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TO: SMALL CRAFT HARBOR COMMISSION

FROM: RICHARD D. WEISS
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RE: **Marina Ownership and Jurisdictional Issues**

Your Commission has asked our office to address issues raised by members of the public regarding the ownership of, and jurisdiction over, the land and water areas of Marina del Rey, particularly with respect to the interests of the federal government and the California Coastal Commission.

As indicated below, we have concluded that the County owns the fee interest in the land areas and virtually all of the water areas of Marina del Rey. The federal government owns two easements whose boundaries currently encompass the entrance and main channel areas of the Marina. Those easements provided for the initial construction of the entrance, jetties and main channel and give the federal government ongoing authority to maintain the easement areas as navigable waters of the United States. The federal easements do not deprive the County of any authority over the land or water areas of the Marina so long as that authority is not exercised so as to conflict with the above-identified federal rights. The federal government has also occupied a small portion of the land and water area of the Marina since the early 1960s through a lease granted by the County.

The Marina does not contain tidelands or submerged lands which are subject to the California public trust doctrine or to the regulatory authority of the State Lands Commission. This is due to the historical chain of title leading to County ownership of the Marina. Notwithstanding the above, the Marina is subject to the regulatory authority of the California Coastal Commission under the California Coastal Act. The Marina del Rey Local Coastal Program lawfully regulates the land and water areas of the Marina and the County lawfully exercises coastal permit jurisdiction over the land areas of the Marina while the Coastal Commission retains coastal permit jurisdiction and federal consistency review authority over the water areas.

Finally, the federal legislation adopted in the 1950's which led to the federal participation in the development of the Marina and ongoing maintenance authority did not provide absolute restrictions on the nature or intensity of landside or waterside development of the Marina or deprive the County of jurisdictional land use control over the Marina.

**I.
The County Owns the Land and Water Areas of the
Marina while the Federal Government Owns Easements
Over the Entrance and Main Channel Areas**

County Ownership

Representatives of the public have asserted that the County granted significant portions or all of its property rights and jurisdiction over the Marina to the federal government by virtue of a 1958 "perpetual right of way and easement." This is not correct. Although, the County has granted easement rights to the federal government, including the above-referenced 1958 easement, the rights conveyed to the federal government do not deprive the County of the ownership, control or jurisdictional rights that the County currently exercises in the Marina.

Title information and other records maintained by the County Department of Public Works, demonstrate that the County of Los Angeles owns the fee title to the land and water areas of Marina del Rey, except for a small portion of the main channel that is seaward of Ocean Front Walk (Ocean Front Walk is essentially parallel to the shore line at the seaward edge of the development on both sides of the entrance channel to the Marina). That particular water portion of the Marina is owned by the state, operated by the City of Los Angeles and was franchised to the County in 1957 to allow for the excavation of the Marina's main channel.

The County acquired its fee title to the Marina through various decrees of condemnation and deeds of record. The Marina is a manmade harbor that was predominantly dry land (with some portions of the area now known as Basin H being characterized as salt marsh with tidal channels) prior to the excavation project undertaken by the Army Corps of Engineers in the late 1950's to excavate the main channel and to commence the project that resulted in the development of the Marina.

Federal Property Rights in the Marina

The United States of America owns two permanent easements affecting the Marina and has also operated a coast guard facility in the Marina since approximately 1962 under a lease from the County. The two easements cover existing water areas of the Marina main channel and entrance and specifically indicate that their purpose is to allow for the federal government's construction and maintenance of the entrance and main channel facilities of the Marina to create and preserve their navigability. The easements did not transfer full ownership of the Marina to the federal government and do not presently affect the County's proprietary or regulatory authority over the water or land areas of the Marina beyond preserving the federal government's right to ensure that the entrance and main channel are preserved as navigable waters of the United States.

