

Marina del Rey Periodic LCP Review
December 24, 2007

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EXHIBIT NO. 1

Application Number

MDR Periodic
Review

California Coastal Commission

From: Daniel Henry Gottlieb [daniel.gottlieb@gmail.com]

Sent: Tuesday, October 02, 2007 11:49 PM

To: Jessica Reed

Cc: Louise Warren; Nancy Marino; Pam Emerson; John Ainsworth; De Lange PhD PhD; Al Padilla; Deborah Lee; Peter Douglas; Teresa Henry

Dear Jessica,

I have been asked to provide a little addendum to my Tuesday email to you detailing exactly which views are protected and where they are mentioned in the LCP, and also to extend the cc list.

The powers of the DCB are given in the Certified LPC Ordinances 550042 and 950058 at Section 22.46.1180 12(a) (This is in the MDR Specific Plan):

a. The design control board shall review the development for conformance of the project with this specific plan and with the identity and accessibility of the marina as a public boating and recreational facility. The board's analysis shall address, at a MINIMUM, public access, height, circulation, massing, VISUAL IMPACT, VIEWS, and view corridors, compatibility of uses in a mixed use project, and the visibility and convenience of public spaces as they pertain to the policies of this LCP. The design control board shall adopt a written report and/or exhibits describing their analysis and recommendations. The design control board, as a condition of its approval, may require the applicant to return with final plans for approval of signage, landscaping, color and other details. (MY EMPHASIS)

PROTECTED VIEWS

The certified LCP of the Coastal Commission for MDR states on page 99 (Ch. 9 p. 5 item 5) the following conditions regarding disturbing certain important scenic views:

View Protection

5. The following existing views within the existing Marina SHALL not be significantly disturbed:

0 All views from north jetty and south jetty (west of UCLA boathouse);

0 Harbor views from Burton Chace Park and Fisherman's Village;

0 Cross-beach view from Panay Way parking lot (parcel GG); and

0 Main channel view from Admiralty Park.

(MY EMPHASIS)

Note the cross-beach view from Panay Way parking lot (parcel GR, not GG) should not be significantly disturbed.

The DCB has already approved the via Venitia on parcel 64, a skyscraper which will obliterate the views of the snow covered mountains from both the north and south jetties as shown in the email by David de Lange, PhD. to the staff on 08/28/07.

In addition, the partially completed construction on parcel 12 already significantly disturbs the view from Burton Chace Park and disturbs the view from Fisherman's village.

The cross beach view from Panay Way will soon be disturbed when the next story of the Admiralty Apartments is built. The second story is being built now.

The view from Admiralty Park is scattered into several view corridors. and it doesn't offer a panoramic view. But the massive construction on parcel 12 does disturb the view. This also seems not to have been studied,

Received at Commission Meeting

JUL 12 2007

From: _____

Daniel
Remove Sophistry from Record

July 12, 2007

EXHIBIT NO. 2
Application Number
MDR Periodic
Review
LOFC
California Coastal Commission

***** SOPHISTRY ALERT Page 170 *****

"The County has fully implemented requirements for hearing and noticing for coastal permits". In fact:

- The adjoining Condos were missing from the description of the surrounding land use of the Shores Project (Parcels 100 and 101) and as a result the property owners were not notified of the first hearings by the Design Control Board. And no study was done of the impact of the Shores Project on the view sheds from the scenic highway via Marina or of the impact on views from Ballona Lagoon.
- The Esprit Project (Parcels 12 and 15) did not have an Initial Study done by the DRP staff, and it appears there was no Independent Review by Staff of the Final EIR.
- The Jamaica Bay Inn Project (Parcel 27) was described by an address on Palawan Way in the initial notice of intent to file for a LC permit and then by a DIFFERENT address on a DIFFERENT street for the application for a NEGATIVE DECLARATION, thus violating a CEQA rule that the project must be described by a COMMONLY USED NAME. This means there will be no EIR, and hence no study of the LUP protected view across the beach from Palawan Way!
- Two mutually inconsistent trip generation maps from nearby projects Shore and Esprit, was not commented on by the County's Traffic engineer in the FIER, even though the Public brought them to the County's attention at the Regional Planning Commission and at the Board of Supervisors. The only response from the County was an email from the highest level of the Staff which claimed not to know what the project on parcel 12 was named on its EIR.
- The County is asking for an LCP Amendment to STRIP the Design Control Board of its authority to ensure compliance of the County with the Coastal Act. They say it is the interest of clarifying the process, but in fact it will NOT "maximize public participation".

+++++

APPENDIX A: Finding On Page 170

D. Conformance with Coastal Act

The County has fully implemented requirements for hearing and noticing for

coastal permits and LCP Amendments in conformity with the Coastal Act and administrative regulations and has implemented significant outreach efforts on upcoming projects in order to maximize public participation. Continual improvements in public outreach to ensure the LCP is carried out in conformity with Coastal Act Section 30006.

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APPENDIX B: Coastal Act Section 30006

Section 30006 Legislative findings and declarations; public participation

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

Section 30006.5 Legislative findings and declarations; technical advice and recommendations

The Legislature further finds and declares that sound and timely scientific recommendations are necessary for many coastal planning, conservation, and development decisions and that the commission should, in addition to developing its own expertise in significant applicable fields of science, interact with members of the scientific and academic communities in the social, physical, and natural sciences so that the commission may receive technical advice and recommendations with regard to its decisionmaking, especially with regard to issues such as coastal erosion and geology, marine biodiversity, wetland restoration, the question of sea level rise, desalination plants, and the cumulative impact of coastal zone developments.

+++++

APPENDIX C:

On 12/19/2005 Project number R2005-04106 was filed with the RCDP. The Applicant was listed as L.A. County and the site was called 14110 Palawan Way.

A hearing was scheduled at the RCP on June 13, 2007. The Notice of Intent to adopt a mitigated negative declaration described the property with a different address. The address of the property was given as 4175 Admiralty Way MdR. Its Parcel was identified, Parcel 27. The applicants were not named. As a result, at least two interested parties failed to attend.

There was no Initial Study among the supporting documents, only a 15 page document entitled Staff Analysis. This does not have the check boxes of a usual Initial Study, and it bears no signatures.

The certified LCP of the Coastal Commission states on page 9-5 the following conditions regarding disturbing certain important scenic views:

View Protection

5. The following existing views within the existing Marina shall not be significantly disturbed:

- 0 All views from north jetty and south jetty (west of UCLA boathouse);
- 0 Harbor views from Burton Chace Park and Fisherman's Village;
- 0 Cross-beach view from Panay Way parking lot (parcel GG); and
- 0 Main channel view from Admiralty Park.

Note the cross-beach view from Panay Way parking lot (parcel GR, not GG) should not be significantly disturbed. The Jamaica Bay project threatens to disturb the view from the Panay Way parking lot!

Received at Commission Meeting

JUL 12 2007

Th 15a

Daniel Henry Gottlieb

Remove Sophistry from Recommendation 21

From: _____

July 12, 2007

***** SOPHISTRY ALERT *****

In the second to last paragraph just above on page 4 of the MdR Revised Staff Recommendations . The last phrase, "on publicly owned land designated for visitor or public uses", actually means ON PARCELS NOT LEASED TO PRIVATE LESSEES.

This wording also appears in Recommendation 21 on page 28.

At the last line of Recommendation 21, "privately [individually] owned" the bracketed word individually RESTRICTS the meaning of privately.

APPENDIX A: Paragraph on Page 4

Revises Recreation and Visitor Serving recommendations to prohibit development of condominium hotels, timeshares or other forms of fractional interest ownership on publicly owned land designated for visitor or public uses.

APPENDIX B: Recommendation 21, Page 28.

21. The County should amend LCP Definitions to define "hotel" and should evaluate opportunities to protect the availability of, and encourage additional, short-term overnight accommodations in the Marina. To protect and maximize public access, LUP and LIP definitions and development standards should exclude private fractional ownership of hotel/motel rooms on publicly owned land designated for visitor or public uses. And for areas not designated for visitor use, in any hotel, motel or similar project that includes timeshare or fractional or condominium ownership components, the County shall address, among other factors, peak use demands in the summer, availability of units to the general public and operational provisions to require hotel/motel management of a facility. LCP Standards should ensure that such projects maximize public access in operation of the hotel/motel, including restrictions on the percentage of units privately [individually] owned and length of stay.

Received at Commission Meeting

Th 15a

Daniel Henry Gottlieb

JUL 12 2007

Remove Sophistry from Recommendation 21

From: _____

July 12, 2007

***** SOPHISTRY ALERT 13 *****

"Amend LIP section 22.46.1180.A.11.b to reflect the County's current traffic study guidelines" What Guidelines? (No reference given.) The only Guidelines we could find are dated January 1, 1997 (by Google). Since the LIP was written on May 10, 1995, the updating based on the guidelines should be minimal. But the real problem is, the County does not follow its own Guidelines. We had discovered that two neighboring projects (The Shores and Esprit) had INCONSISTENT trip generation maps, both of which were missing key local roads and hence fatally flawed (both maps were done by Crane and Associates). We presented these trip generation maps to the Regional Planning Commission and to the Board of Supervisors. We received no response to our complaints in the Final EIR, which violates policy. However we did receive a response by email from the highest county Staff Levels which ignored our maps based on their claim that they never heard of the Esprit Project under its EIR name.

"and its requirement that studies be based on and consistent with the most recent studies of major projects in the area". We can't find the requirements that it must be consistent with major projects in the area. This is probably a sophism whose goal is to inshrine the wildly inaccurate ambient growth rate of 0.6% of the Shores project into the process.

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APPENDIX A: Recommendation 13:

13. (A) Although redevelopment of the 1994 DKS1 transportation model is not recommended as part of this review, any changes to the cap system (that is based on the DKS study), if proposed, should be based on a revised model or equivalent comprehensive traffic analysis. (B) Amend LIP section 22.46.1180.A.11.b to reflect the County's current traffic study guidelines and its requirement that studies be based on and consistent with the most recent studies of major projects in the area, including models prepared for the Airport LAX expansion and Playa Vista Phase II traffic models.

APPENDIX B: LIP 22.46.1180.A.11

b. Traffic Study. A detailed traffic study shall be submitted at the time of the application for the coastal development permit which addresses the project's traffic impacts on various highway intersections that could experience significant impact as described in subsection e. The study shall document: 1) the number of daily, weekend and a.m. and p.m. peak hour trips which would be generated by the project, 2) the number and percentage of those trips originating and terminating outside the Marina del Rey specific plan area, 3) the distribution of the trips upon departing the study area, 4) how much a specific

mitigation measure would reduce daily and peak hour trips, and 5) such additional information as the department of public works may require to properly evaluate the project's proportionate traffic impacts on the study intersections. The study shall compare levels of service for existing, ambient growth and with and without construction of the project, and cumulative traffic impacts with other known development.

e. Threshold. Cumulative sub-regional traffic system mitigation measures are required if a) an intersection is projected to operate at a mid-range level of service D (or volume to capacity (V/C) ratio of 0.85) as a result of the project's impacts, or b) intersections within the project's area of influence are already operating at a level of service above 0.85, and the project will result in a projected increase of 0.01 above anticipated ambient conditions.

Carlsmith Ball LLP

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EXHIBIT NO. 3
Application Number MIR Periodic Review 1 of 4
California Coastal Commission

CALIFORNIA
COASTAL COMMISSION

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

September 20, 2007

Re: Request for immediate designation of ESHA for proposed Sea Glass Condo and Commercial Development Project Located at 6719-6823 S. Pacific Avenue, Playa del Rey, CA 90293 -- City of Los Angeles Draft EIR (ENV-2004-7360-EIR)

Dear Mr. Douglas:

We are writing you today to request that the Coastal Commission make a determination that a 33 acre parcel of land located on a sand dune in Playa Del Rey be designated as an Environmentally Sensitive Habitat Area (ESHA) under the California Coastal Act. There is currently a proposal to build 35 condos and related commercial operations on these dunes and the project has undergone a draft EIR by the City of Los Angeles, which completely ignores the fact that the project is to be built in an ESHA. A determination by the Coastal Commission that the property lies in an ESHA will have major impacts on the scope and ultimate design of any potential project on this critical important piece of property and should be made as early as possible to help shape any eventual project on the parcel in question. A draft EIR has been prepared and circulated on the project and is awaiting final amendment and approval by the City of Los Angeles. The Coastal Commission did not file comments on the draft EIR but should now intervene to make it clear that the project lies in an ESHA and that special precautions and considerations will therefore apply to any development on the parcel in question.

The project in question is known as the Sea Glass Holdings project -- the proposed development of 35 condominiums and related commercial space -- at 101 E. Culver Boulevard and 6719 - 6823 S. Pacific Avenue (Assessor Parcel No. 4116003001) in Playa Del Rey. The draft City of Los Angeles EIR is ENV-2004-7360-EIR. In addition to the specific project proposed for this property, the City of Los Angeles is in the process of establishing a "Mixed-Use Incentive District along Culver Boulevard" that would include this entire parcel of property -- treating it similarly to all commercial property along the first four blocks of Culver Blvd. with no consideration for the fact that the property is in an ESHA. This proposed Mixed

Use Incentive District makes it paramount that the parcel in question receive a clear ESHA designation so that it is not treated as a typical "commercial" property.

The proposed project will have irreversible and significant environmental impacts on "environmentally sensitive habitat areas" "environmentally sensitive areas" and "sensitive coastal resources areas" in the coastal zone as defined in Sections 30107.5 & 30116 of the California Coastal Act. As such, special considerations should apply pursuant to Section 30240 of the Coastal Act. No such special considerations have been considered by the developer or by the City of Los Angeles to date. Indeed the parcel has been included as "commercial" property in a proposed Mixed Use Incentive District.

The project site is located within the Coastal Zone and therefore is under the joint jurisdiction of the City of Los Angeles and the California Coastal Commission for coastal land use planning and permitting of all projects. Thus, both the project permit application and accompanying EIR will ultimately be before the Coastal Commission. But it is important for everyone concerned, that an early and immediate determination be made that the project is indeed in an ESHA and therefore that special consideration and care must be utilized in reviewing the project and preparing a final EIR

The proposed project's site consists of undeveloped partially-vegetated sandy dune terrain (on the eastern half) and groomed beach sand (on the western half). It is fully occupied by a large sand dune identified in many studies to be the northern most portion of the Los Angeles/El Segundo Dunes complex.

Listed below are comments drawn from the City of Los Angeles draft EIR documenting animal and plant life on the site and impacts from any development on the site which mandate that the site be treated as an ESHA. In addition to these comments drawn directly from the draft EIR, it is clear to anyone who visits the site (including a recent group of staff members from the Coastal Commission) that the site is in an ESHA.

Impact on wildlife on site:

"The Proposed Project would impact Dorothy's El Segundo dune weevil (*Trigonoscuta dorothea dorothea*), a California Department of Fish and Game "Special Animal" by removing individuals and habitat."

"The Proposed Project would remove the limited vegetation on-site that may provide nesting habitat for breeding migratory birds, which are protected by the Federal Migratory Bird Treaty Act. In addition, construction activity may result in noise that may impact nesting birds in the vicinity. The removal of active nests or the disturbance of nesting activities could result in potentially significant impacts".

"[T]he site has the potential to be used by other nesting birds, including the endangered California least tern (*Sterna antillarum browni*)"

Impact on rare vegetation on site:

“Dominant plant species present on-site [include] (silver beach bursage [*Ambrosia chamissonis*], beach evening primrose [*Camissonia cheiranthifolia*], sea rocket [*Cakilemaritime*], and iceplant [*Carpobrotus edulis*]); one sample was collected beneath pink sand verbena (*Abronia umbellata*), and three samples were collected (one on the north property area and two on the south property area) beneath ruderal species including brome (*Bromus* sp.).”

“an issue [was raised] regarding a rare plant species that was not identified in the reports – Lewis’ evening primrose (*Camissonia lewisii*), which Dr. Mattoni has observed in the Los Angeles International Airport (LAX) and Ballona areas.”

“Specific sensitive biological resources mentioned include beach morning glory (*Calystegia soldanella*), sand verbena (*Abronia maritima*), Dorothy’s El Segundo dune weevil (*Trigonoscuta dorthea*), silvery legless lizard (*Anniella pulchra pulchra*), and Southern foredune habitat.”

“The Proposed Project would result in the removal of five individuals of red sand verbena (*Abronia maritima*), a California Native Plant Society List 4.2 species (plants of limited distribution, fairly endangered in California).”

“The Proposed Project would result in the removal an unknown number of individuals of Lewis’ evening primrose (*Camissonia lewisii*), a California Native Plant Society List 3 species.”

“The Proposed Project would result in the removal of approximately 2 acres of Southern Foredune habitat, a plant community that is considered sensitive by the California Department of Fish and Game.”

Impact on water resources and water pollution near or at the ocean:

“Construction of the Proposed Project has the potential to deplete groundwater supplies.”

“The Proposed Project has the potential to increase the rate of urban pollutant introduction into stormwater runoff, and increase erosion, transport of sediment load, and downstream siltation, all of which constitute avoidable impacts to surface water quality.”

Impact on immediately surrounding park and lagoon facilities:

“During construction, two basic types of activities would be expected to occur and generate noise. The first activity would involve the preparation and grading of the project site to accommodate the building foundations for the Proposed Project. . . . The second activity that would generate noise during construction would involve the physical construction and finishing of the new residential and commercial buildings”.

Conclusion: On the basis of these findings in the draft EIR and because of the location of the proposed project or rare open dunes immediately adjacent to the Del Rey Lagoon and park, we respectfully request that the Coastal Commission issue a finding that the land in question lies in

an ESHA. Such a determination will help both the developer and the surrounding community focus on appropriate limitations and conditions for any development on the property. It will also serve to highlight the differences between the parcel in question and all other property being included by the City of Los Angeles in a proposed Mixed Use Incentive District.

Respectfully submitted,



Thomas Houston
Attorney for
Esplanade Homeowners Association.

✓ Cc:
John (Jack) Ainsworth,
Deputy Director
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

EXHIBIT NO. 4
Application Number MDR Periodic Review
California Coastal Commission

-----Original Message-----

From: Nancy-marino@aol.com [mailto:Nancy-marino@aol.com]

Sent: Friday, November 10, 2006 2:45 AM

To: Periodic Review

Subject: Re: LCP Revised review

Hi, Pam,

It seems to me that it would be more appropriate to leave the July 20 draft on your website until a revised draft is available for posting. I did not get a hard copy of the report and thus it is impossible for THIS member of the public to ascertain what comments or corrections would be significant.

It gets worse: now I cannot access any of my stored Coastal Commission web pages, nor even your main page when I type in the main page address in my browser. Each attempt yields the result:

Error 504 " Gateway Timeout.

Please ask your web page manager to look into this. It is hard enough to find the time to give this report the time and attention it merits, and this is at least my sixth attempt that has been thwarted.

In the meantime, I implore you to strengthen any existing language in your report regarding compliance with onsite parking requirements for leaseholds (re: Sections A.2.c and A.2.e.9 of the LUP; Sections 22.46.1060 and 22.46.1110 of the MdR Specific Plan). If there are no remarks about this aspect of County compliance please add some, admonishing strict adherence to adequate onsite parking rules, and recommend additional parking over the minimums.

Two weekends ago, a Kingswood neighbor who worked at the new Ralphs/Waterside was killed while crossing Admiralty Way to get to the employee parking located in the Public Lot on Mindanao Way behind the Visitors Center. I believe that Ralphs pays the County a flat fee for the use of that lot so their employees can park there without charge, which amounts to tacit acknowledgement by both parties that this LCP standard has not been met.

I have been dismayed at other developers' insufficient parking for the size of their proposed projects as well. At a DCB meeting earlier this year, the board was perplexed by a Goldrich & Kest proposal to place a 57' high parking structure on the Panay Way mole road (between the Cheesecake Factory and the Marina Fitness Center west of Mothers Beach). When they learned that it was, in part, to accommodate required parking spaces for other DCB-approved projects in the vicinity, the board contemplated revisiting those approvals for a possible scaling back of projects (I do not know if they actually did so—nothing has been publicized). One board member even remarked to the applicant about trying to "lipstick on a pig." On the other side of the Marina, the new proposal for Fisherman's Village is seeking approval to use the Public Lot down by the boat launch (Lot 51, I think) to satisfy their minimum parking needs.

With the death of Patrick Conarpe, my dismay has turned to anger. Please urge your commissioners to add an edict to the revised recommendations that LCP standards not be exceeded except where public safety is a compelling factor (there were a couple of edicts in your draft review of 2005 but I don't recall any in the 2006 version). Also, please recommend that public safety be given more weight in the determination of "feasibility."

7/10/2007

Nancy Vernon Marino
13700 Tahiti Way, #249
Marina del Rey, CA 90292

June 12, 2006

Ms. Deborah Lee
South Coast Deputy Director
California Coastal Commission
200 Ocean Gate Blvd., 10th Floor
Long Beach, CA 90802-4325

Re: Marina del Rey LCP Review

Dear Deborah,

I enjoyed meeting you, Pam Emerson, Al Padilla, and Liz Fuchs at last Thursday's meeting. There is much to learn about the Marina del Rey development process, and you were all a great help to me. Thank you.

I do have some follow-up remarks and questions on specific issues covered at that meeting:

First, with regard to the hotel proposed for the Mothers Beach parking lot: Pam Emerson stated that she had found a policy in the LCP that allows recreational *buildings* on existing parking lots, provided parking is replaced elsewhere; and also that the Coastal Commission considers a hotel a "recreation support building."*

The 1996 Certified Land Use Plan, Section A.2.e.12 (page 2-8), states that "No designated public parking areas... shall be converted to uses other than public parking or public park purposes" [*a reminder that "shall" means the requirement is mandatory and must be followed by the decision makers*]. I do not consider "park" and "recreation" to be synonymous, so this is not likely the section Pam was referring to.

Q1): Is there is a policy elsewhere in the LCP that contradicts this, allowing a use other than parking or park development on a current public parking area, and if so, will you please advise me where she found it?

In my opinion, if there is any subsequent section contrary to this it would be invalid without an LCP amendment, since this section specifically precludes any other standard or action. Furthermore, Pam did not say you considered a hotel a recreation building, but rather a recreation support building, and that seems crucial difference—one that is NOT, I expect, included in any policy to which Pam refers. As far as I have been able to ascertain, hotels are considered "visitor-serving," a secondary and not the primary goal for Marina redevelopment, and they serve neither more nor less recreation purpose than parking lots that accommodate all visitors to the Marina—although decidedly less of a *public* recreation purpose, in my opinion.

(continued)

EXHIBIT NO.	5
Application Number	MIR Periodic
	Review
	1 of 2
California Coastal Commission	

JUN 16 2006

CALIFORNIA
COASTAL COMMISSION

Ms. Deborah Lee
Page 2 of 2
June 12, 2006

Q2): Have you arbitrarily decided the useful purpose(s) of these buildings, or is there a specific regulation which has determined that hotels are considered a recreational purpose? Please advise me of any such regulation or designation. If no regulation or determination exists, or if none has been relied upon in making your determination, please so state.

Second, with regard to the Czucker project on parcels 33 and NR: Parcel NR, the public parking lot, is slated for residential units atop several parking levels. That is clearly NOT a recreational use by anyone's account, and therefore a coastal development permit is clearly not warranted, whether there is an LCP policy regarding hotels or not.

Q3): Will you therefore deny the Coastal Development Permit for the Czucker project on that basis?

I will repeat my assertion in my letter of May 24, 2006: It is unacceptable for the County to submit Requests For Proposals which are inconsistent with the LCP and rely on subsequent LCP amendments to "back-door" them (especially when this is done in piecemeal fashion!). That practice makes a farce out of the LCP and is an insult to the community it—and our public officials—is intended to serve.

Thank you for your consideration. I look forward to your reply. If it is more convenient, please feel free to reply by email to nancyvmarino@aol.com.

Sincerely,



Nancy Vernon Marino
(310) 490-1983

via: USPS Certified Mail

* I made a partial transcript of about 9 minutes of the meeting, as best I was able, which I am enclosing. A full transcript of the recording is likely not feasible, and the Coalition is looking into an "action minutes" transcription as an alternative. That, too, may not be feasible, since several of the voices are similar-sounding and we did not identify ourselves each time we spoke. In the meantime I am enclosing a DVD of the two recordings for your records (I stopped the recorder for a couple of seconds toward the end of the meeting to test that it was actually working).

Nancy Vernon Marino
13700 Tahiti Way, #249
Marina Del Rey, CA 90292
(310) 490-1983
nancyvmarino@aol.com

EXHIBIT NO.	6
Application Number	MDIR Periodic Review
	1 of 7
California Coastal Commission	

November 26, 2007

Peter Douglas, Executive Director
Attn: Jeff
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: November 15, 2007 Coastal Commission hearing - public comment transcripts

Dear Jeff,

Enclosed are 13 copies of the oral testimony that Ina Barish, Maritza Rodriguez and I had prepared for the public comment period at the Coastal Commission's November 15 session, together with the additional written comments referenced at that hearing.

Per our agreement with Peter Douglas, most of this material was not presented at the hearing to expedite adjournment, in exchange for his promise to distribute copies of the written transcripts and materials to each of the Commissioners immediately upon receipt, rather than waiting for the packet of agenda materials that are sent to the Commissioners prior to the item's agenda hearing.

Mr. Douglas did not wish to accept the hand-printed transcripts offered at the meeting and instead asked for everything to be typed. There was a slight delay getting that done, so in the interest of time I have made 12 additional copies to expedite distribution to the Commissioners, with an extra copy for staff files.

I would appreciate if you would send me confirmation of the date these are distributed to the Commissioners, so I may note that in my files.

Thank you for your assistance in this matter.

Sincerely,



Nancy Vernon Marino

/enclosures (13)

cc: Ina Barish, Maritza Rodriguez

California Coastal Commission Meeting San Diego November 15, 2007
Public Comment by Ina Barish

Re: Marina del Rey LCP Review

Commissioners,

As you conduct your Marina del Rey LCP Review, it is important that you be aware of the County's actions in relation to the Design Control Board.

In April 2006, the DCB caught onto the myriad of problems caused by the proposed private developments. The Board was not comfortable and asked tough questions. Directives were given to Mr. Wisniewski as to what the Board would like to see at the next meeting to be in compliance with the LCP. The meeting effectively never came because in September 2006 the County moved to strip the DCB of their substantive powers. Mr. Wisniewski foreshadowed this at the meeting.

You have each been provided with 4 discs that represents the entirety of the meeting. I know this is a lot to ask of your time. I've prepared a short excerpt that illustrates the point.

<1min 37 second Audio>

Recommendation:

I respectfully recommend the Commission assert its authority over the review of the County's implementation of the Local Coastal Program. Please direct staff to revert to the May 25, 2005 Staff Report (Tu7a) and strengthen the recommendations for measures to bring the county into compliance with the existing, certified LCP.

Thank you for your consideration,
Ina Barish

Re: Marina del Rey LCP Review

The latest version of the LCP Review Staff Report, dated June 25, 2007, gives us a hint:

“The essence of the plan would be to centralize most public use at Burton Chace Park, and create a hotel commercial center at the Marina Beach.”*

Current redevelopment plans promise the destruction of no fewer than 7 of the 12 public parking lots throughout the Marina. In their place, the County proposes private, non-marine commercial, residential and hotel buildings. These plans violate our LCP’s mandate for only a park or parking on existing public parking lots (LUP §A.2.e), a provision clearly protective of the visual access to the Marina from these locations.

The proposed projects would effectively eliminate both practical and visual access to many areas of Marina del Rey. Ms Barish introduced one of the major threats to physical access through the elimination of required public parking, and the consequence to the local enforcement body when they sought to correct it.

Mothers Beach is not only one of the premier day-visitor attractions in the Marina, it also provides the key panoramic viewscape that establishes the identity of Marina del Rey as a small craft harbor and public recreation destination. Everyone who enters the Marina from the north—by car, bicycle, foot or other means—is treated to this visual experience. Other LCP-protected views are already disappearing behind wood and steel, restricting public visual access to many of the .

Recommendation:

I respectfully recommend this Commission further direct your staff to add specific protections for the views of the water and mountains from and across ALL of the public parking lots in Marina del Rey to the May 25, 2005 Staff Report (Tu7a) recommendations.

Thank you for your consideration,
Nancy Vernon Marino

* Source: ITEM TH 15a, Pp. 95-6, followed by map of public parking lots. 4 of the 5 lots serving Mothers Beach (Parcels OT, NR, IR and FF) are slated for destruction

Re: Marina del Rey LCP Review

The final segment of our presentation has to do with the systematic exclusion of the public from this process by the County of Los Angeles, led by the Department of Beaches & Harbors.

Following the initial Coastal Commission public workshop in January 2005, the County has not held a single public hearing on this Review. They have engineered delay after delay, in the meantime approving individual projects in a piecemeal approach.

Sixteen projects are currently in the approval process or have received development permits.

The county refuses to do a comprehensive EIR, even though they are a partner in every project. The claim the certified LCP is the functional equivalent—but they do not follow LCP guidelines!

The Beaches & Harbors Department recently submitted a letter with supporting disks to your staff regarding the LCP Review draft report, which they indicated in the cover letter was not for public view or dissemination.*

Recommendation:

I respectfully recommend that this Commission direct staff to dismiss all County-negotiated language and recommendations in the final draft of the Staff Report as unreliable and in no way representative of the public that those individual County officials claim to serve. They have not asked or allowed our input, and they do not listen to us.

We sincerely hope you will.

Thank you for your consideration,
Maritza Rodriguez

* Attached: copy of letter dated May 23, 2007, from Kerry Silverstrom, Deputy Director, Department of Beaches & Harbors, to Jack Ainsworth, Deputy Director-South Coast District Office (LA Co), California Coastal Commission (pages 4-5 of .pdf file)

5067



To enrich lives through effective and caring service

May 23, 2007



Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

CONFIDENTIAL AND PERSONAL

Jack Ainsworth, Deputy Director
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001-2801

RECEIVED
South Coast Region

MAY 24 2007

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Ainsworth:

Enclosed with this letter, you will find a disk containing the following:

- A redlined version of Coastal staff's "Revised Staff Recommendation: Report to Los Angeles County on Marina del Rey Periodic LCP Review";
- A document headed "Response to Staff Recommendations on Traffic and Circulation From a Traffic Engineer's Perspective"; and
- A document entitled "Intersection of Admiralty Way and Via Marina - Triple-Left-Turn Lanes vs. Reconfigured Intersection and the Admiralty Way Improvement Project".

I am transmitting the disk to you with the following understanding:

(1) The redlined version is based upon the review of Coastal staff's revised report by solely Andi Culbertson, the County's consultant, and myself. Nobody else from the County has either seen or had the opportunity to comment on what we've done in the way of changes or comments. Indeed, on the same day this is being transmitted to you, I am providing copies to Board Deputies from the Supervisors' Offices, County Counsel and the County's Regional Planning Department. Only after they have had an opportunity to review and comment on the work Andi and I have done will we be able to signal to you in any way whatsoever whether or not we believe others have reacted generally favorably to our positions.

(2) We are solely providing these documents to you for your internal use as a tool to assist you in your review of the staff report as currently written and for no other purpose. We have been very direct and forthright in these comments for clarity in our discussions with you and selected members of your staff, as our extensive production of materials in the past hasn't resulted in the report's complete accuracy. In some cases, this honesty has revealed some embarrassing mistakes on your staff's part. It is not our intention to create discomfort, but rather to point out these errors. However, this type of communication is understandably not suitable for public review. Accordingly, the material contained on the disks is confidential and privileged as draft, mental impressions material, and, as such, not able to be disseminated to anybody outside your internal staff.



CONFIDENTIAL AND PERSONAL
Jack Ainsworth
May 23, 2007
Page 2

As our assertion of privilege, which is ours alone to waive, was not recognized by Coastal staff when we provided comments to the originally-drafted report, you must understand we are providing this material to you at this time on your assertion of a new working relationship between our entities. I note this is on the basis of your words only, as we have yet to see the letter we had been promised with respect to the Cease and Desist Order (CDO) we received from the Executive Director with respect to our annual tree pruning and, moreover, were naturally disappointed about his unwillingness to rescind the CDO. Accepting, therefore, what you have stated at face value, we have reciprocated with frankness in the revisions and comments we have provided on the enclosed redlined version of Coastal staff's revised report.

I can't reiterate enough that these comments are in the interest of close cooperation with Coastal staff and, understandably therefore, not suitable for public dissemination. Accordingly, **we trust that you will insure the confidentiality of this redlined version is safeguarded.**

(3) Upon completion of your use of the material on the disks solely in connection with your review of the staff report as currently written, we respectfully request that you return both disks to us. In this way, we can assure ourselves that the disks will not fall into the wrong hands.

We are going to review these documents again prior to our meeting next week. To the extent we find further areas we wish to comment on or areas where our text could have provided more clarity, we will offer refinements at next week's meeting.

We look forward to meeting with you next week at your Long Beach offices in furtherance of a continued good working relationship, as well as what we hope will be an improved report to the Commission. We would like to be able to state publicly that we find ourselves in general agreement with what has been presented and, moreover, to express appreciation for the positive relationship we now find ourselves in with Coastal staff. Toward that end, please do not hesitate to contact me before next week's meeting if I can assist in your understanding of what we are transmitting.

Very truly yours,



Kerry Silverstrom, Chief Deputy Director

California Coastal Commission Meeting San Diego November 15, 2007
Additional Comments for Group presentation: ESHA
(written addendum to oral presentations)

To: California Coastal Commission
Re: Marina del Rey LCP Review

In 2005 Coastal Commission Staff stated that the LCP Review was to assess L.A. County's implementation of the existing LCP, with recommendations limited to County actions that would be more consistent with the existing LCP, and any amendments needed to bring the LCP into compliance with the Coastal Act. The example your staff gave of a Review recommendation for an amendment was if a new ESHA had developed--or been declared--since certification.

In light of this, the most recent Staff Report (Th 15a) is an anomaly. Its recommendations would facilitate massive increases in development that would destroy known ESHAs—development in violation of Coastal Act ESHA and public access provisions, and inconsistent with certified LCP standards for land use designations, use priorities, and height and density limits.

Several ESHAs not known or considered in our 1996 certified LCP have been well documented, for both the County and Commission Staffs, as well as before this Commission.

Regrettably, there is at present no ESHA section in our LCP. The Coastal Commission certified this LCP in 1996 based on County assertions that no ESHAs remained in Marina del Rey after the removal of Area A (and with the caveat that the Design Control Board would have conceptual review authority). County staff continues to lobby extensively to exclude any recommendations for ESHA language, despite certain knowledge of several or known or probable ESHAs in Marina del Rey.

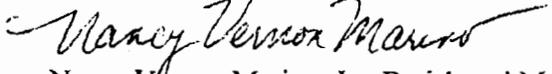
Coastal Commission Staff are well aware of the County's desire to destroy known heron rookeries and wetland-adjacent lands with private residential and hotel/timeshare projects. Nevertheless, much of the delay regarding this Review is the direct result of County "negotiations" with your staff to refute your own biologist's findings and therefore continue the exclusion of ESHA considerations in Marina del Rey's LCP.

Recommendations:

We respectfully recommend that the Commissioners direct your staff to return to the May 25, 2005 Staff Report Tu 7a as the basis for the final draft, and:

- 1) reinstate all Coastal Act ESHA language, including an enumeration of all currently known or possible ESHAs, and
- 2) provide for the protection of any current or future possible ESHAs until a ruling on the ESHA status has been reviewed by this Commission.

Thank you for your consideration,



Nancy Vernon Marino, Ina Barish and Maritza Rodriguez
P.O. Box 9096
Marina del Rey, CA 90295

EXHIBIT NO. 7

Application Number

MDR Periodic
Review

1 of 3

California Coastal Commission

I would like to call your attention to the Th15a Report section "Public Comment/History" on pages 1 and 2. Why has the County made such a great effort to keep its "comments" concealed from the public? What proprietary interest do they have in the Periodic Review that absolves them from the mandate of transparency in government? The County did not hold one single public meeting on this issue: did County staff take it upon themselves to advocate weakening the protections for public recreation and precious coastal resources in favor of fattening their "cash cow" to the point of obesity—or did the Board of Supervisors discuss it with them (and others) behind closed doors? I was not aware that the County's meetings with Commission staff were public meetings. The Coalition invited me and others to join their meetings with staff (I was unable to accept); Director of Beaches & Harbors, Stan Wisniewski (310-305-9503) reported to the SCHC that County staff had scheduled a meeting with Commission staff (there may have been more than one; he reports on ongoing department activities at every SCHC hearing), but he did not indicate that members of the public would be allowed to participate, let alone observe.

There is much to decry in this report, mostly having to do with the severe weakening of language protecting view sheds and public uses, allowing for lawyering up by developers and County Counsel for loophole diving (maybe the County considers that "recreation"?). Some of the information shows blatant prior non-compliance, e.g., the transfer of 97 Development Units from DZ1 to DZ4 for Parcel 20 (Capri Apartments), despite clear language in our Land Use Plan (section C.8.e) prohibiting such transfers. The report casually remarks that the County is investigating complaints that it does not enforce its own conditions of Coastal Development Permits on Lessees, e.g. Parcel 20 (Capri again), first for affordable units onsite and then for subsequent rent overcharges (residents and supporters actively fought for 2 years just to get the covenant signed and recorded by the Lessee). It appears to be *unwritten* County policy to ignore all such issues in the hope that, with their piecemeal approach to development keeping us racing full tilt, most of it will never even be uncovered. Misinformation abounds, e.g., the description of Parcel 18 as 60 "congregate care" units when it is apartments (that is either the Monte Carlo or St. Tropez on Panay Way, I'm not sure); maps showing a fuel dock on Parcel 55, a Restaurant at Panay and Via Marina (Benihana's has been gone for years and years; new development is shown so they have clearly "updated" the map); the Ritz Carlton restaurant in the East Tower of the Marina City Club; or a residential project on Fiji Way along H basin west of the Boat Yard.

The lack of condemnation for County plans to fork over no fewer than 5 of our public parking lots to private development, despite LUP sections A.2.c and A.2.e envisioning a new park on Lot FF and mandating parks or parking only on those parcels is a huge disappointment. Our parking lots provide most of the grand waterscapes that establish the identity of the Marina and make it a visual treat for all who live, work, play, visit or just pass through. They are not underutilized, except by the County's limited criteria —1) money, 2) money, and 3) money. Lot OT, for example, gets frequent use, mostly by dads or grandfathers with their youngsters (especially after Christmas) remote-control car racing and stunt-driving; it and other lots are great training grounds for children with their first scooter, bicycle, roller skates, skateboard or kite. The County should calculate the value of all waived parking fees in the economic data for all public parking lots, and it should act to provide additional public recreational opportunities near these lots, because most people aren't too keen to spend \$5 to stand on a sidewalk (fancy or otherwise) just to watch other people having fun. The discussion of County plans to herd most public use to the Burton Chace Park - Public Launch Ramp zone, and turn Mothers' Beach into the functional equivalent of a private beach for high end hotel patrons, disgusts me: it is utterly contrary to the basic premise (whether the County likes it or not) of House Document 389 and Public Law 780 establishing the Marina for SMALL craft recreational boating on the water and PUBLIC RECREATION and some coastal-dependent uses on the land. The Mothers Beach picnic areas, a favorite place for Parks & Recreation summer camps, senior centers, large family outings and the like, will be shoved to either side of the beach (where they will vie with kayakers, windsurfers, dinghy and other small boat users for space), effectively closing off the main central section—which will be walled behind 4 midrise hotel buildings and practically unnoticeable from the main thoroughfares—for hotel patrons. Sorry I don't have page numbers or sections for reference—you'll have to search it yourselves. I don't have time to cite other items, although there are numerous examples of these as well as other alarming statements and wafflings in the recommendations and discussions.

