

October 28, 2008

Mr. Michael Tripp  
Acting Director  
Department of Regional Planning  
320 West Temple Street, Room 1362  
Los Angeles, CA 90012

**Re: OPPOSITION COMMENTS: Project R2006-03647, Project R2006-03652, Project TR067861, Project R2006-03643 and Project R2006-03644 (together the “Woodfin/Neptune Project”) and COMMENTS on combined Draft Environmental Impact Report - Neptune Marina Apartments And Anchorage/Woodfin Suite Hotel And Timeshare Resort Project (“DEIR”)**

Dear Mr. Tripp:

We ARE Marina del Rey (“WAM”) strongly urges the Department of Regional Planning to reject the projects listed above, to deny all applicable Plan Amendments, Coastal Development permits, Conditional Use permits, Variances, Parking permits and Tentative Tract Map No. 067861 based on the following issues and comments on the projects and the DEIR.

## **A. Piecemealing CEQA/Overall Marina wide EIR**

We ARE Marina del Rey (“WAM”) believes that Los Angeles County (“County”) is piecemealing the redevelopment of Marina del Rey in violation of state law, including the California Coastal Act (“Coastal Act”) and the California Environmental Quality Act (“CEQA”). County has admitted on the record and it is widely known, that County intends to redevelop Marina del Rey (the “Marina Redevelopment Project”). This “Marina Redevelopment Project” constitutes “a project” under CEQA. According to Public Resources Code § 21065, a project is defined as the whole of an action, which has a potential for resulting in either a direct physical change in the environment.

The Marina Redevelopment Project consists of all the County’s individual developments within Marina del Rey now making their way through the public approval process (Fisherman’s Village, Mother’s Beach, Western Marina residential complexes, etc). County is dividing “the Marina Redevelopment Project” into smaller redevelopment projects (e.g. the projects cited above) in order to reduce and hide the environmental impact of the “Marina Redevelopment Project.” Therefore, County is piecemealing the “Marina Redevelopment Project,” in violation of CEQA. California Supreme Court case law holds that the County cannot “hide” the redevelopment project from the public by breaking the Marina Redevelopment Project into little parts, and the County’s behavior – actions and words - confirms there is “a Marina Redevelopment Project.”

The California Coastal Commission stated during its Local Coastal Program (the “LCP”) Periodic Review hearing on January 9, 2008, that County is piecemealing projects and that this is bad planning. They strongly recommended (said recommendation reaffirmed on October 16,

2008), that County should do a comprehensive LCP update amendment of anticipated future development that includes all pending project driven amendments, fulfillment of Asset Management strategies and other facilities identified through a community planning process. The intent behind this recommendation was:

*“Well, I think it is apparent that if LCP amendments are pursued on an individual basis, project by project, that the cumulative impacts, and the coordinated efforts will be very difficult for the community, for the County, and for this Commission to understand.” - Commissioner Kinsey, LCP Review Hearing, January 9, 2008*

An Environmental Impact Report should be prepared for the whole “Marina Redevelopment Project” should be County’s highest obligation to determine the overall environmental impacts of all projects in the Marina. County argues that the LCP is the functional equivalent of an EIR per CEQA § 21080.5 because it is a certified program, a position WAM does not share. However, instead of following the LCP for Marina del Rey, which County considers to be the functional equivalent of an EIR, County is implementing a slate of redevelopment projects contained in its *Marina del Rey Asset Management Strategy* (“AMS,” April 15, 1997, which is not part of the Certified LCP). The projects, including Project R2006-03652 (apartment units on Parcel FF, a public parking lot) and Project TR067861 (the 19-story hotel and timeshare suites – more on this inconsistency follows below) and the document itself are not in conformity or consistent with the Marina del Rey Certified LCP. Additionally, the AMS has not been reviewed or approved by the California Coastal Commission and has no regulatory or legal standing.