The 1957 Easement - The County granted the United States a permanent easement for constructing and maintaining the entrance channel, jetties and appurtenances for the Marina in a document recorded on October 1, 1957, in the Official Records of the County Recorder at Book 55733, page 92 (the "1957 Easement"). See Attachment "A" - "1957 Easement." The 1957 Easement covers an area near the very entrance of the main channel extending from the previously mentioned Ocean Front Walk, westerly to a point approximately 150 feet beyond the end of the rock jetties. The 1957 Easement authorized the federal government to enter upon, dig, or cut away and remove any or all of the involved property as may be required for the "Playa del Rey Inlet and Harbor" (the initial project name for Marina del Rey) and to maintain the portion cut away and removed as part of the navigable waters of the United States. The easement only authorizes the federal government to construct and maintain the entrance channel jetties and appurtenances within that easement area.

The 1958 Perpetual Right of Way and Easement - A second easement was granted by the County to the United States to provide for the construction and maintenance of the remainder of the main channel area of the Marina. This "Perpetual Right of Way and Easement" is dated November 18, 1958, and was recorded in the Official Records of the County Recorder on December 5, 1958, in Book D296, pager 840 (the "1958 Easement"). See Attachment "A" - "1958 Easement." That easement extends along what is now the main channel from the easterly edge of the 1957 Easement to approximately the bulkhead at the end of the main channel. The 1958 Easement does not cover the Marina moles or the Marina basins. The 1958 Easement grants to the federal government the perpetual right and easement to enter upon, dig, or cut away and

remove any or all portions of the easement area for the Playa del Rey Inlet and Harbor project as is required for the construction of the main channel and to maintain the portion cut away as part of the navigable waters of the United States.

Selected portions of the water areas of some Marina leaseholds along the main channel are within the outer boundaries of the 1958 Easement. However, to the extent those portions of the lease parcels contain any improvements, they contain docks and boat slips which are in furtherance of the Marina's use for small crafts and recreational boat use. Additionally, construction of improvements in such areas are subject to federal review to ensure that they do not conflict with the navigability of the harbor.

The 1958 Easement specifically reserves to the County all rights and privileges in the easement area as may be used and enjoyed without interfering with or abridging the rights and easements conveyed to the federal government.

As indicated, the two federal easements do not cover the moles or basins of the Marina. The easements specifically only cover the entrance, jetties and main channel area and do not otherwise directly affect any of the County's rights in its ownership or operation of the Marina, except as to having authorized the past federal construction of the entrance, jetties, and main channel and the ongoing maintenance of the entrance and main channel facilities to retain their navigability.

There is nothing in either easement that purports to transfer the fee ownership of the Marina from the County to the federal government, or to deprive the County of proprietary or regulatory authority over the land or water areas of the Marina, except to the extent that such activities would conflict with the federal rights identified above.

The Coast Guard has also leased facilities near the Department of Beaches and Harbors' administrative headquarters on Fiji Way for a number of years. The terms of that lease do not in any way affect the proprietary or regulatory authority of the County over any other land or water portion of the Marina. As a result of the Coast Guard lease, the federal government has had an ongoing presence in the Marina since its virtual inception.

In accordance with the 1957 and 1958 Easements, the federal government retains responsibility to dredge the entrance and main channel areas to preserve the navigability of those areas. Additionally, the Army Corps of

Engineers reviews waterside Marina development applications for impacts on the navigability of the Marina water areas. We are aware of no evidence that suggests that the federal government has ever alleged that the County is violating the United States' rights under the 1957 or 1958 Easements.

II.

The Marina Does Not Include Public Trust Tidelands or Submerged Lands

Representatives of the public have suggested that the Marina includes submerged lands or tidelands that are held in public trust under the laws of the State of California. This is not correct. The Marina contains no submerged lands or tidelands that are subject to the California public trust doctrine.

