

CALIFORNIA COASTAL COMMISSION

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



F19a

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original staff report](#)

ADDENDUM

May 5, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **CDP NO. A-5-MDR-12-161-E2 (Los Angeles County Department of Beaches and Harbors) FOR THE COMMISSION MEETING OF FRIDAY MAY 13, 2016.**

I. PUBLIC CORRESPONDENCE

Commission staff received two (3) letters of objection for the extension request from, Ms. Carla Andrus, Dr. Daniel H. Gottlieb and J. Kurland and three (3) letters of support for the extension request from: the Los Angeles County Department of Regional Planning, Aaron P. Clark of Armbruster Goldsmith & Del Vac LLP, and Don Knabe the Los Angeles County Board of Supervisors, and one (1) ex parte communication between Commissioner Cox and J. Kurland .

From: J Kurland [jjsk7@hotmail.com]
Sent: Thursday, May 05, 2016 4:35 PM
To: Cox, Greg@Coastal
Subject: CCC May 13 agenda comments: MRD Parcel 9/9U

The Honorable California Coastal Commission
c/o Greg Cox, Councilmember

RE: Marina del Rey Parcel 9/9U
[A-5-MDR-16-0004 \(MDR Hotels LLC, Marina del Rey\)](#)
Mr. Cox:

Please APPROVE appeal submitted by Ballona Institute and DENY approval of a hotel complex.

1. This is a historical part of the Ballona Wetlands, and while there may have been a bit of building that was started 25 years ago on the site, plants, birds and other wildlife do not consider this degradation. Plants, birds and other wildlife currently already use the site, as it is “a functioning wetland”. This parcel is **very much alive**. You should see the bright green vegetation and flowers that spring to life after even a little rain.
This entire site should be considered ESHA (Environmentally Sensitive Habitat Area) due to regular feeding on site by Great Blue Herons, Great Egrets and various Songbird species.
There is **nothing in the Coastal Act that allows for alteration of a wetland** - into a different type of wetland. This plan simply provides a landscaped patio for the hotel. (A hotel with very deep pocketed supporters who twist information and people to their sole benefit.)
2. It is not a coastal dependent use to add one more unnecessary high-end hotel to Marina del Rey. There are **already two other Marriott hotels within eye sight of the proposed Marriott-owned hotel**. (Not to mention three – yes (3) - other hotels in between.) Low-income accommodations required to be funded by such hoteliers are being relied on by a fund from a previous developer from more than 30 years ago. (Low income rooms in practice still will be priced out of reach of their target audience.)
3. The already **diminished PUBLIC view** of the marina waters from Via Marina will be diminished to negligible with the construction of this 5 & 6-story hotel complex. Architect's *renderings are misleading*. Furthermore, ‘view corridor’ claimed by the hotel is at podium level – a full story above grade.
4. The precious few parking spaces provided by the hotel project for the park is a joke compared to the impact of cars do to the hotel. Hotel valet parking services will park vehicles on public streets, which ALREADY are overloaded, causing an impact on public access to the coastal resources, such as Ballona Lagoon Marine Preserve, Ballona Grand Canal Lagoon, the seaside walkways at the Marina and Venice Beaches. **As it is, I hear comments all of the time from people who are starting to avoid Marina del Rey due to lack of parking.**

Your attention to this matter is appreciated,

J. Kurland
20-yr Marina del Rey resident
4300 Via Dolce & 13930 Captains Row



carla andus <candrusmdr@gmail.com>

some edits

1 message

bxrussell1@aol.com <bxrussell1@aol.com>

Fri, Apr 29, 2016 at 4:36 PM

To: candrusmdr@gmail.com

Honorable Commissioners

I will start with a bit of history on how the creation of the so-called Wetland Park is being used by the County of Los Angeles to back out of a 1996 binding commitment under the terms of the California Coastal Act to make Parcel FF in Marina del Rey a day use park in exchange for being granted massive development on more residential projects. *BOS Minutes. * Transcribed from taped San Diego Hearing 2-8-96

Former Executive Director Peter Douglas was adamant FF should be an active recreational day use park. The County agreed and the park was shown in maps contained in its amended LCP. The Amendment also established the Coastal Improvement Fund to finance the construction of the park. * Coastal Improvement Fund *Map 5 * Policies and Actions of MDR LUP (Chapter 2 Recreation and Visitor-Serving Facilities).

But in a complete show of bad faith the County began negotiations with Legacy-Neptune as early as 1998 on making FF part of a large residential block, the County clearly lied in agreeing to the terms of the 1996 LCP. * RFQ * RFP * Design Control Board.2006.

The County first opted to move the park project off parcel FF to the north side of the neighboring parcel 9U with a hotel project to the south. But when in 2006 the southern portion was revealed to contain an unbuildable wetland the hotel was moved to the north and the public was left with a small stub of wetland which the County proposed if renovated would replace FF even though it could only serve as a passive park, and an aggrandized feature of the hotel.

Unfortunately the Coastal Commission went along with this County swindle by retroactively approving the Legacy/Neptune project and the wetland swap. It did so without realizing that the overdue park was enforceable and should have been implemented in concert with the 1000 new units already built and occupied.

There was incomplete information on the significance of FF and its protected status as a day use park. In law the park was a condition of certification and an exchange for granting Coastal Development Permits. The FF park was to be paid for out of a Coastal Improvement Fund set up at that time and contributed to by developers. The Fund contributions were tied to the obligation of phasing of the park. *MDR LCP Implementation Ordinances As modified by the Commission on May 10, 1995.

The county intentionally characterized parcel FF as an underutilized parking lot and went so far as to do a parking study of county parking lots that confirmed the lot as underused. This erroneous information misleads one to believe that FF was a parking lot and not designated in the Land Use Plan as a park and mapped as such. In fact the parcel was an undeveloped park.

In 2011 Jack Ainsworth told your commission there was no requirement of when those parks were to be constructed or installed. In fact phasing was required set by a formula, the first 645 new units would trigger the building of the park. Furthermore the monies collected under the Coastal Improvement Fund were specifically to be spent on creating the recreational park.

At the time of the LCPA Oceanside hearing in 2011 the commission was told by its staff that there was only \$35,000 in the fund which was insufficient to build a park and the park was thus no longer possible. In fact there was \$200,000 in the park at that time. The first contribution was from Goldrich and Kest for \$76,800 which by 2011 had amassed \$50,000 in interest.

Instead of paying for a recreational day use park as originally proposed, the Coastal Improvement Fund is now going to be used in the service of the hotel project on 9U by cleaning up the area in front of the hotel and providing it with a front courtyard. This amounts to a violation of public trust and the gifting of public land to developers.

The changed circumstance is that leaves us without a recreational park and massive apartment blocks crowding the west side of the marina. There is no place in all of Marina del Rey to run and play, not one basket ball hoop or a handball court that parcel FF would have provided nothing for the public or the residents. Instead the public was given a hotel court yard with a promenade around a wetland off limits to public use.

Another important changed circumstance has occurred recently in the Marina with a developer withdrawing a residential retirement

project on Parcel OT on Admiralty Way. This opens an opportunity to shift the unwanted hotel on parcel 9 to a superior location on OT and leaving parcel 9 to favor public recreation and the protection of wetland.

What our small group is asking for is that the changed circumstances listed above be taken into account by you Commissioners and that you move and pass a motion insisting that the County live up to its obligation to provide a proper two acre recreational day use park that is the equivalent of the FF park originally proposed.

Carla Andrus

candrusmdr@gmail.com
578 Washington Bl. #1102
Marina del Rey CA 90292



BOARD OF SUPERVISORS COUNTY OF LOS ANGELES

822 KENNETH HAHN HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012
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MEMBERS OF THE BOARD

HILDA L. SOLIS
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MICHAEL D. ANTONOVICH

DON KNABE
SUPERVISOR, FOURTH DISTRICT

April 26, 2016

Mr. Steve Kinsey
Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

SUBJECT: Marina del Rey Wetland Park Coastal Development Permit Time Extension (CDP A-5-MDR-12-161) and Hotel Project Appeal (A-5-MDR-16-0004)

Dear Chair Kinsey and Honorable Commissioners:

As the Supervisor of the Fourth Supervisorial District, I am respectfully requesting your consideration and your support of two projects in Marina del Rey that your Commission will be considering at your May 2016 hearing – a wetland park project and a hotel project.

The first project is a Coastal Development Permit (CDP) time extension request for a wetland restoration project planned for the southern portion of Lease Parcel 9 in Marina del Rey. The wetland restoration project was unanimously approved by your Commission on December 12, 2012. County staff worked in close cooperation with your staff to develop a project that improves habitat value by restoring a degraded wetland, while at the same time increasing public access with walking paths, a 28-foot-wide pedestrian promenade, and educational signage. Due to a lawsuit, which challenged the Commission's original approval, we were not able to begin the project as quickly as we would have liked. That lawsuit was settled, the extent of the new wetland was expanded, and we have received the necessary permits from the Army Corps of Engineers and the Regional Water Quality Control Board. We are excited about the benefits this project will bring to the community and ready to begin work.

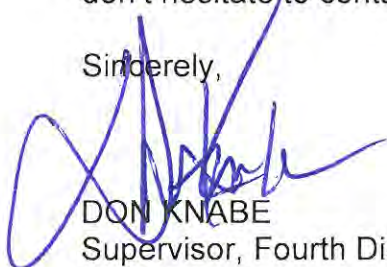
The second project is an appeal of the Los Angeles County Board of Supervisors' approval of a CDP for a hotel project, which would be located on the northern portion of Lease Parcel 9. The proposed hotel has been a long time coming. Your Commission originally approved a CDP for a 4-story hotel back in 1979, which would have covered the entire site. That project began, but was never completed, and the hole that was left behind is where we now have the degraded wetland. When our Marina del Rey Local Coastal Program (LCP) was first approved back in 1984, that parcel was zoned for hotel

The current applicant for the hotel project had their original plan approved by the Los Angeles County Regional Planning Commission in March 2010. That approval was for a 288-room hotel and timeshare resort that would have stood 19 stories tall. That project was appealed to my Board. The Board remanded that project back to the Regional Planning Commission (RPC), and requested that the timeshare component be removed, and the height be lowered to six stories. What the applicant returned with was an improved project that was more in scale with the surrounding neighborhood. This revised project was approved by the RPC and the Board, and has now been appealed to your Commission. The project is wholly consistent with the Marina del Rey LCP, and will bring visitor-serving amenities to a portion of the Marina that desperately is in need of them. In addition to the new hotel rooms, the project includes a 28-foot-wide promenade, a water taxi stop, and a restaurant. In addition, the project will have a 40% view corridor, which far exceeds what is required under the LCP.

I respectfully request your Commission to extend the CDP for the wetland restoration project, and to find no substantial issue regarding the appeal of the County's approval for the hotel CDP.

If you have any further questions, or if I or my staff can be of any assistance, please don't hesitate to contact my deputy, Julie Moore, at (213) 974-4444.

Sincerely,



DON KNABE
Supervisor, Fourth District
County of Los Angeles

DK:di

c: Commissioners
Ms. Sachi Hamai, Chief Executive Officer
Ms. Lori Glasgow, Executive Officer, Board of Supervisors
Ms. Mary C. Wickham, County Counsel, Office of County Counsel
Mr. Gary Jones, Director, Department of Beaches and Harbors
Mr. Richard Bruckner, Director, Department of Regional Planning
County of Los Angeles

ARMBRUSTER GOLDSMITH & DELVAC LLP

LAND USE ENTITLEMENT □ LITIGATION □ MUNICIPAL ADVOCACY

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Aaron@AGD-LandUse.com

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April 29, 2016

Via E-Mail

Mr. Steve Kinsey, Chair
California Coastal Commission
35 Fremont Street, Suite 2000
San Francisco, CA 94105

**Friday, May 13
Agenda Item 17b**

**SUBJECT: Request for No Substantial Issue Determination re: Appeal of Marriott
Courtyard & Residence Inn Project, Marina del Rey Parcel 9U (A-5-MDR-
16-0004)**

Hon. Chair Kinsey and Commissioners:

Our law firm represents MDR Hotels, LLC, the permit applicant in the above-referenced appeal, which has been authorized by the County of Los Angeles to develop a Marriott Courtyard & Residence Inn and associated public and visitor-serving amenities on Marina del Rey lease Parcel 9U, a vacant parcel of County-owned land at the northeasterly corner of Tahiti Way and Via Marina that is currently all but fenced off from public access. For the reasons set forth in this letter, we respectfully request that the Commission adopt the staff recommendation that the appeal raises no substantial issue.

MDR Hotels, LLC proposes to construct a 288-room, dual-branded hotel on the northerly 2.2 acres of Parcel 9U (the "Project"). Under a separate coastal development permit, a County public wetland and upland park—a unique ecological feature that will be the first of its kind in Marina del Rey—will be developed adjacent to the hotel on the southerly 1.46 acres of the parcel. The Project includes an assortment of public and visitor-serving amenities, including a 28-foot-wide waterfront public pedestrian promenade and an alfresco-style waterfront café that will be fully accessible from the adjacent pedestrian promenade MDR Hotels, LLC will develop along the parcel's waterfront. The Project, as conditionally approved by the County, is wholly consistent with the parcel's land use designation and development criteria identified for Parcel 9U in the certified Marina del Rey Local Coastal Program. Of note, the LCP contains numerous specific statements and/or policies referencing development of a hotel and restoration of a tidally-influenced wetland on this parcel, as has been proposed here. (These LCP excerpts are attached for your reference). Significantly, the hotel also will be the first unionized hotel in Marina del Rey.

The Project has undergone a number of beneficial changes, since it was first conceived in 1998, in response to public and County input, resulting in unanimous County Board of Supervisors approval late last year.

- **Reduced Height.** The height of the hotel has been significantly reduced. The initial height of the hotel's tower was 225 feet (19 stories), which is the maximum building height allowed on this parcel under the LCP. In response to community and Board-member concerns regarding the height, the hotel was redesigned to provide two attractive, lower-height "wings" – one 72 feet in height (6 stories) and the other 61 feet in height (5 stories).
- **Reduced Massing.** To address concerns regarding massing, the above-ground parking garage that had dominated the visual field along Via Marina has been eliminated; the hotel now provides one level of parking in a subterranean garage. The Project's height and massing are now in accord with new developments in the project vicinity.
- **Reduced Traffic.** In response to community concerns regarding traffic, MDR Hotels, LLC eliminated the previously proposed large banquet hall and meeting spaces, commercial spa facilities and destination-style restaurant.

On October 6, 2015, the Board conducted a public hearing on an appeal filed by the appellant (the "Ballona Institute," via Marcia Hanscom) that challenged the County Regional Planning Commission's ("RPC") unanimous approval of the Project CDP and related permits (the "Project Permits"). At the conclusion of that appeal hearing – after thoughtfully considering each of the appellant's claims regarding the Project's alleged inconsistency with the LCP, the Coastal Act and CEQA – the Board voted unanimously to indicate its intent to deny the appeal and to sustain the RPC's action by approving the Project Permits. In approving the Project Permits, the Board approved an Addendum to the certified EIR for the Project (the "Addendum"), appropriately finding that none of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent or supplemental EIR had occurred.

The appellant now has appealed the County's Project CDP approval for the hotel to the Commission, raising nearly identical false assertions it raised during the County's public review hearings for the Project. As set forth in detail in the February 25, 2016 appeal rebuttal letter submitted by the County to the Commission, all of the appellant's claims against the Board's approval of the Project CDP and Addendum are unsupported and lack merit. Moreover, since submitting its rebuttal letter on the appeal, the County caused a respected mammologist (Richard Erickson of LSA Associates, Inc.) to conduct a small mammal trapping protocol on the parcel. This was done in response to the appellant's accusation (false, it turns out) that California salt marsh shrews and south coast marsh voles inhabit the parcel. The results of that trapping protocol found neither of these small mammals were trapped, very strong evidence that these

small mammals do not inhabit the parcel. (This trapping protocol and results are discussed in greater detail in your staff's report for the County's wetland park CDP extension item for Parcel 9U).

None of the appellant's claims constitute substantial evidence, but rather consist entirely of argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly erroneous or inaccurate. The Project, as conditionally approved by the County, is wholly consistent with the certified LCP. The appeal raises no bonafide issue regarding either the Project's consistency with the LCP or its consistency with the public access policies of the Coastal Act.

We therefore respectfully request that the Commission **support your staff's determination that the appeal raises no substantial issue** at your May 13, 2016, substantial issue hearing on the Project CDP appeal, thereby sustaining the County's well-reasoned approval of the Project CDP and allowing Project development to finally commence.

Sincerely,



Aaron P. Clark

Armbruster Goldsmith & Delvac LLP

Attachments

cc: MDR Hotels, LLC

Attachment A

Marina Del Rey Certified LCP Excerpts re: Parcel 9U Hotel & Wetland Park

- “The County is developing a 1.46 acre wetland park on Parcel 9U.” (LUP Pg. 1.4, Shoreline Access)
- “To facilitate public use of and additional access along the harbor, a new wetland park, 1.46 acres in size, is to be established on Parcel 9U as part of a proposed hotel development in the vicinity of Tahiti Way. This park will also feature transient docking arrangements for water-borne visitors to visit the park as an in-marina destination.” (LUP Pg. 2-3, Recreation & Visitor-Serving Facilities)
- “The County is focusing on certain specific areas for concentrated attention and restoration...Together, with possible restoration efforts on the Ballona Lagoon and the Del Rey Lagoon...the wetland park on Parcel 9U, and the restored Ballona wetlands, [these restoration efforts will] incrementally create a broad context for environmental interpretation and further the public access goals of the Coastal Act..” (LUP Pg. 2-5, Recreation & Visitor-Serving Facilities)
- “Parcel 9 contains a wetland, as defined under the Coastal Act and the Coastal Commission regulations, which was created when the excavation for a hotel project was abandoned. This wetland is slated for restoration and inclusion in a new park, all in connection with the development of adjacent parcels.” (LUP Pg. 4-20, Marine Resources)
- “The existing wetlands, including the flood control basin on a portion of Parcel P, the Marina waters, and a portion of Parcel 9, are the marine resources which shall be maintained, and, where feasible, enhanced and restored.” (LUP Pg.4-21, Marine Resources Policy #1)
- The Conservation & Management Plan (CMP) provides recommendations for improving habitat conditions in three specific areas of Marina del Rey (Oxford Retention Basin, Proposed Wetland Park at Parcel 9, and the margin of the Ballona Wetlands Area A” (LUP Pg. 5-6, Important Biological Resources)
- The tallest structures allowed in the Marina, those up to 225 feet, would still only be permitted on the periphery of the Marina or on Parcel 9U...” (LUP Pg. 9-3, Coastal Visual Resources) *[Note the hotel height has been reduced to max. of 72 feet even though LUP provides for hotel height up to 225 feet on the parcel; our client is still maintaining a 40% view corridor to the water over the parcel, whereas the LUP requires provision of only a 20% view corridor for the Project.]*

A copy of these materials have been provided to Coastal Commission Staff

- LCP's land use designation for the northerly 2.2 acres of Parcel 9 is "Hotel-Waterfront Overlay"; land use designation for southerly 1.46 acres of Parcel 9 is "Open Space-Waterfront Overlay" (LUP Pg. 8-19, Land Use Plan)
- **Conservation Policies for Wetland Park at Parcel 9 are noted below** (from LUP Pgs. 5-7 & 5-8, Important Biological Resources)

"Restore saltmarsh habitat with tidal influence (Parcel 9)"

To the extent permitted under engineering constraints, tidally influenced saltmarsh habitat will be restored/enhanced at the Wetland Park. Once the final contours of the development are established, habitat should be established that includes areas of emergent native marsh vegetation, exposed even during high tide, to serve as refuge for animals, and areas of exposed mud ("mudflats") at low tide, to serve as foraging areas for migratory and resident birds. The potential area of mudflats may be limited by engineering constraints.

Debris, including a concrete slab that was installed as part of the abandoned hotel project, should be removed, as these would interfere with ecological functions of the Wetland Park.

Restoration and landscape management considerations for upper slopes

Non-native vegetation should be professionally removed from all parts of the Wetland Park on a regular, continuing basis. No non-native vegetation, or "California native" (but not locally-native) vegetation inappropriate for the Ballona Wetlands, should be introduced.

Establish the primacy of habitat values over recreational uses

The Wetland Park, as envisioned, will be a very small area (less than 1.5 acres) effectively surrounded by development. To provide habitat useful to wildlife other than the most human-tolerant species, this area will be designed and managed primarily for its wildlife habitat values. Passive recreation and other human uses at the Wetland Park should follow from this main purpose. For these reasons, a truncated trail system is recommended, with little or no area devoted to hardscape features, such as picnic tables, outdoor exhibit areas, or wide, paved trails.

Maintenance and management activities shall be compatible with managing the site as a native wildlife sanctuary. The routine use of power equipment (e.g., trimmers and electric or gas-powered blowers), dumping of compost, or feeding of wildlife or domesticated birds, should not be tolerated."



Los Angeles County Department of Regional Planning

Planning for the Challenges Ahead



Richard J. Bruckner
Director

May 2, 2016

Mr. Steve Kinsey, Chair
California Coastal Commission
45 Freemont Street, Suite 2000
San Francisco, California 94105-2219

Dear Chair Kinsey and Honorable Commissioners,

**PERMIT NO. A-5-MDR-12-161-E2 – MARINA DEL REY WETLAND PARK
RESTORATION PROJECT COASTAL DEVELOPMENT PERMIT
TIME EXTENSION REQUEST**

I am writing in support of your staff's determination that no changed circumstances have occurred regarding the Marina del Rey Wetland Park Restoration Project. The granting of this time extension will permit the County of Los Angeles ("County") to undertake the restoration of this important biological resource. The County has construction crews ready to begin work on this important project.

Since the early 2000s, the County has worked in close cooperation with your staff to develop a restoration plan for the degraded wetland habitat located on an abandoned construction site on the western side of Marina del Rey. Over this period, numerous biological studies have been conducted and wetland delineations made, each involving significant input from biological experts on your staff as well as at the County. As a result of these efforts, in 2012, your Commission certified policy additions to the Marina del Rey Local Coastal Program ("LCP") that require the restoration of this degraded wetland area and its conversion to tidally-influenced saltmarsh habitat.

Also in 2012, and based on the extensive analysis of the Project Site over the last decade, your Commission approved a CDP for this restoration project and established parameters under which it is to occur. Consistent with the LCP, the CDP required that the wetland area be converted to tidally-influenced saltmarsh habitat. In 2013, your Commission's approval of the CDP was challenged in court. The suit was settled in 2014 and resulted in an expansion of the wetland area but also a 15 month delay in project implementation. Since that time, the County has worked diligently to finalize the design of the restoration project and obtain necessary permits. Throughout this process,

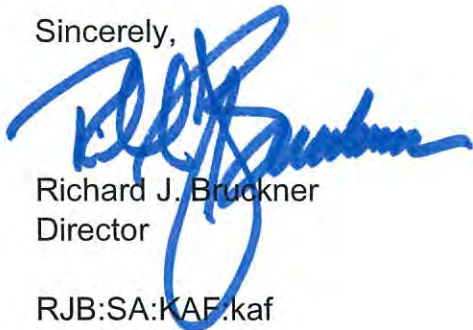
May 2, 2016

Page 2

biological surveys of the site have continued and each has resulted in the same conclusions that underlie your Commission's approval of the CDP.

I respectfully request your Commission concur with staff's recommendation and find that no changed circumstances have occurred and grant the requested time extension. Should you be interested in discussing this matter further, please feel free to contact me at (213) 974-6401.

Sincerely,



Richard J. Bruckner
Director

RJB:SA:KAF:kaf

Vaughn, Shannon@Coastal

From: Padilla, Al@Coastal
Sent: Friday, April 29, 2016 7:39 AM
To: Vaughn, Shannon@Coastal
Subject: FW: The Wetlands on 9U and the California Auditor report on the Coastal Improvement Fund

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Deadlines 1

From: Daniel Gottlieb [mailto:daniel.gottlieb@gmail.com]
Sent: Friday, April 29, 2016 2:55 AM
To: Padilla, Al@Coastal
Cc: Daniel Gottlieb
Subject: The Wetlands on 9U and the California Auditor report on the Coastal Improvement Fund

TO:
Mr. Al Padilla
Coastal Analyst
California Coastal Commission
200 Oceangate
10th Floor
Long Beach
CA 90802-4416
562 <590-5071>

April 29, 2016

Dear Al,

This is a request to not approve the lease option on 9U in MdR. I previously wrote an email to the Commission addressed to Dr Lester and the Commissioners on January 17, 2016. I will attach it to this email, just incase it has gotten lost in the turmoil which the CCC must be having nowadays. If possible, I request the State Auditors report be available to the Commissioners so they can verify my statements. The wetlands is not a park, the word park was adjoined to the wetlands for two purposes. First, to get around the rule that wetlands should not be moved or constructed on at the behest of a developer, and secondly, to spend at least some of the money in the Coastal Improvement Fund so the County can argue that they are actually following the promise made to the CCC in 1998 to mitigate the density of the residential construction. Unfortunately for the county, the acreage of the wetlands is only 10% of the required amount in the LCP. The other 90% is far away from the new density which is to be mitigated by a playground park.

