

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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**Th 13b****ADDENDUM**

March 10, 2015

Click here to go to  
original staff report

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM TH13B, 5-13-1233 FOR THE COMMISSION  
MEETING OF THURSDAY, MARCH 12, 2015.**

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**1. CHANGES TO STAFF REPORT**

Commission staff recommends modifications to the staff report dated 2/27/15 in the following sections of the staff report: Exhibits and Section II (Findings and Declarations). Language to be added to the findings and conditions is shown in underlined text, and language to be deleted is identified by ~~strike-out~~.

**A. Page 6 – Add the following exhibits, as follows:**

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Exhibit No. 26 – Zoning Map

Exhibit No. 27 – Hotels in Area

Exhibit No. 28 – Letter from Campbell Lodging, Inc. dated February 4, 2014

Exhibit No. 29 – Letter from Kosmont Companies to BCP dated March 4, 2014

Exhibit No. 30 – California Coastal Commission staff report for the City of Seal Beach Land Use Plan dated July 15, 1983

Exhibit No. 31 – City of Seal Beach letter dated March 9, 2015

Exhibit No. 32 – U.S. Army Corps of Engineers, Navigable Waters in Los Angeles District

Exhibit No. 33 – Letter from Melvin Nutter to Commission staff dated March 6, 2015

Exhibit No. 34 – Ex Partes

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**B. Pages 11-12 – Modify II. B.1., as follows:**

...

Sometime after this action, the City of Seal Beach submitted their LCP Land Use Plan (LUP) which included the 1982 DWP Specific Plan for certification by the CCC. On June 24, 1983 ~~July 28, 1983~~, the CCC held a public hearing on the City of Seal Beach LUP. Commission staff recommended that the Commission find that the LUP raise Substantial Issue and the Commission agreed. The CCC found that the DWP Specific Plan contained unclear policies and designations for this site. As proposed by the City, the specific plan allowed visitor-serving uses on the northerly 30% of the DWP parcel and open space uses on the southerly 70% of the DWP parcel. Visitor serving uses were defined as: “A hotel use and the necessary ancillary support

*uses including, but not limited to, restaurants, service uses, meeting/conference rooms and banquet facilities.”* Permitted uses included a hotel use with a maximum number of rooms or suites not to exceed 300 without City Council approval, restaurant, retail, and service uses, meeting conference rooms and a banquet room. Open space uses were defined as: *“Public parks, green belts, bike trails, nature trails, hiking trails, and any active or passive recreational uses normally located in parks or open spaces, and theater.”* Permitted uses included those contained in Chapter 28, Article 20 of the Seal Beach Municipal Code as authorized by the City Council, which included public parks, green belts, government buildings, public schools, etc. The uses proposed within the open space areas of the DWP site had conflicting policies and thus raised Substantial Issue with the policies of Chapter 3 of the Coastal Act. The conflict arose from a Specific Plan policy that identified permitted uses in the open space that included government buildings and facilities, and unspecified uses deemed appropriate by the Planning Commission. The lack of clearly defined uses could have allowed non-priority, non-public uses within the open space.

Following the Substantial Issue determination, the CCC held a public hearing July 28, 1983 on the City of Seal Beach LUP, as submitted (Exhibit No. 30). The Commission denied the LUP as submitted based on inconsistencies with the Coastal Act. Regarding the DWP site, suggested modifications were necessary to limit uses within the Open Space designation. Thus, the suggested modification provided that those uses which were inconsistent with the protection of 70% of the site for open space for parks, trails, active or passive recreation and theatre be deleted. A suggested modification was made which specifically identified that the open space uses for the DWP parcel shall contain only the following: public parks, green belts, beaches, piers, wildlife refuges, tidal marshlands, bicycle trails, nature trails, flood-control basins, flood-control channels, parking lots or facilities, and earthquake fault buffer zones (Chapter 28 Article 20, Section 28-2002(1) of the Seal Beach Municipal Code). The Commission then adopted suggested modifications, which if adopted by the City would bring the Plan into conformance with provision of the Coastal Act. The Commission found that the hotel, restaurant, retail and other proposed visitor-serving commercial uses on the remaining portion of the DWP site were consistent with the Coastal Act.

However, these suggested modifications were never adopted by the City. Therefore, the LUP was never effectively certified and the Commission’s action on the DWP Specific Plan/LUP subsequently lapsed. Thus, the standard of review for this application is the Coastal Act. While these suggested modification regarding the DWP site were never adopted by the City, it does show the City’s and Commission’s intent in 1983 of preserving the site for priority uses including lower cost open space park uses and fairly intense hotel and other visitor-serving commercial uses on the northerly 30% of the DWP site. Such uses are still strongly encouraged, and approval of development that does not include a significant visitor-serving commercial component could prejudice preparation of a certifiable LCP for the City of Seal Beach.

## **2. Previous Commission Staff Comments on Project Site**

In 1996, the DWP Specific Plan was amended by the City to reduce the maximum number of rooms for the hotel use from 300 rooms to 150 rooms, which was not reviewed or approved by the Commission. Thus, the Commission comments letters discussed below refer to the 150 room hotel.



On July 6, 2011 and again on January 9, 2012, Commission staff commented on the Draft Environmental Impact Report (SCH# 2011061018) for the currently proposed Bay City Partners DWP project (**Exhibit No. 6**). The EIRs used the 1996 DWP Specific Plan as a basis for reviewing the proposal. Among the issues and inconsistencies with the Coastal Act raised in the Commission staff letters was the proposed change in land use from visitor-serving commercial (hotel) to residential use. As stated previously, the Commission did not review or approve the changes to the DWP Specific Plan that resulted in the 1996 DWP Specific Plan. However, in both the 1982 and 1996 DWP Specific Plans, the visitor serving land use was the designated use. The applicants were made aware that the past Commission action supported visitor serving uses on the site. In its letter, Staff further reiterated that the DWP site is located in a prime location along the coast that is well suited for visitor-serving and lower cost visitor and recreation uses. Each of these uses is a higher priority use in the Coastal Act since each offers an opportunity for the public to access and enjoy the coast. Residential uses on the other hand are not high priority uses since they do not provide the same beneficial uses for the broader general public.

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**C. Page 13 – Modify II. B.4., as follows:**

...

**4. Local Government Approval**

Subsequent to the Commission's 1983 approval of the Land Use Plan and DWP Specific Plan with suggested modifications, the City took another action in 1996 on the subject site which resulted in an updated DWP Specific Plan referenced as the 1996 DWP Specific Plan. The City allowed the maximum number of rooms or suites for the permitted hotel use in the Specific Plan under visitor serving uses to be reduced from 300 to 150 rooms. In addition, the definition of Open space uses was revised to remove any reference to active recreational uses to be allowed under the open space use designation. Instead, the definition only referenced passive recreational uses. However, these changes to the Specific Plan were not reviewed nor approved by the Commission.

...

**D. Page 19 – Modify II. C.2., as follows:**

...

**2. Applicants' Analysis of the Feasibility of Hotel Use**

Pursuant to the Coastal Act, a hotel use is an ideal use of the project site since a hotel is a visitor-serving use that provides for extended stay and use of the coast for a greater segment of the public than private residential use would provide. Within the City of Seal Beach, there are only two other hotels located in the Coastal Zone. The Pacific Inn (600 Marina Drive) is located approximately .35 miles from the DWP site and the Hampton Inn & Suites Seal Beach (2401 Seal Beach Boulevard) is located approximately 2 miles away from the DWP site (**Exhibit No. 27**). Although these hotels are nearby, they are located either in an industrial area, near the Boeing facility or in a General Commercial zoned area.

The applicants have stated that the hotel use and the size of the hotel stated in the Specific Plan were not based on a feasibility analysis. This is incorrect. Since the 1979 Restoration Plan proposed by the Coastal Conservancy, feasibility studies for a hotel use on site have been an ongoing part of the planning for the DWP site. In the 1983 Commission staff report for review of the City of Seal Beach LCP Land Use Plan (LUP) which included the 1982 DWP Specific Plan, it discussed these ongoing studies, and also showed the Commission's historic concern that the site be used for this type of visitor-serving use:

*“Continued economic feasibility studies have been an ongoing part of the planning for the DWP site. In 1979 in conjunction with the Coastal Conservancy Restoration Plan extensive feasibility studies were done based on proposed visitor and open space uses. Since that time more recent economic studies were completed by consultants and used in the City's adoption of the Specific Plan (see correspondence from Keyser Martson Associates, Inc., Appendix C).*

*These economic studies analyzed the feasibility of a 250-350 room hotel and parking on the DWP to estimate the lease payment for the land. The most recent information concluded:*

*“Specifically, at the midpoint of the range, i.e. at \$15,500 per room, the developer's lease payment for land would range from \$237,000 for a 250 room facility to \$267,000 for one with 350 rooms.” (letter dated July 28, 1982 from H. Schilling, Keyser Martson Assoc., Inc to Mr. Allan Parker, City Manager)*

*This economic evaluation and correspondence between the City and DWP concerning this economic evaluation indicate that the City's proposed specific plan and LUP policies are feasible and supportable.*

Therefore, a hotel use on site has always been an important visitor serving use for the DWP site as indicated in the LUP approved by the Commission and such use had been evaluated and supported through historic feasibility analyses.

Prior to the November 2013 Commission hearing, the applicants, in order to determine if hotel use is a viable use, commissioned several analyses: *Analysis of Potential Market Demand and Statements of Estimated Annual Operating Results for a Proposed Hotel to be located in Seal Beach, CA* prepared by PKF Consulting, USA dated July 31, 2003; *Potential Market Demand and Estimated Operating Results for a Proposed Hotel to be located in Seal Beach, California* prepared by PKF Consulting, USA dated November 6, 2009; and *Peer Review and Site Specific Hotel Feasibility Evaluation* prepared by Kosmont Companies date September 2011.

...

#### **E. Page 23 – Modify II. C.2., as follows:**

...

In response to why the adjacent property owners would find the residential option with the Public Trust easement intact infeasible, the applicants stated that the adjacent neighbors would object to the revised location of the residential element to more of the center of the site because they have fought for years to have it in the proposed location. The Commission does not find

this to be a compelling reason to eliminate design and siting options that could provide an expanded visitor-serving component on the property.

Additionally, in order to determine the feasibility of a 150 room hotel use on site, an independent analysis was completed by Campbell Lodging, Inc. dated February 4, 2014. The analysis concluded that a hotel use was feasible use on site **Exhibit No. 28**. In response to this analysis, Kosmont Companies responded to this analysis (**Exhibit No. 29**) and concluded that their analysis for a hotel on site was infeasible.

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**F. Page 25 – Modify II. C3., as follows:**

...

Additionally the report states that the site is adjacent to a non-navigable stream. According to the US Army Corps of Engineers, portions of the San Gabriel River are Navigable Waters of the U.S. (**Exhibit No. 32**). Further, as proposed and approved by the SLC Land Exchange Agreement, the public trust easement that is currently on the portion of the project site proposed for residential use will be transferred to land and water area within the river. For public trust purposes, navigability is defined as those waterways that support commerce, recreation and navigation. Therefore, the portion of the San Gabriel River adjacent to the applicant's property is further a navigable waterway, as recognized by the public trust doctrine. The San Gabriel River is currently used for water skiing and fishing by some members of the public. The applicants' supplemental information indicates that there is a seasonal beach and that this is area can provide access for hand carried watercraft. The applicants' recognition of the use of the adjacent San Gabriel River for personal watercraft is that they have revised their proposed passive park plan to include amenities such as seasonal kayak and stand up paddleboard rentals.

...

**G. Page 28 – Modify II. C4., as follows:**

...

Staff indicated that the mitigation requirement would be for the loss of all potential to provide hotel and other visitor-serving commercial recreational use with the land use designation and zoning of the property being changed to preclude overnight accommodations on the site. The Commission normally assesses an appropriate mitigation fee on a project providing overnight accommodations when there is such a proposal before them. In this case, the applicants are not proposing overnight accommodations. Therefore, the Commission cannot determine the appropriate mitigation at this time. Therefore, a fee that only mitigated a percentage of hotel rooms, as proposed (which is typically imposed if an applicant is providing luxury rate hotel rooms at the expense of low or moderate cost rates) was not adequate.



**CAMPBELL LODGING, INC.**

**2050 Santa Cruz St., Suite 2000, Anaheim, CA 928505**

**• (714) 256-2070 • FAX (714) 256-2165**

RE: Seal Beach Hotel Site

February 4, 2014

To Whom It May Concern:

James C Caviola asked us to review a site for a hotel in Seal Beach to see if we thought it was feasible. We asked Smith Travel Research (STR) to give us a report of how hotels in the area that would like a hotel on the beach in Seal Beach.

The STR report covers the Hampton Inn in Seal Beach, the Residence Inn in Long Beach, the DoubleTree Hotel in Long Beach, the Hyatt Regency in Huntington Beach, the Hilton Inn in Huntington Beach and the Marriott Hotel in Newport Beach. Those hotels averaged 70.9% occupancy over the last 7 years and 76.6% over the last 3 years. They also averaged over \$184 per room rented over the last 7 years and over \$185 for the last 3 years. To see the details of the STR report please see the attached STR Trend Ref #337854. This report does not detail each hotel but it does detail the average for all of these hotels by month and year.

You told us that there is about 10 acres of land that has been acquired that fronts on the beach and sides to the riverwash but that only about 3 of those acres are buildable and the rest was to be deeded to the city for a park like area and the hotel would be limited to about 3 stories high. We decided to use a Hyatt Place as a model for a hotel in this location. We used the STR report and our knowledge of developing and operating hotels to produce an estimated costs and cash flow (income) statement.

We projected the cost of the hotel as \$3,500,000 for the land, \$22,500,000 for the development of the building, \$3,300,000 for the FF&E and \$100,000 for the franchise right to a 150 room Hyatt Place – that gives a total cost of approximately \$29,400,000. These amounts have not verified because that would need the plans and bidding but with our past development experience we are very positive we could develop this hotel for those amounts. With Hyatt's name, reputation and marketing expertise we do not think there is any detriment to the non-visibility from a major freeway and the hard to find location.

As I said before, the hotels we used to compare for this hotel averaged more than \$185 average daily rate (ADR) and more than 76% occupancy (OCC). For this hotel we used from \$140 to \$180 ADR rate and from 68% to 77% OCC. We used all of our past operating knowledge to forecast the operating costs. This analysis results in a capex value at 8% from \$27,000,000 at \$140 ADR and 66% OCC to \$49,000,000 at \$180 ADR and 77% OCC. Since the projected value is equal or more than the original projected cost this hotel is feasible to build. Please see the excel spreadsheet to see the details of the income and value calculations.

## OUR HISTORY

Beginning in 1969, Jack B. Campbell and his partner founded California 6 Motels which, with the additional operating name of Western 6 Motels, grew to become a chain of 55 motels with 5,445 rooms. From 1975 through 1982, gross revenues increased an average of 37% annually to \$30 million per year with an average occupancy above 90%, substantially higher than published industry.

That original company was sold in the early 1980's and in 1983 the Campbell family started Campbell Lodging, Inc. Our successes over those last 27+ years have been achieved largely through our ability to access overall market conditions and to act upon the accurate information we have gathered. By building a successful team of core Professional Corporate and Regional Executive Staff, we have the knowledge and experience to efficiently oversee the day to day operations of your investment.

Our accomplishments are many and it's thanks to our fine management and staff at each property. We know that as a company it is our associates at each location that make us shine so brightly. With that clearly in focus we remind ourselves that Campbell Lodging's corporate structure is a "support team" to those who work so hard with us at each hotel (not the other way around). Each hotel, its associates, its guests and its owners are our primary focus and each day we work to support their needs and that of the communities they live and work in.

Since our origination in 1983, Campbell Lodging has seen substantial personal and financial growth. Starting with the independent name of Travelers Inns, Campbell Lodging grew to 38 properties by December 1998.

In 1997 a family decision was made to convert from independently named properties into nationally recognized franchised brands - Marriott Fairfield Inns, Red Roof Inns, Super 8 Motels and Comfort Inns. Additionally, a new focus was adopted regarding new development and acquisitions. Affiliations with mid-priced national brands including Marriott Fairfield Inn & Suites, Marriott TownePlace Suites, Marriott Springhill Suites, Hilton Garden Inn, Hampton Inn & Suites, Holiday Inn Express and other franchise brands were established.

In 2009 a new era of Campbell Lodging began with the addition of offering management services to owners and investors. Campbell Lodging not only provides top notch management for their own portfolio of owned properties, but for other hotel investors as well. Simply put, we think and manage like owners because we are owners!

### Jack B. Campbell, Senior Chairman of the Board

Jack Campbell founded the company in 1983 bringing with him 20 years of experience as a practicing CPA where he was President and Senior Partner of a CPA firm. Dating back to the 1970's, Jack was founder or co-founder of two hotel chains, which combined with Campbell Lodging, Inc., represent the development and operating of over 100 properties in 10 western states. He also established the company vision that transformed Campbell Lodging into the successful operation it is today, owning and operating hotels affiliated with strong franchised brands and providing ultimate guest satisfaction while supporting employee and company needs. Jack is past President/CEO of Campbell Lodging, Inc. For many years he was a board member of the California Hotel & Lodging Association (CH&LA) and has served as Chairman of their Audit Committee and as a member of their Executive Committee. He was named Most Valuable Volunteer in 2003 and was inducted into the CH&LA Hall of Fame in 2007. Jack was a founding Board Member, past President and Treasurer for the California Highway Patrol II-99 Foundation, which raises funds

for the Highway Patrol to provide scholarships and financial assistance for the Highway Patrol employees and their families that have unexpectedly suffered financial disasters. Jack is past Chairman and Audit Committee Chairman for the Downey Regional Medical Center and the Memorial Trust Foundation. He was a founding Board Member and Treasurer of the Downey Police and Fire Foundation, past Vice Chairman of Landmark Bank and a member of their Executive Committee and Sr. Loan Committee; past Board Member of California State Bank and their Sr. Loan Committee; Member of the American Institute of CPA's and California Society of CPA's; and a past member of the Downey Kiwanis.

J. Alan Campbell, President, CEO

Alan Campbell has been with the company since April 1983, bringing with him 13 years of experience from California 6 Motels and Western 6 Motels. Alan has a B.A. in Accounting from Cal State Fullerton. Under his direction, the company was able to finance its growth in order to transition regional brands into the national brands. Alan monitors all financial metrics to assure outstanding financial performance. Additionally, Alan negotiates and acquires all insurance policies for the company. Alan is a current member of the Family Business Council of the California State University at Fullerton. He is a former member of Marriott's Franchise Advisory Council for Fairfield Inns and Suites. Alan continues to expand on his father's vision of owning and operating hotels affiliated with strong franchised brands, and providing the ultimate in guest satisfaction.

Martin A. Campbell, Chairman of the Board, Vice President, CDO

Marty Campbell has been with the company since its foundation in 1983. His background includes a B.S. in business with an emphasis in real estate valuation from USC. Marty began his career with a couple of nationally recognized real estate firms and from 1981 to 1983, he focused on selling residential real estate, business opportunities and leased office space. His initial responsibilities at Campbell Lodging were to find locations for development and to negotiate the purchase through closing. Over the years, Marty's role evolved into providing feasibility studies for development on selected sites, recommendations for the best franchise affiliations and to negotiate and complete the purchase. In 1998, Marty was given responsibility of creating and managing the Sales & Marketing Department. This consisted of staffing, training and establishing goals for the marketing department. Prior to and during his establishing of the Sales & Marketing Department, Marty received extensive one-on-one training from both highly recognized industry leaders and world class sales and marketing experts. He is a former Marriott Franchise Advisory Council Member for Fairfield Inn & Suites. Being a family member on the Executive Committee Team, he has an equal role in the long term vision of the company.

At Campbell Lodging we are always looking for new, innovative development opportunities. We continue to watch market trends and look for opportunities that can be both rewarding and profitable for our owners. As we have done with our own portfolio over the years, we manage our development growth cautiously and we develop in strong performing segments and locations.

It can usually take years to research, design, submit and obtain for permits, build and finally open a new hotel development. For these reasons our team takes the time necessary to evaluate each project individually and spends countless hours on research and feasibility analysis before ever presenting a new development for consideration. We realize that each market is different and not every market can justify a new hotel.

The recent economy has presented many new and exciting opportunities as existing properties have come to market. The need to continue pursuing property acquisitions in addition to new development is an area that we watch closely and act upon when the right opportunities present themselves.

Deciding on the right brand is something that requires experience and an understanding of individual markets. We evaluate multiple brands for each location and select only a brand that is best suited for that market. If the brands we select are not available we will simply move on.

Campbell Lodging has partnered with West-Cal Construction for over 40 years with the building of all of our hotel developments. Together we have built well over 100 hotels in the Western half of the United States. Tried and true methods have been learned, modified and repeated when appropriate to maximize the owners experience. As a result of our experience, we have cut construction times down to a minimum. These efficiencies allow for less time owing money to the lending institutions and more time earning money for our owners.

Experience: Nearly 30 years experience and over 100 hotels built ranging from budget ( Motel 6, Super 8, etc.) to Select Service (Hilton Garden Inn, SpringHill Suites by Marriott, etc.) and all in between ( Fairfield Inn & Suites and TownePlace Suites by Marriott, Hampton Inn & Suites, Holiday Inn Express & Suites, etc.)

Quality Control- Order inspections, walk the property with the franchisor, negotiate PIP or renovation scope, obtain bids, oversee work, accurate administrative processes.

Completed on Time: Estimate cost and prepare timeline, schedule work (seasonal & event planning), oversee work to completion.

Cost Control: 35 years experience creating synergies for dependable and affordable sub-contractors, industry best pricing, work-scope knowledge for improved design producing more efficient results.

Value Engineering Options: Our experience has fostered choices from luxury and stylistic choices to more economical and practical options.

#### Types of Construction Services Offered:

"Turnkey Completion" where we build the hotel, order and place the FF&E package and deliver a ready to operate property to the Operations team to take over and operate. We coordinate areas and periods for the Opt Team to come in and "get ready" to open the property.

"Shell Ready" where we build the hotel for you and hand it over for you to furnish the FF&E and the owner provides their own management team.

"Build to Suit" where we take your plans, site location and loan program and build the hotel exactly as you desire. This is the best way to save significant dollars on the cost of a hotel. We only draw a minor fee (typically added on to the construction fee) while we oversee the entire entitlement and construction process for you.

"Spec Build" where we use our own funds and loans to build the hotel. This is the best way to minimize your risk prior to actually opening the hotel and is required by some larger institutional owners (such as REIT's).

Campbell Lodging successfully maneuvered through the recent economic downturn by relentless monitoring of rates and opportunities through revenue management. Our practice of reviewing property performance on a daily basis and making valued decisions and changes "on the fly" continues to be vital to the success of each hotel we manage.

Labor continues to be the single largest operating expense for most owners. Campbell Lodging is committed to controlling your property's labor expense by closely managing daily staffing levels and maximizing efficiency through proper training and supervision.

Additional operating costs such as room and maintenance expenses, utilities and energy usage are controlled effectively through our operation team's hands on approach.

The key to any hotel's success starts with guest satisfaction. Campbell Lodging is a leader in this area. We provide incentive plans for all employees that reward associates for producing some of the highest guest satisfaction scores in our industry. We proactively address hotel related issues on a continuous basis and have created a culture of Hospitality that naturally makes guests want to return.

Equal importance must be given to our focus on property level sales efforts. These efforts are supported by Corporate level industry experts who emphasize both proper training and supervision. We keenly monitor each properties marketing programs which are custom tailored for each property in each market.

### Welcome to Campbell Lodging!

Hos-pi-tal-i-ty (hos'pi-tal'i-te) n., pl. Cordial and generous reception of guests.

Although the dictionary defines Hospitality one way, Campbell Lodging redefines Hospitality by creating memorable experiences for hotel guests that start at reception and continue throughout their entire stay.

Based on core values and time tested practices, Campbell Lodging's success is in large part due to one key ideal... integrity. We are a family based business which allows for a hands on and personal approach. We are a team that really cares about YOUR success. If you want premium returns on your investment and are looking for a Management Company who can deliver on what they promise, your search is over. When you partner with Campbell Lodging you will receive the same attention for your investment as we have been devoting to our own personally owned properties over the past 40 years.

### PRESIDENT'S MESSAGE

*Our first hotel management company was founded by my father in 1967 with one core value to manage by: "Take care of the guest and the profits will naturally take care of themselves".*

*Over the years, Campbell Lodging has built itself around that core value as an ever growing company whose successes are achieved through careful thought and meticulous planning. We are a family based business with a hands on and personal approach. We are a team who really cares about the success of our guests, associates and owners.*

*Campbell Lodging analyzes your investment with a systematic, detailed and organized accounting system that provides accurate information flow and accountability. This results in a proactive (not reactive) decision making process that allows us to maintain a competitive edge.*

*We look forward to putting our experience to work for you. We share your passion and commitment in providing the best hospitality experience for your guests while maintaining a profitable growth model for*



*you as an owner. We understand your goals as they have been my family's goals as well for over 40 years.*

If you need an experienced hotel developer please give us a call. If you have any question please let us know.

Thank You

J Alan Campbell  
President  
Campbell Lodging, Inc.  
2050 South Santa Cruz Suite 2000  
Anaheim, CA 92805  
714-256-2070x205

## Campbell Motel Properties

## Forecasting Worksheet

## Yearly Totals

## Hyatt Place

## Seal Beach

## Ca

Cost - Land	3,500,000		Loan	2,450,000		Cost/Room	23,333			
Cost - Building	22,500,000		Loan	15,750,000		Cost/Room	150,000			
Cost - F F E	3,300,000		Loan	2,310,000		Cost/Room	22,000			
Cost - Franchise	100,000		Loan	70,000		Cost/Room	667			
Totals	29,400,000			20,580,000			196,000			
Number of Rooms	150		150	150		150	150			
Days in Year	365		365	365		365	365			
Rooms Available	54,750		54,750	54,750		54,750	54,750			
Occupancy Percentage	68%		72%	74%		76%	77%			
Rooms Sold	37,230		39,420	40,515		41,810	42,158			
Average Room Rate	140.00		150.00	160.00		170.00	180.00			
Income										
Rental Income	5,212,200		5,913,000	6,482,400		7,073,700	7,588,350			
Telephone Income	15,637		17,739	19,447		21,221	22,765			
Other Income	219,553		232,938	243,814		255,108	264,937			
Total Income	5,447,390	100.0%	6,163,677	100.0%	6,745,861	100.0%	7,350,029	100.0%		
Expenses:										
Payroll	1,191,266	21.9%	1,211,192	19.7%	1,221,155	18.1%	1,231,117	16.7%	1,236,099	15.7%
Supplies	275,812	5.1%	293,823	4.8%	305,144	4.5%	316,697	4.3%	324,789	4.1%
Maintenance	94,764	1.7%	95,122	1.5%	95,413	1.4%	95,715	1.3%	95,978	1.2%
Utilities	150,549	2.8%	155,586	2.5%	158,105	2.3%	160,623	2.2%	161,882	2.1%
Telephone	31,109	0.6%	32,791	0.5%	34,158	0.5%	35,577	0.5%	36,812	0.5%
Advertising	16,200	0.3%	16,200	0.3%	16,200	0.2%	16,200	0.2%	16,200	0.2%
Commissions & Discounts	135,095	2.5%	152,859	2.5%	167,292	2.5%	182,281	2.5%	195,326	2.5%
Other Variable	8,400	0.2%	8,400	0.1%	8,400	0.1%	8,400	0.1%	8,400	0.1%
Franchise Costs	668,977	12.3%	757,278	12.3%	829,022	12.3%	903,526	12.3%	968,372	12.3%
Insurance & Taxes	365,212	6.7%	374,166	6.1%	381,441	5.7%	388,995	5.3%	395,571	5.0%
Total Operating Expenses	2,937,385	53.9%	3,097,417	50.3%	3,216,329	47.7%	3,339,131	45.4%	3,439,429	43.7%
Operating Cash Flow	2,510,005	46.1%	3,066,261	49.7%	3,529,332	52.3%	4,010,897	54.6%	4,436,623	56.3%
Other Items:										
General & Administrative	181,422	3.3%	202,910	3.3%	220,370	3.3%	238,501	3.2%	254,282	3.2%
Replacement Reserve	159,609	2.9%	180,596	2.9%	197,648	2.9%	215,356	2.9%	230,768	2.9%
Contingency	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Total Other Items	341,030	6.3%	383,506	6.2%	418,018	6.2%	453,857	6.2%	485,050	6.2%
Pre Debt Service Cash Flow	2,168,974	39.8%	2,682,755	43.5%	3,111,314	46.1%	3,557,041	48.4%	3,951,574	50.2%
Debt Service:										
Interest	1,131,900	20.8%	1,131,900	18.4%	1,131,900	16.8%	1,131,900	15.4%	1,131,900	14.4%
Principal	238,000	4.4%	238,000	3.9%	238,000	3.5%	238,000	3.2%	238,000	3.0%
Total Debt Service	1,369,900	25.1%	1,369,900	22.2%	1,369,900	20.3%	1,369,900	18.6%	1,369,900	17.4%
Net Cash Flow	799,074	14.7%	1,312,855	21.3%	1,741,414	25.8%	2,187,141	29.8%	2,581,674	32.8%
Cash on Cash Return	9.06%		14.88%		19.74%		24.80%		29.27%	
FM Value @ 8% Cap	27,112,180		33,534,432		38,891,427		44,463,009		49,394,669	
FM Value @ 9% Cap	24,099,715		29,808,384		34,570,158		39,522,675		43,906,373	

# Tab 2 - Data by Measure

Long Beach, CA Area Selected Properties  
Job Number: 550197\_SADIM Staff: KD

Created: January 10, 2014

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Nov YTD
2007	62.7	74.2	76.4	74.2	76.3	81.9	82.9	83.7	70.4	70.9	64.4	51.9	72.3	74.2
2008	68.9	73.3	73.3	70.2	71.6	77.7	70.4	85.9	71.6	85.9	61.0	49.8	71.0	73.4
2009	58.9	59.2	56.7	64.4	56.4	70.0	78.0	80.9	67.1	84.2	50.7	44.9	62.4	63.7
2010	66.3	68.0	74.6	70.7	68.8	77.2	61.9	80.9	77.2	71.3	57.1	51.7	89.6	71.3
2011	82.4	69.8	81.8	74.0	78.7	88.3	85.2	85.2	77.4	79.4	61.9	63.8	73.7	75.5
2012	67.8	76.8	79.6	79.6	76.6	85.3	85.2	85.0	77.4	74.6	67.4	57.0	76.2	76.2
2013	63.9	71.1	75.1	73.0	70.9	79.4	83.7	82.2	72.0	72.2	60.9	51.4	70.9	73.2
Avg	64.3	71.1	75.1	73.0	70.9	79.4	83.7	82.2	72.0	72.2	60.9	51.4	70.9	73.2

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Nov YTD
2007	125.26	130.84	155.23	154.15	155.93	174.27	195.24	194.42	145.30	149.42	124.87	94.88	151.69	151.69
2008	141.54	146.76	152.53	139.51	147.31	155.47	191.34	180.07	134.50	102.28	106.53	72.80	142.35	148.83
2009	104.37	108.49	101.58	116.50	94.66	113.89	143.40	142.44	110.74	127.28	75.91	67.86	107.33	111.17
2010	100.48	107.71	120.52	118.14	111.58	135.08	164.38	158.14	120.32	122.61	98.88	77.86	119.34	122.86
2011	109.06	133.83	141.23	141.46	130.96	135.08	103.54	164.48	127.75	123.67	90.02	79.18	128.55	133.13
2012	103.83	136.84	146.81	143.77	134.22	173.21	102.96	179.70	136.70	140.92	103.01	87.20	138.79	145.53
2013	111.86	129.23	137.24	133.37	129.23	150.44	182.07	174.37	130.70	130.07	101.95	79.71	130.72	137.80
Avg	111.86	129.23	137.24	133.37	129.23	150.44	182.07	174.37	130.70	130.07	101.95	79.71	130.72	137.80

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Nov YTD
2007	47.554	47.554	47.554	48.020	47.554	47.554	47.554	47.554	46.023	47.554	46.020	47.554	512.356	512.356
2008	47.554	48.020	47.554	48.020	47.554	48.020	47.554	47.554	46.020	47.554	46.020	47.554	512.356	512.356
2009	47.554	48.020	47.554	48.020	47.554	48.020	47.554	47.554	46.020	47.554	46.020	47.554	512.356	512.356
2010	47.554	48.020	47.554	48.020	47.554	48.020	47.554	47.554	46.020	47.554	46.020	47.554	512.356	512.356
2011	47.554	48.020	47.554	48.020	47.554	48.020	47.554	47.554	46.020	47.554	46.020	47.554	512.356	512.356
2012	47.554	48.020	47.554	48.020	47.554	48.020	47.554	47.554	46.020	47.554	46.020	47.554	512.356	512.356
2013	47.554	48.020	47.554	48.020	47.554	48.020	47.554	47.554	46.020	47.554	46.020	47.554	512.356	512.356
Avg	47.554	48.020	47.554	48.020	47.554	48.020	47.554	47.554	46.020	47.554	46.020	47.554	512.356	512.356

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Nov YTD
2007	28.834	31.870	35.972	34.151	36.265	37.573	39.409	39.098	32.404	33.697	28.647	24.863	404.533	379.940
2008	32.784	33.739	34.395	34.637	36.572	37.573	42.786	42.860	36.292	34.538	36.091	22.825	423.602	399.157
2009	25.914	27.212	28.873	31.740	31.836	38.188	42.786	43.076	36.618	36.231	27.896	27.300	397.157	369.857
2010	35.240	34.651	42.089	39.921	37.686	46.214	46.214	45.634	37.640	40.231	31.173	29.212	402.691	388.577
2011	38.288	38.200	40.428	43.986	43.269	42.978	46.214	46.214	40.231	43.922	33.028	32.274	485.724	453.479
2012	36.092	36.680	44.405	42.240	40.407	46.686	46.214	46.214	40.231	43.922	33.028	32.274	485.724	453.479
2013	33.852	34.421	40.247	37.899	36.573	41.810	45.570	44.749	37.922	41.860	36.346	32.274	507.802	489.364
Avg	33.852	34.421	40.247	37.899	36.573	41.810	45.570	44.749	37.922	41.860	36.346	32.274	507.802	489.364

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Nov YTD
2007	5,955,884	6,493,169	7,361,809	7,084,211	7,415,242	8,020,007	9,284,267	9,243,098	6,696,327	7,105,466	5,746,407	4,511,302	84,931,048	80,418,145
2008	6,731,024	6,947,212	7,773,861	6,680,771	7,508,304	7,687,059	9,746,144	9,085,354	6,013,485	5,782,412	4,144,770	3,028,408	84,931,048	81,215,338
2009	4,679,299	5,033,309	5,770,552	5,742,680	5,340,946	6,480,801	8,085,354	8,038,251	6,013,485	5,782,412	4,144,770	3,028,408	84,931,048	81,215,338
2010	5,672,459	5,468,928	6,799,887	6,430,489	6,294,131	7,375,951	9,274,086	9,222,200	6,869,523	6,917,516	4,963,519	4,401,080	84,931,048	81,215,338
2011	6,150,334	6,182,639	7,937,812	7,727,407	7,392,615	7,620,514	10,381,283	9,222,200	6,869,523	6,917,516	4,963,519	4,401,080	84,931,048	81,215,338
2012	5,047,389	5,906,316	8,310,912	7,675,747	7,507,809	9,488,596	11,687,967	10,115,608	7,498,320	7,331,497	5,489,549	4,401,080	84,931,048	81,215,338
2013	5,848,026	6,259,304	7,937,812	7,031,381	7,392,615	7,620,514	10,381,283	9,222,200	6,869,523	6,917,516	4,963,519	4,401,080	84,931,048	81,215,338
Avg	5,848,026	6,259,304	7,937,812	7,031,381	7,392,615	7,620,514	10,381,283	9,222,200	6,869,523	6,917,516	4,963,519	4,401,080	84,931,048	81,215,338

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March 4, 2014

Edward Selich  
Bay City Partners  
627 Bayside Drive  
Newport Beach, CA 92660

Re: Application 5-13-003; Review of Campbell Lodging Letter of February 4, 2014

Dear Mr. Selich:

Kosmont Companies ("Kosmont") has reviewed the Campbell Lodging letter ("Campbell Report") that purports to show a 150-room hotel would be feasible on the 3+ acre site at 1<sup>st</sup> street and Marina Drive in Seal Beach ("Site"). We found several flaws in the Campbell report, including a site plan that placed the hotel on adjacent property not owned by Bay City Partners, the Applicant.

Since hotel market analysis is a specialized field, Kosmont utilized the services of PKF Consulting in December 2013 to determine market demand and likely room rates for various hotel product types used in the Kosmont feasibility report that was submitted to Coastal Commission in January 2014.

Kosmont and PKF have reviewed the Campbell Report. Kosmont and PKF concur that the Campbell Report includes data from and based on luxury hotels with demand diversity that is premised on residing in superior locations, and as such represent inappropriate comparables to the subject site. Further, the Campbell Report uses a select service hotel product type, and that based on industry data and experience, the projected range of room rates and occupancy rates shown by Campbell are not achievable given the Hyatt Place select service product type suggested by Campbell. A letter from PKF Consulting identifying the primary faults in the data sample used by Campbell is attached.

In summary, the Seal Beach site will not support a new hotel, as the site's location and competitive properties result in local market demand that is insufficient to generate room rates and occupancy rates that are high enough to support the cost of building a new hotel anywhere on the 10-acre site. Further, PKF concludes that Campbell Lodging, Inc.'s projections for revenue generating potential for a hotel on the Site are unfounded and warrant further examination.

Sincerely,

Larry J. Kosmont, CRE®  
President & CEO

Attachment: PKF Letter

March 4, 2014



Mr. Edward Selich  
Bay City Partners  
627 Bayside Drive  
Newport Beach, California 92660  
Re: Application 5-13-003; Review of Campbell Lodging Inc Letter of February 4, 2014

Dear Mr. Selich:

We have reviewed the report provided by Campbell Lodging, Inc. for a proposed 150-unit Hyatt Place hotel to be located at the western quadrant of the Pacific Coast Highway and 1<sup>st</sup> Street intersection in the City of Seal Beach, California. It is our understanding that Campbell Lodging, Inc. deemed the development of a proposed 150-unit Hyatt Place hotel feasible at the subject site. Based on our knowledge of the local competitive market, as well as the general operational performance of Hyatt Place properties in similar Southern California markets, we are of the opinion that the projected stabilized occupancy and average daily rate for the proposed select-service property are unreasonable for a Hyatt Place on the subject site.

In connection with their analysis, Campbell Lodging, Inc. ran a Smith Travel Research (STR) report on a set of hotel properties located in the cities of Seal Beach, Long Beach, Huntington Beach, and Newport Beach to derive the stabilized occupancy and average daily rate for the proposed subject; these hotels include: Hampton Inn in the Seal Beach, the Residence Inn and DoubleTree in Long Beach, the Hyatt Regency and Hilton in Huntington Beach, as well as the Marriott in Newport Beach. This competitive set represents two full-service resort hotels (the Hyatt Regency and Hilton in Huntington Beach), one full-service group, corporate, and resort hotel (the Marriott in Newport Beach), and extended-stay and full-service hotels in the City of Long Beach, both of which cater to local demand generators. Campbell's report fails to address the type of demand for the subject in Seal Beach, which is derived from the transient leisure guests to the local beaches, as well as to the corporate and group travel segments, mainly due to the presence of Boeing and the Naval Weapons Base. This group of hotels caters to a diverse demand set—none of which are relevant to the subject site. While the subject site is near the ocean, it could not be considered an oceanfront hotel.

Campbell's analysis also assumes that the subject would be branded as a Hyatt Place and positioned as a select-service property with a three-story height limitation on the northern portion of the subject site without direct beach frontage. A select-service property is characterized by reduced amenities with an emphasis on guestrooms. With its isolated and hard to find location, the subject will be charged with the responsibility of inducing its own

demand rather than feeding off of what currently exists in the market. The subject will also be challenged to attract higher-rated leisure and group travelers without desirable facilities, such as a spa and adequate meeting space, or area amenities. Furthermore, its coastal orientation places the subject farther from commercial demand generators in the immediate area, making it a less desirable lodging option for those who wish to remain proximate to the areas in which they are doing business. It should be noted that the Hyatt Place select-service product and brand specifications offer extremely limited food and beverage options, thereby limiting the subject's potential to generate substantial food and beverage revenues. As such, we find it unreasonable that the subject property under this scenario, with its limited facilities and amenities, as well as its inferior beach fronting orientation and proximity to area demand generators, will be able to compete with the aforementioned full-service and extended-stay properties and command the projected stabilized occupancy and average daily rate used to reach Campbell's conclusions.

Campbell Lodging, Inc. gives no indication that they did any field work to produce their analysis other than to run a STR report on a non-comparable set of hotel properties and uses a set of general assumptions as to the performance of the subject property. At an estimated cost of \$29,400,000, or \$196,000 per room, we believe the projected cost for the development of a select-service property to be reasonable; however, we are of the opinion that Campbell Lodging, Inc.'s projections for the subject's revenue generating potential are unfounded and warrant further examination.

We appreciate the opportunity to work on this assignment and look forward to answering any questions you may have regarding our conclusions presented herein.

Sincerely,

*PKF Consulting USA*



By Bruce Baltin  
Senior Vice President

## ***STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS***

## **STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS**

***This report is made with the following assumptions and limiting conditions:***

**Economic and Social Trends** - The consultant assumes no responsibility for economic, physical or demographic factors which may affect or alter the opinions in this report if said economic, physical or demographic factors were not present as of the date of the letter of transmittal accompanying this report. The consultant is not obligated to predict future political, economic or social trends.

**Information Furnished by Others** - In preparing this report, the consultant was required to rely on information furnished by other individuals or found in previously existing records and/or documents. Unless otherwise indicated, such information is presumed to be reliable. However, no warranty, either express or implied, is given by the consultant for the accuracy of such information and the consultant assumes no responsibility for information relied upon later found to have been inaccurate. The consultant reserves the right to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

**Hidden Conditions** - The consultant assumes no responsibility for hidden or unapparent conditions of the property, subsoil, ground water or structures that render the subject property more or less valuable. No responsibility is assumed for arranging for engineering, geologic or environmental studies that may be required to discover such hidden or unapparent conditions.

**Hazardous Materials** - The consultant has not been provided any information regarding the presence of any material or substance on or in any portion of the subject property or improvements thereon, which material or substance possesses or may possess toxic, hazardous and/or other harmful and/or dangerous characteristics. Unless otherwise stated in the report, the consultant did not become aware of the presence of any such material or substance during the consultant's inspection of the subject property. However, the consultant is not qualified to investigate or test for the presence of such materials or substances. The presence of such materials or substances may adversely affect the value of the subject property. The value estimated in this report is predicated on the assumption that no such material or substance is present on or in the subject property or in such proximity thereto that it would cause a loss in value. The consultant assumes no responsibility for the presence of any such substance or material on or in the subject property, nor for any expertise or engineering knowledge required to discover the presence of such substance or material. Unless otherwise stated, this report assumes the subject property is in compliance with all federal, state and local environmental laws, regulations and rules.

**Zoning and Land Use** - Unless otherwise stated, the projections were formulated assuming the hotel to be in full compliance with all applicable zoning and land use regulations and restrictions.

**Licenses and Permits** - Unless otherwise stated, the property is assumed to have all required licenses, permits, certificates, consents or other legislative and/or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

**Engineering Survey** - No engineering survey has been made by the consultant. Except as specifically stated, data relative to size and area of the subject property was taken from sources considered reliable and no encroachment of the subject property is considered to exist.

**Subsurface Rights** - No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether the property is subject to surface entry for the exploration or removal of such materials, except as is expressly stated.

**Maps, Plats and Exhibits** - Maps, plats and exhibits included in this report are for illustration only to serve as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced or used apart from the report.



## **STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS**

(continued)

**Legal Matters** - No opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate consultants.

**Right of Publication** - Possession of this report, or a copy of it, does not carry with it the right of publication. Without the written consent of the consultant, this report may not be used for any purpose by any person other than the party to whom it is addressed. In any event, this report may be used only with proper written qualification and only in its entirety for its stated purpose.

**Testimony in Court** - Testimony or attendance in court or at any other hearing is not required by reason of rendering this report, unless such arrangements are made a reasonable time in advance of said hearing. Further, unless otherwise indicated, separate arrangements shall be made concerning compensation for the consultant's time to prepare for and attend any such hearing.

**Archeological Significance** - No investigation has been made by the consultant and no information has been provided to the consultant regarding potential archeological significance of the subject property or any portion thereof. This report assumes no portion of the subject property has archeological significance.

**Compliance with the American Disabilities Act** - The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We assumed that the property will be in direct compliance with the various detailed requirements of the ADA.

**Definitions and Assumptions** - The definitions and assumptions upon which our analyses, opinions and conclusions are based are set forth in appropriate sections of this report and are to be part of these general assumptions as if included here in their entirety.

**Dissemination of Material** - Neither all nor any part of the contents of this report shall be disseminated to the general public through advertising or sales media, public relations media, news media or other public means of communication without the prior written consent and approval of the consultant(s).

**Distribution and Liability to Third Parties** - The party for whom this report was prepared may distribute copies of this report only in its entirety to such third parties as may be selected by the party for whom this report was prepared; however, portions of this report shall not be given to third parties without our written consent. Liability to third parties will not be accepted.

**Use in Offering Materials** - This report, including all cash flow forecasts, market surveys and related data, conclusions, exhibits and supporting documentation, may not be reproduced or references made to the report or to PKF Consulting in any sale offering, prospectus, public or private placement memorandum, proxy statement or other document ("Offering Material") in connection with a merger, liquidation or other corporate transaction unless PKF Consulting has approved in writing the text of any such reference or reproduction prior to the distribution and filing thereof.

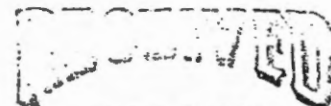
**Limits to Liability** - PKF Consulting cannot be held liable in any cause of action resulting in litigation for any dollar amount which exceeds the total fees collected from this individual engagement.

**Legal Expenses** - Any legal expenses incurred in defending or representing ourselves concerning this assignment will be the responsibility of the client.

LCP file

California Coastal Commission  
631 Howard Street, 4th Floor  
San Francisco, California 94105  
(415) 543-8555

*Bob F.I.*  
August 16, 1983



AUG 20 1983

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Honorable Willemke Vanderstaay  
Members of the City Council  
City of Seal Beach  
211 Eighth Street  
Seal Beach, CA 90740

Dear Mayor Vanderstaay and Members of the Council:

On July 28, 1983 the California Coastal Commission held a public hearing on the Land Use Plan for the City of Seal Beach as resubmitted by the City. The Commission by a 2-9 vote denied the Land Use Plan as submitted.

The Commission's action was based on inconsistencies with Coastal Act policies as set forth in the findings dated July 15, 1983, attached.

The Commission then by a vote of 9-3 adopted suggested modifications which if adopted by the City would bring the Plan into conformance with provisions of the Coastal Act. The suggested modifications adopted by the Commission are detailed on pages 27-32 of the attached report.

The suggested modifications to the Land Use Plan as acted on by the Commission are considered to be the minimum necessary to bring the Plan into conformance and enable the Commission to certify it. At this point the City has the option of adopting the suggested modifications to the denied Land Use Plan or proposing other solutions that accomplish the same objectives of the Commission and resubmitting the Plan for Commission review.

If there are any questions or if we can be of assistance, please contact me or Liz Fuchs of the staff at your convenience.

Sincerely,

*[Signature]*  
MICHAEL L. FISCHER  
Executive Director

Attachments

cc: Allan Parker, City Manager



*(\*) The suggested modifications were never adopted by the City. Therefore, the LUP was never effectively certified and subsequently lapsed.*

California Coastal Commission  
SOUTH COAST DISTRICT  
245 West Broadway, Suite 380  
P.O. Box 1450  
Long Beach, California 90801-1450  
(213) 590-5071

LUP RESUBMITTED: APRIL 8, 1983  
STAFF REPORT: JULY 15, 1983  
MEETING OF: JULY 27-29, 1983

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: NANCY A. LUCAST, DISTRICT DIRECTOR  
DAVID LOOMIS, CHIEF PLANNER  
LIZ FUCHS, LEAD PROJECT PLANNER

SUBJECT: CITY OF SEAL BEACH LAND USE PLAN (for Public Hearing and Action at the meeting of July 27-29, 1983).

### SYNOPSIS

#### BACKGROUND

On June 24, 1983 following public hearing, the Commission determined that the Land Use Plan as submitted by the City of Seal Beach raised substantial issue with the following policy groups of Chapter 3 of the Coastal Act: A) Marine Resources/Sensitive Habitats/Diking, Dredging & Filling; B) Shoreline Structures; C) Public Access; D) Hazards; E) Archaeological Resources; F) New Development.

#### Staff Recommendation for Denial

The staff recommends that the Commission deny the City of Seal Beach Land Use Plan as submitted. In order to implement this recommendation, staff recommends a NO vote on the following motion:

Motion #1: I move that the Commission certify the Land Use Plan of the City of Seal Beach Local Coastal Program as submitted.

A majority of appointed Commissioners is needed to pass the motion. If the motion fails, the Commission may suggest modifications which, if adopted by the County, will result in a certified Land Use Plan.

#### Staff Recommendation for Suggested Modifications

Staff recommends that the Commission certify the Land Use Plan as modified by the attached suggested modifications and findings. The attached Staff Report and Recommendation includes suggested modifications which if adopted, would support approval of the Land Use Plan. If the Commission denies the Land Use Plan as submitted, staff recommends that the adoption of these suggested modifications would eliminate deficiencies in the denied Land Use Plan. The

Commission must deny the Land Use Plan before it can vote on the suggested modifications.

The suggested modifications as detailed in Section VII B are summarized as follows:

- o Require that diking dredging and filling activities be carried out consistent with the provisions of Section 30233 of the Coastal Act.
- o Require conditions of approval for other uses in severely degraded wetlands in the Hellman which would implement a plan for restoration and permanent protection of 19.6 acres of wetlands and hydrology plans, management plans, landscaping plans and engineering analysis.
- o provide for the construction of shoreline structures to serve coastal dependent uses or to protect existing structures or public beaches and when designed to eliminate or mitigate adverse impacts on shoreline sand supply.
- o provide for dedication of lateral and vertical access in new development projects proposed by the Surfside Colony Community Association or proposed on Association property.
- o Requires engineering modifications in new development to minimize risks from liquefaction and requires waiver of public liability in hazardous areas.
- o Requires archaeological surveys and mitigation measures in new development.
- o Limits uses within the Open Space designation of the DWP.
- o Specifies protecting visitor serving uses in the main street area and allows for future improvements of the Seal Way Walkway.

In order to implement this recommendation, staff recommends a YES vote on the following motion:

Motion #2: I move that the Commission certify the Land Use Plan of the City of Seal Beach Local Coastal Program if it is modified in conformity with the suggested modifications and findings as contained in the attached Staff Report and Recommendation.

An affirmative vote by a majority of appointed Commissioners is needed to pass the motion.

#### Additional Information

Questions concerning the City of Seal Beach Land Use Plan or this report should be directed to Liz Fuchs, California Coastal Commission, 631 Howard Street, 4th Floor, San Francisco, California, 94105, (415) 543-8555 or JoAnn Sullivan, South Coast District Office, 245 W. Broadway, Suite 380, Long Beach, California 90801, (213) 590-5071.

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## EXHIBITS

1. Location Map
2. LUP Map
3. Hellman Property Wetlands as mapped by DFG
4. Proposed Restoration Hellman site
5. Proposed Access Surfside Colony

#### APPENDICES

- A. Correspondence
- B. Dept. of Fish and Game Reports on Hellman Wetlands
- C. Correspondence Related to Economic Feasibility of DWP Specific Plan



## I INTRODUCTION/PLAN HISTORY

On June 24, 1983 the Commission, following public hearing, determined Substantial Issue with the following policy groups: Marine Resources/Sensitive Habitats/Diking, Dredging & Filling; Shoreline Structures; Public Access; Hazards; Archaeological Resources; and, New Development.

The LCP planning for the City of Seal Beach began in November 1978 with approval of the work program and issue identification. Public meetings of the Citizen's Local Coastal Program Committee began in late November 1978 and continued until 1980. In 1978-79 the Coastal Conservancy, in conjunction with the City, conducted public workshops to develop the Restoration and Enhancement Plan for the Department of Water and Power (DWP) site.

In 1981 the City submitted its LUP for Commission review. The LUP was however withdrawn by the City as incomplete because it failed to include the Hellman properties in the LUP. In 1982, the Commission reviewed and approved in concept a Conservancy Restoration and Enhancement Plan for the Hellman Site (Ponderosa Homes).

The Commission also held a public hearing in May, 1982 on the proposed permit application for development of the Hellman site. The permit was subsequently withdrawn to allow the City to complete a Specific Plan for the site. The City resubmitted its LUP, including Specific Plans for the Hellman site and DWP site, in March, 1983 and it was filed on April 8, 1983.

Because of the prior Commission review of the two Conservancy Restoration Plans and proposed permit applications, the Commission has established extensive findings and given guidance to the City on appropriate land uses and policies which the Commission is able to find consistent with Chapter 3 of the Act.

## II. Area Description

As previously discussed in the Substantial Issue Report of May 27, 1983, the 12 square mile City has 1½ miles of shoreline separated by Anaheim Bay and the Seal Beach Naval Weapons Station which includes the Anaheim Bay Wildlife Refuge. The coastal zone is divided into seven planning areas: 1) the Coastal District, which contains the 1 mile public beach, municipal pier, visitor-commercial areas and small residential lots; 2) the Marina Hill, a developed residential area; 3) the Hellman/Rockwell Property, containing the Rockwell industrial complex and the 185-acre vacant Hellman property which was the subject of a Conservancy Restoration Plan for protection and restoration of 25 acres of wetlands on the site; 4) the Seal Beach Naval Weapons Station, under federal jurisdiction and containing the National Wildlife Refuge and separated by Anaheim Bay which gives channel access to Sunset Aquatic Park; 5) Surfside Colony, a locked-gate community of single-family residences and a 7 acre private beach; 6) the Department of Water (DWP) site, a vacant parcel adjacent to public beach and the San Gabriel River which contains abandoned demolished foundations of an old power plant and which was also the subject of a Conservancy Restoration Plan to restore the site for visitor-serving uses and open space; 7) the State Lands Site, a vacant parcel adjacent to Pacific Coast Highway at a major entry way into the community.

Summary of the LUP. The Land Use Plan is made up of several components: A description of the existing developed areas and vacant parcels; existing General Plan policies; Proposed Land Use designations and policies and two Specific Plans.

The existing General Plan policies include general statements, statements on specific subject areas and sites. The general statements provide for, 1) establishment of a Design Review Board to address community character in new development; 2) protection of natural areas including the eucalyptus grove in the Marina Hill area; and, 3) establishment of a land use intensity of 20 du/acre maximum in residential development. Existing General Plan Policies on Specific Subject areas include the following:

- 1) In Transportation/Access, policies promote transit access and development of a shuttle system between the beach and outlying parking area while providing that additional coastal area land should not be committed to beach visitor parking;
- 2) In the area of Beaches and Waterfront, policies consider the shoreline of the City to be of regional significance. They recognize the erosion problem and provide that the City seek assistance in replenishing and maintaining the beach. And, the policies provide that the Municipal Pier be maintained at its present use to allow public fishing and viewing. Existing General Plan policies on specific sites in the City (principally the remaining vacant sites) provide the following: 1) The State Lands parcel as a major entrance to the community will reflect commercial uses open to the general public and will reflect particular attention to the visual and functional design; 2) The Orange County flood control basin is proposed for a joint use facility for park use and flood control purposes; 3) The DWP site, because it is critically located, will be a planned unit concept with strict design standards applied; 4) For the Seal Beach Naval Weapons Station and National Wildlife Refuge, cooperation with the federal interests is encouraged to preserve many of the area's natural assets, and preserving the marshlands in a pristine state is considered to be a matter of high priority. The existing General Plan also contains specific plans and elements which develop and protect scenic highways; remove "visual pollution" from scenic highways and coordinate scenic routes with the bicycle trail network. Ocean Avenue, Electric Avenue; Pacific Coast Highway and portions of Seal Beach Boulevard and Lampson Avenue are identified as scenic routes.

The Land Use Plan maps and designations designate Surfside Colony as "Low Density Residential" with a 3-story height limit and identifies the 6-acre military site. A portion of the beach is designated "public beach". The Coastal District is primarily designated for "High-Density Residential" (17-20 du/acre) with some "Low Density Residential" (2 story maximum with 60% lot coverage) below Marina and Pacific Coast Highway. An area along Pacific Coast Highway and Main Street and a small area along Seal Beach Blvd are designated "Commercial" which allows professional and service facilities coverage. The area at the base of the Municipal Pier is designated "Park". A small area near the San Gabriel River and Marina Blvd is designated "OIL" for oil extraction activities and support facilities. The Marina Hill area is designated primarily for "Low Density Residential" and "Park" with some "Commercial" along Pacific Coast Highway. While the Land Use Map proposes no designation for the beach or pier area, the Access Component identifies the beach area as "Public Beach".



The Rockwell area is designated for "Light Manufacturing" with a maximum of 70 feet height limit and 70% lot coverage. The Hellman property and the Department of Water and Power (DWP) site are designated "Specific Plan" with the specific plans incorporated into the LUP.

The Land Use Policies on Access ensure that existing beach accessways are maintained; that the City work towards obtaining the 6-acre military site in Surfside for public access; that access is maximized through a signing program; that one-half of all on-street parking in a portion of the Coastal District area be maintained for beach/visitor parking in order to assure adequate parking for both residents and visitors; and that uses on the beach be limited to minor support facilities (restrooms, lifeguard towers and minor recreational structures (e.g. volleyball nets) which do not require alteration of sandy beach.

Proposed new development policies maintain existing community character; protect existing sand dunes and prevent encroachment onto public beach area; provide, where feasible, for beach related public use facilities on the 6-acre military site at Surfside should it be made available; provide that no private permanent structures shall be constructed or extend more than 10 feet into or over the Surfside beach; that land use for the DWP parcel be consistent with the C/P zoning designation and Redevelopment Agency and be consistent with the Specific Plan; and, the Specific Plan for the Hellman site shall be modified as necessary to preserve wetlands on site.

The Specific Plans incorporated into the Land Use Plan provide more specific standards for development of the Hellman site and the DWP parcel. The Specific Plan for the 225 acre Hellman site proposes 1000 residential units on 110.5 acres, (29.2 acres), areas for oil production and future development at unspecified intensities (32.1 acres), areas of the flood control retention basin (35.3 acres), and major roads (17.9 acres), including the extension of First Street as a Primary Highway.

The Specific Plan for the DWP site designates 30% of the site as "Hotel/commercial" use defined as a maximum 300-room hotel with a maximum height of 35 feet and necessary ancillary support uses to serve hotel guests. The remaining area is designated as "Open Space" with uses defined as public parks, greenbelts, trails, recreational uses and theatre with a maximum height of 25 feet. All uses in the Seal Beach Municipal Code for "Public Land Use" (PLU) are permitted in the "Open Space". These include uses such as government buildings and facilities (such as sanitation or water district facilities), concessions and businesses when designated by the City Council and other public uses found by the Planning Commission to be within the intent of the zone.

### III. Land Use Plan

#### A. Staff Recommendation for Denial

The staff recommends a NO vote to the following motion and the adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

"I move that the Commission certify the City of Seal Beach

Land Use Plan of the City's Local Coastal Program as submitted."

Resolution to Deny Certification

The Commission hereby denies certification of the City of Seal Beach Land Use Plan of the City's Local Coastal Program and finds that the Land Use Plan fails to meet the requirements of and does not conform to the policies of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic stated goals specified in Section 30001.5 of the Coastal Act; does not contain a specific public access component as required by Section 30500(a) of the Coastal Act; is not consistent with applicable decisions of the Commission which shall guide the local government in their future actions under Section 30625(c) of the Coastal Act; and does not meet the requirements of Section 21080.5 (d) (2) (i) of the California Environmental Quality Act, because there are feasible alternative or mitigation measures available which would substantially lessen any significant adverse impact which the Land Use Plan may have on the environment.

B. Findings for Denial

1. Marine Resources/Sensitive Habitats/Diking Dredging & Filling.

The Coastal Act provides strong policies to protect sensitive coastal habitats such as wetlands, and to limit uses and activities within those areas.

Section 30230 provides, in part, that:

Marine resources shall be maintained, enhanced, and where feasible restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters...

Section 30231 provides in part that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes...shall be maintained and, where feasible, restored...

Section 30240 provides:

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

And, Section 30233 provides, in part:

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

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

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

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetlands. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities.

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

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

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activity.

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

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

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at

appropriate points on the shoreline in accordance with other applicable provisions of this deviation, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, an sensitivity of the placement area.

Numerous documents and previous Commission actions have identified significant wetland habitat resources within the City. (see Section IV and Appendix B). In the Determination of the Status of Wetlands within the City of Seal Beach, Immediately South and East of the San Gabriel River Channel (Ponderosa Seal Beach Wetlands), January 13, 1982, the Dept. of Fish and Game determined that, "there are approximately 25 acres of wetlands in the subject area of which 23 acres are severely degraded," (Exhibit 3). The Commission, in its action in the Coastal Conservancy Project #1-82, (Seal Beach) (herein incorporated by reference) found that 25 acres on the Hellman site are wetlands.

And, in the subsequent public hearing on the proposed development of the Hellman site, the Commission staff noted that the site was the subject of a specific plan which proposed residential development for wetland areas.

In other actions such as the Consistency Determination CD-14-82 (US Navy) for dredging and spoils disposal the Commission found that wetlands existing on the 6 acre Navy site adjacent to Surfside Colony.

The Land Use Plan as submitted by the City does not contain any new information which would affect the Commission's previous findings and determination of wetlands on the Hellman site or elsewhere in the City's Coastal Zone. The LUP policy on wetlands merely states:

"The adopted specific plan for the Hellman Estates shall be modified as necessary to preserve wetlands on site." (LUP p.36)

The LUP incorporates the same Specific Plan which was reviewed in permit application no. 5-82-221 (Ponderosa Homes) but never acted on by the Commission.

That Specific Plan and the LUP propose residential development and unspecified "future development" in areas designated by the Commission as wetlands. Residential development is not among the allowable uses for which filling of wetlands is permitted under Section 30233 of the Act. Consequently, residential development as proposed by the LUP can only be allowed on the non-wetland portions of the site except pursuant to policies restoring the severely degraded wetland, as proposed in the approved Conservancy project and pursuant to the determination by the Dept. of Fish and Game.

The LUP fails to provide policies which would protect and restore wetlands and other environmentally sensitive habitats throughout the Coastal Zone. The LUP policy, while acknowledging wetlands still proposes land uses not allowed by Section 30233 and fails to include standards for restoration which could permit such uses. To determine such policies and standards only through some future amendment action fails to assure that the uses and standards will protect resources consistent with Sections 30233, 30230, 30231, and 30240 of the Act.



Also, Section 30233 provides that certain uses are allowed "where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided." The LUP and Specific Plan policies as submitted do not reflect these additional requirements for diking, dredging and filling of coastal waters and wetlands.

Further, Section 30233 specifies that dredge spoils suitable for beach replenishment should be transported for such purposes to beaches or the longshore current system. The LUP notes the significant beach erosion problem existing in the City and the past replenishment efforts by the Corps of Engineers. Given the documented history of erosion it is important that the LUP establish policies to assure that suitable dredge material be returned to the beaches. The Commission, in previous actions (Consistency Certification #CD-14-82 (US Navy) for dredging in Anaheim Bay and Permit A-200-80 (Parks & Recreation and Orange County for dredging of San Juan Creek in Orange County) the Commission has found that suitable material must be returned to the beaches in order for the activity to be consistent with the Act.

The LUP as submitted fails to include any policies to specify the manner of dredging and spoils disposal to assure that habitat disruption is minimized and suitable beach replenishment sand is assured. Absent these provisions the Commission cannot find the LUP as submitted consistent with Section 30233(b).

Therefore, while the Commission notes that the City's LUP indicates an intent to protect sensitive resources, the Commission finds that the LUP as submitted is insufficient to protect, restore and maintain habitats and provide standards for activities within those areas and conflicts with previous Commission actions. The Commission therefore finds that the LUP is not consistent with Sections 30233, 30230, 30231 and 30240 of the Coastal Act.

2. Shoreline structures. The Coastal Act policies related to construction of shoreline protective devices are as follows:

Section 30235.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosions and when designed to eliminate or mitigate adverse impacts on local-shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253.

New development shall:

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

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion,

geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (Emphasis added)

In addition, Sections 30210 - 30212 provide that maximum public access be protected and provided in new development.

The City of Seal Beach presently has shoreline structures within the City. The San Gabriel River jetties are located on the western boundary of the City adjacent to the City of Long Beach. Additional jetties exist to the east at the entrance to Anaheim Bay as part of the Naval Weapons Station and under federal jurisdiction. In addition, the Municipal Pier is a public pier located in the main beach area. And, to the east at the beach at Surfside Colony a rock revetment was constructed under emergency permits (Nos. 5-82-579G and 5-82-748G). The City has applied for a coastal development permit for permanent placement of this seawall at Surfside on property owned by the Community Association.

Previous studies have identified erosion problems in the City. A feasibility Study on the Surfside revetment prepared by Moffat and Nichol Engineering (January, 1982) describes the historical erosion problems at the site associated with the construction of the Anaheim Bay entrance jetties in the 1940's:

Sources of material of the San Pedro cell have historically been the Los Angeles, San Gabriel and Santa Ana Rivers. In recent times the Los Angeles and San Gabriel Rivers have been eliminated as sources of material to the cell and the Surfside-Sunset Beach has been added as a source by virtue of periodic beach nourishment. The transport path for the cell is in the surf zone. Breaking waves provide the energy for the process. The sinks for the cell are the Newport Submarine Canyon and the steeper nearshore bathymetry off the Newport Beach Area. A sink to the north is the protected area behind the Los Angeles-Long Beach Breakwater. Sand moving into this area when waves are from the south is not moved out again when waves are from the north because of the sheltering effect of the breakwater.

Construction of the Anaheim Bay entrance jetties in the mid 1940's, blocked sediment brought to the San Pedro cell by the San Gabriel River from reaching the Surfside-Sunset Beach. Erosion has been a continuous problem since then. In 1945, the U.S. Navy constructed 600 feet of stone revetment down-coast from the Anaheim Bay east jetty to retard the erosion but had to reinforce it the following year. In 1947, the revetment was extended farther and a wood sheet-pile bulkhead was established to protect the shore road. Throughout the 1940's, material in the amount of 1,422,000 cubic yards was placed on the beach (Hales, 1980).

Residents of Surfside Colony report that in the mid 1950's homes were damaged by waves. In 1956, 874,000 cubic yards of material was placed on the beach. This widened the beach about

300 feet, however, the erosion continued. Residents report that homes were lost during the period prior to the next beach fill which occurred in 1964. Portions of the street behind the first row of houses were also damaged and rubble was placed in front of the homes and road for protection. The 1964 fill episode placed 4,000,000 cubic yards of material on the beach. This material eroded until 1971 when 2,300,000 cubic yards was added. The last fill occurred in 1979 with 1,600,000 cubic yards placed on the beach. Residents report that since 1964 the beach has never receded as close to the houses as it is presently.

Shoreline structures affect the configuration of the shoreline and the beach profile and in all probability have some degree of adverse impact on the shoreline. That shoreline structures, including vertical seawalls and rock revetments, have adverse impacts on the shoreline is accepted among experts in the field of coastal engineering and geology. In Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981) which was signed by 94 experts in the field of coastal geology, it is stated...

These structures are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long a life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect.

So although shoreline protection devices can be permitted in order to provide protection to existing structures as allowed for in Coastal Act Section 30235, they can have an adverse impact on local shoreline sand supply and therefore raise a question of consistency with 30235.

It is recognized that large structures such as groins and breakwaters will have significant and obvious impacts on sand supply and beach profiles, but even a relatively small structure such as the one proposed in Surfside Colony will have an impact on the site and the adjoining area. As stated in a publication by the State Department of Boating and Waterways (formerly called Navigation and Ocean Development), Shore Protection in California (1976),

While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall rapidly remove sand from the beach.

This impact is reiterated in the paper, "Economic Profiling of Beach Fills" by Herman Christiansen which is contained in the proceedings of Coastal Sediments '77 (November 1977). It states:

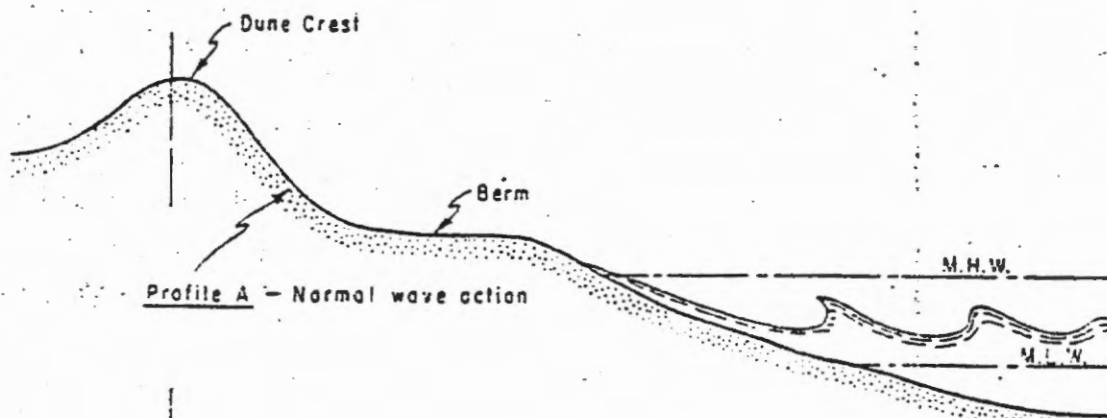
Observations at some of the investigated beaches have shown that an optimal profile becomes instable, if structures, such as rocks, groins, revetments, piles, stairs etc., are placed within the wave action zone of a beach. Steady erosions, caused by complex high turbulent surf currents, lead to heavy sand losses.

Although they do not have as great an impact as smooth, vertical seawalls, rock revetments such as the one existing in Surfside Colony have effects on the beach sand in front of and around the structure. A rock seawall operates on the principal that the wave's energy is dissipated within the voids of the wall, therefore producing less reflected wave energy. However, the rock seawall will still reflect enough energy to change the beach profile, steepen the beach, and cause accelerated erosion of the downcoast area. One mechanism that accounts for rock walls' impact on beaches is stated in "The Role of Wave Reflection in Coastal Processes" in Coastal Sediments '77 by Richard Silvester:

Rubble-mound structures can reflect long period wave components with little dissipation and hence short-crested phenomena in front of and downcoast from them should be considered in design and maintenance.

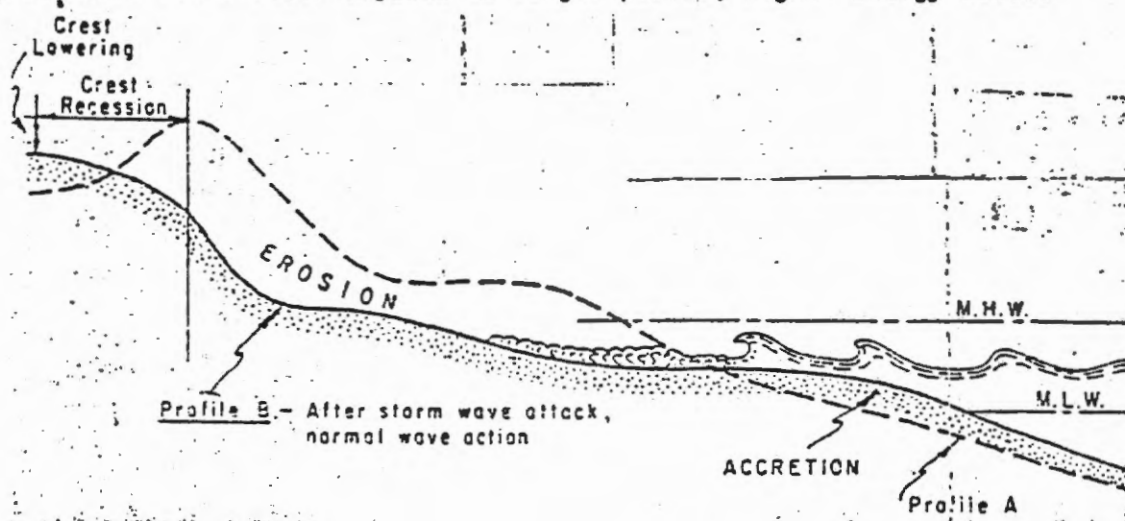
Moreover, the literature on coastal engineering repeatedly warns that unprotected properties adjacent to the seawall may experience increased erosion. A rock wall invariably protrudes seaward from development which exacerbates this situation. Actual field observations have verified this concern, see for example the paper by Gerald G. Kuhn of the Scripps Institution of Oceanography entitled "Coastal Erosion along Oceanside Littoral Call, San Diego County, California" (1981). In this paper, it is written and pictorially illustrated that erosion on properties adjacent to rock seawall is intensified when wave run-up is high.

A discussion of the physical processes of wave runup on a natural shore will help establish the effects of seawalls on shoreline processes. Sandy beaches are dynamic systems, the individual grains of sand adjust quickly to reflect both the overall supply of sediment and the ongoing forces of waves. A typical non-storm profile of the beach looks like this:



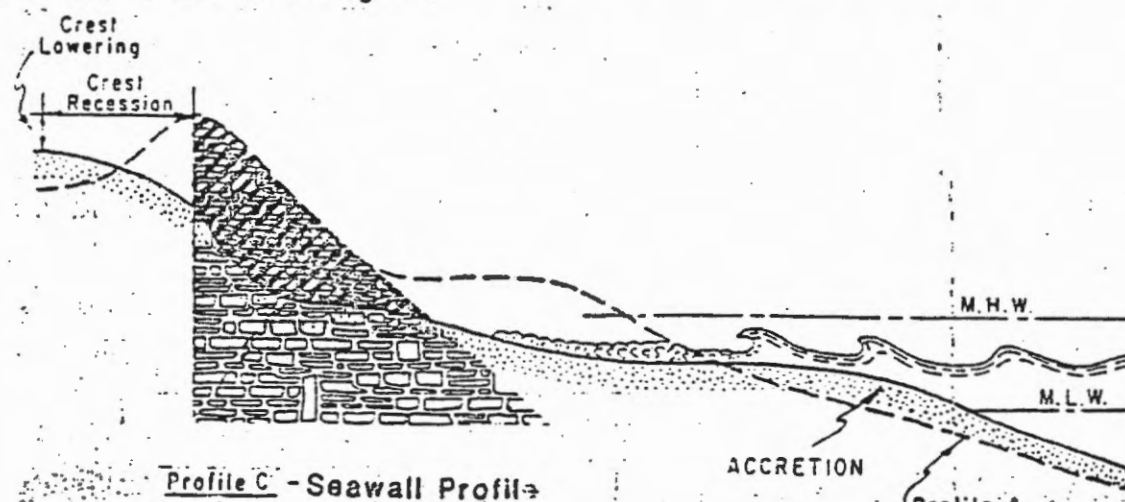


At this profile, the shore has adjusted to a low-energy wave environment, reflecting the short period, low energy waves that strike the beach. The next diagram shows how a beach adjusts to longer period, higher energy waves:



This cross section illustrates several important things about the beaches adjustment to the higher energy of striking waves. First, the wave energy has eroded material from the foreshore and deposited the material off-shore in a bar. Second, the shoreline profile flattens to absorb the greater amount of wave energy, even with waves breaking on the bar. These adjustments are fundamental to the shore's adjustment to high wave energy. The migration of the material to an off-shore bar causes waves to break in deeper water, and begins the process of energy dissipation far from the inland extent of the beach. The dynamic process of eroding material from the foreshore enables the shoreline to absorb wave energy. This process goes on continuously, if a given shore profile is not sufficient to absorb wave energy without further erosion, additional material is moved from the shore to the bar to increase the distance between the bar and the inland extent of the wave uprush. The value of the bar cannot be overemphasized, it is on the bar that winter waves break, and the dynamic processes of the actual shoreline are affected by wave uprush, not actual breaking waves.

The next diagram was made by superimposing a revetment on the shoreline profiles that we saw in the last diagram:



This diagram illustrates dramatically the effect of a seawall on the shoreline. The material shown in cross-hatching is the material formerly available to nourish the bar. This material is now unavailable because it is either behind the seawall, or has been replaced by the seawall. As a result, the bar receives less nourishment. This makes the bar less effective in causing waves to break offshore, and results in greater wave energy being felt on the actual shoreline. That energy is then dissipated by uprush and reflection against the face of the revetment. However, since more energy comes on-shore, more energy is reflected and sand is scoured from the base of the revetment. The Commission concludes from the opinion of experts and from an analysis of the process of shoreline dynamics that placement of a seawall within the areas of a shore affected by those processes adversely affects shoreline processes in front of the seawall as well as property on either side of the seawall. Obviously the impact of a seawall is greater the more often it is exposed to wave attack, and seawalls located far up the beach have less impact than seawalls lower on the beach. However, since most of the coast of California, including this area, is subject to overall erosional processes, even a well-designed seawall adversely affects shoreline processes.

However, the Commission finds that the probable negative impacts of seawalls must be weighed against the property owner's need to protect the structure behind it. [the Commission recognizes that seawalls will probably change the beach profile by steepening it and increasing beach erosion around it, however,].

The problems associated with modifications to the sediment supply in the San Pedro littoral cell are well documented and as a result of those modifications as well as the jetties at the mouth of Anaheim Bay, Surfside Colony is an erosional coast. (See draft "Sunset Harbor-Bolsa Chica Bay Feasibility Study", Engineering and Cost Estimating Appendix, Corps of Engineers, Los Angeles District, 1982). Dams and debris basins have been constructed on the Los Angeles, San Gabriel and Santa Ana Rivers, severely reducing the supply of sand to the cell. The cell is thus dependent upon artificial nourishment, and the Surfside-Sunset Beach has been used and regarded as the source of beach nourishment for downcoast beaches. Over 11,515,000 cubic yards of material have been placed on those beaches since 1945, with 1,644,000 yards placed as recently as 1979. Thus, both changes in streams and the effects of the Anaheim Bay jetties create erosion problems along Surfside and Sunset Beaches.

The LUP identifies existing General Plan policies related to the beaches and the waterfront which address shoreline structures.

"Because the littoral currents have been altered, the problem of beach erosion will continue indefinitely. While the Corps of Engineers replenishes sand at Surfside, the City must assume full responsibility for redistribution of sand from the west to the east beach. The City should continue to seek assistance from State and Federal agencies in order that the City might be relieved of a portion of the burden and expense of maintaining this facility of regional significance" (LUP P.21.)

"Seal Beach Pier - the Seal Beach Pier, one of the very few piers in use today along the California coastline, should be maintained at its present use to allow for both fishing and pleasure-walking to

enjoy ocean amenities. Any needed repairs for the pier should be carried out so that the present use can be continued and enhanced". (LUP P. 21).

The LUP also contains policies limiting structures on the beach:

"Uses permitted on public beaches are limited to minor support facilities such as restrooms, lifeguard towers and trash receptacles. Minor ocean-oriented recreational structures such as volleyball nets are permitted as long as they do not require significant alteration to or elimination of sandy beaches (LUP P.28).

And, specific to the beach at Surfside the LUP states:

"No private permanent structures shall be constructed or extended more than 10 feet onto or over the Surfside beach" (LUP P. 35 #14)."

While the LUP recognizes the continuing erosion problems in the City, the policies as submitted fail to provide standards for development of shoreline structures. The policy on the Surfside beach (LUP P. 35) in fact allows permanent structures to encroach on the beach area regardless of whether or not they are needed to protect existing structures on public beaches and does not require that such structures be designed to eliminate or mitigate adverse impacts on sand supply and to minimize encroachment onto the beach and impacts on adjacent properties. For the Coastal District, absent specific policies on shoreline structures the policy on page 28 noted above would actually prevent development of shoreline structures which may be needed to serve coastal dependent uses or to protect existing structures or beaches. Given the documented impact of shoreline structures the LUP policies proposed fail to protect shoreline sand supplies.

The Commission therefore finds that the LUP as submitted fails to provide policies limiting shoreline structures and requiring that they be designed to mitigate impacts to shoreline sand supply. The Commission therefore finds that the Plan is inconsistent with Sections 30235 and 30253 of the Coastal Act.

3. Public Access. Section 30210-30214 and Section 30252 provide that maximum public access be provided and protected and that public access be provided in new development projects.

As indicated in the report on Substantial Issue, there is extensive public access in the Central district of the City, provided by a mile-long public beach, 13 dedicated public street ends, beach parking lots, public transit and beach shuttles, and bicycle trails. The .6 mile beach at Surfside Colony is a private community. The sand beach oceanward of the first row of lots is privately owned for a distance of between 70-100 feet.

As a condition to coastal permit P-2445 (Surfside Colony) the South Coast Regional Commission conditioned development as follows:

"Access shall be available to pedestrians and bicyclists during daylight hours".

There are two entrances to the community, one at Phillips Street (with a guard station) and one at Anderson St. (with automatic gates). The pedestrian gate at Anderson is open from 6 a.m. to 6 p.m. Within the community there are 7 Community Association-owned pedestrian walkways through the first row of houses to the beach which are currently unobstructed.

Recently the Community Association constructed a revetment to protect existing homes from erosion and wave hazards under emergency permit. The revetment is approximately 14 feet high and located a minimum of 20 feet oceanward of the houses. The beach seaward of the revetment (as discussed in the previous section) is between 3 to 5 feet lower than the sandy beach between the homes and the revetment. During low tides beach area is available seaward of the revetment. However during high tides as were experienced this past January, waves reached the revetment, leaving only the 20 feet of private beach area behind the revetment available for pass and repass. The existing shoreline structure in Surfside Colony is intended to protect private residences from wave damage and erosion rather than to protect the shoreline beach area. Given the adverse effects of seawalls on shoreline processes as discussed in the previous section, the Commission finds that the LUP must address to the overall impact that these changed shoreline processes will have on public access. The public has an ownership right in the lands of the State seaward of mean high water. Because the ownership lies seaward of a mean water mark, the most extraordinary high and low tides are factored out. The tidal regime along the coast varies with the season and with the lunar cycles. Theoretically, tidal cycles also vary over an 18.6 year period in response to astronomical changes (Shore and Sea Boundaries Aaron Shalowitz, US. Department of Commerce 1962, p. 95). However, as a practical matter on a coast like California's where sediment supply has been substantially altered, the location of the lower and higher water lines are determined largely by sediment supply. Overall sediment supply depends heavily on the frequency of large storms as about 90% of all beach sand is transported to the shoreline in those infrequent storms. All of these processes are dynamic, and the beach varies to reflect the changes. If an area is experiencing net erosion or net deposition due to natural or man-made phenomena, it will be particularly difficult to define the mean low and mean high water lines.

The public's ownership interest similarly varies with these changes, although the use of the "mean" tends to smooth out changes in public ownership. The important question to examine is what effect changes in shoreline processes have on public lands. The Commission noted above that seawalls tend to steepen shorelines by reflecting wave energy and by starving the off-shore bar. This affects the public ownership by moving the mean high water line landward. But more importantly, this affects the public's ownership by tending to eventually fix the mean high water line at or near the seawall. This interference with a dynamic system then has a number of effects on the public's ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, alter the useable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The loss of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to



nourish the beach. The effects of this on the public are again a loss of area between the mean high water line and the actual water. Third, seawalls cumulatively affect public access by causing greater erosion on adjacent public beaches. This effect may not become clear until seawalls are constructed individually along a shoreline until they reach a public beach. Finally, seawalls interfere directly with public access by their occupation of beach area, and when materials erode from the seawall and roll onto the sandy beach where they present physical obstacles to access.

The LUP proposes to protect existing accessways and sandy beach areas in the main Coastal District in perpetuity. However, the LUP does not consider or provide standards to mitigate the adverse impact of new development such as shoreline structures on public access. The LUP proposes to maintain the existing vertical access at Anderson Street but provides only that the City, "pursue a western access by working with Surfside LTD while assuring the right of existing property owners". In addition, access signing is encouraged at the Phillips Street pedestrian gates.

An additional policy allows construction of private structures into a 10-foot encroachment area leased to individual owners by the Community Association. Presently, about 85% of the units in the first row of lots have patios and decks extending into this encroachment area.

In previous Commission actions on permits for construction of seawalls (e.g. Appeal No. 165-79 Blue Lagoon Community Association, Inc., Appeal 2-79 Isle Vista, 5-81-568 Schafer et. al; 5-81-488 Trindle) the Commission has found that public access along the shoreline was adversely affected by such structures, due to the physical impairment to public access and due to loss of sand supply on the beach, provision of public access was required to find the project consistent with the policies of the Coastal Act.

The LUP policies do not reflect the potential for adverse impacts to shoreline sand supply, access and public lands from new development of such shoreline structures or other structures on beach area, nor do they reflect requirements for provision of public access in new developments between the first public road and the sea as provided in Section 30212 of the Act. While the Commission did place an access condition on a previous permit of the Surfside Community Association, it did not require permanent easements in favor of the public which would ensure continued provision of maximum public access. Further the proposed policy to "pursue a western access by working with Surfside" provides no guarantee that access will ever be assured.

Also, in Surfside, the LUP policy allows continued development of private permanent structures onto a 10-foot encroachment area of beach. (In the Colony, the Community Association owns the beach in common oceanward of the individual private lot lines of the first row of lots, referred to in the LUP as "Row A". The Community Association in turn leases back to each individual property owner a 10-foot area extending oceanward of the individual's lot line. This is herein referred to as the 10-foot encroachment area, and generally depicted in Exhibit 5). Within this area the lease allows first level patios and decks and 5-foot 2nd and 3rd level decks. The City LUP proposes now to also allow other private permanent structures such as staircases within the area. Approximately 85% of the existing lots have decks/patios within the encroachment area.

As proposed in the LUP, new development of structures could occur on the shoreline and encroaching onto beach area resulting in the loss of sandy beach area available. Given the lack of existing access to surfside colony, this places an additional burden on the public's ability to reach and use the shoreline as guaranteed by the Constitution. Absent policies to ensure maximum public access in new development and to provide mitigation for impacts to public access the Commission finds the Land Use Plan as submitted inconsistent with Section 30210, 30211, 30212, 30214, 30233 and 30253 of the Coastal Act.

The Coastal Act sections also provide that public access opportunities be maximized. Although access is provided and protected in the Coastal District, the LUP lacks specific policies which would maximize recreational use of the shoreline. Seal Way Walkway is a dedicated public right of way along the Shoreline adjacent to the existing residential development. It is improved down coast of the pier but remains unimproved upcoast of the pier, primarily due to maintenance constraints. In other permit actions concerning public beach walkways such as on Ocean Front Walk the Commission has noted the importance of such walkways in maximizing public access by distributing beach use. The LUP as proposed lack policy direction which would provide for potential future improvement of SealWay walkway by the City, Coastal Conservancy or other public agency. As such the Commission finds that the LUP does not maximize public access consistent with Section 30210 of the Coastal Act.

4. Hazards. Section 30253 of the Coastal Act states, in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Several hazards which could affect new development have been identified in the City. As discussed previously, the City's beaches and adjacent development have been and continue to be subject to erosion and wave run-up hazards. Geologic hazards, including earthquake faulting and severe liquefaction have been identified for the Hellman property.

In the Commission review of the Conservancy Restoration Project on the Hellman Site and subsequent hearing on permit 5-82-221 (Ponderosa Homes) the potential geologic hazards were identified:

The Seal Beach fault splay of the Newport-Inglewood fault system runs through the site, and the site is also subject to ground shaking from the Palos Verdes Fault, the Whittier-Elsinore Fault, the Sierra Madre Fault, the Malibu-Santa Monica Fault and the San Andreas Fault zone. The seismic hazards of the site are seriously compounded by the nature of the soils at the site. Subsoils of most of the site are

marshy soils, characterized by silts, sandy silts and sands. Soils have been deposited in layers, and some of these layers are highly susceptible to liquefaction from ground shaking. A liquefaction evaluation of the soils was performed by Medall, Arragon, Worswick and Associates, Inc. in May of 1980. That report and an associated report recommending remedial measures reasoned that a Richter Magnitude earthquake of 6.5 on the Seal Beach fault beneath the site had roughly a 10% probability of occurring once every 50 years. Such an earthquake would be likely to produce bedrock acceleration of approximately 0.6g and ground surface acceleration of 0.5g. Soils at the site were evaluated for liquefaction potential, using a repeatable ground acceleration of 0.35g during a 50 year life span. Under these conditions, virtually all of the sedimentary soils on the site are subject to liquefaction. About one-third of the lowland on the site has been mapped as having a high liquefaction potential and about 2/3 of the lowland has been mapped as having a moderate liquefaction potential. (Staff report of 5/5/82).

The geologic conditions of the Hellman site were also reviewed by the Division of Mines and Geology. In a June 2, 1982 letter to Commission staff, DMG noted that, "The Seal Beach fault is a segment of the larger Newport-Inglewood fault which is believed to be capable of generating a M7+ earthquake" and, to minimize hazards, noted:

"It is an engineering decision as to how the rupture of gas lines or other facilities could be prevented from the effects of liquefaction and ground shaking. However, it does appear to be reasonable to specify certain limitations, to the designer such as quantified ground settlement, beyond which the probability of maintaining safety or functionality would not be practical by design measures."

Previous Commission actions have addressed hazards from liquifaction (A-185-77 SOHIO), first denying development because of liquefaction hazards and later approving the project after engineering modifications to minimize risks.

The LUP as submitted incorporating the Hellman Specific Plan contains no specific policies to assure that new development will minimize hazards and risks to life and property. The Specific Plan require conformance to setback requirements of the Alquist-Priolo Act to minimize risks from faulting.

The Commission finds that absent policy standards to require mitigation of liquefaction hazards, especially in areas proposed for residential development, the Land Use Plan as submitted is not consistent with Section 30253 of the Coastal Act.

5. Archaeological Resources. Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Significant archaeological resources have been identified in areas proposed for future residential development in the City. (Draft EIR on Hellman Specific Plan pp. 28-44). Grading and development of the site could adversely impact the resources unless mitigation measures are implemented.

The LUP as submitted incorporates the Hellman Specific Plan which provides that the Planning Commission shall make the following findings before recommending approval of any Precise Plan for implementing the Specific Plan:

"The design of the project is not likely to damage significant archaeological sites." (LUP P. 21 of Specific Plan).

The LUP while requiring the noted findings fails to specify necessary mitigation measures to assure that the project will not damage significant sites.

The Draft EIR for the Hellman site identified potential mitigation measures such as further site investigation, preservation, salvage excavation, grading monitoring and retention of an archaeologist on-site for in-grading inspections.

Although the LUP in requiring such findings indicates an intent to protect such resources, the lack of clear policy standards in the Plan fails to ensure that adequate mitigation measures will be implemented. Therefore the Commission finds that as submitted the Land Use Plan is not consistent with Section 30244 of the Coastal Act.

6. New Development. Section 30108.5 of the Coastal Act provides in part that a Land Use Plan be "sufficiently detailed to indicate the kinds, location and intensity of land uses"... And, Section 30221 provides, in part, that oceanfront land suitable for recreational use shall be protected for such uses. Section 30212 provides that, "Developments providing public recreational opportunities are preferred."

One of the only remaining vacant beach front parcels in the City is the 9-acre Department of Water and Power site adjacent to the sandy beach and San Gabriel River in the western area of the City. This site was the subject of a Conservancy Restoration project which, in conjunction with the City and citizens, planned for restoration of the old power plant site with visitor uses and open space. (Conservancy Project #3-79). Although this project was never implemented it served as the basis for the City's development of the Specific Plan for the site.

The Commission found in approving that Conservancy Project that,

The DWP site is one of the last few sizeable open spaces on the urbanized coastline of Southern California available for community uses and public access... It is also the terminus of a major inland regional bicycle trail system. As such, this site has the highest potential for regional recreational development.

As submitted, the Land Use Map designates the DWP site as "SP" Specific Plan. The LUP proposes several policies to govern the DWP site. These policies require:



1. DWP 9-acre site to be developed with open space on 70% of the site and a hotel on 30% of the site in accordance with the adopted specific plan. (LUP P.27).

Certain real property within the City is unique due to its proximity to the ocean and its water-oriented character. It is determined to be in the best interest of the City to permit some flexibility in development of said property. Only hotel and/or service commercial uses shall be permitted within the zone. In addition, a minimum of 70% of any parcel within this zone shall be devoted to park uses with unrestricted access to the public. Development of said property shall be subject to issuance of a conditional use permit. (LUP P. 28).

DWP Parcel. The Land Use Plan for the Department of Water and Power (DWP) parcel shall be consistent with the City's General Plan zoning designation of C/P and Redevelopment Agency. Development shall be consistent with the adopted specific plan (LUP P.35).

b. Permitted Uses

All uses contained in Chapter 28, Article 20 of the Seal Beach Municipal Code as authorized by the City Council. (Specific Plan P. 5).

Chapter 28 Article 20 (Public Land Use Zone) of the Municipal Code specifically permits the following uses:

Sec. 28-2002. Uses Permitted. The following uses are permitted in the public land use (PLU) zone:

(1) Public parks, green belts, beaches, piers, wildlife refuges, tidal marshlands, bicycle trails, nature trails, flood-control basins, flood-control channels, parking lots or facilities, and earthquake fault buffer zones;

(2) All buildings and facilities owned or operated by the city, county, state, United States Government and special assessment districts, such as a sanitation or water district, provided such buildings and facilities are used for public purposes;

(3) Public schools, museums and other historical landmarks, sites, memorials or monuments;

(4) Concessions and businesses when so designated and approved by the city council, subject to all conditions imposed at the time of approval and located on public land;

(5) Other public uses when found by the planning commission to be within the intent and contemplation of this article. (Ord. No. 948; Ord. No. 1011, S 17.)

As submitted the LUP allows permitted uses which may conflict with the LUP policy devoting 70% of the site to open space and public park uses. Development of government facilities or unspecified concessions and "other public uses" as

provided in Section 28-20021 2)(4) and (5) would permit non priority, non-public uses which are not consistent with maintenance in the open space designation of public park uses on the site, nor with the intent of the Commission's previous action in approving the Conservancy Restoration Plan for the site. While the Commission finds that the intent of the LUP to provide visitor serving uses on the site is consistent with the recreation policies of the Act and previous Commission action, absent clarification of uses permitted in the open space the Land Use Plan as submitted is not consistent with Section 30221, 30212 or 30108.5 of the Coastal Act.

At the public hearing on Substantial Issue the Dept. of Water and Power representatives contended that the Specific Plan as proposed with development restricted to 30% site coverage would make development of the site economically infeasible for DWP, and requested changes to the LUP to delete policy reference to provision of open space on a minimum of 70% of the site and development on 30% of the site.

However, the Commission notes that the points raised by DWP are not supported by the information and economic analysis completed to date.

Continued economic feasibility studies have been an ongoing part of the planning for the DWP site. In 1979 in conjunction with the Coastal Conservancy Restoration Plan extensive feasibility studies were done based on proposed visitor and open space uses. Since that time more recent economic studies were completed by consultants and used in the City's adoption of the Specific Plan (see correspondence from Keyser Marston Associates, Inc., Appendix C).

These economic studies analyzed the feasibility of a 250-350 room hotel and parking on the DWP to estimate the lease payment for land. The most recent information concluded:

"Specifically, at the midpoint of the range, i.e. at \$15,500 per room, the developer's lease payment for land would range from \$237,000 for a 250 room facility to \$267,000 for one with 350 rooms." (letter dated July 28, 1982 from H. Schilling, Keyser Marston Assoc., Inc to Mr. Allan Parker, City Manager)

This economic evaluation and correspondence between the City and DWP concerning this economic evaluation indicate that the City's proposed specific plan and LUP policies are feasible and supportable.

And, aside from the issue of economic feasibility, the Commission found in its previous action on the Conservancy Restoration Plan that such policies locating development on 30% of the site with the remainder in open space was most protective of coastal resources, in that it maximize public access and recreation and minimized impacts to public views, and found that:

"The public recreational areas of the site must be preserved in perpetuity, to assure the continued balance of development and recreation."

This Restoration Plan as well as best available economic information was used by the City in arriving at policies of the LUP. Thus, policies limiting

development to 30% of the site are consistent with the access and recreation policies of the Coastal Act, can be feasibly accomplished and reflect the basic goals and standards of the Restoration Plan for the site. The Commission therefore finds that the LUP policy as proposed, except for uses within the open space, is consistent with the Access and Recreation policies of the Act.

Regarding Sunset Aquatic Park, it appears this area lies within the Commission's continuing permit jurisdiction and the standard of review for projects remains the policies of Chapter 3 of the Coastal Act. While not binding, the City may choose to give guidance to the Commission on appropriate uses and standards for development although such designations are not presently included in the LUP as submitted.

### C. Other Issues

#### Agriculture.

Sections 30241 and 30242 of the Coastal Act provide for the protection of prime agricultural lands. There are no prime agricultural lands within the City. The Commission finds that the LUP as submitted is consistent with Sections 30241 and 30242 of the Act.

