

CALIFORNIA COASTAL COMMISSION

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



Th21d

ADDENDUM

DATE: June 11, 2007
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item Th21d, Channel Islands Harbor Notice of Impending Development 2-06 (Marine Emporium Landing Parcel X-1-B) Thursday, June 14, 2007

The purpose of this addendum is to modify and add Special Conditions, modify Findings, and address public comments received.

Note: ~~Strike through~~ indicates text to be deleted from the May 24, 2007 staff report and underline indicates text to be added to the May 24, 2007 staff report.

1.) The **SUMMARY AND STAFF RECOMMENDATION** shall be modified as follows:

Page 1

Staff is recommending that the Commission determine that the impending development **is consistent** with the certified Channel Islands Harbor Public Works Plan (PWP, as modified pursuant to ~~eight (8)~~ nine (9) **special conditions** regarding: (1) ~~pre-construction~~ biological surveys, (2) construction and maintenance responsibilities and debris removal, (3) drainage and polluted runoff control plans, (4) removal of temporary construction trailer, (5) lighting restriction, (6) approval of resource agencies, (7) revised plans, ~~and~~ (8) public access, and (9) invasive plants.

2.) The **SPECIAL CONDITIONS** shall be modified as follows:

Page 3

1. **Pre-Construction Biological Surveys**

By acceptance of this authorization for development, the Harbor Department agrees to retain the services of a qualified independent biologist or environmental resources specialist with appropriate qualifications acceptable to the Executive Director, to conduct a biological surveys of trees on ~~or~~ and adjacent to the project site (within 500 feet of any construction activities) just prior to any construction activities, and once a week upon commencement of construction activities that include grading or use of other heavy equipment that can cause

excessive noise, odors, or vibrations **and** that will be carried out between February 1 and August 15th, inclusive. The Ventura Harbor Department shall direct the environmental resource specialist to: (1) conduct a surveys in order to determine the presence of black-crowned night herons, great blue herons, snowy egrets, or other sensitive species in or near the project site, one day prior to commencement of grading or use of any heavy equipment that can cause excessive noise, odors, or vibrations and once a week after such construction begins and (2) immediately report the findings of the survey to the Ventura Harbor Department and the Executive Director.

In the event that the environmental specialist reports any black-crowned night herons, great blue herons, snowy egrets, or other sensitive species exhibiting reproductive or nesting behavior on and adjacent to the project site (within 500 feet of any construction activities), the following restrictions shall apply:

- A. Ventura Harbor ~~District~~ Department shall ~~not commence~~ cease work, and shall immediately notify the Executive Director.
- B. Project activities may commence only upon written approval of the Executive Director and only in areas more than 300 feet from any identified nesting site.
- C. Construction activities that are within 300 feet from any identified nesting site shall not commence until the environmental specialist has determined that black-crowned night herons, great blue herons, or snowy egrets near the project site have ceased to exhibit reproductive or nesting behavior and would not be impacted by any project activities.
- D. The Ventura Harbor Department shall have the environmental resource specialist conduct surveys to determine the presence of black-crowned night herons, great blue herons, snowy egrets, or other sensitive species in or adjacent to the project site, at least once weekly, during the construction.
- E. Construction noise reduction measures such as sound shields made from plywood or sound-board or molded sound shields shall be used and measures shall be taken to minimize loud noise generation to the maximum feasible extent during construction. Permanent lighting shall be shielded and directed downward. Bright upward shining lights shall not be used during construction and construction employees shall not bring pets (e.g. dogs and cats) to the construction site.

Page 7

8. Public Access

By acceptance of this authorization for development, the Harbor Department agrees that the proposed public walkways and public promenade shall be constructed, as shown in the site plans on Exhibit No. 2, concurrently with the construction of the X-1-B building and the H-2 building and shall open for public use prior to or concurrently with the authorization to occupy the X-1-B ~~building~~ and H-2 buildings.

Page 7

9. Invasive Plants

By acceptance of this Notice of Impending Development, the applicants agree that vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, and no plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified by the State of California shall be employed in any landscaping or planter areas, or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

3.) The **FINDINGS FOR APPROVAL OF THE NOTICE OF IMPENDING DEVELOPMENT** shall be modified as follows:

Page 11, 1st full paragraph

Additionally, in a report dated June 5, 2007, Dr. Froke reported that no great blue heron nesting sites were found on the west side of the harbor.

Page 11, 2nd full paragraph

The proposed project is located approximately 750 ft. away from the closest known nesting trees on the linear park to the south and approximately 700 feet away from the closest known nesting sites on the peninsula to the east.

Page 18, after Policy 22 a

F. VISUAL RESOURCES

Additionally, Policy 22 c states:

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 access 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.

Page 19, 2nd full paragraph

The proposed building will reduce some of the view of the harbor and water that is currently available across the vacant site from the frontage road. Exhibit 11 provides a computerized simulation of what the building will look like looking out towards the harbor. Some trees on the site also block views of the building and water (Exhibit 11). When looking from the first public road, Cabezone Way, toward the X-1-B building, one will be able to see the boat docks

and open water to the north side of the building. When looking from Cabezone Way toward the south side of the X-1-B building, there will be about 42 feet between the X-1-B building and the adjacent H-2 building, allowing views of the harbor. However, the construction of this building, at the proposed size and height, is provided for by the Public Works Plan. As shown on Exhibit 11, a view will still be available from the parking lot and street to the harbor along the north side of the site.

The 2005 PWP amendment for the Boating Instruction and Safety Center (BISC) project modified PWP Policy 22c to prevent new development within a designated view corridor, other than the BISC project, from taking place without a PWP amendment. This policy, however, does not apply in this instance because the PWP has already authorized this facility. The X-1-B development project is unique because it is the only landside site specifically outlined in the certified 1986 PWP for future development for a particular building on an identified vacant parcel in the Harbor, as further explained below. The PWP states in Section 4.4, Commercial Fishing, that the “landside X-1-B parcel is reserved for a commercial dock facility providing fish on and off-loading, facilities for cold storage and a fish market.” The intent of the 2005 PWP amendment was not to preclude a facility on this site, already authorized under the 1986 PWP, but was added to ensure that any new development projects, not previously contemplated in the PWP, do not block view corridors.

Furthermore, the X-1-B site occupies some of the area designated as a view corridor in the PWP’s Land Use Plan/Access Map (attached hereto). The Land Use Plan/Access Map also identifies all of the linear park to the south of the Marine Emporium Landing site and most other areas along Harbor Boulevard to the south as view corridors. Despite the fact that some of the view corridor shown on the Land Use Plan/Access Map for the X-1-B site may be impacted by a building on the X-1-B site, the PWP specifically discusses plans for a commercial fishing facility on the X-1-B site. First, the Channel Islands Harbor Master Plan Map shows the X-1-B parcel site as a Commercial Fishing Center. No other area in the Harbor is depicted as a Commercial Fishing Center on the Master Plan Map. Second, Table 1, “Inventory of Existing Uses/Intensities by Parcel,” identifies Parcel X-1-B as an “In-Concept” Office Building for a Commercial Fishing Support Facility. This is the only “In-Concept” building provided for in Table 1. Lastly, Section 4.4 of the PWP, Commercial Fishing, states that this landside parcel is reserved for a commercial dock facility and Policy 1 of Section 4.4 provides that “[t]he County will protect the Harbor’s existing commercial fishing slips and facilities...and provide new facilities at reasonable rates including cold storage, ice and a hoist on parcel X-1B.” Therefore, a commercial fishing facility, like the facility proposed by NOID 2-06, is clearly designated by the PWP for this site despite the apparent conflict between the designated X-1-B facility and the depiction of a view corridor on the same site.

Further, the proposed public pedestrian promenade along the water’s edge and walkway around the building will enhance public access and views of the harbor from the water’s edge. No accessway along the waterside currently exists in this area. Public access to the walkways and promenade is required by **Special Condition Eight (8)** to be open to the public at the same time the buildings X-1-B and H-2 are open to the public. Additionally, lighting on the building has been restricted in **Special Condition Five (5)** in order to minimize visual impacts to the public and biological resources. Therefore, the Commission finds that the Notice of Impending Development for the Marine Emporium Landing Parcel X-1-B, as conditioned to restrict lighting and provide public access near the water, is consistent with the applicable visual resource protection policies of the certified Public Works Plan.

4.) Public Comments. Staff has received several letters regarding NOID 2-06.

The Beacon Foundation ("Beacon") has raised concerns regarding staff's recommendation of approval of this Notice of Impending Development through three letters submitted to the Commission (attached hereto) as well as in a meeting with staff on June 6, 2007. Through several of the modifications recommended in this addendum, Commission staff has addressed issues raised by Beacon regarding biological resources, visual resources, and public access. In a June 7, 2007 letter, Beacon raised concerns that herons may begin nesting on site after construction begins, even if no nests are identified in surveys prior to the commencement of construction. Staff acknowledged that this may be true and now recommends the requirement of weekly monitoring for herons, egrets, and other sensitive species in addition to pre-project monitoring in Condition One (1), requiring biological surveys. Staff also modified Condition One (1) to require an independent biologist, approved by the Commission's Executive Director, to report the monitoring results to the Commission's Executive Director, as well as to the Harbor Department. Additionally, staff addressed Beacon's concerns regarding view corridors by recommending additional findings that clarify that Visual Access Policy 22c, as modified by PWP amendment 1-04, was not intended to apply to this case, as this building and site were specifically reserved for a Commercial Fishing Facility in the 1986 PWP. Also, the numerous references in the PWP regarding this site and facility highlight that this building was contemplated, despite the view corridor shown on the Land Use Plan/Access map. Furthermore, staff modified the Public Access condition, Condition Eight (8) to make clear that, consistent with the Harbor Department's proposal, the public promenade will be constructed across both the X-1-B site considered in the subject NOID and the adjacent H-2 site and that it will be built and open to the public concurrently with the occupancy of the X-1-B and H-2 buildings.

5.) Applicant's Comments.

Staff has received a letter from the Harbor Department responding to concerns of The Beacon Foundation (Attached). The Harbor Department's letter also includes two new biological reports. Staff has also received a letter from a lessee of Marine Emporium Landing, Steven Buenger (Attached).

List of Attachments:

1. June 7, 2007 letter from The Beacon Foundation to the California Coastal Commission.
2. June 4, 2007 letter from The Beacon Foundation to the California Coastal Commission.
3. Jan. 24, 2007 letter from The Beacon Foundation to the California Coastal Commission.
4. PWP Land Use Plan/Access Map
5. June 5, 2007, Channel Islands Harbor Field Report from Dr. Jeffrey Froke.
6. June 11, 2007 letter from Steven Buenger of Marine Emporium Landing to the California Coastal Commission.
7. June 11, 2007 letter from Lyn Krieger, Director, Channel Islands Harbor to the California Coastal Commission.



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

RECEIVED
JAN 30 2007

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

January 24, 2007

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

Re: Notice of Impending Development
Marine Emporium, Channel Islands Harbor
Parcel X-1-B and H-2

CORRECTION

Dear Mr. Timm:

I revisited the site after delivering our letter of this date to your office. This leads me to make a correction to the first paragraph. I state there that grading and excavation is not only of the area occupied by the structure destroyed by fire in October of 2005 but also the area contemplated for new structures by the NOID. On revisit, it appears the excavation encompasses a far greater area than the old footprint but does not extend on to adjoining parcel X-1-B.

It continues to be our understanding that the only exemption granted by Commission staff with regard to the destroyed building was for its demolition. This is set out in the Harbor Director's letters to Mr. Ainsworth of October 20 and 26, 2005. The Harbor Director wrote in the first of these:

"The City Building Department has agreed to the demolition, pending meeting Coastal Act requirements. Given all of these concerns, I am declaring this an emergency pursuant to the Coastal Act and authorizing the immediate removal of the structure. Consistent with the Coastal Commission regulations, we will file a Notice of Impending Development after the fact to fulfill your requirements."

The Director's letter of October 26, 2005 memorialized her understanding "regarding the demolition at Marine Emporium" that a NOID would not be required because the removal had been declared an emergency. Nothing is said about reconstruction. If there is any other documentation that approves reconstruction without a NOID and permit, I request a copy.

The construction now on-going appears to be without proper authorization. In addition, as stated in our letter, the reconstruction is not a replacement of the destroyed structure but a whole new and significantly different project.

Sincerely,

Lee Quaintance
Cc: Peter Douglas



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

RECEIVED
JAN 30 2007

CALIFORNIA
COASTAL COMMISSION
FIFTH CENTRAL COAST DISTRICT

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

January 24, 2007

Re: Notice of Impending Development
Marine Emporium, Channel Islands Harbor
Parcel X-1-B and H-2

Dear Mr. Timm:

The Ventura County Harbor Department submitted a Notice of Impending Development (NOID) dated December 26, 2006 ("the County submission") for the above referred parcels.

1. Halt Unauthorized Construction

Attached is a photograph showing extensive construction activity on the site. The photo was taken on January 12, 2006. Two bulldozers on site are continuing to grade and excavating not only the area occupied by the structure that was destroyed by fire in October 2005 but also the area for the new structures subject of the NOID. The fencing around the site cuts off public access to the waterfront of the property. In a January 17, 2006 staff report, copy attached, the Harbor Director announces that "*construction*" on this site began on January 8th. So, nine working days after the NOID submission construction was underway. As the County very well knows, even in situations where a NOID is appropriate, "*No development shall take place within 30 working days after notice.*" Public Resources Code Sec 30606. Appropriate action is customarily taken to extend the no development time to allow for Commission consideration.

We call upon your office to halt County violation of the Commission approval process, stop the unauthorized construction activity, and require restoration of public access to the entire waterfront.

2. Ineligible For Review As A NOID. The project sketched in the County submission is inconsistent with the certified PWP and ineligible for consideration as a NOID. Approval of this project requires submission and approval by the Coastal Commission of multiple amendments to the certified 1986 Harbor Public Works Plan (PWP).

A. Incomplete Project Description. The project is said to consist of "*construction of a new 8,800 sq. ft. commercial fishing and support services building on Parcel X-1-B*" along with "... *new sidewalks, paved areas, pedestrian walkway and landscaping....*" on this parcel and on H-2. However, the diagram included with the submission discloses multiple other new structures on these parcels and parcel H-1.

The NOID submission alludes to a *“replacement building that will soon be under construction”* on parcel H-2 totaling some 18,000 square feet. The structure previously on parcel H-2 was destroyed by fire in October 2005. The NOID diagram shows six new structures on this site with a total square footage that appears to be much greater than the destroyed structure.

On several occasions we have asked to be informed of any approval given by your office to construction on the H-2 site and the only approval we have learned of is the October 2005 permission to demolish and remove the wreckage of the building destroyed by fire. That demolition was completed months ago and it is our understanding that no Commission approval has been (or could be) given for any construction on this parcel outside the normal permit process and without compliance with the certified PWP.

The development on parcels X-1B and H-2 are admitted in the NOID letter to be “an integrated development.” The County must be required to present the whole project for Commission review and approval.

- B. The Project is not Contained Within the 1986 PWP as Amended. The County submission purports approval of the 8,800 sq ft building portion of the project was given by Coastal Permit 178-15. This permit was issued February 9, 1979 and referred in general terms to a yacht club, community center and theme village. Those developments were subject to Commission approval if suitable detailed plans were submitted and conditions fulfilled. None of the structures was to be on parcel X-1B or H2.

The parcels included in the NOID submission are the subject of Conditions II and Condition III of the 1979 permit. Those Conditions pertain to development of amenities to serve commercial fishing including such things as reserved fisherman parking and net drying areas – **no buildings are included among potential developments on these parcels described in the permit.** Further, the Permit expressly provides (Section IV. Part B) *“Nothing in this permit shall be construed as authorizing the development listed under Conditions II and III and **separate permits shall be required for such development.**”* [emphasis added].

Permit 178-15 expired more than 25 years ago. Its Standard Condition 3 states: *“If construction has not commenced, **this permit will expire two (2) years from the date on which the Commission voted on the application.** Application for extension of this permit must be made prior to the date of expiration.”* [emphasis added]

After endeavoring to boot strap its project off an expired 1979 permit the County NOID submission tries a segues to a reference in Table 1 of the PWP. The County says Table 1 "anticipates" a building of approximately 8,000 sq ft on site X-1-B. The Table 1 reference to the parcel states merely "8,000 sq ft (In Concept)" as a possible use on this parcel for "Office & Bldg. for Admin-Mngmt of Comm. Fishing support facility." No actual structure existed or was the subject of a valid permit on this parcel at the time the PWP was certified. As established in Commission action on the prior Boating Center (BISC) project, a PWP amendment is required to add new structures because of the express provision that the Harbor is built out.

- C. The County Previously Determined PWP Amendments Are Required For This Project. The County submission references a lease approved by the Board of Supervisors on November 1, 2005. It says *"The lease requires construction of the commercial building on X-1-B in order for the lessee to obtain a term extension."* This comment implies Board approval of the project as now submitted. No such approval was given. The Board of Supervisors has never seen or approved the project depicted in the NOID submission.

The Staff report to the Board of Supervisors for the November 1, 2005 lease is attached. It describes in conceptual terms three new buildings. With respect to two of the structures it states *"A Public Works Plan Amendment would be required for this component. Board approval of such an amendment is not guaranteed by the adoption of this lease."*

- D. The Project Requires Multiple PWP Amendments. Submission of a PWP amendment is required to add any new structures and also for any incursion of the project on existing PWP protections

One of the amendments necessary is for the blocking by project buildings of view corridors expressly designated and diagramed in the PWP.

The County submission tacks 800 sq ft and 2.5 feet of additional height on to the 8,000 square foot building it says Table 1 of the PWP "anticipates." There is no such building included in the PWP and thus no basis for building expansion. The proposed 27.5 foot height is in direct violation of height restrictions of the PWP and would require an amendment.

Another amendment issue is compliance with PWP section 4 requirements for public access via waterfront walkways. The diagram provided with the County submission depicts a "cantilever concrete boardwalk" on the waterside perimeter of the parcels X-1-B, H-2 and H-1. The NOID Project Description refers to "sidewalks, paved areas, [and] pedestrian walkways" but never to a "cantilever concrete boardwalk." It appears this only means of public access to the waterfront is not within the project leasehold and that no obligation is imposed for this structure as part of the project.

The November 1, 2005 staff report for the lease amendment states the only County cost "*will be the cost of the promenade which will be incurred in FY 06-07 at an estimated cost of \$35,000.*" This treats the walkway as outside the leasehold and leaves any obligation to actually construct it to the discretion of the County. Obviously, the cantilevered concrete boardwalk structure diagramed would cost many times \$35,000. There must be a requirement for its completion at the time of construction of any buildings on the parcels or the PWP must be amended to exempt these parcels from waterside public access. We find it inconceivable such an amendment would be approved by the Commission. If the cantilevered public walkway is in the diagram but not a required part of the project, the Commission is being misled.

