

1 or point-to-point water taxi service within the limits of the City of Long Beach, or
2 Catalina Island Transit Services.

3 2.1. Delivery and Loading.

4 Permittee, its subpermittees, concessionaires or other person or entity
5 person or entity operating under a contract with Permittee or on behalf of Permittee
6 delivering, loading or unloading goods, services or merchandise to the Permit Area
7 shall use the Shoreline Village parking lot.

8 2.2. Rainbow Harbor Rules and Regulations.

9 Permittee shall comply with the Rainbow Harbor Rules and Regulations of
10 the City of Long Beach whether known by that or some other name or names.

11 2.3. Customer Satisfaction. Permittee shall make available customer
12 satisfaction evaluation surveys to all customers.

13 3. TERM: The term of this Permit shall commence at 12:01 a.m. on December 1,
14 2005 and shall terminate at midnight on November 30, 2008. Notwithstanding the
15 foregoing, either party may terminate this Permit at any time for any or no reason upon
16 ninety (90) days' written notice to the other party. Upon termination of this Permit (whether
17 by lapse of time or otherwise), Permittee shall quit and surrender possession of the Permit
18 Area and remove its personal property therefrom. The term of this permit may be
19 extended beyond November 30, 2008, for two (2) additional periods of three (3) years at
20 the sole discretion of the City Manager of the City of Long Beach.

21 4. COMPENSATION:

22 4.1. Dock Fee. Permittee shall pay to the City for the use of the Permit Area
23 an amount equal to \$13.35 per lineal foot, per month, or other fee subsequently
24 adopted by the City Council of the City of Long Beach, occupied and/or reserved by
25 Permittee for any time such slip or end tie is so used. The Dock Fee shall be paid
26 on or before the first day of each month during the term of this Permit. The Dock
27 Fee shall be paid in advance and Permittee shall not have any right of abatement,
28 deduction, set off, prior notice or demand.

1 4.2. Permit Fee.

2 A. Permittee shall pay to the City percentage fees in the amount of
3 eight percent (8%) of Permittee's "gross receipts" (as that term is defined in
4 subparagraph 4.5 below) derived from Permittee's Long Beach Operations per
5 month on the twentieth (20th) day of each month following each and every month
6 in which gross receipts are received whether received by Permittee, its
7 subpermittees, concessionaires or other person or entity operating under a contract
8 with Permittee from all permitted concessions, operations and activities. Permittee
9 shall not have any right of abatement, deduction, set off, prior notice or demand.

10 B. In the event that the eight percent of gross receipts derived from
11 Permittee's Long Beach Operations paid by Permittee to City does not exceed
12 Thirty Five Thousand Dollars (\$35,000.00) for each calendar year ("Minimum
13 Payment"), then Permittee shall pay to City the difference between Thirty Five
14 Thousand Dollars and the amount of Permit Fees paid during the calendar year on
15 or before January 31 of each year. Said payment shall be included with the
16 statements required pursuant to Section 4.5 (B), said Minimum Payment shall be
17 prorated for any partial calendar year at Two Thousand Nine Hundred Eighteen
18 Dollars (\$2,918.00) per month.

19 C. Adjustment of Minimum Payment.

20 In the event the term of this Permit is extended beyond November 30, 2008, the
21 annual Minimum Payment shall be increased each year by the Consumer Price
22 Index (CPI) (all Urban Consumers) for the Los Angeles - Riverside - Orange County,
23 California area. The Minimum Payment shall not be reduced pursuant to this
24 section and each annual increase shall not exceed eight (8) percent.

25 The CPI statistical data reported for the month of August each year shall be used
26 to calculate the increase in the Minimum Payment for the following calendar year.
27 For example, if the term of the Permit is extended beyond November 30, 2008, the
28 Minimum Payment for calendar year 2009 shall be increased from Thirty Five

1 Thousand Dollars (\$35,000.00) by the CPI increase for the period of September
2 2007 through August 2008.

3 4.3. Charges for Late Payments.

4 A. If Dock Fee payment is not received within ten days after the
5 same has become due, a late fee shall be assessed. The late fee shall be, in
6 addition to the amount of the Dock Fee, a sum equal to ten percent (10%) thereof.

7 B. If Permit Fee payment is not received on the twentieth(20th)
8 day following the preceding month, a late fee shall be assessed. The late fee shall
9 be 5% or \$50, whichever is greater.

10 C. If the Minimum Payment, if any, is not received on or before
11 January 31 of each year, a late fee shall be assessed. The late fee shall be
12 assessed. The late fee shall be 5% or Fifty Dollars (\$50.00) whichever is greater.

13 D. In addition to the late fees above, interest shall accrue on all
14 amounts owed from the due date, at a rate of ten (10) percent per annum until paid.

15 E. The late fees above are intended to compensate City for its
16 additional administrative costs resulting from Permittee's failure, and has been
17 agreed upon by City and Permittee, after negotiation, as a reasonable estimate of
18 the additional administrative costs that will be incurred by City as a result of
19 Permittee's failure. The actual cost in each instance is extremely difficult, if not
20 impossible, to determine. These late fees will constitute liquidated damages and
21 shall be paid to City together with such unpaid amounts. The payment of these late
22 fees shall not constitute a waiver by city of any default by Permittee under this
23 Permit.

24 4.4. Gross Receipts. "Gross receipts" as used herein shall include the
25 following:

26 A. The gross selling price of all boat tickets or other charges for the
27 use of or passage aboard any Permittee authorized vessel that docks or ties up at
28 the Permit Area.

1 B. The gross selling price for all food, beverages, and other
2 merchandise or services sold or delivered by Permittee, its permitted licensees,
3 concessionaires, and persons, firms, or corporations aboard said vessels.

4 C. Gross receipts shall include sales for cash, credit, or services
5 whether collected or not. Gross receipts shall not include, or if included shall be
6 deducted (but only to the extent they have been included), any sales and use taxes,
7 transportation taxes, excise taxes, franchise taxes, and other similar taxes now or
8 in the future imposed on the sale of tickets, food, beverages, merchandise, or
9 services, but only if such taxes are added to the selling price, separately stated,
10 collected separately from the selling price and collected from customers. Gross
11 receipts shall not include any value imputed to charitable charters (i.e., any charter
12 in which Permittee does not collect a fee or reimbursement for expenses).

13 4.5. Statement of Gross Receipts.

14 A. Permittee shall prepare and deliver or cause to be prepared and
15 delivered to the City at:

16 Department of Parks, Recreation and Marine

17 2760 Studebaker Road

18 Long Beach, CA 90815-1697

19 Attention: Accounting Section

20 within twenty (20) days after the end of each month during the term of this permit
21 or extension thereof, a financial statement showing in reasonable detail Permittee's
22 gross receipts for the preceding calendar month or partial calendar month and a
23 computation of the percentage fee provided for herein.

24 B. Permittee shall within thirty (30) days of each calendar year deliver
25 to the City, at the address set forth in subparagraph 4.5.A. above, a statement
26 showing gross receipts of the preceding calendar year or partial calendar year. Such
27 statement shall be prepared and delivered to City in accordance with generally
28 accepted accounting practices containing a statement of gross receipts and a

1 computation of percentage of gross receipts.

2 C. Each statement shall be signed and certified to be correct by an
3 officer of Permittee.

4 5. FEES AND CHARGES: All fees and charges associated with the permitted
5 concessions, operations and activities and any changes to fee schedules shall be subject
6 to the prior written approval of the Manager.

7 6. AUDIT: The City shall be entitled during the initial term or any extension thereof
8 and within three (3) years after the expiration or termination of this Permit to inspect,
9 examine, and audit all Permittee's books of account, records, cash receipts, and other
10 pertinent data so City can ascertain Permittee's gross receipts. Permittee shall cooperate
11 fully with City in making any such inspection, examination, and audit. The inspection,
12 examination, or audit shall be conducted during usual business hours. If an audit shows
13 that there is a deficiency in the payment of any sum due the City, the deficiency shall
14 become immediately due and payable. The costs of the audit shall be paid by the City
15 unless the audit shows that Permittee understated gross receipts by more than three
16 percent (3%), in which case Permittee shall pay all City's costs of the audit. If it is
17 determined by an audit that there is an overpayment of percentage fees, a refund shall
18 become due from the City.

19 7. BOOKS OF ACCOUNT AND RECORDS:

20 A. Permittee shall keep, within the City of Long Beach, complete and
21 accurate books of account, records, cash receipts, and other pertinent data showing
22 all gross receipts, all in accordance with generally accepted accounting principles.

23 B. Permittee shall install and maintain accurate receipt printing cash registers
24 or computer systems and shall record on the cash registers or computer systems
25 every sale of merchandise and services or other transactions at the time of the
26 transaction on either a cash register having a sealed, continuous cash register tape
27 with cumulative totals that numbers, records and duplicates each transaction
28 entered into the register, or serially numbered sales slips.

1 If Permittee chooses to record each sale by using a cash register, the
2 continuous cash register tape will be sealed or locked in such a manner that it is not
3 accessible to the person operating the cash register.

4 If Permittee chooses to record each sale by using a computer system, the
5 computer generated receipts shall be retained in chronological order (including
6 those canceled, voided or not used) for three (3) years.

7 If Permittee chooses to record each sale on individual slips, the sales slips
8 (including those canceled, voided, or not used) will be retained in numerical
9 sequence for three (3) years.