The report actually paves the way for much of this overdevelopment to happen despite the prohibitions in the existing LCP and the stated intentions of the Coastal Act. The language of the original draft, while not as

strong as we had hoped, would have at least made it much more difficult. The 1996 amendment and 2001 amendment allow more than the optimum non-recreational development, in my opinion.

Deborah advised several of us earlier in the week that the ESHA section of the review will not even be considered this next Thursday. The County has been granted *another* delay because they are "not prepared" to comment on the ESHA language. I wish I could get a delay every time I am not prepared on these development issues--but I am not getting a County paycheck for this work, so perhaps that's the hitch. Those of us who will take a full day or more to travel the 200 miles to SLO will therefore have to take *another* day off work in October in order to have the full opportunity to address the the commissioners directly on the complete review (that hearing will at least be in San Pedro--but I'm not taking bets on the agenda just yet). The non-ESHA language may get approval on Thursday, but it would not take effect until the Commission acts on the ESHA to complete the review (Deborah is checking on this anomaly with Jack).

All that said, the real scoop here is: **a dysfunctional entitlements process and imprudent Marina del Rey management practices (especially including noncompliant redevelopment) are locking Marina del Rey onto the same track to economic ruin as New York City experienced in the 1970's.*** (see below) Rampant development of "high end" buildings and neglect to invite full community involvement ended up driving the middle and much of the wealthy classes right out of that city, and left it without the tax base it anticipated from the massive developments (remember the *Daily News* headline, "[President] Ford to City: Drop Dead"?). Crime and blight were unintended consequences. Recovery was a long time coming, and the worst end of the deal went to those who could least afford it. Instead of addressing these issues in Marina del Rey with a *bona fide* Master Plan--with a comprehensive EIR--the County adeptly uses sophistry and quibbling to further obfuscate both public awareness of the nature of County actions, and our attempts to demand compliance with our laws and the agreements crafted thereunder. It starts with their claim in the LCP (Appendix D of the Local Implementation Program) that the LCP is the "functional equivalent of a master plan."

At its core, our LCP does not address the dearth of parks and open space for Los Angeles County residents, and the hemorrhaging of that valuable resource on the west side as land values rise. Nationally, the urban standard is 6-10 acres per 1,000 residents (LA Times article following the Griffith Park fire). Last fall I found a staff report for a Board of Supervisors' agenda item averring that the County is providing only 12% of its own policy requirement of 4 ac/1,000--and recommending applications to State and Federal sources for \$100,000,000 to purchase parks and open space in unincorporated areas of the County. (Psst! Supes: we already have the land, right here!) Somewhere in the mountain of papers that have passed under my eyes in the last couple of weeks, I noticed that the County's allotment for open space in Marina del Rey is a paltry 3 acres/1,000 residents. And the County has a penchant for "stacking" that open space on top of view corridors--or perhaps it is the other way around--on the premise that one is at ground level and the other is above it, I kid you not. I don't see apartment buildings in Griffith Park; there are no 19-story hotel/timeshares at Whittier Narrows or Bonelli Park. Marina del Rey should at least aspire to a healthy balance because it serves not only the thousands of residents within the Marina but also large numbers of visitors from many other places both within and outside of LA County.

Furthermore, the LCP does not begin to address fresh water sources, wastewater treatment/graywater recycling, green building, emergency evacuations, cumulative traffic planning/alternate transportation and designs that will facilitate positive lifestyle modifications envisioned in the LCP and in some of the promotional materials for the proposed projects promulgated under the Asset Management Strategy. All are highly desirable and most are absolutely critical if the Marina is to remain a vibrant, viable community over the long term. Doubtless I have omitted other major concerns.

Stan's latest claim [SCHC meeting June 13] is that the LCP is the closest thing we have to a master plan--I agree with him (in fact, I was pleased to hear him reiterate what I have opined publicly on several occasions). Unlike a true Master Plan, however, our LCP claims (erroneously, in my opinion) that an overall EIR is not warranted. More to the point, however, is that the County disregards these LCP standards and restrictions anyway. It unilaterally (or possibly with developer collusion) approves major changes in land use, as well as the usurpation of public land for private benefit without thorough or impartial analysis of all impacts. Make no mistake: LA County residents are being systematically cheated out of more and more of our public recreation land. Most County residents are unaware that it is happening--or even that the Marina is public land designated for their recreational use. The County's generous deals to lessees and lack of Lessor oversight

post-development will ultimately consume any near-term financial benefits to the County--and then some. It will also, I believe, exacerbate some of the very crises that the County claims it needs more money for now: health care and law enforcement.

There is much reading to be done! Please also write about this meeting and the related issues in your publications, to promote public awareness and participation. I hope to see you in San Luis Obispo on Thursday.

Together,
We ARE Marina Del Rey,

Nancy Vernon Marino
310-490-1983
310-827-0683 fax
nancyvmarino@aol.com

Deborah Alexander
PO Box 12744
Marina Del Rey, CA 90295
whisperingtale@yahoo
(310) 465-6965

EXHIBIT NO.	8
Application Number	MDR Periodic Review
	1 of 2
California Coastal Commission	

October 16, 2007

OCT 23 2007
CALIFORNIA
COASTAL COMMISSION

John Ainsworth
Deputy Director
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

RE: Redevelopment of Marina Del Rey

Dear Mr. Ainsworth;

As a member of the Marina Del Rey boating community, I am one of many who have become concerned by plans Los Angeles County has for the redevelopment of The Marina. The County has made it clear public input is not welcome, having become happy bedfellows with developers, trying to quickly push through building plans and construction. What consideration, if any, has been given to the environmental impact of increased development, major traffic and congestion on Admiralty & Lincoln (which is already bad) as well as the needs and wants of the community and residents of The County of Los Angeles? What about the wildlife and the impact of increased development on the harbor, which is already questionable at best. County officials have conveniently forgotten this is public property. Public property for public use.

There are 6,000 boats in the Marina, and is therefore one of the largest worldwide. How many people does The County feels can comfortably live in one small area? This a public marina, a place for boats, fish, birds, parks and recreation. Every great city has state/ federal lands, parks or public areas which give people places to escape the grind of daily life, also serving to protect against over-development.

Southern California's havens are its' golden beaches and waterways. It's 2007, and while other major cities are trying to go "green", the only "green" in Los Angeles is lining the pockets of LA County and the developers involved. While we can't stop growth and change, we can make wise choices about how best to use and preserve the small pieces of land we have left in California. Or are we just headed for privatization, like on

the East Coast, where you have to pay to put your towel down on the beach? Where's the urban planner? Who is looking out for the interests of the general public? Who's protecting our environment, and taking steps to make our harbors and beaches less polluted? It's hard to believe that a Woodfin Time-Share Hotel is in the best interest of the general public. The County's vision of The Marina will only be able to be enjoyed by those who can afford it.

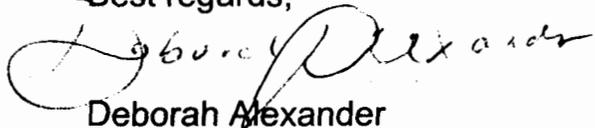
I was sad to hear of the forced closure of Harbor House and Edies Restaurants, and sad to hear PF Changs and Houstons may move in. Sadder yet is the string of hotels planned to be built on Mother's Beach. What about the fate of Burton Chace Park? Will we be saying goodbye to Windjammer's Yacht Club, one of the oldest clubs in The Marina? While the area is in need of an infusion of innovative ideas, does this mean bulldozing the entire city?

What gives a city flavor is a mixture of old establishments, inviting parks and public areas, interesting architecture, all keeping with the surrounding environment. What we find so appealing about tourist destinations such as Tuscany, San Francisco, London, Yosemite, Napa, to name a few, are not food and hotel chains, but rather grand spaces or landscapes, old or innovative architecture, little mom and pop establishments, charm and character, things which define a place. Otherwise, it's strip mall, after strip mall. Anywhere, USA. Marina Del Rey is built around a grand marina, a place in where people of all socioeconomic groups can enjoy a myriad of outdoor and boating activities. A place which provides a home to many types of birds and aquatic life.

We live in a time when we have a responsibility to look out for the health of our environment. Al Gore won the Nobel Peace Prize for helping bring awareness to the plight of Earth. Yet Los Angeles is still plagued by out of control building, disposable architecture, traffic and pollution. It has become an expensive city, with no place for those who cannot afford it.

Here is a golden opportunity to do something great. When the developers are long gone and the politicians have retired, the rest of us will have to live with what they have left behind. We have a voice, and as a members of this community, we have a right to say how we would like our community to be shaped. Please help protect the Marina against development gone awry. Please help to protect this area through responsible and innovative growth and change.

-Best regards,



Deborah Alexander

EXHIBIT NO. 9
Application Number MDR Periodic Review
California Coastal Commission

From: Maureen [maureen_only@hotmail.com]

Sent: Thursday, May 25, 2006 9:13 PM

To: Periodic Review

Subject: LCP into compliance

Ms. Pam Emerson
California Coastal Commission
South Coast District Office
200 Oceangate Blvd., 10th Floor
Long Beach, CA 90802-4325

Re: Marina del Rey LCP Review

Dear Ms. Emerson,

In regard to the Coastal Commission's May 25, 2005 Periodic Review of the Marina del Rey Local Coastal Program, I would like to express my support for the commission's 54 recommendations to bring the LCP into compliance with Coastal Act policies.

Our County officials are protesting your recommendations because, if they complied, they would have no basis for their support of several redevelopment projects currently in the approvals process.

Developers are exceeding or disregarding even existing LCP standards by:

- "transferring" development units from parcels located in other development zones within the Marina in order to design buildings that are larger than the LCP allows
- proposing offsite parking to satisfy parking requirements because there is no room in their oversized projects for even the minimum parking needed
- proposing excessive hotel development on waterside parcels because hotels are exempt from height limitations imposed on other end-use projects
- proposing development of every single parcel in Marina del Rey

I object to the way redevelopment projects are being presented to the public in piecemeal fashion. We learn of these projects one by one, with no clear information about what overall redevelopment will be, and no opportunity to respond to that overall vision. Without knowing the context, how can we make an informed decision about the appropriateness or desirability of any particular project?

Please remain steadfast in your protection of Marina del Rey's public resources from private development that is not consistent with the best interests of the people. Our coastal resources are a precious asset, and our public lands must give their preservation and enhancement highest priority.

Thank you for your consideration.

Sincerely,

Maureen Hunt

3614 Grand Canal

Marina Del Rey, CA 90292

California Coastal Commission
Att: Chair and Executive Director
Re: Marina Del Rey Local Coastal Program Review 4/9/07

EXHIBIT NO.	10
S Application Number	MDR Periodic
	Review
CC	1 of 2
	California Coastal Commission

THE STATE OF CALIFORNIA IS AND HAS BEEN VIOLATING Article VI, Clause 5, of the CONSTITUTION OF THE UNITED STATES.

THE STATE OF CALIFORNIA HAS BEEN AND IS NOW VIOLATING THE COASTAL ZONE MANAGEMENT ACT OF 1972 16 U.S.C. § 1453. Definitions (Section 304)(1, 10, 18)

THE STATE OF CALIFORNIA IS NOW VIOLATING US. SUPREME COURT DECISIONS BY EXTENDING LAND USE PLANS UNDER THE COASTAL ACT ONTO FEDERAL LANDS, MARINA DEL REY. CALIFORNIA COASTAL COMMISSION V. GRANITE ROCK COMPANY. (1986) 162 U.S. 572.)

SOURCE: <http://coastalmanagement.noaa.gov/about/czma.html#section304>

THE CALIFORNIA COASTAL ZONE MANAGEMENT PLAN DEFINES MARINA DEL REY AS EXCLUDED FROM THE COASTAL ZONE.

The National Coastal Zone Management (CZM) Program is a voluntary partnership between the federal government and U.S. coastal states and territories authorized by the Coastal Zone Management Act of 1972.

Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

THE CALIFORNIA COASTAL COMMISSION HAS APPROVED LAND USES IN AN EXCLUDED AREA BY APPROVING THE MARINA DEL REY LOCAL COASTAL PLAN WHICH IT NOW REVIEWS.

16 U.S.C. § 1453. Definitions (Section 304)

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917, (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1801 et seq.), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705), as applicable. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents

(10) The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 1456(g) of this title.

(12) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this chapter, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(18) The term "water use" means a use, activity, or project conducted in or on waters within the coastal zone.

(10) The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 1456(g) of this title.

CALIFORNIA COASTAL ACT DEFINES MARINA DEL REY AS EXCLUDED FROM THE COASTAL ZONE.

Section 30102 of the California Coastal Act defines the California Coastal Plan.

Section 30700 references exclusion of wetlands, estuary, or existing recreation areas from Article One Findings and General Provisions of the Chapter and states those excluded lands are indicated in Part 5 of the coastal plan.

According to part 5 of the California Coastal Plan Marina del Rey excluded areas are indicated as excluded by the map legend on the back page of the plan under the Coastal Zone Management Act of 1972.

THEREFORE THE STATE OF CALIFORNIA COASTAL COMMISSION AND OTHER BODIES OF THE STATE SUCH AS THE COUNTY OF LOS ANGELES NOW STAND IN VIOLATION OF THE COASTAL ZONE MANAGEMENT ACT OF 1972 16 U.S.C. § 1453. Definitions (Section 304) (1, 10, 18). NOCITC OF THIS VIOLATION IS HEREBY SUBMITTED TO THE CALIFORNIA COASTAL COMMISSION AND THE REQUEST IS NOW MADE TO ENFORCE THE COASTAL ZONE MANAGEMENT ACT OF 1972 IN MARINA DEL REY.

Submitted by John A. Davis on my own behalf and on the behalf of GrassRoots Coalition a California non profit corporation.

PO Box 10152
Marina del Rey Ca 90045

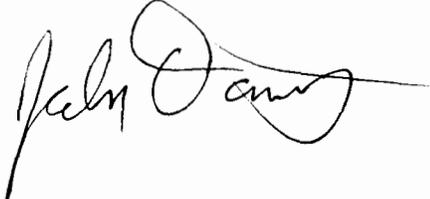


EXHIBIT NO.	11
Application Number	MDR Periodic
	Review
	1 of 2
California Coastal Commission	

REC
South C
ME
CALIF
COASTAL

California Coastal Commission
 Att: Chair and Executive Director
 Re: Marina Del Rey Local Coastal Program Review 5/23/07

Honorable Commissioners,

Marina del Rey is a project authorized by the United States and is listed in the California Coastal Zone Management Program in section D as land under the Former ownership of the United States and excluded as such pursuant to **COASTAL ZONE MANAGEMENT ACT OF 1972 16 U.S.C. § 1453. Definitions (Section 304) (1, 10, 18).**

SEE THE COASAL ZONE MANAGEMENT PLAN FO R CALIFORNIA SECTION D

Marina del Rey is funded and carried out by the federal government and affects the Coastal Zone resources and must be reviewed by the Commission for consistency with the federally approved Coastal Management Program, including the Coastal Act (PRC 30519(b), and 30416(d).

ATTACHMENT 1, Permanent Responsibilities of the California Coastal Commission.

The County of Los Angeles has failed to inform the Commission that a underground gas and or oil transmission line is located adjacent to major roads in Marina del Rey and that two other lines were discovered beneath the line when it recently ruptured. The lines are not on dig alert maps and Never mentioned in Environmental Reports commissioned by the County. Furthermore the County has directly lied about the proximity of the Southern California Gas Company underground storage field in relation to all Coastal Development Permits for Marina Two LLC and Marina Pacific Associates.

Methane and other gases associated with a sour oil field are being released into the environment By Sempra Gas Co. in Marina del Rey which is excluded from the Coastal Zone and adjoining areas located in the Coastal Zone.

Theses gases such as Hydrogen Sulfide are deadly to wildlife. Old pipelines may contain radioactive substances that may also affect Coastal Zone Enviroment adversely.

I hereby submit the following materials for the review of the Coastal Commission as current and abandoned oil and gas wells and transmission lines and underground storage may contribute to soil and water contamination in the Coastal Zone causing adverse affects on the Coastal Zone Environment and the release of methane gas into the atmosphere by Southern California Gas Company contributes to global warming, sea water temperature increase and the rise of sea level.

- ATTACHMENT 2 Playa del Rey Storage Field Map**
- ATTACHMENT 3 Playa del Rey Storage Field Map surface and bottom hole well location map.**
- ATTACHMENT 4 DOG Pipeline Management Map for the Playa del Rey Storage Field.**

The pipeline that ruptured was not reported to the Coastal Commission by the County of Los Angeles even though hazmat teams arrived.

All maps were purchased by myself from the State of California Department of Conservation Division of Oil and Gas and each copy transmitted to the Commission by myself are true and accurate copies.

It is the duty of the Coastal Commission to review any potential adverse effects on the environment according to the standards set by the California Environmental Quality Act as set forth in the California Coastal Act.

Sincerely,

**John Davis
PO 10152 Marina del Rey Ca, 90295**



EXHIBIT NO.	12
Application Number	MDR Periodic Review
	10F3
	California Coastal Commission

CC
NATURAL RESOURCE

November 9, 2005

Attn. Pam Emerson
Los Angeles Area County Supervisor
California Coastal Commission
South Coast District Office
200 Oceangate Blvd., 10th floor, Suite 1000
Long Beach, CA 90802

Re: Comments on the Marina del Rey Local Coastal Program Periodic Review

Dear Commissioners and Executive Director:

On behalf of NRDC (the Natural Resources Defense Council), an environmental non-profit organization with over 1 million members and activists, 250,000 of whom are Californians, we write to comment on the Marina del Rey Local Coastal Program ("LCP") Periodic Review. The Marina del Rey area ("Marina") provides indispensable natural resources, and the LCP needs stronger provisions to protect wildlife and limit development.

Since the LCP was last examined in 1996, the Marina has come under increased pressure as a result of massive development in the region. Stronger measures are now needed to protect the Marina's natural resources and, accordingly, we propose the following improvements to the LCP: (i) focus redevelopment and the protection of wildlife in a manner that promotes ecotourism; (ii) add protection for marine resources that are currently ignored under the LCP; (iii) designate environmentally sensitive habitat areas ("ESHA"); and (iv) revert certain parking lot areas back to wetlands.

First, ecotourism is an untapped resource for the County of Los Angeles. The LCP can help both the economy and the environment by encouraging the redevelopment of Marina del Rey as an ecological tourist destination. Instead of considering the Marina as an exclusively residential enclave, the LCP should create opportunities for the general public to view and learn about the many species of plants and animals. For example, building aquariums, education centers, and viewing towers, and encouraging small, ecotourism businesses are all feasible options. While we are not supporting new development that infringes on wildlife habitat, the LCP can take steps to encourage *redevelopment* that capitalizes on this synergy of wildlife preservation and ecotourism.

Second, there are several marine species that were not previously considered in the Marina LCP, but are now in need of protection. These species include, but are not limited to, harbor seals, sea lions, sea otters, California least terns, California brown pelicans, herons, and egrets. The LCP should take steps to ensure these species are afforded greater protection and refuge. For example, seals and seal lions need haul-out locations in the Marina because much of their beaches have been taken by development, and marine life such as fish, jellies, and clams can be protected by the simple measure of not scrapping the sides of walls in the Marina. More generally, fire works should be prohibited within Marina del Rey because of the negative effects on wildlife, and all functioning wetlands should be given a minimum of 100 foot buffers to protect their ecosystems.

Third, the LCP should immediately designate ESHAs before future development is proposed. Although having more data and wildlife documentation is always helpful, the reality is we need to protect these areas now or they will be slated for other uses. And we have enough information to do so. There are six ESHAs that should be designated:

- (i) a rookery for the Great Blue Herron, Cormorant, and White-tailed Kite that encompasses the entirety of their habitat in the west end of Fiji Way, near Villa Venetia, and the surrounding Cypress trees, palm trees at the UCLA boat house, and trees near the Sheriff Station and Shanghai Reds Restaurant and across the water at one of Doug Ring's developments;
- (ii) the Oxford Lagoon and surrounding areas, as used for nesting by herons, egrets, and other bird species;
- (iii) roosting areas for egrets and herons at the end of Bora Bora Way surrounding the parking lot near the gas dock;
- (iv) Area A which is owned by the State of California and should be both returned to the Marina LCP and designated as an ESHA;
- (v) the waters of the Marina which are full of life and provide the foundation for ecological systems; and
- (vi) Parcel 9 at Tahiti Way and Via Marina which should be both declared an ESHA and restored to coastal marsh and transition wetland habitat.

In addition, the ESHAs should be clarified to include legal principles from the Bolsa Chica decision, including making it clear that ESHAs cannot be "moved" and that wetlands, regardless of prior degradation, all deserve the same protection under the California Coastal Act.

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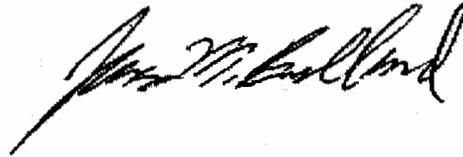
California Coastal Commission
NRDC Support Letter, page 3
November 9, 2005

Finally, there are two parking lots that merit consideration: The parking lot at Dock 52 on Fiji Way should continue to be used and designated for free parking to provide public access to the wetlands and further promote ecotourism; and the TEMPORARY 158 parking lot, originally used for the 1984 Olympics, should be returned to wetlands as agreed under the original permit that allowed its construction.

NRDC also supports the substance of the June 6, 2005 comment letter to the California Coastal Commission from Marcia Hanscom, Managing Director, Coastal Law Enforcement Action Network, and Executive Director, Wetlands Action Network.

Thank you for considering our comments. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "James Birkelund", written in a cursive style.

James Birkelund
Staff Attorney



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EXHIBIT NO. 13
Application Number
MDR Periodic
Review
1 of 11
California Coastal Commission

RECEIVED
South Coast Region

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July 10, 2007

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California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
Via FAX: (562) 590-5084

CALIFORNIA
COASTAL COMMISSION

~~CALIFORNIA
COASTAL COMMISSION~~

RE: Revised Staff Recommendations: Report to Los Angeles County on Marina del Rey Periodic Local Coastal Program Review (Th15a)

Dear Coastal Commissioners:

On behalf of Heal the Bay, a non-profit environmental group with over 12,000 members dedicated to making Santa Monica Bay and Southern California coastal waters safe and healthy for people and marine life, we have reviewed the Revised Staff Recommendations: Report to Los Angeles County on Marina del Rey Periodic Local Coastal Program (LCP) review. We have several concerns about the staff recommendations and review, particularly in regards to the marine resources and water quality section of the document. Coastal Act policies 30230 and 30231 require that marine resources and water quality be protected; however, some of the recommendations within the LCP review do not maintain the protections outlined in these policies.

Our overarching concern is that the entire LCP review takes a general tone biased towards enabling development at the sacrifice of protecting coastal biological and aquatic resources. This tone is continually reflected throughout the recommendations with frequent use of phrases such as, "to the extent feasible," without including clauses such as "to ensure protection of marine resources and water quality." The mission of the Coastal Commission is to "protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations." Nowhere in this mission does it provide caveats such as, "protect coastal resources when feasible." Clauses like this only serve to enable development at the expense of causing detriment to coastal resources; we recommend that phrases such as "when feasible" within the Coastal Commission recommendation be eliminated (see Appendix 1 for specific language suggestions). If general language like this is used in planning documents, it must be accompanied with distinct, balanced criteria under which to evaluate feasibility. Without doing so, a feasibility determination may be solely based upon economic considerations, without accounting for marine resource benefits within a project analysis. At a minimum, specific criteria are necessary to inform a feasibility determination in order to ensure that marine resources and water quality are adequately protected and provide the public an element of transparency in the decision-making process.



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Our specific concerns are provided in more detail below, and recommendations for language changes within the staff report are attached in Appendix 1.

1. The LCP should not be reviewed in two separate iterations

At present, the majority of the Marina del Rey LCP is being reviewed at this July 2007 Coastal Commission meeting, while the Environmentally Sensitive Habitat Area (ESHA) component of the LCP review has been deferred to a future meeting. Although separating out the more contentious section of the LCP may ease the burden of review for the Coastal Commission and staff, we believe it has negative policy implications.

While the seven separate articles within Chapter 3 of the Coastal Act (Coastal Resource Planning and Management Policies) may allow for a split review, dividing the Marina del Rey LCP review may result in a rough set of recommendations that neglect some important interconnections between these articles. For example, biological resources and ESHA are closely connected with water quality and marine biological resources. By reviewing these two sections of the LCP in isolation, key recommendations that apply to protections for all of these resources may be lost in one or both of the reviews. The most likely outcome is for decisions made in the water quality and marine biological resources section to limit commission flexibility on the ESHA and biological resources section. Marina del Rey is an area of particular importance when considering management of the land-sea interface. It is an area with extensive development, which receives high recreational use and encompasses wetland and ESHA regions. Without comprehensive review, the Coastal Commission's recommendations regarding ESHA, marine resources and water quality will be fragmented and incomplete.

Furthermore, dividing the Marina del Rey LCP review may only serve to complicate matters surrounding this item for the Coastal Commission in the future. In addition to the split review, there is little direction provided within the staff report regarding the responsibilities of Los Angeles County to report back to the Coastal Commission regarding its plans to update the Marina del Rey LCP. This will only cause unwarranted confusion about the already complex LCP review and amendment process, and may result in a product that does not provide adequate ESHA, marine resource and water quality protections.

2. The staff recommendations fail to fully integrate LCP implementation and protection of water quality

We applaud Coastal Commission staff for providing recommendations to integrate existing water quality policies and regulations into LCP planning and implementation. However, the recommendations fail to include a complete suite of local and state policies and regulations that address water quality. For example, both staff recommendation #6 and #8 advise Los Angeles County to update its LCP policies and requirements that



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address reducing polluted runoff and water quality impacts resulting from development to be consistent with the County's National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit, Standard Urban Stormwater Mitigation Plan (SUSMP), and adopted Total Maximum Daily Load (TMDL) requirements under the Clean Water Act. [redacted] does not recommend including the integration of additional [redacted] water quality improvement and protection policies, such as the State Nonpoint Source Control Plan and Contaminated Sediment Task Force recommendation. These and other related programs (described on pages 55-58 of the Marina del Rey Periodic LCP Review revised staff recommendations document), which are essential in improving California's water quality, have been created or modified since the 1996 LCP update and should be integrated into current LCP policies and requirements.

As mentioned in the staff report, Marina del Rey continually suffers poor water quality. Presently, Marina del Rey has TMDL requirements for both toxics and fecal bacteria. The Marina's beaches and waters are significant public recreation areas, frequented by beachgoers, kayakers, outrigger paddlers, sailors and other water enthusiasts. Mother's Beach often gets Cs, Ds, and Fs on Heal the Bay's Beach Report Card and the beach frequently violates Marina del Rey Beach Bacteria TMDL requirements. The Marina is also home to a diversity of marine life. Protection of water quality for recreation and biological productivity is required under Chapter 3 of the Coastal Act, and thereby should be a high priority for the Coastal Commission and reflected in its review of the Marina del Rey LCP.

In addition to its importance as a land use planning document for this region, the LCP should be viewed as a principal implementing document for these TMDLs. As such, it is imperative that the LCP contain provisions and policies that protect water quality in Marina del Rey by eliminating bacteria and pollutant loading. These requirements are critical to cleaning up the Marina. For example, Marina del Rey is currently mandated under its Beach Bacteria TMDL to meet state beach bacteria water quality standards with zero exceedences during the AB 411 time period (April 1st -October 31st). Compliance with the Beach Bacteria TMDL became effective as of April 1st, 2007. Yet, Los Angeles County is currently in violation of the Clean Water Act, as Mother's Beach has already had numerous water quality exceedences for beach bacteria this year. It is imperative that these bacteria [redacted] requirements, the Marina del Rey toxics TMDL requirements/ [redacted] requirements, NPDES Municipal Stormwater permit requirements, and other/ [redacted] water quality requirements be incorporated into the LCP at a minimum by reference, including permit amendments and compliance deadlines. By including these water quality requirements, the Commission will maintain the right to enforce when provisions within the Marina del Rey LCP are violated, and ensure that the County's General Plan is best informed by all water quality requirements within in the region.

We urge the Commission to amend [redacted] to read, "...related provisions of the LCP, the County's National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit, Standard Urban Stormwater Mitigation Plan (SUSMP)

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requirements, *Total Maximum Daily Load (TMDL) requirements, State Nonpoint Source Control Plan, and Contaminated Sediment Task Force recommendations* are integrated." We also urge the Commission to amend **recommendation #8^f** to read, "...reviewed for conformance with the requirements contained in the Los Angeles County Municipal NPDES Stormwater permit and SUSMP requirements, any adopted TMDLs, applicable provisions of the Santa Monica Bay Restoration Plan, State Nonpoint Source Control Plan, Contaminated Sediment Task Force recommendations, and applicable standards and requirements contained in the Marina del Rey LCP."

3. The recommended Marina Water Quality Management Plan should include additional components to be fully effective, including monitoring and mechanisms to minimize trash pollution

We also support staff **recommendation #12** to revise the LCP to include a Marina Water Quality Management Plan (MWQMP). The inclusion of such plan will help improve water quality in the Marina; however, as currently outlined the MWQMP will not be fully effective.

Firstly, staff recommends that Best Management Practices for marinas and recreational boating activities be implemented to "reduce" the release of pollutants to surface waters. Although we support the use of Best Management Practices (BMPs) to improve water quality, the current recommendation is weak and provides no assurance to the public that the release of pollutants will actually be controlled. Instead, BMPs should be required to "eliminate" the flow of pollutants to surface waters that cause or contribute to impaired and/or water quality standard exceedences. For no reason should pollutants be allowed to degrade the Marina's waters.

The criteria listed within the staff recommendation are a good first-step at controlling against water pollution in the Marina; however, some essential components are missing to ensure the water quality management plan is comprehensive. Marina del Rey is a high use, densely populated area, and because of this, is plagued with trash. As a lead agency of the California Boating Clean and Green program, **the Coastal Commission should recommend that Marina del Rey include a trash component in its MWQMP.** Marine debris is a problem that plagues the California coast, and it is estimated that 80% of marine debris comes from land-based sources. Presently there is a lack of adequate recycling and trash receptacles in the Marina area. At a minimum, the MWQMP should require that sufficient recycling, trash, and cigarette butt receptacles be placed in convenient locations around the Marina and that these receptacles are covered and frequently serviced. Full capture devices, such as trash screens should also be placed on storm drains throughout the Marina del Rey area. As it is now, trash easily escapes from too few overflowing waste receptacles and city recycling efforts are ignored, thereby polluting nearby beaches and waters.



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Furthermore, a **monitoring and assessment component must be included** within the MWQMP to evaluate its effectiveness. **This monitoring should include both a water quality and biological resources component.** The Coastal Commission is responsible for protecting coastal marine flora and fauna. Therefore to truly evaluate the effectiveness of the LCP and whether or not it protects, conserves, restores, and enhances environmental and human-based coastal resources, both water quality and marine biological resources must be monitored in the Marina. Without monitoring BMPs to control against stormwater and dry-weather runoff, proper sewage disposal in the marina, hazardous substance management, and other provisions within the MWQMP, there is no way to assess whether or not the program is actually benefiting water quality and marine resources for future reviews. *To this end, we urge the Coastal Commission to include an additional criterion within the recommended MWQMP that states, "A monitoring and assessment component to evaluate the effectiveness of the MWQMP."*

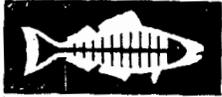
Additionally, the MWQMP should include a monitoring provision for BMPs required by the plan. Pursuant to the Los Angeles County SUSMP, design, source control, and treatment control BMPs shall be designed to eliminate or minimize dry weather runoff and treat runoff from the 85th percentile storm event. Although SUSMP requirements help manage runoff, it is also imperative that the effectiveness of these BMPs is monitored. As such, the Coastal Commission should include a monitoring provision within its MWQMP that states, *"All BMPs implemented under the MWQMP should be monitored to ensure that performance achieves at least the 75th percentile of BMP performance on the EPA-ASCE database."*

4. **The Coastal Commission should include a recommendation that Marina del Rey provide updated information about existing marine resources and biological monitoring, and recommend continued monitoring of these resources**

The staff review lacks any discussion on the current health of existing marine resources. The staff review simply relies on the 1996 certified Marina del Rey LCP as sufficient discussion of marine resources for the 2006 periodic review. Unfortunately, most of the marine resource data used in the 1996 certified Marina del Rey LCP are 15 to 30 years old depending on the resource referenced.

The periodic review is intended to examine whether the Marina del Rey LCP is "being effectively implemented in conformity with the policies of the Coastal Act," yet it is presently based on outdated data. How can the Coastal Commission assess whether the Marina del Rey LCP is protecting marine resources, as required by section 30230 of the Coastal Act, if no current biological monitoring data are utilized in such assessments? Furthermore, how can the Coastal Commission determine whether the biological productivity or integrity of the Marina's resources are being impacted if there are no baseline figures, stated numeric goals, and milestones included in the Marina's LCP for future reviews?

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The Marina del Rey LCP review should include an updated assessment of existing biological resources (separate from the marine resources deemed ESHA) to serve as a baseline for this and future reviews. It should also outline an ongoing monitoring program under which to assess the state of marine resources and evaluate the cumulative impacts from development within the Marina. The whole point of protecting and enhancing existing marine resources is to prevent their degradation. Without present marine biological data and sufficient monitoring, it is impossible to understand whether or not the policies within the Marina del Rey LCP are truly protecting marine resources.

Marina del Rey is home to a diversity of marine life. It serves as a nursery for fish and is a source of forage for the endangered California Least Tern and California Brown Pelican. Because of the Marina's important ecosystem roles, it is imperative that its biological resources be protected, enhanced, and restored. To adequately implement this charge under the Coastal Act, marine biological resources in Marina del Rey should be actively monitored and their status periodically assessed. With a 5-year cyclical nature, the LCP review is an appropriate venue to conduct and report on such assessment.

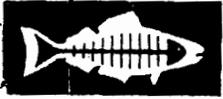
We urge the Coastal Commission to recommend Los Angeles County assess and report back on the status of marine biological resources within this and future periodic reviews which can be achieved by adding a recommendation to the review that reads, "*Los Angeles County should assess and report back to the Commission during the Marina del Rey LCP periodic review process on the status of marine biological resources, including seabirds, based upon updated biological monitoring data.*"

5. The review should recommend a plan for water reuse and conservation

While the Marina del Rey LCP review contains extensive comments on existing water quality policies and suggested BMP recommendations for improving water quality, it stops short of recommending any water reuse and water conservation measures as a mechanism for preventing dry weather runoff. The staff report simply states, "...while no suggested recommendation is made, this [water reuse and conservation] is an area where the County could factor in policy direction in updating its Marine Resources/Water Quality components of the LCP to direct and encourage water conservation and reuse measures in landscaping plans."

The Coastal Act requires protection of water quality, and specifically states in section 30231:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and



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entrainment, *controlling runoff, preventing depletion of ground water supplies* and substantial interference with surface water flow, *encouraging waste water reclamation*, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.
(emphasis added)

With explicit provisions within Coastal Act section 30231 (italicized above) that support water reuse and conservation, it is impossible to understand why the Marina del Rey periodic LCP review stops short of recommending water reuse and conservation as mechanisms to protect water quality in the Marina. In fact, there is no discussion in the review as to why any dry weather nuisance runoff is permissible (it is illegal under the Los Angeles County Stormwater permit), nor is there any discussion in the water quality section of integrated water resources management. The example of Mission Bay is illustrative of this point. San Diego spent considerable resources eliminating nuisance runoff and enhancing irrigation efficiency; the end result is a cleaner Mission Bay and Bay beaches. Addressing and integrating wastewater and runoff issues with potable water needs in Marina del Rey is an essential component of comprehensive basin-wide water resources planning. At a minimum, the Coastal Commission should recommend a provision within the LCP requiring that there be no dry weather runoff discharged into the Marina year-round. We also recommend the Commission require water reuse and smart irrigation (areas adjacent to Playa Vista are already dual plumbed) in Marina del Rey. Water reuse and conservation measures are essential tools in reducing the amount of polluted runoff discharged into Marina del Rey, and should be included in the LCP.

As such, we urge the Coastal Commission to include the following recommendation in its Marina del Rey LCP review, ***“The LCP should be amended to require water reuse and conservation measures, including, but not limited to smart irrigation.”***

Provisions addressing water reuse and conservation are currently being incorporated in other planning documents, which could serve as a model for the Marina del Rey LCP. For example, the draft Ventura MS4 permit includes a provision that would require all new development and redevelopment projects to integrate Low Impact Development (LID) principles into project design. LID is a stormwater management and land development strategy that emphasizes conservation and the use of onsite natural features integrated with engineered, small-scale hydrologic control to reflect predevelopment hydrologic functions. LID is primarily a source control strategy that minimizes the need for large sub-regional and regional treatment control BMPs. By incorporating provisions like this in LCPs, the Coastal Commission could set a statewide standard for preventing water quality and habitat degradation from stormwater runoff.



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6. The review should recommend a restoration plan for the Oxford Retention Basin

The Oxford Retention Basin is a tremendous source of bacterial pollution to the Marina, and has been causing water quality problems in this region for over 20 years. This historic wetland is now a stormwater detention basin that drains directly to the Marina. It is still an important bird habitat and home to a substantial population of nesting night herons. Presently, the Oxford Retention Basin is surrounded by non-native and invasive vegetation. Heal the Bay has long advocated that this area be restored to provide improved wetland habitat. Restoring this area will enhance its importance as a natural resource, and ensure that it becomes an efficient tool in pollutant removal.

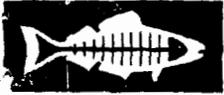
We urge the Coastal Commission to prioritize in its Marina del Rey LCP review recommendations that Los Angeles County appropriately restore the Oxford Retention Basin (which may include dredging to remove contaminants) by adding the following recommendation, "The LCP should be updated to include a provision that prioritizes full restoration of Oxford Retention Basin to benefit both water quality and biological resources."

7. The Coastal Commission should include a recommendation that the County require pumpout services to be included in all Marina leases

While current bacteria reduction measures being implemented by the Los Angeles County are important, they are unlikely to solve the bacteria problem as long as there remains the potential for individual boaters to illegally discharge the contents of their heads into Marina waters. The Marina del Rey LCP review should recommend that the County require pumpout services be included in all leases in the Marina. This is analogous to homeowners or apartment dwellers that pay for regular trash collection whether or not they generate trash; in this case, slip leaseholders would pay for biweekly mobile pumpout service as part of the monthly lease, regardless of whether the head has been used. This would eliminate the need for individual boaters to visit pumpouts each time they use their boat, and would drastically reduce the inclination of any boater to illegally discharge. Stationary pumpout services would remain available for visiting boaters and for leaseholders who need to pump in between visits from the mobile service that would be included in their lease. *To this end, we recommend the Coastal Commission include a recommendation in its review that states, "The LCP should be updated to require biweekly mobile pumpout services be included in all leases in the Marina."*

Conclusion

Marina del Rey is an area of abundant coastal development, recreational use and biological resources. The Marina del Rey LCP review is of particular importance because 1) the LCP is an implementing document for water quality and biological protections; 2) it provides recommendations upon which the public can actively advocate before local governments; and 3) it provides agencies a goal to reach for to achieve effective resource



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protections. As an area that is heavily impacted by stormwater and dry-weather runoff, and that receives extensive recreational use, it is imperative that the LCP be as up-to-date and thorough as possible when considering marine resources, water quality, and ESHA protections. We urge the Commission to consider and implement the recommendations provided within this letter.