I wrote below the estimates of the acreage involved in the park and in the Coastal Improvement Fund

The estimates are 1.5 residents/unit and the New Residential units allowed is 2,420. Thus 3,630 Estimated New Residents are to be provided with 14.5 acres of residential park. The Wetlands (park) 9U is 1.46 acres, That is only

10% of the required acreage!!! Beach&Harbors claims they are proposing park extensions at Chace Park for 6.6 Acres and 10 acres for Oxford Basin. Chase park is what, about two miles away from the residential west side? Neither the Wetlands are useful for neighborhood recreation, nor Oxford Basin. You can see these figures on the State Auditor's report on the California Improvement Fund at Figure 1 on Page 4 and on page 2. Figure 1 seems to imply that they will take 1 acre of Mothers beach parking lot to put on recreational stuff near the residential area. This is not mentioned in the Beaches and harbors website to inform the public as the State Auditor required.

https://www.auditor.ca.gov/pdfs/reports_2014-136.pdf

Below is the text of my January 17 email.

Daniel H. Gottlieb

January 17, 2016,

Dear Dr. Lester and Coastal Commissioners,

Below is a list of changed circumstances involving Coastal permits for Parcel 9U. You have seen the list before. I will discuss **number 6**, by contributing a link which details the hurried actions of the Board of Supervisors in approving their part of the permits, extending from October thru December 2016. I give a link to a detailed summary of several BOS Board Letters which show that the County attempting to deceive the public as to the misuse of the Coastal Improvement Fund (CIF), even though a State Audit ordered the County to disclose uses of the CIF to the public. "Now the State Auditor did a report on the Coastal Improvement Fund (CIF). Letter Report 2014-136

It was sent to the Governor and to the Speaker and President of the Senate:" This report showed several instances of the the funds due to the CIF being used for projects with **no "observable Public benefits"**. The CIF was a fund to be used to create a park (playground) paid for by the developers of apartment complexes in MdR. The park was slated for parcel FF, but it was used as a parking lot, and when the possibility of leasing FF arose, FF was called an **underutilized parking lot** even though it was heavily used during beach days. But it was studied during a period when it was a staging area for nearby construction, so **under utilized** was stuck onto FF's description. In the meantime, nature created a wetlands on the southern part of Parcel 9U. Wetlands are protected from development by the Coastal Act. So when a hotel project was proposed, the public analyzing a series of maps and a satellite view were able to show that the hotel would be encroaching on the wetlands. So since a wetlands could not be moved at the behest of a developer, the Wetlands became a Wetlands **Park**. The idea was that the County could spend the CIF money on the wetlands and move it because it was a park. At the 2011 Amendments to the LCP, the CIF rule was changed, but only by adding one extra condition to to the credits so a developer did not have to pay into the CIF if he could use the credit. However, a clause was written in by who knows who which demands that the developer of 9U and the developer of FF must pay half the construction cost of a park built on the wetlands. A hotel was not responsible for paying into the CIF, only an

apartment was according to the unchanged part of the CIF ordinance. But the 'who knows who' inserted a clause in a 'who knows where' in the LCP which requires the hotel and the apartment to split the cost of the wetland park by paying the money into the CIF. (Actually, I know where the 'who knows where' is, but I'd like to see if you can find it. I am sure no one at the Coastal Commission knows this location.) Then in the October 6 BOS meeting, the Board's letter states in the unfinished lease that not less than \$46.7 million should be paid by the hotel for the wetlands. The Public was not permitted to speak on the item which dealt with the Wetlands. The fact that the Department of Beaches and Harbors had to let the public know about the CIF probably caused the meeting with MdR residents. The consultants and staff admitted that the lease was not yet signed, that they did not have Federal permits and that they were starting construction on the Wetlands at the beginning of December, and that they would use County money to fund the wetlands, at least initially. They hurried because on December 10 the lease extension would expire. So with consultants and lawyers like that working for the County, every circumstance is always changing!

But there is more. Every high building should have a View Corridor with at least a 20% **unobstructed view** from the road to the water where the 20% means of the length of the water front. The percentage grows as the buildings get taller. The hotel, on their portion of Parcel 9U, will not have a view corridor. The other part, which the lease names as Parcel 9V (new info!) will be the wetland park, (or vice versa). This has a 47% **unobstructed View Corridor**. But a hotel cannot lease a wetland, so the hotel has to construct a faux wetland, but they do not lease the wetland, except they own the view corridor which is most of the wetland. Now how do you have such a complicated arrangement, and for what? A footnote is that the first building, Esprit I, did not have any View Corridor. The Design Control Board discovered the View Corridor rule shortly before the BOS stripped the DCB of its power. The next case involving View Corridors was on Parcel 21. It had several view corridors which added up to about 20%. But they didn't have one that was an unobstructed View Corridor. So they failed to satisfy the ordinance, but at the appeal before the CCC your staff argued that the lawyers just forgot to put an s on corridor, and so the small corridors should add up to 20%. Now in the most recent case, on Parcel 44 which is to be a low rise shopping center, the EIR claimed to have nine 20% view corridors. That would add up to 180% of the water front. Impossible, so they used the word queering technique of the wetland park. They said their **segmented view corridor** was big enough. So what is that? A view corridor with at least 7 obstructions.

The following CHANGED CIRCUMSTANCES exist on the parcel known as 9-U, 9 and the Marina Marsh & Meadow, and these circumstances require full analysis by staff, as well as a full public hearing:

1. The species types of vegetation growing on the site are clearly not suited to a tidal marsh, AND the marsh is healing and growing in size.

2. State and Regional Water Board actions taken in 2014-2015 have included determinations that marina waters include “toxic pollutants,” which were not known nor taken into account in terms of being invited into the wetland via a tidal connection
3. There is, according to the expert opinion of wildlife biologist Robert Roy van de Hoek, that the possibility of one or two small mammal species exist on the site, species which are on the California List of Species of Special Concern.
4. Sea level rise and climate change circumstances, policies and knowledge had changed since the permit was originally granted.
5. New information about El Nino and climate change relating to converting a freshwater/alkali wetland to a tidal marsh is needed to be analyzed.
6. A legislative audit committee activity has provided new information about park tradeoffs.

<https://www.dropbox.com/s/w0ycxj912dn9w7p/Notes on December 15 BOS meeting. FF and 9U.rtf?dl=0>

<https://www.dropbox.com/s/aq178nzzfgnwk2l/Updated Misinformation at LCP meeting and 5 appeals.rtf?dl=0>

Prof. Dan Gottlieb
3516 via Dolce
Marina del Rey
90292

Vaughn, Shannon@Coastal

From: Ainsworth, John@Coastal
Sent: Thursday, May 05, 2016 4:45 PM
To: Rehm, Zach@Coastal; Vaughn, Shannon@Coastal
Cc: Hudson, Steve@Coastal
Subject: FW: CCC May 13 agenda comments: MRD Parcel 9/9U

Please include this letter in the addendum. This letter covers both the wetland permit extension and the hotel appeal. Thanks, Jack

From: J Kurland [<mailto:jjsk7@hotmail.com>]
Sent: Thursday, May 05, 2016 4:22 PM
To: Ainsworth, John@Coastal
Subject: CCC May 13 agenda comments: MRD Parcel 9/9U

The Honorable California Coastal Commission
c/o Jack Ainsworth, Acting Executive Director
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

RE: Marina del Rey Parcel 9/9U

Mr. Ainsworth:

Please APPROVE appeal submitted by Ballona Institute and DENY approval of a hotel complex.

1. This is a historical part of the Ballona Wetlands, and while there may have been a bit of building that was started 25 years ago on the site, plants, birds and other wildlife do not consider this degradation. Plants, birds and other wildlife currently already use the site, as it is "a functioning wetland". This parcel is **very much alive**. You should see the bright green vegetation and flowers that spring to life after even a little rain.

This entire site should be considered ESHA (Environmentally Sensitive Habitat Area) due to regular feeding on site by Great Blue Herons, Great Egrets and various Songbird species.

There is **nothing in the Coastal Act that allows for alteration of a wetland** - into a different type of wetland. This plan simply provides a landscaped patio for the hotel. (A hotel with very deep pocketed supporters who twist information and people to their sole benefit.)

2. It is not a coastal dependent use to add one more unnecessary high-end hotel to Marina del Rey. There are **already two other Marriott hotels within eye sight of the proposed Marriott-owned hotel**. (Not to mention three – yes (3) - other hotels in between.)

Low-income accommodations required to be funded by such hoteliers are being relied on by a fund from a previous developer from more than 30 years ago. (Low income rooms in practice still will be priced out of reach of their target audience.)

3. The already **diminished PUBLIC view** of the marina waters from Via Marina will be diminished to negligible with the construction of this 5 & 6-story hotel complex. Architect's *renderings are misleading*. Furthermore, 'view corridor' claimed by the hotel is at podium level – a full story above grade.
4. The precious few parking spaces provided by the hotel project for the park is a joke compared to the impact of cars do to the hotel. Hotel valet parking services will park vehicles on public streets, which ALREADY are overloaded, causing an impact on public access to the coastal resources, such as Ballona Lagoon Marine Preserve, Ballona Grand Canal Lagoon, the seaside walkways at the Marina and Venice Beaches. **As it is, I hear comments all of the time from people who are starting to avoid Marina del Rey due to lack of parking.**

Your attention to this matter is appreciated,

J. Kurland
20-yr Marina del Rey resident
4300 Via Dolce & 13930 Captains Row

CALIFORNIA COASTAL COMMISSION

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



F19a

Filed: 12/10/2015
Staff: S. Vaughn-LB
Staff Report: 04/28/2016
Hearing Date: 05/13/2016

STAFF REPORT: PERMIT EXTENSION REQUEST

Application No.: A-5-MDR-12-161-E2

Applicant: Los Angeles County Department of Beaches and Harbors

Agent: Michael Tripp

Location: Marina del Rey Lease Parcel 9 (Southerly 1.46 Acres Located at the Northeasterly Corner of Via Marina and Tahiti Way) Marina del Rey, Los Angeles County

Project Description: Construction and maintenance of a 1.46 acre public tidal wetland and upland park including site grading and extraction of existing structural pilings, and constructing a tidal inlet through the marina seawall.

Staff Recommendation: Approval

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the extension be granted because there are **no changed circumstances** that will affect the development's consistency with the public access and recreation Chapter 3 policies of the Coastal Act or the natural resource policies of the certified Los Angeles County Marina del Rey LCP. Opponents of the extension request claim that: the species types of vegetation are not suitable for a tidal marsh; the extent of the marsh has expanded; marsh vole, meadow mouse, or salt marsh shrew may reside at the site; previously unknown toxic pollutants have been found in harbor waters; new information regarding park tradeoffs has been provided; the extension request was not properly noticed; sea level rise and climate change circumstances have changed; and El Nino effects should be analyzed. Each of these claims has been repudiated by the Commission's and the County's biologists and are described in detail in the findings of this staff report.

PROCEDURAL NOTES:

1. Standard of Review

The project was approved after the certification of the Los Angeles County Marina del Rey Local Coastal Program (LCP), which was certified on May 10, 1995. The project is located in between the first public road and the sea. Therefore, pursuant to Section 30604 of the Coastal Act, the standard of review for the original permit application was the public access and recreation policies of Chapter 3 of the Coastal Act and the certified LCP. In its consideration of the coastal development permit (CDP) extension, the Commission must decide whether there are changed circumstances that affect the consistency of the development with the certified LCP and the relevant Chapter 3 policies of the Coastal Act.

2. Commission Action on Permit Extension Requests

In this case, the Executive Director has determined that there are **no changed circumstances** and the approved development is consistent with the policies of the certified Los Angeles County Marina del Rey LCP and the public access and recreation policies of Chapter 3 of the Coastal Act. The extension request is being reported to the Commission pursuant to Section 13169(d) of the Commission's regulations. Pursuant to Section 13169(d)(1) of the regulations, if three (3) or more Commissioners determine that there are changed circumstances that affect the consistency of the development with relevant Chapter 3 policies of the Coastal Act or the policies of the certified Los Angeles County Marina del Rey LCP, the extension request shall be denied and the application shall be set for a full public hearing as though it were a new application. If no such determination is made by three Commissioners, the permit will be extended for an additional one-year period from the most recent expiration date.

3. Applicant May Not Undertake Development During Pendency of Extension Request

When an applicant timely submits an application for a time extension prior to expiration of the permit, Section 13169(e) of the Commission's regulations provides an automatic extension of time for commencement of development until such time as the Commission has acted upon the extension request. However, the Commission's regulations further require that the applicant shall not undertake development during the period of automatic extension that is provided for in Section 13169(e).

I. MOTION AND RESOLUTION

Motion:

I move that the Commission find that there are changed circumstances that affect the consistency of the development approved in Coastal Development Permit No. A-5-MDR-12-161 with the Chapter 3 policies of the of the Coastal Act and the certified Los Angeles County Marina del Rey Local Coastal Program

Staff recommends a **NO** vote. An affirmative vote of three Commissioners is needed to deny the extension request. If the extension request is approved, the following resolution and findings will be adopted.

Resolution:

The Commission hereby approves the request to extend the time in which the development must commence under permit number A-5-MDR-12-161 in order for the permit not to expire, on the grounds that there is not sufficient evidence of changed circumstances that affect whether the development approved in this permit is consistent with the Chapter 3 policies of the Coastal Act and the certified Los Angeles County Marina del Rey Local Coastal Program.

II. FINDINGS AND DECLARATIONS

A. PERMIT HISTORY AND PROJECT DESCRIPTION & LOCATION

On March 10, 2010, after numerous public hearings, the Los Angeles County Planning Commission approved CDP No. 2006-00006-(4), with conditions, for site preparation work (including site grading and extraction of existing structural pilings), and the construction and ongoing maintenance of a public upland and wetland park (including piercing of the seawall to facilitate installation of a pipe allowing a tidal connection from Marina Basin B to the wetland) and an adjacent 28-foot wide waterfront public pedestrian promenade on Parcel 9. Pursuant to section 22.60.230 of the Los Angeles County Code, the Planning Commission's action was appealed by a member of the opposition group "We Are Marina Del Rey" to the Los Angeles County Board of Supervisors (Board). On April 26, 2011, after public hearing, the Board denied the appeal. Subsequently, on May 15, 2012, the Board approved the coastal development permit.

On May 23, 2012 the County's final action notice was received by the Coastal Commission's South Coast District office. On June 7, 2012, David Barish of We ARE Marina del Rey and Marcia Hanscom of the Wetlands Defense Fund appealed the County's approval. On December 12, 2012, the Commission found a substantial issue with respect to the grounds on which the appeal was filed. The same day, at the de novo hearing, the Commission approved with conditions CDP No. A-5-MDR-12-161.

The approved permit, which was valid for two years without an extension was set to expire on December 12, 2014. The County did not satisfy the "prior to issuance" special conditions prior to the expiration of the CDP and on November 4, 2014 requested their first extension of the CDP. The extension request was reported to the Commission on February 12, 2015 and opposed by: Mr. Jon

Nahas, Ms. Carla Andrus, Ms. Marcia Hanscom Ms. Lynn Shapiro, and Dr. Daniel Gottlieb. The objections were reported to the Commission on March 2, 2015. On May 15, 2015, the Commission found that there were no changed circumstances affecting the project and approved the request for an extension.

On December 10, 2015, the County again submitted a request to extend CDP A-5-MDR-12-161 for an additional one-year period. The extension is the proposed project's second extension request.

On January 5, 2016, the South Coast District Office in Long Beach issued notices of the Executive Director's determination that there are no changed circumstances that may affect the proposed development's consistency with the relevant Chapter 3 policies of the Coastal Act or the certified LCP. As required by Section 13169(b) of Title 14 of the California Code of Regulations, the Executive Director reported this determination to the Commission at its January 13, 2016 meeting. Within the ten working-day period (January 6, 2016 – January 20, 2016), during which time any person may object to the Executive Director's determination, the South Coast District Office received eight letters from Ms. Nancy Vernon Marino (2 letters), Mr. William Hicks & Ms. Elise Hicks, Ms. Kathy Knight, J. Kurland, Mr. Alberto Saavedra, Ms. Ileana Wachtel, and Ms. Marcia Hanscom, objecting to the Executive Director's determination that there are no changed circumstances that affect the proposed development's consistency with the Chapter 3 policies of the Coastal Act or certified LCP (**Exhibit 1**). Two additional letters were received after the objection period from Carla Andrus and Holly Mosher. They are included as **Exhibit 2** for reference only. Also, during the objection period, the South Coast District Office received one letter from Ms. Melanie Luthern supporting the Executive Director determination that there are no changed circumstances that affect the proposed development's consistency with the public access and recreation Chapter 3 policies of the Coastal Act or certified LCP (**Exhibit 3**). At its February 11, 2016 meeting, three Commissioners voted that "there may be changed circumstances" affecting the project. Pursuant to Commission regulations 13169(c), this hearing has been scheduled to determine whether or not there are changed circumstances that affect the project's consistency with the relevant policies of Chapter 3 and the certified LCP.

The objectors assert that: (1) marsh vole, meadow mouse, or salt marsh shrew are listed as Species of Special Concern by the State of California and may reside at the site; (2) the species types of vegetation are not suitable for a tidal marsh and that the extent of the marsh has expanded; (3) previously unknown toxic pollutants have been found in the harbor waters; (4) new information regarding park tradeoffs has been provided; (5) improper noticing of the extension request; (6) sea level rise and climate change circumstances have changed since the permit was approved and need to be reviewed; (7) and current El Nino effects should be analyzed. The Los Angeles County Department of Beaches and Harbors has submitted a response to the objections letters (**Exhibit 4**).

Additional concerns regarding: (8) how the wetland restoration project is related to the hotel; (9) the design of the wetland; (10) a saltwater versus fresh water wetland; (11) how the parcel was subdivided; (12) there are narrow leaf willow trees at the site that provide habitat; and (13) archeological resources, were raised at the Commission's February 11, 2016 meeting and the Commission voted to hear if there are changed circumstances at a subsequent hearing. None of the concerns raised at the Commission's February 2016 meeting present change circumstances since the project was originally approved that would affect the project's consistency with relevant Chapter 3 policies of the Coastal Act or the certified LCP.

B. EXECUTIVE DIRECTOR'S DETERMINATION THAT THERE ARE NO CHANGED CIRCUMSTANCES

(1) Opponents of the extension contend that new mammalian species of special concern may exist at the site. An Environmental Impact Review (EIR) was conducted in conjunction with the original permit request (draft EIR dated September 2008.) Results of that EIR determined that no special status species, including benthic invertebrate, fish, insects, reptiles, or mammals, or wildlife movement corridors occur on the project site and that the project is consistent with all regional and local plans that pertain to the protection of natural and biological resources. In light of recent claims that species of special concern may reside at the site, the County commissioned an additional protocol survey. On April 15 – 19, 2016, LSA Associates, INC. conducted a protocol survey of the site for the California least tern, western snowy plover, Pacific pocket mouse, Southern California salt marsh shrew, and south coast marsh vole (**Exhibit 5**). The protocol survey consisted of five consecutive nights of trapping on a 110 x 70 meter grid of 96 points at the subject site. The grid was established on approximately the southern 80% of the site, on the best potential habitat available for these species. A one-gallon bucket (i.e., a pitfall trap buried flush with the ground) and a nine-inch Sherman live-traps were placed at all but two of the 96 points established by the grid. The traps were baited and checked early each morning and evening. One mammal, a Botta's pocket gopher (*Thomomys bottae*) and one bird, a European starling (*Sturnus vulgaris*) were captured. No species of special concern, such as march vole, meadow mouse, or salt marsh shrew, were captured or observed at the site during this survey. Additionally, the proof provided by those opposed to the extension is anecdotal, including a photograph of a bird with a rodent in its mouth and there is no certainty as to the type of rodent or even if the bird caught the rodent on the site. No physical evidence of mammalian species of special concern existing at the site has been provided or discovered. Nevertheless, as part of the conditions of approval of the CDP, the permittees are required to comply with a restoration plan, which includes biologic monitoring prior to and during construction activities. Biological monitors are required to survey the area and identify any species of special concern including shrew and vole. Should any mammalian species of special concern be found at the site, the permittee is required to work with the California Department of Fish and Wildlife to trap and relocate any such animals. Therefore, adequate biological assessments have been conducted and adequate monitoring is provided for through existing special conditions of the permit. To date, there are no changed circumstances related to the existence of mammalian species of special concern since the project was originally approved that would affect the development's consistency with the relevant Chapter 3 policies of the Coastal Act or the certified LCP.

(2) Opponents are concerned that the wetland has gotten bigger, the wetland delineation was originally determined in May 2011. The jurisdictional wetlands are a result of past grading activities and as such they are acutely degraded. Input from resource agencies, conservation organizations, academic institutions, and biological museums with specific expertise regarding the biological resources related to this project were contacted and their input was included when determining the extent of the wetland (EIR 2008.) The Coastal Commission, which uses a "one parameter" indicator test, determined that 0.43 acres of wetlands exist on the site. That number was confirmed, using the "one parameter" indicator test, by Glenn Lukos Associates (GLA). Later that year a "three parameter" wetland indicator test was conducted at the site by GLA and the U.S. Army Corps of Engineers (USACE). USACE is responsible for determining the extent of the wetlands for the purposes of issuing permits pursuant to Section 404 of the Clean Water Act. The "three parameter" indicator test determined that wetlands at the site cover 0.22 acres of the site. On

Material Extension

August 17, 2015, additional data regarding the delineation of the wetland at the site was collected and the amount of wetland subject to Section 404 was reduced from 0.22 areas to 0.11 acres. The USACE concurred with the change of the delineation of the wetland, and on December 11, 2015, the USACE issued the Section 404 Nationwide permit. GLA suggests that the reduction in wetland area is a consequence of the drought that California has been experiencing. Furthermore, due to the reconfiguration of the wetland boundary, an original loss of 4,917 sq. ft. of wetlands was anticipated. As a result and as a condition of the permit, the County was required to mitigate the loss of those wetlands on a 3:1 mitigation ratio (a further increase of 14,751 sq. ft. of wetlands.) Therefore, even though the wetland has gotten smaller since the project was originally approved, the County was still required to restore 0.66 acres of wetlands at the site. Subsequent to the Commission approval of the CDP, the County entered into a settlement agreement with Ballona Wetland Land Trust to expand the wetland acreage to an additional 0.03 acres (1,306 sq. ft.) for a total of 0.69 acres of wetland restoration. As such, the conditions of the site have changed, however, as conditioned and approved by the Commission, those changes don't change the circumstances of the approval and the restoration will actually restore more wetland area than would be required if the project was proposed today. Therefore, there are no changed circumstances that affect the project's consistency with the certified LCP and the relevant Chapter 3 policies of the Coastal Act.

With respect to the type of vegetation that will be used to restore the site. The restoration plan, including the type of vegetation to be used to restore the site, was reviewed by Commission biologists, Dr. John Dixon and Dr. Jonna Engle and approved by the Commission at a public hearing on December 12, 2012. Additionally, special conditions of the CDP require review by the Federal and State Departments for Fish and Wildlife. As such, no changed circumstances that will affect the project's consistency with the relevant policies of Chapter 3 of the Coastal Act or with the certified LCP have been identified.

(3) Opponents to the extension claim that toxic pollutants, such as copper, in the marina were not known at the time of the permit approval and that they have been found near the site and could be introduced into the tidal wetland. This contention is not correct. The EIR that was prepared for the project in 2008 listed copper, as well as other metals, as known contaminants in the waters/sediment of Marina del Rey, and it was determined that copper and other contaminants found in the marina would not have a significant impact on the proposed wetland habitat. Furthermore, Marina del Rey has had a Toxic Pollutants Total Maximum Daily Load (TMDL) since 2006 and this was known and considered at the time of the project's review and approval. The TMDL is a regulatory plan authorized by the Clean Water Act to address impaired water bodies. In California, the State Regional Water Quality Control Board is the regulatory agency that ensures implementation of such plans. The Regional Water Quality Control Board has recently approved the 401 certification for the project, thereby indicating that there is no conflict, including that of copper pollutants, with the laws concerning water quality. Therefore, there are no changed circumstances that have been raised on the issue of toxic pollutants since the project was originally approved that would affect the project's consistency with relevant Chapter 3 policies of the Coastal Act or the certified LCP.

