

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Th 15a

DATE: May 26, 2011

TO: Commissioners and Interested Persons

FROM: Jack Ainsworth, Deputy Director
Steve Hudson, South Central Coast District Manager
Barbara Carey, Supervisor, Planning and Regulation
Amber Tysor, Coastal Program Analyst

SUBJECT: **Notice of Impending Development (NOID) 1-011**, for Peninsula Yacht Anchorage Reconstruction, for Public Hearing and Commission Action at the June 16, 2011 Commission Meeting in Marina del Rey.

SUMMARY AND STAFF RECOMMENDATION

The Ventura County Harbor Department proposes to replace 201 boat slips with 179 new slips ranging in size from 19 feet to 80 ft. in length, demolish and replace dock infrastructure, including placement of new piers, abutments, and gangways, new dock boxes, and electrical utility systems located at the Peninsula Yacht Anchorage recreational boating marina, 3700 Peninsula Road, Oxnard, Ventura County. The new dock system will meet accessibility requirements of the Americans with Disabilities Act (ADA) and related state requirements. Modern fire suppression systems will be used. The project does not include any landside components and only includes the marina lease area.

The required items necessary to provide a complete Notice of Impending Development (NOID) were received in the South Central Coast Office on May 10, 2011 and the notice was deemed filed on May 17, 2011.

Staff is recommending that the Commission determine that the impending development **is consistent** with the certified Channel Islands Harbor Public Works Plan (PWP) if modified pursuant to **four (4) special conditions** regarding: (1) removal of construction equipment and debris, (2) approval of resource agencies, (3) in-lieu fee, and (4) bird surveys and monitoring. As conditioned, the project is consistent with all resource protection policies and provisions of the Public Works Plan. See associated Motion and Resolution beginning on **Page 2**. The standard of review for the proposed NOID is conformity with the policies of the certified PWP.

I. PROCEDURAL ISSUES

Sections 30605 and 30606 of the Coastal Act and Title 14, Sections 13357(a)(5), 13359, and 13353-54 of the California Code of Regulations govern the Coastal Commission's review of subsequent development where there is a certified PWP. Section 13354 requires the Executive Director or his designee to review the Notice of Impending Development (or development announcement) within five working days of receipt and determine whether it provides sufficient information to determine if the proposed development is consistent with the certified PWP. The notice is deemed filed when all necessary supporting information has been received.

Pursuant to Section 13359 of Title 14 of the California Code of Regulations, within thirty working days of the project proponent's filing of the Notice of Impending Development, the Executive Director shall report to the Commission the pendency of the development and make a recommendation regarding the consistency of the proposed development with the certified PWP. After public hearing, by a majority of its members present, the Commission shall determine whether the development is consistent with the certified PWP and whether conditions are required to bring the development into conformance with the PWP. No construction shall commence until after the Commission votes to render the proposed development consistent with the certified PWP.

II. STAFF RECOMMENDATION:

MOTION: *I move that the Commission determine that the development described in Ventura County Harbor Department Notice of Impending Development 1-11 (Peninsula Yacht Anchorage), as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a determination that the development described in the Notice of Impending Development 1-11, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DETERMINE DEVELOPMENT IS CONSISTENT WITH PWP:

The Commission hereby determines that the development described in the Notice of Impending Development 1-11, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan for the reasons discussed in the findings herein.

SPECIAL CONDITIONS:

1. Removal of Construction Equipment and Debris

The applicant shall remove all staging equipment and all construction related debris from the staging site within sixty (60) days of completion of all development authorized under Ventura County Harbor Department NOID 1-11.

2. Resource Agencies

The Ventura County Harbor Department shall comply with all requirements, including required mitigation measures, from 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 the marine environment including bird nesting and foraging activity. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a new Notice of Impending Development pursuant to the requirements of the Coastal Act and the California Code of Regulations.

3. In-Lieu Fee

The Harbor Department must ensure that the in-lieu fee submitted to the Channel Islands Harbor Foundation for this development is used for scholarships for youths to participate in boating programs, for purchase of sail training vessels, funding for transportation to bring youths to the Harbor, and for other similar programs to enhance lower cost boating opportunities. Information detailing the in-lieu fees that have been collected, the lower cost boating programs developed and operated, and the number of people participating in such programs shall be provided to the Commission in the annual report, required by PWP Waterways and Boating Policy 12, submitted to the Commission for review and approval by the Executive Director.

4. Bird Surveys and Monitoring

A qualified independent biologist or environmental resource specialist shall prepare biological surveys of trees on and adjacent to the project site (within 500 feet of any construction activities), just prior to any construction activities, and once a week upon commencement of construction activities that include grading or use of other heavy equipment, and that will be carried out between December 1st and September 30th, inclusive. Such surveys shall identify the presence of black-crowned night herons, great blue herons, snowy egrets, or other sensitive species in or near the project site. All surveys conducted pursuant to this condition shall be submitted to the Executive Director of the Coastal Commission.

In the event that the surveys identify any black-crowned night herons, great blue herons, snowy egrets, or other sensitive species exhibiting reproductive or nesting

behavior on or adjacent to the project site (within 500 feet of any construction activities), then the following measures shall be included in the development:

Within 300 feet of any identified active nesting sites, noise monitors shall be present during all pile driving, concrete demolition, or other hardscape demolition. Noise generated by construction (including but not limited to pile driving) shall not exceed 65 dB at any point in time, at any active nesting site. If construction noise exceeds the standard above, sound mitigation measures shall be employed. If these sound mitigation measures do not reduce noise levels within 48 hours, construction within 300 feet of the tree shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.

A qualified independent monitor, approved by the Executive Director, shall be present on site during such construction to measure noise levels. During construction, noise reduction measures such as sound shields shall be used and measures taken to minimize loud noise generation to the maximum extent feasible. Bright upward shining lights shall not be used during construction and construction employees shall be prohibited from bringing pets (e.g., dogs and cats) to the construction site.

III. FINDINGS FOR APPROVAL OF THE NOTICE OF IMPENDING DEVELOPMENT, AS CONDITIONED

The following findings support the Commission's approval of the Notice of Impending Development, as conditioned. The Commission hereby finds and declares as follows:

A. PROJECT DESCRIPTION AND BACKGROUND

The Ventura County Harbor Department proposes to replace 201 boat slips with 179 new slips ranging in size from 19 feet to 80 ft. in length, demolish and replace dock infrastructure, including placement of new piers, abutments, and gangways, new dock boxes, and electrical utility systems located at the Peninsula Yacht Anchorage recreational boating marina, 3700 Peninsula Road, Oxnard, Ventura County. (Exhibits 1-2) The new dock system will meet accessibility requirements of the Americans with Disabilities Act (ADA) and will include wider docks. The new dock system will be constructed of "Unifloat" concrete floating docks and pre-stressed concrete anchor guide piles. Modern fire suppression systems will be utilized, as well as new dock boxes and other modern dock amenities. The 130 slips on the east side of Peninsula Yacht Anchorage will not be replaced and will remain as is.

Access to the marina is from a public walkway around the end of a portion of the peninsula. No landside development is proposed, as the marina is held as a separate leasehold from the adjacent landside parcel. The Casa Sirena Hotel and Lobster Trap restaurant (both now closed for business) and a parking lot are located at the end of the

peninsula adjacent to the Peninsula Yacht Anchorage boating marina. The parking lot is used by the marina tenants, and was formerly also used by hotel and restaurant patrons.

