Los Angeles County
Beaches & Harbors
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December 4, 2003

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan W.

SUBJECT: **COMMISSION AGENDA –December 10, 2003**

Enclosed is the December 10, 2003 meeting agenda, together with the minutes from your meetings of October 8, 2003 and November 12, 2003. Also enclosed are reports related to agenda items 3a, 3b, 5a, 5b and 6a.

Please call me if you have any questions or need additional information.

SW:tlh
Enclosures

13837 Fiji Way • Marina del Rey • CA 90292 ● 310.305.9503 • fax 310.821.6345 ● internet: http://beaches.co.la.ca.us

Stan Wisniewski Director ● **Kerry Gottlieb** Chief Deputy

COUNTY OF LOS ANGELES

SMALL CRAFT HARBOR COMMISSION

(310) 305-9527

Harley A. Searcy, Chairman
Carole B. Stevens, Vice-Chairperson
John C. Law
Russ Lesser
Joe Crail

AGENDA

SMALL CRAFT HARBOR COMMISSION MEETING
DECEMBER 10, 2003
9:30 a.m.
BURTON W. CHACE PARK COMMUNITY BUILDING
13650 MINDANAO WAY
MARINA DEL REY, CA. 90292

1. Call to Order and Action on Absences

2. Approval of Minutes: Meetings of October 8 and November 12, 2003

3. **REGULAR REPORTS** (DISCUSS REPORTS)

   a. Marina Sheriff
      -Crime Statistics
      -Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance

   b. Marina del Rey and Beach Special Events

4. **OLD BUSINESS**

   None

5. **NEW BUSINESS**

   a. Joint Recommendation of the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Approve and Authorize Execution of Limited Forbearance Agreement to Facilitate Amendment to Amended and Restated Lease – Parcel 125R (Marina City Club) – Marina del Rey (RECOMMEND TO BOARD)

   b. Consent to Assignment of Leasehold Interest and Option for Amended and Restated Lease to Facilitate Redevelopment – Parcel 50T (Marina Waterside Center) - Marina del Rey (RECOMMEND TO BOARD)

6. **STAFF REPORTS** (DISCUSS REPORTS)

   a. Ongoing Activities
      - Board Actions on Items Relating to Marina del Rey
      - Design Control Board Minutes

   b. Marina del Rey Convention and Visitors Bureau (PRESENTATION BY EXECUTIVE DIRECTOR OF MdR CVB)

7. **COMMUNICATION FROM THE PUBLIC**

8. **ADJOURNMENT**

PLEASE NOTE:

1. The Los Angeles County Board of Supervisors adopted Chapter 2.160 of the Los Angeles Code 93-031 relating to lobbyists. Any person who seeks support or endorsement from the Small Craft Harbor Commission on any official action must certify that he/she is familiar with the requirements of this ordinance. A copy of the ordinance can be provided prior to the meeting and certification is to be made before or at the meeting.

2. The agenda will be posted on the Internet and displayed at the following locations at least 72 hours preceding the meeting date:

   Department of Beaches and Harbors' Website Address: http://beaches.co.la.ca.us

   Department of Beaches and Harbors
   Administration Building
   13837 Fiji Way
   Marina del Rey, CA 90292

   MdR Visitors & Information Center
   4701 Admiralty Way
   Marina del Rey, CA 90292

   Burton Chace Park Community Room
   13650 Mindanao Way
   Marina del Rey, CA 90292

   Marina del Rey Library
   4533 Admiralty Way
   Marina del Rey, CA 90292

Si necesita asistencia para interpretar esta informacion llame al (310) 305-9546.

Small Craft Harbor Commission
Meeting of October 8, 2003
Minutes

Commissioners Present:

Harley Searcy, Chairman
Carole Stevens, Vice-Chairperson
John Law
Joe Crail

Excused Absences:

Russ Lesser

Department of Beaches & Harbors:	Stan Wisniewski, Director Roger Moliere, Deputy Director, Asset Management & Planning Bureau Julie Cook, Planning Division Dusty Crane, Chief, Community & Marketing Services Division
Other County Departments:	David Michaelson, County Counsel Lt. Tracee Edmonds, Sheriff's Department Deputy Paul Carvalho, Sheriff's Department Debra Williams, Department of Consumer Affairs Rigoberto Reyes, Department of Consumer Affairs
Also Present:	Beverly Moore, Executive Director, MdR Convention & Visitors Bureau Richard S. Volpert, Munger, Tolles & Olson

1. CALL TO ORDER & ACTION ON ABSENCES

Chairman Searcy called the meeting of the Los Angeles County Small Craft Harbor Commission to order at 9:40 a.m. in the Burton W. Chace Park Community Room, Marina del Rey.

Commissioner Law moved and Commissioner Crail seconded a motion to excuse Commissioner Lesser from today's meeting. The motion passed unanimously.

2. APPROVAL OF MINUTES

Vice-Chairperson Stevens requested a revision on page 6, first sentence of paragraph 3 of the September 10, 2003 minutes. The sentence currently reads, "Vice-Chairperson Stevens said she would like to note, on behalf of G&K, that it has instituted a valet parking system for guests where she lives." The sentence should be changed to read, "Vice-Chairperson Stevens said she would like to note, on behalf of G&K, that it has instituted a valet parking system for visitors of the residents."

Vice-Chairperson Stevens explained the reason she brought up the matter was because the valet parking has worked so beautifully that she wanted to encourage other lessees to provide the same service. Mr. Wisniewski informed her that the Department would make sure the issue is brought to the lessees' attention.

Vice-Chairperson Stevens moved and Commissioner Crail seconded a motion to approve the August 27, 2003 minutes. The motion passed unanimously.

Commissioner Law moved and Commissioner Crail seconded a motion to approve the September 10, 2003 minutes as amended by Vice-Chairperson Stevens. The motion passed unanimously.

3. REGULAR REPORTS

a. Marina Sheriff's Department Report

--- Crime Statistics

Lt. Tracee Edmonds reported a reduction in crime in the Marina area, particular in assaults. There are a larger number of grand thefts reported for the month of September, however, most of them could be attributed to bicycle thefts. Someone, or several persons, stole bikes that were either locked in storage facilities or chained to poles in the underground parking structures.

--- Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance

Deputy Paul Carvalho reported little change for the warnings and notices to comply that were issued. There are changes in the amount of derelict vessels that are docked. There are 21 vessels ready for disposal and an additional six vessels awaiting lien sale procedures. The bids for the disposal of the vessels have been sent and the closing date was yesterday. The Department should be hearing shortly who was awarded the bid.

b. Marina del Rey and Beach Special Events

Mr. Wisniewski reported that Marina events occurring in the month of October include the Marina del Rey Outdoor Adventures Final Sessions, which the Department sponsors. The activities include an Ocean Experience Program on October 11, a Bird Watching Experience on October 23 and a Harbor Kayaking Program on October 25.

The MdR/Beach Special Events Report also includes information on the Fisherman's Village Weekend Concert Series and The Discover Marina del Rey Day, scheduled for Sunday, October 12. This event involves the participation of several County departments and offer games and activities that children will enjoy.

Mr. Wisniewski said that October's beach event is the Dolphin Run Triathlon, scheduled for October 11 and 12 at Zuma Beach.

4. OLD BUSINESS

a. Mediation Services for Marina del Rey Apartment & Boat Slip Tenants

Mr. Wisniewski introduced the Department of Consumer Affairs' (DCA) representatives, Ms. Debra Williams and Mr. Rigoberto Reyes, who are attending today's meeting to discuss their Department's services.

Ms. Williams informed the Commission that she heads the DCA's Mediation Program. She said the program handles disputes between landlords and tenants, neighbors, businesses, and vendors and consumers. The mediation service is free of charge and both parties involved in the dispute must voluntarily agree to participate. Ms. Williams said the DCA also offers: consumer protection services; a real estate fraud and information program; small claims court advisor program; dispute settlement services; and public information and community outreach.

Mr. Reyes, who is Supervising Investigator with the DCA's Investigation Division, said the DCA's Real Estate Fraud and Information Program assists consumers with any questions they have regarding real estate transactions, from first-time home buying tips to investigating complaints.

He said the Department also has a section that deals with cable companies that provide services in unincorporated sections of Los Angeles County. The Department licenses and regulates these companies and welcomes consumer feedback regarding their services. DCA's consumer protection service assists consumers who have complaints against businesses. The DCA tries to resolve the complaints for the consumer, however, if the problem cannot be resolved, the Department will assist the District Attorney's office and other agencies with preparing the case for prosecution.

Mr. Reyes said that his Department offers a broad range of services for consumers that are free of charge and branch offices are located throughout Los Angeles County.

Mr. Wisniewski informed the Commission that Mr. Pastor Herrera is Director of the Department of Consumer Affairs and he has received national awards for his excellent leadership. Mr. Wisniewski commended DCA for its work and said the Department of Beaches and Harbors is delighted to have DCA's mediation assistance.

Chairman Searcy expressed gratitude, on his own behalf and that of the Commission, to Mr. Reyes and Ms. Williams for attending today's meeting. He said that Marina del Rey residents regularly attend Commission meetings seeking redress, quite often, out of frustration and lack of information. Members of the public try to redress a situation where they feel they have been wronged and it would be helpful for DCA to assist people in formulating their claims or evaluating where they have or don't have a legal right.

Chairman Searcy said that quite often the Commission has no jurisdiction over the issues that the public brings to it, but the Commission is the only body that the public knows about. He said he is hopeful that members of the public attending today's meeting will spread the word about the Department of Consumer Affairs and avail themselves of the services that the DCA provides. Chairman Searcy added that he is sure the Department will obtain the DCA's public information material and make it available at Beaches and Harbors to interested members of the public.

Mr. Reyes informed the Commission that the Department of Consumer Affairs also conducts presentations to community organizations throughout Los Angeles County. Interested persons can contact the Department to arrange for a presentation.

Chairman Searcy opened the floor to public comment.

Carla Andrus stated, "I called the Department of Consumer of Affairs and I told them about two complaints that I had. I was rerouted actually back to the Board of Supervisors. They told me that they couldn't help boaters...because it is a different thing from a regular landlord tenant thing when you are on the water. They don't have jurisdiction over that. The other complaint that I brought up was, the leases here that are not being enforced, which I thought was a very serious issue. They told me that they don't give legal advice, but they did have a phone number for legal aid. Frankly, I have been through that revolving door, but I have not been able to follow-up on it this time. I welcome this kind of situation so that we can get our complaints out, but I do have some questions...you don't have jurisdiction, they don't have jurisdiction, they don't. They reroute us to the Board of Supervisors and then we're back here. I'm always glad to be here to let you guys know our complaints. I don't know what can be done about that."

Commissioner Law requested one of the DCA representatives to respond to Ms. Andrus' comments. While Ms. Williams approached the microphone, Chairman Searcy clarified that the representative would be addressing Ms. Andrus' comment that she was unable to receive DCA assistance because DCA doesn't handle boat tenant problems.

Mr. Wisniewski said he would like to know more about the problem Ms. Andrus brought to DCA's attention. He said, for clarification purposes, that if Ms. Andrus' problem pertained to rent, the Department of Beaches and Harbors is the appropriate contact since it has jurisdiction in this area. Mr. Wisniewski suggested that Ms. Andrus contact Mr. Moliere if she has rent-related problems.

Rather than further discuss the matter during the meeting, Chairman Searcy suggested that Ms. Andrus meet with Ms. Williams after the meeting.

5. NEW BUSINESS

a. Marina del Rey Convention and Visitors Bureau Renewal and Second Amendment of Funding Agreement

Mr. Wisniewski informed the Commission that it gives him a great deal of pleasure to recommend an extension of the agreement with the Marina del Rey Convention and Visitors Bureau. He explained that the Bureau's agreement with the County is funded partially by the County of Los Angeles and largely by the hotel industry in Marina del Rey. The Department's budget contributes $177,400 a year to the Bureau's budget. The Department also provides office space at the Visitors Center, which is worth over $18,600 a year. The Marina hotels contribute approximately $330,000 annually, with a self imposed 1% fee on all of their room rental rates.

Mr. Wisniewski said the Department is astounded by the Bureau's progress. Vice-Chairperson Stevens serves on its board and Ms. Moore has done an outstanding job as the Bureau's Executive Director. Mr. Wisniewski said that Ms. Moore is very dynamic and progressive and has embraced this community and brought more to it than he's seen in prior years. He added that Ms. Moore works well with the lessees, Department of Beaches and Harbors and the tenants.

Mr. Wisniewski said the Department is suggesting an extension of the Bureau's agreement for one year and he has the ability to extend it another year beyond that, so, effectively, it could become a two-year agreement. Also included in the agreement is an additional $40,000 in funding from the Department, which is budgeted. These funds would be used for a combination of joint promotional efforts between the Department and Bureau.

Mr. Wisniewski said the Commissioners may remember that the opening of the Marina del Rey waterfront walk from Tony P's restaurant over to Marina Beach displayed a number of flags and other types of demarcations that were placed on the median strips in Marina del Rey and along the walkway. This activity was a joint effort between the Department and the Bureau. Mr. Wisniewski said that approximately $10,000 would probably be used for future efforts of this type and the Bureau would use approximately $30,000 to disseminate information.

Chairman Searcy opened the floor to public comment. Hearing no public comment, the following motion was made.

Vice-Chairperson Stevens moved and Commissioner Crail seconded a motion to recommend Board approval of the renewal and second amendment of the County's funding agreement with the Marina del Rey Convention and Visitors Bureau. The motion passed unanimously.

b. Authorize the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Enter into Exclusive Negotiations with Almar Management/Pacific Marina Development for an Option and Long-Term Lease for Development of Parcels 52R and GG – Marina del Rey

Mr. Wisniewski said the Commission may recall previously approving a recommendation to the Board of Supervisors to authorize the Department's Request for Proposals for Development of Boat Storage Facilities on Parcels 52R and GG in Marina del Rey. He said that both parcels are County controlled and are sandwiched between the launch ramp area and the first commercial boat repair yard on Fiji Way.

Three very strong proposals for Parcels 52R and GG were received and Mr. Wisniewski expressed his delight with the Evaluation Committee's recommendation of Almar Management to develop the parcels. He said that Almar shows not only the necessary experience, but also the financial capability. The developer has a very innovative architectural design that Mr. Wisniewski believes will become an icon for the harbor. The project's design also provides more dry storage facilities than the other proposals.

Chairman Searcy asked whether the Design Control Board (DCB) has a role to play in the approval process. Mr. Wisniewski responded that the DCB would review the designs, as well as the Small Craft Harbor Commission and Regional Planning. The project also requires an Local Coastal Plan amendment, which will need Regional Planning and Coastal Commission approval. Chairman Searcy stressed that members of the public would have plenty of opportunity to provide input when public hearings are held.

Mr. Moliere explained the project's evaluation process, stating that when the Board of Supervisors authorizes the Department to issue Request for Proposals (RFPs), the Director chooses an Evaluation Committee composed of outside experts in various fields to evaluate each proposal received. In the case of the proposals for Parcels 52R and GG, there was an Evaluation Committee that included Mr. Dick Volpert, the County's chief negotiator, as well as an architect who is one of the County's design consultants, an economic consultant, and a representative from the Chief Administrative Office. The Committee also solicited advice from the County's harbor engineers, as well as a number of others. Mr. Moliere explained that the Committee went through each proposal and formulated some preliminary questions that were sent to the proposers. The Committee then interviewed the proposers and met again on several occasions to discuss various issues that were raised before they voted and formulated their recommendation.

Mr. Moliere said that Almar Management/Pacific Marina Development (Almar) is, in fact, the largest private operator of saltwater marinas on the West Coast. The company has been in business for over thirty years and has operations extending through Mexico and Hawaii. Almar's proposal extends partially over the water area of the leasehold. It has an overhead crane system that is very space efficient and quiet. It does not rely on motorized forklifts. The shell of the building is composed of polycarbonate material and it is somewhat translucent, as is the ceiling, which makes it very energy efficient. Light goes in, so the interior of the building retains ambient outdoor lights. It is also uplit and downlit at night to any degree that is appropriate so that it does present a very striking architectural presence. The building materials were chosen for their durability in salt-water environments. They don't rust and they're very durable and replaceable in terms of panels should there be any damage. Mr. Moliere added that this kind of material, in fact, is used extensively in Florida and has been tested against hurricane force winds.

Mr. Moliere continued, informing the Commission that the project will go through a full environmental review, which includes such things as wind testing, wind shadow testing, and all

the rest of the environmental processes. The facility's spaces will total 361 dry stack boat storage spaces, with an additional space for 19 vessels within the building structure to allow for queuing and launching and retrieval of the boats. It has two overhead 6-ton capacity cranes and 1,600 square feet for small boat maintenance and repair. Its staging area is for 31 vessels and 1,250 lineal feet of docking facilities. The facility will have an Americans with Disability Act compliant boat ramp and additional space for 32 mast-up sailboat surface storage spaces. It has three additional public wash-down facilities, which would augment the facilities that are already on site next door. There will be a large pedestrian promenade, a five-ton capacity boat launch hoist to assist in other launches for sailboats and other crafts, and a separate building containing a replacement for the Sheriff's boatwright shop. Operationally, it is Almar's intent to offer a lot of programs that cater to boater education. The company will sponsor seminars, boat handling classes, navigational courses and a number of other things. The facility's lobby would be built so that meeting and educational and community activities can be held.

Mr. Moliere informed the Commissioners that staff also attached to the Parcels 52R and GG Board letter the Evaluation Committee's actual report, which details the comparisons between the proposers and reasons for choosing Almar.

Commissioner Law stated, "I'm fully supportive of the notion of having dry storage. As long as I've been on this Commission, we've talked about it. It's an identified need in the Marina and I'm enthusiastic about the concept. Looking at the design, it is almost a breathtaking design and I find it to be visually highly interesting, however, I am a little concerned about the scale given the surrounding neighborhood. For example, how high is this?" Mr. Moliere responded that representatives are here today to answer the Commission's questions.

Commissioner Law said he would go ahead and identify all of his concerns so that the representatives could address them when they come to the podium: "1) I want to know about what the surrounding uses are, or, if nothing, the anticipated uses, because I want to see, if not immediately, at least in the mid-term, how this is going to fit into the general aesthetic of this part of the Marina; 2) I would like the presenter to talk a little bit about screening. As I look at this, in both drawings, I can see both through the screenings. I appreciate the fact that this is great stuff and it survives hurricanes, but I am thinking that four rows of stack boats aren't necessarily the most attractive thing to look at in that configuration. So, I would like to know how that works; and, 3) My final question, which I think is the easiest one, is parking. I see that it is point four to one and I can understand why this is not going to be a heavy generator of traffic or parking. Nonetheless, point four to one is the lowest parking ratio I think I have ever seen and I am curious about where we found a traffic engineer that had tables on dry boat storage. That is something that is used frequently."

Mr. Wisniewski said he would like to point out what the surrounding area is. To the east of this project is the Marina del Rey launch ramp. One of the concerns was addressing the effect of any wind shadowing, the prevailing wind in that area. Staff is convinced that there won't be a wind shadowing effect for the launch ramp. The Department has a Canadian firm under contract that does wind tunnel studies. The firm actually has a model of Marina del Rey and as each project in Marina del Rey proceeds, the developer will have to pay for a scale model of his particular project. It will be sent through the wind tunnel analysis by the Canadian firm, which will report back to the Department of Regional Planning. The Director of Regional Planning will determine whether or not there is an impact on boating operations. Staff have, on a preliminary basis, discussed the matter with the harbor engineer and the architects, and the prevailing winds are from the west and the northwest. They don't feel that this is going to be an issue, but the matter is something that needs to be addressed in the environmental review process.

In terms of height, Mr. Wisniewski said he has seen things that are taller in Marina del Rey and he cannot think of a better use of height in the Marina than a development that would give back to the boating community more facilities to increase boating in the harbor. This is also a commercial zone. The facility would be built on Fiji Way and on its other side are two commercial boat repair yards. A person working his way around Fiji Way would come up to Fisherman's Village. The good news is that there aren't any residential buildings and the fact that it has such a breathtaking design will be an asset given what is being planned for Chace Park's expansion. Parcel 77's facilities would be relocated to Parcels 52R and GG, which then provides the capability of expanding Chace Park. The Department has an option to buy Parcel 77, but only if it could successfully come up with a project on Parcels 52R and GG.

Mr. Wisniewski said what he likes about the Almar proposal is that the typical forklifts won't be going out in the pubic eye and making a lot of noise. There will be an overhead crane system inside that is quiet and won't be heard on the outside. He said he doesn't think the facility's fitting into the surrounding area will be much of an issue.

Mr. Moliere stated that the project's screening, which is on view today, is actually what would be seen from the water across the channel. From the street side, people can't really see any of the rack facilities. The entire building is enclosed except for the portion from which the boats are launched. Mr. Wisniewski added that, from a parking standpoint, as he understands it, the County's parking requirement would be met.

Commissioner Law stated that he is interested in scale and he still hasn't been given the answer to his question regarding height. He said that scale is a hard thing to figure out because judgment has to be made regarding what it would look like. Mr. Moliere responded that Mr. Richard Orne, an architect, was a member of the Evaluation Committee. He is part of the team of EDAW, which is the Marina's design consultant firm. Mr. Orne specifically looked at issues, such as the fit for each individual project to its surrounding in the entire Marina. Mr. Orne looked at the issues of scale and design and the Committee also examined these issues very carefully.

Chairman Searcy suggested that, in the future, staff use UCLA's simulation software to present design plans to the Commission. A computer with this software was previously used for a Commission presentation and it was very effective in showing various aspects of the project.

Relative to the scaling issue, Mr. Wisniewski stated that as the project works its way through the regulatory process, the Design Control Board will have the same questions as the Small Craft Harbor Commission, plus 100 more. If Almar is selected, it would have to invest a significant amount of money to ensure that the scaling is appropriate for the area.