10 C. For the purpose of ascertaining the number of Rainbow Harbor
11 passengers, Permittee will submit monthly, in writing, vessel schedules, including
12 the name of the boat, and the passenger counts with the gross receipts statements
13 to the Accounting Section of the Department of Parks, Recreation and Marine at the
14 following address:

15 Department of Parks, Recreation and Marine
16 2760 Studebaker Road
17 Long Beach, CA 90815-1697
18 Attention: Accounting Section

19 D. Permittee, will prepare or cause to be prepared, preserve, and maintain,
20 for a period of not less than three (3) years these books, accounts and records:

21 1. daily cash register summary tapes and sealed, continuous cash
22 register tapes or prenumbered sales slips or computer transaction receipts
23 on transaction summary reports;

24 2. a single, separate bank account into which all receipts of business
25 or other revenue from operations on or from the Permit Area are deposited;

26 3. all bank statements detailing transactions in or through any
27 business bank account;

28 4. daily or weekly sales capitulations;

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5. a general ledger or a summary record of all cash receipts and disbursements from operations on or from the Permit Area;

6. copies of all tax returns filed with any governmental authority that reflect in any manner sales, income, or revenue generated in or from the Permitted Premises, including, but not limited to, federal income tax returns and state sales or use tax returns;

7. daily vessel schedules, including the name(s) and identification number(s) of the boat(s), and passenger counts;

8. other records or accounts that City may reasonably require in order to ascertain, document, or substantiate gross receipts.

E. Permittee shall keep within the City of Long Beach all of the books, records, and other documents in the manner recited in this paragraph, and will make said books, records and documents available for inspection, examination, or audit by City or City's designated representative upon giving Permittee five (5) days' prior notice of City's intention to exercise its rights under this paragraph. In connection with an examination of audit, City will have the right to inspect the records of sales from any other store operated by Permittee, but only if the examination is reasonably necessary to ascertain gross sales from the Permit Area. If upon inspection or examination of Permittee's available books and records of account, City determines that Permittee has failed to maintain, preserve, or retain the documents, books, and records that this Permit requires Permittee to maintain in the manner set forth in this paragraph, City will give the Permittee sixty (60) days to cure the deficiencies. Further, if Permittee is found to be deficient in maintaining any of documents, books, or records, Permittee will reimburse City for all reasonable expenses incurred by City in determining the deficiencies, including without limitation any audit or examination fees.

F. The receipt by City of any statement or any payment of compensation for any period shall not bind City as to the correctness of the statement or payment.

1 8. IMPROVEMENTS: Permittee shall not install, erect, or construct any building,
2 improvement, or structure on the Permit Area nor alter the same without the prior written
3 approval of the Manager. In the event Permittee, with the prior written approval of the
4 Manager, shall make any improvement to the structures within the Permit Area, title to any
5 such improvement shall vest in the City.

6 Any approval shall be subject to conditions as may be required for such
7 improvements and imposed by the Manager.

8 9. ADVERTISING:

9 9.1. Advertising Signs. Permittee, at its cost, may place or erect and
10 maintain signs on the Permit Area, provided that Permittee obtains prior written
11 approval from the Department of Parks, Recreation and Marine. Further,
12 Permittee's sign shall be in compliance with City's sign ordinance and conditions of
13 the Department of Parks, Recreation and Marine.

14 9.2. Advertising Budget. Within thirty (30) days after the commencement
15 date of the term of this Permit, and within thirty (30) days after the end of each
16 calendar year during the term of this Permit, Permittee shall submit to the Manager
17 a written budget describing in reasonable detail proposed expenditures for
18 advertising, publicity and promotion (including direct expenses for salaries
19 associated therewith) proposed to be made during the calendar year. Beginning in
20 year 2, the budget shall not be less than one percent (1%) of Permittee's gross
21 sales for previous calendar year. Permittee shall submit to the Manager upon
22 demand a detailed statement of expenditures made by it to advertise, publicize and
23 promote the permitted concession, operations and activities. In the event Permittee
24 fails or refuses to comply with the provisions of this paragraph, such failure or
25 refusal shall be deemed a material breach and the City may terminate this Permit
26 upon fifteen (15) days written notice Permittee.

27 10. UTILITIES: Permittee, at its cost, shall promptly pay or cause to be paid all
28 utility fees, costs and charges resulting from such use or assessments for utilities levied

1 against the Permit Area for any period during the term of this Permit. If Permittee requires
2 utilities which are beyond the capacity provided, Permittee shall coordinate and submit
3 request for additional services through the Manager of the Marine Bureau.

4 11. TRASH REMOVAL AND DISPOSAL: The Permittee is responsible for trash
5 removal for its operations.

6 12. MAINTENANCE AND REPAIR: The City shall maintain the Permit Area and
7 the improvements thereon in good condition and repair, reasonable wear and tear
8 excepted. Permittee understands that the water area within the Rainbow Harbor area is
9 subject to collection of debris from the Los Angeles River runoff. Further, Permittee
10 acknowledges that water conditions including debris and sediment may occur at times in
11 the adjacent area of the Los Angeles River which could affect access to the Rainbow
12 Harbor. City shall not be required to dredge the Permit Area or adjacent area of the Los
13 Angeles river. Neither the City nor its officers or employees shall be liable and Permittee
14 waives all claims for damage to its vessels or its business as a result of any such condition.
15 Permittee's vessels and their gear and Permittee's property thereon shall be at the Permit
16 Area at Permittee's risk and the City shall not be liable for damage thereto or theft or
17 appropriation thereof.

18 13. DAMAGE OR DESTRUCTION OF IMPROVEMENTS:

19 13.1. Responsibility for Repair. If any dock or improvement at any time on
20 the Permit Area shall be damaged or destroyed by any cause whatsoever during
21 the Permit term, Permittee shall, with reasonable promptness, report the damage
22 to the City. The City shall have responsibility to make repairs to replace the same,
23 to at least the condition existing immediately prior to such damage or destruction.
24 The Permittee shall be responsible for reimbursing the City for the pro rata share
25 of expenses incurred to repair or replace the damage or destruction to the Permit
26 Area to the extent contributed to by the act or omission of Permittee, its employees
27 or agents. Permittee shall be responsible for reimbursing the City even though the
28 proceeds of any insurance policies covering the loss ("Insurance Proceeds") shall

1 be insufficient to reimburse Permittee therefor; provided, however, that if such
2 proceeds of insurance are more than sufficient to pay the cost of any such
3 rebuilding, Permittee shall be entitled to receive any surplus. City at its discretion
4 may authorize Permittee to make repairs to replace the same to at least the
5 condition existing immediately prior to such damage or destruction. Such
6 authorization shall be in writing.

7 13.2. Insurance Proceeds. Insurance Proceeds shall be held by an
8 Insurance Trustee mutually agreed to by the parties, but shall be paid to the
9 Permittee or as Permittee may direct from time to time as the restoration of the
10 Permit Area progresses, to pay or reimburse City for the cost of such restoration
11 upon the written request of City accompanied by evidence satisfactory to the
12 Insurance Trustee that:

- 13 A. an amount equal to the amount requested is then due and payable or has
14 been paid and is properly a part of such cost of restoration;
15 B. that the net Insurance Proceeds not yet advanced will be sufficient for the
16 completion of the restoration.

17 If at any time during the period of restoration and/or reconstruction the City shall
18 determine that the Insurance Proceeds are insufficient to cause such restoration,
19 then upon delivery of written notice thereof and specifying the deficit Permittee shall
20 deposit in trust with the Insurance Trustee such additional sums as may be required
21 to complete the restoration of the Permit Area. Upon receipt by the Insurance
22 Trustee of evidence satisfactory to it that:

- 23 A. the restoration of the Permit Area has been completed;
24 B. the cost thereof has been paid in full; and
25 C. there are no mechanic's or similar liens for labor or materials supplied in
26 connection therewith, the balance, if any, of such Insurance Proceeds shall
27 be paid to Permittee or as the Permittee may direct.

28 13.3. Procedure for Restoration of Improvements. Following damage to all

1 or any portion of the Permit Area, Permittee shall reimburse the City for restoration
2 of the Permit Area and/or the improvements thereon, whether or not insurance
3 proceeds are sufficient to do so.

4 14. INSURANCE: Concurrent with the execution of this Permit and in partial
5 performance of Permittee's obligations hereunder, Permittee shall procure and
6 maintain at Permittee's expense for the duration of this Permit, including any
7 extensions, renewals, or holding over thereof, the following insurance coverages
8 from insurance companies that are admitted to write insurance in the State of
9 California or from authorized nonadmitted insurers that have ratings of or equivalent
10 to an A:VIII by A.M. Best and Company:

11 A. Commercial General Liability insurance (equivalent in coverage
12 scope to ISO form CG 00 01 11 85 or 11 88) in an amount not less than One
13 Million Dollars (\$1,000,000) combined single limit per occurrence and
14 covering the Permittee's operations under or in connection with this Permit.
15 If the policy contains a general aggregate, the general aggregate shall be in
16 an amount not less than Two Million Dollars (\$2,000,000). Such insurance
17 shall include, as may be applicable to Permittee's operations under or in
18 connection with this Permit, broad form contractual liability, products and
19 completed operations liability and liquor liability. The City of Long Beach, its
20 officials, employees and agents shall be added as additional insureds by
21 endorsement (equivalent in coverage scope to ISO form CG 20 26 11 85).
22 This insurance shall contain no special limitations on the scope of protection
23 afforded to the City, its officials, employees and agents, and shall provide
24 cross-liability protection.