The marina presently contains 201 slips that will be replaced and reconfigured to create 179 slips, as follows:

Table A

Existing Slips		Proposed Slips	
# of Slips	Length in Feet	# of Slips	Length in Feet
2	19	1	19
44	25	1	21
68	30	1	24
4 (2 end ties)	33	2	26
35 (1 end tie)	35	1	28
2 (end ties)	40	1	30
1 (end tie)	43	1	31
1 (end tie)	45	1	33
31	50	1	34
1 (end tie)	53	36	35
3 (1 end tie)	59	1	36
8	65	2	38
1	90	2	39
		32	40
		2	41
		4	42
		4	43
		3	44
		36	45
		2	46
		3	47
		4	48
		2	49
		3	50
		1	51
		1	53
		2	54
		1	55
		1	56
		1	58
		2	59
		1	61
		1	62
		1	63
		2	64
		3	65
		2	67
		3	68
		1	70
		2	71
		1	72
		1	73
		2	74

Existing Slips		Proposed Slips	
# of Slips	Length in Feet	# of Slips	Length in Feet
		1	75
		1	77
		1	78
		1	80
201	Total Slips	179	Total Slips

The Commission previously approved the minor expansion of the pierhead/lease line, east and west of the peninsula, for this parcel in the recent Channel Islands Harbor Public Works Plan Amendment for the waterside portion of the harbor in February 2008 (revised findings certified by the Commission on October 16, 2008). Additionally, the uses of the site are not proposed to change and will be consistent with the uses designated in the Public Works Plan. The Public Works Plan designates this lease area as Visitor Serving Boating (“V.S.B.”). The permitted uses for V.S.B. on the water include: boat storage, boat and boating equipment rental, sales, display, brokerage and minor repair services. The site will continue to be used as a recreational boating marina.

The construction staging area will be located on the east side of the Harbor, adjacent to the old public launch ramp and incorporated with the existing staging area for Channel Islands Harbor Marina. Construction of the docks will take place at the staging area and will be floated across the channel to be installed at the site. A small landside construction staging area will be located in the adjacent parking area, located on the peninsula just north of the slips. All construction areas are proposed to be fenced and secured and will include storm water control measures.

Great blue herons and black-crowned night herons have used the trees on the peninsula for roosting and nesting in the past. (Exhibit 4) No trees are proposed to be removed as part of this marina reconstruction project.

The Harbor Department has included in its submittal a list of 39 conditions, “PYA Marina Replacement of Marina, Including Docks and Gangway, County of Ventura Harbor Department Conditions of Approval, NOID Dated April 27, 2011.” (Exhibit 3). These conditions incorporate the policies contained in the Channel Islands Harbor Public Works Plan Amendment 1-07 (revised findings certified by the Commission on October 16, 2008). The Harbor Department’s conditions relate to: low cost boating (condition 5 and condition 39), biological resources (condition 36), surveys for caluerpa taxifolia (condition 38), eelgrass surveys (condition 37), a water quality management plan (condition 33), material for pilings (condition 20), best management practices (condition 25), construction and maintenance responsibilities and debris removal (condition 15), a marina inspection and maintenance program (condition 34), lighting (condition 9), and construction staging (condition 30). (Exhibit 3)

Background

On September 19, 1986, the Channel Islands Public Works Plan (PWP) was effectively certified by the Commission. The purpose of the PWP, as certified, is to provide “a detailed and specific planning document to guide future Harbor development.”

Jurisdiction within the Channel Islands Harbor is shared by both the County of Ventura and the City of Oxnard. Oxnard's City limits extend to all Harbor land areas. Based on a previous agreement between the two governmental authorities and the Commission's certification of the Public Works Plan, the County assumed planning and regulatory authority within the Harbor. Under the certified PWP, the County is responsible for approval of all development within the Harbor permitted by the plan. Under the PWP the County must submit a Notice of Impending Development (NOID) describing any proposed development that is listed in the plan, for review and approval by the Commission. For a project contained in the certified PWP, the Commission's review of a Notice of Impending Development is limited to determining whether the development is and can be made consistent with the PWP, or imposing reasonable terms and conditions to ensure that the development conforms to the PWP.

Requirements for the level of information contained in a Public Works Plan are contained in Section 13353 of Title 14 of the California Code of Regulations, which states that a PWP "shall contain sufficient information regarding the kind, size, intensity and location of development activity intended to be undertaken pursuant to the plan." Such information includes: 1) the specific type of activity or activities proposed to be undertaken; 2) the maximum and minimum intensity of activity or activities proposed to be undertaken; 3) maximum size of facilities proposed to be constructed pursuant to the plan; and 4) the proposed location or alternative locations considered for any development activity or activities to be undertaken pursuant to the proposed plan. The Coastal Act envisions that a Public Works Plan functions more as a Specific Plan or a master development permit in order for specific projects or activities described in the PWP to be approved quickly through the Notice of Impending Development Process at later dates with minimal review. Activities, projects, or facilities not specifically proposed in a Public Works Plan in the level of detail described above may require an amendment to the certified PWP that must be approved by the Coastal Commission prior to approval and issuance of a Notice of Impending Development for said activity, project, or facility.

The standard of review for the Notice of Impending Development is the certified PWP (originally certified in 1986 and more recently amended). The PWP contains policies and provisions that identify areas for harbor development while protecting coastal resources including the marine environment, scenic and visual resources, and public access and recreation.

B. RECREATIONAL BOATING

The certified Channel Islands Harbor PWP incorporates by reference Coastal Act Sections 30213, 30220, 30224, and 30234, to protect and promote recreational boating and commercial fishing facilities in the Harbor.

Section 30213 states (in part):

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30220 states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30224 states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30234 states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

In addition, the **Recreational Boating** policies in the Public Works Plan protect visitor-serving opportunities.

Policy 2 states:

2. To provide for, protect and encourage increased recreational boating use of coastal waters, the following policies shall be implemented:

- a. Harbor recreational boating facilities shall be protected, and where possible upgraded in order to provide further opportunity to the recreational boater;**
- a. dry boat storage spaces shall be provided on Parcel P to accommodate a minimum of 400 vessels;**
- b. water storage space shall be provided for at least 2,500 recreational boat slips**
- c. no more than 30% of the Harbor land area shall be developed for visitor serving uses not directly related to boating;**

- d. a target number of 5% of the recreational boat slips shall be available as guest slips*
- e. to protect the recreational character of the Harbor areas, no more than 5% of the boating supply shall be provided for live-aboard use;*
- f. the existing open water areas in the inner Harbor, as depicted on the Land Use Map as “Waterways” (Figure IV) shall not be developed with surface structures of any kind, floating or otherwise, except in cases of emergency here temporary structures are required, or unless authorized pursuant to an amendment to the Public Works Plan certified by the California Coastal Commission.*

Further, the following **Waterways and Boating** policies in the Public Works Plan also protect low-cost recreational boating:

9. Extension of Boat Slips

The maximum extent of new or reconstructed boat slips shall extend no farther than waterside parcel line as depicted on the Master Plan Marina Map, Appendix E.

10. Slip Size Distribution for New or Reconstructed Marinas

The following slip size distribution standards shall apply to the Channel Islands Harbor overall:

A. A minimum of 25% of the total number of slips shall be 32 ft. or under in length.

B. A minimum of 25% of the total number of slips shall be 32 ft., 1 in. – 38 ft. in length.

The County shall maintain an up-to-date harbor-wide accounting of the total number of slips existing and approved through NOIDs, with a breakdown by slip size category (including slips in Categories A and B, and slips over 38 ft. in length).

Any NOID for the development or redevelopment of marinas shall include an analysis of harbor-wide conformance, including the proposed development or redevelopment, with the slip size distribution standards. At no time shall a NOID for the development or redevelopment of marinas result in the provision of less than 23% of slips in Category A or less than 23% in Category B, harbor-wide.

11. The development or redevelopment of marinas shall protect, encourage, and where feasible, provide lower cost visitor boating opportunities.

12. Low Cost Boating

a. The development or redevelopment of marinas or boat slips (not including commercial fishing or commercial sport fishing slips) shall include the provision of an in-lieu fee to the County, or a non-profit organization acceptable to the Executive Director of the Coastal Commission, to be used for scholarships for youths to participate in boating programs, for purchase of sail training vessels, funding for transportation to bring youths to the Harbor, and for other similar programs to enhance lower cost boating opportunities. A NOID submitted for the development or re-development of marinas or boat slips shall include a calculation of the applicable in-lieu fee and a detailed description of the lower cost boating program that the fee will be provided to.

b. The in-lieu fee shall be the equivalent financial value of one 30-foot boat slip (based upon the listed per-foot rental rate posted at the marina on July 1 of each year for 30-foot slips) for each 100 slips of 32 feet 1 inch in length and over that are redeveloped. For marinas containing fewer than 100 slips over 32 feet 1 inch in length, the in-lieu fee shall be prorated based on the number of slips. The payment of the in-lieu fee to the County will commence upon completion of the marina redevelopment construction and continue annually, throughout the course of the ground lease.

c. The Harbor Department shall provide (or shall cause the appropriate non-profit organization to provide) an annual report, for the review and approval of the Executive Director of the Coastal Commission, detailing the in-lieu fees that have been collected, the lower cost boating programs developed and operated, and the number of people participating in such programs. The report shall be provided annually, no later than January 15th of each year for the proceeding calendar year.

