

CALIFORNIA COASTAL COMMISSION

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RECORD PACKET COPY

February 5, 2004

TO: Commissioners and Interested Persons

FROM: Charles Damm, Senior Deputy Director
Gary Timm, District Manager
John Ainsworth, Supervisor, Planning and Regulation

RE: **Notice of Impending Development 1-04, Pursuant to the Channel Islands Harbor certified Public Works Plan (PWP) for Public Hearing and Commission Action at the meeting of February 19, 2004 in San Diego.**

SUMMARY AND STAFF RECOMMENDATION

The impending development consists of the construction of the Boating Instruction and Safety Center (BISC) on property owned by the County of Ventura located on the west side of the Channel Islands Harbor. The project includes approximately 26,000 sq. ft. of exterior space, 24,000 sq. ft. of dock space, a two-story 19,000 sq. ft. building, and a one-story 1,000 sq. ft. maintenance/storage building.

The required items necessary to provide a complete notice of impending development were received in the South Central Coast Office on January 22, 2004, and the notice was deemed filed on January 29, 2004. Staff is recommending that the Commission determine that the impending development is consistent with the certified Channel Islands Harbor Public Works Plan with eight special conditions regarding (1) compliance with all required project modifications and mitigation measures; (2) replacement of lost boat slips caused by the project within the harbor; (3) protection of nesting and roosting herons; (4) night lighting restrictions; (5) revised plans for replacement of lost park area; (6) drainage and polluted runoff control; (7) erosion control and removal of debris; and (8) Best Management Practices, all of which are necessary to bring the development into conformance with the PWP.

SUBSTANTIVE FILE DOCUMENTS: Certified County of Ventura Channel Islands Harbor Public Works Plan (9/19/86); Certified Final Environmental Impact Report for the Boating Instruction and Safety Center (BISC), volumes 1-5, December 2003 prepared for Ventura County Harbor Department and approved by Ventura County Board of Supervisors.

I. PROCEDURE

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

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

II. STAFF RECOMMENDATION: MOTION AND RESOLUTION

MOTION: *I move that the Commission determine that the development described in the Notice of Impending Development 1-04, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a determination that the development described in the Notice of Impending Development 1-04, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DETERMINE DEVELOPMENT IS CONSISTENT WITH LRDP:

The Commission hereby determines that the development described in the Notice of Impending Development 1-04, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan for the reasons discussed in the findings herein.

III. SPECIAL CONDITIONS

1. Mitigation Measures identified during Environmental Review

In accordance with the Ventura County Harbor Department's proposal to implement all mitigation measures identified in the Final Environmental Impact Report (EIR) for the Boating Instruction and Safety Center (BISC) dated December 2003, all mitigation measures and project modifications identified within the subject final EIR applicable to alternative 6.2B are hereby incorporated by reference as conditions of the Notice of Impending Development 1-04 unless specifically modified by one or more of the special conditions set forth herein.

2. Replacement of all lost boat slips within CIH

All recreational boat slips eliminated due to construction of the BISC project shall be replaced in kind (size and use) within the Channel Islands Harbor PWP jurisdiction.

3. Protection of Nesting and Roosting Herons

Commencement of construction shall not take place until a qualified biologist has determined the black-crowned night herons are no longer nesting. No Construction shall commence or ongoing exterior construction shall occur during the nesting season for black-crowned night herons (February through July). Construction improvements to the interior of the building may continue during the balance of the year if the biological monitor determines that interior construction will not adversely impact nesting or fledging activity and all construction noise is mitigated to the maximum feasible extent. Construction staging shall take place from the opposite side of the BISC away from the nesting trees. A qualified biologist shall monitor the site prior to, during (at least twice monthly), and after construction. The biologist shall submit a monitoring report after each nesting season during construction and once annually for 3 years after final construction is completed which addresses the status of black-crowned night heron nesting in the immediate vicinity of the BISC. If the biologist determines that nesting has been adversely impacted by the BISC additional trees suitable for nesting shall be planted within the harbor.

4. Direction of lighting on north side of building away from nesting trees.

To avoid disturbance of nesting herons all lighting on the north side of the BISC building shall be of low intensity and directed downward and/or away from nesting trees.

5. Revised Plans for showing replacement of lost park area.

Prior to commencement of construction the County shall submit a site plan showing the replacement of an equal or greater area of park to that lost to construction of the BISC within the immediate area of the project site in the Harbor. The replaced park area shall be equally accessible and usable by the public as the area lost to construction.

6. Drainage and Polluted Runoff Control Plan

Prior to the commencement of development, the Harbor Department shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Site design, source control, and treatment control BMPs shall be implemented to minimize water quality impacts resulting from the proposed project.
- (b) Parking lots shall be designed to minimize the offsite transport of pollutants that are deposited on parking lot surfaces. Parking lots shall be designed to reduce impervious land coverage of parking areas, infiltrate runoff before it reaches the storm drain system, and treat runoff before it reaches the storm drain system. The proposed parking lots for this project shall incorporate infiltration measures such as permeable pavement, infiltration basins, or other landscaped features to ensure that all runoff is infiltrated and/or treated onsite before it reaches the storm drain system, to the maximum extent feasible.
- (c) Development of the BISC shall be designed to control the runoff of pollutants from structures, parking and loading areas. Loading/unloading dock areas shall be covered or run-on and run-off of drainage shall be minimized. Under no circumstances are direct connections to the storm drains from depressed loading docks permitted. Repair/maintenance bays shall be indoors or designed in such a way that does not allow stormwater run-on or contact with stormwater runoff. Repair/maintenance bay drainage systems shall be designed to capture all washwater, leaks and spills and shall be connected to a sump for collection and disposal. Vehicle/boat/equipment wash areas shall be self-contained and/or covered, equipped with a clarifier, or other pretreatment facility, and properly connected to a sanitary sewer.
- (d) Outdoor material storage areas shall be designed to prevent stormwater contamination from stored materials. Materials with the potential to contaminate storm water shall be placed in an enclosure such as a cabinet, shed or similar structure that prevents contact with runoff or spillage to the storm water conveyance system or protected by secondary containment structures such as berms, dikes or curbs. The storage area shall be paved and sufficiently impervious to contain leaks and spills.
- (e) Trash storage areas shall be designed to prevent stormwater contamination by loose trash and debris. Trash container areas shall have drainage from adjoining roofs and pavement diverted around the area(s). Trash container areas shall be screened or walled to prevent off-site transport of trash.

- (f) Treatment control BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (g) Runoff shall be conveyed off site in a non-erosive manner.
- (h) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (i) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the Harbor Department or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area.

7. Erosion Control and Removal of Debris

Prior to the commencement of development, the Harbor Department shall submit, for the review and approval of the Executive Director, an erosion and sediment control plan and Storm Water Pollution Prevention Plan for the construction phase of the project designed by a licensed landscape architect, licensed engineer, or other qualified specialist. The plans shall be reviewed and approved by the consulting engineering geologist or qualified County designee to ensure that the plans are in conformance with the consultants' recommendations and shall provide the following:

- (a) The project site shall be in compliance with State Water Resources Control Board NPDES Permit Waste Discharge Requirements for Construction Activity and shall not cause or contribute to significant adverse impacts to coastal resources.
- (b) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to erosion and dispersion.
- (c) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction.
- (d) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas, and stockpile areas.
- (e) Construction debris and sediment shall be properly contained and secured on site with Best Management Practices (BMPs) to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or

tracking. BMPs designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activities shall be implemented prior to the on-set of such activity. These BMPs shall include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, sediment must be trapped on site using fiber rolls, silt fencing or sediment basins, disturbed areas must be stabilized with vegetation, mulch or geotextiles, all stockpiles must be covered, the storage, application and disposal of pesticides, petroleum and other construction and chemical materials must be managed and controlled, and adequate sanitary and waste disposal facilities must be provided. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading and/or site preparation operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

- (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and graded areas with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

8. Water Quality/Best Management Practices Program

Prior to the commencement of development, the Harbor Department shall submit, for the review and approval of the Executive Director, a detailed Water Quality/Best Management Practices (BMP) Program for controlling adverse impacts to water quality related to the public boating facilities associated with this project. The plan shall demonstrate that boating in the project area will be managed in a manner that protects water quality and that persons or employees maintaining boats in slips or using slips on a transient basis are made aware of water quality provisions. The plan shall include, at a minimum, the following provisions:

- a. Boat Maintenance Best Management Practices
- Clean boat hulls above the waterline and by hand. Where feasible, remove the boats from the water and perform cleaning at a location where debris can be captured and disposed of properly.
 - Detergents and cleaning products used for washing boats shall be phosphate-free and biodegradable, and amounts used shall be kept to a minimum.
 - Detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye shall not be used.

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- In-the-water hull scraping or any process that occurs underwater to remove paint from the boat hull shall be minimized to the maximum extent practicable.

b. Solid Waste Best Management Practices Related to Boat Maintenance

- Boat maintenance and cleaning shall be performed above the waterline in such a way that no debris falls into the water.
- Clearly marked designated work areas for boat repair and maintenance shall be provided. Work outside of designated areas shall not be permitted.
- Hull maintenance areas, if provided, shall be cleaned regularly to remove trash, sanding dust, paint chips and other debris.
- Public boat facility patrons shall be provided with proper disposal facilities, such as covered dumpsters or other covered receptacles.
- Receptacles shall be provided for the recycling of appropriate waste materials.

c. Hazardous Waste Best Management Practices

- Storage areas for hazardous wastes, including old gasoline or gasoline with water, oil absorbent materials, used oil, oil filters, antifreeze, lead acid batteries, paints, and solvents shall be provided.
- Containers for used anti-freeze, lead acid batteries, used oil, used oil filters, used gasoline, and waste diesel, kerosene and mineral spirits which will be collected separately for recycling shall be provided in compliance with local hazardous waste storage regulations and shall be clearly labeled.
- Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes.

d. Sewage Pumpout System Best Management Practices

- Adequate sewage pumpout facilities to serve the proposed development shall be provided to prevent the overboard disposal of untreated sewage within the project area and surrounding waters.

e. Public Education Measures

The Harbor Department shall distribute the Water Quality Management Plan to all users of the boat docks. Informative signage describing and/or depicting Best Management Practices for maintenance of boats and boating facilities consistent with those specified herein shall be posted conspicuously.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Background and Description of Impending Development

On September 19, 1986, the Channel Islands Public Works Plan (PWP) was effectively certified by the Commission. The purpose of the PWP, as certified, is to provide "a detailed and specific planning document to guide future Harbor development." Jurisdiction within the Channel Islands Harbor is shared by both the County of Ventura and the City of Oxnard. Oxnard's City limits extend to all Harbor land areas. Based on a previous agreement between the two governmental authorities and the Commission's certification of the Public Works Plan, the County assumed planning and permitting authority within the Harbor. Under the certified PWP, the County is responsible for issuing all permits for development within the Harbor permitted by the plan. Review of a specific development by the Coastal Commission is limited to imposing reasonable terms and conditions to ensure that the development conforms to the PWP.

The proposed project subject to the Notice of Impending Development (NOID) consists of the construction and operation of a Boating Instruction and Safety Center (BISC) on a 0.84 acre parcel owned by the County of Ventura located on the west side of the Channel Islands Harbor between Harbor Boulevard and the Harbor (attachment 1). The BISC would consist of approximately 26,000 sq. ft. of exterior space, 24,000 sq. ft. of dock space, an approximately 19,000 sq. ft. two-story building, and a one-story, 1,000 sq. ft. maintenance and storage building to provide for incidental maintenance of the sailing, rowing, kayaking, and canoeing vessels. The project includes a full ADA access ramp from the main building to the dock area.

The BISC would be available to California State University – Channel Islands (CSU-CI), the Channel Islands Marine Sanctuary, community colleges, public schools, community groups, and the general public. The County intends to operate the BISC in partnership with CSU-CI to provide programs in marine biology, ecology, coastal resources, and oceanography. These programs will be available to University students and to the general public through extended education classes. The facility will also provide training in sailing, rowing, kayaking, canoeing, and other aquatic skills to students at the University, local public schools and the public. Nominal fees will be charged for equipment rental, boating and safety classes, and education programs. A gathering and teaching facility on the second floor will be available to the general public on a fee basis. The proposed facility will be open to the general public.

There is significant public opposition to the project, particularly from residents living adjacent to the west side of the Harbor. As originally proposed, the BISC was to be constructed within a grassy area of the Harbor designated as Public Park in the PWP and would have required the removal of a number of nesting trees for Black-crowned Night Herons. In response to comments from Commission staff the County re-oriented the BISC building by 90 degrees to avoid the trees used for nesting activity and to

significantly minimize intrusion into the park area. As a result, one non-nesting tree and 800 sq. ft. of grass area will be lost. Street access was also redesigned, however, to provide a small increase in green area. This alternative, identified as alternative 6.2B in the FEIR, was approved by the County as the preferred alternative. In its approval of alternative 6.2B, the County Board of Supervisors incorporated all EIR mitigation measures into the BISC project. The Board also required 10 Standard Conditions and 31 Project Modifications (Special Conditions) in its approval of the project.

The project is proposed to be funded through a mix of state and local funds. The State Department of Boating and Waterways is contributing a significant portion of the funds necessary to construct the project.

B. Public Works Plan Consistency

Land Use Plan

A disagreement has arisen between the County and opponents of the proposed BISC over whether the specific development is permitted under the certified PWP or whether it should be subject to a PWP amendment. The introductory chapter to the PWP states the following:

With the completion of already approved projects along the West Channel the Harbor will be completely built out; The Property Administration Agency does not have any plans for any major expansions or re-constructions of the Harbor area.

The principal objective of the Public Works Plan will be to identify land use designations and intensities within the Harbor and provide policies which provide, protect and maintain the public's access to and use of the recreational waters in and adjacent to the Harbor; additionally, the plan will protect and maintain commercial fishing facilities in the Harbor. The Plan will contain policies and actions designed to accomplish these recreational and commercial fishing objectives.

In addition, opponents maintain that the project is inconsistent with policies 20 and 21 of the PWP relative to public access and recreation. Policy 20 states:

All areas designated as public parks and beaches in Figure IV of the Plan shall be protected as open space and shall not be developed or utilized for other uses without an amendment to the plan.

Policy 21 states:

Harbor activities shall be clustered into locations appropriate to their use to protect and enhance public recreational activities in the Harbor. Land uses shall be compatible and consistent with the kind, location and intensity of development

and resource protection and development policies prescribed by this Land Use Plan.

Also cited is Section 4.0, Coastal Issues and Development Policies, which contains the following:

All development in the Harbor shall be subject to the following policy:

- 1) *Any expansion of the existing and permitted structures described in Table I shall be prohibited except for minor alterations which result in an increase of less than 10% of the internal floor area or an increase of 10% in height of the structure.*

The proposed BISC and project site are not described in Table I.

The Land Use Map contained in the PWP specifies land use designations and describes permitted uses within specific areas of the Harbor. The proposed BISC site is designated *Visitor Serving Harbor Oriented (VSHO)*. The PWP states that "the purpose of this designation is to provide for visitor serving uses and amenities which are either directly related to the boating activity within the Harbor, or ancillary to it." Permitted uses include "picnicking and other passive recreation, lodging, dining, fast food and shopping in chandleries, gift shops and boutiques, motels, restaurants, convenience stores, gas stations, fire stations, community centers/meeting places, yacht clubs, park areas, marine museums and marine oriented research facilities."

