

**CALIFORNIA COASTAL COMMISSION**

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Filed: 9/6/2002  
 49th Day: 10/25/2002  
 180th Day: 3/5/2003  
 Staff: CP-LB  
 Staff Report: 11/21/2002  
 Hearing Date: December 10, 2002  
 Commission Action:



# Tu11a

**STAFF REPORT: MATERIAL AMENDMENT**

**APPLICATION NUMBER:** 5-87-847-A1      **RECORD PACKET COPY**

**CO-APPLICANTS:** California Department of Fish & Game  
 County of Los Angeles Department of Beaches & Harbors

**AGENTS:** Lyann Comrack, Associate Wildlife Biologist (DFG)  
 Joseph J. Chesler, AICP, Chief, Planning Division (L.A. Co.)

**PROJECT LOCATION:** Dockweiler State Beach (5201-5501 Ocean Front Walk), Venice,  
 City of Los Angeles, Los Angeles County.

**PREVIOUS APPROVALS:** (1) Coastal Development Permit A-81-7781 (DFG); Place fencing  
 on the beach to establish a 450 by 300 foot least tern nesting  
 area (1981).  
 (2) Coastal Development Permit 5-87-847 (DFG); Enlarge  
 existing California least tern nesting area from 450' x 300' to 500'  
 x 350' (four acres). [Approved December 11, 1987.]

**CURRENT PROPOSAL:** Enlarge the existing protected California least tern nesting area  
 from four acres to approximately nine acres, relocate one public  
 beach volleyball court, replace nesting area's protective fence  
 enclosure, and install new interpretive signs.

**SUMMARY OF STAFF RECOMMENDATION**

The proposed project is situated within Dockweiler State Beach and within the incorporated municipality of the City of Los Angeles. The Commission has not certified a Local Coastal Program (LCP) for the project area. Therefore, and for the reasons set forth below in greater detail, the coastal development permit that is required for the proposed development must be obtained from the Commission.

Staff recommends that the Commission approve a permit amendment for the proposed development with conditions to: minimize impacts on least terns during nesting season, protect public access and recreation opportunities on the beach, protect water quality and marine resources, inform and educate the public about the birds and their nesting area, and to

require the applicants to assume the risks of the development. The applicants agree with the recommendation.

Please see **Page Three** for the motion and resolution necessary to carry out the staff recommendation.

**STAFF NOTE:**

The proposed development is located within an area of the City of Los Angeles that is not subject to a certified Local Coastal Program (LCP). Therefore, the Commission's permitting authority has not been delegated to the local government *pursuant to a certified LCP*. The City of Los Angeles, however, was authorized by the Commission in 1978 to issue local coastal development permits (prior to LCP certification) pursuant to Section 30600(b)(1) of the Coastal Act. Section 30600(b)(1) of the Coastal Act allows local government to assume permitting authority prior to certification of a LCP. Under this section, local government may establish procedures for the filing, processing, review, modification, approval, or denial of coastal development permits within its area of jurisdiction in the coastal zone. Section 30602 states that any action taken by a local government on a coastal development permit application prior to the certification of a LCP can be appealed by the Executive Director of the Commission, any person, or any two members of the Commission to the Commission within twenty working days from the receipt of the notice of City action. Section 30601 of the Coastal Act and Section 13307 of the California Code of Regulations require that development in certain areas of the coastal zone obtain a coastal development permit from both the Commission and the local government (i.e. dual permits). In 1978, when the Commission granted the City of Los Angeles permitting authority, Commission staff prepared maps to identify the areas where coastal development permits must be obtained from both the Commission and the City. This area is commonly known as the "Dual Permit Jurisdiction." Areas in the coastal zone outside the dual permit jurisdiction are known as the "Single Permit Jurisdiction". The City also issues local coastal development permits for projects located in the single permit jurisdiction.

Because the proposed development is located within three hundred feet of the shoreline, it is within the mapped City of Los Angeles Dual Permit Jurisdiction area. Therefore, both the City of Los Angeles and the Coastal Commission prior to development must normally take an action on a coastal development permit application for development in this area. The City, however, does not have permit jurisdiction in this case because the applicants are the State of California and the County of Los Angeles. Pursuant to Section 30600(b)(2) of the Coastal Act, the State and County are not required to obtain a permit from the City; the State and County are not subject to the City's local regulatory authority. Therefore, the coastal development permit that is required for the proposed development must be obtained from the Commission. In addition, the fact that the Commission issued the underlying coastal development permit for the existing least tern nesting area requires that the current proposal must go to the Commission as a permit amendment request. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Los Angeles certified Land Use Plan (LUP) for Venice is advisory in nature and may provide guidance.

**SUBSTANTIVE FILE DOCUMENTS:**

1. City of Los Angeles certified Land Use Plan for Venice, 6/14/01.
2. Coastal Development Permit A-81-7781 (DFG).
3. Coastal Development Permit 5-87-847 (DFG).
4. Coastal Development Permits 5-01-262 & 5-01-263 (L.A. Co. Dept. of Beaches & Harbors: Dockweiler State Beach Improvements).

### **PROCEDURAL NOTE:**

The Commission's regulations provide for referral of coastal development permit amendment requests to the Commission if:

1. The Executive Director determines that the proposed amendment is a material change,
2. Objection is made to the Executive Director's determination of immateriality, or
3. The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

In this case, the Executive Director has determined that the proposed amendment is a material change to the previously approved project. If the applicants or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. [Title 14 California Code of Regulations 13166].

### **STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution to **APPROVE** the permit amendment request with special conditions:

**MOTION:** *"I move that the Commission approve Coastal Development Permit Amendment 5-87-847-A1 pursuant to the staff recommendation."*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### **I. Resolution to Approve a Permit Amendment**

The Commission hereby **APPROVES** the coastal development permit amendment and adopts the findings set forth below on grounds that the development as amended and subject to conditions will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated

to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

## II. Special Conditions

**Note:** The following conditions of the permit amendment are in addition to any conditions of the originally approved permit.

### 1. Beach and Recreation Area Closures and Project Staging Area

**PRIOR TO ISSUANCE OF THE PERMIT AMENDMENT**, the applicants shall submit to the Executive Director, for review and approval, a final demolition and construction schedule, and a detailed plan that identifies the specific location of: the demolition and construction staging area, all equipment and material storage areas, the location where the demolished fence is proposed to be temporarily stockpiled prior to being exported from the coastal zone and disposed of properly, and the workers' access corridors to the project site. Said plan shall include the following criteria and limitations specified via written notes on the plan:

- A. In order to minimize adverse impacts on least terns during nesting season, no construction or demolition activity associated with the proposed project shall occur during the period commencing on March 15 and ending September 30. No construction or demolition activity shall occur if any nesting terns are present.
- B. Open corridors for public access, at least 150 feet in width, shall be maintained on the sandy beach outside of the fence enclosure between the mean high tide line and the most seaward portion of the fence enclosure, and between the boardwalk (Ocean Front Walk) and the most inland portion of the fence enclosure.
- C. In order to reduce adverse impacts to public access and recreation, the following restrictions shall apply:
  - (i) No project staging, demolition or construction activities of any kind shall take place during weekends or holidays.
  - (ii) Whenever the permitted project staging, demolition or construction activities occur in a public parking lot, the activities and development shall be phased to ensure that at least one-half ( $\frac{1}{2}$ ) capacity of the public parking lot is open for public use.
- D. Beach and recreation area closures during demolition and construction shall be minimized and limited to areas immediately adjacent to the project area. Closed areas shall not to exceed a 100-foot radius from the active work area. All beach areas and recreation facilities outside of the 100-foot radius shall remain open and available for public use during the normal operating hours (unless they are

closed pursuant to a Commission approved coastal development permit or permit amendment).

- E. Staging areas, materials storage areas, and all equipment shall be located at least 100 feet from the water at all times, and shall be fenced-off to prevent any encroachment of equipment or debris within 100 feet of water.
- F. Truck and heavy equipment access corridors to the project site shall be located in a manner that has the least impact on public access and public parking areas.

The permittees shall undertake development in accordance with the plan and construction schedule approved by the Executive Director pursuant to this condition. Any proposed change to the approved plan or construction schedule shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plan shall occur without a permit amendment unless the Executive Director determines that no amendment is required.

2. Protection of Water Quality – During Construction

**PRIOR TO ISSUANCE OF THE PERMIT AMENDMENT**, the applicants shall submit for the review and approval of the Executive Director, a Construction Best Management Practices Plan for the project site, prepared by a licensed professional, and shall incorporate into the plan erosion, sediment, and chemical control Best Management Practices (BMPs) designed to minimize to the maximum extent practicable the adverse impacts associated with construction to receiving waters. The applicants shall implement the approved Construction Best Management Practices Plan on the project site prior to and concurrent with the project staging, demolition and construction operations. The BMPs shall be maintained throughout the development process.

- A. The Construction Best Management Practices Plan shall include the following requirements:
  - (i) No construction materials, debris, or waste shall be placed or stored in a manner where it may be subject to wave, wind, rain, or tidal erosion and dispersion.
  - (ii) Any and all refuse and debris resulting from construction and demolition activities shall be removed from the project site within 72 hours of completion of demolition and construction. Construction and demolition debris and sediment shall be removed or contained and secured from work areas each day that construction or demolition occurs to prevent the accumulation of sediment and other debris that could be discharged into coastal waters. All demolition/construction debris and other waste materials removed from the project site shall be disposed of or recycled in compliance with all local, state and federal regulations. No debris shall be placed in coastal waters. If a disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

- (iii) No overnight storage of mechanized equipment is allowed on the sandy beach.
  - (iv) No disturbance or use of areas below the high tide line is permitted for the proposed development.
  - (v) Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control dust and sedimentation impacts to coastal waters during construction and demolition activities.
  - (vi) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and kept as far away from a storm drain inlet and receiving waters as possible.
- B. The required Construction Best Management Practices Plan for the project site shall also include the following BMPs designed to prevent spillage and/or runoff of construction and demolition-related materials, sediment, or contaminants associated with construction activity. The applicants shall:
- (i) Develop and implement spill prevention and control measures and shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the sandy beach, receiving waters, and storm drain inlets as possible.
  - (ii) Maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a controlled location not subject to runoff into coastal waters, not on the sandy beach, and more than fifty feet away from a storm drain, open ditch or surface waters.
  - (iii) Provide and maintain adequate disposal facilities for solid waste, including excess concrete, produced during construction.
  - (iv) Stabilize any stockpiled fill with geofabric covers or other appropriate cover, and close and stabilize open trenches as soon as possible.
  - (v) Prior to final inspection of the proposed project, the applicants shall ensure that no gasoline, lubricant, or other petroleum-based product was deposited on the sandy beach or at any beach facility. If such residues are discovered, the residues and all contaminated sand shall be reported to the Executive Director in order to determine if the removal and disposal of the contaminated matter shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

The Construction Best Management Practices Plan approved by the Executive Director pursuant to this condition shall be attached to all final construction plans. The permittees shall undertake the approved development in accordance with the Construction Best Management Practices Plan approved by the Executive Director pursuant to this condition. Any proposed change to the approved Construction Best Management Practices Plan shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plan shall occur without a permit amendment unless the Executive Director determines that no amendment is required.