(4) Opponents of the extension request claim that there is new information regarding park tradeoffs. The certified LCP requires the permittee to pay into the Coastal Improvement Fund (CIF) to help fund the design, permitting, and construction of the wetland restoration park. The Coastal Improvement Fund (CIF) audit did not provide any new information about the park tradeoff as

opponents have stated. The report made recommendations to the County but did not find that the County was operating the CIF in violation of the LCP. The County has since implemented all of the recommendations made as part of the audit. The implementation of the CIF and its possible impact on other parklands does not affect the development of this park, which was found consistent with the certified LCP and the Coastal Act and approved under Coastal Development Permit A-5-MDR-12-161. No changed circumstances have been raised since the project was originally approved as a result of the audit that would affect the project's consistency with the relevant policies of Chapter 3 of the Coastal Act or the certified LCP.

(5) A statement was made by Marcia Hanscom that the extension request was not properly noticed. The County provided addresses of all owners and occupants within 100 feet (excluding roads) of the property lines of the site and all interested parties based on their records. Hearing notices were mailed out on January 5, 2016 thereby establishing the ten working day objection period, which ended on January 20, 2016. Commission staff notified all owners, occupants, and interested parties, including Marcia Hanscom, about the extension request.

(6) & (7) The final written arguments from those opposed to the extension have to do with climate change and El Nino. Climate change, including sea-level rise and the effects of El Nino, have been well-known concepts for several years and were considered at the time the CDP was approved and there has been no significant change to sea level rise projections that would affect this project. Furthermore, the CDP was conditioned to include final restoration plans and required review and approval by United States Army Corps and other regulatory agencies. If there was a modification that was required by the other agencies to address an unexpected change in the sea-level projections, the applicant is required to submit any revised plans to the Executive Director for review to determine if an amendment, or new permit, is required. Therefore, no changed circumstances have been raised on the issue of climate change and El Nino since the project was originally approved that would affect the project's consistency with the relevant policies of Chapter 3 of the Coastal Act or the certified LCP.

(8) The wetland restoration project is related to the development of the hotel in that they share a parcel and impacts of both projects were considered collectively. Both projects were designed with mutual regard for the impacts that they would have on each other and the surrounding area when the County's LCP was updated in 2011 and again when the County issued their CDPs for the projects and once more when the Commission heard arguments regarding the wetland restoration project in 2012.

The wetland area was determined to be .43 acres in size, and with adequate mitigation established by the Commission, the wetland project was expanded to .66 acres within a 1.46 acre park, which included a buffer zone. Based on the degraded nature of the area, low functioning seasonal wetlands located on a highly constrained site surrounded by existing development within a highly urbanized area, the Commission approved the wetland with a 25-foot buffer. The Commission found that the location of the wetland and future adjacent development, the 25-buffer would be adequate. Therefore, the Commission in approving the CDP, considered the relationship of the wetland and future adjacent development.

There are no changed circumstances with regard to the relationship between the hotel and wetland restoration project since the project was originally approved that would affect the project's consistency with Chapter 3 policies of the Coastal Act or the certified LCP.

(9) & (10) The design of the wetland, including whether it should be a salt water or freshwater wetland, was also considered with the County's LCP update in 2011. The certified LCP states that the parcel is to be developed with a "tidally influenced saltmarsh habitat." The wetland design features were further discussed at the de novo hearing on the project in 2012. Dr. John Dixon and Dr. Jonna Engle, the Commission's staff biologists, extensively reviewed the proposed wetland restoration project and determined that a tidally influenced saltwater wetland would provide the highest value habitat for this area, enabling plants and animals to thrive. Based on their review, the Commission found that the proposed tidal wetland was consistent with the biological resources policies of the Coastal Act and approved the wetland project. Additionally, freshwater wetlands provide an opportunity for vector diseases to propagate, such as those carried by mosquitos (West Nile virus, Zika virus, etc.) While Zika transmission has not been discovered in Southern California (although there are two confirmed case of those carrying the disease), there have been over 5,500 reported cases of West Nile virus between 2003 and 2015 with 229 fatalities¹.

The design of the wetland restoration project was fully discussed throughout the planning process (LCP periodic review 2008, and LCP amendment 1-11, 2011) and with the Commission approval of the CDP. The objectors of this extension request have not raised or provided any new information that would support changed circumstances with regard to the habitat type. Therefore, there are no changed circumstances that would affect the project's consistency with relevant Chapter 3 policies of the Coastal Act or the certified LCP.

(11) The parcel has not been subdivided. However, the land use category has been approved and changes in the County's LCP. Previously, the entire 3.66 acre parcel was designated as a "hotel" land use. There was an amendment to the County's LCP amendment in 2011 that changed the southern 1.46 acres of the parcel to "open space" while the remaining northern 2.20 acres remains designated as a "hotel." This land use designation change was addressed during the periodic review of the LCP (2008), in the LCP amendment 1-11, and at the time that the CDP was approved by the Commission. The separation of the parcel into two land uses, "open space" and "hotel", was previously addressed and does not represent any new information. Therefore, there are no changed circumstances to the wetland restoration project since the project was originally approved that would affect the project's consistency with the relevant policies of the Coastal Act or the certified LCP.

(12) A concern that narrow leaf willow trees have recently propagated at the site and their presence should be evaluated was raised. The existing narrow leaf willows are considered scrub habitat. The County's consultant, Tony Bomkamp, Senior Biologist with Glenn Lukos Associates, conducted a recent site visit on March 9, 2016. The willows range from ¾ to 1 ½ inches in diameter. The willows, based on past nesting surveys that have been done in Marina del Rey, do not provide bird nesting habitat and are not considered endangered or sensitive species. Furthermore, Mr. Bomkamp states that a large number of willows have died and many more show die back in 50 to 90 percent of the foliage due to the ongoing drought over the last four years. The willows were identified on the

¹ <http://westnile.ca.gov/>; <http://www.cdc.gov/westnile/statsMaps/preliminaryMapsData/histatedate.html>;
<http://www.nbcalosangeles.com/news/local/Second-Case-Of-Zika-Virus-Confirmed-in-LA-County-370384521.html>

site and discussed in the 2008 draft EIR as well as in the 2012 staff report of CDP A-5-MDR-12-161. The presence of narrow leaf willow trees has been fully considered. Their continued presence does not raise any changed circumstances that would affect the project's consistency with the certified LCP or the relevant policies of Chapter 3 of the Coastal Act.

(13) The existing site of the wetland restoration project sits atop dredged spoils from the dredging of the marina. It is highly unlikely that archeological resources exist on the site. Nevertheless, the CDP is conditioned to protect any archeological resources that may exist at the site and requires the submittal of an archeological monitoring plan prepared by a qualified professional prior to issuance of the permit. Potential impacts to cultural/archeological resources were analyzed in the 2008 EIR and were considered when the project was originally approved, and does not provide any changed circumstances that would affect the project's consistency with the relevant policies of Chapter 3 of the Coastal Act or the certified LCP.

Conclusion

Section 13169(c) of the Commission's regulations states, in part, that in order to deny an extension request objections must identify changed circumstances that may affect the consistency of the development with Chapter 3 policies of the Coastal Act or the certified LCP. The concerns raised fail to deliver any new or changed circumstances that would affect the proposed project's consistency with Chapter 3 policies of the Coastal Act or with the certified LCP.

The Executive Director has concluded that the objections raised do not identify any changed circumstances that may affect the proposed development's consistency with the Chapter 3 policies of the Coastal Act or with the certified LCP. As required by Section 13169(c) of Title 14 of the California Code of Regulations, the Executive Director is reporting this conclusion to the Commission along with a copy of the objection letters. Therefore, the Executive Director recommends that the Commission concur with the Executive Director's determination and find that there are no changed circumstances that would affect the project's consistency with applicable Chapter 3 policies of the Coastal Act or with the certified LCP and approve the extension request, extending the expiration date of Coastal Development Permit A-5-MDR-12-161 to December 12, 2016, one year from the previous date of expiration.

Appendix A - Substantive File Documents

- Certified Los Angeles County Marina del Rey Land Use Plan
- Coastal Development Permit Application No. A-5-MDR-12-161



To: Dr. Charles Lester, Executive Director
California Coastal Commission &
Honorable Coastal Commission

January 12, 2016

**Re: EXTENSION REQUEST - Marina Marsh & Meadow -
(parcel 9 on MDR LCP; parcel 9-U on County Planning documents) -
at Tahiti Way & Via Marina**

Coastal Development Permit: A-5-MDR-12-161

For: "Site preparation work (including site grading and extraction of existing structural pilings), and the construction and ongoing maintenance of a public upland and wetland park and an adjacent 28-foot-wide waterfront public pedestrian promenade"

Dear Dr. Lester and Honorable Commissioners:

This letter is submitted to object to the granting of an extension to the Los Angeles County Department of Beaches and Harbors for the permit A-5-MDR-12-161 based on the fact that **there are changed circumstances** that warrant a public hearing and additional analysis by your staff, possible redesign of the project and even possibly a complete rejection of any further action that would allow proceeding with this project.

This parcel is the last undeveloped historical Ballona Wetlands marshland in the County's unincorporated area of Marina del Rey - left undeveloped by a series of economic situations with a previous developer and fits and starts of further planning for this site from the County. The marina of Marina del Rey and most of its associated development was planned, permitted and constructed prior to the 1972 vote of the people that was meant to protect coastal resources and public access and created the California Coastal Commission. Had the Coastal Act been enacted prior to the construction of Marina del Rey, it is questionable whether the extent or density of development in the marina would have been granted.

In fact, every time the Coastal Commission has overseen subsequent planning regulations for Marina del Rey, there have been strong sentiments expressed both by the public and by the Commission and its staff that public access and protection of important natural resources needed to be granted high priority.


BALLONA INSTITUTE
restoration, research, education, artistic expression
The Voice for Nature on the Los Angeles Coast
322 Culver Blvd., Ste. 317 ~ Playa del Rey, CA 90293 ~ (310) 823-7040

COASTAL COMMISSION
A-5-MDR-12-161-E
EXHIBIT # 1
PAGE 1 OF 17

**Ballona Institute Re: EXTENSION REQUEST – Marina Marsh & Meadow –
(parcel 9 on MDR LCP; parcel 9-U on County Planning documents) –
at Tahiti Way & Via Marina**

January 12, 2016 ~ page 2

During the last 10-15 years this parcel of land has been increasingly reverting to its freshwater, alkali marsh state – as was the condition of the majority of the landscape of the Ballona Wetlands/Ballona Lagoon – as explained by historical ecology reports and map interpretations by Dr. Travis Longcore, Dr. Dave Jacobs and Dr. Eric Stein.

Since the permit for this project was approved by the Coastal Commission in December, 2012, the extent of the marsh has been expanding. This expansion of the marsh vegetation and soils is a **changed circumstance** that must be taken into account, with significant marsh vegetation growing throughout the parcel designated on the Marina del Rey LCP maps as “Parcel 9” – not just limited to the site that has been permitted for this project. A new delineation of the extent of the wetland is needed, as well as the current type of wetland and its characteristics, as the historical marsh is healing and recovering from previous human-caused impacts.

During the County of Los Angeles proceedings for a proposed hotel, the hotel proposed to share this parcel 9 with the “wetland park,” evidence was presented by Robert van de Hoek, a qualified expert and President of Ballona Institute, having served the federal government as a wildlife biologist, hydrologist and having qualified to be considered for hiring by the California Dept. of Fish & Wildlife as a botanist and wildlife biologist. He presented evidence that, in his view, the site characteristics have changed, and that Seaside Heliotrope and other wetland vegetation has been spreading throughout the parcel – and this wetland vegetation is not limited to the southern portion of parcel 9 where a planned “wetland park” is contemplated.

Furthermore, these additional **changed circumstances** exist and must be taken into account:

1. The Los Angeles Regional Water Quality Control Board and the State Water Quality Control Board (SWQCB) have issued orders and made decisions – with final decisions by the SWQCB last year – 2015 – that have found that toxic pollutants, including copper are found in the harbor waters of Marina del Rey, and that these pollutants must be cleaned up. The documents indicate this clean-up will take a minimum of 10-12 years.

[http://www.swrcb.ca.gov/rwqcb4/Boater Fact Sheet updated.pdf](http://www.swrcb.ca.gov/rwqcb4/Boater_Fact_Sheet_updated.pdf)

http://www.waterboards.ca.gov/press_room/press_releases/2014/pr090914_rb4mdr.pdf

http://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/tmdl_list.shtml

[http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/bpa_96_R14-004 td.shtml](http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/bpa_96_R14-004_td.shtml)

COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 17

**Ballona Institute Re: EXTENSION REQUEST – Marina Marsh & Meadow –
(parcel 9 on MDR LCP; parcel 9-U on County Planning documents) –
at Tahiti Way & Via Marina**

January 12, 2016 ~ page 3

http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/96_New/c_EOCorrectionLetter_signed_withAttachments.pdf

http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/96_New/e_StaffReport_9_FINAL_includesEOCorrections_clean.pdf

Since the permit was granted for the destruction of the current freshwater/alkali wetland, which includes some 300+ Sandbar Willow trees, and replacement with a full tidal marsh, the introduction of saltwater from the marina with these now-acknowledged “toxic pollutants” indicates the originally permitted project is not the least environmentally damaging alternative, which is required by the Coastal Act. This pollutant information was not known when the permit was approved or analyzed by the Coastal Commission staff.

2. During the County of Los Angeles proceedings for a proposed hotel, also to share this parcel 9 with the “wetland park,” additional evidence was presented by Robert van de Hoek, a qualified expert, having served the federal government as a wildlife biologist, hydrologist and having qualified to be considered for hiring by the California Dept. of Fish & Wildlife as a botanist and wildlife biologist, that – based on photographic evidence of a Great Blue Heron feeding on prey – combined with historical ecology evidence of the occurrence of two rare small species in the area, that one or two small mammal species on the State of California List of Species of Special Concern may be present on the site. We have asked the County, with no adequate response from them, and we believe the Coastal Commission is obliged to seek an opinion from the California Dept. of Fish & Wildlife, and possibly the US Fish & Wildlife Service to require the County to complete protocol surveys for these two species – the South Coast Marsh Vole *Microtus californicus stephensi* and/or Southern California Salt Marsh Shrew *Sorex ornatus salicornicus*. These two species are known to have historical presence on Ballona marshlands like those that this proposed hotel contemplates displacing. The expert the County engaged for this project is a botanist who appears unaware of the kind of habitat where these mammals thrive.
3. There are new standards and policies that the Coastal Commission, other state agencies and the California Supreme Court have issued and adopted for compliance and analysis about sea level rise and climate change. Given that this parcel of land is at or near sea level, it is important that analyses for these situations be completed, including how introducing seawater to this parcel of land may impact adjacent residences, businesses and infrastructure – as opposed to how the retaining of a freshwater/alkali wetland and meadow might be less of an impact than introducing seawater into the site.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 3 OF 17

**Ballona Institute Re: EXTENSION REQUEST – Marina Marsh & Meadow –
(parcel 9 on MDR LCP; parcel 9-U on County Planning documents) –
at Tahiti Way & Via Marina**

January 12, 2016 ~ page 4

4. It is anticipated that climate change has influenced weather patterns such that this year we may have an unprecedented El Nino year – and this situation also needs to be analyzed in terms of how this project would impact adjacent residences, businesses and infrastructure – as opposed to how the retaining of a freshwater/alkali wetland and meadow might be less of an impact (serving as a sponge for soaking up rain and floodwaters) than introducing seawater into the site.
5. There are significant outstanding questions that have been raised by a legislative audit committee as to whether or not this parcel is sufficient mitigation for the loss of a park that was to be constructed on nearby parcel FF. The findings of this report are needed to be analyzed and the facts that the public has submitted to the state legislative committee need to be taken into account. As we understand it, the language of the original parcel requirements for FF stated that a replacement for this park could only be changed out if the parcel were larger than FF, which the size of this “wetland park” is not. This audit report, in its entirety, which was published in early 2015, as well as all documents submitted to the committee by the public, need analysis before this project is allowed to fulfill two purposes – one of the wetland protection measure, as required by the Coastal Act, and one as a park that was promised to the community for a larger parcel that is now slated to be turned into residential development.

http://file.lacounty.gov/bc/q1_2015/cms1_223926.pdf

These changed circumstances need transparency, analysis and public input before a decision is made by this Commission and/or its staff for the requested extension by the County of Los Angeles.

Should you have further questions or wish to contact us directly about this extension objection, please contact me at: <wetlandact@earthlink.net>

Sincerely,

Marcia Hanscom /s/

Executive Director
Ballona Institute

Cc: Robert van de Hoek, Conservation Biologist & President, Ballona Institute

COASTAL COMMISSION

EXHIBIT # 1
PAGE 4 OF 17

Vaughn, Shannon@Coastal

From: ileana wachtel [<mailto:wachtelileana@gmail.com>]
Sent: Tuesday, January 12, 2016 10:22 AM
To: Lester, Charles@Coastal
Subject: RE: Ballona Wetlands - Allow Full Public Hearing

Dear Mr. Lester:

As a native Angeleno and someone who cares deeply about our environmental habitats I am writing to urge you as the executive director of the Coastal Commission, to consider the changed circumstances around the two proposed projects: 1. Wetlands park & 2. 288-room hotel complex for the site at Tahiti & Via Marina. Both of these projects will be detrimental for this land if they are allowed to proceed.

As a citizen, as a resident of Los Angeles, as an environmentalist, I am urging you to give these projects a full public hearing before the extension is granted. There are many issues surrounding these projects, not the least of which is the clean-up order from the Regional Water Board because of high levels of cooper. This project would invite that polluted water into what is now the Sandbar Willow.

I urge you to listen to our concerns and hear the facts by granting a full public hearing. Again, there are new circumstances that have not yet been heard about how the project of establishing a "wetlands park" is not appropriate for this site.

Thank you,
Ileana Wachtel

COASTAL COMMISSION

EXHIBIT # 1
PAGE 5 OF 17

From: Alberto Saavedra <alsaavedra@yahoo.com>
Sent: Wednesday, January 13, 2016 8:30 PM
To: Lester, Charles@Coastal; Vaughn, Shannon@Coastal
Subject: Tahiti Way & Via Marina

Dear Dr. Lester and Coastal Commissioners,

I OBJECT to the IMMATERIAL Extension of the permit for destruction of a wetland and construction of a new wetland on the parcel at Tahiti Way & Via Marina in Marina del Rey.

The following CHANGED CIRCUMSTANCES exist on the parcel known as 9-U, 9 and the Marina Marsh & Meadow, and these circumstances require full analysis by staff, as well as a full public hearing:

1. The species types of vegetation growing on the site are clearly not suited to a tidal marsh, AND the marsh is healing and growing in size.
2. State and Regional Water Board actions taken in 2014-2015 have included determinations that marina waters include "toxic pollutants," which were not known nor taken into account in terms of being invited into the wetland via a tidal connection
3. There is, according to the expert opinion of wildlife biologist Robert Roy van de Hoek, that the possibility of one or two small mammal species exist on the site, species which are on the California List of Species of Special Concern.
4. Sea level rise and climate change circumstances, policies and knowledge had changed since the permit was originally granted.
5. New information about El Niño and climate change relating to converting a freshwater/alkali wetland to a tidal marsh is needed to be analyzed.
6. A legislative audit committee activity has provided new information about park tradeoffs.

THANK YOU for your dedication to protecting the California coast, including in Los Angeles.

Sincerely,

Alberto Saavedra
alsaavedra@yahoo.com

Vaughn, Shannon@Coastal

From: J Kurland <jjsk7@hotmail.com>
Sent: Thursday, January 14, 2016 1:43 PM
To: Vaughn, Shannon@Coastal; Lester, Charles@Coastal
Subject: OBJECT! for County Extension

Follow Up Flag: Follow up
Flag Status: Flagged

California Coastal Commission
South Coast District Office
200 Oceangate, Long Beach, CA 90802:

Dear Dr. Lester and Coastal Commissioners

We/I OBJECT to the IMMATERIAL Extension of the permit for destruction of a wetland and construction of a new wetland on the parcel at Tahiti Way & Via Marina in Marina del Rey.

The following CHANGED CIRCUMSTANCES exist on the parcel known as 9-U, 9 and the Marina Marsh & Meadow, and these circumstances require full analysis by staff, as well as a full public hearing:

1. The species types of vegetation growing on the site are clearly not suited to a tidal marsh, AND the marsh is healing and growing in size.
2. State and Regional Water Board actions taken in 2014-2015 have included determinations that marina waters include "toxic pollutants," which were not known nor taken into account in terms of being invited into the wetland via a tidal connection
3. There is, according to the expert opinion of wildlife biologist Robert Roy van de Hoek, that the possibility of one or two small mammal species exist on the site, species which are on the California List of Species of Special Concern.
4. Sea level rise and climate change circumstances, policies and knowledge had changed since the permit was originally granted.
5. New information about El Nino and climate change relating to converting a freshwater/alkali wetland to a tidal marsh is needed to be analyzed.
6. A legislative audit committee activity has provided new information about park tradeoffs.

THANK YOU for your dedication to protecting the California coast, including in Los Angeles.

Sincerely,
J. Kurland

COASTAL COMMISSION

EXHIBIT # 1
PAGE 7 OF 17

W18

Page 1 of 3

January 12, 2016

RECEIVED
South Coast Region

JAN 15 2016

CALIFORNIA
COASTAL COMMISSION

Charles Lester, Executive Director
✓ Steve Hudson, Deputy Director South Coast District - Los Angeles
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
Attn: Shannon Vaughn, Coastal Program Analyst (shannon.vaughn@coastal.ca.gov)

OBJECTION TO LACK OF ADEQUATE NOTICE:

Re: 1) Notice of Extension Request For Coastal Development Permit, (A-5-MDR-12-161-E2)
2) Item W18 on CCC calendar for 1/13/2016: So. Coast District/L.A. Co. Deputy Director's
Report requesting one-year Permit extension effective 12/12/2015

Dear Dr. Lester and Deputy Director Hudson:

Objection: We object to the scheduling, on January 13, 2016, of a presentation to the Commission of the first referenced item ("Notice") which is included in the Deputy Director's report in the second referenced item ("W18"), or at any other time prior to the conclusion of the public comment period stipulated in the Notice, i.e. January 20, 2016.

Grounds: Publishing the Notice in W18, without benefit of all the public responses, a response from the applicant and a relevant analysis by staff, effectively:

- 1) Violates the terms of the Notice AND Coastal Act §30006. Placing the Notice on the Commission calendar for January 13th, seven days before the statutory response period concludes, constrains the actual public response period to only 3 days in which to make any objections known to the Commission before their action is taken, rather than the ten working days stipulated in the Notice (here equating to 15 calendar days including two weekends and a State holiday). Per my telephone conversation with Ms. Vaughn on January 5th (the putative Notice publication date), only responses received by January 8th would be submitted to the Commission prior to the meeting. While any "orphaned responses" (i.e., those received subsequent to January 8th) will eventually appear in a future Deputy Director's Report, they will not be timely to the Commissioners' decision on January 13th, thus they are not the requisite participation stipulated in the Notice. Since the Commission will take its action on January 13th, these responses are not, in fact participation at all, by any definition of the term, but will instead be marginalized as after the fact complaints. This subverts one of the most important tenets of the Coastal Act, namely public participation:

Section 30006 Legislative findings and declarations; public participation

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

COASTAL COMMISSION

EXHIBIT # 1
PAGE 8 OF 17

- 2) Denies the Commissioners information of consequence that is material to their January 13th acceptance of the W18 report, which if accepted will confirm the Executive Director's determination as "conclusive" and trigger renewal of the Permit. The Commissioners do not, in fact, currently have the legally-prescribed available facts upon which to make a determination about whether to request a hearing on the extension request, because those facts are still being solicited pursuant to the Notice and won't be fully known or available until January 20th;
- 3) Misleads the Commissioners by "jumping the gun", effectively suppressing potentially critical information and virtually guaranteeing their acceptance of W18 (or at least this Notice element) by giving the false appearance that there are no objections to the Executive Director's determination, and no known issues or basis upon which to consider a hearing;
- 4) Facilitates an imprudent renewal of a Permit that may result in severe, irreversible, and unmitigatable impacts to wildlife populations in Marina del Rey, because changed circumstances in Marina del Rey that create inconsistencies of the proposed development that are inconsistent with the Coastal Act. These changed circumstances include:
 - new photographic evidence of rare, sensitive species on the Permit site that will likely be killed during implementation if certain conditions of the Permit are not amended or added;
 - destruction of major acreage of alternate habitat that has not yet been replaced or re-established, endangering or impairing the survival chances of a) the wildlife species reliant on the Parcel 9U wetland and uplands (the Permit's development site) and b) other local and migratory wildlife that relied on the destroyed habitats who may find sustenance on Parcel 9U until their customary habitat is once again viable; and
 - the beginnings of a predicted record-breaking storm season, unknown at the time of the previous renewal, that will add to the already-massive deliberate habitat destructions in Marina del Rey during flood preparations, as well as add storm- and flood-driven impairments (damage or destruction) of an unknown magnitude throughout the region.