The project includes replacing 201 existing slips with 179 new slips ranging in size from 19 feet in length to 80 feet in length. (see Table A above). The minor dock expansion and lease line extension into the waterway at this site was approved by the Commission under PWPA 1-07 ("Master Plan Marina Map") in October 2008. The certified PWP designates the water portion of the Peninsula Yacht Anchorage marina as visitor serving boating (V.S.B.). The purpose of the visitor serving boating designation is to provide "access to and storage of boats, and where launch facilities exist, to provide for the entry and removal of boats from (or to) the waters of the Inner Harbor." The waterside permitted uses of this designation are "boat storage, boat and boating equipment rental, sales, display, brokerage, and minor repair services. The reconstruction of the Peninsula Yacht Anchorage meets the stated purpose in the certified PWP to provide visitor serving boating facilities and will continue to be used as a recreational boating marina.

Additionally, in compliance with Policy 10 above, the Harbor Department has provided an analysis of harbor-wide conformance of slip-size distribution standards, including the proposed marina redevelopment. The Harbor's analysis conforms to Policy 10 because the redevelopment of the marina does not result in the provision of less than 23% of

slips in Category A (32' or under), nor less than 23% in Category B (32'1" to 38'), harbor-wide. The existing slip mix includes 153 slips that are 38 feet and under in length and the proposed slip mix includes 49 slips that are 38 feet and under in length. After reconstruction of the Peninsula Yacht Anchorage, the harbor wide slip mix will be as follows:

Table B

Slip Size	# Change	Total Number	Proposed Percentage
32' or under	-145	770	35.10%
32' 1"- 38'	+2	528	24.10%
38' 1" and over	+85	894	40.80%
Total Slips		2189	100%

Further, according to Waterways and Boating Policy 12, the redevelopment of the marina requires an in-lieu fee to be used for scholarships for youths to participate in boating programs, for purchase of sail training vessels, funding for transportation to bring youths to the Harbor, and for other similar programs to enhance lower cost boating opportunities. The Harbor Department, as part of the NOID submittal, has provided a calculation (according to Policy 12 b, above) of the applicable in-lieu fee and a detailed description of the lower cost boating program that the fee will be provided to.

According to the Harbor Department, the per-foot rate for a 30 foot slip in this marina on July 1st, 2010 was \$14.00 per foot, or \$420.00 per month, which is \$5,040.00 per year. The proposed slip mix for new slips is detailed in Table A above. The number of slips that are over 32 feet that will be redeveloped is 87. Thus, the amount of the fee is prorated based on the number of slips. Therefore, the in-lieu fee will be \$4,384, which is 87% of the yearly amount of \$5,040.00 for a 30-foot boat slip. The Harbor Department will recalculate the fee prior to authorizing occupancy of the completed marina using the slip rate in effect as of July 1 of the year the marina is completed.

In compliance with Public Works Plan Waterways and Boating Policy 2.a., the Harbor Department has included a detailed description of the lower-cost boating program the fee will be provided to. According to the Harbor Department, the in lieu fees will be collected by the Channel Islands Harbor Foundation, the County-designated 501(c)(3) non-profit that promotes marine education and encourages public interaction with the marine environment. The Harbor Department states that the fees will be used by the Channel Islands Harbor Foundation for youth sailing programs. However, the Commission finds that use of the fee for the junior lifeguard program is not consistent with Policy 12 of the PWP, above, because the junior lifeguard program is not a low-cost boating program as the policy requires. Thus, **Special Condition 3** is required to assure that the fee will only be used for low-cost boating opportunities for youths.

Therefore, as conditioned, the Notice of Impending Development is consistent with the recreational boating policies of the certified Public Works Plan.

C. COASTAL ACCESS

In addition to the recreational provisions mentioned above, the certified Channel Islands Harbor PWP incorporates by reference Coastal Act Sections 30211 and 30212 to ensure that maximum public access and recreational opportunities be provided to allow use of dry sand and rocky coastal beaches and that development not interfere with the public's right to access the water, consistent with the need to protect public safety, private property and natural resources.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except where:

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

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected.

Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Further, the **Public Access and Recreation** Chapter of the PWP provides protections for public access.

Policy 2 states:

Public access from the closest public roadway to the shoreline or along the waterfront shall be provided in new development or redevelopment projects, unless:

a. to do so would jeopardize the public safety, military security needs, or the adequate protection of fragile coastal resources;

b. sufficient access exists nearby.

The County will designate a public or private agency which shall be responsible for the operation, maintenance and liability of dedicated accessways prior to the approval of any new development or redevelopment projects. Actual improvements to accessways shall be completed and operational prior to the completion of new development or redevelopment.

Policy 5 states:

Maximum pedestrian waterfront access shall be provided by incorporating waterfront pedestrian walkways into all redevelopment projects. Where existing structures are found to interfere with lateral shoreline access, walkways shall be located as close as possible to the water. All walkways shall be linked with adjacent walkways in order to insure uninterrupted pedestrian movement. A promenade walkway shall be provided along the Harbor frontage for all new development.

The proposed project involves reconstruction of the Peninsula Yacht Anchorage marina. No public walkway is proposed at this site because the parcel leased for the marina only includes the waterside lease area. There is an existing sidewalk from the west end of the marina to the marina office, which is the eastern building on the very end of the peninsula. The remainder of the area is accessible to the public and the marina tenants from the parking lot. A dedicated public walkway would be required upon any landside redevelopment near this site.

Thus, the Commission finds that the proposed project will not result in any adverse impacts to public access to and along the waterways in the Harbor and that this Notice of Impending Development is consistent with applicable public access policies of the Channel Islands PWP.

D. VISUAL RESOURCES

The certified Channel Islands Harbor PWP incorporates by reference Coastal Act Section 30251, which seeks to protect the visual and scenic qualities of coastal areas as a resource of public importance.

Coastal Act Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the

Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition, Policy 22 under Public Access and Recreation, Visual Access in the certified PWP states:

To enhance visual quality and ensure that new development and redevelopment activity does not impede views to the water area from the roadway to and from the waterfront and inland Harbor area, the following measures shall be implemented by the County:

a. A view corridor shall be defined as that area between the roadway and the roadway and the water which is not occupied by buildings, solid walls or fences, or landscaping which might interfere with the view of the water or water surface activity from the roadway.

b. A view corridor shall be measured from the linear distance paralleling the nearest public road.

c. At least 25% of the Harbor shall provide a view corridor that is to be measured from the first main road inland from the water line, which shall be at least 25 feet in width. View corridors shall be landscaped in a manner that screens and softens the view across any parking and pavement areas in the corridor. This landscaping, however, shall be designed to frame and accentuate the view, and shall not significantly block the view corridor. All redevelopment shall provide maximum views. Other than the proposed Boating Instruction and Safety Center (BISC) identified in this plan, no new development within a designated view corridor shall occur without an amendment to the Public Works Plan.

d. Future building or redevelopment in the Harbor shall not exceed 2 stories or 25 feet in height or 35 feet on parcel V-1 at the corner of Victoria and Channel Islands Boulevard. Height shall be measured from the centerline of the frontage road.

The public views of the harbor waterways from public viewing areas in the harbor will not be adversely affected by the proposed development. Although the docks will be expanding slightly into the channel, the project will replace an existing outdated marina with a new marina in the same location. The impacts from this additional development over the waterway were evaluated the part of the recent Public Works Plan Amendment 1-07 for the waterside portion of the harbor. To minimize lighting impacts from this new portion of the marina, the Harbor Department has included the following condition as part of its approval of the project to minimize view impacts:

9. Prior to installation of any lighting, a lighting plan shall be submitted to the Harbor Department showing type of fixtures, heights, and intensity of illumination. Lighting fixtures shall be cut-off type fixtures that divert lighting

downward onto the property and shall not cast light onto adjacent property, adjacent roadways or adjacent waterways.

