

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
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VENTURA, CA 93001  
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**DATE:** September 27, 2007

**TO:** Commissioners and Interested Persons

**FROM:** John Ainsworth, Deputy Director  
Gary Timm, District Manager

**SUBJECT:** **(1) Proposed Major Amendment (1-04) to the Channel Islands Harbor Public Works Plan and;**

**(2) Notice of Impending Development 1-05, Pursuant to the Channel Islands Harbor certified Public Works Plan (PWP) as amended by the proposed PWP amendment 1-04 referenced above.**

For Public Hearing and Commission Action at the October 10, 2007  
Commission Meeting at the Crowne Plaza Los Angeles Harbor Hotel, 601  
S. Palos Verdes St., San Pedro, CA.

### **SUMMARY AND STAFF RECOMMENDATION**

#### **Staff Note:**

This matter is being heard by the California Coastal Commission for a second time following an original approval in March of 2005. The approval of the California Coastal Commission was legally challenged by the organization *Habitat for Hollywood Beach*. In its Statement of Decision, the Superior Court of the County of Los Angeles found that the Commission's findings were not adequate regarding the consideration of alternatives and cumulative impacts. The court, by writ, commanded the Commission to set aside its approval of the proposed Public Works Plan amendment and associated NOID for the BISC project, and to prepare a new report addressing the alternatives analysis and cumulative impacts issues.

In its decision, the court stated that the Commission could rely on the County's EIR, but that the Commission staff report must show "solid evidence of meaningful review" of alternatives and cumulative impacts in order to demonstrate to the public that the environment is being protected. Specifically, while the court recognized that the County's EIR discussed alternatives and cumulative impacts, and that the Commission was entitled to rely upon the analysis in that EIR, it required that these matters be independently addressed in the Commission's staff report.

Therefore, this revised report conforms to the command of the court by separately addressing alternatives and cumulative impacts. The analysis relies on the County's EIR, and also on new information that has become available since the original approval.

The amendment to the Public Works Plan (PWP) is proposed to allow for 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 County Harbor Department has also submitted the corresponding Notice of Impending Development (NOID) to provide for construction of the proposed project upon certification of the PWP amendment. 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 Ventura County Harbor Department submitted the amendment to its certified Channel Islands Harbor Public Works Plan (PWP) on October 28, 2004. On November 19, 2004, the Executive Director determined that the County's amendment submittal was in proper order and legally adequate to comply with the submittal requirements of Coastal Act Section 30605. Pursuant to Section 30605 of the Coastal Act, any proposed amendment to the certified PWP shall be submitted to, and processed by, the Commission in the same manner as prescribed for amendment of a local coastal program, and the amendment shall be approved only if it is found to be in conformity with the local coastal program covering the area affected by the plan.

The proposed staff recommendation relies largely on the same submittal materials as were used in the original proceeding although some material or statements have been revised, deleted, or added to reflect current situations.

Staff is recommending denial of the proposed PWP amendment as submitted followed by approval with 22 suggested modifications. Staff is also recommending that the Commission determine that the impending development will be consistent with the certified Channel Islands Harbor Public Works Plan, as amended pursuant to the staff recommendation, and with ten recommended 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; (8) Best Management Practices; (9) approval of PWP amendment; and, (10) prohibition of amplified music, all of which are necessary to bring the development into conformance with the PWP.

### **STANDARD OF REVIEW**

Section 30605 of the Coastal Act and Title 14, Section 13356 of California Code of Regulations provides that where a public works plan is submitted prior to certification of the Local Coastal Program (LCP) for the jurisdiction affected by the plan the Commission's standard of review for certification is Chapter 3 of the Coastal Act.

Although the land area within the Harbor is owned by the County, it lies within the jurisdiction of the City of Oxnard. The Commission certified the Public Works Plan in September 1986 prior to certification of the LCP for the Harbor area which was certified in December 1986. Therefore, the Commission's certification was based on consistency with Chapter 3. Section 30605 and Section 13357 of the Code of Regulations also states that where a plan or plan amendment is submitted after the certification of the LCP for the area any such plan shall be approved by the Commission only if it finds, after full consultation with the affected local government(s), that the proposed plan is in conformity with the certified LCP. Therefore, the standard of review for the proposed amendment to the Public Works Plan, pursuant to Section 30605 of the Coastal Act, is that the proposed plan amendment is in conformance with the certified Local Coastal Program for the City of Oxnard. Since the City's certified LCP contains all applicable Coastal Act policies, conformance with applicable Chapter 3 policies of the Coastal Act is also required. PRC Section 30605 also states that any proposed amendment shall be processed in the same manner as prescribed for an amendment to a Local Coastal Program.

Sections 30605 & 30606 of the Coastal Act and Title 14, sections 13357(a)(5) and 13359 of the California Code of Regulations govern the Coastal Commission's review of subsequent development where there is a certified PWP. The Commission reviews the project for consistency with the certified Public Works Plan.

After public hearing, by a majority of its members present, the Commission shall determine whether the development is consistent with the certified PWP and whether conditions are required to bring the development into conformance with the PWP. No construction shall commence until after the Commission votes to render the proposed development consistent with the certified PWP.

### **PUBLIC PARTICIPATION**

The County of Ventura Board of Supervisors held a public hearing and approved the PWP amendment on October 19, 2004. Written comments were also received regarding the project from public agencies, organizations and individuals. The hearing was duly noticed to the public consistent with Sections 13552 and 13551 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties. Although the writ issued by the superior court required the Commission to rescind its prior approval, the County approval remains intact and will be recognized in this new proceeding.

### **PROCEDURAL REQUIREMENTS**

Because approval of the PWP amendment is subject to suggested modifications by the Commission, the County must act to accept the adopted suggested modifications pursuant to the requirements of Section 13547 of the California Code of Regulations, which provides for the Executive Director's determination that the County's action is

legally adequate, within six months from the date of Commission action on this application before the PWP amendment shall be effective.

**I. STAFF RECOMMENDATION FOR DENIAL OF PWP AMENDMENT 1-04 AS SUBMITTED AND CERTIFICATION WITH SUGGESTED MODIFICATIONS**

**A. Denial as Submitted**

**MOTION:**     *I move that the Commission certify the Channel Islands Harbor Public Works Plan Amendment 1-04 as submitted.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the Public Works Plan Amendment 1-04 and the adoption of the following resolution and findings. The motion to certify passes only by an affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION I:**

The Commission hereby denies certification of the Channel Islands Harbor Public Works Plan Amendment 1-04 and adopts the findings stated below on the grounds that the Amendment does not conform with the certified Local Coastal Program for the City of Oxnard. Certification of the Amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or feasible mitigation measures or alternatives that would substantially lessen the significant adverse effects that the approval of the Amendment] would have on the environment.

**B. Certification with Suggested Modifications**

**MOTION:**     *I move that the Commission certify the Channel Islands Harbor Public Works Plan Amendment 1-04 if modified as suggested in the staff report.*

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Public Works Plan Amendment 1-04 plan as modified. The motion to certify passes only by affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION II:**

The Commission hereby certifies the Channel Islands Harbor Public Works Plan Amendment 1-04 as modified and adopts the findings stated below on the grounds that the Amendment as modified conforms with the certified Local Coastal Program for the City of Oxnard. Certification of the Amendment if modified as suggested complies with

the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Amendment on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the Amendment] on the environment.

### **SUGGESTED MODIFICATIONS**

The staff recommends the Commission certify the Public Works Plan Amendment only with the modifications as shown or described below. Language presently contained within the certified PWP is shown in straight type. Language recommended by Commission staff to be deleted is shown in ~~line-out~~. Language proposed by Commission staff to be inserted is shown underlined. Other suggested modifications to revise maps or figures are shown in *italics*.

The following policies relating to construction and continued operation of the Boating Instruction and Safety Center shall be added to the Public Works Plan:

Add to Chapter 4.5, Biological Resources – Policies (page 74):

#### Modification 1

Portions of Hollywood Beach west of the Harbor utilized by western snowy plovers and/or California least terns for nesting, breeding, and foraging are designated as Environmentally Sensitive Habitat Area. No activities associated with operation of the BISC shall be permitted to occur on or across Hollywood Beach during the nesting/breeding season for snowy plovers and least terns (March 1 – September 30). In carrying out this policy the Harbor Department shall consult with the US Fish and Wildlife Service.

#### Modification 2

The Harbor Department shall coordinate with the California Department of Fish and Game, the US Fish and Wildlife Service and the Army Corps of Engineers to develop and implement a long-term conservation plan for California least terns and western snowy plovers at Hollywood Beach. The conservation plan shall include management strategies that address Harbor education and outreach programs (including those associated with the BISC), beach maintenance activities, dredging, and designation of breeding areas for the least tern and snowy plover.

#### Modification 3

The Harbor Department shall avoid beach grooming activities at Hollywood Beach between January 1 and September 30 of each year unless authorized by the US Fish and Wildlife Service. Removal of items not necessary to support insects and

invertebrates that western snowy plovers feed upon is allowed provided that removal is not conducted during the breeding season. Motorized vehicles shall stay on the wet sand or along the south edge by the jetty during this period.

#### Modification 4

The Harbor Department shall install educational signs at access points to Hollywood Beach to inform beach users of “leash” laws and to discourage harmful activity within the nesting area for snowy plovers and least terns during the breeding season. If recommended by the U.S. Fish and Wildlife Service “symbolic” fencing (e.g. rope and stakes) may be installed to protect nests during the breeding season.

#### Modification 5

##### Construction of the Boating Instruction and Safety Center (BISC)

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.

#### Modification 6

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.

#### Modification 7

##### 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. Replacement shall take place within 6 months of completion of BISC.

#### Modification 8

Replacement of lost park area from BISC construction

The County shall be responsible for 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. The replacement of the park shall occur concurrently with construction of the BISC.

Modification 9

Page 5, 3<sup>rd</sup> paragraph. (Delete proposed addition of “Phase III basin” and “basin” and elimination of “built out” as follows:

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

Modification 10

Page 22, - *Figure IV shall be revised to identify the Boating Instruction & Safety Center as proposed rather than existing at bottom of page as follows:*

Existing and/or Proposed Recreation/Access/Visitor Serving Facilities

Modification 11

Page 25, FUTURE WATERSIDE BOATING SUPPORT FACILITIES (for BISC at bottom): -*Table II shall be revised to account for change in number of recreational and live-aboard boating spaces due to construction of BISC as well as lateral dock space provided for BISC.*

Modification 12

Page 42, Public Parks: *Revise 2<sup>nd</sup> full sentence at top of page as follows:*

The linear Channel Islands Harbor Park is located on the western Harbor side, and consists of all open turf and landscaped area, trees, picnic tables, walkways and restroom facilities.

Modification 13

*Figures III (page 6), IV (page 22) and VII (page 35) shall be revised to clarify or reflect that the entire linear landscaped park along the west side of the Harbor is designated as Public Park (with the exception of the portion of the existing park eliminated due to construction of BISC).*

Modification 14

Page 50, Recreation Policy 20 shall be revised as follows:

20. All areas designated as public parks and beaches in Figures III, IV, and VII 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.

Modification 15

Page 50, Visual Access Policy 22c. shall be revised as follows:

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

Modification 16

*Table III (page 51) shall be revised to incorporate results of parking lot survey conducted over 3-day Labor Day weekend, September 2004.*

Modification 17

Page 53, 3<sup>rd</sup> paragraph (proposed to be added by Harbor Department) under "Recreational Boating" shall be modified as follows:

One means of carrying out the Recreational Boating policies of the Coastal Act is by establishing a Boating Instruction and Safety Center on the west side of the Harbor as shown on Figures III, IV, V, and VII.

Modification 18

Page 69, Biological Resources, added paragraph under "Existing Conditions" shall be modified as follows:

Notwithstanding this man-made environment, several bird species, such as great blue herons and black-crowned night herons, utilize the trees in the Harbor for roosting and nesting. Although none of these species is listed as threatened or endangered, their presence is considered important. In addition, nearby Hollywood Beach west of the

Harbor is designated as critical habitat for western snowy plover and California least tern.\*

\*double underline indicates language added to new language proposed to the PWP by the Harbor Department

#### Modification 19

Page 71, under "BIRDS", add black-crowned night herons, and western snowy plover and California least tern on adjacent Hollywood Beach.

#### Modification 20

Page 74, Section 4.5, Biological Resources, POLICIES shall be modified to add the following policies:

#### Water Quality Protection

5. Ensure that development is designed and managed to minimize the introduction of pollutants into the Channel Islands Harbor and surrounding coastal waters to the maximum extent practicable.

6. Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs) to reduce pollutants and runoff from the proposed development to the maximum extent practicable. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.

7. Ensure that development minimizes erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Ensure that development minimizes land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality.

8. Ensure that development incorporates appropriate design elements and management practices to minimize adverse impacts to water quality related to boating facilities and boater waste in the Channel Islands Harbor to the maximum extent practicable. Boating in the Harbor shall be managed in a manner that protects water quality, and any persons or employees maintaining boats in slips or using slips on a transient basis shall be made aware of water quality provisions.

#### Modification 21

Page 28 of PWP amendment, Chapter 2.3, first sentence under “Commercial Sport Fishing” shall be revised to delete the proposed change in the dock length to 600 ft. as follows:

The commercial sport enterprises within the Harbor operate from approximately 300 feet of floating dock at Murre Way on the eastern side of the main channel.

Modification 22

Page 74 of PWP amendment, Biological Resources, POLICIES, shall be modified to add to following policy:

**In order to provide further protection to avian species adjacent to the BISC, all music played at the BISC during special events, whether inside or outside the facility, shall consist of non-amplified, acoustic music.**

**II. STAFF RECOMMENDATION FOR APPROVAL OF NOTICE OF IMPENDING DEVELOPMENT WITH SPECIAL CONDITIONS**

**MOTION:        *I move that the Commission determine that the development described in the Notice of Impending Development 1-05, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan if amended in accordance with the suggested modifications.***

Staff recommends a **YES** vote. Passage of this motion will result in a determination that the development described in the Notice of Impending Development 1-05, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan, as amended pursuant to PWP Amendment 1-04 in accordance with the suggested modifications, and adoption of the following resolution and findings. The motion passes by affirmative vote of a majority of the Commissioners present.

**RESOLUTION:**

The Commission hereby determines that the development described in the Notice of Impending Development 1-05, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan, as amended pursuant to PWP Amendment 1-04, 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 1-05 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. Replacement shall take place within 6 months of completion of the BISC. Prior to commencement of construction the Harbor Department shall submit a slip replacement plan for the review and approval of the Executive Director.

**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.

**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, for the review and approval of the Executive Director, 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 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85<sup>th</sup> 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 30<sup>th</sup> 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.

**9. Approval of PWPA 1-04**

Commencement of development/construction of the proposed Boating Instruction and Safety Center shall not occur until the County has acted to accept all suggested modifications to PWP amendment 1-04 and the Executive Director of the Commission has formally concurred with said County action.

**10. Amplified Music Restriction**

All music played at the BISC during special events, whether inside or outside the facility, shall consist of non-amplified, acoustic music.

**III. FINDINGS FOR DENIAL OF THE PUBLIC WORKS PLAN AMENDMENT AS SUBMITTED AND APPROVAL OF THE PUBLIC WORKS PLAN AMENDMENT IF MODIFIED AS SUGGESTED AND APPROVAL OF THE RESPECTIVE NOTICE OF IMPENDING DEVELOPMENT, AS CONDITIONED.**

The following findings support the Commission’s denial of the PWP amendment as submitted, and approval of the PWP amendment if modified as indicated in the *Suggested Modifications* and approval of the corresponding Notice of Impending Development, *as conditioned*. The Commission hereby finds and declares as follows:

**A. Amendment and Project Description and Background**

On September 19, 1986, the Channel Islands Public Works Plan (PWP) was effectively certified by the Commission. The purpose of the PWP, as certified, is to provide “a detailed and specific planning document to guide future Harbor development.” Jurisdiction within the Channel Islands Harbor is shared by both the County of Ventura and the City of Oxnard. Oxnard’s City limits extend to all Harbor land areas. Based on a previous agreement between the two governmental authorities and the Commission’s certification of the Public Works Plan, the County assumed planning and 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. For a project contained in the certified PWP, the Commission’s review of a Notice of Impending Development is limited to determining that the development as proposed is consistent with the PWP, or imposing reasonable terms and conditions to ensure that the development conforms to the PWP.

Requirements for the level of information contained in a Public Works Plan are contained in Section 13353 of the California Code of Regulations, which states that a PWP “shall contain sufficient information regarding the kind, size, intensity and location of development activity intended to be undertaken pursuant to the plan”. Such information includes: 1) the specific type of activity or activities proposed to be undertaken; 2) the maximum and minimum intensity of activity or activities proposed to be undertaken; 3) maximum size of facilities proposed to be constructed pursuant to the plan; and 4) the proposed location or alternative locations considered for any development activity or activities to be undertaken pursuant to the proposed plan. In

other words the Coastal Act envisions that a Public Works Plan functions more as a Specific Plan or a master development permit in order for specific projects or activities described in the PWP to be approved quickly through the Notice of Impending Development Process at later dates with minimal review. Activities, projects, or facilities not specifically proposed in a Public Works Plan in the level of detail described above shall require an amendment to the certified PWP that must be approved by the Coastal Commission prior to approval and issuance of a Notice of Impending Development for said activity, project, or facility.

The 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.” Although the BISC is the type of use that appears to be consistent with the use designation it is not specifically referenced or described as a permitted use in the PWP, however. In addition, although the BISC has been rotated on the proposed project site to minimize encroachment into the designated public park, the project is still inconsistent with Policy 20 of the PWP which requires that all areas designated as public parks shall not be developed or utilized for other uses without an amendment to the plan.

The Commission has previously found that the BISC was not approved or intended for the specific proposed project site along the West Channel of the Harbor at the time the PWP was certified. In addition, the BISC is not specifically referenced as an existing or permitted structure in Table I of the PWP which provides for limiting expansion of existing and permitted structures in the Harbor. Therefore, in order for the BISC to be permitted pursuant to the PWP an amendment to the plan is required.

#### Amendment and Project Description

The proposed amendment and project subject to the Notice of Impending Development (NOID) is to authorize 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 (exhibits 2 & 5). 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 approximately 1700 sq. ft. of grass area will be lost. Street access was also redesigned, however, to provide a small overall increase in green area of approximately .25 acres. Opponents contend that the amount of green area displaced is 2300 sq. ft. when the area to be fenced off by the BISC is considered. 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.

Note: There are also a number of proposed minor changes to the PWP included in the County's proposal involving correcting typos, punctuation, spelling, and page numbers etc. that do not relate directly to the BISC project. These changes are found throughout the PWP document and the Commission agrees with staff's recommendation of approval of these changes as submitted.

#### Department of Boating and Waterways Review

The Department of Boating and Waterways has reviewed the proposed project and commented on the proposed project including the proposed location on the west side of the Harbor.

The location of the BISC has become extremely controversial. There is opposition to siting the proposed BISC on the west side of the Harbor and opponents have argued that an eastside location is preferable. The Commission has been provided copies of letters from the Department of Boating and Waterways concerning location of the BISC (December 1, 2003 from Mike Ammon to Lyn Krieger, October 15, 2004 from Raynor

Tsuneyoshi, Director to members of the Ventura County Board of Supervisor, October 21, 2004 from Director Tsuneyoshi to Assemblyman Tony Strickland, September 20, 2007 from Director Tsuneyoshi to Gary Timm). [Exhibit 7] These letters all indicate a preference for locating the BISC on the west side of the Harbor in the proposed location. Safety concerns relative to wind direction were cited as one of many factors in the decision. Both the October 15 and 21 letters state “given the considerable safety concerns expressed by independent experts, we cannot recommend funding from the Department of Boating and Waterways for a BISC project on the harbor’s east side.” Prior to the March 2005 Commission hearing, staff contacted the Department to confirm this position and in an e-mail dated February 28, 2005 Director Tsuneyoshi stated that the Department continues to prefer the Harbor west side location for the BISC and that the Department’s position has not changed. Most recently, in an e-mail and letter response to an inquiry from staff dated September 20, 2007, Director Tsuneyoshi again confirmed the Department’s support and preference for locating the BISC on the west side of the Harbor. The letter stated (in part):

“The Department remains supportive of constructing the BISC at the previously approved west side location. The west side site was selected by a panel of current or former BISC directors with over 100 years of combined experience in developing and safely managing boating instruction programs for youths, adults, and special needs students. This panel of experts independently ascertained that, among the possible locations for a BISC in Channel Islands Harbor, the west side location was the safest location for the types of boating instruction contemplated at the proposed boating center and also ranked high on other site selection criteria.”

**B. Consistency with City of Oxnard certified Local Coastal Program**

The Oxnard LCP was effectively certified by the Commission in April 1985; however, certification of an LCP for the Channel Islands Harbor was deferred creating an Area of Deferred Certification (ADC). The PWP for the Harbor was certified by the Commission in September of 1986 prior to certification of an LCP for the area. Subsequently, the Commission certified an LCP for the City’s Harbor ADC in December 1986. As previously stated, pursuant to PRC Section 30605 of the Coastal Act and Article 14, Section 13357 of the California Code of Regulations, where a plan or plan amendment is submitted after certification of the LCP for the jurisdiction affected by the plan (in this case, the City of Oxnard LCP) any such plan amendment shall be approved by the Commission only if it finds, after consultation with the affected local government, that the proposed plan amendment is in conformance with the certified LCP. As also stated, the City’s LCP contains all applicable Coastal Act policies which the plan amendment is subject to as well.

The Commission has received a letter from the City of Oxnard Development Services Director (exhibit 6) dated February 4, 2005 concerning the proposed BISC’s consistency with the City’s certified LCP. In the letter the City states its determination that the BISC

is consistent with the City's certified LCP and provides substantiation for that position. The letter notes that the certified LCP emphasizes recreational boating and that sailing schools are listed as conditionally permitted uses. Other policies encourage the maximization of public access and recreational boating opportunities and provide for the promotion and protection of water-related uses. The City notes that there are no policies prohibiting new development in the harbor although the existing PWP can be interpreted as such (which is the basis of the submittal of the PWP amendment to allow the project). In addition to the issue of build-out of the harbor, the City also addresses designation and use of the park area on the west side of the harbor and maintenance of view corridors in the harbor and concludes that the BISC project is consistent with LCP policies. In a letter dated February 6, 2003 to the Director of the Harbor Department (exhibit 6) the City notes that the BISC site is zoned HCI (Harbor, Channel Islands) in the certified coastal zoning ordinance and that "sailing or SCUBA schools and marine-related museums are listed as conditionally permitted uses in this zone." The City concludes that the BISC is consistent with this zoning designation.

### **C. Biological Resources**

The certified LCP for the City of Oxnard incorporates Sections 30230, 30250, and 30240 of the Coastal Act which provides for the protection of marine resources, coastal resources, and Environmentally Sensitive Habitat Areas:

#### Section 30230

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

#### Section 30250 (In part)

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

#### Section 20240

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

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

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 have been 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 may not begin prior to August 1 unless a qualified biologist determines that nesting and fledging activity have been completed. The County required special conditions (mitigation measures) which have been incorporated into the approved project by the Harbor Department including special condition 15 which requires enforcing litter and trash standards during construction and ongoing operation of the BISC and special condition 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.” As previously stated, trees within the linear park which parallels the west side of the Harbor along Harbor Boulevard have been used by Black-crowned night herons for nesting and roosting in the past. 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.

Monitoring of heron activity, including nesting, has been ongoing since the last Commission hearing for the BISC in 2005. The County’s biological consultant, Dr. Jeffrey Froke, has reported that black-crowned night herons did not nest in the vicinity of the BISC location during 2005 (memo from J. Froke to A. Culbertson dated Oct. 31, 2005). Dr. Froke reports that there were approximately 39 black-crowned night heron nests on the west side of the Harbor in 2003, 5 in 2004, and 1 in 2005. Dr. Froke further reports that the heron colony has shifted to Port Hueneme. The County Harbor Department has reported that there have been no herons nesting at the site during either the 2004, 2005, 2006 or 2007 nesting season and that, while roosting and foraging have occurred on the west side of the Harbor, nesting has only occurred on the Harbor Peninsula. In a memo to Lyn Krieger, Harbor Director, dated March 5, 2007 Dr. Froke reported that there were no black-crowned night herons nesting in the Harbor study area as of February 22, 2007 but that there were two pairs of great blue heron nesting in a Monterey Pine on the Peninsula northeast of the BISC site in the center of the Harbor.

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 (County special condition 30) requiring that no construction shall commence during the nesting season for black-crowned night herons. If construction commences prior to 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. Nor is the Commission convinced that the herons will relocate to other trees in the harbor to avoid construction activity. The Commission also notes that the PWP does not contain policies to adequately protect the heron rookery from impacts associated with construction and permanent placement of new buildings adjacent to the park. Had the PWP anticipated future construction of a specific project in that location it is likely that the PWP would have contained additional protective policies in addition to Policy 2 cited above.

Therefore, the Commission is requiring PWP suggested modification 5 and NOID special condition 3 which prohibit 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 desirable in an area of otherwise undisturbed pristine habitat it is not possible in this case under the proposed development scenario. More importantly, it does not appear to be necessary here. The County biological consultant maintains that the black-crowned night herons have demonstrated a high level of adaptability or tolerance to human caused impacts in the

Harbor. (The degree of tolerance or adaptability of herons which become accustomed to nesting and roosting in large, undisturbed areas might be quite different, however.) It is possible that the introduction of an additional disturbance such as construction of the BISC so close to the nesting trees could cause a change in the level of tolerance of the herons, however. The biological consultant also notes that the primary food source for the herons, Harbor waters, will not be degraded or lessened by construction of the BISC. As previously noted, the proposed BISC project will be sited less than 10 feet away from the existing nesting trees. The degree of tolerance or adaptability of the herons to future development, which have become accustomed to nesting and roosting in the public park, cannot be accurately predicted and might be quite different, however, during or after construction of the BISC. Although it is not possible or necessary to provide a setback of 200 meters to avoid disturbance to the heron colony other measures are feasible to provide a greater degree of protection for the herons at this location during and post construction.

The Commission's staff biologist, Dr. John Dixon, has reviewed the County biological consultant's report and agrees with its conclusions relative to the nesting and roosting activity of the black-crowned night herons near the BISC site. Due to the existence of numerous trees throughout the harbor available to the herons and level of tolerance and adaptability to humans and structures demonstrated in the past an additional setback from the trees is not necessary in this case. Nor do the trees within the Harbor meet the Coastal Act definition of Environmentally Sensitive Habitat under Section 30240. Coastal Act Sections 30230 and 30250, as incorporated into the City of Oxnard LCP, require protection of marine resources and coastal resources respectively. Therefore, the Commission finds that it is necessary that measures be taken during the nesting season to protect the herons during construction of the BISC, however. It is also noted that protection of heron rookery habitat in the harbor is an issue that will be addressed in a more comprehensive fashion in an upcoming future PWP amendment that will address new proposed landside development in the harbor.

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. The Commission is requiring compliance with PWP suggested modification 5 and NOID special condition 3 to prohibit commencement of construction or ongoing exterior construction of the BISC during the nesting season for black-crowned night herons (February through July). In addition, modification 5 and special condition 3 require biological monitoring during and after construction. PWP modification 6 and NOID special condition 4 require that all lighting on the north side of the BISC building be of low intensity and directed downward and away from the nesting trees. PWP modification 22 and NOID special condition 10 require that the playing of music during special events at the BISC must be limited to non-amplified, acoustic music, whether the event takes place inside or outside of the BISC facilities. PWP modifications 18 and 19 add language to the PWP to acknowledge the existence and nesting activity of the herons within the Harbor.

The FEIR for the proposed BISC dated December 2003 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. In 2004 the Ventura Audubon Society, operating under an agreement between the USFWS and the Harbor Department, monitored 50 Least Tern nests and 7 Western Snowy Plover nests in 2004 (Reed Smith, 3/14/05 e-mail). 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 mitigation measure or County special condition 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.*

The Commission notes that the March 2003 letter from USFWS to the County does not address current nesting activity by snowy plovers on Hollywood Beach that has been observed and that the PWP contains no specific policies which require mitigation or protective measures for western snowy plovers during nesting season. Therefore, for the reasons discussed above, the Commission finds that modifications to the PWP are necessary to provide protective measures to nesting snowy plovers and least terns and to designate nesting areas on Hollywood Beach as Environmentally Sensitive Habitat. PWP Modification 1 designates the nesting and breeding area as ESHA and prohibits activities associated with the BISC on or across Hollywood Beach during the nesting & breeding season (March 1 – September 30). This requirement is also included within Special Condition 1 to the NOID, (Mitigation Measures). Modification 2 provides for coordination with the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the Army Corps of Engineers to develop a conservation plan for least terns and western snowy plovers that address Harbor education and outreach programs such as those provided by the BISC. Modification 3 provides that beach grooming by the Harbor Department at Hollywood Beach is restricted between January 1 and September 30 of each year unless authorized by the U.S. Fish and Wildlife

Service. Modification 4 requires that educational signs be installed at beach access locations to inform beach users of leash laws and to discourage harmful activity within the nesting area.

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified, is consistent with the City of Oxnard LCP including applicable Coastal Act policies 30230, 30250, and 30250. In addition, the Commission finds that the Notice of Impending Development for the BISC project, subject to the recommended special conditions, is consistent with the PWP, as modified, relative to biological resources.

#### **D. Recreational Boating**

The certified City of Oxnard LCP incorporates Sections 30220, 30224, and 30234, of the Coastal Act relative to the provision and protection of recreational boating and commercial fishing facilities in the Harbor.

##### Section 30220

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

##### Section 30224

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

##### Section 30234

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

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 noted that the Harbor width at the proposed BISC location contains 900 feet of usable water area and that vessels can be seen for ¼ mile in either direction. The study also concluded 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. The vessel traffic assessment prepared by the County (and included in the Final EIR), also addressed and considered two recently approved residential projects, Seabridge and Mandalay Bay, in its conclusion. A third project undertaken in the Harbor is for the renovation of the Channel Islands Marina (also referred to as Vintage Marina). The project is currently under construction and nearly complete. The reconstructed marina would result in a total of 402 - 416 boat slips representing a loss of as many as 84 wet slips (depending on final configuration of the end ties). Additional dry dock storage is being provided to minimize the overall loss. The Commission approved a Public Works Plan Amendment and the associated Notice of Impending Development for the Channel Islands Marina renovation at its May 2006 hearing. Overall, the renovation project will not result in any significant increase in boat vessel traffic in the Harbor.

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 County special condition 28 into the proposed project which require the Harbor Department to offer transient boaters (non live-aboard) similar accommodations within the Harbor. In addition to compliance with Policy 3, stated above, relative to protecting recreational boating facilities in the Harbor, however, the Commission is also requiring PWP suggested modification 7 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. Special Condition 2 to the NOID also requires in kind replacement of recreational boating slips within the Harbor.