Mr. Jeffrey Pence, one of the owners of Pacific Marina Development, Inc, informed the Commissioners that the project is 40' feet up in the air, which is the height of a three-story office building. He said the pink apartment building that could be viewed from Chace Park is about 5' lower from the top of the planned building.

Commissioner Law asked whether the height extends from the base of the building to the top. Mr. Pence responded that in the middle, because of the gantry crane, it goes up five more feet, which is towards the middle because of the equipment. Basically, 85% of the building is 40' up in the air. In other words, the side scan all the way up is 40' with an additional 5' in the center. Chairman Searcy asked whether the peak of the building is 45', including the gantry area. Mr. Pence responded that the peak is 45' and the gantry area is probably 20' or 30' wide.

As for the building's screening, Mr. Pence displayed a sample of the material that would be used and he explained that the material was selected because of the ability to highlight it and make it

an architectural focal point at night. Additionally, because the California Coastal Commission is concerned about the type of materials used, he wanted to make sure that there would not be shadow lines over the water and that the materials would meet Coastal Commission approval. He said the material is regulated for a 220 mile an hour wind. The material takes away 99% of the UV rays and is currently being used in an office building in London. The material is also being used in some schools in Southern California. He said that backlighting is the key and if a decision is made not to do backlighting, the material couldn't even be seen through in the evening.

Commissioner Law asked whether people, during the daytime, would be able to view the boats through the openings that are at the ends of the building. Mr. Pence responded, "no."

Commissioner Crail said he's concerned about the building's extension into the basin and that boats won't have room to turn around. Additionally, he expressed concern about the boats being launched and whether they would have space to set up in the water. Mr. Pence responded that there will be an ability to stage in the water upwards of 60-70 boats at one time around the periphery of the dock. If the facility's interior staging area is added to this number, approximately 90 boats could be staged. He said that all kinds of time trials were conducted and his firm knows the time needed to take the boat from the upper furthest rack at the back of the facility and put it into the water. Almar also knows how long it takes to raise the boat up and wash it out. Mr. Pence said that an elevator system would be included in the design so that at least 2 vessels, if not 4, could be used in the elevator system.

Commissioner Crail said, as a boater, he would hate to see the elimination of the extra space that boaters use to set up. Mr. Pence said that nautical engineers have looked at the entire basin and the design will not deter any vessels coming out of the ramp system or any vessels going up and down the harbor.

Chairman Searcy asked about the existing boat repair facilities. Mr. Wisniewski responded that there are existing boat repair facilities on Parcel 77. The new facilities will have to provide at least the same level of service that's currently available on Parcel 77. Mr. Pence commented that there would be up to a 1,600 square foot maintenance facility for repair services.

Chairman Searcy asked whether the developer has taken the opportunity to tour the existing facilities and meet with the existing operators. Mr. Pence responded that he has. Chairman Searcy informed him that the Marina is a small boating community with a lot of goodwill and the current operators have institutional knowledge from which the developer could benefit.

Commissioner Law asked whether the new facility's protrusion is approximately 200'. Mr. Moliere responded that it is a little under 200' from the pier line, which is the length of the adjoining docks.

Commissioner Law asked whether the protrusion extends as far as the docks. Mr. Moliere responded "yes." Mr. Pence said the facility is indented in 28' feet from the water line and there's plenty of room for boaters in slips adjacent to the property owner to be able to back in and out. He said, basically, boats need 175% of the length to come out and the design adds another 28' to this amount.

Chairman Searcy opened the floor to public comment.

Ms. Andrus said, "This is what we got in exchange for our boat slips in the Marina. This is the plan the Department came up with to mitigate the loss of our boat slips. This is a whole different way of sailing. It's not sailing and I wonder how much this is gonna cost the average guy who wants to just go out and take his boat out. Another question I would have is, what are the size

boats that this thing would accommodate? We should have a public meeting, a night meeting. I see on your agenda you have lots of major serious development like this, that's gonna take this whole regulatory process to get through all the way up to the Coastal Commission. We still don't have a public night meeting. We don't have public workshops. The night meetings that we talked about a long time ago have been over a year last May. I think it's time for the public to weigh in on these kind of plans. Maybe it's not too late. Maybe we could just keep some of the slips. I'm thinking that because I don't know what's going on at the Coastal Commission. The Department and Two Partnership are asking for an extension on their permit, so we're gonna be without slips all this time and here we are planning all this. We haven't even had a night meeting or a Local Coastal Plan; that's been put off. EDAW was brought up again. We paid that agency $170,000 and they're supposed to be so interested in what the public has to say about these fine designs and the way the Marina's gonna look from now on and how much it's gonna cost and we haven't seen them. Where are they?"

Mr. Richard Stevens, Waterfront Investors, LLC/Bellport Group, said, "I'm the loser, but I'm not here for sour grapes. First of all, I'm here to congratulate Almar and their team for a spectacular design effort. I'm also here to tell you why we rejected the essence of the mechanics of what makes their project go. The reason I'm concerned, as Stan well knows, I've been a proponent for dry storage in this harbor for many years for a number of reasons. One of them was, real fortunately, brought home when I was on David Levine's team for Marina Harbor and we successfully went through two years of battle to rebuild Marina Harbor, which is still underway very successfully. During that period of time, the Coastal Commission staff made it eminently clear to staff here and us that the County should not come in with anymore projects to reconfigure this Marina until they have the small boat problem resolved and lean toward dry stack. So, the importance of dry stack I would support whether we win, lose or otherwise. It's critically important in this harbor and along with that, it's critically important to have it now."

Mr. Stevens continued, stating, "A word of caution I want to put out here, along with a suggestion, is that if we spend three years and this project is shot down for some very valid reasons in my opinion, we start at ground zero three years from now. That's why our proposal was very pedestrian, not imaginative, but it met the code and criteria of the Coastal Commission and operations. We're not proud of our drawing except that it works, it has worked, it will work, and it complied with the RFP requirements. We suggested to staff that they start all over with a new redesign criteria and we would certainly help them do that. How could we do that? First of all, our company is as large as Almar. I've been in the business 40 years. I've been in this harbor 25 years; I'm involved in it now and deeply....We rejected these design criteria because, in 40 years of experience of our team with the Coastal Commission and all government agencies, we never knew of anyone who was allowed to put a structure over the bulkhead line, no one, and that's the backbone of this deal. Secondly, the overhead crane system has been around in industrial applications for 90 years and it works wonderfully. It has not worked well in the marine industry. There's less than a handful of overhead crane systems in existence in this industry and we know most of them. Our manufacturer knows them all. Our big concern is that when that overhead crane breaks down, your whole system stops, and unfortunately, it does break down. I have a whole bunch of other things, but I won't take anymore time, although I think it's warranted. I would suggest to you that, prior to taking this through the laborious passage for two or three years until the environmentalists and coastal staff shoot you down for going over the water, I would suggest the County, before awarding this contract, put together a team of their own to go down and sit with the top people at Coastal."

Commissioner Law expressed his appreciation to Mr. Stevens for his comments. He asked Mr. Stevens whether Mr. Stevens believes the odds of the Coastal Commission approving Almar's plans are slim to none. Mr. Stevens responded, "correct." Mr. Stevens informed Commissioner Law that his company operates the only dry stack operation on the West Coast and has been

before the Coastal Commission 22 times. He said he cannot conceive of the Coastal Commission setting a precedent of allowing Almar's proposed facility to go over the water, otherwise, the door would be open for restaurants, office buildings and anything else to extend into the water.

Mr. Wisniewski commented that the Department is looking for innovative designs because the proposed facilities will be in the Marina for quite some time. He said that unimaginative pedestrian development inside of the Marina should not be endorsed by the Commission or Department. Mr. Wisniewski said that Almar is very experienced and it would be very costly for Almar to go through the regulatory process if Almar did not believe it had a reasonable chance of obtaining approval. Also, if the Evaluation Committee did not believe there was a reasonable chance, the Committee would not recommend Almar's proposal, nor would the developer have submitted the proposal.

Chairman Searcy commented that the regulatory process that is in place would give members of the public, environmental community, Coastal Commission, and other agencies the opportunity to review the project's plans and provide input. Mr. Wisniewski said this process would take time. He explained that the Department is not interested in backing a losing horse, that's why the Department has traditionally insisted that the lessee parallel track the regulatory process along with the proprietary process. While the Department is negotiating a term sheet, it will encourage the developer to engage in the regulatory process and the Department will pull the plug if a problem arises.

Vice-Chairperson Stevens said she is uncomfortable after hearing Mr. Stevens' comments. Commissioner Law expressed his agreement with Commissioner Crail's earlier comments about the proposal. He said that, "I will support this, however, I have real concerns about the design and the scale....This is a tremendous departure from the architecture that exists here. I suppose it's closest to the high rise buildings that the City allowed to have built on its property, which I wish the County, the adjacent landowner, might have taken a position on. I'm not discouraging a modern design. I'm a modest student of it. I am concerned about this because I believe it has been a long-term objective of both the Department and the Commission to have dry boat storage. I'm not persuaded by arguments about whether or not this is useful. It's proven to my satisfaction that it is useful and it is desirable in the Marina and provides other people, a different kind of user, a way to access first class facilities. I have no concerns about the applicant's ability to manage these projects. From reading the materials, they have a demonstrated record. To take one exception with what the Chairman said, I agree we have a very intensive regulatory process the developer must go through. I also agree with the Director's view that they do so at their own risk, however, the postponement of a long held goal from the County's standpoint, if, in fact, what the other gentleman indicates is true that, in the past, the Coastal Commission did not allow projects to protrude over the bulkhead, also has a risk for us. It could be three years down the road and we have to start over. Maybe we'll be wiser. Maybe we'll be smarter. Maybe we were smart in the beginning. We'll find out. Still, we'll be sitting here, or our successors will be sitting here three years from now thinking that it would be nice to have that dry storage."

Mr. Wisniewski commented that he didn't think the regulatory process would take three years. Mr. Moliere said that, on the regulatory side, once the coastal process is started, it takes less than a year. He pointed out that Almar submitted an alternate design and there are ways to, alternatively, not go over the water, which lowers the total boat count, but not lower than that of the other two proposals.

Chairman Searcy said the real key for him is that there is a process in place that needs to be followed and it would be good to let that process continue. A large part of the process will involve the continued examination of design considerations. Chairman Searcy said he's glad to hear the

regulatory process would not take three years and the Commission's approval today would allow the process to move along. He said he is also hopeful that the project's proponents really hear the concerns expressed at today's meeting.

Commissioner Crail said he could not support the proposal since a 40' facility over the water is too much. He understands the lessee has the right to put slips there, but the facility on the water is a new step that he doesn't like and he would like the plans to be further reviewed. Commissioner Crail added that he would really like the dry stack storage placed on the shore, as originally proposed.

Commissioner Law said he would support the plans reluctantly. He is hopeful that not just the developer, but also the Evaluation Committee and Department, seriously consider the issues that were raised today. Commissioner Law said that he doesn't want to delegate the Commission's responsibility to the Design Control Board, which has its own process, as does the Coastal Commission and Regional Planning. He again expressed his reluctance to support the proposal, but said he would go ahead and support it since he believes in the goal and relies, to some degree, on the Evaluation Committee to mitigate some of the identified problems.

Vice-Chairperson Stevens asked Mr. Volpert, who was a member of the Evaluation Committee, to comment on the Committee's reasons for rejecting the other two proposals. Mr. Volpert responded that, in the case of Waterfront Investors [Mr. Stevens' group], the Committee had a problem with its design and amount of land used for parking and the revenues. As for Kor Realty, it was a good plan, but the net add to the Marina was less in terms of both revenue and what the company would earn.

Mr. Moliere explained that the second ranked proposal, Kor Realty, combined Parcel 53, which it currently owns. Kor Realty had an excellent design, but it didn't have experience running dry stack storage facilities, as do the other two proposers. Also, in the proposal, much of the revenue to the County was attributable to increased retail uses on Parcel 53 and it was as much an issue of retail intensification as it was for boat storage and it didn't have the ability to store as many boats.

Mr. Moliere said the third ranked proposal, Waterfront Investors, scored significantly lower for a number of reasons. Because of its design, Waterfront Investors was required to do an on site structured parking facility, which added approximately $2 million to costs and eliminated the ability of the project to pay any rent to the County at all for at least five years. After that amount of time, it was very contingent upon Waterfront Investors meeting a certain investment return criteria on the amount of its investment.

Mr. Moliere said that all three designs certainly would work. The Committee looked very closely at the regulatory issues and Almar, in fact, has had experience going before the Coastal Commission many times since it is the largest saltwater operator on the West Coast and is very familiar with coastal issues.

Commissioner Law moved and Chairman Searcy seconded a motion to authorize the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Enter into Exclusive Negotiations with Almar Management/Pacific Marina Development for an Option and Long-Term Lease for Development of Parcels 52R and GG – Marina del Rey. The motion passed with Chairman Searcy, Vice-Chairperson Stevens and Commissioner Law voting in favor. Commissioner Crail opposed.

c. **Authorize the Chief Administrative Officer and Director of the Department of Beaches Harbors to Enter into Exclusive Negotiations for Lease Options and Long-Term Leases/Lease Extensions for Three Development Projects on Parcels NR/33R, Parcel IR and Parcels GR/22R – Marina del Rey**

Mr. Wisniewski said that staff is requesting Commission recommendation to the Board of Supervisors to authorize the Department to engage in negotiations for three development projects around Marina Beach. He said the projects result from an RFP that the Commission and Board of Supervisors previously approved.

Mr. Wisniewski explained that the proposals are for County parking lots GR, IR and NR. The goal is to revitalize this area into a resort theme-type attraction. The Department solicited for visitor-serving uses with one minor exception for Parcel NR, which the Department would consider for a mixed-used development. He said three exciting proposals were received and when the development is completed, along with renovation of the existing projects in the area, there will be a more user-friendly, dramatically improved Marina Beach.

Mr. Wisniewski explained that when the Department receives proposals to RFPs, an Evaluation Committee that he appoints reviews them. Typically, the Committee is comprised of the Department's economic consultant, Mr. Dick Volpert, as well as an architect and a representative from the Chief Administrative Office's (CAO) Asset Management Section. Mr. Volpert and the CAO representative team with the Department to ensure that the Board of Supervisors remains very well informed about the development's progress.

At this point in the meeting, Vice-Chairperson Stevens announced a short break to allow the public an opportunity to view the design plans on display at the front of the community room.

After the meeting reconvened, Mr. Moliere informed the Commission that the Department received five excellent proposals in response to the RFP issued for three separate parking lots around Marina Beach. He explained that two of the five proposals that were rejected were competing with one of the proposals chosen for Parcel NR, which was so excellent that the other proposals suffered by comparison. The Department allowed for combined proposals, which enabled the adjoining leasehold to submit its own proposal or join another proposer to include both the RFP parcel and the adjoining parcel. On Parcel NR, proposals for mixed-use serving (a combination of residential and visitor-serving), were allowed as long as the residential component was on the upper floors in order to preserve the street level serving and beach level visitor-serving components.

Mr. Moliere informed the Commission that the selected proposers are at today's meeting to address members' questions.

Mr. Wisniewski asked Ms. Cook to point out the parcels on the display board as Mr. Moliere discusses each one. Mr. Wisniewski commented that all of the parking lots under discussion are public and the Department is required to replace lots displaced by development. Parcel IR is at the major intersection of Via Marina and Admiralty Way and the RFP requires opening of the viewshed to the beach. He said that some obstructions to the view were recently removed, but the Department wants to do something more significant so that when people enter the harbor they know they are in a harbor, which was not the way Marina del Rey was originally designed.

-- **EMC Proposal for Parcels 33R and NR**

Mr. Moliere said the EMC proposal is for Parcel NR and the adjoining Parcel 33, which is currently Harbor House Restaurant and Edie's Diner. The proposal will place 292 residential units above facilities on the lower beach and street level, which includes 22,000 square feet of retail and 13,000 square feet of restaurant space. The proposal preserves a lot of view corridor and has heavy landscaping and a public rooftop observatory that will be open to the public seven days a week through the early evening hours. Retail uses not currently in the Marina, such as specialty food and supermarket-type service, is included. The proposal fully contains all of the parking both for replacement of the existing parking and the new parking that is required for the proposed uses.

Mr. Moliere said the Evaluation Committee thought that EMC did a particularly good job with the street level by integrating the promenade uses and creating a new promenade around Marina Beach that connects with the existing one. One of the goals of the Asset Management Strategy (AMS) is to integrate all of the promenades throughout the Marina. The EMC proposal effectively helps to achieve that goal. Mr. Moliere noted that the designs on display today show lots of open spaces and architectural interests. Overall, the EMC proposal met all of the criteria identified in the RFP in terms of both design revenue and interest.

Mr. Moliere said the Local Coastal Plan (LCP) identifies mixed-use as one of the kinds of uses that would be good for the Marina. All three proposals would require LCP amendments and the Department believes that the EMC proposal, because of its design, public features, promenade and observation deck, would gain approval when going through the regulatory process.

Commissioner Law asked the architect to provide an overview of the design proposal. The EMC proposer, Mr. Edward Czuker, introduced his Design Architect, Mr. David Van Oeyen and Project Counsel, Mr. Jeff Mitchell.

Mr. Van Oeyen said that that the project's goal is to make a mixed-rich use function work on the site and have pedestrian accessibility. He said there is as much retail planned as the particular area could absorb and a specialty market is proposed. The design has layer intensity. The lower rise residential unit running along Palawan Way is the scale of the adjoining apartment uses. Retail is at the lower level, apartments are at the upper levels and two levels of parking below. With Parcel 33, the intensity increases a bit. Along the promenade, there are a series of restaurants and shops. A point was made to continue the promenade and develop a galleria that runs across to Mother's Beach and connects back to the Marina City Club. He said the feature that is perhaps the most delightful for visitors is the eighth floor promenade area that will be a rooftop concourse, with trellis, for viewing the entire Marina. The building is mid-rise and its 75' height requires Coastal Commission approval.

Commissioner Law asked how the public would access the top floor of the complex. Mr. Oeyen responded that an elevator will take patrons to the restaurant and visitors to the rooftop.

Commissioner Law asked how the parking would be replaced and where would it be located. Mr. Oeyen responded that there would be two levels of subterranean parking. The 191 existing parking spaces would be replaced and additional spaces added to accommodate retail store customers.

Vice-Chairperson Stevens asked whether the project is on fill. Mr. Oeyen responded that it is partially on fill. She asked whether the facility would withstand two levels of parking. Mr. Oeyen responded "yes."

Vice-Chairperson Stevens asked what would happen to Marina Beach. Mr. Oeyen responded that there will be a good view of Marina Beach and the plan is to construct the promenade across Palawan Way to Marina Beach. The new complex will be on the northeast side of Marina Beach and not right on the beach per se.

Vice-Chairperson Stevens said she is concerned that Marina Beach visitors would have to pay to park in the new parking structure. Mr. Wisniewski responded that Marina Beach visitors currently pay to park in a County lot and the cost to use the new parking area will remain reasonable since rates are under County control.

Vice Chairperson Stevens asked whether there is a way to go to the eighth floor to enjoy the view without having to go to the restaurant. Mr. Oeyen said the eighth floor will be open to the public and is free of charge. Mr. Oeyen explained that the restaurant is actually one level below and visitors can take the elevator straight to the observation deck without going to the restaurant.

Mr. Wisniewski clarified that the new parking structure would serve Marina Beach visitors and adequate signage will be available to ensure that people know how to access the parking.

Chairman Searcy opened the floor to public comment on the EMC proposals for Parcels 33R and NR.

Mr. Donald Klein, president, Coalition to Save the Marina, said, "I've reviewed these projects that are going on here. Although this may be the Director's vision of what the Marina is going to be, it certainly is not a large percentage of the public's opinion of what the original concept of what this Marina was designed to be, so we're basically opposed to Item 5c. We're concerned with a number of things. One of them is the loss of grade level public parking because we already have a problem now where there's a parking problem that is unable to accommodate existing boater parking, so I don't know how that's gonna translate with these other projects. We're concerned with the density. Basically, what it looks like is a live-in Third Street Promenade here and I don't think that was the original concept for the Marina. As a matter of fact, I know it wasn't....We also have a concern with the fact that the Marina del Rey Local Coastal Plan Review has not been completed; has not even been started and may not happen until October of next year. We would be very concerned and would like to see, basically, ... an Environmental Impact Report on all of this density and traffic and so forth..."

Ms. Carla Andrus said, "I wrote a letter asking the Department what was the failed negotiations with the Marriott the first time. I didn't get a response to that. I think it would be interesting to know that since the Marriott was going to be there and they pulled out of those negotiations, the public is interested in knowing why. I mean, we sat down through this whole thing. We've been through this site before. We still don't have an LCP. We should wait until we do have one. It was clear at the last public meeting that the public was opposed very strongly to this whole idea of crowding in Mother's Beach...with all of this traffic, I mean it really interferes with access to the beach and it changes the whole thing completely. I would really like to know what happened to the Marriott because maybe we could learn some lessons from that."

Commissioner Law explained to Ms. Andrus that the Marriott, and hotel development in general, were impacted by the terrorist attacks on September 11. Tourism, air travel and the economy suffered and hotel occupancy fell dramatically, causing the Marriott to withdraw its development

plans. Mr. Wisniewski commented that, when the Marriott withdrew, a written explanation was given to the Commission and the public at the time.

Commissioner Law said he gathered from Mr. Van Oeyen's presentation that a variance would be needed for the planned 75' height. Mr. Moliere responded, "It's built into the LCP. There is an additional view corridor being provided that does allow for bonus height. So it's provided in the LCP. It would go slightly above, without view corridor number, by providing additional view corridor, the viewing platform and other public amenities. It fits within the bonus allowed under the LCP." Chairman Searcy clarified that the LCP provides specific language that allows for increased height and the EMC would seek approval to avail themselves of this allowance.