Objection: There is NO PROJECT REFERENCE number on our notices. Ms. Vaughn gave me the project reference number via telephone on January 5, so it was known at the putative time of Notice publication, and Commission Regulations surely require that it be on the Notice. Oddly, the Notice that appears in the Deputy Director's Report posted on your website (accessed today) shows both the date, "January 5, 2016" and a project reference number, "(A-5-MDR-12-161-E2)" in a different font than the body of the text, as if they were typed by hand onto an undated, un-referenced hard copy of the Notice, and subsequently scanned for the Deputy Director's Report. They are visibly dissimilar, and it appears as though this Notice has treated as a work in process, to be adapted at whim.

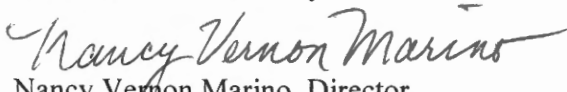
Objection: if the applicant submitted the extension request on December 12, 2015, as required in the Permit, why did the Executive Director make a determination before public response was solicited? Knowing all of the issues results in better decision-making, and it would have ensured that the Commissioners had all of the facts before the meeting. I am sure that is the aim of the Commission Rules, whether or not the letter of the law stipulates this.

Dr. Lester, we respectfully and vehemently disagree vehemently with your determination in this case, but no one in our group can afford to forego a day's work on Wednesday in order to drive 127 miles

through Los Angeles, Orange and San Diego County traffic for an uncertain chance that we might be allowed 3 minutes in which to make an oral presentation of our objections, including Coastal Act inconsistencies, to the Commission. In any event, it is physically impossible to speak that fast--or to be comprehended if we could. The Commission's Meeting Rules and Procedures strongly discourage presenting written materials to the Commissioners at the meeting, (so much so, it underscores this) so we don't dare send it with others who will attend. We submit that it is unreasonable to impose such constraints on public participation by means of this obviously insufficient Notice.

Thank you for your consideration. We urge you to table the matter of A-5-MDR-12-161-E2 until proper notice is given; and we sincerely hope you will reconsider your own determination in light of this new information and any other information that has been or will be forthcoming, and schedule a hearing instead.

Together,
We ARE Marina del Rey



Nancy Vernon Marino, Director
nancyvmarino@aol.com
310.490.1983

via email to Shannon Vaughn
via USPS Certified Mail #7008 1830 0001 8885 3895 to the addressees

COASTAL COMMISSION

EXHIBIT # 1
PAGE 10 OF 17

January 18, 2016

Dear Dr. Lester and Coastal Commissioners

We OBJECT to the IMMATERIAL Extension of the permit for destruction of a wetland and construction of a new wetland on the parcel at Tahiti Way & Via Marina in Marina del Rey.

Please help the public to protect to the FULLEST EXTENT this last marshland in Marina Del Rey. Over 95% of our coastal wetlands have already been destroyed by development.

The following CHANGED CIRCUMSTANCES exist on the parcel known as 9-U, 9 and the Marina Marsh & Meadow, and these circumstances require full analysis by staff, as well as a full public hearing:

1. The species types of vegetation growing on the site are clearly not suited to a tidal marsh, AND the marsh is healing and growing in size.
2. State and Regional Water Board actions taken in 2014-2015 have included determinations that marina waters include "toxic pollutants," which were not known nor taken into account in terms of being invited into the wetland via a tidal connection
3. There is, according to the expert opinion of wildlife biologist Robert Roy van de Hoek, that the possibility of one or two small mammal species exist on the site, species which are on the California List of Species of Special Concern.
4. Sea level rise and climate change circumstances, policies and knowledge have changed since the permit was originally granted.
5. New information about El Nino and climate change relating to converting a freshwater/alkali wetland to a tidal marsh is needed to be analyzed.
6. A legislative audit committee activity has provided new information about park tradeoffs.

THANK YOU for your dedication to protecting the California coast, including in Los Angeles.

Sincerely,
Kathy Knight
Ballona Ecosystem Education Project
(310) 613-1175

COASTAL COMMISSION

EXHIBIT # 1
PAGE 11 OF 12

Vaughn, Shannon@Coastal

From: We Hicks <wingsthejourneyhome@gmail.com>
Sent: Tuesday, January 19, 2016 5:35 PM
To: Vaughn, Shannon@Coastal
Subject: We Object to the Coastal Commission extension request on Parcel 9-U by L.A. County

Dear Shannon Vaughn and Coastal Commissioners

We OBJECT to the IMMATERIAL Extension of the permit for destruction of a wetland and construction of a new wetland on the parcel at Tahiti Way & Via Marina in Marina del Rey.

The following CHANGED CIRCUMSTANCES exist on the parcel known as 9-U, 9 and the Marina Marsh & Meadow, and these circumstances require full analysis by staff, as well as a full public hearing:

1. The species types of vegetation growing on the site are clearly not suited to a tidal marsh, AND the marsh is healing and growing in size.
2. State and Regional Water Board actions taken in 2014-2015 have included determinations that marina waters include "toxic pollutants," which were not known nor taken into account in terms of being invited into the wetland via a tidal connection
3. There is, according to the expert opinion of wildlife biologist Robert Roy van de Hoek, that the possibility of one or two small mammal species exist on the site, species which are on the California List of Species of Special Concern.
4. Sea level rise and climate change circumstances, policies and knowledge had changed since the permit was originally granted.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 12 OF 12

5. New information about El Nino and climate change relating to converting a freshwater/alkali wetland to a tidal marsh is needed to be analyzed.

6. A legislative audit committee activity has provided new information about park tradeoffs.

THANK YOU for your dedication to protecting the California coast, including in Los Angeles.

Sincerely,

William and Elise Hicks

Residents of Marina del Rey & L.A. County

310-567-3301

COASTAL COMMISSION

EXHIBIT # 1
PAGE 13 OF 17

January 19, 2016

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South Coast Region

JAN 22 2016

CALIFORNIA
COASTAL COMMISSION

Charles Lester, Executive Director
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
Attn: Shannon Vaughn, Coastal Program Analyst

Re: Permit No. A-5-MDR-12-161 (E2)
Los Angeles County Dept. of Beaches & Harbors (DBH) application for a second one-year permit extension, from effective December 12, 2015 - December 12, 2016

Dear Dr. Lester:

Pursuant to your January 5, 2016 Notice, we object to the extension referenced above due to the following changed circumstances that affect the Project's consistency with the Coastal Act. We also respectfully ask you to re-consider your determination regarding this application before presenting it to the Commission for a possible hearing. The Project, as defined by the LA County Board of Supervisors, consists of the joint-venture proposal for a hotel, residential redevelopment and public "wetland park" on Marina del Rey Parcels 9U, 10R and FF (re-designated as Parcels 9, 10 and 14, respectively, in the current LCP).

Objections:

- 1) **New, photographic evidence of the possible presence on the site of rare small mammal species** that are on the State of California List of Species of Special Concern. We understand that the Commission has already received/viewed these photos (of a Great Blue Heron catching and eating what may be a Marsh Vole), which were presented by the Ballona Institute's qualified biologist, Robert Roy van de Hoek, and we also support the Ballona Institute's request for protocol surveys and a new delineation of the Parcel 9U wetland, in order to ensure consistency of the Project with the Coastal Act. The DBH biologist, Hamilton Biology, has not bothered to survey the Project site (Parcel 9U) in at least the last two annual bird surveys, so the applicant's assertion that the site is poorly used by wildlife is factually baseless (and contrary to local residents' experience of a wealth of sights and sounds, across the parcel and throughout the year). In addition to the 300 narrow leaf willow trees and thick, undisturbed brush and other ground cover, there are numerous large, untrimmed palm trees that are ideal nesting habitat for many wildlife species. The nearly constant presence of large birds hunting and foraging during the winter season is a delightful attraction for local joggers, walkers, and even passing motorists.
- 2) **New conditions on Parcel P, which is now bereft of all habitat** save for about 5 of its former 650 trees since the clearing, grubbing and excavation of the site in January 2015. That parcel, many times the size of this wetland conversion plan, is Marina del Rey's only designated Bird Conservation Area (and only a fraction of the 44 acres mandated by the Federal government as mitigation for the impacts of the construction of Marina del Rey). It is still undergoing construction of new flood-control infrastructure and other improvements designed to increase human access to and enjoyment of the parcel, and will offer no habitat or wildlife support for the foreseeable future, even to its own displaced local and migratory

wildlife populations, many of which that survived are now in dire need of alternate habitat themselves (among those that did not survive were hundreds of Monarch butterflies in a eucalyptus tree that was felled on a chilly, drizzly day). An all-new plant palette for Parcel P is in the early stages of planting as of this writing, with no prediction as to when the new environment might become established, viable habitat, and then assessed for its suitability to the needs of this area's wildlife. To be consistent with the Coastal Act protections for important species and sensitive habitat areas, the Commission must ensure that there is adequate, appropriate habitat nearby to bridge the full period of Parcel 9U habitat destruction (plus a buffer of time, in case of construction delays), not just for the protection of species on this site, but for those displaced from all other areas of the Marina as well. Assessment and analysis of the cumulative impacts of multiple habitat destructions, and of the suitability and "productivity" of new, unproven habitats, are both crucial to these protections.

- 3) **Extreme El Nino forecast, first weather event of its kind since the Project was introduced in 1999 and now getting underway, puts other freshwater habitat in the region in danger of destruction or impairment,** due to flood control preparations and/or storm damage. A full assessment of the area's fresh-water habitats (e.g., Ballona Creek habitat, currently under consideration for removal by the USACE in preparation for the upcoming storm season) and other freshwater marsh habitat that may be at risk from the predicted severe storms and/or flooding, is needed before the proposed destruction of habitat on Parcel 9U is extended or amended.
- 4) **Unanticipated, additional mature-tree removals throughout the Marina have exacerbated the cumulative impacts of completed and pending planned habitat eliminations.** In late December DBH announced the removal of an additional 18 mature, large-canopy trees throughout the Marina, which it alleged were diseased or impaired, some of which did not appear to show signs of impairment after they were felled. With over a thousand trees and other habitat already destroyed, and at least that number of trees and vast swaths of habitat currently approved or planned for destruction, the wildlife of the area is in extreme peril of irreversible impairment or outright destruction. A cumulative review by the Commission is desperately needed at this time.
- 5) **New State and Regional Water Board actions taken in 2014-2015, including determinations that the harbor waters include "toxic pollutants."** We support the Ballona Institute's objection to introducing this polluted water to the site (using public recreational funds, no less!) in order to convert the freshwater wetland to a pollution-riddled, toxic tidal marsh. We further support their recommendation to allow the natural restoration process that is occurring--without human intervention--to continue, for consistency with the Coastal Act provision mandating a less-damaging alternative, if feasible. This natural restoration, or a plan that would enhance this natural restoration, is entirely feasible in all regards.
- 6) **New information from a State Audit in January 2015, and new discoveries last fall of heretofore un-disclosed documents setting forth both Commission and LA County Board of Supervisors mandates for a minimum 2-acre, active recreational park to achieve consistency with the then-governing LCP, and with the Coastal Act both then and now.** An Audit Report by State Auditor Elaine M. Howle, CPA, of January 27, 2015 reveals irregularities in the administration of the Coastal Improvement Fund (CIF), which until the 2011 LCP Amendment certification was designated for recreational park development of Parcel FF(14) and Parcel P public improvements and amenities. It was belatedly re-purposed in 2010-2011 for this wetland conversion scheme on the pretext that

CIF funds were insufficient to build that park. Had the CIF been administered as stipulated by law, funding and construction could have occurred long before the Project re-design usurping the developable portion of Parcel 9U for the hotel developer, and relegating the "park" to a much smaller area comprised mainly of inaccessible wetland, was introduced in 2006. The Coastal Commission, as a non-negotiable condition of its certification of the 1-94 LCP Amendment demanded the establishment, funding and construction of a 2-acre, active recreational park on Parcel FF, which was further protected in that LCP against any private development whatsoever (see Coastal Commission transcripts of 1995 for this stipulation and the County's agreement to those terms. Commission certification of that amendment sealed that contract. Furthermore, in its 1999 Board letter pertaining to the Project RFP, the LA County Board of Supervisors stipulated that the public recreational park could be relocated ONLY if the alternate location was equal to or better than the Parcel FF location.

Had some or all of this information been known to the Commission at the time, it would potentially have had a material impact on Commission decisions spanning from 2005 to the present, with respect to the LCP Review and the LCP Amendment certified in November 2011 that retro-fitted local law to conform to the needs of this Project, in addition to all subsequent Commission rulings on this Project and its concomitant permits and/or extensions.

Taken together, these changed circumstances and new discoveries warrant a full Commission review, with potential amendments or other determinations regarding the Project and/or its permits, including the captioned Permit A-5-MDR-12-161, that may be necessary to bring the Project into compliance with local, State and Federal laws.

Thank you for your consideration.

Together,
We ARE Marina del Rey



Nancy Vernon Marino
Director

COASTAL COMMISSION

EXHIBIT # 1
PAGE 16 OF 17

Rising, Nicky@Coastal

From: Staben, Jeff@Coastal on behalf of Coastal Meetingnotice
Sent: Tuesday, January 26, 2016 2:19 PM
To: Rising, Nicky@Coastal
Subject: FW: Extension for Coastal Development Permit A-5-MDR-12-161

For your file...

From: Lynne Shapiro [mailto:liro2323@gmail.com]
Sent: Sunday, January 10, 2016 10:12 AM
To: Coastal Meetingnotice
Subject: Extension for Coastal Development Permit A-5-MDR-12-161

Mr. Charles Lester
Ms. Shannon Vaughn

I am a resident of Marina del Rey and would like to know if this extension signifies that the California Coastal Commission has approved the 288 room hotel on Parcel 9U? I would also like to know if the commissioners will have visited the area before voting, as many of them may not realize that we now have five major hotels in Marina del Rey with a sixth slated for future development at Fisherman's Village OR that this hotel is to be constructed on a wetland in the midst of a completely residential neighborhood with thousands of condo owners, Silver Strand homeowners and renters. No commissioner should vote for this project until they have read the environmental impact report, as serious harm/pollution may be done to the Marina waters, Ballona and the wetland itself during construction without constant surveillance and corrective machinery.

You may answer my questions at liro2323@gmail.com

Thank you,

Lynne Shapiro
5100 Via Dolce #312
Marina del Rey CA 90292

RECEIVED
South Coast Region

JAN 27 2016

CALIFORNIA
COASTAL COMMISSION

COASTAL COMMISSION

EXHIBIT # 1
PAGE 17 OF 17

Vaughn, Shannon@Coastal

From: Holly Mosher <hollywoodnt@mac.com>
Sent: Wednesday, January 20, 2016 10:20 PM
To: Lester, Charles@Coastal; Vaughn, Shannon@Coastal
Subject: Protect our coastal wetlands

Follow Up Flag: Follow up
Flag Status: Completed

Dear Dr. Lester and Coastal Commissioners,

I object to the immaterial extension of the permit for destruction of a wetland and construction of a new wetland on the parcel at Tahiti Way & Via Marina in Marina del Rey.

The following changed circumstances exist on the parcel known as 9-U, 9 and the Marina Marsh & Meadow, and these circumstances require full analysis by staff, as well as a full public hearing:

1. The species types of vegetation growing on the site are clearly not suited to a tidal marsh, AND the marsh is healing and growing in size.
2. State and Regional Water Board actions taken in 2014-2015 have included determinations that marina waters include "toxic pollutants," which were not known nor taken into account in terms of being invited into the wetland via a tidal connection
3. There is, according to the expert opinion of wildlife biologist Robert Roy van de Hoek, that the possibility of one or two small mammal species exist on the site, species which are on the California List of Species of Special Concern.
4. Sea level rise and climate change circumstances, policies and knowledge had changed since the permit was originally granted.
5. New information about El Nino and climate change relating to converting a freshwater/alkali wetland to a tidal marsh is needed to be analyzed.
6. A legislative audit committee activity has provided new information about park tradeoffs.

Thank you for your dedication to protecting the California coast, including in Los Angeles.

Sincerely,

Holly Mosher
1707 Hill St.
Santa Monica, CA 90405

COASTAL COMMISSION

A-5-MDR-12 -161-E2

EXHIBIT # 2

PAGE 1 **OF** 7

Vaughn, Shannon@Coastal

From: carla andus <candrusmdr@gmail.com>
Sent: Wednesday, January 20, 2016 5:07 PM
To: Vaughn, Shannon@Coastal; carla andus
Subject: objection to extension A-5-MDR-12-161-E2
Attachments: Janurary 20 2016 Dear Commissioner.docx; Gmail - RE_.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Ms. Vaughn

Please let our objection be known to the Executive Director and the Coastal Commissions.

COASTAL COMMISSION

EXHIBIT # 2
PAGE 2 OF 7

January 20, 2016

Dear Dr. Lester and Coast Commissioners

We object to this extension of an extension A-5-MDR-12-161-E2

I am resubmitting our first letter of objection to A-5-MDR-12-161-E1

This major violation of the Coastal Act makes a farce of process and all the pomp and circumstance around the Executive Determination. A hearing on this matter will begin the unraveling of the 2011 Determination of legal adequacy

Parcel FF was supposed to mitigate for all the residential growth the earlier commission allowed. We reject that this wetland is used to mitigate for the park that was enforceable before the 2011 amendment and for the failure to enforce that promise.

This violates the General Plan which requires 4 acres of park per 1,000 residents that threshold was met before the 2011 amendment. It is a scandal we already had a 32 acre deficit of public park requirements; do you realize this public resource does not have one playing field for soccer, basketball, or handball We had anticipated that parcel FF, or the north side of 9U would have met that modest goal.

We are told that the developers are too far invested and we say, so what? It was an illegal and ill advised gamble, not an entitlement. We will send supporting documents for your thoughtful review.

Do not allow this wetland to become our park, a wetland is a wetland tidal or freshwater I don't care if the applicant claims it is the Fountain of Youth, it is a wetland protected from public use and in no way mitigates for recreation which is required by law. This is fraud to the people of the state and a corruption of the Coastal Act.

Thank you,

Carla Andrus
1.310.306.3181
578 Washington Bl. 1102
Marina del Rey, CA 90292

COASTAL COMMISSION

EXHIBIT # 2
PAGE 3 OF 7

1/20/2016

Gmail - RE:



carla andus <candrusmdr@gmail.com>

RE:

3 messages

Padilla, Al@Coastal <Al.Padilla@coastal.ca.gov>
To: "candrusmdr@gmail.com" <candrusmdr@gmail.com>

Mon, Dec 21, 2015 at 11:26 AM

From: Padilla, Al@Coastal
Sent: Thursday, December 17, 2015 3:44 PM
To: 'candrusmdr@gmail.com'
Subject:

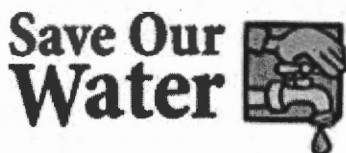
Carla,

Here is your email that you sent for the last extension request and the Regulation section regarding Extensions.

Al J. Padilla
Regulatory Permit Supervisor
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90801
(562)590-5071



Every Californian should conserve water. Find out how at:



COASTAL COMMISSION

EXHIBIT # 2
PAGE 4 OF 7

1/20/2016

Gmail - RE:

SaveOurWater.com · Drought.CA.gov

Shannon Vaughn

February 11, 2015

Coastal Program Analyst

California Coastal Commission

Shannon.Vaughn@coastal.ca.gov

RE Extension Required for CDP

One Year extension of Appeal A-5-MDR-12-161-E1

February 10, 2014

Dear Ms Vaughn

I believe that the Coastal Commission seriously erred in 2011 in approving the substitution of the 9U wetland for a promised park on Parcel FF and I am opposing this proposed extension to prevent the error being perpetuated.

The County agreed to make Parcel FF a park in 1996 in exchange for a Coastal Commission concession allowing more than 2,400+ more residential units in building lots around the park. This agreement was confirmed in the certified 1996 LCP which also contains a map showing FF as a park.

In 2011 the County went back on its promise by applying to build a residential block on FF. It substituted the entirely unsuitable stub of wetland on Parcel 9U which is to be tidally waterlogged and of no recreational use. This amounts to a mitigation of a mitigation which is entirely unacceptable. At the same time the County retained its concession for greater residential density.

In siting some of the park area required under county rules for the increased residential population, the county stated part of it would be sited a mile away on Burton Chace park, which, again, is no substitute for the neighborhood park agreed on FF and is, again, a mitigation of a mitigation.

EXHIBIT # 2
PAGE 5 OF 7

In 2011 Commission Deputy Executive Director Jack Ainsworth failed to tell Commissioners, largely new to their jobs, about the standing commitment on FF. He failed to do so even when Commissioner Sanchez, as a result of

1/20/2016

Gmail - RE:

remarks by myself, asked if it was true that a park had been promised on FF. Mr Ainsworth stated that this was a misconception on the part of some members of the public. As a longstanding officer of the Commission he was in a position to know a great deal better.

In addition Mr Ainsworth told Commissioners that as there was only \$35,000 in a builder-contributed Coastal Improvement Fund, building of the park was out of the question. In fact there was more than \$190,000 in the fund at that date. Mr Ainsworth also stated that there was no timing for the FF park construction. But County Specific Plan's Coastal Improvement Ordinance requires four acres of park for every new 1,000 residential unit. This threshold had already been reached before the 2011 LCP hearing and construction of the park was enforceable. We know that a phasing schedule was required and that it would be with the Department of Public Works.

You should know that the California Joint Legislative Audit Committee has conducted an investigation into the County's management of the CIF and will continue to monitor these operations during the upcoming year. I believe the Coastal commission also failed in its duties to monitor operation of the fund.

I believe that the Coastal Commission failed in its duty to uphold the terms of the California Coastal Act in allowing the substitution of low priority residential use for top priority public recreational use on Parcel FF and that the situation should be redressed by refusing the extension of the 9U wetland conversion.

Carla Andrus,

578 Washington Blvd 1102

Marina del Rey 90292

candrusmdr@gmail.com

carla andus <candrusmdr@gmail.com>

Tue, Dec 22, 2015 at 9:41 PM

To: al.padilla@coastal.ca.gov

AI

What is the criteria for changed circumstance? How much will I owe for a copy of the Application Extension Permit

No.: A-5-MDR-12-161

Thank you

Carla

COASTAL COMMISSION

EXHIBIT # 2
PAGE 6 OF 7

We want the park or the additional development potential to be scaled back we want the county to drop the new units there is not enough park space to satisfy the General Plan.

Doesnt the Coastal Act say no to developing a wetland as part of a project.

Do you think it is appropriate to use the CIF to renovate a wetland that has no value to the developers

if it is renovated to enhance the face of the hotel

BACKGROUND

Request for Qualifications and Request for Proposal Parcel 10 9 and FF

Can you send the other letters that opposed the wetland conversion

Did you

[Quoted text hidden]

Padilla, Al@Coastal <Al.Padilla@coastal.ca.gov>

Wed, Dec 23, 2015 at 3:51 PM

To: carla andus <candrusmdr@gmail.com>

The application is two pages and at \$0.25 per copy, total will be \$0.50. Need check or money order.

al

From: carla andus [mailto:candrusmdr@gmail.com]

Sent: Tuesday, December 22, 2015 9:41 PM

To: Padilla, Al@Coastal

Subject: Re:

[Quoted text hidden]

COASTAL COMMISSION

EXHIBIT # 2
PAGE 7 OF 7

UNITE HERE! *Local 11*

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

Via E-Mail (Shannon Vaughn: Shannon.Vaughn@coastal.ca.gov)

January 20, 2016

California Coastal Commission
Attn: Each Coastal Commissioner & Charles Lester, Executive Director
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, California 90802

**RE: Extension Request for Coastal Development Permit No. A-5-MDR-12-161-E2,
Southerly 1.46 acres of Marina del Rey Parcel 9U; County of Los Angeles (Permittee)**

Honorable Commissioners and Executive Director Lester:

Unite Here Local 11 is writing in strong support of the County of Los Angeles' request for a one-year extension of the above-captioned Coastal Development Permit (the "CDP"). The CDP, which was originally unanimously approved by the Coastal Commission, authorizes the County to create a tidally-influenced wetland and upland park on the southerly approximately 1.46 acres of Marina del Rey Parcel 9U.

