

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



W12b

ADDENDUM

DATE: August 6, 2012
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 12b, Wednesday, August 8, 2012, Coastal Development Permit Application 4-09-026 (Ventura Port District and Sondermann Ring Partners)

The purpose of this addendum is to add a special condition and findings for indemnification by the applicants, to address an inadvertent error, and to attach and respond to two letters in opposition.

Note: ~~Strikethrough~~ indicates text to be deleted from the July 13, 2012 staff report and underline indicates text to be added to the July 13, 2012 staff report pursuant to this addendum.

1. The following special condition shall be added to page 12 of the staff report:

10. Indemnification by Applicants. Liability for Costs and Attorneys Fees: By acceptance of this permit, the Applicants/Permittees agree to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicants/Permittees against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

2. The following language shall be added to page 28 of the staff report:

...hazards as they relate to the proposed project and indemnify and hold harmless the Commission against any claims, damages, or costs associate with damage caused by such hazards.

Further, Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. See also 14 C.C.R. § 13055(e). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition Ten (10)**, requiring reimbursement of any costs and attorneys fees the

Commission incurs “in connection with the defense of any action brought by a party other than the Applicant/Permittee challenging the approval or issuance of this permit.”

3. To correct an inadvertent error, the following shall be added to page 1 of the staff report:

Hearing Date: 8/8/12

4. Two letters in opposition of the staff recommendation were received on July 27 and August 3, 2012, and are attached hereto. All issues raised by both letters have already been fully addressed and evaluated in the staff report for this item. Specifically, the first letter, from Mr. Robert Timms, asserts that both public access and scenic views would be diminished by approval of the subject CDP. However, as discussed more fully in the staff report, the subject project has been specifically designed to enhance both public access and recreational opportunities within the Ventura Harbor area and would minimize impacts to scenic views. In addition, the second letter in opposition to the project, from Mr. Richard Eicker and Ms. Claire Shechtman, neighboring residents, does not raise any Coastal Act issues relevant to the project. Staff therefore continues to recommend that the Commission approve the Coastal Development Permit application with the conditions included in the staff report.

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**W12b**

Filed: 3/29/12
 180th Day: 9/25/12
 Staff: J. Blaugrund-V
 Staff Report: 7/13/12
 Hearing Date:

STAFF REPORT: REGULAR CALENDAR

Application No.: 4-09-026

Applicants: Ventura Port District and Sondermann Ring Partners

Agents: Roger Van Wert and Jennifer Carter, Van Wert Inc.; Michael Sondermann and Tom DiGiuseppe, Sondermann Ring Partners.

Location: Port District Parcels 15, 16, & 18 (Assessor Parcel Numbers 080-0-240-245 and 080-0-240-125) in the Ventura Harbor, City of San Buenaventura, Ventura County

Project Description: Adjust the lot lines of Port District Parcels 15, 16, and 18 and construct an approximately 44,400 sq. ft. new public recreational marina; install new piles, gangways, and utilities for the berthing of 104 boats, ranging from 30 ft. to 80 ft. in length; construct a new 90 ft. public long dock for use by personal watercraft; designate six new public transient boating spaces, one new non-profit boating space, and one new water taxi stop.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed development with **nine (9) special conditions** regarding (1) revised project plans, (2) public boating amenities, (3) eel grass survey(s), (4) pre-

construction *Caulerpa taxifolia* survey, (5) construction responsibilities and debris removal, (6) best management practices program, (7) marina inspection and maintenance program, (8) conformance with the requirements of other resource agencies, and (9) assumption of risk.

The Ventura Port District and Sondermann Ring Partners are proposing to adjust the lot lines of Port District parcels 15, 16, and 18 to add approximately 3.17-acres of water area (for a total water area of approximately 6.45-acres) and to construct an approximately 44,400 sq. ft. new public recreational marina. Construction would consist of the placement of approximately 99 precast concrete guide piles, dock structures, and four gangways, three of which would be Americans with Disabilities Act (ADA) compliant. The subject marina would be capable of berthing 104 boats, ranging in size from 30 to 80 ft. long, with approximately 40 percent of berthing spaces dedicated to boats 35 ft. and below. Six transient berthing spaces would be dedicated for exclusive use by short-term renters and one transient berthing space would be dedicated, and available at no cost, for exclusive use by non-profit boating groups. Amenities available to each berthing space would include water, electrical power supply, communication, and TV and data service. An in-slip pump-out service, operated by authorized dock personnel, would also be available to each berthing space. Additionally, a water taxi stop would be designated to promote harbor connectivity and a 90 ft. long dock would be constructed for use exclusively by personal watercraft such as kayaks and paddleboards.

The proposed marina is located at the terminus of Schooner Drive, west of the intersection of Anchors Way Drive and Schooner Drive, in the Ventura Harbor. Within the City of San Buenaventura's (Ventura) certified Land Use Plan (LUP), the Ventura Harbor is divided into four areas: South Peninsula Harbor Area, Southwest Harbor Area, Central Harbor Area, and the Northeast Harbor Area. The proposed marina is located in the Northeast Harbor area, immediately seaward of the vacant waterfront property that was the subject site of City of Ventura Local Coastal Program Amendment 1-11. This approximately 23.75-acre property is composed of Port District parcels, 15, 16, and 18.

The subject CDP was submitted to the Commission on April 14, 2009. The permit application was deemed incomplete and letters outlining the additional information needed were sent to the applicant on May 11, 2009, July 29, 2011, and January 24, 2012. The applicant provided all of the information items requested by staff and the permit application was deemed complete for filing on March 29, 2012.

Although the Commission has previously certified a Local Coastal Program (LCP) for the City of Ventura, the proposed project will be located within an area where the Commission has retained jurisdiction over the issuance of coastal development permits. Thus, the standard of review for this project is the Chapter Three policies of the Coastal Act, with the applicable policies of the City of Ventura LCP as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

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APPENDICES

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EXHIBITS

Exhibit 1 – Vicinity Map
Exhibit 2 – Aerial Photograph
Exhibit 3 – Proposed Site Plan
Exhibit 4 – Proposed Lot Line Adjustment
Exhibit 5 – State Lands Commission Review Letter

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 4-09-026 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

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

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Revised Project Plans.

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director's review and approval, two full size sets of final revised project plans (i.e. site plan, elevations, cross-sections, etc.) The final revised project plans should depict the following:

- (1) A detailed design plan for the on-dock sewage pump-out system. The design details should describe a closed system that uses a suction pump design with built-in features that alert the operator to system malfunctions and prevents spills. The location of elements of the system, including the hydrants, hose storage and sewer lines, shall be shown on the plans. The pipe material and pipe dimensions shall be specified. The method of coupling together pipe segments and providing for bends in the pipe alignment and attachments that connect to individual hydrants shall be noted. The method of the attachment of the system to the dock, or on-dock housing of the system, should be discussed in the design plan. Any other detail which demonstrates the system is engineered appropriately for floating docks should be discussed and shown in the design. Containment to prevent spills where pipe breakage or pump failure is possible should be included in the sewage pump-out system design to add a final measure of water quality protection.

- (2) A signage program that implements conspicuously posted signs, which make the public aware of:

- (i) Access and recreational activities available on site and directs them to such facilities including, but not limited to, boating facilities, personal watercraft long dock, water taxi stop, and coastal/boater access parking.

- (ii) The best management practices for maintenance of boats and boating facilities consistent with Special Condition Six (6).

- (3) The location of security gates within the project area. This includes, but is not limited to, gates placed at the landside ingress/egress point of the gangways.