Public Resources Code § 21080.5 and CEQA Guideline also state that a “certified program” remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. Therefore, even if the LCP were the functional equivalent of an EIR, County must still review the overall impacts of the “Marina Redevelopment Project.”

The DEIR states that it is a “project EIR, and therefore, can use environmental information from the Certified LCP. DEIR, page 8 of Section 2.0 Introduction, reads:

*The scope of the analyses in this project EIR also relates to the environmental analyses contained within the Local Coastal Program (LCP). LCPs are Certified Regulatory Programs and as such are exempt from CEQA pursuant to CEQA Section 21080.5. Because the Coastal Commission’s consideration and certification of an LCP is the functional equivalent of an EIR, any environmental impact determinations and analysis of the CCC within the LCP are pertinent to and may be incorporated within the scope of the impact discussion in the project EIR where such analyses are sufficiently complete for that purpose. Therefore, where appropriate, reference will be made to the prior environmental analysis to the extent such analysis obviates the need for further discussion of an environmental issue within the meaning of Section 21166.*

*The land use changes accommodated in the 1996 certified Marina LCP, inclusive of the provision of view corridors of the harbor to accommodate taller structures, complied with CEQA as provided in Public Resources Code Section 21080.5 and Coastal Act Sections 30500 through 30522 because the LCP certification process involves the functional environmental analysis equivalent to that required by CEQA. (bold emphasis added)*

However, because projects, including Project R2006-03652 and Project TR067861, are not in conformity with the LCP, the environmental impacts of said projects would not have been contemplated or analyzed in the 1996 certification of the Marina del Rey LCP. Therefore the LCP as a functional equivalent to an EIR provides an insufficiently incomplete analysis vis-à-vis the projects in this DEIR, and the reliance on the environmental provisions of the LCP in relation to these projects problematic. Additionally, as stated above, a “certified program” still remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible.

Another area where reliance on the environmental analysis of the LCP is seriously flawed involves ESHA. This DEIR does not reflect the changes on the ground to the environment since the LCP was certified in 1996. The DEIR states on page 44 of Section 5.5 Biota:

*The Marina del Rey Local Coastal Plan does not designate any environmentally sensitive habitat areas (ESHA), and none is recognized within the project site. Accordingly, no significant, adverse impacts will result from the project.*

However, on January 9, 2008 (reaffirmed October 16, 2008), the California Coastal Commission determined parts of Marina del Rey contain ESHA, and therefore, recommended that County, as part of the overall LCP update amendment, add ESHA findings and provisions to the Marina del Rey LCP, in conformance with the Coastal Act and that County carry out a survey to determine if there are additional ESHA sites in Marina del Rey. For example, in close proximity to the instant Project Site (parcels 9U, 10R and FF) is a great blue heron rookery at Mariners Village. This DEIR provides no analysis of the potential environmental impacts of the Woodfin/Neptune Project on these ESHA sites or potentially unidentified ESHA sites. Therefore, in relation to ESHA, this DEIR is substantially incomplete.

## **B. Inconsistencies with Certified Land Use Plan (“LUP”) and Plan Amendments**

Although the DEIR states otherwise, there are a number of major inconsistencies and lack of conformity to the Certified LCP with regards to Project R2006-03652 (apartment units on Parcel FF, a public parking lot) and Project TR067861 (the 19-story hotel and timeshare suites).

A 19-story structure, while permitted on Parcel 9U, is significantly out of context to its surroundings. The usurpation of public parking lots for private development is also inconsistent with the LUP.