#### Commercial Fishing/Recreational Boating

Section 30224 provides that increased recreational boating shall be encouraged. Section 30234 provides that facilities for commercial fishing and recreational boating shall be protected and where feasible upgraded. The only harbor area within the City is the Sunset Aquatic Park. Since this area remains in continuing Commission permit jurisdiction the LUP policies are advisory only. The LUP has chosen not to adopt policies relative to this area.

#### Scenic and Visual Resources

Section 30251 of the Coastal Act provides that scenic and visual resources shall be protected and development shall be sited and designed to protect views to and along the ocean. The LUP proposes policies to limit structures on the sandy beach thus protecting the recreational use and scenic views along the shore. The LUP also incorporates policies from the Scenic Highway Element to protect visual resources of the community. As submitted the Commission finds the plan consistent with Section 30251 of the Coastal Act.

#### Public Works

Section 30254 of the Coastal Act provides that public works facilities be designed and limited to accommodate needs generated by development or uses permitted, with priority to coastal dependent land uses, essential public services and basic industries, recreation and visitor uses. The LUP proposes no additional policies regarding future development and allocation of public services. However, the City of Seal Beach, which is substantially developed, exhibits no available capacity constraints on existing public facilities.

The Commission therefore finds the Plan as submitted will not affect services to priority uses and is consistent with Section 30254 of the Act.

### Industrial Development

Sections 30260 and 30262 provide for continued development of coastal dependent industries and oil and gas development. The LUP as submitted designates existing oil sites for continued oil operation thus permitting reasonable long term growth. The Commission finds that as submitted the Plan is consistent with Section 30260 and 30262 of the Act.

### IV. CONSISTENCY WITH CEQA

Pursuant to SB 1973, which amended the California Environmentally Quality Act, the Coastal Commission is the lead agency in terms of meeting CEQA requirements for Local Coastal Programs. In addition to making a finding that the LCP is in full compliance with CEQA, the Commission must find that the least environmentally damaging feasible alternative is chosen.

With regard to the Land Use Plan consistency with CEQA, the staff recommends that the Commission adopt the following finding:

"Based on the findings of Sections III and VII C of this report, the Commission finds that the Land Use Plan does not meet the requirements of Section 21080.5(d)(2)(i) of the Resources Code, which requires that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment."

### V. PRIOR RELEVANT COMMISSION ACTIONS

As indicated in Appendix D the Commission has previously addressed protection of wetland resources within the City. The Commission has also dealt with the development of shoreline structures and mitigation for impacts to public access in numerous permit actions.

Most of the permit activity in the City has been for residential development with issues addressing parking conflicts, provision of recreation and visitor uses, intensity of development and maintenance of community character.

### VI. PUBLIC PARTICIPATION/AGENCY COMMENTS

In addition to the public participation program described in the Substantial Issue report of 5/27/83, additional comments have been received. The Dept. of Fish and Game in a letter dated July 7, 1983 noted their previous documentation of wetlands and recommended that the LUP include mapping of all wetlands, policies for the protection of city regulated wetlands and policies for the protection of federally regulated wetlands through the Federal Consistency Determination Program. (Appendix A)



VII. SUGGESTED MODIFICATIONS WHICH, IF ADOPTED, WOULD RESULT IN CERTIFICATION

A. Staff Recommendation

Staff recommends a YES vote to the following motion and adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is necessary to pass the motion and resolution.

"I move that the Commission certify the City of Seal Beach Land Use Plan of the Local Coastal Program if it is modified in conformity with the suggested modifications and findings set out in the Staff Report on this issue."

Resolution for Adoption of Suggested Modifications

The Commission hereby certifies the City of Seal Beach Land Use Plan of the Local Coastal Program subject to the following modifications and adopts the findings stated below on the grounds that, if modified as suggested below, the Land Use Plan will meet the requirements of and conform with the policies of Chapter 3 commencing with Section 30200 of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the Land Use Plan will contain a specific access component as required by Section 30500(a) of the Coastal Act; the Land Use Plan will be consistent with the applicable decisions of the Commission that shall guide local government actions pursuant to Sections 30625(c); and the Land Use Plan will meet the requirements of Section 21080.5 (d)(2)(i) of the California Environmental Quality Act, as there would be no further feasible mitigation measures or feasible alternatives which could substantially lessen significant adverse impact on the environment.

The suggested modifications to the submittal are necessary to achieve the basic state goals set forth in Section 30001.5 of the Coastal Act.

The Commission further finds that if the City of Seal Beach adopts and transmits its revisions to the Land Use Plan in conformity with the suggested modifications, then the Executive Director shall so notify the Commission.

B. Suggested Modifications

The Land Use Plan shall be modified to include the following policies and/or land use designation changes.

Protection and Restoration of Habitats

1. Wetlands resources in the City (excluding those under federal jurisdiction) shall be identified and mapped as indicated in Exhibit 3, (Habitat Designations of the California Dept. of Fish and Game for the Wetland Resources within the City of Seal Beach, South of the San Gabriel River.)
2. Diking, dredging and filling of coastal waters, wetlands and estuaries shall be limited to the specific activities listed in Sections 30233 and 30607.1

of the Coastal Act where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided and shall be carried out consistent with the provisions of Section 30233 of the Coastal Act.

3. Within the Hellman "SP" designation, other uses, including residential uses, shall be permitted in severely degraded wetland areas only subject to the following conditions:

- (a) Prior to approval of any development, the applicant shall be required to implement a restoration plan in the area generally north of First Street, east of the tidal ditch, and south of the power plant intake channel as indicated in Exhibit 4. Additionally, an area to the south of First Street is to be restored such that this area is contiguous with other restored wetlands and the proposed park dedication area. (Exhibit 4 The Restoration Plan shall restore and enhance 19.6 acres of wetland, including the 5.0 acres of wetlands near the intersection of the southern levee of the power plant intake channel and the tidally influenced drainage ditch (north of First Street). The 19.6 acres of restored wetlands are to be exclusive of any setbacks, buffers, maintenance roads, levee embankments or other non-wetland areas.

Oil service roads, oil storage facilities and oil extraction equipment may be maintained in a maximum of 2.5 acres of the restoration area, provided the applicant temporarily restores 2.5 acres of wetlands elsewhere on the project site (either in a proposed development area, proposed park area or both) in exchange for continued oil operations in the primary restoration area, as long as the total wetland area to be restored remains 19.6 acres and the temporary restoration area is located contiguous with other restored and/or enhanced wetland areas. Following cessation of oil extraction activities the area shall be restored to wetland status and the temporary 2.5 acre site may be converted to residential use or more intensive park facilities or both.

- (b) Further, to offset the loss of 5 acres of wetland that has occurred through unpermitted fill activities on the property that is not being incorporated into the restoration plan, the City shall designate 10 acres in the Specific Plan/LUP for wetland habitat enhancement in the adjacent flood control retention basin. The 10 acres shall be subject to future wetland enhancement as part of any Conservancy Restoration plan and consistent with CP#1-82.

- (c) The Restoration Plan required pursuant to 2(a) above shall include the following:

1. Hydrology Plans identifying a water source of acceptable volume and quality to be used by the applicant. The hydrology plans shall assure that water movement can be maintained by gravity flow.
2. Management Plans which provide assurances necessary to conclude that the restored and/or enhanced wetland area will be maintained as highly productive wetland habitat in perpetuity. The management plan shall be subject to review and approval of the Department of Fish and Game. The management plan shall take into account concurs or requirements of the local health, flood control and mosquito

abatement districts

3. Engineering Analysis of all water structures and physical modifications necessary.
  4. Landscaping Plans which provide adequate buffers a minimum of 100' between the development and the restoration area including fencing and compatible uses sufficient to prevent or effectively limit intrusion by children and domestic pets.
- (c) The applicant shall be required to subject all privately owned wetland areas to a conservation easement or to dedicate such lands to a public agency or to assure permanent protection of the wetland through other means. Vehicular access shall be prohibited in such conservation easement areas.
- (d) The applicant shall be responsible for implementing the restoration plan before or during construction of the permitted development.
- . Development adjacent to wetlands and other environmentally sensitive habitats shall be sited and designed so as to prevent impacts which would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.

SHORELINE STRUCTURES

1. Construction of shoreline structures (such as revetments, seawalls, breakwaters etc) shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Such structures shall be designed by a registered engineer experienced in shoreline protective works and shall include recommendations for monitoring the effects on sand supply and appropriate mitigation measures.

SHORELINE ACCESS

1. Public access to, and use of the Surfside Colony beach for low intensity recreational uses shall be required as a condition of any new development project as defined by section 30106 and 30212 of the Coastal Act by the Surfside Colony Community Association or proposed on Association property, or within any easement area over association property. Approval of any such project shall be conditioned upon the prior recordation of an irrevocable offer to dedicate an easement for public access and low intensity recreational uses. The public access easements shall be offered to the City of Seal Beach or other public agency or private association acceptable to the Coastal Commission and shall provide, at a minimum, the following:
  - (a) Lateral Access. The applicant shall cause to be executed and recorded a document irrevocably offering to dedicate to a public agency or a private association an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicants and landowners from interfering with present use by the

public of the areas subject to the easement prior to acceptance of the offer. The easement shall include all areas from existing shoreline structures, including seawalls, bulkheads, or revetments, seaward to the mean high tide line. Where no shoreline protective work exists, the easement shall include all areas twenty feet seaward from the seawardmost extent of existing private property lot lines of the first Row of lots as indicated in Exhibit 5, seaward to the mean high tide line. Where shoreline structures are not located or proposed to be located immediately adjacent to existing development, the applicant shall cause to be executed and recorded a document irrevocably offering to dedicate to a public agency or a private association an easement for future construction of a boardwalk/walkway. Said easement shall be located on the inland side of the revetment and shall be a minimum of ten feet in width and shall extend the length of the revetment. The document submitted for recording shall include a record of survey illustrating the easement. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicants or landowners. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

- (b) Vertical Access. The applicant shall cause to be executed and recorded a document irrevocably offering to dedicate to a public agency or private association an easement for public pedestrian and bicycle access to the shoreline. Such easement shall be described as through the guard gate along Phillips Street and across the Community Association property seaward of the guard gate to the beach. Said easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicants or landowners. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Nothing in these policies or in the agreements or easements described therein shall be interpreted as affecting the right of the public to use any portion of the beach subject to the public trust.
3. An access management program shall be prepared as a part of the Implementation portion of the Local Coastal Program. The purpose of the access management plan shall be to provide maximum public access consistent with the Coastal Act of 1976, taking into account private property rights and site-specific constraints.
  - (a) The access management program shall include but not be limited to the following:
    1. The provision of signing at the Phillips St. entrance in order to make the public aware of the



existence of the accessway and its hours of operation.

2. An evaluation of the future location and development of support facilities such as parking and restrooms. Such facilities should be provided in conjunction with any easement on the 6-acre military site.
3. The accepting agency may charge a reasonable entrance or use fee, comparable to those charged by State and County-operated day use facilities, in order to defray costs for maintenance.
4. The LUP access component shall add the following policy:

The City shall encourage and allow for the Coastal Conservancy or other public agency or private association to improve the public Seal Way Walkway upcoast of the Pier. Any future improvement shall provide for a minimum 10-foot walkway.

#### HAZARDS

1. As a condition of approval of new development on shorefront parcels or in areas of liquefaction or fire hazards, the applicant shall submit a deed restriction for recording free of prior liens except for tax liens, that bind the applicants and any successors in interest. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from erosion, flooding, or wave damage or liquefaction and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the City or the Coastal Commission or any other public agency for any damage from such hazards; and (c) the applicants understand construction in the face of these possible known hazards may make them ineligible for public disaster funds or loans for repair, replacement or rehabilitation of the property in the event of erosion, flooding, wave damage or liquefaction and subsidence.
2. New development in areas of potential liquefaction and seismic hazards shall be subject to the following conditions.
  - a. Prior to approval of development the applicant shall specify the design earthquake and acceleration value on the site.
  - b. Earthwork shall consist of provision of 1) a permeable "blotting" layer just above the ground water surface, to absorb porewater which may travel upward during a seismic event and 2) a compacted fill blanket to cap all lots.
  - c. All structures in such areas shall be provided with special, rigid-behaving foundation systems (special foundations such as deep foundation or a mat type footing) capable of tolerating ground movement and with capacity for being releveled, if necessary, after a seismic event.

#### ARCHAEOLOGICAL RESOURCES

1. Prior to approval of new development sampling and subsurface testing of the area and accurate mapping by a qualified archaeologist shall be completed and recommendations for mitigation measures made. Based on such recommendations development shall be sited and designed so as to either permanently preserve archaeological/paleontological sites or provide for complete excavation and recovery of the sites. A qualified archaeologist shall be retained on site during grading activities and if resources are discovered grading shall be temporarily halted pending disposition of the site.

#### New Development

1. The DWP Specific Plan p. 5 4(b) Permitted Uses shall be modified as follows:

All uses contained in Chapter 28 Article 20, Section 28-2002(1) of the Seal Beach Municipal Code as authorized by the City Council.

2. Modify Policy 10 to add:

Commercial parcels along Main Street shall protect the visitor serving nature of the pier area by restricting amount of service and office uses and maintaining ground level uses for visitor serving facilities.

3. Modify Policy 14 as follows:

No private structures or landscaping (except shoreline protective devices consistent with all policies of the LUP) shall be constructed or extend beyond the 10-foot encroachment area defined by the line 10-feet oceanward of the seaward most private property line of the first row of lots. Development within the 10-foot encroachment area is allowed provided access is assured in new development consistent with Access Modifications 1 and 2 above.

#### C. Findings For Suggested Modifications.

1. Diking, Dredging, Filling and Protection of Habitats

The suggested modifications are intended to ensure protection of wetland resources consistent with the Coastal Act.

The Commission recognizes the intent of the LUP to acknowledge the resources but found in the previous section (herein incorporated by reference) that providing standards in some future amendment to the Specific Plan failed ensure uses and protection consistent with Sections 30233, 30230, 30231 and 30240 of the Act.

The suggested modifications provide for wetland identification and specific standards for uses permitted in wetlands and conditions for restoration of severely degraded wetlands. These reflect the previous Commission actions in this area and the position of the Dept. of Fish and Game (See Appendix B). The Commission has found in the past that for wetlands which constitute a "severely degraded wetland system", that consolidation and restoration of that system in conjunction with a residential development

proposal was an allowable use under sections 30233(3) and 30411(b)(3). The Commission finds such modifications necessary to ensure protection and restoration of wetland resources. As the Commission previously found in its action on the Conservancy Restoration Project, major restoration is indeed required for the severely degraded wetlands identified by the DFG:

"...only 2 to 5 acres of wetland are functioning at all well, and the problem of illegal fill is a continuing problem. The Commission therefore concludes that in this particular wetland, maintaining the status quo is an undesirable planning option, and that restoration should be aggressively pursued. Indeed, under Section 30233(a), the status quo is not the least environmentally damaging alternative.

And, "Because the wetland is severely degraded and in new of major restoration, uses of the wetland that involve wetland fill for residential use" can be considered further, but only if such alternatives are indeed the least damaging feasible alternative."

The Commission finds that the suggested modifications would ensure protection of wetland resources and provide for feasible restoration. The modifications specify a restoration plan which would provide 19.6 acres of restored wetland yet allow for consolidated development of 1000 residential units a community park and continued oil operations as specified in the LUP. The suggested modifications would also ensure permanent protection of the restored habitat through permanent conservation easements, a management plan and provision of buffers.

Therefore, the Commission finds that the LUP as modified will protect enhance and restore marine resources, wetlands and environmentally sensitive habitat areas and is thus consistent with the resource policies of the Coastal Act.

## 2. Shoreline Structures.

The goals of Sections 30235 and 30253 of the Coastal Act is to protect existing homes and beaches and provide safety from hazards from erosion and wave run up, and to minimize adverse impacts to shoreline sand supply and beaches. Given the persistent erosion problems in the City, the Commission recognizes that there is a potential for shoreline structures in the City and/or modifications to existing shoreline structures. The Land Use Plan must provide policy guidance in the development of such structures in order to be consistent with the Coastal Act.

The Commission also recognizes the need to provide maximum safety to residents of Surfside Colony and the suggested modifications therefore incorporate the provisions of Section 30235 which permits structures to protect existing residences. However, consistent with numerous previous Commission actions (noted in Appendix D) engineering and design of shoreline structures is necessary to ensure minimum impacts to shoreline sand supply.

Therefore the Commission finds that the LUP as modified will minimize risks to existing properties allow shoreline structures to protect such structures

or public beaches while assuring protection of sand supply and coastal resources, and is as modified consistent with Section 30235 of the Coastal Act.

### 3. Shoreline Access

The intent of the suggested modifications is to maximize access to and along the shoreline in the City consistent with Section 30210, and to assure that new development provides public access opportunities consistent with Sections 30211, 30212, and 30214 of the Coastal Act. In addition, the suggested modifications will mitigate the impacts to the beach resources and the public's ability to reach and use the shore resulting from development of permitted shoreline structures.

The Commission notes the extensive public access and recreational opportunities in the City and the LUP policies which protect such access. However, as noted in Section III B of this report, the development of shoreline structures can have significant adverse impacts on the availability of sandy beach area and possibly public beach lands thus severely impeding public access. Such impacts have already been evident from construction of the existing revetment at Surfside.

The Commission finds that policies to provide access to and along the shore in Surfside and to provide safe access along the existing revetment are needed to find the project consistent with the access policies of the Coastal Act. Further, Modifications to ensure that access is maximized throughout the City are necessary to find the LUP consistent with Section 30210 of the Act.

The Commission finds that the LUP as modified will protect, provide and enhance public access and is consistent with the access and recreation policies of Chapter 3 of the Coastal Act.

### 4. Hazards.

The Coastal Act requires that new development minimize risks to life and property in hazardous areas. As discussed in Section III B of this report there are identified hazards in the City including wave run-up, erosion and liquefaction which have and may continue to have adverse effects on existing and new development. The Commission finds that the LUP must require measures to minimize potential impacts in order to be consistent with the Act.

The suggested modifications provide that if new development occurs in such areas that full knowledge of the hazards, waiver of public liability and engineering modifications will minimize risks.

The Commission finds that the LUP as modified will minimize risks in hazardous areas and is thus consistent with Section 30253 of the Coastal Act.

### 5. New Development.

As discussed in Section III B of this report the LUP, through contradictory



policies, allows permitted uses within the DWP open space area which are not consistent with the protection of open space for recreational uses as intended in the Plan. The suggested modifications provide that those uses which are inconsistent with the protection of 70% of the site in open space for parks, trails, active or passive recreation and theatre would be deleted.

Modifications would also assure that existing visitor serving uses are protected consistent with the public access and recreation policies of the Act.

The Commission therefore finds that as modified the LUP would protect the recreational nature of the open space and prevent development of non-priority uses on this beachfront parcel consistent with Sections 30210, 30213, 30221, 30222 and 30223 of the Coastal Act.

As discussed in Section III B of this report, the LUP allows for potential encroachment of private structures onto a 10-foot area beyond private lot lines in Surfside. Absent provision of maximum lateral and vertical access to Surfside such encroachment could result in the loss of recreational access. The Commission has in other actions (e.g. San Diego) allowed such encroachments only under certain conditions and only where public access is assured. In the case of Surfside, since almost 85% of the existing encroachment area is developed, allowing development in the encroachment area will not significantly impact public access provided maximum public access is assured and where there is a limit to such encroachment. As modified, the LUP policy 14 page 35 would allow encroachment provided access in Surfside is assured and would restrict development beyond that encroachment line to protect public access. As modified, the LUP is consistent with the public access and new development policies of the Coastal Act.

F-8

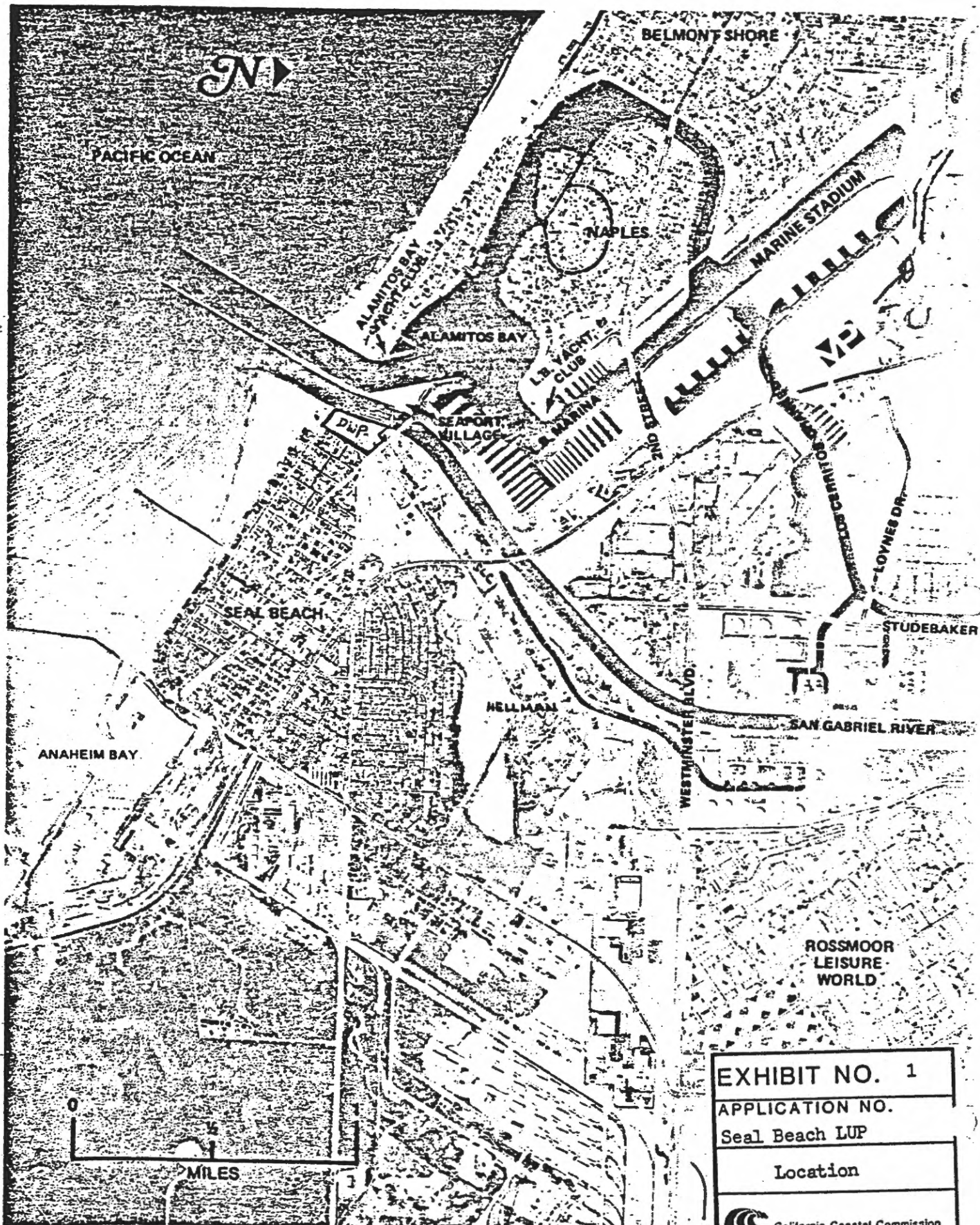




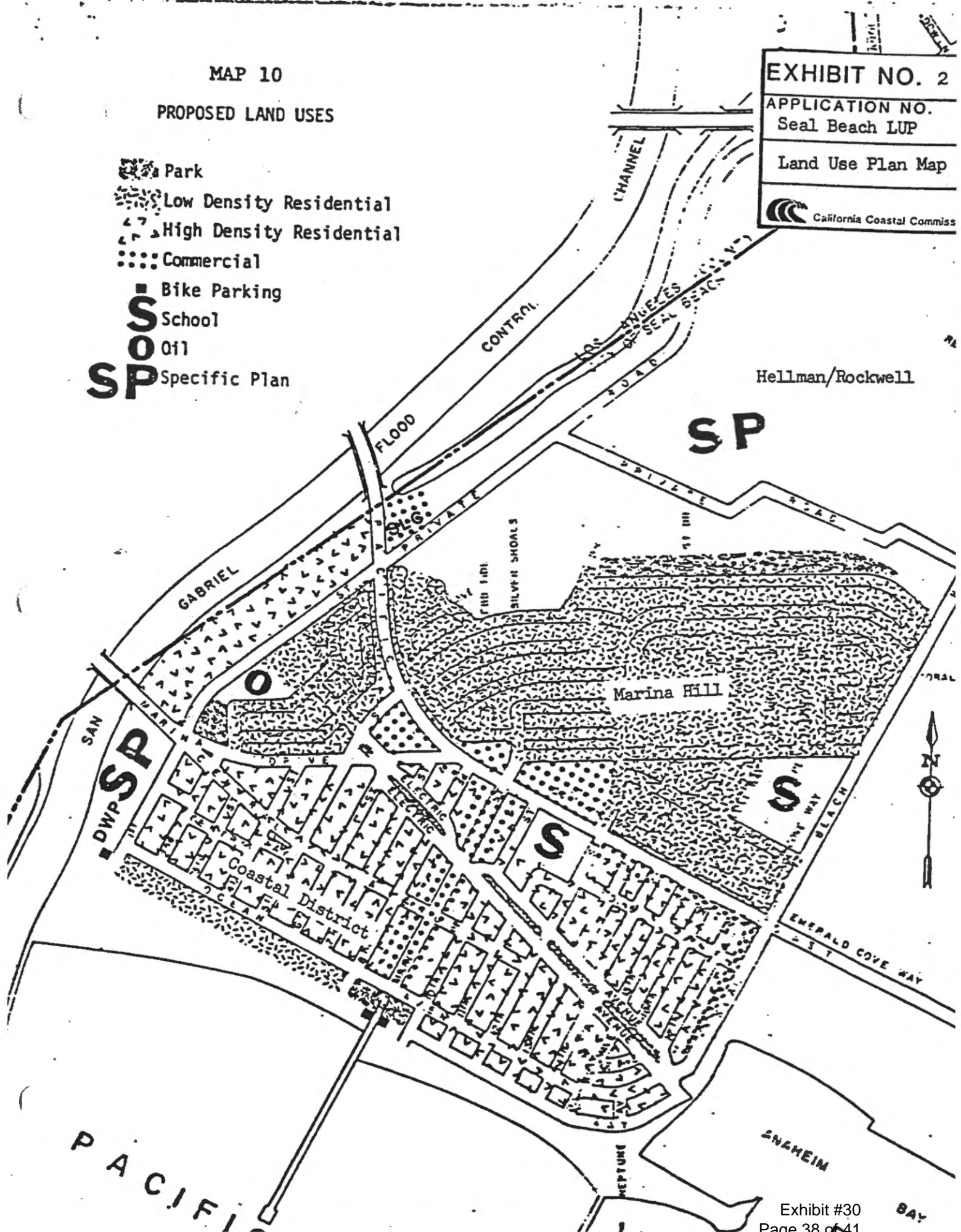
EXHIBIT NO. 1
APPLICATION NO.
Seal Beach LUP
Location
 California Coastal Commission

## PROPOSED LAND USES

**S** Bike Parking  
**S** School  
**O** Oil  
**SP** Specific Plan



California Coastal Commission



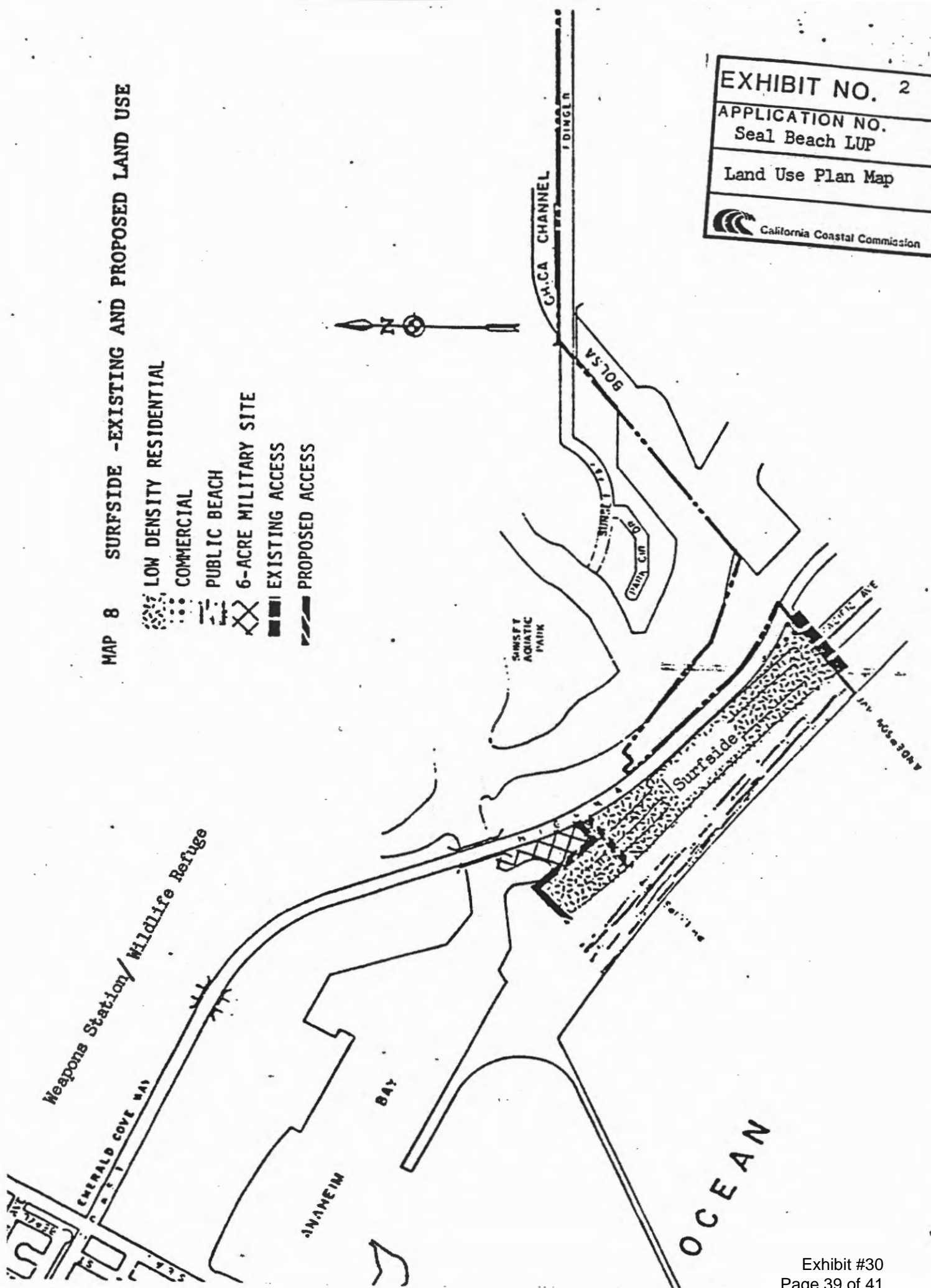


# MAP 8 SURFSIDE -EXISTING AND PROPOSED LAND USE

- LOW DENSITY RESIDENTIAL
- COMMERCIAL
- PUBLIC BEACH
- 6-ACRE MILITARY SITE
- EXISTING ACCESS
- PROPOSED ACCESS



EXHIBIT NO. 2
APPLICATION NO. Seal Beach LUP
Land Use Plan Map
 California Coastal Commission





This map was prepared from a report of the California Department of Fish and Game (1983). The unimproved roads, trails and pathways, oil wells and related processing, storage and administrative facilities, except for the two slums, are not shown on this map.

The definitions of the four habitat categories used by the California Department of Fish and Game are given in Table 6. The Open Water, Salt Flat and Salt/Brackish Water Marsh habitats are shown on this map using symbols as noted below; the Upland/Fill habitat occupies the remainder of the Study Area.

- Open Water
- Salt Flat
- Salt/Brackish Water Marsh

- 0.239 acre
- 0.624 acre
- 0.335 acre
- 0.165 acre
- 0.165 acre
- 1.95 acres

Drainage Channel Pipe  
Leading to San Gabriel River

DWP Intake Channel

Upland/Fill

0.239 acre

8.19 acres

1.69 acres

Upland/Fill

Open Water = 1.92 acres

Salt/Brackish Water Marsh = 1.14 acres

# 3.06 acres

Upland/Fill

0.551 acre

0.184 acre

7.02 acres

0.202 acre

0.77 acre

0.138 acre

PACIFIC COAST HIGHWAY

N

HABITAT DESIGNATIONS OF THE CALIFORNIA DEPARTMENT OF FISH AND GAME FOR THE WETLAND RESOURCES WITHIN THE CITY OF SEAL BEACH, SOUTH OF THE SAN GABRIEL RIVER.

# ACREAGE TOTALS

Open Water = 3.33 acres  
Salt Flat = 18.02 acres  
Salt/Brackish Water Marsh = 3.36 acres

Los Alamitos Retarding Basin

Boundary of Total Study Area

WESTMINSTER AVE.

SEAL BEACH BLVD

U.S. NAVAL WEAPONS STATION

1 Inch = 435.7 Feet

EXHIBIT NO. 3

APPLICATION NO.

Seal Beach LUP

Wetlands as Mapped 1






DFG

California Coastal Commission

December 19, 1980

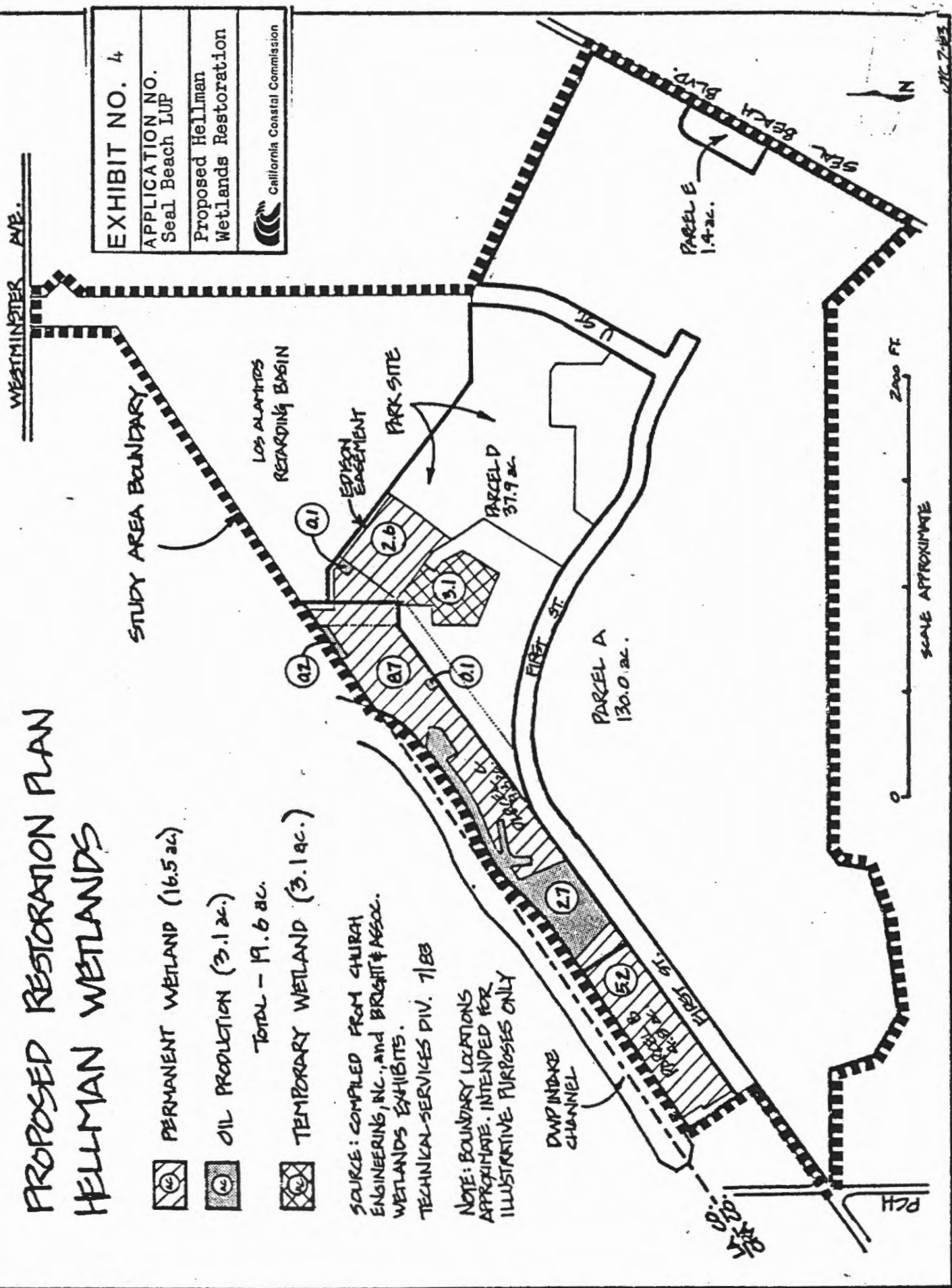
# PROPOSED RESTORATION PLAN HELLMAN WETLANDS

-  PERMANENT WETLAND (16.5 ac.)
-  OIL PRODUCTION (3.1 ac.)
-  TEMPORARY WETLAND (3.1 ac.)

TOTAL - 19.6 ac.

SOURCE: COMPILED FROM CHURCH  
ENGINEERING, INC., AND BRIGHT & ASSOC.  
WETLANDS EXHIBITS.  
TECHNICAL SERVICES DIV. 7/83

NOTE: BOUNDARY LOCATIONS  
APPROXIMATE. INTENDED FOR  
ILLUSTRATIVE PURPOSES ONLY



March 9, 2015

TH 13b

Steve Kinsey, Chair  
Honorable Coastal Commissioners  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 90105

**Re: Application No. 5-13-1233 (City of Seal Beach, Bay City Partners & Marina Beach House)**

**Agenda Item 13b, March 12, 2015**

Dear Chair Kinsey and Commissioners:

The City of Seal Beach, as co-applicant with Bay City Partners, LLC, respectfully requests Commission approval of the above application, which proposes the subdivision of the former power plant (DWP) site and the creation of a 6.4-acre public, coastal park and a 4.5-acre 32 lot residential development.

In 2011, the Commission approved the City's River's End Staging Area (RESA), a public oceanfront recreational facility that the City recently constructed adjacent to the beach and the San Gabriel River. The RESA has become a popular staging area for windsurfers and provides parking for beachgoers and a key segment of the "Mountains to the Sea" bike trail which is used by cyclists and pedestrians who recreate along the San Gabriel River. The proposed project on the adjacent inland DWP site now completes the City's vision for this area by creating a unique, activated coastal park, conceived in part, as to the four native plant communities proposed (with input from the Commission's biologist), and, importantly, ensures that the portion of the bike trail astride the park and driveway access to the RESA parking lot will remain open and transferred in fee to the City at no cost.

The City is very proud of this Project, and your Commission's approval will end 48 years in which a weed covered lot, consisting of 8 separate parcels, has remained idle and fenced.

The City has prepared this letter in response to the Staff Report. To assist you, we offer the following points:

*A copy of this letter has also been provided to Staff in the South Coast District Office*

### **Coastal Resource Benefits Lost by the Staff Recommendation of Denial**

As noted, in September 2011, the Commission approved the RESA, which includes a number of public access improvements funded by your sister state agency, the Los Angeles and San Gabriel Rivers and Mountains Conservancy (RMC). The approval included restriping a 115 space parking lot, native landscaping around the perimeter of the lot, a sidewalk, and a remodeled restroom and picnic/bench facilities. It also included river trail improvements along the San Gabriel River, including a segment of the bike trail that currently runs through the subject property, which is owned by Bay City Partners.

As a condition of a Settlement Agreement resolving eminent domain litigation, Bay City Partners agreed to lease the City for \$1 annually a Driveway Parcel, which provides the sole vehicle access to the RESA parking lot, and a Bike Trail Parcel, which provides the bike trail segment through the subject property. The Settlement Agreement provides for conveyance of the Driveway and Bike Trail Parcels to the City, as well as the 6.4-acre visitor-serving Open Space area, upon issuance of a CDP for the residential project proposed here. Importantly, however, the Lease also provides that it will terminate on March 31, 2015 or, if the project is denied, 30 days after denial, whichever is earlier. That imminent March 31, 2015 deadline is now upon us.

The Staff Report does not spell out the real adverse consequence of accepting its denial recommendation. The driveway would be lost, so there would be no vehicular access to 115-car RESA parking lot. More importantly, that would eliminate a significant portion of the parking available for beachgoers – 21% of the overall beach parking in the City, with the closest lot being 9 blocks away. A key segment in the “Mountains to the Sea” river trail would be lost and the existing gate closed and locked, foreclosing bike and pedestrian access over the trail. The City would lose valuable open space it could not afford to purchase and the opportunity for that area to be transformed into a highly valued regional coastal resource. The subject property would continue to be fenced and covered with weeds. This would be a truly horrible result for a project that provides substantial public benefits and coastal resource protection.

The City took the first step in obtaining the Lease for the driveway to the RESA parking lot and the bike path segment. We are now looking to the Commission to approve the Project so that these valuable coastal improvements are permanently preserved.

### **The Coastal Park, as Now Modified, Makes Far More Sense Than Staff's Recommended “Active Sports” Field**

The Staff Report dismisses the proposal to develop the 6.4 acre open space area into a natural coastal park for reasons that we believe make very little coastal sense. It states, in part: “. . . [P]artial use of the project site for these types of uses [lower-cost recreational uses], such as active park (i.e., including sports fields, playgrounds, etc.), passive and habitat parks would be consistent with the public access and recreation policies of the Coastal Act. The Commission notes that in some Orange County cities there is a severe shortage of active parks offering soccer and baseball fields.” (Staff

Report, Page 19.) In the City's view, this is not the appropriate location for sports fields, playgrounds, or soccer and baseball fields.

The Staff Report also characterizes the open space area here as a passive park. It is, however, much more than that, and it bears emphasis that since this matter was last heard in November 2013, Bay City has proposed not only amazing natural coastal park features, conceived with the benefit of valuable input from the Commission's Staff Biologist, but also has activated the property with new coastal access and recreation uses.

The Project initially included four (4) native plant communities in the Park: Coastal Sage Scrub, Native Grasslands, Riparian/Freshwater Marsh and Coastal Trees. But, as the Staff Report notes it also includes the following:

- "1) Two water quality treatment areas that are designed to have a dual function to treat runoff from both the passive open space park area and the residential area and serve as part of the riparian area;
- 2) Vista rest Area and Interpretive Center with free Wi Fi, a seat wall with shaded trellis, bicycle racks and interpretive elements;
- 3) Paved trail from the San Gabriel River Trail to the Interpretive Center and to Ocean Avenue;
- 4) Decomposed granite trail throughout the open space;
- 5) Fitness trail with fitness trail (exercise) stations;
- 6) Benches, picnic table and areas;
- 7) San Gabriel River Trail Signage;
- 8) San Gabriel River Trail Rest Area located at the entrance to the park from the San Gabriel River Trail that will provide benches, a shade trellis, trash cans, drinking fountains, bicycle racks, bicycle repair station and water bottle filling stations;
- 9) Pedestrian entrance from the RESA Parking Lot and other pedestrian entrances from surrounding adjacent areas;
- 10) Free play lawn area near "B" Street; and
- 11) Child's play area below the Vista Rest Area and Interpretive Center next to the River Trail." (Staff Report, p. 8.)

It also includes seasonal and year-round commercial visitor-serving uses proposed at locations within the open space area. The seasonal uses would be operated from Memorial Day weekend through Labor Day weekend:

- "1) Location 1: Seasonal Kayak and Stand Up Paddleboard Rentals in a portable kiosk or tent at the Trailside Rest Area; and
- 2) Location 2: Seasonal and Year Round Bicycle Rental Station next to the River Trail area next to the Children's Play Area. (Staff Report, p. 8.)

The City of Seal Beach wishes the Commission to understand that this is the City's opportunity to celebrate its own regional coastal habitat in an activated coastal park setting – the terminus of a river that spans from the San Gabriel Mountains to the ocean, where the prize for the bike rider at the end of his/her journey from inland areas or from the City of Long Beach is the mouth of the San Gabriel River, the beach and ocean, and on this site, astride the River, a regional coastal park as a respite with bike service and rider amenities, along with the numerous uses above for the general public.

This is the perfect spot and opportunity for the coastal park described, not an active sports field or playground that could be located anywhere, as the Staff Report suggests.

**After Considerable Study, Visitor-Serving Commercial is Not a Feasible Use on this Site**

The Staff Report ignores the City's efforts to explore activating a visitor-serving commercial use on this property. The City's experience, after many years, is that you do not just put a visitor-serving commercial use anywhere. Rather, you need to determine first whether it makes sense and is feasible. That is exactly what the City has done with the DWP site.

The City tried for a number of years to encourage traditional hotel development on the property. On four occasions, expert consulting firms prepared studies to evaluate the feasibility of a hotel or other visitor-serving commercial uses. Each study concluded that such uses would be infeasible because of the nature and location of the site. (PKF 2003, 2009, 2012 and Kosmont Peer Review 2011.)

In its 2011 peer review study, Kosmont Companies explained that PFK's 2009 study analyzed four hotel development scenarios and determined that each would be "financially infeasible as the projected net operating income would not be sufficient to secure development financing, and equity returns would be too low to encourage developer investment." Kosmont added two traditional hotel alternatives to the analysis and concluded that those alternatives too "are financially infeasible." (Kosmont, p. 32.)

In its 2009 analysis, PKF explained:

"In a previous study performed in 2003, PKF Consulting concluded that the development of a hotel as determined by the Specific Plan would not be feasible at the site due to its location in a highly residential area, lack of visibility, and difficulty of access, amongst other reasons.

The 2009 study then analyzed potential visitor-serving commercial uses other than hotel to determine their viability at the subject site. Among other things, PKF noted:

- Current demographics, visitor profile, and existing development in the City of Seal Beach do not support the addition of retail or office space at the subject's location at this time;
- Though the site is located on the water, this portion of the San Gabriel River is a non-navigable waterway, therefore, excluding all potential water/marine related uses;



- The subject site is located on a high residential area and fairly distant to the main entertainment district of Seal Beach;
- There are several restaurants and shops across the River that are not performing too well due in part to their location and accessibility; and
- There is sufficient supply of Visitor-Serving uses in the City of Seal Beach and surrounding neighborhoods based on the current visitor profile.” (PKF 2012, pp. 1-2.)

PKF specifically analyzed the following: bed and breakfast/hostel, marine related uses, bicycle/skateboard/surfboard rentals, beach equipment rentals, visitor serving specialty retail, beach oriented markets, and restaurants. PFK concluded:

“ . . . it is our opinion that there is sufficient supply of visitor-serving uses in the area. In addition, although the site is bordered by a water stream and close to the beach, the non-navigability of the water stream makes any marine or water related uses not possible at the site. Further, the portion of the site which allows for visitor-serving purpose is fairly distant from the beach to be appealing for any beach related purposes. The subject site is located within a mostly residential area and the area surrounding the site, composed mainly of residences, makes the site less desirable for commercial visitor serving uses.” (PKF 2012, p. 6.)

Since then yet additional studies have concluded that a hotel is simply infeasible – 2014 Study by PKF, 2014 Peer Review by Kosmont, 2015 Update by PKF, and 2015 Peer Review by Kosmont.

The City, through its General Plan, has concentrated its visitor-serving commercial uses in areas of our community where it makes sense by applying sound land use planning principles and standards. The DWP property, unfortunately, does not make sense for that type of use as it meets none of these standards. It is not enough for the Staff Report to suggest that such uses are feasible. The expert evidence – in fact, the only evidence -- overwhelmingly concludes otherwise. The City proactively explored those uses before reaching the conclusion that they do not work here and that the proposed development instead makes sense for this site.

The City wishes to emphasize that the Staff Recommendation would not lead to development of visitor-serving commercial uses on this property. It would, instead, condemn the property to remain a fenced, undeveloped weed lot, much like it has remained for the past 48 years. For the last 30 years, while zoned for visitor-serving use, not one proposal has come forth from the development community for a hotel or other commercial use. On this issue, the Staff Report is not realistic or supported, and would simply result in sacrificing the significant coastal resources benefits this project would provide.

#### **The Existing Boat Repair and Dry Boat Storage Business on the Adjoining Parcel Would be Unaffected by This Project**

The Staff Report makes much of a small existing small boat repair and dry small trailerable boat sales and storage business located between the property and San Gabriel River. It asserts that “the introduction of a residential subdivision, especially



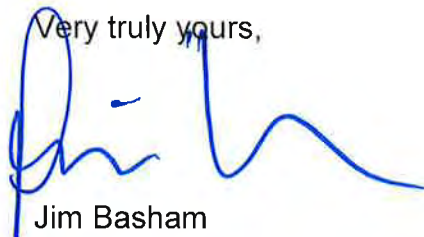
large lot, detached single family residential lots, adjacent to an existing recreational boating support use introduces a potential land use conflict [which] could ultimately result in the elimination of the higher priority use." (Staff Report, p. 18.)

There is no evidence that supports this conclusion. The Staff Report does not explain that this business already shares its own parcel with an existing large single-family residence and separate apartment unit. It also does not explain that the business sits across the street, Marina Drive, from a complete block of existing residential uses and a block from the residences along 1<sup>st</sup> Street. The business itself is oriented to the River and Marina Drive, not this property. The biggest constraint facing this existing boat support use is the fact that the parcel on which it is located is very small, the business has but a couple of boats in its inventory, and it faces considerable competition from the existing, more substantial boat repair and dry boat storage facilities on the other side of the River in nearby Los Alamitos Bay. It is also worth noting that the River is not navigable; this particular business could be located anywhere.

### **Conclusion**

For all these reasons, the City of Seal Beach respectfully asks the Commission to approve the application for permit, subject to the conditions which Bay City has submitted to your Staff. Thank you for your consideration.

Very truly yours,



Jim Basham  
Community Development Director  
City of Seal Beach

ccs: Dr. Charles Lester, Executive Director  
Sherilyn Sarb, South Coast District Director  
Teresa Henry, South Coast District Manager  
Fernie Sy, Coastal Analyst  
Mayor Ellery A. Deaton  
Mayor Pro Tem David W. Sloan  
Councilman Mike Varipapa  
Councilwoman Sandra Massa-Lavitt  
Councilman Gary A. Miller  
Jill Ingram, City Manager  
Steven Flower, City Attorney  
Steven H. Kaufmann, Asst. City Attorney  
Edward Selich, Bay City Partners  
Susan McCabe, McCabe and Company



[HOME](#) > [MISSIONS](#) > [REGULATORY](#) > [JURISDICTIONAL DETERMINATION](#) > [NAVIGABLE WATERWAYS](#)

# LOS ANGELES DISTRICT

*This table lists Navigable Water only and does not include other non-navigable water of the U.S. that may be managed under Section 404 of the Clean Water Act*

Body of Water	County/State	Remarks	Authority
Agua Hediona Lagoon	San Diego County	CG--TO 2.5 ft MSL. Coe--TO 2.5 ft MSL.	D11 Memo 29 Mar 80. CoE LTR 29 Nov 72.
Alamitos Bay	Los Angeles County	TO MHW Small boat harbor	D11 Memo 25 Jan 74.
Alamo River	Imperial County	Nonnavigable	D11 Memo 14 May 76
Anaheim Bay	Orange County	CG-Entire Bay. COE--To 2.5 ft MSL.	D11 Memo 27 May 80. COE LTR 6 Feb 79
Arroyo Hondo	Santa Barbara County	CG--TO SR 101	D11 LTR 7 Sep 79
Ballona Creek	Los Angeles County	COE--TO 206 ft MSL.	COE LTR 29 Nov 72
Batiquitos Lagoon	San Diego County	COE TO Mile 2.5 ft MSL	COE LTR 29 Nov 72
Bolsa Bay	Orange County	CG--TO MHW. COE--TO 2.5 ft MSL.	D11 Memo 22 Jan 80. COE LTR 29 Nov 72
Buena Vista Lagoon	San Diego County	CG Nonavigable. COE to 2.5 ft MSL	COMDT ltr dtd 15 sep 75. COE ltr dtd 29 Nov 72.
Butano Creek	San Luis Obispo County	CG to mile 1.7. COE to mile 1.4 San Gregoria.	D12 ltr 6 feb 79. COE ltr 2 aug 71
Calleguas Creek	Ventura County	COE to 2.5 ft MSL	COE ltr 29 nov 72
Camp Pendelton Harbor	San Diego County	Military	COE ltr 17 feb 58
Carpinteria El Estero Marsh	Santa Barbara County	CoE to 2.5 ft MSL	CoE ltr 29 nov 72
Chorro Creek	San Luis Obispo County	CG to mile 1.2. COE to mile 11	D12 ltr 6 feb 79. COE Note 15 Jul 78
Colorado River: Mexican Border to Hoover Dam		Arizona V. CA.,283 US 423 (1931) & Arizona V. CA., 298 US 558 (1936)	
Colorado River: Hoover Dam to Grand Wash		Lake Mead	CoE LTR 2 Jan 75
Colorado River: Grand Wash to Glen Canyon Dam		No CG Determination CCGD11 (oan) LTR 16590 6 Feb 87	CoE LTR 8 Nov 73
Colorado River: Glen Canyon Dam to Cataract Canyon (Mile 176)		US V. Utah. 283 US 64 (1931)	
Colorado River: Cataract Canyon to Utah-Colorado Boarder			G-LMI LTR 16211 30 Nov 77
Colorado River: 4.5 Miles Below Green River to Castle Creek (just above MOAB)			
Colorado River: Utah-Colorado Boarder to Grand Junction			CoE LTR 15 Feb 72
Devareaux Ranch Lagoon	Santa Barbara County	COE to 2.5 ft MSL.	COE ltr 29 nov 72
Domingez Channel	Los Angeles County	CG to Vermont Ave	D11 dl Memo 21 Jul 81
Franklin Creek Carpinteria Valley Watershed Project	Santa Barbara County	Nonnavigable	D11 ltr 5 jan 76
Gila River	Arizona	Between Coolidge Dam & Painted Rock Dam	
Goleta Slough	Santa Barbara County	CG to MHW. CoE to 2.5 ft MSL.	COMDT ltr 12 nov 69. CoE ltr 29 nov 72.
Greenville-Banning Channel	Orange County	CG to 19th st bridge	D11 Memo 9 feb 78

Irwindale Quarry Lake Powell	Los Angeles County AZ/Utah	Nonnavigable	D11 memo 17 jan 80
LA Plaeta Creek	San Diego County	CG to SD & AE Crossing. National City to San Diego & Arizona E RR BR.	D11 memo 16 jun 80
Las Chollas Creek	San Diego County	CG to mile 0.35	D11 memo 17 jul 78
Los Angeles/Long Beach Harbor	Los Angeles County	CG to MHW. COE to to mile 8	D11 memo 23 aug 78. COE ltr 17 feb 58.
Los Angeles River	Los Angeles County	CG to PCH Bridge/MHW. CoE to 2.5 ft MSL.	D11 memo 23 aug 78. CoE LTR 29 nov 72.
Los Penasquitos Lagoon	San Diego County	CG to I-5 Bridge. CoE to 2.5 ft MSL.	D11 memo 5 mar 86. CoE LTR 29 nov 72.
Mission Bay (Upper)	San Diego County	CoE to 2.6 ft MSL.	CoE LTR 29 nov 72
Morro Bay (Lower)	San Luis Obispo County	CG to MHW. CoE to 2.4 ft MSL.	D12 ltr 6 feb 79. CoE LTR 29 Nov 72.
Mugu Lagoon	Ventura County	CG Undetermined. CoE to 2.5 ft MSL.	COE LTR 29 Nov 72
Newport Bay (Upper)	Orange County	CoE to 2.5 ft MSL.	COE LTR 29 Nov 72
New River	Imperial County	Nonnavigable	D11 MEMO 18 Mar 77
Otay River	San Diego County	CG to MHW	D11 memo 22 mar 77
Pismo & Arroyo Grande Creeks	San Luis Obispo County	CoE to 2.5 ft MSL	CoE ltr 29 nov 72
Playa Del Ray Harbor	Los Angeles County		
Port Hueneme	Ventura County		
Port San Luis	San Luis Obispo County	Tidal	
Redondo Beach	Los Angeles County		CoE LTR 17 feb 58
Salton Sea	Imperial County	Nonnavigable	COMDT ltr 3 jan 61
San Antonio Creek	Santa Barbara County	Nonnavigable	D11 memo 26 sep 79
San Diego River	San Diego County	CG to mean high water. COE to 2.7 ft MSL.	D11 memo 30 sep 76. COE ltr 29 nov 72.
San Diego Bay (lower)	San Diego County	Coe to 3 ft MSL.	COE LTR 29 nov 72
San Dieguito River	San Diego County	CG to I-5. Coe to 2.5 ft MSL.	D11 memo 8 mar 85. COE ltr 29 nov 72.
San Elijo Lagoon	San Diego County	Coe to 2.5 ft MSL.	COE LTR 29 nov 72
San Gabriel River	Orange County	CG to 7th street bridge. COE to 2.5 ft MSL.	D11 memo 16 sep 80. COE LTR 6 feb 79.
San Juan Creek	Orange County	CoE to 2.6 ft MSL.	COE LTR 29 Nov 72
San Luis Rey River	San Diego County	CG to route 76. COE to 2.5 ft MSL.	D11 memo 12 feb 79. COE ltr29 nov 72.
San Luis Obispo Creek	San Luis Obispo County	CG to mile 1.3. COE to 2.5 ft MSL Pismo Beach.	D12 LTR 6 feb 79. CoE ltr 29 nov 72.
San Mateo Creek	San Diego County	Coe to 2.6 ft MSL.	COE ltr 29 nov 72.
San Pedro Creek	Santa Barbara County	Nonnavigable	D11 memo 1 may 78
San Simeon Bay	San Luis Obispo County	Coe to 2.5 ft MSL.	CoE ltr 29 nov 72.
San Simeon Creek	San Luis Obispo County	CG to mile 0.5. Camisria.	D12 ltr 6 feb 79
Santa Ana River	Orange County	CG to 19th street bridge.	D11 memo 9 feb 78.
Santa Barbara Harbor	Santa Barbara County	CoE--	
Santa Clara River	Ventura County	CG Nonnavigable	D11 memo 3 jun 87. D11 memo 29 Nov 72.
Santa Margarita River	San Diego County	CG Nonnavigable. CoE to 2.5 ft MSL.	D11 memo 16 nov 78. CoE ltr 29 nov 72.
Santa Maria River	Santa Barbara County	CoE to 2.5 ft MSL.	CoE LTR 29 nov 72
Santa Ynez River	Santa Barbara County	CoE to 2.5 ft MSL.	CoE LTR 29 nov 73
Sweetwater River	San Diego County	CG to mile 0.8	COMDT LTR 23 jan 76
Talbert Flood Control Channel	Orange County	CG to mean high water	D11 (d1) memo OF 26 july 84.
Tecolate River	San Diego County	CG to MHW. Mission Bay, San Diego	D11 memo 27 jan 78.
Tecolotilo Creek	Santa Barbara County	CG to Fowler St. Bridge.	COMDT LTR 12 nov 69
Tijuana Estuary	San Diego County	CoE to 2.5 ft. M.S.L.	CoE LTR 29 Nov 72
Ventura River	Ventura County	CoE--TO 2.6 ft M.S.L	CoE LTR 29 Nov 72



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March 6, 2015

Chair Steve Kinsey and Commissioners  
California Coastal Commission  
Suite 2000  
45 Fremont St.  
San Francisco, CA 94105

Permit Number 5-13-1233  
Item No. TH13b  
Hearing: March 12, 2015  
Opposition to Project

Re: Permit No. 5-13-1233  
Bay City Partners

Dear Chair Kinsey and Commissioners:

By insisting that a private housing development is the only economically viable use for the Seal Beach DWP Site, the applicants are confusing profitability with the Coastal Act test of feasibility.

Visitor serving uses in the Coastal Zone are preferred over residential uses. Section 30213 provides that "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." Section 30108 provides that feasible "means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

The applicants' primary objection to the staff recommendation is based on the argument that providing a hotel on the site is not feasible. Your staff analysis concerning hotel and other visitor serving use possibilities adequately responds to the objection.

There is a serious flaw in the hotel analysis presented by the applicants. Unfortunately, the focus of the applicants' studies is profitability. The Coastal Act asks that you consider feasibility, not profitability.

The applicants' various financial reports focus on the return that they would like to make on their investment, taking into account the original purchase price and the years they have held the property.

The feasibility question for the Coastal Commission is, "Can a hotel operator build and operate a hotel economically on this site?" Assuming that you believe this is a proper location for a hotel or other visitor serving facilities, that is the question you need to answer.



Chair Steve Kinsey and Commissioners  
California Coastal Commission  
March 6, 2014  
Page 2 of 2

The current owners purchased property with a visitor serving land use designation. Nevertheless, the historical price paid for the land and the lost opportunity cost of holding it for several years, has nothing to do with current feasibility because economic feasibility is a forward looking, not backward, analysis.

For a contrasting perspective of hotel feasibility, please consider the attached copy of a letter from Campbell Lodging, Inc. dated February 4, 2014. The letter is referenced in Appendix 1 of the staff report as a substantive file document.

The provision of private housing on this site would ignore the Coastal Act's policy directive contained in Section 30213 and therefore you should deny this application.

Very truly yours,

A handwritten signature in black ink, appearing to read "Melvin L. Nutter". The signature is fluid and cursive, with the first name "Melvin" being more prominent.

Melvin L. Nutter

MLN/cc

Enclosure as Stated

## EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Greg Cox

- 1) Name or description of project: 5-13-1233 (Bay City Partners/City of Seal Beach/Marina Beach House)
- 2) Date and time of receipt of communication: March 4, 2015 at 4:00pm
- 3) Location of communication: Telephone  
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:  
Anne Blemker
- 5) Identity of person(s) on whose behalf communication was made:  
Ed Selich, Bay City Partners
- 6) Identity of persons(s) receiving communication:  
Greg Cox
- 7) Identity of all person(s) present during the communication:  
Ed Selich, Ellery Deaton, Steve Kaufmann, Susan McCabe, Anne Blemker, Greg Murphy

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from the applicants' representatives in which we went through a briefing booklet that was previously provided to staff. We discussed previous Commission consideration of the project and the applicants' efforts to address concerns raised in prior hearings. We then discussed the site history, project background and efforts by both the City and the land owner to site a hotel or other commercial use on the subject property. As stated by the applicant, multiple professional analyses have determined the site to be infeasible for a hotel use. Instead the City's planning efforts have concluded the site to be appropriate for a public park and residential use. The proposed project would provide permanent public access over the existing driveway to the beach, permanent public use of San Gabriel River Trail, creation of a 6.5 acre public park and would provide mitigation funds that would go toward creation of new overnight accommodations by State Parks. In addition, the State Lands Commission has approved an exchange agreement that ensures public use of the trail property. The applicants disagree with staff's recommendation for denial and request that the Commission approve the project subject to special conditions being offered by the applicants.

3/9/15  
Date

Greg Cox  
Signature of Commissioner

**TIMING FOR FILING OF DISCLOSURE FORM:** File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

## EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Carole Groom

- 1) Name or description of project:  
Application No. 5-13-1233 (City of Seal Beach, Bay City Partners and Marina Beach House, Seal Beach)  
Appeal No. A-2-HMB-15-0006 (Campodonico, Half Moon Bay)
- 2) Date and time of receipt of communication: March 3, 2015 at 10 AM
- 3) Location of communication: Office of the Board of Supervisors (400 County Center, Redwood City, CA 94063) -- Telephone  
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:  
Anne Blemker
- 5) Identity of person(s) on whose behalf communication was made:  
City of Seal Beach, Bay City Partners, Marina Beach House, and Schiller Residence
- 6) Identity of persons(s) receiving communication:  
Carole Groom
- 7) Identity of all person(s) present during the communication:  
Susan McCabe and ~~XXXX~~ Ed Selich

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from Susan McCabe and ~~XXXX~~ Ed Selich in which two electronic briefing booklets were presented (they were provided to staff previously – they are titled “5-13-1233 – DWP Specific Plan Implementation Project” and “A-2-HMB-15-0006, 170 Correias Street, Half Moon Bay.”)

The representatives spent most of the telephone meeting discussing the City of Seal Beach, Bay City Partners, and Marina Beach House matter. They discussed the history of the application, including being asked to withdraw it in November of 2013 due to a lack of open space, a pending State Lands Commission (SLC) Exchange Agreement, and concerns about the visitor-serving commercial uses of the proposed project. The representatives indicated that they have addressed these issues, including obtaining State Lands Commission approval and including a variety of enhancements to the open space and recreation options in relation to visitor-serving commercial uses. They discussed the proportions of the site being split between open space and the proposed development and that the relative percentages were resolved at the city level. The representatives then turned to the issue of the feasibility of putting a hotel on the site. They stated that a maximum capacity of 75 rooms would be feasible and that this small size would not be economically viable, would not fit within the city's height limits, and would not provide adequate parking on the developable portion of the site. They stated that a mitigation fee proposal is being offered to provide an in lieu fee of \$641,000 to State Parks. They also mentioned a public trust easement and a \$2.7 million payment that would be made. The City of Seal Beach would gain donated parkland through the deal, according to the representatives.

The second item was mention briefly. Ms. McCabe stated that they are in agreement with the staff recommendation on the Half Moon Bay proposed house (Campodonico).

MAR 4 2015

Date

Carole Groom

Signature of Commissioner

**TIMING FOR FILING OF DISCLOSURE FORM:** File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

## EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Wendy Mitchell

- 1) Name or description of project: 5-13-1233 (Bay City Partners/City of Seal Beach/Marina Beach House)
- 2) Date and time of receipt of communication: March 3, 2015 at 12:00pm
- 3) Location of communication: Studio City  
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:  
Anne Blemker
- 5) Identity of person(s) on whose behalf communication was made:  
Ed Selich, Bay City Partners
- 6) Identity of persons(s) receiving communication:  
Wendy Mitchell
- 7) Identity of all person(s) present during the communication:  
Ed Selich, Susan McCabe

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from the applicants' representatives in which we went through a briefing booklet that was previously provided to staff. We discussed previous Commission consideration of the project and the applicants' efforts to address concerns raised in prior hearings. We then discussed the site history, project background and efforts by both the City and the land owner to site a hotel on the subject property. As stated by the applicant, multiple professional analyses have determined the site to be infeasible for a hotel use. Instead the City's planning efforts have concluded the site to be appropriate for a public park and residential use. The proposed project would provide permanent public access over the existing driveway to the beach, permanent public use of San Gabriel River Trail, creation of a 6.5 acre public park and would ensure that the property will be developed as a unified plan, rather than as 8 individual projects under separate ownership. The project also proposes mitigation that would go toward creation of new overnight accommodations by State Parks. The applicants disagree with staff's recommendation for denial and requests that the Commission approve the project subject to special conditions being offered by the applicants.

3/6/15  
Date

Wendy Mitchell  
Signature of Commissioner

**TIMING FOR FILING OF DISCLOSURE FORM:** File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

**CALIFORNIA COASTAL COMMISSION**

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

# Th 13b



Filed:	10/21/14
180th Day:	4/19/15
Staff:	F. Sy-LB
Staff Report:	2/27/15
Hearing Date:	3/12/15

## STAFF REPORT: REGULAR CALENDAR

<b>Application No.:</b>	5-13-1233
<b>Applicants:</b>	Bay City Partners, LLC, City of Seal Beach and Marina Beach House
<b>Agent:</b>	Edward Selich, Howard Zelefsky and Susan McCabe
<b>Location:</b>	Southwest corner of 1st Street and Marina Drive, Seal Beach (Orange County)
<b>Project Description:</b>	Subdivision of a 10.9 acre vacant, former power plant (DWP) site into two parcels; subdivision of the 4.5 acre parcel into 32 single-family (custom-home) residential lots and installation of street and drainage improvements; construction of a passive open space park with master plan on the 6.4 acre remainder parcel; lot line adjustment and street vacation.
<b>Staff Recommendation:</b>	Denial

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## SUMMARY OF STAFF RECOMMENDATION

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), the current owners of the site. The project site is located along the east side of the San Gabriel River in the City of Seal Beach, seaward of Pacific Coast Highway (PCH). The project site is also contiguous with and inland of the 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 approximately 28-mile long San Gabriel River Trail which runs from the foot of the San Gabriel Mountains and terminates at the public beach.



Therefore the project site is considered to be both riverfront and oceanfront. Such a large vacant site, under single ownership, is ideally suited to carry out the recreation and public access provisions of the Coastal Act that require that; (1) oceanfront land suitable for recreational use be protected and developed with uses supporting public or commercial recreational activities (CA Section 30221); (2) the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation have priority over private residential development (CA Section 30222); (3) upland areas necessary to support coastal recreational uses be reserved for and developed with such uses (CA Section 30223); (4) lower cost visitor and recreational facilities, including overnight accommodations, be provided, and (5) developments providing public recreational opportunities are preferred (CA Section 30213).

The site has been designated open space and zoned in the DWP Specific Plan for visitor-serving hotel and park use by the local government for more than 30 years and that is the land use designation approved by the Commission in its action on the Seal Beach LCP Land Use Plan (LUP) in 1983. Nevertheless, the applicants seek to develop the site with a private, custom-home, single family residential subdivision and large open space passive park to be a buffer between the residential use and the public beach and River's End public recreational area. The proposed residential subdivision also incorporates land within the adjacent existing recreational boating support facility located along the San Gabriel River on the northern portion of the site, owned by Marina Beach House, one of the co-applicants. The adjacent site is zoned Service Commercial (SC). To accommodate the proposed residential project, the City approved a zone change from SC to DWP Specific Plan to allow the proposed residential use. Conversion of land area designated and used for higher priority recreational boating support use to lower priority residential use is inconsistent with the Coastal Act and invites potential conflict between the new residents and the continuation of boating support use of the adjacent site.

Several discretionary approvals by the local government were required to allow residential use of the site, including: General Plan Amendment 11-1, DWP Specific Plan Amendment 11-1, Zoning Map Amendment 11-1, Tentative Tract Map (TTM) 17425 and Lot Line Adjustment 13-1. None of the City's zoning actions for this site have been certified by the Commission as there is no certified LCP. Approval of the proposed development which relies on conversion of the land use designation and rezoning of the property to allow for non-priority uses in the absence of a certified LCP would prejudice preparation of a certifiable LCP by the City inconsistent with Section 30604 (c) of the Act. Preparation of a certifiable LCP would include a comprehensive analysis of the supply and demand for visitor-serving and public recreational facilities within the City's coastal zone.

This application was before the Commission in November 2013 and staff was recommending denial of the proposed development for all the same reasons noted above. In addition, a portion of the proposed residential land use area was encumbered by a public trust easement, thereby prohibiting the use of the land for private residential purpose. At that time, BCP had applied to the State Lands Commission (SLC) to remove the public trust easement from the proposed residential area on the project site through a title settlement and land exchange agreement. In August 2014, through a formal dispute resolution, the Commission confirmed the SLC action was required prior to filing the application complete. On October 14, 2014, SLC approved the termination of the public trust easement from a portion of the project site where residential development is proposed, encumbered other areas on the project site with a public trust easement, and required that \$2.71 million be paid

to the Kapiloff Land Bank Fund as mitigation (as more fully described in **Section C. 5.** of this staff report and **Exhibit No. 19**).

The Coastal Act dictates that private lands suitable for visitor-serving commercial recreational facilities be developed with such uses. The subject site is adjacent to substantial public recreational opportunities, including water-related coastal recreational activities of swimming, surfing, kite-surfing, kayaking and stand-up paddle boarding and land-born coastal recreational activities including biking, jogging, strolling and fishing along the San Gabriel River mouth and Seal Beach beach area. Therefore, the subject 10.9 ac site should be developed with visitor-serving uses that would enhance the public's enjoyment of these coastal resources. The applicant proposes a 6 acre passive park to meet the Coastal Act requirement for visitor-serving commercial and recreational use of the property. It is noted that there is already an existing public park (Marina Park and Community Center) across Marina Drive from the project site.

In the initial application the proposed passive park had very limited amenities and the Agreements between the City and Bay City Partners and the Specific Plan are very restrictive concerning the amenities allowed. Since the November 2013 hearing, the applicants have revised the project description to include the actual construction of the park (prior to occupancy of the first residence) and added amenities, including free play lawn area, bicycle repair station and water bottle filling station, seasonal kayak and stand up paddleboard rental station; and seasonal and year round bicycle rental station that would take advantage of recreational use of the adjacent river and regional bike trail. However, even with the modifications, the proposed passive park is not sufficient to meet demand for public or visitor-serving commercial and recreational facilities that could be accommodated on the property.

In 2011, the Seal Beach Chamber of Commerce submitted a letter to the Commission in response to the staff report recommendation for a RESA improvement project, stating that the RESA improvements will "increase utility of [the] river area...[which] in turn will benefit the City, the business community and visitor serving uses of our river trail." The letter concluded that the RESA improvements will attract visitors to Main Street and the Pier" and "encourage both residents and visitors to enjoy the Seal Beach community in a new, deeper way."<sup>1</sup> Passive habitat parks are normally associated with development sites that contain sensitive habitats, including former or degraded habitats that are being restored or protected. However in this case, no sensitive habitat exists on the project site and a passive habitat park is instead proposed to be created.

Because of its ideal location immediately inland of the beach, adjacent to the river and a commercial recreational boating services facility, with the Los Alamitos Bay Marina and associated marine-related and visitor-serving uses just across the river, there are higher priority uses for the project site that would be consistent with Chapter 3 policies of the Coastal Act. Higher Coastal Act priority uses of the site include but are not limited to visitor-serving commercial uses, such as hotels/motels or other overnight accommodations; lower-cost visitor and recreational facilities, such as camping or RV park; public recreational opportunities, such as passive or active parkland; commercial visitor-serving facilities, such as restaurants and retail/markets; and/or mixed-use development including any of the above uses with a residential component on the upper floors with visitor-

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<sup>1</sup> <http://documents.coastal.ca.gov/reports/2011/9/W13a-9-2011.pdf>. Exhibit No. 5, page 1.

serving commercial uses located on the ground floor. Such options would provide higher priority visitor-serving uses on the site as an alternative to the primarily residential development currently proposed. Subsequent to the withdrawal of the application heard by the Commission in November, 2013 the applicants commissioned a feasibility analysis of various visitor-serving uses of the project site (**Exhibit No. 21 and No. 22**). The applicants contend that none of these visitor-serving uses are feasible.

As detailed in **Sections C. 2 and 3.** of this staff report, staff does not agree with this conclusion for a number of reasons. The majority of feasibility analyses are based on the rate of return taking into consideration the \$4.5 million purchase price of the land by this owner in 2003. Throughout the process of local review, the applicant was given no reason to assume the Commission's past actions which identified visitor-serving commercial and recreational use, and preferably a hotel or motel, as the priority use for the site pursuant to the Coastal Act, would change. Previous studies dating back to demolition of the power plant have identified the site should be reserved for such uses and such uses were incorporated in the City's LCP Land Use Plan when it was approved by the Commission.

The Commission is not responsible for guaranteeing a certain rate of return on a property but is charged with implementing the Coastal Act. The proposed primarily single family residential development with a passive, open space park does not meet the requirements of the public access and recreation policies of the Coastal Act for the property which is between the ocean and first public roadway. The submitted analysis supports the fact the owner is interested in developing residential use and not a hotel. Staff believes it is feasible for development of this site to provide some meaningful visitor-serving options designed to meet the user demands of the bicyclists and watersport enthusiasts that are drawn to the site due to its waterfront location along both the Pacific Ocean and the San Gabriel River, and nearby supporting commercial and recreational uses. Such uses would also be consistent with the public trust and the land exchange agreement with State Lands or payment of the \$2.7 million would not be necessary. For these reasons stated above, staff recommends the Commission DENY the proposed use of the project site for 32 single family residences and a passive open space park.

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### APPENDICES

Appendix 1 – Substantive File Documents

### EXHIBITS

Exhibit No. 1 – Site Plans

Exhibit No. 2 – Plans showing “sewer”, “driveway”, and the “San Gabriel River Trail” parcels and the open space park

Exhibit No. 3 – Passive Open Space Park Site Plan

Exhibit No. 4 – Location Maps

Exhibit No. 5 – Legal Lots Plan

Exhibit No. 6 – Commission staff letters dated July 6, 2011 and January 9, 2012 commenting on the Draft Environmental Impact Report (SCH# 2011061018)

Exhibit No. 7 – Zoning Map Amendment

Exhibit No. 8 – Tentative Tract Map (TTM) 17425

Exhibit No. 9 – Settlement Agreement dated March 16, 2011

Exhibit No. 10 – Disposition and Development Agreement dated July 9, 2012

Exhibit No. 11 – Public Trust Easement Exchange Parcels

Exhibit No. 12 – *Peer review and Site Specific Hotel Feasibility Evaluation* prepared by Kosmont Companies date September 2011

Exhibit No. 13 – *Visitor-Serving Use Analysis* prepared by PKF Consulting USA, dated November 26, 2012

Exhibit No. 14 – Letter from BCP to Commission staff dated August 20, 2013

Exhibit No. 15 – California Coastal Commission staff report for the review of the Coastal Conservancy Restoration Plan (Conservancy Project #3-79) for the DWP site

Exhibit No. 16 – Section VI (Additional Recommendations) pages VI-2 to VI-3 from the Analysis of Potential Market Demand and Statements of Estimated Annual Operating Results for a Proposed Hotel to be located in Seal Beach, CA prepared by PKF Consulting, USA dated July 31, 2003

Exhibit No. 17 – Pages 5 to 6 from the Potential Market Demand and Estimated Operating Results for a Proposed Hotel to be located in Seal Beach, California prepared by PKF Consulting, USA dated November 6, 2009

Exhibit No. 18 – City of Seal Beach Memorandum dated September 22, 1981

Exhibit No. 19 – Letter from State Lands Commission (SLC) to Commission staff dated October 16, 2014

5-13-1233 (Bay City Partners, LLC, City of Seal Beach and Marina Beach Partners)

Exhibit No. 20 – Letter from BCP to Commission staff dated January 27, 2015;

Exhibit No. 21 – *Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives* Bay City Partners/LADWP Site – Seal Beach prepared by Kosmont Companies dated January 2014

Exhibit No. 22 – *Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives* Bay City Partners/LADWP Site – Seal Beach prepared by Kosmont Companies dated January 2014 (Updated May 2014)

Exhibit No. 23 – *Proposed Seal Beach Hotel Land Use Analysis* prepared by PKF Consulting, USA dated January 2014

Exhibit No. 24 – *Proposed Seal Beach Hotel Land Use Analysis* prepared by PKF Consulting, USA dated January 2014 (Updated May 2014)

Exhibit No. 25 – *Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives* Bay City Partners/LADWP Site – Seal Beach prepared by Kosmont Companies dated January 2014-Site Plan Analysis dated March 6, 2014

Exhibit No. 26 – Zoning Map

Exhibit No. 27 – Hotels in Area

## **I. MOTION AND RESOLUTION**

### **Motion:**

*I move that the Commission approve Coastal Development Permit No. 5-13-1233 for the development proposed by the applicant.*

Staff recommends that the Commission **DENY** the Coastal Development Permit application by voting **NO** on the following motion and adopting the following resolution.

### **Resolution:**

*The Commission hereby **DENIES** a Coastal Development Permit for the proposed development on the ground that the development will not conform to the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

## **II. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

### **A. PROJECT DESCRIPTION AND LOCATION**

#### **1. Project Description**

The coastal development permit (CDP) application is a joint application between the City of Seal Beach and Bay City Partners, LLC (BCP), the landowner, for the approval of a passive open space park master plan and a thirty-two lot residential development (**Exhibit No. 1**) on the former 10.9 acre Department of Water and Power (DWP) site. Currently, the project site consists of eight legal lots. The City approved a Tentative Tract Map which would subdivide the property into a 4.5 acre parcel with thirty-two residential lots and a 6.4 acre remainder parcel. BCP will install the street and drainage improvements, but the lots will be occupied by custom designed residences. The City will construct the improvements to the passive open space park (6.4 acre total remainder parcel) at some point in the future, if BCP sells the land to the City based upon the terms of the 2011 Settlement Agreement between the parties. BCP owns the former DWP site which includes the “sewer parcel” and the adjacent “driveway parcel” that provide vehicular and pedestrian access to the adjacent oceanfront Rivers End Staging Area (RESA) from 1<sup>st</sup> Street, as well as a parcel that consists of a portion of the San Gabriel River and a portion of the San Gabriel River Trail. Based upon a 2011 Settlement Agreement (Settlement), as modified by the 2012 Disposition and Development Agreement (DA) between the City and BCP, the City has the “driveway” and the “San Gabriel River Trail” parcels under lease until March 2015, but upon issuance of a CDP from the California Coastal Commission (CCC) for the residential project as proposed (known as the “Proposed Residential Project”), the City will get, at no cost, fee title to the “sewer”, “driveway”, the “San Gabriel River Trail” parcels and the open space park (**Exhibit No. 2**). In turn, BCP will get fee title to a portion (approximately 7,600 square feet) of the City-owned land (right-of-way) at the corner of 1st Street and Marina Drive (**Exhibit No. 2**). However, if the Commission does not approve the “Proposed Residential Project”, BCP will not convey the 6.4 passive open space park to the City and the “driveway parcel”, “sewer parcel” and “San Gabriel River Trail parcel” leases terminate 30 days from the date of Commission denial of the residential subdivision.

The CDP application also includes a lot line adjustment between two properties, a northern portion of the subject project site and an adjacent northern property. The adjacent northern property was zoned Service Commercial and is developed with an existing recreational boating support facility (boat repair and dry boat storage area) use. As a result of the lot line adjustment, a portion of that property will be incorporated into the DWP site and has been re-zoned Specific Plan Regulation Zone (SPR) in Zoning Map Amendment 11-1 to allow residential use in accordance with the DWP Specific Plan Amendment 11-1. The applicants in exchange will give up a portion of the existing DWP property to that northern landowner.

The future passive open space park will consist of four native plant communities: Coastal Sage Scrub, Native Grasslands, Riparian/Freshwater Marsh, and Coastal Trees. Additionally, the passive open space park area will contain the following (**Exhibit No. 3**):



- 1) Two water quality treatment areas that are designed to have a dual function to treat runoff from both the passive open space park area and the residential area and serve as part of the riparian area;
- 2) Vista Rest Area and Interpretative Center with free Wi Fi, a seat wall with shaded trellis, bicycle racks and interpretative elements;
- 3) Paved trail from the San Gabriel River Trail to the Interpretative Center and to Ocean Avenue;
- 4) Decomposed granite trail throughout the open space;
- 5) Fitness trail with fitness trail (exercise) stations;
- 6) Benches; picnic tables and areas;
- 7) San Gabriel River Trailside Signage;
- 8) San Gabriel River Trailside Rest Area located at the entrance to the passive open space park from the San Gabriel River Trail that will provide benches, a shade trellis, trash cans, drinking fountains, bicycle racks, bicycle repair station and water bottle filling station;
- 9) Pedestrian entrance from the RESA Parking Lot and other pedestrian entrances from surrounding adjacent areas;
- 10) Free play lawn area near "B" Street; and
- 11) Child's play area below the Vista Rest Area and Interpretive Center next to the River Trail.

The proposal also includes seasonal and year round commercial visitor serving uses proposed at locations within the passive open space area. The seasonal uses would be operated from Memorial Day weekend through Labor Day weekend:

- 1) Location 1: Seasonal Kayak and Stand Up Paddleboard Rentals in a portable kiosk or tent at the Trailside Rest Area; and
- 2) Location 2: Seasonal and Year Round Bicycle Rental Station next to the River Trail area next to the Children's Play Area.

BCP has stated that the passive open space area and its accompanying elements will be constructed prior to occupancy of the first residential unit.

BCP has also stated that the project incorporates the following:

- 1) Prior to conveyance of the property that is subject to the CDP, that a deed restriction shall be recorded imposing all standard and special conditions of this CDP;
- 2) BCP accepts any liability for costs and attorney fees that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicants/permittees against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this CDP;
- 3) Best Management Practices (BMP's) for storage of construction materials, mechanized equipment and removal of construction debris; That the proposed project shall conform to the City of Seal Beach DWP Specific Plan as approved by the City of Seal Beach on July 9, 2012; and
- 4) Prior to issuance of the CDP, BCP shall submit final drainage/runoff control plans and State Lands (SLC) approval.

The applicants have also stated that there is a seasonal beach that occurs in the San Gabriel River adjacent to the northern project boundary (adjacent to the San Gabriel Bike Trail) (**Exhibit No. 3**).

The applicants state this beach can be used for beach and hand carried watercraft access, such as kayaking, stand up paddleboard, etc.

The project site totals 10.9 acres. Residential development is proposed on the northern 4.5 acres. The thirty-two lot residential subdivision will consist of the following: all street and alleys will be public with on-street parking and no gates; approximately 7,600 square feet of land at 1<sup>st</sup> Street and Marina Drive will be vacated by the City of Seal Beach and included in the project; the design of the future single family detached residences will be regulated by the Development Standards of the City RHD 20 Zoning regulations and Architectural Guidelines will be recorded with the Final Tract Map. The proposed lots range in size from 3,144 to 5,787 square feet (**Exhibit No. 1 & Exhibit No. 8**). According to the settlement, no affordable housing will be provided on-site nor is BCP required to pay affordable housing in-lieu fees.

Additionally, the proposed residential subdivision includes the vacation of approximately 7,600 square feet of the 1<sup>st</sup> Street right-of-way along the east\ side of the project site. Although the coastal development permit application includes the request for the street vacation, there is no evidence that the City Council has approved the street vacation in its local action on the proposed project.

The proposed project will have sixty-nine on street parking spaces and sixty-four off street parking spaces (2 per residential). Grading will consist of 1,600 cubic yards of cut, 3,800 cubic yards of fill and 2,200 cubic yards of import.

## **2. Project Location/Surrounding Development**

The proposed project is located at the southwest corner of 1<sup>st</sup> Street and Marina Drive in the City of Seal Beach, the former DWP site (**Exhibit No. 4**). The project site consists of eight legal lots that consist predominantly of undeveloped, disturbed non-native grassland (**Exhibit No. 5**). Of these lots, there is a “sewer parcel” that is improved with landscaping and a sidewalk. The “sewer parcel” is adjacent to the paved “driveway parcel” that provides access to the 1<sup>st</sup> Street public beach parking lot (**Exhibit No. 2**). The western portion of the DWP site includes a parcel that contains a segment of the San Gabriel River Trail. The project also involves two adjacent properties: north of the project site is a property that contains California Everglades, a recreational boating support facility (boat repair and dry boat storage area) and also a legal non-conforming single-family residence; and another property east of the project site that is part of the current 1<sup>st</sup> Street right-of-way (ROW) located at 1<sup>st</sup> Street and Marina Drive and contains roadway pavement, curb/gutter, sidewalk, and ornamental landscaping (**Exhibit No. 2**).

East of the project site is 1<sup>st</sup> Street and residential uses; north of the project site are a legal non-conforming single-family residence on the site of the recreational boating support facility (on a property zoned as Service Commercial), Marina Drive and residential uses, west of the site is the channelized San Gabriel River and the San Gabriel Bike Trail with Los Alamitos Bay Marina and commercial development across the river to the west; and south of the project site is an existing City-owned maintenance structure, storage yard, and oil processing structure, the 1<sup>st</sup> Street beach parking lot, the River’s End Staging Area (RESA), and the River’s End Café, adjacent to the public sandy beach (**Exhibit No. 4**).

The subject site is adjacent to the RESA, a facility providing coastal recreational opportunities, including water-related coastal recreational activities of swimming, surfing, kite-surfing, kayaking and stand-up paddle boarding and land-born coastal recreational activities including biking, jogging, strolling, and fishing along the San Gabriel River mouth and Seal Beach beach area. The RESA is a popular area for windsurfing and kite sailing and is utilized as a recreational staging area for the San Gabriel River Trail. The Commission approved the construction of the RESA on September 11, 2011, [CDP No. 5-10-220-(City of Seal Beach)] consisting primarily of landscape improvements, new/renovated sidewalks, new asphalt paving, signage, lighting, picnic bench facilities, and a series of low seat walls to block wind blown sand from reaching the RESA. The San Gabriel River Trail is a paved regional recreational trail along the eastern boundary of the San Gabriel River. Improvements to the San Gabriel River Trail consisted primarily of trail resurfacing, striping, signage, fencing, landscaping and irrigation. Funding for the project came from a grant from the Rivers and Mountains Conservancy. In approving the project the Commission required an amendment or coastal development permit for any future changes to the public's ability to access the RESA from the "Driveway Parcel" and "Bike Trail Parcel". The Commission also conditioned the project to ensure maximum public access to the facility and required the public parking lot be managed such that the vehicular gate remain open except for temporary closure due to public safety concerns related to natural hazards; required that the parking lot remain open, but approved the collection of fees between 7am to 10pm; and required the removal of any beach closure signs.

## **B. PROJECT SITE HISTORY**

### **1. Previous Commission LCP Actions on Project Site**

In 1978-1979 the Coastal Conservancy in conjunction with the City, conducted extensive public workshops to develop a Restoration Plan (Conservancy Project #3-79) for the DWP site. This Restoration Plan was approved in concept by the Coastal Commission (CCC) in June 1979 and specified provisions which needed to be included in a final project and the range of possible uses as parameters for later permit approval (**Exhibit No. 15**). The Restoration Plan provided visitor uses and open space, more specifically a 6-½ acre park, visitor/serving development and housing, with development concentrated on the northerly 1/3 of the site, with all ground floor commercial coastal-related, visitor-serving facilities. As described in the staff report for the Conservancy Project, the re-use plan included bicycle trails and active and passive areas; visitor-serving recreational facilities such as a 30-bed hostel to serve bicyclists and other tourists; commercial development including a restaurant and coastal- and recreational-related shops such as bait and tackle shops; and fourteen condominium units to be located on the 2nd floor above the commercial uses. This staff report stressed the importance that the site provide a wide range of recreational and visitor-serving uses, with 100% of the ground floor proposed for public use and not lower priority private residential use. Residential use was permitted only above the ground floor so as to prioritize the recreation, visitor-serving and public access uses. The staff report indicated that the DWP site is one of the last few remaining sizable open spaces on the urbanized coastline of Southern California that is available for public access. Also, because the site is the terminus of a bicycle trail system, that the site has the highest potential for regional recreational opportunities. Furthermore, the hostel is identified as a key part of the Restoration Plan proposal that would provide a recreational and visitor-serving priority use. The issues and concerns addressed in this previous Coastal Conservancy staff report are similar to the ones identified and discussed in this current staff report. Subsequent to the Commission's approval of the Conservancy's plan to re-use the site, the City of Seal Beach City

Manager prepared a memorandum to the City Council on September 22, 1981 regarding the status of negotiations with all parties relative to the DWP site (**Exhibit No. 18**). Within that memo, the City Manager reiterated Commission staff concerns including preference for visitor-serving commercial uses and that residential condominiums were only acceptable because it included commercial uses and that there must be a substantial visitor-serving commercial element to the development.

To guide development on the DWP site, the City of Seal Beach in 1982 adopted the 1982 DWP Specific Plan. The Specific Plan provided for visitor-serving uses defined as “*A hotel [not to exceed 300 rooms and a 35-foot height limit] and the necessary ancillary support uses including, but not limited to, restaurants, retail uses, service uses, meeting/conference rooms and banquet facilities limited to the northerly 30% of the parcel [north of an imaginary westerly prolongation of Central Way]. The Specific Plan stated that the remainder 70% was for open space uses defined as “Public parks, green belts, bike trails, nature trails, hiking trails, and any active or passive recreational uses normally located in parks or open spaces, and theater.”*

Sometime after this action, the City of Seal Beach submitted their LCP Land Use Plan (LUP) which included the 1982 DWP Specific Plan for certification by the CCC. On July 28, 1983, the CCC held a public hearing on the City of Seal Beach LUP. Commission staff recommended that the Commission find that the LUP raise Substantial Issue and the Commission agreed. The CCC found that the DWP Specific Plan contained unclear policies and designations for this site. The uses proposed within the open space areas of the DWP site had conflicting policies and thus raised Substantial Issue with the policies of Chapter 3 of the Coastal Act. The conflict arose from a Specific Plan policy that identified permitted uses in the open space that included government buildings and facilities, and unspecified uses deemed appropriate by the Planning Commission. The lack of clearly defined uses could have allowed non-priority, non-public uses within the open space.

Following the Substantial Issue determination, the CCC held a public hearing on the City of Seal Beach LUP, as submitted. The Commission denied the LUP as submitted based on inconsistencies with the Coastal Act. Regarding the DWP site, suggested modifications were necessary to limit uses within the Open Space designation. Thus, the suggested modification provided that those uses which were inconsistent with the protection of 70% of the site for open space for parks, trails, active or passive recreation and theatre be deleted. The Commission then adopted suggested modifications, which if adopted by the City would bring the Plan into conformance with provision of the Coastal Act. The Commission found that the hotel, restaurant, retail and other proposed visitor-serving commercial uses on the remaining portion of the DWP site were consistent with the Coastal Act.

However, these suggested modifications were never adopted by the City. Therefore, the LUP was never effectively certified and the Commission’s action on the DWP Specific Plan/LUP subsequently lapsed. Thus, the standard of review for this application is the Coastal Act. While these suggested modification regarding the DWP site were never adopted by the City, it does show the Commission’s intent in 1983 of preserving the site for priority uses including lower cost open space park uses and fairly intense hotel and other visitor-serving commercial uses on the northerly 30% of the DWP site. Such uses are still strongly encouraged, and approval of development that

does not include a significant visitor-serving commercial component could prejudice preparation of a certifiable LCP for the City of Seal Beach.

## **2. Previous Commission Staff Comments on Project Site**

In 1996, the DWP Specific Plan was amended by the City to reduce the maximum number of rooms for the hotel use from 300 rooms to 150 rooms. Thus, the Commission comments letters discussed below refer to the 150 room hotel.

On July 6, 2011 and again on January 9, 2012, Commission staff commented on the Draft Environmental Impact Report (SCH# 2011061018) for the currently proposed Bay City Partners DWP project (**Exhibit No. 6**). The EIRs used the 1996 DWP Specific Plan as a basis for reviewing the proposal. Among the issues and inconsistencies with the Coastal Act raised in the Commission staff letters was the proposed change in land use from visitor-serving commercial (hotel) to residential use. Staff further reiterated that the DWP site is located in a prime location along the coast that is well suited for visitor-serving and lower cost visitor and recreation uses. Each of these uses is a higher priority use in the Coastal Act since each offers an opportunity for the public to access and enjoy the coast. Residential uses on the other hand are not high priority uses since they do not provide the same beneficial uses for the broader general public.

## **3. Previous Commission Action**

### CDP No. 5-13-003-(Bay City Partners, City of Seal Beach and Marina Beach Partners)

On November 15, 2013, the Commission held a public hearing on the proposed development, which at that point was referred to as CDP No. 5-13-003, including a staff recommendation of denial. A significant issue at this hearing involved the existing public trust easement on the proposed residential portion of the subject site. Bay City Partners was in the process of pursuing a final land exchange agreement with the State Lands Commission.

On October 14, 2014 SLC, among other things, approved the termination of the public trust easement from a portion of the project site where residential development is proposed, encumbered other areas on the project site with a public trust easement, and required that \$2.71 million be paid to the Kapioloff Land Bank Fund to make up the difference in the valuation of the land (1.6 acre) where the public trust easement was terminated and that of the on-site exchange areas. Section C. 4. of this staff report provides the details of the SLC action.

At the November 2013 hearing, direction was also given that a current feasibility study should be conducted that evaluates a range of visitor-serving commercial (including overnight accommodations), commercial recreational, and open space (both active and passive) uses over the entire 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. Consideration was also to be given to residential uses above the ground floor and visitor-serving uses such as bike camping. The applicants withdrew the application at the hearing prior to Commission voting and resubmitted the application on November 19, 2014, which was given the new application number, CDP No. 5-13-1233. The determination of completeness of this application was disagreed upon by the applicants and Commission staff. Thus, the determination of CDP application completeness was taken before the Coastal Commission on August 12, 2014

through a dispute resolution. The application was eventually deemed complete on October 21, 2014, upon receipt of State Lands Commission (SLC) approval. Further information regarding the determined completeness of the CDP application is found below under the Dispute Resolution discussion.

CDP No. 5-13-1233-EDD-(Bay City Partners, City of Seal Beach and Marina Beach Partners)  
Dispute Resolution

On August 12, 2014, the Commission heard Dispute Resolution CDP No. 5-13-1233-(Bay City Partners, City of Seal Beach and Marian Beach Partners) in which the applicants claimed that the application should be deemed complete. Commission staff had requested several documents, information, and/or types of analyses (collectively, “incomplete items”) that they determined were needed in order to complete the application. The applicants had provided responses and provided a majority of the items requested in Commission staff’s Notice of Incomplete Letters. However, the applicants had 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 staff report indicated the SLC approval was necessary because the proposed residential use is no an allowable use on land subject to a public trust easement. The requested “rate of return” information for the proposed residential use would allow the Commission to compare and analyze the “rate of return” of the alternative visitor-serving uses versus the applicants’ residential proposal. The mitigation for loss of potential visitor-serving overnight accommodations was helpful to evaluate the project’s consistency with Section 30213 of the Coastal Act. At the Commission hearing, there was concurrence that the information the applicants had already submitted regarding the “rate of return” and mitigation information was adequate and nothing else was required; however, the Commission confirmed the SLC approval was still necessary as a filing requirement. On October 21, 2014, SLC approval was provided and the application was deemed complete.