- B. In the event that one or more of the transient berthing spaces located on the 160 ft. long dock are determined to be not useable for transient boaters because water taxi operations require a larger dock area than thirty (30) feet, then the marina operator shall designate one or more additional transient berthing spaces within the approved marina and shall submit, for the Executive Director's review and approval, two full size sets of final revised berthing configuration plans that identify the location of the additional transient berthing spaces.
 - C. The Permittees shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to the Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.
2. **Public Boating Amenities.** By acceptance of this permit, the applicants agree to comply with the following restrictions regarding the public boating amenities approved within the marina:
- A. Construction Timing:
 - (1) The 90-foot long dock, the six transient berthing spaces, the non-profit boating berthing space, and the water taxi stop shall all be constructed concurrently with construction of the marina and shall be made available for use no later than the day the first leased boat slip is available.
 - B. Operations:
 - (1) The 90-foot long dock shall be maintained in perpetuity for the general public, at no cost, for the exclusive use by personal watercraft, including but not limited to, kayaks, dinghies, paddleboards, and rowing shells on a short-term (not overnight) basis.
 - (2) A minimum of six (6) transient berthing spaces shall be provided in perpetuity and reserved for exclusive use by short-term renters. These transient spaces shall be available for rent on a daily, weekly or monthly basis, not to exceed 120 days for any one renter in any calendar year.
 - (3) At least one (1) transient berthing space shall be provided in perpetuity, at no cost, and reserved for exclusive use by non-profit boating groups. Each group may use this transient space for no more than 30 days in any calendar year. For reservations lasting longer than one (1) day, the marina owner or operator may recover direct costs of utilities and services used by the occupancy including electricity, water, cable, Wi-Fi, and pump-out.

(4) One water taxi docking area (water taxi stop) shall be provided for the use of the general public during all times that a water taxi service is operated in the harbor. The docking area shall be sited in an area and of sufficient size to provide for safe operation of a publicly available water taxi service.

3. Eelgrass Survey(s).

A. Pre Construction Eelgrass Survey:

- A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision Eight (8) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

B. Post Construction Eelgrass Survey:

- If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicants shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision Eight (8) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicants shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

4. Pre-Construction *Caulerpa taxifolia* Survey.

- A. Not earlier than ninety (90) days and no later than thirty (30) days prior to commencement of any development authorized under this coastal development permit (the “project”), the applicants shall undertake a survey of the project area and a buffer area at least ten (10) meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicants shall submit the survey:
 - (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT).
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the project until (1) the applicants provide evidence to the Executive Director that all *C. taxifolia* discovered within the project and/or buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or (2) the applicants have revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Construction Responsibilities and Debris Removal. By acceptance of this permit, the applicants agree to comply with the following construction-related requirements:

- A. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave or tidal action, erosion, or dispersion.
- B. Any and all debris resulting from construction activities shall be removed from the site within twenty-four (24) hours of completion of construction and disposed of at an appropriate location.
- C. If turbid conditions are generated during construction, a silt curtain shall be utilized to control turbidity.
- D. Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day.
- E. Divers shall recover non-buoyant debris discharged into coastal waters as soon as possible after loss.

- F. The applicants shall dispose of all construction debris resulting from the proposed project at an appropriate location outside the coastal zone. If the disposal site is located within the coastal zone, a separate coastal development permit shall be required before disposal can take place.
- G. Reasonable and prudent measures shall be taken to prevent any discharge of fuel or oily waste from heavy machinery or construction equipment into coastal waters. The applicants and applicants' contractors shall have adequate equipment available to contain any such spill immediately.
- H. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
- I. Any wood treatment used shall conform with the specifications of the American Wood Preservation Association for saltwater use. Wood treated with Creosote, CCA (Chromated Copper Arsenate), or ACA (Ammoniacal Copper Arsenate) is prohibited. No wood treated with ACZA (Ammoniacal Copper Zinc Arsenate) shall be used where it could come into direct contact with the water. All treated timber shall be free of chromium and arsenic.
- J. The applicants shall use the least damaging method for the construction of pilings and dock structures and any other activity that will disturb benthic sediments. The applicants shall limit, to the greatest extent practicable, the suspension of benthic sediments into the water column.

6. Best Management Practices Program. The applicants shall take the steps necessary to ensure that the long-term water-borne berthing of boats at the approved marina will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs:

A. Clean Marina Plan:

- Prior to the issuance of the Coastal Development permit, the permittees shall submit for the review and approval of the Executive Director, a Clean Marina Plan (CMP) for the post-construction project site. The CMP shall include appropriate BMPs for the protection of water quality from waterside development activities. Guidance for appropriate BMPs can be found in the Program Manual and Clean Marina Scoresheets of the Clean Marinas program (www.cleanmarina.org). While this permit only addresses waterside activities, it is recommended that this project follow all the guidelines of the Clean Marina Program and seek certification under that program.

B. Boat Maintenance and Cleaning Best Management Practices:

- Boat maintenance shall be performed above the waterline in such a way that no debris falls into the water.

- In-water top-side and bottom-side boat cleaning shall be by hand and shall minimize the discharge of soaps, paints, and debris. Where feasible, remove the boats from the water and perform cleaning at a location where debris can be captured and disposed of properly.
- Detergents and cleaning products used for washing boats shall be phosphate-free and biodegradable, and amounts used shall be kept to a minimum.
- Detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye shall not be used.
- In-the-water hull scraping or any process that occurs underwater to remove paint from the boat hull shall be prohibited and shall not occur.
- Boat repair and maintenance shall only occur in clearly marked designated work areas for that purpose.
- All boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. Boaters shall also use preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas.

C. Solid and Liquid Waste Best Management Practices:

- All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene, and mineral spirits shall be disposed of at a permitted facility and shall not at any time be disposed of in the water or a gutter.

D. Sewage Pump-out System Best Management Practices:

- Vessels shall dispose of any sewage at designated pump-out facilities provided by the permittees.
- Sanitary sewer pump-out hydrants will be located in convenient locations on the docks so that in-slip pump-out service is available to all boats utilizing no more than 75' of hose reach.
- Only authorized dock personnel will operate the sewer pump-out service and self-service pump-outs by boaters will not be permitted.
- Each time the pump is used the vacuum pressure generated by the system will be noted to ensure there are no leaks. Any detected leaks will be traced to the source and repaired.

E. Petroleum Control Management Measures:

- Boaters shall practice preventive engine maintenance and shall use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and

hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.

- If the bilge needs more extensive cleaning (e.g. due to spill of engine fuels, lubricants, or other liquid materials), the boaters shall use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
- Bilge cleaners which contain detergents or emulsifiers shall not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

F. Public Education Measures:

- The applicants shall distribute a pamphlet with the best management practices included in this condition to all users of the boat docks and end ties. Informative signage and/or depicting best management practices for maintenance of boats and boating facilities consistent with those specific herein shall be posted conspicuously pursuant to Special Condition One (1).

7. **Marina Inspection and Maintenance Program.** Throughout the life of the development approved by this permit, the permittees shall exercise due diligence in periodically inspecting (at least once a year) the marina facilities that are subject to this coastal development permit. The permittees shall immediately undertake any repairs necessary to maintain the structural integrity of the docks, pilings, over-water sewer lines, and other utility connections, prevent leaks, and to ensure that pieces of unattached plastic or other debris do not enter the environment.

Over-water sewer lines, including all pipes from sewage pump-out facilities, shall be visually inspected where feasible and pressure-tested quarterly. The inspections shall be undertaken by boat, during periods of extreme low tides. All leaks shall be repaired immediately upon discovery.