3. Signage Plan

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit a signage plan, for the review and approval of the Executive Director, for all signage proposed to be installed on or adjacent to the proposed development. The signage plan shall conform to, and clearly demonstrate compliance with, the following requirements:

- A. In order to educate and inform the public about the California least tern and the Venice least tern nesting area, the signage plan shall include a low-scale official interpretive sign at the following locations: the intersection of Ocean Front Walk and Union Jack Street, the intersection of Ocean Front Walk and Westwind Street, and the intersection of Ocean Front Walk and the walkway on the Marina Entrance Jetty.
- B. Freestanding signs shall be limited to low-scale official State, City or County information and directional signs, and shall not interfere with the public's use of the Venice Boardwalk (Ocean Front Walk) or the walkway on the Marina Entrance Jetty.
- C. No portion of any sign shall be placed on the roof of a structure, and no sign shall exceed the roof height of a structure or the height of the approved fence enclosure.
- D. All sign faces shall be limited to a maximum area of 25 square feet.

The permittees shall undertake the development in accordance with the signage plan approved by the Executive Director pursuant to this condition. Any proposed change to the approved signage shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plan shall occur without a permit amendment unless the Executive Director determines that no amendment is required.

4. Conformance with the Requirements of the Resource Agencies

The permittees shall comply with all permit requirements and mitigation measures of the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of the California least tern, water quality and the marine environment. Any change in the approved project, which may be required by the above-stated agencies, shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No change to the project shall occur without a permit amendment unless the Executive Director determines that no amendment is required.

5. Future Uses and Improvements

This approval is limited to the uses and development specifically described in the project description, approved plans and related findings contained in Coastal Development Permit Amendment 5-87-847-A1. Any proposed additional development will require another amendment to the permit or a new coastal development permit unless the Executive Director determines that neither is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.

6. No Future Shoreline Protective Device

**A. BY ACCEPTANCE OF THIS PERMIT AMENDMENT**, the applicants agree, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit Amendment 5-87-847-A1 in the event that the development is threatened with damage or destruction from waves, erosion, flooding, storm conditions, or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

By acceptance of this permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the permittees and/or whoever has authority over this site and the development authorized by this permit shall remove the development authorized by this permit if any government agency has ordered that the development is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the permittees and/or whoever has authority over this site and the development authorized by this permit shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

In the event the shoreline recedes to within ten feet (10') of the development authorized by this permit but no government agency has ordered that the development not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the permittees, that addresses whether any portion of the development is threatened by wave, erosion, flooding, storm conditions or other natural



hazards. The report shall identify all those immediate or potential future measures that could stabilize the development authorized by this permit without shoreline protection including, but not limited to, removal or relocation of portions of the development. If the geotechnical report concludes that the development authorized by this permit or any portion of the development is unsafe and cannot be stabilized quickly and without a shoreline protective device, the permittees and/or whoever has authority over this site and the development authorized by this permit shall, in accordance with a coastal development permit, remove the threatened portion of the development.

**B. PRIOR TO ISSUANCE OF THE PERMIT AMENDMENT**, the applicants shall secure, and submit to the Executive Director, a written agreement from the California Department of Parks and Recreation (State Parks), that State Parks (a) agrees to all of the above terms in subsection A of this condition to which the applicants agree, and (b) waives any rights analogous to those waived by the applicants; and that State Parks will require any other agent acting on its behalf with respect to this site to do the same.

7. Assumption of Risk

**A. BY ACCEPTANCE OF THIS PERMIT AMENDMENT**, the applicants acknowledge and agree: (i) that the site may be subject to hazards from seismic events, liquefaction, storms, waves, flooding and erosion; (ii) to assume the risks to the permittees and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**B. PRIOR TO ISSUANCE OF THE PERMIT AMENDMENT**, the applicants shall secure, and submit to the Executive Director, a written agreement from the California Department of Parks and Recreation (State Parks), that State Parks acknowledges and agrees to the four items in subsection A of this condition and that State Parks will require any other agent acting on its behalf with respect to this site to acknowledge and agree to the four items in subsection A of this condition.

III. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The California Department of Fish and Game and the County of Los Angeles Department of Beaches and Harbors propose to enlarge the existing protected California least tern nesting area in the Venice portion of Dockweiler State Beach (Exhibit #2). The California least tern,

Sterna antillarum browni, is a Federal and State listed endangered bird species that nests on sandy beaches (Exhibit #5).

The County maintains the State Beach under an agreement with the California Department of State Parks and Recreation, and the Department of Fish and Game is responsible for protecting the least terns' nesting area on the sandy beach. The protected nesting area, located seaward of Ocean Front Walk on the southern end of the Marina Peninsula in Venice, is currently surrounded by a six-foot high fence (chain-link topped with chicken wire) that encloses a 500' x 350' rectangular-shaped sand area (Exhibit #3). The birds have been known to nest on the project site since 1977, and it is one of the most productive least tern nesting sites in the State (Exhibit #5, p.6-7). The Commission approved previous fence enclosures on the same site in 1981 (Appeal No. A-7781) and in 1987 (Coastal Development Permit 5-87-847). The Department of Fish and Game invited the Department of Parks and Recreation (State Parks) to be a co-applicant in this proposal, but State Parks did not wish to be a co-applicant.

The currently proposed project involves the following changes to the least tern nesting area:

- 1) Remove the old damaged fence, and construct a new six-foot high chain-link fence, topped with three strands of cantilevered barbless wire (Exhibit #4). The new fence would enclose nine acres of sandy beach, including the 4.18 acres of sand area enclosed by the existing fence. The four sides of the proposed fence enclosure measure 464' x 726' x 575' x 736' (Exhibit #3).
- 2) Relocate one public beach volleyball court approximately 150 feet north of its present site (Exhibit #3). Four other public beach volleyball courts, situated between the nesting area and Ocean Front Walk, would remain in their present locations.
- 3) Install new interpretive signs to educate and inform the public about the California least tern and the Venice least tern nesting area.

The proposed project does not include any work in the water, and does not include any recontouring of the beach. The existing dunes and vegetation will be left intact, except in the locations where the old fence is being removed (Exhibit #5, p.2).

For public access, recreational activities, lifeguard patrols and beach maintenance vehicles, the proposed project will preserve the following access corridors on the sandy beach outside of the fence enclosure: a 150-foot wide corridor between the current shoreline and the most seaward portion of the fence enclosure, a 150-foot wide corridor between the boardwalk (Ocean Front Walk) and the most inland portion of the fence enclosure, and a 100-foot wide corridor between the public restroom facility located on the sandy beach seaward of Yawl Street and the southernmost portion of the fence enclosure (Exhibit #3).

## B. Environmentally Sensitive Habitat Area (ESHA)

The certified Venice LUP designates the Venice least tern nesting area as an ESHA protected by Section 30240 of the Coastal Act (Exhibit #2). The California least tern, Sterna antillarum browni, is a Federal and State listed endangered species. The least tern is migratory and generally arrives in the project area each year in early April, and departs in early autumn. Least terns capture small fish for their newly hatched chicks in the nearby ocean, wetlands, lagoons, and canals. These fish include northern anchovies, gobies, top smelt, various surfperch, killifish, mosquito fish, and other lagoon and estuarine fish species. Least terns are often observed foraging for fish in the Venice Canals, Ballona Lagoon and ocean near the Venice Beach nesting area. The Venice Beach least tern colony is currently one of the largest and most productive colonies of California least terns remaining in the state (Exhibit #5, p.6).

The Venice least tern nesting area also has provided valuable habitat area for other sensitive animals and plants, including the sandy beach tiger beetle, globose dune beetle, Dorothy's El Segundo dune weevil, Belkin's dune tabanid fly, beach spectacle-pod, and sand verbena (Exhibit #5, p.3). The Western snowy plover Charadrius alexandrinus nivosus nested on the site at one time but is now presumed to be extirpated from the site, but the proposed project would provide an opportunity for several of these species to reestablish themselves in the area.

The Commission's responsibility to protect the habitat area is established by the habitat protection policies of the Coastal Act. Section 30240 of the Coastal Act, which requires that ESHA be protected from significant disruption of habitat values, is also included in the certified Venice LUP.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The following certified LUP policies also protect the Venice Beach least tern colony and its foraging areas from adverse impacts.

- **Policy IV. D. 1. Venice Canals Habitat.** *The Venice Canals have been identified by the Least Tern Recovery Team as a foraging habitat for the Least Tern. Development within or adjacent to the canals that might affect this foraging habitat shall not be permitted.*
- **Policy IV. D. 2. Ballona Lagoon Habitat.** *The Ballona Lagoon has been identified by the Least Tern Recovery Team as a critical habitat for the Least*

*Tern for feeding. Development within or adjacent to the lagoon that might adversely impact the quality of this foraging habitat shall not be permitted.*

• **Policy IV. D. 3. Venice Beach.** *The Least Tern nesting habitat on Venice Beach shall be preserved and shall not be disturbed by encroachments of public improvements and activities.*

• **Policy III. C. 2. Least Tern Nesting Area.** *No development permits shall be granted for development which would have a potential significant impact on the Least Tern nesting ground in the vicinity of the jetty at the Marina Channel.*

The proposed project involves changes to the existing protected California least tern nesting area, including the enlargement of the protected area with a new fence enclosure (Exhibit #3). The goals of the proposed project, as stated in the application submitted by the Department of Fish and Game, are to protect the existing least tern colony and increase nesting opportunities by giving the nesting birds more space (Exhibit #5, p.1). The applicants propose, and Special Condition 1.A. of the permit amendment requires, that the proposed project be implemented and completed outside of the least tern's nesting season, which runs from mid-March until late September (Exhibit #5, p.4). No work at all is proposed to occur in the water.

In addition, Special Condition Four requires the permittees to comply with all permit requirements and mitigation measures of the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of the California least tern, water quality and marine environment.

The proposed development has been designed by the California Department of Fish and Game specifically to protect the least tern nesting area from the negative effects of uncontrolled beach use and to prevent impacts that would significantly degrade the ESHA. The least terns nest on the beach, and unless their nesting area is protected from foot traffic, nesting will not be successful. A biologist from the Fish and Wildlife service indicates that the continued beach use and concomitant maintenance work well together to assure successful nesting.

