

**CALIFORNIA COASTAL COMMISSION**

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Commission Action:

**CONSOLIDATED STAFF REPORT  
SUBSTANTIAL ISSUE DETERMINATION FOR APPEAL  
AND  
COASTAL DEVELOPMENT PERMIT APPLICATION**

**COMMISSION APPEAL NO.:** A-4-SBV-01-093

**APPLICATION FILE NO.:** E-01-006

**LOCAL GOVERNMENT:** City of San Buenaventura

**LOCAL DECISION:** Approved ACDP-389, with denial of appeal

**APPLICANT:** Ventura Port District

**PROJECT LOCATION:** 1431 Spinnaker Drive, Ventura, Ventura County,  
within Ventura Harbor.

**PROJECT DESCRIPTION:** Upgrading a fueling system at a fuel pier used by  
commercial fishing vessels.

**APPELLANT OF LOCAL PERMIT:** Mr. Lou Merzario

**SUBSTANTIVE FILE DOCUMENTS:** See Appendix A

## SYNOPSIS

This staff report evaluates proposed repairs to a marine fuel pier used by commercial fishing vessels in Ventura Harbor. In 1998, the Ventura Fire Department determined that the pier's existing fuel system did not meet state safety codes, and therefore closed the pier. The Ventura Port District proposes to install the equipment needed to bring the facility into compliance and allow it re-open at the same level of service it provided before the closure.

The proposed project is located within the jurisdiction of both the City of San Buenaventura (the City) and the Commission, and will require a coastal development permit (CDP) from each. The landward elements of the project, which include upgrading existing fuel tanks, replacing fuel lines and installing new sumps and a leak detection panel, are under the City's jurisdiction. Elements of the project that are on the pier over tidal waters and therefore subject to the Commission's retained jurisdiction include replacement of a fuel line and a fuel dispenser.

This marine fueling facility was part of a harbor development proposal authorized through several CDPs in the early and mid-1980s. It most recently served commercial fishing vessels in Ventura Harbor.

In January 2001, the Ventura Port District applied for CDPs from both the City and the Commission. On March 6, 2001, the City issued a conditional CDP for the part of the project in its jurisdiction. Mr. Lou Merzario appealed the City's decision to the Commission. This staff report evaluates both the appeal and the permit application before the Commission.

The appeal contends that the CDP issued by the City was based on inadequate evaluation of the project, a flawed CEQA process, and abuse of discretion by the Ventura Port District. The staff does not believe these contentions constitute valid grounds for appeal before the Commission under Section 30603(b)(1) of the Coastal Act. The staff therefore recommends that the Commission find that the appeal raises no substantial issue with respect to the project's conformity with the certified local coastal program (LCP).

In addition, staff recommends that the Commission approve that portion of the proposed project that lies within the Commission's retained permit jurisdiction and is the subject of CDP application E-01-006. Staff has determined that the proposal, as conditioned, will comply with Sections 30210 and 30212.5 (public access and recreation), Section 30234 (commercial fishing and recreational boating), and Section 30232 (oil spill prevention, containment, and cleanup).

In order to ensure the project results in approximately the same level of use as occurred previously and does not increase impacts to coastal resources, **Special Condition 1** clarifies that the proposal is to upgrade an existing facility to allow the same intensity of use that existed before the closure, and states that proposals to add new equipment or change the intensity of use of the facility will require a new CDP or an amendment to this CDP.

**Special Condition 2** requires that before fuel is stored or transferred from the facility, the applicant provide the Executive Director copies of other approvals needed from the U.S. Coast Guard, the California Office of Spill Prevention and Response and Regional Water Quality Control Board, and the City for facility operations. These approvals include Best Management Practices necessary to avoid or minimize fuel spills and to contain, respond to, and clean up spills if they occur.

***Staff Recommendations***

This report includes two staff recommendations:

- 1) that the Commission find that the appeal raises no substantial issue with respect to the consistency of the CDP issued by the City of Ventura with the LCP; and,
- 2) that the Commission conditionally approve the permit for elements of the project subject to the Commission's retained jurisdiction.

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## **1.0 STAFF RECOMMENDATIONS**

### **1.1 Appeal A-4-SBV-01-093 – No Substantial Issue**

Pursuant to Section 30603(b) of the Coastal Act, and as discussed in the findings below, staff recommends the Commission determine that the appeal filed on the City's permit raises NO substantial issue with respect to conformity of the permit with the LCP. The motion is:

#### **Motion**

*I move that the Commission determine Appeal #A-4-SBV-01-093 raises NO substantial issue as to conformity with the certified Local Coastal Program.*

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by the majority of the Commissioners present.

#### **Resolution**

*The Commission finds that the grounds on which Appeal No. A-4-SBV-01-093 has been filed do not present a substantial issue with respect to consistency of the appealed permit with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.*

### **1.2 Coastal Development Permit Application E-01-006**

The staff recommends conditional approval of the permit application.

#### **Motion**

*I move that the Commission approve Coastal Development Permit E-01-006 subject to conditions set forth in the staff recommendation dated May 24, 2001.*

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

#### **Resolution**

*The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified Local Coastal Program and the public*

*access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## 2.0 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. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the executive director or the Commission.
4. **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.
5. **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.

## 3.0 SPECIAL CONDITIONS

1. **Operational Limits.** This permit authorizes the upgrade of equipment necessary to meet requirements of the California Fire Code only, and allows the fuel pier to re-open to provide the level of service it provided before its closure in 1998. Any additional equipment or change in operations that will result in a change to the pre-existing intensity of use will require a new coastal development permit or an amendment to this permit.
2. **Other Approvals.** Prior to storing or dispensing fuel at the facility, the applicant shall provide to the Executive Director a copy of applicable final authorizations necessary to operate the facility from the U.S. Coast Guard, the California Office of Spill Prevention and Response, the Regional Water Quality Control Board, and the City Fire Department. The applicant shall implement the Best Management Practices required by these authorizations and shall ensure that the facility remains in compliance with these authorizations.

#### 4.0 PROJECT DESCRIPTION, SETTING, AND BACKGROUND

This project involves the modification of a marine fueling facility to meet requirements of California Underground Storage Tank regulations (23 CCR § 2641). The modifications are intended to allow the facility to re-open at its previous level of service. The project is located in Ventura Harbor (the Harbor) (Exhibit 1), within the Ventura Port District and the City of San Buenaventura (the City). Development and facilities on land within the Harbor are within the City's jurisdiction and are subject to the City's Comprehensive Plan and LCP, which are combined in a single document (hereinafter collectively referred to as "the LCP"). Development and facilities over water within the Harbor are within the retained jurisdiction of the Commission.

Portions of the project in the City's jurisdiction include upgrading three existing 20,000-gallon diesel underground storage tanks (USTs) by adding a containment sump and automatic level sensor, replacing buried 3-inch single-wall fuel lines with 3-inch double-wall lines, adding an electronic leak and spill detection system with automatic system shutdown capability, installing emergency shutoff valves and switches, and testing and possibly replacing existing fuel delivery pumps. Portions of the project within the retained jurisdiction of the Commission include replacing the portion of the fuel line on the pier and replacing a fuel dispenser.

The project is located in the Southwest Harbor area (Exhibit 2), which is one of four areas designated in the LCP to support certain primary uses:

- Northeast Harbor: primarily for commercial visitor-serving uses.
- Central Harbor: primarily for recreational boating.
- Southwest Harbor: includes commercial fishing, recreational boating, and visitor-serving commercial uses.
- South Peninsula: primarily for water-oriented recreational activities.

The LCP includes provisions supporting commercial fishing as a primary use of the Harbor, and states that activities be clustered in locations appropriate to their use in furtherance of Coastal Act policies. There are several other facilities in this area of the Harbor that support the commercial fishing fleet, including a boat repair yard, a fish buying station, and an ice house. The Harbor also includes two marinas, several hundred boat slips, restaurants and shops, the visitor center for Channel Islands National Park, and another fuel pier primarily used by recreational boats.

The subject fuel facility was originally part of an overall development proposal for Ventura Harbor authorized through several CDPs issued during the early and mid-80s (including CDPs 178-15, 211-25, 213-09, 217-29, 4-82-25, 4-84-21, and E-82-8). The facility was originally leased as a support base for the oil industry to fuel helicopters from a 10,000-gallon jet fuel UST. Later, three 20,000 gallon diesel fuel USTs and a 12,000 gallon gasoline UST were added, along with a fuel filtration vault, approximately 280 linear feet of fuel piping leading from the tanks and vault to the pier, and a fuel dispenser on the pier to provide service to commercial fishing vessels and oil crew boats.

The facility was closed in the late 1980s for noncompliance with various requirements. The jet fuel and gas tank USTs were abandoned in place. A new lessee re-opened the facility in 1994 to sell diesel fuel, engine oil, and filters to commercial fishing boats. It was able to fuel one vessel at a time. To ensure the facility was used primarily by the larger commercial fishing vessels and to minimize conflicts between the commercial fishing vessels and the smaller recreational boats, the Port District required a minimum purchase of \$200.00 worth of fuel per sale.

In 1998, the City's Fire Department cited the facility for not complying with safety requirements and required the facility to close until the fueling system was upgraded to meet California's UST requirements. The Fire Department required that the abandoned tanks be removed and the three operating tanks be upgraded. Also at that time, inspections revealed that the system had leaked and caused soil and groundwater contamination. The Port District has removed the gasoline and jet fuel USTs, temporarily closed the three diesel USTs, and has removed approximately 85 tons of contaminated soil from the site during the past several years. Site cleanup is within the City's CDP jurisdiction. The Port District may need additional authorization from the City, the Commission, or other agencies if additional soil remediation is proposed.

During this most recent closure, the Port District sought a new lessee for the facility. In January 2001, the Port signed a lease with Ventura Harbor Marine Fuel, Inc. to operate the pier when it re-opens with the new equipment authorized by these CDPs. The lease requires the facility to operate with a 100-gallon minimum on diesel fuel sales so as to maintain the same level of service provided before the closure and to minimize conflicts between commercial fishing vessels and recreational boats, which generally have much smaller fuel tanks.

The lease contemplates development of several amenities that were not a part of the previous operation, and are not a part of the current proposed project, including offering oil changes and bilge water disposal, providing a new type of fuel (BioDiesel), and developing a landside diesel fueling operation. These activities and the additional facilities that may be associated with these activities are not a part of the current permit applications before the City or the Commission, and are not authorized as part of either permit. New facilities needed for these services, or changes in the facility's intensity of use due to these services will require additional authorization from the City and Commission.

## **5.0 APPEAL PROCESS**

### **5.1 Local Government Action**

On January 29, 2001, the Port District submitted a CDP application to the City for "modification of existing marine fueling facility to meet requirements of the California Fire Code." On March 6, 2001, the City of Ventura Planning Department approved CDP ACDP-389. The approval includes findings that the project conforms to applicable policies of the LCP, including public access and recreational use.



On March 16, 2001, Mr. Lou Merzario filed a timely appeal of the Planning Department's permit approval. On April 16, 2001, the Ventura City Council upheld the CDP as issued and denied the appeal.

## **5.2 Filing of Appeal with the Coastal Commission**

On April 25, 2001, the Commission received notice of the City's final action approving, with conditions, the CDP for the project. The Commission's appeal period started the following working day and ran for ten working days until May 8, 2001. On May 8, the Commission received an appeal from Mr. Lou Merzario. The appeal was assigned file number A-4-SBV-01-093.

On May 8, in accordance with the Commission's regulations, staff notified the City and the applicant of the appeal. Section 13112 of the Commission's regulations provide that upon receipt of a notice of appeal, a local government shall refrain from issuing a CDP and shall deliver to the Executive Director all relevant documents and materials used by the local government in consideration of the CDP application. Information from the City's permit file was received on May 15, 2001.

Pursuant to Section 30621 of the Coastal Act, the appeal hearing must be set within 49 days of the date on which an appeal is filed. The 49<sup>th</sup> day from the appeal is June 26, 2001.

## **5.3 Appeals Under the Coastal Act**

After LCPs are certified, Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of certain local government actions on CDPs. Section 30603(a) states that an action taken by a local government on a CDP application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area or within 100 feet of any wetland, estuary, or stream. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments that constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. This action can be appealed to the Commission because the proposed development is located between the sea and the first public road paralleling the sea, and is also within three hundred feet of the mean high tide line.