8. **Conformance with the Requirements of the Resource Agencies.** The applicants shall comply with all permit requirements, and mitigation measures of the California Department of Fish and Game, State Water Quality Control Board, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

9. **Assumption of Risk.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from storm waves, tsunamis, surges, and flooding; (ii) to assume the risks to the applicants and the property that is the subject of this permit

of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

Prior to commencement of development, the applicants shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND BACKGROUND

The Ventura Port District and Sondermann Ring Partners are proposing to adjust the lot lines of Port District parcels 15, 16, and 18 to add approximately 3.17-acres of water area (for a total water area of approximately 6.45-acres) and to construct an approximately 44,400 sq. ft. new public recreational marina. Construction would consist of the placement of approximately 99 precast concrete guide piles (measuring approximately 18 in. in diameter), dock structures and four gangways, three of which would be Americans with Disabilities Act (ADA) compliant. The subject marina would be capable of berthing 104 boats, ranging in size from 30 to 80 ft., with approximately 40 percent of berthing spaces dedicated to boats 35 ft. and below. Six transient berthing spaces would be dedicated for exclusive use by short-term renters and one transient berthing space would be dedicated, and available at no cost, for exclusive use by non-profit boating groups. Amenities available to each berthing space would include water, electrical power supply, communication, and TV and data service. An in-slip pump-out service, operated by authorized dock personnel, would also be available to each berthing space. Additionally, a water taxi stop would be designated to promote harbor connectivity and a 90 ft. long dock would be constructed for use exclusively by personal watercraft such as kayaks and paddleboards.

The proposed marina is located at the terminus of Schooner Drive, west of the intersection of Anchors Way Drive and Schooner Drive, in the Ventura Harbor. Within the City of Ventura's certified LUP, the Ventura Harbor is divided into four areas: South Peninsula Harbor Area, Southwest Harbor Area, Central Harbor Area, and the Northeast Harbor Area. The proposed marina is located in the Northeast Harbor area, immediately seaward of a vacant, irregularly-shaped peninsula that is flanked by a public boat launch and parking area to the north and boat slips and parking to the south and west. This peninsula is composed of Port District Parcels 15, 16, and 18 is encompasses approximately 23.75-acres, including the adjacent water area. Parcels 15 and 18 are approximately 1,000 to 1,200 feet deep and parcel 16 is approximately 250 ft. wide and surrounded by water on three sides, as seen in Exhibit 2.

In 1979, the Ventura Port District (Port District) adopted a Development Plan (partly to assist the City of Ventura with preparation of its LCP) which designated commercial and recreational uses for various parcels within the Ventura Harbor. In 1980, the State Lands Commission (SLC) and the Port District entered into a Settlement Agreement in order to resolve sovereign title issues for multiple land and water parcels within the Ventura Harbor. Pursuant to this agreement, both parties agreed, among other items, that the State quitclaimed what was referred to as the remaining water area (a portion of which would be subject to the development within the currently proposed CDP) to the Port District with the understanding that the rights of the public to use the waters within this remaining water area for access and recreation would be consistent with, and at least as comprehensive as, those provided in the Development Plan. Within in the water adjacent to parcel 16, the Development Plan provided for a service dock and 26 boat slips. No water improvements were associated with parcels 15 and 18. Commission staff requested SLC staff review of the proposed project. Upon review of the proposed marina project, the State Lands Commission staff found that its construction would be consistent with the 1980 Settlement Agreement, and therefore carried out the intent of the Development Plan, as seen in Exhibit 5.

On December 19, 2007, the City of Ventura approved an Administrative Coastal Development Permit (CDP), requested by the Port District, for a lot line adjustment of Port District Parcels 15, 16, and 18 to accommodate development of the subject recreational marina. The Notice of Final Action for the CDP was received by Commission staff on January 17, 2008. However, since the water areas of Ventura Harbor are subject to the CDP jurisdiction of the Coastal Commission, and not the City, the City did not have the authority to grant the CDP since the lot line adjustment involved water areas of the harbor. As such, in a letter dated January 31, 2008, Commission staff notified the City that the CDP was not valid and considered null for the reasons stated above and that the Port District must obtain a CDP from the Coastal Commission prior to recordation of the lot line adjustment.

At its April 2012 meeting, the Commission approved City of Ventura Local Coastal Program Amendment 1-11 with suggested modifications. This amendment, requested in order to accommodate a mixed use development project, made modifications to the development provisions of the Harbor Related Mixed Use land use designation in the certified Land Use Plan and modified the zoning designation of Port District Parcels 15, 16, and 18 in the City's certified Implementation Plan from Harbor Commercial to Coastal Mixed Use Development. Because the subject LCP amendment reduced the potential area available for visitor-serving commercial, public amenities, and water-oriented recreational facilities, the Sondermann Ring Partners, in consultation with Commission staff, offered several measures to mitigate the loss of these areas. These measures include the provision of materials for the improvement of the Leo Robbins Community Sailing Center (not considered in the subject CDP application), as well as the provision of public boating amenities in the subject marina, including the designation of a minimum of six transient berthing spaces and at least one berthing space for use by non-profit boating groups, as well as construction of a long dock, no less than 90 ft. in length for exclusive use by personal watercraft, and provision of support for the operation of a water taxi service in the harbor.

Construction of the proposed marina project would take place concurrently with the above mentioned mixed use development. The proposed dock structures and concrete guide piles would

be manufactured off-site and subsequently assembled onsite. Installation of the guide piles would occur from a water-based pile-driving derrick barge. Small support skiffs and other watercraft would be utilized to install the dock structures and utilities. The sewer lines necessary for the in-slip pump-out service would be constructed with PVC pipe encased by a flexible sewer hose and would run through the docks, up the proposed gangways, and connect with the landside public sewer line. Pump-out hydrants, which have a hose reach of 75 ft., would be placed at specific locations throughout the proposed dock area to ensure that each berthing space would have adequate access to the in-slip pump-out service.

Although the Commission has previously certified a Local Coastal Program (LCP) for the City of San Buenaventura (Ventura), the proposed project will be located within an area where the Commission has retained jurisdiction over the issuance of coastal development permits. Thus, the standard of review for this project is the Chapter Three policies of the Coastal Act, with the applicable policies of the City of Ventura LCP as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

B. RECREATIONAL BOATING AND PUBLIC ACCESS

Coastal Act Section 30210 states:

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

Coastal Act Section 30211 states:

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

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) adequate access exists nearby, or,*
- (3) agriculture would be adversely affected.*

Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30213 of the Coastal Act states, in part:

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

Section 30220 states:

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

Section 30224 states:

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.

Section 30234 states:

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.

The City of Ventura LUP Land Use Development Standards for the Northeast Harbor Area state, in part, that:

...

g) Any residential development proposed within the HRMU designated area shall provide measures to mitigate the loss of harbor area available for public amenities, visitor-

servicing commercial and water-oriented recreational facilities. Such measures shall include:

...

(b) Construction of a 90 ft. long dock for use by personal watercraft;

(c) Provision of a minimum of six (6) transient berthing spaces;

(d) Provision of at least one (1) transient berthing space for use by non-profit boating groups; and

(e) Support of a water-taxi service within the harbor.

The City of Ventura LIP Harbor Mixed Use Zone -- Development Regulations and Standards states, in part:

...

16. Public Boating. In conjunction with any residential development that occurs within the HMXD zone, the following measures shall be implemented:

...

b) Construction of a long dock, not less than 90 feet in length, parallel to the shoreline, for exclusive use by personal watercraft such as kayaks, dinghies, paddleboards, and rowing shells on a short-term (not overnight) basis. The long dock may include dry storage racks for non-motorized watercraft. Construction of the long dock shall be completed concurrent with construction of a marina adjacent to and coterminous with the HMXD zone, and no later than three (3) years from the issuance of the first building permit for any new residential development within the HMXD zone.

c) Within the marina adjacent and coterminous to the HMXD zone, a minimum of six (6) transient berthing spaces shall be provided and reserved for exclusive use by short-term renters. These transient spaces shall be available for rent on a daily, weekly or monthly basis, not to exceed 120 days in any calendar year. Construction of the transient spaces shall be completed concurrent with construction of a marina adjacent to and coterminous with the HMXD zone, and no later than three (3) years from the issuance of the first building permit for any new residential development within the HMXD zone.

d) In addition to the six (6) transient berthing spaces required in 16(c) above, at least one (1) transient berthing space shall be provided in perpetuity, at no cost, and reserved for exclusive use by non-profit boating groups. Each group may use this transient space for no more than 30 days in any calendar year. For reservations lasting longer than one (1) day, the marina owner or operator may recover direct costs of

utilities and services used by the occupancy including electricity, water, cable, Wi-Fi, and pump-out. Construction of the transient space shall be completed concurrent with construction of a marina adjacent to and coterminous with the HMXD zone, and no later than three (3) years from the issuance of the first building permit for any new residential development within the HMXD zone.