The PWP contains ambiguous or contradictory statements and policies relative to allowance of future development. Where a plan or policy contains contradictory language or policy direction the plan must be interpreted in a way that best carries out the intent of the plan. The PWP contains statements to the effect that the Harbor will be completely built out with the completion of already approved projects along the West Channel. A letter dated December 16, 2003 from the consultants who prepared the PWP for the County agrees with this contention (attachment 5). There are also several policies within the PWP that refer or apply to future additional development relative to access and recreation, parking, view corridors, height, recreational boating etc. As an example of internal inconsistency the Commission notes the contradiction between Policy 4 in the PWP which calls for the wide distribution of public facilities throughout the Harbor to minimize overcrowding and overuse and Policy 21 which calls for clustering. In approving the project the County noted the ambiguities between the Land Use Plan and certain policies of the PWP, including those cited above, and found that the Land Use Plan of the PWP is the controlling document. The County found that the plan allows for a wide range of uses under the VSHO designation and that the BISC was a permitted use.

Although the County staff believe that the BISC is an allowable use within the area designated as a public park under the PWP the Commission does not agree. Although the proposed project has been realigned or rotated to avoid being sited directly onto the

park, approximately 800 sq. ft. of designated park area will be displaced by the BISC. The County has countered that loss of park area by proposing to redesign the parking and circulation area for the adjacent Whale's Tail restaurant resulting in an overall increase of .2 acres of park. The County maintains that the open space is being relocated rather than eliminated. In order to insure that no net loss of park area occurs as a result of construction of the BISC Special Condition No. 6 requires the County to submit plans showing the location and amount of restored or replaced park area in the immediate vicinity of the BISC that, at a minimum, equals the amount of park area displaced. The Commission finds that special 6 is necessary to bring the proposed development into conformance with the certified PWP.

Biological Resources

The proposed BISC is located on the western side of the Harbor in an area comprised predominantly of paved areas for parking and visitor-serving uses. A landscaped linear park exists adjacent to Harbor waters and a public walkway that parallels Harbor Boulevard. The landscaped area includes several large non-native trees that are used by black-crowned night herons for nesting. Existence of the heron rookery has been confirmed by the California Department of Fish and Game (DFG). Nests were found throughout the Harbor. Great blue herons also have been found nesting in Cypress trees in the Harbor away from the proposed BISC site.

As stated in the FEIR the black-crowned night heron is a fairly common local resident of lowlands and foothills and very common locally in large nesting colonies. The herons are not listed or proposed for listing as threatened or endangered species. The federal Migratory Bird Treaty Act provides protection for individual black-crowned night herons and their active nests, however. The California Fish & Game Code also prohibits direct take of individual birds and their active nests. The FEIR states that in southern and central California the species nest in numerous types of trees, tall shrubs, and dense emergent marsh vegetation and is widely known to nest in City parks. The species is noted for its tolerance of human activity, including noise, within its nesting environment. The FEIR states that the black-crowned night herons at Channel Islands Harbor have adjusted to the presence of human activity. The FEIR concludes that construction of the BISC project will not undermine or displace the black-crowned night heron colony in nesting trees on the west side of the Harbor due to the species resilience and acclimation to human activity and that the herons will reassemble after construction is completed. As proposed by the County, major construction will take place outside of the nesting season as a mitigation measure to avoid or minimize adverse impacts on the night herons. Site work and outdoor construction will not begin before August 1 or prior to August 1 if a qualified biologist determines that nesting and fledging activity have been completed. Project modifications (mitigation measures) incorporated into the approved project by the Harbor Department include project modification 15 which requires enforcing litter and trash standards during construction and ongoing operation of the BISC and project modification 30 regarding timing of commencement of and ongoing construction which is discussed below.

The certified PWP states that there are no terrestrial biological resources of significance within Channel Islands Harbor, that the area is completely developed, and that terrestrial vegetation consists entirely of introduced landscaping species. Bird species found in the Harbor identified in the PWP include great blue herons, double-breasted cormorant, western grebes, brown pelicans, herring gulls, and California gulls. The PWP acknowledges that it is probable that many more migratory bird species use the Harbor during the year. Policy 2 in the Biological Resources chapter states "use of the marine environment shall be permitted to the extent that it does not adversely impact the biological productivity of Harbor and coastal waters." Presently, trees within the linear park which parallels the west side of the Harbor along Harbor Boulevard are used by Black-crowned night herons for nesting and roosting. The heron rookery includes trees immediately adjacent to the proposed BISC project site but also extends well beyond the site into the park area and other areas of the Harbor. The project will extend to within 10 feet of the nearest nesting tree.

The consulting biologist for the proposed BISC has reviewed the revised plan (alternative 6.2B) and commented as follows:

Importantly, the activity entrances and mobilization areas of this building are oriented to the parking lot side of the facility, not the tree side. This orientation will allow the nesting birds to coexist with the non-threatening human activities associated with the BISC program. I also continue to recommend that construction of the exterior components of the project (grading, framing, roofing and exterior sheeting) be limited to the non-breeding season, which is August through January. Construction improvements to the interior of the building could continue during the balance of the year, i.e., February through July, without disturbing the birds.

As stated previously, the project has been revised to relocate the building so that only one non-nesting tree is lost. Although the County has found that there are several other trees in the Harbor available for nesting, in order to avoid impacts to herons caused by construction noise the County has incorporated a mitigation measure (project modification 30) requiring that no construction shall commence during the nesting season for black-crowned night herons. If construction commences prior to the nesting season, however, or continues into a nesting season the County has required that six nesting trees adjacent to the BISC site be covered with netting to prevent herons from using the trees for nesting during construction. Prior to commencement of construction a qualified biologist is required to determine that black-crowned night herons are not nesting and that fledging will not be adversely affected by construction. It is anticipated that construction will take from 12 to 14 months to complete. The Commission is not convinced that covering nesting trees with netting and allowing construction to continue during the nesting season is the least damaging alternative. Therefore, the Commission is requiring special condition 3 which prohibits all outside exterior construction during the nesting season of the night herons. Interior construction shall be allowed throughout the year if the consulting biological monitor determines that interior construction can be performed without adversely impacting nesting herons.

Opponents to the project cite a letter to Lyn Krieger, Director of the Harbor Department, from John P. Kelly, PhD, dated June 25, 2003, commenting on the Draft EIR for the BISC. Dr. Kelly suggests that it would not be possible to either avoid or mitigate significant adverse impacts on the heronry, given the close proximity of the BISC. Dr. Kelly further states that "disturbed colonies may or may not re-establish in nearby areas", that "heronries vary dramatically in their response to disturbance", and that "scientific efforts have been unable so far to explain this variability in ways that allow reliable prediction of the consequences of construction activities, increases in human presence, or special recreational events." The letter concedes that black-crowned night herons often nest in areas with human activity but that they "seem to be very sensitive to changes in human activity and will abandon nesting areas if disturbed." Dr. Kelly's letter asserts that "disturbed colonies may shift locally to adjacent trees but may also abandon colony sites completely" due to such causes as removal of trees, direct harassment, predators, and other types of disturbance. In addition, Dr. Kelly states that assertions made in the DEIR relative to relocation are not substantiated or documented. He recommends a setback of nearly 200 meters to avoid disturbance.

While it is true that the greater the distance of setback the lesser the chance of disturbance or impacts the Commission notes that the area of the proposed BISC is not pristine and has been subject to human intrusion for years yet the black-crowned night herons continue to nest in the area. While the degree of disturbance may be intensified somewhat by construction of the BISC there are alternative trees available for nesting in the near vicinity of the project. Further, the County has required planting of additional trees suitable for nesting in the Harbor by incorporating mitigation measures 1 - 4 into the project. While a large setback might be applicable in an area of otherwise undisturbed pristine habitat it is neither possible nor necessary in this case. It is possible that the introduction of an additional disturbance could cause a change in the level of tolerance of the herons, however, it should be recognized that the black-crowned night herons have demonstrated a high level of adaptability or tolerance to human caused impacts in the Harbor. In this case the primary food source for the herons, Harbor waters, will not be degraded or lessened by construction of the BISC. (The degree of tolerance or adaptability of herons which become accustomed to nesting and roosting in large, undisturbed areas might be quite different, however.) For the reasons discussed above, the Commission finds that construction of the BISC consistent with alternative 6.2B and with all required mitigation measures and special conditions attached to this permit will not adversely impact the nesting of black-crowned night herons in the long run. Therefore, the Commission finds that the proposed BISC is consistent with the certified PWP relative to biological resources.

The FEIR states that the western snowy plover and the California least tern use areas on nearby Hollywood Beach to rest or forage. Hollywood Beach is located west of the Harbor. According to the FEIR snowy plovers roost on the beach and nest or attempt to nest in front of the dunes at the south end of the beach. In past years up to five nests have been observed. Hollywood Beach has been designated as critical habitat for the snowy plover. No nesting by California least tern has been observed at Hollywood

Beach. Concerns have been raised that snowy plover and least tern habitat would be adversely affected by users of the BISC crossing the beach from the Harbor to the ocean. In response to these concerns the U.S. Fish and Wildlife Service was consulted and determined, in a March 25, 2003 letter to the County, that "the activities associated with BISC on Hollywood Beach are not likely to cause disturbance beyond that caused by current recreational use and beach grooming activities. Therefore, we concur with your determination that the proposed BISC would not result in the take of western snowy plovers or California least terns." The USFWS did recommend that the County take measures to protect portions of the beach used by these species. In approving the project the County required suggested mitigation measure or project modification 14 to be incorporated into the project which states:

In January of each calendar year, the Director, County of Ventura Harbor Department will consult with the USFWS. If the USFWS advises that a western snowy plover nesting season is expected that year, the County of Ventura Harbor Department shall restrict crossing at the south end of Hollywood Beach for BISC activity during the months that correspond with the western snowy plover nesting season. Prior to recurring activities that cross the beach, the County of Ventura Harbor Department will consult with the USFWS to assure that the nesting season is considered complete.

Recreational Boating and Commercial Fishing

In approving the Public Works Plan the Commission found it to be consistent with Sections 30224, 30234, and 30220 of the Coastal Act relative to the provision and protection of recreational boating and commercial fishing facilities in the Harbor. Under the PWP 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 (PRC Section 30234). Policy 3 of the Recreational Boating Section of the PWP states, in part:

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

- (a) Harbor recreational boating facilities shall be protected, and where possible upgraded in order to provide further opportunity to the recreational boater.*

Uncongested use and access to the ocean through Channel Islands Harbor waterways is a stated objective of the PWP. Policy 4 states:

Any further development adjacent or near to Channel Islands Harbor which will create significant additional demand for boating access to the Harbor or its landside facilities will have adverse effects upon circulation and congestion, particularly at the Harbor entrance. As a condition to the consideration of any such development, the project proponent(s) shall be required to have completed

a study evaluating traffic circulation and all related impacts. This shall include examination of the adequacy of the Harbor waterway and entrance to accommodate such demand and what measures are appropriate to mitigate these issues.

The Harbor Department prepared "an assessment of vessel traffic congestion of the inland waters of Channel Islands Harbor". The stated purpose of the study was to assess current and predicted vessel traffic congestion on the inland waters of Channel Islands Harbor. The study focused on the potential impact on current vessel traffic of the proposed BISC relative to conducting boating classes within the waters of the Harbor. The study compared Channel Islands Harbor, Marina del Rey and Newport harbors. The study found that current vessel activities are well managed and conducted in a relatively safe environment. The study also found that the proposed BISC location would provide more than ample room for transiting vessel traffic to maneuver safely around students. The study concludes that that the Harbor will not likely reach a level of congested weekday vessel traffic and that, even on weekends, current vessel operating conditions should not be significantly impacted by the BISC.

Construction of the proposed BISC will cause the elimination or loss of three live-aboard spaces and 22 recreational boating spaces. The County has incorporated mitigation measure 3 and project modification 28 into the proposed project which require the Harbor Department to offer transient boaters (non live-aboard) similar accommodations within the Harbor. In order to comply with Policy 3, stated above, relative to protecting recreational boating facilities in the Harbor, however, the Commission is requiring special condition no. 2 which requires that all recreational boating slips eliminated as a result of construction of the BISC be replaced in kind within the jurisdictional geographic boundaries of the PWP.

Water Quality

The Public Works Plan contains policies to protect the water quality and biological productivity of Harbor waters. Policy 1 requires a water quality monitoring and a biological monitoring program. Policy 2 states that "use of the marine environment shall be permitted to the extent that it does not adversely impact the biological productivity of Harbor and coastal waters. The proposed BISC will result in the addition of structural and parking lot development plus increased use of the site which have the potential to adversely impact coastal water quality through the removal of vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as chemicals, petroleum, cleaning products, pesticides, and other pollutant sources.

Potential sources of pollutants such as chemicals, petroleum, cleaning agents and pesticides associated with new development, as well as other accumulated pollutants from rooftops and other impervious surfaces result in potential adverse effects to water quality to the Harbor and coastal waters. Such cumulative impacts can be minimized through the implementation of drainage and polluted runoff control measures. In

addition to ensuring that runoff is conveyed from the site in a non-erosive manner, such measures should also include opportunities for runoff to infiltrate into the ground. Methods such as vegetated filter strips, gravel filters, and other media filter devices allow for infiltration.

In the case of this project, a majority of the project site has been previously developed with landscape and some hardscape features. In this case, the proposed development will result in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with the proposed use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals; dirt and vegetation; litter; fertilizers, herbicides, and pesticides. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the PWP, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the amount of stormwater produced by all storms up to and including the 85th percentile, 24 hour storm event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in special condition 6, and finds this will ensure the proposed development will be designed to

minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the LRDP.

Furthermore, interim erosion control measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. To ensure that proposed erosion control measures are properly implemented and in order to ensure that adverse effects to coastal water quality do not result from the proposed project, the Commission finds it necessary to require the Harbor Department, as required by Special Condition 7, to submit final erosion control plans. Additionally, the Commission finds that stockpiled materials and debris have the potential to contribute to increased erosion, sedimentation, and pollution. Therefore, consistent with the PWP in order to ensure that excavated material will not be stockpiled on site and that landform alteration and site erosion is minimized, Special Condition 7 requires the Harbor Department to remove all excavated material, including debris resulting from the demolition of existing structures, from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the commencement of development. Should the disposal site be located in the Coastal Zone a separate coastal development permit or notice of impending development shall be required.

The Commission also notes the potential for adverse impacts to water quality related to the public boating facilities associated with the BISC. Therefore, special condition 8 requires the Harbor Department to submit a water quality Best Management Practices (BMPs) program that demonstrates that boating activity in the project area will be managed in a manner that protects water quality.

The Commission finds that the proposed BISC project described in the notice of impending development, as conditioned, is consistent with the applicable policies of the PWP with regards to protection of water quality.

C. California Environmental Quality Act

Pursuant to Section 21080.9 of the California Environmental Quality Act ("CEQA"), the Coastal Commission is the lead agency responsible for reviewing Public Works Plans for compliance with CEQA. The Secretary of Resources Agency has determined that the Commission's program of reviewing and certifying PWP's qualifies for certification under Section 21080.5 of CEQA. In addition to making the finding that the PWP amendment is in full compliance with CEQA, the Commission must make a finding that no less environmentally damaging feasible alternative exists. Section 21080.5(d)(1) of CEQA and Section 13356 of the California Code of Regulations require that the Commission not approve or adopt a PWP, "...if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment."