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified, is consistent with the City of Oxnard LCP including applicable Coastal Act policies. In addition, the Commission finds that the Notice of Impending Development for the BISC project, subject to the recommended special conditions, is consistent with the PWP, as modified, relative to protection of recreational boating.

**E. Public Access and Recreation - Parkland**

The City of Oxnard LCP contains Coastal Act policies relative to the protection and provision of public access and recreation including lower cost visitor and recreational facilities:

Section 30213 states in part:

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

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

In addition, existing Policy 20 to the Public Works Plan 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.*

Existing 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.*

A linear parkway borders Harbor Boulevard on the west side of the Harbor. As proposed, construction of the BISC will eliminate approximately 1700 sq. ft. of grassy area within the park to allow for placement of the BISC structure and related parking.

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.

As previously indicated, 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 the landscaped 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 1700 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 Commission finds that the entire linear landscaped area along the west side of Harbor Boulevard is designated as Public Park in the PWP. Therefore, an amendment to the PWP is necessary to construct a portion of the BISC on the park. In this case, the Commission finds that the proposed BISC, as described above, is consistent with the type of uses envisioned by the City of Oxnard LCP and the applicable public access and recreation policies of the Coastal Act. For this reason the Commission finds that it is appropriate to displace a portion of the public park for the BISC facility provided that an equal amount of parkland is created in the immediate area. Displacement of public parks would not be appropriate for other kinds of uses in the Harbor, however. Therefore, modification 8 to the PWP amendment and special condition 5 to the NOID

require the replacement of an equal or greater area of park that is lost to construction of the BISC within the immediate area of the project site. PWP modification 12 further defines the entire linear grass area on the western side of the Harbor as public park (minus the portion eliminated due to BISC construction) and modification 13 provides that all areas designated as public park shall not be developed unless an amendment to the PWP is approved.

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified is consistent with the public access and recreation policies of the certified City of Oxnard LCP. In addition, the proposed NOID, as conditioned, is consistent with the PWP as amended, relative to the public access and recreation policies of the Channel Islands Harbor Public Works Plan.

#### **F. Water Quality**

The City of Oxnard certified LCP contains Coastal Act policies 30230 & 30231 which are both applicable to the protection of water quality:

##### Section 30230 Marine resources; maintenance

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

##### Section 30231 Biological productivity; water quality

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

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. 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 City of Oxnard certified LCP and 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 85<sup>th</sup> 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 PWP modification 20 and special condition 6 to the NOID, 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 Oxnard LCP and PWP as amended.

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 modification 20 and 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 City of Oxnard LCP and PWP, in order to ensure that excavated material will not be stockpiled on site and that landform alteration and site erosion is minimized, Modification 20 and 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, modification 20 and 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 proposed PWP amendment with the suggested modifications is consistent with the applicable policies of the City of Oxnard LCP. In addition, the Commission finds that the Notice of Impending Development, as conditioned, is consistent with the PWP, as amended, with regards to protection of water quality.

## **G. Visual Resources – View Corridors**

The City of Oxnard LCP contains Coastal Act policy 30251 relative to the protection of scenic views:

Section 30251 Scenic and visual qualities

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

Construction of the BISC will take place within a view corridor designated by Figure VII in the Public Works Plan. Figure VII designates all of the linear park and most other areas along Harbor Boulevard as view corridors. Protected views are from the street east and north to the Harbor waters. Existing PWP policy 22c states that “at least 25% of the Harbor shall provide a view corridor that is to be measured from the first main road inland from the water line, which shall be at least 25 feet in width.

A controversy exists as to the interpretation of the view corridor map and policies. Opponents to the project maintain that the entire mapped view corridor is to be protected while the County interprets the policy as only requiring protection of 25% of the mapped view corridor.

The proposed BISC will result in some view blockage from Harbor Boulevard. Given the largely undeveloped nature of the west side of the Harbor the Commission finds that this view blockage is not significant. Further, the Commission notes that the BISC will provide additional benefits for public access and recreation. The Commission also finds that the apparent conflict between the mapped view corridor and policy 22 in the PWP should be resolved before any additional new development in the Harbor is approved in the future. Therefore, the Commission is requiring suggested modification 15 to policy 22c which provides that, other than the proposed BISC, no new development within a designated view corridor shall occur without an amendment to the PWP. Only as modified does the Commission find that that the proposed PWP amendment and corresponding NOID is consistent the certified LCP for the City of Oxnard and the PWP, as amended.

**I. Project Alternatives**

The County, acting as the “lead agency” for this project for purposes of the California Environmental Quality Act (“CEQA”), Cal. Pub. Res. Code §§ 21000 *et seq.*, certified an Environmental Impact Report (EIR) for the proposed project in December of 2003 that addresses 12 alternatives to the proposed project. CEQA requires that an EIR describe

a range of reasonable alternatives to the projects evaluated, which may include alternative locations for the project, that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. .” Cal. Code Regs., tit. 14, § 15126.6(a). An EIR is not required to consider every conceivable alternative to a project. As noted in the EIR, CEQA does not require the consideration of alternatives that are not feasible.

The CEQA Guidelines require the project description in the EIR to include a statement of the objectives of the project. 14 C.C.R. § 15124(b). Pursuant to this requirement the County has determined that maximizing safety is one of the primary objectives of the BISC project. In regards to safety, the County has determined that site location in relation to wind direction is a critical feature of the sailing center. Because of the relatively novice status of sailing students in non-powered craft, the ability for upwind docking is vital to safety. Upwind docking enables a beginning sailor to navigate a sailboat into the wind, which allows easier slowing and stopping of the boat. Because the predominant wind direction at Channel Islands Harbor is from the west-northwest, the preferential upwind location would be oriented to the west side of the Harbor. While there is disagreement with and objection to locating the BISC on the west side of the Harbor it is noted that the Department of Boating and Waterways prefers a west side location based on an independent analysis by a panel of boating experts because it is the safest location for the project.

Other project objectives listed in the EIR include:

- The BISC must be oriented to the water in a way that allows personnel to supervise minors and novices adequately.
- The BISC must be ADA (handicapped access) compliant.
- The BISC must have adequate dock space.
- The BISC should provide adequate public access to the waterfront.
- The BISC should be located near the turning basin to allow greater room for maneuverability and minimize the hazard of transit through narrow channels.

As noted above, the County considered 12 alternatives in the Final EIR including alternatives that members of the public specifically requested during the scoping or Notice of Preparation phases of the EIR. Each of the alternatives were measured against the project goals and objectives by the County. In addition to meeting the project goals and objectives, a purpose of the alternatives analysis is to “reduce or eliminate” environmental effects of the proposed project. Project alternatives considered are addressed below:

### No Project

The no project alternative would result in no or less significant impacts to all of the potential impact areas considered. The EIR did determine, however, that the failure to construct the BISC would result in adverse impacts to the achievement of

recreational and public access goals of the PWP and the Coastal Act by not achieving any of the stated project objectives including the basic goal of providing a safe, sailing, aquatic, and marine-oriented instructional center to residents of Ventura County.

### Building Height Reduction

This alternative proposes a building height reduction to 25 feet, with the project as proposed in the preferred design as described in the EIR. This objective – reduction in height to 25 feet – has already been achieved in Project alternative 6.2B, the preferred alternative discussed as the proposed project throughout this report.

### Alternative Sites 1 and 2 – Whale’s Tail and Port Royal Restaurant Sites

After preliminary site selection studies and discussions with an appointed working group were completed the most favored sites were the locations of the existing Whale’s Tail and Port Royal Restaurants on the west side of the Harbor. The sites were favored for reasons relating to boater safety and wind direction, access to adequate dock space, adequate parking, available waterfront area, proximity to the turning basin in the channel and others. Both structures housed restaurants operating under existing lease agreements, however. The Port Royal restaurant is located immediately on the west Harbor channel and adjacent to the proposed BISC dock (on the north side of the restaurant). The site has been proposed as an alternative location on the west side of the harbor because it would not require removal of any trees or turf area and is further removed from potential heron nesting trees. The County has considered the Port Royal site as a BISC location but has concluded that it is not a feasible alternative location because the restaurant on the site is still in operation and has 7 years remaining on its lease. The Commission concurs with this reasoning and this conclusion that this is not a feasible alternative. The Whale’s Tail restaurant is also operating under a long term lease and there are additional parking conflicts associated with that specific location due to the presence of the adjacent Channel Islands Harbor Yacht Club and Bahia Cabrillo Apartments. Therefore, neither of the existing buildings nor the sites are available or viable as a BISC location. For these reasons the County rejected this alternative. The Commission also concurs with this reasoning and this conclusion that this is not a feasible alternative.

### Alternative Site 3

This site is known as the “Marine Emporium” site. The site is located in a narrower area of the Harbor some distance from the turning basin and has less room for docks. Negotiating the channel to arrive and depart the BISC would be a more difficult challenge for BISC students as opposed to the flexibility of being in the turning basin. The PWP, in policy 5, also currently restricts small vessel operation in this location to minimize waterway congestion. This site also occupies a larger area of grass and trees within the linear park on the west side of the Harbor. Due to the narrower channel and distance from the turning basin the County determined that

locating the BISC at this site would increase conflicts between recreational boaters and novice sailors. This location would also result in greater conflict with view corridors identified in the PWP. For all of these reasons the County rejected this alternative site and found that this alternative site contained greater adverse impacts than those associated with the preferred alternative site. The Commission concurs with the County's reasoning and conclusions provided above.

#### Alternative Site 4

This site is known as the "Vintage Marina Vacant Site." This is the largest of the alternative sites evaluated and currently contains a marina office, restroom, and storeroom plus 137 parking spaces. No slips are adjacent to this site and impacts involving the relocation of live-aboards is not an issue. Similar to study area 3, however, this area requires passage through the Channel commercial fishing areas and could create conflicts between novice sailors and commercial fishing boats as well as recreational boaters. As with site 3, the PWP, policy 5, restricts small craft use at this location. This site is the least limited location on the west side with regard to view corridors largely because the site is designated for use as a community/convention center in the PWP. The County determined that it was not a complete upwind docking location but that it was tolerable for novice sailors although docking space was tight. There were also constraints associated with Americans with Disabilities Act (ADA) compliance associated with this site related to the elevation difference between the water and the existing pad. The County found this alternative to be infeasible due to the presence of more severe impacts than at the preferred alternative site. The Commission concurs with this reasoning and the conclusion that this is not a feasible alternative.

#### Alternative Site 5

This site is known as the "Fire Station/Bridge Edge Site." It could be appropriate for the rowing function of the BISC but it is a downwind location for sailing activities. It is also located directly across from the Pacific Corinthian Yacht Club, where substantial boating activity occurs, and directly west of the Channel Islands Boulevard Bridge, where boats from Mandalay Bay and points northeast are navigating through the area. The County determined that use of this site by unskilled novice sailors would leave little room for error. In addition, four existing trees would need to be removed at this potential location. In rejecting this alternative the County found that the location was infeasible because of an upwind docking location and the interference with traffic from Mandalay Bay. The preferred alternative was found to have less impacts. The Commission concurs with the County's conclusion that this is not a feasible alternative site.

#### Alternative Site 6

This site is known as the "Peninsula Park Site" and is currently developed as a public park with tennis courts, playground, a waterfront dock, a bathroom, a small

meeting facility, and general park open space. Two adjacent hotels are available for overnight accommodations and visitor-serving use. The park contains many trees, many of which have shown evidence of nesting by black-crowned night herons. Designated view corridors exist across the site. In addition, the County has determined that there is not room for adequate parking at this location and there is little available dock space. Existing dock space is available for transient use. For all of these reasons the County found that this site was not feasible relative to meeting many project objectives and was inferior to the preferred alternative. The Commission concurs with the County's reasoning and conclusion that this is not a feasible alternative site.

#### Alternative Sites 7 and Cisco's Restaurant on East Side of Harbor

This project alternative, also known as the "old boat launch site" is the only alternative site located on the east side of the Harbor and is the preferred location for the BISC by many project opponents (of the proposed location). The Cisco's site, also located on the east side of the Harbor, is an operating commercial sport fishing facility within the Harbor. Because of the deep water requirements of commercial sport fishing boats, and because the deepest water portion within the Harbor only exists on the east side, it is not considered feasible by the Harbor Department to relocate this facility and its related functions. Due to the support for an east side location by opponents of the proposed location on the west side, the County conducted an expanded and comprehensive analysis of alternative site 7 and the Cisco's site that provides a topic-by-topic comparison of site 7 with the preferred alternative site 6.2B. This analysis assumes the same building design and associated programs as the proposed alternative. This analysis also provided additional elaboration on harbor congestion, wind direction, and safety. East Harbor side water related conditions and issues discussed below apply equally to the Cisco's site and alternative site 7 although discussion refers to an east side location as alternative site 7 throughout this section. The central question relating to any east side location for the BISC is whether a safe and adequate docking arrangement can be designed and constructed for the BISC.

Alternative site 7 is approximately 2.07 acres and is sufficient in size to accommodate the BISC. The parcel is designated as Visitor-Serving Boating in the PWP. One of the public parks in the Harbor is located on this site adjacent to the old launch ramp. The park is approximately 0.6 acres in size. There are 2 trees in the park open space, one of which contains a remnant nest. There would be sufficient room, however, to locate the BISC and associated parking without affecting the public park or removing any trees. Access would be taken off of Victoria Avenue. Existing uses on the east side of the Harbor include boat launch facilities, existing marinas, commercial development, commercial fishing boats, and existing government offices.

Site 7 is also located in a designated view corridor. The 0.6 acre park currently provides views of open water area from Victoria Avenue for a portion of its width.

However, views of the Harbor are currently obstructed by boat storage in the parking lot although the boat storage is unpermitted at this time. Based on the analysis contained in the EIR alternative site 7 would not result in aesthetic impacts to the view corridor. The EIR concludes that construction of the BISC could potentially improve public views from Victoria Avenue. In summary, as with the proposed site, site 7 would result in some obstruction of a portion of a view corridor but, overall, would restore view corridor area currently obstructed by existing boat storage. The County determined that project-related aesthetic impacts would be less than significant at either site 7 or the proposed project site.

Air quality impacts associated with alternative site 7 would be substantially the same as with the proposed BISC location since both projects consist of similar site plans and building dimensions with identical traffic generation. Potential short-term air quality impacts would result from construction and grading. Neither long-term nor short-term air quality impacts associated with either site were found to be significant by the County.

No significant adverse impacts to biological resources have been identified with construction of the BISC at alternative site 7 on the east side. Two mature non-native *Myoporum* trees exist on the site and one contains a remnant of an old nest but these trees are not used by herons for nesting or roosting. As discussed elsewhere in this report, with implementation of the recommended project alternative location and design, no black-crowned night heron nesting trees will be removed to accommodate the BISC. Construction activities are identified as a potentially significant adverse impact if not mitigated. Mitigation measures required by the County and by this staff recommendation will prohibit construction during the nesting season in any event. Section III.C. of this report discusses biological impact issues and required mitigation measures in greater detail. Biological issues are also discussed below in a summary discussion of the proposed alternative. Potential impacts to use of Hollywood Beach by least terns and snowy plovers are considered insignificant by the EIR for alternative site 7 and the preferred site by the EIR. The staff recommendation contains suggested modifications and special conditions to avoid potential impacts to least terns and snowy plover on Hollywood Beach by BISC users, however, that are also discussed in greater detail in Section III.C of this report. The County EIR concluded that construction of the BISC at alternative site 7 would have no significant impacts on biological resources and that the recommended project alternative site would have less than significant impacts with implementation of recommended mitigation to reduce construction impacts to the heron rookery. Recommended additional mitigation measures contained in this report and staff recommendation reduce potential biological impacts even further.

Geologic and soils impacts associated with either alternative site 7 or the preferred project alternative site are similar since both sites are located in the same regional and local geologic setting. Implementation of the standard conditions and project modifications identified in the EIR for the BISC will reduce the potential for geologically related impacts to the maximum extent feasible based upon standards

established by the Uniform Building Code and County of Ventura development standards and regulations. Less than significant impacts relative to either alternative 7 or the preferred alternative site will result with implementation of the County's geotechnical recommendations and compliance with standard regulations.

Impacts caused by hazards and hazardous materials associated with alternative site 7 would result from the use, storage, and/or transport of minimal quantities of paint and cleaning solvents, primarily to be used for cleaning and maintenance of boats and the BISC building only. Similar impacts would be expected at the proposed building location. Compliance with hazardous materials storage, handling, and disposal procedures and regulations would be required for the BISC project at both alternative 7 and the preferred site alternative. The EIR concluded that impacts from hazards and hazardous materials could be greater for alternative site 7 than the proposed project site because existing conditions on the east side site 7 have a greater potential for containing hazardous materials on-site given that existing and past use of the site involves the storage of boats along with daily activities associated with boat storage such as vessel maintenance and repair. Storage of motorized vessels at site 7 would also involve the storage of fuel, oil, cleaning solvents and chemicals. Implementation of standard conditions identified in the EIR will reduce the potential for hazards related impacts to a less than significant level for either site based upon standards established by the California Health and Safety Code and by the County of Ventura Health Department.

BISC construction at alternative site 7 would result in similar impacts to hydrology and water quality, as the building size and the amount of parking will remain the same for either alternative and result in a comparable area of impervious surfaces. Proper drainage and runoff mitigation measures would be required to be designed and engineered to conform to either site location. As with the proposed project site, a Water Quality Management Plan (WQMP) and a Storm Water Pollution Prevention Plan (SWPPP) would be required to be prepared and implemented to manage and reduce potential storm water pollutants resulting from construction and on-going operations. Implementation of standard conditions identified in the EIR will reduce the potential for hydrology and water quality impacts to a less than significant level based upon standards established by the County of Ventura Water Quality Management Plan and by additional requirements of the staff recommendation discussed in greater detail in Section III.F. of this report.

The County concluded that BISC construction on alternative site 7 would result in significant impacts to land use and planning because the BISC project is not currently a permitted use at this location. Currently, site 7 is designated as Visitor-Serving Boating and a PWP amendment would be required to allow the BISC on the site. The Commission, however, has previously determined that a PWP amendment is also necessary to allow construction of the BISC on the preferred alternative site which is discussed in greater detail in this report. The necessity of obtaining a PWP amendment to allow the BISC use on the site does not preclude its use, however, assuming a PWP amendment were approved. Other existing land use restrictions or

impacts associated with construction of the BISC at the east side site 7 location would likely preclude approval of a PWP amendment, however. Such impacts include loss of dry boat storage space and potential loss of existing commercial fishing docks, (commercial fishing is given priority protection in the Coastal Act and the PWP). Another significant impact associated with an east side land use concerns dock design and wind safety issues which are discussed in greater detail in the Public Safety section below. Extension of the dock pierhead line to accommodate an upwind docking in a downwind location at the site 7 location would likely lead to significant to waterway congestion in the Harbor. Further, the U.S. Coast Guard has opposed any dock extension at this location. For these additional reasons the County concluded that alternative site 7 on the east side would result in significant impacts associated with land use and planning.

Significant short-term construction noise impacts would result from construction the BISC at either alternative site 7 or the preferred alternative. Impacts from construction noise on nesting and roosting black-crowned night herons would not be anticipated with construction of the BISC at an east side location other than noise associated with pile driving for docks. Prohibitions on construction during the nesting season for black-crowned night herons at the preferred alternative site will reduce the construction related impacts to a less than significant level as is discussed in the Biological Resources Section of this report. Restriction on the hours and location of events playing amplified music will reduce long-term noise impacts to a less than significant level for either alternative.

Construction of the BISC project at either site 7 on the east side or at the proposed alternative site will result in an incremental increase in demand for fire protection, law enforcement and other public services but are considered less than significant. Recommended measures such as built-in safety features, staff training, added conditional use permit approvals for events involving alcohol and secure storage of equipment will mitigate impacts to a level on no significant impacts at either location.

The County concluded that impacts to recreation associated with construction of the BISC at alternative site 7 on the east side could result in a reduction in recreational opportunities for BISC students and the general public because of safety and operational issues associated wind and navigation limitations. These impacts are discussed in greater detail below under public safety. The EIR concludes that impacts to recreation associated with site 7 could somewhat increase as compared to the proposed alternative. Impacts to recreation and parkland associated with the proposed project alternative site are discussed in greater detail in Section III.E. of this report under Public Access and Recreation.

Anticipated impacts to roadways and traffic associated with site 7 and the preferred project site would be less than significant due to the small amount of traffic projected to be generated by the BISC project. The EIR provides recommendations to reduce impacts in the area of site circulation and parking. Alternative site 7 is located on the east side of the Harbor's main channel and would have site access from and to

Victoria Avenue. Traffic generated by site 7 has been calculated for the intersections in the vicinity of the site and no significant impacts were identified in the EIR. The EIR does conclude that the alternative site 7 will contribute more significant impacts to the intersection of Victoria Avenue and Channel Islands Boulevard because it would require a northbound right turn lane (with the elimination of one of the northbound left turn lanes) to reduce impacts to a less than significant level. This improvement can be striped within the existing right-of-way for Victoria Avenue. In summary, on-site circulation and parking would have no significant impacts for either alternative site 7 or the proposed alternative site. However, traffic volumes at the intersection of Victoria Avenue and Channel Islands Boulevard will increase somewhat with the alternative site 7 location as compared to the proposed project site.

Development of the BISC will cause an incremental increase in demand on water, sewer, solid waste, electricity, gas, and telecommunications services. Since alternative site 7 provides for the same project as at the preferred alternative project site, similar demands with regard to utilities and service systems are anticipated according to the EIR. The infrastructure necessary to deliver utilities and services are in place and available to serve the project at either location. The EIR concluded that impacts to utilities and service systems are less than significant for either alternative site 7 or the preferred alternative site.

In regards to population and housing locating the BISC at alternative site 7 would not require relocation of any live-aboard or transient boater facilities. Locating the BISC at the preferred project site would require relocation of up to three live-aboard boaters within the Harbor which is considered a significant impact by the EIR. Mitigation measures adopted by the County require relocation of live-aboard boaters within the Harbor to similar accommodations. With implementation of the recommended mitigation measures the EIR concludes that no significant adverse impacts would result from the project.

Construction of the BISC at alternative site 7 will result in significant public safety impacts according to the EIR in relation to safety design features and wind direction. With regard to public safety issues, the threshold for significance is that an impact will be considered significant if the project will expose people to greatly increased dangers, or unusual risks, as a result of using the BISC. The County found that this was the case as far as locating the BISC at alternative site 7 on the east side of the Harbor.

At the direction of the County, additional independent analyses were conducted regarding harbor congestion, wind characteristics, and potential dock design. Conditions at Channel Islands Harbor were compared with Marina Del Rey and Newport Harbors. The studies concluded and the County approved EIR found that Channel Islands Harbor does not, and most likely will not, reach a level of on-the-water vessel traffic on weekdays that would be considered congested.

Analyses regarding wind direction characteristics of the Harbor and comparison of alternative site 7 and the proposed project site were conducted by experts in the field of sailing and boating instruction and are included in the EIR as Appendices R and S. The analyses, and the EIR, conclude that an upwind location, as provided at the proposed project site, is important for teaching sailing and that “the ‘wind shadow’ created along the west side of the Harbor is particularly beneficial for a sailing learning environment”. The analysis also concludes that the alternative site 7 “downwind location creates potential navigational hazards and could not provide for BISC docking needs”.

The EIR concludes that the building and landmass on the west side of the Harbor provide a natural windbreak for beginning sailors to rig their boats in a calm and safe environment. The EIR also concludes that a calmer setting is also important for rowing programs. The downwind conditions at alternative site 7 would mean that “beginning sailors would not only have to deal with wind direction, but also with the wave and chop created by the larger fetch, in this case approximately one-half mile of open water to the weather shoreline”. Harbormaster records indicate that the east side of the Harbor produces high statistics for rescues of vessels that end up on the rocks in this area.

Based on the analysis contained in the EIR, the County concludes that the proposed location of the BISC along the western side of the Harbor provides for the best location in terms of safety and operational considerations. The main constraint of alternative site 7 on the east side, the EIR analysis concludes, is wind direction, and that the construction of a new dock would protrude into the Harbor beyond the pierhead line at that location creating conflicts related to waterway navigation and congestion and Harbor and Coast Guard operations.

Prevailing wind direction and strength are major considerations in designing and locating a safe and effective docking system to accommodate the number and types of boats used at a facility like the BISC. Initial project design projected necessary docking space beyond the existing pierhead line on the east side of the Harbor. For safety reasons, and in response to comments by the U.S. Coast Guard, which opposes a pierhead dock extension at that location, the County focused on the feasibility of a dock design within the existing pierhead line. The County ultimately determined that it was infeasible to design a safe and effective docking arrangement within the pierhead line. Constructing a safe docking system within the pierhead line would require the displacement of considerable commercial sport fishing activity. In addition, the County determined that it would not be feasible to conduct safe sailing maneuverability within an existing pierhead dock design. The County found that it was not feasible to reduce the size of the BISC instructional program to the extent that it would fit inside the pierhead line because it would not meet primary objectives of the BISC.

A proponent of an east side location for the BISC maintains that it is now feasible to construct dock space on the east side because the County is requesting to extend

the pierhead line in a recently submitted PWP Amendment request. The County has responded to this contention. The County points out that Channel Islands Harbor does not have a specified or designated pierhead line. The County treats the existing end of marina dock construction as a pierhead line in practice. In the recently submitted PWP amendment the County has requested to extend the eastside pierhead line well to the north of alternative site 7 for the BISC (towards Fisherman's Wharf). The County has not requested a pierhead line extension at the commercial sportfishing docks, in the location of alternative site 7, due to safety concerns on the part of the Harbormaster, and previously expressed concerns by the Coast Guard. The County reports that its initial request to extend the pierhead lines on the east side somewhat north of alternative site 7 was not supported by the Coast Guard and the extension was moved further to the north in order to avoid the turning basin which is the area for dropping sails and rafting disabled vessels. The east side area, where the Coast Guard is located, is the deepest water area in the Harbor for the Coast Guard to dock its Cutter and conduct operations.

Analyses contained in the EIR support the conclusion that the primary constraint of alternative site 7, including the Cisco's site, is wind direction and the improvements that would be necessary to accommodate the BISC at this downwind location as described above. The EIR further concludes that a downwind dock design at this location is not well suited to novice sailors and would create substantially greater public safety impacts. In approving the EIR and in rejecting alternative site 7 as a BISC location, the County found that significant impacts would be created with regards to public safety and that alternative site 7 does not meet key objectives for the BISC in regards to operational needs and maximizing safety for BISC users. The County found that maximum safety is obtained by providing upwind docking slips that would enable a beginning sailor to navigate a sailboat into the wind, which would help to slow and stop the boat. For all of these reasons the County found that this alternative site was not feasible as a BISC location. For all of the reasons discussed above concerning alternative site 7, including the Cisco's site, the Commission concurs with the County's reasoning and conclusion that site 7 was not a feasible alternative site for the BISC project.

#### Alternative Sites Outside Channel Islands Harbor

##### Port of Hueneme – Oxnard Harbor District

The Port of Hueneme is located in the City of Port Hueneme and is a major deep-water commercial port. It is the only commercial deep-water sea port between Los Angeles and San Francisco Bay. It serves international shipping operations and ocean carriers from the Pacific Rim and Europe. No recreational sailing vessels are located in the Port and its port expansion program does not provide for any recreational or instructional boating uses. Its core mission is heavy cargo and deep-water vessels. The County Harbor Department determined that the Port of Hueneme was an inappropriate location for a boating instruction and safety center. Boating and safety instructional operations involving novice sailors and small craft

would clearly conflict and be incompatible with the heavy cargo and deep-water vessels operating in the Port of Hueneme.

### Ventura Harbor

Ventura Harbor is a small boat harbor operated by the Ventura Port District within the City of Ventura. The Harbor is governed by the Ventura Harbor Master Plan. No area is designated for use as a BISC in the harbor plan and the Port District has not expressed interest in such a program. The County rejected this location for these reasons.

### Alternative Project Design – Preferred Alternative

The FEIR addressed two variations of project design alternatives, both of which are located in the currently proposed building location on the west side of the harbor. Both alternative designs rotate the BISC building 90 degrees to avoid turf areas and trees as much as possible. Alternative A (or alternative 6.2A) would result in the removal of 2 trees, one of which has been used for nesting by black-crowned night herons in the past. Alternative B (6.2B) would eliminate a walkway through the trees and necessitate the removal of one non-nesting tree only. Alternative 6.2B is the preferred alternative approved by the County and is the proposed project at issue and is therefore described in greater detail throughout this report. In approving the project alternative the County incorporated all recommended EIR mitigation measures into the project and also required 10 standard conditions and 31 project modifications (special conditions) in its approval.

The EIR concluded that the proposed project, alternative 6.2B, would result in potentially adverse impacts to biological resources, transient and liveaboard boat slips, and noise. With the exception of temporary construction noise related impacts, all adverse impacts associated with the proposed project can be mitigated to a level of less than significant with this alternative and implementation of required mitigation measures. Mitigation measures, project modifications, and standard conditions for biological resources, housing, and noise have been included in the approved project to reduce environmental impacts to a less than significant level, with the exception of construction noise. Prohibitions on construction during the nesting season for herons and on on-going BISC activities at Hollywood Beach during the nesting and breeding season for snowy plovers and least terns and noise restrictions on the use of amplified music at the BISC, as required by this staff recommendation, will also provide long term mitigation measures for potential biological impacts.

The EIR concluded that reorienting the building would reduce *aesthetics* impacts under the preferred alternative site B by reducing tree removal and loss of turf area. Preferred alternative B would result in the loss of one non-nesting tree. Reorientation of the BISC building would also reduce the extent of view corridor loss. It is also noted that Commission suggested modification 8 to the PWP and

corresponding special condition 5 to the NOID require the County to replace an equal or greater amount of grass park area lost to construction of the BISC within the immediate area of the project site. Commission suggested modifications 12 and 13 further clarify that the extent of the linear park on the west side of the harbor consists of all open turf and landscaped areas, trees, picnic tables, and restroom facilities with the exception of the existing park eliminated due to construction of the BISC.

The EIR concluded that impacts to *air quality, geology and soils, hazards, hydrology and water quality, public services, recreation, transportation and traffic, utilities and services, and population and housing* associated with this alternative would remain substantially the same as with all of the proposed BISC construction alternatives. Impacts associated with these areas of concern are either not significant or mitigated to a level of insignificance.

Impacts to *biological resources* from reorienting the building based on alternative B (the preferred alternative) would be reduced because no nesting trees would be lost to construction. Impacts to the heron rookery would still occur if construction were to take place during the nesting season. However, a number of mitigation measures are recommended to reduce impacts and protect heron habitat and the Commission has suggested modifications to the PWP and special conditions to the NOID as requirements that must be accepted and carried out in order for the project construction to go forward. Biological impacts and required mitigation measures relative to heron habitat are discussed in greater detail in Section IIIC to this report. PWP Suggested Modification 5 and NOID special condition 3 requires that commencement of construction not occur until a qualified biologist has determined that black-crowned night herons are not nesting; no construction shall commence or ongoing exterior construction shall occur during the nesting season (February through July); a qualified biologist shall monitor the site prior to, during, and after construction and submit a monitoring report after each nesting season and annually for 3 years after final construction is completed. Suggested Modification 6 and special condition 4 requires that all lighting on the north side of the BISC building (nearest the trees) be of low intensity and directed downward and/or away from the trees.