25 B. Protection and Indemnity including, as may be applicable to
26 Permittee's operations under or in connection with this Permit, injury to
27 passengers, damage to piers, docks and pilings and property on piers and
28 docks, wreck removal, and collision liability in an amount not less than One

1 Million Dollars (\$1,000,000) per occurrence for each vessel operating under
2 this Permit. If the policy contains a general aggregate, the general aggregate
3 shall be in an amount not less than Two Million Dollars (\$2,000,000). The
4 City of Long Beach, its officials, employees and agents shall be added as
5 additional insureds by endorsement. This insurance shall contain no special
6 limitations on the scope of protection afforded to the City, its officials,
7 employees, and agents, and shall provide cross-liability protection.

8 C. Workers' Compensation as required by the State of California
9 endorsed, as applicable, to include United States Longshoremen and Harbor
10 Workers' Compensation Act coverage and Jones' Act coverage and
11 Employer's Liability insurance with minimum limits of One Million Dollars
12 (\$1,000,000).

13 Any self-insurance program or self-insured retention must be approved separately
14 in writing by City and shall protect the City of Long Beach, its officials, employees, and
15 agents in the same manner and to the same extent as they would have been protected
16 had the policy or policies not contained retention provisions.

17 Each insurance policy shall be endorsed to state that coverage shall not be
18 suspended, voided, materially changed, or canceled by either party except after thirty (30)
19 days prior written notice to City, and shall be primary to City. Any insurance or self-
20 insurance maintained by City shall be excess to and shall not contribute to insurance or
21 self-insurance maintained by Permittee.

22 Permittee shall deliver to City certificates of insurance and the required
23 endorsements for approval as to sufficiency and form prior to commencement of this
24 Permit. The certificates and endorsements for each insurance policy shall contain the
25 original signature of a person authorized by that insurer to bind coverage on its behalf.
26 Permittee shall, at least thirty (30) days prior to expiration of such policies, furnish City with
27 evidence of renewals. City reserves the right to require complete certified copies of all said
28 policies at any time.

1 Such insurance as required herein shall not be deemed to limit Permittee's liability
2 relating to performance under this Permit. The procuring of insurance shall not be
3 construed as a limitation on liability or as full performance of the indemnification and hold
4 harmless provisions of this Permit. Permittee understands and agrees that,
5 notwithstanding any insurance, Permittee's obligation to defend, indemnify, and hold City,
6 its officials, agents, and employees harmless hereunder is for the full and total amount of
7 any damage, injuries, loss, expense, costs, or liabilities caused by or in any manner
8 connected with the operations of Permittee.

9 Not more frequently than every three (3) years, if in the opinion of City the amount
10 of the foregoing insurance coverages is not adequate, Permittee shall amend the
11 insurance coverage as required by City's Risk Manager or designee.

12 Any modification or waiver of the insurance requirements herein shall be made only
13 with the written approval of the City's Risk Manager or designee.

14 **15. INDEMNIFICATION:**

15 15.1. General Indemnity. Permittee shall defend and indemnify the City of
16 Long Beach and its officers and employees while acting within the scope of their
17 duties from and against any and all actions, suits, proceedings, claims and
18 demands, costs (including attorneys' fees and court costs), expense and liability of
19 any kind or nature whatsoever ("claims") for injury to or death of persons or damage
20 to property (including property owned by or under the control of the City) which may
21 be brought, made, filed against, imposed upon or sustained by the City, its officers
22 or employees based upon or arising out of:

23 A. An act or omission of Permittee, its officers, agents, employees,
24 contractors, licensees or invitees or of any person entering upon the Permit Area
25 with the express or implied invitation of Permittee;

26 B. A violation by Permittee, its officers, agents, employees, contractors,
27 licensees or invitees or of any other person entering upon the Permit Area with the
28 express or implied invitation of Permittee of any law ordinance or governmental

1 order of any kind;

2 C. The use or occupancy of the Permit Area by Permittee, its officers,
3 agents, employees, contractors, licensees or invitees or of any other person
4 entering upon the Permit Area with the express or implied invitation of Permittee.

5 This indemnity shall not include claims based upon or arising out of the sole
6 negligence, gross negligence, or willful misconduct of the City, its officers and
7 employees. Further, this indemnity shall not require payment of a claim by the City
8 or its officers or employees as a condition precedent to the recovery under the
9 same.

10 This indemnification provision supplements and in no way limits the scope
11 of the indemnifications set out in subparagraph 15.2 below. The indemnity
12 obligation of Permittee under this paragraph shall survive the expiration or
13 termination, for any reason, of this Permit.

14 **15.2. Environmental Release and Indemnification.**

15 Permittee hereby agrees to hold harmless, defend and indemnify the City and its
16 employees, members and officials from and against all liability, loss, damage, costs,
17 penalties, fines and/or expenses (including attorneys' fees and court costs) arising
18 out of or in any way connected with or the activities, acts or omissions of Permittee,
19 its permittees, employees, contractors or agents on or affecting the Permit Area
20 without regard to fault or negligence including but not limited to the release of any
21 hazardous materials into the air, soil, groundwater or surface water on, in, under or
22 from the Permit Area whether such condition, liability, loss, damage, cost, penalty,
23 fine and/or expense shall accrue or be discovered before or after termination of this
24 Permit. This indemnification supplements and in no way limits the scope of the
25 indemnification set forth in paragraph 15.1. above.

26 In addition, Permittee waives, releases, acquits and forever discharges City,
27 its employees, members and officials or any other person acting on behalf of City,
28 of and from any and all claims, actions, causes of action, demands, rights,

1 damages, costs, expenses, or compensation (collectively "claims") whatsoever
2 (including, but not limited to, all claims at common law and/or under any federal,
3 state or local environmental, health and/or safety-related law, rule, regulation or
4 order, currently existing and as amended or enacted in the future ("Environmental
5 Law"), whether direct or indirect, known or unknown, foreseen or unforeseen, which
6 Permittee now has or may have or which may arise in the future on account of or
7 in any way growing out of or in connection with any hazardous materials on, under
8 from, or affecting the Permit Area, or any law or regulation applicable thereto.
9 Permittee acknowledges that it is familiar with Section 1542 of the California Civil
10 Code which reads: "A general release does not extend to claims which the creditor
11 does not know or suspect to exist in his favor at the time of executing the release,
12 which if known by him must have materially affected his settlement with the debtor";
13 and hereby releases the Permittee from any unknown claims and waives all rights
14 it may have under Section 1542 of the Civil Code or under any other statute or
15 common law principle of similar effect.

16 15.2.1. Exclusions.

17 A. Contamination on, beneath, or abutting the Permit Area
18 which existed prior to the initial commencement date of the Permit.

19 B. Contamination which has emanated or emanates from a
20 location off site the Permit Area and which has trespassed onto,
21 underneath or across the Permit Area.

22 C. Contamination which is unrelated to Permittee's use,
23 occupancy of Permittee's subpermittees, invitees, or guests, on the
24 Permit Area.

25 D. Permittee need not indemnify City for activities carried on or
26 around the Permit Area by City as part of occasional use of the Permit
27 Area by City or its other permittees, licensees, or the like or actions of
28 the public who have not been permitted or solicited by Permittee.

1 15.3. Definition. "Hazardous material" means any substance:

2 A. the presence of which requires investigation or remediation under
3 any federal, state or local statute, regulation, ordinance, order, action, policy
4 or common law; or

5 B. which is or becomes defined as a "hazardous waste," "hazardous
6 substance," pollutant or contaminant under any federal, state or local statute,
7 regulation, rule or ordinance or amendments thereto including, without
8 limitation, the Comprehensive Environmental Response, Compensation and
9 Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource
10 Conservation and Recovery Act (42 U.S. C. Section 6901 et seq.); or

11 C. which is toxic, explosive, corrosive, flammable, infectious,
12 radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or
13 becomes regulated by governmental authority, agency, department,
14 commission, board, agency or instrumentality of the United States, the State
15 of California or any political subdivision thereof; or

16 D. the presence of which on the Permit Area causes or threatens to
17 cause a nuisance upon the Permit Area or to adjacent properties or poses
18 or threatens to pose a hazard to the health or safety of persons on or about
19 the Permit Area; or

20 E. the presence of which on adjacent properties could constitute a
21 trespass by Permittee; or polychlorinated bipheynols (PCBs), asbestos or
22 urea formaldehyde foam insulation.

23 16. FORCE MAJEURE: City and Permittee shall not be deemed to be in default
24 in the performance of the terms, covenants or conditions of this Agreement if either party
25 is prevented from performing said terms, covenants or conditions by causes beyond its
26 control, including, without limitation, acts of God or the public enemy; failures due to
27 nonperformance or delay of performance by suppliers or contractors; any order, directive
28 or other interference by municipal, state, federal or other governmental official or agency;

1 any catastrophe resulting from the elements, flood, fire, explosion, or any other cause
2 reasonably beyond the control of a party, but excluding strikes or other labor disputes,
3 lockouts, work stoppages or financial inability.

4 17. VESSELS: Permittee agrees, with respect to its operation of charter cruises and
5 its use of the Permit Area, Permittee shall at all times comply with the Rainbow Harbor
6 Rules and Regulations of the City of Long Beach, including other conditions herein:

7 A. Permittee shall submit weekly, in writing, daily vessel schedules, including
8 the name(s) and identification number(s) of the boat(s), and passenger counts. The
9 schedules shall be submitted by the Friday of the preceding week. Permittee may
10 amend the reported information to make changes to or correct information pursuant
11 to the vessel schedule, boat name or identification number and passenger count.
12 Permittee must give the Manager of the Marine Bureau prior written notification of
13 any changes.