Pursuant to section 30603(b)(1) of the Coastal Act, the grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access and public recreation policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents

will typically have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified LCP and with the public access and public recreation policies of the Coastal Act.

Pursuant to Section 13117 of the Commission's regulations, the only persons qualified to testify before the Commission on the substantial issue question are the applicants, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

#### **5.4 Standard of Review**

Section 30625(b) of the Coastal Act states that the Commission shall hear an appeal unless it determines, for appeals to the commission after certification of an LCP, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. The term "substantial issue" is not defined in the Coastal Act; however, Section 13115(b) of the Commission's regulations indicates that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified LCP...."

Even where the Commission chooses not to hear an appeal, appellants may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandamus pursuant to section 30802 of the Coastal Act and section 1094.5 of the Code of Civil Procedure.

## **6.0 FINDINGS AND DECLARATIONS ON SUBSTANTIAL ISSUE ANALYSIS FOR APPEAL NO. A-4-SBV-01-093**

### **6.1 Appellant's Contentions**

Mr. Merzario appealed the City's decision to approve the project based on the following contentions:

1. Failure to evaluate the incremental project as part of a larger project.
2. Flawed CEQA process.
3. Abuse of discretion by the Ventura Port District in conducting its public hearings and misstatements as to intent.

Staff was unclear about the meaning of Contention #1 and called Mr. Merzario to clarify the issue. Mr. Merzario explained that his claims under Contention #1 were:

- a) the Port District and the City should have evaluated the proposal as a new, rather than existing project under CEQA guidelines;
- b) if it had been considered a new, rather than existing project, the environmental analysis would have likely resulted in a different location for the facility elsewhere in the Harbor; and,
- c) allowing this facility to re-open might result in the closure of the other fuel pier in the Harbor due to loss of business. This loss of the fuel pier used by recreational boats would reduce coastal access for recreational uses.

Staff determined that Contentions #1a, 1b, 2, and 3 do not constitute valid grounds for appeal, and determined that Contention #1c may constitute valid grounds for appeal. These determinations are provided below.

### **6.2 Appellant's Contentions That Do Not Constitute Valid Grounds for Appeal**

The contentions below do not present valid grounds for appeal for the following reasons:

Contention #1a – Failure to evaluate the incremental project as part of a larger project – should have been considered a new, rather than existing project under CEQA guidelines. The CEQA lead agency was the Ventura Port District. The Port District determined that the proposed project was categorically exempt per Section 15301 of the CEQA guidelines, which allows exemptions to be granted for repairs to existing facilities. The City's decision was based on this finding by the Port District.

CEQA review is an independent process not governed by the LCP policies. Therefore, the Commission finds this contention is not a valid ground for appeal under Section 30603(b)(1) of the Coastal Act because it is not an allegation that the approved development does not conform to the certified LCP or the policies of the Coastal Act.

Contention #1b – Failure to evaluate the incremental project as part of a larger project – had it been evaluated as a new rather than existing project, it would have likely resulted in a different location for the facility elsewhere in the Harbor. Both the Port District and the City evaluated this proposal as an existing rather than a new project. The proposal before the City was to re-open the facility in its existing location and to its previously existing and previously authorized level of service. The City's decision was based in part on findings that the proposed project met the applicable policies and requirements of the LCP. For Ventura Harbor, the LCP includes the following elements that establish the overall planning context for locating facilities such as the subject fuel pier:

From the City's LCP, Ventura Harbor Section:

- p. III-74: "...development should be oriented toward recreation, visitor-serving, marina, and commercial fishing uses."
- p. III-74: "the Harbor Commercial (HC) designation...shall give priority to visitor-serving commercial recreational uses over general commercial development, but not over commercial fishing..."
- p. III-74: "Priority uses include...commercial fishing..."
- p. III-75: "A minimum number of facilities serving the commercial fishing industry shall be provided within the Harbor complex. These include ... fuel facilities (24 hours/day)..."
- p. III-78: "Harbor activities shall be clustered into locations appropriate to their use to further Coastal Act policies. More intensive and higher density activities shall be concentrated on the inland side of the Harbor."
- p. III-79: "Southwest Harbor Area: This area shall contain uses oriented toward or serving commercial fishing, recreational boating, and visitor-serving commercial uses... Water dependent uses shall include at least 4,200 lineal feet of slip and wharf space for commercial vessels such as fishing boats and oil crew boats, and may include fish receiving facilities, ice facilities, fuel facilities, a boat lift, a full service boat yard and a self service boat yard."
- p. III-80: "General Location Policies – Existing facilities serving recreational boaters and commercial fishermen shall be retained, unless equivalent facilities are constructed elsewhere in the Harbor in conjunction with the redevelopment of existing facilities."

The fueling facility was originally approved as part of a comprehensive development plan for Ventura Harbor and authorized through several CDPs issued by the City or the Commission. It is located in an area designated in the LCP for uses related to commercial fishing. The proposed upgrade will bring the fuel system up to code and will allow the facility to operate at its previously authorized level of service. Also, because this proposed repair and upgrade is under the jurisdiction of both the City and the Commission, the City properly focused its review on the landward part of the project, which is the only portion under the City's jurisdiction.

Because the City's decision will result in the re-opening of a facility that is specifically included in the LCP, that was originally permitted at this location in 1982, and that is proposed to operate

under the same intensity of use as it did previously, the Commission finds that the above contention does not present a valid ground for appeal under Section 30603 of the Coastal Act.

Contention #2 – Flawed CEQA process. As described in Contention #1a above, the appellant contends that the Port District improperly exempted this project because it is not an existing facility. The appellant also contends that the Port District did not provide timely notice, and did not provide a complete project description for CEQA purposes.

CEQA review is an independent process not governed by the LCP policies. Therefore, the Commission finds this contention is not a valid ground for appeal under Section 30603(b)(1) of the Coastal Act because it is not an allegation that the approved development does not conform to the certified LCP or the policies of the Coastal Act.

Contention #3 – Abuse of discretion by the Ventura Port District in conducting its public hearings and misstatements as to intent. Pursuant to Section 30603(b)(1) of the Coastal Act, this issue is not a proper subject of appeal before the Commission. The conduct of the Port District has no relation to whether the proposed project conforms to the certified LCP or the policies of the Coastal Act.

### **6.3 Appellant's Contention That May Constitute Valid Grounds for Appeal**

Contention #1c – Failure to evaluate the incremental project as part of a larger project – allowing this facility to re-open might result in the closure of the other fuel pier in the Harbor due to loss of business. The appellant contends that the outcome of re-opening the subject facility could be the closure of the Harbor's other fuel pier used primarily by recreational boats, and that this would lead to the loss of coastal access for recreational use.

The LCP includes the following:

*City's LCP, Ventura Harbor Section, General Location Policies #2 (p. III-97): Existing facilities serving recreational boaters and commercial fishermen shall be retained, unless documentation, consistent with that described under the Intent and Rationale Statement demonstrates that there is no longer a demand for facilities is provided or equivalent facilities are constructed elsewhere in the Harbor in conjunction with the redevelopment of existing facilities.*

*City's LCP, Ventura Harbor Section, Intent and Rationale for Land Use Designations (p. III-101): Recreational boating and commercial fishing shall be located and designated so as to not interfere with one another. Potential impacts from commercial fishing or general boat repair and construction operations shall be mitigated. Mitigation measures shall include locating such facilities away from existing residential areas...*

*...A minimum number of facilities serving the commercial fishing industry, adequate to meet the industry demand demonstrated in the Ventura Harbor, shall be provided within the Harbor complex. These include the existing 4,200 slip feet or berthing for at least 90*

*permanent and 15 transient commercial fishing boats, whichever is greater, a boat repair yard, ice facilities, fuel facilities (24 hours/day), laundry, shower and rest room facilities, two or more fish receiving facilities, a net repair area, hoists, wharfage of additional docking space and, cold storage facilities.*

The LCP requires that unless documentation is provided showing there is no longer a need for such facilities, Ventura Harbor shall have separate fueling facilities for commercial fishing vessels and for recreational boats. No such documentation has been provided.

The Port District has expressed its interest in maintaining both facilities as required by the LCP. It has stated that the two facilities are intended to be complementary to one another, and has shown its support for both types of facilities in several ways. Since the 1998 closure of the subject facility, the Port District actively sought operators for the pier, and removed only those USTs not needed for a commercial fishing fuel pier.

In January 2001, the Port District signed a lease with Ventura Harbor Marine Fuel, Incorporated, to operate the fuel pier after the fueling equipment was upgraded. In recognition of the concern about maintaining adequate business for two facilities, the Port District included in the lease a required minimum purchase of 100 gallons of fuel. The intent of this requirement is to ensure the larger commercial fishing vessels use the subject fuel pier, while the smaller recreational boats (most with fuel tanks of 25 gallons or less) use the other pier in the Harbor, allowing both fuel piers to be economically viable.

Additionally, Ventura Harbor has supported two fuel facilities during most of the past several decades – the existing recreational fuel pier has been in business for approximately thirty-five years, and the subject fuel pier has been at the Harbor since the early 1980s, although under different management at various times and closed during several periods.

The Commission has not received any evidence that suggests re-opening the commercial fishing fuel pier will result in the closure of the recreational fuel pier.

For the reasons described above, and pursuant to Section 30603(b)(1) of the Coastal Act, the Commission finds no grounds to the allegation that the development does not conform to the standards set forth in the certified LCP or the public access and public recreation policies set forth in the Coastal Act.

#### **6.4 Conclusions and Findings**

For the reasons stated above, the Commission has determined that the appeal does not raise substantial issues regarding the project's conformity with the standards of the certified LCP and with the public access and public recreation policies of the Coastal Act.

## 7.0 FINDINGS AND DECLARATIONS FOR CDP APPLICATION E-01-006

### 7.1 Standard of Review

For the portion of the project located within the Commission's retained permit jurisdiction, the standard of review is whether the project complies with the policies of Chapter 3 of the Coastal Act. The Commission may also refer to the provisions of the certified LCP for guidance.

### 7.2 Public Access and Public Recreation

Coastal Act Section 30210 states:

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

Coastal Act Section 30212.5 states:

*Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

In addition, the Ventura Harbor Section of the City's certified LCP includes the following policies:

*Harbor Commercial Land Use Designation (p. III-84): "The Harbor Commercial (HC) designation in the Ventura Harbor area is intended to cause any new development in that area to be compatible with existing and proposed uses in the Harbor complex (as described below). Development in this area, which is also designated as a Scenic Approach to the City, should be designated to complement the existing visual and structural character of the Harbor complex, and the development should be oriented toward recreation, visitor-serving, marina, and commercial fishing uses.*

*To facilitate the recreation, tourist and commercial fishing opportunities within the Harbor complex, the Harbor Commercial (HC) designation shall give priority to visitor-serving commercial recreational uses over general commercial development, but not over commercial fishing, and shall protect coastal recreational land suitable for such uses."*

The project supports the above public access policies of the Coastal Act and the LCP in several ways. It will enhance access to coastal resources by the commercial fishing vessels using Ventura Harbor. Returning this facility to service will also reduce conflicts between recreational boating users and commercial fishing vessels by separating fueling activities into two separate areas of the Harbor. Construction associated with the project may result in minor, short-term disruption to public access as the pier may be inaccessible during short periods or excavation or

equipment installation. As the fuel pier is currently closed and will be closed until construction is completed, this will not result in any significant loss of public access.

The City's LCP also includes a section on public access in the Harbor area (pp. IV-12-15, "Objective 8 – Harbor Circulation and Access"), which addresses road design, parking, public transit, bicycle and pedestrian access, and boat circulation. Re-opening the subject facility does not conflict with this element of the LCP and will not result in changes to any previously existing access elements.

### **Conclusion**

For the reasons above, the Commission finds the project consistent with Sections 30210 and 30212.5 of the Coastal Act.