Impacts from *noise* associated with alternative 6.2.B will be similar to those of other project alternatives. Because this alternative site is located closer to trees that have served as nesting sites additional measures are necessary to minimize noise impacts associated with construction and on-going BISC activities. Among those required measures are the construction restrictions and monitoring requirements addressed above relative to biological impacts.

In approving and adopting the final EIR, the County found that all recommended mitigation measures were feasible and they were incorporated into the approved project. In addition, special condition 1 to the Notice of Impending Development recommended in this staff report and findings requires that all mitigation measures

and project modifications identified in the Final EIR for the BISC applicable to approved alternative 6.2B be incorporated by reference as conditions of the NOID unless specifically modified by any other recommended special conditions.

The staff recommendation and findings contain 22 suggested modifications to the PWP amendment and 10 special conditions to the Notice of Impending Development which are all discussed in greater detail in the preceding analysis and findings. Based on the preceding findings contained herein, the Commission finds not only that the proposed PWP amendment 1-04 is consistent with the certified LCP for the City of Oxnard and applicable Coastal Act policies and that the proposed Notice of Impending Development 1-05 is consistent with the PWP, as amended, but that the approved project as a whole has no remaining significant impacts on the environment, and there are no feasible, preferable alternatives that would further reduce the insignificant impacts on the environment that the project will have.

#### **J. Cumulative Impacts**

CEQA requires the consideration of cumulative impacts which are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” The County has found that the cumulative impacts of the BISC taken together with other known approved or foreseeable future projects affecting Channel Islands Harbor are insignificant individually and cumulatively. There are three known major projects that affect Channel Islands Harbor in some way. Two major residential projects that include waterfront boat docks have been approved by the Coastal Commission as coastal development permits (on appeal from City of Oxnard decisions). Additionally, a major reconstruction and renovation of the Channel Islands Harbor Marina (also known as Vintage Marina) has been approved by the Coastal Commission as a PWP amendment and related NOID after receiving initial approval from the County. In addition to these three major projects, several small repair and/or dock reconstruction projects have been approved through the Notice of Impending Development process. Two additional marina replacement projects within the Harbor were approved by the Commission through the NOID process in June 2007 at Channel Islands Landing and Marine Emporium Landing. Most recently, the County has approved PWP amendment 1-07 that addresses waterside improvements only in Channel Islands Harbor. This amendment has been submitted to the Commission for approval, but has not been considered by the Commission. The Westport at Mandalay Bay residential project was approved by the City of Oxnard initially, appealed to the Coastal Commission and approved on appeal by the Coastal Commission in April 2001. The project site is located in the City of Oxnard adjacent to the Reliant Energy Canal (formally the Edison Canal), a waterway that extends from Channel Islands Harbor northward to the Reliant Energy Plant at Mandalay Beach. The project includes creation of channels and waterways; subdivision of three existing parcels into 116 lots (95 single family lots, 17 duplex lots, 2 townhouse lots, and 2 “mixed use” lots); the construction of 95 single family residences (82 with private boat docks); 35 residential duplex units; 88 townhouse condominiums; mixed-use development with 88 multi-family residential units and 22,000 sq. ft. of visitor-serving or neighborhood commercial uses; and 8.16-acres of public park area with trail system.

Channel Islands Harbor PWP Amendment 1-04 &  
Notice of Impending Development 1-05

The Commission approved the project with special conditions including requirements for lateral access along some of the channels and vertical access points, construction of all public park and access improvements prior to occupancy of any structures, provision of a public access and signage program, and submittal of a boat dock management plan that provides that 50 per cent of the boat docks are made available to the public. Other conditions dealt with issues not related to water use in the Harbor.

Another major residential project approved by the City of Oxnard, appealed to the Coastal Commission and subsequently approved, is the Seabridge project. The project is located on the west side of Victoria Avenue, between Wooley Road and Hemlock Street, within the Mandalay Bay Specific Plan area, in the City of Oxnard. The project includes creation of channels and waterways; subdivision of three existing parcels into 334 lots; the construction of 708 residential units (276 single-family homes, 42 multi-family units, and 390 residential units in the visitor-serving and mixed use designations); 169,000 square feet of commercial floor area on 35 acres; 16.5 acres of recreational land uses; 32.2 acres of open water; 503 boat slips (241 public and 235 private); public trail system (10,755 linear feet of lateral access and 3,841 linear feet of vertical access); and other necessary infrastructure improvements. The Commission approved the project with special conditions in July 2003. Among the special conditions were requirements for the provision of lateral public access over and along all of the water channels.

The Commission approved a PWP amendment with Suggested Modifications and Notice of Impending Development with Special Conditions for the Channel Islands Harbor Marina (Vintage Marina) reconstruction project in May 2006. The amendment to the Public Works Plan (PWP) was approved to allow for the demolition and reconstruction of the Vintage Marina on property owned by the County of Ventura located on the west side of the Channel Islands Harbor. The corresponding Notice of Impending Development (NOID) provides for construction of the proposed project upon certification of the PWP amendment. The project includes reconstruction of an existing marina on two parcels (D & E) occupying a total of 14.35 acres. The two parcels are separated by the parcel on which the proposed Boating Instruction and Safety Center (BISC) is to be located. The existing 500-slip marina was over 40 years old and was in a state of disrepair and at the end of its useful life. The proposed 402 –416 slip marina (depending on how the end ties are utilized) is designed to comply with new safety standards for Department of Boating and Waterways (DBAW) and Americans with Disabilities Act (ADA). In order to comply with the DBAW and ADA standards as well as accommodate a greater number of larger boat slips, the new design results in a net loss of between 84 and 100 wet slips (depending on how the end ties are configured). In order to minimize the loss of boating slips, the new design extends the docks 20 feet beyond the existing pier head line. In addition, to mitigate for the loss of wet slips, the Harbor Department proposed to increase the number of dry dock storage spaces on Parcel P in the Harbor from approximately 300 to 400 spaces. The Commission action included suggested modifications that provide for the protection of a specified percentage of small and medium size boat slips, provision of additional dry land storage space for boats, and protection of potential nearby heron nesting activity. Required

special conditions also provided for the protection of nearby heron nesting activity and submittal of revised plans that demonstrate that Fairway space between Vintage Marina dock F and Boating Instruction and Safety Center (BISC) dock E including side ties shall conform to California Department of Boating and Waterways 2005 Guidelines for vessel traffic ingress and egress for both docks simultaneously. The revised plans were required to also demonstrate that the BISC project, including dock E, conforms to the project approved by the Commission. Construction of this project is underway and scheduled to be completed in January 2008.

The County considered the individual and cumulative impacts associated with these projects in its review of the BISC project and related EIR. The County determined that the impacts of the BISC are insignificant individually and cumulatively in consideration of the BISC with other know future projects. In consideration of potential cumulative impacts related to Harbor use and vessel traffic congestion and safety impacts relative to operation of the BISC caused by the two residential projects the County found no significant impacts. The County's EIR contains a vessel traffic congestion analysis that takes into account the added vessel traffic contributed by the residential projects. The analysis is contained in Appendix Q to the FEIR. Issues associated with the two residential projects in the County's review and approval concerned the adequacy of the Harbor mouth to accommodate the additional vessel traffic to and from the sea more than movement inside the Harbor.

On-the-water operations of the BISC will be well supervised by trained personnel, operations will occur mainly in the large turning basin where the usable water area is approximately 900 feet wide, and operations and BISC water activity will avoid peak vessel traffic periods on weekends. Although operations related to boat traffic created by the BISC is minimal, such features as the size of the turning basin, advantage of wind direction, on-site supervision, and use during less busy times of Harbor boat traffic will provide additional factors of safety. Therefore, the County determined and the Commission concurs, that the cumulative impacts on boating safety of the BISC taken together with the Westport at Mandalay and Seabridge projects are negligible.

The combination of vehicle traffic from the BISC and the residential projects were considered in a traffic analysis completed for the County. The analysis also considered growth projections over the next 10 years. The analysis concluded that whether the BISC is included or not, it does not alter traffic service levels. The Westport and Seabridge projects are located in the northern channel areas of the Harbor at a significant distance from the BISC project location. In terms of Harbor congestion, these projects affect the Harbor in different ways and at different times such that their impacts are not cumulative. Therefore, the County determined, and the Commission concurs, that vehicle traffic impacts associated with the two residential projects in combination with the BISC project are negligible.

The Channel Islands Marina (Vintage Marina) reconstruction project will not result in additional boat traffic in the Harbor. The total number of boat slips is reduced by approximately 84 to 100 slips (the exact number is unknown) although there will be an increase in dry dock storage on the east side of the Harbor. One concern related to the

combination of the BISC construction and the Vintage Marina reconstruction concerned the reconstruction project's impact upon future construction of the approved BISC dock. In approving the marina reconstruction project the Commission required the Harbor department to submit evidence in the form of revised plans demonstrating that the fairway space between Vintage Marina dock F and Boating Instruction and Safety Center (BISC) dock E including side ties conforms to California Department of Boating and Waterways 2005 Guidelines for vessel traffic ingress and egress for both docks simultaneously. The revised plans must also demonstrate that the BISC project, including dock E, conforms to the project approved by the Commission. The Harbor Department has complied with this special condition.

As indicated above, the reconstruction project conforms to the State guidelines for vessel traffic ingress and egress. Further, boat traffic in the Harbor will not increase as a result of the marina reconstruction project. Some larger boats will be docked in the marina but there is no expected impact upon BISC operations given that most activity will occur in the large turning basin with on-site supervision and favorable wind conditions most of the year. Therefore, for these reasons the Commission finds that there will be minimal cumulative impacts associated with the combined construction of the BISC project and the reconstruction of the Vintage Marina.

Since its approval of the BISC project the Ventura County Harbor Department has submitted a PWP amendment application to the Commission on March 30, 2007 for waterside improvements throughout the Harbor. The waterside amendment includes revisions to allow pierhead expansion for additional boat slips along the peninsula, along the southwest side of the harbor and along the northeast side of the harbor. The amendment also includes revisions to allow for reconstruction of marinas and boater related amenities, such as dock and gangway repair, replacement, and maintenance. Additionally, commercial fishing services are proposed to be consolidated to the commercial fishing wharf on the west side of the harbor. The Ventura County Harbor Department also plans to submit a PWP amendment application for landside improvements in the future, which may include changes to allowed height and density for new or reconstructed buildings, addition of a public promenade, and expansion or addition of park areas.

The PWP amendment proposes an increase in the total number of slips in the Harbor from 2,148 to 2,227, an increase of 79 spaces or 3.5 per cent. Slip reconstruction is proposed to occur at various locations throughout the Harbor. There will also be a minimal increase in the provision of larger boat slips, from 48% to 50% for slips between 30 and 40 feet and from 10% to 11% for slips over 50 feet in length. Given the small number of additional slips proposed and for the reasons discussed above regarding the Vintage Marina reconstruction project, the Commission finds that there will be minimal cumulative impacts associated with the combined construction of the BISC project and the future waterside improvements proposed in the upcoming PWP amendment.

A future PWP amendment that addresses landside improvements will likely result in some intensification of development within the Harbor. The focus will be on

revitalization of the aging Harbor. Although the size and scale of future proposed development is not known at this time it is safe to say that, in terms of scale, the plan will be much larger than the BISC. The amendment will be subject to appropriate environmental review according to the County. Although future impacts are not known at this time since no project or PWP amendment has been approved to date by the County or the Commission it is clear that the small size and limited intensity of the BISC will contribute insignificant cumulative impacts in combination with the landside projects. Whether the BISC is constructed or not in combination with the future development within the Harbor will make little difference in overall impacts. Therefore, the Commission finds that there will be minimal cumulative impacts associated with the combined construction of the BISC and construction of future landside improvements. As previously indicated, a number of small dock repair or reconstruction projects have also occurred in the Harbor. None of these activities are significant taken cumulatively with the BISC project due to their size, distance from the BISC and the fact that they do not intensify vessel or dock use, traffic or congestion within the Harbor.

#### **J. California Environmental Quality Act**

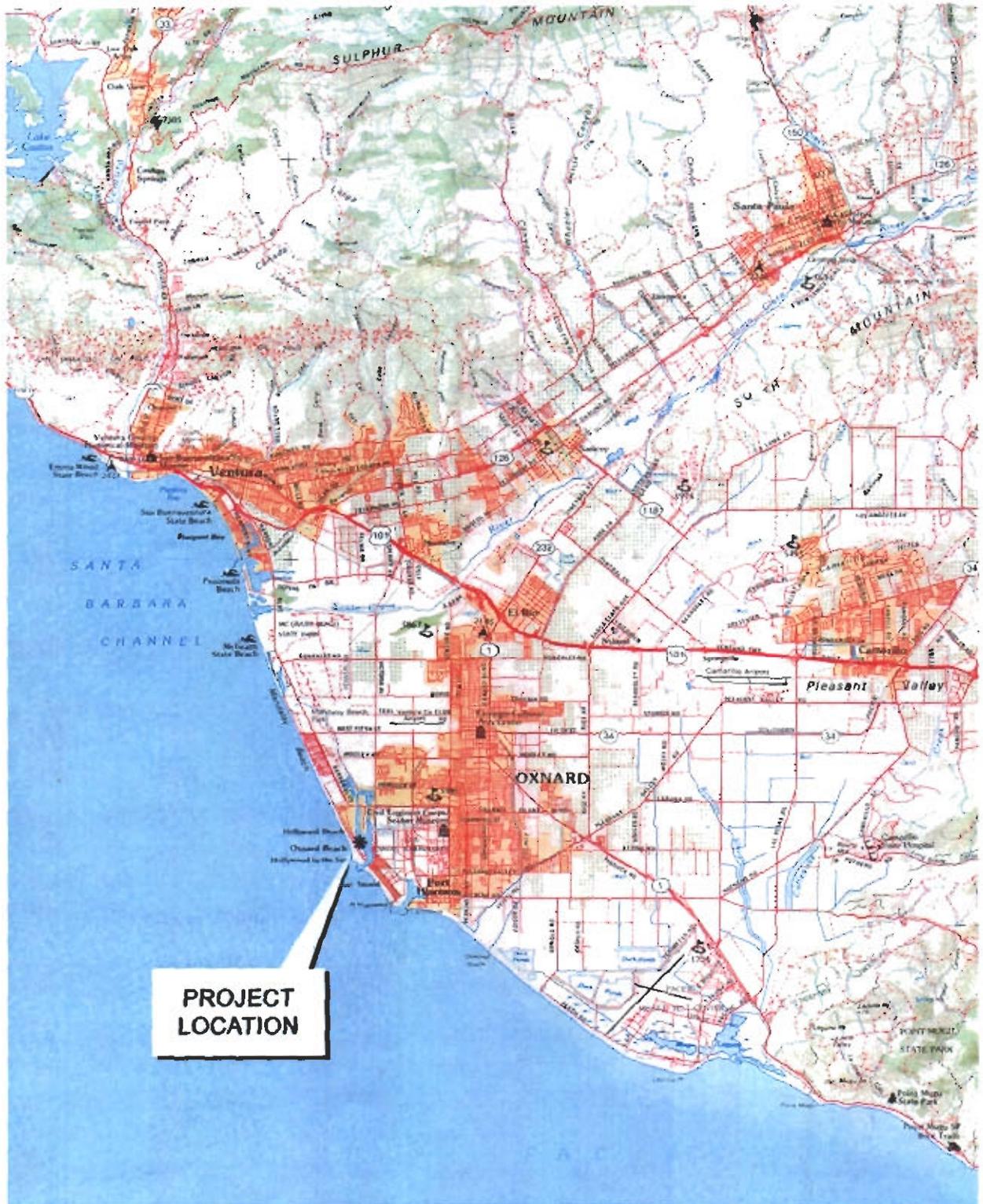
At least two governmental entities have been involved in reviewing the environmental impacts of this project – the County and the Coastal Commission. The County prepared an Environmental Impact Report (EIR) for the project. The Coastal Commission reviewed that report in the course of its review of the proposed PWPA and project and has consulted with the County and other public agencies in the course of preparing this report. As an agency with a certified regulatory program under CEQA section 21080.5, the Commission must consider alternatives and mitigation measures that would lessen any significant environmental impacts that the proposals would otherwise have on the environment. Sections 13371 and 13356(b)(2) of Title 14 of the California Code of Regulations require that Commission not approve or adopt a PWPA unless it can find that , “...there are no feasible alternatives, or feasible mitigation measures, available which would substantially lessen any significant adverse impact which the activity may have on the environment.” The Commission has consulted with other public agencies in conducting its review and has provided those agencies

For the reasons discussed in this report, the PWP Amendment No.1-04, if modified as suggested, is consistent with Coastal Act requirements and the PWP Notice of Impending Development 1-05, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan if amended in accordance with the suggested modifications. In addition, the mitigation measures identified in the Final Environmental Impact Report (December 2003) have been incorporated by reference into the special conditions identified herein through Special Condition One (1), and are thereby imposed along with any other mitigation measures the Commission has found to be feasible and necessary to lessen any significant adverse effect of the specific project components associated with Notice of Impending Development 1-04. As modified and conditioned, the PWP Amendment and NOID will not have any significant environmental effects. There are no other feasible alternatives or mitigation measures available that would

Channel Islands Harbor PWP Amendment 1-04 &  
Notice of Impending Development 1-05

further lessen any significant adverse effect that the approval would have on the environment. The Commission has suggested modifications to the PWP Amendment and imposed conditions upon the respective Notice of Impending Development to include such feasible measures as will reduce environmental impacts of new development. As discussed above, the Commission's suggested modifications and special conditions bring the proposed projects into conformity with the Coastal Act and the PWP, if amended in accordance with the suggested modifications. The Commission further finds that the PWP Amendment No. 1-04 and PWP NOID 1-05 if modified and as conditioned herein are consistent with CEQA.

# Regional Location Map



**PROJECT  
LOCATION**

**Exhibit 1  
PWPA 1-04  
NOID 1-05**

# Project Vicinity

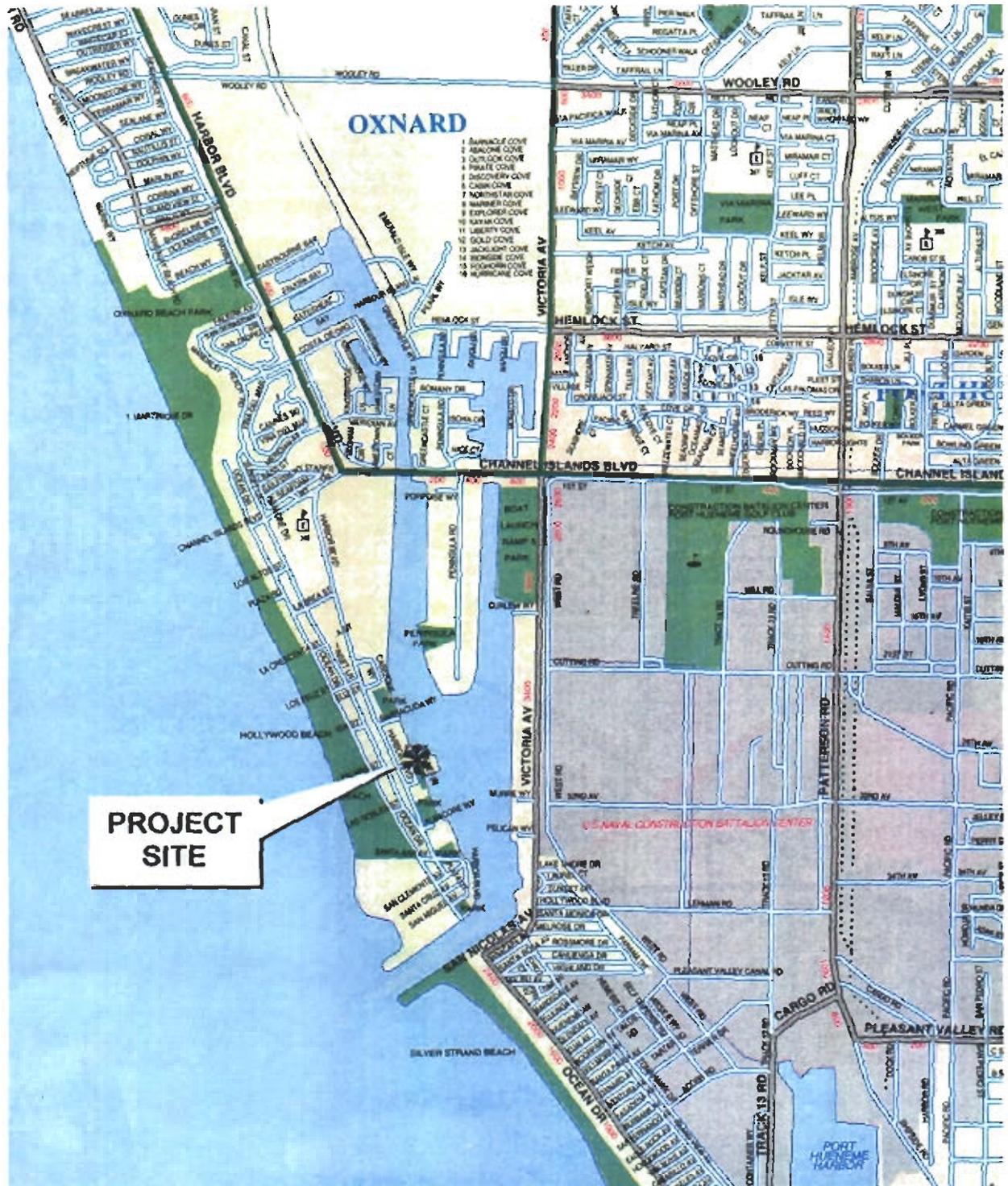


Exhibit 2  
PWPA 1-04  
NOID 1-05



**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

October 27, 2004

RECEIVED

OCT 28 2004

Mr. Peter Douglas, Executive Director  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2219

OFFICE OF THE  
CALIFORNIA COASTAL COMMISSION  
SOUTH CENTRAL COASTAL DISTRICT

Attention: Mr. Gary Timm, District Manager

**SUBJECT: TRANSMITTAL OF AMENDMENT TO THE CHANNEL ISLANDS  
PUBLIC WORKS PLAN TO ESTABLISH A BOATING INSTRUCTION  
AND SAFETY CENTER (BISC)**

Dear Mr. Timm:

The County of Ventura is pleased to submit this focused amendment to the Channel Islands Harbor Public Works Plan (hereinafter "PWPA") in accordance with the agreement reached between the California Coastal Commission (hereinafter "CCC") and the County of Ventura, Board of Supervisors (hereinafter "Board"). We make this submittal in accordance with Coastal Act §30605 and Coastal Commission Regulations §§ 13370 and 13371.

The Board approved this PWPA on October 19, 2004, and directed the Harbor Department to forward such amendment to the California Coastal Commission for review and action in accordance with the Agreement.

The Board majority strongly supports this public use, which they believe is key to providing access to the Harbor and to the ocean for all residents of Ventura County, as well as the general public. Although controversy still attends this project, the Board of Supervisors remains strongly committed to this facility, as does the State Department of Boating and Waterways.

This PWPA is for the express and limited purpose of recognizing that the BISC is a permitted use in the PWP.

In compliance with Coastal commission Regulations §13353, the County has already submitted the entire Final EIR record to the Ventura office of the CCC, as well as

Exhibit 3  
PWPA 1-04  
NOID 1-05

Mr. Peter Douglas, Executive Director

October 27, 2004

Page 2

numerous large-scale maps and supplemental informational materials. In view of the fact that the prior Notice of Impending Development Application was considered complete with these materials, the County is only transmitting those materials which are specifically directed at the PWWA. These include:

1. A full copy of the Board of Supervisors hearing package, including a highlight/strikeout version of the PWP which is the subject of the Amendment, as well as clean version of the same document;
2. The Addendum pursuant to CEQA;
3. The final biological reports (also submitted to Dr. Dixon by mutual agreement);
4. A parking study over Labor Day weekend 2004 confirming that parking is underutilized in this area;
5. Signed resolution of the Board of Supervisors;
6. The agreement between the CCC and the County dated July 26, 2004; and
7. Recent correspondence to and from the Department of Boating and Waterways regarding the feasibility and desirability of a BISC on the east side.

We look forward to working with you on this important public project. Please do not hesitate to call on us for any assistance you may need.

Sincerely yours,



Lyn Krieger  
Director

c: Board of Supervisors  
County Counsel

A RESOLUTION OF THE VENTURA COUNTY BOARD OF SUPERVISORS  
APPROVING AN AMENDMENT TO THE CHANNEL ISLANDS HARBOR  
PUBLIC WORKS PLAN

WHEREAS, the Channel Island Harbor Public Works Plan was certified by the California Coastal Commission on September 19, 1986;

WHEREAS, the Ventura County Board of Supervisors now wishes to amend the Public Works Plan as set forth in Exhibit 4 to the Board;

WHEREAS, a legally noticed public hearing on this matter was held by the Board of Supervisors of Ventura County at Ventura, California, on October 19, 2004;

WHEREAS, the Board of Supervisors ("Board") considered all written and oral testimony on this matter, including County staff reports and recommendations;

WHEREAS, notice of the hearing has been provided as required by law; and.

WHEREAS, the matter was considered by the Ventura County Harbor Commission on September 29, 2004.

NOW, THEREFORE, BE IT RESOLVED, ORDERED, AND DETERMINED THAT the Board has reviewed and considered, and has approved and adopted the Addendum to EIR as set forth in Exhibit 2 to the Board, prepared in accordance with the provisions of the California Environmental Quality Act (CEQA) and the CEQA Guidelines and found that no subsequent or supplemental EIR is necessary;

FURTHER BE IT RESOLVED, ORDERED, AND DETERMINED THAT the Board finds that the Public Works Plan as amended as set forth in Exhibit 4 to the Board is in conformity with the Local Coastal Plan of the City of Oxnard;

FURTHER BE IT RESOLVED, ORDERED, AND DETERMINED that the Board hereby also finds the adoption of the Public Works Plan amendment as set forth in Exhibit 4 to the Board to be in the public interest and consistent with the California Coastal Act and its policies and hereby adopts the Public Works Plan Amendments as set forth in Exhibit 4 to the Board.

FURTHER BE IT RESOLVED, ORDERED, AND DETERMINED that the Board finds that the Boating Instructional and Safety Center (BISC) project as approved by the Board on December 16, 2003, is consistent with the Public Works Plan amendment as set forth in Exhibit 4 to the Board and approved herein;

FURTHER BE IT RESOLVED, ORDERED, AND DETERMINED that the Board specifies the Clerk of the Board, 800 S. Victoria Avenue, Ventura, California, and the Harbor Department, 3900 Pelican Way, Oxnard, as the custodians and the location of the documents which constitute the record of proceedings upon which its decision is based; and

FINALLY, BE IT RESOLVED, ORDERED, AND DETERMINED that the Public Works Plan Amendment shall become effective and operative upon: 1) the adoption of this Resolution and 2) approval and certification by the California Coastal Commission.

Upon motion of Supervisor Long, seconded by Supervisor Mikels, duly carried, the foregoing Resolution was passed and adopted this 19th day of October, 2004.



A handwritten signature in cursive script, appearing to read "S. H. ...", is written over a horizontal line.

Chair, Board of Supervisors

ATTEST: JOHN F. JOHNSTON  
Clerk of the Board of Supervisors  
County of Ventura, State of California

By: C. Christina Delongue  
Deputy Clerk of the Board

February 25, 2005

Mr. Gary Timm  
CALIFORNIA COASTAL COMMISSION  
South Central Coast Area Office  
89 So. California Street, Suite 200  
Ventura, CA 93001

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

Dear Mr. Timm:

Pursuant to Public Resources Code §30606 and California Coastal Commission Regulations §§ 13358 and 13359, 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. A Public Works Plan Amendment was submitted in October, 2004 to specifically designate this project.

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 4  
PWPA 1-04  
NOID 1-05

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. A Public Works Plan Amendment has been submitted to the Coastal Commission and is being heard

Mr. Gary Timm  
February 25, 2005  
Page 3

concurrently with this project. The Public Works Plan Amendment is for the specific purpose of recognizing that the BISC is permitted at the site proposed.

In addition, Coastal Act §30605 makes clear that Coastal Commission review of the NOID (if the Public Works Plan Amendment is approved) 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.

#### 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 has been provided of all persons and organizations receiving a copy of this letter, including all residents within 300 feet of the project.