When completed by the County, the wetland and upland park will provide residents and visitors to the Marina a unique space to observe a functioning coastal wetland in an urbanized environment. Unite Here Local 11 strongly supports the creation of low cost recreational access to our coastal resources. The park will serve as a valued ecological complement to the hotel that is proposed for development on the northerly portion of this parcel. We understand both the US Army Corps of Engineers and the Los Angeles Regional Water Quality Control Board have thoroughly reviewed and approved this project and that their respective permits for the project are ready to issue. Mr. Lester, we support your determination that there are no changed circumstances affecting the approved development's consistency with the Coastal Act, and thus respectfully urge the Coastal Commission to sustain this determination in granting the County's CDP extension request.

Sincerely,

Melanie Luthern

COASTAL COMMISSION
A-5-MDR-12-161-E2
EXHIBIT # 3
PAGE 1 OF 1



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017

January 12, 2016

Mr. Gary Jones and Mr. Brock Ladewig
Los Angeles County Department of Beaches and Harbors
13837 Fiji Way
Marina del Rey, California 90292

Dear Mr. Jones and Mr. Ladewig:

I am responding to your December 7, 2015 letter to Colonel Kirk Gibbs, Commander of the U.S. Army Corps of Engineers Los Angeles District, concerning the proposed wetland park project located on Marina del Rey lease parcel 9 (U.S. Army Corps of Engineers File Number: SPL-2015-00503). Your letter served to notify the Corps of an informational meeting held regarding the construction of the wetland park and provide an overview of the proposed project.

We are aware of the proposed wetland park project and have completed processing the Clean Water Act section 404 Nationwide Permit verification request submitted by your agency on July 21, 2015.

After the informational meeting referenced in your letter, the Corps received phone calls from a few concerned residents of Marina del Rey. The residents expressed a wide array of concerns with the proposed project. However, the majority of the issues raised were outside of the Corps section 404 regulatory purview.

The Nationwide Permit verification letter for the parcel 9 wetland park project was issued to your agency on December 11, 2015. The issued verification letter was conditional pending Corps receipt of the project's Clean Water Act section 401 Water Quality Certification (WQC) and Coastal Commission-approved Coastal Development Permit (CDP). Since the issuance of the verification letter the Corps received the project 401 WQC on December 17, 2015.

Thank you for providing the project overview and status update. If you have any questions, please contact me at 805-585-2141 or at David.J.Castanon@usace.army.mil or your staff may contact Ms. Pam Kostka, Project Manager in our Regulatory Division at 213-452-3420 or via e-mail at Pamela.K.Kostka@usace.army.mil.

Sincerely,

CASTANON.DAV
ID.J.1231966150

David J. Castanon
Chief, Regulatory Division

Digitally signed by
CASTANON.DAVID.J.1231966150
DN: c=US, o=U.S. Government, ou=DoD,
ou=FA, ou=USA,
cn=CASTANON.DAVID.J.1231966150
Date: 2016.01.12 11:32:32 -08'00'

COASTAL COMMISSION

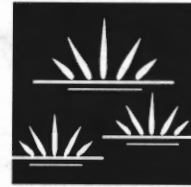
A-S-MDR-12-161-52

EXHIBIT # 24
PAGE 1 OF 63

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 09860003MITI

TO: Michael Tripp, Los Angeles County Department of Beaches & Harbors

FROM: Tony Bomkamp, Senior Biologist

DATE: October 23, 2015 [Updated January 18, 2016]

SUBJECT: Responses to 1) Wetlands, Species of Special Concern, and Federal Permitting Addressed in the October 6, 2015 Letter from Robert van de Hoek, President of Ballona Institute and 2) Responses to Item 4 of the January 12, 2016 Letter from We Are Marina del Rey

Wetlands

On page 6 of the October 6, letter, Mr. van de Hoek asserts that:

*As time has passed, the extent of the wetland returning to it [sic] original marsh and willow woodland condition is significant, and the area considered wetland is greater than it was in 2009, or 2011 or 2013 when the consultants for the project last visited the site, during only one season. I have visited the site regularly, throughout various seasons, and as I stated in my previous testimony at the Regional Planning Commission, it is clear that the wetland vegetation is expanding on the entire unbuilt site of Parcel 9U, the Marina Marsh and Meadow as would be expected as nature heals and revives itself over time. **The Wetland, in other words, is not only located on the southern portion of the parcel of 9U, but is the entire parcel. No additional surveys have been entered into the record, sine the Bomkamp records, which are several years old. My own observations are that wetland plants are expanding throughout the site, as would be expected.*** [Emphasis in Original]

On August 17, 2015, I attended a site visit with Ms. Pamela Kostka of the Regulatory Branch of the Los Angeles District of the U.S. Army Corps of Engineers (Corps) to review the jurisdictional delineation of the site, pursuant to Section 404 of the federal Clean Water Act. During the site visit with Ms. Kostka, we collected additional data to determine the extent of the wetlands. Eight additional data sheets were completed in accordance with the 1987 Wetland Delineation Manual¹ (Wetland Manual) and the 2008 Regional Supplement to the Corps of

¹ Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

EXHIBIT # 4

PAGE 2 OF 63

MEMORANDUM

October 23, 2015 [Updated January 18, 2016]

Page 2

Engineers Wetland Delineation Manual: Arid West Region Version 2.0² (Arid West Supplement). Vegetation on the site was evaluated using the updated *The National Wetland Plant List*³ which is the "official" list authorized by the Corps for Section 404 jurisdictional delineations. The locations of the data collection points are depicted on Exhibit 1 and the most recent data sheets are included as Appendix A. Exhibit 1 shows the extent of the wetland as proposed by GLA. Based on her review of the previous data as well as the data collected on August 17, 2015, Ms. Kostka requested that I reduce the amount of wetland area that would be subject to Section 404 of the Clean Water Act. Exhibit 1 shows the wetland extent approved by the Corps based on the 2015 field visit, which decreased from 0.22 acre to 0.11 acre. Based on the recent review by the Corps, who is responsible for determining the extent of wetlands for purposes of issuing permits pursuant to Section 404 of the Clean Water Act, it is clear that wetlands on the site are not expanding. The Corps has approved the jurisdictional delineation of the wetland, and subsequently issued the Section 404 Nationwide Permit on December 11, 2015.

Mr. van de Hoek's assertion that wetlands occur across the parcel has in the past been premised on the fact that salt marsh heliotrope (*Heliotropium curassavicum*) occurs across much of the site growing in the upland areas with non-native grasses and weeds. Mr. van de Hoek's assertion was based on the wetland rating of this species as an "Obligate" wetland plant in the *National List of Plant Species that Occur in Wetlands*⁴, which was the predecessor to the Corps' *National Wetland Plant List* cited above. Importantly, in the most recently issued version (2014) of the *National Wetland Plant List*, the wetland indicator status for salt marsh heliotrope has been changed by the Corps from "Obligate" (OBL) to "Facultative Upland" (FACU), which is an "upland" category. I do not know if Mr. van de Hoek is aware of the changed status of this species; however, any arguments asserting that wetlands occur across the entire parcel based on the indicator status of this plant are not valid.

On October 16, 2015, I attended a site visit with Ms. Valerie Carrillo of the Los Angeles Regional Water Quality Control Board (Regional Board) to review the jurisdictional delineation and the proposed project pursuant to Section 401 of the Clean Water Act and Section 13260 of the California Water Code. Regional Board staff subsequently issued a 401 water quality certification on December 11, 2015.

² U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0). Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center and Engineering Laboratory.

³ Lichvar, R.W., M. Butterwick, N.C. Melvin, and W.N. Kirchner. 2014. *The National Wetland Plant List: 2014 Update of Wetland Ratings*. Phytoneuron 2014-41: 1-42.

⁴ Reed, P.B., Jr. 1988. National List of Plant Species that Occur in Wetlands. U.S. Fish and Wildlife Service Biological Report 88(26.10).

COASTAL COMMISSION

EXHIBIT # 4
PAGE 3 OF 603

MEMORANDUM

October 23, 2015 [Updated January 18, 2016]

Page 3

Small Mammals

Mr. van de Hoek asserts that two small mammals, the Southern California Salt Marsh Shrew (*Sorex ornatus salicornicus*) and the South Coast Marsh Vole or Meadow Mouse (*Microtus californicus stephensi*) likely occur on Parcel 9U:

...My professional opinion (from photographs I reviewed and requested to be taken by local concerned residents) is that the increasing rare and imperiled South Coast Marsh Vole or Meadow Mouse (Microtus californicus stephensi) – a species of special concern candidate listed by the California Department of Fish & Wildlife – is present on the site. It must be assumed (taking into account the Precautionary Principle combined with historical ecology knowledge) that the Southern California Salt Marsh Shrew (Sorex ornatus salicornicus) is also living in this marsh...

Mr. van de Hoek's assertion is based on the current presence of these small mammals within the Ballona Wetlands Ecological Reserve. The Ballona Wetlands Ecological Reserve covers nearly 600 acres and includes a variety of wetland and upland habitats.⁵ Parcel 9U covers 3.23 acres of which 0.43 acre was determined to be wetlands by the California Coastal Commission and 0.11 acre by the Corps as noted above. Mr. van de Hoek ignores the history of Parcel 9U in making the assertion that the subject small mammals continue to persist on the site. The attached figure labeled Exhibit 6 is an aerial photograph with the boundaries of Parcel 9U depicted. The attached figure labeled Exhibit 7 is an aerial photograph of the parcel in 1962 following construction of the Marina. It is clear that Parcel 9U was covered with dredge spoils and sand and graded flat, leaving no habitat intact on the site, extirpating native small mammal species that occurred on the site. The site remained in this condition until the 1980s when construction on the site was started and then halted leaving the site in its current condition.

As such, there was a 20+ year interval when the site contained no habitat for the above-referenced small mammals, during which time the surrounding areas were developed, eliminating any potential habitat in surrounding areas that could allow recolonization of the site by the subject small mammals. In addition to this, following abandonment of the construction project, the County maintained the site, limiting the type and amount of wetland plants to grow in the lower portions of the site (where the wetland areas occur). Maintenance of the site, including the spreading of mulch to prevent the growth of vegetation until about 2005 meaning that there was a 40+ year period during which no potential habitat occurred on the site.

⁵ <http://www.ballonafriends.org/history.html>

COASTAL COMMISSION

EXHIBIT # 4
PAGE 4 OF 103

MEMORANDUM

October 23, 2015 [Updated January 18, 2016]

Page 4

The only conclusion that can be drawn from the history of the site is that these two small mammals were extirpated from the site during the late 1950s and early 1960s with no potential for recolonization of the site due to lack of suitable habitat. As further addressed below, the site continues to exhibit conditions that are not suitable for these species.

The Southern California Salt Marsh Shrew occurs in coastal marshes of Los Angeles, Orange and Ventura Counties and requires dense vegetation. The species has been documented in 1991 to occur within the Ballona Marsh about 0.25 mile southwest of Lincoln and Jefferson Boulevards and the Ballona population is considered to be extant by CDFW. As noted by Mr. van de Hoek, this species is not listed on either the federal or State as Endangered or Threatened but is considered a California Species of Special Concern. The Certified EIR (Section 5.5.3.1 Terrestrial Flora) describes the vegetation on the majority of Parcel 9U (3.23 acres), including some portions of the excavated depression and all of the areas outside the depression (except the berm on the southern edge of the property), as ruderal and dominated by upland non-native herbaceous species. Additional vegetation communities on Parcel 9U include ruderal wetland (0.31 acre) with small locally dominant areas of native species, narrow-leaved willow scrub (0.22 acre) consisting of a berm dominated with narrow-leaved will (*Salix exigua*), and emergent marsh (0.04 acre) within the excavated basin and dominated with hydrophytic herbaceous species. The vegetation communities on Parcel 9U do not provide suitably dense cover to support this species because the areas that support marsh species does not support vegetation of sufficient density and the areas are too small in area to support viable population. Habitat requirements for this species are described as follows:

Habitat: Grinnell (1933) described the species' habitat as Salicornia marshes. At the Seal Beach National Wildlife Refuge it occurred in salt marsh dominated by Salicornia virginica; at Bolsa Chica Ecological Reserve, it occurred in dense Salicornia and salt grass (Feldmeth et al. 1989). Its occurrence in association with dense willow (Salix spp.) and bulrush (Scirpus sp.) thickets near Point Mugu (J. Maldonado pers. comm.) suggests it occurs in a broader range of wetland habitats than first thought. The habitat characteristics of southern California salt marsh shrews may be similar to those which Johnston and Rudd (1957) recorded for other salt marsh-inhabiting populations of ornate shrew: dense vegetative ground cover, protected nesting sites above mean high tide which are free from inundation, and moist surroundings.⁶

Finally, it is important to note that for this species to move from previously documented sites in the Ballona Wetlands, the animals would have to cross both Ballona Creek and the main channel of the Marina Del Rey Harbor, which combined is about 1,200 feet of open water, which is not

⁶ Terrestrial Mammal Species of Special Concern in California, Bolster, B.C., Ed., 1998, p. 14

COASTAL COMMISSION

EXHIBIT # 4
PAGE 5 OF 63

MEMORANDUM

October 23, 2015 [Updated January 18, 2016]

Page 5

possible for this species. As such, when all of the factors are considered (site history, lack of suitable habitat, and migration barriers) there is no potential for this species to occur on the site.

South Coast Marsh Vole or Meadow Mouse is also recorded at Ballona Creek, about 0.25 miles northwest of the intersection between Lincoln and Jefferson Boulevards. The species habitat has been thought to be solely within tidal marshes found in Los Angeles, Orange and southern Ventura Counties. Most recent record for the species was in 1991 and the population is considered to be extant within the limited range. As discussed above, Parcel 9U contains mostly ruderal vegetation but also ruderal wetland, narrow-leaved willow scrub, and emergent marsh. None of these vegetation types are considered tidal marsh because there is no tidal influence on the project site and any flooding would result only from seasonal rain events. As such, the vegetation communities on the Project site do not provide suitable habitat to support this species.

As noted for the Southern California Salt Marsh Shrew, the population of the South Coast Marsh Vole at the Ballona Wetlands is fully cut-off from Parcel 9U by Ballona Creek and the main channel of the Marina del Rey Harbor, which combined is about 1,200 feet of open water, which is not possible for this species to cross. As such, when all of the factors are considered (site history, lack of suitable habitat, and migration barriers) there is no potential for this species to occur on the site.

Federal Review

On page 8 of Mr. van de Hoek's letter he states that appropriate federal review of the project has not been undertaken. The letter asserts:

FEDERAL REVIEW: No analysis has been completed on this topic, in spite of baseless and speculative conclusions by the Hardage lawyers. Thus, concerns outlined in the paragraph below are still valid.

Marcia Hanscom, Ballona Institute's Executive Director, rightly spoke to the need for the federal environmental review law, the National Environmental Policy Act (NEPA), which must also be followed. There are two significant triggers that require an EIS (Environmental Impact Statement) be completed for this project – one is the alteration of a wetland and the other is the removal of all or part of the seawall once designed and constructed under the oversight by the United States Army Corps of Engineers. **Until the federal review is undertaken, it is premature to issue these permits from the County. Federal issues raised in such a review are important for the Supervisors to know about in case of additional mitigations or other considerations that might be appropriate.**

COASTAL COMMISSION

EXHIBIT # 4
PAGE 6 OF 63

MEMORANDUM

October 23, 2015 [Updated January 18, 2016]

Page 6

While the Hardage lawyers argue that the federal government can undertake its own review later, you – as Supervisors – took an oath of office that requires you uphold the laws of California and this nation – and it is incumbent upon you to require these resource laws be followed in contemplating your own actions. Thus, our concerns about federal review remain. [Emphasis in original]

The County of Los Angeles submitted an application/Pre-Construction Notification to the Corps on July for permitting under Section 404 of the federal Clean Water Act and Section 10 of the River and Harbors Act on July 17, 2015. An updated application/Pre-Construction Notification was submitted on October 23, 2015 that accounts for the reduction in Section 404 jurisdiction and associated reduction in project impacts. As noted, the Corps visited the site on August 17, 2015 as part of the project review and is processing a Nationwide Permit (NWP) 27 for “Aquatic Habitat Restoration, Establishment, and Enhancement Activities”. It is important to note that the NWPs are issued by the Corps for activities which have been determined to have a minimal effect on the aquatic environment:

*The U.S. Army Corps of Engineers (Corps) issues nationwide permits (NWPs) to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The purpose of this regulatory action is to reissue 48 existing NWPs and issue two new NWPs. In addition, three new general conditions and three new definitions will be issued. The NWPs may be issued for a period of no more than five years. Therefore, the Corps must reissue the NWPs every five years to continue to authorize these activities. These 50 NWPs will go into effect on March 19, 2012. The NWPs authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment.*⁷ [Emphasis not in original]

In order to make a finding that a project does not have a significant effect on the environment, each Nationwide Permit is subject to review under the National Environmental Policy Act (NEPA):

A decision document, which includes an environmental assessment and Finding of No Significant Impact (FONSI), has been prepared for each NWP. These decision documents are available at: <http://www.regulations.gov> (docket ID number COE-2010-0035). They are also available by contacting Headquarters, U.S. Army Corps of

⁷ Department of the Army, Corps of Engineers. Reissuance of Nationwide Permits, Final Notice. Federal Register / Vol. 77, No. 34 / Tuesday, February 21, 2012, p. 10184.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 7 OF 43

MEMORANDUM

October 23, 2015 [Updated January 18, 2016]

Page 7

Engineers, Operations and Regulatory Community of Practice, 441 G Street NW., Washington, DC 20314-1000.⁸

As such, the Corps has already completed NEPA review for Nationwide Permit 27 as part of the NWP program and no additional federal review pursuant to NEPA is necessary.

January 12, 2016 Letter from We Are Marina del Rey

Item 4 of the January 12, 2016 Letter from We are Marina del Rey states that there would be severe, irreversible, and unmitigatable impacts to wildlife populations in Marina Del Rey due to changed conditions on the site. Item 4, is excerpted below:

4) Facilitates an imprudent renewal of a Permit that may result in severe, irreversible, and unmitigatable impacts to wildlife populations in Marina del Rey, because changed circumstances in Marina del Rey that create inconsistencies of the proposed development that are inconsistent with the Coastal Act. These changed circumstances include:

- *new photographic evidence of rare, sensitive species on the Permit site that will likely be killed during implementation if certain conditions of the Permit are not amended or added;*
- *destruction of major acreage of alternate habitat that has not yet been replaced or re-established, endangering or impairing the survival chances of a) the wildlife species reliant on the Parcel 9U wetland and uplands (the Permit's development site) and b) other local and migratory wildlife that relied on the destroyed habitats who may find sustenance on Parcel 9U until their customary habitat is once again viable; and*
- *the beginnings of a predicted record-breaking storm season, unknown at the time of the previous renewal, that will add to the already-massive deliberate habitat destructions in Marina del Rey during flood preparations, as well as add storm- and flood-driven impairments (damage or destruction) of an unknown magnitude throughout the region.*

Regarding the first bullet point, there is no new evidence for the presence of rare or special-status species on the site. Specifically, as discussed above, there is no evidence that the Southern California Salt Marsh Shrew or the South Coast Marsh Vole or Meadow Mouse occur on Parcel 9U. The purported new evidence seems to be a photograph of a great blue heron on the Parcel 9U site; however, the presence of a great blue heron does not provide any evidence or support that the site is occupied by the special-status species noted above.

⁸ Ibid., p. 10269.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 8 OF 103

MEMORANDUM

October 23, 2015 [Updated January 18, 2016]

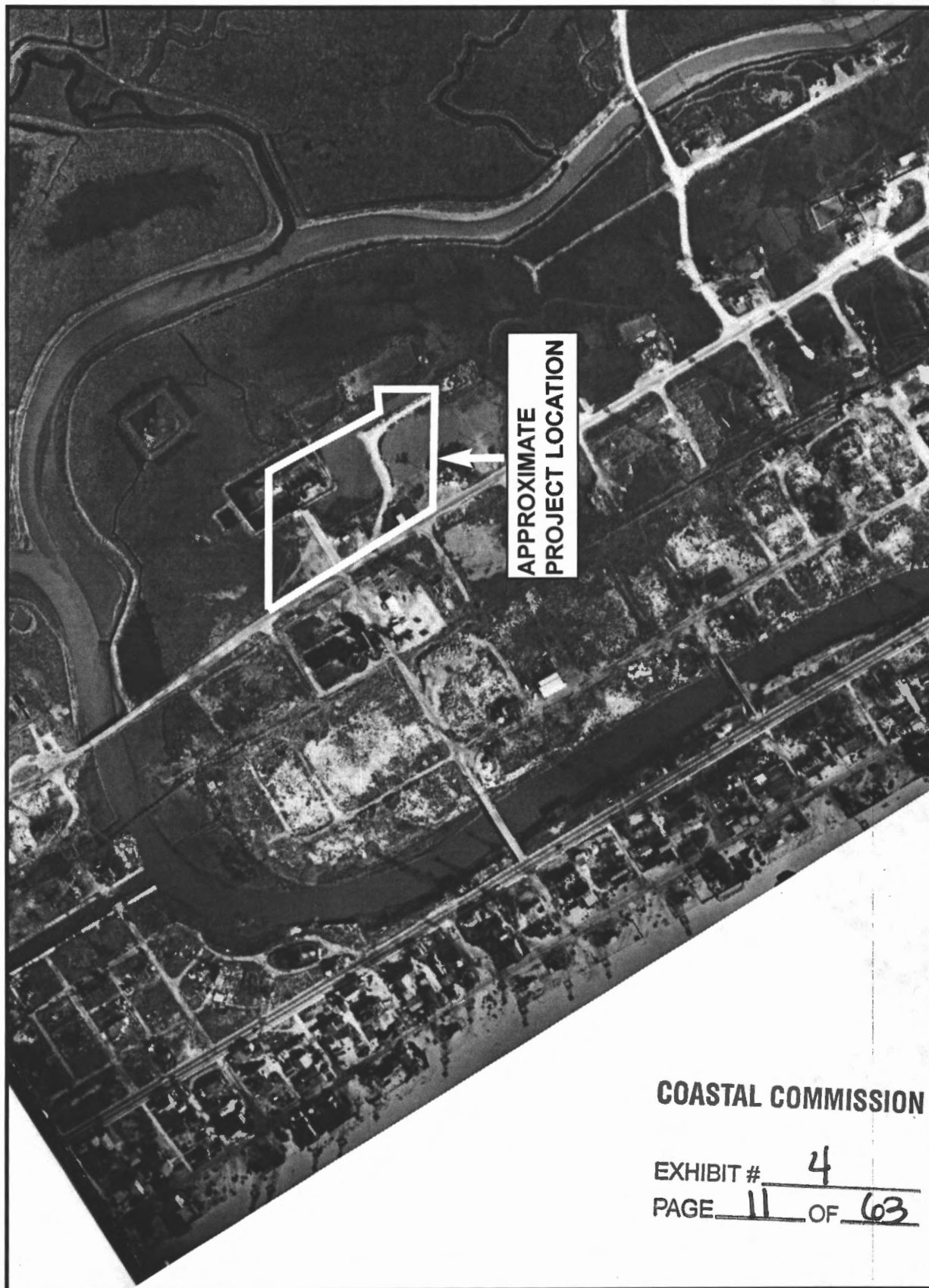
Page 8

The second bullet point in Item 4 appears to be alluding to restoration of the Oxford Basin, which has resulted in the temporary loss of non-native trees and associated foraging areas. Given the limited size of Parcel 9U totaling 3.23 acres and the lack of trees other than a few invasive Mexican fan palms (*Washingtonia robusta*), and 0.43 acre of wetlands (0.11 acre of Corps wetlands) the site exhibits limited potential for common wading birds that could use the site. The nearby Ballona Wetlands Ecological Reserve, which covers nearly 600 acres and includes a variety of wetland and upland habitat that provide substantial nesting, roosting and foraging habitat that is not available on Parcel 9U.