Thank you for the opportunity to comment. Please contact us at 310.451.1500 if you have any questions.

Sincerely,

Sarah Abramson, MESM
Staff Scientist

Mark Gold, D.Env
President

Alexandra Tower, PhD
Director of Science and Policy

James Alamillo
Urban Programs Manager



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APPENDIX 1: RECOMMENDED LANGUAGE CHANGES TO THE STAFF REPORT

Marine Resources/Water Quality Staff Recommendation #5, page 22:

Staff recommendation #5 states, "Development shall maintain, enhance, and where feasible restore marine resources..." although no criteria are given to determine feasibility. *The clause "where feasible" leaves a lot of room for interpretation as to what constitutes feasibility, and should be deleted.* To adequately protect marine resources, specific, balanced criteria to determine feasibility must be stipulated. Without doing so, a feasibility determination may be solely based upon economic considerations, without accounting for marine resource benefits within a project analysis. At a minimum, detailed criteria are necessary to inform a feasibility determination in order to ensure that marine resources and water quality are adequately protected.

Marine Resources/Water Quality Staff Recommendation #9a, page 23:

Staff recommendation #9a calls for source control and treatment BMPs to "eliminate or minimize to the extent feasible dry weather flow to storm drains or bays." The phrase "to the extent feasible" provides undue ambiguity as to what BMPs will actually achieve appropriate protections against dry weather flow. *Instead, this language should be replaced with "eliminate dry weather flows except those exempt under the Los Angeles County Stormwater permit."*

Marine Resources/Water Quality Staff Recommendation #10a, page 23:

Staff recommendation #10a advises that all projects should be designed to "avoid or minimize the discharge of pollutants that may result in water quality impacts." The term "avoid or minimize" provides a caveat under which developers may seek to weaken water quality protections. *Instead, this recommendation should simply state "prohibit the discharge of pollutants that cause or contribute to receiving water impairment or water quality standard exceedences..."* At a minimum, the Coastal Commission should recommend that discharge of any dry weather nuisance flows be prohibited in the marina year-round.

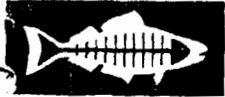
Marine Resources/Water Quality Staff Recommendation #10e, page 24:

Staff recommendation #10e states, "where feasible, incorporate on-site retention and infiltration measures to slow and reduce the amount of runoff discharged from the site." Although we applaud the recommendation to include on-site retention and infiltration measures to protect water quality, *we are again concerned about the terminology, "where feasible." This phrase is ambiguous and fails to provide direction regarding what is and is not acceptable to the Coastal Commission, and therefore should be deleted.*

Marine Resources/Water Quality Staff Recommendation #10i, page 24:

Staff recommendation #10i recommends that all development "avoid causing or contributing to an exceedence of any applicable water quality standard in receiving water or an exceedence of any TMDL load allocation for the source represented by the development." This recommendation is in direct conflict with the federal Clean Water Act, under which it is

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unlawful to contribute to any water quality standard exceedences as set by TMDLs. We urge the Coastal Commission to strengthen this recommendation by *replacing it with the language, "prohibit discharges that cause or contribute to an exceedence of any applicable water quality standard in receiving water or an exceedence of any TMDL load allocation for the sources represented by the development."*

Marine Resources/Water Quality Staff Recommendation #12, page 25:

Staff recommendation #12 states that "BMPs for marinas and recreational boating activities shall be implemented to reduce release of pollutants to surface waters." As previously stated, permitting the discharge or release of pollutants into surface waters is in direct conflict with Coastal Act section 30231, which requires water quality to be protected for both marine resources and human health. *We recommend the Coastal Commission amend this provision by replacing the term "reduce" with "eliminate."* At a minimum, the Coastal Commission should recommend that discharge of any dry weather nuisance flows be prohibited in the marina year-round.

EXHIBIT NO.	14
Application Number	MDR Periodic Review
California Coastal Commission	

-----Original Message-----

From: Tony Medley [mailto:reviews@tonymedley.com]

Sent: Wednesday, July 11, 2007 7:57 AM

To: John Ainsworth; Deborah Lee

Cc: Nancy Marino; OurMdR@aol.com; gary@argienews.com; roger@venicepaper.net;

ASarabia@goboatingamerica.com; tibbyrothman@venicepaper.net; steve.lopez@latimes.com; Jack Leonard;

alison.hewitt@la.copleynews.com; vince@argienews.com; cindy.chang@aya.yale.edu; Calendar@freevenice.org;

kristin.agostoni@dailybreeze.com; citynews@pacbell.net; CarolHector@aol.com

Subject: Meeting in SLO

To: Deborah Lee

Jack Ainsworth

I've been a sublessee in Marina del Rey since 1975. It is people like me who have made the Marina a success. Without us the lessees would have nobody to whom to lease. For more than ten years I've read the reports of meetings before the Small Craft Harbor Commission. It has been disheartening to read how the presentations by people like Nancy Marino and Fred Newman and others are politely listened to and then ignored by the Commissioners.

Now one of the most important meetings on the future of the Marina is taking place. But is it taking place in a location convenient to sublessees to appear? The answer to that is a swift NO! The meeting on the future of Marina del Rey is taking place more than 300 miles away, in San Luis Obispo.

I object to this choice of location for this meeting. I think that it is a transparent ploy to keep people like me, people who love the Marina as it was contemplated when it was planned in the late '50s, as a small craft harbor and low rise residential area, from attending. The County wants to increase population and traffic so it can increase revenue. But it knows that that is contrary to the Marina's charter, and contrary to the wishes of those of us who live and work here. We never get a vote in what happens. The County doesn't care what the 10,000 sublessees think and want for their homes and places of business. If we proposed that the future of the Marina be determined by a vote of those of us who live and work here, the County would reject that out of hand. It doesn't care what we desire for our homes and places of business. The County only listens to the three or four major developers, the prime lessees, and ignore those of us who make it work.

It is not the function of government to maximize profit. It is the function of government to govern in accordance with the wishes and best interests of the governed. The County's primary objective in running the Marina is to maximize profit. The wishes of those it governs in the Marina are never considered by the County. Since the sublessees have no vote, we have no way to influence what the County does with the Marina we love and support.

Now it doesn't even want to listen to us, so it schedules its important hearing in San Luis Obispo. I object, and ask that the meeting be rescheduled so that it takes place in a location in Los Angeles County where the sublessees can attend.

Tony Medley

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

Wetlands Action Network
protecting & restoring wetlands along the Pacific migratory p

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EXHIBIT NO. 15
Application Number MDR Periodic Review
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California Coastal Commission

RECEIVED
South Coast Region

JUN 15 2007

CALIFORNIA
COASTAL COMMISSION

June 6, 2005

The Honorable Meg Caldwell, Chair
& Honorable Commissioners
Mr. Peter Douglas, Executive Director
California Coastal Commission

re: Marina del Rey Local Coastal Program Periodic Review
hand delivered to staff and Commissioners

Dear Chair Caldwell, Commissioners and Mr. Douglas:

Thank you for the opportunity to comment on the Marina del Rey Local Coastal Program (LCP) Periodic Review. We applaud staff for undertaking this effort and pause to thank the Coalition to Save the Marina for its litigation that caused this periodic review to rise to the top of the stack of workload the Commission is in need of completing.

We are especially grateful because it seems that the time is right to revisit many of the decisions made by your predecessors in 1996. It is true that there is new information since 1996, as well as emerging issues that were not fully known nor appreciated when the LCP was last changed and approved.

Cumulative impacts from massive development in the region that has been completed and/or begun since 1996 are greater than what was imagined at the time - even with nearly 400 acres of land acquired by the State of California from private developers.

Wildlife is flourishing in the marina, due to many factors outlined below. In addition, the coastal area of the City of Los Angeles, which embraces the Marina recently gave voice to concerns of many in the region when they elected Bill Rosendahl to represent all 250,000 of them on the City Council, largely on a slow-growth/fix the traffic gridlock platform. These issues -- protection of wildlife, limiting development and alleviating traffic gridlock are all issues that seem paramount in the Marina del Rey area and appear to have been given short shrift in the 1996 LCP.

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We support the staff recommendation for opening and continuing the hearing on this matter, but we ask that the hearing remain open for 60 days so that the final approval of these periodic review recommendations will be heard and can be commented on by the public when the Commission next meets in Los Angeles - in August. It is important that the greatest amount of public input be made as possible, and with a new city councilmember for the district embracing the marina and a new city mayor - both taking office on July 1, it would seem prudent to allow this time for the City of Los Angeles to be able to comment sufficiently and completely on these recommendations that will also impact the City.

A NEW VISION

The Marina as an Ecological Tourist destination/part of a National Recreation Area for Southern California residents and visitors

We recognize that the County of Los Angeles depends on revenue from the Marina area, yet we appeal to you to assist the County to find a new way for those revenues to be realized -- a way that would be much more compatible with the goals and the mandates of the California Coastal Act - especially in terms of protection of coastal resources and public access to those resources.

The County, with its imperative to be focusing on coastal dependent uses, has ignored one of the most important revenue sources around, ecotourism. Los Angeles is a major travel destination, and because the Marina has been in the past reflected upscale living environments, somewhat mysterious and inaccessible to the general public - an entire source of spending activity has been lost to the county.

If the wildlife of the Marina were embraced, even as much as it is at the marina near Elkhorn Slough or San Francisco Bay, hotels would have higher occupancy rates, which translate to higher bed-tax revenues for the County. Shops that include kayak outfitters, birding paraphernalia, cameras/film and other eco-tourism items ought to be sought out by the county to encourage this focus. The US Fish & Wildlife Service has completed studies showing the amazing amount of revenue that surrounding communities receive adjacent to wildlife refuges in this country.

A small aquarium, visitor center or other environmental education center could be featured in the marina, directly across the street from the new state-protected lands at Ballona on Fiji Way. An observation tower could be built on Fiji Way that would allow visitors an eagle's eye view of the entire marina and all of the Ballona Wetlands.

It is time to turn away from the idea that this marina should continue toward being an exclusive residential enclave only for the wealthy to enjoy with their huge yachts. The original rationale for destroying what was then more than 1/2 of the Ballona marshlands was

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that this marina would be fully accessible and useful for all of the people, not just catering to an upper class segment of Los Angeles. Instead, the focus on redevelopment of the marina ought to be as one of embracing its role as home to many marine species and coastal dependent species of plants and animals.

Marine Resources - *missing the species in the water*

The marina was once a flourishing marsh, part of the estuary created by the Los Angeles River, a grand river that has created an immense Santa Monica submarine canyon immediately off the coast from where the marina now sits. Now it still is a huge home to wildlife, many of which are ignored in the Marina LCP.

For example, Harbor Seals and Sea Lions are often swimming in the marina. Haul-out locations need to be provided for these seals and sea lions, whose bodies require they be out of the cold coastal waters about 50% of the time. Since humans have taken over their beaches, we need to find and allow for some haul-out refuges for these majestic mammals of our coastal waters. If there were some mud haul-out areas, they actually might give birth -- something people from miles around drive to Carpinteria and Ano Nuevo to see.

At Pier 39 in San Francisco, where seals haul-out and rest for hours, visitors jockey for window seats where they can sip wine and watch the seals. Marina del Rey could not only support such tourist and visitor-serving activities, but it could embrace the idea and actually work with the Monterey Aquarium when it finds abandoned Sea Otter babies to re-introduce them back into our southern California coastal area by providing a refuge in our marina, much like at Moss Landing, where Sea Otters often can be seen frolicking among the boats in the marina. What could attract more people than a cuddly Sea Otter? This could offer an especially important teaching opportunity about endangered species to the hundreds of thousands of school children and families in the region - most of whom have never seen a live Sea Otter.

Also missing in the discussion about marine resources is protection of other marine life, including fish, jellies, clams and other important marine species. The sides of the walls of the marina, for example, should not be scraped of sea creatures.

The endangered California Least Tern and the endangered California Brown Pelican are two bird species which fish in the marina. Herons and Egrets also fish in the marina, with several of these species hanging out on bait docks where they hope to catch an easy meal.

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The Marina as ESHA - Environmentally Sensitive Habitat Areas

The ESHA section of the periodic review is lacking in its absence of data and documentation on the many wildlife species that inhabit the marina. Due to our own observations of Great Blue Heron, White-tailed Kite, Black-crowned Night Heron, Snowy Egret and Green Heron nesting in numerous locations in the marina, we disagree with the idea that designation of ESHAs should be delayed until future development is proposed.

In many ways, we think the entire Marina should be designated as ESHA, especially considering the movement of animals and birds throughout the marina and the surrounding natural landscapes, such as the Ballona Wetlands, the Del Rey Lagoon, Ballona Lagoon Marine Preserve, Ballona Lagoon Bird Sanctuary (Grand Canal) and the Venice Least Tern Preserve. However, it does not seem practical to so designate the entire marina as ESHA, so the next best thing would be to designate the areas described below as ESHA.

The recommended ESHAs below need to be designated with some sort of official signage and roping off of the area in a visually pleasing way – so that people do not park their cars underneath the birds and so visitors keep their distance from sensitive wildlife. Viewing areas need to be designed and a map with these areas made available for visitors.

These designations should not be done at later dates by consultants from lessees whose websites proclaim “we are confident that our expert team can move your project forward expeditiously, because that's what we do best.”* Clearly, it is not in the best interest of coastal protection to have these folks consultants do the studies that determine whether or not a specific area meets the definition of an ESHA.

* Michael Brandman & Associates website
<http://www.brandman.com/mba/aboutmba.html>

note: Brandman was a consultant for the developers/lessees who desired to destroy the Great Blue Heron rookery in its infancy. Mr. Brandman serves on the Board of the Building Industry Association. We hope staff realizes his bias and ceases to quote him as an expert of any sort related to the Great Blue Herons.

ESHA area #1:

According to observations of biologist and naturalist Robert Roy van de Hoek, 19 nests were documented for the Great Blue Heron in the marina last year. This is far more than is needed to document the existence of an official rookery. This rookery has been in existence since at least 2000 and needs to be established officially as an Environmentally Sensitive

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Habitat Area (ESHA.) If ESHA status is delayed, then the protection of these areas will not occur as a matter of regular practice, which needs to be the case.

Hérons and Egrets are making a come-back as nesting birds in Los Angeles County, as compared to the early and middle part of the last century when they were basically hunted to extinction (extirpated) in this region.

Now, with cities having grown up where rural guns ruled previously, these birds have come back and have found Los Angeles safe from the hunters' rifles. Even the White-tailed Kite, one of the state's most protected species, nested in the marina a couple of years ago in a tree nearby the Heron rookery at Villa Venetia apartments.

The combination of the years passed since hunting flourished, the maturing and growth of many of the trees in the marina since many of them were planted in the 1960s, the location near more than one mile of coastal prairie in Ballona Areas A & C for foraging and the proximity to the water (Heron diets consist more of fish as they grow older, but still a portion of the Heron meal is land-based, especially in the younger years when fish hunting has not been perfected yet) has created the ideal conditions for the rookery.

For the first time since the rookery was established at the west end of Fiji Way, near Villa Venetia, the U.S. Coast Guard station and the Orange County Sheriff Station/Beaches & Harbors office, Cormorants have been showing up in large numbers in the Cypress trees there, pushing the Herons to other locations. The rookery has grown, now encompassing not only the Cypress trees, but palm trees at the UCLA boat house, trees surrounding the Sheriff station and Shanghai Reds Restaurant and across the water at one of Doug Ring's developments. The entire rookery area should be designated as an ESHA.

This rookery, having hosted Great Blue Heron, Cormorant and White-tailed Kite, is at least as important of a coastal resource as the rookery on the Bolsa Chica Mesa which has received enormous support and attention from the Commission staff for protection.

ESHA area #2:

Black-crowned Night Herons and Snowy Egrets have nested near the bike/walk path adjacent to Oxford Lagoon. This lagoon and surrounding area should also be designated as an ESHA. When trees get trimmed excessively, the birds find other trees to nest in - sometimes in surrounding neighborhoods, but they eventually return to the Oxford Lagoon area. Permanent protection and no tree-trimming would assist greatly in protection of these coastal resources. The lagoon is also a very important resting and foraging place for many species of birds. It truly is a bird sanctuary, as it was once designated, but now oft-forgotten.

ESHA area #3:

There are significant Egret and Black-crowned Night Heron roosting areas (possibly nesting, but no direct evidence as of yet) at the end of Bora Bora Way surrounding the parking lot near the gas dock. Roosting areas near food sources are very important for these birds. These trees, as others in the marina are trimmed regularly, sometimes to discourage the birds because of guano droppings intersecting with cars in parking lots. An effort needs to be made to set aside some of these areas for the birds and have parking areas in different locations so that people do not get upset with the bird droppings getting on their cars. We need to live in harmony with these important species.

ESHA area #4:

Area A: While it seems logical on many counts, it also does not seem correct to leave Area A of the Ballona Wetlands out of the Marina del Rey Local Coastal Program. While Area A, which is 139 acres, not 112 acres, as the staff report incorrectly states on page 127, has indeed been purchased by the State of California, there are still many intricate ties between these lands. One example is the Heron Rookery - dependent on trees in the marina for nesting, and Area A and other parts of the Ballona Wetlands for foraging and loafing.

Area A should be returned to the marina LCP and designated as ESHA. There are many important species present, and the Coastal Act and LCP ought to guide the restoration planning there.

ESHA area #5:

The waters of the marina should be designated ESHA. They are full of life which should not be ignored. If they are designated ESHA, impacts to these ecological systems will be minimized.

ESHA area #6:

Parcel 9 at Tahiti Way and Via Marina should be declared ESHA and restored to a coastal marsh and transition wetland habitat. There is a preponderance of wetland vegetation in many locations on the site, not only where the Army Corps of Engineers delineated a wetland, but where the less restrictive definition of a wetland under the California Coastal Act would apply and determine there to be more wetland areas. The overview map in Exhibit 9 demonstrates how little natural open spaces there are in the marina, and this would be a great location for a natural marshland as passive open space for walkers and for wildlife.

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PARKING LOTS -

1. Parking lot - Dock 52 on Fiji Way - Previous plans of the County were to demolish the free public parking lot known as Dock 52 on Fiji Way and replace it with a ho-hum shopping mall - one that could be found virtually anywhere - stores like Borders, the Gap, etc. were to be present. Fortunately, there were protests from the small boating community, Coalition to Save the Marina and others, and this plan was abandoned.

With the acquisition by the State of California with the Ballona Wetlands, with an entrance way immediately across the street from this parking lot on Fiji Way, it makes sense to designate this to be a free parking lot in the future as well, so the public can visit the wetlands with ease. Trails around the perimeter of Area A would make a nice walking area, and a visitors' natural history education center with an observation tower makes perfect sense adjacent to this parking lot, where temporary county offices now exist.

2. Parking lots returned to wetlands - In 1984, for the Olympics that were held in Los Angeles, part of the wetlands in Area A were allowed use for a huge TEMPORARY 158 space parking lot, so the Olympic Marathon could be accommodated in the area. The permit from the Commission stated "The area will be restored to a condition comparable to what existed prior to the project by October 15, 1984." The California Department of Fish & Game concurred with the permit request IF the following condition was met: "Within two weeks after the permitted use expires on October 1, 1984, Real Property Management Inc. will plow or disc the entire parking lot area to encourage the regrowth of the native vegetation."

This condition of the original approval was never met. In 1988 another TEMPORARY permit for a parking facility for 158 cars was approved. This time for employees and visitors to Fisherman's Village, but to be returned to its former use after five years. Apparently, this time asphalt was added, something the Fish & Game Department had objected to previously, requiring bare ground to be where cars would park in the temporary Olympic parking lot.

17 years later, this parking lot is still present, as well as another parking lot paved over on the wetlands to the west of this lot. These parking lots are used by the County of Los Angeles and rents were paid to Playa Vista up until last year when the State of California took possession of the land. The County now pays rent for these parking lots to the State of California on a month-to-month basis.

Clearly, these parking lots were never meant to be permanent parking lots for the marina and need to be restored to their natural wetland and coastal prairie habitats.

The fact that the County still rents these lots demonstrates that their plan for including sufficient parking for public uses along with new developments is failing. These parking lots should be returned to wetlands and additional public parking opportunities need to be sought out, instead of the wrong-direction planning the County now has to eliminate many of the public parking facilities in the marina. We need public access in the marina and sufficient parking, and we also need every square inch of wetland and adjacent uplands to be restored in the area. What we do not need is more upscale and increasingly dense housing being built in an area that is already traffic gridlocked at many times of the day.

Miscellaneous specific recommendations:

#35 of staff recommendations - ESHA designation - it is important to also add the clarifications that were made re: ESHAs from the Bolsa Chica decision, as well as the clarifications that were made related to protection of wetlands, i.e., that it does not matter about the degraded nature of wetlands, they all deserve the same protection under the California Coastal Act, and ESHAs can not be "moved."

#47 of staff recommendations - 100 feet buffers should be given to all functioning wetlands.
This amount of buffer space is actually insufficient for many species, including Great Blue Heron, so 100' is already a compromise for many of the wetland species that the buffer is there to protect.

Mother's Beach and water quality issues - much is said about the poor water quality at Mother's Beach. Little is usually said publicly about the prevalence of house boats with live aboards in the channel approaching Mother's Beach. Is this a policy being ignored, or are stricter policies necessary to discourage such liveaboard situations where sanitation issues must be contributing to the pollution known to be in this area.

Fireworks - the 4th of July is coming up once again, and the baby Great Blue Herons in the rookery are about to be scared out of their minds again for the 1/2 hour of temporary delight for a few thousand people. Not only are young herons nearby where the boats send off their loud noises, polluted air quality and bright lights, but the State-protected and endangered Belding's Savannah Sparrow is also nesting just across the water from where the fireworks barge ignites the show each year at this time.

At the New Year there is another fireworks show in the marina, and while last year they moved the show to the Pacific Avenue Bridge, this too was a problem, as we watched more than 100 sleeping Bufflehead ducks that had been sleeping in the Del Rey Lagoon scatter off in flight, some to never return again. These ducks were here wintering from Canada, and had been sleeping in the same place for some time until the fireworks madness.

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re: Marina del Rey Local Coastal Program Periodic Review
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Anyone who has a dog knows of the pain and suffering animals go through when fireworks are ignited. Even smaller animals, like birds, and other wildlife in the marina and at the Ballona Wetlands are obviously negatively impacted by these fireworks.

The fireworks, while nice for a few for a short while, should be taken elsewhere, not near sensitive wildlife areas, especially where nesting of young birds - some of them endangered is taking place. The Endangered Species Act does not allow harm to happen to endangered species, and the continued use of these fireworks is a violation of this law, as well as a violation of other harassment regulations of the California Fish & Game code. The Marine Mammal Protection Act likewise protects marine mammals from such harm, and Sea Lions and Harbor Seals are also impacted, swimming regularly in the very location where fireworks are set to go off this July 4th.

Please recommend to specifically eliminate fireworks from the Marina in the new LCP.

There are further comments we would like to make, and we need time to compile these comments into additional submittals to Commission staff. We appreciate the extension of the time period to 60 days until the next scheduled Commission hearing in Los Angeles in August.

With best regards,



Marcia Hanscom
Managing Director
Coastal Law Enforcement Action Network
(CLEAN) - a project of International Humanities Center

&

Executive Director
Wetlands Action Network

Coastal Law Enforcement Action N
CLEAN

enforcing laws protecting the California coast

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EXHIBIT NO.	16
Application Number	MIR Periodic Review
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California Coastal Commission	

Received at Commission Meeting

JUL 12 2007

From: _____

July 12, 2007

The Honorable Patrick Kruer, Chair, California Coastal Commission
& Honorable California Coastal Commissioners
and Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

item: **Th 15a**

RE: Marina del Rey LCP Periodic Review (Los Angeles County)

Dear Commission Chair Kruer, Commissioners and Mr. Douglas:

The Coalition to Save the Marina brought and settled a lawsuit with the Coastal Commission requiring the Commission undertake preparation of a periodic review of the Marina del Rey LCP. The settlement of this case occurred in about 2002. In summer of 2005, public interest groups remained somewhat hopeful that this process could assist the public in bringing about some mid-course corrections in the path the County had mapped out that conspires to turn a public small craft harbor into largely a privately-operated high-density, residential "city" that defeats the entire purpose and intent of the Coastal Act.

We submitted a letter to the Coastal Commission, attached herein, dated June 6, 2005, suggesting that the County reconsider its approach to the marina and honor the wildlife and natural resources which are surrounding and within the marina. The Natural Resources Defense Council (NRDC) submitted a letter supporting these premises on November 9, 2005 (also attached).

*California Coastal Commission – CLEAN comments
Marina del Rey LCP periodic review
July 12, 2007*

City Councilman Bill Rosendahl also submitted a letter to the Commission (in the Commission file) expressing strong concerns about overdevelopment, traffic and natural resource protections in the area. The City of Los Angeles surrounds the marina on all sides, except for the boat channel which connects to Santa Monica Bay.

Not only was the approach we suggested completely ignored, but the specific issues we addressed are not even before you today. The only one we thought we might have a chance of reaching some conclusion which is in compliance with the Coastal Act was the ESHA provision, and that has now been yanked from what you are being asked to vote on.

Thus, we are left with no other option than to plead with you to listen to the public's concerns today and to delay action on the entire periodic review until October, when the ESHA recommendations will heard. In the meantime, **we also ask that you direct staff to address the following issues, which we believe are not addressed in any significant fashion in the periodic review document.**

The 1996 LCP is so weak and so inconsistent with the Coastal Act that our recommendation is to start with the Coastal Act and require that the County simply utilize that language instead of what was adopted in 1996.

For instance, off-site mitigation is allowed in several policy provisions of the LCP when the Coastal Act policies are not being met in the Marina. The result is the diminishment of coastal resources and recreation opportunities in the marina. Soon, it will be silly, except for its geographic location, to even consider that the Marina is a coastal zone resource. The situation today comes perilously close to that scenario.

Following are specific sections of the Coastal Act which are not being followed by permitting and by management practices in the Marina by the County of Los Angeles Beaches & Harbors Department. Because of the confusing manner in which the County of LA Marina LCP is organized, the best recommendation we can make in light of this failure to uphold the Coastal Act is that the LCP be recommended to be amended to include the exact provisions of the Coastal Act

*California Coastal Commission – CLEAN comments
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July 12, 2007*

for categories which are being jettisoned by current County of Los Angeles practices, including those projects in the pipeline for a slew of amendments the County intends to bring to you which would further erode the Coastal Act protections of coastal resources and public access to those resources.

Currently, the County of Los Angeles does not comply with the part of the Coastal Act which requires maximum access to coastal resources and the waterfront of Marina del Rey, as required by section 30210.

30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Private development, via private leaseholds the County enters into with private developers on publicly-owned land, is interfering with the public's right of access to the sea.

30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

The County of Los Angeles is undertaking a massive intensification of use of residential development on these public lands, which by its very nature is in conflict with the tenets of the Coastal Act, but will also bring more and more medium and high income residents to roadways and transportation corridors which already gridlocks traffic to the waterfront and coastal resources which include the Ballona Lagoon Marine Preserve, Venice Beach, Dockweiler State Beach, Ballona Wetlands Ecological Reserve, Oxford Lagoon, Grand Canal Lagoon and Del Rey Lagoon. The following provision of the Coastal Act is being ignored, in light of the above-mentioned concerns.

30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative

*California Coastal Commission – CLEAN comments
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July 12, 2007*

authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Numerous new developments planned and some which have been permitted by the County since the 1996 LCP have not provided public access in accordance with section 30212 of the Coastal Act.

30212. (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

... (c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Parking facilities in the marina are in the process of being converted into more private development opportunities. The County has used the rationale that many of these parking lots are not used, however, the public has pointed out that it is the management of these lots which discourages such public use, not their mere existence.

30212.5. Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

*California Coastal Commission – CLEAN comments
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Section 30213 of the Coastal Act goes seemingly ignored by the County, as there has been a persistent march in the opposite direction by the plans of numerous development projects in the midst of the permitting process. Just one example is the plan for the total demolition of Fisherman's Village (repairs to which have been ignored so as to claim the area dilapidated), and the replacement with a high-end destination resort. The lower and middle-class visitor population will no longer be able to afford their special occasion visits to the restaurant and other visitor serving areas, nor to the quaint fishing village atmosphere which will be utterly displaced. The LCP amendment for this proposal will be forthcoming to you, and will be entirely approvable under the recommendations provided by this current periodic review.

30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Sections 30220 and 30221 of the Coastal Act are not being followed by the County of Los Angeles due to their sheer worship of the continued massive residential development, which is and will be the majority of uses at the marina. The entire marina could and ought to be preserved for these water-oriented uses. For example, the one undeveloped parcel – 9-U - could and should be preserved for a wetland recreational walkpath and bird observation area, with kayak opportunities from part of the waterside portion of this parcel. Instead, a massive hotel and timeshare development is planned for this site. With the population of southern California increasing as it has, there is no question that the demand and need for further waterfront recreation facilities is needed.

30220. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational

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activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act is being ignored in the following ways. Private leaseholds are almost exclusively dedicated to residential development, and even more so in the future County plans, which have been previewed in some public meetings, wherein the Coastal Act and the LCP were completely disregarded. Obviously, these long-term leaseholds, especially since so many have been and are in the process of being renegotiated, are ripe to be reconfigured for the proper uses, as mandated by the Coastal Act. PRIORITY is currently given to residential and then commercial office space.

30222. The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223 of the Coastal Act is being disregarded. Here is an example. The County has proposed and is advocating, in spite of the unanimous opinion of the Design Control Board that it does not comply with the Coastal Act or the LCP, to construct a massive dry-stack storage facility and REMOVE from use the only free parking lot in the marina. This free parking lot is necessary to provide "support" for coastal recreation uses such as the fishing boats which depart from this Dock 52, as well as educational boat departures by UCLA and other interests. Dock 52 parking lot is also immediately across Fiji Way from the state-owned Ballona Wetlands Ecological Reserve, and public tours, as well as tours of elected officials have departed from this free parking facility for many years. It is entirely feasible to construct a dry-stack storage facility elsewhere in the marina.

30223. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

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Section 30224 of the Coastal Act is being completely disregarded at Marina del Rey. Not only are the mandates of this section ignored, but there is a DECREASE of recreational boating use being pushed on the public by the management and practices of LA County Beaches & Harbors.

30224. Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Sections 30230 and 30231 of the Coastal Act are being completely disregarded at Marina del Rey. The County essentially does not view the marina as having any marine resources. They systematically destroy seastars and other marine life by scraping the bulkheads and walls of the marina channels. A lush and long-lived Sea-Lite bush was destroyed by County maintenance from the Marina jetty, bothering no one and providing food and refuge for native butterflies. The marine waters, full of life (including Harbor Seals, endangered and rare birds, Sea Lions, Stingrays, Jellies, Clams and many, many other marine species), needs to be declared ESHA, and the destructive management practices of the County needs to be halted.

30230. Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

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30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Sections 30233 (a) and (c) of the Coastal Act needs to be included in full in the Marina LCP. There are wetlands existing on lands in the marina which are not recognized by the County (parcel 9-U and Oxford Lagoon), and are not managed nor protected as mandated by the Coastal Act.

30233. (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource-dependent activities.

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(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Section 30234 of the Coastal Act needs to be included in the LCP recommendations for change. This policy of the Coastal Act would also not be followed by the County if its plan to remove the free parking lots which serves recreation boating and fishing.

30234. Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30235 of the Coastal Act needs to be included in the LCP recommendations for change. If this provision were included, the County would be required to study the feasibility of insuring Oxford Lagoon is regularly subject to tidal action, which it cuts off for significant time periods, and which leads to fish kills.

30235. Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public

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beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

The following portion of Sections 30240 of the Coastal Act needs to be included in the LCP. Currently, the County does not recognize either the Ballona Wetlands Ecological Reserve, nor adjacent and included functioning Lagoons (Oxford Lagoon, Ballona Lagoon Marine Preserve, Grand Canal Lagoon, Ballona Creek estuary) as ESHA, when they obviously are. Likewise, important bird areas, including roosting and nesting sites for Snowy Egret, Black-crowned Night Heron, Great Egret and Great Blue Heron are not recognized as ESHA, even though the Coastal Commission biologist has rendered an opinion on this matter. **It is CRUCIAL that this language be added to the Marina del Rey LCP in order for it to be in compliance with the California Coastal Act.**

30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The following portions of Sections 30250, 30251, 30252, 30253, 30254 and 30254 of the Coastal Act are essential to be included in the LCP. The current and future development plans of the County will render this part of the California coast virtually out of compliance with the Coastal Act if these sections of the Act are not included in recommendations for revision of the LCP. Los Angeles should not be essentially declared a sacrifice zone in terms of coastal protection and public access, but that will happen if these provisions of the Act are continued to be ignored.

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30250. (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

30252. The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

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30253. *New development shall:*

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

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

(3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.

(4) Minimize energy consumption and vehicle miles traveled.

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

30254. New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal-dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

30255. Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

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Finally, a very serious mid-source correction is required on this periodic review, else the completely watered-down version of the recommendations now suggested by staff will result in the Marina del Rey section of the California coast and its adjacent public resources – including the Ballona Wetlands Ecological Reserve, which the state paid \$139 million for – will be destroyed in the coming years by the completion of development plans under the current LCP.

The people of California did not mean for the Los Angeles coastline, or any other area nearby urban environments to be left out of full compliance with coastal protection and public access tenets and laws of this state.

With best regards,



Marcia Hanscom
Managing Director

*also on behalf of
Ballona Institute*

Wetlands Defense Fund

*Sierra Club Ballona Wetlands
Restoration Committee*



EXHIBIT NO.	17
Application Number	MIR Periodic
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	1 of 4
California Coastal Commission	

Santa Monica Baykeeper

RECEIVED
South Coast Region

July 10, 2007

JUL 10 2007

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
Via FAX: (562) 590-5084

CALIFORNIA
COASTAL COMMISSION

Re: Item No. Th15a, Revised Staff Recommendation and Proposed Resolution Following Periodic Review of Los Angeles County's Local Coastal Plan for Marina del Rey

Dear Coastal Commissioners,

Thank you for the opportunity to comment on the Revised Staff Recommendation: Report to Los Angeles County on Marina del Rey Periodic Local Coastal Plan (LCP) Review. Santa Monica Baykeeper supports the conclusion of the California Coastal Commission staff based on the periodic review of Los Angeles County's LCP for Marina del Rey that the Marina del Rey LCP is not being implemented in conformity with the policies of the Coastal Act and, consequently, the Coastal Commission should transmit recommendations for corrective actions to the County under section 30519.5 of the Coastal Act. Baykeeper's praise is tempered by some concerns with the staff recommendations, as explained below.

Pursuant to section 30519.5 of the California Coastal Act, the California Coastal Commission "shall, from time to time, but at least once every five years after certification, review every certified local coastal program to determine whether such program is being effectively implemented in conformity with the policies of this division." Pub. Res. Code § 30519.5 (a). In case the commission finds that "a certified local coastal program is not being carried out in conformity with any policy of this division it shall submit to the affected local government recommendations of corrective actions that should be taken." Id. The local government to which the recommendations are submitted will review them and "if the recommended action is not taken, the local government shall, within one year of such submission, forward to the commission a report setting forth its reasons for not taking the recommended action." Pub. Res. Code § 30519.5 (b). The commission will review the local government report and will, "where appropriate, report to the Legislature and recommend legislative action necessary to assure effective implementation of the relevant policy or policies of this division." Pub. Res. Code § 30519.5.

The California Coastal Commission first certified Los Angeles County's LCP for Marina del Rey (with the exception of Area A, which is still uncertified) on December 13, 1990. At that point, the Commission transferred coastal permit authority to Los Angeles County. The LCP for Marina del Rey was revised and updated in 1996. Since 1996, Los Angeles County has submitted only two LCP amendments for the Marina del Rey segment. From initial transfer of permit authority in 1990,

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the County has issued fourteen local permits, seven of which have been since the 1996 LCP revision. The current staff periodic review and recommendations focuses primarily on the Marina del Rey LCP implementation by Los Angeles County since the LCP's last modification in 1996.

Although, as stated above, Santa Monica Baykeeper supports the proposed recommendations with respect to the Marine Resources/Water Quality section of Marina del Rey's LCP, one of our primary concerns is that the recommendations are not worded as proposed changes in the Marina del Rey LCP. The recommendations would have been clearer and far more effective in directing the County towards improving water quality in the Marina if they were worded as specific language changes in the same manner as was done for the "New Development/Circulation", "Recreation and Visitor Facilities", "Public Access" and "Cultural Resources" sections of the LCP. Santa Monica Baykeeper strongly urges the Coastal Commission to adopt this approach in its future periodic reviews of the Marine Resources/ Water Quality sections of any part of the Los Angeles County LCP, and urges the Commission to use this approach where feasible in the current decisionmaking process.

Santa Monica Baykeeper applauds Coastal Commission staff's recommendation that Los Angeles County amend, revise and update the Marine Resources/Water Quality section of its LCP for Marina del Rey to ensure that the policies, procedures and requirements for development in Marina del Rey are aimed at reducing polluted runoff and preventing water quality impairments. The LCP update should revise policies and ordinances so that sections 30230¹, 30231², 30232³, 30233⁴ and

¹ "Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes." Pub. Res. Code § 30230.

² "The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams." Id. § 30231.

³ Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur. Id. § 30232.

⁴ (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance

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30240⁵ of the California Coastal Act, related LCP sections, Los Angeles County's National Pollutant Discharge Elimination System (NPDES) municipal storm water permit, and the Standard Urban Stormwater Mitigation Plan (SUSMP). Thus, all development must address water quality by incorporating Best Management Practices (BMPs). (Staff Recommendations Nos. 5 – 7). While the proposed integration of water quality programs, regulations and policies is an improvement, there is no justification in the exclusion of other policies and programs aimed at water quality improvement and protection, such as the State Nonpoint Source Control Plan and the Contaminated Sediments Plan. Santa Monica Baykeeper urges the Coastal Commission to include these other already-existing policies and programs aimed at improving water quality in the Marina in the recommendations for amendment of the Marina del Rey LCP.

In addition, Santa Monica Baykeeper supports the recommendation that all development proposals should, at the time of application, be reviewed to determine whether they conform with the requirements of the Los Angeles County Municipal Stormwater NPDES permit, the SUSMP, any adopted TMDLs, applicable provisions of the Santa Monica Bay Restoration Plan, and applicable standards and requirements of the Marina del Rey LCP. (Staff Recommendation No. 8).

of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource-dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where the improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

⁵ (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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BAYKEEPERItem No: Th15a
Santa Monica Baykeeper

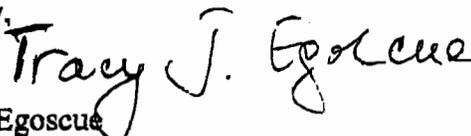
Staff recommendations Nos. 9, 10 and 11, contain further corrective measures utilizing BMPs with respect to developments requiring Coastal Development Permit and guidelines containing a list of BMPs that the County should incorporate in the Marina del Rey LCP. All of these measures are directed toward water quality maintenance and improvement and are commendable. (Staff Recommendations Nos. 9 - 11).

Santa Monica Baykeeper further commends the Coastal Commission staff for recommending that "[a]ny coastal development application for reconstruction, modification or redevelopment of marina or launch facilities shall include a Marina Water Quality Management Plan (MWQMP) that includes BMPs to control water quality impacts at each marina or launch." (Staff Recommendation No. 12). The proposed integration of such an MWQMP in development applications, however, should also include a provision for trash reduction and elimination as trash is a major source of pollution in the Marina. Staff Recommendation No. 12 should also include a monitoring component to ensure that the MWQMP's effectiveness is properly evaluated.