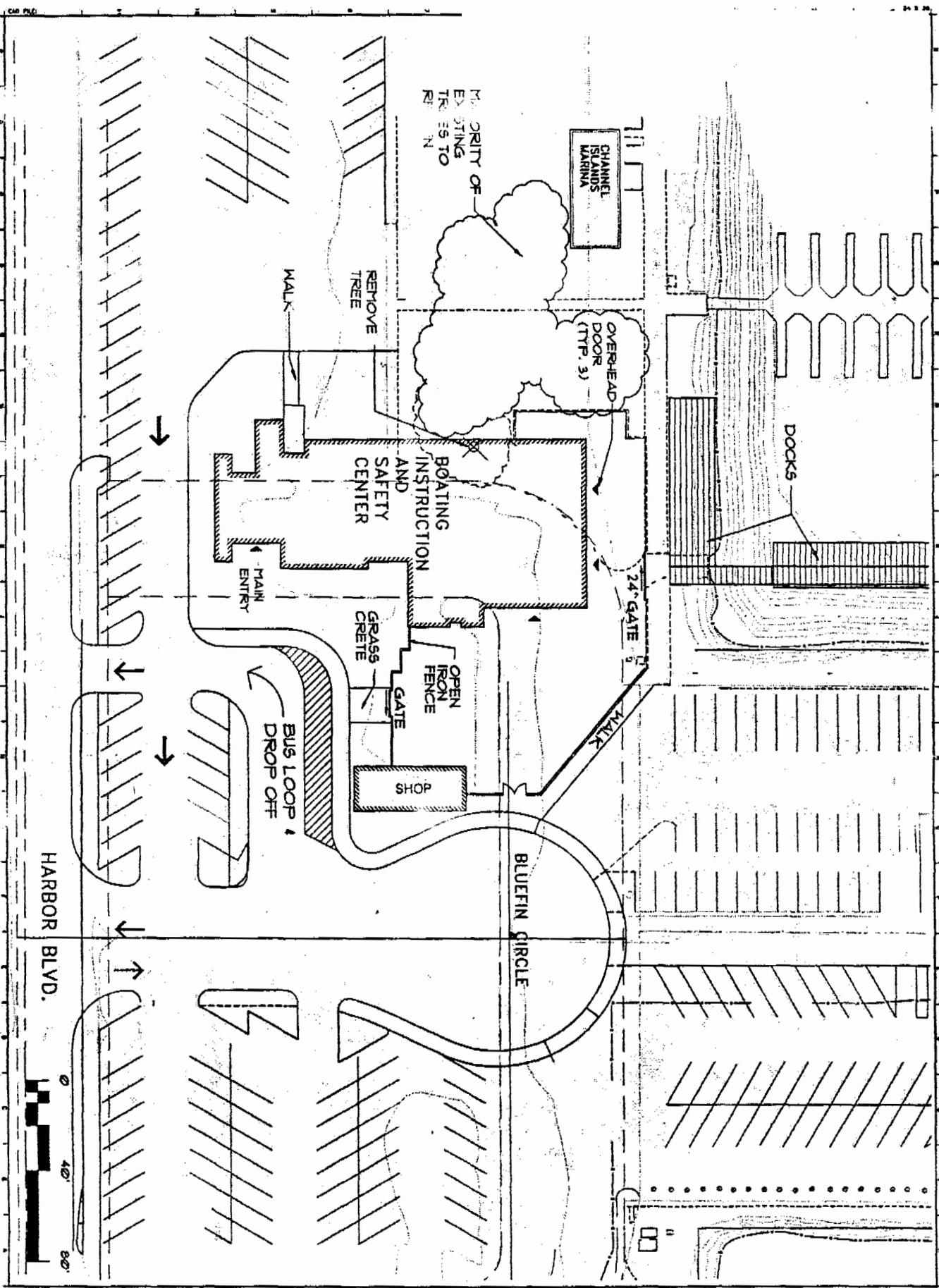
#### Conclusion

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,

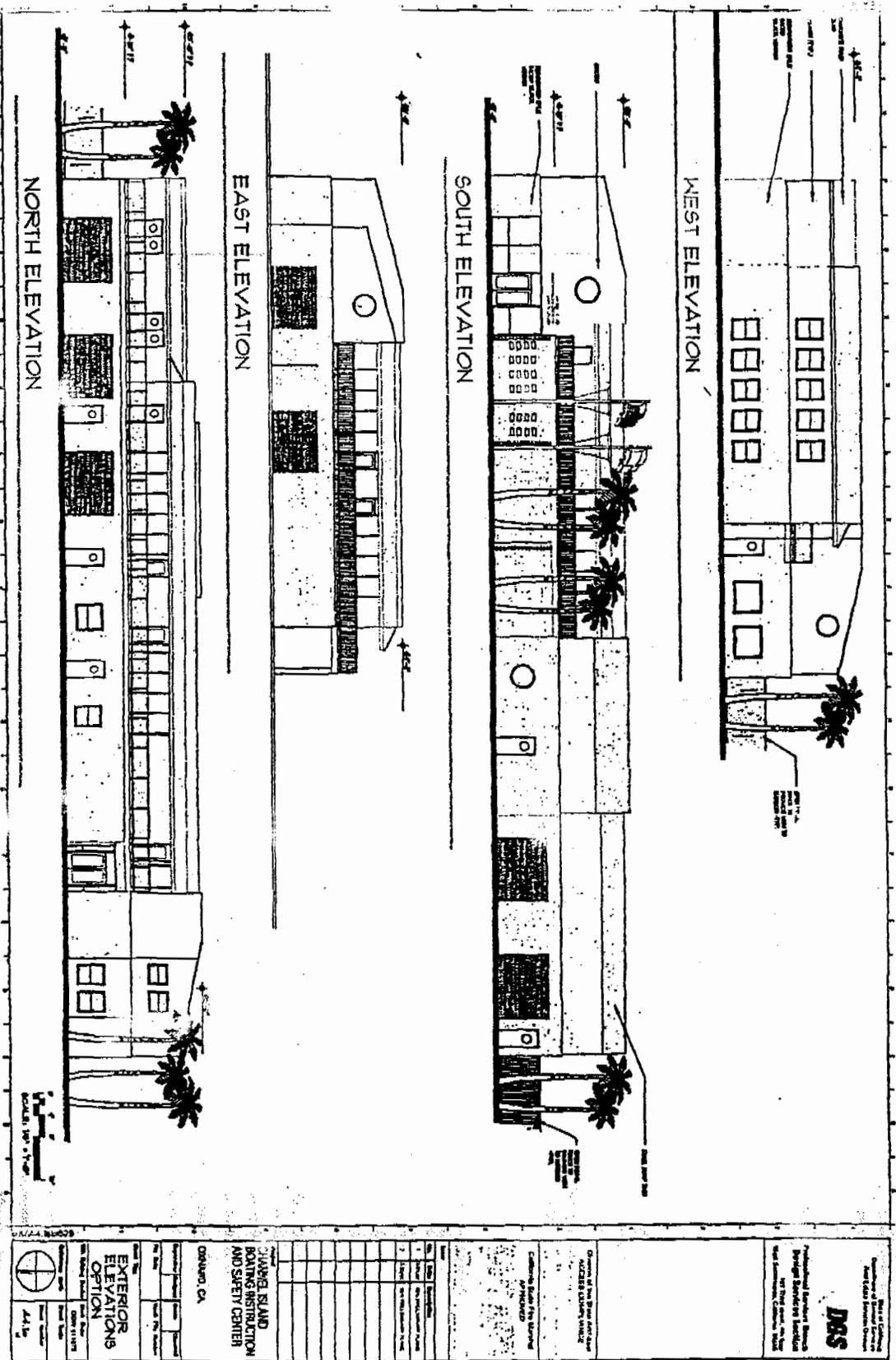
Lyn Krieger, Director  
County of Ventura Harbor Department

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



Division of the State Architect ACCESS COMPLIANCE App. No.: 88-18228 Approved by: _____ Date: _____	
Contract Status: Not Started Project: Channel Islands Marina Location: Channel Islands Marina Address: 1000 Channel Islands Marina City: Ventura, CA State: CA Zip: 93001 Phone: (805) 231-1100	
Project: CHANNEL ISLANDS BOATING INSTRUCTION AND SAFETY CENTER ORLANDO, CA	Site Plan ALTERNATIVE (VARIATION)
Prepared by: [Blank] Checked by: [Blank] Date: [Blank]	Date: [Blank]

Exhibit 5  
 PWPA 1-04  
 NOID 1-05





Development Services Administration  
305 West Third Street • Oxnard, CA 93030 • (805) 385-7896 • Fax (805) 385-7833

February 4, 2005

RECEIVED

FEB 10 2005

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Mr. Jack Ainsworth  
Mr. Gary Timm  
California Coastal Commission  
89 S. California St.  
Suite 200  
Ventura, CA 93001

Dear Messrs. Ainsworth and Timm:

SUBJECT: Boating Instruction and Safety Center, Channel Islands Harbor;  
Determination of Consistency with the Oxnard Local Coastal Plan (LCP)  
Pursuant to Coastal Commission Regulations Sec. 13371

The City of Oxnard has been working cooperatively with the County of Ventura Harbor Department towards establishing a Boating Instruction and Safety Center ("BISC") in Channel Islands Harbor. We are aware that the County and your agency have agreed to process an amendment to the Public Works Plan, and that your regulations require consultation with our City regarding the consistency of the amendment with the City LCP. The purpose of this letter is to conform to CCR Sec. 13371 by explaining our determination of consistency.

*Background*

The Public Works Plan (PWP) for Channel Islands Harbor was approved prior to the Oxnard LCP, and takes precedence over the LCP. However, if and when an amendment to the PWP is proposed, the amendment must be evaluated to determine if it is in conformity with the Oxnard LCP. Both the PWP and the Oxnard LCP are older documents, and share the same historical context, being approved in the same general timeframe.

The City first considered the consistency question when we were approached by the County and its consultant during the preparation of the EIR for the BISC. That EIR was to evaluate this consistency question, and the County desired the City's input during the normal CEQA consultation process.

Exhibit 6  
PWPA 1-04  
NOID 1-05

California Coastal Commission  
February 4, 2005  
Page Two

After carefully evaluating the BISC project against the Oxnard Certified LCP, the City prepared a letter concluding that the BISC "would appear to be consistent with the policies and ordinances". That letter, dated February 6, 2003, is attached for your reference.

Thereafter, the City reviewed the Draft EIR and its discussion of the Oxnard LCP. As the EIR accurately reflected the City's position, the City made no comment on the Draft EIR. The Board of Supervisor's selection of Project Alternative 6.B reduced impacts even further.

*Present Position of the City of Oxnard*

The City has been made aware that the County and the Coastal Commission have entered into an agreement whereby the PWP will be amended in a focused amendment aimed at making clear that the BISC is a permitted use under the PWP. The City believes that the LCP allows the BISC in any event; however, the City has no objection to a clarifying amendment to the PWP if that is the desire of the Coastal Commission and the County.

The Coastal Commission regulations provide a role for the City in that your agency is obligated to request that our City transmit its determination as to whether the Plan amendment is in conformity with the certified local coastal program. We are writing now to assist the County and the Commission in complying with this section of your regulations.

The City of Oxnard has determined that the BISC itself is consistent with the Oxnard Certified LCP. It naturally follows that an amendment, narrowly focused on establishing the BISC in the manner already approved by the Board Of Supervisors, would also be consistent. We have reviewed the County's Board of Supervisor's transmittal, including the amendment itself and the associated addendum, and we have determined that the amendment is in conformity with our certified LCP. No modifications to the PWP amendment are recommended by the City.

In terms of consistency, and because it has been asserted that the BISC is in fact not consistent with the Oxnard certified LCP, we offer the following substantiation of our position. First, in our February 6, 2003 letter we explain that the Oxnard Certified LCP emphasizes recreational boating, noting specifically that sailing schools are listed as conditionally permitted uses. Further policies stress the need to promote and protect water-related uses. We are not aware of any controversy concerning our determination of consistency when this project was being considered by the Board of Supervisors last year.

Present concerns seem to focus on three areas; that the harbor is "built out" and therefore the BISC cannot be established, that the BISC will be located in a "park", and that the BISC would interfere with protected view corridors. The following addresses those concerns:

*Buildout of Harbor*

The Oxnard LCP devotes five pages to the Channel Islands Harbor. A complete reading of these pages reveals to the reader that the concept of "buildout" is related to the harbor/water area itself, and not the landside development. The LCP notes that at the time of original preparation there were two studies related to enlarging the harbor and reducing congestion. The Inland Waterway issues had just arisen, and as your agency is aware, have recently been resolved. Therefore, the City's focus was on the size, number and character of the *waterside* facilities. Note the statement in the LCP, repeated from what was then the draft Public Works Plan:

"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 plans for any major expansions or re-constructions of the harbor area." (Oxnard LCP, page III-21)

This passage follows a discussion of "Local Issues" wherein the City of Oxnard relates studies that were being considered at that time to expand the water portion of the harbor itself. The City wanted to be on record supporting the expansion of recreational boating opportunities (Oxnard LCP, page III-21). We also wanted to be a part of any future proposal to expand the harbor (Oxnard LCP, page III-22). Clearly, when read in context, the Oxnard Certified LCP not only does not "freeze" development as it existed at the time of original certification, it provides encouragement and regulations to maximize public access and recreational boating opportunities. (Oxnard Certified LCP policies 14, 116, 21, 24, and 25, pages III-22,23). There is no statement that no other structures or uses could be established in Channel Islands Harbor in the Oxnard LCP.

The decision of whether to amend the PWP is one to be made between the County and the Coastal Commission. However, it is the determination of the City of Oxnard that no amendment is necessary to its LCP to establish the BISC.

*Use of the "Park"*

The Oxnard Certified LCP, Policy 26 at page III-23, states:

"To ensure that lower cost recreational and visitor-serving harbor facilities are available to all income groups, picnic tables, public restrooms, pedestrian and bicycle accessways, pedestrian furniture, bicycle storage racks, small boat sailing, renting and berthing areas shall be provided. In addition, the harbor public park areas, which provide a lower cost recreational activity, shall be preserved for general public recreational use."

First, the public park areas insofar as the City is concerned are those shown on the Master Plan and referred to in the PWP, as explained in the BISC EIR. Secondly, the Oxnard LCP in no way prohibits the establishment of the BISC in a park, even if that characterization is given to the BISC site. Therefore, the City has determined that the BISC is consistent with its LCP.

Oxnard LCP Policy N calls for the preservation of parking to serve recreational boating, sport fishing and commercial fishing. The BISC is part of a recreational boating complex.

*View Corridors*

The Oxnard Certified LCP contains Policy 35 at page III-24, which is aimed at preserving the visual quality of the area.

Oxnard LCP Policy V calls for the maintenance of view corridors between the first main road and the water line. The LCP does not identify with precision where the view corridors are located. The BISC does not interfere with two view corridors identified in the Channel Islands PWP, which allows elimination of the identified view corridors so long as 25% of the view corridors as identified remain.

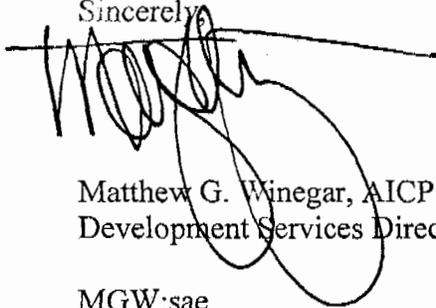
*Conclusion*

It is our finding that this project is consistent with the Oxnard Certified LCP and advances Coastal Act objectives.

California Coastal Commission  
February 4, 2005  
Page Five

Please contact me if I can answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew G. Winegar", is written over a horizontal line. The signature is stylized and somewhat illegible due to the cursive nature of the handwriting.

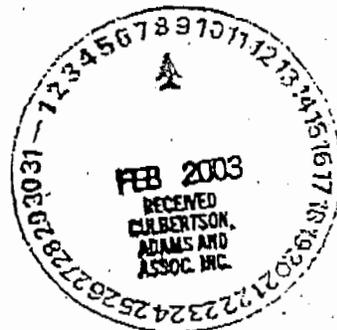
Matthew G. Winegar, AICP  
Development Services Director

MGW:sae

cc: Edmund F. Sotelo, City Manager  
Mayor and City Council



Planning and Environmental Services Division  
 305 West Third Street • Oxnard, CA 93030 • (805) 385-7858 • Fax (805) 385-7417



February 6, 2003

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

Re: *Response to Notice of Preparation of Environmental Impact Report  
 Boating Instruction and Safety Center (BISC)  
 Channel Islands Harbor, California*

Thank you for including the City of Oxnard on the distribution list for the NOP for the Boating Instruction and Safety Center. I would like to submit the following comments.

Channel Islands Harbor is within the city limits of the City of Oxnard and is addressed within the City's Local Coastal Plan. The County of Ventura Channel Islands Harbor Public Works Plan was adopted by the County of Ventura and reviewed and approved by the California Coastal Commission in 1986. Under the Public Works Plan the County issues all permits or other approvals within the Channel Islands Harbor. It has been the practice, since 1986, for the City of Oxnard to issue building permits for private development within the harbor. Because this is a County/State facility, it is anticipated that building permits will be issued by the State of California. Since the City has no permitting authority for the proposed BISC, it is not a responsible agency as defined by CEQA. Because the facility will require connection to City services such as water, sewer, etc., it is considered an "agency with jurisdiction by law." The Development Services Department will be responsible for issuing any connection permits associated with providing City services.

The City's Local Coastal Plan contains several policies that pertain to the Channel Islands Harbor, including policies within Sec. 3.2.4 and 3.2.5. These policies support recreational boating and other water-related uses within the Channel Islands Harbor. Further, the site is zoned HCI (Harbor, Channel Islands) in the City's coastal zoning ordinance. Sec. 37-2.15.1 states that the purpose of the HCI zone is to "provide, protect and encourage commercial fishing, sport fishing, recreational boating and related uses at the Channel Islands Harbor." Sailing or SCUBA schools and marine-related museums

Lyn Krieger, Director  
Ventura County Harbor Department  
NOAA Boating Instruction and Safety Center  
Channel Islands Harbor, California

February 6, 2003

Page 2

are listed as conditionally permitted uses in this zone. The proposed BISC would appear to be consistent with these policies and ordinances.

The City of Oxnard Recreation Department operates a variety of recreational programs for all segments of the community. Providing Oxnard citizens with an opportunity to learn sailing, boating and water safety, and take advantage of other marine educational programs is a benefit available in few cities. We look forward to working with you on this worthwhile facility.



Marilyn Miller, AICP  
Planning & Environmental Services Manager

- C: M. Andriette Culbertson, President, Culbertson, Adams & Associates, Inc.  
Edmund F. Sotelo, City Manager  
Matthew G. Winegar, AICP, Development Services Director  
Rob Roshanian, Development Services Manager  
Bo Bowman, Public Works Director  
Michael Henderson, Parks and Facilities Superintendent  
Gil Ramirez, Recreation Superintendent

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800



February 24, 2005

Raynor Tsuneyoshi, Director  
Department of Boating and Waterways  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815-3888

Re: Proposed Boating Instruction and Safety Center for Channel Islands Harbor, Ventura County

Dear Director Tsuneyoshi:

Coastal Commission staff has been provided copies of letters from the Department of Boating and Waterways concerning proposed construction of the Boating Instruction and Safety Center (BISC) in Channel Islands Harbor (December 1, 2003 from Mike Ammon to Lyn Krieger, October 15, 2004 to members of the Ventura County Board of Supervisors, and October 21, 2004 to Assemblyman Tony Strickland). These letters all indicate a preference for locating the BISC on the west side of the Harbor in the proposed location. In particular, safety concerns relative to wind direction was cited as one of many factors for your decision. Both the October 15 and 21 letters signed by you state "given the considerable safety concerns expressed by independent experts, we cannot recommend funding from the Department of Boating and Waterways for a BISC project on the harbor's east side."

As I'm sure you are aware the location of the BISC has become extremely controversial. The Coastal Commission has scheduled a public hearing on a proposed Public Works Plan Amendment for Channel Islands Harbor to specifically permit the BISC at the west side location for its March 16, 2005 meeting in Orange County. Because of the continuing controversy surrounding this project I am writing to ask whether the Department's position has changed in any form from that stated in the October 15 and 21, 2004 letters referenced above. Specifically, does the Department continue to prefer the Harbor west side location for the BISC and has the Department's position on funding changed?

Although we would prefer to receive a written response to this letter please feel free to call me if that is not possible. You may also reply by e-mail. My phone number and e-mail address are provided below. Thank you for your prompt response.

Sincerely,

A handwritten signature in black ink that reads "Gary Timm".

Gary Timm

District Manager  
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA. 93001  
805-585-1800  
[gtimm@coastal.ca.gov](mailto:gtimm@coastal.ca.gov)

cc. Jack Ainsworth  
Lyn Krieger

Exhibit 7  
PWPA 1-04  
NOID 1-05

**Gary Timm**

---

**From:** Ray Tsuneyoshi [RTSUNEYOSHI@dbw.ca.gov]  
**Sent:** Monday, February 28, 2005 2:06 PM  
**To:** gtimm@coastal.ca.gov  
**Cc:** Lyn Krieger; David Johnson; Steve Watanabe  
**Subject:** Your Letter of 2/24/05:BISC for Channel Islands Harbor, Ventura County

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

Dear Mr. Timm,

To answer your two questions as succinctly as possible, "Specifically, does the Department continue to prefer the Harbor west side location for the BISC..." The answer is , yes. "has the Department's position on funding changed." The answer is, no.

I hope our response is clear. If not, please give me a call at 916 263 4326.

Sincerely

Raynor Tsuneyoshi  
Director  
Department of Boating and Waterways

STATE OF CALIFORNIA-THE RESOURCES AGENCY

Arnold Schwarzenegger, Governor

## DEPARTMENT OF BOATING AND WATERWAYS

1000 Evergreen Street, Suite 100  
SACRAMENTO, CA 95815-3888  
(916) 263-1331

December 1, 2003

Lyn Krieger, Director  
Harbor Department  
3900 Pelican Way, L#5200  
Oxnard, CA 93035-4367**Subject: BISC Site Funding**

Dear Ms. Krieger:

The purpose of this letter is to comment on the site selection for the Channel Islands Boating Safety Center, which is funded in large part by this Department. The Department has reviewed the presented alternatives, studied the comments by the four Center Directors, and visited the alternative project sites. Our position after careful study is that the only viable site is #2, the "Port Royal/CI Marina Central" location.

In light of the presented evidence it is the Department's position that it will be very unlikely that any other site will be acceptable.

Sincerely,

A handwritten signature in cursive script that reads "Mike Ammon".

Mike Ammon  
Contract Administrator  
(916) 263-8163RECEIVED  
South Coast

FEB 4 2004

COPIES

Oct 15 04 09:30a

Boating &amp; Waterways

916-263-0648

P. 1

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF BOATING AND WATERWAYS**

2000 Evergreen Street, Suite 100  
SACRAMENTO, CA 95815-3888  
Tele: (916) 263-4325  
Fax: (916) 263-0648  
www.dbw.ca.gov



October 15, 2004

Supervisor Steve Bennett  
Supervisor Linda Parks  
Supervisor Kathy Long  
Supervisor Judy Mikels  
Supervisor John Flynn  
County of Ventura  
800 S. Victoria Avenue  
Ventura, CA 93009

**Subject: Funding for the Proposed Channel Islands Boating Instruction and Safety Center**

Dear Supervisor:

Chairman Steve Bennett recently wrote to the Department of Boating and Waterways asking for clarification of the Department's position on site selection as it relates to funding of the proposed Channel Islands Boating Safety Instruction Center (BISC).

As you are aware, Ventura County proposed, and the State accepted, a project adjacent to the Port Royal site within the Channel Islands Harbor.

This west harbor site was selected after careful consideration by a committee of experts, which included the director of the San Diego Aquatic Center, Glen Brandenburg. Many questions were raised during the site selection evaluation phase of the study regarding wind effect on boating safety.

We reviewed the reports submitted by experts retained by the County, experts in whom we have a great deal of confidence. We also conducted our own review and site inspections. To date, four current or former boating center directors in California have unanimously recommended the proposed west side site as the safest location.

Conversely, these same experts have counseled against a site on the east side for safety and operational reasons. The mission of the Department is to provide safe boating access to the California boating public. In regard to a boating center that will be offering boating and sailing instruction for youths and beginners, safety is a paramount concern.

For the current fiscal year, a total of \$310,000 is appropriated from the Department's Harbors and Watercraft Revolving Fund for the development of working drawings at the west site.

Oct 15 04 09:30a

Boating & Waterways

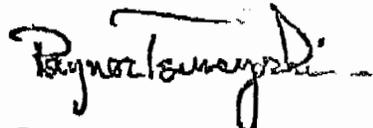
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p. 2

Supervisors, County of Ventura  
October 15, 2004  
Page Two

Given the considerable safety concerns expressed by independent experts, we cannot recommend funding from the Department of Boating and Waterways for a BISC project on the harbor's east side.

Sincerely,



Raynor Tsuneyoshi  
Director

RT:dj:ms

cc: Mr. David Johnson  
Mr. Steve Watanabe ✓  
Ms. Lyn Krieger

02/02/05 12:22 FAX 8053823015

CHANNEL ISLANDS HARBOR

002

Feb 01 05 12:00

Boating

State

915-263-0648

1

STATE OF CALIFORNIA - THE RESOURCE AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF BOATING AND WATERWAYS

2000 Evergreen Street, Suite 100  
SACRAMENTO, CA 95815-3288  
Tele: (916) 263-4325  
Fax: (916) 263-0648  
www.cbw.ca.gov



October 21, 2004

-Faxed on 10/21/04-

The Honorable Tony Strickland  
Assemblyman, Thirty-Seventh District  
Westlake Corporate Centre  
2659 Townsgate Road, Suite 236  
Westlake Village, CA 91361

Post-It® Fax Note	7671	Date	11/01/04
To	CAROL ABELLA	From	MILO ABELLA
Co./Dept		Co.	
Phone #		Phone #	
Fax #		Fax #	

Dear Assemblymember Strickland:

I am writing in response to your October 14, 2004, letter concerning the Channel Islands Boating Instruction and Safety Center. I assure you that the single most influential factor in our deliberations is safety. The west harbor site was selected after careful consideration by a committee of experts, which included the director of the San Diego Aquatic Center, Glen Brandenburg. Many questions were raised during the site selection evaluation phase of the study regarding wind effect on boating safety.

We reviewed the reports submitted by experts retained by the County, experts in whom we have a great deal of confidence. We also conducted our own review and site inspections. To date, four current or former boating center directors in California have unanimously recommended the proposed west side site as the safest location. In regard to a boating center that will be offering boating and sailing instruction for youths and beginners, safety is of paramount concern.

Following are answers to each of the specific questions you have raised:

1. Question: Is it true that site #2 is the only viable site in the harbor?

Answer: The site selection report for the Boating Instruction and Safety Center for the Channel Islands Harbor was completed in November 1999 and submitted to the Department of Boating and Waterways. Based on recommendations in the report, the "Port Royal/Channel Islands Marina Central" site was selected by the State of California as the preferred alternative.

Accordingly, funding for preliminary plans for a capital outlay, Boating Instruction and Safety Center in the amount of \$319,000 was included in the State of California's 2001-02 Budget Act (Chapter 106, Statutes of 2001). This \$319,000 line-item appropriation, initiated by the Administration and approved by the Legislature, was allocated for the "Port Royal" site.

02/02/05 12:23 FAX 8053823015

CHANNEL ISLANDS HARBOR

003

Feb 01 05 10:56a

Boating &amp; Waterways

316-263-0640

p. 2

Honorable Tony Strickland  
October 21, 2004  
Page Two

On December 1, 2003, Mike Ammon, Contract Administrator, Department of Boating and Waterways, wrote a letter to Lyn Krieger, Director of the Ventura County Harbor Department, which stated, in part, that "the only viable site is #2, the 'Port Royal/CI Marina Central' location." Mr. Ammon's letter was made in response to an information request from the County of Ventura.

Mr. Ammon's statement was based on a variety of critical factors – site capability, locational criteria, financial issues, development criteria, and, equally important, State budgetary and funding issues. Site #2 is "the only viable site" in the sense that these project funds are not portable and have been earmarked for the Port Royal location. Moving the project to a new location will essentially require starting the budget process all over and ignoring the approximate \$500,000 of state and county funds already spent on this project. Because the State of California is continuing to face difficult budgetary problems, there is no assurance that State funding for a new site would be available and approved in the future. Given the breadth of these factors, Mr. Ammon's statement is accurate.

2. **Question:** Was land traffic taken into consideration as one of the site selection criteria when analyzing the various sites in the harbor?

**Answer:** Although land traffic was not addressed in the original proposal, a 55-page traffic study was included in the EIR, which revealed no significant impacts.

3. **Question:** Is the wind direction the sole factor that makes the east side a safety concern for the Department?

**Answer:** The direction of the wind in relation to the proposed Boating Instruction and Safety Center is clearly significant for safety reasons, but this factor is just one of the many factors listed in the original proposal Site Selection Criteria (Please see page 12 of the "Proposed Boating Instruction and Safety Center, Channel Islands Harbor, Ventura County, California" proposal, dated November 1999.)

In addition, the EIR points out that if the east side were selected, a dock would have to be placed into the channel that would protrude 115 feet beyond the existing pierhead lines. The U.S. Coast Guard is on record opposing this concept for channel traffic safety reasons. It is also noteworthy that the east side site received one of the lowest ratings of the seven study areas, as listed on the Site Selection Criteria study, and was the only location marked down for safety reasons.

4. **Question:** Are there other BISCs in the state that are placed downwind? With these BISCs placed downwind, what are the overriding factors that determined placement?

**Answer:** We have not, to our knowledge, funded the construction of any BISC facilities in the state with wind conditions as unfavorable as those that would be found at a BISC located on the east side of Channel Islands Harbor.

02/02/05 12:23 FAX 8053823015

CHANNEL ISLANDS HARBOR

0004

Feb 04 05 10:57a

Boating &amp; Waterways

916-263-0648

p.3

Honorable Tony Strickland  
October 21, 2004  
Page Three

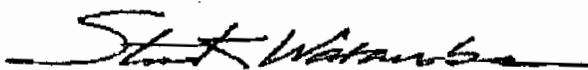
**Question:** If the county were to opt to place the BISC on the east side of the harbor, would the Department completely refuse to support the BISC?

**Answer:** Given the considerable safety concerns expressed by independent experts, we cannot recommend support from the Department of Boating and Waterways for a BISC project on the harbor's east side.

Lastly, we have enclosed an April 20, 2004, letter from Steve Bennett and Kathy I. Long, members of the Board of Supervisors for the County of Ventura, concerning the board's reasoning and decision-making for the boating center. Supervisors Bennett and Long make clear that the board majority concluded separately that the west side was superior based upon important reasons other than the Department's letter.

Like you, we are interested in assuring that the county's decision is based on receiving complete and accurate information from the Department of Boating and Waterways. Hopefully we have provided the clarification you were seeking. If you should have any further questions regarding our response, please contact me or David Johnson (916) 263-0780.

Sincerely,



*for* Raynor Tsuneyoshi  
Director

RT:dj:ms

Enclosure

cc: Mr. Steve Watanabe  
Mr. David Johnson ✓

**CAPITOL OFFICE:**  
STATE CAPITOL  
P.O. BOX 1000  
SACRAMENTO, CA 95833-0007  
(916) 319-2037  
FAX: (916) 319-2137

**DISTRICT OFFICE:**  
WESTLAKE CORPORATE CENTRE  
2659 TOWNSGATE ROAD, SUITE 236  
WESTLAKE VILLAGE, CA 91361  
(805) 230-9167  
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Assembly  
California Legislature



**TONY STRICKLAND**  
ASSEMBLYMAN, THIRTY-SEVENTH DISTRICT

**COMMITTEES:**  
**VICE-CHAIRMAN**  
ARTS, ENTERTAINMENT, SPORTS,  
TOURISM AND MEDIA  
**MEMBER**  
BANKING AND FINANCE  
ELECTIONS, REDISTRICTING, AND  
CONSTITUTIONAL AMENDMENTS  
GOVERNMENTAL ORGANIZATION  
**COMMISSION**  
STRUCTURAL CHALLENGES  
TO BUDGETING IN CALIFORNIA

October 14, 2004

Mr. Raynor Tsuneyoshi  
Director  
Department of Boating and Waterways  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815-3888

Dear Director Tsuneyoshi:

First, I want to thank Mike Ammon and David Johnson from your Department for assisting my office and helping to clarify some issues regarding the Channel Islands Boating Safety Center in Ventura County. I also appreciate their efforts in assisting the County of Ventura. However, it is precisely your department's assistance to the County that has caused me to write to you today.

In reference to the attached letter from Mr. Ammon sent to Lyn Krieger on December 1, 2003 regarding the Channel Islands Boating Safety Center, it was stated that it is the Department's position that "the only viable site is #2, the Port Royal/CI Marina Central location." It has come to my attention that Mr. Ammon's description of site #2 as the "only viable" site may be inaccurate.

Because I want to assure the County of Ventura and its residents that your department did indeed provide accurate and complete information to the County, can you please take the time to address the following questions?

