay Development Zone).

### D. <u>DESCRIPTION OF LOCAL APPROVAL</u>

On February 22, 2006, the County of Los Angeles Regional Planning Commission approved coastal development permit No. 2005-00001(4), with conditions (see Exhibit No. 6). The permit retroactively authorized the previous demolition of an automobile service station and the establishment of a passive park (see County permit, Exhibit No. 6). The Planning Commission's action was appealable to the Board of Supervisors. However, no appeals were filed with the Board, and notice of the County's final action was received by the Coastal

Commission's South Coast District office on June 13, 2006 (The local government charges a fee for the filing of an appeal with the Board, therefore, pursuant to Section 13573(a)(4), the appellant filed the appeal directly to the Commission).

### E. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(a)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., tit. 14, section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the proposed development, as conditioned, is consistent with the applicable standard of review;
- 2. The extent and scope of the development as approved by the local government;
- 3. The significance of the coastal resources affected by the decision;
- 4. The precedential value of the local government's decision for future interpretations of its LCP; and
- 5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the California Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the County does not raise a substantial

issue with regard to the appellant's contentions regarding consistency with the certified Local Coastal Plan.

**A.** Factual and legal support for the local government's conclusion that the development, as conditioned, is consistent with the LCP and the public access policies of coastal Act

The first factor in the Commission's analysis is the degree to which the local government decision was supported. We assess the local government's decision in light of the appellant's contentions regarding inconsistencies.

### **Appellant's Contentions**

**1.** The County issued the permit after the work was completed.

As stated, the County of Los Angeles owns the Marina, with the Department of Beaches and Harbors responsible for the management of the Marina. The County leases parcels to private developers and operators for various uses including residential, hotel, commercial, and boating. On this particular project site (Parcel 51U), the parcel was developed with an automotive service station and operated by a private lessee. The lease for the service station was terminated approximately in 2002, the service station closed and was removed, and the Department of Beaches and Harbors had the site landscaped as an interim use.

The Department of Beaches and Harbors did not apply for a coastal development permit prior to the demolition and landscaping at the site. The County has a certified LCP for Marina del Rey and has Coastal Development Permit (CDP) issuing authority. The Department of Beaches and Harbors indicated to Commission staff that they did not believe that the removal of the service station and landscaping required a permit, and they therefore did not process an application through the County's Regional Planning Department. After being informed by Commission staff that a permit should have been issued by the County, the Department of Beaches and Harbors submitted an application to Regional Planning and subsequently received a CDP for the project.

Regional Planning reviewed the project in terms of its consistency with the certified LCP and found that, as conditioned regarding lighting, site remediation (compliance with Regional Water Quality Control Board requirements), and landscaping (, the development would be consistent with the certified LCP. Although the permit was issued as an after-the-fact permit, the County had the authority to issue the permit for the development of this site. There are no provisions in the certified LCP or the Coastal Act that prohibit issuance of after-the-fact permits or that require that the Commission assume permit jurisdiction for after-the-fact permit applications. The fact that the permit was issued after development had occurred does not raise a substantial issue with respect to consistency of the project with the LCP or the policies in Chapter 3 of the Coastal Act, and is therefore not a valid ground for appeal with respect with the standards of the LCP. Therefore, the proposed

project does not raise a substantial issue with respect to the County processing the Coastal Development Permit.

2. Landscaping includes nonnative, invasive plants that are incompatible with the Ballona Wetlands Ecological Reserve, which is immediately adjacent to the property. A tidal creek--the only tidal creek in the Ballona Wetlands with completely unimpeded tidal flow—is immediately adjacent to this property.

These are factual assertions about the existing landscaping, their compatibility with the adjacent areas, and the existence of a tidal creek. This contention contains no clear statement of in what manner the appellant alleges the County's approval to be inconsistent with the applicable standard of review. The implication appears to be that the applicable standard would prohibit the use of nonnative, invasive plants in this location, and that the County's approval allows such plants. As is explained below, neither proposition is true.

After the removal of the service station, including underground tanks and hardscape, the Department of Beaches and Harbors landscaped the area using native and drought tolerant non-native plants (see Exhibit No. 5 for list of plants). Existing planters along Fiji Way and Lincoln Boulevard, which contained palms and ground vegetation, were left in place. The palms were kept and the ground vegetation was replaced with new plants from the new plant list.

The County's CDP requires, as a condition (No. 27.D.), that:

The applicant is required to plant non-invasive species. Any vegetation that does not survive will be removed; these portions of the site will be re-planted.

The property is located at the corner of Fiji Way and Lincoln Boulevard in Marina del Rey, adjacent to the Ballona wetlands (Area A). The Environmentally Sensitive Habitat Area section of the Marina del Rey LUP was initially reserved for Area A, since it was the only area within Marina del Rey that was considered at that time to be habitat area. However, Area A was segmented from the marina in 1995 by the Commission and all ESHA policies were removed from the LCP. Then, in 2004, Area A, along with other portions of Ballona wetlands, was acquired by the State, and is currently being planned for an ecological reserve.

The currently certified LCP does not contain any policies that address environmentally sensitive habitat areas or require the use of native, non-invasive plants. Therefore, the issue of the type of plants used and impacts to the adjacent habitat areas does not raise any issues of consistency with the LCP. Furthermore, since the County issued a CDP for the development and conditioned the permit to require non-invasive plants, and found the project consistent with the certified LCP, if the applicant in fact used invasive plants this would be a local government condition compliance issue that should be addressed by the County as a permit enforcement matter.

With regards to the County's permit condition compliance, according to the County, some of the plants used are non-native, however, all varieties used are considered non-invasive,

consistent with the requirements of the County approved permit. For instance, Fountain grass (*Pennisetum setaceum*) is a non-native plant and is considered highly invasive; however, the Department of Beaches and Harbors required the use of a cultivar, *Pennisetum setaceum* "*Rubrum*" instead, which is considered non-invasive. Other non-native plants, such as Blue Oat Grass (*Helictotrichon sempervirens*) and Natal Plum (*Carissa Macrocarpa*) were selected based on their non-invasiveness. The site has been landscaped with these plants for approximately two years and the plants show no signs of spreading within the site or into the surrounding areas (the site has recently been inspected by Commission staff, Department of Fish and Game, and the County's biologist).

The Commission concurs with the opponent that the adjacent Area A contains wetlands and associated upland areas. This area is a potential environmentally sensitive habitat area. The Commission noted the presence of wetlands in its action on the Playa Vista LUP, finding that there were approximately 40 acres of wetland Area A, including a small drainage directly adjacent to this property. Plans for restoration of the area are being prepared by the California Coastal Conservancy and Department of Fish and Game. Until further research is completed, all of Area A should be considered potentially an environmentally sensitive habitat.

The Commission notes that irrespective of its LCP policies, the County has imposed conditions that address habitat issues. Those conditions prevent the use of invasive plants in the plant palette, which might migrate into Area A.

