

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

T13a

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original staff report

ADDENDUM

August 11, 2014

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM T13a, COASTAL COMMISSION PERMIT APPLICATION NO. 5-13-1233-(BAY CITY PARTNERS, LLC, CITY OF SEAL BEACH & MARINA BEACH HOUSE) FOR THE COMMISSION MEETING OF TUESDAY, AUGUST 12, 2014.**

CHANGES TO STAFF REPORT

Commission staff recommends modification and additions to Section III (Findings and Declarations) of the staff report. Language to be added to the findings is shown in underlined, as shown below:

A. Page 4 – Modify the list of Exhibits, by adding the following:**EXHIBITS**

...

Exhibit #6 – June 17, 2014: Letter received via e-mail from the applicants to Commission staff (Hardcopy of letter received via USPS on June 17, 2014)

Exhibit #7 – Letter from State Lands Commission

Exhibit #8 – Draft Land Exchange Agreement

Exhibit #9 – Transcript of the 11/15/13 California Coastal Commission Hearing provided by the Applicant

B. Page 7 – Modify Section III.A., by adding the following:

CDP Application No. 5-13-1233-(Bay City Partners, LLC, City of Seal Beach & Marina Beach House)

Subdivision of a 10.9 acre former power plant (DWP) site into two parcels; creation of a passive open space park master plan for the 6.4 acre remainder parcel and construction of a thirty-two lot residential subdivision on the other 4.5 acre parcel. The development also includes lot line adjustment, street vacation, residential infrastructure, and the construction of the residential drainage facilities on the park site.

Since the November 15, 2013 CCC meeting, changes to the proposed project have taken place. These changes included the following:

On February 3, 2014, the applicants identified changes to the previously submitted DWP Specific Plan Open Space Master Plan dated October 12, 2013. The revised plan was dated January 29, 2014 and the additions to the plan consisted of the following:

- 1) A Free Play Lawn near ‘B’ Street;
- 2) A Child’s Play area adjacent to the Interpretive Center next to the San Gabriel River Trail;
- 3) A Bicycle Tire Repair Station and Water Bottle Filling Station at the Trailside Rest Area;
- 4) An expanded Fitness Trail description that depicted the numbered Fitness Trail Stations on the diagram;
- 5) Inclusion of a “Free Wi Fi” notation to the Interpretive Center Notation; and
- 6) Clarified picnic table locations.

This revised plan also included prior changes made to the plan in October 2013. That plan, dated October 12, 2013, included the following changes:

- 1) A Fitness Trail;
- 2) A Trailside Rest Area;
- 3) A Beach and Hand Carried Watercraft Access Area; and
- 4) A Seasonal Beach

On May 15, 2014, the applicants again revised their previously submitted DWP Specific Plan Open Space Master Plan dated January 29, 2014. The revised plan was dated May 14, 2014 and the additions to the plan consisted of the following:

- 1) A Seasonal Kayak & Stand Up Paddleboard Rental Station;
- 2) A Year Round Bike Rental Station; and
- 3) A Seasonal Surfboard, Stand Up Paddleboard & Wind Surfing Rental Station.

On November 22, 2013, Commission staff requested a current feasibility study that evaluated a range of visitor-serving commercial (including overnight accommodations), commercial recreational, and open space (both passive and active) uses over the entire 10.9 acre site, irrespective of the current DWP Specific Plan development standards limiting allowable development to only hotel and passive open space uses at specific locations and percentages of land area. Commission staff stated that private residential units could have also been considered, above the ground floor. Additionally, Commission staff stated that the evaluated range of uses should have also included bike camping, as was suggested at the November 15, 2013 CCC meeting. In response to this request, Commission staff received the following information in regards to this request:

On February 3, 2014, Commission staff received from the applicants an analysis entitled: Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives dated January 2014 prepared by Kosmont Companies.

On March 5, 2014, Commission staff received the following from the applicants: 1) background data regarding key assumptions and revenue forecasts made in the Kosmont Companies analysis dated January 2014 from Kosmont Companies, including the following reports: Proposed Seal Beach Hotel Land Use Analysis dated January 2014 prepared by PKF Consulting, USA; ESRI Retail MarketPlace Profile, Seal Beach, and USC Casden Multifamily Forecast for 2014, Orange County Section. 2) clarification from on whether the figures used in the Kosmont Companies analysis dated January 2014 was based on a specific market area that included the project site, Orange County, Southern California, regional or national areas; 3) clarification on whether the analyzed individual uses were also analyzed together in various combinations in order to determine if potential successful use combinations would succeed on-site; 4) clarification on whether siting of the various types of proposed uses was taken into consideration in the determination of feasibility for their success, including the analysis entitled: Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives dated January 2014 Site Plan Analysis dated March 6, 2014; and 5) analysis of the feasibility of development of the site with the Public Trust Easement remaining in place (included in the Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives dated January 2014 Site Plan Analysis dated March 6, 2014).

On April 8, 2014, Commission staff received from the applicants additional information associated with the Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives dated January 2014 Site Plan Analysis dated March 6, 2014 regarding: Scenario 1 (Hotel on the southerly area, Visitor Serving Public Open Space on the center area, and Visitor Serving Commercial on the northerly area) and Scenario 4 (Private residential with Public Trust Easement-Visitor Serving Open Space).

On May 15, 2014, Commission staff received the following from the applicants: 1) UPDATE Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives dated May 2014 prepared by Kosmont Companies with the total rate of return analysis now included; 2) a revised Proposed Seal Beach Hotel Land Use Analysis dated January 2014

prepared by PKF Consulting with backup documentation on the budget hotel now included. However, the applicants declined to provide the “rate of return” analysis for the proposed private residential use since they believed that it was of no benefit since all the land use scenarios containing visitor-serving uses that were analyzed were not feasible.

On June 17, 2014, Commission staff received a letter from the applicants in which they reiterate that they decline to submit the requested “rate of return” analysis for the proposed private residential use.

C. Page 8 – Modify the third paragraph as follows:

In the applicants’ June 17, 2014 letter, they reiterated to Commission staff that they have reached a draft agreement with the SLC and submitted a document (not on SLC letterhead) on February 3, 2014. The applicants also indicated that the SLC is requesting that the Coastal Commission act on the project prior to the SLC acting on the exchange agreement, based on Section 13053 of Title 14 of the California Code of Regulations (California Coastal Commission). Additionally in that February 3, 2014 letter, the applicants stated that the draft land exchange agreement has been revised to instead have the applicants pay a sum of money to the State Attorney General’s Kiploff Fund for Public Trust Lands to extinguish the public trust easement. Staff has recently received a copy of the latest draft agreement from the SLC staff and a letter clarifying the current status of SLC review. ~~However, I~~ It has been clarified by the SLC staff that the land exchange agreement currently being considered involves both a land exchange and payment of \$2.71 million into the Fund. ~~Although requested, the applicants have not submitted evidence of a draft land exchange agreement from SLC (on SLC letterhead), nor has Commission staff received a~~ The letter does not include a request from SLC or SLC staff, that the Commission act on the proposed residential project first, pursuant to Section 13053 of Title 14 of the California Code of Regulations, but clarifies the reasons why SLC does not object to the Commission taking action on the proposed development first. For clarification, Section 13053 of the Commission’s regulations applies to permits from local or State agencies and the land exchange agreement is not the type of discretionary action to which this section would apply. ~~Further, subsequent to the applicants’ February 2014 submittal SLC was successfully sued on a similar land exchange. Therefore, the current status of any draft land exchange agreement with the SLC staff is unknown at this time.~~ Further, a draft land exchange agreement with SLC staff does not indicate what may or may not be finally approved by the SLC; therefore, a final land exchange agreement or other written determination from the SLC is necessary.

D. Page 9 – Modify the first paragraph under Objection 2 “Rate of Return” Analysis as follows:

~~Information related to the rate of return for the proposed project is necessary to determine the applicant’s legal interest in its property, including its legal interest as it relates to the protections afforded property owners under the 5th Amendment. This information necessarily informs the Commission on issues related to compliance with section 30010 of the Coastal Act which~~

~~precludes the Commission from acting in a manner on a permit matter that would have the effect of taking property for public use without payment of just compensation.~~ In Commission staff's June 13, 2014 incomplete letter to the applicants regarding the CDP application, Commission staff reiterated a request made in a previous communication dated May 8, 2014 that the applicants provide a "rate of return" analysis for their current residential project. In the applicants' June 17, 2014 letter, they state that providing such information would involve proprietary information from their project pro forma which is not public information. The applicants had also stated in previous communication to Commission staff dated May 15, 2014 that they would not be providing this information since it would not provide meaningful benefit since all of their land use scenarios containing visitor-serving uses that were analyzed were not feasible, due primarily to an inadequate rate of return. Therefore, Commission staff interprets that the applicants believe since their research concluded that no visitor-serving uses are feasible, only their proposed residential use would be feasible for the project site. The requested "rate of return" information for the proposed residential use would allow Commission staff to compare and analyze the "rate of return" of the alternative visitor-serving uses versus the applicants' residential proposal. This information is necessary to assist Commission staff and the Commission in understanding the applicant's claim that residential development provides a higher "rate of return" versus visitor-serving uses. This information is not being requested to determine economic feasibility of proposed use of the property for purposes of avoiding a takings. There is sufficient information to assess investment backed expectations for development of the site which was designated and zoned for VC land use at the time the property was purchased. The information is being requested for purposes of comparison to determine reasonable use of the property and to confirm that the costs associated with clearing title to allow residential use of the property have been fully analyzed and incorporated into the feasibility analyses.

E. Page 10 – Modify Section III.B., by adding the following:

...The same type of offset or compensation may be addressed in the SLC determination on the loss of the public trust easement.

In the June 13, 2014 incomplete letter, Commission staff stated that in a meeting with the applicants on April 23, 2014, Commission staff asked the City if a hotel use was not appropriate for the DWP location, where in the City would such a use be provided and secured by designating the site as visitor-serving commercial, including overnight accommodation, given the fact that existing visitor-serving commercial uses are currently located on designated general commercial sites? In the applicants June 17, 2014 letter, they responded by stating that there is a potential site of similar size for this type of use located on the north side of Coast Highway at 1st Street that is owned by the SLC and that it is designated commercial-service in the City's General Plan zoned Specific Plan Regulations. The applicants claim that it has all the attributes lacking on the DWP site to provide a hotel use., such as visibility. The site is under lease for oil operations until 2036. The letter indicates this site is a potential long term hotel or commercial visitor-serving use site that can be used for a hotel or commercial visitor serving use in the future.

Staff will talk to the SLC and the City regarding how this site may be part of any land use planning for the City in the future. No additional information re the site is required at this time.

**CALIFORNIA STATE
LANDS COMMISSION***Established in 1938***EXECUTIVE OFFICE**
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202**JENNIFER LUCCHESI, Executive Officer**
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
Voice Phone 1-800-735-2922

August 11, 2014

File Ref: W 26609

Dr. Charles Lester
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Proposed Seal Beach Title Settlement and Land Exchange with
Bay City Partners

Dear Dr. Lester:

The purpose of this letter is to update you on the status on the proposed Seal Beach title settlement and land exchange negotiations with Bay City Partners (BCP) involving property located adjacent to the San Gabriel River and commonly known as the former DWP site. State Lands Commission (SLC) staff has reached a tentative agreement with BCP for an agreement that involves exchanging the current public trust easement parcel for a parcel located along the San Gabriel River and a monetary payment into the Kapiloff Land Bank Fund. (Public Resources Code sections 6307 and 8600 *et al*). All moneys received by the Kapiloff Land Bank Fund pursuant to a title settlement and land exchange agreement are subject to a statutory trust that requires the money be spent to acquire interests in land which is beneficial for public trust purposes. Please note that while SLC staff and Bay City Partners have reached a tentative agreement, the proposed title settlement and land exchange would need to be approved by the State Lands Commission at a properly noticed public meeting.

One complication that has arisen during the negotiations of the proposed agreement is that there is disagreement regarding the use by the SLC of the statutory exemption from California Environmental Quality Act (CEQA). Generally, land exchange and boundary line agreements with the SLC are statutorily exempt from CEQA review pursuant to PRC 21080.11¹. Recently, the San Francisco County Superior Court found that the use of this exemption did not apply to a settlement and land exchange where there was no "dispute" as to title or boundaries. While that case is currently on appeal to the First District Court of Appeal and SLC staff remains confident that the statutory exemption will ultimately be determined to be appropriate,

¹ PRC section 21080.11 is entitled "[a]ct not applicable to State Lands Commission settlements" and states "[t]his division shall not apply to settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements."

out of an abundance of caution SLC staff believes that it is in the best interest of the state to rely on other environmental review to comply with CEQA.

Two alternatives remain: 1) Rely on the City of Seal Beach certified EIR for the proposed project; or, 2) Rely on an approved Coastal Development Permit (CDP) for the project by the California Coastal Commission. The City of Seal Beach certified an EIR for the BCP's proposed project on July 25, 2012. However, the project reviewed in the EIR did not include the proposed title settlement and land exchange and termination of the public trust easement on a portion of the project planned to be developed with residential housing. The second option would be for the SLC to rely on an approved CDP for the project as a CEQA substitute by a Responsible Agency pursuant Title 14, California Code of Regulations section 15253. As such SLC staff does not object to the Coastal Commission acting first on the CDP application.

I hope this provides some additional explanation on the status of the proposed title settlement and land exchange involving the subject property. I am happy to discuss in more detail at your convenience.

Sincerely,



JENNIFER LUCCHESI
Executive Officer

Recorded at the Request of
STATE OF CALIFORNIA
STATE LANDS COMMISSION

WHEN RECORDED mail to:
State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202
Attention: Kathryn Colson, Staff Counsel

STATE OF CALIFORNIA
OFFICIAL BUSINESS: Document
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Pursuant to Government Code
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ADxxx; W26609

APN:

NO TAX DUE

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**COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT
REGARDING CERTAIN INTERESTS IN LANDS IN THE VICINITY OF
THE SAN GABRIEL RIVER
CITY OF SEAL BEACH, CALIFORNIA**

This document, the Compromise Title Settlement and Land Exchange Agreement Regarding Certain Interest in Lands in the Vicinity of the San Gabriel River, City of Seal Beach, California ("City"), hereinafter "Agreement", entered into between the State of California, acting by and through the California State Lands Commission, hereinafter "STATE", and the Bay City Partners LLC, hereinafter referred to as "BAY CITY PARTNERS", the above collectively referred to as "Parties.

RECITALS

1. Upon its admission to the United States of America on September 9, 1850, the State of California, by virtue of its sovereignty under the Equal Footing Doctrine of the Constitution of the United States, received in trust for the people of California all right, title, and interest in previously ungranted tidelands and submerged lands within Alamitos Bay for public trust purposes including but not limited to commerce, navigation and fisheries, a part of which is located within the City of Seal Beach.
2. Pursuant to Division 6 of the Public Resources Code, including sections 6216 and 6301, the STATE is vested with all jurisdiction and authority as to the right, title, and interest in all ungranted tidelands and submerged lands held by California in trust for the benefit of all the people of the State of California and the reversionary.
3. BAY CITY PARTNERS is a California limited liability company.

4. This Agreement concerns two separate real property interests in a parcel of land located in the City of Seal Beach, County of Orange, State of California south of present day San Gabriel River and referred to throughout this Agreement, for convenience, as the “Subject Property” depicted in Exhibit A. The Subject Property consists of: one trust termination easement parcel referred to throughout this Agreement as the “Trust Termination Easement Parcel” (described in Exhibit C and shown for reference purposes only on Exhibit A); and, one public trust easement parcel referred to throughout this Agreement as “Public Trust Easement Parcel” (described in Exhibit B and shown for reference purposes only on Exhibit A).
5. BAY CITY PARTNERS owns the Subject Property in fee but the STATE holds a dominant public trust easement over a portion of the Subject Property. This is the Trust Termination Easement Parcel.
6. Originally, the Subject Property was located partially in Rancho Los Alamitos and partially on sovereign tidelands. The state conveyed to private parties certain sovereign land in the Alamitos Bay Area pursuant to State Tideland Location No. 137, but those lands were subject to a public trust easement for purposes of commerce, navigation and fisheries.
7. Several boundary line and exchange agreements involving portions of the Subject Property have fixed boundaries or relocated the public trust easement resulting the present configuration. In 1967, Boundary Line Agreement 90 (BLA 90) was entered into between the City, the Los Angeles Department of Water and Power (“DWP”), and STATE. BLA 90 fixed and described the boundary along the shore of the Pacific Ocean at the mouth of San Gabriel River Channel. In 1968, Boundary Line Agreement 94 (BLA 94) was entered into by the STATE, the City, DWP, the predecessors in interest to BAY CITY PARTNERS, as well as numerous other parties which owned land adjacent to the newly-established boundary line. BLA 94 fixed the boundary between Rancho Los Alamitos and the sovereign lands of the state, certain of which were conveyed into private ownership by virtue of State Tide Land Location No. 137. BLA 94 confirmed that those lands which were conveyed into private ownership pursuant to State Tide Land Location No. 137 were subject to a public trust easement for purposes of commerce, navigation and fisheries.
8. In 1970, a land exchange agreement which involved the Subject Property, referred to as Sovereign Land Location 51 (SLL 51), was entered into between the STATE, San Gabriel River Improvement Company, Dow Chemical, and East Naples Land Company. SLL 51 terminated the public trust easement on parcels adjacent to the Public Trust Easement Parcel (Exhibit C) in exchange for the STATE receiving fee title to certain nearby parcels. STATE maintains that SLL 51 did not terminate the public trust easement on the Trust Termination Easement Parcel.
9. Currently, the Subject Property is undeveloped but previously was the site of a DWP building. BAY CITY PARTNERS acquired the Subject Property from DWP in May of 2003.
10. The City of Seal Beach certified the Final EIR (SCH #2011061018) on June 25, 2012. The City also approved a General Plan Amendment 11-1 and Tentative Tract Map 17425 at the same meeting.

11. BAY CITY PARTNERS has received land use development permits from the City to subdivide the land to build single family residences on a portion of the Subject Property which, STATE maintains, is impressed with the public trust easement. The STATE maintains that residential development is inconsistent with the common law Public Trust Doctrine (Public Trust) and the public trust easement.
12. BAY CITY PARTNERS maintains that the STATE does not have a valid claim to the public trust easement on any portion of the Subject Property.
13. The Parties consider it expedient and necessary and in the best interests of the STATE and BAY CITY PARTNERS and the public to enter into this compromise title settlement and land exchange agreement.
14. The STATE is authorized under Division 6 of the Public Resources Code, and specifically pursuant to Section 6307 thereof, to exchange interests in real property held by the STATE by reason of its sovereignty for interests in other lands of equal or greater value.
15. The State is authorized under Public Resources Code sections 8600 *et seq.*, and specifically pursuant to Section 8625(a), to accept a monetary payment into the Kapiloff Land Bank Fund as consideration passing to the state in a title settlement agreement (Kapiloff Funds). This money is subject to a statutory trust limiting its use exclusively to the purchase of interests in a Land Bank Fund parcel and conveyance of those interests to the State of California.
16. This Agreement provides for BAY CITY PARTNERS to grant the Public Trust Easement Parcel, described in Exhibit B, to STATE, as well as, deposit \$2.71 Million with STATE acting as Kapiloff Land Bank Fund trustee. In exchange, STATE will terminate its public trust interests in the Trust Termination Easement Parcel, described in Exhibit C, and quitclaim any remaining interests in the Trust Termination Easement Parcel to BAY CITY PARTNERS.
17. In the interest of settlement, STATE and BAY CITY PARTNERS have conducted independent studies and evaluations of the appraised value of the Subject Property. The monetary value of the sovereign interests in the Trust Termination Easement Parcel to be conveyed free and clear of any public trust easement interest of the state is less than or equal to the value of the Public Trust Easement Parcel plus the \$2.71 Million Kapiloff Funds to be conveyed to STATE as trustee of the Kapiloff Land Bank Fund.
18. Kapiloff Funds shall be used to purchase interests in tide and submerged lands whether or not they have been filled, diked or cut off from tidal waters, lands which have been or may be converted to wetlands or adjoining or nearby lands where the public use and ownership of land is necessary or extremely beneficial for furtherance of public trust purposes.
19. The Public Trust Easement Parcel is located along the San Gabriel River and contains a bike trail which leads to the Pacific Ocean. Although the parcel has already been improved with a bike trail it is currently located on private property with no guaranteed public right to use the bike trail. By acquiring the Public Trust Easement Parcel, the public will have a legal right to access and use this portion of the trail along the river. However, it is anticipated however that BAY CITY will transfer fee title to

approximately 6.4 acres, including the Public Trust Easement Parcel, to the City of Seal Beach to be used as open space.

20. The Trust Termination Easement Parcel has been filled and reclaimed and is above, and cut off from, the current mean high tide line.
21. The Trust Termination Easement Parcel is not necessary or suitable for the Public Trust purposes of commerce, navigation, and fisheries, and the Public Trust Easement Parcel to be acquired, because of its location closer to the San Gabriel River and status as open space and bike path, can be used more effectively in furtherance of public trust purposes, specifically public access and recreation, than the Trust Termination Easement Parcel to be conveyed.
22. The STATE, by approval of Calendar item #__ at its meeting of _____, approved this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the terms set forth below and for valuable consideration, the receipt of which is hereby acknowledged, the Parties mutually agree to the following terms and conditions and to convey certain property rights as follows:

- I. **STATE LANDS COMMISSION FINDINGS.** STATE, by its approval and authorization of Calendar item XX at its meeting of _____ and its authorization of the execution of this Agreement, pursuant to Public Resources Code section 6307 finds and declares the following, which findings and declarations II.A. through II.H. below, shall become effective only upon recordation as provided herein:
 - A. The Public Trust Easement Parcel provides significant benefits to the public trust because the parcel provides public access and recreation along the San Gabriel River towards the Pacific Ocean. Additionally, the Public Trust Easement Parcel enhances the physical configuration of the trust land ownership because the public trust easement will now be located adjacent to the San Gabriel River.
 - B. The exchange provided for in this Agreement does not substantially interfere with public rights of navigation and fishing, but rather will protect and enhance the public's rights of public access and recreation in the Public Trust Easement Parcel which is adjacent to the San Gabriel River.
 - C. The granting of the Public Trust Easement Parcel, along with the \$2.71 million deposit into the Kapiloff Land Back Fund to be conveyed to the STATE by the BAY CITY PARTNERS is equal to or greater than the value of the Trust Termination Easement Parcel to be quitclaimed by the STATE to the BAY CITY PARTNERS.
 - D. The Trust Termination Easement Parcel, consisting of 1.17 acres being relinquished by the STATE, is cut off from water access and no longer is in fact tidelands or submerged lands or navigable waterways, by virtue of being filled and reclaimed, and is relatively useless for public trust purposes.
 - E. This Agreement is in the best interests of the State by consolidating and expanding the total acreage of lands protected under public trust and providing and protecting public

access and recreation along the San Gabriel River through the acquisition of Public Trust Easement Parcel. The \$2.71 million deposit in the Kapiloff Land Bank Fund shall be used to purchase outstanding interests in tide and submerged lands or in lands which are beneficial for the furtherance of public trust purposes.

- F. This Agreement shall release any and all public trust claims from the Trust Termination Parcel Easement that is being conveyed by the STATE to the BAY CITY PARTNERS and shall impose the public trust easement onto the Public Trust Easement Parcel being conveyed by the BAY CITY PARTNERS to the STATE.
- G. The purpose of the exchange provided for in this Agreement is to: 1) enhance public access and recreation to and along the water; 2) enhance the physical configuration of the trust land ownership, and 3) resolve a title dispute.
- H. It is the intent of this Agreement that no mineral rights shall be transferred as part of this Agreement.

II. BAY CITY PARTNERS' CONVEYANCE TO STATE:

- A. BAY CITY PARTNERS shall convey a Grant Deed to STATE for a public trust easement in the Public Trust Easement Parcel, substantially in the form of Exhibit D.
- B. BAY CITY PARTNERS shall deposit \$2.71 Million ("Kapiloff Funds") with STATE, which must be used exclusively to purchase interests in land necessary or beneficial for furtherance of public trust purposes.

III. STATE'S CONVEYANCE TO BAY CITY PARTNERS: In consideration of BAY CITY PARTNERS' Grant Deed and Kapiloff Funds conveyed to STATE, as provided for in paragraph II above, STATE shall convey a Quitclaim Deed and Trust Termination to BAY CITY PARTNERS for all of its right, title and interest in the Trust Termination Easement Parcel, substantially in the form of Exhibit E, free of the public trust for commerce, navigation and fisheries, water-related recreation, preservation in its natural state, and other trust uses.

IV. STATE'S ACCEPTANCE OF PUBLIC TRUST EASEMENT PARCEL: STATE shall accept the Public Trust Easement Parcel conveyed by BAY CITY PARTNERS, as provided in Paragraph II above, substantially in the form of Exhibit F.

V. ESCROW AND DEPOSIT

A. Opening Escrow.

The Parties have agreed to open escrow with _____ ("Escrow Agent"). As part of escrow, the Parties shall submit mutually agreeable escrow instructions.

i. BAY CITY PARTERS Deposits into Escrow.

(1) A Grant Deed, substantially in the form attached hereto as Exhibit D, transferring to STATE the Public Trust Easement Parcel.

(2) **BAY CITY PARTNERS** shall deposit into escrow \$2,710,000 ("Kapiloff Funds"). The entire amount of the Kapiloff Funds will be paid in cash or immediately available funds at the Closing.

ii. STATE Deposits into Escrow.

- (1) This Agreement, duly and properly executed by Parties.
- (2) A Quitclaim Deed and Trust Termination, substantially in the form attached hereto as Exhibit E, transferring to BAY CITY PARTNERS its interest in the Trust Termination Easement Parcel.
- (3) A certificate of acceptance, substantially in the form attached hereto as Exhibit F, accepting the Public Trust Easement Parcel from BAY CITY PARTNERS.

B. Closing

- i. Closing of the Escrow (the "Closing") will be held at the office of the Escrow Agent on or before _____ (the "Closing Date") or as specified in the escrow instructions.
- ii. Upon receipt of all Kapiloff Funds and all documents, Escrow Agent shall notify the Parties of its intention to close escrow and to record the Agreement, the grant deed and the quitclaim deed and transfer the Kapiloff Funds to the STATE, in the manner and subject to the requirements of escrow instructions submitted to the Escrow Agent by the Parties.

VI. ADDITIONAL PROVISIONS

A. Further Assurances.

So long as authorized by applicable laws to do so, the Parties hereto will perform such other acts, and execute, acknowledge and deliver all further documents, conveyances and other instruments that may be necessary to effectuate fully the provisions of this Agreement.

B. Execution before a Notary Public.

All signatures of the Parties to this Agreement and all deeds executed pursuant to this Agreement, shall be acknowledged before a Notary Public and a certificate of acknowledgment shall be attached to this Agreement and other documents to allow them to be recorded in the Office of the Recorder of Orange County, California.

C. Counterparts.

This Agreement may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original and as if all of the Parties to the aggregate counterparts had signed the same instrument.

D. BAY CITY PARTNERS to Indemnify and Hold State Harmless.

BAY CITY PARTNERS shall indemnify, defend and hold harmless the State, its officers, agencies, commissions, and employees from and against any and all claims, liability, losses, costs and expenses, including, without limitation, third party claims and claims by any governmental agency (other than the STATE) that may arise from this Agreement, any environmental review of this Agreement, or the lands involved in this Agreement.

E. No Admission or Effect if Agreement Not Made Effective.

In the event this Agreement does not become effective for any reason, nothing herein shall constitute, or be construed as, an admission by any Party or evidence concerning the boundaries, physical character, or character of title to or interest in the Subject Property.

F. No Effect on Other Lands.

The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any party or evidence concerning the boundaries, physical character, or character of title to or interest in any lands outside the Subject Property.

G. Impacts of Sea Level Rise.

The boundaries established and conveyances made pursuant to this Agreement are intended to be fixed and not subject to change by erosion, accretion, reliction or submergence whether due to natural or artificial causes. However, should lands freed of the common law Public Trust become inundated from waters of or adjacent to the San Gabriel River, the Pacific Ocean or any other waters, whether due to either erosion or sea level rise that results in the land being submerged or subject to the ebb and flow of the tide below the elevation of mean high water, the lands for so long as such conditions exist will be subject to the public trust easement. Nothing in this section limits the rights of any Party pursuant to Civil Code Section 1015.

Nothing in this Agreement obligates the STATE to protect or cause to be protected any privately held uplands, including, but not limited to, constructing or causing to be constructed any protective structures that benefit any privately held uplands. Further, the STATE shall not in any manner be liable to the owners of upland properties within the Subject Property for failure to provide protection against sea level rise, erosion, or storm events.

H. Exemptions.

This Exchange Agreement and the conveyances provided herein are exempt from 1) the Subdivision Map Act pursuant to Government Code Section 66412(e), 2) the California Coastal Act pursuant to Public Resources Code Section 30416(c), and 3) the Property Acquisition Law pursuant to Government Code Section 15853(c).

I. Binding Agreement.

All the terms, provisions, and conditions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

J. Allocation of Costs and Expenses.

All expenses, fees, costs and expenses of any attorney, engineer or other person employed or retained by a party hereto in connection with the transaction underlying this Agreement shall be borne by that party, or as otherwise agreed to. BAY CITY PARTNERS shall pay costs related to escrow.

K. Title Insurance.

The parties shall independently elect whether to obtain a policy of title insurance and shall each individually pay or cause to be paid the premiums and costs of any such title insurance policy for their respective interests.

L. Modification.

No modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by all of the Parties to this Agreement.

M. No Effect on Other Government Jurisdiction.

This Agreement does not exempt the Parties from the regulatory, environmental, land use or other jurisdiction of any federal, state, local, or other government entity.

N. Headings.

The title headings of the sections of this Agreement are inserted for convenience only and shall not be considered in construing this Agreement.

O. Effective Date.

This Agreement becomes effective only after recordation in the Office of the Recorder, County of Orange and the effective date shall be the date of the Governor's Signature.

P. Notifications.

All notices required or permitted to be given to a Party hereto by the provisions of this Agreement shall be deemed to have been given forty-eight (48) hours after such notice is deposited with the United States Postal Service, as registered or certified mail with postage thereon fully prepaid, addressed to such party at its address set forth below. Any notice given in any other fashion shall be deemed to have been given when actually received by the addresses. Any Party may change its address by giving written notice to the other Parties. The addresses of the Parties hereto are as follows:

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202
Attn: Legal Division

Bay City Partners, LLC
299 Westminster Avenue, Suite 211
Seal Beach, CA 90740

VII. Exhibits.

All preliminary recitals of and exhibits to this Agreement (Exhibits A through F) are hereby incorporated by reference. The exhibits to this Agreement are as follows:

Exhibit A - Plat of Subject Property

Exhibit B - Land Description of Public Trust Easement Parcel

Exhibit C- Land Description of Trust Termination Easement Parcel

Exhibit D –Form of Grant Deed for Public Trust Easement Parcel

Exhibit E – Form of Quitclaim Deed and Trust Termination for Trust Termination Easement Parcel

Exhibit F – Form of Certificate of Acceptance for Public Trust Easement Parcel

Approved as to form:

KAMALA D. HARRIS
Attorney General
State of California

By: _____

Deputy Attorney General

To witness this Agreement, a duly authorized officer of each party has executed it below on the date opposite each signature.

DATED: _____

State of California
State Lands Commission

By: _____
Jennifer Lucchesi
Executive Officer

ATTACH ACKNOWLEDGMENT of signature

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the date and year first above written.

CITY OF SEAL BEACH

By: _____

Mayor Michael P. Levitt

BAY CITY PARTNERS, LLC

By: _____

Rocky Gentner,
Member

ATTEST:

BAY CITY PARTNERS, LLC

By: _____
Linda Devine, City Clerk

By: _____
Bob Griffith,
Member

APPROVED AS TO FORM:

By: _____
Quinn Barrow, City Attorney

BAY CITY PARTNERS, LLC

By: _____
James Parkhurst,
Member

BAY CITY PARTNERS, LLC

By: _____
Brian Kyle,
Member

BAY CITY PARTNERS, LLC

By: _____
Cindy Atkinson,
Member

All signatures for Bay City Partners, LLC to be acknowledged by a Public Notary

ATTACH ACKNOWLEDGMENT of signature

In approval whereof, I, EDMUND G. BROWN JR., Governor of the State of California, have set my hand and caused the seal of the State of California to be hereunto affixed pursuant to Section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this ____ day of _____, two thousand fourteen.

Edmund G. Brown Jr.
Governor

Attest:

Secretary of State

EXHIBIT A
PLAT OF SUBJECT PROPERTY

DRAFT

EXHIBIT B
LAND DESCRIPTION OF PUBLIC TRUST EASEMENT PARCEL

DRAFT

EXHIBIT C
LAND DESCRIPTION OF TRUST TERMINATION EASEMENT PARCEL

DRAFT

EXHIBIT D
FORM OF GRANT DEED FOR PUBLIC TRUST EASEMENT PARCEL

OFFICIAL STATE BUSINESS – EXEMPT FROM RECORDING FEES
PURSUANT TO GOVERNMENT CODE SECTION 27383 AND DOCUMENTARY
TRANSFER TAX PURSUANT TO REVENUE AND TAXATION CODE SECTION 11922.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed

APN(S): , County of Orange

Bay City Partners LLC

hereby GRANTS to the STATE OF CALIFORNIA, acting by and through the State Lands Commission, a public trust easement for commerce, navigation, and fisheries, in the following described real property situated in the State of California, County of Orange, described as follows:

See Exhibit "A"
consisting of _____ pages attached hereto
and by this reference made a part hereof.

Dated: _____

Bay City Partners LLC

By _____

[Acknowledgment to be Attached]

EXHIBIT E
FORM OF QUITCLAIM DEED AND TRUST TERMINATION FOR TRUST
TERMINATION EASEMENT PARCEL

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

STATE OF CALIFORNIA
State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202
Attn: Kathryn Colson, Legal Dpt.