Relative to the third bullet point, there is no evidence that the forecasted El Niño event would result in habitat destruction within Marina Del Rey. As far as "already-massive deliberate habitat destructions in Marina Del Rey during flood preparations", it appears that this is again referring to the Oxford Basin, which is addressed above.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 9 OF 63

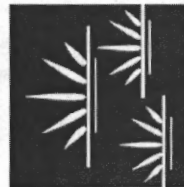


COASTAL COMMISSION

EXHIBIT # 4
PAGE 11 OF 63

Adapted from Fairchild Aerial Photography Collection in
Flight C-22403A Frame 11

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NORTH

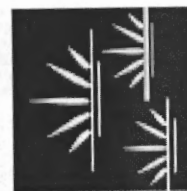
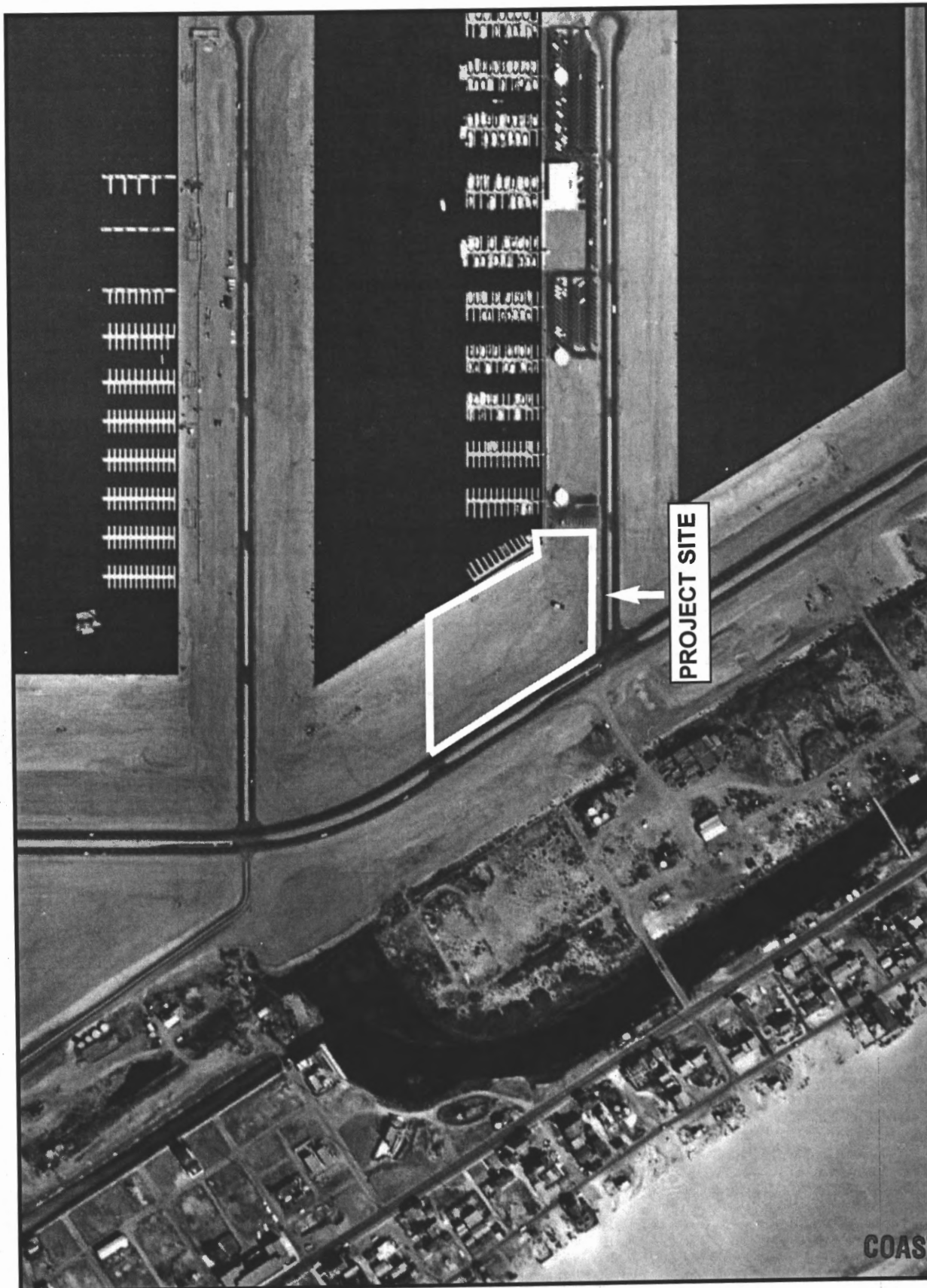


GLENN LUKOS ASSOCIATES

Exhibit 6

PARCEL 9U

1956 Historic Aerial Photograph



GLENN LUKOS ASSOCIATES

Exhibit 7

PARCEL 9U

1962 Historic Aerial Photograph

COASTAL COMMISSION

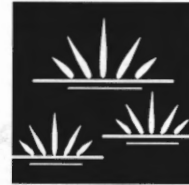
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EXHIBIT # 4
NORTH PAGE 12 OF 63

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 09860003MITI

TO: Michael Tripp, Los Angeles County Department of Beaches & Harbors

FROM: Tony Bomkamp

DATE: January 27, 2016

SUBJECT: Assertions in January 12, 1016 Letter from Ballona Institute that the Wetlands on Parcel 9U Are Expanding Resulting in "Changed Conditions"

In their January 12, 2016 Letter, the Ballona Institute makes assertions regarding the wetlands on Parcel 9U, which are excerpted below:

1. **The species types of vegetation growing on the site are clearly not suited to a tidal marsh, AND the marsh is healing and growing in size.** Since the permit for this project was approved by the Coastal Commission in December, 2012, the extent of the marsh has been expanding. This expansion of the marsh vegetation and soils is a **changed circumstance** that must be taken into account, with significant marsh vegetation growing throughout the parcel designated on the Marina del Rey LCP maps as "Parcel 9" – not just limited to the site that has been permitted for this project. A new delineation of the extent of the wetland is needed, as well as the current type of wetland and its characteristics, as the historical marsh is healing and recovering from previous human-caused impacts. Additionally, it is abundantly clear now with more than 300 Sandbar Willow Trees on the site that the nature of this marsh is freshwater/alkali and not tidal.

The Ballona Institute Assertion: "the marsh is healing and growing in size" is demonstrably false. First, in the Coastal Commission Staff Report dated November 29, 2012, the Coastal Commission determined that the wetland covers 0.43 acre based on the "one parameter" test, consistent with Coastal Act policies. Previously, in May of 2011 Glenn Lukos Associates identified the extent of wetlands as 0.43 acre, fully consistent with the extent determined by the Coastal Commission, though it should be noted that the actual configuration of the wetland delineated by GLA and the Coastal Commission was different, the total area remained the same. In 2011, GLA determined that three-parameter wetlands as regulated by the U.S. Army Corps of Engineers (Corps) pursuant to Section 404 of the Clean Water Act, covered 0.22 acre.

On August 17, 2015, GLA attended a site visit with Ms. Pamela Kostka of the Regulatory Branch of the Los Angeles District of the U.S. Army Corps of Engineers (Corps) to review the jurisdictional delineation of the site, pursuant to Section 404. During the site visit with Ms.

EXHIBIT #

4

PAGE 13 OF 63

MEMORANDUM

January 28, 2016

Page 2

Kostka, additional data was collected to determine whether the extent of the wetlands had changed in accordance with the 1987 Wetland Delineation Manual¹ (Wetland Manual) and the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region Version 2.0² (Arid West Supplement). Vegetation on the site was evaluated using the updated *The National Wetland Plant List*³ which is the "official" list authorized by the Corps for Section 404 jurisdictional delineations. Based on her review of the previous data as well as the data collected on August 17, 2015, Ms. Kostka requested that GLA reduce the amount of wetland area subject to Section 404 from 0.22 acre to 0.11 acre. Based on the recent review by the Corps, who is responsible for determining the extent of wetlands for purposes of issuing permits pursuant to Section 404 of the Clean Water Act, it is clear that wetlands on the site are not expanding. The Corps has approved the jurisdictional delineation of the wetland, and subsequently issued the Section 404 Nationwide Permit on December 11, 2015.

This is not surprising given that the site has experienced a four-year drought, which continues into early 2016 due to lower than average rainfall received thus far for the 2015/2016 rainfall season. Four years of below average rainfall has limited the ability of wetland indicator plants to colonize additional areas thus ensuring that the overall size of the wetland has not increased since the 2012 Coastal Commission determination regarding the extent of wetlands as defined under the Coastal Act. Based on GLA's recent site review with the Corps, there is no evidence to suggest that the wetlands have expanded.

Furthermore, it is also important to note that three other species of plants that occur on Parcel 9U, which previously exhibited wetland indicator statuses of FAC have been changed by the Corps to FACU.⁴ Specifically, small-flowered iceplant, (*Mesembryanthemum nodiflorum*, FACU), sicklegrass (*Parapholis incurva*, FACU), and five-hook bassia (*Bassia hyssopifolia*, FACU), which occur mostly just beyond the wetland boundaries but also within portions of the area previously identified as wetland, are now classified as most often occurring in upland areas (i.e., FACU). The change in status for these three plants would, if anything, slightly reduce the size of the wetland along the outer edges since these areas were defined as wetlands using only

¹ Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

² U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0). Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center and Engineering Laboratory.

³ Lichvar, R.W., M. Butterwick, N.C. Melvin, and W.N. Kirchner. 2014. *The National Wetland Plant List: 2014 Update of Wetland Ratings*. Phytoneuron 2014-41: 1-42.

⁴ Lichvar, Robert. November 12, 2015. Personal Communication via Email to Tony Bomkamp, confirming that the wetland status for *Bassia hyssopifolia* and *Parapholis incurva* was changed from FAC to FACU for the National Wetland Plant List. The changes, which are in effect, will be published when the next iteration of the National Wetland Plant List is published. The change for small-flowered iceplant is noticed on the NWPL website: <http://rsgisias.crrel.usace.army.mil/NWPL/#>

COASTAL COMMISSION

EXHIBIT # 4
PAGE 14 OF 63

MEMORANDUM

January 28, 2016

Page 3

the vegetation parameter. Nevertheless, the County of Los Angeles has indicated its intent to honor the Commission's 2012 wetland determination regardless of these recent changes.

Finally, as noted in the updated Memorandum dated January 18, 2016, the Ballona Institute's assertion that wetlands occur across the parcel has in the past been premised on the fact that salt marsh heliotrope (*Heliotropium curassavicum*) occurs across much of the site growing in the upland areas with upland non-native grasses and weeds. This assertion was based on the wetland rating of this species as an "Obligate" wetland plant in the *National List of Plant Species that Occur in Wetlands*⁵, which was the predecessor to the Corps' *National Wetland Plant List* cited above. Importantly, in the most recently issued version (2014) of the *National Wetland Plant List*, the wetland indicator status for salt marsh heliotrope is no longer "Obligate" (OBL) as it was changed to "Facultative Upland" (FACU), in 2012 by the Corps. FACU is an "upland" category. I do not know if Mr. van de Hoek and the Ballona Institute are aware of the changed status of this species; however, any arguments asserting that wetlands occur across the entire parcel based on the indicator status of this plant are not valid and have not been valid since 2012. As previously noted, the County of Los Angeles has indicated that they are willing to retain the 2012 wetland determination of the Commission.

⁵ Reed, P.B., Jr. 1988. National List of Plant Species that Occur in Wetlands. U.S. Fish and Wildlife Service Biological Report 88(26.10).

COASTAL COMMISSION

EXHIBIT # 4
PAGE 15 OF 63



January 21, 2016

Dr. Charles Lester, Executive Director
California Coastal Commission
45 Fremont Street
San Francisco, California 94105-2219

ATTN: Steve Hudson

Dear Dr. Lester,

**COUNTY RESPONSE TO COMMENT LETTERS REGARDING THE WETLAND
PARK CDP EXTENSION (A-5-MDR-12-161)**

My staff and I are in receipt of the protest letters, forwarded to us by your staff, that were sent to the California Coastal Commission (CCC) regarding the County's request for a one-year time extension on the Coastal Development Permit (A-5-MDR-12-161) for the Wetland Park proposed on Marina del Rey Lease Parcel 9. After reviewing the letters, we concur with your staff that no changed circumstances have been raised. Below, please find a more detailed response to the issues raised in the protest correspondence:

Claim 1: The species types of vegetation growing on the site are clearly not suited to a tidal marsh, and the marsh is healing and growing in size (Please see letters from Kathy Knight and Marcia Hanscom)

County Response: This issue has been raised several times during this project's review. The design of this tidal wetland was undertaken in close consultation with Coastal staff, and was approved by your Commission at a full hearing, in connection with an appealed Coastal Development Permit (CDP) (A-5-MDR-12-161). The decision to restore this incidental wetland – created by an abandoned construction project on dredge spoil – was fully argued at the hearing on the CDP and the CCC made a decision to restore this area to tidal salt marsh. This assertion of the objectors is an attempt to re-argue the Commission's past decision, which is beyond the scope of this extension. Contrary to the assertion by Ms. Knight and Ms. Hancom that the wetland has grown in size since last delineated, the 404 permit just recently issued by the Army Corps of Engineers (Please see Attachment 1) found that the wetland had actually shrunk from .22 acres to .11 acres, based on their August 17, 2015 site visit.

Claim 2: State and Regional Water Board actions taken in 2014-2015 have included determinations that marina waters include "toxic pollutants," which were not known nor taken into account in terms of being invited into the wetland

Caring for Your Coast

Gary Jones
Director

Kerry Silverstrom
Chief Deputy

John Kelly
Deputy Director

Brock Ladewig
Deputy Director

EXHIBIT # 4
PAGE 16 OF 63

via a tidal connection (Please see letters from Kathy Knight, Marcia Hanscom, and Ilana Wachtel)

County Response: Marina del Rey has had a Toxic Pollutants Total Maximum Daily Load (TMDL) since 2006. That TMDL identifies copper from boat hulls as a source of copper leaching into the harbor. Each project such as this must be reviewed by the Regional Water Quality Control Board (RWQCB) for compliance with clean water principles. The RWQCB has recently approved the 401 certification for this project, thereby indicating no conflict with laws concerning water quality. Significantly, with respect to this particular allegation, the RWQCB's 401 certification states in the project description section, "17. Proposed Compensatory Mitigation: *The proposed Project will enhance the aquatic function of the existing excavated basin. The Project will result in an increase in both the quantity of wetland, from .11 acre to .75 acre as well as the quality of the wetlands.*" (Emphasis added: Please see Attachment 2)

Claim 3: There is, according to the expert opinion of wildlife biologist Robert Roy van de Hoek that the possibility of one or two small mammal species exist on the site, species which are on the California List of Species of Special Concern. (Please see letters from Kathy Knight, Marcia Hanscom, and Nancy Marino)

County Response: Mr. Van de Hoek's claims are based on the conjecture that because two small mammals may continue to exist on the Ballona wetlands, they must, by extension, exist on the subject parcel. Mr. Van de Hoek fails to explain how the two small mammal species were able to traverse the Marina's streets or main channel to make the trip to this fragmented and landlocked site surrounded by urban development. Nonetheless, the County of Los Angeles caused a survey to be performed by an expert in sensitive species assessments, and that survey revealed that there was no evidence of either species at the site. (Please see attachments 3 and 4)

Claim 4: Sea level rise and climate change circumstances, policies and knowledge have changed since the permit was originally granted. (Please see letters from Kathy Knight and Marcia Hanscom)

County Response: Sea-level rise and climate change were both well-known concepts at the time that the CDP was unanimously approved by the CCC. The Wetland Park Restoration Plan required by the CDP was designed with these issues in mind. Circumstances have not changed regarding this issue with respect to the project

Claim 5: New information about El Nino and climate change relating to converting a freshwater/alkali wetland to a tidal marsh is needed to be analyzed. (Please see letters from Kathy Knight, Marcia Hanscom, and Nancy Marino)

County Response: The conversion of an artificially-created and degraded seasonal fresh water wetland to a tidally-influenced wetland was thoroughly analyzed by Coastal staff, and approved by the Coastal Commission. The transition to a salt water marsh regime is a positive transition if sea level rise occurs in a major way and the land is

inundated. El Nino was a known phenomenon at the time that the permit was approved. The temporary impacts of an El Nino are not expected to have an impact on the project, as no grading work will be done until after the storm season has passed.

Claim 6: A legislative audit committee activity has provided new information about park tradeoff. (Please see letters from Kathy Knight and Marcia Hanscom)

County Response: Contrary to the claim made in the letters from Ms. Knight, and Ms. Hanscom, the audit did not provide new information about the park trade off. The report made recommendations to the County, such as keeping the public updated on the intended use of the Coastal Improvement Fund (CIF), but did not find that the County was operating the CIF in violation of Local Coastal Program. The County has implemented all of the recommendations made as part of the audit.

Claim 7: Destruction of major acreage of alternative habitat that has not yet been replaced or re-established, endangering or impairing the survival chances of a) the wildlife species reliant on the Parcel 9U wetland and uplands (the Permit's development site) and b) other local and migratory wildlife that relied on the destroyed habitats who may find sustenance on Parcel 9U until their customary habitat is once again viable. (Please see letter from Nancy Marino)

County Response: It is unclear what alternative habitat Ms. Marina is referring to. The nearby Oxford Basin Enhancement project is currently under construction by the Los Angeles County Department of Public Works. This project received a Coastal Development Permit from the Coastal Commission. Regarding migratory wildlife needing to find similar habitat to that found on Parcel 9, the 600-acre Ballona Wetlands is located approximately 3,400 feet from the site.

Please feel free to contact Michael Tripp of my staff at (310) 305-9537 if you have any questions.

Very truly yours,



GARY JONES, DIRECTOR

SHK:GJ:mrt

c: Jack Ainsworth, Senior Deputy Director
Teresa Henry, District Manager
Dr. Jonna Engel, Ecologist

Attachments

COASTAL COMMISSION

EXHIBIT # 4
PAGE 18 OF 63



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017

December 11, 2015

Michael Tripp
County of Los Angeles Department of Beaches and Harbors
13837 Fiji Way
Marina Del Rey, California 90292

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT VERIFICATION

Dear Mr. Tripp:

I am responding to your request (SPL-2015-00503-PKK) for a Department of the Army permit for your proposed project, Parcel 9U Wetland Park Project. The proposed project is located in the city of Marina del Rey, Los Angeles County, California (Lat. 33.974266°N, Long. -118.457109°W).

Because construction of this project would result in a discharge of dredged and/or fill material into waters of the United States and would place structures or consist of work in or affecting navigable waters of the United States a Department of the Army permit is required pursuant to Section 404 of the Clean Water Act (33 USC 1344; 33 CFR parts 323 and 330) and Section 10 of the Rivers and Harbors Act (33 USC 403). I have determined your proposed project, if constructed as described in your application, would comply with Nationwide Permit (NWP) 27: Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Specifically, and as shown in the enclosed figures, Parcel 9 U Wetland Park Conceptual Restoration Plan and Neptune Marina Wetland Sheets 1 and 2, you are authorized to:

1. Push two 12-inch PVC pipes through the bottom of the seawall footing from the landward side of the seawall to reestablish the tidal connection on 0.75 acre of land. The pipes will extend 12 inches from the seawall into non-wetland waters of the United States.
2. Excavate 700 cubic yards of fill and discharge 120 cubic yards of fill over 0.114 acre of wetland waters of the United States to create 0.75 acre of tidal marsh.

For this NWP verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the non-discretionary Special Conditions listed below:

1. This permit is contingent upon the issuance of a Coastal Zone Management Act (CZMA) consistency certification and section 401 Water Quality Certification (WQC). The Permittee shall abide by the terms and conditions of the CZMA consistency certification and Clean Water Act section 401 WQC. The Permittee shall submit the CZMA consistency certification and section 401 WQC to the Corps Regulatory Division (preferably via email) within two weeks of receipt from the

COASTAL COMMISSION

EXHIBIT # 4
PAGE 19 OF 63

issuing state agency. The Permittee shall not proceed with construction until receiving an e-mail or other written notification from Corps Regulatory Division acknowledging the CZMA consistency certification and Clean Water Act 401 WQC has been received, reviewed, and determined to be acceptable. If the RWQCB fails to act on a valid request for certification within two months after receipt of a complete application, please notify the Corps so we may consider whether a waiver of water quality certification has been obtained. If the California Coastal Commission fails to act on a valid request for concurrence with your certification within six months after receipt, please notify the Corps so we may consider whether to presume a concurrence has been obtained.

2. Incidents where any individuals of fish, sea turtle, or marine plant species listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this NWP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Los Angeles District of the U.S. Army Corps of Engineers at (213) 452-3425. The finder should leave the plant or animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure, or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

3. Within 45 calendar days of completion of authorized work in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a post-project implementation memorandum including the following information:

- A) Date(s) work within waters of the U.S. was initiated and completed;
- B) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions taken or proposed to achieve compliance);
- C) Color photographs (including map of photopoints) taken at the project site before and after construction for those aspects directly associated with permanent impacts to waters of the U.S. such that the extent of authorized fills can be verified;
- D) One copy of "as built" drawings for the entire project. Electronic submittal (Adobe PDF format) is preferred. All sheets must be signed, dated, and to-scale. If submitting paper copies, sheets must be no larger than 11 x 17 inches; and
- E) Signed Certification of Compliance (attached as part of this permit package).

This verification is valid through March 18, 2017. If on March 18, 2017 you have commenced or are under contract to commence the permitted activity you will have an additional twelve (12) months to complete the activity under the present NWP terms and conditions. However, if I discover noncompliance or unauthorized activities associated with the permitted activity I may request the use of discretionary authority in accordance with project

COASTAL COMMISSION

EXHIBIT # 4
PAGE 20 OF 63

CFR § 330.4(e) and 33 CFR § 330.5(c) or (d) to modify, suspend, or revoke this specific verification at an earlier date. Additionally, at the national level the Chief of Engineers, any time prior to March 18, 2017, may chose to modify, suspend, or revoke the nationwide use of a NWP after following procedures set forth in 33 CFR § 330.5. It is incumbent upon you to comply with all of the terms and conditions of this NWP verification and to remain informed of any change to the NWPs.

A preliminary jurisdictional determination (JD) has been conducted to determine the extent of U.S. Army Corps of Engineers (Corps) geographic jurisdiction, upon which this NWP verification is based. A preliminary JD is advisory in nature and is a written indication Corps geographic jurisdiction may be present on a particular site, but is not appealable. An approved JD is an official Corps determination of the precisely identified limits of Corps geographic jurisdiction on a particular site, and is appealable. Should you wish to appeal an approved JD, you may request an administrative appeal under Corps regulations at 33 C.F.R. part 331. Please refer to the enclosed Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form for more information.

A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in the regulatory program. If you have any questions, please contact Pamela Kostka at 213-452-3420 or via e-mail at Pamela.K.Kostka@usace.army.mil. Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Sincerely,

SWENSON.DANIEL.PA
TTERSON.1081348363

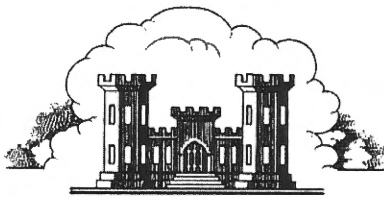
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ou=USA
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Daniel P. Swenson, D.Env.
Chief, L.A. & San Bernardino Section
North Coast Branch
Regulatory Division

Enclosures

COASTAL COMMISSION

EXHIBIT # 4
PAGE 21 OF 63



LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

CERTIFICATE OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT

Permit Number: *SPL-2015-00503-PK*

Name of Permittee: *Michael Tripp, County of Los Angeles Department of Beaches and Harbors*

Date of Issuance: *December 11, 2015*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it by **ONE** of the following methods;

1) Email a digital scan of the signed certificate to Pamela.K.Kostka@usace.army.mil
OR

2) Mail the signed certificate to
U.S. Army Corps of Engineers
ATTN: Regulatory Division SPL-2015-00503-PKK
915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017

I hereby certify that the authorized work and any required compensatory mitigation has been completed in accordance with the NWP authorization, including all general, regional, or activity-specific conditions. Furthermore, if credits from a mitigation bank or in-lieu fee program were used to satisfy compensatory mitigation requirements I have attached the documentation required by 33 CFR 332.3(l)(3) to confirm that the appropriate number and resource type of credits have been secured.