However, with the exception of some general policies addressing the biological resources at the Oxford retention basin located in the northern portion of the marina, the Marina del Rey certified LCP does not include any policies that address impacts on environmentally sensitive habitat areas in or adjacent to the Marina del Rey. When the Commission approved the LUP amendment in 1995, that segmented Area A, it approved revisions that removed all policies protecting wetlands and environmentally sensitive habitat area from the Marina del Rey segment of the County's certified LCP.

Therefore, there is no support for any contention that the County's approval is inconsistent with the applicable standard of review, both because the County did not authorize nonnative invasive plants, and because the appellant has cited no LCP provision prohibiting such an authorization. The vegetation authorized by the proposed project does not raise a substantial issue with respect to LCP policies of the present LCP

**3.** Lights and irrigation are also inappropriate for this site, given the proximity to the Ecological Reserve, which includes nesting birds in immediately adjacent areas.

Again, this contention involves a factual assertion regarding the propriety of certain aspects of the project without any attempt to tie this generalized claim either to the terms of the County's approval or of any standard established by the LCP. The County's plan calls for the installation of seven, approximately five and a half feet tall, concrete block pilasters with low intensity lights along the southern property line. The lights are located on the north face of the squared pilasters and are directed downward to illuminate the area in front, or north of the

pilasters, and away from the Ballona wetland area (Area A). The County's CDP requires as a condition (No. 27.A.) that:

The applicant is required to shield lighting and direct it away from environmental areas. Low intensity lighting is required.

In addition, there is a three and half-foot high retaining wall along the southern property line, between the lights and the adjacent wetland area, which will help shield the light. As conditioned, the project is not allowed to illuminate the environmental areas, and as designed and located, the lights will not in fact illuminate the adjacent wetland area and will not have any significant light induced impacts on the surrounding area.

The site previously had irrigation for the existing landscaping associated with the previous use. Irrigation was expanded to cover the new landscaping and with the use of native and drought tolerant plants, the amount of irrigation will be minimized and will not have a significant impact on the surrounding area.

Moreover, as noted above, the certified Marina del Rey LCP includes no standards that address impacts on environmentally sensitive habitat area or on adjacent environmentally sensitive habitat areas. Therefore, even if the project were not designed and conditioned to avoid illumination of the wetland area, the appellant has not explained how that would be inconsistent with the applicable standard of review. In sum, this allegation does not demonstrate that the County's decision that the project, as conditioned, is approvable, lacks factual or legal support, and the appellant's contention with regarding lighting and irrigation does not raise a valid ground for appeal with respect with the standards of the LCP.

**4.** Proper abandonment of underground fuel tanks from the gas station previously on the site.

The appellant further states that:

There were reports by Cal Trans in environmental review documents about these tanks leaking into the wetlands. A "groundwater plume" is referred to in letter from the LA Regional Water Quality Control Board attached to the permit approval letter.

It is unclear if any measures were taken to properly protect the wetlands during this abandonment of tanks, and it is also unclear as to whether proper clean-up of the wetlands and any spills has occurred. It is also unclear as to the status of the groundwater plume. Failure to provide conditions related to this aspect of the abandonment and closure of the gas station translates to a violation of the responsibility the County has to comply with coastal protection requirement of its certified Local Coastal Program and the California Coastal Act.

The only policy in the certified LCP addressing the appellants issue is policy e.1 in the Marine Resources section, which states:

The existing wetlands, including the flood control basin in parcel PP, the Marina waters, and Ballona Creek flood control channel are the marine resources which shall be maintained and, where feasible, enhanced and restored. Uses permitted in or adjacent to these areas shall be carried out in a manner to protect the biological productivity of these marine resources and maintain healthy populations of marine organisms.

The appellant is raising an issue with respect to tank abandonment and water quality. The project as submitted to the County was required to comply with the standards of the RWQCB. The County's findings state that soil remediation was complete and conducted in compliance with Regional Water Quality Control Board (CRWQB) requirements. In a letter from CRWQB, dated March 22, 2002, attached as an exhibit to the report (see Exhibit No. 6), it states that In February 2002, an "Interim Remedial Action Plan" was prepared for the site for CRWQB to remove the underground gasoline tanks and address water quality issues. The Action Plan called for remedial over-excavation and dewatering of the underground tank cavity during site demolition, filling of excavated area with clean soil, additional monitoring wells and reinstallation of wells to monitor the groundwater plume. CRWQB approved the Action Plan and required the continuation of quarterly groundwater monitoring reports.

Pursuant to the approved Action Plan, the station and underground tanks were removed, along with 6,591 tons of hydrocarbon-affected soil and 17,300 gallons of groundwater generated during remedial excavation activities. The soil and groundwater were transported to State approved disposal/recycling facilities. If there was leakage from these tanks the removal of the tanks and the other remedial measures required by the Water Board, including the monitoring requirements, should have addressed this issue.

The excavation and removal of the tanks were conducted in accordance with the Action Plan and approval of CRWQB. There has been no evidence presented that would indicate that the demolition and remedial work was conducted inconsistent with the Action Plan and CRWQB approval, or that the demolition activity has adversely impacted water quality within the Marina or surrounding wetlands. Furthermore, although the findings of the County's CDP do not specifically address water quality requirements, the LIP requires the Department of Public Works to implement appropriate best management practices within the Ballona Creek watershed, as required by the County NPDES municipal storm water permit and protect marine resources within the existing Marina from runoff. The LCP water quality standards are essentially a requirement to comply with CWQCB standards which the project complied with through the preparation of the Action Plan and approval by CWQCB. Therefore, the County had adequate reason to believe that the project complies with the policies of the certified LCP that protect water quality, and the appellant's contention does not raise a valid ground for appeal with respect with the standards of the LCP.

### **B.** The extent and scope of the development approved.

The proposed removal of the service station and underground tanks is a fairly minor project, involving just one ½-acre lot and resulting in no new development. Moreover, it was completed consistent with California Regional Water Quality Control Board approval. The removal of the tanks and contaminated soils should prevent any future leakage and potential contamination of the surrounding area. Therefore, the project should have a benefit to the surrounding area. The other aspect of the project, the landscaping, is also minor, will improve the visual appearance of the vacant lot, and is considered temporary until the site is developed. The landscaping will have no significant impact on the surrounding area and will be removed once the site is developed with a more permanent use. The overall development is not extensive and does not raise any significant environmental issues as approved by the County. Therefore, the appeal does not raise any significant issue with respect to the extent and scope of the development approved,

### **C.** The significance of the coastal resources affected by the decision

The area (Area A) adjacent to and to the south of this site, contains wetlands and associated upland vegetation. This area is a potential environmentally sensitive habitat area. The Commission noted the presence of wetlands in its action on the Playa Vista LUP, finding that there were approximately 40 acres of wetland in Area A, including a small drainage directly adjacent to this property. However, the Commission also allowed this area to be designated for marina expansion in the certified LCP due to the degraded nature of the wetlands. Currently, after Area A and other portions of Ballona wetlands reverted to State ownership, plans are currently being developed by the California Coastal Conservancy and Department of Fish and Game for the restoration of the Ballona Wetlands, including Area A. Until further research is completed, all of Area A should be considered potentially an environmentally sensitive habitat. Thus, there are at least potentially significant resources very nearby.