1. Is it true that site #2 is the *only* viable site in the harbor? It is my understanding that the Department uses a ranking system based on selection criteria and that several sites in the harbor can be considered viable. In fact in a conversation with my staff, Mr. Ammon mentioned that there are only a couple of sites that can be flatly rejected and that there are more sites that can be deemed viable.
2. Was land traffic taken into consideration as one of the site selection criteria when analyzing the various sites in the harbor?
3. Is the wind direction the sole factor that makes the east side a safety concern for the Department?
4. Are there other BISCs in the state that are placed downwind? With these BISCs placed downwind, what are the overriding factors that determined placement?

E-MAIL: [Assemblymember.Strickland@assembly.ca.gov](mailto:Assemblymember.Strickland@assembly.ca.gov)

WEB: <http://www.assembly.ca.gov/strickland>

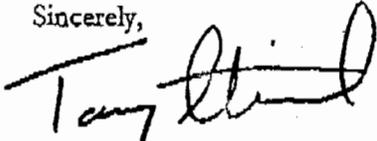
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5. If the County were to opt to place the BISC on the east side of the harbor, would the Department completely refuse to support the BISC?

Thank you in advance for your time. I am sure you share my desire to ensure that the County of Ventura did indeed receive complete and accurate counsel from your department.

If you should have any questions, please feel free to contact me or my Chief of Staff, Joel Angeles, in my District Office at (805) 230-9167.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Strickland". The signature is written in a cursive style with a large, sweeping initial "T".

Tony Strickland  
Assemblyman, 37<sup>th</sup> District

**MAXIMUM NUMBER OF SPACES OCCUPIED  
OVER 3-DAY LABOR DAY PERIOD**

Parking Lot	1000 Hrs	1300 Hrs	1600 Hrs	2000 Hrs	Total available spaces	Percent full during maximum demand
W-2	86	104	110	105	182	57%
W-3 <sup>1</sup>	7	17	19	69	149	46%
W-4 <sup>1</sup>	65	78	86	65	179	48%
W-5	59	116	98	55	171	68%
W-6 <sup>2</sup>	152	152	111	65	152	100%
Whale's Tail/ Port Royal	12	51	57	71	76	93%

<sup>1</sup> Lots closest to Boating Instruction and Safety Center

<sup>2</sup> The Farmer Market was being held this weekend. W-6 is the supporting parking lot. The Farmers' Market is held on Sundays.



# The Beacon Foundation

PMB 352  
3844 W Channel Islands Blvd  
Oxnard, CA 93035

RECEIVED

February 2, 2005

FEB 02 2005

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

Re: PWP-MAJ-1-04  
County In Denial

CALIFORNIA  
COASTAL COMMISSION  
NORTH CENTRAL COAST DISTRICT

Dear Director Timm:

Without unduly burdening your file, we wish to provide the enclosed partial transcript of the October 19, 2004 Ventura County Board of Supervisors meeting where, by a vote of three to two, the Public Works Plan Amendment before you was approved. Please particularly note the following:

1. County Refusal to Accept the Validity of CCC June 9, 2004 Findings. At pages 13-14 of the transcript Supervisor Flynn inquires whether language added to the Public Works Plan by the Amendment is in answer to the CCC findings. The Harbor Director, Lyn Krieger, responds:

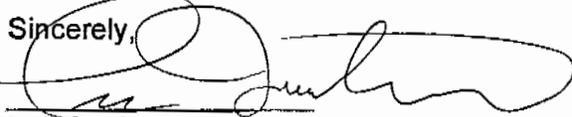
"No. They are not responding to the June findings. I have been told that the County does not recognize the June findings because there's disagreement about whether a decision was even made in February. See, we are specifically not responding to the findings, but we are responding to the written agreement we have with the Coastal Commission and the comments made at the February and June meetings."

Director Krieger states at page 6 that the purpose of the Amendment is to "insert" the BISC as a "specific project" in the PWP. That insertion is the only obligation recognized by the County and the Commission is said to agree. This is wholly erroneous. The Commission findings detail multiple Coastal Act and PWP compliance deficiencies. The review agreement with Commission staff does not and cannot waive the necessity for the County to respond to the substantive issues raised by the findings and to otherwise come into compliance with the Coastal Act.

2. County Refusal to Accept Commission Determination that the BISC Site is a Designated Park. At pages 10-12 Supervisor Parks leads questioning on placement of the BISC in a designated park. Director Krieger responds that the County does not accept that the site is a designated park. She says the Amendment makes the BISC an "exemption" to Policies 19 and 20. She states that it was always clear to County Planning and CCC staff that the project was consistent with the PWP. In fact, at all times from the first Staff Report through the findings, The Commission has consistently recognized the site as a designated park.

County failure to respond to the findings and its refusal to accept that its chosen site is a designated park should make it impossible for Commission staff to recommend approval of the Amendment. **The County and the Commission are trains passing in the night. To accept a County Amendment pasted over unresolved and fundamental disagreement would be to become complicit in County undermining of the protections of the Public Works Plan.**

Sincerely,



Lee Quaintance  
Secretary

Encl.

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VENTURA COUNTY BOARD OF SUPERVISORS

STATE OF CALIFORNIA

--oOo--

ITEM NO. 33

CHANNEL ISLANDS HARBOR AND PUBLIC WORKS PLAN  
AMENDMENT, ADDENDUM TO FINAL ENVIRONMENTAL IMPACT  
REPORT AND PROJECT CONSISTENCY/BOATING INSTRUCTION  
AND SAFETY CENTER IN CHANNEL ISLANDS HARBOR

--oOo--

HEARING BEFORE THE BOARD OF SUPERVISORS

COUNTY OF VENTURA

Partial Transcript of Recorded Proceedings

Tuesday, October 19, 2004

Ventura, California

Transcribed by:

Marlene Struss

PARTICIPANTS

Board of Supervisors

First District - Steve Bennett, Chair  
Second District - Linda Parks  
Third District - Kathy I. Long  
Fourth District - Judy Mikels  
Fifth District - John K. Flynn

County Representatives

Lyn Krieger - Harbor Department

Public Speakers

Mark Graves  
Marcia Marcus, Channel Islands Beach Community  
Services District  
Jonathan Ziv  
Bart Schuman  
Vickie Finan, Beacon Foundation  
Gordon Birr, Beacon Foundation  
Jean Rountree, Beacon Foundation  
Lee Quaintance, Beacon Foundation  
John Buse, Environmental Defense Center, Beacon  
Foundation  
Nancy Snooks  
Lauraine Effress, Harbors West Owners Association  
Ellen Spiegel, Channel Islands Beach Community  
Services District  
Patrick Forrest  
Kenneth Grim  
Carol Burhoe  
Bruce Markovich  
Anna Spanopoulos  
Stephanie Angelini  
Trevor Smith  
Tom Land

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VI ERA, CALIFORNIA

TUESDAY, OCTOBER 19, 2004

--oOo--

(CD Board of Supervisors Mtg. 10/19/04

@1:30:01.)

SUPERVISOR BENNETT: I'd like to call the meeting back into order, welcome everybody here.

We have quite a few speaker cards here. And so I'm going to ask everybody to limit their comments to four minutes. And I have one speaker who wants to speak on two items, 33 and 34, Marcia Marcus.

I'm going to ask you to speak first only -- that way I'll put your card in the right spot and I won't forget when we get to Item 34

Also I'm going to ask that anybody who has -- actually, Marcia, I'm going to let you go second. I'm going to go with Mark Graves. He was up here first. You look like you need a second there now, right?

And I'm going to ask anybody that has a speaker card or wishes to speak, if you'd turn it in now, we will stop accepting speaker cards here in the next 30 seconds or so. Does anybody else have a speaker card to turn in?

All righty. Okay, our -- we have our staff report.

4

1 MS. KRIEGER Good afternoon Members of  
2 Board, Ms. Robinson. Lyn Krieger from the Harbor  
3 Department.

4 And I am here today for a very specific  
5 purpose and specific project. And that is for a  
6 proposed amendment to the Channel Islands Harbor Public  
7 Works Plan as certified by the Coastal Commission on  
8 September of 1986.

9 Accompanying that document is an addendum to  
10 the file -- final environmental impact report that you  
11 all certified last December for project consistency and  
12 for the Boating Center.

13 These two items are before you today at your  
14 own instruction. As you know this, we have a project.  
15 The project has already been adopted and approved. And  
16 the EIR has already been certified. It is final. And  
17 there's been a notice to that effect.

18 I know that there are a number of people who  
19 still want to revisit the project. And we'd be happy  
20 to answer any questions you might have today about any  
21 of that. But our real purpose here is for the  
22 amendment.

23 This is a very focused amendment to the  
24 Public Works Plan, done based on comments from the  
25 Coastal Commission, from specific Coastal

Commissioners.

2           We have today here to answer your questions  
3 of course County Counsel, who are here in force, Noel  
4 Klebaum and his staff. Also, Andi Culbertson is here  
5 from Culbertson, Adams, & Associates. And Jeffrey  
6 Froke, who was the biologist for this particular  
7 project, who is involved in review of these documents.

8           This focused amendment is in response to, as  
9 I said, Coastal Commission comments and to our recent  
10 agreement with the Coastal Commission. And what we  
11 agreed to was to make the Boating Instruction and  
12 Safety Center a specific project within the Public  
13 Works Plan.

14           We have provided to you both a red-line and a  
15 clean copy of the amended Public Works Plan. The  
16 red-line is provided to you for your convenience;  
17 otherwise, I must tell you, even I couldn't find what  
18 was changed in this document. It's a little  
19 difficult.

20           The clean copy is what would ultimately, if  
21 adopted, be the final amended Public Works Plan.

22           You'll notice as you went through it that  
23 what we have done primarily is insert the -- the  
24 project specifically, which is what was suggested to  
25 us, both by commissioners and Coastal Commission staff

6

1 to do. We've also addressed Policies 20 and 21, which  
2 have been the subject of considerable testimony before  
3 the Board, having to do with open space. And there has  
4 been some clarification in tables where public projects  
5 are listed. Other than that, there is very little  
6 change.

7 The addendum, after review by County Counsel,  
8 is what was required for modification of the CEQA  
9 document to meet the requirements of the California  
10 Environmental Quality Act.

11 I'm not going to belabor this issue now. I'm  
12 sure there will be a number of questions, but I just  
13 wanted to give you a brief overview of where we are.

14 SUPERVISOR BENNETT: Thank you very much.

15 Do we have any questions before we go to the  
16 public comment?

17 Supervisor Parks?

18 SUPERVISOR PARKS: I -- I was hoping we'd have  
19 like a PowerPoint.

20 Can you tell us specifically then the changes  
21 like in the open space and just be more specific?

22 MS. KRIEGER: Yes. In Policies 20 and 21 -- and  
23 if you can give me just a moment to find the page --  
24 and if someone finds it sooner than me, they can call  
25 it out.

1 Well, I'll comment on areas. First, on  
2 page 40 -- because this relates to Policies 20 and 21  
3 -- the section on public recreation begins at the  
4 bottom of page 41, where we talk about public  
5 recreation. It mentions, and I quote, "A publicly  
6 owned and operated facility is also permitted. The  
7 Boating Instruction and Safety Center. This facility  
8 is located on public land and provides marine  
9 education, including but not limited to sailing,  
10 rowing, swimming, beach activities, marine biology, and  
11 other water-oriented activities and topics.

12 "The Boating Instruction and Safety Center  
13 also has a gathering facility," which is what it was  
14 called in the EIR, "which is provided for community  
15 gatherings, classes, and fee-paying private events as  
16 approved by the Harbor Department."

17 SUPERVISOR PARKS: Though specifically this  
18 wording says the park could also be this building --  
19 could have this building?

20 MS. KRIEGER: That's correct. Well, not the  
21 park. It just says that that particular area, which is  
22 designated visitor-serving harbor oriented.

23 SUPERVISOR PARKS: Well, because this -- I'm  
24 sorry. The last portion of the paragraph prior to what  
25 you just read said, "Further, the park could be

1 expanded either along the --" and it -- it's talking  
2 about the park.

3 MS. KRIEGER: Right. That's right.

4 SUPERVISOR PARKS: So then it goes, "A publicly  
5 owned and operated facility is also permitted."

6 MS. KRIEGER: In that area.

7 SUPERVISOR PARKS: In that park area.

8 MS. KRIEGER: Right.

9 In terms of policies, on page 50 of the  
10 document, going back further, I'll come in on 18, 19,  
11 and 20. Policy 18 on the top of page 50, it currently  
12 says "to ensure that lower-cost recreational and  
13 visitor-serving facilities are available to all income  
14 groups, picnic tables, public restrooms, pedestrian  
15 furniture, bicycle storage rack, small boat rental,  
16 berthing and sailing areas," and then added was "marine  
17 education facilities." And then it goes to the  
18 original, "and at least two lower-cost eating  
19 establishments."

20 In Policy 19 it says, "The four existing park  
21 areas, the public swim beach, and the BISC facility and  
22 uses shown on Figures 3, 4, 5, and 7 have been added."

23 And in Policy 20 it says, "All areas  
24 designated as public parks and beaches in Figure 4 of  
25 the plan shall be protected as open space and shall not

1 be developed or utilized for other uses without an  
2 amendment to the plan except as set forth in Policy  
3 19," where the BISC facility is (inaudible)

4 SUPERVISOR PARKS: If I may, then, prior to the  
5 amendment that you're suggesting, you had Item 20 that  
6 said it can only be used for open space.

7 MS. KRIEGER: Well, it said all areas designated  
8 as public parks, which we don't believe this area --

9 SUPERVISOR PARKS: Shall be protected as open  
10 space and shall not be developed --

11 MS. KRIEGER: Right.

12 SUPERVISOR PARKS: -- and then, "without an  
13 amendment to the plan." But you don't need to amend  
14 the -- the plan if you want to put item Policy No. 19  
15 in this public park open space.

16 MS. KRIEGER: Well, we are amending the plan. I  
17 mean, that's what this --

18 SUPERVISOR PARKS: To put --

19 MS. KRIEGER: -- is (inaudible)

20 SUPERVISOR PARKS: Okay, I just -- you understand  
21 where I'm going. We are putting the building in a park  
22 that was previously only allowed for open space.

23 MS. KRIEGER: Oh, yeah, there's -- there's some  
24 disagreement (inaudible) testimony.

25 SUPERVISOR PARKS: I -- I don't know if that's a

10

1 point of view if the words say it. You know, that  
2 "shall be protected as open space and shall not be  
3 developed or utilized for other uses." This is in  
4 reference to the public park. So I don't think it's an  
5 interpretation.

6 But now we're putting an exemption for a BISC  
7 in a public park that's designated for open space to  
8 this -- to this date.

9 SUPERVISOR BENNETT: Supervisor Mikels.

10 SUPERVISOR MIKELS: Well, to follow up on that,  
11 then do we have a picture of the map with the land use  
12 underlying designation? I don't believe that was  
13 designated parkland.

14 MS. KRIEGER: Well, that's where the disagreement  
15 has always been. And what we're trying to do is --

16 SUPERVISOR MIKELS: Is undisagreement it.

17 MS. KRIEGER: Yes.

18 SUPERVISOR MIKELS: Okay.

19 MS. KRIEGER: It's just make it clear where before  
20 clearly the County's Planning Department, the Coastal  
21 Commission staff, and in the EIR it was always found  
22 consistent with the existing plan, including the staff  
23 report from the Coastal Commission. So we believe it's  
24 clear.

25 But clearly there are enough people who don't  
11

1 believe that, that it seems in order to make it clear  
2 here and not argue anymore about what is park and what  
3 is not park, but to specifically allow the use. And  
4 even if it were a park. in many jurisdictions buildings  
5 for recreational purposes are allowed --

6 SUPERVISOR MIKELS: On parks, right.

7 MS. KRIEGER: -- in parks. It's not private  
8 development; it's a public use.

9 SUPERVISOR BENNETT: So my guess, Supervisor  
10 Parks, you -- we still have a disagreement, but do you  
11 under- -- did you hear?

12 SUPERVISOR PARKS: Well, it sounds like what the  
13 rules are on open space and parks there's no  
14 disagreement about. The disagreement is about whether  
15 this site is considered one of those parks or open  
16 space.

17 MS. KRIEGER: That's correct.

18 SUPERVISOR PARKS: And just to make sure there's  
19 no question about it, you're now allowing building of a  
20 BISC in the park or open space --

21 MS. KRIEGER: But --

22 SUPERVISOR PARKS: -- just in case that's how  
23 people interpret it?

24 MS. KRIEGER: But only a boating center. We're --  
25 yeah, we're making it specific.

12

1 SUPERVISOR BENNETT: Okay. Supervisor Flynn?

2 SUPERVISOR FLYNN: Yes. I assume that all of the  
3 underlinings in the public works document that is  
4 before us, those are changes; is that correct?

5 MS. KRIEGER: I believe there's one spot where we  
6 have a note that says this was originally underlined.  
7 I don't remember exactly where that is, but it's  
8 specifically noted. But other than that, yes, they are  
9 all changes.

10 SUPERVISOR FLYNN: And these -- these underlinings  
11 pertain, in your view, to a focus amendment, relate to  
12 a focus amendment?

13 MS. KRIEGER: That's correct.

14 SUPERVISOR FLYNN: All the underlines relate to a  
15 focus amendment of the Public Works Plan.

16 MS. KRIEGER: Well, there are a couple of areas,  
17 particularly in tables where the numbers didn't add up  
18 or were flatly incorrect even at the time it was  
19 written. And where we knew exactly what those were,  
20 they were corrected, but otherwise, that -- that's  
21 true.

22 SUPERVISOR FLYNN: And thirdly, these -- these  
23 underlinings that we're looking at represent answers,  
24 if you will, to the concerns of the Coastal Commission  
25 that were expressed at a Coastal Commission meeting.

13

1 The underlinings are -- are answering the findings; is  
2 that -- is that your thought?

3 MS. KRIEGER: No. They are not responding to the  
4 June findings. I have been told that the County does  
5 not recognize the June findings because there's  
6 disagreement about whether a decision was even made in  
7 February. See, we are specifically not responding to  
8 the findings, but we are responding to the written  
9 agreement we have with the Coastal Commission and the  
10 comments made at the February and June meetings.

11 SUPERVISOR FLYNN: Well, I -- Mr. Chair?

12 (Inaudible)

13 SUPERVISOR BENNETT: You still got the floor.

14 SUPERVISOR FLYNN: Do you have a copy of the  
15 letter, a memorandum to Lee Quaintance dated August  
16 3rd, 2004, from Chuck Damm, subject processing a public  
17 works plan amendment for the Boating Instruction and  
18 Safety Center in Channel Islands Harbor? Are you  
19 familiar with that?

20 MS. KRIEGER: No, I don't believe it was forwarded  
21 to us.

22 SUPERVISOR FLYNN: Let me -- let me just read a  
23 little bit. Maybe you will.

24 "The purpose of my sending this memo is to  
25 clarify that the Coastal Commission did agree to

14

1 process a public works plan amendment for the Channel  
2 Islands Harbor should the County choose to submit such  
3 an amendment.

4 "The intent of the amendment would be to  
5 include the Boating Instruction and Safety Center in  
6 the Public Works Plan. However, in agreeing to process  
7 an amendment to the Public Works Plan I want to assure  
8 you that the review and processing of the amendment  
9 will follow the Commission's regulations for such  
10 review and processing that one or more duly noticed  
11 public hearings will held -- be held by the Commission  
12 that legal basis for review will be consistency with  
13 the policies of the California Coastal Act. This is  
14 the normal process, and no exception to that process  
15 was made."

16 "As part of the Commission agreeing to  
17 process the Public Works Plan amendment submission the  
18 Coastal Commission retains full discretion as to its  
19 review and action on the amendment. Commission staff  
20 did indicate that the County -- to the County that we  
21 expect to process the amendment once it's deemed filed  
22 within four to six months."

23 And then my understanding is that both the  
24 County and the Commission retain their respective legal  
25 positions regarding the Commission's action on the BISC

15

1 this past February and that all legal proceedings are  
2 told during the time the Public Works Plan amendment is  
3 being processed.

4 You're familiar with that?

5 MS. KRIEGER: Oh, I don't know that I've seen that  
6 memo. But that is exactly my understanding of where we  
7 are.

8 SUPERVISOR FLYNN: Okay. That's --

9 SUPERVISOR BENNETT: Okay. Any other questions?

10 Thank you very much.

11 MS. KRIEGER: Thank you.

12 SUPERVISOR BENNETT: We will begin our public  
13 testimony. We're going to go with Mark Graves, and  
14 then we'll go to Marcia Marcus.

15 Oh, are you? Go ahead.

16 MR. GRAVES: Fight over who could get there  
17 first.

18 SUPERVISOR BENNETT: Right.

19 MR. JOHNSTON: Mr. Chairman? Excuse me one  
20 moment.

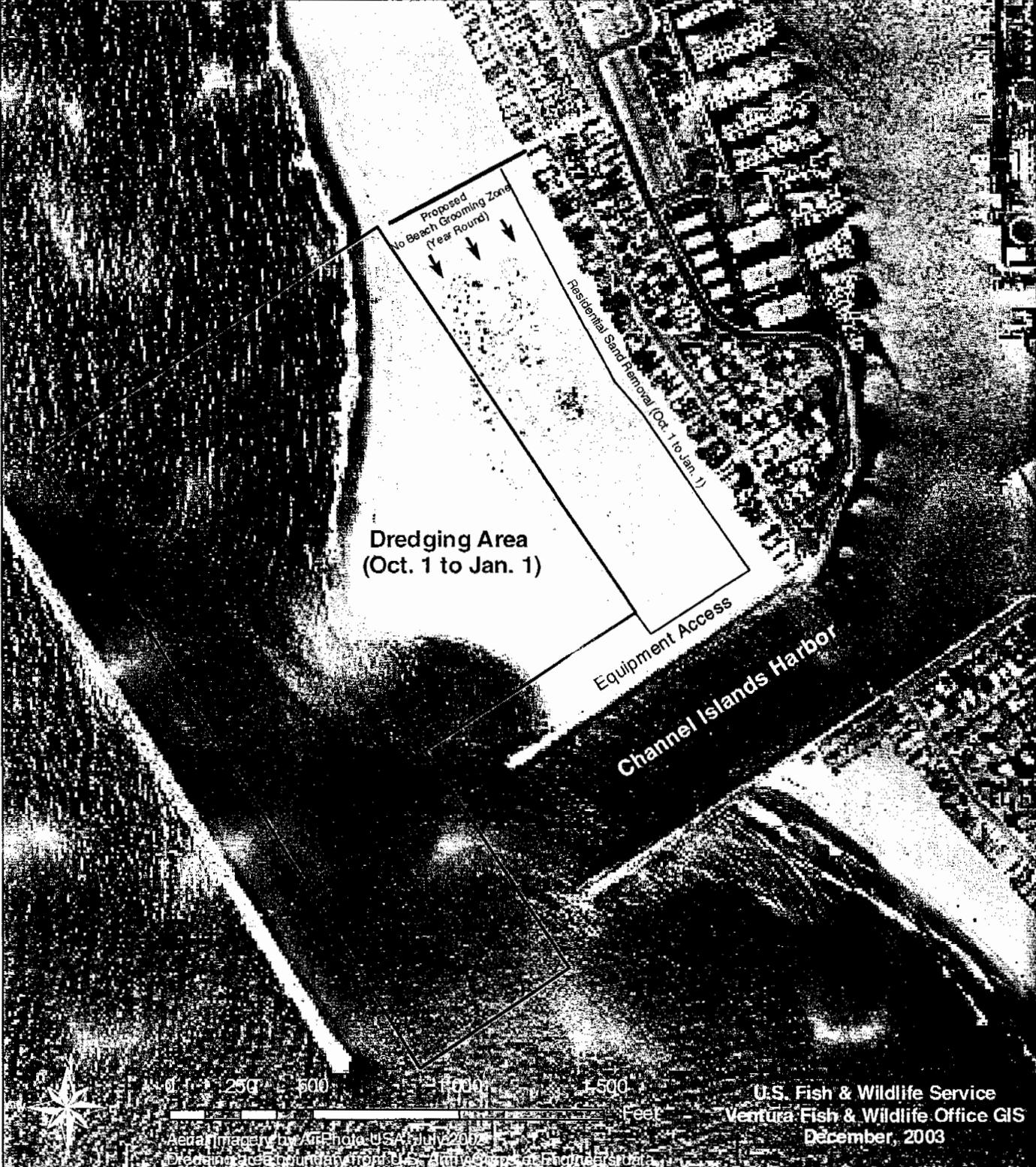
21 SUPERVISOR BENNETT: Excuse me.

22 MR. JOHNSTON: I -- I just would like to clarify  
23 that you are now opening the public hearing on Item No.  
24 33.

25 SUPERVISOR BENNETT: Well, thank you very much for

16

# Hollywood Beach Snowy Plover Management Area





## Habitat for Hollywood Beach

September 2004

### I. Mission

The mission of Habitat for Hollywood Beach (HHB) is to *preserve and enhance the biotic resources of the Hollywood Beach Peninsula, with a focus on the conservation of western snowy plovers and California least terns*. This mission will be accomplished by outreach, monitoring, protection, and advocacy. HHB is comprised of local citizens from Ventura County with a variety of backgrounds and experiences in grassroots conservation and conservation biology.

### II. Background

Throughout California and much of the United States, migratory bird populations have declined due habitat loss from human development, pollution, and nonnative species interactions. This is true for western snowy plovers (*Charadrius alexandrinus nivosus*) and California least terns (*Sterna antillarum browni*) throughout their range. These birds are both protected by the State and Federal Endangered Species Acts. On the Oxnard lowland, which includes Hollywood Beach, breeding western snowy plovers (plover) declined over 60% from 1989 to 1995 alone. The number of active California least tern (tern) breeding sites in California is limited to between 34 and 39 sites. Most of these tern breeding sites are decreasing or not increasing significantly in the number of birds, and most do not have good breeding success. In the past at Hollywood Beach, anthropogenic disturbances (recreation, beach grooming, dogs, etc.) inadvertently lead to unsuccessful nesting, and egg and chick mortality, and the eventual abandonment of the nesting site for these and other birds.

In the past few years, many birds have returned to Hollywood Beach, including the plover and the tern. Residents of Hollywood Beach are fortunate to have the opportunity to observe and assist in the recovery of the plover and tern, as they return to the beach to once again nest and fledge their young. At Hollywood Beach there exists a unique chance to enhance and protect this habitat, while still enjoying recreational activities. Small differences in activity and human behavior can lead to large changes in local plover and tern populations.

### III. Accomplishments to Date

Habitat for Hollywood Beach was formed in May 2004 by Dr. Jon and Jayne Ziv, Lorie Baker, Casey Burns, and Al Sanders. In August 2004, Western Alliance for Nature ([www.wanconservancy.org](http://www.wanconservancy.org)) director Lawrence Wan agreed to bring HHB under his organization as a branch group. (Western Alliance for Nature currently has a conservation program directed at Hollywood Beach.) HHB has been holding bi-weekly meetings since its inception to organize and carry out action items. Articles regarding HHB and its activities have already been featured in the Ventura County Star three times, the local Sierra Club newsletter, and on a Santa Barbara television newscast.

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here themselves next year

The first organized outreach effort of HHB centered on the potential impacts from the 4<sup>th</sup> of July weekend, 2004. The fireworks for the City of Oxnard are shot from Channel Islands Harbor, which forms the inland boundary of the Hollywood Beach peninsula. Tens of thousands of spectators descend upon the peninsula to enjoy the festivities. This represents an increase of visitors over a normal weekend by roughly a hundred-fold. HHB volunteers went door-to-door to educate the local residents on the sensitivity of the nesting birds to human disturbance. A docent program was organized over the 4<sup>th</sup> of July weekend to monitor the nesting area and to educate beach users. This program proved successful, but will have to be repeated yearly to avoid disturbance to the birds during their sensitive nesting period.

#### **IV. Goals**

Current action items include:

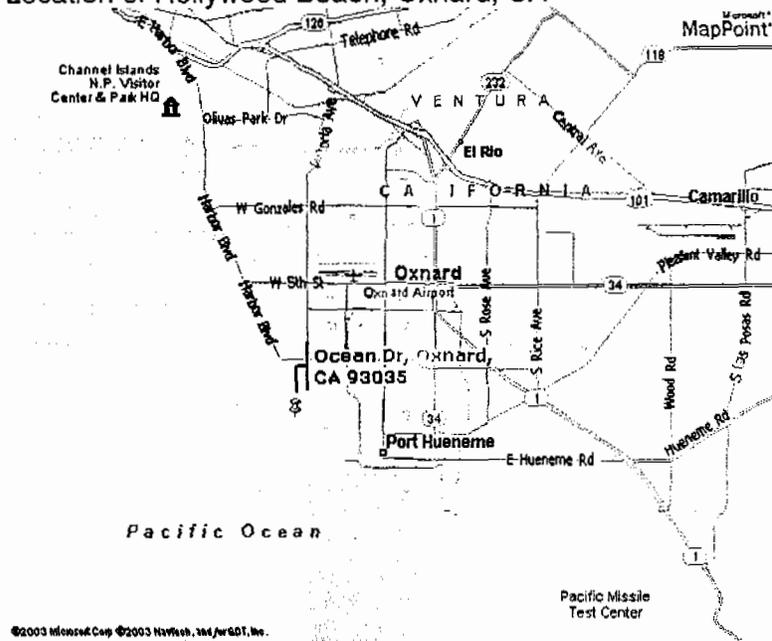
- Eliminate / relocate plane and helicopter low level flyover
- Continue with bird surveys in conjunction with Audubon Society
- Extend outreach activities to more local residents and beach users
- Educate for voluntary enforcement of existing dog leash laws
- Educate local city and county officials, and law enforcement
- Direct official and illegal on-beach vehicle disturbance and beach grooming
- Begin research projects to determine:
  - site fidelity
  - local fledge rates
  - rate of human intrusion
  - public opinion
- Determine and recommend enlarged recovery area boundary

#### **VII. Contacts**

<b>HHB:</b>	Gecey Burns 1028 Bath Ln., Ventura, CA 93001 (805) 258-3798 HabitatforHollywoodBeach@yahoo.com
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VIII. Attachments

**Attachment 1. Pin - Location of Hollywood Beach, Oxnard, CA**



**Attachment 2. Hollywood Beach Photographs**



1. western snowy plover in exclusion area



2. California least tern returning to nest



3. disturbance from low flying aircraft at HB



4. enclosure at HB



5. fence at HB

All photos by Jon Ziv

Page 2

**Matthew Schuman**  
4936 Amalfi Way  
Ormond, CA 93035  
(805) 944-2123  
matthewschuman@hotmail.com

RECEIVED

FEB 15 2005

California Coastal Commission  
89 S. California St., Ste. 200  
Ventura, CA 93001

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

RE: Amendment to Public Works Plan for Channel Islands Harbor

February 7, 2005

Dear Commissioners:

My name is Matthew Schuman. For three years, I was the Head Sailing Instructor at the Pacific Corinthian Youth Foundation in Channel Islands Harbor. I support the Ventura County Harbor Commission's proposed Boating Instruction and Safety Center at Bluefin Circle and ask that you approve the amended public works plan that would allow for its construction.