14 B. Permittee, at its cost, shall maintain each of its vessels in good,
15 seaworthy condition. At all times, if any condition is discovered affecting the safety
16 of the vessel or its seaworthiness, that vessel shall be immediately withdrawn from
17 service and all necessary repairs promptly commenced. Permittee's vessels shall
18 be attractive in design and shall at all times be maintained in a neat and clean
19 condition free from deteriorations. To maintain an attractive appearance at all
20 times, Permittee, at its cost, shall cause its vessels to have all gear stored and to
21 be regularly painted. No rips, tears or missing pieces or excessive fading shall be
22 permitted.

23 18. LICENSE AND CERTIFICATION: Permittee shall not permit any person
24 charged with the responsibility of operating any of its vessels providing dinner, harbor or
25 charter cruises to do so unless and until that person is qualified and duly licensed to
26 operate and in compliance with the U.S. Coast Guard regulations, the vessel or vessels
27 to which that person is assigned. Permittee shall deliver to the Manager of the Marine
28 Bureau copies of such licenses for all vessel operators. Permittee's vessel operators and

1 crew and ticket sellers shall at all times be dressed in clean, well-kept coordinated
2 uniforms, except when performing required maintenance.

3 Permittee's vessels shall at all times be certified and licensed and inspected by
4 those governmental agencies having jurisdiction over Permittee's activities. Permittee shall
5 at all times comply with all United States Coast Guard regulations.

6 19. PARKING: Parking facilities at Shoreline Village shall not be used by
7 Permittee's patrons.

8 19.1. Parking/Traffic Management. Permittee and employees of Permittee
9 may be required to participate in a parking/traffic management program which may
10 designate parking areas for Permittee's employees.

11 20. STORAGE ON DOCKS: Storage of items on dock, except in dock
12 boxes/containers approved by City is prohibited.

13 21. ASSIGNMENT OR TRANSFER: Permittee shall not assign or transfer this
14 Permit nor shall any interest herein be assignable or transferable by operation of law or by
15 any process or proceedings of any court or otherwise. Any attempted transfer or
16 assignment shall be void and confer no rights whatsoever upon a transferee or assignee.

17 Notwithstanding the foregoing, Permittee may grant subpermits, licenses or
18 concessions to others provided Permittee shall first obtain the written consent of the
19 Manager. The Manager shall not be required to give any consent to a proposed
20 subpermitting, licensing or grant of concession rights, unless and until Permittee has
21 submitted to the Manager such additional information regarding the identity of proposed
22 subpermittee, licensee or concessionaire and the terms and conditions of the proposed
23 transaction as may be required by the Manager to make a determination to grant or
24 withhold such consent. Further, the Manager shall have the right to impose such further
25 conditions in connection with the granting of consent as may be required to assure that
26 public health, safety, welfare and convenience will be best served by the proposed
27 subpermit, license or concession.

28 If Permittee shall be adjudicated a bankrupt or become insolvent or any interest in

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City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 this Permit be taken by virtue of attachment, execution, or receivership, the City may
2 terminate this Permit upon five (5) days written notice to Permittee.

3 22. HOLDING OVER: This Permit shall terminate without any further notice as of
4 the Permit expiration date set forth in paragraph three above. Any holding over by
5 Permittee after the Permit expiration date shall not constitute a renewal or extension or
6 give Permittee any rights in or to the Permit Area except as expressly provided in this
7 Permit. Any holding over after the Permit expiration date with the consent of City shall be
8 construed to be a tenancy from month to month, at fees equal to the fees due for the last
9 year of the Permit term, and shall otherwise be on the terms and conditions herein
10 specified.

11 23. INSPECTION: The City's authorized representatives shall have access to and
12 across the Permit Area during business hours and, in the event of an emergency, at any
13 other time for inspection, repair of publicly-owned utilities and structures, and for fire and
14 police purposes. The City, acting through the Marine Bureau of the Department of Parks,
15 Recreation and Marine, shall have the right, but not the obligation, to board and inspect
16 any such vessels to assure compliance by Permittee with the provisions of this Permit. City
17 shall coordinate inspections with Permittee.

18 24. GENERAL PROVISIONS:

19 24.1. Notices, Demands and Communication Between the Parties. Written
20 notices, demands, and communication between City and Permittee shall be in
21 writing and shall be sufficiently given if personally served or if mailed by registered
22 or certified mail, postage prepaid, return receipt requested addressed as follows:

23 TO CITY: City Manager
24 13th Floor, City Hall
25 333 West Ocean Boulevard
26 Long Beach, California 90802

27 WITH A COPY TO: Director of Parks, Recreation & Marine
28 2760 Studebaker Road
Long Beach, California 90815-1697

//

1 TO PERMITTEE: Jayme Wilson
2 doing business as Spirit Cruises
3 Port's O' Call, Berth 77
4 San Pedro, California 90731

5 Either party may change its address by notifying the other party of the
6 change of address. Notice shall be deemed communicated within forty-eight (48)
7 hours from the time of mailing if mailed as provided in this paragraph.

8 24.2. Conflict of Interest. No member, official or employee of City shall have
9 any personal interest, direct or indirect, in this Permit, nor shall any such member,
10 official or employees participate in any decision relating to this Permit which affects
11 his personal interest or the interests of any corporation, partnership or association
12 in which he is, directly or indirectly, interested. No member, official or employee of
13 City shall be personally liable to Permittee, or any successor in interest, in the event
14 of any default or breach by City or for any amount which may become due to
15 Permittee or successor or on any obligations under the terms of this Permit.

16 24.3. Defaults and Remedies.

17 24.3.1. Defaults - General. Failure by either party to perform any term
18 or provision of this Permit constitutes default under this Permit, if not cured
19 within thirty (30) days from the date of receipt of a written notice from the
20 other party specifying the claimed default provided that is such default
21 cannot reasonably be cured within such thirty (30) day period, the party
22 receiving such notice of default shall not be in default under this Permit if
23 such party commences the cure of such default within such thirty (30) day
24 period and thereafter diligently prosecutes the steps to cure such default to
25 completion.

26 24.3.2. Institution of Legal Actions. In addition to any other rights or
27 remedies, either party may institute legal action to cure, correct, or remedy
28 any default, to recover damages for any default, or to obtain any other
remedy consistent with the purpose of this Permit. Such legal actions must
be instituted in the South Branch of the Superior Court of the County of Los

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Angeles, State of California, in an appropriate municipal court in that county, or in the Federal District court in the Central District of California. The prevailing party in any action commenced pursuant to this Permit shall be entitled to recover reasonable costs, expenses and attorneys' fees.

24.3.3. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Permit. Permittee during its use and occupancy of the Permit Area shall at all times comply with all laws, ordinances, rules, and regulations of and obtain permits from all federal, state, and local governmental authorities having jurisdiction over the Permit Area, Permittee's vessels and Permittee's activities thereon.

24.3.4. Service of Process. In the event any legal action is commenced by Permittee against City, service of process on City shall be made by personal service upon the City Clerk of the City, or in such other manner as may be provided by law.

In the event that any legal action is commenced by City against Permittee, service of process on Permittee shall be made as provided by law and shall be valid whether made within or without the State of California.

24.3.5. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Permit, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

24.3.6. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any

1 such rights or remedies.

2 24.3.7. Remedies. In the event of a default by Permittee, which is not
3 cured by Permittee within the times specified in this Permit, City without
4 further notice to Permittee, may declare this Permit and/or Permittee's right
5 of possession at an end and may reenter the Permit Area by process of law,
6 in which event, City shall have the right to recover from Permittee:

7 24.3.7.1. The worth at the time of award of the unpaid fees
8 which has been earned at the time of termination, plus interest;

9 24.3.7.2. The worth at the time of award of the amount by
10 which the unpaid fees which would have been earned after
11 termination until the time of award exceeds the amount of such fee
12 loss that Permittee proves could have been reasonably avoided, plus
13 interest;

14 24.3.7.3. The worth at the time of award of the amount by
15 which the unpaid fees for the balance of the term after the time of
16 award exceeds the amount of such fee loss for the same period the
17 Permittee proves could be reasonably avoided, plus interest thereon;
18 and

19 24.3.7.4. The remedies of City as hereinabove provided are
20 cumulative to the other provisions of this Permit.

21 24.4. Partial Invalidity. If any term or provision of this Permit or the
22 application thereof to any party or circumstances shall, to any extent, be held invalid
23 of unenforceable, the remainder of this Permit, or the application of such term or
24 provisions, to persons or circumstances other than those as to whom or which it is
25 held invalid or unenforceable, shall not be affected thereby, and each term and
26 provision of this Permit shall be valid and enforceable to the fullest extent permitted
27 by law.

28 24.5. Entire Agreement, Waivers and Amendments. This Permit constitutes

1 the entire understanding and agreement of the parties. This Permit integrates all the
2 terms and conditions mentioned herein or incidental hereto, and supersedes all
3 negotiations between the parties with respect to all or any part of the subject matter
4 hereof.

5 24.6. Waivers. All waivers of the provisions of this Permit must be in writing
6 by the appropriate authorities of City or Permittee and all amendments hereto must
7 be in writing by the appropriate authorities of City and Permittee.

