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November 14, 2011

Planning Commission
City of Long Beach
333 W. Ocean Blvd.
Long Beach, CA 90802

Re: Application of Seaport Marina LLC/David Malmuth Development LLC for Site Plan Review, Tentative Subdivision Map, Standards Variance and Local Coastal Development Permit approval (Second + PCH Application No. 0904-09)
Planning Commission Hearing: November 17, 2011 - Regular Agenda Item 2

Honorable Commissioners:

The comments and requests that follow I make on behalf of the Los Cerritos Wetlands Land Trust (LCWLT). The LCWLT provided comments concerning the adequacy of the Draft and the Final Environmental Impact Report. To the extent that those comments are relevant to the current proceeding, they are incorporated herein by reference. The focus of this communication is to urge you to recognize your responsibilities procedurally and substantively under the California Coastal Act.

We recognize that you are forwarding to the City Council recommendations concerning potential amendments to the General Plan, the Local Coastal Program (LCP) and the SEADIP Ordinance. Those recommendations do not change the standards you are charged with applying as you consider the pending application. Until changed, the current certified LCP controls both land use and zoning. Put simply, the applicant has asked you to approve a Coastal Development Permit (CDP) for a project that violates current law.

In due course, the City Council may authorize your Planning staff to submit an application to the Coastal Commission for certification of the LCP amendment you recommended it approve. Nevertheless, that does not absolve you of your responsibility to apply the law as it now exists. Further, there are reasons why ignoring the law at this stage is a bad idea. Please consider the following:

1. The law requires any Coastal Development Permit you issue to be consistent with the City's certified LCP. State law as well as Chapter 21.25, Division IX of the Long Beach Municipal Code includes this requirement.
2. On page 5 of the proposed Site Plan Review Findings appears the following finding: "The proposed development conforms to the certified local coastal program . . ."

3. The proposed development may conform “to the recommended LCP text amendment” as asserted in the Findings, but it is not consistent with the City’s current certified LCP. The proposed finding is unsupported by the record and contradicted by the facts.
4. Without major changes to the project or to the certified LCP, approval of the project by the City will be legally indefensible.
5. For any amendment to an LCP to be effective, the California Coastal Commission must approve the amendment. As a former Chair of that Commission and as a long time Commission observer, I cannot recall a single instance in which the Coastal Commission approved a major amendment without first requiring significant changes.
6. Under the circumstances, it is extremely unlikely that the Coastal Development Permit the applicant has asked you to approve will ever be issued.
7. Before the Coastal Commission is able to certify an amendment to the LCP, under the Permit Streamlining Act the applicants may require the City to act on the application. Therefore, it would be appropriate for you to deny the application until the Coastal Act issues the LCP amendment raises have been resolved.
8. If you elect to approve a CDP not allowed by the City’s certified LCP, at the very least you should condition that approval so that no permit will be issued until and unless the project meets the requirements of a certified LCP.
9. The applicants have expended time and money pursuing development entitlements to which they are not now legally entitled. If they had asked the City to update that portion of the City’s LCP that affects their property before seeking development entitlements, they could have designed a project consistent with rules that the City would administer. If the City approves the current application, unfortunately for both the City and the applicants, the Coastal Commission on appeal, rather than the City, may deny the project or dictate the conditions required for its approval.

In summary, regardless of your LCP amendment recommendations, the LCWLT believes it is premature for the City to approve a Coastal Development Permit for this project because it violates the requirements of the City’s certified Local Coastal Program.

Yours very truly,



Melvin L. Nutter