Signature of Permittee

Date

COASTAL COMMISSION

EXHIBIT # 4
PAGE 22 OF 43

Enclosure 1: NATIONWIDE PERMIT NUMBER 27: Aquatic Habitat Restoration, Establishment, and Enhancement Activities. TERMS AND CONDITIONS

1. Nationwide Permit 27: Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Terms:

Your activity is authorized under Nationwide Permit Number (NWP): 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities and is subject to the following terms:

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services. To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site. This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments. Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the

COASTAL COMMISSION

EXHIBIT # 4
PAGE 23 OF 63

landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. Reporting: For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP. Notification. The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27), except for the following activities: (1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, or their designated state cooperating agencies; (2) Voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSM or the applicable state agency. However, the permittee must submit a copy of the appropriate documentation. (Sections 10 and 404) Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

2. Nationwide Permit General Conditions: The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of

COASTAL COMMISSION

EXHIBIT # 4
PAGE 24 OF 63

the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 25 OF 63

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.
(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the

COASTAL COMMISSION

project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on,

COASTAL COMMISSION

determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 28 OF 63

22. Designated Critical Resource Waters. Critical resource waters include NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.
- (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
- (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.
23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:
- (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
- (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
- (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.
- (2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
- (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

COASTAL COMMISSION

EXHIBIT # 4
PAGE 29 OF 63

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 30 OF 63

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required

COASTAL COMMISSION

EXHIBIT # 4
PAGE 31 OF 103

compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer.

However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

- (b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

COASTAL COMMISSION

EXHIBIT # 4
PAGE 32 OF 63

- (2) Location of the proposed project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
- (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and
- (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.
- (c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.
- (d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.
- (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300

COASTAL COMMISSION

linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

3. Regional Conditions for the Los Angeles District:

In accordance with General Condition Number 27, "Regional and Case-by-Case Conditions," the following Regional Conditions, as added by the Division Engineer, must be met in order for an authorization by any Nationwide to be valid:

1. For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.
2. Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-52 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert

COASTAL COMMISSION

EXHIBIT # 4
PAGE 34 OF 63

regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).

3. When a pre-construction notification (PCN) is required, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified in accordance with General Condition 31 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at: <http://www.spl.usace.army.mil/missions/regulatory>. In addition, the PCN shall include:
 - a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
 - b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los Angeles District Regulatory Division* (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/missions/regulatory/); and
 - c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.
4. Submission of a PCN pursuant to General Condition 31 and Regional Condition 3 shall be required for all regulated activities in the following locations:
 - a. All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).
 - b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.
 - c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
 - d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 35 OF 63

5. Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under NWP's 5, 6, and 27 with the submission of a PCN in accordance with General Condition 31 and Regional Condition 3.
6. Individual Permits shall be required in Murrieta Creek and Temecula Creek watersheds in Riverside County for new permanent fills in perennial and intermittent watercourses otherwise authorized under NWP's 29, 39, 42 and 43, and in ephemeral watercourses for these NWP's for projects that impact greater than 0.1 acre of waters of the United States. In addition, when NWP 14 is used in conjunction with residential, commercial, or industrial developments the 0.1 acre limit would also apply.
7. Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.
8. In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has revoked the use of the following 26 selected NWP's within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. Consequently, these NWP's are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.
9. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWP's 29, 39, 40 and 42, 43, 44, 51 and 52 or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:
 - a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characters observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.
 - b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 31 and Regional Condition 3;
 - c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
 - d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.
10. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 36 OF 63

4. Further information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - (a) This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - (b) This permit does not grant any property rights or exclusive privileges.
 - (c) This permit does not authorize any injury to the property or rights of others.
 - (d) This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - (a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - (b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - (c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - (d) Design or construction deficiencies associated with the permitted work.
 - (e) Damage claims associated with any future modification; suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - (a) You fail to comply with the terms and conditions of this permit.
 - (b) The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - (c) Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

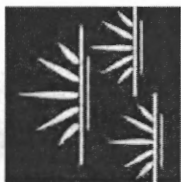
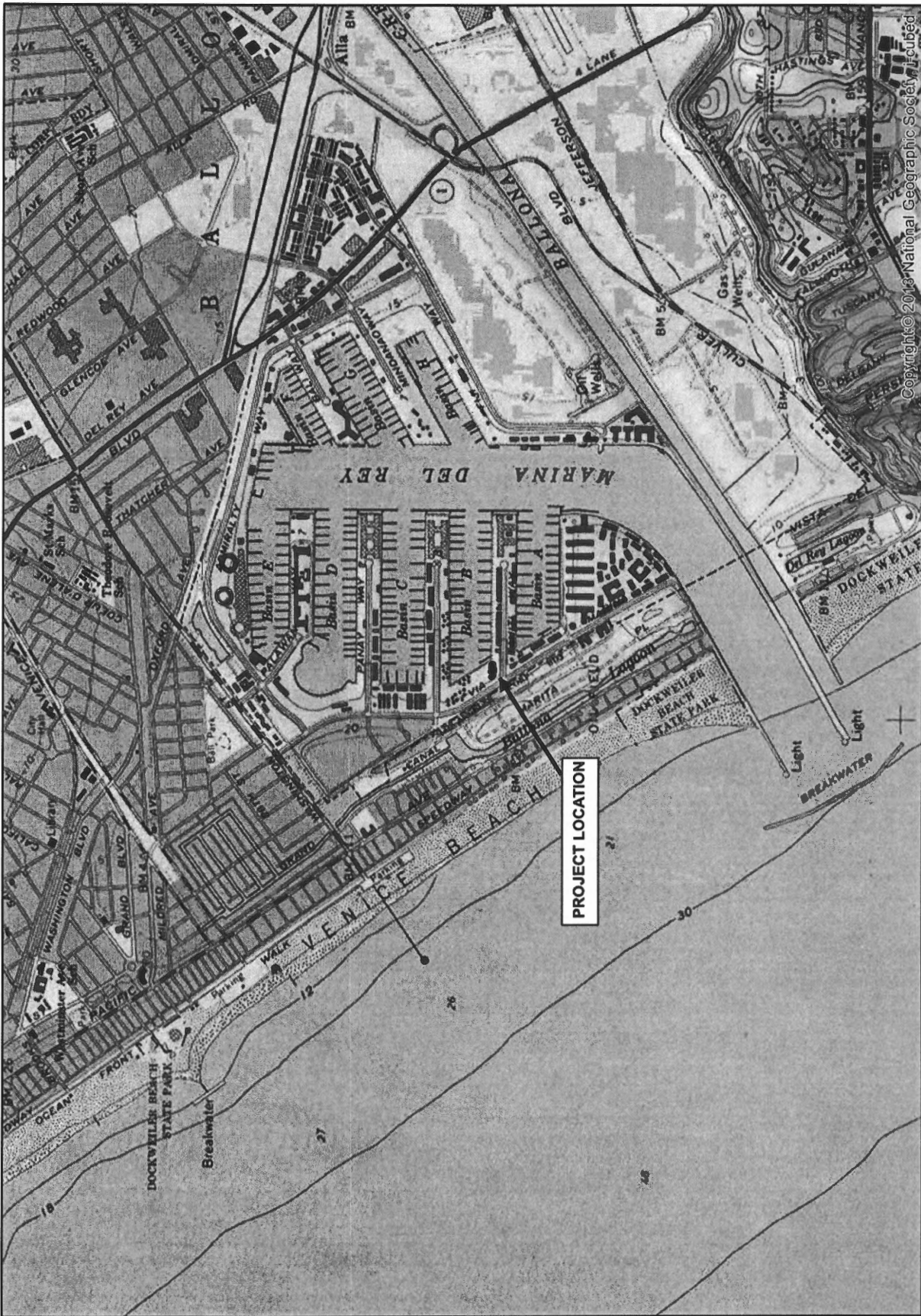
COASTAL COMMISSION

EXHIBIT # 4
PAGE 37 OF 63

6. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time.
7. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition H below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
8. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 38 OF 63



GLENN LUKOS ASSOCIATES

Exhibit 2

PARCEL 9U

Vicinity Map

Adapted from USGS Venice, CA quadrangle



COASTAL COMMISSION

EXHIBIT # 4

PAGE 39 OF 63



- Coastal Prairie
- Coastal Sage Scrub
- Fire Lane
- Low Marsh
- Mid Marsh
- Subtidal
- Trail
- Upper Marsh



0 17.5 35 70
Feet

1 Inch = 35 feet

Coastal Salt Marsh Habitat (Wetland Creation- 32,656 sq ft 0.75-acre)

Low Marsh:
California cord grass (*Spartina foliosa*)
Saltwort (*Batis maritima*)

Mid-Marsh:
Common pickleweed (*Salicornia virginica*)
Alkali heath (*Frankenia salina*)
Saltgrass (*Distichlis spicata*)

Upper-Marsh:
Parish's saltwort (*Arthrocnemum subterminale*)
Southwestern spiny rush (*Juncus leopoldi*)

Coastal Prairie Habitat (within 25-foot Vegetation Buffer)
Purple needlegrass (*Stipa pulchra*)
Coast range melic (*Melica imperata*)
Wishbone bush (*Mirabilis californica*)
Coastal goldenbush (*Isocoma menziesii*)
Blue eyed grass (*Syntherisma bellum*)

Coastal Sage Scrub Habitat (within 25-foot Vegetation Buffer)
California sagebrush (*Artemisia californica*)
Bush sunflower (*Encelia californica*)
Buckwheat (*Eriogonum fasciculatum*)
Sea cliff buckwheat (*Eriogonum parvifolium*)
Purple needlegrass (*Stipa pulchra*)

COASTAL COMMISSION

PARCEL 9U

Wetland Park Conceptual Restoration Plan

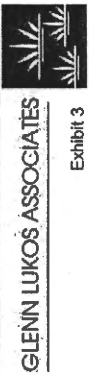


Exhibit 3

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

| | | | | | |
|--|----------------------|---------------------------------|--------------------------------|--|--|
| District Office | Los Angeles District | File/ORM # | SPL-2015-00503 | PJD Date: | Dec 9, 2015 |
| State | CA | City/County | Marina del Rey/ Los Angeles | Name/ Address of Person Requesting PJD | Michael Tripp County of Los Angeles Department of Beaches and Harbors 13837 Fiji Way Marina del Rey, California 90292 |
| Nearest Waterbody: | Pacific Ocean | Location: TRS. Lat/Long or UTM: | 33.974266, -118.457109 | | |
| Identify (Estimate) Amount of Waters in the Review Area: | | | Name of Any Water Bodies Tidal | | |
| Non-Wetland Waters. | | | on the Site Identified as | | |
| Stream Flow | | | Section 10 Waters: | | |
| 303 linear ft 204 width 1.5 acres N/A | | | Marina del Rey | | |
| Wetlands: 0.114 acre(s) Cowardin Class. Palustrine, emergent | | | Date of Field Trip | | |
| | | | Aug 17, 2015 | | |

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below)

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Maps submitted by GIA
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☒ Office concurs with data sheets/delineation report.
 - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps
- ☐ Corps navigable waters' study: _____
- ☐ U.S. Geological Survey Hydrologic Atlas:
 - ☐ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite quad name: _____
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: _____
- ☐ National wetlands inventory map(s). Cite name: _____
- ☐ State/Local wetland inventory map(s): _____
- ☐ FEMA/FIRM maps: _____
- ☐ 100-year Floodplain Elevation is: _____
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth 2015
 - ☐ Other (Name & Date): _____
- ☐ Previous determination(s). File no. and date of response letter: _____
- ☐ Other information (please specify): _____

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

KOSTKA.PAMELA.K.14
68176625

Digitally signed by KOSTKA.PAMELA.K.1468176625
DN: cn=US, ou=U.S. Government, ou=DoD, ou=PR,
ou=USA, cn=KOSTKA.PAMELA.K.1468176625
Date: 2015.12.11 12:46:44 -0500

Signature and Date of Regulatory Project Manager
(REQUIRED)

Michael Tripp
Signature and Date of Person Requesting Preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

EXHIBIT #

PAGE 41 OF 63

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Appendix A - Sites

District Office File/ORM # PJD Date:
State City/County Person Requesting PJD

| Site Number | Latitude | Longitude | Cowardin Class | Est. Amount of Aquatic Resource in Review Area | Class of Aquatic Resource |
|-------------|-----------|-------------|-------------------------|--|---------------------------|
| 1 | 33.974213 | -118.457280 | Palustrine, scrub-shrub | 0.004 acre | Non-Section 10 wetland |
| 2 | 33.974193 | -118.456927 | Palustrine, scrub-shrub | 0.11 acre | Non-Section 10 wetland |
| 3 | 33.974490 | -118.456529 | Marine | 1.5 acres | Section 10 tidal |
| | | | | | |
| | | | | | |
| | | | | | |

Notes:

Site 1: Wetland area 1
Site 2: Wetland area 2
Site 3: Pacific Ocean

Wetland boundaries based off submitted wetland delineation data sheets.

COASTAL COMMISSION

EXHIBIT #

4

PAGE

43

OF 63



Source: Fed. Digital Data, Google, Earthstar Graphics, ENESatellite SA, USDA, USGS, AEX, Getmapping, Aergrid, Best Digital, and the CIA floor Government.

כאמור, המעורבות של הממשלה במסגרת המסחר חופשי היא בעלת אופי שונה מאשר במסגרת המסחר המוגבל. במסגרת המסחר המוגבל, הממשלה נדרשת להגביל את הפעילות של הממשלה במסגרת המסחר חופשי, ובמסגרת המסחר חופשי, הממשלה נדרשת להגביל את הפעילות של הממשלה במסגרת המסחר המוגבל.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Michael Tripp, County of Los Angeles Department of Beaches and Harbors

File Number: SPL-2015-00503

Date: December 11, 2015

Attached is:

See Section below

| | | |
|---|--|---|
| | INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission) | A |
| | PROFFERED PERMIT (Standard Permit or Letter of permission) | B |
| | PERMIT DENIAL | C |
| | APPROVED JURISDICTIONAL DETERMINATION | D |
| X | PRELIMINARY JURISDICTIONAL DETERMINATION | E |

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 45 OF 63

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Pamela Kostka
Project Manager
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 930
ATTN: Regulatory Division, CESPL-RG
Los Angeles, California 90017-3401
Phone: 213-452-3420
Email: pamela.k.kostka@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Thomas J. Cavanaugh
Administrative Appeal Review Officer,
U.S. Army Corps of Engineers
South Pacific Division
1455 Market Street, 2052B
San Francisco, California 94103-1399
Phone: (415) 503-6574
Fax: (415) 503-6646
Email: thomas.j.cavanaugh@usace.army.mil

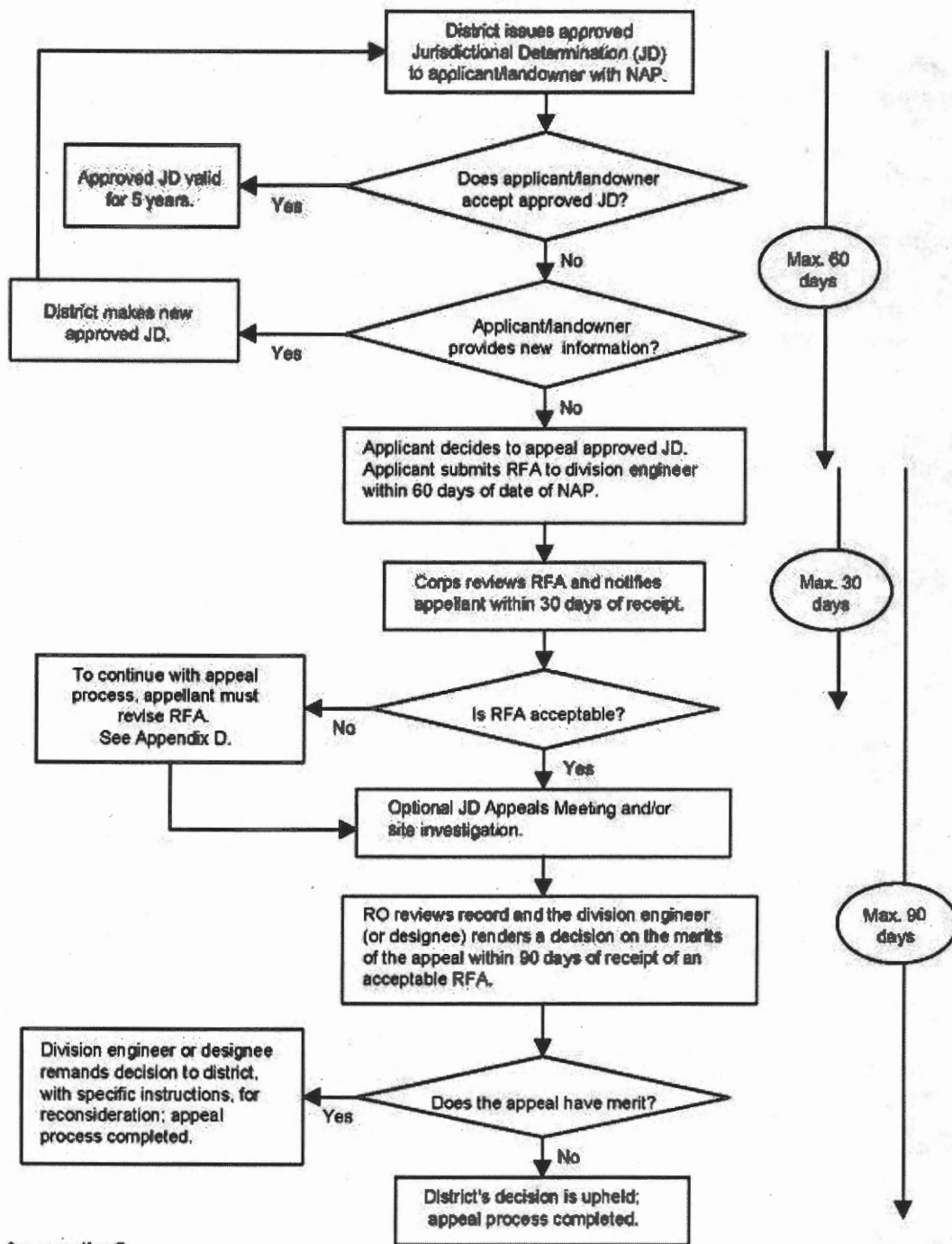
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

| | | |
|---|-------|-------------------|
| <hr/> Signature of appellant or agent. | Date: | Telephone number: |
|---|-------|-------------------|

COASTAL COMMISSION

EXHIBIT # 4
PAGE 46 OF 63

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

§ 331.5 Criteria.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 47 OF 63

(a) *Criteria for appeal* —(1) *Submission of RFA*. The appellant must submit a completed RFA (as defined at §331.2) to the appropriate division office in order to appeal an approved JD, a permit denial, or a declined permit. An individual permit that has been signed by the applicant, and subsequently unilaterally modified by the district engineer pursuant to 33 CFR 325.7, may be appealed under this process, provided that the applicant has not started work in waters of the United States authorized by the permit. The RFA must be received by the division engineer within 60 days of the date of the NAP.

(2) *Reasons for appeal*. The reason(s) for requesting an appeal of an approved JD, a permit denial, or a declined permit must be specifically stated in the RFA and must be more than a simple request for appeal because the affected party did not like the approved JD, permit decision, or the permit conditions. Examples of reasons for appeals include, but are not limited to, the following: A procedural error; an incorrect application of law, regulation or officially promulgated policy; omission of material fact; incorrect application of the current regulatory criteria and associated guidance for identifying and delineating wetlands; incorrect application of the Section 404(b)(1) Guidelines (see 40 CFR Part 230); or use of incorrect data. The reasons for appealing a permit denial or a declined permit may include jurisdiction issues, whether or not a previous approved JD was appealed.

(b) *Actions not appealable*. An action or decision is not subject to an administrative appeal under this part if it falls into one or more of the following categories:

(1) An individual permit decision (including a letter of permission or a standard permit with special conditions), where the permit has been accepted and signed by the permittee. By signing the permit, the applicant waives all rights to appeal the terms and conditions of the permit, unless the authorized work has not started in waters of the United States and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7;

(2) Any site-specific matter that has been the subject of a final decision of the Federal courts;

(3) A final Corps decision that has resulted from additional analysis and evaluation, as directed by a final appeal decision;

(4) A permit denial without prejudice or a declined permit, where the controlling factor cannot be changed by the Corps decision maker (e.g., the requirements of a binding statute, regulation, state Section 401 water quality certification, state coastal zone management disapproval, etc. (See 33 CFR 320.4(j)));

(5) A permit denial case where the applicant has subsequently modified the proposed project, because this would constitute an amended application that would require a new public interest review, rather than an appeal of the existing record and decision;

(6) Any request for the appeal of an approved JD, a denied permit, or a declined permit where the RFA has not been received by the division engineer within 60 days of the date of the NAP;

(7) A previously approved JD that has been superseded by another approved JD based on new information or data submitted by the applicant. The new approved JD is an appealable action;

(8) An approved JD associated with an individual permit where the permit has been accepted and signed by the permittee;

(9) A preliminary JD; or

(10) A JD associated with unauthorized activities except as provided in §331.11.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 48 OF 63



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017

January 12, 2016

Mr. Gary Jones and Mr. Brock Ladewig
Los Angeles County Department of Beaches and Harbors
13837 Fiji Way
Marina del Rey, California 90292

Dear Mr. Jones and Mr. Ladewig:

I am responding to your December 7, 2015 letter to Colonel Kirk Gibbs, Commander of the U.S. Army Corps of Engineers Los Angeles District, concerning the proposed wetland park project located on Marina del Rey lease parcel 9 (U.S. Army Corps of Engineers File Number: SPL-2015-00503). Your letter served to notify the Corps of an informational meeting held regarding the construction of the wetland park and provide an overview of the proposed project.

We are aware of the proposed wetland park project and have completed processing the Clean Water Act section 404 Nationwide Permit verification request submitted by your agency on July 21, 2015.

After the informational meeting referenced in your letter, the Corps received phone calls from a few concerned residents of Marina del Rey. The residents expressed a wide array of concerns with the proposed project. However, the majority of the issues raised were outside of the Corps section 404 regulatory purview.

The Nationwide Permit verification letter for the parcel 9 wetland park project was issued to your agency on December 11, 2015. The issued verification letter was conditional pending Corps receipt of the project's Clean Water Act section 401 Water Quality Certification (WQC) and Coastal Commission-approved Coastal Development Permit (CDP). Since the issuance of the verification letter the Corps received the project 401 WQC on December 17, 2015.

Thank you for providing the project overview and status update. If you have any questions, please contact me at 805-585-2141 or at David.J.Castanon@usace.army.mil or your staff may contact Ms. Pam Kostka, Project Manager in our Regulatory Division at 213-452-3420 or via e-mail at Pamela.K.Kostka@usace.army.mil.

Sincerely,

CASTANON.DAV
ID.J.1231966150
David J. Castanon
Chief, Regulatory Division

Digitally signed by
CASTANON.DAVID.J.1231966150
DN: cn=US, o=U.S. Government, ou=DoD,
ou=PRC, ou=USA,
cn=CASTANON.DAVID.J.1231966150
Date: 2016.01.12 11:32:32 -0800

| Department of Beaches and Harbors | | |
|--------------------------------------|------|-----|
| Jan. 19, 2016 | | |
| | Info | Act |
| Director | ✓ | |
| Chief Deputy Director | | |
| Deputy Director | ✓ | |
| Executive Assistant | | |
| Admin. Services | | |
| Asset Management | | |
| Operational Services | | |
| Community Services | | |
| Planning | ✓ | |

COASTAL COMMISSION

EXHIBIT # 4
PAGE 49 OF 63



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

Mr. Michael Tripp
County of Los Angeles
Department of Beaches and Harbors
13837 Fiji Way
Marina Del Rey, CA 90292

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7008 1830 0004 3360 1066

**TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION FOR
PROPOSED PARCEL 9U WETLAND PARK PROJECT (Corps' Project No. 2015-00503-
PKK), MARINA DEL REY HARBOR, LOS ANGELES COUNTY (File No. 15-080)**

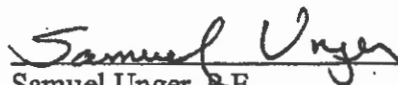
Dear Mr. Tripp:

Board staff has reviewed your request on behalf of County of Los Angeles, Department of Beaches and Harbors (Applicant) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on October 16, 2015.

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

Please read this entire document carefully. The Applicant shall be liable civilly for any violations of this Certification in accordance with the California Water Code. This Certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this Certification action, please contact Valerie Carrillo Zara, P.G., Lead, Section 401 Program, at (213) 576-6759.