For the reasons discussed in this report, the PWP Notice of Impending Development 1-04, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan. In addition, the mitigation measures identified in the Final Environmental Impact

Channel Islands Harbor Public Works Plan
Notice of Impending Development 1-04

Report (December 2003) have been incorporated by reference into the special conditions identified herein through Special Condition One (1), in addition to other special conditions which will lessen any significant adverse effect of the specific project components associated with Notice of Impending Development 1-04. There are no other feasible alternatives or mitigation measures available that would further lessen any significant adverse effect that the approval would have on the environment. The Commission has imposed conditions upon the respective Notice of Impending Development to include such feasible measures as will reduce environmental impacts of new development. As discussed in the preceding section, the Commission's special conditions bring the proposed projects into conformity with the certified PWP. Therefore, the Commission finds that the Notice of Impending Development 1-04, as conditioned herein, is consistent with CEQA and the certified Public Works Plan for Channel Islands Harbor.



CHANNEL ISLANDS HARBOR

Ventura County Harbor Department
3900 Pelican Way • Oxnard, CA 93035-4367

Lyn Krieger
Director

Telephone (805) 382-3001
FAX (805) 382-3015
www.channelislandsharbor.org

January 21, 2004

Chuck Damm
Senior Deputy Director
CALIFORNIA COASTAL COMMISSION
South Central Coast Area Office
89 So. California Street, Suite 200
Ventura, CA 93001

RECEIVED

JAN 22 2004

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

**SUBJECT: NOTICE OF IMPENDING DEVELOPMENT – BOATING INSTRUCTION
AND SAFETY CENTER (CHANNEL ISLANDS HARBOR)**

Dear Mr. Damm:

Pursuant to Public Resources Code §30606, this letter is presented to provide Notice of Impending Development (NOID) for the proposed Boating Instruction and Safety Center (BISC) project located at Channel Islands Harbor. Such notice must be submitted prior to commencement of development by the public agency proposing a public works project pursuant to an adopted Public Works Plan. In this case, the certified Channel Islands Harbor Public Works Plan (PWP) is the PWP covering this project. This Notice provides a description of the proposed project as well as a showing of consistency with the PWP.

On December 16, 2003, the Ventura County Board of Supervisors certified the project EIR and approved the project, more specifically, Alternative 6.2B. Therefore, the project as originally proposed by the Board of Supervisors was rejected, and an environmentally superior alternative was adopted.

Project Description

The project approved by the Board of Supervisors is a State Capital Project on County-owned land. The project consists of the development of the Boating Instruction and Safety Center (BISC) on property located in Channel Islands Harbor, more specifically Project Alternative 6.2B as described in the EIR (Section 6.2). The project site is located on the west side of Channel Islands Harbor between Harbor Boulevard and the Harbor. Please see the enclosed Regional Location Map, Project Vicinity Map and Aerial Photograph.

EXHIBIT NO.
APPLICATION NO.
NOID 1-04
ATTACHMENT 1

The project as originally proposed eliminated a small number of nesting trees for Black-crowned night herons. To reduce biological resources impacts to less than significant levels, Project Alternative 6.2B was developed to re-orient the BISC building and avoid trees with nesting activity. The approved project site plan and elevations are enclosed and also are shown as Exhibits 49 and 50 in the EIR. This alternative was coordinated with the Department of Fish and Game, and was endorsed by the Harbor Department and the Harbor Commission prior to the Board's action.

The 0.84-acre project site proposes to accommodate approximately 26,000 sq. ft. of exterior space and approximately 24,000 sq. ft. of dock space, which includes a full ADA access ramp from the main building to the docking area. The facility would provide of a two-story, approximately 19,000 sq. ft. building and a one-story, 1,000 sq. ft. maintenance/storage building (square footages are approximate and may be slightly higher or lower upon completion of working drawings). The proposed center would be designed to provide training in sailing, rowing, kayaking, and canoeing for athletes, local public schools, California State University, Channel Islands (CSUCI), and the general public.

The County plans to lease the center to CSUCI to provide programs in marine biology, ecology, and oceanography. The BISC will provide facilities, staff, and equipment needed to teach sailing and aquatic skills and safety to youth and adults of Ventura County, and various college-level marine and oceanographic courses to California State University, Channel Islands students. The second floor "Teaching/Gathering Facility" would accommodate public and private functions. The Center would also include a Gathering Facility for limited events for a fee, in the same manner as other BISCs in the state operate.

The project is proposed to be funded through a mix of state and local funds. A contribution has been approved by the Department of Boating and Waterways to fund \$4.2 million to go toward construction of the project. The remaining money to fund the BISC is to be raised by the County of Ventura.

Recognizing the existing limited public use of the site, the BISC is an effort by the County and the State Department of Boating and Waterways to increase public access to the water and insure that the amenities serving the general public are increased in the harbor.

Consistency with Public Works Plan

The Channel Islands Harbor Public Works Plan, including the Land Use Plan, was certified by the Coastal Commission on September 19, 1986, and has been the governing document for Harbor development since that time. The land use designation on the certified Land Use Plan of the PWP for the project site is Visitor-Serving, Harbor-

Oriented (VSHO). Discussion of project consistency with the certified PWP is provided in Section 5.7 of the EIR (EIR Volume 1 - pages 155 through 170), in the Responses to Comments on the Draft EIR (EIR Volumes 3 and 4) and in the project resolution findings (pages 14 and 15). The project resolution is provided in Volume 1 of the Certified Final EIR, and the staff report to the Board of Supervisors is included in Volume 5 of the Certified Final EIR. A complete set of the Certified Final EIR document has been forwarded to you under separate cover.

Substantial controversy surrounded the County's determination that the BISC project as provided for in Alternative 6.2B was consistent with the PWP. Among the arguments made were:

1. The BISC occupied a portion of an area shown as Public Park in Figure IV, and page 45 of the PWP states that only four parks exist in the PWP, and this area is not one of them;
2. The BISC is not consistent with Policy 20;
3. The BISC exceeds the "10% addition to existing and permitted uses" provision at page 43 of the PWP.

The Board carefully considered these arguments and found that the Land Use Plan of the PWP is the controlling document. This Land Use Plan is the plan required to be found consistent with the California Coastal Act at the time of PWP certification by the Coastal Commission. This plan encourages a wide range of uses in the Visitor-Serving, Harbor-Oriented category, which applies to the BISC property. The Board found that in reconciling the ambiguity between Policy 20 and the Land Use Plan, interpretations must be made that are consistent with the principles of Chapter 3 of the Coastal Act to foster maximum public access. The BISC maximizes that public access.

Language within the PWP, particularly relating to increases in land use, is clearly aimed at leasehold interests, and not the public use of public land. Specifically, statements at page 38, 39, 42 and 43 of the PWP are designed for increases in development or redevelopment on leaseholds. Several policies of the PWP – including but not limited to those found in Policy 21, for example – emphasize the steps to be taken when property in the Harbor is developed or redeveloped.

The Board found that the PWP document, read in total and in the context of the Coastal Act, does not limit the ability to approve the BISC in the configuration shown in Alternative 6.2B without a PWP amendment.

In addition, Coastal Act §30605 provides that Coastal Commission review is limited to imposing conditions consistent with Section 30607 and 30607.1. Section 30607.1 is restricted only to consideration of dike and fill impacts to wetlands. No wetlands exist on the project site; therefore, this section does not apply to the proposed project.

Mr. Chuck Damm
January 21, 2004
Page 4

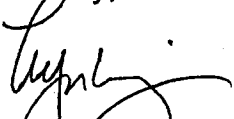
Notification

Pursuant to Coastal Act §30606, the Harbor Department is notifying, through provision of this letter, the Coastal Commission as well as other interested persons, organizations, and governmental agencies of the impending development. Under separate cover, a list is provided of all persons and organizations receiving a copy of this letter, including all residents within 300 feet of the project.

Conclusion

In conclusion, we believe the approved project is in compliance with the certified PWP as well as consistent with the purpose of the Coastal Act by furthering educational opportunities for boating and marine instruction. Please let us know if any additional information or materials are needed to assist with your review.

Sincerely,



Lyn Krieger, Director
County of Ventura Harbor Department

Enclosures: Regional Location Map
Project Vicinity Map
Aerial Photograph
Approved Project Site Plan and Elevations (Alternative 6.2B)