#### **4. Local Government Approval**

The City of Seal Beach took several actions in approving the proposed development including modifying the General Plan, Zoning Code, and Specific Plan to allow residential use of the site. Additionally, a settlement agreement and disposition and development agreement between the City of Seal Beach and BCP were agreed upon in order to carry the development forward. Given the terms of the two Agreements, assurance is not provided that the land proposed for the future passive park will ever be conveyed to the City or if conveyed, whether the park will actually be built since the Agreements require BCP to convey the land only if the “proposed residential project” is approved by the Commission. Although the agreements between the BCP and the City have not been amended, on November 7, 2014 BCP submitted information to the Executive Director stating that the passive open space and it accompanying elements will be constructed prior to occupancy of the first residential unit. The local actions are described below:

General Plan Amendment 11-1 (adopted by the City of Seal Beach City Council on July 9, 2012 through Resolution No. 6274).



This amendment to the Land Use Element of the General Plan would allow residential development to be accommodated on the northerly 4.5 acres of the subject property. This proposed residential designation would replace the previous visitor-serving use designation, while the open space use designation would remain on the lower portion of the site. This amendment has not been certified by the Commission and is not used as guidance by the Commission in making its decision on the subject application.

DWP Specific Plan Amendment 11-1 (adopted by the City of Seal Beach City Council July 9, 2012 through Ordinance No. 1620).

This amendment would eliminate the visitor-serving use component and replace it with a residential use, not to exceed thirty-two single-unit detached residential units with a 25-foot height limit. The open space use designation would remain. However, reference to the percentage occupation of the site by each of the two uses was replaced with language discussing the limits of use. For example, the amended Specific Plan (SP) states the following regarding the residential use: *“As shown on the Land Use Development Plan (Exhibit B), no residential parcels shall be permitted south of an imaginary western prolongation of the northerly Central Way right-of-way line.”* The open space designation would remain and be limited to the area south of the extrapolated Central Way right-of-way line. Development standards and regulations for this open space designation would remain unchanged. Residential structures authorized by this Specific Plan would be subject to a 25-foot height limit and the same development standards generally applicable to residential high density (RHD-20) development in the Old Town area of the city, where the DWP site is predominantly located. The Commission did not review the SP amendment.

Zoning Map Amendment 11-1(adopted by the City of Seal Beach City Council July 9, 2012 through Ordinance No. 1620).

This amendment would adjust the boundaries of the DWP Specific Plan area to include the entirety of the subject property, which would be zoned SPR for Specific Plan Regulation. Approximately 1.4 acres of land would be rezoned and added to the existing designation and a 0.005 acre northern portion of the site that is currently part of the SPR area would be re-zoned as Service Commercial (SC), which would permit it to be absorbed into the adjacent separate northern SC property (**Exhibit No. 7**). This is further discussed below under the Lot Line Adjustment subsection.

Tentative Tract Map (TTM) 17425 (adopted by the City of Seal Beach City Council on July 9, 2012 through Resolution No. 6275).

This TTM would subdivide the northerly 4.5 acres of the site into thirty-two lots for detached single-family residences (**Exhibit No. 8**). Residential lot sizes would range from 3,144 to 5,787 square feet with averaged widths between 30 and 58 feet and depths of at least 100 feet. Access to the tract would be via both Marina Drive and 1<sup>st</sup> Street. All streets and alleys would be public. Initially the TTM was for forty-eight residential lots, but after a June 6, 2012 Planning Commission hearing, the applicants made some suggested changes which included revising the TTM to include only thirty-two lots. This revised project was subsequently taken to City Council and approved.

Settlement Agreement dated March 16, 2011.

A settlement agreement between the City and BCP from BCP's lawsuit challenging the City's certification of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the River's End Project and the City's condemnation lawsuit against BCP, in which the City sought to acquire the "driveway parcel" and "sewer parcel" was entered into by both parties (**Exhibit No 9**). Concurrent with a \$900,000 payment to BCP, BCP entered into a lease with the City of Seal Beach for the "driveway parcel" and the "San Gabriel River Trail parcel" that commenced on March 31, 2011. The lease will terminate on March 31, 2015 or upon conveyance of the parcels to the City if the Coastal Commission approves the "proposed residential project". Upon receipt of the \$900,000, BCP agreed to convey to the City an irrevocable easement for the "sewer parcel". Upon issuance of a CDP by the California Coastal Commission for the "proposed residential project" (defined as subdivision of forty-eight residential lots at that time, the City agreed to pay BCP \$1.1 million and to convey to BCP by quitclaim deed, a portion (approximately 7,600 square feet) of the City-owned land (right-of-way) at the corner of 1st Street and Marina Drive. BCP will then convey to the City by quitclaim deed, fee title to the 6.4 acre open space areas (except for a 1,200 square foot portion of land within the proposed residential area) consisting of the "sewer", "driveway", and "San Gabriel River Trail" parcels and the rest of the passive open space park. The City agreed that the BCP conveyance of the open space area shall be for the purpose of future open space and park uses. The quitclaim deed from BCP to the City includes a requirement that a deed restriction be recorded against the land, limiting the uses of the open space area to passive park uses contained in the amended DWP Specific Plan. The SP limits structures in the future passive park to benches and light standards no more than 15-feet in height. The settlement agreement also states that if no CDP is issued by CCC for the residential project, the parties have no obligation to the agreement. The Commission is not a party to this agreement and is, thus, not bound, in any way, by its terms.

Disposition and Development Agreement dated July 9, 2012 (adopted by the City of Seal Beach City Council on July 9, 2012 through Resolution No. 6276).

A disposition and development agreement (DA) between BCP and the City of Seal Beach followed the settlement agreement (**Exhibit No. 10**). The DA states that upon the California Coastal Commission's issuance of a CDP for the "proposed residential project" (which was revised from a subdivision of forty-eight residential lots to thirty-two lots), BCP shall donate to the City the open space, including the "sewer" and San Gabriel River Trail" parcels San Gabriel; and will convey/exchange fee title of the "driveway parcel" located within the open space to the City for a portion (approximately 7,600 square feet) of the City-owned land (right-of-way) at the corner of 1st Street and Marina Drive. The right-of-way will be incorporated into the DWP Specific Plan and zoned for residential use. This area will also form part of the Tentative Tract Map. The DA however acknowledges that the street vacation requires separate approvals. However, there is no evidence that the City Council has approved the street vacation. This agreement requires that the open space be deed restricted for open space uses as defined in the DWP Specific Plan. Further, the documentation transferring ownership of the open space to the City shall contain a right of reversion in favor of the owner and the owner's successors-in-interest in the event the permitted open space uses are discontinued and some other use of the open space is proposed that would be inconsistent

or in conflict with such permitted uses. The Commission is, also, not a party to this agreement and is, thus, not bound, in any way, by its terms.

#### Lot Line Adjustment 13-1.

The proposed project includes a lot line adjustment between two properties, a northern portion of the subject project site and an adjacent northern property. The adjacent northern property was zoned Service Commercial and is developed with an existing recreational boating support facility (boat repair and dry boat storage area) use. A portion of that property would be incorporated into the DWP site and would be re-zoned SPR in Zoning Map Amendment 11-1 to allow residential use in accordance with to the DWP Specific Plan Amendment 11-1 (**Exhibits No. 2 & No. 7**). In exchange, the applicants would give up a portion of the existing DWP property to that northern landowner (**Exhibits No. 2 & No. 7**).

### **5. Other Agency Approval**

A portion of the subject site (Parcel A) is encumbered with a public trust easement and therefore approval from the State Lands Commission (SLC) is needed to remove the public trust easement in order to use the land for residential development (**Exhibit No. 11**). Residential uses are prohibited on public trust land.

At the time of the November 2013 Commission hearing BCP had submitted a request to SLC to relocate the public trust from the proposed residential portion of the site to the proposed open space areas of the project site and adjacent water areas under BCP ownership. However, at the time of the 2013 hearing SLC had determined that the request was deficient and therefore was not scheduled for action.

The applicants have obtained SLC approval of the land exchange agreement. State Lands Commission (SLC) held a hearing on October 14, 2014 and approved the proposal to consider a compromise title settlement and land exchange agreement that includes: SLC terminating the public trust easement on Parcel 1 in exchange for BCP granting a public trust easement on a n approximately 1.177 acre parcel which includes a portion of Parcel 6, and a portion of Parcel 7 and Parcel 8 along the bike trail and depositing \$2.71 million into the Kapiloff Land Bank Fund, which is administered by the SLC. Section C. 4. Of this staff report provides the details of the SLC action.

### **6. Standard of Review**

The City of Seal Beach does not have a certified Local Coastal Program (LCP) nor has the Commission certified the DWP Specific Plan. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

### **C. LAND USE**

The following Coastal Act policies support the development of higher priority uses and require that lower-cost visitor and recreational facilities be encouraged and where feasible, provided; water-oriented activities in coastal areas that cannot be provided at inland areas be protected for such use; that oceanfront land suitable for recreational use be protected for that use; that visitor-serving commercial recreational facilities have priority over private residential; that increased recreational boating use of coastal waters shall be encouraged by providing recreational boating support

facilities; and that coastal dependent development shall have priority over other development on or near the shoreline.

Section 30213 of the Coastal Act (Lower cost visitor and recreational facilities) states:

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

Section 30220 of the Coastal Act (Protection of certain water-oriented activities) states:

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

Section 30221 of the Coastal Act (Oceanfront land; protection for recreational use and development) states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30222 of the Coastal Act (Private lands; priority of development purposes) states:

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

Section 30224 of the Coastal Act (Recreational boating use; encouragement; facilities) states:

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

Section 30255 of the Coastal Act (Priority of coastal-dependent developments) states:

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

## 1. Coastal Act Priority Land Uses

Given its riverfront and oceanfront location, adjacent recreational boating support use and Los Alamitos Bay Marina and commercial development across the river to the west, the subject site is well suited for higher priority uses encouraged by the Coastal Act. Such uses include visitor-serving commercial, commercial recreation, marine commercial and lower cost visitor and recreational facility uses as they offer a greater opportunity for the general public to enjoy the coast. The subject 10.9 acre site is owned by a single entity, thereby increasing the ability to comprehensively plan and development the site. However, the applicants are proposing a residential use, specifically thirty-two detached single family residences, which is not a high priority use in the Coastal Act for such a site.

Private residential uses do not provide the general public an opportunity to enjoy the coast nor does it maximize potential public enjoyment of the coast. As part of the proposed residential use, the applicant is taking a portion of the adjacent boating support facility that is located along the river to the north of the project site (**Exhibit No. 2**). The adjacent site is currently zoned Service Commercial and has an existing recreational boating support use (boat repair and dry boat storage), which is a higher priority use. In fact the Coastal Act encourages increased recreational boating by, among other things, providing and protecting boating support uses. The introduction of a residential subdivision, especially large lot, detached single family residential lots, adjacent to an existing recreational boating support use introduces a potential land use conflict that could ultimately result in the elimination of the higher priority use. To avoid such a conflict, only higher priority compatible visitor-serving commercial and public recreational use should be established on the project site.

The applicants are also proposing along with the residential use, a passive open space park use designation on the majority of the project site with the future creation of a habitat area consisting of four native plant communities along with trails, benches, a picnic area, an interpretive center, shaded trailhead, etc. (**Exhibit No. 3**). Passive open space parks and habitat parks are positive uses that are also encouraged under the Coastal Act. However, habitat parks are normally associated with development proposals where the site has or is adjacent to existing sensitive habitat that is being restored or protected. However in this case, there is no sensitive habitat that exists and it is instead being created. This created habitat area will act as a privacy buffer for the proposed residential use and provide a location for the drainage of the residential subdivision. Passive open space or habitat park use should not be eliminated in its entirety from the project site. A portion of the site could include a passive public use; however because of its superior location along the coast and adjacent and nearby public recreational and access amenities that could support more active public uses, there are better uses suited for the subject site. These higher priority uses include: visitor-serving commercial, recreation and marine commercial and lower-cost visitor and recreational facilities.

Visitor-serving commercial uses are a high priority use since they provide enhanced opportunities for a greater segment of the general public to enjoy the coast. These types of uses provide accommodations, goods, and services intended to primarily serve the needs of visitors, such as hotel, bed and breakfast, hostel and other overnight accommodations; restaurants, food concessions

and other eating establishments; bike and other recreational equipment rentals, and souvenir shops and other retail uses.

Commercial recreation and marine commercial uses additionally provide coastal- related and coastal-dependent uses that enhance opportunities for the public to experience to the coast. Some segments of the public currently enjoy fishing and water skiing along and within the adjacent San Gabriel River. In recent years more and more owners of smaller boats are choosing to store their boat on land as opposed to keeping them in marina slips. Thus, the demand for surface dry boat storage is a growing recreational need which could be satisfied on the subject property.

Lower-cost recreational uses further maximize public opportunities to access and enjoy the coast. Therefore, partial use of the project site for these types of uses, such as active park (i.e. including sports fields, playgrounds, etc.), passive and habitat parks would be consistent with the public access and recreation policies of the Coastal Act. The Commission notes that in some Orange County cities there is a severe shortage of active parks offering soccer and baseball fields. At the Sunset Ridge Park site in Newport Beach, the Commission had the difficult task of allowing active park use while protecting and enhancing sensitive habitat areas (CDP No. 5-10-168).

When applicants propose both higher and lower priority uses, it is normally required that the higher priority uses be constructed prior to or concurrent with the use or occupancy of the lower priority use. This is done to insure that the higher priority use is actually constructed and public use of the site is obvious to future residents. BCP has stated that the passive open space area and its accompanying elements will be constructed prior to occupancy of the first residential unit. While the applicants have proposed that the passive park be constructed prior to occupancy of the first residential use, it does not negate the fact that residential use is a lower priority use.

## **2. Applicants' Analysis of the Feasibility of Hotel Use**

Pursuant to the Coastal Act, a hotel use is an ideal use of the project site since a hotel is a visitor-serving use that provides for extended stay and use of the coast for a greater segment of the public than private residential use would provide. Within the City of Seal Beach, there are only two other hotels located in the Coastal Zone. The Pacific Inn (600 Marina Drive) is located approximately .35 miles from the DWP site and the Hampton Inn & Suites Seal Beach (2401 Seal Beach Boulevard) is located approximately 2 miles away from the DWP site (**Exhibit No. 27**). Although these hotels are nearby, they are located either in an industrial area, near the Boeing facility or in a General Commercial zoned area.

Prior to the November 2013 Commission hearing, the applicants, in order to determine if hotel use is a viable use, commissioned several analyses: *Analysis of Potential Market Demand and Statements of Estimated Annual Operating Results for a Proposed Hotel to be located in Seal Beach, CA* prepared by PKF Consulting, USA dated July 31, 2003; *Potential Market Demand and Estimated Operating Results for a Proposed Hotel to be located in Seal Beach, California* prepared by PKF Consulting, USA dated November 6, 2009; and *Peer Review and Site Specific Hotel Feasibility Evaluation* prepared by Kosmont Companies date September 2011.

The 2003 analysis by PKF Consulting, USA concluded a hotel use on site would potentially be a positive use of the property due to (1) the location near the beach; (2) good access to the site from



points across southern California; and (3) the excellent visibility of the site considering the low-rise nature of the surrounding area. However the analysis ultimately concluded that the project site is not a luxury site that would support a hotel that could maintain an average daily rate of between \$200 and \$300. The analysis additionally stated that the site could support approximately 200 hotel rooms if the facility is located at the southern end of the site near the beach and beach parking lot instead of placing a hotel use in the northern portion of the site near Marina Drive, which is consistent with the layout as described in the DWP Specific Plan (**Exhibit No. 16**). Thus the analysis concluded that construction of a hotel in the location indicated in the DWP Specific Plan would not be feasible. Additionally, the study felt that considering the surrounding development, a hotel of this size would be out of character.

The analysis also included a section that analyzed solely residential uses on the site, as well as a boutique hotel with surrounding residential. The analysis stated that while they are not experts in the residential field, that an approximate development of forty residential units with limited open space would be the most economically feasible utilization of the site. However, the analysis does conclude that this type of use would not be favorable with the CCC. A use that the analysis does suggest that may be a better fit was a boutique hotel with surrounding residential. Such a development would consist of approximately 30 rooms and an average daily rate of \$225. Furthermore, the analysis stated that a factor that would help the performance of the boutique hotel would be the construction of residential and open space in the development. The hotel would act as an amenity to the surrounding residential and the Seal Beach community.

In 2009, PKF Consulting, USA conducted another hotel analysis of the site. The conclusion of the 2009 analysis was that construction of a hotel as set forth in the DWP Specific Plan still was not feasible (**Exhibit No. 17**). As a result of that conclusion, BCP developed a series of scenarios that modified the DWP Specific Plan in an attempt to provide for a feasible hotel on the property. BCP identified two locations for the hotel development; 1) within the 30% area (at the intersection of 1<sup>st</sup> Street and Marina Drive) designated as visitor-serving; and 2) in the area identified as open space adjacent to the beach parking lot/beach. The analysis reviewed these options and stated that the limiting factors of the first option are: the small land area, underground parking is not feasible for cost reasons, and the location of the land area for the hotel use is less desirable since it is farther from the water. On the other hand, the analysis states that the second location is the ideal location for a hotel use since it is adjacent to the beach. The PKF Consulting, USA analysis went further with this analysis by developing four scenarios involving the two land area options. The first scenario involved a 150 room hotel at the northwest portion of the site (1<sup>st</sup> Street and Marina Drive). The analysis states that this scenario will not work since it is too small of an area to construct a 150 room hotel with the required amenities and surface parking. A second scenario involved a 75 room boutique hotel, a third scenario involved a 100 room boutique hotel and a fourth scenario involved a 50 room boutique hotel located adjacent to the beach and beach parking lot and included a residential use component. The analysis stated that while these additional scenarios could potentially work, the revenue generated by these alternatives would not be ideal.

In 2011, the City of Seal Beach commissioned a peer review of the 2003 and 2009 PKF Consulting, USA analyses (**Exhibit No. 12**). This analysis analyzed the revenues projected and the cost of developing the discussed scenarios to determine if they would generate sufficient net operating income to support the development in the current marketplace. This analysis concludes that it is

unlikely that revenues generated by the proposed development considered in these reports would be sufficient to support traditional debt financing. As part of the Kosmont 2011 analysis, a smaller 60 room boutique style hotel that could be substantially or completely financed through a condominium hotel capital structure was evaluated. The analysis concludes that this may be financially feasible. However, the report author states that financing for this option based upon the inconsistency of the market and the risky project profile contribute to make the project feasibility marginal. Additionally, it was pointed out that a condominium hotel may not be permitted under the current DWP Specific Plan.

At the November 2013 Commission hearing, direction was given to the applicant to conduct a current feasibility study that evaluated hotel use and a larger range of visitor-serving uses for the project site. In response the applicant submitted the following analyses: *Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives* Bay City Partners/LADWP Site – Seal Beach prepared by Kosmont Companies dated January 2014 (**Exhibit No. 21**) and an updated analyses dated May 2014 (**Exhibit No. 22**) which included the “rate of return” information; and *Proposed Seal Beach Hotel Land Use Analysis* prepared by PKF Consulting, USA dated January 2014 (**Exhibit No. 23**) and an updated analyses dated May 2014 (**Exhibit No. 24**) which included the budget hotel information; “rate of return” information; *ESRI Retail MarketPlace Profile, Seal Beach* received March 6, 2014; and *USC Casden Multifamily Forecast for 2013, Orange County Section* received March 6, 2014. The Commission notes that while this information was submitted in 2014, the analysis used 2013 data. In 2013 the economy was still suffering from a general economic downturn.

The January 2014 Kosmont analysis analyzed three hotel scenarios: 1) a resort type 150 room hotel with restaurant, meeting space and spa/fitness uses located on the northerly portion of the site per the City’s Specific Plan; 2) a resort type 150 room hotel with restaurant, meeting space and spa/fitness uses located on the southerly portion of the site near the beach, irrespective of the current DWP Specific Plan development standards limiting a hotel use to the northern location; and 3) a budget hotel on the northerly portion of the lot. The analyses concluded that even under a wide range of product types and locations, with unrestricted zoning, that due to substantial negative residual land values based on a variety of specific market and/or operating conditions, that all three uses would be financially infeasible. Residual land value is defined as:

*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.*

The January 2014 PKF Consulting, USA analyzed a hotel scenario on the subject site using the following assumptions: 1) it would be located on the southern parcel of the site; 2) it does not adhere to zoning or easement restrictions; 3) marketed as a high quality, upscale, resort type of hotel; 4) will contain 150 rooms in a seven story structure; 5) will contain a three-meal restaurant and offer meeting and event space consistent with its quality level ; and 6) will offer 320 surface parking spaces. In order to conduct their analysis, a competitive set was selected which consisted of non-resort type of hotels in the area such as, the Pacific Inn, Ayres Hotel and Hampton Inn in Seal Beach and Marriot Long Beach Airport, Holiday Inn Long Beach Airport, Residence Inn Long Beach Airport and Courtyard Long Beach Douglas Park in Long Beach. The analysis stated that

resort hotels in Huntington Beach and other cities further downcoast were not selected. It concluded that based on their analyses of projected occupancy and rate levels, the total costs of hotel construction, and current capitalization rates, that the hotel development would not be feasible at this time.

The submitted *Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives* Bay City Partners/LADWP Site – Seal Beach prepared by Kosmont Companies dated January 2014 -Site Plan Analysis dated March 6, 2014 provided site plans (**Exhibit No. 25**) for the hotel scenarios that were evaluated in that analysis and also expanded on those proposals and included additional analysis: 1) a resort type 150 room hotel on the northern portion of the lot with visitor-serving public open space on the southerly portion of the lot; 2) a resort type 150 room hotel southerly portion of the lot with open space in the center area of the lot and visitor-serving commercial on the northerly portion of the lot; 3) RV Park and Tent Camping; and 4) residential with Public Trust Easement (Public Trust not extinguished) This analysis also assumed that the lot line adjustment nor the street vacation were part of the project. The analysis concluded that each scenario was infeasible for economic and land use and circulation reasons.

More specifically it stated the following reasons: 1) the isolated location of the hotel and lack of demand generators would limit any hotel to second rate status; 2) for the resort type 150 room hotel southerly portion of the lot, the hotel use would be hindered by the adjacent RESA parking lot, maintenance yard and driveway to the RESA, limited water frontage and wide beach. It also stated that beach services (visitor-serving use) would be better served at the RESA and that a hostel anywhere on the site would be problematic; 3) for the RV park and Tent Camping, it states that because of lack of exposure, incompatibility with adjacent uses and the need to use the entire site for this use that would leave no room for public open space; 4) for the residential use with Public Trust Easement (Public Trust not extinguished), limited water frontage and wide beach, it states that residential and open space would be feasible on site in a revised layout with the residential use located more toward the center of the subject site but that no other uses as indicated in the Kosmont January 2014 would be feasible, it would difficult to obtain entitlements from the City and that the adjacent property owners would find this alternative unacceptable.

The Commission questions the conclusions based on the isolated location of the hotel and lack of demand generators in the area. The site is in a prime location exposed to many different users of the waterfront, beach, river and regional bike trail including windsurfers and other various watersport enthusiasts. The only visitor-serving use currently serving this area on the east side of the river is the River's End Cafe within the RESA. The City of Seal Beach Main Street is approximately ½ a mile from the site, thus the public is drawn to this location due to its proximity to other tourist-oriented areas of the City. The site location immediately adjacent to the San Gabriel River includes a portion of the Regional bike trail which draws bicyclists to the site from inland areas. There is a fishing station on the Marina Street bridge just west of the property. Just across the bridge, a block to the west is the Los Alamitos Bay Marina including visitor-serving restaurants and marine-related uses. All these amenities would be available to serve hotel guests. In addition, the site is served by bike lanes on the major roadways, and the Long Beach transit system which provides non-automobile access to major visitor destinations, such as the Aquarium of the Pacific, the Pike and the Queen Mary at Long Beach Harbor.

The fact the analysis considers a wide beach to be detrimental to public use of the property is questionable. The wide beach is within easy walking distance of the site and its width would not adversely impact the use of the site for visitor-serving purposes. On the contrary, it should be considered a benefit to provide a larger area for the general public and hotel guests to enjoy the beach, including sunbathing, kite flying and other activities. In response to the beach width question, the applicants stated that a beachfront hotel is more desirable where there is close access to the water for the hotel guests. Furthermore, it states that the beach width is approximately 1000-feet wide and guests do not want to carry their beach going items across the wide beach. This is unsubstantiated since there are other hotel locations in nearby areas that are a greater distance away from the beach but are successful visitor-serving uses and are utilized by the general public.

For example, the Hyatt Regency Huntington Beach Resort and Spa (21500 Pacific Coast Highway) and the Waterfront Beach Resort (21100 Pacific Coast Highway), both located in Huntington Beach on the inland side of Pacific Coast Highway approximately the same distance from the water. In addition, a new mixed use development known as Pacific City also located in Huntington Beach on the inland side of Pacific Coast Highway the same approximate distance from the water is currently being constructed that includes a hotel, apartments, retail and restaurants. Thus, such uses, including hotel, apartment and visitor-serving uses that are a short, but walkable distance away from the water similar to the analyzed scenario are viable and can succeed.

It is also unclear how the hotel use would be hindered by the adjacent RESA parking lot, maintenance yard and driveway to the RESA, or how there would be lack of exposure for an RV Park and Tent Camping Use since it would be available to the general public from the San Gabriel River Trail, RESA and beach and Los Alamitos Bay Marina. There is no explanation on how it would be incompatible with the adjacent area and it seems that camping would be a compatible low cost visitor-serving use supported by bicyclists and watersport enthusiasts.

In response to why the adjacent property owners would find the residential option with the Public Trust easement intact infeasible, the applicants stated that the adjacent neighbors would object to the revised location of the residential element to more of the center of the site because they have fought for years to have it in the proposed location. The Commission does not find this to be a compelling reason to eliminate design and siting options that could provide an expanded visitor-serving component on the property.

In order to be able to further analyze the feasibility of various alternative uses on the subject site, Commission staff requested that the applicants clarify the term “residual land value” and provide “rate of return” for the proposed residential use and the alternative uses. In response the applicants provided an updated Kosmont Companies analysis dated May 2014 that included the “rate of return” information for the uses discussed in that study. In this updated analysis, it still concluded that these uses were infeasible due to minimal “rate of return” The applicant however refused to provide the “rate of return” for the residential use since they consider it proprietary information and would have no meaningful benefit since all the other alternative and use scenarios that they analyzed were infeasible. The requested “rate of return” information for the proposed residential use would have to include the \$2.7 million required to remove the public trust easement from the area where residential use is proposed. However, even with that additional cost, the cost of construction for this development only includes the infrastructure improvements as the lots are to be sold for custom

home development. In this beachfront location, it can be assumed the 32 lots will be sold for at least \$1 million, which is likely a low estimate. Therefore, any residential only option, will always pencil-out to be more profitable than a hotel or other tourist-oriented development.

Commission staff had also requested that the applicants provide an updated January 2014 PKF Consulting, USA study that included an analysis of a budget hotel. In response, the applicants provided an updated May 2014 report that analyzed a budget hotel scenario using the following assumptions: 1) it would contain 100 rooms; 2) marketed as a budget hotel; 3) provide surface parking; and 4) will provide facilities and amenities consistent with its quality level. In order to conduct their analysis, a competitive set was selected which consisted of non-resort type of hotels in the area such as, the Pacific Inn, Ayres Hotel and Hampton Inn in Seal Beach and Marriot Long Beach Airport, Holiday Inn Long Beach Airport, Residence Inn Long Beach Airport and Courtyard Long Beach Douglas Park in Long Beach. This competitive set was the same used for the resort type hotel analysis, but was better suited for analysis of a budget hotel. While the analysis provided information about the feasibility of a budget hotel, it made no conclusion that it is or is not feasible at this time. From the information analyzed, it appears a budget hotel may be a feasible use of the subject site.

A continuing theme regarding the applicants' conclusion that a hotel use would not be ideal for the site is that it would not generate sufficient revenue when considering the purchase price. The amount of revenue is not a basis in the Coastal Act to not require a priority use. Thus, while the hotel use may not generate the applicants' ideal revenue, the Commission finds it would be premature and short-sited to eliminate the long-standing reservation of this site to meet the demand for visitor-serving commercial and recreational facilities at a suitable location for such uses. In addition, all of the studies that have been completed to evaluate the feasibility of hotel use on the subject site have been done using 2013 data or older. At the time of these studies, the nation was just working its way out of a recession. The lodging industry was particularly hard hit by the economic downturn. Since then the economy has been improving and with it, the hotel industry as seen in the Los Angeles Times Article "*Investors checking into luxury hotels*" dated Monday, February 16, 2015. <http://lat.ms/1zGyLZr>

### **3. Applicants' Analysis of the Feasibility of Other Visitor-Serving Uses**

In addition, while these hotel studies concluded that a hotel may not be suitable for the site; there are a host of other visitor-serving uses that could be located on this site that would enhance and provide opportunities for the public to enjoy the coast. To limit visitor-serving development to only a hotel use is too narrow of a development approach for this property.

Other visitor-serving commercial, commercial recreation, marine commercial, lower-cost visitor and recreational uses should be considered. Additionally, while the DWP Specific Plan limits uses and location of those uses, such limitations do not exist under the Coastal Act. A mix of these higher priority uses should also be considered. The site could be developed with a single use or a variety of higher priority uses that would create a site that maximizes opportunity for the public to access and enjoy the coast.

Prior to the November 2013 hearing, in order to determine if visitor-serving uses were feasible on site, the applicants commissioned the following analysis: *Visitor-Serving Use Analysis* prepared by

PKF Consulting USA, dated November 26, 2012 (**Exhibit No. 13**). Some of the potential uses that this analysis evaluated were: bed and breakfast/hostel/ marine related uses, bicycle/skateboards/surfboard rentals, beach equipment rentals, visitor-serving specialty retail, beach oriented markets and restaurants. The analysis concluded that visitor-serving uses on this site were not the best use of the site for a number of reasons. The report stated that there are already sufficient visitor-serving uses in the area so additional similar uses were not needed. The analysis also stated that although the site is located near the water (San Gabriel River) and a beach, the non-navigability of the water makes any marine or water related uses not possible on site. Furthermore, since the portion of the project site which allows for visitor-serving uses is fairly distant from the beach, the analysis stated that this is not appealing for beach-related purposes. The analysis also commented that since the site is surrounded by residences, it makes the site less desirable. The analysis concluded that a better utilization of the site would be residential uses, a use that conforms to the general area.

While the visitor-serving use analysis conducted by PKF Consulting, USA concludes that such uses are not a good use of the site, the analysis fails to provide supportive information and research that shows how such visitor-serving and recreation uses are not viable. There is no data or analysis provided that leads to this conclusion.

In addition, the applicant has inserted the DWP Specific Plan as an unnecessary constraint for the analysis of all potential land use for the property. As discussed previously, while the DWP Specific Plan limits uses to specific areas of the site, the Coastal Act does not. The City amended the Specific Plan to accommodate the proposed development and it can be amended again to allow a different development. Thus, limiting uses to sections of the site as dictated in the DWP Specific Plan is not a requirement or a constraint. What is necessary is proper use of the site that is consistent with the higher priority uses of the Coastal Act.

The analysis claims that since other visitor-serving uses are nearby that they are not necessary at this location. The analysis is correct that there are existing visitor-serving uses approximately .5 miles east of the site along Main Street in Seal Beach. While these areas are developed with visitor serving uses, the Commission notes that the City of Seal Beach does not have a visitor-serving commercial zoning designation. Instead it has a General Commercial (GC) and Main Street Specific Plan (MSSP) designations (**Exhibit No. 26**). Therefore, these areas are not guaranteed to remain predominately visitor serving. Although there is also across the San Gabriel River in the City of Long Beach visitor serving uses, that does not preclude such uses at this project site. The project site is uniquely located immediately adjacent to the recently developed River's End project and the sandy beach. Development of the DWP site should take this unique location into consideration. Additionally the report states that the site is adjacent to a non-navigable stream. The San Gabriel River is currently used for water skiing and fishing by some members of the public. The applicants' supplemental information indicates that there is a seasonal beach and that this is area can provide access for hand carried watercraft. The applicants' recognition of the use of the adjacent San Gabriel River for personal watercraft is that they have revised their proposed passive park plan to include amenities such as seasonal kayak and stand up paddleboard rentals.

North of the DWP site is an area that includes existing recreational boating support facility (boat repair and dry boat storage area). The existence of this facility, as well as the applicants' addition of



personal watercraft rental amenities indicates that such higher priority uses are viable at this location and should be considered. While the site is surrounded by residential uses, the 10.9 acre site is ideal for visitor and recreation purposes nonetheless due to its adjacency to both the ocean and the river. Such uses would also be beneficial for the adjacent residents as it would enhance their experience to the coast by providing added services and recreational opportunities.

After the November 2013 hearing, the January 2014 Kosmont analysis also analyzed visitor-serving use scenarios consisting of: 1) RV park on the entire 10.9 acre site; 2) hostel built on as little as 1 acre in conjunction with hotel, commercial or tent campground use; 3) bike/tent camping; 4) retail/restaurant; 5) residential over commercial (apartments over commercial and condominiums over commercial); 6) beach services (boat, kayak, paddleboard and surfboard rentals) rentals; and 7) marine services. The analysis found them all to be financially infeasible, including infeasibility due to negative residual land value. In addition, the analysis made the following statements in regards to the infeasibility of those uses: 1) the RV park would need a minimum of 10 acres and that would eliminate public open space on the subject site and that the SP does not permit this use and would require an expensive entitlement process and that there is a lack of nearby non-water entertainment options for families; 2) the hostel is directly adjacent to single-family residences and does not provide the “nature” experience and that the SP does not permit this use and would require an expensive entitlement process; 3) retail/restaurant uses would be located in an isolated location where there are no ocean or marina/sailboat views, that there are competing retail areas within a 1-mile radius, that Seal Beach has an oversupply of restaurants and that the SP does not permit this use and would require an expensive entitlement process; and 4) given the isolated location near the San Gabriel River, the subject’s site walking distance from the ocean because of the wide width of the beach near this location and the seasonality of beach equipment uses.

The Commission finds the conclusions of the January 2014 Kosmont analysis questionable for the following reasons: 1) the site of a potential RV park could be reduced so as not to occupy the entire are; 2) a hostel does not need to be located in “nature” to provide an adequate use (the Santa Monica Hostel, located in downtown Santa Monica is highly successful. An application from Hostelling International for a CDP for a second expansion to that facility was received in February, 2015); 3) while there may be existing retail and restaurants uses near the site, there are none at this prime location that would afford an opportunity for the public to enjoy the river, beach and regional bike path; 4) the RESA is located adjacent to the site which brings windsurfers and other water sport enthusiasts to the area; 5) the City of Seal Beach Main Street is approximately ½ a mile from the site, thus the public would be drawn to its location near other tourist-oriented areas of the City; and 6) the site location immediately adjacent to the San Gabriel River includes a portion of the Regional bike trail which draws a bicyclists to the site from inland areas; and d 7) the San Gabriel River Trail, RESA and the beach and the Los Alamitos Bay Marina are all visitor amenities frequented by the general public. The wide beach is within easy walking distance of the site and its width would not adversely impact the use of the site for visitor-serving purposes as it would be a benefit to provide a larger area for the general public to enjoy the beach, including sunbathing, kite flying and other activities. In addition, for those uses that the analysis states are not permitted in the SP and would need an expensive entitlement process, the process would be no more difficult than what the proposed development has undergone.

The Commission further questions the conclusions because the submitted Site Plan analysis acknowledged that for the resort type 150 room hotel on the southerly portion of the lot, with visitor-serving commercial on the northerly portion of the lot, the option of residential over commercial in this scenario is feasible and that marine service commercial could be substituted for visitor-serving commercial. Thus, this analysis appears to support the notion that visitor-serving uses could exist on site. However, In response to Commission staff's question if other potential use combinations would succeed on-site, the applicants responded by stating that since each of the uses are infeasible then any combination would be infeasible.

In conclusion, the majority of analysis is based on the rate of return when considering the cost of purchase of the land by this owner in 2003 and uses economic data for 2013 or older. Since 2008 there has been a significant downturn in the economy and particularly the lodging industry, but recent market analysis shows the hotel industry is on the rebound. Throughout the process of local review, the applicant was aware of the Commission's past position that the priority use for the site pursuant to the Coastal Act is visitor-serving commercial and recreational use, preferably a hotel or motel. Previous studies have identified the site should be reserved for such uses in the City's LCP Land Use Plan which was approved by the Commission but was not accepted by the City so is not certified. The Commission is not responsible for guaranteeing a certain rate of return on a property but is charged with implementing the Coastal Act.

The Commission may not act in a manner which will take or damage private property for public use, without the payment of just compensation therefor (Section 30010 of the Coastal Act). While the Commission is sympathetic to the applicants' economic goals, the policies of the Coastal Act protecting priority land uses along the shorefront and existing case law interpreting regulatory takings law do not provide guarantees that an applicant can always achieve the most profitable or "the highest and best use" of his or her property. (*MacLeod v. County of Santa Clara*, (1984) 749 F.2d 541, 547-548, *cert. denied*, 472 U.S. 109 (1985)). So long as the Commission's denial furthers its authority to protect public's health, safety, and welfare and does not preclude an alternative development project that results in an economic use consistent with reasonable investment-backed expectations, the Commission's denial will not result in a regulatory taking. (*Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125.)

The applicants were aware or should have been aware of the historical treatment of the site by the Commission given the Commission and staff's consistent public messages to the City that Chapter 3 policies do not support approval of a residential development on the subject site, well before the applicants bought the property from the City. After the applicants became the owner there were also letters sent to the applicants regarding the proposed residential development's inconsistency with the Coastal Act. This historical context provides the framework from which the Commission can determine if the applicants' investment-backed expectation to improve the site with residential development is a reasonable one. The Commission concludes that it is not a reasonable investment-backed expectation. The historical planning considerations of the site by the Commission, rather, would inform the applicants that a reasonable investment-backed expectation would be one where the applicants would expect to develop the property with a high priority development as dictated by relevant Chapter 3 policies of the Coastal Act which further promote the public's welfare by enhancing public opportunities for coastal recreation for the entire general public. The applicants' alleged economic impact related to developing the site with a priority visitor-serving does not relate

to an impact based on a reasonable investment-backed expectation since it relies on a comparison of financial return from development of the site with its proposed non-priority use— a use which has never been supported by the Commission, Commission staff or Chapter 3 policies of the Coastal Act—versus development of the site with a high priority visitor-serving use. Had the applicant alleged an economic impact between two competing proposals of high-priority use, such an impact would be grounded in a reasonable investment backed expectation because the property owner could reasonably expect to develop the property with a high-priority use as dictated by the historical treatment of the subject site. Thus, the Commission’s action will not interfere with an economic use of the applicants’ property that is grounded in a reasonable investment-backed expectation and, thereby, will not exercise its power in a manner which will take private property for public use, without the payment of just compensation therefor. Therefore, the Commission’s action will not be inconsistent with section 30010 of the Coastal Act.

#### **4. Applicants’ Offer of Mitigation for Loss of Hotel Use**

The applicant has presented a number of mitigation proposals to offset the loss of visitor-serving hotel use on the project site. The first mitigation proposal was in August 2013. Based on the applicants’ interpretation of the Commission’s action on the 2010 City of Malibu LCP amendment for the Crummer Trust property (MAL-MAJ-2-09-A) the applicant offered a mitigation fee of \$175,000 (**Exhibit No. 14**). That proposal was analyzed by Commission staff in the staff report for the November 2013 Commission hearing. In addition to the concerns raised in the staff report, there was discussion at the November 2013 hearing regarding the adequacy of the applicant’s mitigation proposal. Subsequently, in November and December 2014 the applicants submitted mitigation proposals using the Hilton Garden Inn Design Manual as a guide for a 75 room hotel, 35 ft. in height and made a mitigation proposal of \$641,041.50 based on their interpretation of the Commission’s action on a July 2014 Ventura LCPA, SBV-MAJ-2-12. Both in-lieu fee proposals would go to Hostelling International for a future hostel to be built in the Long Beach area or other lower cost overnight accommodations, as proposed by the applicants. Commission staff and the applicants have met several times since the November 2013 Commission hearing and staff indicated that the applicant should continue to consider hotel and other visitor serving uses for the entire project site and that if those uses were determined not to be feasible that the mitigation proposals presented were not adequate to mitigate the loss of the site for priority visitor-serving uses. Staff indicated that the mitigation requirement would be for the loss of all potential to provide hotel and other visitor-serving commercial recreational use with the land use designation and zoning of the property being changed to preclude overnight accommodations on the site. Therefore, a fee that only mitigated a percentage of hotel rooms, as proposed (which is typically imposed if an applicant is providing luxury rate hotel rooms at the expense of low or moderate cost rates) was not adequate.

Finally, in January 2015 the applicants again offered the same mitigation fee of \$641,041.50 which had been submitted in November and December (which was based on a 75 room hotels and a mitigation fee of \$34,188.00 per room for 25% of the rooms) but instead would be used to fund improvements to the existing RV park at Bolsa Chica State Beach. The applicant approached State Parks and asked if there were projects that could be funded with the proposed \$641,041.50 mitigation fee. State Parks identified several projects, including the provision of 15 additional “dry” RV camping sites that could be used in the off-peak season. These dry RV sites (no utility hookups) would be less expensive (approx. \$40/night, as opposed to \$50 to \$65/night for a full service site in the peak season) and would be available on a first-come first-serve basis (**Exhibit No. 20**)

Commission staff was also contacted by State Parks staff concerning the proposal. While the improvements proposed at Bolsa Chica State Beach are the types of improvements that have been funded by previous lower cost overnight accommodation mitigation fees, the overall fee proposed is inadequate to mitigate the adverse impacts to lower cost overnight lodging opportunities. If the Commission were to approve the proposed residential and passive park use over retaining the ability to use the site for a hotel or mixed use commercial and recreational project that could allow some residential use, the proposed improvements to Bolsa Chica State Beach RV park may be acceptable as part of a larger mitigation package.

The Commission finds that the applicant's proposed mitigation fees are significantly inadequate to mitigate the loss of hotel use at this prime oceanfront and riverfront site. The first problem is that the proposed mitigation is based on a hotel of only 75 rooms where a much larger hotel could be built on the 10.9 acre site. As stated above, a hotel of up to 300 rooms was originally contemplated for the site. Subsequently, both the Land Use Plan recommended by the Commission and the City's adopted Specific Plan determined that a 150 room hotel could be built on the site. The applicants state that while the DWP Specific Plan allowed for 150 rooms, actually only 50 rooms could be built on site after Specific Plan development standards were taken into consideration. The applicants stated that a 75 room hotel could be considered only if changes were made to adjust the height of the building. The Specific Plan has not been certified by the Commission and therefore there is no requirement to abide by its standards which limit the height and location of a hotel. Further, the Commission notes that the Specific Plan was amended to allow the project that is proposed in this application, including the change to residential use of the property. Therefore, the Specific Plan can be amended to include standards that would allow the previously contemplated 150 room hotel. Consequently, any mitigation fee should be based on the impact of losing, at a minimum, a 150 room hotel.

Secondly, the examples cited by the applicant are not applicable to the project site. In order to offset the loss of visitor-serving hotel use on the DWP property, the applicants in a letter dated August 20, 2013 to Commission staff stated that BCP is willing to pay a mitigation fee of \$175,000 (**Exhibit No. 14**). BCP states that the fee is based upon a 2010 City of Malibu LCP amendment MAL-MAJ-2-09, in which a fee for 15% of the lost potential hotel rooms at a rate of \$14,494.00 was recommended by Commission staff for the loss of visitor serving zoned land. BCP adjusted the rate for inflation to \$15,159 per lost room. The fee for the Malibu LCPA was based on the number of hotel rooms that might have been built on the 24 acre site. Again, the applicants state that while the DWP Specific Plan allowed for 150 rooms, actually only 50 rooms could be built on site after Specific Plan development standards were taken into consideration and that a 75 room hotel could be considered only if changes were made to adjust the height of the building. Taking those two hotel scenarios into consideration, the applicants proposed mitigation ranged from eight rooms for the 50 room hotel or 11 rooms for a 75 room hotel at \$15,159.00. Therefore, the mitigation fee would range from \$121,272.00 to \$166,749.00, but the applicants round up the proposed mitigation to \$175,000.00.

BCP states that the fee is based upon a 2010 City of Malibu LCP amendment MAL-MAJ-2-09, in which a fee for 15% of the lost potential hotel rooms at a rate of \$14,494.00 was recommended by Commission staff for the loss of visitor serving zoned land. BCP adjusted the rate for inflation to \$15,159 per lost room. The fee for the Malibu LCPA was based on the number of hotel rooms that

might have been built on the 24 acre site. Again, the applicants state that while the DWP Specific Plan allowed for 150 rooms, actually only 50 rooms could be built on site after Specific Plan development standards were taken into consideration and that a 75 room hotel could be considered only if changes were made to adjust the height of the building. Taking those two hotel scenarios into consideration, the applicants proposed mitigation ranged from eight rooms for the 50 room hotel or 11 rooms for a 75 room hotel at \$15, 159.00. Therefore, the mitigation fee would range from \$121,272.00 to \$166,749.00, but the applicants round up the proposed mitigation to \$175,000.00.

The applicant's account of the staff's recommended mitigation is inaccurate for the cited Malibu LCPA for the Crummer Trust site. The mitigation recommended by staff was \$750,000. The staff recommended mitigation was not based on the Malibu LCP provisions that require that the mitigation fee be based on only 15% of the rooms at the rate of \$10,419 (to be adjusted for inflation). Further, the applicant does not indicate that the mitigation fee actually imposed by the Commission in this case was \$2 million. Therefore, the proposed mitigation fee is not in line with what was imposed by the Commission in the Crummer Trust case.

In BCP's second mitigation proposal they cite the Commission's action on a Ventura area LCP amendment, SBV-MAJ-2-12 which was acted on by the Commission in July, 2014. The LCPA dealt with an 11 ac. site located on blufftop situated between the railroad tracks and Highway 101, known as the Triangle Site, Promenade Parcels or Lloyd Properties. In that case the City was requesting that the land use and zoning of those properties be changed from Commercial-Tourist-Oriented that did not allow residential uses, to Downtown Specific Plan, that would allow mixed use development, including residential use. The Commission's action in approving the proposed land use and zoning changes included a required in-lieu fee payment of \$1.8 million. The Commission found that a hotel of approximately 210 rooms could have been provided on the 11 acre site and the mitigation fee was based on a payment of \$34,188.88 for 25% of the hotel rooms that could have been built.

The subject BCP site at 10.9 acre is comparable in size to the 11 acre Lloyd Properties site yet BCP states that a hotel of only 50 to 75 rooms can be provided. Therefore, the mitigation amount offered by BCP proposal is not comparable to Lloyd Properties, as the applicant states. However, the Commission notes that there are other differences in both the Crummer Trust and Lloyd Properties cases that are not comparable to the facts in the case of the BCP proposal. In the case of the 24.9 ac Crummer Trust site, the 1986 certified Malibu Land Use Plan designated the site as office/commercial and rural residential land use. Further, while there had been other development proposals for the site, it had never been designated or proposed for hotel use under the former County of Los Angeles jurisdiction or the City of Malibu. In 2002 when the Commission certified the City of Malibu LCP, the Commission assigned the Crummer property a placeholder zone designation of "Planned Development" which also allowed a mix of up to eight residential units and recreational use under the condition that active park uses on an adjacent property were transferred to the site. Ultimately, the active uses were not transferred to the Crummer property and the Commission's approval MAL-MAJ-2-09-A allowed a maximum of 5 residential units on the site and also required the inclusion of active park uses and support parking on the site. In certifying the LCP amendment to allow the residential use the Commission also imposed an in-lieu of \$2million to mitigate for the loss of visitor-serving land use. Therefore, unlike the subject BCP site, the

Commission previously certified non-visitor uses (office/commercial and residential) on the Crummer Trust site. Nonetheless, the Commission required an in-lieu fee of \$2million for the loss potential hotel use of the site. The Land Use Plan for the subject site was designated hotel and park use. Residential use has never been recommended by the Commission. Up until the subject Bay City Partners application, the City of Seal Beach likewise designated and zoned the property for hotel and park use.

The Lloyd Properties LCPA changed the land use and zoning to a mixed use designation that would still allow visitor serving commercial uses, including a hotel, while also allowing residential use of the site. And the Commission still imposed a mitigation fee of \$1.8 million. In the subject application, the local government has changed the land use designation and zoning through a Specific Plan amendment that would allow only residential and passive open space park uses. Therefore, all other visitor-serving uses would be precluded on the applicant's entire 10.9 acre site and the applicant is proposing to pay a mitigation fee of either \$175,000 or \$641,041.50. The Commission further notes that there is an existing 77 room historic hotel located across from the Lloyd Properties site. Additionally, in the case of the Crummer Trust LCP amendment, the Commission noted that there is an existing 30 ac vacant site across street that had been previously considered, and continues to be considered, for a hotel use. Further, there are approximately twelve (12) parcels, totaling approximately 80 acres, zoned Commercial Visitor-Serving (excluding the Crummer Trust property) and that there were six (6) existing overnight accommodation facilities in the coastal zone of Malibu at that time. In the case of the City of Seal Beach, as explained above, there is no land designated Visitor-Serving Commercial Use and there are only 2 existing hotels in the coastal zone. The subject BCP site has been pointed to by the City of Seal Beach as the site where visitor serving uses, specifically a hotel should be located. This is the last large lot in the City where a hotel and other visitor-serving and recreational uses can be located.

In 2007 the Commission required an in-lieu fee of \$5million dollars in approving a Land Use Plan amendment, NPB-MAJ-1-06 (Part A) for the City of Newport Beach Santa Barbara Condos project where the land use designation was being changed from Visitor-Serving Commercial to Residential. The site was already developed with hotel use but the LUP amendment allowed 79 residential condominium units to be built on 4.25 acres, thereby precluding future additional hotel units on the site. In the subject BCP proposal, all hotel use would be precluded in favor of residential and passive park use and no hotel use would be allowed anywhere on the 10.9 acre parcel.

The Commission finds that when considering the above mitigation fees that have been imposed to mitigate the loss potential of lower cost overnight accommodations, the proposed in-lieu fee proposal is woefully inadequate and is inconsistent with the public access and public recreation policies of Chapter 3. Therefore, the Commission denies the proposed project.

While the payment of a mitigation fee for the loss of visitor-serving overnight accommodations has been approved by the Commission in other instances, it is premature to consider mitigation as an option in this case since there are a number of other higher priority uses that could be developed on site before it is concluded that the proposed residential and passive open space is the only option. The provision of other overnight accommodations or other uses providing public visitor-serving commercial or commercial recreational uses could avoid the need for the payment of any mitigation fee.



Staff suggested that the applicant evaluate the feasibility of different siting of a hotel on the 10.9 acre site including locating an overnight accommodation closer to the ocean, as recommended in their own studies. Other types of overnight accommodations should be considered, including but not limited to a hostel, a RV park or a combination of those uses. The applicants should first seriously consider other uses that are a higher priority than a residential use for the DWP site. Payment of a mitigation fee should not be considered until these and other potentially viable uses are considered and found to be infeasible. As discussed above, the applicants have studied the feasibility of various visitor-serving scenarios. However, the Commission is not convinced that with the change in the economic conditions now favoring hotel development, that a hotel or mixed use development with primarily visitor serving uses is not feasible for the site. Residential uses could be allowed above the ground floor in a mixed-use development taking advantage of the site's proximity to the ocean, river and mass transit opportunities.

The loss of visitor-serving uses is a significant concern that has been raised with other projects located within the City of Seal Beach. CDP No. 5-99-026-(Musso) and CDP No. 5-05-385-(Seal Beach Six, Inc.). Both dealt with the loss of visitor serving commercial uses to residential uses. However, in these cases the Commission did agree that for the Musso application that the site was not suitable as a commercial reservoir for future visitor serving commercial use and that the Seal Beach Six location would not be suitable for re-development as an overnight accommodation. Something else that these projects held in common was that the City indicated while visitor-serving uses would be lost at these sites, there were other locations within the City that would be more suitable for these types of uses, including the subject DWP site. The DWP has long been envisioned by the City and the Commission as a location for higher priority overnight accommodation and other active visitor-serving uses.

## **5. Public Trust Lands**

The Commission is vested with the authority to assure that it acts in a manner consistent with Section 30210 of the Coastal Act which requires the Commission to carry "out the requirement of Section 4 of Article X of the California Constitution" and provide for maximum access and recreational opportunities for all people. Section 4 of Article X of the California Constitution provides the following:

*No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof. (emphasis added.)*

This section merges the common law public trust doctrine with the California Constitution. (See *Personal Watercraft Coalition v. Marin County Board of Supervisors* (2002) 100 Cal.App.4th 129, 144-145.) The Legislature, in furthering the goals of Article X Section 4 of the Constitution, enacted section 30210 of the Coastal Act to ensure the public can always attain access to navigable waters for recreational purposes. As such, through this legislative mandate, the Commission is charged

with the duty of ensuring that proposed development is consistent with Section 30210 of the Coastal Act, and by extension, the public trust doctrine.

When the BCP application was submitted, a significant portion of the proposed residential development was located on the portion of the site where there was a public trust easement. More specifically, 11 of the proposed 32 lots were wholly or partially located within the public trust easement. This 1.168ac easement area is identified as Parcel A in **Exhibit No. 11**. The public trust is a sovereign public property right held by the State (under the jurisdiction of the California 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. 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 public trust obligations from certain public trust resources (**Exhibit No. 11**).

Residential use on the public trust easement area is not consistent with the uses allowed under the public trust. To remedy this situation, BCP submitted a request to SLC to exchange the public trust easement from Parcel A to Parcel B) so that the proposed residential development can be undertaken. Parcel B is also located on the project site, along the San Gabriel River and includes submerged land within the River (**Exhibit No. 11**).

The staff report for the November 2013 hearing on the BCP application pointed out that the proposed land exchange agreement that would remove the public trust easement from Parcel A, and instead encumber Parcel B with a public trust easement, would not afford the same opportunities to benefit the public as those located on the Parcel A. A significant portion of Parcel B is already undevelopable since it is submerged property. Additionally, the applicants have already agreed in the 2011 Settlement Agreement and the 2012 Disposition and Development Agreement affecting the project site to convey Parcel B to the City (the “San Gabriel River Trail Parcel” which is to be used for public trail purposes). If Parcel B is conveyed to the City for public trail purposes, its value as an exchange parcel for the public trust easement is severely diminished as the land would already be protected for the uses encouraged by the Coastal Act and consistent with the public trust. In addition, Parcel A is located adjacent to land developed with a marine-related boating use that is consistent with the public trust doctrine. Thus, the public trust easement should remain on Parcel A as it is an ideal location for higher priority uses encouraged by the Coastal Act and which could support, rather than conflict with the adjacent marine-related/recreational use. Marine-related and/or visitor-serving recreational uses are also those required on public trust lands, thus, no land exchange is needed to allow build-out of the subject site consistent with both the Coastal Act and the public trust doctrine. Commission staff communicated these concerns to SLC prior to their action on the BCP land exchange agreement hearing.

On October 14, 2014 the State Lands Commission considered the BCP request and approved the Compromise Title Settlement and Land Exchange Agreement. Their action included the termination of the public trust easement on Parcel 1 (the 1.168 acre parcel referred to as Parcel A above and on **Exhibit No. 11**) in exchange for BCP granting a public trust easement on an approximately 1.177 acre parcel which includes a portion of Parcel 6, a portion of Parcel 7 and Parcel 8 which include mainly water area and a small portion of land area, including land containing

a portion of the existing San Gabriel River bike trail (referred to as Parcel B above and on **Exhibit No. 11**). However, the SLC action also required BCP to pay \$2.71 million to be deposited into the Kapiloff Land Bank Fund, which is administered by the SLC and used to acquire outstanding interests in tidelands or lands that are near tidelands and beneficial for public trust purposes, according to the SLC staff report for this action (**Exhibit No. 19**). According to the October 14, 2014 staff report adopted by the SLC, the basis for the \$2.71million Kapiloff Fund contribution that was required in addition to the exchange of the public trust easement from Parcel A to Parcel B, included the following economic analysis:

*Commission staff spent a significant amount of time appraising the value of the public trust easement on the Trust Termination Easement Parcel. Staff's approach was to appraise the value of the parcel based on the highest and best economic use with a trust consistent development (i.e., a visitor serving hotel) and compare that with the highest and best economic use of the parcel without consideration of the Public Trust Doctrine (i.e., residential development). The difference between those values is the basis of the valuation of the public trust easement on the Trust Termination Easement Parcel. Staff determined the state's public trust easement interest in the Trust Termination Easement Parcel is valued at \$2.71 million. (Exhibit No. 19, page 7)*

The \$2.71 million contribution was found necessary by SLC to mitigate the loss of value in removing the public trust easement from a 1.168ac area of the 10.9ac project site. This mitigation is not for the loss of lower cost visitor-serving uses, including lower cost overnight accommodations in order to find the development consistent with the recreation and public access provisions of the Coastal Act. Such an additional mitigation requirement may occur if the Coastal Commission were to approve the proposed project which includes a change in the allowable use from hotel use only, or other priority use for the site, to residential use only on the northerly 4.5 acres of the 10.9ac site. The Commission notes that the applicant would not have to pay the \$2.71million fee to terminate the public trust easement if the site was developed with hotel or other visitor-serving commercial and recreational uses.

## **Conclusion**

The proposed primarily single family residential development with a passive, open space park does not meet the requirements of the public access and recreation policies of the Coastal Act for the property which is between the ocean and first public roadway. The submitted economic analysis supports the fact the owner is interested in developing residential use on the site and not a hotel. The Commission finds it is feasible for development of this site to provide some meaningful visitor-serving options designed to meet the user demands of the bicyclists and watersport enthusiasts that are drawn to the site due to its waterfront location along both the Pacific Ocean and the San Gabriel River, and nearby supporting commercial and recreational uses. Such uses would also be consistent with the public trust and the land exchange agreement with State Lands or payment of the \$2.7 million would not be necessary. For these reasons, staff recommends the Commission DENY the proposed use of the project site for 32 single family residences and a passive open space park.

As proposed, the project fails to provide Coastal Act higher priority uses at a prime riverfront and oceanfront location that would maximize the public's opportunities for the coastal access and

recreation. Therefore, the Commission finds that the proposed project is inconsistent with Sections 30213, 30220, 30221, 30222, 30224 and 30255 of the Coastal Act and must be denied.

## **D. ALTERNATIVES**

There are several alternatives to the proposed development that can be found consistent with the public access, public recreation and recreational boating support policies of the Coastal Act. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of all the possible alternatives).

### **1. No project**

No changes to the existing site conditions would result from the “no project” alternative. As such, the site would remain undeveloped and residential use, a lower priority use, would not be constructed on site. There also would be no encroachment into the existing adjacent preferred recreational boating support use by residential use, thereby avoiding a conflict with the continuance of the existing beneficial use.

### **2. Revising the proposed project to include higher priority Coastal Act uses**

Another potential alternative would be revising the proposed project so that it included higher priority uses that are encouraged by the Coastal Act, such as visitor-serving commercial including overnight accommodations, commercial recreation, and marine commercial and lower cost visitor and recreational facilities. As opposed to the applicants’ residential proposal for the site, these uses would offer an opportunity for the site to maximize its ability to provide amenities beneficial to a greater segment of the general public. These higher priority uses could be stand alone uses or a mix of these uses could be provided. These uses could range from beach equipment rental shops, boat repair facilities, active park, RV park, etc. An additional higher priority use would be placing a passive park, similar to the applicants proposed park, but not at such a large scale that would take into account habitat concerns including foraging areas. An option for including a lower priority residential use is to place it on the upper floors of a mixed use development while preserving the ground floor for higher priority visitor-serving commercial uses. Whichever way the site is developed with either a single use or mixed-use, these uses should be of the higher priority variety allowable under the Coastal Act.

As stated, the project site is an ideal location for higher priority uses. This is even further highlighted by the applicants’ recent indication that there is a seasonal beach that occurs in the San Gabriel River adjacent to the northern project boundary along the San Gabriel Bike Trail. The applicants state this beach area can be used for beach recreation and hand carried watercraft access, such as kayak, stand up paddleboard, etc. Thus, this reinforces the fact that the site serves as an ideal location for higher priority visitor-serving and commercial recreational uses.

### **3. Revising the proposed project to include a hotel use located at the southern portion of the property adjacent to the parking lot/beach**

A constant theme in the applicants’ hotel analyses for the site was that hotel options were not favorable due to the DWP Specific Plan requiring the hotel use to be located near Marina Drive instead of near the City parking lot/beach. The standard of review is the Coastal Act and it does not preclude any areas of the site for hotel development or other visitor-serving commercial recreational

uses. As stated above, the site should instead be evaluated in its entirety and the best possible higher priority use or uses for the entire site should be identified, which could include a hotel use or other type of overnight accommodation located near the City parking lot/beach or somewhere else on the property.

## **E. UNPERMITTED DEVELOPMENT**

Development has allegedly occurred on the project site without all required Coastal Act authorizations. The development consisted of: construction of the San Gabriel River Trail; removal of subsurface structures and remediation of the site for asbestos contamination; re-grading of the site; removal of the Ocean Avenue bridge ramp; installation of the perimeter fence/green screen; and mowing and disking of the site. None of this development was included with the proposed project and no previous coastal development permits have been approved for this work. Thus, the unpermitted development is not resolved with this application.

In response to the unpermitted development discussed above, the applicants submitted a letter dated October 31, 2013 to Commission staff. The applicants state that in 1976 the City of Seal Beach received approval from the LADWP (Los Angeles Department of Water & Power) and LACFCD (Los Angeles County Flood Control District) to use the existing flood control maintenance road for bicycle trail purposes (San Gabriel River Trail). The applicants also provided aerials from 1972 showing the maintenance road was in existence prior to the road being used for a bicycle trail. The paving of the bicycle trail was completed at some unknown point.

Regarding the removal of subsurface structures and remediation of the site for asbestos contamination; re-grading of the site; and removal of the Ocean Avenue bridge ramp, the applicants submitted a copy of CDP No. 5-87-541-(City of Los Angeles Department of Water & Power), that was approved by the Commission on October 16, 1987 which allowed the following development on site: "The project is to demolish and extract surface and subsurface remnants of abandoned power plant. Grading is estimated at about 70,000 cubic yards." Thus, the applicants have provided information showing that a CDP was approved for that identified development on site.

The applicants have provided information showing that the site has had a pre-coastal fence on site, the green screen has been removed and that the site has been mowed and disked continuously for years by the previous owner and the current owner in response to the installation of the perimeter fence/green screen; and mowing and disking of the site. For forty years, the site was covered by a steam energy generating facility until it was partially demolished in 1967. In 1987, CDP No. 5-87-541-(City of Los Angeles, Department of Water & Power) allowed the demolition and extraction of surface and subsurface remnants of the abandoned power plant as well as grading of the site. The site currently contains disturbed non-native grassland that has been mowed and disked ever since.

## **F. LOCAL COASTAL PROGRAM (LCP)**

Section 30600(c) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a Certified Local Coastal Program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with Section 30604 of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is inconsistent with the Chapter 3 policies of the Coastal Act and would prejudice the City's ability to prepare a Local Coastal Program for Seal Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). The applicants proposal to place a lower priority residential use at the DWP site, which is an ideal coastal location instead for higher priority uses ranging from visitor-serving commercial, recreation and marine commercial and lower cost visitor and recreational facility uses could prejudice the City's ability to prepare a LCP that is consistent with the Coastal Act.

### **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). The City of Seal Beach is the lead agency for purposes of CEQA compliance. An Environmental Impact Report (EIR) was approved for this project in July 2012 pursuant to the provisions of CEQA. Mitigation measures included measures to minimize any impacts to aesthetics, cultural, traffic and noise. However, Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment.

While the City of Seal Beach approved an EIR for the site with mitigation measures to minimize any impacts, the Commission, pursuant to its certified regulatory program under CEQA, the Coastal Act, determined that the proposed development would have both, direct and cumulative adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as a no project alternative, revising the proposed project to include higher priority Coastal Act uses, revising the proposed project to include a hotel use located at the southern portion of the property adjacent to the parking lot/beach or developing the 10.9 acre site with a mixed-use development continuing a combination of some of these uses and perhaps passive or active park use on a portion of the site. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.

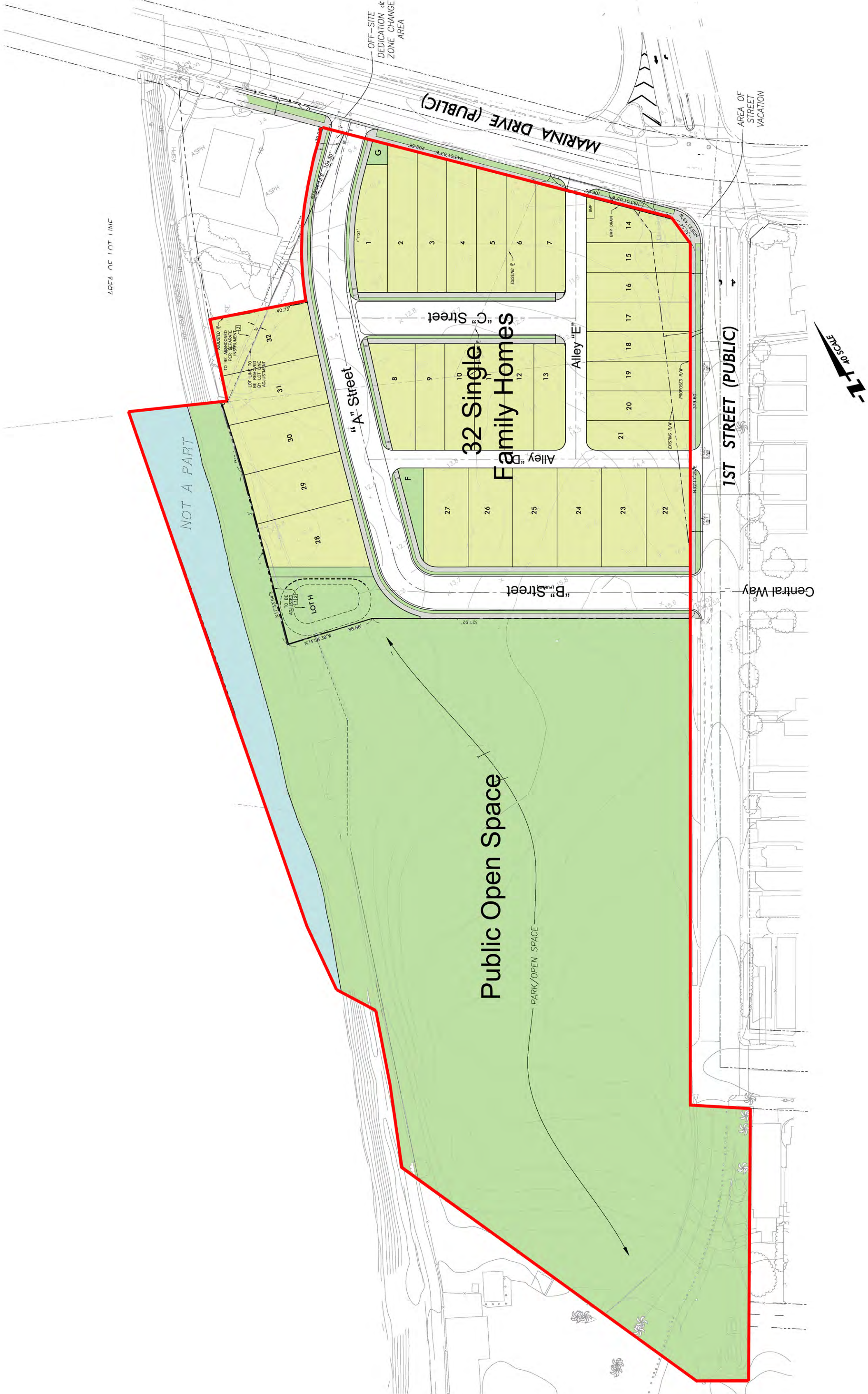


## APPENDIX 1

**SUBSTANTIVE FILE DOCUMENTS:** 1982 DWP Specific Plan; 1996 DWP Specific Plan; City of Seal Beach Approval in Concept dated January 8, 2013; CDP No. 5-10-220-(City of Seal Beach); CDP No. 5-10-168-(City of Newport Beach); City of Malibu LCPA MAL-MAJ-2-09-A; CCC action on the City of Seal Beach LUP dated July 24, 1983; CDP No. 5-99-026-(Musso); CDP No. 5-05-385-(Seal Beach Six, Inc.); CDP No. 5-87-541-(City of Los Angeles, Department of Water & Power); Dispute Resolution CDP No. 5-13-1233-EDD-(Bay City Partners, City of Seal Beach and Marina Beach Partners); CDP No. 5-99-026-(Musso); CDP No. 5-05-385-(Seal Beach Six, Inc.); LCP Amendment MAL-MAJ-2-09-A-(Crummer); Environmental Impact Report (EIR) (SCH# 2011061018); Addendum to Environmental Impact Report (EIR) (SCH# 2011061018) – Title Settlement and Land Exchange Agreement; State Lands Commission (SLC) Notice of Determination (File Ref: W26609/SCH#2011061018/Calendar Item: C108)/; State Lands Commission Notice of Exemption (File Ref: W26609/Calendar Item: C108); Commission staff comment letters regarding Draft Environmental Impact Report (EIR) (SCH# 2011061018) dated July 6, 2011 and January 9, 2012; City of Seal Beach Resolution No. 6274; City of Seal Beach Resolution No. 6275; City of Seal Beach Resolution No. 6276; City of Seal Beach Ordinance No. 1620; City of Seal Beach General Plan Amendment 11-1; City of Seal Beach DWP Specific Plan Amendment 11-1; City of Seal Beach Zoning Map Amendment 11-1; City of Seal Beach Tentative Tract Map (TTM) 17425; City of Seal Beach and BCP Settlement Agreement dated March 16, 2011; City of Seal Beach and BCP Disposition and Development Agreement dated July 9, 2012; and Lot Line Adjustment 13-1; *Analysis of Potential Market Demand and Statements of Estimated Annual Operating Results for a Proposed Hotel to be located in Seal Beach, CA* prepared by PKF Consulting, USA dated July 31, 2003; *Potential Market Demand and Estimated Operating Results for a Proposed Hotel to be located in Seal Beach, California* prepared by PKF Consulting, USA dated November 6, 2009; *Peer review and Site Specific Hotel Feasibility Evaluation* prepared by Kosmont Companies dated September 2011; *Visitor-Serving Use Analysis* prepared by PKF Consulting USA, dated November 26, 2012; Letter from BCP to Commission staff dated August 20, 2013; Letter from the SLC to City of Seal Beach Director of Development Services dated April 25, 2012; Letter from and the SLC to City of Seal Beach Planning Commission dated May 2, 2012; Letter from BCP to Commission staff dated November 19, 2013; Email correspondence between BCP and Commission staff dated November 22, 2013; Letter from Commission staff to BCP dated December 11, 2013; Letter from BCP to Commission staff dated January 31, 2014; *Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives Bay City Partners/LADWP Site – Seal Beach* prepared by Kosmont Companies dated January 2014; *Active Park Analysis* dated January 31, 2014; Letter from Commission staff to BCP dated March 5, 2014; Letter from Campbell Lodging, Inc. dated February 4, 2014; Letter from Richards, Watson, Gershon to Commission staff dated February 7, 2014; Letter from BCP to Commission staff dated March 4, 2014; Letter from Kosmont Companies to BCP dated March 4, 2014; Letter from BCP to Commission staff dated March 6, 2014; Letter from Kosmont Companies received March 6, 2014; *Proposed Seal Beach Hotel Land Use Analysis* prepared by PKF Consulting, USA dated January 2014; ESRI Retail MarketPlace Profile, Seal Beach received March 6, 2014; *USC Casden Multifamily Forecast for 2013, Orange County Section* received March 6, 2014; *Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives Bay City Partners/LADWP Site – Seal Beach* prepared by Kosmont Companies dated January 2014-Site Plan

Analysis dated March 6, 2014; Letter from Commission staff to BCP dated April 4, 2014; Letter from BCP to Commission staff dated April 7, 2014; Letter from Commission staff to BCP dated May 8, 2014; Letters from BCP to Commission staff dated May 14, 2014; *Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives* Bay City Partners/LADWP Site – Seal Beach prepared by Kosmont Companies dated January 2014 (May 2014); *Proposed Seal Beach Hotel Land Use Analysis* prepared by PKF Consulting, USA dated January 2014 (Updated May 2014); Letter from BCP to Commission staff dated June 17, 2014; Letter from BCP to Commission staff dated October 9, 2014; Letter from Commission staff to State Lands Commission (SLC) dated October 13, 2014; Letter from State Lands Commission (SLC) to Commission staff dated October 16, 2014; Letter from BCP to Commission staff dated October 17, 2014; Letter from BCP to Commission staff dated December 23, 2014; Letter from BCP to Commission staff dated January 23, 2015; Letter from BCP to Commission staff dated January 27, 2015; Letter from the City of Seal Beach to Commission staff; and Los Angeles Times Article “*Investors checking into luxury hotels*” dated Monday, February 16, 2015.













# Ocean Place Development Plan

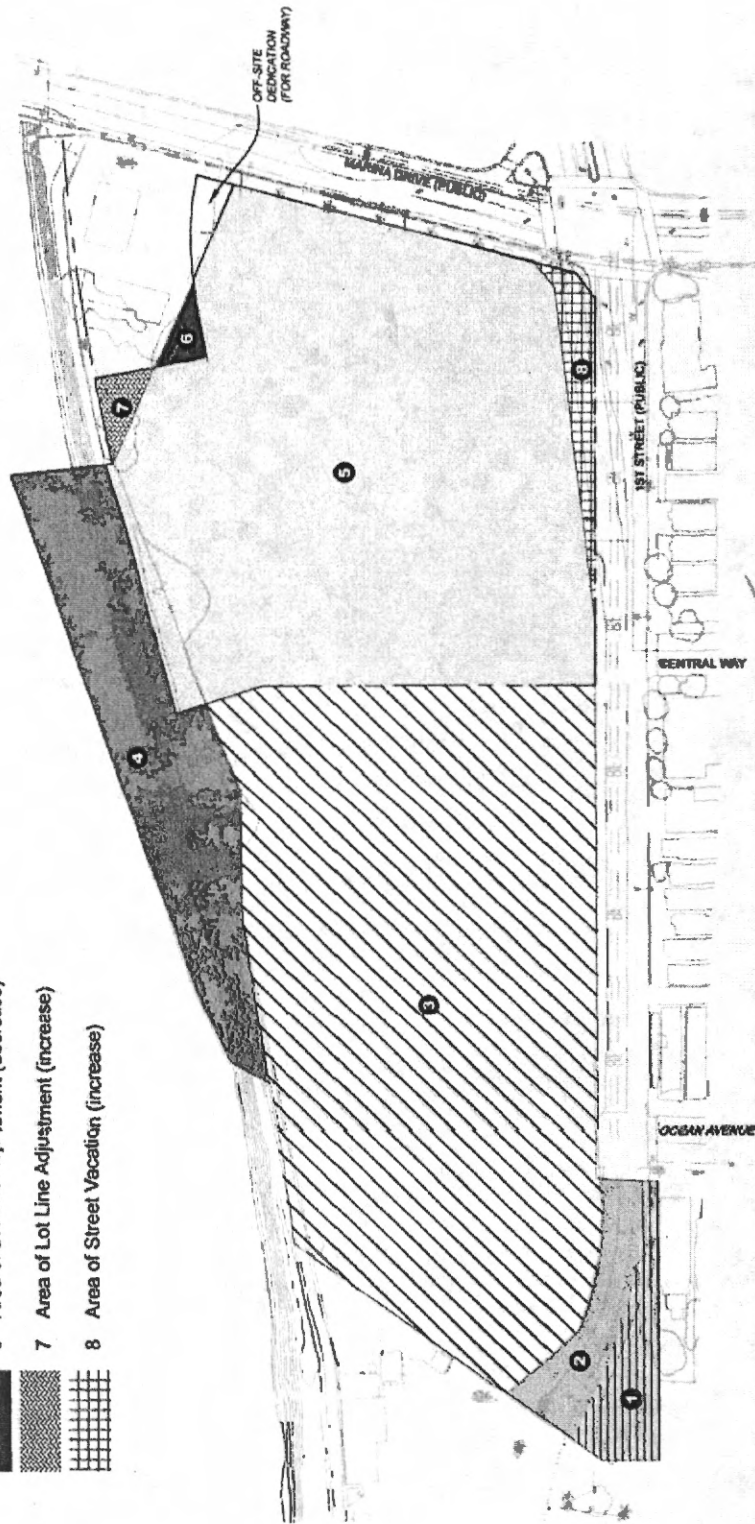




## Overall DWP Specific Plan & River's End Staging Area

# **LEGEND**

- |   |  |
|---|--|
|  | 1 Sewer Parcel                           |
|  | 2 Driveway Parcel                        |
|  | 3 Park/Open Space                        |
|  | 4 River / Bike Trail Parcel              |
|  | 5 Area of Residential Use                |
|  | 6 Area of Lot Line Adjustment (decrease) |
|  | 7 Area of Lot Line Adjustment (increase) |
|  | 8 Area of Street Vacation (increase)     |



## **DWP Specific Plan Area Layout**



Pacific Ocean

San Gabriel River

River Trail Under  
Lease To City

Rivers End  
Staging Area

Visitor Serving Passive  
Open Space

Residential  
Development

Marina Drive

Driveway To  
River's End  
Under Lease  
To City

First Street

First Street Area To  
Be Vacated By City

Ocean Ave

Centralway





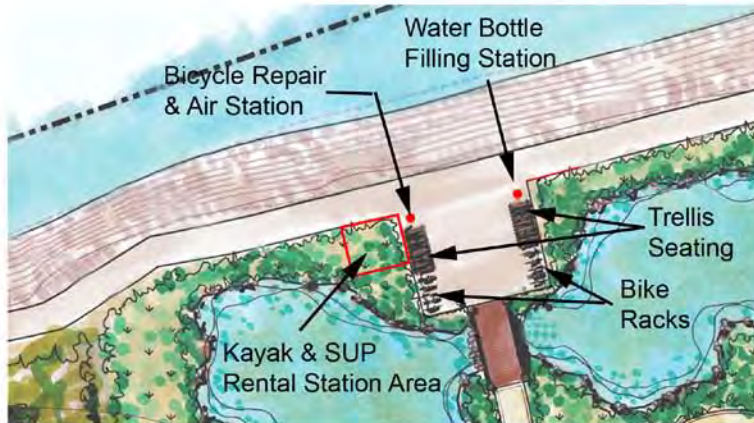






## Non Commercial Visitor Serving Uses

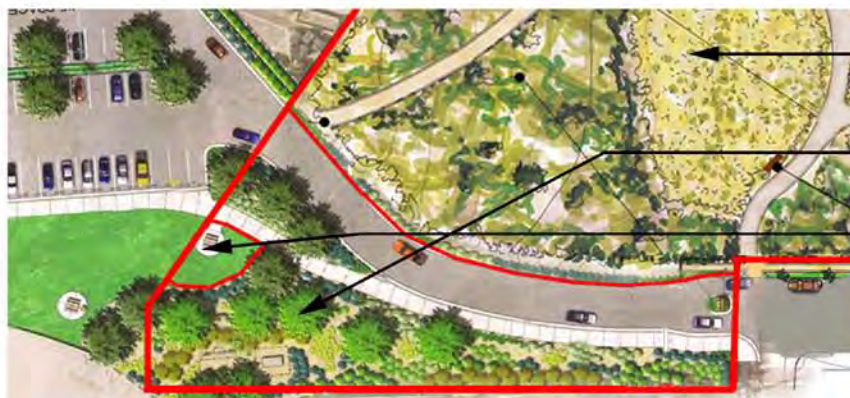




1 Kayak & Stand Up Paddleboard Rental Station



2 Bike Rental Station



Area to be landscaped  
as part of Open Space  
Master Plan

Existing area landscaped as part  
of Rivers End Project

Surfboard & Wind Surfing  
Rental Station Area

4 Surfboard & Windsurfing  
Rental Station

## Visitor Serving Use Location Details



### Legend

- Coastal Sage Scrub
- Native Grasslands
- Riparian / Marshlands
- Freshwater Ponds / Retention Area
- Dry Stream Bed
- \* Coastal Trees
- Turf
- Children's Play Area

## Overall Planting Diagram





# Project Vicinity



Pacific Ocean

San Gabriel River

Project Area

Rivers End  
Staging Area

Marina Drive

First Street

Ocean Ave

Central Way

Beach



# TOPOGRAPHIC MAP

**COAST** SURVEYING, INC.  
15051 PARKWAY LOOP, SUITE B  
TUSTIN, CALIFORNIA 92780-6527  
(714) 918-6266

SECTION 20.314, MAP 88  
 BEING RECORDED  
 DESCRIBED BY DEC 1973 05 LOTS 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 8

FOR:  
BAL CITY PARTNERS, LTD  
AND  
CHICAGO TITLE COMPANY

BEING BLOCK "C" AND PORTIONS OF BLOCK "B" AND  
OCEAN AVENUE, PER MAP OF BAY CITY, N.Y. 3/19,  
BLOCK 100 PER, TRACT NO. 698, N.Y. 31/27 AND A  
PORTION OF TIDE LAND LOCATION NO. 157 SURVEY  
NO. 108, PER PATENT BOOK 1, PAGE 251.

[illegible]

DATE  
NOVEMBER 8, 2002  
JOB NUMBER  
102-052



# DWP Specific Plan Legal Lots

**ENCROACHMENT NOTES:**

THE SELV BRICK WALL OF THE HOUSE ALONG THE NORTHWESTERLY BOUNDARY ENCROACHES OVER THE PROPERTY LINE 0.6 TO 1.2'

THE BEACH ACCESS ROAD AND ALLENITES ARE LOCATED ON THE SOUTHEASTERLY PORTION THE PROPERTY. THE TITLE REPORT DOES NOT INDICATE ANY DOCUMENTS OF RECORD FOR ANY RIGHTS THEREIN.

THE ASPHALT PATH ALONG THE SOUTHWESTERLY PORTION OF THE PROPERTY IS ENCROACHING 8' TO 14' INTO THE PROPERTY.



**CALIFORNIA COASTAL COMMISSION**

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

**FILE COPY**

July 6, 2011

Mark Persico, AICP, Director of Development Services  
Development Services Department  
City of Seal Beach  
211 8<sup>th</sup> Street  
Seal Beach, CA 90740

**Re: Department of Water and Power Specific Plan Amendment  
Notice of Preparation of a Draft Environmental Impact Report (SCH# 2011061018)**

Dear Mr. Persico,

Thank you for the opportunity to review the Notice of Preparation of a Draft Environmental Impact Report for the Department of Water and Power Specific Plan Amendment. The subject site is seaward of the intersection First Street and Marina Drive in Seal Beach. The project consists of: 1) grading of the 10.7 acre site and installation of appropriate infrastructure in order to allow for future development of residential and open space/passive park uses, and 2) a General Plan Amendment, Department of Water and Power (DWP) Specific Plan Amendment, Redevelopment Plan Amendment and Tentative Tract Map that would allow for the development of a 48-lot residential development on a former power plant site in the City of Seal Beach. Additionally, a lot line adjustment is proposed that will adjust the project acreage from 4.3 acres to 4.4 acres for the residential portion of the Specific Plan area.

The proposed project is located within the Coastal Zone in the City of Seal Beach. The proposed development will require a Coastal Development Permit from the California Coastal Commission. The City does not have a certified coastal Land Use Plan or Implementation Plan (i.e. a Local Coastal Program), so, the land use issues raised by the proposal would be addressed in the context of the Coastal Development Permit application.

The following comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself. As described below, the proposed project raises issues related to land use, visual impacts, biological resources, archaeological resources, hazards, and water quality.

Below are the comments by Commission staff on the Notice of Preparation of a Draft Environmental Impact Report.

**Land Use**

The proposed project would change the permitted use of an area of the project site from visitor-serving to residential uses. Given its waterfront and riverfront location, the subject site is well suited for lower cost recreation and visitor-serving uses. Lower cost recreation and/or visitor-

Notice of Preparation of a Draft Environmental Impact Report  
Department of Water and Power Specific Plan Amendment  
Page 2 of 4

serving uses are a priority use in the Coastal Act as they offer an opportunity for the public to recreate along and have access to the coast. However, residential uses are not a priority use and do not offer the same beneficial uses that lower cost recreation and visitor-serving uses do. Lower cost recreation and visitor-serving uses should be maximized on the subject site. Additionally, the project states that there will be approximately 6.4 acres of open space/parkland as well on site. However, the proposed amendment would actually reduce the amount of open space currently called for by City planning documents from 70% to 60% within the proposed Specific Plan area. The reduction in planned open space/park area, in exchange for an increase in the quantity of residential uses (a lower priority use), is a significant concern raised by this proposal. Lower cost visitor-serving uses, as well as open space area, must be maximized and protected since they are priority uses as stated in the Coastal Act. We recommend that the EIR consider project alternatives that significantly reduce and/or eliminate the proposed residential uses on the subject site.

On July 28, 1983, the California Coastal Commission held a public hearing on the Land Use Plan for the City of Seal Beach as submitted by the City. The Commission denied the Land Use Plan as submitted based on inconsistencies with the Coastal Act. The Commission then adopted suggested modification, which if adopted by the City would bring the Plan into conformance with provision of the Coastal Act.

Suggested modification for the DWP site designated that 30% of the site be for hotel/commercial uses defined as a maximum 300-room hotel with a maximum height of 36-feet and necessary ancillary support uses to serve hotel guests. The remaining portion of the site was designated as open space with uses defined as public parks, greenbelts, trails, recreational uses and theater with a maximum height of 25-feet. Furthermore, all uses in the Seal Beach Municipal Code for public land use were permitted in open space.

However, these suggested modifications were never adopted by the City. Therefore, the Land Use Plan was never effectively certified and subsequently lapsed. While these suggested modification regarding the DWP site were never adopted by the City, it does show the Commission's concern of preserving the site as a lower cost visitor-serving and open space area in 1983 and we note that such uses are still strongly encouraged. The EIR should consider the above described land uses in its alternatives analysis (and/or variations on it).

#### Visual Impacts

The project site is located seaward of the first coastal roadway and public views across the site to and along the shoreline have been enjoyed by the public for a significant period of time. The Coastal Act requires the protection of public views to and along the coastline. Any adverse impacts to these scenic resources must be avoided or minimized to the greatest extent feasible. The EIR must analyze impacts to public coastal views and consider alternatives that avoid significant adverse impacts to coastal views.

Please note, the visual impact analysis should consider impacts to views as they would legally exist relative to the subject site. Any existing unpermitted fencing and/or screening should not be considered the 'existing' condition.

### Biological Resources

There is potential for impacts to biological resources with the proposed project, especially since the Notice of Preparation stated that the undeveloped site has the potential to contain wetlands as defined by the United States Army Corps of Engineers (USACOE) and the California Coastal Commission (CCC). The Coastal Act identifies the types of development, which may occur in wetlands. In order for the Commission to analyze whether the proposed project is consistent with the Coastal Act you must submit a biological study, which identifies the presence and boundary of any wetland, which exists in the project area based on Coastal Act criteria (note, the USACOE and CCC criteria for identifying wetlands differ significantly). In addition, an analysis must be prepared which identifies any direct or indirect impacts upon wetlands resulting from the proposed project. Therefore, please provide a wetlands identification and biological analysis, prepared by a biologist in accordance with current professional practice, of any direct and/or indirect impacts of the proposed project upon wetlands and associated sensitive biological resources in the project area. The analysis must include a map showing the location of the existing and proposed project with respect to the location of the wetlands and/or any other biological resources located on the property. Where applicable, proper protocol surveys should be conducted for sensitive, rare and/or endangered plant or animal species that may exist on the subject site.

### Archaeological Resources

The project site is located in an area where archaeological resources (i.e. Native American Resources) have been found. Thus, please provide an archaeological survey that provides, at minimum, a preliminary investigation (i.e. reconnaissance) for the presence of any archaeological resources on site. If the preliminary investigation reveals that archaeological resources exist and/or very likely exist on the subject site, a more thorough investigation will be required prior to submittal of any Coastal Development Permit application for development of the subject site. Please note that an archaeological investigation may require a Coastal Development Permit. Please contact Commission staff regarding the need for a permit prior to undertaking the investigation.

### Hazards

An analysis for the potential of structural damage due to sea level rise, flooding and wave attack must be conducted for the project site. The study must be prepared by a licensed engineer with expertise in coastal processes, which analyzes whether the proposed project minimizes risks from hazards including, but not limited to, sea level rise, flooding and erosion. The study must explain whether any protective devices will be necessary to protect the proposed development from any existing or anticipated future hazards.

### Water Quality

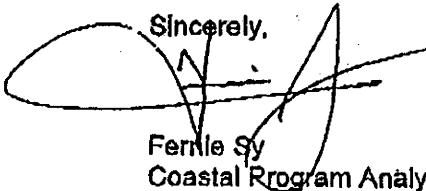
An analysis of the potential impacts to water quality resulting from the proposed project and the measures to deal those impacts is necessary. Any proposed measures must be sized and designed to mitigate water quality impacts generated by the development. The Commission has recently required that post-development peak runoff rates and average volume from the developed site shall not exceed pre-development levels for the 2-year 24-hour storm runoff event. In addition, post-construction treatment control BMPs shall be designed to mitigate

Notice of Preparation of a Draft Environmental Impact Report  
Department of Water and Power Specific Plan Amendment  
Page 4 of 4

(treat, infiltrate or filter) stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. If the proposed water quality mitigation measures do not meet the above criteria, water quality could be adversely impacted. The Environmental Impact Report should address whether the proposed development meets the above guidelines and any impacts upon water quality, which may result if the development is not consistent with the guidelines.

Thank you for the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the Department of Water and Power Specific Plan Amendment. Commission staff request notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when an application is submitted for a Coastal Development Permit. Please feel free to contact me at 662-590-5071 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ferlie Sy", written over a horizontal line.

Ferlie Sy  
Coastal Program Analyst II

CC: State Clearinghouse



**CALIFORNIA COASTAL COMMISSION**

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



January 9, 2012

Mark Persico, AICP, Director of Development Services  
Development Services Department  
City of Seal Beach  
211 8<sup>th</sup> Street  
Seal Beach, CA 90740

**Re: Department of Water and Power Specific Plan Amendment  
Draft Environmental Impact Report (SCH# 2011061018)**

Dear Mr. Persico,

Thank you for the opportunity to review the Draft Environmental Impact Report for the Department of Water and Power Specific Plan Amendment. The subject site is a former power plant site located seaward of the First Street and Marina Drive intersection in Seal Beach. The project involves amendments to the 1996 DWP (Department of Water and Power) Specific Plan (Proposed Specific Plan Amendment) that would allow for the development of a 48-lot residential development (Tentative Tract Map No. 17425). That is, the DWP Specific Plan currently designates that 30% of the site be for visitor serving uses and that 70% be for open space. As proposed, the residential component would occupy 41% of the site and be located on approximately 4.5 acres in the northern portion (landward) of the project site. The project applicant would construct, in one phase, the finished pads and all necessary infrastructure necessary to serve the new residential development. The residential units would be developed individually by homeowners as custom homes. As proposed, the remaining 59% (approximately 6.4 acres of the project site) would be used for open space/passive recreation uses.

The proposal would require a General Plan Amendment, Zone Change, DWP Specific Plan Amendment, Redevelopment Plan Amendment, Tentative Tract Map, and Lot Line Adjustment. The General Plan Amendment, DWP Specific Plan Amendment, and Zone Change, if approved, would allow the property to be developed for residential uses. The Tentative Tract Map and Lot Line Adjustment, if approved, would allow the property to be subdivided into single-family parcels. The proposed amendments are intended to address aspects of each policy document that are not consistent with the proposed project.

The proposed project is located within the Coastal Zone in the City of Seal Beach. The proposed development will require a Coastal Development Permit from the California Coastal Commission. The City does not have a certified coastal Land Use Plan or Implementation Plan (i.e. a Local Coastal Program), so, the land use issues raised by the proposal would be addressed in the context of the Coastal Development Permit application.

The following comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as

Draft Environmental Impact Report  
Department of Water and Power Specific Plan Amendment  
Page 2 of 4

representing the opinion of the Coastal Commission itself. As described below, the proposed project raises issues related to land use, visual impacts, biological resources, and hazards.

Below are the comments by Commission staff on the Draft Environmental Impact Report.

Land Use

The proposed project would change the permitted use of an area of the project site from visitor-serving to residential uses. Given its waterfront and riverfront location, the subject site is well suited for lower cost recreation and visitor-serving uses. Lower cost recreation and/or visitor-serving uses are a priority use in the Coastal Act as they offer an opportunity for the public to recreate along and have access the coast. However, residential uses are not a priority use and do not offer the same beneficial uses that lower cost recreation and visitor-serving uses do. Lower cost recreation and visitor-serving uses should be maximized on the subject site. The DWP Specific Plan currently designates that 30% of the site be for visitor serving uses and that 70% be for open space (to be discussed more below). This would change with the proposed project as the residential component use in the northern portion (landward) of the project site would be increased to 41% (4.5 acres) and the open space/passive recreation use component in the southern portion (oceanward) would be reduced to 59% (6.4 acres). The proposed project would reduce the amount of open space currently called for by City planning documents from 70% to 59% within the proposed Specific Plan area. The reduction in planned open space/park area, in exchange for an increase in the quantity of residential uses (a lower priority use), is a significant concern raised by this proposal. Lower cost visitor-serving uses, as well as open space area, must be maximized and protected since they are priority uses as stated in the Coastal Act. Project alternatives have been provided that include no project/no build and adherence to the current 1996 DWP Specific Plan. However, we recommend that the EIR consider additional project alternatives that significantly reduce and/or eliminate the proposed residential uses on the subject site.

On July 28, 1983, the California Coastal Commission held a public hearing on the Land Use Plan for the City of Seal Beach as submitted by the City. The Commission denied the Land Use Plan as submitted based on inconsistencies with the Coastal Act. The Commission then adopted suggested modification, which if adopted by the City would have brought the plan into conformance with provisions of the Coastal Act.

Suggested modification for the DWP site designated that 30% of the site be for hotel/commercial uses defined as a maximum 300-room hotel with a maximum height of 35-feet and necessary ancillary support uses to serve hotel guests. The remaining portion (70%) of the site was designated as open space with uses defined as public parks, greenbelts, trails, recreational uses and theater with a maximum height of 25-feet. Furthermore, all uses in the Seal Beach Municipal Code for public land use were permitted in open space.

However, these suggested modifications were never adopted by the City. Therefore, the Land Use Plan was never effectively certified and subsequently lapsed. While these suggested modification regarding the DWP site were never adopted by the City, it does show the Commission's concern of preserving the site as a lower cost visitor-serving and open space area in 1983 and we note that such uses are still strongly encouraged. While the EIR has provided alternatives to the proposed project including adherence to the current 1996 DWP Specific Plan, additional alternatives are needed that preserve the entire site as a lower cost

visitor serving and open space area. Thus, the EIR should consider the above described land uses in an additional alternatives analysis (and/or variations on it).

The proposed project would result in the significant lost of an area currently designated as open space in the City's Land Use Element of the General Plan, which could be used for parkland. In the EIR, it states that in order to meet the City's parkland-to-ratio population goal, a total of 121 acres of parkland would be required. Currently the City maintains approximately 77.3 acres of parkland. The EIR states that while the City has not met this goal, the City benefits from additional recreation amenities within its boundaries (i.e., beaches, Sunset Marina Park, etc). Nonetheless, what was the justification for the loss of this site to entirely serve as open space? Loss of the site to residential use, a non priority use, is significant. Therefore, an explanation and justification for the loss of the site as potential parkland should be included in the EIR.

#### Visual Impacts

The project site is located seaward of the first coastal roadway and public views across the site to and along the shoreline have been enjoyed by the public for a significant period of time. For example, views to the ocean are available from the San Gabriel Rive Bike Trail, Marina Drive and 1<sup>st</sup> Street. The Coastal Act requires the protection of public views to and along the coastline. Any adverse impacts to these scenic resources must be avoided or minimized to the greatest extent feasible. The EIR must analyze impacts to public coastal views and consider alternatives that avoid significant adverse impacts to coastal views.

Please note, the visual impact analysis should consider impacts to views as they would legally exist relative to the subject site. Any existing unpermitted fencing and/or screening should not be considered the 'existing' condition.

#### Biological Resources

Part of the site analysis included a wetland boundary determination based on Coastal Act criteria and based on that analysis, no wetlands were identified on the project site. However, the EIR states that nine (9) special status plant species were identified as having potential to occur on site, but due to diking, historic disturbance, and the absence of suitable habitat surrounding the project site, all nine (9) of those species are considered unlikely to occur on site. Additionally, eight (8) special status wildlife species were identified, but only five (5) of these species are considered unlikely to occur based on the same reasons. Please provide further discussion regarding the diking and historic disturbance of the site and whether or not these activities were permitted by any Coastal Development Permit. Any previous removal of major vegetation would have required approval of a Coastal Development Permit. Any existing unpermitted removal of major vegetation should not be considered the 'existing' condition for purposes of identifying biological resources impacts.