...

Coastal Act Section 30210 and Coastal Act Section 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Section 30212(a) of the Coastal Act provides that adequate public access to the sea be provided in new development projects. Coastal Act Section 30213 protects and encourages lower cost visitor and recreational facilities and Section 30220 protects coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas for such uses. Further, Coastal Act Sections 30224 and 30234 encourage the development of recreational boating facilities and protect facilities serving the recreational boating industry. Additionally, the City of Ventura LUP outlines measures to mitigate the loss of harbor area available for public amenities, visitor serving commercial and water-oriented recreational facilities due to construction of residential development, and the LIP describes the parameters that the mitigation measures must follow.

The proposed project would involve the construction of a new public marina that would provide 104 new recreational berthing spaces, ranging in size from 30 to 80 ft. long, as described below in Table A. Approximately 40 percent of the proposed slip mix is composed of berthing spaces for boats 35 ft. and under. In comparison to the current harbor wide percentage of berthing spaces 30 ft. and under, the proposed percentage is considerably less (5.8 percent), as depicted in Table B. However, approximately 35 percent of the proposed berthing spaces would be moderately sized at 31 to 35 ft. in length. Further, currently within the Ventura Harbor there are 1,248 recreational berthing spaces (including side tie areas), with a large proportion (approximately 28 percent) dedicated to boats 30 ft. and under. Combined with the proposed slip mix, the harbor wide percentage of berthing spaces for boats 30 ft. and under would remain high at approximately 26 percent. As such, the Commission finds that there will continue to be an adequate provision of lower cost boating opportunities harbor-wide, with the addition of the proposed new marina.

Table A

Existing Spaces in the Ventura Harbor			Proposed Spaces		
Type of Space	Length in Feet	Number of Recreational Spaces	Type of Space	Length in Feet	Number of Spaces
Slip	20' to 25'	107	Slip	30'	6
Slip	26' to 30'	241	Slip	35'	34
Slip	31' to 35'	258	End Tie	35'	2
Slip	36' to 40'	240	Slip	40'	18
Slip	41' to 45'	139	End Tie	40'	1
Slip	46' to 50'	142	Side Tie	40'	4
Slip	51' to 55'	33	Slip	45'	15
Slip	56' to 60'	23	Slip	50'	6
Slip	61' to 65'	10	End Tie	50'	1
Slip	66' to 70'	4	Side Tie	50'	1
Slip	71' to 80'	6	Slip	55'	10
Slip	81' to 85'	0	End Tie	55'	1
Slip	86' to 100'	2	Slip	60'	3
Slip	101' to 110'	1	Slip	80'	2
Slip	160' to 199'	0	Total Spaces		104
Slip	>200'	0			
Side Tie	1,721'	42			
Total Spaces		1,248			

Table B

<i>Slip Size</i>	<i>Existing Harborwide Number and Percentage</i>	<i>Slip Size</i>	<i>Proposed Marina Number and Percentage</i>	<i>Slip Size</i>	<i>Harborwide Including Proposed Marina Number and Percentage</i>
<i>30' and under</i>	348 (27.9%)	<i>30' and under</i>	6 (5.8%)	<i>30' and under</i>	354 (26.2%)
<i>31' to 35'</i>	258 (20.7%)	<i>31' to 35'</i>	36 (34.6%)	<i>31' to 35'</i>	294 (21.7%)
<i>36' and over (including all side ties)</i>	642 (51.4%)	<i>36' and over (including all side ties)</i>	62 (59.6%)	<i>36' and over (including all side ties)</i>	704 (52.1%)
<i>Total Recreational Spaces</i>	1,248	<i>Total Recreational Spaces</i>	104	<i>Total Recreational Spaces</i>	1,352

Also included within the proposed slip mix are six transient spaces (four 40 ft. spaces and two 35 ft. spaces) designated for use exclusively by short-term renters, as well as one new space (35 ft. in length) designated for exclusive use by non-profit boating groups. Construction of these berthing spaces would greatly enhance the availability of low cost boating opportunities within the Ventura Harbor, as no transient berthing spaces currently exist. A 90 ft. public long dock for use only by personal watercraft such as kayaks and paddleboards would also be constructed and a water taxi stop would be designated along a 160 ft. dock section, adjacent to three of the 40 ft. transient spaces.

As previously stated, a lot line adjustment is also proposed, as it would provide the additional approximately 3.17-acres of water area necessary for construction of the proposed marina. As seen in Exhibit 3, although the proposed lot area would encompass all of the dock structures, boats located in eight berthing spaces would extend beyond the newly proposed lease line. However, this arrangement is consistent with the Ventura Harbor regulations and surrounding marinas.

Existing public access areas in the Ventura Harbor include Surfer's Knoll Public Beach, several public parking areas, picnic tables, public restrooms, pedestrian and bicycle accessways along the harbor-front, benches, and bicycle storage racks. Recreational boating opportunities include small boat sailing, renting and berthing areas, and public boat launch facility. With the exception of the public boat launch facility and one public parking lot, which are located within the Northeast Harbor Area, and the pedestrian and bicycle accessway which is developed along the majority of the developed harbor-front, the majority of the above listed public access opportunities are located within the South Peninsula Harbor Area. Thus, the Northeast Harbor Area, where the proposed marina would be located, contains very few public access and recreational boating opportunities.

The proposed project does not specifically include any landside improvements, however the public access components of the City of Ventura LCP Amendment 1-11 include a 2.44-acre waterfront park, a 6,450 sq. ft. pet park, as well as a 1,850 linear ft. public promenade along the waterfront perimeter of the site that would connect with the proposed marina via four gangways, three of which would be ADA compliant. Additionally, two parking areas will have 78 parking spaces and amenities designated specifically for boater use. Boater Facility One will contain 52 boater parking spaces and Boater Facility Two will contain 26 spaces, three of these parking spaces will be ADA compliant. Each of these facilities would also contain restrooms, showers, and laundry amenities available for use by boaters.

Construction of the proposed marina project will serve to greatly enhance access and recreational opportunities not only within the Northeast Harbor Area, but also throughout the entire Ventura Harbor. Specifically, the proposed water taxi stop would enhance connectivity and increase access to recreational amenities throughout the harbor. However, the 160 ft. long dock, where the water taxi stop has been proposed, is also the proposed location of three 40 ft. transient berthing spaces. In order to ensure that the water taxi will have adequate operating room in perpetuity and that all six transient spaces will be available for use, **Special Condition One (1)** requires the applicants to submit revised plans that indicate three alternate berthing spaces for transient

boaters that will be utilized in the event that the water taxi requires a larger dock area than 30 ft. and one or more of the transient spaces have to be eliminated from the 160 ft. long dock.

It is typical in marinas that have been considered by the Commission, that security gates, fencing, and other measures to provide security for boat owners are proposed project components. Although the applicants have not proposed any of the above mentioned security measures within the subject CDP, in order to ensure that such security measures do not prevent the general public from accessing the water taxi stop or the personal watercraft dock, Special Condition One (1) also requires that the applicants to submit revised plans which indicate the exact location(s) of any proposed security gates within the project area. Further, to make the public aware of the newly constructed access and recreational boating opportunities available within the project area, Special Condition One (1) requires that the applicants implement a signage program that makes the public aware of activities including, but not limited, to boating facilities, personal watercraft long dock, water taxi stop, and coastal/boater access parking.