Additionally, **Special Condition 1** requires the applicant to remove all staging equipment and all construction related debris from the staging site within sixty (60) days of completion of all development authorized pursuant to NOID 1-11.

Therefore, the Commission finds that, as conditioned by the Harbor Department, the proposed Notice of Impending Development for the Peninsula Yacht Anchorage marina reconstruction is consistent with the applicable visual resource protection policies of the certified Public Works Plan.

E. BIOLOGICAL RESOURCES

The certified Channel Islands Harbor PWP incorporates by reference Sections 30240, 30230, and 30231 of the Coastal Act. Section 30240 provides for the protection of Environmentally Sensitive Habitat Areas. Sections 30230 and 30231 of the Coastal Act mandate that marine resources and coastal water quality shall be maintained and where feasible restored.

Section 30240 of the Coastal Act States:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

In addition, Policy 2 under Biological Resources in the Public Works Plan states:

Use of the marine environment shall be permitted to the extent that it does not adversely impact the biological productivity of Harbor and coastal waters.

The Channel Islands Harbor Public Works Plan contains policies to protect marine and biological resources and environmentally sensitive habitat areas in and around Harbor waters. The proposed project is for the redevelopment of the existing Peninsula Yacht Anchorage marina. This development has the potential to adversely impact marine and biological resources during the construction phase of the project.

1. Nesting Birds

Policy 9 in Biological Resources of the Public Works Plan states:

All new marina development or redevelopment shall minimize impacts to sensitive bird species, including but not limited to black-crowned night herons, great blue herons, snowy egrets, and other sensitive bird species.

The presence of these bird species is important because some species of herons and egrets are considered Sensitive Species and play an integral role in the ecosystem as top wetland predators.

The proposed project is located on the north-south oriented peninsula in the middle of Channel Islands Harbor. Great blue herons and black-crowned night herons have been documented nesting and roosting in trees on the peninsula, particularly near the Casa Sirena Hotel, adjacent to the project site. Dr. Jeffrey Froke, the Harbor Department's biologist has conducted surveys of trees within Channel Islands Harbor to identify locations of great blue heron and black-crowned night heron nests, and nests of other sensitive species, since 2003. The most recent bird survey, prepared by Dr. Jeffrey Froke on September 23, 2008, documented 15 Great blue heron nesting sites on the peninsula and 3 nests on the west side of the harbor. (Exhibit 4) The closest known

nesting site is approximately 50 feet from the Peninsula Yacht Anchorage marina. The Harbor Department has proposed to comply with all policies in the certified PWP related to marine and biological resources, as well as to comply with approvals and mitigation measures required by other resource agencies. In order to minimize impacts to birds from construction and has included condition 36, which requires bird surveys, as part of its approval. (Exhibit 3)

However, **Special Condition 4** is necessary in order to ensure that the bird surveys are consistent with Policy 10 of the certified PWP. **Special Condition 4** requires a qualified independent biologist or environmental resource specialist to prepare biological surveys of trees on and adjacent to the project site (within 500 feet of any construction activities), just prior to any construction activities, and once a week upon commencement of construction activities that include grading or use of other heavy equipment, and that will be carried out between December 1st and September 30th, inclusive. Such surveys are required to identify the presence of black-crowned night herons, great blue herons, snowy egrets, or other sensitive species in or near the project site. All surveys conducted pursuant to this special condition are required to be submitted to the Executive Director of the Coastal Commission. In the event that the surveys identify any black-crowned night herons, great blue herons, snowy egrets, or other sensitive species exhibiting reproductive or nesting behavior on or adjacent to the project site (within 500 feet of any construction activities), then **Special Condition 4** requires that, within 300 feet of any identified active nesting sites, noise monitors must be present during all pile driving, concrete demolition, or other hardscape demolition. Noise generated by construction (including but not limited to pile driving) shall not exceed 65 dB at any point in time, at any active nesting site. If construction noise exceeds the standard above, sound mitigation measures shall be employed. If these sound mitigation measures do not reduce noise levels within 48 hours, construction within 300 feet of the tree shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.

Additionally, according to **Special Condition 4**, a qualified independent monitor, approved by the Executive Director, is required to be present on site during such construction to measure noise levels. During construction, noise reduction measures such as sound shields shall be used and measures taken to minimize loud noise generation to the maximum extent feasible. Bright upward shining lights shall not be used during construction and construction employees shall be prohibited from bringing pets (e.g., dogs and cats) to the construction site.

2. Resource Agencies

In addition, in order to ensure that the proposed project is consistent with all California Department of Fish and Game and other agency regulations, **Special Condition Two (2)** requires the applicant to agree to comply with all requirements and mitigation measures from the California Department of Fish and Game, United States Army Corps of Engineers, US Fish and Wildlife Service, and the Regional Water Quality Control Board prior to commencement of construction.

The proposed redevelopment of the marina has the potential to impact marine biological resources. As conditioned, however, the Commission finds that the proposed Notice of Impending Development is consistent with the biological policies of the certified PWP.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Harbor Department, in its role as lead agency for the PWP and the NOID for purposes of the California Environmental Quality Act (“CEQA”),¹ has determined that the project is categorically exempt from the provisions of CEQA, under CEQA Guidelines Section 15302. 14 C.C.R. § 15302 (“Replacement or Reconstruction”); see *also* CEQA section 21084 (authorizing promulgation of regulations listing categorical exemptions). For CEQA purposes, the Commission’s role with respect to this project is that of a responsible agency. Despite the lead agency’s determination of categorical exemption for the project, the Commission has separately considered the potential environmental impacts of the project as it would be characterized under both CEQA and the Coastal Act. As an agency with a certified regulatory program under CEQA section 21080.5, the Commission regularly assesses whether its approval of a project, as modified by any conditions of approval, is consistent with the provisions in CEQA Section 21080.5(d)(2)(A) that a proposed project not be approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect the activity may have on the environment. As in other contexts, the Commission has considered that question here.