However, as designed and approved by the County, the development will not have a significant impact on these resources. Therefore, the appeal does not raise any significant issue with respect to the significance of the coastal resources affected.

**D.** The precedential value of the local government's decision for future interpretations of its LCP

The County reviewed the proposed development and found it consistent with the applicable policies of the certified LCP. Although the LCP does not contain policies addressing environmentally sensitive habitat areas, the County approved the project with conditions, such as lighting, water quality, views, and landscaping to address potential impacts to the surrounding wetland area. [do we know if the County's decision even does an analysis of any of its LCP provisions in connection with this approval?] As approved by the County, the development will not have a negative precedent for future decisions. Therefore, the appeal does not raise any significant issue with respect to the precedential value of the local government's decision for future interpretations of its LCP.

**E.** Whether the appeal raises only local issues, or those of regional or statewide significance

The issues raised by the appellant are specific to this site and the policies of the local LCP. Therefore, the appeal does not raise any significant issue with respect to regional or statewide significance.

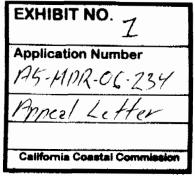
### Conclusion

The Commission finds that no substantial issues exist with respect to the grounds on which the appeal was filed, as there has been no showing of any manner in which the approved project is not in conformance with the County's certified LCP or the public access or recreation policies of the Coastal Act.

Coastal Law Enforcement Action Network (CLEAN) enforcing laws protecting the California coast

Marcia Hanscom Managing Director

egional project of IH-Center 322 Culver Blvd., Suite 317 Playa del Rey, CA 90293 telephone: (310) 821-9045 facsimile: (310) 448-1219 coastallawenforcement@earthlink.net June 15, 2006



Qalifornia Coastal Commission c/o Pam Emerson, Supervisor, LA County 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Re: Appeal of Project No. R2005-00142-(4) Coastal Development Permit 200500001-(4)

### Dear Ms. Emerson:

This letter is sent in order to request that you please apply the appeal I previously filed for the project approved by the County of Los Angeles at 4801 Lincoln Blvd. in Marina del Rey (Marina del Rey Parcel 51), now that the County has finally sent a final notice to the Coastal Commission.

We still believe that the approval of this permit with the conditions attached by the County of Los Angeles is insufficient to protecting coastal resources as required by the California Coastal Act and the County's certified LCP.

This is especially true since this permit was given to the applicant (the county granting itself a permit) AFTER the work had already been completed.

Landscaping includes nonnative, invasive plants that are incompatible with the Ballona Wetlands Ecological Reserve, which is immediately adjacent to the property. A tidal creek – the ONLY tidal creek in the Ballona Wetlands with completely unimpeded tidal flow – is immediately adjacent to this property.

Palms, Fountain Grass and other plants which are nonnative to the ecology of the area were planted. These were planted immediately adjacent to an area that obviously qualifies as ESHA (Environmentally Sensitive Habitat Area) since it was designate the California Fish & Game Commission as an Ecological Reserve.

Lights and irrigation are also inappropriate for this site, given the proximity to the Ecological Reserve, which includes nesting birds in immediately adjacent areas.

In addition, there are questions which still arise about the proper abandonment underground fuel tanks from the gas station previously on the site. There had reports by Cal Trans in environmental review documents about these tanks leave the stanks leave the sta

CLEAN
California Coastal Commission
Appeal – 4801 Lincoln Blvd., Marina del Rey
June 15, 2006
Page 2

the wetlands. A "groundwater plume" is referred to in a letter from the LA Regional Water Quality Control Board attached to the permit approval letter.

It is unclear if any measures were taken to properly protect the wetlands during this abandonment of tanks, and it is also unclear as to whether proper clean-up of the wetlands and any spills has occurred. It is also unclear as to the status of the groundwater plume. Failure to provide conditions related to this aspect of the abandonment and closure of the gas station translates to a violation of the responsibility the County has to comply with coastal protection requirements of its certified Local Coastal Program and the California Coastal Act.

Finally, the County giving itself a CDP "after-the-fact" seems to be an outrageous example of the fox guarding the chicken coop. It was only after numerous citizen questions about this project and the Commission staff's subsequent asking the County about this project that this CDP was even issued.

It is important for the County of Los Angeles to receive a loud and clear message from the California Coastal Commission that CDPs must be properly applied for, properly conditioned and received by the applicant BEFORE any work that impacts sensitive coastal resources is undertaken.

Thank you for considering this appeal, which we think screams out for a necessary review by the California Coastal Commission.