As described above, the proposed marina is part of a mixed-use development that includes the subject water area and the adjacent land area. This mixed-use development is subject to LCP policies and provisions, including requirements for public boating amenities. The proposed marina will include a mix of public recreational boating facilities, including spaces that would be available for long term leasing, transient docks available for short term rental, a personal watercraft long dock, and water taxi stop. The proposed project therefore includes the facilities that are required by the above mentioned City of Ventura LCP policies. However, to ensure that the construction timing of the proposed boating amenities in the marina is consistent with those policies, **Special Condition Two (2)** requires that construction of the long dock, transient berthing spaces, non-profit berthing space, and water taxi stop occur concurrently with construction of the marina. Further, Special Condition Two (2) outlines the parameters that must be followed to ensure that operation of these project components is carried out pursuant to the City of Ventura LCP policies.

Therefore, as conditioned, the proposed project is consistent with Coastal Act Policies 30210, 30211, 30212, 30213, 30220, 30224, and 30234, as well as City of Ventura LUP and LIP policies used as guidance.

C. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30240 of the Coastal Act States:

(a) Environmentally sensitive habitat areas shall be protected against a 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.

Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. Further, Section 30231 requires that the biological productivity and quality of coastal waters be maintained. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources.

Eelgrass

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat and foraging area for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (DFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

Development contemplated in the proposed marina project has the potential to directly impact sensitive resources, including eelgrass, which may be present in the project area. Construction of the proposed marina includes installation of concrete guide piles into the seafloor and placement of docks into the waterways surrounding parcels 15, 16, and 18, as depicted in Exhibit 3.

Installation and driving of piles can directly remove and disturb eelgrass. In addition, the docks and vessels berthed above these resources can reduce the light available to eelgrass and kelp by shading portions of the ocean floor. While there is potential for eelgrass habitat within in the project area, it was not identified during a 2009 survey completed by Aquatic Bioassay and Consulting Laboratories. However, it is possible that eelgrass has established in portions of the project site since the survey has occurred, as it is not currently shaded by vessels. Staff notes that the Commission has routinely required surveys for eelgrass to be carried out prior to construction of marina improvements, as a condition of approval, in order to ensure that, if eelgrass is present, mitigation measures are incorporated into the project.

Therefore, **Special Condition Three (3)** requires the applicants to conduct, prior to construction, a survey of the project area for eelgrass. If the survey identifies any eelgrass within the project area which would be impacted by the proposed project, the Executive Director must be notified prior to construction. If any eelgrass is identified in the project area prior to construction, the applicant shall also conduct a second eelgrass survey one month after the conclusion of construction to determine if any eelgrass was adversely impacted. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1. Implementation of mitigation shall require an amendment to this permit or new coastal development permit.

Caulerpa taxifolia

The Commission further finds that the driving of piles on the sea floor could disturb and cause the spread of non-native and invasive species, such as *Caulerpa taxifolia* and Japanese kelp (*Undria pinnatifida*). *C. taxifolia* is a tropical green marine alga that spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation of *C. taxifolia* has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing in places such as the Mediterranean¹. Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated

¹ References:

- Meinesz, A. (Translated by D. Simberloff) 1999. Killer Algae. University of Chicago Press
- Chisholm, J.R.M., M. Marchionetti, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of *Caulerpa taxifolia* (Chlorophyta). *Marine Ecology Progress Series* 201:189-198
- Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga *Caulerpa taxifolia* in the Mediterranean. *Marine Ecology Progress Series* 182:299-303
- Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for *Caulerpa* species: Fates of fragments and implications for management of an invasive weed. *Marine Ecology* 20:307-319.
- Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga *Caulerpa taxifolia* introduced to the Mediterranean Sea. *Marine Ecology Progress Series* 172:275-280.
- Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga *Caulerpa taxifolia* introduced into the Mediterranean Sea. *Marine Ecology Progress Series* 146:145-153.
- Gacia, E. C. Rodriguez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of *Caulerpa taxifolia* from the northwestern Mediterranean. *Aquatic Botany* 53:215-225.
- Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga *Caulerpa taxifolia* introduced into the Mediterranean. *Aquatic Botany* 51:163-169.

a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001, the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species.

In June 2000, *C. taxifolia* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures down to at least 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several States, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

Although no *C. taxifolia*, Japanese kelp or other non-native invasive aquatic species were previously identified in a 2009 survey of the project site completed by Aquatic Bioassay and Consulting Laboratories, if *C. taxifolia*, Japanese kelp or other non-native invasive aquatic species has become present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In order to assure that the proposed marina development does not cause the dispersal of *C. taxifolia* and other non-native species, the Commission imposes **Special Condition Four (4)**, which requires the applicants to survey the project area for the presence of *C. taxifolia*, Japanese kelp, or other non-native invasive aquatic species just prior to construction of the proposed project. If *C. taxifolia*, Japanese kelp, or other non-native invasive aquatic species is present in the project area, no work may commence and the applicants shall immediately notify the Executive Director.

Construction Impacts

The proposed marina is located in and over the waters of the Ventura Harbor. The associated dock structures and concrete guide piles necessary for construction of the marina would be manufactured off-site and subsequently assembled onsite. Installation of the guide piles would occur from a water-based pile-driving derrick barge. Small support skiffs and other watercraft would be utilized to install the dock structures and utilities. Construction of any kind, adjacent to or in coastal waters, has the potential to adversely impact marine resources and water quality through the introduction of pollutants associated with construction.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged

into waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species by interfering with their ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **Special Condition Five (5)** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Marine resources and water quality can also be adversely affected by the use of toxic chemicals used to treat wood products that come into contact with the water. The toxic chemicals can leach out of treated wood and poison marine organisms. Some wood treatments can be used if the wood does not come into contact with the water. Therefore, Special Condition Five (5) also requires that any wood treatment used shall conform with the specifications of the American Wood Preservation Association for saltwater use. Wood treated with Creosote, CCA (Chromated Copper Arsenate), or ACA (Ammoniacal Copper Arsenate) is prohibited, and all treated timber shall be free of chromium and arsenic. No wood treated with ACZA (Ammoniacal Copper Zinc Arsenate) shall be used where it could come into direct contact with the water. The applicants plan to use timber in very limited quantities. The docks and piles used in the marina will be concrete.

Further, Special Condition Five (5) requires that the applicants dispose of all demolition and construction debris at an appropriate location. This condition requires the applicants to incorporate silt curtains and/or floating booms when necessary to control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible. In addition, **Special Condition Eight (8)** is required to ensure that the permittees comply with all permit requirements and mitigation measures of the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

Boating Activities

The proposed marina project would provide approximately 44,400 sq. ft. of new public recreational marina, and would create 104 new public berthing spaces. Amenities available to each berthing space would include water, electrical power supply, communication, and TV and data service. An in-slip pump-out service would also be available to each berthing space and would be operated by authorized dock personnel. The subject marina would be located in and over the waters of the Ventura Harbor, and therefore has the potential to adversely impact marine resources and water quality through the introduction of pollutants, including plastics, other materials, and waste, associated with the proposed boating facilities and related activities.

Operations and maintenance of marina facilities and the boats in those facilities have the potential to cause ongoing adverse impacts to coastal resources through polluted runoff and other pollutant discharges. Potential sources of pollutants associated with boating activities such as chemicals, petroleum, cleaning agents and sewage result in potential adverse impacts to water quality in the Ventura Harbor and surrounding coastal waters. The discharge of these pollutants

to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health. Such cumulative impacts can be minimized through the implementation of boating Best Management Practices (BMPs). In order to maintain water quality and prevent water quality impacts associated with the new marina post-construction, the applicant needs to develop a site specific Clean Marina Plan (CMP) that includes appropriate post-construction BMPs. The applicant has not submitted a CMP. Therefore, the Commission finds it necessary to impose **Special Condition Six (6)**, which requires the applicants to submit and follow a Best Management Practices Program, including a Clean Marina Plan to ensure that boating activity in the project area will be managed in a manner that protects both water quality and marine resources. Further, **Special Condition One (1)** requires the applicants to implement a signage program that makes the public aware of the above mentioned Best Management Practices identified within Special Condition Six (6).