### **7.3 Oil and Fuel Spills**

Coastal Act Section 30232 states:

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

The proposed fuel facility will store up to 60,000 gallons of diesel fuel in three underground tanks within approximately 250 feet of coastal waters. It will also transfer at least 100 gallons of fuel at a time to boats from a single fuel dispenser located on a finger pier over the water. The facility is authorized to transfer fuel to boats that hold up to 250 barrels (approximately 10,500 gallons) of fuel. In addition, the facility and the boats it serves will likely store some unknown amount of other petroleum products such as engine oil, lubricating oil, etc. There is also a potential of spills from delivery trucks bringing fuel to the underground tanks.

Coastal Act Section 30232 requires a two-part test – first, does the development provide protection against project-related spills; and second, does it provide effective containment and cleanup should spills occur?

#### ***Protection Against Spills***

The applicant has prepared draft copies of three documents developed for the facility that address spill prevention and response methods pursuant to state and federal requirements. These include a Facility Operations Manual and Emergency Response Plan as provided to the U.S. Coast Guard, and a Stormwater Pollution Prevention Plan as provided to the Regional Water Quality Control Board. The Facility Operations Manual is meant to satisfy federal requirements related to spill prevention and response requirements at 33 CFR 154 ("Facilities Transferring Oil or Hazardous Material in Bulk"). The Emergency Response Plan is meant to satisfy the requirements of applicable federal water quality and spill prevention and response requirements



at 33 CFR § 154.1030 ("General Response Plan Contents") and 40 CFR § 112.20, and state water quality requirements at Title 14 CCR Division 1, Subdivision 4. The Stormwater Pollution Prevention Plan is meant to satisfy state and federal water quality requirements under Section 402 of the federal Clean Water Act. In addition, the facility will be subject to the conditions of a Certificate of Financial Responsibility issued by the state Office of Spill Prevention and Response.

These documents describe the facility, its fuel storage and transfer equipment, the fuel transfer procedures that apply to the facility, and steps the facility is required to take in the event of a fuel spill. They also establish Best Management Practices (BMPs) meant to prevent spills or to respond to spills if they occur. Spill prevention BMPs include the following:

Facility and equipment:

- The tanks and transfer area must comply with DOT, EPA, and USCG requirements for secondary containment.
- Pumps, filters, valves, etc. are designed to be in the off position if they fail.
- The tanks are equipped with high level alarms and automatic pump shutoffs to prevent overfilling.
- The tanks and piping include a cathodic protection system.
- All pipelines are to be double-walled constructed.
- The exposed fuel transfer components must be inspected daily.
- The fuel system must be leak-tested annually.
- The tanks, valves, and fuel system are locked when not in operation, and the facility is lit at night and under surveillance by the Port Security Office.
- Fuel delivery truck drivers are trained in proper fuel transfer and safety procedures.
- Fuel trucks are required to carry portable spill kits.

Facility operations:

- All fuel transfers must be continuously monitored by trained personnel.
- All fuel transfer personnel must be trained by the facility operator and supervised continuously until they are qualified. Training includes spill prevention and mitigation, and requires periodic checkups.
- Fuel inventory and inventory records are to be reconciled weekly.
- Fuel gauges are viewed daily and fuel tanks are hand gauged monthly.

The Commission is requiring in **Special Condition 2** that the BMPs in the final approved documents be implemented to protect against spills. The Commission believes that with these prevention measures in place, the proposed project meets the first test of Coastal Act Section 30232.

### ***Spill Containment and Cleanup***

The documents cited above also include BMPs meant to assist in containing and cleaning up spills should they occur. The Emergency Response Plan calculates the size and extent of potential spills from the facility, and develops emergency procedures based on those potential spills. Using methods contained in applicable state and federal regulations, the plan calculates spill scenarios ranging from 7.75 gallons ("Average Most Probable Discharge") to 20,000 gallons (assuming 100% failure of the largest storage tank). The Response Planning Volume is 775 gallons, which represents "that portion of the total line fill capacity which could be lost during an spill taking into account the availability and location of emergency cut off controls, plus the amount of additional spillage that could reasonably be expected to enter marine water during an emergency shut off" (from 14 CCR § 817.02(d)).

The BMPs identified for spill containment and cleanup include the following:

#### **Facility and Equipment:**

- The facility is required to maintain sufficient equipment to contain a 1.7 barrel (approximately 75 gallon) discharge.
- A containment boom must be maintained on the dock and ready for deployment.
- The Harbor maintains equipment adequate to contain a spill of up to 4,000 gallons. Sufficient resources are available to respond to a spill of up to 16,800 gallons within four hours.

#### **Spill Response:**

- Any spill, threatened spill, or possible spill shall be immediately reported to the Facility Operator, who shall assess the situation and notify the appropriate personnel and local, state, and federal agencies, pursuant to the notification plan for the facility and Harbor.
- The Emergency Response Plan describes the area around the facility, the possible impacts to coastal resources should a spill occur, and the types of responses necessary to prevent or minimize impacts to those resources. It identifies specific areas within the Harbor where a spill could be contained to avoid or minimize impacts to other coastal resources.

The Commission has determined in past decisions that spills cannot be effectively contained or cleaned up when they occur in open waters. However, because accidental spills from this facility would be subject to the BMPs in the documents cited above, and because they would occur in an enclosed area within the Harbor well away from open ocean waters, they can be effectively contained and cleaned up within this area.

The Commission is requiring in **Special Condition 2** that the BMPs in the final approved documents be implemented if spill response, containment, or cleanup is needed, and to ensure adequate finances are available to pay for such incidents, if necessary. The Commission believes

that with these measures in place, the proposed project meets the second test of Coastal Act Section 30232.

### **Conclusion**

The two tests of Section 30232 are first, to ensure protection against spills, and second, to ensure that effective containment and cleanup is provided if spills occur. The Commission finds that the first test is met because the BMPs described in the above documents and as required by **Special Condition 2** provide significant protection against spills. The Commission also finds that the second test is met because these BMPs include measures to effectively contain anticipated spills within confined areas of the harbor, to clean up spills using spill cleanup equipment and personnel available at the facility, the Harbor, and other nearby facilities, and to ensure financial resources are available for such efforts.

For the reasons described above, the Commission finds the project consistent with Section 30232 of the Coastal Act.

### **7.4 Commercial Fishing and Recreational Boating**

Coastal Act 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 City's LCP includes the following policies:

*City's LCP, Ventura Harbor Section, General Location Policies #2 (p. III-97): Existing facilities serving recreational boaters and commercial fishermen shall be retained, unless documentation, consistent with that described under the Intent and Rationale Statement demonstrates that there is no longer a demand for facilities is provided or equivalent facilities are constructed elsewhere in the Harbor in conjunction with the redevelopment of existing facilities.*

*City's LCP, Ventura Harbor Section, Intent and Rationale for Land Use Designations (p. III-101): Recreational boating and commercial fishing shall be located and designated so as to not interfere with one another. Potential impacts from commercial fishing or general boat repair and construction operations shall be mitigated. Mitigation measures shall include locating such facilities away from existing residential areas...*

*...A minimum number of facilities serving the commercial fishing industry, adequate to meet the industry demand demonstrated in the Ventura Harbor, shall be provided within the*

*Harbor complex. These include the existing 4,200 slip feet or berthing for at least 90 permanent and 15 transient commercial fishing boats, whichever is greater, a boat repair yard, ice facilities, fuel facilities (24 hours/day), laundry, shower and rest room facilities, two or more fish receiving facilities, a net repair area, hoists, wharfage of additional docking space and, cold storage facilities.*

City's LCP, Ventura Harbor Section, Area Locational and Intensity Policies #4 – Northeast Harbor Area (p. III-106): *Uses allowed in this area include the following: (1) commercial visitor-serving uses; (2) recreational boating; (3) non-priority uses limited to public facilities and general retail and offices; (4) non-water oriented commercial; (5) public park and recreation; (6) residential uses limited to a maximum of 300 units and limited to the upper story (stories) of any development; and (7) mobile homes for the Mobile Home Park area (MHP). Commercial fishing facilities are not intended uses in the Northeast Harbor Area.*

The intent of the proposed project is to retain and upgrade an existing but closed fuel facility intended for use by commercial fishing vessels. Both the Coastal Act and the LCP require this type of facility to be retained and that such facilities not interfere with those meant to serve recreational boating. This fuel pier is located in the area of the Harbor designated in the City's LCP for facilities related to commercial fishing. The other fuel pier in the Harbor, intended for use by recreational boats, is in the Northeast Harbor area, where recreational boating facilities are a permitted use and commercial fishing facilities are specifically prohibited.

Staff received several public comments raising concerns about the economic viability of having two fuel piers at Ventura Harbor. The appellant in the above appeal commented that re-opening the subject fuel pier may cause the failure of the recreational fuel pier, resulting in a loss of coastal access to recreational boaters. He provided a letter from the owner of the recreational fuel pier, which states concerns about their ability to compete with another fuel pier subsidized by the Port District.

The Commission has not received any further evidence supporting or refuting this contention. The Port District has stated the two facilities are intended to be complementary to one another, and has expressed its interest in maintaining both facilities, as required by the Coastal Act and by the LCP. Additionally, Ventura Harbor has supported two fuel facilities during most of the past several decades – the existing recreational fuel pier has been in business for approximately thirty-five years, and the subject fuel pier has been at the Harbor since the early 1980s, although under different management at various times and closed during several periods.

In recognition of the concern about maintaining adequate business for two facilities, the Port District included in its lease for the subject facility a required minimum purchase of 100 gallons of fuel. The intent of this requirement is to ensure the larger commercial fishing vessels use the subject fuel pier, while the smaller recreational boats (most with fuel tanks of 25 gallons or less) use the other, allowing both fuel piers to be economically viable.

To further evaluate this concern, Commission staff requested comments from the Department of Boating and Waterways, as required in Section 30419, which states:

*Chapter 5, Section 30419 The Department of Boating and Waterways is the principal state agency for evaluating the economic feasibility of any boating facility to be developed within the coastal zone.*

*If the economic viability of a boating facility becomes an issue in a coastal development permit matter or in a local coastal program or any amendment thereto, the commission shall request the Department of Boating and Waterways to provide comment, including, but not limited to, the analysis of costs associated with conditions of approval. In cases where the Department of Boating and Waterways desires to make any comment, it shall be made within 30 days of the commission's request. The commission shall include the comment in its decision regarding a coastal development permit or local coastal program or any amendment thereto.*

The Department, however, informed staff on May 24, 2001, that it would not provide comments on the proposed project.