With best regards,

Marcia Hanscom Managing Director

**CLEAN** 

&

Executive Director
Wetlands Action Network

# REGIONAL VICINITY

TOUNTY UNINCORPORATED LAND - MARINA DEL REY LCP

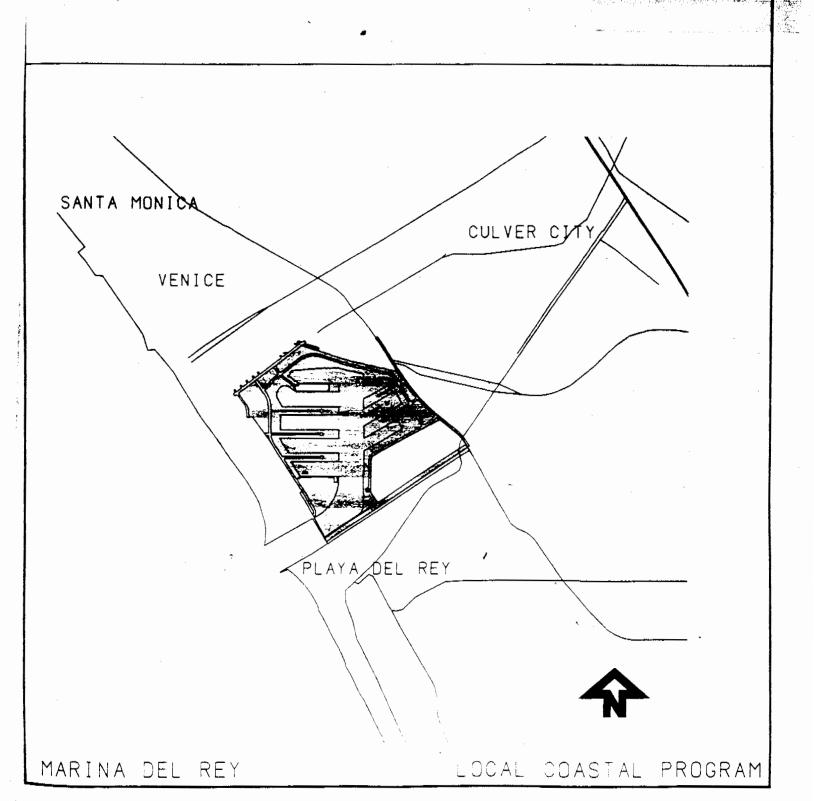
EXHIBIT NO. 2

**Application Number** 

P5-MPR-06-234

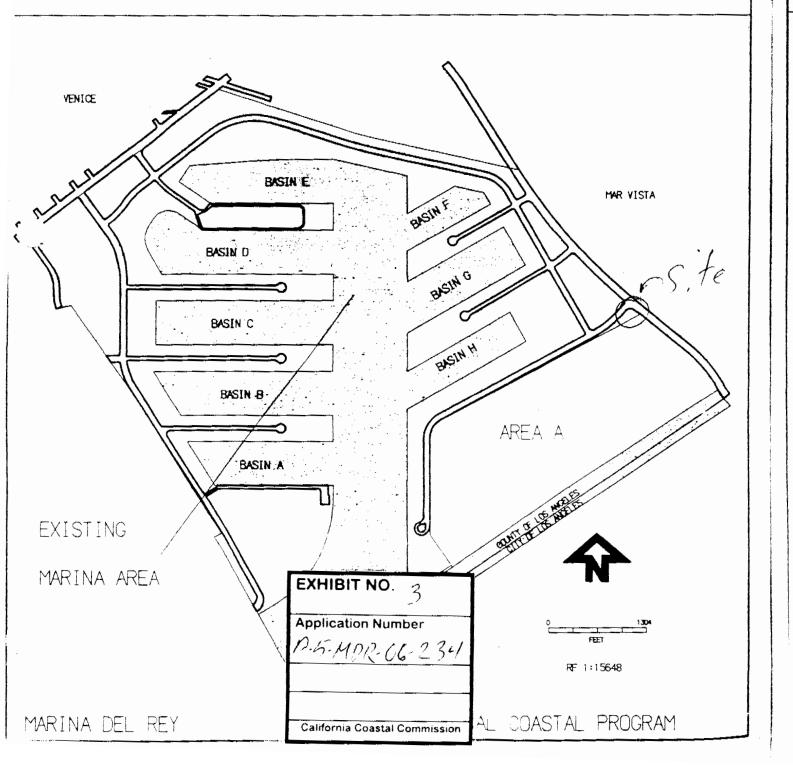
Vicinity Mep

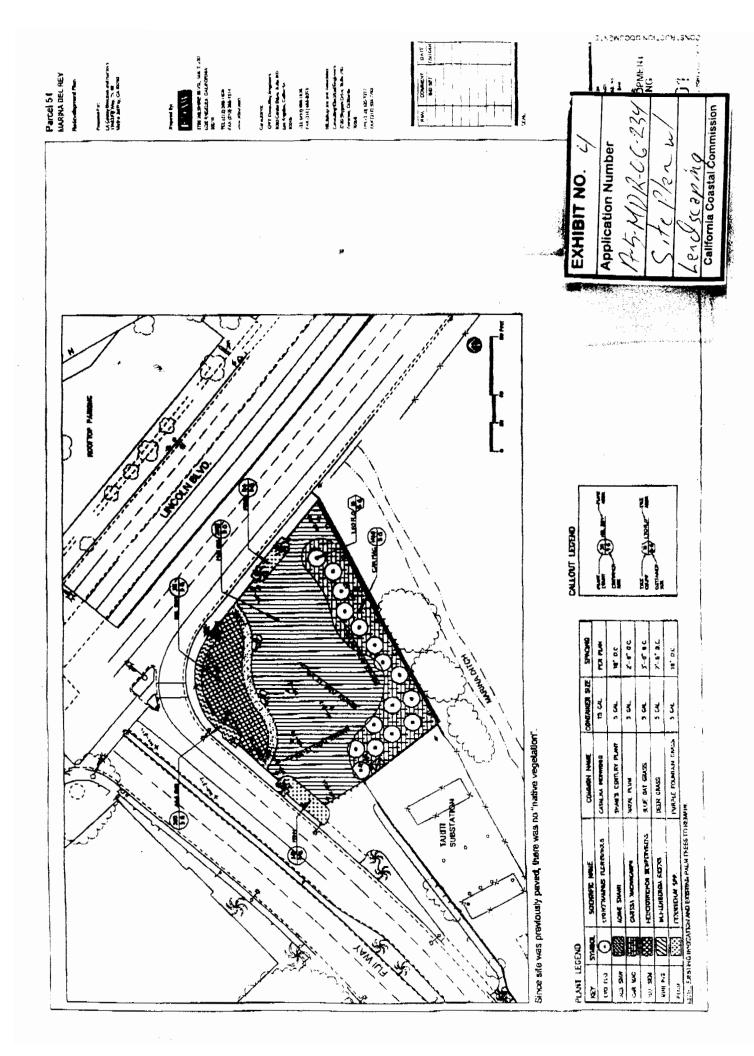
California Coastal Commission



EXISTING MARINA DEL REY 804 Acres (401 land acres, 403 water acres)

AREA A 139 Acres (All currently vacant land area)





### Plant List for Parcel 51

Fountain grass

Pennisetum setaceum "Rubrum"

Blue Oat Grass

Helictotrichon sempervirens

Natal Plum

Carissa Macrocarpa

Purple muhly

Muhlenbergia capillaris

Century Plant . •

Agave

Catalina Ironwood

Lyonothamnus Floribundus

Sycamore

Platanus occidentalis





### Los Angeles County Department of Regional Planning

South Coast Regione Challenges Ahead

JUN 1 2 2006



James E. Hartl AICP Director of Planning

June 8, 2006

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED** 

California Coastal Commission Attn. Al Padilla 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Dear Mr. Padilla:

SUBJECT: PROJECT NO. R2005-00142-(4)

COASTAL DEVELOPMENT PERMIT 200500001-(4)

Demolition of an automobile service station and establishment of a passive

recreational park.

4801 Lincoln Boulevard, Parcel 51

Marina del Rey, CA

The Los Angeles County Regional Planning Commission, by its action on February 22, 2006, **APPROVED** the above-referenced Coastal Development Permit.

Under Section 22.56.2450 of Los Angeles County code, an appeal of the county's decision on a Coastal Development Permit application may be filed by an applicant or any aggrieved person who exhausted local appeals or any two members of the Coastal Commission. If no appeal is filed during the subsequent 10-day period, the Regional Planning Commission action is final. The local appeal period pertaining to this case expired on June 7, 2006.

Please find enclosed the findings and conditions of approval of this action. If you have any questions or need further information regarding this matter, please contact Dr. Russell Fricano of the Zoning Permits II Section at (213) 974-6435. Department hours are Monday through Thursday from 7:00 a.m. to 6:00 p.m. the Department is closed on Friday.