As previously described, the applicants propose to install an in-slip pump-out service, operated by authorized dock personnel, that will allow for sewage pump-out for each boat in its slip, rather than the boat having to be transported to a pump-out location. The sewer lines necessary for the in-slip pump-out service would be constructed with PVC pipe encased by a flexible sewer hose and would run through the docks, up the proposed gangways, and connect with the landside public sewer line. Pump-out hydrants, which have a hose reach of 75 ft., would be placed at specific locations throughout the proposed dock area to ensure that each berthing space would have adequate access to the in-slip pump-out service. According to Tom Digiuseppe from Sondermann Ring Partner's Construction Division, the sewage pump out system design will be based on a similar system currently in place in at the Marina Del Rey (MDR) Harbor. Both MDR Harbor and the Ventura Harbor system will be designed by Keco (pumpahead.com), a company that has been designing and building sanitary systems for the marine environment for 50 years. According to Mr. Digiuseppe, the MDR harbor pump out system at MDR Harbor has a 5 year track record and has been spill-free. The Commission finds that the convenience of the in-slip system is an incentive for utilization by boaters. To minimize the deleterious impacts that can occur to water quality and marine resources due to inadequate sewage disposal from boating activities, **Special Condition One (1)** also requires that the applicants submit revised project plans that indicate the locations of all pump-out system sites and over water sewer lines that will be utilized for the in-slip pump-out service.

In addition, there is the potential for the materials used in the marina to degrade over time. Piles, docks, over-water sewer lines, and utility lines that utilize plastics and other materials for protection are constantly subject to abrasive forces from boats, ships, and the marine environment. If the plastics and other materials were to become brittle, they may splinter or chip upon impact and would introduce debris into coastal waters, and thus would adversely affect water quality and marine resources. Because of the potential for pieces of unattached plastic or

other materials to enter into the marine environment due to damage or degradation, the docks must be routinely inspected to ensure that the facility is being maintained in an environmentally safe operating condition and so that any damaged or degraded facilities are replaced in a timely manner. Therefore, **Special Condition Seven (7)** requires that the applicants inspect the marina facilities at least once a year and visually inspect where feasible and pressure-test quarterly the over-water sewer lines subject to this coastal development permit. If monitoring confirms that the use of plastic or other materials in the marina is damaging marine resources and water quality, the use of such materials shall be stopped as more environmentally friendly products are developed.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

D. DIKING, FILLING, DREDGING, AND HAZARDS WITHIN OPEN COASTAL WATERS

Section 30233 of the Coastal Act addresses, in part, the fill of open coastal waters:

(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:

...

(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.

Section 30253 of the Coastal Act states, in pertinent part, that 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, 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.

Section 30233 of the Coastal Act limits the fill of open coastal waters to specific, enumerated uses and also requires that any project which results in fill of open coastal waters provide adequate mitigation and that the project be the least environmentally damaging alternative. Coastal Act Section 30253 mandates that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard.

The project is located in the northeast harbor area, adjacent to existing marinas, as seen in Exhibit 2. The proposed project includes installation of approximately 99 new concrete guide piles and approximately 44,400 sq. ft. of new dock area, both of which constitute fill of coastal waters. According to a biological study conducted in 2009 by Aquatic Bioassay and Consulting Laboratories, the existing benthic habitat within the project area is primarily composed of clay and silt, rocky habitat was not identified.

Allowable Use

Section 30233(a)(3) of the Coastal Act allows the fill of open coastal waters, other than wetlands, such as the Ventura Harbor waterways where the subject site is located, for new or expanded boating facilities and the placement of pilings for public recreational piers that provide public access and recreational opportunities. No wetlands are found on the project site, only open coastal waters. The proposed project, a recreational marina, constitutes a new boating facility. Thus, the project is an allowable use under Section 30233(a)(3).

Least Environmentally Damaging Alternative

The applicants propose to construct a new recreational boating marina, which would include the placement of approximately 99 new precast concrete guide piles and approximately 44,400 sq. ft. of new dock area. This is the minimum number of piles necessary to adequately support and anchor the new dock under current engineering and safety standards. The proposed project will use the minimum number of piles thereby minimizing the amount of fill needed to support the proposed allowable use. Thus the project as proposed is the least environmentally damaging alternative.

Adequate Mitigation

Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation. Placement of the proposed piles in conjunction with the proposed marina will displace bottom habitat area. However, the proposed project is the least environmentally damaging, feasible alternative, and includes feasible mitigation measures. Given that the project location encompasses the largest remaining water area within the Ventura Harbor that could be developed as a marina, and that it is adjacent to existing marinas composed of similar dock configurations and berthing spaces, there are no alternative locations available for the proposed marina that would be less environmentally damaging. Further, **Special Condition Three (3)** requires surveys for eelgrass, **Special Condition Four (4)** requires surveys for *Caulerpa taxifolia*, and **Special Condition Five (5)** requires that the applicants comply with construction responsibilities and debris removal. These special conditions will assure that that displacing bottom habitat from placement of the pilings will result in minimal impacts to the sea floor and marine environment.

The proposed project has been designed to maximize the safety and stability of the docking system and berthing spaces. However, given that the docks would be constructed within a harbor channel, the project still has the potential to be subject to hazards associated with storm waves, tsunami, surges, and flooding. Therefore, **Special Condition Nine (9)** has been included to require that the applicants assume the risks of injury and damage associated with these potential

hazards as they relate to the proposed project and indemnify and hold harmless the Commission against any claims, damages, or costs associate with damage caused by such hazards.

For the reasons discussed above, the Commission finds that the proposed project is consistent with Sections 30233 and 30253 of the Coastal Act.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental impacts have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

Substantive File Documents

Caulerpa taxifolia Survey Reporting Form, dated February 1, 2009; Mitigated Negative Declaration, EIR-2436, dated January 22, 2007; Ordinance No. 41 Authorizing Execution of Option to Lease for Parcels 15, 16, and 18, dated July 24, 2002; California State Lands Consistency Determination with the 1980 Settlement Agreement, dated March 20, 2012; City of San Buenaventura Local Coastal Program Amendment 2-96, dated November 5, 1997; Ventura Harbor Summary Slip Size and Usage, dated May 20, 2011; Letter from Oscar Pena regarding the project lease line, dated July 3, 2012.



Project Location

Exhibit 1
 CDP 4-09-026
 Vicinity Map



Exhibit 2
CDP 4-09-026
Aerial Photograph

MARINA DOCK PLAN NOTES

RECREATIONAL MARINA
The proposed marina will be for recreational use with the boat slips and berthing available to the general public. No preferential availability will be made to the residents of the adjacent land-side development.