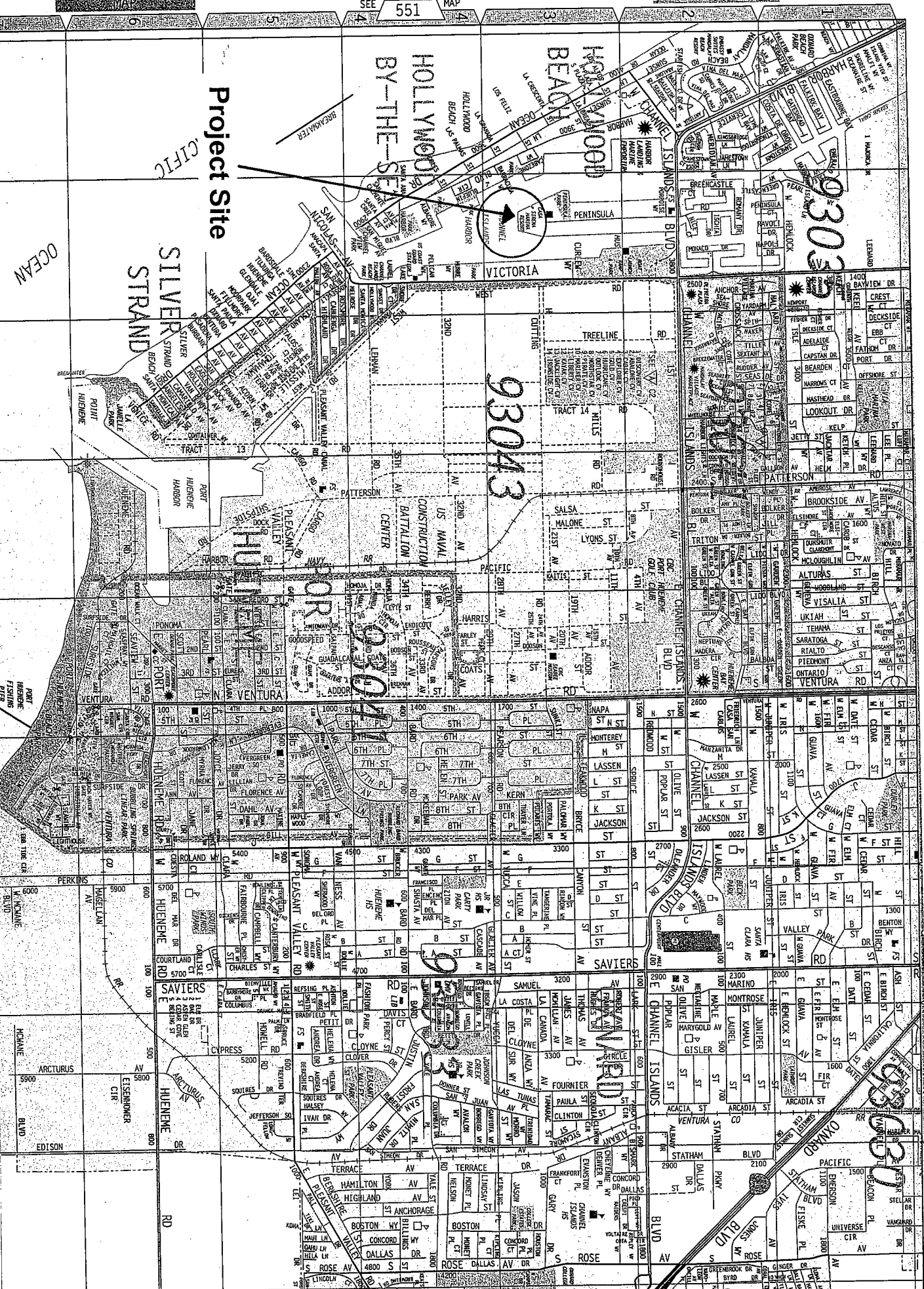
The Commission has imposed conditions upon the Notice of Impending Development to include such feasible measures as will reduce environmental impacts of new development. The Commission incorporates its findings on Coastal Act and PWP consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development approved by this NOID, as conditioned, is consistent with the policies of the certified PWP. Feasible mitigation measures that will minimize all adverse environmental impacts have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, that would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the Notice of Impending Development, as conditioned herein, is consistent with CEQA Section 21080.5(d)(2)(A), and the applicable provisions of the Public Works Plan.

¹ Cal. Pub. Res. Code (“PRC”) §§ 21000 *et seq.* All further references to CEQA sections are to sections of the PRC.

0 0.25 0.5 1.0 miles 1 in. = 2400 ft.

SEE 386 MAP

EXHIBIT 1
CI Harbor NOID 1-11 (Peninsula Yacht Anchorage)
Vicinity Map



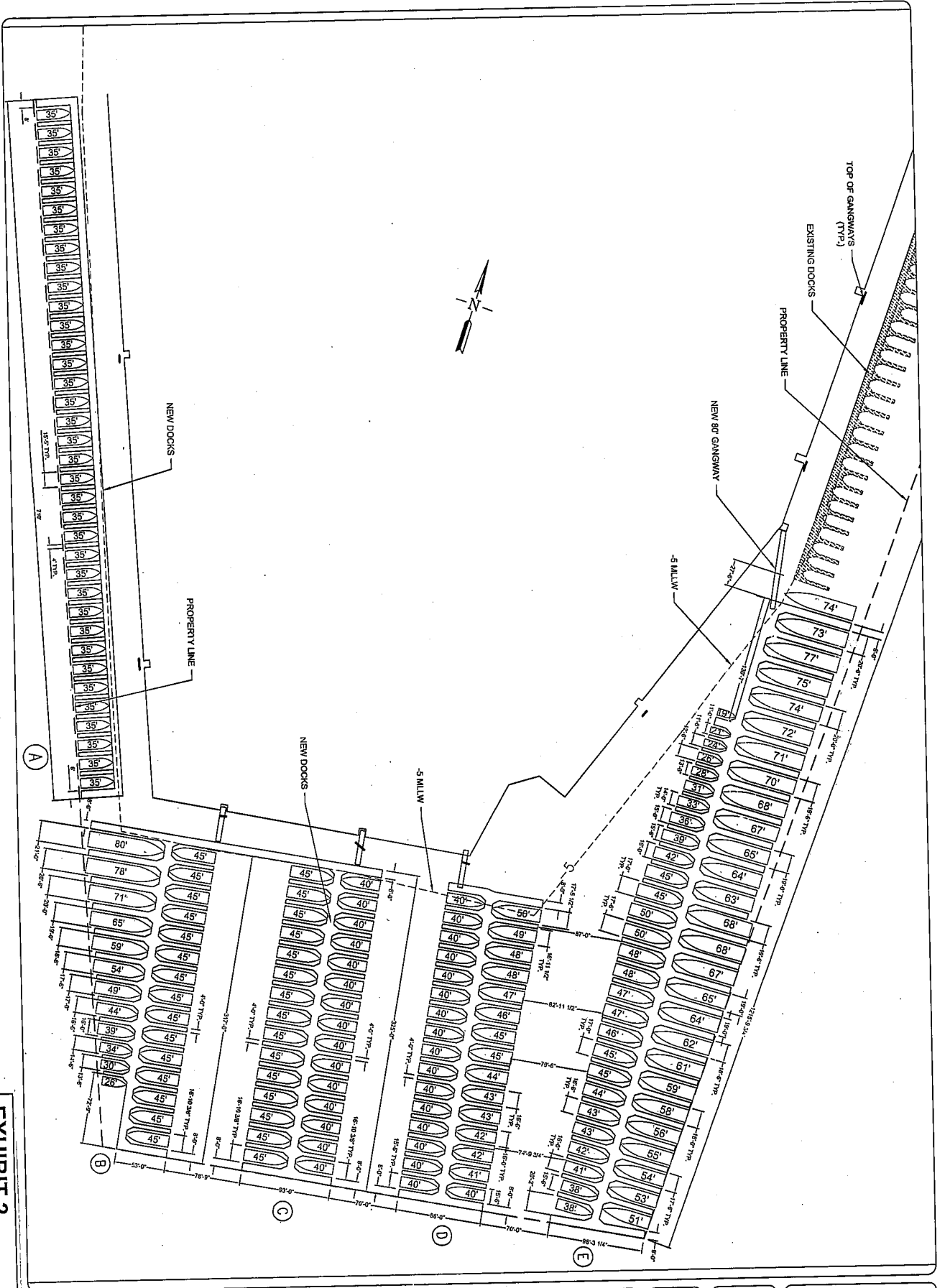


EXHIBIT 2
CI Harbor NOID 1-11 (Peninsula
Yacht Anchorage)
Site Plans

Drawn By: KGI/D
 Checked By: No Scale
 Date: 05-03-11
 Sheet: 1

Revisions:

Job No. ---
 Overall Layout
 05-03-11

Peninsula Yacht
 Anchorage
 Ventura, California

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**PYA MARINA REPLACEMENT OF MARINA, INCLUDING
DOCKS AND GANGWAY
COUNTY OF VENTURA HARBOR DEPARTMENT
CONDITIONS OF APPROVAL
NOID Dated April 27, 2011**

1. Prior to submitting plans to the City of Oxnard for a building permit, the Lessee shall submit to the Harbor Department for approval a full set of plans for construction of the slips and the gangways, abutments, utility system, and all other plans. Building permits will not be issued until Harbor Department approval is obtained. The plans submitted to the City of Oxnard shall substantially conform to the plans approved as a part of this Notice of Impending Development.
2. Prior to submitting any plans for a building permit, the lessee shall submit for approval by the Harbor Department, a plan that shows the exact locations of all utility boxes and utility structures, including backflow devices.
3. Any modifications to the plans after approval of the Harbor Department shall also be approved by the Harbor Department. Copies of the approved plans shall be provided to the Harbor Department in both paper and electronic format.
4. A copy of these conditions shall be reproduced on the initial pages of the plans submitted for approval to the City of Oxnard for building permit issuance.
5. Prior to issuance of any building permits, the Lessee shall submit to the Harbor Department an exact calculation and comparison of slips removed and slips. The Harbor Department shall submit, for the review and approval of the Executive Director of the California Coastal Commission, an analysis of harbor-wide conformance, including the proposed project, with the following slip size distribution standards: (a) a minimum of 25% of the total number of slips shall be 32 ft. or under in length; and (b) a minimum of 25% of the total number of slips shall be 32 ft. 1 in. to 38 ft. in length. At no time shall this project result in the provision of less than 23% of slips in Category A or less than 23% in Category B, harbor-wide.
6. Gangway, abutment, security devices, entry gates, electrical boxes, and other marina-associated structures shall be located off of any area intended for public walkway and the walkway shall be left clear for public access.
7. No materials classified as flammable, combustible, radioactive, carcinogenic, or otherwise potentially hazardous to human health shall be handled, stored

EXHIBIT 3

**CI Harbor NOID 1-11 (Peninsula
Yacht Anchorage)**

**Harbor Department Conditions of
Approval**

or used on the project property, except as provided by a permit issued by the City of Oxnard or County of Ventura Fire Departments.