E. The County Submission Does Not Provide Information Necessary for Commission Discharge of its Obligation for a Functionally Equivalent CEQA analysis. The County Submission says "*The Harbor Department*" has determined the project is categorically exempt from CEQA. The Board of Supervisors has made no such determination and it defies common sense to maintain that a project requiring multiple PWP amendments is exempt. Whether or not that determination is erroneous, as we believe it is, there remains the Coastal Commission's independent responsibility to make an environmental review that is functionally equivalent to a CEQA review. The County has presented a naked file with no environmental review of any kind. It also fails to present the project as a whole and provides no consideration of cumulative impact or of alternatives.

One illustration of the obvious need for environmental review of this project arises from the "cantilever concrete boardwalk" discussed in point D above. The building of such a structure over the existing rip rap has impacts on biota that must be analyzed.

What is the effect on biological resources in or about the rip rap caused by driving piles or other supports for this structure? What will be the effect of shading of the rip rap and adjacent water by the cantilevered structure?

+++++

We call upon the Commission to take immediate action to halt the un-permitted construction and to require restoration of public access to the water front. Further, we ask the Executive Director, Mr. Douglas, to determine the file is incomplete due to the lack of a total project description and the absence of any environmental analysis. Finally, we ask the Commission to inform the County that this project is not contained within the existing PWP and would require multiple amendments to the PWP --- thus barring its consideration as a NOID.

The Beacon Foundation is a non-profit environmental organization focused on coastal Ventura County.



Lee Quaintance

Secretary

Encls.

Cc: Peter Douglas



HARBOR DEPARTMENT

MEMORANDUM

DATE: January 17, 2007
TO: Harbor Commission
FROM: Lyn Krieger, Director
SUBJECT: DIRECTOR'S REPORT

The following report is intended to bring you up to date on principal activities since the last Harbor Commission meeting.

Leasing and Property Updates

Since the last meeting of the Harbor Commission, the following lease amendments or updates have been heard by the Board of Supervisors, or are scheduled for hearing: Vintage Marina lease extension option (parcels X-2 and Y-1), amended and restated leases (new lease forms) for Peninsula Yacht Anchorage and Bahia Marinas (Parcels LM-1, 2 and 3, F and F-1, and C), amended and restated lease for Channel Islands Boatyard and Landing (Parcels N and P), amended and restated lease for the Whale's Tail Restaurant (Parcel K-1) and a small amendment to the Marine Emporium Landing lease (Parcels H-1, H-2, X-1B and X-1C).

Remaining leases that are under negotiation for full replacement leases include Fisherman's Wharf and Anacapa Marine Services. Other amendments or space leases may arise, but none are known at this time.

Public Works Plan

The draft Waterside Amendment will be presented to the Commission at the January 17, 2007, meeting for discussion. This procedure is somewhat different than was last discussed with the Commission at the November meeting. Current plans call for the draft Amendment to be discussed by the Commission at this meeting, followed by a hearing before the Board of Supervisors on February 27, 2007, at 1:30 p.m. This time frame allows for an additional meeting for discussion by the Commission, if you choose to do so.

Construction Update

As of this writing, four construction projects are underway in the Harbor. This includes the construction start for Channel Islands Harbor Marina, the ongoing revetment repair work, the continuing construction on the Hampton Inn, and the start of construction on Marine Emporium Landing on January 8th.



Lyn Krieger
Director

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



Telephone (805) 382-3001
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November 1, 2005

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

SUBJECT: AMENDED AND RESTATED LEASE – MARINE EMPORIUM LANDING
(on file with Clerk of the Board) (4/5 vote required)

Recommendation:

Harbor Department Staff recommends that your Board:

1. Approve and authorize the Chair to execute the attached Amended and Restated Harbor Lease for Parcels H-1, H-2, X1-B and X1-C contingent upon the verification of the Director with the concurrence of the County Executive Officer and County Counsel that following substantive issues have been resolved:

- a. The final initial minimum rent, scheduled to be re-set as of October 1, 2005, based on the following formula in the lease: 80% of prior 3 years' average monthly total rent paid to County. Estimated to be approximately \$12,300 per month, pending rent reports due November 15, 2005.
- b. Final legal description of Parcel X1-C.

2. Authorize the Harbor Director to make corrections, clarifications, and technical modifications, which are non-monetary in nature, to the Lease prior to its execution by the Chair with the concurrence of the County Executive Officer and County Counsel, so long as there is no change to the stated intent of the leases, loss of income, or other costs to the County.

3. Find, based on the certified regulatory program of the California Coastal Commission applicable to the Harbor, and the nature of the amended and restated leases' terms, that the above stated actions are exempt from the provisions of the California Environmental Quality Act (CEQA) under applicable the statutory and categorical exemptions found in CEQA and the CEQA Guidelines, as further discussed herein, and that there is no substantial evidence of unusual circumstances or cumulative impacts about these approvals that would make these statutory and categorical CEQA exemptions inapplicable.

4. Direct the Harbor Department Director to prepare and sign the appropriate CEQA Notices of Exemption, and to file them with the County Clerk.

Fiscal/Mandates Impact:

Harbor Enterprise Fund 2490

Mandatory: No
Source of Funding: Leases
Funding Match Required N/A
Impact on Other Departments: County Counsel will Review Documents

The only fiscal impact will be the cost of the promenade which will be incurred in FY 06-07 at an estimated cost of \$35,000. However, increases in lease revenue are anticipated once the leasehold refurbishment is complete.

Current Fiscal Year Budget Projections:

CURRENT FY 2005-06 Budget Projection for Harbor Enterprise				
	Adopted Budget	Adjusted Budget	Projected Budget	Estimated Savings/(Deficit)
Appropriations	\$8,545,803	\$8,545,803	\$8,545,803	\$0
Revenue	\$8,622,887	\$8,622,887	\$8,622,887	\$0
Operating Gain/Loss	\$77,084	\$77,084	\$77,084	\$0

Background:

On September 2, 1985, your Board granted a 35-year lease to the current Lessee, Marine Emporium Landing, terminating on September 30, 2020. The Lessee and the County have entered into negotiations to amend and restate the entire lease in exchange for the Lessee receiving options for lease term extensions based upon the completion of specific, extensive capital improvements by the Lessee. Under the amended and restated lease, the Lessee will be entitled to up to a maximum additional 40 years of lease term, if the proposed capital improvements are all completed, this would result in a total of 55 years on the new lease, with a completely refurbished leasehold, resulting in a maximum end date of 2060, if all improvements are made and capital is spend in excess of required Components. Such additional term shall be given in stages as each Component of the proposed work is completed. In addition, Parcel X1-C, which the County constructed using a loan from the California Coastal Conservancy (fully paid in 1998), will become part of the leasehold. The Lessee will assume full operational and maintenance responsibility for the wharf and crane which serves the commercial fishing industry on Parcel X1-C.

The Components of proposed capital expenditures are as follows:

- Component A:** Replacement of existing docks at Parcels H-1 and H-2 with some minimal changes in design; new gangways; construction of 800 sq ft Public Restrooms; construction of new trash enclosure; development of publicly accessible courtyard, concrete and landscaping; installation of landscaping and lighting, benches and other hardscape features on the new promenade to be constructed by County at water's edge of Parcels H-1 and H-2. The County will construct the concrete promenade using existing maintenance personnel. The reconfigured dock system will be conducive to commercial passenger vessels, such as the Island Packers and sport fishing businesses presently operating on the leasehold. It is contemplated to accommodate 10 boats ranging from 70 to 80 feet in length. The docks will also provide facilities for kayak rentals, electric and paddle boat rentals, water taxi service and guest docking for the facilities at Marine Emporium Landing. Component A must commence not later than July 1, 2007 and be completed by June 30, 2008. Component A must be completed prior to Lessee receiving any extension of term from completion of any other Components. In other words, without completion of these public benefit improvements, no lease extensions are available.
- Component B:** An option for Construction of 8000 sq ft "Terminal Building" on Parcel H-1 including landscaping. If approved, this 2-story building would be constructed east of the existing building on Parcel H-1 (see diagram) and would serve as the terminal for access to water activities in the Harbor and the Channel Islands. There will be visitor information kiosks, souvenir shops, and representation by the Harbor Department, City of Oxnard, National Parks Service and NOAA. The second floor will provide professional office space. Component B must be completed not later than December 31, 2011, but shall not have a compulsory commencement date. A Public Works Plan Amendment would be required for this Component. Board approval of such an amendment is not guaranteed by the adoption of this lease.
- Component C:** Construction of a 6500 sq ft "Commercial and Sport Fishing Building" on Parcel X1-B, already included in the existing Public Works Plan. This 2-story building will be constructed on Parcel X1-B and serve as the ticket office for the sport fishing operations at Marine Emporium Landing and support the needs of the local commercial fishing trade. A new gangway will be installed on the north side of the parcel to access the Commercial Fishing Marina. This second floor will provide professional office space.

Component C must commence not later than December 31, 2007, and be completed by December 31, 2008.

Component D: An option for construction of a 15,700 sq ft "Visitor Serving Retail Building" on Parcel H-2. This 2-story building, if approved, will be constructed to the west of the existing (currently fire damaged) building on Parcel H-2. It will accommodate numerous retail activities and serve as the pedestrian entrance to the Marine Emporium center. It will provide visitors with an informative and entertaining educational experience on the Channel Islands National Park and the Marine Sanctuary. In addition, there will be coffee houses, fast food and other visitor oriented shops. The second floor will provide professional office space. Component D must be completed not later than December 31, 2011, but shall not have a compulsory commencement date. A Public Works Plan Amendment would be required for this Component. Board approval of such an amendment is not guaranteed by the adoption of this lease.

Component E: Replace building on Parcel H-2 and remodel existing building on Parcels H-1 including, without limitation, the roof, sprinkler system, electrical system, HVAC system, new facades and siding and structural upgrades. The work on Parcel H-1 will update the 26-year old building and enhance the desirability of the lease space. The building on H-2 was destroyed by fire on October 2, 2005. Component E must commence not later than December 31, 2008, and be completed by December 31, 2010.

In addition to the components above, if the Lessee proceeds with either Components B or D, it has the option to cooperate with the County in the redesign and reconstruction of the main parking lot on Cabazon Way. Such redesign and reconstruction will be partially funded by the Lessee (to a maximum of 20% of cost or \$220,000), the County (to the same level as Lessee) and, potentially, the City of Oxnard or other public agency.

Completion of each of the Components above and expenditure of a minimum of a set amount of capital ("Obligatory Expenditure") will entitle Lessee to a term extension as follows:

Component	Obligatory Expenditure	Additional Term
A	\$720,000	5 years
B	\$1,008,000	7 years
C	\$645,000	4.5 years
D	\$1,280,000	12 years
E	\$770,000	5 years
Parking Lot Reconstruction	\$220,000	1.5 years

In addition to the term extensions above, if Lessee exceeds the Obligatory Expenditure of any Component, and it completes Components A, C and E, it is eligible for further term extensions of one month for each \$12,000 of such cost overruns up to a maximum of 60 months.

Components A, C and E do not require and amendment to the current Public Works Plan; however, Components B and D will require such amendment, as noted above.

Immediately upon execution of this amended and restated lease, the County will secure various new lease clauses, such as favorable end-of-lease language, imputed rent and improved self-help provisions and cost recovery provisions for minor lease violations. In exchange, the Lessee will secure a modification of certain percentage rents, primarily a reduction in the office category from the penalty rate of 20% to the market rate of 10.5% (reduced by .25% for the first five years due to fire damage).

In order to complete this lease package, a legal description of Parcel X-1C (the wharf) must be completed, since this improvement has never been defined in a lease parcel before. At the same time, the existing legal description for the other parcels must be checked for accuracy, a task which the Lessee will undertake. Errors in other legal descriptions within the Harbor have been discovered in recent years, making this step of verification necessary.

The Harbor Department recommends that you find and determine the County's actions in approving the Amended and Restated Lease are exempt from the terms of the California Environmental Quality Act (CEQA) that require preparation of an environmental impact report (or other document) under the terms of Public Resources Code sections 21080.5 and 21080.9 and CEQA Guidelines ("Guidelines") Sections 15251, 15265, 15301, 15302, 15303, 15304, 15352, and 15378, among others, for the following reasons (any one of which is sufficient to exempt these lease approvals from CEQA):

- (1) approval of this Amended and Restated Lease for these existing facilities does not constitute approval of a project under CEQA (see Guidelines Sections 15352 and 15378);
- (2) approval of this Amended and Restated Lease is undertaken to facilitate the operation, repair, renovation, maintenance, leasing, or other activities related thereto (Guidelines Sections 15301 and 15302);
- (3) execution of this Amended and Restated Lease does not commit the agency to a definite course of action in regard to a potential future (revised) project which may (or may not) have environmental impacts (which impacts, if any were to be proposed, would be addressed under CEQA at such time (see also Guidelines Section 15301); and

- (4) to the extent any environmental analysis of this Amended and Restated Lease and subsequent activities related thereto could cause environmental impacts, such impacts are exempt from County of Ventura review under CEQA pursuant to the statutory exemption found in Public Resources Code Sections 21080.5 and 21080.9, and Guidelines Sections 15250 and 15251(c) and (f), as being subject to the certified regulatory program of the California Coastal Commission regarding its final review and approval for such activities (see also Guidelines Section 15265(c)).

The County Executive Office and County Counsel have reviewed this letter. The Harbor Commission reviewed these documents on October 19, 2005, and unanimously recommended your approval.

If you have any questions regarding this item, please contact me at 382-3002.



LYN KRIEGER
Director



The Beacon Foundation

PMR 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

Amber Tysor, Coastal Program Analyst
California Coastal Commission
88 S. California Street, Suite 200
Ventura, CA 93001

June 4, 2007

Re: NOID 2-08

Dear Ms. Tysor,

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

Our chief but not only issues with the Staff Report for the above referred project is the protection of biological resources. We would appreciate an opportunity to meet at your office some time this week on this and other concerns. In view of the shortness of time, this letter set out biological resources issues:

1. Illusory Protection of Heron. Special Condition 1 is an incomplete and watered down version of the protections devised by the Commission for the Vintage Marina and BISC projects. These are the deficiencies of Special Condition 1:

No restrictions apply except if confirmed nesting sites **EXIST BEFORE** construction starts. If nesting commences after construction starts the only obligation is for the Harbor Department "environmental resources specialist" to "conduct surveys" weekly. Even without the presence of confirmed nests on site, sound level restrictions need to be applied during the nesting season as they are in the Vintage Project modifications.

The staff report does not require the biologist or "environmental specialist" to be "qualified and independent" — both requirements were applied in the Vintage Project Modification 7. Apparently, for the Marine Experiment project, staff envisions Jeffrey Froke, Ph.D in this role. Dr. Froke is a consultant to the Harbor Department's private development lobbyist. He was initially considered as the qualified and independent biologist for the Vintage project by the County but was not chosen for this role by the Commission.

Special Condition 1 is premised on the false information (for which no source is given) that (page 11) "The nearest tree that has contained a heron nest is [sic] the past is about 750 feet from the site." Dr. Froke's field report to the Harbor Department and its development lobbyist dated April 22, 2007 and attached to the Staff Report as Exhibit 7, documents his latest observations.

-2-

Two of the six nesting sites he identifies on the central Peninsula in the Harbor are on its west side. The same two sites are documented in Dr. Froke's October 2004 overall "Synopsis" on heronry in the Harbor. Both of these nesting sites are less than 500 feet from the landside portion of the proposed project and less than 400 feet from the waterside portion. Dr. Froke's October 2004 Synopsis (page 7) notes: "The Channel Islands Harbor heronry is a single colonial entity that is physically subdivided - the West Side and Peninsula colonies - by only a 200-foot channel." He further observes:

"Great Blue Heron and Black-crowned Night-Heron routinely fly back and forth across the channel to the respective colony (or sub-colony) areas. The two parts - seen as whole trees and tree tops - are clearly visible (and audible) from each other"

We agree with Dr. Froke on this observation. The Staff Report disregards the need to protect the heron colony as an organic whole and instead accepts the false and destructive premise that protection need be given only if a parcel has a nest on it before construction starts. This thinking can lead and has already led to extirpating much of the colony.

2. Failure to Analyze Effects on Marine Biota. The NOID submission purports to provide public coastal access by a "cantilever concrete boardwalk" placed over existing rip rap. There is in the County submission no consideration of the effects on marine biota or avian species of this engineering marvel. The Commission cannot discharge its obligations under the coastal act and for an environmental review functionally equivalent to CEQA if it lacks the data necessary to analyze the effects of driving piles for this structure and the effects on marine biota and avian foraging areas of shading by the cantilevered structure of the rip rap and adjacent waterway.

Sincerely,



Lee Quaintance
Secretary



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

June 7, 2007

Th 21c & d – Channel Island Harbor

The Beacon Foundation is a nonprofit environmental organization focused on coastal resources of Ventura County. These are our issues and requests for Commission action:

Issue

Requested Commission Action

1. Protect the Heron. The project is within a heron rookery the Commission has worked to sustain by Conditions on County development project projects in the Harbor. The County has repeatedly violated the Conditions and the rookery population is diminished and at risk of total extirpation.

The heron protection proposed for Item 21 c & d is a diminished version of the Conditions imposed by the Commission on the adjacent Vintage and Boating Center projects. The lesser protection is based on lack of proof of nesting on the specific parcels now proposed for development and erroneous information that the nearest nesting trees are 750 feet away. In fact, the biologist report dated April 22nd submitted by the County, documents current nesting on the Peninsula area of the Harbor that is within 400 feet of Project 21c and 500 feet of project 21d.

The staff report would impose no restrictions to protect the heron unless the County's observer finds nesting behavior "on or adjacent" to the project site before construction commences. Special Condition 1 requires the County observer to be "qualified" but does not require this person be "independent." If, nesting commences after construction starts the sole obligation is for the County to observe. Even if nesting is found on the day before construction starts, there is no obligation to restrict noise levels to any specified standard.

So, if construction started on October 1st, a date far outside the nesting season, there would be no birds present and no Condition would apply to protect the birds even if they later appeared on site during the nesting season of February 1 through August 15. This is an open invitation to the County to pick a construction commencement date outside the nesting season and thus avoid all protection for the heron.

Revise Condition 1 to:

- Require the County biologist to be both "qualified" and "independent."
- Prohibit construction noise above 65 db within 500 feet of any nesting tree.
- Prohibit construction noise above 65db during the nesting season of February 1 through August 15.
- Provide that all of the protections of Condition 1 shall apply if nesting birds appear at any time during construction.
- Require that all required Biologist and/or sound monitoring reports be provided to the Commission.

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SOUTH CENTRAL COAST DISTRICT

2. Require Project 21d to be processed as a Public Works Plan Amendment .

A 1986 Public Works Plan governs the Channel Islands Harbor. It protects low density, low and no cost public access, and boating amenities for the public and for commercial fishing.