Very truly yours,

**DEPARTMENT OF REGIONAL PLANNING** James E. Hartl, AICP, Director of Planning

Russel A Fricano

Russell J. Fricano, Ph.D., AICP Supervising Regional Planner Zoning Permits II Section

**RJF** 

Enclosures:

Findings and Conditions

c: Los Angeles County Department of Beaches and Harbors. Enforcement; Testifiers

Project No. R2005-00142-(4)
Coastal Development Permit No. 200500001-(4)

Findings and Order of the Regional Planning Commission COUNTY OF LOS ANGELES

REGIONAL PLANNING COMMISSION HEARING DATE: January 25, 2006.

SYNOPSIS: The applicant, Los Angeles County Department of Beaches and Harbors, has requested a Coastal Development Permit to authorize the previous demolition of an automobile service station and the establishment of a passive park.

### PROCEEDINGS BEFORE THE COMMISSION:

### January 25, 2006 Public Hearing

A duly noticed public hearing was held. Four Commissioners were present; Commissioner Helsley was absent. The public hearing opened with a presentation by staff

The applicant testified in favor of the proposal and deferred his testimony to the rebuttal segment of the hearing. He also offered to answer any questions of the Commission.

Three persons testified in opposition to the proposal. The testifiers expressed concerns about notification of government agencies, the retroactive nature of the permit request, remediation, and impacts posed to the adjacent wetland area by lighting, walls, on-site vegetation, and the leaking of fuel tanks. Additional testimony noted that the site was not appropriate as a park; the site would be better suited as a visitor's center. It was also not appropriate to use the park as a credit for park space. Other testimony noted that the site was more appropriate for its original use as a gasoline station as more of these uses are needed in this area, that power lines should be removed and that the public be provided with an opportunity to review the park design. The testifiers requested a continuance until these issues were resolved.

In rebuttal the applicant noted that service stations in the area were adequate, referencing gasoline stations across the street and further down the road. According to the applicant the cost of removing power lines was prohibitive. The park is intended as an interim corrective action for the site. Landscaping was reviewed by the Design Control Board which recommended native vegetation; the Coastal Commission affirmed the appropriateness of vegetation. The provision of additional landscaping was constrained by the monitoring wells. Soil remediation was complete with exception to the monitoring, conducted in

compliance with Regional Water Quality Control Board requirements. The applicant further noted that the park was not included as credit for park space and other entry corridors were being considered. When asked whether waste receptacles were being proposed, the applicant responded that waste receptacles would be a feature for the updated plan.

There being no further testimony, the Regional Planning Commission closed the public hearing. In a motion by Commissioner Rew, seconded by Bellamy, the Regional Planning Commission expressed its intent to approve the project and instructed staff to prepare findings and conditions and the final environmental document.

### **Findings**

- 1. The applicant has requested: a Coastal Development Permit to authorize the demolition of an automobile service station and establishment of a passive public park in the Visitor-Serving/Convenience Commercial category of the Marina del Rey Specific Plan.
- 2. The demolition activity and the establishment of the park already occurred. The applicant had initiated the redevelopment of the site as a maintenance activity to address visual impacts posed by the abandonment of an auto service station. It was later determined that this action also required a Coastal Development Permit.
- The subject property is located at 4801 Lincoln Boulevard in Marina del Rey (Marina del Rey Parcel 51). This property is situated at the southeasterly corner of Lincoln Boulevard and Fiji Way. The property is also located in the Playa del Rey Zoned District.
- 4. The subject property is located on level terrain between a highly urbanized area devoted to commercial uses to the west and open space to the east.
- The subject property is zoned "Specific Plan" within the Marina Del Rey Local Coastal Program (LCP). This corresponds to a designation of "Visitor-Serving/ Convenience Commercial.
- 6. Zoning on the surrounding properties consists of the following:

North: Visitor-Serving/Convenience Commercial and City of Los Angeles.

South: A-1-1 (Light Agricultural-One Acre Minimum Required Area) and City of Los Angeles.

### PROJECT NO. R2005-00142 COASTAL DEVELOPMENT PERMIT NO. 2005-00001-(4) FINDINGS

West: Visitor-Serving/Convenience Commercial

East: A-1-1; City of Los Angeles [Q] C4-1 ( Commercail-One Acre Required Area)

- 7. The property is currently used as a passive public park. Some landscaping and irrigation equipment has been established on the property. Additional vegetation has been placed in planters along the perimeter of the property along Fiji Way and Admiralty. Outdoor seating, in the form of two boulders, has been positioned along the meandering dirt foot path.
- 8. Land use on surrounding properties consist of the following:

North: Shopping center

South: Open space

West: Shopping center and public facility

East: Open space; shopping center

9. Three Plot Plan cases were previously filed on the subject property under the same project number. Each is listed in chronological order.

Plot Plan 32963: Plot Plan to authorize the demolition of an abandoned automobile service station (Applicant: Los Angeles County Department of Beaches and Harbors). The Plot Plan was approved June 18, 2002.

Plot Plan 32963: Two requests:

Plot Plan to authorize the demolition of existing service station building and accessory canopy and remove existing underground tanks (applicant Tosco Marketing). This application was filed on April 18, 2002; no record of action found.

Plot Plan to authorize the reconstruction of a service station destroyed in a fire (Applicant: Union Oil Company). The Plot Plan was approved on November 6, 1984.

- 10. No records of any enforcement action were found on file at the Department of Regional Planning, relating to the subject property.
- 11. The site plan depicts a 0.52 acre passive public park. A path of decomposed granite traverses the northeasterly side of the site. Various

types of hardscape and landscaping are also shown. Two boulders, located along the path, serve as a form of outdoor furniture. No on-site parking is proposed. The site plan also indicates monitoring wells. A retaining wall and a row of pilasters are located along the southerly perimeter of the site.

- The Marina del Rey Local Coastal Program (LCP) provides development guidelines for the unincorporated community of Marina del Rey. The Marina del Rey LCP consists of two sets of inter-related requirements: the Marina del Rey Land Use Plan (land use policies) and the Specific Plan or Local Implementation Program (development-specific requirements). The following analysis identifies policies in the Marina del Rey Land Use Plan applicable to this proposal.
- 13. The subject property is designated "Visitor-Serving/Convenience Commercial" in the Marina del Rey Land Use Plan. The Marina Land Use Plan provides the following policies for development in land in this designation:

"Typical visitor-serving uses may include public or private recreation, cultural and educational facilities, gift and specialty shops, service concessions (i.e., boat, bicycle or skate rentals), food and drink establishments, overnight lodgings and related parking areas."

(Policy 2 (e) (1), Page 2-7, Marina del Rey Land Use Plan, February 8, 1996).