8 24.7. Successors in Interest. The provisions of this Permit shall be binding
9 upon and shall inure to the benefit of the heirs, executors, assigns and successors
10 in interest of the parties hereto.

11 24.8. Nondiscrimination. In connection with performance of this Agreement
12 and subject to applicable laws, rules and regulations, Consultant shall not
13 discriminate in rendering services hereunder on the basis of race, color, religion,
14 national origin, sex, sexual orientation, AIDS, HIV status, age, disability, handicap
15 or veteran status.

16 24.9. No Joint Venture or Partnership. Nothing in this agreement shall be
17 construed as creating either a partnership or joint venture between the parties
18 hereto.

19 24.10. Jointly Drafted. This agreement is jointly drafted by the parties hereto
20 and it is not to be construed against either party as the drafter.

21 24.11. Municipal Powers. Nothing contained herein shall be construed as a
22 limitation upon powers of City as a chartered city of the State of California. This
23 Permit is entered into by City in its proprietary capacity and nothing contained herein
24 shall relieve Permittee from complying with all requirements, rules, regulations or
25 ordinances of the City of Long Beach.

26 24.12. No Mineral Rights. This Permit creates no rights in Permittee to
27 minerals, or proceeds from mineral production, which may lie below the Permit Area
28 including but not limited to any unitized oil.

1 24.13. No Relocation Benefits. Permittee shall have no rights to relocation
2 benefits mandated by the laws of the State of California as to this Permit Area.

3 24.14. Americans with Disabilities Act. Permittee shall have and be allocated
4 the sole responsibility to comply with the Americans with Disabilities Act ("ADA") as
5 may be applicable with respect to Permittee's operation and the Permittee shall
6 indemnify and hold City harmless from and against any claims of a violation of the
7 ADA.

8 25. TAXES: This Permit may create a possessory interest subject to property
9 taxation and Permittee may be liable for the payment of property taxes levied on such
10 possessory interest. Permittee shall pay or cause to be paid, prior to delinquency, all
11 taxes, assessments and other governmental and district charges that may be levied or
12 assessed for buildings, improvements or property located on the Permit Area and upon
13 possessory interests created by this Permit. Satisfactory evidence of such payments shall
14 be delivered by Permittee upon demand therefor.

15 26. COASTAL DEVELOPMENT PERMIT: Permittee acknowledges that the
16 California Coastal Commission requires that any permit issued for operation within the
17 Rainbow Harbor area shall be subject to the terms and conditions of Coastal Development
18 Permit no. 5-96-124, and Coastal Development Permit no. 5-98-161. The conditions of
19 Coastal Development Permit no. 5-96-124, and Coastal Development Permit no. 5-98-161
20 are incorporated herein and attached as Exhibits A and B respectively:

21 Exhibit A - Coastal Development Permit no. 5-96-124

22 Exhibit B - Coastal Development Permit no. 5-98-161

23 27. FOURTH OF JULY: Permittee recognizes that it is the responsibility of the City
24 to maintain a safe and secure environment for the public at all times. Annually, the
25 Rainbow Harbor area experiences exceptional visitor and activity levels related to the 4th
26 of July. To mitigate the impact to public safety and security, the City may limit Rainbow
27 Harbor activity. Permittee agrees to be bound by reasonable restrictions on its activities
28 in or around the Permit Area on such day or day(s) of 4th of July activities each year of the

1 term of this Permit. Such restrictions may include limitations on the hours businesses may
2 operate including those of Permittee in the Permit Area. Permittee waives any and all
3 claim that it might ever have against City as a result of any adverse impact on its
4 operations or business as a result of City restrictions.

5 28. SPECIAL EVENTS: Permittee recognizes that the area of the City in which
6 Permittee will operate further to this Permit is annually impacted by Special Events,
7 including but not limited to the running of the Long Beach Grand Prix. Permittee waives any
8 and all claim that it might ever have against City or the operators of said Special Events,
9 including but not limited to the Grand Prix as a result of any adverse impact on its
10 operations or business as a result of said Special Events.

11 29. EMPLOYMENT COOPERATION. Permittee acknowledges that the Queensway
12 Bay Project, including Permittee's operations under this Permit, is subject to the hiring
13 requirements set forth in 24 C.F.R. Section 570.209. Such requirements mandate that the
14 Queensway Bay Project create 1,143 new jobs for low- or moderate-income persons (as
15 defined in 24 C.F.R. Section 570.3) (hereinafter 'low-income hires'). Accordingly,
16 Permittee agrees that it shall use good faith efforts to create such low income hires, and
17 shall report to the City of Long Beach, on an annual basis, the name, position, date of hire
18 and income level for all low-income hires for its operations under this Permit. Permittee
19 further agrees that all permits, subpermits, concession agreements and licenses entered
20 into by Permittee regarding any portion of the permit area shall require that all
21 subpermittees, concessionaires and licensees comply with such requirements. In
22 furtherance of these requirements, Permittee agrees that it will reasonably cooperate with
23 the City of Long Beach, through its Training and Employment Development Officer and
24 staff with recruitment, screening and tracking. In implementing such efforts, the City of
25 Long Beach, through its Training and Development Officer and staff, will provide to
26 Permittee and all Queensway Bay permittees, subpermittees, concessionaires and
27 licensees, staff assistance, at no cost, to pre-screen and qualify all potential job applicants.
28 Such services include assisting with community outreach to recruit qualified job applicants

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City Attorney of Long Beach
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Long Beach, California 90802-4664
Telephone (562) 570-2200

1 and conducting pre-screening sessions to determine the most qualified applicants for jobs.
2 All qualification and hiring decisions will be made by Permittee or its subpermittees,
3 concessionaires or licensees. As part of its implementation program, the City of Long
4 Beach will also provide for up to 240 hours of on-the-job training if the employee is
5 determined to need such training and he/she meets Federal Job Training Partnership Act
6 (JTPA) program eligibility. The City of Long Beach Training and Employment Development
7 Officer is responsible for providing the staff necessary for pre-employment assistance. The
8 requirements set forth in this Section shall terminate upon the City's written verification that
9 1,143 low-income hires have been created for the Queensway Bay Project.

JAYME WILSON DBA SPIRIT CRUISES,
a sole proprietorship

12 12/30, 2006

By: 

14 _____, 2006

By: _____

"PERMITTEE"

CITY OF LONG BEACH, a
municipal corporation

19 6/25, 2006/7

By:  ASSISTANT
City Manager

"CITY"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

Approved as to form this 4th day of June,

24 ~~2006.~~
2007

ROBERT E. SHANNON, City Attorney

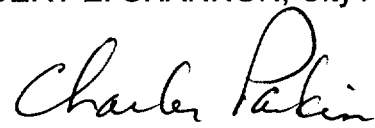
By: 
Principal Deputy

EXHIBIT A

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 W BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (310) 590-5071

Page 1 of 8
 Date: 13 November 1996
 Permit No. 5-96-124

COASTAL DEVELOPMENT PERMIT

On 12 September 1996, the California Coastal Commission granted to City of Long Beach this permit subject to the attached Standard and Special conditions, for development consisting of

Construct a downtown commercial harbor in Shoreline Park and Lagoon, reconstruct and improve Shoreline Park, demolish the Golden Shore public boat launch in order to create a 6.4 acre habitat mitigation area, transport approximately 109,000 cubic yards of excavated sand to 8th Place Beach area for beach replenishment, [and dispose of approximately 325,000 cubic yards of dredged materials at the LA-2 offshore disposal site (see Consistency Certification No. CC-98-96)].

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 200 W. Shoreline Drive (Shoreline Park), 199 S. Golden Shore (Golden Shore boat launch), and public beach between 1st Place and 15th Place (beach replenishment), City of Long Beach.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
 Executive Director

By: 

Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

 Date

 Signature of Permittee

COASTAL DEVELOPMENT PERMIT

Page 2 of 8
Permit No. 5-96-124

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Regional Bicycle Route

Pursuant to the July 11, 1996 letter signed by Robert Paternoster, Director of the Queensway Bay Project, and addressed to Charles Posner, Coastal Program Analyst, the Commission's Long Beach office:

- a) During the construction phase of the proposed project, the City shall provide and maintain a temporary bicycle route connecting the existing Los Angeles River bicycle path to the existing beach bicycle path. The temporary bicycle route shall maintain regional bicycle circulation through the Downtown Shoreline area by generally following the route described in the July 11, 1996 letter.

COASTAL DEVELOPMENT PERMIT

Page 3 of 8
Permit No. 5-96-124

- b) Prior to the closing or demolition of any portion of the existing regional bicycle route, a replacement bicycle route shall be constructed and opened in order to maintain the connection between the Los Angeles River bicycle path and the beach bicycle path.
- c) Prior to the removal of the temporary bicycle route, the City shall construct, open and maintain the proposed permanent regional bicycle route which connects the Los Angeles River bicycle path to the beach bicycle path as shown on Exhibit #11 of this report.

2. Public Restrooms

The City shall provide public restroom facilities in Riverfront Park. Either temporary or permanent restroom facilities shall be available for public use when Riverfront Park officially opens, and thereafter. The City shall install permanent restroom facilities in Riverfront Park within one year of the official opening the park to the public, or within such additional time as may be granted by the Executive Director for good cause. The permanent restroom facilities will require a Coastal Development Permit or a permit amendment approved by the Commission.

3. Parking Meters

Any parking meters installed on public parking spaces in Riverfront Park shall allow ninety minutes of parking when the maximum amount of coins are deposited. In addition, the users of such public parking spaces shall be permitted to use the metered parking spaces for at least four hours (if the required amount of coins are added) before being required to vacate the parking space.