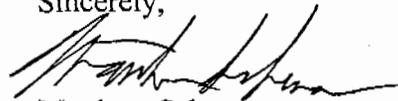
Amending the public works plan does not change the current description of use for this site -- it enhances it. Building the BISC at Bluefin Circle will allow a broader portion of the public to enjoy marine related activities. It grants direct access to the harbor and ensures on-the-water participation rather than limiting visitors to passively enjoying the view from the shore.

The proposed site also provides the safest and most accessible location for quality boating activities in Channel Islands Harbor. I have sailed and taught sailing in the harbor for over ten years. As Head Sailing Instructor at PCYF, I supervised all daily activities to ensure the safety and quality of instruction of over 150 children each summer and successfully collaborated with the Harbor Patrol and organizations throughout the harbor to avoid potential traffic problems and guarantee that the harbor remained accessible.

Having sailed at venues nationwide, I also know just how much I personally enjoy the beauty of Channel Islands Harbor. As a sailing instructor, I am proud to have seen the growth of PCYF, a non-profit foundation, whose outreach to underprivileged youth extends throughout Ventura County and provides them with this same opportunity. At PCYF, I watched children learn sportsmanship, responsibility, and values through their experiences in the harbor. The proposed BISC will allow PCYF and programs like it to continue to grow, increasing the benefits that their activities provide.

Please take advantage of this opportunity to maximize the benefits of Channel Islands Harbor while maintaining its beauty and integrity.

Sincerely,



Matthew Schuman

NOV 23 2004  
OFFICE OF THE DISTRICT MANAGER  
SOUTH CENTRAL COAST DISTRICT

November 23, 2004  
3413 Sunset Lane  
Hollywood Beach, CA 92035

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

Dear Mr. Timm,

I am very concerned about boating safety issues relating to the Channel Islands Harbor Public Works Plan Amendment that was approved by a 3 to 2 vote of the County Board of Supervisors on October 19, 2004. By now, this amendment has been received by your office.

I have a Master of Science Degree in Engineering and have retired from a successful thirty year career of engineering for major corporations. I am also a certified United States Coast Guard Auxiliary instructor for Boating Safety and Seamanship. (The opinions stated here are mine and not those of the USCGA.)

As I stated in earlier hearings on the EIR, the west side location of the BISC, where the west harbor channel enters the turning basin, places the young novice sailing students in the path of increasing recreational boating traffic ( the large number of new homes and docks/boats being added to the Seabridge and Westport developments) and in the path of large commercial fishing vessels, with limited clear visibility and maneuverability. This arrangement increases the probability of an accident involving BISC novice student sailors and increases the liability for recreational and commercial fishing vessels.

My testimony at the PWP Amendment hearings is attached. My testimony focuses on the inconsistency of the Amendment with the EIR. Inadequate but at least mandatory measures prescribed in the EIR to deal with the congestion are watered down and left entirely to Harbor Department discretion.. This is inconsistent with and a contradiction of the EIR. The permissive language of the PWP Amendment has not been subject to an environmental review and requires a supplemental EIR for this changed circumstance.

Sincerely,

  
Kenneth R Grim

10/19/04

K. Grim Input to Ventura County Board of Supervisors on PWP Amendment

When I began to review the amendment to the PWP, I expected to find changes in line with the suggestions from the Coastal Commission and which considered the BISC in context to an overall harbor plan minimizing contradictions and inconsistencies. Instead I found an amendment to rewrite history which added contradictions and inconsistencies with the EIR. The only purpose of amending the PWP was stated to be the addition of the BISC to the PWP. This is not the case in many instances.

One example is the statement, " 14. Public Safety, No change from previous analysis." On page 12 , An Addendum to Comply with the CEQA Guidelines, Section 15164.

In the PWP Amendment on page 59, states that " during periods of significant congestion, the Harbor will restrict organized on the water operations of the Boating Instruction and Safety Center. The types of congestion contemplated in this restriction would be holidays and weekends during peak periods."

This new language is added to an existing part of the PWP that specifies steps that the Harbor Department is only require to " consider" when congestion occurs .

This contradicts the mitigation on congestion in the Recirculated, EIR, page 281, Project Modification 29 which states, "The Harbor Department will, in coordination with the user groups of the BISC, allow operation of sailing classes on Monday through Friday. On holidays, Saturdays and Sundays, the Harbor Department will regulate the conduct of classes from the BISC in a manner that ensures maximum safety to non-powered sailboats and powered boats alike. The Harbor Department will coordinate with the Harbor Patrol office in making determinations concerning sailing classes."

The new PWP Amendment language gives total discretion to the Harbor Department to determine whether congestion exists and whether or not to do anything about it. The EIR mitigation required restrictions for safety on all "holidays, Saturdays and Sundays" The new language of the PWP Amendment only requires considerations of such restrictions in "peak periods" as determined by the Harbor Department. The PWP Amendment contains no mandatory restrictions and grants broad Harbor Department discretion. This is **INCONSISTENT WITH** and a **CONTRADICTION** of the EIR The permissive language of the PWP Amendment has not been subject to an environmental review and requires a **Supplemental EIR** for this changed circumstance.



## **Habitat for Hollywood Beach**

**September 2004**

### **I. Mission**

The mission of Habitat for Hollywood Beach (HHB) is to *preserve and enhance the biotic resources of the Hollywood Beach Peninsula, with a focus on the conservation of western snowy plovers and California least terns*. This mission will be accomplished by outreach, monitoring, protection, and advocacy. HHB is comprised of local citizens from Ventura County with a variety of backgrounds and experiences in grassroots conservation and conservation biology.

### **II. Background**

Throughout California and much of the United States, migratory bird populations have declined due habitat loss from human development, pollution, and nonnative species interactions. This is true for western snowy plovers (*Charadrius alexandrinus nivosus*) and California least terns (*Sterna antillarum browni*) throughout their range. These birds are both protected by the State and Federal Endangered Species Acts. On the Oxnard lowland, which includes Hollywood Beach, breeding western snowy plovers (plover) declined over 60% from 1989 to 1995 alone. The number of active California least tern (tern) breeding sites in California is limited to between 34 and 39 sites. Most of these tern breeding sites are decreasing or not increasing significantly in the number of birds, and most do not have good breeding success. In the past at Hollywood Beach, anthropogenic disturbances (recreation, beach grooming, dogs, etc.) inadvertently lead to unsuccessful nesting, and egg and chick mortality, and the eventual abandonment of the nesting site for these and other birds.

In the past few years, many birds have returned to Hollywood Beach, including the plover and the tern. Residents of Hollywood Beach are fortunate to have the opportunity to observe and assist in the recovery of the plover and tern, as they return to the beach to once again nest and fledge their young. At Hollywood Beach there exists a unique chance to enhance and protect this habitat, while still enjoying recreational activities. Small differences in activity and human behavior can lead to large changes in local plover and tern populations.

### **III. Accomplishments to Date**

Habitat for Hollywood Beach was formed in May 2004 by Dr. Jon and Jayne Ziv, Lorie Baker, Casey Burns, and Al Sanders. In August 2004, Western Alliance for Nature ([www.wanconservancy.org](http://www.wanconservancy.org)) director Lawrence Wan agreed to bring HHB under his organization as a branch group. (Western Alliance for Nature currently has a conservation program directed at Hollywood Beach.) HHB has been holding bi-weekly meetings since its inception to organize and carry out action items. Articles regarding HHB and its activities have already been featured in the Ventura County Star three times, the local Sierra Club newsletter, and on a Santa Barbara television newscast.

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re there are birds nesting year.

A first organized outreach effort of HHB centered on the potential impacts from the 4<sup>th</sup> of July weekend, 2004. The fireworks for the City of Oxnard are shot from Channel Islands Harbor, which forms the inland boundary of the Hollywood Beach peninsula. Tens of thousands of spectators descend upon the peninsula to enjoy the festivities. This represents an increase of visitors over a normal weekend by roughly a hundred-fold. HHB volunteers went door-to-door to educate the local residents on the sensitivity of the nesting birds to human disturbance. A docent program was organized over the 4<sup>th</sup> of July weekend to monitor the nesting area and to educate beach users. This program proved successful, but will have to be repeated yearly to avoid disturbance to the birds during their sensitive nesting period.

### Goals

Current action items include:

- Eliminate / relocate plane and helicopter low level flyover
- Continue with bird surveys in conjunction with Audubon Society
- Extend outreach activities to more local residents and beach users
- Educate for voluntary enforcement of existing dog leash laws
- Educate local city and county officials, and law enforcement
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  - local fledgling rates
  - rate of human intrusion
  - public opinion
- Determine and recommend enlarged recovery area boundary

### Contacts

B:	Casey Burns 1028 Bath Ln., Ventura, CA 93001 (805) 258-3798 HabitatforHollywoodBeach@yahoo.com
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# The Beacon Foundation

PMB 302  
Channel Islands Blvd  
Oxnard, CA 93035

RECEIVED

DEC 28 2004

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

December 28, 2004

Gary Timm  
District Director  
California Coastal Commission  
89 S. California Street, Suite 200  
Ventura, CA 93001

Re: PWP-MAJ-1-04  
Taking of Public Access  
Parks and Parking

Dear Director Timm:

Three letters<sup>1</sup> to the Commission by our Counsel John Buse detail our concerns regarding the proposed Amendment to the Channel Islands Harbor Public Works Plan (PWP). This letter focuses on **diminished public coastal access** caused by taking park and parking resources for the Boating Instruction and Safety Center (BISC) project.

**1. Parks.** Commission staff has consistently rejected the County contention that the BISC site is not a park protected by Policy 19 and Policy 20 of the PWP. The findings adopted by the Commission on June 9, 2004 affirm the staff position.

The County has also grossly understated the amount of park taken. Its EIR it states the taking is 800 sq ft. At the Commission BISC hearing on February 19, 2004, we presented<sup>2</sup> the County site diagram (Attachment One) colored to depict the taking. Colored blue on the diagram is 1,700 square feet of existing park covered by the BISC building footprint. Colored Green is 2,300 square feet of existing park enclosed within the gated and fenced BISC compound. We testified that these two takings total 4,000 square feet of park that is eliminated by the BISC. The County preparer, Andi Culbertson, told the Commission:

*"There was a comment made that 4000-square feet is what is occupied at the park. That is false. I have measured it, and I have had an engineer measure it, and the lawn area is generously estimated at 800-square feet ...."<sup>3</sup>*

The County has belatedly but only partly recanted this misstatement by an EIR amendment approved on October 19, 2004 and submitted to the Commission as part of the Amendment. It states the County *"retained a civil engineer to review the drawing ..."* and determined that: *"The turf area actually occupied by the building shown on Exhibit 49 is approximately 1500-1700 square feet."* This validates our 1,700 square foot calculation for the building footprint. We calculated the additional area taken by the fenced and gated BISC compound using the same method we used for the footprint. **Even in the Amendment, the County persists in mischaracterizing the area as "turf" rather than a protected park. It replaces its prior misstatement of the size of the taking with a half truth. It admits its error regarding the footprint while ignoring the additional taking of park by the fenced and gated BISC compound.**

<sup>1</sup> September 23, 2004, October 19, 2004 and November 15, 2004

<sup>2</sup> Certified Transcript pages 44-47

<sup>3</sup> Certified Transcript page 66.

Any taking of protected park is contrary to clear preservation requirements of the PWP. An encroachment even of 800 square feet (and it is actually five times that) requires a PWP Amendment. The purported Amendment filed with the Commission imposes the BISC on PWP Policies 19 and 20<sup>4</sup> by fiat. It simply pastes the BISC on as a like thing to a designated park, beach or open space. This rhetorical designation of "park" as "BISC" defines two unlike things as the same thing. It is illogical and inconsistent on its face. This is demonstrated by the Policy 19 requirement, even after amendment, that facilities designated therein "*shall be protected for general public use.*" The BISC is a special purpose facility with primary use by enrolled students of California State University. Any secondary users must be enrolled in some program that gains approval to use the facility at times not needed by the primary user. This is a pay for use facility imposed on a public park actively utilized for coastal access by the general public without enrollment or fee of any kind. Taking this free park for a fee use is contrary to Coastal Act and PWP protections for low cost recreational users and is an issue of environmental justice.

The County states an intention to more than replace the "turf" it is taking with other "landscaped area" to be created from present roadbed abandoned in reconfiguration of the site. There is no actual commitment by the County in any stated time frame to convert the roadbed to "landscaped area." Additionally, **parks are not fungible**. Specific parks are protected under the PWP and this roadbed is not one of them. Further, much of the roadbed is located with its view of the water blocked by the backside of two existing restaurants. The entire area of existing protected park appropriated by the BISC project is qualitatively superior to the roadbed. It has mature trees and all of it has unobstructed views of the water.

**2. Parking.** The Amendment packet<sup>5</sup> submitted to the Commission by the County contains raw utilization data for parking lots in the vicinity of the BISC project. This consists of photos taken at intervals on the Labor Day weekend in 2004 and charts stating the lots were variously 46% to 100% "*full during maximum demand.*" The only interpretation of the data is by Director Krieger in her October 17, 2004 cover letter statement that the 2004 study shows "*parking is underutilized in this area.*" This statement completely misunderstands the role of parking enunciated in the Public Works Plan.

The Public Works Plan contains a parking lot demand study conducted on the Labor Day weekend in 1985. It showed<sup>6</sup> "ample" public parking in the lots nearest the area now proposed for the BISC. This was not seen as "underutilization" but as fulfillment of an PWP objective. The PWP approaches Harbor parking as an organic whole. It specifically states a goal through shuttle buses and other means to balance low use in one area with high use in another. "Ample" and free public parking is a key PWP program to assure maximum public coastal access. The County 2004 Labor Day study does nothing more than show that the Plan objectives are being achieved with the present activity level in the Harbor. In no way does it justify absorbing new project parking demand within existing parking.

<sup>4</sup> See annotated version of proposed Amended Public Works Plan, page 50

<sup>5</sup> Please note that this "packet" includes materials not seen or approved by the Board of Supervisors. Not part of the materials reviewed by the Board for its October 19, 2004 approval of the amendment, are the parking and heronry studies.

<sup>6</sup> See annotated version of proposed Amended Public Works Plan, page 44 et. seq.

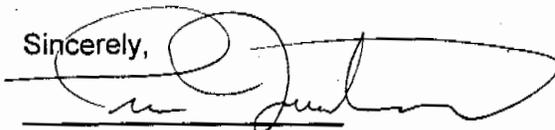
The new parking data fails to even consider BISC parking demand. The "study" is not only devoid of consideration of parking usage by BISC users but also fails to consider the parking impact of elimination of existing parking by the BISC and its fenced compound.

The diagram we presented at the February 19, 2004 Coastal Commission hearing (Attachment One to this letter) shows the elimination of existing parking by the BISC project. Colored on the diagram in yellow is more than 15,000 square feet of existing parking area that will be taken by the BISC building footprint and by its gated and fenced compound. In addition pursuant to the County EIR<sup>7</sup> 118 parking spaces in the immediate vicinity of the BISC are to be signed and enforced as "BISC Use Only" parking spaces. The Harbor Director may seek to make these spaces available to other users when the BISC is not in use but no method of doing so is indicated. Obviously, this signage will place these 118 spaces out of general public use.

The proposed reconfiguration of the area depicted in Attachment One reduces the present existing spaces available in the area by more than 100. In addition all of the surviving spaces, depicted in salmon color on the diagram, will be signed for "BISC Use Only." The net effect is the elimination of more than 218 parking spaces from general public use. This appropriation of existing parking requires analysis and an Amendment to the PWP. **The submission received by the Commission makes no Amendment to existing PWP parking provisions.**

**3. Conclusion.** Appropriation by the BISC project of a protected park and parking has a direct and negative effect on public coastal access. We call on the Commission to uphold the PWP as the only existing charter document for the Channel Islands Harbor. If the County wishes to fundamentally revise this charter it must follow the proper process for a comprehensive amendment. Meanwhile, it may not ignore requirements of the present PWP and be permitted to "paste" in new projects. The proposed Amendment before you is defective and incomplete and severely diminishes protections for public coastal access. It should be rejected.

Sincerely,



Lee Quaintance  
Secretary

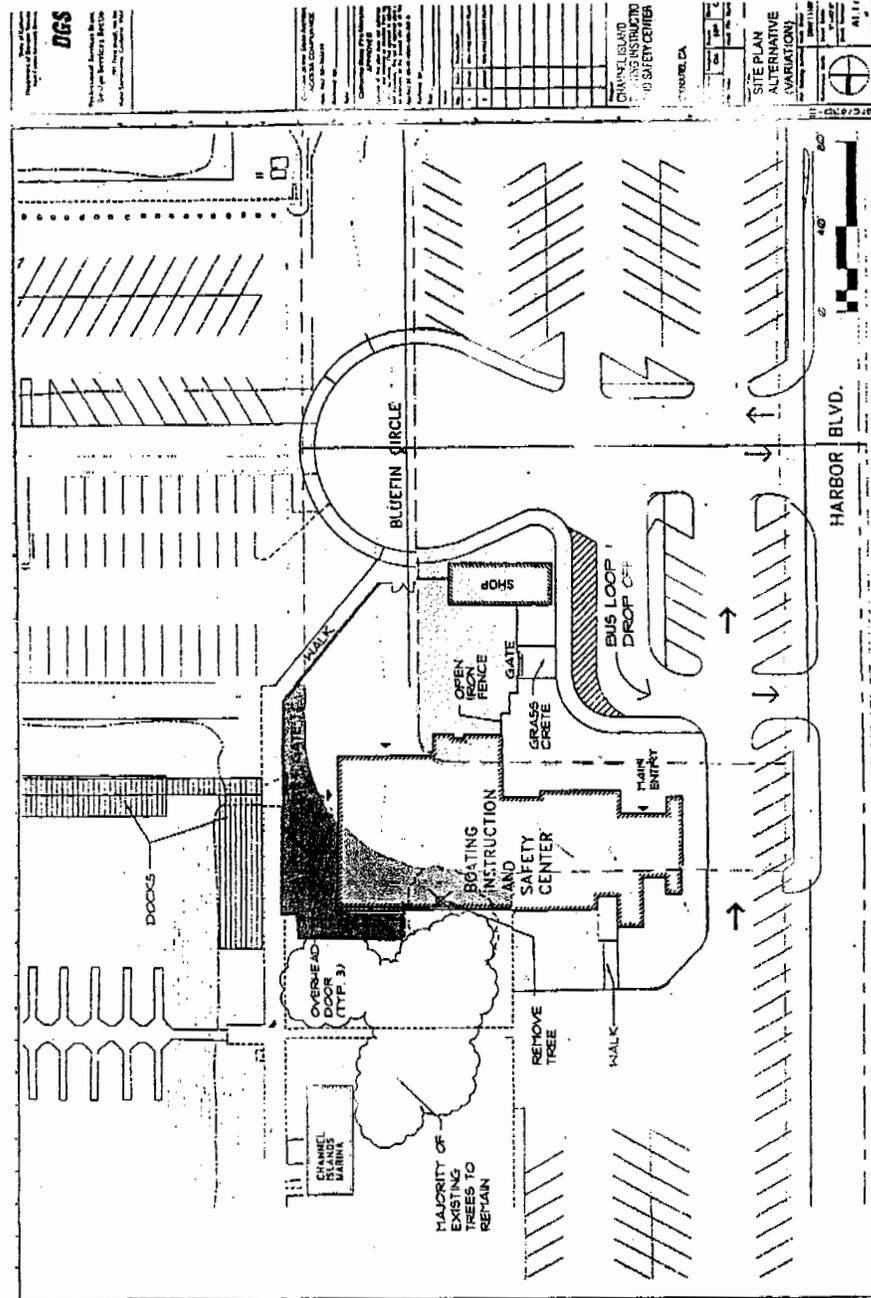
Attachment

<sup>7</sup> EIR Project Modification number 27, page 252 and 349

# TAKING OF PUBLIC PARK AND PARKING

Th7

Exhibit 9



- 2,300+ sq. ft. of existing park taken by fenced compound.
- 1,700+ sq. ft. of existing park taken by building footprint.
- 15,000+ sq. ft. of existing parking area taken by building footprint and compound.
- 100 of the 118 parking places to be permanently posted as: "BISC use only"

This project diagram is attached to the Notice of Impending Development as "the approved project site plan." The County claims it "only occupies approximately 9800 square feet of turf." The area of existing park taken by the project is actually more than 4000 sq. ft.

The CCC Staff Report relied on the false County data stating: "approximately 800 sq. ft. of designated park area will be displaced by the BISC."

Condition 5 is based on the false data. This taking requires a PWP amendment. In a Notice process, Condition 5 needs to be rewritten to state:

**Revised Condition 5: The project may not take designated park area and must not displace public parking access to designated park area.**



# The Beacon Foundation

PMB 352  
3344 W Channel Islands Blvd  
Oxnard, CA 93030

Received  
11/16/04

November 12, 2004

Barbara J. Carey  
Coastal Program Analyst  
California Coastal Commission  
89 South California Street  
Ventura, CA 93001

Re: Permit Application # 4-04-097  
Vintage Marina, Channel Islands Harbor

Dear Ms. Carey:

The Beacon Foundation is a nonprofit environmental organization focused on coastal Ventura County. We have reviewed the above file and have concerns we wish to draw to your attention. We also request by this letter to be placed on the distribution for all notices or actions regarding this Permit Application or regarding any Notice of Impending Development or Public Works Plan Amendment that may be filed with regard to this project.

**A primary and threshold concern is that the application is so incomplete that the project is not fully described.** We note that by a letter of October 19, 2004 you have requested additional information. Based on the data at hand we have identified these concerns:

**1. Issue of NOID or PWP Amendment for landside development.**

Your letter of October 19, 2004 indicates that landside portions of the project are not in the area of original permit jurisdiction of the Commission and will need to be evaluated via a Notice of Impending Development (NOID) process. We suggest that there is insufficient information in the Application to determine whether an NOID or a Public Works Plan (PWP) Amendment will be necessary for the landside portion. If the landside development is not consistent and contained within the PWP then a Plan Amendment rather than a NOID will be needed. Among key factors not clear from the Application, is whether buildings to be demolished are replaced entirely on the same footprint; the square footage of replacement structures compared to existing structures is not stated; replacement building heights are not disclosed; and it is unclear whether there are any entirely new buildings.

**2. Interdependency with the Boating Instruction and Safety Center (BISC) Project.**

The BISC project is the subject of extensive proceedings before the Coastal Commission as NOID 1-04. At a hearing on June 9, 2004 the Commission adopted Findings confirming its determination at a two and one half hour hearing on February 19, 2004. The Commission found that the BISC project is not contained within or consistent with the approved 1986 Public Works Plan and that the project could not be processed as an NOID. The County is

now seeking approval of the BISC project via an Amendment to the Public Works Plan filed with the Commission on October 27, 2004. The Findings approved June 9, 2004 are relevant to the Vintage Marina project as will be pointed out below. The marina project and the BISC project are proposed on physically adjacent sites in the Channel Islands Harbor (see pages 18-19 of the Vintage Application that includes depiction of the BISC building and compound). In addition to being physically adjacent, these two projects are functionally intertwined.

- *Slip Count and Public Availability.* Approximately 24,000 square feet of dock space and 25 slips in the Vintage Marina project are to be dedicated for use by the BISC. Those slips are not available for lease to the general public. The Application presented by Vintage does not describe the BISC component of its project. Among the resulting unanswered questions is whether the 405 slips stated in the Vintage application include the BISC dedicated slips. The findings in NOID 1-04 (page 12) state that the elimination of the recreational spaces for BISC use is inconsistent with Policy 3 of the PWP. This same inconsistency is operative in the Vintage Marina project.

As presented in the Application, the Vintage project contains 87 less slips than the existing marina total of 592 slips. Whether or not the applicant's 405 slip count includes slips dedicated to the BISC is unknown. If the 25 slips lost to BISC use are in the 405 total then the number of slips lost to general public use is actually 112 rather than 87. The Marina project eliminates 15% (87) or 19% (112) of the public slips and this further compounds inconsistency with Policy 3 of the PWP.

- *Extension of Pier Heads.* The Vintage Application (pages 18-19) depicts the project extending 20 feet **beyond the present pier head** into the Harbor main channel waterway. The new area would be developed into slips and tie downs. This incursion into the waterway does not appear to be included in the lease the County has granted to Vintage. This proposed building into the main channel creates congestion and safety issues for boating classes the BISC proposes to operate in the portion of the channel immediately adjacent to the Vintage project. These effects are not considered in the Vintage Application. The Findings adopted by the Commission in the BISC matter recognize that the PWP states the Harbor will be completely "built out" with construction of projects scheduled in PWP Table 1. Neither the BISC nor extension of the Vintage marina 20 feet further into the Harbor main channel is contained in Table 1. Therefore, a PWP amendment (as required by the Commission findings for the BISC project) should be required for any expansion of the Vintage project beyond the existing pier heads.

The Amendment to the PWP filed with the Commission for the BISC project seeks to alter the PWP restriction on new construction by adding the word "basins" so the restriction would read "the Harbor basins will be completely built out." Were this amendment to be approved, the restriction on expansion of the Vintage project beyond the present

pier head would be even more clearly forbidden without submission and approval of an Amendment to the PWP to allow such expansion.

Aside from the "built out" restriction, the proposed expansion beyond the existing pier head lines is already specifically prohibited by existing Policy 3 g (page 68) of the PWP providing:

The existing open water areas in the inner Harbor, as depicted on the Land Use Map as 'Waterways' and as defined by existing pier head lines at the time of original approval by the California Coastal Commission of the Harbor's Public Works Plan, shall not be developed with surface structures of any kind, floating or otherwise, except in cases of emergency where temporary structures are required.

The stated total of 405 slips in the reconstructed marina includes slips and tie downs gained by extension of the pier heads. Unless this extension is approved by a PWP amendment the number of slips available for public use will be even further reduced counter to Policy 3.

### **3. Loss of Lower Cost Recreational Facilities**

The Vintage Application (page 5) asserts that the project will protect existing "lower cost visitor and recreational facilities." However, the application never considers the effects of the substantial decrease in the number of slips (see point 2 above) or the consequences of the drastic decrease in the number of slips 30 feet or less in length used by smaller vessels. This reduction of lowest cost slips used by small boats is obviously a negative impact on lower cost recreational facilities.

Another impact on lower cost facilities not evaluated in the Application, is the effects of phasing of the redevelopment. The Applicant claims that nearly one quarter of the slips in the project will be for vessels 30 feet or less in length. However, the project will be developed in phases and no information is provided on how this phasing will affect the mix of slips. Will there be one or more points in time when less than one quarter of the operational slips are 30 feet or less? How long will any such phase last? If phasing of the development results in a decrease in the ratio of small slips to large slips then the project falls disproportionately on the lower cost slip users. The diagram of the project in the application suggests this impact may well occur when the southern basin is built out since the new configuration appears entirely reserved for larger slips.

### **4. Exemption from CEQA**

The Application claims categorical exemption from CEQA pursuant to Guideline 15302. This Guideline describes a Class 2 exemption as one applicable to replacement of existing structures and facilities on the same site and for "substantially the same purpose and capacity as the structures replaced." The substantial diminution in the absolute number of slips available to the public for recreational boating and the disproportionate impact of this decrease on lower cost slips makes a Class 2 exemption inappropriate for this project.

Further, the Guideline Section 15300.2 may make a categorical exemption inapplicable due to cumulative impacts or "... where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The Vintage project application fails to consider impacts of this action in conjunction with the interrelated BISC project and so there are cumulative impacts requiring analysis.

The existence of significant effects of the project due to "unusual circumstances" is clearly present. As is demonstrated in the County filing NOID 1-04, the BISC project is partly on a public park containing an established rookery for a colony of black-crowned night heron. The Coastal Commission staff addendum dated June 7, 2004 to its staff report on the BISC notes this rookery has been confirmed by the California Department of Fish and Game. The Commission Finding adopted June 9, 2004 states: "... the degree of tolerance or adaptability of the heron to future development cannot be accurately predicted and might be quite different during or after construction of the BISC." The Commission further stated it was not convinced the draping of trees to prevent nesting use is "the least damaging alternative." The findings suggest greater protections are needed.

**The Vintage project is immediately adjacent to the same heron rookery. It's landside buildings are in the very park where the BISC is proposed. The most direct access to The Vintage docks is a pathway underneath nesting trees and some of the present and proposed Vintage buildings are less than 20 feet from nesting trees.**

The application notes that all the present buildings and docks will either be extensively remodeled or demolished. It is contemplated that the demolition and construction will extend over several years. Despite the obvious potential for disruption of biological resources during or after construction of the Vintage project there is no recognition of impacts by the Applicant. In fact, **the biological survey provided in the Application does not even list the black crowned night heron among species found in proximity to the project site.** This September 20, 2004 document in support of the Applicant's Notice of Exemption was prepared by Rincon Consultants Inc.

The omission of the black-crowned night heron is bizarre and very troubling since it was this very same consulting firm, Rincon Consultants Inc, that first confirmed the existence of the heron rookery. Its original findings are contained in the attached letter of August 30, 2001 to the preparer who was then engaged by the County of Ventura to do the environmental documentation for the BISC project.

The Rincon biological assessment of August 30, 2001 specifically finds this heron rookery to be (page 2) "a sensitive biological resource ...." The obvious probability that the Vintage project, just as the BISC project, may have a significant effect on the environment makes any exemption to CEQA inapplicable to this project. The project must comply with CEQA analysis requirements.

Sincerely



Lee Quaintance, Secretary

Encl.

cc: Gary Timm



Rincon Consultants, Inc.

790 East Santa Clara Street  
Ventura, California 93001

805 641 1000  
FAX 641 1072

info@rinconconsultants.com  
www.rinconconsultants.com

August 30, 2001.

Ingrid Else/ Associates  
3875 Telegraph Road A155  
Ventura, CA 93003

Attention: Ingrid Else

Reference: Channel Islands Boating and Instruction Safety Center Project  
Biological Assessment

Dear Ms. Else:

Rincon Consultants has conducted a limited biological assessment of the above referenced project and prepared the biological assessment section of an Initial Study (attached). The project is located within the Channel Islands Harbor at a previously urbanized location, a portion of which is a strip park adjacent to the harbor waters. According to the information previously provided, a heron rookery had developed in the non-native trees within the park. Information supplied by an employee of the Channel Islands Marina, located adjacent to the park, indicated that this past spring and summer, 12-20 Black-crowned night heron nests, 2 Great blue heron nests, and two Snowy egret nests were located at the site. Two Great blue heron nests are also located to the north of the site along Barracuda Way.

The field investigation conducted on August 14, 2001 confirmed the presence of Black-crowned night-herons, with several probable nests observed in the trees within the park, extensive fecal droppings on the trees, and an adult and five juveniles observed within a large pine tree near the water. The presence of juveniles confirm the use of the site for nesting since the young are normally not far from their nests at this time of the year. Figure 1 (attached) illustrates the location of the heron rookery.