The PWP requires 25% of public harbor views from roads shall be preserved. In addition it designates by diagram specific view corridors of special concern. The County has sought to eliminate its obligation to respect diagramed view corridors and the Commission has rebuffed this.

As observed by one Commissioner during a hearing on the Boating Center (BISC) project, the diagramed view corridors are in the PWP for a purpose and must be respected. This resulted in a 2005 Amendment to the PWP adopted by the Commission and the County. Added to Visual Policy 22c is the following clarification:

"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." [emphasis added]

The PWP designates and diagrams a view corridor on the now vacant parcel proposed for development by project 21d.

Please find that Project 21d cannot be approved as a NOID and will require a PWP Amendment.

To eliminate a designated view corridor an Amendment to the PWP is required. This has always been the case and the 2005 Amendment just made it crystal clear to the County that this is the view of the Coastal Commission.

Staff acknowledges there is a designated view corridor on the parcel. However, it would allow it to be taken without a PWP amendment because staff believes its development is contemplated by the PWP.

For reasons detailed in a letter of January 24, 2007 we believe the development now proposed is not contained in the PWP.

Whether development is contemplated or not -- and even if there is an inconsistency in the PWP -- the taking of a designated view corridor must be resolved by a PWP amendment. If not, the County will use this precedent for its position that designated view corridors are unprotected.

3. Require Project 21c assure build out of A public waterside access walkway.

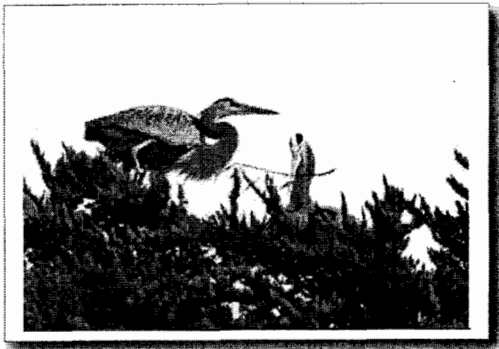
The PWP calls for public access along the waterside of harbor development and specifically provides that developed areas not having such access at the time of PWP certification shall add it when they are redeveloped.

The diagram included in the NOID for Project 21c omits the public walkway extending from Project 21d. The gangway diagramed for construction as part of Project 21c interdict the areas where a public walkway is required.

Please require the public waterside access walkway to be built as part of any approval of Project 21c.

Condition 8 for Project 21d requires the waterside walkway to be constructed concurrently . This walkway is supposed to continue on the adjacent parcel. The diagram for 21c omits the walkway and depicts a gangway in conflict with it. This needs to be resolved by requirement for construction of the public walkway





Jeffrey B. Froke, Ph.D.
CALIFORNIA WILDLIFE ECOLOGY

Survey Design Monitor & Manage
3158 Bird Rock Road / Pebble Beach CA 93953
TEL (831) 224-8595 / FAX (831) 649-3764
jbfroke@mac.com

CHANNEL ISLANDS HARBOR FIELD REPORT

DATE: 05 June 07

TO: Lyn Krieger
Ventura County Harbor Department

CC: Andi Culbertson
CAA Planning

SUBJECT: **COVERING PERIOD OF 27 April 2007 – 31 May 2007**

This report covers the known nesting status of all herons at Channel Islands Harbor as of 31 May 07, the date of my most recent onsite inspection. The previous report, submitted on 29 May 07 (and clarified and resubmitted on 31 May), gave the known status of the CIH colony as of 26 April 07. My next field inspection will be in mid-late June 07.

Both days were windy with gusts of approximately 15 knots springing up to 20 knots.

Black-crowned Night-Heron –

We now know that BCNH are nesting in the CIH environment, specifically on the Peninsula. I confirmed an active nest with young nestlings begging for food at 730 PM on 30 May 07. The nest is deep inside the super-dense foliage and needle matting of a 30 ft conical Monterey Cypress; the nest itself is approximately 10-12 ft off the ground and 2 ft off-center from the trunk facing E-SE. The tree is located at the entrance of the boat anchorage parking lot, near the *Lobster Tail* at the cul de sac end of Peninsula Road.

In addition to the confirmed nest (which also was detected and confirmed independently by Greg Ainsworth, Impact Sciences on the previous day, 29 May 07) I suspected two nests in two adjacent trees – one in a Monterey Pine next to and overhanging the street, and one in the companion cypress by the active nest tree. Ainsworth also suspects

nests in these trees, again by independent investigation (plus we have supported each other's suspicions with our shared evidence).

At minimum, there is one BCNH nest; and there may be others in specified trees in the same vicinity. Further, and in view of the late nest-start (late April) by the night-heron pair, plus the relative commonness of the type and physical characteristics of tree selected by the nesting pair, I believe there is a greater probability of finding new nests later this month.

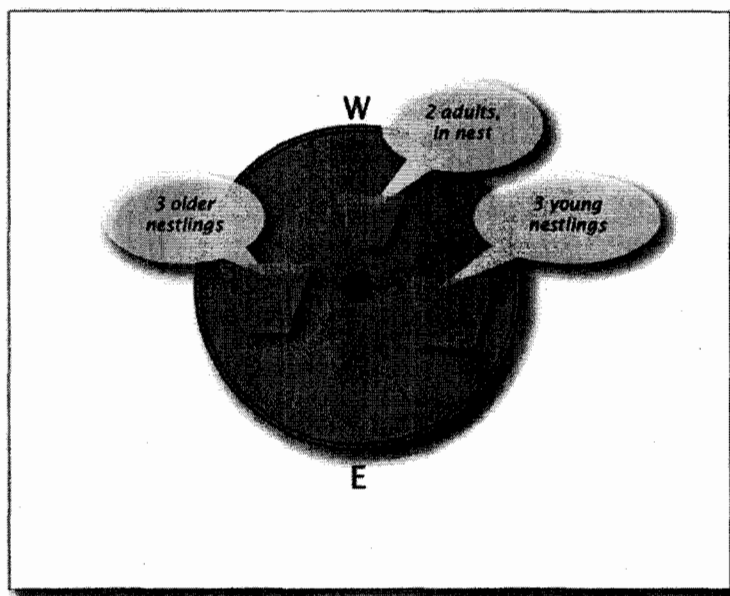
Great Blue Heron -

Westside. There were no nesting GBH on the Westside of CIH.

Peninsula/Peninsula Park. There were no nesting herons at Peninsula Park or its vicinity.

Peninsula/Casa Sirena. **Three (3) pairs of GBH** were nesting on the grounds of Casa Sirena, all of which were in the single Monterey Pine in the central portion of the (3-story) hotel complex (*the stairwell pine*). The Casa pair that had been nesting in the adjacent palm, 25 ft distant from the pine in the parking lot was not present, nor were any nestlings that could be positively identified with the palm nest. While the following observation was made there were six (6) juvenile GBH standing on the westward rooftop of the adjacent section of the hotel.

Momentary status of the three active nests in the Casa Stairwell Pine (*looking from above / plan view*):

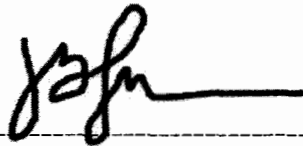


Peninsula/Boat Lot. Five (5) pairs of GBH were nesting in as many palms on the north edge of the Boat Anchorage Parking Lot, along its border with the adjacent apartment complex. At the times of observation: Nest 01 = 1 aa; 02 = 2 older nn; 03 = no birds seen; 04 = 2 middle nn; 05 = begging chick sounds emanated and pair was observed feeding at least two nestlings therein.

Summary:

BCNH - *minimum 1 nest with young*

GBH -- *minimum 5 nests with young*

A handwritten signature in black ink, appearing to be 'JBF', is written over a horizontal dashed line.

June 11, 2007

To: California Coastal Commission
Attn: Commissioners

From: F. Steven Buenger, Marine Emporium Landing

Re: Notice of Impending Development (NOID) 2-06, Parcel X1-B, Channel Islands Harbor.

Dear Commissioners :

I am the owner and operator of the Marine Emporium Landing in Channel Islands Harbor. I am a second generation operator, as my father, Fred Buenger began our family's involvement as a lessee when the harbor opened in 1963. We have been the Lessee of Parcels H-1 and H-2 since 1974, and the lease was restated to include parcel X1-B in 1985 after several years of discussion. Our lease hold also includes the adjacent wharf, parcel X1-C.

A condition imposed on us per the terms of the 1985 lease was to construct a commercial fishing support facility on parcel X1-B. In view of this knowledge and contractual requirement, the County-prepared Public Works Plan, certified by the California Coastal Commission in 1986, included the building on Parcel X-1B in Table I as allowed development. The construction was to be triggered upon completion of the County-developed commercial fishing wharf on parcel X1-C. The County completed construction of the commercial fishing wharf in 1990.

Unfortunately by the time the wharf was completed, the real estate recession which began in about 1990 was at the beginning of a steep drop, and we were unable to fulfill the obligation, and provide the commercial fishing support facility. Factors that contributed to the infeasibility of the project included not only the nation-wide recession, but also a diminishing local commercial fishing industry which resulted in decreased demand for these services.

A few times between 1991 and 1998 the county warned us with "default" letters since the building had not been constructed in fulfillment of the requirements of our lease. We communicated regularly with county management, and in 1999 we began formulating a plan for the development of this parcel which would satisfy the conditions of the lease, and be developed in a way that would comply with the 1986 Public Works Plan.

Since that time, the commercial fishing industry that remains has been strengthened through public and legislative support. The construction of these facilities will contribute critical infrastructure as additional support for this local ocean-based industry, fulfilling the longstanding public commitment made to them, and affirmed in the 1986 PWP. Similarly, we are now positioned to facilitate the improvements on the parcel, along with other enhancements for public safety and enjoyment.

MARINE EMPORIUM LANDING GATEWAY TO THE CHANNEL ISLANDS

CHANNEL ISLANDS HARBOR • 3600 SOUTH HARBOR BOULEVARD, OXNARD, CA 93035 • LEASING: 805/985-5628 • FAX: 805/985-1534
www.MarineEmporiumLanding.com

Harborside
Restaurant

Traditional
Ships Chandlery

Boat Charters

Island
Excursions

Yacht Brokers

Harbor Taxi

Sandwich Shop
& Deli

Nautical Gifts
Clothing & Decor

Fish Market

Sportfishing
Landing

Waterfront
Offices

Postal Services

Commercial
Fishing Wharf

Bait & Tackle

Kayak Rentals

NOAA
Channel Islands
National Marine
Sanctuary

The improvements include:

An 8,800 square foot building designed to accommodate the following:

- Commercial fishing brokerage offices
- Commercial fishing cold storage
- Fish Market – retail / wholesale
- Commercial sport fishing office
- Patios and walking areas for pedestrians
- Restaurant to serve fresh catch and provide a visitor serving amenity

A pedestrian promenade that connects to the existing walkways at both the north and south ends of the parcels is included in this plan. This promenade will finally complete the connection on the west side of the Harbor, which has been interrupted for decades.

Contrary to comments in a letter you received from Lee Quaintance of the Beacon Foundation, the promenade, as approved by the Ventura County Board of Supervisors, is not cantilevered. Initially considered as an opportunity to provide the public a closer experience to the water, it was determined that it was not practical for several reasons, not least of which was revetment maintenance. The planned promenade, as reflected on the site plans in your packet, is a broad sidewalk along the water's edge.

Our plans for these projects, which are in strict conformity with the lease terms, have been presented to the Ventura County Board of Supervisors in December 2006 and April 2007. They were approved by a unanimous vote each time. There were no objections by the public at either hearing date.

The local community strongly supports both of these County approved projects. We are ready to proceed immediately upon approval of the NOIDs, with the construction of X1-B, the Marina Replacement and the Promenade. However, we have at all times acted in good faith, and no construction relative to X1-B, or the Marina Replacement has been initiated.

I was born in Oxnard, only 2 miles away from the subject site. I have been a resident of Ventura County my entire life. I am personally dedicated to the constructive preservation of the environment and the habitat that makes Channel Islands Harbor so attractive. It is with this dedication and concern that any project is measured against for implementation. I do appreciate the commission's favorable decision regarding this project, and your continued support of improved public access and commercial fishing services in the Channel Islands Harbor.

I can be reached at 805/985-5828, ext 104 for additional discussion and clarification. Thank you for your consideration.

Sincerely,
Marine Emporium Landing, LLC.



F. Steven Buenger
Managing Member



Lyn Krieger
Director

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



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

June 11, 2007

Thu 21C and 21D

Patrick Kruer, Chair
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Subject: County Response to Beacon Foundation letter; County response to CCC staff report; Ventura County Channel Islands Harbor Public Works Plan Notice of Impending Development No. 1-07 (Marine Emporium Landing Marina); Ventura County Channel Islands Harbor Public Works Plan Notice of Impending Development No. 2-06 (Marine Emporium Landing Parcel X-1-B and H-2).

On behalf of the County of Ventura, I am writing you as Harbor Director to support the staff recommendation – with a minor exception in the reasoning on view corridors, as well as rebut statements made in several letter from the Beacon Foundation, most recently expressed in a letter dated June 7, 2007.

The Beacon Foundation makes three assertions:

1. That the protection of the herons from construction noise is inadequate;
2. That the project requires an amendment to the PWP because it is asserted that view corridors are being interrupted in violation of Policy 22C of the PWP; and,
3. That the public walkway is not adequately identified.

These assertions are addressed in turn.

The assertion that the herons are not adequately protected during construction

The commenter makes sweeping assertions regarding the state of the heron rookery but offers no evidence whatsoever for his position. Since the approval of the Boating Instruction and Safety Center (BISC) in March 2005 and the onset of construction of the Channel Islands Marina in January, 2007, there have been no nesting Black-Crowned Night Herons (BCNH) between the BISC site and the subject site. Since they were known not to nest in the area from 2005¹ to the onset of construction of Channel Islands Marina in January 2007 – almost two years later – their absence cannot be blamed on construction activity, as Beacon Foundation asserts.

¹ Channel Islands Harbor Heronry-2003-2006, Dr. Jeffrey Froke, page 37

As to the criticisms regarding the adequacy of the restrictions on construction presented by the Beacon Foundation, we respectfully request that the Commission consult Attachments 1 and 2. In addition to the extensive baseline work prepared by Dr. Jeffrey Froke, the County – in satisfaction of the condition imposed on Channel Islands Harbor Marina – contracted with an additional biologist to observe construction and heron behavior during the Channel Islands Harbor Marina construction. This biologist, Greg Ainsworth of Impact Sciences, has offered his response to the Beacon Foundation letter. As a result of these contemporaneous observations of a Coastal Commission –approved consultant, it has been determined that noise does not affect the herons at all. BCNH have frequented the area during construction and not been disturbed – they simply did not nest there. This is consistent with their general behavior, as noted in the letter from Robb Hamilton. Mr. Hamilton is yet another biologist retained by the County to guide the County's thinking on biology, and to study alternative heron habitats. The Commission is respectfully asked to note the complete symmetry between the positions of Mr. Ainsworth and Mr. Hamilton, as well as that of Dr. Froke as presented in previous reports.

The Commission is also asked to note that the distances provided by Beacon Foundation are inaccurate and inconsistent with current observations, as noted in Attachment 1.

There can be no doubt that the County of Ventura has complied with the letter and spirit of the Commission's requirements, and will continue to do so. The commenter is simply wrong and the condition imposed in the staff report is adequate to address protection of the herons. The noise limitation is more than adequate for a site that is across a main boating channel.

The assertion that the project requires an amendment to the PWP because view corridors are being interrupted in violation of Policy 22C of the PWP

The County respectfully disagrees with the CCC staff report, as well as the Beacon Foundation. A careful examination of the view corridor exhibit in the PWP depicts two non-continuous view corridors over Parcel X-1-B. These two view corridors intersect with four view corridors from Harbor Boulevard which are continuous. The County notes that one of the view corridor lines over Parcel X-1-B does not even connect with the view corridor arc representing a view corridor "fan" from Harbor Boulevard.

This conclusion is completely logical. As noted in the letter from the lessee submitted under separate cover, negotiations for this building were completed in 1985, one year before the certification of the PWP. The building is included as a specific future project in the PWP.² It would be completely illogical and illusory to allow a building, and then place a view corridor over the very property that was intended for the building.

² In fact, during the lengthy hearings for the BISC, opponents asserted that the harbor was "built out". The County noted that this building – and one other at 12,000 square feet – were never built, and therefore that alone refuted the contention that the harbor was "built out".

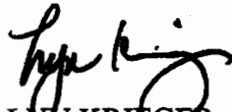
Therefore, while the County agrees with the CCC staff that even if a view corridor was involved the intrusion is minimal, the County also contends that no view corridor "fan" is intended here, and that a logical interpretation of the documents supports that view.

The assertion that the public walkway is not adequately identified

The promenade, as depicted in the site plans included in the Coastal Commission file, is not cantilevered. Initially considered as an opportunity to provide the public a closer experience to the water, it was determined that it was not practical for several reasons, not least of which was revetment maintenance. The planned promenade, as reflected on the site plans in your packet, is a broad sidewalk along the water's edge.

I will be available at the hearing to answer any additional questions, or can be reached in advance at (805)382-3002.