4. Public Access

The City shall provide and maintain unobstructed public access to and along the Pine Avenue Pier, the Queensway Bay Harbor esplanade, and the plaza areas in front of and adjacent to the aquarium structure free of charge for the life of the development approved herein. Public access to the Pine Avenue Pier may only be interrupted for special events with a duration of six hours or less, or by special events permitted by a subsequent Coastal Development Permit. Public access may also be interrupted subject to those temporary safety limitations necessitated by unsafe conditions resulting from waves, extreme weather or required maintenance activities.

5. Public Boat Docks

The City shall provide and maintain a minimum of 200 linear feet of docking area within the Queensway Bay Harbor which shall be reserved for short-term public docking which shall be available for free or at rates comparable to automobile parking. Short-term shall be defined as any term between one hour and six hours. This public docking area shall not be leased or reserved by any individual, business or organization. Additional short-term and/or long-term public docking areas over and

COASTAL DEVELOPMENT PERMIT

Page 4 of 8
Permit No. 5-96-124

above this minimum requirement may be provided. All public docking areas shall be identified with signage which clearly communicates the availability and limitations of the public docking facilities.

6. Future Uses and Improvements

This approval is limited to the uses and development specifically described in the project description and related findings contained in Coastal Development Permit 5-96-124. Any additional development, including intensification of use such as the lease of docks areas, esplanade areas, park areas, or the commercial use of docks by party boats or cruise ships, will require an amendment to the permit or a new Coastal Development Permit.

7. Leases to Private Operators

The lease of any area subject to the terms and conditions of Coastal Development Permit 5-96-124 to private operators shall explicitly incorporate the terms and conditions of Coastal Development Permit 5-96-124. In addition, such leases shall incorporate provisions for use, public access and public recreation consistent with all terms and conditions contained herein.

8. Chemical Management Plan

Prior to the issuance of the Coastal Development Permit, the City shall submit a Chemical Management Plan for the review and approval of the Executive Director. The purpose of the Chemical Management Plan shall be to address how the City will construct and operate the Queensway Bay Harbor in a manner that protects water quality from pollutants, typically associated with commercial harbors, such as boat cleaning chemicals, pesticides, fuels and oil. The Chemical Management Plan shall identify the equipment and structures that will be installed at the harbor to assist users in preventing any discharge of pollutants into the harbor. The Chemical Management Plan shall be in compliance with the standards and regulations of the California Regional Water Quality Control Board, the United States Environmental Protection Agency (EPA), and all other applicable local, state and federal regulations. The Executive Director will approve the Chemical Management Plan if it contains the following minimum elements:

- a. Harbor users shall be prohibited from discharging pollutants, including pesticides, varnishes, paints, sewage, cleaners, fuel, etc. into the harbor.
- b. The City will install the equipment necessary to prevent or reduce any discharge of pollutants into the harbor, including the equipment for the proper disposal of pollutants in compliance with all local, state and federal regulations.

The approved Chemical Management Plan shall be prominently posted near all docks and shall be explicitly incorporated into all leases to private

COASTAL DEVELOPMENT PERMIT

Page 5 of 8
Permit No. 5-96-124

operators within the harbor. The Queensway Bay Harbor shall be constructed and operated consistent with the plan approved by the Executive Director. Should the City need to revise the plan, the proposed revisions shall be submitted to the Executive Director in order to determine if the proposed changes shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

9. Public Boat Launch

Within two years of the demolition of the Golden Shore public boat launch, the City shall construct and open to the public a new boat launch of not less than two launching lanes and 60 parking spaces for autos with boat trailers within the Queensway Bay area.

10. Golden Shore Public Parking

The City shall retain a minimum of thirteen (13) existing public metered parking spaces in the existing public parking lot located near the entrance of the recreational vehicle park and the Golden Shore public boat launch (See Exhibit #15).

11. Habitat Mitigation Project

- a) The City shall construct, monitor and maintain the proposed habitat mitigation project consistent with the standards contained in the "Planting Plan, August 1996" and the "Monitoring Plan, August 1996" prepared for Moffatt & Nichol Engineers by Wetlands Research Associates, Inc.
- b) The implementation of the grading and planting plans (Exhibit #15) for the proposed habitat mitigation project shall commence prior to or simultaneous with the commencement of the proposed dredging of Shoreline Lagoon. Once the grading has commenced for the habitat mitigation project, the construction and planting of the habitat mitigation site shall proceed continuously until it is completed in conformance with the approved plan.
- c) The five-year monitoring period proposed by the "Monitoring Plan, August 1996," prepared for Moffatt & Nichol Engineers by Wetlands Research Associates, Inc., shall commence upon completion of the first planting of the project site. The City shall notify the Executive Director upon completion of the first planting of the project site.
- d) Upon completion of the first year of the monitoring period, and annually thereafter, the City shall submit to the Executive Director a report which documents the implementation of the planting and monitoring plans and which documents the status of the habitat mitigation project in relation to the performance standards contained in those plans.

COASTAL DEVELOPMENT PERMIT

Page 6 of 8
Permit No. 5-96-124

- e) Any additional work or modifications to the habitat mitigation project which are necessary to meet the performance standards contained in the planting and monitoring plans shall be submitted to the Executive Director. Any change in the approved habitat mitigation project 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.
- f) The City shall be responsible for the ongoing maintenance of the habitat mitigation project and site. The required maintenance shall include regular cleaning and trash pick-up.

12. Siltation Control

Prior to the issuance of the Coastal Development Permit, the City shall submit, for the review and approval of the Executive Director, an erosion control and siltation prevention plan which controls erosion from the upland portions of the construction sites, and prevents silt from the upland portions of the construction sites from entering coastal waters during the construction of the proposed harbor and habitat mitigation project. The plan shall conform to the standards of the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers. The approved plan shall be implemented during construction of the proposed project.

13. Turbidity Control

The City shall minimize negative impacts on the marine environment by using silt curtains, sand bags, or other forms of barriers during construction of the proposed harbor and habitat mitigation project to confine turbid water to the immediate areas of all dredging, excavation and deposition.

14. Suitability of Materials for Beach Replenishment

Prior to the issuance of the Coastal Development Permit, the City shall submit a written agreement, subject to the review and approval of the Executive Director, to provide a qualified expert at the sand source site to inspect and monitor all material proposed to be deposited at the approved deposition site. The inspector shall determine the geotechnical suitability of all such material using the sediment compatibility criteria contained in the Dredged Material and Sand Testing Program - Queensway Bay Downtown Harbor Facilities, City of Long Beach, by Kinnetic Laboratories, Inc. & ToxScan, Inc., June 19, 1996. Only material deemed "compatible" by the qualified expert pursuant to the criteria contained in the above-stated document may be deposited at the approved deposition site. All contracts involving the subject project shall include the above stated condition of approval.

COASTAL DEVELOPMENT PERMIT

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Permit No. 5-96-124

15. Beach and Recreational Facility Closures

During the proposed beach replenishment project, all beach areas and recreation facilities shall remain open and available for public use during the normal operating hours on weekends. On weekdays, beach area closures shall be minimized and limited to areas immediately involved in transportation and deposition. On all days, except for the portions of the beach where transportation and deposition is occurring, all beach areas and recreation facilities shall remain open and available for public use during the normal operating hours. On all days, the beach bicycle path shall remain open and available for public use during the normal operating hours.

16. Timing of Beach Replenishment Project

In order to reduce impacts on the grunion and the California least tern during the grunion breeding runs and the least terns' nesting and foraging season, no beach replenishment shall occur during the period commencing March 15 and ending September 1. However, limited beach replenishment activities may occur between March 15 and May 16 if the City submits, for the review and approval of the Executive Director, a mitigation program approved by the California Department of Fish and Game which insures that no adverse impacts will occur during grunion breeding or to least tern foraging areas.

17. Conformance with the Requirements of the Resource Agencies

The City 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 water quality and marine environment. Any change in the approved project which are 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.

18. Foundation Design

Prior to the issuance of the Coastal Development Permit, the City shall submit for review and approval by the Executive Director, final plans for the proposed harbor and habitat mitigation site which have been reviewed and approved for structural soundness and safety by a qualified engineer. The submitted plans must be in substantial conformance with the plans approved by the Commission and must contain the foundation design recommendations contained in the Geotechnical Investigation Report for Queensway Bay Downtown Harbor by Advanced Earth Sciences, Inc., June 28, 1996. Any changes in the design of the proposed project which was approved by the Commission which may be required by the engineer 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. The proposed harbor and habitat mitigation site shall be constructed in a manner consistent with the final approved plans.

COASTAL DEVELOPMENT PERMIT

Page 8 of 8
Permit No. 5-96-124

19. Assumption of Risk

By acceptance of this Coastal Development Permit, the City agrees that: (a) the site may be subject to extraordinary hazard from storms, waves and erosion; and (b) the City hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards.

20. City Acceptance of Conditions

Prior to the issuance of the Coastal Development Permit, the City Council shall adopt and submit a resolution, subject to the review and approval of the Executive Director, agreeing to abide by all terms and conditions of Coastal Development Permit 5-96-124. The City and its representatives shall abide by all terms and conditions of Coastal Development Permit 5-96-124.