### **Conclusions**

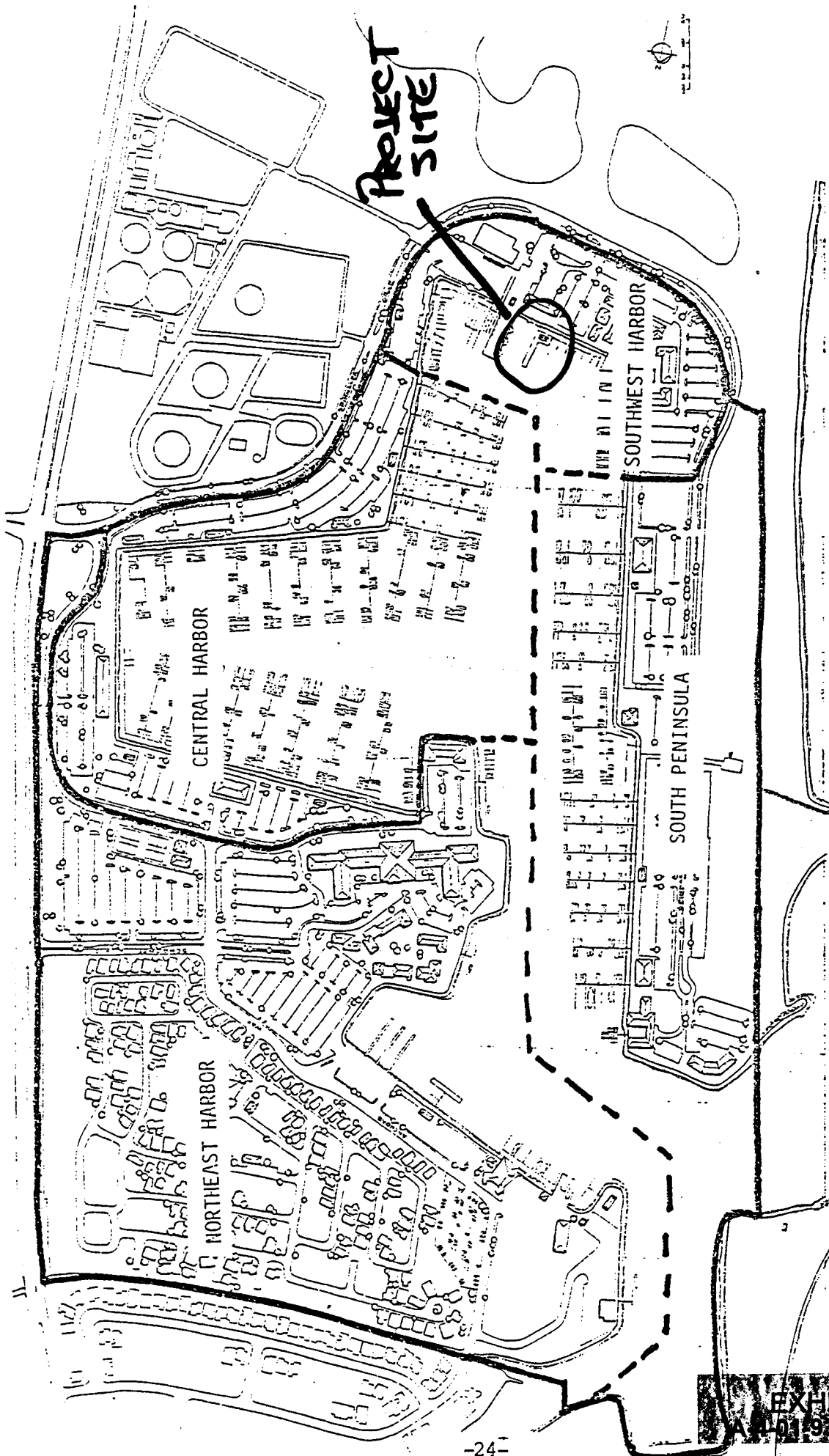
For the reasons described above, and because there is no evidence that suggests re-opening the commercial fishing fuel pier will result in the closure of the recreational fuel pier, the Commission finds the project complies with Section 30234 of the Coastal Act.

## **8.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's administrative regulations requires Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of the CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives. Therefore, the Commission finds that the proposed project is consistent with the resource protection policies of the Coastal Act and with the CEQA.





ILLUSTRATIVE SITE PLAN · VENTURA HARBOR · VENTURA PORT DISTRICT,  
 VENTURA, CALIFORNIA

MAP 4

EXHIBIT 2  
 A-4-01-93/E-01-006

## **APPENDIX A: Substantive File Documents**

### Local CDP Documents from City of San Buenaventura

- Application for CDP from Ventura Port District, January 29, 2001
- Administrative Report, March 28, 2001
- Public Hearing Notice for Administrative CDP Application, received February 26, 2001
- Administrative Public Hearing Agenda, March 6, 2001
- Local Coastal Program/Municipal Code, November 1999

### City Appeal Documents

- Appeal to City by Mr. Lou Merzario, March 16, 2001
- Appellant's Testimony to City Council, April 16, 2001
- City's Administrative Report on Appeal and Resolution #2001-42, April 16, 2001

### Public Comment Letters

- From Lou Merzario, February 22, 2001 (attached)
- From Dorothy Hitch, Dave's Marine Fuel Service, Inc., April 26, 2001 (attached)
- From Edward Schoemer, Manager, Ventura Isle Marina, May 13, 2001 (attached)

### Commission Review Documents

- Application for Coastal Development Permit from Ventura Port District, received January 31, 2001
- Notice of Incomplete Letter from Commission staff to Applicant, February 22, 2001
- Letter from Lessee providing additional application information, February 22, 2001
- Letter from Applicant providing additional information in response to Notice of Incomplete Letter, February 26, 2001
- Letter from Applicant providing additional information in response to Notice of Incomplete Letter, April 25, 2001
- Letter from Applicant stating no fuel spills from the commercial fishing fuel dock in the past twenty-one years, February 28, 2001 (attached)
- Appeal of City's Decision by Lou Merzario, May 8, 2001 (attached)
- Commission Notification of Appeal to City, May 8, 2001 (Appeal #A-4-SBV-01-093)
- Draft Facility Operations Manual for Ventura Harbor Marine Fuel, Inc., January 2001
- Draft Emergency Response Manual for Ventura Harbor Marine Fuel, Inc., January 2001
- Draft Stormwater Pollution Prevention Plan for Ventura Harbor Marine Fuel, Inc., January 2001
- Fueling Facility Lease between Ventura Port District and Ventura Harbor Marine Fuel, Inc., January 2001
- Fueling Facility Lease between Ventura Port District and Hi-Seas Fuel Dock, September 1, 1993
- Letter from Commission staff to Department of Boating and Waterways requesting comments, May 15, 2001
- Personal communication from Don Waltz, Department of Boating and Waterways to Tom Luster, May 24, 2001



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., 2ND FLOOR  
VENTURA, CA 93001  
(805) 641-0142

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

RECEIVED  
MAY 08 2001  
CALIFORNIA COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT



Please Review Attached Appeal Information Sheet Prior To This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

LOU MERZARIO  
1567 SPINNAKER DR PMB 44  
VENTURA CA 93001 (805) 658-0117 IF RYSYCALL  
Zip Area Code Phone No.  
310 625-6692

SECTION II. Decision Being Appealed

1. Name of local/port government: VENTURA PORT DISTRICT / CITY OF SAN BUENAVENTURA

2. Brief description of development being appealed: ACDP-389 THE PROPOSED "RE-ESTABLISHMENT" OF A FUEL FACILITY

3. Development's location (street address, assessor's parcel no., cross street, etc.): 1431 SPINNAKER DRIVE  
APN 080-0-240-245

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions:  \_\_\_\_\_
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-4-SBV-01093

DATE FILED: 5/8/01

DISTRICT: \_\_\_\_\_

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator      c.  Planning Commission  
b.  City Council/Board of Supervisors      d.  Other \_\_\_\_\_

6. Date of local government's decision: APRIL 16, 2001

7. Local government's file number (if any): ACDP-389  
RESOLUTION No. 2001-42

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

VENTURA PORT DISTRICT  
1603 ANCHORS WAY DRIVE  
VENTURA, CA 93001

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) VENTURA ISLE MARINA ATTN JERI DUNHAM  
1363 SPINNAKER DR  
VENTURA CA 93001
- (2) DAVE'S MARINE FUEL SERVICE ATTN GARY HITCH  
1404 ANCHOR'S WAY  
VENTURA, CA 93001
- (3) VENTURA HARBOR BOATYARD ATTN JOHN JOHNSON  
1379 SPINNAKER DRIVE  
VENTURA, CA 93001
- (4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

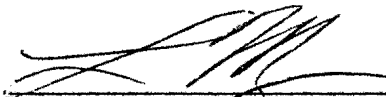
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

PLEASE REFER TO THE ATTACHED

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or  
Authorized Agent

Date May 8, 2001

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

#### **SECTION IV. Reasons Supporting This Appeal**

Three deciding bodies have recently voted to approve the "re-establishment of a fuel facility" at a site formally occupied and operated as such. These deciding bodies include the:

Ventura Port District (**District**),

Community Development Director of the City of San Buenaventura (approved ACDP-389), and

Ventura City Council (denied appeal, upheld approval of ACDP-389).

In making their decisions, all deciding bodies failed to properly define the project, employed a flawed environmental review process, and adopted improper findings. As a result, the approval of ACDP-389 was granted in a manner that was inconsistent with the intent and purpose of the California Environmental Quality Act (**CEQA**) and the California Coastal Act (PRC Division 20, January 2001), as it is being implemented under the Local Coastal Program adopted by the City of San Buenaventura.

I offer the following in evidence of this flawed process, the details of which are explained more completely in Exhibit "1" - Background Information:

- 1) The proposed project was improperly described as a "modification to an existing fuel facility". In fact, the site has been abandoned and the subject of an enforcement action for more than three (3) years. As there is no valid CDP in force, no lessee of the site, and no operator, there is no existing fuel operation. Rather, the proposed project should have been correctly defined as a new project that would "re-establish a fuel facility, making use of the available in-place infrastructure (i.e., three underground tanks and the delivery pipelines".
- 2) Given this incorrect Project Description, the District, as CEQA Lead Agency, erroneously determined the proposed project was a Class 1 Categorical Exemption, a status reserved for Existing Facilities under Section 15301 of the CEQA Guidelines.
- 3) The Community Development Director and the City Council similarly erred by making the finding that the CEQA review performed by the Lead Agency was "*adequate for the City's review of the project under the provisions of its Local Coastal Program and public access and recreation policies of the Coastal Act.*"
- 4) The District made an untimely filing of its Notice of Exemption (**NOE**), seven days prior to its January 24, 2001 approval of the current proposed project, which is in violation of Section 15061(d) of the CEQA Guidelines (Review for Exemption).
- 5) As a result, there was no CEQA Initial Study conducted for the proposed project, no consultation with other key agencies, such as the State Department of Boating and Waterways, and there has been no evaluation of the economic and environmental effects of the proposed project.

Throughout the public hearing process, testimony has been offered in evidence of the potential effects of the proposed project. Principal among these potential effects are the following:

- 1) Given the prevailing winds, a fuel spill at the proposed location will immediately impact the hundreds of recreational boats moored immediately adjacent to the proposed fuel facility. This is described more fully in Exhibit "1" - Background Information.

This is not the case with the fuel facility that does exist in Ventura Harbor (Dave's Marine Fuel Service). Dave's Marine Fuel Service is the perfect location for the District's proposed increase in fuel related services. During prevailing winds from the northwest, a fuel spill could be quickly contained against the area of the boat ramp. During Santa Ana wind conditions from the east to southeast, any fuel spill could be quickly contained before reaching the finger leading to the Ventura Keys. In both instances, few boat slips would be involved and clean-up efforts would be relative unhindered. Refer to Exhibit "2" - Ventura Harbor graphic.

- 2) The economic effects upon the operator of the fuel facility that does exist in Ventura Harbor (Dave's Marine Fuel Service). The operator of that facility has repeatedly noted there is not enough business to support two fuel facilities. By re-establishing a fuel facility that is designed for the larger vessels, the resulting loss of business Dave's Marine Fuel Service will likely result in the failure of that business. Should this occur, the approval of ACDP-389 will serve to deny coastal access to the thousands of recreational boaters that make use of the harbor because they will be unable to obtain fuel at the fuel facility "re-established" under ACDP-389.
- 3) The routine fuel spills that currently impact the hundreds of recreation boats downwind from the fishing fleet do not foster a sense of "land use compatibility" among the affected recreational boaters nor the marina operators. Re-establishing a fuel facility in such close proximity to these recreational boat marinas has the potential of adversely affecting individual boat owners and adversely affecting marina revenues should these spills result in unoccupied slips. It is worth noting that, in approving the proposed project, none of the deciding bodies made a "land use compatibility" finding.

**RECOMMENDED ACTION:**

FIND that the Ventura Port District, as the designated Lead Agency under Section 15051 of the California Environmental Quality Act, erroneously determining the proposed project a Categorical Exemption (Class 1), under the provisions of Section 15301(e)(1) minor alterations to an existing structure, and said determination is not adequate for the California Coastal Commission's review of the project under the provisions of the City of San Buenaventura's Local Coastal Program and public access and recreation policies of the Coastal Act.

APPROVE the Appeal of ACDP-389 and REVERSE, without prejudice, the City Council's April 16, 2001 decision to approve ACDP-389.

DIRECT, as a Responsible Agency under CEQA and as a permitting jurisdiction, that the applicant must prepare the following prior to submitting a new application to the City:

- 1) A complete Project Description, including all project components, regardless of permitting jurisdiction, pursuant to Section 15063(a) of the CEQA Guidelines.