In reference to the Marriott, Mr. Moliere clarified that the proposals formerly received from the Marriott were from the Marriott Corporation, which has two divisions. One division builds hotels for its corporate account and the other division allows franchisees, which are private individuals who are expert in the hotel industry, to operate a Marriott. He explained that Marriott formerly withdrew from negotiations for a variety of reasons pertaining to its corporate structure; in fact, Marriott halted all building plans at that time.

-- **Invest West Financial Corporation Proposal for Parcel IR**

Mr. Moliere explained that the Investment West Financial Corporation (IWP) proposal is for a Marriott. The IWP is a private corporation and is the existing lessee of the Marina's Best Western Jamaica Bay Inn. IWP is a licensed franchisee for Marriott and proposes to build a 147 room Residence Inn by Marriott, which is a longer-term residence type hotel.

Mr. Moliere said that the LCP requires developers to preserve a view corridor from the Admiralty Way and Via Marina intersection. The proposer's bifurcated building designs present two buildings with a view corridor right between the two so that visitors to the Marina will see the ocean and heavily landscaped areas rather than a building front. He said the proposal provides for replacement parking. The RFP allowed for either replacing the public parking on site or relocating some of the parking to Parcel 21, which is on the other side of the beach. The Parcel 21 lessee is building a parking structure to accommodate the relocated parking.

Mr. Moliere said that the proposer for Parcel IR, Mr. Dale Marquis, is at today's meeting to answer the Commission's questions.

Commissioner Law asked the County's experience with the lessee in terms of the lessee's operation of the Jamaica Bay Inn (Parcel 27). Mr. Wisniewski responded that the lessee has been responsive to maintenance deficiencies. He said the Department was disappointed with the lessee's timeliness in responding to a lease extension proposal that the lessee submitted for Jamaica Bay Inn. The lessee had a proposal on the table pursuant to the previous RFP round that did not move as timely as it should have. Mr. Wisniewski said the lessee has taken steps to make negotiations on Parcel 27 current.

Chairman Searcy asked for more information relative to the lessee's maintenance of the hotel. Mr. Wisniewski responded that the lessee has been responsive to maintenance issues. When the lessee took over the leasehold without an extension, he invested money to upscale the hotel's appearance.

Commissioner Law said today is the first time he's heard of a parking structure on Parcel 21. Mr. Moliere explained that in the course of the Marriott proposal, provisions were made for Parcel OT, which is across the street, to be used for extra parking. During the course of negotiations, the lessee of Parcel 21 [and Parcel OT] expressed a willingness to provide parking so there wouldn't

have to be a traversing of the street for public parking. An arrangement was made as part of the Marriott proposal to provide a parking structure on Parcel 21 for any overflow or excess parking that was necessary for replacement. The Parcel 21 lessee is willing to continue this agreement and whichever of the proposers avail themselves of the parking spaces will have to pay a pro rata share for the spaces. Mr. Wisniewski said that the written agreement pertaining to this matter would be submitted to the Commission in the future.

Commissioner Law said he isn't delighted about the plan to put a parking structure on the water. He added that he understands the plans are preliminary, but before anything is finalized, Commissioner Law wants the Commission to have the chance to review the exact parking structure designs that are planned. Mr. Wisniewski said he shares Commissioner Law's concerns about the parking issue and clever architectural plans are needed to mitigate having the parking structure so close to the water.

Chairman Searcy opened the floor to public comment.

Ms. Andrus informed the Commission that there were people attending today's meeting who wanted to address the Commission during public comment, however, they had to leave because the meeting is taking so long. She asked whether anything could be done to accommodate members of the public who are under time constraints and would like to address the Commission. Chairman Searcy responded that the Commission must adhere to the agenda.

--- **Marina del Rey Promenade, LLL Proposal for Parcels 22R and GR**

Mr. Moliere said that drawings aren't displayed today for the third proposal, which is for Parcels 22R and GR, because as originally submitted, the proposal encompassed all three of the RFPs, for Parcels NR/33R, IR AND GR, plus Parcel 22. The Evaluation Committee liked many elements of the designs, however, the Committee did not want to put all of its eggs in one basket. As submitted, the proposal was not one the Committee thought it could recommend. The Committee did feel, however, that it could recommend the developer and his plan relating to Parcel 22 and the adjacent Parcel GR.

Mr. Moliere informed the Commission that Parcel 22 is the Foghorn Inn and contains the Cheesecake Factory. Some of the elements of the proposal included an expanded retail and restaurant presence, along with the adjacent Parcel GR, which was used for parking in the original plan. The Committee did not think Parcel GR was a good place for a parking structure and requested the proposer to redesign Parcels 22 and GR to include only visitor-serving elements. He said he believes the proposer is willing to comply with this request since the proposer expressed as much to the Committee.

Mr. Moliere said the Department is requesting Commission approval for specific negotiating authority to allow the Department to enter into negotiations and present the plans to the Commission once the project is more fully formed.

Vice-Chairperson Stevens said that the Marina boat shuttle would probably be in operation year-round by the time the proposed projects are built. Additionally, a pedestrian shuttle that moves from one side of the Marina to the other would also be available. She asked whether space would be allotted for the shuttles. Mr. Wisniewski responded that dock space is available for a water shuttle and any proposal that develops on Marina Beach requires the improvement of a waterfront promenade.

Vice-Chairperson Stevens said she would like to emphasize the need for a land-based shuttle system. Mr. Wisniewski responded that he agrees there is a need and the Department has been

in discussion with the Culver City bus system and the MTA. His first and highest priority is to increase water shuttle usage and he plans to promote the water shuttle's expansion as aggressively as possible. Mr. Wisniewski said that the land-based system is important, but he really wants people to get the water experience.

Commissioner Law commented that the Commission was given an eight-paragraph description of a design concept, but was not given a visual depiction of the design. Mr. Wisniewski informed him that the Department received design concepts, but they were inadequate and the lessee was requested to return to the drawing board.

Commissioner Law stressed the need to establish minimum standards before plans are submitted for Commission approval. He said he isn't opposed to the project, but needs to fully understand the project before voting on it and a written description of the design concept is insufficient. Mr. Wisniewski explained that the Department is requesting authorization from the Commission to enter negotiations. He said that since new well-defined projects are planned on both sides of Parcel 22 and Parcel GR, now is the time for the Department to negotiate with the lessee regarding Parcels 22 and GR as well.

Commissioner Law said he appreciates the Department's situation, however, the Department doesn't need Commission authority to negotiate with the developer. The Department can negotiate with the developer on its own authority anytime it chooses; what the Department is requesting from the Commission is the exclusive right to negotiate with the developer. Mr. Wisniewski said that if he was in the negotiator's shoes he wouldn't want to negotiate with the Department unless he knew the Department had license because of the expense involved in doing the architecturals, etc.

Mr. Moliere explained that, while the Department could negotiate regarding Parcel 22, it couldn't regarding a parcel, such as Parcel GR, for which an RFP has to be issued. He said he chose not to bring the designs today because they would have been more misleading than helpful. The designs that were submitted to the Evaluation Committee were only for residential use, which the Evaluation Committee would not approve since it was looking for retail and visitor-serving use designs.

Mr. Wisniewski said that the Department cannot negotiate with someone on a County parcel without having gone through the legal RFP process. Parcel 22 and GR would be a project that is adjacent to Parcel 21, where the parking structure's design is currently in the fluid stage. The Department wants input from Parcel 21's neighbors and to engage them in the discussion in order to have uniform development around Marina Beach.

Vice-Chairperson Stevens said she believes the fitness center and Goldrich & Kest's new project should be included in the process. Mr. Wisniewski informed her that they are involved. He added that one of the beauties of obtaining negotiating authorization is it enables the Department to involve all of the parties that are developing in a particular area. If this isn't done, the plans might not be integrated properly.

Vice-Chairperson Stevens expressed her agreement with Commissioner Law about the need to see visual plans for proposed projects. Mr. Wisniewski said that the Commission would receive the visual plans after the projects have been fleshed out a little bit more during the regulatory process. Chairman Searcy requested that members receive a computer presentation of the design plans when staff is ready to present them to the Commission.

Chairman Searcy made a motion, seconded by Commissioner Crail, to recommend Board approval of the proposed developments on Parcels NR/33R, Parcel IR and Parcels GR/22R.

Before voting, Commissioner Law requested that the Commission vote on the three proposals separately. Chairman Searcy requested Deputy County Counsel Dave Michaelson's opinion on a separate vote for each proposal. Mr. Michaelson responded that there is no problem with the Commission voting on the proposals separately.

Chairman Searcy amended his motion to recommend that the Board of Supervisors authorize the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Enter into Exclusive Negotiations for Lease Options and Long-term Leases/Lease Extensions for Development Projects on Parcels NR/33R and Parcel IR. Commissioner Crail seconded the motion. The motion passed unanimously.

Chairman Searcy moved and Vice-Chairperson Stevens seconded a motion to recommend that the Board of Supervisors authorize the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Enter into Exclusive Negotiations for Lease Options and Long-term Leases/Lease Extensions for Development Projects on Parcels 22R and GR. The motion passed with Chairman Searcy, Vice-Chairperson Stevens and Commissioner Crail voting in favor. Commissioner Law opposed.

6. STAFF REPORT

a. Ongoing Activities Report

Chairman Searcy said that, in the interest of time, the Commission would receive and file the Ongoing Activities Report.

b. ADA Compliance Issue – Holiday Harbor Marina

Mr. Moliere distributed copies of a letter sent by Holiday Harbor's lessee to the Department. He said that since the October meeting, the lessee has sought independent legal advice on the Americans with Disability Act (ADA) and Mr. Michaelson spoke with the lessee's counsel concerning the matter.

Mr. Michaelson informed the Commission that he had a substantive conversation with the lessee's attorney, who works with the law firm of Latham and Watkins. They discussed the issues involved, particularly Title III of the ADA, and the scope and reach of the federal law with respect to this particular lessee. Mr. Michaelson said that he and the attorney would continue to have a dialogue because at this point they don't have the same impression as to what the law provides.

Mr. Michaelson said the conversation with the attorney involved Title II of the ADA, which applies to local governments, and Title III, which applies to the private sector and would be applicable to the situation concerning Mr. Nicholls. He explained that Title III has a different structure than Title II and tends to be less broad and have less application than Title II would. Government facilities, such as the Chace Park Community Center, have to be accessible to everyone, and programs, activities and services that occur there must be accessible. If the community room was a private facility open to the public, it would fall under Title III regulations and different rules would apply. Mr. Michaelson said that in his conversation with the attorney, the attorney expressed disagreement about the applicability of Title III with respect to the lessee's property.

Mr. Michaelson also informed the Commission that the slip rented by Mr. Nicholls has a recreational commercial feature and he believes it is subject to Title III. The lessee's attorney doesn't necessarily agree and they will have to discuss the matter further. Mr. Michaelson said an area in which he and the attorney might have a meeting of the minds is that of the parcel's

parking facility and the path of travel to the rental office and the rental office itself. That clearly is, Mr. Michaelson believes, a part of the structure that is open to the public, not just the boat renters, and there needs to be accessible features in the path of travel, the parking lot, and the rental office.

Mr. Michaelson said the good news is that regardless of the legal discussion's outcome, the lessee appears to be receptive to making changes in the restroom, but it remains to be seen what the extent of these changes will be. The lessee will rely on its legal counsel's advice and what the lessee believes is appropriate for goodwill and meeting its renters' needs.

Commissioner Law said the lessee has a huge interest in the Marina and he encourages the lessee to not turn the matter into an ongoing legal dispute, which he isn't suggesting the lessee is doing, but Commissioner Law believes the lessee should just do what is right. Mr. Michaelson said that the lessee's lawyer seemed receptive to moving the matter forward regardless of the law's interpretation; however, it remains to be seen what actually will be done.

Chairman Searcy opened the floor to public comment.

Mr. Sherman Gardner, a representative of the Holiday Harbor lessee, informed the Commission of the lessee's efforts relative to the concerns raised by Mr. Nicholls at the September meeting. He said, "Mr. Wisniewski, as recently as the 27th, brought it to my attention for the first time when he told me what the issue was.... I went to our facility and I noted that there was a handicapped parking space that was just almost contiguous to the health club. That wasn't good enough for me. Where I'm coming from is, with anyone in this room it could happen to and we certainly are not insensitive to this kind of situation. We're not newcomers to the Marina. We've been around for a long time and we understand the situation. We were encouraged to talk to legal counsel and that's what I did. I went to the facility and I created a handicapped parking space right in front of the dock by his [Mr. Nicholls] slip. I further went through our file and I contacted Mr. Nicholls. I got him on the phone and he was very concerned as to how I received that phone number. I said to him, 'You know, just pick up the phone. Usually the way we operate, if you have a concern, just pick up the phone and I'm happy to talk to you about it. It's our style.' I told him that if he wanted to come by the close of business tonight, which was the 27th of August, there would be a handicapped parking stall right in front of his dock and if he had any other further concerns, here is the private line in my office and here is my fax number, call me. As we are standing here today, I've yet to hear from Mr. Nicholls."

Mr. Gardner continued, stating, "I heard what was said about the restrooms. Obviously, that's a very undignified situation. I don't want to be in that position. If there's a way for me to cure it without tearing that building down and, wisely as Mr. Michaelson said, if it's readily achievable, I'm going to do it...We did in fact move one of the stalls over and we have widened the area in which Mr. Nicholls is able to go into the restroom. That was done, perhaps, a couple of weeks ago. The interesting point I want to raise to you is that, evidently, Mr. Nicholls was here, or someone was here, who spoke to you on September 10. That's two weeks subsequent to the conversation I had with Mr. Nicholls. Nothing was mentioned in that document to the tune of a handicapped parking space, the willingness to cooperate, etc. Several months ago, three or four months ago, we did in fact provide a handicapped access ramp for Mr. Nicholls and our management told me that it was stolen on several occasions and they built an additional one. The item that Mr. Wisniewski brought to my attention about notes being left, well, we don't leave notes. We have a regular form used when someone is parking in the wrong spot. It's a standard form. I certainly apologize for anyone who left a note that adversely affected him....That is not the way we do businesss. My office has a call into Mr. Nicholls. I want to see if there's anything else we could further assist him with that again is readily achievable without tearing the property down."

In conclusion Mr. Gardner said, "I pointed out in my note that I sent, that we are in the process now of negotiating a new lease, which would involve the rehabilitation of the entire marina. The first note that was sent by Mr. Wisniewski's office, I didn't see it until a day or week later and that's the reason it took me a few days longer to respond."

Vice-Chairperson Stevens asked, since most of the bathrooms for the boaters, at least in the Dolphin complex, have stairs going down, how the property could be made ADA compliant. Mr. Gardner responded that the facility in question is Parcel 21, which is an older facility purchased approximately five years ago. The lessees are in the process of attempting to rehabilitate and refurbish it. It has two bathrooms now and one of the bathroom areas had its stall widened. He stressed that his office is available to discuss problems and is only a phone call away.

Commissioner Law expressed his appreciation for Mr. Gardner's comments and efforts to resolve the matter.

Ms. Andrus said, "About Dolphin Marina, Mr. Nicholls brought up the issue of the beveled walkway. Isn't that a brand new feature to the walking promenade?" She explained that, at the September Commission meeting, Mr. Nicholls mentioned the concern he had, as a disabled person, using the beveled walkways at Dolphin Marina.

Additionally, Ms. Andrus said, "You accommodate ADA ramps to get down to a boat, but you don't think about the restrooms at Dolphin, which Ms. Stevens indicated, have stairs. This was also indicated in Mr. Nicholls' testimony last time. The real issue, broader than that, is the promenade in itself. Mr. Ring, in February 2000, went in front of the Design Control Board about his promenade and he's also going to have the ADA access ramps to the boats, which eliminates a lot of slips as we all know. I brought it up at that meeting and asked about the beveled walkway."

Chairman Searcy clarified that Ms. Andrus is addressing the issue of material uses and surfaces, which is not necessarily completely within control of the developer or lessee, but rather is subject to or derives from the Department of Public Works and rules pertaining to ADA compliance, which require the use of a certain type of surface.

Mr. Michaelson said that Chairman Searcy is correct. The federal regulations are encapsulated in Americans with Disabilities Act Architectural Guidelines (ADAAG) and its California equivalent, California Building Code. It's very specific and detailed that, when dealing with new construction, certain surfaces are appropriate and certain surfaces are not. With new construction, the builder has to comply with the more stringent of the federal or state law and obtain a building permit, which necessitates a building official to confirm that the construction was done right.

Ms. Andrus said that if beveled walkways are used, there should be cutouts so that wheelchairs could easily access the area where the ramp is located. This should also be considered for restroom access.

Chairman Searcy encouraged Ms. Andrus to address the Design Control Board with her concerns and also review the information that was distributed by the representative who discussed ADA issues with the Commission at a previous meeting. He suggested that Ms. Andrus contact Mr. Moliere if she needs further assistance.

b. Marina del Rey Convention and Visitors Bureau

Chairman Searcy said that, due to time, the Convention and Visitors Bureau's Report is postponed until the November meeting.

7. COMMUNICATIONS FROM THE PUBLIC

Chairman Searcy opened the floor to public comment.

Ms. Pat Phillips said, "Only a certain amount of folks usually come during public comment and argue on behalf of us boaters. I know more than one reason why that occurs. It's intimidating, we're all scared. We're all insecure and have been for some time because of what's happening. I'm part of what the Marina was built for. I'm a liveaboard and a recreational sailor. I take women out with the Women's Sailing Association, voluntarily and free, to introduce them to the water. I have been doing this for years. I just received a rent increase. I'm at Panay Way, Holiday Harbor. They said it's for the sewer, water and trash removal starting November 1. What scared me, it [rent increase notice] said, 'We could arrange payments to cover these utilities.' I don't know what that means yet. My big question is, I've been told that all of these twelve years, I pay more than a non-liveaboard to cover utilities because I use more of them. I'm paying $140.00 as a liveaboard over and above my rent. What I want to know is why? This is not just where I live, this is an issue for the whole Marina; to understand why we pay more because we use more utilities and now we have to pay, along with everyone else, money for the utilities."

Mr. Wisniewski requested that Ms. Phillips meet with Mr. Moliere after today's meeting to discuss the matter.

Mr. David Levine said, "I'm providing you with a letter. A couple of months ago the Commission asked if the Lessees Association would consider greater communication amongst boaters and the members of the Association, particularly in regard to relocation during time of redevelopment. We had a conversation at the Lessees Association meeting and I have a written response, which I will be delighted to distribute."

Chairman Searcy asked Mr. Levine to give a brief summary of his letter. Mr. Levine said, "The lessees are preparing to commence redevelopment and will communicate more fully the impending construction plans and timetables with all of the affected boaters, including liveaboard tenants. We'll do what we can to try and facilitate relocation efforts in those cases where the liveaboard boaters are tenants in good standing prior to relocation and where the boater maintains a vessel that complies with all of the appropriate County requirements and standards."

Chairman Searcy requested Mr. Levine to provide the Commission with a copy of his letter and Mr. Levine complied by distributing copies to the Commissioners and Department staff.

Ms. Andrus submitted a video to Mr. Moliere and said, "I promised you a video and this is a video on Mr. Moliere's investigation that will help you. It would be nice if you guys could find a way to see it all together. In front of the video is the testimony that I brought to you about the pricing market manipulation allegation, which you could fast forward through since you've already seen that. Because of my own budget concerns, when you guys are finished, I would like to have that back so that I can show it to the public. That's the reason that I made it. The day after I made those allegations, I told you that I have those specifics that you required. I thought, maybe you'd like to see those....Another member [of the public] came to talk on the same issue that Pat brought up. I also live in that marina. I'm interested in what's going on with that. I'm wondering about sewage, etc. That's a whole property thing. I know the Cheesecake Factory's there, the

fitness center. Are the boaters going to be asked to subsidize this? How do they calibrate meters? What license do they have to do that? I have questions like that on that issue. I would hope that we could get that field trip started. Maybe we could put that on the agenda?"

Chairman Searcy said that one of the things he would discuss with Mr. Wisniewski is, perhaps, arranging for individual Commission members, rather than the entire body, to conduct site visits since the entire Commission's involvement at the same time would require adherence to the Brown Act's meeting rules, etc. Additionally, Chairman Searcy said the visits might be conducted on an unannounced basis.

8. ADJOURNMENT

Chairman Searcy adjourned the meeting at 12:25 p.m.

Respectfully submitted,

Toni Minor, Secretary

Small Craft Harbor Commission
Meeting of November 12, 2003
Minutes

Commissioners Present:

Harley Searcy, Chairman
Carole Stevens, Vice-Chairperson
Russ Lesser

Excused Absences:

Joe Crail
John Law

Department of Beaches & Harbors:	Kerry Gottlieb, Chief Deputy Director Roger Moliere, Deputy Director, Asset Management & Planning Bureau Joe Chesler, Chief, Planning Division Dusty Crane, Chief, Community & Marketing Services Division
Other County Departments:	Tom Faughnan, County Counsel Sgt. Gary Thornton, Sheriff's Department Deputy Paul Carvalho, Sheriff's Department
Also Present:	Beverly Moore, Executive Director, MdR Convention & Visitors Bureau Jeff Heintz, Munger, Tolles & Olson

1. CALL TO ORDER & ACTION ON ABSENCES

Chairman Searcy called the meeting of the Los Angeles County Small Craft Harbor Commission to order at 9:31 a.m. in the Burton W. Chace Park Community Room, Marina del Rey.