"As defined by the Coastal Act and specified in the specific plan guidelines for each parcel in the Local Implementation Program, new development shall provide additional recreational opportunities including trains, bikeways (additions and/or extensions of existing bike paths), open space/park areas and viewing areas as appropriate. Adequate support facilities (bike storage lockers, drinking fountains, etc.) shall also be provided" (Policy 2 (e) (2), Page 2-7, Marina del Rey Land Use Plan, February 8, 1996).

"Lower cost visitor-serving facilities shall be protected and, to the extent feasible, new lower cost visitor serving uses shall be provided within the existing Marina."

(Policy 2 (e) (4), Page 2-7, Marina del Rey Land Use Plan, February 8, 1996).

The subject park provides an additional public recreational opportunity, in the form of an open space/park area that is primarily passive and pedestrian-oriented. Furthermore, it is low cost due to its use as a passive park. The park is consistent with the above policies.

- 14. The Marina del Rey Specific Plan specifies Filing Requirements for development applications in Section 22.46.1180. Applications for new development shall provide information.
  - A. Protection and Enhancement of Shoreline Access and Views.

The park has no structures which could obstruct views or access to the shoreline.

### B. Wind Study

The conversion to a passive park also converts the land to open space. No significant wind effects are anticipated.

### C. Avoidance and Mitigation of Geologic/Geotechnical Hazards

The park is exclusively open space; no structures were constructed.

### D. Protection of Cultural Heritage Resources

A use was previously established on the site. The use of a park is less intensive. The environmental review did not indicate potential cultural impacts.

### E. Avoidance and Mitigation of Flood Control Hazards

No flood control problems were identified in the environmental review. However, remediation of the site was conducted in 2002 to remove soil contaminated with hydrocarbons. Conditions of approval require the applicant to monitor groundwater for potential contamination following Regional Water Quality Control Board requirements. The monitoring wells have been established on site.

### F. Protection of Gas Company Facilities

Environmental review did not indicate the existence of gas company facilities on the subject property.

### G. Conformance with Development Phasing Plan

The request is for the establishment of a passive park; no residential units are proposed. This requirement is not applicable.

### H. <u>Direct Traffic Mitigation</u>

The park is passive and has no parking or facilities that would generate traffic.

I. Mitigation of Cumulative Impacts of the Subregional Traffic System.

The park is passive and does not propose any facilities or uses that would generate traffic on a subregional basis.

- 15. The Marina del Rey Specific Plan lists, "Parks, play grounds and beaches with all facilities customarily found in conjunction therewith" as permitted uses in the Visitor-Serving/Convenience Commercial category (Section 22.46.1390 (a) (1)).
- 16. Under Section 22.46.1210 (B) principal permitted uses require a Coastal Development Permit unless they are specifically exempted or categorically excluded. These provisions do not exempt or categorically exclude parks.
- 17. As specified in Section 22.46.1380 of Los Angeles county code, the Visitor-Serving/Convenience Commercial category is intended:
  - "...as a service-oriented category providing dining facilities, retail sales and personal services for visitors, residents and employees of Marina del Rey."
- 18. Section 22.46.1080, which references the land use plan and defines Visitorserving/Convenience Commercial uses as
  - "Dining facilities, retail sales and personal services for visitors, residents and employees of Marina del Rey."
- 19. The park is consistent with Sections 22.46.1380 and 22.46.1080 of Los Angeles county code, as it provides a personal service, intended as a pedestrian rest area; the park also beautifies a vacant lot.
- 20. Section 22.52.1175 Los Angeles county code specifies parking requirements for public parks. However, these guidelines area based upon the square feet of building floor space. There are no structures proposed on the site. Due to the passive nature of the park, parking requirements in this circumstance are not applicable.
- 21. An initial study was prepared for the project under California Environmental Quality Act (CEQA) guidelines. The initial study identified a potential environmental safety impact due to soil contamination related to the previous use of the site as an automobile service station. The applicant is in compliance with Regional Water Quality Control Board requirements that require monitoring of the site for contamination. The applicant must also obtain an encroachment permit from the California Department of Transportation (Caltrans) for any work within the State right-of-way on

Lincoln Boulevard. The project was granted a Negative Declaration under CEQA reporting requirements.

- 22. All pertinent governmental agencies were consulted in the environmental review process.
- 23. A legal notice was published in the local newspaper, The Argonaut, on December 22, 2005. Staff also mailed out 54 hearing notices to property owners within 500 feet of the site and interested parties. The applicant posted a hearing notice sign on the subject property 30 days prior to the public hearing.
- 24. Staff received one phone call in opposition to this request. The caller expressed concern over compliance with the Coastal Act and responsibility for site remediation.
- 25. The applicant had filed a Coastal Development Permit to bring the demolition of the service station and the establishment of the park into compliance.
- 26. The park design and landscaping were reviewed by the Design Control Board in a public forum.
- 27. Conditions of approval address the following issues:

### A. Lighting

The applicant is required to shield lighting and direct it away from environmental areas. Low intensity lighting is required.

### B. Remediation

Monitoring of the soil for contamination will continue to be conducted in compliance with Regional Water Quality Control Board requirements. The permittee will provide monitoring reports to the Department of Regional Planning on a periodic basis.

### C. Design

The applicant is required to submit a subsequent site design that features trash receptacles designed and colored to blend with the surrounding area.

### D. Landscaping

The applicant is required to plant non-invasive species. Any vegetation that does not survive will be removed; these portions of the site will be re-planted.

- 28. The passive park provides a transitional use between the urbanized area to the west and the environmentally sensitive area to the east. It also beautifies a vacant lot and serves as a pedestrian rest area.
- 29. The site is less intensive than the previous use of an automobile service station.
- 30. Remediation of the site and monitoring will further enhance and protect the sensitive environmental area to the east.
- 31. The passive park is intended as an interim solution to beautifying a vacant lot; it is not considered as a credit to park space in Marina del Rey.
- 32. The demolition of the gas station and establishment of the passive park is consistent with the Marina del Rey Land Use Plan and Specific Plan.
- 33. Conditions of approval will ensure that the park is compatible with the surrounding environment.

BASED ON THE FOREGOING, REGARDING THE CONDITIONAL USE PERMIT BURDEN OF PROOF, THE REGIONAL PLANNING COMMISSION CONCLUDES:

- A. That the proposed project is in conformity with the certified local coastal program and, where applicable,
- B. That any development, located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, is in conformity with the public access and public recreation policies of Chapter 3 of Division 20 of the Public Resources Code.

AND, THEREFORE, the information submitted by the applicant and presented at the public hearing substantiates the required findings for a Coastal Development Permit as set forth in Section 22.56.2410, Title 22, of the Los Angeles County Code (Zoning Ordinance).

### REGIONAL PLANNING COMMISSION ACTION:

- The Regional Planning Commission, acting in its role as responsible agency for the project, certifies that it has independently reviewed and considered the information contained in the Negative Declaration prepared by Los Angeles County Department of Regional Planning as lead agency prior to approving the project.
- 2. In view of the findings of fact and conclusions presented above, Project No. R2005-00142 and Coastal Development Permit Case No. 2005-00001-(4) is approved subject to the attached conditions.