"The least terns at Venice are restricted to nesting in the fenced area now due to the beach grooming that takes place on a daily basis. Terns will sometimes roost overnight outside the fence, and occasionally start to make a scrape in the sand in the morning, but the beach grooming vehicle comes along and flushes them all back into the fenced area and smoothes out the sand. This actually helps us to manage the area because it keeps all of the chicks within the enclosure where they are safer. This also allows recreational activities to go on around the enclosure without endangering the nests" (Kevin Clark, Wildlife Biologist, USFWS, personal communication, November 22 2002.)

The proposed fence enclosure is necessary and compatible with the continuance of the ESHA. As proposed and conditioned, the proposed project will not disrupt the habitat values of the ESHA and will not have any adverse impacts on the least tern nesting area. Therefore, as

conditioned, the proposed project is consistent with the habitat protection policies of the Coastal Act and the policies of the certified Venice LUP.

### **C. Public Access and Recreation**

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast, although such access shall be provided in a manner consistent with the need to protect natural resource areas from overuse.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 provides, in part:

#### Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, ...

Section 30214 states, in part:

#### Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. ...

The Coastal Act thus provides for access but allows the Commission to implement access provisions in a manner that protects sensitive resources. As noted above, the resource in this

case is a least tern nesting area that has existing on the site for over 20 years, a remnant of a larger colony that existed before development of the Peninsula for residential uses.

The proposed project involves a fence enclosure that would prohibit public access to a nine-acre area of sandy beach on the southern end of the Marina Peninsula in Venice (Exhibit #3). More than four acres of the site is currently enclosed by a fence that protects the least tern nesting and prevents access and use by the public. The certified LUP states that public use of the beach on the Marina Peninsula is less intensive than public use of the beach area in North Venice. This pattern of less intense use occurs for many reasons, including the absence of commercial recreational support facilities on the Marina Peninsula, inadequate public parking supplies, the uncompleted boardwalk, the steep underwater slope of the ocean bottom south of Venice Pier, and the distance from heavily traveled access routes such as Venice Boulevard and the Santa Monica Freeway. While the LUP includes several measures to increase access to the area, the LUP recognizes that the Marina Peninsula will continue to exhibit of less intensive public use than occurs in North Venice or on Santa Monica State Beach.

The certified Venice LUP states that Venice Beach has 2.9 linear miles of beach and 238 acres of sandy beach. Given the need to protect the nesting site from trampling and overuse, public access and recreational opportunities are maximized consistent with the need to protect the ESHA. The proposed preservation of nine acres of the southern portion of the 238-acre Venice Beach as ESHA will not negatively affect public access and recreation because adequate sandy beach area in the immediate vicinity of the project will remain open for recreational activities. These include areas adjacent to the residential structures and a 150-foot wide band of sand adjacent to the water, which is used by joggers. Existing volleyball courts will for the most part remain in place, although some courts will be relocated in the immediate vicinity. Public access to this portion of Venice Beach is more limited by inadequate parking and other reasons listed above than by the use of a relatively small portion of the sand by nesting least terns.

Public access and recreational activities outside of the proposed nine-acre enclosure would remain unaffected by the proposed project. The sandy beach around the outside of the proposed fence enclosure will remain completely open to public access, and as noted above 150-foot wide open sandy beach areas will be preserved on both the seaward and landward sides of the proposed fence enclosure (Exhibit #3). The average 150-foot distance from the edge of the water and from the dedicated, but mostly undeveloped, Ocean Front Walk, will preserve adequate sand area for swimmers, joggers and other recreational visitors to continue their activities. In fact, the distance between the enclosure and the existing and relocated volleyball courts will not change—the separation of the enclosure from the sand areas used for jogging and volleyball is no different than provided by the present configuration. The proposed project will not interfere with existing public pedestrian and bicycle use of the Venice Boardwalk (Ocean Front Walk) or the walkway on the Marina Entrance Jetty (Exhibit #2). The project is set back almost 600 feet from the paved walkway that leads to the Jetty. Therefore, the proposed enlargement of the least tern nesting area to nine acres does not conflict with the public access policies of the Coastal Act or the policies of the certified Venice LUP.

### **Timing of Construction Activities**

In order to avoid adverse impacts to public recreation during the proposed construction and demolition activities, Special Condition One requires that the applicants submit a final demolition and construction schedule and plan. The required final demolition and construction schedule and plan will protect public access and recreation activities by:

1. Prohibiting all demolition and construction activities during the least tern nesting season. These months happen to include the peak beach use season, which runs through the summer from May to October.
2. Prohibiting demolition and construction activities during all weekends and holidays.
3. Minimizing beach closures and limiting any necessary closures to the immediate area of work.

The County of Los Angeles Venice Beach rehabilitation (Coastal Development Permit 5-01-263), City of Los Angeles Ocean Front Walk refurbishment (Coastal Development Permit 5-96-176), Venice Pavilion demolition (Coastal Development Permit 5-99-427) and Damson Oil Facility Demolition (Coastal Development Permit 5-01-484) projects were subject to similar timing restrictions. As conditioned, the impacts of the proposed development on public access and recreation have been mitigated. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the public access and recreation policies of the Coastal Act.

### **D. Marine Resources – Water Quality**

The Coastal Act contains policies that address development in or near coastal waters. The proposed project is located on the beach, which could be submerged during extreme storm events (Exhibit #2). The standard of review for the proposed development is the Chapter 3 policies of the Coastal Act, including the following marine resource policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity, public recreation and marine resources.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act requires that special precautions be implemented to protect the coastal environment from hazardous substances. Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

As stated previously in this report, Section 30240 of the Coastal Act also requires that environmentally sensitive habitat areas (ESHA) be protected from adverse impacts. The proposed project is located along the shoreline of Santa Monica Bay, an ESHA.

Sections 30230, 30231, 30232 and 30240 of the Coastal Act require that marine resources be maintained, enhanced, and restored in a manner that will sustain the biological productivity of all species of marine organisms in coastal waters. It also requires that the biological productivity and water quality of coastal waters (in this case the Santa Monica Bay) be maintained and restored by controlling polluted runoff.

The proposed project is located at the middle point along the Santa Monica Bay shoreline. Santa Monica Bay has received recognition as an estuary of ecological importance. Under the Clean Water Act, 1977 and the Water Quality Act, 1987 Congress established the National Estuary Program (NEP). The Santa Monica Bay is an estuary participating in this program, which provides a mechanism for coordination action. The Santa Monica Bay Restoration Program (SMBRP) was created to develop a Comprehensive Conservation and Management Plan for the Bay. The plan addressed habitat and water quality concerns within Santa Monica Bay through a long-term watershed management strategy.

The Santa Monica Bay supports a wide array of marine habitat for marine mammals, fish, waterfowl, and shorebirds. Endangered species in the bay include the California gray whale, brown pelican and the California least tern. Santa Monica Bay also provides people with many water-related recreational activities such as fishing, boating, swimming, surfing and scuba diving. Because of the extensive coastal recreation activities and the sensitivity of the Bay habitat, water quality issues are essential in the review of this project.



Pollutants such as sediments, toxic substances (e.g., grease, motor oil, heavy metals, and pesticides), bacteria, and trash and particulate debris are often contained within urban runoff entering via the storm water system or directly into the ocean. The discharge of polluted runoff onto the beach and into the Santa Monica Bay would have significant adverse impacts on the overall water quality of the bay and Pacific Ocean. Poor water quality has an adverse effect on marine life and coastal recreation.

### **Construction Impacts to Water Quality**

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, tide, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged to coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, Special Condition Two outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Special Condition Two requires the applicants to dispose of all demolition and construction debris at an appropriate location outside of the coastal zone and informs the applicants that use of a disposal site within the coastal zone will require an amendment or new coastal development permit. This condition also requires the applicants to submit a Construction Best Management Practice Plan that includes specific provisions to be implemented during all construction and demolition activities in order to prevent adverse impacts to marine resources. Only as conditioned to comply with construction related requirements, dispose of all debris at an approved disposal site, incorporate and maintain BMPs during construction, is the proposed project consistent with the marine resource policies of the Coastal Act.

### **E. Visual Resources**

Section 30251 of the Coastal Act requires that the scenic and visual resources of coastal areas be considered and protected as a resource of public importance. In addition, public views to and along the ocean and scenic coastal areas shall be protected.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Public views to and along the beach in this area consist of views along the shoreline and views of the expanse of undeveloped sand. Because of the absence of a continuous paved walkway along the landward edge of the beach, public views are confined to views from the parking lot at Washington Boulevard, from the walkway along the revetment at the south end of the beach and from the street ends and walk streets. Because of the influence of the armored Marina del Rey entrance channel to impede the migration of sand down coast, this beach, particularly at the southern end where the enclosure is proposed, is quite wide.

The existing fence extends six feet above the beach. There is a chicken wire extension on top of the fence to deter cats. The present fence is worn out and rusty –its condition has a negative impact on public views. The proposed new fence is a six-foot high chain-link fence topped with three strands of cantilevered barbless wire (Exhibit #4). The existing fence is visible from the surrounding area. The applicants propose to reduce the visibility of the fence by coating the wire with brown (sand-colored) vinyl.

Because the fence is chain link, the color and light of the ocean will be visible from publicly accessible places such as the street ends. Because the fence is proposed to be set back at least 150 feet from the shoreline, views along the water line will not be impeded from the areas near the water line, which are most commonly used for jogging and swimming. Finally, because the fence is set back from street ends, views beside and angled past the enclosure to the ocean will remain. Visitors from the public parking area must walk or jog about 4,500 feet before they reach the northern edge of the proposed enclosure.

A fence enclosure is necessary to protect the least tern nesting area from being trampled by beach goers and beach maintenance vehicles. The fence also discourages domestic pets from preying on the birds inside the enclosure. A shorter fence would be less effective and less protective of the endangered least terns. In order to minimize the visual impact of the proposed fence, the applicants proposed to use pale brown-colored vinyl-coated fencing material that does not contrast with the color of the sand (Exhibit #5, p.3). Therefore, although the proposed fence is longer than the existing one, the proposed new fence material is not more visually obtrusive than the existing dilapidated fence. Finally, the enclosure offers opportunities for the public to see the terns during nesting season.

The enclosure will occupy a small part of the beach, it is relatively low, six feet, and constructed of vinyl covered chain link which will allow views through the enclosure. In any case, a fenced enclosure has been permitted in this same location since 1981. Therefore, the proposed project will not degrade the scenic and visual qualities of this coastal recreation area, and is consistent with Section 30251 of the Coastal Act.

### **Signage**

Signs can have, and often do have, an adverse effect on scenic coastal resources. Excessive and unnecessary signage in coastal areas is not consistent with Section 30251 of the Coastal Act because such signage degrades the scenic and visual qualities of coastal areas. Signs that degrade visual resources include very large signs, signs on top of buildings that block views of the shoreline and/or sky, and freestanding signs that interfere with coastal access or block views of the shoreline and/or sky.