Vice-Chairperson Stevens moved and Commissioner Lesser seconded a motion to excuse Commissioner Crail and Commissioner Law from today's meeting. The motion passed unanimously.

2. APPROVAL OF MINUTES

There wasn't a quorum of Commissioners present today who attended the October 8, 2003 meeting; therefore, Chairman Searcy postponed action on the minutes to the December 10, 2003 meeting.

3. REGULAR REPORTS

a. Marina Sheriff's Department Report

--- Crime Statistics

Since Lt. Edmonds was absent from today's meeting, Sgt. Thornton informed the Commission that he would give any questions they have concerning the report's statistics to Captain Dacus.

Chairman Searcy requested Sgt. Thornton to identify the east end area. Sgt. Thornton responded that the Marina del Rey station is responsible for serving two specific areas: Marina del Rey and the east end, which includes Ladera Heights, View Park and Windsor Hills.

--- **Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance**

Deputy Paul Carvalho reported the one notable change in the report is that derelict vessels are being disposed of. He said the report identifies one boat as being disposed of, when, actually, six vessels have been disposed of to date and will be reflected in next month's report. Hopefully, by the end of the month, the majority of the vessels will be disposed of and the Sheriff's Department will proceed with enforcing the seaworthy part of the ordinance.

b. Marina del Rey and Beach Special Events

Chairman Searcy announced that Beaches and Harbors' Chief Deputy Director, Kerry Gottlieb, is attending today's meeting in Mr. Wisniewski's absence. Ms. Gottlieb informed the Commission that Mr. Wisniewski is absent because he is attending a meeting of the Board of Supervisors, which has on its agenda the Parcels 52R and GG item that the Commission recommended for approval last month.

Ms. Gottlieb introduced new County Counsel representative, Tom Faughnan, who is replacing Dave Michaelson as the Department's counsel on both beach and Marina-related items. She said that Mr. Michaelson is no longer employed with the County of Los Angeles and now works for the Los Angeles City Attorney's office. Mr. Faughnan previously worked as the Department's counsel on beach-related issues and assisted with the development of the Marina del Rey Convention and Visitors Bureau.

In reference to the MdR/Beach Special Events Report, Ms. Gottlieb encouraged the Commissioners and members of the public to attend the December 13th Holiday Boat Parade, which has the theme, "Through the Eyes of a Child." Supervisor Don Knabe is the parade's Grand Marshal and the Department will have a boat participating in the parade this year.

4. OLD BUSINESS

None.

5. NEW BUSINESS

a. Appointment of a Member and Alternate to the Marina del Rey Convention and Visitor's Bureau Board of Directors for 2004

Chairman Searcy moved and Commissioner Lesser seconded a motion to reappoint Vice-Chairperson Stevens as a member of the MdR Convention and Visitor's Bureau Board of Directors for 2004. The motion passed unanimously.

Vice-Chairperson Stevens moved and Chairman Searcy seconded a motion to reappoint Commissioner Lesser as an alternate to the MdR Convention and Visitor's Bureau Board of Directors for 2004. The motion passed unanimously.

b. Amendment to and Assignment of Option to Amend Lease Agreements and Modification of Amended and Restated Lease Agreements, Parcels 12R (Deauville Marina) and 15U (Bar Harbor Marina) – Marina del Rey

Ms. Gottlieb informed the Commission that she would defer her discussion of this item to lead staff member, Roger Moliere, and the Department's legal consultant, Jeff Heintz.

Mr. Moliere stated that since the Parcels 12 and 15U projects are nearing their construction start date, which may be no later than the first quarter of 2004, a number of administrative items need to be taken care of. All of the items, in terms of exercising the Option, need to be revisited to provide sufficient time in order for the Option to be exercised after all of the reconstitution of the financing, which has been delayed during this period. The Option Agreement before the Commission today extends the period to exercise the Option by 60 days, with an additional 60 days at the Director's discretion, to give sufficient time to exercise the Option after the financing has been cleared.

Mr. Moliere explained that the project was split into dual ownership in order to enable the financing. The Parcels 12R and 15U Amendment and Assignment allow for the two new entities, Esprit One and Esprit Two, to exercise the Option for Parcels 12R and 15U, respectively. Initially, the time-period, which was meant to be 39 years, was measured from execution date of the documents rather than from the true date of the leases. That's now been corrected to provide the full 39-year additional terms for each lease. Additionally, three provisions have been added to the lease that are quite beneficial. These are modernized provisions that are included in the new leases; however, when the Parcels 12 and 15 leases were originally negotiated, these provisions weren't on the horizon. One of the provisions is price control to assure that lessee services and facilities are provided to the public at fair market rates. There is also a provision for liquidated damages of $100/day in the case of maintenance deficiencies. Lastly, there's a provision wherein the lessee will provide a water taxi station.

Chairman Searcy asked whether the $100/day provision is per maintenance violation. Mr. Moliere responded that it is per violation per day.

Vice-Chairperson Stevens asked the names of the principal parties behind Esprit One and Esprit Two. Mr. Moliere responded that the owners are Doug Ring and Mike Sonderman.

Vice-Chairperson Stevens asked for details regarding the $100 per maintenance deficiency provision. Mr. Moliere responded that the Department periodically develops a maintenance deficiency report, which identifies a parcel's maintenance deficiencies. The lessee is given an appropriate amount of time to correct the deficiency unless the deficiency is safety-related, in which case it must be immediately corrected. If time elapses for correction and the problem still isn't corrected, from that day onward, for each deficiency, there is a payment due the County of liquidated damages of $100 per day until the deficiencies are corrected.

Vice-Chairperson Stevens asked whether there are current deficiencies in need of correction. Mr. Moliere responded there are not any deficiencies that haven't been corrected in a timely manner. In other words, those that are listed on the deficiency reports are either being worked on or have been corrected.

Ms. Gottlieb explained that the Department has been successful in securing the maintenance provision in current lease extensions. The Parcels 12 and 15U lease extension, however, was entered into between the County and the lessee in the year 2000 and at this time the provision was not a regular provision. Now that there is an opportunity to make amendments to the Parcels 12R and 15U lease, this maintenance provision is included and will be included in all other lease extension deals. This provision will give the maintenance inspection program more teeth and ensure the correction of deficiencies.

Chairman Searcy opened the floor to public comment.

Ms. Carla Andrus said, "I don't think that there should be any amendments or modifications on this lease because...it strips away the protections that the public has to make sure that they start

on time and complete on time. We've already been held up. As much as they like to suggest that this is all on James Sokalski's shoulders, I would dispute that...I'm sure that had something to do with it, that's a small case that Doug Ring probably could have wished away. If he was losing that much money all of this time, it's a case he certainly could have come to terms with and worked out. Just to remind everybody, that lawsuit was about including public participation in regards to what was going on in that marina..... The public has already opposed this project overwhelmingly and they have never gotten to say anything about this project. This project has been held up, not at just a great inconvenience to boating and recreational boating, but it has also began to affect the marketing of this Marina. You've shut down all of these boat slips and prices are increasing on docks that are dilapidated and in bad condition. There's no reason that we should make any further amendments or modifications to accommodate Mr. Ring and his financing. His financing is what got us in this trouble in the first place. Because he was unable to meet his mortgage way back when it was due, we started to create these wonderful lease extension ideas when really he should have been found in default of his lease. The lease should have reverted back to the County. We would have a bidding process and there would be new blood in this Marina. Why are we doing everything for Doug Ring? This doesn't benefit the public whatsoever. I hope you totally reject this idea of any amendments or modifications or any further consideration for Mr. Ring, who has really proven to be a slumlord in this Marina."

Mr. John Davis said, "I'm speaking on behalf of myself and on behalf of the Sierra Club. I'm the Chairman of the Marina del Rey Task Force. In regard to Item 5b, I will read the following letter I'm supplying six pages to this Commission for the administrative record to be transmitted to the Board of Supervisors."

He read the following:

> Attached to this letter and incorporated by reference are letters to the Coastal Commission objecting to a request by the applicant to extend Coastal Development Permit 5-01-143 offering the same objections as objections to Item 5b. The letter submitted to you regarding Item 5b by Stan Wisniewski, Director of Los Angeles County Department of Beaches and Harbors is a false document in many respects. The Director further recommends that this Commission divest itself of its legal obligation to approve item 5b to County Counsel on page 1.
>
> The most glaring false statement is located on page 12-15 BOARDLTR 11-04-03V6, middle paragraph, "Lessee has obtained all necessary regulatory approvals and is in process of finalizing complex financing arrangements to comply with the precondition to exercise option." This statement is false. Due to the fact that the California Coastal Commission is the regulatory body of the State of California and issues Coastal Development Permits in consistency with the California Coastal Act, the California Coastal Management Plan, the U.S. Coastal Zone Protection Act of 1972.
>
> Coastal Development Permit 5-01-143 is expired. There are no regulatory entitlements now. They are expired. The applicant has reapplied, but they are expired. Therefore, this Commission cannot possibly approve an extension of an option that has such a patently false statement included. Therefore, the Director's claim is knowingly and undeniably false.
>
> The Director further bases his request to this Commission to approve an Amendment and Assignment to Amend Lease Agreements and Restated Lease Agreements. The Director and his Board recommends that the County is exempt from the California Environmental Quality Act though California Public Resource

> Code No.15-020, or section, shows the Director has once again made a false statement.
>
> Then, on the same page, the Director recommends "liquidated damages for maintenance deficiencies and provisions for taxi docking area." Well, by this language, the Director is trying to exempt this applicant from County Policy Statement 25 regarding maintenance. This is in direct contradiction of County Policy Statement 25. Also, fair and reasonable price constraints are imposed on this project and this application is inconsistent with those regarding fair and reasonable pricing.

In response to Mr. Davis' comments, Ms. Gottlieb said it is true that the current lessee and the Department went to the Coastal Commission for an extension of the existing Coastal Development Permit. However, the permit is not currently expired, but it was believed that an extension might be needed because of the amount of time that was taken on the lawsuits.

Chairman Searcy asked whether the Coastal Commission granted the extension request. Ms. Gottlieb responded that the extension request hasn't yet been granted.

Chairman Searcy asked the expiration date of the permit. Ms. Gottlieb responded that there is an issue as to whether or not the permit expires. She explained that Mr. Ring filed for a permit just in case there was an interpretation that the permit would expire. Contrary to the Department's recommendation to approve the extension request on consent, the Coastal Commission set a hearing date for, Ms. Gottlieb believes, December 10. The hearing is in San Francisco and members of the public who aren't able to attend can send their written comments to the Coastal Commission.

For clarification purposes, Commissioner Lesser asked whether Mr. Davis incorrectly stated the permit had expired. Ms. Gottlieb responded, "yes." Commissioner Lesser asked whether Mr. Davis also incorrectly stated that the applicant is in default of his lease because he has violated Policy No. 25. Mr. Moliere responded that Mr. Davis incorrectly stated that the applicant is in violation. Mr. Moliere added that the project fully complies with environmental laws and went through all the required public hearings, including six Regional Planning Commission hearings, eleven Coastal Commission hearings and numerous Design Control Board hearings.

Vice-Chairman Stevens said, "I don't understand why, if the Esprit Corporation is still Doug Ring, it is necessary to grant him the Option." Chairman Searcy responded that the size of the overall renovation and reconstruction of the project necessitated, for financing purposes, the split of Marina Two Holding Partnership into Esprit One and Esprit Two. Ms. Gottlieb explained that the Commission and Board of Supervisors have already approved the Assignment of the Parcel 12R and 15U leases to Esprit One and Esprit Two. The document before the Commission today is the Option to Amend the Lease Agreement to the two new entities, Esprit One and Esprit Two.

Commissioner Lesser clarified that the Parcels 12R and 15U Option to Amend Lease Agreement being voted on today doesn't change the project or affect construction. The project, after receiving approval from several regulatory bodies, was delayed because of a lawsuit. An extension of the Option's expiration date is necessary because of the time that was taken to address the lawsuit. This extended time gives the County the opportunity to add certain provisions to the lease that benefit the County.

Commissioner Lesser moved and Chairman Searcy seconded a motion to recommend to the Board of Supervisors approval of the Amendment to and Assignment of Option to Amend Lease Agreements and Modification of Amended and Restated Lease Agreements, Parcels 12R

(Deauville Marina) and 15U (Bar Harbor Marina) – Marina del Rey. The motion passed unanimously.

c. **Assignment of Leasehold Interest – Parcel 125R (Marina City Club) – Marina del Rey, from Marina City Club, LP to Essex Portfolio, LP**

Ms. Gottlieb informed the Commission that this item is an Assignment from the existing lessee, Jerry Snyder, to a new entity, Essex Portfolio, LP (Essex). She said the Marina City Club has a number of condominiums and apartments. Mr. Snyder is the lessee for the apartments and the condo's common areas and he is assigning his interest to Essex.

Ms. Gottlieb explained that, generally, it is the Department's policy when doing Assignments, to review the financial conditions of the proposed assignee, as well as the price being paid, and whether the leasehold's management would still be within the County's interests. In the case of Essex, all of the County's requirements are satisfied. Essex is a well-financed company, the sale price is reasonable, and the property's management would be taken over by an experienced multi-family housing management company.

Chairman Searcy asked to what extent Mr. Snyder would continue his involvement with the property. Mr. Moliere responded that there would be a full sale of all of Mr. Snyder's interests to Essex and Essex will completely replace Mr. Snyder. He said that Essex is a publicly traded, New York Stock Exchange listed, real estate investment trust. The company is incorporated in Maryland, but operates primarily in Palo Alto, CA and is a Western United States operation. Essex has several hundred California apartments and is principally involved with multi-family complexes. The company is very experienced, very well capitalized and has top notch banking relationships.

Vice-Chairperson Stevens said, "Given the tremendous number of problems we've had with the condos that are privately owned and, I understand the ones also that Mr. Snyder retained on the promenade, where I had two friends move in and move out because there was no heat, there was no air, there was nothing. The building, as we all know and have discussed over many months, is still in desperate need of repair. Is Essex prepared to do this, because Jerry Snyder certainly wasn't?" Mr. Moliere responded that the current lessee and the new lessee have no direct connection with the condos. The condos are individually owned.

Vice-Chairperson Stevens clarified that her question pertained to Essex's responsibility for maintenance of the condo's common areas, such as the tennis courts and garage. Mr. Moliere responded that the condominium and common areas are subject to a separate negotiation going on right now with the Homeowners Association and only indirectly with Mr. Snyder and now, Essex. There is a coming probable deal in the works that would address these issues, but it is not the direct responsibility of either Mr. Snyder or Essex. The lessee's responsibility, according to the written lease, extends only to the frontal common areas, the docks (which the lessee has agreed to replace), the apartments and certain of the other common areas.

Vice-Chairperson Stevens commented that she knows at least two condominium owners whose water pipes burst and ruined their furniture and rugs. She said the homeowners do have some responsibility; however, the pipes throughout the building are the lessee's responsibility. Ms. Gottlieb said that the individual condo owners would feel the pipes are the lessee's responsibility, but, in fact, pursuant to various agreements that were entered into at the time that bankruptcy occurred years ago, it became a condition of the Homeowners Association to take care of the various deficiencies. This issue has been the subject of a number of years of discussion and now there are ongoing negotiations to try to attend to deferred maintenance deficiencies.

Chairman Searcy asked with whom the homeowners are negotiating since the lessee is not responsible for maintenance deficiencies. Ms. Gottlieb responded that the homeowners are negotiating with the County for some relief from shadow rent increases and, in fact, deferral of shadow rent increases. She said the County has been setting aside the increased shadow rent so that homeowners could use it for needed capital improvements.

Chairman Searcy asked the amount of funds accrued from the shadow rent. Mr. Moliere responded there is approximately $2 million. If the deal comes to fruition, approximately $4.5 million will be provided as an advance to the homeowners, which they will pay back with interest in the form of increased participation fees as condos are sold.

Chairman Searcy opened the floor to public comment.

Mr. David Naftalin said, "I'm here on behalf of the Marina Tenants Association.... I was fascinated by the discussion that just took place because my review of the proposal was based only on the facts that were contained in the letter from the Department urging the Board of Supervisors to approve this transfer. It's shocking to me that the County would let the Homeowners Association flounder like this. The information contained in this recommendation letter and made available to the public is shockingly inadequate. There's no information about what the seller is receiving as an allocation to condos. Apparently nothing for condos, but as an allocation, how many units he's selling. It just says that the lease contains this many units and includes this, but it doesn't say what the money is going for. If the $28 million were $30 million and the improvements were only worth $28 million, then you say, 'well what's the other $2 million for?' Well, what's the $28 million for? The County has a policy on approving transfers and it includes Item B here on the first page of the recommendation letter, 'The price to be paid for the leasehold as it relates to the improvements or potential development thereon.' Now, absolutely no information is provided about the relationship between the proceeds to the seller and the value of the improvements. There's no way that I, or anybody else from the public, can analyze this. I can't believe that the Commission has only received this information and that the Board of Supervisors would be asked to make an approval based on this three page letter. It contains virtually nothing."

Mr. Naftalin continued, "I'm going to follow up, with your kind permission, with a letter setting forth my questions. It has to do with what exactly is being transferred? How are the $28 million proceeds being allocated? What methodology has the County employed to relate the proceeds to the improvements? You see, the seller can't just take and say, 'hey, it's such a great deal doing business with the County, they roll over. You can get all you want.' Then say, 'I want $100 million for my lease,' and the County says, 'Well, it's a bona fide deal.' That's what it says in the letter, 'It's a bona fide financial arrangement.'....We kinda have to know that there's some relationship between the value of the improvements, which is all the lessee owns, and the sales proceeds. I would like to know what that relationship is and what methodology is being used. Also, since there are admitted deficiencies in the present maintenance, because obviously there's deficiencies in the slip maintenance, as in Exhibit B, the list, the promise to improve the slips, well, insofar as that promise to improve the slips now is a deficiency that should have been cured by the present owner, that cost has to be added to the proceeds too. If, in fact, this is something that the present lessee should have done and then he gets $28 million and he gets covered for his deficiencies, that's something he's receiving too. He's walking away free and clear and washing his hands of the problems with the Homeowners Association."

In conclusion, Mr. Naftalin said, "There's a general point I'd like to make. Each one of these lease approvals, transfer approvals, is an opportunity to take back the Marina. In 2000, I noticed in the discussion on Item 5b, Ms. Gottlieb was saying 'we put in some new provisions, in 2000 we got some better provisions in the lease that relate to our right to negotiate on the deficiencies, the maintenance deficiencies.' The County is very deferential at the very least. This is the one

opportunity when we don't have to be so deferential. When the County can step out and say, 'no, I'm not gonna approve this. We're not gonna approve a transfer until we get....' .I don't know why the strength of the buyer is so important. Do we really want more strong buyers? Have they contributed to the Board of Supervisors? There ought to be a conflict assessment to see whether some of the Board ought to recuse themselves on this issue. I don't see how this proposal can be recommended on this record."

Vice-Chairperson Stevens expressed her opinion that action on the Marina City Club Assignment should be deferred until the Commission receives answers to questions regarding the maintenance that's being loaded onto the Homeowners Association and the lack of commitment on the part of Mr. Snyder in performing general maintenance, such as to the pipes and in the garage. She questioned whether Essex would fix these problems. Ms. Gottlieb responded that Mr. Snyder is not responsible for the repair of the pipes and the garage and it will not be the responsibility of Essex. The Homeowners Association is responsible for correcting the deferred maintenance. The County is in negotiations with the Homeowners Association to try to assist the owners with meeting their obligations to cover the deficiencies.

Ms. Gottlieb emphasized that the item before the Commission today is not a lease extension deal when additional things could be extracted from the lessee. The item before the Commission today is an Assignment of the lessee's interest to another entity. Ms. Gottlieb said that under the existing lease the County is not able to unreasonably withhold its approval of the transfer.

Commissioner Lesser recounted his experience with a property transfer when he was a member of the Manhattan Beach City Council. The Radisson, now Marriott Hotel, was on city land. It had a long-term 99-year lease that allowed for a transfer and the City Council had the right to not approve it; however, approval could not be unreasonably withheld. Commissioner Lesser expressed his disagreement with Mr. Naftalin's comments questioning whether the County needs a strong buyer. Commissioner Lesser said a strong financial position is important and the County should want a lessee who could afford to take over a $28 million lease. As far as the price is concerned, Commissioner Lesser expressed his opinion that the Commission does not have the right to get involved with this matter; after all, the deal is between a willing buyer and a willing seller and the asset isn't being changed. He said that in the case of the Manhattan Beach Radisson Hotel, it was sold for $85 million and the city received a nice transfer fee.

Ms. Gottlieb stated that, when looking at the price, the County makes sure the property isn't loaded with so much debt that it won't take care of itself and that the County's underlying land interest is protected. She added that it's not just the improvements on the land, but the number of years that the lease is in existence, that weighs in on whether or not the Department believes the price adequately protects the County's underlying land interests.

Chairman Searcy requested Mr. Lon Snyder, Jerry Snyder's son, to come to the podium to address some of the questions concerning the Marina City Club.

Mr. Snyder said, "The Marina City Club consists of 600 condos, 101 apartments and approximately 300 boat slips. The Marina City Club LP, what you call Jerry Snyder, is the master lessee and is ultimately responsible for everything that happens on the property. Out of the 1994 bankruptcy, came a management arm called the Management Council. What was happening was that the 600 homeowners were obligated to pay monthly their share of the maintenance fees but had zero say in how the property was managed. So, out of the 1994 bankruptcy settlement came a management arm consisting of five persons: two people from the elected homeowners board, two Snyder reps and an independent member."