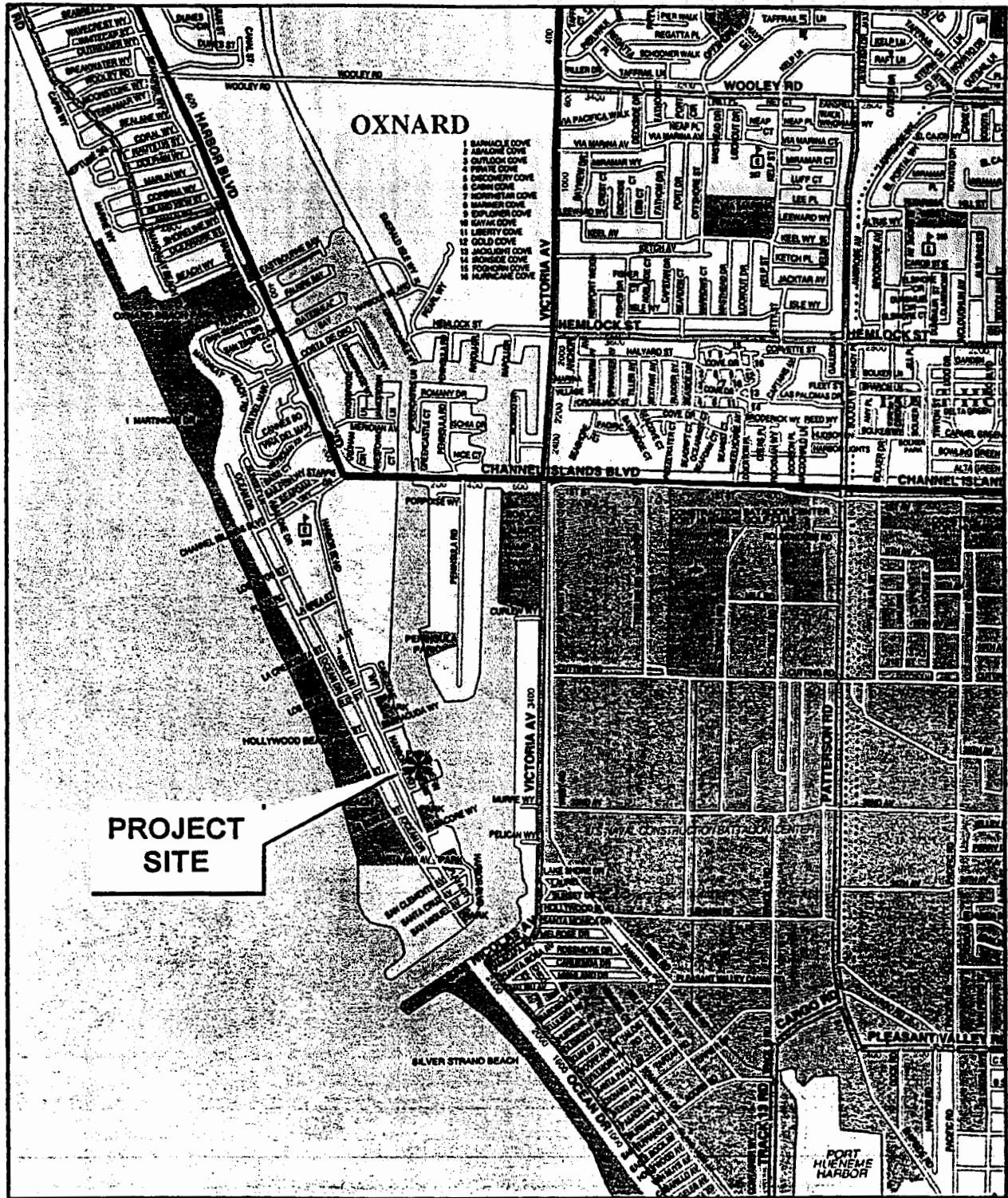


Exhibit 2 - Project Vicinity

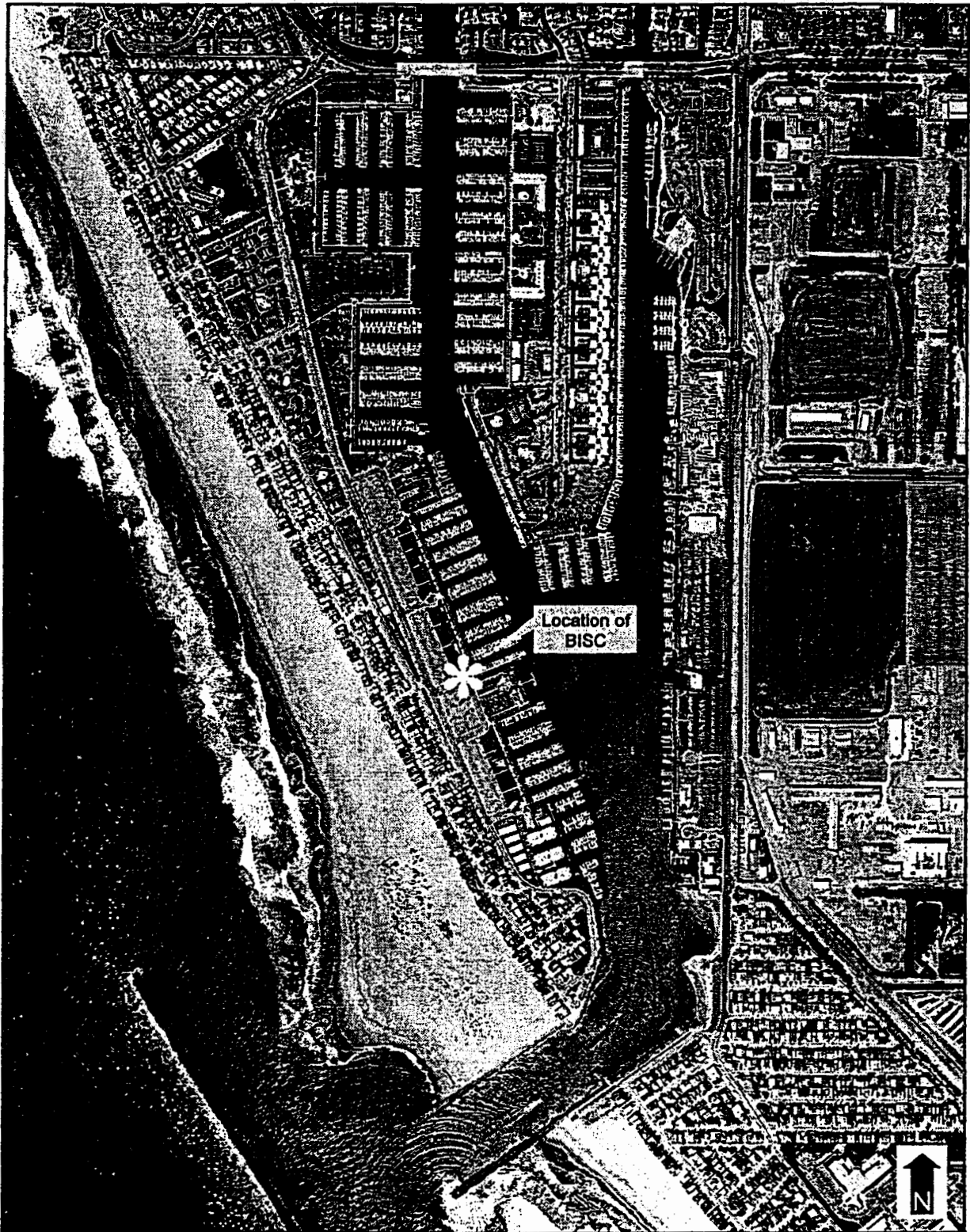
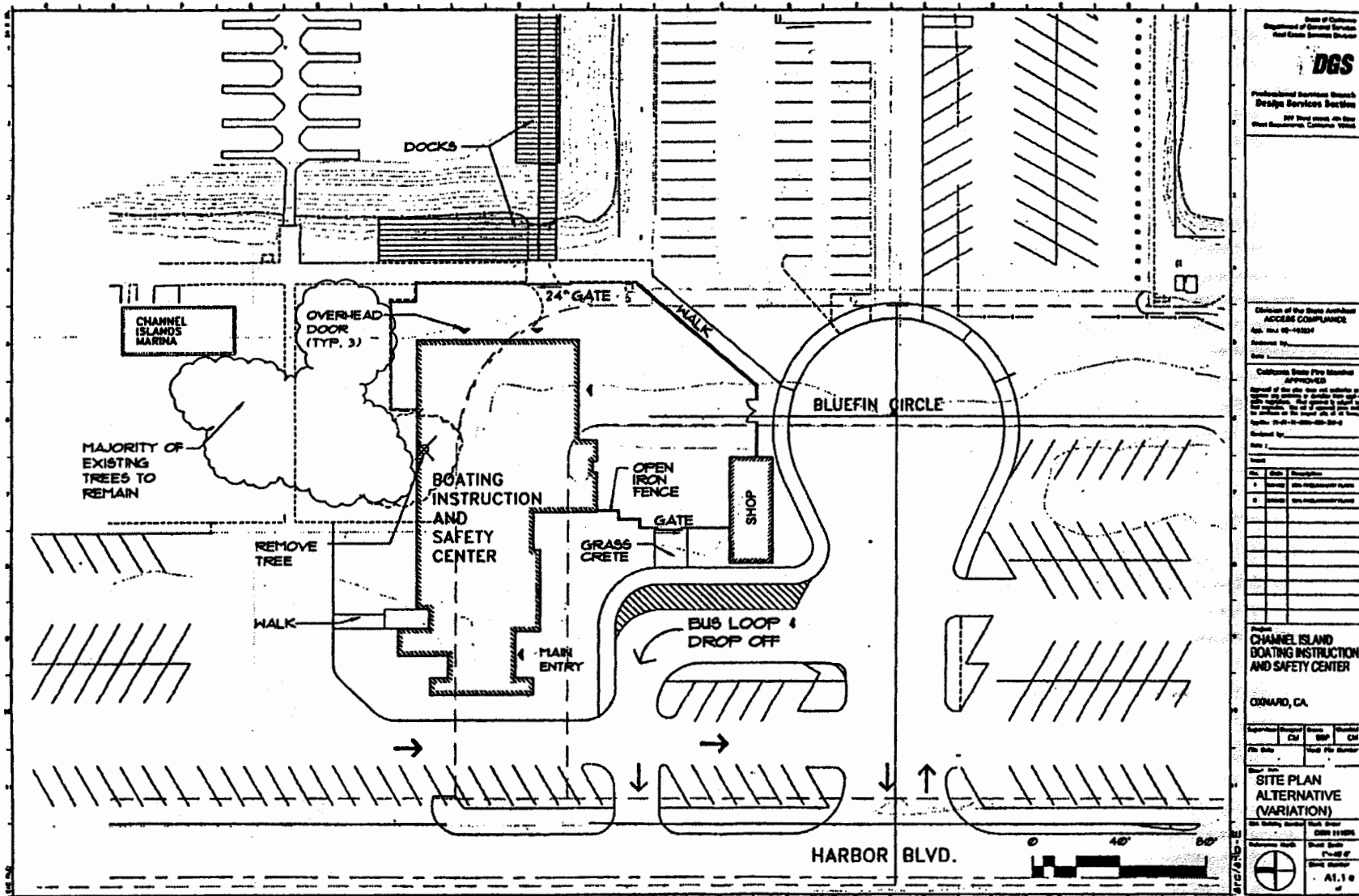


Exhibit 3 - Aerial Photograph



State of California
Department of General Services
and State Services Division

DGS

Professional Services through
Design Services Section
100 Third Street, 4th Floor
West Sacramento, California 95691

Division of the State Architect
ACCESS COMPLIANCE
App. No. 19-14824
Contract No.
Date

California State Fire Marshal
APPROVED
Approval of this site plan and related to
fire safety is based on the information
submitted. It is not intended to be a
guarantee of the safety of the building.
Regulations: 91.40-10-000-000-00-0

Contract No.
Date

No.	Date	Description
1	10/1/00	Site plan preparation
2	10/1/00	Site plan preparation

Project
**CHANNEL ISLAND
BOATING INSTRUCTION
AND SAFETY CENTER**
OSNARD, CA.

Department	Division	Room	Number	Class
Fire	CS	BP		

Site Plan
**SITE PLAN
ALTERNATIVE
(VARIATION)**

Site Safety Number: 0000 114024
Drawing No. 11-00
Scale: 1"=40'
Sheet Number: 1 of 1

Exhibit 49 - Alternate Project Design (Variation B)

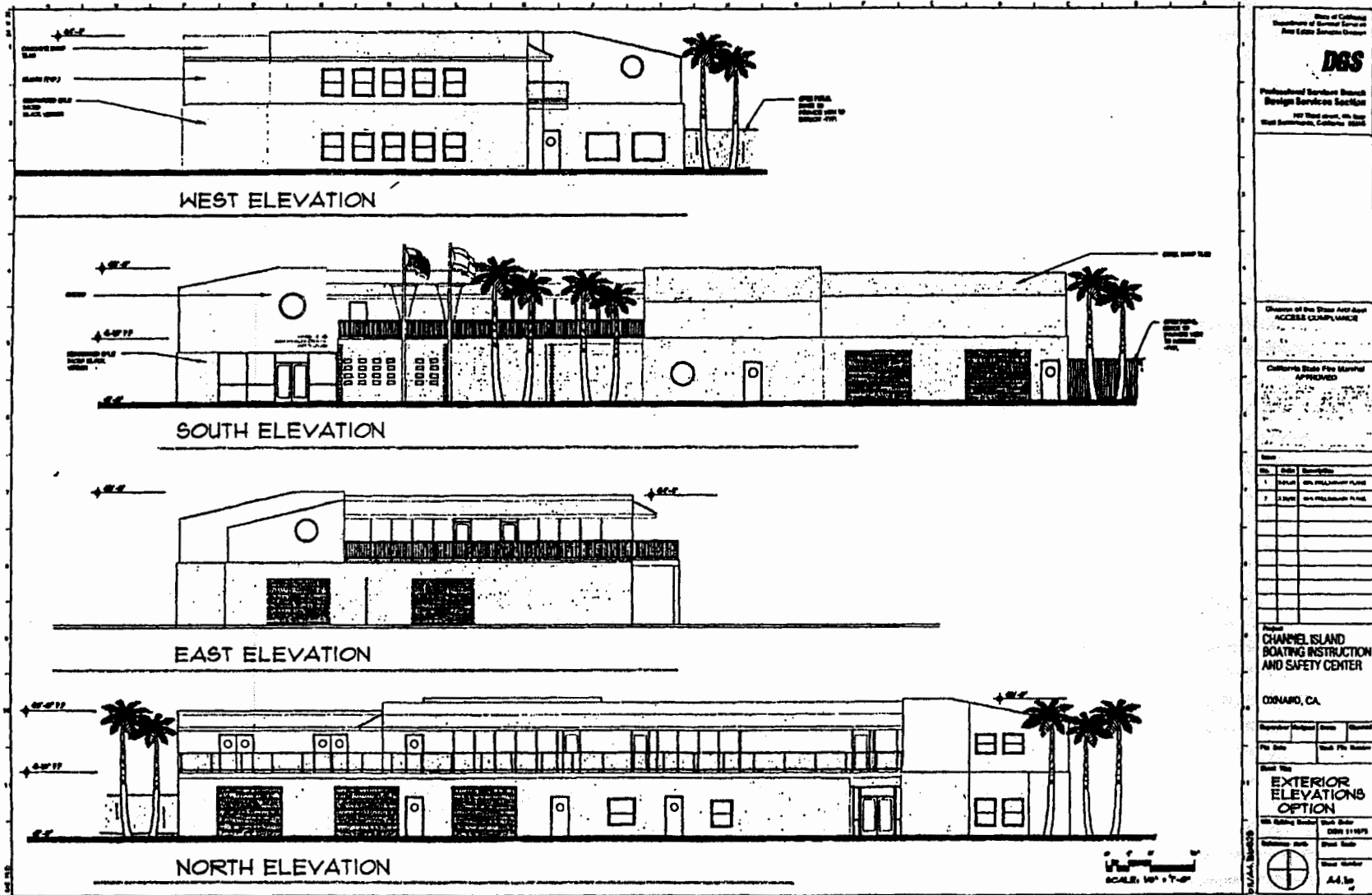


Exhibit 50 - Exterior Elevations (Variations A and B)



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

January 26, 2004

Kara Kemmler
Coastal Planner
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Re: Notice of Proposed Development
Channel Islands Harbor, Ventura County

Dear Kara,

We understand that Ventura County filed with your office on January 22, 2004 a Notice of Proposed Development for a Boating Instruction and Safety Center (BISC) project in the Channel Islands Harbor. The proposed Development violates many coastal protections set forth in the 1986 Public Works Plan as approved by the Commission. The proposed Development would, as a minimum, require amendment to the Public Works Plan.

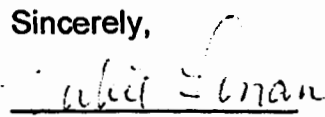
The Beacon Foundation is represented by the Environmental Defense Center in a lawsuit we filed January 16th regarding inadequacy of the EIR for this Development.

We know that adequacy of the EIR is not a subject within the purview of the Commission. However, I am enclosing a copy of the complaint because it raises many issues regarding violation by the Development of specific protections of the Public Works Plan that are very much central to Coastal Commission consideration of this project.

In addition to running afoul of provisions of the Public Works Plan, this proposed Development is inconsistent with Coastal Act protections for environmentally sensitive habitat. Further, we question the availability under the Coastal Act of a Notice of Proposed Development process for this project.

We request an opportunity to meet with you before issuance of your staff report on this Notice. Please let me know when we may do so.

Sincerely,


Vickie Finan
President
(805) 985-4655

RECEIVED

JAN 26 2004

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST

EXHIBIT NO.
APPLICATION NO.

NOID 1-04
ATTACHMENT 2



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

NEWS

For Immediate Release

Lawsuit Challenges Boating Center

The Beacon Foundation filed suit today challenging the adequacy of the Ventura County environmental review for a Boating Instruction and Safety Center (BISC) in the Channel Islands Harbor. The BISC project includes a 26,000 square foot fenced compound, a 19,000 square foot building and 24,000 square feet of dock space. A bare majority of three members of the Board of Supervisors certified the EIR for this project on December 16th despite widespread opposition by members of the public and environmentalists.

The EIR approved a single west side site in the Channel Islands Harbor for the BISC. The chosen location is parkland protected by the County Public Works Plan and the site of a heron rookery.

"The environmental review process was fundamentally dishonest" said Beacon Foundation President Vickie Finan. "There was a predetermined outcome." She noted further, "In June 2001 the County put up a sign in the park and sent out invitations to a dedication of its chosen site without any environmental review." Finan said: "Everything after that was just window dressing to justify a decision already made."

The complaint filed on behalf of the Foundation by The Environmental Defense Center states the west side site violates protections of parks, open space, view corridors and other environmental requirements of the County's own Public Works Plan. The chosen site also violates legal protections for the heron rookery.

EDC attorney John Buse notes: "The Beacon Foundation is going to court to stop the County from undermining its own Public Works Plan." He added: "This assault on Public Works Plan, if unchallenged, would open the door to unchecked and rampant redevelopment of the Channel Islands Harbor."

The Beacon Foundation supports a properly scaled and sited Boating Instruction and Safety Center. Finan said: "County mishandling of the environmental review has put the State partial funding of the BISC at risk." "We are hopeful," Finan added, "that the County will reconsider its present ill conceived project and offer an alternative that will comply with the Public Works Plan and gain State and public support."

The Beacon Foundation is a nonprofit environmental organization focused on coastal Ventura County.

Contact: Vickie Finan (805) 985-4655
John Buse (805) 677-2570 ex. 102

the "Project) at Channel Islands Harbor and certification of an Environmental Impact Report ("EIR") for the BISC. Petitioner requests that this Court vacate and set aside approval of the Project and certification of the EIR because the County failed to comply with the California Environmental Quality Act (Pub. Res. Code §§ 21000 *et seq.*, herein "CEQA"), the California Coastal Act (Pub. Res. Code §§ 30000 *et seq.*) and the County's Public Works Plan for Channel Islands Harbor.

2. Accordingly, The Beacon Foundation petitions this Court for a writ of mandate under Code of Civil Procedure section 1094.5 directing Respondents to vacate and set aside their approval of the Project and certification of the EIR. In addition, The Beacon Foundation seeks declaratory and injunctive relief based on the Project's inconsistencies with the policies of the Channel Islands Harbor Public Works Plan. These claims are based on the following allegations:

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to sections 1094.5, and 187 of the California Code of Civil Procedure, and sections 21168, 21168.5, and 30803 of the Public Resources Code.

4. Venue for this action properly lies in the Ventura County Superior Court because the County is a respondent and because the proposed site of the Project is located in Ventura County.

THE PARTIES

5. THE BEACON FOUNDATION ("The Beacon" or "Petitioner) is a California nonprofit public benefit corporation. The Beacon is concerned with the protection and sensible planning of coastal Ventura County, including Channel Islands Harbor.

6. The Officers and Board of Directors of The Beacon have an interest in the orderly planning and development of Channel Islands Harbor. In particular, The Beacon and its officers and directors, all of whom testified at public hearings held by the County on

the Project, have an interest in ensuring that harbor development avoids environmentally sensitive sites, protects public open space, and complies with applicable policies.

7. Officers and directors of The Beacon use and enjoy the public areas of Channel Islands Harbor that would be affected by the BISC. The Beacon and its officers and directors support the development of a BISC at an alternative, environmentally superior site in Channel Islands Harbor. Accordingly, The Beacon and its officers and directors would derive environmental, recreational, and aesthetic benefit from preservation of the BISC site as open space, from avoidance of the Project's impacts on biological resources, from the County's adherence to applicable harbor development policies, and from the location of the BISC on an alternative site in Channel Islands Harbor. As a result of Respondent's failure to comply with the requirements of CEQA and other applicable laws and policies in certifying the EIR and approving the Project, The Beacon and its officers and directors have been, are, and will be directly, adversely and irreparably affected, and will continue to be prejudiced by Respondent's unlawful actions until and unless this Court provides the relief prayed for in this petition.

8. Respondent COUNTY OF VENTURA ("County") is a local governmental agency and political subdivision of the State of California charged with the authority to regulate and administer land use activities in Channel Islands Harbor by, among other means, the Channel Islands Harbor Public Works Plan, subject at all times to the obligations and limitations of all applicable state, federal, and other laws, including CEQA, the CEQA Guidelines, and the Coastal Act. The County is the CEQA lead agency for the Project. The County is also the owner of site of the approved BISC and will be the operator of the BISC.

9. Respondent BOARD OF SUPERVISORS OF THE COUNTY OF VENTURA ("Board") is the legislative body and the highest administrative body of the County.