Sincerely yours,



LYNN KRIEGER
DIRECTOR

Cc: Board of Supervisors
John F. Johnston, CEO
Noel Klebaum, County Counsel
Steve Buenger, Marine Emporium Landing

Attachments: Letter from Robb Hamilton, dated June 11, 2007
Letter from Greg Ainsworth, dated June 11, 2007
Site plan indicating view corridors as outlined in 1986 PWP
Project elevations indicating view corridor



ROBERT A. HAMILTON

June 11, 2007

MEMORANDUM

TO: Andi Culbertson

FROM: Robert A. Hamilton, Consulting Biologist

SUBJECT: Notice of Impending Development (NOID) 2-06 for
Marine Emporium Landing Parcel X-1-B at Channel Islands Harbor

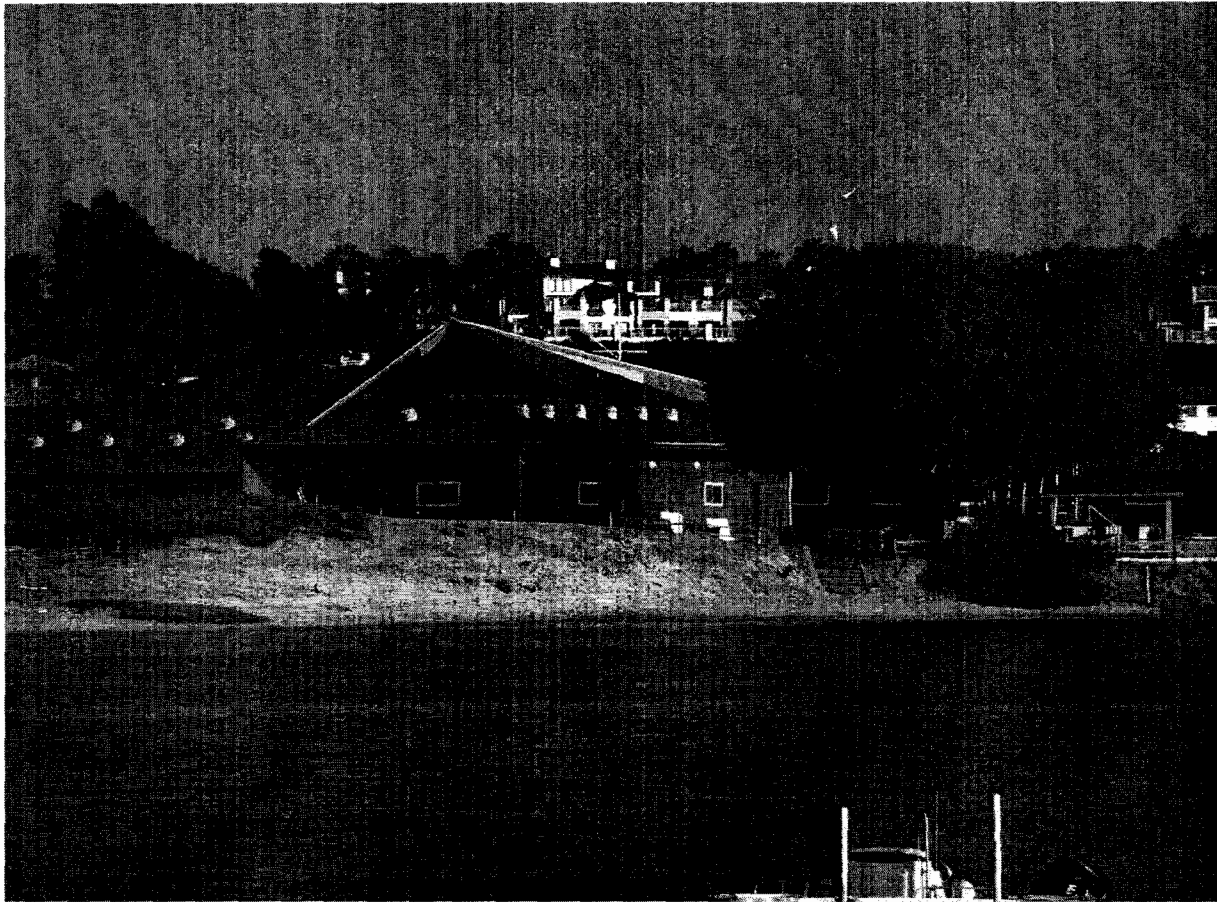
At your request, I have prepared this letter responding to comments provided to the California Coastal Commission (CCC) by the Beacon Foundation. It is my understanding that this letter will be considered by the CCC in preparation for a Public Hearing and Action at the 14 June 2007 CCC meeting in Santa Rosa, California. The County of Ventura has contracted with me to provide peer review of Dr. Jeffrey Froke's studies of herons at Channel Islands Harbor (CIH) in Oxnard, and to develop, in coordination with Dr. Froke, Dr. Terry Master, and Peter Bloom, a strategy for responsibly accommodating the continued nesting of Great Blue Herons (*Ardea herodias*) and Black-crowned Night-Herons (*Nycticorax nycticorax*) at Channel Islands Harbor while allowing for the harbor's ongoing development. My qualifications for this work are summarized in the attached Curriculum Vitae.

This letter incorporates information that will be included in a more comprehensive memorandum that Dr. Master, Mr. Bloom and I will provide to the County of Ventura later this week. In brief, we believe that Dr. Froke has done a capable job of documenting the breeding status of herons and egrets at CIH from 2003 to present, including his documentation of the birds' capacity to establish territories and successfully breed in areas where humans are routinely and conspicuously present.

The Beacon Foundation in its comments of 4 June 2007 note that Dr. Froke documented nesting by Black-crowned Night-Herons on the west side of the harbor, within approximately 400-500 feet of the Marine Emporium site. It is relevant, however, that herons have not been found nesting on the west side of the harbor since 2005. It is not unusual for Black-crowned Night-Herons in southern California—outside of a small number of large, permanent colonies—to move around periodically. Referring to the species' status in Orange County, for example, Sylvia Gallagher wrote, "Black-crowned Night-Herons are like the proverbial floating crap game. A colony of them can set up housekeeping in anyone's yard—so long as it's reasonably close to water" (Gallagher, S. R. 1997. Atlas of Breeding Birds, Orange County, California. Sea and Sage Audubon Press, Irvine, CA.). This characterizes my experience with Black-crowned Night-Herons in southern California.

As of Dr. Froke's last report, dated 5 June 2007, no herons of any species were nesting on the west side of CIH. One to three pairs of Black-crowned Night-Herons and five pairs of Great Blue Herons are currently nesting on the peninsula—across the water from the Marine Emporium site, in areas close to ongoing human activity. With regard to construction effects on these birds, I know of no credible evidence showing that Black-crowned Night-Herons are particularly sensitive to noise or human activity several hundred feet from their nesting sites. Since January 2007 I have been

monitoring construction of the Back Bay Science Center at Upper Newport Bay in Orange County. The following photo, taken on 8 June 2007, shows Snowy Egrets in a large *Ficus* tree next to the nearly-completed science center (the green building shown in the photo). This tree is currently occupied by at least six nesting pairs of Snowy Egrets and one nesting pair of Black-crowned Night Herons. The California Department of Fish and Game (CDFG) maintains an office next to this site, and Jeff Stoddard of CDFG (pers. comm.) indicates that 2007 is the first year that egrets or herons have nested in this tree. One would not expect these birds to have moved into this *Ficus* tree in 2007 if these birds were particularly sensitive to noise or construction activity.



In summary, I believe that the Special Conditions specified in the Notice of Impending Development (NOID) for Marine Emporium Parcel X-1-B are appropriate and adequate to mitigate any potentially substantial effect that this project could have on the nesting of herons or egrets at CIH.

ROBERT A. HAMILTON
CURRICULUM VITAE

7203 STEARNS STREET
LONG BEACH, CA 90815

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EXPERTISE

CEQA Analysis
General Biological Surveys
Endangered Species Surveys

Avian Population Monitoring
Open Space Management
Bird Banding

EDUCATION

1988. Bachelor of Science degree in Biological Sciences, University of California, Irvine.

PROFESSIONAL EXPERIENCE

1995 to Present. Independent Biological Consultant.
1988 to 1995. Biologist, LSA Associates, Inc.
1987 to 1988. Independent Biological Consultant.

OTHER RELEVANT EXPERIENCE

Field Ornithologist, San Diego Natural History Museum Scientific Collecting Expedition to Central and Southern Baja California, October/November 1997 and November 2003.
Field Ornithologist, Island Conservation and Ecology Group Expedition to the Tres Mariás Islands, Nayarit, Mexico, 23 January to 8 February 2002.
Field Ornithologist, Algalita Marine Research Foundation neustonic plastic research voyages in the Pacific Ocean, 15 August to 4 September 1999 and 14 to 28 July 2000.
Field Assistant, Bird Banding Study, Río Nambí Reserve, Colombia, January to March 1997.

BOARD MEMBERSHIPS, ADVISORY POSITIONS, ETC.

American Birding Association: Baja California Peninsula Regional Editor, *North American Birds*
Western Field Ornithologists: Publications Committee & Associate Editor of *Western Birds*
California Native Plant Society, Orange County Chapter: Conservation Chair (1992-2003)
California Bird Records Committee (1998-2001)
Nature Reserve of Orange County: Technical Advisory Committee (1996-2001)

OTHER PROFESSIONAL AFFILIATIONS

American Ornithologists' Union	Institute for Bird Populations
Cooper Ornithological Society	Southern California Academy of Sciences
Association of Field Ornithologists	Western Foundation of Vertebrate Zoology

PERMITS

Federal 10(A)1(a) Permit No. TE-799557 to survey for the Coastal California Gnatcatcher and Southwestern Willow Flycatcher (expires 12 October 2007)
Federal Bird Banding Subpermit No. 20431-AY

INSURANCE

\$2,000,000 general liability policy (Hartford) \$1,000,000 auto liability policy (State Farm)

PRINCIPAL PROFESSIONAL QUALIFICATIONS

I perform field work throughout southern California, including 1) floral and faunal surveys, 2) directed surveys for sensitive plant and animal species, including California Gnatcatchers, Southwestern Willow Flycatchers, and Least Bell's Vireos, 3) open space monitoring and management, 4) vegetation mapping, and 5) bird banding. Professional experience includes:

Under contract to the Port of Long Beach, I completed a 1996 study of the Black-crowned Night Heron colony that nested in ornamental street trees at the Long Beach Naval Shipyard (LBNS). This study involved (1) determining the number of pairs nesting at the LBNS in 1996 (506 pairs); (2) collecting data on breeding activity, including banding of 525 nestlings; (3) characterizing the trees used for nesting; (4) analyzing the data collected in order to identify relationships that exist between heron nesting activity and nest-tree characteristics; (5) reviewing the known nesting status of the Black-crowned Night-Heron in southern California in order to help characterize the regional importance of the LBNS nesting colony; and (6) providing recommendations for relocation of the heron rookery to a different portion of the Long Beach Naval Shipyard.

I have worked with study-design specialists and resource agency representatives to develop the long-term passerine bird monitoring program for the Nature Reserve of Orange County, and have directed its implementation since 1996. This has included (1) oversight of up to 10 constant-effort bird banding stations from 1998 to 2003 under the Monitoring Avian Productivity and Survivorship (MAPS) program; (2) annual monitoring of 40 California Gnatcatcher and Cactus Wren study sites from 1999 to 2004; and (3) detailed mapping of cactus scrub resources and two rounds of focused surveys for the Cactus Wren across the NROC's coastal reserve in 2006.

Having prepared biological technical reports for numerous CEQA documents for projects throughout southern California, I am highly qualified to provide professional, third-party review of CEQA documents. I have professionally reviewed EIRs for the following projects:

The Ranch Plan (residential/commercial, County of Orange)
Southern Orange County Transportation Infrastructure Improvement Project (Foothill South Toll Road, County of Orange)
Tonner Hills (residential, City of Brea)
Villages of La Costa Master Plan (residential/commercial, City of Carlsbad)
Whispering Hills (residential, City of San Juan Capistrano)
Santiago Hills II (residential/commercial, City of Orange)
Rancho Potrero Leadership Academy (youth detention facility/road, County of Orange)
Saddle Creek/Saddle Crest (residential, County of Orange)
Frank G. Bonelli Regional County Park Master Plan (County of Los Angeles)

References provided upon request.

PRESENTATIONS

- Hamilton, R. A., Mitrovich, M. J. 2006 Cactus Wren Study, Nature Reserve of Orange County. Twenty-minute Powerpoint presentation given at the Nature Reserve of Orange County 10th Anniversary Symposium, Irvine, California, 21 November 2006.
- Hamilton, R. A. 2006. 1999-2004 Results of Annual California Gnatcatcher and Cactus Wren Monitoring in the Nature Reserve of Orange County. Twenty-minute Powerpoint presentation given at the Partners In Flight meeting: Conservation and Management of Coastal Scrub and Chaparral Birds and Habitats, Starr Ranch Audubon Sanctuary, 21 August 2004.
- Hamilton, R. A. and K. Messer. 1999-2004 Results of Annual California Gnatcatcher and Cactus Wren Monitoring in the Nature Reserve of Orange County. Twenty-minute Powerpoint presentation given at the Partners In Flight meeting: Conservation and Management of Coastal Scrub and Chaparral Birds and Habitats, Starr Ranch Audubon Sanctuary, 21 August 2004; and at the Nature Reserve of Orange County 10th Anniversary Symposium, Irvine, California, 21 November 2006.
- Hamilton, R.A. and K. Messer. 1999-2001 Results of Annual California Gnatcatcher Monitoring in the Nature Reserve of Orange County. Twenty-minute Powerpoint presentation given at the Western Field Ornithologists' annual meeting, Costa Mesa, California, 11 October 2002.
- Hamilton, R.A. Preliminary results of reserve-wide monitoring of California Gnatcatchers in the Nature Reserve of Orange County. Twenty-minute Powerpoint presentation given at the Southern California Academy of Sciences annual meeting at California State University, Los Angeles, 5 May 2001.

PUBLICATIONS

- Hamilton, R. A. and P. A. Gaede. 2005. Pink-sided × Gray-headed Juncos. *Western Birds* 36:150-152.
- Mlodinow, S. G. and R. A. Hamilton. 2005. Vagrancy of Painted Bunting (*Passerina ciris*) in the United States, Canada, and Bermuda. *North American Birds* 59:172-183.
- Erickson, R. A., R. A. Hamilton, S. González-Guzmán, G. Ruiz-Campos. 2002. Primeros registros de anidación del Pato Friso (*Anas strepera*) en México. *Anales del Instituto de Biología, Universidad Nacional Autónoma de México, Serie Zoología* 73(1): 67-71.
- Hamilton, R. A. and J. L. Dunn. 2002. Red-naped and Red-breasted sapsuckers. *Western Birds* 33:128-130.
- Hamilton, R. A. and S. N. G. Howell. 2002. Gnatcatcher sympatry near San Felipe, Baja California, with notes on other species. *Western Birds* 33:123-124.
- Hamilton, R. A., R. A. Erickson, E. Palacios, and R. Carmona. 2001+. *North American Birds* quarterly reports for the Baja California Peninsula Region starting with the Fall 2000 season.
- Hamilton, R. A. and R. A. Erickson. 2001. Noteworthy breeding bird records from the Vizcaino Desert, Baja California Peninsula. Pp. 102-105 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Hamilton, R. A. 2001. Log of bird record documentation from the Baja California Peninsula archived at the San Diego Natural History Museum. Pp. 242-253 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Hamilton, R. A. 2001. Records of caged birds in Baja California. Pp. 254-257 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Erickson, R. A., R. A. Hamilton, and S. N. G. Howell. 2001. New information on migrant birds in northern and central portions of the Baja California Peninsula, including species new to Mexico. Pp. 112-170 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Howell, S. N. G., R. A. Erickson, R. A. Hamilton, and M. A. Patten. 2001. An annotated checklist of the birds of Baja California and Baja California Sur. Pp. 171-203 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Ruiz-Campos, G., González-Guzmán, S., Erickson, R. A., and Hamilton, R. A. 2001. Notable bird specimen records from the Baja California Peninsula. Pp. 238-241 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Wurster, T. E., R. A. Erickson, R. A. Hamilton, and S. N. G. Howell. 2001. Database of selected observations: an augment to new information on migrant birds in northern and central portions of the Baja California Peninsula. Pp. 204-237 in *Monographs in Field Ornithology* No. 3. American Birding Association, Colorado Springs, CO.
- Erickson, R. A. and R. A. Hamilton. 2001. Report of the California Bird Records Committee: 1998 records. *Western Birds* 32:13-49.
- Hamilton, R. A., J. E. Pike, T. E. Wurster, and K. Rademaker. 2000. First record of an Olive-backed Pipit in Mexico. *Western Birds* 31:117-119.

- Hamilton, R. A. and N. J. Schmitt. 2000. Identification of Taiga and Black Merlins. *Western Birds* 31:65-67.
- Hamilton, R. A. and D. R. Willick. 1996. *The Birds of Orange County, California: Status and Distribution*. Sea & Sage Press, Sea & Sage Audubon Society, Irvine.
- Hamilton, R. A. 1996-98. Photo Quizzes. *Birding* 27(4):298-301, 28(1):46-50, 28(4):309-313, 29(1): 59-64, 30(1):55-59.
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IMPACT SCIENCES

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MEMORANDUM

TO: Lyn Krieger

JOB NAME: Channel Islands Harbor
Heron Monitoring

FROM: Greg Ainsworth

DATE: 6/11/2007

SUBJECT: Heron Monitoring Tasks and Responsibilities

JOB NO.: 890.001

COMMENTS

INTRODUCTION

Beginning on January 17, 2007 and through this date, Impact Sciences has been monitoring heron behavior and the potential effects of the construction-related activities associated with the PWPA 1-05 project on heron behavior, specifically, breeding and nesting behavior. Monitoring is intended to continue through January 2008. Only qualified biologists with experience in conducting bird surveys have been monitoring the herons. Monitoring surveys occur during construction activities, and on days when no construction occurs. Impact Sciences has been in constant communication with Dr. Jeffery Froke to communicate our findings and results of heron monitoring efforts currently being conducted and to confirm that our findings are consistent with Dr. Froke's current and previous (2003-present) monitoring results.

SUMMARY OF TASKS AND RESPONSIBILITIES

Noise Monitoring

- Background Baseline Noise Measurements
- 24- Hour Demolition Baseline Noise Measurements
- Short-Term Demolition Baseline Noise Measurements
- Construction Noise Baseline Measurements
- Data Analysis and Report Preparation
 - Calculate noise levels at the base of the New Zealand Christmas trees (METEXC) located to the north of the Yacht Club. Noise measurements included the following (but not limited to):
 - noise levels for saws-all and chainsaws;

- noise levels for jack hammering and concrete cutting;
- noise levels for piling removal, and;
- noise levels for piling installation.
- Suggest Mitigation Measures to keep construction-related noises below 65dB

Heron Monitoring

- Heron Behavioral Monitoring
 - Prior to, during (at least once weekly), and following the completion of construction activities through February 28, 2008, a qualified biologist with experience in conducting bird surveys, will monitor all suitable habitat areas located in the immediate vicinity of the Channel Islands Harbor Marina for herons and egrets.
 - The biologist will visit suitable habitat areas located in the immediate vicinity of the Channel Islands Harbor Marina during optimal weather conditions, and time of day, to observe typical foraging, feeding, and breeding behavior of herons and egrets.
 - The monitoring biologist will conduct behavioral monitoring for a minimum of 4 hours per week during optimal conditions in suitable habitat areas located in the immediate vicinity of the Channel Islands Harbor Marina through the duration of the project (February 28, 2008).
- Construction Monitoring
 - The biologist will be present throughout the duration of pile driving activities and other activities occurring at docks D and E that may result in noises near the 65dB noise level threshold.
 - Impact Sciences submits a monitoring report to the Ventura County Harbor Department about every other week. The monitoring report addresses the status of heron and egret foraging, feeding, and nesting in the immediate vicinity of the Channel Islands Harbor Marina. The monitoring reports include the mapped localities of herons and egrets observed during monitoring activities. The localities of each behavioral activity (i.e., foraging, feeding, nesting) is also discussed in the reports.