The California public trust doctrine applies to submerged lands and tidelands that were acquired by the state, in its sovereign capacity, when it was admitted to the United States. Under the public trust doctrine, title to such lands is held in trust by the state for "commerce, navigation and fishery," and any private owner holds such lands subject to the limitations imposed by that public trust. Such lands are sometimes referred to as sovereign lands of the state.

Ungranted public trust submerged lands or tidelands (those not transferred by the state to a city or county) are under the exclusive administration and control the State Lands Commission. Public trust tidelands that are granted to a city or county are subject to the terms of such grant and are still subject to the public trust purposes identified above.

In 1984, the United States Supreme Court determined that the tract of land which includes Marina del Rey was not California public trust tidelands and was not subject to any public trust easement on behalf of the state or other entity (*Summa Corp. v. California*, 466 U.S. 198). The Supreme Court's decision was based on the conclusion that the property comprising the Ballona Lagoon (which includes the Marina del Rey area) was once a portion of the Rancho Ballona.

According to property records traced by the Supreme Court, Rancho Ballona was originally deeded to the Machado and Talamantes families in 1839 by the Governor of the Californias, when this land was still part of Mexico. Following that grant, California was ceded to the United States by Mexico pursuant to the Treaty of Guadalupe Hidalgo. Pursuant to the Federal Act of 1851, the interests of the Machado and Talamantes families in Rancho Ballona was confirmed through federal patent proceedings. That patent proceeding failed

to recognize any public trust interest of the government in the Rancho Ballona. The Supreme Court concluded that this chain of events led to the conclusion that the State of California never obtained any public trust rights in the Rancho Ballona.

With the exception of that portion of the entrance area of the Marina seaward of the earlier referenced Ocean Front Walk and subject to the 1957 easement granted to the federal government, the County's title to Marina del Rey stems directly from successors in ownership to the Machado and Talamantes families and is likewise not subject to a public trust easement in favor of the State of California. Accordingly, with the exception of the portion of the entrance area of the Marina seaward of Ocean Front Walk, the Marina is not properly considered sovereign lands of the State of California, subject to a state public trust easement, or subject to the administration or control of the State Lands Commission.

III.

THE MARINA DEL REY LOCAL COASTAL PROGRAM IS VALID AND THE COUNTY RETAINS COASTAL DEVELOPMENT PERMIT JURISDICTION OVER THE LAND AREAS OF THE MARINA WHILE THE COASTAL COMMISSION RETAINS JURISDICTION OVER THE WATER AREAS

Members of the public have contended that the Marina del Rey Local Coastal Program ("LCP") is illegal in that the Marina is excluded from the Coastal Zone as federally owned property. They have also argued that the California Coastal Commission ("Coastal Commission") has exclusive jurisdiction over the consideration of development within the Marina and the County lacks authority to consider or issue coastal development permits for the Marina.

These contentions are not substantiated by the applicable law or by actions of the federal government or the Coastal Commission. A certified Marina LCP has been in effect for a number of years without any known objection by the federal government. That LCP recognizes the authority of the County to issue coastal development permits for all land areas within the Marina and for the Coastal Commission to issue such permits for the water area. Further, under federal law, projects undertaken by the federal government within the Marina LCP area are subject to review by the Coastal Commission for a determination of consistency with the goals and policies of the Coastal Act.

Coastal Commission vs. County Authority in the Coastal Zone

The California Coastal Act ("Coastal Act") was adopted in 1976 and is the successor statutory scheme to the Coastal Zone Conservation Act of 1972. The Coastal Act creates policies for the preservation and enhancement of the state's coastal zone resources. The boundaries of the state's coastal zone are established in official maps that were adopted as part of the 1975-1976 state legislative session. The California Coastal Commission ("Coastal Commission") was also required to prepare and file with the County Clerk of each Coastal County more detailed maps delineating the respective permit jurisdictions of the Coastal Commission and each coastal city and county.