Page 5 of the DEIR Executive Summary states “Intensification of development within Marina del Rey is authorized in the certified Local Coastal Program (LCP).” However, it cannot be emphasized enough that the LUP states that just because development units are allocated and uses allowed does not entitle such use. Development Potential is defined in the LUP (page i-4 to i-5) as:

*Specific types of land uses and the maximum intensity of development that may be permitted on a specific parcel or sub-parcel as established by text policy or shown by land use category on policy maps. The actual development that may be granted on any given parcel is subject to constraints, limitations and conditions, applicable at the time of application, that may be imposed during a public hearing process, culminating in the granting of a Coastal Development Permit. Development potential, by itself, does not establish any right or entitlement to a specific development project.*

### Public Parking Lots

The Land Use Plan (LUP) Section A.2.e.12 states that NO public parking lots, including parcel FF, SHALL be converted to uses other than public parking or public park purposes. That is why Project R2006-03652 requires an LCP Amendment. However, in the analysis section A2.c, the LUP states that a park would be contemplated for Parcel FF. So the analysis and final adopted polices forbid development on parcel FF other than a public park or public parking lot.

Page 6 of the DEIR Executive Summary states that Parcel FF is developed as an underutilized surface parking lot with approximately 200 parking spaces. However, there is no mention that Parcel FF was partially closed (over 50% of the parcel) for years and occupied illegally by Doug Ring and his Esprit project (Parcel 12). The Coastal Commission, on January 9, 2008 in its Staff Report (W10-a) recommended (#19) that the County “analyze the total pattern of public serving and park uses in the Marina” before converting public parking to private use. This DEIR does not present such analysis and is therefore incomplete.

### Timeshare not contemplated by LCP

County has determined that Project TR067861 does not require an LCP Amendment. However, this proposed finding is inconsistent with the Coastal Commission staff’s determination and therefore is not supportable in law or fact. For example, in a letter dated April 27, 2007, in response to the NOP of the Woodfin/Neptune Project, Coastal Commission staff stated that an LCP Amendment would be required. Additionally, in LCP Amendment 1-01, on page 20 of the Coastal Commission staff report, *Table 3.0 Lease Negotiation Parcels* lists Parcel 9, 20-story vacation time share of requiring an LCP amendment. Finally, a Coastal Commission Memorandum dated December 26, 2006 on Condominium Development in the Coastal Zone, states:

*“condo-hotel projects and other limited use/fractional ownership hotel proposals should not be considered unless the applicable LCP specifically allows such development. In the absence of specific LCP provisions allowing such projects, the local government should prepare and submit an LCP amendment for Commission review.”*

The Certified LCP for Marina del Rey is silent on timeshares. Nowhere in the LCP are timeshares contemplated. The argument made in the DEIR that timeshare use was the equivalent of hotel units is baseless. If there was no difference, there would not be two completely separate land use designations. Based on this fact alone, Project TR067861 should be rejected as no LCP amendment has been proposed by County.

## Transfer of Development Units Between Development Zones

The Marina del Rey LUP specifically states that development units may not be transferred between zones (Section C.8). The argument that precedence now exists because Parcel 20 was granted a transfer of development units for that specific parcel only as part of LCP Amendment 1-01 is also baseless. Instead of changing the LCP through amendment to allow transfer of development units, County has created the exception and is now making it the rule. This is another form of piecemeal development that obviates the planning law. When the LCP as written suits County, they quote the LCP. When it does not, they make exceptions to the rules without officially changing the rules.

## Parcel 9U Wetland Status

The southern portion of Parcel 9U, where Project No. R2006-03643 is to be constructed was designated a wetland by the Army Corp of Engineers in 2001. LUP Policy B.4.e.1 states:

*“The existing wetlands, including the flood control basin in parcel PP, the Marina waters, and the Ballona Creek flood control channel are the marine resources which shall be maintained, and where feasible, enhanced and restored. Uses permitted in or adjacent to these areas shall be carried out in a manner to protect the biological productivity of these marine resources and maintain healthy populations of marine organisms.”*

Although the southern portion of Parcel 9U was designated as wetland in 2001, the wetland was in existence at the time of the 1996 LCP Certification.