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.
S.L.C. W26609 ADxxx

STATE OF CALIFORNIA
QUITCLAIM DEED AND TRUST TERMINATION

WHEREAS, the State Lands Commission, at its public meeting on _____, approved Calendar Item No. _____, which authorized a compromise title settlement and land exchange agreement between the Bay City Partners LLC and the State of California ("State"), acting by and through the State Lands Commission, pursuant to Public Resources Code section 6307; and

WHEREAS, the Bay City Partners LLC has granted to the State, acting by and through the State Lands Commission, a public trust easement for commerce, navigation, and fisheries in the PUBLIC TRUST EASEMENT PARCEL; and

WHEREAS, the Bay City Partners LLC has conveyed \$2.71 million to the State, acting by and through the State Lands Commission, which has been accepted by the State, acting by and through the State Lands Commission subject to the statutory trust limiting the use exclusively to the purchase of interests in Land Bank Fund parcels pursuant to Public Resources Code section 8613(a) ; and

WHEREAS, the State, acting by and through the Executive Officer of its State Lands Commission, has accepted the grant deed for the PUBLIC TRUST EASEMENT PARCEL; and

WHEREAS, it is the intent of the State, acting by and through the State Lands Commission, to remise, release and forever quitclaim to the Bay City Partners LLC, all

its right, title and interest in the TRUST TERMINATION EASEMENT PARCEL, as described in attached Exhibit A, including all public trust interests.

Now, THEREFORE,

The State, acting by and through the State Lands Commission, does hereby REMISE, RELEASE and FOREVER quitclaim to the Bay City Partners LLP, all its right, title, and interest in the TRUST TERMINATION EASEMENT PARCEL, as described in attached Exhibit A. This quitclaim is intended to and does terminate any and all public trust interests of the State in the TRUST TERMINATION EASEMENT PARCEL.

IN APPROVAL WHEREOF, I, EDMUND G. BROWN JR., Governor of the State of California, have set my hand and caused the seal of the State of California to be hereunto affixed pursuant to Section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this ____ day of _____, two thousand fourteen.

EDMUND G. BROWN JR.
Governor

Attest:

DEBRA BOWEN
Secretary of state

EXHIBIT F
FORM OF CERTIFICATE OF ACCEPTANCE FOR PUBLIC TRUST EASEMENT
PARCEL

A.P.N.
S.L.C. W26609 ADxxx

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING
PUBLIC TRUST PARCELS
Government Code 27281

This is to certify that the STATE OF CALIFORNIA, acting by and through the CALIFORNIA STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby accepts from Bay City Partners LLC, the attached Grant Deed dated _____, conveying a public trust easement for commerce, navigation and fisheries in the real property described therein.

The STATE OF CALIFORNIA, acting by and through the CALIFORNIA STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby consents to the recordation of this conveyance in the Office of the Recorder for San Diego County.

The said interests in real property are accepted by the STATE OF CALIFORNIA, in its sovereign capacity in trust for the people of the state, as real property of the legal character of tidelands and submerged lands.

This acceptance and consent to recording is executed by and on behalf of the STATE OF CALIFORNIA by the CALIFORNIA STATE LANDS COMMISSION, acting pursuant to law, as approved by Calendar Item No. xx of its public meeting on _____ by its duly authorized undersigned officer.

STATE OF CALIFORNIA
CALIFORNIA STATE LANDS
COMMISSION

Dated: _____

By: _____
Jennifer Lucchesi
Executive Officer

In the Matter of:
CA COASTAL COMMISSION CITY OF NEWPORT BEACH

PUBLIC HEARING

November 15, 2013

Dianne Jones & Associates

Reporting and Videography

P.O. Box 1736
Pacific Palisades, California 90272
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CALIFORNIA COASTAL COMMISSION
CITY OF NEWPORT BEACH
100 CIVIC CENTER DRIVE
NEWPORT BEACH, CA 92660
NOVEMBER 15, 2013

Item 23: Application No. 5-13-003 (Bay City Partners, City of Seal Beach & Marina Beach House, Seal Beach)(Addendum) Application of Bay City Partners, City of Seal Beach and Marina Beach House to subdivide 10.9 acre former power plant (DWP) site, creating 6 4-acre passive open space park and 32-lot residential development on 4.5-acres at southwest corner of 1st Street and Marina Drive, Seal Beach, Orange County (FSY-LB)

1 CHAIR SHALLENBERGER: California Coastal
2 Commission back to order. And we will go to the
3 last item on our agenda, which is 23-A.

4 MS. SARB: Thank you, Madam Chair. This is
5 permit No. 513-003. The Applicants are Bay City
6 Partners, City of Seal Beach and Marina Beach House.
7 I'd like to draw your attention to the addendum
8 where there are changes to the Staff report, there
9 is some additional exhibits, ex parte
10 communications, Applicant correspondence and both
11 letters of support and letters of opposition.

12 And Teresa Henry is the district manager
13 for the South Coast District, and she will present
14 this item today.

15 MS. HENRY: Good afternoon, Commissioners.
16 Item 23 is the Coast Development Permit application
17 of Bay City Partners, LLC, the City of Seal Beach
18 and Marina Beach House to redevelop the former City
19 of Los Angeles Department of Water and Power, or DWP
20 site located in the southwesternmost area of the
21 city of Seal Beach.

22 This next slide is a project vicinity map
23 from the EIR. It shows that the project site is
24 both riverfront and oceanfront, with the San Gabriel
25 River on the western project boundary, and the wide,

1 sandy public beach to the south.

2 The project site is also near the city's
3 municipal pier located at the foot of Main Street.
4 Contiguous with the project site on the south is the
5 recently constructed public oceanfront recreational
6 facility known as the River's End Staging Area or
7 RESA project that was approved by the Commission in
8 September 2011.

9 The popular windsurfing spot with an
10 existing cafe and 114 public parking spaces, beach
11 parking spaces, also included the resurfacing and
12 striping of the bike trail that runs through the
13 project site adjacent to the river.

14 The next slide is a map of the San Gabriel
15 River Trail, a 35-mile long class 1 -- okay. This
16 is the San Gabriel River Trail map. San Gabriel
17 River Trail is a 35-mile long class 1 bikeway that
18 runs from the base of the San Gabriel mountains in
19 the city of Azusa through the project site and
20 terminates at the beach.

21 The popular bike trail is heavily used,
22 being inland bike riders through the project site to
23 the terminus of the trail at the RESA site.
24 According to the bike coordinator for the City of
25 Long Beach, an October 2012 bike count found that

1 approximately 100 cyclists per hour use the San
2 Gabriel Trail at a location north of the project
3 site. October counts for the period between 2008
4 and 2012 at the same location found that an average
5 of 89 cyclists per hour use this bike trail.

6 Therefore, the on-site bike trail provides
7 an additional source of significant exposure and
8 potential customers for a range of visitor-serving
9 commercial and/or recreational uses that could be
10 built on the project site.

11 This slide upcoast, the project site is
12 adjacent to Alamitos Bay area -- okay. This slide
13 shows the upcoast area of the project site.
14 Adjacent to the site is the Alamitos Bay Area of the
15 City of Long Beach, containing a marina, restaurants
16 and other commercial uses as well as the Aqua Link
17 water taxi that provides service to several
18 recreational and visitor-serving areas of Long
19 Beach, including the Queen Mary and the Aquarium of
20 the Pacific.

21 There is direct access to the Alamitos Bay
22 water taxi via the project's frontage road, Marina
23 Drive. Pacific Coast Highway is approximately four
24 tenths of a mile north of the project site.

25 This is a closeup of the project site. A

1 large, vacant, 10.9 acre site. This slide also
2 shows the existing boat repair and boat storage
3 facility located immediately northwest of the
4 project site along the river at Marina Drive.

5 The proposed residential development
6 includes a lot line adjustment that incorporates a
7 portion of the land located along the river owned by
8 one of the co-applicants, Marina Beach House. The
9 adjacent Marina Beach House property, which is
10 developed with a Coastal Act priority boating
11 support commercial use, would be reduced in size
12 along the riverfront in order to accommodate the
13 lower Coastal Act priority residential use.

14 This residential encroachment into
15 recreational boating support use can adversely
16 affect the viability of future use of the site for
17 boating support purposes.

18 Given the project site's location, both
19 river and oceanfront, and its connection to the
20 larger regional area by alternative means of
21 transportation, mainly bicycle and water taxi, as
22 well as vehicular access from Pacific Coast Highway,
23 four tenths of a mile north. The project site is
24 ideally suited to provide a mixture of
25 visitor-serving commercial and commercial

1 recreational uses developed across the entire site,
2 as well as lower cost visitors' facilities and
3 coastal access opportunities that will enhance the
4 enjoyment of the coast for the general public,
5 capitalizing on the adjacent coastal resources.

6 Such uses include overnight
7 accommodations -- include but not limited to
8 overnight accommodations, goods and services
9 intended primarily for visitors such as hotels, bed
10 and breakfast, hostel, RV campground and other
11 overnight accommodations, restaurants, food
12 concessions and other eating establishments,
13 bicycle, kayak and other personal watercraft or
14 recreational equipment rental, souvenir shops and
15 other retail uses, as well as both active and
16 passive park uses on a portion of the site.

17 These types of uses are consistent with the
18 priority land use provisions of Coastal Act.

19 Instead, the Applicant proposes to
20 subdivide the site for the purpose of allowing
21 residential and passive park open space uses. The
22 northern 4.5 acres would be subdivided into 32 lots
23 for the construction of 32 detached custom,
24 single-family homes.

25 The proposed subdivision also creates a 6.4

1 acre remainder parcel in the southern portion of the
2 site. The DWP specific plan was amended to allow
3 this residential use, as historically this site was
4 to be developed with a hotel use in the northern
5 portion of the site, and other visitor-serving and
6 open space uses on the larger southern portion of
7 the site.

8 Pursuant to the terms of a 2011 settlement
9 agreement between Bay City Partners and the City of
10 Seal Beach, which resulted from the City's attempt
11 to obtain, among other things, public access to the
12 adjacent beach through eminent domain, the remainder
13 parcel can only be developed with passive park uses,
14 which have limited amenities allowed.

15 Given the restrictions on the development
16 of this 6.4 acre area, it will not attract
17 general -- the general public who are visiting the
18 adjacent beach, and the RESA or bicyclists who are
19 riding on the river trail.

20 In addition to the inconsistent -- the
21 Applicant argues that the project area cannot be
22 developed -- should not be developed with
23 visitor-serving commercial uses. The Applicant
24 argues that there are visitor-serving commercial
25 areas nearby and the site is not necessary to be

1 retained for that use.

2 The Applicant shows that there are
3 visitor -- existing visitor-serving commercial uses
4 along Main Street and along Pacific Coast Highway.
5 However, as the next slide shows, these areas are
6 not zoned for visitor-serving commercial use or land
7 use designated for such use.

8 The areas are general commercial and at
9 this time are developed with visitor-serving uses;
10 however, there is no requirement for these areas to
11 retain visitor-serving uses and they could be
12 redeveloped with any number of general commercial
13 uses.

14 The Applicant argues that visitor -- that
15 residential use is the only viable use that can be
16 built on the project site. However, and that
17 studies showed -- three studies that were done
18 showed that visitor-serving uses or hotel use is not
19 viable, economically viable on the site.

20 Those studies were performed ten years ago
21 and four years ago during the height of the economic
22 downturn. Even the most recent visitor-serving
23 economic survey is two years old.

24 Since that time, the economic climate of
25 the project vicinity has improved. This slide shows

1 that there are several visitor-serving uses that
2 have been built within the -- within the vicinity of
3 the project site in recent years, including the
4 Malarkey's Restaurant in Alamitos Bay, three tenths
5 of a mile from the project site, which opened in
6 July of this year.

7 Further, the Five Guys Restaurant along
8 Coast Highway opened in November of 2011. Lucille's
9 Smokehouse Restaurant is currently under
10 construction, which is 1.2 miles from the project
11 site, as well as the Gelson Supermarket, which just
12 recently opened, indicating that the area has begun
13 to recover economically.

14 The Applicant also argues that the studies
15 show that the -- the historic studies concluded that
16 hotel and visitor-serving use is not economically
17 viable for the area. However, careful reading of
18 those studies that are attached as exhibits to the
19 Staff report will indicate that those -- that they
20 found that those uses were unfeasible because of the
21 restrictions on the development of the site imposed
22 by the DWP Specific Plan.

23 The DWP Specific Plan required that the
24 hotel use be located in the northern portion of the
25 site away from the beach, and that the

1 visitor-serving uses were extremely limited. It was
2 based on those constraints that the studies found
3 that those uses were not viable for the site.
4 Staff therefore concludes that visitor-serving
5 commercial -- a range of visitor-serving commercial,
6 recreational uses including overnight
7 accommodations, recreational uses should be explored
8 for this site.

9 The Coastal Commission did not require the
10 30 percent, 70 percent hotel and passive
11 visitor-serving use. The site should be looked at
12 as a whole and should be developed comprehensively
13 with those uses. The Applicant's study is not
14 current and did not consider developing the site
15 without those restrictions.

16 Therefore, Staff recommends the Commission
17 deny the proposed residential use of the site. That
18 concludes my comments.

19 MS. SARB: Thank you, Teresa, and I just
20 wanted to emphasize that these are important
21 priority use questions that are raised by the
22 development of this site. Right now we're seeing a
23 proposal for 32 detached single-family residential
24 units, and the rest of the site is designated for
25 open space, and the subdivision would create a

1 remainder parcel, but would be developed as a
2 passive park, but there is nothing in this
3 application that is proposing the construction of
4 that passive park, and these issues we think really
5 should be brought to you more in the form of an LCP.

6 The City of Seal Beach does not have a
7 certified LCP. They did do a certified land use
8 plan that designated, and when the Commission
9 approved that, the site was designated for
10 visitor-serving commercial in the northern part, and
11 open space on the -- on the passive park area. And
12 these kinds of uses need to be looked at on a
13 comprehensive basis, and we can consider what
14 changed circumstances might exist today that didn't
15 exist at that time, so perhaps the -- the
16 requirement that the 70 percent of the site be
17 reserved for open space might be something that
18 could be reconsidered, but that's very difficult to
19 evaluate in the context of this permit here. And
20 that's something that we should again look at in an
21 LCP, and that's why we think that approval of this
22 project at this time is certainly premature and are
23 recommending that you deny it. That concludes my
24 thought.

25 CHAIR SHALLENBERGER: All right. Thank

1 you. I'll come to the Commission for ex partes,
2 starting on my right.

3 Commissioner Groom.

4 COMMISSIONER GROOM: Yes. Communication
5 from Lenny Roberts and Mike Ferrara on November 10th
6 at 12:30 p.m. They indicate that the El Dorado
7 Audubon supports the Staff recommendation of denial
8 of proposed subdivision, representatives maintain
9 that the proposal is an inadequate use of an
10 oceanfront site that should be dedicated to
11 visitor-serving commercial, recreation and coastal
12 access.

13 They maintain that the public trust
14 easement issues have not been resolved with the
15 State Lands Commission. El Dorado Audubon supports
16 a passive park, but they maintain there is no
17 guarantee that a passive park will be built without
18 the inclusion of an enforceable phasing plan.

19 And on November 4th at 4:00 p.m. I had a
20 telephone conversation with Ed Selich, Susan McCabe
21 and Ann Blamker. Visiting serving --
22 visitor-serving commercial has priority over private
23 residential development. As such, Staff
24 representatives of Applicants expressed concern
25 regarding the two elements of Coastal Commission

1 Staff recommendation for use at site. First Staff
2 had suggested the site be used for a visitor-serving
3 commercial use such as hotel. Representatives
4 indicate that the City has conducted three studies
5 and sought a hotel for this site over 30 years with
6 no success.

7 The site is not appropriate for a hotel,
8 being adjacent to a residential neighborhood.

9 Second, representatives indicate that Staff
10 recommended active open space instead of passive
11 open space.

12 Thirdly, they indicated that the Staff
13 required 70 percent of parcel be open space instead
14 of 65.

15 Finally, they indicated they have
16 accommodated staff's concern with a public trust
17 easement through the exchange of lands with the
18 State Land Commission, and that they have resolved a
19 lot line adjustment.

20 CHAIR SHALLENBERGER: Thank you.
21 Commissioner McClure.

22 COMMISSIONER MCCLURE: Yes, thank you.
23 I -- let me get my day here. On November 12th at
24 5:00 p.m. at Newport Beach I had a person-to-person
25 meeting with Ed Selich and Susan McCabe, and I

1 received a briefing book that I have still, and we
2 talked about the amount of time that the parcel has
3 remained without any -- empty.

4 And we talked about the -- the studies that
5 have been completed looking into the feasibility of
6 a hotel, and we talked about the change of the
7 configuration of the -- of the road itself from when
8 the hotel designation was one of the discussion --
9 discussed items when it was identified as a place
10 for a hotel, and that it's no longer really a
11 connector road between Long Beach and Seal Beach.
12 Thank you.

13 CHAIR SHALLENBERGER: Commissioner Cox.

14 COMMISSIONER COX: Thank you, Madam Chair.
15 On November the 7th at 3:00 p.m., I had an -- in
16 San Diego I had an in-person meeting -- excuse me --
17 with Ed Selich, the -- representing the Applicant,
18 and I received a briefing in which we went through a
19 briefing booklet that was previously provided to
20 Staff.

21 We discussed the site history, the project
22 background and previous efforts by both the City and
23 the landowner to site a hotel on the subject
24 property.

25 As stated by the Applicant, multiple

1 professional analyses have determined the site to be
2 infeasible for a hotel use, instead the City
3 planning efforts have concluded the site to be
4 appropriate for a public park and residential use.
5 The proposed project would provide permanent public
6 access over the existing driveway to the beach,
7 permanent public use of San Gabriel River Trail,
8 creation of a 6.5 acre public park, and would ensure
9 that the property will be developed as a unified
10 plan rather than as eight individual projects under
11 separate ownership.

12 The Applicant disagrees with staff's
13 recommendations for denial and requested the
14 Commission approve the project subject to special
15 conditions being offered by the Applicant. Thank
16 you.

17 CHAIR SHALLENBERGER: Commissioner Brennan.

18 COMMISSIONER BRENNAN: Thank you, Madam
19 Chair. On Friday, November, 8th, I had a phone
20 conversation at 10:00 o'clock with Mel Nutter,
21 representing Seal Beach for Open Space. Mel spoke
22 to the issue of the uses, the public beach uses,
23 the -- the driveway, the opportunity for public
24 access, talked about concerns of the trade of the
25 public trust lands and felt the value was way

1 under -- under valued. Had concerns about the
2 housing and was also just, recognized that economic
3 studies have been done but they were -- they were
4 old and not up to date, and was wondering in that
5 regard if a new updated study for a hotel might
6 justify some use there.

7 My other ex partes are on file.

8 CHAIR SHALLENBERGER: Thank you. On
9 November 5th in the morning I had a telephone
10 conversation with Mel Nutter, he said that you
11 couldn't justify supporting buildable land -- oh,
12 exchange of buildable land for part of the
13 San Gabriel River, and call it an equivalent swap.

14 He said the law is clear that if you are
15 going to get rid of a public trust property, that
16 there needs to be -- it needs to be an equivalent
17 value.

18 At Marina and First Street, where the City
19 proposes to cut into the -- to cut into -- okay.

20 So currently the City is leasing private
21 property for public access. The Applicants are
22 saying if you want the -- if you want access -- if
23 one wants access, they would have to have this
24 project, because the lease is up in 2015.

25 The proposed passive -- passive area is --

1 actually results in a very nice front lawn and a
2 buffer maintained by the City, I guess, for the
3 residents that would get houses with this project.

4 The property owner says a hotel isn't
5 feasible, but they purchased it with the land use
6 designation being very clear that it was for a
7 hotel, and it isn't the Commission's responsibility
8 to bail out a private property owner and the -- then
9 this a unique location on the mouth of the San
10 Joa -- San Gabriel River where it meets the ocean,
11 and it would be a shame to build high-priced homes,
12 private homes with a public buffer.

13 Then on November 7th, again in the morning
14 I had a telephone conversation with Susan McCabe,
15 Ann Blemker, Ed Selich, and they said that since
16 July they've -- no, that would be the wrong ex
17 parte. Same date, though, same morning. They
18 claim -- claim that it's not feasible to build a
19 hotel there, that's already been addressed. They
20 said that they would donate the land to the City,
21 the park in exchange for getting a valuable economic
22 use. But if the project doesn't go forward, their
23 lease is up and the City will lose that property for
24 public use.

25 The public trust easement, they disagree

1 with the State Lands on this, but they're going to
2 try and do an exchange, and they recommend that the
3 project, if we approve it, be conditioned --
4 conditioned on approval by State Lands of this swap.
5 The City really wants to have a park, but can only
6 get it if they approve the development.

7 Commissioner Kinsey.

8 COMMISSIONER KINSEY: I -- I had an ex
9 parte with Susan McCabe, Ann Blemker and Ed Selich,
10 discussing the project. We reviewed the
11 presentation booklet that has been provided to us as
12 part of the addendum to the Staff report. They
13 reviewed the economics of the project, the fact that
14 there have been a number of studies saying that
15 hotel project isn't viable at that location. They
16 emphasized the fact that the real core of the Seal
17 Beach commercial area is several blocks away, and
18 that that is the more appropriate for
19 visitor-serving businesses.

20 And they also pointed out that upon the
21 approval of the project, there would be the
22 opportunity for them to develop the park. Thank
23 you.

24 CHAIR SHALLENBERGER: Commissioner Zimmer.

25 COMMISSIONER ZIMMER: Thank you. November

1 11th at 11:00 to about 11:15 I had an ex parte with
2 Mel Nutter, representing the neighbors. He
3 referenced a letter that we had received from the
4 law firm of Chatten-Brown that raised concerns about
5 the transfer of public trust land, and concerns that
6 the way the parcels were being swapped out, that
7 there was an unequal value of properties.

8 The one thing that he said was a surprise
9 in the Applicant's briefing book was that it
10 appeared that they had effectively tried to amend
11 their permit by indicating that a good portion of
12 the public open space, which is outside of Parcel B,
13 would also be subject to public trust, but he felt
14 that that amendment would not take care of their
15 problem.

16 He stated that the feasibility, the
17 analysis of feasibility of hotels and private homes
18 versus public accommodations, what those studies
19 appear to do is to provide a profitability analysis,
20 not a feasibility analysis.

21 The City will be transferring a chunk of
22 what is currently the intersection of First and
23 Molina to provide more space for more homes. That
24 would restrict the access. The so-called driveway
25 parcel is shown as part of the private ownership,

1 but it is the access away from First Street to the
2 parking, the area between the private property here
3 and the beach.

4 They believe that something much closer to
5 what the Conservancy had studied back in the '70s
6 would be appropriate. There ought to be something
7 other than private homes and passive recreation.
8 This is a unique location at the end of the river.
9 A hotel could and would make sense rather than the
10 lower-priority use of private homes.

11 And then I had an ex parte with Susan
12 McCabe and Ed Selich at 4:00 o'clock on Monday,
13 November 11th. Ms. McCabe indicated that since the
14 DWP closed the power plant for years, the City has
15 been wanting a public park. The City had desired a
16 hotel. Several studies have been commissioned, but
17 they assert the hotel is not feasible. The latest
18 study was the Kosmont Company in 2012.

19 So they've moved forward in a desire to
20 take fences down, to apply to allow residential use
21 on 35 percent of the land. Staff has recommended a
22 denial because they want a hotel, not a residential
23 use.

24 The history has always envisioned a passive
25 park, but we had -- we discussed that that has a lot

1 of definitions. They are not including active play
2 fields. They have tried to include a fitness trail,
3 bicycle path and jogging path, and the City has
4 recently updated their parks master plan. The City
5 has the River's End Staging Area park, the San
6 Gabriel River Bike Trail with restaurant, parking,
7 surfboard racks, all sorts of active facilities.

8 The County had wanted to integrate this
9 area into their visitor-serving areas. And they
10 suggested that we need to look at this as part of a
11 larger recreational area. Thank you.

12 CHAIR SHALLENBERGER: Any other ex partes?
13 Commissioner Vargas.

14 COMMISSIONER VARGAS: On November 8th at
15 10:30 a.m., I had a teleconference with Ed Selich,
16 Susan McCabe and Ann Blemker. Received a briefing
17 booklet from the Applicant's representatives
18 previously provided to Staff, discussed the site
19 history, project background and previous efforts by
20 both the City and the landlord to site a hotel on
21 the subject property. Most of the details of the
22 conversation are similar to every -- every other
23 commissioner's reports on this one. Thanks.

24 CHAIR SHALLENBERGER: Commissioner Garcia.

25 COMMISSIONER GARCIA: Thank you. On

1 November the 14th I had a short phone conversation
2 with Mel Nutter, having discussed many of the
3 same -- same content that's been described by other
4 commissioners up here, it was a short conversation
5 but gave essentially their position. And on
6 November the 7th, I had a brief meeting with Susan
7 McCabe and Ed Selich as well, the developers, in
8 which they laid out their positions, which
9 resolved -- revolved mostly around the idea of a
10 hotel being not economically feasible. And I
11 believe I have another couple of ex partes on file.
12 Thank you.

13 CHAIR SHALLENBERGER: All right. Thank
14 you. Any other ex partes? With that, I will open
15 the public hearing and call the project Applicant.
16 And I understand there will be two of you
17 presenting, and you'd like 15 minutes.

18 MR. SELICH: Yes, ma'am, and five-minute
19 rebuttal, if we may.

20 CHAIR SHALLENBERGER: All right.

21 MR. SELICH: Different standing here. I'm
22 usually sitting up there. We're going to have --

23 CHAIR SHALLENBERGER: It's nice up here.

24 MR. SELICH: Pardon me?

25 CHAIR SHALLENBERGER: It's really, it's

1 nice sitting up here. Thank you.

2 MR. SELICH: Commissioner Kinsey's sitting
3 in my seat, so I hope you like it. Hope it's
4 comfortable.

5 CHAIR SHALLENBERGER: Thank you very much
6 for the use of your facilities. It's --

7 MR. SELICH: Well, we welcome you.

8 CHAIR SHALLENBERGER: -- lovely. I
9 understand why. Thank you.

10 MR. SELICH: Thank you. My name is Ed
11 Selich, with Bay City Partners, I'm representing the
12 Applicants in the project. And it's located where
13 the Staff has indicated, and I won't go over their
14 indications, so I'm on it, this is the old power
15 plant site from back in the '20s. But I would point
16 out that the site is surrounded by residential uses,
17 it's the middle of a residential zone.

18 This is the proposed project, the project
19 is 32 homes with the public open space. I think the
20 key thing to look at on this slide is how the open
21 space that we're proposing is integrated with the
22 San Gabriel River Trail and the River's End Staging
23 Area.

24 We think the project meets the Coastal Act
25 policies, the City zoned the site for open space and

1 hotel development over 30 years ago. They did it
2 without any economic feasibility study, and they had
3 the hopes that the resultant economic value of the
4 hotel would be sufficient to allow LA Department of
5 Water and Power to give the remainder of the
6 property to the City at no cost for public open
7 space.

8 In 30 years, remember that number, 30
9 years, in spite of efforts by the City and
10 landowners to attract a hotel or other commercial
11 use, no feasible proposal has ever emerged. We've
12 done three studies on hotels, one visitor-serving
13 use study, they all have concluded that the site is
14 not suitable for hotel or commercial use due to the
15 poor access to the site.

16 The site's main access road, Marina Drive,
17 was recently reduced from four lanes to two lanes,
18 further diminishing its suitability. And the
19 telling thing is the capital markets have spoken, in
20 over 30 years, despite all these efforts to obtain a
21 hotel or commercial use, the experts' opinions have
22 been confirmed, it's not a suitable site. No
23 proposal has ever come forward that's feasible. And
24 we have submitted letters to the Staff from numerous
25 hotel developers confirming that Bay City Partners,

1 ourselves, have tried to go out and get hotel
2 developers and been unsuccessful.

3 The proposed project is a plan that creates
4 a public partnership between the City of Seal Beach
5 and Bay City Partners. Bay City donates six and a
6 half acres of land that we value around \$20 million
7 for public open space the public agencies can't
8 afford to buy and they can't obtain by exaction.
9 And we get an economic use of our property.

10 The slide on the screen now shows two
11 portions of the site that are under lease to the
12 City. The top one is the so-called bike trail
13 parcel, and the bottom left parcel is the San
14 Gabriel River Trail parcel. Those are leased to the
15 City for a dollar a year.

16 The driveway provides access to the River's
17 End Staging Area, it's an important windsurfing and
18 kite-boarding area. It's just been improved with
19 state bond money. Some of that was spent on
20 property that we owned. In addition to beach
21 parking, there's a restaurant, restrooms,
22 windsurfing rigging areas, seating areas and
23 interpretive elements.

24 The San Gabriel River Trail is the only
25 segment of the 38 Mountain River's to the Seas trail

1 that is under private ownership. And it also is
2 recently improved with state bond money, and it's
3 arguably the most significant trail in southern
4 California. I think there's about 20 cities that
5 abut it, and it potentially serves millions of
6 people along that trail.

7 Approval of this project guarantees that
8 these two areas will be preserved in perpetuity for
9 public use. Neither of the agencies, River's and
10 Mountains Conservancy or the City would have the
11 funds to acquire this property if the leases were
12 allowed to expire. Or the property was not donated
13 to them.

14 One positive -- one positive aspect of this
15 proposal the Staff overlooks is that the property is
16 eight legal lots, and they're shown on the screen
17 there. Approval of this plan ensures that the
18 public open space will be concentrated in one area.
19 If the lots were sold individually, the open space
20 would be dispersed throughout the site
21 proportionately in each of these lots, and we would
22 not have a unified, well-planned property here.

23 Now, looking at some of the Staff issues,
24 one of the things that's raised is the 70 percent
25 open space issue. It was never precisely defined,

1 there were two conflicting criteria. The projection
2 of Central Way, a street just to the east of the
3 property, and 30 percent of the original site area.

4 Well, the original plan was a little less
5 than nine and a half acres, the project now is 10.9
6 acres, 70 percent of nine and a half acres is about
7 6.62 acres, and we're providing six and a half acres
8 of open space. So the City Council decided in their
9 wisdom that that was the appropriate amount.

10 Looking at visitor-serving use, you've seen
11 this slide the Staff had up of the coast highway and
12 Main Street commercial areas. I would just point
13 out that although it's not exclusively
14 visitor-serving, it allows numerous visitor-serving
15 uses, particularly on Main Street, that are
16 cherished by the City. The -- the Alamitos Bay
17 Landing that the Staff referred to, to the left of
18 the slide there, is -- is not doing well for
19 visitor-serving uses. There's uses in there such as
20 yarn shops and nail salons, so it's not really
21 providing visitor-serving uses in the context of the
22 Coastal Act.

23 The City's use of sound planning principles
24 in coming up with their commercial areas, access
25 from arterial roads, visibility, compatibility with

1 adjacent land uses, buffering from residential uses,
2 the site meets none of these criteria.

3 The Staff overlooks that our open space
4 plan is visitor-serving. It's designed to be an
5 integrated part of the River's End Staging Area and
6 the San Gabriel River Trail as shown in this slide.
7 It has hiking and jogging paths on it, it has access
8 to the beach area on our property adjacent to the
9 river trail, a place for hand-carried watercraft,
10 kayaks and paddle boards to go out into the water.
11 There is a bicycle trail in the main area that
12 connects to Ocean Avenue, the pier and Main Street.

13 We've got a riverside trail rest area. The
14 photo on the right shows the view from the rest
15 area, what it would look like when it's constructed
16 over the bike trail to the river.

17 We have benches interspersed throughout the
18 park. We've got interpretive elements in the
19 project including this vista rest area and
20 interpretive center, it's showing a map of the
21 San Gabriel river shed on the floor of the
22 interpretive center so that the folks can come and
23 get educated on the importance that the watershed
24 plays in the environment.

25 We've got an active fitness trail in the

1 park throughout the jogging paths that you see
2 there. This is an example of some of the fitness
3 trail stations that we would have in there.

4 Now, the Staff talks about the adjacent
5 land use. This is the adjacent land use. The --
6 the building in the back towards the point of the
7 triangle is a single-family home with an apartment.
8 The middle building is a series of garages used for
9 outboard and engine repair, and the front is used
10 for canvas and sails for some of the trailer boats
11 there. It's not a water dependent nor critical use,
12 and the idea that the Staff raised that the lot line
13 adjustment would reduce the commercial fronting
14 isn't true, because the area that's being adjusted
15 is the portion of this property located on the
16 residents' side of it.

17 Now, the public trust easement has come up,
18 the State Lands Commission has said there's a public
19 trust easement on the green area. We don't
20 necessarily agree with that, but we have agreed to
21 exchange the green area for the blue area, which
22 based on the latest appraisal we have is the
23 equalization of the economic value, the State Lands
24 Commission agrees that having water and waterfront
25 property is much more valuable for public trust

1 purposes than a landlocked or property blocked from
2 the river like the green area is.

3 We have a negotiated exchange agreement,
4 they're going to be considering that at a future
5 meeting, and we have suggested a condition that we
6 just go to the State Lands Commission and get this
7 approved before the CDP is issued. State Lands is
8 not interested in dealing with this until we get
9 through the Coastal Commission.

10 Staff has mentioned active sports fields.
11 The City has recently updated their Master Plan for
12 sports and recreation facilities. This location is
13 not desirable because the facilities are better more
14 centrally located, not at the ends of the city. And
15 there would also be negative impacts on the River's
16 End Staging Area parking lot with organized sports
17 in this open space area during peak use times.

18 Our plan has been endorsed by the River's
19 and Mountains Conservancy. It's been endorsed by
20 Coast Keepers, you see some other views of the beach
21 along the river trail and the river trail near its
22 beginning point.

23 We've offered to incorporate conditions
24 into this project, all standard and special
25 conditions relating to water quality, timing of open

1 space improvements, noise mitigation and recordation
2 of a deed restriction. We've also provided an open
3 space improvements completion guarantee that the
4 open space will be completed prior to the occupancy
5 of the first home, and we have suggested that we
6 have the exchange agreement with State Lands be
7 approved prior to the issuance of the Coastal
8 Development Permit.

9 So we're here today to request your
10 approval on this project. There are many benefits
11 to it. The public gets permanent access over the
12 driveway to the beach, guaranteed for future
13 generations. Permanent public use of the San
14 Gabriel River Trail, again guaranteed for future
15 generations. And then the donation of the six and a
16 half acres of open space area at absolutely no cost
17 to the public.

18 It also ensures that the property will be
19 developed as one unified plan as opposed to eight
20 individual projects under eight separate ownerships.

21 The plan before you has been carefully
22 crafted by the City of Seal Beach and Bay City
23 Partners to maximize the values of the Coastal Act,
24 as the city of Seal Beach nears its centennial
25 celebration, it has demonstrated a long tradition of

1 welcoming visitors to their city going back to its
2 earliest days.