The Coastal Act provides that upon certification by the Coastal Commission of a city or county's LCP, the city or county shall have jurisdiction to issue coastal development permits for development in the area covered by the LCP, essentially except for those portions that are tidelands, submerged lands or other public trust lands. In such areas the Coastal Commission retains the jurisdiction to consider and issue coastal development permits.

The Coastal Commission has certified an LCP for Marina del Rey and has prepared the maps required under state law that depict the respective permit jurisdictions of the County and the Coastal Commission for the areas within the Marina. The Coastal Commission has recognized that the Marina does not include public trust tideland areas subject to the jurisdiction of the State Lands Commission in light of the earlier referenced 1984 United States Supreme Court decision in *Summa Corp. v. California*. Accordingly, as depicted in the official coastal boundary maps prepared by the Coastal Commission, the Coastal Commission exercises original permit jurisdiction over the water areas of the Marina, while the County has permit jurisdiction over the land areas.

Federal Jurisdiction Over the Marina

The jurisdiction of California over its coastal areas is subject to the paramount authority of the federal government over the nation's coastal resources. The federal Coastal Zone Management Act of 1972 ("federal CZMA") provides that the coastal states may exercise regulatory authority over the nation's coastal areas only if the federal government has approved a coastal management program for that state.

The federal government approved the California Coastal Act as the major element of California's Coastal Management Program in 1978. As a result, the Coastal Act can be applied by California to the coastal zone areas of the state, and federal activities within California's coastal zone are subject to review for consistency with the goals and policies of the Coastal Act.

The federal CZMA provides that all lands the use of which is by law subject solely to the discretion of, or which is held in trust by, the federal government are excluded from the coastal zone. However, even for such lands, their exclusion does not exempt them for review under a state coastal management program, if it has been approved by the federal government. Since the federal government has approved the Coastal Act as part of a valid California coastal management program, federal lands excluded from the coastal zone must also be reviewed for consistency with the Coastal Act policies.

In 1974 the federal General Services Administration prepared a listing of real property owned by the United States which contains an entry for Marina del Rey. This document was provided to the Coastal Commission. In 1976, two years after the above-referenced list was provided, the United States Attorney General ruled that only lands actually owned by the federal government were to be considered excluded from the coastal zones of the coastal states under the federal CZMA.

As indicated earlier in this memorandum, the federal government does not own fee title to property in Marina del Rey. Rather, it has two easements for construction and maintenance of the entrance and main channel area of the Marina and has had a lease covering a small land and water portion of the Marina for use by the Coast Guard since approximately 1962. Consequently, the federal government could not assert any ownership interest in the land areas of the Marina over which the County has coastal permit jurisdiction.

The official maps prepared by the Coastal Commission depicting the coastal zone areas of Marina del Rey have never depicted the Marina as being excluded from the Coastal Zone. Staff from the Coastal Commission have informally indicated to us that they are not aware of any contention by the federal government that the Marina LCP is illegal or inappropriately vests jurisdiction over the land areas of the Marina to the County and the water areas to the Coastal Commission. We are likewise aware of no such contention by the federal government in that regard. As recently as 2001, the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration reviewed the Coastal Commission's administration of the Coastal Act as part of

California's approved Coastal Management Program and determined that it satisfactorily implemented federal law relating to coastal areas.

Furthermore, whether excluded or not from the coastal zone, federal activities within the main channel area of the Marina (the only area in which the federal government possesses easement rights) are subject to review by the Coastal Commission for consistency with Coastal Act policies as is specifically mandated by the federal CZMA. As an example, the dredging projects that the federal government has undertaken in the entrance and main channel areas of the Marina have properly been subjected to federal consistency review by the Coastal Commission under both state and federal law.

IV.

THE FEDERAL LEGISLATION AUTHORIZING FEDERAL FUNDING FOR AND PARTICIPATION IN THE CREATION OF MARINA DEL REY HAS NOT DEPRIVED THE COUNTY OF JURISDICTION OVER THE MARINA OR RENDERED EXISTING OR PROPOSED MARINA DEVELOPMENT ILLEGAL

Members of the public have suggested that the County's development and operation of Marina del Rey is in some manner prohibited by, or inconsistent with, the federal legislation adopted in the 1950's that authorized federal funding and participation in the creation of the Marina. We have found no basis for support of those contentions.