Finally, Santa Monica Baykeeper strongly urges the Coastal Commission to recommend a plan for water reuse and conservation to be included in the revised and updated Marina del Rey LCP. The staff report notes in its findings that "the LCP currently does not have any policies that directly address water reuse and conservation" but nevertheless does not contain a recommendation that the Marina del Rey LCP be amended to incorporate such a plan. Given the harmful environmental effects of urban runoff, especially dry weather runoff which consists primarily of water used in landscaping and lawn watering, and the current drought in the Los Angeles area, it is timely and appropriate to recommend to the County to create a plan for the reuse and conservation of water used in the Marina del Rey area.

In conclusion, while Santa Monica Baykeeper generally supports the conclusions and recommendations of the Coastal Commission's periodic review of the Marina del Rey LCP, our organization hopes that the recommendations will be modified to incorporate our comments and concerns motivated by the desire for continued improvement of the water quality of Marina del Rey.

Sincerely,


by TEG

Tracy J. Egoscue
Executive Director
Santa Monica Baykeeper



bay restoration commission

STEWARDS OF SANTA MONICA BAY

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EXHIBIT NO.	18
Application Number	MDR Periodic
	Review
	10F3
California Coastal Commission	

July 11, 2007

California Coastal Commission
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Long Beach, CA 90802-4302
Via FAX: (805) 543-5273

RE: Revised Staff Recommendations: Report to Los Angeles County on Marina del Rey Periodic Local Coastal Program Review (Th15a)

Dear Commissioners:

Thank you for the opportunity to comment on the revised Staff Recommendations for the Marina del Rey Local Coastal Program (LCP) Review. The Santa Monica Bay Restoration Commission (SMBRC) is a National Estuary Program of the USEPA and a state agency charged with restoring the resources of Santa Monica Bay. Our Governing Board consists of 35 members representing elected officials; federal, state and local agencies; County Beaches and Harbors and Flood Control and Sanitation Districts; industries and local businesses; environmental groups and members of the public. In accordance with our Bay Restoration Plan (updated in 2005), we work to build consensus on pressing environmental issues in Santa Monica Bay and its watersheds, including water quality, habitat restoration and public access and environmental justice.

Marina del Rey (the Marina) is a significant feature of the coastline of Santa Monica Bay, providing important ecological, recreational and economic benefits to the region. It is notable that abundant wildlife, tens of thousands of recreational users and numerous businesses coexist in the Marina. This desirable situation should be built upon to further the synergistic relationships that exist; for example, providing wildlife-friendly areas allows greater use by native plants and animals which in turn attracts more recreational users and visitors, who then patronize the local businesses. The SMBRC therefore supports policies that increase habitat, increase public access and visitor-serving uses and assist businesses in providing high-quality services to their patrons.

The Marina is adjacent to a state Ecological Reserve that is the last major wetlands area in Los Angeles, an extremely valuable habitat and recreational resource for which the State Department of Fish and Game, State Coastal Conservancy and SMBRC are leading a major restoration effort.

The SMBRC applauds Coastal Commission staff for their work on the LCP Periodic Review and we generally support their recommendations. In this letter we provide some additional recommendations that we feel are necessary to truly meet the intent and

our mission: to restore and enhance the santa monica bay through actions and partnerships that improve water quality, conserve and rehabilitate natural resources, and protect the bay's benefits and values





bay restoration commission

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requirements of the California Coastal Act and to protect water quality, wildlife and public access in the Marina.

General

The LCP should not be reviewed in two separate iterations. We are disappointed that the subjects of biological resources and ESHA are deferred to a separate hearing since these important issues are integral to the LCP as a whole and should be dealt with at the same time. Development, water quality, marine resources, traffic and other issues cannot be discussed without tying them into the local biological resources, since all of these uses exist side-by-side or overlap each other in the Marina and adjacent areas such as Ballona Wetlands. Policies dealing with ESHA delineation, discharges to Marina waters and public access must fully consider mechanisms for preserving and enhancing the biological resources of the Marina. The SMBRC believes that this is not contrary to the visitor-serving or commercial uses of the Marina, since wildlife such as birds, butterflies, seals and sea lions are extremely attractive to visitors who come to the Marina to experience the coastal environment while patronizing businesses such as restaurants, shops, boat rentals, sightseeing tours, etc.

LCP Section 3. Marine Resources and Water Quality

This section of the LCP is crucial to meeting regulatory requirements such as TMDLs as well as avoiding health impacts to recreational users and wildlife in the Marina. Bacterial pollution is a major water quality problem in the Marina. The County is addressing this through storm drain diversions which the SMBRC has partially funded, and through providing pumpout stations, which the SMBRC has helped to install and publicize through our Clean Boater Program.

Pumpout Services.

While these bacteria reduction measures are important, they are unlikely to solve the bacteria problem as long as there remains the potential for individual boaters to illegally discharge the contents of their holding tanks into Marina waters. The LCP review should recommend that the County require pumpout services be included in all leases in the Marina. This is analogous to homeowners or apartment dwellers who pay for regular trash collection whether or not they generate trash; in this case, slip leaseholders would pay for biweekly mobile pumpout service as part of the monthly lease, regardless of whether the head has been used. This would eliminate the need for individual boaters to visit pumpouts each time they use their boat and would drastically reduce the inclination of any boater to illegally discharge. Stationary pumpout services would remain available for visiting boaters and for leaseholders who need to pump in between visits from the mobile service that would be included in their lease.

our mission: to restore and enhance the santa monica bay through actions and partnerships that improve water quality, conserve and rehabilitate natural resources, and protect the bay's benefits and values





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This recommendation is especially important since the Coastal Commission staff is not recommending use of dye tablets for boats in the Marina.

Oxford Basin

Another major source of bacterial pollution to the Marina is the Oxford Basin. This historic wetland now serves as a stormwater detention basin that drains directly to the Marina. It also provides important bird habitat including nesting area for night herons. The Oxford Basin is now contaminated, surrounded by non-native and invasive vegetation and off-limits to the public. This important ecological resource should be restored to provide improved wetland habitat and public access as well as provide stormwater retention and treatment. The SMBRC would consider providing significant grant funds to assist the County in this restoration effort. The Coastal Commission should more fully address the Oxford Basin in its LCP review by recommending the County undertake a full restoration of the Basin, and include local stakeholders such as the SMBRC and others in the restoration planning.

Water Conservation and Re-use

The LCP review should include recommendations for water conservation and re-use for water quality protection in the Marina. An ideal mechanism for water conservation would be increased use of low-water-use native vegetation throughout the Marina. This would also increase habitat values in the Marina and provide users with a more distinctly southern California experience. As we have learned from SMBRC-supported beach bluff restoration efforts in south Santa Monica Bay, providing native vegetation can dramatically increase the numbers of appealing native animals such as the El Segundo blue butterfly (LA Times, July 9 2007). The SMBRC would strongly support water conservation through native vegetation plantings and would consider providing grant funds to assist the County in a native re-vegetation program throughout the Marina.

Conclusion

Protection and restoration of water quality, habitat and public access in the Marina are priorities for the SMBRC. We urge the Coastal Commission to make recommendations that will bring the County into compliance with the California Coastal Act and other regulations in the areas of pollution prevention, habitat enhancement and improved public access. The SMBRC will continue to be an active partner with LA County to implement projects and programs that help meet our shared goals.

Sincerely,

Shelley Luce, D.Env.
Executive Director

our mission: to restore and enhance the santa monica bay through actions and partnerships that improve water quality, conserve and rehabilitate natural resources, and protect the bay's benefits and values



By BRUCE RUSSELL, MARINA del Rey

EXHIBIT NO.	19
Application Number	MIDR Periodic
	Review
	1 of 4
California Coastal Commission	

TO THE ATTENTION OF: DEBORAH LEE, COASTAL COMMISSIONER

FOR COASTAL COMMISSION MEETING, JUNE 12
MARINA DEL REY PERIODIC REVIEW

SIX YEARS AGO – IN THIS VERY BUILDING – IN THE CITY OF SAN LUIS OBISPO – YOU, LADIES AND GENTLEMEN OF THE COASTAL COMMISSION APPROVED A MOTION TO ALLOW AN APARTMENT BUILDING IN MARINA DEL REY RISE TO FIVE FLOORS FROM THE PREVIOUS TWO OR THREE.

AT THAT TIME NO ONE WAS AWARE OF THE OVERBUILDING PLANS LOS ANGELES COUNTY OFFICIALS WERE HATCHING FOR THE MARINA AND THE MATTER SLIPPED BY WITHOUT ANY ADEQUATE SCRUTINY.

UNFORTUNATELY THAT RAISED HEIGHT LIMIT HAS NOW BECOME THE NORM IN THE MARINA.

IF YOU WISH TO SEE, LADIES AND GENTLEMEN, WHERE YOUR UNFORTUNATE APPROVAL HAS LED, I URGE YOU TO GO TO THE HEAD OF MARQUESAS WAY, ONE OF THE ARMS OF THE MARINA, WHERE CLIFF LIKE APARTMENT BLOCKS HAVE BEEN ERECTED ON EVERY AVAILABLE SQUARE INCH OF LAND TO HEIGHTS THAT BLOCK SUNLIGHT AND ANY WATER VIEWS. THEY HAVE BEEN PUSHED UP AT SUCH SPEED THAT NO ALLOWANCE HAS BEEN MADE FOR SIDEWALKS, AND PEDESTRIANS WISHING TO ENTER THESE BUILDINGS HAVE TO WALK OUT IN THE SPEEDING AUTOMOBILE TRAFFIC. THE NIGHT HERONS THAT USED TO ROOST THERE HAVE TAKEN OFF, PRESUMABLY BECAUSE OF THE LACK OF SUNLIGHT.

THE COUNTY'S RATIONALE FOR THIS UNSUITABLE OVERBUILDING IS THAT THEY NEED TO BUILD NEW RESIDENTIAL BLOCKS TO RAISE REVENUE FOR COUNTY SERVICES. THEY SEE THIS AS THE MAIN PURPOSE OF THE MARINA.

BUT YOU, LADIES AND GENTLEMEN OF THE COASTAL COMMISSION, KNOW THAT THAT IS NOT THE PRIMARY PURPOSE OF THE MARINA. ITS PRIMARY PURPOSE IS TO PROVIDE RECREATIONAL FACILITIES FOR THE CITIZENS OF LOS ANGELES COUNTY. RESIDENTIAL AND COMMERCIAL DEVELOPMENT IS WAY DOWN AT THE BOTTOM OF THE PRIORITIES.

YET BE AWARE, LADIES AND GENTLEMEN, THAT MUCH WORSE IS TO COME. LOS ANGELES COUNTY AUTHORITIES ARE GOING TO COME AT YOU WITH A REQUEST TO ALLOW THEM TO USE PRESENT PUBLIC PARKING SPACES IN THE MARINA, NOW MANDATED FOR PARKING LOTS OR PARK SPACES ONLY, TO BE CONVERTED TO OTHER USES.

YOU NEED BE UNDER NO ILLUSION AS TO WHAT THE COUNTY INTENDS. EVERY PARKING SPACE, EVERY OPEN SPACE, HAS ALREADY BEEN BESPOKEN TO BE BUILT OVER FOR RESIDENTIAL BLOCKS, SHOPPING MALLS, TIMESHARE APARTMENTS, NINETEEN FLOOR HOTELS WHICH IMPINGE ON WETLANDS, HUGE APPARTMENT HIGH RISES AT THE ENTRANCE TO THE MARINA WHICH BLOCK THE VIEWS OF THE MOUNTAINS BEHIND AND STRIP AWAY BLUE HERON NESTING TREES, AND EVEN A MONSTROUS COUNTY ADMINISTRATIVE BUILDING WITH GAPING PARKING LEVELS ON PRIME WATERFRONT SPACE.

IN ALL OF THESE PROJECTS ADVANCING THROUGH THE COUNTY APPROVAL PROCESS THERE IS NOT ONE WORD – NOT ONE WORD – ABOUT INCREASED OR IMPROVED RECREATIONAL FACILITIES.

THE CENTERPIECE OF MARINA RECREATIONAL ACTIVITIES IS THE SO-CALLED MOTHERS' BEACH, A SANDY STRIP CREATED BY THE ARMY CORPS OF ENGINEERS AT THE HEADWATERS OF THE MARINA. THIS IS HUGELY POPULAR WITH PICKNICKERS FROM ALL OVER THE COUNTY, PARTICULARLY FROM THE POORER AREAS, WHO FLOCKS THERE WITH THEIR CHILDREN ON SUNNY DAYS. THERE IS AN ENORMOUS DEMAND FOR ITS PICNIC TABLES. YET WHAT DOES THE COUNTY PROPOSE TO

INCREASE FACILITIES FOR THESE PICNICKERS? THEY PLAN TO TAKE AWAY MOTHERS' BEACH PARKING LOT AND ALL ITS PICNIC TABLES AND HAND THE SPACE OVER TO A LOW LEVEL EXTENDED STAY HOTEL. THE PICNIC TABLES ARE TO BE SHOVED OFF TO THE SIDE ON A NARROW STRIP OF SAND, WHERE THEY WILL HAVE TO COMPETE FOR SPACE WITH KAYAKERS AND RECREATIONAL BOATERS.

OBVIOUSLY IT IS NOT DELIBERATELY INTENDED, BUT THIS WHITTLED DOWN AND SQUEEZING OUT OF ETHNIC RECREATIONAL FACILITIES TO PROVIDE AN UPSCALE BOARDING HOUSE FOR THE WELL-TO-DO, IS A FORM OF RACIAL DISCRIMINATION— OF SOCIAL EXCLUSION.

NOT ONLY IS THE MOTHERS' BEACH PARKING LOT BEING TAKEN AWAY BUT ALL THE NEARBY PARKING LOTS AS WELL.

THIS EGREGIOUS OVERDEVELOPMENT WAS QUICKLY SPOTTED BY A GROUP APPOINTED BY THE COUNTY ITSELF – THE MARINA-BASED DESIGN CONTROL BOARD – WHO SAW THAT THE DEVELOPERS WERE NOT FOLLOWING THROUGH ON THEIR PROMISES TO PROVIDE ADEQUATE ON-SITE PARKING AND THAT THE AREA WAS HEADED FOR A PARKING NIGHTMARE.

COUNTY PLANNERS, DEEPLY OFFENDED THAT ANYONE SHOULD CRITICISE THEIR PROJECTS, MOVED SWIFTLY TO TAKE ACTION. AND THE ACTION THEY TOOK WAS TO STRIP THE DESIGN BOARD OF ITS PRIMARY REVIEW AUTHORITY AND HAVE THEIR PROJECTS RUBBER STAMPED BY A REGIONAL PLANNING COMMITTEE, WHICH MEETS IN DOWNTOWN LOS ANGELES. THE COUNTY IS GOING TO COME AT YOU TO ALLOW THIS CHANGE IN THEIR LOCAL COASTAL PLAN AS WELL.

TO ANSWER THE CHARGE OF INADEQUATE PARKING FACILITIES, THEY PROPOSED TO ERECT AN UNSIGHTLY FIVE FLOOR PARKING STRUCTURE HEMMING IN THE BEACH ENTIRELY BEHIND A WALL OF FIVE STOREY HOTELS AND PARKING STRUCTURES. WE ARE TOLD THIS HAS BEEN REDUCED TO TWO FLOORS BUT STRIP PARKING STRUCTURES

ARE UNACCEPTABLE AT ANY LEVEL AT THE EDGE OF THIS PRETTY BEACH.

BUT THERE IS STILL WORSE ON THE WAY. TO PROVIDE FOR THE CARS OF THE THOUSANDS AND THOUSANDS OF NEW RESIDENTS THEY ARE STUFFING INTO THE MARINA, THE COUNTY PROPOSES TO BRING A SPUR OF THE MARINA FREEWAY RIGHT DOWN INTO THE MARINA ITSELF, FUNNELLING THE TRAFFIC WHICH BLOCKS LINCOLN AND WASHINGTON BOULEVARDS, DOWN THROUGH THIS QUIET RECREATIONAL NEIGHBORHOOD. ADMIRALTY PARK, A VERY POPULAR JOGGING, CYCLING AND DOGWALKING STRIP WILL PROBABLY BE SQUEEZED, TO ALLOW FOR THIS FREEWAY SPUR – ANOTHER RECREATIONAL FACILITY PUSHED AROUND AND WHITTLED DOWN.

LADIES AND GENTLEMEN OF THE COASTAL COMMISSION, THERE ARE PROBABLY WORTHWHILE PROJECTS IN AMONG THE PLETHORA OF THESE COUNTY OVERBUILDING PLANS. BUT BEFORE YOU APPROVE THEIR CONVERTING THESE PARKING LOTS, YOU MUST DEMAND THAT THEY COME UP WITH A COMPLETE MASTER PLAN OF WHAT THEY INTEND, SO YOU CAN APPROVE WHAT YOU FEEL IS ACCEPTABLE FOR THE DEVELOPMENT OF THIS PRECIOUS COASTAL ASSET, ON ONE CONDITION – AND THAT IS THAT OTHER AREAS ARE KEPT AS OPEN SPACE – IN PERPETUITY.

AND THE TOP OF THE LIST FOR REJECTION IS THE PARKING LOT OF MOTHERS' BEACH.



LOS ANGELES AUDUBON SOCIETY

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June 21, 2007

Ms. Deborah Lee
California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

EXHIBIT NO.	20
Application Number	MDR Periodic Review
California Coastal Commission	

Re: Staff Recommendations to Coastal Commission regarding Marina del Rey LCP

Dear Ms. Lee:

Los Angeles Audubon is a California non-profit 501(c)(3) corporation established in 1911. The mission of Los Angeles Audubon is to promote the enjoyment and protection of birds and other wildlife through recreation, education, conservation and restoration.

We take special interest in the Ballona Valley as it has been identified as an Important Bird Area in a national program of Audubon, and a high priority for conservation of birds.

We support the findings of Commission Ecologist Dr. Jonna Engel who found that the heron and egret roosting and nesting tree stands in Marina del Rey are ESHA and has documented her findings in a December 19, 2006 memo with the assistance of Audubon California current and former biologists working on the Important Bird Area Program.

We are concerned about the impact of your staff recommendations to the Commission regarding the heron and egret roosting and nesting trees in Marina del Rey and other areas in the Marina that are used or might be used by birds that are important to the ecosystem of the Ballona Valley Important Bird Area.

Although we agree with your Staff's careful consideration of the need for a mechanism for determining the presence of ESHA values in the Marina del Rey LCP area as set forth in Revised Recommendation #40 in your July 20, 2006 "Revised Staff Recommendation: Report to Los Angeles County on Marina del Rey Periodic LCP Review," we are concerned that without definitive guidance by the Commission in determining ESHA or without definitive adoption by the Commission of the findings of Ms. Engel that the roosting and nesting trees and other vegetation and habitat in the Marina are ESHA, Los Angeles County will not be motivated or compelled to protect this important vegetation, habitat or birds when subject to development pressures.

Therefore, we urge you to protect these important birds and their habitat by including in your LCP periodic review recommendations to the Commission either that the heron and egret roosting and nesting site be declared ESHA, or that Los Angeles County update their LCP to include this finding.

We thank you for the opportunity to comment on this matter.

Sincerely,

Garry George
Executive Director

EXHIBIT NO. 21
Application Number MDR Periodic Review
1 of 14
California Coastal Commission



David De Lange, PhD
Executive Director
Coalition to Save the Marina, Inc.
P.O. Box 9291
Marina Del Rey CA 90295

Phone: (310) 822-8838
Web Site: <http://www.savemdr.org/>

November 12, 2007

To: John Dixon, PhD, Senior Staff Ecologist, California Coastal Commission
Cc: Peter Douglas, Jack Ainsworth, Jonna Engel, Al Padilla, Theresa Henry, Deborah Lee

Subject: Reply to Los Angeles County Consultant Robert Hamilton's Critique of Dr. Jonna Engel's finding that the Marina del Rey Heronry is an ESHA

Dear Dr. Dixon:

Los Angeles County consulting biologist Robert Hamilton, B.A., recently critiqued California Coastal Commission ecologist Dr. Jonna Engel's memorandum of December 19, 2006, a memorandum in which Dr. Engel sets forth evidence and reasons for concluding that several stands of trees in Marina del Rey qualify as an ESHA, or an Environmentally Sensitive Habitat Area.¹ The tree stands Dr. Engel found to be ESHA support multi-species heron roosting and nesting at several Marina del Rey sites.

Mr. Hamilton's critique of Dr. Engel is addressed to Los Angeles County lobbyist, Andriette Culbertson, who forwarded it to the Coastal Commission. Mr. Hamilton's memorandum, while raising some interesting issues, is nevertheless fundamentally and deeply flawed throughout. I will focus not so much on Dr. Engel's various arguments supporting her ESHA finding but instead on the serious mistakes Mr. Hamilton makes in his effort to

¹ All page numbers in parenthesis in the present text will refer to Mr. Hamilton's memorandum unless otherwise indicated. Intra-textual page numbers from Dr. Engel's memorandum and all other documents will appear in the form (Engel (or other Author), p. X)

undermine both Dr. Engel's conclusions and the evidence and reasoning she offers in support of her conclusions.

We begin with the complex definition of ESHA, which according to the Coastal Act is:

... any area in which plant **or** animal life **or** their habitats are either rare **or** especially valuable because of their special nature **or** role in an ecosystem **and** which could be easily disturbed **or** degraded by human activities **and** developments. (PRC, Section 30107.5, Bold Mine)

This definition contains five disjunctive and two conjunctive phrases, at least one of which, we shall see, is ambiguous. Stated in more logical form, an ESHA is any area in which a biological species or its habitat meets at least one of two conditions: 1) it is rare and also easily disturbed or degraded or 2) it is especially valuable because of its special nature or role in an eco system and also either easily disturbed or degraded. Dr. Engel offers evidence that both "1" and "2", not just the minimum "1" **or** "2" of these conditions, is met by Marina del Rey's heron habitat. Mr. Hamilton by contrast tries to prove that not a single one of the four parts of the two two-part ESHA conditions is met.

When analyzing the ESHA definition itself, Mr. Hamilton offers the following incorrect interpretation of it:

Section 30107.5 of the California Coastal Act asks that we consider whether these species or their habitats (a) should be regarded as "especially valuable because of their special nature or role in an ecosystem" **and** (b) "could be easily disturbed or degraded by human activities and developments." Note that both of these criteria must be satisfied before an area meets the Coastal Act's definition of an "environmentally sensitive area². (bold mine)

Once again, the definition clearly reveals that to be an ESHA, a species or habitat must manifest the condition of being either "rare" **or** "especially valuable" together with Mr. Hamilton's condition "b". We turn now to an examination of Mr. Hamilton critique of Dr. Engel's ESHA finding.

Hamilton Denies Herons are Especially Valuable

Two of Mr. Hamilton's most serious errors occurs when he tries to prove, contrary to Dr. Engel, that Marina del Rey's Great Blue Herons (and presumably therefore their habitat as well) fail to be "especially valuable because of their special nature or role in an ecosystem." His reasoning begins:

² This and all subsequent page numbers, unless indicated otherwise, refer to Robert Hamilton's memorandum, dated August 22, 2007. The memorandum Subject Heading is "Great Blue Heron Nesting Trees as Environmentally Sensitive Habitat Areas."

As a species native to the region, the Great Blue Heron fulfills an integral ecological role in southern California's coastal wetland ecosystems, but should this role be regarded as "especially valuable" in all places and at all times? Both CDFG and the U.S. Fish and Wildlife Service have urged restraint in providing heron nesting platforms at Marina del Rey since Great Blues are predators that represent a legitimate threat to eggs and young of **two endangered species that nest in the local area, the Snowy Plover** (*Charadrius alexandrinus*) and the **California Least Tern** (*Sterna antillarum browni*). (p. 4) (Bold mine)

Mr. Hamilton offers his own demanding definition of "especially valuable" as meaning "more valuable than the role of any other species native to the region," which I will accept for the sake of argument. He then concludes that because the Marina del Rey Great Blues (allegedly) threaten the eggs and young of endangered Snowy Plover and Least Terns they could not therefore be "especially valuable."³

Note first that instead of turning to peer reviewed scientific sources, Mr. Hamilton is uncritically accepting, as the basis of his argument, government agency claims that eggs and young of two nesting endangered species are faced with a "legitimate threat." These government claims are simply wrong. To being, **no documented eggs or young of the Snowy Plover have been produced within 35 miles of Marina del Rey for 58 years.** Larry Allen, coauthor with Kimball Garrett, of the forthcoming, updated "Los Angeles Breeding Bird Atlas" on September 5, 2007 summarized the most recent breeding records of the Snowy Plover in both Los Angeles County and in the Ballona Valley, which encompasses Marina del Rey. He writes:

Snowy plovers were confirmed breeding at Piute Ponds (in the Antelope Valley, my parenthesis) during the Atlas period (1995-99), but only once to my knowledge (they have been breeding there since 1981 or so). There may be even more recent records of them from Piute, but I'm not aware of them (Mike San Miguel may know -- he spends a lot of time there).

As far as records from elsewhere in the county, the WFVZ has egg sets from Malibu taken in 1945 and 1947, and American Birds has a report from Manhattan Beach in 1947. There is apparently a 1949 record from one of the westerly beaches also. The latest record I have that specifically mentions Ballona is an egg set taken in 1902⁴.

³ Former CDFG Director Broddrick's October 25, 2006 letter to L.A. County's Stan Wisiewski is the apparent source of the CDFG opinion Hamilton is referring to; the USFW source is unknown.

⁴ Email to me from Larry Allen, September 5, 2007. This email is consistent with information in the earlier publication by the same authors Allen, L. and K. L. Garrett, "Los Angeles County Breeding Bird Atlas: Project of the Los Angeles County Audubon Society in cooperation with the Natural History Museum of Los Angeles County," 1996.

Mr. Allan further concludes: "The bottom line is that Snowy Plover has not been confirmed nesting along L.A. County beaches for about a half century."⁵ **And in Marina del Rey ("Ballona"), we just read, no Snowy Plover nesting has occurred for over a century.**

What about Mr. Hamilton's allegation of Great Blue Heron threats to the endangered Least Terns, a species that does currently nest on Venice Beach less than half a kilometer from the nearest of the Marina del Rey GBH nests? While Mr. Hamilton is correct about the proximity to the heronry to this endangered species' local nest site, he (uncritically following CDFG's Broddrick) completely misrepresents the threat the Great Blues pose. Proof of this lies in a new report by the CDFG commissioned Senior Biologist studying the Marina del Rey adjacent (Venice) colony. He writes:

Least Terns arrived at the site on April 22, 2007 and departed after August 23, 2007. We estimate 453 breeding pairs were present at the site in 2007; numbers peaked between June 8 and July 9. This is the highest population recorded for this site. This large population likely contributed to the colony's ability to fend off egg predation by American Crows in 2007. . . . We counted a total of 546 nests and 775 eggs, resulting in a mean clutch size of 1.42 eggs per nest. We estimate 571 chicks hatched (73.7%) and 413 fledged. This was the highest number of fledglings produced by the colony since re-colonization of the site in 1977. . . . In 2007, American Crows were the primary predators on eggs; an American Kestrel was the primary predator on chicks; and Peregrine Falcons were the primary predators on adult Least Terns. . . . Other potential predators detected include gulls, raccoons, domestic dogs, domestic cats, and rats. Least Terns chased gulls on several occasions, although no predation was observed⁶.

Based on the data used in this 2007 report, Los Angeles Audubon concluded with respect to the Marina del Rey adjacent Least Tern Colony: "Overall 2007 was a very successful year." (Los Angeles Audubon website, September 24, 2007) **"A very successful year!" "Highest number of fledglings since 1977!"** Furthermore, the Great Blue Heron is not even listed in the report's inventory of actual or "potential" Least Tern predators in Marina del Rey.

Deprived of the false assertions about threats to endangered species, what remains of Mr. Hamilton's statement quoted above completely supports Dr. Engel's position that the Marina del Rey Herons are indeed especially valuable. This is because Mr. Hamilton clearly acknowledges above that the Great Blue Heron in general performs as he puts it "an integral ecological role in southern California's coastal wetland ecosystem," and such a role he implies is generally indicative of their "especial value." The only reason Mr. Hamilton refused in this context to acknowledge Marina del Rey's herons as especially valuable is that, despite their having this integral ecological role, the Marina's herons supposedly neutralized or canceled out their otherwise especial value because they were allegedly

⁵ Allen, email cited in footnote "4."
⁶ Ryan, Thomas, "Breeding Biology of the California Least Tern at Venice Beach, Marina Del Rey, California in the 2007 Breeding Season, prepared for CDDG, October 31, 2007, excerpts from sections 1-4.

killing endangered species' eggs and young. Absent the backing of this non-existent threat to Least Terns and Snowy Plovers, Hamilton's only assertion left standing is his claim that the Heron populations of Southern California, which includes the Marina del Rey heronry, are integral to their local wetlands ecology and thus, by implication, especially valuable, an ESHA attribute.

As the only further proof that Marina del Rey's Great Blue Herons are not "especially valuable" to their eco-system, Mr. Hamilton cites Department of Fish and Game's former Director Broddrick's vague, unsupported, and mistaken allegation of a second danger Marina del Rey's Great Blue Heron pose. Broddrick comments that until Ballona Valley's Area A, an Ecological Reserve immediately adjacent to the GBH rookery, is restored, the blue heron has to be "recognized as a **potentially** significant stressor to the species viability of the Area A wetland." (letter cited, footnote 3, bold mine)

There are several problems with this claim, which taken together undermine it entirely⁷. First Broddrick's vague allegation of unspecified "potential" stressors is unaccompanied by any details about the species supposedly under threat or by any evidence of any threatening impacts to a single species in Area A.

Furthermore, why logically speaking, is any current supposed threat of the Great Blue Heron to Area A, if such threat really exists, merely "potential," as Broddrick has it, and not actual? After all, the GBH have actually inhabited Area A, where in approximately the same numbers since the mid-nineties, they have foraged for gophers, lizards, amphibians, and other prey and have otherwise done what herons do. Therefore, one would expect any threats to be actually realized by now, and not merely potential.

Finally, let us assume, for the sake of argument (though it's unproven), that the Great Blue Heron really is a potentially significant stressor to some (unspecified) species viability in Area. It does not follow that such Herons cannot at the same time be especially valuable to their eco system. There are many ways that a stressor, if it were actually occurring and caused by the them, might in fact be very valuable to an ecosystem, for example if the species under stress were itself undesirable or overabundant, or if the stress the Great Blue Herons posed were only temporary as the eco-system transitioned, due to the transitory distress, toward some new, improved homeostasis. Again, however, since Broddrick provides no details supporting his vague, unsupported claim of potential stressors, we have no way of even beginning to assess its possible validity.

In conclusion, Mr. Hamilton has not provided any reason to doubt that the Great Blue Herons of Marina del Rey are especially valuable to their eco-system. He has based his objections to Dr. Engel's support of this thesis entirely on unfounded, false claims about Snowy Plovers and Least Terns and upon the weak, vague, unsupported, refutable assertions

⁷ Broddrick's letter first surfaced in the possession of lobbyist Andriette Culbertson, who read it into the Marina del Rey Design Control Board's September 26, 2006 meeting record, one day after the letter was signed by Director Broddrick on September 25, 2006.

about “potential” stressors of a former political appointee. Deprived of his false premises, what remains is Hamilton’s own statement, as Hamilton puts it, is that the Great Blue Heron (Marina del Rey population now included) “fulfills an integral ecological role in southern California’s coastal wetland ecosystems.” In other words, deprived of his false premises, Mr. Hamilton makes Dr. Engel’s case that the ESHA criterion of “especially valuable because of their special role in an ecosystem” is met by the Marina del Rey Great Blue Heron habitat.

Left standing also is Dr. Engel’s view of the matter, which she states in summary form:

In fact, herons and egrets are integral components of fully functioning wetland ecosystems and are critical to maintaining such ecosystems. They are top predators whose foraging activities maintain a balance in prey populations. (Engel, p. 5)

Hamilton Denies Great Blue Herons/Habitat are Rare or Recovering

Before discussing the Engel/Hamilton disagreement regarding ESHA related species/habitat rarity in Marina del Rey, we begin with important evidence of rarity that neither of these two scientists consider in their memoranda. Two California State listed non-heron species use the very same tree stands that support Great Blue Heron nesting and roosting at Villa Venetia. The **Fully State Protected** White-tailed Kite was photographed from the Villa Venetia roof by Leah Walton in my presence nesting in the pine tree next to the apartments, on the Fiji Way traffic circle at Villa Venetia in May, 2002 (photo and video available). That same pine tree has for years also supported Great Blue Heron nesting according to L.A. County consulting biologist Froke⁸. Furthermore, the White-tailed Kite has also been photographed foraging at Villa Venetia over the last six years (non-digital photos available.)

Additionally, **50-70 Doubled-crested Cormorants, a CDFG Species of Special Concern, roost nightly and exhibit nesting behavior** in two of the GBH Monterey Cypress nest trees at Villa Venetia and have occupied these trees for several years. There are three April-September, 2007, photographs of these subject trees taken by Jonathin Coffin, one showing a D.C. Cormorant with breeding plumage roosting, another of a mature D.C. Cormorant with nesting materials in its beak and a third showing the Cormorant with nesting material and its apparent partner being harassed by a third Cormorant. In September, 2007, I observed a pair of mature D.C. Cormorants lying side by side together in the same Monterey Cypress tree, exactly in the place where the Cormorant held the nesting materials.

CDFG lists the D.C. Cormorant as a Species of Special Concern in part because, as one of their scientists notes, the species is “susceptible to reduced nesting success from persistent pesticides in water.” The scientist adds, “Many nesting colonies in California have been abandoned after human disturbance and habitat destruction (Remsen 1978).”⁹ **Because**

⁸ Froke, Jeffrey, “Report on the Marina del Rey Heron,” 2005-2006

⁹ “Bird species of Special Concern in California,” Calif. Dept. of Fish and Game, Sacramento. Wildl. Manage. Admin. Rep. No. 78-1. 54pp. See Adobe Reader version @

both the White-tailed Kite and D.C. Cormorant are listed species, the nesting habitat they share with the Great Blue Heron at Villa Venetia is, for this reason alone, rare.

We now turn to Dr. Engel examination of additional evidence of rarity in relationship to the Marina del Rey Heronry. Mr. Hamilton, for his part, attempts to discount all three of Dr. Engel's following theses:

- a) the Marina del Rey Great Blue Herons are, though she does not explicitly say so, in effect, somewhat rare;
- b) as partial proof of this, that the Great Blue Herons are only recently recovering from a severe population decline in Southern California caused by human hunting of their feathers; and
- c) that the Marina del Rey multi-species Heron and Egret habitat throughout Marina del Rey itself is rare.

Of these three theses, Dr. Engel appears to believe that, the ESHA attribute of rarity is most convincingly manifested by the heron habitat (item "c"). Dr. Engel seems further to view the near current rarity of the Great Blue Heron's occurrence and their related recent recovery from near extirpation regionally ("a" and "b") as supportive of the importance of protecting both them and their habitat from disturbance in Marina del Rey.

In critiquing "a" above, Hamilton tells us that the Great Blue Heron in Marina del Rey, which nests locally in various types of trees, while neither threatened nor endangered, nor a California Species of Special Concern, is nevertheless designated a "California Special Animal" according to the California Natural Diversity Data Base (CNDDDB). (p. 1) Hamilton lists 8 separate ways a species "may" qualify for Special Animal status, without saying why the CNDDDB did in fact qualify them, and then selects only one of the 8 qualifying criteria as applicable, according to him, to the Great Blue Heron. He strongly implies without any proof that having "a critical, vulnerable stage in their life cycle that warrants monitoring" is the sole CNDDDB criterion that the Great Blue Heron in Marina del Rey satisfies and states that this is true because of the species' vulnerability to catastrophic disturbances due to their proclivity for nesting in colonies.

Hamilton however completely overlooks an obvious second criterion that also qualifies the local Great Blue Heron population for Special Animal status. That criterion reads: "Taxa closely associated with a habitat that is declining in California at an alarming rate (e.g., wetlands.....)" Ballona Area A, immediately adjacent to a large part of Marina del Rey's Heronry, is a wetland where the local Great Blue Heron forages and also brings its young for various training exercises. Furthermore, the one criterion Mr. Hamilton apparently arbitrarily decides is the qualifying criterion (having "a critical, vulnerable stage in their life

http://www.google.com/search?as_q=cormorant&hl=en&num=10&btnG=Google+Search&as_epq=Remsen%2C+J.+V.%2C+Jr.+1978&as_oq=&as_eq=&lr=&as_ft=i&as_filetype=&as_qdr=all&as_nlo=&as_nhi=&as_occt=any&as_dt=i&as_sitesearch=&as_rights=&safe=imageshttp://www.tlma.co.riverside.ca.us/mshcp/volume2/birds.html#TOC1_12

cycle that warrants monitoring”) is also the one criterion that will cause his case against rarity no harm for development interests, for everyone pretty much agrees that the nesting cycle of any regulated species is to be protected by all concerned and so developer/county strategies for habitat destruction typically are employed during non-nesting time frames. However, the CNDDDB’s “declining wetland” criterion, in that it also applies to the Marina del Rey Great Blue Heron, is a criterion that counts heavily toward the determination of rarity, since wetland habitat is well known to be increasingly rare and declining at an alarming rate. In California 95 percent of original coastal wetlands have disappeared and in Los Angeles County 98 percent of this coastal salt marsh is gone¹⁰.

In any case, Dr. Engel and Mr. Hamilton appear to agree on one thing, that the rarity of the Great Blue Heron including in Los Angeles County should be determined by the amount of nesting and roosting that has occurred in these regions and by whether or not there is a recent rebound recovery in these quantities following an earlier decline. Their agreement ends here.

Instead of viewing the Marina del Rey herons or their habitat as in any way rare, Mr. Hamilton asserts:

Great Blue Herons may be fairly characterized as “uncommon” breeders in the region, but there is no documented foundation for the notion that Great Blue Herons are “recovering” to a more common breeding status that was formerly maintained along the coast of Los Angeles County. (p.3)¹¹

Hamilton attempts to establish his hypotheses by a short, selective, misleading string of citations from various authorities that refer to bits and pieces time-frame wise of the last one hundreds years of GBH breeding. However, none of his citations individually or taken as a whole, looks at the overall breeding patterns these last hundred. By contrast, Los Angeles Breeding Bird Atlas author Allen, reviews exactly this time frame altogether and directly contradicts Mr. Hamilton. Allen writes:

Nesting by Great Blue Heron in the county (of Los Angeles) has undergone a dramatic cycle of contraction and expansion during the last 100 years. For decades, this species was regarded as virtually extirpated as a breeder in the county (Garrett and Dunn 1981); however, in 1979 nests with eggs were discovered in Wilmington (WFVZ records), and in subsequent decades nesting was observed at Legg Lakes (1986), Hollywood Reservoir (1991), and Piute Ponds (1992) (LACM files).¹²

¹⁰ Van de Hoek, Robert Roy: “Great Blue heron: Past, Present and Future at Ballona Wetlands and Marina del Rey Los Angeles, California,” a report to California Department of Fish and Game and California Coastal Commission, January, 2001, p. 8.

¹¹ “Uncommon” is typically the category used in avian “status and distribution” reports that falls between “rare” and “fairly common.”