3 This project builds on that tradition by
4 expanding the already visitor-serving River's End
5 Staging Area, and to include greater land area and
6 even more activities for visitors to enjoy when
7 coming to Seal Beach.

8 Madam Chair, we had a lot of speakers here
9 to support us today, and we've asked them to not
10 take the time, and mindful of it being a long day,
11 so what I'm going to do is I'm going to just turn
12 around here and ask all of our supporters if you'd
13 please stand up.

14 With that, Madam Chair, we're handing out a
15 suggested motion and amending motion with our
16 suggested conditions of approval, which we did
17 provide to the Staff over a week ago for review, and
18 at this point I'll turn it over to Councilwoman
19 Ellery Deaton from the City of Seal Beach.

20 MS. DEATON: I wrote good morning, but good
21 afternoon. I know it's been a long three days, and
22 so I don't want to take up much of your time. Since
23 we have decided that we will not all be speaking, I
24 would like to recognize some of the people in the
25 audience.

1 To begin with, I'm Ellery Deaton, I'm the
2 mayor pro tem from the City of Seal Beach, and I
3 would like to -- for you to know that all of our
4 council is here, and we did approve this
5 unanimously, all five of us. We have our mayor,
6 Gary Miller, we have Gordon Shanks, we have David
7 Sloan, and we have Mike Levitt. So we are all here.

8 I also wanted to make note that Peter
9 Amanson, who is a city councilman from the city of
10 Arcadia, drove down to be here this morning, very
11 early, he is here, he expected to speak on behalf of
12 the project, and for him it is very exciting because
13 his area is the beginning of that bike trail, and
14 its his folks that come on down to the beach.

15 So I also want to tell you that our Seal
16 Beach Chamber of Commerce is here represented by at
17 least two people, and beyond that we have businesses
18 and residents from the City of Seal Beach supporting
19 this project.

20 If the residents did not support this
21 project, you would not have five unanimous votes
22 here today.

23 The main purpose that I wanted to speak to
24 you about today is I wanted to tell you about a
25 little bit about our town. Because unless you're

1 familiar with it, you don't know. We are a very,
2 very small town. We have only one mile of
3 beachfront, and we have a small Main Street, and we
4 are very compact, so if you will indulge me, I'm
5 going to read, and I don't like to do that, but I
6 want to be sure I get what I have to say out without
7 taking more of your time.

8 To begin with, old town Seal Beach is very
9 small, we have a one-mile beachfront, a pier, Main
10 Street shops, and the River's End recreational area.
11 We have a fishing pier on our pier, which is in use
12 30 -- 365 days a year. All of these offer
13 visitor-serving amenities. Now, I heard today that
14 we don't have anything zoned specifically for
15 visitor serving. But I think I would argue that the
16 beach is only used for visitor-serving uses. I
17 mean, it's completely open and is always used.

18 Our Main Street would die if it were not a
19 visitor-serving place. We have a Main Street
20 specific plan which requires that the downstairs all
21 be visitor serving and for walking foot traffic, and
22 it would not exist without being visitor serving.

23 In addition, we host events year round, and
24 invite those far and wide. We not only want people
25 to visit us, we need them. Without our visitors,

1 our events would fail, our shops would close, and
2 our property values plummet.

3 The City of Seal Beach publishes a
4 quarterly magazine which I hope you all got. We'll
5 tell you more about our town, and so I won't go into
6 that. But I want you to know that all of our
7 recreation programs are open to everyone regardless
8 of whether or not they're a resident.

9 You have a list of our current events, but
10 just I want you to know, the car shows brings in
11 26,000 visitors, our holiday parade 10,000, the
12 5-10K run about 10,000, the kite festival, 3,000,
13 the summer concerts at least 1500 people per week
14 for eight weeks.

15 We also encourage weddings and personal
16 events, helping people to come and enjoy the beach
17 and our village. Besides events, we have our
18 recreational programs that I've told you about.
19 There's been discussion on fields. We have six
20 softball fields, five soccer fields, 12 basketball
21 courts, five handball courts, six beach volleyball
22 courts, soon to be eight; and two beach tennis
23 courts that we're hoping will soon be installed.

24 CHAIR SHALLENBERGER: Thank you very much.

25 MS. DEATON: May I have -- use the rest

1 of --

2 CHAIR SHALLENBERGER: You may have another
3 minute.

4 MS. DEATON: Thank you, because I was
5 hoping to use the rest of his time to finish.

6 Okay. Thank you. Let me just tell you
7 that --

8 CHAIR SHALLENBERGER: You did.

9 MS. DEATON: I'm sorry?

10 CHAIR SHALLENBERGER: Go ahead, take
11 another minute.

12 MS. DEATON: Thank you. Okay. Let me tell
13 you that we have just finished our -- our -- our
14 Master Plan on our parks. This park was folded into
15 the needs that everyone came out with in this master
16 plan, and that was more hiking trails. So in
17 conclusion, let me say, Commissioners, we in Seal
18 Beach not only want visitors, we need them, we know
19 that the visitors help make up our eclectic
20 population, it is because we embrace those who come
21 to enjoy the beach and our recreational
22 opportunities that Forbes found us to be the fourth
23 friendliest town in all of America.

24 And would you kindly approve this project
25 today with its well-thought out public park for our

1 entire region. Thank you for your consideration.

2 CHAIR SHALLENBERGER: Thank you. And thank
3 you very much for your consideration of the
4 Commission's time by putting all of those people and
5 having just two speakers. To all of you who stood
6 up, I appreciate it very much, and I would urge
7 those are going to speak in opposition to this
8 project to consider doing the same thing, because we
9 will begin to lose commissioners in the near future.
10 So --

11 MS. DEATON: You're welcome.

12 CHAIR SHALLENBERGER: Thank you very much.
13 All right. I call Mel Nutter. Mel, you have two
14 people who have ceded their time to you, and then I
15 have some people who just say donate time, but I
16 don't know who it's to, so --

17 MR. NUTTER: Well, I'm Mel Nutter, this
18 time I'm remembering to identify myself, I didn't do
19 that this morning.

20 We will try to be very efficient, although
21 I can't say we're an organized group, we've got a
22 lot of folks who indicated they simply are here in
23 support --

24 CHAIR SHALLENBERGER: How much time are
25 you asking for?

1 MR. NUTTER: I think I need about six
2 minutes --

3 CHAIR SHALLENBERGER: Okay.

4 MR. NUTTER: -- for myself. What I want to
5 do initially is address the question of feasibility.
6 As you know, the Coastal Act contemplates under
7 Section 3213 that recreational uses of the coastal
8 zone have a much higher priority than private
9 residential uses, and you're very familiar with
10 that.

11 It appears that a good part of the
12 Applicant's objections to the proposal or the
13 suggestion that there be hotel or visitor-serving
14 commercial activities there, has to do with the
15 question of feasibility and I think your Staff
16 report in fact adequately addresses the point, but
17 there's a point I want to make suggesting that
18 there's perhaps a real flaw or difficulty in
19 connection with the analyses that you've been
20 presented and are attached to your various Staff
21 reports and are in the Commission's files.

22 And this is what it really appears to be.
23 The studies appear to be an effort to focus on
24 profitability and the Coastal Act itself deals with
25 the question of feasibility. And those are perhaps

1 related, but they're not exactly the same kind of
2 concept.

3 For instance, that Kosmont analysis that
4 has been addressed dealt with the question, it seems
5 to me, of whether investors could make substantial
6 profit of I think it was 20 percent over a ten-year
7 period. The question it seems to us that the
8 Commission ought to be addressing is the question
9 that is phrased and framed in the Coastal Act, and
10 that's the question of feasibility.

11 In other words, can a hotel operator build
12 and operate a hotel economically on this site and
13 assuming you believe that this is a proper location
14 for a hotel or for other visitor-serving facilities,
15 we believe that that's the question you need to ask.

16 Now, part of what we have seen is that in
17 the studies that have been presented to you, it
18 appears that they include the historical cost of the
19 land or the property as well as perhaps lost
20 opportunity expenses and costs of the last ten
21 years. And of course that's important to an
22 investor.

23 On the other hand, when you're dealing with
24 feasibility, you really ought to be looking forward,
25 not backward. You ought to be trying to determine

1 whether or not a hotel operator or some other
2 commercial recreational facility operator can in
3 fact feasibly operate.

4 In other words, you ought to ignore the
5 so-called sunk costs. I see the clock is running, I
6 want to move on very quickly to the proposed
7 exchange of public trust lands. In connection with
8 that, as has been pointed out, your Staff, your
9 port, and the briefing book that the Applicant
10 provided seemed to provide two different notions as
11 to what may be available for the transfer of the
12 public trust burden.

13 So I'm not quite sure how that works, but
14 it would be useful it seems to me first to know what
15 this draft agreement that we've now been told says,
16 the agreement with the Staff of the State Lands
17 Commission. But in any event, keep in mind that a
18 portion of the property they're talking about is
19 underwater, it's the San Gabriel River, and it's
20 submerged land, and it's going to remain river
21 property.

22 Secondly, much of the rest of the property
23 that Bay City Partners now proposes to be given in
24 some fashion to the State Lands Commission is also
25 apparently to be given to the City or deeded to the

1 City, and I'm not sure quite how that's supposed to
2 work, but even assuming it's possible, what you've
3 got is an exchange which we really seriously doubt
4 provides any kind of economic equality here because
5 of the nature of the restrictions that have already
6 been agreed to by the Applicants, that is the City
7 and the Bay City Partners.

8 And so that is really kind of a scary
9 proposition, and we think you ought to know what it
10 is that's truly being proposed by way of a swap
11 before you embrace this. In fact, it would appear
12 that some of that so-called passive park area is
13 actually going to increase the value of the property
14 that is currently subject to the public trust that
15 the Applicant, private Applicant wishes to develop
16 with homes. And so I question there.

17 I would -- I'm about out of time. I would
18 want to stress the unique location here we have
19 along the river and at the beach, and the high
20 priority Coastal Act purposes if at all feasible
21 certainly ought to be respected, and I thank you
22 very much.

23 CHAIR SHALLENBERGER: Thank you. Jim
24 Caviola. We're going to go, for those people, Jim
25 has one person ceding his time, there's another

1 person, and after that we're going to drop to one
2 minute per person for those individuals here.
3 Again, I would urge you if somebody has already
4 spoken your position, not to take the time, because
5 you're actually taking it away from deliberation of
6 the Commission. Yes.

7 MR. CAVIOLA: Thank you. Thank you for
8 your --

9 CHAIR SHALLENBERGER: You have four
10 minutes, yes.

11 MR. CAVIOLA: Jim Caviola, 34-year resident
12 of Seal Beach. The question becomes public versus
13 private rights here. This is public land. This is
14 owned by the State of California, I've got the maps
15 back to 1850, when it was brought into the public's
16 domain. It was transferred to the City of Los
17 Angeles for a public purpose, namely power.

18 They did not transfer a 1.1 acre parcel,
19 which is on Marina Drive, a hotel would easily go on
20 1.1 acres. In Seal Beach that's a lot of property.
21 So this has always been public land. And it's not
22 correct that it's been for sale for 30 years.
23 That's not true.

24 It wasn't for sale until about 2000. And a
25 little sign went up and it was sold. The Coastal

1 Conservancy was denied at the hearing, I've
2 submitted to you the transcripts, any chance to buy
3 this property, and now the question becomes who owns
4 what? Well, we know the owner bought this land, but
5 they bought it subject to all the rights of the
6 public. They bought basically a sidewalk, you know,
7 they have an acre in the middle of their project
8 that is deeded to the public.

9 So there we are. We had a local coastal
10 plan submitted in '84, and all the way since back in
11 1979 they've been closing motels across town, all
12 saying that this going to be a motel, or hotel, a
13 mixed-use, whatever, so we've gone all the way
14 through with this analysis now, we've been duped,
15 you know, a switch-and-bait, you know,
16 bait-and-switch. It was always going to be what it
17 is.

18 So now they're asking for 32 homes. Well,
19 I was the attorney on the estate at 100 Ocean Avenue
20 in 2006, and we sold that home which is the closest
21 property to it on the Ocean for \$4 million. A
22 tear-down.

23 This property was purchased for \$4 million,
24 it's ten acres. My client had to pay them \$100,000
25 because the wall was on their property. The City

1 has given them \$900,000. So they now have a net
2 investment of \$3 million in 10 acres. And there is
3 no feasibility. I mean, they could put the five
4 houses on the river and triple their money, so
5 that's not logical, that it's not feasible, and the
6 analysis is incorrect.

7 But the bottom line here is this is the
8 ocean, the first ocean access south of San Pedro,
9 because there's a sea wall all the way around Long
10 Beach and San Pedro. We're being duped as far as
11 far as the local coastal plan Mr. Cox referenced, a
12 local coastal plan. We'll never have a local
13 coastal plan in Seal Beach. Just so you know.
14 Because of the gentrification of Seal Beach and the
15 big money that's rolling in here. Okay?

16 I love Seal Beach, I'm from Connecticut.
17 We like to save our towns. But this idea of 32
18 homes sounds great, public land. I talked to the
19 State Lands Commission yesterday, I am in close
20 contact with them, I've ordered all the documents, I
21 talked to the attorney. There's no deal in place.
22 There's nothing even going on. They can't even
23 agree to the parameters of an analysis of the values
24 here.

25 So I'm recommending, or requesting that you

1 follow the staff's report, which was incredible, and
2 the fact that we don't have a local coastal plan is
3 making the Staff do all this work every time
4 something comes down the road for this.

5 So keep the City's feet to the flame, make
6 them do a local coastal plan and put a hotel there
7 where it belongs there. Thank you very much for
8 your time.

9 CHAIR SHALLENBERGER: Thank you. Nancy
10 Cradell? I'm sorry, you are? No, I called Nancy
11 Cradell. Is she here?

12 MS. CRADELL: Yes, may we have Paul Yost
13 instead?

14 CHAIR SHALLENBERGER: Of course.

15 DR. YOST: Hi. In the expedience of time,
16 my name is Dr. Paul Yost, I'm a former city
17 councilman from the city of Seal Beach, former mayor
18 of the city of Seal Beach, former founding board
19 member of the San Gabriel Lower Los Angeles Rivers
20 and Mountains Conservancy, and I'm very, very proud
21 of the fact that I actually introduced and worked
22 forward for the RESA that you see at the end of the
23 First Street parking lot.

24 And I'm sorry, I'm a little bit
25 emotional, I'm usually on the other side of the

1 dais, I don't speak very much anymore, I'm sort of a
2 recovering politician, I'm now mostly just a
3 pediatric anesthesiologist.

4 First thing I want to do is I want to thank
5 each of you for your time up there. You know,
6 public service is a thankless job, I've been on the
7 other side, I know you're pulled in multiple
8 different directions, so thank you regardless of
9 your decision.

10 I also want to thank Staff, because I
11 believe Staff got it right, I really do. I really
12 do not believe that this project is within the
13 Coastal Act, and I don't think it's in the best
14 interest of the public of Seal Beach, and especially
15 not in the future interests of the children of Seal
16 Beach.

17 Once you divide up a public piece of
18 property or a piece of property and sell it off as
19 private, the public never gets to visit it ever,
20 ever, ever again.

21 I do want to disagree with some statements
22 that were made by the paid representative who's more
23 comfortable on the other side of the dais, I guess
24 kind of like me in some ways.

25 First of all, accessing Marina Drive,

1 totally disingenuous. First Street is four lanes
2 from PCH without even a stop sign leading into that
3 site. Totally disingenuous.

4 The fact that the City has been looking for
5 a buyer for 30 years, totally disingenuous. The
6 property wasn't even sold. DWP didn't agree to sell
7 it until 2000. I mean, just absolutely completely
8 disingenuous. This is an age-old story. Obviously
9 you guys have heard this multiple times before.
10 Developers buy a piece of property, give a land use
11 designation, the price they pay for it is
12 commensurate with that land use designation.

13 They realize they can quintuple their
14 profit if they get a change of land use designation,
15 which is exactly what they want to do. They want to
16 do residential, because residential earns them so
17 much more.

18 And if you want to figure out how much
19 more, figure they paid 4 million for the property,
20 how much does a lot go in that particular area?
21 Average of 2 to 4 million each. Do the math. I
22 mean, obviously, and if you do a feasibility study,
23 I can think of about 60 million reasons why that
24 feasibility study is going to show you that a hotel
25 is not going to be feasible. But I don't believe

1 that this project is really within the best interest
2 of the public, and I don't believe it's consistent
3 with the Coastal Act, and I'm really disagree also
4 with this particular developer and the tactics that
5 they've taken.

6 You wonder, why is the City of Seal Beach
7 going along with this? You know, I asked the same
8 thing of some of the city councilmembers, and you
9 know what I was told? They outspent us. You know,
10 they sued us to death, they lawyered us to death,
11 and they outspent us, they spent us to death. You
12 know, just an example, look in your Staff report.
13 The access to the First Street parking lot, the
14 RESA, they got access to that piece of property,
15 they held the city over a barrel and they said, I'll
16 tell you what, you process our application and we'll
17 let you have this piece of property. You know,
18 we'll let you have access to it.

19 That's where our beach cleanup is, that's
20 where all of our facilities are to keep our beach
21 clean. That's where the First Street parking lot
22 is. That's RESA, that's where kids learn how to
23 surf. I mean, that is our access.

24 And I said well, heck, man, imminent domain
25 it. If there is ever a case for imminent domain,

1 that's it. Go for it. And then the developer said
2 great, we'll imminent domain it. We'll charge you
3 the price of a McMansion on the Gold Coast for it.

4 CHAIR SHALLENBERGER: Thank you very much.

5 DR. YOST: And that's the tactic. So
6 anyway, thank you very much. I appreciate your
7 service. Please --

8 CHAIR SHALLENBERGER: Thank you.

9 DR. YOST: Please deny this.

10 CHAIR SHALLENBERGER: Thank you. All
11 right. We're going to go to a minute apiece, and if
12 you don't feel the need to speak, that's fine. We
13 will acknowledge that your speaker slip is here.
14 Mary Parsell, Gary Brown. People can come forward
15 in any order they'd like. Mario Voch. Barbara
16 Wright

17 MS. PARSELL: My name is Mary Parsell, I'm
18 here representing El Dorado Audubon, local chapter
19 of the National Audubon Society. I'm speaking
20 because I feel I have to represent our members here.
21 And the points that Mel Nutter made about the public
22 trust, that means a lot to us. I think it's
23 something we have to really think about.

24 I don't mind the design of the passive
25 park, but I do -- did read the Staff report, and I

1 think the Staff are professionals. And I agree with
2 the Staff report that at this time you should deny
3 it. There's just too many different issues. And
4 this is a lovely area, it's a one of a kind view.

5 My relatives come from Illinois, they have
6 two hours to meet with us to have lunch. Where do
7 they want to go? River's End. It's a beautiful
8 place. Thank you.

9 CHAIR SHALLENBERGER: All right. Any
10 other names I called? Gary Brown, Mario Voch,
11 Barbara Wright. Come forward if you're here. Karen
12 Russell, Pat Stanyo, Louise Dubois. If I've called
13 your name, come to the mic, any order.

14 Just get in a line and we'll --

15 MR. VOCH: Thank you. Mario Voch, Seal
16 Beach. I have been watching this project for quite
17 some time, and I think that your own Staff report
18 probably states it best, it's really dead on. I
19 wouldn't ignore it.

20 In terms of visitor use, there's a lot said
21 on that. And I notice what the proponents, yeah,
22 there's visitor use, but you go over there, and
23 yeah, there's visitor use, and it's up there, and
24 somewhere else. I just stayed in a local hotel in
25 old town Seal Beach right near this place, and the

1 place was packed on two weekends that were not
2 three-day weekends, and non-event weekends.

3 With all the events they keep saying happen
4 in Seal Beach, a hotel on this property would be
5 packed. Think if you went to a private residence
6 and knocked on their door and said, can me and my
7 family have a night, we, you know, we need, because
8 we're coming here to Seal Beach for this weekend for
9 this event. You know the answer to that. So please
10 don't let this happen. Just vote no and be done
11 with it. Thank you.

12 CHAIR SHALLENBERGER: Thank you.

13 MS. DUBOIS: Hello, my name is Louise
14 Dubose, a citizen of Seal Beach since 1975. Bay
15 City Partners entered into escrow in 2000 and closed
16 in 2003. Just before the close of escrow, the DWP
17 lawyer helped Bay City Partners to purchase
18 additional property that the California coastal
19 report on page 7 calls the "sewer and driveway
20 parcel" from an individual in Texas for \$150,000.

21 Prior to this purchase, there was never an
22 issue regarding access to this property which leads
23 to the First Street parking lot and the RESA.
24 Suddenly, the citizens were held hostage and not
25 permitted to enter.

1 Because of this purchase, taxpayers are
2 currently paying \$900,000 for a four-year lease to
3 Bay City Partners for the use of the sewer, driveway
4 into the beach parking lot and the bike trail.

5 Thank you.

6 CHAIR SHALLENBERGER: All right.

7 MS. STANYO: I'm Pat Stanyo, a resident of
8 Long Beach who has been using the shops, the
9 restaurants, the bars in Seal Beach for many, many
10 years. My daughter and granddaughter recently
11 stayed at a hotel that you want to tear down because
12 you say that it's uninhabitable, and I say that a
13 hotel in Seal Beach would be very desirable, and
14 more housing, more private housing is not in the
15 public interest. I love the beach in Seal Beach, I
16 love that coastline. Unfortunately our coastline in
17 Long Beach has a breakwater that makes it no longer
18 usable as a beach, and please, keep this as public
19 land, do not allow private property, private homes
20 to take what should be public land.

21 CHAIR SHALLENBERGER: Thank you very much.

22 MS. RUSSELL: Good afternoon. My name is
23 Karen Russell, I'm a 48-year resident of the city of
24 Seal Beach. My husband actually lived across the
25 street from that development in the old trailer

1 park, in a one-room trailer with four children and
2 his two parents. So he's lived there since 1948.
3 And I remember when the Coastal Commission was
4 formed, and I was so glad, because I felt now that
5 this land that we love so well is well protected.

6 I also want to emphasize that I'm currently
7 a school board for the Los Alamitos Unified School
8 District. And I think that what's so important is
9 we need to leave a legacy for our children. I may
10 not be around when a hotel is built. But I want
11 those kids to have access to the surfing, the
12 windsurfing, and, you know, that's a very delicate
13 area in terms of, you know, you've heard it called
14 Ray Bay, and we have the rays that come in there,
15 and I'm concerned that the whole area will be
16 compromised if -- if we have housing there rather
17 than public access and people able to use and enjoy
18 the nature. Thank you.

19 CHAIR SHALLENBERGER: Thank you so much.
20 Geraldine West. Sally Hirsch. Mike Bivia. I guess
21 I should put my glasses on.

22 MS. WEST: Good afternoon, lady and
23 gentlemen. Please excuse my glasses, my sunglasses,
24 my regular glasses I left at home.

25 CHAIR SHALLENBERGER: Your name for the

1 record?

2 MS. WEST: Pardon me?

3 CHAIR SHALLENBERGER: Your name for the
4 record.

5 MS. WEST: My name is Geraldine West, and
6 for the past 45 years I have lived on Electric
7 Avenue in Seal Beach. I'm here to ask you to deny
8 the appeal of Bay City Partners. What we are
9 dealing here with is greed. Partners, Seal Beach
10 greed. Today, unfortunately, greed is an endemic to
11 our society, and the proposed project is a prime
12 example of greed.

13 The buyers of the DWP property are three
14 wealthy local men who have lived here most or all of
15 their lives. They want to exploit this unique
16 property to make an enormous profit. They -- they
17 were well aware of its zoning.

18 CHAIR SHALLENBERGER: Thank you very much.
19 Time's up.

20 MS. WEST: That's a minute?

21 CHAIR SHALLENBERGER: It is. It just
22 flies by. Do you know how many minutes have flown
23 by up here today?

24 MR. BIVIA: Mike Bivia, 44-year resident of
25 Seal Beach. I'm up here to represent the residents

1 of Seal Beach from a resident point of view. I was
2 the chair of Measure Z, a political battle over open
3 space in 2008. I spent two years of my life on
4 Measure Z, knocked on hundreds of doors, talked to
5 hundreds of people, delivered thousands of fliers,
6 had over a hundred volunteers working on this
7 campaign so that old town would be limited to
8 two-story buildings, not three-story buildings,
9 which translates into open space. And I think
10 that's what we're talking about here, with this
11 development, and why the development shouldn't go
12 forward. Open space is not going to be, you know,
13 enhanced by this.

14 The election was won by a 73 percent
15 majority, and high turnout over the entire city of
16 Seal Beach, not just Old Town, but in the other four
17 districts, too. Thank you.

18 CHAIR SHALLENBERGER: Thank you. Sally
19 Hirsch.

20 MS. HIRSCH: I'll give my time to Carla
21 Watson.

22 CHAIR SHALLENBERGER: Thank you. Let's
23 see. Sheelee Cestorsic.

24 MS. CESTORSIC: I'll give my time to Carla
25 Watson.

1 CHAIR SHALLENBERGER: You'll have three
2 minutes.

3 MS. WATSON: Dear Coastal Commissioners,
4 first of all, I too, like Paul Yost, I managed his
5 campaign and also Gordon Shanks' campaign, and Gwen
6 Forsythe's campaign. I've been involved in city
7 politics for many years. And I would like to say
8 that some of these very sincere people have a
9 different vision, but most of them are paid to be
10 here. They're city Staff, and lot of them either
11 have connections to real estate or are involved in a
12 particular restaurant that is one of the people who
13 is proposing this development.

14 As a strong supporter of the Coastal Act,
15 and as a 50-year resident of Seal Beach, I stand
16 before you as one of the original speakers and
17 members of the San Gabriel Pacifica Parks Society
18 who worked to preserve the integrity of the DWP
19 property. When my husband and I lived on Ocean
20 Avenue in 1967, we felt the impact of the wrecking
21 ball as it battered the old DWP plant.

22 As you know, workshops were held. I spoke
23 at that time before the Coastal Commission and
24 remember that this was a special property, and I
25 agree with Ellery Deaton, this is a special town.

1 I've been involved in open space issues here for 45
2 years. A potential pleasure place where bicycle
3 paths enter, bringing folks from all over the county
4 and the inner areas.

5 It also serves as an invitational entryway
6 to those folks who live in Long Beach, and so it was
7 placed upon the high priority list of the Coastal
8 Commission. Why it wasn't purchased, you spent most
9 of your money in northern California. And I'm sad
10 about that.

11 Unfortunately, our city was not in a
12 financial position to purchase the property,
13 remember Proposition 13 where cities attacked other
14 cities, and that happened with the City of
15 Los Angeles. Why did the City of Los Angeles offer
16 this other part of the property to the developer
17 without going to the City of Seal Beach? Why was
18 the land, which should have been first part of
19 denial, why was the land given to this developer
20 when there was open space people who would have
21 purchased it if they'd been given -- allotted more
22 time.

23 But we are not an exclusive community who
24 believes in absolutely gentrification. On the
25 contrary, we follow our motto of safe, solvent and

1 small. To welcome visitors from all places,
2 including those who feeds their families by fishing
3 form our pier.

4 As a teacher in the inner city, I brought
5 students for their first beach experience. Two of
6 our former mayors spoke, as Paul Yost did, Gwen
7 Forsythe, who is very ill, could not be here today.
8 She was the first mayor in the entire Orange County
9 who spoke up for the Bosa Chica. She supported this
10 plan.

11 Well, Bay City Properties were allowed to
12 purchase the property when the auctioneer would not
13 allow the Nature Conservancy to gather the funds.
14 This property as you know was purchased for \$4
15 million, or \$4.5 million. My point is every step of
16 the way, we've been hindered. And now we have
17 someone who has bullied the city by threatening to
18 access -- you didn't deny access to people who have
19 been having access to beach.

20 Anyway, I hope you deny this. Thank you.

21 CHAIR SHALLENBERGER: Thank you very much.
22 All right. Melinda Howell, Gary Brown and Barbara
23 Wright. Speak now or forever after hold your peace.

24 MS. HOWELL: Commission and Staff, Melinda
25 Howell, I live in Old Town Seal Beach. And what I

1 had intended to say has already been said about the
2 bike trail and the many, many people who use it from
3 areas way north. I have a question. My
4 understanding is the City was going to be
5 responsible for the open space. Who is paying to
6 prepare it under the Applicant's plan? And it was
7 very interesting to me, I just heard for the first
8 time that they paid 4 million, 4.5 million for the
9 property and now what they're saying that their open
10 space is worth is 20 million. Thank you.

11 CHAIR SHALLENBERGER: Thank you. We'll go
12 back to the Applicant -- oh, I'm sorry.

13 MS. WRIGHT: Thank you. I'm Barbara
14 Wright. I was the vice chairman of the original DWP
15 Advisory Committee many years ago. The city council
16 then asked us to research the best use for this. We
17 came up with the idea that a small hotel on this
18 site would benefit the citizens of Seal Beach in the
19 following ways:

20 A hotel would have -- be able to include
21 parking so that 30 percent of this -- this hotel
22 space would not impact the homeowners on Ocean
23 Avenue with parking. A hotel could have a
24 restaurant which would then benefit Seal Beach
25 residents. A hotel could have meeting rooms which

1 would benefit various clubs in Seal Beach, for
2 example right now the Seal Beach Lions has -- has
3 two meetings a month where we have to meet in Long
4 Beach. A hotel would be a vacation destination
5 site, which would bring tourists into our city, so
6 that they could enjoy our beach.

7 The city council approved this plan, and
8 that's how the specific came about.

9 CHAIR SHALLENBERGER: Thank you so much.
10 Anyone else whose name I've called? All right. We
11 will go back to the Applicant at this time. You've
12 asked for five minutes for rebuttal.

13 MR. SELICH: Thank you, Madam Chair. Well,
14 there's a lot of misconceptions that were spoken
15 here today by our opposition, too many to go over.
16 But I just want to touch on a few.

17 First of all, we talked about economic
18 feasibility studies. Well, the ultimate economic
19 feasibility are the capital markets. In over 30
20 years, no feasible hotel proposal has ever come
21 forth. The City sent out requests for proposals,
22 never got a feasible response back.

23 LADWP looked into it, Bay City Partners
24 looked into it, 30 years is good times and bad
25 times, so the Staff argument that these economic

1 studies, maybe if they were done in a different
2 period of time, what difference that would make,
3 there's a 30-year period year, good times, bad
4 times, no feasible proposal. It just isn't a good
5 hotel site. Folks don't want to admit it, but you
6 can't make a hotel go somewhere it doesn't want to
7 go.

8 The public trust easement. There was a
9 comment made that part of it is submerged lands.
10 That's the highest priority for a public trust
11 easement, is for commerce, navigation and fishing,
12 so having submerged land is the -- is the highest
13 value for the public trust doctrine.

14 The agreement with the State Lands
15 Commission is being worked out. There is a draft
16 agreement. The appraisers are working out the
17 appraisal. The appraisal differences are really
18 more on technicalities and how they word their
19 appraisals right now, but I assure you that the --
20 the exchange agreement is -- is being negotiated
21 with the State Lands Commission. They don't want to
22 act until you act. Chicken or the egg. We need to
23 get our action here and then go to the State Lands
24 Commission. We have it conditioned so no State
25 Lands approval of the exchange agreement, no coastal

1 development permit.

2 The \$900,000 a year lease for the sewer
3 easement, that's not true. That was actually a -- a
4 sum of money paid to acquire total interest in it.
5 There -- there has never been any threat to close
6 the access to the trail or the beach. Never any
7 threat.

8 CHAIR SHALLENBERGER: Please give the
9 speaker the respect that every speaker before the
10 Commission deserves. Thank you.

11 MR. SELICH: So in summary, we again would
12 urge you to approve this project. It's a terrific
13 bargain for the public. There's a large amount of
14 open space that will be given at absolutely no cost
15 to the public. We've programmed it for a lot of
16 active uses. You can't look at it just on its own.
17 Look at it in the context of the River's End Staging
18 Area and the San Gabriel River Trail and all of the
19 activities that are occurring there.

20 We've done the environmentally sensitives
21 plants on it, we've tried to do everything we can to
22 make this the -- really a premier landmark open
23 space area along our coastal area. The public gets
24 the driveway in perpetuity, the public gets the
25 trail in perpetuity, the public gets this open space

1 in perpetuity at no cost.

2 Public agencies don't have the money to
3 come out and acquire this kind of property. It's a
4 small -- it's a small tradeoff to allow 32 homes to
5 get all of this value for the public.

6 So with that, I would encourage you to
7 approve this project as submitted with the amended
8 conditions that we have submitted.

9 CHAIR SHALLENBERGER: Thank you. Staff,
10 anything to add.

11 MS. SARB: Yes, thank you, Madam Chair.

12 I -- I just want to again focus on the
13 planning issues. We know that these are difficult
14 issues to address. The Chapter 3 prioritizes
15 visitor-serving recreational and commercial uses,
16 and marine-related commercial uses -- or
17 marine-related uses over private residential. And
18 just the history of the planning of the site I think
19 needs to be emphasized. When the power plant was
20 closed, the conservancy, the Coastal Conservancy did
21 a study to develop a restoration plan for the
22 property. And that's addressed in the addendum.

23 At that time they identified park,
24 commercial recreation, restaurant, hostel, a
25 cultural center, allowed some condos on the upper

1 floors, but this site has always been the site that
2 has been identified in the city of Seal Beach for
3 the visitor-serving uses. The Staff has commented
4 throughout the development of this project that
5 residential only would not be supportable under the
6 Coastal Act.

7 The feasibility studies are based on the
8 constraints to use that are identified in the
9 specific plan, and those are just identified as
10 hotel and open space. And Staff could work with the
11 City here to develop an LCP land use plan that would
12 allow a comprehensive look at all the potential land
13 uses for the site and the surrounding area, and
14 could provide the priority uses.

15 There's a number of other types of
16 overnight accommodations besides hotel-motel.
17 There's RV park or hostel, visitor-serving
18 commercial, active and passive recreational use,
19 access improvements to support the bike trail.

20 But some residential could also be allowed.
21 The residential that's proposed here would be 32
22 detached single-family home sites. That's even a
23 low priority residential use in today's standards.