Heron rookeries are considered sensitive by the California Department of Fish and Game because of their relative scarcity. Rookeries are locations where a large number of the same or like species gather to breed within a limited area. This colonial nesting habit provides greater protection to the eggs and young from certain predators (mostly other birds such as crows and hawks) because the colony's adults can protect several nests or young during the absence of the parents. The California Department of Fish and Game (Morgan Wehtje) and local birding enthusiasts were contacted for information regarding any other known locations of heron rookeries or nesting activity. This site was the only active one known to still be present, though it is likely that black-crowned night heron nesting also occurs at the mouth of the Santa Clara River (possibly within the adjacent Ventura Wastewater Treatment Facility) because of past observance of juvenile birds in this location. A rookery formerly occurred at an elementary school in Fillmore near the fish hatchery but was reported



abandoned by Morgan Wehtje due to tree trimming and thinning. Nesting is still expected to occur somewhere in the vicinity of the fish hatchery because of observance of juveniles in this vicinity this last spring season, but the location of any large rookery is not known. Great blue herons are known to nest in either individual nests or small (2-3 nests) groups at Lake Casitas, but no rookery is known to have formed. Great blue herons may also nest locally in the eucalyptus trees along the base golf course at Port Hueneme.

The limited occurrence of rookeries causes the onsite rookery to be considered a sensitive biological resource from a local perspective, despite the fact that it is located within an urban area and within a habitat that did not exist until the harbor was constructed on dry land in the 1960's. Since it is a sensitive resource, the removal of the nesting trees for the boating safety center is considered a significant impact under the California Environmental Quality Act and mitigation is required. Avoidance, minimization of impacts, restoration, and compensation are the primary mitigation methods available in order of preference. Therefore, the preferred mitigation measure is to move the proposed center to the similar land area located at the southeast corner of Bluefin Circle. If land leases or similar obstructions limit the feasibility of this measure such that it cannot be accomplished, it is possible that the rookery could be moved (re-established) in another location based on the fact that it has developed at this site within the last 40 years. The parkland at the south end of Bluefin Circle (the alternative center site) could serve as the new rookery. Preferably, the existing trees could be transplanted to the new location in the same density pattern as at the project site. Site specific design should also avoid as many trees at the project site as possible, particularly the large pine tree near the water's edge that serves as a roost. It is noted that the current trees are in relatively poor shape, due largely to the heron excrement. If the existing trees cannot be successfully moved and transplanted (per an arborist's opinion), then a similar grove should be developed at the relocation site. This latter measure could cause a few year's loss of nesting activity at the site, but eventually, the rookery would be expected to become re-established.

Thank you for choosing Rincon Consultants for this analysis. If you have any questions, please feel free to contact us.

Sincerely,

RINCON CONSULTANTS, INC.

Duane Vander Pluym, D. ESE

Principal

Exhibit 9



RECEIVED

SEP 23 2004

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

September 23, 2004

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

Steve Bennett, Chairman  
Ventura County Board of Supervisors  
800 S. Victoria Avenue  
Ventura, CA 93009

RE: Public Works Plan Amendment for Ventura County's Boating Instruction and Safety Center, Channel Islands Harbor

Dear Mr. Timm, Chairman Bennett, and Supervisors:

This office represents The Beacon Foundation, which has a long-standing interest in the proposed Channel Islands Harbor Boating Instruction and Safety Center (BISC).

In June, the Commission adopted findings in support of its February decision rejecting Ventura County's Notice of Impending Development for the BISC. These findings made clear the Commission's position that the County's Public Works Plan for Channel Islands Harbor would have to be amended to accommodate the BISC in its proposed location and configuration. It is our understanding that the County now intends to prepare and submit to the Coastal Commission for approval a Public Works Plan (PWP) amendment. The purpose of this letter is to outline our view of the minimum requirements of any PWP amendment for the BISC.

In addition, we would welcome the opportunity to meet with you to discuss our concerns regarding the PWP amendment.

On-site Biological Resources

As approved by Ventura County, the BISC would be located adjacent to trees and within parkland used by nesting black-crowned night herons. The project would require removal of one tree (described as a "non-nesting" tree, although the actual trees used for nesting varies from year to year), and would be within 3 to 5 feet of nesting trees. In the Revised Findings for Notice of Impending Development 1-04 (May 2004), the Commission expressed doubt that a mitigation measure that would cover nesting trees



with netting but allow construction to proceed during the nesting season was the least damaging alternative.

In addition, the Commission noted that "the PWP does not contain policies to adequately protect the heron rookery from impacts associated with construction and permanent placement of new buildings adjacent to the park. Had the PWP anticipated future construction of a specific project in that location it is likely that the PWP would have contained additional protective policies in addition to Policy 2 . . ."

Accordingly, any PWP amendment must include new policies adequately protecting significant terrestrial biological resources in Channel Islands Harbor, including nesting and roosting black-crowned night herons and great blue herons. Moreover, any amendment should require avoidance or mitigation of impacts to such resources, including adequate buffers during both the construction and operational phases of new development.

While the Commission did not address designation of the area containing nesting herons as environmentally sensitive habitat, the County should undertake a reconsideration of such a designation as part of the amendment process. In connection with this consideration, the County should consider the extent and location of other heron nesting habitat available in Channel Islands Harbor. This analysis is essential because the County has alleged that there are alternative nesting trees available and that the herons affected by the project constitute part of a larger harbor population. Thus, this analysis is necessary in order to evaluate the direct and cumulative effect of impacts to the larger population.

#### Off-site Biological Resources

BISC activities would include off-site boat launch and kayaking at nearby Hollywood Beach. In order to conduct these activities, participants would have to traverse areas occupied by nesting snowy plovers and/or least terns. The Commission's Revised Findings note that the County's proposed mitigation, requiring consultation with the US Fish and Wildlife Service, does not address current snowy plover nesting activity at Hollywood Beach. The Findings further state that "the PWP contains no specific policies requiring mitigation or protective measures for western snowy plovers during nesting season. The lack of specific provisions in the PWP for the BISC project at this location should be viewed in tandem with the lack of adequate setback or buffer and other protective policies."

Additional information has come to light since the Commission adopted the Revised Findings indicating that snowy plover and least tern nesting at Hollywood Beach is more prevalent than previously believed. The snowy plover is a federally-listed threatened species and Hollywood Beach is designated as critical habitat. The least tern is a federally-listed endangered species and is considered a "fully protected species" under

state law, which prohibits any "take" of least terns. The area qualifies as environmentally sensitive habitat under the Coastal Act, and plover and tern habitat should be so designated in connection with the County's application and the Commission's review of the BISC PWP amendment. We will provide a map of snowy plover and least tern nesting areas based on the most recent information to guide ESHA designation. In addition, the PWP amendment should adopt policies requiring avoidance, setbacks, and mitigation measures for snowy plovers and least terns.

### Harbor Development

The Commission's Revised Findings note that the current PWP includes statements that the Harbor is completely built out. The Findings further state that "the Commission does not agree that the BISC is a project that is specifically contained in or provided for pursuant to the certified PWP because there is no reference to the specific project, including the type, size, or location of the project, contained in the PWP." Accordingly, any PWP amendment for the BISC must address both the "Harbor is built out" and the "BISC is not contained in the PWP" aspects of the current PWP. If the County proposes to carve out an exception to the "Harbor is built out" limitation, it must evaluate pursuant to CEQA the effect of removing this limitation on Harbor growth recognized by the Commission.

The Findings further state that the current PWP "contains ambiguous or contradictory statements and policies relative to allowance of future development." The County has also stated on numerous occasions that the PWP is ambiguous and internally inconsistent. Any PWP amendment must resolve these ambiguities and inconsistencies in order to provide the clearest possible guide for future Harbor development. Because the current PWP allows only very limited new development in the Harbor (essentially limited to new construction on one designated parcel other than the BISC site and/or minor expansion of no more than 10% of the floor space in existing structures), additional environmental review is necessary to evaluate the growth-inducing and cumulative impacts of any relaxation of this limitation.

### Parks

As approved by Ventura County, the BISC would occupy a portion of a public park. The Commission's Revised Findings concluded that the current PWP does not contain authorization to convert 800 square feet of parkland that would be occupied by the BISC. The Beacon Foundation has measured the parkland affected by the Project and concluded that the area occupied by the BISC and attendant enclosures is actually in excess of 4000 square feet. In any case, a PWP amendment must address any encroachment on parkland inconsistent with current PWP Policies 19 and 20. If the County proposes to carve out an exception to these policies for the BISC, it must evaluate the direct and cumulative loss of parkland, as well as the adverse precedent associated with piecemeal exceptions to the current policies protecting public parks.

During the history of the BISC project, the County has adopted a variety of contradictory positions regarding the parkland at the BISC location and elsewhere in the Harbor. At various times, the County has denied that the BISC will affect parkland at all. More recently, the County has acknowledged the impact, but argued that the loss is mitigated by providing replacement "green areas" despite the fact that PWP Policy 20 absolutely prohibits development of parkland without a PWP amendment. In general, the County has tended to minimize the extent and value of parkland at the BISC site and throughout the Harbor. Accordingly, it is essential that the County provide a full inventory of parkland throughout the Harbor in connection with the BISC PWP amendment in order to evaluate the project's direct and cumulative parkland impacts and to avoid future parkland conversion controversies.

Finally, any PWP amendment must be consistent with the Coastal Act's policy regarding lower cost recreational facilities, which states that "[l]ower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred." Pub. Res. Code § 30213. The parkland that would be occupied and enclosed by the BISC is a low-cost recreational amenity that provides coastal access and recreational opportunities to the public. The BISC, in contrast, would provide only limited public access for paying visitors.

#### Boating and Coastal Access

The Commission's Revised Findings concluded that "the elimination of 22 recreational boating spaces caused by the construction of the BISC is neither consistent with Policy 3 [of the PWP] nor is authorization for this specifically contained in the PWP." The loss of recreational boating spaces must be addressed in the PWP amendment either through modification of the existing recreational boating policies consistent with the Coastal Act or through actual establishment of replacement slips in the Harbor.

In an earlier comment on the County's Mitigated Negative Declaration for the BISC, Commission staff noted that the BISC project does not appear consistent with the intent of PWP Policy 5 regarding the maximization of pedestrian waterfront access (Bonnie Luke June 17, 2002 letter). Although the County subsequently prepared an EIR and revised the project, this concern still has not been adequately addressed. In particular, BISC site plans indicate that the BISC and its enclosures will obstruct existing pedestrian walkways that currently provide direct waterfront access. PWP Policy 5 requires that "[a] promenade walkway shall be provided along the Harbor frontage for all new development." The County must provide such access as part of the BISC or amend the PWP consistent with the public access requirements of the Coastal Act.

#### View Corridors

Although the Commission's Revised Findings did not specifically address the BISC's consistency with the PWP policy protecting Harbor view corridors, this issue has been

raised previously by Commission staff. In particular, the June 17, 2002 letter from Bonnie Luke commenting on the County's Mitigated Negative Declaration for the BISC stated that it is the Commission staff's opinion that the BISC obstructs a mapped view corridor that is afforded "special protection" under the PWP, and that this obstruction is inconsistent with the PWP.

The narrative portion of the PWP (p. 42) states that areas designated on the PWP Access Map as view corridors "will receive special protection." PWP Policy 22(a) defines a view corridor in the Harbor "as that area between the roadway and the roadway [sic] and the water which is not occupied by buildings, solid walls or fences, or landscaping which might interfere with the view of the water or water surface activity from the roadway." The purpose of Policy 22 is to "ensure that new development and redevelopment activity does not impede views to the water area from the roadway to and from the waterfront and inland Harbor area . . ." Based on these criteria, the BISC would occupy and obstruct a protected view corridor that is afforded special protection. Any PWP amendment must address this inconsistency with the current PWP.

#### Water Quality

The Revised Findings provide guidance as to the water quality measures and management practices necessary to meet the PWP's marine resource policies. The amendment should incorporate, at a minimum, these measures and management practices.

#### Alternatives

According to Coastal Commission regulations, an application for a PWP amendment "shall contain information which meets the requirements for submittal of public works plans in Sections 13353 and 13354." Cal. Code Reg. § 13365. Section 13353(6) provides that the PWP shall contain information regarding "the proposed location or alternative locations considered for any development activity or activities to be undertaken pursuant to the proposed plans." Thus, the PWP amendment for the BISC must include information and a comprehensive analysis regarding alternative locations considered for the BISC. The Commission should be aware that the adequacy of the alternatives analysis previously undertaken by the County for the BISC is at issue in The Beacon Foundation's pending lawsuit against the County. Any analysis of alternatives must be sufficient to allow the Commission to make an independent finding that no less environmentally damaging feasible alternative exists (Revised Findings, p. 14).

#### Cumulative Impacts

Section 13353(3) of the Commission's regulations provides that the PWP amendment must contain "the proposed timetable for precise definition of all projects included in the plan and any phasing of development activity contemplated." This requirement should

be viewed in conjunction with the County's obligation to evaluate the BISC's cumulative impacts under CEQA. In The Beacon Foundation's view, the County's environmental review process did not adequately evaluate the project's cumulative impacts. In any case, the PWP amendment should disclose other pending and proposed development activity in the Harbor, including:

- A new lease approved by the County with Vintage Marina partners, which calls for renovation and expansion of existing boating slips proximate to the BISC location.
- A fitness center originally conceived as part of the Vintage Marina lease and proposed for parkland near the BISC site.
- Proposed redevelopment of Fisherman's Wharf, the subject of an August 2004 Request for Qualifications from the County.
- Development proposed in the 1998 Draft Harbor Master Plan, which the County contends has been approved "in concept."
- Approved development projects in the Harbor, including Westport and Seabridge, that will add boating traffic to the Harbor, creating additional cumulative boating congestion impacts in the Harbor's main channel. The PWP requires the County to implement a monitoring plan that identifies areas of boating congestion and establishes actual traffic capacities of Harbor channels (PWP p. 65). To our knowledge, the County has not implemented this plan, which is necessary to evaluate the direct and cumulative impacts of the BISC project on boating traffic.

#### Consistency With City of Oxnard LCP

The current PWP provides (p. 2) that if amendments to the PWP are submitted after certification of the City of Oxnard's Local Coastal Program, the plan shall be approved by the Commission only if it finds, "after full consultation with the affected local governments, that the proposed public works plan is in conformity with the local coastal programs for the affected jurisdiction."

In addition, the Commission's regulations provide that where, as here, a PWP amendment is submitted for a PWP that was approved prior to the certification of a local coastal program, the Commission staff shall consult with affected local government with respect to the impact of the amendment on the coastal zone and on the certified local coastal program. Cal. Code Reg. § 13371(1). Approval of a public works plan amendment by the Commission must be accompanied by specific factual findings that the amendment is in conformity with the certified local coastal program in affected jurisdictions. Cal. Code Reg. § 13371(4).

Thus, the Commission must ensure both that the City of Oxnard is consulted regarding the BISC and that the proposed PWP amendment *is consistent* with Oxnard's certified LCP. The BISC project approved by the County, however, appears to be inconsistent with several policies in the Oxnard LCP for the Harbor, including the following:

Policy M, which states that "the harbor public park areas, which provide a lower cost recreational activity, shall be preserved for general public recreational use." Thus, even if the PWP is amended to allow occupation of public parkland by the BISC, the project would still be inconsistent with Oxnard's LCP.

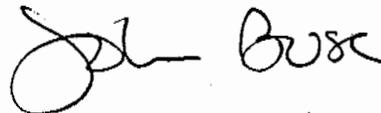
Policy N, which provides that "[p]arking required to serve recreational boating, sport fishing or commercial fishing shall not be eliminated or reduced by new development." The BISC as approved would require the net loss of approximately 100 parking spaces that are currently available to serve recreational boating, sport fishing, and commercial fishing uses. In addition, over 100 other spaces currently available to serve recreational boating, sport fishing, and commercial fishing uses would be converted to exclusive BISC use.

Policy V, which provides that "[t]he visual quality of the harbor shall be maintained by protecting unimpeded views to the water area from the [sic] Victoria Avenue and Channel Islands and Harbor Boulevards by retaining view corridors between the first main road and the water line." Thus, even if the PWP is amended to eliminate the protected view corridor defined in the PWP, the BISC would still be inconsistent with Oxnard's LCP if it blocked a view of the water from Harbor Boulevard.

Based on these inconsistencies, it appears that the Oxnard LCP must be amended concurrently with the PWP to accommodate the BISC as approved by the County.

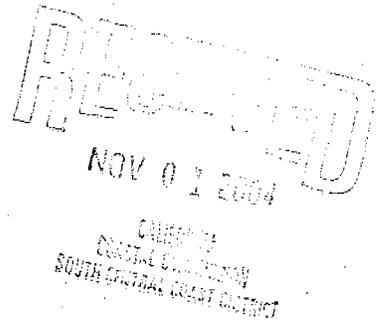
Thank you for your consideration of these comments. Obviously, I am writing without actual knowledge of the content of the anticipated PWP amendment, and we will provide additional comments when the amendment is available for public review. Please keep me apprised of any developments relating to the amendment.

Sincerely,



---

John T. Buse  
Senior Staff Attorney  
Environmental Defense Center



October 19, 2004

Steve Bennett, Chairman  
Ventura County Board of Supervisors  
800 S. Victoria Avenue  
Ventura, CA 93009

RE: Public Works Plan Amendment and EIR Addendum, Boating Instruction and Safety Center, Channel Islands Harbor

Dear Chairman Bennett and Supervisors:

The following comments on the proposed Public Works Plan (PWP) Amendment and EIR Addendum for the Channel Islands Harbor Boating Instruction and Safety Center (BISC) are submitted on behalf of The Beacon Foundation.

The Addendum is Inadequate and a Subsequent or Supplemental EIR Must Be Prepared

*Project Description*

The Introduction states that “[a]ll development projects within the Channel Islands Harbor Public Works Plan ... are subject to County approval and a Notice of Impending Development to the California Coastal Commission.” This statement suggests that all future Harbor development projects will be approved on the basis of a Notice of Impending Development, regardless of whether the project is specifically described in the PWP. This implication is inconsistent with the express requirements of the Coastal Act, which provides that the fast-track Notice of Impending Development process applies only to “a specific project contained in the certified plan.” Public Resources Code § 30605. Moreover, this approach would remove an existing impediment to Harbor development, and thus would require additional environmental review. This statement should be clarified to track the requirements of the Coastal Act.

The Project Description in the Addendum is fundamentally flawed. The Introduction states that “[t]his Addendum has been prepared to analyze whether the addition of an alternative Coastal Commission entitlement mechanism to the previously approved BISC project will require the preparation of a subsequent or supplemental EIR under [CEQA].” This statement neither describes the project under review nor the purpose of the Addendum. What is an “alternative Coastal Commission entitlement mechanism”? What is the alternative to the PWP amendment? The “alternative Coastal Commission entitlement mechanism” language is confusing, meaningless, and adds nothing to this



section. Instead, the Addendum must clearly identify the project under review and the purpose of the project.

A more fundamental problem is that the project description fails to disclose that the project now requires a PWP Amendment. The project description in the Addendum merely refers to an "alternative Coastal Commission entitlement mechanism", whatever that may be. CEQA, however, provides that a "project" is "*the whole of an action, which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment . . .*" CEQA Guidelines § 15378(a) (emphasis added). Neither the EIR nor the Addendum disclose that a PWP Amendment is now part of the project. On the contrary, the EIR contains extensive, although erroneous, analysis contending that a PWP Amendment is not necessary. By failing to provide an accurate description of the project as modified, the Addendum frustrates CEQA's objective of full disclosure of the project's environmental consequences:

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance.

*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.

Here, the Addendum's project description merely considers that "the only project change is to add this alternative coastal regulatory entitlement process to the entitlement component of the [EIR's] project description." This statement is both misleading and inaccurate. The project now includes a PWP Amendment. The PWP Amendment would, standing alone, qualify as a CEQA discretionary project that may have a significant effect on the environment. Thus, the Addendum must evaluate the full range of environmental impacts associated with the PWP Amendment. As discussed more fully below, it does not do so.

Moreover, the Addendum fails to describe reasonably foreseeable future components of the project, including the anticipated lease agreement with California State University Channel Islands for operation of the BISC. The revised Addendum now states that the BISC will "be operated by California State University – Channel Islands, through a lease with the County." This statement is a change from the previously circulated version of the Addendum, which stated that the BISC would be operated by the County Harbor Department. The new statement clearly indicates that the lease will be a part of the project. CEQA requires that reasonably foreseeable future phases of the project must be evaluated. Moreover, the terms of the lease may have environmental consequences or alter existing mitigation obligations. For example, the lease terms may specify off-site

activities that may affect biological resources or establish use fees that are inconsistent with the County's statements about public access to the BISC. In addition, the County is currently responsible for some BISC mitigation measures. If the lease arrangement provides that these measures will be modified or that some other party will perform them, the lease must be evaluated as part of the project.

#### *PWP Consistency*

The Addendum states that "[a]t the [February 19, 2004] Coastal Commission hearing, individual commissioners suggested that the County pursue a PWP amendment." This statement is an incomplete and inaccurate characterization of the Coastal Commission's action. The Commission subsequently adopted specific findings regarding the BISC project's inconsistency with the PWP. The proposed PWP fails to address most of these findings, as discussed below. Because the Addendum makes no effort to respond to the Commission's findings, the Addendum's analysis of the project's consistency with the PWP is inadequate. The Addendum's conclusion that, with the recognition of the BISC in the PWP, "consistency issues will be non-existent" is incorrect because the PWP Amendment fails to address most of the PWP consistency issues raised by the Commission's findings.

#### *CEQA Analysis*

The Addendum further states that "[t]here is no difference between the BISC project described in the Final EIR and the project authorized by the PWP amendment and analyzed in this Addendum." This statement is incorrect. The project now includes the PWP Amendment, which has new direct and cumulative impacts that are not evaluated in the Addendum or elsewhere. For example:

- The PWP Amendment removes an existing impediment to growth by altering language on page 5 of the PWP to indicate that the Harbor *basin*, rather than the Harbor, is complete. The current language supported the Coastal Commission's conclusion that the Harbor was built out and therefore that the BISC (and implicitly most other new Harbor development) required a PWP Amendment. With this change, the door is open not merely to the BISC, but to development throughout the County. The County must consider the growth-inducing impacts of this change. Other statements indicating that the Harbor (not merely the basin) is built out (pp. 53, 78) are retained in the amended PWP, creating further internal inconsistencies or ambiguities in the PWP.
- The PWP Amendment modifies Policies 19 and 20 regarding the protection of public parks by writing in the BISC as an allowed use. Nowhere, however, has the County evaluated the cumulative impact of taking a portion of the existing public park for the BISC. In general, the County has tended to minimize the extent and value of parkland at the BISC site and throughout the Harbor by

exploiting the purported ambiguities and inconsistencies in the PWP, yet the Addendum and PWP Amendment utterly fail to resolve this issue. At a minimum, the PWP Amendment must define the protected parkland in the Harbor and County must review the cumulative loss of parkland associated with the BISC. This review must account for both qualitative and quantitative factors. For example, the replacement "green area" adjacent to the BISC does not appear to have the same value as public open space as the parkland eliminated to accommodate the BISC, as it consists largely of a landscaped area surrounding the BISC and existing buildings bordered by a parking lot. In particular, there is no basis for the Addendum's conclusion that an "augmented" landscaped area on the south side of the Whale's Tail restaurant, which already provides views of the turning basin, somehow replaces the public parkland that will be lost to the BISC.

- In addition, the PWP Amendment adds language to Policy 22 regarding visual access that weakens the current PWP's protection of view corridors. The narrative portion of the PWP (p. 42) states that areas designated on the PWP Access Map as view corridors "will receive special protection." The change in Policy 22 suggests that mapped view corridors can be eliminated so long as 25% of the Harbor provides a view corridor. This change creates an additional inconsistency in the PWP. In addition, the direct and cumulative effects of eliminating or abrogating the effects of mapped view corridors must be evaluated pursuant to CEQA.

Each of these changes to the PWP has the potential to cause new, unevaluated, and potentially significant environmental impacts, and must be considered in a subsequent or supplemental EIR. The Addendum's conclusion that no subsequent or supplemental EIR need be prepared fails to consider new impacts associated with the PWP Amendment and is not supported by substantial evidence.

The Addendum also fails to provide an accurate analysis of significant new information or changed circumstances that have come to light since the EIR was certified. In particular, the Addendum concludes that new information regarding nesting snowy plovers at Hollywood Beach does not require preparation of a subsequent or supplemental EIR. This conclusion, however, is rests on several mistaken assumptions. First, it assumes that the new information relates solely to nesting snowy plovers. The Addendum fails to disclose that California least terns, a state and federal endangered species, and a state fully protected species, are also now nesting at Hollywood Beach and may be affected by BISC activities. Moreover, the Addendum fails to acknowledge that plover nesting has now been documented north of the area covered by the existing MOU with the U.S. Fish and Wildlife Service, indicating that existing mitigation measures are inadequate.

The Addendum states that this information is not a substantial change in circumstances because "the beach is used daily by the public." While this statement is correct, it is

irrelevant to the County's obligation to consider the direct and indirect impacts of the project on terns and plovers. The Addendum further states that the route to the water proposed for some BISC activities is away from the nests and not in their paths. Based on the new information regarding the northward extent of plover nesting, this statement is incorrect. Finally, the Addendum states that "most significantly, the Board of Supervisors has conditioned the BISC project to restrict crossing at the South end of Hollywood Beach if, after consultation with the USFWS, it is advised that a snowy plover nesting season is expected that year". This statement fails to consider the inadequacy of the existing condition in light of the northward extension of plover nesting. As the Coastal Commission recognized, it also fails to consider that the existing MOU between the County and Fish and Wildlife Service is based on outdated information regarding the extent of plover nesting and the presence of least tern nests. The new information and changed circumstances regarding snowy plover and least tern nesting requires additional analysis in a subsequent or supplemental EIR and additional mitigation measures.

The PWP Amendment fails to consider designation of the portion of Hollywood Beach used by nesting snowy plovers and least terns as an environmentally sensitive habitat pursuant to the Coastal Act despite the project's use of this area and potential impact to these species, and despite this area's qualification for environmentally sensitive habitat status. Pub. Res. Code § 30240.

The Addendum further fails to consider the potentially significant cumulative impacts associated with the BISC project in light of new approvals and pending projects described in the attached letter.

As a CEQA certified regulatory agency, the Coastal Commission must address any inadequacies in the County's environmental review for the project when it considers the PWP Amendment.

#### The PWP Amendment Does Not Address Purported Inconsistencies in the PWP

In defending its erroneous conclusion that the BISC can be approved without a PWP Amendment, the County has argued on numerous occasions that the current PWP is internally inconsistent. The Coastal Commission also found that the current PWP "contains ambiguous or contradictory statements and policies relative to allowance of future development." Yet the County now seeks to provide a "spot" amendment to the PWP that addresses none of these purported inconsistencies. This approach is contrary to state law requiring that general plans and their components must be internally consistent. By law, the PWP and land use plan is part of the County's Local Coastal Element. Pub. Res. Code §§ 30108.5, 30108.55. All components of the County's General Plan must be both internally consistent and consistent with other elements of the General Plan. Before the BISC may be approved, the County must address the purported internal inconsistencies in the PWP and land use plan.

The PWP Amendment Does Not Address the BISC Project's Inconsistencies With the PWP

We have previously submitted a letter (attached) detailing the Coastal Commission's findings regarding the BISC's inconsistencies with the PWP, and the need for the PWP Amendment to address these inconsistencies. The PWP Amendment, however, fails to address most of these inconsistencies:

- The PWP Amendment fails to provide new policies protecting biological resources in the Harbor. Instead, the PWP Amendment continues to assert incorrectly that the Harbor contains no natural resources of biological significance (p. 5 and elsewhere). On the contrary, the Harbor contains several populations of black-crowned night herons and great blue herons. The PWP Amendment acknowledges that "several bird species" roost and nest in the Harbor and that their presence is considered "important" but does not describe these species or evaluate their biological significance. In addition, the PWP Amendment does not disclose that endangered least terns use the Harbor for foraging or that marine mammals are found in the Harbor's channel areas. The PWP Amendment must reflect these facts and include policies protecting significant biological resources.
- The PWP Amendment fails to provide specific setbacks and mitigations for roosting herons that will be directly affected by the BISC. This omission is inconsistent with the Coastal Commission's finding that "the PWP does not contain policies to adequately protect the heron rookery from impacts associated with construction and permanent placement of new buildings adjacent to the park. Had the PWP anticipated future construction of a specific project in that location it is likely that the PWP would have contained additional protective policies in addition to Policy 2 . . ."
- The PWP Amendment fails to provide specific policies to protect off-site biological resources, including snowy plovers and least terns at Hollywood Beach, or to consider designation of plover and tern nesting areas as environmentally sensitive habitats pursuant to the Coastal Act.
- The PWP Amendment fails to ensure consistency with the Coastal Act's policy regarding lower cost recreational facilities, which states that "[l]ower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred." Pub. Res. Code § 30213. The parkland that would be occupied and enclosed by the BISC is a low-cost recreational amenity that provides coastal access and recreational opportunities to the public. The BISC, in contrast, would provide only limited public access for paying visitors.
- The PWP Amendment fails to address the Coastal Commission's finding that "the elimination of 22 recreational boating spaces caused by the construction of the BISC

is neither consistent with Policy 3 [of the PWP] nor is authorization for this specifically contained in the PWP.”

- The PWP Amendment fails to address the Coastal Commission staff's conclusion that the BISC project is inconsistent with the PWP because it obstructs a mapped view corridor.
- The PWP Amendment fails to address the Coastal Commission's guidance as to the water quality measures and management practices necessary to meet the PWP's marine resource policies.
- The PWP Amendment fails to address the requirements of Coastal Commission regulations that an application for a PWP amendment “shall contain information which meets the requirements for submittal of public works plans in Sections 13353 and 13354.” Cal. Code Reg. § 13365. Section 13353(6) provides that the PWP shall contain information regarding “the proposed location or alternative locations considered for any development activity or activities to be undertaken pursuant to the proposed plans.” Any analysis of alternatives must be sufficient to allow the Commission to make an independent finding that no less environmentally damaging feasible alternative exists.
- The PWP Amendment fails to address the potential inconsistencies of the PWP Amendment with the City of Oxnard's certified local coastal program outlined in the attached letter.

For these reasons, the BISC project is inconsistent with the PWP despite the proposed PWP Amendment. A more comprehensive PWP Amendment, and attendant supplemental environmental review, is necessary to address the full range of the project's inconsistencies with the PWP and to respond to the findings adopted by the Coastal Commission.

Thank you for your consideration of these comments.

Sincerely,



---

John T. Buse  
Senior Staff Attorney  
Environmental Defense Center

cc: Gary Timm, District Manager, California Coastal Commission



September 23, 2004

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

Steve Bennett, Chairman  
Ventura County Board of Supervisors  
800 S. Victoria Avenue  
Ventura, CA 93009

RE: Public Works Plan Amendment for Ventura County's Boating Instruction and Safety Center, Channel Islands Harbor

Dear Mr. Timm, Chairman Bennett, and Supervisors:

This office represents The Beacon Foundation, which has a long-standing interest in the proposed Channel Islands Harbor Boating Instruction and Safety Center (BISC).