RECENT MONITORING RESULTS

To date, there are no breeding or nesting herons located near the construction activities occurring at Basins D and E. There are European starlings (*Sturnus vulgaris*) and pigeons nesting in palm trees located along the sidewalk near the gangway entrance to old "C" dock. No other birds have been observed breeding or nesting within 500 feet of the current location of construction activities (Basin D). European starlings may also be nesting in the parking light fixtures located in the Whales Tail parking lot. It should be noted that European starlings are an exotic species and are not protected under the Migratory Bird Treaty Act (US Code Title 17, Chapter. 7) and the Fish and Game Code (§ 3503).

To date, no construction related activities have impacted or affected the black-crowned night herons (or any birds observed in the area). Black crowned night herons (BCNH) are breeding within the three Cypress trees near the entrance to the Lobster Trap Restaurant, and small Monterey pine tree located across Peninsula Road to the west. On May 29, the BCHN eggs

hatched and egg shell remains were observed. BCNH chicks can be regularly heard at this nest location.

Breeding BCNH's were also observed in a cluster of Monterey cypress trees located at the Channel Islands Harbor Marina north basin (immediately to the east of the Channel Islands Harbor Marina office). Hatched egg remains were observed at this location on May 31, 2007. It should be noted that this pair of BCNH's successfully bred at this location during consistently noisy construction activities (construction was not related to the PWPA 1-05 [Channel Islands Harbor Marina] project).

One BCNH has been observed roosting in a New Zealand Christmas tree located near the southeast corner of the tennis courts at Peninsula Park.

Consistency with Dr Frokes' Previous Studies

According to Dr. Jeffrey B. Froke's heron studies conducted between 2003 and 2007, BCNH consistently roost in different trees than they nest in, although, in some circumstances, they may roost and nest in the same tree. Furthermore, between 2003 and 2007, BCNH have not returned to the same nesting site year after year. This year's heron behavior has been consistent with their behavior during previous years when no construction was occurring, in that, they roosted in different trees than they nested in. Impact Sciences biologists' and Dr. Jeffrey B. Froke agree that the behavior exhibited by the BCNH's previously roosting near the Yacht Club (which are currently breeding near the Lobster Trap restaurant) is "typical".

Recent Construction Noise Data

Date	Construction Activity	Average Noise (dB)	Collection Location	Comment
April 19	Diesel hammering	65 (average of 21 readings taken @ 5 min. intervals)	METEXC trees near Yacht Club	Land-side
April 27	Drop hammering	60 (average of 13 readings taken @ 5 min. intervals)	METEXC trees near Yacht Club	Water-side
May 18	Concrete pouring	57 (Noted on Field Monitoring Form during visual observation of meter while collecting data.)	METEXC trees near Yacht Club	
	Cement truck engine (revving)	64 (Noted on Field Monitoring Form during visual observation of meter while collecting data.)	METEXC trees near Yacht Club	

	Cement truck engine (accelerating)	73 (Noted on Field Monitoring Form during visual observation of meter while collecting data.)	METEXC trees near Yacht Club	
May 24	Diesel hammering	64 (average of 2 readings taken @ 60 min. intervals)	METEXC trees near Yacht Club	Land-side
	Drop hammering	58 (average of 2 readings taken @ 60 min. intervals)	METEXC trees near Yacht Club	Land-side
May 29	Diesel hammering	59 (average of 2 readings taken @ 60 min. intervals)	METEXC trees near Yacht Club	
May 30	Diesel hammering	61 (average of 5 readings taken @ 5 min. intervals)	METEXC trees near Yacht Club	Land-side
May 30	Ambient Noise	52 (average of 4 readings taken @ 5 min. intervals)	METEXC trees near Yacht Club	

CALIFORNIA COASTAL COMMISSION

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



Th 21d

DATE: May 31, 2007

TO: Commissioners and Interested Persons

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

SUBJECT: **Notice of Impending Development (NOID) 2-06**, for Marine Emporium Landing Parcel X-1-B for Public Hearing and Commission Action at the June 14, 2007, Commission Meeting in Santa Rosa.

SUMMARY AND STAFF RECOMMENDATION

The Ventura County Harbor Department proposes to construct a new 8,800 sq. ft. building, 27.5 feet in height, to be located adjacent to 3600 S. Harbor Boulevard, Oxnard, Ventura County. The building is proposed to accommodate commercial fishing related uses, including commercial fish brokerage offices, cold storage, a fish market and restaurant, areas for gear storage, gear repair, bait supplies, holding areas, commercial fish management offices, information centers/meeting halls, and fish buyer offices. The X-1-B parcel, 0.41 acres in size, is located on the western side of the Channel Islands Harbor, about 0.5 miles south of the Channel Islands Boulevard bridge. No public parking will be removed by the construction of the proposed building and the existing public parking in the immediate area is adequate to provide for the new uses. Areas surrounding the building are proposed to be mostly hardscape, including a patio area, a pedestrian walkway at the water's edge and around the building, and driveway access for the docks. Mature trees are located along the street side of the property and will remain and no trees will be removed as part of this project. No heron or egret nesting sites are located on or near the X-1-B parcel. The proposed construction includes landside improvements only, no waterside construction is proposed.

The required items necessary to provide a complete Notice of Impending Development were received in the South Central Coast Office on April 30, 2007 and the notice was deemed filed on May 4, 2007.

Staff is recommending that the Commission determine that the impending development **is consistent** with the certified Channel Islands Harbor Public Works Plan (PWP), as modified pursuant to **eight (8) special conditions** regarding: (1) pre-construction

biological surveys, (2) construction and maintenance responsibilities and debris removal, (3) drainage and polluted runoff control plans, (4) removal of temporary construction trailer, (5) lighting restriction, (6) approval of resource agencies, (7) revised plans, and (8) public access. As conditioned, the project is consistent with all resource protection policies and provisions of the Public Works Plan. See associated Motion and Resolution beginning on **Page 2**. The standard of review for the proposed NOID is conformity with the policies of the certified PWP.

I. PROCEDURAL ISSUES

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

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

II. STAFF RECOMMENDATION:

MOTION: *I move that the Commission determine that the development described in the Ventura County Harbor Department Notice of Impending Development 2-06 (Marine Emporium Landing Building X-1-B), as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a determination that the development described in the Notice of Impending Development 2-06, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DETERMINE DEVELOPMENT IS CONSISTENT WITH PWP:

The Commission hereby determines that the development described in the Notice of Impending Development 2-06, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan for the reasons discussed in the findings herein.

III. SPECIAL CONDITIONS:

1. Pre-Construction Biological Surveys

By acceptance of this authorization for development, the Harbor Department agrees to retain the services of a qualified biologist or environmental resources specialist with appropriate qualifications acceptable to the Executive Director, to conduct a biological survey of trees on or adjacent to the project site just prior to any construction activities that include grading or use of other heavy equipment that can cause excessive noise, odors, or vibrations **and** that will be carried out between February 1 and August 15th, inclusive. The Ventura Harbor Department shall direct the environmental resource specialist to: (1) conduct a survey in order to determine the presence of black-crowned night herons, great blue herons, snowy egrets, or other sensitive species in or near the project site, one day prior to commencement of grading or use of any heavy equipment that can cause excessive noise, odors, or vibrations and (2) immediately report the findings of the survey to the Ventura Harbor Department.

In the event that the environmental specialist reports any black-crowned night herons, great blue herons, snowy egrets, or other sensitive species exhibiting reproductive or nesting behavior on or adjacent to the project site, the following restrictions shall apply:

- A. Ventura Harbor District shall not commence work, and shall immediately notify the Executive Director.
- B. Project activities may commence only upon written approval of the Executive Director and only in areas more than 300 feet from any identified nesting site.
- C. Construction activities that are within 300 feet from any identified nesting site shall not commence until the environmental specialist has determined that black-crowned night herons, great blue herons, or snowy egrets near the project site have ceased to exhibit reproductive or nesting behavior and would not be impacted by any project activities.
- D. The Ventura Harbor Department shall have the environmental resource specialist conduct surveys to determine the presence of black-crowned night herons, great blue herons, snowy egrets, or other sensitive species in or adjacent to the project site, at least once weekly, during the construction.
- E. Construction noise reduction measures such as sound shields made from plywood or sound-board or molded sound shields shall be used and measures shall be taken to minimize loud noise generation to the maximum feasible extent during construction. Permanent lighting shall be

shielded and directed downward. Bright upward shining lights shall not be used during construction and construction employees shall not bring pets (e.g. dogs and cats) to the construction site.

The applicant shall submit documentation prepared by the biologist or environmental specialist which indicates the results of each pre-construction survey, including if any black-crowned night herons, great blue herons, snowy egrets, or other sensitive species were observed and associated behaviors or activities. Location of any nests observed shall be mapped.

2. Construction and Maintenance Responsibilities and Debris Removal

The Ventura County Harbor Department shall comply with the submitted "County of Ventura Conditions of Approval Marine Emporium Landing Notice of Impending Development Parcel X-1-B," and shall also comply with the following construction-related requirements:

- A. No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
- B. Any and all construction material shall be removed from the site within 24 hours of completion of construction and disposed of at an appropriate location.
- C. Machinery or construction materials not essential for project improvements are prohibited at all times in the subtidal or intertidal zones.
- D. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.
- E. Construction debris shall not be discharged into coastal waters
- F. The applicant shall dispose of all construction debris resulting from the proposed project at an appropriate location outside the coastal zone. If the disposal site is located within the coastal zone, a separate Notice of Impending Development shall be required before disposal can take place.
- G. Reasonable and prudent measures shall be taken to prevent any discharge of fuel or oily waste from heavy machinery or construction equipment into coastal waters. The applicants and applicants' contractors shall have adequate equipment available to contain any such spill immediately.
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- I. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.

If any conditions in the "County of Ventura Conditions of Approval Marine Emporium Landing Notice of Impending Development Parcel X-1-B," (Exhibit 1) are inconsistent with the conditions contained herein, the conditions contained herein shall take precedence.

3. Drainage and Polluted Runoff Control Plans

A. PRIOR TO DEVELOPMENT, the applicant 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. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if a new Notice of Impending Development is required to authorize such work.

B. The Harbor Department shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur unless the Executive Director determines that no new Notice of Impending Development is legally required.

4. Removal of Temporary Construction Trailer

The applicant shall remove the temporary construction trailer and all construction related debris from the staging site within sixty (60) days of completion of any and all development authorized under Channel Islands Harbor NOID 2-06.

5. Lighting Plan

- A. Prior to commencement of the development, the Harbor Department shall submit, for the review and approval of the Executive Director, a lighting plan for the approved structure and associated open areas. The lighting plan shall incorporate the following requirements:
- (1) Any exterior night lighting installed on the project site shall be of low intensity, low glare design, and shall be shielded to direct light downward onto the subject parcel and prevent spill-over onto adjacent parcels, including all public open space areas. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting.
 - (2) The lighting plan shall show the locations of all exterior lighting fixtures and an arrow showing the direction of light being cast by each fixture, the lighting specifications, and the height of the fixtures. The plan shall be designed in particular to avoid lighting impacts to the open spaces and trees.
- B. The Harbor Department shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur unless the Executive Director determines that no new Notice of Impending Development or Public Works Plan Amendment is legally required.

6. Resource Agencies

The Ventura County Harbor Department shall comply with all requirements (including required mitigation measures) from the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and the marine environment including bird nesting and foraging activity. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a new Notice of Impending Development pursuant to the requirements of the Coastal Act and the California Code of Regulations.

7. Revised Plans

Prior to commencement of the development, the Harbor Department shall submit, for the review and approval of the Executive Director, revised floor plans which delete the references to "retail" use where they appear in the individual lease spaces on the first and second floor. The revised plans must indicate either: 1) a specific use for each space, if the intended use has been identified, or 2) a note indicating that each space will be occupied by one of the commercial fishing related uses approved for the X-1-B building, including commercial fish brokerage offices; cold storage; areas for commercial fishing gear storage and repair and bait supplies; commercial fishing holding areas; commercial fishing management offices; and, information centers and meeting halls.

The Harbor Department shall undertake development in accordance with the approved revised plans for only commercial fishing related uses. Any proposed changes to the approved revised plans shall be reported to the Executive Director. The Executive Director will determine if a Notice of Impending Development, or Public Works Plan Amendment is necessary for any such change(s) in use.

8. Public Access

By acceptance of this authorization for development, the Harbor Department agrees that the proposed public walkways and public promenade shall be constructed concurrently with the construction of the X-1-B building and shall open for public use prior to or concurrently with the authorization to occupy the X-1-B building.

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

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

A. PROJECT DESCRIPTION AND BACKGROUND

The Ventura County Harbor Department proposes to construct a new 8,800 sq. ft. building, 27.5 feet in height, to be located adjacent to 3600 S. Harbor Boulevard, Oxnard, Ventura County (Exhibits 2-6). The building is proposed to accommodate commercial fishing related uses, including commercial fish brokerage offices, cold storage, a fish market and restaurant, areas for gear storage, gear repair, bait supplies, holding areas, commercial fish management offices, information centers/meeting halls, and fish buyer offices. The X-1-B parcel, 0.41 acres in size, is located on the western side of the Harbor, about 0.5 miles south of the Channel Islands Boulevard bridge. The site, currently a vacant lot, is directly adjacent to the concurrently proposed site for NOID 1-07, the Marine Emporium Landing Marina replacement project. The site is also adjacent to parcel X-1-C to the north where a commercial wharf and hoist has been in operation by the Marine Emporium Landing operators since 1990 (Exhibit 10). Commission staff determined that the reconstruction of an 18,539 sq. ft. two-story commercial building on parcel H-2, on the south side of the X-1-B site was exempt, as detailed in Exemption No. 4-06-056-X. The exemption for the X-2 commercial building was issued due to the fact that the previous building on the site was destroyed by a fire in 2006. The Harbor Department intends to build the developments on parcel X-1-B and H-2 concurrently.

No public parking will be removed by the construction of the proposed X-1-B building. Adequate public parking is available in parking lots west and southwest of the site. Approximately 220 parking spaces are located in the large adjacent parking lot, including handicapped parking and a handicapped path of travel. Parking is also

available along both sides of Cabezone Way, a U-shaped street that provides access to the Marine Emporium Landing site from Harbor Blvd.

Areas surrounding the building are proposed to be mostly hardscape, including a patio area, a pedestrian walkway at the water's edge and around the proposed building, and driveway access for the docks. The architectural style of the building is contemporary, with varied rooflines and facades (Exhibits 3-4). The materials to be used in the construction include composite siding and standing seam metal roof. New landscaping on the site will consist of small planter areas along the front of the building containing shrubs and accent plant material, and containers with small trees, vines, and colorful foliage. Mature trees are located along the street side of the property and these will remain. A few small trees will be planted on the adjacent H-2 building site, such as New Zealand Christmas trees. The proposed construction includes landside improvements only, no waterside construction is proposed.

A construction staging area will be located off of Cabezone Circle, directly adjacent to the X-1-B parcel, the proposed building site. A temporary construction office will be located within this area. All construction areas will be fenced and secured. Storm water control measures are proposed in conformance with the general National Pollutant Discharge Elimination System permit.

Background

On September 19, 1986, the Channel Islands Public Works Plan (PWP) was effectively certified by the Commission. The purpose of the PWP, as certified, is to provide "a detailed and specific planning document to guide future Harbor development." Jurisdiction within the Channel Islands Harbor is shared by both the County of Ventura and the City of Oxnard. Oxnard's City limits extend to all Harbor land areas. Based on a previous agreement between the two governmental authorities and the Commission's certification of the Public Works Plan, the County assumed planning and regulatory authority within the Harbor. Under the certified PWP, the County is responsible for approval of all development within the Harbor permitted by the plan. Under the PWP, the County must submit a Notice of Impending Development (NOID) describing any proposed development that is listed in the plan, for review and approval by the Commission. For a project contained in the certified PWP, the Commission's review of a Notice of Impending Development is limited to determining whether the development is consistent with the PWP, or can be made consistent by imposing reasonable terms and conditions to ensure that the development conforms to the PWP.

Requirements for the level of information contained in a Public Works Plan are contained in Section 13353 of Title 14 of the California Code of Regulations, which states that a PWP "shall contain sufficient information regarding the kind, size, intensity and location of development activity intended to be undertaken pursuant to the plan." Such information includes: 1) the specific type of activity or activities proposed to be undertaken; 2) the maximum and minimum intensity of activity or activities proposed to be undertaken; 3) maximum size of facilities proposed to be constructed pursuant to the plan; and 4) the proposed location or alternative locations considered for any

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

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

B. MARINE RESOURCES

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

Section 30240 of the Coastal Act States:

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

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

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

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

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

The Channel Islands Harbor Public Works Plan contains policies to protect marine and biological resources and environmentally sensitive habitat areas in and around Harbor waters. The proposed Marine Emporium Landing Parcel X-1-B project is located on the western side of the Harbor and includes construction of an 8,800 sq. ft., 27.5 ft. high building. This development has the potential to adversely impact marine and biological resources during the construction phase of the project.

1. Nesting Birds

Section 4.5 (Biological) of the PWP states:

Within Channel Islands Harbor terrestrial biological resources are limited in distribution and significance. The area is completely developed with commercial, recreational and residential structures; terrestrial vegetation consists entirely of introduced landscaping species.

However, several bird species, such as great blue herons, black-crowned night herons, and snowy egrets 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 because some species of herons and egrets are considered Sensitive Species and play an integral role in the ecosystem as top wetland predators.

The proposed project is located on the western side of Channel Islands Harbor about 0.5 miles south of the Harbor Boulevard bridge. No trees near the site have been designated as environmentally sensitive habitat area. Several palm trees are located on the adjacent parcel, parcel H-2. Three of these trees, situated directly adjacent to the H-

2 building currently under construction, are planned for removal but may be retained if construction allows. There are no trees on the X-1-B building site. A Monterey Cypress, located within the landscape area of the parking lot to the west of parcel X-1-B, will not be disturbed. Furthermore, there are no trees located on or adjacent to the project site or construction staging area that are known or have been known to provide nesting areas for either the great blue heron or black-crowned night herons (Exhibit 10). The nearest tree that has contained a heron nest is the past is about 750 feet from the site.

The Harbor biologist, Dr. Jeffery Froke, regularly conducts surveys of trees within the Channel Islands Harbor to identify the location of great blue heron and black-crowned night herons. Dr. Froke has never documented nesting trees on or directly adjacent to the project site. However, great blue herons and black-crowned night herons use various locations throughout the Channel Islands Harbor as nesting sites and these sites have been documented monthly from 2003 to the present by Dr. Froke. The most recent report from Dr. Froke, dated April 22, 2007, states that, as of March 5, 2007, the only nesting sites for the great blue heron were located on the peninsula in the center of the harbor. Additionally, and there were no nesting sites documented for the black-crowned night heron (Exhibit 7).