24 So this permit would approve 32 residential
25 lots, and one remainder lot, for an open space park.

1 But it does not include construction of a park. The
2 portion of the site is subject to a public trust
3 easement, this would require a land exchange
4 agreement from the State Lands Commission, they have
5 indicated to us that that is substantially
6 incomplete at this time. There is not, that isn't
7 scheduled for action at this point.

8 We don't think that the land exchange
9 agreement is necessary. The portion of the site
10 that's subject to that easement is adjacent to a
11 marine-related site, and all of the uses that are
12 allowed consistent with the public trust are the
13 same types of uses that would be the visitor-serving
14 uses that are consistent with the Coastal Act. So
15 there -- there really isn't a need to even do that
16 land exchange agreement.

17 You've heard some of the consequences of
18 denial due to the terms of the settlement agreement
19 that has been developed between the private owner
20 and the city. The commission is in no way bound by
21 the terms of that settlement agreement, and the
22 closure of those public access ways by themselves
23 would require a separate action from you.

24 And at that point, I think we would want to
25 thoroughly look at what other, what public rights of

1 access may already exist on those areas. And so
2 again, the finding that you need to make regarding
3 possible prejudice to an LCP preparation, I don't
4 think is any stronger than I've ever seen in this,
5 you know, this pace, because it would -- approval
6 now to commit this site to residential use would
7 prejudice preparation of a certifiable LCP for the
8 city of Seal Beach.

9 Again, this site is -- is one that has been
10 set aside for those visitor-serving uses, and we
11 think that there is certainly options available to
12 do this.

13 MR. LESTER: Mr. -- Chair, I just wanted to
14 add in two points. I think Sherilyn hit it right
15 there. But one of the great achievements of the
16 Coastal Act in fact is setting priority uses and not
17 just visitor-serving but agricultural uses, and the
18 land use planning and zoning entailed in that shapes
19 markets. Though one of our approaches over the
20 years has been to put in place the priority zoning
21 and let the markets respond, and I'm confident that
22 it is based, if left to its devices, the markets
23 will respond, and we will get the priority uses over
24 time. It may not be tomorrow, but it will happen.

25 The other thing I just wanted to underscore

1 is I did talk myself with the director of the State
2 Lands Commission and she indicated to me that this
3 land exchange agreement was unfilled. In other
4 words, there were deficiencies in the appraisal that
5 has been submitted, and it was nowhere near being to
6 a point where they might be able to make a finding
7 that they need to make about equal to or better.

8 So I think that's a long ways off, and an
9 important factor to consider in this case. So that
10 concludes staff's remarks.

11 COMMISSIONER KINSEY: Thank you. We'll go
12 to the commissioners now, beginning with
13 Commissioner Garcia, then Commissioner McClure.

14 COMMISSIONER GARCIA: Thank you very much.
15 I -- I know that we're -- we're a little pressed for
16 time, but I am just going to focus on one area, and
17 then I'm sure the commissioners will have some
18 questions about others.

19 I understand, I think, the economic
20 question really is, I think the ideal scenario
21 obviously is would it be great to have a hotel
22 there? I think probably everyone would agree
23 absolutely. Economically am I'm convinced that we
24 can build one there, I don't know the answer to that
25 question. So I'm going to focus on the park and the

1 open space issue.

2 I'm intrigued by this question, and maybe
3 the Applicant can -- can come forward. On the open
4 space, our Staff had mentioned that the park isn't
5 paid for. Can we get a little more explanation on
6 that piece?

7 COMMISSIONER KINSEY: And could you provide
8 your name for the record, please.

9 MR. SELICH: Ed Selich again, representing
10 Bay City Partners. What was the question again,
11 sir?

12 COMMISSIONER GARCIA: Oh, the question was
13 on the park, which -- I mean, I think the open space
14 concept is -- obviously is great, I think we want to
15 have that, the access to the river. I know this
16 location very well, because it's just across the
17 bay, obviously, from -- from Long Beach. I'm
18 wondering is the -- is the park not -- there was
19 comment from Staff that the park isn't actually --
20 there's no funding for the park or -- can we
21 elaborate a little bit on that piece.

22 MR. SELICH: The park is part of the
23 application, part and parcel of the application, it
24 has concept approval from the City of Seal Beach,
25 and we have suggested a condition in the conditions

1 we sent to you that the park be completed prior to
2 the occ -- certificate of occupancy of the first
3 home. So there is a guarantee that the park will
4 be -- be in place, be complete and be done.

5 COMMISSIONER GARCIA: And then as far as
6 who is -- who is actually paying for the park
7 development? Is that the City of Seal Beach or is
8 that the development?

9 MR. SELICH: There is some issues there
10 that the City and Bay City Partners need to work
11 out, but I think for the -- from the perspective of
12 this Commission, if you put the condition on there
13 that you cannot have an occupancy of the first unit
14 until the park is complete, that satisfies your
15 concern that the park is complete.

16 I know that here in Newport Beach there was
17 a project up on Jamboree and Coast Highway with the
18 senior citizens' center down below and the park up
19 above, and that's exactly the condition is worded in
20 that situation.

21 COMMISSIONER GARCIA: Okay. And I do think
22 that, you know, if the Commission moves this project
23 forward, I think having that condition as far as
24 having the park and the open space portion is
25 extremely important.

1 Let me also ask you about, and this is
2 something I'll just -- I'll just, you know, you and
3 I had a very brief kind of in passing discussion
4 about this, which I mentioned in the ex parte, but I
5 wanted to also note, I do think there is some --
6 some value in having an expanded discussion about
7 what the open space looks like, and I'm not in the
8 business of planning Seal Beach's parks, I
9 understand you guys want to do that, I certainly our
10 parks, let the local level develop, but I think from
11 a coastal point of view, I think there is some value
12 in, when you are looking at that open space and how
13 of an important space it is, not just to Seal Beach
14 but to the state, in having a little bit more of an
15 active use on the site, and that's -- that's just my
16 personal opinion of the observation of the space. I
17 think it could be activated in a way that is more
18 active versus what looks to be a pretty passive park
19 now. Do you have any additional comments on that
20 than we did in the conversation?

21 MR. SELICH: Yeah. Yes, sir. Well, not
22 only from you, but we have heard from some others
23 that, you know, the level of activity in the park
24 and, you know, what is a passive park, what is an
25 active park, and I've seen this discussed in many

1 communities.

2 So we went back and took a look at, and
3 again, we looked at the total sum of what we have
4 here, what's going on in the River's End Staging
5 Area, the River Trail, and the new open space area
6 we propose to dedicate.

7 So I looked and tried to find what are some
8 of the holes that we have in there, so we saw that
9 there were some opportunities to, number one, expand
10 the picnic areas, get -- and get more activity from
11 that standpoint. There would be an opportunity,
12 along the trailside area to create a tot lot with a
13 sand play area and some play equipment for -- for
14 children, play sculptures, if you will, that's been
15 successful in a lot of ocean environment types of
16 parks.

17 And then the last thing was to maybe take
18 some of the native grassland out and create a free
19 play area, lawn area where you could just go out and
20 kick a ball around or walk with your kid or
21 whatever.

22 So, you know, we -- you know, we have
23 looked at that, and if the comm -- and kind of
24 anticipating this, if the Commission desires, I -- I
25 do have some suggested wording that you could use if

1 you'd want to do that.

2 COMMISSIONER GARCIA: Okay. And I would
3 add to that I think that -- I think that -- those --
4 those adjustments I think would be important to move
5 forward. And I think about, more example, Mother's
6 Beach, I know, you know, you're familiar with, and
7 others are, and I think the value of having
8 recreational opportunities for families for the
9 whole family at such a valuable site such as this
10 one, to the area I think would be important.

11 So that -- that type of tot lot type of
12 activity, I think the open space, the additional
13 opportunity for families to come down and enjoy the
14 river and access to the river I think would be
15 important, so thank you for that.

16 MR. SELICH: Okay. Thank you.

17 COMMISSIONER KINSEY: Commissioner Zimmer.

18 COMMISSIONER ZIMMER: I'm going to move to
19 continue.

20 COMMISSIONER BOCHCO: Second.

21 COMMISSIONER KINSEY: We have a motion and
22 a second to continue. Did you wish to speak to your
23 motion?

24 COMMISSIONER ZIMMER: Yes, I would like to
25 explain why I think it's premature and inappropriate

1 to go forward with a decision today. One of the
2 reasons is what Mr. Garcia just stated, and that was
3 he really didn't know what to conclude, at least
4 that's what I interpreted, with regard to the claims
5 of feasibility.

6 I share is concern about the financing of
7 the open space and the extent of it, and why it
8 isn't possible to at least come up to the 70 percent
9 that people have been talking about. I am not
10 convinced that certainly the condition that they've
11 drafted isn't enough to comfort me about the
12 construction and maintenance of the passive open
13 space, although the design is very pretty that
14 they're proposing.

15 So those are a couple of the minor points.
16 But there's a couple of bigger points too, and one
17 of them is if we were to go forward to say, okay,
18 it's time to give up on this parcel as potentially
19 for visitor-serving, and that's still a big "if" in
20 my mind, one of the offers that is described in the
21 Staff report was for mitigation for lost
22 visitor-serving areas, and they were offering up a
23 mitigation of \$175,000, and the Staff report says
24 that actually the case that they were relying on,
25 the actual mitigation imposed was, I think the Staff

1 report said \$2 million.

2 So that's a pretty big difference, and I
3 would want a lot more analysis about whether that
4 mitigation is in fact an appropriate mitigation for
5 this particular site.

6 The biggest one, though, for me is I think
7 when we're talking about hotel financing, and we
8 have these feasibility studies, I'm not satisfied
9 from the information in the study or how it's been
10 characterized that we have met the Coastal Act
11 standard for finding a project economically
12 infeasible. And that standard, as we heard on
13 Wednesday, is whether the increased cost or the lost
14 profits are sufficiently severe to render it
15 impractical to proceed with the project. It isn't
16 highest and best use, it isn't highest possible rate
17 of return. That's the legal standard.

18 And looking at these, you know, these are
19 well recognized, at least the one PK study, that's a
20 firm that is, a name that's familiar to me, but I,
21 in just looking at that, I don't understand the
22 study, and I -- I would need some kind of, I don't
23 know if you want to call it peer review or
24 independent review of how that study was constructed
25 and what it means, because with my limited

1 understanding of feasibility studies for hotel
2 projects, there's an awful lot of devil in the
3 details in terms of how things are presented.

4 You know, we -- they don't talk about what
5 their rate of return is, they talk about a net
6 operating income, I'm not sure why that was chosen,
7 when you look at feasibility of high end hotel, you
8 typically look at the number, hundreds of dollars in
9 financing and construction costs that relate to the
10 room rate that can be achieved in the locale.

11 That triggers issues in my mind that kind
12 of go along with what we were talking about earlier
13 in Long Beach, and that is, well, is a high end
14 boutique hotel the right kind of hotel? Should it
15 be perhaps a more modest kind of hotel, if we go
16 there?

17 So, you know, when I came -- I came into
18 this hearing thinking, oh, my gosh, 30 years and
19 they haven't been able to get a hotel developer, and
20 shouldn't we just let go of this, but I've been
21 convinced by the testimony that we don't have the
22 information to make that conclusion. And I -- we
23 may get it, but I'm -- I'm not prepared to reach
24 that today.

25 I think given the priorities in the Coastal

1 Act, it's far too important to get it right. So
2 that's why I would like to see this continued
3 without any kind of action on the project.

4 COMMISSIONER KINSEY: Commissioner Bochco,
5 to your second?

6 COMMISSIONER BOCHCO: Yes, very briefly. I
7 have a lot of the same concerns as Commissioner
8 Zimmer, and I also started, after having read the
9 Staff report, and then the Applicant's materials,
10 that I too was thinking, well, you know, 30 years
11 and you can't, as I think the councilman said, you
12 can't make a hotel be there, you know, there has to
13 be economic factors that support it and -- but I --
14 I felt convinced when I was listening to Ms. Henry
15 that these studies didn't -- don't seem to be of the
16 right thing.

17 It seems to me that these studies need to
18 be done now that we are free of DWP and that there
19 are more flexibilities on the site that you may be
20 able to find ways to do visitor-serving project with
21 some residents, without some residents. You know, I
22 think there's just a lot more information here, and
23 a lot more due diligence that needs to be done for a
24 site as important as this one.

25 You know, if it was just any old site, I

1 mean, you know, I guess you could argue either way.
2 But this is a very important, very rare, it sounds
3 to me, kind of property that has both the river and
4 the beach and all of that implies under the Coastal
5 Act. So, thank you.

6 COMMISSIONER KINSEY: Thank you. Before
7 we take this action, let me just ask, turn to the
8 Staff and ask, given that they extended with a
9 90-day extension, does this mean that the
10 continuance has a time limit to it?

11 MS. SARB: Yes, the 270th day is the end of
12 January, so it would have to come back by January,
13 or be withdrawn.

14 COMMISSIONER KINSEY: Thank you.
15 Commissioner Garcia.

16 COMMISSIONER GARCIA: I'm sorry, you just
17 said January; is that what you said?

18 COMMISSIONER KINSEY: That's right. We
19 would have to take action by January.

20 COMMISSIONER GARCIA: Okay. I just wanted
21 to make a closing comment. First is that I think
22 what's, you know, I think there's an interest to get
23 this property, something done, a real special --
24 this property, so I'm glad that we're not,
25 personally I'm glad that we're not going with a

1 denial recommendation that had been presented by
2 Staff. I think that's important that that's not the
3 direction that we go in.

4 And I'm just hopeful that we're able to
5 come together if the Commission ends up going in
6 this continuance, that it's -- that it's short, that
7 we work in, at least for me, I think that some of
8 those open space changes would be -- would be
9 important, but that we come back quickly and get
10 this resolved and are able to move forward, and
11 this is a special piece of land, I think they're at
12 least -- I'll speak for myself, I think there's an
13 interest to get it -- to get it done.

14 It's just a matter of I think some of these
15 timing issues, and if you have other suggestions
16 throughout the process as far as what type of
17 conditions would help strengthen the public access
18 from the open space, I'd like to hear those as well.
19 Thank you.

20 COMMISSIONER KINSEY: Yes. Commissioner
21 Cox?

22 COMMISSIONER COX: Yeah, assuming this is
23 going to pass, when it comes back in January, I'd
24 like to get some clarification in regards to the --
25 the exchange of properties that was ultimately

1 approved by the State Lands Commission. My
2 understanding is a good portion of what is the park
3 would be conveyed to the State Lands Commission, and
4 I just want to know what the mechanism is to make
5 sure that if that indeed happened, that there is
6 going to be ^ a willingness on the state -- on the
7 part of the State Lands Commission either to lease
8 that or make it available to the city for a park,
9 because that's obviously a very key equation in all
10 of this.

11 And then one of the speakers speaking in
12 opposition to the -- to the park -- or to this plan,
13 referenced the fact that there was a proposition in
14 the city of Seal Beach that limited the height
15 limitation to two stories, and I don't know whether
16 that was just in the downtown area or whether it
17 covered everything. I mean, a two-story hotel
18 probably is, in feasibility that's probably going to
19 be a lot tougher than if -- if it is not applied to
20 this particular parcel, so if we can get answers to
21 those questions when we come back.

22 COMMISSIONER KINSEY: Would you like to
23 get an answer to that question today? Are you
24 asking that of the Staff?

25 COMMISSIONER COX: If they've got an

1 answer, fine. If not --

2 COMMISSIONER KINSEY: Do you have an
3 answer to that question?

4 MR. LESTER: Apparently the height limit is
5 25 feet, but if there was an LCP amendment, that was
6 something that could be considered in the context of
7 a holistic plan. Yeah, I would just point out that
8 we have to come back by January under the Permit
9 Streamlining Act, production for that is the week
10 before the Christmas holiday, I think it's pretty
11 unlikely that you're going to get the kind of
12 feasibility analysis that you're talking about
13 within the next month. Less than that for us to
14 actually be able to evaluate it and come back to you
15 with something.

16 COMMISSIONER KINSEY: I do have a couple
17 of other commissioners. Commissioner Brennan.
18 Commissioner Vargas.

19 COMMISSIONER ~~BRENNAN~~^{VARGAS}: Well, I guess just
20 to kind of add some additional comments, I -- I'm
21 looking at this project, I understand why we would
22 want a continuance, and I'm probably inclined to be
23 supportive of that except now we seem to have some
24 kind of constraints.

25 The project isn't horrible. It's -- I

1 mean, we've got this giant open space here, it seems
2 like we're kind of stuck in this discussion of --
3 and I realize now that, like I don't have an
4 opportunity to make a motion because I've started
5 speaking, but whatever, I'm going to speak my mind
6 anyway.

7 We've -- we've got this -- we've got a
8 great opportunity to build open space and to create
9 a park space that's there. I -- I did not grow near
10 the beach. I grew up actually on the, not too far
11 off of the San Gabriel River Bike Trail way upland,
12 for the Arcadia councilman I was born in -- in your
13 town. And I went to high school and ran track and
14 cross country and we used to use the bike trail all
15 the way, and I've ridden the bike all the way to the
16 ocean.

17 This is a really great opportunity to build
18 an interesting kind of recreation space for a lot of
19 people inland that come to the coast through that
20 trail. And I don't know -- so I guess what I'm
21 having trouble with is like we're focused so much on
22 this hotel, this hotel, this hotel, as if that's the
23 only opportunity for low cost -- or not low cost,
24 but of -- of -- of visitor-serving uses. I -- I --
25 is that all -- I mean, maybe there is an opportunity

1 for the Staff to work with the City and the
2 developer to come up with other opportunities or
3 alternatives.

4 As Commissioner Zimmer was saying the 70 --
5 if we can get closer to that 70/30 ratio, I think
6 that would be a lot better, but now -- now I'm a
7 little kind of lost and confused, because I don't
8 know what we can do if we can't move forward to a
9 continuance.

10 But I wanted to make that, those points
11 made that I think this is on the whole a pretty good
12 opportunity to -- to activate that space, I don't
13 want to -- I don't want to see us denied the permit
14 and kill everything, so I would, you, I offer to the
15 commissioner, since I've kind of wasted my
16 opportunity to make a motion, to make some kind of
17 motion that allows us to move forward and maybe have
18 continuing conversations with the -- with the
19 Applicant as well as with the Staff to kind of make
20 this a better project if that's possible.

21 COMMISSIONER KINSEY: Thank you.
22 Commissioner McClure? Then Commissioner Zimmer,
23 then Brennan.

24 COMMISSIONER MCCLURE: Yes, I have a couple
25 of procedural questions to ask of Staff. And that

1 is the end of January is the end of the -- the
2 streamlining. Can there be an agreement with the
3 applicant for an extension of time, a designated
4 extension of time?

5 ~~MS. SARB:~~ ^{SCHMELTZER} No, there is no authorization in
6 the Permit Streamlining Act for that.

7 COMMISSIONER MCCLURE: No, can the
8 Applicant ask the Staff can we please have an
9 extension of time, we are not going to hold you to
10 the -- to the Streamlining Act, we are going to
11 waive that, and we are going to work with you to
12 come up with a solution?

13 ~~MS. SARB:~~ ^{SCHMELTZER} The Permit Streamlining Act
14 doesn't contemplate that.

15 COMMISSIONER MCCLURE: Well --

16 ~~MS. SARB:~~ ^{SCHMELTZER} I mean, I understand your
17 question --

18 COMMISSIONER MCCLURE: Here's my question.

19 ~~MS. SARB:~~ ^{SCHMELTZER} Yes.

20 COMMISSIONER MCCLURE: Can the Applicant
21 ask Staff, look, we agree to do a six-month
22 extension here because we want to answer all of
23 those vital questions that you had, that the
24 Commission had, and we want to work with you to have
25 a solution on the project?

1 MS. SARB: I think the way to do that
2 would be to withdraw and resubmit. We don't believe
3 we have the ability within the Permit Streamlining
4 Act to do that.

5 COMMISSIONER MCCLURE: May I ask the
6 Applicant what would your desire be?

7 MR. SELICH: A little bit frustrating,
8 first of all. These hotel studies were submitted
9 almost a year ago. We have never heard any of this
10 from the Staff.

11 COMMISSIONER KINSEY: You have a question
12 before you as to whether or not, the question is
13 from Commissioner McClure as to whether you would be
14 open --

15 MR. SELICH: Correct.

16 COMMISSIONER KINSEY: -- to those --

17 MR. SELICH: So here's -- here's my answer
18 to that. We would agree to -- to withdraw and
19 resubmit, we would get the study done and we would
20 agree to it if we can have the hearing in February.

21 COMMISSIONER KINSEY: To the Staff, is that
22 a -- is that a --

23 MR. LESTER: I just think it's too
24 speculative. We don't know what the study is, what
25 it's going to show, when it would be submitted. I

1 think if the Applicant, and if the Commission wants
2 more time, and the Applicant wants to work with the
3 Commission, that they should withdraw and we could
4 go back to the table and talk about what would need
5 to happen to go forward, and then they could
6 resubmit at some point in the future, waiving the
7 permit fees.

8 COMMISSIONER KINSEY: I thought -- I think
9 that was an important point to make, that we have
10 done this on a number of occasions when an Applicant
11 has voluntarily withdrawn, we have allowed them to
12 resubmit at no additional cost, and then we -- we
13 bring it forward, and obviously this Commission
14 would like to take action. And so I think that the
15 idea of -- of bringing it forward as expeditiously
16 as possible within the constraints of the issues
17 that are being raised would be appropriate.

18 Commissioner McClure, you still were on the
19 mic.

20 COMMISSIONER MCCLURE: Yes, I guess I'm
21 back to the Applicant. Would you be willing to
22 withdraw and come back without paying a fee, and
23 knowing that this Commission wants it to be done
24 quickly? We can't really guarantee time.

25 MR. SELICH: Well, it's not my -- it's not

1 my ultimate best wish, but sometimes there's offers
2 that you can't refuse, and so I think that's one of
3 them, and it's the time to accept it, so, yes.

4 COMMISSIONER KINSEY: So I'm going to
5 ask --

6 MR. LESTER: Are we to understand that
7 the --

8 COMMISSIONER KINSEY: Ask the Applicant to
9 come forward, Applicant's representative to come
10 forward. Could you make an announcement, please.

11 MR. KAUFMANN: Thank you very much, Mr.
12 Chairman. Steven Kaufmann, I'm appearing for the
13 City of Seal Beach, and we're a co-applicant, so we
14 would concur with that, just to make the record
15 clear.

16 COMMISSIONER KINSEY: Thank you. So are
17 you then saying that you are withdrawing your
18 application as of now, with the understanding that
19 you can resubmit with no additional fees?

20 MR. KAUFMANN: Yes, and thank you.

21 COMMISSIONER KINSEY: Thank you. So that
22 takes care of it. I don't think there's a need for
23 additional commissioner comments at this time. Oh,
24 there are? I -- I was trying. No. No, I think --
25 do we need a motion to waive the fee?

1 MR. LESTER: I think this is adequate. I
2 did want to just mention that there is the question
3 of the State Lands Commission process out there, and
4 I think that would be also important for us to get
5 better resolution of before we bring back something.

6 COMMISSIONER KINSEY: I think that -- you
7 know, that point was identified in the hearing. We
8 do have, then, we do have -- Commissioner Zimmer,
9 did you have any additional comments to make at this
10 time? Commissioner Brennan.

11 COMMISSIONER BRENNAN: Thank you. I just
12 wanted to briefly say I think Commissioner Vargas
13 brought up a good point, and I think that perhaps as
14 you work through this, because you are talking about
15 the park, you are talking about maybe how it's going
16 to be, either paid for or what it's going to be,
17 kind of fleshed out a little bit more.

18 I think part of that is I've seen in a
19 number of campgrounds where they actually have bike
20 camping, overnight camping, and the opportunity to
21 do something like that, you have residents riding
22 their bike from inland, certainly an overnight
23 opportunity to do that, at least would like them to
24 look at that.

25 And then I think also Kosmont Associates

1 did the economic study, who I -- I have used
2 their -- them numerous times, and they are
3 incredibly good. And I would just say, and they get
4 it right, but I think we certainly won't be done in
5 30 days, but it probably could -- we'll make sure
6 that we do have it in a maybe an up-to-date study.
7 I think the study was done perhaps in a down market,
8 being what it is, things have stepped up a little
9 bit, the opportunity to go out there, they
10 understand the hospitality industry and they
11 understand the business, so I think an opportunity
12 to really flesh that out would be really important
13 to me. Thank you.

14 COMMISSIONER KINSEY: Thank you.
15 Commissioner Garcia.

16 COMMISSIONER GARCIA: Thank you. I just
17 want to just go on the record just for, to Staff, I
18 just -- I'm just hoping that we're able to move
19 forward, I understand we want to be thorough in our
20 review, but I'm just hopeful, I know that the
21 Applicant and the City and everyone involved is
22 anxious about the property and moving forward, and
23 so I just hope that we're able to move this quickly.
24 In a way that we still get all the information, but
25 as quick as possible.

1 COMMISSIONER KINSEY: Thank you. Any other
2 commissioners wishing to speak at this time? Seeing
3 none, we -- this item is complete.

4 (End of Item 23.)
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1 STATE OF CALIFORNIA.)
2) Ss.
3 COUNTY OF FRESNO)
4
5 I, SHELLEY LAW, Transcriber, do hereby
6 certify that the foregoing pages 2 through 89,
7 represent a true and correct transcription of the
8 within-named proceedings before the California
9 Coastal Commission on November 15, 2013, prepared
10 from the electronic audio/video files of said
11 proceedings.
12
13 Dated this 5th day of April, 2014.

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SHELLEY LAW
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CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

T13a

Submitted: June 17, 2014
Staff: F. Sy-LB
Staff Report: August 1, 2014
Hearing Date: Aug. 12-15, 2014

**STAFF REPORT: APPEAL OF
EXECUTIVE DIRECTOR DETERMINATION**

Dispute Resolution No.: 5-13-1233-EDD

Applicants: Bay City Partners, LLC, City of Seal Beach & Marina Beach House

Agents: Edward Selich and Howard Zelefsky

Location: Southwest corner of 1st Street and Marina Drive, Seal Beach (Orange County)

EDD Appeal Description: Appeal of the Executive Director's Determination deeming Coastal Development Permit Application 5-13-1233 incomplete, pursuant to Section 13056(d) of Title 14 of the California Code of Regulations

MOTIONS & RESOLUTIONS: Motion on Page 5

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **concur** with the Executive Director's determination that the subject Coastal Development Permit application is incomplete. Commission staff requested several documents, information, and/or types of analyses (collectively, "incomplete items") that staff determined were needed in order to complete the application. The applicants have provided responses and provided a majority of the items requested in Commission staff's Notice of Incomplete Letters. However, the applicants have objected to the requests to provide (1) an approved land exchange agreement or other written determination from the State Lands Commission (SLC) concluding the public trust easement no longer exists on the portion of the subject site where residential use is proposed; (2) "rate of return" analysis also for the proposed residential project; and (3) a mitigation proposal for the loss of potential visitor-serving overnight accommodations.

The 10.9 acre project site is the former site of the Department of Water and Power (DWP) steam energy generating facility which operated from 1925 until 1967 when it was demolished. In the mid 1980s, the site underwent environmental cleanup and remediation and in 2003 the property was sold to Bay City Partners, LLC (BCP), who are the current owners of the site. The project site is located along the east side of the San Gabriel River and San Gabriel Bike Trail in the City of Seal Beach, seaward of Pacific Coast Highway (PCH). The project site is also contiguous with and inland of the recently constructed public oceanfront recreational facility known as the River's End Staging Area (RESA), which is adjacent to both the beach and San Gabriel River. The RESA is a popular staging area for windsurfers and also provides parking for cyclists and pedestrians who recreate on the San Gabriel Bike Trail. Therefore the project site is both riverfront and oceanfront (Exhibit #2).

The proposed project is for the subdivision of the former power plant (DWP) site into two parcels resulting in the creation of a passive park on the 6.4 acre remainder parcel and construction of a thirty-two (32) lot residential subdivision on the other 4.5 acre parcel. The development also includes lot line adjustment, street vacation, residential infrastructure, and the construction of the residential drainage facilities on the park site.

In all five of Commission staff's Notice of Incomplete Letters, Commission staff has requested that the applicants provide an approved land exchange agreement or other written determination from the SLC concluding the public trust easement no longer exists on the portion of the subject site where residential use is proposed. The applicants' proposed residential use on the subject site is encumbered by a public trust easement. Of the proposed thirty-two residential lots, eleven are affected by the public trust easement. The existing public trust easement provides the opportunity for visitor-serving commercial and recreational uses at this prime oceanfront/riverfront site that are beneficial to the public at large. Private residential use, which is a low priority use under the Coastal Act, is not one of the allowed uses under the public trust doctrine. Staff is requesting evidence that the public trust easement has been removed because without it, residential use is prohibited. The existing public trust easement on the proposed residential portion of the subject site was a significant issue at the November 2013 CCC Hearing. Bay City Partners stated that they had a final land exchange agreement with the State Lands Commission. However, staff made the Commission aware that, according to a recent conversation with SLC staff, the applicants' request to the SLC to remove the public trust easement was grossly inadequate and the matter was not scheduled for SLC action at the time of the November 2013 Commission hearing. Some Commissioners indicated they wanted the applicants to work with Commission staff toward a proposal that may be approvable, which would include removal of the public trust easement through SLC action, if the residential use was still proposed. Without an action by the SLC removing the public trust easement, residential use of the land would be inconsistent with the public trust doctrine. An approved land exchange agreement by the SLC would provide the Commission with findings as to the terms and conditions under which the removal of the public trust easement can be found consistent with the public trust doctrine as well as the Coastal Act, given its preference for the uses allowed under the public trust doctrine. The SLC action will also include an analysis of the mitigation that is necessary to offset the loss of the public trust easement.

The SLC action is also necessary in order to obtain information related to the "rate of return" for the proposed residential use on the subject site. Commission staff had requested a "rate of return" analysis for various visitor-serving land use scenarios, as well as, the proposed residential use in

order to compare and analyze the viability of the various land uses. The applicants have provided the “rate of return” for various land use scenarios containing visitor-serving uses; however, they are not willing to provide the “rate of return” information for the proposed residential use. The cost associated with the removal of the public trust easement would be included in the land exchange agreement with the SLC. The associated cost is a necessary component of the “rate of return” analysis for the residential proposal.

Commission staff in the Notice of Incomplete letters, requested that the applicants provide a mitigation proposal for the loss of visitor-serving overnight accommodation use. This was also a request by some Commissioners at the November 2013 hearing. The site has been designated and zoned for visitor-serving hotel and park use by the local government for more than 30 years. This land use designation was also approved by the Commission in its action on the Seal Beach LUP, which did not become effectively certified. The applicants continue to propose residential use, which is a low priority use under the Coastal Act. In response to Commission staff’s request, the applicants state that their donation to the City of Seal Beach of the passive park open space area meets the requirements of the Coastal Act and that no additional mitigation is necessary. However, the provision of open space passive park does not mitigate the loss of visitor-serving uses, specifically overnight accommodations. Thus, Commission staff is requesting a mitigation proposal to offset this potential loss, should a development that does not include visitor-serving overnight accommodations be approved. The same type of offset or compensation may be addressed in the SLC determination on the loss of the public trust easement. Commission staff believes this information is necessary to complete the application and develop a staff recommendation for the proposed residential development.

The disputed incomplete items are necessary for staff’s analysis of the development proposal, and for the Commission’s consideration of the CDP application, to determine whether the project complies with all relevant policies of the Coastal Act.

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APPENDICES

Appendix 1 – Substantive File Documents

EXHIBITS

Exhibit #1 – November 19, 2013: Letter received via e-mail from the applicants to Commission staff (Hardcopy of letter received via USPS on November 21, 2013)

Exhibit #2 – Location Maps

Exhibit #3 – -November 22, 2013: Email sent from Commission staff to the applicants

Exhibit #4 – *Update Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives* prepared by Kosmont Companies dated May 2014; and *Proposed Seal Beach Hotel, Land Use Analysis* prepared by PKF Consulting, USA dated January 2014.

Exhibit #5 – June 13, 2014: Notice of Incomplete Letter sent via USPS from Commission staff to the applicants

Exhibit #6 – June 17, 2014: Letter received via e-mail from the applicants to Commission staff (Hardcopy of letter received via USPS on June 17, 2014)

I. MOTION AND RESOLUTION:

Staff recommends that the Commission adopt the following findings and resolutions to uphold the Executive Director's determination that the application for Coastal Development Permit remains incomplete.

Motion:

I move that the Commission reject the Executive Director's determination that Coastal Development Permit Application No. 5-13-1233 is incomplete.

Staff Recommendation on Motion:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that the application for Coastal Development Permits is incomplete, pursuant to Section 13056 of the Commission's regulations, (2) the Coastal Development Permits application remaining unfiled, and (3) the Commission's adoption of the following resolutions and findings. A majority of the Commissioners present is required to approve the motion.

Resolution:

The Commission hereby (1) finds that Coastal Development Permit Application No. 5-13-1233 is incomplete, pursuant to Section 13056 of the Commission's regulations, and (2) adopts the following findings in support of its decision.

II. APPEAL PROCEDURES

Pursuant to Section 13056(d) of Title 14 of the California Code of Regulations, an applicant may appeal to the Commission a determination by the Executive Director that an application is incomplete. The Executive Director shall schedule the appeal for the next Commission hearing or as soon thereafter as practicable but in no event later than sixty (60)-calendar days after receipt of the appeal of the filing determination and shall prepare a written recommendation to the Commission on the issues raised by the appeal of the filing determination. The Commission may overturn the Executive Director's determination and/or direct the Executive Director to prepare a different determination reflecting the Commission's decision. Otherwise, the Executive Director's determination shall stand.

In this case, the Commission received the appeals on June 17, 2014. The 60th day after Commission receipt of the appeals is August 16, 2014. Therefore, in accordance with Section 13056(d), the subject appeals have been scheduled for the August 2014 Commission hearing.

III. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Permit Application Background and Appeal of Executive Director's Determination Deeming Application Incomplete

On November 19, 2013, Commission staff received Coastal Development Permit (CDP) Application No. 5-13-1233(Exhibit #1). The application was for the subdivision and development of the former power plant site (DWP) in the City of Seal Beach (Orange County) located at the southwest corner of 1st Street and Marina Drive (Exhibit #2), resulting in the creation of a passive open space park master plan for one parcel and construction of a thirty-two lot residential development on the other parcel. The project had originally been submitted on January 8, 2013 as CDP No. 5-13-003 for the same development. It was heard at the November 15, 2013 California Coastal Commission (CCC) meeting and Commission staff had recommended denial based upon its significant inconsistencies with several policies of the Coastal Act and the public trust doctrine. Prior to a decision being made by the Commission on the project, the applicants withdrew the application. The applicants then subsequently re-submitted the same application on November 19, 2013, as stated above.