8. All Fire Department approvals to ensure access and the availability of water for fire combat operations to all areas of the project shall be obtained prior to final occupancy.
9. Prior to installation of any lighting, a lighting plan shall be submitted and approved by the Harbor Department showing type of fixtures, heights, and intensity of illumination. Lighting fixtures shall be cut-off type fixtures that divert lighting downward onto the property and shall not cast light onto adjacent property, adjacent roadways or adjacent waterways.
10. All lighting, public walkways, signage, landscaping, or other public amenity installed as a part of this marina replacement shall conform to the design standards and guidelines adopted for the Harbor by the Ventura County Board of Supervisors or as approved by the Harbor Department prior to submitting for a building permit.
11. Lessee's contractor shall ensure that all construction equipment is maintained and tuned to meet applicable Environmental Protection Agency (EPA) and California Air Resources Board (CARB) emission requirements. At such time as new emission control devices or operational modifications are found to be effective, lessee's contractor shall immediately implement such devices or operational modifications on all construction equipment.
12. Lessee's contractor shall minimize the number of vehicles and equipment operating on site at the same time.
13. At all times during construction activities, lessee's contractor shall minimize the area disturbed by clearing, grading, earth moving, or excavation operations to prevent excessive amounts of dust.
14. Adjacent streets and public access ways shall be kept free from debris and lessee's contractor shall sweep or clear areas daily as necessary.
15. Construction and Maintenance Responsibilities and Debris Removal
 - a) No Demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
 - b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to ESHA, wetlands or their buffers.

- c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
 - d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
 - e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
 - f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
 - g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located within the coastal zone, a separate Notice of Impending Development shall be required before disposal can take place.
 - h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
 - i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 - j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
 - k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
 - l) The least damaging method shall be used for the construction of pilings and any other activity that will disturb benthic sediments. The suspension of benthic sediments into the water column shall be minimized to the greatest extent practicable.
 - m) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction related materials, and to contain sediment or contaminants associated with demolition or construction activity shall be implemented prior to the onset of such activity.
 - n) All BMPs shall be maintained in a functional condition throughout the duration of the project.
16. Any alteration of rock slope resulting from removal of old gangway support abutments shall be restored to its original footprint and shall not extend further into Harbor waters.

17. Prior to driving new piles and installing new slip structures, Lessee shall have a diver inspect the Harbor bottom and map existing debris, including old pilings, docks, floats, concrete, pieces of boat equipment, and any other material deemed to be a hazard to navigation by the Harbor Department. Lessee shall have this debris removed prior to final approval of the new marina by the Harbor Department.
18. Construction staging areas shall be screened and protected to avoid material being blown or washed into the harbor. Screening material shall be approved by the Harbor Department. Lessee shall limit outdoor storage of materials to the locations shown and all construction material shall be stored within the staging area. Construction staging area shall remain locked and secured when not in use.
19. Machinery or demolition/construction materials not essential for the project are prohibited at all times in the subtidal and intertidal zones.
20. The use of wood piles is prohibited.
21. Silt curtains shall be utilized to control turbidity during placement and removal of all piles.
22. Existing piles shall be removed as soon as possible after dock removal to reduce hazards to boat traffic in the area.
23. Floating booms and silt curtains shall be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
24. Divers shall recover non-buoyant debris discharged into coastal waters as soon as possible after loss.
25. Erosion control/sedimentation BMPs shall be used to control sedimentation impacts to coastal waters during project staging, demolition and construction. BMPs designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with the construction activities shall be implemented prior to the onset of such activity. These BMPs shall include, but are not limited to: storm drain inlets must be protected with sandbags or berms, all stockpiles must be covered, the storage, application and disposal of pesticides, petroleum and other construction chemical materials must be managed and controlled, and adequate sanitary and waste disposal facilities must be provided. BMPs shall include a preconstruction meeting to review procedural and BMP guidelines.

26. Temporary erosion control measures shall be implemented should construction or site preparation cease for a period of more than 30 days. These temporary erosion control measures shall be monitored and maintained until demolition or construction operations resume.
27. The areas to be disturbed by construction activities, including any temporary access roads, staging areas, and stockpile areas, shall be delineated.
28. At the end of the demolition/construction period, the Lessee shall have divers inspect the project area, including the path across the channel from the construction site to the staging site, and ensure that no debris, trash or construction material has been left on the shoreline or in the water, and that the project has not created any hazard to navigation. All debris, including old floats, pilings, pieces of docks, boat material and any other debris that has accumulated on the bottom shall be removed prior to final occupancy approval.
29. Hours of construction shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday, and not allowed on Sunday or holidays without prior approval of the Harbor Department.
30. Signage shall be provided to notify the public when access to public sidewalks will be blocked because of construction. Signage will indicate alternate routes.
31. Lessee is responsible for removing all graffiti from the project site within 24 hours and restoring the surface to match the existing.
32. Adequate trash facilities and pick-ups shall be provided to maintain the site free of debris, food waste, and to minimize scavenger birds.
33. Water Quality/Best Management Practices Program: Prior to final approval of the project construction, Lessee shall develop and submit for approval by the Harbor Department, a detailed Water Quality/Best Management Practices (BMP) Program for controlling adverse impacts to water quality resulting from operation of the public boating facilities. The plan shall demonstrate that boating in the project area will be managed in a manner that protects water quality and that persons or employees maintaining boats in slips or using slips on a transient basis are made aware of water quality provisions. The plan shall include, at a minimum, the following provisions:
 - a) Boat Maintenance Best Management Practices

- i. Clean boat hulls above the water line and by hand. Where feasible, remove the boats from the water and perform cleaning at a location where debris can be captured and disposed of properly.
 - ii. Detergents and cleaning products used for washing boats shall be phosphate-free and biodegradable, and amounts used shall be kept to a minimum.
 - iii. Detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye shall not be used.
 - iv. In-the-water hull scraping or any process that occurs underwater to remove paint from the boat hull shall be minimized to the maximum extent possible.
 - b) **Solid Waste Best Management Practices Related to Boat Maintenance**
 - i. Boat maintenance and cleaning shall be performed above the water line in such a way that no debris falls into the water.
 - ii. Clearly marked designated work areas for boat repair and maintenance shall be provided. Work outside of designated areas shall not be permitted.
 - iii. Hull maintenance areas, if provided, shall be cleaned regularly to remove trash, sanding dust, paint chips and other debris.
 - iv. Public boat facility patrons shall be provided with property disposal facilities, such as covered dumpsters or other covered receptacles.
 - v. Receptacles shall be provided for the recycling of appropriate waste materials.
 - c) **Hazardous Waste Best Management Practices**
 - i. Storage areas for hazardous wastes, including old gasoline or gasoline with water, oil absorbent materials, used oil, oil filters, antifreeze, lead acid batteries, paints, and solvents shall be provided, or, information shall be provided to public boat owners on where and how such materials may be disposed of.
 - ii. Containers for used anti-freeze, lead acid batteries, used oil, used oil filters, used gasoline, and waste diesel, kerosene, and mineral spirits which will be collected separately for recycling shall be provided in compliance with local hazardous waste storage regulations and shall be clearly labeled.
 - iii. Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes.
 - d) **Sewage Pump Out System Best Management Practices:** Adequate sewage pump out facilities to serve the proposed development shall be provided to prevent the overboard disposal of untreated sewage within the project area and surrounding waters.