- 2) An Initial Study, pursuant to Section 15063 of the CEQA Guidelines. If the Initial Study so indicates, preparation of a Negative Declaration (ND) or an Environmental Impact Report (EIR), pursuant to Article 6 or 7 of the CEQA Guidelines, as they may apply. Said environmental documentation, must be based on an accurate definition of Environmental Setting, pursuant to Section 15125 of the CEQA Guidelines.
- 3) An economic analysis, based on consultation with the State Department of Boating and Waterways and other appropriate agencies, to accurately assess the effects of the proposed project within the context of today's "Environmental Setting" which CEQA describes as the physical environmental conditions in the vicinity of the project, from both a local and regional perspective, as they exist at the time of the environmental analysis begins. This assessment shall include accurate representations of location, proximity, extent, and character of the resources on and adjacent to the project site.
- 4) An economic evaluation of the proposed project. Said evaluation is to include an evaluation of the potential adverse economic effects to Dave's Marine Fuel Service, and any resulting denial of coastal access to recreational boaters should they no longer be able to purchase fuel in Ventura Harbor.
- 5) An evaluation of providing the proposed services at an alternative location within the harbor, specifically Dave's Marine Fuel Service. In so doing, the District shall adhere to its fiduciary responsibility to include, within this evaluation, District General Manager Peña's testimony that the National Park Service has expressed interest in entering into a long-term lease for use of the subject area at a price that would likely result in greater net revenues to the District.

### **Recommended Condition of Approval**

After considering this appeal, should the Coastal Commission uphold the prior approval, I ask that you hold ACDP-389 in abeyance until the Coastal Commission makes its decision on the separate and related CDP application now before you. I ask this because it would indeed be unfortunate if the lessee, Mr. Johnson, were to incur land-side costs, only to learn the water-side CDP is either denied, or approved with Conditions of Approval he cannot, or is unwilling to accept.

I also recommend the following condition be placed on ACDP-389. This is important because the failure to impose such a condition in the past is the primary reason the District has been pursuing a new tenant (i.e., one that will get the enforcement agencies off its back).

### **Abandonment and Site Restoration Plan**

*Prior to commencing fuel sales*, the permittee shall prepare and submit for Community Development Director approval a Preliminary Abandonment and Site Restoration Plan. Said plan shall provide for the abandonment of all project related development, including underground storage tanks, delivery pipelines and other appurtenances, and shall include an estimate of abandonment and site restoration costs.

Upon approval of the Preliminary Abandonment and Site Restoration Plan, the permittee shall file, in a form acceptable to the City Counsel and certified by the City Clerk, a performance bond or other security in an amount equal to the estimated cost of abandonment and site restoration. The permittee may submit the following to the Community Development Director in evidence of partial or full compliance with the terms

of this condition. The Community Development Director shall determine if said evidence constitutes condition compliance.

- a. Abandonment and Site Restoration Plan(s) approved by another agency(ies) that includes, or can be amended to include the permitted area.
- b. Abandonment and site restoration performance bond or other security held by other agency(ies) that includes, or can be amended to include the permitted area.

Ninety (90) days prior to the expiration of this Permit or abandonment of the use, the permittee shall submit a proposed Final Abandonment and Site Restoration Plan to the Community Development Director for review. Within thirty (30) days of submittal, the Community Development Director shall advise the permittee of the changes needed, if any, to approve the Plan. Within thirty (30) days of having received the Community Development Director's comments, the permittee shall make the necessary changes and resubmit the Plan for Community Development Director review and approval. The Final Abandonment and Site Restoration Plan shall provide for the abandonment of all project related development, including underground storage tanks, delivery pipelines and other appurtenances, and shall provide that the permit area be restored by the permittee to the conditions existing prior to the issuance of the Permit, unless the Community Development Director determines otherwise.

All abandonment and site restoration activities shall be completed within ninety (90) days of permit expiration or abandonment of the use. In the event that abandonment results from a Permit revocation action, the permittee may be provided an additional ninety (90) days to prepare and obtain Community Development Director approval of the Final Abandonment and Site Restoration Plan. Abandonment and site restoration shall be in accordance with the Community Development Director approved Final Abandonment and Site Restoration Plan.

In case of any failure by the permittee to adequately perform abandonment and site restoration, the Planning Commission may, after notice to the permittee and a public hearing, by resolution, determine the cost of abandonment and declare all or part of the security forfeited in accordance with its provisions. Forfeited securities shall be applied toward the cost of affecting project abandonment and site restoration. The sureties and principal will be jointly and severally obligated to pay forthwith the full amount of the forfeiture to the County of Ventura. The forfeiture of any security shall not insulate the permittee from liability for abandonment and site restoration costs in excess of the sum of the security. Said security shall not be exonerated until the Community Development Director has determined that project abandonment and site restoration has been completed in the manner prescribed in the approved Final Abandonment and Site Restoration Plan.

Exception: Regarding permit expiration, the permittee need not proceed with the preparation of a Final Abandonment and Site Restoration Plan, nor with abandonment and site restoration activities, if a valid permit renewal process has been initiated.

**EXHIBIT "1"**  
**BACKGROUND INFORMATION**  
**Re: Case No. ACDP-389**

**Port District Pubic Hearings and Actions**

All fueling operations ceased at the subject site in early-1998 in response to repeated Code Enforcement actions, including a May 13, 1988 order to cease and desist operations of is underground storage tanks (UST). As a result of these actions, all fuel was removed from the underground tanks, then in place. Since that time, the fuel facility infrastructure has been abandoned and the "cash strapped" District has requested and been granted a series of time extensions. The District has performed only enough remedial work to abate the more pressing of the violations that were the subject of the enforcement actions. This work involved the removal of two underground storage tanks and attendant soil remediation, and the replacement of the over-water delivery pipelines, these on the pier, with double-walled pipes. Fuel had not been stored nor dispensed from this site for 3 years and there is no CDP in force.

Given this status, the proposed project has been misrepresented as a modification to an "existing fuel facility." This is incorrect and the proposed project should have been correctly defined as a new project that would "re-establish a fuel facility, making use of in-place infrastructure."

In late-1999, the District's Commission held a series of public hearings to consider what to do with the abandoned fuel facility. Throughout these hearings, the site was referred to and discussed as a closed facility. Under consideration were two possibilities wherein the District could either:

- 1) accept the need to formally close the site to resolve outstanding enforcement actions and perform the remedial work required by various Local and State Codes pertaining to underground storage tanks and pipelines; or
- 2) try and find a lessee who was willing to "*re-establish commercial fuel operations*" [source: October 27, 2000 District minutes] by completing the work needed to bring the site into compliance with the City of San Buenaventura Fire Code, Chapter 6.7 of the State Health and Safety Code (Sections 25280-25299.7), and Title 23, Division 3, Chapter 16, Article 6 of the California Code of Regulations.

In August of 1999, the District's Commission approved the solicitation of proposals for a commercial/fueling operation at Harbor Village. A Request for Proposals (**RFP**) was sent out to a total of 17 fuel operators, only one of whom responded to the RFP.

At its October 27, 1999 public hearing, the District's Commission learned that the sole RFP response was not in conformance with the requirements stipulated in the RFP. It also learned that an unsolicited response was received from Dave's Marine Fuel Service, the only existing fuel operator in Ventura Harbor. Neither response was found to be acceptable and, on a 3 to 2 vote, the District's Commission approved the *re-establishment of the fueling facility*, pursue the necessary permits, and continue negotiating with the sole respondent to the RFP. [source: October 27, 2000 District minutes]

At that hearing, I noted the need for some sort of "CEQA touch" and specifically asked District's General Manager Peña if there would be any filing of CEQA documentation. I was told it was not necessary.



At its December 15, 1999 public hearing, the District's Commission learned that negotiations with the sole RFP respondent had reach an impasse. They then considered an amendment to the RFP to extend the date for receiving proposals. Left without a proper response to the RFP, the District's Commission briefly considered the response from Dave' Marine Fuel Service, rejecting it again. The District's General Manager, Mr. Peña, made it clear that the District's Commission "*had until December 22, 2000 to reach some type of conclusion on whether to reopen the fuel dock or close it down.*" [source: December 15, 2000 District minutes]

General Manager Peña then requested that he be permitted to "privately negotiate with an anonymous party" who had expressed interested in preparing a new proposal. A motion was made and the District's Commission, on a 3 to 2 vote, instructed General Manager Peña "*to explore further opportunities regarding the Harbor Village fuel dock while at the same time he continue pursuing his negotiation with*" Dave' Marine Fuel Service. [source: December 15, 2000 District minutes]

What transpired at these public hearings served to clearly demonstrate the inadequacy of the District's economic assumptions about its proposed project. Were they valid, many proposals would have been received in response to the RFP. However, this failure was not apparent to the District's Commissioners.

At this point in time, the District's actions were unclear at best. Although the October 27, 2000 hearing resulted in a vote to reopen the fuel facility, yet the December 15, 2000 hearing testimony by General Manager Peña and District Commissioners discussion made it clear they were reconsidering whether to formally close the site or re-establish a fuel facility by the December 22, 2000 deadline. The District's Commission, on a 3 to 2 vote, directed General Manager Peña "*to explore further opportunities regarding the Harbor Village fuel dock while at the same time he continue pursuing his negotiations with the Hitch's*" (operators of Dave's Marine Fuel Service). General Manager Peña was directed to report back to the District's Commission no later than the regular March meeting, at which a decision would finally be made. [source: December 15, 2000 District minutes]

**Thirteen months later**, this matter suddenly reappeared before the District's Commission at its January 24, 2001 public hearing. As before, General Manager Peña began the hearing by noting how "*the deadline for bringing the three underground storage tanks and delivery line into compliance was December 23, 2000, and the District must now make a decision on how to proceed.*" [underscored for emphasis]

"Mr. Peña said should the Commission determine it is in the District's best interest to reopen the facility, the District has submitted plans to City Fire and has applied for the necessary permits. In the event the Commission determines it is in the District's best interest to close the facility, the plans and permits can be modified." [source: January 24, 2001 District minutes]

Clearly, the District's General Manager and its Commission considered the matter was still undecided and felt it was now necessary to make a final decision.

After discussing the proposal resulting from the anonymous third-party discussions, the District's Commission voted, on a 3 to 2 vote, to proceed under a 10-year lease with Ventura Harbor Marine Fuel, Inc., a newly formed entity.

### **Improper Filing of the CEQA Notice of Exemption**

At the January 24, 2001 public hearing, I specifically asked General Manager Peña if the District would be preparing or filing any form of CEQA documentation. I was told no, which was "technically correct" in term of the tense of my question. However, I learned on February 20, 2001 that the District had actually filed a CEQA Notice of Exemption (NOE) on January 17, 2001, seven days prior to the January 24, 2001 decision by the District's Commission to proceed, and 7 days prior to my question to General Manager Peña. At best, I suspect this was a subtle deception.

Filing an NOE before the District's 01-24-01 decision to approve the project violates the CEQA procedures described under Section 15061(d) of the CEQA Guidelines (Review for Exemption) which notes the following:

*After determining that a project is exempt, the agency may prepare a Notice of Exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with OPR or the county clerk until the project has been approved. (underscore added for emphasis)*

To remedy this, I asked that the Notice of Exemption be withdrawn and, re-filed with the County Clerk if District was holding to its exemption claim. My request was denied via e-mail from the District.

### **Incorrect Use of Section 15301 of the CEQA Guidelines**

The District cites CEQA Guidelines Section 15301 - Existing Facilities, which states:

*Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. .... The key consideration is whether the project involves negligible or no expansion of an existing use.*

Section 15301 exemptions are reserved for minor changes to "existing projects". As noted above, there is no existing valid CDP and no "existing project". Therefore, pursuant to CEQA, there is no existing use and the "existing environment" is limited to the infrastructure that remains from the previous "abandoned fuel facility" (i.e., underground tanks and delivery pipelines). The District has acknowledged these facts in making its applications for a new CDP from the City of Ventura and the California Coastal Commission. Therefore, I maintain that this exemption was improperly applied, that the proposed project constitutes "development" as defined under Section 30106 of the California Coastal Act, and that an Initial Study should have been completed before determining the need for further CEQA review/documentation.

When questioned about the early filing of the NOE, General Manager Peña said the January 17, 2001 filing was for the October 27, 1999 decision by the District's Commission, making this filing 1 year and 3 months late. As discussed above, the Administrative Record clearly indicates the District's Commission testimony and discussion at its January 24, 2001 public hearing was a reconsideration of this matter.