10. Petitioner is currently unaware of the true names and capacities of Does 1 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1

through 20, inclusive, are agents of the County, state, or federal government who are responsible in some manner for the conduct described in this petition, or other persons or entities presently unknown to Petitioner who claim some legal or equitable interest in the Project that is the subject of this action.. Petitioner will amend this petition to show the true names and capacities of Does 1 through 20 when such names and capacities become known.

GENERAL ALLEGATIONS

11. As approved, the BISC consists of an approximately 19,000 square foot two-story building, 26,000 feet of exterior space, 24,000 square feet of dock space, and a small storage building. The BISC would be operated by the County's Harbor Department to provide instruction in boating and boating safety, other educational programs, and equipment rentals to the public on a fee basis. It is also anticipated that the County would operate the BISC in partnership with California State University-Channel Islands to provide classes and continuing education programs. In addition, the County would make a large area of the upper floor of the main BISC building available for miscellaneous events, such as parties and receptions.

12. The site approved for the BISC is on the west side of the west channel of Channel Islands Harbor, immediately east of Harbor Boulevard and north of Bluefin Circle.

13. As approved, the main BISC building and related development would occupy the southerly end of an existing public park, and would require removal of at least one mature tree in the park area.

14. The park and its trees provide nesting and rookery habitat for black-crowned night herons and great blue herons. The herons nesting at or in the immediate vicinity of the proposed BISC site form a significant part of the black-crowned night heron and great blue heron populations in Channel Islands Harbor. Channel Islands Harbor contains the largest populations of these herons in coastal Ventura County. The herons, while not

endangered, are considered sensitive species, and their habitat constitutes environmentally sensitive habitat protected pursuant to the Coastal Act.

15. The Beacon first learned of the proposed BISC in July 2001 from an invitation announcing a sign dedication ceremony for the future site of the BISC. The announcement of the dedication preceded any environmental review of the site and any consideration of alternative sites pursuant to the requirements of CEQA. The ceremony was indefinitely postponed following the "discovery" of the heron rookery in the park area that would be occupied by the BISC.

16. The County's Harbor Department subsequently prepared a brief environmental report for the Project in the form of a draft Mitigated Negative Declaration ("MND"). The MND was made available for public review and comment in May 2002. The MND did not evaluate alternative sites for the BISC and concluded that the Project's environmental impacts were less than significant after adoption of the recommended mitigation measures. Based on comments from the public and other governmental agencies, however, the County determined that a full EIR would be necessary due to the Project's potential environmental consequences.

17. Accordingly, the County issued a Notice of Preparation of an EIR in January 2003, and a draft EIR was circulated to the public in May 2003. In June 2003, the Board directed the Harbor Department to provide additional analysis of an alternative site for the BISC on the east side of Channel Islands Harbor. As a result, portions of the EIR dealing with alternatives and boating safety issues, among other things, were recirculated to the public in September 2003.

18. The EIR considered several alternative sites for the proposed Project, including the east side harbor location ("Site 7"). The EIR also evaluated a reconfigured BISC on the original west side site. This alternative (the "Revised Project") reduced the

Project's encroachment into the public park area and reduced the number of trees in the park that had to be removed to accommodate the BISC to one.

19. The Beacon Foundation participated extensively throughout the County's EIR review process by submitting written comments, testifying at hearings, and coordinating testimony by experts and other members of the public.

20. The County's Environmental Report Review Committee considered the draft EIR at meetings on July 23, October 29, November 20, and December 1, 2003. The ERRC ultimately recommended that the Board certify the EIR, but specifically refused to find that the Revised Project was the environmentally superior alternative.

21. On December 16, 2003, the Board conducted a public hearing to consider the approval of the BISC and certification of the EIR. A staff report prepared by the County's Harbor Department recommended approval of the Revised Project. Following testimony from the public and deliberation, the Board adopted the staff recommendations to certify the EIR and approve the Revised Project.

22. In approving the BISC, the Board adopted findings that all environmental impacts of the Project except one (Project-related noise) would be avoided or substantially lessened by the adoption of the recommended mitigation measures. For the noise impact that was considered unavoidable, the Board adopted a Statement of Overriding Considerations, finding that specific overriding economic, legal, social, technological, or other benefits outweighed the significant environmental effect.

23. The Board further found that the alternative sites considered for the BISC were infeasible and that the Revised Project was the environmentally superior alternative. The findings regarding the infeasibility of Site 7 were contradicted by the statements of three of the five Supervisors, who stated that they believed that the evidence demonstrated that Site 7 was a feasible location for the BISC.

24. The Board considered the Project's consistency with the Channel Islands Harbor Public Works Plan. The Public Works Plan is the template for development within the harbor and provides a set of policies governing harbor development. The Public Works Plan was adopted by the Board in 1986 and approved by the California Coastal Commission. The Public Works Plan states that the harbor is "built out" and does not specifically provide for the development of the BISC. In addition, the Public Works Plan contains a policy prohibiting development within specified public park areas. The Beacon and other members of the public argued before the Board that the Project's encroachment in the public park and the inadequate buffer between development and the environmentally-sensitive heron rookery was inconsistent with the existing Public Works Plan and required an amendment to the Public Works Plan. The Beacon and other members of the public also contended that any new harbor development not specifically anticipated in the Public Works Plan beyond minor expansions of existing structures required an amendment to the Public Works Plan, and thus required discretionary review by the Coastal Commission.

25. Nonetheless, the Board found that the Project was consistent with the Public Works Plan and that no amendment to the Public Works Plan was required. Instead, the County's staff report indicated that it was the Harbor Department's intention to submit the BISC proposal to the Coastal Commission in a "Notice of Proposed Development", allowing only limited review by the Coastal Commission and the public. The findings regarding the Project's consistency with the Public Works Plan were contradicted by the statements of three of the five Supervisors, who stated that they believed that a Public Works Plan amendment may be necessary to accommodate the BISC at the preferred site.

26. On December 17, 2003, the County filed a Notice of Determination, which stated that the Board approved the Project, that the Project will have a significant effect on

the environment, that an EIR was prepared, and that a Statement of Overriding Considerations was adopted.

27. As a result of Respondent's approval of the Project, Petitioner will suffer great and irreparable environmental harm as described herein. Petitioners have no adequate remedy at law for this irreparable harm.

28. Petitioner has exhausted all relevant administrative remedies prior to bringing this action. All issues raised in this petition were raised in a timely manner before Respondents by Petitioner, other members of the public, or public agencies.

29. Respondents have abused their discretion and failed to act as required by law in the following ways:

FIRST CAUSE OF ACTION

(Violation of CEQA - Public Resources Code §§ 21000 *et seq.*)

30. Petitioners hereby incorporate by reference the allegations contained in paragraphs 1 through 29, inclusive.

31. In carrying out their review and approval activities with respect to the Project, Respondents were, and are, at all times mentioned herein under a mandatory duty to comply with the provisions of CEQA and the CEQA Guidelines.

32. Under CEQA, Respondents were required to prepare a complete and legally adequate EIR prior to approving the Project. Respondents were also required pursuant to CEQA to consider mitigation measures and alternatives to the Project, to adopt feasible mitigation measures and/or alternatives, and to make adequate findings regarding the basis for the County's decision.

Policy Consistency

33. According to CEQA, a project that is inconsistent with applicable planning and environmental policies has a potentially significant environmental impact that must be evaluated in an EIR.

34. Substantial evidence indicates that the BISC is inconsistent with policies of the Channel Islands Harbor Public Works Plan regarding parks and open space, biological resources, boating, and harbor development.

35. In addition, no substantial evidence supports the EIR's conclusion that the Project is consistent with the Public Works Plan.

36. Accordingly, the EIR must evaluate these policy inconsistencies and propose measures to avoid or mitigate them. Despite the requirements of CEQA and evidence to the contrary, however, the BISC EIR fails to recognize any policy inconsistencies and fails to adopt feasible mitigation measures, such as further design refinements to avoid the policy inconsistencies or an amendment to the Public Works Plan.

Biological Resources

37. CEQA requires that an EIR must disclose, evaluate, and propose measures to mitigate or avoid a project's significant environmental effects.

38. Substantial evidence indicates that, even with adoption of the Revised Project and proposed mitigation measures to reduce impacts to biological resources, the BISC may have a significant impact on the local heron population.

39. In addition, no substantial evidence indicates that the mitigation measures proposed to reduce or avoid impacts to herons will be effective. On the contrary, substantial evidence indicates that proposed mitigation measures for the Project's biological impacts are infeasible or incapable of avoiding or substantially lessening these impacts. Substantial evidence further indicates that these measures are inconsistent with other elements of the Project, including the recommendations of a Geotechnical Engineering Study that must be adopted pursuant to the Project's conditions of approval.

Alternatives

40. CEQA requires that an EIR must evaluate a reasonable range of feasible alternatives that would avoid or substantially lessen a project's significant environmental effects.

41. The EIR for the BISC evaluated several alternative sites for the BISC in Channel Islands Harbor. The EIR concluded, however, that these sites were infeasible.

42. In evaluating alternative sites, the EIR considered information provided regarding these sites (including Site 7) provided by The Beacon and other members of the public. Contrary to the requirements of CEQA, however, the EIR did not provide a good faith effort at full disclosure of the relative merits of the alternative sites. Instead, the EIR selectively presented information regarding alternatives in a manner that biases the comparison of the Revised Project to the alternative sites and exaggerates the purported infeasibility of the alternative sites, including Site 7.

Cumulative Impacts

43. CEQA requires that an EIR must provide an analysis of a project's cumulative impacts. Cumulative impacts are defined as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

44. The BISC EIR included a brief cumulative impacts analysis. Among other related projects, the EIR considers the BISC's cumulative impacts in light of an anticipated update of the Master Plan for Channel Islands Harbor. Without any analysis of specific impacts or developments associated with the Master Plan update, the EIR improperly concludes that the BISC will have no cumulative effect due to the relatively small size and limited intensity of the BISC. CEQA, however, does not permit dismissal of a project's

cumulative effects based on the relatively small contribution of the project in comparison to the impacts associated with other projects.

45. In addition, the EIR failed to consider other pending and reasonably foreseeable harbor developments that may have a cumulative impact when considered together with the BISC.

Inadequate Response to Comments

46. The EIR is further inadequate in that it fails to respond adequately to comments submitted by Petitioner and other commentators. Instead, the responses given to numerous comments regarding the Project's impacts on biological resources, safety, and alternatives are conclusory, evasive, confusing, or otherwise non-responsive, contrary to the requirements of CEQA.

SECOND CAUSE OF ACTION

(Findings Not Supported By Substantial Evidence, CEQA and Code of Civil Procedure
§§ 1094.5)

47. Petitioner hereby incorporates by reference the allegations contained in paragraphs 1 through 46, inclusive.

48. Certain findings are required by applicable laws and programs, including but not limited to CEQA. These findings must be supported by substantial evidence in the record.

49. No substantial evidence supports Respondent's findings that proposed mitigation measures will be effective in avoiding or substantially lessening the significant environmental effects identified in the EIR with respect to biological resources.

50. No substantial evidence supports Respondent's findings regarding the infeasibility of alternative sites for the BISC. On the contrary, a majority of the Board stated

at the approval hearing for the BISC that they did not believe that the Site 7 alternative was infeasible.

51. No substantial evidence supports Respondent's findings regarding the Project's consistency with the policies of the Channel Islands Harbor Public Works Plan. On the contrary, a majority of the Board stated at the approval hearing for the BISC that they believed that a Public Works Plan amendment may be required for the Project.

THIRD CAUSE OF ACTION

(Inconsistency with Public Works Plan - Coastal Act and Code of Civil Procedure §§ 1094.5)

52. Petitioner hereby incorporates by reference the allegations contained in paragraphs 1 through 51, inclusive.

53. As approved, the BISC is inconsistent with the clear requirements of several policies in the Channel Islands Harbor Public Works Plan, including policies relating to public parks and open space, biological resources, boating, and harbor development.

54. The Public Works Plan is authorized pursuant to the Coastal Act, which permits local agencies to submit "plans for public works" to the California Coastal Commission for review. The Coastal Commission approved the Public Works Plan in 1986, finding that it conformed to the County's certified local coastal program.

55. The BISC was approved without an amendment of the Public Works Plan to address the Project's policy inconsistencies.

56. The County's approval of the Project despite its inconsistencies with the Channel Islands Harbor Public Works Plan is an abuse of discretion pursuant to Code of Civil Procedure section 1094.5 and a violation of the Coastal Act pursuant to Public Resources Code section 30803.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as follows:

1. For alternative and peremptory writs of mandate, commanding Respondents:
 - (A) to vacate and set aside certification of the Environmental Impact Report (State Clearinghouse Number 2003011055) and the Findings and Statement of Overriding Considerations supporting approval of the Project;
 - (B) to prepare and certify a legally adequate Environmental Impact Report for the Project;
 - (C) to set aside approval of the Project;
 - (D) to suspend any and all activity pursuant to Respondent's approval of the Project that will prejudice the consideration or implementation of particular mitigation measures or alternatives to the Project, until Respondents have complied with all requirements of the California Environmental Quality Act, the Channel Islands Harbor Public Works Plan, and all other applicable state and local laws, policies, ordinances, and regulations as are directed by this Court pursuant to Public Resources Code Section 21168.9.

2. For a stay, temporary restraining order, preliminary injunction, and permanent injunction prohibiting any actions by Respondents pursuant to Respondent's approval of the Project and certification of the EIR for the Project until Respondents have fully complied with all requirements of the California Environmental Quality Act, the Channel Islands Harbor Public Works Plan, and all other applicable state and local laws, policies, ordinances, and regulations;

3. For declaratory relief pursuant to Public Resources Code section 30803 that the Project is inconsistent with the policies of the Channel Islands Harbor Public Works Plan;
4. For costs of the suit;
5. For attorney's fees pursuant to the Code of Civil Procedure section 1021.5;
and
6. For such other and further relief as the Court deems just and proper.

DATED: January 16, 2004

ENVIRONMENTAL DEFENSE CENTER

By: _____

JOHN T. BUSE
Attorneys for Petitioner



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

RECEIVED

FEB 01 2004

Gary Timm, District Manager
California Coastal Commission
89 S. California Street
Ventura, CA 93001

February 2, 2004

Re: Notice of Impending Development
BISC Project – Ventura County

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Mr. Timm:

We wish to provide this comment on failure of the County letter of January 21, 2002 to qualify the BISC for consideration as an Impending Development under the process established by the Coastal Act and regulations.

A Notice of Impending Development is a streamlined process limited to "specific projects"¹ contained in an PWP. The proposed facility is not a "project" described even generally in the approved PWP. The County's Notice seeks precedent setting approval for a wholly new Development without adhering to the required PWP amendment process. This Development fails to satisfy the threshold of being a "specific project" and on this basis the Notice should be rejected.

We maintain that the Development fails to meet the Notice threshold, but we will also provide these focused comments on violation by the proposed Development of Policy 19 and 20 of the PWP. The Notice letter and the EIR provided with it invent a conflict between Policies of the PWP and its land use descriptions.² The invented conflict is an attempt to justify the position that no amendment to the PWP is required despite violation by the Development of PWP Policies. There is no ambiguity and there is no conflict. The various PWP land use descriptions, much like a zoning ordinance, mention a wide range of uses that might be allowed. This is not a permit for any use. All permitted Developments are specifically described in the PWP and all are subject to the restrictions of PWP Policies that override the general land use description.