On November 22, 2013, Commission staff contacted the applicants, notifying them that additional information is needed to be submitted with their application (Exhibit #3) in order to respond to Commissioner questions and comments made at the November 15, 2013 Commission hearing . Since that time, the applicants have submitted partial responses to five separate incomplete letters sent by Commission staff. The information related to the economic feasibility submitted by the applicant is relevant to the question for dispute resolution regarding the need for the "rate of return" analysis for the proposed development and is attached as Exhibit #4. The most recent incomplete letter was sent by Commission staff on June 13, 2014, notifying the applicants that the application remained incomplete for information previously requested and outlined some additional information needed in order to fully understand the new information that was received on May 8, 2014, as well as full size plans for the additional amenities proposed for the park (Exhibit #5). On June 17, 2014, the applicants submitted a letter appealing the Executive Director's decision not to file the Coastal Development Permit application (Exhibit #6). The applicants have not objected to the submittal of the full size plans.

The project description for the permit application that is subject to this dispute resolution is as follows:

| |
|---|
| <u>CDP Application No. 5-13-1233-(Bay City Partners, LLC, City of Seal Beach & Marina Beach House)</u> |
|---|

| |
|--|
| Subdivision of a 10.9 acre former power plant (DWP) site into two parcels; creation of a passive open space park master plan for the 6.4 acre remainder parcel and construction of a thirty-two lot residential subdivision on the other 4.5 acre parcel. The development also includes lot line |
|--|

adjustment, street vacation, residential infrastructure, and the construction of the residential drainage facilities on the park site.

B. Analysis of Applicants' Appeal of Executive Director's Determination Deeming Application Incomplete

The applicants submitted a letter on June 17, 2014 (Exhibit #6) in response to Commission staff's Notice of Incomplete Letter dated June 13, 2014 arguing that Commission staff refused to accept the State Lands Commission (SLC) staff request to have the Commission act on the application first, even though Section 13053(a)(4) directs the Commission to give consideration to such a request. They also argue that their previous application was deemed complete without submittal of an approved land exchange agreement. Thus, their current application should also be deemed complete without submittal of such SLC approval. Additionally, the applicants stated that there was no direction from the Commission at the November 15, 2013 CCC Hearing to have the draft land exchange agreement be approved by the SLC prior to the withdrawn application being accepted on resubmission. In this June 17, 2014 letter, they also claimed that the request for the "rate of return" for the proposed residential project, which requires proprietary information, goes beyond what is appropriate, and potentially legal, for a complete application, and also that Commission staff went beyond what the Commission requested at the November 15, 2013 CCC Hearing. The applicants also stated that they believe that all five of the Commission staff's Notice of Incomplete Letters went beyond what the Commission requested. Despite stating this, the applicants have provided responses and some information for the items listed in Commission staff's Notice of Incomplete Letters. However, the applicants have objected to the requests to provide (1) an approved land exchange agreement or other written determination from the State lands Commission (SLC) concluding the public trust easement no longer exists on the portion of the subject site where residential uses are proposed; (2) "rate of return" analysis also for the proposed residential project; and (3) a mitigation proposal for the loss of potential visitor-serving overnight accommodations. The applicants now wish to appeal the Executive Director's "incomplete" determination to the Commission pursuant to Section 13056(d) of Title 14 of the California Code of Regulations (California Coastal Commission). The applicants' objections are addressed individually starting below.

Objection 1. State Lands Commission (SLC)

Information related to the request for evidence of a land exchange with SLC to remove the public trust easement over the subject site to enable the applicant to use the site for residential purposes, a non- public trust use, is necessary to evaluate the project's compliance with section 30210 of the Coastal Act, related to protection of public trust uses. In Commission staff's June 13, 2014 Notice of Incomplete Letter, Commission staff reiterated a request made in previous communication dated November 22, 2013, December 11, 2013, March 15, 2014, April 4, 2014, and May 8, 2014 that the applicants provide an approved land exchange agreement or other written determination from the

SLC concluding the public trust easement no longer exists on the portion of the subject site where residential use is proposed. The existing public trust easement provides the opportunity for visitor-serving commercial and recreational uses at this prime oceanfront/riverfront site that are beneficial to the public at large. Private residential use on the public trust easement area is not among the uses allowed under the public trust doctrine. The public trust is a sovereign public property right held by the State (under the jurisdiction of the State Lands Commission) or its delegated trustee, for the benefit of all the people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, recreation, or other recognized public trust purposes, including visitor-serving commercial uses.

The project was previously heard at the November 15, 2013 CCC Hearing and residential use within the existing public trust easement was a significant issue. Residential use is a prohibited use on public trust lands unless the Legislature or courts, either through land exchange, legislative act or adjudication, has removed the public trust obligations. Therefore, Commission staff has requested from the applicants that they provide an approved land exchange agreement or other written determination from the SLC concluding the public trust easement no longer exists on the portion of the subject site where residential use is proposed. Evidence that the public trust easement has been removed is essential in order to file the application because without it, residential use is prohibited. An approved land exchange agreement is also essential as it would include the findings supporting the removal of the public trust easement as well as an analysis of the mitigation necessary to offset the loss of the public trust easement.

In the applicants' June 17, 2014 letter, they reiterated to Commission staff that they have reached a draft agreement with the SLC and submitted a document (not on SLC letterhead) on February 3, 2014. The applicants also indicated that the SLC is requesting that the Coastal Commission act on the project prior to the SLC acting on the exchange agreement, based on Section 13053 of Title 14 of the California Code of Regulations (California Coastal Commission). Additionally in that February 3, 2014 letter, the applicants stated that the draft land exchange agreement has been revised to instead have the applicants pay a sum of money to the State Attorney General's Kapiloff Fund for Public Trust Lands to extinguish the public trust easement. However, it has been clarified by the SLC staff that the land exchange agreement currently being considered involves both a land exchange and payment into the Fund. Although requested, the applicants have not submitted evidence of a draft land exchange agreement from SLC (on SLC letterhead), nor has Commission staff received a request from SLC or SLC staff, that the Commission act on the proposed residential project first, pursuant to Section 13053 of Title 14 of the California Code of Regulations. Further, subsequent to the applicants' February 2014 submittal SLC was successfully sued on a similar land exchange. Therefore, the current status of any draft land exchange agreement with the SLC staff is unknown at this time. Further, a draft land exchange agreement with SLC staff does not indicate what may or may not be finally approved by the SLC; therefore, a final land exchange agreement or other written determination from the SLC is necessary.

The applicants argue that since Commission staff filed the previous application containing residential development on land subject to the same public trust easement without an approved land exchange agreement from SLC, that staff should do the same with the proposed application. With the previous application, Commission staff likewise requested several times that the applicants submit evidence of an approved land exchange agreement from SLC prior to filing the CDP

application. The applicants refused to provide that information. Once the applicants had provided all of the remaining material that had been requested, Commission staff filed the application without the SLC approval because staff intended to recommend that the Commission deny the proposed project, based in part on the fundamental question as to the appropriateness of residential use on such a prime site that has been historically designated for visitor-serving commercial overnight accommodation. During the November 15, 2013 Commission hearing, several Commissioners direction to the applicants was to work with Commission staff to identify an approvable development. A proposed project that includes a residential component without an approved land exchange agreement or some indication from SLC that the public trust easement can be removed would not be an approvable project and staff believes is inconsistent with the direction the Commission presented. Therefore, as a residential use is still located within land subject to the public trust, an approved land exchange agreement or other written determination from the SLC that concludes the public trust easement no longer exists on the portion of the site where residential use is proposed is still necessary.

A determination from the SLC indicating the terms under which the public trust easement can be removed from the property would also provide information necessary to evaluate the “rate of return” for the proposed residential use. See objection 2 below for “rate of return”. The applicants have provided the “rate of return” for various land use scenarios containing visitor-serving uses; however, they are not willing to provide the “rate of return” information for the proposed residential use. According to one of the applicants’ consultants, Kosmont, the “rate of return” is determined by dividing the Net Operating Income (Annual Revenues minus Operating Costs/Reserves) by the Residual Land Value (Land Cost Values Basis minus Development Costs) and multiplying by 100. As indicated by the applicants, the draft land exchange agreement with the SLC had been revised to include a payment into the State Attorney General’s Kapiloff Fund for Public Trust Lands to extinguish the public trust easement, as well as, exchange land. Accordingly, that dollar amount is necessary in order to determine Land Cost Value, which is essential in determining the Residual Land Value and subsequently the “rate of return” for the residential use of the site. Therefore, this serves as another reason why an approved land exchange agreement is necessary.

In conclusion, the Commission finds that an approved land exchange agreement or other written determination from the State Lands Commission (SLC) concluding the public trust easement no longer exists on the portion of the subject site where residential use is proposed is information necessary for the Commission’s consideration of the subject application and its consistency with the Chapter 3 policies of the Coastal Act. Therefore, the Commission concurs with the Executive Director’s determination regarding filing.

Objection 2. “Rate of Return” Analysis

Information related to the rate of return for the proposed project is necessary to determine the applicant’s legal interest in its property, including its legal interest as it relates to the protections afforded property owners under the 5th Amendment. This information necessarily informs the Commission on issues related to compliance with section 30010 of the Coastal Act which precludes the Commission from acting in a manner on a permit matter that would have the effect of taking property for public use without payment of just compensation. In Commission staff’s June 13, 2014 incomplete letter to the applicants regarding the CDP application, Commission staff reiterated a

request made in a previous communication dated May 8, 2014 that the applicants provide a “rate of return” analysis for their current residential project. In the applicants’ June 17, 2014 letter, they state that providing such information would involve proprietary information from their project pro forma which is not public information. The applicants had also stated in previous communication to Commission staff dated May 15, 2014 that they would not be providing this information since it would not provide meaningful benefit since all of their land use scenarios containing visitor-serving uses that were analyzed were not feasible, due primarily to an inadequate rate of return. Therefore, Commission staff interprets that the applicants believe since their research concluded that no visitor-serving uses are feasible, only their proposed residential use would be feasible for the project site. The requested “rate of return” information for the proposed residential use would allow Commission staff to compare and analyze the “rate of return” of the alternative visitor-serving uses versus the applicants’ residential proposal. This information is necessary to assist Commission staff and the Commission in understanding the applicant’s claim that residential development provides a higher “rate of return” versus visitor-serving uses.

In conclusion, the Commission finds that a “rate of return” analysis for the proposed residential use is information necessary for the Commission’s consideration of the subject application and its consistency with the Chapter 3 policies of the Coastal Act. Therefore, the Commission concurs with the Executive Director’s determination regarding filing.

Objection 3. Mitigation for Loss of Potential Visitor-Serving Overnight Accommodations

Information related to mitigation for loss of potential visitor-serving overnight accommodations is necessary to evaluate the project’s consistency with section 30213 of the Coastal Act. In Commission staff’s June 13, 2014 incomplete letter to the applicants regarding the CDP application, Commission staff reiterated a request made in a previous communication dated May 8, 2014 that the applicants provide a mitigation proposal for the loss of visitor-serving overnight accommodation use. In the applicants June 17, 2014 letter, they respond to this request by stating that their donation to the City of Seal Beach of the passive park open space area meets the requirements of the Coastal Act and that no additional mitigation proposal is necessary. The provision of open space passive park area does not mitigate the potential loss of land area that has been designated for provision of high priority visitor-serving uses such as overnight accommodations. Staff believes some Commissioners anticipated this information would be part of any subsequent proposal from discussion at the November 2013 hearing prior to the application being withdrawn. The City of Newport Beach LCPA NPB-MAJ-1-06 (Part A) (Lennar Development) which included a \$5,000,000 mitigation fee for conversion of land designated for visitor-serving use to residential use was cited as an example. The same type of offset or compensation may be addressed in the SLC determination on the loss of the public trust easement.

In conclusion, the Commission finds that a mitigation proposal for the loss of visitor-serving overnight accommodation use is information necessary for the Commission’s consideration of the subject application and its consistency with the Chapter 3 policies of the Coastal Act. Therefore, the Commission concurs with the Executive Director’s determination regarding filing.

C. Conclusion

The Commission **concurs** with the Executive Director's determination that the subject Coastal Development Permit application is incomplete. The Commission concludes that all of the information requested by staff is necessary for staff's analysis of the development proposal, and for the Commission's consideration of the CDP application to determine whether the project complies with all relevant policies of the Coastal Act.

APPENDIX 1

SUBSTANTIVE FILE DOCUMENTS: CDP No. 5-13-003; CDP No. 5-13-1233; Letter from the applicants addressed to Commission staff received November 19, 2013; Email addressed to the applicants from Commission staff dated November 22, 2013; Letter addressed to the applicants from Commission staff dated December 11, 2013; Letter from the applicants addressed to Commission staff received February 3, 2014; Letter addressed to the applicants from Commission staff dated March 5, 2014; Letters from the applicants addressed to Commission staff received March 5th and 6th, 2014; Letter addressed to the applicants from Commission staff dated April 4, 2014; Letter from the applicants addressed to Commission staff received April 8, 2014; Letter addressed to the applicants from Commission staff dated May 8, 2014; Letters received from the applicants addressed to Commission staff dated May 15th and 19th, 2014; Letter addressed to the applicants from Commission staff dated June 13, 2014; and Letter received from the applicants addressed to Commission staff dated June 17, 2014.

Bay City Partners

2999 Westminster Avenue, Suite 211
Seal Beach, California 90740

562-594-6715

Ms Teresa Henry
District Director
California Coastal Commission
200 OceanGate
10th Floor
Long Beach, CA 90802-4416

November 19, 2013

Re: Application #5-13-003 Re-submittal

Dear Teresa,

At the November 15, 2013 public hearing on the above referenced application the Coastal Commission requested that the applicant withdraw and resubmit this application. The Coastal Commissioners desired additional information which, although would we indicated would be submitted in time for the January Coastal Commission meeting, staff stated could not be adequately reviewed by staff for the January meeting due to the upcoming holidays. Due to the Permit Streamlining Act deadlines the application could not be continued past Jan 31, 2014. The applicants, The City of Seal Beach, Bay City Partners and Marina Beach House withdrew the application as requested and hereby re-submit the application.

The Commission directed that the re-submittal be accepted without payment of additional filing fees. Several Commissioners, including Commissioners McClure and Garcia, indicated to staff that they desired the application be rescheduled as soon as possible.

The applicants were requested to submit additional information on the feasibility of a hotel. Commissioner Brennan indicated that the Kosmont Company was an excellent firm to complete this analysis therefore we will retain this firm. The additional feasibility information will be submitted by December 1st. We would appreciate immediate consultation with you on anything you would like to include

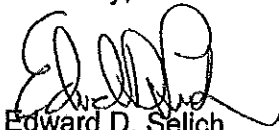
In the analysis in addition to your comments in the staff addendum. We know you are busy with an incredible workload so an email or letter would suffice to save you the time of another meeting.

Also, Commissioner Garcia inquired about additional active uses for the Public Open Space Area. The applicant described several additional uses. The Commission requested that the applicant submit a revised plan showing the additional uses. The applicant will be submitting a revised page 5 of the DWP Specific Plan Open Space Master to comply with this request.

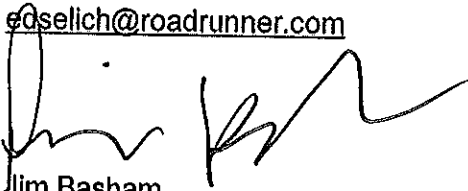
We anticipate all these materials being in the staff's hands by December 1, 2013. Since staff has indicated that it would not be able to review the material in time for the January 2014 meeting, we request that the application be scheduled for the February 2014 meeting for hearing.

Thank you very much.

Sincerely,



Edward D. Selich
Bay City Partners Project Manager
627 Bayside Drive
Newport Beach Ca 92660
949-723-6383
edselich@roadrunner.com



Jim Basham
Seal Beach Community Development Director
City of Seal Beach
211 8th Street
Seal Beach, CA 93955

cc: Sherilyn Sarb
Charles Lester
Karl Schwing
Fernie Sy
Quinn Barrow, Seal Beach City Attorney



Ocean Place Development Plan



Project Vicinity

Pacific Ocean

San Gabriel River

Project Area

Rivers End
Staging Area

Marina Drive

First Street

Ocean Ave

Central Way

Beach

From: [Henry, Teresa@Coastal](mailto:Henry.Teresa@Coastal)
To: [Edward Selich \(edselich@roadrunner.com\)](mailto:Edward.Selich@roadrunner.com)
Cc: [Sy, Fernie@Coastal](mailto:Sy.Fernie@Coastal); [Schwing, Karl@Coastal](mailto:Schwing.Karl@Coastal); [Lester, Charles@Coastal](mailto:Lester.Charles@Coastal); [Sarib, Sherilyn@Coastal](mailto:Sarib.Sherilyn@Coastal); "Quinn M. Barrow"; "Jim Basham"
Subject: DWP Application # 5-13-003 Resubmittal
Date: Friday, November 22, 2013 3:41:38 PM
Attachments: [SEAL BEACH - DWP Application Resubmittal 11-19-13 Executed.pdf](#)

Dear Ed,

We cannot accept application submittals via email. Therefore, this emailed resubmittal will be considered informational only and the original received via USPS mail will be considered your formal resubmittal. However, we suggest that you wait to resubmit your application until you can include the information requested below and you also allow time to work with Commission staff on a revised plan.

With regard to the content of your resubmittal application, we will need clarification of the proposed project, as well as additional information, before we can consider the application complete. Subsequent to the submittal of your initial coastal development permit application 5-13-003 you submitted a revised park plan, draft special conditions and other project changes in the briefing book that was sent to staff and Commissioners. Your resubmitted application must clearly indicate the currently proposed project. We note that some of the changes conflict with one or more of the terms of the supporting documents (Settlement Agreement and Development Agreement) submitted with your original application. Therefore, please also submit copies of any amendments to these Agreements. We also need a copy of the final approved land exchange agreement from the State Lands Commission if your proposed project still includes residential or other uses prohibited on public trust lands.

Pursuant to the discussion at the November 15, 2013 Commission meeting, a current feasibility study should evaluate a range of visitor-serving commercial (including overnight accommodations), commercial recreational, and open space (both passive and active) uses over the entire 10.9 acre site, irrespective of the current DWP Specific Plan development standards limiting allowable development to only hotel and passive open space uses at specific locations and percentages of land area. Residential units may also be considered, above the ground floor. The range of uses evaluated should also include bike camping, as was suggested at the Commission meeting.

The attached letter indicates your desire to have the resubmitted application scheduled as soon as possible, and specifically for the Commission's February meeting. As staff stated at the Commission meeting, we cannot predetermine the hearing date for the resubmitted application without having first received and reviewed the above required information. Further, additional time and/or information may be needed, based upon the information you submit. The resubmitted application would also need to be scheduled for a southern California meeting location.

Teresa Henry

District Manager, South Coast District
California Coastal Commission
(562) 590-5071

UPDATE

Presentation to Coastal Commission

Feasibility of Visitor Serving Uses Bay City Partners / LADWP Site – Seal Beach



May 2014

**Prepared By:
Kosmont Companies**



DRAFT

Coastal Commission Request

- Review of conclusions of submitted feasibility studies of a 150 room hotel under 1996 DWP Specific Plan. Perform market update and feasibility analysis of other types/sizes/location of hotel/motel use assuming no zoning restrictions.
- Evaluate other visitor serving uses, shown below, without zoning restrictions (supply & demand factors; site requirements/limitations, residual land value, economic probability of success).
 1. RV Park
 2. Hostel / Commercial Bike / Tent Camping
 3. Other Visitor Serving Retail Uses (restaurants, gift shops)
 4. Residential over commercial (apartments and condominiums)
 5. Beach Services (surfboard, kayak rentals etc)
 6. Marine Services (boat repair, maintenance, charters)

- I. Executive Summary
- II. Site Location & Constraints
- III. Hotel Feasibility Evaluation – Scenarios
- IV. Evaluation of Other Visitor Serving Uses

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I. Executive Summary

- Kosmont Companies (“Kosmont”) working in conjunction with PKF Consulting (“PKF”) evaluated the market and financial feasibility of visitor serving uses on the 10-acre DWP site located at 1st St and Marina Drive. Bay City Partners acquired the site in 2003 for \$4.5 million (approx. \$450K per acre)
- For purposes of the feasibility analysis, Kosmont established a land cost basis to measure a return on cost and provide a comparison against residual land value of visitor serving uses.
 - **Residual Land Value:** The net dollars remaining after deducting all development costs from the estimated value at completion of the project. The estimated value at completion is based on annual income following completion of the visitor serving use.
 - **Return on Cost:** Divides the stabilized net operating income by the total construction cost, plus the land cost basis. In order for the use to be feasible, the annual percentage return must be greater than industry standard market rates of return for similar uses, ranging from **6% to 9%** or more.
- Kosmont conservatively assumed no increase in the land cost basis, above the original \$4.5 million, for this feasibility analysis. Any visitor serving use must generate a residual land value in **excess of \$4.5 million** for the entire site in order to be financially feasible.

Hotel Feasibility Analysis

- Hotel is most desired use per City's Specific Plan, which was adopted in 1982 and amended in 1996.
- PKF analyzed hotel demand for a range of budget hotels to luxury hotels, with and without Specific Plan restrictions.
 - a. Due to its isolated location and lack of easy ocean access, the projected room and occupancy rates are well below similar hotels in the market, as well as resort oceanfront hotels in Huntington Beach.
- Development of any hotels/motels are financially infeasible under a wide range of product types and locations as well as taking into account unrestricted zoning, which yields a below market rate of return and substantially negative residual land values.

Evaluation of Other Visitor Serving Uses

The analysis conducted for these following uses were deemed financially infeasible due to negative residual land values as well as low rates of return. The following are the specific results of the analysis by land use:

- **RV Park:** Construction of an RV Park similar to KOA, would require the full 10-acre site and would accommodate approximately 80 spaces. This use is financially infeasible to the developer since the residual land value **(\$1.1M)** is approximately 20% of the land cost basis (\$4.5M).
- **Hostel:** Could be built on as little as one acre in conjunction with hotel, commercial or tent campground but the residual land value is negative **(-\$60K)**, which renders it financially infeasible.
- **Bike and Tent Campground:** This use would require the majority of the 10-acre site and would provide up to 100 camping spaces. However, this use is financially infeasible, since the residual land value is negative **(-\$200K)**.
- **Retail/Restaurant:** The use of approximately 20,000 square feet might be suitable on the northern 2.5 acre portion fronting on Marina Drive. However, extensive competition and weak market rents yield a negative residual land value **(-\$900K)**.

Evaluation of Other Visitor Serving Uses

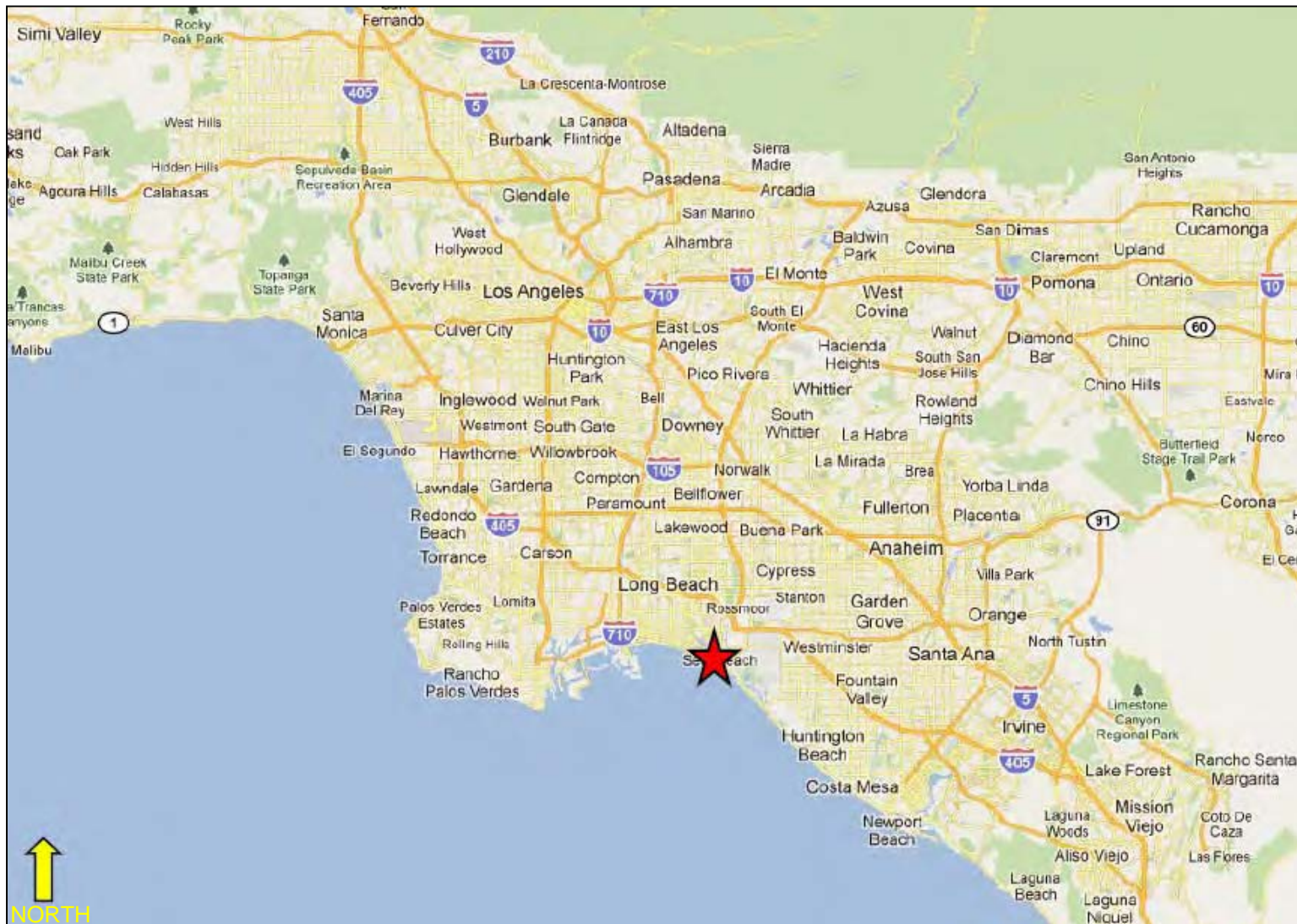
- **Residential over Commercial (Apartments):** Adding two levels of apartments above the same 20,000 square foot retail/restaurant use is not financially feasible as market rents are insufficient to finance the construction cost premium required for apartments on top of commercial uses.
- **Residential over Commercial (Condos):** Adding 2 levels of for-sale condominiums over retail yields a positive land value for the 2-3 acre commercial site – but it is insufficient to fund remaining 7-8 acre open space improvements, making it financially infeasible.
- **Beach & Marine Service Use:** It is possible to construct use on the northern 1-2 acres of the site, which is adjacent to the Southern California Ocean Sports marine repair facility, but residual land value is less than **5%** of the owner's land cost basis, which does not meet market rates of return for similar uses. Furthermore, given the isolated location near the San Gabriel River, walking distance from the ocean and the seasonality of equipment rentals, beach services would not generate a sufficient amount of income to justify development.

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II. Site Location & Constraints

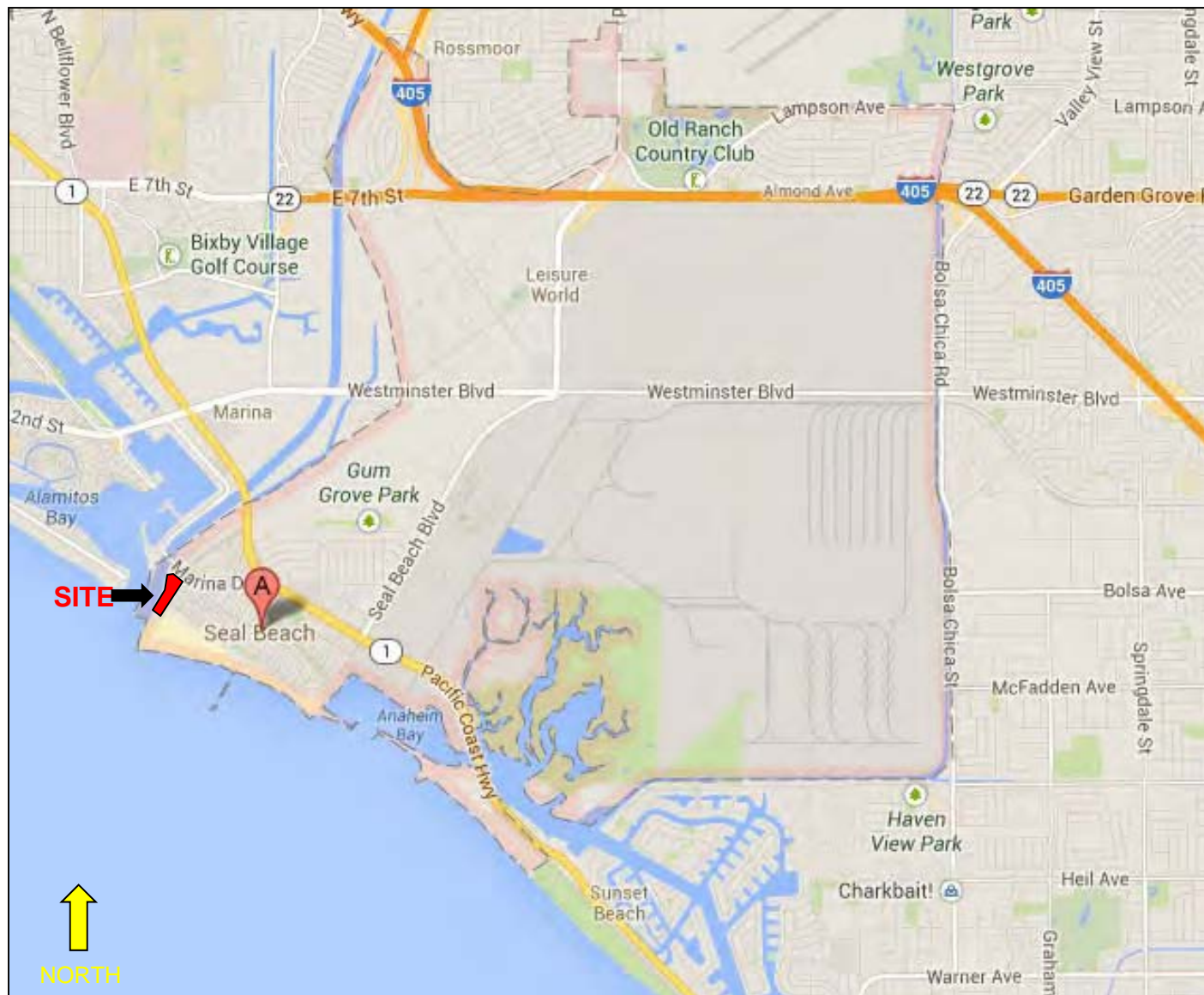
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Site – Regional Map



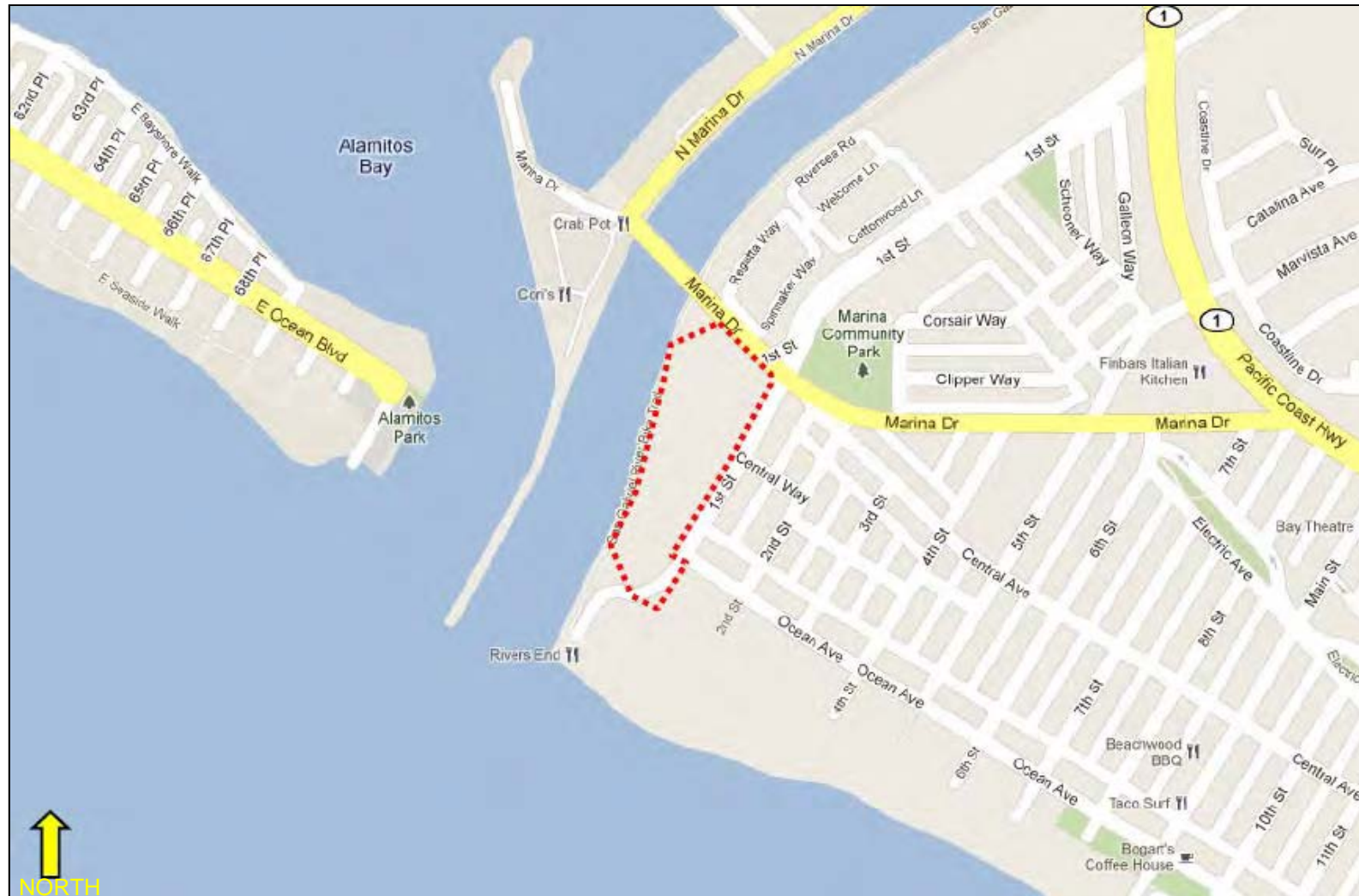
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Site – City Map



- Seal Beach is a relatively small oceanfront community surrounded by major land/water areas that isolate the community from adjoining cities of Huntington Beach and Long Beach.
- Population of Seal Beach is approximately 24,000 and has remained steady over the past two decades.
 - a) Over 50% of population lives in age-restricted Leisure World community.
 - b) 25% of population is over 75 years of age.
 - c) Less than 8% of population is high school or college age.
- Pacific Coast Highway and Seal Beach Blvd. provide regional highway access to the community. San Gabriel River Bike path provides direct access to site for hundreds of bikers each day.