LCFA 1-11 RECREATIONAL ELEMENTS

- The marina project will also include a number of requirements set forth in the policies of the Local Coastal Program Amendment (L-11), approved by the California Coastal Commission. The proposed marina will be for recreational use with the boat slips and berthing available to the general public. No preferential availability will be made to the residents of the adjacent land-side development.
- The marina will include a 90-foot long dock for exclusive use by personal watercraft such as kayaks, dinghies, paddleboards and rowing shells on a short-term (not overnight) basis. For the LCFA, the long dock may contain any storage racks for exclusive use by boat-lantern remain. In addition to these six (6) transient berthing spaces, at least one transient berthing space shall be provided in perpetuity, at no cost (except for recovery of direct costs) as allowed by the LCFA, and reserved for exclusive use by non-profit boating groups.
- The marina will include a 90-foot long dock for exclusive use by personal watercraft such as kayaks, dinghies, paddleboards and rowing shells on a short-term (not overnight) basis. For the LCFA, the long dock may contain any storage racks for exclusive use by boat-lantern remain. In addition to these six (6) transient berthing spaces, at least one transient berthing space shall be provided in perpetuity, at no cost (except for recovery of direct costs) as allowed by the LCFA, and reserved for exclusive use by non-profit boating groups.
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TRANSIENT GUEST BERTHS

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WATER TACKLING

- A landing area at the docks where visitors could embark and disembark will be provided during the season that the Ventura Port District water services is available.
- The visitors would have convenient access to and from the landside improvements and facilities via an accessible gangway.
- Water taxi services typically welcome bikes and strollers.

DOCK UTILITIES

- Utilities available to each slip would include water supply, electrical power supply and connection to communication/TV/cable services.
- 35' of hose reach. Only authorized dock personnel will operate the sewer pump-out service. Self-service pump-outs by boaties will not be permitted.
- No utilities will be provided for the 90-foot long PVC dock.

WATER TAXI LANDING LOCATION

Water taxi services typically welcome bikes and strollers.

LEASABLE AREAS

Leasable areas include the same dockside services as other boat slip berths, such as water supply, electrical power supply and communication/TV/cable services.

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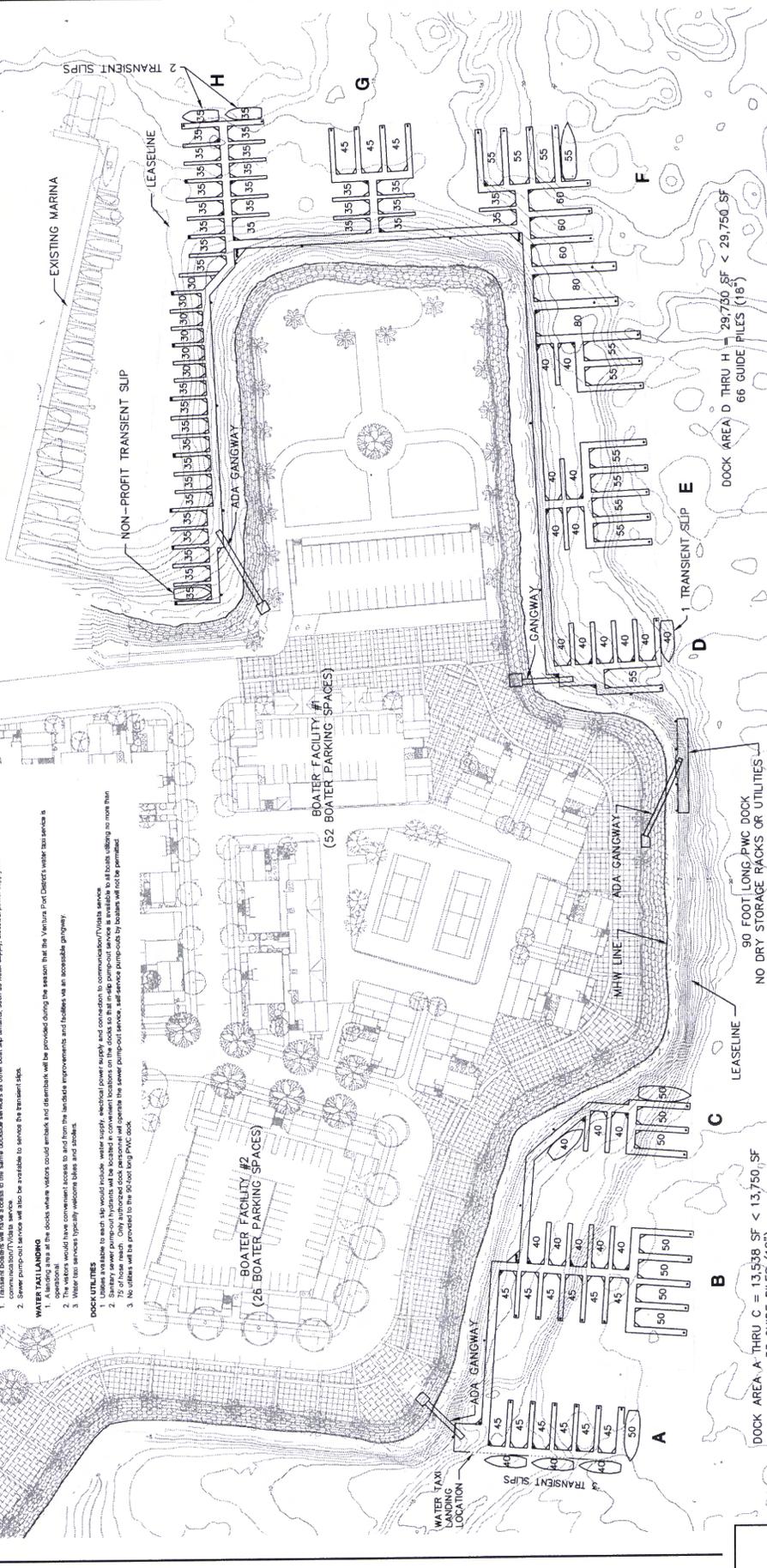
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SLIP	SLIP TYPE	NUMBER OF SLIPS	LENGTH (FEET)	WIDTH (FEET)	PERCENTAGE OF TOTAL SLIP AREA
35	FULL	6	100'	15'	6.8%
35	FULL	4	70'	15'	32.7%
35	END TIE	2	70'	15'	6.8%
40	FULL	18	70'	15'	17.2%
40	FULL	1	40'	15'	1.8%
40	END TIE	1	40'	15'	1.8%
40	FULL	15	80'	15'	14.4%
40	FULL	6	80'	17'	6.8%
40	END TIE	1	50'	17'	1.8%
40	END TIE	1	50'	17'	1.8%
40	FULL	10	50'	17'	10.8%
40	FULL	3	100'	15'	3.6%
40	FULL	3	100'	15'	3.6%
40	FULL	104	4,300'	N/A	100.0%