Mr. Snyder continued, "You [Vice-Chairperson Stevens] mentioned that the promenade didn't have any heat. People have moved in and moved out. The first part of this year, we replaced the heating system and the building is currently being painted. Improvements are being made to the promenade. With regards to pipes breaking in the condos and tennis courts needing to be fixed, the Management Council, the joint board of the homeowners and the association, is aware of these problems and is hoping that the ground rent negotiation deal with the County will be approved and will give us the funds to fix all of these problems. It is also aware that if the ground rent deal fails, there will be a special assessment of multimillion dollars to fix all of those problems. The County has been very nice to give the master lessee time to try to work all of these problems out. The County has the ultimate hammer. You guys could put the master lessee into default, make us fix it, and we would have to go special assess. We still have that right. Essex will step into our shoes. The entire interest is being sold. To address the question of is it a fair price, the master lease is being sold to Essex, so Essex will step into our shoes. The condo owners are sub leaseholders. That doesn't change. The relationship doesn't change. The promenade apartments, boat slips and various retail areas have an annual net operating income of roughly $2 million to one. A six percent cap, generally what apartments sell for, works out to $33 million. The purchase price is $28 million. That differential of $5 million gives you the money to fix up the boat slips."

Vice-Chairperson Stevens asked whether the assessment Mr. Snyder mentioned would be against the homeowners or against the lessee and the homeowners. Mr. Snyder responded, "If the ground rent deal fails and there's a $6 million special assessment, to the extent that the improvements are not part of the shared common area, which are the driveways, pool, club, courts, everything that's basically between the apartments and the boat slips, the things that are shared are paid by both the condo association and the master lessee. The items that are part of the towers only are paid exclusively by the 600 condominium sub leaseholders."

Vice-Chairperson Stevens said she noticed when reading the Argonaut that condos are frequently put up for lease rather than for sale. She asked who is responsible for a leased condo. Mr. Snyder responded that the condominium sub leaseholder is responsible for any charges against his/her condo irrespective of whether he/she rents the unit to someone.

In response to Mr. Naftalin's comments, Mr. Moliere said that with the Marina City Club transaction, the Department asked for the purchase agreement, the operating statement for the last five years and Essex's operating plan. As for maintenance deficiencies on the Marina City Club's promenade, Mr. Moliere said that deficiencies are being corrected in the portion of the Marina City Club that Mr. Snyder is selling. Also, according to the deal that was made, the new buyer agreed to replace the docks within 3-5 years.

Mr. Donald Klein, president of the Coalition to Save the Marina, said, "I'm glad to see the County is doing all their assessments on all of this financial stuff. I just wondered whether Mr. Snyder or Mr. Robert Nehu, who originally funded the Marina City Club, was informed, or whether the County has ever informed the people involved with this lease, that the property that they're sitting on was the site of two abandoned oil refineries, one abandoned oil well, a former sewage treatment plant and a city trash dump, all in that specific area. Believe me, this is no new information because it was presented to this Commission August 17, 2002 and was brought up before the California Coastal Commission at their meeting in San Luis Obispo in December of last year, I believe December 11, if I'm not mistaken. My feeling is that it doesn't exactly smell like a bed of roses when you drive around the Marina City Club. It sure smells like a lot of hydrogen sulfide gas...I realize Mr. Chesler has made a statement, something about all this was taken care of, everything was capped, so forth and so on. However, no empirical data or documents have ever been shown to show that those statements were made...also there's a requirement by the

County, 110.3 and 110.4, which requires a state licensed engineer to make an assessment of toxic substances, and things of this nature, of this area, which has never been done."

Mr. Davis said, "I incorporate my comments and the Sierra Club's comments, numbered 1-9 on Item 5b of today's agenda, as opposition to this transaction as well. The Club concurs with the statements made by Don Klein of the Coalition to Save the Marina, so there is no further reason to restate these extreme public safety issues except to also include the fact that this is in a seismic hazard zone. I could not believe that the County Counsel laughed nervously in the discussion of these very important public safety issues. This is a serious matter. It is certainly not a laughing matter. The grand jury of the County of Los Angeles, in its review of Marina del Rey in 1982, concurred with the statements from County Counsel to Jack Salyers, Chairman of the grand jury at that time, that you cannot have 60-year leases. You call them condos. These are leases, 60-year leases, called condo leases. They're apartments, they're not condos. They're not privately owned, number one. Number two, the County disregarded the advice of the grand jury and County Counsel itself and two or three years later, giving 60-year leases and calling them condo leases. Mr. Moliere and Stan Wisniewski and County Counsel are disregarding Policy Statement 25 regarding maintenance standards in Marina del Rey that are here for public safety matters. I submitted that document to this Commission. It was one page. It's simple. It said that safety deficiencies are cured immediately and other deficiencies are to be cured within one month. The fact is that County Counsel has advised that it is not the case. This Commission is concurring and Beaches and Harbors is not adhering to Policy Statement 25 and the lessee is in default of its lease. Now, to prove that this lessee is in default of its lease and that the County of Los Angeles Department of Beaches and Harbors fails to enforce Policy Statement 25, read Item #2 on page B-10 [of the Leasehold Premise Maintenance Repair Deficiency Report attached to the Marina City Club Board Letter]."

Mr. Davis referred to the Department's Maintenance Repair Deficiency Report and read aloud one of the Marina City Club promenade's deficiencies. Mr. Davis said, "He [Mr. Moliere] states the ongoing repair processes are suitable to the Department of Beaches and Harbors. I would like him to answer how many maintenance crews it takes and how long to paint a pole."

In conclusion, Mr. Davis said, "Marina del Rey is categorically excluded from the coastal zone and the County Counsel's document stating that the ownership of Marina del Rey and stating that federal jurisdiction only regards the main channel is based upon a false document, which is the deed of 1958 whereby the County of Los Angeles was to transfer all lands, easements and rights of ways necessary to construct a harbor in the United States. The deed says it's in conformance with House Document 389, which shows attachment 1 as the true boundaries of Marina del Rey, but the geographic description contradicts the first written text and the deed, therefore, that is a false document that the County is using to assert that there are no federal easements over the Marina del Rey. This will be discussed at the Coastal Commission and in the eventual review of the LCP."

Vice-Chairperson Stevens stated that she's disturbed by the fact that, for as long as she can remember, the Homeowners Association and its differing membership have discussed with the County and Mr. Snyder how to handle the issues discussed today. She expressed her feeling that nothing will ever be resolved. Ms. Gottlieb said the Department is hopeful that is not the case and staff has committed to the Board to make a good faith effort to reach an agreement. She said the issue is a complex one. There are 600 homeowners and a substantial amount of deferred maintenance, which costs a lot of money. After the bankruptcy there were some responsibilities directed to the Management Council. It's a very complicated matter, it's gonna cost a lot of money, a lot of people have to agree to it, and the County has to remain in a good position for itself. Ms. Gottlieb said the Department is very hopeful that current negotiations will

be successful and is working toward that goal so that the condo owners and the County will be satisfied.

Commissioner Lesser mentioned that as a condo owner he could relate to the problems and complexities involved with maintenance issues; however, he fails to see what these issues have to do with the lease Assignment before the Commissioners today. He said that the Marina City Club Assignment involves the proposed buyer and the proposed seller of the existing leasehold. The leasehold is not really going to change in any way by the transfer; the only way it would change is with the commitment to fix the boat slips earlier, which is positive. The price seems to be reasonable and the buyer has the requisite experience. Commissioner Lesser said the only decision the Commission is required to make today is whether or not there is a reason to withhold the transfer and he doesn't see a reason to withhold the transfer since the County would benefit from it.

Commissioner Lesser moved and Chairman Searcy seconded a motion to recommend Board approval of the Assignment of Leasehold Interest – Parcel 125R (Marina City Club) – Marina del Rey, from Marina City Club, LP to Essex Portfolio, LP. The motion passed unanimously.

6. STAFF REPORT

a. Ongoing Activities Report

Ms. Gottlieb reported that the Board of Supervisors approved the one-year extension of the Marina del Rey Convention and Visitors Bureau Agreement. The Board also approved the Assignment of leases for Parcels 12R (Deauville Marina) and 15U (Bar Harbor Marina) to Esprit One and Esprit Two. Additionally, the Board authorized the Department to enter into exclusive negotiations for lease extensions with three projects surrounding Marina Beach. These projects were discussed in detail at the October meeting.

Ms. Gottlieb informed the Commission that the Board also approved contracts for appraisal services. She concluded the report by stating that the Design Control Board minutes were included in the Commissioners' meeting packets.

Chairman Searcy opened the floor to public comment.

Mr. Klein said, "I have a question on paragraph two [of the Ongoing Activities Report] concerning Parcel 12R, Deauville, and 15U, Bar Harbor. Partially, Commissioner Stevens touched on some of the things that I wanted to know. This Esprit One LLC and Esprit Two LLC, I have not seen a corporation statement of domestic stock on this and I'm kinda curious as to who the real directors and officers are in these corporations and I don't know what the percentages are, whether or not this is a new corporation or what....I don't know. I'm kinda curious, perhaps, Mr. Moliere could straighten me out on that."

Mr. Moliere responded that Esprit One and Esprit Two are limited liability corporations and are on file with the state. He said that members of the public could obtain documents identifying the officers, etc., from the state. Also, the material distributed at the October Commission meeting included the information that Mr. Klein is requesting. Mr. Moliere suggested that Mr. Klein contact him to arrange to receive the material.

Ms. Andrus said, "I don't see how we can make any decisions on any of these things without a public hearing. The public hasn't been invited to tap their input on these things. I would like to know when is the next public night meeting so that the public will have opportunity to understand what's going on in the Marina?"

Chairman Searcy asked Ms. Andrus to which agenda items she was referring when stating that decisions were made without a public hearing. Ms. Andrus responded, "There were no night meetings so that the public in this Marina will have a chance to understand what's going on... There's been several public hearings, just as we've been through this whole regulatory process all along. We've never been taken seriously. That's unfortunate because the public does have a lot to say that would benefit these developers. You know, sometimes you're gonna get what you wish for. With Mr. Ring for example, you know, you went ahead and passed this thing, but he's gonna be facing the Design Control Board just on issues of ADA compliance in his marina. That's gonna hold up his project and in the meantime it holds up the public."

Chairman Searcy expressed his confusion as to exactly what Ms. Andrus is concerned about. He explained that he understood Ms. Andrus to be concerned that there isn't a public hearing process, yet at the same time she appears to be expressing her concern that Mr. Ring's projects will be held up during the public hearing process. Ms. Andrus informed him that she is concerned that Mr. Ring's projects were approved during the public hearing process even though Mr. Ring didn't address unresolved issues, such as ADA compliance, which means he might need to go before the Design Control Board again regarding the matter.

Relative to public input, Ms. Gottlieb said that staff submits to the Board all of the items recommended by the Commission for approval. The public has an opportunity to attend Board meetings and/or send their comments to the Board regarding these items. The County's website identifies Board agenda items and the dates on which they will be heard. The public could also obtain copies of Board agendas by contacting the Executive Office of the Board of Supervisors.

In response to Ms. Andrus concerns about the Commission's approval of the Parcels 12R and 15U Amendment and Assignments, Commissioner Lesser commented that the Commission did not take any action today that would change the design of the Parcel 12 and 15 project in any way; therefore, the project doesn't need to return to the Design Control Board for review. He also expressed his certainty that the completed project would not have ADA deficiencies.

b. <u>Marina del Rey Convention and Visitors Bureau</u>

Commissioner Lesser commended Ms. Moore, Executive Director, MdR Convention and Visitors Bureau, for her excellent 2004 Annual Plan. He said the Plan is extremely interesting, informative and professionally prepared. Ms. Moore thanked Commissioner Lesser and said that Vice-Chairperson Stevens and Commissioner Lesser received advance copies of the Plan because of their Board membership. Copies of the Plan will be available to the public on Friday, November 14 at the Convention and Visitors Bureau, which is located at 4701 Admiralty Way.

Ms. Moore thanked the Commission for endorsing the extended Agreement between the County and the Convention and Visitors Bureau and expressed her appreciation for the Commissioners' support.

Ms. Moore reported there is now over 100 decorated, circular disks on the waterfront walk area parallel to Admiralty Way. These disks help to demarcate, for the very first time, the waterfront walk area and encourage the public to circulate between the restaurants and other businesses along the waterfront. She thanked the Department's staff members for their work on this project.

Ms. Moore said that the Visitors Bureau hosted a group of travel agents from Japan who were visiting the Marina last month. She said that Japanese travel to the United States is just beginning to make a comeback after almost 10 years in recession and briefing travel planners on

existing, new and proposed tourism services helps to place the Marina in a good position as the tourism market begins to reemerge in Los Angeles.

She continued her report, informing the Commission that the Bureau also hosted 10 California based travel writers this past month on a tour of the Marina. Every step of the tour was supported by local businesses to help house, feed and entertain the guests. The writers spent three days in the Marina and their activities included bicycling along the bike path, taking a boat tour and walking around the community. The writers particularly enjoyed their water experience. They were not only given a tour of the Marina's visitor's section, but also its residential sections. She said that the writers were impressed by the active role the County is taking to improve the Marina and staff is hopeful that they will write positive stories about their experiences.

7. COMMUNICATION FROM THE PUBLIC

Before receiving communication from the public, Chairman Searcy requested Ms. Gottlieb to schedule the January or February 2004 Commission meeting in the evening.

Vice-Chairperson Stevens commented that there was much public comment at the last evening meeting; however, the Commission and Department staff did not answer the public's questions. She encouraged the Commission and staff to try to address the questions posed by the public at the next evening meeting.

Chairman Searcy said that staff did respond to some of the questions posed at the last evening meeting; however, many questions went unanswered. He said the next evening meeting should be thorough and provide as much information about upcoming developments as possible, including the status of construction and information about traffic mitigation.

Chairman Searcy requested staff to submit to the Commission a draft agenda for the next evening meeting so that members will have an opportunity to review the agenda and provide input before staff finalizes it.

Ms. Gottlieb responded that staff would comply with Chairman Searcy's request. Additionally, if the public wants information on development in the Marina, it is available on the Department's website, which is http://beaches.co.la.ca.us. There are plans to also include information about construction activity in the future.

Mr. Donald Klein asked whether there is a public member of the Commission. He clarified that, by public member, he means a member of the Commission that is put forward by a public group of people. Ms. Gottlieb responded that the Board of Supervisors, which is composed of elected officials, appoints the Small Craft Harbor Commissioners.

Mr. Klein said, "I'd like to have set for the agenda for the next meeting the detailed report and documents on the oil field and gas problems. The data was never shown. It was a letter by Mr. Chesler that said that this has all been done, but nothing was ever produced. I've seen no empirical data and no documents."

Mr. Chesler informed the Commission that Mr. Klein is incorrect in characterizing that staff didn't respond or provide data. The Department asked the Department of Public Works (DPW), which employs the County's engineers and geologists, to write an opinion letter, which was included in the meeting material made available to the public at a Commission meeting approximately one year ago. He said the opinion letter essentially confirmed that "all due diligence has been followed with respect to eventual reuse of the land that had formerly been subject to hazardous material activity. Public Works, essentially, as the experts, as the engineers and geologists for

the County, confirmed that proper procedures had been followed and, in consultation with the State Department of Oil and Gas, which has ultimate jurisdiction over the reuse of these properties, all proper and legal means have been taken to essentially correct the ills of the past and move forward with redevelopment. That particular record is in your minutes and I would be happy to ensure that Mr. Klein gets that again if it's helpful."

Chairman Searcy requested Mr. Chesler to review DPW's documentation to verify that it contains the information Mr. Klein requests. If the material doesn't contain the needed information, Chairman Searcy requested Mr. Chesler to obtain it and send it to Mr. Klein.

Mr. Klein said, "It's not sufficient having a phone call from Public Works saying they did this or did that. There's no empirical proof that such actual assessment has taken place. It's required by County law, I believe its 110.3 and 110.4, that before any construction takes place in a former hazardous area or oil refinery type of situation, there has to be a state certified engineer that has to make a report. I want to see the report."

Chairman Searcy explained to Mr. Klein, "The steps that you're referring to, as required by the requisite laws, statues, regulations, etc., have been complied with. The documentation of that, which you indicated you have not seen, received, and don't know where it is, I've instructed staff to get that information, to identify where it is so that you can see the empirical data, so that you can see the geotechnical engineer. You want to look at his license number and know who he was, that he did it and review his report, we are trying to get that information to you, specifically. Once you get that information and you see, 'hey this guy did this report and he's been dead for 12 years,' we would love to know about that."

Mr. Klein reiterated that he wants to see the data and asked would the issue be agendized. Chairman Searcy informed him that the issue would not be agendized. Mr. Klein expressed his concern that the issue would be forgotten if it isn't agendized. Chairman Searcy told him the matter would not be forgotten and he requested Mr. Klein to inform him at the next meeting if staff doesn't follow up with the information Mr. Klein is requesting.

Mr. Klein asked what steps the County is taking relative to the Local Coastal Plan (LCP) review. He asked whether the issue could be agendized. Chairman Searcy informed him that the issue would not be agendized. He said that, if it's merely information Mr. Klein is requesting, staff could provide it.

Ms. Gottlieb said, relative to the LCP, the Department gave material to the California Coastal Commission (CCC) in a timely fashion, as requested. The CCC indicated that it would be unable to meet its obligation to review the LCP within the timeframe that it told the court. Apparently, the CCC lacks the resources to meet the court date. She said the Department is at a loss as to what the Coastal Commission intends to do or can do since its budget was cut and it has insufficient staff. There is nothing else for the County to do with respect to the review but await the CCC's actions.

Chairman Searcy asked whether, during this state of limbo, there is opportunity for the public to submit information to the CCC relative to the LCP. Ms. Gottlieb responded that the public could certainly provide information during this time. Even though the LCP is stalled, what has occurred on an ongoing basis is that the Coastal Commission continues to consider Marina del Rey development projects on a case-by-case basis.

Mr. Fred Newman said, "I'm referring to the Argonaut on October 16, which says that the Small Craft panel has OK'd negotiations for three new projects in the Marina and they have pictures of it. Most of them enclose Mother's Beach, but the most important one that I refer to is on Palawan

Way, which is Parcel NR, which is behind the Harbor House Restaurant at Admiralty and Palawan Ways. I happen to live at the end of that on Palawan and I wonder now, when it's hard to get on Admiralty because of congestion, how you're going to put in apartments plus retail and restaurant space? How the heck does the panel figure that people who live at the end of Palawan Way are going to be able to live a good life with all these people closing in on them?"

Ms. Gottlieb responded that all the projects before the Commission come in a proprietary fashion. The County is currently negotiating with the recommended Marina Beach proposer on the economic deal points. Any project that goes through the process of obtaining a lease proceeds to the regulatory side, which is when all the traffic mitigation issues and other zoning and planning obligations are considered. The Regional Planning Commission, the DCB and other regulatory agencies will hear the projects and the public will have an opportunity to contribute input.

Chairman Searcy asked whether the Department includes on its website the Marina del Rey projects that are being heard by regulatory agencies. [At this point, Mr. Wisniewski arrived at the meeting.] Mr. Wisniewski responded that a list of the Marina projects scheduled for regulatory hearings, including hearing dates, is available at the Visitors Center, public library and the Department's Administration building. This list is also available on the Department's website.

Mr. Chesler commented that Mr. Newman's name is included on the list of people to receive notification of public hearings for development projects.

Mr. Newman asked what the Commission was thinking when it approved the proposed projects on Palawan Way. Ms. Gottlieb responded that the Commission did not approve a particular project, but rather, a recommendation for the Department to enter into exclusive negotiations.

Mr. John Davis stated, "I am speaking on my own behalf so that the local media has no question who I am speaking on behalf of. I am speaking on my own behalf. I would like to help demystify the LCP process very briefly. I submitted a request for necessary action to the National Oceanic Atmospheric Administration (NOAA) regarding their periodic review of the CCC. They agreed and issued a necessary action requiring the CCC to review all LCPs within the legal timeframe. NOAA also advised the CCC that, if the state does not find the money, the federal government would reach in and find it for them. Also, regarding Mr. Chesler's assertations regarding the Department of Public Works' documents, the correct agency is located within the Department of Regional Planning. It is the Watershed Section and the Environmental Section, especially the Legacy Pollutant Section. That is whom we should be hearing from. Those are where the documents should be. Also, the geologist for the County of Los Angeles, in reviewing geotechnical reports for several of the permits that were issued in Marina del Rey, fails to notify this Commission that these projects are located in a seismic hazard zone as proved by the state geologist of the state of California. I have two points in closing. I would like to ask two simple questions to this Commission. First of all, I submitted Policy Statement 25 regarding maintenance standards to this Commission. I believe it was two pages, in August. It contradicts exactly what County Counsel and Beaches and Harbors states regarding maintenance procedures. I ask this Commission, did you read Policy Statement 25 yourselves? I submitted it in the hearings of last summer. Did any of the Commissioners read Policy Statement 25 regarding maintenance enforcement in Marina del Rey?"

Chairman Searcy responded that the Commissioners read the material that was provided to them, including Policy Statement 25.

Mr. Davis asked whether Commission members read the most recent grand jury report regarding Marina del Rey. Chairman Searcy responded that he hasn't read the grand jury report.

Mr. Davis said, "County Counsel stated that a particular Costal Development Permit had not expired in a direct question from Russ Lesser. I will supply the Chairman, and any other Commissioners that request it, a letter from the CCC I received stating that the permit had expired. And I would remind County Counsel that Counsel could be disbarred by providing false and misleading information at a public forum."

Ms. Gottlieb, Chief Deputy Director at the Department of Beaches and Harbors, informed the Commission that it was she, rather than Tom Faughnan, who said the permit had not expired.

Commissioner Lesser expressed his wish to see the letter indicating that Mr. Ring's Coastal Development Permit had expired. Mr. Davis requested Commissioner Lesser to give him his [business] card so that he could fax the letter to him. Mr. Davis also said he would request the CCC to send a copy to Commissioner Lesser.