DRAFT Site – Neighborhood Location Map



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Site Aerial – Oblique View



1. Specific Plan for DWP site limits development on site:
 - a) Development limited to northern 30% (3.2 acres) of Site.
 - b) 35 foot height limit.
2. Easements on site restrict use:
 - a. Ocean Avenue road easement.
 - b. Driveway to beach parking lot.
3. Other Constraints:
 - a. City-owned beach parking lot with maintenance and storage area.
 - b. Lack of direct ocean view from site due to width of sand beach.

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Site Constraints Map



Land Cost / Feasibility Threshold

- In order to measure feasibility, we need to have a land cost basis to compare against the residual land value of various visitor serving uses.
- Bay City Partners acquired the site in 2003 at a cost of **\$4.5 million**, or approximately \$450,000 per acre. Over the past 10 years they have incurred substantial carrying costs (e.g. interest, taxes and insurance).
- To be conservative, Kosmont has assumed no increase in land cost basis above the original **\$4.5 million**, for this feasibility analysis.
- For uses with a public open space component, the private development must cover cost of landscape improvements (e.g. \$200,000 per acre)
- Any visitor serving uses must generate a residual land value, after recouping all development costs, of **at least \$4.5 million**.

III. Hotel Feasibility – Scenarios

1. Build hotel on northern portion of lot as per City's Specific Plan.
2. Build luxury hotel on southern portion of lot – nearer the ocean, ignoring existing easement constraints.
3. Build budget motel on northern portion of site.

Key Assumptions

- Resort quality 150-room hotel with restaurant, meeting space and spa/fitness
- 135,000 SF gross building area, 320 parking spaces
- 400 SF average room size
- Development cost of \$300,000 per room

Market Overview

- 12% growth in hotel room supply in 2013 – New Courtyard by Marriott
- Occupancy rates declined from 75% in 2008 to 72% in 2013
- Average room rate declined from 4% in 2008 to \$125 in 2013

PKF Revenue Forecast – Scenario 1

- Hotel will likely achieve less than average market penetration due to lack of ocean frontage and distance from demand generators.
- Occupancy rate is projected at 62% in opening year increasing to a stabilized 68% occupancy after 3 years
- Expected room rate will be above most in the competitive market area as defined by PKF - \$142 in 2016 and increasing by 3% per annum.

PKF Revenue Forecast – Scenario 2

- Occupancy rate is projected at 62% in opening year increasing to a stabilized 70% occupancy after 3 years
- Expected room rate will be above most in the competitive market area as defined by PKF - \$164 in 2016 and increasing by 3% per annum.

DRAFT(1) Hotel Feasibility – Specific Plan

Stabilized Pro Forma - 2018

| | <u>Total</u> | <u>%</u> |
|--------------------------------|-----------------------|------------|
| Annual Revenues /1 | \$10,500,000 | 100% |
| Operating Costs/Reserves /1 | <u>8,900,000</u> | <u>85%</u> |
| Net Operating Income | \$ 1,600,000 | 15% |
| Development Value (8% cap) | \$20,000,000 | |
| Development Cost (\$300k/room) | <u>45,000,000</u> | |
| Residual Land Value (loss) | \$(25,000,000) | |

Hotel development with Specific Plan restrictions is clearly infeasible since residual land value is massively negative.

/1 Per PKF Analysis January, 7 2014

DRAFT(1) Hotel Feasibility – Specific Plan

Return on Cost – Stabilized

| | |
|--------------------------------|-------------------|
| Annual Revenues /1 | \$10,500,000 |
| Operating Costs/Reserves /1 | <u>8,900,000</u> |
| Net Operating Income | \$ 1,600,000 |
| Land Cost Value Basis | \$ 4,500,000 |
| Development Cost (\$300k/room) | <u>45,000,000</u> |
| Residual Land Value | \$49,500,000 |
| Return on Cost | 3.2% |

As shown above, the annual rate of return on investment is only 3.2% compared to a required 8.0% minimum return.

/1 Per PKF Analysis January, 7 2014

DRAFT

(2) Hotel Feasibility – No Restrictions

Stabilized Pro Forma - 2018

| | <u>Total</u> | <u>%</u> |
|--------------------------------|-----------------------|------------|
| Annual Revenues /1 | \$12,925,000 | 100% |
| Operating Costs/Reserves /1 | <u>10,906,000</u> | <u>84%</u> |
| Net Operating Income | \$ 2,019,000 | 16% |
| Development Value (8% cap) | \$25,000,000 | |
| Development Cost (\$300k/room) | <u>45,000,000</u> | |
| Residual Land Value (loss) | \$(20,000,000) | |

Hotel development with no zoning or easement restrictions is clearly infeasible since residual land value is negative.

/1 Per PKF Analysis January, 7 2014

DRAFT

(2) Hotel Feasibility – No Restrictions

Return on Cost – Stabilized

| | |
|--------------------------------|-------------------|
| Annual Revenues /1 | \$12,925,000 |
| Operating Costs/Reserves /1 | <u>10,906,000</u> |
| Net Operating Income | \$ 2,019,000 |
| | |
| Land Value Cost Basis | \$ 4,500,000 |
| Development Cost (\$300k/room) | <u>45,000,000</u> |
| Total Development Cost | \$49,500,000 |
| Return on Cost | 4.1% |

The annual rate of return on investment is only 4.1% compared to a required 8.0% return.

/1 Per PKF Analysis January, 7 2014

(3) Budget Hotel Feasibility

Revenue Forecast

- Per PKF May 2014 update, a 100-room budget hotel on the site will likely achieve slightly less than average market penetration due to distance from demand generators.
- Per PKF, the occupancy rate is projected at 68% in opening year increasing to a stabilized 74% occupancy after 3 years.
- Per PKF the expected room rate will be approximately \$115 at 2016 opening.
- No food and beverage or meeting room services will be provided on site except for pool, laundry and snack bar.
- Per PKF, the development cost will be \$125,000 per room excluding land.

DRAFT

(3) Budget Hotel Feasibility

Stabilized Pro Forma - 2018

| | <u>Total</u> | <u>%</u> |
|--------------------------------|--------------------|------------|
| Annual Revenues /1 | \$3,106,000 | 100% |
| Operating Costs/Reserves /1 | <u>2,174,000</u> | <u>70%</u> |
| Net Operating Income | \$ 932,000 | 30% |
| Development Value (8% cap) | \$11,650,000 | |
| Development Cost (\$125k/room) | <u>12,500,000</u> | |
| Residual Land Value (loss) | \$(850,000) | |

Budget hotel development with no restrictions is infeasible since residual land value is negative.

/1 Per PKF Analysis May 2014 update

DRAFT

(3) Budget Hotel Feasibility

Return on Cost – Stabilized

| | |
|--------------------|-------------|
| Annual Revenues /1 | \$3,106,000 |
|--------------------|-------------|

| | |
|-----------------------------|------------------|
| Operating Costs/Reserves /1 | <u>2,174,000</u> |
|-----------------------------|------------------|

| | |
|----------------------|------------|
| Net Operating Income | \$ 932,000 |
|----------------------|------------|

| | |
|-------------------------|--------------|
| Land Value – Cost Basis | \$ 4,500,000 |
|-------------------------|--------------|

| | |
|--------------------------------|-------------------|
| Development Cost (\$125k/room) | <u>12,500,000</u> |
|--------------------------------|-------------------|

| | |
|------------|---------------|
| Total Cost | \$ 17,000,000 |
|------------|---------------|

| | |
|----------------|------|
| Return on Cost | 5.5% |
|----------------|------|

The annual rate of return on investment is only 5.5% compared to a required 8.0% return, which indicates financial infeasibility.

/1 Per PKF Analysis May 2014 update

IV. Evaluation of Other Visitor Serving Uses

1. RV Park
2. Hostel
3. Commercial Bike / Tent Camping
4. Other Visitor-Serving Uses (Restaurants, Gift Shops)
5. Residential over Commercial (Apts & Condos)
6. Beach Services (Surfboard, Paddleboard, etc.)
7. Marine Services (Boat sales & Repair, Maintenance, Electronics, Brokers, etc.)

Location / Site Requirements

- RV parks are found in any tourist oriented location – providing short-term low cost lodging for families. Beachfront locations are very popular during Spring break and Summer months.
- Minimum site needed is 10 acres – eliminates public open space on the subject site.

Site Specific Strengths / Weaknesses

- Site is directly adjacent to single family homes – does not provide “nature” experience.
- Specific plan does not permit this use – thus requiring expensive entitlement processing.
- Lack of nearby non-water entertainment options for families.

Market Overview

- Surveyed RV park and camping rates throughout southern California. There are a wide range of facilities with direct ocean access and/or park hiking trails and onsite recreational facilities. Daily rates ranged from \$30 to \$60.

Key Assumptions

- Assumed 80-space full service RV Park with recreational facilities.
- Average Summer rate of \$50 and off-season rate of \$40 per night.
- 80% occupancy during summer, 40% during shoulder and 20% in winter.
- Operating costs of \$3,500 per space include 10% franchise/marketing, utilities, management and security, taxes and insurance.
- Per KOA website, development cost estimated at \$2.3 million for site improvements – grading, paving, landscaping, office and recreational facility.

Stabilized Pro Forma

| | <u>Total</u> | <u>%</u> |
|----------------------------|------------------|------------|
| Annual Revenues | \$ 590,000 | 100% |
| Operating Costs | <u>280,000</u> | <u>45%</u> |
| Net Operating Income | \$ 310,000 | 55% |
| Development Value (9% cap) | \$3,400,000 | |
| Development Cost | <u>2,300,000</u> | |
| Residual Land Value | \$1,100,000 | |

Even assuming an RV Park could get entitlements from the City, it is not financially feasible since residual land value is only 20% of the land cost basis of \$4.5 million. In addition there is no land left for open space.

Return on Cost – Stabilized

| | |
|-----------------|------------|
| Annual Revenues | \$ 590,000 |
|-----------------|------------|

| | |
|-----------------|----------------|
| Operating Costs | <u>280,000</u> |
|-----------------|----------------|

| | |
|----------------------|------------|
| Net Operating Income | \$ 310,000 |
|----------------------|------------|

| | |
|-----------------------|-------------|
| Land Value Cost Basis | \$4,500,000 |
|-----------------------|-------------|

| | |
|------------------|------------------|
| Development Cost | <u>2,300,000</u> |
|------------------|------------------|

| | |
|------------------------|-------------|
| Total development Cost | \$6,800,000 |
|------------------------|-------------|

| | |
|----------------|------|
| Return on Cost | 4.5% |
|----------------|------|

The return on cost is only 4.5% as compared to a minimum target of 9%.

Location / Site Requirements

- Hostels are most often located in urban areas within walking distance or in state and regional parks where hiking trails are available.
- Such facilities have multiple beds per room and offer few amenities beyond restrooms and breakfast areas.

Site Specific Strengths / Weaknesses

- Site is located adjacent to major bike trail and Pacific Ocean.
- Site is directly adjacent to single family homes – does not provide “nature” experience.
- Specific plan does not permit this use – thus requiring expensive entitlement processing.

Market Overview

- Surveyed hostel facilities throughout southern California.
- Daily rates ranged from \$25 to \$35 for shared sleeping area.

Key Assumptions

- Assumed 100-bed facility with breakfast facilities – 17,000 square feet total building area.
- Average daily rate of \$30 during summer and offseason rate of \$20.
- 90% occupancy during summer, 50% during shoulder and 30% in winter.
- Operating costs equal to 40% of revenues.
- Development cost estimated at \$200 per square foot including furnishings.

Stabilized Pro Forma

| | <u>Total</u> | <u>%</u> |
|----------------------------|-------------------|------------|
| Annual Revenues | \$ 502,000 | 100% |
| Operating Costs | <u>201,000</u> | <u>40%</u> |
| Net Operating Income | \$ 301,000 | 60% |
| Development Value (9% cap) | \$3,340,000 | |
| Development Cost | <u>3,400,000</u> | |
| Residual Land Value (Loss) | \$(60,000) | |

Hostel is not feasible even in conjunction with other uses since residual land value is negative.

Return on Cost – Stabilized

| | |
|----------------------|----------------|
| Annual Revenues | \$ 502,000 |
| Operating Costs | <u>201,000</u> |
| Net Operating Income | \$ 301,000 |

| | |
|--------------------------|------------------|
| Land Value Cost basis /1 | \$2,250,000 |
| Development Cost | <u>3,400,000</u> |
| Total Development Cost | \$5,650,000 |
| Return on Cost | 5.5% |

The above analysis reveals that the return on cost is only 5.5% vs a 9% target threshold.

/1 Allocated cost at 50% of total cost

Location / Site Requirements

- Tent camps are most often located in state and regional parks where hiking trails are available.
- Such camps require few facilities beyond restrooms and showers.

Site Specific Strengths / Weaknesses

- Site is located adjacent to major bike trail and Pacific Ocean.
- Site is directly adjacent to single family homes – does not provide “nature” experience.
- Specific plan does not permit this use – thus requiring expensive entitlement processing.

Market Overview

- Surveyed camping facilities throughout southern California.
- Daily rates ranged from \$10 to \$30.

Key Assumptions

- Assumed 100-space limited service facility with few recreational facilities on approximately 8 acres.
- Average daily rate of \$25 during summer and offseason rate of \$15.
- Operating costs \$100 per space per month for mgmt., taxes, and insurance.
- 80% occupancy during summer, 40% during shoulder and 20% in winter.
- Development cost estimated at \$250,000 per acre for site improvements – grading, paving, landscaping plus \$500,000 for office and restrooms.

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Tent Campground Feasibility

Stabilized Pro Forma

| | <u>Total</u> | <u>%</u> |
|----------------------------|---------------------|------------|
| Annual Revenues | \$ 330,000 | 100% |
| Operating Costs | <u>120,000</u> | <u>35%</u> |
| Net Operating Income | \$ 210,000 | 65% |
| Development Value (9% cap) | \$2,300,000 | |
| Development Cost | <u>2,500,000</u> | |
| Residual Land Value (Loss) | \$ (200,000) | |

Tent camp, as shown in the above analysis, is not feasible since residual land value is negative.

DRAFT

Tent Campground Feasibility

Return on Cost - Stabilized

| | |
|-----------------|------------|
| Annual Revenues | \$ 330,000 |
|-----------------|------------|

| | |
|-----------------|----------------|
| Operating Costs | <u>120,000</u> |
|-----------------|----------------|

| | |
|----------------------|------------|
| Net Operating Income | \$ 210,000 |
|----------------------|------------|

| | |
|-----------------------------|---------------------------|
| Land Value – Allocated Cost | \$2,250,000 (50% of site) |
|-----------------------------|---------------------------|

| | |
|------------------|------------------|
| Development Cost | <u>2,500,000</u> |
|------------------|------------------|

| | |
|------------------------|-------------|
| Total Development Cost | \$4,750,000 |
|------------------------|-------------|

| | |
|----------------|------|
| Return on Cost | 4.4% |
|----------------|------|

The return on cost, as shown above, is only 4.4% versus a 9% minimum required amount.

Location / Site Requirements

- Retail and restaurants are usually found in high density population areas or on streets with high traffic volume, in conjunction with many complementary retail uses (e.g. “Restaurant Row”) or anchor tenants such as grocery stores or drug stores.
- Isolated specialty restaurants can be located on oceanfront or marina sites – but must provide high quality and be a destination location – i.e. Gladstone’s in Santa Monica.
- Restaurants require substantial parking – typically 6 to 10 spaces per 1,000 square feet of building area.
- Restaurants are high risk businesses with 60% of restaurants closing within the first three years of operation – They also require major capital investment in FF&E and tenant improvements.

Site Specific Strengths / Weaknesses

- Subject site is in an isolated location with secondary street access provided on the far north boundary by Marine Drive. There is a lack of ocean or marina/sailboat views.
- There is major competition with a half dozen neighborhood and community –sized shopping centers within a 1-mile radius (See map following slide).
- Seal Beach community is surrounded by Pacific Ocean, Alamitos Channel, Alamitos Bay and U.S. Naval Weapons station limiting market demand from neighboring communities.
- Demographic and retail spending analysis by ESRI indicates that Seal Beach has significant oversupply of restaurants per capita.
- Specific plan does not permit this use – thus requiring expensive entitlement processing.

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Shopping Areas



Market Overview

- There are over a dozen full service restaurants located within 1-mile of the site and many of them have gone out of business in the past several years. On historic Main Street – there are another dozen small cafes and diners.
- Red Onion restaurant at Peter's Landing went out of business many years ago – and no replacement tenant could be found. In 2012 – the 7,000 sq. ft. restaurant was converted into the Calvary Chapel Church.
- Average rents for inline shops in the Long Beach, Seal Beach and Huntington Beach submarkets have declined by approximately 20% from 2007-08 levels to \$1.75 to \$2.00 per square foot.
- Asking rents for shop space at Seal Beach Center (Pavilions and CVS Drug as anchors) is \$2.25 per square foot.

Key Assumptions

- Assumed approximately 2.5 acres available at intersection of Marina Drive and 1st Street. This would allow approximately 20,000 square feet of restaurant and retail spaces.
- Average rent is projected to be \$2.25 per square foot per month triple net with a 15% vacancy allowance.
- Development cost estimated at \$200,000 per acre for site improvements – grading, paving and utilities plus \$300 psf in direct and indirect construction and leasing costs for new restaurant and retail facility.
- Development value cap rate is estimated at 7.5% of stabilized net operating income.

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Retail/Restaurant Feasibility

Stabilized Pro Forma

| | <u>Total</u> | <u>%</u> |
|------------------------------|--------------------|------------|
| Annual Revenues | \$ 459,000 | 100% |
| Operating Costs/Reserves | <u>40,000</u> | <u>10%</u> |
| Net Operating Income | \$ 419,000 | 90% |
| Development Value (7.5% cap) | \$5,590,000 | |
| Development Cost | <u>6,500,000</u> | |
| Residual Land Value (Loss) | \$(910,000) | |

A 20,000 SF retail center is financially infeasible, as shown above, which yields a negative residual land value.

DRAFT

Retail/Restaurant Feasibility

Return on Cost – Stabilized

Annual Revenues \$ 459,000

Operating Costs/Reserves 40,000

Net Operating Income \$ 419,000

Alloc. Land Cost Basis \$1,100,000 (25% of total site)

Development Cost 6,500,000

Total Development Cost \$7,600,000

Return on Cost 5.5%

As shown above, the return on cost of 5.5% compared falls short of the 7.5% minimum required return.

Key Assumptions

- Assumed approximately 2.5 acres available at intersection of Marina Drive and 1st Street. This would allow approximately 40,000 gross square feet of apartment use over restaurant and retail spaces.
- With 85% efficiency the rentable area is 34,000 square feet.
- Apartment rent is projected to be \$2.25 per square foot per month with a 5% vacancy allowance. Operating costs are estimated at 35% of gross income.
- Construction cost for apartments above retail is estimated at \$250 psf in direct and indirect construction and leasing costs.
- Development value cap rate for apartment component is estimated at 6% of stabilized net operating income.

DRAFT Apartments/Commercial Feasibility

Apartment Stabilized Pro Forma

| | <u>Total</u> | <u>%</u> |
|-----------------------------------|-------------------|------------|
| Annual Revenues | \$ 872,000 | 100% |
| Operating Costs/Reserves | <u>305,000</u> | <u>35%</u> |
| Net Operating Income | \$ 567,000 | 65% |
| Development Value (6% cap) | 9,450,000 | |
| Development Cost | <u>10,000,000</u> | |
| Apt. Residual Land Value (Loss) | \$ (550,000) | |
| Retail Residual Land Value (Loss) | \$(910,000) | |

A mixed-use apartment over retail project is infeasible with total combined negative \$2.5 million residual land value for the 2.5-acre site.

DRAFT Apartments/Commercial Feasibility

Apartment Return on Cost - Stabilized

| | |
|--------------------------|----------------|
| Annual Revenues | \$ 872,000 |
| Operating Costs/Reserves | <u>305,000</u> |
| Net Operating Income | \$ 567,000 |

| | |
|---------------------------|-------------------|
| Land Value Allocated Cost | \$1,100,000 |
| Development Cost | <u>10,000,000</u> |
| Total Development Cost | 11,100,000 |
| Return on Cost | 5.1% |

The apartments built above retail yield a 5.1% return, below the threshold level of 6%.

Key Assumptions

- Assumed approximately 20,000 SF of ground floor retail on 2.5 acres at intersection of Marina Drive and 1st Street. This would allow approximately 40,000 square feet of residential building above the retail – and result in approximately 34,000 square feet of useable area on two levels.
- Based on Dataquick survey for December, the average housing price for Seal Beach is \$500 psf.
- Construction cost for condominiums above retail is estimated at \$300 psf in direct and indirect construction costs.
- Marketing and sales commissions are estimated at 10% of sales price.
- Builder profit for condominiums is a minimum of 10% of sales price.

DRAFT

Condo's/Commercial Feasibility

Condominium Pro Forma

| | <u>Total</u> | <u>%</u> |
|-----------------------------|-----------------------|----------|
| Sales Proceeds | \$17,000,000 | 100% |
| Marketing Costs | – (1,700,000) | 10% |
| Builder Profit @ 10% | <u>\$ (1,700,000)</u> | 10% |
| Net Proceeds | \$13,600,000 | 80% |
| Development Cost @\$300 psf | <u>(12,000,000)</u> | |
| Condo Residual Land Value | \$1,600,000 | |
| Retail Residual Land Value | <u>\$ (900,000)</u> | |
| Combined Value Added | \$ 700,000 | |

A 2.5-acre condo over retail project is infeasible given a residual land value substantially less than the cost of providing 7-8 acres of open space.

Location / Site Requirements

- Beach services such boat rentals, kayak rentals, paddleboard and surfboard rentals are found on prime beachfront locations, near high density public parking areas such as piers or main street commercial districts.
- Beach services require very little land area and are highly seasonal businesses .
- Marine services such as boat/engine repair and maintenance and yacht sales need to be located near marinas and boat storage facilities and require 1-2 acres.

Site Specific Strengths/Weaknesses

- Site is located at least 100 yards from ocean mean tide line, since beach sand is at its widest point along the entire shoreline.
- Public parking lot, which is located between the subject site and the beach has only a few dozen parking spaces – major beach services are located ¼ mile east near the Seal Beach pier.
- Western boundary is restricted by San Gabriel bike path and the San Gabriel River Channel – so no direct access to water.
- Northern boundary of the site – Marine Drive connects to Alamitos Bay, where there are many marine service businesses.
- Site is too large for such uses – would require only 2-3 acres at most.
- Specific plan does not permit this use – thus requiring entitlement processing.

Market Overview

- There are a dozen bike, boat, kayak, paddleboard rental shops within 5 miles of the site.
- Marine service facilities operate similar to retail stores and/or auto repair shops. Market rents for marine repair shops are typically similar to light industrial rents. There are several facilities located near Alamitos Bay along Marina Drive.
- Yacht brokerage is typically found in retail centers near marinas, where boats can be stored.
- Beach services have low capital investment in FF&E and tenant improvements. May operate out of temporary facilities.

Key Assumptions

- Assumed approximately 2 acres available at intersection of Marina Drive and 1st Street. This would allow approximately 12,000 square feet of boat repair and maintenance facility.
- Average rent is projected to be \$1.50 per square foot per month triple net.
- Development cost estimated at \$200,000 per acre for site improvements – grading, paving and landscaping plus \$200 psf in direct and indirect construction and leasing costs.
- Development value cap rate is estimated at 7% of stabilized net operating income.

DRAFT

Marine Service Feasibility

Stabilized Pro Forma

| | <u>Total</u> | <u>%</u> |
|----------------------------|------------------|-----------|
| Annual Revenues | \$ 216,000 | 100% |
| Operating Costs/Reserves | <u>10,000</u> | <u>5%</u> |
| Net Operating Income | \$ 206,000 | 95% |
| Development Value (7% cap) | \$2,900,000 | |
| Development Cost | <u>2,800,000</u> | |
| Residual Land Value | \$ 100,000 | |

A 2-acre marine service facility is infeasible given that the residual land value is insufficient to pay for the cost of the remaining 8-acre open space improvements.

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Marine Service Feasibility

Return on Cost – Stabilized

Annual Revenues \$ 216,000

Operating Costs/Reserves 10,000

Net Operating Income \$ 206,000

Land Value – Allocated Cost \$1,100,000

Development Cost 2,800,000

Total Development Cost \$3,900,000

Return on Cost 5.3%

A marine service facility yields a rate of return of 5.3%, below threshold level of 7%.

- Given the isolated location near the San Gabriel River, the subject site's walking distance from the ocean and the seasonality of equipment rentals, beach services is not a suitable use – generating insufficient income to justify development.

Proposed Seal Beach Hotel Land Use Analysis

PKF Consulting, USA
January 2014

Assumptions for the Development Scenario

- The subject will be located on the southern parcel of the subject site northwest of the 1st Street and Ocean Avenue intersection;
- The subject in this scenario does not adhere to existing height, zoning, or easement restrictions;
- The subject will be a high quality hotel positioned and marketed as an upscale, resort hotel;
- The subject will contain 150 rooms in a seven story structure;
- The subject will contain a three-meal restaurant and offer meeting and event space;
- The subject will offer 320 parking spaces on a surface parking lot;
- The subject will offer facilities and amenities consistent with its respective quality level; and,
- The proposed hotel project will open on January 1, 2016.

Proposed Seal Beach Hotel Hotel Facilities Programming

Based on our site analysis, we recommend the proposed hotel be positioned as a ***resort style hotel*** with the following facilities and amenities:

- 150 room hotel in a seven-story structure;
- Gross building area of approximately 135,000 square feet;
- 150 guestrooms including 15 suites;
 - Average room size: 390 SF
 - Average suite size: 600 SF
- 1,800 SF lobby;
- 2,700 SF restaurant/lounge;
- 600 SF coffee bar/sundry store;
- 9,000 SF of banquet and meeting space, plus 2,700 SF of pre-function space;
- 3,000 SF spa/fitness center;
- Outdoor pool, pool deck, and Jacuzzi;
- Surface parking lot containing 320 spaces; and,
- Rooftop deck/lounge.

Proposed Seal Beach Hotel Competitive Market

- The subject's competitive set was selected based on each property's location, number of guestrooms, size of meeting space, facilities, amenities, room rate structure, and market orientation.
- Though there are a number of additional properties in the Cities of Seal Beach and Long Beach, they have not been included for a number of reasons, including market positioning, location, and rate structure. We have also not included resort hotels in Huntington Beach and further south for the same reasons.

| Competitive Supply | | |
|--|-----------------------------------|-----------------|
| | Property | Number of Rooms |
| <i>Subject</i> | <i>Proposed Subject Hotel</i> | <i>150</i> |
| 1 | Pacific Inn | 71 |
| 2 | Ayres Hotel Seal Beach | 112 |
| 3 | Hampton Inn & Suites Seal Beach | 110 |
| 4 | Marriott Long Beach Airport | 311 |
| 5 | Holiday Inn Long Beach Airport | 222 |
| 6 | Residence Inn Long Beach Airport | 216 |
| 7 | Courtyard Long Beach Douglas Park | 159 |
| Total Competitive Supply (not including subject) | | 1,201 |
| Source: <i>PKF Consulting</i> | | |

Historical Market Performance of the Competitive Supply

| Historical Market Performance of the Competitive Supply | | | | | | | | | |
|---|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|---------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2008 | 377,045 | N/A | 282,651 | N/A | 75.0% | \$130.20 | N/A | \$97.61 | N/A |
| 2009 | 380,330 | 0.9% | 252,743 | -10.6% | 66.5% | 119.35 | -8.3% | 79.31 | -18.7% |
| 2010 | 380,330 | 0.0% | 260,399 | 3.0% | 68.5% | 119.03 | -0.3% | 81.49 | 2.7% |
| 2011 | 380,330 | 0.0% | 273,849 | 5.2% | 72.0% | 119.74 | 0.6% | 86.21 | 5.8% |
| 2012 | 380,330 | 0.0% | 298,244 | 8.9% | 78.4% | 122.15 | 2.0% | 95.78 | 11.1% |
| CAAG | 0.2% | | 1.4% | | | -1.6% | | -0.5% | |
| YTD 11/12 | 348,575 | N/A | 266,858 | N/A | 76.6% | \$122.70 | N/A | \$93.93 | N/A |
| YTD 11/13 | 391,645 | 12.4% | 281,835 | 5.6% | 72.0% | 125.01 | 1.9% | 89.96 | -4.2% |

Source: PKF Consulting USA

- Supply within the competitive set during the preceding five years has grown by a compound average annual growth rate of 0.2 percent as a result of the 110-room Hampton Inn & Suites in Seal Beach opening in 2008.
- During the same five-year period, demand as measured in occupied room nights, increased at a compound annual growth rate (CAAG) of 1.4 percent. Prior to the economic downturn in 2009, the market maintained occupancy levels in the mid to high 70 percentile range.
- The market finished 2012 at an occupancy of 78.4 percent, reaching a historical high in the five year period.
- Between 2008 and 2012, average daily rate (ADR) decreased an average of 1.6 percent annually, mainly attributed to the decreases experienced in 2009 and 2010.
- ADR has experienced two years of consecutive growth; however, it has not yet surpassed levels reached in 2008.
- Year to date through November, supply growth outpaced demand growth by 12.5 percent and 5.6 percent, respectively. Based on year to date performance of the competitive market, we estimate that 2013 ended at an occupancy of 73 percent and an ADR of \$125.00.

Projected Market Performance of the Competitive Supply

| Projected Market Performance of the Competitive Supply | | | | | | | | | |
|--|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|---------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2013 | 427,235 | 12.3% | 311,700 | 4.5% | 73% | \$125.00 | 2.3% | \$91.20 | -4.8% |
| 2014 | 438,365 | 2.6% | 321,100 | 3.0% | 73% | 129.00 | 3.2% | 94.49 | 3.6% |
| 2015 | 438,365 | 0.0% | 328,800 | 2.4% | 75% | 133.00 | 3.1% | 99.76 | 5.6% |
| 2016 | 493,115 | 12.5% | 357,500 | 8.7% | 72% | 140.00 | 5.3% | 101.50 | 1.7% |
| 2017 | 493,115 | 0.0% | 368,300 | 3.0% | 75% | 144.00 | 2.9% | 107.55 | 6.0% |
| 2018 | 493,115 | 0.0% | 369,800 | 0.4% | 75% | 148.00 | 2.8% | 110.99 | 3.2% |
| 2019 | 493,115 | 0.0% | 369,800 | 0.0% | 75% | 152.00 | 2.7% | 113.99 | 2.7% |
| 2020 | 493,115 | 0.0% | 369,800 | 0.0% | 75% | 157.00 | 3.3% | 117.74 | 3.3% |
| CAAG | 2.1% | | 2.5% | | | 3.3% | | 3.7% | |

Source: PKF Consulting USA

- We estimate that market occupancy decreased to 73 percent in 2013 with the introduction of the Courtyard and that it will remain at this level in 2014 with the annualized rooms entering the market.
- We estimate occupancy will increase to 75 percent in 2015, followed by a decrease in 2016 to 72 percent with the introduction of the subject to the market.
- As the market absorbs the new supply, we project that market occupancy will return to 75 percent in 2017 and stabilize at this level of occupancy for the remainder of the projection period.
- While the market may fluctuate above and below this number, an occupancy rate of 75 percent is appropriate for this particular market considering the supply and demand patterns, seasonality, and mix of business within the competitive market.

Projected Market Performance of the Subject Hotel

| Projected Market Performance of the Subject Hotel | | | | | | | | | | | |
|---|---------------|----------------|----------------|----------------|----------------------|--------------------|----------------|----------|----------------|--------------------|---------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Occupancy Percentage | Average Daily Rate | Percent Change | REVPAR | Percent Change | Market Penetration | Revenue Yield |
| 2016 | 54,750 | N/A | 34,100 | N/A | 62% | \$164.00 | 3.0% | \$102.14 | N/A | 86% | 101% |
| 2017 | 54,750 | 0.0% | 36,900 | 8.2% | 67% | 169.00 | 3.0% | 113.90 | 11.5% | 90% | 106% |
| 2018 | 54,750 | 0.0% | 38,100 | 3.3% | 70% | 174.00 | 3.0% | 121.08 | 6.3% | 93% | 109% |
| 2019 | 54,750 | 0.0% | 38,100 | 0.0% | 70% | 179.00 | 3.0% | 124.56 | 2.9% | 93% | 109% |
| 2020 | 54,750 | 0.0% | 38,100 | 0.0% | 70% | 184.00 | 3.0% | 128.04 | 2.8% | 93% | 109% |
| CAAG | 0.0% | | 2.8% | | | 2.9% | | 5.8% | | | |

Source: PKF Consulting USA

- Demand for the subject hotel will be generated by commercial, leisure, and group demand segments.
- Based on the subject property's anticipated positioning in the competitive market, it is estimated that the subject property will achieve below its fair share of demand on a stabilized basis due to its distance from major demand generators. While the hotel would be located proximate to the ocean, as a beachfront site it is limited by the adjacent maintenance yard and actual distance from the water.
- Upon opening, the subject property is estimated to achieve below its fair share of market demand, with its penetration rate estimated at 86 percent, reflecting an occupancy level of 62 percent during its first year of operation.
- The subject property's penetration rate is expected to increase to 90 percent in 2017 and 93 percent, reaching its stabilized level of occupancy of 70 percent by its third year of operation.
- The subject is anticipated to be a high quality, attractive hotel and offer inviting and desirable facilities and amenities; therefore, it is estimated that the subject will achieve an opening average daily rate of \$164.00 in 2016 dollars, equal to an average daily room rate of \$155.00, stated in 2014 dollars, which would position it as the highest rated property in the competitive market.
- This rate is expected to increase at a compound average annual rate of 3.0 percent throughout the projection period.