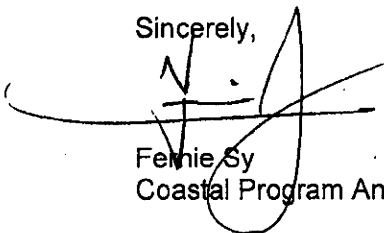
#### Hazards

An analysis for the potential of structural damage due to sea level rise, flooding and wave attack must be conducted for the project site. The study must be prepared by a licensed engineer with expertise in coastal processes, which analyzes whether the proposed project minimizes risks from hazards including, but not limited to, sea level rise, flooding and erosion. The study must explain whether any protective devices or other mitigation measures will be necessary to protect the proposed development from any existing or anticipated future hazards.

Draft Environmental Impact Report  
Department of Water and Power Specific Plan Amendment  
Page 4 of 4

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Department of Water and Power Specific Plan Amendment. Commission staff request notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when an application is submitted for a Coastal Development Permit. Please feel free to contact me at 562-590-5071 with any questions.

Sincerely,



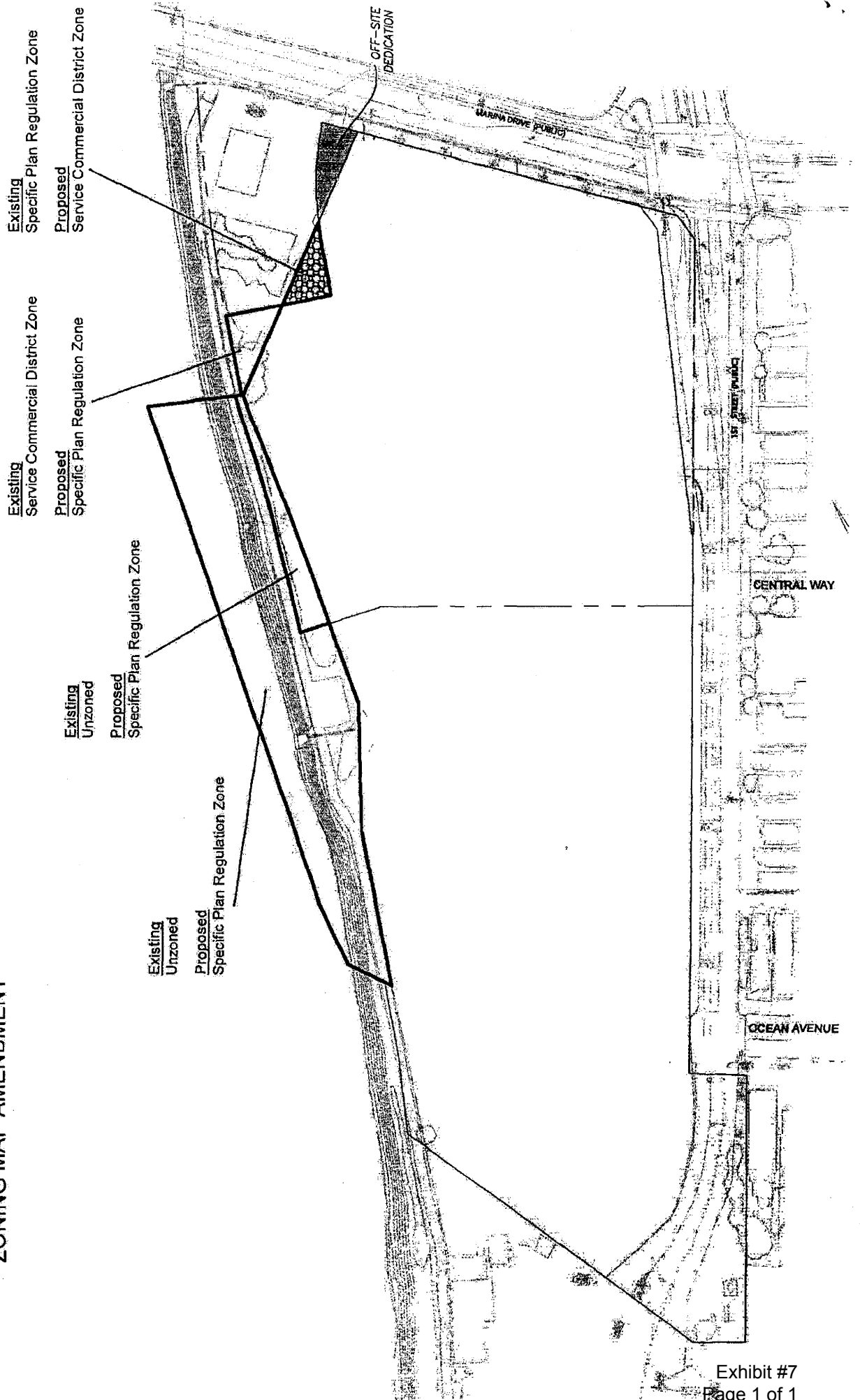
Fernie Sy  
Coastal Program Analyst II

CC: State Clearinghouse



# EXHIBIT "B"

## ZONING MAP AMENDMENT



## REVISED TENTATIVE TRACT MAP NO. 17425 - V2

PREPARED BY:



16793 Van Kesteren, July 1988  
Irvine, California 92604  
Tel 949.274.1968 - fax 949.474.5315

[illegible]

TYPICAL LOT LEGAL DESCRIPTION

TYPICAL LOT LEGAL DESCRIPTION

LEGEND

TRACT BOUNDARY  
STREET (C  
LOT LINE  
LOT NUMBER

**NOTES:**

THE FOLLOWING INFORMATION IS FOR THE USE OF THE  
CUSTOMER ONLY. IT IS NOT TO BE REPRODUCED OR  
TRANSMITTED IN ANY FORM OR BY ANY MEANS  
ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING,  
RECORDING, OR BY ANY INFORMATION STORAGE AND  
RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING  
FROM THE PATENT AND TRADEMARK OFFICE.

**EASEMENTS:**

[ ] EXAMINE THE CHANNELS TO LOS ANGELES COUNTY JUDICIAL CONTROL DISTRICT RECORDED MAY 20, 1943 IN BOOK 612, PAGE 317 OF OFFICIAL RECORDS

[ ] UNRECORDED DE AND HAS LEASE AND ADJUT BETWEEN LEE AND JOHN CARROLL AND JOHN CARROLL AS DISCLOSED BY SURVEY RECORDED MAY 22, 1944 IN BOOK 1251, PAGE 137 OF OFFICIAL RECORDS

[ ] EXAMINE THE PUBLIC UTILITY PARKERS RECORDED ADVISORY A FIVE SEVENTEEN AND 13945 IN BOOK 3272, PAGE 7 OF OFFICIAL RECORDS

**DEDICATIONS:**

STREETS 'N' B' 'B' & 'C' FOR PUBLIC HIGHWAY PURPOSES WILL BE DEDICATED TO THE CITY OF SEAL BEACH

## LOT SUMMARY

OFFICE	PERSONNEL	NO. OF	PERCENT
		OFFICERS	
1	1	1	100.0
2	2	2	100.0
3	3	3	100.0
4	4	4	100.0
5	5	5	100.0
6	6	6	100.0
7	7	7	100.0
8	8	8	100.0
9	9	9	100.0
10	10	10	100.0
11	11	11	100.0
12	12	12	100.0
13	13	13	100.0
14	14	14	100.0
15	15	15	100.0
16	16	16	100.0
17	17	17	100.0
18	18	18	100.0
19	19	19	100.0
20	20	20	100.0
21	21	21	100.0
22	22	22	100.0
23	23	23	100.0
24	24	24	100.0
25	25	25	100.0
26	26	26	100.0
27	27	27	100.0
28	28	28	100.0
29	29	29	100.0
30	30	30	100.0
31	31	31	100.0
32	32	32	100.0
33	33	33	100.0
34	34	34	100.0
35	35	35	100.0
36	36	36	100.0
37	37	37	100.0
38	38	38	100.0
39	39	39	100.0
40	40	40	100.0
41	41	41	100.0
42	42	42	100.0
43	43	43	100.0
44	44	44	100.0
45	45	45	100.0
46	46	46	100.0
47	47	47	100.0
48	48	48	100.0
49	49	49	100.0
50	50	50	100.0
51	51	51	100.0
52	52	52	100.0
53	53	53	100.0
54	54	54	100.0
55	55	55	100.0
56	56	56	100.0
57	57	57	100.0
58	58	58	100.0
59	59	59	100.0
60	60	60	100.0
61	61	61	100.0
62	62	62	100.0
63	63	63	100.0
64	64	64	100.0
65	65	65	100.0
66	66	66	100.0
67	67	67	100.0
68	68	68	100.0
69	69	69	100.0
70	70	70	100.0
71	71	71	100.0
72	72	72	100.0
73	73	73	100.0
74	74	74	100.0
75	75	75	100.0
76	76	76	100.0
77	77	77	100.0
78	78	78	100.0
79	79	79	100.0
80	80	80	100.0
81	81	81	100.0
82	82	82	100.0
83	83	83	100.0
84	84	84	100.0
85	85	85	100.0
86	86	86	100.0
87	87	87	100.0
88	88	88	100.0
89	89	89	100.0
90	90	90	100.0
91	91	91	100.0
92	92	92	100.0
93	93	93	100.0
94	94	94	100.0
95	95	95	100.0
96	96	96	100.0
97	97	97	100.0
98	98	98	100.0
99	99	99	100.0
100	100	100	100.0

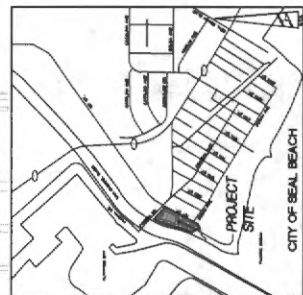
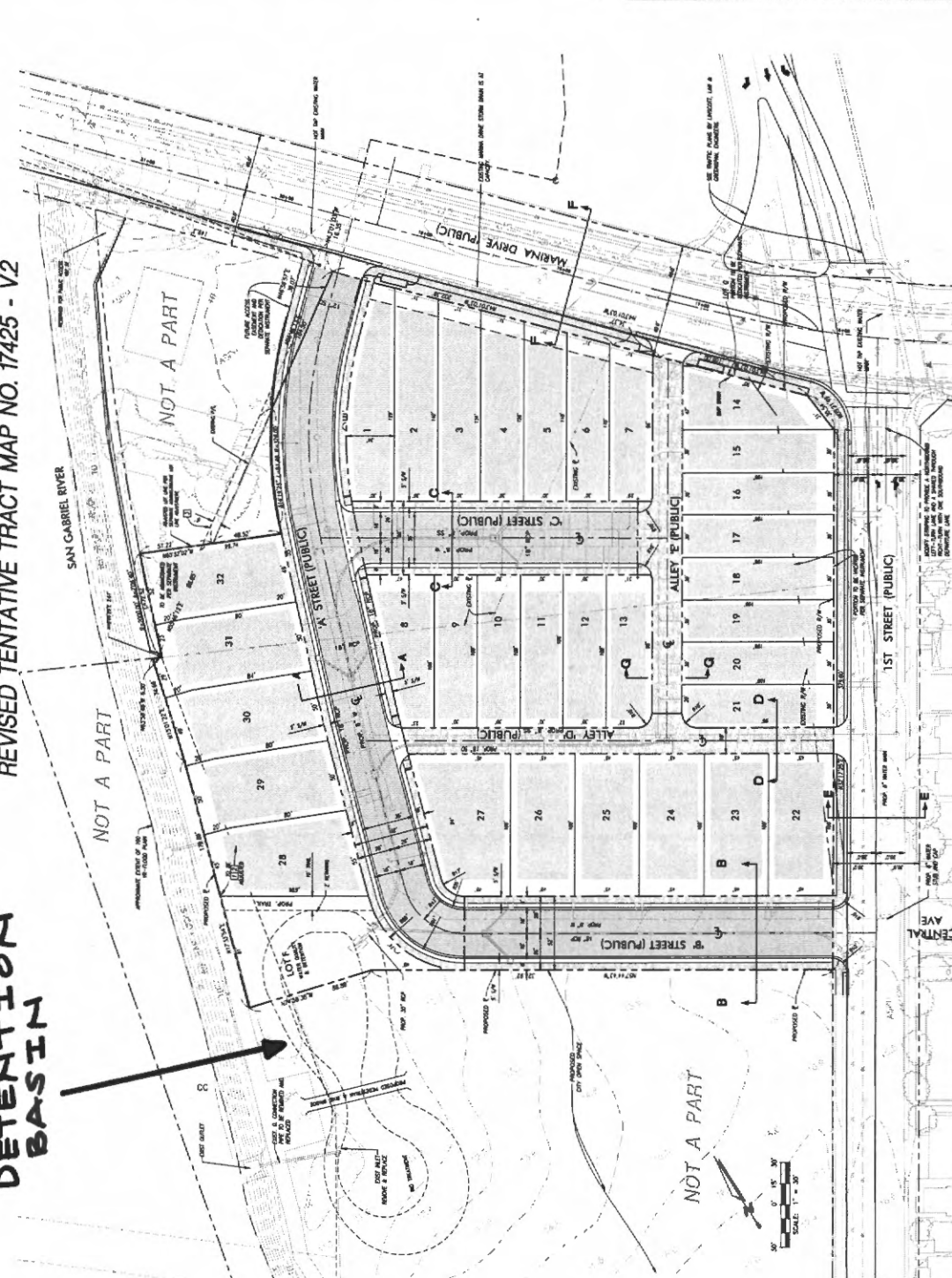
Year	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100
1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	

DATE:	11/30/12
SCALE:	AS SHOWN

NORTH  
SHEET #: C.1 of C.4

Ocean Place  
Tract No. 17425  
Seal Beach, California

PREPARED FOR:  
**Bay City Partners, LLC**  
627 Bayside Drive,  
Newport Beach, CA 92660-7213



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered by and between:

(a) Bay City Partners LLC, a California limited liability company (Also known as Bay Cities Partners, LLC) ("Bay City"), on behalf of itself and its successors, successors-in-interest and assigns, on the one hand; and

(b) The City of Seal Beach, a municipal corporation; the City of Seal Beach Redevelopment Agency and the City of Seal Beach Planning Commission (collectively, "City") on behalf of themselves and each of their agencies, divisions, departments, attorneys, staff members, agents and representatives, on the other.

The Agreement shall be effective as of March 16, 2011 (Effective Date).

The Agreement is entered into with respect to the following:

### RENTALS

A. Bay City represents that it holds fee title to vacant land of approximately 10.697 acres located between First Street and the San Gabriel River and between Marina Drive and the City beach in the City as shown on Exhibit A attached hereto (the "Property").

### Bay City's Proposed Residential Project

B. Bay City has owned the Property since approximately May 27, 2003. Bay City intends to pursue residential development of the Property.

C. Bay City seeks to develop a subdivision of 48 residential lots on the Property suitable for single-family detached homes with the balance remaining Open Space (the "Proposed Residential Project"). Such lots will be located on the Property generally and largely north of the westerly prolongation of the southern right-of-way boundary of Central Way as shown specifically on Exhibit B attached hereto (the "Proposed Residential Project Area"). Exhibit C-1 attached hereto is the legal description ("Legal Description") of the Proposed

Residential Project Area. The Proposed Residential Project is shown on plans submitted to the City and is attached hereto as Exhibit C-2 ("Proposed Residential Project Plans").

D. Beginning before 2009, Bay City applied to the City for some of the land use and other entitlements and permits required by the City for the Proposed Residential Project. These land use and other entitlements and permits consist of:

- (1) Certificate of Compliance 2009-01, approved and recorded March 10, 2009 as Instrument No. 2009000109534 in the Official Records, Orange County, California;
- (2) Certificate of Compliance 2010-01, approved and recorded August 27, 2010 as Instrument No. 2010000419498 in the Official Records, Orange County, California; and
- (3) Lot Line Adjustment, approved December 2010.

E. Bay City seeks to obtain all land use and other entitlements and permits from the City required by the City and other agencies for the Proposed Residential Project. Bay City also wishes to obtain a coastal development permit ("CDP") from the California Coastal Commission ("Coastal Commission") for the Proposed Residential Project.

F. In furtherance of this effort, Bay City intends to submit, on or before March 31, 2011, or as soon thereafter as reasonably possible, the remaining applications for all land use and other entitlements and permits required by the City for development of the Proposed Residential Project.

G. The remaining portion of the Property, not included in the Proposed Residential Project Area, lies generally and largely south of the westerly prolongation of the southern right-of-way boundary of Central Way as shown more specifically on Exhibit D attached hereto (the "Open Space").

#### **The City's River's End Project**

H. The City seeks to refurbish and improve its River's End Staging Area and San Gabriel River Bike Trail through its River's End Staging Area and San Gabriel River Bikeway Enhancement Plan (the "River's End Project"). Much of the River's End Project is located on property adjacent to the southwesterly boundary of the Property.

I. A segment of the bike trail that is part of the River's End Project crosses onto the Property along the San Gabriel River at the Property's westerly property line, as shown on Exhibit E attached hereto (the "Bike Trail Parcel"). The City wishes to acquire the Bike Trail Parcel from Bay City for the River's End Project. The City has not filed a complaint in eminent domain to acquire the Bike Trail Parcel.

J. In April 2005, the City successfully applied to the Rivers and Mountain Conservancy for a grant to help fund the River's End Project (the "RMC Grant").

K. In 2010, the City submitted an application to the Coastal Commission for a CDP for the River's End Project.

L. On October 26, 2010, Bay City submitted an objection to the Coastal Commission opposing the Commission's issuance of a CDP to the City for the River's End Project. Bay City asserted that portions of the River's End Project are located on the Property.

M. In November 2010, the Coastal Commission staff deemed the City's application for a CDP for the River's End Project incomplete.

#### **Bay City's Challenge to the River's End Project in the CEQA Lawsuit**

N. On April 19, 2010, Bay City filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the City, pursuant to the California Environmental Quality Act ("CEQA Lawsuit"). The CEQA Lawsuit is entitled *Bay City Partners LLC v. City of Seal Beach, et al.* (Orange County Superior Court Case No. 30-2010 00364553). In the CEQA Lawsuit, Bay City sought to challenge the City's certification of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the River's End Project.

O. On February 1, 2011, the Court entered Judgment in the CEQA Lawsuit. The Judgment granted Bay City's petition in part and denied it in part. On February 1, 2011, the Court issued a Writ of Mandate directed to the City. On March 1, 2011, Bay City appealed the Judgment denying its petition in part.



### The City's Condemnation Lawsuit

P. On September 23, 2009, the City filed a complaint in eminent domain entitled *City of Seal Beach v. Bay City Partners LLC, et al.* (Orange County Superior Court Case No. 30-2009 00305309) ("Condemnation Lawsuit"). In the Condemnation Lawsuit, the City sought, among other things, to acquire two portions of the Property located at First Street and Ocean Avenue. In particular, the City sought to acquire:

(1) A portion of Orange County Assessor's Parcel Numbers 043-171-02 and 043-172-13, as shown on Exhibit F attached hereto, in fee simple, reserving therefrom that non-exclusive easement for transportation of oil, gas and water, as more particularly set forth in that certain Easement Agreement dated February 17, 2009 and recorded November 2, 2009, as Instrument No. 2009000593882 in the Official Records, Orange County, California (the "Driveway Parcel"). The City asserted that it sought to acquire the Driveway Parcel for an access road.

(2) A portion of Orange County Assessor's Parcel Numbers 043-171-02 and 043-172-13, as shown on Exhibit G attached hereto, in fee simple, reserving therefrom that non-exclusive easement for transportation of oil, gas and water, as more particularly set forth in that certain Easement Agreement dated February 17, 2009 and recorded November 2, 2009, as Instrument No. 2009000593882 in the Official Records, Orange County, California (the "Sewer Parcel"). The City asserted that it sought to acquire the Sewer Parcel for a sewer maintenance area.

Q. The City asserted that it sought to acquire the Driveway Parcel for a public access roadway from First Street and Ocean Avenue to the public parking lot that serves the River's End Project. The City further asserted that it needed the Driveway Parcel in order to maintain public access to the public beach, the Pacific Ocean, Windsurfer Park, the First Street parking lot, and the River's End Café.

R. The City asserted that it sought to acquire the Sewer Parcel for a sewer maintenance area to maintain an existing City sewer line.

### The Settlement

S. The intentions of Bay City and the City in entering this Agreement include, without limitation:

- (1) Good faith consideration of land use and other entitlements and permits for Bay City's Proposed Residential Project, including issuance of a CDP from the Coastal Commission;
- (2) Compensation of Bay City for the transfer to the City of fee title to the Driveway Parcel, the Sewer Parcel, the Bike Trail Parcel, and the Open Space parcel, as promptly as possible;
- (3) Resolution of all existing, current disputes and litigation between Bay City and the City, finally and completely;
- (4) Approval and issuance of a CDP from the Coastal Commission for the City's River's End Project; and
- (5) Transfer of title to the Open Space, including the Driveway Parcel, the Sewer Parcel, and the Bike Trail Parcel, to the City upon the triggering event described in the Agreement.

NOW, THEREFORE, BASED ON THESE FACTS, AND IN CONSIDERATION FOR THE COVENANTS SET FORTH BELOW, BAY CITY AND THE CITY AGREE AS FOLLOWS:

1. **Concurrent with the Effective Date of the Agreement:** The parties agree that, within fourteen (14) days of the Effective Date of the Agreement:

**A. City's Obligations Concurrent With the Effective Date:**

(1) **\$900,000 Payment.** The City shall pay the amount of \$900,000 to Bay City concurrent with the Effective Date of the Agreement. Such \$900,000 payment to Bay City is non-refundable. Bay City shall have no obligations hereunder unless and until such timely payment occurs. The City shall not be entitled to a refund or reimbursement of any portion of such payment. In particular, there shall be no refund or reimbursement of such

payment, regardless of whether or when the Proposed Residential Project is approved by the City or the Coastal Commission as discussed in paragraphs 2 and 4, below. The \$900,000 payment shall be payable by check to Bay City Partners LLC.

(2) **Dismissal of the Condemnation Lawsuit.** The City shall dismiss the Condemnation Lawsuit without prejudice. The Condemnation Lawsuit may be re-filed, if at all, only in accordance with paragraph 4, below. The City acknowledges that such dismissal may result in an obligation on the City's part to reimburse Bay City's ordinary court costs (but not attorneys' fees) under Code of Civil Procedure section 1032. The parties estimate and agree that such ordinary costs are less than \$10,000.

(3) **Indemnity.** As a material term of the Agreement and the Lease, the City shall indemnify, save, hold harmless and defend Bay City, its members and its successors, successors-in-interest and assigns from and all claims, suits, causes of action, and liability for any damages, personal injury or death which may arise directly or indirectly, from the use of the Driveway Parcel, the Bike Trail Parcel or the Sewer Parcel by the City or the public.

(4) **Insurance.** As a material term of the Agreement and the Lease, within fourteen (14) days of entering the Lease, the City shall provide Bay City with evidence of insurance coverage carrying an annual aggregate limit of \$2,500,000 for the Driveway Parcel, the Bike Trail Parcel, and the Sewer Parcel.

**B. Bay City's Obligations Concurrent With the Effective Date:**

(1) **Lease of the Driveway Parcel and the Bike Trail Parcel.** Concurrent with the \$900,000 payment described in paragraph 1.A(1), above, the City and Bay City will enter a lease for the Driveway Parcel and the Bike Trail Parcel (the "Lease"), based on the terms sheet attached hereto as Exhibit H. Under the Lease, Bay City will lease the Driveway Parcel and the Bike Trail Parcel to the City. The City and Bay City agree that the term of the Lease will commence on March 31, 2011. The City and Bay City agree that the term of the Lease will terminate on the earlier of:

(a) March 31, 2015; or

(b) Conveyance of the Driveway Parcel and the Bike Trail Parcel to the City pursuant to the transaction described in paragraph 5.B, below; or

(c) If the Coastal Commission denies or declines to process further the Proposed Residential Project, then thirty (30) days thereafter such denial or declination. (Bay City shall determine, in its sole discretion, whether a Coastal Commission denial or declination has occurred. Bay City shall promptly notify the City in writing of such determination.)

**(2) Irrevocable Easement for the Sewer Parcel.** Upon Bay City's receipt of the \$900,000 payment described in paragraph 1.A(1), above, Bay City will convey to the City an irrevocable easement for the Sewer Parcel (the "Irrevocable Easement"). The Irrevocable Easement shall be for sewer access, installation and maintenance purposes only. The City shall be entitled to keep the Irrevocable Easement in perpetuity. The City shall not be required to reconvey to Bay City or abandon the Irrevocable Easement regardless of whether or when the Proposed Residential Project is approved by the City or the Coastal Commission as discussed in paragraphs 2 and 4, below.

**Dismissal of the CEQA Lawsuit.** Upon Bay City's receipt of the \$900,000 payment described in paragraph 1.A(1), above, Bay City shall also: (a) dismiss its appeal filed on March 1, 2011, of the CEQA Lawsuit; and (b) authorize its attorneys to enter into and execute a stipulation regarding the City's return to the February 1, 2011 Writ of Mandate.

**(4) Cooperation on the River's End Project.** Upon Bay City's receipt of the \$900,000 payment described in paragraph 1.A(1), above, Bay City shall also: (a) withdraw its opposition with the Coastal Commission to the City's application for a CDP for the River's End Project; and (b) take reasonable steps, upon written request from the City, to: (i) assist the City in obtaining a CDP from the Coastal Commission for the River's End Project; and (ii) assist the City in expediting the River's End Project to help the City avoid losing the

RMC Grant. For purposes of Bay City's obligation to take "reasonable steps" to assist the City, "reasonable steps" shall not require Bay City to spend any money or pay any money to the City.

2. **Concurrent Upon Bay City's Proposed Residential Project Application:** The parties further agree as follows:

A. **Bay City's Obligations Concurrent With Bay City's Proposed Residential Project Application:**

Bay City will submit to the City the necessary applications, information and documents for all land use and other entitlements and permits that the City requires for the Proposed Residential Project within the time frame described in paragraph F of the General Terms, above.

B. **City's Obligations Concurrent With Bay City's Proposed Residential Project Application - - City Consideration of Bay City's Proposed Residential Project:**

(1) **Consideration.** Although the City cannot guarantee approval of the Proposed Residential Project, any of Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project, Bay City and the City's staff expect that such consideration of the Proposed Residential Project will occur, and as a matter of fact, mutually represent to one another that such consideration is foreseeable, reasonable, and expected. The parties further acknowledge that all obligations of Bay City in this paragraph 2A shall be contingent on such timely consideration.

(2) In furtherance of consideration of the Proposed Residential Project, the City specifically agrees as follows:

(a) The City's staff shall use each of his or her best efforts to secure consideration of (i) the Proposed Residential Project as shown on the Proposed Residential Project Plans; and (ii) Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project subject to CEQA analysis, findings, and mitigation measures;



(b) The City's staff shall each recommend to the Planning Commission and City Council that the City's staff in good faith considered the Proposed Residential Project and Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project;

(c) The City's staff shall work diligently and in good faith with Bay City to expeditiously accomplish consideration of the Proposed Residential Project and Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project upon Bay City's submission of the applications, information and documents necessary for processing approval;

(d) The City shall process expeditiously in good faith the applications, information and documents for the Proposed Residential Project. The City shall expedite the processing of any current applications for land use and other entitlements and permits for the Proposed Residential Project already on file with the City and any future applications that Bay City may submit to the City for the Proposed Residential Project, according to a schedule developed by the parties.

(3) **Terms of Approval.** In connection with such approval, the City specifically agrees: Bay City's conveyance of the Open Space to the City discussed in paragraph 5.B, below, satisfies all of the following possible exactions for the Proposed Residential Project:

- (a) Park fees ("Quimby fees");
- (b) Park improvement obligations;
- (c) Affordable housing requirements (either in lieu fees or on-site improvements);

In no event shall the City require or impose additional park fees ("Quimby fees"); additional park improvement obligations; or additional affordable housing requirements (either as in lieu fees or on site improvements) for the Proposed Residential Project. The parties will amend the existing reimbursement agreement between the parties to

reduce planning staff overhead charges from 17.5% to 8% for the Proposed Residential Project. The City waives the Transportation Facilities Fee for the Proposed Residential Project.

(4) **Hearing on Project.** On or about March 31, 2012, or as soon thereafter as the City concludes is reasonably and legally possible, and subject to Bay City's timely submittal of all necessary applications, studies, reports and plans, the City Council will hold a hearing for final action on approval of the Proposed Residential Project and Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project.

(a) At the hearing, the City Council will consider, among other things: the terms of the Agreement; Bay City's desire to obtain prompt approval of the Proposed Residential Project; and the fact that the parties have settled current disputes and litigation between the parties through the Agreement.

(b) After all legal and necessary notices and deliberations, the City Council may issue a final approval of the Proposed Residential Project and Bay City's applications for land use and other entitlements and permits for the Proposed Residential Project.

(c) Nothing herein shall be deemed to constrain or limit the City's legislative discretion.

(5) The City agrees that the "sitting area" shown on the River's End Project plans, attached hereto, shall be moved to a location south of the westerly prolongation of the southerly right-of-way of Central Way to allow 3,500 square feet of the San Gabriel River bike path to be incorporated into the Proposed Residential Project at no cost to the City.

3. **If And When the City Approves the Proposed Residential Project:** If and when the City Council approves the Proposed Residential Project discussed in paragraph 2, above, the City agrees to: (a) take reasonable steps to assist Bay City in obtaining a CDP from the Coastal Commission for the Proposed Residential Project; (b) testify on behalf of Bay City in favor of a CDP for the Proposed Residential Project before the Coastal Commission at any

hearing; and (c) if legally permissible, be a co-applicant with Bay City for a CDP from the Coastal Commission for the Proposed Residential Project and removal by the City of the fence surrounding the Open Space to be conveyed to the City upon receipt of a CDP by Bay City and Construction by the City of a replacement fence along the new common property line. For the purposes of City's obligations in this paragraph 3 to assist Bay City, such obligations shall not require City to spend any money or pay any money to Bay City (other than the cost associated with the fence).

4. **If No City Approval of the Proposed Residential Project:** If the City does not approve the Proposed Residential Project, then the parties have obligations under paragraph 5, below, of the Agreement. Instead, the City shall promptly consider acquiring through negotiation or eminent domain, if necessary, the Driveway Parcel and the Bike Trail Parcel. In the event the City Council authorizes the acquisition of the Driveway Parcel and the Bike Trail Parcel, Bay City and its assignees waive and affirm all claims associated with the adoption of a resolution of eminent domain, right of way, precondemnation activities and any other claims or defenses previously waived in the eminent domain matter identified in Recital P and not related to valuation of the subject interests. The City agrees that the larger parcel for the Driveway Parcel is as previously stipulated in the eminent domain matter identified in Recital P. Such acquisition shall serve to acquire not only the Driveway Parcel and the Bike Trail Parcel as well.

5. **Concurrent With the Coastal Commission's Issuance of a CDP for the Proposed Residential Project:** Promptly upon the Coastal Commission's issuance of a CDP to Bay City for the Proposed Residential Project, the parties agree as follows:

A. **City's Obligations Concurrent With Issuance of a CDP for the Proposed Residential Project:**

(1) **\$1,100,000 Payment.** The City will pay the amount of \$1,100,000 to Bay City or its successors, successors-in-interest and assigns immediately upon recording of the deed described in paragraph B, below.

(2) **Donation Tax Credit.** The City agrees that Bay City may take a donation credit for tax purposes for all of the land Bay City transfers to the City under the Agreement. The donation credit may be for the difference between Bay City's appraised value for the land transferred and the total cash compensation of \$2,000,000 paid to Bay City for the land transferred. The City's agreement to the donation credit and to use of Bay City's appraised value does not obligate the City to agree with Bay City's appraised value.

(3) **Transfer of City-Owned Property.** The City will convey by quitclaim deed to Bay City fee simple title to approximately 7,000 square feet of land that the City owns adjacent to the corner of Marina Drive and First Street and legally described in Exhibit K attached hereto ("City-Owned Property").

**B. Bay City's Obligations Concurrent with Issuance of a CDP for the Proposed Residential Project - - Purchase and Sale Agreement and Open Space:**

The City and Bay City will enter into a purchase and sale agreement that contains all of the standard provisions (the "Purchase and Sale Agreement"), including a provision awarding attorneys' fees, costs and expenses to the prevailing party in any action or proceeding instituted to interpret or enforce any of the terms or provisions of the Purchase and Sale Agreement. Pursuant to the Purchase and Sale Agreement, Bay City will convey to the City, by quitclaim deed, fee title to all of the land described in Exhibit D attached hereto and identified as the "Open Space." The Open Space that Bay City will convey to the City by quitclaim deed consists of:

(1) All of the land south of the westerly prolongation of the southern right-of-way boundary of Central Way, *except*  $\pm 1,200$  square feet of land within the Proposed Residential Project Area south of the westerly prolongation of the southern right-of-way boundary of Central Way as shown and identified on Exhibit J attached hereto.

- (2) The Driveway Parcel;
- (3) The Sewer Parcel; and
- (4) The Bike Trail Parcel.

The City agrees that Bay City's conveyance of the Open Space to the City shall be for the purpose of future open space and park uses. The quitclaim deed from Bay City to the City conveying the Open Space to the City will include a deed restriction limiting the uses of the Open Space to open space and park uses. The City may allow Bay City or its successors, successors-in-interest and assigns limited grading on the "Open Space" parcel as part of the review and approval process as shown on Exhibit C-2.

6. **If No Issuance of a CDP By the Coastal Commission for the Proposed Residential Project:** If the Coastal Commission does not issue a CDP for the Proposed Residential Project, the parties shall have no obligation under paragraph 5, above, of the Agreement.

7. **DCOR Oil and Gas License and Easement:**

A. Bay City and its assigns shall retain all rights to and interests in the easement for transportation of oil, gas and water, as more particularly set forth in that certain Easement Agreement dated January 17, 2009 and recorded November 2, 2009, as Instrument No. 2009000593882 in the Official Records, Orange County, California, and as shown on Exhibit L attached hereto ("DCOR Easement").

B. Bay City and its assigns shall retain all rights to and interests in the oil and gas license with DCOR Cuadras Offshore Resources, LLC ("DCOR") or its successors as shown on Exhibit M attached hereto and located within the DCOR Easement.

C. The City agrees that it will not (a) interfere with or impede the normal course of business under either the license with DCOR or the DCOR Easement; or (b) interfere with any of the pipelines existing under either the license with DCOR or the DCOR Easement.

8. **Standard Provisions:**

A. **Entire Agreement.**

The Agreement contains the entire agreement and understanding concerning the subject matter hereof between the parties, and supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral, express or implied,



of any type whatsoever. Each of the parties hereto acknowledges that neither any other party hereto, nor any agent or attorney of any other party has made any promise, representation or warranty whatsoever, expressed or implied, not contained herein concerning the subject matter hereof to induce it to execute the Agreement, and acknowledges and warrants that the Agreement is not being executed by such party in reliance on any promise, representation or warranty not contained herein.

**B. Mutual Release.**

(1) Bay City, for itself and each of its agents, representatives, heirs, executors, administrators, co-owners, co-tenants, subtenants, successors-in-interest, assigns past and present, officers, directors, partners, trusts, trustees, members, contractors and subcontractors, and each of them, hereby releases and discharges the City, and each of its agents, representatives, heirs, executors, administrators, co-owners, co-tenants, successors, successors-in-interest, assigns past and present, officers, directors, partners, trusts, trustees, members, contractors and subcontractors, and each of them, from any and all claims, demands, actions, causes of action, obligations, liabilities, losses, debts, contracts, covenants, duties, damages, expenses, costs, costs on appeal and charges of whatever kind, whether known or unknown, suspected or unsuspected, which exist or may exist as of the Effective Date of the Agreement regarding and arising from or pertaining to: (a) the Condemnation Lawsuit; and (b) the CEQA Lawsuit.

(2) The City, on behalf of itself and each of its agents, representatives, heirs, executors, administrators, co-owners, co-tenants, subtenants, successors, successors-in-interest, assigns past and present, officers, directors, partners, trusts, trustees, members, contractors and subcontractors, and each of them, hereby releases and discharges Bay City, and each of its agents, representatives, heirs, executors, administrators, co-owners, co-tenants, subtenants, successors, successors-in-interest, assigns past and present, officers, directors, partners, trusts, trustees, members, contractors and subcontractors, and each of them, from any and all claims, demands, actions, causes of action, obligations, liabilities, losses, debts, contracts,

covenants, duties, damages, expenses, costs, costs on appeal and charges of whatever kind, whether known or unknown, suspected or unsuspected, which exist or may exist as of the Effective Date of the Agreement regarding and/or arising from or pertaining to: (a) the Condemnation Lawsuit; and (b) the CEQA Lawsuit.

**C. Civil Code Section 1542.**

The parties hereto acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The parties hereto, and each of them, waive and relinquish all rights and benefits to the full extent that they may lawfully waive all such rights and benefits as existed or currently exist, but such waiver shall not apply to such claims that may arise in the future.

**D. Attorneys' Fees, Costs and Expenses.**

(1) Each party shall bear its own attorneys' fees and litigation expenses.

(2) In any action or proceeding instituted to interpret or enforce any of the terms or provisions of this Agreement, the prevailing party or parties shall be entitled to attorneys' fees, court costs and expenses incurred by the prevailing party in connection with such action or proceeding.

**E. Successors and Assigns.**

The Agreement shall inure to the benefit of and be binding upon each party hereto, including each party's respective agents, representatives, heirs, administrators, executors, successors, successors-in-interest, and assigns.

**F. Counterparts.**

The Agreement may be executed in one or more counterparts, each of which, when taken together, shall constitute a completely executed original. The counterparts may be transmitted by facsimile, which shall be deemed original signatures.

**G. Authority.**

(1) Bay City warrants and represents that each signatory to the Agreement on behalf of Bay City has authority to sign the Agreement in his or her representative capacity. Similarly, the City warrants and represents that its signatory has authority to sign the Agreement on behalf of the City.

(2) Each of the undersigned represents and warrants that he, she or it is fully authorized to enter the Agreement on behalf of his, her or its principal and to bind each principal to the terms set forth herein without further authorization of any principal.

**H. Resolution of Disputes.**

Pursuant to Code of Civil Procedure section 664.6, the parties agree that the Orange County Superior Court will retain jurisdiction over the parties and the Agreement. The Court shall resolve all disputes, controversies and claims relating to the Agreement and the obligations of the parties under it. The disputes, controversies, and claims covered by this paragraph include, without limitation, any dispute sounding in contract or tort, any dispute as to the making, validity, interpretation, construction or enforceability of the Agreement, and any dispute seeking legal, equitable, provisional or permanent relief relating to the Agreement.

**I. Notice.**

(1) If to the City:

City of Seal Beach  
211 8th Street  
Seal Beach, California 90740  
Attn: City Manager

With Copy To:  
Quinn Barrow, Esq.  
Richards, Watson & Gershon  
355 South Grand Avenue, 40th Floor  
Los Angeles, California 90071-3101  
Email: [qbarrow@rwglaw.com](mailto:qbarrow@rwglaw.com)  
Fax No.: (213) 626-0078

(2) If to Bay City:

Bay City Partners LLC  
2999 Westminster Avenue, Suite 211  
Seal Beach, California 90740  
Attn: Rocky Gentner  
Email: [Rockyg@gentnerandcompany.com](mailto:Rockyg@gentnerandcompany.com)

With Copy To:  
John C. Murphy, Esq.  
Murphy & Evertz LLP  
650 Town Center Drive, Suite 550  
Costa Mesa, California 92626  
Email: [jmurphy@murphyevertz.com](mailto:jmurphy@murphyevertz.com)  
Fax No.: (714) 277-1777

**J. Jurisdiction.**

The Agreement shall be deemed by the parties to have been executed and delivered within the State of California, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

**K. Venue.**

The parties hereto agree that any action, suit, claim or other proceeding of any type that may be prosecuted, initiated or attempted in connection with the Agreement, shall be brought in the Superior Court of the State of California, County of Orange.

**L. Construction.**

Each party has participated in the drafting and preparation of the Agreement, or has had the opportunity to do so. Hence, the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be employed in any interpretation of the Agreement.

**M. Severability.**

In the event any part of the Agreement should be found invalid, unenforceable or nonbinding, the remaining portions will remain in force and fully binding.

**N. Waiver of Breach.**

The waiver by any party of any breach of any term in the Agreement shall not be construed as a waiver of any subsequent breach.


**O. Voluntary Agreement.**

Each party hereto acknowledges and warrants that such party has been represented by counsel of its own choice throughout all negotiations which preceded the execution of the Agreement. Each party has read or has had read to such party the Agreement, and has had it satisfactorily explained to such party by counsel representing such party. Accordingly, each party is satisfied with the settlement contained herein and has signed the Agreement voluntarily.

IN WITNESS WHEREOF, the City and Bay City cause the Agreement to be executed.

Dated: 3-16, 2011

CITY OF SEAL BEACH,  
A municipal corporation

  
Michael Le...  
Mayor of City of Seal Beach

Dated: 3-16, 2011

SEAL BEACH REDEVELOPMENT AGENCY

By: 

David Sloan  
Chairman

Dated: \_\_\_\_\_, 2011

BAY CITY PARTNERS LLC,  
A California limited liability company

By: \_\_\_\_\_

Rocky Gentner  
Member



Dated: 3/16, 2011

BAY CITY PARTNERS LLC,  
A California limited liability company

By: Bob Griffith  
Bob Griffith  
Member

Dated: 3/16, 2011

BAY CITY PARTNERS LLC,  
A California limited liability company

By: James R. Hurst  
James R. Hurst  
Member

Dated: 3/16/2011, 2011

BAY CITY PARTNERS LLC,  
A California limited liability company

By: [Signature]  
[Signature]  
Member

Dated: 3-16-2011, 2011

BAY CITY PARTNERS LLC,  
A California limited liability company

By: Cindy Atkinson  
Cindy Atkinson  
Member

APPROVED AS TO FORM:

Dated: 3-16, 2011

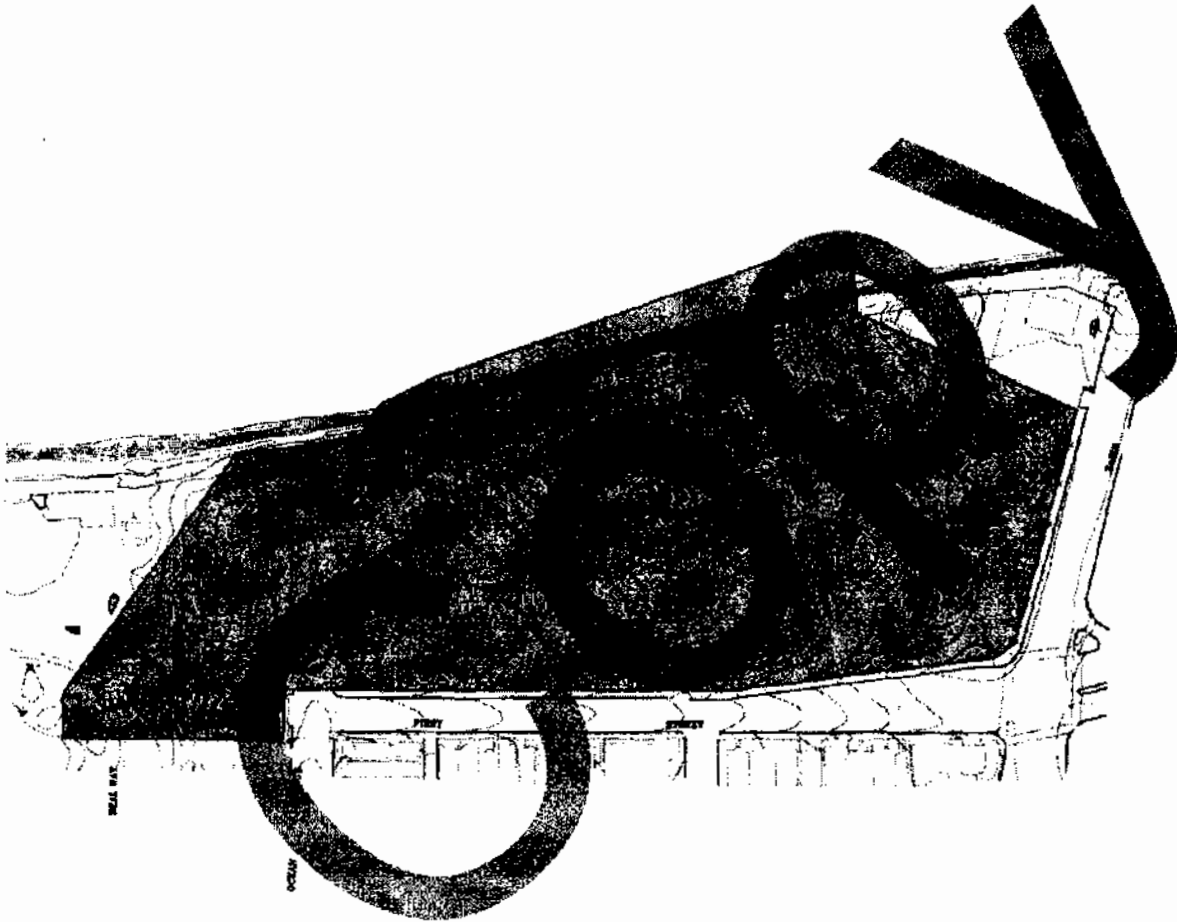
CITY OF SEAL BEACH,  
A municipal corporation

By: Quinn M. Barrow  
Quinn M. Barrow  
City Attorney of City of Seal Beach

**EXHIBIT A**

**BAY CITY PARTNERS LLC**

**THE PROPERTY**



A-1

**Exhibit A**  
**Legal Description of Property**

**PARCEL 1:**

LOTS 1, 2 AND 3 IN BLOCK 100 OF TRACT NO. 694, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OFFICIAL RECORDS OF SAID COUNTY.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, IN BOOK 20, PAGES 21-22 INCLUSIVE OF RECORD OF SURVEYS.

**PARCEL 2:**

THAT PORTION OF TIDE LAND LOCATION NO. 137 (SUBDIVISION NO. 106) AS PRESENTED BY THE STATE OF CALIFORNIA ON FEBRUARY 12, 1901 AND RECORDED APRIL 27, 1901 IN BOOK 9, PAGE 105 OF PATENTS, RECORDS OF LOS ANGELES COUNTY AND RECORDED SEPTEMBER 5, 1905 IN BOOK 1, PAGE 231 OF DEEDS, RECORDS OF ORANGE COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF THE BOUNDARY SURVEY OF THE RANCHO LOS ALAMITOS, AS PER MAP RECORDED IN BOOK 1, PAGES 461-462 OF PATENTS OF SAID LOS ANGELES COUNTY; THENCE ALONG SAID BOUNDARY NORTH 63° 00' 00" WEST 230.47 FEET TO A LINE PARALLEL WITH AND 200.00 FEET NORTHWESTERLY FROM THE RANCHO LINE; BETWEEN BOUNDARY STATIONS 49 AND 50; THENCE ALONG SAID PARALLEL LINE NORTH 54° 48' 00" EAST 1228.77 FEET TO A LINE PARALLEL WITH AND 30.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THE 200 FOOT STRIP OF LAND DESCRIBED IN OUTCLAIMS TO THE PACIFIC ELECTRIC RAILWAY COMPANY RECORDED FEBRUARY 21, 1901 IN BOOK 514, PAGE 44 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 43° 15' 00" EAST 201.52 FEET TO THE RANCHO LINE; THENCE SOUTH 54° 48' 00" WEST 1136.60 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THE PORTION Lying NORTHEASTERLY OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES RECORDED IN BOOK 426, PAGE 378 OF DEEDS, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND SUBSEQUENTLY RELINQUISHED TO THE CITY OF SEAL BEACH BY INSTRUMENT RECORDED IN BOOK 700, PAGE 260 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN STATIONS 49 AND 50 OF SAID RANCHO LOS ALAMITOS, DISTANT NORTH 54° 48' 00" EAST 213.27 FEET FROM SAID STATION 49; THENCE NORTH 43° 36' 00" WEST 202.36 FEET TO A LINE PARALLEL WITH AND DISTANT NORTHWESTERLY 200.00 FEET FROM SAID BOUNDARY LINE; THENCE NORTH 54° 48' 00" EAST 80.94 FEET ALONG SAID PARALLEL LINE; THENCE SOUTH 43° 36' 00" EAST 202.36 FEET TO SAID BOUNDARY LINE; THENCE SOUTH 54° 48' 00" WEST 80.94 FEET ALONG SAID BOUNDARY LINE TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN AS PARCEL A IN LICENSEE SURVEYORS MAP OF THE TIDELANDS EAST OF NAPLES FILED IN BOOK 2, PAGES 47 AND 48 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE.

**PARCEL 3:**

THAT PORTION OF THE SOUTH HALF OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST, INCLUDED WITHIN LOT C-1 OF THE RANCHO LOS ALAMITOS, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAPS 1 AND 2 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF CALIFORNIA, AND FOR THE COUNTY OF LOS ANGELES, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL ORDER OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF SAID RANCHO LOS ALAMITOS; THENCE NORTH 54° 47' 05" EAST 213.27 FEET ALONG THE WESTERLY BOUNDARY OF SAID RANCHO TO THE SOUTHWESTERLY LINE OF MARINA DRIVE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 436, PAGE 107 OF THE RECORDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 88° 02' 50" EAST 33.50 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 940 FEET; THENCE SOUTHEASTERLY 127.71 FEET ALONG SAID CURVE TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON A MAP OF BAY CITY RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 31° 17' 50" WEST 137.49 FEET ALONG SAID PROLONGATION TO THE SOUTHWESTERLY LINE OF SAID LOT C; THENCE NORTH 65° 02' 50" WEST 150.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 1211, PAGE 201, OFFICIAL RECORDS.

**PARCEL 4:**

THAT PORTION OF BLOCK B OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING NORTHWESTERLY OF THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF FIRST STREET AS SHOWN ON SAID MAP.

EXCEPT THAT PORTION THEREOF LYING NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS DESCRIBED IN THE DEED TO SAID CITY RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION THEREOF LYING SOUTHERLY AND SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF SAID SOUTHEASTERLY LINE OF FIRST STREET 273.93 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH  $58^{\circ} 54'$  WEST 55.33 FEET; THENCE NORTH  $22^{\circ} 31'$  WEST 366.64 FEET; THENCE NORTH  $24^{\circ} 31'$  EAST 71.78 FEET TO THE SOUTHWESTERLY LINE OF OCEAN BOULEVARD, AS SHOWN ON SAID MAP.

**PARCEL 5:**

THAT PORTION OF BLOCK "B" TOGETHER WITH THAT PORTION OF OCEAN AVENUE STREET, IN THE BAY CITY TRACT, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING WEST OF THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF BLOCK "C" OF SAID BAY CITY TRACT DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON SAID MAP, WITH THE NORTHEASTERLY LINE OF SAID BLOCK "B"; THENCE NORTH  $11^{\circ} 17' 00''$  EAST 111 FEET ALONG SAID SOUTHWESTERLY PROLONGATION TO THE MOST SOUTHERLY CORNER OF SAID BLOCK "C"; THENCE NORTH  $55^{\circ}$  WEST 311 FEET ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK "C" TO THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 20, 1933 IN BOOK 612, PAGE 317 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTHERLY ALONG THE SOUTHERLY PROLONGATION OF SAID EASTERLY LINE, AND SEAL BEACH BOUNDARY AGREEMENT NO. 1 RECORDED APRIL 8, 1968 IN BOOK 8336 PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY TO THE NORTHERLY TERMINUS OF THE AGREEMENT LINE BETWEEN THE STATE LANDS COMMISSION AND THE CITY OF SEAL BEACH AND THE CITY OF LOS ANGELES RECORDED AUGUST 9, 1967 IN BOOK 8336 PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH  $24^{\circ} 31' 00''$  WEST 60.00 FEET ALONG LAST SAID AGREEMENT LINE TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO THE CITY OF SEAL BEACH RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH  $67^{\circ} 06' 27''$  EAST 297.06 FEET ALONG THE SOUTHERLY LINE OF SAID LAND OF THE CITY OF SEAL BEACH, SAID SOUTHERLY LINE BEING THE SOUTHERLY LINE OF OCEAN AVENUE AS SET FORTH IN RESOLUTION NO. 1972 OF THE CITY OF SEAL BEACH AND RECORDED IN SAID BOOK 536, PAGE 49 OF OFFICIAL RECORDS, TO THE POINT OF BEGINNING.

A PORTION OF SAID OCEAN AVE. WAS VACATED UPON APPLICATION OF THE BAYSIDE LAND COMPANY AND ACTION OF THE TRUSTEES OF THE CITY OF SEAL BEACH RECORDED AUGUST 18, 1914 IN MINUTE BOOK 11 AT PAGE 51.



**PARCEL 6:**

BLOCK C OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT A-2, IN THE RANCHO LOS ALAMITOS INCLUDED WITHIN SAID CITY OF SEAL BEACH, AS SHOWN ON MAP NO. 1 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, LYING WESTERLY OF SAID BLOCK C AND LYING NORTHERLY OF THE WESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF SAID BLOCK C.

EXCEPT FROM THE ABOVE DESCRIBED PORTION OF SAID LOT A-2 THAT LIES THEREOF LYING WESTERLY AND SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT NORTH 65° 00' 00" WEST, 330.00 FEET FROM STATION NO. 49 OF THE PATENT BOUNDARY LINE OF THE RANCHO LOS ALAMITOS, LYING IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" AND ON THE WESTERN SHORE OF THE INLET FROM THE PACIFIC OCEAN TO ALAMITOS BAY: THENCE SOUTH 12° 00' 00" WEST, 547.80 FEET; THENCE SOUTH 6° 00' 00" WEST, 69.95 FEET; THENCE SOUTH 29° 15' 00" EAST, 38.72 FEET TO THE POINT OF INTERSECTION WITH THE NORTHEASTERLY LINE OF OCEAN AVE, AS SHOWN ON AFORESAID MAP OF BAY CITY; THENCE SOUTH 55° 43' 00" EAST, ALONG SAID LINE OF OCEAN AVENUE 1263 FEET TO THE SOUTHWESTERLY CORNER OF SAID BLOCK "C".

ALSO EXCEPT THAT PORTION THEREOF INCLUDED WITHIN TRACT 694, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 121, PAGE 201, OFFICIAL RECORDS.


EXCEPT FROM SAID PARCELS 1 THROUGH 6 ALL WATER AND WATER RIGHTS APPURTENANT TO EITHER SURFACE OR SUBSURFACE AND ALSO EXCEPT THEREFROM ALL OIL, GAS, AND PETROLEUM, OR OTHER MINERAL OR HYDROCARBON SUBSTANCES, WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OF SAID LAND FOR SUCH USE, AS RESERVED BY THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, IN THE GRANT DEED RECORDED MAY 27, 2003 AS INSTRUMENT NO. 2003000612579, OF OFFICIAL RECORDS.

**END OF LEGAL DESCRIPTION**

### BOUNDARY AND EASEMENT MAP

1-6-1964

the 1990s, the industry has been hit hard by a combination of factors. The most significant of these is the decline in the number of people working in the industry. This has been caused by a number of factors, including the fact that many people have left the industry to pursue other careers, and the fact that the industry has become less attractive to new entrants. This has led to a shortage of skilled workers, which has in turn led to a decline in the quality of the work produced. Another major factor has been the decline in the number of people working in the industry. This has been caused by a number of factors, including the fact that many people have left the industry to pursue other careers, and the fact that the industry has become less attractive to new entrants. This has led to a shortage of skilled workers, which has in turn led to a decline in the quality of the work produced.



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6. What is the author's main conclusion?
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9. What is the author's main recommendation?
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- and 47. "Deaths and Burial in 1917."
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- and 96. "Deaths and Burial in 1966."
- and 97. "Deaths and Burial in 1967."
- and 98. "Deaths and Burial in 1968."
- and 99. "Deaths and Burial in 1969."
- and 100. "Deaths and Burial in 1970."

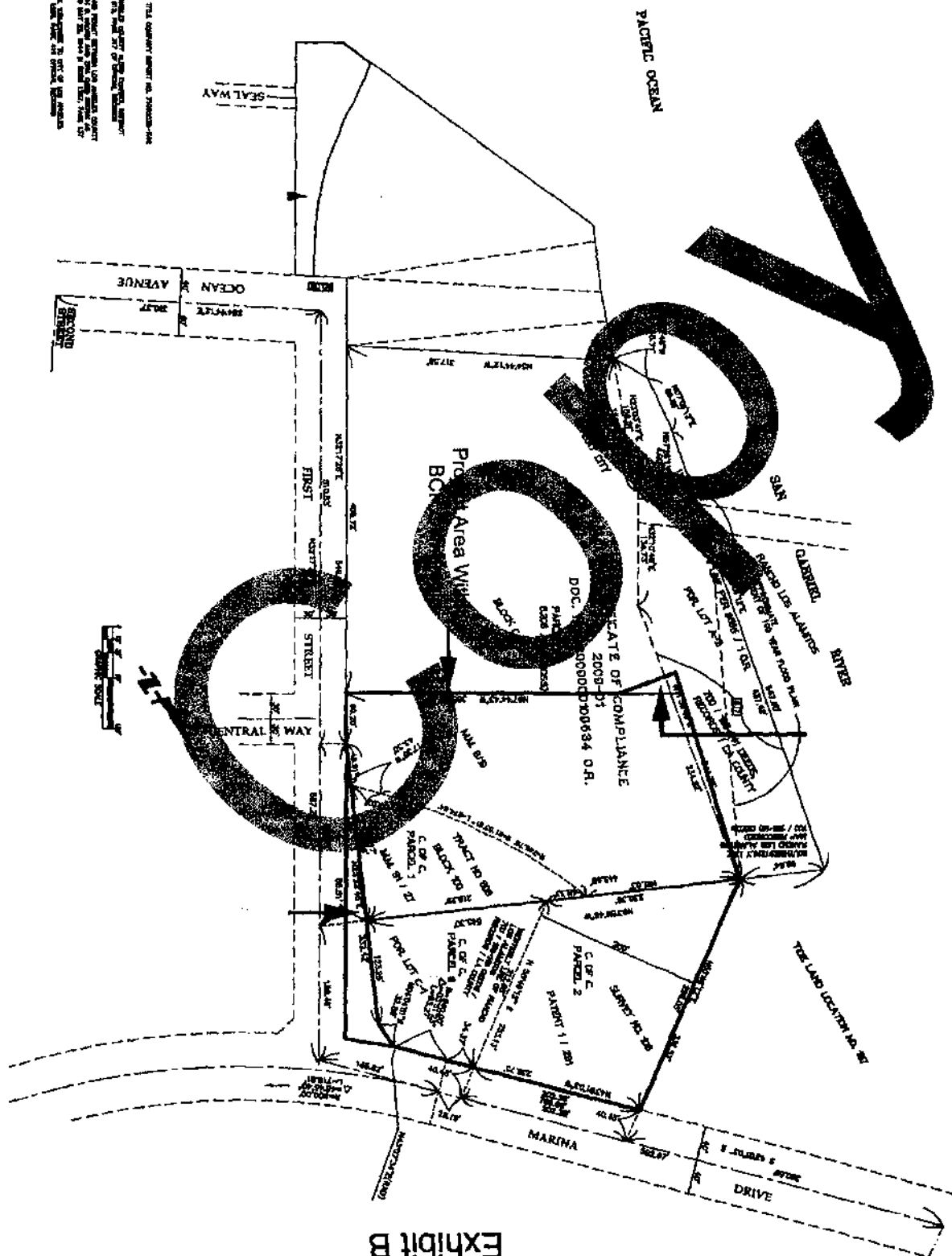
DATE	NOVEMBER 11, 2002
TO	FOR
10	2

PREPARED FOR:  
SAY CITY PARTNERS, LLC  
AND  
CHICAGO TITLE COMPANY

**COAST SURVEYING, INC.**  
23031 PLYMOUTH LOOP, SUITE B  
TUSTIN, CALIFORNIA 92780-8557

**INTERVIEW NOTES**

1. NO RELEASED FOR AIR  
2. ALSO INTERVIEWED ABOUT THE  
RECENT "GREAT COAST GUARDIAN"  
AND "LAWYER" MAGAZINE, 19, 20, 21



## Exhibit B

## EXHIBIT "C-1"

### LEGAL DESCRIPTION "PROPOSED RESIDENTIAL PROJECT AREA"

#### LOT "D"

LOTS 1, 2 AND 3 IN BLOCK 100 OF TRACT NO. 698, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OF OFFICIAL RECORDS.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, IN BOOK 90, PAGE 30 TO 30 INCLUSIVE OF RECORD OF SURVEY.

#### LOT "E"

THAT PORTION OF TIDE LAND LOCATION NO. 137 (SURVEY NO. 106) AS REPRESENTED BY THE STATE OF CALIFORNIA ON FEBRUARY 12, 1901 AND RECORDED APRIL 27, 1901 IN BOOK 9, PAGE 105 OF PATENTES, RECORDS OF LOS ANGELES COUNTY AND RECORDED SEPTEMBER 5, 1905 IN BOOK 1, PAGE 231 OF PATENTES, RECORDS OF ORANGE COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE STATION 49 OF THE BOUNDARY SURVEY OF THE RANCHO LOS ALAMITOS, AS PER MAP RECORDED IN BOOK 1, PAGES 46 AND 47 OF PATENTES OF SAID LOS ANGELES COUNTY; THENCE ALONG SAID BOUNDARY NORTH 00° 00' WEST 230.47 FEET TO A LINE PARALLEL WITH AND 200.00 FEET NORTHWESTERLY FROM THE RANCHO LINE BETWEEN BOUNDARY STATIONS 49 AND 50; THENCE ALONG SAID PARALLEL LINE NORTH 54° 48' 00" EAST 1226.40 FEET TO A LINE PARALLEL WITH AND 30.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THE 200 FOOT STRIP OR LAND DESCRIBED IN QUITCLAIM DEED TO THE PACIFIC ELECTRIC RAILWAY COMPANY RECORDED FEBRUARY 21, 1924 IN BOOK 5, PAGE 44 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 42° 15' 00" EAST 201.52 FEET TO SAID RANCHO LINE; THENCE SOUTH 54° 48' 00" WEST 1136.60 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION Lying NORTHEASTERLY OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES RECORDED IN BOOK 426, PAGE 378 OF DEEDS, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND SUBSEQUENTLY RELIQUISHED TO THE CITY OF SEAL BEACH BY INSTRUMENT RECORDED IN BOOK 700, PAGE 260 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN STATIONS 49 AND 50 OF SAID RANCHO LOS ALAMITOS DISTANT NORTH 54° 48' 00" EAST 213.27 FEET FROM SAID STATION 49; THENCE NORTH 43° 56' 00" WEST 202.36 FEET TO A LINE PARALLEL WITH AND DISTANT NORTHWESTERLY 200.00 FEET FROM SAID BOUNDARY LINE; THENCE NORTH 54° 48' 00" EAST 80.94 FEET ALONG SAID PARALLEL LINE; THENCE SOUTH 43° 56' 00" EAST 202.36 FEET TO SAID BOUNDARY LINE; THENCE SOUTH 54° 48' 00" WEST 80.94 FEET ALONG SAID BOUNDARY LINE TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN AS PARCEL A IN LICENSE SURVEYORS MAP OF THE TIDELANDS EAST OF NAPLES FILED IN BOOK 2, PAGES 47 AND 48

OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE.

**LOT "F"**

THAT PORTION OF THE SOUTH HALF OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST, INCLUDED WITHIN LOT C-1 OF THE RANCHO LOS ALAMITOS, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAPS 1 AND 2 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF SAID RANCHO LOS ALAMITOS; THENCE NORTH 54° 05' EAST 213.27 FEET ALONG THE WESTERLY BOUNDARY OF SAID RANCHO TO THE SOUTHWESTERLY LINE OF MARINA DRIVE, AS DESCRIBED IN THE DEED OF THE STATE OF CALIFORNIA, RECORDED IN BOOK 436, PAGE 107 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 44° 02' 00" WEST 100.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 940 FEET; THENCE SOUTHEASTERLY 123.71 FEET ALONG SAID CURVE TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FLEMING STREET, AS SHOWN ON A MAP OF BAY CITY RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 31° 17' 50" WEST 137.49 FEET ALONG SAID PROLONGATION TO THE SOUTHWESTERLY LINE OF SAID LOT C-1; THENCE NORTH 65° 02' 10" WEST 240.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OF OFFICIAL RECORDS.

**LOT "G"**

BLOCK "C" OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT A-2, IN THE RANCHO LOS ALAMITOS INCLUDED WITHIN SAID CITY OF SEAL BEACH, AS SHOWN ON MAP NO. 1 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, LYING WESTERLY OF SAID BLOCK "C" AND LYING NORTHERLY OF THE WESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF SAID BLOCK "C".

ALSO EXCEPT THAT PORTION THEREOF INCLUDED WITHIN TRACT 698, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12155, PAGE 201, OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION THEREOF LYING SOUTHEASTERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

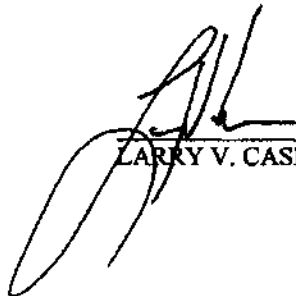
BEGINNING AT THE SOUTHEASTERLY LINE OF SAID BLOCK "C" OF BAY CITY, BEING 60.20' SOUTHERLY FROM THE MOST SOUTHERLY POINT OF THE LAND INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OF

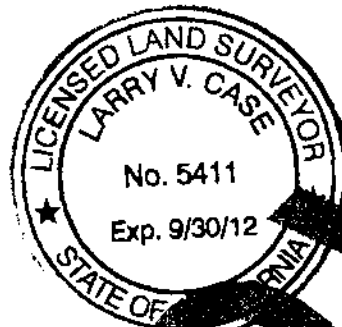


OFFICIAL RECORDS; THENCE NORTH 58° 53' 38" WEST, 321.92 FEET; THENCE NORTH 76° 07' 33" WEST, 88.88 FEET; THENCE NORTH 16° 24' 59" EAST, 179.66 FEET; THENCE NORTH 13° 52' 27" EAST, 74.66 FEET TO A POINT IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" DISTANT NORTH 65° 00' 00" WEST, 238.07 FEET FROM STATION 49 OF THE RANCHO LOS ALAMITOS AS SHOWN ON SAID MAP OF BAY CITY.

ALL AS SHOWN ON EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:

 3-17-11  
LARRY V. CASE, L.S. No. 5411



**COPY**

Totals = 4.274 ac.

**EXHIBIT "A"**

N. T. S.

POR. LOT A-2  
N13°52'27"E 74.66'  
N16°24'59"E 179.66'

LOT "E"  
N 54°47'48" E 297.08'  
N 43°56'57" W 202.37'  
N 43°56'57" W 235.87'  
N 54°42'05" E 213.44'

LOT "G"  
N65°00'00"W 330.00'  
230.47'  
7.60'

LOT "F"  
N 54°42'05" E 213.44'  
N 65°00'00"W 330.00'  
N 31°17'22" E 311.06'

LOT "D"  
N 31°17'22" E 311.06'

POR. BLOCK C OF BAY CITY, M.M. 3/19  
N58°55'56"W 321.92'  
N43°14'30"E 45.30'

TRACT NO. 31/27  
BLOCK 698, M.M. 31/27  
L=273.17'  
R=746.78'  
Δ=2057.31'

60.2'

88.88'  
N76°07'33"W

MARINA DRIVE

FIRST STREET

FINAL ORDER OF CONDEMNATION  
REC. 3/23/77, BK 12115, PG 201 O.R.

LICENSED LAND SURVEYOR  
LARRY V. CASE  
No. 5411  
Exp. 9/30/12  
STATE OF CALIFORNIA

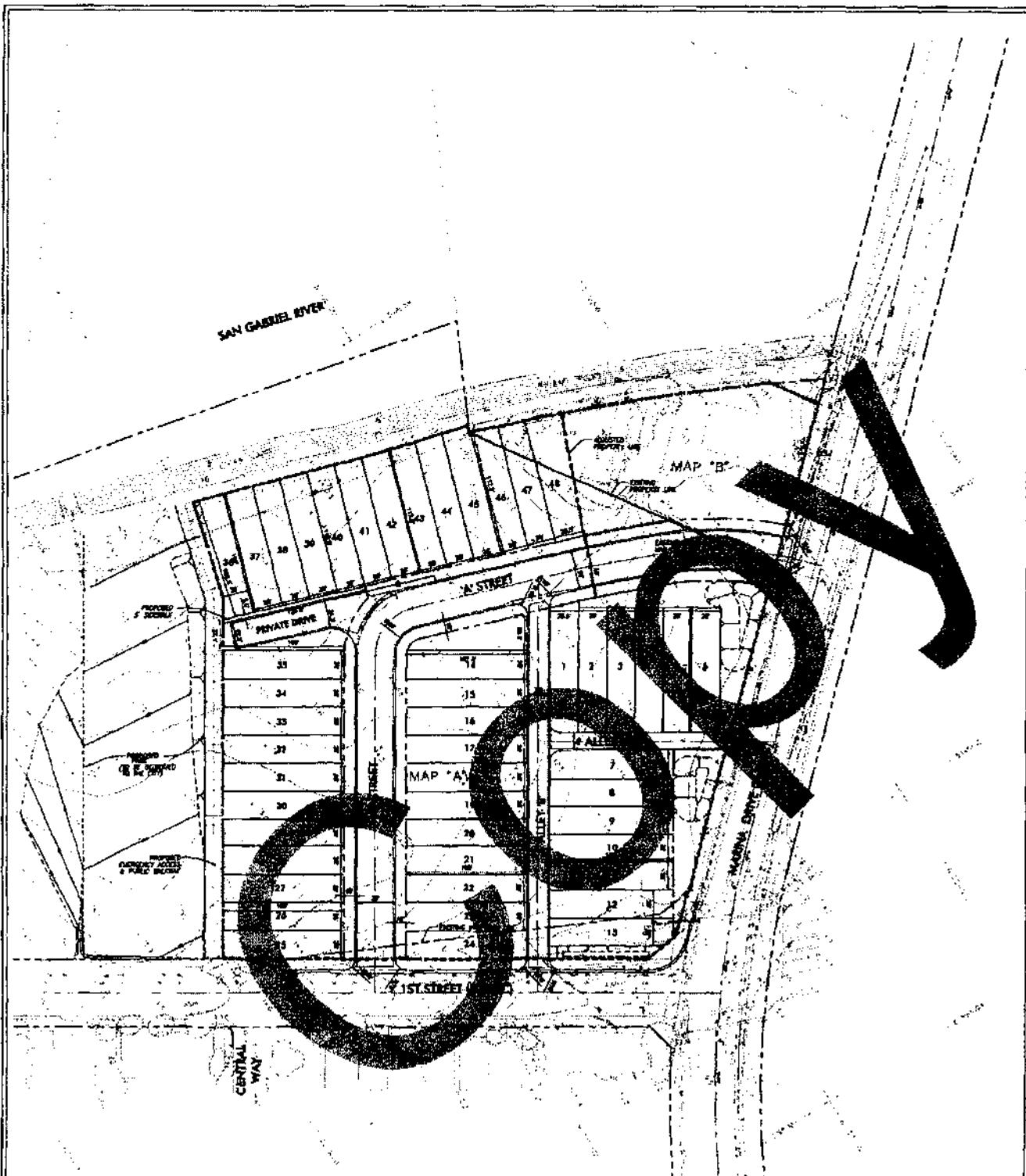
3-17-11

LARRY V. CASE L.S. 5411

CITY OF SEAL BEACH

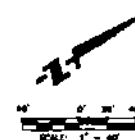
PROPOSED RESIDENTIAL PROJECT AREA  
POR. OF BLOCK C, BAY CITY MAP BK 3, PG. 19, OF MAPS, & POR. LOTS 1, 2 & 3 TR 698, MM 31/27 COUNTY OF ORANGE, STATE OF CALIFORNIA.

SHEET 1 OF 1  
JOB No. 11-SEA-791



#### LEGEND

- EXISTING RIGHT OF WAY
- EXISTING PROPERTY LINE
- PROPOSED STREET CENTERLINE
- PROPOSED RIGHT OF WAY
- PROPOSED CURB
- PROPOSED LOTLINE
- EXISTING OR LINE
- EXISTING STORM DRAIN LINE
- EXISTING WATER LINE
- MAP 'A' BOUNDARY
- MAP 'B' BOUNDARY



#### EXHIBIT C-2

Proposed Residential Project Plans  
**OCEAN PLACE DEVELOPMENT PLAN**  
**SEAL BEACH, CALIFORNIA**

Exhibit #9

**FUSCOE**  
 ENGINEERS  
 14701 Van Ness, Suite 100  
 San Francisco, CA 94133  
 Tel: (415) 774-1100 • Fax: (415) 774-1101  
 www.fuscoe.com

DESIGNED BY: JAMES H. HAY  
 DRAWN BY: JAMES H. HAY  
 CHECKED BY: JAMES H. HAY

C-1

**EXHIBIT D  
CITY PARCEL**

**LEGAL DESCRIPTION  
"CITY PARCEL"**

**LOT "A"**

THAT PORTION BLOCK "B" OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING NORTHWESTERLY OF THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF FIRST STREET AS SHOWN ON SAID MAP.

EXCEPT THAT PORTION THEREOF LYING NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS DESCRIBED IN THE DEED TO SAID CITY RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION THEREOF LYING SOUTHERLY AND SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF SAID SOUTHEASTERLY LINE OF FIRST STREET 273.93 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 55° 51' 00" WEST 55.51 FEET; THENCE NORTH 22° 51' WEST 366.64 FEET; THENCE NORTH 24° 31' 00" WEST 70.00 FEET TO THE SOUTHWESTERLY LINE OF OCEAN BOULEVARD, AS SHOWN ON SAID MAP.

**LOT "B"**

THAT PORTION OF BLOCK "B" TOGETHER WITH THAT PORTION OF "OCEAN AVE." A STREET, IN THE BAY CITY TRACT, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING WESTERLY OF THE SOUTHERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF BLOCK "C" OF SAID BAY CITY TRACT DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON SAID MAP, WITH THE NORTHEASTERLY LINE OF SAID BLOCK "B"; THENCE NORTH 31° 17' 00" EAST 80.11 FEET ALONG SAID SOUTHWESTERLY PROLONGATION TO THE MOST SOUTHERLY CORNER OF SAID BLOCK "C"; THENCE NORTH 55° 41' 30" WEST 317.56 FEET ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK "C" TO THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 20, 1933 IN BOOK 612, PAGE 317 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTHERLY ALONG THE SOUTHERLY PROLONGATION OF SAID EASTERLY LINE, ALONG THE SEAL BEACH BOUNDARY AGREEMENT NO. 2, RECORDED APRIL 8, 1968 IN BOOK 8565, PAGE 1 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY TO THE NORTHERLY TERMINUS OF THE AGREEMENT LINE BETWEEN THE STATE LANDS COMMISSION AND THE CITY OF SEAL BEACH AND THE CITY OF LOS ANGELES RECORDED AUGUST 9, 1967 IN BOOK 8336 PAGE 954 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 24° 31' 00" WEST 60.00 FEET ALONG LAST SAID AGREEMENT LINE TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO THE CITY OF SEAL BEACH RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 67° 06' 27" EAST 297.06 FEET ALONG THE SOUTHERLY LINE OF SAID LAND OF THE CITY OF SEAL BEACH, SAID SOUTHERLY LINE BEING THE SOUTHERLY LINE OF OCEAN AVENUE AS SET FORTH IN RESOLUTION NO. 197

BY THE TRUSTEES OF THE CITY OF SEAL BEACH AND RECORDED IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS, TO THE POINT OF BEGINNING.

A PORTION OF SAID OCEAN AVENUE WAS VACATED UPON APPLICATION OF THE BAYSIDE LAND COMPANY AND ACTION OF THE TRUSTEES OF THE CITY OF SEAL BEACH RECORDED AUGUST 18, 1914 IN MINUTE BOOK 11 AT PAGE 51.

LOT "C"

BLOCK "C" OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT A-2, IN THE RANCHO LOS ALAMITOS INCLUDED WITHIN SAID CITY OF SEAL BEACH AS SHOWN ON MAP NO. 1 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, LYING WESTERLY OF SAID BLOCK "C" AND LYING NORTHERLY OF THE WESTERLY PROLONGATION OF THE SOUTHWESTERLY CORNER OF SAID BLOCK "C".

EXCEPT FROM THE ABOVE DESCRIBED PORTION OF SAID LOT A-2 THE PORTION THEREOF LYING WESTERLY AND SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT NORTH 65° 00' 00" WEST, 330.00 FEET FROM STATION NO. 49 OF THE PATENT BOUNDARY LINE OF THE RANCHO LOS ALAMITOS, BEING IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" AND ON THE EASTERN SHORE OF THE INLET FROM THE PACIFIC OCEAN TO ALAMITOS BAY, THENCE SOUTH 6° 00' 00" WEST, 547.80 FEET; THENCE SOUTH 6° 00' 00" WEST, 69.92 FEET; THENCE SOUTH 15° 00' 00" EAST, 38.72 FEET TO THE POINT OF INTERSECTION WITH THE NORTHEASTERLY LINE OF OCEAN AVENUE, AS SHOWN ON AFORESAID MAP OF BAY CITY; THENCE SOUTH 23° 43' 00" EAST, ALONG SAID LINE OF OCEAN AVENUE 321.92 FEET TO THE SOUTHEASTERLY CORNER OF SAID BLOCK "C".

ALSO EXCEPT THAT PORTION THEREOF LYING NORTHEASTERLY AND EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHEASTERLY LINE OF SAID BLOCK "C" OF BAY CITY, BEING 60.20' SOUTHERLY FROM THE MOST SOUTHERLY POINT OF THE LAND INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201, OF OFFICIAL RECORDS; THENCE NORTH 13° 52' 27" WEST, 88.88 FEET; THENCE NORTH 13° 52' 27" WEST, 321.92 FEET; THENCE NORTH 76° 07' 33" WEST, 88.88 FEET; THENCE NORTH 76° 07' 33" WEST, 179.66 FEET; THENCE NORTH 13° 52' 27" EAST, 74.66 FEET TO A POINT IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" DISTANT NORTH 65° 00' 00" WEST, 238.07 FEET FROM STATION 49 OF THE RANCHO LOS ALAMITOS AS SHOWN ON SAID MAP OF BAY CITY.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:

  
LARRY V. CASE, L.S. No. 5411

3-17-11



Totals = 6.412 ac.



# EXHIBIT "B"

N. T. S.

SURVEY NO. 106  
PATENT 1/231

MARINA DRIVE

POR. LOT C-1

BLOCK 10  
BAY CITY, M.M. 3/19

POR. BLOCK C OF  
BAY CITY, M.M. 3/19

POR. LOT A-2  
LOT "C"

POR. BLOCK C OF BAY CITY,  
M.M. 3/19

ORDER OF CONDEMNATION  
RECEIVED  
2011



3-17-11

LARRY V. CASE L.S. 5411

CITY OF SEAL BEACH

CITY PARCEL

POR. OF BLOCKS B, C AND OCEAN AVE.  
OF BAY CITY IN BOOK 3, PAGE 19, OF  
MAPS, COUNTY OF ORANGE, STATE OF  
CALIFORNIA.

SHEET  
1  
OF 1  
JOB No.  
11-SEA-791

PREPARED IN THE OFFICE OF:

**Case Land Surveying, Inc.**  
Surveying Mapping GPS Services  
614 Eckhoff St.  
Orange, CA. 92868  
Tel (714) 628-8948  
Fax (714) 628-8905

**EXHIBIT E  
BIKE TRAIL PARCEL**

THOSE PORTIONS OF BLOCKS B AND C AND OCEAN AVENUE AS SHOWN ON THE MAP OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY CORNER OF BLOCK B AS SHOWN ON RECORD OF SURVEY 2002-1090, RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG THE NORTHWESTERLY LINE OF SAID BLOCK B AND ALONG THE NORTHWESTERLY LINE OF OCEAN AVENUE THE FOLLOWING TWO (2) COURSES:

1. NORTH 25°31'25" EAST 78.63 FEET;
2. NORTH 21°26'49" EAST 80.01 FEET TO THE SOUTHERLY CORNER OF THE LAND DESCRIBED IN THE EASEMENT DEED TO THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 20, 1933 IN BOOK 612, PAGE 317 OFFICIAL RECORDS IN THE OFFICE OF SAID COUNTY RECORDER;

THENCE ALONG THE SOUTHWESTERLY LINE OF SAID EASEMENT DEED NORTH 28°13'48" EAST 5.29 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE NORTH 20°35'5" EAST 145.26 FEET; THENCE NORTH 08°18'15" EAST 25.13 FEET; THENCE NORTH 0°42'40" EAST 101 FEET; THENCE NORTH 20°50'28" EAST 87.75 FEET; THENCE NORTH 15°52'02" EAST 62.47 FEET; THENCE NORTH 18°16'30" EAST 130.33 FEET; THENCE NORTH 16°28'55" EAST 143.42 FEET; THENCE NORTH 19°04'10" EAST 9.40 FEET TO THE NORTHERLY CORNER OF SAID EASEMENT DEED; THENCE ALONG SAID NORTHERLY LINE SOUTH 63°58'48" EAST 9.40 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 15°01'22" WEST 74.86 FEET; THENCE SOUTH 17°33'5" WEST 17.11 FEET; THENCE SOUTH 74°58'38" EAST 29.41 FEET TO THE SOUTHEASTERLY LINE OF SAID EASEMENT DEED TO THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 11°36'49" WEST 11.11 FEET; THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE SOUTH 32°10'48" WEST 16.09 FEET; THENCE SOUTH 12°02'1" WEST 13.48 FEET; THENCE SOUTH 23°03'47" WEST 21.18 FEET; THENCE SOUTH 19°4'1" WEST 15.26 FEET; THENCE SOUTH 21°00'17" WEST 127.66 FEET; THENCE SOUTH 20°12'32" WEST 90.35 FEET; THENCE SOUTH 22°43'11" WEST 40.94 FEET TO THE SOUTHWESTERLY CORNER OF SAID BLOCK B; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 21°50'35" WEST 18.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 14,208 SQUARE FEET, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 18<sup>TH</sup> DAY OF MARCH, 2011

*Gwen Vera del Castillo*

GWEN-VERA DEL CASTILLO, PLS 5108

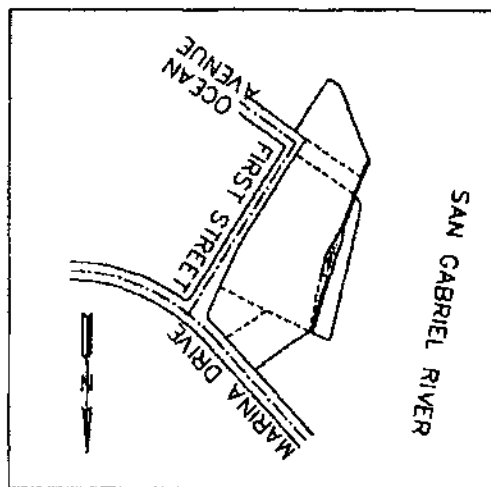


COAST

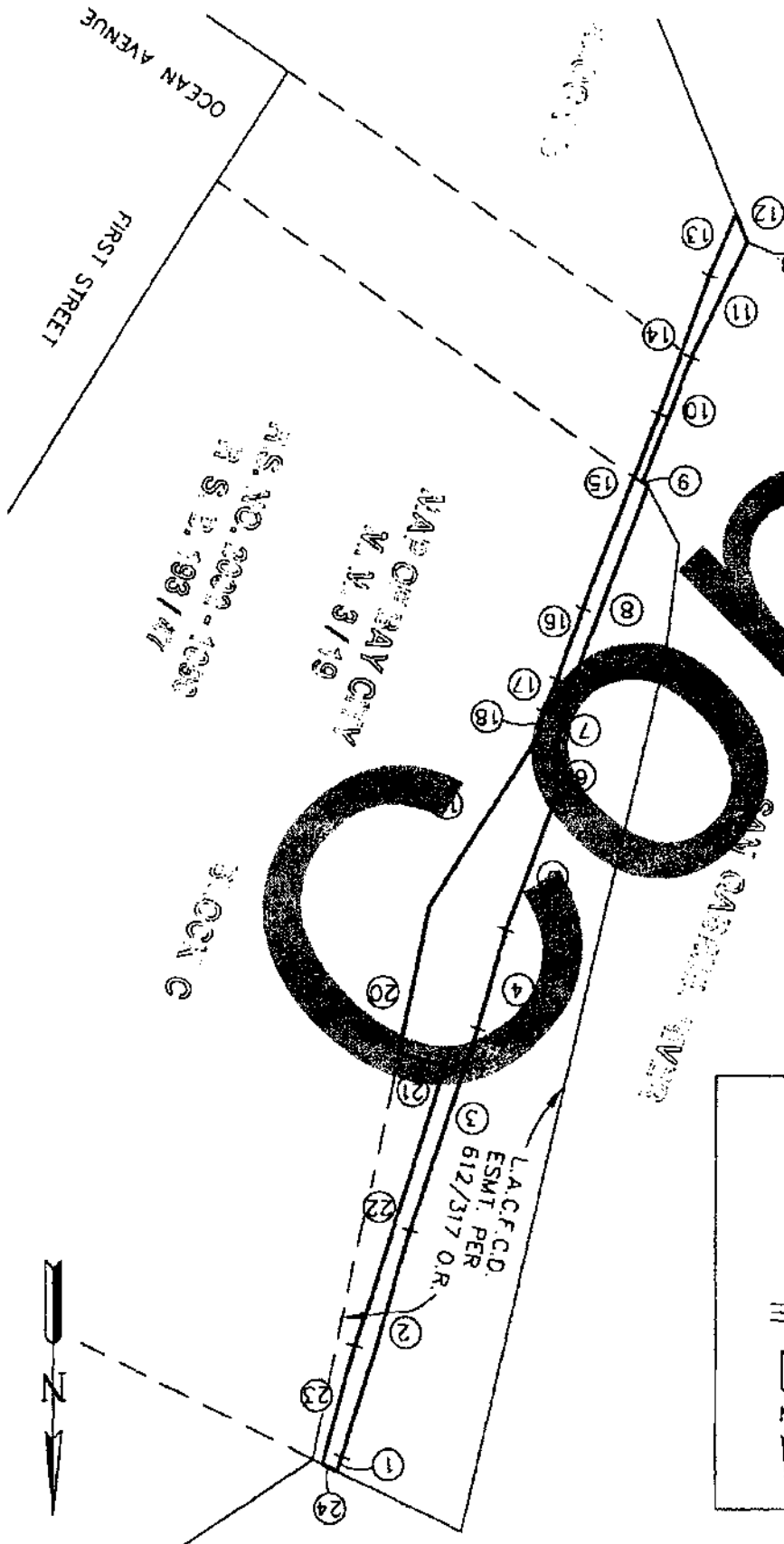
EXHIBIT "B"

15051 PARKWAY LOOP, SUITE B  
 TUSTIN, CA 92780-6527 (714) 918-6266

BEARING	DISTANCE
1	S19°04'10"W 9.40'
2	S16°20'55"W 143.42'
3	S18°18'30"W 130.33'
4	S15°52'02"W 62.47'
5	S20°50'28"W 2.75'
6	S00°42'40"W 2.01'
7	S08°18'15"W 2.75'
8	S20°35'51"W 1.15'
9	S28°13'48"E 3.85'
10	S21°26'49"W 80.01'
11	S5°31'25"W 78.63'
12	N1°50'35"E 18.54'
13	S22°43'11"E 40.94'
14	S20°12'32"E 10.35'
15	N1°00'17"E 1.66'
16	N7°40'E 2.75'
17	N1°02'30"E 21.18'
18	N13°48'E 13.48'
19	N32°00'48"E 0.09'
20	N11°49'E 29.41'
21	N74°38"W 29.41'
22	N17°35"E 179.66'
23	N15°02'E 74.66'
24	N63°58"W 9.76'



VICINITY MAP  
 N.T.S.



**EXHIBIT F  
DRIVEWAY PARCEL**

A STRIP OF LAND 40.00 FEET WIDE IN BLOCK B OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE SOUTHEASTERLY LINE OF WHICH STRIP OF LAND IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EXTENSION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE, NORTH 54°44'12" WEST, 13.95 FEET ALONG THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SHOWN ON RECORD OF SURVEY NO. 2003000516244 IN BOOK 193, PAGE 47 OF RECORDS OF SAID COUNTY, THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, STATE OF CALIFORNIA, TO THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING AT THE INTERSECTION OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 500.00 FEET WITH A RADIAL TO SAID CURVE AT SAID POINT BEARING NORTH 58°15'19" WEST; THENCE, SOUTHWESTERLY, 106.15 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°09'49" TO A POINT OF COMPOUND CURVE WITH A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 200.00 FEET, A RADIAL THROUGH SAID POINT OF COMPOUND CURVE BEARING NORTH 46°05'30" WEST; THENCE, SOUTHWESTERLY, 22.35 FEET ALONG SAID 200.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 6°07'37" TO A POINT OF TANGENCY WITH THE BEARING SOUTH 50°18'37" WEST; THENCE, SOUTH 50°18'37" WEST ALONG SAID TANGENT LINE 42.77 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 90.00 FEET; THENCE, SOUTHWESTERLY, 17.98 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°26'52" TO A POINT OF REVERSE CURVE WITH A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 400.00 FEET, A RADIAL THROUGH SAID POINT OF REVERSE CURVE BEARING SOUTH 28°14'31" EAST; THENCE, SOUTHWESTERLY, 78.24 FEET ALONG SAID 400.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 12°25" TO THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY NO. 2003000516244.

THE NORTHWESTERLY LINE OF SAID 40.00-FOOT-WIDE STRIP SHALL BE LENGTHENED OR SHORTENED TO TERMINATE SOUTHWESTERLY IN THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY AND NORTHEASTERLY IN THE SOUTHWESTERLY LINE OF SAID OCEAN AVENUE.

CONTAINING 10,233 SQUARE FEET, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

# DRIVEWAY EASEMENT

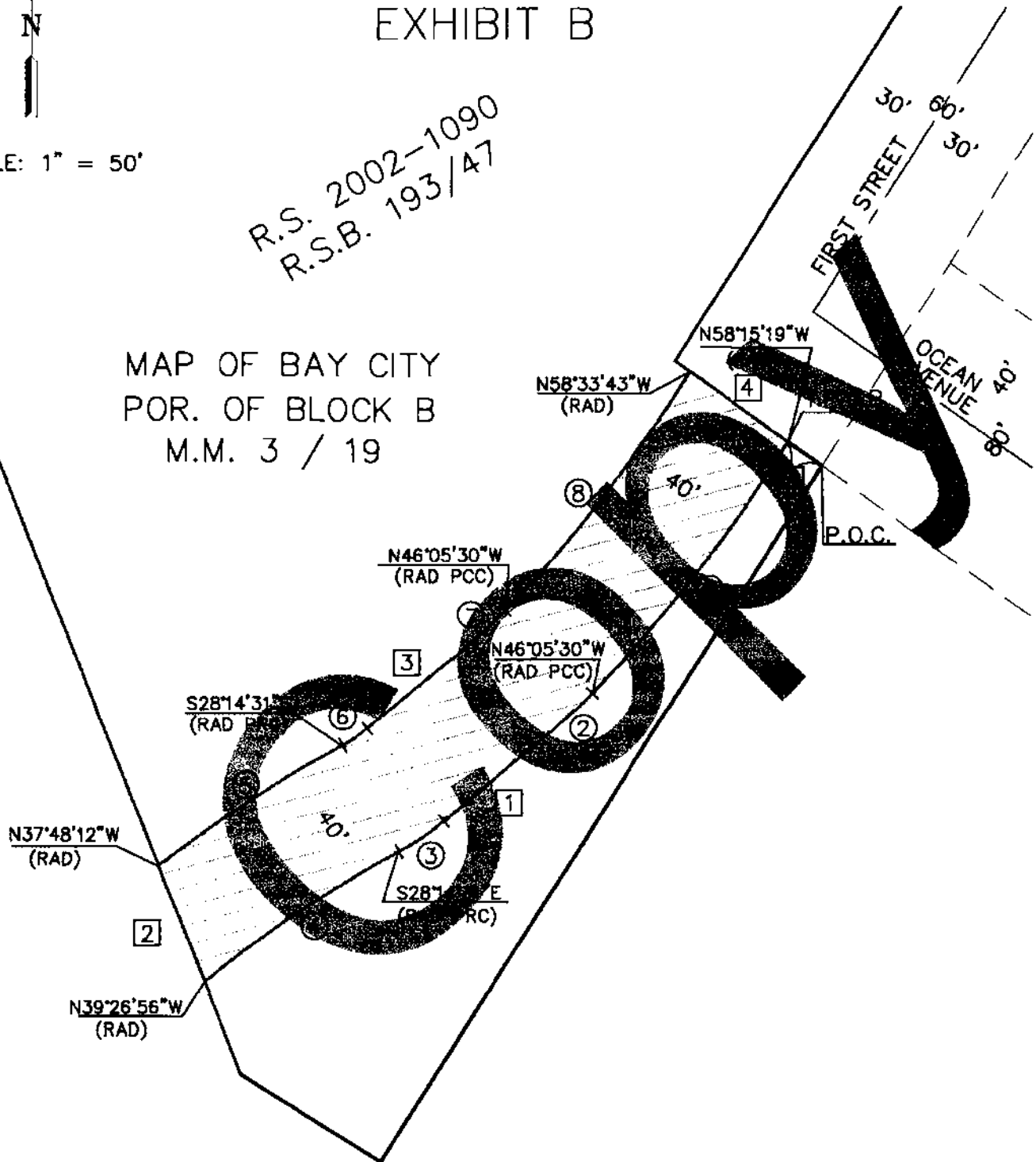
## EXHIBIT B



SCALE: 1" = 50'

R.S. 2002-1090  
R.S.B. 193/47

MAP OF BAY CITY  
POR. OF BLOCK B  
M.M. 3 / 19



○	DELTA	RADIUS	LENGTH	□	BEARING	DISTANCE
1	12° 09' 49"	500.00'	106.15'	1	S50° 18' 37" W	42.77'
2	6° 24' 07"	200.00'	22.35'	2	N21° 50' 35" W	41.78'
3	11° 26' 52"	90.00'	17.98'	3	N50° 18' 37" E	42.77'
4	11° 12' 25"	400.00'	78.24'	4	S54° 44' 12" E	40.08'
5	9° 33' 41"	440.00'	73.43'	5	S54° 44' 12" E	13.95'
6	11° 26' 52"	50.00'	9.99'			
7	6° 24' 07"	160.00'	17.88'			
8	12° 28' 13"	460.00'	100.12'			



**EXHIBIT G  
SEWER PARCEL**

THAT PORTION OF BLOCK B OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE EXTENSION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE, NORTH 54°44'12" WEST, 13.95 FEET ALONG THE SOUTHWESTERLY LINE OF OCEAN AVENUE, AS SHOWN ON RECORD OF SURVEY NO. 2002-1090; THENCE, BY INSTRUMENT NO. 2003000516244 IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, STATE OF CALIFORNIA, TO A POINT ALSO BEING THE INTERSECTION OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 200.00 FEET WITH A RADIAL TO SAID CURVE AT SAID POINT BEARING NORTH 58°15'19" WEST; THENCE, SOUTHWESTERLY, 106.15 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°09'49" TO A POINT OF COMPOUND CURVE WITH A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 200.00 FEET, A RADIAL THROUGH SAID POINT OF COMPOUND CURVE BEARING NORTH 46°05'11" WEST; THENCE, SOUTHWESTERLY, 22.35 FEET ALONG SAID 200.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 63°44'07" TO A POINT OF TANGENCY WITH A LINE BEARING SOUTH 50°18'37" WEST; THENCE, SOUTH 50°18'37" WEST ALONG SAID TANGENT LINE 42.77 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 400.00 FEET; THENCE, SOUTHWESTERLY, 17.98 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°26'52" TO A POINT OF REVERSE CURVE WITH A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 400.00 FEET, A RADIAL THROUGH SAID POINT OF REVERSE CURVE BEARING SOUTH 28°14'31" EAST; THENCE, SOUTHWESTERLY, 78.24 FEET ALONG SAID 400.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 11°12'25" TO THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY NO. 2002-1090; THENCE, ALONG THE SOUTHWESTERLY AND SOUTHEASTERLY LINES OF SAID RECORD OF SURVEY THE FOLLOWING COURSES AND DISTANCES:

1. SOUTH 21°50'35" EAST, 32.84 FEET;
2. SOUTH 57°53'35" EAST, 55.32 FEET;
3. NORTH 32°17'25" EAST, 273.93 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,768 SQUARE FEET, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

# SEWER EASEMENT

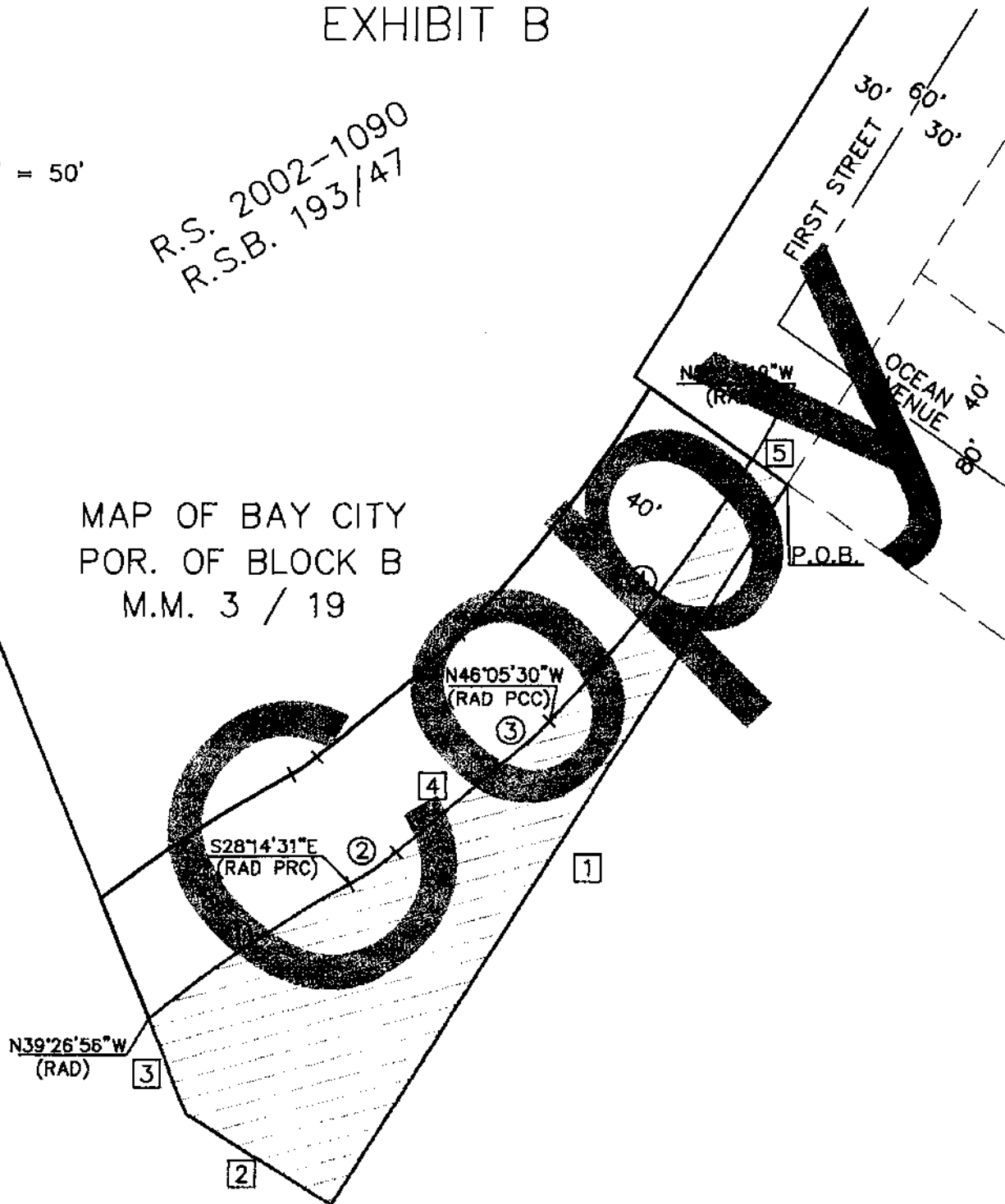
## EXHIBIT B



SCALE: 1" = 50'

R.S. 2002-1090  
R.S.B. 193/47

MAP OF BAY CITY  
POR. OF BLOCK B  
M.M. 3 / 19



○	DELTA	RADIUS	LENGTH
1	11°12'25"	400.00'	78.24'
2	11°26'52"	90.00'	17.98'
3	6°24'07"	200.00'	22.35'
4	12°09'49"	500.00'	106.15'

□	BEARING	DISTANCE
1	S32°17'25"W	273.93'
2	N57°53'35"W	55.32'
3	N21°50'35"W	32.84'
4	N50°18'37"E	42.77'
5	S54°44'12"E	13.95'

## EXHIBIT H

### **TERMS SHEET OF THE LEASE**

1. Property subject to Lease:  
The Driveway Parcel as shown and legally described in Exhibit F.  
The Bike Trail Parcel as shown and legally described in Exhibit E.
2. Term: At most, four years.
3. Commencement Date: March 31, 2011.
4. Expiration Date:  
The earlier of:  
  
(a) March 31, 2015;  
  
(b) conveyance of the Driveway Parcel and Bike Trail Parcel to the City pursuant to transaction described in paragraph 5.B of the Settlement Agreement and Mutual Release;  
  
(c) if the Coastal Commission denies or delays the City's Proposed Residential Project, then thirty (30) days thereafter such denial or delay. Bay City shall determine, in its sole discretion, whether a denial or delay has occurred. Bay City shall promptly notify the City in writing of such determination.
5. Rent: Annual One Dollar (\$1.00) per annum rental payment from the City to Bay City shall be deemed payment in full of the rent required under the Lease.
6. Use of Premises:  
The Driveway Parcel shall be used for a public access roadway from First Street and Ocean Avenue to the public parking lot that serves the River's End Project in order to maintain public access to the public beach, the Pacific Ocean, Windsurfer Park, the First Street parking lot, and the River's End Campground. The Bike Trail Parcel shall be used for a public bike path. All premises shall be maintained in good condition.
7. Tenant's Liability Insurance: Annual Aggregate Limit \$2,500,000
8. Indemnity:

As a material term of the Agreement and the Lease, the City shall indemnify, save, hold harmless and defend Bay City, its members and its successors and assigns from any and all claims, costs, causes of action, and liability for any damages, personal injury or death which may arise, directly or indirectly, from the City's use of the Driveway Parcel or Bike Trail Parcel.