¹² Verbatim from September 12, 2007 draft sent me by Allen of forthcoming update to Allen and Garrett, op. cit., footnote “4”

The cyclical contraction/expansion referred to here and in other more specific remarks by Allen clearly implies that around in Los Angeles County around 1980 there was a recovery from a greatly reduced population level that existed sometime in the time preceding around 1900.¹³

The underlying issue at stake here is whether or not in Los Angeles County, the current recent increase in breeding of the Great Blue Heron amounts to a fragile, initial toehold on recovery following virtual extirpation throughout the entire region of a once sizeable breeding population. Breeding data expert Allen concludes that this is precisely the case for Los Angeles County (and Southern California) Great Blue Heron populations. Furthermore, part of the reason for the Great Blue Heron's risk of again collapsing toward regional extinction is that wetlands on which they are dependent continue to be destroyed and degraded throughout Los Angeles County.¹⁴

However, it is the Marina del Rey Heron and Egret roosting and nesting habitats rather than the (regionally uncommon to rare) Great Blue Heron itself that Dr. Engel believes is clearly rare and thus evidence of ESHA ("c" above). Mr. Hamilton's effort to undermine Dr. Engel's habitat rarity thesis begins with his memorandum's opening remark that the marina's Great Blue Heron's nest in "landscape trees." Mr. Hamilton perhaps understands that by referring to the Monterey Cypress, Mexican Fan Palm Eucalyptus and Pine trees the Herons nest in as mere landscape trees, he might evoke a (non-critical) tendency in some readers to assume that such vegetation could never be rare. However, there is nothing in the meaning of ESHA rarity that requires that the habitat be native, instead of planted by humans. The exotic eucalyptus trees of Bolsa Chica, for example, were found by the Coastal Commission and tacitly accepted, in a published, precedent setting Appeals Court decision, as ESHA.¹⁵

Furthermore, Dr. Engel's main reason for asserting that Marina del Rey's heron habitat is rare is based on her finding that the tree stands used by these herons exhibit characteristics that are very scarce in Los Angeles County and that besides there is little useable alternative habitat left for these birds to chose from. The habitat characteristics in short supply in the harbors and other highly developed areas where herons and egrets have recently nested consist of tall, dense (hence camouflaged), non-native trees close to hunting areas and protected from predators. (Engel, p.4) Dr. Engel cites Andrea Jones, Important Bird Areas Coordinator of Los Angeles County Audubon, who concludes, even more specifically that the trees in the Marina del Rey area where herons and egrets nest and or roost should not be "removed or altered" because they provide the only remaining habitat that is appropriate for nesting and roosting in the Ballona Valley. (Engel, p.4)

¹³ Email cited in footnote 12.

¹⁴ Van de Hoek, op cit, p, 8.

¹⁵ <http://caselaw.lp.findlaw.com/data2/californiastatecases/d029461.doc>

In his main reply to this Audubon scientist Ms. Jones, Mr. Hamilton turns again to CDFG political appointee Broddrick as his scientific authority. Broddrick declares without supporting evidence that the scientists who report to him can predict what the Marina del Rey herons will do if driven from their current nests:

“The birds actually originated in Ballona, and the trees that were their primary roosting and nesting habitat still exist. If the current Cypress trees are removed, our habitat specialists are confident that birds will recruit to the original area or use nesting habitat at your offices, which is not proposed for removal.”¹⁶

This unsupported assertion is logically flawed on the face of it. The two habitats the herons allegedly will chose from once they are separated from their current nest are very different from one another and the unnamed “habitat specialists,” we are assured, are asserting that they know the minds of birds and can know in advance that these birds have narrowed their choices down to two. Why then do these same habitat specialists not know which one of the two very different habitats will be the chosen one. The first choice is in open wetlands, the Ecological Reserve. The second choice is dominated by buildings, traffic and sometimes noisy Sheriff/Coast Guard emergency vehicles on the Marina channel. Furthermore, what evidence is there that herons will return to habitat they have just recently abandoned (in the Ecological Reserve)? What authorities or experimental evidence are these unnamed habitat specialists relying on?

Finally CDFG’s own former Regional Manager flatly contradicts Broddrick’s optimistic assurances that the herons will simply relocate nearby:

It is the Department’s opinion that the (Villa Venetia redevelopment) project will likely result in significant impacts to the heron colony. The proposed project, including removal of the heron nests once they are no longer active, and the removal of nest trees, will likely reduce the chances for the disturbed heron to successfully reproduce for at least one breeding season.... There is some question as to whether other suitable nest sites are available in the area. The existence of heron nesting colonies are of particular local importance to the continued biodiversity of Ballona wetlands and Los Angeles County.” (CDFG Former Regional Manger Charles Raysbrook letter to Edward J. Casey, Esq., attorney for former owner of Villa Venetia Apartments, Marina del Rey February 9, 2001)

When this earlier habitat protective letter was written by Mr. Raysbrook, the bird politics were different and CDFG, under the glare of television cameras, was in that year of 2001 warding off a persistent effort by Los County and the Villa Venetia’s former leaseholder to rid Parcel 64 of the heron’s presence during the nesting season, without going through the permitting process.

¹⁶ Letter cited in footnote 3

In any case, I believe that this marked CDFG difference of opinions regarding heron habitat rarity is scientifically irrelevant, since both opinions were written by politically appointed CDFG administrators. Unlike Mr. Hamilton, I maintain that instead of placing any stock in the opinions of one or the other of these conflicting CDFG managers, we must rely upon the evaluations of independent experts like Dr. Engel and Audubon's Ms. Jones if science is to remain beyond the reach of the changing winds of political influence.

Dr. Engel and Ms. Jones offer sound reasons for asserting that the subject habitat is rare. The added evidence I have provided of other listed species (e.g. Kite, Osprey and Cormorant, also Brown Pelican) roosting and/or nesting among the herons, especially at Villa Venetia, makes the determination of rarity unavoidable.

Is Heronry Easily Disturbed /Degraded by Human Activities and Development

Besides being either rare or having a special role in an ecosystem, to be an ESHA, a species or habitat must exhibit either one of two, or (?) one of four, further conditions (depending on how we interpret the ESHA definition's ambiguous grammatical formulation). The two main possible formulations of this additional ESHA requirement are: 1) Either the species or separately their habitat must be such that one or the other could be either a) easily disturbed or b) (easily?) degraded by human activities and development (this first formulation contains four possibilities any one of which sufficiently fulfills the criterion); and 2) Either the species can be easily disturbed or the habitat can be (easily?) degraded (there are only two possibilities in this second formulation).

I will adopt the latter more demanding formulation with only two possibilities. Furthermore, to leave no doubt that the ESHA criterion is fully met in Marina del Rey, I will assume, also more restrictively, that "easily" applies to both "disturbed" and "degraded" although the definition's wording is open to the less burdensome interpretation that "easily" applies only to "disturbed." Furthermore, though neither does either author offer, nor does the Coastal Act further define, these concepts, I take "disturbance" to mean a disruption in a species' normal state or behavior pattern and "degradation" to mean a reduction in a habitat's established state of health or established level of functioning. Finally, I will show that the "is easily degraded" part of the ESHA definition provides one more avenue to an ESHA finding in Marina del Rey, an avenue that neither Dr Engel nor Mr. Hamilton explores.

In support of her ESHA finding, Dr. Engel describes several ways in which herons are easily disturbed and how this occurs both within and outside of urban settings. In his reply, Mr. Hamilton begins by asserting that the "evidence is overwhelming that Snowy Egrets, Great Blue Herons, and Black-crowned Night-Heron that nest in coastal southern California are highly tolerant of all kinds of human activities including walking, biking and driving near their nests." (p. 5) Mr. Hamilton further cites expert Phillip Unitt, who describes urban Black-Crowned Night Herons as highly tolerant of all kinds of human activity and notes their tendency to nest near human population concentrations and to continue nesting so long as routine human activity remains ongoing. (p.5)

The evidence Hamilton offers however, even if valid, only show that a certain range of human activities do not disturb herons and shows nothing more. The point is that, at the same time, another wide range of human activities clearly do disturb heron and egret species repeatedly every day in Marina del Rey. Here are some examples that can be easily observed: humans approaching too close on foot to foraging or roosting sites, large or noisy and especially nearby waterborne, airborne and land based machinery of all sorts; attacks from corvidae (mainly crows and jays), raptors, and other wading and water bird species, fireworks (frightened two chicks to the ground July 4th, 2007, documented killing of at least one), certain types of episodic building maintenance and repair procedures, fox, and domestic dog attacks, children throwing projectiles, and tree trimming near nests. These and a range of other human activities easily disrupt normal heron and egret behavior patterns. It goes without saying that development plans (part of the definition) to scrape the Villa Venetia parcel clean of all vegetation and buildings, would in its earliest stages and throughout, easily disturb on-site heron routines. Mr. Hamilton never even considers the easy disturbance such development would bring, nor do his examples of heron adaptability undermine the clear evidence Dr Engel and I offer showing the many ways in which herons and egrets are easily disturbed in Marina del Rey.

What about easy degradability by “human activities and development”? Although considered by neither Dr. Engel nor Mr. Hamilton, clearly again, the proposed redevelopment of Villa Venetia itself would easily and essentially degrade the nearby habitat since the three story apartments proposed for removal and high rise replacement are right next to the heron nest trees. Furthermore, the taking of tree parts via tree trimming from nest supporting trees, a form of development that has occurred on-site, by its nature essentially involves habitat degradation. By contrast, certain non-development maintenance activities, like painting and lawn care, are not typically very degrading of heron habitat. But there are long lists of activities one could easily make of everyday urban, human activities that would degrade their habitat. Furthermore and even more essentially to the point, naturalist Helen Pratt writes that:

“Like all birds dependent on freshwater and marine wetlands, members of the heron family are suffering progressive loss of essential habitat.Great Blue Herons (*Ardea herodias*) and Black-crowned Night-Herons (*Ncticorax nycticorax*) have declined in parts of their range and have been placed on the National Audubon Society’s Blue List of species ‘which have recently given or are currently giving indications of non-cyclical population declines or range contractions either locally or widespread.’¹⁷

Again around 95 percent of heron habitat in Southern California has been destroyed mainly over the past hundred years, and especially in coastal areas. Therefore, the strongest possible evidence that heron habitat can be easily degraded, is the simple logic telling us that **if habitat in a widespread regional pattern has been so completely degraded, it certainly can be easily degraded.** Marina del Rey’s heronry in short also fulfills the

¹⁷ Pratt, Helen, *Western Birds*, Volume 14, Number 4, 1983

second of two parts of the definition of ESHA, where only one of the two parts (easily disturbed or easily degraded) is necessary for an ESHA designation.

Mr. Hamilton concludes his critique of Dr. Engel views on rarity by attacking a straw man and then employing a misleading non sequitur. He writes:

“For the reasons detailed herein, I believe it would be a mistake to interpret Section 30107.5 of the Coastal Act in such a way that every landscaped tree ever used by a nesting heron or egret in California would be designated as an ‘environmentally sensitive area’ or ESHA. Such a designation could be appropriated for certain large, permanent nesting colonies of herons and egrets that have become established in a limited number of groves of non-native trees in the region, but in most cases that involve small numbers of nesting birds I believe that designation of an ‘environmentally sensitive area’ or ESHA would be unjustified.” (p. 7)

Dr. Engel’s argument we have seen has nothing to do “with every landscaped tree ever used by a nesting heron or egret in California,” and so even if not every such tree should be designated an ESHA, the trees being used in Marina del Rey have many features that other landscaped trees do not have. Two experts, we have seen, tell us that they are very rare and/or unique in their locality. In fact, the Ballona Valley surrounding Marina del Rey includes so few if any nesting site alternatives that even the leading proponents of removing their habitat are advocating the construction of artificial nesting platforms for the herons as replacements for their chosen sites. (Draft Memo of Robert Hamilton to Culbertson, “Subject: Draft Peer Review of Dr. Jeffrey Froke’s Heron Studies at Marina del Rey; Conceptual Great Blue Heron Management Strategy, August 22, 2007.) Furthermore, as we have seen, the Great Blue Heron habitat was shared by nesting White-tailed Kites in 2002, and is now occupied by several dozen roosting Double-crested Cormorants, a listed species, one individual of which at least has just been photographed with nesting material in its beak. Mr. Hamilton completely ignores the fact that this heron habitat is highly unique.

Furthermore, the Marina del Rey heronry does not consist of a “small number of nesting birds.” The Villa Venetia Apartments and immediately adjacent parcels alone have been home to between 11-14 active Great Blue Heron nests over the last 7 years.¹⁸ But even if the local Great Blue Heron population were smaller than it is, to argue that it would not therefore be ESHA is to simply ignore the fact that the legal definition of ESHA has no size limitations whatsoever. The idea in any case that the current population of approximately 55-60 Great Blue Heron adults and chicks is not of a size worthy of ESHA designation manifests an attitude that could lead to at least a regional extirpation of the Great Blue Heron, because as one author’s survey of California rookeries indicates, the Marina del Rey population of Great Blue Heron is of a size similar to most of the patchwork remnant of surviving populations eking out a living in Southern California.¹⁹ Since these Herons are increasingly selecting coastal urban nesting sites, their survival is in conflict with the human

¹⁸ Van de Hoek, Robert Roy, op cit, and Froke, Jeffrey, op cit.

¹⁹ Van de Hoek, Robert Roy, op cit, pp. 7-23.

hunger for development in the coastal zone. Without ESHA protection, their Southern California, including Marina del Rey, habitat will disappear and so will they.

Conclusion

This concludes my critique of Mr. Hamilton's memorandum. The shortcomings of his work fall into one or more of several categories. Some of his main scientific claims are demonstrably and disturbingly false. Other key statements he makes lack any proof and are most likely false. Besides some of Mr. Hamilton's main reasoning sequences contain serious non-sequiters. Yet other reasoning patterns involve (perhaps inadvertent) logical sleights of hand that depend on conceptual ambiguities for their purported validity. Mr. Hamilton also attacks several straw men, that is, he disproves certain points that turn out, despite the impression he creates, to be ultimately irrelevant to the debate between him and Dr. Engel. Finally Mr. Hamilton regularly quotes the politically appointed head of the California Department of Fish and Game and other governmental agencies to support crucial biological claims, while writing as if his science is objective. Finally, Mr. Hamilton submitted his memorandum directly to Los Angeles County lobbyist, Andriette Culbertson, while at the same time maintaining that his work is independent.

By contrast, Dr. Engel's and my evidence show that more than the minimum number of criteria necessary for a finding of ESHA exist at the roosting and nesting sites comprising the Marina del Rey Heronry.

David De Lange, PhD
Executive Director
Coalition to Save the Marina

EXHIBIT NO.	22
Application Number	MDR Periodic
	Review
	1 of 7
California Coastal Commission	

DRAFT 3/7/07

To: California Coastal Commission Staff

From: David De Lange, PhD, Executive Director of the Coalition to Save the Marina

Subject: Suggested Changes to July 20, 2006 "Revised Staff Recommendation: Report to Los Angeles County on Marina del Rey Periodic Review"

The Coalition to Save the Marina would like to offer wording changes and other suggestions to the Coastal Commission Staff prior to Staff's finalizing the recommendations it places before the Commission related to its periodic review of the Marina del Rey LCP. Commission Staff has recently created two major documents in the course of reviewing this LCP. I will refer to recommendations from the first of these documents, dated May 25, 2005, as Draft Recommendations ("DR") and to recommendations from the second later document, dated July 20, 2006, as Revised Recommendations ("RR") The Coalition is concerned that the RR are in several instances weaker, that is, less protective of the public interest, than the earlier DR and that this weakening is due in important part to Los Angeles County government influences. We would like to see much of the more public protective language of the DR reinstated and in some instances strengthened further. We note happily that there are besides several public-friendly Revised Recommendations that the Commission Staff retained from the Draft Recommendations, despite resistance from the County (e.g., RR #20, which would increase public, low cost recreation rights). Below follows an analysis of the Coalition's draft position on some of the most important issues under review by Commission Staff.

Comprehensive Amendment

We ask Staff to reinstate the Comprehensive Amendment language of Draft Recommendation #14 (DR, p. 18), which reads: *"The County should implement a comprehensive LCP revision identifying the parcel(s) that would be subject to reallocation of uses recommended in the Asset Management Strategy and consider all the changes in one LCP amendment as an integrated whole, so that the balance of public uses recommended in the Asset Management Strategy, the LCP and the Coastal Act is achieved."*

The much weaker Revised Recommendation #17 replaces this DR # 14 and reads: *"Revise the LCP to require that the County consider all pending project-driven amendments of the LCP that could change the designation of parcels from a public park or parking use to a private use at the same time. A project shall be considered pending if there is an approved term sheet allowing the applicant to apply for approval of the project. In considering such amendments, the County should analyze the total pattern of public serving and park uses in the Marina."*

(Revised Recommendation (RR #18), which supplements RR #17, reads: "*The County should amend its LCP to include development standards that could incorporate the design elements in the Asset Management Strategy (similar to many of the LCP policies concerning public access and site design....*")

RRs #17 and #18 together are much narrower in their scope and in their restriction on piecemealing than is DR #14. RR #17, for example, fails to include in its sweep: 1) any County amendments changing parcels from commercial to residential use that do not also change the current designation from a public park or parking use to a private use, 2) any County amendments allowing increased residential densities, and 3) all contemplated future projects that are not currently pending projects. The result of these exclusions from a comprehensive amendment is that all projects not covered by RR#17 and needing amendments to the LCP will likely be considered parcel by parcel, which is what we call piecemealing.

Why was this wording weakened? Apparently because between the writing of DR #14 and RRs #17 and #18, the Commission received the County's undated, unsigned "Response to (Draft) Recommendations," reportedly authored primarily by County Consultant Andriette Culbertson and Beaches and Harbors Deputy Director, Kerry Silverstrom. When discussing DR #14 in this undated document, these County authors assert without any proof:

"The County cannot undertake a comprehensive amendment. However, the County is prepared to work to accommodate revisions to the LCP on a staged basis in connection with project-driven amendments. The County appreciates the CCC staff's recognition of limited resources at page 12 of the report."

This assertion is demonstrably false. Immediately preceding certification of the MDR LCP in 1996, the County successfully undertook the creation of just such a comprehensive amendment, which is called the Marina del Rey Specific Plan. It is filled with an abundance of relaxed development restrictions. So the County can (has the capacity to) undertake such a comprehensive amendment because it has already recently done so. Furthermore, courts have long held that agencies cannot abrogate their duties merely by contending that they have limited resources. (See e.g., *Forest Guardians v. Babbitt*, 174 F.3d 1178 (10th Cir. 1998))

It appears that the County's current resistance to creating a comprehensive amendment is due not to some inability, but rather to unwillingness. When the County created a comprehensive amendment back in 1996, it appeared to be serving its own interests in fostering increased development mainly involving increased residential densities. Little doubt the county officials perceived the Commission's current call for a comprehensive amendment in Draft Recommendation #14 as a threat to the even more unrestricted development policies the County seeks in the Marina going forward.

Very importantly, there is wording on p. 104 of the Revised Recommendations which is much stronger than RR #17 itself and comes close to the comprehensive scope of

recommendation #14 in the earlier Draft Recommendations. This wording reads: "*The County should implement a comprehensive revision identifying the parcel(s) that would be subject to a changes (actual wording) in land use designation to carry out projects suggested in the Asset Management Strategy and consider them in one LCP amendment, so that the balance of public use recommended in the LCP and the Coastal Act is achieved. To achieve this it will be necessary to protect existing public parking, public beach and boat launch areas and public access to these areas. The LCP update should include all those major changes suggested in the Asset Management Strategy that the County has decided to implement.*" Unfortunately, this wording from the RR document is not included on the numbered list of Revised Recommendations beginning on p. 19. The Coalition requests that either this stronger p. 104 language from the Revised Recommendations or the earlier language of DR #14 replace the greatly weakened RRs #17 and #18 on the list of Revised Recommendations.

Circulation

The Commission could make a significant contribution to the public interest by creating or recommending a procedure for devising a traffic study and traffic model for MDR that is based on objective science instead of vested interest. Neither the relevant Draft Recommendation, while well intentioned, nor the weakened Revised Recommendation, achieve this goal. The studies they turn to for answers were, in differing ways, commissioned and financed either by development interests or by entities motivated to enable prospective developments via mitigating their adverse traffic effects.

DR # 10 recommends that "*The County should revisit the Barton Aschman and DKS traffic models, and recalculate, eliminating Playa Vista Phase II development in Areas A, B and eliminating road-widening projects that extend or relocate roads onto Playa Vista Areas A, B and C, which are now state-owned property. Because construction of a sixth lane on Admiralty Way will require and LCP amendment, models should not assume a sixth lane on Admiralty Way unless certified by the Commission.*"

This recommendation is replaced in July, 2006, with RR # 13: "*(A) Although development of the 1994 DKS model is not recommended as part of this review, any changes to the cap system (that is based on the DKS study), if proposed, should be based on a revised model. (B) Amend LIP section 22.46.1180.A.11.b to reflect the County's current traffic study guidelines and its requirement that studies be based on and consistent with the most recent studies of major projects in the area, including models prepared for the Airport LAX expansion and Playa Vista Phase II traffic models.*"

RR # 13 appears to concede most of what the County asks for in their "Response to Recommendations." The County argues there that there is no need to revisit older models, since the newer Playa Vista traffic model exists for everyone's use. The County authors further advocate relief from the trip end caps present in the current MDR LCP and justify this by arguing that the Playa Vista model shows that there will be less traffic congestion in 2010 than was anticipated in the 1994 DKS model. In a related argument the County alleges: "...contrary to the assumption that traffic has increased and service

level statements are no longer representative. it is clear the opposite has occurred.” In short the County concludes that there is less traffic intensity now in the Marina del Rey region than in 1994 and that there will be even less in 2010.

If indeed the current Playa Vista traffic model or any study generates these conclusions, then that model's premises data and/or logic must be profoundly flawed, because anyone who has regularly driven the streets in and around the marina since 1994 knows that traffic on all the major arteries, and at virtually all the major intersections, has significantly worsened over that time frame. An **impartial** traffic study would certainly show that volume/capacity (V/C) ratios and the related Levels of Service (LOS) have significantly increased/worsened since 1994 both within Marina del Rey and in the adjacent sub-regional traffic system, and that the limited efforts at de facto mitigation have been overwhelmed by these traffic intensity increases. These worsened conditions are reflected in a resounding increase of citizen complaints and unhappiness with traffic intensities especially over the last 10 years. Adding a traffic lane here or there along with other proposed mitigations seems like the equivalent of changing seating arrangements on the Titanic, especially when the “catalytic retail projects” and high rises the County proposes will increase traffic intensities further.

A new, impartial, peer reviewed and overseen study of the marina's sub-regional traffic system is needed prior to consideration of any further increases in new development that would generate increased traffic trips. We predict that such a study would further lead to a recommendation of tightened trip end caps within the MDR LCP area.

Pam Emerson pointed out recently that under applicable law, while the courts would not prevent a specific new MDR project from contributing additional trips to an already overburdened sub-regional system, they would allow an LCP restriction on total new trips generated by all development considered within an entire LCP area. The Coalition and the public would like to see a significant reduction of the number of trips generated in the Marina by Phase II development. Pending the outcome of an impartial traffic study recommending trip cap revisions, a moratorium on Phase II development is needed.

Recreational Boating

The Coalition is concerned with various adverse impacts on lower cost boating both occurring now and expected in the future. These impacts are mainly felt by lower income boaters. Both the relevant Draft and Revised Recommendations also reflect this concern. RR #1 improves upon DR # 1, from a lower income boater perspective, by recommending, as does DR #1, that any dock redevelopment project should be based on a comprehensive study, but then adding that the study not be more than five years old. However, in leaving the recommended studies in the hands of the project permit seeker, DR # 1 enables the almost predictable study outcome that the more profitable larger size slip will be favored over the small slips affordable to lower income boaters.

The County offers two fallacious arguments favoring a proportional increase in large slips, those above 36 feet. 1) Their argument that constructing a higher percentage of

large slips is justified by a relative demand increase for larger slips is based mostly on a self fulfilling prophecy: recent large slip rent increases, recent dock redevelopments with increased proportions of large slips, and recent illegal live-aboard evictions have significantly discouraged ownership among the less affluent when compared with those who can afford large slips and the boats to go with them. If, by contrast, smaller slips were built in higher proportion going forward, people, including the affluent, would buy smaller boats and as a result more boats would fit into the marina and more of our citizens could go sailing. (Even the wealthy bought smaller cars two decades ago when pollution standards generated decreased automobile sizes.). Furthermore, Section 30213 of the Coastal Act states: "Lower cost visitor and recreational and recreational facilities shall be protected....."

2) The current MDR LCP argues @ Chapter 3-2 that during the recession of 1991-93 only the demand for larger slips remained relatively constant, while vacancies in smaller slips increased, thus showing that there is a strong, constant demand only for slips 36 feet and larger. This self-serving argument overlooks the obvious fact that recessions impact lower income people's purchasing power the most. If instead, making use of a principle analogous to progressive taxation, a publicly sensitive County had reduced small slip rents during that recession, they would have kept the small slip occupancy rate up.

Finally, a current LCP finding states that "A primary purpose of the Marina is to provide recreational boating opportunities for citizens of Los Angeles County. Thus any study of a prospective dock redevelopment should determine what boat slip size and distribution is needed by County residents as opposed to residents outside the County, who probably tend to be more highly represented in the large boat owner category. Again we ask the Commission Staff recommend ways to insure the impartiality of studies regarding slip size allocations.

RR #2 recommends that the County continue to provide a mix of small, medium and large slips but this allows for any actual mix that a project developer's self- paid study recommends. We ask the Commission to as a minimum recommend that the County insure that the current mix of small, medium and large slips be maintained. Anecdotally we are aware right now that small boaters, including liveaboards are being displaced in greater numbers than usual. The affluent by contrast have considerable more ability to meet their needs and this is probably why we do not hear reports of them being displaced. A small boater, especially a liveaboard, being displaced, is a far more serious situation than an affluent citizen not being able to obtain an optimal sized slip for the boat upgrade (s)he hopes to purchase. This argument suggest again that public policy should favor retention of smaller slips.

RR #3 recommends the creation of additional slips along the main channel, end ties, et cetera to assure, among other goals, "lower cost boating opportunities." There is no feasible way the intent of this recommendation can be implemented except by at least maintaining, if not increasing, the ratio of smaller to larger slips in the Marina.

Biological Resources and ESHAs

We are happy to see Dr. Jonna Engel's biological determination that the Marina del Rey tree stands supporting Heron roosting and nesting in Marina del Rey constitute an ESHA. Dr. Engels believes in fact that the Marina heronry meets what she calls all three criteria for ESHA designation. To be very exact, there are actually two (not three) separate sufficient conditions for something being an ESHA, each of which in turn itself contains a conjunction of two sub-conditions. A precise analysis of the Coastal Act wording reveals the following two separately, each in and of itself, sufficient conditions for being an ESHA:

- 1) a) any area in which plant or animal life or their habitats are rare and which b) could be easily disturbed or degraded by human activities and development; or
- 2) a) any area in which plant or animal life or their habitats are especially valuable because of their special nature or role in an ecosystem and which b) could be easily disturbed or degraded by human activities.

Dr. Engel in effect concludes that both of these two two-part sets of conditions is fully met by the Marina heronry. So the marina heron rookery qualifies as an ESHA twice over.

Based on Dr. Engels biological determination, we ask that the Commission Staff recommend that the Commission declare the Marina del Rey heronry an ESHA. As an article by land use firm, Sheppard Mullin, recently pointed out: ". . .the Commission has adopted the practice of declaring specific parcels as ESHA even when the local government has not designated the site as ESHA under its LCP or other implementing actions." <http://www.sheppardmullin.com/publications/pubview.cfm?pubID=154>

At the same time, we hope that the Commission and Staff are becoming convinced that RR #40, which asks the County to "assess the resources on a site and determine the presence of any ESHA..." is an exercise in futility. Why so? Well, in the first place the County objects to the very inclusion of any ESHA provisions in the LCP. One main reason offered for this unwillingness to have even an ESHA determining process in place involves a non-sequitur from Culbertson and Silverstrom in their "Response to Recommendations." "The County" they write "knows of no reason to designate any of the resources in Marina del Rey as ESHA. . . ." But how could the County even in principle know of reasons for declaring something an ESHA when they have no method in place for making an ESHA determination? More importantly, how can any governmental entity opposed to the existence of a mechanism that could test for ESHA values nevertheless be entrusted with the task of determining whether there are ESHA values in Marina del Rey?

Ballona Wetlands Area A

The Coalition recommends that Area be put back into the MDR LCP. Area A is part of Marina del Rey and the original official rationale for segmenting it—that there were delays in the Playa Vista permitting process—is no longer relevant. Playa Capital no longer owns Area A.

EXHIBIT NO.	22
Application Number	MDR Periodic Review
	1066
California Coastal Commission	

To: Deborah Lee, District Manager, California Coastal Commission

From: David De Lange, PhD, Executive Director, Coalition to Save the Marina
Subject: Requested LCP Periodic Review Materials/Wording Recommendations
Submitted: March 28, 2007

Coastal Commission Staff at a meeting with the Coalition to Save the Marina ("Coalition") on March 9, 2007 requested that we submit additional materials related to the proposals for wording changes we would like to see made to the July 20, 2006 "Revised Staff Recommendation: Report to Los Angeles County on Marina del Rey Periodic Review" ("RR"). Responsive to your request, the materials we are submitting include comments below together with various attached documents.

Comprehensive Amendment

After consulting with Commission Staff and upon further consideration, we propose the following language to replace RR #17 and RR #18:

"If and when it seeks any further use reallocation related changes to the current LCP, the County shall propose a comprehensive LCP revision identifying the parcels that would be subject to reallocation of uses and consider all these changes in an LCP amendment as an integrated whole. The reallocation of uses covered by this provision shall encompass all parcels included in Phase II development as authorized under the Marina del Rey Revised Local Coastal Program certified by the California Coastal Commission February 8, 1996. The parcels covered by this comprehensive amendment shall include, but not be limited to, the 16 Parcels/Projects referred to in the L.A. County Document "Marina del Rey Redevelopment Projects: Description and Status of Regulatory/Proprietary Approvals—As of January 19, 2007" (attached) and any additional parcels or other reallocation of uses for which the County at the time it submits this comprehensive amendment has officially decided to initiate the Request for Proposal Process. Any reallocation of uses subsequent to Phase II development that requires an LCP amendment shall be part of a Phase III comprehensive amendment similar in nature and scope to the Phase II comprehensive amendment."

By contrast to this proposed wording, RR #17 is objectionable, because it so very narrowly restricts the reallocation of uses to be included in a "comprehensive" amendment to all and only currently pending projects that would change the designation of a parcel from a public park or parking use to a private use. By further comparison, RR# 17 is much narrower in its protection against piece mealing than Commission Staff's earlier Draft Recommendation ("DR") #14,

which calls for a broad, if not quite precisely enough described, comprehensive amendment covering all "reallocation of uses recommended in the Asset Management Strategy." (CCC Staff Recommendation: Report to Los Angeles County on Marina del Rey Periodic LCP Review," May 25, 2005)

Commission Staff asked the Coalition to justify its request that Staff reinstate the essence and spirit of DR #14 by identifying for Staff examples of already existing County proposals to reallocate parcel uses that are not covered by the language of RR #17. Underlying this request was Staff's idea that RR# 17 could then be broadened to specifically include these proposals the Coalition identifies so that they could be added to the parcels already included in RR#17, i.e., added to parcels currently allocated for parking lots and parks that the County wants to convert to private use.

The Coalition believes that to fulfill this Staff request is to start down a path that abandons the whole purpose of asking the County for a comprehensive amendment in the first place. Existing County proposals for reallocated uses cover only a small minority of possible use reallocations that the County might want to eventually request amendments for. Under RR # 17 or a similar recommendation that included a few more types of parcels the Coalition identifies, the County would only have to alter its proposals for reallocation to some use that the reallocation related wording did not cover, and then could continue its piecemeal ways in seeking its LCP amendments.

Comprehensive amendment language must by its very nature use wording that is comprehensive. The wording the Coalition proposes above accomplishes that purpose and further offers the County the possibility of pursuing yet another comprehensive amendment to seek reallocated land uses beyond Phase II development.

Marina del Rey Heronry—Nesting Attrition

Commission Staff asked for documentation showing reductions in Great Blue Heron (GBH) nesting in Marina del Rey that have been correlated with "tree trimming", known to us as habitat destruction. We are submitting two attached documents showing that such nesting reductions occurred at Villa Venetia and were significant. As documented by Roy Van de Hoek in his 76 page report ("Great Blue Heron: Past, Present and Future at Ballona Wetlands in Marina del Rey, Los Angeles, California", January 24-25, 2001, p. 29) and further verified by Audubon member, David De Lange, GBH nesting in Marina del Rey was concentrated mainly in four Monterey Cypress Trees at the Villa Venetia Apartments from the nesting years 1999-2001 (although it has expanded since mainly to nearby palm trees). Richard and Joanna Parness in their (attached) January 3, 2001 letter to DFG biologist Scott Harris report observing "about 6" GBH nests and "possibly more that we could not see" in the lone Villa Venetia Cypress tree in guest parking next to the paddle tennis court during the nesting year 2000. Later that year 2000, the top of this Cypress tree, together with all 6

or more GBH nests, was destroyed with a chain saw. Ever since then, including again this year, many observers including this author, have verified no more than 1-2 nests in that tree per year, an ongoing loss of from at least 300-600%.

The three other Villa Venetia Cypress trees have stood together next to the Coast Guard building (the center one of these three trees, one without any current active nests, was downed yesterday by a mighty wind.) US Fish and Wildlife Service biologist Kevin Clark in a December 12, 2000 email to this author (attached) confirmed the existence of 7-9 Great Blue Heron nests in these three trees in the nesting year 2000. I counted 8 active nests in those same three trees that same nesting season. In a well documented event in August of 2002, all these (7-9) active nests were also chain sawed to the ground by the former owner of Villa Venetia. While the Great Blue Herons rebuilt nests almost immediately in the heavily trimmed trees, this 2007 nesting season, there have been only four active nests in the same three trees that seven years ago supported eight active nests.

Gull Park Relocation Effort

The heron relocation in the Port of Long Beach was a total failure. As of the 2006 nesting season, not one relocated nest was active on Gull Island, the relocation site. However, in a September 27, 2006 email to Los Angeles Audubon director, Gary George, copied to Commissioner Sara Wan, County consultant Andriette Culbertson, discussing the relocation program in the Port of Long Beach, wrote:

“Our information on the Long Beach program is that it was initially successful, and then a Navy project disturbed it. It has recently been extremely successful. I will be happy to provide that information to you. Since I want to provide a good copy, and our key biologist, Dr. Jeffrey Froke, is away this week, I will have to send it next week.”

In fact, the Gull Park project as of Culbertson's 2006 email, according to those commissioned to study it—we also possess a “good copy” of their study, the same one Dr. Froke is said to possess—had a disastrous, not an “extremely successful” outcome. I have submitted to Pam Emerson the baseline year 1998 study of that relocation effort along with the most recent 2006 study, which documents this outcome. Below, I quote my testimony to the Design Control Board on October 26, 2006 regarding this failed relocation:

“Let's look more closely at relocating birds to new habitat. We turn to the tragic story of the heron relocation misadventure in the Port of Long Beach. Since the last hearing I have secured the nine annual reports on that disaster, years 1998 through 2006, all prepared by MBC |Applied Environmental Sciences. The reports are similarly entitled “Black-crowned Night Heron (BCNH) study 1998, 1999” etc. The overall conclusions of these reports are shocking and disheartening. The BCNH is a stocky gray, black-

capped bird about half the height of our GBH and looks like a miniature football player, sort of like a linebacker. Following the relocation, two kilometers away to Gull Park, of a few hundred Black-crowned night heron (GBNH) nests—the number of actively used nests plummeted from 400 in year 1999 to zero active nests in 2006. Yet, white-washing scientists, employed or heavily influenced by development interests, claim that the initial so-called success of the relocation proves that relocation is a good idea and that noisy disturbances at Gull Park were really the culprit responsible for the complete abandonment of all 400 nests by 2006. That's and Orwellian insanity, where you tell the Big Lie and cross your fingers. Human arrogance, ignorance and incompetence, the inability to foresee this tragic outcome are the real culprits.

But what about the Great Blue Heron's relocation to Gull Park in the Port of Long Beach? After all, they and not the Black-crowned Night Herons, are the species of interest at Villa Venetia. Two weeks ago, Dr. Froke wrote the following extremely misleading remarks about the Great Blue Herons in the Port of Long Beach: "Originally, GBH were attracted to the translocation site along with Black-crowned Night Heron from the outset of the project.... Over the course of nearly ten years, during which time BCNH have not recovered their numbers, GBH have done so; and as of this past season (2006) there were between 20-22 nesting pairs of the species to comprise the POLB." (Memo To Michael Fischer, October 12, 2006).

These remarks would seem to the casual or non-scientific reader like a description of successful Great Blue Heron relocation or translocation of their nesting trees from one place to another, like what's being proposed at Villa Venetia. Let's look closer at the apparent deception involved here.

1. The 1998 baseline report studying the birds to be relocated to Gull Park indicates that there were no Great Blue Herons at the original site to begin with. So any Great Blue Herons at the relocation Gull Park site were not relocated there by the relocation effort. They came from somewhere else but Dr. Froke writes about these GBH as if he is showing that you can recruit birds from an original specific site to a new or "translocation" site. In other words, Dr. Froke cites irrelevant evidence of relocation or translocation and clearly writes as if it is relevant.
2. Then Dr. Froke suddenly shifts gears and tells you that in 2006 there were 20-22 nesting pairs of Great Blue Herons in the Port of Long Beach. But the POLB is a much bigger area than the relocation sight called Gull Park. At Gull Park, according to the 2006 report, only 5 Great Blue Heron nests were active in 2006 (p. 3) That's actually a decline from earlier years of GBH nesting at Gull Park, but of course this is all irrelevant because none of these five nesting pairs relocated from the original sight to begin with.

As an undergraduate student a mere few years ago, I was assigned to read a textbook "How to Lie With Statistics." I leave it for now to the designing, planning and supervising bodies of this County to decide whether or not Dr. Froke has taken a page out of this textbook."

If Commission Staff cannot currently find the Port of Long Beach relocation studies I sent to Pam Emerson as verification of the claims I make above, please contact me and I will resubmit them. Based on the relocation monitoring team's studies, the overall conclusion here is that none of the over 400 nesting pairs of Black Crowned Night Herons was successfully relocated to Gull Park from their original site—none of them stayed at Gull Park-- and that no Great Blue Herons whatsoever could have been relocated even unsuccessfully to the new site, because there were none to begin with at the original site. Now that the untruths related to this project have been publicly unmasked, proponents of relocation will no doubt try singing a different tune in their unrelenting effort to destroy inconvenient environmentally sensitive habitat areas.

ESHA POLICIES

The Coalition and the others who consulted with Commission Staff a few weeks are convinced that, left to its own devices, Los County officials will systematically resist any effort to reinstate ESHA language into the Marina del Rey LCP. Furthermore, the County has clearly indicated that even if there were a mechanism in this LCP for determining the presence of ESHAs, still no ESHAs would be found to exist by the County. Therefore if truth in these matters is to be proclaimed by any governmental body, it is left to the Commission to itself identify the Marina del Rey locations that qualify for ESHA designation. The County would then decide whether or not to accept the Commission's determinations and related recommendations.

In keeping with this analysis, Marcia Hanscom (with very minor edits from this author) suggests the following ESHA language be included in the current Marina del Rey Periodic Review. The Coalition to Save the Marina concurs:

"Due to changed circumstances since the last LCP was approved and based on scientific evidence entered into the record by the Commission's ecologist, Dr. Jonna Engel, the Commission finds that the following locations qualify as Environmentally Sensitive Habitat Area (ESHA) as defined by the Coastal Act:

1. Great Blue Heron rookery at Villa Venetia/Beaches & Harbors Administration Building, Shanghai Red's restaurant, UCLA Boathouse and various public areas, as mapped on attached document (provided by Dr. Engel).
2. Snowy Egret and Black-crowned Night Heron rookery along bicycle path between Oxford Lagoon and Oxford Triangle, as well as including some pine trees within Oxford Lagoon fenced area, immediately adjacent to the bicycle path - and as mapped on document (provided by Dr. Engel)
3. Egret and Heron roosting site at end of mole road of Bora Bora Way.