### **VOTE 3-0-1**

Concurring: Modugno, Rew and Valadez

Dissenting: None

Abstaining: Helsley

**Absent: Bellamy** 

Action Date: February 22, 2006

**RJF** 

5-17-06

### PROJECT NO. R2005-00142 COASTAL DEVELOPMENT PERMIT NO. 200500001-(4)

- 1. This grant authorizes the demolition of an automobile service station and the establishment of a passive recreational park, subject to all of the following conditions of approval.
- 2. Unless otherwise apparent from the context, the term "permittee" shall include the applicant and any other person, corporation, or other entity making use of this grant.
- 3. This grant shall not be effective for any purpose until the permittee, and the owner of the subject property if other than the permittee, have filed at the office of the Department of Regional Planning their affidavit stating that they are aware of, and agree to accept, all of the conditions of this grant and that the conditions of the grant have been recorded as required by Condition No. 8, and until all required monies have been paid pursuant to Condition Nos. 10, 12, 22c and 22.s.
- 4. To the extent permitted by law, the permittee shall defend, indemnify and hold harmless the County, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul this permit approval, which action is brought within the applicable time period of Government Code Section 65009. The County shall notify the permittee of any claim, action, or proceeding and the County shall reasonably cooperate in the defense.
- 5. In the event that any claim, action, or proceeding as described above is filed against the County, the permittee shall within ten days of the filing pay the Department of Regional Planning an initial deposit of \$5,000, from which actual costs shall be billed and deducted for the purpose of defraying the expenses involved in the department's cooperation in the defense, including but not limited to, depositions, testimony, and other assistance to permittee or permittee's counsel. The permittee shall also pay the following supplemental deposits, from which actual costs shall be billed and deducted:
  - a. If during the litigation process, actual costs incurred reach 80 percent of the amount on deposit, the permittee shall deposit additional funds sufficient to bring the balance up to the amount of the initial deposit. There is no limit to the number of supplemental deposits that may be required prior to completion of the litigation.
  - b. At the sole discretion of the permittee, the amount of an initial or supplemental deposit may exceed the minimum amounts defined herein.

The cost for collection and duplication of records and other related documents will be paid by the permittee in accordance with Los Angeles County Code Section 2.170.010.

### PROJECT NO. R2005-00142 COASTAL DEVELOPMENT PERMIT NO. 200500001-(4)

- 6. This grant will expire unless used within 2 years from the date of approval. A one-year time extension may be requested in writing with the applicable fee six months before the expiration date.
- 7. If any provision of this grant is held or declared to be invalid, the permit shall be void and the privileges granted hereunder shall lapse.
- 8. Prior to the use of this grant, the property owner or permittee shall record the terms and conditions of the grant in the office of the County Recorder. In addition, upon any transfer or lease of the property during the term of this grant, the property owner or permittee shall promptly provide a copy of the grant and its conditions to the transferee or lessee of the subject property.
- 9. The subject property shall be maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance, or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions.
  - If additional inspections are required to ensure compliance with the conditions of this grant, or if any inspection discloses that the subject property is being used in violation of any condition of this grant, the permittee shall be financially responsible and shall reimburse the Department of Regional Planning for all additional inspections and for any enforcement efforts reasonably necessary to bring the subject property into compliance. Inspections shall be made to ensure compliance with the conditions of this grant as well as adherence to development in accordance with the site plan on file. The amount charged for additional inspections shall be \$150.00 per inspection, or the current recovery cost, whichever is greater.
- 10. Notice is hereby given that any person violating a provision of this grant is guilty of a misdemeanor. Notice is further given that the Regional Planning Commission or a hearing officer may, after conducting a public hearing and giving notice thereof to permittee, revoke or modify this grant, if the Commission or hearing officer finds that these conditions have been violated or that this grant has been exercised so as to be detrimental to the public's health or safety or so as to be a nuisance.
- 11. The permittee shall remit processing fees payable to the County of Los Angeles in connection with the filing and posting of a Notice of Determination in compliance with Section 21152 of the Public Resources Code.
- 12. Upon approval of this grant, the permittee shall contact the Fire Prevention Bureau of the Los Angeles County Forester and Fire Warden to determine what facilities may be necessary to protect the property from fire hazard. Any necessary facilities shall be provided as may be required by said Department.

### PROJECT NO. R2005-00142 COASTAL DEVELOPMENT PERMIT NO. 200500001-(4)

- 13. All requirements of the Zoning Ordinance and of the specific zoning of the subject property must be complied with unless specifically modified by this grant, as set forth in these conditions or shown on the approved plans.
- 14. All structures shall comply with the requirements of the Division of Building and Safety of the Department of Public Works.
- All structures, walls, and fences open to public view shall remain free of extraneous markings, drawings, or signage. These shall include any of the above that do not provide pertinent information about said premises.
- 16. In the event such extraneous markings occur, the permittee shall remove or cover said markings, drawings, or signage within 24 hours of such occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of the adjacent surfaces. The only exceptions shall be seasonal decorations. Inspections shall be made as provided in Condition No. 10 to ensure compliance with this condition, including any additional inspections as may be necessary to ensure such compliance.
- 17. Within ninety (90) days of approval of this grant, the permittee shall submit to the Director for review and approval three copies of revised plans, similar to Exhibit "A" as presented at the public hearing that clearly depicts all required project changes. Said project changes shall include trash receptacles. The property shall be developed and maintained in substantial conformance with the approved revised Exhibit "A". All revised plot plans must be accompanied by the written authorization of the property owner.
- 18. Within ninety (90) days of approval of this grant, the permittee shall submit to the Director for review and approval three copies of a landscape plan, which may be incorporated into the Revised Exhibit "A" described in Condition No. 17. The landscape plan shall show the size, type, and location of all plants, trees, and watering facilities. The permittee shall maintain all landscaping in a neat, clean and healthful condition, including proper pruning, weeding, removal of litter, fertilizing and replacement of plants when necessary for the life of this grant. All landscaping shall consist of native and non-invasive species as recommended by the Department of Regional Planning.
- 19. All structures, walls and fences open to public view shall remain free of extraneous markings, drawings or signage. These shall include any of the above that do not directly relate to the business being operated on the premises or that do not provide pertinent information about said premises. The only exceptions shall be seasonal decorations or signage provided under the auspices of a civic or non-profit organization.