A primary objective (Policy 18) of the PWP is "To ensure that lower cost recreational and visitor serving facilities are available to all income groups." Consistent with this, a bright line in the PWP is its protection of parkland and open space in Policies 19 and 20 as follows:

"19. The four existing park areas and public swim beach shall be protected and preserved for general public use."
[emphasis added]

¹ California Coastal Act Sec. 30605. Coastal Commission Regulations Sec. 13357(a)(5).

² This invented ambiguity, is the subject, among other things, of our suit challenging adequacy of the EIR: The Beacon Foundation vs. County of Ventura.

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"20. All areas designated as public parks and beaches in Figure IV of the Plan shall be protected as open space and shall not be developed or utilized for other uses **without an amendment to the Plan.**" [emphasis added]

As demonstrated in our comment letters on the EIR, (included in the materials provided to the Commission with the Notice), the proposed BISC site is clearly within one of the Public Park areas designated in Figure IV of the PWP. This area has been maintained as a park for passive no charge public enjoyment for more than 35 years. The County consistently recognized the proposed site as a park until it suddenly reversed this position in the EIR.³

As a fallback from the erroneous position that the BISC site is not a protected park, the County twisted the BISC building 90 degrees and moved it **partly** off the park. The EIR claims⁴ "Variation B only occupies approximately 800 square feet of turf..." Actually, the incursion of the Development on the existing park is more than twice as great in square footage and infinitely more in impact on public access to this no cost recreational resource.

Attached to this letter is the Variation B diagram provided with the January 21, 2004 Notice of Impending Development. We have colored in orange the portion of the BISC building footprint depicted on the existing park. Using the scale provided in the diagram, it appears this building footprint intrusion is more than 1,000 square feet – this is fully 10% of the building footprint. We have colored in green the additional area of the existing park that will be enclosed within the fenced BISC compound. This outdoor use takes in excess of an additional 1,000 square feet of existing park.

Any taking of this park without an amendment is forbidden by the PWP. There is no *de minimis* concept in Policy 19 and 20 nor, indeed, does the County so argue. Even if there were a *de minimis* concept it would be inappropriate here. The BISC facility encompasses an acre and a half of restricted-pay-for-use facilities. It comprises 26,000 square feet of fenced exterior space, 24,000 square feet of restricted dock space, and building footprints approximating 10,000 square feet. In addition the BISC Development will dedicate⁵ for "BISC Use Only" 118 parking spaces adjacent to the park.

³ The Channel Islands Harbor Master Plan conceptually approved by the Board of Supervisors in May 1998 states at Sec 1.2 that the two restaurants at Blue Fin Circle are "flanked by linear parks." In its November 7, 2003 Response to Comments on Letter 26 from The Beacon Foundation, the EIR preparer states: "The County takes the position that the BISC site is not a park in any event." The Final Revised May, 2002 Mitigated Negative Declaration for the BISC project, Attachment F, page 5, states both in comment on Policy 19 and on Policy 20 that "The project site would be located on one of the four park areas identified in the Plan" The County chose in July 2002 to do an EIR for the Project rather than proceed with certification of its MND.

⁴ EIR page 285.

⁵ EIR Sec. 5.11.4

Incursion of this project, even partly on the park, changes the character of the whole area. Passive no cost recreational use is displaced and overshadowed by a pay for use massive fenced compound with parking restrictions. This new use, not contemplated by the PWP, affects not only human use and enjoyment of the park but also its viability as a recognized heron habitat.

We will note one more County theory invented to circumvent the PWP amendment process. This novel theory appears in the January 21, 2004 letter:

"Language within the PWP, particularly relating to increases in land use, is clearly aimed at leasehold interests, and not the public use of public land."

Acceptance by the Coastal Commission of this theory would wholly exempt the County from observance of all the coastal resource protections in the PWP. All land in the Channel Islands Harbor is owned by the County of Ventura and under this theory the County could build anything anywhere so long as it deemed it a "public use" whether open to the general public or not.

In fact, the PWP makes no distinction between public and leasehold use of the land – both have the same status and are subject to all the policies and restrictions of the PWP. For example, at page 43 the PWP states:

**"All development in the Harbor shall be subject to the following policy:
1) Any expansion of the existing and permitted structures described in Table 1 shall be prohibited except for minor alterations which result in an increase of less than 10% of the internal floor area or an increase of 10% in height of the structure." [emphasis added]**

The "public use exemption" is an attempt to get around the fact that the BISC Development is not a "specific project" or a "permitted structure" found anywhere in Table 1 or anywhere else in the PWP.

In this letter we have focused on Policy 19 and 20. As will be seen in a reading of our EIR comment letters, and those written on our behalf by The Environmental Defense Center, there are other Policies (including the protection of view corridors) that require a PWP amendment to allow the BISC project. Additionally, we and others raise in the comment letters biological resource impacts caused by the disruption or destruction of a heron rookery on the proposed site and a snowy plover habitat on beach areas that will be used by the BISC.

Sincerely,


Lee Quaintance, Secretary

Cc: Chuck Damm, Kara Kemmler



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FEB 03 2004

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

February 2, 2004

Gary Timm
California Coastal Commission
89 California Street, Suite 200
Ventura, CA 93001

RE: Notice of Impending Development for Channel Islands Harbor Boating
Instruction and Safety Center (BISC)

Dear Gary:

I am sorry to have missed meeting with you last week to discuss Ventura County's Notice of Impending Development for the BISC. In this letter, however, I have attempted to describe briefly our positions regarding the applicable procedures, standards, and options for responding to the notice.

1. A Notice of Impending Development is Appropriate Only When the Development is Described in the Public Works Plan

Both the Coastal Act and the implementing regulations provide that the streamlined approval process for projects pursuant to a Public Works Plan or Long Range Development Plan are appropriate only when the development is "contained in" the plan. Specifically, Public Resources Code section 30605 states in relevant part that:

Where a plan for a public works or state university or college or private university development project has been certified by the commission, any subsequent review by the commission of *a specific project contained in the certified plan* shall be limited to imposing conditions consistent with Sections 30607 and 30607.1.

(Emphasis added.) Similarly, the regulations provide that:

Following Commission certification of a public works plan, any review of *a specific project contained in the plan* shall be to determine the conformity of the project with the certified public works plan, as provided in Sections 13358 and 13359.

14 C.C.R. § 13357(a)(5) (Emphasis added). This language indicates that, in order for a project to be considered pursuant to a Notice of Impending Development, the project must be described in some manner in the plan. It is not enough that the project is within

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the geographical scope of the plan, as both the Coastal Act and the regulations indicate that the project must be contained in the *plan*, not merely within the planning area.

The proposed BISC project is described nowhere in the current Channel Islands Harbor Public Works Plan. No structure of any type is proposed on the site approved by the BISC. Moreover, no building comparable to the BISC in intended use and bulk is described in the Public Works Plan at any other location in Channel Islands Harbor. Accordingly, the BISC is not "contained in" the Public Works Plan, and may not be processed with a Notice of Impending Development. Instead, a Public Works Plan amendment is required, which will have the additional benefit of addressing the BISC's inconsistencies with the policies of the current Public Works Plan.

This interpretation is supported by both the intended function of Public Works Plans in general and the specific terms of the Channel Islands Harbor Public Works Plan in particular. A contextual reading of the Coastal Act and the implementing regulations indicates that Public Works Plans and university Long Range Development Plans are intended to be *detailed* planning documents, in contrast to local coastal programs. A Public Works Plan is literally a plan *for* "public works" as defined by Public Resources Code section 30114, yet the current Public Works Plan cannot be considered a plan *for* the BISC, which is not described in the plan.

The regulations are even more clear in this regard. Section 13353 requires that:

[a]ny [Public Works Plan] *shall contain sufficient information regarding the kind, size, intensity and location of development activity intended to be undertaken pursuant to the plan to determine consistency with the policies of Chapter 3 of the Coastal Act of 1976, including, but not limited to the following where applicable:*

(1) *the specific type of activity or activities proposed to be undertaken;*

(6) *the proposed location or alternative locations considered for any development activity or activities to be undertaken pursuant to the proposed plans.*

(Emphasis added.) The current Public Works Plan does not provide sufficient information regarding the specific BISC project, nor does it describe the proposed location or alternative locations for the BISC. As the attached December 16, 2003 letter from Stanley & Associates indicates, a Public Works Plan "is in essence a master permit

for which the Coastal Commission reviews build-out of its individual projects for consistency with the plan through the 'notice of impending' development process."¹

Language within the current Channel Islands Harbor Public Works Plan lends additional support to this interpretation. The preamble to the Public Works Plan states that "[t]he purpose of this Public Works Plan is to provide Channel Islands Harbor with a *detailed and specific* planning document to guide future Harbor development." (p. 1, emphasis added.) The existing plan states that "With the completion of already approved projects along the West Channel the Harbor will be *completely built out*." (p. 5, emphasis added.) Elsewhere, the Public Works Plan states that ". . . the Harbor is built out (except parcel X-3 for which there is a certified EIR) and will not be expanding . . ." (p. 91). The City of Oxnard's LCP provides external verification that the harbor is built out. The LCP's Land Use Plan states that the development of the X-Y parcels in Channel Islands Harbor "completes the development of the harbor." (Land Use Plan p. III-31).

It is not our position that the current Public Works Plan prohibits all new development in the harbor for all time. However, the Public Works Plan is clearly very restrictive, and provides for only very limited expansion of existing development, *unless the plan is amended*. A Public Works Plan amendment will be required for the BISC, even if the Commission finds that it is otherwise consistent with the policies of the plan.

2. The BISC is Inconsistent With the Specific Policies of the Public Works Plan

Nonetheless, it is our position that the BISC is inconsistent with several policies of the current Public Works Plan, including those for parkland and open space, view corridors, and biological resources. Our comments regarding these inconsistencies are developed at length in the record submitted by Ventura County and in a February 2, 2004 letter submitted by the Beacon Foundation. I will, however, respond to two issues raised in the County's Notice of Impending Development.

First, the notice states that Ventura County found that "in reconciling the ambiguity between Policy 20 and the Land Use Plan, interpretations must be made that are consistent with the Principles of Chapter 3 of the Coastal Act to foster maximum public access." No such ambiguity or conflict exists between the Land Use Plan of the Public Works Plan and the specific policies of the Public Works Plan. On the contrary, the policies, such as Policy 20, which protects parkland in the harbor from development, are clear, detailed, specific, and unambiguous. There is no conflict with the Land Use Plan, which merely establishes general land use designations (such as Visitor Serving Harbor Oriented) for the harbor. As the Public Works Plan indicates, these designations allow, but do not permit development. Specific development proposals, such as the BISC, must

¹ Ventura County has argued that the views of Stanley & Associates are entitled to no special weight in interpreting the Public Works Plan. These comments are provided here, however, as insights from specialists with a particular expertise in preparing, adopting, and implementing Public Works Plans in general, not as opinion regarding the interpretation of the Channel Islands Harbor Public Works Plan..

be evaluated based on the policies of the Public Works Plan. Ventura County's strained interpretation relies on a nonexistent conflict or ambiguity and is manifestly unreasonable.

Second, the Notice of Impending Development states that language within the Public Works Plan, "particularly relating to increases in land use, is clearly aimed at leasehold interests, and not the public use of public land." This conclusion, however, is far from clear. On the contrary, we can find no support whatsoever for the statement that, in general, policies in the Public Works Plan relating to increases in land use and to new development are inapplicable to the BISC and other public facilities.

Both of Ventura County's contentions regarding the interpretation of the Public Works Plan are specious and without any rational basis. Neither provides any reason to disregard the BISC's multiple inconsistencies with the current Public Works Plan.

3. The Commission May Condition the BISC to Require Modifications or an Amendment of the Public Works Plan

It is our position that the lack of any description of the BISC in the Public Works Plan precludes processing the project with a Notice of Impending Development. Thus, the Commission may reject the Notice of Impending Development as inconsistent with the procedures established in the Coastal Act and its regulations for reviewing specific projects following certification of a Public Works Plan. Even if the Commission determines that the Notice of Impending Development is the proper vehicle for evaluating the BISC, however, it retains the discretion to impose conditions on the project.

Ventura County contends in the Notice of Impending Development that "Coastal Commission review is limited to imposing conditions consistent with Section 30607 and 30607.1." This statement is correct, but should not be taken as a limitation on the Commission's discretion to impose conditions requiring project modifications or an amendment of the current Public Works Plan. Public Resources Code section 30607 states:

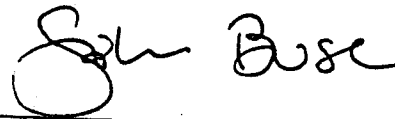
Any permit that is issued or any development or action approved on appeal, pursuant to this chapter shall be subject to reasonable terms and conditions in order to ensure that such development or action will be in accordance with the provisions of this division.

Nothing in this provision limits the Commission's discretion to condition approval of the BISC on project changes that bring the BISC in consistency with the current Public Works Plan or, in the alternative, on an amendment of the Public Works Plan to conform to the BISC development. Neither alternative

represents a denial of the project and both are therefore reasonable and proper conditions.

Thank you for your consideration of these comments. I am available by phone to discuss or clarify our positions.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Buse". The signature is written in dark ink and is positioned above a horizontal line.

John T. Buse
Senior Staff Attorney
Environmental Defense Center

Attachment

December 16, 2003

Chair Judy Mikels and Members
Ventura County Board of Supervisors
C/O Clerk of the Board
800 S. Victoria Avenue
Ventura, CA 93003

RE: Proposed Boating Center for Channel Islands Harbor

Dear Chairperson Mikels and Members of the Board:

We respectfully submit the following comments in the hope of correcting apparent misinterpretation and misapplication of the policies and land uses within the 1986 Public Works Plan (PWP) for Channel Islands Harbor relative to a proposed Boating Center in the west side of Channel Islands Harbor. Additionally, we would like to clarify the appropriate procedures for administering and amending PWPs based on our experience with other public works plans. Our company, Stanley & Associates (formally Spectra Inc.) prepared the Harbor's 1986 PWP with Frank Anderson under contract with the County. We have over a decade of experience with PWPs, including the preparation, adoption, and subsequent amendment(s) of the Santa Barbara Community College PWP. Both of us worked at the California Coastal Commission during the 1970s and early 1980s, and participated in the review, revision and implementation of Local Coastal Programs for Ventura County, City of Oxnard, Port Hueneme, City of Santa Barbara and Ventura and Santa Barbara County. We are familiar with the Coastal Act and its regulations and the geography, resource issues, coastal processes and development history of the Ventura County shoreline.

Based upon the information that we have been provided by a local citizen, our review leads us to suggest that the Harbor District may be erroneously administering its PWP as a Land Use Plan, rather than as a PWP as is required under Coastal Act regulations. It appears also that relevant policy language regarding specific issues associated with the proposed project and potential alternative sites may have been ignored.

Context for the 1986 Channel Island PWP

When the 1986 PWP was prepared, the Harbor was essentially "built out" with no new projects or uses proposed or anticipated by the District. Some projects had coastal permits but were not yet constructed and most harbor lands were under existing leases that would eventually turn over. Additionally there were areas of public open space (beaches, parks, paths) that were in public use either officially or by custom. Based on these conditions, the Channel Island Harbor PWP was primarily designed: to regulate uses within existing buildings that were subject to renewable leasing by the Harbor, in order to maintain consistency with the Coastal Commission permits and the Coastal Act; to protect and maintain commercial fishing facilities; and to protect public access

Stanley & Associates 1135 Greenwood Blvd SW, Issaquah, WA 98027 4

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and recreation use where it existed. In this regard, the Plan states specifically on page 5, third paragraph that:

“The principal objective of the Public Works Plan will be to identify land use designation and intensities within the Harbor and provide policies which provide, protect and maintain the public’s access to and use of the recreational water in and adjacent to the Harbor; additionally, the Plan will protect and maintain commercial fishing facilities in the Harbor. The Plan will contain policies and actions designed to accomplish these recreation and commercial fishing objectives.”