In regards to signs, the certified Venice LUP contains the following policy:

- **Policy I. D. 4. Signs.** *Roof top signs and billboards are prohibited in all land use categories. Business identification signs shall comply with the height limits and development standards specified in the LUP to ensure they do not adversely affect view sheds and view corridors.*

Informational signage, however, is necessary and can be designed in manner protective of visual resources. The applicants have proposed to install signs as part of the proposed project in order to educate and inform the public about the California least tern and the Venice least tern nesting area, but they have not yet submitted a specific signage plan. Such signs are necessary to increase public knowledge about the coastal environment and to explain to the public why the proposed fence is on the beach.

Therefore, in order to ensure that the signage associated with the proposed development is designed consistent with the requirements of Section 30251 of the Coastal Act, Special Condition Three requires the applicants to develop, and submit for approval, comprehensive signage plan. The recommended conditions will provide for necessary interpretive signage and prohibit the erection of any free-standing signs or signs which could have an impact similar to "roof" signs.

Only as conditioned does the proposed project conform to the requirements of Section 30251 of the Coastal Act and the certified Venice LUP.

#### **F. Hazards**

The Coastal Act states that new development must minimize risks to life and property and not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30253 of the Coastal Act states, in part:

New development shall:

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

Developments located in or near the ocean have the potential for damage caused by storms and wave energy. The proposed project is located on the beach where development is susceptible to flooding and wave damage. The proposed development is set back 150 feet

from the current mean high tide line (Exhibit #3). No development in or near the water can be guaranteed to be safe from hazard.

Beach areas are dynamic environments that are subject to unforeseen changes. Therefore, the presence of a wide sandy beach does not preclude wave up-rush damage and flooding from occurring on this beach in the future. The width of the beach can and does change on an annual and seasonal basis. Sometimes extreme changes occur during a single storm event, like the ones that occurred in 1983 and 1998. Changing beach width, in combination with extreme storm events, would likely result in flooding and wave damage to the proposed development.

Section 30253 requires that new development be designed and sited to lessen the risks due to hazards. In this case, the risks are from waves, storm events, erosion and flooding. The applicants in fact, acknowledge that the fence enclosure is considered "temporary" because it could be damaged or destroyed by a storm. Because the project site is subject to significant wave hazards, storms, flooding, or erosion, Special Condition Seven requires the applicants to acknowledge and agree again in writing that the project site and improvements are located in an area that is subject to flooding and wave run-up hazards and to assume the risks to the applicants and the property subject to this permit. With this standard waiver of liability condition, the applicants are also notified that the Commission is not liable for such damage simply because it approved the permit for development. In addition, the applicants must obtain written agreements from the property owner (State Parks) where the proposed improvements are located, stating that the landowner also assumes the risks of the development on its property, and it will not hold the Commission liable for damages as a result of approving the permit for the development.

The Commission routinely imposes conditions for assumption of risk in areas at high risk from hazards. The condition ensures that the applicants understand and assume the responsibility for the potential hazards associated with development in or near the water. The Commission has imposed such a condition on Coastal Development Permit 5-90-490 (City of Huntington Beach), Coastal Development Permit 5-94-100 (Pointe Design - Avalon), Coastal Development Permit 5-98-156 (City of Long Beach), and Coastal Development Permits 5-01-262 and 5-01-263 (L.A. Co.).

### **No Future Shoreline Protective Device**

Section 30235 of the Coastal Act states:

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

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources including adverse effects on sand supply, public

access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach and coastal access. Under Section 30235 of the Coastal Act, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

Section 30235 requires the Commission to approve shoreline protection for development only for existing principal structures. The construction of a shoreline protective device to protect new development would not be required by Section 30235 of the Coastal Act. In fact, it would be in conflict with several sections of the Coastal Act. For example, Section 30253(2) specifically prohibits any new development that creates or contributes significantly to erosion or that requires "the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." In the case of the current project, the applicants do not propose the construction of any new shoreline protective device to protect the proposed development. It is not possible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, it is conceivable the proposed project may be subject to wave run-up hazards that could lead to a request for a protective device.

Shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, shoreline protective devices can cause changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property.

The second effect of a shoreline protective device on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. A loss of area between the mean high water line and the actual water is a significant adverse impact on public access to the beach.

Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. Venice Beach is currently a wide sandy beach. However, the width of the beach can vary, as demonstrated by severe storm events. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists.

Fourth, if not sited in a landward location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and

seawalls interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events, but also potentially throughout the winter season.

As noted above, Section 30253(2) of the Coastal Act states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the proposed structure requires a protective device in the future, and the applicants were able to seek one pursuant to Section 30235, this project would also be inconsistent with Section 30253 of the Coastal Act because such devices contribute to beach erosion (as mentioned above).

Based on the information provided by the applicants, no mitigation measures, such as a seawall, are anticipated in the future. There is currently a wide sandy beach in front of the proposed development that currently provides substantial protection from wave activity. To ensure that the proposed project is consistent with Sections 30235, 30253 and the visual, access and recreation policies of the Coastal Act, among others, and to ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes Special Condition Six which requires the applicants to agree that no future shoreline protective device ever be constructed to protect any portion of the proposed project in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future.

Special Condition Six also requires the applicants to remove the development authorized by this permit if any government agency has ordered that the development is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the permittee and/or landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site.

Finally, Special Condition Six requires that in the event the shoreline recedes to within ten feet of the development authorized by this permit, but no government agency has ordered that the development not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the permittee. The report shall address whether any portion of the development is threatened by wave, erosion, storm conditions, or other natural hazards. If the geotechnical report concludes that the development authorized by this permit or any portion of the development are unsafe, the permittee and/or landowner shall, in accordance with a coastal development permit, remove the threatened portion of the development or stabilize it without the use of a shoreline protective device.

In addition, the applicants must obtain written agreements from the property owner (State Parks) where the proposed improvements are located, stating that the landowner also agrees to the terms of Special Condition Six. Only as conditioned, does the Commission find that the proposed project is consistent with Sections 30253 and 30235 of the Coastal Act.

### **G. Local Coastal Program**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

- (a) Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

The City of Los Angeles does not have a certified Local Coastal Program for the Venice area. The Los Angeles City Council adopted a proposed Land Use Plan (LUP) for Venice on October 29, 1999. The Commission officially certified the Venice LUP on June 14, 2001.

The proposed project, as conditioned, conforms with the certified Venice LUP. The proposed project, as conditioned, is also consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

### **H. California Environmental Quality Act (CEQA)**

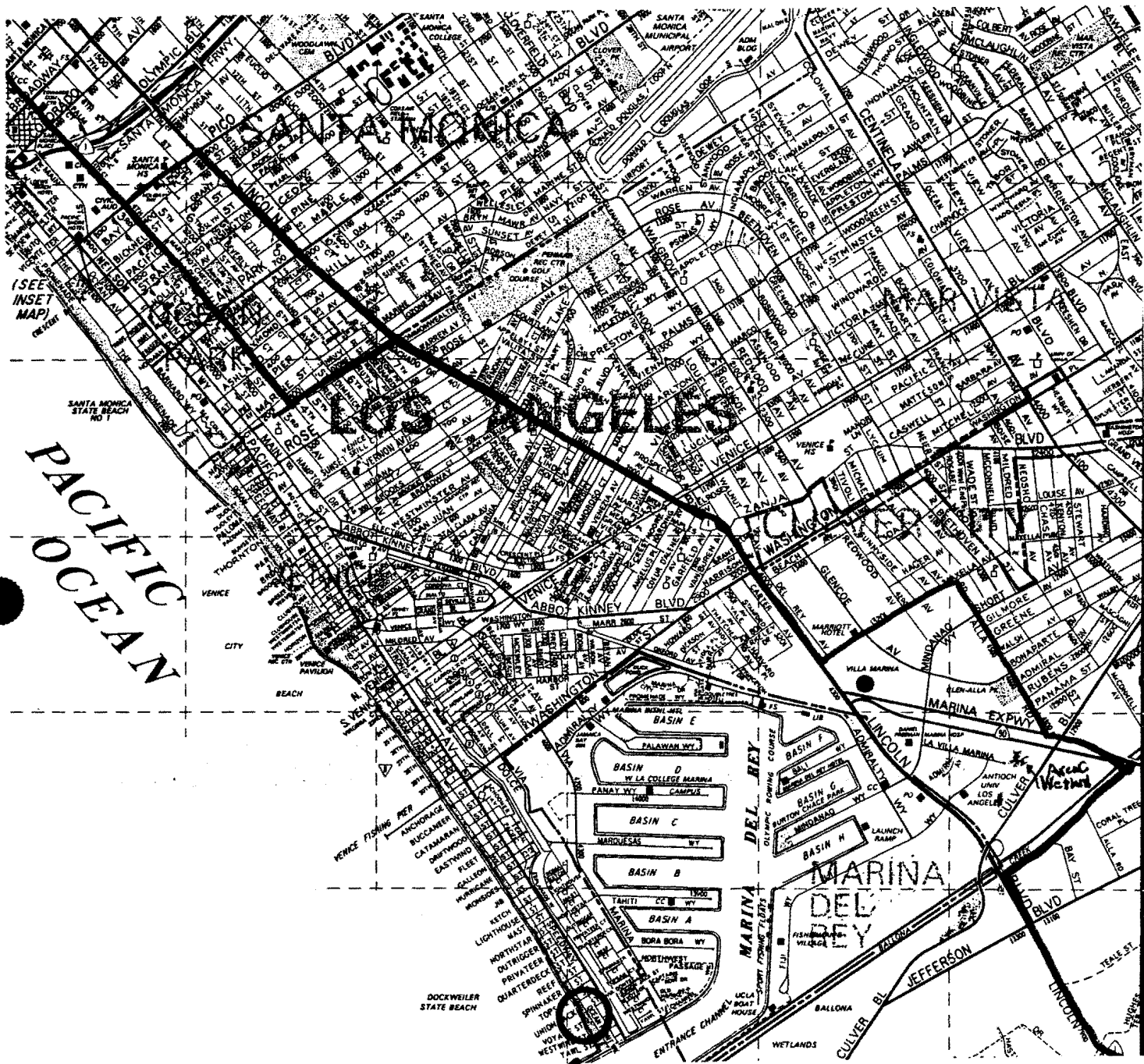
Section 13096 of the California Code of Regulations requires Commission approval of coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Only as conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.