The proposed project is located 750 ft. away from the closest known nesting trees. However, if great blue or black-crowned night herons were to begin nesting near the project site, there is the potential that activities associated with the construction of the new building, such as excessive noise above the level of acoustic noise normally existing at the marina, could adversely impact nesting herons. Therefore, to ensure that nesting herons are not adversely affected by construction activities, the Commission is requiring **Special Condition One (1)**, which requires a pre-construction survey by a qualified independent biologist approved by the Executive Director to determine whether herons are nesting near the project site, if construction will occur during nesting season (between February 1 and August 15). Should nesting activity within the project site be observed in the pre-construction survey, then several restrictions will apply to the construction, including that construction may not commence in the areas within 300 feet of any identified nest(s), that construction over 300 feet from any nest(s) will employ noise reduction measures, [such as sound shields, as recommended in a report by the harbor biologist, Dr. Froke (Exhibit 8)], and trees on the site and immediately adjacent will be surveyed weekly during construction. Finally, the designated biologist is required to submit written documentation of the pre-construction survey and any required weekly survey(s) regarding the status of heron or egret nesting and foraging in the immediate vicinity of the construction site.

2. Resource Agencies

In addition, in order to ensure that the proposed project is consistent with all California Department of Fish and Game and other agency regulations, **Special Condition Six (6)** requires the applicant to agree to comply with all requirements and mitigation measures from the California Department of Fish and Game, United States Army Corps of Engineers, US Fish and Wildlife Service, and the Regional Water Quality Control Board prior to commencement of construction.

The proposed construction of the Marine Emporium Landing building X-1-B has the potential to impact marine and biological resources. Special Condition One (1) relating to nesting birds, which will minimize these impacts, have been required. The Commission, therefore, finds that the proposed Notice of Impending Development is consistent, as conditioned, with the biological policies of the certified PWP.

C. COMMERCIAL FISHING USE

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

Section 30234 states:

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

In addition, Commercial Fishing Policies 1 and 2 in the Public Works Plan state, respectively:

The County will protect the Harbor's existing commercial fishing slips and facilities and lease them at reasonable rates to Commercial Fishermen and provide new facilities at reasonable rates including cold storage, ice and a hoist on parcel X-1B.

Commercial fishing facilities shall not be reduced unless the absence of need for such facilities can be demonstrated or equivalent substitute facilities are provided elsewhere.

The certified Channel Islands Harbor Public Works Plan identifies the use of this site for "Commercial Fishing." According to the PWP, the purpose of the "Commercial Fishing" designation is "to provide for the operation of commercial fishing support operations and facilities (except seafood processing) necessary to serve the needs of the offshore commercial fishing and diving industry for landside loading/unloading, and berthing facilities." The permitted uses of commercial fishing sites are "fish receiving and transferring facilities including storage, packaging, wholesale and retail fish sales and related offices, hoist facilities, net drying and repair areas, commercial fishing boat slips, icing facilities and other support facilities such as restrooms, showers and meeting rooms which are subordinate to, but necessary or helpful to the maintenance of the commercial fishing industry." Also, Section 4.4 in the Commercial Fishing Section of the PWP states that "...parcel X-1B is reserved for a commercial dock facility providing fish on and off-loading, facilities for cold storage and a fish market."

Building X-1-B is consistent with the policies and intent of the PWP Commercial Fishing Use designation because the building is proposed to accommodate commercial fishing related uses, including commercial fish brokerage offices, cold storage, a fish market and restaurant, areas for gear storage, gear repair, bait supplies, holding areas, commercial fish management offices, information centers/meeting halls, and fish buyer offices. Although the submitted floor plans include references to “retail” use for some individual lease spaces (Exhibits 5-6), the Harbor Department has confirmed that retail use is not proposed. **Special Condition Seven (7)** requires the Harbor Department to submit revised plans that delete the references to “retail” use and indicate either a specific commercial fishing use for each space or a note on the plans to indicate that each space will be occupied by one of the approved commercial fishing related uses. **Special Condition Seven (7)** also requires the Harbor Department to report any changes in commercial fishing use to the Executive Director.

Additionally, the certified Channel Islands Harbor Public Works Plan specifically identifies this site for construction of an 8,000 sq. ft. building for “Office and Building for Administration and Management of a Commercial Fishing Support Facility” in Table 1 of the PWP. Further, Section 4.0 of the PWP, Coastal Issues and Development Policies, as further explained below, allows for a ten percent expansion of the floor area and the height of any structure proposed under the PWP. Thus, the 1986 certified PWP identifies the X-1-B parcel for the use proposed, an 8,800 sq. ft. building to be used as a commercial fishing facility.

The construction of the Marine Emporium Landing parcel X-1-B development meets the stated purpose in the certified PWP to provide commercial fishing facilities because it will provide for uses that support commercial fishing. Therefore, the Commission finds that the Notice of Impending Development, as conditioned, is consistent with the commercial fishing policies of the certified Public Works Plan.

D. COASTAL ACCESS

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

Coastal Act Section 30211 states:

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

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

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

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected.

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

Further, Policy 5 in the Public Access Chapter of the PWP states that:

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

The proposed project involves the construction of an 8,800 sq. ft. building with public walkways around the building, connecting to a public promenade along the waterfront (Exhibit 2). The proposed public pedestrian promenade along the water's edge and walkway around the building will facilitate public access along the entire Marine Emporium Landing site and to the proposed Marine Emporium Landing Replacement Marina (considered in NOID 1-07). The proposed promenade will not be along the water's edge when crossing over the adjacent X-1-C site where the existing commercial fishing hoist/crane is located. The promenade will cross over the X-1-C site and will incorporate a special pedestrian crosswalk where the driveway meets the commercial fishing dock (Exhibit 10). In order to ensure that the proposed pedestrian accessway is constructed in a timely manner, the Commission finds it necessary to require that the walkway be constructed concurrently with construction of the approved building. **Special Condition Eight (8)** requires the concurrent construction and the walkway to be open to the public at the same time the building X-1-B is occupied and open to the public.

Furthermore, no public parking will be removed by the construction of the proposed X-1-B building and adequate public parking for the X-1-B building is available in parking lots west and southwest of the site. Approximately 220 parking spaces are located in the large adjacent parking lot, including handicapped parking and a handicapped path of travel. Parking is also available along both sides of Cabezone Way, a U-shaped street that provides access to the Marine Emporium Landing site from Harbor Blvd.

The Commission finds that the proposed project will not result in any adverse impacts to public access to and along the waterways in the Harbor, but instead will enhance access by providing a new public pedestrian walkway around the site and along the

waterfront. Therefore, the Commission finds that the Notice of Impending Development, as conditioned, is consistent with applicable public access policies of the certified Public Works Plan.

E. WATER QUALITY

As previously explained in the Biological Resources section above, the certified Channel Islands Harbor PWP incorporates by reference Coastal Act Sections 30230 and 30231, mandating that marine resources and coastal water quality shall be maintained and where feasible restored. Additionally, Coastal Act Section 30232, also incorporated into the certified PWP, requires protection against spillage of hazardous substances into the marine environment relating to any new development.

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

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

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

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

Further, Policy 3 under Biological Resources states:

Activities which produce, handle or transport petroleum products or hazardous substances within Harbor water areas shall be discouraged unless it can be proven beyond reasonable doubt that such activity will not result in any significant environmental impact. This policy does not apply to retail fuel sales/operations for boaters and commercial fishermen in the Harbor.

Policy 4 under Biological Resources states:

Adequate cleanup procedures and containment equipment shall be provided by the Harbor for all hazardous materials stored in the Harbor.

Construction Activities

The proposed construction of the Marine Emporium Landing X-1-B building has the potential to adversely impact coastal water quality through introduction of pollutants associated with construction.

Construction, debris removal and erosion and sediment control measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from the use of construction materials and methods. To ensure that these measures are properly implemented and in order to ensure that adverse effects to coastal water quality do not result from the proposed project, the Commission finds it necessary to require the Harbor Department, as required by **Special Condition Two (2)**, to implement construction phase best management practices (BMPs), including submit a final Construction, Debris Removal and Erosion and Sediment Control Plan. This plan will include measures such as storage of all construction materials or waste in a manner which prevents their movement via runoff, or any other means, into coastal waters, the removal of any and all construction equipment, materials and debris from the project site at the conclusion of construction, the disposal of all demolition and construction debris at an appropriate site, and the implementation of appropriate erosion and sediment control BMPs.

Additionally, runoff from the proposed building has the potential to impact water quality in the Harbor. Therefore, **Special Condition Three (3)** requires the Harbor Department to submit drainage and polluted runoff control plans. The proposed development will result in an increase in hard surface areas. As described above, the proposed

development includes an 8,800 sq. ft. building with surrounding hardscape areas, including a patio area, pedestrian walkway along the waterfront and the building, and a driveway. The site is adjacent to harbor waters and runoff associated with the impervious surface on the site may impact water quality in the harbor.

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 include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and cleaners; soap and dirt; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from waste. 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 Coastal Act and the Public Works Plan, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the amount of stormwater produced by all storms up to and including the 85th percentile, 24 hour storm event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Three (3)**, 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 Coastal Act.

Therefore, the Commission finds that the proposed Notice of Impending Development for the Marine Emporium X-1-B site, as conditioned to incorporate and maintain drainage and polluted runoff control plans and to incorporate best management practices during construction, is consistent with the applicable water quality protection policies of the certified Public Works Plan.

F. VISUAL RESOURCES

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

Coastal Act Section 30251 states:

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

In addition, Policy 2a under Public Access and Recreation in the certified PWP states (in part):

View corridors shall be landscaped in a manner that screen 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.

Policy 2d states:

Future building or redevelopment in the Harbor shall not exceed 2 stories or 25 feet in height...Height shall be measured from the centerline of the frontage road.

Policy 1 under Section 4.0 of the PWP, Coastal Issues and Development policies states that all development in the Harbor shall be subject to the following policy:

Any expansion of the existing and permitted structures described in Table 1 shall be prohibited except for minor alterations which result in an

increase of less than 10% of the internal floor area or an increase of 10% in height of the structure.

The construction of the Marine Emporium Landing building on Parcel X-1-B has the potential to impact visual resources in the harbor. As previously stated, the structure will be 8,800 square feet in size and 27.5 feet in height. This size and height is permitted under Policy 1, Section 4.0 in the PWP, allowing a 10% increase in size and height of the 8,000 sq. ft. in-concept structure noted in Table 1 of the certified PWP. Areas surrounding the building are proposed to be mostly hardscape, including a patio area, a pedestrian walkway at the water's edge and around the perimeter of the building, and driveway access for the docks. The architectural style of the building is contemporary, with varied rooflines and facades (Exhibits 3-4). The materials to be used in the construction include composite siding and standing seam metal roof. New landscaping on the site will consist of small planter areas along the front of the building containing shrubs and accent plant material, and containers with small trees, vines, and colorful foliage. Mature trees are located along the street side of the property will remain. A few small trees will be planted on the adjacent H-2 building site, such as New Zealand Christmas trees. These trees and plantings will enhance the visual qualities of the building area views from the public promenade.

The proposed building will reduce some of the view of the harbor and water that is currently available across the vacant site from the frontage road. Exhibit 11 provides a computerized simulation of what the building will look like looking out towards the harbor. Some trees on the site also block views of the building and water (Exhibit 11). However, the construction of this building, at the proposed size and height, is provided for by the Public Works Plan. As shown on Exhibit 11, a view will still be available from the parking lot and street to the harbor along the north side of the site. Further, the proposed public pedestrian promenade along the water's edge and walkway around the building will enhance public access and views of the harbor from the water's edge. No accessway along the waterside currently exists in this area. Public access to the walkways and promenade is required by **Special Condition Eight (8)** to be open to the public at the same time the building X-1-B is open to the public. Additionally, lighting on the building has been restricted in **Special Condition Five (5)** in order to minimize visual impacts to the public and biological resources. Therefore, the Commission finds that the Notice of Impending Development for the Marine Emporium Landing Parcel X-1-B, as conditioned to restrict lighting and provide public access near the water, is consistent with the applicable visual resource protection policies of the certified Public Works Plan.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Harbor Department, in its role as lead agency for the PWP and the NOID for purposes of the California Environmental Quality Act ("CEQA"),¹ has determined that the project is categorically exempt from the provisions of CEQA, under CEQA Guidelines Sections 15303 and 15332. 14 C.C.R. § 15303 (construction of small

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

structures); 14 C.C.R. § 15332 (in-fill development project); see also CEQA section 21084 (authorizing promulgation of regulations listing categorical exemptions). For CEQA purposes, the Commission's role with respect to this project is that of a responsible agency. Despite the lead agency's determination of categorical exemption for the project, the Commission has separately considered the potential environmental impacts of the project as it would be characterized under both CEQA and the Coastal Act. As an agency with a certified regulatory program under CEQA section 21080.5, the Commission regularly assesses whether its approval of a project, as modified by any conditions of approval, is consistent with the provisions in CEQA Section 21080.5(d)(2)(A) that a proposed project not be approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect the activity may have on the environment. As in other contexts, the Commission has considered that question here.

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

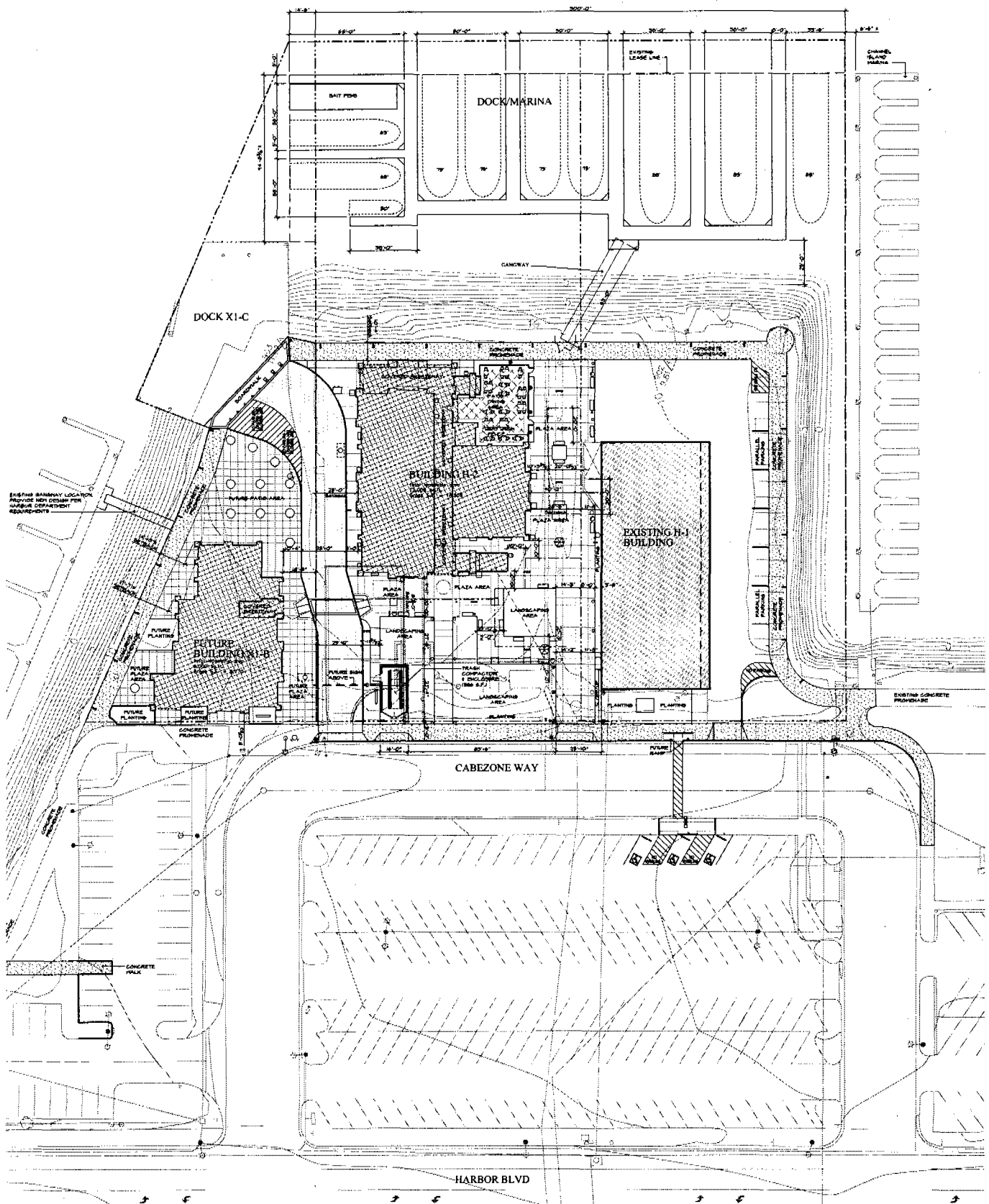
Exhibit C

**County of Ventura Conditions of Approval
Marine Emporium Landing Notice of Impending Development
Parcel X-1-B**

1. Prior to obtaining a building permit or grading permit from the City of Oxnard, the Harbor Department shall approve all plans for construction of this development, including grading, building, signage and landscaping plans. The revised plans submitted for approval by the Harbor Department and for building permit issuance shall demonstrate compliance with the PWP in that the building will be no larger than 8,800 sq. ft. in area, and no taller than 25 feet in height.
2. Any modifications to the plans after approval of the Harbor Department shall also be approved by the Harbor Department. Copies of the approved plans shall be provided to the Harbor Department in both paper and electronic format.
3. No materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health shall be handled, stored or used on the project property, except as provided by a permit issued by the City of Oxnard Fire Department.
4. Landscaping and irrigation plans shall show proper water meter size, backflow prevention devices and cross-connection control. All irrigation systems shall be designed to be low water using and shall include automatic rain shut-off and water sensor shut off devices as water conservation measures.
5. All trees planted or placed on the property by the Lessee shall be at least 24-inch-box size. All shrubs and vines shall be at least five-gallon size, except as otherwise approved on the landscape plans.
6. All vehicle access driveways shall be constructed to meet Fire Department conditions. All curbs adjacent to designated fire lanes shall be painted to prohibit parking or stopping in accordance with the California Vehicle Code.
7. All roof covering materials shall be of non-combustible or fire retardant materials as approved by the City of Oxnard Fire Department and the City of Oxnard Code.
8. All Fire Department approvals to ensure access and the availability of water for fire combat operations to all areas of the project shall be obtained prior to final occupancy.
9. Prior to installation of lighting, a lighting plan shall be submitted to the Harbor Department showing type of fixtures, heights, and intensity of illumination. Lighting fixtures shall be cut-off type fixtures that divert lighting downward onto the property and shall not cast light onto adjacent properties, roadways or waterways. Under canopy lighting shall be concealed or recessed so as to not be directly visible from the street.