Application of PWP Master Plan Map (Figure 3) and Existing Recreation/Access/ and Visitor Serving Facilities (Figure 4)

Consistent with the access and recreation policies of the Coastal Act the principle purpose of the 1986 PWP, as stated above, was to protect and maintain the public’s access to and use of the recreational water in and adjacent to the Harbor. Figure 4 serves a central role along with other PWP recreation and access policies (e.g. policy 19 and 20) of assuring that the PWP does indeed uphold this “protect and maintain” purpose by identifying the critical facilities in the Harbor that provide for public access to and along the shoreline. This includes public parks, walkways/bikeways, and beaches and visitor serving facilities and recreational boating slips. Therefore, these public access and recreational facilities are not to be altered, eliminated or over-ridden by the master plan map set forth in figure 3 of the PWP except as otherwise permitted through the PWP amendment process.

Understanding Public Works Plans

PWPs, as set forth in section 30605 of the California Coastal Act are “intended to promote greater efficiency for the planning of any public works or state university or college or private university development projects...” (emphasis added).

PWPs deal specifically with development projects and are not intended to take the place of, or be administered the same as, Local Coastal Plans which operate on a more general planning scale and consist of a “land use plan, implementing ordinances, regulations and other actions.” (Section 30108.6 of the Calif PRC). Section 30108.5 of the Coastal Act defines a “land use plan” as “the relevant portion of a local government’s general plan or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of lands uses, the applicable resource protection and develop policies and, where necessary, a listing of implementing actions.” (emphasis added). Unlike PWPs, land use plans are not intended to deal with specific “public works” projects.

Section 30114 of the Coastal Act defines public works as “all public transportation facilities, including streets, roads, highways, public parking lots and structures, ports, harbors, airports, and other related facilities. “ Clearly, Channel Islands Harbor qualifies under this Coastal Act section for the preparation of a PWP.

Section 13353, Title 14, of the Coastal Commission regulations further clarifies the distinction between an LCP and PWP by stating that such a plan (PWP) shall contain sufficient information regarding the kind, size, intensity and location of development activity intended to be undertaken..” (emphasis added). This section goes on to list the type of information to be included within a PWP including, but not limited to:

- 1) the specific type of activity or activities proposed to be undertaken;
- 2) the maximum and minimum intensity of activity or activities proposed to be undertaken (e.g. maximum number of recreation vehicle campsites, maximum treatment capacity for sewage treatment plan, maximum traffic capacity of a road); and
- 3) maximum size of facilities proposed to be constructed pursuant to the plan (e.g. Size of a treatment outfall, number of lanes of a road) and the proposed timetable for precise definition of all projects included in the plan and any phasing of development activity contemplated."

Per these regulations, when a jurisdiction issues a notice of "impending development" for a project within a PWP (Section 30606) it is for a specific project that is already described in the adopted PWP, which has been approved by the Coastal Commission and subjected to environmental review as part of the approval. A public works plan is in essence a master permit for which the Coastal Commission reviews build-out of its individual projects for consistency with the plan through the "notice of impending development" process.

When the Channel Islands Harbor Master Plan was prepared by Spectra Inc. it was with the understanding that "with completion of already approved projects along the West channel the Harbor will be completely built out..." (page 5, paragraph 2 of 1986 PWP). The PWP goes on to state that "the Property Administration Agency does not have plans for any major expansions or re-constructions of the Harbor area." and that "there will be, therefore, no previously undisclosed environmental impacts associated with implementation of this proposed Public Works Plan." As such, the 1986 PWP incorporated the specific provisions of recent Coastal Commission Permits at that time specifying the kind, size, intensity and location of commercial fishing, recreation boating and visitor serving facilities in the harbor (Coastal Commission Permit 178-15 and 217-29), and provided guidance for the implementation of those projects, including regulation of the uses within the existing developed areas of the harbor. Accordingly any new development not specified in the PWP would be outside of its bounds and would have to be amended to the PWP subject to the procedures set forth in Sections 13366 through 13371 of the Coastal Commission regulations.

Interpretation of PWP Land Uses and Policies

It is our understanding that a Boating Center "building" is proposed for the western side of the harbor, located partially within the linear park, and is "asserted" to be permitted by the Public Works Plan. It is also our understanding that the Harbor District's interpretation of the 1986 PWP is that eastern side of the Harbor is reserved for commercial fishing uses and cannot be considered as an alternative site for the building. .

Boating Center Location in West Harbor

The proposed Boating Center is proposed within an area designated as Visitor Serving Harbor Oriented, which does include, among other things, "yacht clubs, park areas, marine museums and marine oriented research facilities." The Boating Center is clearly a use anticipated by this land use. However park areas within this land use designation are protected by policies 19 and 20 of the plan which state, respectively, that:

"The four existing park areas and public swim beach shall be protected and preserved for general public use." and

"All areas designated as public parks and beaches in Figure IV of the Plan shall be protected as open space and shall not be developed or utilized for other uses without an amendment to the Plan."

Figure IV (attached) of the PWP is titled "Existing Recreational/Access/Visitor Serving Facilities." It depicts areas that are to be protected for general public use and clearly shows the location of park/open spaces referred to by Policy 20. The proposed Boating Center would be located within a portion of linear park area that parallels parking lots W2 through W5 also shown on Figure IV. Locating the building on park area would be inconsistent with policies 19 and 20 of the PWP. Policy 20 requires that "any use" of the park area other than "open space" requires an amendment to the PWP.

For any new building within the Harbor not described in the approved 1986 PWP, Coastal Act regulations require that it first be approved as an amendment to the PWP. If a proposed building would displace existing open space, parking, and/or require a significant alteration of the number of boat slips authorized in the PWP, then these impacts associated with the building should be addressed within the process of amending the PWP.

Boating Center Location in the East Harbor.

The Land Use Map of the PWP designates the east side of the Harbor for a combination of Visitor Serving Harbor Oriented, Visitor Serving Boating, and Boat Dependent Industrial. The area currently occupied by the Cisco's Restaurant building is designated as Visitor Serving Harbor Oriented, which would permit the proposed Boating Center. However, the areas immediately outside of the Cisco building are designated Visitor Serving Boating, which is limited to boat storage, boat and boating equipment rental, sales, display, brokerage and minor repair services; the proposed Boating Center does not appear to be consistent with the intent of the VSB designation or with that of the Boating Dependent Industrial, which is oriented towards boat haul-out, repair, inspection and construction.

There is a sport fishing dock adjacent to the Cisco's building, which can be used by both sport fishing and commercial fishing vessels. Section 4.4 of the PWP sets forth a series of conditions under which commercial fishing slips are provided to commercial fishing vessels. Conditions for the provision of 150 slips are outlined in policy 3 "a" and "b" for the west side of the harbor for parcels X-1-A and X-2. Outside of these areas, however, commercial fishing vessels have no special claim on spaces and they compete with other boats on a first come first serve basis. Policy 3d states that:

"Policy 3 a, b, and c above, shall not be interpreted to mean that commercial fishing vessels would be excluded from other areas of the harbor, nor shall it be interpreted to mean that they would receive any special consideration other than that expressly provided for in these policies." (emphasis added).

Policy 2 states that "commercial fishing facilities shall not be reduced unless the absence or need for such facilities can be demonstrated or equivalent substitute facilities are provided elsewhere." As long as commercial fishing slips are available within the existing designated areas (note that commercial fishing is a designated use on the Land Use Map for the west side of the Harbor), per policies 3 a, b and c, then displacement of commercial fishing vessels from existing berths elsewhere in the harbor, such as the sport fishing dock, cannot be considered inconsistent with the intent of the PWP.

Timely Review of PWP's

Local Coastal Plans and Public Works Plans should undergo annual review to monitor whether or not their provisions are addressing current issues and conditions, and should be thoroughly reviewed and updated at least every five years. The Channel Island PWP is seventeen years old. In its present form it cannot be expected to address contemporary issues, demands and economic development objectives. Through a public process involving all interests, and looking at the harbor resource as a whole, it needs to be updated and amended.

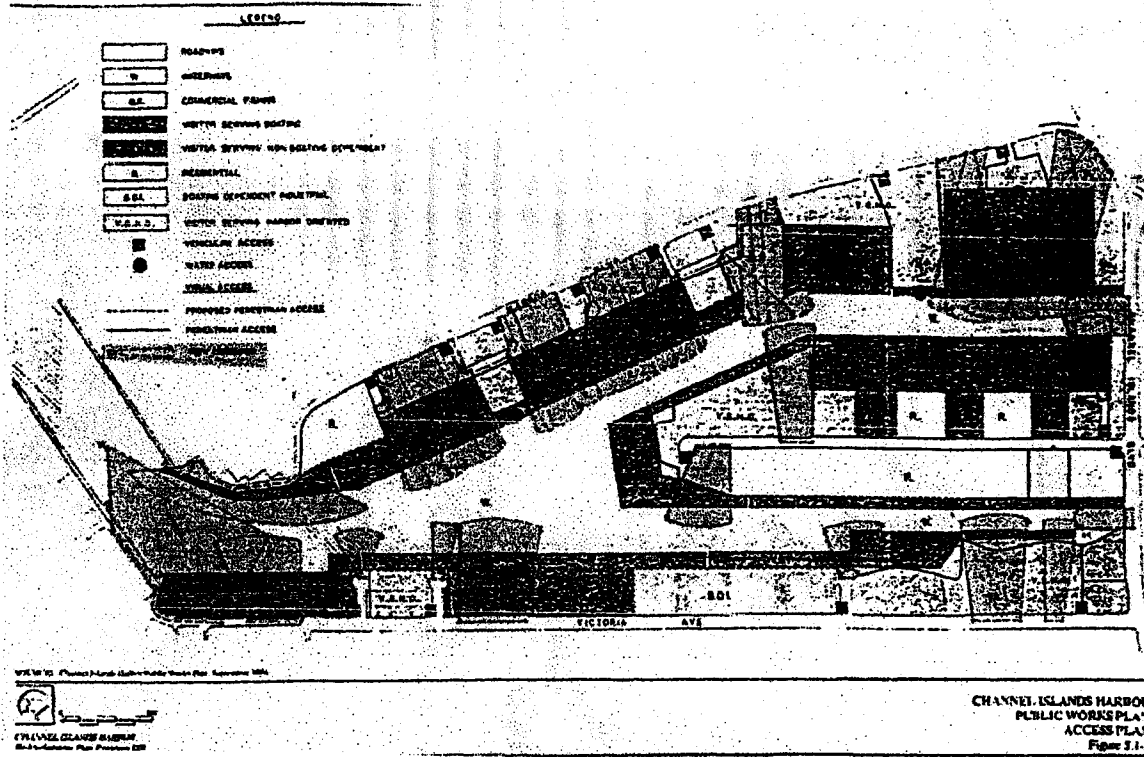
Finally, please be advised that in offering the above comments, the authors of this letter offer no opinion on the merits of the proposed project, the appropriateness of the Harbor District's preferred location for it, or the suitability of alternative sites. Our comments are intended to inform interested persons on the appropriate procedures for PWP's. Relative to issues surrounding the proposed project, we seek only to offer a more rigorous and complete interpretation of the policies and provisions of the 1986 Channel Islands Harbor PWP than appear to have been provided to date.

Sincerely,

Stephen J. Stanley & Phil Mees (64/535)

Stephen Stanley and Phil Mees

cc: Chuck Damm, Sr. Deputy Director
South Central Coast District Office, CCC



1986 Channel Islands PWP Land Use Map and Public Access Map

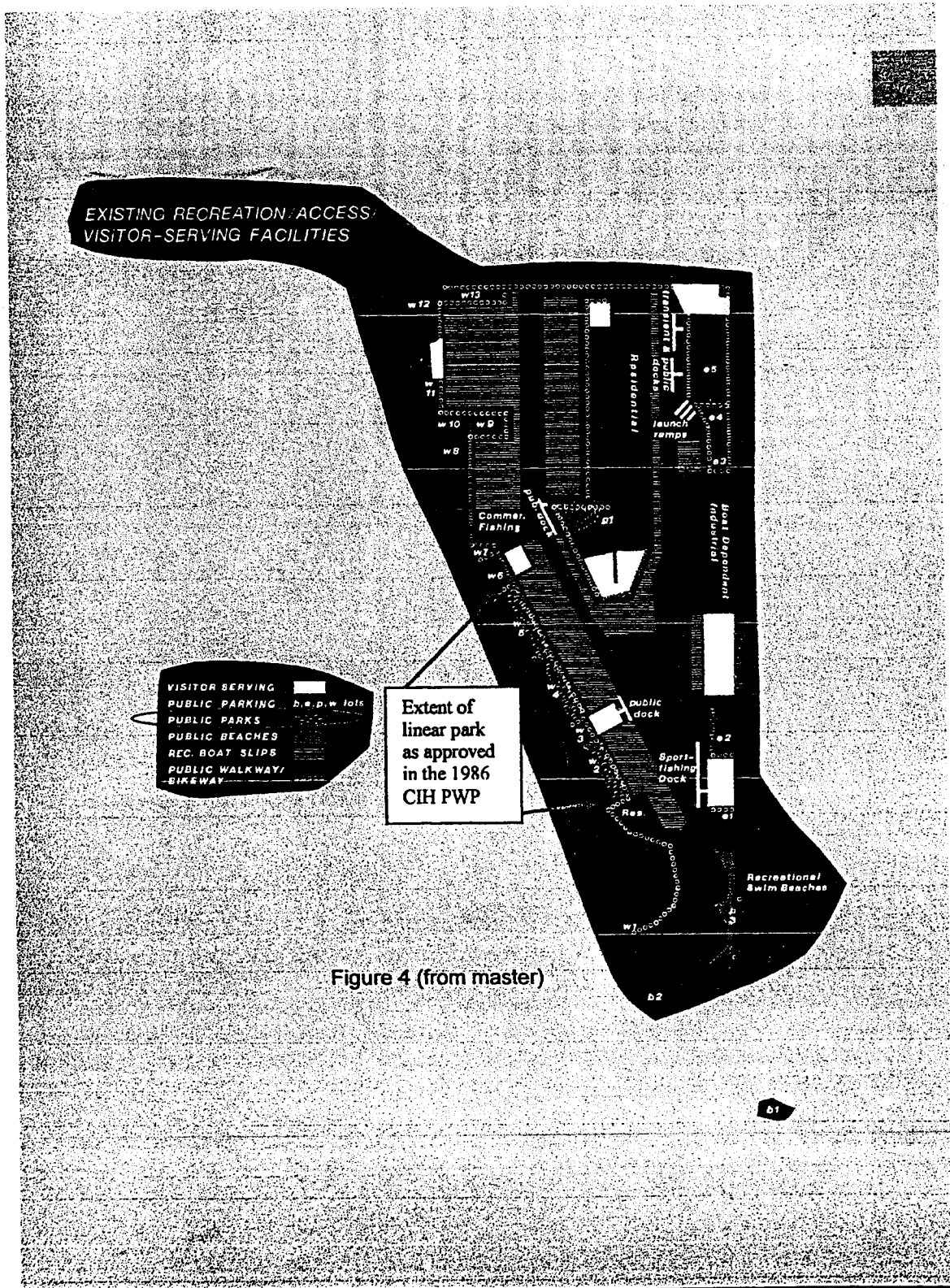


Figure 4 (from master)



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25 June 2003

Lyn Krieger, Director
Ventura County Harbor Department
3900 Pelican Way
Oxnard, CA 93035-4367

RE: Draft EIR for the Boating Instruction and Safety Center (BISC), Channel Islands Harbor

Dear Ms Krieger:

Audubon Canyon Ranch (ACR) has conducted research, conservation, and education activities in the San Francisco Bay area since the mid-1960s (www.egret.org). We also manage a system of wildlife sanctuaries in Marin and Sonoma counties, which include a large nesting colony of herons and egrets on Bolinas Lagoon. Since 1990, I have conducted scientific studies of herons and egrets at all known heronries in the northern San Francisco Bay area (more than 60 in any year; Kelly et al. 1993). I have published numerous scientific papers on birds, including topics such as nest predation, human disturbance, foraging ecology, breeding behavior, habitat relationships, and energetics in birds.