4. Wetlands, transition wetlands and surrounding buffer - Parcel 9U - the only completely undeveloped parcel of land in the marina - a portion of this site has already been delineated under ACOE guidelines and is likely at the original elevation of the marsh which the marina displaced in the 1960s.

5. Oxford Lagoon (sometimes referred to as Oxford Basin) - this area for many years has clearly been subjected to daily tidal influences and exhibits native wetland vegetation and is used as foraging grounds and shelter for many bird species.

6. Eucalyptus grove lining bicycle path on Admiralty Way - beginning across the street from the public library and continuing north to Washington Blvd. Besides nesting areas for Snowy Egret and Black-crowned Night Heron, these trees are roosting sites for migratory Monarch Butterflies.

7. Mariner's Village eucalyptus trees directly across the water from Villa Venetia have hosted Great Blue Heron nest for numerous years, showing these trees are an extension of the Great Blue Heron rookery described in #1. (although not directly accessible for humans via automobiles, there is direct accessibility and proximity for Herons via flight.)

Since the Commission finds these sites to be ESHA, the Commission recommends that the County of Los Angeles update their LCP to include this finding."

CONCLUSION

Still being prepared for submission to you is an updated report showing the ecological functionality and importance of the Villa Venetia habitat and other environmentally sensitive habitat areas in Marina del Rey. We are also developing a standard recommending the percentage of small boat slips that should be built in any dock redevelopment. Finally, we are still working on suggested language to govern traffic research and policy in Marina del Rey.

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EXHIBIT NO.	24
Application Number	MDR Periodic Review
	1 of 3
California Coastal Commission	

June 15, 2007

To: California Coastal Commission
From: David De Lange, PhD, Executive Director, Coalition to Save the Marina
Subject: Addendum to Comments on Marina del Rey Periodic Review Issues

DESIGN CONTROL BOARD AUTHORITY

On March 27, 2007 L.A. County Board of Supervisors (BOS) passed an LCP amendment that would significantly change the role of Marina del Rey's Design Control Board (DCB). The amendment is characterized by County officials as created to accomplish 1) a streamlining of the entitlement process by allowing some of the review procedures of the DCB and the Department of Regional Planning (DRP) to overlap in time and 2) eliminating an alleged potential inconsistency in the land use entitlement process by allowing only the DRP, and no longer the DCB as well, to a project's determine consistency with the LCP.

http://search.co.la.ca.us/search97cgi/s97is.dll?action=View&VdkVgwKey=D%3A%5CPogram+Files%5CVerity%5CDocNav%5FProd%5FPlatform%5Cdn%5Cdocs%5Cq9b0%2Evdb&ServerKey=Primary&QueryZip=design+control+board&Inctx=Main&ViewTemplate=lac_hm_try_bottommf.hts&

DCB Over-all Authority

An examination of the actual specific LCP language changes approved by the BOS reveals that in fact, what this amendment seeks to further accomplish, without comment or analysis, is the transformation of the Design Control Board, with real authority to alter or block a project's site planning and building design, into a Design Review Board with nothing more than a right to have its views on these and all other matters considered by the RPC.

The current LCP (Ch. 9, p. 4) describes the DCB's authority as follows: "**Design Control Board Authority.** Signing, building design, site planning and façade design in the existing Marina shall continue to be controlled by the Marina del Rey Design Control Board." The replacement language proposed by the BOS eliminates the above wording and replaces it with: "**Design Control Board Scope of Review.** Architectural design (i.e. building and façade design, materials, colors), landscaping, signs and site planning in the existing Marina shall continue to be reviewed by the Design Control Board." The complete removal of the DCB's over-all authority is evident in this changed wording.

The County has already begun to act as if the DCB's authority has been eliminated, although the Commission has not approved the related amendment. The DCB has in turn reasserted its authority as reported in the most June 7, 2007 issue of the *Argonaut*.

http://www.argonautnewspaper.com/articles/2007/06/07/news_features/marina_del_rey/mdr2.txt The county's challenge to the DCB's authority has

occurred as a result of the county's reported decision to move a dry-stack storage proposal forward to Regional Planning despite the fact the DCB is unanimously opposed to the project. The Design Board is correctly asserting that the county has no right to move the project forward because the Board has authority to halt projects.

There is a widespread public perception that the real problem our Los Angeles County Government has with its Design Control Board is that this Board has sometimes, and especially recently, found proposals the Board wanted passed objectionable. By contrast, I know of no project desired by the BOS that the RPC has ever opposed. The practical effect of removing the DCB's authority will be to remove almost any de facto project review process that would conflict with the will of the BOS. Yet the Supervisors are hardly qualified experts on detailed matters of land use.

LPC Consistency

The "potential inconsistency" that allegedly arises when both the DCP and the RPC examine a project for adherence to the LCP is that the two bodies might disagree as to whether or not some aspect (s) of a project conforms to the LCP. The BOS eliminates this so-called inconsistency by striking the following language, which is part of the LCP's description of the DCB's present authority: "All approvable development shall include modifications to ensure consistency with all policies and development standards of the certified LCP." (ch. 9, p. 5)

The BOS assumes that the potential inconsistency between the findings of the two bodies is a bad thing and the BOS never considers the merits of such potential inconsistency. When two bodies, with different knowledge and expertise, must both be satisfied that a project conforms to the LCP, the public interest has a better chance of being protected, and adherence to the LCP is better assured. Eliminating the DCB's right to determine LCP consistency because it might conflict with the RPC's findings is the equivalent at a food processing plant of removing the authority of the food poison control inspector because she sometimes rejects food that is okayed by the food packaging inspector. The real loser in both cases is the public. The public interest is best served when both bodies, with their different expertise, determine whether a project is legal.

VIEW DISTURBANCE PROTECTION

A very important view corridor protection policy of the current LCP has apparently been overlooked by all parties concerned with Marina del Rey development until it was recently discovered and analyzed by public interest concerns. The policy reads as follows:

- "5. The following existing views within the existing Marina shall not be significantly disturbed:
 - All views from north jetty and south jetty (west of UCLA boathouse);
 - Harbor views from Burton Chace Park and Fisherman's Village;
 - Cross-beach view from Panay Way parking lot (parcel GG); and
 - Main channel view from Admiralty Park." (MDR LCP ch. 9, p. 5)

This policy has far reaching implications for several high rise projects currently under consideration in the Marina. For example, the first provision in this policy implies that the current views looking landward/westward from the south jetty toward the current Villa Venetia 3 story apartment building cannot be significantly disturbed. Yet, as the Commission was shown at public comment in January, 2007, a 13 story structure is proposed to replace the current building. From anywhere on the south jetty the disturbance of the current views such a structure would create would be very significant. On those stretches of the south jetty where most people walk and ride bicycles--the segments closest to Villa Venetia, just west of the UCLA boathouse--the view disturbances would be huge. The view disturbance language was placed in the LCP for some reason. Yet to what could this policy's first provision possibly apply if it does not apply to a huge build-out on the existing Villa Venetia parcel 64?

The view disturbance policy discussed here merits analysis in the current periodic review. It would serve as an overlooked guideline to County officials and development interests as they continue to consider Phase II development in the marina.

EXHIBIT NO.	25
Application Number	MDR Periodic Review
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California Coastal Commission	



August 5, 2007

To: California Coastal Commissioners and Executive Director Peter Douglas
Cc: Jack Ainsworth, Al Padilla, Theresa Henry
Attorneys Jamie Peterson, Dan Olivas, Christopher Pederson

From: David De Lange, PhD (Coalition to Save the Marina), Marcia Hanscom (CLEAN), Nancy Marino (We are MDR), and Bill Farhood (Marina Peninsula Neighborhood Association)

Subject: Requested Commission Action Regarding Marina del Rey LCP Review

We are deeply concerned about the future of Marina del Rey and its LCP. We believe that coastal protection and public access to this part of our treasured California Coast are in serious jeopardy. A main reason for this is that Los Angeles County representatives are systematically undermining the LCP Review process entrusted to your care. The independence and objectivity of that process and the mandated "widest opportunity for public participation" in that process (P.R.C. Sec. 30006) are being significantly compromised. The result could be a major loss of coastal resources.

Public Participation

The Coastal Commission's Recap Guidance Manual states, even more specifically than does PRC 30006 that during a periodic review "the priority given to public participation should guide *any* procedure (p.3-13, italics mine) We believe that the County has made it increasingly difficult for Commission Staff ("Staff") to comply with this directive, a directive we believe Commissioners and Staff wish to uphold. The Commission and public were just informed that, especially since March of 2007, the County has provided repeated, confidential verbal input to Commission Staff regarding LCP review related matters without instead providing written input that Staff had promised to give the public once it was received from the County. In March, 2007 when the County sent the Staff written materials, insisting that they not be released to the public, the County was acting in bad faith, because they knew from previous experience of the Commission's position

that their submissions would become a public record. By effectively forcing Staff to return these written materials unread, the County thereby created a pretext for then confidentially verbalizing the contents of these submissions to a Staff desirous of their way overdue input.

We imagine that County representatives have realized all along that their participation in the MDR Periodic Review was highly desired by Commission Staff, but nowhere mandated. Yet the Commission was required to conduct a review. And so for several years the County variously delayed, threatened non-participation, or participated with the proviso that the public be prevented access to any of their written input. This behavior now appears to us to have been an effort to create in Commission Staff a sense of relief and gratitude when County representatives finally agreed to at least confidential meetings between the two hidden from public scrutiny.

This thwarting of public participation in the LCP review process by County staff and consultants during recent months must be stopped and remedied. On behalf of the public, we ask for a written summary of any and all changes in the revised draft recommendations that County representatives have been seeking since March, 2007, and for a summary of the rationale or evidence on which these proposed changes are based. For any future County staff or consultant input to the Commission Staff that is not submitted in writing and then given immediately to the public as has been promised by Staff, we ask for the same written summary of County LCP recommendations and rationales, or alternatively for a complete audio tape of any Commission Staff meetings with County representatives regarding the LCP review.

Given the County staff's apparent refusal to allow public disclosure of their written input to Commission Staff, we can see no other way that the Commission can assure "widest public participation" and besides follow your manual's directive to have priority of public participation guide "any procedure." We are very sorry to burden you with this request. We realize the difficult position the County staff has put Commission Staff in, but the County's insistence on secretly communicating its needed input with Commission Staff leaves us few other options in the pursuit of our rights.

We are pleased that Commissioner Bill Burke has committed to insuring the County conduct at least one County public hearing on the matter, and we hope that elected and/or appointed officials preside over and listen to public testimony at this hearing so that the input the Coastal Commission receives is from those who are accountable to the electorate and not just the creation of County staff and its consultants.

Goals of A Periodic Review

The PRC clearly establishes that a periodic review is an independent performance review of a County by a State agency, involving a process that in no way has agreement between the two as an essential feature. We support The Commission's right to determine whether a County has implemented an LCP in conformance with the Coastal Act, no matter what the County believes, says, or does.

Several comments in the Commission Staff's July 12, 2007 presentation to the Commission on the MDR LCP review left the impression that perhaps Commission Staff's highest priority goal was not so much to review the County's performance as to achieve agreement with the County regarding the content of the Commission's recommendations to them. For example, Commission Staff stated that it was not possible to schedule a hearing in May of 2007 because Staff was working with the County to resolve a number of outstanding issues regarding the Staff recommendations. Commission Staff also asserted that they have been working very hard with the County to try to resolve differences between the two and were "moving toward a periodic review we can both agree on." In short, Staff's presentation left the clear impression that they had been negotiating with the County about its recommendations to the County as if this process were something like a legal settlement, with Commission Staff seeking to remove any disagreement between the two bodies.

While County staff's concurrence with all of the Commission Staff's recommendations is highly desirable, we maintain that it is in no way the goal of a review or a measure of its success. The Commission Staff is neither mandated nor even allowed to seek such negotiated agreements with the County if such agreements would in any way compromise the Commission's independently arriving at considered conclusions that the County's implementation of their LCP has involved non-conformance with the Coastal Act. Furthermore, a County's implicit or explicit threat that it will not follow a Commission recommendation should in no way deter Commission Staff from making such a recommendation.

LCP ESHA Recommendations

Dr. Jonna Engel declared, in a letter responding to a County Attorney's denial of ESHA values in Marina del Rey heronries, that certain of the Marina's heron roosting and nesting sites exhibited ESHA values. She found in effect that these sites meet both criteria for being an ESHA even though meeting only one of those two criteria is sufficient grounds for an ESHA declaration. Dr. Engel's letter is very definite and nowhere indicates that her ESHA declaration was a preliminary finding; yet Staff characterized her finding as preliminary. Dr. Engel was then quoted as having recently acknowledged that the designation of exotic and/or invasive tree species as ESHA is a controversial designation. This acknowledgement no way weakens her ESHA declaration. The question is whether her ESHA designation is valid and defensible, not whether it is controversial. The court in the Bolsa Chica decision [Bolsa Chica Land Trust v. Superior Court 71 Cal. Ap.4. th. 493, 507] clearly found no problem with the notion that exotic eucalyptus trees supporting heron and raptor roosting and nesting constituted an ESHA, although that decision remains very controversial mainly because it frustrates the hopes of development interests and their well-paid biological consultants throughout California.

We were informed by Staff at the July, 2007, hearing that the County and their biologists and ornithologists strongly disagreed with Dr. Engel's ESHA conclusion and allege that it is not based on sound ecological principles or sound science. Nevertheless more time was requested for these same scientists to present the studies underlying their assertions at the October, 2007 hearing. So which way is it? Do these scientists already have an informed, fully analysis based conclusion that they and not Dr. Engel are correct, and if so why could this finding not have been presented by them at the July hearing? Alternatively, do these scientists really need further time to arrive at their non-ESHA finding? If so, how then can the County allege in advance of their study, that they and not Dr. Engel are correct about ESHAs in the Marina? Someone associated with the County misrepresented something here. We believe that the County scientists' non-ESHA determination is a forgone conclusion that will only be presented at the eleventh hour when the County attempts to derail Dr. Engel's independent work with their science for hire.

The County further asserts that the current LCP certified in 1996 contains no ESHA provisions because of a specific Commission finding that there were at the time of certification no ESHAs in the Marina del Rey LCP area. This allegation while true is irrelevant to the current period review, because its truth in one way implies, as County representatives insist, that we are therefore stuck with the Commission's 1996 non-ESHA finding. One major purpose of a review is to determine whether new, post LCP certification, occurrences create a need for new LCP amendments. In fact, the earliest nests in the current Great Blue Heron Rookery in and near the Villa Venetia Apartments were not established until well after the current LCP was certified. Naturalist Roy Van de Hoek wrote in 2001:

"The nesting rookery at the Villa Venetia apartments began in the year of 1998 with 2-3 nests (not documented in detail for that year)." (*Great Blue Heron: Past, Present and Future at Ballona Wetlands and Marina del Rey, Los Angeles, California. A Report to California Department of Fish and Game and California Coastal Commission, January 23, 2001, p. 26*)

A post-1996 scientific finding that such heron habitat is ESHA would then necessitate an LCP amendment acknowledging this finding and establishing ESHA protective LCP policies.

In addition, there are new nesting and roosting sites for Black-crowned Night Heron and Snowy Egret in the Marina. This new behavior is an adaptation that Unitt and Gallagher^{1 2} have documented and observed during the past decade along the southern California coast – apparently in part due to the elimination of hunting in urban areas and

¹ Unitt, Philip. 2004. *San Diego County Bird Atlas. Proceedings of the San Diego Society of Natural History #39.* San Diego Natural History Museum."

² Gallagher, Sylvia. 1997. *Atlas of Breeding Birds, Orange County, California.* Sea & Sage Audubon Press, Irvine, CA."

the fading out of DDT and exotic landscaping growing to the point where it is attractive to these birds which have dispersed to this area – likely from Mexico, where they were not hunted nor poisoned to local extinction. There are also Monarch Butterfly roosts in the trees adjacent to the Snowy Egret rookery. None of this behavior was known, nor could it have been predicted, when the 1996 LCP was approved.

Furthermore, an earlier finding that there are no ESHAs in an LCP study area, can be revisited *de novo* in an LCP review if that earlier finding ignored facts that could have resulted in an ESHA finding. Marina del Rey’s current LCP, for example, does not acknowledge the existence of wetlands on Parcel 9U. Instead County employees neglected, and then illegally filled, those wetlands with non-wetland soils and poisonous eucalyptus trimmings effectively obscuring their true nature. In 2001 the Army Corp of Engineers made a (conservative) determination that Parcel 9U contained 1.3 acres of wetlands. Now that this is known, these wetlands need to be revisited for a determination of their possible ESHA properties and the need for a related LCP amendment.

In addition, Oxford Lagoon was certainly missed in the last LCP approval. It is a tidal lagoon, functioning as such, with Pickleweed, Saltgrass and other native salt marsh plants bordering the water’s edge. Fish and birds are abundant in the lagoon. It clearly qualifies as ESHA and needs nonnative, invasive plants removed carefully, without disturbing the Black-crowned Night Heron rookery which is on the eastern edge of the lagoon

Finally, even if a fully informed Commission had found in 1996 that there were no ESHAs whatsoever in the Marina, the purpose of a current review is to determine if the LCP is being implemented in conformity with Chapter 3 of the Coastal Act. Such review can include a finding that a former Commission erred in its findings. Furthermore the current Marina del Rey LCP contains the Coastal Act’s definition of ESHA in its list of introductory definitions. If ESHAs are now scientifically determined to exist in Marina del Rey, then clearly the LCP needs amending to incorporate a methodology for recognizing the ESHAs covered by this LCP ESHA definition. Otherwise the County is not implementing its LCP in conformity with the Coastal Act and furthermore the appearance of the ESHA definition in the current LCP would be meaningless. The Coastal Act in effect requires that where there are ESHAs an LCP should contain provisions for recognizing and managing them. Commission Staff has the right and the duty to so recommend.

We appreciate your attention to the matters outlined in this letter. Thank you for your generous contribution of time to insure the tenets of the Coastal Act are upheld.

Sincerely for all signatories,

David De Lange, PhD
Executive Director
Coalition to Save the Marina



EXHIBIT NO.	2C
Application Number	MIR Periodic
	Review
	1 of 10
California Coastal Commission	

September 17, 2007

Coalition to Save the Marina, Inc.
P.O. Box 9291
Marina Del Rey CA 90295

To: Executive Director Peter Douglas, California Coastal Commission
Cc: Jack Ainsworth, Jonna Engel, Ph.D., Al Padilla, Theresa Henry, Deborah Lee,
Los Angeles Audubon Colleagues, et. al.
Re: Robert Hamilton's August 15, 2007 letter to Director Douglas

Dear Peter:

I am writing this letter in response to Robert Hamilton's August 15, 2007, letter which you received under the subject heading "Regarding the 9 August 2007 Public Testimony of David De Lange." I see that Mr. Hamilton's letter was forwarded to you by Los Angeles County Consultant, Andriette Culbertson. Having read Mr. Hamilton's letter, I remain very concerned that independent, objective science cannot be assured when the science is paid for and done under the supervision of parties interested in the scientist's findings and conclusions. Mr. Hamilton himself characterizes my concern as a "perhaps-understandable cynicism about the role of consultants in the application of land use policies in California." (p.2)¹ He offers even stronger backing for the essence of my central claim when he writes: "I am aware of many situations in which consultants have skewed or ignored facts favorable to their clients." (p.2) Mr. Hamilton maintains, nevertheless, that he is not one of the scientists whose work can be influenced by those who hire them.

I do not know Mr. Hamilton and would not presume to judge his character or his motives. His letter sounds sincere. Still many of his actions concern me a great deal. Mr. Hamilton tells us that he "remain(s) employable by governmental agencies, private land owners, and environmental groups alike" and that this demonstrates his integrity, objectivity, and intellectual rigor. (p. 2). My job as a conservationist is to point out, with respect to such widespread employability, the potential moral hazard in all such arrangements, even when the work is paid for by environmental groups.² The

¹ This and all following page references are to Mr. Hamilton's August 15, 2007 letter unless otherwise indicated.

² I believe objectivity in science is best promoted when the hiring authority's interest in a scientist's findings are at most minimal. So, for example, the Coastal Conservancy, and to some extent the Coastal Commission, especially its staff biologists, are in a better position than is either L.A. County, its development community, or its environmental organizations to hire and manage biologists who will more

fundamental problem is not with the individual consultant, but with the system in which consulting scientists' work is typically embedded. Those who hire scientific consultants usually have the power to select, rehire, refer, recommend or not recommend, verbally influence, praise or demonize, and pay their consultant. Because consultants are caught between this considerable power and the need to make a living, and/or the possibility of making a very good living working for development interests, the temptation to become a cooperating, rather than an impartial, consultant, must be very strong.

Los Angeles County has hired Mr. Hamilton, he tells us, for the task of reviewing, in Marina del Rey "the historical and current status and distribution of Great Blue Herons in the local area and wider region and reaching my own conclusion regarding whether trees that have been used by Great Blue Herons for nesting in Marina del Rey satisfy ESHA criteria . . ." (p.1) It is important to add that an ESHA finding by the Commission, which Mr. Hamilton's work could influence, would imply generally that the Great Blue Heron's current habitat could not be destroyed and that the birds could not be relocated or "recruited" (read "driven" or "herded") to a new location; whereas a non-ESHA finding would support the case for removal of the Great Blue Heron's nesting habitat ("trees") and/or could enable the "recruiting" of the subject Great Blue Herons to a new habitat.³ Such habitat removal and possible Great Blue Heron relocation is a stated objective of Mr. Hamilton's Los Angeles County employer.

Mr. Hamilton has previously worked on relocations of bird populations to new sites, work that preceded the destruction and ensuing development of the birds' original habitat. With this in mind, I now turn to Mr. Hamilton's defense of this earlier work. His general approach in defending that work against my comments of August 9, 2007, is to distance himself from the projects he has worked on while at the same time generally supporting these projects.

Cactus Wren Relocation Project (Orange County)

As a wildlife advocate, I am naturally concerned by Mr. Hamilton's role in the sad saga and relocation of a group of Southern California's coastal Cactus Wrens, especially since

likely study L.A. County development proposals with independence and objectivity. An even more optimal chance of independence and objectivity I think comes from scientific work that is self-instigated, self-managed, and then donated to the public domain by economically disinterested entities like California Wetlands Research. Such groups typically look for ways to finance their research that is completely unrelated to the research. The groups of this kind I have met insist on following scientific method no matter where it leads.

³ "Recruiting" birds to a new nesting location or destroying their habitat is normally, in the absence of a valid permit, a misdemeanor, a violation of, among other laws CA Code Title 14, §251.1. Harassment of Animals. This code section states: "Except as otherwise authorized in these regulations or in the Fish and Game Code, no person shall harass, herd or drive any game or non-game bird or mammal or furbearing mammal. For the purposes of this section, harass is defined as an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering. This section does not apply to a landowner or tenant who drives or herds birds or mammals for the purpose of preventing damage to private or public property, including aquaculture and agriculture crops."

this coastal population is threatened with possible extinction.⁴ Mr. Hamilton begins the defense of his work by noting that, contrary to my claim, a Mr. Kamada and not he was the biologist for the Nature Reserve of Orange County's (NROC's) coastal Cactus Wren relocation project. He adds "When I learned that Mr. Kamada was coordinating with the NROC to relocate wrens to the coastal reserve I was excited to participate." (p.5) This appears to mean that Mr. Hamilton was not "the lead" but "a" biologist on the project. I accept this restatement as more accurate although it bears no relationship to my overall concern.

Mr. Hamilton then tells us that "the only pay I received for any of this work derives from the slight overlap between the relocation project and my ongoing surveys of all lands with the NROC's coastal reserve" and that his work involvement was otherwise voluntary. (p.5.)

"Slight overlap?" Mr. Hamilton's NROC employer, who also funded the overall relocation project, posted a statement on the NROC website they attribute to Mr. Hamilton and his fellow workers, which seems to indicate that the employer's view of Mr. Hamilton's employee overlap with the relocation ("translocation") project was far more than "slight" no matter how the paychecks were officially calculated. A copy and paste from the employer's website on September 7, 2007, reads exactly as follows:

**Cactus Wren Translocation
Milan Mitrovich, Dana Kamada, and Robb Hamilton**

Effective management of coastal populations of the Cactus Wren (*Campylorhynchus brunneicapillus*) is considered one of the great challenges in bird conservation for southern California. Loss and fragmentation of habitat due to development, agricultural displacement, and high frequency wildfire, have led to major declines in this species throughout large portions of the region. Even on protected conservation lands populations are vulnerable to local extinction, and the need for active management of this species is becoming increasingly obvious. Between 17 June and 23 September 2006 we captured, color-banded, and relocated ten cactus wrens in order to study the biological and behavioral response of adult and juvenile wrens to translocation. Following release, the wrens were monitored for a minimum of 60 days and information concerning their behavior and survivorship was obtained. <http://www.naturereserveoc.org/projects.htm>

Mr. Hamilton further tells us that although the Irvine Company was ultimately responsible for the decision to relocate the Cactus Wrens, this company, contrary to my impression, nevertheless "undertook the relocation effort (in mid- 2006) *not as a required mitigation measure, but as a voluntary experiment* toward gathering information about techniques that could be useful for managing and conserving Cactus Wren populations." (pp. 5-6, parentheses mine) The suggestion here seems to be that the Irvine Company was not motivated by legally required mitigation mandates related to their development plans, but rather by a voluntary effort to determine what would be best for these Cactus

⁴ Drs. Solek and Szijj point out that this population is presently listed as a California State Species of Special Concern and Cleveland National Forest Federal Sensitive. See Solek, C. and L. Szijj. 2004. Cactus Wren (*Campylorhynchus brunneicapillus*). In "The Coastal Scrub and Chaparral Bird Conservation Plan: a strategy for protecting and managing coastal scrub and chaparral habitats and associated birds in California. California Partners in Flight." <http://www.prbo.org/calpif/htmldocs/scrub.html>

Wrens. (Read here “best” if their habitat is going to be destroyed.) Mr. Hamilton then summarizes correctly the prior (to me very objectionable) removal of many such legal barriers when he pointed out that the Irvine Company, a Real Estate Investment Firm, made a large money and land (easement) donation to NROC ⁵ and “as a result, all of the company’s pending development projects are already covered with respect to local, state, and federal laws regulating the loss of coastal sage scrub and associated species, including the Cactus Wren.” (p. 4, bold mine)

I can understand why my testimony might have given Mr. Hamilton the impression that I was talking about legal barriers when I said that these Cactus Wrens stood in the way of development. But rather it was mainly the barrier of public opinion that the relocation sought to mitigate. Lead biologist Dana Kamada’s report on these Cactus Wrens acknowledges that the habitat these birds occupied when their relocation occurred in mid-2006 was “due to be developed in late 2006” ⁶ From a developer’s public relations point of view, with these Cactus Wrens on the brink of seeing their habitat destroyed, mid-2006 seems like a perfect time for a “voluntary relocation experiment.” However, what these Cactus Wrens needed from the Irvine Company and Mr. Hamilton all along was not relocation, but rather the “No Project” development alternative, and restoration and extension of their fragmented original habitat.

What did these birds get instead? Mr. Kamada, Mr. Hamilton’s associate, describes the first year of relocation as “relatively successful. . .at least in the short run.” (Kamada, p.6) without stating his criteria of success.

Here are the facts: a total of 10 cactus wrens were relocated (5 adults and 5 very young juveniles). Right off we must ask: Especially since coastal Cactus Wren is a small population threatened by extinction, what other than some development related pressure could have possibly motivated these researchers to relocate this group of birds when they had just produced vulnerable, fresh young hatchlings to feed? Such is a time in the population’s annual life cycle of near maximal vulnerability.

Next we are told that 6 of the 10 birds including all five juveniles disappeared for good within 23 days of relocation. Little wonder given their great vulnerability at the time. Here is biologist Kamada’s explanation for the disappearance:

“. . .in the case of the three fledglings that disappeared within a week of release and the adult male that disappeared, we suspect predation as a possible cause. Potential predators of small birds, the Cooper’s Hawk (*Accipiter cooperii*), Northern Harrier (*Circus cyaneus*), White-tailed Kite (*Elanusleucurus*), and American Kestrel (*Falco sparverius*) were routinely observed in the vicinity of the release sites.” (Kamada, p. 5)

⁵ The composition of the Nature Reserve of Orange County’s Board of Directors and its website provide a glimpse at this non-profit’s role in what I would call green washing in the circumvention of the original intent of the Endangered Species Act.. See the NROC website @ <http://www.naturereserveoc.org/board.htm>

⁶ Dana Kamada, “Results of the 2006 Cactus Wren (*Campylo rhynchus brunneicapillus*) Translocation Study in Orange County, California,” p. 2) <http://www.naturereserveoc.org/Cactus%20Wren%20Translocation%20Report.pdf>

Mr. Kamada attributes the disappearance of the remaining two young to either predation or dispersal but other researchers note the very strong tendency of Cactus Wrens to not disperse, logically leaving predation as the likely cause for all five juvenile disappearances. (Solek and Szijj, op.cit.) . Furthermore, for lead researcher Kamada to characterize as “relatively successful” a relocation in which all young are lost in less than a month mainly or entirely due to predation seems completely unjustified..

Mr. Hamilton tells us that part of his role was relocation site selection: “My initial contribution to the Cactus Wren relocation effort was to identify areas of high-quality cactus scrub habitat that did not already support wrens.” (p. 5) The relocation site chosen (Upper Newport Bay) was in earlier years used by Cactus Wrens who then disappeared from it. The relocation biologists apparently somehow did not take seriously the possibility that likely predation by the Hawks, Harriers and Kites whom they observed in 2006 (see quote just above) at the relocation site had also caused the earlier Cactus Wren population’s previous disappearance from that very site. How could they then relocate birds under such circumstances to this very site? Or did they not understand the danger of predation that was there to see?

Finally, Mr. Hamilton concludes his own remarks on this project with an assertion that one pair of Cactus Wrens produced a single fledgling at the relocation site a year later, in 2007. However there is no discussion of this fledgling’s parents’ identity, its length of survival, or of the utter statistical insignificance of such a singular finding.

I am particularly concerned with Kamada and Hamilton’s work on the coastal Cactus Wren’s because of this population’s precarious situation. Most especially in Orange County, where the relocation occurred, the coastal Cactus Wren is on the verge of extirpation. (Solek and Szijj, op.cit.) This imperiled population requires habitat restoration supported by habitat expansion, not development driven habitat destruction enabled by “experimental” relocation to formerly abandoned habitat.

Black-Crowned Night Heron Relocation (Port of Long Beach)

With Mr. Hamilton’s assistance, around 1996, the Port of Long Beach (POLB) began implementing a massive relocation to nearby supposedly remote Gull Park of several hundred Black-crowned Night Herons (BCNH) and 50 of their uprooted and boxed nest supporting trees. Mr. Hamilton responded to my statement that he was “recently hired by the Port of Long Beach and others who were attempting to relocate both Black crowned Night-Herons and Cactus Wrens” (p.2) by noting that his employment on this POLB project ended in 1996. Since Mr. Hamilton has worked on the Cactus Wren project in year 2007, it would have been more precise to say that “over recent years (1996-2007), Mr. Hamilton has been hired for work related to the BCNH and Cactus Wren relocation projects.” However, as we shall see, these choices between phrasings have no bearing on the overall concerns I expressed in my testimony.

In his discussion of the Black-crowned Night Heron project, Mr. Hamilton emphasizes that he “*had no direct involvement in the relocation effort*” and then left the project

because of (unspecified) “different views on how the project should be carried forward.” (p. 3) He describes the work he actually did do as follows:

During that year (1996), fellow consultant Peter H. Bloom and I documented several hundred active nests at the Naval Station/Shipyard and fitted 570 nestlings with leg bands. Our scope of work also called on us to collect data on the types, sizes, and shapes of trees used by the nesting herons; consult with heron biologists and other knowledgeable ornithologists regarding the methods proposed by the Port of Long Beach to relocate the colony to a **protected site** located elsewhere on the U.S. Navy’s property; research other night-heron colonies in the region; and recommend measures intended to improve the relocation project’s chances of success. (p. 2, bolding mine)

It appears that Mr. Hamilton does not view his banding the birds for and planning for their relocation as “direct involvement.” Central, however, to Mr. Hamilton’s self-described planning responsibility on the project was a role in the identification of, as he puts it, a “protected site” to which the birds would be relocated. This plan to move these birds to a protected site is what failed.

Here are the facts. At the end of the 1998 nesting season, several hundred Black-crowned Night Heron nests and their nest bearing trees were uprooted, boxed and moved across the Port of Long Beach to Gull Park. The herons themselves were enticed with recorded heron vocalizations and decoys to follow.⁷ By nesting year 2000 there were 423 active Black-crowned Night Heron nests at the new site. However by the year 2002 not a single one of these nests remained active. (MBC, 2002, p. 4) Mr. Hamilton explains this dramatic nesting failure by referring to a personal communication from a biologist, Dr. Jeffrey Froke,⁸ who, it so happens, is also currently consulting with Los Angeles County on the Marina del Rey heronry and supports its destruction (read footnote “8” above). Mr. Hamilton writes:

According to Dr. Jeff Froke (pers. comm.), nesting Black-crowned Night-Herons abandoned Gull Park when the U.S. Navy created a major disturbance of soil and trees there some time after the 2000 nesting season. (p.4)

The relocation project managers/researchers describe the Navy disturbances as follows:

Navy contractors began major soil investigations at Gull Park in 2000, following the black-crowned night heron nesting season. As part of the initial remediation process, soils and 20 of the established trees on the north side of the site were removed. Following the initial excavations and prior to the start of the 2001

⁷ Crouch, Paquette and Vilas, MBC Applied Environmental Sciences, “Black-Crowned Night Heron Study Year 3, 2001 Nesting Season Gull Park, Navy Mole, Long Beach, California,” 2001 (This is one of nine annual reports on the relocation published by MBC from 1998-2006)

⁸ Following the public’s extensive critique of Dr. Froke’s 2005 Marina del Rey Heronry report, according to the minutes of Marina del Rey’s October 26, 2006 Design Control Board, that Board’s Chair pro tem, Ms. Katherine Spitz, offered an assessment of Dr. Froke’s report. The minutes read: “Ms. Spitz said there was a great perception of bias in the heronry report, and it was her feeling the county made a bad choice in the expert they chose.” (p. 8) The County referred to is Los Angeles and the expert is Dr. Froke.

nesting season, the boxed, relocated trees were permanently planted throughout the site. The soil remediation process conducted by Navy contractors, including drilling of wells and debris removal, continued throughout the 2001 nesting season. (MBC, 2003, p. 2)

There is indeed a paper trail, sent bundled in a DAT document to the Coastal Commission's Jack Ainsworth by Andriette Culbertson on August 22, 2007, showing substantial Navy activity at the relocation site, especially early in the year 2001 nesting season. This paper trail consists of correspondence between the POLB relocation planners and the Navy, and generally reveals that the planners argued and pleaded with and pressured the Navy to overcome various delays and to modify other practices, like on-site helicopter and heavy equipment use, all of which, they believed, were adversely affecting the 2001 nesting season. Navy contractors, for example, had excavated half of Gull Island's soil to clear metal debris only to discover that unplanned for soil replacement would be required by DTCS. As a result, the Navy contractor's replanting of the boxed, relocated nest supporting trees, some of which the Herons had nested in the previous year while still in their boxes, was not completed in time for the 2001 nesting season. Disagreements and finger pointing related to removing radioactive contamination at the relocation site caused further delays in accessing and watering the dying, boxed trees.

Let us assume for the moment and for the sake of argument that various Navy activities and behaviors did severely disturb Heron nesting. Does this mean that the relocation planners/biologists are not responsible for the failed relocation and that the Navy and/or its contractors are to blame? Not at all. Blaming Navy disturbances overlooks the plain truth that, in fact, a highly planned relocation was ultimately completely undermined by unplanned, unanticipated, and/or uncontrollable circumstances. The planners at the outset embarked upon a project while obviously not assuring that they had the authority and/or ability to guarantee successful execution of their plan. The planners did not insure that Gull Island would be safe and secure for the Herons before uprooting and relocating them there and furthermore were relying on the Navy and others not under their command for the timely future carrying out of crucial parts of the relocation plan itself, like soil preparation and tree watering and replanting. Mr. Hamilton himself actually implicitly acknowledges this planning failure, while trying to justify the relocation projects' dismal outcome, when he concludes in his letter to you: "There is no way of knowing whether those birds would have continued to nest at Gull Park over the long term had the relocated heronry been protected against major disturbances." (p. 4)

But remember—the biologists' plan was to relocate the Herons to a **protected** site. That plan completely failed. Assuming again for the sake of argument that Navy disturbances did severely affect Heron nesting, it was the project planners who exposed these Herons to these disturbances by clearly placing the unfortunate birds beyond the ability of the planners to protect them at the relocation site. When doing this, the planner/biologists at the same time had a key role in removing this huge Black-crowned Night Heron colony

from an original site at which they had been nesting in great numbers successfully for years. (MCB, 1998, p.1)⁹

There's still more to this sad relocation story and yet even more to understand about the way the story has been told to the public and to the scientific community. Again more specifically, year 2001 is when the relocation began to unravel: "Black-crowned heron nesting activities at Gull Park "decreased dramatically in 2001." (MBC, August, 2002, p. 2) The next year 2002, there was no successful heron nesting whatsoever at Gull Park. (MBC, 2002 p. 4) The failure continued; from year 2003 through the 2006 nesting year, there was still no Black-crowned Night Heron nesting at the Gull Park relocation site. (MBC, 2003, 2004, 2005, 2006)

Instead of quoting and analyzing these dismal findings, Mr. Hamilton's letter to you cites the one major publication on this relocation effort that can be found and is easily available on-line, at *Waterbirds*. It is an inappropriately glowing report of the alleged success of the Black-crowned Night Heron relocation project and was received by the *Waterbirds* publisher on February 2, 2002 and **published on-line in December, 2002 many months after Black-crowned Night Heron nesting at the Gull Park relocation site was known by the authors of the glowing report to have become completely nonexistent.** [http://www.bioone.org/perlserv/?request=getdocument&doi=10.1675%2F15244695\(2002\)025%5B0474%3AROALBN%5D2.0.CO%3B2](http://www.bioone.org/perlserv/?request=getdocument&doi=10.1675%2F15244695(2002)025%5B0474%3AROALBN%5D2.0.CO%3B2)

Remarkably, this highly visible December, 2002 report, this report that Mr. Hamilton cites, heralds the fact that in year 2000, the POLB Black-crowned Night Heron's had, as we have already mentioned, 423 active nests at the relocation site. The report makes no mention whatsoever of the dismal years 2001 and 2002 that immediately followed. Results from these dismal years that I quoted just above come instead from an obscure August, 2002 annual report by the very same MBC authors who published the on-line *Waterbirds* success story article in December 2002. (This obscure report with the dismal results was available to me for purchase only directly from the Port of Long Beach.)