Ms. Carla Andrus stated, "I wanted to first thank you for the night meeting. I hope that the Convention Center would be able to help us promote that meeting, a really nice promotion in the area to let people know that it is going to happen."

Ms. Andrus read a letter regarding market manipulation:

> I just wanted to give you an update I have of the market manipulation in the Marina, on the subject of slip pricing. I hope you got to see the video I provided you at the last meeting that highlighted some very specific situations. I want to focus on one in particular, that's a bulkhead slip at Tahiti Marina. The tenant there was renting a bulkhead slip for three boats at $75.00 a month for a period of several years. When just recently he was told he could not keep all his boats there, he would have to rent three bulkhead slips effectively raising his rents from $75.00 to $225.00.
>
> Mr. Moliere and Mr. Wong have been investigating this situation. I had some obvious questions for their investigation. Number one: because it is illegal to rent these slips, I asked if the lessee had been paying its percentage due to the County or was this money being charged under the table. Number two: If these slips aren't supposed to be rented and their books show that they are receiving revenue, why isn't the County enforcing its policy?
>
> Then you have different marinas charging different rates even within their own marinas and if you don't like it, you can move on. That's the policy of these marinas with their pricing. Since this one tenant's complaint of over charging got back to the dockmaster at Tahiti Marina, one of his boats has been towed to the Sheriff's Department. Dale, the dockmaster at the Bay Club, has let his tenants make use of the bulkhead slips at no charge. The only consistent policy has been is that if you don't like it you can move on. So, the boaters have been extorted. I told Mr. Wong that I believe the boaters should get their money back from these illegal charges. The lessee should not profit from this sort of business in the Marina. The refund of these monies should be in full and if the lessees want to recover the percentage they gave to the County, that's on them.
>
> My understanding is that the law in place is first to protect the seawall, a seawall that came at great expense to the taxpayers. Another concern is that in the event of some catastrophe, a small boat of 20' or more, any boat with a cabin might have someone on board putting his life in danger, therefore, opening the County up to liability. It's a reasonable law except it doesn't seem to be of any

real consequence to the smaller size boats, dinghies, day sailers and workboats. At any rate, the marinas are being asked to have all boats removed from the bulkhead slips now, which does not benefit the public whatsoever, which is a ridiculous thing to do. We can make all these amendments and modifications for Doug Ring, but when it comes to helping the public in a situation like this, we need those bulkhead slips and if we don't have them, then they're going to have to find some remedy. Putting those boats at the back of the vessels is not a remedy. It creates a navigational problem and, another thing, that shows, illustrates very well the market manipulation in this Marina. Those boats have to be included in a true market study, they have to be. They're vibrant to the Marina and it's necessary and it's a real hurtful thing the County has done asking the operators to have all of these boats removed.

Mr. Richard Horner said, "I am a boater and member of the South Coast Corinthian Club. I am here to speak on two issues. Issue #1 is the former bike patrol that the Sheriff used to have, which I thought was a wonderful thing. I am sorry to see that there is not enough funding for that anymore. The Corinthian Club was robbed twice within a ten-day period. The contributing factor, I believe, was that there is no more bike patrol because both times the robbery occurred between the hours of early morning and mid-morning. "

Commissioner Lesser asked whether robberies or burglaries occurred. Mr. Horner informed him that burglaries occurred.

Mr. Horner continued, "We are doing measures, such as installing a safe and doing some measures. The first time they broke through the sliding glass door. The second time they climbed up the side by taking all kinds of chairs and things and stacking them and went up to, what was, a second story through our windows... We never thought that was an issue because we never thought anyone could get up there. They did not get much; they caused more vandalism than they did... My comment is that there are a lot of things going on in the Marina, there's a lot of revenue being raised, a lot of construction permits. I think that this Commission can find the funding somehow to reinstate the bike patrol. I think it was a good thing, not just for the boaters, but for the public and tourists as well. I had, about two months ago, I bought a life raft safety device. It's carried in, like a little nap sack. It's a man overboard device. Sometimes I go to my boat everyday and I go to the Corinthian Club events and sometimes I might not be in my boat for a month. So, my diver found one and he charged me for it and I paid him. He said, 'I'll put it in your boat' and he put it in my boat and it was stolen. I don't know between what period. I think it was about a twenty-day period I wasn't at my boat, so I didn't even bother to report it. I believe that also was a contributing factor, that it may not have happened if we had a bike patrol. So, I am here to say that I would like to explore measures to see that happening again, the bike patrol."

Chairman Searcy informed Mr. Horner that the County of Los Angeles, certainly the Commission, the Department of Beaches and Harbors, and the Sheriff's Department, would welcome Mr. Horner's efforts, and that of his friends and club members, in a letter writing campaign to help try to restore funds for the bike patrol. Mr. Horner suggested that, perhaps, lessees could also contribute funding for a bicycle patrol.

Mr. Horner continued, "The second thing I want to talk about is bathroom facilities here for the boaters. In the 'G' basin, below our Corinthian Club, I don't know how, but every van aboard and all kinds of people who live in their vans that are not boaters, and I think possibly have no business being in the Marina, and lots of homeless people and people who don't have boats that don't live here and are not part of any club. The amount of traffic in the bathroom is shocking to see. Quite frankly, there are some people, boaters as well as club members, that have said, 'I

don't allow my children and I won't go into those bathrooms because they are dangerous.' I want to know what avenue there is, without retaliation, to pressure...Pacific Ocean Management...how do I approach them to maintain and manage the bathroom facilities that they say they have no funds for and don't have enough money to change the locks? They will not have any kind of security and I have actually had on two occasions, in the last year and a half, confrontation with people who said, 'This is a public facility let me in' and I said, 'Well, quite frankly, I can't do that.' It's been confrontation. So, what do I do about that? I am speaking on behalf of several members."

Mr. Wisniewski informed Mr. Horner that staff would gladly talk to Mr. Horner at the end of today's meeting about the issue. Mr. Wisniewski said, perhaps, there's some discussion that staff could have with the lessee to encourage the lessee to improve security.

8. ADJOURNMENT

Chairman Searcy adjourned the meeting at 11:32 a.m.

Respectfully submitted,

Toni Minor, Secretary

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

MARINA DEL REY STATION

PART I CRIMES- NOVEMBER 2003

Part I Crimes	MARINA AREA (RD'S 2760-2763)	EAST END (RD'S 2764-2768)
Homicide	0	0
Rape	0	0
Robbery: Weapon	0	3
Robbery: Strong-Arm	0	2
Aggravated Assault	2	4
Burglary: Residence	0	9
Burglary: Other Structure	3	6
Grand Theft	10	4
Grand Theft Auto	2	13
Arson	0	0
Boat Theft	0	0
Vehicle Burglary	3	3
Boat Burglary	2	0
Petty Theft	7	7
Total	**29**	**51**

Note- The above numbers may change due to late reports and adjustments to previously reported crimes.

Source- LARCIS, **Date Prepared** – December 1, 2003
CRIME INFORMATION REPORT - OPTION B

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
MARINA DEL REY STATION
PART I CRIMES- NOVEMBER 2003

	West Marina 2760	East Marina 2761	Lost R.D. 2762	Marina Water 2763	Upper Ladera 2764	County Area 2765	Lower Ladera 2766	Windsor Hills 2767	View Park 2768	TOTALS
Homicide										**0**
Rape										**0**
Robbery: Weapon							3			**3**
Robbery: Strong-Arm								1	1	**2**
Aggravated Assault	1			1			1	1	2	**6**
Burglary: Residence					1		3	3	2	**9**
Burglary: Other Structure	2	1			1	1		2	2	**9**
Grand Theft	7	1	1	1	1		1		2	**14**
Grand Theft Auto	2				1	1	3	6	2	**15**
Arson										**0**
Boat Theft										**0**
Vehicle Burglary	2	1			2				1	**6**
Boat Burglary				2						**2**
Petty Theft	3	3	1		2	1	1	3		**14**
REPORTING DISTRICTS TOTALS	**17**	**6**	**2**	**4**	**8**	**3**	**12**	**17**	**11**	**80**

Note- The above numbers may change due to late reports and adjustments to previously reported crimes.

Source- LARCIS, **Date Prepared – December 1, 2003**
CRIME INFORMATION REPORT - OPTION B

MARINA DEL REY HARBOR ORDINANCE
SEAWORTHY & LIVEABOARD COMPLIANCE REPORT

	October	November
Liveaboard Permits Issued	1	3
Warnings Issued (Yellow Tags)	0	0
Notices to Comply Issued	0	0

Total Reported Liveaboards By Lessees - 541
Total Liveaboard Permits Issued - 432
Percentage of Compliance - 79

No new Warnings were issued in the month of November.

No new Notices to Comply were issued in the month of November. There are no active cases.

No new citations were issued for violations of 19.12.1110 L.A.C.C. (liveaboard permit) or 19.12.1060 L.A.C.C. (unseaworthy vessel) in the month of November.

Number Of Unseaworthy Vessels Demolished

To date, one hundred and fifty three (153) vessels have been removed from the marina for disposal. Currently, five (5) vessels are ready for disposal and ten (10) are awaiting lien sale procedures.

Los Angeles County Beaches & Harbors — Caring for Your Coast

To enrich lives through effective and caring service

December 4, 2003

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director

SUBJECT: **MARINA DEL REY AND BEACH SPECIAL EVENTS**

MARINA DEL REY EVENTS

41st ANNUAL HOLIDAY BOAT PARADE

Saturday, December 13
6:00 p.m. – 8:00 p.m. with Fireworks Show at 5:55 p.m.

Sponsored by the Holiday Boat Parade, the Los Angeles County Department of Beaches and Harbors, The Marina del Rey Convention & Visitors Bureau, Marina City Club, The Argonaut Newspaper, Southwest Airlines, Playa Vista, Edward Jones Investments, Hornblower Cruises & Events, Daniel Freeman Marina Hospital, Wells Fargo Bank, Takeout Taxi, Living Air, Northwest Airlines, PNR Travel, The Parking Spot, Vitality Health Center and Wilson Creek Winery Vineyards.

Marina del Rey's 41st Annual Holiday Boat Parade will light up the Marina on Saturday, December 13 with a fireworks display off the Marina breakwater as brilliantly lit and decorated vessels circle the Main Channel. Parade theme for the 2003 Holiday Boat Parade is "*Through the Eyes of a Child*." Grand Marshal for this year's parade will be Supervisor Don Knabe, Fourth District, who is Chairman of the Los Angeles County Board of Supervisors.

Boat owners will compete for numerous prize packages with the *"Best Overall"* winning a 2-night trip for two to Fort Lauderdale, Florida for the Winterfest Boat Parade touted as the "World's Most Watched Boat Parade."

Best spots for viewing the boat parade are Burton Chace Park, located at 13650 Mindanao Way and Fisherman's Village on Fiji Way where spectators can see and hear the parade free of charge. The Holiday Boat Parade can also be viewed from the deck of the Lady Washington 1-800-200-LADY ($40 adult, $10 child). Parking is available in County lots throughout the Marina.

For event information call: The Holiday Boat Parade at (310) 670-7130 or visit their website at www.mdrboatparade.org

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Stan Wisniewski Director ● **Kerry Gottlieb** Chief Deputy

TALL SHIPS AT FISHERMAN'S VILLAGE

December 11th – 26th

Lady Washington will arrive in Marina del Rey at 2:00 p.m. on Thursday, December 11th. There will be free tours from 3:00 p.m. – 6:00 p.m. (December 11th only). On weekdays, there will be history programs for 4th and 5th grade students (by reservation, $5 dockside, $30 sailing). Public Dockside tours will be available on weekdays ($7 family, $3 adult, $2 students and seniors, $1 children under 12 years) from 4:00 p.m. to 5:00 p.m. (except Dec. 24, 25, 26). Tours will also be available on Saturdays from 10:00 a.m. to 1:00 p.m. Join the Lady Washington for an interactive Adventure Sail Training on Sunday, December 21st, 10:00 a.m. –1:00 p.m. and 2:00 p.m. – 5:00 p.m. ($40 adult, $20 child).

Friday, December 26th, the Hawaiian Chieftain joins the Lady Washington for a battle re-enactment sail ($45 adult, $25 child).

For event information and reservations call: Lady Washington at 1 (800) 200-LADY or visit their website at http://ladywashington.linsect.com/

MARINA DEL REY GREETS THE NEW YEAR WITH FIREWORKS SPECTACULAR

Wednesday, December 31
Sponsored by the Department of Beaches and Harbors
and presented by Zambelli Fireworks Internationale

On New Year's Eve, a brilliant display of fireworks will light up the skies over Marina del Rey. The fireworks will continue into the opening minutes of 2004, beginning at the 30-second countdown to midnight.

The fireworks can be viewed throughout Marina del Rey. The best locations for viewing them are Fisherman's Village on Fiji Way and Burton Chace Park, at 13650 Mindanao Way. Parking is available in County lots throughout the Marina.

For event information call: Marina del Rey Visitor Center at (310) 305-9545

FISHERMAN'S VILLAGE WEEKEND CONCERTS
Sponsored by Pacific Ocean Management, LLC
All concerts from 1:00 p.m. – 4:00 p.m.

Saturday, December 13
Phyllis Chang, playing Jazz, Pop & Adult Contemporary (1:00 p.m. - 4:00 p.m.)
Visit Santa's House, Building D (1:00 p.m. - 5:00 p.m.)
Live DJ/Emcee (5:00 p.m. - 8:00 p.m.)

Sunday, December 14
The Gregg Wright Band, playing Jazz

Saturday, December 20
Hammersmith, playing Jazz

Sunday, December 21
Floyd & the Fly Boys, playing Blues

Saturday, December 27
Jasmine, performing R&B, Funk and Pop

Sunday, December 28
Kid & Nic Show, performing Jazz & Swing

For recorded information call: (310) 823-5411.

BEACH EVENTS

THE CITY OF MANHATTAN BEACH
HOLIDAY FIREWORKS FESTIVAL
Sponsored by Manhattan Beach
Sunday, December 14
5:00 p.m. – 6:30 p.m. with Firework Show at 6:30 p.m.

The City of Manhattan Beach will have a Holiday Fireworks Festival with two performances with a public sing-a-long you do not want to miss, plus a special visit from Santa Claus on his float on Sunday, December 14 located on the Pier. In addition, Manhattan Beach is also sponsoring a Toy and Canned Food Drive, so please bring something with you.

The Hyperion Outfall Serenaders
5:00 p.m. – 5:30 p.m.

John Brown Band
A public sing-a-long
5:30 p.m. – 6:30 p.m.

For more information call: City of Manhattan Beach at (310) 802-5403

VENICE PENGUIN SWIM CLUB ANNUAL SWIM
Thursday, January 1, 2004
11:00 a.m.

The famous club goes into the ocean for its 44th annual "chilly" wintertime swim at Venice Beach.

For event information call: The Venice Penguin Swim Club at (310) 390-5700 or visit their website at www.swim.net/scaq/

SW:mc

Los Angeles County
Beaches & Harbors
Caring for Your Coast

To enrich lives through effective and caring service

December 4, 2003

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director

SUBJECT: **JOINT RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER AND DIRECTOR OF BEACHES AND HARBORS TO APPROVE AND AUTHORIZE EXECUTION OF LIMITED FORBEARANCE AGREEMENT TO FACILITATE AMENDMENT OF AMENDED AND RESTATED LEASE – PARCEL 125R (MARINA CITY CLUB) – MARINA DEL REY**

Item 5A on your agenda relates a proposed Limited Forbearance Agreement (Agreement) that would authorize a temporary deferral of the scheduled January 1, 2004 increase in "shadow rent" for the condominium units in Parcel 125R (Marina City Club), to facilitate the completion of a lease amendment that will address proposed infrastructure and capital improvement matters relating to the condominium portions of the leasehold.

The text of the proposed Agreement is not yet available. However, the attached Board letter provides details regarding all proposed provisions and we will file the Board letter only at such time as County Counsel has approved the text of the amendment. We will also return this item for your Commission's consideration if there is any material variance from the terms described in the attached Board letter.

Your Commission's endorsement of my recommendation to the Board of Supervisors as contained in the attached letter is requested.

SW:rm

Attachment

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

Stan Wisniewski Director • **Kerry Gottlieb** Chief Deputy

December 1, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

JOINT RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER AND DIRECTOR OF THE DEPARTMENT OF BEACHES AND HARBORS TO APPROVE AND AUTHORIZE EXECUTION OF LIMITED FOREBEARANCE AGREEMENT TO FACILITATE AMENDMENT TO AMENDED AND RESTATED LEASE – PARCEL 125R (MARINA CITY CLUB) – MARINA DEL REY
(4th DISTRICT)
(3 VOTES)

IT IS JOINTLY RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Limited Forbearance Agreement for Parcel 125R is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve and authorize the Chairman of the Board to sign three copies of the Limited Forbearance Agreement (Agreement) for Parcel 125R, temporarily delaying implementation of scheduled rent increases to specified future dates.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The proposed Agreement is intended to provide a delay period during which negotiations can continue toward addressing infrastructure and capital improvement concerns relating to leasehold improvements on Parcel 125R in Marina del Rey, and are a continuation of a policy adopted by your Board in January 1999, wherein the Department was instructed to

establish a deferred revenue account to deposit certain incremental rent increases from the leasehold pending possible agreement that would address those concerns. The Agreement provides for a limited rent increase deferral (not a waiver), and if final agreement is not reached and approved, the County will be made whole, with interest, for any deferred increased rental amounts. The Parcel 125R project element that is addressed is the leasehold condominium portion of the project and its 600 individual condominium subleases. The negotiations hinge, in part, upon the need for a temporary rent freeze and, thus, a deferral of the January 1, 2004 rent increase is required in order to provide sufficient time to assemble the numerous consents and amendments to individual condominium and condominium loan and other documents and preserve the elements of the proposed final agreement, should such final agreement be considered and approved by your Board. An overview of the proposed final agreement is included in the "Facts and Provisions/Legal Requirements" section later herein.

County and Marina City Club, L.P. (Lessee) are parties to that certain Second Amended and Restated Lease (Lease) dated October 27, 1987 that allowed establishment of a condominium plan and assignment of subleased condominium interests in the 600 high-rise units (Condominium Units) constructed on the leasehold. The leasehold also contains 101 low-rise apartment units, a promenade and certain common area facilities. Pursuant to the Lease, the Condominium Units were assigned to Marina City Condominiums, a California limited partnership, and subsequently individually assigned, on a condominium-by-condominium basis, to individual condominium sublessees (Condominium Sublessees), together with the undivided leasehold interest in the common areas and appurtenant rights applicable to each Condominium Unit.

While the parties to the Lease are the County and Lessee, and the parcel contains both apartments and 600 Condominium Units, the Lessee (in the case of the condominiums) acts essentially as a pass-through for the payment of the County's monthly "shadow rent" by the individual Condominium Sublessees. "Shadow rent" is an amount meant to approximate the rent the County would have received had the condominiums remained rental apartments. This device was designed as a quid-pro-quo for the County's consent to allow condominium sales of a sublease interest in the Condominium Units. The individual

Condominium Sublessees have a possessory interest in the Condominium Units purchased and may sell their interest to others, however at the end of the lease term (2067), full title and use rights to all of the Condominium Units as well as all rights to common areas and all appurtenant rights will revert to the County. The amount of shadow rent was set at the date of the condominium conversion and now is adjusted annually in accordance with an index, reflecting changes in Westside Los Angeles residential prices and the Consumer Price Index (CPI). The County also receives a percentage of gross sale proceeds (Administrative Transfer Fee) as each Condominium Unit is "sold" (assigned) throughout the term of the Lease.

While the County looks to the Lessee for maintenance of the three condominium towers and associated common areas as a legal matter pursuant to the terms of the Lease, the primary financial burden of funding both the maintenance and any needed structural repairs falls to the individual Condominium Sublessees. In response to the Condominium Sublessees' requests for certain adjustments in shadow rent and aid in correcting building structural and infrastructure deficiencies, your Board directed that all amounts representing annual increases in shadow rent starting January 1, 1999 be held in a separate account pending consideration of the Condominium Sublessees' requests. Pursuant to negotiation between the County and the Condominium Sublessees, a plan to accomplish the expressed needs of the Condominium Sublessees and preserve the County's lease revenue benefits has been developed. Certain elements of the proposed plan (Plan) will call for a temporary "freeze" on increases in shadow rent, and utilization of the amounts of shadow rent increases accumulated pursuant to your Board's direction since January 1, 1999 (which will further accumulate during the proposed temporary freeze period) for repairs to specified leasehold infrastructure and other capital improvement items. Amounts so utilized under the Plan will be repaid, with interest, by the Condominium Sublessees over time from an increase in the Administrative Transfer Fee for each Condominium Unit and from further increases (if necessary) in shadow rent percentage in later years should the increased Administrative Transfer Fee amounts prove insufficient to fully amortize the amounts, with interest, advanced to the Condominium Sublessees and to recover the rent loss due to the temporary freeze on increased shadow rent.