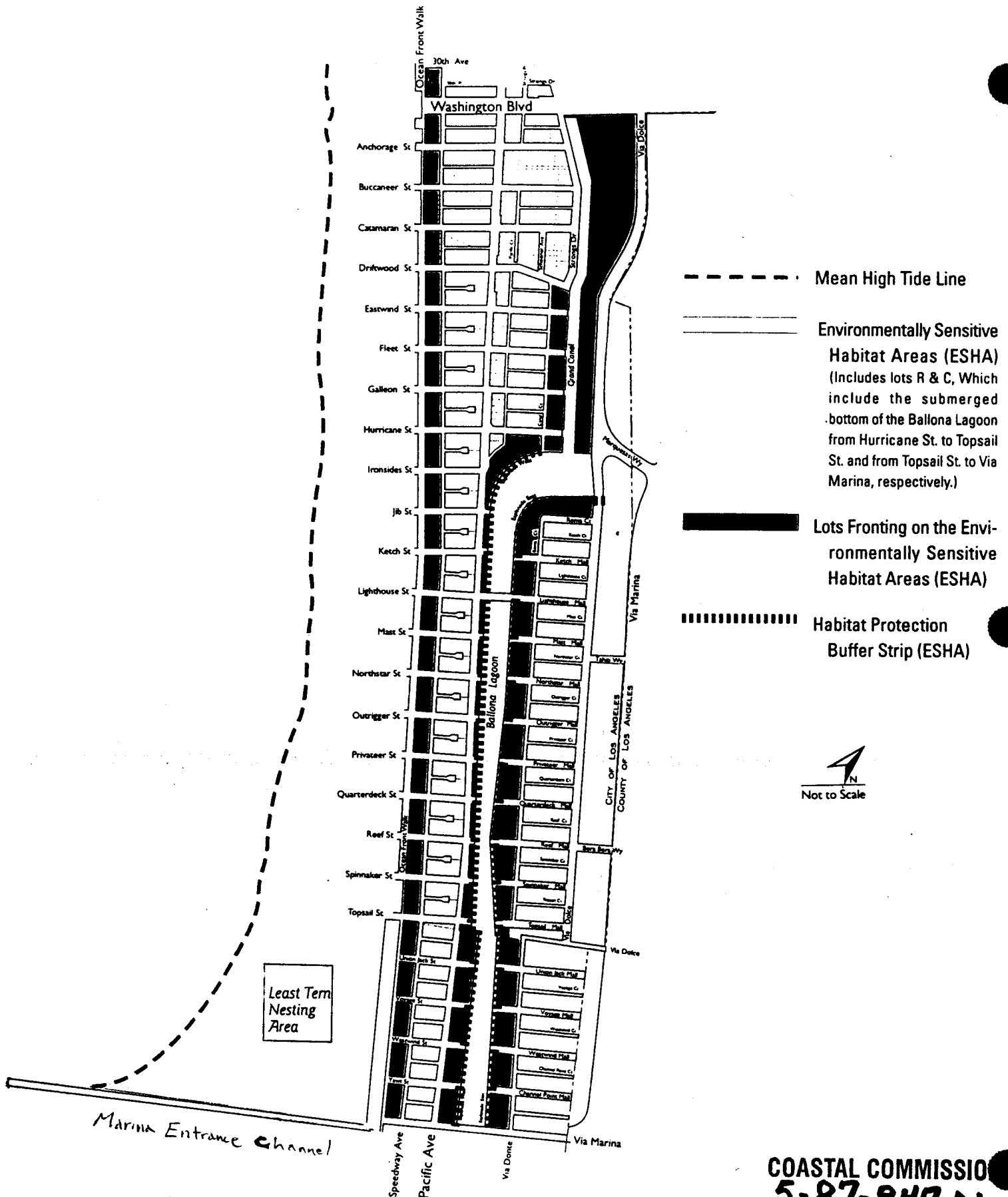
# VENICE, CA



Least Tern  
Nesting Area

COASTAL COMMISSION  
5-87-847-A1

EXHIBIT # 1  
PAGE 1 OF 1



**Exhibit 22c**  
**Environmentally Sensitive Habitat Areas**

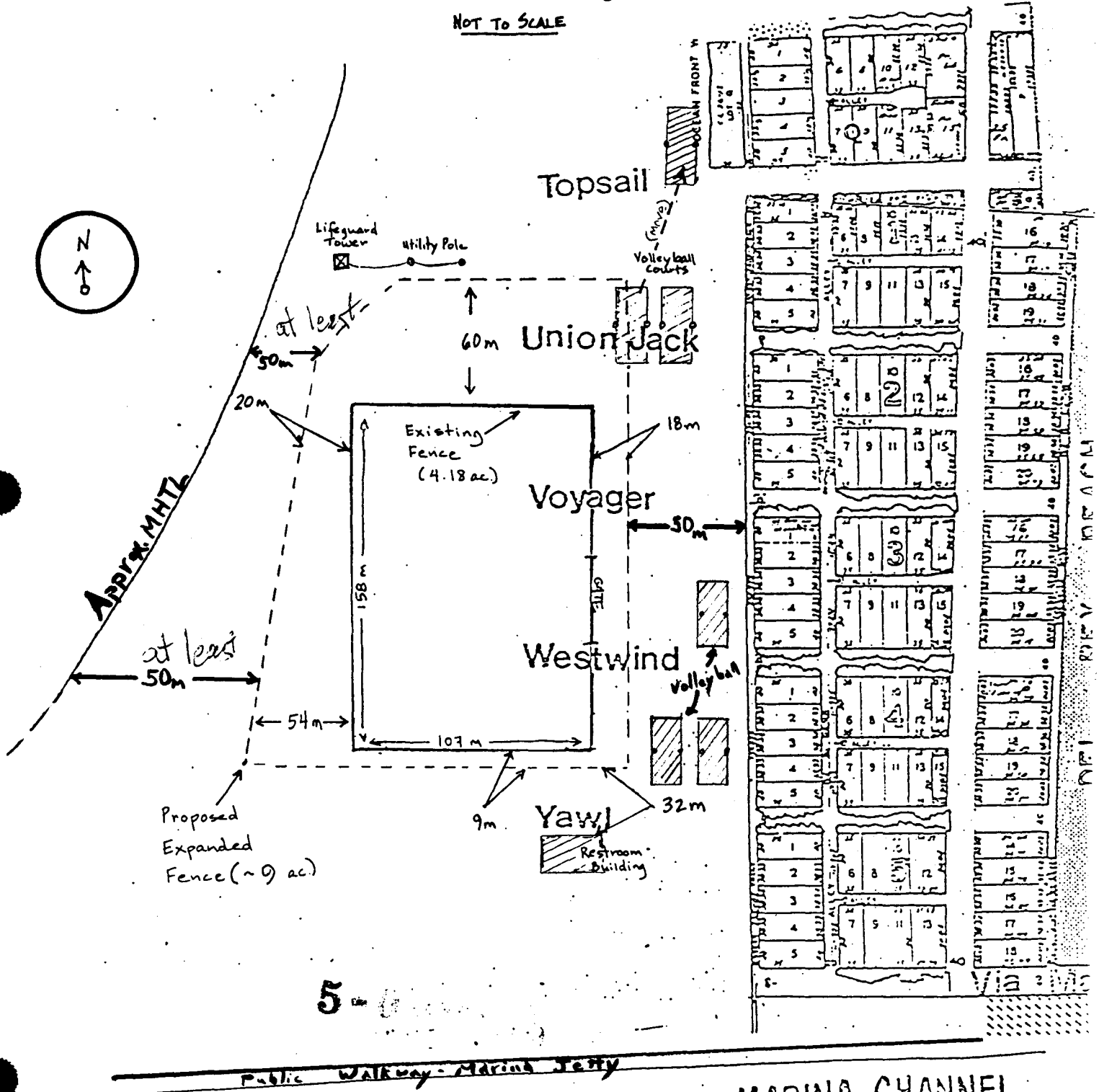
**COASTAL COMMISSION**  
**5-87-847-A1**  
 EXHIBIT # 2  
 PAGE 1 OF 1

SEP 6 - 2002

Figure 2  
Venice Least Tern Colony  
Fence Replacement & Proposed Expansion  
(29 Nov 01; rev. 26 August 02)

CALIFORNIA  
COASTAL COMMISSION

NOT TO SCALE



MARINA CHANNEL  
COASTAL COMMISSION  
5-87-847-A1

EXHIBIT # 3

PAGE 1 OF 1

# Figure 3: Fencing Detail

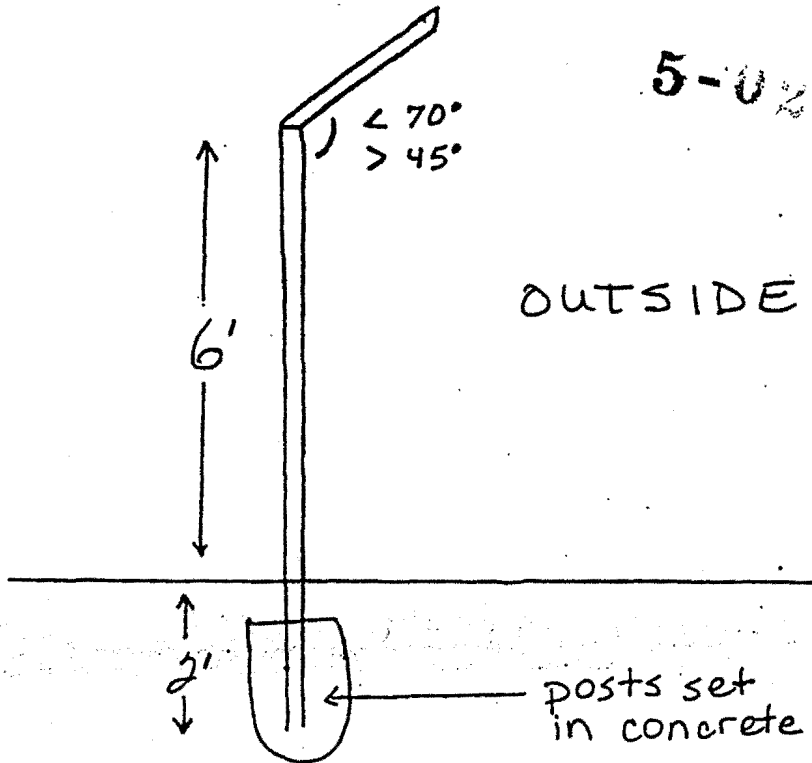
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South Coast Region