Furthermore, the visible, glowing, misleading December, 2002 report by the POLB project managers/authors, which Mr. Hamilton cites approvingly, contains the further following remarkable conclusion:

The 2000 breeding season was the most successful in the Long Beach area since yearly studies commenced in 1996. Although monitoring is on-going, it appears that the long term mitigation strategy of relocating Naval Station nesting trees to

⁹ Mr. Hamilton, following Froke, further speculates that the presence of the Great Blue Herons, who moved into Gull Park from elsewhere about the time the Black-crowned Night Herons were being relocated there, may have deterred the return of the Black Crowns to the relocation site once the Navy disturbances ceased. However, even if this speculation were true, it would be just more evidence of the biologists' plan for a protected site-gone-haywire. The Great Blue Herons presence was clearly unplanned for and unforeseen, nor was it under the planner/biologists' control. In any case, the Great Blue Herons-did-it hypothesis is probably incorrect anyway because we read in the MBC Applied Environmental Sciences annual 2002 BCNH relocation report that 26 Great Blue Herons nests were active along side the 423 active BCNH nests during 2000, the first and only year that BCNH occurred at Gull Park with any so-called success. (MBC, 2002, p. 1)

Gull will ***succeed in maintaining*** the Long Beach Black-crowned Night Heron colony. (p.5, italics, bold mine)

How could these MBC authors Mr. Hamilton cites as evidence of project success possibly allow an (on-line) December, 2002 publication of a prediction of on-going future nesting success to stand without further on-line explanatory comment, when these authors show awareness in (obscure) print, long before this date, that nesting was plummeting (2001) and nonexistent (mid-2002)? In other words, months before the December 2002 publication date, there was **no nesting colony** left to “maintain”? I am wondering if Mr. Hamilton was aware of how misleading this on-line publication I have just analyzed was when Ms. Culbertson forwarded it to you along with Mr. Hamilton’s letter of August 15, 2007.

By August, 2006, the MBC project managers/authors had run out of explanations for the continuing failed Black-crowned Night Heron relocation and **no longer blamed the Navy**. In their 2006 annual report, again available to me only through the Port of Long Beach (no on-line access here), they write:

No black-crowned night heron nesting activities were observed at Gull Park during the 2006 nesting season. . . .The low heron nesting activity in Gull Park continues a trend in the area since the 2002 nesting season (MBC 2002, 200, 2004 2005). Navy mitigation activities have been completed and, except for automated machinery on the eastern side of the site and visits by a service technician, the area appears to be undisturbed. These factors are not considered stressful enough to interfere with nesting, and the reason for the continued absence of black-crowned night heron nesting at Gull Park remains unknown. (MBC, 2006, p. 5)

A recent complete hold out to the apparent truth about this failed relocation project is Los Angeles consultant Ms. Andriette Culbertson. In a communication to Los Angeles Audubon¹⁰ concerning the Black-crowned Night Heron relocation, **dated September 27, 2006**, Ms. Culbertson herself writes:

Our information on the Long Beach program is that it was initially successful, and then a Navy project disturbed it. It has **recently been extremely successful**. I will be happy to provide that information to you. Since I want to provide a good copy and our key biologist Dr. Jeffrey Froke, is away this week, I will send it next week. (Bold mine)

As I have just documented, the project managers/researchers acknowledge that there has been no Black-crowned Night Heron nesting in the Port of Long Beach since 2001. Furthermore, the Navy project Ms. Culbertson mentions ended in 2002 (MBC, 2003) Ms. Culbertson’s claim, in late September, 2006, that this relocation program has “recently been extremely successful” is therefore completely and disturbingly false. Furthermore, the email trail your offices sent us shows that Mr. Hamilton is sending his reports and documents--at least each of the fourteen that the

¹⁰ I currently serve on the Los Angeles Audubon Board of Directors. I have participated in Audubon field trips and educational forums continuously over the past 15 years.

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Commission has sent us related to the Long Beach and Marina del Rey Heronries--to Ms. Culbertson before she forwards them to the Commission.

I leave it to the reader to decide what credibility remains when someone makes a major claim, such as Culbertson's, that has been so completely, continuously, and knowably false for around five years. But my main point is that to make proper decisions about Marina del Rey's herons and their habitat, the Coastal Commission would best rely on scientists who are in a position to be as economically disinterested, self-managed, independent and objective as is humanly possible.

Sincerely,

David De Lange, PhD
Executive Director
Coalition to Save the Marina
Los Angeles Audubon Board

EXHIBIT NO.	27
Application Number	MDR Periodic Review
	10/13
California Coastal Commission	

**The Public's Analysis and Proposals For
 Recommendation Language to Replace or Supplement Existing
 Recommendation Language in CCC's June 28, 2007
 Marina del Rey LCP Periodic Review Staff Report**

DDJ By David De Lange, PhD (author, editor), and authors Ina Barish,
 Marcia Hanscom, Nancy Marino, and Jon Nahhas
 Representing Various Coalition to Save the Marina, We are MDR and CLEAN

PROHIBITED VIEW DISTURBANCE POLICY

A very protective view corridor policy of the current LCP has apparently been overlooked by all parties concerned with Marina del Rey development until it was recently discovered and analyzed by the public. The policy reads as follows:

5. The following existing views within the existing Marina shall not be significantly disturbed:
- All views from north jetty and south jetty (west of UCLA boathouse);
 - Harbor views from Burton Chase Park and Fisherman's Village;
 - Cross-beach view from Panay Way parking lot (parcel GG): and
 - Main channel view from Admiralty Park." (MDR LCP Ch. 9, p. 5)

This policy has far reaching implications for several high rise projects currently under consideration in the Marina. For example, the first provision of this policy implies that the current views looking landward/westward from the south jetty toward the current Villa Venetia 3 story apartment building cannot be significantly disturbed. Yet, as the Commission was shown at public comment in January 2007, a 13 story structure is proposed to replace the current building. From anywhere on the south jetty the disturbance of the current views such a structure would create would be very significant. On those stretches of the south jetty where most people walk and ride bicycles--the segments closest to Villa Venetia, just west of the UCLA boathouse--the view disturbances would be huge all along this entire jetty segment. The view disturbance language was placed in the MDR LCP for some reason. Yet to what could this policy's first provision (above) possibly apply if it does not apply to a huge build-out on the existing Villa Venetia parcel 64?

The third provision of this policy implies that current cross-beach view from Panay Way parking lot (parcel GG) toward the coastal waters, the small craft harbor and the Santa Monica Mountains to the north cannot be significantly disturbed. However, currently under construction on Parcel 140 is a multi-story structure (approximately 4 to 5 stories) that will consist of 172 new apartments. Even prior to completion, this apartment complex significantly disturbs the views of the Santa Monica Mountains from parcel GG if not eliminating the view entirely. Moreover, the proposed construction of addition

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 COASTAL COMMISSION

levels on the existing hotel on parcel 27 and the proposed addition of the new five story hotel on parcel IR will continue to obliterate this protected view from parcel GG.

The prohibited view disturbance policy discussed here merits analysis in the current periodic review. It would serve as a much needed but completely overlooked guide to County officials and development interests as they continue to consider Phase II development in the Marina. Please direct Staff to review the County's compliance with the view non-disturbance policy in the current periodic review. The periodic review recommendation to the County we suggest is essentially that they start doing a job they have neglected so far and could be worded as follows:

New Prohibited View Disturbance Recommendation: The County should immediately analyze the implications for all developable parcels in Marina Del Rey to determine the limitations and other parameters for development mandated by the View Disturbance Prohibition Policy 5 on page 5 of the LCP's Chapter 9. In the course of analyzing development on any specific Marina del Rey Parcel, the County shall contain a finding, justified with specific reasons, that the proposed development is consistent with this View Disturbance Prohibition Policy.

CONSERVATION OF MOTHER'S BEACH

Views

Marina Beach, popularly known as Mother's Beach, is not only one of the premier day-visitor attractions in the Marina. It also provides the key panoramic viewscapes that establishes the identity of Marina del Rey as a small craft harbor and public recreation destination. Everyone who enters the Marina from the north—by car, bicycle, foot or other means—is treated to this visual experience. The certified Land Use Plan highlights the need to enhance and preserve this very viewscape in Section 1e (14) pages 1-8 to 1-9:

Public opportunities for viewing the Marina's scenic elements, particularly the small craft harbor water areas, shall be **enhanced and preserved** (*emphasis added*).

- All developments on the waterfront side of Via Marina, Admiralty Way and Fiji Way shall provide windows to the water, wherever possible, while at the same time, screening unsightly elements such as parking areas and trash receptacles with landscaping.

The picnic shelters that currently exist on Mother's Beach provide just what is mandated here, windows that frame a welcoming view as you turn the corner from Admiralty Way to Via Marina or drive on Via Marina from Washington Blvd. It is a warm and inviting sight that signals that you have entered the enclave of Marina del Rey.

This very viewscape is threatened by the County's plan to "centralize most public use at Burton Chase Park, and create a hotel commercial center at the Marina Beach." (LCP Review Staff Report dated June 25, 2007, ITEM TH 15a, Pp. 95-6.) Among the

proposed development is a corporate long-term stay hotel on Parcel IR and extending the height of an existing hotel on Parcel 27.

Preservation of the viewscape upon entering Marina del Rey from the north merits analysis in the current periodic review, perhaps in conjunction with the preservation of the cross-beach view from Panay Way parking lot (parcel GG) highlighted in the section entitled "View Non-Disturbance Policy." Preservation of the visual access to Mother's Beach should be highlighted as County considers Phase II development in the marina.

New Proposed Recommendation 31.1

The LCP should be revised to recognize that Marina Beach, popularly known as Mother's Beach, is not only one of the premier day-visitor attractions in the Marina, but that the intersection of Admiralty Way and Via Marina that frame Mother's Beach provides the key panoramic viewscape that establishes the identity of Marina del Rey as a small craft harbor and public recreation destination. The LCP should be revised to strengthen the preservation of this panoramic entry into Marina del Rey. In addition, all development policies related to Parcels IR and GG and any additional development on Parcel 27 shall not disturb the existing view of the coast, the Santa Monica Mountains and the small craft harbor from Mother's Beach and parcel GG.

Conservation of Public Recreation Area

Marina or Mother's Beach, besides being a very significant visitor destination area used by tourists, locals and LA County residents alike, and besides possessing significant recreational value and being highly scenic, is also a launching point for kayaking and canoeing clubs, a host site for recreational volleyball and fitness programs, and a site chosen for many celebrations and picnics. It also provides the only playground for local children in Marina del Rey. It is a beloved landmark and in the language of the Coastal Act, a sensitive coastal resource area. (*Coastal Act, Definitions, Section 30116*)

Mother's Beach is an existing, dynamic, thriving example of free recreation that development is threatening to destroy by removing the picnic shelters and replacing them with a corporate, extended stay hotel and displacing the picnic tables to the periphery of Mother's Beach while the prime real estate and views services the corporate clientele. Preservation of a 20% view corridor does not seem equitable when a 100% view currently exists. Plus there will be 2 deterrents to playing or picnicking on Mother's Beach in the future: (1) limited public parking (a number of lots will be eliminated, including parking lot 10 on parcel IR which is closest to the picnic tables) and (2) the sun will be blocked by the proposed Marriott Residence Inn, making it colder, particularly in winter afternoons.

Multiple provisions of the *Coastal Act, Article 2 Public Access* are relevant in analyzing the appropriateness of the proposed development at Mother's Beach. Two perhaps not immediately obvious are: (1) *Section 30212.5, Public facilities: distribution* which provides: "Wherever appropriate and feasible, public facilities, including parking areas

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or facilities, shall be distributed throughout an area so as to mitigate against impacts, social and otherwise, of overcrowding or overuse by the public of any single area;" and (2) Section 30252 Maintenance and enhancement of public access which reads in relevant part, "(6) assuring that the recreational needs of new residents will not overload nearby coastal areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development."

The County currently plans to "centralize most public use at Burton Chase Park, and create a hotel commercial center at the Marina Beach." LCP Review Staff Report dated June 25, 2007, ITEM TH 15a, Pp. 95-6. As indicated by this statement, the intention is to concentrate recreation in Burton Chase Park. With current uses being condensed to a smaller physical space within Mother's Beach or transferred to Burton Chase Park, and with the proposed addition of 3500+ new apartments that do not provide recreational facilities on site to serve the new development, how can there be anything but an overuse and overcrowding of Burton Chase Park.

In sum, it is difficult not to conclude that the planned redevelopment of Mother's Beach is a violation of the essence of the Coastal Act and the certified LCP. An amendment to the staff report to protect and preserve the existing Mother's Beach is needed.

New Proposed Recommendation 31.2

The LCP should be revised to recognize that Marina Beach, popularly known as Mother's Beach, is a sensitive coastal resource area and as such its recreational value and highly scenic views should be enhanced and preserved. Mother's Beach should be preserved as a primary location for low coast and free recreation in Marina del Rey in addition to Burton Chase Park. No development of any kind inconsistent with these principles should be allowed.

COMPREHENSIVE AMENDMENT

Revised Staff Recommendation #17 (RR#17) is what remains of the Commission Staff's original recommendation that the County present future proposed reallocation of parcel uses together in the form of a Comprehensive LCP Amendment. This weakened RR#17 reads: "*Revise the LCP to require that the County consider all pending project-driven amendments of the LCP that could change the designation of parcels from a public park or parking use to a private use at the same time. A project shall be considered pending if there is an approved term sheet allowing the applicant to apply for approval of the project. In considering such amendments, the County should analyze the total pattern of public serving and park uses in the Marina.*"

Recommendation #14 from the Staff's earlier Draft "Staff Recommendations" (May 25, 2005) is much more comprehensive in scope than RR #17. It reads: "*The County should implement a comprehensive LCP revision identifying the parcel(s) that would be*

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subject to reallocation of uses recommended in the Asset Management Strategy and consider all the changes in one LCP amendment as an integrated whole, so that the balance of public uses recommended in the Asset Management Strategy, the LCP and the Coastal Act is achieved."

The discarded Draft Staff Recommendation #14 is a comprehensive anti-piecemealing recommendation. We would like to see a more precise version of it reinstated in the Staff's Revised Recommendations. RR #17 by contrast is of limited scope in several respects. It excludes from its sweep, for example, any County amendments changing parcels from commercial to residential use and any County amendments allowing increased residential densities. Furthermore, RR #17 limits the projects it includes for comprehensive analysis to currently pending projects thereby overlooking many possible future projects. As a result, all projects not covered by RR#17 needing amendments to the LCP could still be considered parcel by parcel, which is what we call piece-mealing. On the other hand, while headed very much in the right direction, Draft Recommendation #14 has been understandably criticized for its lack of specificity. It seems to suggest that the County might have only one opportunity ever in the future to seek an amendment related to reallocation of parcel uses. To remedy this and give more specificity to the idea of a comprehensive amendment for Marina del Rey's LCP, we recommend the following wording.

Revision Replacing Recommendation #17: At any time, if any, the County seeks to amend the LCP to reallocate or change in any way the current land use designation of parcels covered by the LCP, the County shall seek one comprehensive LCP amendment identifying all of the parcels that would be subject to change or reallocation of uses, so that proposed change(s) or reallocation(s) of use requiring an amendment to the LCP may be reviewed as an integrated plan and the balance of public uses required by the LCP and the Coastal Act is maintained. To achieve this it will be necessary to protect existing public parking, public beach and boat launch areas and public access to these areas. The reallocation of uses covered by this provision shall include, but is not limited to, all parcels included in Phase II development as authorized under the LCP. Any reallocation of uses subsequent to Phase II development requiring an LCP amendment shall be part of a Phase III comprehensive amendment similar in nature and scope to the Phase II comprehensive amendment. Any reallocation of uses subsequent to Phase III development requiring an LCP amendment shall be part of a Phase IV comprehensive amendment similar in nature and scope to the Phase II comprehensive amendment and so forth.

The list of 16 projects currently proposed as part of Phase II MDR Development can be found at: <http://beaches.co.la.ca.us/BandH/Marina/DCBProjectTable021507.pdf>

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PUBLIC PARKING

An essential aspect of increasing public access to coastal resources and of free and low-cost recreation service locations is ensuring that public parking adjacent to such coastal areas are protected and maintained. Under the County's current and proposed redevelopment plans, 4 of the 5 parking lots serving Mothers Beach (Parcels OT, NR, IR and FF) are slated for destruction. Moreover, the proposed replacement businesses will not be able to provide parking to satisfy their own parking needs and replacement parking. (From various minutes of Marina del Rey Design Control Board proceedings)

The County has demonstrated an intention to disregard the importance of public parking, most clearly at the April 2006 Design Control Board Meeting. In that meeting, the Board became aware of the huge potential problem that was developing with parking. The DCB summed it up as a "knot that needs to be untied." The Board asked the Director of the Department of Beaches and Harbors to "take a bigger view of a way to deal with parking," "to look at the projects that have not been built yet and are not providing their own parking and look at the possibility of reducing the overall square footage," "we have a problem and are asking you to consider it." The Design Control Board's reward for its efforts at protecting the public's right to access the coastal recreational facilities and to enforce the LCP – a County amendment stripping them of their substantive powers passed the Board of Supervisors earlier this year. The fate of the Design Control Board is discussed more fully in the section entitled "Design Control Board." More relevant here is the fact that the recommendations protecting public parking need to be strengthened. "An out" to protect parking "where feasible" is too large and conflicts with the Coastal Act and the LCP.

Revision Replacing Recommendation 35, Bullet 3

Ensures public parking serving (1) Marina Beach, popularly known as Mother's Beach, (2) coastal and boating access and (3) other recreational facilities in Marina del Rey is protected and maximized.

ENFORCEMENT OF BUILDING HEIGHT/DESIGN CONSTRAINTS IN MDR SPECIFIC PLAN (LIP)

The Marina Del Rey Specific Plan, part of the LIP, contains an overall design concept for Marina del Rey along with a method for resolving any conflicts between its policies and the policy language of the earlier Land Use Plan. They read:

22.46.1040 Urban design concept. The urban design concept for Marina del Rey embodies a three-dimensional option that will give the study area a strong, definitive physical image and identity. Key features of the urban design concept include:

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- A modified "bowl concept" consisting of a skyline of taller buildings around the outer and northern edges of the Marina, with lower buildings on the moles. The concept will enhance the image of the Marina and will ensure adequate sunlight and wind circulation over the water basin;
- A framework of "community identity elements" to provide a sense of place and establish the character of the area. Such identity elements serve to orient Marina visitors and provide a logical, coherent, unified network of movement, land use and activity;
- Design guidelines to coordinate the visual character of the Marina through the application of Marina-wide guidelines pertaining to landscaping, hardscape and street furniture, signs, quality site design and architectural treatment.
- View corridors to maintain and enhance public views of the harbor are a priority of this plan. Enhancing the ability of the public to experience and view the Marina waters shall be implemented by requiring view corridors in the design of all new or renovated development. This goal shall be achieved by placing conditions on permits for new development to enhance public viewing, to allow for greater public access, and to create view corridors to and along the waterfront.
(Ord. 95-0042 § 1 (part), 1995; Ord. 90-0158 § 1(part), 1990.)

22.46.1060 Communitywide design guidelines.

E.

5. Building Height Standards. Unique site design with respect to height and setbacks is encouraged on all parcels in Marina del Rey. Heights shall be limited according to the following standards: the development standards of each land use category and the Site-Specific Development Guidelines. Where the land use category height standards found in Section 22.46.1690 differ from the site-specific standards found in Sections 22.46.1790 through 22.46.1940, such site-specific standards noted in the applicable portion of Sections 22.46.1200 through 22.46.1690 shall control. Maximum heights may be reduced during the coastal development permit process to preserve public recreation, solar access to the beaches, parks and boat basins and wind for sailing or as otherwise required in all other policies of the certified Land Use Plan and this Specific Plan.

There is evidence that these standards are being consistently and regularly overlooked in the Coastal Development Permitting Process in Marina del Rey.

New Proposed Recommendation: Any application by the County for a CDP in Marina del Rey shall contain a carefully researched and determined finding, complete with reasons for the finding, that the proposed project is consistent with Sections 22.46.1040 and 22.46.1060 of the Marina del Rey Specific Plan.

DESIGN CONTROL BOARD AUTHORITY

On March 27, 2007 L.A. County Board of Supervisors (BOS) passed an LCP amendment that would significantly change the role of Marina del Rey's Design Control Board (DCB). The amendment is characterized by County officials as created to accomplish a streamlining of the entitlement process by allowing some of the review procedures of the DCB and the Department of Regional Planning (DRP) to overlap in time and 2) eliminating an alleged potential inconsistency in the land use entitlement process by

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allowing only the DRP, and no longer the DCB as well, to determine a project's consistency with the LCP.

<http://search.co.la.ca.us/search97cgi/s97is.dll?action=View&VdkVgwKey=D%3A%5CPogram+Files%5CVerity%5CDocNav%5FProd%5FPlatform%5Cdn%5Cdocs%5Cq9b0%2Evdb&ServerKey=Primary&QueryZip=design+control+board&Inctx=Main&ViewTemplate=lac.htm+try+bottommf.hts&>

DCB Over-all Authority

An examination of the actual specific LCP language changes approved by the BOS reveals that in fact, what this amendment seeks to further accomplish, without comment or analysis, is the transformation of the Design Control Board, with real authority to alter or block a project's site planning and building design, into a Design Review Board with nothing more than a right to have its views on these and all other matters considered by the RPC.

The current LCP (Ch. 9, p. 4) describes the DCB's authority as follows: "**Design Control Board Authority.** Signing, building design, site planning and façade design in the existing Marina shall continue to be controlled by the Marina del Rey Design Control Board." The replacement language proposed by the BOS eliminates the above wording and replaces it with: "**Design Control Board Scope of Review.** Architectural design (i.e. building and façade design, materials, colors), landscaping, signs and site planning in the existing Marina shall continue to be reviewed by the Design Control Board." The complete removal of the DCB's over-all authority is evident in this changed wording.

The County has already begun to act as if the DCB's authority has been eliminated, although the Commission has not approved the related amendment. The DCB has in turn reasserted its authority as reported in the most June 7, 2007 issue of the *Argonaut*.

http://www.argonautnewspaper.com/articles/2007/06/07/news_features/marina_del_rey/mdr2.txt the County's challenge to the DCB's authority has occurred as a result of the County's reported decision to move a dry-stack storage proposal forward to Regional Planning despite the fact the DCB is unanimously opposed to the project. The Design Board is correctly asserting that the county has no right to move the project forward because the Board has authority to halt projects.

There is a widespread public perception that the real problem our Los Angeles County Government has with its Design Control Board is that this Board has sometimes, and especially recently, found proposals the Board wanted passed objectionable. By contrast, I know of no project desired by the BOS that the RPC has ever opposed. The practical effect of removing the DCB's authority will be to remove almost any de facto project review process that would conflict with the will of the BOS. Yet the Supervisors are hardly qualified experts on detailed matters of land use.

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Furthermore, Los Angeles County Head Planner Ron Hoffman stated at the hearing regarding DCB authority that the DCB's current powers had been bestowed upon it as a required condition of the overall relaxed building standards provided for in the Marina del Rey Specific Plan, when it was certified by the CCC in 1996.

LPC Consistency

The "potential inconsistency" that allegedly arises when both the DCP and the RPC examine a project for adherence to the LCP is that the two bodies might disagree as to whether or not some aspect (s) of a project conforms to the LCP. The BOS eliminates this so-called inconsistency by striking the following language, which is part of the LCP's description of the DCB's present authority: "All approvable development shall include modifications to ensure consistency with all policies and development standards of the certified LCP." (Ch. 9, p. 5)

The BOS assumes that the potential inconsistency between the findings of the two bodies is a bad thing and the BOS never considers the merits of such potential inconsistency. When two bodies, with different knowledge and expertise, must both be satisfied that a project conforms to the LCP, the public interest has a better chance of being protected, and adherence to the LCP is better assured. Eliminating the DCB's right to determine LCP consistency because it might conflict with the RPC's findings is the equivalent at a food processing plant of removing the authority of the food poison control inspector because she sometimes rejects food that is okayed by the food packaging inspector. The real loser in both cases is the public. The public interest is best served when both bodies, with their different expertise, determine whether a project is legal.

Current Recommendation #22 enables the tacit transfer of DCB authority to the Department of Regional Planning. Instead of enabling this reduction of DCB authority, we recommend the following

Proposed Replacement for Recommendation #22: The Design Authority of the Marina Del Rey Design Control Board shall in no way be weakened, compromised or reduced through LCP amendments or otherwise. The County should resume recognizing the authority ("control") of this Board over signing, building design, site planning and façade design as currently specified in the certified MDR LCP.

INDEPENDENT TRAFFIC STUDY

The current traffic study model being used by the County to justify continued increase in traffic trips related to new development is the Playa Vista Traffic Study. According to County Consultant Culbertson and County Deputy Director Silverstrom: "Importantly, what is shown in the Playa Vista model is the traffic levels will now be much lower than originally forecast, causing LCP development trip end caps and mitigation to be tailored to an overstated condition. Therefore, contrary to the assumption that traffic has increased and service level statements are no longer representative, it is clear the opposite

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has occurred.” (PRA request obtained submission to CCC by County, 2006, entitled “Response to Recommendations.” In other words, traffic conditions in the sub-regional area surrounding Marina del Rey are supposedly improving. Since everyone knows that this is false, any traffic implying this must be deeply flawed. Instead of a developer driven and paid for traffic study, the public needs an independent traffic study. The commute times especially on our major roadway arteries have become treacherous and are worsening yearly.

Recommendation For Independent Traffic Study The Coastal Conservancy or a body similarly independent of all parties interested in Marina del Rey development, a body furthermore not under the control or influence of Los Angeles County officials or other interested parties, should immediately conduct a comprehensive sub-regional traffic study for Marina del Rey and the surrounding area. This study would be paid for by Los Angeles County. This study should be completed within one year of the approval of this recommendation and the traffic policy recommendations of this study should be immediately incorporated by amendment into the Marina del Rey LCP. Until such study is completed, no CDPs resulting in net traffic trip increases may be issued in Marina del Rey. The study should recommend new total trip caps related to any further development in MDR. The study authors should consider the possibility of recommending that no additional traffic trips will be allowed to be generated by new development.

RECREATIONAL BOATING

Revised Staff Recommendation #1 (RR#1) does not adequately address the need for a comprehensive boater study. RR#1 relaxes the recommendation for “an updated comprehensive study” set forth in the May 25, 2005 Draft by adding the phrase “no more than five years old.” This simple addition makes it permissible for the County to rely upon the Marina del Rey – Boat Slip Sizing and Pricing Study Update, dated May 18, 2004 prepared by Williams-Kuebelbeck & Associates Inc. (the “2004 Kuebelbeck Study”). The 2004 Kuebelbeck Study is inadequate because it (1) was commissioned by a Lessee in support of its application, (2) has not been made publicly available, despite valid PRA requests made for it by the public, even though the County is relying upon this data in its redevelopment plans and in its submissions to the Commission [See e.g., July 20, 2006 California Coastal Commission Revised Staff Recommendations], and (3) is an update from a 2001 study that contains faulty methodology and unexplained anomalies. Moreover, the redevelopment of docks should be considered in a comprehensive manner similar to that of land use designations so that the appropriate mix of boat slips and boating facilities may be maintained across the redevelopment projects. In place of the June 28, 2007 CCC Staff recommendation, we propose

Revision Replacing Recommendation #1: The County shall commission, and make available for public comment, a new independent comprehensive boater use, slip size, and slip distribution study of Marina del Rey as a whole to assess boater facility needs (the “Boating Study”). The Boating Study should include, but not be

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limited to, an analysis of (a) national trends, (b) trends in Marina del Rey over the past ten years and (c) the effects the current or pending redevelopment projects at Holiday Harbor, Dolphin and Panay Way, among others, have had on the vacancy rates of small and medium slips at such facilities. The County shall commission, and make available for public comment, an independent update to the Boating Study once every five years.

Revision Replacing Recommendation #2: There shall be a moratorium on the approval by the County of all applications for dock and boating facility redevelopment projects that affects slip size and distribution of slips, and on the development of any approved project that has not commenced construction that affects slip size and distribution of slips, until completion of the Boating Study referenced in Recommendation #1. Upon completion of the initial Boating Study, all of the foregoing dock redevelopment projects shall be reviewed as an integrated plan so that the balance of public uses [required] by the LCP and the Coastal Act is maintained and is based upon the required Boating Study. All future dock and boating facility redevelopment projects shall continue to be reviewed as an integrated plan with the purpose of maintaining the balance of public uses [required] by the LCP and the Coastal Act based upon the required updated Boating Studies.

Alternative Boating Analysis by Second Author with Related Recommendations

The continued decline of existing wet slips coupled with abnormally high slip fee increases (50-60%) have diminished recreational opportunities in Marina Del Rey. The harbor has now reached capacity in boats 35 feet or larger. The construction of unnecessary long gangways for ADA compliance, restroom and pump-out facilities on the docks, and redevelopment favoring larger slips has drastically reduced the total number of slips in the area. The above factors have created a "black market" and a "separation of classes" that cannot be tolerated on public land. Under the Coastal Act, the protection of lower cost recreational opportunities is a key policy.

Since the LCP was updated in 1996, changes have occurred that affect the recreational boating in the Marina. Land values have sky-rocketed adjacent to the harbor and recreational opportunities have become expendable for the stewards of Marina Del Rey. Los Angeles County has allowed the private concessions to artificially increase prices to stimulate their interest for redevelopment of their infrastructure. Though the cost of dock construction has increased, recreational boaters in the Marina are paying two to three times the value of their moorings. The ultimate measure of pricing of a public marina not the pricing strategy but whether it achieves the purposes and objectives established for the marina – why it was built, why it is operated by that unit of government. In recent actions, the Commission has reinforced the need to develop alternatives to expand more affordable recreational boating opportunities.

Recommendations: include policy revisions to require alternatives such as

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the establishment of a Joint Powers Authority along with an Oversight Committee in the harbor, creating news slips, ensuring a variety of slip lengths, creation of programs that provide low cost boating opportunities for citizens, including youths and disadvantaged youths. A Joint Powers Authority (City of Los Angeles, City of Santa Monica, City of Culver City) and Los Angeles County would have the responsibility to operate, maintain, improve, and redevelop the existing facilities where deemed appropriate. Also, while the need for comprehensive data for analysis of boating impacts was reinforced, it is acknowledged that such data may already be available. The recommendations therefore include a provision that such data be no more than 5 years old in order to give an adequate assessment. Therefore, given all these changes in circumstances related to boating facilities, the County should revise the LCP to reflect current, unbiased, comprehensive boating data. This data should be used to guide future development and ensure that a mix of slip lengths is provided in the Marina. Staff also recommends that the County explore alternatives to slips to expand boating opportunities, such as creation of youth boating programs that provide low cost boat opportunities for youths, including disadvantaged youths; a reversion to "return on investment" (cost recovery model) for concessions in the harbor; new storage facilities; day use rentals; reservation of slips for rental or boating membership programs; and increased opportunities to launch and use kayaks and other smaller craft.

ESHA POLICIES

We believe that, left to its own devices, Los County officials will systematically resist any effort to reinstate ESHA language into the Marina del Rey LCP. Furthermore, the County has clearly indicated that even if there were a mechanism in this LCP for determining the presence of ESHAs, still no ESHAs would be found to exist by the County. Therefore if truth in these matters is to be proclaimed by any governmental body, it is left to the Commission to itself identify the Marina del Rey locations that qualify for ESHA designation. The County would then decide whether or not to accept the Commission's determinations and related recommendations.

In keeping with this analysis, we suggest the following ESHA language be included in the current Marina del Rey Periodic Review.

Proposed ESHA Findings/Policy Recommendation: Due to changed circumstances since the last LCP was approved and based on scientific evidence entered into the record by the Commission's ecologist, Dr. Jonna Engel, the Commission finds that the following locations qualify as Environmentally Sensitive Habitat Area (ESHA) as defined by the Coastal Act:

- 1. Great Blue Heron rookery at Villa Venetia/Beaches & Harbors Administration Building, Shanghai Red's restaurant, UCLA Boathouse and various public areas, as mapped on attached document (provided by Dr. Engel).**
- 2. Snowy Egret and Black-crowned Night Heron rookery along bicycle path between Oxford Lagoon and Oxford Triangle, as well as including some**

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pine trees within Oxford Lagoon fenced area, immediately adjacent to the bicycle path - and as mapped on document (provided by Dr. Engel)

3. Egret and Heron roosting site at end of mole road of Bora Bora Way.

4. Wetlands, transition wetlands and surrounding buffer - Parcel 9U - the only completely undeveloped parcel of land in the marina - a portion of this site has already been delineated under ACOE guidelines and is likely at the original elevation of the marsh which the marina displaced in the 1960s.

5. Oxford Lagoon (sometimes referred to as Oxford Basin) - this area for many years has clearly been subjected to daily tidal influences and exhibits native wetland vegetation and is used as foraging grounds and shelter for many bird species.

6. Eucalyptus grove lining bicycle path on Admiralty Way - beginning across the street from the public library and continuing north to Washington Blvd. Besides nesting areas for Snowy Egret and Black-crowned Night Heron, these trees are roosting sites for migratory Monarch Butterflies.

7. Mariner's Village eucalyptus trees directly across the water from Villa Venetia have hosted Great Blue Heron nest for numerous years, showing these trees are an extension of the Great Blue Heron rookery described in #1. (although not directly accessible for humans via automobiles, there is direct accessibility and proximity for Herons via flight.)

Proposed ESHA Designation Recommendation: Since the Commission and/or Commission Ecologist finds these sites to be ESHA, the Commission recommends that the County of Los Angeles update their LCP to include this finding."

David De Lange, PhD

EXHIBIT NO.	28
Application Number	MDR Periodic Review
	1 of 7
California Coastal Commission	

**The Public's Analysis and Proposals For
 Recommendation Language to Replace or Supplement Existing
 Recommendation Language in CCC's June 28, 2007
 Marina del Rey LCP Periodic Review Staff Report**

**Addendum by David De Lange, PhD, with research assistance by
 David Barish
 To: California Coastal Commission Staff
 December 20, 2007**

Maintenance of Affordable Housing: The County's Asset Management Strategy and their entitlement processes have demonstrated at best minimalist or negligent practices with respect to the maintenance and replacement of low and moderate income affordable housing in Marina del Rey. Furthermore, non-compliance by some leaseholders in failing to provide even the token number of replacement units already built as part of Phase II development to qualified residents at the mandated prices have been documented. The LCP states that "Affordable and senior citizen housing projects shall be encouraged as part of Phase II development. . . ." (Ch. 8, p. 9) Yet there is no evidence of any governmental body connected with the MDR LCP area providing such encouragement. There is considerable evidence of discouragement, which is somewhat predictable from the County's avowed virtually singular devotion to maximizing revenues for leaseholders and the County in connection with Phase II development. Furthermore, the LCP states that "The conversion of demolition of existing residential dwelling units occupied by persons of low and moderate income shall be replaced consistent with the provisions of Government Code Section 65590." This section in effect requires that virtually all residential units in Marina del Rey proposed for demolition shall be replaced by like kind units, since virtually all such units have a history of moderate pricing. Yet there is evidence that virtually all apartment units scheduled for demolition in Phase II will be replaced by units priced in excess of these mandated moderate price standards. Furthermore, leaseholders routinely attempt to build affordable replacement residential structures in less desirable areas outside of Marina del Rey and outside of the coastal zone. The LCP provisions referred to above have backing in the Coastal Act which declares in Section 30604(g): "The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone." To our knowledge and with respect to affordable housing, the current MDR LCP review does not analyze Los Angeles County's non-conformity with the LCP in its carrying out of the policies of the Coastal Act as mandated in Coastal Act Section 30519.5

Proposed Recommendation: Los Angeles County shall actively encourage and ensure that all leaseholders constructing new or

remodeled residential structures in Marina del Rey shall completely adhere to Government Code Section 65590 in all phases of CDP application, construction and throughout the term of their leasehold. Furthermore, it is feasible that all newly constructed Marina del Rey structures replacing existing residential structures shall be built within the MDR LCP area. Any non adherence by either the County or the Leaseholder to this and all other government codes pertaining to affordable (low and moderate income) housing shall be subject to the Cease and Desist Order provisions of the Coastal Act.

For the analyst's convenience, Government Code Section 65590 is reproduced below:

- California Codes
 - o California Government Code
 - GOVERNMENT CODE SECTION 65590-65590.1

65590. (a) In addition to the requirements of Article 10.6 (commencing with Section 65580), the provisions and requirements of this section shall apply within the coastal zone as defined and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code. Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone.

(b) The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit. In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents

thereof, is of low or moderate income.

For purposes of this subdivision, a residential dwelling unit shall be deemed occupied by a person or family of low or moderate income if the person or family was evicted from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this subdivision. If a substantial number of persons or families of low or moderate income were evicted from a single residential development within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of this subdivision and the applicant for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this subdivision.

The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:

(1) The conversion or demolition of a residential structure which contains less than three dwelling units, or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer dwelling units.

(2) The conversion or demolition of a residential structure for purposes of a nonresidential use which is either "coastal dependent," as defined in Section 30101 of the Public Resources Code, or "coastal related," as defined in Section 30101.3 of the Public Resources Code. However, the coastal-dependent or coastal-related use shall be consistent with the provisions of the land use plan portion of the local government's local coastal program which has been certified as provided in Section 30512 of the Public Resources Code. Examples of coastal-dependent or coastal-related uses include, but are not limited to, visitor-serving commercial or recreational facilities, coastal-dependent industry, or boating or harbor facilities.

(3) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has within the area encompassing the coastal zone, and three miles inland

therefrom, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use.

(4) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has established a procedure under which an applicant for conversion or demolition will pay an in-lieu fee into a program, the various provisions of which, in aggregate, will result in the replacement of the number of dwelling units which would otherwise have been required by this subdivision. As otherwise required by this subdivision, the replacement units shall, (i) be located within the coastal zone if feasible, or, if location within the coastal zone is not feasible, shall be located within three miles of the coastal zone, and (ii) shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition.

The requirements of this subdivision for replacement dwelling units shall not apply to the demolition of any residential structure which has been declared to be a public nuisance under the provisions of Division 13 (commencing with Section 17000) of the Health and Safety Code, or any local ordinance enacted pursuant to those provisions.

For purposes of this subdivision, no building, which conforms to the standards which were applicable at the time the building was constructed and which does not constitute a substandard building, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the building does not conform to one or more of the current provisions of the Uniform Building Code as adopted within the jurisdiction for new construction.

(c) The conversion or demolition of any residential structure for purposes of a nonresidential use which is not "coastal dependent", as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location. If a local government makes this determination and authorizes the conversion or demolition of the residential structure, it shall require replacement of any dwelling units occupied by persons and families of low or moderate income pursuant to the applicable provisions of subdivision (b).

(d) New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health

and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees.

(e) Any determination of the "feasibility" of an action required to be taken by this section shall be reviewable pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure.

(f) The housing provisions of any local coastal program prepared and certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code prior to January 1, 1982, shall be deemed to satisfy all of the requirements of this section. Any change or alteration in those housing provisions made on or after January 1, 1982, shall be subject to all of the requirements of this section.

(g) As used in this section:

(1) "Conversion" means a change of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling, including a mobilehome, or a mobilehome lot in a mobilehome park, or a residential hotel to a nonresidential use.

(2) "Demolition" means the demolition of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, which has not been declared to be a public nuisance under Division 13 (commencing with Section 17000) of the Health and Safety Code or any local ordinance enacted pursuant to those provisions.

(3) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account

economic, environmental, social, and technical factors.

(h) With respect to the requirements of Sections 65583 and 65584, compliance with the requirements of this section is not intended and shall not be construed as any of the following:

(1) A statutory interpretation or determination of the local government actions which may be necessary to comply with the requirements of those sections; except that compliance with this section shall be deemed to satisfy the requirements of paragraph (2) of subdivision (c) of Section 65583 for that portion of a local government's jurisdiction which is located within the coastal zone.