The proposed Plan, including the detailed assumptions utilized to project repayment, interest and other financial terms, is based upon the temporary freeze of further shadow rent increases becoming effective January 1, 2004. However, the Plan requires that a number of preconditions be satisfied by the Lessee and Condominium Sublessees, including amendments, consents and other documentation that must be executed by each Condominium Unit sublessee, each sublessee Condominium Unit lender, and a lease amendment and consent executed by the Lessee and its lender, as well as consideration of the Plan and the aforementioned documentation by your Board, all of which will require additional time to complete. In order to preserve the benefits of the proposed Plan and to effectuate its provisions should it be eventually approved by your Board, we propose to delay implementation of the shadow rent increase scheduled to take effect January 1, 2004. The attached Agreement provides that the County will delay implementation of the scheduled January 1, 2004 shadow rent increase until September 30, 2004, on condition that, if the Plan does not become effective on or before June 30, 2004, any amounts that would otherwise be payable to County in the form of increased Administrative Transfer Fees due to Condominium Unit transfers that take place between June 30, 2004 and September 30, 2004 be paid to the County upon the effective date of the Agreement (all of the preconditions, including the aforementioned amendments, consents and other documentation having been completed and your Board's approval of a Lease amendment embodying the Plan having been obtained). If the Plan is not approved on or prior to September 30, 2004, the shadow rent increase scheduled for January 1, 2004 will be retroactively implemented and sums due, with interest, become immediately due and payable. Additionally, any Condominium Sublessee who does not join in the Plan on or before the above referenced dates will also be retroactively assessed with the increased shadow rent amounts and such amounts, with interest, will become immediately due and payable, with interest, by the Lessee who will enforce the payment against any such Condominium Sublessee through its sublease and enforcement deed rights.

Implementation of Strategic Plan Goals

In furtherance of County Goal #4, "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic

partnerships with existing and prospective lessees toward preservation of County assets by facilitating repairs and replacement of infrastructure and capital improvements in leasehold property that will eventually revert to County ownership. This recommendation is also consistent with the County's Strategic Plan Goal of Service Excellence, in that while maintaining appropriate protection of County interests, it allows for and facilitates the preservation of improvements on the leasehold through arrangements with the Lessee.

FISCAL IMPACT/FINANCING

Fiscal impact is limited to the delay in collection of certain portions of County rent for the leasehold, all of which is to be repaid, with interest, in the event the proposed Plan is not effectuated or repaid over the course of the lease term, with interest, if the proposed Plan is approved, the Plan being designed to be revenue neutral to the County.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Proposed Plan Overview:

The proposed Plan that is intended to be implemented upon final documentation and agreement between the County and Lessee pursuant to a lease amendment will contain the following elements:

- County will extend a "freeze" on future increases in shadow rent for three years, beginning January 1, 2004 for all "Category A" Condominium Units (as discussed further below). Starting January 1, 2007, annual fixed increases in shadow rent of 3.75% will be implemented in lieu of the regular rent adjustment index now provided in the Lease.

- County will continue to accumulate shadow rent increases over 1998 base level during the three-year "freeze" period at the 2003 shadow rent rate.

- County will allow utilization of accumulated funds for reimbursement of certain

defined capital improvements.

- Repayment of advanced funds will come from increased County participation on sale proceeds.

- If advances are not fully repaid, with interest, by 2022, then cash repayment is required, such repayment being secured by a first deed of trust on all Condominium Units.

- If, by 2019, it appears that extra County revenue from increased sale proceeds will not fully reimburse County for the present value of the loss due to the 3-year freeze of increased shadow rent, a "lookback" provision provides for an upward adjustment of shadow rent increase from the fixed 3.75% annual level for the remainder of the Lease term, so that the County will be made whole for any such shortfall. Due to the delayed imposition of the effective date of the Agreement, and the consequent delayed imposition of the increase in County participation in sale proceeds, it is now likely that there will be an increase in shadow rent at the time of the 2019 "lookback".

- A precondition of the Plan is that not less than 80% of Condominium Sublessees elect to be bound by the Plan (as discussed further below).

Details of Proposed Plan and Forbearance Agreement:

County and Lessee have been negotiating, but have not finalized, an amendment to the Lease to effectuate the Plan. It is anticipated that the terms of the Plan will include establishing two categories of Condominium Sublessees as follows: a) the first category will consist of those Condominium Sublessees who timely elect to be bound by the Plan (Category A Condominium Sublessees), and b) the second category will consist of all other Condominium Sublessees who do not timely elect to be bound by the Plan or that do not make any timely election (Category B Condominium Sublessees). The Plan will not become effective unless and until at least 80% of Condominium Sublessees elect to be

bound by the Plan. It is further anticipated that the Plan will include, among others, the following terms:

A) Freezing the Lease shadow rent for each Category A Unit at its 2003 level through December 31, 2006 (the "Temporary Shadow Rent Freeze"), providing that, commencing January 1, 2007 and continuing each January 1 thereafter until at least January 1, 2018, the shadow rent for each Category A Unit shall be increased by 3.75%, rather than in accord with the current index specified in the Lease, and that effective as of January 1, 2019 and continuing each January 1 thereafter during the term of the Lease, the shadow rent for each Category A Unit may (but shall not necessarily) be increased by a fixed percentage greater than 3.75% if anticipated repayment of the present value of the loss due to the 3-year freeze of increased shadow rent, with interest, has not occurred, and

B) Increasing the Administrative Transfer Fee to be collected by Lessee for the benefit of County (in addition to any similar fee otherwise payable to Lessee for its own account) upon a change in ownership of each Category A Condominium Unit from 1% to an amount equal to 2.5% of the gross sales price or other consideration given for such change in ownership.

The proposed Lease amendment will not be effective unless and until certain conditions precedent have been satisfied or waived by County and Lessee in writing as soon as practicable, and in all events no later than September 30, 2004, on condition that any amounts which would otherwise be payable to County in the form of increased Administrative Transfer Fees due to Condominium Unit transfers that take place between June 30, 2004 and September 30, 2004 be paid to the County upon the effective date of the proposed Plan. Given that one of the components of the Plan will include a temporary shadow rent freeze for all or substantially all of the Condominium Subleases, the Condominium Sublessees have requested that County refrain from implementing the increase in the shadow rent as to each of them, that is otherwise scheduled to be effective as of January 1, 2004 under the Lease (the "2004 Increase") and County is willing to do so, all upon the terms and subject to the conditions contained in the Agreement. In reliance upon and subject to the terms of the Agreement, Lessee will notify each of the

Condominium Sublessees that Lessee is temporarily delaying the implementation of the increase in the shadow rent that is scheduled to be effective as of January 1, 2004.

County's agreement to delay the effect of the 2004 Increase shall not be effective unless and until each of the following have occurred by the applicable specified date: (i) Aetna Life Insurance Company, the current Lessee lender, shall have executed a Consent of Mortgagee in substantially the form attached to the Agreement and delivered the same to County not later than December 8, 2003; (ii) Essex Property Trust, Inc. (the prospective purchaser to Lessee's interest in the leasehold) shall have executed an Acknowledgement of Prospective Purchaser in form substantially as attached to the Agreement and delivered the same to County not later than December 8, 2003; and (iii) County shall have received an acceptable opinion of Lessee's counsel confirming enforceability of special charges against Category B Condominium Sublessees not later than December 12, 2003.

County's Limited Forbearance:

If the Forbearance Period commences (i.e., if the conditions contained in Paragraph 1 of the Agreement are satisfied on or before the periods specified in the Agreement), then:

A) If the Forbearance Period (the period during which the scheduled 2004 shadow rent increase is suspended) ends because the Plan is agreed to and becomes effective, then the 2004 Increase shall apply only to the Category B Units and be retroactive to January 1, 2004 and, not later than five (5) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which the shadow rent for each Category B Unit (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest on the amount described in clause (a) during the Forbearance Period at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period.

B) If the Forbearance Period ends due to the failure of the Plan to be approved or otherwise through the failure of one or more of the preconditions of effectiveness listed

in the Agreement, then the 2004 Increase shall apply to each of the Condominium Sublessees (both the Category A Units and the Category B Units) and be retroactive to January 1, 2004 and, not later than five (5) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which the Master Lease Shadow Rent for each Prepaid Sublease (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest on the amount described in clause (a) during the Forbearance Period at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period.

Notice to Condominium Sublessees. Promptly after the Agreement has been executed and delivered by Lessee and approved by County, and all of the conditions set forth in Paragraph 1 of the Agreement (consent of the Lessee its lender, acknowledgment by the prospective leasehold purchaser, and legal opinion of Lessees counsel as to enforceability of special charges against Class B Condominium Sublessees) have been timely satisfied, Lessee shall send each of the Condominium Sublessees a Notice of Temporary Freeze of Shadow Rent in the form attached as Exhibit B to the Agreement (the "Condominium Sublessee Notice"). Lessee will agree not to alter the form of the Condominium Sublessee Notice or send any other notices or communications to the Condominium Sublessees concerning the subject matter thereof without County's prior written consent, which shall not be unreasonably withheld or delayed.

Effect of Limited Forbearance: Nothing in the Agreement shall obligate, or constitute a commitment by, County to enter into the Plan. Moreover, County's agreement to the limited forbearance does not constitute a waiver of any other terms or provisions of the Lease, which has not been amended and remains in full force and effect, subject to this Agreement.

The Small Craft Harbor Commission is scheduled to consider the Agreement at its meeting of December 10, 2003 and we will advise your Board of the Commission's recommendation prior to your consideration of the Agreement. County Counsel has approved the Agreement as to form.

ENVIRONMENTAL DOCUMENTATION

The proposed Agreement is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. This proposed action and Agreement, in and of themselves, do not authorize any construction or other activity.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on current County services as a result of the Agreement.

CONCLUSION

Please authorize the Chairman to execute three copies of the Agreement and direct the Executive Officer to return two executed copies of the Agreement to the Department of Beaches and Harbors.

Respectfully submitted,

David Janssen, Chief Administrative Officer

Stan Wisniewski, Director
Department of Beaches and Harbors

Attachment (1)

c: Executive Officer
County Counsel

DJ/SW:rm

Los Angeles County
Caring for Your Coast
Beaches & Harbors

To enrich lives through effective and caring service

December 4, 2003

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director

SUBJECT: **CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST AND OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT - PARCEL 50T (MARINA WATERSIDE CENTER) - MARINA DEL REY**

Item 5B on your agenda relates to: a) a proposed assignment of leasehold interest in Parcel 50T (Marina Waterside Center) from the current lessee, Carlisle Realty Holdings I Limited Partnership, to Marina Waterside LLC, a California limited liability company that is controlled by the principal of Caruso Affiliated Holdings, Inc. and, b) a proposed lease option (Option) and amended and restated lease (Restated Lease), designed to facilitate redevelopment of the center by the proposed assignee.

Attached is a copy of the Board Letter that explains the details of both the proposed assignment and the Option and Restated Lease. Your Commission's endorsement of my recommendation to the Board of Supervisors as contained in the attached letter is requested.

SW:rm

Attachment

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Stan Wisniewski Director • **Kerry Gottlieb** Chief Deputy

Los Angeles County
Caring for Your Coast
Beaches & Harbors

To enrich lives through effective and caring service

December 3, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST AND OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT – PARCEL 50T (MARINA WATERSIDE CENTER) - MARINA DEL REY
(4th DISTRICT)
(4 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed assignment of the leasehold interest in Parcel 50T, Lease No. 8106, is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve and authorize the Chair of the Board to sign three copies each of the Consent of County of Los Angeles to Assignment of Lease (Consent), attached as Exhibit A, for Parcel 50T from Carlisle Realty Holdings I Limited Partnership, a Massachusetts limited partnership ("Carlisle"), to Marina Waterside LLC, a California limited liability company (MW).

3. Find that approval of the proposed Option to Amend Lease Agreement ("Option"), attached as Exhibit B, is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

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Stan Wisniewski Director • Kerry Gottlieb Chief Deputy

4. Approve and authorize the Chair of the Board to sign the attached Option granting to the recommended lessee, upon fulfillment of stated conditions, the right to extend the term of its existing ground lease on Parcel 50T by 39 years.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Assignment of Leasehold

Carlisle is the lessee of Parcel 50T by virtue of a previous assignment, approved by your Board on November 1, 1988. Carlisle is now requesting the County's consent to the assignment of its leasehold interest in Parcel 50T, commonly known as the Marina Waterside Center ("Waterside"), to MW.

Marina del Rey leases provide that the County's consent is required on most lease assignments and that such consent may not be unreasonably withheld. Department of Beaches and Harbors policy provides that the County's approval or denial of any assignment will be based on the following criteria: (a) the financial condition of the assignee; (b) the price to be paid for the leasehold as it relates to the existing development thereon; and (c) management of the leasehold by the new lessee being in the best interests of the Marina as a whole.

Our review has found: 1) MW is a limited liability company formed for the purpose of owning and operating the leasehold, whose single member, Rick Caruso, is an experienced developer and principal of Caruso Affiliated Holdings, Inc., a company that acquires, develops, owns and manages high-quality neighborhood and regional retail shopping centers throughout Southern California, and MW has appropriate financial resources to own and operate the leasehold and perform the anticipated renovations and improvements to the leasehold; b) the sales price appears reasonable for the leasehold and improvements thereon; and c) the assignee and its proposed management have the requisite experience in acquiring, developing and managing shopping center developments similar to Waterside.

Option and Amended and Restated Lease

The proposed Option for Parcel 50T is the result of negotiations with MW, with the consent of Carlisle, for such Option. The attached Option is designed to allow the prospective lessee (MW), to exercise its option and receive the benefits of the Amended and Restated Lease (Restated Lease), attached as Exhibit C, upon demonstration that it has satisfied all of the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project. If the lessee does not exercise the Option, the new percentage rents and a number of improved lease terms will nonetheless be incorporated by amendment into the current lease.

The Restated Lease provides for a 39-year lease extension; payment of a $500,000 lease extension fee; complete renovation of the existing 125,653 square foot shopping center, including new building facades, landscaping, lighting, sidewalk treatments, signage, parking lot reconfiguration and "screening" and landscape treatment of the Lincoln Boulevard exposure of the center, in addition to 9,500 square feet of new construction (expansion of the existing Ralphs market and conversion to an upscale, Ralphs "FreshFare" market) to replace 5,000 square feet of existing building, resulting in a remodeled shopping center of 130,153 square feet; establishment of a minimum expenditure for common area and building exterior upgrades equal to 1.5% of the gross revenues derived from the leasehold for years 1 through 5 of the extended lease term and 2% of such gross revenue thereafter, less any approved capital expenditures after extended lease year 10, to be utilized for an additional Director-approved renovation not later than 20 years after the effective date of the Restated Lease and, again, by the end of each 15 years thereafter; establishment of new minimum and percentage rents; County participation in leasehold sale and/or refinance; revised arbitration procedures; County right to recapture the leasehold if the lessee pursues its sale; establishment of a sinking fund to remove leasehold improvements at lease termination; liquidated damages of $100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after the specified cure period; and other miscellaneous improvements to the lease (e.g., payment of late fees and interest on overdue County payments and enhanced audit and record-keeping standards). Once the lessee has obtained all necessary project entitlements and has fulfilled the other requirements entitling it to exercise the Option, we will return to your Board for authority to execute the Restated Lease in substantially the form attached.

The Department has obtained an appraisal that confirms the return to the County from the lease extension is equivalent to, or greater than, fair market value.

Implementation of Strategic Plan Goals

These recommendations are consistent with the County's Strategic Plan Goal of "Service Excellence," in that appropriate management of the leasehold and protection of County interests are maintained in the transfer of the ownership interests, and of County Goal of "Fiscal Responsibility," in that the recommended Option and Restated Lease will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward both revenue maximization and property redevelopment.

The following chart details the proposed deal terms of the Restated Lease providing for the 39-year lease extension as they relate to your Board's existing lease extension policy:

BOARD POLICY ITEM	PROPOSED DEAL TERMS – PARCEL 50T
REDEVELOPMENT Redevelopment of existing improvements	• Renovation of existing 125,653 sf shopping center, including the Ralphs market, conversion to a Ralphs FreshFare, and upon satisfaction of Ralphs conditions, an approximate 9,500 sf expansion of Ralphs (replacing 5,000 sf of existing building). Total renovation to be completed within 2 years of lessee's exercise of Option, exclusive of delays caused by force majeure, which in no event shall extend the completion date for more than 2 years. • Total development cost to be not less than $8,865,000 plus additional amounts up to $2,000,000 for possible Ralphs expansion. • No later than the 20th anniversary of the effective date of the Restated Lease, lessee shall be obligated to upgrade the common areas and building facades and by the end of each 15 years thereafter. Minimum expenditures for the first scheduled upgrade shall be equal to 1.5% of leasehold gross revenue for years 1 through 5 and 2% of such gross revenues thereafter, less any approved capital expenditures incurred after lease year 10. Subsequent upgrades shall be equal to 2% of leasehold gross revenue from the date of the previous upgrade.

EXTENSION TERM	• Option to extend lease for 39 years, from February 1, 2024 to January 31, 2063. The Option is exercisable by lessee within 6 months of grant of Option by Board of Supervisors. Lessee can exercise Option only after it has obtained all required planning, zoning and entitlement approvals, including approvals by Design Control Board, Regional Planning, Board of Supervisors (if applicable) and Coastal Commission (if applicable), and has provided to County satisfactory evidence of project financing. If lessee is unable to obtain all of the necessary entitlement and financing approvals within the 6-month period, the Director may grant, in his discretion, one 6-month extension if lessee can demonstrate it has diligently pursued those approvals. If lessee obtains its approvals within the 6-month (or 12-month) period, but such approvals are subject to litigation or appeal brought by a third party, then the Option exercise date will be tolled pending the resolution of such litigation or appeal; provided, however, that the Option exercise date shall in no event be later than 4 years after the date of the grant of Option.
EXTENSION FEE Fee equal to or commensurate with value of the extension	• An extension fee in the amount of $500,000, payable as set forth below. • Lessee shall pay a non-refundable option fee of $100,000 concurrent with the execution of the Option. Such payment shall be credited against the extension fee if the Option is exercised, but shall not be refundable in the event the Option is not exercised. • The remaining $400,000 shall be payable in 7 equal annual principal installments plus interest (at the 10-year Treasury Bond rate) accrued on the unpaid balance of the extension fee, beginning at the commencement of the 4th extended lease year.
MARKET RATE RENTS Ensure fair market rents	• Minimum annual rent set upon exercise of Option to $750,000 for the first 5 lease years and reset for the 6th year, and every 3 years thereafter, equal to 75% of the previous 3 years' average annual total rent paid to County, subject to renegotiation to fair market value at the commencement of the 21st year and every 10 years thereafter. • Percentage rents: 3.5% of Food & Beverage gross receipts 6.0% of all other subtenant gross rent revenues paid to lessee, plus property tax, and insurance recoveries paid by subtenants to lessee as provided under current lease terms • Percentage rents fixed for a 20-year period from effective date of the Restated Lease and are subject to renegotiation to fair market rental as of the 1st day of the 21st year and every 10 years thereafter.

PARTICIPATION IN SALE AND REFINANCE Secure County participation in sale and refinance of leasehold	• Sale Participation: Greater of 5% (provided that any sale during the 1st 10 years after exercise of the Option shall be for an amount at least equal to 105.26% of lessee's cost) of Gross Proceeds or 20% of Net Profit upon assignment of leasehold. • Refinance Participation: 20% of Net Proceeds not reinvested in leasehold improvements.
COUNTY ADMINISTRATIVE COSTS Ensure payment for County costs for lease extension and administration	• Reimbursement of County costs for extension negotiations/lease documentation.
COUNTY INCOME CONTINUITY Ensure County revenue flow during redevelopment	• Minimum annual rent set upon exercise of option at $750,000 for first 5 years and reset in the 6th year, and every 3 years thereafter, to equal 75% of the previous 3 years' average annual total rent paid to County.
RIGHT TO RECAPTURE	• County has right to recapture the leasehold if lessee desires to either assign or sell a controlling interest in leasehold.
LEASE ASSIGNMENT-DISCLOSURE ISSUES	• Lessee has agreed to County disclosure requirements relating to identity, operating experience and character/reputation of proposed assignees, as well as to disclosure of financial information in conformity with County policies.
APPRAISAL	• County has received an appraisal that confirms return to the County from the lease extension is equivalent to, or greater than, fair market value.

Additional Matters

OTHER TERMS	1. 10 years prior to expiration of lease, lessee to structure funding for removal of improvements (at County's election). 2. Rental renegotiation and insurance disputes subject to rent-a-judge procedure pursuant to "baseball" type arbitration. 3. Maintenance standards for improvements to conform to Marina del Rey standards as revised from time to time. 4. Lease administrative items include a) late fee of 6% plus interest at prime plus 3% for any late payments, b) security deposit equal to 3 months' minimum rent, c) insurance levels reset/renegotiated upon execution of the Restated Lease and every 5 years thereafter, d) County maintains approval rights over all construction plans and specifications, e) enhanced audit and record-keeping standards. 5. Liquidated damages of $100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after a specified cure period, to be assessed against the security deposit. 6. In the event that a) the improvements are damaged or destroyed, unless from a cause not required to be insured against, then only in the event of all, or substantially all, of the improvements are damaged, or b) within 5 years of the lease term, the improvements are damaged equal to at least 25% of cost of replacement, or c) due to condemnation of at least 25% of the center value as measured by the then cost of replacement or the parking ratio is decreased below 4.6 parking spaces per 1,000 sf of floor area, lessee shall have the right to assign all insurance and condemnation proceeds to County and terminate the lease. In all other instances, lessee shall have the obligation to rebuild and shall have no right to terminate the lease.

If the Lessee does not or is unable to exercise the Option on or before its stated expiration date (including any extensions), it is required to execute an amendment to the current lease, which will add the following requirements to its currently-existing lease: a) County participation in sale and refinance; b) the obligation to reimburse the County's actual costs incurred for outside consultants, County Counsel and the Department's lead negotiator in the review, negotiation, preparation and documentation of the Restated Lease; c) the County's right to recapture the leasehold in the event of it being offered for sale; d) a sinking fund for the removal of lease improvements upon lease termination; e) disclosure provisions in the event of lease assignment; f) assessment of a late fee and interest for late payments due the County; g) security deposit equal to 3 months' minimum rent (with the possibility of being reduced to two months' minimum rent by fulfilling certain

requirements); h) insurance levels newly set and renegotiated every 5 years; i) provision for enhanced audit and record-keeping standards; j) leasehold maintenance in conformity with Marina standards as revised from time-to-time; k) starting in the sixth lease year, and every three years thereafter, the minimum rent to be adjusted to 75% of preceding 3 years' average total rent and renegotiated with percentage rent and insurance provisions 20 years after exercise of the Option and every tenth lease year thereafter; and l) modernized arbitration provisions.