9. Notice:

Landlord

Bay City Partners LLC  
2999 Westminster Avenue, Suite 211  
Seal Beach California 90740  
Attn: Rocky Gentner  
Email: [Rockyg@gentnerandcompany.com](mailto:Rockyg@gentnerandcompany.com)

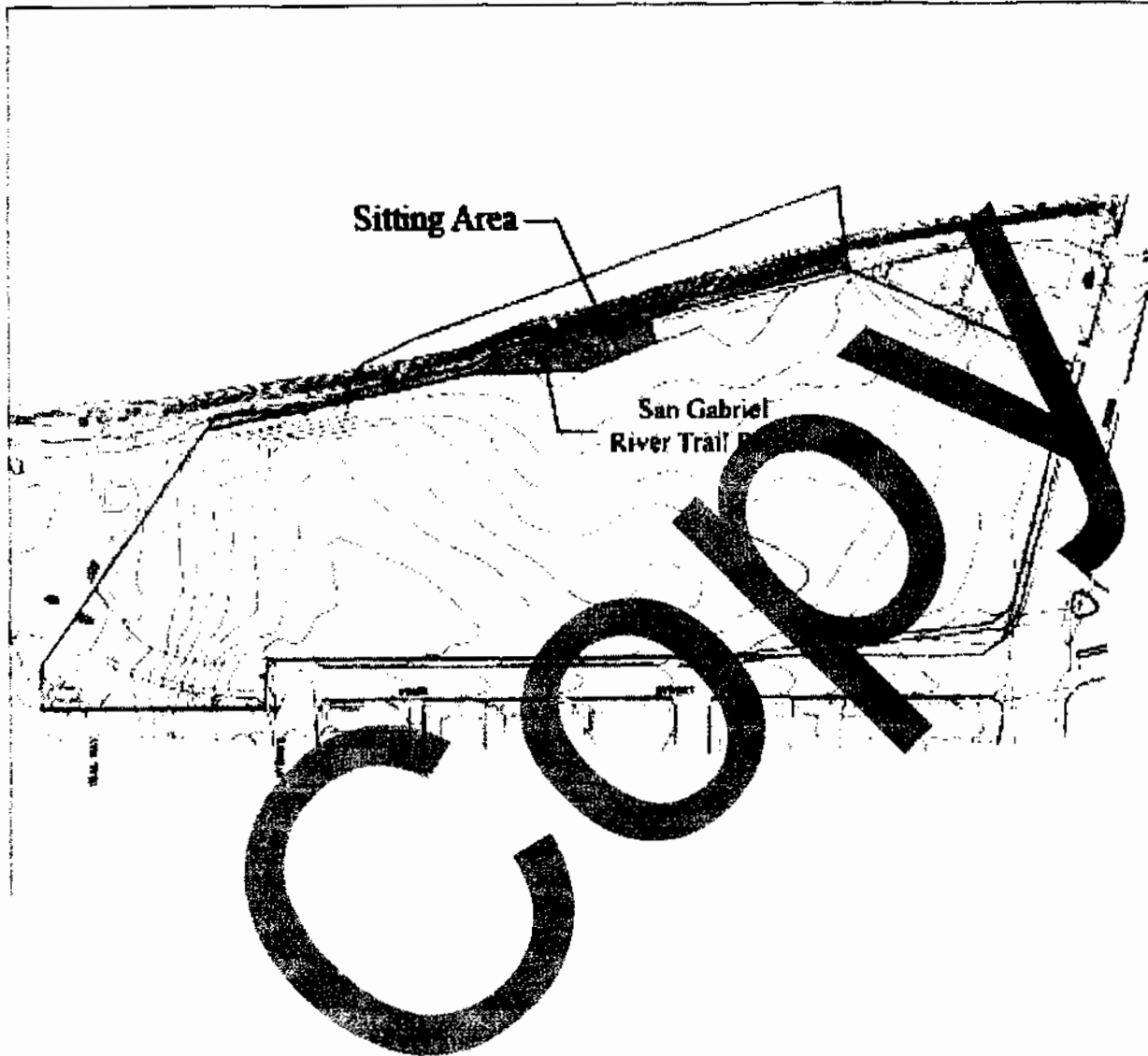
Tenant

City of Seal Beach  
211 8th Street  
Seal Beach, California 90740  
Attn: City Manager

With Copy To:  
Quinn Barrow, Esq.  
Richards, Watson & Gelsinger  
355 South Grand Avenue, 40th Floor  
Los Angeles, CA 90071-3101  
Email: [qbarrow@rwg.com](mailto:qbarrow@rwg.com)  
Fax No: (310) 626-0078

COPY

Exhibit "I"  
Relocated Sitting Area



E-1



# Exhibit J

1200 sq ft +/- Within  
Proposed Residential  
Development Area

The Bile Trail Parcel

All of the land South of the Westerly  
Prolongation of the Southern Right  
Of Way Line of Central Way Except  
the 1200 sq ft +/- within the Proposed  
Residential Project Area

The Driveway Parcel

The Sewer Parcel

PACIFIC OCEAN

OCEAN AVENUE

SEAL WAY

B-1

- 1. THE PROPOSED RESIDENTIAL DEVELOPMENT AREA IS SHOWN IN THE ATTACHED MAP.
- 2. THE PROPOSED RESIDENTIAL DEVELOPMENT AREA IS SHOWN IN THE ATTACHED MAP.
- 3. THE PROPOSED RESIDENTIAL DEVELOPMENT AREA IS SHOWN IN THE ATTACHED MAP.
- 4. THE PROPOSED RESIDENTIAL DEVELOPMENT AREA IS SHOWN IN THE ATTACHED MAP.

REFERENCE MAPS  
1. TO THE MAP OF THE  
2. TO THE MAP OF THE  
3. TO THE MAP OF THE

## EXHIBIT "A"

Deed #224

## DESCRIPTION:

THOSE PORTIONS OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST IN THE RANCHO LOS ALAMITOS AS PER MAP FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14 PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, CALIFORNIA, OF LOTS 1, 2 AND 3, BLOCK 100, TRACT NO. 698 AS PER MAP RECORDED IN BOOK 31 PAGE 27 OF MISCELLANEOUS MAPS RECORDS OF SAID ORANGE COUNTY AND OF BLOCK "C" BAY CITY AS PER MAP RECORDED IN BOOK 3 PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, ALL IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF THE LAND DESCRIBED IN PART 3 OF EXHIBIT A-1 IN A DEED TO THE CITY OF LOS ANGELES, CALIFORNIA, RECORDED IN BOOK 869 PAGE 1 OF OFFICIAL RECORDS: THENCE SOUTHWEST 17° 22' WEST 347.06 FEET ALONG THE SOUTHEAST BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES, THE SOUTHEAST BOUNDARY OF SAID LOTS 1, 2 AND 3 AND THE SOUTHEAST BOUNDARY OF SAID BLOCK "C", THENCE NORTH 24° 22' 42" EAST 332.42 FEET; THENCE NORTH 55° 38' 24" EAST 33.18 FEET TO A POINT ON THE NORTHEAST BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES SAID POINT BEING ON A CURVE INCAVE NORTH EASTERLY HAVING A RADIUS OF 940.00 FEET A RADIAL FROM SAID POINT BEARS NORTH 42° 07' 31" EAST; THENCE ALONG SAID CURVE AND THE BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES TO THE MOST EASTERLY CORNER TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, BOOK 90 PAGE 23 TO 30 OF RECORD OF SURVEY.

be and the same is hereby condemned to the use of the plaintiff, THE CITY OF SEAL BEACH, a municipal corporation, and to the use of the public for said public purposes.

DESCRIPTION	66P. 1000
APPROVED	DATE 12/18/1977
APPROVED	APPROVED
EXAMINED	EXAMINED
DATE 12/18/1977	BY 12/18/1977

MAP #2

SCALE 1"=40'

REC # 0320

BLOCK C  
BAY CITY  
MM 3/19

TR. NO. 1  
BLK. 2  
100  
M.M. 31/27

FR. S.W. 1/4 SEC 11  
T. 55. R. 12 W.  
A 1. / 469, 462

332.42'  
N 27° 22' 42" E

FIRST STREET  
N 31° 17' 22" E

17.06

**Copy**

35'

K-2

MARINA DRIVE  
L 60.68'  
R 940'  
N 65° 38' 1"

ADJMP EXCESS PARCEL  
PROPOSED TAKE FOR FIRST ST.  
PHASE III EXTENSION

BASIS OF BEARING -  
SURVEY OF SEAL BEACH  
BOUNDARY AGREEMENT N 2

## Exhibit L

RECORDING REQUESTED BY  
FIRST AMERICAN TITLE INSURANCE CO.  
NATIONAL COMMERCIAL SERVICES  
SC 1000-12/ACCUM  
RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Hewitt & O'Neil LLP  
19900 MacArthur Blvd., Suite 1050  
Irvine, CA 92612  
Attn: Jay F. Palchikoff

This Document was electronically recorded by  
First American National Commercial

Recorded in Official Records, Orange County  
Tom Daly, Clerk-Recorder

RECORDED 08.00  
20090000003882 11:18am 11/02/09  
184 38 ED1 21  
0.00 0.00 0.00 0.00 00.00 0.00 0.00 0.00

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

### EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is made in Orange County, California, on February 17, 2009, by and among Bay City Partners, LLC, a California limited liability company ("Owner"), and Atkinson LLC, a California limited liability company ("Atkinson LLC"), The Street Building, LLC, a California limited liability company ("Gentner LLC"), Main & PC LLC a California limited liability company, ("Griffith LLC"), Kyle LLC, a California limited liability company ("Kyle LLC"), and Park-e, LLC, a California limited liability company ("Parkhurst LLC"), who agree as follows:

#### TERMS

A. Owner is the record fee owner of that certain real property, located in the City of Seal Beach, County of Orange, State of California, described as Exhibit A attached hereto (the "Property").

B. Owner desires by this Agreement to grant Atkinson LLC, Gentner LLC, Griffith LLC, Kyle LLC and Parkhurst LLC (each, individually, an "Easement Holder" and collectively, the "Easement Holders"), tenants in common, a non-exclusive perpetual easement over, under, upon, across and through a portion of the Property for the purpose of (a) laying, constructing, installing, reconstructing, replacing, repairing, renovating, maintaining, operating, changing and removing underground pipelines and appurtenances thereto for the transportation of oil, gas, water, and surface electrical substation and related facilities and underground electrical and communications lines, wires, conductors, cables and conduits and appurtenances thereto for the transmission of electrical power and communications, and (c) for other reasonable uses related to the easement purposes described above, and (ii) set forth certain obligations of Owner and the Easement Holders with respect to said easement, on the terms and conditions set forth herein. This grant of easement shall be effective immediately.

D. Owner and the Easement Holders deem it to be in their mutual best interest to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing facts and the terms and conditions hereinafter set forth, the parties agree as hereinafter provided:

**Article 1**  
**Definitions**

1.1 "Easement Area" shall mean that certain portion of the Property which is described on Exhibit B-1 and depicted on Exhibit B-2 attached hereto.

1.2 "Owner" shall mean (i) each Person owning the fee simple title to the Property, (ii) any ground tenant of the Property holding a ground tenant's interest therein, and (iii) a vendee in possession under a contract of sale or, if not in possession, the vendor or vendors under an executory contract of sale for the Property, but not a Person having an interest in the Property holding title merely as security for the performance of an obligation.

1.3 "Permitted Users" shall mean the Easement Holders, their respective heirs and assigns, employees, agents, representatives, contractors and subcontractors, invitees, customers, guests, tenants and subtenants, the employees, agents and representatives of all the foregoing described parties.

1.4 "Person" shall mean individuals, partnerships, firms, associations, trusts, corporations, limited liability companies, limited liability partnerships, limited partnerships and any other form of business entity, and the singular shall include the plural.

**Article 2**  
**Easements**

2.1 Easement. Owner hereby grants to the Easement Holders, together with the right to transfer the same and to grant (and grant assignments of) easements, sub-easements and licenses with respect thereto, a non-exclusive easement, over, under, upon, across and through the Easement Area for the purpose of laying, constructing, installing, reconstructing, replacing, repairing, removing, maintaining, operating, changing and removing (a) underground pipelines and appurtenances thereto for the transportation of oil, gas and water and (b) up to four (4) areas selected by the Easement Holders from time to time, each not exceeding ten feet (10') in horizontal size and six feet (6') in height and each of which may be fenced or otherwise secured (each, a "Surface Installation") for one or more surface electrical substations and other facilities, including, but not limited to, electrical and communications lines, wires, conductors, cables, conduits and appurtenances thereto for the transmission of electrical power and communications, and (ii) other reasonable uses related to the easement purposes described above. This grant of easement shall be effective immediately.

2.2 Purpose and Use of Easements Permitted Users. The easements granted under this Agreement may be used by the Permitted Users only for the purposes set forth herein. The Easement Holders shall have the right to enter into any and all agreements they deem necessary or desirable to memorialize the use of the Easement Area by any of the Permitted Users, and to receive and retain any and all revenues paid by such Permitted Users in connection with the Permitted Users' use of the Easement Area; provided, however, that such revenues shall be apportioned among the Easement Holders in the percentages set forth on Schedule 1 attached hereto, subject to other agreements among the Easement Holders, including, but not limited to,



their Agreement Among Tenants in Common of even date herewith, as such agreement may be amended from time to time.

**2.3 Use of Easement Area by Owner.** Owner may use the Easement Area in a manner and for purposes that are not inconsistent with or contrary to and that do not interfere with the rights of the Easement Holders or Permitted Users as set forth in this Agreement. Such use shall in no event involve the erection of structures, paved roadways or other improvements, the storing of materials, or the planting of any trees upon the Easement Area (or any plants or bushes with roots extending more than 12" below ground level) without the unanimous prior written consent of the Easement Holders (which may be withheld in each Easement Holders' sole discretion). Owner shall not install a gate, fence or similar barrier entry into or out from the Easement Area without the unanimous prior written consent of the Easement Holders (which may be withheld in each Easement Holders' sole discretion). Owner shall not perform or otherwise on the Property that impede or interfere with use of the Easement Area by the Easement Holders and their Permitted Users.

**2.4 Rights Reserved.** Subject to Sections 2.3 above, Owner shall have right, from time to time, with the consent of the Easement Holders (which consent shall not be unreasonably withheld, conditioned or delayed), to make changes, modifications or alterations to the surface of the Easement Area in connection with the development of improvements on such Property, provided that (a) the use or accessibility of the Easement Area is not materially affected thereby, (b) any such changes, modifications or alterations shall not interfere in any manner whatsoever with facilities located within the Easement Area owned or operated by the Easement Holders or their Permitted Users, and (c) applicable governmental laws and restrictions shall not be violated. Owner shall be responsible for all real property taxes and possessory interest taxes assessed against the Property and any improvements thereon and the Easement Holders shall be responsible for all personal property taxes assessed against the Easement Holders or their Permitted Users' personal property located on the Easement Area.

**2.5 Effect of Agreement.** The easements, covenants, restrictions, conditions and provisions contained in this Agreement (whether affirmative or negative in nature) shall run and pass with each and every portion of the Property and be binding upon Owner and its successors and assigns and every person having title, leasehold, or other interest in the Property or any portion thereof to the extent that the covenants, restrictions, conditions, or provisions burden such interest in the Property, and shall benefit and shall be enforceable by Easement Holders and their successors and assigns.

**2.6 Subdivision of Parcel.** If the Property shall be subdivided into more than one Parcel, or should the lot lines of the Property be adjusted, such subdivision or lot line adjustment shall not terminate or otherwise affect the easements and rights established herein.

**2.7 No Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of a Parcel or any portion thereof to or for the general public, or for any public purpose whatsoever. It is the intention of Owner and the Easement Holders that this Agreement shall be strictly limited to the purposes expressed in this Agreement. Further, the easements established in this Agreement are not intended to create, nor will they create, any prescriptive rights in the public.

2.8 **Limits on Transfer.** Owner may not transfer or assign any right, power or obligation created under this Agreement without also transferring therewith Owner's interest in the Easement Area.

### **Article 3** **Maintenance of Easement Area; Insurance**

3.1 **Maintenance of Easement Area.** Owner shall be obligated, at Owner's sole cost and expense, to perform or provide for performance of Maintenance (as hereinafter defined) of the surface of the Easement Area (except for the Surface Installations). As used herein, "Maintenance" means sweeping, lighting, rubbish removal, regular and customary maintenance of surfaces and landscaping, and such other maintenance and repair as is reasonably necessary to ensure a clean and sanitary area. Notwithstanding the foregoing, if an Easement Holder or any Permitted User damages any portion of the Easement Area as a result of (i) a violation of the limitations set forth in Sections 2.1 and 2.2 above or (ii) the actual misfeasance or negligent act or failure to act by such Easement Holder or Permitted User, the Easement Holders shall, at the sole cost, promptly repair the damage. Also notwithstanding the foregoing, Owner shall not be obligated to perform Maintenance of any of the Easement Holders' or Permitted Users' improvements or facilities within the Easement Area.

3.2 **Insurance.** At all times, Owner shall, at Owner's sole cost and expense, maintain public liability insurance for the Easement Area, with coverage of at least Two Million Dollars (\$2,000,000) for damage to property and/or injury or death of any person(s) per occurrence. Such insurance shall name the Easement Holders as additional insureds. Such insurance shall provide that the same shall not be cancelled or not renewed except upon thirty (30) days prior notice to the Easement Holders. Evidence of such insurance shall be provided to the Easement Holders on demand. If Owner fails to maintain such insurance, the Easement Holders may, after notice to Owner of such failure to cure within five (5) days after such notice, obtain the same, and Owner shall reimburse the Easement Holders for the cost of such insurance within ten (10) days after demand therefor.

### **Article 4** **Enforcement**

4.1 **Default and Remedies.** In the event of any material violation or threatened violation (a "Breach") by one party hereunder (a "Defaulting Party"), which Breach has not been cured within ten (10) days of written request therefor by the other party hereunder (a "Non-Defaulting Party") (or if any such Breach is not reasonably susceptible of cure within such ten (10) day period, then if the Defaulting Party has not commenced promptly within the ten (10) day period to effect a cure and thereafter diligently proceeded to effect such cure) (provided, however, that no such notice or cure period shall be required with respect to the third time that the same or similar Breach occurs in any consecutive twelve (12) month period), the Non-Defaulting Party shall have the following rights and remedies:

4.1.1 **Substitute Performance.** Without any obligation to do so, the Non-Defaulting Party may at its option (a) pay any unpaid sum or settle or discharge any action therefor or judgment thereon, (b) enter the Easement Area and perform such work as may be

necessary to resolve the same, (c) provide other substitute performance of any obligations of the Defaulting Party at such party's expense. In any such event, the Defaulting Party shall reimburse the Non-Defaulting Party for all direct costs or expenses connected with such performance within ten (10) days after receipt of any itemized statement showing all such direct costs of remedying such default, plus interest on all such amounts owed at the maximum legal contract rate permitted by law from the date incurred until paid;

**4.1.2 Damages.** A Non-Defaulting Party may bring a suit for damages for any compensable breach of any of the easements or covenants contained herein (but such damages shall in no event include punitive, special or so-called "consequential" damages) or for declaratory relief to determine the enforceability of any of the agreements contained herein and for injunctive relief thereon, including all court costs, reasonable attorneys' fees and other costs of collection or enforcement related thereto;

**4.1.3 Equity.** It is recognized that a breach by a party of any Person having possession under a party, of one or more of the easements or rights or covenants contained herein, may cause a Non-Defaulting Party to suffer material injury or damage not compensable in money, and that the Non-Defaulting Party shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with these restrictions or for an injunction to prevent or enjoin the continuance of such Breach.

**4.2 No Waiver.** No waiver of default by a party shall be implied from an omission by the other party to take any action with respect to such default. A waiver of a default hereunder shall not be deemed a waiver of any subsequent default of the same provision or any other provision contained herein.

**4.3 Rights of Lenders; Subordination.** No breach, enforcement or attempted enforcement of any other the terms, covenants, conditions or restrictions of this Agreement will defeat or render invalid the lien of any mortgage or deed of trust securing a loan made in good faith and for value with respect to developing, financing, permanent financing, or refinancing of the Property or any facilities thereon; provided, however, that all provisions of this Agreement will be binding upon and effective against any subsequent Owner of the Property or successor whose title to the Property or any portion of such is acquired by foreclosure, trust deed sale, or otherwise. The easements and covenants established hereunder, whether now existing or granted hereafter by the Easement Holders, shall be superior to any and all mortgages, liens, ground leases, licenses, covenants, or encumbrances now or hereafter affecting the Property, as well as any of the same specifically subordinated hereto (hereinafter collectively referred to as the "Mortgages"). Any such Mortgages shall be deemed to be subordinate to this Agreement, and this Agreement shall survive any foreclosure of any such Mortgages; provided, however that nothing in this Agreement will affect the validity of any such Mortgages.

### **Article 5**

#### **General Conditions**

**5.1 Term.** The easement and all rights and privileges related thereto established by this Agreement shall be perpetual and shall remain in effect until terminated by the recordation of a written agreement signed by all Easement Holders, or their successors or assigns.

## **5.2 Mechanics Lien Work Standards.**

(a) Whenever under the terms of this Agreement any Easement Holder performs any work upon the Easement Area, the party performing such work will not permit any mechanics', materialmen's or similar lien to be maintained against the Property on which any labor or material has been furnished in connection with such work, and will indemnify and hold harmless Owner from and against any and all liens, claims, liabilities, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of such work. Notwithstanding the foregoing, the party performing such work may contest the validity or amount of any lien or claim of lien arising out of such work by appropriate legal proceedings diligently pursued, provided that such party obtains a surety bond or other security reasonably satisfactory to Owner to protect fully Owner and the Property against such lien or claim of lien, and provided further that such party immediately pays and discharges any judgment or settlement rendered or reached in any such proceedings and causes such lien to be released at such party's expense prior to foreclosure. Prior to the commencement of any work, the party performing the work shall also provide Owner at least ten (10) days' prior written notice of the start date, as well as evidence that appropriate insurance has been obtained. Upon completion of the work in question, the performing party shall, if applicable, cause a Notice of Completion to be recorded in the Office of the Orange County Recorder in accordance with Section 3093 of the California Civil Code and, upon request of Owner, deliver to Owner a legible copy of all permits, approvals and other documents issued by any governmental agency in connection with the work.

(b) Whenever under the terms of this Agreement Owner performs any work upon the Easement Area, Owner will not permit any mechanics', materialmen's or similar lien to be maintained against the Easement Area, and will indemnify and hold harmless Easement Holders and the Permitted Users from and against any and all liens, claims, liabilities, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of such work. Notwithstanding the foregoing, the party performing such work may contest the validity or amount of any lien or claim of lien arising out of such work by appropriate legal proceedings diligently pursued, provided that such party obtains a surety bond or other security reasonably satisfactory to Easement Holders to protect fully Easement Holders and the Easement Area against such lien or claim of lien, and provided further that such party immediately pays and discharges any judgment or settlement rendered or reached in any such proceedings and causes any lien to be released at such party's expense prior to foreclosure. Prior to the commencement of any work, the party performing the work shall also provide Easement Holders at least ten (10) days' prior written notice of the start date, as well as evidence that appropriate insurance has been obtained. Upon completion of the work in question, the performing party shall, if applicable, cause a Notice of Completion to be recorded in the Office of the Orange County Recorder in accordance with Section 3093 of the California Civil Code and, upon request of any Easement Holder, deliver to Easement Holders a legible copy of all permits, approvals and other documents issued by any governmental agency in connection with the work. All work shall be performed so as to minimize, to the greatest extent reasonably possible, interference with use of the Easement Area in question by the Permitted Users thereof.

(c) Whenever any party performs any work upon the Easement Area, the party performing such work shall commence and complete such work promptly and in a good and

workmanlike manner and in compliance with all insurance requirements, applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws now or hereafter in effect pertaining thereto.

**5.3 Indemnity.** Each party shall indemnify and hold harmless the other party (and its/their officers, directors, partners, members, agents, representatives and employees) from and against any claims, loss, damage, liability or expense, including reasonable attorneys' fees arising out of such party's exercise of its rights under this Agreement or such party's failure to comply with its obligations hereunder except to the extent attributable to the negligence or willful misconduct of the indemnified party.

**5.4 Estoppel Certificate.** The Easement Holders, upon the written request of Owner (which may not be made more frequently than three (3) times during any calendar year) shall issue to a prospective mortgagee or successor of Owner, within fifteen (15) business days of receipt of any such request, an estoppel certificate stating:

- (a) Whether the party to whom the request has been directed knows of any default by Owner under this Agreement, and if there are known defaults, identifying the nature thereof;
- (b) Whether this Agreement has been fully assigned, modified or amended in any way (and if it has, then stating the nature thereof); and
- (c) That to the Easement Holders' knowledge, this Agreement, as of the date of the estoppel certificate, is in full force and effect.

Such statement shall act as a waiver of any claim by the Easement Holders furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide purchaser for value, lender or mortgagee without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. In the event the Easement Holder being requested to give an estoppel certificate pursuant to the provisions of this Section 5.4 fail to give such certificate within the time specified time period, it shall be deemed that, as of the date of the request: (i) the Easement Holder certifies of no default by Owner under this Agreement; (ii) this Agreement has not, to the Easement Holder's knowledge, been assigned or modified or amended in any way, except as may be of record; and (iii) this Agreement is, to the Easement Holder's knowledge, in full force and effect.

**5.5 Notices.** Any notice or other communication given in connection with this Agreement shall be in writing and addressed to the parties at the addresses indicated below, and shall be deemed given (i) upon personal delivery, (ii) the next day following delivery by overnight courier, (iii) upon receipt of delivery confirmation following delivery by facsimile, and (iv) the fifth (5th) day following delivery by U.S. Postal Service regular mail.

If to Owner:

Bay City Partners, LLC  
4592 Orion Street  
Huntington Beach, CA 92649  
Attn: Cindy Atkinson



Bay City Partners, LLC  
2999 Westminister Avenue, Suite 203  
Seal Beach, CA 92662  
Attn: Rocky Gentner

Bay City Partners, LLC  
1225 Catalina Avenue  
Seal Beach, CA 90740  
Attn: Bob Griffith

Bay City Partners, LLC  
P.O. Box 179  
Seal Beach, CA 90740  
Attn: Brian Kyle

Bay City Partners, LLC  
107 Opal  
Balboa Island, CA 92662  
Attn: Bob Griffith

With a copy to:

Hewitt & O'Neil  
1000 MacArthur Blvd., Suite 100  
Irvine, CA 92612  
Attn: Ray F. Palchik

If to Atkinson LLC:

Atkinson, LLC  
400 Orion Street  
Huntington Beach, CA 92694  
Attn: Cindy Atkinson

If to Griffith LLC:

Griffith Street Building, LLC  
2999 Westminister Avenue, Suite 203  
Seal Beach, CA 90740  
Attn: Rocky Gentner

If to Griffith LLC:

Main & PCH, LLC  
1225 Catalina Avenue  
Seal Beach, CA 90740  
Attn: Bob Griffith

If to Kyle LLC:

Kyle, LLC  
P.O. Box 179  
Seal Beach, CA 90740  
Attn: Brian Kyle

If to Parkhurst LLC: Park-e, LLC  
107 Opal Ave.  
Newport Beach, CA 92662  
Attn: Jim Parkhurst

Each party shall have the right to direct another address for notice hereunder, provided that such direction is duly served upon the other parties at the last address referred to in this Agreement.

5.6 Entire Agreement; No Modification. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. No modification or amendment hereto shall be of any force or effect unless it shall be in writing and signed by the parties hereto (or, as applicable, their successors or assigns).

5.7 Binding Effect; Constructive Notice and Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors-in-interest and assigns.

5.8 Further Assurances. The parties agree to execute, within ten (10) days of presentation, any and all further documents necessary to accomplish the intent of this Agreement.

5.9 Incorporation. The Recitals and Exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth in the body hereof.

5.10 Attorneys' Fees. In the event either party shall institute any action or proceeding against the other relating to the provisions of this Agreement, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorneys' fees and costs actually incurred.

5.11 Captions. The Section headings or captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit, define or amplify the scope or intent of the terms and provisions hereof.

5.12 Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.13 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

5.14 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute a single agreement and each of which shall be an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Owner:

Bay City Partners, a California limited liability company

By:

  
Rocky Gentner, Member

By:

  
Bob A. Griffith, Member

By:

  
Brian Kyle, Member

By:

  
James H. Hurst, Member

By:

  
Andy Atkinson, Trustee

Atkinson Family, LLC

Atkinson LLC:

Atkinson LLC, a California limited liability company

By:

  
Andy Atkinson, Member

Gentner LLC:

Gentner Street Building, LLC, a California limited liability company

By: Rocky and Deborah Gentner Family, LLC,  
a California limited liability company

By:

  
Rocky Gentner, Managing Member

Griffith LLC:

Main & PCH, LLC, a California limited liability company

By:

  
Bob A. Griffith, Managing Member

Kyle LLC:

Kyle, LLC, a California limited liability company

Kyle LLC:

Kyle, LLC, a California limited liability company

By:

  
Brian Kyle, Sole Member

Parkhurst LLC:

Parkhurst, LLC, a California limited liability company

By:

  
James Parkhurst, Managing Member

COPY

STATE OF CALIFORNIA

COUNTY OF ORANGE

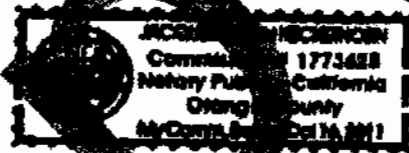
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On April 14, 2009, before me, Jacquelyn A. Heckethorn, a Notary Public, personally appeared Rocky Gertner, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jacquelyn A. Heckethorn  
Notary Public



STATE OF CALIFORNIA

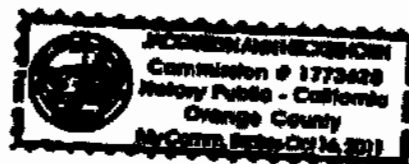
COUNTY OF ORANGE

On April 14, 2009, before me, Jacquelyn A. Heckethorn, a Notary Public, personally appeared Bob A. Griefith, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jacquelyn A. Heckethorn  
Notary Public



STATE OF CALIFORNIA

COUNTY OF ORANGE

)  
) ss  
)

On April 14, 2009, before me, Jacquelyn A. Heckethorn, a Notary Public, personally appeared Brian Kyle, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jacquelyn A. Heckethorn  
Notary Public



STATE OF CALIFORNIA

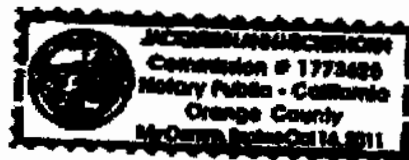
COUNTY OF ORANGE

On April 14, 2009, before me, Jacquelyn A. Heckethorn, a Notary Public, personally appeared James Parkhurst, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jacquelyn A. Heckethorn  
Notary Public





**ACKNOWLEDGMENT**

STATE OF CALIFORNIA  
COUNTY OF Los Angeles

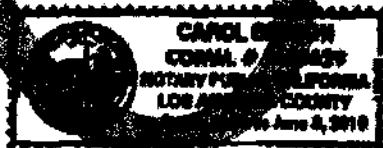
On March 2, 2009 before me, Carol Benson  
Notary Public, personally appeared  
Cindy Atkinson

who proved to me on the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged  
me that he/she/they executed the same in his/her/their authorized capacity,  
and that by his/her/their signature(s) on the instrument, he/she/they, or the  
person upon behalf of which the person(s) acted, executed the instrument. I certify under  
PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carol Benson

(Seal)



**Exhibit A**  
**Legal Description of Property**

**PARCEL 1:**

LOTS 1, 2 AND 3 IN BLOCK 100 OF TRACT NO. 696, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION INCLUDED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12113, PAGE 201, OFFICIAL RECORDS.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, IN BOOK 90, PAGE 100, INCLUSIVE OF RECORD OF SURVEYS.

**PARCEL 2:**

THAT PORTION OF TIDE LAND LOCATION NO. 137 (COUNTY NO. 106) AS TENTED BY THE STATE OF CALIFORNIA ON FEBRUARY 12, 1901 AND RECORDED APRIL 27, 1901 IN BOOK 9, PAGE 103 OF PATENTS, RECORDS OF LOS ANGELES COUNTY AND RECORDED SEPTEMBER 5, 1905 IN BOOK 1, PAGE 231 OF DEEDS, RECORDS OF ORANGE COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF THE BOUNDARY SURVEY OF SAID RANCHO LOS ALAMITOS, AS PER MAP RECORDED IN BOOK 1, PAGES 40 AND 41 AND AS THE PATENTS OF SAID LOS ANGELES COUNTY, THENCE ALONG SAID BOUNDARY NORTH 80° 00' WEST 230.47 FEET TO A LINE PARALLEL WITH SAID BOUNDARY NORTHWESTERLY FROM THE RANCHO LINE, BETWEEN BOUNDARY STATIONS 49 AND 50; THENCE ALONG SAID PARALLEL LINE NORTH 54° 48' 00" EAST 122.00 FEET TO A LINE PARALLEL WITH AND 30.00 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THE 200 FOOT STRIP OF LAND DESCRIBED IN QUITCLAIM DEED TO THE PACIFIC ELECTRIC RAILWAY COMPANY RECORDED FEBRUARY 21, 1901 IN BOOK 514, PAGE 44 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 42° 19' 00" EAST 201.52 FEET TO SAID RANCHO LINE; THENCE SOUTH 54° 48' 00" WEST 1136.60 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION LYING NORTHEASTERLY OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES RECORDED IN BOOK 426, PAGE 178 OF DEEDS, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND SUBSEQUENTLY RELINQUISHED TO THE CITY OF SEAL BEACH BY INSTRUMENT RECORDED IN BOOK 700, PAGE 260 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN STATIONS 49 AND 50 OF SAID RANCHO LOS ALAMITOS, DISTANT NORTH 54° 48' 00" EAST 213.27 FEET FROM SAID STATION 49; THENCE NORTH 43° 56' 00" WEST 202.36 FEET TO A LINE PARALLEL WITH AND DISTANT NORTHWESTERLY 200.00 FEET FROM SAID BOUNDARY LINE; THENCE NORTH 54° 48' 00" EAST 80.94 FEET ALONG SAID PARALLEL LINE; THENCE SOUTH 43° 56' 00" EAST 202.36 FEET TO SAID BOUNDARY LINE; THENCE SOUTH 54° 48' 00" WEST 80.94 FEET ALONG SAID BOUNDARY LINE TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN AS PARCEL A IN LICENSE SURVEYORS MAP OF THE TIDELANDS EAST OF NAPLES FILED IN BOOK 2, PAGES 47 AND 48 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE.

**PARCEL 3:**

THAT PORTION OF THE SOUTH HALF OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST, INCLUDED WITHIN LOT C-1 OF THE RANCHO LOS ALAMITOS, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAPS 1 AND 2 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 100, DEED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 49 OF SAID RANCHO LOS ALAMITOS; THENCE NORTH 54° 47' 05" EAST 213.27 FEET ALONG THE WESTERLY BOUNDARY OF SAID RANCHO TO THE SOUTHWESTERLY LINE OF MARINA DRIVE, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 436, PAGE 107 OF DEEDS OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 44° 02' WEST 33.50 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 940 FEET; THENCE SOUTHEASTERLY 105.71 FEET ALONG SAID CURVE TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON A MAP OF BAY CITY RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 31° 17' 50" WEST 137.49 FEET ALONG SAID PROLONGATION TO THE SOUTHWESTERLY LINE OF SAID LOT C-1; THENCE NORTH 65° 02' WEST 100.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 121, PAGE 201, OFFICIAL RECORDS.

**PARCEL 4:**

THAT PORTION OF BLOCK 12 OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING NORTHWESTERLY OF THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF FIRST STREET AS SHOWN ON SAID MAP.

EXCEPT THAT PORTION THEREOF LYING NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS DESCRIBED IN THE DEED TO SAID CITY RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION THEREOF LYING SOUTHERLY AND SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF SAID SOUTHEASTERLY LINE OF FIRST STREET 272.93 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 58° 54' WEST 55.32 FEET; THENCE NORTH 22° 31' WEST 364.64 FEET; THENCE NORTH 24° 31' EAST 78.78 FEET TO THE SOUTHWESTERLY LINE OF OCEAN BOULEVARD, AS SHOWN ON SAID MAP.

**PARCEL 5:**

THAT PORTION OF BLOCK "B" TOGETHER WITH THAT PORTION OF "OCEAN AVENUE" A STREET, IN THE BAY CITY TRACT, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF THE PLANNED MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY LYING AND BEING OF THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF BLOCK "C" OF SAID BAY CITY TRACT DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, AS SHOWN ON SAID MAP, WITH THE NORTHEASTERLY LINE OF SAID BLOCK "B"; THENCE NORTH 31° 17' 00" EAST 80.11 FEET ALONG SAID SOUTHWESTERLY PROLONGATION TO THE EAST SOUTHERLY CORNER OF SAID BLOCK "C"; THENCE NORTH 55° 42' 00" WEST 104.64 FEET ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK "C" TO THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 20, 1933 IN BOOK 612, PAGE 317 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTHERLY ALONG THE SOUTHERLY PROLONGATION OF SAID EASTERLY LINE, AND THE SEAL BEACH BOUNDARY AGREEMENT NO. 2, RECORDED APRIL 8, 1968 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY TO THE NORTHERLY TERMINUS OF THE AGREEMENT LINE BETWEEN THE STATE LANDS COMMISSION AND THE CITY OF SEAL BEACH, AND THE CITY OF LOS ANGELES RECORDED AUGUST 9, 1967 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 28° 01' 00" WEST 60.00 FEET ALONG LAST SAID AGREEMENT LINE TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO THE CITY OF SEAL BEACH RECORDED JANUARY 23, 1932 IN BOOK 536, PAGE 49 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 67° 06' 27" EAST 297.06 FEET ALONG THE SOUTHERLY LINE OF SAID LAND OF THE CITY OF SEAL BEACH, SAID SOUTHERLY LINE BEING THE SOUTHERLY LINE OF OCEAN AVENUE AS SET FORTH IN RESOLUTION NO. 197 B, THE ORDINANCES OF THE CITY OF SEAL BEACH AND RECORDED IN SAID BOOK 536, PAGE 49 OF OFFICIAL RECORDS, TO THE POINT OF BEGINNING.

A PORTION OF SAID OCEAN AVE. WAS VACATED UPON APPLICATION OF THE BAYSIDE LAND COMPANY AND ACTION OF THE TRUSTEES OF THE CITY OF SEAL BEACH RECORDED AUGUST 18, 1914 IN MINUTE BOOK 11 AT PAGE 51.

**PARCEL 6:**

BLOCK C OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT A-2, IN THE RANCHO LOS ALAMITOS INCLUDED WITHIN SAID CITY OF SEAL BEACH, AS SHOWN ON MAP NO. 1 FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 1, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, LYING WESTERLY OF SAID BLOCK C AND LYING NORTHERLY OF THE WESTERLY PROLONGATION OF THE SOUTHWESTERLY CORNER OF SAID BLOCK C.

EXCEPT FROM THE ABOVE DESCRIBED PORTION OF SAID LOT A-2 THE PORTION THEREOF LYING WESTERLY AND SOUTHERLY OF THE FOLLOWING DESCRIBED

BEGINNING AT A POINT NORTH 65° 00' 00" WEST, 330.00 FEET FROM SECTION NO. 49 OF THE PATENT BOUNDARY LINE OF THE RANCHO LOS ALAMITOS BEING IN THE NORTHEASTERLY LINE OF SAID BLOCK "C" AND ON THE EASTERN SHORE OF THE INLET FROM THE PACIFIC OCEAN TO ALAMITOS BAY; THENCE SOUTH 12° 00' 00" WEST, 547.00 FEET; THENCE SOUTH 6° 00' 00" WEST, 69.93 FEET; THENCE SOUTH 29° 15' 00" EAST, 38.72 FEET TO THE POINT OF INTERSECTION WITH THE NORTHEASTERLY LINE OF OCEAN AVE., AS SHOWN ON AFORESAID MAP OF BAY CITY; THENCE SOUTH 55° 43' 00" EAST, ALONG SAID LINE OF OCEAN AVENUE 15.63 FEET TO THE SOUTHWESTERLY CORNER OF SAID BLOCK "C".

ALSO EXCEPT THAT PORTION THEREOF INCLUDED WITHIN TRACT 698, AS PER MAP RECORDED IN BOOK 31, PAGE 27 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED MARCH 23, 1977 IN BOOK 12, PAGE 201, OFFICIAL RECORDS.

EXCEPT FROM SAID PARCELS 1 THROUGH 6 ALL WATER AND WATER RIGHTS APPURTENANT WHETHER SURFACE OR SUBSURFACE AND ALSO EXCEPT THEREFROM ALL OIL, GAS, AND PETROLEUM, OR OTHER MINERAL OR HYDROCARBON SUBSTANCES, WITHOUT THE RIGHT OF ACCESS TO THE SURFACE OF SAID LAND FOR SUCH USE, AS RESERVED BY THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, IN THE GRANT DEED RECORDED MAY 27, 2003 AS INSTRUMENT NO. 2003060612579, OF OFFICIAL RECORDS.

**END OF LEGAL DESCRIPTION**

Exhibit B-1  
Legal Description of Easement Area

A STRIP OF LAND 10.00 FEET IN WIDTH OVER THAT PORTION OF BLOCK 8 OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3 PAGE 19 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE LAND AS SHOWN ON RECORD OF SURVEY NO. 2002-1000, AS FILED IN BOOK 1 PAGE 47 IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY NORTH 57°53'35" WEST 15.50 FEET TO THE POINT OF BEGINNING; THENCE NORTH 32°17'25" EAST 20.04 FEET TO POINT A; THENCE CONTINUING NORTH 32°17'25" EAST 20.04 FEET; THENCE NORTH 25°31'05" EAST 25.23 FEET TO THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SHOWN ON SAID RECORD OF SURVEY.

THE SIDELINES OF SAID STRIP TO BE LENGTHENED OR SHORTENED TO MEET AT ANGLE POINTS AND TO TERMINATE SOUTHWESTERLY IN THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY AND NORTHEASTERLY IN SAID SOUTHWESTERLY LINE OF OCEAN AVENUE.

TOGETHER WITH:

PARCEL A: BEGINNING AT THE HEREIN ABOVE DESCRIBED POINT A; THENCE NORTH 57°42'35" WEST 9.60 FEET; THENCE NORTH 32°17'25" EAST 44.00 FEET; THENCE SOUTH 57°42'35" EAST 18.00 FEET; THENCE SOUTH 32°17'25" WEST 44.00 FEET; THENCE NORTH 57°42'35" EAST 9.60 FEET TO THE POINT OF BEGINNING.

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHTS OF WAY AND EASEMENTS OF RECORD, IF ANY.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 13<sup>TH</sup> DAY OF MAY, 2004.

  
GWEN-VERA DEL CASTILLO, PLS 5108  
REGISTRATION EXPIRES 6/30/07







**Schedule 1**

**Revenue Allocations for Easement Holders**

Atkinson LLC	12.5%
Gentner, LLC	25%
Griffith LLC	25%
Kyle LLC	12.5%
Parkhurst LLC	25%

**Copy**

## Exhibit M

### ASSIGNMENT OF LICENSE AGREEMENT

This Assignment of License Agreement (this "Assignment") is entered into as of February 17, 2009 (the "Effective Date") by and between Bay City Partners, LLC, a California limited liability company ("Assignor"), on the one hand, and Atkinson LLC, a California limited liability company ("Atkinson LLC"), Tenth Street Building, LLC, a California limited liability company ("Gentner LLC"), Main & PCH, LLC a California limited liability company, ("Griffith LLC"), Kyle LLC, a California limited liability company ("Kyle LLC"), and Park-e, LLC, a California limited liability company ("Parkhurst LLC") (collectively "Assignee"), on the other hand:

1. Assignment and Assumption of License Agreement. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to that certain License Agreement (the "License Agreement") dated as of February 9, 2006 by and between Assignor, as licensor, and Plains Exploration & Production Company, a Delaware corporation, assigned to Dos Cuadras Offshore Resources, LLC, a Texas limited liability company, as licensee, pursuant to that certain Letter Agreement dated March 1, 2006 (the "Letter"), as assigned to DCOR, LLC a Texas limited liability company ("DCOR") covering the property then described (the "License Area").

Assignee hereby accepts the foregoing assignment, assumes and agrees to perform all of the covenants, conditions, agreements and obligations of Assignor under the License that arise or accrue on or after the Effective Date.

2. Assignee as Easement Holder. The parties understand and agree (and, by execution below, Licensee understands and agrees) that Assignor has previously granted or concurrently herewith granting to Assignee a non-exclusive easement of the entire License Area pursuant to the certain Easement Agreement dated on this date herewith by and between Assignor and Assignee (the "Easement Agreement") and that, based on the Easement Agreement, Assignee shall be deemed to be the "Owner" under the License Agreement for all purposes, notwithstanding that Assignee does not own fee title to the License Area.

3. Indemnification. Assignor shall, from and after the Effective Date, indemnify, defend, and hold Assignee harmless from any liabilities, losses, costs, demands, damages, claims, suits, judgments or expenses (including, without limitation, attorneys' fees and costs) incurred by Assignee arising out of or connected with the License that arose or accrued prior to the Effective Date.

Assignor shall, from and after the Effective Date, indemnify, defend, and hold Assignee harmless from any liabilities, losses, costs, demands, damages, claims, suits, judgments or expenses (including, without limitation, attorneys' fees and costs) incurred by Assignor arising out of or connected with the License that arise or accrue on or after the Effective Date.

4. Representations and Warranties. Assignor and Assignee each represent and warrant to each other that it is qualified and has full power and authority to execute this Assignment, and that the person signing this Assignment on its behalf is authorized to do so. Assignor further represents and warrants to Assignee that (i) the License is in full force and effect, (ii) Assignor has the right to assign its rights under the License to Assignee, (iii) Assignor

has not previously assigned its rights under the License Agreement to any other party, and (v) Assignee shall be entitled to receive any and all revenues received from the Licensee under the License Agreement.

5. Binding Agreement. This Assignment shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

6. Attorneys' Fees. In the event of any controversy arising out of or in connection with this Assignment, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including actual attorneys' fees, disbursements, and court costs reasonably incurred by the prevailing party in connection with such action or proceeding.

7. Governing Law. This Assignment shall be governed by, interpreted under and construed in accordance of the laws of the State of California.

8. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall collectively constitute one agreement.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date written above.

Assignor:

City Partners, California limited liability company

By: [Signature]  
Member

Bob A. Griffith  
Bob A. Griffith, Member

Brian Kyle  
Brian Kyle, Member

By: [Signature]  
James Parkhurst, Member

By: [Signature]  
Cindy Atkinson as Trustee of The Atkinson Family Trust

Assignee:

Atkinson LLC:

Atkinson LLC, a California limited liability company

By:

  
Cindy Atkinson, Member

Gentner LLC:

Tenth Street Building, LLC, a California limited liability company

By: Rocky and Deborah Gentner Family LLC, a California limited liability company

By:

Rocky Gentner, Managing Member

Griffith LLC:

Main & PCH, LLC, a California limited liability company

By:

  
Bob A. Griffith, Managing Member

Kyle LLC:

Kyle LLC, a California limited liability company

By:

  
Brian Kyle, Sole Member

Parkhurst LLC:

Parkhurst LLC, a California limited liability company

By:

  
James Parkhurst, Managing Member

**ACCEPTED AND AGREED:**

DCOR hereby acknowledges and consents to the foregoing Assignment of License Agreement by and between Assignor and Assignee. DCOR acknowledges that as a result of this Assignment, the License Agreement is now between DCOR and the Assignee (i.e., the easement holders of the License Area). DCOR further acknowledges and agrees that as a result of this Assignment, as of the Effective Date Assignor is hereby released from any and all obligations under the License Agreement, and Assignee is solely obligated thereunder. DCOR agrees, from and after November 20 2009, until notified otherwise by a majority in interest of the easement holders, to make separate payments of the amounts due under the License Agreement to each of Atkinson LLC, Gentner LLC, Griffith LLC, Kyle LLC and Parkhurst LLC according to the percentage interest held by each and at the address for each as set on Schedule attached hereto.

DCOR, LLC,  
a Texas limited liability company

By: *Jeffrey E. Warren*

Name: Jeffrey E. Warren

Title: Vice President

COPY



Schedule to Assignment of License Agreement

Atkinson LLC (12.5%)  
4592 Orion Street  
Huntington Beach, CA 92649  
Attn: Cindy Atkinson

Tenth Street Building, LLC (25%)  
2999 Westminster Avenue, Suite 203  
Seal Beach, CA 90740  
Attn: Rocky Gentner

Main & PCH, LLC (25%)  
1225 Catalina Avenue  
Seal Beach, CA 90740  
Attn: Bob Griffith

Kyle, LLC (12.5%)  
P.O. Box 179  
Seal Beach, CA 90740  
Attn: Brian

Parkhurst LLC (25%)  
10700 Pal Ave.  
Newport Beach, CA 92662  
Attn: Dan Parkhurst

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Seal Beach  
211 - 8th Street  
Seal Beach, CA 90740  
Attn: City Clerk

Recorded in Official Records, Orange County  
Tom Daly, Clerk-Recorder



NO FEE

2012000479003 4:01 pm 08/20/12

276 422 A12 30

0.00 0.00 0.00 0.00 87.00 0.00 0.00 0.00

Exempt from recording fees pursuant to Govt. Code Section 27383

(Space above for recorder's use)

## DISPOSITION AND DEVELOPMENT AGREEMENT

Between



City of Seal Beach  
211 - 8th Street  
Seal Beach, CA 90740

&

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

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of July 9, 2012, by and between Bay City Partners, LLC, a California limited liability company (hereinafter "Owner"), and the City of Seal Beach, a California charter city (hereinafter "City"). Owner and City are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties."

## RECITALS

A. Owner owns approximately 10.7 acres of land located south of Marina Drive and west of 1st Street within Seal Beach, California and has proposed a project on property described with more particularity in Exhibit "A" and shown on Exhibit "B" ("Property").

B. Owner has proposed Tentative Tract Map 17425, as revised (TTM 17425) for a 32-residential lot subdivision on the northerly portion of the Property described in Exhibit C, and has applied for related approvals (the "Project"). Owner has agreed, inter alia, to donate the property described in Exhibit D ("Open Space") (excluding the property defined as Driveway Parcel in Recital C) to the City at no cost to the City, concurrently with issuance of a coastal development permit ("CDP").

C. Located within the Open Space is a driveway that provides access to the 1st street parking lot. Owner has offered to convey the driveway and the underlying fee to the City ("Driveway Parcel") in exchange for a portion of land within the right-of-way for 1st Street that is owned by the City in fee. The Driveway Parcel is described in Exhibit F.

D. City must comply with all applicable state laws prior to vacating the City-owned land within the right-of-way for 1<sup>st</sup> Street.

E. Pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq. ("CEQA")) and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000, et seq.), the City prepared an Environmental Impact Report to analyze and disclose the potential environmental impacts of the Project, including those impacts potentially arising from the disposition of City property contemplated by this Agreement. The City Council certified an Environmental Impact Report on June 25, 2012.

F. On July 9, 2012, the City Council approved TTM 17425 for a 32-residential lot subdivision and related approvals.

G. On March 16, 2011, the Parties entered into a settlement agreement and mutual release ("Settlement") of an eminent domain action filed by the City to acquire a portion of the Property and an application for a writ of mandate filed by Owner challenging the adequacy of the CEQA review of a nearby City project subject to the terms and conditions stated therein. As part of the Settlement, the City agreed to process in good faith a 48-unit residential project that Owner intended to submit to the City subsequent to the Settlement. The previously contemplated 48-unit residential project is depicted in Exhibit C-2 of the Settlement and is referred to therein as the "Proposed Residential Project."

H. The Council-approved Project is substantially different than the 48-unit Proposed Residential Project contemplated in the Settlement.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Tentative Tract Map 17425. It is mutually and expressly agreed by the Parties that TTM 17425, as approved by the City Council on July 9, 2012, supersedes any reference to the "Proposed Residential Project," in the Settlement, including but not limited to Exhibit C-2 to the Settlement.

2. California Coastal Commission. The Project requires a CDP from the California Coastal Commission. In the event the Commission issues a CDP for the Project:

2.1 Owner shall donate by conveyance of fee title to the City and at no cost to the City, the "Open Space" described in Exhibit "D" attached hereto, excluding the Driveway Parcel described in Exhibit "E".

2.2 The Open Space shall be deed restricted to those permitted uses set forth in the DWP Specific Plan more specifically listed as public parks, greenbelts, bike trails, nature trails, hiking trails, driveway and drainage facilities, and any passive recreational uses normally located in parks or open spaces. To ensure the passive nature of the open space area, only light standards and park benches shall be allowed, and the height of said light standards shall not exceed 15 feet.

2.3 The documentation transferring ownership of the open space to the City shall contain a right of reversion in favor of the Owner and Owner's successors-in-interest in the event the permitted open space uses as provided in the DWP Specific Plan are discontinued and some other use of the Open Space area is proposed that would be inconsistent or in conflict with such permitted uses.

2.4 As evidence of the donation credit for tax purposes, as provided in this Agreement, Owner shall have a right to install a surface plaque or monument on the Open Space area in a location easily visible by the public with an inscription acknowledging the donation of the Open Space by Bay City Partners, LLC to the City of Seal Beach. The dimensions of the plaque or monument shall be no larger than two feet by two feet.

2.5 As to the DCOR Oil and Gas License and Easement referenced in the Settlement, the City agrees that it shall not: (a) interfere with or impede the normal course of business under either the license with DCOR or the DCOR Easement; or (b) interfere with or relocate any of the pipelines existing under either the license with DCOR or the DCOR Easement. The City further agrees to accept a restriction on the donated land that no easements or construction shall be permitted for any oil and gas pipelines other than what is needed to directly serve the donated land without Owner's or Owner's successors-in-interest approval.

2.6 The City will conduct all necessary proceedings to consider vacating approximately 7,600 square feet of land that the City owns adjacent to the corner of Marina Drive and 1st Street shown on and legally described in Exhibit "E" attached hereto. In the event the City satisfies all statutory requirements, the City shall then convey by quitclaim deed to Owner fee simple title to that property in exchange for Owner's conveyance of the Driveway Parcel. To the extent the Driveway Parcel exceeds the value of the approximately 7,600 square feet of the City owned land, Owner may use that value as a donation tax credit as provided in the Settlement.

3. Settlement. Unless modified by this Agreement, the terms and provisions of the Settlement shall remain in full force and effect and shall be binding on the Parties.

4. Termination. This Agreement may be terminated by either Party upon notice to the other upon the occurrence of any of the following events: (1) a referendum overturning any City Council's legislative approvals for the Project; (2) if termination occurs pursuant to any specific provision of this Agreement; or (3) entry after all appeals have been exhausted of a final judgment or issuance of a final order directed to the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval of the City Council of this Agreement or any land use entitlement for development of the Project.

5. Public Improvements. Owner shall provide for the installation of all Public Improvements required by the City pursuant to any condition of approval of TTM 17425 and Public Improvements required pursuant to the Mitigation Monitoring and Reporting Program adopted for the Project.

6. Green Screen Removal. Developer shall remove the green screen on the fence constructed on the perimeter boundaries of the Property on or before September 28, 2012 and shall thereafter not replace the green screen without the City's approval unless a referendum or legal challenge is filed to overturn the certification of the Project EIR or land use entitlements approved by the City for development of the Project.

7. Venue. Any legal action shall be brought in the Superior Court for Orange County, California.

8. Waivers and Delays.

8.1 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a default by the other Party hereto, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future.

8.2 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes, other labor difficulties, federal or state government regulations, court actions, or other causes beyond the Party's control.

8.3 Government Agencies. Any delay resulting from the acts or omissions of the City or any other governmental agency or public utility and beyond the reasonable control of Owner except those related to the normal and customary processing of future development approvals.

9. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or deposited in the United States mail, postage prepaid and addressed to the addresses on page 1 of this Agreement. Either Party may change the address stated therein by giving notice, in writing, to the other Party. Thereafter, notices shall be addressed and submitted to the new address. Notices shall be deemed received upon personal delivery or upon the third day following deposit in the U. S. mail in the manner set forth above.

10. Attorneys' Fees. If legal action is brought by any Party against another for breach of this Agreement, or to compel performance under this Agreement, the prevailing Party shall be entitled to an award of reasonable attorneys' fees and costs incurred in connection with such action.

11. Authority to Execute. Each person executing this Agreement on behalf of Owner warrants and represents that each has the authority to execute this Agreement on behalf of the Owner and to bind Owner to the performance of its respective obligations hereunder.

12. Severability of Terms. If any term or provision of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to enforce.

13. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with California laws. The Parties understand and agree that this Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of the City, and in particular, the City's police powers. In this regard, the Parties understand and agree that this Agreement shall not be deemed to constitute the surrender or abnegation of the City's governmental powers over the Property.

14. Legal Remedies.

14.1 Specific Performance Remedy. The City and Owner acknowledge that, if Owner fails to carry out its obligations under this Agreement, the City shall have the right to refuse to issue any permits or other approvals to which Owner would otherwise have been entitled. Therefore, the City's remedy of denying issuance of permits or terminating this Agreement shall be sufficient in most circumstances if Owner fails to carry out its obligations hereunder. Notwithstanding the foregoing, if the City issues a permit or other approval pursuant to this Agreement in reliance (explicitly stated in writing) upon a specified condition being satisfied by Owner in the future, and if Owner then fails to satisfy such condition, the City shall be entitled to specific performance for the sole purpose of causing Owner to satisfy such condition. The City's right to specific performance shall be limited to those circumstances set forth above, and the City shall have no right to seek specific performance to cause Owner to otherwise proceed with the development of the Project in any manner.

14.2 City not Liable for Damages. It is acknowledged by the Parties that City would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof. Consequently, and except for the payment of attorneys' fees in accordance with Section 10 above, City shall not be liable in damages to Owner or to any assignee, transferee or any other person, and Owner covenants on behalf of itself and its successors in interest not to sue for or claim any damages:

- (a) for any breach of, or which arises out of, this Agreement;
- (b) for the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; or
- (c) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.



14.3 Breach by Action of the Electorate. The Parties hereby warrant that each enters into this Agreement with the understanding that if the City defaults on its obligations under the Agreement due to an action taken by the electorate of the City in the exercise of the reserved powers of initiative and referendum, this Agreement shall be modified or suspended and Owner's right to seek specific performance, a writ of mandate, or other mandatory relief shall be limited by such force as the action taken by the electorate may have in light of state law as determined by any court of competent jurisdiction, in which case Owner's principal remedy shall lie in reformation of this Agreement.

15. Local, State and Federal Laws. Owner, its assigns and its contractors shall carry out the design and construction of all private improvements on the Property and all Public Improvements in conformity with all applicable laws, including, without limitation, all applicable federal, state and local occupation, employment, prevailing wage, safety and health laws, rules, regulations and standards. Owner agrees to indemnify, defend and hold the City harmless from and against any cost, expense, claim, charge or liability relating to or arising directly or indirectly from any breach by or failure of Owner or its contractor(s) or agents to comply with such laws, rules or regulations. Owner's indemnity obligations set forth in this Section shall survive the termination or expiration of this Agreement.

16. Rules of Construction and Miscellaneous Terms.

16.1 Time of Essence. Time is of the essence regarding each provision of this Agreement of which time is an element.

16.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and this Agreement supersedes all previous negotiations, discussion and agreements between the Parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

16.3 Not for Benefit of Third Parties. This Agreement and all provisions hereof are for the exclusive benefit of the City and Owner and its Transferees and shall not be construed to benefit or be enforceable by any third party.

16.4 Counterparts. This Agreement may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts shall constitute one and the same agreement.

16.5 Exhibits. The following Exhibits are attached to this Agreement and incorporated herein as though set forth in full:

Exhibit A – Legal Description of the Property

Exhibit B – Map of the Project

Exhibit C – Legal Description of Residential Portion

Exhibit D – Legal Description of Open Space

Exhibit E – Legal Description of City Property at Marina Drive and First Street

Exhibit F – Driveway Parcel

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:

By: 

Linda Devine, City Clerk

BAY CITY PARTNERS, LLC

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*

STATE OF CALIFORNIA


)  
) ss  
)

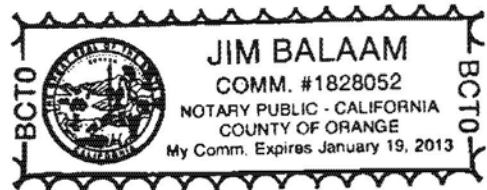
COUNTY OF ORANGE

On July 5, 2012, before me, Jim Balaam, a Notary Public, personally appeared BOB GUFFIN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public



STATE OF CALIFORNIA

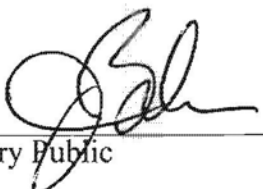
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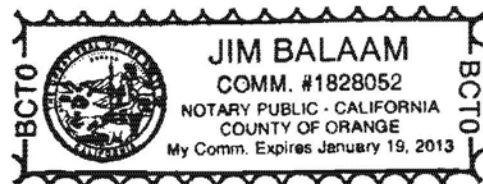
COUNTY OF ORANGE

On July 5, 2012, before me, Jim Balaam, a Notary Public, personally appeared Brian Kyle, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public



STATE OF CALIFORNIA

)  
) ss  
)

COUNTY OF ORANGE

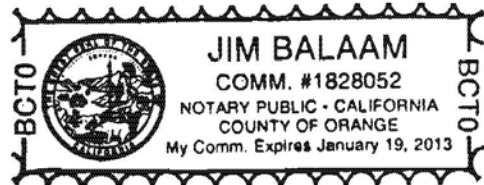
On July 6, 2012, before me, Jim Balaam, a Notary Public, personally appeared CINDY ATKINSON, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



STATE OF CALIFORNIA

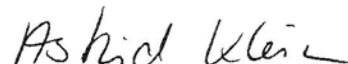
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COUNTY OF ORANGE

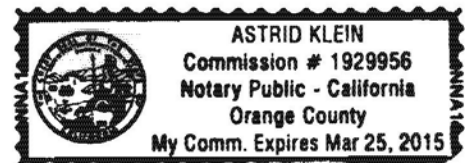
On July 18 2012, before me, Astrid Klein, a Notary Public, personally appeared Rocky W. Gentner, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



STATE OF CALIFORNIA

COUNTY OF ORANGE

)  
) ss  
)

On July 18, 2012, before me, Astrid Klein, a Notary Public, personally appeared James E. Parkhurst, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Astrid Klein  
Notary Public



## EXHIBIT "A"

### LEGAL DESCRIPTION "SITE MAP DWP SPECIFIC PLAN AREA"

THAT PORTION OF LAND SITUATED IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF CERTIFICATE OF COMPLIANCE NO. 2009-01, RECORDED MARCH 10, 2009 AS INST. NO. 2009000109534, OFFICIAL RECORDS OF SAID COUNTY AND A PORTION OF THE TIDE LAND LOCATION NO. 137 AS DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS INST. NO. 20070000052124, OFFICIAL RECORDS OF SAID COUNTY AND SHOWN ON RECORD OF SURVEY NO. 2002-1090 RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND A PORTION OF FIRST STREET AND MARINA DRIVE, PUBLIC ROADWAYS DESCRIBED AS FOLLOWS:

ALL OF PARCELS 1, 4, 5 AND 6 OF SAID CERTIFICATE OF COMPLIANCE NO 2009-01

AND

PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE 2009-01

**EXCEPTING** THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL NORTH 55°46'12" EAST 101.79 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE NORTH 55°46'12" EAST 89.76' FEET TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 326.00 FEET, A RADIAL BEARING TO SAID CURVE BEARS NORTH 54°22'38" WEST; THENCE SOUTHWESTERLY 75.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°14'21"; THENCE NONTANGENT NORTH 68°01'12" WEST 40.73 FEET TO THE **TRUE POINT OF BEGINNING**.

**TOGETHER WITH** THAT PORTION OF THE TIDE LAND LOCATION NO. 137, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS DOCUMENT NO 2007-000052124 OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 2002-1090 RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF SAID COUNTY RECORDER, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE 2009-01; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL NORTH 55°46'12" EAST 101.79 FEET; THENCE NORTH 68°01'12" WEST 58.91 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS DOCUMENTED NO. 2007-000052124 OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ALSO SAID LINE BEING THE SOUTHEASTERLY LINE OF THE LOS ANGELES COUNTY FLOOD CONTROL CHANNEL, SAME BEING A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 2000.00 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 68°21'13" WEST; THENCE ALONG SAID NORTHWESTERLY DEED LINE THE FOLLOWING TWO COURSES:

1. NONTANGENT SOUTHWESTERLY 82.02 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°20'59";



2. THENCE NONTANGENT SOUTH 19°00'21" WEST 2.61 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 3 OF SAID CERTIFICATE OF COMPLIANCE 2009-01

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID PARCEL 3; THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY RIGHT-OF-WAY OF MARINA DRIVE AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE 2009-01, SOUTH 43°01'03" EAST, 34.37 FEET TO THE **TRUE POINT OF BEGINNING**, SAID POINT ALSO BEING THE BEGINNING OF TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 940.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND RIGHT-OF-WAY, THROUGH A CENTRAL ANGLE OF 3°51'23", AN ARC DISTANCE OF 63.27 FEET TO A NON-TANGENT POINT IN THE MOST EASTERLY LINE OF SAID PARCEL 3. A RADIAL BEARING TO SAID POINT BEARS NORTH 43°07'34" EAST. THENCE SOUTHEASTERLY ALONG SAID LINE, SOUTH 04°04'51" EAST, 3.39 FEET; THENCE NORTH 43°01'03" WEST, 65.85 FEET TO THE **TRUE POINT OF BEGINNING**.

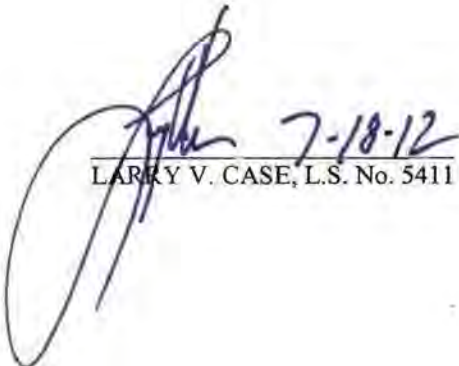
AND

THAT PORTION OF FIRST STREET, A PUBLIC ROADWAY, DESCRIBED AS FOLLOWS: **BEGINNING** AT AFOREMENTIONED POINT "A"; THENCE NORTH 32°17'25" EAST, 379.60 FEET ALONG A LINE PARALLEL TO AND 30.00 FEET NORTHWESTERLY OF THE CENTERLINE OF FIRST STREET AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE 2009-01; THENCE NORTH 05°21'49" WEST, 30.54 FEET; THENCE NORTH 43°01'03" WEST, 40.15 FEET TO A POINT IN THE MOST EASTERLY LINE OF PARCEL 3 OF SAID CERTIFICATE OF COMPLIANCE NO. 2009-01; THENCE SOUTHEASTERLY ALONG SAID LINE, SOUTH 04°04'51" EAST, 29.50 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF SAID PARCEL 3; THENCE SOUTHWESTERLY ALONG SAID LINE, SOUTH 25°22'45" WEST, 332.42 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 10.885 ACRES, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "A-1" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

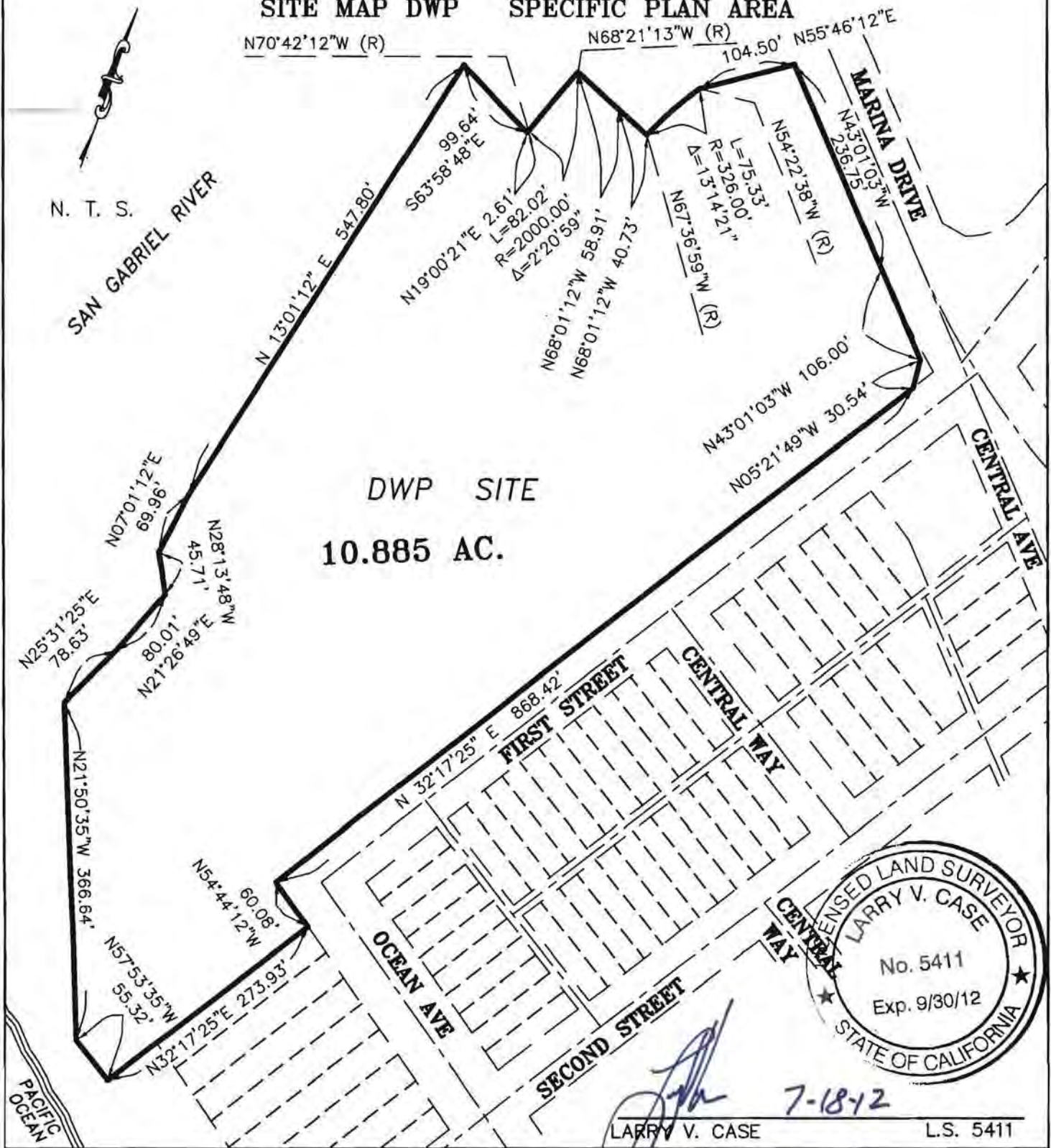
PREPARED BY:

  
LARRY V. CASE, L.S. No. 5411



# EXHIBIT "A-1"

## SITE MAP DWP SPECIFIC PLAN AREA



PREPARED IN THE OFFICE OF:

**Case Land Surveying, Inc.**

Surveying Mapping GPS Services  
614 Eckhoff St.  
Orange, CA. 92868  
Tel (714) 628-8948  
Fax (714) 628-8905

CITY OF SEAL BEACH

SITE MAP - DWP SPECIFIC PLAN AREA

CERTIFICATE OF COMPLIANCE NO.  
2009-01, RCRD 3/10/2009, INSTR.  
2009000109534, COUNTY OF ORANGE,  
STATE OF CALIFORNIA.

SHEET  
1  
OF 1

JOB No.  
11-SEA-791

Exhibit #10

**EXHIBIT B**  
**MAP OF PROJECT**  
**(LAND USE DEVELOPMENT PLAN)**



# Exhibit "B"

## Notes:

1. For purposes of determining building setbacks, Lots 1 through 7 shall have an average 12' and minimum 6' front yard setback along Marina Drive and a 5' minimum rear yard setback along "C" Street. Lots 28 through 32 shall have an average 12' and minimum 6' front yard setback along the river and a 5' minimum rear yard setback along "A" Street.
2. Solid fencing along Marina Drive shall not exceed a height of 42 inches (as measured on the side of fencing facing Marina Drive) within ten (10) feet of the Marina Drive right-of-way. The area between any such fencing and the Marina Drive right-of-way shall be landscaped and properly maintained by the homeowner.
3. Lot 22: The 6'9" required building setback area along 1st Street shall be landscaped and shall not contain any fencing or hedges above 42" in height as measured on the east side of the fencing / hedges facing 1st Street. The main entrance to the house shall be located on the east side of the building facing 1st Street. The building elevation facing east towards 1st Street shall have architecturally enhanced articulation, indicative of a typical front elevation of a residence.



## Land Use Development Plan

**EXHIBIT C**

**LEGAL DESCRIPTION OF RESIDENTIAL AREA**

## EXHIBIT "C"

### LEGAL DESCRIPTION "PROPOSED RESIDENTIAL PROJECT AREA"

THAT PORTION OF LAND SITUATED IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF CERTIFICATE OF COMPLIANCE NO. 2009-01, RECORDED MARCH 10, 2009 AS INST. NO. 2009000109534, OFFICIAL RECORDS OF SAID COUNTY AND A PORTION OF THE TIDE LAND LOCATION NO. 137 AS DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS INST. NO. 20070000052124, OFFICIAL RECORDS OF SAID COUNTY AND SHOWN ON RECORD OF SURVEY NO. 2002-1090 RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND A PORTION OF FIRST STREET AND MARINA DRIVE, PUBLIC ROADWAYS DESCRIBED AS FOLLOWS:

ALL OF PARCEL 1 OF SAID CERTIFICATE OF COMPLIANCE NO 2009-01

AND

PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE 2009-01

**EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:**

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL NORTH 55°46'12" EAST 101.79 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE NORTH 55°46'12" EAST 89.76 FEET TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 326.00 FEET, A RADIAL BEARING TO SAID CURVE BEARS NORTH 54°22'38" WEST; THENCE SOUTHWESTERLY 75.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°14'21"; THENCE NONTANGENT NORTH 68°01'12" WEST 40.73 FEET TO THE **TRUE POINT OF BEGINNING**.

**TOGETHER WITH** THAT PORTION OF THE TIDE LAND LOCATION NO. 137, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS DOCUMENT NO 2007-000052124 OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 2002-1090 RECORDED IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY, IN THE OFFICE OF SAID COUNTY RECORDER, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE 2009-01; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL NORTH 55°46'12" EAST 101.79 FEET; THENCE NORTH 68°01'12" WEST 58.91 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE QUITCLAIM DEED RECORDED JANUARY 25, 2007 AS DOCUMENTED NO. 2007-000052124 OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ALSO SAID LINE BEING THE SOUTHEASTERLY LINE OF THE LOS ANGELES COUNTY FLOOD CONTROL CHANNEL, SAME BEING A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 2000.00 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 68°21'13" WEST; THENCE ALONG SAID NORTHWESTERLY DEED LINE THE FOLLOWING TWO COURSES:

1. NONTANGENT SOUTHWESTERLY 82.02 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°20'59";



2. THENCE NONTANGENT SOUTH 19°00'21" WEST 2.61 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 3 OF SAID CERTIFICATE OF COMPLIANCE 2009-01

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID PARCEL 3; THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY RIGHT-OF-WAY OF MARINA DRIVE AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE 2009-01, SOUTH 43°01'03" EAST, 34.37 FEET TO THE **TRUE POINT OF BEGINNING**, SAID POINT ALSO BEING THE BEGINNING OF TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 940.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND RIGHT-OF-WAY, THROUGH A CENTRAL ANGLE OF 3°51'23", AN ARC DISTANCE OF 63.27 FEET TO A NON-TANGENT POINT IN THE MOST EASTERLY LINE OF SAID PARCEL 3. A RADIAL BEARING TO SAID POINT BEARS NORTH 43°07'34" EAST. THENCE SOUTHEASTERLY ALONG SAID LINE, SOUTH 04°04'51" EAST, 3.39 FEET; THENCE NORTH 43°01'03" WEST, 65.85 FEET TO THE **TRUE POINT OF BEGINNING**.

AND

A PORTION OF PARCEL 6 OF SAID CERTIFICATE OF COMPLIANCE 2009-01 DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHEAST CORNER OF SAID PARCEL 6; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL, SOUTH 25°22'45" WEST 49.91 FEET; SAID POINT HERINAFTER REFERRED TO AS POINT "A"; THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE, SAID LINE ALSO BEING NORTHWESTERLY RIGHT-OF-WAY OF FIRST STREET, SOUTH 32°17'25" WEST 60.20 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE NORTH 57°44'43" WEST 321.92 FEET; THENCE NORTH 74°58'38" WEST 88.88 FEET; THENCE NORTH 17°33'54" EAST 179.66 FEET; THENCE NORTH 15°01'22" WEST, 74.66 FEET TO THE NORTHERLY LINE OF SAID PARCEL 6; THENCE ALONG SAID NORTHERLY LINE SOUTH 63°58'48" EAST 188.53 FEET TO THE NORTHERLY CORNER OF SAID PARCEL 6, BEING THE BEGINNING OF A NONTANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 746.78 FEET, A RADIAL BEARING TO SAID CURVE BEARS SOUTH 68°46'16" WEST; THENCE SOUTHEASTERLY 274.54 FEET ALONG SAID CURVE AND ALONG THE NORTHEASTERLY LINE OF SAID PARCEL THROUGH A CENTRAL ANGLE OF 21°03'51"; THENCE CONTINUING ALONG SAID NORTHEASTERLY PARCEL LINE SOUTH 42°17'35" EAST 37.07 FEET TO THE **POINT OF BEGINNING**.

AND

THAT PORTION OF FIRST STREET, A PUBLIC ROADWAY, AS SHOWN ON FINAL ORDER OF CONDEMNATION, RECORDED MARCH 23, 1977 IN BOOK 12115, PAGE 201 OF OFFICIAL RECORDS DESCRIBED AS FOLLOWS:


**BEGINNING** AT AFOREMENTIONED POINT "A"; THENCE NORTH 32°17'25" EAST, 379.60 FEET ALONG A LINE PARALLEL TO AND 30.00 FEET NORTHWESTERLY OF THE CENTERLINE OF FIRST STREET AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE 2009-01; THENCE NORTH 05°21'49" WEST, 30.54 FEET; THENCE NORTH 43°01'03" WEST, 40.15 FEET TO A POINT IN THE MOST EASTERLY LINE OF PARCEL 3 OF SAID CERTIFICATE OF COMPLIANCE NO. 2009-01; THENCE SOUTHEASTERLY ALONG SAID LINE, SOUTH 04°04'51" EAST, 29.50 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF

SAID PARCEL 3; THENCE SOUTHWESTERLY ALONG SAID LINE, SOUTH 25°22'45" WEST, 332.42 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 4.462 ACRES, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "C-1" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:

 7-18-12  
LARRY V. CASE, L.S. No. 5411



# EXHIBIT "C-1"

POR. TIDE LAND LOCATION NO. 137,  
QUIT CLAIM DEED, REC. 01/25/07  
INSTR. 2007-000052124

SAN GABRIEL RIVER

MARINA DRIVE

CENTRAL AVE

FIRST STREET

CENTRAL WAY

N. T. S.

PORTION OF PARCEL 6  
CERTIFICATE OF  
COMPLIANCE 2009-01,  
REC. 03/10/09  
INSTR. 2009000109534

POR. OF PARCEL 2  
CERTIFICATE OF  
COMPLIANCE 2009-01,  
REC. 03/10/09  
INSTR. 2009000109534

POR. OF PARCEL 3  
CERTIFICATE OF  
COMPLIANCE 2009-01,  
REC. 03/10/09  
INSTR. 2009000109534

PARCEL 1  
CERTIFICATE OF  
COMPLIANCE 2009-01,  
REC. 03/10/09  
INSTR. 2009000109534

FINAL ORDER OF CONDEMNATION  
REC. 3/23/77, BK 12115, PG  
201 O.R.



LARRY V. CASE L.S. 5411

PREPARED IN THE OFFICE OF:

**Case Land Surveying, Inc.**

Surveying Mapping GPS Services  
614 Eckhoff St.  
Orange, CA. 92868  
Tel (714) 628-8948  
Fax (714) 628-8905

CITY OF SEAL BEACH

PROPOSED RESIDENTIAL PROJECT AREA

POR. OF CERTIFICATE OF COMPLIANCE NO.  
2009-01, RCRD 3/10/2009, INSTR.  
2009000109534, & POR. TIDE LAND LOC. NO.  
137, & POR. 1ST ST. & MARINA DR. COUNTY  
OF ORANGE, STATE OF CALIFORNIA

SHEET  
1  
OF 1

JOB No.  
11-SEA-791

**EXHIBIT D**

**LEGAL DESCRIPTION OF OPEN SPACE**



## EXHIBIT "D"

### LEGAL DESCRIPTION "OPEN SPACE"

THAT PORTION OF LAND SITUATED IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND BEING PARCELS 4, 5, AND A PORTION OF PARCEL 6 OF CERTIFICATE OF COMPLIANCE NO. 2009-01, RECORDED MARCH 10, 2009, AS INSTRUMENT NO. 2009000109534 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE MOST EASTERLY CORNER OF SAID PARCEL 4, SAID POINT ALSO BEING AT THE SOUTHWESTERLY RIGHT OF WAY OF OCEAN AVENUE, 80.00' IN WIDTH AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE; THENCE ALONG THE BOUNDARY LINES OF SAID PARCEL 4 THE FOLLOWING COURSES, SOUTH 32° 17' 25" WEST, 273.93' TO AN ANGLE POINT;

THENCE NORTH 57° 53' 35" WEST, 55.32 FEET TO AN ANGLE POINT;

THENCE NORTH 21° 50' 35" WEST, 366.64 FEET TO AN ANGLE POINT;

THENCE CONTINUING ALONG SAID BOUNDARY LINE OF PARCEL 4 AND CONTINUING ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 5, NORTH 25° 31' 25" EAST, 78.63 FEET TO AN ANGLE POINT;

THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE OF PARCEL 5, NORTH 21° 26' 49" EAST, 80.01 FEET TO AN ANGLE POINT;

THENCE LEAVING SAID NORTHWESTERLY LINE PARCEL 5 AND ALONG THE BOUNDARY OF SAID PARCEL 6 THE FOLLOWING COURSES, NORTH 28° 13' 48" WEST, 45.71 FEET TO AN ANGLE POINT;

THENCE NORTH 07° 01' 12" EAST, 69.96 FEET TO AN ANGLE POINT;

THENCE NORTH 13° 01' 12" EAST, 547.80 FEET TO AN ANGLE POINT;

THENCE SOUTH 63° 58' 48" EAST, 93.14 FEET TO AN ANGLE POINT;

THENCE LEAVING SAID BOUNDARY OF PARCEL 6, SOUTH 15° 01' 22" WEST, 74.66 FEET TO AN ANGLE POINT;

THENCE SOUTH 17° 33' 54" WEST, 179.66 FEET TO AN ANGLE POINT;

THENCE SOUTH 74° 58' 38" EAST, 88.88 FEET TO AN ANGLE POINT;

THENCE SOUTH 57° 44' 43" EAST, 321.92 FEET TO THE SOUTHEASTERLY LINE OF SAID PARCEL 6 AND ALSO THE NORTHWESTERLY RIGHT OF WAY OF FIRST STREET, 60.00 FEET IN WIDTH, AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE;


THENCE ALONG SAID SOUTHEASTERLY LINE OF PARCEL 6 AND CONTINUING ALONG THE SOUTHEASTERLY LINE OF PARCEL 5, AND ALSO SAID NORTHWESTERLY RIGHT OF WAY OF FIRST STREET, SOUTH 32° 17' 25" WEST, 488.82 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL 5;

THENCE LEAVING SAID SOUTHEASTERLY LINE OF PARCEL 5, AND ALSO SAID NORTHWESTERLY RIGH OF WAY OF FIRST STREET, AND ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 4, AND ALSO THE SOUTHWESTERLY RIGHT OF WAY OF OCEAN AVENUE, 80.00 FEET IN WIDTH, AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE, SOUTH 54° 44' 12" EAST, 60.08 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 6.424 ACRES, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B-1" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:

 7-18-12  
LARRY V. CASE, L.S. No. 5411





# EXHIBIT "D-1"



SAN GABRIEL RIVER

N 13°01'12" E 547.80'

S15°01'22"W 74.66'

S17°33'54"W 179.66'

S74°58'38"E 88.88'

S57°44'43"E 321.92'

PORTION OF PARCEL 6  
CERTIFICATE OF  
COMPLIANCE 2009-01, REC.  
03/10/09  
INSTR. 2009000109534

PARCEL 2  
CERTIFICATE OF  
COMPLIANCE 2009-01,  
REC. 03/10/09  
INSTR. 2009000109534

PARCEL 1  
CERTIFICATE OF  
COMPLIANCE 2009-01,  
REC. 03/10/09  
INSTR. 2009000109534

PORTION OF PARCEL 6  
CERTIFICATE OF  
COMPLIANCE 2009-01, REC.  
03/10/09  
INSTR. 2009000109534

6.424 AC.

N25°31'25"E 78.63'

N07°01'12"E 69.96'

N28°13'48"W 45.71'

PARCEL 5  
CERTIFICATE OF  
COMPLIANCE 2009-01,  
REC. 03/10/09  
INSTR. 2009000109534

PARCEL 4  
CERTIFICATE OF  
COMPLIANCE 2009-01,  
REC. 03/10/09  
INSTR. 2009000109534

FIRST STREET

CENTRAL WAY



LARRY V. CASE

L.S. 5411

7-18-12

POINT OF BEGINNING

OCEAN AVE

PREPARED IN THE OFFICE OF:

**Case Land Surveying, Inc.**  
Surveying Mapping GPS Services  
614 Eckhoff St.  
Orange, CA. 92868  
Tel (714) 628-8948  
Fax (714) 628-8905

CITY OF SEAL BEACH

CITY PARCEL

PARCELS 4, 5, AND POR. OF PARCEL 6  
CERTIFICATE OF COMPLIANCE NO.  
2009-01, RCRD 3/10/2009, INSTR.  
2009000109534, COUNTY OF ORANGE,  
STATE OF CALIFORNIA.

SHEET  
1  
OF 1  
JOB No.  
11-SEA-791

Exhibit #10

**EXHIBIT E**

**LEGAL DESCRIPTION OF CITY PROPERTY  
AT MARINA DRIVE AND FIRST STREET**

## EXHIBIT "E"

### DESCRIPTION:

THOSE PORTIONS OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 12 WEST IN THE RANCHO LOS ALAMITOS AS PER MAP FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14 PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, CALIFORNIA, OF LOTS 1, 2 AND 3, BLOCK 100, TRACT NO. 698 AS PER MAP RECORDED IN BOOK 31 PAGE 27 OF MISCELLANEOUS MAPS RECORDS OF SAID ORANGE COUNTY AND OF BLOCK "C", BAY CITY AS PER MAP RECORDED IN BOOK 3 PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, ALL IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF THE LAND DESCRIBED IN PART 3 OF EXHIBIT A-1 IN A DEED TO THE CITY OF LOS ANGELES, CALIFORNIA RECORDED IN BOOK 869 PAGE 1 OF OFFICIAL RECORDS; THENCE SOUTH 31° 17' 22" WEST 347.06 FEET ALONG THE SOUTHEAST BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES, THE SOUTHEAST BOUNDARY OF SAID LOTS 1, 2 AND 3 AND THE SOUTHEAST BOUNDARY OF SAID BLOCK "C"; THENCE NORTH 24° 22' 42" EAST 332.42 FEET; THENCE NORTH 05° 38' 24" WEST 33.18 FEET TO A POINT ON THE NORTHEAST BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 940.00 FEET A RADIAL FROM SAID POINT BEARS NORTH 42° 07' 31" EAST; THENCE ALONG SAID CURVE AND THE BOUNDARY OF SAID LAND OF THE CITY OF LOS ANGELES SOUTHEASTERLY 60.68 FEET TO THE POINT OF BEGINNING.

SAID LAND IS INCLUDED WITHIN THE AREA SHOWN ON A MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, IN BOOK 90 PAGE 23 TO 30 INCLUSIVE OF RECORD OF SURVEYS.

DESCRIPTION	667-1-1-1
APPROVED	APPROVED
DATE	March 8, 1977
APPROVAL	APPROVAL
LAWYER	LAWYER
DATE	DATE
BY	BY

K-1 -5-



**EXHIBIT F**  
**DRIVEWAY PARCEL**

## EXHIBIT F DRIVEWAY PARCEL

A STRIP OF LAND 40.00 FEET WIDE IN BLOCK B OF BAY CITY, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 3, PAGE 19 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE SOUTHEASTERLY LINE OF WHICH STRIP OF LAND IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EXTENSION OF THE SOUTHEASTERLY LINE OF FIRST STREET AND THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SAID STREETS ARE SHOWN ON THE MAP OF SAID BAY CITY; THENCE, NORTH 54°44'12" WEST, 13.95 FEET ALONG THE SOUTHWESTERLY LINE OF OCEAN AVENUE AS SHOWN ON RECORD OF SURVEY NO. 2002-1090 FILED AS INSTRUMENT NO. 2003000516244 IN BOOK 193, PAGE 47 OF RECORDS OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, STATE OF CALIFORNIA, TO THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING AT THE INTERSECTION OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 500.00 FEET WITH A RADIAL TO SAID CURVE AT SAID POINT BEARING NORTH 58°15'19" WEST; THENCE, SOUTHWESTERLY, 106.15 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°09'49" TO A POINT OF COMPOUND CURVE WITH A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 200.00 FEET, A RADIAL THROUGH SAID POINT OF COMPOUND CURVE BEARING NORTH 46°05'30" WEST; THENCE, SOUTHWESTERLY, 22.35 FEET ALONG SAID 200.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 6°24'07" TO A POINT OF TANGENCY WITH A LINE BEARING SOUTH 50°18'37" WEST; THENCE, SOUTH 50°18'37" WEST ALONG SAID TANGENT LINE 42.77 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 90.00 FEET; THENCE, SOUTHWESTERLY, 17.98 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°26'52" TO A POINT OF REVERSE CURVE WITH A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 400.00 FEET, A RADIAL THROUGH SAID POINT OF REVERSE CURVE BEARING SOUTH 28°14'31" EAST; THENCE, SOUTHWESTERLY, 78.24 FEET ALONG SAID 400.00-FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 11°12'25" TO THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY NO. 2002-1090.

THE NORTHWESTERLY LINE OF SAID 40.00-FOOT-WIDE STRIP SHALL BE LENGTHENED OR SHORTENED TO TERMINATE SOUTHWESTERLY IN THE SOUTHWESTERLY LINE OF SAID RECORD OF SURVEY AND NORTHEASTERLY IN THE SOUTHWESTERLY LINE OF SAID OCEAN AVENUE.

CONTAINING 10,233 SQUARE FEET, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.