CP:b11

Attach Exhibit Nos. 11 & 15

7727F

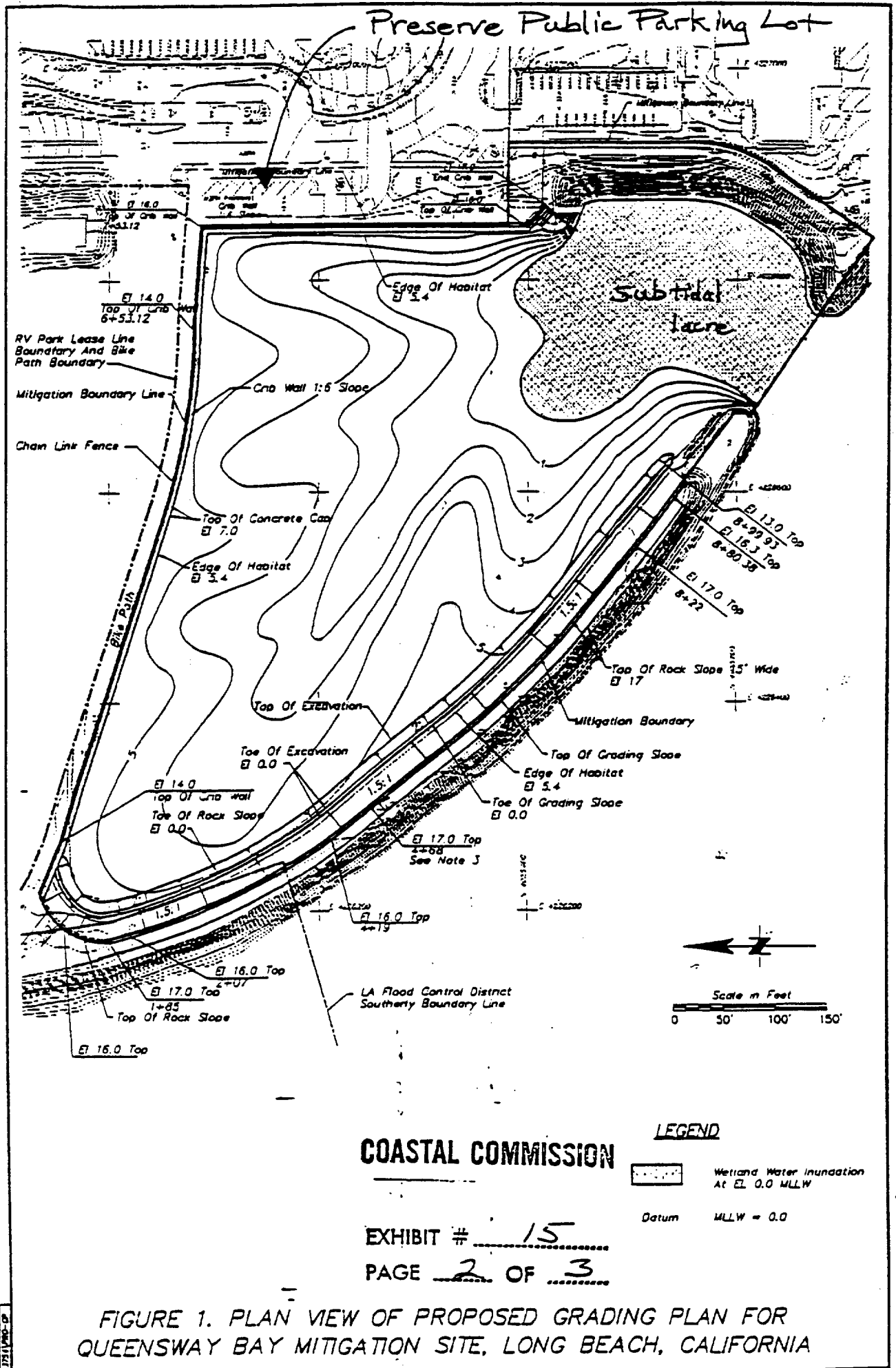


FIGURE 1. PLAN VIEW OF PROPOSED GRADING PLAN FOR QUEENSWAY BAY MITIGATION SITE, LONG BEACH, CALIFORNIA

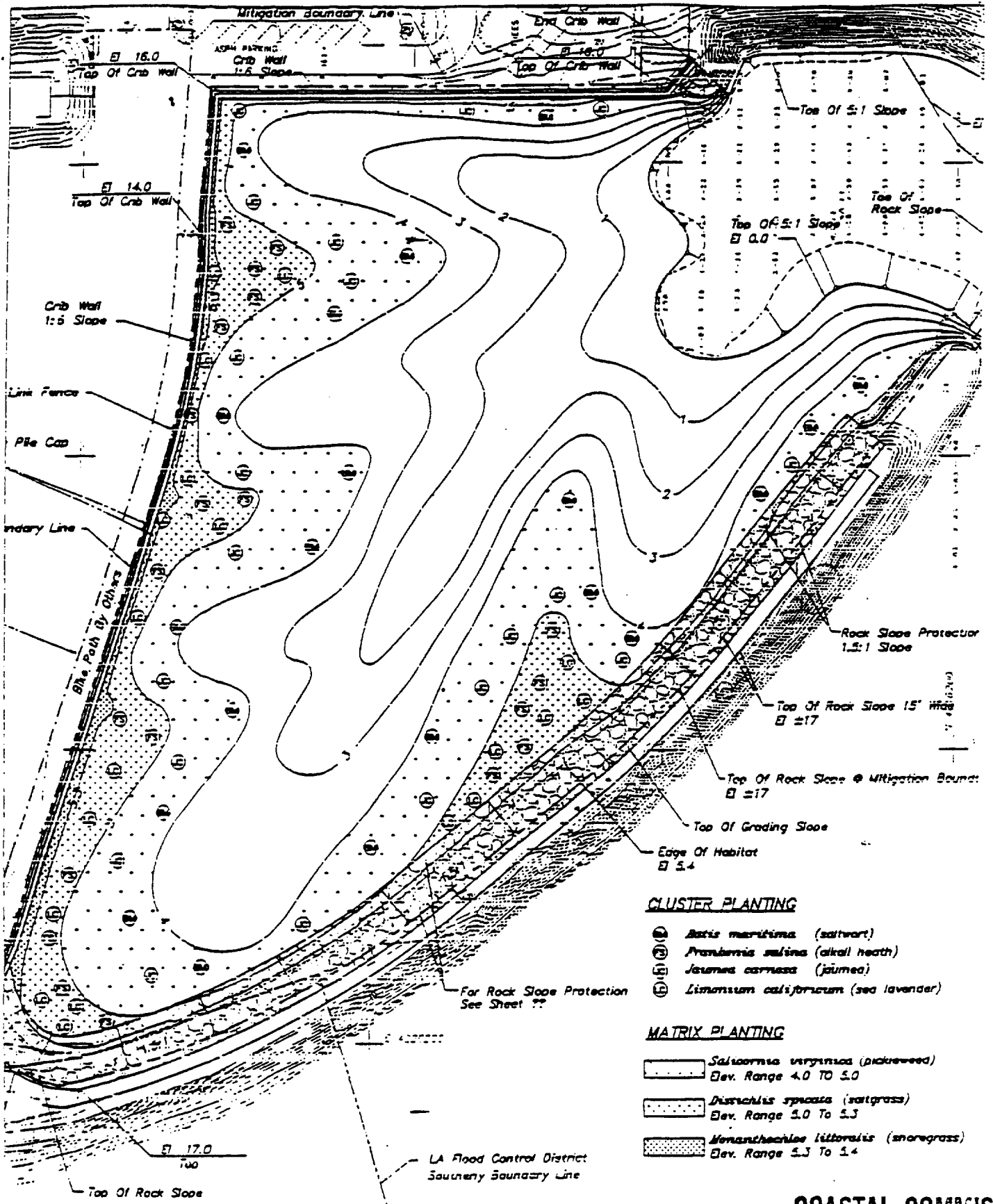


Figure 8: MITIGATION PLANTING PLAN

1 RESOLUTION NO. C- 26100

2
3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH ACCEPTING ALL TERMS AND
5 CONDITIONS OF CALIFORNIA COASTAL COMMISSION
6 COASTAL DEVELOPMENT PERMIT 5-96-124 ISSUED IN
7 CONNECTION WITH THE QUEENSWAY BAY PROJECT
8

9 WHEREAS, on September 12, 1996, the California Coastal
10 Commission granted to the City of Long Beach a Coastal Development
11 Permit to: construct a downtown commercial harbor in Shoreline Park
12 and Lagoon; to reconstruct and improve Shoreline Park; to demolish
13 the Golden Shore public boat launch in order to create a 6.4 acre
14 habitat mitigation area; to transport approximately 109,000 cubic
15 yards of excavated sand to the 8th Place Beach area for beach
16 replenishment; and to dispose of approximately 325,000 cubic yards
17 of dredged materials at the LA-2 offshore disposal site; and

18 WHEREAS, the aforementioned Coastal Development Permit is
19 subject to certain standard and special conditions for development,
20 which conditions are fully set forth in the Notice of Intent to
21 Issue Permit, a copy of which is attached hereto and incorporated
22 herein by this reference; and

23 WHEREAS, it is the City's intent to abide by all terms and
24 conditions of Coastal Development Permit 5-96-124;

25 NOW, THEREFORE, the City Council of the City of Long Beach
26 resolves as follows:

27 Section 1. That the City agrees to accept all terms and
28 conditions of Coastal Development Permit 5-96-124.

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(310) 570-2200

John R. Calloun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(310) 570-2200

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Sec. 2. That the City Manager is hereby authorized and directed to execute an acknowledgment and acceptance of the terms and conditions contained in California Coastal Development Permit No. 5-96-124.