- 20. In the event such extraneous markings occur, the permittee shall remove or cover said markings, drawings, or signage within 24 hours of such occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of adjacent surfaces.
- 21 Any new signage or additional signage shall comply with Part 10, Chapter 22.52 of the Los Angeles County Code.
- 22. The operation of the use shall be further subject to all of the following restrictions:
  - a. The permittee shall submit a lighting plan which indicates the type of lighting, intensity, shielding and configuration. The permittee shall further provide appropriate low level lighting for the park; lighting shall be directed away from the easterly side of the site;
  - b. The permittee shall monitor vegetation on site on a monthly basis and replace vegetation as needed;
  - c. The permittee shall obtain an encroachment permit from the California Department of Transportation (Caltrans) prior to performing any work within the State Right-of-Way (Lincoln Boulevard) and a Caltrans Transportation Permit if the use of oversized vehicles is necessary for the development of the project;
  - d. The permittee shall continue soils and groundwater monitoring as outlined in its interim Remedial Action Plan dated February 27, 2002 as approved and conditioned in the California Regional Water Quality Control Board letter dated March 22, 2002 (attached hereto).
  - e. The permittee shall submit an update regarding monitoring activities at the subject site to the Department of Regional Planning for review;
  - f. The permittee shall design and color trash receptacles or other park features to be compatible with the surrounding area.

RJF 2-4-06

### Attachments:

California Department of Transportation letter, dated August 18, 2005 California Regional Water Quality Control Board letter, dated March 22, 2004

### California Leg\_onal Water Quality \_\_atrol Board

### Los Angeles Region

Over 50 Years Serving Coastal Los Angeles and Ventura Counties

Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful

RECD MAR 2 6 2002 Gray Davis

Secretary for Environmental Protection

320 W. 4th Street, Suite 200, Los Angeles, California 90013

Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: http://www.swrcb.cargov/rwqc

March 22, 2002

Mr. Christopher Swartz Tosco Marketing Company P. O. Box 25376 Santa Ana, CA 92799-5376

GROUNDWATER INVESTIGATION PROGRAM
76 PRODUCT SERVICE STATION NO. 5071
4801 LINCOLN BOULEVARD, MARINA DEL RE

4801 LINCOLN BOULEVARD, MARINA DEL REY (ID# 1-05967)

Beaches and Harborss Beaches Beaches Beaches Repair Management Beaches Prepair Management Beaches Beach

Dear Mr. Swartz:

We have reviewed the "Interim Remedial Action Plan" (IRAP) dated February 27, 2002, for the subject site. The IRAP supersedes the Feasibility Testing Work Plan dated December 6, 2001. Because the site is scheduled to be demolished, excavation is considered to be the most cost-effective option for this site. You propose to conduct an additional onsite assessment and perform a remedial over-excavation and dewatering of the underground tank cavity during site demolition. Nine soil borings (G1 through G9) will be drilled to assess the extent of impacted soil warranting excavation. Following completion of excavation, backfill and site grading activities, you will install three monitoring wells (MW-13 through MW-15) and reinstall Wells MW-4, MW-5 and MW-10 to monitor the groundwater plume.

We concur with the IRAP as proposed, provided the following conditions are met:

- All necessary permits must be obtained from the appropriate agencies prior to the start of work.
- All work must be performed by or under the direction of the registered professional. A
  statement is required in the report that the registered professional in responsible charge
  actually supervised or personally conducted all work associated with the project.
- All reports submitted to this office must conform to the "Guidelines for Report Submittals" (June 1993) published by Los Angeles County Department of Public Works.
- 4. Two weeks prior to commencing field work, a health safety plan pertinent to the subject project must be submitted to the Regional Board. A copy of the plan must also be sent to our Industrial Hygienist, Ms. Cynthia Paulo at 3737 Main Street, Suite 500, Riverside, CA 92501, for her review.
- Please notify us at least seven working days prior to the start of work so that we may schedule a member of our staff to be present.
- 6. You must submit a technical report containing the results of this phase of remedial activities to this Regional Board by June 28, 2002. The report must also contain a

California Environmental Protection Agency

\*\*\*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption\*\*\*

\*\*\*For a list of simple ways to reduce demand and cut your energy costs, see the tips at: http://www.swrch.ca.gov/news/echallenge.html\*\*\*

detailed workplan to conduct any further remedial measures necessary to clean up the residual soil and groundwater contamination.

You are required to continue the quarterly groundwater monitoring program. Your next quarterly groundwater monitoring report (January –March 2002) is due to this Board by April 15, 2002. If you have any questions concerning this matter, please call me at (213) 576-6712.

Sincerely,

Mercedes S. Hsu Water Resource Control Engineer Underground Tanks/LA Coastal

cc: Mr. Hari Patel, State Water Resources Control Board, Underground Storage Tank Cleanup Fund

Mr. Jose Reynoso, Water Well Permits, Los Angeles County Department of Health Services

Mr. Tim Smith, Los Angeles County, Department of Public Works
Captain Al Gonzales, Los Angeles City Fire Department, Underground Tanks
Mr. Joe Chesler, County of Los Angeles, Department of Beach and Harbors

Mr. Steve Keane, TRC

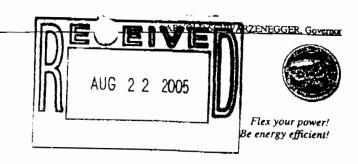
California Environmental Protection Agency

\*\*\*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption\*\*\*
\*\*\*For a list of simple ways to reduce demand and cut your energy costs, see the tips at: http://www.swrcb.ca.gownews/echallenge.html\*\*\*

### DEPARTMENT OF TRANSPORTATION

DISTRICT 7, REGIONAL PLANNING IGR/CEQA BRANCH 100 MAIN STREET, MS # 16 LOS ANGELES, CA 90012-3606 PHONE: (213) 897-3747

PHONE: (213) 897-3747 FAX: (213) 897-1337



IGR/CEQA No. 050736AL, ND Project No. R2005-00142 Public Park Retroactive Permit SCH #: 2005071062

August 18, 2005

Mr. Sam Dea
L.A. County Department of Regional Planning
320 West Temple Street
Los Angeles, CA 90012

Dear Mr. Dea:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above referenced project. The proposed project is to authorize the previous demolition of an automobile service station and establishment of a passive public park consisting of pathways, benches, walls, lighting and landscaping.

We would like to remind you that any work to be performed within the State Right-ofway will need an Encroachment Permit from the California Department of Transportation.

Storm water run-off is a sensitive issue for Los Angeles and Ventura counties. Please be mindful that projects need to be designed to discharge clean run-off water.

Any transportation of heavy construction equipment and/or materials which requires the use of oversized-transport vehicles on State highways will require a Caltrans transportation permit. We recommend that large size truck trips be limited to off-peak commute periods. In addition, a truck/traffic construction management plan is needed for this project. Thank you for the opportunity to have reviewed this project.

If you have any questions, please feel free to contact me at (213) 897-3747 or Alan Lin the project coordinator at (213) 897-8391 and refer to IGR/CEQA No. 050736AL.

Sincerely,

CHERYL J. POWELL IGR/CEQA Branch Chief

alon Lin for

cc: Scott Morgan, State Clearinghouse