Subsequently, I request that the City, as a Responsible Agency under CEQA, intervene in this matter to either: 1) assume Lead Agency status itself and prepare an Initial Study itself based on a complete Project Description, or 2) send this case back to the District until an Initial Study is prepared based on a complete Project Description. The latter would have necessitated that the City uphold my appeal, denying the proposed project without prejudice, and find that District's CEQA review had not been adequately performed.

### **Incomplete and Inaccurate Project Description**

Five days after making its decision to proceed, the District applied for new CDP's from the City of San Buenaventura and the California Coastal Commission. The Project Description on these applications is limited to the following single sentence:

*Modification of existing fueling facility to meet requirements of the California Fire Code.*

As noted above, it was improper for the District, and the City, to characterize the site as an "existing fueling facility". Instead, it should have been characterized as a new project, one that would perform the remedial construction and re-construction needed to make use of available in-place infrastructure. This is not a subtle point because it dictates the manner in which the proposed project is to be evaluated under CEQA, specifically as it pertains to the "environmental setting" within which CEQA review is to be conducted.

Also missing from the Project Description are the range of additional uses discussed at the public hearings, such as the delivery of soy-based alternative fuel, fuel polishing, oil changing, and bilge pumping services. Without a complete and accurate Project Description, one that includes all requested uses, it is not possible for staff to fully evaluate the proposed project's potential effects, make a well informed staff recommendation, or properly condition the project.

Note: On April 25, 2001, Coastal Commission staff received an expanded Project Description, which was faxed to me the next day. None of this information was available to City staff during their evaluations and deliberations of the proposed project, lending credence to my assertion that the proposed project was not properly evaluated by the City.

### **Improper Definition of Environmental Setting = Failure to Prepare a CEQA Initial Study**

"Environmental Setting" is a description of the physical environmental conditions in the vicinity of the project, from both a local and regional perspective, as they exist at the time of the environmental analysis begins. The discussion of environmental setting must provide a clear and definite analysis of the location, extent, and character of the resources on and adjacent to the project site. By defining the proposed project as an "existing fuel facility", the District's Commission incorrectly assumed the proposed project was part of the environmental setting and was, therefore exempt from CEQA evaluation. As noted above, I submit there is no existing fuel facility at the subject location and, by relying upon a flawed definition of environmental setting, the District has failed to properly evaluate the proposed project pursuant to the requirements of Section 15063 of the CEQA Guidelines (Initial Study).

Given a complete Project Description, and a correct characterization of the project as "proposed" rather than "existing", it would have been incumbent upon the District, as CEQA Lead Agency, to prepare a CEQA Initial

Study. Having done so, the project being proposed under ACDP-389 would be considered as the first action in a series of actions, including the California Coastal Commission CDP, resulting in an evaluation of the entire project (i.e., re-establishment of a new fuel facility).

This is evidenced by the fact that two new CDPs are required to re-establish a new fuel facility: ACDP-389 from the City; and the CDP now under application with the California Coastal Commission (CCC). These new permits are being required because there is no current and valid permit on file for this site with either agency. This is an important point because, in preparing an Initial Study, a determination for each issue listed in the CEQA Initial Study Checklist must be made as to whether the project (individually and cumulatively) would have an effect on the existing environment, and whether that effect would be significant. The Initial Study must consider also the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts. This is also defined under Section 30105.5 of the California Coastal Act, as follows:

*"'Cumulatively' or 'cumulative effect' means the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."*

As currently described, it is not possible for City staff to make any conclusions or recommendations regarding the project potential environmental effects, nor is it possible for City staff to develop the necessary conditions of approval or any mitigation measures needed to address such effects.

Coastal Commission staff clearly demonstrated an understanding of this need for a complete Project Description. In a February 22, 2001 letter from Mr. Tom Luster (CCC) to Mr. Richard Parsons (District Applicant), Mr. Luster articulated a very detailed request for the information needed to find the District CDP application before the CCC complete for processing. Although this letter was received by City staff, the Administrative Record indicates City staff made no similar inquire on behalf of the City. Such information was requested by me and others at the various District public hearings which I noted in my letter dated February 22, 2001 to City Planner Kevin Colin, which stated:

*"Despite my questions at the public hearings, the District has not provided evidence of a Fuel Spill Prevention Plan, Fuel Spill Response Plan, or any of the other 'Plans' normal to fuel operations within the Coastal Zone. As a resident of the harbor, I have witnessed many large fuel spills and have yet to witness a response or an effort to clean up the spill. The only exception to this has been when a vessel has sunk and been boomed off to contain fuel and oil. When I asked if the District had prepared Conditions of Approval, Fuel Spill Prevention/Response Plans, or were imposing financial assurance responsibilities upon the intended contractor, I receive a blank stare. Similarly, there was no reply to my questions regarding the District's efforts to keep these vessels from dumping their holding tanks in our waters (a common practice). All of these matters have yet to be addressed."*

I suspect that the District's fear and mistrust of the City and CCC permitting process are at work here. During the public hearing the District General Manager and a majority of the District Commissioners expressed views that it was essential to hang on to the fuel facility infrastructure by re-establishing a fuel operation. They believed that, were it fully removed in response to the long-standing enforcement actions, it would be near-impossible to ever re-establish a fuel facility at this location should the need arise in the future. I suspect this fear and mistrust,

drove the majority to pursue this matter under an environmental setting that defined said infrastructure as an existing fuel facility. Under this definition, they believe they will get a "free pass" through the permitting and CEQA processes.

In appealing to the City Council, a Responsible Agency under CEQA, I asked that the City's consideration of ACDP-389 needs to be "responsible" to ensure that the Lead Agency has conducted adequate CEQA review. This is necessary because, in granting its approval, the City must make the finding that the CEQA review performed by the Lead Agency was "*adequate for the City's review of the project under the provisions of its Local Coastal Program and public access and recreation policies of the Coastal Act.*"

In discussions with staff, and based upon the Administrative Record, there was no such review, and the District's NOE was simply accepted by the City on its face.

### **Environmental Setting and its Influence on the Permitting Process**

Had an Initial Study been conducted, the "environmental setting" would have included the following pertinent conditions:

- 1) The National Park Service is now a permanent occupant and active user of the harbor waters and, as an existing District tenant, has expressed interest in leasing the now former fuel dock (i.e., the subject site).
- 2) The Oracle Racing sailing syndicate (i.e., America's Cup) has occupied a large area near the proposed fuel facility, bringing additional and unprecedented prestige to Ventura Harbor.
- 3) Given this prestige, increased interest by recreational boaters to move into the adjacent Ventura Isle Marina.
- 4) The harbor is host to an established fishing industry that is currently as active as the fishery will support. According to General Manager Peña, its fleet is at or near 100% occupancy in terms of slip occupancy.
- 5) Dave's Marine Fuel Service is an existing fuel facility that currently provides fuel to recreation, fishing and commercial vessels. This existing fuel facility is better located in terms of fuel spill containment and general harbor congestion.

The question before the District Commission should have been properly couched in terms of how to install the additional services being demanded by the fishing fleet, such as the higher speed fuel delivery (now withdrawn from consideration), the delivery of soy-based alternative fuel, and providing fuel polishing, oil changing, and bilge pumping services. No one has voiced opposition to the provision of these expanded services within Ventura Harbor.

Though not a normal part of the CDP permit processing, considering an alternative location within the harbor is reasonable in this instance because the District is the entity controlling all of the leases within Ventura Harbor. It is in the District's fiscal interest to conduct its business in a manner that enhances the financial viability of its tenants, while bring the new services being demanded. Once there were two fuel facilities in Ventura Harbor,

and one failed as the harbor cannot support two such businesses. Yet, the District has stubbornly refused to take this into consideration and pursue a good faith effort to locate the proposed services with the only "existing fuel facility" within Ventura Harbor: Dave's Marine Fuel Service.

At every public hearing, testimony was been offered in evidence of the fact that Dave's Marine Fuel Service is the perfect location for the District's proposed increase in fuel related services. Their public hearing testimony made it clear there was interest in providing the necessary services at this alternative site, which affords the best location should a major fuel spill occur. During prevailing winds from the northwest, any fuel spill could be quickly contained against the area of the boat ramp. During Santa Ana wind conditions from the east to southeast, any fuel spill could be quickly contained before reaching the finger leading to the Ventura Keys. In both instances, few boat slips would be involved and clean-up efforts would be relative unhindered. Refer to Exhibit "2" - Ventura Harbor graphic.

That is not the case with the location proposed under ACDP-389. You need only walk the area to see how quickly a fuel spill will find its way into the adjacent recreational marina and amongst hundreds of boats, rendering it impossible to clean up. The Oracle Racing syndicate is now located there as well. Since the fishing fleet reached its full occupancy, I have personally witnessed several large fuel spills, and many more smaller spills, most resulting from automatic bilge pumps within the fishing fleet. Each time the fuel would pool around my boat which was located on the first downwind finger of Ventura Isle Marina on "C" Dock. This is of concern to the management of Ventura Isle Marina as these fuel spills place a fuel ring around each boat, which the owners must wash off each time it happens. In 12 years I have witnessed only 2 or 3 instances where an effort was made to recover or contained spilled fuel. In each instance, sinking boats were "booming off" and fuel recovered/evaporated in place. The routine fuel spills that impact the hundreds of recreation boats downwind do not foster a sense of "land use compatibility" among the affected recreational boaters. Perhaps that is why staff has not asked the City Council to make a "land use compatibility" finding for the proposed project.

Another argument supporting the use of the Dave's Marine Fuel Service location was made by General Manager Peña. In public testimony and in discussions with individuals, General Manager Peña has repeated made the District's Commission aware of the fact that the National Park Service has expressed interest in entering into a long-term lease for use of the subject area, and at a price that would likely result in greater net revenues to the District. That option had never considered by the District's Commission.

I submit that Dave's Marine Fuel Service very likely emerge as a CEQA Environmentally Preferred Alternative if the proposed project were evaluated given:

- 1) a complete Project Description;
- 2) the inclusion of Dave's Marine Fuel Service as an alternative location; and
- 3) the preparation of an Initial Study, and any requisite CEQA documents.

### City Council Findings in Error (Resolution No. 2001-42)

I submit that the combined flaws of the ACDP-389 planning process resulting in the City Council making findings that are in error. I call your attention to Resolution No. 2001-42 from which I have derived the following extracts in evidence of these errors. Following each extract, I offer my indented comments.

#### Section 2, Finding 2.

The proposed development is *necessary* in order to bring the *existing fuel facility* into compliance with the...

Necessary? - three options exist: formally close and remediate the site, re-establish a fuel facility, or expand Dave's Marine Fuel Service and install another coastal dependent use on what was the Harbor Village fuel dock.

Correctly defined, there is no "existing fuel facility" at this location.

#### Section 2, Finding 5.

...their installation would enhance the continuation of coastal dependent land use types in a manner which *best addresses the long-term quality of harbor waters*.

Without a complete Project Description and Initial Study, staff has no basis for asserting the proposed project will best address the long-term quality of harbor waters. In fact, it is highly likely Dave's Marine Fuel Service will be forced out of business as a result of ACDP-389 approval, effectively discontinuing recreation boater access to fuel sales within Ventura Harbor.

#### Section 2, Finding 6.

...the project would result in *enhanced access capabilities to coastal waters* by the re-opening of an existing fuel pier dock...

Nothing is achieved in approving ACDP-389 that cannot be achieved at Dave's Marine Fuel Service. If Dave's Marine Fuel Service is forced out of business as a result of ACDP-389 approval, recreation boater access will be denied within Ventura Harbor, as boaters find the need to travel to Channel Islands for fuel, or use plastic Jerry jugs for fuel transfer in their slips, a practice that would violate Harbor Patrol and recreational boat marina policies.

#### Section 2, Finding 6.

...thereby facilitating and encouraging not only *coastal access for recreational purposes*, but also for commercial fishing activities...

The 100 gallon minimum fuel purchase imposed by the District, effectively precludes the use of this proposed fuel facility by most recreational vessels...which again poses the question: Where will recreational boaters go if Dave's Marine Fuel Service is forced out of business as a result of the proposed project?

Section 2, Finding 8.