I would like to offer the following comments on the biology of Black-crowned Night-Herons (BCNH) and other herons and egrets, and on potential impacts of the proposed Boating Instruction and Safety Center (BISC) on the heronry at Channel Islands Harbor. Together, the points raised below suggest that it could be impossible to either avoid or mitigate appropriately for significant adverse impacts on the heronry, given the close proximity of the proposed BISC.

Local status

Disturbed colonies may or may not re-establish in nearby areas. I have evidence (unpublished) that night-herons may relocate as far as 35-40 km away in response to nest disturbance. BCNHs often feed in areas close to nesting colonies but will also fly up to 24 km to feed (Hoefler 1979). Consequently, the distribution of heronries only loosely reflects the distribution of habitats used for feeding. This suggests strongly that the birds nesting at Channel Islands Harbor do not represent a population that "has emerged over an unknown number of years [since development

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ATTACHMENT 6

of the harbor]” as indicated in the DEIR (DEIR Sec. 5, p. 122). BCNHs have actually been a part of the local bird community for a long time (at least throughout 20th Century; Grinnell 1915, Willett 1933). Therefore, the trees at Channel Islands Harbor provide nesting habitat for a previously established population.

Other colonies

To my knowledge, existing information on the distribution of heronries in southern California does not indicate the presence of BCNH colonies in Ventura County (Grinnell and Miller 1944, Garrett and Dunn 1981, Granholm 1990). According to the Rincon Associates, Inc. (30 August 2001 letter to Ingrid Elsel/Associates), the California Department of Fish and Game and local Ventura birders indicated that the Channel Islands Harbor heronry is the only known active site in the area (other than an unconfirmed site at the mouth of the Santa Clara River). The narrative cited in the DEIR from the California Wildlife Habitat Relationships System (Granholm 1990) indicates only that night-herons are “locally common” in California, especially near large nesting colonies, but does not indicate that colonies are “very common locally” (as might be implied by the DEIR, Sec. 5, p. 111), and provides no evidence that other heronries exist along the Ventura coast.

Human disturbance

Published studies demonstrate that heronries vary dramatically in their responses to disturbance. Scientific efforts have been unable so far to explain this variability in ways that allow reliable prediction of the consequences of construction activities, increases in human presence, or special recreational events. It is true that BCNHs often nest in areas with human activity. In the Bay Area, BCNHs nest on Alcatraz Island, Bodega Harbor, Napa State Hospital, and in suburban landscapes. However, their sensitivity is based on a subtle but important point. Although herons (esp. BCNHs) occasionally select nesting areas near humans, they seem to be very sensitive to changes in human activity and will abandon nesting areas if disturbed (Tremblay and Ellison 1979, Gross 1923).

Frequent unsubstantiated assertions in the DEIR, such as “the birds have adjusted to ...human activity” (DEIR Sec. 5, p. 122); “the species’ resilience...will allow it to reassemble after construction is completed” (DEIR Sec. 5, p. 123); “birds on the Peninsula side of the channel will not be affected at all...” (DEIR Sec. 5, p. 123); or that “operation of the BISC will not adversely affect nesting” (Sec. 6, p. 280), are inconsistent with my experience and, to my knowledge, are not supported by the scientific literature on BCNHs or on other herons and egrets.

Colony site fidelity

Disturbed colonies may shift locally to adjacent trees (as predicted by the DEIR) but may also abandon colony sites completely. In the Bay Area, cases of complete abandonment have occurred after removal of trees, direct harassment, disturbance by predators, and undetected "disturbance." It is possible that nesting herons and egrets disturbed by construction of the BISC will renest in nearby trees. However, because the proposed construction provides no buffer zone to protect the adjacent heronry, I believe there is a substantial and significant risk of complete abandonment.

Suitable feeding sites in or near the harbor do not guarantee that herons or egrets will continue to nest in the vicinity. Following disturbance by raccoons in 1991, the largest colony of Great Blue Herons in Marin County, at Stafford Lake, was abandoned and has not been reestablished, even though there are many apparently suitable nesting trees and alternative sites available and herons continue to feed along the shore. Similarly, Great Blue Herons abandoned a colony site in the pristine Drakes Estero in the Point Reyes National Seashore and failed to nest anywhere in the entire estuary for several years. Many estuaries in California do not support nesting BCNHs even though night-herons may commonly use them as feeding areas. I am therefore concerned that if construction of the BISC results in abandonment of the adjacent heronry, the birds may not continue to nest near the Harbor.

Buffer zones

The recommended setback distance to avoid disturbance to nesting BCNHs, based on experimental work in Florida, is 97 meters (Rodgers and Smith 1995), and this should be increased by an additional 100 meters to avoid disturbance early in the season before active nests are established (Erwin 1989). Some heron biologists have concluded that BCNHs are the most sensitive of herons, because in mixed heronries BCNHs are generally the first species to flush in response to human disturbance (Erwin 1989). I have personally seen considerable resilience as well as a high level of sensitivity in night-heron colonies subject to disturbance.

The speculation that Great Blue Herons nesting nearby will not be adversely affected by construction of the BISC (DEIR Sec. 5, p.123) is reasonable only if their nesting sites are greater than a recommended minimum distance of 200 m from the construction site. This is the buffer distance currently recommended by ornithologists for wading bird colonies, including BCNH colonies (Vos et al. 1985, Erwin 1989, Rodgers and Smith 1995, Kelly 2002). It accounts for seasonal variation in the sensitivity of nesting birds and for "dread" (initial panic) prior to flushing, and it is based only on experimental responses to passive observers approaching on foot. Research in lower Chesapeake Bay, a landscape with 30-40 buildings per square mile, indicated that Great Blue Herons avoid establishing colony sites in areas where there are more than 3-4 buildings within 400 meters (Watts and Bradshaw 1994). This suggests that the suitability of the Great Blue Heron nesting site near the proposed BISC could be significantly degraded by the cumulative impacts of additional buildings and associated human activity in the area.

Likelihood of successful relocation

The DEIR states correctly that the attempted relocation of the heronry at the U.S. Naval Station Long Beach (Crouch et al. 2002) has failed. However, the reasons for failure given in the DEIR (an unrelated naval construction operation; Appendix F, p. 15) should not be used to imply that such effort would otherwise lead to successful relocation, because the effectiveness of the methods (moving trees, use of decoys, etc.) was not adequately tested. There remains no evidence of successful relocation of a BCNH colony to date and any such effort must be considered as experimental at best.

Further assertions presented in the DEIR (e.g., Sec. 5, p. 125-130) that herons at Channel Islands Harbor will relocate to newly constructed sites cannot be substantiated and exceed current scientific understanding of their nesting behaviors. The DEIR (Sec. 5, p. 125) states, "A number of studies and other mitigation programs suggest that herons will readily re-establish nesting and roosting in other areas that are suitable, provided they are offered an opportunity," but no documentation is given for this statement. I believe that the statement is simply not true. In fact, many apparently suitable, alternative nesting sites are available (not limiting) in most areas, and most of such sites continue to go unused, for unknown reasons.

In my work with managers of the Marin Islands National Wildlife Refuge in San Francisco Bay (Kelly et al. 1994-1997, Kelly and Fischer 1998-2002), we have considered the use of decoys to attract nesting herons and egrets to new nesting areas. However, we decided not to use decoys because (1) resident birds are certainly aware of existing habitat opportunities without decoys and (2) the absence of birds from apparently suitable nesting sites may reflect the evolution of important but unknown habitat preferences. Similarly, Napa State Hospital decided against experimental relocation of a BCNH nesting colony because of insufficient expectations for success. No one knows why many apparently suitable sites are never used.

Noise

Although herons and egrets often tolerate routine noises imposed by human activity, they do not generally tolerate changes in noise levels associated with unusual events, construction, or changes in human activity. Noise levels associated with construction of the BISC are predicted by the DEIR to be above "very loud" in the adjacent heronry (70-95 dBA; Appendix K, Exhibit 1 and p. 9). To avoid such disturbance, construction must not occur during the nesting season. The suggestion in the DEIR (Sec. 6, p. 280) that "construction may proceed to completion during the nesting season if...the 6 nesting trees adjacent to the BISC site are covered with netting sufficient to prevent BCN herons from using the trees for nesting" is unjustified because construction activities are likely to cause major disturbance to nesting birds in other parts of the colony. The responses of herons to noise are consistent with their responses to other disturbances, as discussed below.

Noise mitigation measures described by the DEIR (Sec. 5, p. 189) are based only on limiting the hours of construction activities and will not protect the heronry from excessive noise. I am further concerned that, if the heronry is still active after construction, new levels of increased human activity and noise associated with the BISC could seriously disturb the nesting herons. Limiting the hours during which loud music is allowed will not protect nesting herons, and plans to close windows and doors may not be effective.

Habitat requirements

Suggestions in the DEIR of key habitat features important for nesting BCNHs may be of value, especially with regard to wind protection, canopy cover, isolation from human activity, tree height, etc. However, relying on these features might overlook other (unknown) features critical to the nesting performance of the birds (Erwin 1987). Even if habitat created for relocation is suitable, disturbed birds may prefer to abandon the Harbor for more distant sites.

One apparently important influence on the quality of nesting habitat is protection from predators. The DEIR indicates the probable importance of nest predation by American Crows at Channel Islands Harbor (Appendix F, p. 11). Crows are well-known nest predators in heronries and operate opportunistically in response to disturbances by humans and by other predators (Burger and Hahn 1977, Parsons 1995, Kelly et al. 2002). The presence of crows or ravens can be expected to increase rates of nest failure if herons are flushed from their nests by activities associated with the proposed project. Such indirect effects of disturbance can increase the likelihood of colony site abandonment and should be considered in evaluating the potential for significant impacts.

Mixed colonies

The biological assessment of the BISC Project conducted for Ingrid Elsel/Associates by Rincon Consultants (30 August 2001), referred to the reported presence of two Snowy Egret nests. However, the potential for significant adverse impacts on nesting Snowies was not addressed in the DEIR. I agree with the DEIR (Appendix F, pp. 11-12) that the Great Egret observed on 30 March 2003 was very likely nesting. It was observed at the expected time of courtship and nest establishment (mid-March to early April), at which time egrets are the most sensitive to human presence (Vos et al. 1985, Kelly 2002). I suspect that Dr. Froke's impression was correct, that the bird was deterred from nesting by activity in the picnic area below the tree.

The appearance of the Great Egret and reports of Snowy Egret nests are consistent with observations of all known BCNH colonies in the San Francisco Bay area, where nesting night-herons are eventually joined first by nesting Snowies, then by Great Egrets, and finally, at some sites, by Great Blue Herons. In California and other parts of the country, BCNH is often the first colonizer species at new sites, followed later by other heron and egret species. Snowy Egrets

and Great Egrets rarely establish new colony sites on their own. Therefore, the Channel Islands Harbor heronry should be evaluated as a mixed species colony, and potentially significant impacts to four species of herons and egrets should be considered.

Thank you for this opportunity to respond to the proposed BISC Project. Please feel free to contact me if you have questions regarding my comments.

Sincerely,

John P. Kelly, PhD
Research Director

cc:
Morgan Wehtje, California Department of Fish and Game
Bonnie Luke, California Coastal Commission
The Beacon Foundation

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8 December 2003

Lyn Krieger, Director
Ventura County Harbor Department
3900 Pelican Way
Oxnard, CA 93035-4367

RE: Responses to Comment Letter #28, on the Boating Instruction and Safety Center (BISC),
Channel Islands Harbor

Dear Ms. Krieger:

Thank you for sending a copy of the Responses to my comments (Comment Letter #28) on the Draft EIR for the Boating Instruction and Safety Center (BISC) at Channel Islands Harbor. I appreciated the responder's comments and found that they clarified some of the issues. However, the issues raised by my initial comments remain critical to the project, indicating a considerable risk of losing the heron colony if the proposed location for the BISC is approved. Several of the responder's comments would benefit from further clarification.

Response 28-1: The responder has assumed, without substantiation, that disturbance of part of a nesting colony would have no effect on the use of the heronry overall. It is not possible to predict whether complete abandonment of the heronry will or will not occur.

Response 28-2: The colony site was obviously established since the development of the Harbor, but in contrast to the assertion in the EIR, the local heron population did not emerge because of Harbor development. I agree with the responder that this distinction does not affect whether impacts on herons are significant, but it clarifies the pre-existing significance of the herons that occupy the harbor.

Response 28-3: With only one other known colony site along the Ventura coast, night-heron colonies are clearly not "locally common."

Response 28-4: My initial statement, that "published studies demonstrate that heronries vary dramatically in their responses to disturbance," is in complete agreement with the responder's point, that existing information does not allow predictions of how night-herons will respond to the project. Consequently, the high level of sensitivity in night-herons reported by other scientific authors (and which I have observed in my own work) suggests that an ability to tolerate or habituate to disturbance from the BISC project cannot be assumed or predicted with any certainty.

Response 28-5: In spite of considerable uncertainty, the responder implies, without justification, that a complete abandonment of the heronry would not occur and that the birds nearest to the BISC would relocate to other parts of the colony. The responder further asserts that this would reduce the impacts to less than significant. However, even if the colony is not completely abandoned, it is impossible to predict whether birds will relocate to other parts of the colony or, alternatively, cease to use the area, reducing the size of the heronry. This latter case would suggest a significant "take" of active nests. A decline in the number of breeding pairs is typical in heronries that experience significant disturbance but are not completely abandoned.

Response 28-6: The 200 m setback was not just my personal recommendation, but reflected the best-available data and recommendations from scientific investigators (see citations for Erwin 1989 and Rodgers and Smith 1995). This recommendation should not be discounted simply because of inconvenience or because the studies were conducted in other areas. The experimental results upon which such studies have been based involve disturbance levels far below those that would result from the proposed project.

Response 28-7: The assertion in the DEIR that herons displaced from existing nest trees would relocate to constructed sites with newly introduced trees remains unsubstantiated.

Response 28-8: The responder is correct that night-herons might tolerate loud noises, but the likelihood of this cannot be determined. There is a reasonable but unknown level of risk that the newly introduced, "very loud" noises proposed in the DEIR could cause some or all of the birds to abandon the site.

Thank you for this opportunity to comment.

Sincerely,



John P. Kelly, Ph.D.
Research Director

cc: Judy Mikels, Chair, Ventura County Board of Supervisors