FISCAL IMPACT/FINANCING

The current County percentage rent equals 3.25% of food and beverage gross sales and 20% of subtenant gross rent revenues plus property tax and insurance recoveries paid by subtenants to the lessee. The Restated Lease raises the food and beverage gross percentage rent to 3.5% and reduces other rent to 16% of the referenced subtenant payments. The initial net dollar effect is to provide the County with approximately the same total rent as is currently generated by the leasehold, but with greater upside potential due to both built-in periodic rent increases in the new Ralphs "FreshFare" market lease and the expected larger rents to be derived from upgrading the center, as detailed below. The Restated Lease will produce two categories of fiscal benefit to the County: 1) an extension fee; and 2) rent increases due to the upgrading and modernization of the remodeled shopping center and the increase in square footage of the shopping center. Each component is discussed in detail below.

Extension Fee

Lessee will pay an extension fee of $500,000 due on exercise of the Option, payable as a non-refundable option fee of $100,000 concurrent with the execution of the Option, with the remaining balance of $400,000 payable in seven equal installments of $57,142.86 in principal, plus interest accrued on the unpaid balance at the 10-year Treasury Bond rate, adjusted quarterly, beginning at the commencement of the fourth extended lease year.

Rent Increase Due to New Construction

The total rent derived from Parcel 50T during calendar year 2002 was approximately $742,000. The lessee will pay minimum annual rent of $750,000 for the first five lease

years, which will effect a guaranteed annual increase even during the renovation/construction period. The initial net dollar effect of the rent structure is projected to provide the County with approximately the same total rent as is currently generated by the leasehold, but with greater upside potential due to both built-in periodic tenant rent increases in the new sublease for the expanded, upscaled food market (Ralphs FreshFare) and the expected larger rents to be derived from the upgrading of the center and, especially, as tenant turnover of current subleases allow for further restaurant and other tenant upgrades.

Costs of consultants and primary County staff involved in the negotiation and development of the Option and Restated Lease are being reimbursed by the recommended assignee on an ongoing basis.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On February 1, 1964, the County entered into a 60-year lease for the premises currently known as Parcel 50T, Marina Waterside Center. On November 1, 1988, your Board approved an assignment wherein Benequity Properties, a California corporation, assigned all its interest in Parcel 50T to Carlisle. The parcel is currently improved with 125,653 square feet of retail/commercial and restaurant buildings on 9.726 acres of land area. In exchange for a lease extension to the date of January 31, 2063 that will be available upon satisfaction of the Option's enumerated conditions and your Board's approval of the Restated Lease, lessee has agreed to remodel all of the existing improvements and expand the existing Ralphs market. The Restated Lease will also require renovations to physically reposition the project by the 20th anniversary of the effective date of the Restated Lease and again each 15 years thereafter.

The most recent maintenance inspection of Parcel 50T was completed on August 11, 2003, and identified 5 items requiring repairs. The Department of Beaches and Harbors' Facilities & Property Maintenance division has reviewed the specified items, as well as repair requirements to bring them to Marina standards. The assignee has specifically committed, as a condition of the Department's consent to the assignment, to assume the lease obligation to maintain the leasehold in accordance with all maintenance, repair and improvement requirements. A rental audit was completed on December 31, 2001, and the

proposed assignee is aware of and has agreed to assume the responsibility for any additional rent or outstanding lease payment obligations or other payments that may be identified in future audits from and after the last audit date.
The lessee is in process of making application to the Regional Planning Department for its discretionary land use entitlements under the applicable standards of the Local Coastal Program (LCP), including those related to building height and traffic requirements. Approval of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Amendment and extension of the existing lease is authorized by Government Code Sections 25907 and 25536. The extended lease term is in conformance with the maximum 99-year period authorized by California law.

The Small Craft Harbor Commission is scheduled to consider the Director's recommendations to approve the assignment and Option at its meeting of December 10, 2003. We will advise your Board of the Commission's recommendations prior to your consideration of this request. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

Approval of the assignment of leasehold interests and the Option are categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting and Procedures Guidelines. Approval of the Option does not authorize construction or re-construction of any improvements on the parcel. The discretionary land use entitlements and the corresponding environmental documentation necessary to implement the proposed redevelopment/replacement contemplated by the Option and the Restated Lease are under review by the Department of Regional Planning.

CONTRACTING PROCESS

The lessee's proposal for a lease extension was submitted to the Department and negotiations were pursued for the proposed Option, as well as the Restated Lease, pursuant to the Board-adopted Lease Extension Policy. Upon lessee's demonstration that it

has satisfied the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project, we will return to your Board for final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied and request authorization for execution of the Restated Lease.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Please authorize the Chairman of the Board of Supervisors to sign three copies each of the Consent and Option and authorize the Executive Officer of the Board to acknowledge the Chairman's signature on each document and return two executed copies of each to the Department of Beaches and Harbors.

Respectfully submitted,

Stan Wisniewski

Stan Wisniewski, Director

SW:RM:AK:GB
Attachments (3)

c: Chief Administrative Officer
Executive Officer, Board of Supervisors
County Counsel

EXHIBIT A

CONSENT TO ASSIGNMENT OF LEASE

The COUNTY OF LOS ANGELES ("County"), Lessor under that certain lease No. 8106, dated May 8, 1964, as amended ("Lease"), applicable to those certain premises commonly known as Parcel 50T, Marina del Rey Small Craft Harbor, described in Exhibit "A," attached hereto and incorporated herein by this reference, does hereby consent to the assignment of said Lease by the present lessee, CARLISLE REALTY HOLDINGS I LIMITED PARTNERSHIP, a Massachusetts limited partnership ("Carlisle"), to MARINA WATERSIDE LLC, a California limited liability company ("Waterside"), in accordance with that certain Assignment of Lease and that certain Acceptance of Assignment of Lease prepared in connection with the proposed assignment contemplated thereby (the, "Assignment"). County further agrees that upon the effective date of said Assignment, Carlisle shall be fully relieved of, and released from, any and all obligations to County under the Lease accruing on or after the effective date of said Assignment. It is further understood and agreed that the County's consent to the Assignment is subject to the following express conditions:

A. This Consent to Assignment shall be null and void and of no further force or effect, until and unless the Assignment is complete and irrevocable in all respects within sixty (60) days of the date of execution on behalf of the County of this Consent to Assignment of Lease.

B. This Consent to Assignment is contingent upon Waterside's assumption and agreement to perform the obligations and liabilities of the lessee under the Lease in accordance with and subject to the provisions of the Acceptance of Assignment of Lease being executed and delivered by Waterside concurrently herewith. Nothing herein shall limit the County's ability to pursue remedies against either Carlisle or Waterside, at the County's option, for obligations of the lessee created prior to this assignment, by the terms, covenants and conditions of said Lease, subject, however, to the terms and conditions of the Acceptance and Assignment of Lease executed and delivered by Waterside.

C. The Assignment, having once become complete and irrevocable in all respects, shall thereafter be fully binding upon Waterside whether or not Carlisle and Waterside have entered into a separate agreement or understanding to which the County is not a party and which provides for or otherwise purports to affect the Assignment, and whether or not in such event any party thereto alleges, claims or otherwise shows or proves that there has been a breach, default, violation, or termination of any such separate agreement.

D. Waterside shall not make any further assignment or sublease of the Lease, nor any portion thereof, without the written consent of County as lessor having first been obtained thereto in accordance with, and to the extent required by, the provisions of Section 10.03 of the Lease.

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D. Waterside shall not make any further assignment or sublease of the Lease, nor any portion thereof, without the written consent of County as lessor having first been obtained thereto in accordance with, and to the extent required by, the provisions of Section 10.03 of the Lease.

Dated this _____ day of _____, 2003

COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

ATTEST:
VIOLET VARONA-LUKENS,
Executive Officer of
the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM
BY COUNTY COUNSEL

LLOYD W. PELLMAN

By: _____
Deputy

OPTION TO AMEND LEASE AGREEMENT

THIS OPTION TO AMEND LEASE AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2003, by and between the COUNTY OF LOS ANGELES ("County") and MARINA WATERSIDE, LLC, a California limited liability company ("Lessee").

RECITALS

A. County, as lessor, and Sandpiper Builders and Michael Sims, as lessee, entered into Lease No. 8106 dated May 8, 1964, as amended (the "Existing Lease") pursuant to which County leases to the current lessee thereunder certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 50T, as more particularly described in the Existing Lease (the "Premises").

B. Concurrent or substantially concurrent herewith Lessee has acquired all of the right, title and interest of the lessee under the Existing Lease.

C. The term of the Existing Lease is currently scheduled to expire on January 31, 2024 (the "Existing Expiration Date").

D. Lessee has requested County, and County is willing, to grant Lessee an option to extend the term of the Existing Lease through January 31, 2063.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Grant of Option. County hereby grants to Lessee an option (the "Option") to extend the term of the Existing Lease through January 31, 2063 (the "Extended Expiration Date"). Such extension shall be on the terms and conditions set forth in the form of Amended and Restated Lease Agreement for Parcel 50T attached to this Agreement as Exhibit A (the "Restated Lease").

2. Option Term. The term of the Option (the "Option Term") shall commence on the date of this Agreement and expire on that date (the "Option Expiration Date") which is the earlier of (i) forty-five (45) days following the date of the satisfaction of the Entitlement Conditions, or (ii) six (6) months following the date of this Agreement set forth above, subject to extension as provided in Section 6 below.

3. Exercise of Option. The Option shall be exercisable by Lessee only by strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall accompany the notice described in the preceding clause (i) with Lessee's (A) execution and delivery to County of the Restated Lease with any blank or bracketed terms set forth in Exhibit A

completed in accordance with the terms and provisions of this Agreement, and (B) payment of the amount by which the Security Deposit required under Article 7 of the Restated Lease exceeds the amount of the security deposit then maintained by Lessee with County pursuant to Section 7 of the Existing Lease; (iii) as of the date of Lessee's delivery of the notice described in clause (i) above Lessee shall not be in breach or default of any term or provision of the Existing Lease, after notice from County and the expiration of any applicable cure period thereunder; (iv) the Entitlement Conditions (as defined below) shall have been satisfied; (v) Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by the Director of the Department of Beaches and Harbors of the County ("Director"), to complete the Redevelopment Work (taking into consideration the construction contribution to be made by Alpha Beta Company, as sublessee, in connection with the renovation and proposed expansion of the existing supermarket facility on the Premises (the "Supermarket Premises")); (vi) Director shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 5.3 of this Agreement; and (vii) at Lessee's option, there shall be no legal action or proceeding pending to contest the issuance of the Entitlements (as defined below), or to enjoin or restrain the performance of the Redevelopment Work. Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease not later than forty-five (45) days following the date of Lessee's exercise of the Option.

For purposes hereof, the "Entitlement Conditions" shall mean the following conditions: (a) Lessee shall have received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities (including County and the California Coastal Commission) for the construction of the Redevelopment Work (as defined below), including without limitation, Design Control Board approval (the "Entitlements"), and (b) any appeal period to contest the issuance of the Entitlements shall have lapsed. For purposes of this Agreement, the "Redevelopment Work" shall have the meaning given such term in Section 5.1 of the Restated Lease. The Entitlements shall not include the building permits for the Redevelopment Work.

4. Option Fee/Extension Fee.

4.1 Option Fee. In consideration of County's grant of the Option to Lessee, Lessee shall pay to County concurrent with Lessee's execution of this Agreement the sum of One Hundred Thousand Dollars ($100,000.00) (the "Option Fee"). The Option Fee shall be non-refundable, but shall be applied against the Extension Fee described below if Lessee exercises the Option.

4.2 Extension Fee. If Lessee exercises the Option, Lessee shall pay County an extension fee in the amount of Five Hundred Thousand Dollars ($500,000.00) (the "Extension Fee") to compensate County for the value of the lease extension set forth in the Restated Lease. The Option Fee shall be applied against the Extension Fee. The remaining Four Hundred Thousand Dollars ($400,000.00) of the Extension Fee shall be paid in seven (7) equal annual principal installments of $57,142.86 each, plus interest accrued on the unpaid principal balance of the Extension Fee as provided below (the "Extension Fee Installment Payments"). Interest shall accrue on the unpaid balance of the Extension Fee from the Effective Date of the Restated Lease until paid by Lessee, at an annual rate of interest equal to the interest rate in

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3. Exercise of Option. The Option shall be exercisable by Lessee only by strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall accompany the notice described in the preceding clause (i) with Lessee's (A) execution and delivery to County of the Restated Lease with any blank or bracketed terms set forth in Exhibit A

effect from time to time on 10 Year United States Treasury Bonds, adjusted on a quarterly basis (i.e., the first day of each January, April, July, and October). The first Extension Fee Installment Payment shall be due on the third (3rd) anniversary of the Effective Date of the Restated Lease and the remaining six (6) Extension Fee Installment Payments shall be due on each of the next six (6) anniversaries of the Effective Date of the Restated Lease. Lessee shall have the right, at Lessee's option, to prepay the Extension Fee, in whole or in part, at any time, without penalty.

5. Entitlements and Plan Preparation During Option Term.

5.1 Obtaining Entitlements. Lessee shall use its best efforts to obtain the Entitlements and to satisfy the Entitlement Conditions as soon as possible following the date of this Agreement. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, application fees, travel costs, architectural fees and consulting and lobbying fees, as reasonably necessary to expedite the permit, license and other approval processes.

5.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "Department") shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the Entitlements. Such cooperative efforts may include the Department's joinder in any application for the Entitlements where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Agreement and/or the Restated Lease shall be approvals pursuant to its authority under Sections 25907 and 25536 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Restated Lease in no way release Lessee from using its best efforts to obtain, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Redevelopment Work and operation and other use of the Premises; and that the Department's duty to cooperate and County's approvals under this Agreement and/or the Restated Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement and/or the Restated Lease.

5.3 Plans and Specifications for Redevelopment Work. The Redevelopment Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the Restated Lease. The requirements of Article 5 of the Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Redevelopment Work, as set forth in more detail in Section 5.3 of the Restated Lease. The schedule for the preparation, submittal and approval of such plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the Restated Lease. Notwithstanding the foregoing, during the period commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval, any portions of the plans, specifications and other materials described in Section 5.3 of the Restated Lease that are required to be submitted to governmental authorities (including the County, the Design Control Board and the California Coastal Commission) in connection with

Lessee's applications for and/or receipt of the Entitlements for the Redevelopment Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in such Section 5.3, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 5.3 shall be in accordance with the terms and provisions of Section 5.3 of the Restated Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule submitted by Lessee and reasonably approved by Director that facilitates Lessee's satisfaction of all conditions precedent to the exercise of the Option on or before the Option Expiration Date. In addition to the plans, specifications and materials required to be submitted by Lessee to Director pursuant to this Section 5.3, Lessee shall have the right, at its election, to deliver to Director, for Director's approval, additional plans, specifications and materials pertaining to the Redevelopment Work. Director shall notify Lessee of its approval or disapproval of such additional plans, specifications and materials within the time frames and in accordance with the requirements of Section 5.3 of the Restated Lease.

6. Delay in Exercise of Option. If Lessee is unable to satisfy the Entitlement Conditions within six (6) months after the date of this Agreement, and Director in the exercise of the Director's reasonable judgment determines that Lessee diligently pursued the satisfaction of the Entitlement Conditions within such six (6) month period but was unable to satisfy the Entitlement Conditions as a result of a delay in the processing of the Entitlements by the applicable governmental authority (an "Extraordinary Governmental Delay") or as a result of a delay caused by Force Majeure (as defined in the Restated Lease) (a "Force Majeure Delay"), then the Director shall grant Lessee one or more extensions of the Option Expiration Date. Any such extension shall be limited to the period of delay caused by the Extraordinary Governmental Delay or Force Majeure Delay, and in no event shall such extensions, in the aggregate, extend beyond after the first (1st) anniversary of the date of this Agreement. If Director shall determine that Lessee does not meet the requirements for an extension as provided above, then Lessee shall have the right, within ten (10) days following Director's denial, to submit a written request to the Board of Supervisors of County to reconsider such denial by Director. For purposes hereof, a "delay" by the applicable governmental authority in the processing of Entitlements shall mean the failure of such governmental authority to process Lessee's application for the applicable Entitlements within the period(s) established for such processing by the rules, regulations, guidelines or other Applicable Laws pertaining to such processing.

If Lessee obtains the Entitlements within six (6) months after the date of this Agreement (as such six (6) month period may be extended pursuant to the first paragraph of this Section 6), but such Entitlements are contested by appeal or litigation brought by a third party (a "Contest Delay"), then upon the written request of Lessee, and provided that Lessee continues to use its commercially reasonable efforts to contest the appeal or litigation, Director shall extend the Option Expiration Date until a final order or decision on such appeal or litigation is issued or such appeal or litigation is dismissed or otherwise resolved without further right of appeal; provided, however, in no event shall the Option Expiration Date be extended beyond the fourth (4^{th}) anniversary of the date of this Agreement. For purposes of the immediately preceding sentence, a "third party" shall mean any person or entity other than (a) Lessee or any person or entity with any direct or indirect economic interest in Lessee, or (b) the governmental agency,

commission, board or other instrumentality that issued the Entitlement that is the subject of the appeal or litigation.

Director shall have no right or obligation to extend the Option Expiration Date under this Section 6 if Lessee is in material breach or default of the Existing Lease following notice and the expiration of any applicable cure period, or if Lessee is in material breach or default under this Agreement. No Extraordinary Governmental Delay, Force Majeure Delay or Contest Delay shall be considered to have commenced under this Section 6 until such time as Lessee shall have notified Director in writing of such delay. If Lessee desires to have the Option Expiration Date extended pursuant to this Section 6, then Lessee must deliver written notice to Director of its request for the extension not later than thirty (30) days prior to the Option Expiration Date, as such date may have been previously extended; provided, however, that if the basis for the delay first arises during the thirty (30) day period prior to the Option Expiration Date (as previously extended), then the required date by which Lessee must deliver its written request for an extension shall be extended until the earlier of (i) ten (10) days after Lessee first becomes aware of the delay, or (ii) 5:00 p.m. (Pacific Time) on the Option Expiration Date (as previously extended).

7. Alternative Lease Amendment. If Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date), then (a) the Option shall be automatically terminated, and (b) within forty-five (45) days following the Option Expiration Date, County and Lessee shall execute and deliver an amendment to the Existing Lease (the "Non-Exercise Amendment"), which amendment shall (i) amend and restate Sections 11 through 15 of the Existing Lease in accordance with all of the terms and provisions of Article 4 of the Restated Lease, excepting Section 4.3 of the Restated Lease; (ii) add Article 16 of the Restated Lease to the Existing Lease; (iii) amend and restate Section 7 of the Existing Lease in accordance with Article 7 of the Restated Lease; (iv) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.3 through 5.8 of the Restated Lease; (v) amend and restate Section 18 of the Existing Lease in accordance with Sections 2.3 and 2.4 of the Restated Lease; (vi) amend and restate Sections 22A and 22C of the Existing Lease in accordance with Sections 11.1, 11.2 (excepting subsections 11.2.4 and 11.2.5) and 11.3 of the Restated Lease; (vii) amend and restate Section 22B of the Existing Lease in accordance with Article 12 of the Restated Lease; (viii) amend Section 26 of the Existing Lease to adjust the amount of commercial general liability insurance coverage required to be carried by Lessee to equal the amount set forth in the first paragraph of Section 9.3 of the Restated Lease and to add to Section 26 of the Existing Lease the third (3rd) paragraph of Section 9.3 of the Restated Lease; (ix) amend and restate Sections 30, 31 and 32 of the Existing Lease in accordance with Article 14 of the Restated Lease; and (x) incorporate into the Existing Lease the definitions of capitalized terms used in the Restated Lease to the extent such terms are used in the Non-Exercise Amendment pursuant to clauses (i) through (viii) above. For purposes of the Non-Exercise Amendment, all references in the Restated Lease to the "Effective Date" shall mean and refer to the date of the execution and delivery of the Non-Exercise Amendment, but not later than forty-five (45) days following the Option Expiration Date.

8. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Restated Lease) incurred

by County in the review, negotiation, preparation and documentation of the Restated Lease, the Non-Exercise Amendment, this Agreement and the term sheets and memoranda that preceded the foregoing. The parties acknowledge that Lessee has deposited the sum of Ten Thousand Dollars ($10,000.00) toward those costs. County shall deliver to Lessee an initial report detailing such expenditures within ninety (90) days after the date of this Agreement. County shall thereafter deliver supplemental reports to Lessee for costs, if any, incurred subsequent to the initial report.

9. Miscellaneous.

9.1 Time is of the Essence. Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

9.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

9.3 Notices. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the Restated Lease.

9.4 Captions. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

9.5 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party.

9.6 No Assignment. Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion.

9.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supercedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

9.8 Joint Effort. Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not be construed more severely against one of the parties than against the other.

9.9 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

9.10 Counterparts. This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

9.11 Successors and Assigns. Subject to Section 9.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

9.12 Exhibits. Exhibit A attached to this Agreement is hereby expressly incorporated herein by reference.

IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the day and year first written above.

APPROVED AS TO FORM:

LLOYD W. PELLMAN
COUNTY COUNSEL

By: ORIGINAL SIGNED
Deputy

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

MARINA WATERSIDE, LLC, a California limited liability company

By: ORIGINAL SIGNED
Rick J. Caruso, Manager

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of the Board
of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: ORIGINAL SIGNED