SEP 6 - 2002

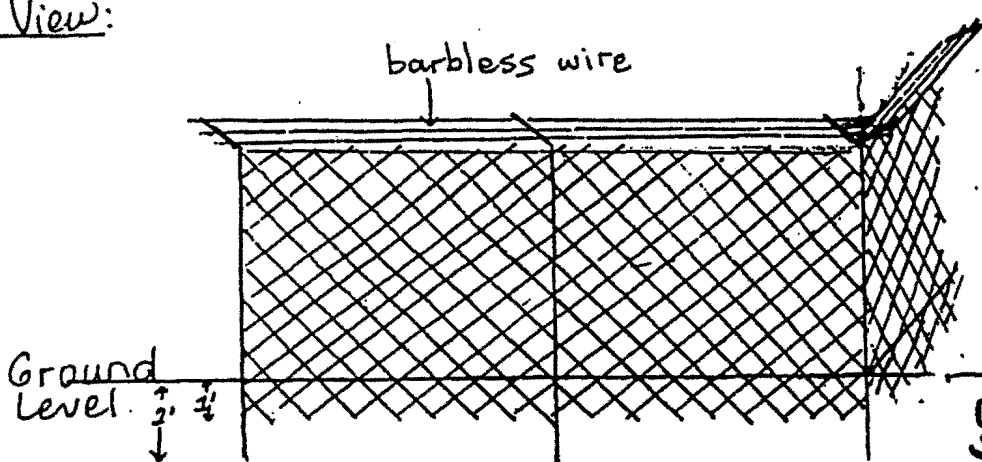
CALIFORNIA  
COASTAL COMMISSION

5-02-009

Cross View:



Front View:



COASTAL COMMISSION  
5-87-847-A1

EXHIBIT # 4  
PAGE 1 OF 1

California Department of Fish & Game, South Coast Region  
Land Management and Monitoring Program

Project Title: **Venice Beach Least Tern Colony Enlargement & Fence Replacement**  
Location: Dockweiler State Beach, Venice California  
Fiscal Year: 2002/2003  
Prepared By: Lyann Comrack, Associate Wildlife Biologist  
California Department of Fish and Game  
Date: 29 November 2001 (rev. 19 July 2002)

Approved By: Theresa A. Stewart Date: 7/22/02  
Theresa Stewart, Senior Biologist Supervisor  
California Department of Fish and Game

Objectives

The objectives of the project are to 1) protect the existing least tern colony at Venice [Dockweiler State Beach] by replacing the fence, chick fence, and interpretive signs with new materials and, 2) increase nesting opportunities for the least tern in the Los Angeles basin by enlarging the existing least tern protected area. The existing least tern nesting enclosure will be enlarged to an area of approximately 9.0 acres. Presently it measures 4.18 acres. This enlargement is necessary to accommodate more nesting least tern pairs and chicks at this highly successful site and is critical to the recovery of the species in the heavily urbanized county of Los Angeles. A larger protected area will buffer the core nesting colony from increasing episodes of human trespass and domestic dog, cat and other predator problems. All fencing and gates will be replaced with new chainlink, vinyl coated fencing materials; new interpretive signs will be installed. Local residents will be incorporated into all phases of the process.

Consistency Statement with State Park General Plan Objectives

California Department of Parks and Recreation has reviewed an earlier version of this project plan and conditionally approved of this project (see Appendix A).

Project Description

Background

The California least tern (*Sterna antillarum browni*) is one of three subspecies of least tern that breeds in North America. A migratory species, it nests along the west coast from San Francisco southwards to northern Baja California. It presumably winters in Central America and/or northern South America. Birds arrive in the state generally by early to mid-April and depart by late August to mid-September.

California least terns historically nested in several small, scattered aggregations on sandy beaches and salt flats along the southern California coast. The progressive loss of undisturbed sandy beaches during the early part of this century to development and other

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5-87-847-A1  
EXHIBIT # 5  
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forms of human disturbance resulted in a severe reduction in both nesting sites and numbers of nesting pairs. By the 1940s, most terns were gone from the beaches of Orange and Los Angeles counties, and they were considered sparse elsewhere. This reduction in population resulted in listing the California least tern as an endangered species under the federal and California endangered species acts (in 1970 and 1971 respectively).

### History of the Venice Colony

Least terns were known to have nested near Venice before 1919 (Edwards 1919). According to Bender (1974), a colony existed in the Playa del Rey area during or before the late 1960s. In 1973, a colony was discovered on an alkali flat in a degraded salt marsh just south of the Ballona Creek flood control channel. This colony produced relatively well most years from 1973-1979, with about 10 - 30 breeding pairs present each year. On May 8, 1977, an unseasonable rain storm flooded the flat and the colony was unable to nest there. Two weeks later, three pairs of terns were discovered nesting on the sand at Venice Beach just north of the Ballona Creek mouth, approximately three-quarters of a mile west of the old colony site (Atwood et al. 1977). Emergency fencing was erected and protection activities allowed the beach colony to continue nesting without disturbance; the colony grew in size during the season and successfully raised young. This was the first known least tern nesting use at Venice Beach (R. Jurek no date).

Protection of the nesting site at Venice Beach with fencing and monitoring has been provided annually since 1977. Temporary fencing was erected and removed seasonally by the County of Los Angeles from 1977 until 1980. A permanent chain-link fence was constructed prior to the start of the 1981 breeding season, and when it deteriorated, a replacement fence was erected prior to the 1988 season.

Despite impacts of predation and human disturbance, the least tern nesting colony at Venice Beach has grown over the years and is consistently one of the top three producers in the state (Appendix B). Recovery of the least tern is contingent on maintaining key breeding locations such as the Venice colony in perpetuity.

### Project Description

A meeting between U. S. Fish and Wildlife Service (USFWS) (Kevin Clark) and California Department of Fish and Game (DFG) (Lyann Comrack) and local residents was held 31 October 2001. The project was described and attendees were encouraged to discuss their concerns and ideas. Following this meeting and in further consultation with Los Angeles County Department of Beaches and Harbors (Joe Chessler), the new configuration of the least tern preserve was determined (Figure 1). The site will not be recontoured; rolling dunes and native vegetation will be left intact except where the old fence stands. Under contract, 2,546 feet of 6-foot high chain-link fence, including one 15-foot single-entry gate and one 3-foot walkthrough gate, will be installed. Posts will be set approximately two

feet under the sand, in concrete (although depending on ground conditions, posts may be driven only.) The fabric will be pale brown vinyl-coated, 11 gauge, 2 inch mesh chain link and set approximately one foot under the sand. Barb wire arms (with three strand barbless wire) will be installed on entire fence and gates at a minimum 45° to maximum 70° angle outward and upward. (Figure 2). Existing fence will be removed and hauled away by arrangement prior to new fence installation. Existing corner posts will be left standing for reference.

### Physical Location

The project is located at Dockweiler State Beach between Yawl and Topsail Streets, in the City of Venice, County of Los Angeles; USGS 71/2 minute quad: Venice Beach (Figure 3).

### Natural Resources

Native and nonnative dune plant species grow sparsely onsite and are dominated by Beach Evening Primrose (*Camissonia cheiranthifolia suffruticosa*), Beach Bur (*Ambrosia chamissonis bipinnatisecta*) and ice plant (*Carpobrotus* spp.).

Sensitive Resources: In addition to the California least tern, RAREFIND (California Natural Diversity Database - 6/2002) yielded the following report on sensitive taxa for the Venice Quad:

Avifauna: Western Snowy Plover (*Charadrius alexandrinus nivosus*) historically nested in the area but has been extirpated. The project may provide future nesting opportunities for this species.

Insecta: Sandy Beach Tiger Beetle (*Cicindela hirticollis gravida*) historically occurred in the area but is presumed extirpated. Globose Dune Beetle (*Coelus globosus*), Dorothy's El Segundo Dune Weevil (*Trigonoscuta dorothea dorothea*), Belkin's Dune Tabanid Fly (*Brennania belkini*) are known to occur in the El Segundo dune area. It is unknown if these species occur on the project site. By doubling the area protected from the County's beach cleaning operations and general human disturbances, this project may provide habitat for these sensitive species.

Plants: Beach Spectaclepod (*Dithyrea maritima*) historically occurred in the area but is presumed extirpated. Sand Verbena (*Abronia maritima*), a California Native Plant Society List 4 species (CNPS 2001) grows in small numbers inside the fence on the west side of the enclosure. It will be protected either by protective barrier or by a site monitor during all phases of this project and is routinely protected during annual site preparation activities for the least tern.

Cultural Resources

Based on a complete archeological survey, there are no known Native American sites at Dockweiler State Beach. Additionally, there are no known historic sites (DPR 1991).

Environmental Review (permits and approvals)

- X CEQA- California Department of Parks and Recreation- Lead Agency
- X Los Angeles County Beaches and Harbors - co-applicant
- X California Department of Parks and Recreation - Letter of Approval
- X Los Angeles City Planning and Zoning
- pending California Coastal Commission - Coastal Development Permit
- 10/30/01 Public meeting with Venice residents and USFWS and DFG

Budget

Estimated cost of fence, gates and labor is approximately \$ 20,000.00. The state will contract with a private firm through the open bid process for these services. Funding is provided through USFWS Section 6 grant to the State (Index H100; PCA A2530; Activity 121129).

Time-line

All construction will be completed by no later than mid-March 2003. In the event all necessary permits have not been secured and/or all construction cannot be completed prior to mid-March 2003, construction will occur in late September 2003, after all least terns have left for the season.

Monitoring

The site will be monitored for Least Tern use and productivity before and after the fence replacement and site enlargement. These data will be compiled and submitted to the statewide coordinator for inclusion in the season's final report.

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Appendix B. California least tern breeding population and fledgling production at all known nesting sites from 1976 to 1999.