# DRIVEWAY EASEMENT

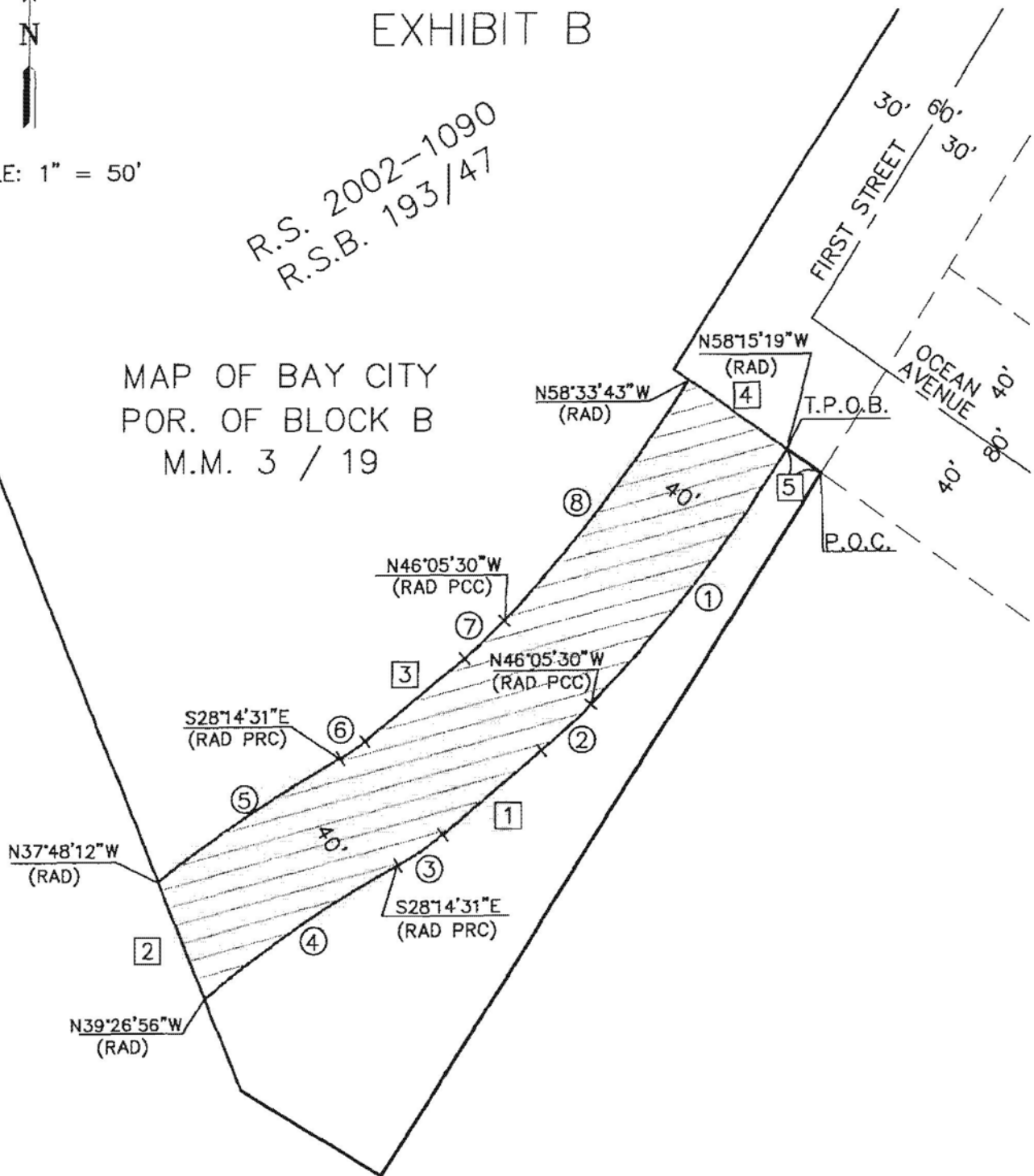
## EXHIBIT B



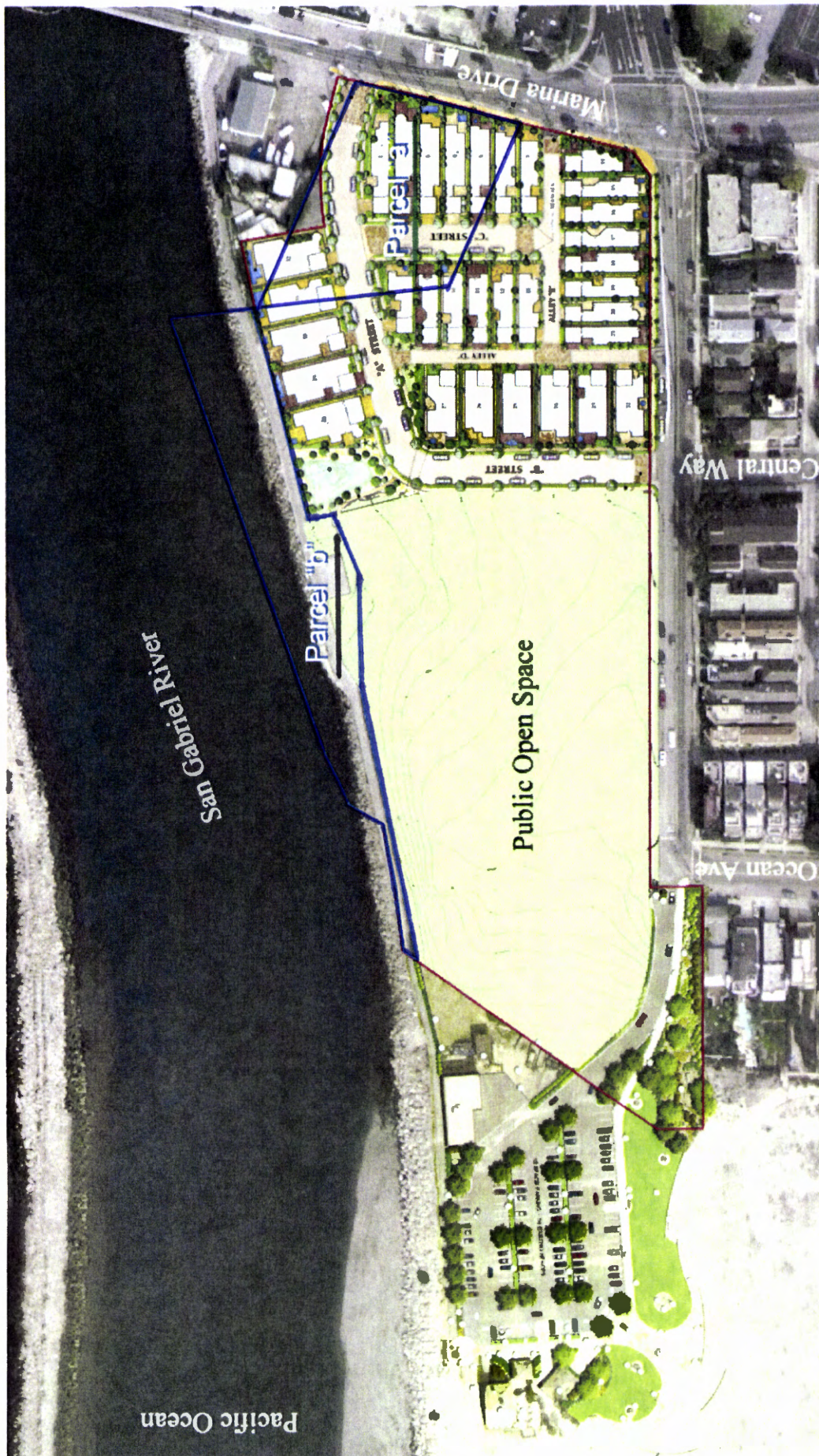
SCALE: 1" = 50'

R.S. 2002-1090  
R.S.B. 193/47

MAP OF BAY CITY  
POR. OF BLOCK B  
M.M. 3 / 19



○ DELTA	RADIUS	LENGTH	□ BEARING	DISTANCE
1 12° 09' 49"	500.00'	106.15'	1 S50° 18' 37" W	42.77'
2 6° 24' 07"	200.00'	22.35'	2 N21° 50' 35" W	41.78'
3 11° 26' 52"	90.00'	17.98'	3 N50° 18' 37" E	42.77'
4 11° 12' 25"	400.00'	78.24'	4 S54° 44' 12" E	40.08'
5 9° 33' 41"	440.00'	73.43'	5 S54° 44' 12" E	13.95'
6 11° 26' 52"	50.00'	9.99'		
7 6° 24' 07"	160.00'	17.88'		
8 12° 28' 13"	460.00'	100.12'		



# OCEAN PLACE SEAL BEACH CALIFORNIA



South Coast Region

MAY 6 2013

CALIFORNIA  
COASTAL COMMISSION

Trust Termination  
Parcel  
MARINA  
"a"  
PARCEL

New Public Trust<sup>®</sup>  
Parcel (PARCEL "b")

## Public Trust Easement Exchange Parcels

Exhibit #11  
Page 2 of 2



# **CITY OF SEAL BEACH**

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## **PEER REVIEW AND SITE SPECIFIC HOTEL FEASIBILITY EVALUATION**



**DWP COMMITTEE DRAFT – SEPTEMBER 2011**

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**KOSMONT COMPANIES**



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# 1.0 Background

The City of Seal Beach ("City") retained Kosmont Companies ("Kosmont") to complete a peer review of a hotel market analyses prepared by PKF Consulting ("PKF") in November of 2003 and November of 2009 evaluating the market for a hotel development on approximately 10.7 acres ("Property", "Site") located along the Pacific Ocean within the City. The City also requested that Kosmont evaluate the feasibility of developing a hotel within the requirements and constraints of a Specific Plan approved by the City in 1996 covering the property ("Specific Plan").

The 2003 and 2009 PKF studies were prepared at the request of Bay City Partners, LLC ("Developer") to evaluate the potential market and financial performance of a hotel development on the Site. The Developer stipulates that the results of PKF's analysis support its position that a hotel use on the site as prescribed by the terms and conditions of the Specific Plan, and potentially even without the restrictions imposed by the Specific Plan is financially infeasible. The Specific Plan calls for visitor serving uses on the northerly 30% of the Property, and open space on the southerly 70% of the Property. Permitted visitor serving uses specifically include hotel uses and uses ancillary to a hotel.

This analysis includes an evaluation of the PKF reports, the financial feasibility of the four hotel development scenarios discussed therein, as well as an evaluation of three additional development alternatives that would likely be permitted under the Specific Plan. The revenues projected to be generated by, and the cost of developing each of these scenarios and alternatives were evaluated to determine if they would generate sufficient net operating income to support the financing required for development as currently available in the marketplace. Based on the estimated cost of construction and current lending requirements it appears unlikely that the revenue generated by either the four PKF development scenarios or the three additional development alternatives would be sufficient to support traditional debt financing of the same.

As part of its analysis Kosmont also evaluated the potential to develop a smaller, 60 room boutique style hotel that could theoretically be substantially or completely financed through a condominium hotel capital structure. Under a condominium hotel structure individual owners hold title to individual rooms with rights to use their rooms a certain number of days a year. The remainder of the year the rooms are available to the general public during which a split of net profit accrues to the room owner. Kosmont's conclusion is that such a development may represent the most financially feasible alternative; however, such alternative would require support from private investors at a time when private investors may have difficulty accessing capital, and at a time when there may be limited interest in such properties. Additionally, such condominium hotel structure may not be permitted under the controlling 1996 Specific Plan. Kosmont's conclusion is that such an alternative may be financially feasible, but such financial feasibility is far from certain or reliable. A detailed discussion of Kosmont's analysis and conclusions follow.

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## 2.0 Site Profile

The Property is located at the mouth of the San Gabriel River Channel along the Pacific Ocean in Seal Beach, California. The Site is comprised of three parcels (Orange County Assessor Parcel Numbers 043-141-02, 043-172-08, and 043-172-13) and was formerly home to a Los Angeles Department of Water and Power ("LADWP") power plant. Depending on the record source and the inclusion or exclusion of roadway right of ways, the three parcels total between approximately 10.1 and 10.7 acres of land. The Property is rectangular and flat and enjoys reasonably unobstructed views of the beach and ocean. The proximate area is almost completely built-out and surrounding uses are primarily residential and / or recreational in nature. A discussion of additional details about the Property location, access, suitability for hotel development, history, and a recent settlement agreement between the City and Developer specific to the Property follow.

### 2.1 Location & Proximate Uses

The Property is located within the City of Seal Beach, at the westernmost point of Orange County, along the northern border with Los Angeles County. The City itself is home to roughly 25,000 residents concentrated within roughly one-third of the approximately 11 square miles of land area within the City. The City has a small town atmosphere that is home to large swaths of low intensity industrial and government uses with a significant presence of open space and nature preserves. As previously introduced the Property fronts the San Gabriel River channel where the river meets the Pacific Ocean. The northwestern edge of the Site is fronted by a regional bike trail along the river channel that terminates at the beach.

Neighboring uses to the southwest and north of the Property are primarily residential. The Marina Community Park lies to the east, and marina and retail uses lie to the northwest and across the river channel to the west. Additional commercial, retail and restaurant centers are located within approximately one mile of the Property. Finally, the Site is approximately six miles southeast of downtown Long Beach which is a major business and commercial center in the region.

An isometric aerial image of the Property follows in Figure 1: Site Aerial, and a map of the surrounding neighborhood can be found in Figure 2: Neighborhood Map.

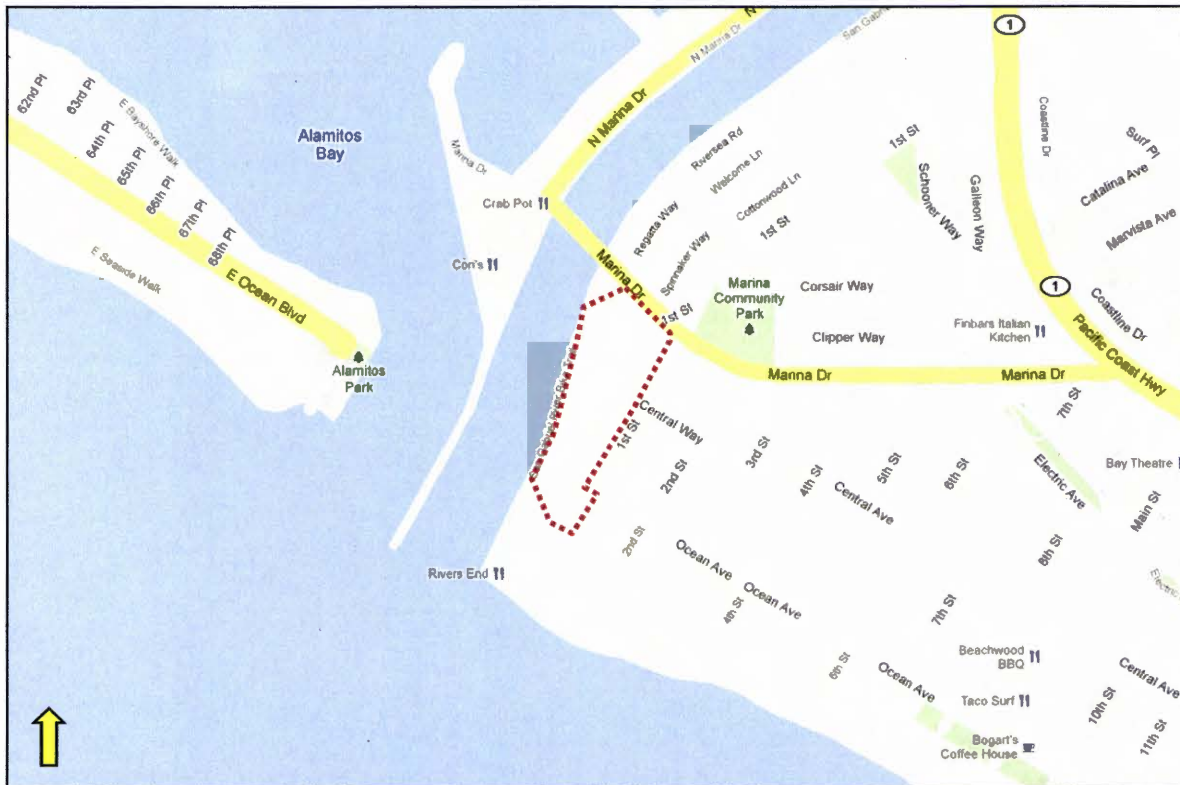
*Note: all property boundaries are approximate depictions. The yellow arrow found in the lower right-hand corner of the maps generally points to north.*



Figure 1: Site Aerial



Figure 2: Neighborhood Map



## 2.2 Access

Both regional and local access to the Site is commercially reasonable but not particularly convenient, nor is the Property particularly visible from primary traffic corridors. The Pacific Coast Highway runs within half of a mile of the Site, and the intersection of the regional serving I-605 and the I-405 are within three miles. Bus service is available within less than one-quarter of a mile of the Site, but overall, public transit is generally limited and requires a number of transfers to get to most major destinations. The closest light rail station with regional access is approximately five miles away. Airport service is notably good with commercial service from the Los Angeles International Airport (26 miles), the Long Beach Airport (7 miles), and the John Wayne Airport (20 miles).

A map of the greater area can be found in Figure 3: Area Map, and the Property's location within the Los Angeles basin is depicted in Figure 4: Regional Map.



Figure 3: Area Map

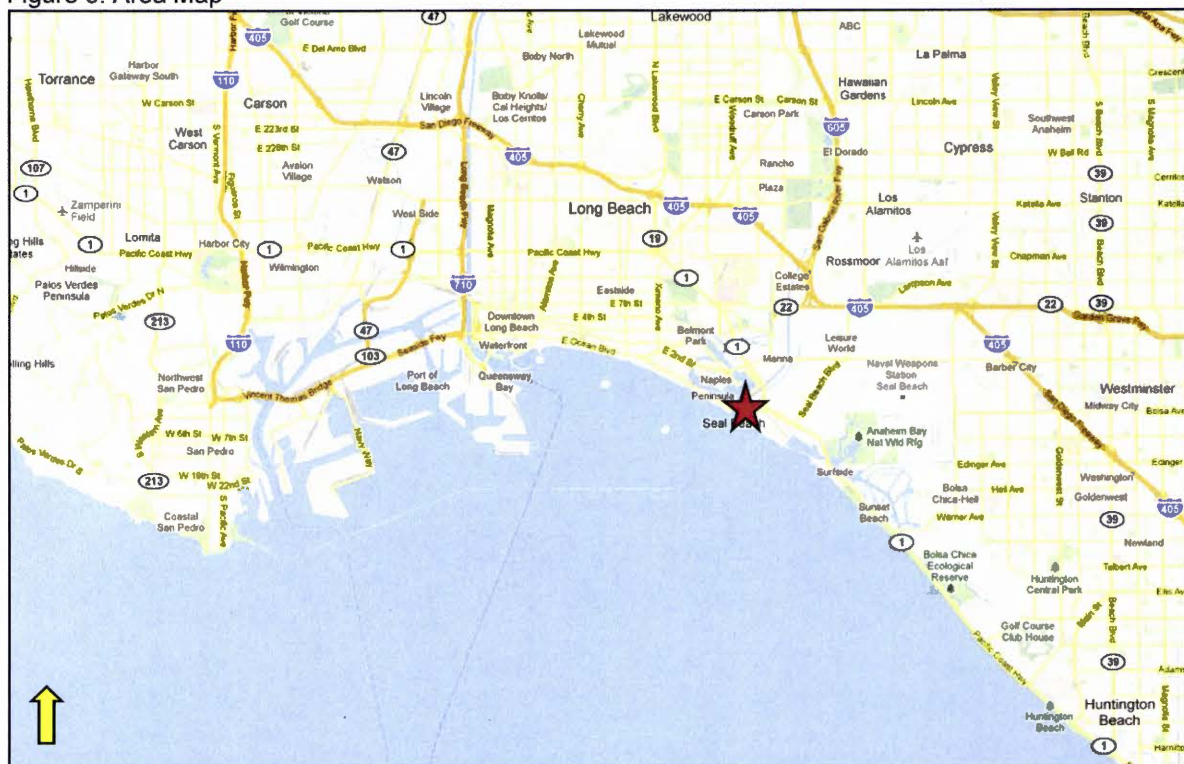
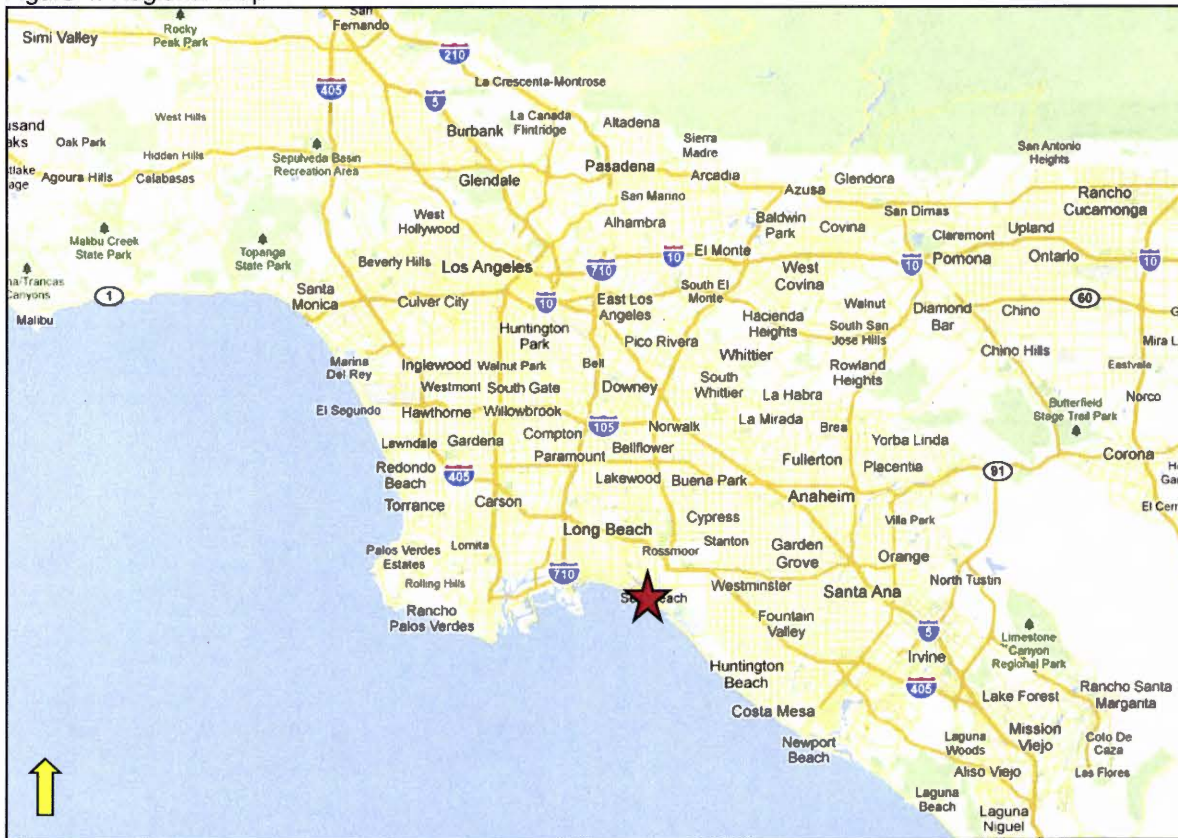




Figure 4: Regional Map



### 2.3 Site Suitability for Hotel Use

The characteristics that make for a commercially viable and competitive hotel location depend on the primary target market and customer base of a given hotel, but typically include some productive combination of the following:

- Transportation - Access via a variety of transportation means, and proximity to transportation corridors and nodes
- Demand Drivers – Proximity to business activity centers, conference facilities, tourist attractions, and other similar uses
- Area Amenities - Proximity and access to restaurants, retail, entertainment and recreational amenities

While overall Site access is reasonably good and there are a fair number of proximate visitor serving amenities and attractions, a hotel use on the Site would likely have to be somewhat of a destination in and of itself, with on-site amenities and attractors to buttress the ocean front appeal and drive hotel demand. In essence, the location is comparatively isolated, and a hotel on the Property would likely have to be sufficiently notable, and not reliant on incidental traffic to drive occupancy. As such, it is Kosmont's opinion that a smaller, boutique hotel with higher end amenities and a destination, resort like atmosphere would likely be the most successful on the

---

Property. Given the Site's access to the ocean this development profile is conceptually possible, yet current market conditions do not clearly support a choice by capital investors for this type of project, particularly because most hotel investment is flowing to existing product rather than ground-up projects such as this investment.

## **2.4 Ownership History**

As discussed, the Site was previously owned by the LADWP and utilized for a power generation station. The power plant was demolished in the mid-1960's and the Property has remained vacant since. In 1999 the Developer entered into what was ultimately a four-year escrow to purchase the property from the LADWP for \$4,501,000. Pursuant to public records, the Developer closed escrow and acquired fee simple title to the Property on May 27, 2003.

## **2.5 Developer's Desired Use**

The Developer has indicated that it desires to construct a residential development on the Site in-lieu of the hotel use required under the Specific Plan. To this end it has submitted a proposal for a 48-unit single family residential project on the northern portion of the Site, and the City has indicated a willingness to consider this proposal pursuant to the settlement agreement discussed below. This use would not be in conformance with the existing Specific Plan covering the Site, would require approval by the City, and given the proximity to the ocean, approval by the California Coastal Commission.

## **2.6 Settlement Agreement**

In March of 2011 the Developer and City entered into a settlement agreement ("Settlement Agreement") related to various contentions between the two parties on the Property. Among other terms the Settlement Agreement stipulates that:

- The City will, in good faith, consider the Developer's proposed use of the Property for a 48-unit residential development.
- The City will pay the Developer \$900,000 for an irrevocable sewer easement across the eastern edge of the Property.
- Upon the granting of certain entitlements for the Developer's preferred development, the City will pay the Developer \$1,100,000 for fee title to portions of the Property to be retained as open space.



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## 3.0 Specific Plan

Development of the Property is guided by a Specific Plan approved by the Seal Beach City Council in 1996 which explicitly details the approvable development envelope and development approval processes. For reference, the current Specific Plan was an update and successor to a Specific Plan approved by the Seal Beach City Council in 1982. Based on the approval date, the 1996 Specific Plan was in place before the Developer first entered escrow to purchase the property in 1999 and close of escrow in 2003.

The Specific Plan stipulates that development of the Property shall be limited to visitor-serving and open space uses. Visitor-serving uses are defined in the Specific Plan as a hotel and ancillary support uses including, but not limited to restaurants, retail uses, service uses, meeting / conference rooms and banquet facilities. Open space uses are defined as public parks, green belts, bike trails, nature trails, hiking trails, and any passive recreational uses normally located in parks or open spaces. Pursuant to the Specific Plan, visitor serving uses shall be limited to the northerly 30% of the Property (specifically limited to the area adjacent to Marina Drive and 1<sup>st</sup> Street) and the remaining 70% shall be for open space. As such, assuming total Site acreage of 10.7 acres, visitor serving uses are limited to approximately 3.2 acres and open space is required on the remaining 7.5 acres.

### 3.1 Allowable Visitor Serving Building Envelope

The 1996 Specific Plan includes a number of building parameters that establish the maximum building envelope of the visitor serving use. Pursuant to the Specific Plan, a hotel on the Site can have no more than 150 rooms or suites, building height is limited to 35 feet, and a 20 foot setback is required from both Marina Drive and 1<sup>st</sup> Street. Ancillary uses to a hotel such as restaurants, retail uses, and service uses may be provided to primarily serve hotel guests, but must also be open to the general public. Additionally, a banquet / meeting / conference room capable of accommodating up to 175 people is expressly approvable. The Specific plan allows for subterranean parking and prescribes a minimum number of parking spaces (surface or other) as follows:

- One space per room / suite
- One space per 100 square feet of gross restaurant floor area
- One space per 75 square feet of meeting room / conference room floor area
- One space per 300 square feet of retail use / service business

### 3.2 Maximum Development within Allowable Envelope

Pursuant to the various constraints provided by the Specific Plan the hotel must have 150 or fewer rooms, be less than 35 feet in height which is assumed to be three or fewer stories, sit on approximately 3.2 or fewer acres (139,828 square feet), and provide adequate parking pursuant

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to the requirements listed above. As necessary, parking could theoretically be provided via a subterranean structure, but subterranean parking is likely a cost prohibitive solution. A discussion of development alternatives considered compliant with the Specific Plan is provided in Section 7.0.

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## 4.0 Market Conditions

The hospitality industry is a uniquely dynamic industry that is highly responsive to economic fluctuations and consumer trends. The industry is risk prone, and can yield developers and investors healthy returns, or equity cashflow deficits. The major limiting factor to new hotel development is the ability to access financing. New developments are frequently reliant on a blend of layers of high yielding equity, lower yielding mezzanine debt, and lower cost, traditional debt. Of late, traditional debt and bond offerings have displayed an aversion to new hotel development in favor of existing hotels with ongoing operations and proven revenues. As a result, financing for new developments is often provided only to experienced operators and / or provided with comparatively higher interest rates and debt coverage cushions. Finally, hotels require somewhat frequent and significant reinvestment and improvements to maintain even stable patronage, and this can lead to unacceptable long-term returns unless initial fundamentals are strong. A discussion of key industry terms, and the overall hotel market follows.

### 4.1 Fundamental Lodging Industry Terms

The hotel and lodging industry utilizes several metrics and terms to describe and evaluate hotel performance that are also utilized in this report. The most pertinent metrics and terms follow.

**ADR** – The Average Daily Rate or “ADR” represents the average income of an occupied, revenue generating room over a given time period, expressed on a per room basis. ADR is calculated by dividing total hotel room revenue by the number of occupied, revenue generating rooms, divided by the number of days being evaluated. For example, a hotel grossing \$5,000,000 in a year with 100 available rooms would have an ADR of \$137 ( $\$5,000,000 / 100 / 365$ ) for the year. For reference, the calculation of ADR excludes staff rooms, however some operators include complimentary room use, lowering the ADR.

**Occupancy Rate** – The occupancy rate is the percentage of rooms that are generating revenue in any given period. The occupancy rate is the inverse of the vacancy rate, and is calculated by dividing the number of rooms generating revenue by total number of rooms available to generate revenue. For example a 100 room hotel that, on average, has 75 occupied rooms, would have an occupancy rate of 75%.

**RevPAR** – The Revenue Per Available Room, or “RevPAR”, is the average revenue generated by all available rooms expressed on a per room basis. RevPAR is calculated by multiplying the ADR by the occupancy rate. Continuing the example, a hotel with an ADR of \$137 and a 75% occupancy rate would have a RevPAR of \$103 ( $\$137 \times .75$ ).

**Key** - Key is an industry standard term for room. A 100 room hotel would have 100 “keys”. This term is often used in describing the cost of hotel as in “the hotel was purchased for \$200,000 a key.”



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**Flag** – The term “flag” refers to the branding of a particular hotel by a major chain. Each brand (i.e. Hilton, Marriot, Best Western) has specific requirements including minimum room counts, design standards, and required on-site amenities. A hotel flag can help provide access to reservation systems, management expertise, and other valuable resources, but requires an operator to pay a franchise fee to the brand.

**DSCR** – The term Debt Service Coverage Ratio or “DSCR” is not unique to the industry, but worth defining. The DSCR is the ratio of net operating income to debt service. As an example, a lender may only provide financing if the DSCR is at or above certain levels. For new hotel developments the required DSCR is often above 1.35, meaning that for every dollar of annual debt service a hotel must have \$1.35 or more of net operating income.

**LTV** – The Loan-to-Value or “LTV” is the amount a lender may be willing to lend against the total value of a hotel. In recent years the required LTV has decreased meaning that lenders will provide a reduced loan amount against the value of a particular project. Currently lenders will typically provide loans for 60% to 70% of the value of a hotel. Thus for each \$1,000,000 in hotel value a lender may only provide \$600,000 to \$700,000 in financing with the balance of the required financing to be comprised of equity.

**Capitalization Rate** – The capitalization rate or “Cap Rate” helps to determine the theoretical value of a development or the return of an investment at a given price, and is equal to the annual cashflow of an investment before financing divided by the cost of the investment. For example a hotel generating \$1,000,000 in annual cashflow that has a value of \$10,000,000 would have a capitalization rate of 10% ( $\$1,000,000 / \$10,000,000$ ).

**Condominium Hotel** – A condominium hotel or condo hotel / condotel is both a hotel ownership and financing structure. In recent years condominium hotels have emerged as an alternative financing vehicle for particularly attractive or desirable hotel operations. Through a condominium hotel individuals can purchase ownership of a hotel room and through such ownership have a right to occupy the room for a given number of days in any year. The remaining days during the year that the owner does not occupy the room, it is managed by the hotel and occupied by hotel guests. The owner and hotel typically split revenues from room occupancy less any hotel management costs. This structure is different from a time share or fractional ownership structure in that the room is not occupied by multiple owners throughout the year, but rather one owner for up to a small portion of the year and the remainder of the year it is utilized by paying hotel guests.

## 4.2 General Industry Performance

In recent years the market has experienced an overall decrease in revenues and operating performance. However, this decrease has been met with reductions in financing rates, required equity yields, and capitalization rates. This has served to help preserve hotel values, yet

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financing terms remain more restrictive than in years past, and many hotels continue to struggle to realize growth in average room rates and occupancy.

### **RevPAR**

One of the most important figures in evaluating the health of the lodging markets is RevPAR. RevPAR trends can vary within markets and submarkets, however most markets have experienced a fairly dramatic reduction since 2008. Between the late 1980's and 2008 the Los Angeles County market as a whole grew at an average compound annual growth rate ("CAGR") of slightly higher than 4%. Notable fluctuations during this period include fairly significant reductions in the early 1990's and double digit declines following the events on September 11, 2001. In both cases the industry saw sizable increases in RevPAR two to four years subsequent. Since 2008 the regional industry has struggled to maintain growth, and average RevPAR remains well below 2008 levels. Current economic conditions and uncertainty may be indicative of suppressed room rates for several years to come; however, near term recovery in this volatile industry would not be unprecedented.

### **Capitalization Rates**

Capitalization rates tend to follow interest rates and required equity yields, with some influence from perceived minimum per key valuations. For the most part capitalization rates based on existing, historic revenues have been fairly low, due to low interest rates and anticipated revenue growth. The decrease in revenues has been met by decreased capitalization rates, and resulted in some preservation of hotel values as a decrease in capitalization rates results in higher hotel values. Decreases in capitalization rates also suggest some continued appetite for hotel investments.

The only use of a capitalization rate in the analyses herein is in the estimation of hotel value 10 years from initial operations, as part of an evaluation of potential Developer return. For this evaluation a capitalization rate of 8% was utilized as it is considered more indicative of historic long term averages of roughly 10%, greater than the average over the last 10 years would suggest. An 8% rate may be conservatively low, to the benefit of the developer, and promote a conclusion of financial feasibility when a higher rate that would reduce financial feasibility may be justifiable. Table 1: Capitalization Rates 2000-10 showing the approximate hotel capitalization rates over the last 10 years follows.



Table 1: Capitalization Rates 2000-10

Cap Rate Based on Historic NOI	
2000	9.2%
2001	8.2%
2002	8.9%
2003	7.9%
2004	5.8%
2005	5.2%
2006	5.5%
2007	6.0%
2008	6.7%
2009	8.0%
2010	4.6%

Average 6.9%

### 4.3 Hotel Financing

New “ground up” hotel development is often considered a highly speculative venture suitable only for experienced, and / or well capitalized and risk tolerant developers. In most ground up hotel development scenarios equity capital is paired with a loan or debt to finance construction costs and the completed and operational hotel. The ratio of debt and equity required can vary depending on the specific site location, proven proximate market demand, the flag, and other similar factors. Additionally, the interest rate, and required return on equity are typically based on the same factors, as well as average interest rates and yields for investment alternatives in the financial markets. Average interest rates (pertaining mostly to stabilized operations) and equity yields from 2000 to 2010 are provided below in Table 2: Hotel Mortgage Rates and Equity Yields 2000-10.

Table 2: Hotel Mortgage Rates and Equity Yields 2000-10

	Hotel Mortgage	
	Interest Rate	Equity Yield
2000	8.8%	21.0%
2001	7.8%	22.2%
2002	7.0%	21.0%
2003	5.9%	21.4%
2004	6.1%	19.7%
2005	5.6%	19.7%
2006	6.4%	18.9%
2007	5.9%	21.3%
2008	6.6%	19.3%
2009	8.2%	16.9%
2010	6.2%	15.9%

Average      6.8%      19.8%

#### 4.4 Required Equity Returns

Historically equity investments in hotel developments have yielded high returns which are commensurate with the level of risk involved in the product type. As shown above in Table 2: Hotel Mortgage Rates and Equity Yields 2000-10, over the last 10 years required equity returns have ranged from approximately 15.9% to 22.2%. For new developments, proforma returns of 20% or greater are typically required to induce new hotel development. For the purposes of the financial feasibility analyses herein a rate exceeding 20% in the most conservative of assumptions (i.e. lowest interest rates, and most developer friendly) was required over a ten year horizon to be considered even potentially financially feasible.

#### 4.5 Site Specific Market Demand

The customer base of a viable hotel on the site would likely be comprised primarily of a blend of leisure and business travel. The leisure component would likely include patrons from inland and other regions interested in vacationing at the beach, as well as patrons interested in staying close to family and friends in proximate communities. Business patronage would likely be driven by an interest in being near Long Beach, Huntington Beach, and other proximate commercial centers. Given the notable competition in the marketplace a viable hotel on the site would likely need to differentiate itself on a factor other than price, and appropriately not target the most price conscious consumer in either the leisure or business segments. To the extent conference facilities are available on-site, group patron could be encouraged, however there are many alternatives for such users in the marketplace.

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#### **4.6 Site Specific Competition**

A hotel on the Site would likely compete with a variety of existing hotels located from Long Beach to the north to Huntington Beach to the south. Within this general area there is a wide variety of alternative offerings ranging from two to five stars, in locations on the water, close to the water / beach, and well inland, and operated under a number of well known and respected flags. The occupancy and ADR performance of the existing competition suggests that a new entrant to the marketplace would likely face less than optimal performance, unless the hotel's offering was unique such as can be the case with a boutique hotel. As such, market competition is strong, and any hotel on the Site would likely need to be notably attractive or unique in order to establish a viable position within the marketplace.

#### **4.7 Summary of Market Condition**

The financial markets currently exhibit a general aversion to lending for new hotel developments. However, some new developments have been able to secure loans to support construction and at a minimum, seven to 10 years of post construction financing. The ability to secure financing is critical to new hotel developments as developers can rarely justify committing or access enough capital to fully support construction costs, and without such financing, new hotel developments are financially infeasible. Recent financing terms evaluated in the marketplace include 7-10% interest rates, initial DSCRs of 1.35 – 1.40, and LTVs of 60-70%. For reference, a lower interest rate, lower DSCR, and higher LTV would be favorable for a developer (unless the required rate of return on equity is less than the interest rate). The best of these terms would be provided to experienced and / or well capitalized developers in proven markets.

For the purposes of the financial feasibility analyses provided herein, interest rates ranging from 7-10%, a DSCR of 1.35 and a 70% LTV were utilized. The use of these assumptions is considered conservative in that if the evaluated scenarios and alternatives were not financially feasible under the most favorable assumptions, then the scenarios or alternatives are likely financially infeasible.



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## 5.0 PKF Scenarios

Subsequent to its purchase of the Property in 2003 the Developer retained PKF to prepare a market feasibility analysis. This initial 2003 report was updated by PKF in 2009 and included an evaluation of four development scenarios. A description of the included scenarios, and an evaluation of the fundamentals of the 2009 PKF report follow.

### 5.1 PKF Evaluated Alternatives – 2009 Report

In the 2009 PKF Report four potential development scenarios were evaluated, with estimated operating performance provided for each of the four. The alternatives are as follows:

**PKF Scenario One:** A 150 room, five to six-story hotel with surface parking and standard amenities found at a commensurate sized hotel. This scenario as proposed would not comply with the Specific Plan given the proposed building height.

**PKF Scenario Two:** A 75 room hotel superior in quality to PKF Scenario One. PKF Scenario Two would include standard amenities as well as a spa facility. This scenario as proposed would not comply with the Specific Plan given the proposed building location, but could conceivably be relocated to comply with the Specific Plan.

**PKF Scenario Three:** This scenario would be similar in profile to PKF Scenario Two however, would include an additional 25 rooms for a total of 100 rooms. This scenario as proposed would not comply with the Specific Plan given the proposed building location, but could conceivably be relocated to comply.

**PKF Scenario Four:** At the request of the Developer PKF evaluated this fourth scenario comprised of a 50 room hotel. This scenario would be similar in quality as PKF Scenario Two and PKF Scenario Three and similarly include a spa facility. It is presumed that this scenario could be developed in conformance with the Specific Plan.

As part of the evaluation of the PKF analysis, the primary tables used to calculate and project operating performance were recreated. These recreated tables allow for verification of calculations as well as modeling exercises to evaluate financial performance and sensitivity to differing RevPAR and other assumptions. The recreated spreadsheets are provided as Attachment A through D.

*Note: The figures attached do not use the same rounding methodology as found in the PKF report and as such while the figures are usually extremely close, the two may not match perfectly.*

## 5.2 Assumed RevPAR

As part of its analysis PKF included assumed ADRs and occupancy rates which are multiplied to estimate RevPARs for each of the PKF Scenarios. The provided RevPAR assumptions are based on existing operations from comparable hotels identified by PKF. RevPAR assumptions were provided for each of the PKF scenarios as shown in Table 3: PKF Assumed RevPAR.

Table 3: PKF Assumed RevPAR

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
<b>PKF Scenario One</b> <b>150 Rooms</b>										
Projected Occupancy	58.0%	64.0%	67.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%
Projected ADR	167.00	172.00	177.00	182.00	188.00	194.00	199.00	205.00	211.00	218.00
Projected RevPAR	96.86	110.08	118.59	131.04	135.36	139.68	143.28	147.60	151.92	156.96
<b>PKF Scenario Two</b> <b>75 Rooms</b>										
Projected Occupancy	60.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Projected ADR	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
Projected RevPAR	114.60	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00
<b>PKF Scenario Three</b> <b>100 Rooms</b>										
Projected Occupancy	59.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Projected ADR	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
Projected RevPAR	112.69	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00
<b>PKF Scenario Four</b> <b>50 Rooms</b>										
Projected Occupancy	60.0%	65.0%	70.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
Projected ADR	194.00	199.00	205.00	212.00	218.00	224.00	231.00	238.00	245.00	253.00
Projected RevPAR	116.40	129.35	143.50	169.60	174.40	179.20	184.80	190.40	196.00	202.40

(Source: 2009 PKF Study)

Based on Kosmont's independent analysis of market comparables, the projected RevPAR and underlying occupancy and projected ADRs are reasonable given the development profile of each of the PKF scenarios evaluated.

## 5.3 Ratio Analysis

The PKF analysis is reliant upon ratios of revenues and operational expenses of various standard hotel revenue and cost centers. The ratios provided in the PKF analysis of each of the scenarios are based upon actual operating performance of existing operations of the market comparables. In Table 4: PKF Projected vs. Expected Operating Ratios which follows, the underlying ratios used to project the operating performance of each of the scenarios are provided. Additionally, the range of anticipated ratios based on the metrics of market comparables independently evaluated, are provided to the right of the ratios for each scenario. Given the slightly different profile of each of the four scenarios evaluated by PKF, the ratios for each scenario are unique. However, due to each of the scenarios having somewhat similar amenities, the ratios are relatively close overall. The primary exception to this is the higher ratio of revenue in "Other Operated Departments" in PKF Scenarios Two through Four due to the inclusion of a spa amenity.



Table 4: PKF Projected vs. Expected Operating Ratios

	Scenario One	Scenario Two	Scenario Three	Scenario Four	Expected Range	
Rooms	150	75	100	50		
Revenue						
Room Revenue	64.6%	61.3%	62.5%	54.6%	60.0%	70.0%
Food & Beverage	26.9%	26.1%	24.6%	34.3%	25.0%	30.0%
Other Operated Departments	6.7%	11.2%	11.4%	9.8%	2.0%	10.0%
Rentals & Other Income	1.8%	1.5%	1.5%	1.3%	1.5%	3.0%
Total Revenue	100.0%	100.0%	100.0%	100.0%		
Departmental Expense						
Rooms	24.3%	23.6%	23.6%	23.4%	20.0%	25.0%
Food & Beverage	74.0%	76.0%	76.0%	76.0%	73.0%	78.0%
Other Operated Departments	70.0%	70.0%	70.0%	70.0%	25.0%	80.0%
Total Departmental Expense	40.3%	42.1%	41.4%	45.7%		
Departmental Profit	59.7%	57.9%	58.6%	54.3%		
Undistributed Operating Expenses						
Administrative & General	10.3%	10.3%	9.5%	9.1%	7.5%	10.5%
Marketing	5.1%	5.5%	5.1%	4.8%	4.0%	5.0%
Franchise Fee	0.0%	0.0%	0.0%	0.0%	0.0%	7.0%
Prop. Operations & Maintenance	5.1%	5.1%	5.1%	4.5%	3.5%	5.0%
Utilities	2.4%	2.5%	2.5%	2.2%	3.0%	4.5%
Total Undistributed Operating Expenses	22.9%	23.4%	22.2%	20.6%	18.0%	32.0%
Gross Operating Profit	36.8%	34.5%	36.4%	33.7%		
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses						
Property Taxes	2.8%	2.5%	2.7%	2.3%	1.5%	2.0%
Insurance	1.3%	1.4%	1.4%	1.2%	1.0%	2.0%
Total Fixed Expenses	4.1%	3.9%	4.1%	3.5%	2.5%	4.0%
Net Operating Income Before Reserve	29.8%	27.6%	29.3%	27.2%		
Furniture, Fixture & Equipment Reserve	4.0%	4.0%	4.0%	4.0%	4.0%	5.0%
Net Operating Income After Reserve	25.8%	23.6%	25.3%	23.2%	22.0%	30.0%

(Source: 2009 PKF Study; Expected Range – Kosmont Companies)

Overall the projected ratios of each of the PKF Scenarios fall within the range of the expected ratios with few exceptions. Additionally, the few exceptions are close to the expected range, are not noteworthy, and do not significantly skew the results of the operational performance analysis.

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#### **5.4 PKF Analysis Summary**

In summary, Kosmont finds the PKF analysis to be both reasonable and reliable. An independent evaluation of the marketplace and market comparables suggests that the performance assumptions utilized for each of the PKF's scenarios is supportable, and can be relied upon for an evaluation of the resulting financial feasibility.

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## 6.0 Financial Feasibility of PKF Scenarios

The next step in evaluating the 2009 PKF report was the analysis of the financial feasibility of the four development scenarios. A development scenario was considered financially feasible if the development could support the development and financing costs, meet the performance metrics likely required to secure financing, and provide the Developer with a reasonable return commensurate with the risk of developing a hotel. This portion of the analysis includes an evaluation of development costs including the cost of land, a review of the net operating income available to support the required debt payments, and the potential developer return under a range of assumptions.

### 6.1 Cost of Land

Based on publicly available information, the Developer purchased the underlying Property in 2003 for \$4,501,000. Should the Developer receive payments pursuant to the existing Settlement Agreement, the Developer would receive a total of \$2,000,000. To evaluate the Developer's effective land cost it was assumed that settlement payments would be received eight years after initial acquisition expenses, accrue to the Developer, be available to offset the incurred land costs, and that an effective land value of \$4,500,000 could be recaptured upon development of the Site which was assumed to occur in 2014, roughly 10 years after acquisition. Thus, based on an initial outlay (assumed to be 100% equity) of \$4,501,000, receipt of \$2,000,000 eight years after acquisition, and in essence a sale two years later, or 10 years after acquisition for \$4,500,000, the effective return on equity would be roughly 4%. A 4% return is less than desirable to encourage development activity, but is superior to the losses many developers and land speculators have realized of late. Additionally, the Developer would accrue any gains from the ultimate development of the Site. As such, despite the required capital outlay and long holding period the Developer will likely fair reasonably well, assuming a \$4,500,000 land value upon development, and additional financial returns from the development project.

For the analyses herein a land value of \$4,500,000 in 2014 was assumed. This value was utilized as it reflects the actual cost the Developer paid for the Property, and while the property was purchased more than eight years ago, land values have not appreciated much (if they have even held value since this time period due to a significant reduction between roughly 2007 and 2010 after a period of growth ending in 2007). For reference, assuming 3.2 developable acres of land, a total price of \$4,500,000 is equal to value of \$1.4 million per acre, or approximately \$32 per square foot.

### 6.2 Development Costs

In order to estimate the amount of financing required to support the development and operation of each of the PKF scenarios, a range of development costs per key was estimated for each. These per key costs are unique to each development scenario, and reflect construction costs



seen in the market of late. A summary of the assumed per key construction costs follows in Table 5: PKF Scenario Development Costs. These development costs are subsequently used to estimate the total required financing and derive the annual debt service in the next part of the financial feasibility analysis.

Table 5: PKF Scenario Development Costs

	<u>PKF Scenario 1</u>		<u>PKF Scenario 2</u>		<u>PKF Scenario 3</u>		<u>PKF Scenario 4</u>	
Quality (Stars)	3		4		4		4+	
Rooms	150		75		100		50	
Cost/Room	175,000	200,000	200,000	250,000	200,000	225,000	225,000	275,000
Total Construction Cost	26,250,000	30,000,000	15,000,000	18,750,000	20,000,000	22,500,000	11,250,000	13,750,000
Cost of Land	4,500,000		4,500,000		4,500,000		4,500,000	
Total Development Cost	30,750,000	34,500,000	19,500,000	23,250,000	24,500,000	27,000,000	15,750,000	18,250,000

(Source: Kosmont Companies)

### 6.3 Assumed Financing Costs

A previously introduced, interest rates ranging from 7-10%, a DSCR of 1.35 and a 70% LTV were utilized in evaluating the annual debt service required to support the development of each of the PKF scenarios. These assumptions were applied to the estimated development costs above, and evaluated in relation to the projected operating performance of each of the PKF Scenarios. Additionally, the Developer's potential internal rate of return ("IRR") assuming financing could be secured was also evaluated. Tables showing the results for each of the four PKF scenarios follow in Table 6: Financial Feasibility - PKF Scenario One and Two and Table 7: Financial Feasibility - PKF Scenario Three and Four.

In each of the evaluations, both initial DSCR is below 1.35 (highlighted in red), and Developer IRR over a ten year period is less than 20%. As a result of these two critical metrics, the PKF scenarios appear financially infeasible as it is unlikely such development profiles could attract financing or produce enough cashflow to support the developer interest or investment required for construction and ongoing operations. These metrics suggest that the Developer would be unable to obtain financing with even the more aggressive and risk tolerant of lenders, and the proforma developer return would not be sufficient to warrant the risk of developing a hotel on the Site under the PKF Scenarios.

For reference, of the four PKF scenarios the two closest to financial feasibility are PKF Scenario One and Three, the 150 room and 100 room development scenarios, however, these scenarios as proposed do not comply with the 1996 Specific Plan. This scenario is estimated to realize the required DSCR in year three of operations and yield the Developer a return of approximately 16% over a 10 year horizon. Additionally RevPAR would have to be roughly 10% higher than projected for PKF Scenarios One and Three for Developer returns to exceed 20% at even the lowest interest rate of 7%, and RevPAR would have to be roughly 55% higher for the DSCRs to be at acceptable levels in the initial years. As such even these most optimistic of scenarios appear financially infeasible as, again, it is unlikely that it would produce enough cashflow to attract financing or support the developer interest or investment required to construct and operate the project.

Table 6: Financial Feasibility - PKF Scenario One and Two

PKF Scenario One												
150 Rooms												
	1	2	3	4	5	6	7	8	9	10		
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023		
Projected Occupancy	58.0%	64.0%	67.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%
Projected ADR	167.00	172.00	177.00	182.00	188.00	194.00	199.00	205.00	211.00	218.00	218.00	218.00
Projected RevPAR	96.86	110.08	118.59	131.04	135.36	139.68	143.28	147.60	151.92	156.96	156.96	156.96
Projected NOI (After Reserve)	1,448,589	1,988,380	2,258,335	2,850,154	2,948,255	3,046,229	3,126,658	3,224,368	3,321,943	3,436,795		
Estimated Development Cost (Low)*												
Estimated Development Cost (High)*												
Estimated Financing Cost (Low)	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476	1,718,476
DSCR	0.84	1.16	1.31	1.66	1.72	1.77	1.82	1.88	1.93	2.00		
Developer Cashflow	(9,494,887)	269,904	539,859	1,131,677	1,229,779	1,327,753	1,408,181	1,505,892	1,603,467	1,718,319		
Estimated Financing Cost (High)	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202	2,543,202
DSCR	0.67	0.78	0.89	1.12	1.16	1.20	1.23	1.27	1.31	1.35		
Developer Cashflow	(11,444,613)	(554,823)	(284,867)	306,951	405,053	503,027	583,455	681,166	778,741	893,592		
PKF Scenario Two												
75 Rooms												
	1	2	3	4	5	6	7	8	9	10		
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023		
Projected Occupancy	60.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Projected ADR	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00	250.00	250.00
Projected RevPAR	114.60	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00	185.00	185.00
Projected NOI (After Reserve)	805,656	999,713	1,267,994	1,622,806	1,670,961	1,727,670	1,775,680	1,832,240	1,888,725	1,953,757		
Estimated Development Cost (Low)*												
Estimated Development Cost (High)*												
Estimated Financing Cost (Low)	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765	1,089,765
DSCR	0.74	0.92	1.16	1.49	1.53	1.59	1.63	1.68	1.73	1.79		
Developer Cashflow	(6,134,110)	(90,053)	178,229	533,041	581,196	637,905	685,914	742,475	798,959	863,991		
Estimated Financing Cost (High)	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897	1,713,897
DSCR	0.47	0.58	0.74	0.95	0.97	1.01	1.04	1.07	1.10	1.14		
Developer Cashflow	(7,883,242)	(714,185)	(445,903)	(91,091)	(42,936)	13,773	61,782	118,343	174,827	239,859		
*Includes Land at \$4,500,000												

(Source: 2009 PKF Study; Development, Financing Costs - Kosmont Companies)



Table 7: Financial Feasibility - PKF Scenario Three and Four

PKF Scenario Three											
100 Rooms	1 2014	2 2016	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023	
Projected Occupancy	59.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Projected ADR	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00	250.00
Projected RevPAR	112.69	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00	185.00
Projected NOI (After Reserve)	1,109,325	1,459,068	1,817,628	2,275,305	2,342,836	2,422,366	2,489,691	2,569,012	2,648,225	2,739,430	
Estimated Development Cost (Low)*		200,000	/ROOM								
Estimated Development Cost (High)*		225,000	/ROOM								
Estimated Financing Cost (Low)			7.0% Interest Rate								
DSCR	0.81	1.07	1.33	1.66	1.71	1.77	1.82	1.88	1.93	2.00	
Developer Cashflow	(7,609,867)	89,875	448,435	906,113	973,643	1,053,173	1,120,499	1,199,819	1,279,033	1,370,237	
Estimated Financing Cost (High)			10.0% Interest Rate								
DSCR	0.66	0.73	0.91	1.14	1.18	1.22	1.25	1.29	1.33	1.38	
Developer Cashflow	(8,981,007)	(531,265)	(172,705)	284,973	352,503	432,033	499,359	578,680	657,893	749,097	
PKF Scenario Four											
50 Rooms	1 2014	2 2016	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023	
Projected Occupancy	60.0%	65.0%	70.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
Projected ADR	194.00	199.00	205.00	212.00	218.00	224.00	231.00	238.00	245.00	253.00	253.00
Projected RevPAR	116.40	129.35	143.50	169.60	174.40	179.20	184.80	190.40	196.00	202.40	202.40
Projected NOI (After Reserve)	605,460	781,633	984,298	1,313,106	1,351,392	1,389,624	1,434,633	1,479,585	1,524,480	1,576,149	
Estimated Development Cost (Low)*		225,000	/ROOM								
Estimated Development Cost (High)*		275,000	/ROOM								
Estimated Financing Cost (Low)			7.0% Interest Rate								
DSCR	0.69	0.89	1.12	1.49	1.54	1.58	1.63	1.68	1.73	1.79	
Developer Cashflow	(4,999,736)	(98,563)	104,103	432,910	471,197	509,429	554,438	599,390	644,285	695,954	
Estimated Financing Cost (High)			10.0% Interest Rate								
DSCR	0.45	0.58	0.73	0.98	1.00	1.03	1.07	1.10	1.13	1.17	
Developer Cashflow	(6,214,858)	(563,685)	(361,019)	(32,212)	6,075	44,307	89,316	134,268	179,163	230,832	
*Includes Land at \$4,500,000											

(Source: 2009 PKF Study; Development, Financing Costs - Kosmont Companies)

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## 7.0 Other Development Alternatives

In addition to the PKF scenarios previously discussed, a variety of sample, prototypical hotel developments that could fit within the constraints of the Specific Plan were evaluated. As a result of this review the following alternatives were developed and likely represent alternatives that would comply with the requirements of the Specific Plan.

### 7.1 Alternative A: 150 Room Hotel

Under Alternative A, a three-story, 150 room hotel would be constructed. The hotel would include a restaurant amenity and conference amenity, each approximately 2,000 square feet, and approximately 200 surface parking spaces. Rooms would average approximately 425 square feet. This plan and footprint would require that virtually the entire 3.2 acre hotel portion of the Site be used either for building footprint or surface parking, and may not permit much landscaping. Additionally it is unlikely that the building footprint would support even a small recreational amenity, and there almost certainly would be no other room for the same on the Site. The resulting hotel profile is likely less attractive than would likely be desired and would likely impair achievable ADRs. The potential for subterranean parking was also evaluated, however as suggested in the 2009 PKF report, subterranean parking at or below the water table as may be required on this site would likely be cost prohibitive, and increase the financial infeasibility of the scenario. Finally, the alternative parking solution of an aboveground structure would likely be visually unacceptable.

### 7.2 Alternative B: 100 Room Hotel

Under Alternative B, a three-story, 100 room hotel would be constructed. This alternative represents a probable profile for a typical hotel constructed within the constraints of the Specific Plan. The hotel would include a restaurant amenity and conference amenity, each approximately 2,000 square feet. The hotel could include a minor recreational amenity, and surface parking for approximately 150 vehicles, slightly in excess of the required minimums under the Specific Plan. Rooms would average approximately 425 square feet each. This plan and resulting footprint of approximately 25,500 square feet would accommodate some on-site landscaping around drive isles and minimal setbacks, but such landscaping would not be notably significant. The 100 room threshold is likely the fewest rooms that a hotel chain or "flag" would be willing to brand.

### 7.3 Alternative C: 60 Room Boutique Condominium Hotel

Under Alternative C, a three-story, 60 room boutique hotel would be developed. Under this scenario the hotel could theoretically be mostly to completely financed through the sale of individual rooms to private owners under a condominium hotel structure. Under a condominium

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hotel structure individual owners hold title to individual rooms with rights to use their rooms a certain number of days a year, and the remainder of the year the rooms are available to the general public during which a split of net profit accrues to the room owner. The reduced room count would help support slightly larger room sizes averaging 500 square feet, additional on-site amenities commensurate with boutique hotels, including up to 2,500 square feet of meeting / banquet space, 2,000 square feet of gross restaurant space, and 2,000 square feet for a spa or other similar use. Under the Specific Plan this development profile would require 120 parking spaces, which could be provided in a surface lot with a fair amount of landscaping and visual appeal.



## 8.0 Financial Feasibility of Development Alternatives

In order to evaluate the financial feasibility of the non-PKF development alternatives Kosmont backed into the RevPAR required to support the development of the hypothetical hotels on the Property. For the purposes of evaluating these additional development alternatives a land cost of \$4,500,000 was again used pursuant to the discussion in Section 6.1 Cost of Land above.

### 8.1 Estimated Cost of Development of Alternatives

The first step in the feasibility analysis was to evaluate the potential cost of construction of the hypothetical development alternatives. The cost of construction per room or key can vary widely depending on the level of service, amenities, finishes, and type of construction of any particular hotel. The hypothetical development alternatives would likely support a three-star hotel under Alternative A, a four-star hotel under Alternative B, and a four-star plus boutique hotel under Alternative C and service, amenities, finishes and construction costs commensurate with the same. A range of the estimated development costs for each of the three development alternatives evaluated follows in Table 8: Estimated Development Cost below.

Table 8: Estimated Development Cost

	<u>Alternative A</u>		<u>Alternative B</u>		<u>Alternative C</u>	
Quality (Stars)	3		4		4+	
Rooms	150		100		60	
Cost/Room	175,000	200,000	200,000	225,000	225,000	275,000
Total Construction Cost	26,250,000	30,000,000	20,000,000	22,500,000	13,500,000	16,500,000
Cost of Land	4,500,000		4,500,000		4,500,000	
<b>Total Development Cost</b>	<b>30,750,000</b>	<b>34,500,000</b>	<b>24,500,000</b>	<b>27,000,000</b>	<b>18,000,000</b>	<b>21,000,000</b>

(Source: Kosmont Companies)

### 8.2 Required RevPAR of Alternatives

The next part of the evaluation was to estimate the RevPAR (again, the revenue per available room) required to generate the NOI required to support financing for the development alternatives. Kosmont estimated the minimum required RevPAR based on actual financing terms for ground up hotel construction currently being offered in the marketplace. The assumptions used include a maximum loan-to-value ratio of 70%, a 7-10% interest rate, 30 year amortization period, and a minimum initial debt service coverage ratio ("DSCR") of 1.35. For reference, this loan profile provides for roughly a 7 – 9% cash on cash return in the initial year of stabilized operations, and growing thereafter. This figure does not take into account any additional required return from land holding costs.

The required NOI calculated as described above was then divided by typical ranges in net margins for each of the development alternatives. It should be noted that the margins evaluated are for stabilized operations, and the initial years of a hotel's operations tend to have significantly lower margins. As such, it is assumed that if the alternative developments are not financially feasible given stabilized operations and anticipated RevPAR rates, then taking into account start-up profiles would only result in further financial infeasibility. For reference anticipated RevPAR rates were based on operating hotels with profiles similar to those of the three development alternatives. Further, these figures were compared with PKF's research of market comparables and the two are similar in range.

As a result of this analysis the three development alternatives do not appear to be financially feasible with traditional financing under the parameters currently available in the market as defined above (excluding condominium hotel structures). Under each of the three development alternatives the RevPAR required to support the financing of each development was greater than the anticipated RevPAR attainable under the alternatives. The calculations and assumptions used in establishing this conclusion follow in Table 9: RevPAR Required to Support Development Alternatives – 7% Interest Rate and Table 10: RevPAR Required to Support Development Alternatives – 10% Interest Rate.

Table 9: RevPAR Required to Support Development Alternatives – 7% Interest Rate

	<u>Alternative A</u>		<u>Alternative B</u>		<u>Alternative C</u>	
Rooms	150		100		60	
Maximum LTV	70.0%		70.0%		70.0%	
Minimum Equity	9,225,000	10,350,000	7,350,000	8,100,000	5,400,000	6,300,000
Loan Principal	21,525,000	24,150,000	17,150,000	18,900,000	12,600,000	14,700,000
Amortization (yrs)	30		30		30	
Rate	7.00%		7.00%		7.00%	
Annual Payment	1,718,476	1,928,047	1,369,193	1,508,906	1,005,937	1,173,594
Minimum DSCR	1.35		1.35		1.35	
Minimum NOI	2,319,943	2,602,863	1,848,410	2,037,023	1,358,015	1,584,351
<i>Net Margin</i>	26%		25%		22%	
Minimum RevPAR	163	183	203	223	282	329
<i>Net Margin</i>	30%		29%		28%	
Minimum RevPAR	141	158	175	192	221	258

	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>
Estimate of Required RevPAR \$	141	183	175	223	221	329
Anticipated Stabilized RevPAR \$	90	115	100	125	180	215
RevPAR +3 Yrs Growth \$	98	126	109	137	197	235

(Source: Kosmont Companies)



Table 10: RevPAR Required to Support Development Alternatives – 10% Interest Rate

Rooms	<u>Alternative A</u>		<u>Alternative B</u>		<u>Alternative C</u>	
	150		100		60	
Maximum LTV	70.0%		70.0%		70.0%	
Minimum Equity	9,225,000	10,350,000	7,350,000	8,100,000	5,400,000	6,300,000
Loan Principal	21,525,000	24,150,000	17,150,000	18,900,000	12,600,000	14,700,000
Amortization (yrs)	30		30		30	
Rate	10.00%		10.00%		10.00%	
Annual Payment	2,266,767	2,543,202	1,806,042	1,990,332	1,326,888	1,548,036
Minimum DSCR	1.35		1.35		1.35	
Minimum NOI	3,060,136	3,433,323	2,438,157	2,686,949	1,791,299	2,089,849
<i>Net Margin</i>	26%		25%		22%	
Minimum RevPAR	215	241	267	294	372	434
<i>Net Margin</i>	30%		29%		28%	
Minimum RevPAR	186	209	230	254	292	341

	<i>Min</i>	<i>Max</i>	<i>Min</i>	<i>Max</i>	<i>Min</i>	<i>Max</i>
Estimate of Required RevPAR	\$ 186	\$ 241	\$ 230	\$ 294	\$ 292	\$ 434
Anticipated Stabilized RevPAR	\$ 90	\$ 115	\$ 100	\$ 125	\$ 180	\$ 215
RevPAR +3 Yrs Growth	\$ 98	\$ 126	\$ 109	\$ 137	\$ 197	\$ 235

(Source: Kosmont Companies)

In summary, as shown above, even at an aggressive 7% interest rate, Alternative A would likely require RevPAR of \$141 – \$183 or more to even attract financing, yet anticipated stabilized RevPAR is \$90 - \$115 and RevPAR with three years of growth is anticipated to be \$98 - \$126. Required RevPAR with a 7% interest rate under Alternative B is estimated to be \$175 - \$223, yet anticipated RevPAR is only \$100 - \$125 and \$109 - \$137 respectively. Finally, assuming an aggressive 7% interest rate under Alternative C, required RevPAR is estimated to be \$221 - \$329, and anticipated RevPAR is only \$180 – \$215, and while with three years of growth the anticipated RevPAR of \$197 – \$235 provides some overlap, actual results would have to be the best case just to entice financing, and the overlap is not considered significant enough support a determination of financial feasibility.

Additionally, the above figures represent calculations based on stabilized operations, and as such, predict financial infeasibility even in stabilized operations, and further, provide no margin to support start-up operations. As such Kosmont concludes that the development of the three alternatives under traditional financing options currently available in the marketplace is likely financially infeasible.

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### 8.3 Condominium Hotel Alternative

Alternative C meets the profile of developments potentially suitable for development financing through the sale of condominium hotel rooms. Under this scenario individual owners would purchase title to rooms and make up-front deposits and ultimately payments to the Developer to support the cost of construction and repay construction financing for the development of this alternative.

The financial feasibility of this structure is highly dependent on the attainable sales price for individual rooms. Based on Kosmont's calculations as provided below, a minimum average sale price of approximately \$225,000 per room would be required to begin to attain financial feasibility for development.

For reference, other condominium hotels in local, superior markets with proven, stable operations have been trading in the range of \$400,000 to \$450,000 per room. Traditionally, new ownership opportunities trade at a significant discount until development risk is reduced, hotel operations are established, and market interest clearly determined. Additionally, the ability for prospective buyers to obtain financing for the purchase of to be built units can be limited, and the pool of potential buyers reduced given the current economic environment. The assumptions and results of this analysis follow in Table 11: RevPAR Required - Alternative C, Condominium Hotel Financing

Table 11: RevPAR Required - Alternative C, Condominium Hotel Financing

	<b>Alternative C</b>	
Quality	4+	
Rooms	60	
Cost/Room	225,000	275,000
Total Construction Cost	13,500,000	16,500,000
Cost of Land		4,500,000
<b>Total Development Cost</b>	<b>18,000,000</b>	<b>21,000,000</b>
<b>Average Price of Condo Hotel Unit</b>		225,000
<b>Revenue from Condo Sales</b>		13,500,000
<b>Required RevPAR</b>		
Maximum LTV	70.0%	
Minimum Equity	-	
Loan Principal	4,500,000	7,500,000
Amortization (yrs)	30	
Rate	7.00%	
Annual Payment	359,263	598,772
Minimum Coverage	1.35	
NOI Split with Property Owner	50%	
Minimum Gross NOI	970,011	1,616,685
Days/Year Fractional Owner Use		60
Adjustment Factor	-16.4%	
<b>Net Margin</b>	<b>22%</b>	
Minimum RevPAR	201	336
<b>Net Margin</b>	<b>28%</b>	
Minimum RevPAR	158	264
	<u>Min</u>	<u>Max</u>
<b>Estimate of Required RevPAR</b>	\$ 158	\$ 336
<b>Anticipated RevPAR</b>	\$ 150	\$ 180

(Source: Kosmont Companies)



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In summary, as shown above in Table 11: RevPAR Required - Alternative C, Condominium Hotel Financing, based on the minimum required RevPAR of \$158 and anticipated effective RevPAR ranging from \$150 - \$180 (reduced based on owner use of unit) this alternative may be financially feasible. However, given the range of required RevPAR, and reliance on a minimum sales price of \$225,000 per unit the financial feasibility of this alternative is not certain. Further, small boutique hotel projects are typically projects that reflect the individual passion and skill set of a specialized boutique developer / operator, frequently requiring significant design amenities and operating distinctions (class A restaurant and progressive lounge and / or cabana pool scene) that while possible to achieve, significantly increase the costs and as a result, the risk profile of the project as well. Such an operation may also not be in keeping with local resident preferences as to users and peak usage times. Overall, the boutique hotel project may be viable but in current market conditions sufficiently challenging to predict a reliable result for, and therefore an unattractive option for potential developers.

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## 9.0 Summary & Conclusions

In conclusion, Kosmont evaluated the PKF reports on the projected performance of hotel development scenarios, and separately performed an evaluation of the financial feasibility of additional hotel development alternatives on the Site.

As a result of this analysis it appears that the four development scenarios included in the 2009 PKF report are financially infeasible as the projected net operating income would not be sufficient to secure development financing, and equity returns would be too low to encourage developer investment. Additionally Kosmont developed and evaluated three additional alternatives likely in conformance with the 1996 Specific Plan covering the property. The three additional alternatives evaluated were a 150 room hotel, a 100 room hotel, and a 60 room condominium boutique hotel.

The first two alternatives were evaluated for financial feasibility based on current market conditions including average room rates and financing available for ground up hotel construction. Based on this evaluation, it is Kosmont's conclusion that it is unlikely that the revenue required to support the potential development profiles could be generated by either alternative, and as such concludes that these two development alternatives are financially infeasible.

Finally the analysis of the 60 room condominium hotel suggests that this alternative may be financially feasible. However, a potential lack of financing available for prospective buyers, uncertainty of and sensitivity to market interest and attainable sales values, and a risky project profile based on whether the hotel will deliver precisely the right and somewhat unique product type to engender consistent demand, all contribute to make project feasibility marginal. As such, financial feasibility of even this alternative is far from certain and this uncertainty likely represents a legitimate and fatal hurdle to developer interest in such a project.

**Attachment: A**  
**PKF Scenario One**

PKF Scenario One 150 Rooms	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023
Occupancy	58.0%	64.0%	67.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%	72.0%
Average Daily Rate:	167.00	172.00	177.00	182.00	188.00	194.00	199.00	205.00	211.00	218.00
Average Daily Rate (Adjusted):	167.00	172.00	177.00	182.00	188.00	194.00	199.00	205.00	211.00	218.00
		3.0%	2.9%	2.8%	3.3%	3.2%	2.6%	3.0%	2.9%	3.3%
Revenue Per Available Room	96.86	110.08	118.59	131.04	135.36	139.68	143.28	147.60	151.92	156.96
Revenue										
Room Revenue	5,303,085	6,026,880	6,492,803	7,174,440	7,410,960	7,647,480	7,844,580	8,081,100	8,317,620	8,593,560
Food & Beverage	2,210,098	2,511,744	2,705,921	2,989,998	3,088,570	3,187,141	3,269,284	3,367,855	3,466,426	3,581,426
Other Operated Departments	552,730	628,169	676,732	747,777	772,429	797,081	817,625	842,277	866,929	895,889
Rentals & Other Income	147,011	167,076	179,993	198,889	205,446	212,002	217,466	224,023	230,580	238,229
Total Revenue	8,212,924	9,333,870	10,055,448	11,111,104	11,477,404	11,843,705	12,148,955	12,515,255	12,881,555	13,308,905
Departmental Expense										
Rooms	1,442,439	1,554,935	1,636,186	1,743,389	1,800,863	1,858,338	1,906,233	1,963,707	2,021,182	2,088,235
Food & Beverage	1,792,389	1,951,625	2,061,912	2,212,599	2,285,541	2,358,484	2,419,270	2,492,213	2,565,156	2,650,256
Other Operated Departments	386,911	439,719	473,712	523,444	540,701	557,957	572,337	589,594	606,850	626,983
Total Departmental Expense	3,621,739	3,946,279	4,171,810	4,479,432	4,627,105	4,774,779	4,897,840	5,045,514	5,193,187	5,365,473
Departmental Profit	4,591,185	5,387,591	5,883,637	6,631,673	6,850,299	7,068,926	7,251,115	7,469,741	7,688,368	7,943,432
Undistributed Operating Expenses										
Administrative & General	1,043,041	1,073,395	1,106,099	1,138,888	1,176,434	1,213,980	1,245,268	1,282,814	1,320,359	1,364,163
Marketing	521,521	536,698	553,050	568,889	587,643	606,398	622,026	640,781	659,536	681,416
Prop. Operations & Maintenance	521,521	536,698	553,050	568,889	587,643	606,398	622,026	640,781	659,536	681,416
Utilities	243,103	251,081	258,425	265,555	274,310	283,065	290,360	299,115	307,869	318,083
Total Undistributed Operating Expenses	2,329,185	2,397,871	2,470,623	2,542,221	2,626,030	2,709,840	2,779,681	2,863,490	2,947,300	3,045,077
Gross Operating Profit	2,261,999	2,989,720	3,413,014	4,089,452	4,224,269	4,359,086	4,471,434	4,606,251	4,741,068	4,898,354
Management Fee	246,388	280,016	301,663	333,333	344,322	355,311	364,469	375,458	386,447	399,267
Fixed Expenses										
Property Taxes	273,000	306,900	313,038	319,299	325,685	332,198	338,842	345,619	352,532	359,582
Insurance	129,764	134,408	137,760	142,222	146,911	151,599	155,507	160,195	164,884	170,354
Total Fixed Expenses	402,764	441,308	450,798	461,521	472,596	483,798	494,349	505,815	517,416	529,936
Net Operating Income Before Reserve	1,612,847	2,268,396	2,660,553	3,294,598	3,407,351	3,519,977	3,612,616	3,724,979	3,837,206	3,969,151
Furniture, Fixture & Equipment Reserve	164,258	280,016	402,218	444,444	459,096	473,748	485,958	500,610	515,262	532,356
Net Operating Income After Reserve	1,448,589	1,988,380	2,258,335	2,850,154	2,948,255	3,046,229	3,126,658	3,224,368	3,321,943	3,436,795

(Source: 2009 PKF Study)



PKF Scenario One 150 Rooms		1 2012	2 2013	3 2014	4 2015	5 2016	6 2017	7 2018	8 2019	9 2020	10 2021
Revenue											
Room Revenue	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%	64.57%
Food & Beverage	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%	26.91%
Other Operated Departments	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%	6.73%
Rentals & Other Income	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%	1.79%
Total Revenue	100.0%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Departmental Expense											
Rooms	24.30%	27.2%	25.8%	25.2%	24.3%	24.3%	24.3%	24.3%	24.3%	24.3%	24.3%
Food & Beverage	74.00%	81.1%	77.7%	76.2%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Other Operated Departments	70.00%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%
Total Departmental Expense		44.1%	42.3%	41.5%	40.3%	40.3%	40.3%	40.3%	40.3%	40.3%	40.3%
Departmental Profit		55.9%	57.7%	58.5%	59.7%	59.7%	59.7%	59.7%	59.7%	59.7%	59.7%
Undistributed Operating Expenses											
Administrative & General	10.25%	12.7%	11.5%	11.0%	10.3%	10.3%	10.3%	10.3%	10.3%	10.3%	10.3%
Marketing	5.12%	6.4%	5.8%	5.5%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Prop. Operations & Maintenance	5.12%	6.4%	5.8%	5.5%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Utilities	2.39%	3.0%	2.7%	2.6%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%
Total Undistributed Operating Expenses	22.9%	28.4%	25.7%	24.6%	22.9%	22.9%	22.9%	22.9%	22.9%	22.9%	22.9%
Gross Operating Profit		27.5%	32.0%	33.9%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses											
Property Taxes	Formula	3.3%	3.3%	3.1%	2.9%	2.8%	2.8%	2.8%	2.8%	2.7%	2.7%
Insurance	1.28%	1.6%	1.4%	1.4%	1.3%	1.3%	1.3%	1.3%	1.3%	1.3%	1.3%
Total Fixed Expenses		4.9%	4.7%	4.5%	4.2%	4.1%	4.1%	4.1%	4.0%	4.0%	4.0%
Net Operating Income Before Reserve		19.6%	24.3%	26.5%	29.7%	29.7%	29.7%	29.7%	29.8%	29.8%	29.8%
Furniture, Fixture & Equipment Reserve	4.00%	2.0%	3.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Net Operating Income After Reserve		17.6%	21.3%	22.5%	25.7%	25.7%	25.7%	25.7%	25.8%	25.8%	25.8%

(Source: 2009 PKF Study)

**Attachment: B**  
**PKF Scenario Two**

PKF Scenario Two 75 Rooms	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023
Occupancy	74.0%	60.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Average Daily Rate:	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
Average Daily Rate (Adjusted):	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
		3.1%	3.0%	3.0%	2.9%	3.3%	2.7%	3.1%	3.0%	3.3%
Revenue Per Available Room	114.60	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00
Revenue	3,137,175	3,451,440	3,834,416	4,233,818	4,355,363	4,497,165	4,618,710	4,760,513	4,902,315	5,064,375
Room Revenue	1,332,954	1,466,482	1,629,205	1,798,906	1,850,550	1,910,800	1,962,443	2,022,694	2,082,944	2,151,802
Food & Beverage	571,047	628,251	697,963	770,664	792,788	818,600	840,724	866,536	892,348	921,847
Other Operated Departments	75,730	83,316	92,561	102,203	105,137	108,560	111,494	114,917	118,340	122,252
Rentals & Other Income	5,116,906	5,629,489	6,254,145	6,905,590	7,103,837	7,335,125	7,533,371	7,764,659	7,995,947	8,260,276
Total Revenue										
Departmental Expense										
Rooms	828,214	880,117	939,432	1,000,874	1,029,608	1,063,130	1,091,863	1,125,385	1,158,907	1,197,218
Food & Beverage	1,107,685	1,183,451	1,274,038	1,367,169	1,406,418	1,452,208	1,491,457	1,537,247	1,583,038	1,635,369
Other Operated Departments	399,733	439,776	488,574	539,465	554,952	573,020	588,507	606,575	624,643	645,293
Total Departmental Expense	2,335,632	2,503,344	2,702,044	2,907,508	2,990,977	3,088,358	3,171,827	3,269,208	3,366,588	3,477,880
Departmental Profit	2,781,274	3,126,146	3,552,101	3,998,082	4,112,860	4,246,767	4,361,545	4,495,452	4,629,359	4,782,395
Undistributed Operating Expenses										
Administrative & General	649,847	669,909	694,210	713,347	733,826	757,718	778,197	802,089	825,981	853,286
Marketing	347,950	360,287	368,995	379,807	390,711	403,432	414,335	427,056	439,777	454,315
Prop. Operations & Maintenance	322,365	332,140	343,978	352,185	362,296	374,091	384,202	395,998	407,793	421,274
Utilities	158,624	163,255	168,862	171,259	176,175	181,911	186,828	192,564	198,299	204,855
Total Undistributed Operating Expenses	1,478,786	1,525,592	1,576,045	1,616,599	1,663,008	1,717,153	1,763,562	1,817,707	1,871,851	1,933,731
Gross Operating Profit	1,302,488	1,600,554	1,976,057	2,381,484	2,449,852	2,529,614	2,597,982	2,677,745	2,757,507	2,848,665
Management Fee	153,507	168,885	187,624	207,168	213,115	220,054	226,001	232,940	239,878	247,808
Fixed Expenses										
Property Taxes	154,000	173,000	176,460	179,989	183,589	187,261	191,006	194,826	198,723	202,697
Insurance	86,987	90,072	93,812	95,297	98,033	101,225	103,961	107,152	110,344	113,992
Total Fixed Expenses	240,987	263,072	270,272	275,286	281,622	288,485	294,967	301,978	309,067	316,689
Net Operating Income Before Reserve	907,994	1,168,597	1,518,160	1,899,030	1,955,115	2,021,075	2,077,015	2,142,827	2,208,562	2,284,168
Furniture, Fixture & Equipment Reserve	102,338	168,885	250,166	276,224	284,153	293,405	301,335	310,586	319,838	330,411
Net Operating Income After Reserve	805,656	999,713	1,267,994	1,622,806	1,670,961	1,727,670	1,775,680	1,832,240	1,888,725	1,953,757

(Source: 2009 PKF Study)



PKF Scenario Two 75 Rooms		1 2012	2 2013	3 2014	4 2015	5 2016	6 2017	7 2018	8 2019	9 2020	10 2021
Revenue											
Room Revenue	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%	61.31%
Food & Beverage	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%	26.05%
Other Operated Departments	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%	11.16%
Rentals & Other Income	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%	1.48%
Total Revenue	100.0%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Departmental Expense											
Rooms	23.64%	26.4%	25.5%	24.5%	23.6%	23.6%	23.6%	23.6%	23.6%	23.6%	23.6%
Food & Beverage	76.00%	83.1%	80.7%	78.2%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%
Other Operated Departments	70.00%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%
Total Departmental Expense		45.6%	44.5%	43.2%	42.1%	42.1%	42.1%	42.1%	42.1%	42.1%	42.1%
Departmental Profit		54.4%	55.5%	56.8%	57.9%	57.9%	57.9%	57.9%	57.9%	57.9%	57.9%
Undistributed Operating Expenses											
Administrative & General	10.33%	12.7%	11.9%	11.1%	10.3%	10.3%	10.3%	10.3%	10.3%	10.3%	10.3%
Marketing	5.50%	6.8%	6.4%	5.9%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
Prop. Operations & Maintenance	5.10%	6.3%	5.9%	5.5%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Utilities	2.48%	3.1%	2.9%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Total Undistributed Operating Expenses	23.4%	28.9%	27.1%	25.2%	23.4%	23.4%	23.4%	23.4%	23.4%	23.4%	23.4%
Gross Operating Profit		25.5%	28.4%	31.6%	34.5%	34.5%	34.5%	34.5%	34.5%	34.5%	34.5%
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses											
Property Taxes	Formula	3.0%	3.1%	2.8%	2.6%	2.6%	2.6%	2.5%	2.5%	2.5%	2.5%
Insurance	1.38%	1.7%	1.6%	1.5%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
Total Fixed Expenses		4.7%	4.7%	4.3%	4.0%	4.0%	3.9%	3.9%	3.9%	3.9%	3.8%
Net Operating Income Before Reserve		17.7%	20.8%	24.3%	27.5%	27.5%	27.6%	27.6%	27.6%	27.6%	27.7%
Furniture, Fixture & Equipment Reserve	4.00%	2.0%	3.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Net Operating Income After Reserve		15.7%	17.8%	20.3%	23.5%	23.5%	23.6%	23.6%	23.6%	23.6%	23.7%

(Source: 2009 PKF Study)

**Attachment: C**  
**PKF Scenario Three**

PKF Scenario Three 100 Rooms	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023
Occupancy	74.0%	59.0%	64.0%	69.0%	74.0%	74.0%	74.0%	74.0%	74.0%	74.0%
Average Daily Rate:	191.00	197.00	203.00	209.00	215.00	222.00	228.00	235.00	242.00	250.00
Average Daily Rate (Adjusted):	3.0%	3.1%	3.0%	3.0%	2.9%	3.3%	2.7%	3.1%	3.0%	3.3%
Revenue Per Available Room	112.69	126.08	140.07	154.66	159.10	164.28	168.72	173.90	179.08	185.00
Revenue	4,113,185	4,601,920	5,112,555	5,645,090	5,807,150	5,996,220	6,158,280	6,347,350	6,536,420	6,752,500
Room Revenue	1,620,266	1,812,788	2,013,938	2,223,714	2,287,553	2,362,031	2,425,870	2,500,348	2,574,827	2,659,945
Food & Beverage	747,613	836,445	929,258	1,026,052	1,055,508	1,089,873	1,119,329	1,153,694	1,188,060	1,227,334
Other Operated Departments	100,033	111,919	124,337	137,289	141,230	145,828	149,769	154,368	158,966	164,221
Rentals & Other Income	6,581,096	7,363,072	8,180,088	9,032,144	9,291,440	9,593,952	9,853,248	10,155,760	10,458,272	10,804,000
Total Revenue	1,098,220	1,173,490	1,252,576	1,334,499	1,372,810	1,417,506	1,455,817	1,500,514	1,545,210	1,596,291
Departmental Expense	1,356,163	1,463,827	1,574,899	1,690,023	1,738,540	1,795,144	1,843,661	1,900,265	1,956,868	2,021,558
Rooms	523,329	585,511	650,481	718,236	738,855	762,911	783,530	807,586	831,642	859,134
Food & Beverage	2,977,712	3,222,828	3,477,956	3,742,758	3,850,205	3,975,561	4,083,009	4,208,364	4,333,720	4,476,983
Other Operated Departments	3,603,384	4,140,244	4,702,132	5,289,386	5,441,235	5,618,391	5,770,239	5,947,396	6,124,552	6,327,017
Total Departmental Expense	789,732	809,938	836,005	861,667	886,403	915,263	940,000	968,860	997,719	1,030,702
Departmental Profit	414,609	427,058	441,725	456,123	469,218	484,495	497,589	512,866	528,143	545,602
Undistributed Operating Expenses	210,595	213,529	220,862	227,610	234,144	241,768	248,302	255,925	263,548	272,261
Administrative & General	1,829,545	1,877,583	1,940,317	2,001,523	2,058,983	2,126,020	2,183,480	2,250,516	2,317,553	2,394,166
Marketing	1,773,840	2,262,661	2,761,815	3,287,863	3,382,251	3,492,371	3,586,760	3,696,879	3,806,999	3,932,850
Prop. Operations & Maintenance	197,433	220,892	245,403	270,964	278,743	287,819	295,597	304,673	313,748	324,120
Utilities	217,000	244,000	248,880	253,858	258,935	264,113	269,396	274,784	280,279	285,885
Total Undistributed Operating Expenses	118,460	117,809	122,701	126,450	130,080	134,315	137,945	142,181	146,416	151,256
Gross Operating Profit	335,460	361,809	371,581	380,308	389,015	398,429	407,341	416,964	426,695	437,141
Management Fee	1,240,947	1,679,960	2,144,831	2,636,591	2,714,493	2,806,124	2,883,821	2,975,242	3,066,556	3,171,590
Fixed Expenses	131,622	220,892	327,204	361,286	371,658	383,758	394,130	406,230	418,331	432,160
Property Taxes	1,109,325	1,459,068	1,817,628	2,275,305	2,342,836	2,422,366	2,489,691	2,569,012	2,648,225	2,739,430
Insurance										
Total Fixed Expenses										
Net Operating Income Before Reserve										
Furniture, Fixture & Equipment Reserve										
Net Operating Income After Reserve										

(Source: 2009 PKF Study)



PKF Scenario Three 100 Rooms		1 2012	2 2013	3 2014	4 2015	5 2016	6 2017	7 2018	8 2019	9 2020	10 2021
Revenue											
Room Revenue	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%	62.50%
Food & Beverage	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%	24.62%
Other Operated Departments	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%	11.36%
Rentals & Other Income	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%	1.52%
Total Revenue	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Departmental Expense											
Rooms	23.64%	26.7%	25.5%	24.5%	23.6%	23.6%	23.6%	23.6%	23.6%	23.6%	23.6%
Food & Beverage	76.00%	83.7%	80.8%	76.2%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%
Other Operated Departments	70.00%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%
Total Departmental Expense		45.2%	43.8%	42.5%	41.4%	41.4%	41.4%	41.4%	41.4%	41.4%	41.4%
Departmental Profit		54.8%	56.2%	57.5%	58.6%	58.6%	58.6%	58.6%	58.6%	58.6%	58.6%
Undistributed Operating Expenses											
Administrative & General	9.54%	12.0%	11.0%	10.2%	9.5%	9.5%	9.5%	9.5%	9.5%	9.5%	9.5%
Marketing	5.05%	6.3%	5.8%	5.4%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Prop. Operations & Maintenance	5.05%	6.3%	5.8%	5.4%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
Utilities	2.52%	3.2%	2.9%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Total Undistributed Operating Expenses	22.2%	27.8%	25.5%	23.7%	22.2%	22.2%	22.2%	22.2%	22.2%	22.2%	22.2%
Gross Operating Profit		27.0%	30.7%	33.8%	36.4%	36.4%	36.4%	36.4%	36.4%	36.4%	36.4%
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses											
Property Taxes	Formula	3.3%	3.3%	3.0%	2.8%	2.8%	2.8%	2.7%	2.7%	2.7%	2.6%
Insurance	1.40%	1.8%	1.6%	1.5%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
Total Fixed Expenses		5.1%	4.9%	4.5%	4.2%	4.2%	4.2%	4.1%	4.1%	4.1%	4.0%
Net Operating Income Before Reserve		18.9%	22.8%	26.2%	29.2%	29.2%	29.2%	29.3%	29.3%	29.3%	29.4%
Furniture, Fixture & Equipment Reserve	4.00%	2.0%	3.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Net Operating Income After Reserve		16.9%	19.8%	22.2%	25.2%	25.2%	25.2%	25.3%	25.3%	25.3%	25.4%

(Source: 2009 PKF Study)

**Attachment: D**  
**PKF Scenario Four**

PKF Scenario Four 50 Rooms	1 2014	2 2015	3 2016	4 2017	5 2018	6 2019	7 2020	8 2021	9 2022	10 2023
Occupancy	80.0%	65.0%	70.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
Average Daily Rate:	194.00	199.00	205.00	212.00	218.00	224.00	231.00	238.00	245.00	253.00
Average Daily Rate (Adjusted):	194.00	199.00	205.00	212.00	218.00	224.00	231.00	238.00	245.00	253.00
		2.6%	3.0%	3.4%	2.8%	2.8%	3.1%	3.0%	2.9%	3.3%
Revenue Per Available Room	116.40	129.35	143.50	169.60	174.40	179.20	184.80	190.40	196.00	202.40
Revenue										
Room Revenue	2,124,300	2,360,638	2,618,875	3,095,200	3,182,800	3,270,400	3,372,800	3,474,800	3,577,000	3,693,800
Food & Beverage	1,335,619	1,484,212	1,646,575	1,946,057	2,001,134	2,056,211	2,120,467	2,184,724	2,248,981	2,322,417
Other Operated Departments	381,884	424,370	470,793	556,421	572,169	587,917	606,289	624,662	643,034	664,031
Rentals & Other Income	50,996	56,669	62,868	74,303	76,406	78,509	80,962	83,416	85,869	88,673
Total Revenue	3,892,798	4,325,889	4,795,111	5,671,981	5,832,509	5,993,036	6,180,319	6,367,601	6,554,884	6,768,921
Departmental Expense										
Rooms	552,318	590,159	628,530	722,729	743,184	763,638	787,502	811,366	835,230	862,502
Food & Beverage	1,109,899	1,190,338	1,281,035	1,479,003	1,520,862	1,562,720	1,611,555	1,660,390	1,709,225	1,765,037
Other Operated Departments	267,318	297,059	329,555	389,495	400,518	411,542	424,402	437,263	450,124	464,822
Total Departmental Expense	1,929,536	2,077,557	2,239,120	2,591,227	2,664,564	2,737,900	2,823,460	2,909,019	2,994,579	3,092,361
Departmental Profit	1,963,262	2,248,332	2,555,991	3,080,754	3,167,945	3,255,136	3,356,859	3,458,582	3,560,305	3,676,560
Undistributed Operating Expenses										
Administrative & General	435,993	449,892	460,715	514,449	529,009	543,568	560,555	577,541	594,528	613,941
Marketing	233,568	237,924	244,755	274,524	282,293	290,063	299,127	308,192	317,256	327,616
Prop. Operations & Maintenance	214,104	220,620	230,357	254,105	261,296	268,488	276,878	285,269	293,659	303,248
Utilities	105,106	108,147	110,380	123,649	127,149	130,648	134,731	138,814	142,896	147,562
Total Undistributed Operating Expenses	988,771	1,016,584	1,046,206	1,166,726	1,199,747	1,232,768	1,271,292	1,309,816	1,348,340	1,392,367
Gross Operating Profit	974,492	1,231,748	1,513,785	1,914,027	1,968,198	2,022,368	2,085,567	2,148,766	2,211,965	2,284,193
Management Fee	116,784	129,777	143,973	170,159	174,975	179,791	185,410	191,028	196,647	203,068
Fixed Expenses										
Property Taxes	116,000	130,000	132,600	135,252	137,957	140,716	143,531	146,401	149,329	152,316
Insurance	58,392	60,562	60,949	68,631	70,573	72,516	74,762	77,048	79,314	81,904
Total Fixed Expenses	174,392	190,562	193,549	203,883	208,530	213,232	218,312	223,449	228,643	234,220
Net Operating Income Before Reserve	683,316	911,409	1,176,263	1,539,985	1,584,602	1,629,345	1,681,846	1,734,289	1,786,676	1,846,906
Furniture, Fixture & Equipment Reserve	77,856	129,777	191,964	226,879	233,300	239,721	247,213	254,704	262,195	270,757
Net Operating Income After Reserve	605,460	781,633	984,298	1,313,106	1,351,392	1,389,624	1,434,633	1,479,585	1,524,480	1,576,149

(Source: 2009 PKF Study)



PKF Scenario Four 50 Rooms		1 2012	2 2013	3 2014	4 2015	5 2016	6 2017	7 2018	8 2019	9 2020	10 2021
Revenue											
Room Revenue	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%	54.57%
Food & Beverage	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%	34.31%
Other Operated Departments	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%	9.81%
Rentals & Other Income	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%	1.31%
Total Revenue	100.0%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Departmental Expense											
Rooms	23.35%	26.0%	25.0%	24.0%	23.4%	23.4%	23.4%	23.4%	23.4%	23.4%	23.4%
Food & Beverage	76.00%	83.1%	80.2%	77.8%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%	76.0%
Other Operated Departments	70.00%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%
Total Departmental Expense		49.6%	48.0%	46.7%	45.7%	45.7%	45.7%	45.7%	45.7%	45.7%	45.7%
Departmental Profit		50.4%	52.0%	53.3%	54.3%	54.3%	54.3%	54.3%	54.3%	54.3%	54.3%
Undistributed Operating Expenses											
Administrative & General	9.07%	11.2%	10.4%	9.6%	9.1%	9.1%	9.1%	9.1%	9.1%	9.1%	9.1%
Marketing	4.84%	6.0%	5.5%	5.1%	4.8%	4.8%	4.8%	4.8%	4.8%	4.8%	4.8%
Prop. Operations & Maintenance	4.48%	5.5%	5.1%	4.8%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%
Utilities	2.18%	2.7%	2.5%	2.3%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%
Total Undistributed Operating Expenses	20.6%	25.4%	23.5%	21.8%	20.6%	20.6%	20.6%	20.6%	20.6%	20.6%	20.6%
Gross Operating Profit		25.0%	28.5%	31.5%	33.7%	33.7%	33.7%	33.7%	33.7%	33.7%	33.7%
Management Fee	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Fixed Expenses											
Property Taxes	Formula	3.0%	3.0%	2.8%	2.4%	2.4%	2.3%	2.3%	2.3%	2.3%	2.3%
Insurance	1.21%	1.5%	1.4%	1.3%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%
Total Fixed Expenses		4.5%	4.4%	4.0%	3.6%	3.6%	3.6%	3.5%	3.5%	3.5%	3.5%
Net Operating Income Before Reserve		17.6%	21.1%	24.5%	27.2%	27.2%	27.2%	27.2%	27.2%	27.3%	27.3%
Furniture, Fixture & Equipment Reserve	4.00%	2.0%	3.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Net Operating Income After Reserve		15.6%	18.1%	20.5%	23.2%	23.2%	23.2%	23.2%	23.2%	23.3%	23.3%

(Source: 2009 PKF Study)



November 26, 2012



Mr. Edward Selich  
Project Manager  
Bay City Partners  
627 Bayside Drive  
Newport Beach, CA 92660

Dear Mr. Selich:

In accordance with your request we have completed an analysis of potential Visitor-Serving uses for the vacant site located at the intersection of Marina Drive and 1<sup>st</sup> Street in Seal Beach, California. As agreed, we have not performed an in depth market study for each potential use but rather utilized our general market knowledge coupled with the steps enumerated below to develop our conclusions.

The scope of our work included, but was not limited to, the following:

- Tour and analysis of the subject site, immediate surroundings, and adjacent neighborhoods;
- Review of existing supply of Visitor-Serving uses in Seal Beach and surrounding neighborhoods;
- Review of Seal Beach demographics and visitor profile; and
- Evaluation of potential visitor-serving uses at the subject site.

This report is subject to the attached Statement of Assumptions and Limiting Conditions.

Our analysis is presented in the following paragraphs.

## INTRODUCTION

PKF Consulting was retained by Bay City Partners to conduct an analysis relative to the viability of potential Visitor-Serving uses at a site located at the intersection of Marina Bay Drive and 1<sup>st</sup> Street in Seal Beach, California. In our analysis, we reviewed historical economic, demographic, and tourism indicators for the overall market area, and assessed the strength of the Seal Beach market relative to the potential uses of the site. In a previous study performed in 2003, PKF Consulting concluded that the development of a hotel as determined by the Specific Plan would not be feasible at the site due to its location in a highly residential area, lack of visibility, and difficulty of access, amongst other reasons. In this study, we have analyzed potential Visitor-Serving uses other than hotel, to determine their viability at the subject site. Based on our general knowledge of the market and

research relative to this assignment, we developed preliminary conclusions in regards to the potential viability of other Visitor-Serving uses at the subject site.