In June, the Commission adopted findings in support of its February decision rejecting Ventura County's Notice of Impending Development for the BISC. These findings made clear the Commission's position that the County's Public Works Plan for Channel Islands Harbor would have to be amended to accommodate the BISC in its proposed location and configuration. It is our understanding that the County now intends to prepare and submit to the Coastal Commission for approval a Public Works Plan (PWP) amendment. The purpose of this letter is to outline our view of the minimum requirements of any PWP amendment for the BISC.

In addition, we would welcome the opportunity to meet with you to discuss our concerns regarding the PWP amendment.

#### On-site Biological Resources

As approved by Ventura County, the BISC would be located adjacent to trees and within parkland used by nesting black-crowned night herons. The project would require removal of one tree (described as a "non-nesting" tree, although the actual trees used for nesting varies from year to year), and would be within 3 to 5 feet of nesting trees. In the Revised Findings for Notice of Impending Development 1-04 (May 2004), the Commission expressed doubt that a mitigation measure that would cover nesting trees



with netting but allow construction to proceed during the nesting season was the least damaging alternative.

In addition, the Commission noted that "the PWP does not contain policies to adequately protect the heron rookery from impacts associated with construction and permanent placement of new buildings adjacent to the park. Had the PWP anticipated future construction of a specific project in that location it is likely that the PWP would have contained additional protective policies in addition to Policy 2 . . ."

Accordingly, any PWP amendment must include new policies adequately protecting significant terrestrial biological resources in Channel Islands Harbor, including nesting and roosting black-crowned night herons and great blue herons. Moreover, any amendment should require avoidance or mitigation of impacts to such resources, including adequate buffers during both the construction and operational phases of new development.

While the Commission did not address designation of the area containing nesting herons as environmentally sensitive habitat, the County should undertake a reconsideration of such a designation as part of the amendment process. In connection with this consideration, the County should consider the extent and location of other heron nesting habitat available in Channel Islands Harbor. This analysis is essential because the County has alleged that there are alternative nesting trees available and that the herons affected by the project constitute part of a larger harbor population. Thus, this analysis is necessary in order to evaluate the direct and cumulative effect of impacts to the larger population.

#### Off-site Biological Resources

BISC activities would include off-site boat launch and kayaking at nearby Hollywood Beach. In order to conduct these activities, participants would have to traverse areas occupied by nesting snowy plovers and/or least terns. The Commission's Revised Findings note that the County's proposed mitigation, requiring consultation with the US Fish and Wildlife Service, does not address current snowy plover nesting activity at Hollywood Beach. The Findings further state that "the PWP contains no specific policies requiring mitigation or protective measures for western snowy plovers during nesting season. The lack of specific provisions in the PWP for the BISC project at this location should be viewed in tandem with the lack of adequate setback or buffer and other protective policies."

Additional information has come to light since the Commission adopted the Revised Findings indicating that snowy plover and least tern nesting at Hollywood Beach is more prevalent than previously believed. The snowy plover is a federally-listed threatened species and Hollywood Beach is designated as critical habitat. The least tern is a federally-listed endangered species and is considered a "fully protected species" under

state law, which prohibits any "take" of least terns. The area qualifies as environmentally sensitive habitat under the Coastal Act, and plover and tern habitat should be so designated in connection with the County's application and the Commission's review of the BISC PWP amendment. We will provide a map of snowy plover and least tern nesting areas based on the most recent information to guide ESHA designation. In addition, the PWP amendment should adopt policies requiring avoidance, setbacks, and mitigation measures for snowy plovers and least terns.

#### Harbor Development

The Commission's Revised Findings note that the current PWP includes statements that the Harbor is completely built out. The Findings further state that "the Commission does not agree that the BISC is a project that is specifically contained in or provided for pursuant to the certified PWP because there is no reference to the specific project, including the type, size, or location of the project, contained in the PWP." Accordingly, any PWP amendment for the BISC must address both the "Harbor is built out" and the "BISC is not contained in the PWP" aspects of the current PWP. If the County proposes to carve out an exception to the "Harbor is built out" limitation, it must evaluate pursuant to CEQA the effect of removing this limitation on Harbor growth recognized by the Commission.

The Findings further state that the current PWP "contains ambiguous or contradictory statements and policies relative to allowance of future development." The County has also stated on numerous occasions that the PWP is ambiguous and internally inconsistent. Any PWP amendment must resolve these ambiguities and inconsistencies in order to provide the clearest possible guide for future Harbor development. Because the current PWP allows only very limited new development in the Harbor (essentially limited to new construction on one designated parcel other than the BISC site and/or minor expansion of no more than 10% of the floor space in existing structures), additional environmental review is necessary to evaluate the growth-inducing and cumulative impacts of any relaxation of this limitation.

#### Parks

As approved by Ventura County, the BISC would occupy a portion of a public park. The Commission's Revised Findings concluded that the current PWP does not contain authorization to convert 800 square feet of parkland that would be occupied by the BISC. The Beacon Foundation has measured the parkland affected by the Project and concluded that the area occupied by the BISC and attendant enclosures is actually in excess of 4000 square feet. In any case, a PWP amendment must address any encroachment on parkland inconsistent with current PWP Policies 19 and 20. If the County proposes to carve out an exception to these policies for the BISC, it must evaluate the direct and cumulative loss of parkland, as well as the adverse precedent associated with piecemeal exceptions to the current policies protecting public parks.

During the history of the BISC project, the County has adopted a variety of contradictory positions regarding the parkland at the BISC location and elsewhere in the Harbor. At various times, the County has denied that the BISC will affect parkland at all. More recently, the County has acknowledged the impact, but argued that the loss is mitigated by providing replacement "green areas" despite the fact that PWP Policy 20 absolutely prohibits development of parkland without a PWP amendment. In general, the County has tended to minimize the extent and value of parkland at the BISC site and throughout the Harbor. Accordingly, it is essential that the County provide a full inventory of parkland throughout the Harbor in connection with the BISC PWP amendment in order to evaluate the project's direct and cumulative parkland impacts and to avoid future parkland conversion controversies.

Finally, any PWP amendment must be consistent with the Coastal Act's policy regarding lower cost recreational facilities, which states that "[l]ower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred." Pub. Res. Code § 30213. The parkland that would be occupied and enclosed by the BISC is a low-cost recreational amenity that provides coastal access and recreational opportunities to the public. The BISC, in contrast, would provide only limited public access for paying visitors.

#### Boating and Coastal Access

The Commission's Revised Findings concluded that "the elimination of 22 recreational boating spaces caused by the construction of the BISC is neither consistent with Policy 3 [of the PWP] nor is authorization for this specifically contained in the PWP." The loss of recreational boating spaces must be addressed in the PWP amendment either through modification of the existing recreational boating policies consistent with the Coastal Act or through actual establishment of replacement slips in the Harbor.

In an earlier comment on the County's Mitigated Negative Declaration for the BISC, Commission staff noted that the BISC project does not appear consistent with the intent of PWP Policy 5 regarding the maximization of pedestrian waterfront access (Bonnie Luke June 17, 2002 letter). Although the County subsequently prepared an EIR and revised the project, this concern still has not been adequately addressed. In particular, BISC site plans indicate that the BISC and its enclosures will obstruct existing pedestrian walkways that currently provide direct waterfront access. PWP Policy 5 requires that "[a] promenade walkway shall be provided along the Harbor frontage for all new development." The County must provide such access as part of the BISC or amend the PWP consistent with the public access requirements of the Coastal Act.

#### View Corridors

Although the Commission's Revised Findings did not specifically address the BISC's consistency with the PWP policy protecting Harbor view corridors, this issue has been

raised previously by Commission staff. In particular, the June 17, 2002 letter from Bonnie Luke commenting on the County's Mitigated Negative Declaration for the BISC stated that it is the Commission staff's opinion that the BISC obstructs a mapped view corridor that is afforded "special protection" under the PWP, and that this obstruction is inconsistent with the PWP.

The narrative portion of the PWP (p. 42) states that areas designated on the PWP Access Map as view corridors "will receive special protection." PWP Policy 22(a) defines a view corridor in the Harbor "as that area between the roadway and the roadway [sic] and the water which is not occupied by buildings, solid wall or fences, or landscaping which might interfere with the view of the water or water surface activity from the roadway." The purpose of Policy 22 is to "ensure that new development and redevelopment activity does not impede views to the water area from the roadway to and from the waterfront and inland Harbor area . . ." Based on these criteria, the BISC would occupy and obstruct a protected view corridor that is afforded special protection. Any PWP amendment must address this inconsistency with the current PWP.

#### Water Quality

The Revised Findings provide guidance as to the water quality measures and management practices necessary to meet the PWP's marine resource policies. The amendment should incorporate, at a minimum, these measures and management practices.

#### Alternatives

According to Coastal Commission regulations, an application for a PWP amendment "shall contain information which meets the requirements for submittal of public works plans in Sections 13353 and 13354." Cal. Code Reg. § 13365. Section 13353(6) provides that the PWP shall contain information regarding "the proposed location or alternative locations considered for any development activity or activities to be undertaken pursuant to the proposed plans." Thus, the PWP amendment for the BISC must include information and a comprehensive analysis regarding alternative locations considered for the BISC. The Commission should be aware that the adequacy of the alternatives analysis previously undertaken by the County for the BISC is at issue in The Beacon Foundation's pending lawsuit against the County. Any analysis of alternatives must be sufficient to allow the Commission to make an independent finding that no less environmentally damaging feasible alternative exists (Revised Findings, p. 14).

#### Cumulative Impacts

Section 13353(3) of the Commission's regulations provides that the PWP amendment must contain "the proposed timetable for precise definition of all projects included in the plan and any phasing of development activity contemplated." This requirement should

be viewed in conjunction with the County's obligation to evaluate the BISC's cumulative impacts under CEQA. In The Beacon Foundation's view, the County's environmental review process did not adequately evaluate the project's cumulative impacts. In any case, the PWP amendment should disclose other pending and proposed development activity in the Harbor, including:

- A new lease approved by the County with Vintage Marina partners, which calls for renovation and expansion of existing boating slips proximate to the BISC location.
- A fitness center originally conceived as part of the Vintage Marina lease and proposed for parkland near the BISC site.
- Proposed redevelopment of Fisherman's Wharf, the subject of an August 2004 Request for Qualifications from the County.
- Development proposed in the 1998 Draft Harbor Master Plan, which the County contends has been approved "in concept."
- Approved development projects in the Harbor, including Westport and Seabridge, that will add boating traffic to the Harbor, creating additional cumulative boating congestion impacts in the Harbor's main channel. The PWP requires the County to implement a monitoring plan that identifies areas of boating congestion and establishes actual traffic capacities of Harbor channels (PWP p. 65). To our knowledge, the County has not implemented the plan, which is necessary to evaluate the direct and cumulative impacts of the BISC project on boating traffic.

#### Consistency With City of Oxnard LCP

The current PWP provides (p. 2) that if amendments to the PWP are submitted after certification of the City of Oxnard's Local Coastal Program, the plan shall be approved by the Commission only if it finds, "after full consultation with the affected local governments, that the proposed public works plan is in conformity with the local coastal programs for the affected jurisdiction."

In addition, the Commission's regulations provide that where, as here, a PWP amendment is submitted for a PWP that was approved prior to the certification of a local coastal program, the Commission staff shall consult with affected local government with respect to the impact of the amendment on the coastal zone and on the certified local coastal program. Cal. Code Reg. § 13371(1). Approval of a public works plan amendment by the Commission must be accompanied by specific factual findings that the amendment is in conformity with the certified local coastal program in affected jurisdictions. Cal. Code Reg. § 13371(4).

Thus, the Commission must ensure both that the City of Oxnard is consulted regarding the BISC and that the proposed PWP amendment *is consistent* with Oxnard's certified LCP. The BISC project approved by the County, however, appears to be inconsistent with several policies in the Oxnard LCP for the Harbor, including the following:

Policy M, which states that "the harbor public park areas, which provide a lower cost recreational activity, shall be preserved for general public recreational use." Thus, even if the PWP is amended to allow occupation of public parkland by the BISC, the project would still be inconsistent with Oxnard's LCP.

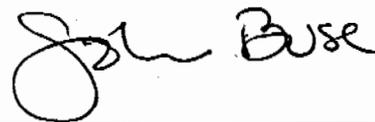
Policy N, which provides that "[p]arking required to serve recreational boating, sport fishing or commercial fishing shall not be eliminated or reduced by new development." The BISC as approved would require the net loss of approximately 100 parking spaces that are currently available to serve recreational boating, sport fishing, and commercial fishing uses. In addition, over 100 other spaces currently available to serve recreational boating, sport fishing, and commercial fishing uses would be converted to exclusive BISC use.

Policy V, which provides that "[t]he visual quality of the harbor shall be maintained by protecting unimpeded views to the water area from the [sic] Victoria Avenue and Channel Islands and Harbor Boulevards by retaining view corridors between the first main road and the water line." Thus, even if the PWP is amended to eliminate the protected view corridor defined in the PWP, the BISC would still be inconsistent with Oxnard's LCP if it blocked a view of the water from Harbor Boulevard.

Based on these inconsistencies, it appears that the Oxnard LCP must be amended concurrently with the PWP to accommodate the BISC as approved by the County.

Thank you for your consideration of these comments. Obviously, I am writing without actual knowledge of the content of the anticipated PWP amendment, and we will provide additional comments when the amendment is available for public review. Please keep me apprised of any developments relating to the amendment.

Sincerely,



---

John T. Buse  
Senior Staff Attorney  
Environmental Defense Center



September 29, 2004

Gary Timm  
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001-2801

Dear Mr. Timm,

To follow up on your recent conversations with Dr. Jon Ziv, Habitat for Hollywood Beach, of which Dr. Ziv is a member, would like to present you with the attached list of management recommendations for Hollywood Beach. These recommendations are designed to protect and enhance habitat specifically for the threatened western snowy plover and the endangered California least tern, as well as for the entire suite of species that utilize this valuable, yet threatened coastal habitat. Please consider the attached recommendations when meeting with the Ventura County Harbor Department, the Fish and Wildlife Service, the Army Corps of Engineers, and any other individual or group involved in the management of Hollywood Beach.

Our primary recommendation is that you consider an "environmentally sensitive habitat area" (ESHA) designation for the plover and tern habitat at Hollywood Beach. This designation would align with the purpose of ESHA, which is to ensure that environmentally sensitive habitat are protected for both the wildlife inhabiting them as well as the enjoyment of present and future populations. We also recommend ESHA cover the heron and egret rookery in the cypress trees on the Channel Islands Harbor.

There are currently many threats to the plovers and terns while they are nesting, roosting, and foraging on Hollywood Beach. Some of these threats, such as unleashed dogs, uncontrolled beach driving, low-level flybys and harbor dredging carry the potential for "take" as defined by the Endangered Species Act. Other suggestions we offer, such as restricting beach grooming and expanding the exclusion area, could lead to an increase in habitat for the plover and tern, which would benefit the ultimate recovery of these species. It is the goal of Habitat for Hollywood Beach to provide areas for the birds to nest, roost, and forage, while still maintaining the current level of responsible recreation and enjoyment.

Please review the attached recommendations and take them into consideration. If you should have any questions, comments, or require further information, please contact me.

Sincerely,

Casey Burns  
Habitat for Hollywood Beach

1028 Bath Lane  
Ventura, CA 93001  
(805) 258-3798

Attachments:

- Management Recommendations
- HHB Background Information
- Map of Snowy Plover Management Area (2003)



## **Habitat for Hollywood Beach**

### **Western Snowy Plover and California Least Tern Management Recommendations**

**September 29, 2004**

Habitat for Hollywood Beach (HHB) recommends the following actions:

- **Designation of environmentally sensitive habitat area (ESHA)**

Currently, there is no designation of ESHA anywhere on the Hollywood Beach Peninsula. While other areas of similar habitat enjoy the safety of the ESHA designation, Hollywood Beach, with inhabitants such as the threatened plover western snowy plover and the endangered California least tern, does not. Therefore, Hollywood Beach may be subject to developmental pressures which could result in habitat loss or disruption of sensitive species.

*HHB believes that an ESHA designation is warranted due to the prolific nesting, foraging, and roosting habitat of the plover and tern, as well as a variety of other native species. HHB also recommends the inclusion of the cypress trees on the Channel Islands Harbor side of the Peninsula which support a productive heron and egret rookery.*

- **Enforce existing dog leash laws**

The existing law prohibits unleashed dogs on Hollywood Beach at all times. Leashed dogs are permitted between the hours of 5 PM to 9 AM. All other hours, dogs are not permitted on the beach. Currently most dogs on Hollywood Beach are not leashed and roam freely. Canine disturbance is a significant cause of stress to plovers and terns, and may lead to nest abandonment/failure and/or site abandonment.

*HHB recommends the enforcement of the existing laws to prohibit the prevalence of unleashed dogs on Hollywood Beach.*

- **Review and reevaluate current beach grooming practices**

In the recent past, beach grooming activities at Hollywood Beach have been adjusted to accommodate the nesting plovers and terns by avoiding the signed exclusion area boundary (defined by the attached management area map as identified by US Fish and Wildlife Service in 2003). However, beach grooming continues to remove nearby washed-up vegetation, which is vital to foraging plovers.

Beyond the need for foraging habitat, nests are often laid near driftwood. Reducing driftwood may reduce suitable nest sites. Driftwood contributes to the formation of new dunes. Vegetation provides for year-round protection from wind and provides shelter for chicks hiding from predators. In addition, the numbers of plovers and terns attracted to this beach has led to the need for additional nesting habitat. Discontinuing of beach grooming activities is good for all shorebirds and the ecosystem as a whole.

*HHB recommends reduced and redirected beach grooming, which will provide additional sites for the birds to nest and forage, and would enhance the recovery; and ultimately, the delisting prospects for the plover and tern.*

- **Review and redirect official vehicle disturbance**

In the recent past, official vehicle use (law enforcement, life guard, maintenance, etc.) on Hollywood Beach has been adjusted to accommodate the nesting plovers and terns by avoiding the delineated exclusion area, which is the actual on-the-ground limit of the majority of recent nesting habitat. The potential, and in some cases documented, nesting and roosting of the plover and tern outside of the delineated exclusion area has raised HHB's concern that direct mortality and severe disturbance may occur from official vehicle use.

*Further review of current official vehicle activities may be warranted based on the increasing residency of the plover and tern. HHB suggests that official vehicles voluntarily restrict their movement to a single route, as far inland as possible to avoid damage to the nesting, roosting and foraging habitat of these species.*

- **Eliminate illegal vehicle disturbance**

Due to the lack of barriers at beach access points throughout Hollywood Beach, illegal vehicle entry is occurring on a routine basis. As mentioned above, the potential, and in some cases documented, nesting and roosting of the plover and tern outside of the delineated exclusion area has raised HHB's concern that direct mortality and severe disturbance may occur from vehicle use.

*It is HHB's recommendation that barriers be placed at all access points through which official vehicles may pass but unauthorized vehicles may not.*

- **Enlarge current recovery and exclusion area**

The management area represents the US Fish and Wildlife Service (USFWS) mapped boundary, which as of 2003 approximated the observed boundaries of plover and tern nesting (attached). Whereas, the exclusion area is the actual on-the-ground limit of the majority of recent nesting habitat, delineated by fencing and signage.

During the height of the 2004 breeding and nesting season, plover and tern activities burgeoned beyond both the management area and the exclusion area. In cooperation with USFWS and the Audubon Society, the exclusion area had to be enlarged numerous times to accommodate this growth. The exclusion area has proven successful in the recent breeding and nesting season, with noted increases in plover and tern population (particularly tern numbers).

*HHB recommends encompassing roosting areas and other potential nesting areas into an expanded management and exclusion area. With anticipated increases in plover and tern occupation at Hollywood Beach (such as that experienced this year), it is likely that the management area will need to be enlarged. HHB also recommends that this management area remain fluid and easily adjustable on a year-to-year basis. These adjustments should be orchestrated primarily by USFWS personnel in coordination with other relevant parties.*

- **Reevaluate dredging activities**

Dredging activities as currently planned within and around Channel Islands Harbor pose a

pose a threat to the recovery and exclusion area of the plover and tern. Due to planned dredging, the substrate on which these birds nest and roost may be wholly or partly destroyed.

It is HHB's understanding that USFWS is currently conferring with Army Corps of Engineers (ACOE) to address this planned dredging with respect to potential threats to the nesting habitat at Hollywood Beach (refer to "dredging area" on attached management area map).

*HHB recommends that a complete analysis be done by the Harbor Department, the Army Corps of Engineers, and other relevant parties, as to the effects of this dredging on the Hollywood Beach habitat. This action needs to be taken immediately, as dredging is planned for October 2004.*

- **Eliminate and relocate low-level aircraft flyover**

Currently Hollywood Beach experiences routine low-level flyover from aircraft, such as helicopters and ultralight planes. This type of activity jeopardizes the nesting success of the plovers and terns, as well as other shorebirds. These birds see such aircraft as potential avian predators, leading them to flee the nesting area. Frequent departures may lead to nest abandonment and/or failure.

*HHB would like to see prohibition of low-level flight on Hollywood Beach.*

## DEPARTMENT OF BOATING AND WATERWAYS

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

September 20, 2007

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

**Subject: Channel Islands Boating Instruction and Safety Center**

Dear Mr. Timm:

This letter is in response to your email to me dated September 19, 2007, in which you ask for updated clarification of the Department of Boating and Waterways' position on the proposed boating center project.

The Department remains supportive of constructing the BISC at the previously approved west side location. The west side site was selected by a panel of current or former BISC directors with over 100 years of combined experience in developing and safely managing boating instruction programs for youths, adults and special needs students. This panel of experts independently ascertained that, among the possible locations for a BISC in Channel Islands Harbor, the west side location was the safest location for the types of boating instruction contemplated at the proposed boating center and also ranked high on other site selection criteria.

We appreciate the opportunity to comment on this project and are available to answer any further questions you may have on this subject.

Sincerely,



for Raynor Tsuneyoshi  
Director

Exhibit 10  
PWPA 1-04  
NOID 1-05



# The Beacon Foundation

PO Box 352  
3844 W Channel Islands Blvd  
Oxnard, CA 93035

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SEP 21 2007

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Gary Timm  
District Manager  
California Coastal Commission  
89 S. California Street, Suite 200  
Ventura, CA 03001

September 20, 2007

Re: BISC – Channel Islands Harbor  
Item 11a, b – 10/10/07

Dear Director Timm:

We are concerned that Commission staff is initiating Coastal Commission re-review of the Boating Instruction and Safety Center (BISC) project without requiring the County of Ventura to provide adequate or timely environmental documentation and without adequate public notice.

This staff re-review initiative follows abandonment two week ago by the Commission and Ventura County of their respective appeals of the Habitat for Hollywood Beach case (CIV 233653). The ruling in that case nullified the March 16, 2005 Commission approval of the BISC project.

Proceeding with a new hearing, a "second bite at the apple," on the existing record profoundly misunderstands the court decision and deprives the Commission of the ability to discharge its obligation for an environmental review functionally equivalent to a CEQA review.

## 1. Misunderstanding the Habitat decision

The thoughtful 21 page decision of Judge Chalfant, directed the Commission to set aside its approval of the BISC. To proceed with the project, the Court required (page 21) the Commission to:

**"... prepare a new functional equivalent of an EIR addressing the alternatives analysis and cumulative impacts issues."** [emphasis added]

The Court decision does not require the Commission to do the environmental studies that are necessary to support its functional equivalent of an EIR. The Court requires that the Commission rely on adequate environmental documentation to support its analysis. As noted in the decision (page 5) the Commission's functional equivalent of an EIR:

**"... must be supported with reference to specific scientific and empirical evidence."** [case citation omitted]

The Commission lacks the staff and resources to do the environmental documents necessary to support such a review. In normal practice, Commission staff requires the applicant to provide the underpinning analytical material. It has not done so here. We understand from you, that the County has neither been asked to nor has it on its own initiative provided any environmental review documents to support a rehearing on this project. Further, there is no indication that the County has filed any document seeking this re-review or that any determination has been made by the Executive Director that the existing file is adequate to allow Commission action.

Exhibit 11  
PWPA 1-04  
NOID 1-05

## **2. Holding the Bag For The County.**

It appears Commission staff will rely in its re-review Report on an EIR certified by the County on December 13, 2003 – nearly four years ago and relevant materials, if any, submitted by the County in advance of Commission approval of the project on March 16, 2005. This exercise is deficient on its face. Changed circumstances make new empirical environmental reviews necessary and, more important, there simply is no data in the prior record on key deficiencies noted by the Court.

Proceeding on the current inadequate record fulfills the myth broadcast by the County that the adverse decision in the Habitat case was solely the fault of Commission staff. Its often repeated refrain is that the record had everything needed to support the Commission decision but that vital pieces of County submissions were left out by Commission staff error. As addressed below, this self serving myth is just that and untrue.

## **3. New Review Required By The Habitat Decision.**

The County myth of Commission staff failure is expressed by Harbor Director, Lyn Krieger, in her Report to the Ventura County Harbor Commission dated November 10, 2006. She states (page 2):

"In short, the County does not need to redo or repeat any work. Challenges to the EIR itself were unsuccessful. The only area found lacking by Judge Chalfant was a portion of the staff report from the Coastal Commission staff to the Coastal Commission."

In fact, the Court did not validate the adequacy of the County EIR or other County materials in the record. Judge Chalfant's states (page 18):

"... the Court makes no findings as to whether the County's EIR, PWP amendment application, and NOID application contain the necessary supporting materials for the Commission's alternatives analysis."

The Court also did not validate adequacy of County submissions on cumulative impacts.

The Court focused on gaps in documentation of the Commission's approval action. The Court did not determine whether subjects were overlooked or just not supported in the record. A careful review shows that on key issues the required scientific and empirical support is lacking from County submissions. As to some issues, supporting data cannot possibly be found in the pre-decision record because impacts result from post decision events and actions.

### **a. The Alternative Sites**

The Court decision notes (page 15) "The staff report contains no description or analysis of alternatives to the project." Further (page 15) :

"... a mere conclusion that there are no feasible alternatives without further explanation is simply inadequate. The reader has no opportunity to compare the problems involved with the proposed project with difficulties involved with the alternative."

The EIR contains cursory dismissal of alternative sites that does not permit the comparison required of the decision maker. One of the alternatives not analyzed in County submission at all is the Port Royal restaurant parcel. Subsequent to the October 16, 2006 Habitat decision, The County recognized this site as an alternative. There is no way for Commission staff to adequately review this site based on the pre-March 16, 2005 record.

Another alternative not adequately reviewed is known as the Cisco sport fishing site on the east side of the Harbor. Subsequent to the County BISC EIR certification, this site came (and today remains) under the direct control of the County due to expiration of the lease. The argument raised by the County at an earlier time that this site was not a "viable" alternative because it was under lease became moot. There have also been subsequent changes to the docks at this site that may enhance its suitability. This site cannot be adequately reviewed on the pre-March 16, 2005 record.

b. Cumulative Impacts.

The Court found the staff report does not include analysis of the cumulative impacts of redevelopment of a marina adjacent to the BISC project and the cumulative effects of two new massive housing projects in the north Harbor. Again the Court does not determine whether or not the record before the Commission contains adequate environmental analysis upon which staff could rely. We know from review that adequate environmental review materials on the cumulative effects of these projects is not to be found in the pre March 16, 2005 record. Further, many additional projects in the Harbor have been approved by the County that have cumulative impacts on the BISC project. These include the Marine Emporium project and reconstruction of slips on the east side of the Harbor Main Channel. Both of these projects, as approved by the Commission, entail narrowing of the existing main Harbor channel and present boat congestion and other potential cumulative impacts on the BISC project. In addition, in March of 2007 the County approved and submitted to the Commission a massive waterside amendment to the Certified Public Works Plan (PWP) with significant potential cumulative impacts on the BISC project. None of these post March 16, 2005 projects can possibly be analyzed based on the stale record from two and half years ago.

**3. Conclusion.**

Commission staff must not hold the bag for deficiencies in the environmental record provided to it by the County of Ventura. Responsibility for doing the necessary and additional environmental review documentation must be placed squarely on the applicant or it will not be done at all.

The appropriate action is to postpone presentation of this Item pending an application by the County Board of Supervisors. Any submission should be deemed incomplete until it includes adequate environmental review in areas of concern identified by the Court and until it includes environmental review of the impacts on the BISC project of post March 16, 2005 developments.

The Beacon Foundation is a nonprofit environmental organization focused on coastal Ventura County. For fourteen years we have sought to educate and advocate for coastal resources.

Sincerely,



Lee Quaintance, Secretary

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VENTURA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

**MEMBER:**  
CALIF. SOC. OF C.P.A.  
PEER REVIEW

September 19, 2007

Gary Timm  
District Manager  
California Coastal Commission  
89 S. California Street, Suite 200  
Ventura, CA 93001

Re: BISC-Channel  
Islands Harbor

Dear Director Timm:

I have been made aware that the Coastal Commission will again take up the question of the construction of the BISC at our C.I. Harbor. When Ms. Kreiger, of the Harbor Department, was asked if the application would be essentially the same as the original application she indicated that there would be little if any changes. She assured the questioner that the application would show little difference from the original and that went for the location as well as the lack of concern as to other developments that are planned for our harbor.

This flies in the face of logic and the legal settlement that was just completed. Both the County and the Commission ceased their appeals of the verdict and the Judge's ruling is now set in stone. As a taxpayer I would hope that smarter minds would now be allowed into the discussions. We need people who realize that the actions that both the County and Commission had previously followed should no longer be part of the "playbook". However, it appears that Ms. Kreiger does not understand the simple two letter word "NO".

Perhaps she is aware of facts that have been discussed secretly in some smoky backroom and which have never been permitted to see the light of day. Needless to say, I'm not privy to such knowledge.

Please help prevent this new application and Commission review from becoming another "Groundhog Day" experience. Help the parties to this application renewal forge a new direction. Let us not replay the same hand and expect a different result. I believe it was Einstein who defined insanity as doing the same act over and over again, continuing to expect a different outcome. That seems to be the road the Ventura County Board of Supervisors and the Harbor Department Director are on.

(Cont)

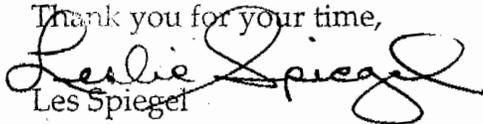
Exhibit 12  
PWPA 1-04  
NOID 1-05

September 19, 2007

Page 2

Please start over and include all the "facts" that are known and give consideration to the newly completed and pending developments that are currently on the drawing boards. There may or not be a better location than the one the Ms. Kreiger continues to press for. However, until all possibilities are considered, the best choice can never be known.

Thank you for your time,



Les Spiegel

Channel Islands Beach

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