Statement of Estimated Annual Operating Results

| Summary of Estimated Annual Operating Results | | | |
|---|---------------|----------------------|-------------------------|
| Year | Total Revenue | Net Operating Income | Ratio to Total Revenues |
| 2016 | \$10,790,000 | \$1,287,000 | 12% |
| 2017 | 12,011,000 | 1,755,000 | 15% |
| 2018 | 12,925,000 | 2,019,000 | 16% |
| 2019 | 13,304,000 | 2,075,000 | 16% |
| 2020 | 13,689,000 | 2,125,000 | 16% |
| 2021 | 14,119,000 | 2,211,000 | 16% |
| 2022 | 14,554,000 | 2,291,000 | 16% |
| 2023 | 14,994,000 | 2,365,000 | 16% |
| 2024 | 15,442,000 | 2,437,000 | 16% |
| 2025 | 15,896,000 | 2,505,000 | 16% |

- To prepare estimates of future operating results for the proposed subject as of January 1, 2016, the starting point or basis is the best estimate of results that could be achieved with good management in a representative year or stabilized market, calculated in 2014 dollars.
- The estimates of revenues, costs and expenses are based on the proposed facilities and services and the operational characteristics thereof. The basis for these projections is the operating results of lodging properties with similar characteristics that are believed to operate with efficient management and proper control over costs and expenses.
- To portray price level changes during the holding period, an inflation rate of 3.0 percent is assumed throughout the projection period. This rate reflects the consensus of several well-recognized economists for the current long-term outlook for the future movement of prices and is consistent with historical inflation rates. All expenses, save for property taxes, are projected to increase at 3.0 percent throughout the holding period. Property taxes are assumed to inflate at 2.0 percent annually in accordance with California's Proposition 13.

Statement of Estimated Annual Operating Results

| | | | | | | |
|---|-------------------------------|---------------|--------------------|---------------|--------------------|---------------|
| Proposed Seal Beach Hotel Projected Operating Results Calendar Years | | | | | | |
| | 2016 | | 2017 | | 2018 | |
| Number of Units: | 150 | | 150 | | 150 | |
| Number of Annual Rooms Available: | 54,750 | | 54,750 | | 54,750 | |
| Number of Rooms Occupied: | 33,950 | | 36,680 | | 38,330 | |
| Annual Occupancy: | 62.0% | | 67.0% | | 70.0% | |
| Average Daily Rate: | \$164.00 | | \$169.00 | | \$174.00 | |
| Revenue Per Available Room: | \$101.68 | | \$113.23 | | \$121.80 | |
| | Amount | Ratio | Amount | Ratio | Amount | Ratio |
| Revenues | | | | | | |
| Rooms | \$5,568,000 | 51.6% | \$6,199,000 | 51.6% | \$6,669,000 | 51.6% |
| Food & Beverage | 4,322,000 | 40.1% | 4,810,000 | 40.0% | 5,177,000 | 40.1% |
| Other Operated Departments | 900,000 | 8.3% | 1,002,000 | 8.3% | 1,079,000 | 8.3% |
| Total Revenues | 10,790,000 | 100.0% | 12,011,000 | 100.0% | 12,925,000 | 100.0% |
| | | | | | | |
| Departmental Expenses | | | | | | |
| Rooms | 1,725,000 | 31.0% | 1,844,000 | 29.7% | 1,941,000 | 29.1% |
| Food & Beverage | 3,636,000 | 84.1% | 3,917,000 | 81.4% | 4,141,000 | 80.0% |
| Other Operated Departments | 675,000 | 75.0% | 752,000 | 75.0% | 809,000 | 75.0% |
| Total Departmental Expenses | 6,036,000 | 55.9% | 6,513,000 | 54.2% | 6,891,000 | 53.3% |
| Departmental Profit | 4,754,000 | 44.1% | 5,498,000 | 45.8% | 6,034,000 | 46.7% |
| | | | | | | |
| Undistributed Expenses | | | | | | |
| Administrative & General | 1,082,000 | 10.0% | 1,115,000 | 9.3% | 1,148,000 | 8.9% |
| Marketing | 796,000 | 7.4% | 820,000 | 6.8% | 844,000 | 6.5% |
| Property Operation and Maintenance | 430,000 | 4.0% | 443,000 | 3.7% | 456,000 | 3.5% |
| Utility Costs | 318,000 | 2.9% | 328,000 | 2.7% | 338,000 | 2.6% |
| Total Undistributed Operating Expenses | 2,626,000 | 24.3% | 2,706,000 | 22.5% | 2,786,000 | 21.6% |
| Gross Operating Profit | 2,128,000 | 19.7% | 2,792,000 | 23.2% | 3,248,000 | 25.1% |
| Base Management Fee | 324,000 | 3.0% | 360,000 | 3.0% | 388,000 | 3.0% |
| | | | | | | |
| Fixed Expenses | | | | | | |
| Property Taxes | 237,000 | 2.2% | 251,000 | 2.1% | 256,000 | 2.0% |
| Insurance | 64,000 | 0.6% | 66,000 | 0.5% | 68,000 | 0.5% |
| Total Fixed Expenses | 301,000 | 2.8% | 317,000 | 2.6% | 324,000 | 2.5% |
| Net Operating Income Before Reserve | 1,503,000 | 13.9% | 2,115,000 | 17.6% | 2,536,000 | 19.6% |
| FF&E Reserve | 216,000 | 2.0% | 360,000 | 3.0% | 517,000 | 4.0% |
| Net Operating Income After Reserve | \$1,287,000 | 11.9% | \$1,755,000 | 14.6% | \$2,019,000 | 15.6% |
| Source: PKF Consulting | Full Year of Operation | | | | | |

Statement of Estimated Annual Operating Results

Proposed Seal Beach Hotel
Projected Operating Results
Calendar Years

| | 2021 | | 2022 | | 2023 | | 2024 | | 2025 | |
|---|--------------------|---------------|--------------------|---------------|--------------------|---------------|--------------------|---------------|--------------------|---------------|
| Number of Units: | 150 | | 150 | | 150 | | 150 | | 150 | |
| Number of Annual Rooms Available: | 54,750 | | 54,750 | | 54,750 | | 54,750 | | 54,750 | |
| Number of Rooms Occupied: | 38,330 | | 38,330 | | 38,330 | | 38,330 | | 38,330 | |
| Annual Occupancy: | 70.0% | | 70.0% | | 70.0% | | 70.0% | | 70.0% | |
| Average Daily Rate: | \$190.00 | | \$196.00 | | \$202.00 | | \$208.00 | | \$214.00 | |
| Revenue Per Available Room: | \$133.00 | | \$137.20 | | \$141.40 | | \$145.60 | | \$149.80 | |
| | Amount | Ratio | Amount | Ratio | Amount | Ratio | Amount | Ratio | Amount | Ratio |
| Revenues | | | | | | | | | | |
| Rooms | \$7,283,000 | 51.6% | \$7,513,000 | 51.6% | \$7,743,000 | 51.6% | \$7,973,000 | 51.6% | \$8,203,000 | 51.6% |
| Food & Beverage | 5,657,000 | 40.1% | 5,827,000 | 40.0% | 6,001,000 | 40.0% | 6,181,000 | 40.0% | 6,367,000 | 40.1% |
| Other Operated Departments | 1,179,000 | 8.4% | 1,214,000 | 8.3% | 1,250,000 | 8.3% | 1,288,000 | 8.3% | 1,326,000 | 8.3% |
| Total Revenues | 14,119,000 | 100.0% | 14,554,000 | 100.0% | 14,994,000 | 100.0% | 15,442,000 | 100.0% | 15,896,000 | 100.0% |
| Departmental Expenses | | | | | | | | | | |
| Rooms | 2,121,000 | 29.1% | 2,185,000 | 29.1% | 2,250,000 | 29.1% | 2,318,000 | 29.1% | 2,387,000 | 29.1% |
| Food & Beverage | 4,525,000 | 80.0% | 4,661,000 | 80.0% | 4,801,000 | 80.0% | 4,945,000 | 80.0% | 5,093,000 | 80.0% |
| Other Operated Departments | 884,000 | 75.0% | 910,000 | 75.0% | 938,000 | 75.0% | 966,000 | 75.0% | 995,000 | 75.0% |
| Total Departmental Expenses | 7,530,000 | 53.3% | 7,756,000 | 53.3% | 7,989,000 | 53.3% | 8,229,000 | 53.3% | 8,475,000 | 53.3% |
| Departmental Profit | 6,589,000 | 46.7% | 6,798,000 | 46.7% | 7,005,000 | 46.7% | 7,213,000 | 46.7% | 7,421,000 | 46.7% |
| Undistributed Expenses | | | | | | | | | | |
| Administrative & General | 1,254,000 | 8.9% | 1,292,000 | 8.9% | 1,331,000 | 8.9% | 1,371,000 | 8.9% | 1,412,000 | 8.9% |
| Marketing | 922,000 | 6.5% | 950,000 | 6.5% | 979,000 | 6.5% | 1,008,000 | 6.5% | 1,038,000 | 6.5% |
| Property Operation and Maintenance | 498,000 | 3.5% | 513,000 | 3.5% | 528,000 | 3.5% | 544,000 | 3.5% | 561,000 | 3.5% |
| Utility Costs | 369,000 | 2.6% | 380,000 | 2.6% | 391,000 | 2.6% | 403,000 | 2.6% | 415,000 | 2.6% |
| Total Undistributed Operating Expenses | 3,043,000 | 21.6% | 3,135,000 | 21.5% | 3,229,000 | 21.5% | 3,326,000 | 21.5% | 3,426,000 | 21.6% |
| Gross Operating Profit | 3,546,000 | 25.1% | 3,663,000 | 25.2% | 3,776,000 | 25.2% | 3,887,000 | 25.2% | 3,995,000 | 25.1% |
| Base Management Fee | 424,000 | 3.0% | 437,000 | 3.0% | 450,000 | 3.0% | 463,000 | 3.0% | 477,000 | 3.0% |
| Fixed Expenses | | | | | | | | | | |
| Property Taxes | 272,000 | 1.9% | 277,000 | 1.9% | 283,000 | 1.9% | 288,000 | 1.9% | 294,000 | 1.8% |
| Insurance | 74,000 | 0.5% | 76,000 | 0.5% | 78,000 | 0.5% | 81,000 | 0.5% | 83,000 | 0.5% |
| Total Fixed Expenses | 346,000 | 2.5% | 353,000 | 2.4% | 361,000 | 2.4% | 369,000 | 2.4% | 377,000 | 2.4% |
| Net Operating Income Before Reserve | 2,776,000 | 19.7% | 2,873,000 | 19.7% | 2,965,000 | 19.8% | 3,055,000 | 19.8% | 3,141,000 | 19.8% |
| FF&E Reserve | 565,000 | 4.0% | 582,000 | 4.0% | 600,000 | 4.0% | 618,000 | 4.0% | 636,000 | 4.0% |
| Net Operating Income After Reserve | \$2,211,000 | 15.7% | \$2,291,000 | 15.7% | \$2,365,000 | 15.8% | \$2,437,000 | 15.8% | \$2,505,000 | 15.8% |

Source: PKF Consulting

Hotel Feasibility

- A construction budget for the proposed subject property was prepared by Bay City Partners based on the aforementioned recommended facilities and amenities. The following table presents a summary of the estimated development costs for the proposed Seal Beach hotel on the southern parcel of the subject site. It should be noted that the total construction budget is not inclusive of land costs.

| Proposed Seal Beach Hotel Developer's Construction Budget | |
|--|---------------------|
| | Totals |
| Hotel | \$33,750,000 |
| FF&E | 7,500,000 |
| Exterior Pool/Jacuzzi | 350,000 |
| Parking Lot | 1,750,000 |
| Landscape/Hardscape | 940,000 |
| Soft Costs | 15,501,500 |
| TOTAL (Rounded) | \$59,791,500 |
| Cost per Room (Rounded) | \$398,600 |

- As a test of reasonableness, these opinions were evaluated in conjunction with in-house data and national cost estimates. Based upon our analysis of the development costs provided by the Marshall & Swift Marshall Valuation Service and persons active in hotel development, we believe that the development budget cost is reflective of the cost it would take to finish the project.
- Financial feasibility is based on whether a proposed project will attain a cash flow of sufficient quantity, quality, and duration to allow investors to recover the capital invested and achieve the necessary and expected rate of return.
- Based on our analysis of projected occupancy and rate levels, the total costs of hotel construction, and current capitalization rates, it is our opinion that the development of a hotel property on the subject site would not be feasible at the present time.

Budget Hotel Scenario — Assumptions

- The subject will contain 100 rooms;
- The subject will be of average quality and positioned and marketed as a budget hotel;
- The subject will offer surface parking;
- The subject will offer facilities and amenities consistent with its respective quality level; and,
- The proposed hotel project will open on January 1, 2016.

Budget Hotel Scenario — Proposed Seal Beach Hotel Competitive Market

- The subject's competitive set was selected based on each property's location, number of guestrooms, size of meeting space, facilities, amenities, room rate structure, and market orientation.
- Though there are a number of additional properties in the Cities of Seal Beach, Long Beach, and Huntington Beach, they have not been included for a number of reasons, including market positioning, location, and rate structure.

| Competitive Supply | | |
|---|---|-------------------|
| | Property | Number of Rooms |
| <i>Subject</i> | <i>Proposed Subject Hotel</i> | <i>100</i> |
| 1 | Pacific Inn | 71 |
| 2 | Ayres Hotel Seal Beach | 112 |
| 3 | Hampton Inn & Suites Seal Beach | 110 |
| 4 | Hotel Current (formerly Guest House) | 99 |
| 5 | Motel 6 Long Beach | 42 |
| 6 | Extended Stay America OC/Huntington Beach | 104 |
| Total Competitive Supply (not including subject) | | 538 |
| Source: <i>PKF Consulting</i> | | |

Budget Hotel Scenario — Historical Market Performance of the Competitive Supply

| Historical Market Performance of the Competitive Supply | | | | | | | | | |
|---|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|---------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2008 | 209,145 | N/A | 158,055 | N/A | 75.6% | \$92.46 | N/A | \$69.87 | N/A |
| 2009 | 212,430 | 1.6% | 152,970 | -3.2% | 72.0% | 89.09 | -3.6% | 64.15 | -8.2% |
| 2010 | 212,430 | 0.0% | 159,691 | 4.4% | 75.2% | 89.06 | 0.0% | 66.95 | 4.4% |
| 2011 | 212,430 | 0.0% | 164,258 | 2.9% | 77.3% | 92.01 | 3.3% | 71.14 | 6.3% |
| 2012 | 208,050 | -2.1% | 164,822 | 0.3% | 79.2% | 96.17 | 4.5% | 76.19 | 7.1% |
| CAAG | -0.1% | | 1.1% | | | 1.0% | | 2.2% | |
| YTD 11/12 | 190,895 | N/A | 151,975 | N/A | 79.6% | \$96.18 | N/A | \$76.57 | N/A |
| YTD 11/13 | 179,945 | -5.7% | 140,271 | -7.7% | 78.0% | 100.25 | 4.2% | 78.14 | 2.1% |

Source: PKF Consulting USA

- Supply within the competitive set during the preceding five years has decreased at a compound average annual rate of 0.1 percent as a result of the 143-room Hotel Current reducing its room count to 99.
- During the same five-year period, demand as measured in occupied room nights, increased at a compound annual growth rate (CAAG) of 1.1 percent. During this time, the market maintained occupancy levels in the mid to high 70 percentile range.
- The market finished 2012 at an occupancy of 79.2 percent, reaching a historical high in the five year period.
- Between 2008 and 2012, average daily rate (ADR) increased an average of 1.0 percent annually.
- ADR remained flat in 2010 followed by two years of consecutive growth, ending 2012 at an ADR of \$96.17.
- Year to date through November, annual rooms supply and occupied room nights experienced declines of 5.7 percent and 7.7 percent, respectively. Based on year to date performance of the competitive market, we estimate that 2013 ended at an occupancy of 78 percent and an ADR of \$101.00.

Budget Hotel Scenario — Projected Market Performance of the Competitive Supply

| Projected Market Performance of the Competitive Supply | | | | | | | | | |
|--|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|---------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2013 | 196,370 | -5.6% | 153,200 | -7.1% | 78% | \$101.00 | 5.0% | \$78.80 | 3.4% |
| 2014 | 196,370 | 0.0% | 149,200 | -2.6% | 76% | 104.00 | 3.0% | 79.02 | 0.3% |
| 2015 | 196,370 | 0.0% | 149,200 | 0.0% | 76% | 107.00 | 2.9% | 81.30 | 2.9% |
| 2016 | 232,870 | 18.6% | 176,900 | 18.6% | 76% | 111.00 | 3.7% | 84.32 | 3.7% |
| 2017 | 232,870 | 0.0% | 176,900 | 0.0% | 76% | 115.00 | 3.6% | 87.36 | 3.6% |
| 2018 | 232,870 | 0.0% | 176,900 | 0.0% | 76% | 118.00 | 2.6% | 89.64 | 2.6% |
| 2019 | 232,870 | 0.0% | 176,900 | 0.0% | 76% | 122.00 | 3.4% | 92.68 | 3.4% |
| 2020 | 232,870 | 0.0% | 176,900 | 0.0% | 76% | 125.00 | 2.5% | 94.96 | 2.5% |
| CAAG | 2.5% | | 2.1% | | | 3.1% | | 2.7% | |

Source: PKF Consulting USA

- Rooms supply in the competitive market decreased by 5.6 percent in 2013 due to the closure of 44 rooms at Hotel Current.
- We estimate that market occupancy decreased to 78 percent in 2013.
- Market occupancy is projected to decrease to 76 percent in 2014 and stabilize at this level of occupancy for the remainder of the projection period.
- While the market may fluctuate above and below this number, an occupancy rate of 76percent is appropriate for this particular market considering the supply and demand patterns, seasonality, and mix of business within the competitive market.

Budget Hotel Scenario — Projected Market Performance of the Subject Hotel

Projected Market Performance of the Subject Hotel

| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Occupancy Percentage | Average Daily Rate | Percent Change | REVPAR | Percent Change | Market Penetration | Revenue Yield |
|------|---------------|----------------|----------------|----------------|----------------------|--------------------|----------------|--------|----------------|--------------------|---------------|
| 2016 | 36,500 | N/A | 24,700 | N/A | 68% | 115.00 | 3.0% | 77.82 | N/A | 89% | 92% |
| 2017 | 36,500 | 0.0% | 25,600 | 3.6% | 70% | 118.00 | 3.0% | 82.76 | 6.3% | 92% | 95% |
| 2018 | 36,500 | 0.0% | 27,100 | 5.9% | 74% | 122.00 | 3.0% | 90.58 | 9.4% | 98% | 101% |
| 2019 | 36,500 | 0.0% | 27,100 | 0.0% | 74% | 125.00 | 3.0% | 92.81 | 2.5% | 98% | 100% |
| 2020 | 36,500 | 0.0% | 27,100 | 0.0% | 74% | 129.00 | 3.0% | 95.78 | 3.2% | 98% | 101% |
| CAAG | 0.0% | | 2.3% | | | 2.9% | | 5.3% | | | |

Source: PKF Consulting USA

- Demand for the subject hotel will be generated by commercial, leisure, and group demand segments.
- Based on the subject property's anticipated positioning in the competitive market, it is estimated that the subject property will achieve below its fair share of demand on a stabilized basis due to its distance from major demand generators and lack of desirable facilities and amenities.
- Upon opening, the subject property is estimated to achieve below its fair share of market demand, with its penetration rate estimated at 89 percent, reflecting an occupancy level of 68 percent during its first year of operation.
- The subject property's penetration rate is expected to increase to 92 percent in 2017 and 98 percent in 2018, reaching its stabilized level of occupancy of 74 percent by its third year of operation.
- It is estimated that the subject will achieve an opening average daily rate of \$115.00 in 2016 dollars, equal to an average daily room rate of \$108.00, stated in 2014 dollars.
- This positions the subject below the branded, limited-service properties and above the other budget hotels in the competitive set.
- This rate is expected to increase at a compound average annual rate of 3.0 percent throughout the projection period.

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



June 13, 2014

Edward Selich
627 Bayside Drive
Newport Beach, CA 92660

RE: NOTICE OF INCOMPLETE APPLICATION

Bay City Partners, City of Seal Beach & Marina Beach House; Applicants
Southwest Corner of First Street and Marina Drive, Seal Beach, (Orange County);
Location
Coastal Development Permit Application No. 5-13-1233

Dear Mr. Selich,

On May 8, 2014 Commission staff sent you an incomplete letter (a copy of that letter has been included with this letter) for CDP No. 5-13-1233. The application under consideration is for a Coastal Development Permit for the subdivision of a 10.9 acre former power plant (DWP) site into two parcels; creation of a passive open space park master plan for the 6.4 acre remainder parcel and construction of a thirty-two (32) lot residential development on the 4.5 acre parcel. The development also includes lot line adjustment, street vacation and residential infrastructure. On May 15, 2014 and May 19, 2014, Commission staff received information from you in response to that incomplete letter. Thank you for submitting the information in response to the letter dated May 8, 2014. We have reviewed the submitted information. However, some of the information that staff requested has not been submitted. Commission staff has reviewed your application and determined that the submission remains incomplete pending the information requested in the letter dated May 8, 2014, as well as clarification requested herein.

1. Commission staff previously requested that you provide an approved land exchange agreement or other written determination from the State Lands Commission (SLC) that concludes the Public Trust Easement no longer exists on the portion of the site where residential uses are proposed. You state that you have reached an agreement with the SLC on the exchange agreement and that the SLC is requesting that the Coastal Commission act on the project prior to the SLC acting on the exchange agreement. As of today, your current project still consists of a residential component located within land subject to the public trust. Therefore, Commission staff again requests that you provide an approved land exchange agreement or other written determination from the SLC that concludes the Public Trust Easement no longer exists on the portion of the site where residential uses are proposed.
2. Commission staff previously requested the "rate of return" analysis for your previously proposed alternative site uses and for your current proposal that you had agreed to provide after our meeting on April 23, 2014. In response, you state that you would no longer be providing the "rate of return" for your current proposal since you believe that it

is of no meaningful benefit since all land use scenarios containing visitor serving uses that were analyzed were not feasible. Thank you for your response. However, Commissions staff still requests that information since it will help us compare and analyze the "rate of return" of the previously proposed alternative site uses versus your current proposal. It will assist us in understanding how the different types of uses would perform on site.

You have submitted reduced copies of Page 5A (Existing and Proposed Year Round & Seasonal Commercial Visitor Serving Uses). However, 11' x 17 size copies have not been submitted. Thus, please provide two (2) 11' x 17 size copies Page 5A (Existing and Proposed Year Round & Seasonal Commercial Visitor Serving Uses).

On April 23, 2014 Commission staff met with you, Susan McCabe, Jim Basham of the City of Seal Beach & a Kosmont Company representative and there was a discussion of hotel use being desired at the project site. We stated that if a hotel use is not appropriate for this location, where in the City would such a use be provided and secured by designating the site as visitor-serving commercial given the fact that existing visitor-serving commercial uses are currently located on designated general commercial sites. Please provide that information. Additionally at this meeting, you agreed to provide the supporting background information for Scenario C Budget Hotel. Please provide that information.

Commission staff previously requested how you would plan to mitigate loss of potential visitor-serving commercial, including overnight accommodation use. In response, you state that that mitigation is visitor-serving open space area. The provision of visitor-serving open space area does not mitigate the loss of overnight accommodations as would be provided if the site was developed with a hotel use that historically was desired onsite. Please provide your mitigation proposal for the loss of this potential use. In the past, the Commission has accepted an in-lieu fee where provision of these overnight accommodations were not provided onsite.

Please do not limit your submittal to the mentioned items. You may submit any information, which you feel, may help Commission staff gain a clear understanding of the scope of your project. Upon receipt of the requested materials, we will proceed with determining the completeness of your application. Please be aware that additional questions may be raised after review of the information requested.

Thank you for your attention to these matters. We look forward to working with you. If you have any questions, you may contact me at (562) 590-5071.

Sincerely,

[Original signed by]
Fernie Sy
Coastal Program Analyst II

Attachment: Commission staff response dated May 8, 2014

Bay City Partners

2999 Westminster Avenue, Suite 211
Seal Beach, California 90740

562-594-6715

Ms Teresa Henry
District Director
California Coastal Commission
200 OceanGate
10th Floor
Long Beach, CA 90802-4416

June 17, 2014

Re: Application #5-13-1233 – Section 13056 (d) Dispute Resolution and Notice of Incomplete Application Dated June 13, 2014

Dear Teresa,

Pursuant to Section 13056 (d) of Coastal Commission Regulations we are appealing the June 13, 2014 Notice of Incomplete Application to the Coastal Commission.

Since we withdrew our application from Coastal Commission consideration and agreed to resubmit we have attempted to cooperatively provide information to the Coastal Commission staff, much of which goes beyond what the Commission requested. The Commission requested this item be brought back to them quickly. Six months have now passed. The latest Notice of Incomplete Application appears to refuse to accept the State Lands Commission staff request to have the Commission act on the application first even though Section 13053 (a) (4) directs that the Commission give consideration to such a request. It also ignores the fact the application was previously found complete without an approved Exchange Agreement. There was no direction from the Commission at the November 15, 2013 hearing to have the Exchange Agreement approved by the State Lands Commission prior to the withdrawn application being accepted on resubmission.

You are requesting a rate of return analysis of our proposed project which requires proprietary information to be of any value. In addition to going beyond what is appropriate, and perhaps legal, for a complete application this request goes beyond what the Commission requested in their decision to allow us to withdraw and resubmit. An analysis of the transcript of the November 15th meeting show that Coastal Staff has gone beyond what the Commission requested in all five of the notices of Incomplete

Application we have received in the past six months. We have tried our best to meet your requirements but whatever we do never seems to be enough.

Thus, we feel we have no choice but to file a Dispute Resolution request under Section 13056 (d) that requires that the Executive Director set this matter for hearing at the next Coastal Commission meeting. We therefore request that this be set for hearing at the July 2014 Coastal Commission meeting in Ventura.

Subject to the 13056 (d) Dispute Resolution and in response to the attached Notice of Incomplete Application we are submitting the following responses to your comments. These responses are provided in the spirit of the last paragraph of the five Notices of Incomplete Application you have sent us in the last six months where you state:

“You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project.”

The information below is not to be inferred as being submitted to start another 30 day Permit Streamling Act clock.

We are at an impasse and desire the Commission to make a determination on the completeness of our application and that the 13056 (d) hearing be set for the July 2014 Coastal Commission Hearing in Ventura

1) Comments on the Exchange Agreement with the State Lands Commission

Your Comments: *Commission staff previously requested that you provide an approved land exchange agreement or other written determination from the State Lands Commission (SLC) that concludes the Public Trust Easement no longer exists on the portion of the site where residential uses are proposed. You state that you have reached an agreement with the SLC on the exchange agreement and that the SLC is requesting that the Coastal Commission act on the project prior to the SLC acting on the exchange agreement. As of today, your current project still consists of a residential component located within land subject to the public trust. Therefore, Commission staff again requests that you provide an approved land exchange agreement or other written determination from the SLC that concludes the Public Trust Easement no longer exists on the portion of the site where residential uses are proposed.*

Our Response: Since our meeting of April 23rd and response of May 15th we have reached agreement with the State Lands Commission Staff on an exchange agreement. They are requesting that the Coastal Commission act on the project prior to the State Lands Commission acting on the exchange agreement. On May 15th we requested that you contact Jennifer Luchesi Executive Director or Kathryn Colson staff attorney to verify this. Since that date State Lands Commission Staff has told us that they have requested that you schedule this project for hearing prior to them scheduling the

Exchange Agreement before the State Lands Commission. We are mystified as to why the Coastal Staff would not consent to the request of the State Lands Commission as a matter of sheer comity between two state agencies and in light of Section 13053 of the Commission's regulations, which provides:

"Where Preliminary Approvals Are Not Required:

(a) The executive director may waive the requirement for preliminary approval by other federal, state or local governmental agencies for good cause, including but not limited to:

(4) The state or local agency has specifically requested the coastal commission to consider the application before it makes a decision."

There is no reason at this point why the application should not be deemed complete. The project remains the same as originally submitted, except for a few minor enhancements of the open space area. Thus, the basis you accepted the application complete last summer remains the same today. We again respectfully request that you accept the application complete without an approved agreement as you did last summer. Since we have State Lands Commission Staff concurrence on the Exchange Agreement it is not logical to have the Exchange Agreement approved by the State Lands Commission until the project is acted on by the Coastal Commission because if the Coastal Commission does not approve residential in the claimed Public Trust Easement area there is no need for the Exchange Agreement. We have offered a special condition to accommodate this.

2) Questions regarding: *Feasibility of Visitor Serving Uses*

Your Comment 1: *Commission staff previously requested the "rate of return" analysis for your previously proposed alternative site uses and for your current proposal that you had agreed to provide after our meeting on April 23, 2014. In response, you state that you would no longer be providing the "rate of return" for your current proposal since you believe that it is of no meaningful benefit since all land use scenarios containing visitor serving uses that were analyzed were not feasible. Thank you for your response. However, Commissions staff still requests that information since it will help us compare and analyze the "rate of return" of the previously proposed alternative site uses versus your current proposal. It will assist us in understanding how the different types of uses would perform on site.*

Our Response 1: Any meaningful Rate of Return Analysis would involve providing proprietary information from our project pro forma which is not public information. Any other Rate of Return analysis would have no value and we again respectfully decline to provide that information. We believe requesting this information goes beyond the scope of what the Coastal Commission or any other regulatory agency can require for a complete application.

Your Comment 2: *You have submitted reduced copies of Page 5A (Existing and Proposed Year Round & Seasonal Commercial Visitor Serving Uses). However, 11' x 17' size copies have not been submitted. Thus, please provide two (2) 11' x 17' size copies Page 5A (Existing and Proposed Year Round & Seasonal Commercial Visitor Serving Uses).*

Our Response 2: We provided two copies of this diagram to you May 15th. The May 15th response was delivered in an approximately 2" deep x 11" wide x 17" long box. Two binders with our response were included along with a complete 11" x 17" reprint of the Open Space Master Plan which included the two copies of page 5A. However, we have provided two additional copies of Page 5A as part of this response even though you already have it or have misplaced it.

Your Comment 3: *On April 23, 2014 Commission staff met with you, Susan McCabe, Jim Basham of the City of Seal Beach & a Kosmont Company representative and there was a discussion of hotel use being desired at the project site. We stated that if a hotel use is not appropriate for this location, where in the City would such a use be provided and secured by designating the site as visitor-serving commercial given the fact that existing visitor-serving commercial uses are currently located on designated general commercial sites. Please provide that information.*

Our Response 3: There was a discussion on this subject on April 23rd. However, you did not specifically request that we provide it in the Notice of Incomplete Application dated May 8th or any of the previous Notices of Incomplete Application nor did you request it be submitted at our April 23rd meeting. We take the Notices of Incomplete Application seriously and attempt to respond directly to the items contained in the Notices. This seems to be a case of "Moving The Goal Line" every time we respond to a Notice of Incomplete Application.

In any event, there is a site located on the north side of Coast Highway at First Street owned by the State Lands Commission that has all the attributes lacking on the proposed project site. It is of similar size, has great visibility and has the access lacking on the proposed project site. It is designated in the City's General Plan as Commercial-Service and zoned Specific Plan Regulations. It is under lease for oil operations until 2036. All economic data shows any hotel or other commercial visitor serving use is not supportable in Seal Beach at this time. This site is a potential long term hotel or commercial visitor serving use site that can be used for a hotel or commercial visitor serving use in the future. There has also been local discussion of placing a Visitor's Center for the Lost Cerritos Wetlands in this area but no formal decision has been made. When the lease expires the State of California will have complete discretion as to the public benefit of a hotel, commercial visitor serving use, a Visitor's Center for the Los Cerritos Wetlands or any combination of these on the site and will be able to secure developer proposals and lease the property for the use they deem best suited for the site. Attached is a diagram showing the location of the site in relation to the other existing and potential visitor serving commercial areas of Old Town Seal Beach.

Your Comment 4: *Additionally at this meeting, you agreed to provide the supporting background information for Scenario C Budget Hotel. Please provide that information.*

Our Response 4: We did provide this in our May 15th response to the May 8th Notice of Incomplete Application on page 2 as follows:

"Our Response 1: Attached is a revised report from Kosmont with the total rate of return analysis. Also included is backup documentation on the budget hotel you requested at our April 23rd meeting."

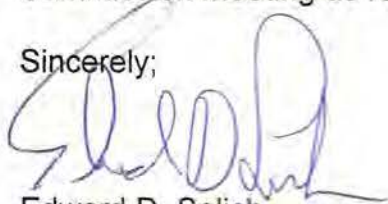
In case you have misplaced it we are submitting it again as an excerpt for this response.

Your Comment 5: *Commission staff previously requested how you would plan to mitigate loss of potential visitor-serving commercial, including overnight accommodation use. In response, you state that that mitigation is visitor-serving open space area. The provision of visitor serving open space area does not mitigate the loss of overnight accommodations as would be provided if the site was developed with a hotel use that historically was desired onsite. Please provide your mitigation proposal for the loss of this potential use. In the past, the Commission has accepted an in-lieu fee where provision of these overnight accommodations were not provided onsite.*

Our Response 5: Bay City Partners donating to the City of Seal Beach the Visitor Serving Open Space Area meets the requirements of the Coastal Act and no additional mitigation proposal is necessary. Our previous offer of a mitigation fee was only done because a prior consultant advised us to do so to obtain a staff recommendation for approval. When the staff report recommended denial that offer was no longer valid.

Again this information is to not be inferred that we are not Submitting a 13056 (d) appeal. It is intended as additional information to help you understand the project as you request in your Notices of Incomplete Application. This letter is a 13056 (d) appeal and we request that this Dispute Resolution be set for hearing at the July 2014 Coastal Commission meeting as required by law.