- e) **Public Education Measures:** The Lessee shall distribute the Water Quality Management Plan to all users of the boat docks. Informative signage describing and/or depicting Best Management Practices for maintenance of boats and boating facilities consistent with those specified herein shall be posted conspicuously.
34. **Marina Inspection and Maintenance Program:** Lessee shall cooperate in periodic and regular inspections of the marina facilities that are the subject of this NOID. The Lessee will be immediately required to undertake any repairs necessary to maintain the structural integrity of the docks, pilings and utility connections, and to ensure that pieces of debris do not enter the marine environment. On a revolving five year basis, following the date that the first dock is installed, the Harbor department shall conduct an inspection of the marina to ensure the integrity of the docks, pilings and utility connections, and to ensure that all corrective actions have or will immediately be undertaken to maintain the integrity of the facility. Lessee shall cooperate with all inspections and repairs.
35. The Lessee shall comply with all requirements, requests and mitigation measures from 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 the marine environment including nesting and foraging activities. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Harbor Department in order to determine if the proposed change will require a new permit.
36. **Biological Surveys:** A qualified independent biologist or environmental resources specialist with appropriate qualifications acceptable to the Harbor Department and the Executive Director of the Coastal Commission shall be retained to conduct biological surveys of trees on and adjacent to the project site (within 500 feet of any construction activities), just prior to any construction activities, and once a week upon commencement of construction activities that include grading or use of other heavy equipment, and that will be carried out between December 1st and September 30th, inclusively. Such surveys shall identify the presence of black-crowned night herons, great blue herons, snowy egrets, or other sensitive species in or near the project site. All surveys conducted pursuant to this condition shall be submitted to the Harbor Department and the Executive Director of the Coastal Commission.

In the event that the surveys identify any Black Crown Night Herons, Great Blue Herons, Snowy Egrets, or other sensitive species exhibiting reproductive or nesting behavior on or adjacent to the project site (within 500 feet of any

construction activities), then the following measures shall be included in the development:

Within 300 feet of any identified active nesting sites, noise monitors shall be present during all pile driving, concrete demolition, or other hardscape demolition. Noise generated by construction (including but not limited to pile driving) shall not exceed ambient noise levels at the construction site and in no case shall construction noise exceed 65 dB at any point in time, at any active nesting site. If construction noise exceeds the standard above, sound mitigation measures shall be employed. If these sound mitigation measures do not reduce noise levels within 48 hours, construction within 300 feet of the tree shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.

A qualified independent monitor, approved by the Harbor Department and the Executive Director, shall be present on site during such construction to measure noise levels. During construction, noise reduction measures such as sound shields shall be used and measures taken to minimize loud noise generation to the maximum extent feasible. Bright upward shining lights shall not be used during construction and construction employees shall be prohibited from bringing pets (e.g. dogs and cats) to the construction site.

37. Eelgrass Surveys:

- a) Preconstruction Eelgrass Survey. A valid preconstruction eelgrass survey shall be completed during the period of active growth of eelgrass (typically March through October). The preconstruction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The Lessee shall submit the new eelgrass survey to the Harbor Department who shall submit it to the Executive Director of the California Coastal Commission within five working days of completion of the new eelgrass survey and in any event no later than fifteen working days prior to commencement of construction. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the harbor Department shall immediately notify the Harbor Department, who shall then notify the Executive Director of the Coastal Commission.

- b) Post Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection a) of this condition above, within one month after the conclusion of construction the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The Lessee shall submit the post-construction eelgrass survey to the Harbor Department who shall submit it to the Executive Director of the Coastal Commission within third days after completion of the survey. If any eelgrass has been impacted, the Lessee shall replace the impacted eelgrass at a minimum 1.2:1 ratio onsite, or at another location, in accordance with the southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exception to the required 1.2:1 mitigation ratio found within the SCEMP shall not apply. Implementation of mitigation shall require a new Notice of Impending Development unless the Executive Director of the Coastal Commission determines that no new Notice of Impending Development is required.

38. Preconstruction *Caulerpa Taxifolia* Survey

- a) Not earlier than 90 days nor later than 30 days prior to commencement or recommencement of any development authorized under this NOID, the Lessee shall undertake for submittal to the Harbor Department a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia* or other non-native aquatic species. The survey shall include a visual examination of the substrate.
- b) The survey shall be prepared consistent with the survey protocol required by the Southern California Caulerpa Action Team (SCCAT).
- c) Within five business days of completion of the survey, the Harbor Department will submit the survey for review and approval of the Executive Director of the California Coastal Commission and to the Surveillance Subcommittee of the SCCAT.
- d) If *Caulerpa taxifolia* or other non-native invasive aquatic species is found within the project site or buffer area, the applicant shall not proceed with the project until: 1) the Lessee provides evidence to the Harbor Department and the Executive Director of the California Coastal Commission that all *C. taxifolia* discovered within the project site and/or buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to, those of the California Coastal Act; or 2) the Lessee has

revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur unless the Harbor Department and the Executive Director of the California Coastal Commission is immediately notified.

39. Low Cost Boating In-lieu Fee. Prior to sign off of the dock construction, and before occupancy of the slips, a fee shall be paid by the Lessee to the Harbor Department to fund scholarships for youth participation in boating programs, for purchase of sail training vessels, and other low cost boating opportunities provided by non-profit organizations approved by the Harbor Department. The in-lieu fee shall be the equivalent financial value of one 30-foot boat slip (based upon the listed per-foot rental rate posted at the marina on July 1 of each year for 30-foot slips) for each 100 slips of 32 feet 1 inch in length and over that are redeveloped. When fewer than 100 slips are over 32 feet 1 inch in length, the in-lieu fee shall be prorated based on the number of slips. The payment shall continue annually, throughout the course of the lease. The Lessee shall include an explanation of how the fee was calculated to meet the above requirement.



CALIFAUNA

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HERON PROJECT UPDATE

Project: Channel Islands Harbor
Period: June - September 2008
Date: Tuesday, 23 September 2008

INTRODUCTION

This report covers an extended period of the 2008 heron nesting season, from 15 May (mid-season) to 24 September (end-of-season). Specific field days were 06 June, 12 July, 20 August, and 21 September 2008. The previous past reports of this year covered the entire early nesting season. The next report, planned for December of this year, will provide a complete season-long description, analysis and detailed (nest-tree use) mapping of the 2008 heron nesting season.

OBSERVATIONS

Great Blue Herons: On 6 June, there was a minimum of 15 pairs and 36 nestlings occupying 15 nests on the Peninsula. The nests were divided thusly: seven around the boat anchorage parking lot and eight across the street on the grounds of Casa Sirena. By 12 July, there were three remaining active nests in the Harbor area, all on the Peninsula. Then occupying the three Peninsula nests was a minimum of 4 nestlings (chicks and pre-fledglings).

On 20 August, there were two pre-fledge nestlings branching in the NE corner group of palms next to the boaters' parking lot, next to the Lobster Trap, and two others, each occupying a palm nest in the same area. Across the road at Casa Sirena, a pair of GBH pre-fledge nestlings still occupied the group of three nests in a Monterey Pine at Casa Sirena. These birds may have been fledglings, which frequently will return to reoccupy their natal sites for an "extra" week or two. Finally, by 21 September, there were no longer any nestlings known to occupy nests in the harbor area.