Proposed Marina Dock Plan

Ventura Harbor: Parcels 15, 16 & 18

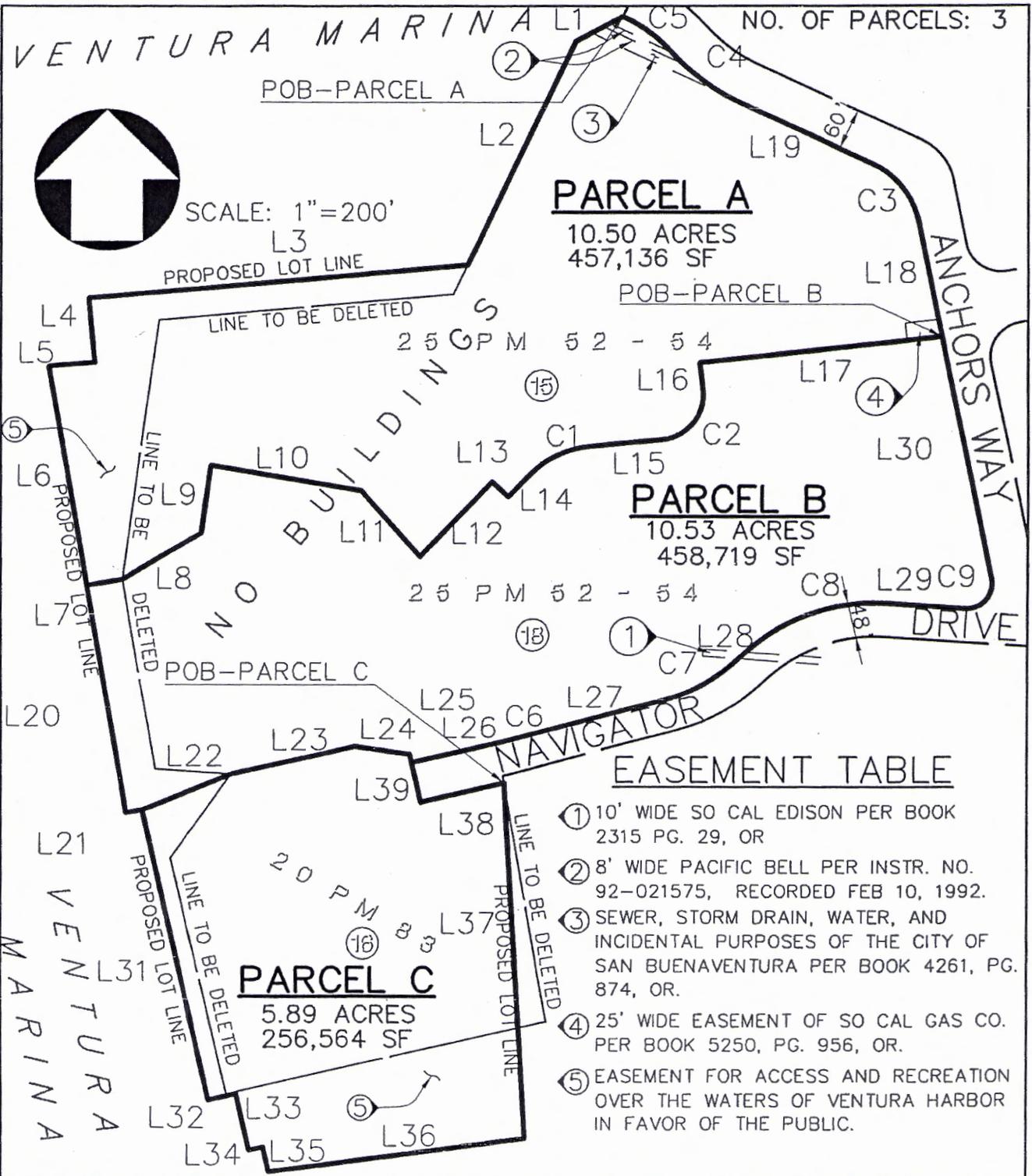
Sondermann Ring Partners
13910 Marquesas Way, Marina del Rey, CA 90292

DATE: JUNE 2012



Exhibit 3
CDP 4-09-026
Proposed Site Plan

MOFFATT & NICHOL



NO. OF PARCELS: 3



SCALE: 1"=200'

PARCEL A

10.50 ACRES
457,136 SF

PARCEL B

10.53 ACRES
458,719 SF

PARCEL C

5.89 ACRES
256,564 SF

EASEMENT TABLE

- ① 10' WIDE SO CAL EDISON PER BOOK 2315 PG. 29, OR
- ② 8' WIDE PACIFIC BELL PER INSTR. NO. 92-021575, RECORDED FEB 10, 1992.
- ③ SEWER, STORM DRAIN, WATER, AND INCIDENTAL PURPOSES OF THE CITY OF SAN BUENAVENTURA PER BOOK 4261, PG. 874, OR.
- ④ 25' WIDE EASEMENT OF SO CAL GAS CO. PER BOOK 5250, PG. 956, OR.
- ⑤ EASEMENT FOR ACCESS AND RECREATION OVER THE WATERS OF VENTURA HARBOR IN FAVOR OF THE PUBLIC.

CITY OF SAN BUENAVENTURA
DESCRIPTION AND PLAT APPROVED BY

[Signature]

CITY SURVEYOR PLS 5685 EXP. 9/30/07

PLAT TO ACCOMPANY LEGAL DESCRIPTION

ALD NO. 930

DRN BY: RCO DES. BY: RCO SHEET 1 of 2 ENGINEERING DIVISION

Exhibit 4
CDP 4-09-026
Proposed Lot Line
Adjustment

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202**Received**

MAR 22 2012

California Coastal Commission
South Central Coast District

CURTIS L. FOSSUM, Executive Officer

(916) 574-1800 FAX (916) 574-1810

California Relay Service from TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-2555

Contact FAX: (916) 574-1835

March 20, 2012

File Ref: SLL 66

Oscar Peña
Ventura Port District
1603 Anchors Way Drive
Ventura, CA 93001

SUBJECT: Consistency Determination with the 1980 Title Settlement Agreement Between the California State Lands Commission and the Ventura Port District for the Proposed Development of Parcels 15, 16, and 18 Located Within Ventura Harbor, Ventura County

Dear Mr. Peña:

As requested, staff of the California State Lands Commission (Commission) have reviewed your letter of February 1, 2012, and the proposed development project (Project) for parcels 15, 16, and 18 located within Ventura Harbor, to determine if the Project is consistent with the requirements of the 1980 Title Settlement Agreement (Agreement) entered into between the Commission and the Ventura Port District to resolve sovereign title issues for various land and water parcels in and around Ventura Harbor. The Project and an associated Local Coastal Plan Amendment, LCPA No. 1-11, are expected to be considered by the California Coastal Commission (CCC) at an upcoming meeting, and this consistency determination was requested by CCC staff as part of its review.

The Agreement excepted and reserved to the State "... public access to the waters of Ventura Harbor... consistent with, and at least as comprehensive as provided in the [1979] Development Plan" for the area identified in the Agreement as the 'Dry Land to District' parcel. The 'Dry Land to District' parcel includes parcels identified as 15, 16, and 18 under the 1979 Development Plan (Plan). The Agreement also excepted and reserved to the State "...the rights of the public to use the waters for access and recreation consistent with, and at least as comprehensive as provided in, the Development Plan" for the area identified in the Agreement as the 'Remaining Water Area' parcel adjacent to parcels 15, 16, and 18.

Exhibit 5
CDP 4-09-026
State Lands Commission
Review Letter

The Plan designated recreational and commercial uses for the various land and water parcels within Ventura Harbor, including parcels 15, 16, and 18. The Plan identified bicycle lanes and pedestrian walkways, to be located along the waterfront of parcels 15 and 18, that would connect with Navigator Drive on the boundary of Parcels 16 and 18. The bicycle lanes and pedestrian walkways would be designed to be separated from "...motor vehicle traffic wherever possible..." The Plan also provided for a service dock and 26 boat slips adjacent to parcel 16, with no water improvements associated with parcels 15 or 18.

As currently proposed, the Project would provide a "waterfront promenade" for pedestrian and bicycle access across parcels 15 and 18, and would connect to a waterfront view park on parcel 16 at the terminus of Navigator Drive. The waterfront promenade would be separated from motor vehicle traffic, but would be accessible from several adjacent parking areas. The project would also include 104 boat slips adjacent to parcels 15, 16, and 18, and a 160-foot dock for transient guest mooring and water taxi landing adjacent to parcel 15. While the proposed project includes more boat slips than originally envisioned in the Plan, Commission staff believes that the nature of the uses remain consistent with the Plan's intent.

Based on the information provided, staff concurs with your letter of February 1, 2012 and agrees that the project as proposed is consistent with the public use and access requirements of the 1980 Title Settlement Agreement.

Should you have any questions regarding any information discussed above, please contact me via email at Kenneth.Foster@slc.ca.gov, or via telephone at (916) 574-2555.

Sincerely,



Kenneth Foster
Public Land Management Specialist

cc: Kanani Brown
California Coastal Commission
89 So. California Street, 2nd Floor
Ventura, CA 93001

Roger Van Wert
Van Wert, Inc.
12301 Wilshire Boulevard, Suite 203
Los Angeles, California 90025

Exhibit 5
CDP 4-09-026
State Lands Commission
Review Letter