Sincerely;



Edward D. Selich
Bay City Partners Project Manager
627 Bayside Drive
Newport Beach Ca 92660
949-723-6383
edselich@roadrunner.com

Attachment 1

June 17, 2014

Existing and Potential Visitor Serving Commercial Diagram



Existing and Potential Visitor Serving Commercial

Attachment 2

June 17, 2014

Excerpt from Komont Study submitted May 15, 2014
related to Budget Hotel

&

Complete PKF Study submitted May 15, 2014
with backup data related to Budget Hotel

Attachment 1
Revised Kosmont Analysis
May 14, 2014

(3) Budget Hotel Feasibility

Revenue Forecast

- Per PKF May 2014 update, a 100-room budget hotel on the site will likely achieve slightly less than average market penetration due to distance from demand generators.
- Per PKF, the occupancy rate is projected at 68% in opening year increasing to a stabilized 74% occupancy after 3 years.
- Per PKF the expected room rate will be approximately \$115 at 2016 opening.
- No food and beverage or meeting room services will be provided on site except for pool, laundry and snack bar.
- Per PKF, the development cost will be \$125,000 per room excluding land.

DRAFT

(3) Budget Hotel Feasibility

Stabilized Pro Forma - 2018

| | <u>Total</u> | <u>%</u> |
|--------------------------------|--------------------|------------|
| Annual Revenues /1 | \$3,106,000 | 100% |
| Operating Costs/Reserves /1 | <u>2,174,000</u> | <u>70%</u> |
| Net Operating Income | \$ 932,000 | 30% |
| Development Value (8% cap) | \$11,650,000 | |
| Development Cost (\$125k/room) | <u>12,500,000</u> | |
| Residual Land Value (loss) | \$(850,000) | |

Budget hotel development with no restrictions is infeasible since residual land value is negative.

/1 Per PKF Analysis May 2014 update

DRAFT

(3) Budget Hotel Feasibility

Return on Cost – Stabilized

Annual Revenues /1 \$3,106,000

Operating Costs/Reserves /1 2,174,000

Net Operating Income \$ 932,000

Land Value – Cost Basis \$ 4,500,000

Development Cost (\$125k/room) 12,500,000

Total Cost \$ 17,000,000

Return on Cost **5.5%**

The annual rate of return on investment is only 5.5% compared to a required 8.0% return, which indicates financial infeasibility.

/1 Per PKF Analysis May 2014 update

Attachment 2
Revised PKF Analysis
(With Budget Hotel Data)
May 14, 2014

Proposed Seal Beach Hotel Land Use Analysis

PKF Consulting, USA
January 2014

PKF
HOSPITALITY
RESEARCH

Assumptions for the Development Scenario

- The subject will be located on the southern parcel of the subject site northwest of the 1st Street and Ocean Avenue intersection;
 - The subject in this scenario does not adhere to existing height, zoning, or easement restrictions;
 - The subject will be a high quality hotel positioned and marketed as an upscale, resort hotel;
 - The subject will contain 150 rooms in a seven story structure;
 - The subject will contain a three-meal restaurant and offer meeting and event space;
 - The subject will offer 320 parking spaces on a surface parking lot;
- The subject will offer facilities and amenities consistent with its respective quality level; and,
- The proposed hotel project will open on January 1, 2016.

Proposed Seal Beach Hotel Hotel Facilities Programming

Based on our site analysis, we recommend the proposed hotel be positioned as a **resort style hotel** with the following facilities and amenities:

- 150 room hotel in a seven-story structure;
- Gross building area of approximately 135,000 square feet;
- 150 guestrooms including 15 suites;
 - Average room size: 390 SF
 - Average suite size: 600 SF
- 1,800 SF lobby;
- 2,700 SF restaurant/lounge;
- 600 SF coffee bar/sundry store;
- 9,000 SF of banquet and meeting space, plus 2,700 SF of pre-function space;
- 3,000 SF spa/fitness center;
- Outdoor pool, pool deck, and Jacuzzi;
- Surface parking lot containing 320 spaces; and,
- Rooftop deck/lounge.

Proposed Seal Beach Hotel Competitive Market

- The subject's competitive set was selected based on each property's location, number of guestrooms, size of meeting space, facilities, amenities, room rate structure, and market orientation.
- Though there are a number of additional properties in the Cities of Seal Beach and Long Beach, they have not been included for a number of reasons, including market positioning, location, and rate structure. We have also not included resort hotels in Huntington Beach and further south for the same reasons.

| Competitive Supply | | |
|--|-----------------------------------|-----------------|
| | Property | Number of Rooms |
| Subject | Proposed Subject Hotel | 150 |
| 1 | Pacific Inn | 71 |
| 2 | Ayres Hotel Seal Beach | 112 |
| 3 | Hampton Inn & Suites Seal Beach | 110 |
| 4 | Marriott Long Beach Airport | 311 |
| 5 | Holiday Inn Long Beach Airport | 222 |
| 6 | Residence Inn Long Beach Airport | 216 |
| 7 | Courtyard Long Beach Douglas Park | 159 |
| Total Competitive Supply (not including subject) | | 1,201 |
| Source: <i>PKF Consulting</i> | | |

Historical Market Performance of the Competitive Supply

| Historical Market Performance of the Competitive Supply | | | | | | | | | |
|---|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|---------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2008 | 377,045 | N/A | 282,651 | N/A | 75.0% | \$130.20 | N/A | \$97.61 | N/A |
| 2009 | 380,330 | 0.9% | 252,743 | -10.6% | 66.5% | 119.35 | -8.3% | 79.31 | -18.7% |
| 2010 | 380,330 | 0.0% | 260,399 | 3.0% | 68.5% | 119.03 | -0.3% | 81.49 | 2.7% |
| 2011 | 380,330 | 0.0% | 273,849 | 5.2% | 72.0% | 119.74 | 0.6% | 86.21 | 5.8% |
| 2012 | 380,330 | 0.0% | 298,244 | 8.9% | 78.4% | 122.15 | 2.0% | 95.78 | 11.1% |
| CAAG | 0.2% | | 1.4% | | | -1.6% | | -0.5% | |
| YTD 11/12 | 348,575 | N/A | 266,858 | N/A | 76.6% | \$122.70 | N/A | \$93.93 | N/A |
| YTD 11/13 | 391,645 | 12.4% | 281,835 | 5.6% | 72.0% | 125.01 | 1.9% | 89.96 | -4.2% |

Source: PKF Consulting USA

- Supply within the competitive set during the preceding five years has grown by a compound average annual growth rate of 0.2 percent as a result of the 110-room Hampton Inn & Suites in Seal Beach opening in 2008.
- During the same five-year period, demand as measured in occupied room nights, increased at a compound annual growth rate (CAAG) of 1.4 percent. Prior to the economic downturn in 2009, the market maintained occupancy levels in the mid to high 70 percentile range.
- The market finished 2012 at an occupancy of 78.4 percent, reaching a historical high in the five year period.
- Between 2008 and 2012, average daily rate (ADR) decreased an average of 1.6 percent annually, mainly attributed to the decreases experienced in 2009 and 2010.
- ADR has experienced two years of consecutive growth; however, it has not yet surpassed levels reached in 2008.
- Year to date through November, supply growth outpaced demand growth by 12.5 percent and 5.6 percent, respectively. Based on year to date performance of the competitive market, we estimate that 2013 ended at an occupancy of 73 percent and an ADR of \$125.00.

Projected Market Performance of the Competitive Supply

| Projected Market Performance of the Competitive Supply | | | | | | | | | |
|--|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|---------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2013 | 427,235 | 12.3% | 311,700 | 4.5% | 73% | \$125.00 | 2.3% | \$91.20 | -4.8% |
| 2014 | 438,365 | 2.6% | 321,100 | 3.0% | 73% | 129.00 | 3.2% | 94.49 | 3.6% |
| 2015 | 438,365 | 0.0% | 328,800 | 2.4% | 75% | 133.00 | 3.1% | 99.76 | 5.6% |
| 2016 | 493,115 | 12.5% | 357,500 | 8.7% | 72% | 140.00 | 5.3% | 101.50 | 1.7% |
| 2017 | 493,115 | 0.0% | 368,300 | 3.0% | 75% | 144.00 | 2.9% | 107.55 | 6.0% |
| 2018 | 493,115 | 0.0% | 369,800 | 0.4% | 75% | 148.00 | 2.8% | 110.99 | 3.2% |
| 2019 | 493,115 | 0.0% | 369,800 | 0.0% | 75% | 152.00 | 2.7% | 113.99 | 2.7% |
| 2020 | 493,115 | 0.0% | 369,800 | 0.0% | 75% | 157.00 | 3.3% | 117.74 | 3.3% |
| CAAG | 2.1% | | 2.5% | | | 3.3% | | 3.7% | |

Source: PKF Consulting USA

- We estimate that market occupancy decreased to 73 percent in 2013 with the introduction of the Courtyard and that it will remain at this level in 2014 with the annualized rooms entering the market.
- We estimate occupancy will increase to 75 percent in 2015, followed by a decrease in 2016 to 72 percent with the introduction of the subject to the market.
- As the market absorbs the new supply, we project that market occupancy will return to 75 percent in 2017 and stabilize at this level of occupancy for the remainder of the projection period.
- While the market may fluctuate above and below this number, an occupancy rate of 75 percent is appropriate for this particular market considering the supply and demand patterns, seasonality, and mix of business within the competitive market.

Projected Market Performance of the Subject Hotel

Projected Market Performance of the Subject Hotel

| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Occupancy Percentage | Average Daily Rate | Percent Change | REVPAR | Percent Change | Market Penetration | Revenue Yield |
|------|---------------|----------------|----------------|----------------|----------------------|--------------------|----------------|----------|----------------|--------------------|---------------|
| 2016 | 54,750 | N/A | 34,100 | N/A | 62% | \$164.00 | 3.0% | \$102.14 | N/A | 86% | 101% |
| 2017 | 54,750 | 0.0% | 36,900 | 8.2% | 67% | 169.00 | 3.0% | 113.90 | 11.5% | 90% | 106% |
| 2018 | 54,750 | 0.0% | 38,100 | 3.3% | 70% | 174.00 | 3.0% | 121.08 | 6.3% | 93% | 109% |
| 2019 | 54,750 | 0.0% | 38,100 | 0.0% | 70% | 179.00 | 3.0% | 124.56 | 2.9% | 93% | 109% |
| 2020 | 54,750 | 0.0% | 38,100 | 0.0% | 70% | 184.00 | 3.0% | 128.04 | 2.8% | 93% | 109% |
| CAAG | 0.0% | | 2.8% | | | 2.9% | | 5.8% | | | |

Source: PKF Consulting USA

- Demand for the subject hotel will be generated by commercial, leisure, and group demand segments.
 - Based on the subject property's anticipated positioning in the competitive market, it is estimated that the subject property will achieve below its fair share of demand on a stabilized basis due to its distance from major demand generators. While the hotel would be located proximate to the ocean, as a beachfront site it is limited by the adjacent maintenance yard and actual distance from the water.
 - Upon opening, the subject property is estimated to achieve below its fair share of market demand, with its penetration rate estimated at 86 percent, reflecting an occupancy level of 62 percent during its first year of operation.
 - The subject property's penetration rate is expected to increase to 90 percent in 2017 and 93 percent, reaching its stabilized level of occupancy of 70 percent by its third year of operation.
- The subject is anticipated to be a high quality, attractive hotel and offer inviting and desirable facilities and amenities; therefore, it is estimated that the subject will achieve an opening average daily rate of \$164.00 in 2016 dollars, equal to an average daily room rate of \$155.00, stated in 2014 dollars, which would position it as the highest rated property in the competitive market.
- This rate is expected to increase at a compound average annual rate of 3.0 percent throughout the projection period.

Statement of Estimated Annual Operating Results

| Summary of Estimated Annual Operating Results | | | |
|---|---------------|----------------------|-------------------------|
| Year | Total Revenue | Net Operating Income | Ratio to Total Revenues |
| 2016 | \$10,790,000 | \$1,287,000 | 12% |
| 2017 | 12,011,000 | 1,755,000 | 15% |
| 2018 | 12,925,000 | 2,019,000 | 16% |
| 2019 | 13,304,000 | 2,075,000 | 16% |
| 2020 | 13,689,000 | 2,125,000 | 16% |
| 2021 | 14,119,000 | 2,211,000 | 16% |
| 2022 | 14,554,000 | 2,291,000 | 16% |
| 2023 | 14,994,000 | 2,365,000 | 16% |
| 2024 | 15,442,000 | 2,437,000 | 16% |
| 2025 | 15,896,000 | 2,505,000 | 16% |

- To prepare estimates of future operating results for the proposed subject as of January 1, 2016, the starting point or basis is the best estimate of results that could be achieved with good management in a representative year or stabilized market, calculated in 2014 dollars.
- The estimates of revenues, costs and expenses are based on the proposed facilities and services and the operational characteristics thereof. The basis for these projections is the operating results of lodging properties with similar characteristics that are believed to operate with efficient management and proper control over costs and expenses.
- To portray price level changes during the holding period, an inflation rate of 3.0 percent is assumed throughout the projection period. This rate reflects the consensus of several well-recognized economists for the current long-term outlook for the future movement of prices and is consistent with historical inflation rates. All expenses, save for property taxes, are projected to increase at 3.0 percent throughout the holding period. Property taxes are assumed to inflate at 2.0 percent annually in accordance with California's Proposition 13.

Statement of Estimated Annual Operating Results

| Proposed Seal Beach Hotel Projected Operating Results Calendar Years | | 2016 | | 2017 | | 2018 | | 2019 | | 2020 | |
|--|--|------------------------|--|-------------|--|-------------|--|-------------|--|-------------|--|
| Number of Units: | | 150 | | 150 | | 150 | | 150 | | 150 | |
| Number of Annual Rooms Available: | | 54,750 | | 54,750 | | 54,750 | | 54,750 | | 54,750 | |
| Number of Rooms Occupied: | | 33,950 | | 36,680 | | 38,330 | | 38,330 | | 38,330 | |
| Annual Occupancy: | | 62.0% | | 67.0% | | 70.0% | | 70.0% | | 70.0% | |
| Average Daily Rate: | | \$164.00 | | \$169.00 | | \$174.00 | | \$179.00 | | \$184.00 | |
| Revenue Per Available Room: | | \$101.68 | | \$113.23 | | \$121.80 | | \$125.30 | | \$128.80 | |
| Revenues | | Amount | | Amount | | Amount | | Amount | | Amount | |
| Rooms | | \$5,568,000 | | \$6,199,000 | | \$6,669,000 | | \$6,861,000 | | \$7,053,000 | |
| Food & Beverage | | 4,322,000 | | 4,810,000 | | 5,177,000 | | 5,332,000 | | 5,492,000 | |
| Other Operated Departments | | 900,000 | | 1,002,000 | | 1,079,000 | | 1,111,000 | | 1,144,000 | |
| Total Revenues | | 10,790,000 | | 12,011,000 | | 12,925,000 | | 13,304,000 | | 13,689,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| Rooms | | 51.6% | | 51.6% | | 51.6% | | 51.6% | | 51.5% | |
| Food & Beverage | | 40.1% | | 40.0% | | 40.1% | | 40.1% | | 40.1% | |
| Other Operated Departments | | 8.3% | | 8.3% | | 8.3% | | 8.4% | | 8.4% | |
| Total Revenues | | 100.0% | | 100.0% | | 100.0% | | 100.0% | | 100.0% | |
| Departmental Expenses | | Amount | | Amount | | Amount | | Amount | | Amount | |
| Rooms | | 1,725,000 | | 1,844,000 | | 1,941,000 | | 1,999,000 | | 2,059,000 | |
| Food & Beverage | | 3,636,000 | | 3,917,000 | | 4,141,000 | | 4,266,000 | | 4,394,000 | |
| Other Operated Departments | | 675,000 | | 752,000 | | 809,000 | | 833,000 | | 858,000 | |
| Total Departmental Expenses | | 6,036,000 | | 6,513,000 | | 6,891,000 | | 7,098,000 | | 7,311,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| Rooms | | 31.0% | | 29.7% | | 29.1% | | 29.1% | | 29.2% | |
| Food & Beverage | | 84.1% | | 81.4% | | 80.0% | | 80.0% | | 80.0% | |
| Other Operated Departments | | 75.0% | | 75.0% | | 75.0% | | 75.0% | | 75.0% | |
| Total Departmental Expenses | | 55.9% | | 54.2% | | 53.3% | | 53.4% | | 53.4% | |
| Departmental Profit | | 4,754,000 | | 5,498,000 | | 6,034,000 | | 6,206,000 | | 6,378,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| Departmental Profit | | 44.1% | | 45.8% | | 46.7% | | 46.6% | | 46.6% | |
| Undistributed Expenses | | Amount | | Amount | | Amount | | Amount | | Amount | |
| Administrative & General | | 1,082,000 | | 1,115,000 | | 1,148,000 | | 1,182,000 | | 1,218,000 | |
| Marketing | | 796,000 | | 820,000 | | 844,000 | | 869,000 | | 896,000 | |
| Property Operation and Maintenance | | 430,000 | | 443,000 | | 456,000 | | 470,000 | | 484,000 | |
| Utility Costs | | 318,000 | | 328,000 | | 338,000 | | 348,000 | | 358,000 | |
| Total Undistributed Operating Expenses | | 2,626,000 | | 2,706,000 | | 2,786,000 | | 2,869,000 | | 2,956,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| Undistributed Expenses | | 24.3% | | 22.5% | | 21.6% | | 21.6% | | 21.6% | |
| Gross Operating Profit | | 2,128,000 | | 2,792,000 | | 3,248,000 | | 3,337,000 | | 3,422,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| Gross Operating Profit | | 19.7% | | 23.2% | | 25.1% | | 25.1% | | 25.0% | |
| Base Management Fee | | 324,000 | | 360,000 | | 388,000 | | 399,000 | | 411,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| Base Management Fee | | 3.0% | | 3.0% | | 3.0% | | 3.0% | | 3.0% | |
| Fixed Expenses | | Amount | | Amount | | Amount | | Amount | | Amount | |
| Property Taxes | | 237,000 | | 251,000 | | 256,000 | | 261,000 | | 266,000 | |
| Insurance | | 64,000 | | 66,000 | | 68,000 | | 70,000 | | 72,000 | |
| Total Fixed Expenses | | 301,000 | | 317,000 | | 324,000 | | 331,000 | | 338,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| Fixed Expenses | | 2.2% | | 2.1% | | 2.0% | | 2.0% | | 1.9% | |
| Net Operating Income Before Reserve | | 1,503,000 | | 2,115,000 | | 2,536,000 | | 2,607,000 | | 2,673,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| Net Operating Income Before Reserve | | 13.9% | | 17.6% | | 19.6% | | 19.6% | | 19.5% | |
| FF&E Reserve | | 216,000 | | 360,000 | | 517,000 | | 532,000 | | 548,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| FF&E Reserve | | 2.0% | | 3.0% | | 4.0% | | 4.0% | | 4.0% | |
| Net Operating Income After Reserve | | \$1,287,000 | | \$1,755,000 | | \$2,019,000 | | \$2,075,000 | | \$2,125,000 | |
| Ratios | | Ratio | | Ratio | | Ratio | | Ratio | | Ratio | |
| Net Operating Income After Reserve | | 11.9% | | 14.6% | | 15.6% | | 15.6% | | 15.5% | |
| Source: PKF Consulting | | Full Year of Operation | | | | | | | | | |

Statement of Estimated Annual Operating Results

| Proposed Seal Beach Hotel Projected Operating Results Calendar Years | | 2021 | | 2022 | | 2023 | | 2024 | | 2025 | |
|--|--|-------------|--------|-------------|--------|-------------|--------|-------------|--------|-------------|--------|
| Number of Units: | | 150 | | 150 | | 150 | | 150 | | 150 | |
| Number of Annual Rooms Available: | | 54,750 | | 54,750 | | 54,750 | | 54,750 | | 54,750 | |
| Number of Rooms Occupied: | | 38,330 | | 38,330 | | 38,330 | | 38,330 | | 38,330 | |
| Annual Occupancy: | | 70.0% | | 70.0% | | 70.0% | | 70.0% | | 70.0% | |
| Average Daily Rate: | | \$190.00 | | \$196.00 | | \$202.00 | | \$208.00 | | \$214.00 | |
| Revenue Per Available Room: | | \$133.00 | | \$137.20 | | \$141.40 | | \$145.60 | | \$149.80 | |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Revenues | | | | | | | | | | | |
| Rooms | | \$7,283,000 | 51.6% | \$7,513,000 | 51.6% | \$7,743,000 | 51.6% | \$7,973,000 | 51.6% | \$8,203,000 | 51.6% |
| Food & Beverage | | 5,657,000 | 40.1% | 5,827,000 | 40.0% | 6,001,000 | 40.0% | 6,181,000 | 40.0% | 6,367,000 | 40.1% |
| Other Operated Departments | | 1,179,000 | 8.4% | 1,214,000 | 8.3% | 1,250,000 | 8.3% | 1,288,000 | 8.3% | 1,326,000 | 8.3% |
| Total Revenues | | 14,119,000 | 100.0% | 14,554,000 | 100.0% | 14,994,000 | 100.0% | 15,442,000 | 100.0% | 15,896,000 | 100.0% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Departmental Expenses | | | | | | | | | | | |
| Rooms | | 2,121,000 | 29.1% | 2,185,000 | 29.1% | 2,250,000 | 29.1% | 2,318,000 | 29.1% | 2,387,000 | 29.1% |
| Food & Beverage | | 4,525,000 | 80.0% | 4,661,000 | 80.0% | 4,801,000 | 80.0% | 4,945,000 | 80.0% | 5,093,000 | 80.0% |
| Other Operated Departments | | 884,000 | 75.0% | 910,000 | 75.0% | 938,000 | 75.0% | 966,000 | 75.0% | 995,000 | 75.0% |
| Total Departmental Expenses | | 7,530,000 | 53.3% | 7,756,000 | 53.3% | 7,989,000 | 53.3% | 8,229,000 | 53.3% | 8,475,000 | 53.3% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Departmental Profit | | 6,589,000 | 46.7% | 6,798,000 | 46.7% | 7,005,000 | 46.7% | 7,213,000 | 46.7% | 7,421,000 | 46.7% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Undistributed Expenses | | | | | | | | | | | |
| Administrative & General | | 1,254,000 | 8.9% | 1,292,000 | 8.9% | 1,331,000 | 8.9% | 1,371,000 | 8.9% | 1,412,000 | 8.9% |
| Marketing | | 922,000 | 6.5% | 950,000 | 6.5% | 979,000 | 6.5% | 1,008,000 | 6.5% | 1,038,000 | 6.5% |
| Property Operation and Maintenance | | 498,000 | 3.5% | 513,000 | 3.5% | 528,000 | 3.5% | 544,000 | 3.5% | 561,000 | 3.5% |
| Utility Costs | | 369,000 | 2.6% | 380,000 | 2.6% | 391,000 | 2.6% | 403,000 | 2.6% | 415,000 | 2.6% |
| Total Undistributed Operating Expenses | | 3,043,000 | 21.6% | 3,135,000 | 21.5% | 3,229,000 | 21.5% | 3,326,000 | 21.5% | 3,426,000 | 21.6% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Gross Operating Profit | | 3,546,000 | 25.1% | 3,663,000 | 25.2% | 3,776,000 | 25.2% | 3,887,000 | 25.2% | 3,995,000 | 25.1% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Base Management Fee | | 424,000 | 3.0% | 437,000 | 3.0% | 450,000 | 3.0% | 463,000 | 3.0% | 477,000 | 3.0% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Fixed Expenses | | | | | | | | | | | |
| Property Taxes | | 272,000 | 1.9% | 277,000 | 1.9% | 283,000 | 1.9% | 288,000 | 1.9% | 294,000 | 1.8% |
| Insurance | | 74,000 | 0.5% | 76,000 | 0.5% | 78,000 | 0.5% | 81,000 | 0.5% | 83,000 | 0.5% |
| Total Fixed Expenses | | 346,000 | 2.5% | 353,000 | 2.4% | 361,000 | 2.4% | 369,000 | 2.4% | 377,000 | 2.4% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Net Operating Income Before Reserve | | 2,776,000 | 19.7% | 2,873,000 | 19.7% | 2,965,000 | 19.8% | 3,055,000 | 19.8% | 3,141,000 | 19.8% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| FF&E Reserve | | 565,000 | 4.0% | 582,000 | 4.0% | 600,000 | 4.0% | 618,000 | 4.0% | 636,000 | 4.0% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Net Operating Income After Reserve | | \$2,211,000 | 15.7% | \$2,291,000 | 15.7% | \$2,365,000 | 15.8% | \$2,437,000 | 15.8% | \$2,505,000 | 15.8% |
| Amount | | | | | | | | | | | |
| Ratio | | | | | | | | | | | |
| Source: PKF Consulting | | | | | | | | | | | |

- A construction budget for the proposed subject property was prepared by Bay City Partners based on the aforementioned recommended facilities and amenities. The following table presents a summary of the estimated development costs for the proposed Seal Beach hotel on the southern parcel of the subject site. It should be noted that the total construction budget is not inclusive of land costs.

| Proposed Seal Beach Hotel Developer's Construction Budget | |
|--|---------------------|
| | Totals |
| Hotel | \$33,750,000 |
| FF&E | 7,500,000 |
| Exterior Pool/Jacuzzi | 350,000 |
| Parking Lot | 1,750,000 |
| Landscape/Hardscape | 940,000 |
| Soft Costs | 15,501,500 |
| TOTAL (Rounded) | \$59,791,500 |
| Cost per Room (Rounded) | \$398,600 |

- As a test of reasonableness, these opinions were evaluated in conjunction with in-house data and national cost estimates. Based upon our analysis of the development costs provided by the Marshall & Swift Marshall Valuation Service and persons active in hotel development, we believe that the development budget cost is reflective of the cost it would take to finish the project.

Financial feasibility is based on whether a proposed project will attain a cash flow of sufficient quantity, quality, and duration to allow investors to recover the capital invested and achieve the necessary and expected rate of return.

- Based on our analysis of projected occupancy and rate levels, the total costs of hotel construction, and current capitalization rates, it is our opinion that the development of a hotel property on the subject site would not be feasible at the present time.

Budget Hotel Scenario — Assumptions

- The subject will contain 100 rooms;
- The subject will be of average quality and positioned and marketed as a budget hotel;
- The subject will offer surface parking;
- The subject will offer facilities and amenities consistent with its respective quality level; and,
- The proposed hotel project will open on January 1, 2016.

Budget Hotel Scenario — Proposed Seal Beach Hotel Competitive Market

- The subject’s competitive set was selected based on each property’s location, number of guestrooms, size of meeting space, facilities, amenities, room rate structure, and market orientation.
- Though there are a number of additional properties in the Cities of Seal Beach, Long Beach, and Huntington Beach, they have not been included for a number of reasons, including market positioning, location, and rate structure.

| Competitive Supply | | |
|---|---|-----------------|
| | Property | Number of Rooms |
| <i>Subject</i> | <i>Proposed Subject Hotel</i> | <i>100</i> |
| 1 | Pacific Inn | 71 |
| 2 | Ayres Hotel Seal Beach | 112 |
| 3 | Hampton Inn & Suites Seal Beach | 110 |
| 4 | Hotel Current (formerly Guest House) | 99 |
| 5 | Motel 6 Long Beach | 42 |
| 6 | Extended Stay America OC/Huntington Beach | 104 |
| Total Competitive Supply (not including subject) | | 538 |
| Source: <i>PKF Consulting</i> | | |

Budget Hotel Scenario — Historical Market Performance of the Competitive Supply

| Historical Market Performance of the Competitive Supply | | | | | | | | | |
|---|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|---------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2008 | 209,145 | N/A | 158,055 | N/A | 75.6% | \$92.46 | N/A | \$69.87 | N/A |
| 2009 | 212,430 | 1.6% | 152,970 | -3.2% | 72.0% | 89.09 | -3.6% | 64.15 | -8.2% |
| 2010 | 212,430 | 0.0% | 159,691 | 4.4% | 75.2% | 89.06 | 0.0% | 66.95 | 4.4% |
| 2011 | 212,430 | 0.0% | 164,258 | 2.9% | 77.3% | 92.01 | 3.3% | 71.14 | 6.3% |
| 2012 | 208,050 | -2.1% | 164,822 | 0.3% | 79.2% | 96.17 | 4.5% | 76.19 | 7.1% |
| CAAG | -0.1% | | 1.1% | | | 1.0% | | 2.2% | |
| YTD 11/12 | 190,895 | N/A | 151,975 | N/A | 79.6% | \$96.18 | N/A | \$76.57 | N/A |
| YTD 11/13 | 179,945 | -5.7% | 140,271 | -7.7% | 78.0% | 100.25 | 4.2% | 78.14 | 2.1% |
| Source: PKF Consulting USA | | | | | | | | | |

- Supply within the competitive set during the preceding five years has decreased at a compound average annual rate of 0.1 percent as a result of the 143-room Hotel Current reducing its room count to 99.
- During the same five-year period, demand as measured in occupied room nights, increased at a compound annual growth rate (CAAG) of 1.1 percent. During this time, the market maintained occupancy levels in the mid to high 70 percentile range.
- The market finished 2012 at an occupancy of 79.2 percent, reaching a historical high in the five year period.
- Between 2008 and 2012, average daily rate (ADR) increased an average of 1.0 percent annually.
- ADR remained flat in 2010 followed by two years of consecutive growth, ending 2012 at an ADR of \$96.17.
- Year to date through November, annual rooms supply and occupied room nights experienced declines of 5.7 percent and 7.7 percent, respectively. Based on year to date performance of the competitive market, we estimate that 2013 ended at an occupancy of 78 percent and an ADR of \$101.00.

Budget Hotel Scenario — Projected Market Performance of the Competitive Supply

| Projected Market Performance of the Competitive Supply | | | | | | | | | |
|--|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|---------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2013 | 196,370 | -5.6% | 153,200 | -7.1% | 78% | \$101.00 | 5.0% | \$78.80 | 3.4% |
| 2014 | 196,370 | 0.0% | 149,200 | -2.6% | 76% | 104.00 | 3.0% | 79.02 | 0.3% |
| 2015 | 196,370 | 0.0% | 149,200 | 0.0% | 76% | 107.00 | 2.9% | 81.30 | 2.9% |
| 2016 | 232,870 | 18.6% | 176,900 | 18.6% | 76% | 111.00 | 3.7% | 84.32 | 3.7% |
| 2017 | 232,870 | 0.0% | 176,900 | 0.0% | 76% | 115.00 | 3.6% | 87.36 | 3.6% |
| 2018 | 232,870 | 0.0% | 176,900 | 0.0% | 76% | 118.00 | 2.6% | 89.64 | 2.6% |
| 2019 | 232,870 | 0.0% | 176,900 | 0.0% | 76% | 122.00 | 3.4% | 92.68 | 3.4% |
| 2020 | 232,870 | 0.0% | 176,900 | 0.0% | 76% | 125.00 | 2.5% | 94.96 | 2.5% |
| CAAG | 2.5% | | 2.1% | | | 3.1% | | 2.7% | |

Source: PKF Consulting USA

- Rooms supply in the competitive market decreased by 5.6 percent in 2013 due to the closure of 44 rooms at Hotel Current.
- We estimate that market occupancy decreased to 78 percent in 2013.
- Market occupancy is projected to decrease to 76 percent in 2014 and stabilize at this level of occupancy for the remainder of the projection period.
- While the market may fluctuate above and below this number, an occupancy rate of 76percent is appropriate for this particular market considering the supply and demand patterns, seasonality, and mix of business within the competitive market.

Budget Hotel Scenario — Projected Market Performance of the Subject Hotel

Projected Market Performance of the Subject Hotel

| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Occupancy Percentage | Average Daily Rate | Percent Change | REVPAR | Percent Change | Market Penetration | Revenue Yield |
|------|------------------|-------------------|-------------------|-------------------|-------------------------|-----------------------|-------------------|--------|-------------------|-----------------------|------------------|
| 2016 | 36,500 | N/A | 24,700 | N/A | 68% | 115.00 | 3.0% | 77.82 | N/A | 89% | 92% |
| 2017 | 36,500 | 0.0% | 25,600 | 3.6% | 70% | 118.00 | 3.0% | 82.76 | 6.3% | 92% | 95% |
| 2018 | 36,500 | 0.0% | 27,100 | 5.9% | 74% | 122.00 | 3.0% | 90.58 | 9.4% | 98% | 101% |
| 2019 | 36,500 | 0.0% | 27,100 | 0.0% | 74% | 125.00 | 3.0% | 92.81 | 2.5% | 98% | 100% |
| 2020 | 36,500 | 0.0% | 27,100 | 0.0% | 74% | 129.00 | 3.0% | 95.78 | 3.2% | 98% | 101% |
| CAAG | 0.0% | | 2.3% | | | 2.9% | | 5.3% | | | |

Source: PKF Consulting USA

- Demand for the subject hotel will be generated by commercial, leisure, and group demand segments.
 - Based on the subject property's anticipated positioning in the competitive market, it is estimated that the subject property will achieve below its fair share of demand on a stabilized basis due to its distance from major demand generators and lack of desirable facilities and amenities.
 - Upon opening, the subject property is estimated to achieve below its fair share of market demand, with its penetration rate estimated at 89 percent, reflecting an occupancy level of 68 percent during its first year of operation.
 - The subject property's penetration rate is expected to increase to 92 percent in 2017 and 98 percent in 2018, reaching its stabilized level of occupancy of 74 percent by its third year of operation.
- Exhibit #6
Page 29 of 31
- It is estimated that the subject will achieve an opening average daily rate of \$115.00 in 2016 dollars, equal to an average daily room rate of \$108.00, stated in 2014 dollars.
- This positions the subject below the branded, limited-service properties and above the other budget hotels in the competitive set.
- This rate is expected to increase at a compound average annual rate of 3.0 percent throughout the projection period.

Attachment 3

June 17, 2014

Page 5A Originally submitted May 15th 2014



3 Year Round
River's End
Cafe & Restrooms
(Existing)



2 Year Round
Bike Station
(Proposed)



1 Seasonal Kayak &
Stand UP Paddleboard
Rental Station
(Proposed)



4 Seasonal Surfboard,
Stand UP Paddleboard
& Wind Surfing
Rental Station
(Proposed)

**EXISTING & PROPOSED YEAR
ROUND & SEASONAL COMMERCIAL
VISITOR SERVING USES**