Our preliminary conclusions regarding the highest and best use of the site are:

- The subject site is underutilized as it sits vacant. Therefore it is not producing the maximum financial returns for the ownership and the City of Seal Beach;
- Current demographics, visitor profile, and existing development in the City of Seal Beach do not support the addition of retail or office space at the subject's location at this time;
- Though the site is located on the water, this portion of the San Gabriel River is a non-navigable waterway, therefore, excluding all potential water/marine related uses;
- The subject site is located on a highly residential area and fairly distant to the main entertainment district of Seal Beach;
- There are several restaurants and shops across the river that are not performing too well due in part to their location and accessibility; and,
- There is sufficient supply of Visitor-Serving uses in the City of Seal Beach and surrounding neighborhoods based on the current visitor profile.

The following text provides background for the foregoing conclusions.

### **ECONOMIC OVERVIEW**

The purpose of an economic overview is to determine whether the overall economic environment of an area appears capable of supporting a proposed commercial development. Past economic and demographic data provide an indication of the future economic potential of a market area, as a proposed facility is largely dependent upon local economic conditions. The paragraphs that follow present an economic profile of the Seal Beach area including population, employment, and tourism.

- The City of Seal Beach consists of 11.97 square miles on the coast of northwestern Orange County. As of 2010, the city had a population of approximately 24,168 people. Seal Beach offers two strikingly different experiences. The quaint beach town to the west of Pacific Coast Highway is of greatest interest to tourists. East of PCH is tract housing, the gated Leisure World retirement community, shopping, freeways, and high-tech space and defense facilities, such as Seal Beach Naval Weapons Station and Boeing. The space and defense industries attract many visitors to the region who also love to play "tourist" when not working on assignment or contract.
- As of September 2012, Seal Beach's unemployment rate stands at 5.2 percent, down from 6.4 percent in September of 2011. According to a study performed

by the Southern California Association of Governments (SCAG), in 2009, the sector of employment providing the highest salary per job in the city was Professional-Management (\$70,611), while the Leisure-Hospitality sector provided the lowest annual salary per job (\$17,544). However, Leisure-Hospitality was the largest job sector in 2010, accounting for approximately 26.8 percent of total jobs in the city. According to the US Census Bureau, the 2010 median household income for the City of Seal Beach was \$58,990. Median Existing Home Sales Price in 2010 was \$685,000, with a homeownership rate of 77.2 percent, as compared to Orange County's figures of \$433,000 and 61.5 percent, respectively.

- According to SCAG's report, retail sales in Seal Beach increased by 64.1 percent between 2000 and 2005, and decreased by 2.7 percent between 2005 and 2009. Between 2007 and 2010, the number of retail trade jobs in the city decreased by 12.4 percent, accounting for 9.5 percent of the jobs in 2010.
- Tourism is a moderate economic driver in Seal Beach. Popular activities include swimming, surfing, boogie-boarding, fishing, bicycling, and walking around the beach, pier, and shops. Old Town Seal Beach features Main Street, a three-block segment filled with restaurants, shops, and galleries that is very popular amongst locals and visitors. Seal Beach is known as a great location for windsurfing and has a kite-surfing launch area at the western end of 1<sup>st</sup> Street. The main beach provides one mile of white sandy beaches attracting nearly one million visitors per year.

## **SITE DESCRIPTION**

The subject site consists of approximately 11.0 acres. The boundaries of the 12-acre site consist of Marina Drive to the north, the San Gabriel River Channel and Alamitos Bay Marina to the west, public beach access and Pacific Ocean to the south, and 1<sup>st</sup> Street to the east. Further east is Seal Beach Municipal Pier located at the foot of Main Street. The subject site is located over 28 miles southeast of Los Angeles International Airport and is three miles west of the 405 freeway.

The area immediately surrounding the subject site is largely residential and relatively close to the Seal Beach Pier. Further east of the subject's coastal community are additional residential neighborhoods and a fair amount of corporate activity generated by Boeing and the Naval Weapons Station. Given Seal Beach's smaller size, it tends to benefit from activity generated by its neighboring cities of Long Beach and Huntington Beach.





Primary access to the site is provided from automobiles. Access from the Los Angeles International Airport can be provided by heading east on I-105 towards the 405 Freeway South and exiting at Studebaker Road and turning right on 2<sup>nd</sup> Street/Westminster Avenue, and again on Marina Drive and following the road until crossing the bridge. Access is also provided via Pacific Coast Highway from the north and south, by heading west on 1<sup>st</sup> Street if traveling from the south or connecting with 2<sup>nd</sup> Street if traveling from the north.

It is our understanding that the site is governed by the City of Seal Beach under a Specific Plan. There are two principal land use categories within the Specific Plan area: Residential (formerly Visitor-Serving) and Publicly-Owned Open-Space Uses with very restrictive improvements allowed. Currently, according to the Specific Plan, the Residential uses (formerly Visitor-Serving) are limited to the northerly 4.5 acres of the parcel, which is the area adjacent to Marina Drive and First Street. The remaining 6.5 acres are limited to Publicly-Owned Open-Space uses.

Our 2003 study concluded that “the construction of the hotel as set forth in the Specific Plan would not be feasible.” Our opinion on the development scenario has not changed. The subject site’s location adjacent to the ocean warrants that any development on the site will be low-rise, in order to maintain the seaside, quaint atmosphere that is consistent throughout Seal Beach. We have analyzed other potential Visitor-Serving land uses for the subject site. The following paragraphs present our analysis.

#### **ANALYSIS OF POTENTIAL VISITOR-SERVING LAND USES**

Other potential visitor-serving uses at the site include bed and breakfast, hostels, RV Park/Campground, commercial beach parking lot, bicycle rentals, skateboard rentals,

Segway Rentals and Tours, restaurants, marine related offices and other office uses serving visitors, dry boat storage yard, boat sales and brokers, beach equipment rentals, visitor-serving specialty retail, and beach oriented markets, amongst others. Following is our analysis of some of these uses.

- **Bed and Breakfast/Hostels** - The area surrounding the site is mainly residential, with no retail amenities within walking distance. As such, it is our opinion that a hostel or bed and breakfast would not be the best use of the site, as guests staying at these lodging establishments usually want to have easy access to shops, restaurants, and other convenience stores within a short walk.
- **Marine Related Uses** - As previously mentioned, the site is bound to the north and west by the San Gabriel River channel. The channel is a non-navigable waterway. Therefore, any marine/water related uses would not be possible at the site.
- **Bicycle/Skateboard/Surfboard Rentals** - There are numerous of these stores in the area, which, in our opinion, are already fulfilling this need. Further, several of these other stores are located in more commercial areas than the subject site, allowing for easier access and visibility.
- **Beach Equipment Rentals** - The site is bound by the beach on the south. However, the portion of the site that allows for visitor-serving uses is the northern portion of the site, therefore making it too distant from the beach for these types of operations.
- **Visitor Serving Specialty Retail** - The area surrounding the site is mainly residential. Visitors looking for gifts, souvenirs, sundries, etc., usually do so closer to the main entertainment districts of a town. In the case of Seal Beach, that would be Main Street or areas closer to the beach with a more commercial setting. As such, it is our opinion that this is not the best use of the site.
- **Beach Oriented Markets** - As mentioned earlier, the portion of the site where a visitor-serving use would be developed is the northernmost portion. As such, it is considerably far for people to walk from the beach to get a quick drink or snack.
- **Restaurants** - There are a few restaurants north of the site, on the other side of the bridge, which do not perform very well in general. Further, the area surrounding the site is mostly residential, with not many other commercial uses around. Further, the site does not enjoy easy access or visibility, making a restaurant targeting visitors not a good use of the site, as it wouldn't be within the main traffic areas.

The following is a list of identified existing visitor-serving uses other than restaurants within the City of Seal Beach and neighboring area of Los Alamitos.

- Canvas Shop – surf shop
- Alternative Surf – surf shop
- Harbour Surf Boars – surf shop



- Inflight Surf & Sail – surf shop
- Glyder Surfboards – surf shop
- Katin Surf Shop
- Southern California Kiteboarding
- Captain Kirk's Kitesurf & Windsurf & Standup
- Long Beach Windsurf & Kayak
- Alamitos Bay Yacht Club
- Main Street Cyclery
- Sunset Beach Rentals
- Star Party Cruises
- Long Beach Marina Sport Fishing
- The Pacific Inn
- Main Street Travel
- Catalina by Design
- Vida Organic Life Massage
- Old Town Seal Beach Gallery
- Captain's Locker – marine supplies
- California Seashell Company
- Sailing Pro Shop
- Big Fish
- Marine Stadium Park
- Bay Boat Rentals
- Long Beach Sailing
- Stan Miller Yachts
- Scuba Duba Corporation
- Corks Away Wine Cruises

The preceding list is only a sample of identified visitor-serving uses in the area. In addition, there are numerous restaurants, many of them which are located in more commercial areas of Seal Beach, enjoying better access and visibility.

## CONCLUSIONS

Based on our knowledge of the Seal Beach market and our research relative to this assignment, it is our opinion that there is sufficient supply of visitor-serving uses in the area. In addition, although the site is bordered by a water stream and close to the beach, the non-navigability of the water stream makes any marine or water related uses not possible at the site. Further, the portion of the site which allows for visitor-serving purposes is fairly distant from the beach to be appealing for any beach related purposes. The subject site is located within a mostly residential area and the area surrounding the site, composed mainly of residences, makes the site less desirable for commercial visitor serving uses. As such, it is our opinion the site would be better utilized for residential development, a use that conforms with the general area.

This completes our analysis. We appreciate the opportunity to work on this assignment and look forward to answering any questions you may have regarding our findings and conclusions presented herein.

Sincerely,

PKF Consulting USA

A handwritten signature in blue ink, appearing to read "B. Baltin", is written over the printed name.

By Bruce Baltin  
Senior Vice President

**ADDENDA**

**STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS**

## **STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS**

***This report is made with the following assumptions and limiting conditions:***

**Economic and Social Trends** - The consultant assumes no responsibility for economic, physical or demographic factors which may affect or alter the opinions in this report if said economic, physical or demographic factors were not present as of the date of the letter of transmittal accompanying this report. The consultant is not obligated to predict future political, economic or social trends.

**Information Furnished by Others** - In preparing this report, the consultant was required to rely on information furnished by other individuals or found in previously existing records and/or documents. Unless otherwise indicated, such information is presumed to be reliable. However, no warranty, either express or implied, is given by the consultant for the accuracy of such information and the consultant assumes no responsibility for information relied upon later found to have been inaccurate. The consultant reserves the right to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

**Hidden Conditions** - The consultant assumes no responsibility for hidden or unapparent conditions of the property, subsoil, ground water or structures that render the subject property more or less valuable. No responsibility is assumed for arranging for engineering, geologic or environmental studies that may be required to discover such hidden or unapparent conditions.

**Hazardous Materials** - The consultant has not been provided any information regarding the presence of any material or substance on or in any portion of the subject property or improvements thereon, which material or substance possesses or may possess toxic, hazardous and/or other harmful and/or dangerous characteristics. Unless otherwise stated in the report, the consultant did not become aware of the presence of any such material or substance during the consultant's inspection of the subject property. However, the consultant is not qualified to investigate or test for the presence of such materials or substances. The presence of such materials or substances may adversely affect the value of the subject property. The value estimated in this report is predicated on the assumption that no such material or substance is present on or in the subject property or in such proximity thereto that it would cause a loss in value. The consultant assumes no responsibility for the presence of any such substance or material on or in the subject property, nor for any expertise or engineering knowledge required to discover the presence of such substance or material. Unless otherwise stated, this report assumes the subject property is in compliance with all federal, state and local environmental laws, regulations and rules.

**Zoning and Land Use** - Unless otherwise stated, the projections were formulated assuming the hotel to be in full compliance with all applicable zoning and land use regulations and restrictions.

**Licenses and Permits** - Unless otherwise stated, the property is assumed to have all required licenses, permits, certificates, consents or other legislative and/or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

**Engineering Survey** - No engineering survey has been made by the consultant. Except as specifically stated, data relative to size and area of the subject property was taken from sources considered reliable and no encroachment of the subject property is considered to exist.

**Subsurface Rights** - No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether the property is subject to surface entry for the exploration or removal of such materials, except as is expressly stated.

**Maps, Plats and Exhibits** - Maps, plats and exhibits included in this report are for illustration only to serve as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced or used apart from the report.



## **STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS**

(continued)

**Legal Matters** - No opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate consultants.

**Right of Publication** - Possession of this report, or a copy of it, does not carry with it the right of publication. Without the written consent of the consultant, this report may not be used for any purpose by any person other than the party to whom it is addressed. In any event, this report may be used only with proper written qualification and only in its entirety for its stated purpose.

**Testimony in Court** - Testimony or attendance in court or at any other hearing is not required by reason of rendering this report, unless such arrangements are made a reasonable time in advance of said hearing. Further, unless otherwise indicated, separate arrangements shall be made concerning compensation for the consultant's time to prepare for and attend any such hearing.

**Archeological Significance** - No investigation has been made by the consultant and no information has been provided to the consultant regarding potential archeological significance of the subject property or any portion thereof. This report assumes no portion of the subject property has archeological significance.

**Compliance with the American Disabilities Act** - The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We assumed that the property will be in direct compliance with the various detailed requirements of the ADA.

**Definitions and Assumptions** - The definitions and assumptions upon which our analyses, opinions and conclusions are based are set forth in appropriate sections of this report and are to be part of these general assumptions as if included here in their entirety.

**Dissemination of Material** - Neither all nor any part of the contents of this report shall be disseminated to the general public through advertising or sales media, public relations media, news media or other public means of communication without the prior written consent and approval of the consultant(s).

**Distribution and Liability to Third Parties** - The party for whom this report was prepared may distribute copies of this report only in its entirety to such third parties as may be selected by the party for whom this report was prepared; however, portions of this report shall not be given to third parties without our written consent. Liability to third parties will not be accepted.

**Use in Offering Materials** - This report, including all cash flow forecasts, market surveys and related data, conclusions, exhibits and supporting documentation, may not be reproduced or references made to the report or to PKF Consulting in any sale offering, prospectus, public or private placement memorandum, proxy statement or other document ("Offering Material") in connection with a merger, liquidation or other corporate transaction unless PKF Consulting has approved in writing the text of any such reference or reproduction prior to the distribution and filing thereof.

**Limits to Liability** - PKF Consulting cannot be held liable in any cause of action resulting in litigation for any dollar amount which exceeds the total fees collected from this individual engagement.

**Legal Expenses** - Any legal expenses incurred in defending or representing ourselves concerning this assignment will be the responsibility of the client.



**RECEIVED**  
South Coast Region

AUG 21 2013

CALIFORNIA  
COASTAL COMMISSION

# Bay City Partners

2999 Westminster Avenue, Suite 211  
Seal Beach, California 90740

562-594-6715

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

August 20, 2013

**Re: DWP Specific Plan Implementation Project Application**

Dear Teresa,

As a follow up to our meeting of August 13, 2013 the City of Seal Beach and Bay City Partners, as co applicants, have met to discuss the concerns expressed by Coastal Staff and are submitting the attached proposed conditions which we would agree to as part of our application.

Condition No. 1

This is a proposed mitigation fee to offset the loss of Visitor Serving Land. It is based on previous applications wherein the Coastal Commission conditioned the projects for the loss of Visitor Serving opportunities through the payment of a mitigation fee. In particular we are using the City of Malibu LPCA No. MAL-MAJ-2-09-A since it is a directly parallel example. In that a fee for 15% of the lost potential hotel rooms at a rate of \$14,494 per lost room was recommended by Coastal Staff for the loss of 24 acres of visitor serving zoned land. This was in 2010 and adjusted for inflation it is now \$15,159 per lost room.

As in the Malibu LPCA the number of hotel rooms was based on what might actually have been able to have been built on the 24 acres. Although the DWP Specific Plan allowed for up to 150 rooms, as a practical matter only a 50 room hotel would fit on the designated Visitor Serving area when height, setback limits and other specific plan development standards are taken into consideration. A 75

room hotel would only have been possible if changes were made to lower the grade in combination with a flat roof instead of a pitched roof.

If we use the Malibu formula we would mitigate in the range of 8 rooms ( for a 50 room hotel)-11 rooms ( for a 75 room hotel) at \$15,159 or in the range of \$121,272 to \$166,749. We would round that up to \$175,000. As stated in the attached condition the fee would go to Hosteling International for a project planned in Long Beach, or if the Long Beach Hostel did not move forward in a reasonable amount of time, to another visitor serving facility in the area.

#### Condition No. 2

Condition No 2 guarantees that the open space creation and landscaping will actually be accomplished by the project applicants. The City of Seal Beach and/or Bay City Partners would construct the improvements in Visitor Serving Passive Open Space Area. Further details need to be worked out in the agreements between the applicants but this guarantees that one or both will complete the improvements.

#### Condition No. 3

To respond to your concern over noise from the adjacent Boat Sales and repair use we are proposing a condition to mitigate sound through appropriate sound wall techniques along the northerly property line of lot 32 and the westerly right of way line of "A" Street. Through this, the nearby residents will not be able to either see or hear what happens on that adjacent property and thus there will be no basis for any objection to the continued operation of that facility.

#### Condition No. 4

As a supplement to Condition No 1 we are proposing language guaranteeing that the City of Seal Beach, as part of their upcoming Local Coastal Plan, which they are committed to seeing done as fast as practical, will to the greatest extent feasible make a good faith effort to add new Visitor Serving designations in their land use plan.

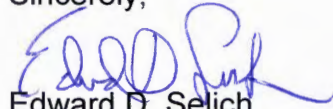
We feel these proposed conditions address your concerns sufficiently to determine that the proposed project meets the requirements of the Coastal Act and ask that you recommend approval of this project. In addition to meeting all of the requirements of the Coastal Act this project has significant public benefits which will be lost if it does not move forward. It will, among other things, guarantee in perpetuity public access to the beach through the driveway to the Rivers End parking lot and San Gabriel River Trail and provide over 6 acres of

open space that will be designed to create new and beneficial habitat adjacent to the river.

Should the substance of the proposed conditions be acceptable to the Coastal Commission staff, subject to some fine tuning by Coastal staff may want to do, we are agreeable to a 90 day continuance with the understanding the hearing would be held in November in Newport Beach.

Thank you very much for your consideration in this matter.

Sincerely;



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

Cc: Jim Basham Community Development Director City of Seal Beach

Attachments:

1. Proposed Conditions
2. Tentative Tract 17425 Condition 7.5
3. City of Seal Beach Noise Ordinance



## **Proposed Conditions**

August 20, 2013

### **Suggested Condition # 1 Mitigation Fee for the Loss of Visitor Serving Land**

Prior to the issuance of a Building or Grading Permit for the residential portion of the project, the applicant, Bay City Partners shall pay a mitigation fee of \$175,000 for the loss of Visitor Serving Commercial land in the City of Seal Beach. Said fee, is to be paid to Hostelling International to specifically supplement their existing fund to create a new Hostel facility in the Coastal Zone of the City of Long Beach. The applicant shall provide documentation to the Executive Director of the Coastal Commission that full payment of the fee has been made, prior to commencing any construction activity. If construction of the Hostel in Long Beach is not commenced within 5 years from payment of mitigation fee, the funds shall be made available to another public agency or private non-profit association designated by the Executive Director to be used for the acquisition of land and/or construction of a low-cost visitor serving hostel facility or campsites in the coastal area of Orange or Los Angeles County.

### **Suggested Condition #2 Improvement of the Visitor Serving Passive Open Space Area**

Prior to issuance of a Certificate of Occupancy for the first housing unit, the applicants, the City of Seal Beach and/or Bay City Partners, shall commence construction (grading) on the Visitor Serving Passive Open Space Area. The Open Space area shall be complete and final, no longer than 12 months after issuance of the grading permit. Final approval and completion of the Open Space Area shall be to the satisfaction of the Coastal Commission staff.

### **Suggested Condition #3 Noise Mitigation**

Supplemental to the attached TM 17425 Condition 7.5 the required landscaping/fencing treatment between "A" Street and the commercial site to the west of the tract shall attenuate the sound from the adjacent commercial property to conform to the attached standards of Section 7.15.015 of the Seal Beach Municipal Code entitled "Exterior Noise Standards". In addition, the required northerly property line wall of lot 32 shall also attenuate sound from the adjacent commercial property to conform to the attached standards of Section 7.15.015 of the Seal Beach Municipal Code entitled "Exterior Noise Standards".

Suggested Condition #4 City of Seal Beach LCP

The City of Seal Beach will continue to work with the Coastal Commission staff and make a good faith effort to plan for visitor serving commercial land use designations as part of the Local Coastal Program process.



**Tentative Tract Map 17425**  
**Condition of Approval 7.5**

Services, prior to placing the Final Map on City Council agenda for approval.

- 7.3 Any structure that crosses any property line on the tentative map shall be demolished prior to final map approval. The subdivider shall obtain all required building/demolition permits prior to any such demolition and comply with any and all conditions of such permits.
- 7.4 Prior to City Council approval and recordation of the final tract map, a boundary line adjustment, land exchange agreement or other instrument shall be approved by the State Lands Commission that resolves any public trust restrictions on the property.
- 7.5 Prior to City Council approval and recordation of the final tract map, plans shall be submitted to the Community Development Department demonstrating to the satisfaction of the Community Development Director the landscape/fencing treatment interface between "A" Street and the commercial site to the west of the tract.
- 7.6 As to each residential lot, construction of a residential structure must be completed thereon no later than 2 years after the first conveyance of that lot following recordation of the final map. This requirement shall be included in the subdivision agreement required by Condition 7.2.2.

## Chapter 7.15 Noise

### § 7.15.005 County Code Adopted by Reference.

Except as provided in this chapter, the noise code for the county, set forth at Orange County Code Section 4-6.1 et seq., is hereby adopted by reference as the noise ordinance for the city.

### § 7.15.010 Designated Noise Zones.

The noise zones of the city are as follows:

- A. Noise Zone 1: Residential properties.
- B. Noise Zone 2: Commercial properties.
- C. Noise Zone 3: Industrial, manufacturing and oil properties.

### § 7.15.015 Exterior Noise Standards.

A. Unless otherwise specifically indicated, the following exterior noise standards shall apply to all property within a designated noise zone:

#### Noise Standards:

<u>Noise Zone</u>	<u>Noise Level</u>	<u>Time Period</u>
1	55 db(A) 50 db(A)	7:00 a.m. – 10:00 p.m. 10:00 p.m. – 7:00 a.m.
2	65 db(A)	At any time
3	70 db(A)	At any time

In the event the alleged offensive noise consists of impact noise, simple tone noise, speech, music or any combination thereof, each of the above noise levels shall be reduced by 5 db(A).

B. No person shall create any noise, or allow the creation of any noise, on property owned or occupied by such person when such noise causes the noise level to exceed the following when measured from a residential property:

1. The exterior noise standard for a cumulative period of more than 30 minutes in any hour.



2. The exterior noise standard plus 5 db(A) for a cumulative period of more than 15 minutes in any hour.

3. The exterior noise standard plus 10 db(A) for a cumulative period of more than 5 minutes in any hour.

4. The exterior noise standard plus 15 db(A) for a cumulative period of more than 1 minute in any hour.

5. The exterior noise standard plus 20 db(A) for any period of time.

C. In the event the ambient noise level exceeds any of the first 4 noise limit categories in paragraph B, the cumulative period applicable to such category shall be increased to reflect that ambient level. In the event the ambient noise level exceeds the fifth noise limit category, the maximum allowable noise level under such category shall be increased to reflect the maximum ambient noise level.

#### § 7.15.020 Interior Noise Standards.

A. Unless otherwise specifically indicated, the following interior noise standards shall apply to all residential property within a designated noise zone:

##### Noise Standards:

<u>Noise Zone</u>	<u>Noise Level</u>	<u>Time Period</u>
1	55 db(A)	7:00 a.m. – 10:00 p.m.
	50 db(A)	10:00 p.m. – 7:00 a.m.

In the event the alleged offensive noise consists of impact noise, simple tone noise, speech, music or any combination thereof, each of the above noise levels shall be reduced by 5 db(A).

B. No person shall create any noise, or allow the creation of any noise, on property owned or occupied by such person when such noise causes the noise level to exceed the following when measured from another dwelling unit on residential property:

1. The interior noise standard for a cumulative period of more than 5 minutes in any hour.

2. The interior noise standard plus 5 db(A) for a cumulative period of more than 1 minute in any hour.

**CALIFORNIA COASTAL COMMISSION**  
631 Howard Street, San Francisco 94105 — (415) 543-8555

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**CALIFORNIA COASTAL COMMISSION**  
STAFF RECOMMENDATION ON COASTAL RESTORATION PROJECT

Coastal Conservancy  
Project #3  
(Seal Beach)  
Hearing Opened: 5/15/79  
60th Day: 6/22/79

APPLICANT: California Coastal Conservancy

DEVELOPMENT  
LOCATION:

Corner of First Street and Marina Drive, adjacent to the Pacific Ocean and the San Gabriel River, in the City of Seal Beach, Orange County (Exhibit 1)

DEVELOPMENT  
DESCRIPTION:

Coastal Restoration Plan to develop the degraded nine-acre Department of Water and Power site and create a park with adjacent community cultural center, restaurant, hostel, commercial shops, condominium housing, and on-site parking (Exhibits 2 and 3)

HEARING OPENED: May 15, 1979, in Los Angeles

ADDITIONAL SUBSTANTIVE FILE DOCUMENTS:

1. A Plan By and For Seal Beach: Guideline for Development, prepared by the California Coastal Conservancy, dated April 24, 1979

STAFF NOTE:

The California Coastal Conservancy is submitting the Department of Water and Power site restoration plan to the California Coastal Commission for its review and approval, as required by Sections 31213 and 31208 of the Coastal Conservancy Act of 1976. Under Section 31213 the Coastal Commission must take two actions to implement this project:

1. Certify that the project is of high priority in terms of accomplishment of the policies and objectives of the Coastal Act of 1976; and
2. Determine the conformity of such plan with the policies and objectives of the Coastal Act of 1976.

Section 31208 provides that the Coastal Commission has 60 days to review the plan and transmit its findings to the Conservancy. If no findings are made during that period, the restoration plan is deemed to be approved and consistent with the Coastal Act. Under the Coastal Act and the Coastal Conservancy Act, the Commission's task is to conduct a conceptual review of the plan and give an indication to the Coastal Conservancy what provisions must be included in a final project to find such a development consistent with the Coastal Act. The Regional Commission will review the final project when a permit application for the development is received. The conceptual approval of a restoration plan by the State Commission includes the range of possible uses consistent with the Coastal Act which provides the parameters for later permit approval.

6/19-20-21/79

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, its approval in concept for the proposed restoration plan, finding that the proposed restoration plan for the Seal Beach Department of Water and Power site is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and is of high priority in terms of the implementation of the policies and objectives of the Coastal Act of 1976.

II. Conditions

The Commission grants its approval for the restoration plan subject to the following conditions:

1. General Conditions. The permit application filed with the Regional Commission shall include:

- a. A copy of this approval in concept, with these conditions.
- b. A copy of existing engineering and/or geologic reports on the required site restoration and any potential geologic or seismic issues.

2. Access. The permit application filed with the Regional Commission shall include:

- a. A map showing existing public transit routes which stop within a three-block radius of the project site, showing all conspicuously-posted public transit stops.
- b. An on-site parking plan providing separate, conspicuously-posted parking areas for bicycle and motorcycle parking.
- c. An on-site parking plan providing for: (1) conspicuously-posted parking areas for handicapped parking at a ratio of 1:100 spaces, (2) mechanisms to allocate parking among dual or overlapping uses and to minimize conflicts with the existing beach parking lot, (3) all the proposed uses consistent with the Regional Interpretive Guidelines for Orange County, and (4) placement of signs, conspicuously-posted, indicating the availability of the parking and facilities to the general public which are consistent with the Regional Interpretive Guidelines for Orange County.

3. Views. The permit application filed with the Regional Commission shall include plans providing for an adequate view corridor from Marina Drive to the San Gabriel River channel and the ocean. The Regional Commission shall determine what is an adequate view corridor, consistent with its earlier permit decisions.

4. Recreation. The permit application filed with the Regional Commission shall include a provision which will assure that the public areas of the site will remain in public use in perpetuity. This may be in the form of a deed restriction, an offer to dedicate, or an agreement to protect the public areas in perpetuity, approved by the Executive Director.

5. Visitor-Serving Facilities. The permit application filed with the Regional Commission shall provide for a deed restriction which shall be recorded and evidence of which shall be submitted to the Executive Director; such deed restriction shall



assure that all ground-floor commercial shops shall be coastally-related, visitor-serving facilities, and that no residential or office uses shall be permitted on the ground floor.

6. Housing. To offset the lack of any provision for low- or moderate-income housing units, the permit application filed with the Regional Commission shall include:

a. An agreement which permits construction of the condominium units only in conjunction with the construction of, at a minimum, a 6.5-acre park with landscaping, ground-floor visitor-serving facilities including, but not limited to, restaurants, a hostel, a cultural center, a fishing platform, a bicycle trail, a lagoon, and a beach.

b. A plan which calls for no more than 14 luxury condominiums up to a maximum of 3,000 sq. ft. each.

### III. Findings and Declarations

The Commission finds and declares as follows:

1. Project Description. The Conservancy proposes to develop the degraded Department of Water and Power (DWP) site to provide a 6½-acre park with adjacent visitor-serving and housing uses to make the entire development self-supporting. The developed area will consist of a cultural center, hostel, restaurant, and 14 condominium units above recreation-related shops. Development will be concentrated in the north end of the site and will be of Spanish-style architecture. The site's ground level is reserved for park and visitor-serving uses (Exhibits 2 and 3). The Conservancy estimates that revenue-producing uses cover only 7% of the site.

The nine-acre DWP site is located in the City of Seal Beach, in Orange County, just across the county line from Los Angeles County (Exhibit 1). The site is bounded on the north by Marina Drive, on the east by First Street, on the south by the public beach and city parking lot, and on the west by the San Gabriel River channel. At present, the site is vacant with extensive concrete tunnels and foundations remaining from the demolition of the power plant. Land uses adjacent to the site include the Marina Trailer Park to the north and one- and two-story residential development to the east. The Regional LARIO/San Gabriel River bicycle trail ends nearby. At the northwest corner of the site adjacent to the river channel is an existing marine-related commercial use which is not part of the project. The project site is currently zoned CRP (commercial-residential-park) by the City of Seal Beach. This zoning requires that one-third of the site be set aside as open space. The project is between the sea and the first public road nearest the sea. Briefly, the restoration plan proposes the following uses:

a. Restoration of the site through removal of concrete tunnels and foundations. Re-use includes a recreational games area and concealed parking space.

b. Development of a 6½-acre public park that includes landscaping, bicycle trails, active and passive use areas, a beach area, a fishing platform which utilizes the ruins of an old bridge ramp, a viewing platform, and a tidal lagoon with fountains.

c. Development of visitor-serving recreational facilities, including a cultural center housing a small theatre, studios, galleries, meeting rooms, and an auditorium of approximately 12,000 sq. ft.; and a 30-bed hostel to serve bicyclists and other tourists.

d. Commercial development including approximately 18,000 sq. ft. of restaurant space and approximately 5,000 sq. ft. of other commercial space, for use as coastal- and recreational-related shops such as bait and tackle shops, fishing rental and sales, bicycle and roller skate services and rentals, snack shops, etc.

e. Development of fourteen condominium units of up to 3,000 sq. ft. each to be located on the second story above the commercial establishments, to enhance the project's economic feasibility.

f. Adequate parking associated with each land use to meet anticipated demand.

The Conservancy estimates that under the proposed design 70% of the project site will be devoted to open-space recreational uses. Ocean and shoreline views from the ground and from proposed public and private structures are provided for in the design. The entire site will remain in public ownership. Space for all proposed private commercial uses will be leased by the City.

The proposed restoration plan is the result of over four months of extensive community workshops, conducted by the Conservancy and its consultants, in which over 200 persons participated. Specifically, the proposal takes into account many conclusions of participants of the community workshops. Among these conclusions are that the project not be a financial drain on the City of Seal Beach, that 2/3 of the project be in park use, that parking be as unobtrusive as possible, that the development be located in the northern portion of the lot, that a cultural center be included in the project, and that maximum public use and access be provided.

2. Access. Section 30210 of the Coastal Act provides that maximum public access to the shoreline shall be provided. The restoration plan will provide a wide range of recreational and visitor-serving uses, with 100% of the ground area proposed for public use. The site is well-situated to take advantage of bicycle trails and existing public transit opportunities.

Section 30252 of the Coastal Act provides for the maintenance and enhancement of public access to the coast by, among other means:

(1) facilitating the provision or extension of transit service,...(3) providing non-automobile circulation within the development, [and] (4) providing adequate parking facilities...

The project would provide for parking in two locations, one of which would only be available for overflow parking at night. The park would be closed to automobiles, and bicycle trails and footpaths are provided on the site. Public transit systems in Seal Beach that serve local and regional patrons currently include a bus stop at First and Marina, and it is possible that once the site is developed, transit service may be increased. Condition 2a will require the eventual permit application to include a map of existing public transit routes which stop at or near the DWP site. Condition 2b requires provision of bicycle and motorbike parking to assure non-automobile circulation within the park and to improve access to the site, consistent with Section 30252. Ample parking for handicapped persons will also be provided through Condition 2c, to assure that all persons have access to the recreational and visitor-serving uses on the site, consistent with Sections 30252.

A potential parking problem may arise due to the proximity of an adjacent City-owned beach parking lot which charges a significant daily fee (Exhibit 1). Access to the site may be impaired if beach users use on-site parking areas, rather than the beach lot, thereby precluding others from using the recreational and commercial opportunities. Condition 2c would require the eventual permit application to contain

a solution to this problem in order for the Commission to find the project consistent with the Coastal Act. To assure adequate parking as provided in accordance with Section 30252, Condition 2c also requires the Conservancy to provide mechanisms to allocate parking among dual or overlapping uses. The proposal already provides for separate parking and access for competing residential and commercial users. Since some subterranean parking is called for, a copy of an existing geologic report shall be provided to the Regional Commission staff for its review to assure the stability of the underground parking area. Finally, parking requirements and conspicuously-posted notice of available parking, as set forth in the adopted Regional Interpretive Guidelines for Orange County, should be complied with; Condition 2c requires such compliance.

Thus, the Commission finds that, as conditioned, the project would provide adequate parking and would be consistent with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976.

3. Views. Section 30251 of the Coastal Act provides that development:

...shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize alteration of landforms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The project's central parking area is designed to fit in with the existing topography of the site and will also have the benefit of being hidden from view from most areas of the site. The northernmost parking area will serve the developed area of the site and will be visible from the trailer park on Marina Drive and the homes on First Street. The plan calls for parking to be screened from view either by using the existing topography or landscaping (trees, trellises, and vines, etc.). Using the topography of the site to conceal parking and a fishing platform assures that the project will conform to the requirements of Section 30251 that development protect views and minimize alteration of landforms.

Finally, the entire project will "...enhance visual quality in [a] visually degraded area..." by replacing the concrete remains of a power plant with a park and commercial shops. The proposal is within the criteria of the Regional Interpretive Guidelines for height and bulk to assure adequate views for all. The Statewide Interpretive Guidelines on View Protection, adopted May 3, 1977, provide that the "...primary concern under [Section 30251]...is the protection of ocean and coastal views from public areas such as...roads..." As such, an adequate view corridor from Marina Drive to the San Gabriel River channel and the ocean is assured by Condition 3. As the plan is conditioned, the Commission finds it consistent with the visual protection policies provided for in Section 30251 of the Coastal Act of 1976.

4. Recreation. Section 30221 of the Coastal Act provides that "...oceanfront land suitable for recreational use shall be protected for recreational use..." Section 30212 provides that "Developments providing public recreational opportunities are preferred."

Demand for public recreational facilities and open space is high and the City of Seal Beach has an extremely low ratio of recreational space to population according to SCAG, State and Federal park planning standards. These standards vary starting with 15+ acres for regional parks and 10-15 acres of local parks per thousand population. The City currently has approximately 2.6 acres of regional park and 2.1 acres

of local parks per thousand population. Orange County has 6 acres of regional parks and 1.6 acres of local parks per thousand population.

The DWP site is one of the last few sizable open spaces on the urbanized coastline of Southern California available for community uses and public access. This site is "Priority 1A" on the Commission's list of sites recommended for possible acquisition. It is also the terminus of a major inland regional bicycle trail system. As such, this site has the highest potential for regional recreational development.

California Coastal Plan Policy 141 provides:

New residential developments near the coast shall be required to have adequate open space and on-site recreational provisions. In addition, public amenities such as pedestrian walkways, bicycle paths, equestrian trails, open space, and parking areas shall be provided in new developments large enough to accommodate them.

The Conservancy's proposal calls for bicycle trails, a fresh-water wading lagoon, a fishing pier, and open space for the City of Seal Beach to determine the use. A hostel is a key part of the proposal. The 30-bed family and group hostel is at the terminus of the regional San Gabriel River Bicycle Trail. A total of \$5.5 million has been allocated for the completion of this regional recreational trail linking 21 cities, 10 parks, the Pacific Ocean, and the San Gabriel Mountains. This trail is estimated to serve 241,000 persons annually. Both the hostel and the trail will enhance the use of the recreational areas.

The proposal calls for a rich mix of different recreational uses, some passive and some active. The recreational opportunities take advantage of the ocean frontage of the site, consistent with Section 30220 of the Coastal Act, by providing beaches a fishing pier, a lagoon, and a viewing area. Of the nine-acre site, 6½ acres are proposed for recreational use. The proposal calls for the City of Seal Beach to own all the land and to devise particular recreational uses for open space provided on the site. Condition 4 would require that all recreation areas be preserved for public use in perpetuity. The Commission finds the project as conditioned consistent with the public recreation provisions of the Coastal Act of 1976.

5. Visitor-Serving Facilities. Section 30222 of the Coastal Act provides that the "...use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over...general commercial development." The Conservancy proposal calls for first-floor commercial uses in the developed area at the northern portion of the site, in addition to a restaurant, a hostel, and a community cultural center. This provides a mix of uses on the site which combine to form a complete unit, partly public and partly private uses. The purpose of this mix of uses is to generate revenues from the private uses which will be absorbed by the public uses; in short, to make the project self-sufficient.

In the past, the Commission has addressed issues involving mixed-use development in key coastal areas. In Appeal No. 275-77 (Williams), the State Commission denied a permit to construct a six-unit apartment building with ground-level commercial facility in Venice. Some actions have allowed residential-office uses only in conjunction with provisions to assure groundfloor or additional uses are coastally-related or visitor-serving uses, as in P-3518 (Haskins and Sloan), P-8742 (McGuire), and P-7759 (Swagerty). In Appeals No. 270-74 (Carleton) and 70-77 (Shepard), the following coastally-related uses were listed as appropriate: restaurant, coffee shop,

drug store, delicatessen, convenience market, sporting goods and camping supplies store, swimming supplies store, sail maker, engine sales or service outlet, marine insurance office, fishing equipment store, marine laboratory or fresh fish market. Other illustrative coastal-related uses include a roller skate rental outlet and a bicycle repair shop. Condition 5 requires all commercial use on the site to be coastally-related, visitor-serving facilities. The Commission finds the project, as conditioned, consistent with the visitor-serving commercial use provisions of the Coastal Act of 1976.

6. Housing. The final use proposed for the project site is housing. The plan calls for 14 luxury condominiums up to a maximum size of 3,000 sq. ft. each. The units would be located on the second and third floors of the development which parallels Marina Drive, over the commercial shops.

Section 30213 of the Coastal Act provides that "...housing opportunities for persons of low- and moderate-income shall be protected, encouraged, and, where feasible, provided..." Section 30222 of the Coastal Act provides that public uses shall have priority over private residential uses or general commercial development. Based on the priorities set out in these sections of the Act, luxury housing, especially if no low- or moderate-income housing were provided, would be an inappropriate use for this site. Existing Statewide Interpretive Guidelines on Housing, adopted October 4, 1977, provide that "...where residential development is proposed, priority should be given to proposals that include housing opportunities for persons of low and moderate income..." Recent Commission permit decisions have required that approximately 25% of new units in multi-family development be set aside as low- or moderate-income housing units.

The Conservancy recognizes that housing is a low-priority Coastal Act use for this site. However, the Conservancy contends that the high revenue-generating potential of these large condominium units is the best means to support the public recreational uses. No low- or moderate-income housing units would be provided on the site. To add low-cost housing would take precious recreational space from the site to pay for the units.

The Conservancy's proposal coincides with the LCP's expected emphasis on recreational uses as a priority for this site. The Conservancy's plan is a restoration project, designed to make an affirmative overall impact on the coastal zone by creating needed public parkland out of a degraded private site. The park plan calls for many visitor-serving facilities which can serve persons of all income levels, especially the hostel, the lagoon and open space areas, and the fishing pier. Without the provision of all these low-cost recreational uses on the site, the Commission could not find that the luxury housing use proposed is consistent with the Coastal Act of 1976. Only viewing the project as a whole, considering the overall goal of project self-sufficiency supporting the public recreational benefits proposed, can the Commission find the project consistent with the housing provisions of the Coastal Act.

This approval gives the Conservancy and the City of Seal Beach, which will be the eventual permit applicant, flexibility within the specified uses, but not the option to delete the specific uses proposed. Therefore, the specific public uses proposed in this plan must be included in the future application for a permit in order for that application to be consistent with the approved plan.

Conditions imposed to gain the approval in concept require that the eventual project presented for Regional Commission approval include the balanced, specific



land uses approved at this stage (Condition 6a). The public recreational areas of the site must be preserved in perpetuity, to assure the continued balance of development and recreation (Condition 4). The number of housing units shall be no more than fourteen, the minimum number the Conservancy believes will provide the necessary revenue to acquire and maintain the public recreational uses (Condition 6b).

In conclusion, the Commission certifies that, as conditioned, the project is of high priority in terms of accomplishment of the policies and objectives of the Coastal Act of 1976, and determines that the Seal Beach Coastal Restoration Plan, as conditioned, conforms with the policies and objectives of the Act.

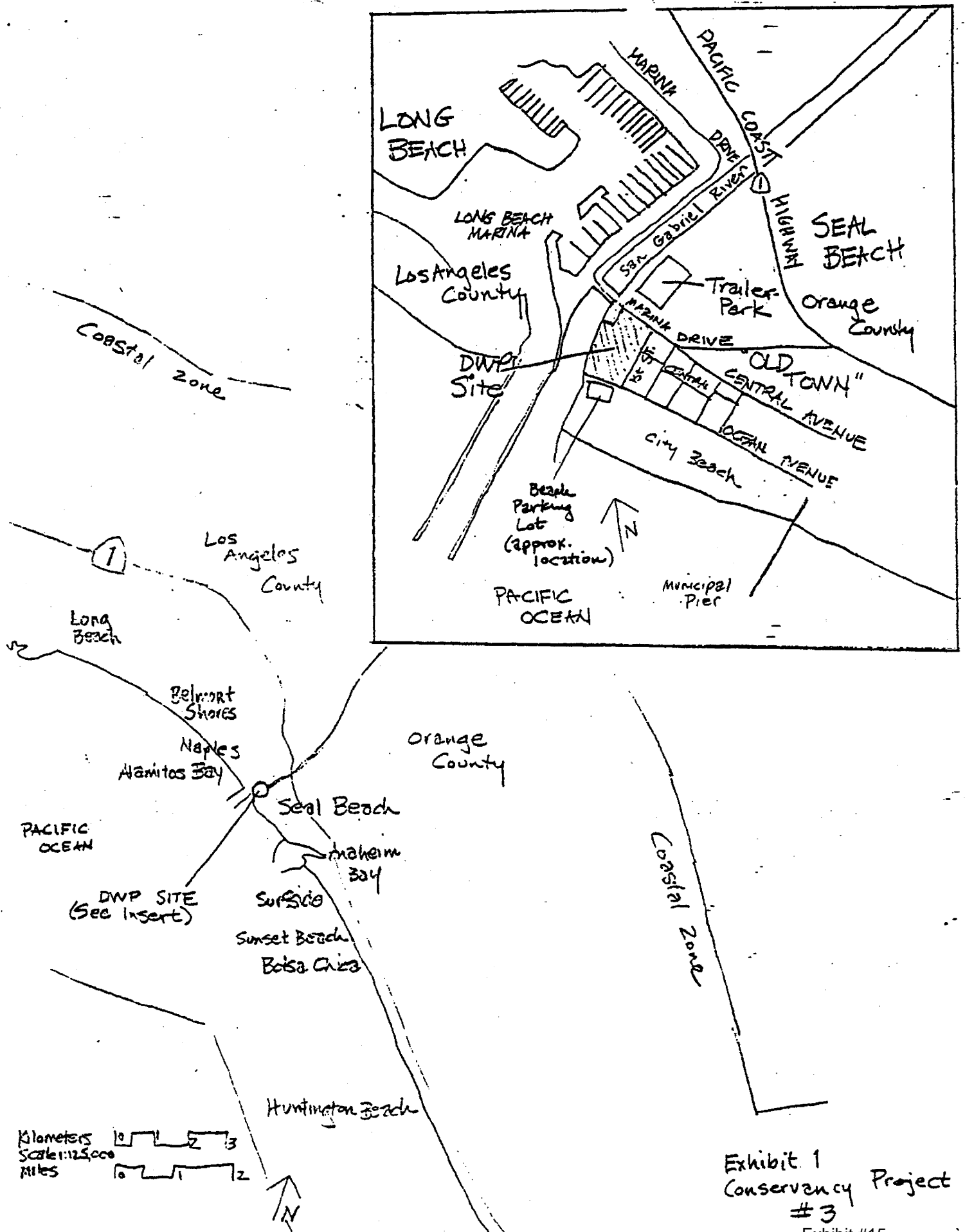


Exhibit 1  
Conservancy Project  
#3

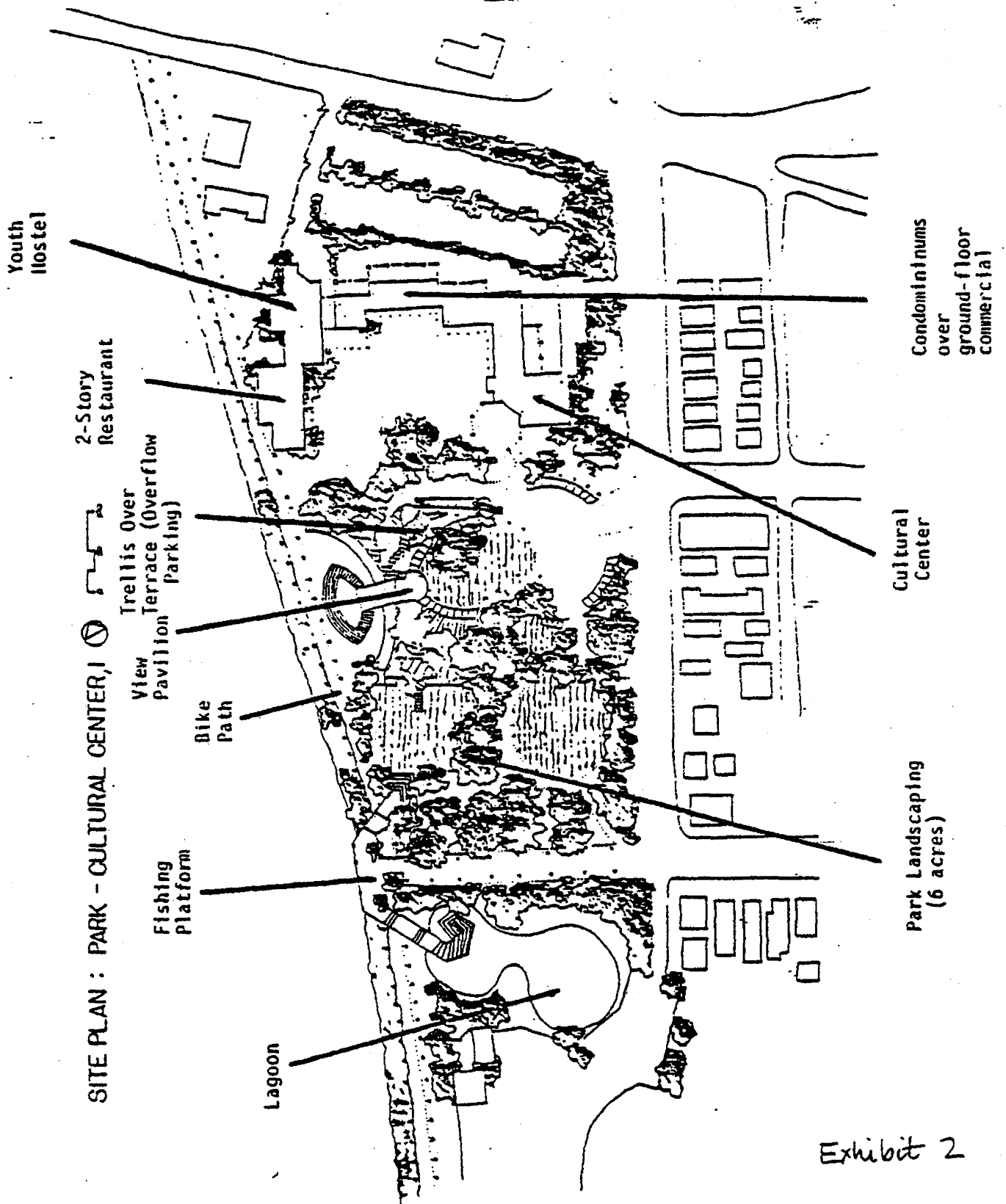


Exhibit 2

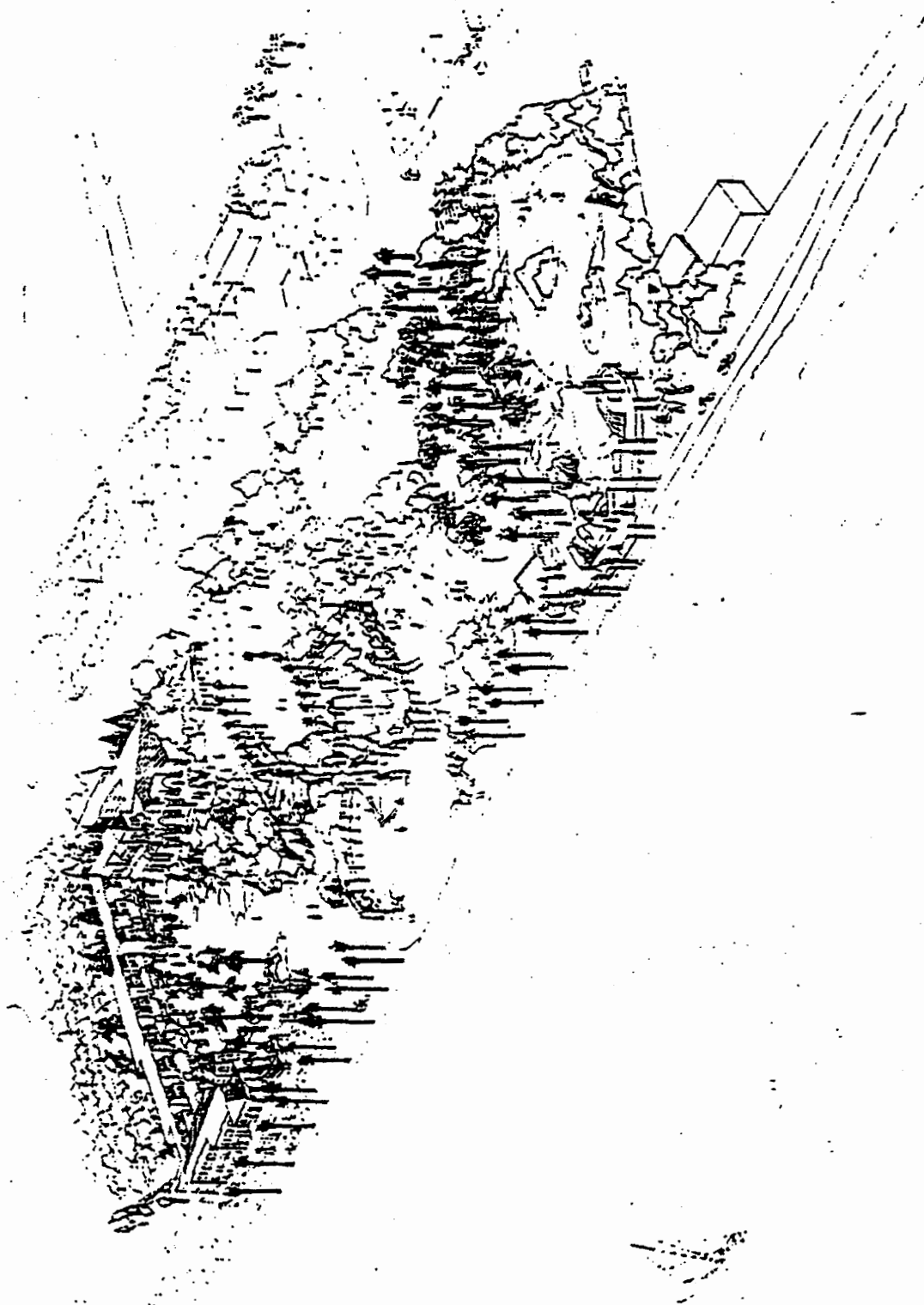


Exhibit 3

- The Sheraton San Pedro was given a loan by the city to allow it to operate at a deficit of \$250,000 per year but not to exceed \$750,000 for its first four years of operation. In addition, the city leased the land to the developer for the first eight years at a favorable amount.
- The Sheraton Suites Pomona Fairplex was assisted by the city in the form of a \$17 million bond to help build the property. The city also built all of the infrastructure improvements around the property. In order to meet debt service, the transient occupancy tax collections were rebated to the property until debt service was met.
- The land on which the Omni Hotel was built (originally constructed as the InterContinental Hotel in downtown Los Angeles) was leased to the developers for an amount significantly below market averages.

### ALTERNATIVE USES

In addition to the construction of a 200-room hotel on the subject site, we are of the opinion that the subject site would also be well served as a mixed-use development that includes hotel, open space, and residential uses.

The recommendations listed in Section IV represent the best results that could be achieved by a hotel constructed on the southern end of the site were the land only to be used for hotel and open space purposes. The proposed subject at 200 rooms would need to be constructed in order to generate the group rooms demand that would need to support the subject. However, this project would need to cover approximately 50 percent of the subject site's area.

A hotel of this size, while it would be feasible from a market demand perspective, is out of character with the surrounding area improvements. The area around the hotel is primarily single and multi-family housing units and small commercial developments that do not exceed three stories. A property of 200 rooms would not be the most complimentary development considering the existing area improvements.

In addition, as stated above, the property would possibly create a negative land value considering the high cost of the land and the inability of the subject hotel to attain an average daily rate in excess of \$200. For a developer to undertake such a project, tax subsidies would most likely need to be involved.

However, there are possibilities that exist that would allow development on the site and would not require tax subsidies payable by the City of Seal Beach. The two most reasonable of these alternative uses is listed below.



### Strict Residential Use

Perhaps the use that would best justify development of the site would be for pure residential purposes. While we are not experts in this field, we think that a development of approximately 40 housing lots with limited open space would be the most economically feasible utilization of the subject site. Residential development would yield the highest and best use of the property from a land value perspective and would most likely yield the highest revenue for the city from a property tax perspective.

The local area is already improved primarily with residential units. Further residential construction would be the most complimentary development. This site and the surrounding area amenities would support the development and maintenance of residential units due to its proximity to downtown Seal Beach and the San Gabriel River channel.

However, we are aware of the California Coastal Commission's current zoning for the subject site which does not include residential development. Therefore, we suggest the following use.

### Boutique Hotel with Surrounding Residential

A smaller, more upscale boutique hotel could be constructed on the site in conjunction with a mix of residential uses and open space. We would recommend a hotel of approximately 30 rooms that could be developed on the subject site. This smaller hotel could achieve an occupancy of approximately 75 percent with an average daily rate of approximately \$225. This hotel, though, like the subject above, would need to be built on the southern end of the site, ideally on the beach where the parking lot and tractor shed currently exist.

We have reviewed our database of comparable lodging facilities and prepared a list of the following hotels as analogous to the type of property that could be expected to be built at the subject site. The properties listed below had 2002 average daily rates ranging from approximately \$160 to approximately \$270.

<b>Proposed Seal Beach Boutique Hotel Analogous Boutique Hotel Properties</b>	
<b>Hotel Name</b>	<b>Number of Rooms</b>
Blue Lantern Inn	29
Inn at Laguna Beach	70
Hotel Oceana Santa Monica	63
Santa Barbara Inn	71
Inn of the Spanish Garden	23

These smaller properties generally attain a higher occupancy than larger hotels due to the fact that they have fewer rooms to sell. Additionally, these hotels, if properly constructed with correspondingly high levels of service, can also maintain a high average daily rate.

The following table shows the performance of the these smaller, boutique hotels from 1998 to 2002. The increase in supply is the 2001 addition of the Inn of the Spanish Garden.

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
1998	85,045	N/A	69,952	N/A	82.3%	\$184.03	N/A	\$151.37	N/A
1999	85,045	0.0%	69,634	-0.5%	81.9	197.77	7.5%	161.93	7.0%
2000	85,045	0.0	71,166	2.2	83.7	205.81	4.1	172.22	6.4
2001	87,235	2.6	69,396	-2.5	79.6	206.27	0.2	164.09	-4.7
2002	93,440	7.1	70,833	2.1	75.8	205.40	-0.4	155.71	-5.1
CAAG	2.4%		0.3%			2.8%		0.7%	

Source: PKF Consulting

One factor that would help the performance of this smaller boutique hotel would be the construction of residential houses and open space in this development. The hotel would then act as an amenity to the surrounding residential and the greater Seal Beach community. Limited meeting space and a quality restaurant would be excellent area amenities and allow the hotel to perform at a higher level.

As stated above, in addition to this smaller hotel site, the best complementary use would be the construction of residential units and open space on the remainder of the site. The hotel would be complemented by these uses which would help to improve the average daily rate of the smaller property. In addition, the residential units would be improved by the construction of a smaller hotel which would act as an area amenity for these new homes.

Perhaps the most attractive aspect of this scenario would be the combination of the retention of the visitor-serving uses for the land combined with the high value created by the construction of the residential uses. In this scenario, the value of the residential uses constructed on the site acts as a subsidy for the cost of the land and construction of the hotel without the City of Seal Beach needing to provide any general subsidy for the construction of a hotel.

responsibility to induce its own demand rather than feed primarily off of what exists in the market.

## **SITE ANALYSIS**

The overall site is bound by the San Gabriel River Channel to the west, First Street to the east, Marina Drive to the north, and the public beach on the south. The site is governed by the city of Seal Beach under a Specific Plan. There are two principal land use categories within the Specific Plan area: Visitor-Serving Land Uses and Publicly-Owned Open-Space Uses with very restrictive improvements allowed. Currently, according to the Specific Plan, the visitor-serving uses are limited to the northerly 30 percent of the parcel (293,000 to 300,000 square feet), which is the area adjacent to Marina Drive and First Street. The remaining 70 percent (450,000 to 475,000 square feet) is limited to publicly-owned open-space uses.

Our 2003 study concluded that "the construction of the hotel as set forth in the Specific Plan would not be feasible." Our opinion on the development scenario has not changed.

As a result, the property owner, Bay City Partners, has developed a series of scenarios that modify the Specific Plan in an attempt to provide for a feasible hotel on the property. Two locations have been identified in the scenarios for hotel development — the first being within the 30 percent area designated as Visitor-Serving adjacent to Marina Drive and First Street as required by the Specific Plan. The second site identified is located in the area currently designated by the city as Publicly-Owned Open-Space, which is adjacent to the public beach and the San Gabriel River Channel. The potential options for hotel development on the first site are limited for the following reasons:

- ♦ The allowable land area for Visitor-Serving Use is too small to construct a quality visitor-serving hotel with surface parking within the 35' height limit.
- ♦ Underground parking is not feasible on this site for cost reasons. Therefore all parking must be surface parking.
- ♦ The allowable Visitor-Serving Area is the least desirable location on the site to place a hotel as it is located as far from the water as possible and would result in a business-oriented hotel at best, and not the visitor-serving hotel envisioned by the Specific Plan.

However if the hotel were to be located street side, the land between the hotel and beach should be developed as high quality open space usable by hotel guests, similar to what has been done at the Montage in Laguna Beach. By doing so, the hotel would still be able to provide guests with a resort experience. The development options for the second location are more vast given the hotel would have the advantage of being adjacent to the beach. It is our opinion that the most appropriate location for a hotel is one that is next to the water and not located at the intersection of First Street and Marina Drive as called for in the Specific Plan. The remaining land away from the hotel could be developed in a variety of

ways. Based on the site restrictions and conversations with the developer, we have evaluated four development scenarios noted below.

**Development Scenarios**

- ♦ Scenario One: Develop the hotel according to the City's Specific Plan, which includes a 150-room hotel on the northwest region of the site with the remaining land designated for Publicly-Owned Open Space.
- ♦ Scenario Two: Develop the hotel on the oceanfront portion of the land as a 75-room boutique hotel, which would allow for the development of residences and other ancillary uses, as a Residential Resort Concept.
- ♦ Scenario Three: Develop the hotel on the oceanfront side of the site as a 100-room boutique hotel, which would allow for the development of residences and other ancillary uses, as a Residential Resort Concept.
- ♦ Scenario Four: Develop the hotel on the oceanfront side of the site as a 50-room boutique hotel, which would allow for the development of residences and other ancillary uses, as a Residential Resort Concept.

The diagrams for each of these development scenarios are noted on the following pages.

September 22, 1981

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MEMORANDUM

CALIFORNIA  
COASTAL COMMISSION

TO: Honorable Mayor and City Council  
FROM: Allen J. Parker, City Manager  
SUBJECT: Department of Water and Power 9 Acre Parcel Update

The following represents the status of negotiations with all parties relative to the Department of Water and Power (DWP) site.

Department of Water and Power. On September 4, 1981, the City was formally notified by the DWP that the Department would only make the property available under a long-term ground lease, and that the lessee would be selected through a competitive bid process. In effect, the City no longer had an exclusive right to purchase and/or lease the property.

Since that time, I have been informed by the DWP that it still desires City involvement in the negotiations with proposed developer(s). My assumption is that any final contract will be a three (3)-party agreement which will include the City, the DWP and the developer.

Potential Developers. At the present time, seven potential developers are still interested in pursuing projects: three desiring to build a hotel on the site, three desiring a residential development ranging in size from twenty (20) luxury condos to 135 affordable condos, and one desiring to build an office complex. Each of these developers are willing to "front" the current appraisal price of \$3 million should the Community Redevelopment Agency wish to acquire the property via condemnation.

Coastal Commission Staff Position. In view of the fact that no developer has been found willing to build the project according to the concept plan - 14 to 22 luxury condos on top of visitor-serving commercial - City staff met with Coastal staff on September 21st to determine types of development that would be permissible. We were informed of the following:

1. Their preference is for visitor-serving commercial. The concept plan, which included condos, was acceptable only because it included commercial uses.
2. A residential-only development will not be looked upon favorably. There must be a substantial visitor-serving commercial element to the development.
3. In the event visitor-serving commercial cannot be developed, the Commission has been known to not allow any development to take place in the hopes that a commercial use will be found in the future.
4. The 70% public open space, 30% private development division of the land is still a mandate.

City Staff Conclusions. First, it appears that the concept plan as conceived by the citizens of Seal Beach is no longer valid except for the 70/30 division of land. As stated previously, no developer has been found willing to build the project according to the concept plan.



Second, of the proposals submitted thus far, only a hotel development would be acceptable to the Coastal Commission. The question then becomes: is a hotel acceptable to the City Council and those citizens involved in the concept plan? If the answer is "yes," then negotiations can continue immediately with the DWP and prospective hotel developers. However, if the answer is "no," then it is my opinion that we are back to square one...the parcel must be replanned to reflect a visitor-serving commercial development that is acceptable to all parties concerned and one that a developer will build. Furthermore, we would stand a very good chance of losing the \$450,000 County park grant owing to additional but necessary delays.

Therefore, it is critical that the issue of hotel vs no hotel be resolved.

Respectfully submitted,

  
Allen J. Parker

AJP/ci

AGENDA ITEM #P.

**CALIFORNIA STATE LANDS**

**COMMISSION** 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 from Voice Phone 1-800-735-2922

**Contact Phone: (916) 574-2501**  
**Contact Fax: (916) 574-1855**

October 16, 2014

File Ref: W26609/AD642

Teresa Henry  
District Manager  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802

Re: State Lands Commission October 14, 2014 Meeting Calendar Item 108

Dear Ms. Henry:

At the October 14, 2014 meeting, the State Lands Commission (Commission) considered Calendar Item 108 for a Compromise Title Settlement and Land Exchange Agreement involving certain interests in land located adjacent to and in the San Gabriel River, and along First Street and Marina Drive, in the City of Seal Beach, County of Orange, California with Bay City Partners, LLC (attached). The Commission voted 2-0 to approve the Compromise Title Settlement and Land Exchange Agreement.

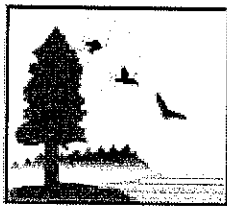
If you have any questions regarding this matter, please feel free to contact me at (916) 574 – 2501.

Sincerely,

Kathryn Colson  
Staff Attorney

cc: Fernie Sy, CCC  
Ed Selich, Bay City Partners LLC

# CALIFORNIA STATE LANDS COMMISSION



*Established in 1938*

JOHN CHIANG, STATE CONTROLLER, CHAIR  
GAVIN NEWSOM, LIEUTENANT GOVERNOR, MEMBER  
MICHAEL COHEN, DIRECTOR OF DEPARTMENT OF FINANCE, MEMBER

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Original Agenda Posted 4 PM on Thursday, October 02, 2014

REGULAR MEETING

## A G E N D A

OCTOBER 14, 2014

SANTA MONICA CIVIC AUDITORIUM  
EAST WING  
1855 MAIN STREET  
SANTA MONICA, CALIFORNIA 90401

1:00 P.M.

### VOTING RECORD

#### COMMISSIONERS PRESENT:

- ALAN GORDON, Chief Deputy Controller and Alternate for Controller John Chiang
- KEVIN SCHMIDT, Policy Director and Alternate for Lt. Governor Gavin Newsom
- ERAINA ORTEGA, Chief Deputy Director and Alternate for Director of the Department of Finance Michael Cohen

#### VOTE:

THE MINUTES OF THE SEPTEMBER 2, 2014 TELECONFERENCE MEETING WERE APPROVED BY A

**VOTE OF 2-0 (ORTEGA AND SCHMIDT).****CONSENT CALENDAR:**

- CONSENT ITEMS C23, C40, C50, C64, C68, C99, AND C104 WERE REMOVED FROM CONSIDERATION
- CONSENT ITEM C47 WAS MOVED TO THE REGULAR CALENDAR
- CONSENT ITEMS C01-C22, C24-C39, C41-C46, C48, C49, C51-C63, C65-C67, C69-C98, AND C100-C103 WERE APPROVED AS PRESENTED BY A VOTE OF 2-0 (ORTEGA AND SCHMIDT)

**INFORMATIONAL:**

- ITEM 105 – WAS INFORMATIONAL – NO VOTE REQUIRED
- ITEM 106 – WAS INFORMATIONAL – NO VOTE REQUIRED

**REGULAR CALENDAR:**

- ITEM 47 – WAS APPROVED AS PRESENTED BY A 2-0 VOTE (ORTEGA AND SCHMIDT)
- ITEM 107 – WAS REMOVED FROM CONSIDERATION
- ITEM 108 – WAS APPROVED AS PRESENTED BY A VOTE OF 2-0 (ORTEGA AND SCHMIDT)
- ITEM 109 – WAS APPROVED AS AMENDED BY A VOTE OF 2-0 (GORDON AND ORTEGA)
- ITEM 110 – STAFF PRESENTATION WAS MADE. ITEM WAS INFORMATIONAL – NO VOTE REQUIRED

**CALIFORNIA STATE LANDS COMMISSION MEETING PROCEDURES:****SPEAKER SIGN-UP AND TIME LIMITS**

Anyone wishing to address the Commission must fill out a "Request to Speak" form. Forms are available at a reception table near the entrance to the meeting. When you are called to speak, please identify yourself and your affiliation for the record. Generally, each speaker will be allowed 3 minutes to speak; however, the Chair may set different time limits.

**ACCESS TO MEETINGS**

If you need reasonable accommodation to conduct business with the Commission for a disability, as defined by the Federal Americans with Disabilities Act and the California Fair Employment and Housing Act, please contact the Commission at (916) 574-1800 in advance to arrange for such accommodation.

**SIGN LANGUAGE INTERPRETER**

A sign language interpreter will be provided upon advance notification of need by a deaf or hearing impaired person. Please contact the Commission at (916) 574-1800 in advance to arrange for an interpreter.

**STAFF REPORTS AND EXHIBITS**

A written staff report is available for most items on this agenda. Please note that staff reports are posted as soon as available on the Commission's website at [www.slc.ca.gov](http://www.slc.ca.gov). The staff report and exhibits may be reviewed and downloaded. Past meetings, including staff reports and exhibits, transcripts, and webcasts, may also be viewed on the Commission's website.

**SUBMISSION OF WRITTEN MATERIALS**

Written materials should be submitted to the Commission no later than three business days before the meeting.

**Please Note:** You are discouraged from submitting written materials to the Commission on the day of the meeting, unless they are visual aids as it is difficult for Commissioners to thoroughly consider late submittals. No facsimiles, texts or emails will be accepted at the meeting site. All non-procedural communications become part of the record. Written materials may be submitted to: [CSLC.Commissionmeetings@slc.ca.gov](mailto:CSLC.Commissionmeetings@slc.ca.gov) or 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825.

**CALENDAR ITEM**

**108**

A 72

10/14/14

W 26609

R. Collins

S 34

K. Colson

**CONSIDER A COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT INVOLVING CERTAIN INTERESTS IN LAND LOCATED ADJACENT TO AND IN THE SAN GABRIEL RIVER, AND ALONG FIRST STREET AND MARINA DRIVE, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, CALIFORNIA**

**PARTIES:**

Bay City Partners, LLC

California State Lands Commission

**INTRODUCTION:**

Bay City Partners, LLC (Bay City) owns the fee title to 10.9 acres of land along First Street, Marina Drive and the San Gabriel River in the City of Seal Beach (City). Bay City proposes to develop a portion of the 10.9-acre site into 32 residential lots and the rest of the site, approximately 6.4. acres, would be used for public open space and passive recreation purposes.

The 10.9-acre site, which was previously owned by the Los Angeles Department of Water and Power (DWP), is commonly known as the "former DWP property." A 1.168-acre portion of the site where residential development is proposed is subject to a public trust easement (Trust Termination Easement Parcel). Because residential development is generally considered inconsistent with the common law Public Trust Doctrine (Public Trust Doctrine), Bay City has proposed a title settlement and land exchange that would terminate the public trust easement on the 1.168-acre Trust Termination Easement Parcel (as shown on Exhibit A). In exchange, Bay City would grant a public trust easement to the California State Lands Commission (Commission) in a 1.177-acre parcel in and along the San Gabriel River called the Public Trust Easement Parcel (as shown on Exhibit A) and contribute \$2.71 million into the Kapiloff Land Bank Fund exclusively for the acquisition of property better suited for public trust purposes. The \$2.71 million would be used to purchase outstanding interests in tidelands or lands that are nearby tidelands and beneficial for public trust purposes. The Commission and Bay City are both parties in the proposed "Compromise Title Settlement and Land Exchange



CALENDAR ITEM NO. **108** (CONT'D)

Agreement Regarding Certain Interest in Lands in the Vicinity of the San Gabriel River, City of Seal Beach, County of Orange, California" (Agreement).

**BACKGROUND:**

*Title and Boundary History*

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 its boundaries for certain public trust purposes including but not limited to commerce, navigation and fisheries. Originally, the 10.9-acre site 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.

Several boundary line and exchange agreements involving portions of the site have fixed boundaries or relocated the public trust easement resulting in the present configuration. These agreements were fully executed and recorded with the Orange County Recorder. In 1967, Boundary Line Agreement 90 (BLA 90) was entered into between the City, DWP (the predecessors in interest to Bay City), and the Commission. BLA 90 fixed the boundary along the shore of the Pacific Ocean at the mouth of the San Gabriel River Channel. In 1968, Boundary Line Agreement 94 (BLA 94) was entered into by the Commission, the City, DWP, as well as numerous other parties that 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 those lands that 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.

In 1970, a land exchange agreement which involved portions of the site, referred to as Sovereign Land Location 51 (SLL 51), was entered into between the Commission, 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 along the San Gabriel River in exchange for the Commission receiving fee title to certain nearby parcels. The Commission maintains that SLL 51 did not terminate the public trust easement on the Trust Termination Easement Parcel.

## CALENDAR ITEM NO. 108 (CONT'D)

Commission staff first became aware of the proposed development project in April 2012 when staff was contacted by a local community member. Commission staff sent a letter to the City's Planning Commission identifying the Commission's public trust easement interest in the Trust Termination Easement Parcel. Bay City strongly disagrees with the Commission's public trust easement claim. Commission staff and Bay City have been negotiating the proposed Agreement since 2012.

### *The 10.9-Acre Site and the Proposed Development Project*

Currently, the 10.9-acre site is vacant and fenced off except for the San Gabriel River bike path improvement located along the San Gabriel River. The proposed development is for a 32-lot residential development on 4.5 acres, with another 6.4 acres to be transferred to the City for public open space. Approximately 11 of the proposed 32 lots are affected by the public trust easement on the Trust Termination Easement Parcel.

Adjacent to the southwestern end of the site is a public oceanfront recreational facility known as the River's End Staging Area (RESA) that is adjacent to both the beach and the San Gabriel River. The RESA separates the 10.9-acre site from the Pacific Ocean. It is a popular windsurfing staging area and provides parking for cyclists and pedestrians who use the San Gabriel River Trail, which connects the Pacific Ocean to the San Gabriel Mountains and runs through a portion of the site.

As a settlement of eminent domain litigation between the City and Bay City, Bay City currently leases the driveway to the RESA parking lot and the bike trail parcel to the City for \$1 a year. The settlement also provides for the conveyance of the driveway and bike trail parcels as well as the proposed 6.4-acre open space area upon the issuance of a coastal development permit (CDP) for the residential development. The lease to the City will expire on March 31, 2015, or within 30 days of a project denial by the California Coastal Commission (CCC).

The City certified the Final Environmental Impact Report (EIR) (State Clearinghouse [SCH] No. 2011061018) on June 25, 2012. The City also approved a General Plan Amendment 11-1 and Tentative Tract Map 17425 at the same meeting.

### *California Coastal Commission Review of the Proposed Development Project*

Bay City applied to the CCC for a CDP for the proposed development in May 2013. The proposed development is within the Coastal Zone and there is no certified Local Coastal Program. Therefore, the CCC has original permit jurisdiction over the development project. However, the CCC's review and approval is not required for the proposed Agreement pursuant to Public Resources Code section 30416, subdivision (c).

## CALENDAR ITEM NO. 108 (CONT'D)

CCC first considered the CDP application in November 2013 and CCC staff recommended denial based on several concerns with the development project. Bay City agreed to withdraw its application and resubmit the application with the additional requested information. In August 2014, the CCC considered and voted in favor of CCC staff's determination to find the application incomplete.

The CCC has been involved in the planning for this site since the late 1970s. The CCC considered the City's proposed Land Use Plan (LUP) in 1983, which called for visitor serving development on 30 percent of the site, but the modifications suggested by CCC were never adopted by the City and the LUP was never certified. The suggested modifications included only allowing open space for parks, trails, active or passive recreation and theatre on the 70 percent of the site dedicated to open space.

The CCC staff strongly believes that higher priority uses consistent with Chapter 3 policies of the Coastal Act should be included in the development on the site. These include visitor serving commercial uses that provide accommodations, and goods and services intended to primarily serve the needs of visitors, such as hotels, as well as active or passive park use facilities. Residential use is not a high priority use under the Coastal Act. CCC staff believes that the proposed Agreement is unnecessary because the priority uses CCC staff believes are appropriate for this site, including a visitor-serving hotel, are consistent with the Public Trust Doctrine.

### Kapiloff Land Bank Fund

The proposed Agreement would provide for a \$2.71 million deposit into the Kapiloff Land Bank Fund, which the Commission administers as the trustee pursuant to Public Resources Code section 8600 et seq. The Kapiloff Land Bank Act (Act) was introduced by Assemblyman Lawrence Kapiloff and enacted by the Legislature in 1982. The Act is an extension of the Commission's authority as set forth in Public Resources Code section 6307, enacted to facilitate settlements of title to real property with cash payments where exchange parcels are not readily available or are not of equal value and to potentially facilitate purchase of larger interests in land through the pooling of such acquisition money. Money acquired through a title settlement and land exchange agreement and held in the Kapiloff Land Bank Fund must be spent only to acquire interest(s) in land for uses that are consistent with and promote the Public Trust Doctrine. The types of land that can be acquired with the funds include outstanding interests in tide and submerged lands, lands which may have been converted to wetlands, or adjoining or nearby lands where the public use and ownership of the land is necessary or extremely beneficial for the furtherance of public trust purposes. (Pub. Resources Code § 8613, subd. (a).) For example, the Commission, as trustee for the Kapiloff Land Bank Fund, recently approved the acquisition of a parcel of land adjacent

CALENDAR ITEM NO. **108** (CONT'D)

to Lake Tahoe in the city of South Lake Tahoe that provides direct public access and recreational opportunities to the lake.

**LEGAL REQUIREMENTS FOR A TITLE SETTLEMENT AND LAND EXCHANGE:**

Pursuant to Public Resources Code section 6307, the Commission is authorized, under certain limited circumstances, to terminate the State's public trust interests and enter into a compromise title settlement and land exchange agreement. The Commission, in order to comply with article X, section 3 of the California Constitution and to approve the proposed Agreement, must make the following requisite findings pursuant to Public Resources Code section 6307:

- (1) The exchange is for one or more of the following purposes:
  - a. To improve navigation or waterways;
  - b. To aid in reclamation or flood control;
  - c. To enhance the physical configuration of the shoreline or trust land ownership;
  - d. To enhance public access to or along the water;
  - e. To enhance waterfront and nearshore development or redevelopment for public trust purposes;
  - f. To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space; and/or
  - g. To resolve boundary or title disputes.
- (2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust;
- (3) The exchange does not substantially interfere with public rights of navigation and fishing;
- (4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in land given by the trust in exchange;
- (5) The lands or interests in land given in exchange have been cut off from water access and are in fact no longer tidelands or submerged lands or navigable waterways and are relatively useless for public trust purposes;
- (6) Mineral interests are not being exchanged as part of the Agreement; and,
- (7) The exchange is in the best interests of the state.

**ANALYSIS AND STAFF RECOMMENDATION:**

Commission staff analyzed all the evidence available concerning the site in question, including the title history, title reports, historic use reports, surveys, survey instructions, maps, historic photographs, feasibility studies, appraisals, local and state governmental

CALENDAR ITEM NO. **108** (CONT'D)

staff reports, applicable case law and other useful information in determining a recommendation for the proposed Agreement.

*Purposes of the exchange.*

The purposes of the exchange provided for in the Agreement are 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. Currently, the Trust Termination Easement Parcel is not adjacent to the San Gabriel River and only one corner of the parcel comes near the river. The Public Trust Easement Parcel to be received is partially located within the San Gabriel River and is a long parcel that extends along the river and the bike path located next to the river. Since the Public Trust Easement Parcel is physically located in and along the water, it provides better direct and continuous access to the San Gabriel River than the Trust Termination Easement Parcel. Since the privately owned Public Trust Easement Parcel is already improved with a bike path, obtaining a public trust easement, held by the Commission, in this parcel would ensure that the public has the right to use the bike path.

As the result of artificial changes to the mouth of the San Gabriel River and a boundary line and land exchange agreement in 1970, the Trust Termination Easement Parcel is not contiguous with other sovereign land interests. In contrast, the Public Trust Easement Parcel is adjacent to sovereign land ownership within the San Gabriel River. If the Agreement is approved, there will no longer be a gap in sovereign ownership. Additionally, the proposed Agreement will also resolve a title dispute between Bay City and the Commission of whether there is a valid public trust easement over the Trust Termination Easement Parcel.

*Interests in land to be acquired will provide a significant benefit.*

The Public Trust Easement Parcel provides significant benefits to the public trust because the parcel provides public access and recreation to, along, and in the San Gabriel River towards the Pacific Ocean. The Public Trust Easement Parcel has been improved with a portion of the San Gabriel River Bike Path that allows the public access from the Pacific Ocean to the San Gabriel Mountains. According to Bay City, there is a seasonal beach that occurs in the San Gabriel River within the Public Trust Easement Parcel that could provide beach access and beach recreational activities. The Public Trust Easement Parcel enhances the physical configuration of the trust land ownership because the public trust easement will now be located in and adjacent to the San Gabriel River and sovereign land ownership by the state. Additionally, the \$2.71 million deposit into the Kapiloff Land Bank Fund will allow the Commission to acquire outstanding interests in tide or submerged land or nearby uplands that are necessary and beneficial for public trust purposes, such as to provide meaningful public access.



CALENDAR ITEM NO. **108** (CONT'D)

*Exchange does not substantially interfere with public rights of navigation and fishing.*

The Trust Termination Easement Parcel has been filled and reclaimed and is not covered with water. The parcel is also not adjacent to the San Gabriel River. Termination of the public trust easement in the Trust Termination Easement Parcel would not interfere with any navigation or fishing rights because it is not possible to participate in either activity in the Trust Termination Easement Parcel. The Public Trust Easement Parcel, however, will allow the public to access the water and engage in navigation, water-related recreational and fishing activities.

*Monetary value of lands or interests in lands received by the trust is equal or greater than lands given by the trust.*

Commission staff spent a significant amount of time appraising the value of the public trust easement on the Trust Termination Easement Parcel. Staff's approach was to appraise the value of the parcel based on the highest and best economic use with a trust consistent development (i.e., a visitor serving hotel) and compare that with the highest and best economic use of the parcel without consideration of the Public Trust Doctrine (i.e., residential development). The difference between those values is the basis of the valuation of the public trust easement on the Trust Termination Easement Parcel. Staff determined the state's public trust easement interest in the Trust Termination Easement Parcel is valued at \$2.71 million.

Commission staff is unable to assign any monetary value to the Public Trust Easement Parcel because if Bay City receives a CDP for the proposed development, the fee ownership of the Public Trust Easement Parcel will be transferred to the City. Under City ownership, the Public Trust Easement Parcel will be used for essentially the same public access purposes as the public trust easement that the Commission will obtain over the parcel.

Therefore, staff recommends that the proposed Agreement provide for \$2.71 million to be deposited into the Kapiloff Land Bank Fund based on the value the state's public trust easement interest in the Trust Termination Easement Parcel to ensure that the monetary value of the lands and interests to be exchanged into the Public Trust under the Agreement is equal or greater than the monetary value of the lands and interests to be exchanged out of the Public Trust. In addition to the \$2.71 million, the Commission will also receive a public trust easement on the Public Trust Easement Parcel that is slightly larger than the Trust Termination Easement Parcel.

CALENDAR ITEM NO. **108** (CONT'D)

*Lands or interests in land given have been cut off from water access are no longer tidelands or submerged lands and are relatively useless for trust purposes.*

The Trust Termination Easement Parcel has been filled and reclaimed and does not currently provide water access. The Trust Termination Easement Parcel is no longer tidelands, submerged lands or a navigable waterway because it is physically separated from the current San Gabriel River and is no longer covered with water.

The 10.9-acre parcel was previously the site of a DWP power plant that was constructed in the 1920s and was removed in 1967. The entire site has been remediated since the 1980s and there are no environmental impairments or restrictions on the property. The Trust Termination Easement Parcel is fenced off and does not currently provide any public trust purposes.

The only portion of the 10.9-acre site impressed with a public trust easement is the 1.168-acre Trust Termination Easement Parcel that is located on the northern portion of the site, the farthest away from the ocean. This is the area that is proposed for residential development and the portion of the site closer to the ocean and the river are to be reserved as public spaces. For the past 30 years, this 1.168-acre Trust Termination Easement Parcel has remained relatively useless for trust purposes, as evidenced by the lack of trust-consistent development interest.

Since 1982, the site has been subject to a specific plan designation for open space and a visitor-serving hotel but there was never a certified Local Coastal Program (LCP) for this area. Commission staff has reviewed the feasibility studies submitted to the CCC that evaluated whether a hotel development on the site is feasible. Commission staff believes that the feasibility studies provided by Bay City concluding that a hotel is not feasible on the site are based on reasonable assumptions and analysis.

*Mineral interests are not being exchanged as part of the Agreement.*

The Agreement only involves public trust easements in the property and does not include any conveyance of fee interest that could include mineral rights. In addition, the Agreement expressly states that it does not affect any mineral interests.

*Exchange is in the best interests of the state.*

Through the proposed Agreement, the Commission will receive a slightly larger public trust easement adjacent to and in the San Gabriel River and \$2.71 million deposit in Kapioloff to acquire other interests in land better suited for public trust purposes. The proposed Agreement will allow for the residential development on the northern portion of the 10.9-acre site and, as a result, 6.4 acres will be conveyed to the City as open space and recreational land. The proposed Agreement will ensure that through

CALENDAR ITEM NO. **108** (CONT'D)

acceptance of the Public Trust Easement Parcel the public has a permanent right to use the portion of the San Gabriel River Bike Trail that passes through the property and is currently in private ownership.

Since litigation of this matter would likely be extremely protracted and costly with uncertain results, the Parties to the Agreement consider it expedient, necessary, and in the best interests of the State and Bay City to resolve this dispute through a title settlement and land exchange agreement thereby avoiding the substantial costs and uncertainties of litigation.

Public Resources Code section 21080.11 states that “[t]his division [California Environmental Quality Act (CEQA)] 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.” Commission staff believes that Public Resources Code section 21080.11 is applicable to the Agreement and that no additional CEQA review is required because the Agreement is in furtherance of the settlement of title problems. The dispute is over whether there is a valid public trust easement on the Trust Termination Easement Parcel.

In addition, the City certified an EIR on June 25, 2012, that examined all the environmental effects from the Specific Plan Amendment and related development on the site. The EIR did not discuss the title settlement and land exchange agreement that would be necessary before the development occurred. Although Commission staff believes the statutory exemption discussed above applies, in an abundance of caution, Commission staff prepared an Addendum to the certified EIR as contained in Exhibit B. There is no legal requirement to publicly circulate an Addendum; however, Commission staff published the Addendum on its website on October 1, 2014, and sent notices to all recipients on the original EIR mailing list as well as other interested parties known to Commission staff. As detailed in the Addendum, Commission staff found that the modified project, the proposed title settlement and land exchange agreement, did not have any new significant effects on the environment.

As described in the preceding paragraphs, the facts support each of the necessary findings the Commission must make, including that the Agreement is in the best interests of the state. Commission staff and the Attorney General’s Office have reviewed the proposed Agreement and believe all necessary legal elements have been met. Staff therefore recommends that the Commission approve the Agreement, in substantially the form on file at the Commission’s Sacramento Office, and authorize its execution and the execution and recordation of all documents necessary to implement the Agreement.

CALENDAR ITEM NO. **108** (CONT'D)

**OTHER PERTINENT INFORMATION:**

1. The State, acting by and through the Commission, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to section 6307 of such code, to enter into title settlement and land exchange agreements.
2. The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems and to exchanges or leases in connection with those settlements.

Authority: Public Resources Code Section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f).

3. An EIR, SCH No. 2011061018, was prepared for this project by the City and certified on June 25, 2012. Commission staff has reviewed this document and Mitigation Monitoring Program prepared pursuant to the provisions of CEQA (Pub. Resources Code, § 21081.6) and adopted by the City. On October 1, 2014, Commission staff prepared an Addendum to the certified EIR and posted the Addendum on its website and mailed notices of intent informing interested persons about the Addendum.
4. This activity involves lands that have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are “significant” by nature of their public ownership (as opposed to “environmentally significant”). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project’s consistency with the use classification as required by California Code of Regulations, Title 2, section 2954 is not applicable.

**EXHIBITS:**

- A. Site and Location Map
- B. Addendum

CALENDAR ITEM NO. **108** (CONT'D)

**RECOMMENDED ACTION:**

**CEQA FINDINGS:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f), settlement of title and boundary problems and to exchanges or leases in connection with those settlements.

Find that an EIR, SCH No. 2011061018, was prepared for this project by the City of Seal Beach and certified on June 25, 2012, and that the Commission has reviewed and considered the information contained therein and in the Addendum as contained in Exhibit B prepared by Commission staff.

Find that in its independent judgment, none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts has occurred, and therefore, no additional CEQA analysis is required.

**AUTHORIZATION:**

1. Based upon the foregoing analysis, the information contained in the Commission's files, and the information presented at the public meeting on the proposed Agreement, find that:
  - 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.
  - B. The exchange provided for in the 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 that is adjacent to and in the San Gabriel River.



CALENDAR ITEM NO. **108** (CONT'D)

- C. The Public Trust Easement Parcel to be acquired by the Commission and, the \$2.71 million deposit into the Kapiloff Land Back Fund is equal to or greater than the monetary value of the Trust Termination Easement Parcel to be quitclaimed by the Commission to Bay City.
  - D. The Trust Termination Easement Parcel, consisting of 1.17 acres being relinquished, 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. The Agreement is in the best interests of the state for the following reasons: 1) by consolidating and expanding the total acreage of lands protected under the public trust; 2) providing and protecting public access and recreation along the San Gabriel River through the acquisition of the Public Trust Easement Parcel; 3) the \$2.71 million deposit into the Kapiloff Land Bank Fund shall be used to purchase outstanding interests in tide and submerged lands or in lands that are beneficial for the furtherance of public trust purposes.
  - F. The Agreement shall release any and all public trust claims from the Trust Termination Parcel Easement that is being conveyed by the Commission to Bay City and shall impose the public trust easement onto the Public Trust Easement Parcel being conveyed by Bay City to the Commission.
  - G. The purposes of the exchange provided for in the Agreement are 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 the Agreement that no mineral rights shall be transferred as part of the Agreement.
2. Find that the lands and interests in lands to be conveyed to the State of California, acting by and through the Commission, are to be accepted as public trust lands for the benefit of the people of the State

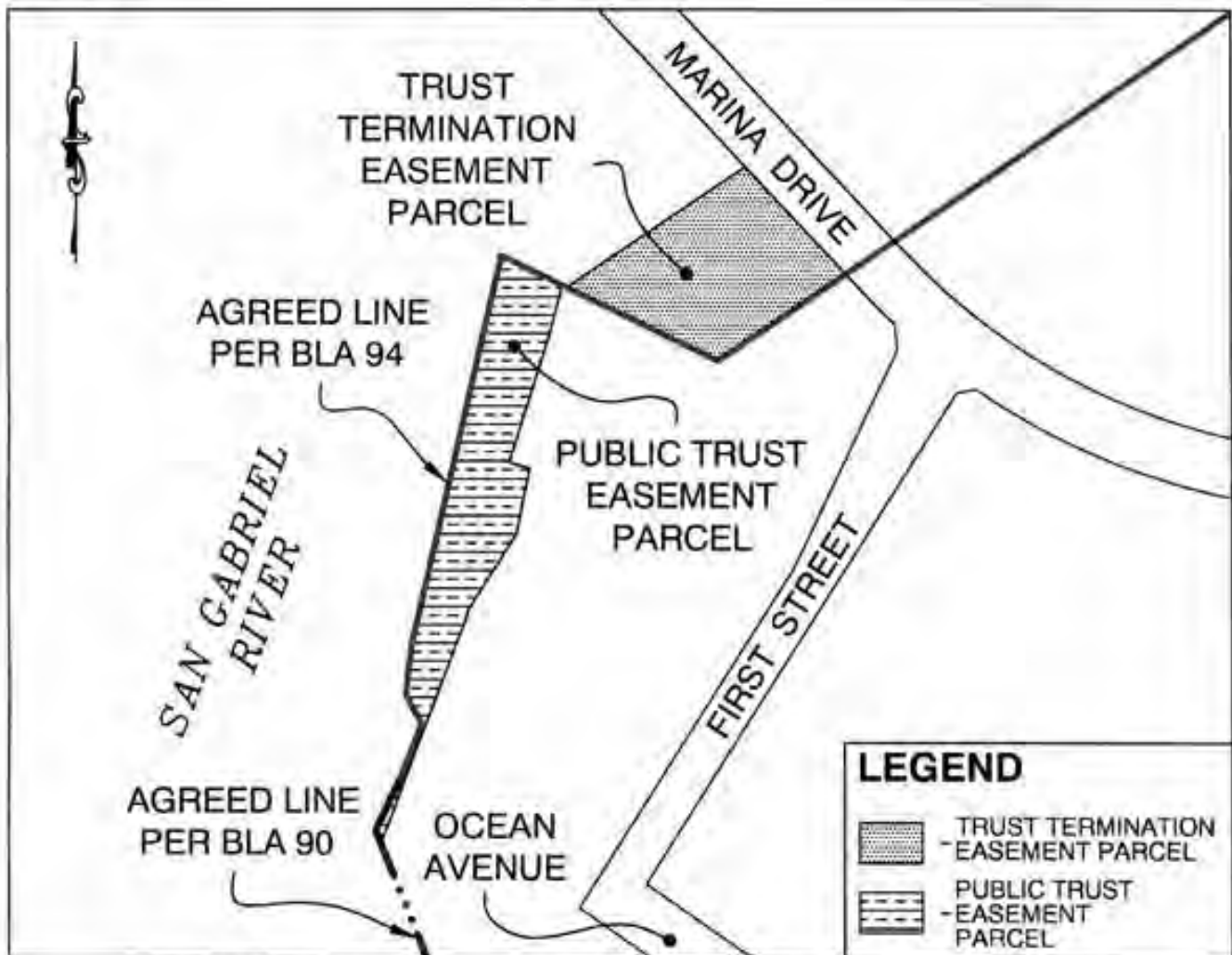
CALENDAR ITEM NO. **108** (CONT'D)

of California, to be held by the State of California for public trust purposes.

3. Approve and authorize the execution, acknowledgment, and recordation of the Agreement and associated deeds and acceptances on behalf of the Commission, in substantially the form of the copy of such Agreement on file with the Commission.
4. Authorize the acceptance and deposit of \$2.71 million into the Kapiloff Land Bank Fund to be used only for the purchase of interest(s) in land pursuant to Public Resources Code section 8613, subdivision (a).
5. Authorize and direct the staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the California State Lands Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.

NO SCALE

## SITE



### SAN GABRIEL RIVER VICINITY, CITY OF SEAL BEACH

NO SCALE

## LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

## **Exhibit A**

W 26609  
BAY CITY  
PARTNERS, LLC  
TITLE SETTLEMENT  
ORANGE COUNTY



JWP/09/30/14

**ENVIRONMENTAL IMPACT REPORT ADDENDUM  
TITLE SETTLEMENT AND LAND EXCHANGE  
AGREEMENT (DEPARTMENT OF WATER AND POWER  
SPECIFIC PLAN AMENDMENT PROJECT)**

**SCH No. 2011061018**

October 2014

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**Responsible Agency:**

California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, California 95825

**Lead Agency:**

City of Seal Beach  
211 8<sup>th</sup> Street  
Seal Beach, California 90740

**Project Proponent:**

Bay City Partners, LLC  
627 Bayside Drive  
Newport Beach, California 92660

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### 1.1 PROJECT LOCATION

The Department of Water and Power Specific Plan Amendment (Project) is located within the City of Seal Beach (City), in the northwestern portion of Orange County. The overall Project involves a 10.9-acre site (Assessor's Parcel Numbers [APNs] 043-171-02, -172-07 (portions), -172-08, -172-12, and -172-13), which currently consists of vacant land, portions of a residence and commercial facility, and portions of the San Gabriel River and associated bike trail (San Gabriel River Bike Trail). The overall Project site was formerly utilized by the Los Angeles Department of Water and Power (DWP) for power plant facilities and operations. The Project site is generally bounded by Marina Drive to the north, 1<sup>st</sup> Street to the east, the Rivers End Café/beach parking lot to the south, and the San Gabriel River to the west.

### 1.2 PROJECT MODIFICATION

The proposed Project modification is a proposed Title Settlement and Land Exchange Agreement (Land Exchange Project) involving Parcels 1, 6, 7 and 8 of the Project (see Figure 2-1, *Existing Legal Parcels*).

The Project site is currently divided into eight legal parcels which are owned in fee by Bay City Partners, LLC (BCP). Parcel 1 is approximately 1.168 acre area currently encumbered with a public trust easement. A public trust easement is a sovereign public property right held by the State (under the jurisdiction of the California State Lands Commission [CSLC]), for the benefit of all the people in California. Public trust purposes include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space.

The proposed Land Exchange Project includes the CSLC terminating the public trust easement on Parcel 1 in exchange for BCP granting a public trust easement on a approximately 1.177 acre parcel which includes a portion of Parcel 6, and a portion of Parcel 7 and Parcel 8 along the bike trail and depositing \$2.71 million into the Kapiloff Land Bank Fund, which is administered by the CSLC (see Figure 2-2, *Proposed Exchange*).