Sec. 3. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify to the vote adopting this resolution.

I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of October 8, 1996, by the following vote:

Ayes:	Councilmembers:	<u>Oropeza, Lowenthal, Drummond,</u>
		<u>Roosevelt, Topsy-Elvord,</u>
		<u>Donelon, Kellogg, Shultz.</u>
Noes:	Councilmembers:	<u>None.</u>
		<u></u>
Absent:	Councilmembers:	<u>Robbins.</u>
		<u></u>

Shelba Powell
City Clerk

MJM:vmh
10/2/96
s:\mais\cc-reso\Queens.per

CALIFORNIA COASTAL COMMISSION

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

**AMENDMENT TO COASTAL DEVELOPMENT PERMIT****5-96-124-A2****page 1 of 2**

August 20, 1997

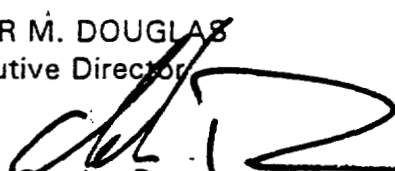
Permit Number 5-96-124 issued to City of Long Beach for:

construct a downtown commercial harbor (Rainbow Harbor) in Shoreline Park and Lagoon, reconstruct and improve Shoreline Park, demolish the Golden Shore public boat launch to create a 6.4 acre habitat mitigation area.

at: 200 W. Shoreline Drive, (Shoreline Park & Rainbow Harbor), City of Long Beach, Los Angeles County has been amended to include the following change: amend previously approved Rainbow Harbor and Shoreline Park project to include minor revisions to the previously approved plans and construction of two public restrooms, concession building, three tensile structures, lighthouse, water feature, informational signs, and light standards.

This amendment will become effective upon return of a signed copy of this form to the Commission office. Please note that the original permit condition unaffected by this amendment are still effect.

PETER M. DOUGLAS
Executive Director

By: 
Title: Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above permit and agree to be bound by the conditions as amended of Coastal Development Permit 5-96-124.

Date: _____

Signature _____

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

5-96-124-A2

Page: 2

SPECIAL CONDITIONS:

No new special conditions are added to the permit by this amendment. However, the original special conditions of Coastal Development Permit 5-96-124 remain in full force and effect.

CP:

96-124-A2

c:\msoffice\winword\template\amend.dot Printed on August 20, 1997

CALIFORNIA COASTAL COMMISSION

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

**IMMATERIAL AMENDMENT**
TO COASTAL DEVELOPMENT PERMIT

November 13, 1998

Permit Number 5-96-124 issued to City of Long Beach for:

Construction of a downtown commercial harbor (Rainbow Harbor) in Shoreline Park and Lagoon, reconstruct and improve Shoreline Park, and demolish the Golden Shore public boat launch in order to create a 6.4 acre habitat mitigation area.

at: 200 W. Shoreline Drive (Shoreline Park & Rainbow Harbor), Long Beach, Los Angeles County has been amended to include the following change: Grant the City a one-year time extension to comply with special condition nine of coastal development permit 5-96-124.

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received. Please note that the original permit condition unaffected by this amendment are still effect.

PETER M. DOUGLAS
Executive Director


By: Charles Posner
Title: Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above permit and agree to be bound by the conditions as amended of Coastal Development Permit 5-96-124.

Date: _____

Signature _____

CALIFORNIA COASTAL COMMISSION

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



5-96-124-A4

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

DATE January 19, 2000

Permit No: 5-96-124

issued to: City Of Long Beach, Attn: City Manager James C. Hankla

for: **One-year time extension to comply with special condition nine of Coastal Development Permit 5-96-124.**

at: **200 W. Shoreline Drive And 199 So. Golden Shore, Long Beach (Los Angeles County)**

has been amended to include the following changes:

One-year time extension (until January 2001) for City compliance with special condition nine of Coastal Development Permit 5-96-124 requiring the construction of a new public boat launch ramp (located on the South Shore of Queensway Bay).

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received or the Commission concurred with the Executive Director's determination of immateriality (Sec. 13166 (b)(2)).

This amendment will become effective upon return of a signed copy of this form to the South Coast Area office. Please note that the original permit conditions are still in effect.

Sincerely,
PETER M. DOUGLAS
Executive Director

By: CHUCK POSNER
Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above amendment and agree to be bound by the remaining conditions of Permit No: 5-96-124.

Date: _____

Signature _____

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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

RECEIVED
South Coast Region



DEC 8 - 2004

AMENDMENT TO COASTAL DEVELOPMENT PERMIT
5-96-124-A5

December 3, 2004
Page 1 of 1

Permit Number 5-96-124 issued to City of Long Beach for:

Construct a downtown commercial harbor (Rainbow Harbor) in Shoreline Park and Lagoon, reconstruct and improve Shoreline Park, and demolish the Golden Shore public boat launch to create a 6.4-acre habitat mitigation area.

At: 100 Aquarium Way, Downtown Shoreline, City of Long Beach, Los Angeles County, has been amended to include the following change:

Install new signage and refurbish an existing water fountain on the Rainbow Harbor Esplanade in order to create the "Rio de la Vida/River of Life" interpretive exhibit. Includes the installation of three new fountain nozzles and a one thousand square foot ceramic mural on the existing fountain walls, placement of granite boulders within the existing fountain area, attachment of two 8'x 1.5' graphic panels to the existing security railing, and erection of two ten-foot high freestanding interpretive signs (2.75'x 5') next to the fountain.

This amendment will become effective upon return of a signed copy of this form to the Commission office. Please note that this permit amendment does not affect the special conditions of Coastal Development Permit 5-96-124 as previously amended, and all previously imposed special conditions still apply to the approved development. No new special conditions are being imposed by this permit amendment.

PETER M. DOUGLAS
Executive Director

By: Charles R. Posner
Title: Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above amendment and agree to be bound by the remaining conditions of Permit No: 5-96-124.

Date: 12/4/04

Signature Barbara Long

EXHIBIT B

CALIFORNIA COASTAL COMMISSION

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

Page: 1 of 4
Date: July 22, 1998
Permit No: 5-98-161



COASTAL DEVELOPMENT PERMIT

On 10 June 1998, the California Coastal Commission granted to City of Long Beach Coastal Development Permit 5-98-161, subject to the attached Standard and Special Conditions, for development consisting of: establishment of on-the-water commercial concessions to be provided by approximately forty vessels operating out of Rainbow Harbor. More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at Rainbow Harbor, Downtown Shoreline, City of Long Beach.

Issued on behalf of the California Coastal Commission on July 22, 1998.

PETER DOUGLAS
Executive Director

By: 
Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CAL. ADMIN. CODE SECTION 13158(a).

_____ Date

_____ Signature of Permittee

Please sign and return one copy of this form to the Commission office at the above address.

COASTAL DEVELOPMENT PERMIT

No. 5-98-161

Page 2 of 4

STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. **Public Boat Docks**

Prior to the issuance of the Coastal Development Permit, the City shall submit a plan which identifies at least 200 linear feet of docking area within Rainbow Harbor which is reserved for short-term public docking as required by Coastal Development Permit 5-96-124. The public docking area shall not be leased or reserved by any individual, business or organization. The vessels which provide the commercial uses permitted by this permit (Coastal

COASTAL DEVELOPMENT PERMIT

No. 5-98-161

Page 3 of 4

Development Permit 5-98-161) shall not be permitted to use the public docking areas. All public docking areas shall be identified with signage which clearly communicates the availability, cost and time limits of the public docking facilities.

2. Public Parking

All parking spaces within the Shoreline Park parking lot shall be reserved for the use of the general public and shall be available for use on a first-come, first-served basis. There shall be no reserved parking spaces or exclusive use of the parking spaces within the Shoreline Park public parking lot by any person or group other than the general public (handicapped spaces excluded).

3. Temporary Trailer

A 440 square foot trailer may be placed in the Shoreline Park public parking lot on a temporary basis for the administration of fishing and diving boat expeditions operating at Pierpoint Landing in Rainbow Harbor. The trailer must be removed from the Downtown Shoreline area prior to September 15, 1998. The Executive Director may grant an extension to the September 15, 1998 deadline for good cause.

4. Shoreline Park and Rainbow Esplanade

The commercial uses and associated activities permitted by this permit (Coastal Development Permit 5-98-161) shall not interfere with public use or access to Shoreline Park and the Rainbow Esplanade. The park and esplanade areas shall be kept free of any barriers which could impede public access through the area, or impede public use of the area.

5. Leases to Private Operators

The lease of any dock area in Rainbow Harbor to private operators shall explicitly incorporate the terms and conditions of Coastal Development Permits 5-96-124 and 5-98-161. Such leases shall incorporate provisions for use, public access and public recreation consistent with all terms and conditions contained in Coastal Development Permits 5-96-124 and 5-98-161.

6. Assumption of Risk

By acceptance of this Coastal Development Permit, the City agrees that:
(a) the site may be subject to extraordinary hazard from storms, waves, floods, and earthquake induced liquefaction; and (b) the City hereby waives

COASTAL DEVELOPMENT PERMIT

No. 5-98-161

Page 4 of 4

any future claims of liability against the Commission its successors in interest for damage from such hazards.

CP:bll

98161per.doc.

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Exhibit C
Permit Area



Jayme S. Wilson, d.b.a. Spirit Cruises

Dock 9