Samuel Unger, P.E.
Executive Officer

Dec. 11, 2015
Date

COASTAL COMMISSION

EXHIBIT # 4
PAGE 50 OF 63

CHARLES STRINGER, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

DISTRIBUTION LIST

Tony Bomkamp (via electronic copy)
Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630

Bill Orme (via electronic copy)
State Water Resources Control Board
Division of Water Quality
P.O. Box 944213
Sacramento, CA 94244-2130

Daniel P. Swenson (via electronic copy)
U.S. Army Corps of Engineers
Regulatory Branch, Los Angeles District
915 Wilshire Blvd., Suite 1101
Los Angeles, CA 90017

Elizabeth Goldmann (via electronic copy)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street, WRT-2-4
San Francisco, CA 94105

Melissa Scianni (via electronic copy)
600 Wilshire Blvd, Suite 1460
Los Angeles, CA 90017
213-244-1817

G. Mendel Stewart
Johnathan Snyder
U.S. Fish and Wildlife Service
2177 Salk Ave. Carlsbad Ca, 92008

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

COASTAL COMMISSION

ATTACHMENT A

Project Information

File No: 15-080

1. Applicant: Michael Tripp
County of Los Angeles, Department of Beaches and Harbors
13837 Fiji Way
Marina Del Rey, CA 90292

Phone: (310) 305-9537

2. Applicant's Agent: Tony Bomkamp
Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630

Phone: (949) 837-0404 x41 Fax: (949) 837-5834

3. Project Name: Parcel 9U Wetland Park

4. Project Location: Marina Del Rey, Los Angeles County

| <u>Latitude</u> | <u>Longitude</u> |
|-----------------|------------------|
| 33.975089 | 118.457190 |
| 33.975070 | 118.458295 |
| 33.974644 | 118.457977 |
| 33.974210 | 118.457646 |
| 33.973893 | 118.457359 |
| 33.973887 | 118.456437 |
| 33.974255 | 118.456452 |
| 33.974685 | 118.456891 |

5. Type of Project: Wetland restoration

6. Project Purpose: The proposed Project will construct a 1.46-acre public "Wetland Park" which will include creation of a tidal wetland totaling 0.75-acre. The goal of the restoration Project is to create coastal salt marsh habitat with a "muted" tidal regime that supports a suite of native salt marsh plants that also exhibits enhanced functions for wildlife.

7. Project Description: Parcel 9U encompasses approximately 3.66 acres, and is located in Marina Del Rey. Parcel 9U is generally bounded by Via Marina to the west, Basin B of Marina Del Rey to the east, residential development to the north, and Tahiti Way to the south.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 52 OF 63

ATTACHMENT A

Project Information File No. 15-080

The proposed Project will construct and maintain a 1.46 acre public tidal wetland and upland park including site grading and extraction of existing structural pilings, and constructing a tidal inlet through the marina seawall.

Construction of the park and establishment of the 0.75-acre wetland will include re-contouring the existing depression and establishment of a "muted" tidal connection to provide enhanced hydrologic and habitat functions. The proposed "muted" tidal salt marsh will be surrounded by a 25 foot buffer separating the wetland area from surrounding development. Areas surrounding the basin would be planted with coastal prairie and coastal sage scrub to provide a buffer zone for the restored saltwater marsh.

The Wetland Park will include:

- (a) a 28-foot wide fire access lane along the northern boundary of the Wetland Park, with a 72-inch wide meandering concrete pedestrian walking path;
- (b) a picnic table in northwestern corner;
- (c) a 72-inch wide decomposed granite path meandering around the perimeter of the Wetland Park;
- (d) a viewing area at the western side of the Wetland Park;
- (e) park landscaping containing native and wetland plant species;
- (f) a connection pipe that will feed the wetland pipe tidally;
- (g) a 28-foot wide waterfront pedestrian promenade along the Parcel 9 bulkhead;
- (h) and an educational gathering area with informational signage, seating, and an overhead wood trellis in the northeastern corner of the Wetland Park.

The creation of the Wetland Park will require approximately 1,302 cubic yards of cut and 3,177 cubic yards of fill.

The Project will result in temporary impacts to waters of the U.S. and State. Specifically, the necessary grading to create tidally influenced coastal salt marsh will require modification of the artificially created basin with subsequent re-contouring. Tidal connection will be provided by means of two pipes, which will connect the marina to the wetland.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 53 OF 63

ATTACHMENT A

Project Information File No. 15-080

8. Federal Agency/Permit: U.S. Army Corps of Engineers
NWP No. 27 (Permit No. 2015-00503-PKK)
9. Other Required
Regulatory Approvals: California Coastal Commission,
Coastal Development Permit (A-5-MDR-12-161)
10. California
Environmental Quality
Act Compliance: The County of Los Angeles, Department of Regional Planning
approved the project's Final Environmental Impact Report (EIR
SCH No. 2007031114) on January 10, 2013.
11. Receiving Water: Marina Del Rey Harbor (Hydrologic Unit Code: 180701040502)
12. Designated Beneficial
Uses: NAV, REC-1, REC-2, COMM, MAR, WILD, SHELL
13. Impacted Waters of the
United States: Federal jurisdictional wetlands: 0.11 temporary acres
14. Dredge Volume: None
15. Related Projects
Implemented/to be
Implemented by the
Applicant: Private partners plan to build apartments, hotel and public boat
facilities on adjacent parcels; these planned projects and the
Wetland Park project were considered in a single EIR approved by
the County of Los Angeles January 10, 2013.
16. Avoidance/
Minimization
Activities: The Applicant has proposed to implement several Best
Management Practices, including, but not limited to, the following:
- A written plan designed to control dust, concrete, demolition
pavement or pipe removed during construction, and/ or
construction materials, and standards for interim control and for
clean-up. All sediment waste and debris shall be retained on-site
unless removed to an appropriate approved dumping location
either outside the coastal zone or to a site within the coastal zone
permitted to receive fill. Contractors and County Inspectors shall
monitor and contain oil or fuel leaks from vehicles and
equipment.
 - Temporary erosion control measures should grading or site
preparation cease for a period of more than 30 days, including
but not limited to: filling or covering all holes/trenches in
roadways such that traffic can continue to pass over disturbed

COASTAL COMMISSION

EXHIBIT # 4
PAGE 54 OF 63

ATTACHMENT A

Project Information File No. 15-080

areas, stabilization of all stockpiled fill, disturbed soils and trenches with shoring, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained at least on a weekly basis until grading or construction operations resume.

- Construction materials, chemicals, debris and sediment shall be properly contained and secured on site to prevent the unintended transport of material, chemicals, debris, and sediment into habitat areas and coastal waters by wind, rain or tracking. A designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the onset of such activity. A pre-construction meeting shall be held for all personnel to review procedural and BMP guidelines.
- Disposal of debris and excess material. Debris and excess material shall be disposed or recycled at a legal disposal/recycling site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is required. No debris or excess material shall be placed on or within adjacent park or habitat areas.
- Debris and sediment shall be removed from the construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into habitat areas and coastal waters.
- Any and all debris resulting from construction activities shall be removed from the project site within 7 days of completion of construction.

17. Proposed Compensatory Mitigation:

The proposed Project will enhance the aquatic function of the existing excavated basin. The Project will result in an increase in both the quantity of wetlands, from 0.11 acre to 0.75 acre as well as the quality of wetlands.

COASTAL COMMISSION

EXHIBIT #

4

PAGE

55

OF

63

ATTACHMENT A

Project Information File No. 15-080

18. Required
Compensatory
Mitigation:

Since this is a wetland restoration project, the Regional Board will not require any compensatory mitigation. [See *Attachment B, Conditions of Certifications, Additional Conditions* for modifications and additions to the above proposed compensatory mitigation.]

COASTAL COMMISSION

EXHIBIT # 4
PAGE 56 OF 63

ATTACHMENT B

Conditions of Certification File No. 15-080

STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR Subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' (ACOE) Section 404 Permit and the California Coastal Commission Coastal Development Permit. These documents shall be submitted prior to any discharge to waters of the State.
2. The Applicant shall adhere to the most stringent conditions indicated with either this Certification, the CDFW's Streambed Alteration Agreement, or the ACOE Section 404 Permit.
3. The Applicant shall comply with all water quality objectives, prohibitions, and policies set forth in the *Water Quality Control Plan, Los Angeles Region (1994)*, as amended.
4. The Avoidance/Minimization activities proposed by the Applicant as described in Attachment A, No. 16, are incorporated as additional conditions herein.
5. The Applicant and all contractors employed by the Applicant shall have copies of this Certification, and all other regulatory approvals for this project on site at all times and shall be familiar with all conditions set forth.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 57 OF 63

ATTACHMENT B

Conditions of Certification

File No. 15-080

6. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the State. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the State.
7. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the State. Designated spoil and waste areas shall be visually marked prior to any excavation and/or construction activity, and storage of the materials shall be confined to these areas.
8. All waste or dredged material removed shall be relocated to a legal point of disposal if applicable. A legal point of disposal is defined as one for which Waste Discharge Requirements have been established by a California Regional Water Quality Control Board, and is in full compliance therewith.
9. The Applicant shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This Certification does not authorize the discharge by the applicant for any other activity than specifically described in the 404 Permit.
10. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses.
11. The Applicant shall allow the Regional Board and its authorized representative entry to the premises, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Certification, or as otherwise authorized by the California Water Code.
12. Application of pesticides must be supervised by a certified applicator and be in conformance with manufacturer's specifications for use. Compounds used must be appropriate to the target species and habitat. All pesticides directed toward aquatic species must be approved by the Regional Board. Pesticide utilization shall be in accordance with State Water Resources Control Board Water Quality Order Nos. 2011-0003-DWQ, for Aquatic Animal Invasive Species Control; 2011-0004-DWQ, for Spray Applications; 2011-0002-DWQ, for Vector Control; and 2013-0002-DWQ, for Weed Control.

COASTAL COMMISSION

ATTACHMENT B

Conditions of Certification

File No. 15-080

13. The Applicant shall not conduct any construction activities within waters of the State during a rainfall event. The Applicant shall maintain a **five-day (5-day) clear weather forecast** before conducting any operations within waters of the State.
14. The Applicant shall utilize the services of a qualified biologist with expertise in riparian assessments during any vegetation clearing activities. The biologist shall be available on site during construction activities to ensure that all protected areas are marked properly and ensure that no vegetation outside the specified areas is removed. The biologist shall have the authority to stop the work, as necessary, if instructions are not followed. The biologist shall be available upon request from this Regional Board for consultation within 24 hours of request of consultation.
15. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum **5-foot** buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge (ROWD)** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste.

Sufficient time should be allowed to obtain any such permits (generally 180 days). If groundwater is encountered without the benefit of appropriate permits, the Applicant shall cease all activities in the areas where groundwater is present, file a Report of Waste Discharge to this Regional Board, and obtain any necessary permits prior to discharging waste.

16. All project/maintenance activities not included in this Certification, and which may require a permit, must be reported to the Regional Board for appropriate permitting. Bank stabilization and grading, as well as any other ground disturbances, are subject to restoration and revegetation requirements, and may require additional Certification action.
17. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan** (plan) to this Regional Board. The plan shall include the proposed method and duration of diversion activities, structure configuration, construction materials, equipment, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. Contingency measures shall be a part of this plan to address various flow discharge rates. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for the following shall be implemented:
 - pH
 - temperature

COASTAL COMMISSION

EXHIBIT # 4
PAGE 59 OF 103

ATTACHMENT B

Conditions of Certification File No. 15-080

- dissolved oxygen
- turbidity
- total suspended solids(TSS)

Analyses must be performed using approved US Environmental Protection Agency methods, where applicable. These constituents shall be measured at least once prior to diversion and then monitored for on a daily basis during the first week of diversion and/or dewatering activities, and then on a weekly basis, thereafter, until the in-stream work is complete.

Results of the analyses shall be submitted to this Regional Board by the 15th day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Downstream TSS shall be maintained at ambient levels. Where natural turbidity is between 0 and 50 Nephelometric Turbidity Units (NTU), increases shall not exceed 20%. Where natural turbidity is greater than 50 NTU, increases shall not exceed 10%. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.

18. The Applicant shall restore all areas of TEMPORARY IMPACTS to waters of the United States and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the State. Restoration shall include grading of disturbed areas to pre-project contours and revegetation with native species.
19. The Applicant shall submit to this Regional Board **Annual Monitoring Reports** (Annual Reports) by **January 1st** of each year for a minimum period of **five (5) years** following this issuance of 401 Certification or until restoration success has been achieved and documented. The Annual Reports shall describe in detail all of the project/construction activities performed during the previous year and all restoration efforts; including percent survival by plant species and percent cover. At a minimum the Annual Reports shall include the following documentation:
 - (a) Color photo documentation of the pre- and post- restoration site conditions;
 - (b) Geographical Positioning System (GPS) coordinates in decimal-degrees format outlining the boundary of the restoration areas;
 - (c) The overall status of project including whether or not work has begun on the Project and a detailed schedule;
 - (d) Copies of all permits revised as required in Additional Condition 1;

COASTAL COMMISSION

EXHIBIT # 4
PAGE 60 OF 63

ATTACHMENT B

Conditions of Certification File No. 15-080

- (e) Water quality monitoring results for each reach (as required) compiled in a spreadsheet format;
 - (f) A certified Statement of "no net loss" of wetlands associated with this project;
 - (g) Discussion of any monitoring activities and exotic plant control efforts; and
 - (h) A certified Statement from the permittee or his/her representative that all conditions of this Certification have been met.
20. All applications, reports, or information submitted to the Regional Board shall be signed:
- (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates.
 - (b) For a partnership, by a general partner.
 - (c) For a sole proprietorship, by the proprietor.
 - (d) For a municipal, State, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.
21. Each and any report submitted in accordance with this Certification shall contain the following completed declaration:

"I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Executed on the _____ day of _____ at _____.

(Signature)
(Title)"

22. All communications regarding this project and submitted to this Regional Board shall identify the Project File Number 15-080. Submittals shall be sent to the attention of the 401 Certification Unit.

COASTAL COMMISSION

ATTACHMENT B

Conditions of Certification File No. 15-080

23. Any modifications of the proposed project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application and appropriate filing fee.
24. The project shall comply with the local regulations associated with the Regional Board's **Municipal Stormwater Permit** issued to Los Angeles County and co-permittees under NPDES No. CAS004001 and Waste Discharge Requirements Order No. R4-2012-0175. The project shall also comply with all requirements of the National Pollutant Discharge Elimination System (NPDES) **General Permit** for Storm Water Discharges Associated with Construction Activity, Order No. 2012-0011-DWQ. All stormwater treatment systems shall be located outside of any water of the State and shall not be used as a wetland or riparian mitigation credit.
25. Coverage under this Certification may be transferred to the extent the underlying federal permit may legally be transferred and further provided that the Applicant notifies the Executive Officer at least 30 days before the proposed transfer date, and the notice includes a written agreement between the existing and new Applicants containing a specific date of coverage, responsibility for compliance with this Certification, and liability between them.
26. The Applicant or their agents shall report any noncompliance. Any such information shall be provided verbally to the Executive Officer within 24 hours from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
27. *Enforcement:*
 - (a) In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
 - (b) In response to a suspected violation of any condition of this Certification, the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this Certification

COASTAL COMMISSION

EXHIBIT # 4
PAGE 62 OF 103

ATTACHMENT B

Conditions of Certification

File No. 15-080

to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

- (c) In response to any violation of the conditions of this Certification, the SWRCB or RWQCB may add to or modify the conditions of this Certification as appropriate to ensure compliance.
28. This Certification shall expire five (5) years from date of this Certification. The Applicant shall submit a complete application at least 90 days prior to termination of this Certification if renewal is requested.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 163 OF 163

April 19, 2016

Nancy Frost
Sensitive Bird and Mammal Monitoring Program
South Coast Region
California Department of Fish and Wildlife
3883 Ruffin Road
San Diego, CA 92123

Scott Osborn, Ph.D.
California Department of Fish and Wildlife
Wildlife Branch, Nongame Wildlife Program
1812 Ninth Street
Sacramento, CA 95811

Subject: Southern California Salt Marsh Shrew and South Coast Marsh Vole Survey Results – April 2016: Parcel 9U, Marina de Rey, Los Angeles County, California (LSA Project No. LEP1501)

Dear Ms. Frost and Dr. Osborn:

This letter report documents the results of a protocol presence/absence survey for two California Species of Special Concern (southern California salt marsh shrew, *Sorex ornatus salicornicus*, and south coast marsh vole, *Microtus californicus stephensi*) conducted by LSA Associates, Inc. (LSA). The survey was done in preparation for the proposed Wetland Park Restoration Plan in Marina del Rey.

No southern California salt marsh shrews or south coast marsh voles were captured.

Study Area

The approximately 3.23-acre study area is on undeveloped property at the intersection of Via Marina/Tahiti Way in Marina del Rey, Los Angeles County, California, shown in Figure 1, Attachment A. Coordinates near the center of the site are 33.974258, -118.457253, and the location is shown on the United States Geological Survey (USGS) *Venice, California*, 7.5-minute topographic quadrangle map. Vegetation within the study area consists primarily of non-native grassland, with a large stand of herbaceous spurge (*Euphorbia* sp.) and scattered palms on the north end. At the south end is a patch of pickleweed (*Salicornia* sp.) and a grove of narrow-leaved willow (*Salix exigua*).

Methods

LSA biologists Richard Erickson and Leo Simone, with field assistance from Lonnie Rodriguez, conducted four days and five nights of protocol trapping (April 14–19, 2016), pursuant to LSA's California Department of Fish and Wildlife (CDFW) Memorandum of Understanding attachment to Scientific Collecting Permit No. SC-000777 providing Conditions for Research on the California least tern, western snowy plover, Pacific pocket mouse, southern California salt marsh shrew, and south coast marsh vole (January 21, 2016–January 31, 2019). The survey protocol approved by CDFW for this survey called for five consecutive nights of trapping on a 110x70-meter grid of 96 points (Figure 1). The grid was established on approximately the southern 80 percent of the site, on the best potential habitat available for these species. A 1-gallon bucket (i.e., a pitfall trap buried flush with the ground) and a 9-inch Sherman live-trap were placed at all but two of the 96 points established by the grid. Traps were baited

with apples, small alfalfa pellets, and seed, and the buckets with canned cat food. The stations were checked each evening and early each morning. The sherman live traps were closed each morning but the pitfall traps remained open at all times.

Results

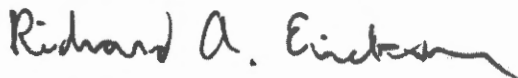
No southern California salt marsh shrews or south coast marsh voles were captured. There was only one small mammal capture: one Botta's pocket gopher (*Thomomys bottae*) in a pitfall trap on the first morning. One bird (a European starling, *Sturnus vulgaris*) was captured in a Sherman live-trap on the last morning. Complete capture results are shown in Table B-1, Parcel 9U, Marina del Rey, Los Angeles County Trapping Summary, April 2016, in Attachment B.

California Native Species Field Survey Forms are provided in Attachment C.

If you have any questions or comments, please contact Leo Simone or me by phone at (949) 781-9310 or via email at leo.simone@lsa-assoc.com or Richard.erickson@lsa-assoc.com.

Sincerely,

LSA ASSOCIATES, INC.



Richard Erickson
Associate/Biologist

cc: Michael Tripp, Los Angeles County Department of Beaches & Harbors
California Natural Diversity Database

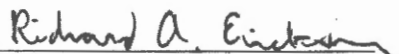
Attachments: A: Figure 1, Small Mammal Survey Area
B: Table B-1, Parcel 9U, Marina del Rey, Los Angeles County Trapping Summary,
April 2016
C: California Native Species Field Survey Forms

I CERTIFY THAT THE INFORMATION IN THIS SURVEY REPORT AND ATTACHED EXHIBITS FULLY AND ACCURATELY REPRESENT MY WORK:

SURVEYOR:

SCP NUMBER:

DATE:


Richard Erickson

SC-000777

April 19, 2016


Leo Simone

SC-5243

April 19, 2016

COASTAL COMMISSION

ATTACHMENT A

FIGURE 1, SMALL MAMMAL SURVEY AREA

COASTAL COMMISSION

EXHIBIT # 5
PAGE 3 OF 4

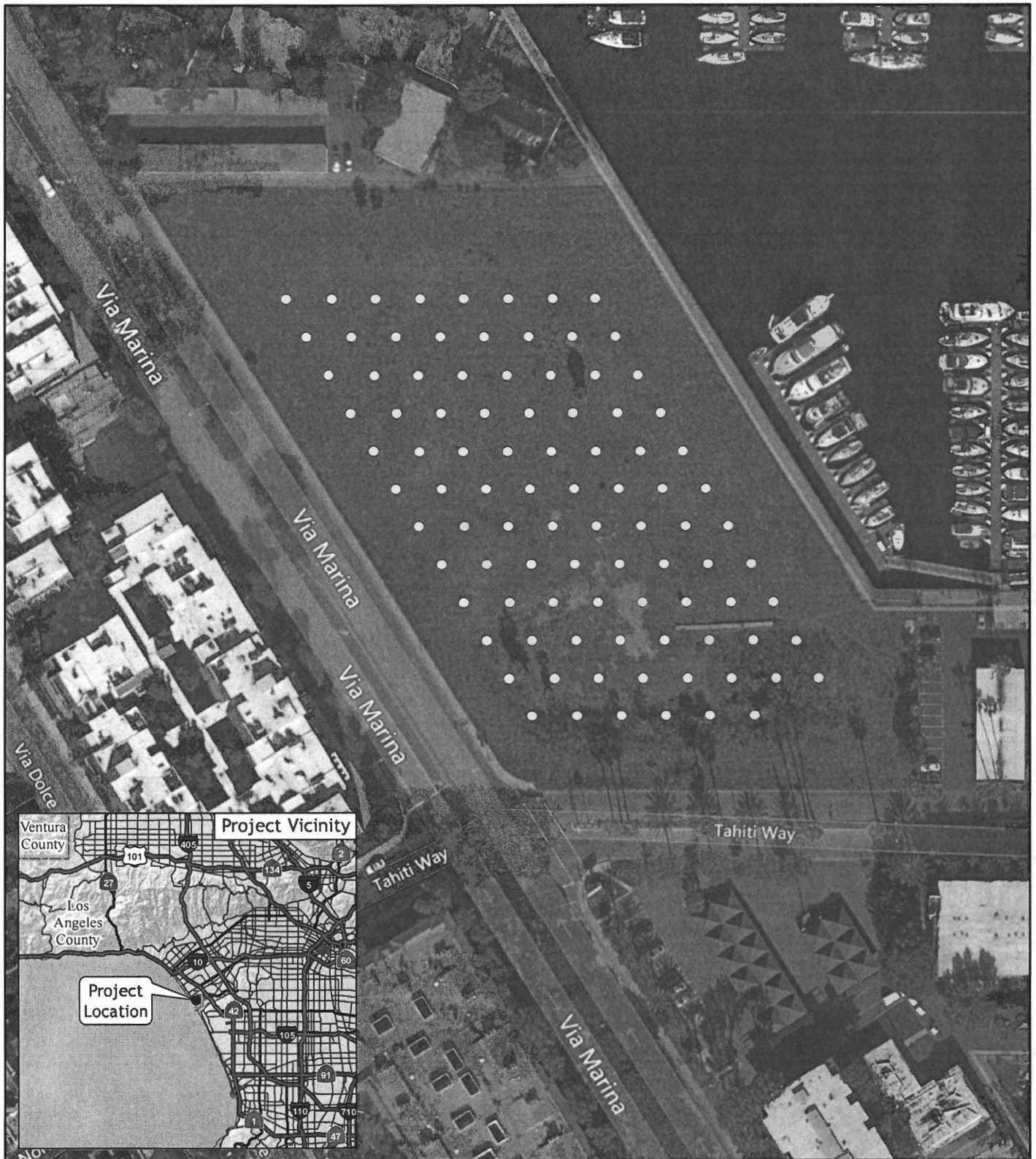


FIGURE 1

LSA

LEGEND

● Trap Location



0 50 100
FEET

SOURCE: Bing Maps (2014)

I:\LEP1501\GIS\TrappingGrid.mxd (4/19/2016)

COASTAL COMMISSION

EXHIBIT # 5
PAGE 4 OF 6

Parcel 9U, Marina del Rey
Trapping Grid

ATTACHMENT B

TABLE B-1, TRAPPING RESULTS

COASTAL COMMISSION

EXHIBIT # 5
PAGE 5 OF 10

Table B-1: Parcel 9U, Marina del Rey, Los Angeles County Trapping Summary, April 2016

| Date and Time | Trapping Results | | | | | | | | | | Total |
|---|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|--|-------|
| | April 15 morning | April 15 evening | April 16 morning | April 16 evening | April 17 morning | April 17 evening | April 18 morning | April 18 evening | April 19 morning | | |
| Number of Traps/ Pitfall Buckets | 188 | 94 | 188 | 94 | 188 | 94 | 188 | 94 | 188 | | 1,316 |
| Species | | | | | | | | | | | |
| Botta's pocket gopher <i>Thomomys bottae</i> | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 1 |
| Total Small Mammal Captures | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 1 |
| European starling <i>Sturnus vulgaris</i> | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | | 1 |

COASTAL COMMISSION

EXHIBIT # 5
PAGE 10 OF 10