ESTIMATED NUMBER OF BREEDING PAIRS (FLEDGLINGS)\*

	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
San Francisco Bay												
P.O.E. Pittsburg									8 (8)	4 (4)	1 (2)	4 (5)
Port Chicago												3 (2)
Alameda Naval Air Station	10	45	80 (13)	40 (7)	60 (5)	74 (103)	73 (0)	3 (1)	44 (9)	53 (48)	43 (75)	38 (87)
Bay Farm Island												9 (4)
Oakland Airport	8	7					12 (11)	61 (8)	15 (2)	12 (9)	32 (11)	
Alvarado Salt Ponds			2 (1)	3 (2)	12 (5)			6 (1)		1 (0)		
Beir Island	15	1		4 (0)	38 (14)	23 (28)	53 (58)	22 (0)	3 (7)			
San Luis Obispo County												
Pismo Dunes/Pismo Beach							3 (5)	7 (7)				
Deo Fluo Lalo					7 (3)		2 (0)	1 (0)				
Guadalupe Dunes												
Santa Barbara County												
Mussel Rock Dunes**		25	19 (15)	21 (10)	17 (15)	25 (8)	12 (3)	7 (3)	10 (7)	11 (10)	13 (7)	23 (36)
San Antonio Creek			9 (6)	4 (4)	2 (0)	4 (4)	6 (7)	14 (10)	17 (1)	14 (5)	3 (0)	2 (0)
Vandenberg AFB, Beach 2												
Vandenberg, Pumas Pt.			5 (7)	27 (25)	28 (20)	30 (12)	18 (1)	14 (9)	20 (1)	18 (3)		14 (0)
Santa Inez River Mouth	4							8 (4)			9 (10)	4 (6)
Yubarta County												
Santa Clara River Mouth***		7	13 (12)	18 (25)	13 (14)	23 (25)	19 (16)	3 (2)	8 (6)	12 (7)	19 (15)	13 (10)
Diamond Beach	17	30		7 (3)			7 (0)	22 (15)		5 (0)		
Point Mugu	10	7	11 (0)	7	12 (1)		13 (0)	4 (2)	18 (5)	60 (70)	51 (40)	20 (3)
Los Angeles County												
Venice		35	68 (75)	88	158	150 (195)	170 (60)	145 (140)	83 (94)	96 (113)	104 (113)	109 (82)
Playa del Rey	10		28 (30)	22	?	16 (0)						
Teeminal Island	60	50				38 (7)	65 (15)	83 (92)	117 (70)	60 (63)	79 (83)	40 (5)
Costa del Sol						18 (12)	21 (2)	23 (14)	5 (7)	33 (0)	4 (0)	
Los Cerritos Wetland					14	3 (0)						
San Gabriel River	60	35	63 (70)	53	?							
Orange County												
Anaheim Bay/Seal Beach NWR				6	41 (24)	43 (20)	19 (2)	4 (2)	22 (33)	20 (3)	49 (81)	69
Boise Chico		7		39	23	63 (20)	90 (75)	141 (45)	103 (50)	118 (65)	73 (81)	80 (63)
Santa Ana River Mouth State	11	45	83 (100)	88	80	113 (168)	98 (50)	88 (60)	70 (20)	45 (42)	69 (34)	58 (9)
Upper Newport Bay		12	9 (0)	7	4			9 (2)	6 (0)		22 (26)	43 (33)
San Diego County												
Aliso Creek/White Beach				15 (8)	70 (22)	23 (10)	1 (0)	12 (9)	12 (4)	7 (11)	4 (0)	
Santa Margarita R. Mouth***	125	120	35 (8)	36 (22)	56 (1)	88 (48)	126 (50)	237 (181)	234 (112)	198 (108)	163 (220)	192 (60)
Buena Vista Lagoon					1 (2)	3 (2)					4 (0)	
Agua Hedionda Lagoon		?	13 (14)	26 (9)	12 (4)							
Bataquitos Lagoon	12	?	25 (0)	39 (33)	28 (17)	43 (26)	25 (6)	1 (2)	3 (6)	18 (24)	17 (0)	8 (18)
San Elijo Lagoon	26	4	9 (0)	12 (7)	17 (8)	12 (8)	29 (12)	28 (23)	20 (10)	13 (0)	9 (2)	13 (2)
San Dieguito Lagoon/Del Mar					5 (1)							
Los Peñasquitos Lagoon	35	14	22 (10)	16 (0)	15 (0)							
FAA Island/Beacon Island	23	125	145 (5)	96 (48)	150 (190)	90 (80)		12 (18)	60 (0)		55 (22)	25 (3)
Mariner's Point												
Fiesta Island	15	8	9 (5)	15 (0)	8 (4)	8 (2)	55 (75)	68 (0)			4 (2)	
Other Mission Bay sites***	32						42 (5)					
Lindbergh Field/SD Airport		25	43 (10)	108 (53)	71 (0)		10 (3)	27 (14)	12 (2)		11 (10)	50 (60)
Naval Training Center		35	10 (5)		100 (9)						6 (6)	11 (0)
NAS North Island		?	36 (0)	78 (70)		61 (5)	68 (28)	75 (9)	45 (40)	83 (25)	35 (0)	6 (4)
Coronado Cays		17	9 (10)	39 (7)								
Delta Beach***			4 (4)	11 (3)						13 (17)	43 (25)	28 (10)
Sweetwater R. Mouth/D St.	24	40	47 (15)	26 (18)	14 (0)		1 (2)	1 (0)	16 (15)	44 (0)	6 (7)	28 (10)
Chula Vista Reserve					58 (31)	95 (35)	78 (14)	75 (90)	19 (4)			
San Diego Saltworks	49	69	29 (2)	29 (9)	20 (4)	1 (0)			15 (4)	30 (6)	12 (2)	21 (4)
Tijuana River Mouth***	5	6	10 (8)	28 (19)	38 (25)	12 (10)	26 (17)	63 (30)	66 (16)	37 (24)	39 (33)	21 (16)
Others (1 season only)		20		1 (0)	4 (3)	10 (5)		7 (0)		1 (0)		
TOTAL # OF PAIRS	665	775	836	1002	1172	1069	1133	1264	1051	1006	979	979
TOTAL # FLEDGLINGS	--	--	425	696	768	833	512	806	521	657	900	900
RATIO OF FLEDGLINGS/PAIR	--	--	0.51	0.69	0.66	0.78	0.45	0.64	0.5	0.65	0.92	0.92

\* Fledgling counts were not undertaken until 1978  
 \*\* Erroneously called Guadalupe Dunes in early reports.  
 \*\*\* Multiple sites pooled

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Appendix B. California least tern breeding population and fledgling production at all known nesting sites from 1976-1999 (Continued).

ESTIMATED NUMBER OF BREEDING PAIRS (FLEDGLINGS)\*

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
San Francisco Bay												
P.G.E. Pittsburg	3 (1)	4 (2)	3 (0)	2 (3)	2 (1)	2 (4)	2 (3)	3 (2)	4 (4)	4 (2)	11 (8)	11 (14)
Fort Chicago	1 (0)											
Alameda Naval Air Station	63 (84)	74 (83)	99 (105)	110 (138)	126 (218)	127 (207)	138 (196)	150 (73)	208 (233)	244 (316)	243 (90)	250 (77)
Bay Farm Island												
Oakland Airport	7 (0)	7 (2)	6 (0)		2 (0)			4 (0)	0			
Ahanda Salt Ponds												
Bair Island												
Kings County												
Kettleman City											1 (1)	
San Luis Obispo County												
Pismo Dunes/Pismo Beach			4 (0)	6 (4)	4 (2)		2 (0)	1 (0)	0	6 (4)	37 (25)	24 (7)
Oso Flaco Lake												
Guadalupe Dunes							4 (2)	0	0	30 (23)	2 (0)	26 (12)
Santa Barbara County												
Mussel Rock Dunes**	11 (7)	18 (13)	32 (7)	35 (27)	28 (9)	6 (38)	56 (48)	52 (23)	48 (28)	0		
San Antonio Creek	7 (3)	3 (0)	1 (0)									
Vandenberg AFB, Beach 2					6 (3)	10 (7)	1 (0)		0	3 (0)	0 (0)	
Vandenberg, Purisma Pt.	3 (1)	17 (2)	9 (3)	10 (0)	1 (1)	9 (7)	38 (3)	38 (17)	62 (11)	25 (0)	19 (14)	27 (15)
Santa Inez River Mouth		3 (0)										
Ventura County												
Santa Clara River Mouth	3 (4)	6 (8)	27 (34)	26 (7)	26 (35)	15 (14)	26 (34)	17 (17)	28 (20)	43 (37)	38 (22)	16 (24)
Ormond Beach	3 (7)	3 (1)	42 (60)	17 (13)	12 (17)	17 (9)	39 (31)	98 (52)	85 (18)	63 (51)	86 (56)	70 (63)
Hollywood Beach										8 (13)	0 (0)	
Point Mugu/Pt. Mugu Islands	100 (75)	86 (118)	12 (0)	50 (58)	133 (72)	?	?	?	69 (11)	74 (16)	276 (165)	139 (40)
Los Angeles County												
Venice	165 (192)	137 (134)	206 (279)	198 (200)	229 (245)	246 (280)	345 (224)	310 (44)	271 (92)	375 (263)	383 (200)	43 (0)
Playa del Rey												
Terminal Island/Pier 400/TC2	5 (0)	19 (6)	32 (12)	2 (0)		10 (10)	31 (3)	15 (9)	56 (48)	80 (105)	172 (148)	235 (165)
Los Cerritos/San Gabriel River												
Orange County												
Anaheim Bay/SBNWR	83 (66)	97 (104)	102 (147)	189 (283)	219 (275)	198 (364)	179 (225)	117 (3)	150 (100)	178 (113)	167 (99)	45 (0)
Bolsa Chica	92 (43)	115 (45)	217 (190)	159 (95)	131 (32)	142 (37)	185 (30)	134 (15)	147 (20)	141 (61)	136 (74)	49 (0)
Santa Ana River Mouth	86 (43)	70 (5)	46 (18)	72 (51)	138 (31)	234 (157)	282 (54)	171 (57)	300 (255)	373 (325)	319 (249)	303 (25)
Upper Newport Bay	73 (55)	74 (55)	70 (85)	90 (31)	46 (11)	50 (16)	49 (25)	38 (0)	55 (14)	82 (25)	26 (20)	32 (5)
San Diego County												
Aliso Creek/White Beach		12 (14)	20 (21)	33 (52)	31 (11)	31 (15)	42 (18)	28 (9)	38 (8)	17 (18)	33 (18)	53 (4)
Santa Margarita River Mouth	246 (387)	161 (67)	293 (306)	328 (377)	334 (201)	435 (450)	446 (455)	335 (112)	612 (236)	808 (975)	727 (285)	619 (32)
Buena Vista Lagoon		16 (6)			3 (0)							
Bataquitos Lagoon	48 (28)	3 (0)	27 (26)	35 (36)	11 (4)	32 (35)	72 (68)	82 (71)	205 (228)	271 (254)	179 (28)	146 (11)
San Elijo Lagoon	11 (3)	17 (0)	121 (3)	12 (0)	22 (2)	8 (0)	9 (0)	2 (1)	2 (3)	9 (7)	2 (1)	8 (2)
San Dieguito Lagoon/Del Mar												
FAA Island/Beacon Island	37 (50)	125 (30)	177 (137)	125 (124)	158 (52)	133 (48)	330 (140)	200 (60)	188 (3)	20 (10)	31 (25)	66 (2)
Maziner's Point		2 (0)	19 (37)	125 (130)	120 (70)	205 (140)	62 (25)	210 (125)	250 (125)	268 (165)	528 (596)	562 (60)
Fiesta Island	1 (1)				5 (2)	6 (2)	10 (6)	12 (4)	11 (5)	76 (20)	21 (13)	0 (0)
Other Mission Bay sites										0 (0)	9 (1)	0 (0)
Lindbergh Field/SD Airport	80 (30)	9 (0)					10 (3)	26 (51)	63 (110)	102 (50)	18 (21)	20 (0)
Naval Training Center	1 (1)					3 (4)	13 (12)	5 (3)				
NAS North Island	20 (4)	24 (14)	38 (23)	28 (25)	49 (5)	43 (14)	43 (32)	54 (24)	49 (21)	22 (13)	59 (75)	80 (35)
Coronado Cays		9 (10)										
Delta Beach/Amphibious Base	7 (10)	33 (20)	45 (54)	35 (20)	39 (26)	102 (133)	166 (110)	173 (144)	277 (270)	410 (355)	494 (443)	630 (53)
Sweetwater R. Mouth/D St.	19 (0)	2 (7)		46 (40)	135 (19)	23 (1)	8 (3)	26 (25)	25 (25)	38 (0)	6 (9)	30 (2)
Chula Vista Reserve	24 (15)	28 (7)	70 (32)	1 (0)	20 (19)	52 (5)	1 (7)	0 (0)			3 (3)	2 (0)
San Diego Saltworks	17 (15)	28 (3)	25 (10)	31 (10)	8 (5)	38 (8)	52 (6)	23 (10)	22 (2)	36 (7)		18 (6)
Tijuana River Mouth	44 (30)	49 (20)	72 (23)	62 (28)	43 (38)	92 (38)	151 (58)	275 (70)	137 (26)	211 (3)	99 (53)	95 (24)
Others (1 season only)			1 (0)									
TOTAL # OF PAIRS	1260	1242	1706	1827	2100	2324	2792	2599	3362	4017	4125	3599
TOTAL # FLEDGLINGS	1111	759	1610	1745	1376	2043	1784	1021	1916	3231	2742	674
RATIO OF FLEDGLINGS/PAIR	0.88	0.61	0.94	0.96	0.66	0.88	0.64	0.39	0.57	0.80	0.66	0.19