The determination made by the Ventura Port District...under the provisions of Section 15301(e)(1) (minor alterations to an existing structure), has been reviewed in conjunction with the proposed project, and *found to be adequate for the City's review of the project...*

Discussions with staff indicate there was no such review, and the District's NOE was simply accepted by the City on its face. At the very least, the State Department of Boating and Waterways should have been consulted as part of an economic analysis of the proposed project's cause and effects to the only existing fuel facility in the harbor: Dave's Marine Fuel Service.

Section 2, Finding 7. (presented out of order, given the length of my response)

The proposed development is permitted and encouraged by the Land Use portion of the LCP and General Plan, and is consistent with the requirements and/or standards of the Implementation Program and Zoning Ordinance.

This finding fails to take into account the economic viability of the proposed project and, more importantly, the effects upon the only existing fuel facility operating in Ventura Harbor. Should ACDP-389 approval, testimony has been made that it would take the commercial vessel business away from Dave's Marine Fuel Service and likely force that long-standing business out of Ventura Harbor. Such an eventuality would deny recreational boaters access to a fuel facility because that proposed under ACDP-389 requires a minimum 100 gallons purchase (too much for most boats), and does not support a floating pier (requires side-tying to piers).

As such, the proposed project is not consistent with the requirements and/or standards of the following Sections of the California Coastal Act (extracted and presented in the next section of this Exhibit):

Section 30001.5 (failed to take "*into account the social and economic needs of the people of the state.*")

Section 30108 (did not consider the feasibility of the proposed project by "*taking into account economic, environmental, social, and technological factors.*")

Section 30234 (fails to recognize that "*recreational boating industries shall be protected and, where feasible, upgraded.*")

Section 30261 (though most applicable to tanker facilities, I submit the Act can be interpreted to include fuel facilities and, as such, the finding fails to recognize that fuel facilities "*shall be designed to (1) minimize the total volume of oil spilled, (2) minimize the risk of collision from movement of other vessels, (3) have ready access to the most effective feasible containment and recovery equipment for oil spills.*")

Section 30262 (though most applicable to large oil and gas facilities, I submit the Act can be interpreted to include fuel facilities and, as such, the finding fails to ensure that "*new or expanded facilities related to such development are consolidated, to the maximum extent feasible and legally permissible...*")



Section 30419 (failed to consult with "the Department of Boating and Waterways is the principal state agency for evaluating the economic feasibility of any boating facility to be developed within the coastal zone.") Specifically, this Section requires consultation "if the economic viability of a boating facility becomes an issue in a coastal development permit matter."

Visiting the City Planning Department, I obtained pages III-84 through III-112, which I was told was the Ventura Harbor portion of the City's LCP. Although very repetitive, there is only minimal substance in terms of additional policy. There are a few citations worth noting.

Page III-84 (the very first page) includes the following:

*"The Harbor Commercial (HC) designation in the Ventura Harbor area is intended to cause any new development in that area to be compatible with existing and proposed uses in the Harbor Complex." No such findings has been made.*

Pages III-88 and III-102 include the following:

*"The location and intensity of all land and water uses must be specifically defined to ensure no significant adverse cumulative impacts on coastal resources or access by existing permitted development." I submit that staff has not been permitted to evaluate, nor determine whether this can be assured, both in terms of the existing permitted Dave's Marine Fuel Service, nor the existing recreational boat marinas.*

Pages III-87 and III-101 include the following:

*"A minimum number of facilities serving the commercial fishing industry, adequate to meet the industry demand demonstrated in the Ventura Harbor, shall be provided within the Harbor complex. These include...fuel facilities (24 hours/day)..." Dave's Marine Fuel Service has been providing this service for many years and has attempted to negotiate with the District to enhance the services offered there to include those proposed under ACDP-389. In addition, there has been no demonstration of increased demand to warrant a second fuel facility. In fact, evidence has been offered to the contrary at public hearing.*

Pages III-95, III-100 and III-110 include the following, regarding the Southwest Harbor Area (where the project has been proposed):

*"Water dependent uses...may include...fuel facilities..." Listed among the possible uses, there is no requirement that a fuel facility be placed in the Southwest Harbor area.*

Pages III-97 includes the following General Location Policy:

*"2. Existing facilities serving recreational boaters and commercial fishermen shall be retained, unless documentation, consistent with that described under the Intent and Rationale Statement demonstrates that there is no longer a demand for facilities is*

*provided or equivalent facilities are constructed elsewhere in the Harbor in conjunction with the redevelopment of existing facilities."*

As previously noted, the only "existing fuel facility" is that of Dave's Marine Fuel Service, which can be expanded to provide the additional services being proposed under ACDP-389. Conversely, evidence has been provided indicating it will be difficult to retain Dave's Marine Fuel Service, should ACDP-389 be permitting. Providing equivalent services for recreational boaters is not possible nor feasible at the site of the proposed fuel facility.

Page III-100 includes the following:

*"In addition, a minimum number of recreational boating facilities available to the general public shall be provided and/or protected, including at least 1,500 recreational boat slips, public launch facilities, dry boat storage and fuel dock facilities."*

Should ACDP-389 be approved, the Administrative Record includes evidence that it is likely Dave's Marine Fuel Service will fail. If so, the fuel dock facilities referenced above will not be provided nor protected and recreational boaters will be denied access.

**Coastal Act Citations in Support of the Arguments Presented Herein** (*underscoring italics* added for emphasis)

### **Section 30001.5**

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and *economic needs* of the people of the state.

### **Section 30106**

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; *change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility*; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

**Section 30107**

"Energy facility" means any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal, or other source of energy.

**Section 30108**

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

**Section 30234**

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.

**Section 30261**

Multicompany use of existing and new tanker facilities shall be encouraged to the maximum extent feasible and legally permissible, except where to do so would result in increased tanker operations and associated onshore development incompatible with the land use and environmental goals for the area. New tanker terminals outside of existing terminal areas shall be situated as to avoid risk to environmentally sensitive areas and shall use a monobuoy system, unless an alternative type of system can be shown to be environmentally preferable for a specific site. Tanker facilities shall be designed to (1) minimize the total volume of oil spilled, (2) minimize the risk of collision from movement of other vessels, (3) have ready access to the most effective feasible containment and recovery equipment for oil spills, and (4) have onshore deballasting facilities to receive any fouled ballast water from tankers where operationally or legally required.

**Section 30262**

Oil and gas development shall be permitted in accordance with Section 30260, if the following conditions are met:

(b) New or expanded facilities related to such development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.

**Section 30419**

The Department of Boating and Waterways is the principal state agency for evaluating the economic feasibility of any boating facility to be developed within the coastal zone.

If the economic viability of a boating facility becomes an issue in a coastal development permit matter or in a local coastal program or any amendment thereto, the commission shall request the Department of Boating and Waterways to provide comment, including, but not limited to, the analysis of costs associated with conditions of approval. In cases where the Department of Boating and Waterways desires to make any comment, it shall be made within 30 days of the commission's request. The commission shall include the comment in its decision regarding a coastal development permit or local coastal program or any amendment thereto.

—end—

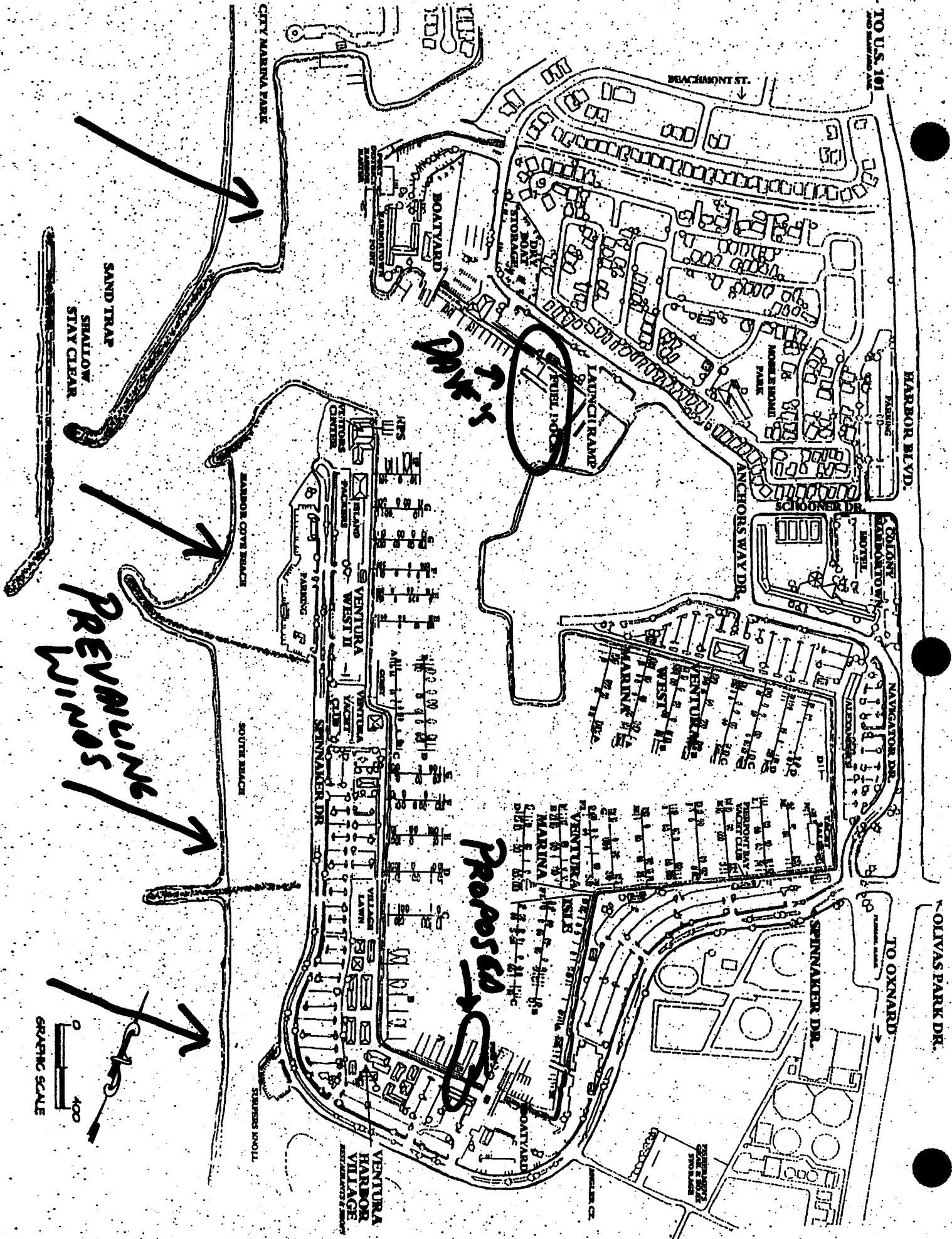


Exhibit "2" - Appeal of ACDP

Dave's Marine Fuel Service, Inc.  
1404 Anchors Way Drive  
Ventura, California 93004-4234  
(805) 644-6776 Fax (805) 644-2376

April 26, 2001

California Coastal Commission  
Mr. Tom Luster, Environmental Specialist  
45 Fremont St #2000  
San Francisco, California 94105-2219

Regarding: The re-establishment of the closed fuel facility at the Ventura Harbor

Dear Mr. Luster;

As the owners of Dave's Marine Fuel Service, in the Ventura Harbor, we have watched the fuel business for 37 years. The current closures on fishing, the financial state of the Harbor, and the anticipated closures of substantial parts of the Channel Islands have taken a toll on our business. Our current sales are down 30% from the 1998-99 levels. We understand the evolution of the industry and are prepared to weather the storm and continue to provide the best service possible to the commercial and recreational users of the Harbor.

What we cannot do is compete with a subsidized fuel facility owned by the Ventura Port District. They are currently trying to open an out of compliance fuel facility that has been closed for 4 years. They have undertaken this project only after every other businessman has rejected it as a money loser. This Harbor cannot support two fuel facilities as evidenced by the repeated failure and closure of that one.

The Port District has already stated that they could make more money if the site were used differently. We believe the duplication of services to a limited population will put both facilities at risk financially. It will also make it impossible financially for our business to keep up with compliance changes in the future.