10. All trucks hauling graded or excavated material offsite, if any, shall be required to cover their loads as required by the California Vehicle Code Sec. 23114, with special attention to preventing spilling onto public streets.
11. All graded and excavated material, exposed soils areas, and active portions of the construction site, including unpaved onsite roadways, shall be treated to prevent fugitive dust. Treatment shall include, but not necessarily be limited to, periodic watering, application of environmentally safe soil stabilization materials, and/or roll-compaction as appropriate. Watering shall be done as often as necessary and reclaimed water shall be used whenever possible.
12. Lessee's contractor shall ensure that all construction equipment is maintained and tuned to meet applicable Environmental Protection Agency (EPA) and California Air Resources Board (CARB) emission requirements. At such time as new emission control devices or operational modifications are found to be effective, lessee's contractor shall immediately implement such devices or operational modifications on all construction equipment.
13. Lessee's contractor shall minimize the number of vehicles and equipment operating on site at the same time.
14. At all times during construction activities, lessee's contractor shall minimize the area disturbed by clearing, grading, earth moving, or excavation operations to prevent excessive amounts of dust.
15. During periods of high winds (i.e. wind speed sufficient to cause fugitive dust to impact adjacent properties), lessee's contractor shall cease all clearing, grading, earth moving, and excavation operations to prevent fugitive dust from being a nuisance or creating a hazard, either onsite or offsite.
16. Throughout construction, lessee's contractor shall sweep adjacent streets and roads at least once per day, preferably at the end of the day, so that any visible soil material and debris from the construction site is removed from the adjacent roadways.
17. Lessee and/or lessee's contractor shall employ current Best Management Practices to protect against storm water runoff into storm drains and the harbor.
18. Construction staging areas shall be screened and protected to avoid material being blown or washed into the harbor. Screening material shall be approved by the Harbor Department. Lessee shall limit outdoor storage of materials to the locations shown and all construction material shall be stored within the staging area. Construction staging area shall remain locked and secure when not in use.
19. Hours of construction shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday, and not allowed on Sunday or holidays without prior approval of the Harbor Department.

20. Signage shall be provided to notify the public when access to public sidewalk will be blocked because of construction. Signage will indicate alternate routes.
21. All roof heating and cooling systems, and other exterior mechanical equipment, shall be screened from view from adjoining properties, waterways or public streets. Plumbing vents, ducts, and other appurtenances protruding from the roof of structure shall be placed so that they will not be visible from the front of the property, from waterways, or other vantage points. Roof vents shall be painted to match the roof material color.
22. Exterior utility meter panels shall be painted to match the structure upon which it is located. Such panels shall be located to take advantage of screening (e.g., landscaping or other building elements) from public views, to the maximum extent feasible.
23. Lessee shall submit a master sign program for the entire project for approval of the Harbor Department prior to final certificate of occupancy.
24. Lessee is responsible for removing all graffiti from the project site within 24 hours and restoring the surface to match the existing.
25. Adequate trash facilities and pick ups shall be provided to maintain the site free of debris, food waste, and to minimize scavenger birds.



BUENGER COMMERCIAL REAL ESTATE, INC.
SALES - LEASING - PROPERTY MANAGEMENT - CONSULTING

MARINE EMPORIUM LANDING
3600 SOUTH HARBOR BLVD.
OXNARD, CA 93035

MARINE EMPORIUM LANDING - FULL DEVELOPMENT SCHEME

SITE PLAN
SCALE: 1" = 30' 4"



**Corcoran
Corcoran
& Botich**
Architecture
and Planning

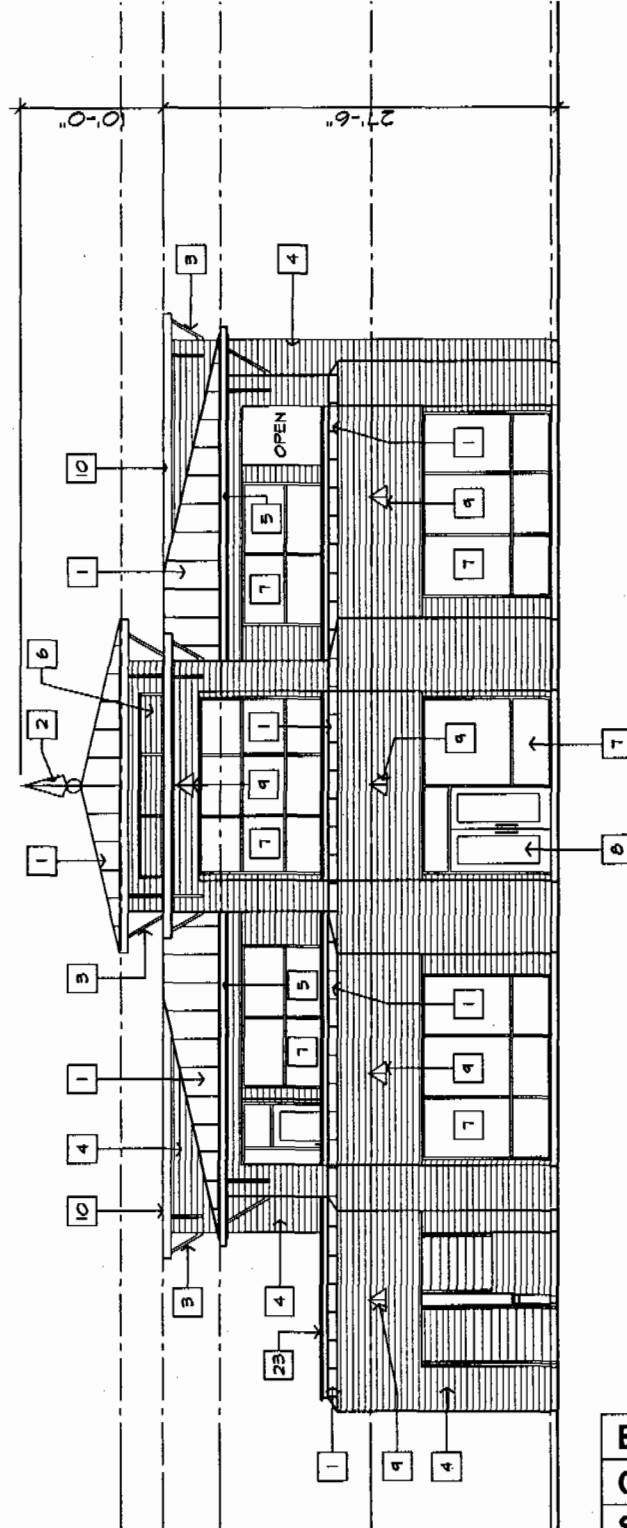
EXHIBIT 2

CI Harbor NOID 2-06

Site Plans

Elevation Notes

- 1 METAL ROOFING, ARCHITECTURAL / STRUCTURAL FLAT PAN STANDING SEAM PANEL, 18" PANEL COVERAGE WITH 1" HEIGHT, KYNAR 500 CUSTOM FINISH COLOR PER ARCHITECT
- 2 METAL SPIRE, MATCH ROOF COLOR.
- 3 METAL BRACE, COLOR TO MATCH ROOF COLOR.
- 4 CEMENTITIOUS BEVEL SIDING WITH WOOD GRAIN TEXTURE, COLOR PER ARCHITECT
- 5 ALUMINUM GUTTER, COLOR TO MATCH ROOF COLOR.
- 6 ALUMINUM LOUVER, KYNAR 500 CUSTOM FINISH COLOR TO MATCH ROOF
- 7 2-1/4" BY 4-1/2" ALUMINUM STOREFRONT WITH 1" INSULATED GLAZING, POWDER COATED FINISH COLOR PER ARCHITECT
- 8 STORE FRONT DOOR COLOR TO MATCH STOREFRONT COLOR AND FINISH
- 9 LIGHT FIXTURE, FINISH AND COLOR PER ARCHITECT
- 10 PARAPET WITH CAP FLASHING, COLOR AND FINISH TO MATCH ROOF
- 11 PVC CELLULAR TRIM WITH WOOD GRAIN TEXTURE, PAINTED COLOR PER ARCHITECT



SOUTH ELEVATION

SCALE: 1/8" = 1'-0"

2

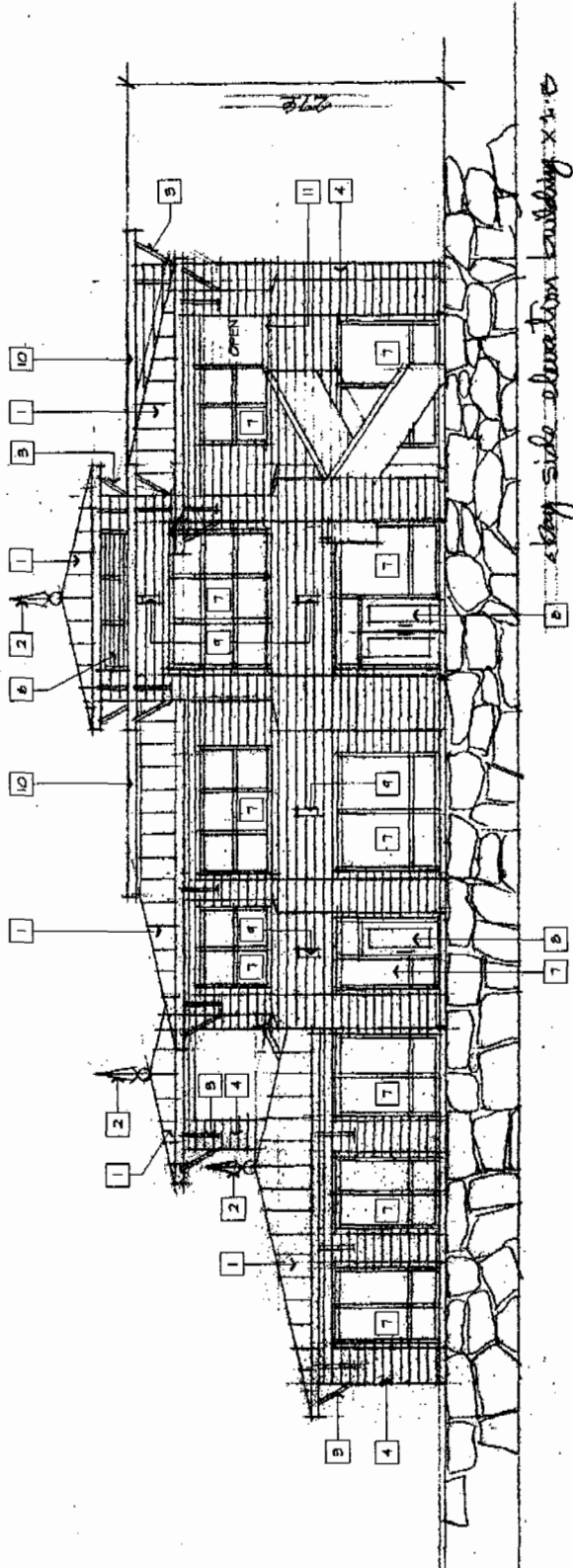
EXHIBIT 3

CI Harbor NOID 2-06

South Elevation Plans

Elevation Notes

- 1 METAL ROOFING, ARCHITECTURAL / STRUCTURAL FLAT PAN STANDING SEAM PANEL, 18" PANEL COVERAGE WITH 1" HEIGHT, KYNAR 500 CUSTOM FINISH COLOR PER ARCHITECT
- 2 METAL SPIRE, MATCH ROOF COLOR
- 3 METAL BRACE, COLOR TO MATCH ROOF COLOR
- 4 GEMENTIONS BEVEL SIDING WITH WOOD GRAIN TEXTURE, COLOR PER ARCHITECT
- 5 ALUMINUM GUTTER, COLOR TO MATCH ROOF COLOR
- 6 ALUMINUM LOWER KYNAR 500 CUSTOM FINISH COLOR TO MATCH ROOF
- 7 2-1/4" BY 4-1/2" ALUMINUM STOREFRONT WITH 1" INSULATED GLAZING, POWDER COATED FINISH COLOR PER ARCHITECT
- 8 STORE FRONT DOOR COLOR TO MATCH STOREFRONT COLOR AND FINISH
- 9 LIGHT FIXTURE, FINISH AND COLOR PER ARCHITECT
- 10 PARADET WITH CAP FLASHING, COLOR AND FINISH TO MATCH ROOF
- 11 PVC CELLULAR TRIM WITH WOOD GRAIN TEXTURE, PAINTED COLOR PER ARCHITECT



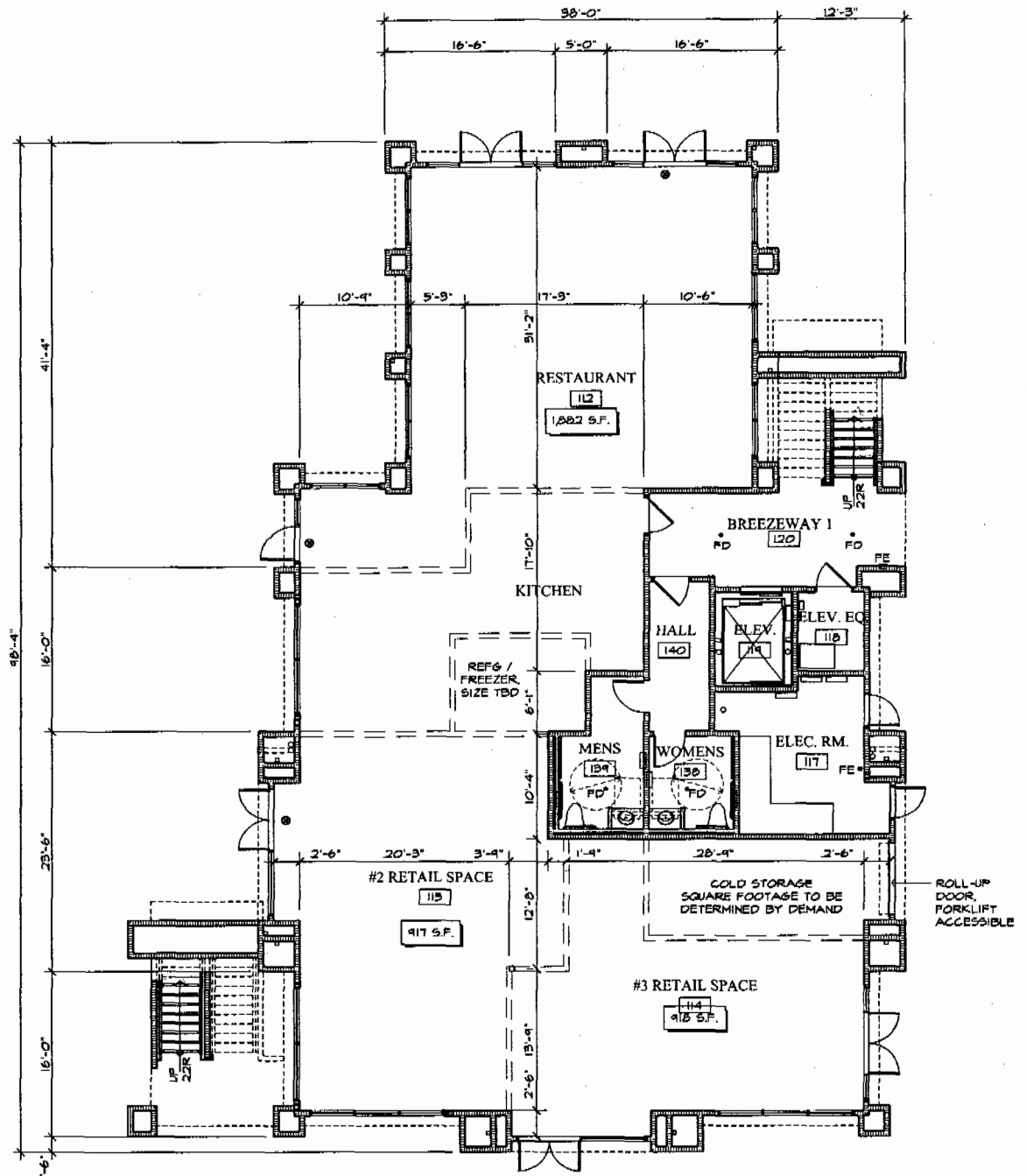
WEST ELEVATION
SCALE 1/8" = 1'-0"

3

EXHIBIT 4

CI Harbor NOID 2-06

West Elevation Plans



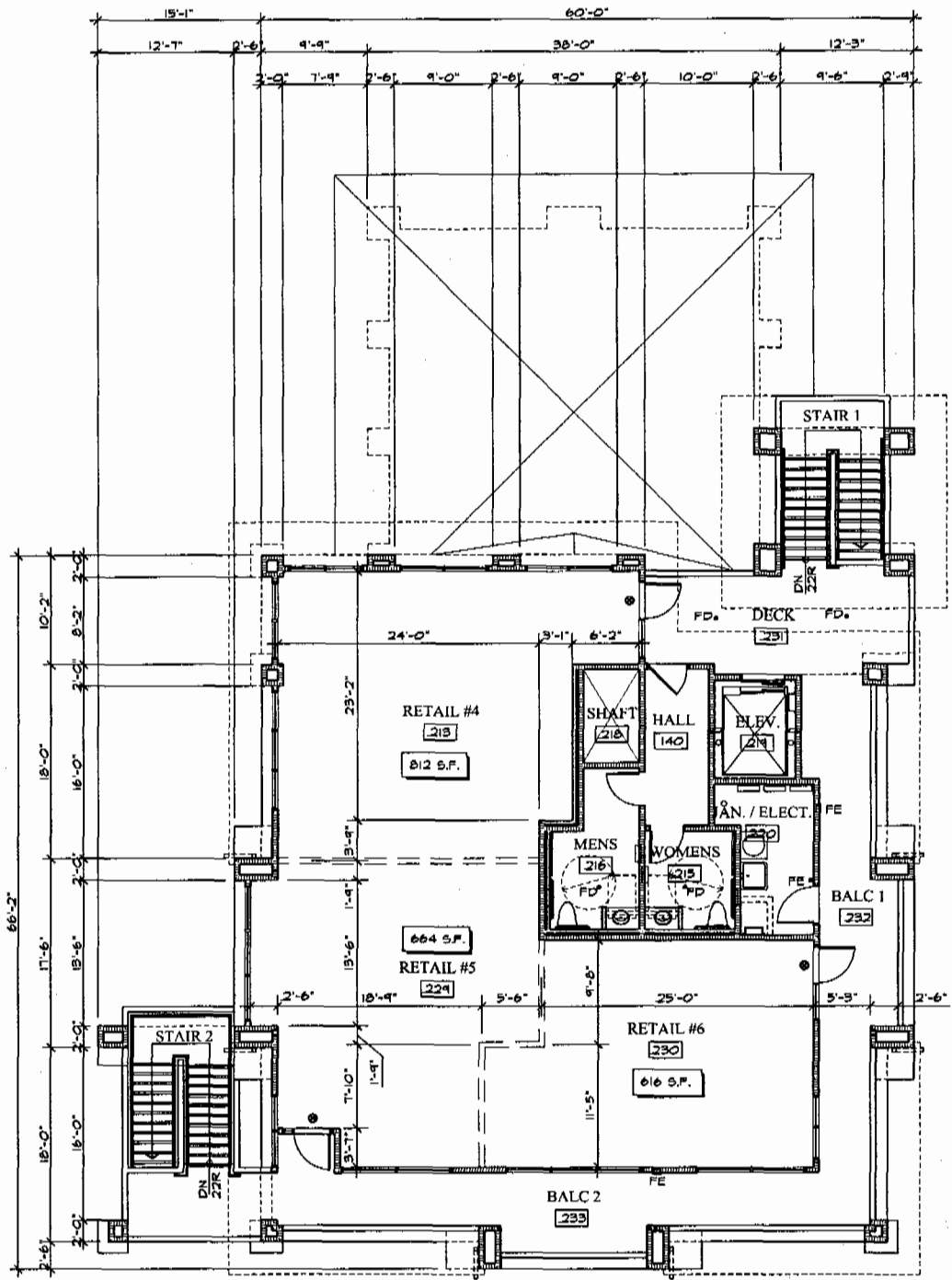
BUILDING X1-B FIRST FLOOR

SCALE: 1/8" = 1'-0"
P:\532MarineEmpland\532A2.01.dwg Mar 06, 2007

EXHIBIT 5

CI Harbor NOID 2-06

First Floor Plans



BUILDING X1-B SECOND FLOOR

SCALE: 1/8" = 1'-0"

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EXHIBIT 6

CI Harbor NOID 2-06

Second Floor Plans



Jeffrey B. Froke, Ph.D.
CALIFORNIA WILDLIFE ECOLOGY

Survey · Design · Monitor & Manage

3158 Bird Rock Road / Pebble Beach CA 93953

TEL (831) 224-8595 / FAX (831) 649-3764

jbfroke@mac.com

CHANNEL ISLANDS HARBOR FIELD REPORT

DATE: 22 April 2007
TO: Lyn Krieger
Ventura County Harbor Department
CC: Andi Culbertson
Culbertson Adams & Associates

This report of all herons' nesting status at Channel Islands Harbor is as of 15 Mar 07, the date of my most recent onsite inspection. The previously submitted report (05 Mar 07) gave the status of the CIH colony per 22 Feb 07. My next scheduled field inspections will be this week, on 23 and 26 Apr 07.