### 1.3 PROJECT BACKGROUND AND OBJECTIVES

On May 27, 2011, BCP submitted an application to the City to develop the DWP Specific Plan area with a 48-lot residential development on 4.5 acres and 6.4 acres for public open space passive recreation purposes. The Draft Environmental Impact Report (EIR) was circulated for a 57-day public review and comment period from November 14, 2011, to January 9, 2012. Following the public review period, the City prepared a Final

EIR, which included written responses to all comments received during the public review period regarding the Draft EIR, a Mitigation Monitoring and Reporting Program, and Errata. The Final EIR was released to the public on April 2, 2012.

On May 2, 2012, and June 6, 2012, the Planning Commission held duly noticed public hearings to consider the proposed Project. During the May 2, 2012 hearing, the Applicant presented a revised tract map that contained the same number of lots within the same tract boundary, but with a different lot configuration and site access. The Planning Commission provided comments to the applicant regarding the originally submitted tract map and the revised map. The concerns primarily focused on lot widths, drainage patterns/water quality features, pad elevations, and street/alley widths. Consequently, the Applicant again revised the tract map to address the Planning Commissions' comments. The site plan ultimately resulted in a 32-lot residential development on 4.5 acres and 6.4 acres for public open space passive recreation purposes. Upon an environmental analysis of the Alternative Site Plan, conducted in June 2012, the proposed project and Final EIR were considered by the Planning Commission and City Council. The Final EIR was certified on June 25, 2012, by the City Council.

CSLC staff first became aware of the Project in late April 2012, and on May 2, 2012, CSLC staff submitted a letter to the Planning Commission explaining that a portion of the Project site was impressed with a public trust easement. BCP, the property owner, has disagreed with CSLC's position. Several boundary line and exchange agreements with the CSLC and the prior owners involved portions of the 10.9-acre site in the late 1960s and early 1970s which fixed the boundaries of Rancho Los Alamitos and State Tideland Location No. 137.

As the agency with ownership and control of the State's ungranted tide and submerged lands, the CSLC must make specific findings pursuant to Public Resources Code section 6307 when approving a title settlement and land exchange agreement involving filled or reclaimed tide and submerged lands that are subject to the public trust.

The proposed Land Exchange Project involves \$2.71 million being deposited into the Kapiloff Land Bank Fund, which CSLC administers as the trustee pursuant to Public Resources Code section 8600 et seq. The Kapiloff Land Bank Act (Act) was introduced by Assemblyman Lawrence Kapiloff and enacted by the Legislature in 1982. The Act is an extension of CSLC's authority as set forth in Public Resources Code section 6307, which was enacted to facilitate settlements of title to real property with cash payments where exchange parcels are not readily available or are not of equal value and to facilitate mitigation through the pooling of such payments.

## **2.0 DESCRIPTION OF PROJECT MODIFICATION**

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### **2.1 ADDENDUM PURPOSE AND NEED**

Once an Environmental Impact Report (EIR) has been certified for a project, no subsequent or supplemental EIR shall be required unless one or more of the following events occurs:

- 1) Substantial changes are proposed in the project which will require major revisions of the EIR.
- 2) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR.
- 3) New information, which was not known and could not have been known at the time the EIR was certified, becomes available. (Pub. Resources Code, § 21166.)

The State CEQA Guidelines section 15162 (Cal. Code Regs., tit. 14, § 15000 et seq.) provides additional information on when the above events trigger the need for a subsequent EIR. A subsequent EIR is required if:

- 1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- 2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete shows any of the following:
  - A. The project will have one or more significant effects not discussed in the previous EIR;
  - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

- D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

When none of the above events has occurred, yet some changes or additions are necessary, an addendum is required. (State CEQA Guidelines, § 15164.)<sup>1</sup>

As will be explained below, none of the conditions described in State CEQA Guidelines section 15162 calling for preparation of a subsequent EIR has occurred. This Addendum supports the conclusion that the Land Exchange Project does not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There are no new mitigation measures or alternatives available that would substantially reduce the environmental effects beyond those previously described in the EIR. As a result, an addendum is an appropriate CEQA document for analysis and consideration of the Land Exchange Project.

Circulation of an addendum for public review is not necessary (State CEQA Guidelines, § 15164, subd. (c)); however, the addendum must be considered in conjunction with the Final EIR by the decision-making body (State CEQA Guidelines, § 15164, subd. (d)).

## **2.2 COMPONENTS OF PROJECT MODIFICATION**

Parcel 1 is encumbered with a public trust easement held by the California State Lands Commission (CSLC) in trust for the people of California. Development of residential uses is prohibited on such land. In order to settle the disputed claim of a public trust easement and allow use of Parcel 1 for residential development, the Project Proponent proposes to obtain approval from the CSLC of a title settlement and land exchange agreement pursuant to Public Resources Code section 6307 to terminate the public trust easement from Parcel 1 in exchange for Bay City Partners, LLC (BCP) granting to CSLC a public trust easement in a portion of Parcels 6, 7 and 8 and \$2.71 million to be deposited in the Kapiloff Land Bank Fund (see Figure 2-2, *Proposed Exchange*).

CSLC staff and BCP have worked on a draft title settlement and land exchange agreement for the termination of the public trust easement on Parcel 1 (1.168 acres) in exchange for a public trust easement on a portion of Parcels 6, 7, 8 (1.177 acres) which is located along the San Gabriel River, plus a cash payment of \$2.71 million to the Kapiloff Land Bank Fund. These monies will be held in the Kapiloff Land Bank Fund

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<sup>1</sup> It is noted that this Addendum does not address other CEQA exemptions that may be applicable to this land exchange, such as Public Resources Code section 21080.11 (CEQA not applicable to State Lands Commission settlements) or other CEQA categorical exemptions. (See e.g., State CEQA Guidelines, §§ 15307 (actions by regulatory agencies for protection of natural resources), 15308 (actions by regulatory agencies for protection of the environment), 15317 (open space contracts or easements), and 15061, subd. [b][3] (common sense exemption).)

subject to the statutory requirement that they be spent to acquire property interests in tide and submerged lands or adjoining lands that are necessary or extremely beneficial for public trust purposes. The payment of \$2.71 million to this fund conforms to its purpose and furthers the CSLC's mission of acquiring public trust lands. The CSLC holds and administers the acquired lands as sovereign lands of the legal character of tidelands and submerged lands.

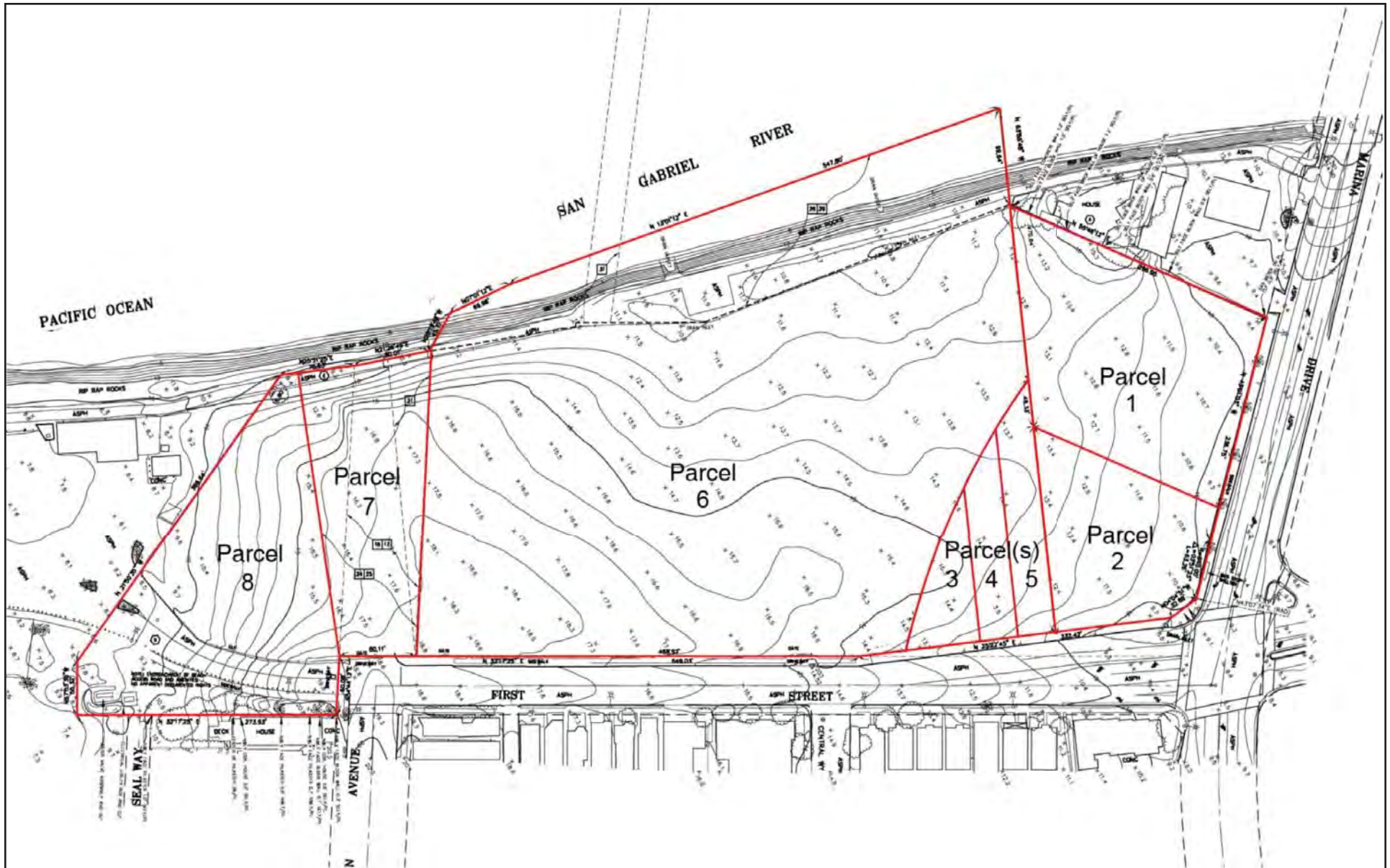
The CSLC's discretionary actions associated with this proposed Project modification include making the requisite findings pursuant to Public Resources Code section 6307 and approving the Title Settlement and Land Exchange Agreement prior to residential development on the site.

The Final EIR certified by the City of Seal Beach (City) did not expressly analyze the environmental effects of the proposed Land Exchange Project. Public comment was received during public review of the Draft EIR, circulated from November 14, 2011, through January 9, 2012. The City responded to those comments pertaining to the claimed public trust easement as follows:

“...comment makes a legal argument that the ‘public trust doctrine prohibits the type of residential land use proposed in this Project....’ Such argument does not raise new environmental information or challenge information provided in the Draft EIR. In that this argument does not question the Draft EIR’s factual conclusions or the adequacy of the environmental analysis in the Draft EIR, no further response is necessary.”

The purpose of this Addendum to the certified EIR is to verify that the proposed Land Exchange Project between BCP and the CSLC would not cause significant, adverse impacts to the environment.





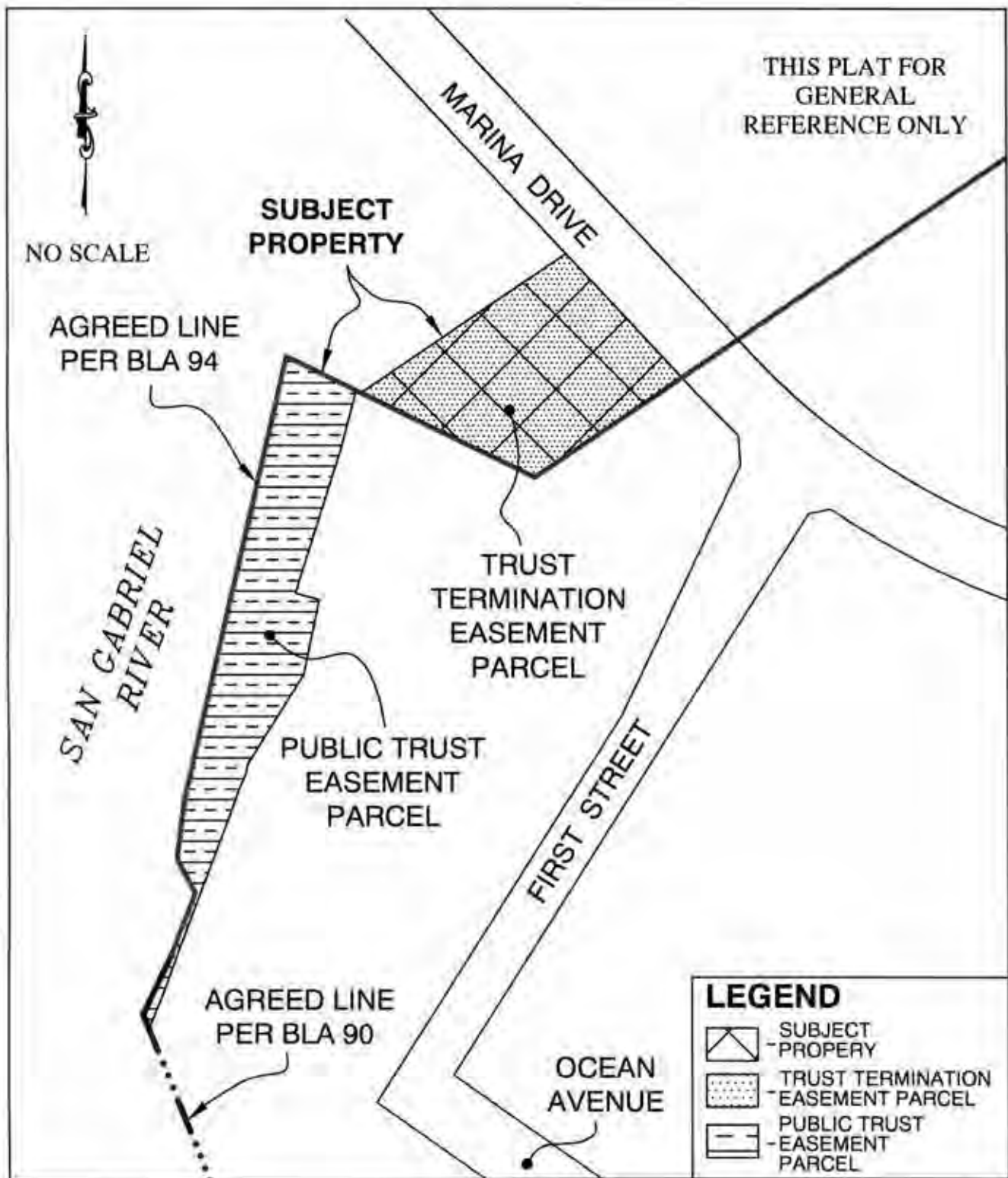
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09/14

## Existing Legal Parcels

**Figure 2-1**



**FIGURE 2-2**

Page 1 of 1

**PROPOSED SETTLEMENT**

**CALIFORNIA STATE  
LANDS COMMISSION**



### 3.0 ENVIRONMENTAL ASSESSMENT

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This comparative analysis has been undertaken to analyze whether the proposed Land Exchange Project would have any significant environmental impacts that are not addressed in the Final Environmental Impact Report (EIR). The comparative analysis discusses whether impacts are increased, decreased, or unchanged from the conclusions discussed in the Final EIR. The comparative analysis also addresses whether any changes to mitigation measures are required.

**Aesthetics/Light and Glare.** The Land Exchange Project would result in the same land use and development as that analyzed for the Final EIR for the Project. Therefore, no new impacts have been identified and no new mitigation measures are required.

**Agriculture Resources.** As was the case with the Final EIR for the Project, the Land Exchange Project would not result in any impacts to farmland, agricultural uses, or forest land. Therefore, no new impacts have been identified and no new mitigation measures are required.

**Air Quality.** The Land Exchange Project would result in the same construction activities (including cut and fill and earthwork volumes) as the Final EIR for the Project. The Land Exchange Project would also result in the same generation of vehicle trips as the Final EIR for the Project, resulting in the same operational air emissions. Thus, no new impacts have been identified and no new mitigation measures are required.

**Biological Resources.** With implementation of the Land Exchange Project, construction activities would occur over the same development footprint as the Final EIR for the Project. The Land Exchange Project would also not conflict with local policies, ordinances, or plans, similar to the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Cultural Resources.** The Land Exchange Project would result in the same construction activities as the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Geology and Soils.** The Land Exchange Project would result in the same impacts regarding geology and soils since the proposed development area would be the same (compared to the Final EIR for the Project). No new impacts have been identified and no new mitigation measures are required.

**Greenhouse Gas (GHG) Emissions.** The Land Exchange Project would result in the same construction activities as the Final EIR for the Project in regards to grading and construction activities as well as long-term trip generation/distribution. Thus, the Land Exchange Project would not result in increased GHG emissions compared to the Final

EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Hazards and Hazardous Materials.** The Land Exchange Project would involve similar construction activities and operations, and would result in similar hazard and hazardous materials-related impacts as the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Hydrology and Water Quality.** The Land Exchange Project would not result in any changes to the proposed grading, drainage, and/or resultant discharge patterns for the site and surrounding area, compared to that analyzed in the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

**Land Use and Planning.** The proposed Land Exchange Project would not result in any changes to the proposed land uses. These project changes would be consistent with the City's goals and policies applicable to the project site. No new impacts have been identified and no new mitigation measures are required.

**Mineral Resources.** As the Land Exchange Project only involves public trust easements and specifically states that it is not intended to affect any mineral rights at the site, no new impacts have been identified and no new mitigation measures are required for the Land Exchange Project.

**Noise.** The Land Exchange Project would not result in any new long-term mobile and stationary noise impacts. No changes to grading or construction activities would occur. No increases to vehicles trips would occur. No new impacts have been identified and no new mitigation measures are required.

**Population and Housing.** The Land Exchange Project would not result in an increase in population or housing. No new impacts pertaining to housing displacement would occur. No new impacts have been identified and no new mitigation measures are required.

**Recreation.** The Land Exchange Project would not result in any changes to the proposed recreational facilities or passive open space use on the southern portion of the site and no new demands for recreational facilities would result. The proposed Land Exchange Project would impress a public trust easement over a portion of the existing San Gabriel River Trail in the northern portion of the overall Project site. As discussed on page 5.13-2 of the Final EIR, the San Gabriel River Trail is an approximately 35-mile-long regional recreational paved trail that runs along the eastern boundary of the San Gabriel River. The trail extends from the base of the San Gabriel Mountains in the City of Azusa to the River's End Staging Area (RESA). The San Gabriel River drains a watershed that extends from the San Gabriel Mountains to the Pacific Ocean. The River

empties into the outlet of Alamitos Bay southwest of the project site. As depicted on the City's General Plan Figure OS-1, *Existing Parks, Recreation, and Open Space Areas*, the San Gabriel River corridor is designated Greenbelt. As discussed on page 5.13-25 of the Final EIR, regional recreational activities would continue along the Bike Trail/River. The Final EIR for the Project does not propose any physical alterations or improvements to these portions of the project site. The existing bike trail parcel is under lease to the City of Seal Beach until March 2015. Bay City Partners, LLC (BCP) has applied to the California Coastal Commission to develop a residential parcel which includes Parcel 1. If the overall Project is not approved by the Coastal Commission, the bike trail parcel lease would terminate 30 days thereafter. The Land Exchange Project would facilitate the continued use of the bike trail parcel.

The proposed Land Exchange Project and public trust easement would not result in any changes to the use of the existing bike path and no physical changes to the environment would occur. Thus, no new impacts have been identified and no new mitigation measures are required.

**Transportation/Circulation.** The Land Exchange Project would not result in an increase in trip generation. The circulation system would be unchanged. No new impacts have been identified and no new mitigation measures are required.

**Public Services.** The Land Exchange Project would not result in an increase in demands on public services. The acreage for the passive open space would be unchanged. No new impacts have been identified and no new mitigation measures are required.

**Utilities and Service Systems.** The Land Exchange Project would not result in an increase in the demands on utilities and service systems as that considered for the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.



#### **4.0 DETERMINATION/ADDENDUM CONCLUSION**

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As detailed in the analysis presented above, this Addendum supports the conclusion that the changes to the overall Project by including the Land Exchange Project do not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. No new information has become available and no substantial changes to the circumstances under which the overall Project is being undertaken have occurred since certification of the Environmental Impact Report (EIR). No substantial changes are required for the proposed Land Exchange Project, compared to that analyzed in the EIR. There are no new mitigation measures required and no new alternatives are available that would substantially reduce the environmental effects beyond those previously described in the EIR. Therefore, the California State Lands Commission (CSLC) has determined that no subsequent or supplemental EIR is required.

## **5.0 ADDENDUM PREPARATION SOURCES AND REFERENCES**

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### Addendum Preparers:

Eddie Torres, Environmental Sciences Manager, RBF Consulting

Kathryn Colson, Staff Counsel, CSLC

Eric Gillies, Asst. Chief, Division of Environmental Planning and Management, CSLC

### References:

City of Seal Beach, *Final Department of Water and Power Specific Plan Amendment Environmental Impact Report*, dated April 2, 2012 and certified June 25, 2012.

# Bay City Partners

2999 Westminster Avenue, Suite 211  
Seal Beach, California 90740

562-594-6715

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

January 27, 2015

**Re: Application #5-13-1233 – Revised Proposal to mitigate the loss of Potential Affordable Hotel Rooms**

Dear Teresa,

We have been working with the State Parks Department to come up with a project to add additional affordable lodging at Bolsa Chica State Beach which already has an RV Campground.

While we have had some terrific ideas so far we were not able to land on a specific proposal by January 23<sup>rd</sup> and sent you a proposed condition based on the status of our discussions as of that date.

We understand that State Parks Department staff has been in discussions with Coastal Commission Staff on a more specific project for Bolsa Chica State Beach.

Specifically, in regard to adding an “En Route” RV Camping Component to the established RV Camping Area.

In that regard we are submitting this revised mitigation proposal which has the support of the State Parks Department.

Attached is a mitigation proposal showing the layout of the “En Route” Camping Area containing 15 spaces.

“En Route” RV Camping will be a more affordable beach lodging experience than the current RV Camping Area. It will not require reservations and will be available on a first come first served basis and rent at a lower rate.

The major difference will be that there will be no RV hookups at these spaces. It will be "Dry Camping". However there are showers and restrooms nearby.

Our proposed mitigation fee will be in excess of the cost to create these 15 spaces. We propose that the excess be used to upgrade the current RV Campground. State parks Staff has the desire to add some upgrades to the sanitation system which the excess funds could be used for as well as other improvements. We propose to allow them to use the excess at their discretion for these purposes.

Thus we propose a condition similar to the one in the City of San Buenaventura Local Coastal Program Amendment No. SBV-MAJ-2-12 approved by the Commission in June 2014:

We are basing our proposal on a 75 room Hotel which can be constructed on the site as submitted to you last November.

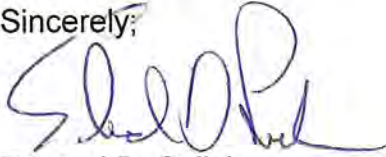
Our Proposal is as follows:

*"Require the Applicant, Bay City Partners, to pay a mitigation fee for affordable rooms in a 75 room hotel, which could potentially be built on the subject site. This equates to the following in-lieu mitigation fee: 75 rooms x 25% x \$34,188.88 = approximately \$641,041.50.*

*Also require that prior to the issuance of any building permits for the subject site, the above calculated fee shall be deposited into an account managed by the California Department of Parks and Recreation (State Parks) for the construction of low-cost visitor serving accommodations within the Orange County. State Parks has indicated that with the monies obtained through this LCP amendment, they can construct 15 low-cost overnight "En Route" camping spaces at Bolsa Chica State Beach, located within the City of Huntington Beach. Any excess funds from the mitigation fee are to be used at the State Parks Department discretion for upgrades to the current RV Camping Area"*

At our November 6, 2014 meeting you indicated we would be on the January 2015 agenda if the recommendation was for denial but would get on the March 2015 agenda if the recommendation was for approval. We request the March 2015 agenda as the April meeting is the last meeting within the 180 day complete application period which started October 22, 2014 when you received the hard copy of the State Lands Commission Approval. The April meeting is in Northern California while the March meeting is in Southern California. Based on the time frame you gave us for writing a staff report for approval this proposal gives adequate time to write the report.

Sincerely;

A handwritten signature in blue ink, appearing to read 'Selich', with a stylized flourish at the end.

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

CC: Eric Dymmel State Parks Department  
Brian Ketterer, State Parks Department



## Proposed Bolsa Chica State Beach Camping Area Enhancements

January 27, 2015

1. Basic Proposal – In order to mitigate for the loss of 75 potential hotel rooms on the DWP Specific Plan Specific Plan Project in Seal Beach it is proposed to fund \$641,042 of improvements to the Bolsa Chica State Beach Camping Area. The \$642,042 is based on the formula of 25% of the potential hotel rooms times \$34,188 per room. Bolsa Chica State Beach currently has 57 RV Camping Sites. There is an opportunity to add an additional 15 RV Camping Sites thereby increasing the total RV Camping capacity by 26%. The cost to construct these sites is less than the proposed mitigation fees. It is proposed that any excess funds go towards enhancements to the current RV Camping Area.
2. En Route RV Dry Camping Sites – The parking lot area adjacent to the existing RV Camping Area can accommodate 15 additional RV Camping spaces. It will be necessary to repave the entire lot and construct the 15 RV Camping pads. Unlike the current lot which requires reservations this lot will be available on a first come first served basis. Because the pads will be interspersed with regular parking spaces the pads can serve double duty as four parking spaces for each pad when not being used for RV Camping. It is called Dry Camping because unlike the existing lot the pads do not have utility hookups. There are, however, restroom and shower facilities adjacent to the proposed area.
3. Conceptual Diagrams - Attached is a conceptual diagram illustrating the En Route RV Dry Camping Area and the current RV Camping Area



Proposed Bolsa Chica State Beach Camping Area Enhancements

# **Presentation to Coastal Commission**

## **Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives**

### **Bay City Partners / LADWP Site – Seal Beach**



**January 2014**

**Prepared By:  
Kosmont Companies**

# Coastal Commission Request

- Review of conclusions of submitted feasibility studies of a 150 room hotel under 1996 DWP Specific Plan. Do feasibility analysis of other types/sizes/location of hotel/motel use assuming no zoning restrictions
- Evaluate other visitor serving uses with no zoning restrictions (supply & demand factors; site requirements/limitations, residual land value, economic viability)

1. RV Park
2. Hostel
3. Bike / Tent Camping
4. Other Visitor Serving Retail Uses (restaurants, gift shops)
5. Residential Over Commercial (apartments and condominiums)
6. Beach Services (surfboard, kayak rentals, etc.)
7. Marine Services (boat repair, maintenance, charters)

And a combination of above uses with parks/open space included

# Overview

## I. Executive Summary

## II. Site Location & Constraints

## III. Hotel Feasibility Evaluation – Scenarios

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

## IV. Evaluation of Other Visitor Serving Uses

- 1. RV Park
- 2. Hostel
- 3. Bike / Tent Camping
- 4. Other Visitor Serving Retail Uses (restaurants, gift shops)
- 5. Residential Over Commercial (apartments and condominiums)
- 6. Beach Services (surfboard, kayak rentals, etc.)
- 7. Marine Services (boat repair, maintenance, charters)



# I. Executive Summary

# Executive Summary

Kosmont Companies (“Kosmont”) working in conjunction with PKF Consulting (“PKF”) evaluated the market & financial feasibility of hotel & visitor serving uses on the 10-acre DWP site, 1<sup>st</sup> St & Marina Dr. Seal Beach

Hotel is most desired use per City’s Specific Plan adopted in 1982 and amended in 1996. **All other uses require extensive entitlement risk.**

- a. PKF analyzed hotel demand for a range of budget hotels to luxury hotels, with and without Specific Plan restrictions
- b. Due to isolated location and lack of easy ocean access, projected room rate and occupancy rates are well below similar hotels in the market, as well as resort oceanfront hotels in Huntington Beach

**Development of hotels/motels are financially infeasible** even under a wide range of product types and locations, with unrestricted zoning, due to substantial negative residual land values based on a variety of specific market and/or operating conditions

# Executive Summary

## Summary of Visitor Serving Uses Scenarios

1. RV Park - Construction of an RV Park similar to KOA would require the full 10-acre site and would accommodate approx. 80 spaces. This use is financially infeasible to the developer based on a residual land value that is much less than the acquisition price of the land, and the need for entitlements for this use
2. Hostel - A Hostel could be built on as little as one acre in conjunction with hotel, commercial or tent campground. This use is financially infeasible, since the residual land value is negative.
3. Bike / Tent Camping – A Bike and Tent campground would require the majority of the 10-acre site and would provide up to 100 camping spaces. This use is financially infeasible, since the residual land value is negative

# Executive Summary

## Summary of Visitor Serving Uses Scenarios

4. Other Visitor Serving Uses - Retail/Restaurant use of approximately 20,000 square feet might be suitable on the northern 2.5 acre portion fronting on Marina Drive. However due to extensive competition, location constraints and equity needed, this use is financially infeasible, as weak market rents yield a negative residual land value.

## 5. Residential Over Commercial –

- I. 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 required for apartments on top of commercial uses.
- II. 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 infeasible.

# Executive Summary

## Summary of Visitor Serving Uses Scenarios

6. Beach Services - Given the relatively isolated location near the San Gabriel River, the site's walking distance from the ocean and the seasonality of equipment rentals, beach services is not a viable use, generating insufficient income to justify development.
7. Marine Services - Marine Service use is possible on northern 1-2 acres of the site, which is adjacent to Southern California Ocean Sports marine repair facility; residual land value is less than 5% of the owner's land cost basis and is not financially viable.

Conclusion: no combination of visitor serving uses are financially feasible given the market conditions and physical constraints of the site.

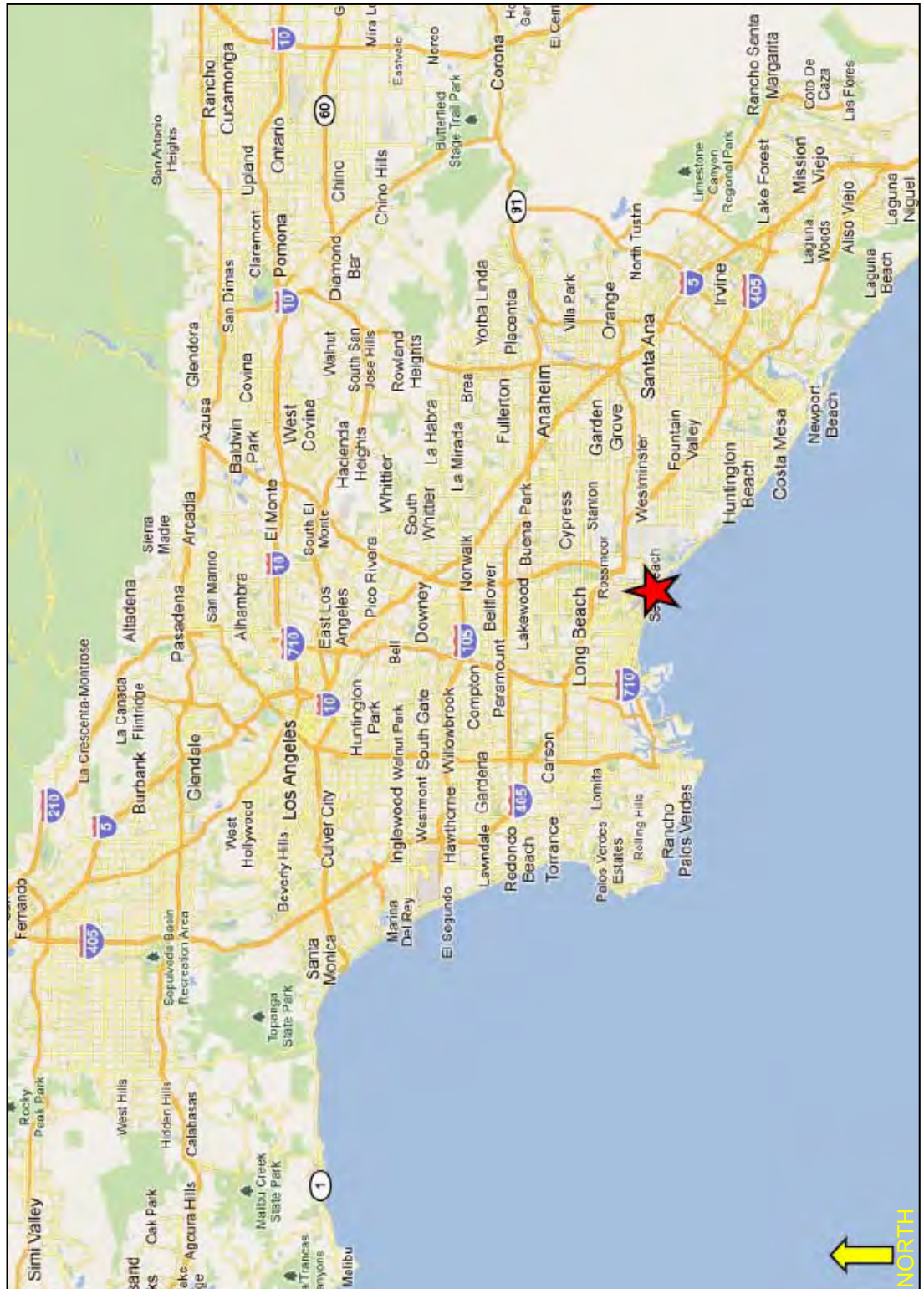


# Summary Matrix of Findings

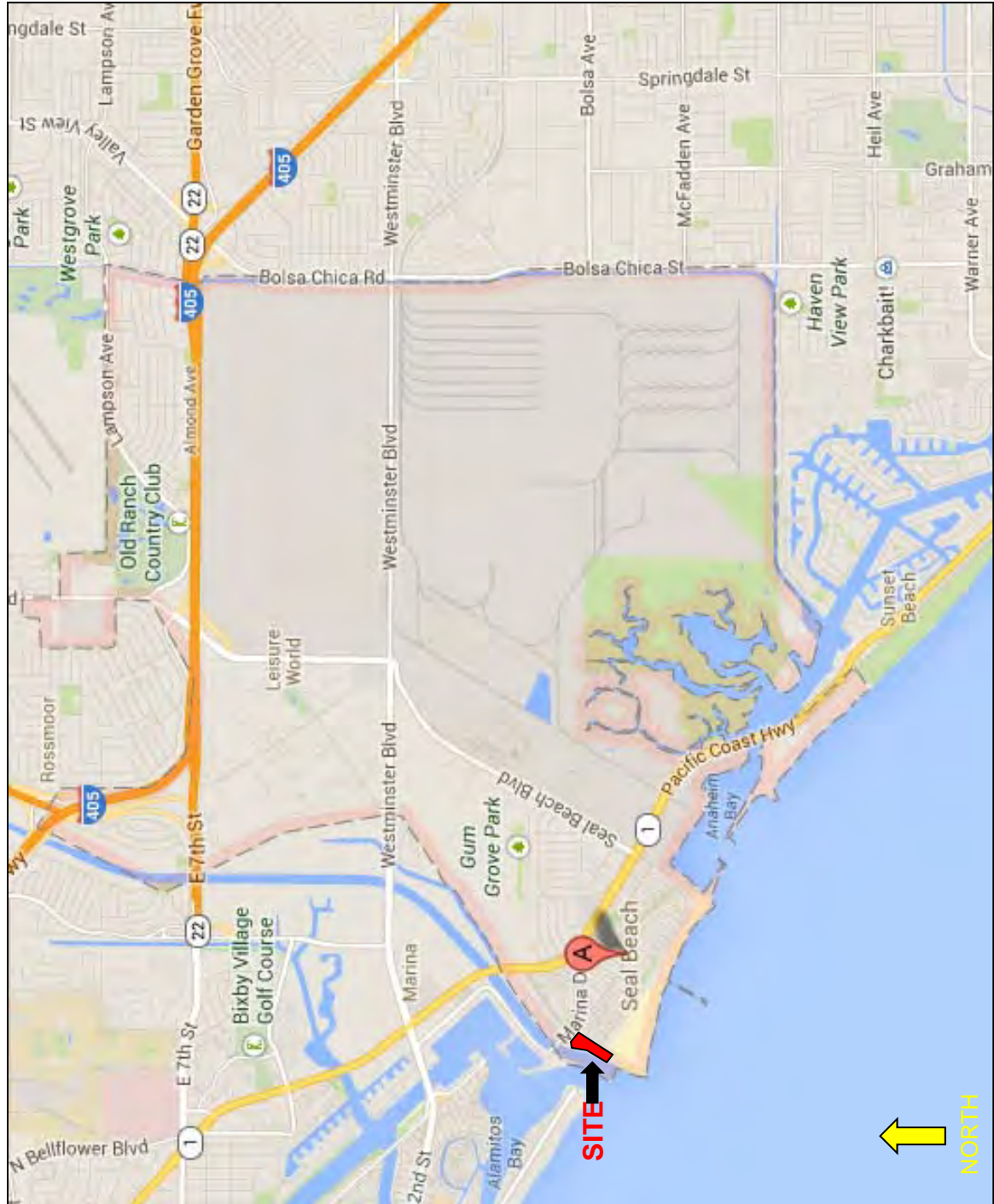
Scenario	Description	Entitlements Required	Is the Scenario Feasible?
A	Hotel – Specific Plan	Yes	No
B	Hotel - Luxury	Yes	No
C	Hotel Budget	Yes	No
1	RV Park	Yes	No
2	Hostel	Yes	No
3	Bike/Tent Camping	Yes	No
4	Other Visitor Serving Uses (Restaurant)	Yes	No
5 (I & II)	Residential Over Commercial	Yes	No
6 & 7	Beach & Marine Services	Yes	No
Combination	Mix of Above Scenarios	Yes	No

## II. Site Location & Constraints

# Site – Regional Map



# Site – City Map





# Site – Neighborhood Location Map





# Site Aerial – Oblique View



# Site Constraints Map





# Site Constraints

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

# Seal Beach Overview

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.

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.

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

# Land Cost Basis

## Land Cost / Feasibility Threshold Factors

In order to measure feasibility, a land cost basis is required 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.

Any visitor serving uses must generate a residual land value after recouping all development costs of at least \$4.5 million.

For scenarios with a public open space component, the development should also cover cost of landscape improvements (e.g. \$200,000 per acre)



### III. Hotel Feasibility – Scenarios

- A. Build hotel on northern portion of lot per City's Specific Plan
- B. Build luxury hotel on southern portion of lot – nearer the ocean, ignoring existing easement constraints
- C. Build budget motel on northern portion of site

# Hotel Feasibility – Scenarios A & B

## 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 4% from 2008 to \$125 in 2013

# Hotel Feasibility

## PKF Revenue Forecast – Scenario A

- 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 B

- 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.

# Hotel Scenario A – 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)	<b>\$(25,000,000)</b>	

Hotel development with Specific Plan restrictions is clearly infeasible since residual land value is negative. Even assuming 100% higher NOI – residual land value is negative.

/1 Per PKF Analysis January, 7 2014

# Hotel Scenario B – 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)	<b>\$(20,000,000)</b>	

Hotel development with no zoning or easement restrictions is clearly infeasible since residual land value is negative. Even assuming 50% higher NOI, residual land value is negative.

/1 Per PKF Analysis January, 7 2014



# Hotel Scenario C – Budget Hotel

## Revenue Forecast

- A 100-room budget hotel on the site will likely achieve slightly less than average market penetration due to lack of major highway visibility and distance from demand generators.
- Occupancy rate is projected at 60% in opening year increasing to a stabilized 70% occupancy after 3 years
- Expected room rate will be approximately \$110 increasing by 3% per year
- No food and beverage or meeting room services will be provided on site except for pool, laundry and snack bar.
- Development cost will be \$125,000 per room

# Hotel Scenario C – Budget Hotel Feasibility

## Stabilized Pro Forma - 2018

	<u>Total</u>	<u>%</u>
Annual Revenues /1	\$2,810,000	100%
Operating Costs/Reserves /1	<u>1,968,000</u>	<u>70%</u>
Net Operating Income	\$ 843,000	30%
Development Value (8% cap)	\$10,540,000	
Development Cost (\$125k/room)	<u>12,500,000</u>	
Residual Land Value (loss )	<b>\$(1,960,000)</b>	

Budget hotel development with no restrictions is infeasible since residual land value is negative. Even assuming 25% higher NOI, residual land value is negative.

/1 Per PKF Analysis January, 7 2014

# IV. Evaluation of Other Visitor Uses

## Scenarios

1. RV Park
2. Hostel
3. Bike / Tent Camping
4. Other Visitor Serving Retail Uses (restaurants, gift shops)
5. Residential Over Commercial
  - I. Apartments
  - II. Condominiums
6. Beach Services (surfboard, kayak rentals, etc.)
7. Marine Services (boat repair, maintenance, charters)

# 1. RV Park

## Location / Site Requirements

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

## Site Specific Strengths / Weaknesses

- Site is adjacent to single family homes– does not provide “nature” experience
- Specific Plan does not permit use: requires expensive entitlement process
- Lack of nearby non-water entertainment options for families

# 1. RV Park

## 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 offseason 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, development cost estimated at \$2.3 million for site improvements
  - grading, paving, landscaping, office and recreational facility



# 1. RV Park Feasibility

## 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 80% less than the land cost basis of \$4.5 million, with minimal or no land left for open space

## 2. Hostel

### Location / Site Requirements

- Hostels are typically located in walkable urban areas, 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

## 2. Hostel

### 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

## 2. Hostel Feasibility

### 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)	<b>\$(60,000)</b>	

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

# 3. Bike / Tent Campground

## 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



# 3. Bike / Tent Campground

## 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 management, taxes, insurance etc.
- 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

### 3. Bike / Tent Campground

#### 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)	<b>\$(200,000)</b>	

Tent camp is not feasible since residual land value is negative

## 4. Visitor Serving Retail (Restaurant)

### Location / Site Requirements

- Successful retail and restaurants are typically 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 first three years of operation – They also require major capital investment in FF&E and tenant improvements.

## 4. Visitor Serving Retail (Restaurant)

### 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 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.

# Nearby Shopping Areas





## 4. Visitor Serving Retail (Restaurant)

### Market Overview

- There are over a dozen full service/family service restaurants located within an approximate 1 to 1.5-miles of the site, a number of which have gone out of business in past year. On Seal Beach's quaint Main Street there another roughly 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.

## 4. Visitor Serving Retail (Restaurant)

### Key Assumptions

- Assumed approximately 2.5 acres available at intersection of Marina Drive and 1<sup>st</sup> 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 hard and soft construction costs in the range of \$300 psf and leasing costs for new restaurant and retail facility depending on tenant finishes.
- Development value cap rate is estimated at 7.5% of stabilized NOI

## 4. Visitor Serving 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)	<b>\$(910,000)</b>	

A 20,000 SF retail center is infeasible given a negative residual land value

## 5. Residential Over Commercial

### Two Residential Scenarios

I. Apartments

II. Condos

# 5-I. Apartments/Commercial

## Key Assumptions

- Assumed approximately 2.5 acres available at intersection of Marina Drive and 1<sup>st</sup> 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
- Average apartment rent is projected to be \$2.00 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 NOI



# 5-l. Apartments/Commercial Feasibility

## Apartment Stabilized Pro Forma

	<u>Total</u>	<u>%</u>
Annual Revenues	\$ 775,000	100%
Operating Costs/Reserves	<u>271,000</u>	<u>35%</u>
Net Operating Income	\$ 504,000	65%
Development Value (6% cap)	8,400,000	
Development Cost	<u>10,000,000</u>	
Apt. Residual Land Value (Loss)	<b><u>\$(1,600,000)</u></b>	
<b>Retail Residual Land Value (Loss)</b>	<b><u>\$(910,000)</u></b>	
Combined Res. Land Value (Loss)	<b><u>\$(2,510,000)</u></b>	

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

# 5-II. Condos/Commercial

## Key Assumptions

- Assumed approximately 20,000 SF of ground floor retail on 2.5 acres at intersection of Marina Drive & 1<sup>st</sup> Street. This allows approximately 40,000 square feet of residential building above the retail – results 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 hard and soft construction costs.
- Marketing costs & sales commissions estimated at 10% of sales price
- Builder profit for condominiums is a minimum of 10% of sales price

# 5-II. Condo's/Commercial Feasibility

## Condominium Pro Forma

	<u>Total</u>	<u>%</u>
Sales Proceeds	\$17,000,000	100%
Marketing Costs	<u>- (1,700,000)</u>	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	<del>\$ (910,000)</del>	
Combined Residual Land Value	\$ 690,000	

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

# 6 & 7. Beach and Marine Services

## Location / Site Requirements

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

# 6&7. Beach and Marine Services

## 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 large for such uses – would require only 2-3 acres at most
- Specific plan does not permit this use – requires entitlement processing



# 6&7. Beach and Marine Services

## 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.

# 6&7. Beach and Marine Services

## Key Assumptions

- Assumed approximately 2 acres available at intersection of Marina Drive and 1<sup>st</sup> 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 ft. 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 NOI

## 6. Beach Services Feasibility

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

# 7. 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 clearly infeasible given a residual land value insufficient to pay for the cost of remaining 8-acre open space improvements.

**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

***DRAFT***

# 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 1<sup>st</sup> 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

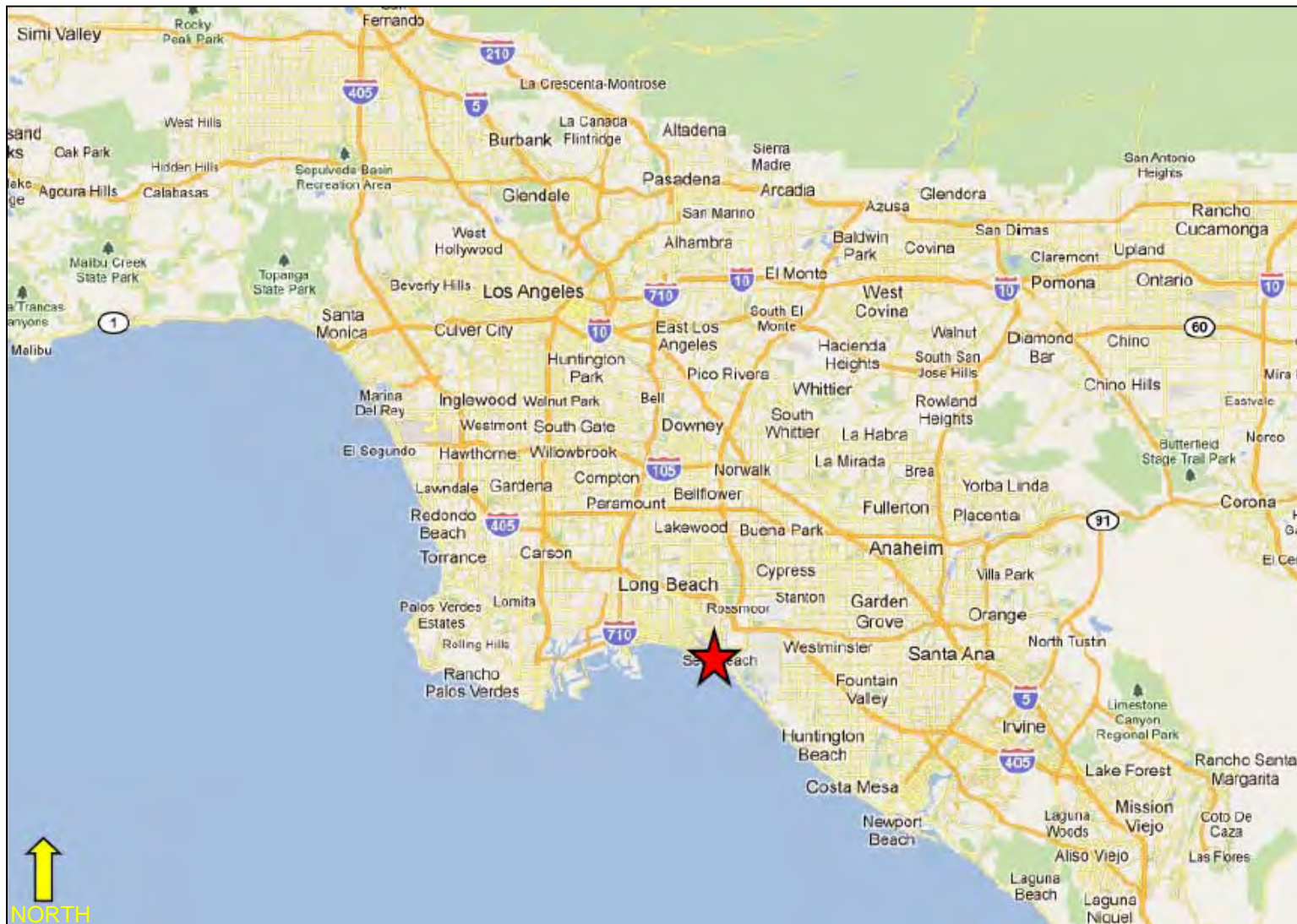
- **Residential over Commercial (Apartments):** Adding two levels of apartments above the same 20,000 square foot retail/restaurant use is not financially feasible as market rents are insufficient to finance the construction cost premium required for apartments on top of commercial uses.
- **Residential 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.

***DRAFT***

## II. Site Location & Constraints

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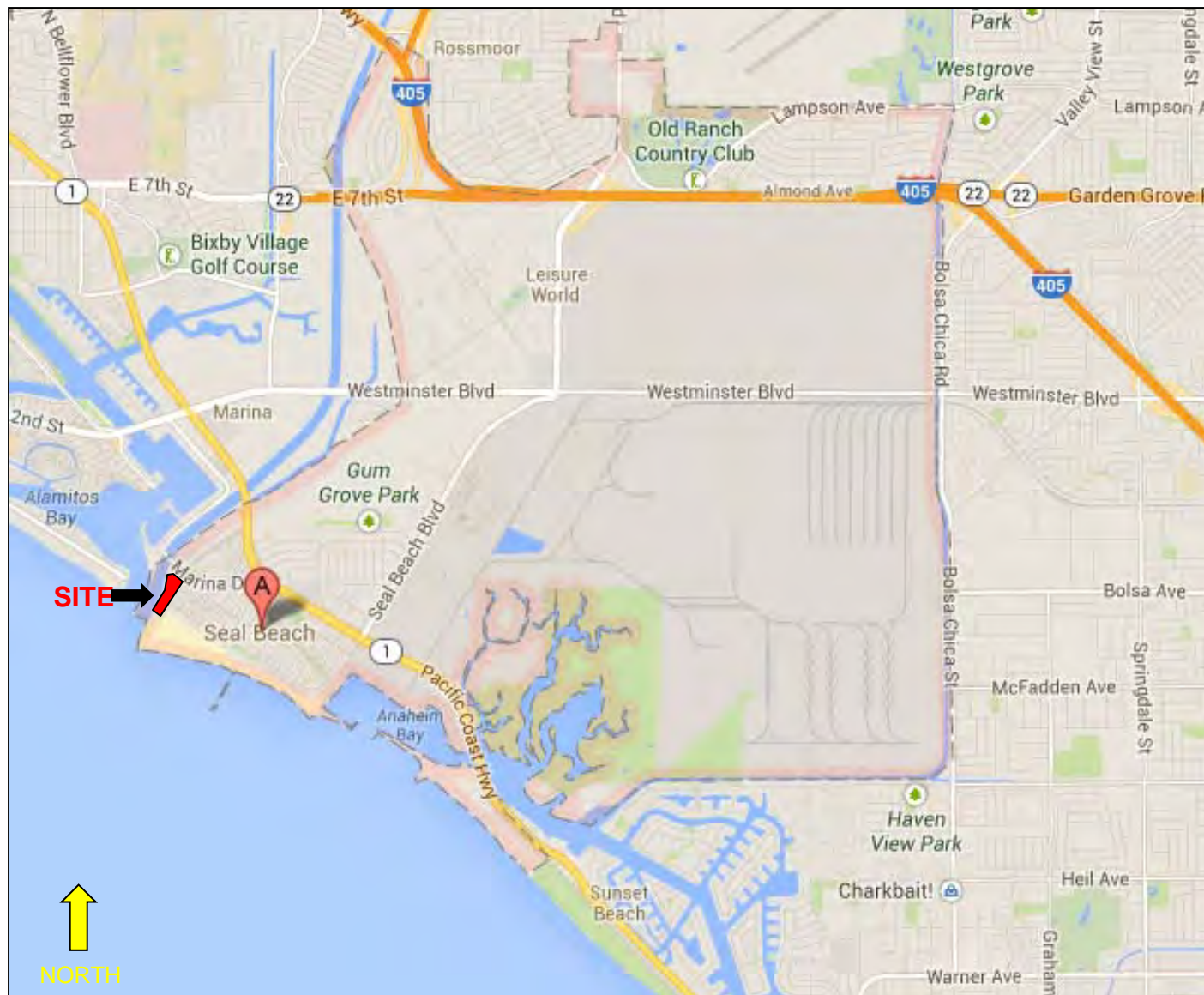
# Site – Regional Map





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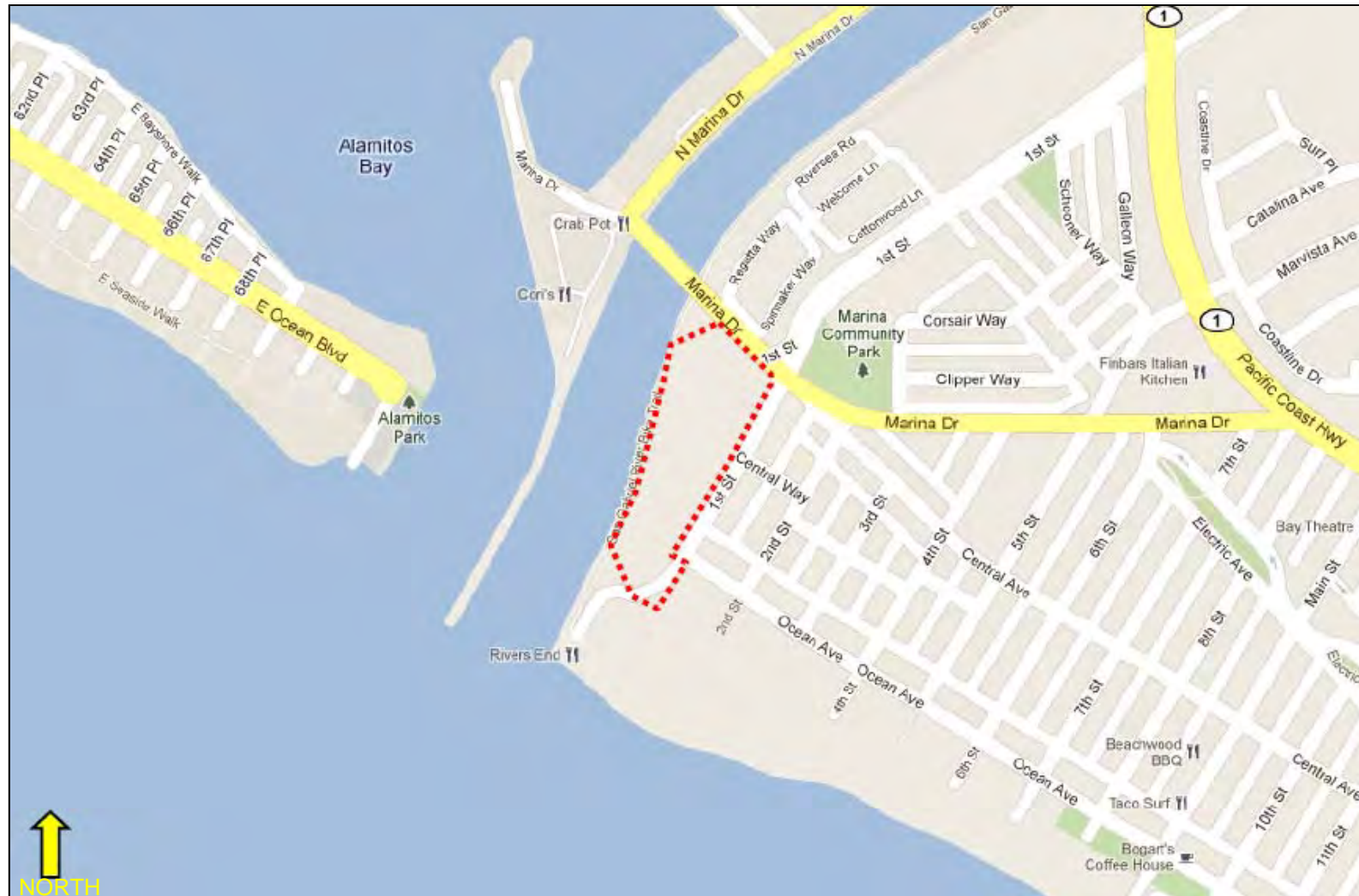
# Site – City Map





- 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)	<b>\$(25,000,000)</b>	

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)	<b>\$(20,000,000)</b>	

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.

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## (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 )	<b>\$(850,000)</b>	

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

## **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
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Operating Costs	<u>280,000</u>
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Net Operating Income	\$ 310,000
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Land Value Cost Basis	\$4,500,000
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Development Cost	<u>2,300,000</u>
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Total development Cost	\$6,800,000
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Return on Cost	4.5%
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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)	<b>\$(60,000)</b>	

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)	<b>\$ (200,000)</b>	

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

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# Tent Campground Feasibility

## Return on Cost - Stabilized

Annual Revenues	\$ 330,000
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Operating Costs	<u>120,000</u>
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Net Operating Income	\$ 210,000
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Land Value – Allocated Cost	\$2,250,000 (50% of site)
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Development Cost	<u>2,500,000</u>
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Total Development Cost	\$4,750,000
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Return on Cost	4.4%
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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 1<sup>st</sup> 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)	<b>\$(910,000)</b>	

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



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# 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 1<sup>st</sup> 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 1<sup>st</sup> 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.



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# 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 1<sup>st</sup> 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.



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# 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%.

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# Beach Services Feasibility

- 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 1<sup>st</sup> 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
<b>Total Competitive Supply (not including subject)</b>		<b>1,201</b>
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

<b>Proposed Seal Beach Hotel</b> Projected Operating Results Calendar Years											
		<b>2016</b>		<b>2017</b>		<b>2018</b>		<b>2019</b>		<b>2020</b>	
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	
		Amount	Ratio	Amount	Ratio	Amount	Ratio	Amount	Ratio	Amount	Ratio
<b>Revenues</b>											
Rooms		\$5,568,000	51.6%	\$6,199,000	51.6%	\$6,669,000	51.6%	\$6,861,000	51.6%	\$7,053,000	51.5%
Food & Beverage		4,322,000	40.1%	4,810,000	40.1%	5,177,000	40.1%	5,332,000	40.1%	5,492,000	40.1%
Other Operated Departments		900,000	8.3%	1,002,000	8.3%	1,079,000	8.3%	1,111,000	8.4%	1,144,000	8.4%
<b>Total Revenues</b>		<b>10,790,000</b>	<b>100.0%</b>	<b>12,011,000</b>	<b>100.0%</b>	<b>12,925,000</b>	<b>100.0%</b>	<b>13,304,000</b>	<b>100.0%</b>	<b>13,689,000</b>	<b>100.0%</b>
<b>Departmental Expenses</b>											
Rooms		1,725,000	31.0%	1,844,000	29.7%	1,941,000	29.1%	1,999,000	29.1%	2,059,000	29.2%
Food & Beverage		3,636,000	84.1%	3,917,000	81.4%	4,141,000	80.0%	4,266,000	80.0%	4,394,000	80.0%
Other Operated Departments		675,000	75.0%	752,000	75.0%	809,000	75.0%	833,000	75.0%	858,000	75.0%
<b>Total Departmental Expenses</b>		<b>6,036,000</b>	<b>55.9%</b>	<b>6,513,000</b>	<b>54.2%</b>	<b>6,891,000</b>	<b>53.3%</b>	<b>7,098,000</b>	<b>53.4%</b>	<b>7,311,000</b>	<b>53.4%</b>
<b>Departmental Profit</b>		<b>4,754,000</b>	<b>44.1%</b>	<b>5,498,000</b>	<b>45.8%</b>	<b>6,034,000</b>	<b>46.7%</b>	<b>6,206,000</b>	<b>46.6%</b>	<b>6,378,000</b>	<b>46.6%</b>
<b>Undistributed Expenses</b>											
Administrative & General		1,082,000	10.0%	1,115,000	9.3%	1,148,000	8.9%	1,182,000	8.9%	1,218,000	8.9%
Marketing		796,000	7.4%	820,000	6.8%	844,000	6.5%	869,000	6.5%	896,000	6.5%
Property Operation and Maintenance		430,000	4.0%	443,000	3.7%	456,000	3.5%	470,000	3.5%	484,000	3.5%
Utility Costs		318,000	2.9%	328,000	2.7%	338,000	2.6%	348,000	2.6%	358,000	2.6%
<b>Total Undistributed Operating Expenses</b>		<b>2,626,000</b>	<b>24.3%</b>	<b>2,706,000</b>	<b>22.5%</b>	<b>2,786,000</b>	<b>21.6%</b>	<b>2,869,000</b>	<b>21.6%</b>	<b>2,956,000</b>	<b>21.6%</b>
<b>Gross Operating Profit</b>		<b>2,128,000</b>	<b>19.7%</b>	<b>2,792,000</b>	<b>23.2%</b>	<b>3,248,000</b>	<b>25.1%</b>	<b>3,337,000</b>	<b>25.1%</b>	<b>3,422,000</b>	<b>25.0%</b>
<b>Base Management Fee</b>		<b>324,000</b>	<b>3.0%</b>	<b>360,000</b>	<b>3.0%</b>	<b>388,000</b>	<b>3.0%</b>	<b>399,000</b>	<b>3.0%</b>	<b>411,000</b>	<b>3.0%</b>
<b>Fixed Expenses</b>											
Property Taxes		237,000	2.2%	251,000	2.1%	256,000	2.0%	261,000	2.0%	266,000	1.9%
Insurance		64,000	0.6%	66,000	0.5%	68,000	0.5%	70,000	0.5%	72,000	0.5%
<b>Total Fixed Expenses</b>		<b>301,000</b>	<b>2.8%</b>	<b>317,000</b>	<b>2.6%</b>	<b>324,000</b>	<b>2.5%</b>	<b>331,000</b>	<b>2.5%</b>	<b>338,000</b>	<b>2.5%</b>
<b>Net Operating Income Before Reserve</b>		<b>1,503,000</b>	<b>13.9%</b>	<b>2,115,000</b>	<b>17.6%</b>	<b>2,536,000</b>	<b>19.6%</b>	<b>2,607,000</b>	<b>19.6%</b>	<b>2,673,000</b>	<b>19.5%</b>
<b>FF&amp;E Reserve</b>		<b>216,000</b>	<b>2.0%</b>	<b>360,000</b>	<b>3.0%</b>	<b>517,000</b>	<b>4.0%</b>	<b>532,000</b>	<b>4.0%</b>	<b>548,000</b>	<b>4.0%</b>
<b>Net Operating Income After Reserve</b>		<b>\$1,287,000</b>	<b>11.9%</b>	<b>\$1,755,000</b>	<b>14.6%</b>	<b>\$2,019,000</b>	<b>15.6%</b>	<b>\$2,075,000</b>	<b>15.6%</b>	<b>\$2,125,000</b>	<b>15.5%</b>
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
<b>Revenues</b>										
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%
<b>Total Revenues</b>	<b>14,119,000</b>	<b>100.0%</b>	<b>14,554,000</b>	<b>100.0%</b>	<b>14,994,000</b>	<b>100.0%</b>	<b>15,442,000</b>	<b>100.0%</b>	<b>15,896,000</b>	<b>100.0%</b>
<b>Departmental Expenses</b>										
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%
<b>Total Departmental Expenses</b>	<b>7,530,000</b>	<b>53.3%</b>	<b>7,756,000</b>	<b>53.3%</b>	<b>7,989,000</b>	<b>53.3%</b>	<b>8,229,000</b>	<b>53.3%</b>	<b>8,475,000</b>	<b>53.3%</b>
<b>Departmental Profit</b>	<b>6,589,000</b>	<b>46.7%</b>	<b>6,798,000</b>	<b>46.7%</b>	<b>7,005,000</b>	<b>46.7%</b>	<b>7,213,000</b>	<b>46.7%</b>	<b>7,421,000</b>	<b>46.7%</b>
<b>Undistributed Expenses</b>										
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%
<b>Total Undistributed Operating Expenses</b>	<b>3,043,000</b>	<b>21.6%</b>	<b>3,135,000</b>	<b>21.5%</b>	<b>3,229,000</b>	<b>21.5%</b>	<b>3,326,000</b>	<b>21.5%</b>	<b>3,426,000</b>	<b>21.6%</b>
<b>Gross Operating Profit</b>	<b>3,546,000</b>	<b>25.1%</b>	<b>3,663,000</b>	<b>25.2%</b>	<b>3,776,000</b>	<b>25.2%</b>	<b>3,887,000</b>	<b>25.2%</b>	<b>3,995,000</b>	<b>25.1%</b>
<b>Base Management Fee</b>	<b>424,000</b>	<b>3.0%</b>	<b>437,000</b>	<b>3.0%</b>	<b>450,000</b>	<b>3.0%</b>	<b>463,000</b>	<b>3.0%</b>	<b>477,000</b>	<b>3.0%</b>
<b>Fixed Expenses</b>										
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%
<b>Total Fixed Expenses</b>	<b>346,000</b>	<b>2.5%</b>	<b>353,000</b>	<b>2.4%</b>	<b>361,000</b>	<b>2.4%</b>	<b>369,000</b>	<b>2.4%</b>	<b>377,000</b>	<b>2.4%</b>
<b>Net Operating Income Before Reserve</b>	<b>2,776,000</b>	<b>19.7%</b>	<b>2,873,000</b>	<b>19.7%</b>	<b>2,965,000</b>	<b>19.8%</b>	<b>3,055,000</b>	<b>19.8%</b>	<b>3,141,000</b>	<b>19.8%</b>
<b>FF&amp;E Reserve</b>	<b>565,000</b>	<b>4.0%</b>	<b>582,000</b>	<b>4.0%</b>	<b>600,000</b>	<b>4.0%</b>	<b>618,000</b>	<b>4.0%</b>	<b>636,000</b>	<b>4.0%</b>
<b>Net Operating Income After Reserve</b>	<b>\$2,211,000</b>	<b>15.7%</b>	<b>\$2,291,000</b>	<b>15.7%</b>	<b>\$2,365,000</b>	<b>15.8%</b>	<b>\$2,437,000</b>	<b>15.8%</b>	<b>\$2,505,000</b>	<b>15.8%</b>

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
<b>TOTAL (Rounded)</b>	<b>\$59,791,500</b>
<b>Cost per Room (Rounded)</b>	<b>\$398,600</b>

- 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.

# 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 1<sup>st</sup> 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

<b>Proposed Seal Beach Hotel</b> Projected Operating Results Calendar Years						
	<b>2016</b>		<b>2017</b>		<b>2018</b>	
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
<b>Revenues</b>						
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%
<b>Total Revenues</b>	<b>10,790,000</b>	<b>100.0%</b>	<b>12,011,000</b>	<b>100.0%</b>	<b>12,925,000</b>	<b>100.0%</b>
<b>Departmental Expenses</b>						
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%
<b>Total Departmental Expenses</b>	<b>6,036,000</b>	<b>55.9%</b>	<b>6,513,000</b>	<b>54.2%</b>	<b>6,891,000</b>	<b>53.3%</b>
<b>Departmental Profit</b>	<b>4,754,000</b>	<b>44.1%</b>	<b>5,498,000</b>	<b>45.8%</b>	<b>6,034,000</b>	<b>46.7%</b>
<b>Undistributed Expenses</b>						
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%
<b>Total Undistributed Operating Expenses</b>	<b>2,626,000</b>	<b>24.3%</b>	<b>2,706,000</b>	<b>22.5%</b>	<b>2,786,000</b>	<b>21.6%</b>
<b>Gross Operating Profit</b>	<b>2,128,000</b>	<b>19.7%</b>	<b>2,792,000</b>	<b>23.2%</b>	<b>3,248,000</b>	<b>25.1%</b>
<b>Base Management Fee</b>	<b>324,000</b>	<b>3.0%</b>	<b>360,000</b>	<b>3.0%</b>	<b>388,000</b>	<b>3.0%</b>
<b>Fixed Expenses</b>						
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%
<b>Total Fixed Expenses</b>	<b>301,000</b>	<b>2.8%</b>	<b>317,000</b>	<b>2.6%</b>	<b>324,000</b>	<b>2.5%</b>
<b>Net Operating Income Before Reserve</b>	<b>1,503,000</b>	<b>13.9%</b>	<b>2,115,000</b>	<b>17.6%</b>	<b>2,536,000</b>	<b>19.6%</b>
<b>FF&amp;E Reserve</b>	<b>216,000</b>	<b>2.0%</b>	<b>360,000</b>	<b>3.0%</b>	<b>517,000</b>	<b>4.0%</b>
<b>Net Operating Income After Reserve</b>	<b>\$1,287,000</b>	<b>11.9%</b>	<b>\$1,755,000</b>	<b>14.6%</b>	<b>\$2,019,000</b>	<b>15.6%</b>
<b>Source: PKF Consulting</b>	<b>Full Year of Operation</b>					

# 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
<b>Revenues</b>										
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%
<b>Total Revenues</b>	<b>14,119,000</b>	<b>100.0%</b>	<b>14,554,000</b>	<b>100.0%</b>	<b>14,994,000</b>	<b>100.0%</b>	<b>15,442,000</b>	<b>100.0%</b>	<b>15,896,000</b>	<b>100.0%</b>
<b>Departmental Expenses</b>										
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%
<b>Total Departmental Expenses</b>	<b>7,530,000</b>	<b>53.3%</b>	<b>7,756,000</b>	<b>53.3%</b>	<b>7,989,000</b>	<b>53.3%</b>	<b>8,229,000</b>	<b>53.3%</b>	<b>8,475,000</b>	<b>53.3%</b>
<b>Departmental Profit</b>	<b>6,589,000</b>	<b>46.7%</b>	<b>6,798,000</b>	<b>46.7%</b>	<b>7,005,000</b>	<b>46.7%</b>	<b>7,213,000</b>	<b>46.7%</b>	<b>7,421,000</b>	<b>46.7%</b>
<b>Undistributed Expenses</b>										
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%
<b>Total Undistributed Operating Expenses</b>	<b>3,043,000</b>	<b>21.6%</b>	<b>3,135,000</b>	<b>21.5%</b>	<b>3,229,000</b>	<b>21.5%</b>	<b>3,326,000</b>	<b>21.5%</b>	<b>3,426,000</b>	<b>21.6%</b>
<b>Gross Operating Profit</b>	<b>3,546,000</b>	<b>25.1%</b>	<b>3,663,000</b>	<b>25.2%</b>	<b>3,776,000</b>	<b>25.2%</b>	<b>3,887,000</b>	<b>25.2%</b>	<b>3,995,000</b>	<b>25.1%</b>
<b>Base Management Fee</b>	<b>424,000</b>	<b>3.0%</b>	<b>437,000</b>	<b>3.0%</b>	<b>450,000</b>	<b>3.0%</b>	<b>463,000</b>	<b>3.0%</b>	<b>477,000</b>	<b>3.0%</b>
<b>Fixed Expenses</b>										
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%
<b>Total Fixed Expenses</b>	<b>346,000</b>	<b>2.5%</b>	<b>353,000</b>	<b>2.4%</b>	<b>361,000</b>	<b>2.4%</b>	<b>369,000</b>	<b>2.4%</b>	<b>377,000</b>	<b>2.4%</b>
<b>Net Operating Income Before Reserve</b>	<b>2,776,000</b>	<b>19.7%</b>	<b>2,873,000</b>	<b>19.7%</b>	<b>2,965,000</b>	<b>19.8%</b>	<b>3,055,000</b>	<b>19.8%</b>	<b>3,141,000</b>	<b>19.8%</b>
<b>FF&amp;E Reserve</b>	<b>565,000</b>	<b>4.0%</b>	<b>582,000</b>	<b>4.0%</b>	<b>600,000</b>	<b>4.0%</b>	<b>618,000</b>	<b>4.0%</b>	<b>636,000</b>	<b>4.0%</b>
<b>Net Operating Income After Reserve</b>	<b>\$2,211,000</b>	<b>15.7%</b>	<b>\$2,291,000</b>	<b>15.7%</b>	<b>\$2,365,000</b>	<b>15.8%</b>	<b>\$2,437,000</b>	<b>15.8%</b>	<b>\$2,505,000</b>	<b>15.8%</b>

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
<b>TOTAL (Rounded)</b>	<b>\$59,791,500</b>
<b>Cost per Room (Rounded)</b>	<b>\$398,600</b>

- 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
<b><i>Subject</i></b>	<b><i>Proposed Subject Hotel</i></b>	<b><i>100</i></b>
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
<b>Total Competitive Supply (not including subject)</b>		<b>538</b>
Source: <b><i>PKF Consulting</i></b>		

# 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.



**Feasibility of Visitor Serving Uses: Evaluation of Viability for  
Various Requested Alternatives dated January 2014  
Site Plan Analysis**

March 6, 2014

Based upon the Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives dated January 2014 the following conceptual site plan scenarios were developed.

As a basis of reference the proposed project is presented in the same scenario format as the four conceptual plans.

The following were held as constants in all scenarios:

Sewer Easement Area  
Driveway to River End Staging Area  
River /Bike Trail Area

In addition, the Area of Street Vacation was assumed to not be part of the project area for these scenarios as the Settlement Agreement and DDA would not be operative. Also, it was assumed the lot line adjustment with the adjacent property would not occur as it was negotiated based upon the proposed project.

Although there are almost an infinite number of Visitor Serving Commercial land use combinations that could be analyzed the following scenarios present the various uses analyzed in the report in the most feasible combinations based upon the criteria set forth in the report.

The Visitor Serving Commercial uses analyzed are:

- 150 room hotel at the southerly end of the property.
- 150 room hotel at the northerly end of the property
- 100 room budget hotel at the northerly end of the property
- RV Park
- Hostel
- Bike and Tent Camping
- Visitor Serving Retail
- Visitor Serving Retail with Residential above
- Marine Services
- Beach Services

**Scenario 1** Hotel on the southerly area, Visitor Serving Public Open Space on the center area, and Visitor Serving Commercial on the northerly area.

The hotel would be a 150 room luxury hotel with restaurant and function space. It is hindered by the beach front parking lot, maintenance yard and driveway to the Rivers

End Staging Area. Also, there is a public right of way for old Ocean Ave going through the middle of the area. In addition to the above, this area has limited water frontage and the unusually wide beach make it less than desirable for a beach front hotel.

The Visitor Serving Retail Commercial is shown at the intersection of First and Marina. The report concludes that this is the only potentially feasible area from a location standpoint. There is the option to have residential over the commercial in this scenario. Also, the Marine Service use could be substituted for Visitor Serving Retail Commercial.

The center area is Visitor Serving Public Open Space. There is an option in this scenario for a hostel on part of the Open Space Area. There is also an option for Beach Services next to the trail but this service could better be provided in the Rivers End Staging Area. Also, the isolated location of the site make locating a hostel anywhere on the site problematic.

This scenario is infeasible for economic and land use and circulation reasons.

**Scenario 2** Hotel on the northerly area and Visitor Serving Public Open Space on the southerly area.

The hotel would be a 150 room hotel with restaurant and function space. There would be the option for a 100 room budget hotel. The site's isolated location and lack of demand generators would limit any hotel here to second rate status.

The southerly area is Visitor Serving Public Open Space. There is an option in this scenario for a hostel on part of the Open Space Area. There is also an option for Beach Services next to the river trail or at Ocean Ave and First Street but this service could better be provided in the Rivers End Staging Area. Also, the isolated location of the site make locating a hostel anywhere on the site problematic.

This scenario is infeasible for economic and land use and circulation reasons.

**Scenario 3** RV Park and Tent Camping

Based on the study both of these uses would take up the entire site less the areas held as constants. Both uses lack exposure, are incompatible with adjacent uses and take up the entire site, leaving no room for any public open space. Uses such as this are typically located away from residential development. Three potential access points are shown on the diagram. Ocean Ave and First Street is the most logical main entrance as it is close to the Rivers End Staging Area entrance. Central Way or Marina Drive would be the most logical points for secondary access.

This scenario is infeasible for economic and land use and circulation reasons.

#### **Scenario 4** Residential with Public Trust Easement

This scenario analyzes how the proposed project would be modified if the Public Trust Easement was not extinguished. The Public Trust Easement area would become Visitor Serving Public Open Space. The residential area would be extended by an equal sized area south of Central Way to allow the same acreage for residential and open space and the same number of residential lots as in the proposed project. None of the Visitor Serving Commercial uses analyzed in the Feasibility of Visitor Serving Uses: Evaluation of Viability for Various Requested Alternatives dated January 2014 study were included in this scenario since they all are infeasible.

This scenario is infeasible for as it would be difficult to obtain entitlements from the City of Seal Beach and would be unacceptable to adjacent property owners.

In summary, the proposed project is the most feasible from both an economic and land use and circulation perspective.

# Proposed Project

## Open Space on Southerly Area

## Residential on Northerly Area

### LEGEND



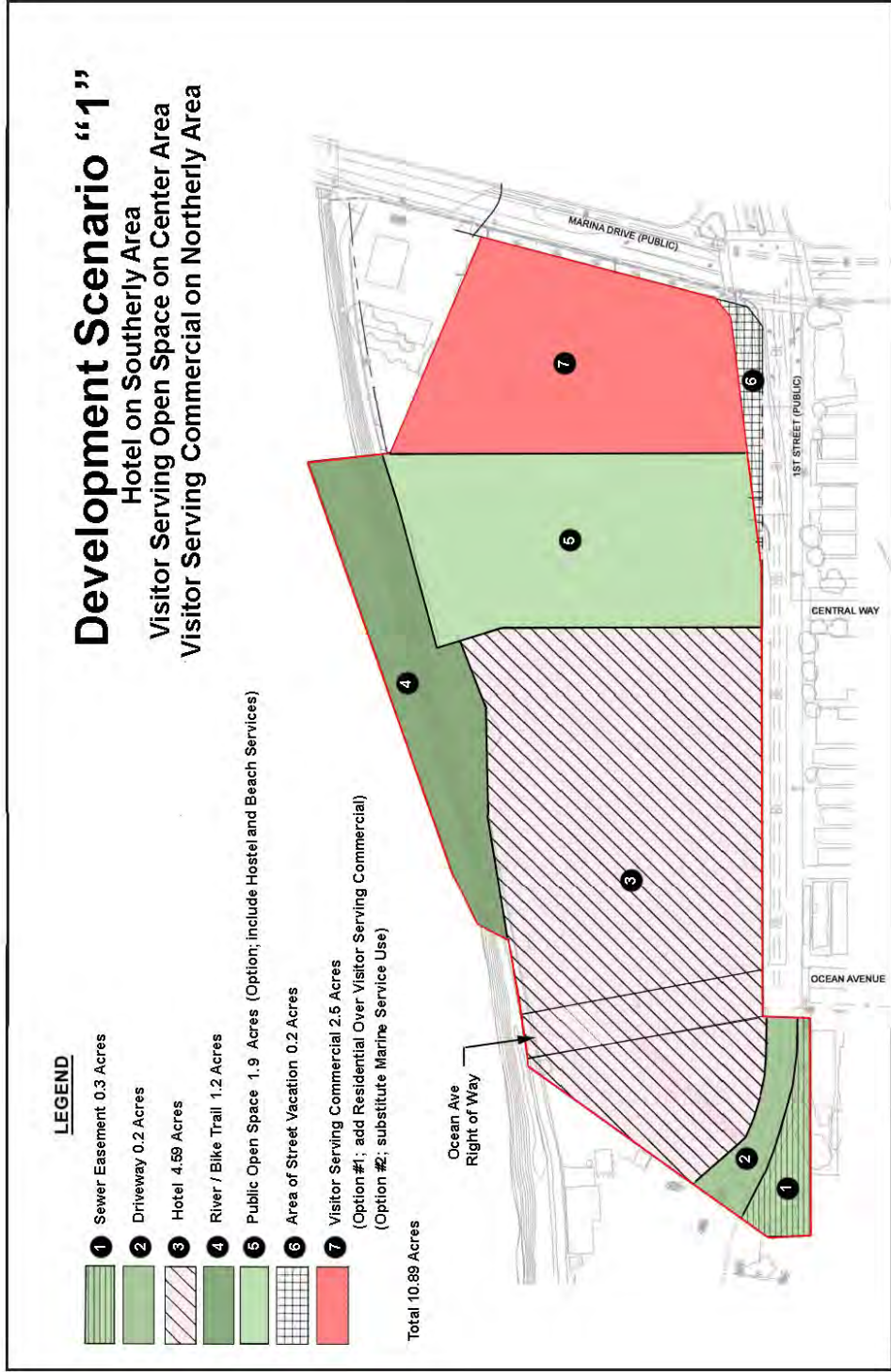
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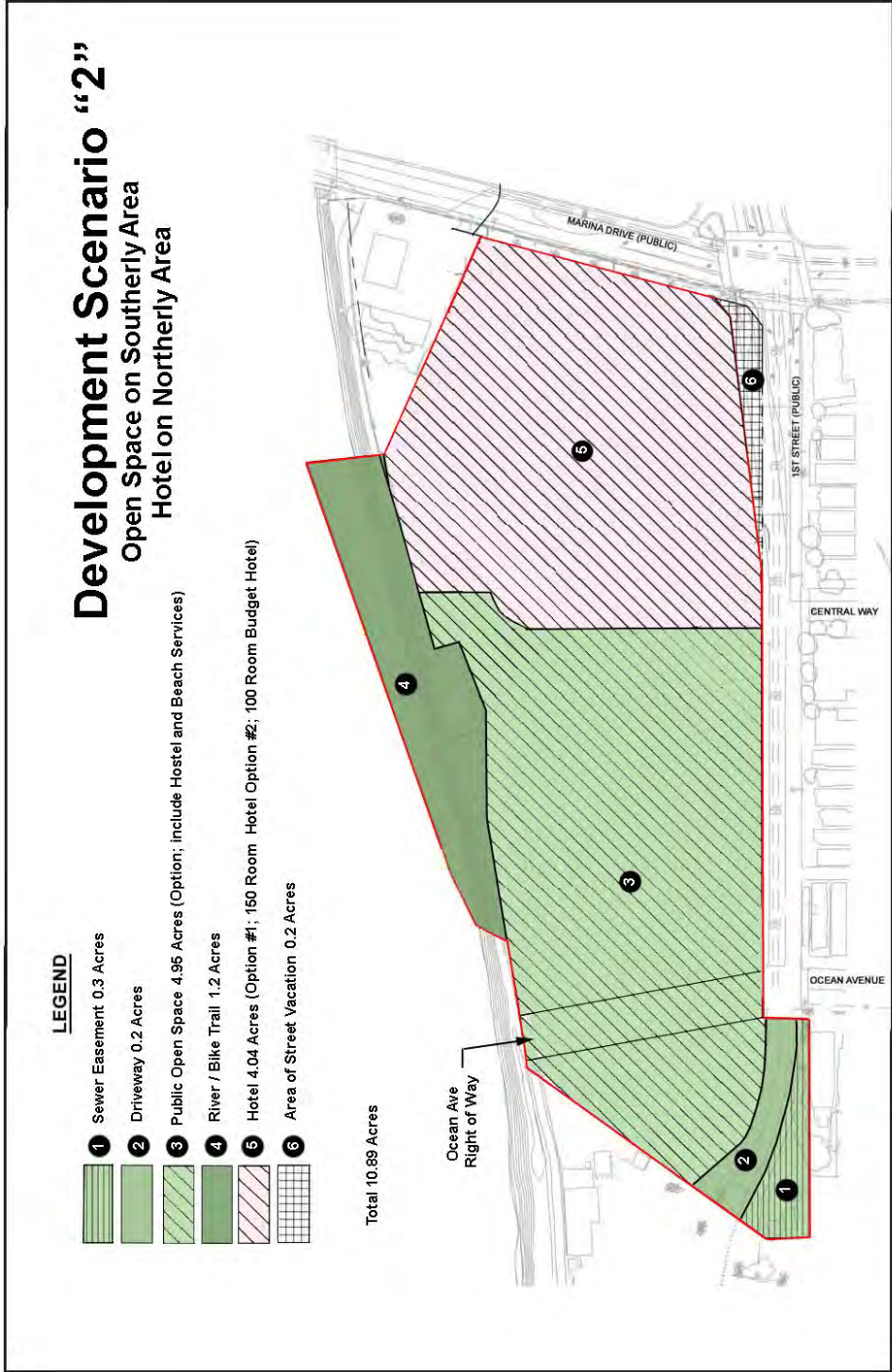
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ENVIRONMENTAL IMPACT REPORT  
DEPARTMENT OF WATER AND POWER SPECIFIC PLAN AMENDMENT  
**Area Layout**

**Exhibit 3-4**





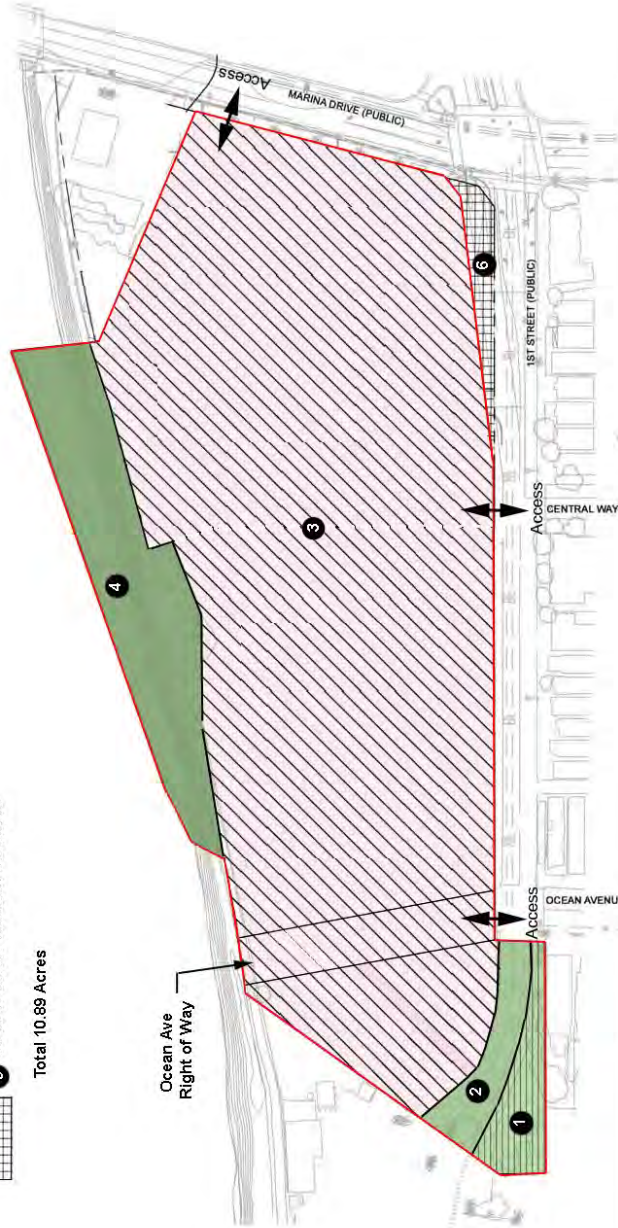


# Development Scenario "3"

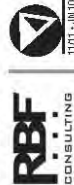
## RV Park and/or Tent Camping

### LEGEND

- 1 Sewer Easement 0.3 Acres
  - 2 Driveway 0.2 Acres
  - 3 RV Park and/or Tent Camping 8.99 Acres
  - 4 River / Bike Trail 1.2 Acres
  - 5 Public Open Space 0.0 Acres
  - 6 Area of Street Vacation 0.2 Acres
- Total 10.89 Acres



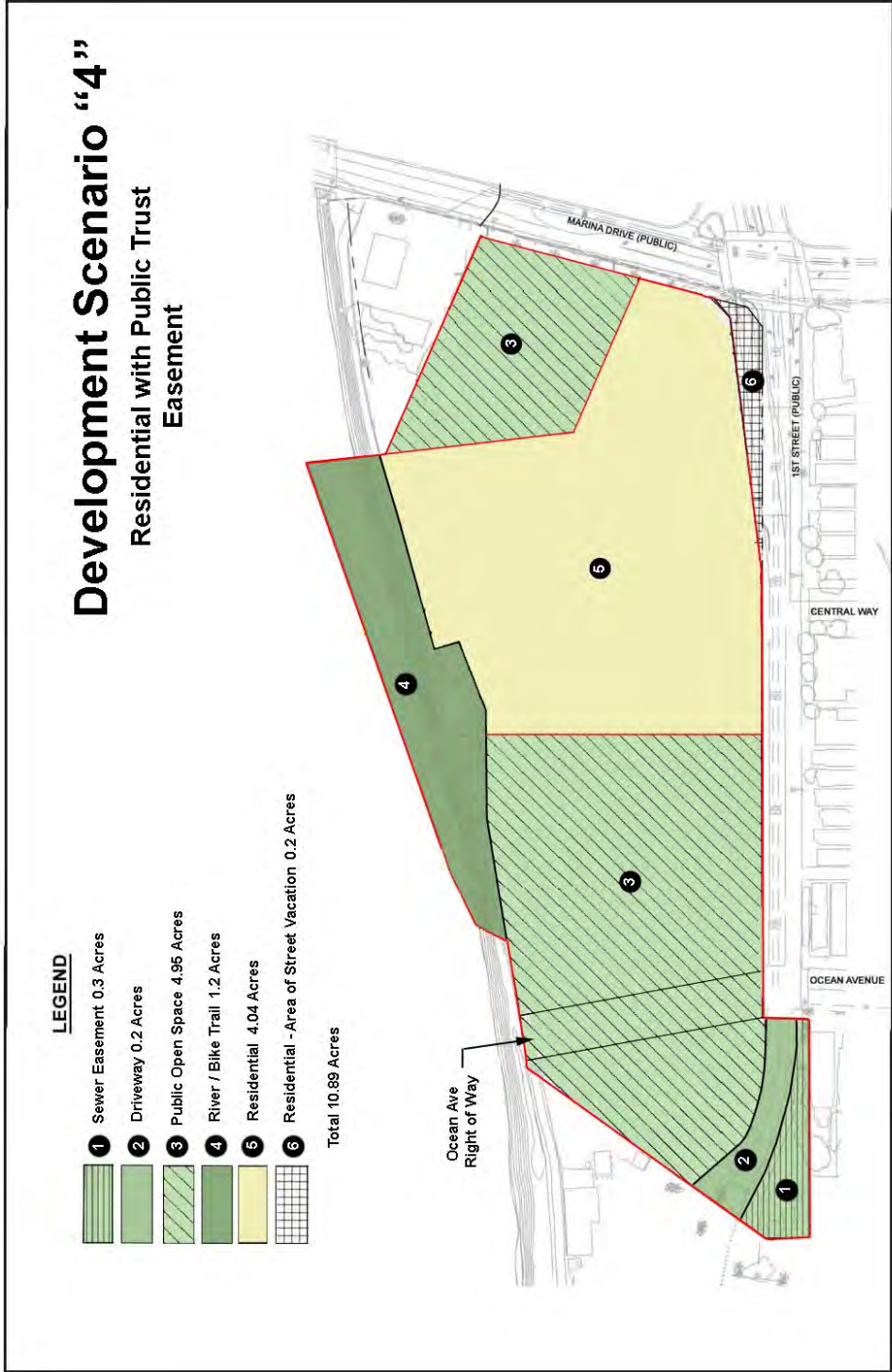
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11/11-11/10-10/2023

ENVIRONMENTAL IMPACT REPORT  
DEPARTMENT OF WATER AND POWER SPECIFIC PLAN AMENDMENT  
**Area Layout**

**Exhibit 3-4**







# Zoning Map (INDEX)

Service Commercial

General Commercial

Project Site

## Legend

FREEWAY

## ZONING

### Type

- RLD-9 (Residential Low Density-9)
- RLD-15 (Residential Low Density-15)
- RMD-18 (Residential Medium Density-18)
- RHD-20 (Residential High Density-20)
- RHD-33 (Residential High Density-33)
- RHD-PD (Residential High Density-Planned Development)
- RHD-46 (Residential High Density-46)
- LC/RMD (Limited Commercial/Residential Medium Density)
- MSSP (Main Street Specific Plan)
- PO (Professional Office)
- SC (Service Commercial)
- GC (General Commercial)
- LM (Light Manufacturing)
- OE (Oil Extraction)
- PS (Public and Semipublic Facilities)
- RG (Recreation/Golf)
- MIL (Military)
- BEA (Beach)
- OS-N (Open Space Natural)
- OS-PR (Open Space Parks and Recreation)
- SPR (Specific Plan Regulation)

Main Street Specific Plan

OLD TOWN & BRIDGEPORT  
(PAGE 2)

MARINA HILL, HELLMAN RANCH,  
BOEING FACILITY  
(PAGE 3)

LEISURE WORLD  
(PAGE 4)

COLLEGE PARK WEST  
(PAGE 5)

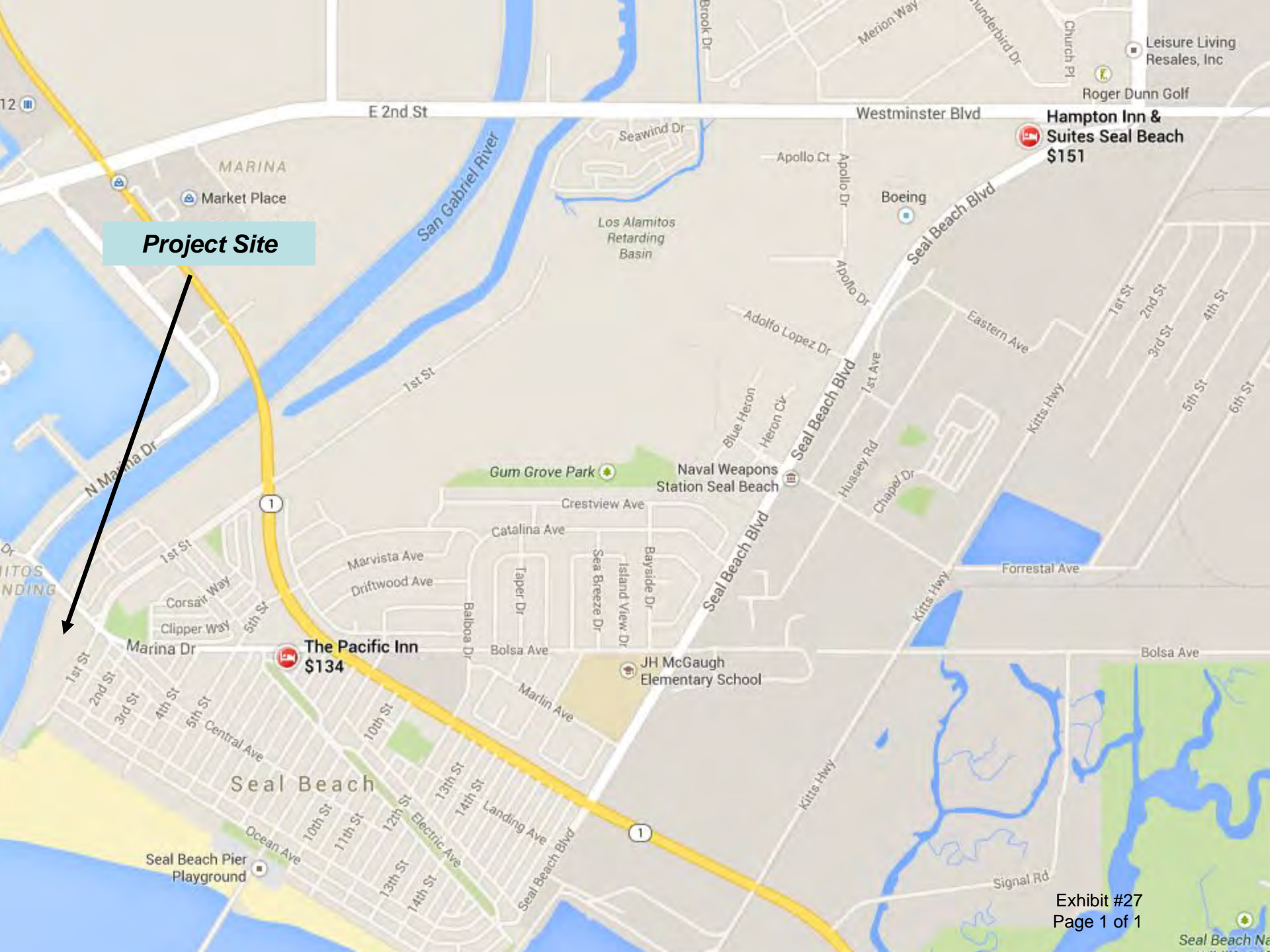
ROSSMOOR CENTER  
(PAGE 6)

OLD RANCH  
(PAGE 7)

COLLEGE PARK EAST  
(PAGE 8)

SURFSIDE  
(PAGE 9)

updated March, 2013



**Project Site**

**Hampton Inn & Suites Seal Beach**  
**\$151**

**The Pacific Inn**  
**\$134**