We were moved to this location next to the public launch ramp in 1973. This was done to keep the fuelling process away from populated areas of the Harbor, to relieve boating congestion and lessen the risk of a fuel spill. This is still the superior location for all the same reasons. We currently serve the needs of all the boaters in the Harbor.

Our site has been in environmental compliance since opening in 1964. Our tanks were among the first in the State to be double-walled and electronically monitored. We are active in promoting proper fuel handling, and storage. We encourage our customers to

use pollution-reducing products even when they reduce fuel consumption. Gary is quoted in "The Changing Tide" Volume 5 Issue 1-Winter 2001 on the topic of fuel contamination and proper fuelling. We are a certified waste oil recycling facility. We also provide essential services to the public from our location next to the public launch ramp. As a Master Lessee we are constantly looking for ways to upgrade our facility to better serve any anticipated new recreational or commercial business.

Thank you for this opportunity to describe our Business to you.

Sincerely

A handwritten signature in cursive script that reads "Dorothy Hitch". The signature is written in black ink and is positioned above the typed name and company information.

Gary and Dorothy Hitch  
Dave's Marine Fuel Service, Inc.

February 22, 2001

City of San Buenaventura  
Department of Community Development  
Attn: Mr. Kevin Colin

California Coastal Commission  
San Francisco Office, Energy Division  
Attn: Tom Luster

RE: Coastal Development Permit Applications Submitted by the Ventura Harbor District for a Proposed Fuel Dock Facility

Gentlemen,

Thank you for your time regarding the proposed fuel dock in Ventura Harbor. I am sending this letter to you as e-mail and as an attached Adobe .pdf file, which may be printed. I requested your e-mail confirmation that you have received this letter.

I have boiled down my concerns about this proposed project to three topics, two of which warrant your attention. The third summarizes my frustration regarding process.

### **Notice of Exemption**

At the 01-24-01 public hearing, I asked if the District was going to perform CEQA review or file CEQA related documents. I was told it would not. At first, I thought I had been lied to, then learned the Ventura Port District had already filed a Notice of Exemption with the Ventura County Clerk on 01-17-01. This filing is erroneous in two regards:

First, the Notice of Exemption was filed 7 days before the 01-24-01 public hearing that resulted in the District's decision to approve the project. This violates the CEQA procedures described under Section 15061(d) of the CEQA Guidelines (Review for Exemption) which notes the following:

After determining that a project is exempt, the agency may prepare a Notice of Exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with OPR or the county clerk until the project has been approved. (underscore added for emphasis)

To remedy this, I request that the Notice of Exemption be withdrawn and, if it is the intent of the District to hold to its exemption claim, refile with the County Clerk. This will restart the 30-day period for public review and appeal. I formally request that you notify me of any subsequent filing. Also, should the District simply re-file the same Notice of Exemption, please consider this letter my appeal of said filing.

Second, the District cites CEQA Guidelines Section 15301 - Existing Facilities, which states:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. .... The key consideration is whether the project involves negligible or no expansion of an existing use.

This 01-17-01 filing of the Notice of Exemption is in error and I wish to appeal it on the following grounds:

Section 15301 exemptions are reserved for minor changes to "existing projects". As there is no existing valid Coastal Development Permit and no existing fuel dock operation. Therefore, pursuant to CEQA, there is no existing use and the "existing setting" is defined simply as tanks and pipelines in the ground. The District has acknowledged these facts in making its applications for a new Coastal Development Permit to be issued by the City of Ventura and by the California Coastal Commission. Therefore, I maintain that this exemption was improperly applied and that an Initial Study must be completed before determining the CEQA review/documentation needed.

Because the Project Description is not complete, staff was not aware of the fact that the proposed project includes the use of a 300 gallon per minute fuel delivery system, an amount substantially in excess of anything used in the past under the prior expired fuel dock permit. In addition, the District has stated at its public hearing that it is pursuing this proposed project to substantially expand the existing commercial fishing related uses within the harbor and specifically to expand the uses of this former fuel dock. I maintain these facts do not support the use of a Section 15301 exemption determination by the District and that it should be overturned.

I suggest that staff consider such potential effects as growth inducement within the fishing fleet (particularly in light of the closure of northern fishing grounds), what effect the inducement of larger fishing vessels into our waters will have upon the fishing stock, fuel spill prevention/response provisions, and the financial responsibilities and bonding necessary to ensure our harbor remains clean.

### **Project Description**

In reviewing the Coastal Development Permits submitted to the City of Ventura and the California Coastal Commission, it is very apparent that the information provided therein is incomplete. Specifically, the Project Description fails to describe the proposed use of a 300 gallon per minute fuel delivery system, an amount substantially in excess of anything used in the past under the prior expired fuel dock permit. It also fails to describe the District's stated intent that the proposed project substantially expand the existing commercial fishing related uses within the harbor and expand upon the former uses of the currently inactive fuel dock. In addition to the delivery of diesel fuel, the District proposes the delivery of alternative soy based fuel, the provision of fuel polishing and oil change services, among other vessel related services.

Despite my questions at the public hearings, the District has not provided evidence of a Fuel Spill Prevention Plan, Fuel Spill Response Plan, or any of the other "Plans" normal to fuel operations within the Coastal Zone. As a resident of the harbor, I have witnessed many large fuel spills and have yet to witness a response or an effort to clean up the spill. The only exception to this has been when a vessel has sunk



Letter to Mssrs. Kevin Colin and Tom Lustor  
RE: Ventura Harbor Port District application for a CDP  
February 22, 2001

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and been boomed off to contain fuel and oil. When I asked if the District had prepared Conditions of Approval, Fuel Spill Prevention/Response Plans, or were imposing financial assurance responsibilities upon the intended contractor, I receive a blank stare. Similarly, there was no reply to my questions regarding the District's efforts to keep these vessels from dumping their holding tanks in our waters (a common practice). All of these matters have yet to be addressed.

### **Public Review Process**

It stinks! Having attended several District meetings on this matter, I believe the District holds the notion of public review in contempt. Meeting agendas placed this topic at the end of very long meetings, a practice they finally changed at the last meeting. Hearing Notices are mailed on the Friday preceding Tuesday meetings, ensuring that most people do not have time to schedule their attendance, nor prepare testimony. Most annoying was the practice of limiting testimony to 3 minutes, a practice that seems not to apply to those speaking in favor of the proposed project.

The last public hearing on this matter, before the 01-24-01 hearing, was held several months prior. At that time, the District was frustrated over having received only two responses to its RFP (1 formal and unacceptable, and 1 unsolicited). Apparently, the District had sent out 17 or so and no one found the request compelling. Rejecting the two proposals received, the District acceded to Mr. Oscar Pena's request to pursue "private negotiations" with another party. I attempted to gain insight into this matter, as a point of order, and was denied. Suddenly, nearly 9 months later, the District holds what I refer to as a "Jack in the Box" public hearing where a new proposal is presented and adopted. True to its public notification procedures, I did not receive notice of this hearing until the day following the hearing, though was told of it by a friend.

I realize there is little you can do regarding this matter, I simply bring it to your attention as a reflection of the poor process being employed by the District.

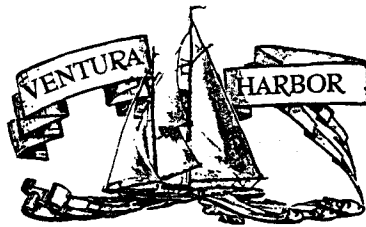
Again, I thank you for your time and look forward to your replies. Should you have any questions, please contact me directly

Sincerely,

Lou Merzario  
1567 Spinnaker Drive, PMB #4  
Ventura Harbor, CA 93001

310-625-6692

e-mail: lou\_ aboard\_alia@yahoo.com



February 28, 2001

Richard W. Parsons  
RWP Dredging Management  
2271 Los Encinos Road  
Ojai, CA 93023

Dear Richard,

In response to your inquiry regarding the history of fuel spills in the Harbor Village area, specifically the Fuel Dock, I can make the following declarations. They are based on my twenty-one years of employment with the District, fifteen of which have been in a supervisory role with the Harbor Patrol.

- No spills have occurred related to the operation of the fuel facilities;
- In my time with the District, there have been less than ten spills that have required a boom to be deployed. These were caused by boats sinking in their slips, improper transfer of fuel within a vessel's fuel tanks, and a case where an aluminum vessel's hull and fuel tank were punctured as it sat on a mooring buoy at an offshore platform.
- The Harbor Patrol frequently investigates petroleum sheens in the water off Harbor Village. Most often, the source of the sheen cannot be found. However when it is, the vast majority of spills are caused by an accidental discharge of an automatic bilge pump.

I hope this documentation provides useful information.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Scott Miller'.

G. Scott Miller  
Operations Manager



## VENTURA ISLE MARINA

1363 Spinnaker Drive  
Ventura, California 93001  
(805) 644-5858

# RECEIVED

MAY 14 2001

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

May 13, 2001

California Coastal Commission  
45 Fremont Street, #2000  
San Francisco, CA 94105-2219

Attention: Mr. Tom Luster, Environmental Specialist

Dear Commissioners:

Ventura Isle Marina, a recreation boating facility in operation since 1970, is located in the southeast corner of Ventura Harbor. We are submitting this letter to express our extraordinary concern regarding the re-establishment of a fueling facility adjacent to our docks.

Our several concerns are as follows:

1. **Congestion:** The turning basin at the southwest corner of the harbor is insufficient in size to hold large fishing vessels waiting their turn at the proposed fuel dock and allow for safe passage of the numerous boats docked at that end of our Marina. The basin in front of the existing fuel operation, Dave's Fuel Dock, is large enough to stage several large vessels and allow for uncontested, safe passage of boats in and out of the main channel.
2. **Safety:** The likelihood of spilled fuel and fire hazards are always present in a fueling operation. The proximity of the proposed fueling operation is extremely close to our docks. In fact, the prevailing winds and harbor currents would direct spilled fuel not only into the V. I. M. dock area, but into the commercial pier and boatyard docks, endangering over 100 recreation vessels. Furthermore, the proposed site is within a few yards of a high use pedestrian walkway, several well attended restaurants, and other tourist oriented shops and businesses.

The existing fuel facility on the other hand, is in a location well away from tourist operations. In the event of a fire or a spill, the area is isolated and contamination would be contained in a corner of the Harbor adjacent to the launch ramp.

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3. **Environment:** Ventura Isle Marina must deal on a daily basis with an oily sheen on our harbor waters. All of our 530 slips are directly downwind from the commercial docks and the pumping of contaminated bilge water from one or more of the numerous fishing vessels are a weekly occurrence. To add the component fueling operation spills to the Harbor waters is not worth the risk, no matter how much containment equipment is at hand. Nothing seems to stop the present fuel spills.
4. **Economic:** Ventura Harbor has had a continuously operating fueling operation since the Harbor opened in the late 1960's. Dave's fuel dock has provided gasoline and diesel to the commercial and recreation boating community and remained in business throughout all the highs and lows of the economy. That cannot be said of past commercial fueling stations in the proposed location. Of the two previous operations, none survived.
5. **Recreation:** The proposed fuel operation will limit sales to vessels taking 100 or more gallons of diesel. Gasoline sales will not be offered nor will compressed natural gas (CNG) cylinders be exchanged. The Hitch family, operators of Dave's Fuel Dock, have indicated they will not be able to remain in business if their current diesel fuel sales are diminished. They do not sell enough gasoline to the recreation boating community to economically survive. Were they to go out of business and the other operation not sell gasoline, then the recreation boater would be forced to travel nearly 18 miles round-trip to fuel. It is likely then, many owners would move their boats to slips in Channel Islands Harbor to be closer to a gasoline fuel source. This hardship would impact both recreation marinas in the harbor to the extent the Port District's collection of percentage rent would significantly diminish.

Ventura Isle Marina is fully supportive of competing businesses in any endeavor; the issue here is the location of the proposed operation. The impact on congestion, safety, environment, economic, and recreation elements right next door to the Harbor's highest source of percentage rent income is of significant concern to our organization and our boating customers. We urge the Commission to give the utmost consideration to all these factors in your decision process.

Sincerely,



Edward Schoerner  
Marina Manager

ES:jd

Cc: Almar Ltd.  
Harry L. Nelson, Jr.  
Randy Short