Black-crowned Night-Heron -

There were no BCNH pairs nesting or starting to nest in the harbor study area. My information consisted of direct observations plus those of Greg Ainsworth (Impact Sciences). By mutual agreement, Greg and I will notify one another whenever we detect or suspect BCNH to be nesting or displaying serious nesting behavior in the harbor environment.

Great Blue Heron -

Westside. There were no GBH nesting on the Westside of CIH, including the two large cypresses at Barracuda Way. [running total: 0 GBH prs]

Peninsula/Peninsula Park. There were no nesting herons at Peninsula Park or its vicinity. [0 GBH]

Peninsula/Casa Sirena. Three pairs of GBH were nesting on the grounds of Casa Sirena, two of which were in the well-established Monterey Pine in the central portion of the (3-story) hotel complex (*stairwell pine*). It is likely these are the same birds observed by our tour group in February. A third Casa pair was nesting in an adjacent palm, 25 ft distant from the pine in the parking lot; this is one of the palms that was first used by a nesting pair last year (2006). [running total: 3 GBH prs]

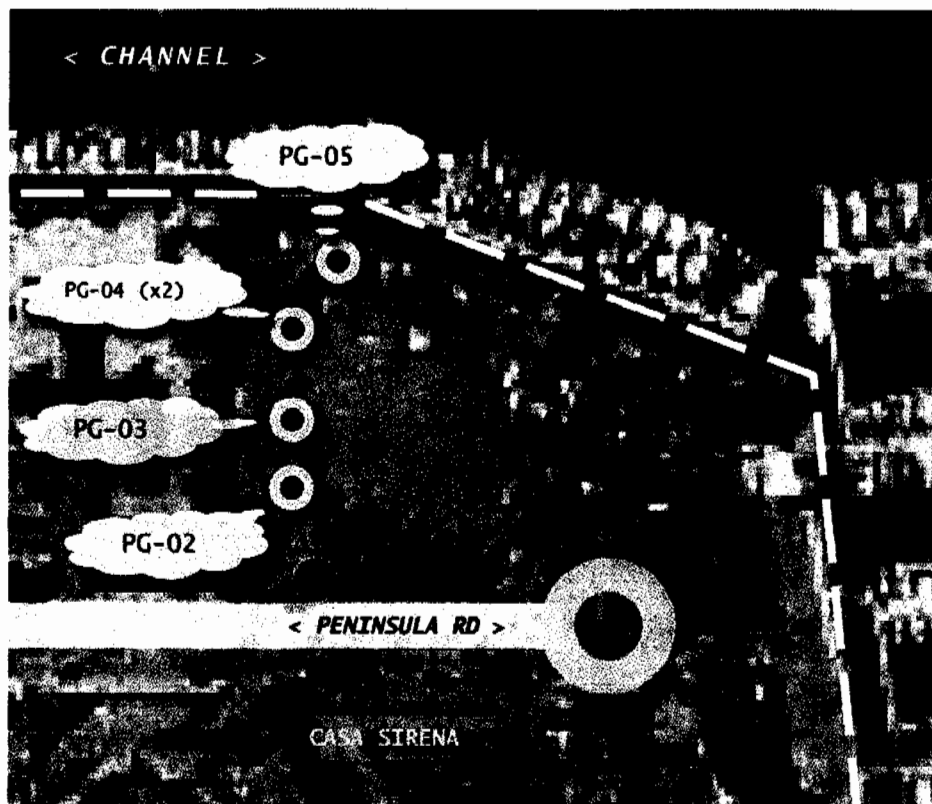
Peninsula/Boat Lot. Five pairs of GBH were nesting in as many palms on the north edge of the Boat Anchorage Parking Lot, along its border with the adjacent apartment complex. See attached figure. At the time of observation (3.5 hrs, midday), no evidence of hatched eggs or nestlings was observed; and either single or both adults were attending the nests. The pair at nest site Pen-PG-

EXHIBIT 7

CI Harbor NOID 2-06

Froke April 2007 Report

03 (see figure) was building or rebuilding their nest, and the collecting adult (likely the male) was making its circuit @ \pm 7-minute intervals. [running total: 8 GBH prs]



CIH Peninsula Boat Anchorage Parking Lot. Linear grouping of Mexican Fan Palms along the border of the parking lot and adjacent apartment complex (right): Single trees in Palm Groups 02-05[©] are occupied by nesting pairs of Great Blue Heron, 22 March 2007. Two trees in Palm Group 04 are occupied.

Notes:

- (1) Three palms occupied by nesting GBH on 22 Feb 07 were in PGs 02, 03, and 04.
- (2) AP07 Photographs of the nesting herons and the palm nest sites are on file and available.





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Revised 29 March 2006

MEMORANDUM

TO Ms Lyn Krieger, Director
 Ventura County Harbor Department

SUBJECT Channel Islands Harbor | Basins D & E
 Dock Construction and Heron Protection

BACKGROUND

Construction of a replacement marina is proposed for Basins D and E, which are located south and adjacent to the future Boating Instruction and Safety Center (BISC) on the West Side of Channel Islands Harbor.

In past years (previous to and including 2002-2003), there existed both a nesting colony and day roost of Black-crowned Night-Herons scattered over the West Side area, particularly adjacent to the E Basin, and across the channel on the mid-harbor Peninsula. Effective in 2004 and to the present, however, the majority of the night-heron population relocated to a larger dual-species heronry in Port Hueneme, leaving the sites of the former West Side colony mostly quiet of herons. The Port Hueneme heronry consisted of nearly 100 pairs of Snowy Egrets and Black-crowned Night-Herons in 2005. On the other hand, Great Blue Herons (at least 3 pairs in early 2006) remain attached to the West Side (1 pair) and Peninsula (at least 2 pairs) colony locations for at least another nesting season.

Despite the limited presence of Black-crowned Night-Herons in the vicinity of the proposed construction area, special consideration of the

EXHIBIT 8
CI Harbor NOID 2-06
Froke March 2006 Report

birds and conservative actions to assure that the birds will not be harmed or adversely affected by proposed construction activities are essential. A conservative approach would be called for to avoid even mildly disrupting the birds. It is possible that individuals or small groups of night-herons might return to the West Side to day roost or nest; and in fact three pairs were present on nests in adjacent trees on 24 March 2006. Therefore, the conservation objective of this project is to avoid disrupting or causing harm to night-herons, especially breeding night-herons.

Arrival of Adults Birds

The following statement addresses when Black-crowned-Night-Herons may arrive to breed at the West Side of Channel Islands Harbor:

Adult Black-crowned Night-Herons arrive where they will nest to then pair-up and initiate breeding activities as early as January and February, but more typically during March; and some early nesting may be underway as early as March. Nesting can be expected to be in full-swing by mid-April, then as a colony - if there are numerous pairs - to continue as long as August. The latest it is reasonable to expect arriving new birds is mid-late April.

IMMEDIATE OBJECTIVE

To protect Black-crowned Night-Herons and Great Blue Herons from disturbance during the construction phase of the marina, each construction activity capable of such disturbance should be evaluated to determine if precautions are in order. The types of activities that may disturb or discourage herons may be characterized as sudden and exceptionally loud noise generation, bright upward shining lights, and - at least in the case of night-herons - both leashed and unleashed dogs and cats that are left to harass birdlife in the park trees. The following

set of responsible construction and management practices should be administered whenever and wherever the birds may be nesting. Nesting boundaries, including nesting location and timeline, should be carefully identified and monitored by a qualified heron ecologist.

It is noted that the Project Owner has committed to employ certain silt and turbidity reduction measures, these including silt curtains and partially-set piles. Whether nesting herons are present to benefit from these environmental protection allowances, the sum effects will be positive for all waterbirds and the total marine environment of the harbor.

Prescriptive Measures

Construction Noise & Setbacks

Setbacks and buffer distances. Although there is usually discussion about whether and how extensive to make linear setbacks or buffers from, e.g., present or even former but presently vacant heron nests to active machinery or other sources of industrial noise, the argument in support of setbacks lacks data. In fact, all real evidence points to the species' tolerance of noise and source activity, especially in the realm of outdoor recreation and human and mechanical sounds that have a repetitive and predictably broad pattern, e.g., marine and auto traffic.

In the present case, the distance from the noise source (assumed to be an on-ground compressed-air pump (diesel) operating at the work site) to the protected resource (active heron nests) can be accurately measured. With respect to Basin D, the measured distances from the proximal nest tree to the respective bulkhead for each of the first six docks, starting from the *Whale's Tale* and headed south range from 128 – 651 feet. By contrast, the same nest tree is located 34 ft. from the adjacent parking lot, which includes not only the general public and

Yacht Club members' autos but also the neighborhood dumpster, which occupies the parking stall closest to the tree.

Distance to known nest trees from 2006. A reasonable use of the current data is to identify the distance from the only West Side heron nest trees (four active in 2006) to the closest respective construction sites. As stated, the proximal of three contiguous night-heron nest trees is 128 ft from the closest possible construction point, a dock bulkhead in Basin D. The only Great Blue Heron nest, in a 60-ft cypress at Barracuda, is located more than 132 ft (ground distance) to the closest construction point, a dock bulkhead in Basin E.

CONCLUSION

A specific setback of hundreds of feet from construction activity to heron nesting spaces is already in-play. In fact, available data and observations of contemporary Southern California heronries surely illustrate that Black-crowned Night-Herons, Great Blue Herons, and Snowy Egrets not only tolerate presence of humans and structures associated with urban-waterscape settings, but under certain circumstances the species may also be *attracted* to such settings. (See findings of my ongoing studies of herons in human settings at both Channel Islands Harbor (2004) and Marina del Rey (2005)). The dual-species heronry of Black-crowned Night-Herons and Snowy Egrets at Dana Point Harbor is yet another interesting case where nearly 100 pairs nest directly above a popular bait hut and roadway turnout.

Positive Prescriptions for Environmental Management

Sound Prescription. The power systems that will be employed for the jack-hammers and pile-drivers (etc.), will be driven by compressed air, and it is reasonable that the engine and compression unit would be shielded from the external environment for the purpose of reducing sound emissions. Shields made from ordinary heavy plywood or sound-

board, or molded sound shields that are custom-made for the compression unit would be suitable if properly managed, and monitored throughout the work day.

Dog-Free Parks. During the heron nesting period, when this protection plan is in effect, construction employees must abstain from bringing their pets (dogs and cats) to the job site. Workers should not be permitted to lunch under nesting trees.

No Loud Music. During the heron nesting period, when this protection plan is in effect, construction employees must abstain from playing loud music or other programs in and around the job site.

Overall Connection. Throughout the construction period, when it intersects with the active nesting period for herons within Channel Islands Harbor, an ornithologist who is familiar with the local heronry shall make the rounds of the project area and all known nesting neighborhoods, on a twice-a-month basis for the following monitoring and protective purposes:

- (1) To ensure that approved measures are taken to shield generated noise from designated construction power systems;
- (2) To ensure that construction crews have left their pets at home and are not playing loud music in or around the job site; and,
- (3) To locate and reconfirm the presence and status of nesting heron pairs and their eggs/young in the harbor environment.

Through work sponsored by the Ventura County Harbor Department over the last 3-4 years, we have learned a great deal about three

species of breeding herons in coastal Ventura County. The best news of all is that the herons' numbers appear to be growing, their geographic range is advancing, and their adaptability to live in human occupied settings is assured.

Respectfully,

A handwritten signature in black ink, appearing to be 'JBF', followed by a horizontal line.

Heron Nest Trees, CHANNEL ISLANDS HARBOR, Ventura Co., California (2003-2006)



Marine Emporium
Landing X-1-B Site

This map shows all trees in the CIH study area that were confirmed as used by nesting herons during 2003, 2004, 2005 & 2006. Tree species are New Zealand Christmas Trees (METEXCL), Monterey Pine (PIPIRAD), Monterey Cypress (CUPMAC), Mexican San Palm (WASROB), a Metahuca (MELALEUCA sp.), and a Magnolia (MAGNOLIA sp.). Heron species are Black-crowned Night-Heron (BCHN), Snowy Egret (SEEG), and Great Blue Heron (GBHL).

Note: Black-crowned Night-Herons, which were most numerous @ CIH in 2003 (139 nesting pairs on the West Side), have since declined in numbers: 5 pairs in 2004, a single pair in 2005, and no birds in 2006. Simultaneously, BCHN numbers have grown to match Snowy Egrets at Port Hueneque (approx. 100 pairs total), and a record-high of approximately 17 pairs of Great Blue Herons nested at Ventura Harbor during 2005.

© 2006, 2007, 2008

Exhibit 9
CI Harbor NOID 2-06
Heron Nesting Site Aerial



Exhibit 10
CI Harbor NOID 2-06
Building X-1-B Site

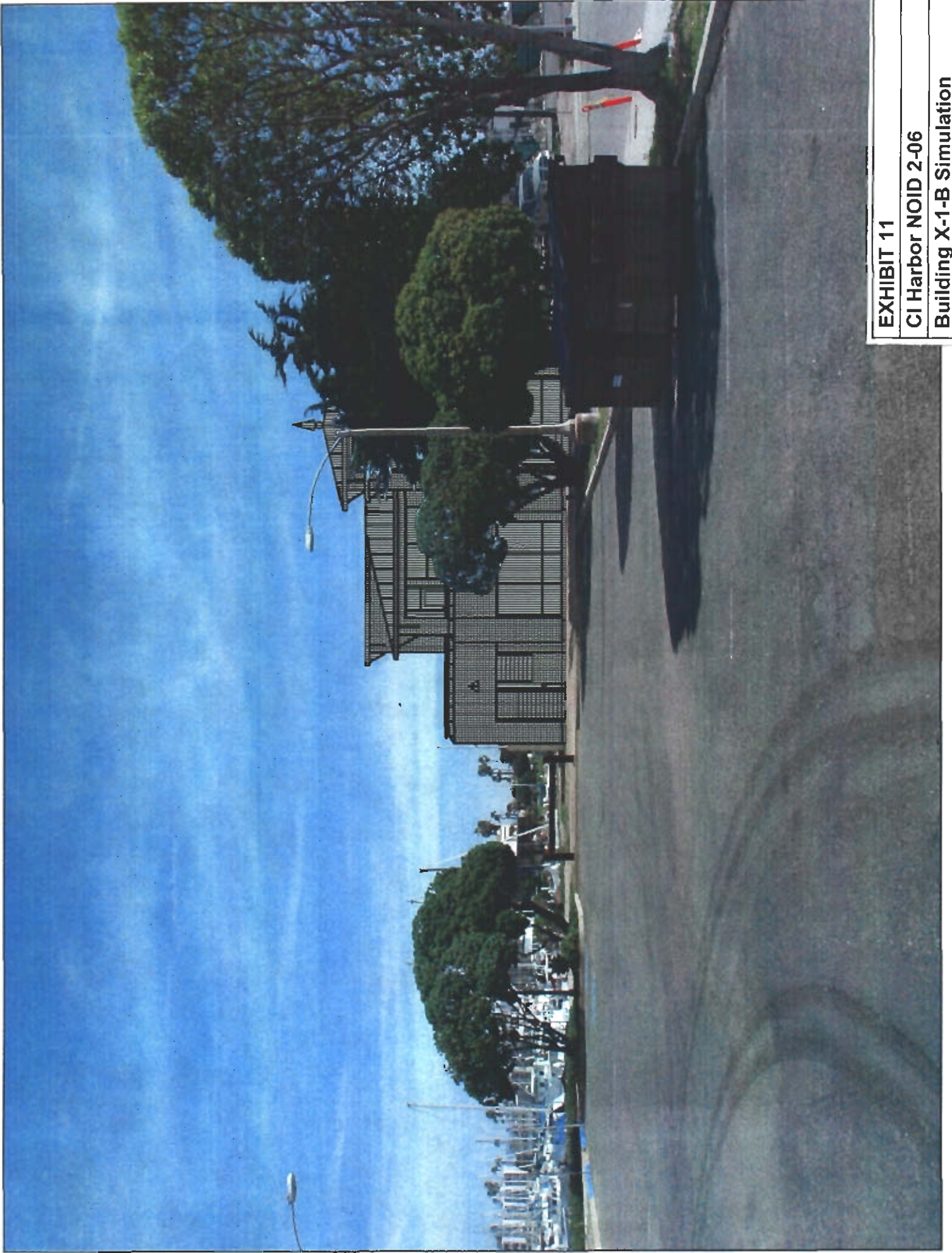


EXHIBIT 11

CI Harbor NOID 2-06

Building X-1-B Simulation