\* Fledgling counts not done until 1978  
 \*\* Erroneously called Guadalupe Dunes in early reports  
 \*\*\* Multiple sites pooled  
 # Fledgling count pooled with Santa Margarita River Mouth

\* Playa del Rey "i" Area "B"  
 Playa Vista

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## Addendum to Appendix B

2000 – Venice held as estimated 274-294 pairs of least terns with 308 nests producing an estimated 150-200 fledglings.

2001 – Venice held an estimated 331 pairs of least terns with 348 nests producing an estimated 300-388 fledglings.

2002 – No nests of least terns were reported at Venice for the 2002 season (through July 15, 2002).

Note: These data should be considered preliminary until the Department of Fish and Game published the annual reports for these years (2000 and 2001 due by December, 2002; 2002 due by April 2003).

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DEPARTMENT OF PARKS AND RECREATION

Rusty Areias, Director

Southern Division Chief Office  
700 N. Alameda St, Rm. 5/502  
Los Angeles, CA 90012

December 20, 2001

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5-02-309

Lyann Comrack, Associate Wildlife Biologist  
Dept. of Fish and Game  
South Coast Region  
4949 Viewridge Ave.  
San Diego, CA 92123

Dear Lyann:

The California Department of Parks and Recreation, Southern Division Chief Office, has had the opportunity to review your project proposal for the Venice Beach (Dockweiler State Beach) Least Tern Colony Enlargement and Fence Replacement.

Based on our review of your proposal and the site visit on 12/17/01, we feel that the enlargement of the Least Tern Colony and fence replacement is consistent with the goals and mission of State Parks. Therefore, we have granted conditional approval of this Least Tern proposal, contingent upon the receipt of the year 2000 annual Venice Beach Least Tern Monitoring Report (the estimated number of breeding pairs, fledglings), and subsequent annual reports thereafter. This data is requested for our records to evaluate the efficacy of this project. Please send the 2000 monitoring report and all future monitoring reports to the above address.

Should you have any further questions, comments, or concerns, please feel free to contact Audra Lindsey of my staff, at 213-620-6402. Thank you.

Sincerely,

Steven B. Treanor  
Southern Division Chief

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5-87-847-A1

EXHIBIT # 6

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**DEPARTMENT OF FISH AND GAME**

http://www.dfg.ca.gov  
4949 Viewridge Avenue  
San Diego, CA 92123  
(858) 467-4201



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November 8, 2002



Steven B. Treanor, Chief  
Department of Parks and Recreation  
Southern Division Chief Office  
700 N. Alameda St., Room 5/502  
Los Angeles, CA 90012

Dear Mr. Treanor:

I would like to take this opportunity to update you on the status of the project to expand the Least Tern preserve at Venice Beach (Dockweiler State Beach) and to install new protective fencing and interpretive signage. The application for a California Coastal Commission (CCC) permit was filed on September 6, 2002 and was assigned Application Number 5-87-847-A. The public hearing for the project has been tentatively scheduled for December 10-13, 2002 in San Francisco. I will attend the meeting; I understand Los Angeles County Beaches and Harbors (LACBH) will also send a representative to answer any questions that may arise.

As part of the CCC permit process, I would like to invite you, as the land owner, to become a co-applicant with LACBH and the Department of Fish and Game. Your participation in this endeavor is welcome and entirely voluntary.

If you have any questions, please do not hesitate to contact me at the letterhead address or by telephone at 858 467-4208 or by email at [lcomrack@dfg.ca.gov](mailto:lcomrack@dfg.ca.gov). Thank you for your continued support of this important project.

Sincerely,

Lyann A. Comrack  
Sensitive Species Monitoring Program

cc: ✓ Charles Posner  
California Coastal Commission

Joseph Chessler  
Los Angeles County Beaches and Harbors

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**5-87-847-A1**

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Ann A. Perkins

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john2ann@aol.com  
(310) 301-8018

November 10, 2002

California Coast Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

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Dear Honorable Commission Members:

I am writing in reference to your project #5-02-309 concerning enlargement of the California Least Tern nesting area on Venice Beach. Based on the following information, please deny this project and send its applicants back to the drawing board.

This project is in conflict with the Coastal Commission's mandate to protect the scenic and visual qualities of the Venice coastal areas - a resource of public importance. I believe that doubling the size of the tern nesting area would significantly impact the views, access and the recreational opportunities of city residents, and it would probably not result in an increase in the number of terns.

The Proposed Project: Project #5-02-309 will more than double the size of the existing fenced nesting area from 175,000 to over 380,000 square feet and raise the fence from an existing 5 feet to a proposed 6 feet. As reported, the Venice site is one of several successful nesting sites managed by the two agencies proposing this project. The agencies hope, but they provide no scientific analysis, that enlarging the habitat will result in more nests and chicks. While the application includes the number of fledglings at various sites over the last decade, this data doesn't prove that "bigger is better." In fact, in "Project Description - Background," the applicants indicate that terns naturally choose "several small, scattered" nesting areas. If the terns prefer multiple small nesting areas, wouldn't a second site of similar size, perhaps located just south of the Marina jetty in Playa del Rey, be a better idea? Also, according to the agencies' concerns, moving the fence closer to residences, public lavatories, beach-goers and volleyball courts would have a negative impact on nesting.

Likewise, why increase the height of the fence? On the ground there are two main threats to these nests: crows which eat eggs and chicks, and people, whose noise and

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pets seem to deter successful nesting. Increasing the fence height isn't justified for either of these threats. The crows certainly won't be deterred by a fence of any height. In our 4 years living immediately behind the reserve, we have never seen humans or their dogs or cats climb the fence to get inside (and if cats could climb a 5' fence they could also climb a 6' one.) Therefore, it makes no sense to raise the height of the fence - in fact, lowering it to 4' might make it a less desirable stopover for the crows and would allow people to see the water over it!

There is a third threat to the survival of the least tern: food scarcity. For several of the past years, a lack of anchovies in the local waters has been blamed for low nesting numbers. The number of fish apparently ebbs and flows with weather trends and certainly isn't effected by the size or location of the nesting area. However, since this scarcity is a significant threat to bird population, does it make sense to encourage more nesting, and perhaps have more birds starve as a result? No scientific opinion has been presented in this application.

Ocean Views and Coastal Access: Referring to Figure 2 in the project proposal, you can see that the existing site already significantly blocks the ocean views of residents between Union Jack and Yawl streets and requires a zigzag path to the water from both Voyager and Westwind. Project #5-02-309 would stretch the fencing another 220' north and south, preventing unobstructed water views for the residents along three full blocks, partially blocking the views of many more, and making access difficult from Union Jack as well.

For those living and playing at ground level, the existing 5' fence mostly or completely blocks the view of the ocean; a 6' fence would block ocean views and sunsets for the entire length of the project - and for what purpose?

Recreational Impact: Again referring to Figure 2, please note the locations and proposed relocation of volleyball courts. These drawings are not exact, but the proposal results in two negative impacts. First, these two courts frequently are used by groups of friends who share the courts; spreading them apart will make this difficult and negatively impact the players' enjoyment of this recreational resource. And second, the proposed fence on the eastern side of the reserve will be close enough to the courts to frighten the terns. Under the present configuration, joggers are often attacked by frightened terns when they get "too close" - perhaps 20' - to the fence, and tern experts suspect this deters breeding.

It should be noted that there are three additional volleyball courts that aren't in Figure 2. They are located between Yawl and Westwind and would also need relocating, again to the detriment of the players, and again the terns might be alarmed by the players' new proximity.

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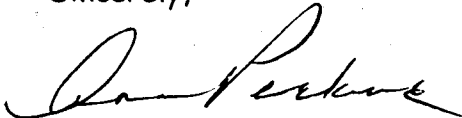
In addition to volleyball and the numerous other obvious recreational opportunities near the Venice tern site, the Department of Beaches and Harbors offers a very successful day-long program to hundreds of students, teaching teambuilding, water safety, kayaking, surfing and ecology. Taking advantage of the calm waters and easy access and parking at the jetty, this program uses the beach in front of the nesting area. Naturally, teachers and students prefer the warm weather of May-September, just like the terns! Project #5-02-309 asks to move the tern fencing 180 feet closer to the water and to these students.

Maintenance: I'm not in any way against the efforts to save the least terns by using the beach at Venice. In the years we have lived near the Venice Tern Reserve, I've been an active volunteer in support of the tern habitat, chasing crows, patrolling for lost chicks, and rescuing the injured. The 300 new young terns that flew out of here in 2001 were a highlight of my year. As reported by the agencies in their proposal, the first year-round fencing at this site needed replacing after 7 seasons; the current fence has been weather-beaten for twice that long! I enthusiastically support the prospect of new fencing, free of rust, litter and patched holes, (and perhaps shorter than the old one?)

To be consistent with the Coastal Act, projects like this must add significant and proven benefit to justify its adverse impact to public views, marine resources, public access and recreation opportunities. Because it fails to prove such benefit, please send project #5-02-309 back to the drawing boards.

Thank you for your consideration.

Sincerely,



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