Black-crowned Night-Herons: On 6 June, there were at least five begging nestlings in three nests: two in the SE cypress island at the Peninsula Road roundabout, and three in the two nests

EXHIBIT 4

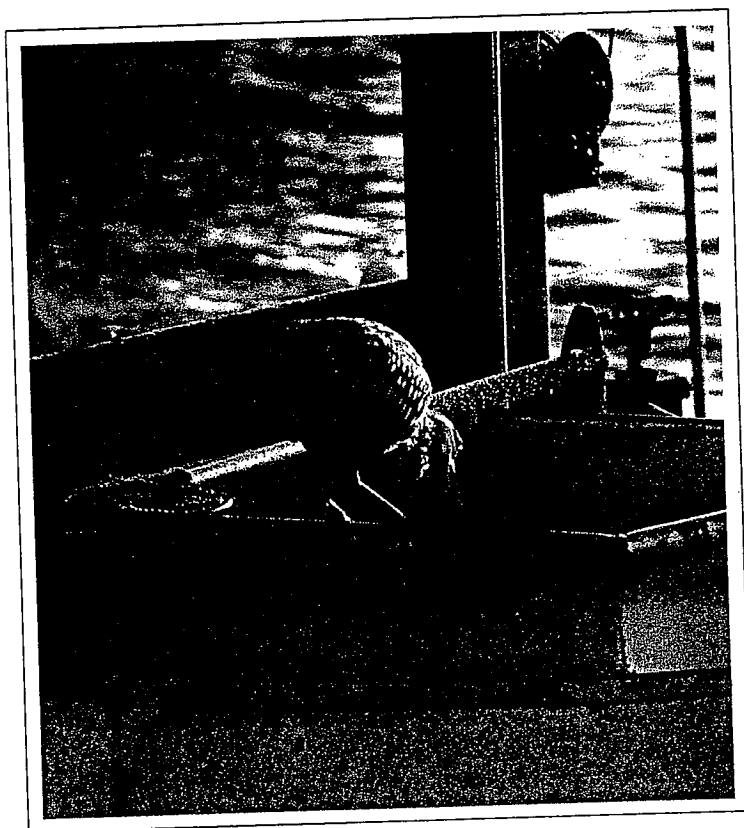
**CI Harbor NOID 1-11 (Peninsula
Yacht Anchorage)**

Bird Surveys

CALIFAUNA

(one in each of two trees) adjacent to the Vintage Yacht Sales Office on the Westside. On 12 July, four adults (likely 2 pairs) and four pre-fledglings occupied two nests, one each in the two cypress trees next to the Vintage Yacht Sales on the Westside (Harbor Blvd.). On 20 August, two pre-fledge nestlings were branching in the cypress trees in the SE island adjacent to the boaters' parking lot. Finally, by 21 September only two adults were observed occupying any nests of the just-ended nesting season, these in one of the nests located by the Vintage office.

JBF





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01 June 2008

To: Lyn Krieger

Cc: Andi Culbertson, Marilyn Miller

Re: **HERONRY REPORT FOR APRIL & MAY 2008**

The following information, including a current nest map, is based on my most recent observations and data for nesting herons within the Channel Islands Harbor environment. Reported observations were made on **20 April** and **13 May 2008**. My last report to you was dated 07 April 08 and represented observations of 01 April 2008. I will be onsite for a June survey on the 5th).

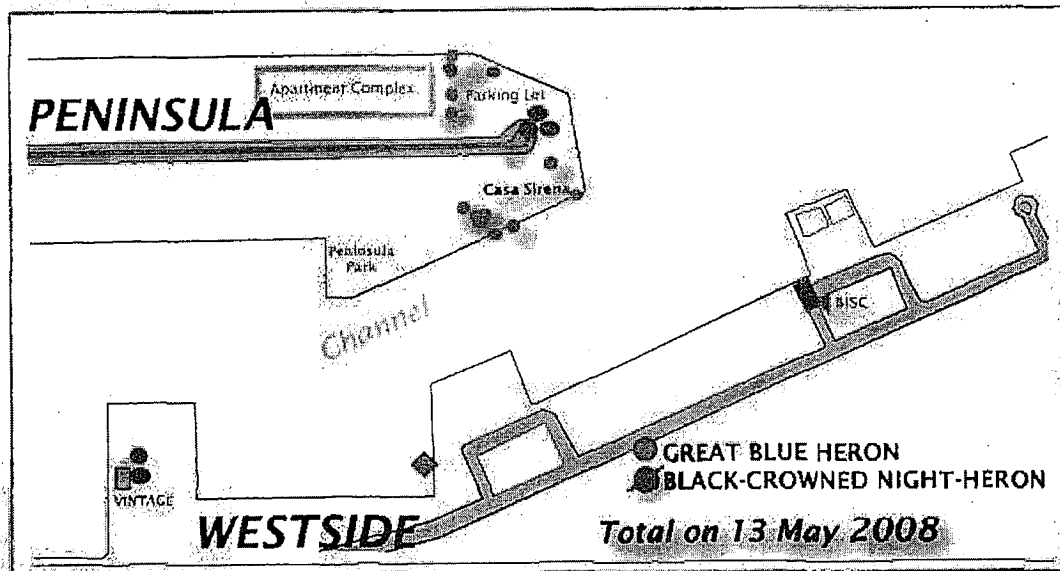
Westside (Harbor Blvd.) -- On 20 April, there were two BCNHs, one adult and one juvenile (2007 hatch) perched and walking about in the canopies of two adjacent cypress trees near the Vintage Marina Yacht Sales building, on the Westside. No direct evidence of nesting was seen in April; but in May, two additional (2nd & 3rd confirmed) adult BCNH were observed, one standing by the nest in the tree closest to the building and the other setting inside the nest in the second tree (both nests were caked with fresh guano, indicating ongoing nest use). Although not seen, it is reasonable to expect that one additional adult (female) may have been in the first nest, brooding. Total Westside nests = 2 (BCNH).

Peninsula -- Nine (9) heron nests in eight trees were confirmed to be active on the Peninsula, on 01 April. Nearly three weeks later, on 20 April, there were 10 active nests situated in nine trees. Of these, four were in and around Casa Sirena (palms and the central Monterey Pine), and the other six were in trees surrounding the anchorage parking lot (one cypress w/ BCNH; and five palms w/ GBH). By May, there were still the two active nests (BCNH) at Vintage Marina, plus three BCNH nests in the southern group of three cypresses next to the anchorage parking lot (total = 5 BCNH). Also in May, there was a total of 14 GBH nests, distributed as eight at Casa Sirena and six in the palms around the anchorage parking lot (*see attached map*).

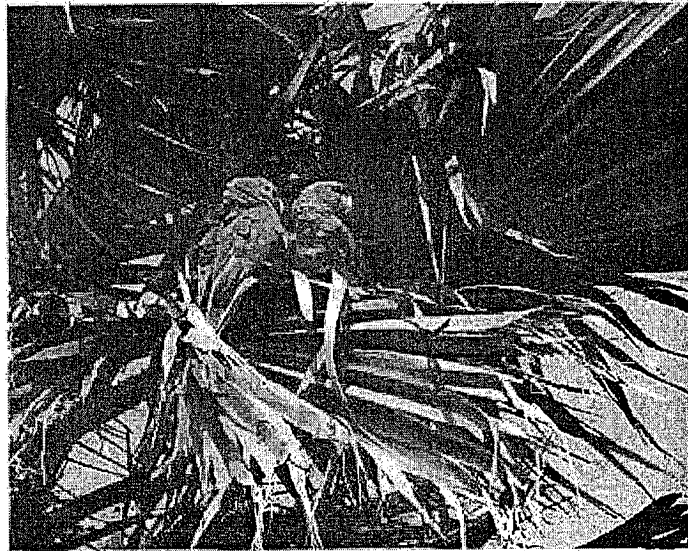
The locations of all (19-20+)* active nests discovered during April and May are identified on the following CIH Heronry Map. ([*]) without knowing the specific identities of all nesting birds, it is not possible to determine the true number of nesting pairs, or nesting efforts within the heronry. Therefore, the number of nests (or, nestings), whether successful, could exceed the instant number of active nests at any one time. *Total active nests confirmed @ CIH, 13 May 08: BCNH (5); GBH (14).*

2008 HERON SEASON

HERON NEST ATLAS FOR CHANNEL ISLANDS HARBOR HERONRY, 2003-2008



Two parrots occasionally seen (and heard!) near the Marine Emporium Landing (◆ above) are Lilac-crowned Amazon (right) and Red-lored Amazon (left)



JB Froke