## The Marina as a Small Craft Harbor

Further evidence that the Woodfin/Neptune Project is not consistent with the LCP and should be denied exists in the Marina del Rey LUP. Section A.2.d states:

*“A strong demand exists for new lower-cost recreational opportunities in the LCP area such as restaurants, waterfront parks, pedestrian/bicycle paths, and for improved transit to such opportunities, whereas demand for more expensive visitor-serving facilities, such as hotel rooms, has proven to be limited.”*

The LUP further states C.8.e.1:

*The primary purpose of the Land Use plan shall be to maintain Marina del Rey as a Small Craft Harbor for recreational purposes. A secondary purpose shall be to promote visitor-serving uses.*

The LUP further states (C.8.e.8):

*“Coastal Housing not a Priority.”*

## **C. Issues/Comments On DEIR**

### DEIR Executive Summary

The introduction includes a number of misleading statements and leaves out important issues as follows:

- The DEIR does not discuss the fact that the Coastal Commission states that a Plan Amendment is required for Project # TR067861.
- Page 7 includes the following statement: “A structure height of 75 feet is consistent with height provisions defined in the LUP, the recently approved ‘The Shores’ project on the adjacent Parcels 100 and 101, and the recently constructed apartments on the adjacent Parcel 12. This DEIR fails to state that “The Shore” project was no longer approved and that all permits were rescinded.

### Traffic

One of the major mitigations cited to deal with traffic impacts in the DEIR is the improvement at the intersection of Via Marina and Admiralty Way that will enhance traffic flow between Admiralty Way and Via Marina south of Admiralty Way within the Marina, reducing the northbound right-turn traffic volumes on Via Marina at Washington Boulevard as specified in the TIP. However, it should be noted that this project has not been approved or funded at this point in time. And this DEIR relies heavily on this traffic mitigation factor. Therefore, we urge the Regional Planning Commission to remove this mitigation option from the analysis and to re-determine the impacts on traffic for the overall Woodfin/Neptune Project.

### Construction Impacts

Firstly, the DEIR is missing a significant proposed project in Marina del Rey, the Venice Dual Force Main Sewer project that contemplates a 32-month project that will include a long strip of Via Marina from Marquesas Way to the Breakwater as part of the new underground sewer line. This project, which is anticipated to commence in August of 2010 will significantly short-term construction related impacts on the Marina del Rey community and will coincide with the planned construction dates of the Woodfin/Neptune Project.

Additionally, this DEIR does not detail the construction timelines and impact analysis of other nearby Marina del Rey proposed projects that will, if approved, most likely be constructed concurrently with the Woodfin/Neptune Project.

Therefore, this DEIR, in leaving out the Venice Dual Force Main Sewer project and construction timelines of other nearby proposed projects, fails to fully analyze the overall and project short-term construction impacts on the community and the environment.

## Alternative Projects

WAM finds the following reason for passing on Alternative #5 as baseless.

*“Alternative 5 would not meet the project objectives as fully as the proposed project in that with the provision of fewer residential units less affordable housing would be incorporated into the proposed project. Additionally, with the construction of fewer hotel and timeshare units, fewer visitors would be served by the project.”*

The loss in affordable housing and fewer visitors being served by the project does not outweigh the lessened environmental impacts that would be gained by Alternative #5. This project would certainly lessen low-cost recreational visitor serving uses which is a priority. See comments above on the Marina as a Small Craft Harbor that details what priorities are in the Marina.

## **D. Conclusion**

Based on the above facts, comments, concerns and issues related to the Woodfin/Neptune Project and all Marina del Rey development, WAM urges Regional Planning to deny this project the Plan Amendments, all applicable permits, and deem the DEIR insufficient in light of the overall piecemealing of the Marina Redevelopment Project. Additionally, we urge you to advise the Board of Supervisors to prepare an Environmental Impact Report for the Marina Redevelopment Project and adhere to the California Coastal Commission’s recommendation to carry out a comprehensive LCP update amendment in order to assess the overall environmental and social impacts of the Marina Redevelopment Project through a meaningful community planning process.

Together,  
We ARE Marina del Rey



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