(2) A limitation on the program components which may be included in a housing element, or a requirement that a housing element be amended in order to incorporate within it any specific provision of this section or related policies. Any revision of a housing element pursuant to Section 65588 shall, however, take into account any low- or moderate-income housing which has been provided or required pursuant to this section.

(3) Except as otherwise specifically required by this section, a requirement that a local government adopt individual ordinances or programs in order to implement the requirements of this section.

(i) No provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.

(j) Local governments may impose fees upon persons subject to the provisions of this section to offset administrative costs incurred in order to comply with the requirements of this section.

(k) This section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

65590.1. Any local government which receives an application as provided in Section 30600.1 of the Public Resources Code to apply the requirements of Section 65590 to a proposed development shall apply these requirements within 90 days from the date on which it has

received that application and accepted it as complete. In the event that the local government has granted final discretionary approval to the proposed development, or has determined that no such approval was required, prior to receiving the application, it shall, nonetheless, apply the requirements and is hereby authorized to conduct proceedings as may be necessary or convenient for the sole purpose of doing so.



ROBERT A. HAMILTON

EXHIBIT NO.	29
Application Number	MIR Periodic
	Review
	1 of 8
California Coastal Commission	

August 15, 2007

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: REGARDING THE 9 AUGUST 2007 PUBLIC TESTIMONY OF DAVID DELANGE

Dear Mr. Douglas,

I have worked as a professional consulting biologist in coastal southern California since 1988, and since 1995 I have worked as an independent consultant. My professional history and qualifications are summarized in the attached Curriculum Vitae. I am compelled to set the record straight regarding statements made by Dr. David DeLange at a public meeting of the California Coastal Commission held on 9 August 2007 in San Francisco. Dr. DeLange, a mental health professional and member of the *Coalition to Save the Marina*, provided testimony with regard to the ongoing study of Great Blue Herons at Marina del Rey. According to the video (<http://www.cal-span.org/cgi-bin/media.pl?folder=CCC>), his testimony started at approximately 3 hours, 24 minutes, 00 seconds (3:24:00) and ended at approximately 3 hours, 27 minutes, 50 seconds (3:27:50). This letter responds to each statement made by Dr. DeLange about me that I know to be false. My responses refer to the time stamp shown on the video and quotations from Dr. DeLange's testimony is shown in **bold type**. I should note that Dr. DeLange never actually mentioned my name during his testimony; he referred to me as the biologist recently hired by the County of Los Angeles, and each of the comments quoted and replied to in this letter clearly refer to me unless otherwise noted in my response.

3:24:15 – "ESHA determinations are being placed somewhat at the mercy of qualified biologists working under the supervision of County staff and their consultants, Culbertson and Associates." As you know, determinations of ESHA status are made by the Coastal Commission and have not, to any degree, been "placed at the mercy" of any outside agent. In my role as an independent biological consultant retained by CAA Planning, which is retained by the County of Los Angeles, I am reviewing the historical and current status and distribution of Great Blue Herons in the local area and wider region and reaching my own conclusion regarding whether trees that have been used by Great Blue Herons for nesting in Marina del Rey satisfy ESHA criteria spelled out in Section 30107.5 of the California Coastal Act. My memorandum will be circulated to the Coastal Commission and staff for their consideration, but naturally the Commissioners will reach their own conclusions as to whether or not such trees satisfy the criteria for ESHA (or "environmentally sensitive areas").

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3:24:27 – “The problem with this set-up is that a qualified biologist cannot work as an independent scientist if he or she is hired to determine whether or not there are ESHAs by supervisors who insist there are no ESHAs in Marina del Rey.” This comment reflects a perhaps-understandable cynicism about the role of consultants in the application of land use policies in California. I am aware of many situations in which consultants have skewed or ignored facts in order to achieve results favorable to their clients. In fact, I consider this issue important enough that my independent consulting practice specializes in conducting professional third-party reviews of biological analyses prepared under the California Environmental Quality Act (CEQA). As listed in my Curriculum Vitae, numerous environmental and homeowner groups have retained me to independently review CEQA documents on their behalf. In this capacity I have worked on some of the largest projects in coastal southern California, such as the massive Ranch Plan and Foothill South Toll Road projects, both in southern Orange County. In a twist on this arrangement, after I provided third-party review of an EIR covering the initial phase of the expansive Santiago Hills II/East Orange Planned Community project, the City of Orange retained me to prepare the Biological Resources section for the SEIR/EIR that eventually covered the entirety of this controversial project. The SEIR/EIR was certified in November 2005 to the satisfaction of the City, the applicant, and the concerned environmental groups that had originally hired me and whose members continued to closely follow the proceedings until the end. My point is that I’m keenly aware that my credibility as an independent biological consultant rests on the completeness and validity of my findings and recommendations. Were I the malleable and craven figure imagined in Dr. DeLange’s comment, I would quickly become vulnerable to legitimate attacks from persons or organizations who take the opposing view on a given project. Only by demonstrating integrity, objectivity, and intellectual rigor in all my work do I remain employable by governmental agencies, private land owners, and environmental groups alike.

3:26:05 – “We know he’s a highly skilled bird-watcher, but also that he was recently hired by the Port of Long Beach and others who were attempting to relocate both Black-crowned Night-Herons and Cactus Wrens.” As noted in the attached paper by Crouch et al., *Relocation of a Large Black-crowned Night Heron Colony in Southern California*¹, the Port of Long Beach hired me in 1996 to study the Black-crowned Night-Heron colony at the Long Beach Naval Station/Shipyard in preparation for its planned conversion to a commercial shipping facility. During that year, fellow consultant Peter H. Bloom and I documented several hundred active nests at the Naval Station/Shipyard and fitted 570 nestlings with leg bands. Our scope of work also called on us to collect data on the types, sizes, and shapes of trees used by the nesting herons; consult with heron biologists and other knowledgeable ornithologists regarding the methods proposed by the Port of Long Beach to relocate the colony to a protected site located elsewhere on the U.S. Navy’s property; research other night-heron colonies in the region; and recommend measures intended to improve the relocation project’s chances of success.

¹Crouch, S., Paquette, C., and Vilas, D. 2002. Relocation of a large Black-crowned Night Heron colony in southern California. *Waterbirds* 25:474-478.

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During review of the draft report, which included my recommendations for relocating the colony, it became clear that the Port of Long Beach and I had different views on how the project should be carried forward, and so we parted ways. I have not worked for the Port during the ensuing eleven years. My final report to the Port provided only factual information about how many herons nested in which types and sizes of trees, how many were banded, where banded birds were later re-sighted, and the approximate numbers of Black-crowned Night-Herons known to nest at other colonies in southern California. The Port hired MBC Applied Environmental Sciences (MBC) to implement their relocation plan and to conduct follow-up monitoring. According to MBC's web page (<http://www.mbcnet.net/>), their firm has been involved in the project from 1997 through the present. I had no direct involvement in the relocation effort and I know of its results only through the attached paper by Crouch et al. and other second-hand sources.

3:26:16—“Let me tell you something about the essence of those reports that he was involved with: The Port of Long Beach was a disaster. There were 500 pair of Black-crowned Night-Heron who were moved in the year 1999, and in the year 2000 there's this glowing report that was published online of the immense success: 433 of the 500 successfully re-nested when their trees were moved.” Again, I had no direct involvement in the relocation effort. Crouch et al. (2002) reported the following results from 1996 through 2000:

ACTIVE NESTS (ESTIMATED YOUNG PRODUCED)				
YEAR	LONG BEACH NAVAL STATION/SHIPYARD	GULL PARK	TOTAL	
1996	357 (873)*	0 (0)**	357 (873)	
1997	113 (186)***	no data reported	113 (186)	
1998	73 (155)	62 (141)	135 (296)	
1999	no data reported	254 (660)	254 (660)	
2000	trees removed/relocated to Gull Park	423 (1,128)	423 (1,128)	

* Values reported by Crouch et al. (2002) based on my 1996 study. Pete Bloom and I banded 570 nestlings at the Naval Station/Shipyard during that year and found that 120 out of 506 active nests had already fledged young by the time banding commenced on 21 May. The 357 active nests reported by Crouch et al. probably excludes the 120 nests that had already fledged and 29 nests that may have been at the Long Beach Naval Shipyard instead of the Long Beach Naval Station (Hamilton and Bloom covered both areas). Crouch et al. appear to have derived the value of 873 young by including individuals that we noted but failed to band.

** I checked Gull Park during summer 1996 and found no nesting herons there.

*** The Long Beach Naval Shipyard was not monitored during 1997, so this value is from the Naval Station only.

The data reported by Crouch et al. (2002) indicate that more young were produced at Gull Park in 2000—the year after the colony was relocated—than Bloom and I found at the Port of Long Beach in 1996, and probably more than had been produced there in 1997, 1998, and 1999 combined.

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3:26:50 – “Well what happened was that no one mentioned, that, by the year 2006 (and this has not been published online) a report shows, of the very people who did the moving (and this biologist was involved in it), it shows that not a single one of the nests was active. From 423 it went down to zero. My goodness.” According to Dr. Jeff Froke (pers. comm.), nesting Black-crowned Night-Herons abandoned Gull Park when the U.S. Navy created a major disturbance of soil and trees there some time after the 2000 nesting season. Great Blue Herons moved into Gull Park around the same time and have continued to nest there through the present. It is possible that their domineering presence has dissuaded any Black-crowned Night-Herons that might otherwise have moved back to the park in recent years. In 2001, most of the Black-crowned Night-Herons apparently moved across the port to Belmont Shore, where have nested in large numbers during recent years. The Port of Long Beach relocation program demonstrated that several hundred pairs of Black-crowned Night-Herons can be successfully encouraged to move to suitable habitat a couple kilometers away from the original colony site. There is no way of knowing whether those birds would have continued to nest at Gull Park over the long term had the relocated heronry been protected against major disturbances.

Whatever the case, the paper by Crouch et al. verifies the basic fact that I was not involved in the relocation effort. I have not worked for the Port of Long Beach in any capacity since 1996. Dr. DeLange’s repeated vague assertions to the contrary lack any factual basis.

3:27:50 – “The County consultant, in a communication dated October – excuse me, September – of 06, says the following: That this Long Beach heronry relocation has been ‘extremely successful.’ That’s just patently false. It’s the kind of thing that happens when you have biologists for hire.” I believe Dr. DeLange is quoting Andi Culbertson. In 2000, Black-crowned Night-Herons produced an estimated 1,128 young at a relocation site that supported no herons four years earlier. In my opinion, one may fairly characterize the first year of the heron relocation effort as “extremely successful.” The birds’ later dispersal to Belmont Shore appears to have been caused by a major disturbance of the heronry by the U.S. Navy. Major disturbances could cause abandonment of *any* Black-crowned Night-Heron colony in the region, not just relocated ones. By what tortured logic does Dr. DeLange lay responsibility for this turn of events at the feet of “biologists for hire” instead of the U.S. Navy?

Please refer back to Dr. DeLange’s statement at 3:26:05, where he suggests that I was also recently hired to relocate Cactus Wrens. “And, why is that important? Well they stood in the way of development is why the relocation effort was on the hire.” In 2006, The Irvine Company contracted with biologist Dana Kamada – not me – to relocate Cactus Wrens that were to be impacted by a pending development project in the City of Irvine. Biologists working for LSA Associates had determined that, because the project site was not connected to preserved areas of cactus scrub, the birds would be unlikely to relocate to suitable habitat on their own. As you probably know, The Irvine Company was the major contributor of private land and money to the Nature Reserve of Orange County (NROC), which was established under the Natural Communities Conservation Program (NCCP). As a result, all of the company’s pending development projects are already covered with respect to local, state, and federal laws regulating the loss of coastal sage scrub and associated species, including the Cactus Wren. The Irvine Company undertook the

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relocation effort *not as a required mitigation measure, but as a voluntary experiment* aimed toward gathering information about techniques that could be useful for managing and conserving Cactus Wren populations. Thus, not only is Dr. DeLange mistaken about who was hired to conduct the relocation effort, but his claim that Cactus Wrens "stood in the way of development" is also erroneous.

Although I was not the biologist "on the hire" to do the work, when I learned that Mr. Kamada was coordinating with the NROC to relocate wrens to the coastal reserve I was excited to participate. In 2006 and 2007, the NROC contracted with me to map all cactus resources and to determine the status, distribution, and habitat preferences of Cactus Wrens across the 17,500-acre coastal reserve. This reconnaissance effort was needed because annual sampling that I conducted for the NROC between 1999 and 2004 showed that Cactus Wrens in the coastal reserve were declining. My initial contribution to the Cactus Wren relocation effort was to identify areas of high-quality cactus scrub habitat that did not already support wrens. I also volunteered to be present when some of the birds were released and to periodically monitor their response to being relocated (one pair produced a fledgling in 2007, becoming the first Cactus Wrens to successfully breed at Upper Newport Bay in recent decades). I did not complete any tasks under contract to The Irvine Company, and the only pay I have received for any of this work derives from the slight overlap between the relocation project and my ongoing surveys of all lands within the NROC's coastal reserve.

To summarize, virtually every aspect of Dr. DeLange's public testimony regarding me and my professional practice is verifiably inaccurate. In my opinion, much of it borders on slander. As an independent consultant who works for a wide variety of public agencies, environmental groups, and private land owners, nothing is more valuable to me than my hard-earned reputation for personal and professional integrity. I trust that the information in this letter will suffice to clarify matters for you and any others who may read it. I look forward to working with the Coastal Commission, the County of Los Angeles, and local citizens to arrive at a well-reasoned management plan that can resolve to the benefit of all involved – birds included – the conflicts that exist between people and Great Blue Herons in Marina del Rey.

Sincerely,



Robert A. Hamilton
Consulting Biologist

Attachments: Curriculum Vitae
Paper by Crouch et al. (2002)

6088

ROBERT A. HAMILTON
CURRICULUM VITAE

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EXPERTISE

CEQA Analysis
General Biological Surveys
Endangered Species Surveys

Avian Population Monitoring
Open Space Management
Bird Banding

EDUCATION

1988. Bachelor of Science degree in Biological Sciences, University of California, Irvine.

PROFESSIONAL EXPERIENCE

1995 to Present. Independent Biological Consultant.
1988 to 1995. Biologist, LSA Associates, Inc.
1987 to 1988. Independent Biological Consultant.

OTHER RELEVANT EXPERIENCE

Field Ornithologist, San Diego Natural History Museum Scientific Collecting Expedition to Central and Southern Baja California, October/November 1997 and November 2003.
Field Ornithologist, Island Conservation and Ecology Group Expedition to the Tres Marias Islands, Nayarit, Mexico, 23 January to 8 February 2002.
Field Ornithologist, Algalita Marine Research Foundation neustonic plastic research voyages in the Pacific Ocean, 15 August to 4 September 1999 and 14 to 28 July 2000.
Field Assistant, Bird Banding Study, Río Nambi Reserve, Colombia, January to March 1997.

BOARD MEMBERSHIPS, ADVISORY POSITIONS, ETC.

American Birding Association: Baja California Peninsula Regional Editor, *North American Birds*
Western Field Ornithologists: Publications Committee & Associate Editor of *Western Birds*
California Native Plant Society, Orange County Chapter: Conservation Chair (1992-2003)
California Bird Records Committee (1998-2001)
Nature Reserve of Orange County: Technical Advisory Committee (1996-2001)

OTHER PROFESSIONAL AFFILIATIONS

American Ornithologists' Union
Cooper Ornithological Society
Association of Field Ornithologists
Institute for Bird Populations
Southern California Academy of Sciences
Western Foundation of Vertebrate Zoology

PERMITS

Federal 10(A)1(a) Permit No. TE-799557 to survey for the Coastal California Gnatcatcher and Southwestern Willow Flycatcher (expires 12 October 2007)
Federal Bird Banding Subpermit No. 20431-AY

INSURANCE

\$2,000,000 general liability policy (Hartford) \$1,000,000 auto liability policy (State Farm)

7 cfs

PRINCIPAL PROFESSIONAL QUALIFICATIONS

Perform field work throughout southern California, including 1) floral and faunal surveys, 2) directed surveys for sensitive plant and animal species, including the California Gnatcatcher, Southwestern Willow Flycatcher, and Least Bell's Vireo, 3) open space monitoring and management, 4) vegetation mapping, and 5) bird banding. Recent experience includes:

Worked with study-design specialists and resource agency personnel to develop the long-term bird monitoring program for the Nature Reserve of Orange County, and directed its implementation from 1996 to 2004. This included 1) annual monitoring of 40 California Gnatcatcher and Cactus Wren study sites, and 2) oversight of 10 constant-effort bird banding stations operated from 1998 to 2003 by the Institute of Bird Populations under the Monitoring Avian Productivity and Survivorship (MAPS) program. In 2006 and 2007 I have collaborated on the design of, and been the sole field investigator for, an intensive study of Cactus Wrens within the coastal portion of the Nature Reserve of Orange County. Field work has involved detailed mapping of all cactus resources and multiple rounds of focused searches for Cactus Wrens across the coastal reserve.

Served as the City of Orange's Project Biologist for the Santiago Hills II/East Orange Planned Community project, developed by The Irvine Company near Irvine Lake in central Orange County (SEIR/EIR certified in November 2005).

Having prepared biological technical reports for numerous CEQA documents for projects throughout southern California, I am highly qualified to provide professional, third-party review of CEQA documents. I have professionally reviewed EIRs for the following projects:

- ▶ The Ranch Plan (residential/commercial, County of Orange)
- ▶ Southern Orange County Transportation Infrastructure Improvement Project (Foothill South Toll Road, County of Orange)
- ▶ Tonner Hills (residential, City of Brea)
- ▶ Villages of La Costa Master Plan (residential/commercial, City of Carlsbad)
- ▶ Whispering Hills (residential, City of San Juan Capistrano)
- ▶ Santiago Hills II (residential/commercial, City of Orange)
- ▶ Rancho Potrero Leadership Academy (youth detention facility/road, County of Orange)
- ▶ Saddle Creek/Saddle Crest (residential, County of Orange)
- ▶ Frank G. Bonelli Regional County Park Master Plan (County of Los Angeles)

References provided upon request.

REPRESENTATIVE PRESENTATIONS

Hamilton, R. A., Mitrovich, M. J. 2006 Cactus Wren Study, Nature Reserve of Orange County. Twenty-minute Powerpoint presentation given at the Nature Reserve of Orange County 10th Anniversary Symposium, Irvine, California, 21 November 2006.

Hamilton, R. A. 2006. 1999-2004 Results of Annual California Gnatcatcher and Cactus Wren Monitoring in the Nature Reserve of Orange County. Twenty-minute Powerpoint presentation given at the Partners In Flight meeting: Conservation and Management of Coastal Scrub and Chaparral Birds and Habitats, Starr Ranch Audubon Sanctuary, 21 August 2004; and at the Nature Reserve of Orange County 10th Anniversary Symposium, Irvine, California, 21 November 2006.

Hamilton, R.A. and K. Messer. 1999-2001 Results of Annual California Gnatcatcher Monitoring in the Nature Reserve of Orange County. Twenty-minute Powerpoint presentation given at the Western Field Ornithologists' annual meeting, Costa Mesa, California, 11 October 2002.

PUBLICATIONS

- Hamilton, R. A. and P. A. Gaede. 2005. Pink-sided × Gray-headed Juncos. *Western Birds* 36:150-152.
- Mlodinow, S. G. and R. A. Hamilton. 2005. Vagrancy of Painted Bunting (*Passerina ciris*) in the United States, Canada, and Bermuda. *North American Birds* 59:172-183.
- Erickson, R. A., R. A. Hamilton, S. González-Guzmán, G. Ruiz-Campos. 2002. Primeros registros de anidación del Pato Friso (*Anas strepera*) en México. *Anales del Instituto de Biología, Universidad Nacional Autónoma de México, Serie Zoología* 73(1): 67-71.
- Hamilton, R. A. and J. L. Dunn. 2002. Red-naped and Red-breasted sapsuckers. *Western Birds* 33:128-130.
- Hamilton, R. A. and S. N. G. Howell. 2002. Gnatcatcher sympatry near San Felipe, Baja California, with notes on other species. *Western Birds* 33:123-124.
- Hamilton, R. A., R. A. Erickson, E. Palacios, and R. Carmona. 2001+. *North American Birds* quarterly reports for the Baja California Peninsula Region starting with the Fall 2000 season.
- Hamilton, R. A. 2001. Book review: The Sibley Guide to Birds. *Western Birds* 32:95-96.
- Hamilton, R. A. and R. A. Erickson. 2001. Noteworthy breeding bird records from the Vizcaino Desert, Baja California Peninsula. Pp. 102-105 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Hamilton, R. A. 2001. Log of bird record documentation from the Baja California Peninsula archived at the San Diego Natural History Museum. Pp. 242-253 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Hamilton, R. A. 2001. Records of caged birds in Baja California. Pp. 254-257 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Erickson, R. A., R. A. Hamilton, and S. N. G. Howell. 2001. New information on migrant birds in northern and central portions of the Baja California Peninsula, including species new to Mexico. Pp. 112-170 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Howell, S. N. G., R. A. Erickson, R. A. Hamilton, and M. A. Patten. 2001. An annotated checklist of the birds of Baja California and Baja California Sur. Pp. 171-203 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Ruiz-Campos, G., González-Guzmán, S., Erickson, R. A., and Hamilton, R. A. 2001. Notable bird specimen records from the Baja California Peninsula. Pp. 238-241 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
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rcfs

Grassroots Coalition
For Disclosure of Health and Safety Issues

Patricia McPherson, *President*
3749 Greenwood Avenue, Los Angeles, CA 90066
Phone/Fax 310-397-5779

EXHIBIT NO. 30
Application Number MIR Periodic Review
1066
California Coastal Commission

June 7, 2005

TO: Coastal Commission
Via Local Coastal Program Hearing of June 7, 2005

FROM: Grassroots Coalition
11924 W. Washington Blvd.
Los Angeles, CA 90066
patriciamcpherson@earthlink.net

RE: PUBLIC RESOURCE CODE RESPONSIBILITIES OF THE COASTAL
COMMISSION AND THE LOCAL COASTAL PROGRAM

Dear Commissioners,

Grassroots Coalition has, for the past fifteen years, been investigating and providing disclosure to the Coastal Commission, local government and the public, information regarding health and safety issues resulting from the operations of the SOUTHERN CALIFORNIA GAS COMPANY within the Playa del Rey and Venice oilfields. Grassroots has also spent the past ten years researching and data gathering of the systems intended to protect the health and safety of the public and the environment from oilfield gas migration hazards.

Grassroots Coalition has created and retrieved the documentation to substantiate the allegation that there is a current and ongoing regional health and safety hazard caused by the current and ongoing operations of the SOUTHERN CALIFORNIA GAS COMPANY. (Please check your e-mails which contain a Grassroots Coalition press release pertinent to health and safety issues and disclosure issues discussed here today.)

Because there is no local, state or federal regulatory authority that provides oversight protection to the health, safety and well being of the public and the environment from migrating oilfield gases, Grassroots Coalition requests from the Coastal Commission, in the attempt to help bridge this gap in oversight in order to protect the health and safety of the public and the environment and provide full disclosure to the public so that it may participate fully and knowledgeably in decision making processes, the following:

1. PRC 30339 © advise Grassroots Coalition effective ways of participating and communicating with the Coastal Commission, the information that has been accrued by Grassroots over the past 15 years and, that would also hold the Coastal Commission accountable and responsible for participating in the retrieval

of documentation from the SOUTHERN CALIFORNIA GAS COMPANY as well as local, state and federal agencies that pertains to the operations of the SOUTHERN CALIFORNIA GAS COMPANY , Playa del Rey, operations because of this energy company's effects upon the health, safety and well being of the surrounding public and environment.

30341 Maps – We request the Coastal Commission's help in the creation and storage, for public disclosure purposes, maps that would portray oilwell (both active and abandoned) location and leakage information, gas migration pathways, gas mitigation and monitoring systems throughout neighborhoods and the wetlands.

30343 (1), (2), (3c,d) Store existing studies that pertain to the marine, subsurface and terrestrial environment in order to provide a singular data base for the public to review. This data base would ultimately provide oilfield gas leakage data showing gas migration pathways, gas mitigation & monitoring systems throughout the area and communities, including up to date disclosure data of how the gas mitigation & monitoring systems are performing and where they are being implemented.

2. 30337 Due to the fact that there is no coordinated means of disclosure to the public regarding the oilfield dangers of living with the SOUTHERN CALIFORNIA GAS COMPANY'S operations within the wetlands and local communities, Grassroots requests that the Coastal Commission participate in joint development permit applications and public hearing procedures that would provide specific attention to these disclosure issues and provide a coordinated effort of providing disclosure regarding dangers, gas mitigation and monitoring systems that would provide area wide hazard protection and accountability for the implementation and effectiveness of the monitoring and mitigation.
3. 30335. We are asking for help from the Coastal Commission in funding (and co-funding with other coordinated efforts by local and state agencies) an expert and independent investigation into the operations of the SOUTHERN CALIFORNIA GAS COMPANY to determine the extent of oilfield and reservoir leakage via the 300 plus old and corroding oilwell bores and subsequent migration pathways ie. the 50' Gravel, the old LA Riverbed.
4. 30336. We are asking for help from the Coastal Commission to help fund and coordinate hearings with local and state governmental entities to further disclose the health and safety hazards to the public and the environment associated with the operations of the Southern California Gas Company, Playa del Rey.
5. 30107.5. The Coastal area is an environmentally sensitive area, ie. Ballona Wetlands and Ballona Lagoon as well as the beach areas and neighborhoods that reside within the coastal area therefore, the Coastal Commission has jurisdiction to protect and safeguard these areas to the fullest extent possible. To this end, we request that the Coastal Commission cooperate fully in the investigation, disclosure and participate in ongoing efforts to promote a safe environment.

- 6. 30108. We request that the Coastal Commission participate in disclosing the feasibility of area-wide gas mitigation and monitoring systems and the feasibility of living safely with the operations of the Southern California Gas Company and the potential need for the shut-down of the operations of the Southern California Gas Company due to its violation of PRC and local and state laws.
- 7. 30253 The Coastal Commission is requested to cooperate fully in order to fulfill PRC regulations that ie (1)minimize risks to life and property in areas of high geologic hazard area (current hazards associated with the ongoing operations of socialgas and the resultant dangerous geologic conditions caused by those historic and ongoing operations).
- 8. 30250 (b) regarding any new development to the SOCALGAS operations. Ie. undisclosed lant wells under communities, well operations (or lack of) that do not fulfill stringent guidelines to protect the public and environment.
- 9. 30005. Abate nuisances. Utilize to the fullest extent possible this PRC to safeguard PRC 30001©(d)., 30003, 30004, 30005,30006.

This listing and request for assistance represents a partial list of requests from Grassroots Coalition, on behalf of the public's and the environment's safety. We look forward to a new era of cooperation and proactive involvement from the Coastal Commission in these extremely serious health and safety issues.

Sincerely,



Patricia McPherson , Grassroots Coalition

Partial Transcript of Meeting on June 8, 2006 of California Coastal Commission Staff with Coalition to Save the Marina and other individuals as follows:

- Liz Fuchs, CCC (via teleconference) LF
- Deborah Lee, CCC DL
- Pam Emerson, CCC PE
- Al Padilla, CCC AP
- Nancy Marino, individual NM
- Carla Andrus, individual CA
- David DeLange, Save the Marina Coalition DD
- Don Klein, Save the Marina Coalition DK
- Richard Miller, Marina Strand RM

Picking up discussion at mark 00:26:40

PE: The hotel on Mothers Beach is planned on the Mothers Beach parking lot. There is a policy in the LCP, which I was checking yesterday, that says you can put recreational buildings on parking lots if you replace the parking.

(DD): That's not a recreational building, though.

PE: Well, a hotel, in our view, is a recreation support building. ...the policy establishes some time limits about when the parking has to be there, so that, even that project...it may raise issues, how it's done and whether it does in fact maintain [access to the beach and recreation facilities], how it's designed. It may raise issues with the policies of the LCP and I think the County is still working on that. But the actual use is consistent. They're not stuck with their parking lots where their parking lots are.

...Any development has to also be evaluated for its consistency with public recreation and public access, but that wouldn't require an LCP amendment. It would be a permit and appeal matter, and it would be a situation where essentially the Commission and its staff would be dealing with the developer, not with the County. So then you'd be dealing with issues such as the person's rights to develop when they have a lease and ... reasonable expectations issues. So it's very hard to delay a particular development on the procedural issue.

NM: I have a question on that. Where in the LCP did it say you could do that, because...

PE: I think we could look at that later, not at this meeting. I think you've got to pore over the LCP...

(DK): I believe you're right on that...

NM: If it says it, it does. But it also says specifically that only a park or a parking lot can go on a current public...parking area. So it all ties in. I guess the ...more I'm listening to you all, I'm not sure—do you have the ability to enforce compliance? In other words ...my understanding is that the Coastal Commission passes on whether these local coastal plans are in compliance and at some point—maybe that's a year from now, or whenever you file this final report to give the County another year to respond (I'm not sure why, since they've also had a year to respond, I believe, to the draft report). If they can continue on with getting these projects through the approvals process, then by the time you might make a final decision on that, it might be too late because those projects have already been built. So, do you have any means to force them to comply when there is a direct conflict issue or a direct issue? I mean, I've been reading the Land

Use Plan and I've come up with several that I'm just ...amazed that they even put these projects forward because they exceed the maximum limits that are all over this thing. And they borrow credits—they're not even credits; I'm using their term. They trade development potential from one Development Zone to another, even though it specifically says that the LCP shall not be construed to allow this to happen. So, what do we as the public do as these things are rolling over us?

DL: There's two things going on: In terms of Periodic Review, there's nothing in the Periodic Review that forces or makes any changes to the LCP as it's currently certified. Doesn't undo it; doesn't revise it...

NM: No, and we're not asking to have it revised, we're just asking to have it complied with, and do you have ...enforceability?

DL: So that process is that, and in fact, even if after the one year that the County would have to review the Periodic Review recommendations, ultimately if they come back and they say "we're not interested, we're not going to do anything," our only remaining avenue is to make a report to the Legislature that that's their response.

At mark 00:32:05

[briefly: multiple speakers, not clear]

LF: But aren't you asking about projects that ...are going to be certified?

NM: ...that are happening now, yeah...

LF: The appeals process is the handle on that...

DL: The appeals process is the handle on that.

NM: So we—the public has to appeal it?

DL: Yes.

NM: And the Commission doesn't have any means to say...

DL: No, we also can solicit appeals. We have appealed numerous items, but it's also up to you if we don't solicit one and you feel it's inconsistent.

NM: Can we come to you ...as the public, can we come to you as the Commission and say "Please help us?" or "join us in the appeal"? Would that be an option?

AP: You'd be filing an appeal with us on a County's action...

PE: Let me jump in here because there's something important. In order to appeal a project to the Coastal Commission you have to have participated in the process at the County, which means you have to have testified as an organization and/or individual at the County hearings, at the Regional Planning, possibly at the Design [Control] Board; and you have to have attempted to appeal the matter to the next level. If they might want to charge you money to appeal to the next level, then you can appeal the matter directly to us. But you have to have documented that. So you can't come to us at the end of the process if you haven't participated at the County. ...It's

CofC

structured to give the County a chance and the Board of Supervisors and Planning Commission a chance to fix things that people are concerned about.

DD: We've always tried to make our presence known at public hearings ...to protect the record in case we do need to appeal a particular project.

NM: okay...

DK: The problem with this is that there's 20 projects and maybe only 2 or 3 have LCP amendments. We're going to be stuck with a massive amount of energy and resources only to make all this consistent with the LCP, and it falls on our shoulders, which...

DD: It's a very heavy burden. Even though Nancy has just been talking about some of the processes and you've told her more about the processes, one substantial issue that she raised ...I just want to highlight. She was referring to Chapter 8, Page 14, Paragraph 3 on that page of Conversion Monitoring, where it states, interestingly (I had never caught this before Nancy pointed it out to me)...[Section on Conversion Monitoring and the prohibition of transfer of development potential between Development Zones]...

Discontinued transcript at mark 00:35:23

Mr. Peter Douglas
Executive Director
California Coastal Commission
200 Ocean gate 10th Floor
Long Beach, California 90802-4416

EXHIBIT NO. 31
Application Number MDR Periodic Review
10 of 2
California Coastal Commission

April 20, 2006

Coalition to Save the Marina Inc.
P.O. Box 9291
Marina del Rey, California 90295

Subject: Marina del Rey
Periodic L.C. P. Review

Dear Mr. Douglas:

As you know, the Marina del Rey Periodic Local Coastal Program Review is nearly five years behind schedule. We can appreciate the continuing problems with the Commission's time, resources and number of staff personnel available for evaluation in completing this review. We are however encouraged with the W6a document of proposed recommendations which were presented to the Department of Beaches and Harbors, County of Los Angeles more than nine months ago. To date, the County has made no official response to these recommendations other than a few draft documents. In the mean time they have been pressing forward with the implementation of their controversial Marina del Rey Asset Management Strategy Program (phase II) at a rapid pace. The approval of transfers and thirty year non public bid lease extensions of properties is of great concern. It appears that there is an implied approval of some proposed private developments that may not be compliant with the approved Local Coastal Program and lack necessary entitlements. This reverse engineering concept is disturbing due to its nature and the impending loss of our coastal dependant public land and open space.

Notwithstanding the above, In 2005 the County had acquired the former Pardee Sea Scout Base at Burton Chace Park. Their lease was not renewed due to their alleged inability to finance structural maintenance requirements determined by the County. Since then it appears that they (county) have made structural changes to this building without a construction development permit and are using the building as offices for the county and what appears to be a fitness gym for the employees. In as much as this building is sitting entirely in the water, and is under the exclusive jurisdiction of the Commission. I am requesting an investigation into the alleged breach of the land use plan of the Pardee Sea Scout Base and documentation or lack thereof of a coastal development permit. Absent these conditions, the Coalition to Save the Marina is urging the commission to deny any post construction application permit and change of the conditional use without a public hearing.

Thank you for your consideration.

Donald Klein



Pres.,
Coalition to Save the Marina Inc.

Cc. Department of Beaches and Harbors
Department of Boating and Waterways
NOAA
Pam Emmerson CCC
Andrew Willis CCC

EXHIBIT NO.	32
Application Number	MDR Periodic Review
California Coastal Commission	

From: JIM MAURER [jpmaurer@verizon.net]
Sent: Tuesday, May 23, 2006 5:02 PM
To: Periodic Review
Subject: Marina del Rey LCP Review

Pam Emerson
CA Coastal Commission
South Coast District Office
200 Oceangate Blvd. - 10th Floor
Long Beach, CA 90802

Dear Ms. Emerson:

I am writing to the Coastal Commission to express my support for the commission's 54 recommendations for the Marina del Rey Local Coastal Program which as I understand will bring the Local Coastal Program in compliance with the Coastal Act policies.

LA County officials are against your recommendations due to the fact that if they complied, they would have no foundation for their support of many, many redevelopment projects that are currently in the approval process. County officials and developers are disregarding and even exceeding LCP standards. Examples are as follows:

1. Proposing excessive hotel developments on the waterside parcels due to the fact that hotels are exempt from height limitations imposed on other end-use projects.
2. Proposing offsite parking to satisfy requirements because there is no room in the oversized projects for only the minimum parking needed.
3. Somehow, tranfering development units from parcels located in other development zones within the Marina del Rey area in order to design buildings that are larger than the LBP allows.
4. I certainly seems as thought the developers are proposing projects for every square inch of every parcel in Marina del Rey.

I object to all this development in the Marina. There seems to be no long range plan. We hear of proposals one or two at a time, It's like a puzzel where the residents, taxpayers, and visitors to the Marina receive just a few pieces every one, two, or three years.

I certainly hope you will continue your efforts to protect our Marina del Rey area with keeping in mind the origianl plan and why we have our "current" Marina del Rey.

Private developement of larger buildings, unbelievable traffic congestion and totalling ruining the Marina is what the overall majority of the residents DO NOT WANT!!!!

Please include me on a mailing list of any and all upcoming meetings, etc. relative to this subject area @ jpmaurer@verizon.net

Thank your for your consideration and hopeful support.

Sent: Thursday, November 10, 2005 10:49 AM
To: marinareview@coastal.ca.gov
Subject: Marina Del Rey

EXHIBIT NO. 33
Application Number MDR Periodic Review
California Coastal Commission

Recently I learned that MDR intends to eliminate many boat slips in favor of mega-yachts. At this time there is a dearth of space for 'average' craft in the Marina, and eliminating more dock space would be counter to the public interest.

Currently I am saving for a vessel of modest size, but sufficient to 'live aboard.' I am well over half-way to funding my anticipated purchase and expect to be able to buy an appropriate boat out right easily within the next year. I would very much like to obtain a slip in MDR, however, I am told there is as much as a three year waiting list at present. If slips are eliminated in favor of an outrageously privileged few, of course that would be contrary to the common good.

The California Coast belongs to ALL the people, and access MUST be retained for the greatest possible number of Californians. The MDR group is more interested in its financial bottom line rather than meeting the needs of the People. The CCC is expected to act in the interest of all, rather than profit the privileged.

Please act to insure popular access to California's coastal waters.

Respectfully,
C. Alvin Ross

Yahoo! FareChase: Search multiple travel sites in one click. <http://farechase.yahoo.com>

EXHIBIT NO. 341

Application Number

MDR Periodic
Review

California Coastal Commission

From: Carl J Lundstrom [sailboy11@earthlink.net]
Sent: Thursday, November 10, 2005 10:00 PM
To: marinareview@coastal.ca.gov
Subject: future of Marina Del Rey

As an avid boater, I only want to make sure that we will always have access to dock space and able to sail in and out of the Marina. The developers are trying to put up more and more high rises that would eventually take all the wind that is left, away from us. I appreciate your good work and protecting OUR waters. We have a very precious resource here.

Thank you for your consideration.

Carl J Lundstrom

Marina Del Rey, CA

EXHIBIT NO. 35
Application Number MDR Periodic Review
California Coastal Commission

From: Karen Dreyfuss [karen@escapemodule.com]
Sent: Tuesday, May 23, 2006 1:17 PM
To: Periodic Review
Subject: LCP recommendations

Ms. Pam Emerson California Coastal Commission South Coast District Office 200 Oceangate Blvd.,
10th Floor Long Beach, CA 90802-4325
Re: Coastal Commission's Review of the Marina del Rey LCP

Dear Ms. Emerson,

I am writing to express my support for the commission's 54 recommendations to bring the LCP into compliance with Coastal Act policies.

As I understand it, the commissions's recommendations are crucial to effective, true protection of the coastal resources. Our County officials oppose the recommendations, apparently because following the recommendations would interfere with the County's interest in several redevelopment projects currently in the approval process.

Without the protection added by the recommendations, developers manage to exceed and disregard LCP standards, for example, by seeking to: - "transfer" development units from parcels located in other development zones within the Marina in order to design buildings that are larger than the LCP allows; - create offsite parking to satisfy parking requirements because the scale of their proposed development excludes sufficient, onsite parking spaces; - seek excessive hotel development on waterside parcels because hotels are exempt from height limitations imposed on other end-use projects; - develop every single parcel in Marina del Rey.

I object to the piecemeal presentation of redevelopment projects. We need to know what the overall redevelopment will be, and have an opportunity to respond to that overall vision. Our coastal resources are a precious asset.

As a lifetime resident of Southern California, and mother of two small children who love the beach like a family member, I greatly appreciate your continued efforts. Keep up the good work. Thank you for your consideration. Sincerely,

Karen Dreyfuss
621 25th Street
Santa Monica, CA 90402
(310) 339-7707