Congress first adopted H. R. 7481, dated January 25, 1954, which called for the improvement of a small boat harbor at Playa del Rey substantially in accordance with the recommendations of the Chief of Engineers of the Department of the Army in his report on the project dated August 8, 1952. That bill was referred to the Congressional Committee on Public Works.

Federal participation in the construction and funding of Marina del Rey was subsequently specifically authorized by Public Law 780 - 83d Congress, chapter 1264, also known as the River and Harbor Act of 1954. Such River and Harbor Acts have been adopted periodically by Congress to authorize Army Corps of Engineers civil works projects involving river and harbor facilities.

The River and Harbors Act of 1954 authorized the project then known as "Playa del Rey Inlet and Harbor" to be implemented in accordance with that certain "House Document Numbered 389" and further provided that federal participation in the provision of entrance jetties, the entrance channel, interior

channel and central basin was not to exceed 50 percent of the cost of such facilities.

House of Representatives Document No. 389, dated May 13, 1954, as referred to in the River and Harbors Act of 1954, primarily consists of a compilation of letters, comments and recommendations that had been prepared over the time period from 1948-1954 concerning the proposed Playa del Rey Inlet and Harbor project. Document No. 389 contains the August 8, 1952 report of the Chief of Engineers of the Department of the Army and the recommendations for the project prepared by the Board of Engineers for Rivers and Harbors. The recommendations contained in the August 8, 1952, specifically provide for provision of the proposed harbor project with an estimated cost to the United States of \$6.1 million on the conditions, among others, that local interests:

- provide the necessary rights of way to the United States for the creation of the entrance jetties, entrance channel, and central basin;
- secure and hold in the public interest lands bordering the proposed harbor improvements to a width sufficient for proper functioning of the harbor;
- provide adequate berthing and other facilities for small craft;
- provide adequate parking areas, access roads, and landscaping of the piers; and
- maintain and operate the entire project except aids to navigation entrance jetties, and project depths in the entrance channel.

A subsequent revised plan of improvement for Marina del Rey was approved by the Chief of Engineers of the Department of the Army on June 29, 1956. That revised plan did not substantially change the obligations of the "local interests" with respect to the proposed Marina project and added provisions relating to the relocation of a sewer line and tide gates at the main Venice Canal, and requiring that the County bear the cost of dredging the side basins of the Marina.

We have found nothing in the August 8, 1952, report of the Chief of Engineers, the revised requirements contained in the plan revisions approved in 1956 by the Chief of Engineers or the other historical documents cited that purport to exclude any particular uses of the Marina, that purport to remove authority from the County of Los Angeles to determine appropriate uses on the

land areas of the Marina project, or that purport to transfer ownership or jurisdiction of the Marina to the federal government other than the stated requirements to provide the rights-of-way necessary to allow the federal government to create and maintain the jetties, entrance channel and central basin. In fact the requirement that local interests provide for and operate all portions of the project other than the portions subject to ongoing federal responsibility indicates that the federal government was not purporting to exercise exclusive control over such other portions of the overall project.

As indicated earlier in this memorandum, the federal government, through the Coast Guard, has had an ongoing presence in the Marina since approximately 1962. The federal government has also undertaken several maintenance dredging projects in the Marina since its initial construction and we are advised that representatives of the Army Corps of Engineers are frequent visitors in the Marina. Notwithstanding all of the above, we are unaware of any contention by the federal government that the County has violated the terms of the federal approvals rendered in the 1950s that led to federal participation in the development of the Marina.

We will be available to answer any questions you may have regarding the contents of this memorandum at your July 23, 2003, commission meeting.

RW/

Enclosure